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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
Defendants-Appellants.

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G 72	Weekly Letter, Feb. 15, 1935, W. P. Jacobi to A. G. Maguire	362	2687
G 73	Weekly Letter, June 7, 1935, W. P. Jacobi to A. G. Maguire	458 907	2688
G 75	Weekly Letter, Sept. 20, 1935, W. P. Jacobi to A. G. Maguire	460 907	2689
G 76	Weekly Letter, Dec. 21, 1935, W. P. Jacobi to A. G. Maguire	461 907	2690
G 80	Letter, Aug. 10, 1935, Dale W. Moore to Charles E. Arnott	866	2691
G 83	Letter, Aug. 16, 1935, C. L. Jones to D. W. Moore	866	2693
G 84	Letter, Aug. 16, 1935, C. L. Jones to W. P. Jacobi, enclosing Government Exhibits 80 and 83	866	2693

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G 86	Letter, Aug. 27, 1935, R. H. Romer, Socony-Vacuum Oil Company, Inc., to W. P. Jacobi	471 907	2694
G 87	Letter, Sept. 3, 1935, W. P. Jacobi to J. H. Romer	471 907	2695
G 88	Letter, Sept. 16, 1935, J. H. Romer to W. P. Jacobi	471 907	2696
G 93	Letter, Dec. 27, 1935, W. T. Atkins to J. F. Nagle	1876	2697
G 94	Letter, Dec. 24, 1935, J. F. Nagle to W. T. Atkins	506 907	2697
G 95	Letter, Jan. 9, 1936, W. T. Atkins to Emby Kaye	506	2699
G 96	Letter, Jan. 9, 1936, W. T. Atkins to J. F. Nagle	506 907	2699
G 97	Letter, Jan. 22, 1936, J. F. Nagle to W. T. Atkins	1876	2700
G 98	Letter, Jan. 21, 1936, A. G. Pendergrass to Clara Gartman	506 907	2701
G 99	Letter, Nov. 5, 1935, L. H. Poland to J. F. Nagle	506 907	2701
G 100	Letter, Nov. 20, 1935, J. F. Nagle to L. H. Poland	506 907	2702
G 101	Letter, Jan. 8, 1936, J. F. Nagle to W. T. Atkins	506 907	2702
G 102	Letter, March 18, 1935, O. J. Tuttle to J. F. Nagle	506 907	2703
G 103	Letter, Oct. 22, 1935, J. F. Nagle to A. V. Bourque	506 907	2704
G 104	Letter, Oct. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2705
G 105	Letter, Sept. 20, 1935, Clara Gartman to A. V. Bourque	506 907	2706

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G 106	Letter, Sept. 11, 1935, Clara Gartman to A. V. Bourque...........	506 907	2707
G 107	Letter, Sept. 5, 1935, Clara Gartman to A. V. Bourque...........	506 907	2708
G 108	Letter, June 21, 1935, Clara Gartman to A. V. Bourque...........	506 907	2709
G 109	Letter, July 27, 1935, Clara Gartman to A. V. Bourque...........	506 907	2710
G 110	Letter, July 13, 1935, Clara Gartman to A. V. Bourque...........	506 907	2711
G 111	Letter, June 5, 1935, Clara Gartman to A. V. Bourque...........	506 907	2712
G 112	Letter, May 17, 1935, Clara Gartman to A. V. Bourque...........	506 907	2713
G 113	Letter, May 6, 1935, Clara Gartman to A. V. Bourque...........	506 907	2713
G 114	Letter, April 23, 1935, Clara Gartman to A. V. Bourque..........	506 907	2714
G 115	Letter, April 9, 1935, Clara Gartman to A. V. Bourque..........	506 907	2714
G 116	Letter, April 2, 1935, Clara Gartman to A. V. Bourque..........	506 907	2715
G 117	Letter, March 29, 1935, Clara Gartman to A. V. Bourque..........	506 907	2715
G 118	Letter, March 19, 1935, Clara Gartman to A. V. Bourque..........	506 907	2716
G 120	Letter, May 7, 1935, J. F. Nagle to W. T. Atkins..............	506 907	2716
G 121	Letter, Sept. 11, 1935, J. F. Nagle to A. H. Pendergrass..........	1876	2719
G 122	Letter, Aug. 27, 1935, J. F. Nagle to L. H. Poland..............	506 907	2720
G 123	Letter, Nov. 15, 1935, Clara Gartman to L. H. Poland..............	506 907	2721

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G 124	Letter, Oct. 17, 1935, J. F. Nagle to L. H. Poland	506 907	2722
G 125	Letter, Dec. 20, 1935, L. H. Poland to E. F. Underwood	506 907	2723
G 126	Letter, Dec. 21, 1935, J. F. Nagle to L. H. Poland	506 907	2723
G 127	Letter, Dec. 23, 1935, W. T. Atkins to L. H. Poland	506 907	2724
G 128	Letter, December 23, 1935, W. T. Atkins to J. F. Nagle	1876	2724
G 135	Telegram, Dec. 7, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 136	Telegram, Nov. 23, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 137	Telegram, Feb. 23, 1935, C. E. Arnott to J. J. Taxman	1703	2725
G 148	Letter, Oct. 8, 1935, C. M. Boggs to Dan Danciger	901	2726
G 168	Telegram, Jan. 4, 1935, A. P. Ruether to Crude Oil Department, Tulsa, Petroleum Corporation	724	2726
G 169	Weekly memorandum, Jan. 11, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2727
G-170	Weekly memorandum, Jan. 15, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2728
G 171	Telegram, March 18, 1935, McNair to A. P. Ruether	724	2730
G 173	Telegram, February 2, 1935, R. W. McDowell to P. E. Lakin	825 907	2731
G 174	Telegram, Feb. 13, 1935, G. L. Shoemaker to A. P. Ruether	825	2732

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G 175	Telegram, March 6, 1935, McNair to A. P. Ruether	826	2732
G 176	Weekly memorandum, March 8, 1935, A. P. Ruether to P. E. Lakin and R. P. Bascom	826 907	2732
G 177	Weekly memorandum, Feb. 6, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	832 907	2733
G 178	Weekly memorandum, March 15, 1935 A. P. Ruether to P. E. Lakin	827 907	2734
G 179	Weekly memorandum, March 20, 1935, A. P. Ruether to R. P. Bascom	827 907	2735
G 180	Telegram, March 20, 1935, E. A. Bacon to A. P. Ruether	827 907	2735
G 181	List of refiners from whom "buying group" are purchasing, compiled April 4, 1935, by Harry Jacobs	827 907	2736
G 182	Weekly price review, March 13, 1935, L. van Eeghen to A. Fraser, prepared by Harry Jacobs	829 907	2737
G 183	Weekly price review, March 20, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	829 907	2739
G 184	Weekly price review, April 3, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2742
G 185	Weekly price review, April 10, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2746
G 186	Weekly price review, April 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2751

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G-187	Weekly price review, April 24, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2754
G 188	Weekly price review, May 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2757
G 189	Weekly price review, May 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2760
G 190	Weekly price review, June 7, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2764
G 191	Weekly price review, June 14, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2768
G 192	Weekly price review, June 21, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2771
G 193	Weekly price review, Aug. 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1889	2774
G 194	Weekly price review, August 23, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2777
G 197	Weekly price review, Sept. 25, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2780
G 198	Weekly price review, Oct. 2, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2782
G 199	Weekly price review, Oct. 9, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2785

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G 200	Weekly price review, Oct. 16, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2789
G 201	Weekly price review, Oct. 23, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2792
G 202	Weekly price review, Oct. 30, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2795
G 203	Weekly price review, Nov. 20, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2798
G 204	Weekly price review, Dec. 6, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2800
G 209	Weekly price review, March 28, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2802
G 210	Weekly price review, March 21, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2805
G 212	Weekly price review, Feb. 14, 1936, P. E. Lakin to A. Fraser, prepared By Harry Jacobs	832 907	2808
G 214	Weekly price review, Feb. 1, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2811
G 215	Weekly price review, Jan. 24, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2814
G 217	Weekly price review, Dec. 19, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2817

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G 218	Weekly price review, Dec. 14, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2819
G 220	Weekly memorandum, Jan. 2, 1935, A. P. Ruether to Fraser, Bascom and Lakin	833	2821
G 221	Telegram, Aug. 26, 1935, G. L. Shoemaker to A. P. Ruether	833 907	2822
G 222	Telegram, Aug. 23, 1935, H. L. Stegall to A. P. Ruether	725 907	2822
G 230	Letter, May 24, 1935, A. V. Bourgue to P. E. Lakin	1876	2823
G 231-A	Tabulation of cars purchased in March 1935, being enclosure with Government Ex. 230	1876	2824
G 231-B	Tabulation of cars purchased in April 1935, being enclosure with Government Ex. 230	1876	2825
G 231-C	Tabulation of cars purchased in May 1935, being enclosure with Government Ex. 230	1876	2826
G 232	Letter, May 17, 1935, P. E. Lakin to A. V. Bourque	834 907	2827
G 233	Telegram, Dec. 3, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	907	2827
G 234	Telegram, Dec. 9, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2828
G 235	Weekly Gulf Coast bulk market review, April 9, 1935, C. E. Davis to A. Fraser	834 907	2829
G 237	Telegram, Feb. 15, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2833

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G 238	Telegram, Feb. 25, 1936, Shoemaker to A. P. Ruether	725 907	2834
G 239	Telegram, Feb. 27, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2834
G 240	Letter, Dec. 19, 1935, R. W. McDowell to P. E. Lakin	835 907	2835
G 243	Letter, February 3, 1936, J. E. Fritts to F. L. Schafer	724	2836
G 244	Letter, Jan. 29, 1936, Harry Jenkins to H. A. Bingle, being enclosure with Government Ex. 243	724	2837
G 246	Memorandum, Oct. 3, 1935, J. H. Salmon to Crude Oil Department, received by Harry Jacobs	835 907	2837
G 247	Memorandum, July 26, 1935, A. W. Frey to A. P. Ruether	724	2838
G 248	Weekly Gulf Coast bulk market review, April 23, 1935, C. E. Davis to A. Fraser	1876	2839
G 250	Memorandum, March 6, 1936, A. P. Ruether to P. E. Lakin	836 907	2844
G 251	Weekly Market Letter, April 6, 1935, J. W. Warner to J. D. Collins	622 907	2846
G 252	Weekly Market Letter, April 13, 1935, J. W. Warner to J. D. Collins	622 907	2849
G 253	Weekly Market Letter, April 20, 1935, J. W. Warner to J. D. Collins	622 907	2852
G 254	Weekly Market Letter, April 27, 1935, J. W. Warner to J. D. Collins	622 907	2855
G 256	Weekly Market Letter, May 11, 1935, J. W. Warner to J. D. Collins	622 907	2858
G 257	Weekly Market Letter, May 18, 1935, J. W. Warner to J. D. Collins	622 907	2861

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G 258	Weekly Market Letter, June 1, 1935, J. W. Warner to J. D. Collins.....	622 907	2864
G 259	Weekly Market Letter, June 8, 1935, J. W. Warner to J. D. Collins.....	622 907	2867
G 260	Weekly Market Letter, June 22, 1935 J. W. Warner to J. D. Collins.....	622 907	2870
G 262	Weekly Market Letter, July 20, 1935, J. W. Warner to J. D. Collins.....	622 907	2872
G 265	Weekly Market Letter, Aug. 17, 1935, J. W. Warner to J. D. Collins.....	1876	2876
G 267	Weekly Market Letter, Aug. 31, 1935, J. W. Warner to J. D. Collins.....	622 907	2879
G 268	Weekly Market Letter, Sept. 14, 1935, J. W. Warner to J. D. Collins.....	622 907	2882
G 269	Weekly Market Letter, Sept. 21, 1935, J. W. Warner to J. D. Collins.....	622 907	2885
G 270	Weekly Market Letter, Sept. 28, 1935, J. W. Warner to J. D. Collins.....	622 907	2888
G 271	Weekly Market Letter, Oct. 5, 1935, J. W. Warner to J. D. Collins.....	622 907	2891
G 272	Weekly Market Letter, Oct. 12, 1935, J. W. Warner to J. D. Collins.....	622 907	2894
G 273	Weekly Market Letter, Oct. 19, 1935, J. W. Warner to J. D. Collins.....	622 907	2897
G 274	Weekly Market Letter, Oct. 26, 1935, J. W. Warner to J. D. Collins.....	622 907	2899
G 275	Weekly Market Letter, Nov. 2, 1935, J. W. Warner to J. D. Collins.....	622 907	2903
G 276	Weekly Market Letter, Nov. 9, 1935, J. W. Warner to J. D. Collins.....	622 907	2906
G 277	Weekly Market Letter, Nov. 18, 1935, J. W. Warner to J. D. Collins.....	622 907	2909
G 278	Weekly Market Letter, Nov. 23, 1935, J. W. Warner to J. D. Collins.....	622 907	2912

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G 279	Weekly Market Letter, Nov. 30, 1935, J. W. Warner to J. D. Collins	622 907	2915
G 280	Weekly Market Letter, Dec. 7, 1935, J. W. Warner to J. D. Collins	622 907	2918
G 281	Weekly Market Letter, Dec. 14, 1935, J. W. Warner to J. D. Collins	622 907	2921
G 284	Weekly Market Letter, Jan. 4, 1936, J. W. Warner to J. D. Collins	622 907	2924
G 285	Weekly Market Letter, Jan. 11, 1936, J. W. Warner to J. D. Collins	622 907	2927
G 286	Weekly Market Letter, Jan. 18, 1936, J. W. Warner to J. D. Collins	622 907	2930
G 287	Weekly Market Letter, Jan. 25, 1936, J. W. Warner to J. D. Collins	786 907	2933
G 291	Weekly Market Letter, Feb. 22, 1936, J. W. Warner to J. D. Collins	837	2936
G 292	Weekly Market Letter, Feb. 29, 1936, J. W. Warner to J. D. Collins	786 907	2940
G 293	Weekly Market Letter, March 7, 1936, J. W. Warner to J. D. Collins	1876	2944
G 294	Weekly Market Letter, March 14, 1936, J. W. Warner to J. D. Collins	786 907	2947
G 295	Weekly Market Letter, March 28, 1936, J. W. Warner to J. D. Collins	786 907	2950
G 296	Weekly Market Letter, April 4, 1936, J. W. Warner to J. D. Collins	786 907	2953
D 305	Letter, March 12, 1935, C. E. Arnott to L. L. Marcell	1705	2956
G 306	Letter, March 27, 1935, L. L. Marcell to C. E. Arnott	1787	2957
G 311	Letter, March 12, 1935, L. L. Marcell to C. E. Arnott	1783	2958
G 316	Letter, Aug. 22, 1935, R. O. Audrain to R. N. Cline	1876	2959

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G 317	Letter, Aug. 12, 1935, R. O. Andrain to R. N. Cline, re Texas Oil Products Company	1876	2960
G 318	Letter, Aug. 12, 1935, R. O. Andrain to R. N. Cline, re Century Refining Company	1876	2960
G 319	Letter, Aug. 8, 1935, R. O. Andrain to R. N. Cline	1876	2961
G 320	Telegram, July 31, 1935, Pure Oil Company, Chamberlin, to R. D. Klein	1876	2961
G 321	Telegram, Aug. 6, 1935, Pure Oil Company, Chamberlin, to R. D. Klein	1876	2962
G 327	Letter, June 29, 1935, K. D. Chamberlin to R. D. Klein	650	2962
G 329	Letter, Dec. 16, 1935, K. D. Chamberlin to Grogan Oil Company	1876	2963
D 331	Telegram, March 14, 1935, C. E. Arnott to H. W. Dodge; (identical with Government Exhibit 17)	1720	2964
D 332	Telegram, March 14, 1935, C. E. Arnott to H. W. Dodge	1720	2964
G 334	Letter, Oct. 11, 1935, A. G. Maguire to J. H. Romer	723 907	2964
G 335	Letter, Feb. 13, 1936, Louis McNally to George A. Booth	723 907	2965
G 336	Letter, Feb. 11, 1936, G. A. Booth to F. E. Scuder	723 907	2966
G 337	Letter, Feb. 27, 1936, Ray Williamson to H. B. May, Gilliland Refining Company	866	2967
G 338	Letter, Feb. 28, 1936, H. B. May to Ray Williamson	866	2968

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G 339	Letter, April 17, 1935, Robert W. McDowell to C. S. Smith	845	2969
G 345	Telegram, April 1, 1935, J. W. Carnes to W. A. Tracey	788 907	2970
G 346	Telegram, March 30, 1935, D. A. McDougald to W. A. Tracey and J. V. Dippel	788 907	2970
G 347	Teletype, March 29, 1935, W. A. Tracey to J. W. Carnes	788 907	2971
G 350	Teletype, March 16, 1935, W. A. Tracey to J. W. Carnes	788 907	2971
G 351	Telegram, March 16, 1935, J. W. Carnes to W. A. Tracey	788 907	2972
G 352	Telegram, March 18, 1935, J. W. Carnes to W. A. Tracey	788 907	2972
G 353	Teletype, March 22, 1935, W. A. Tracey to J. W. Carnes	788 907	2973
G 356	Teletype, March 26, 1935, W. A. Tracey to J. W. Carnes	788 907	2973
G 358	Teletype, May 7, 1935, W. A. Tracey to J. W. Carnes	788 907	2974
G 359	Teletype, June 13, 1935, W. A. Tracey to J. W. Carnes	788 907	2974
G 360	Teletype, Feb. 13, 1936, W. A. Tracey to J. W. Carnes	788 907	2975
G 362	Teletype, April 2, 1935, W. A. Tracey to J. W. Carnes	1876	2975
G 365	Teletype, April 4, 1935, W. A. Tracey to J. W. Carnes	788 907	2976
G 369	Telegram, April 7, 1935, C. E. Arnott to Jack Carnes	788 907	2976
G 370	Telegram, April 8, 1935, K. C. Wells to J. W. Carnes	788 907	2977

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G 376	Memorandum by A. H. Sus relative to meeting of Feb. 11, 1935........	1868	2977
G 415	Telegram, Feb. 10, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2979
G 416	Telegram, Feb. 17, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2980
G 417	Telegram, Feb. 19, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2980
G 421	Telegram, March 4, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2981
G 422	Telegram, March 15, 1935, W. T. Dinkins to J. W. Carnes..........	788	2981
G 424	Telegram, May 22, 1935, J. W. Carnes to W. T. Tracey.................	788 907	2982
G 426	Letter, March 15, 1935, W. A. Tracey to D. A. Brown.................	788 907	2983
G 430	Telegram, Jan. 25, 1936, W. A. Tracey to J. W. Carnes.................	788 907	2984
G 432	Telegram, June 5, 1935, W. T. Dinkins to J. W. Carnes, written by W. A. Tracey...................	788 907	2984
G 442	Telegram, July 16, 1935, W. A. Tracey to J. W. Carnes.................	788 907	2985
G 450	Telegram, Jan. 5, 1936, W. A. Tracey to J. V. Dippel.................	788 907	2985
G 454	Letter, March 21, 1935, Harry D. Frueauff to H. E. Brandli........	608 907	2986
G 456	Letter, March 22, 1935, H. E. Brandli to Harry D. Frueauff............	608 907	2986
G 457	Letter, April 1, 1935, E. P. Engelke to Harry F. Frueauff............	726	2987

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G 458	Letter, April 3, 1935, E. P. Engelke to Harry D. Frueauff	726	2988
G 460	Telegram, June 13, 1935, Harry D. Frueauff to C. E. Arnott	1876	2988
G 461	Telegram, Aug. 1, 1935, C. E. Arnott to H. D. Frueauff	1876	2989
G 462	Telegram, Aug. 1, 1935, Harry D. Frueauff to C. E. Arnott	1876	2989
G 467	Letter, Feb. 12, 1936, J. A. Welch to Harry D. Frueauff (Description of)	1876	2990
G 469	Letter, March 4, 1936, J. A. Welch to Harry D. Frueauff (Description of)		2990
G 471	Letter, April 3, 1936, J. A. Welch to Harry D. Frueauff (Description of)	1876	2990
G 473	Letter, May 21, 1935, J. A. Welch to H. D. Frueauff	726	2990
G 474	Tabulation of gasoline purchases, April 1935, by Louisiana Oil Refining Corporation; enclosed with letter, Government Exhibit 473	726	2991
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D 848	(For identification.) Press release, April 6, 1934, issued by Department of Interior, setting forth proprosed amendment to Article IV (refinery section) of Code	1056	3389
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D 850	Letter, Aug. 23, 1935, Harold L. Ickes to John E. Shatford	1073	3399
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IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

Placita.

For the Western District of Wisconsin.

PLACITA.

Pleas in the District Court of the United States for the Western District of Wisconsin, begun and held before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room at the City of Madison in the said District, at the regular term of the said Court beginning on the first Tuesday of December, 1936, and on December 22, 1936, being one of the days of said term, the following proceedings were had, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of Wisconsin.

United States of America,
vs.
Standard Oil Company (Indiana), *et al.*,
Defendants.
} No. 11365.

Be It Remembered, that the above-entitled action was commenced by the Grand Jury returning into Court and by the filing of the following Indictment in the above-entitled cause, on December 22, 1936, with the Clerk of the District Court of the United States for the Western District of Wisconsin:

Filed Dec. 22, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Western District of Wisconsin.

United States of America,
Western District of Wisconsin.
} ss.

INDICTMENT.

The Grand Jurors of the United States of America, at a regular term of the District Court of the United 2 States of America for the Western District of Wisconsin, to-wit: the Madison, December, 1936, term thereof, held at Madison, in the County of Dane in said Western District of Wisconsin, after being duly impanelled, sworn, and charged at the term of court aforesaid, inquiring for the said district, upon their oaths find and present, as follows:

A. The defendants:

1. The following named corporations, engaged principally in the petroleum business, that is to say, in the manufacture, purchase, transportation, and sale of petroleum products, are hereby made defendants herein. Each of said corporations is duly authorized to do business under and by virtue of the laws of the state of incorporation as indicated, and has its principal place of business as indi-

cated. Each may be described as an integrated company, i. e., a company which is engaged in the combined functions of production, transportation, and refining of crude petroleum, and the transportation and wholesale and retail marketing of the products thereof, principally gasoline. Each is also sometimes known as either a "major" or "semi-major" company, as distinguished from "independent," or smaller company. Each will sometimes be referred to herein, for convenience, by the abbreviated name as indicated. Said corporations, and those of their subsidiaries hereinafter named as defendants, will sometimes be referred to as "defendant major oil companies":

Name of Corporation	Abbreviated name	State of incorporation	Principal place of business
Standard Oil Company (Indiana)	Standard of Indiana	Indiana	Chicago, Ill.
Socony-Vacuum Oil Company Inc.	Socony-Vacuum	New York	New York, N. Y.
Cities Service Company	Cities Service	Delaware	New York, N. Y.

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Name of Corporation	Abbreviated name	State of incorporation	Principal place of business
Continental Oil Company	Continental	Delaware	Ponca City, Okla.
Gulf Oil Corporation	Gulf	Pennsylvania	Pittsburgh, Pa.
The Pure Oil Company	Pure	Ohio	Chicago, Ill.
Shell Petroleum Corporation	Shell	Virginia	St. Louis, Mo.
Sinclair Refining Company	Sinclair	Maine	New York, N. Y.
The Texas Company	Texas	Delaware	New York, N. Y.
Tide Water Associated Oil Company	Tide Water	Delaware	New York, N. Y.
Mid-Continent Petroleum Corporation	Mid-Continent	Delaware	Tulsa, Okla.
Phillips Petroleum Company	Phillips	Delaware	Bartlesville, Okla.
Skelly Oil Company	Skelly	Delaware	Tulsa, Okla.
Barnsdall Refining Corporation	Barnsdall	Delaware	Tulsa, Okla.
The Globe Oil & Refining Company	Globe	Oklahoma	Blackwell, Okla.
The Globe Oil & Refining Company	Globe	Illinois	Lemont, Ill.
The Globe Oil & Refining Company	Globe	Kansas	McPherson, Kans.
Deep Rock Oil Corporation	Deep Rock	Delaware	Tulsa, Okla.

2. The following named corporations, subsidiaries of the respective defendant parent companies as indicated, similarly engaged in the petroleum business, are hereby made defendants herein, their respective abbreviated names, states of incorporation and principal places of business being as indicated:

Name of subsidiary	Abbreviated name	Parent Company	State of incorporation	Principal place of business
Cities Service Export Oil Company	Cities Service Export	Cities Service Company	Delaware	New York, N. Y.
Empire Oil and Refining Company	Empire	Cities Service Company	Delaware	Bartlesville, Okla.
Louisiana Oil Refining Corporation	Louisiana Oil	Cities Service Company	Virginia	Shreveport, La.
Gulf Refining Company	Gulf	Gulf Oil Corporation	Delaware	Pittsburgh, Pa.
Wadhams Oil Company	Wadhams	Socony-Vacuum Oil Company, Inc.	Wisconsin	Milwaukee, Wis.
Tide Water Oil Company	Tide Water Oil	Tide Water Associated Oil Co.	New Jersey	New York, N. Y.

3. The following corporations engaged in the publication and distribution of market information and price quotations are hereby made defendants herein:

(a) The Journal of Commerce Publishing Company (referred to hereinafter as Chicago Journal of Commerce), a corporation duly organized and authorized to do business under and by virtue of the laws of the State of Delaware, and having its principal place of business in Chicago, Illinois. Said company causes to be published in Chicago, Illinois, and widely circulated throughout the various states of the United States daily, except Sundays and holidays, the Chicago Journal of Commerce, said journal being devoted to the dissemination of market information concerning the various trades and industries in the United States. There is regularly contained in each issue of said journal a section devoted to "Petroleum Markets, 5 Statistics, News, and Analyses." Said section regularly contains a compilation of "Petroleum Quotations" wherein there are published, among other things, what purport to be gasoline prices prevailing on the preceding day in spot sales to jobbers or to the consuming trade in tank car lots.

(b) W. C. Platt Company (referred to hereinafter as Platt's Oilgram,) a corporation duly organized and authorized to do business under and by virtue of the laws of the State of Ohio, and having its principal place of business in Cleveland, Ohio. Said company causes to be published simultaneously from four offices located in Tulsa, Chicago, Cleveland, and New York, and widely circulated throughout the various states of the United States, daily, except Saturdays, Sundays, and holidays, editions of Platt's Oilgram, a journal devoted to the dissemination of market information relative to the petroleum industry. There is regularly contained in each issue of each edition of said Platt's Oilgram a compilation of petroleum quotations wherein there are published, among other things, what purport to be gasoline prices prevailing on the publication date in spot sales to jobbers in tank car lots.

(c) The National Petroleum Publishing Company (referred to hereinafter as National Petroleum News), a corporation duly organized and authorized to do business under and by virtue of the laws of the State of Ohio, and having its principal place of business in Cleveland, Ohio. Said company is closely affiliated, through common-stock ownership, with Platt's Oilgram. Said company causes to be published in Cleveland, Ohio, and widely circulated throughout the various states of the United States, National Petroleum News, a weekly publication devoted to the dissemination of information concerning the petroleum industry, including news, markets, and technical develop-
6 ment. There are regularly contained in each issue of
said National Petroleum News compilations of what purport to be gasoline prices prevailing daily in the preceding week in spot sales to jobbers in tank car lots, being the same prices published daily during the preceding week in the several editions of Platt's Oilgram.

4. The following individuals are hereby made defendants herein, each having the address and being (or having been) associated with the company and having (or having had) the official title or position therewith, as indicated. Said individual defendants have, during the period covered by this indictment, been actively engaged in the management, direction, and control of the affairs and policies of the respective defendant major oil companies, particularly those affairs and policies of said companies covered by this indictment.

Name of individual	Address	Official title or position	Company with which associated
Edward G. Seubert	Chicago, Ill.	President	Standard of Indiana
Allan Jackson	Chicago, Ill.	Vice-President in Charge of Sales	Standard of Indiana
Edward J. Bullock	Chicago, Ill.	Vice-President in Charge of Purchasing	Standard of Indiana
Ira A. Smith	Tulsa, Okla.	Buyer	Standard of Indiana

Name of Individual	Address	Official title or position	Company with which associated
John A. Brown	New York, N. Y.	Chairman of Executive Committee, and President	Socony-Vacuum
Charles L. Jones	New York, N. Y.	Vice President in Charge of Domestic Trade Department	Socony-Vacuum
Charles E. Arnott	New York, N. Y.	Vice President	Socony-Vacuum
7			
H. T. Ashton	St. Louis, Mo.	Manager of Lubrite Division	Socony-Vacuum
A. G. Maguire	Milwaukee, Wis.	Chairman of Board of Directors	Wadhams
R. R. Irwin	Kansas City, Mo.	Manager, White Eagle Division	Socony-Vacuum
Bryan S. Reid	Chicago, Ill.	General Manager Chicago Division	Socony-Vacuum
Frank R. Coates	New York, N. Y.	Director Vice President	Cities Service Cities Service Export
Harry D. Frueauff	Tulsa, Okla.	Vice President Vice President	Empire Cities Service Export
H. E. Brandli	New York, N. Y.	Vice President Vice President Vice President and General Manager	Empire Louisiana Oil Cities Service Export
O. J. Tuttle	Tulsa, Okla.	Tank Car Sales Manager	Empire
D. W. Harris	Shreveport, La.	General Manager	Louisiana Oil
John A. Welch	Shreveport, La.	Sales Manager	Louisiana Oil
Dan Moran	Ponca City, Okla.	President	Continental
Harry J. Kennedy	Ponca City, Okla.	Vice President in Charge of Marketing	Continental
L. T. Cramer	Ponca City, Okla.	Tank Car Buyer	Continental
Edward Karstedt	Denver, Colo.	Formerly Vice President	Continental
J. F. Drake	Pittsburgh, Pa.	President President	Gulf Oil Corporation Gulf Refining Company
8			
William V. Hartman	Pittsburgh, Pa.	Vice President Vice President	Gulf Oil Corporation Gulf Refining Company
H. C. Meyer	Pittsburgh, Pa.	(Unknown)	Gulf
O. H. Carlisle	Houston, Tex.	(Unknown)	Gulf
Henry M. Dawes	Chicago, Ill.	President	Pure
C. B. Watson	Chicago, Ill.	Vice President	Pure
R. H. McElroy, Jr.	Chicago, Ill.	Tank Car Sales Manager	Pure

Name of Individual	Address	Official title or position	Company with which associated
Dewey K. Chamberlain	Tulsa, Okla.	Manager, Tulsa Division	Pure
Alexander Fraser	St. Louis, Mo.	President	Shell
P. E. Lakin	St. Louis, Mo.	General Manager of Sales	Shell
J. W. Carnes	New York, N. Y.	Vice President	Sinclair
W. S. S. Rodgers	New York, N. Y.	President	Texas
R. D. Cottingham	New York, N. Y.	Assistant to President	Texas
H. W. Dodge	New York, N. Y.	Vice President in Charge of Sales	Texas
P. C. Scullin	Houston, Tex.	Vice President and General Manager	Indian Refining Co., Subsidiary of Texas
Edward L. Shea	New York, N. Y.	Vice President	Tide Water
Noel Robinson	New York, N. Y.	(Unknown)	Tide Water
J. W. Warner	Tulsa, Okla.	(Unknown)	Tide Water
R. O. Audrain	Tulsa, Okla.	Buyer	Tide Water
9			
Jacob France	Baltimore, Md.	President and General Manager	Mid-Continent
Robert W. McDowell	Tulsa, Okla.	Vice President in Charge of Sales	Mid-Continent
Thomas Fitzgerald	Tulsa, Okla.	Assistant to Vice President in Charge of Sales	Mid-Continent
Frank Phillips	Bartlesville, Okla.	President	Phillips
Fred. L. Koopman	Bartlesville, Okla.	(Unknown)	Phillips
A. M. Hughes	Bartlesville, Okla.	Sales Manager	Phillips
H. A. Gardner	Bartlesville, Okla.	Tank Car Sales Manager	Phillips
W. G. Skelly	Tulsa, Okla.	President	Skelly
James Nagle	Tulsa, Okla.	In Charge of Wholesale Sales	Skelly
E. B. Reeser	Tulsa, Okla.	President	Barnsdall
I. A. O'Shaughnessy	Minneapolis, Minn.	President	Globe
Bernard L. Majewski	Chicago, Ill.	Vice President in Charge of Sales	Deep Rock
Keith Fanshier	Chicago, Ill.	Petroleum Editor	Chicago Journal of Commerce
Warren C. Platt	Cleveland, Ohio	President President	Platt's Oilgram National Petroleum News
Clyde M. Boggs	Arkansas City, Kan.	President	Western Petroleum Refiners Association
Arthur V. Bourque	Tulsa, Okla.	Secretary and Treasurer	Western Petroleum Refiners Association

10 B. General nature of the business and the interstate commerce involved:

5. The States of Michigan, Wisconsin (including the Western District thereof), Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri, and Kansas compose one of the great marketing areas for gasoline in the United States. Said area comprises the gasoline marketing territory of defendant Standard of Indiana, and is sometimes known as the "Standard of Indiana territory" by reason of said defendant's dominant position in the distribution of gasoline in each of said states. Said area is sometimes also known as the Mid-Western area and will be so referred to herein. Each of defendant major oil companies, either directly or through subsidiary or affiliated companies, markets gasoline in some or all of the states comprising said Mid-Western area.

6. Gasoline distributed in said Mid-Western area is manufactured largely from crude petroleum produced in the States of Texas, Oklahoma, Kansas, Arkansas, and Louisiana. Said producing states are sometimes divided and grouped into (1) the East Texas field and (2) the Mid-Continent fields, extending over the State of Oklahoma, the northern and western portions of the State of Texas, the southern and eastern portions of the State of Kansas, the southern portion of the State of Arkansas, and the northern portion of the State of Louisiana. Large quantities of the crude petroleum produced in these fields are transported in interstate commerce, principally by pipe lines, from the states of production to refineries located in the aforesaid Mid-Western area, principally in the States of Illinois, Indiana, and Missouri. Gasoline refined from such crude is further transported in substantial quantities in interstate commerce from the states in which refined 11 to other states in said Mid-Western area. Refineries are also located in the aforementioned crude producing states and substantial quantities of gasoline so manufactured in those states are transported in interstate commerce, principally by tank car, into each of the states in the aforesaid Mid-Western area. Defendant major oil companies marketing in the Mid-Western area, together control, and manufacture, ship, and sell more than 85% (approximately 4,500,000,000 gallons) of all gasoline distributed yearly in said Mid-Western area.

7. Each of said defendant major oil companies marketing gasoline in said Mid-Western area distributes and markets said gasoline in the manner following, that is to say:

Each owns or leases, and operates or controls the operation of, large numbers of retail service stations through which gasoline is sold directly to consumers. Each usually delivers gasoline to such retail service stations by tank truck or tank wagon from its bulk storage plants conveniently located to supply the retail stations in the various local marketing areas, said bulk storage plants being supplied with gasoline by tank cars principally from the refineries of the respective defendant major oil companies. Each also sells and distributes large quantities of gasoline from the same or similar bulk storage plants to numerous independent retailers or dealers owning or operating retail service stations, said gasoline being usually sold to such independent dealers under long term supply contracts. In addition to selling through company owned or controlled retail service stations, and to independent dealers, each of said defendant major oil companies marketing gasoline in said Mid-Western area, with the exception of defendant Standard of Indiana, sells gasoline in large quantities in tank car lots to jobbers.

12 8. Jobbers usually own and operate bulk storage plants conveniently located so as to serve, by their tank trucks or tank wagons, retail service stations either owned or operated by them, or independently owned or operated, in the various retail marketing areas served by them. Approximately 50% of all gasoline distributed to retail service stations in said Mid-Western area is distributed by or through jobbers. There are in excess of four thousand jobbers of gasoline doing business in the states comprising the aforesaid Mid-Western area. Great numbers of said jobbers have been engaged in the distribution of gasoline for many years and their investments in capital assets have been and are substantial.

9. Jobbers marketing gasoline in the Mid-Western area are, and have been for several years last past, supplied with gasoline for the most part by the defendant major oil companies marketing in said area, except Standard of Indiana. By means of intensive advertising campaigns defendant major oil companies have created a public acceptance of, and demand for, their gasoline which is sold under their respective brand designations. Most jobbers have been persuaded, or induced, to enter into contracts for the purchase of their supplies from said defendant major oil companies, and at the present time in excess of 80% of all gasoline purchased by the jobbers is purchased from said defendant major oil companies. Gasoline sold

by each of said defendant major oil companies to said
jobbers is sold and transported largely in interstate com-
merce, delivery being made from the states in which the
refineries are located to the states in which the various
jobbers are located, principally in tank cars as aforesaid.
A small number of jobbers in the Mid-Western area pur-
chase gasoline from independent refiners, being com-
13 paratively small refiners located principally in the
East Texas and Mid-Continent fields, either directly
or through so-called brokers or tank car marketers.

10. The terms and conditions of sale under which gasoline is so sold by said defendant major oil companies to jobbers in the aforesaid Mid-Western area are, and have been for several years last past, usually embodied in written contracts between seller and buyer. Each of said defendant major oil companies employs throughout the Mid-Western area a separate standard form of jobber contracts which its jobber customers are required to execute. Each of said defendant major oil companies requires jobbers handling its branded products to do business with it exclusively. Recently said jobber contracts have usually been made for terms of one year.

11. For more than a year last past, and continuing to
the date of the presentation of this indictment, said de-
fendant major oil companies have uniformly adopted and
have embodied in their respective standard forms of job-
ber contracts employed throughout the Mid-Western area
virtually identical provisions governing terms and condi-
tions of sale, in part substantially as follows: The price
of gasoline to the jobber shall be the average spot market
price, determined by averaging the high and low spot mar-
ket prices for gasoline of comparable octane rating pub-
lished by defendant Platt's Oilgram, for the Tulsa, Okla-
homa, market, and by defendant Chicago Journal of Com-
merce on date of shipment. If the average spot market
price plus freight to destination shall allow the buyer a
margin of less than 5½¢ per gallon below the service sta-
tion price posted by defendant Standard of Indiana, then
the buyer and the seller shall share equally in the deficit
below a 5½¢ margin. In certain States in which the
Standard of Indiana has recently discontinued the
14 posting of retail prices, such jobber margins have
been calculated on the basis of a margin of 2¢ below
the dealer tank wagon prices posted by the Standard of
Indiana (such tank wagon prices having usually been
3½¢ below the posted retail prices).

12. Sales by independent refiners to jobbers are also sometimes made under long term supply contracts. Independent refiners in the East Texas field have usually sold the greater part of their gasoline, and independent refiners in the Mid-Continent fields have sold a portion of their gasoline, on a spot basis. Prices of gasoline sold by said independent refiners in spot transactions for delivery within the aforementioned Mid-Western area have generally been quoted f. o. b. "group three" (being a district which includes Tulsa, Oklahoma, and nearby points from which freight rates on gasoline to the same destinations in the Mid-Western area are identical).

13. Defendant major oil companies do not sell any substantial part of their gasoline to jobbers or brokers in tank car quantities in spot transactions. Virtually all gasoline sold in tank car quantities in spot transactions in the aforesaid Mid-Western area is sold by independent refiners. Gasoline so sold in tank car quantities on a spot basis amounts to less than 5% of all gasoline marketed in said Mid-Western area.

14. By far the greater part of all gasoline sold in spot transactions consists of so-called third grade gasoline, that is to say, gasoline having an octane (or anti-knock) rating of less than 65. By far the greater part (not less than 90%) of all gasoline sold under contract by defendant major oil companies to jobbers in the Mid-Western area, as aforesaid, is so-called "regular" or "house brand" gasoline, having an octane rating of 68 to 70. The 15 quantity of gasoline having an octane rating of 68 to 70 sold in spot transactions is not more than 2% of all gasoline sold in said Mid-Western area and not more than 3% of all gasoline having an octane rating of 68 to 70 sold in said Mid-Western area.

15. By reason of the aforesaid uniform provisions of their said standard forms of jobber contracts, and by reason of the further facts set forth in paragraph 13 hereof, said defendant major oil companies marketing gasoline in the Mid-Western area have contracted, and do contract, in effect, to sell regularly to jobbers great quantities of gasoline (amounting to nearly 50% of all gasoline sold in said Mid-Western area) at the average of the prices obtained in sales of less than 5% of all gasoline sold in said Mid-Western area, which sales, as aforesaid, are spot sales by independent refiners. Furthermore, by reason of the additional facts alleged in paragraph 14 hereof, said defendant major oil companies have contracted, and

do contract, in effect, to sell regularly to jobbers by far the greater part of the gasoline sold by them to jobbers, which, as aforesaid, consists of gasoline having an octane rating of 68 to 70, at the average of prices determined in sales of less than 3% of all gasoline of such octane rating sold in said Mid-Western area, which sales, as aforesaid, are spot sales by independent refiners.

16. Tank car prices for gasoline obtained in each of the spot markets in the East Texas and Mid-Continent fields, and in Chicago, Illinois, tend to, and do, directly and substantially influence the spot market tank car prices for gasoline in each of the other of such markets, and such prices in each of such markets tend to, and do, closely parallel the prices in each of the other of such markets.

16 Tank car prices obtained for third grade gasoline in each of the spot markets tend to, and do, directly and substantially influence the spot market prices of regular gasoline; that is to say, when the prevailing price of third grade gasoline is reduced, the spot market price of regular gasoline is likely to, and usually does, decrease; and when the prevailing price of third grade gasoline is increased, the spot market price of regular gasoline is likely to be, and usually is, affected accordingly.

17. Spot market tank car prices of gasoline tend to, and do, directly and substantially influence the retail prices of gasoline, i. e., the prices which consumers are required to pay, in that an increase in the spot market tank car prices of gasoline will, and usually does, result directly in an increase in the retail prices of gasoline.

C. The conspiracy.

18. Beginning in the month of February 1935 and continuing to the date of the presentation of this indictment, defendants and certain persons hereinafter referred to, and other persons to the grand jurors unknown, well knowing all the foregoing facts, have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them and have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the

Western District of Wisconsin), and have
17 arbitrarily, by reason of the provisions of the prevailing form of jobber contracts above described in paragraph 11, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area (including the Western District of Wisconsin), and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area (including the Western District of Wisconsin). In so doing, defendants have then and there engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

19. Said unlawful combination and conspiracy has been effectuated in the following manner and by the following means, that is to say: Beginning in the month of February 1935 and continuously to the date of the presentation of this indictment, as aforesaid, defendant major oil companies, acting through or under the direction of their respective officers and agents and those of their subsidiaries (or former subsidiaries) hereinabove made defendants herein, and through others of their officers and agents, some of them hereinafter referred to, and through defendants Bourque and Boggs, and other persons to the grand jurors unknown, have knowingly and unlawfully engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying program, for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices, some of said defendant major oil companies purchasing gasoline in the East Texas field and others of them in the Mid-Continent fields, and some of said defendant
18 major oil companies making such purchases in both buying programs as hereinafter more fully set forth, but each and all of them acting pursuant to the common purposes set forth in paragraph 18 of this indictment. Said buying programs are more fully described as follows:

(a) The East Texas buying program.

20. Throughout the period aforesaid, defendants, Sinclair, Gulf, Texas, Pure, Continental, Tide Water, Tide Water Oil, Cities Service, Cities Service Export, and

Louisiana Oil, have made large and increased purchases of gasoline in spot transactions from most of the independent refiners located in the East Texas field. Said independent refiners have been members of an association known as the East Texas Refiners Marketing Association which was formed in February 1935, with the knowledge and approval of some of the defendants, for the purpose of selling and facilitating the sale of gasoline to defendant major oil companies. Among members of said association have been McMurray Refining Company, East Texas Refining Company, Dominant Refining Company, Cascade Refining Company, Grogan Oil Company, Trinity Refining Company, Tower Refining Company, La Pren Refining Company, Southport Petroleum Company, Century Refining Company, Tyreco Refining Company, Wabash Refining Company, Inc., Texover Refining Company, Ocean Refining Company, Solvex Refineries, Inc., Arrow Producing & Refining Company, Chief Refining Company, Gilliland Refining Company, Texas Oil Products Company, Matthews Refining Company, Utah Refining Company, Premier Oil Refining Company, and others to the grand jurors unknown.

21. Purchase of gasoline through said association, from the respective members thereof, have been made at the instigation and under the supervision and direction 19 of defendants Arnott and Carnes, with one Neil Buckley, employee of Cities Service Export, acting in a liaison capacity between said association and the defendant major oil companies and also instigating and directing said purchases. Said Buckley acted in said capacity under the instructions of defendant Cities Service and defendants Brandli, Coates, and Frueauff. With the approval of said Buckley, one Robert N. Cline has been secretary and manager of said association and has acted in said capacity, allotting orders for gasoline received from defendant major oil companies among the members of said association. Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased through said association, as from time to time arranged among them. Said quantities of gasoline purchased from said independent refiners through said East Texas Refiners Marketing Association have amounted to more than 50% of all the gasoline produced by said independent refiners. Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said

buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies, all with the unlawful purposes and effects aforementioned. In furtherance of said unlawful purposes said independent refiners have, at the instance of defendant Arnott, and the aforesaid Buckley, curtailed their production of gasoline. All of the companies and individuals mentioned in this and in the preceding paragraph, whether or not made defendants herein, have known of said unlawful purposes and have actively engaged and cooperated in the unlawful combination and conspiracy set forth in this indictment.

20 (b) The Mid-Continent buying program.

22. Throughout the period aforesaid, defendants Standard of Indiana, Socony-Vacuum, Wadhams, Sinclair, Shell, Empire, Pure, Phillips, Mid-Continent, Continental, Skelly, Barnsdall, Globe, and Deep Rock have made large and increased purchases of gasoline from many of the independent refiners located in the Mid-Continent fields. Said independent refiners have been, for the most part, members of an association known as the Western Petroleum Refiners Association. Among the independent refiners in said Mid-Continent fields that have sold gasoline to the aforementioned major oil companies in the Mid-Continent buying program have been Champlin Refining Company, Eason Oil Company, Bell Oil & Gas Company, Panhandle Refining Company, Olney Oil & Refining Company, Omar Refining Company, Cushing Refining & Gasoline Company, Waggoner Refining Company, Inc., Taxman Refining Company, Rock Island Refining Company, The Dickey Oil & Refining Company, Inc., Danciger Oil & Refining Company, Shamrock Oil & Gas Company, Wilcox Oil & Gas Company, and others to the grand jurors unknown.

23. Purchases of gasoline from said independent refiners have been made at the instigation and under the supervision and direction of defendants Arnott, Ashton, McDowell, Tuttle, and Bourque, and one Walter Paul Jacobi, an employee of defendant Wadhams. Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi. At monthly meetings

of representatives of said defendant major oil 21 companies the independent refiners named in paragraph 22 have from time to time been assigned to the defendant major oil companies participating in said buying program, one or more of said independent refiners being assigned to each of said defendant major oil companies as so-called "dancing partners", and each of said defendant major oil companies has purchased from its said dancing partners quantities of gasoline as recommended by said defendants McDowell, Tuttle, and Bourque, and said Jacobi. Said quantities of gasoline purchased from said independent refiners in said buying program have amounted to nearly 50% of all the gasoline sold by said independent refiners. Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies, all with the unlawful purposes and effects aforementioned. In furtherance of said unlawful purposes said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs, and Bourque, curtailed their production of gasoline. All of the companies and individuals mentioned in this and in the preceding paragraph, whether or not made defendants herein, have known of said unlawful purposes and have actively engaged and cooperated in the unlawful combination and conspiracy set forth in this indictment.

Participation of market journals.

24. Defendants Chicago Journal of Commerce and Keith Fanshier, its petroleum editor, and defendant Platt's Oilgram, National Petroleum News, and War-22 ren C. Platt, their president, well knowing all the foregoing facts, beginning on or about March 1, 1935, and continuously to the date of the presentation of this indictment, have intentionally and wrongfully engaged and participated in the combination and conspiracy set forth in this indictment, and have directly and materially aided the other defendants in effectuating the same, and the unlawful purposes and effects thereof set forth in this indictment. Said defendants have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by

the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western Division of Wisconsin. While representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area described in paragraph 11 of this indictment, they have throughout said period in the Mid-Western area, including the Western District of Wisconsin, knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program.

D. Jurisdiction and venue.

25. The combination and conspiracy herein set forth has operated and has been carried out in part within the Western District of Wisconsin. In pursuance of said com-
bination and conspiracy, defendant major oil com-
23 panies (with the exception of Standard of Indiana
and Gulf) have contracted to sell and have sold and have delivered large quantities of gasoline in tank-car lots to jobbers within said district at the artificially raised and fixed and non-competitive prices aforesaid and have arbitrarily exacted from jobbers within said district large sums of money. Defendant major oil companies (with the exception of Gulf) have solicited and taken contracts and orders for said gasoline within said district, sometimes by sales representatives located there, which district has been an important market for their product and they have required retail dealers and consumers in said district to pay artificially increased prices for gasoline, as aforesaid, all by virtue of said combination and conspiracy and pursuant to the purposes and ultimate objectives thereof.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find and present that said defendants, throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have engaged in a combination and conspiracy in restraint of the aforesaid trade and commerce among the several states; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

John Henry Lewin,
Hammond E. Chaffetz,
W. B. Watson Snyder,
Grant W. Kelleher,
Special Assistants to the Attorney General.

John Dickinson,
Assistant Attorney General.
John J. Boyle,
United States Attorney.

24 (Endorsement) No. 11365. In the District Court of the United States for the Western District of Wisconsin. United States of America vs. Standard Oil Company (Indiana), et al., Defendants. Indictment Violation of U. S. Code, Title 15, (Sec. 26, Stat. 209). A true bill, Robert Turner, Foreman. Filed in open court this .... day of ...., A. D. 19.......

Filed Dec. 31, 1936.

25 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

SUMMONS FOR MID-CONTINENT PETROLEUM CORPORATION.

Filed December 31, 1936, H. C. Hale, Clerk.

The President of the United States of America: To the Marshal of the Northern District of Oklahoma—Greeting:

You Are Hereby Commanded, That you summon Mid-Continent Petroleum Corporation, a corporation, Tulsa, Oklahoma, late of your District, if it may be found therein, so that it be and appear within 20 days after service of this summons before the United States District Court for the Western District of Wisconsin, at Madison, Wisconsin, to answer to an indictment returned December 22, 1936, by the Grand Jury in and for the regular December, 1936 term of court for the aforesaid district.

And have you then and there this writ.

Witness, the Honorable Patrick T. Stone, United States District Judge at Madison, Wisconsin this 23rd day of December, A. D. 1936.

H. C. Hale,
Clerk.

(Seal)

26 MARSHAL'S RETURN.

(Corporation)

I certify that I received this writ on December 29, 1936, at Tulsa, Oklahoma, and served the same on the within-named defendant Mid-Continent Petroleum Corporation, a corporation at Tulsa, Oklahoma, on December 29, 1936, by delivering a true copy hereof to J. C. Denton, (Office) Vice-President of said corporation, the President, Treasurer, Secretary, General Manager, Managing Agent, or other higher officers not being found in my district and the said J. C. Denton upon whom service was made was the person having charge thereof at the usual place of business of said corporation.

Jno. P. Logan,
United States Marshal.
By G. L. Hollurt,
Deputy.

27 IN THE DISTRICT COURT OF THE UNITED STATES.

Filed Dec. 29, 1936.

* * (Caption—11365) * *

WARRANT FOR ROBERT W. McDOWELL.

Filed December 29, 1936, H. C. Hale, Clerk.

United States of America, }
Western District of Wisconsin. } ss.

The President of the United States of America, to the Marshal of the Western District of Wisconsin, Greeting:

We Command You to Take Robert W. McDowell, Mid-Continent Petroleum Corporation, Cosden Building, Tulsa, Oklahoma, if he may be found in your bailiwick and him safely keep, so that you have his body before the Judge of the District Court of the United States, within and for the Western District of Wisconsin, at the City of Madison, in said District, forthwith, to answer unto the United States of America, on an indictment for Violation of U. S. C., Title 15, Section 1 (26 Stat. 209) returned on the 22nd day of December, A. D. 1936, by the

Grand Jury of the United States within and for said Western District of Wisconsin.

28 Hereof fail not under the penalty of the law, and have then and there this writ.

Witness, the Honorable Patrick T. Stone, Judge of the District Court of the United States, for the Western District of Wisconsin, this 23d day of December A. D. 1936, and in the 161st year of the Independence of the United States of America.

Attest,
H. C. Hale,
(Seal) *Clerk.*

I hereby certify and return that on the day of , A. D. 19 by virtue of the within writ, I did arrest the within named and now have in custody.

Marshal.

By

Deputy.

United States of America,
Western District of Wisconsin. } ss.

I hereby certify and return that after due and diligent search and inquiry, I am unable to find the within named defendant within my district this 23rd day of December, 1936.

John M. Comeford,
United States Marshal.
By Will Touton,
Will Touton,
Chief Deputy.

(Endorsement on back): U. S. District Court Western District of Wisconsin No. 11365. The United States *vs.* Standard Oil Company (Indiana) *et al.* Criminal Warrant ________________ United States Attorney.

29 IN THE DISTRICT COURT OF THE UNITED STATES.

Filed Jan. 15, 1937.

* * (Caption—11365) * *

SPECIAL APPEARANCE AND PLEA OF DEFENDANT, MID-CONTINENT PETROLEUM CORPORATION, TO THE COURT'S JURISDICTION AND VENUE.

Filed January 15, 1937, H. C. Hale, Clerk.

Comes now the Mid-Continent Petroleum Corporation, a Delaware corporation, one of the defendants in the above entitled cause, and, appearing specially and only for the purpose of this plea, and for no other purpose whatsoever, and without submitting or intending to submit itself to the jurisdiction and venue of this Court, alleges and states.

That this Court is without jurisdiction or venue to hear and determine the above entitled cause for the reason that the indictment herein fails to show that the alleged crime charged or attempted to be charged therein was committed in the Western District of Wisconsin, or in the State of Wisconsin; but, on the contrary, said indictment affirmatively shows that, if said alleged offense were committed, the same was committed not in, but outside, the Western District of Wisconsin and the State of Wisconsin. That by reason thereof said defendant, Mid-Continent Petroleum Corporation, is and was not indictable and cannot legally or constitutionally be tried in the Western District of Wisconsin, or in the State of Wisconsin, for the alleged crime charged or attempted to be charged in said in-
30 dictment. And that said indictment, the summons issued for this defendant on December 23, 1936, and the service of said summons made upon this defendant in the State of Oklahoma on December 29, 1936, pursuant to said indictment are and were null and void, and should be quashed, vacated, set aside and held for naught, for the reason that this Court does not have, by virtue of said indictment, and of said summons and service thereof, any jurisdiction or venue over either the person of said defendant or of the alleged crime charged or attempted to be charged in said indictment.

Wherefore, the defendant, Mid-Continent Petroleum

Corporation, respectfully moves and prays this Honorable Court that the indictment herein, and the said summons and service thereof, be quashed, vacated, set aside and held for naught, for the reason that this Court is without jurisdiction or venue to hear and determine this cause.

Dated this 12th day of January, 1937.

J. D. Denton,
R. H. Wills,
Attorneys for Defendant, Mid-Continent Petroleum Corporation.
(P. O. Box 381, Tulsa, Okla.)

31 In the District Court of the United States.

Filed Mar. 1, 1937.

* * (Caption—11365) * *

JOINT AND SEVERAL SPECIAL APPEARANCE AND PLEA OF DEFENDANTS, JACOB FRANCE, ROBERT W. McDOWELL AND THOMAS FITZGERALD, TO THE COURT'S JURISDICTION AND VENUE.

Filed March 1, 1937, H. C. Hale, Clerk.

Come now Jacob France, Robert W. McDowell and Thomas Fitzgerald, defendants in the above entitled cause, and, appearing specially and only for the purpose of this plea, and for no other purpose whatsoever, and without submitting or intending to submit to the jurisdiction and venue of this Court, allege and state:

That this Court is without jurisdiction or venue to hear and determine the above entitled cause for the reason that the indictment herein fails to show that the alleged crime charged or attempted to be charged therein was committed in the Western District of Wisconsin, or in the State of Wisconsin; but, on the contrary, said indictment affirmatively shows that, if said alleged offenses were committed, the same was committed not in, but outside, the Western District of Wisconsin and the State of Wisconsin. That by reason thereof said defendants, Jacob France, Robert W. McDowell and Thomas Fitzgerald, are and were not indictable and cannot legally or constitutionally be tried in the Western District of Wisconsin, or in the State of Wisconsin, for the alleged crime charged or attempted

32 to be charged in said indictment. And that said indictment, the warrants issued thereunder for these defendants, and each of them, and the service of said warrants upon these defendants, and each of them, pursuant to said indictment, are and were null and void, and should be quashed, vacated, set aside and held for naught, for the reason that this Court does not have, by virtue of said indictment, and of said warrants and the service thereof, any venue or jurisdiction over the persons of said defendants, or either of them, or of the alleged crime charged or attempted to be charged in said indictment.

Wherefore the defendants, Jacob France, Robert W. McDowell and Thomas Fitzgerald, respectfully move and pray this Honorable Court that the indictment herein, and the said warrants and service thereof, be quashed, vacated, set aside and held for naught, for the reason that this Court is without jurisdiction or venue to hear and determine this cause.

Dated this 10th day of February, 1937.

J. Craig McLanahan,
(1125 Calvert Bldg., Baltimore, Md.)
J. C. Denton,
R. H. Wills,
(P. O. Box 381, Tulsa, Okla.)
Attorneys for Defendants, Jacob France, Robert W. McDowell and Thomas Fitzgerald.

33 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF ORDER OVERRULING PLEA.

On February 1, 1937, one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States court room in the City of Madison in said District, the special appearance and plea of defendant Mid-Continent Petroleum Corporation to the Court's jurisdiction and venue, which had been filed with the Clerk of said Court on January 15, 1937, came on for hearing, and, after consideration thereof, the Court, on February 1, 1937, made an order overruling said special appearance and plea, to which order the Court allowed an exception to the defendant Mid-Continent Petroleum Corporation.

34 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF ORDER OVERRULING PLEA.

On March 3, 1937, one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States court room in the City of Madison in said District, the special appearance and plea of the defendants Jacob France, Robert W. McDowell, and Thomas Fitzgerald to the Court's jurisdiction and venue, which had been filed with the Clerk of said Court on March 1, 1937, came on for hearing, and after consideration thereof, the Court, on March 3, 1937, made an order overruling said special appearance and plea, to which order the Court allowed an exception to the defendants Jacob France, Robert W. McDowell, and Thomas Fitzgerald.

35 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF MOTION AND ORDER THAT ARRAIGNMENTS BE SUBJECT TO DETERMINATION OF DEMURRERS AND MOTIONS.

On March 3, 1937, being one of the days of the regular term of the above Court, at a hearing of the above entitled cause before the Honorable Patrick T. Stone, Judge of the said Court, in the United States Court Room in the City of Madison in said District, counsel for the defendants made a motion that the arraignments of the individual defendants to the indictment in the above entitled cause and the entry of a plea of not guilty by each defendant on March 3, 1937, be subject to the determination by the Court of the demurrers to said indictment, motions for bills of particulars, and other motions presented to the Court on March 3, 1937.

36 IN THE DISTRICT COURT OF THE UNITED STATES.

Filed Jan. 27, 1937.

* * (Caption—11365) * *

DEMURRER.

Filed January 27, 1937, H. C. Hale, Clerk.

Come Now the hereunder named defendants, by their respective attorneys, and demur to the indictment heretofore returned and filed herein, and as grounds for their demurrer say that the said indictment is fatally insufficient and defective in substance and in form and especially in that:

1. The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

2. The said indictment discloses on its face that a trial of the defendants thereunder in the Western District of Wisconsin would violate the right of the defendants under the Sixth Amendment of the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

3. The said indictment fails to describe and to particu-
larize the alleged combination and conspiracy with
37 sufficient definiteness and certainty and so specifically
as to enable the defendants to prepare and to make
their defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceeding against them based on the same matters or things, or on any of them, on which said indictment is based.

4. The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1).

5. The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1).

6. The said indictment fails to allege facts showing any violation by these defendants of any law of the United States.

7. The said indictment is insufficient and defective for other reasons apparent upon its face.

Wherefore, the hereunder named defendants ask that this demurrer be sustained and that the said indictment be dismissed.

William J. Donovan,
Herbert H. Thomas,
Office and Post Office Address
1 West Main Street, Madison,
Dane County, Wisconsin.
Attorneys appearing for the defendants hereinbelow named.

38 Socony-Vacuum Oil Company, Inc.
by its attorney
Louis Mead Treadwell

Wadhams Oil Company
by its attorneys
Louis Mead Treadwell
Joseph H. Marshutz

Cities Service Company
Cities Service Export Oil Company
by their attorneys
Theodore W. Brazeau
E. L. Wingert
Frueauff, Burns, O'Brien & Ruch

Empire Oil and Refining Company
by its attorneys
Theodore W. Brazeau
E. L. Wingert
James W. Finley
Frueauff, Burns, O'Brien & Ruch

Louisiana Oil Refining Corporation
by its attorneys
Theodore W. Brazeau
E. L. Wingert
Henry C. Walker, Jr.
Walter A. Harris
Howard B. Warren

Continental Oil Company
by its attorneys
James J. Cosgrove
William H. Zwick

The Pure Oil Company
by its attorneys
Charles I. Francis
Carl N. Hill

Shell Petroleum Corporation
by its attorneys
Samuel A. Mitchell
Truman Post Young

Sinclair Refining Company
by its attorneys
William D. Whitney
James C. Condon
R. T. Osborne

The Texas Company
by its attorneys
Harry T. Klein
George W. Ray, Jr.

39 Phillips Petroleum Company
by its attorneys
R. H. Hudson
W. L. Barnes
R. L. Foster

Skelly Oil Company
by its attorneys
W. P. Z. German
A. F. Molony

Barnsdall Refining Corporation
by its attorney
E. C. Mead

The Globe Oil & Refining Company (Oklahoma)
The Globe Oil & Refining Company (Kansas)
The Globe Oil & Refining Company (Illinois).
by their attorney
Ralph Horween

Deep Rock Oil Corporation
by its attorneys
E. A. De Meules
Harold P. Reynolds

Tide Water Associated Oil Company
by its attorneys
Bethuel M. Webster
Charles Garside

Filed Jan. 30, 1937. 40 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

DEMURRER.

Filed January 30, 1937, H. C. Hale, Clerk.

Comes Now the Standard Oil Company (Indiana) one of the defendants, by its attorneys, and demurs to the indictment heretofore returned and filed herein, and as grounds for its demurrer says that the said indictment is fatally insufficient and defective in substance and in form, and especially in that:

1. The said indictment fails to allege that the defendant entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendant performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

2. The said indictment discloses on its face that a trial of the defendant thereunder in the Western District of Wisconsin would violate the rights of the defendant under the Sixth Amendment of the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

3. The said indictment fails to allege facts showing the commission by this defendant of any offense over which this Court has jurisdiction.

41 4. The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable the defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceeding against it based on the same matters or things, or on any of them, on which said indictment is based.

5. The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of

Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1).

6. The said indictment fails to allege facts showing any violation by this defendant of any law of the United States.

7. The indictment shows upon its face that this defendant did not and could not have had any connection with the alleged conspiracy therein attempted to be charged.

8. That the said indictment is fatally duplicitous.

9. That the said indictment is fatally duplicitous in that more than one contract, combination or conspiracy is attempted to be alleged within a single count.

42 10. The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1).

11. The said indictment is insufficient and defective for other reasons apparent upon its face.

Wherefore, the defendant, Standard Oil Company (Indiana) asks that this demurrer be sustained and that the said indictment be dismissed.

William J. Donovan,
Weymouth Kirkland,
Weymouth Kirkland,
John L. McInerney,
John L. McInerney,
Louis L. Stephens,
Buell F. Jones,
Herbert H. Thomas,
Herbert H. Thomas,
Attorneys for defendant, Standard Oil Company (Indiana).

43 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

MEMORANDUM OF ORDER ALLOWING INDIVIDUAL DEFENDANTS TO JOIN IN DEMURRER FILED BY STANDARD OIL COMPANY (INDIANA).

On March 3, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States court room in the City of Madison in said District, counsel for the defendants made

a motion that the defendants Charles E. Arnott, H. T. Ashton, P. E. Lakin, Robert W. McDowell, Edward G. Seubert, Allan Jackson, Edward J. Bullock, Ira A. Smith, John A. Brown, Charles L. Jones, A. G. Maguire, R. R. Irwin, Bryan S. Reid, Frank R. Coates, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, D. W. Harris, John A. Welch, Dan Moran, Harry J. Kennedy, L. T. Cramer, Edward Karstedt, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, Alexander Fraser, J. W. Carnes, W. S. S. Rodgers, R. D. Cottingham, H. W. Dodge, Edward L. Shea, Noel Robinson, J. W. Warner, R. O. Audrain, Jacob France, Thomas Fitzgerald, Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, W. G. Skelly, James Nagle, E. B. Reeser, I. A. O'Shaughnessy, be made parties to the demurrer of the defendant Standard Oil Company (Indiana) filed January 30, 1937, and, after consideration thereof, the Court, on February 1, 1937, made an order granting said motion.

Filed Feb. 11, 1937. 44 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

SEPARATE DEMURRER OF DEFENDANT, MID-CONTINENT PETROLEUM CORPORATION.

Filed February 11, 1937, H. C. Hale, Clerk.

Comes now the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, by its attorneys, and demurs to the indictment filed herein on the following grounds, to-wit:

1. Said indictment does not charge said defendant with any crime or any offense under any law of the United States.

2. Said indictment fails to allege that the defendants named therein, or any two or more of them, formed or entered into the alleged combination and conspiracy within the Western District of Wisconsin or within the State of Wisconsin; or that said defendants, or any of them, and particularly this defendant, Mid-Continent Petroleum Corporation, performed or did any act pursuant to, tending to effect the object of or consummating the alleged combination and conspiracy, within the Western District of Wisconsin or within the State of Wisconsin.

3. Said indictment alleges facts which affirmatively

show that the trial of this defendant on the charge contained in said indictment, within the Western District of Wisconsin or within the State of Wisconsin, would vio-
45 late the rights of said defendant under the Sixth Amendment to the Constitution of the United States, which guarantees to said defendant the right to speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed.

4. Said indictment alleges facts which affirmatively show that this Honorable Court does not thereunder have any venue or jurisdiction over this defendant, or any venue or jurisdiction to try said defendant for the alleged crime attempted to be charged in said indictment, by reason of Section 3, Article III of the Constitution of the United States, which provides that the trial of all crimes shall be held in the State where the said crime shall have been committed.

5. Said indictment does not inform this defendant of the nature and cause of the accusation against it, as required by the Sixth Amendment to the Constitution of the United States, in that said indictment fails to allege and describe the alleged combination and conspiracy attempted to be set out therein or the acts alleged to have been performed in pursuance of or to effect the object of said combination and conspiracy with sufficient definiteness and certainty as to enable this defendant to prepare and to make its defense thereto, or to plead an acquittal or a conviction thereunder in bar to a subsequent prosecution for the same alleged offense attempted to be charged in said indictment.

6. Said indictment does not inform this defendant of the nature and cause of the accusation against it with sufficient definiteness and certainty as to enable it to prepare and to make its defense thereto, or to plead an acquittal or a conviction thereunder in bar of a subsequent prosecution for the same offense attempted to be charged in said indictment, as required by the Sixth Amendment to the Constitution of the United States, for the following reasons, to-wit:

46 (a) Said indictment does not allege or state what were the artificially raised and fixed spot market tank car prices of gasoline which the indictment alleges that the defendants named therein "combined and conspired together for the purpose of artificially raising and fixing * * * in the aforementioned spot markets," and "have maintained said prices at artificially high and non-competitive levels and at levels agreed upon among them," and "have thereby intentionally increased and fixed the tank

car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the Western District of Wisconsin)"; and does not allege or state what were the artificially raised and fixed spot market tank car prices of gasoline which the indictment alleges were maintained by said defendants at artificially high and non-competitive levels, or what were the said artificially high and non-competitive levels at which said prices of gasoline were maintained; and does not allege or state which of the defendants have arbitrarily, by reason of the provisions of the prevailing form of jobber contracts described in paragraph 11 of the indictment, exacted large sums of money from thousands of jobbers in the said Mid-Western area (including the Western District of Wisconsin), and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area (including the Western District of Wisconsin); and does not give the names of the jobbers, or any of them, from whom it is alleged large sums of money were exacted, or state the time and place and other facts and circumstances necessary or sufficient to identify said jobber transactions; and does not state what was the level of
47 retail prices of gasoline before the formation of said conspiracy as charged, nor the general level to which said retail prices were raised by the consummation of said conspiracy.

(b) Said indictment does not allege or state the names of the corporate or individual defendants who performed each and all of the acts which are alleged to have been the manner and means of effectuating said combination and conspiracy; and does not identify or connect said corporate and individual defendants, and each of them, with each and all of said alleged acts which were performed by each of them respectively; and does not allege or state the time when nor the place where each of said acts were performed by the respective defendants, corporate or individual, or other necessary and material facts and circumstances relating to, connected with and identifying each of said acts relied upon to effectuate or consummate said combination and conspiracy.

(c) Said indictment does not allege and state the material facts relating to and describing the allegedly "large and increased purchases of gasoline in spot transactions" made by the defendants, Sinclair, Gulf, Texas, Pure, Continental, Tide Water, Tide Water Oil, Cities Service, Cities Service Export and Louisiana Oil from the independent

refiners located in the East Texas field; and does not allege the names of the independent refiners of gasoline located in the East Texas field from which each of said large and increased purchases of gasoline in spot transactions were made, nor the time when nor the place where each of said large and increased purchases were made, or the particular corporate defendant which made each of
48 such purchases, or the amount of each of such purchases or the price thereof; and does not allege other material facts relating to, connected with and describing each of said purchases.

(d) Said indictment does not allege the names of the defendants herein, either corporate or individual, and each of them, who it is alleged had knowledge of and approved the formation of the East Texas Refiners Marketing Association in February, 1935, for the purpose of selling and facilitating the sale of gasoline to the defendant major oil companies; and does not allege which of such purchases of gasoline by and through said East Texas Refiners Marketing Association were made, as alleged, at the instigation and under the supervision and direction of defendants Arnott and Carnes with one Neil Buckley, employee of Cities Service Export, acting in a liaison capacity between said Association and defendant major oil companies; and does not allege the name or the names of each of said purchasers, the time when nor the place where each of said purchases were made, the amount of such purchases or the price thereof, or other material facts relating to and describing each of said purchases; and does not allege or state the prices at which such purchases of gasoline were made, and which prices the indictment expressly alleges were "uniform, high, arbitrary and non-competitive prices, and from time to time progressively increased prices"; and said indictment does not allege or state facts sufficient to identify or describe the various orders for gasoline received from defendant major oil companies, which the indictment charges one Robert N. Cline, as Sec-
49 retary and Manager of said East Texas Refiners Association, with the approval of the said Buckley, allotted among the members of said Association; and does not allege or state what was the amount of gasoline produced by the members of said East Texas Refiners Association, or what was the percentage or ratio of gasoline purchased from said independent refiners in relation to the total production of gasoline in the United States or in the East Texas and the Mid-Continent fields; and does not al-

lege and state facts and circumstances necessary to identify and describe each and every instance or transaction when said independent refiners, and each of them, as the indictment charges, at the instance of Arnott and the aforesaid Buckley, curtailed their production of gasoline.

(e) Said indictment does not allege facts sufficient to describe or to identify each and all of the large and increased purchases of gasoline made by the defendants, Standard of Indiana, Socony-Vacuum, Wadhams, Shell, Empire, Pure, Phillips, Mid-Continent, Continental, Skelly, Barnsdall, Globe and Deep Rock, which the indictment charges were made from many of the independent refiners located in the Mid-Continent field, nor the names of said independent refiners in said Mid-Continent field from which each of such purchases were made, nor the time when or the place where each of such purchases took place, the amount of gasoline purchased, the prices paid, and other material facts; and does not allege which of said purchases of gasoline from the independent refiners in the Mid-Continent field and from members of the Western Petroleum Refiners Association were made at the instigation and under the supervision and direction of Arnott, Ashton,
50 McDowell, Tuttle, Bourque and one Paul Jacobi, an
employee of Wadhams; and does not allege which of said purchases of gasoline by said defendants, and each of them, was made from time to time on the allotment or allocation to said defendants by the defendants, McDowell, Tuttle and Bourque and the aforesaid Jacobi; and does not allege when and where the monthly meetings of representatives of said defendant major oil companies were held, at which meetings, the indictment charges, said independent refiners were from time to time assigned to the defendant major oil companies participating in said Mid-Continent buying program; and does not allege and state the names of each of the independent refiners named in paragraph 22 of the indictment who were from time to time assigned to the defendant major oil companies participating in said buying program as "dancing partners," and the name of the major oil company to which each of said independent refiners was assigned, as alleged; and does not allege and state the purchase prices at which each of such purchases or sales were made, which the indictment charges to have been made at "uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon by said defendant major oil companies"; and does not allege what the

percentage or ratio of the quantity of gasoline purchased by said defendant major oil companies from said independent refiners was or bore to the total quantity of gasoline produced by said independent refiners or in said Mid-Continent area or in the United States; and does not allege which of said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle and Bourque, curtailed their production of gasoline; and when and where such curtailment took place, and the amount of and other material facts pertaining to such curtailment.

51 (f) Said indictment does not allege or state any facts or circumstances to support the conclusion of the pleader contained therein that "said defendants have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western Division of Wisconsin."

(g) Said indictment does not allege and state the names of the defendant major oil companies which, as alleged, have contracted to sell and have sold and have delivered large quantities of gasoline in tank car lots to jobbers within said Western District of Wisconsin "at artificially raised and fixed and non-competitive prices"; and does not allege and state the time when, the place where, the persons to whom, or the prices at which, such sales were made, and other material facts necessary to describe and identify said sales; and does not allege and state the names of the major oil companies which, as alleged in said indictment, have solicited and taken contracts and orders for sales of gasoline in tank car lots to jobbers within said Western District of Wisconsin; and does not allege and state the time when or the place where such contracts and orders were solicited and taken, or the persons from whom such orders were taken, or the amount or the prices of such sales, and other material facts necessary to describe and identify said sales; and does not allege and state the name of the defendant major oil companies which, the indictment charges, have arbitrarily exacted from jobbers in the Western District of Wisconsin large sums of money, or the
52 names of such jobbers from whom large sums of money have been exacted, or the time when or the place where such exactions took place; and does not allege and state which of the defendants have required consumers in the said Western District of Wisconsin to pay artificially in-

creased prices for gasoline, or the names of the consumers in said District who have been required to pay said artificially increased prices for gasoline, or the time when or the place where such alleged transactions took place, and other material facts necessary to describe and identify the same,—all of which acts, the indictment alleges, are relied upon to give the United States District Court for the Western District of Wisconsin jurisdiction and venue to try said defendants, and each of them, on the alleged crime contained in said indictment.

7. Said indictment fails to allege facts showing any violation by this defendant of any law of the United States, and particularly of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, in that the facts alleged in said indictment and relied upon to effect the object of said combination and conspiracy show on their face that said acts did not and could not actually or legally have the effect, as charged in said indictment, of consummating said conspiracy or of artificially 9 raising and fixing the spot market tank car prices of gasoline or of maintaining said prices at artificially high and non-competitive levels.

8. Said indictment alleges no facts or acts which constitute any violation of the laws of the United States, and particularly of said Section 1 of the Act of Congress of July 2, 1890, in that the two alleged buying programs, the East Texas buying program and the Mid-Continent buying program, which the indictment charges were the manner and means of effectuating the object of the con-53 spiracy charged therein, were wholly incapable of effectuating or consummating the object of the conspiracy as charged in the indictment.

9. Said indictment alleges no facts or acts which constitute a violation of the laws of the United States, and particularly of Section 1 of the Act of Congress of July 2, 1890, in that said indictment fails to allege and state what were the alleged artificially fixed and raised spot market tank car prices of gasoline created or brought about by the alleged conspiracy and acts of said defendants, and each of them; and, therefore, the allegations or recitals contained in said indictment charging that the said spot market tank car prices of gasoline were "artificially raised and fixed," were maintained at "artificially high and non-competitive levels" and at levels agreed upon among the defendants, and at "uniform, high and at times progressively increased prices," were and are mere conclusions of the

pleader, and are insufficient in law and in fact to show or charge a violation of Section 1 of said Act of Congress of July 2, 1890, or that the alleged conspiracy as charged in the indictment is one in restraint of trade or commerce among the States.

Wherefore, defendant, Mid-Continent Petroleum Corporation, prays that its demurrer to the indictment be sustained and that the indictment herein be quashed, vacated and set aside.

J. C. Denton,
R. H. Wills,
Attorneys for Defendant, Mid-Continent Petroleum Corporation.

Entered Mar. 31, 1937.

* * (Caption—11365) * *

ORDER OVERRULING DEMURRERS TO INDICTMENT AND OTHER PLEADINGS IN THE NATURE OF DEMURRERS.

Filed March 31, 1937, H. C. Hale, Clerk.

The defendants hereinafter named have demurred to the indictment in the above entitled cause for the reasons set forth in said demurrers filed herein, and the Court, having heard the arguments of counsel and considered the briefs submitted, is of the opinion that the indictment meets the legal test required under numerous decisions of the United States Supreme Court, in that it sets forth the facts which constitute the alleged offense so distinctly and so clearly as to advise the defendants of the charge they are to meet; so fully as to give them a fair opportunity to prepare their defense; so particularly as to enable them and each of them to avail himself of a conviction or acquittal in defense of another prosecution for the same crime; and so clearly that the Court, on examination of the indictment, may be able to determine whether or not, under the law, the facts therein stated are sufficient to support a conviction. The indictment charges the defendants with commission of acts which by a law of the United States are made criminal and punishable. This offense is charged in the indictment with precision and certainty, and every ingredient of which it is composed is clearly set forth.

55 It Is Therefore Ordered, Adjudged and Decreed, that the demurrers of the defendants, Standard Oil Company (Indiana); Socony-Vacuum Oil Company, Inc.; Wadhams Oil Company; Cities Service Company; Cities Service Export Oil Company; Empire Oil and Refining Company; Louisiana Oil Refining Corporation; Continental Oil Company; The Pure Oil Company; Shell Petroleum Corporation; Sinclair Refining Company; The Texas Company; Phillips Petroleum Company; Skelly Oil Company; Barnsdall Refining Corporation; The Globe Oil and Refining Company (Oklahoma); The Globe Oil and Refining Company (Illinois); The Globe Oil and Refining Company (Kansas); Deep Rock Oil Corporation; Tide Water Associated Oil Company; Mid-Continent Petroleum Corporation; The Journal of Commerce Publishing Company; W. C. Platt Company; National Petroleum News; Platt's Oilgram; Edward G. Seubert; Allan Jackson; Edward J. Bullock; Ira A. Smith; John A. Brown; Charles L. Jones; Charles E. Arnott; H. T. Ashton; A. G. Maguire; R. R. Irwin; Bryan S. Reid; Frank R. Coates; Harry D. Frueauff; H. E. Brandli; O. J. Tuttle; D. W. Harris; John A. Welch; Dan Moran; Harry J. Kennedy; L. T. Cramer; Edward Karstedt; Henry M. Dawes; C. B. Watson; R. H. McElroy, Jr.; Dewey K. Chamberlain; Alexander Fraser; P. E. Lakin; J. W. Carnes; W. S. S. Rodgers; R. D. Cottingham; H. W. Dodge; Edward L. Shea; Noel Robinson; J. W. Warner; R. O. Audrain; Jacob France; Robert W. McDowell; Thomas Fitzgerald; Frank Phillips; Fred L. Koopman; A. M. Hughes; H. A. Gardner; W. G. Skelly; James Nagle; E. B. Reeser; I. A. O'Shaughnessy; Keith Fanshier; Warren C. Platt; Clyde M. Boggs; Arthur V. Bourque; and P. C. Scullin, be and the same are hereby overruled.

For the same reasons as hereinbefore set forth, It Is
Ordered, Adjudged and Decreed, that the motions to
56 quash the indictment herein filed by the Gulf Oil Corporation,
the Gulf Refining Company, and other defendants
above named, be and the same are hereby denied.

It Is Further Ordered, Adjudged and Decreed, that the defendants who have not heretofore entered a plea of not guilty to this indictment may have until April 16th next to enter a plea herein.

To all of which the defendants may have an exception.

Dated at Madison, Wisconsin, this 31st day of March, A. D. 1937.

Enter:

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

57 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF ARRAIGNMENTS OF CORPORATE DEFENDANTS.

On February 1, 1937, being one of the days of the regular term of the above Court, at a hearing of the above entitled cause before the Honorable Patrick T. Stone, Judge of the said Court, in the United States Court Room in the City of Madison in said District, the defendants Gulf Oil Company and Gulf Refining Company each was arraigned on the indictment in the above entitled cause, and through their attorney each waived the reading of the said indictment and each entered a plea of not guilty to said indictment.

On March 4, 1937, being one of the days of the regular term of the above Court, at a hearing of the above entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District, the defendants W. C. Platt Company and The National Petroleum Publishing Company each was arraigned on the indictment in the above entitled cause, and, through their attorney, each waived the reading of the said indictment and each entered a plea of not guilty to said indictment.

The defendants Standard Oil Company (Indiana),
Socony-Vacuum Oil Company, Inc., Cities Service Com-
pany, Continental Oil Company, The Pure Oil Com-
58 pany, Shell Petroleum Corporation, Sinclair Refining
Company, The Texas Company, Tide Water Associ-
ated Oil Company, Mid-Continent Petroleum Corporation,
Phillips Petroleum Company, Skelly Oil Company, Barns-
dall Refining Corporation, The Globe Oil & Refining Com-
pany (Oklahoma), The Globe Oil & Refining Company
(Illinois), The Globe Oil & Refining Company (Kansas),
Deep Rock Oil Corporation, Cities Service Export Oil
Company, Empire Oil and Refining Company, Louisiana

Oil Refining Corporation, Wadhams Oil Company, Tide Water Oil Company, and The Journal of Commerce Publishing Company were not arraigned in the above entitled cause and did not enter any plea to the indictment therein. Said defendants waived arraignment in the above entitled cause and did not enter any plea to the indictment therein, but said defendants, except the Tide Water Oil Company, went to trial on said indictment.

59 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF ARRAIGNMENTS OF INDIVIDUAL DEFENDANTS.

At hearings of the above entitled cause before the Honorable Patrick T. Stone, Judge of the above named Court, in the United States Court Room in the City of Madison in the above named District, on the dates stated below, each being a day of the regular term of said Court, the following proceedings occurred, constituting all of the arraignments of individual defendants in the said cause:

On March 3, 1937, the defendants Frank R. Coates, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, John A. Welch, Harry J. Kennedy, L. T. Cramer, Edward Karstadt, Alexander Fraser, P. E. Lakin, Robert W. McDowell, Thomas Fitzgerald, Frank Phillips, A. M. Hughes, H. A. Gardner, W. G. Skelly, James Nagle, E. B. Reeser, Warren C. Platt, Clyde M. Boggs, Arthur V. Bourque, Fred L. Koopman, P. C. Scullin, R. O. Audrain, Noel Robinson, Edward L. Shea, J. W. Warner, Edward J. Bullock, Ira A. Smith, Charles L. Jones, Charles E. Arnott, H. T. Ashton, A. G. Maguire, R. R. Irwin, Bryan S. Reid, Dan Moran, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, W. S. S. Rodgers, [illegible] D. Cottingham, H. W. Dodge, Keith Fanshier, and J. W. Carnes, being present in Court, each was arraigned on the indictment in the above entitled cause, each
60 waived the reading of said indictment, and each entered thereto a plea of not guilty.

On March 4, 1937, the defendant D. W. Harris was arraigned on the indictment in the above entitled cause, and, not being present in Court but being represented by his attorney, waived the reading of said indictment, through his attorney, and entered a plea of not guilty to said indictment.

On April 15, 1937, the defendants Edward G. Seubert, Allan Jackson and Jacob France, being present in Court, were each arraigned on the indictment in the above entitled cause, each waived the reading of said indictment, and each entered thereto a plea of not guilty.

On April 20, 1937, the defendant I. A. O'Shaughnessy, being present in Court, was arraigned on the indictment in the above entitled cause, waived the reading of said indictment, and entered thereto a plea of not guilty.

On April 21, 1937, the defendant John A. Brown, being present in Court, was arraigned on the indictment in the above entitled cause, waived the reading of said indictment, and entered thereto a plea of not guilty.

The defendants J. F. Drake, William V. Hartman, H. E. Meyer, O. H. Carlisle, and Bernard L. Majewski, were not arraigned at any time on the indictment of the above entitled cause, and did not enter a plea of guilty or not guilty to said indictment, and were not tried on said indictment.

61 IN THE DISTRICT COURT OF THE UNITED STATES. Entered June 3, 1937.

• • (Caption—11365) • •

ORDER GRANTING MOTION OF TIDE WATER OIL COMPANY.

Filed June 3, 1937, H. C. Hale, Clerk.

The motion of Tide Water Oil Company, a defendant named in the indictment in the above entitled action, that the summons herein dated December 23, 1936 and addressed to the Tide Water Oil Company be quashed and that the return on said summons be vacated, and that the indictment be dismissed as to said Tide Water Oil Company, on the ground that prior to the date of the indictment herein, on September 4, 1936, the said Tide Water Oil Company was dissolved pursuant to and in accordance with the laws of the State of New Jersey, having come on to be heard at the present term of the above named Court, and after hearing the arguments of counsel and having considered the briefs submitted, and being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the said motion of the Tide Water Oil Company be and the same is hereby granted, and that the summons be quashed and the indictment be dismissed as to the Tide Water Oil Company, without costs to the United States of America.

Dated this 3rd day of June, A. D. 1937.

Enter:

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Filed Oct. 4, 1937. 62 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF DEFENDANTS NOT BROUGHT TO TRIAL.

On October 4, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District, counsel for the Government submitted to the Court for its approval, a list of defendants in the above-entitled cause who were not called for the trial of said cause, and after considering said list, the Court, on October 4, 1937, made an order that the record show that the defendants John A. Brown, Frank R. Coates, D. W. Harris, J. F. Drake, William V. Hartmann, H. C. Meyer, O. H. Carlisle, Bernard L. Majewski, Keith Fanshier, and Edward Karstedt were not present and were not being tried at the trial of the above-entitled cause beginning on October 4, 1937.

63 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION TO QUASH.

Filed October 4, 1937, H. C. Hale, Clerk.

Come Now the hereunder named defendants, by their respective attorneys, and move to quash the indictment heretofore returned and filed herein, and as grounds for their motion say that the said indictment is fatally insufficient and defective in substance and in form and especially in that:

1. The said indictment fails to allege that the defendants

in the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

2. The said indictment discloses on its face that a trial of the defendants thereunder in the Western District of Wisconsin would violate the right of the defendants under the Sixth Amendment of the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

3. The said indictment fails to describe and to particularize the alleged combination and conspiracy with 64 sufficient definiteness and certainty and so specifically as to enable the defendants to prepare and to make their defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceeding against them based on the same matters or things, or on any of them, on which said indictment is based.

4. The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1).

5. The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1).

6. The said indictment fails to allege facts showing any violation by these defendants of any law of the United States.

7. The said indictment is insufficient and defective for other reasons apparent upon its face.

Wherefore, the hereunder named defendants ask that this motion be granted and that the said indictment be quashed.

William J. Donovan,
Herbert H. Thomas,
Office & Post Office Address
1 West Main Street, Madison,

67 In the District Court of the United States.

* * (Caption—11365) * *

MEMORANDUM OF ORDER OVERRULING MOTION TO QUASH.

On October 4, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District, the motion of the defendants to quash the indictment which had been filed with the Clerk of said Court on October 4, 1937, came on for hearing, and after consideration thereof, the Court, on October 4, 1937, made an order overruling said motion to quash the indictment, to which order the Court allowed an exception to the defendants making said motion.

65 In the District Court of the United States.

* * (Caption—11365) * *

ORDER.

Filed August 19, 1938, H. C. Hale, Clerk.

A stipulation entered into by William J. Donovan and Herbert H. Thomas, for the defendants in this cause and by John Henry Lewin, representing the United States, having been presented to the Court relative to the amendment of the Motion to Quash, made on behalf of certain defendants on October 4, 1937, so as to designate the defendants joining in that motion;

And the Court being of the opinion that the amendment is proper,

Now, Therefore, It Is Ordered, that said Motion to Quash be amended by the addition nunc pro tunc of the names of the following, then defendants:

Standard Oil Company (Indiana)
Edward G. Seubert
Allan Jackson
Edward J. Bullock
Ira A. Smith

Skelly Oil Company
W. G. Skelly
James Nagle
Barnsdall Refining Corporation
E. B. Reeser
The Globe Oil & Refining Company (Oklahoma)
The Globe Oil & Refining Company (Illinois)
The Globe Oil & Refining Company (Kansas)
I. A. O'Shaughnessy
Deep Rock Oil Corporation
Tide Water Associated Oil Company
Edward L. Shea
Noel Robinson
J. W. Warner
66 R. O. Audrain
The Texas Company
W. S. S. Rodgers
R. D. Cottingham
H. W. Dodge
P. C. Scullin
Wadhams Oil Company
A. G. Maguire
Cities Service Company
Harry D. Frueauff
Cities Service Export Oil Company
H. E. Brandli
Empire Oil & Refining Company
O. J. Tuttle
Mid-Continent Petroleum Corporation
Jacob France
Robert W. McDowell
Thomas Fitzgerald
Phillips Petroleum Company
Frank Phillips
Fred L. Koopman
A. M. Hughes
H. A. Gardner
Louisiana Oil Refining Corporation
John A. Welch
Socony-Vacuum Oil Company, Inc.
Charles E. Arnott
Charles L. Jones
H. T. Ashton
R. R. Irwin
Bryan S. Reid
Continental Oil Company

Dan Moran
Harry J. Kennedy
L. T. Cramer
The Pure Oil Company
Henry M. Dawes
C. B. Watson
R. H. McElroy, Jr.
Dewey K. Chamberlain
Shell Petroleum Company
Alexander Fraser
P. E. Lakin
Sinclair Refining Company
J. W. Carnes.

Dated at
August 19, 1938

Patrick T. Stone,
District Judge.

164 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365-CM) * *

Filed Dec. 9, 1938.

BILL OF EXCEPTIONS.

Filed Dec. 9, 1938.

Be It Remembered, That at a regular term of the District Court of the United States for the Western District of Wisconsin, begun on the first Tuesday of December, 1936, at the United States Court House in the City of Madison in the said District, and which term had not yet adjourned for the purposes of the above-entitled cause, before the Honorable Patrick T. Stone, Judge of said Court, with respect to and in the above-entitled cause the following proceedings were had:

Presiding:

Honorable Patrick T. Stone,
District Court Judge.

Attorneys for the Government:

W. P. Crawford,
Hammon E. Chaffetz,
John Henry Lewin,
W. B. Watson Snyder,
Grant W. Kelleher,
Special Assistants to the Attorney General.
John J. Boyle,
United States Attorney.

165 General Attorneys for defendants:

William J. Donovan,
Herbert H. Thomas,
J. Edward Lumbard, Jr.,
Ralstone R. Irvine,
Attorneys for all defendants, except Gulf Oil Corporation, Gulf Refining Company, The Journal of Commerce Publishing Company, W. C. Platt Company, W. C. Platt, The National Petroleum Publishing Company, Keith Fanshier, A. V. Bourque and Clyde M. Boggs.

Attorneys for certain defendants:

Archie D. Gray,
William H. Dougherty,
Attorneys for Gulf Oil Corporation and Gulf Refining Company.

Samuel T. Lawton,
Attorney for The Journal of Commerce Publishing Company and Keith Fanshier.

Morris T. Hanning,
William A. McAfee,
Attorneys for The National Petroleum Publishing Company, W. C. Platt Company, and W. C. Platt.

Ralph Horween,
Attorney for The Globe Oil & Refining Companies (Illinois), (Oklahoma), (Kansas); I. A. O'Shaughnessy, and A. V. Bourque.

Weymouth Kirkland,
Louis L. Stephens,
Buell F. Jones,
John McInerny,
Attorneys for Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock, and Ira A. Smith.

Louis Mead Treadwell,
Attorney for Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Charles E. Arnott, Charles L. Jones, H. T. Ashton, R. R. Irwin, Bryan S. Reid, and A. G. Maguire.

166 Goldthwaite H. Dorr,
Attorney for Charles E. Arnott.

J. H. Marshutz,
Attorney for Wadhams Oil Company and A. G. Maguire.

Theodore W. Brazeau,
Charles A. Frueauff,
Attorneys for Cities Service Company, Harry D. Frueauff and Empire Oil & Refining Company.

Charles E. Gately,
Attorney for Cities Service Export Oil Company, H. E. Brandli, and Empire Oil & Refining Company.

Emmet L. Wingert,
Attorney for Empire Oil & Refining Company, O. J. Tuttle, and D. W. Harris.

Henry C. Walker, Jr.,
Walter Harris,
Attorneys for Louisiana Oil Refining Corporation and John A. Welch.

James J. Cosgrove,
W. H. Zwick,
Attorneys for Continental Oil Company, Dan Moran, Harry J. Kennedy, L. P. Cramer, and Edward Karstedt.

Charles I. Francis,
Carl N. Hill,
Attorneys for The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., and Dewey K. Chamberlain.

Samuel A. Mitchell,
Truman Post Young,
Attorneys for Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin.

C. T. Stanford,
Roy T. Osborn,
Frederick Wood,
Attorneys for Sinclair Refining Company and J. W. Carnes.

167 Sal Morgan,
Harry T. Klein,
George W. Ray, Jr.,
Attorneys for The Texas Company, W. S. S. Rodgers, R. D. Cottingham, H. W. Dodge, and P. C. Scullin.

J. C. Denton,
Attorney for Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell, and Thomas Fitzgerald.

Amos L. Beatty,
Walter Barnes,
R. L. Foster,
Attorneys for Phillips Petroleum Company, Frank Phillips, Fred L. Koopman, A. M. Hughes, and H. A. Gardner.

W. P. Z. German,
A. F. Molony,
Cliff V. Peery,
Attorneys for Skelly Oil Company, W. G. Skelly, and James Nagle.

William Dewey Loucks,
Glen W. Stephens,
Attorneys for Barnsdall Refining Corporation and E. B. Reeser.

Bethuel M. Webster,
Attorney for Tide Water Oil Company, Tide Water Associated Oil Company, Edward L. Shea, Noel Robinson, J. W. Warner, and R. O. Andrain.

W. L. Cunningham,
Attorney for Clyde M. Boggs.

H. P. Reynolds,
Attorney for Deep Rock Oil Corporation and Bernard L. Majewski.

168 **Indictment:**

The above-entitled action was commenced by the Grand Jury returning into Court and by filing with the Clerk of the above-entitled Court, on December 22, 1936, the Indictment in the above-entitled cause.

(Said Indictment is printed ante, pages 2-18 of the Record.)

Pleas to the Jurisdiction and Venue:

On January 15, 1937, the defendant Mid-Continent Petroleum Corporation, by its attorneys, appeared specially and filed with the Clerk of the said Court its Plea to the Court's Jurisdiction and Venue in this cause, and moved to quash the Summons served upon it.

(Said Plea to Court's Jurisdiction and Venue is printed ante, pages 21-22 of the Record; and said Summons is printed ante, pages 18-19 of the Record.)

On February 1, 1937, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order Overruling the Plea of the defendant Mid-Continent Petroleum Corporation to the Court's Jurisdiction and Venue in this cause, and allowed an exception.

(Memorandum of said Order is printed ante, page 23 of the Record.)

169 On March 1, 1937, the defendants Jacob France, Robert W. McDowell, and Thomas Fitzgerald jointly and severally, by their attorneys, appeared specially and filed with the Clerk of the above Court their Plea to the Court's Jurisdiction and Venue in this cause and moved to quash the Warrants served upon them.

(Said Plea to Court's Jurisdiction and Venue is printed ante, pages 22-23 of the Record, and said Warrant issued for the defendant Robert W. McDowell is printed ante, pages 19-20 of the Record.)

On March 3, 1937, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order overruling the Plea of the defendants Jacob France, Robert W. McDowell, and Thomas Fitzgerald to the Court's Jurisdiction and Venue in this cause, and allowed an exception.

(Memorandum of said Order is printed ante, page 24 of the Record.)

Arraignments:

On February 1, 1937, the defendants Gulf Oil Corporation and Gulf Refining Company, and on March 4, 1937, the defendants The National Petroleum Publishing Company and W. C. Platt Company each was arraigned on the Indictment in this cause, and each entered a plea
170 of not guilty to the said Indictment. The other corporate defendants were not arraigned and did not enter any plea to the Indictment herein, but waived arraignment.

(Memorandum of said Arraignments of Corporate Defendants is printed ante, pages 39-40 of the Record.)

On March 3, 1937, at a hearing of the above cause, counsel for the defendants made a Motion that the arraignments of the individual defendants to the Indictment in this cause and the entry of a plea of not guilty by each defendant be subject to the determination by the said Court of the Demurrers to said Indictment, Motions for Bills of Particulars and other Motions presented to the Court on March 3, 1937.

(Memorandum of said Motion is printed ante, page 24 of the Record.)

On the same date, March 3, 1937, at a hearing of the above cause, Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order granting the said Motion.

On March 3, March 4, April 15, April 20, and April 21, 1937, each of the individual defendants named in the Indictment in this cause was arraigned on said Indictment and pleaded not guilty, except that the defendants J. F. Drake, William V. Hartman, H. E. Meyer, O. H. Car-
171 lisle, and Bernard L. Majewski were not arraigned at any time, and were not tried on said Indictment.

(Memorandum of said Arraignments of individual defendants is printed ante, pages 40-41 of the Record.)

Demurrers:

On January 27, 1937, the corporate defendants Socony-Vacuum Oil Company, Inc., Cities Service Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, The Texas Company, Tide Water Associated Oil Company, Phillips Petroleum Company, Skelly Oil Company, Barnsdall Refining Corporation, The Globe Oil & Refining Company (Oklahoma), The Globe Oil & Refining Company (Kansas), The Globe Oil & Refining Company (Illinois), Deep Rock Oil Corporation, Cities Service Export Oil Company, Empire Oil and Refining Company, Louisiana Oil Refining Corporation, and Wadhams Oil Company, by their attorneys, filed their Demurrer to the Indictment in this cause with the Clerk of the above Court.

(Said Demurrer is printed ante, pages 25-27 of the Record.)

On January 30, 1937, the corporate defendant Standard Oil Company (Indiana), by its attorney, filed its Demurrer to the Indictment in this cause with the Clerk of the above Court.

172 (Said Demurrer is printed ante, pages 28-29 of the Record.)

On February 1, 1937, Warren C. Platt, W. C. Platt Company, The National Petroleum Publishing Company, and The Journal of Commerce Publishing Company, by their attorneys, filed their Demurrers to the Indictment in this cause with the Clerk of the above Court.

On February 11, 1937, the defendant Mid-Continent Petroleum Corporation, by its attorney, filed its Demurrer to the Indictment in this cause with the Clerk of the above Court.

(Said Demurrer is printed ante, pages 30-37 of the Record.)

On March 3, 1937, at a hearing of this cause, before the Honorable Patrick T. Stone, Judge of the above Court, the defendants, Charles E. Arnott, H. T. Ashton, P. E. Lakin, Robert W. McDowell, Edward G. Seubert, Allan Jackson, Edward J. Bullock, Ira A. Smith, John A. Brown, Charles L. Jones, A. G. Maguire, R. R. Irwin, Bryan S. Reid, Frank R. Coates, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, D. W. Harris, John A. Welch, Dan Moran, Harry J. Kennedy, L. T. Cramer, Edward Karstedt, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, Alexander Fraser, J. W. Carnes, W. S. S. Rodgers, R. C. Cottingham, H. W. 173 Dodge, Edward L. Shea, Noel Robinson, J. W. Warner, R. O. Audrain, Jacob France, Thomas Fitzgerald, Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, W. G. Skelly, James Nagle, E. B. Reeser, and I. A. O'Shaughnessy, by their attorneys, made a Motion that they be made parties to the Demurrer, filed on January 30, 1937, by the defendant Standard Oil Company (Indiana). Thereafter, on the same date, March 3, 1937 (and not on February 1, 1937, as stated in the "Memorandum of Order Allowing Individual Defendants to Join in Demurrer Filed by Standard Oil Company (Indiana)", appearing at page 29 of the Record), at a hearing of this cause, the Honorable Patrick T. Stone, Judge of said Court, granted said Motion, and made and entered an Order allowing the individual defendants to join in the said Demurrer to the Indictment in this cause filed by Standard Oil Company (Indiana).

(Memorandum of said Order is printed ante, pages 29-30 of the Record.)

On March 31, 1937, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order overruling the above-mentioned Demurrers and other pleadings in the nature of demurrers to the Indictment in this cause, and allowed an exception to the defendants.

(Said Order is printed ante, pages 37-39 of the Record.)

174 **Statements of Counsel During Arguments on Demurrers:**

On March 3, 1937, during the hearing of the arguments on the above-mentioned Demurrers in the above Court before the Honorable Patrick T. Stone, Judge of said Court, the following occurred:

(1) In the course of the argument by Samuel T. Lawton, attorney for the defendants, The Journal of Commerce Publishing Company and Keith Fanshier, in support of the Demurrers filed by such defendants, the following colloquy occurred:

> "General Lawton: Now, in the first place, so far as the participation of the journals in the conspiracy is concerned, the oil companies get the benefit of their own conspiracy without any further conspiring with the journals, the conspiracy that ultimately as the Government contends, raised the prices of the spot jobbers tank car purchases, and, knowing the journals will publish that the next morning, the good is automatically accomplished. They do not have to ask if the Journal will publish that price the next morning. They know the Journals will do that. All the journals will do that in the regular course of their business. So I think it is important to keep 175 in mind that the cooperation of these journals is absolutely unnecessary, that the oil companies will get the benefit of their conspiracy; it works automatically.
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> • • • • • •
>
> "The Court: It is quite possible that the Journal might be an innocent victim of the conspiracy.
>
> "Mr. Lewin: Not under the way this indictment alleges."

(2) The colloquy set forth below occurred between Samuel T. Lawton, attorney for the defendants The Journal of Commerce Publishing Company and Keith Fanshier, and John Henry Lewin, Special Assistant to the Attorney General of the United States, attorney for plaintiff:

> "Gen. Lawton: Here is what you say: The Journal of Commerce purporting to publish tank-car prices to jobbers, and intending they should be relied upon by the jobbers, instead of doing that they substituted a false price for that which is the majors'

price to the independents, and I believe I will show before I am through that those two are the same.

176 "Mr. Lewin: Is it your thought that you cannot help along the conspiracy by doing a fraudulent act?

"Gen. Lawton: Oh, no, but you are charging us with doing something that is not related to the conspiracy of the oil companies.

"Mr. Lewin: You are the chief instrumentality.

"Gen. Lawton: No.

"Mr. Lewin: If it had not been for your fraud the whole thing would have broken down.

"Gen. Lawton: No.

"The Court: Let's stick to the argument.

"Gen. Lawton: Had we published the true jobber price you would have the benefit of the conspiracy right there.

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"Mr. Lewin: They not only published it; they published it knowing the possibilities.

"Gen. Lawton: Yes.

"Mr. Lewin: They published it as part of the participation.

"Gen. Lawton: That is a conclusion.

"Mr. Lewin: They published it as part of the agency. You say they were the only agency for effecting the thing.

177 "Gen. Lawton: No.

"Mr. Lewin: And they published it with an idea which they well knew might have destroyed the link in what they did in the East Texas field and what they accomplished in Wisconsin, and you helped them along.

"Gen. Lawton: Why don't you say so?

"Mr. Lewin: It does say so."

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(3) In his argument in opposition to said Demurrers, Hammond E. Chaffetz, Special Assistant to the Attorney-General of the United States, attorney for the plaintiff, stated:

"Our proposition to your Honor is going to be that the indictment can mean only one thing, and that is that it charges a combination and conspiracy to raise the spot prices; that the raising of the spot prices was only the immediate object of the conspiracy; it couldn't have been the real end and aim and ultimate objective; and that by so doing, the defendants intended to and did raise the price of gasoline in this area; that that, the raising of the price to the 178 jobbers and to the consumers in this area, was the real ultimate purpose of the whole conspiracy."

(4) Later in the course of Mr Chaffetz' argument in opposition to said Demurrers, the following colloquy occurred:

"Col. Donovan: For the Court, would you mind asking—would you mind my asking you this?

"Is it your contention that it is stated anywhere in this paragraph, or anywhere in the indictment, that the defendants agreed among themselves that they would sell to the jobbers only at the average spot market price that you have described?

"Mr. Chaffetz: That question touches upon the question that Colonel Donovan propounded in the course of his argument yesterday, and I had intended to deal with that specifically.

"I will state now that this paragraph does not intend to charge, and does not charge that the defendants agreed together to do business only on the basis of this contract. The contract, the substance of it, is set forth in Paragraph 11.

"Col. Donovan: Thank you very much. You won't mind if we take up also whether you think 179 that charge is made here, Mr. Chaffetz?

"Mr. Chaffetz: No, I will stand by that. I don't think that charge is made in this indictment.

"Col. Donovan: It is not made in this indictment?

"Mr. Chaffetz: Not in this indictment, that is right.

"Mr. Lewin: It is charged as an overt act later—not the fact that they made the uniform pattern, but that they sold on that basis.

"Mr. Chaffetz: I stand on my statement, which is that this indictment nowhere charges that the defendants agreed to do business only on this contract, the substance of which is set forth in Paragraph 11.

"Col. Donovan: But the answer to my question is that it is not your contention that they agreed among themselves to sell only at the spot market price which you have described in Paragraph 11?

"Mr. Chaffetz: I think I will stand by the response that I made.

"Col. Donovan: Yes. I just wanted to be sure. Thank you very much."

180 (5) In his argument in opposition to said Demurrers, Mr. Lewin made the following statements:

"Mr. Lewin: For a long time contracts that the defendant major oil companies make with jobbers have followed a certain uniform pattern.

• • • • • • •

"It required that they make contracts in their sales to jobbers, or continue to make contracts in their sales to jobbers, where the contract price to the jobber would be based on the spot market.

"Now, if the spot market is uninfluenced, small though it is, it might be a fair measure of the contract price. If it were free, open markets, arm's length transactions between a willing seller and a willing buyer, then it might be regarded, not a satisfactory measure of what the right contract price ought to be, but it might be regarded as one type of proper measure. But think how terrible it would be if instead of that measure being a free, open contract, transactions, measures, it is a spot price determined by fiat of interests controlling 85 per cent of all the 181 business. Then think what you have! Then you have contracts, innocent on their face, really meaning that the contract price shall be what the major companies, putting their heads together, say that it shall be.

"Now, that was too raw a way to do it, and this indictment shows how the ingenious way was selected and followed. If they could raise the spot market then they would be automatically given the opportunity by further overt acts to translate that raised spot market price, in which they should not be interested at all because they did not sell on the spot market, and they make gasoline for sale, or if they are interested in it they ought to be interested in it very casually, and they certainly ought to have kept their hands off of it if they kept their contract with their own jobbers—if they can get that price, if they can get the trade journals to cooperate with them, because that is a necessary element too—they might have raised that price ever so high; and if it had not been quoted in the Chicago Journal of Commerce and Platt's Oilgram as the arm's length price, then the contract price based on what is carried in Platt's 182 Oilgram and the Chicago Journal of Commerce would not rise.

"So a necessary element in this ingenious scheme was to get the trade journals to cooperate. What was the motive of the trade journals is beside the point. Let's leave that to the evidence. There was enough temptation there to warrant them in cooperating, under the words of this indictment, because they did consciously—knowing how these contracts were made, knowing what they provided, knowing that they intended them to be arm's length transactions between independent refiners and jobbers, knowing and participating in a scheme that would make them fiat prices determined by the major oil companies—they learned this: In the words of this indictment they participated in that very scheme, and formed the connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective, unjust enrichment for the major oil companies.

* * * * * *

"If these trade journals had been in that position,
innocent victims, simply reporting news, then you
would say that they were a chain and means where-
183 by the whole conspiracy was carried out, but an in-
nocent means.

* * * * * *

"Now, here it is alleged that these trade journals knew everything that has been alleged in that indictment, and then intentionally participated in it. Now, if knowing of that they had put their feet down and said, 'No, we won't cooperate,' they could have prevented this particular scheme from working. Some other scheme might have been devised to get around that, some other agency might have been found with less conscience, that would have quoted these fiat, agreed upon prices on the spot market, so that the contracts with the jobbers could be made in terms of that quotation.

"But that was not necessary here, because these trade journals, knowing all of this, knowing how important they were, lent themselves to it, and they lent themselves to it and in order to lend themselves to it they had to commit a fraud as well.

* * * * * *

"Spot market, the place where the jobber ordi-
narily buys, where the independent refiner ordinarily
184 sells, where transactions are ordinarily supposed to

be an arm's length transaction, made by a fair external measure of a price in the contract—it now becomes not that, but a price fixed by the major oil companies themselves, and it is fixed in two ways.

"One is by the direct process that the major oil companies have by being put into the journals, because this indictment says that the journals carried these very prices under a caption, 'Prices to jobbers'. That is one way. That is direct. The major oil companies acting together were in there buying 50 per cent at the spot market. The need for it is negligible—buying it up not because they needed it, but because they wanted to raise the spot market price, and that price they paid is translated directly into the journals.

"As they participate in these spot markets, may it please the Court, as they run up that price, they run up the price that the real jobber has to pay as well.

"If a buying force suddenly comes into a small spot market and buys up 50 per cent of the gasoline that is offered on that spot market, what is going to happen to the price of the other 50 per cent? Why,
185 of course under competitive conditions it is going to respond accordingly.

"So when the trade journals published these things, whether they published jobbers' prices, or whether they published major oil company prices, they were really major oil company prices, determined by their own concerted action, and they published them as a price in an arm's length transaction with a really true, honest-to-goodness independent jobber, and the jobbers paid that price under those contracts."

• • • • • • •

"And again, where we talked about the trade journals, why would we say, or why would the draftsman say, if you like, that the trade journals

> "'have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline made by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, including the Western District of Wisconsin,'—

unless the pleader intended to charge and did charge a conspiracy to accomplish that final result, the raising of prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area? 186

* * * * * * *

"As I have said before, this isn't a case, under the allegations of this indictment, of some innocent, ignorant person being victimized by a conspiracy. This is a case in which the cooperation of the trade journals, I say, either consciously or unconsciously is absolutely necessary if this particular conspiracy is going to work.

"The major oil companies could go out and spend their money and waste it on the spot market, and raise the actual prices that they paid there, day by day or week by week, as they did; but that would be a foolish expenditure unless they can get it translated into the terms of jobber contracts and into the terms of the retail prices that follow. So that the market journals became the outstanding means, the absolutely necessary means toward getting the conspiracy through. They are more important, probably, than any one of the major companies buying in the pools. They become outstanding defendants, in a sense. 187

"Now, they are alleged to have conspired with the other defendants to bring about these results. That is categorically, clearly alleged. Some men will call it a conclusion of law; other men, including myself, will call it a statement of ultimate fact. They conspired—that is, they put their heads together to accomplish a result. That is perfectly plainly stated there.

"Then it is further alleged that they participated in the partnership that got going,—knowing what? Knowing all of these things: Knowing that the pools were in operation; knowing that the prices were being bid up; knowing what the intent was on the part of the major oil companies; knowing what the real objectives were; knowing how absolutely necessary to the whole scheme the trade journals actually were.

"Now, when you give them all of that complete knowledge of the comprehensive crime that is charged here, and if you state further that they conspired in it, participated in it, and lent themselves as one of the chief agencies for the carrying out of that conspiracy; and when you follow that up further by 188 saying that they really stooped to a fraud in order to aid their confederates—and the specific fraud is set forth: Publishing as spot market prices to jobbers what were really spot market prices to major oil companies—then it would seem to me that you have just as many detailed facts of criminality charged against those trade journals as you have against any of the defendants.

189 "The major oil companies couldn't have published the prices; that wasn't their job. Both things had to be done, both the paying of the high spot market price and its rigging, and its translation into the market journals, and hence, from there, into the contracts with the jobbers. Each man did and labored according to his particular assignment and task.

"Now can there be any doubt under the law that, if a conspiracy gets under way, and one particular feature of it is necessary to it; and one man undertakes to do that, knowing about the conspiracy and intending to further it, and actually furthering it and making it succeed; can there be any doubt under the law that that person is just as guilty as the rest?"

Motion to Quash of Tide Water Oil Company:

On February 1, 1937, the defendant Tide Water Oil Company, by its attorney, filed its Motion to Quash the Summons filed upon it and to Dismiss the Indictment against it.

On June 3, 1937, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order granting the Motion of Tide Water Oil Company to Quash 190 the Summons filed upon it and to Dismiss the Indictment against it.

(Said Order is printed ante, pages 41-42 of the Record.)

Motions for a Bill of Particulars:

On February 1, 1937, the corporate defendants Barnsdall Refining Corporation, Cities Service Company, Cities Service Export Oil Company, Continental Oil Company, Empire Oil and Refining Company, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Kansas), The Globe Oil and Refining Company (Oklahoma), Louisiana Oil Refining Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Socony-Vacuum Oil Company, Inc., Standard Oil Company (Indiana), The Texas Company, Wadhams Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, Deep Rock Oil Corporation, Tide Water Associated Oil Company, by their attorneys, filed in the above Court their Motion for a Bill of Particulars; and thereafter on February 17, 1937, said corporate defendants, by their attorneys, filed in the said Court, their Amended Motion for a Bill of Particulars.

On March 3, 1937, the individual defendants Edward G.
Seubert, Allan Jackson, Edward J. Bullock, Ira A.
191 Smith, John A. Brown, Charles L. Jones, Charles E.
Arnott, H. T. Ashton, A. G. Maguire, E. R. Irwin, Bryan S. Reid, Frank R. Coates, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, D. W. Harris, John A. Welch, Dan Moran, Harry J. Kennedy, L. T. Cramer, Edward Karstedt, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, Alexander Fraser, P. E. Lakin, J. W. Carnes, W. S. S. Rodgers, R. D. Cottingham, H. W. Dodge, P. C. Scullin, Edward L. Shea, Noel Robinson, J. W. Warner, R. O. Audrain, Jacob France, Robert W. McDowell, Thomas Fitzgerald, Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, W. G. Skelly, James Nagle, E. B. Reeser, I. A. O'Shaughnessy, by their attorneys; and on the same day the defendants C. M. Boggs and A. V. Bourque, by their attorney; and on the same day the defendants Warren C. Platt, W. C. Platt Company and The National Petroleum Publishing Company, by their attorney, filed with the Clerk of the above Court their respective Motions for a Bill of Particulars.

On March 23, 1937, the defendants Gulf Refining Company and Gulf Oil Corporation, by their attorney, filed with the Clerk of the above Court their Motion for a Bill of Particulars.

192 On April 6, 1937, the defendants Shell Petroleum Corporation, Alexander Fraser, and P. E. Lakin, by their attorneys, filed with the Clerk of the above Court their Supplemental Motion for a Bill of Particulars.

On June 3, 1937, the Honorable Patrick T. Stone, Judge of the above Court, signed and caused to be filed with the Clerk of the above Court (1) an Order granting certain demands of the Supplemental Motion for a Bill of Particulars of the defendants Shell Petroleum Corporation, Alexander Fraser, and P. E. Lakin; (2) an Order denying the Motion for a Bill of Particulars of the defendants Warren C. Platt, W. C. Platt Company, and The National Petroleum Publishing Company; (3) an Order granting certain demands of the Motion for a Bill of Particulars of the defendants C. M. Boggs and A. V. Bourque; (4) an Order granting certain demands of the Motions for a Bill of Particulars of the corporate defendants, filed on February 1, 1937 and February 17, 1937; (5) an Order granting certain demands of the Motion for a Bill of Particulars, filed on March 3, 1937, by certain individual defendants; and (6) an Order granting certain demands of the Motion for a Bill of Particulars of the defendants Gulf Oil Corporation and Gulf Refining Company.

193 On June 15, 1937, the Honorable Patrick T. Stone, Judge of the above Court, signed and caused to be filed with the Clerk of the above Court an Amended Order granting certain demands of the Motion for a Bill of Particulars of the individual defendants, filed on March 3, 1937.

On July 12, 1937, the plaintiff, the United States of America, by its attorneys, in compliance with the above-mentioned Order of the Court, filed respectively with the Clerk of the above Court, five separate Bills of Particulars. Each of said Bills of Particulars sets forth the same, or substantially the same statements appearing in the other Bills of Particulars. In order to avoid repetition which would result in printing herein each of said Bills of Particulars, and to avoid printing the various Motions for Bills of Particulars, the said five Bills of Particulars have been consolidated, and the following is a complete, accurate and fair consolidation of the said five Bills of Particulars:

194 BILL OF PARTICULARS.

Now comes the United States of America, and in compliance with the Orders of the Court filed herein on the 3rd day of June, 1937, passed upon the Motions for a Bill of Particulars of the defendants Edward G. Seubert, Allan Jackson, Edward J. Bullock, Ira A. Smith, John A. Brown, Charles L. Jones, Charles E. Arnott, H. T. Ashton, A. G. Maguire, R. R. Irwin, Bryan S. Reid, Frank R. Coates, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, D. W. Harris, John A. Welch, Dan Moran, Harry J. Kennedy, L. T. Cramer, Edward Karstedt, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, Alexander Fraser, P. E. Lakin, J. W. Carnes, W. S. S. Rodgers, R. D. Cottingham, H. W. Dodge, P. C. Scullin, Edward L. Shea, Noel Robinson, J. W. Warner, R. O. Audrain, Jacob France, Robert W. McDowell, Thomas Fitzgerald, Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, W. G. Skelly, James Nagle, E. B. Reeser and I. A. O'Shaughnessy; and of the defendants Barnsdall Refining

Corporation, Cities Service Company, Cities Service Export Oil Company, Continental Oil Company, Empire Oil & Refining Company, The Globe Oil & Refining Company (Illinois), The Globe Oil & Refining Company (Kansas), The Globe Oil & Refining Company (Oklahoma), Louisiana 195 Oil Refining Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Socony-Vacuum Oil Company, Inc., Standard Oil Company (Indiana), The Texas Company, Wadhams Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, Deep Rock Oil Corporation, and Tidewater Associated Oil Company; of the defendants Gulf Oil Corporation and Gulf Refining Company; and of the defendants Shell Petroleum Corporation, Alexander Fraser, and P. E. Lakin; and of the defendants C. M. Boggs and A. V. Bourque, files the following Bill of Particulars:

As to Paragraph 18 of the Indictment:

(1) In response to the demand in said motions:

Whether it is claimed that defendant conspired that the defendants, or some of them, should agree upon levels at which spot market tank-car prices should be fixed?

The Government claims that all of the defendants named in the Indictment conspired and agreed in the Sherman Act sense to raise and fix prices "at levels agreed upon among them."

(2) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

196 Is it claimed that defendants Boggs and Bourque conspired to raise and fix the spot tank-car market prices artificially?

The Government claims that each defendant named in the Indictment, including defendants Boggs and Bourque, "combined and conspired together," within the meaning of the Sherman Act, for the purpose of artificially raising and fixing the spot market tank-car prices of gasoline.

(3) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that defendants Boggs and Bourque were parties to a conspiracy or agreement that the spot market tank-car price should be fixed at agreed upon levels?

The Government claims that every defendant named in the Indictment, including defendants Boggs and Bourque, were parties to a conspiracy within the meaning of the Sherman Act, whereby the spot market tank-car prices of gasoline should be fixed at agreed upon levels.

(4) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that defendants Boggs and Bourque agreed with any other persons as to the levels at which the spot market tank-car prices should be fixed? If so, specify
197 names and the times and the places of such agreement. If a written agreement, furnish a copy. If oral, give the substance of the agreement and the names of all persons present when such oral agreement was made:

The Government claims that defendants Boggs and Bourque agreed in the Sherman Act sense with the other defendants named in the Indictment upon the levels at which the spot market tank-car prices should be fixed.

(5) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that defendants Boggs and Bourque agreed with any other person to increase and fix the price of gasoline contracted to be sold and sold?

The Government claims that defendants Boggs and Bourque agreed in the Sherman Act sense with the other defendants named in the Indictment to increase and fix the tank-car price of gasoline contracted to be sold and sold in the Mid-Western area.

(6) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that defendants Boggs and Bourque or either of them made any sales of gasoline to jobbers or to any other persons or corporations in the Western District of Wisconsin?

198 The Government does not claim that defendants Boggs and Bourque sold gasoline to jobbers in the Western District of Wisconsin, but only that they were participants in a conspiracy to raise and fix the price of gasoline which jobbers and others in this District were compelled to pay.

(7) In response to the demand in said motions:

Whether it is claimed that defendant entered into an agreement to raise the general level of retail prices prevailing in the Mid-Western area, including the Western District of Wisconsin?

The Government states that the defendants are charged in Paragraph 18 of the Indictment with having entered into a combination and conspiracy to raise the general level of retail prices prevailing in the Mid-Western area, including the Western District of Wisconsin, and the Government claims that such combining and conspiring amounts to an agreement within the meaning of the Sherman Act.

(8) In response to the demand in said motions:

Whether it is claimed that the defendant entered into an agreement not to sell to jobbers except in accordance with "the prevailing form of jobber contract described in Paragraph 11"?

199 The Government does not claim that each defendant "entered into an agreement not to sell to jobbers except in accordance with" the contract described in Paragraph 11 of the Indictment. The Indictment, in Paragraphs 11 and 15, alleges that the defendant major oil companies have made contracts wherein the contract price is based upon the spot market quotations. It further alleges in Paragraph 18 that the defendants conspired to, and have, fixed the spot market prices and, "by reason of the provisions of the prevailing form of jobber contracts" the prices charged to jobbers and others.

As to Paragraph 19 of the Indictment:

(9) In response to the demand in said motion filed by Shell Petroleum Corporation, Alexander Fraser, and P. E. Lakin:

With respect to the allegations of Paragraphs 19, 20 and 21: whether the two buying programs set out in said paragraphs were a part of one conspiracy?

The Government claims that a general conspiracy is charged by the Indictment, in which two buying programs were used simultaneously and concurrently for carrying it out and "for common purposes," some of defendants taking an active part in both programs.

200 (10) In response to the demand in said motions:

Whether it is claimed that defendant agreed that defendant should engage and participate in the two buying programs referred to in Paragraph 19, and, if so, whether the defendant conspired and agreed that said buying programs were to operate the one in concert with the other?

The Government claims that each of the defendants engaged and participated with the other defendants in a general conspiracy in which "two concerted buying programs" were used simultaneously and concurrently for carrying it out and "for common purposes," some of the defendants taking an active part in the operation of both programs, which participation amounted to an agreement within the meaning of the Sherman Act.

(11) In response to the demand in said motions:

Whether it is claimed that defendant engaged and participated in the two buying programs referred to in Paragraph 19, and, if not, in which, if either, of said buying programs defendants are alleged to have engaged and participated?

The Government claims that the defendants Sinclair, Gulf, Texas, Pure, Continental, Tide Water, Cities Service, Cities Service Export and Louisiana Oil bought, and their
defendant officers and agents participated, in the East
201 Texas buying program, and that defendants Standard
of Indiana, Socony-Vacuum, Wadhams, Sinclair, Shell, Empire, Pure, Phillips, Mid-Continent, Continental, Skelly, Barnsdall, Globe, and Deep Rock bought, and their defendant officers and agents participated, in the Mid-Continent buying program.

(12) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that defendants Boggs and Bourque, or either of them, entered into a conspiracy or agreement that the alleged combination should be carried out in the manner and by the means described in Paragraph 19 and the paragraphs following?

The Government claims that defendants Boggs and Bourque entered into a conspiracy within the meaning of the Sherman Act that the alleged combination should be carried out in the manner and by the means described in Paragraph 19 and subsequent paragraphs of the Indictment.

(13) In response to the demand in the motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that Boggs and Bourque, or either of them, participated in or were parties to a conspiracy, combination or agreement that the major oil companies, referred
to in Paragraph 20, should make large and increased
202 purchases of gasoline from most of the independent
refiners located in the East Texas field? If so, specify the times when the places where Boggs and Bourque, or either of them, participated in such conspiracy, combination, or agreement, the names of other persons present, the manner in which they, or either of them, so participated and the acts performed by Boggs and Bourque, or either of them, in furtherance thereof:

The Government claims that defendants Boggs and Bourque were parties to a conspiracy, within the meaning of the Sherman Act, whereby the defendant major oil companies made large and increased purchases of gasoline from independent refiners located in the East Texas field.

As to Paragraph 20 of the Indictment:

(14) In response to the demand in said motions:

In comparison with purchases during what period or with what other standard the alleged purchases referred to in the first sentence of Paragraph 20 are described as "increased", and whether in number, volume or value?

The Government claims that a part at least of the purchases made by the defendant major oil companies in both buying programs would not have been made had there been no conspiracy to fix tank-car prices.

203 (15) In response to the demand in said motions:

Whether it is claimed that the purposes of the East Texas Refiners Marketing Association have at any time included the making or facilitating of the purchases by the defendants to be made pursuant to the alleged so-called buying programs, and if so, when, and in particular whether at the time of the formation of said Association?

The Government claims that the purposes of the East Texas Refiners Marketing Association included the making or facilitating of purchases by the defendant major oil companies to be made pursuant to the East Texas buying program, and that such was one of the purposes of the Association at the time of its formation.

204 As to Paragraph 21 of the Indictment:

(16) In response to the demand in said motions:

Whether it is claimed that Arnott and Carnes acted in a liaison capacity between the East Texas Refiners Marketing Association and the defendant major oil companies?

The Government claims that Arnott and Carnes instigated and directed purchases of gasoline in the East Texas buying program and that Neil Buckley acted in a liaison capacity between the East Texas Refiners Marketing Association and the defendant major oil companies.

(17) In response to the demand in said motions:

Whether it is claimed that Neil Buckley approved the incumbency of Robert N. Cline as secretary and manager of the East Texas Refiners Marketing Association or the allotments alleged to have been made by Cline in said capacity?

The Government claims that Buckley approved Cline's appointment as secretary and manager of the East
205 Texas Refiners Marketing Association and approved his acting in that capacity, and his general conduct of his office, but no claim is now made by the Government that Buckley expressly and specifically approved each of the actual allotments of purchases made by Cline.

(18) In response to the demand in said motion filed by Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin:

Whether or not it was a part of the original conspiracy that the defendant Arnott and one Buckley should cause the independent refiners referred to in said Paragraph to curtail their production in the East Texas field, and whether or not these moving defendants are alleged to have joined in a conspiracy to cause such curtailment of production?

The Government claims that the curtailment of production, as alleged in Paragraph 21 of the Indictment, was done pursuant to the conspiracy and in furtherance of its unlawful purposes, each of the individuals and companies participating having knowledge "of said unlawful purposes," and that, therefore, the curtailment alleged was within the general scope of the conspiracy to which defendants were parties.

206 (19) In response to the demand in said motions:

The purposes to which reference is had in the last sentence of Paragraph 21, together with the place, if any, in the Indictment at which mention is made thereof?

The Government states that the unlawful purposes referred to in the last sentence of Paragraph 21 of the Indictment refer to those set forth in Paragraph 18 of the Indictment, namely, to raise and fix artificially the tank-car prices of gasoline in the spot markets, to maintain said prices at artificially high and non-competitive levels, and to increase, fix and maintain the tank-car prices of gasoline contracted to be sold and sold in interstate commerce in the Mid-Western area, to raise, fix and maintain the general level of retail prices prevailing in said area, and to exact large sums of money from handlers and consumers of gasoline.

As to Paragraph 22 of the Indictment:

(20) In response to the demand in said motions:

Whether it is claimed that any of the purchases referred to in the first sentence of Paragraph 22 were spot transactions, and if so, the parties to each such purchase and the dates thereof?

The Government claims that the purchases in the Mid-Continent buying program were made in spot transactions.

207 (21) In response to the demand in said motions:

In comparison with purchases, during what period or with what other standard the alleged purchases referred to in the first sentence of Paragraph 22 are described as "increased" and whether in number, volume or value?

The Government claims that a part at least of the purchases made by the defendants in the Mid-Continent buying program would not have been made had there been no conspiracy to fix tank-car prices.

As to Paragraph 23 in the Indictment:

(22) In response to the demand in said motions:

Whether it is claimed that the quantities of gasoline alleged in the second sentence of Paragraph 23 to have been taken by the defendant major oil companies were so taken pursuant to an agreement entered into by the defendant?

The Government claims that the purchases, alleged in the second sentence of Paragraph 23 of the Indictment to have been made by the defendant major oil companies, were
208 made pursuant to an agreement in the Sherman Act
sense and pursuant to the combination and conspiracy charged in the Indictment.

(23) In response to the demand in said motions:

Whether McDowell, Tuttle, Bourque, and Jacobi participated in making each or any of the allotments referred to in the second sentence of Paragraph 23?

The Government claims that McDowell, Tuttle, Bourque, and Jacobi allotted gasoline among the defendant major oil companies in the Mid-Continent buying program.

(24) In response to the demand in said motion filed by C. M. Boggs and A. V. Bourque:

Is it claimed that Boggs and Bourque, or either of them, were parties to the alleged agreement among the defendant major oil companies as to the alleged uniform, high, arbitrary, and non-competitive prices referred to in the fifth sentence of Paragraph 23?

The Government claims that defendants Boggs and Bourque participated in the conspiracy charged in the Indictment and, as such participants, were parties to an agreement, in the Sherman Act sense, as to the uniform, high, and non-competitive prices referred to in Paragraph 23 of the Indictment.

(25) In response to the demand in said motion filed
209 by C. M. Boggs and A. V. Bourque:

As to the following allegations in Paragraph 23:

> "In furtherance of said unlawful purposes, said independent refiners, at the instance of defendants Arnott, McDowell, Tuttle, Boggs, and Bourque, curtailed their production of gasoline."

Is it claimed that Boggs and Bourque, or either of them, were parties to a conspiracy or agreement that the independent refiners would curtail their production of gasoline? If so, specify the time and place when Boggs and Bourque entered into such a conspiracy or became parties to such an agreement, the names of the other parties thereto, the substance thereof and the names of all individuals present:

The Government claims that defendants Boggs and Bourque participated in a conspiracy within the scope of which the curtailment of gasoline productions by independent refiners took place.

(26) In response to the demand in all of said motions:

The purposes to which reference is had in the last sentence of Paragraph 23, together with the place, if any, in the Indictment at which mention is made thereof?

210 The Government states that the unlawful purposes referred to in the last sentence of Paragraph 23 of the Indictment refer to those set forth in Paragraph 18 of the Indictment, namely, to raise and fix artificially the tank-car prices of gasoline in the spot markets, to maintain said prices at artificially high and non-competitive levels, to increase fix and maintain the tank-car prices of gasoline contracted to be sold and sold in interstate commerce in the Mid-Western area, to raise, fix and maintain the general level of retail prices prevailing in said area, and to exact large sums of money from handlers and consumers of gasoline.

As to Paragraph 24 of the Indictment:

(27) In response to the demand in said motions:

Whether any of the acts or things alleged in Paragraph 24 were done by agreement with defendants, and, if so, the time and place of such agreement?

The Government states that Paragraph 24 of the Indictment sets forth the participation of the market journals in the general combination and conspiracy charged in the Indictment, and the Government claims that the allegation of this paragraph that the acts of the Journals were done intentionally "in the combination and con-
211 spiracy set forth in this Indictment" amounts to saying that they were done in combination with all the other defendants.

As to Paragraph 25 of the Indictment:

(28) In response to the demand in said motions:

Whether the defendant has contracted to sell gasoline to jobbers in the Western District of Wisconsin in the

manner alleged in Paragraph 25; whether the defendant has sold gasoline in said district in the manner alleged; whether the defendant has delivered gasoline in said district in the manner alleged?

The Government claims that all of the defendant major oil companies have sold and delivered gasoline in the Western District of Wisconsin in the manner alleged in Paragraph 25 of the Indictment and that all of them, with the exception of Standard of Indiana, have contracted to sell and have sold gasoline to jobbers in this district in the manner alleged.

(29) In response to the demand in said motions:

Whether the artificially raised and fixed, non-competitive prices referred to in the second sentence of Paragraph 25 were raised and fixed by agreement or agreements to which defendant was a party?

The Government claims that the artificially raised and
fixed and non-competitive prices referred to in the
212 second sentence of Paragraph 25 were raised and fixed
by agreements in the Sherman Act sense to which defendants were parties.

(30) In response to the demand in said motions:

Whether the artificially increased prices referred to in the last sentence of Paragraph 25 were increased pursuant to an agreement or agreements entered into by defendant?

The Government claims that the artificially increased prices referred to in the last sentence of Paragraph 25 of the Indictment were increased pursuant to agreements in the Sherman Act sense entered into by defendant.

(31) In response to the demand in the motion filed by the Shell Petroleum Corporation, Alexander Fraser, and P. E. Lakin:

As to Paragraph 25 of the Indictment whether the allegations that defendant major oil companies "have contracted to sell and have sold and have delivered large quantities of gasoline in tank-car lots to jobbers," and the allegation that defendant major oil companies "have solicited and taken contracts and orders for said gasoline within said district, sometimes by sales representatives lo-
cated there," refer solely to contracts executed on
213 the form of contract described in Section 11 of the
Indictment, or whether said allegations refer to and include sales made to jobbers in miscellaneous transactions, such as, cash sales at spot prices and other forms of sales, in addition to sales made upon the contract form described in Section 11?

The Government claims that all contracts to sell, sales and deliveries of gasoline in the Western District of Wisconsin, whether made on the basis of a uniform contract or not, at the artificially raised and fixed prices effectuated by the conspiracy constitute overt acts in furtherance of the conspiracy charged in the Indictment.

W. P. Crawford,
John Henry Lewin,
Hammond E. Chaffetz,
W. B. Watson Snyder,
Grant W. Kelleher,
Special Assistants to the Attorney-General.

214 **Motion to Quash:**

On October 4, 1937, certain of the defendants, by their respective attorneys, filed a Motion to Quash the Indictment in this cause with the Clerk of the above Court.

(Said Motion is printed ante, pages 42-43 of the Record.)

On August 19, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order that the said Motion to Quash the Indictment in this cause be amended by the addition nunc pro tunc of the names of certain individual and corporate defendants.

(Said Order is printed ante, pages 44-45 of the Record.)

On October 4, 1937, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order overruling the said Motion to Quash the Indictment in this cause, and allowed an exception.

(Memorandum of said Order is printed ante, page 44 of the Record.)

TRIAL OF THE CAUSE.

On October 4, 1937, at the hour of 10 o'clock A. M., the trial of this cause began before the Honorable Patrick T. Stone, Judge of the District Court of the United States 215 for the Western District of Wisconsin, sitting at the United States Courthouse at Madison, Wisconsin. The Honorable Patrick T. Stone made and entered an Order that the record show that the defendants John A. Brown, Frank R. Coates, D. W. Harris, J. F. Drake, William V. Hartmann, H. C. Meyer, O. H. Carlisle, Bernard L. Majewski, Keith Fanshier, and Edward Karstedt were not present and were not being tried at the trial of this cause beginning on October 4, 1937. All of the other defendants named in the Indictment in this cause, except Tide Water Oil Company, were present and ready to be tried on said Indictment.

(Memorandum of said Order is printed ante, page 42 of the Record.)

Thereafter, on October 4, 1937, in the course of the proceedings in said cause, the Court made the following statement:

> "The Court: So, without any further discussion, I will say to you now that the jury will be kept in the custody of the Marshal from the beginning to the end of this trial; to the end that the jury will determine this case upon the evidence received in Court, and that only."

Thereafter, on October 4, 1937, the selection of the jury to try this cause occurred, and twelve jurors and two alternate jurors were selected as the jury in this cause.

216 Thereafter, Mr. Crawford, on behalf of the United States, made the first opening address to the jury. Counsel for the defendants-appellants inserted in this Bill of Exceptions those portions of said opening address set forth in the defendants-appellants' Assignment of Error No. 38 and requested counsel for the plaintiff-appellee to specify those other portions of such address which they believed modified or explained such statements in said Assignment. In response counsel for the plaintiff-appellee thereupon requested that the entire opening addresses to the jury by Mr. Crawford and by Mr. Chaffetz be inserted in this Bill of Exceptions. Such opening addresses are hereinafter set forth. The opening address of Mr. Crawford is as follows:

217 OPENING STATEMENTS ON BEHALF OF THE GOVERNMENT.

Mr. Crawford: May it please the Court and gentlemen of the jury; with very little preliminary or introduction I will attempt to give you an outline in a general way of the proof that will be produced here on the part of the Government with respect to the allegations contained in the indictment upon which these defendants, whose names you have heard, are brought to trial here. The litigation

—the indictment, and the charge, as you know now, involves the question of a violation by the defendants of the Sherman Anti-Trust Laws, in that it is claimed, and we will have evidence here to sustain the claim, that these defendants engaged in a conspiracy to fix and regulate prices of gasoline, both wholesale and retail, during the period from at least March of 1935, and continuing on down to the time when the indictment was returned here by a Grand Jury, sitting at Madison, in December of 1936.

In order that you might a little better understand the
evidence that will be presented before you, it is, of
218 course, advisable that you be given some idea of what
the field to be covered by the evidence consists of.

In the first place, gasoline coming in to the mid-western states, which is known as the Standard of Indiana territory, and will be commonly referred to as that, is produced and manufactured principally in East Texas and what is known as the mid-continent field. We will have before you, and it will be explained more fully by one of my colleagues who will follow, by maps and charts here, indicating the areas in which crude oil is produced and places where it is manufactured and shipped.

It is the claim upon the part of the Government that during the year 1935, the early part of that year, these defendant major oil companies—and by the way, perhaps you ought to know who we mean when we speak of major oil companies—that is best explained to you by referring to the indictment itself. A major oil company, in short, is an oil company which produces crude oil; manufacturers it into gasoline, owns and operates refineries and pipe lines and ships and markets the gasoline from its refineries into the different territories where it is distributed, largely by jobbers in this area,—sometimes by the major oil companies themselves.

The major oil companies are, as you have heard here,
and perhaps it ought to be told to you again, the
219 Standard Oil Company of Indiana, Socony-Vacuum,
Continental Oil, Pure Oil, Shell Petroleum, Sinclair Refining Company, Texas Company, Tide Water Associated, Mid-Continent Petroleum, Phillips, Skelly, Barnsdall, Globe, Deep Rock. I have just used the abbreviated names of those.

The mid-western area with which this lawsuit is principally concerned, and in which it is claimed that this conspiracy operated, are the ten mid-western states, including the state of Wisconsin; and so that you may become a little more familiar with that, I will speak of those as they are spoken of in the indictment: The states of Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri, and Kansas. They comprise one of the great marketing areas for gasoline in the United States.

We have also here for trial, in addition to the major oil companies, several of their subsidiaries, such as—and these are all of them—Cities Service Export Oil Company, Empire Oil and Refining Company, Louisiana Oil Refining Corporation, Gulf Refining Company, Wadhams Oil Company of Wisconsin.

In addition to those defendants, we have also here, on
trial, charged as being members of this conspiracy, two
220 or more trade journals—three—Chicago Journal of
Commerce, Platt's Oilgram, and the Petroleum News,
and the connection between those trade journals and these other oil companies and individuals will be made quite plain to you as we go along. I am trying now to get you a little bit familiar with the general set-up in the case, as the evidence is going to be presented to you.

A very important element in the case which you will consider and the evidence will fully explain to you is another group operating in the gasoline business, known as independent refineries. Now let me here explain to you and it will be more fully explained by one of my colleagues who shall follow me, the difference between an independent refiner and a major oil company. Briefly speaking, an independent refiner is one who does not own and have its own crude oil, does not have pipe lines, it gets its crude oil from oil fields which are small and which it may itself own or lease. It operates a small refinery and sells its gasoline on what we call a spot market.

Major oil companies, which are these big aggregations or corporations that I have referred to own their own crude oil and manufacture their own gasoline. They do not sell on the spot market any substantial amount. Neither ordinarily do they buy on what we call the spot market.

Now the "spot market" is a term that is used here
221 and will be used very generally throughout the trial of
the case. Many of you who buy and sell merchandise
know something about what we mean when we say you buy it on the spot. And so these independent refiners, who only control a small percentage of all the gasoline marketed in this mid-western area, sell their gasoline in tank car

quantities to independent jobbers largely, and that transaction is called a spot market transaction.

Now a jobber, as some of you perhaps know from experience, is a corporation or an individual who owns and operates a bulk storage plant. He may have retail service stations of his own or he may deliver the gasoline to independent service stations. He gets his gasoline usually from a broker. Very often he gets it direct; and he gets it from one of two sources,—either from a major oil company or from the independent refiners. When he buys from the independent refiners, as you might know, he buys just like you go out to buy any article of merchandise that you want. You go to the man who has the gasoline to sell and buy it at what price you can buy. Usually, as you will see a bit later, he goes to the independent refiners. The independent refiner quotes him a price. They may dicker on the price, and finally a trade is made, and the jobber buys one tank car or two or three or four, whatever he may need immediately for his bulk storage plant.

222 That comes in tank cars and is delivered to his bulk storage plant, he in turn selling it to the independent retail station or delivering it to his own for sale, and there is where you buy the gasoline for your automobile. That, in short, is the business of the jobber.

Now you will hear a lot about the jobber in this law suit, and it will be important for you to consider just what place he has in this picture. It is a very important place indeed; and as the evidence upon the part of the Government will show that he—now speaking of him as one—speaking and thinking of him as a group again, is the one or the group who probably has been most seriously injured by this conspiracy.

You will hear from the evidence in the case that in the mid-western area there are in the neighborhood of four thousand jobbers engaged in this business. And let me say too that these jobbers now and for some time past buy their gasoline mostly from the major oil companies, and testimony will be produced before you as to why that is done, as to why he does not go into the open market and dicker with the independent refinery and get a price that is satisfactory to him. You will find, from the evidence here, that these jobbers, throughout these ten states, are buying
gasoline chiefly—mostly—under contracts which have
223 been made between themselves and the major oil companies. And you will find too that the contracts which the jobbers have with the major oil companies are substan-

tially alike. And you will find, although it will take a number of witnesses and quite a volume of testimony to give it to you fully, why it is that the jobber operates under this contract and not otherwise.

In the first place, as you all know, when you go to buy gasoline for your car you think of Mobile gas; you think of Shell; you think of Texas, or think of Cities Service, or you think of a number of these major companies whose brands are well known to you. These major companies have over a number of years built up this advertisement—this demand upon the part of the public for this particular brand of gasoline. You listen on the radio, you remember something about that, how extensively it is that they advertise their own brand.

And so the jobber, when he comes to buy gasoline, when he comes to sell it, has to deal really with this branded class or character of gasoline which have been built up for acceptance by the public by the major oil companies.

So if he goes out into the field and buys gasoline and he
goes to the independent refiner, he is in some degree
224 handicapped if he undertakes to deliver that to the
man who drives an automobile, so usually he gets his gasoline from a major oil company who has a brand or character of gasoline, and gets its under a contract.

These contracts may run for a long time or they may run, as many of them do, from year to year. The matter of these contracts is a very important matter in the decision of the questions involved here. It will be found that these contracts are substantially alike and you will find from the evidence too, that a man, for instance, who has a contract with the Standard of Indiana, to buy gasoline over a period of a year at a certain price, I will speak of in a moment, usually don't walk out on that company if he is dissatisfied, like he would, if he were not tied, because if he goes from the Standard of Indiana, or Texas or Cities Service, intending to make a better contract or a better bargain, he would be using precisely the same thing that he had and nothing else. Therefore you have the jobbers bound by these contracts.

These contracts provide, being all substantially alike, that the price which the jobber shall pay to the major oil company for gasoline is this: The spot market tank car price in the field or at the refinery. And that spot market
tank car price is determined by what? It is determined
225 by the price which is quoted in these three trade jour-
nals I have referred to, taking the average of the quo-

tations of high and low from day to day. That presents the price that the jobber must pay for his gasoline. That will give you some explanation and a more full explanation by my colleague will show, and the evidence will show, the part that these trade journals have played in the picture which reflects the operation of this conspiracy.

It will appear too, that 85 per cent or more, of all of the gasoline that is distributed in these ten mid-western states is produced, refined, sold and distributed by these major oil companies. In other words, they have control of about 85 per cent of all the gasoline that is sold in this area, leaving about 15 per cent of the gasoline sold in this area unaccounted for. Presently we will inquire as to what becomes of the other 15 per cent—where it comes from and where it is handled, and we find that about 15 per cent of all gasoline marketed here is sold by these independent refiners, largely to independent jobbers who are not tied by contract to the major companies and sometimes where a man runs away from his contract and does not get caught at it.

As I have told you, the spot market which determines
the price under the contract which the jobber pays for
226 his gasoline is the price paid to the independent refiner
who only handles about 15 per cent of the gasoline, by
the independent jobber. Now the independent refiner also sometimes, perhaps frequently, gets contracts with independent jobbers, so there is taken out perhaps 15 per cent, a substantial part of it in that way, leaving them for the spot market which I have told you is the price which the independent jobber pays to the independent refiner for the gasoline, leaving them with only a small part of the 15 per cent, which makes the market—the market price, for the 85 per cent which is bought under the contract, by the jobber. And as you have seen, the trade journals quoting the prices which are paid in the spot market, the high and low averaged, determines the price that the jobber has to pay for his gasoline.

I told you a moment ago that it would appear here from the testimony and from the inferences from the facts that will be produced before you that these four thousand or more jobbers in this area are the group of people that have been irrevocably hurt by this conspiracy. That will be explained a little more fully but you have the idea from what I have said, as to the principal features of the conspiracy.

Perhaps I have told you enough about the general situ-

ation to go to some general statement as to what this
227 conspiracy is, and I am sure you are anxious to hear
about that now; and to do that I want to say now
here and impress on your mind this fact. The evidence
will show that the quantity of gasoline sold and marketed
in these ten mid-western states amounts annually to between four and a half billion and five billion gallons. Now those figures are too great for me to fully comprehend. I am just going to throw them at you, as the fact is. That will mean the sale of I think ten to twelve million gallons of gasoline per day, for 365 days out of the year. That is the volume of this production that was being dealt with by these men who entered into this conspiracy to raise and fix the prices of gasoline in violation of the law. And out of this four and a half or five billions of gasoline, as you have seen, at least more than 50 per cent of that is sold and handled through jobbers, so that when we speak about the jobber in this territory being affected by this conspiracy, you can understand just about what that means.

Now let's get down and see what it is that the Government claims that these defendants did in violation of the law and in an attempt to take over and control and fix prices. I am not going to give this to you connectedly.

There is only about five per cent, as I said a while
228 ago, of all gasoline that is marketed in this area,
which is sold on the tank car spot market price. 85
per cent of it is controlled by the majors. The trade journals quote the spot market price which is a price of 5 per cent of the gasoline that is sold by the independent refiners to the independent jobbers. So if the spot market price is too low to suit the major companies, and if they can raise the price of the 5 per cent, which is the spot market, they have raised the price of the 85 per cent of the five billions of gasoline that they can sell in a year.

Now, that is the situation which these companies and these individuals sought to manipulate and successfully did. In other words, if they can manipulate the price of 5 per cent of all gasoline sold in this territory, they can control the price of the 85, 90 or 95 per cent, which they sell. Now the indictment charges them with doing that.

Let me say now that you must not expect that we are going to come before you with any written contracts entered into by these big corporations and these 40 or 50 individuals in which it will appear that they contracted in writing with one another to go into this criminal scheme to fix prices in violation of the law. When people are going out to form a conspiracy to enter into an agreement to do something which is contrary to the law, 229 and for which the law may punish them, they don't do it in the presence of witnesses, and they don't do it by any written contract. They do it in the dark and they do it secretly, and they do it by a series of operations—series of contacts covering a long period of time, and that is precisely what they did here. So you must not expect us to have any contracts here to show that they engaged in writing to enter into any violation of law for which they are brought here for trial. But there will be unfolded before you gradually by the witnesses who know the facts and by many documents taken from the files of the corporations themselves a picture of how the master minds in this conspiracy sowed the seed into the minds of those who finally came in with them of the scheme and the plan under which they would raise the price of this 5 per cent of spot market gasoline and in that way would be able to fix the price of gasoline all over this territory and do what they pleased with their oil.

Now, I will refer to the indictment in that respect. Beginning in the month of February, 1935 and continuing to the date of the presentation of this indictment, defendants and certain persons hereinafter referred to, and other persons to the grand jurors unknown, well knowing all the foregoing facts,—which I have just sketched before you—have combined and conspired together for the 230 purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them and have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area, including the Western District of Wisconsin, and have arbitrarily, by reason of the provisions of the prevailing form of jobber contracts above described, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area, including the Western District of Wisconsin, and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area, including the Western District of Wisconsin. In so doing, defendants have then and there engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section one of the Act of Congress of July 2nd, 1890, known as the Sherman Anti-Trust Act.

Now, in order to make this conspiracy effective—in
231 fact, in order to carry it out, it became necessary for
these major oil companies to have the cooperation of
the independent refiners who controlled the 15 per cent of the gasoline in the mid-western area. We find that in 1935 the independent refiners in East Texas and in the Mid-Continent field were selling their gasoline at a very low price—comparatively low price—such a price that enabled the jobber to get a reasonably profitable margin between what he paid for it and what he could sell it at.

This, of course, low price for this gasoline was very unsatisfactory to these big companies, because they had to meet the price, and so they conceived the idea of getting in touch with the independent refiners and in some way raise the price of the small quantity of gasoline that was being sold and being so translated into trade journals which fix the price that the jobber has to pay. This was accomplished in one or both of those fields, I won't stop to go into the details in respect to that, by organizing the independent refiners. There are a large number of them. They are referred to in the East Texas field as about 23. Mid-Continent field, 18 or 20. Just a part of them. So they got these independent refiners who were selling on the spot market organized; had a man act for them as a representative between the independent refiners and the
major oil companies.

232 Now, here is the important thing in the whole
conspiracy. As you have seen, in order to get the
price of gasoline up below the low level at which the independent refiners were selling it, it was only necessary to get the price up of about 5 per cent, not exceeding 15 per cent, of the five billion gallons of gasoline that was sold. Having organized the independent refiners, finding the spot market price too low, wanting to raise it, wanting to control it, the major oil companies began buying gasoline from the independent refiners; not because they needed it. Indeed, they did not. They had more than they needed. But if they could establish a high price in the spot market for gasoline it would fix the price that the jobber would have to pay to them. So they set about to buy gasoline from the independent refiners on the spot market.

233 And when they had that organization perfected, or had it functioning in some sort of a way, later more perfectly functioning—where, for example, the independent refiner today is selling gasoline at 3 cents a gallon, the major oil companies step in and they begin buying from them, and they pay them 4 cents. They pay them 4 cents instead of 3 cents; not because they had to. The independent was willing to sell it at 3; but they don't want it at 3, they want to pay 4 for it.

This is an illustration, now. They don't jump from one cent to another like that; they deal in eighths, usually.

Having paid 4 cents instead of 3, it might occur to you, "now, that is just a loss, a money loss, and it is perfectly foolish to expect us to believe that they did that." But wait till you see how it works.

Now, I spoke about the vast volume of gasoline that is necessary to supply the needs of this Mid-Western area, these ten states. In fact, it now has become one of the necessities of life.

Suppose, for example, that the major oil companies bought today on the spot market from the independent refiners a million gallons of gasoline, and paid 4 cents for it instead of 3. They are taking a loss on that, are they not? Translate that into money, and you have a
234 substantial loss. But suppose that tomorrow they are able to sell 12,000,000 gallons at the increased price of one cent; they have benefited by the transaction. Suppose that during the year they have been able to sell four and a half or five billion gallons of gasoline at this raised price. They took a little loss on the small quantity they bought, where they paid a price they didn't need to pay, but they benefited in the very large volume which they supplied throughout the country.

Now, that is exactly what happened.

The trade journals, whose price determined the price to be paid by the major oil companies, looked at the price in the spot market today. What do they find? They find 4 cents instead of 3, and they quote that; 3⅞ low, and 4 high, and so on, running along like that. They take the average.

Now, that is the price of gasoline to the jobber tomorrow. But the major oil company is the one who made that price, isn't he? Because he went in there and bought gasoline from the independent, and paid him a higher price than he had to, in order to raise the price for the gasoline that he was to sell.

Well, here is the jobber in the picture, with a contract under which they agree to supply him with gasoline for a period of one year, at the price to be quoted by the Journal of Commerce and Platt's Oilgram. And that price is the rigged price, it is the rigged market made by the major oil companies.

235 And the jobber must, if the raise was one cent—the jobber does business on a very narrow margin; his volume largely keeps him alive, if he can get a reasonable margin of profit. The jobber then is squeezed just one cent a gallon, isn't he? And if he has a contract with the major oil companies under which he gets a margin, the difference between what he pays them and what he gets for it at the retail service station, if that is 3 cents and the rigged price takes one cent away from him, he is down to 2. If they raise it another cent he is down to one cent. If they raise it another cent, he is down to zero.

And that is what the major oil companies like. If they raise the spot market one cent more, the jobber goes out of the picture—4000 of them or more, in this one area—and the major companies sell direct to the consumer; and they can tell you and me what to pay, and we have nothing to say about it. They have absolute control of that market, and a monopoly on the whole market; because, where we found that they had 85 per cent in the beginning, they cooperated with the independents and took control of the 15, and they have got it all. It is not a monopoly as we speak of it or read of it—it is the perfect monopoly.

Now, that is precisely what happened here, as the evidence will show: That they took over, and they have
236 retained absolute control of that market. Down until the day that they were indicted by the Grand Jury here on the 22nd of December, 1936, they had the power—maybe they have it now—of making you and me, instead of paying 20 cents a gallon, pay 30 cents. The only reason they don't do it is the very reason they didn't do it in December, 1936: Because the Government of the United States stepped in and said, "You have gone too far now. Stop."

Now, that, in a very general way, is the conspiracy. Very much more, and a good deal of it in legal phraseology, is contained in this indictment, going into some details which I will not follow here, showing you just how this contact was made between the group of major oil companies and the independent refiners, and just how the jobber was hurt.

Now, mind you, the scheme under which the consumer had the price of gasoline raised on him, I have just barely dealt with, just barely touched upon. But you can see at a glance what would happen to the consumer in that situation.

Here is the jobber. He has got thousands of dollars, hundreds of thousands of dollars, many of them have, invested in their plant, bulk stations, retail service stations, trucks and equipment, throughout the country. Here is the jobber, driven to the wall by this rigged market under which he has to pay this high price. He is
237 bound by this contract with the major oil company, and he can't get another contract anywhere; and he can't get gasoline from an independent refiner, because the majors have gone in and taken it all.

Now, what does he try to do, in order to live? He tries the only thing that is possible—and that is hardly possible—that is, to pass on some of his loss to the consumer, and get a higher price at his retail service station in order to make up for his loss in buying under the contract at the rigged market. That is where the consumer has been injured. That is where the consumer has been placed within the grasp and the power of these tremendous aggregations of great wealth, operating together.

Now, one or two of them alone couldn't have done this, of course, if there were competition between them. And they well knew that. And the picture will be painted to you by evidence here, of how they got together; how they held secret meetings, in Chicago, Washington, Kansas City, St. Louis, Tulsa, some of the other places down in the oil fields, from time to time.

And, as I said at the beginning, these were not meetings at which the public were invited—indeed, no. They were meetings from which the public was excluded. And there the scheme was hatched, and there the men were selected for the purpose of going out and taking their part in putting it into effect.

And you will find mentioned frequently here in the trial of this case two very important figures.

238 One was a gentleman by the name of Buckley, Neil Buckley, an employee of the Cities Service Company, who went down into the East Texas field and acted as a contact man between the group of independent refiners and the major oil companies in carrying out the plan to raise the spot market tank car price of gasoline down there. And it will be a long, long story, if it is fully told. And it

won't be fully told, because you must remember, we are not going to have everything that happened here exposed to you. It couldn't be expected, and can't be had. But enough will be exposed before you by way of the testimony of witnesses to show that these people were bound and determined that they were going to carry out this plan of fixing these prices of gasoline.

And Buckley acted as the man between the two groups down in the East Texas field. And you will be shown how he moved about from place to place, from major company office to major company office and to the independent refiners, and to the agency that was set up as the agency between the two. And how, when the independent refiner had gasoline to sell today, he didn't sell it to the jobber, who was begging for gasoline at a reasonable, living price; but he sold it through the agency set up by Buckley. Buckley, on the other hand, contacting the major oil company and saying, "We have so much gasoline from the independent refiner today. Can you take it?" And going to another major and saying, 'I have so much gasoline from this fellow. Can you take it?" And they did. And, "What
239 is the price?" And the price began gradually going
up and up and up.

I didn't intend to refer to this chart, but it might be of some little help to you now, and might give you a little more general idea of what happened in the gasoline price. (Referring to large chart)

You see the top line, showing the rise in prices. You see these bottom lines, showing the rise in prices. That will be gone into very fully and explained to you in detail, that that is the way, essentially, the prices acted.

Then we go into the other field, which is a smaller field in production, the Mid-Continent field; and we find a similar set-up. We find a contact man there between the independents and the majors. He will be referred to by the name of Jacobi, who is an employee of one of the major oil companies, Wadhams Company, the subsidiary of Socony-Vacuum, is it?

Mr. Lewin: Yes.

Mr. Crawford: Socony-Vacuum. He is the man that made the contact, with the help of a lot of other fellows who were also interested in this scheme and were going to benefit by it. He made the contact between the independents and the majors, and helped fix the spot market in the Mid-Continent area.

And the two, of course, operated in harmony. There will be considerable testimony on that point.

240 Now, of course, again speaking generally, we find in this conspiracy, as you might expect, some of the biggest men—speaking now of big in the way of controlling vast volumes of financial influence—some of the biggest men in this country in the oil business, involved in this conspiracy.

And one of them who will be referred to many; many times in the trial of this case, probably was the mastermind in this whole conspiracy. He is the man who led. He is the man who practically told the other fellows what to do, and they followed him. That is one Charles E. Arnott, Vice-President of Socony-Vacuum. He is the man who called these meetings together, many of them. He is the man who at the meetings, very carefully keeping it away from the eyes of the public, laid down the plan under which this operation should be carried on.

I think I have already told you, as the evidence will show, that starting out with 85 per cent control of all the gasoline marketed in these ten states, these defendants had a working monopoly—

The Court: Mr. Crawford, I think we will suspend now until two o'clock.

241 Opening Statement Continued by Mr. Crawford.

May it please the Court, and gentlemen of the jury. I am always glad when we have a little recess between the time that I start to talk and the time I finish. It is nice for the lawyers, but it is kind of tough on the jury, because we go out and we think of a few more things in reference to it to which you have to listen.

I am not going to spend a whole lot of time in talking to you now. My endeavor is purely and simply to outline to you in a general way what the Government expects to prove so that perhaps as the testimony of the Government's witnesses comes in, you will be able to understand it a little better than if the outline had not been given to you.

I referred a while ago to the Mid-Continent oil field, and more particularly to the East Texas field, and that largely because of the East Texas field is a very large oil-producing area. The production there in such large quantity is in East Texas.

When you move from there—and this map will carry you along as you are referring to it—to the field which is known as the Mid-Continent field, and both of those fields will be referred to here so that it is proposed for you

242 to know now what area that Mid-Continent field comprises. So as to make no mistake about that, I again return to the indictment to tell you.

The Mid-Continent fields extend over the State of Oklahoma, the northern and western portions of the State of Texas, the southern and eastern portions of the State of Kansas, and the northern portion of the State of Louisiana.

I spoke to you in the beginning as to what the proof would show with respect to the carrying on of this buying program in the East Texas field. The term "buying program" is a term you are going to hear many times also.

I referred to the fact that it was managed largely by one Neil Buckley who acted, as he will say himself, as a liaison man between the two groups, the independent refiners and the major oil companies.

I think I called your attention, too, to the fact that they set up an organization there in the East Texas field of the independent refiners, and appointed a man by the name of Robert Cline to act between the two groups.

Now, these groups of major oil corporations that were going in there and buying this small quantity of gasoline produced by the independent refiners were really operating a pool, and you will hear a lot about pools as you listen to the evidence in the trial of the case; and I think I need
243 not go into any detailed explanation as to what is meant by a pool to you men, because you have known and heard and read a lot about it, and maybe been on the short end of a few of them, too.

This pool operated in the East Texas field generally in the way I have stated. Get over into the Mid-Continent field, and as I said generally there the pool operation, the buying program, taking up the gasoline of the independent refiners so that the price might be raised, was carried on by one Jacobi as a go-between between the independents and the majors, he having considerable help from another group that were assisting in that work there, and both—both pools, both operations, having drawn in finally the independent refiners so they were all acting together, being managed, as I say, by Mr. Arnott, vice president of Socony-Vacuum Corporation, having his office on Wall Street in New York. This, the evidence will show.

In the Mid-Continent field, for the purpose of making the operation comparatively simple, the independent refiners selling the gasoline to the major corporations had an arrangement whereby a certain independent refining company would be assigned to a certain major company.

That independent refiner would sell his gasoline to that company and no other. That independent refiner
244 who was buying gasoline from a certain major, was known in the Jacobi Mid-Continent pool as a "dancing partner". It operated so well and so much to the satisfaction of the major companies that instead of talking in terms that you and I would talk of that situation, they talked in terms of "dancing partners". So, each independent refiner was a dancing partner for each major, and that will be testified to by the men who had to do with managing these pools.

Now, gentlemen of the jury, I think from what I have already said, and certainly from what shall come afterwards from the witnesses, that you will appreciate the fact that much of this testimony giving you the facts with respect to this conspiracy is going to come from the mouths of men who are just as hostile to the Government in this prosecution as anybody can be, and you have a right to expect from what I have said thus far, and you will have better reason to expect, as we go along, that some of this set-up has got to come from the mouths of the very men who carried it on; and when Neil Buckley testifies to anything here relating to the facts in this case that may be detrimental to the major oil companies, you can believe that he is doing it under the greatest stress and because he finds no other way out.

The same will be true with respect to Jacobi.

245 You will also find that true, gentlemen of the jury, with respect to a great many other witnesses that the Government is going to call here.

In other words, the Government's case has to be made almost entirely, at least very largely, upon the testimony of men that were engaged in the violation of this very law, and for whose punishment some of them are standing before you now.

Now, besides these defendants that have been named here in these large numbers, and besides the men who were engaged in operating, carrying out their scheme, the independent refiners were also taking part, and they were profiting by it; and when and if an independent refiner testifies here, with possibly a very few rare exceptions, you will find them reluctant, unwilling and hostile, and I am going to ask you gentlemen of the jury to receive that testimony in the way in which the Government is obliged to present it to you.

And so they had this "dancing partner" arrangement in the Mid-Continent field, and it worked beautifully. I do

not know who furnished the music. I suppose John Q. Public furnished part of it. I understand that Mr. Arnott is a great musician, a second Paderewski in fact, and he was at the top of the whole show, directing Buckley and Jacobi what to do. Maybe he was the musician. But anyhow they threw this little element of humor into the whole picture so as to take away from it the seriousness per-
246 haps that the Government finally found that it should receive.

Gentlemen of the jury, this is a serious, sober, important and solemn undertaking upon the Department of Justice, being presented to you by the men assigned to the Department of Justice for that purpose, and whatever we do here before you in the way of argument or in the way of presentation of testimony, we do with that seriousness and earnestness which will tell you that there is a conviction in the heart of all of us that this is one of the most gigantic, far-reaching, and withering conspiracies to violate the Sherman Anti-Trust Law ever attempted in the United States, affecting as it does the lives of millions of people in these ten mid-western states, the lives and the happiness and the property and the security of the business of thousands of jobbers in this mid-western area, and if I impressed on your minds this morning that the jobbers are the ones who suffered from this conspiracy so much, I did not mean at all to make less important that the consumer, who always pays most of these bills, is the one who suffered almost equally, if not greater, than he did; because you will find from the testimony here that when the spot market rose, where the independent jobber buys from the independent refiner; the wholesale market went up, the retail market went up almost in the same proportion, there being a lag in point of time, but finally the retail
247 market responding to the rise.

There is one thing that stands out here perfectly plain and will remain in your minds, I think, from the beginning to the end of this trial, and that is, that the rigging of this spot market of gasoline by these indicted defendants, and the money that they took out of it, they took either from the consumer or the jobber. There were only two places for it to come from, and those two classes of people paid the bill, running into millions, hundreds of millions of dollars, as the evidence will show, covering the period of time covered by this indictment.

248 Not only, gentlemen of the jury, is this prosecution actuated by the Government because of the injury done to the public, but because of the fact that it is a ter-

rible thing that a group of influential, wealthy millionaires or billionaires should take over the power, take over the control, the power to make prices, and to want to make them. That is the terrible thing, and the thing which the law denounced and was intended to prevent. I would like to have you carry that with you throughout this trial, because it is, after all, the very thing that the Sherman Anti-Trust Act was intended to prevent.

Now, I would like for you to be not seriously disturbed as you sit here and listen to this evidence, because you don't at once understand and fully analyze it all. Don't let that bother you at all.

There are going to be a great many witnesses; there are going to be hundreds of documents, taken by the Government agents out of the files of these big corporations—and they didn't get them all.

Don't you be disturbed because you are not understanding this as it goes along. Not even all the lawyers in this case, and I think very few of them, are able to make a perfect analysis from the evidence at hand, as to what that set-up was.

But you will, I am sure, keep in mind the major
249 points in the whole case in so far as the Government
is interested in this prosecution; and that is the fact that these men went outside the law, placed themselves above and beyond it, and took over the power to do the thing that the law says they should not do. And it is for that that this prosecution by the Government is being carried on.

Now, the Government remained, as it will appear, silent and inactive for quite a period of time since the beginning of this conspiracy in 1935. And of course that was bound to be true, because it took long, weary, hard work by the Government agents to uncover the scheme and the criminal plot that was worked out by these defendants and put into operation—and put into operation. And it was only when there were murmurings and rumblings and grumblings by the people of these ten Mid-Western States, that it finally reached Washington, that it finally went into the Department of Justice, that this prosecution was decided upon.

Gentlemen of the jury, from the beginning, when it was found advisable and necessary in the interests of the common people and the protection of the public, that something be done about it, as the evidence will show, when
the Bureau of Investigation started out, they faced a
250 long, long, weary, crooked road, to get at some of the
facts. As I said to you before, most, if not all of

them, had to come from the men or the officers of the corporations, and the individuals, who were engaged in the commission of the misdemeanor or the crime for which they are being prosecuted here. But when finally they did get on the trail—if you have been reading something about the Federal Bureau of Investigation and the Department of Justice, they never let up—something like the Canadian Mountie, they always get their man.

And so we think that we have it here, ready to present to you from the mouths of witnesses—most of them unwilling—an abundance of testimony; testimony so convincing and so great in volume and weight that, at the end, you will have no trouble at all in following the instructions of the Court, in finding these defendants guilty beyond all reasonable doubt.

Now, I want to say just one thing more, and perhaps that will be all. And that is with respect to these trade journals.

You have heard me say the part that they played in this picture. These trade journals knew that the prices of gasoline to the jobber—and to the consumer were going
to be affected by it, too—that that was the price that
251 was being made in the spot market by the major oil
companies carrying on this conspiracy, and having rigged the market.

Now, you know what rigging the market means, I am sure. If you lived in 1929, 1928, and a few years afterward, you all heard something about that.

This was a rigged market. These trade journals knew it. They helped to rig it. They knew that you and I and the other millions of people in these ten states were going to buy gasoline on that market. And I shouldn't fail to say to you that we believe the evidence will show here, that nobody in this conspiracy is guilty of more reprehensible conduct than those people. It was not only a violation of the Sherman Anti-Trust law, but it was a perpetration of a gross fraud upon those who were dealing in gasoline.

A good many incidental questions occur to your mind, of course; and perhaps it is not necessary to explain them to you or to talk about them; but one that occurs to the mind of most anybody is: "Well, why is this prosecution brought in Wisconsin?" You are all interested in that.

Well, from what I have told you and from what you are going to hear from the evidence, here, this gasoline
from these refineries, this rigged market gasoline
252 found its way into all of these ten Mid-Western States.

And that rigged-price gasoline was bought and sold in the State of Wisconsin. And every one of these corporations, I think, except two, are engaged in doing business in Wisconsin; and those two ship and sell and market through various agencies gasoline in Wisconsin, too.

Another reason, perhaps, by looking at the map, you might guess, is the location of the State of Wisconsin with reference to these ten Mid-Western States. We all forget our geography pretty easily—I do easier than most of you. But when you look at the location of the State of Wisconsin in this Mid-Western area (referring to large map of the United States), you will find, I think, that it is the only state in that area that does not tie into or connect with any state outside of the area. Now, that is a little complicated, isn't it? But here is Wisconsin (indicating on map). That is part of the Mid-Western area. Here is Minnesota also; here is Michigan; here is Iowa; here is Illinois, and here is Indiana. So that Wisconsin is nearly in the center of these ten Mid-Western States. That may not be any real reason at all, but it is perfectly proper thing to think about, and to talk about. But, anyway, here we are.

253 I won't take the time in looking at those red spots there, which ought to be explained to you; but I won't take the time to explain that. One of my associates can do it so much better than I.

But here we are, in the Western District of Wisconsin, and under an indictment returned by a grand jury in session last December, for the trial of this case.

Now, I needn't say to you, I am sure, but just to mention to you that the Government of the United States doesn't want anybody found guilty who is not guilty. And you are going to get the law of this case from his Honor, the Judge, and from nobody else. And what law anybody might attempt to talk about before you, just forget it, because here (indicating the Court) is the place from which you get the law. And you will be told something about the Anti-Trust Sherman Act by the Court, and that is where you will take your law.

As I said awhile ago, there is so much to talk about here that one hardly knows, who hasn't been through the thick and turmoil of the evidence, and maybe from consultations with many of the witnesses in the case, you hardly know where to begin and where to stop.

We are going to try to make this just as simple for
254 you as we possibly can. And of course, the defendants here are going to be accorded every right and

every privilege and every protection that the law throws out and surrounds and protects anybody charged with a crime with.

But we are going to ask you, gentlemen of the jury, and I do it now, that when you come to a consideration of the evidence or the defense to be offered here by these people who are brought to trial, to remember that after all, and when you are all through, there will stand out prominently in your minds, I believe, in such a way that you cannot forget it—and neither sneering nor eloquence nor argument, without evidence to support it, by the lawyers on the other side, is going to remove it from your minds—and that is that there was a rigged market in gasoline from 1935 down to 1936. And one of my associates will point out to you how that market acted; that it acted during that period of time like no market on merchandise of this kind ever acted in history before.

And so you will keep in your minds the high spots of the charge here, and of the conspiracy: That these men did join together for the purpose of bringing about a fixing of the market, a control, a power over it that left you and I and everybody else who wanted to deal in
255 or use this class of commodity, helpless, prostrate. We want you to keep that in your mind.

And, gentlemen of the jury, if you are satisfied from the evidence here that is going to be produced by the Government, giving full consideration to everything produced by the defendants, that this market was rigged and fixed, then there is only one answer; that is the answer that the Government contends that you ought to make at the conclusion of this trial, and that is the guilt of these defendants.

I thank you.

256 Thereupon, at the close of the opening statement to the jury by Mr. Crawford, and in the presence of the jury, the following colloquies occurred:

Mr. Donovan: May it please the Court, I ask the Court to instruct the jury to disregard the inflammatory remarks of counsel for the Prosecution: Particularly in reference to the millionaires and billionaires here who were attempting to rig the market in this area; and further, to his statement that there was not only a conspiracy in restraint of trade, but there was the perpetration of a gross fraud.

Mr. Crawford: I think, if the Court please, that if that objection were going to be taken, it should have been taken at the time, and not now.

And I don't agree at all that this was anything outside of what it was proper for counsel to say to the jury, that the evidence would convince them of.

Mr. Donovan: If it please the Court, it may well be that, out of an excess of courtesy to counsel, I refrained from interrupting; but that does not preclude these defendants from having the jury instructed to disregard the remark.

257 Mr. Crawford: Counsel has referred to two classes of remarks, I think, especially two. I am willing that the Court should instruct the jury to disregard that, and that it was made in the heat of the argument.

The Court: Yes. I may say to the jury that any reference to the wealth of any of the defendants is entirely immaterial. A man of wealth has just as much standing in a court as a man that is poverty-stricken.

Mr. Donovan: And, if it please the Court, I would like to have it appear further that that assumes something not established.

The Court: Yes, I understand.

Mr. Donovan: I don't know that it would be established here that they were men of wealth.

The Court: Yes.

Mr. Lewin: Certainly, the corporations—

Mr. Crawford: Well, I think it would do nobody any good by discussing that now.

The Court: No.

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Mr. McAffee: Your Honor, before the opening statement is continued, in the interests of the economy of time here, there are various exceptions

258 and objections to testimony and other happenings in the trial that will be made by the defendants or some one of them.

May we have a stipulation with Government counsel, in the interests of economy of time, that the objection or exception taken by any of the counsel for the defendants shall enure to the benefit of all of the defendants, unless otherwise stated at the time of taking such objection or exception?

Mr. Crawford: That is agreeable to us.

The Court: I think that is a very good suggestion. Let the record show that it is so stipulated.

Mr. Gray: Your Honor, before they resume the opening statement for the Government, I would like to supplement the objection made by Colonel Donovan to some of the remarks of the Prosecutor who opened this for the Government, and request the Court to instruct the jury to disregard all of those statements and remarks made by him with respect to the length of time it required the Government and its agents to uncover what he referred to as a scheme in this case—

Mr. Crawford: Now, I think—

259 Mr. Gray: (Continuing.) —and the G-men, and all the agents and everybody else that it required to do those things.

Mr. Crawford: I think that is not proper, if the Court please. The evidence will so show.

The Court: Your motion is denied, and you may have—

Mr. Gray: May we have our exception?

The Court: Yes, you may.

Thereafter, Mr. Chaffetz, on behalf of the plaintiff the United States, made his opening address to the jury. Such address is as follows:

260 Mr. Chaffetz: May it please the Court, gentlemen of the jury, the only excuse that I could possibly offer for taking your time to supplement the remarks of my associate is that the facts in this case are complicated, and it may be that hearing them through a different voice, perhaps, from a somewhat different approach, it may tend to make your task of trying to follow the proof offered by the Government as the witnesses are called before you easier. I think I may best begin by again calling your attention to this map of the United States.

You have been told that the price fixing conspiracy charged by the Government operated in the ten middle western states surrounding the state and including the state of Wisconsin: Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Missouri, and Kansas.

Now, you will learn that those are the states in which the Standard Oil Company of Indiana is what is known as the market leader. It does more gasoline business in each of those states than any other company. And that is why the territory has been known as the Standard of Indiana Territory.

I would like to impress that on your minds, because you will hear continuous reference to the Standard of Indiana Territory throughout this case. I repeat the Gov-
261 ernment case will be that the combination and conspiracy to fix and raise prices charged in the indictment operated in the Standard of Indiana Territory, the ten states to which I have just pointed.

You will find that each of the defendant companies, the major oil companies named in the indictment, does business in some or all of those states. Some of the defendants do business throughout those states, such as the Standard of Indiana. Some of them do business only in part of these ten states. But they all do business in some or all of the ten states that I have enumerated, and the evidence will so show.

Now, the claim is that the conspiracy here charged was directed at raising the general level of the prices of gasoline, both wholesale and retail, prevailing in those states, and to understand that I think it is helpful to refer to this graph.

Can your Honor see it?

This graph will be at a later time offered in evidence by the Government, and I might say that the defendants will have the opportunity to show any inaccuracies. It is brought before you now to give you graphically in picture form what it is the Government contends the defendants have been guilty of, and it is intended to show what the trend of prices of gasoline, both wholesale and retail, was during the period of the conspiracy, and, as you might
262 suspect from the charges made, the trend of prices was upward, and so we contend the testimony will show.

I should say that in general there will be reference in this case to two kinds of gasoline, "Regular" or house brand gasoline, which is the gasoline that most of us buy. It is a gasoline that is sold under the leading brand name of the supplying company, and I suppose includes about 90 per cent or more of all the gasoline that is sold.

In addition to regular gasoline there is what is known as third grade gasoline. Now, there are various qualities of third grade gasoline. Generally the test of the difference between third grade gasoline and regular gasoline, as the evidence will show, will relate or will be based on the anti-knock quality of the gasoline. You buy a cheap gasoline, and you will find that it knocks in your motor more than a higher priced gasoline does. That cheaper quality of gasoline, which usually sells at a differential of a half a cent to two, three, four cents below the regular gasoline, is sometimes referred to as third grade gasoline.

And the conspiracy charged in this case relates to both the poorer quality, third grade gasoline, and the regular gasoline.

263 I will point out to you in a moment that the gasoline purchased in open markets, in order to rig the markets, consisted of more third grade gasoline than of regular gasoline. But, as I say, the conspiracy included both.

And so directing your attention again to this chart, you have as the lowest line across the graph a picture of the trend of the prices of third grade gasoline, beginning at the time that this conspiracy started, the early part of March or the latter part of February, 1935, and continuing down until the return of the indictment by the Grand Jury in December of 1936. And I call your attention to the fact that these prices rose rather rapidly during the earlier part of that time, leveled off, and remained uniform and stationary for a long period of months. Then it gradually went higher, reached a new peak far above the level at which the price trend started in March, 1935, and then dropped gradually thereafter.

In that connection I call the jury's attention to the fact that the Grand Jury, which was first called to investigate this case, the evidence will show, was called on the fourth of May, 1936, and there was a notice in the press for several weeks prior to that time of the proposal of the Government to call the Grand Jury to investigate these matters. We shall have occasion again throughout the

264 trial to refer to the fact that these drops in prices developed after the Government commenced its investigation here.

Now, referring again to this trend of prices, I say to you that this investigation into the facts that are about to come before you, will be for the purpose of determining, for the purpose of your determining whether there was any illegal factor, any illegal cause that entered into that rise in the price.

About the graph that I have just referred to is a line which is intended to indicate the trend of regular prices, wholesale prices of regular gasoline, and you find that the tendency of that graph was to follow very closely the trend of the price of third grade gasoline only at the higher level because it was a higher priced gasoline.

Then we look at the level of the retail prices throughout this period, and we see that the trend of the retail prices, while not exactly the same as the trend of the tank car prices, was following the same general tendency, the same general direction, upward, during the major part of the time the Government contends this conspiracy operated.

And we will contend and we will adduce testimony to prove to you that that trend upwards in the retail prices was brought about directly and intentionally by the
265 conspirators who are here charged with raising and rigging the prices of gasoline in these ten middle western states.

Now, of what does the Government's case consist? It divides itself logically into two parts. The oil industry is a complicated industry. For you to understand the nature of the conspiracy and how it operated, it is necessary for you to become informed as to how the industry operates.

I suppose these defendants could have sat around the table and agreed on the price, just said, "We will charge such and such a price for gasoline." That would have been a very simple conspiracy. It would have accomplished exactly the same results that we contend was accomplished in this case. But they chose to adopt a more round-about and more complicated method of reaching exactly the same results, ultimately fixing the prices of gasoline, which was what they set out to do.

And, as I say, in order for the jury to understand the nature of their scheme and how it functions, in order to bring about the illegal results that I have referred to, we must produce before you evidence to show you how the industry operates normally. That I will refer to as part one of the Government's case.

There will be no evidence of conspiracy in that part
266 of the case. That will be devoted entirely to showing you how the industry operates.

And then part two of the Government's case will commence with the origin of this conspiracy, and we will show you how it began and how it operated in the light of the facts that were presented to you in connection with the first part of the case.

I think at the risk of some repetition I can be of some assistance to you in lightening your task and making it easier for you to understand the witnesses as they testify and the documents as they are offered, if I again outline to you, still rather roughly, but in as much detail as possible, what the facts are, what the basic facts are in the industry against the background of which this conspiracy operated.

I have pointed to the fact that all of the defendant oil companies do business in the Standard of Indiana territory, that is, the middle western states. We will prove that they control more than 85 per cent of all the gasoline that is sold in these states.

Where does that gasoline come from? You will find from the testimony that the crude oil from which the gasoline is manufactured that is shipped into the middle western states, the Standard of Indiana territory, is found largely in two separate areas.

There is first the East Texas field. Unfortunately
267 this map, which is the only one that we could find for
this purpose, doesn't give an accurate picture, as you look at it, of the relative importance of the crude oil producing areas in the United States.

The green on this map indicates the existence of crude oil deposits. The red you may ignore, but to satisfy your curiosity I can tell you that that relates—that refers to the location of natural gas wells—natural gas, I should say, but natural gas has no part in this case.

The green indicates the location of crude oil. And possible crude oil, as the testimony will show, is located here in the East Texas field. And that small green spot that I am pointing to here indicates the location of the largest crude oil field in the world. From that crude oil field a very large part of all the gasoline used and consumed in the middle western area is produced.

268 Surrounding the East Texas field is a series of oil
fields which will be referred to in this case as the Mid-Continent oil field located in Oklahoma, Kansas, Arkansas, Louisiana, and the northern and western portions of Texas. The crude oil produced in these fields is in some part converted into gasoline right in the fields. There are refineries located there. But a large part of that crude, you will discover is put into pipe lines and transported in the form of crude oil out of these oil producing states, into the states of Missouri, Illinois, and Indiana principally, and some of the other states in the middle western area and is there converted into gasoline.

You will learn that some of the largest refineries of the Standard Oil of Indiana are located at Whiting, Indiana, just outside of the City of Chicago. The Shell Company has large refineries outside of St. Louis. From these refineries, whether located within these ten states or located by the producing wells, the gasoline is further transported,

either by pipe line and more often in tank cars, and I am sure you have all seen gasoline tank cars standing at railroad sidings—transported in tank cars to local distribution points. These local distribution points, scattered through-
out these ten middle western states, and indeed
269 throughout the entire United States, are referred to
as bulk stations—bulk storage plants.

Now, each of the defendants owns and operates large numbers of these bulk storage plants throughout the area that I have described.

From the bulk storage plant which ordinarily holds a minimum of one tank car—you dump one tank car into a bulk storage plant, sometimes you can dump a large number of tank cars into a bulk storage plant—from these bulk storage plants the gasoline is further distributed by tank trucks—oil trucks, commonly seen on the highways, to the retail stations. Each of the defendant oil companies referred to as a major oil company or a semi-major oil company when not as large as some of the larger defendant companies are, operates a business which covers all of the phases that I have described, the production of crude oil in the oil fields, the transportation of the crude oil in pipe lines, the conversion of the crude oil into gasoline at refineries, and the further transportation of that gasoline from the refineries to the bulk plants, and from the bulk plants to the retail stations.

Now, the evidence will show that a large part of the gasoline manufactured by the defendants is not sold by them at retail but is sold to jobbers.

A jobber, we will show, is a man who begins with a
270 bulk storage plant. He buys in tank car quantities, has
the tank cars delivered to his bulk storage plant, and he operates from then on, stores, delivers in tank trucks, either to his own retail stations, or to independently owned retail stations.

Now, the indictment alleges, and we will prove, that such jobbers who, I think the evidence will show, compose in numbers, some four thousand within the territory to which I have referred—the Standard of Indiana territory,—that is to say, there are at least four thousand jobbers operating bulk storage plants and tank trucks and retail stations in this territory.

The evidence will show that these jobbers get the greater part of their supply of gasoline from the defendant oil companies. The indictment alleges that they get 80 per cer cent of all the gasoline that they distribute from the defendants, the remainder being sold largely by so-called independent jobbers who handle no major brand of gasoline, is purchased from independent refiners, such independent refiners being located usually right in the oil fields.

How does a jobber buy his gasoline? He buys it under contract with the defendant companies. The evidence will show that each of the defendant companies does business with jobbers in pretty much the same way. They use 271 a contract which is pretty much the same. That contract provides that the price that the jobber shall pay the major oil company—the defendant companies in this case, shall be the average of the prices published in the Chicago Journal of Commerce, a defendant in this case, and Platt's Oilgram, another defendant in this case.

In other words, when the jobber orders his gasoline under his contract, if he wants to know what price he has to pay, he looks at those journals to see what prices they publish as the going spot market price on the day of shipment, and that is the price he has contracted to pay.

Now, as has been pointed out to you, the evidence will show that the jobber was not the one who framed that contract. The jobber has found over a period of years that the public demands a major brand of gasoline,—an advertised brand, that the consumer can depend upon or has been persuaded by advertising to believe is dependable. In order to get that type of gasoline, he must go to the company that sells it. He must go to one of the defendant major oil companies in this case; and if he goes to one and is given a contract by that company, and he does not like that contract, the evidence will show that it is purposeless for him to shift to another company because the same 272 contract is offered to him by any other company to whom he goes. So, we will seek to convince you that it is the major oil companies themselves who determine upon the policy of selling their gasoline to jobbers, consisting fully of one-half of all the gasoline they sell in these ten middle western states. It was their policy, we will show, to do business with jobbers on the basis of the open spot market price of gasoline, as published in the two market journals I have referred to.

Now, what are the open spot market prices? I have referred and my associate referred to the independent refiners.

(Thereupon a recess of 20 minutes was taken.)

Mr. Chaffetz: (Continuing) May it please the Court and gentlemen. At the recess I had just concluded calling your attention to the fact that the prices paid by jobbers who buy about one-half of all the gasoline sold by the defendant major oil companies in this area were under contracts adopted by the major companies themselves, made to depend on the open spot market prices of gasoline as published in the Chicago Journal of Commerce and Platt's Oilgram, so that the prices the jobbers pay is supposed, under those contracts, to be determined by the price made from day to day in this open market known as the spot market.

273 That graph shows, and the Government will prove, that the retail price, likewise the price that you and I pay for gasoline, is determined largely by the open spot market price; as the spot market wholesale tank car price goes up or down the retail price tends to follow up or down; not directly, there may be a lag, but surely as one goes up, the other goes up. The evidence will so show. So that it is a basic fact in this case that all prices—virtually all prices for gasoline sold, no matter which way in these ten middle western states depends upon the price determined in that open spot market.

So it becomes important for the jury to know what is that open spot market, sometimes called spot tank car market because the gasoline sold on these spot markets is sold in tank car quantities. You want to know what that spot market is supposed to be, and what it actually was during the operation of this conspiracy. Now, how is it composed? You will bear in mind that the defendant major oil companies don't sell any significant amount of gasoline on the open spot market. They sell either under contract to jobbers, under contract to dealers, or through their own stations.

274 Sales on the open spot markets in East Texas and Oklahoma are sales almost exclusively by small independent refiners. Some of those small independent refiners do business to some extent in the same way that the defendant major oil companies do; they sell in part under contract to jobbers. But a part of their gasoline they sell in the open market, they sell to any buyer who comes along, for the best price they can obtain at the time of the transaction. That is what makes a spot sale.

Now, you have been told and you will learn again from the evidence, that these independent refiners together control not more than fifteen per cent of all the gasoline that is sold in these ten Mid-Western States. Of that half or more they sell under contract, so not more than five per cent or seven and one-half per cent we will say as a maximum—I think that is what the evidence will show—is sold by these independent refiners on the open spot market.

We have this situation then that you must bear in mind as the evidence develops: That the great bulk of all the gasoline sold in these ten Middle-Western States by the defendant major oil companies who control eighty-five per
cent or more of the oil, and in part by the independent
275 refiners who sell under contract—prices of all that
gasoline are determined in a normal course by this small amount of gasoline sold by a few independent refiners in and around Oklahoma and in Texas on the open market.

The prices in the sales made by these independent refiners to jobbers in the open market are, in the ordinary course of business, the prices which determine the prices that you and I pay for gasoline in these ten Middle-Western States.

Now, these prices, those open spot market prices, are reported in the journals to which I have referred, the Chicago Journal of Commerce and the Platt's Oilgram. Those journals purport, they represent to the public that they are investigators continually on the alert investigating these spot market transactions day by day, to find out what the going market price is on these open spot markets, and they purport to publish in their daily journals what they say they found to be the going spot market tank car prices on that day. The price that they publish becomes the market because, as I have said, the contracts with all these jobbers are based on one or the other, and usually on both of those
journals. The prices published in those journals are
276 the prices that the jobber contracts say shall be paid,
and it is the price published in those journals, as the evidence will show, which directs the movement of the retail price.

So we must keep in mind two things: One, the spot market price, composed by these sales by independent refiners to independent jobbers, and the translation of that spot market price, or those spot market prices, into the journals by the representatives and employees of the journals.

Now, having that situation in mind, if we were about to conspire together to manipulate and raise and fix the price of gasoline in these ten Middle-Western States, we can see that the easiest way to get about it would be to manipulate those open spot market prices, because, as I have said, they determine the prices that the jobbers pay and the prices that the consumers pay in this area.

Not only would we manipulate that open spot market, but to make our conspiracy perfect we would get the journals into the conspiracy and get them to publish the rigged, artificial, arbitrary prices that we want to establish as the prices for gasoline in this area.

277 Now, that, gentlemen of the jury, is what the Government charges the defendant major oil companies and their co-conspirators in this case with you. They tampered with that supposedly free, open, tank-car spot in order, we will charge, to enrich themselves at the expense of the thousands of jobbers and the millions of consumers of gasoline in these ten Middle-Western States.

278 And this is how they did it, in general, as we will show:

As I have said, the normal course of business of an independent refiner is to sell gasoline to a jobber. From time to time, major oil companies have bought on the spot market. Sometimes occasion arises for their buying on the spot market, and there is nothing wrong in that. Any defendant major oil company is free at any time it pleases to buy as much gasoline as it wants on the spot market, so long as it acts alone. But when it combines and conspires with other defendant major oil companies to manipulate that spot market by purchases, then they violate the law. Now, that is what they did.

The buying that will be described to you, the buying on the spot markets which the Government will claim was the buying which rigged and manipulated that spot market price, was done in concert, was done by all of these companies who are charged with acting in co-operation and together, for the purpose of raising the price.

They purchased on these spot markets at gradually increasing prices. They changed the ordinary course of business under which these independent refiners sold their gasoline to independent jobbers. They purchased this 279 gasoline from the independent refiners at arbitrary, non-competitive prices—not the prices that they would pay if they were going into the market to buy gasoline that they needed for their daily operations, and the prices that they would each pay if they were acting alone. They paid increasing prices, higher prices than they would have had to pay if they were buying gasoline to meet their own ordinary needs. And they got the journals to publish as the going market prices the prices that they paid. Now, see how simple that was.

The prices, as I have said again and again, for all gasoline sold in this area, whether to jobbers or consumers, depend on the prices published in these journals. The journals ordinarily publish the going, open market prices. But during the time of this conspiracy, we will show that they published, not the going open market prices, but they published the prices that the major oil companies were trying to fix as the market prices for gasoline throughout this territory.

The major oil companies sell their gasoline in these states. They sell 85 per cent of all the gasoline that is sold in these states. By buying on the open market small dribbles of gasoline, in relation to the large quantity that they sold here, and paying an arbitrary price, and getting the journals to carry that price as the going market 280 price, that price automatically and directly became the price that they got for the great quantities of gasoline that they sold in this territory. Now, that is the nub of the Government's case.

How did it operate, in greater detail?

There were two so-called buying programs.

One, it is alleged, operated in and around the East Texas field; the other operated in the Mid-Continent fields, in Oklahoma, Arkansas, Kansas, Louisiana, and the northern part of Texas.

Let us start with the East Texas purchasing program. In East Texas there are a number of independent refiners, some 15 or 20 or more. As I have said, they normally sell their gasoline in the open market to independent jobbers; sometimes through brokers who buy from the independent refiner and sell to the jobbers.

These independent refiners, the evidence will show, early in the year 1935, organized themselves into an association for the purpose, not of finding a normal market for their gasoline; not for the purpose of advertising that they have a brand of gasoline that is a good gasoline and should be bought by consumers in competition with the brands 281 of the defendant major oil companies. They thought they had an easier device than that for the disposal of their products. They formed an association to dispose of their gasoline to the major oil companies. And they thought—justifiably, I think you will become convinced—that the major oil companies would be interested in paying them higher prices for their gasoline; because they knew that, the higher the price that the major company paid to them for their gasoline, the higher would be the price that the major company got for the gasoline that it sold to the public.

And so, as the evidence will show, this association was organized. It was known as the East Texas Refiners Marketing Association. It sounds like an association organized as a small agency to market gasoline. But it won't take the jury long to realize that a bona fide marketing organization would have been set up to establish permanent markets as outlets for the products of these independent refiners. This wasn't a marketing organization. This was a device, as we will show, for the transfer of gasoline from the independent refiners in East Texas to a group of the defendant major oil companies, at artificially high prices, for the purpose of raising the general level of prices
282 prevailing in this area.

As liaison man or intermediary between these independent refiners and the major oil companies who supported the East Texas market, was Neil Buckley, whom the evidence will show was loaned by the Cities Service Company to the independent refiners for the purpose of effectuating the plan that I have described. He contacted the major companies on the one hand, the independent refiners on the other hand, and caused the scheme to operate. With his approval, Robert Cline was designated as the Executive Secretary and Manager of the association of the independent refiners.

Cline distributed among the independent refiners the orders that Buckley was able to secure from the major oil companies, and advised Buckley from time to time as to how much gasoline there was available that had to be bought in order to keep the market rigged.

These independent refiners, if their gasoline wasn't purchased by the major oil companies, would sell it on the open market, and they might sell it at a low price, and that price might affect the going market price for gasoline. And so Mr. Cline's duty was to keep tabs on all the gasoline that was available, and make sure that the major
283 companies respectively took their fair shares of that gasoline in order to effectuate the scheme.

The other buying program, as I have said, was operated in the so-called Mid-Continent field. There, the scheme was a little different in its operations, but the principle was identical, as the evidence will show.

There was a so-called Tank Car Committee. I think one McDowell, a defendant here, Robert McDowell, an employee of the Mid-Continent Oil Corporation, likewise a defendant here, was known as the Chairman of that committee. The committee consisted also of Ashton, a defendant here, who was an employee of the Shell Corporation—

Mr. Lewin: Socony-Vacuum.

Mr. Chaffetz: —of the Socony-Vacuum Corporation, I should say; Tuttle, an Empire man, or a Cities Service man; Empire is a subsidiary of Cities Service; both companies are defendants here. You will hear reference to an assistant of Mr. Tuttle's, named Fitzgerald, who was likewise with the Empire Company—

Mr. Lewis: Fitzgerald was an assistant of McDowell.

Mr. Chaffetz: My associate tells me that Fitzgerald
284 is the assistant of McDowell. And also on this committee was one Walter Paul Jacobi.

Jacobi will be called here as a witness, and the principal facts as to the operation of the Mid-Continent buying program will be elicited under oath from him. Jacobi is an employee of the Wadhams Oil Company, which is a subsidiary of the Socony-Vacuum Oil Company; and both those companies are defendants here. And you will learn from Mr. Jacobi, as the facts are elicited from him, that there was an organization in the Mid-Continent field, somewhat comparable to the association in the East Texas field, except that this association had been in existence previously, known as the Western Petroleum Refiners Association.

The president of that association, Mr. Boggs, is one of the defendants here. The secretary of that association, Mr. Bourque, B-o-u-r-q-u-e, is likewise a defendant here—and Bourque, incidentally, was a member of this committee that I recently referred to.

Now, the function of this committee was to take the major oil companies who, as the witnesses will say, were supporting the Mid-Continent buying program, and divide among them the output of the independent refiners whose product was being purchased in that program in order
285 to raise the price in the Mid-Continent spot markets.

As Mr. Crawford has so clearly explained to you, the evidence will show that the group of independent refiners were divided among the group of major companies, so that each major company had one or more so-called "dancing partners". And it was the obligation of each of those major companies, under their agreement, to remove from each independent refiner all the gasoline that that refiner had available, to sell on the open market. They will sometimes refer to that gasoline as distress gasoline, or as surplus gasoline.

A big controversy in this case will center around the proper use of those terms. The effort of the defendants, I think, will be to show that this so-called distress gasoline or surplus gasoline was gasoline manufactured by the independent refiners for which they had no use; they couldn't find a market to dispose of it.

We will seek to show that what is distress gasoline or
what is surplus gasoline depends a good deal on price. It
may be that an independent refiner would have no market
for his gasoline at a price of 6 cents; and if the effort is
made to maintain the market at 6 cents, and the independ-
ent refiner can't find a customer for his gasoline at that
286 price, he may consider that he has surplus gasoline.
But the evidence, I am sure, will show that there is a
market for all this gasoline at a price. So that those terms
must not be loosely used, nor the jury led to believe that
all the major companies did was to buy some loose gasoline
that was lying around, that had no market.

I impress upon you, and ask you to watch and listen during the trial with this thought in mind: That that so-called distress or surplus gasoline—and so the defendants will designate all the gasoline that they bought—is the spot market gasoline. It is the gasoline which they, through their own policies, have adopted for the purpose of determining what prices they will charge to the jobbers.

Now, if they have any quarrel with the nature of that spot market, it isn't for them to say, "We will fix a price for that spot market which we think is fair, and charge that price to the jobbers and the consumers." A more honest, more direct method of accomplishing that result, if it was moral at all, would have been to go to the jobbers and say, "The price we want to charge you, and the only price that we think is fair, is this price."

That isn't what they did. We will show, as I have said,
that it was their practice to sell gasoline on the basis
287 of the open spot markets. Then they contend that the
open spot markets aren't good markets, they are not
fair markets, because there is surplus gasoline in those
markets, and they say, "We will buy up that surplus gaso-
line and make a market to suit ourselves."

Not only that, they didn't content themselves—and this
I am positive the evidence will show—they didn't content
themselves with merely buying surplus gasoline which an
independent refiner had which he couldn't dispose of—and
this goes to the very basis of their honest intentions in this
scheme. They bought as much of that gasoline as they
thought was necessary to bring about the price that they
wanted to establish, whether it was surplus gasoline or not
surplus gasoline.

288 Their scheme was to fix the price and not to buy sur-
plus gasoline. I think it would have been just as illegal

for them merely to have bought surplus gasoline under the circumstances, because where a gasoline is not a gasoline that fixes the price that all consumers have to pay, they have no right in concert to affect that market whatsoever under the law. But as I say, we will show they went beyond that. They didn't merely buy this gasoline. They used this gasoline through their purchases for the purpose of raising and fixing the price that they thought they were entitled to. You will find, too, and this is the most amazing of all the testimony that we will offer: The conspiracy had been under way but a few weeks when they became dissatisfied with the way the market was going up by mere purchasing of the gasoline on the market at the price that was effective, the price that was brought about by their own purchases. They thought the market should have moved up a little faster.

And so at these secret meetings, which will be testified to, they said to each other, "Let us each pay an eighth of a cent more today, and see if we can make that the price?" And they did, and they all paid an eighth of a cent more on
that day. And the testimony will show that that price
289 was published immediately in the journals as the
going market price for gasoline. And a week or two weeks later, they agreed and they paid a price one eighth of a cent still higher and so on, down until, I think it was, the seventh of June, 1935, when they indicated that for the moment that they had the price where they wanted it, and they maintained that price absolutely uniform for a period of five to six months by purchasing, by purchasing gasoline continuously at those prices.

I think by referring to the graph you can see pictorially the statement I have just made. The price in June was raised to this peak after continual hiking up until that point, and the evidence will show, as this graph illustrates, that from that point they kept the price absolutely uniform on regular gasoline down until January, and on third grade gasoline, down until November, and dropped for a week or two, and then back at the same level, and then down again until January.

Then what happened in January? The price of crude went up. The price of crude oil went up. I think the evidence will make it pretty clear that the price of crude oil went up, and that the price of gasoline went up. When they had the gasoline market firm at the levels they desired to in their conspiracy, there was a good chance to raise the price of crude, and the price of crude was raised.

Then what did they do? They said, "Now, the
290 price of crude has gone up, we have got to get more
for our gasoline."

Did they consult anybody? No. They consulted themselves. They decided the price of gasoline ought to go up another half cent, and they did, in January, 1936, they got in touch—the conspirators were all represented, and they agreed to raise the price a half a cent, and they did so. The journals again carried that half cent raise of gasoline and at a time, if the jury please, when market conditions were such that gasoline wasn't being sold, in one of the severest winters, the evidence will show, that we had in years. There was no market for gasoline, no normal excuse in the world for the price of gasoline going up in January of that year except the arbitrary action of these conspirators in raising that price.

I don't want you to misunderstand. These meetings I have referred to were meetings held by the representatives of the companies, who, as I have said here, supported the Mid-Continent field. They will tell you there was no price agreement. They will tell you that the price agreement was discussed, and they said they would share in that later, everyone did.

Now, a man with any experience in business at all, knows that when competitors sit in a room and if
one says what he is going to do when they leave that
291 room, everyone knows that his competitor has a moral
obligation to do as he said he was going to do. There is an agreement there, regardless of the fact that the agreement was not in writing and signed. There was a gentleman's understanding, and that is the way these conspiracies, as you will discover, are carried out. Those prices, as you see, were affected in the Mid-Continent area. If the price went up in the Mid-Continent area, the refiners in East Texas, both independent refiners who were selling for the majors, and the majors who were buying gasoline in the East Texas pool or program, following the prices that were being raised in the Mid-Continent fields, paid correspondingly higher prices in this way. The freight rate from the East Texas field into this general area is about one-eighth of a cent more per gallon than the freight rate on gasoline produced and sold from the Mid-Continent field. East Texas is a bit farther away from this area than the Mid-Continent field.

Normally, therefore, there is a differential of about one-eighth of a cent in the price because of the higher freight

rate, and so the normal East Texas price was regarded as a price one-eighth cent below the Mid-Continent price, and that was the price that the defendants supported, the East Texas buying program, gentlemen, well knowing that they were buying at a price based on a price that was
292 being rigged and raised in the Mid-Continent area. They were all in the same conspiracy or engaged to accomplish the same general purpose, to raise and fix the general level of prices prevailing in that area.

The refiners and major companies who were supporting the East Texas Association buying pool, accomplished one more object, and that was they took gasoline that normally flowed from East Texas and moved into the Standard of Indiana territory, and removed it down to the Gulf for the purpose, as we will contend, of reinforcing this buying conspiracy, this conspiracy to raise the price, because if that gasoline moved into the Indiana territory, it would be competitive with gasoline being sold there, and even in such a small way. They took that gasoline out of East Texas and took it down to the Gulf and distributed it to their tankers and to the east coast where they had their other market outlets.

Now, I think I have given you as much as you can absorb at this time upon how these buying pools, as we refer to them, operated. I haven't given you but a very small part of all of the facts. As the evidence is disclosed, you will find in general the purpose, the feeling, I should say, of those who were engaged in it knew what they were doing, were, at least, very close to the line.

I think one illustration will serve to show what I have in mind. You will find this, that the Texas Com-
293 pany, whom the Government charges was supporting the East Texas buying program, didn't buy its gasoline through the Association. I think the evidence may show specifically the reason why they didn't. But it certainly is a suspicious circumstance, all the other companies supporting that program bought through the Association. Texas didn't. They made their purchases. They bought at going prices, the prices paid by the other major companies, who were supporting this market, but they wouldn't buy through the Association. I will let the evidence show for itself what the significance of that fact is.

In closing, I ask only that the jury take my remarks as remarks of counsel, not as proof. I have said all that I have said to you, only for the purpose of enabling you to understand what it is we are trying to show through these witnesses who will be paraded before you one after another, and through the vast quantities of documentary material, which we will offer.

I think you will find, if you keep the picture in mind that I have tried to paint, that the evidence that we will adduce before you will corroborate, will establish the picture that I have painted, beyond any doubt. Thank you.

294 Thereafter, at the close of the opening statement to the jury by Mr. Chaffetz, and in the presence of the jury, the following colloquy occurred:

Mr. Donovan: May it please the Court, the counsel, in his opening, stated this, as I understood it—and if I am wrong, I wish you would correct me: That if this agreement which he alleged took place affected the price one iota that it was a violation of the law.

I ask the Court to instruct the jury to disregard that statement as being an incorrect statement of the law.

Mr. Chaffetz: If the Court please, I think that that is an exact statement of the law, and it was not an oversight. I made that statement deliberately I am willing, in order to leave no erroneous impression with the jury, that the Court instruct the jury, that that is only my statement of the law, and not the Court's statement of the law.

Mr. Donovan: Then I ask the Court, so that there will be no misunderstanding or no misapprehension in the minds of the jury, the correct statement of the law be made to them at this time.

Mr. Crawford: I think that is entirely uncalled for, entirely out of order. It is not the 295 ordinary way to instruct the jury.

The Court: The Court will instruct the jury as to the law.

Mr. Donovan: Exception.

The Court: I want to say this to the jury. The defendants are charged with conspiracy, in fixing and raising the price of gasoline in the mid-western states. Don't let that get away from your minds. That is what they are charged with. And I think that is all I will say on that.

But at this time I want to clear up in the minds of the jury this fact, that no evidence will be received as to the financial condition of any individual defendants. All persons, rich or poor, have the same standing in a court of justice. And you will disregard any remarks that have been made with reference to the financial condition of any of the defendants, individual defendants. I think it is proper that I should make that remark at this time.

And as to the law in the matter, any statements that counsel will make as to what the law is, you may disregard that. At the close of the testimony, the Court will advise you what the law is.

296 Thereafter, William J. Donovan, on behalf of the defendants he represented, made the first opening address to the jury for the defense. Counsel for the plaintiff-appellee have requested that such opening address in its entirety be inserted in this Bill of Exceptions. Such address is as follows:

297 OPENING STATEMENT BY MR. DONOVAN.

Mr. Donovan: May it please the Court and gentlemen of the jury. We have had some hours since the prosecution has outlined this case to you. Now it has come the time for me to address you on behalf of certain of these accused. I want you to look upon me as I am, an advocate for these men, and view all of what I say from that view point. What I shall say, I shall say simply and
298 deliberately and with full consideration. And so I shall not get off the track, so that I shall not take too much of your time, I have notes before me to which I shall have no hesitation in referring, because I want to speak with the fullest accuracy. When you listen to what I have to say, you will find it entirely different from what the prosecution has said—so different that you will believe that we are not talking about the same kind of a case.

Before stating the position of the defense, I must refer briefly to certain statements made yesterday by those of the prosecution who addressed you. One of the first things said,—I may not give it in fullness, but I am sure I give it in substance—was by Mr. Crawford when he said all the facts will not come out. Gentlemen, it will be my purpose, in so far as I can do so, to see that all the facts do come out, and I shall undertake to state to you now what those facts were; what we did; under what circumstances; and at whose instigation and why.

Mr. Crawford said this: When people go out and violate the law, they don't do it before witnesses or before the public. Gentlemen, they don't tell the Government, either. It is fair to say that if they do tell witnesses, they
do tell the public, and they do tell the Government,
299 they were not violating the law. We did do this. We
did tell the Government; and I shall tell you how and under what circumstances we did it.

He said also in substance this: It became necessary to have the cooperation of the independents. The low prices were unsatisfactory to the majors, so it became necessary to get in touch with the independents. This was accomplished by organizing. We shall show that the contrary is the fact, and that these independents were in such dire distress that they came to these defendants for aid and for assistance; that they went to the Government for aid and for assistance, and they thanked these men for having saved them from destruction.

Again, the statement was made the majors were to buy at prices and levels fixed by them. Gentlemen, our proof will show that this is not so. I shall tell you just what we did; just why we did it; under what circumstances what we did was performed.

Then the statement was made the majors had more gasoline than they needed. Our proof will establish that this was not the fact. They had less than they needed, and I shall tell you why they had less,—because of certain Governmental regulations. And that will cause me to tell you, as I will have to tell you, so that you will understand of
how the industry was then being operated under the
300 codes and the machinery which was set up under the
Code in order to control the operation of these refineries.

Then, the Government said that these defendants hatched this conspiracy. There was no conspiracy, gentlemen, we hatched nothing. And I shall show you at whose instance and at whose suggestion, and under what circumstances we did what we did at the time this conspiracy is alleged to have been in existence.

One inference,—inescapable inference from Mr. Crawford's opening was that our objectives were unlawful, and our purposes sinister. I shall show you they were not. I shall show you they were not only the objectives laid down and defined by the Government, but it was the very purpose that the Government was seeking to bring about.

Now, it has been said here that the master-mind was Mr. Arnott, and that he ran this whole show from No. 2 Wall Street. I don't know why that was involved. But at any rate, we shall show that what he did was done from the offices of the Planning and Coordination Committee of the Code in the City of Washington, in a Government building. And what he did went out into the further reaches of the country, dealing with these people that he was requested and authorized by the Secretary of the Interior to deal with.

301 Now, gentlemen, Mr. Thomas and I represent here 21 defendant companies and 43 individual defendants. These defendants are not here because they wish to be; they are here in order to answer this indictment. And I am sure that the Court will approve what I say now, and it is this. That of these defendants not one lives in this Federal District. Only one is a resident of the State of Wisconsin and the remainder live in 12 different states. I think, in point of fact, that the Court indicated that to you himself.

But I want to say something further that the Court, I am sure, will think is only fair to these defendants. These defendants had the right, under the law to refuse to come here until the Government had established in their local communities, before a court of competent jurisdiction, that there was probable cause that an offense had been committed.

302 They had a right to have those local courts determine whether they should be brought to Madison for trial, and they could have stood upon that right. But they have not waited, gentlemen. They have come here to face their accusers, and to present their defense, and to submit to your judgment. They are not here to deny or to minimize the facts or to apologize for what they did. They are prepared to submit their acts to any group of fair-minded men, who, as you have said you are, and will be, are on the level with them.

You have heard undoubtedly of the great number of lawyers who are here, and you see them before you. They have come here by reason of this case, and you may be inclined to wonder why that is. Of course, gentlemen, each of these defendants is concerned with his good name, because, although they are unknown to you, they bear reputations as decent, honorable citizens in their own communities. To them that good name is just as important as their liberty, and they are here to defend that. And under our rules of procedure, they do it through lawyers. Each has the right to be represented here by counsel of his own choosing. That is a fundamental right, so that his case may properly be presented.

303 Now, gentlemen, in the interests of economy of time, the time of the Court as well as your time, because you will be forced at the best, as the Court has indicated, to be here many weeks, away from your homes and your business, and in order to save as much time as we can properly do so, these 21 defendant companies and these 43 individual defendants and their counsel had agreed upon Mr. Thomas and myself to speak on their behalf and present their defense.

You can appreciate what it would mean if at this opening each lawyer were to speak for his client and during the course of the trial, each lawyer should examine and cross-examine each witness. It would be impossible for the Court and it would be an impossible situation for you. It is for that reason that Mr. Thomas and I are here. But I want you to keep in your minds, that during the course of the trial, there may be matters as to which it will be useful for certain counsel to address the Court or to examine a witness on behalf of their particular client. That is a right each one of those clients should have. The Court has already indicated that he will permit it.

Now, I tell you that, gentlemen, at the beginning, because we are going to be together for a long time, and
304 at the very start, I want you to understand and appreciate why Mr. Thomas and I are here.

Now, let me try to state to you as well as I can, as carefully as I can, and as fully as can be encompassed at this time, the facts, the circumstances, and the events which we shall establish during the trial in defense of these men.

Before doing so, let me refer for a moment, as the prosecution has done, to the law against which these men are said to have offended. Now, what I say the law means is not controlling to you. The Court has already indicated to you that you must take the law only from him. What I state the law may be, the Court may feel is erroneous. If he does feel so, he will give you instructions. I am stating the law only because I must do so in order to indicate to you the nature of our defense, so you may see the reason that I have in mind for each piece of evidence that may be offered in the Court.

Counsel for the Government has told you about the Sherman Law and how it forbids monopolies, conspiracies, and combinations, and agreements in restraint of trade. I want only to say this to you, that the law forbids, as it is my understanding of the law—and the Court will correct me if I am wrong—only those combinations or agreements in restraint of trade which are unreasonable.
305 Voluntary acts by industry to rescue and preserve competition is the basic philosophy of our country, to relieve a distressed industry, and to increase employment, and thus to restore and revive commerce by placing it on a healthier basis, are not condemned by law. The fact that the correction of abuses may tend to stabilize the business or produce fairer price levels, does not mean that the abuses should go on uncorrected, or that cooperative effort to correct them can be considered as unreasonable restraint of trade. Putting an end, gentlemen, to injurious practices with the result that there is an improvement in the competitive position of a group of producers may be such action as would be consistent with public interest instead of against it.

Whereas, we shall contend here that that group still needs effective competition in a fair market.

And now, this means, gentlemen, under our view of this case, that the prosecution here must show more than an agreement, and that that agreement restrains competition. They must prove more than this, because the Courts have said that each agreement concerning trade restrains and limitations—what the prosecution must establish, gentlemen, in our view, is, What was done by these defendants in this case unreasonably restraining com-
306 petition and was it prejudicial to the public interest?

You will keep in mind, gentlemen, that the prosecution must prove this, not we who must disprove it.

The prosecution has outlined its charge against the defendants. They say we violated this law. They say we entered into a conspiracy to fix prices.

We believe that our proof will show that nothing could be more contrary to the facts of this case than the picture the prosecution has presented to you. The statements they make, as appears from what they read from the indictment, are only enlargement of what they assert in the indictment, because, as you must know, and if I am mistaken about it, the Court has already indicated—no, he has not indicated that—I must make that statement on my own—that while the indictment has been returned by the Grand Jury, it was written by the men who sit at this prosecution table (indicating).

Now the prosecution would have you believe that these defendants, at a time of great national crisis, took advantage of the situation, were false to their trust, betrayed their country's need, exploited the public and enriched themselves.

Gentlemen: I stand here for the accused, and I tell 307 you that this case will clearly show to you that this sordid picture drawn by the prosecution is a false picture. Our evidence will clearly show that what these men did, they had a right under the law to do, that they attempted honestly and earnestly to correct abuses caused by destructive competitive methods, and they sought to remove those obstacles that stood in the way of healthy competition, and what they did was justified by the economic needs of industry, was promoted by the public interest, and had the sanction of the law, regardless of any National Recovery Act, and regardless of any Oil Code. They stand on that right.

Our evidence will show further, that in doing what they tried to do, they acted to carry out the purposes and objectives sought by the Government and initiated by the Government. They acted, in addition, to accomplish these purposes which were deemed useful and appropriate by the Government. These men tried to help accomplish results which the qualified agents of the Government desired and induced and instigated the defendants to do.

They cooperated with these Government officials to carry out the policies which the Government at the time thought were and which were, in fact, in the interests of the public and the industry alike.

308 Now, gentlemen, what were these objectives? They were objectives defined by the President of the United States. They were purposes, the accomplishment of which the Secretary of the Interior had been charged, under his oath, to seek to obtain. They were purposes which had been sharpened and clearly defined by the emergency which confronted our people at a moment, the dark realities of which, in the words of President Roosevelt, were apparent to everyone, and which, as he said, only a foolish optimist could deny, because—and now I use his words—because, he said, the withered leaves of industrial enterprise lay on every side, and a host of unemployed citizens

faced the grim problem of existence, and an equally great number toiled with little return.

Those were his words, and those were his words used at this time.

Now, let me try to state these purposes for you. The first purpose was to meet the emergency. The second purpose was to increase employment, establish fair wages, and improve the standard of labor. The third purpose was to conserve the national petroleum resources and to prevent those wastes which were detrimental to the public.

309 Now, Mr. Crawford, during the course of his remarks, gentlemen, gave some long reasons why this case happened to be tried in Wisconsin. We are not concerned with those reasons, because gentlemen, these defendants have no hesitation in presenting to a jury representing the thought and the feeling of the people of Wisconsin that they aided, that these defendants aided and cooperated in the attainment of those objectives and the accomplishment of those purposes. They had no fear to proclaim their work, because they know the social sense of the people of this state, your interest in the conservation of living and of security, and more than that they know that you were early taught out of your own bitter experience the need of conservation of great natural resources, that you can understand from your experience with your timber industry what the President meant, as these defendants understood what he meant, when he said, talking directly to this petroleum industry, "A nation is dependent upon its petroleum resources in times of peace and war, in its comfort and in its necessity. The nation must therefore, always be concerned with the production and utilization—" and that is in his words, not mine, gentlemen—"so God gave us this source of wealth, and it is necessary for that nation in its individual and domestic life."

310 He said, "We know it is conservation. Government with the industry—" he is now talking of the industry—"Government with the industry is now engaged in a program of conservation through a balancing of the supply and demand and the control in an orderly manner of newly discovered and developed sources of supply."

And then he goes on to say, "Conservation is vital, but it is not all. The petroleum industry is a large part of the whole of industry that must be stabilized so that those who are devoting their lives and fortunes to this large field of endeavor may share in the well-being of the nation and in the spirit to insure well-being by fair means of competition, just wages, and working conditions."

That was the position of the President.

So, here, then, is what is meant by stabilization. The President defines it. You will hear much of it throughout this trial, and it will be well for you to keep it in mind, because what he said will explain much of what was directed to be done by his Secretary of the Interior.

Now, gentlemen, the Court, when you were sworn in, talked to you about the presumption of innocence, and, again, you must not take what that doctrine means from me, but I can tell you what I understand by that pre-
311 sumption. I understand it to mean this, that this presumption persists throughout the trial by which every piece of evidence must be measured and must remain as your guide in your secret deliberations and it stands unshakeable until the evidence and only the evidence convinces you of guilt beyond a reasonable doubt.

Now, you have been accepted by the Court as a juror in this case, and I only want to say to you that these defendants have confidence in you as representatives of this community to judge them fairly without any preconceived prejudices, and that you will give them a square deal. That is all they ask.

That means, however, gentlemen, that the task before you is a very heavy one, a very important one, and a very responsible one. You have a stake, as representing the public, in this industry. You have a stake in this lawsuit. It means that in order to judge it fairly and impartially you have got to learn something about the oil industry in the few weeks you are here. You have got to learn its characteristics, its peculiarities, the vital necessity in the nation of the conservation of oil, which is one of the greatest of our natural resources, and the history of governmental efforts to accomplish that purpose.

312 Most of all, gentlemen, it means you must put aside, put aside the hindsight by which so many of us are apt to judge men and events, and recall to your minds—yes, more than that, you must re-create and re-live in the time dealt with in this indictment, which was the period of the Depression, a period during which many men feared for the economic security of this country, a period when industry trembled on the brink of disaster, and those in charge of our Government declared the existence of an emergency, just as an emergency can be declared in time of war, and called upon all citizens of the United States

to come to the aid of their country and to cooperate with their Government in meeting this crisis.

Gentlemen, I am not going to burden you with many dates, but one date I do ask you to fix in your minds, and that is the date in the indictment of February 1, 1935. That is the date when the indictment says the conspiracy was entered into. But when you do that, I want you to remember that on this date and for a year and a half preceding and for four months thereafter, the National Industrial Recovery Act was in full force and effect.

What I ask you to keep constantly in mind is the fact that the defendants are charged with having entered
313 into this conspiracy at a time when the industry was operating under a Code, which had been in full force and effect of law, which under penalties, they were bound to obey and whose objects, they were pledged to accomplish.

Now, these purposes hadn't been defined by the industry. These purposes had been defined by Congress. To carry out these purposes President Roosevelt had sent out an appeal for a partnership of Government and industry. This appeal, gentlemen, was accepted by these defendants. That is why they are here.

Now, we don't feel that there is any dispute here between us and the interests of the people of the United States of America or between us and the interests of the Government of the United States.

On the contrary, we feel that in this case—and I say this seriously—we feel that in this case we are defending the interests of the United States and your interests as much as our own.

The question that you will naturally ask there is, "Well, if that's so, what the defendants did was to help in getting the results which the Government wanted and believed to be in the public interest. Why should the Government indict them for it?"

Gentlemen, that is the question that the defendants
314 have been asking themselves for a long time. To them it just doesn't make sense. But the evidence may help to clear that up in your minds.

You know, after all, we ask ourselves this question: What is the Government of the United States? Is it the department of law that is represented here by this group of gentlemen who are acting as prosecutors for the Government, sitting at this table (indicating), or is it the Department of the Interior, charged with the responsibility of conserving our natural resources, and which under the National Industrial Recovery Act, was charged by the President of the United States, with the constructive task of trying to rehabilitate this industry, give leadership to these men as leadership had been given to men in other industries, and to induce and to encourage them to cooperate, and to receive that cooperation in full measure?

The evidence will make clear to you that what we call "the government", for practical purposes, consists of several branches, all operated by different sets of men, with different sets of ideas, with different experiences and knowledge, and consequently with different points of view and with different policies.

We believe that what these prosecutors would do would
be to break down what the evidence will show to be
315 the great work of constructive value that the Presi-
dent himself as well as the Congress of the United
States, and the Department of the Interior, had built up.

Let me, then, try to summarize our position to which we will direct our proof and to which we think the Government should direct its proof, and by which we think the evidence submitted must be measured:

First, that these defendants acted within the law, the very law invoked here, the Sherman Law, and that what they did had the sanction of the decisions of our courts interpreting the law.

Second, that what they did was to relieve the industry of abnormal conditions which threatened to bring disaster upon the industry and everyone employed in it.

Third, that what was done was done for the purpose of removing the evils of destructive competition and to foster competitive practice.

Four, what was done by these defendants was done for the purpose of accomplishing the objectives and purposes of the National Industrial Recovery Act, and was undertaken at the request and pursuant to the authorization of the Secretary of the Interior, Mr. Ickes, the Administrator of the Petroleum Code.

Now, gentlemen, I don't stand here to tell you that
316 these men, in attempting to cure these evils, were
acting solely from motives of altruism. I am not going to claim that they were more than they were. They were practical business men who were trying to improve conditions in the industry in which they made their livelihood. Their intelligent, self-interest told them it was good business to do that.

Gentlemen, the law does not undertake to impose a penalty on the use of intelligence in business and the proof will show, and we want you to believe, that there was more to that than that, because men aren't governed merely by self interest. We have had many emergencies in this country, and you know that is a fact, and these men were engaged in a business closely touching the public and its needs. They had a sense of duty and of obligation, and that sense of duty and of obligation was an important factor in impelling them to accept the appeal of the Government in this emergency.

Now, the evidence that we shall offer, and which I believe we will be permitted to introduce, will show this, that these are men, human beings, gentlemen, nothing mechanical about them, men, who came in and worked their way up through the industry and take pride in their work, pride in their industry, and pride in its accomplishments.

317 The proof will show, and this you ought to know, the proof will show that the oil industry of America has contributed greatly to the country's wealth, that it has served the American public's constantly growing demand for petroleum products at a constantly declining average price, and that the service of its distribution is more humanized than that of any other industry, because, as you know, it is difficult to find in this country, any hamlet, no matter how small it happens to be, without a gasoline pump.

318 It will show that its contributions to foreign trade and to the rapid development of this country can hardly be overestimated.

It employs more than a million men, at wages second to no other industry; that it was a pioneer in the shorter working week, and is now in the forefront of progressive employers in wages and hours. It has probably, as we will show, better conditions of employment and employee benefit plans than any other industry. To achieve the low price of its product, there has been no exploitation of labor.

Now, if, as will be said, and I think has been said, that there has been fluctuation of the price of gasoline, this must be said: That the trend has been consistently downward, and the quality consistently better. No other country in the world enjoys as cheap a price on gasoline and as widespread efficiency of service as does the American motorist. And no regulated industry, no utility in this country can show any such combination of service and price to the public, and such continued improvement of quality as has been provided by the competition prevail-

ing in the American petroleum industry. During the
319 last 16 years, gentlemen—and we will offer proof of
this fact—during the last 16 years, the price of gasoline has been cut in half, and the public has been given the maximum in the way of service; despite higher wages, shorter hours of work, deeper oil drilling, increased taxes and greater demand.

Now, gentlemen, unless you understand the motives and purposes of these defendants, you cannot understand the facts in this case and their significance. These facts will demonstrate that the case of the Prosecution is builded upon a misconstruction of the motives, purposes and intentions of these defendants; that the Prosecution has drawn and has asked you to draw, and will ask you to draw, mistaken and unreasonable inferences from acts done in the utmost good faith, under the eye and guidance of Government officials.

Now, this case can't be judged unless you have the complete story. The story told by the Prosecution is incomplete. They have chosen to eliminate facts which we shall offer as the most important and controlling facts of the whole story. Now, I am not criticising them for doing that, because it is their privilege to pick and choose facts which they think useful to them. But it is our right to present the entire story. And that story is not a short one, but it must be told; and it will require your patient attention, not only here, but during the course of this
320 trial.

I have already said, your Honor, and gentlemen, that these defendants stand upon the contention that what they did was within the law, had its sanction, and was justified by the conditions of the industry.

In order for you to determine whether or not this was the fact, whether or not what these gentlemen did was reasonable, whether or not what they did was to promote healthy competition, you must be informed of those facts, which the Supreme Court has said must be considered in arriving at a verdict.

They are as follows, and I believe that the Court will so instruct you: You must take into account—and if the Prosecution fails to do so, we will offer proof concerning facts peculiar to the oil industry, its condition before and after the acts complained of were done; the nature of these acts, and their actual or probable effect; the history of these acts; the evils believed to exist; the reason for adopting the particular remedy, and the purpose sought to be attained.

The indictment says that we had an illegal and an improper purpose. We assert that we had a legal, a proper, a justifiable purpose.

We think this: That the evidence we shall produce in regard to these matters will convince you that these defendants had, as a matter of economic self defense;
321 legal justification of all that they did.

Let me tell you what I mean by economic self defense. If you or I are attacked, we have a right to defend ourselves for our preservation, so long as we act within the law. So an industry, if attacked, has a right as a principle of economic self defense to protect itself, so long as it acts within the law.

But further, gentlemen, we say that these same facts and these same circumstances which justified these defendants, were the impelling reasons for the Government to take the action it took in dealing with the oil industry. It will explain these facts. It will explain why the Oil Administration felt compelled to inspire and induce and encourage and instigate certain activities on the part of these defendants. It will make understandable the motives of the defendants in complying with the requests and demands—and demands, of Secretary Ickes. In other words, through the facts and circumstances surrounding this industry, we will establish the legal justification for what these defendants did to save a great industry; and the same facts and the same circumstances will make clear why the Government instigated us to do what we did do.

Now, what are the conditions surrounding this industry? That is a question that I will try to answer I am not going to be able to do it very well; it can be better
322 presented to you from these gentlemen, who are familiar with the industry, and who will testify under oath from the stand.

Yesterday, in talking to you, Mr. Chaffetz said that this was a complicated industry, and he felt that you should know something about its operation in normal times. He began with the marketing end of it, and described something of those conditions. But I think you have got to begin at the beginning, to understand anything; you just can't take one part, you gentlemen who are sitting here, and undertake to judge the whole.

So our proof, if the Government does not proceed to do so, will begin with the organization and functions of the industry. And it will then deal with the demoralization existing in the industry at the time charged in this

indictment to be the beginning of this conspiracy, and show the causes of that demoralization. It will be directed to showing the oil program of the Government to deal with those problems during the period of this conspiracy. We will spread before you what was done by these defendants to cooperate with that program. And it will establish the facts as well as the circumstances, by which the Government inspired and requested what was done by these defendants. When this is done, gentlemen, we are confident that it will be shown that
323 this prosecution is wrong in its law and mistaken in
its facts. We will establish, we think, that what was done during that period clearly shows that we, not they, are in fact upholding the law and the public interest in this case.

Now, gentlemen, in any chain of events there is one that stands out as the central, determining fact. It is so here. So far as that is concerned—so far as this case is concerned, the central fact is action taken by the Government through Secretary Ickes on July 20, 1934. That is one other date that I would like you to keep in your minds.

On July 20, 1934, Mr. Ickes, Secretary of the Interior, exercising the delegated powers conferred upon him by the President—because the President delegated to Mr. Ickes all of the power which he had in dealing with the oil industry, conferred upon him by Congress; because, I may as well say this to you now, they regarded the industry as in so extraordinary and peculiar a condition that, while they had one Administrator for all the other industries in the country, they picked out a special one for the oil industry, and that was the Secretary of the Interior, which was the Department dealing with conservation.

Now, this letter was sent to Mr. Arnott—and Mr.
Arnott was described by Mr. Crawford as "this
324 musician", somewhat scornfully. It will be interest-
ing to have it appear through this testimony later that many of these people out in the field, when they heard that Mr. Arnott was coming, would say in their language, which I will not quote, "Well, what is this fiddler going to do out here?" It didn't take long for them, gentlemen, as it will appear, to see that he was a man of character and of understanding and of fairness and of judgment. And that is what you will see before this case is through.

Now, gentlemen, I cannot read that letter, but I can give to you in substance my best recollection of it.

In that letter, Mr. Ickes undertook to explain that the market for gasoline had been disturbed by numerous price wars in many different localities; and that this had resulted in causing petroleum products to be sold below cost in order to meet unrestrained competition; and as a result, had depressed the whole market; and with that result, there had been built up a surplus; all to the economic waste of the industry.

And he pointed out again, that all of those conditions had resulted, in many instances, from the payment of wages, the payment of wages below the minimum established by the code. And you gentlemen will remember
that one of the great concerns of the Code Adminis-
325 tration was to have wages at a right level. And it
also had the effect, as Mr. Ickes pointed out in that
letter, of having employees working beyond the maximum hours provided for by the code.

He pointed out also that price wars necessarily injured independent marketers, who were unable to dispose of their products profitably when prices would sink to ruinous levels.

Then he said this, in effect: "That brings us to this position. We are confronted with the fact that unless something is done, the purposes and objectives of what we have been delegated to do will be prostrated, with the result that there would be increasing unemployment, reducing standards of labor and preventing the rehabilitation of industry"—all of which the Act was intended to achieve.

Then he said: "I am requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee"—as I will explain to you later, the Planning and Coordination Committee was the committee set up in the code administration, made up of the representatives of all points of view, appointed by the industry itself. And, as appears here, Mr. Arnott was chairman of the Marketing Committee of that Committee.

And he said: "I am therefore requesting you to
326 take action, to take action which we deem necessary
to restore markets to their normal conditions in areas
where wasteful competition has caused them to become depressed."

He pointed out that it would be impossible, because of their number, for the Petroleum Administrative Board

—and I will describe that later—which was really the eyes, and arms and motivating power of the Administrator, to deal with each specific instance.

And he said this: "I am therefore requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality, when and as price wars develop, with authority to confer and to negotiate, to hold due public hearings, with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize a price level—to stabilize the price level"—this is from the Secretary of the Interior to Mr. Arnott, whom he designated as his agent—"normally prevailing in contiguous areas where marketing conditions are similar."

Now, gentlemen, I shall have occasion to refer to that letter again, but I want only now to make clear to you, to help you to understand that letter, how it came to be written, and the effects which flowed from it, right up to this trial. We shall have to go backward and forward from its date, that July day in 1934, on which the
327 Secretary of the Interior signed it.

How did it come to be written at all? Why did Mr. Ickes select Mr. Arnott as Stabilizer, as he came to be known? What did Mr. Arnott do under this appointment? And how did that work inevitably grow into the events upon which the Prosecution has based this indictment?

Those are questions which you will naturally ask, and that you are going to ask through the course of this trial. The answers are really clear, but they lie in a multitude of facts, the more important of which I shall try to marshal for you.

Now, gentlemen, I said that I thought we ought to deal with the industry that we are going to try to judge. And I want to talk to you for a few minutes about the organization and functions of this industry.

The Prosecution has already indicated to you that there are five principal states of oil production; but there are nineteen states which produce crude oil in commercial quantities.

The five states that they talked about, Texas, Oklahoma, Kansas, Arkansas and Louisiana, produce over 90 per cent of the crude oil used on this side of the Rocky Mountains. These states contain two great fields, two great oil producing districts.

One is the Gulf Coast District, which runs from

328 the southernmost tip of Texas, as you have seen upon the map, along the Gulf of Mexico to New Orleans. And the so-called Mid-Continent district, which embraces most of the rest of the five states. Now, this latter district includes the great East Texas oil field that Mr. Chaffetz referred to, and which, as he said, you will hear a lot about. It is the largest single oil field ever discovered any place. When discovered, in 1930, it made a dynamic and explosive impact upon the oil industry of the world; for this single pool, gentlemen, increased—and this is important for all of us to keep in mind, because it will explain a great many things that happened—it increased the known oil reserves of the United States by almost 30 per cent.

Now, I don't know how much you gentlemen know about oil—I am sure you know more than I do—but it will be part of our proof upon the witness stand to show the product, its nature, what is done relative to refining and marketing. Let me try in a more imperfect way to remind you of what you probably learned a long time ago, and what you will hear from the witness stand.

Crude oil is found in the earth at varying distances. It may be only 60 feet below the surface, as in the first discovery of oil, down here in western Pennsylvania; or it may be miles under the ocean as, along the Coast of Louisiana.

329 Now, they speak of pools of oil, and when they speak of pools of oil, you might think that oil collects in underground lakes and caverns. But that isn't what happens. It is found between the tiny particles of porous rocks, such as sandstone or limestone; just like water is held in a sponge. And this underground structure in which the oil is found may, for practical purposes, be likened to a dome—in fact, that is what they call it.

Now, within this structure, there is gas on top, oil comes next, and then water. Now, the oil is held within that dome under pressure of the gas, and of millions of gallons of salt water. This pressure, as the experts on the stand will tell you, is tremendous—sometimes over a thousand pounds to the square inch. And in such pools, when the dome is drilled into, this pressure forces the oil out of the well and over the derrick, just like you see it in pictures. Then that pressure goes down, until the pressure in the field is not sufficient to raise the oil to the surface; so then you have got to put on the pump.

Now, everyone trying to get oil in that field is anxious

to get the first production; that is called the flush production; because that production comes before the nature pressure is exhausted. So, as soon as one man finds oil,
there is a mad scramble to sink as many wells as
330 they can in that neighborhood, as soon as possible.

Of course, before you produce oil, you have got to find it; and it is no easy matter to do this. For a long time, it was a hit or miss policy.

Formerly, if you drilled close to a place where some other fellow had already drilled, you had a fair bet; but if you were a wild catter, if you drilled where no one else had yet found oil, your chance was slim.

Now, today, prospecting for oil is much more scientific. They employ expert geologists; they examine the surface of the ground and the rock formations, to find likely places to drill. The oil men take photographs from the air. They create miniature earthquakes with dynamite, to send vibrations through the earth; and they use dozens of similar devices to determine the character of the underground structure. They even examine with a miscroscope the mud that comes out of the drilling well. The workers in the field, for this reason, call these men of science "mud smellers".

Now, even with all these modern improvements, prospecting for oil is still a gamble. In wild cat territory, only one well in every hundred drilled, one well in every hundred drilled is a producing well.

When the oil man has located a pool, his next job is to get his oil to the surface. How does he do this?
It will be explained to you graphically upon the
331 stand, but let me briefly indicate it.

A hole is drilled until it bores through the solid rock capping the oil. When the drill has pierced the cap rock and bored into the porous rock beneath, as I have said, the pressure of the natural gas and of the salt water underneath the oil forces the oil to the surface, in much the same way that seltzer water is forced out of the siphon. But in this wild scramble to produce that I have described, the pressure is quickly exhausted; and the remainder is brought to the surface only by a pump, which strips the remaining oil from the well, just as one strips a cow at milking time, and that is where they get the name "stripper well".

It costs a good deal more to produce oil by pumping than by natural pressure. The cost of producing oil in a flush field may be as low as 10 cents a barrel; but the average cost of running stripper wells on the pump is approximately a dollar a barrel. If the price of crude oil goes below a dollar a barrel, these wells must shut down.

Now, that is one fact that I would like to have you keep in mind, there: If the price of crude oil goes below a dollar a barrel, these wells must shut down. And the fact that these stripper wells can operate only when the price of crude oil is a dollar or more is a matter
332 of national importance. Now, why is that?

Well, of the 325,000 or more stripper oil wells in the United States, something like 250,000 or about five-eighths, are stripper wells. If they are not kept on the pump, the oil in the structure may be lost forever. That means they must be pumped; and pumping costs money, day in and day out. These stripper wells, gentlemen, it will appear from the proof, are the backbone of American production; the future supply of the nation is dependent upon their maintenance. That is why the Government, in the interests of conservation and the consumer, has always insisted that the price of crude oil should be high enough to permit the stripper wells to operate.

Now, you get your oil out, and you are wondering what to do with it. Well, you have to move it, and move it quickly; and why is that? Because, to store it, you have got to build steel tanks, and that is expensive.

It is physically impossible in flush fields to build enough to take care of the oil that is produced. Besides, the bulk of the oil is produced by small, independent producers; and they can build just enough tanks, about, to take care of a few days' production. As a matter of fact, the industry as a whole has only enough crude storage to
333 hold six or eight months production, and little of this
is located in the oil fields. Even today, seven years after it opened, there is barely enough storage in the whole East Texas field to hold a week's production.

Now, if this is true, you may ask, why does an oil man produce his oil unless he has use for it? Why doesn't he let the earth be his storage tank; why not leave the oil in the ground?

The answer to that is a simple one. He could leave it in the ground if all the other producers in the field likewise shut down. But, whenever a single producer runs his well, he is drawing oil from the common storage tank, which is under the land of others as well as his own. Now, why is this?

It is because, as the geologists tell us, oil is migratory;

that is, it moves, if it is given a chance. So, as soon as the well of one operator is opened, the tendency of all the oil is to run to that well.

Ever since 1859, when oil was first discovered, the law has permitted one operator to drain oil from another man's land, without let or hindrance. That is called the law of capture. It is the same law that is applied to wild beasts: He who can get can keep.

Now, we have this situation, then, gentlemen, and it has a very important bearing upon what shall develop in
334 this case:

When Mr. Smith opens his well, Mr. Jones, having wells on adjoining land, must produce his well or lose his oil. Now, if Mr. Jones produces his well, he cannot store more than a very limited quantity of the oil he produces. He must sell it as he produces it.

If the Mr. Joneses and Mr. Smiths are multiplied by hundreds or by thousands, as they were in the East Texas field, the amount of oil forced on the market becomes so great, that, by the simple law of supply and demand, the price must drop, and it does drop. Now, as the price per barrel gets less, the only way in which individual producers can cover the cost of their investment is to produce still more oil. And you can see what effect that has upon conservation.

335 Mr. Donovan: Gentlemen, I am sorry to punish you so much for this but it is something that must be told because I think if we could only get it in our minds it will help us at a later point in the case.

I had finished discussing, very inadequately, how crude oil is obtained. Crude oil in its natural state is practically useless. To be of any commercial value things you use, like gasoline, kerosene, heating and lubricating oil, must be extracted from the crude. This process of extraction is called refining. That is done by heat and pressure. How it is done we will have explained to you from the stand. However, I ought to say this, that the simplest method consists merely of boiling the oil and condensing the vapors into gasoline and other products. This process is called skimming, and refineries operating in this way are called skimming plants. But skimming, as it will appear from the evidence is not only a very wasteful process, it could not begin to produce enough gasoline to run the automobiles of this country. But the inventive genius of our people has devised a method by which the amount of gasoline recovered from a barrel of crude oil has been more

than double. This process is known as the cracking
336 process, and you get it through the use of heat and
pressure.

Now, through that use of heat and pressure, dark, heavy crude oil molecules are torn apart and made into light transparent gasoline. By that process not only is that done but the quality has been improved so that the cracked gasoline is better than that produced by skimming.

These new processes are complicated. They require enormous stills, high pressure towers, special pumps, huge boilers, intricate machinery, alloy steels, all costing hundreds of thousands of dollars, even millions of dollars. All this has merely increased the expense of refining.

I said to you something about the storage of crude oil. As a matter of fact, the storage of gasoline is more of a problem, because it evaporates more quickly. The tanks must be tighter, better built. You have seen the aluminum paint on the gasoline tanks in your neighborhood, and that is to protect the contents from the sun. Now, all of this makes gasoline storage tanks more expensive than the crude oil tanks, and as a result the smaller refiner is even less able than the crude producer to build enough storage tanks.

Here is where we come to one of our problems in this
case: Since he cannot store he must ship, even though
337 he has no customer, he has got to send it to market
and run the chance of getting one. Since he cannot leave it on the siding in the tank car, because it is a fire hazard contrary to the law to store gasoline in this way, it must be sold. So he sells it. And he sells it at whatever price he can get.. Mr. Chaffetz talked to you something about that—rather pooh-pooed the idea of distress gas. But he sells it at whatever price he can get even though that price be below what it costs him to make it. That is what they call distress gasoline.

This selling below cost is known as dumping. Dumping drags down the whole market below cost for every one, big and little alike, but it hurts the little fellow most.

Now, it is natural for you to ask the question why a refiner would produce gasoline as long as he has no customer and which he has got to sell below cost. Why doesn't he shut down? That is a natural question. To answer it we have got to tell you something about the peculiar nature of the oil industry. We cannot shut down. Why can't we shut down. If he refines the oil that he produces himself, he must continue to produce his well or the other crude producers will get his oil, for the reasons I have talked to

you about. If he purchases his crude, the crude producer
selling him that oil requires him to take it from the
338 wells every day, so that the producer will not be drained
by his competitor. So he is in a pretty tough spot.
He must keep taking crude or else lose his source of supply and disappear as a refiner. We shall show you that happened many, many times.

Then this gasoline goes from the refiner to the market. What is that market? It is almost entirely for the use of automobiles. There is an intricate marketing system to render that service. It hasn't any order or scientific basis. It has just grown with a growing industry.

What happens after the gasoline leaves the refiner and goes to market? If you ride on the trains or if you drive along the highway you have frequently seen on the outskirts of every town and city what are called bulk plants. Mr. Chaffetz talked something about those yesterday. Some of them are owned by oil companies but many of them are the storage tanks of the middlemen of the industry. These middlemen are called jobbers. They are the wholesalers. They buy from the refiner. They sell to the service stations and the service stations are sometimes owned by others, and sometimes owned by them—the jobbers.

Now how do they buy from refiners? Mr. Chaffetz referred to it briefly yesterday, and I would like to supple-
ment what he has said. A jobber may buy in one of
339 two ways: One group prefers to do business with an
established refinery on a long time basis, to get the
advantage of a nationally advertised product, well-established from Coast to Coast, of a uniform and dependable high quality of product. He would rather do business with a company financially strong enough to support him in the event that the jobber encountered many difficulties in his marketing problems.

The terms under which a jobber purchases from a refiner are contained in a paper that is called a jobber contract. That contract sets forth the mutual rights and obligations of the refinery, the seller, and the purchasing jobber. I haven't any doubt there will be a great deal of testimony relating to some of those contracts.

There is another type of jobber. He is called the spot market purchasing jobber, and in just a moment I will try to tell you what a spot market is and what it is not. This type of jobber prefers to shop around and pick up his material at the lowest available price. Of course in doing this he runs the danger of getting a poor quality of gasoline. The purchases made by this latter class of jobber are called spot tank car market for which prices are quoted in such trade papers as the Chicago Journal of Commerce and Platt's Oilgram. You have all heard the names of these defendants in this case, who are represented here by counsel now.

340 I said I was going to say to you a word about spot markets and well might do it now, because we ought to understand each other when we talk about that.

In the oil business there are no organized exchanges, such as the Chicago Board of Trade for the various stock, cotton and commodity exchanges of some of the larger cities, where buyers and sellers of gasoline and other oil products could meet and do business together. There aren't even any meeting places of the trade, such as the old curb exchanges, where dealers in securities and commodities used to meet. There is no organized market or exchange at Tulsa, Oklahoma, or East Texas, or in any other place mentioned in the indictment. So, when an oil man speaks about an Oklahoma spot market, he is not thinking of a building, or of a curb or traders banded together in an exchange. All he means is this.

That there are refineries in the state of Oklahoma which sell gasoline from day to day for prompt shipment, and when he speaks of spot prices in the market, he is merely stating what gasoline can be bought for from day to day from refineries located in Oklahoma.

So it is when he speaks of the Chicago spot market. He
means merely that sales of gasoline for prompt ship-
341 ment take place in Chicago. In none of these places
is there a spot market for gasoline except in this sense;
that there is a spot market for butter and eggs in Madison, because if you are living on Main Street you can call up here three or four different grocers and buy butter and eggs from any one of them for immediate delivery.

Now, since in none of these so-called spot markets is there any exchange or curb or board of trade on which sales are made and recorded as they are in the various wheat, cotton, corn or other commodity exchanges in this country, there is no record whatever—no record whatever of the volume of gasoline spot sales, without examining the record of every refiner, jobber, broker, farm cooperative and grain elevator in the oil business. The Government states there are thousands in the jobber category alone.

Nobody can do more than guess at how many of these spot transactions take place every day and how much gasoline is involved. If I try to give you a figure it would only be a guess. Any figure claimed by an oil man, no matter how experienced, would be a better guess than mine, but it would still be a guess.

Let me repeat this. You are going to be dealing with spot tank car market. Let me repeat it, so that you will have the matter clear in your mind.

342 The evidence in this case will show, without dispute, that there is no official source; no petroleum or gasoline exchange which records prices paid by buyers and received by sellers or the amounts dealt in at its trading point. There is no organized trading in or exchange for gasoline. There is no Tulsa, Oklahoma, market as alleged in the indictment, and Platt's Oilgram does not purport to publish any price for any such market. There are no spot markets in the East Texas field and the Mid-Continent field, as alleged in the indictment, except in so far as there are refineries in these districts which sell for prompt shipment to anyone who may happen to inquire for gasoline. Anyone can go into that market and buy or sell. There is no spot market in Chicago, as alleged in the indictment, except in so far as there are some refineries and brokers in that city from whom you can order gasoline, just as in your own home town you can call up your grocer and order flour or coffee or whatever you want.

Now, that brings us to this whole question of the jobber. I have said that the jobber is a middleman. As such he has no investment in the production end of the industry; he has no financial identification with the refinery end of the business. But he does own his own plant, his trucks, and sometimes his service station. He is a very important factor in the marketing end of the industry. With-
343 out him, gentlemen, most of these defendants can not properly market the gasoline which they refine. He is an outlet. He is the pool for their gasoline. Now, this is a small but it is a very important fact. Yet the Government, in its opening, would have you believe that the defendants wanted to drive the jobbers out of the business. That is not the issue in this case and it just isn't true.

There are disagreements in the industry as in every industry between individuals. In this industry, however, there were certain jobbers trafficking in hot oil gasoline. By hot oil gasoline, as I will tell you more fully, is meant gasoline produced from oil run in violation of state conservation laws. They profited in the demoralization of the industry, like the bootlegger or the smuggler, they avoided the payment of state and federal taxes.

344 This kind of jobber by this sort of practice was able to buy this illicit product at a price much less than the law-abiding jobber could do it, of course. This kind of jobber fought the efforts of state and federal governments to stop the traffic in hot oil. They wanted to keep their bootleg business. Many of this kind of jobber are members of an association which has openly and brazenly lobbied against this present national administration's successful effort to conserve the oil resources of the nation by stopping this illegal traffic.

Not one word has been said of the stoppage of this illegal traffic in oil by the so-called Connolly Act, which I will discuss for you—not one word by the prosecution in its presentation to you.

You will find, gentlemen, in the course of this trial what that small minority has been able to do.

Now, Mr. Crawford made this statement when he was talking to you about how long it took to trail these men down, trail these defendants down, and it was only when there were murmurings and rumblings and grumblings by the people of these ten midwestern states that it finally reached Washington, and it finally went into the Department of Justice, that this prosecution was decided upon.

Gentlemen, we will show that the murmurings and grumblings came from these jobbers, among others; 345 that only a small minority who have been able to use the law department, who have been able to punish these defendants by the Department of the Interior.

You will be interested in learning what elements go into the price you pay for your gasoline at the service stations. We are going to show you. We will show you on whatever date may be fixed, selected at the time,—and I may take now October 1st, when the Madison motorist drove into his local service station he paid twenty cents for a gallon of regular grade gasoline. Now, where did that twenty cents go? Of that price, five cents, or twenty-five per cent, represented state and federal taxes; and a little over four cents, or twenty-three per cent, represented the amount your detail dealer adds to his purchase price for gasoline delivered to his underground tanks by jobbers or suppliers. Two cents, or ten per cent of the price, has been added as a distribution margin for the storage and handling of the gasoline, and to cover all the overhead expense of selling. Transportation—that is, freight, amounted to 2.17, or thirteen per cent.

Now, this left 5.66, which was twenty-eight per cent of the price you paid to the refiner and crude oil producer, the

independents among others, and out of which five cents and over had to come the cost of finding and producing the crude oil, and of refining the gasoline, with the amortization of cost and equipment, refiners' and producers' taxes, as well as the expense of the uncertain and expensive
346 search for crude oil.

Now, in those figures I would like you to note this: That the jobber who operates his own retail station gets 6.6 cents for selling the gasoline, while the refiner and crude producer gets only five for finding and producing the crude oil and refining it into gasoline.

Now, gentlemen, that brings us to a point that is a very important point. What was the condition of this industry at the time as alleged in the indictment that this conspiracy was entered into? I cannot tell you what that condition was, excepting that I relate to you the causes leading up to it, because it was that demoralization that caused the Government of the United States to intervene.

Now, those causes I want to refer to briefly but I think you need to know them to understand that condition.

Now, this will appear: That prior to 1924 the industry had been hard pressed to satisfy the demand for gasoline. There was no overproduction of crude gasoline. The gasoline consumption had increased year by year, like the automobile had increased by leaps and bounds.

Then, beginning in 1926, came a series of new oil fields because of intense and destructive competititon; they were so wastefully exploited as to flood the market with
347 more crude oil than anyone knew what to do with.

There was the Seminole field in Oklahoma, the Santa Fe field in California, and then in 1929 the Oklahoma City field in Oklahoma where the wells are sunk in the capitol grounds; and the Capital Hill field in California.

Gentlemen, we were producing more oil in this country than could possibly be used. The result was that each new oil field started a fight between those who wanted to exploit the field at once and those who wanted to protect themselves against reckless exploitation. Then the motive, the reason that I have already stated to you in explaining the migratory character of oil and the law of capture—oil producers had to produce as fast as they could or lose their oil to competing wells.

What was the natural result of that? The natural result of that was waste in the fields and a glut in the market. The oil was produced without any thought as to whether there was any need for it or any market.. So this forced the price of oil down to ridiculously low figures, and those low prices were a stimulus to overproduction.

Now, you see what I have told you about what happened to the refiner and the producer, because what he wanted to do, what he had to do was to meet his costs of producing oil, and those costs are constant overhead costs. 348 They represent the investment in prospecting, in drilling, in drilling equipment. To meet those costs, fixed monthly interest rates had to be met.

Now, those charges do not vary with the amount of oil produced. They are there whether the well operates or not. So that with each drop in the price of crude those charges could only be met by producing more and more oil. And the production of more barrels inevitably led to the still further drop in the price per barrel, and so the spiral ascended and descended.

The refiner was on a worse spot. He had to continue to buy crude because he had a contract to buy it, and, as I have already told you, if he refused to take oil under his contract he lost his source of supply. The only thing he could do was to take the crude oil as it came to him under these contracts, refine it and sell the gasoline as rapidly as he could, at any price he could get regardless of cost.

Of course, gentlemen, neither you nor I have to be much of an economist—which I am not—to see that this amount of gasoline on the market destroyed the entire market price structure of the industry.

The industry had tried to deal with this problem itself. In 1929, before the N.R.A. was ever thought of, they had obtained from the Federal Trade Commission a code of fair trade practices in refining crude oil and marketing 349 its products. But there were no means of enforcing the code. It needed Governmental leadership. How could the situation be remedied? That was the problem that faced the government of every oil-producing state.

Now, what did they try to do? The first practical solution offered was that of proration. And what does proration mean? There is no mystery about that. It was simply an effort at conservation of the oil. It was an attempt to limit production to demand, and to ration proportionately the amount of crude to be produced by each producer in the field. It was an attempt to prevent one man desiring to produce at a wasteful rate, and from forcing all others to produce at a like rate. Under that system of proration the amount of crude petroleum that a producer could take from a well was defined and limited.

In 1926 it was first attempted on a voluntary basis, but this did not work because there was no way of enforcing proration legally or otherwise. And so when the Seminole field came in, the state of Oklahoma attempted proration by the use of an old statute that had been on the books since 1915. So they took this statute, and they tried to perfect it by amendments, and it was wisely copied in various other states.

350 Now those statutes made it a crime to produce oil in excess of a prescribed allocation. It was pretty hard to investigate, and it was infinitely harder to enforce. In every state there was violation. The violator was known as "hot oiler", and the product was known as "hot oil." So that state proration failed as private proration had failed. Some states refused to have any proration law, and each state was insistent upon what is considered a fair share for its citizens.

So confronted with the seriousness of the situation in 1926, the then President of the United States set up a Federal Oil Conservation Board, and instituted the policy of the Federal Government to induce the oil industry to cooperate and carry on its work so that the ultimate capacity of every oil field should be exhausted before that field was abandoned. And so important, gentlemen, had that subject become, that the President of the United States in 1929 called a conference of representatives of the oil industry at which he urged regional interstate compacts, that is, agreements, among those particular oil producing states for curtailment of physical and uneconomical waste in the oil industry as the only sound basis for conservation and stability.

Now, what else happened?

351 As a part of this effort toward conservation, and as an aid to the refinery business, the United States Bureau of Mines, a Federal agency, began issuing monthly reports as to the stocks of gasoline on hand throughout the country, and the estimated National demand for gasoline during the ensuing month. The purposes of that information were fully stated in the report of the Federal Oil Conservation Board to the President of the United States on February 25, 1929, where it was said that a definite knowledge—

> "A definite knowledge of demand and of production control will, in themselves, tend to retard"—

tend to slow up—

> "—the over-expansion of refining and marketing facilities, and over-production of oil. Studies which tend to increase the fund of knowledge on these

phases of the problem, whether initiated by individual companies and associations or sponsored by the Federal Government, should be fostered."

Now, gentlemen, the consequences of a wasteful and uncontrolled industry had been felt. There was physical waste. Billions of cubic feet of natural gas were being
352 needlessly blown into the air, enough to supply the needs, the industrial needs of the nation for years. Millions of barrels of crude oil were being dumped into earthen pits, much of it lost forever. This in itself to the industry spelled chaos and disaster; to the people of the country, it was infinitely worse.

Faced with the insurmountable task of meeting this situation on the part of industrial and governmental people alike, the discovery of East Texas exploded like a bomb. It was the largest oil field the world has ever yet seen. The demoralization which came from its discovery—the discovery of fields like Oklahoma City and Seminole had been bad enough; but you could tuck both of those into a corner of East Texas. This field in a day, as I have already said, and it is worth repeating, had increased the known oil reserves of this country by thirty per cent.

Every operator in the field entered a race to produce oil as rapidly as he could. The number of new wells increased daily. During one week in 1931, nearly 200 were started. Acreage in the field was split up among thousands of small operators. Many drilled to get the oil of their neighbors, and the balance drilled and produced in an effort to protect themselves. More than this, the oil was relatively
353 close to the surface. It was of good quality. It didn't take much effort or much time to get it up. It could be quickly refined into gasoline, because it was of good quality. Within ten months of its discovery, this field was producing a million barrels of crude oil a day—enough to supply almost half of the total requirements of the United States.

What did the Texas authorities do? They made one last despairing effort to check the flow of oil. Their efforts were flouted. They threw up their hands. Martial law was declared, so desperate was the situation; but even the troops were not able successfully to close in the field.

But this wasn't enough. There was still more to hit us. On top of it all came the depression. The posted price of crude oil fell from well over a dollar a barrel to ten cents, and the price of gasoline fell below 2 cents a gallon at refineries in ~~the Mid-Continent~~ field. Refiner after refiner was forced out of business. Throughout the industry, cut-throat competition existed, from the well to the service station. Wage levels were demoralized, and thousands of men were thrown out of employment. The entire industry faced disaster.

Now, this was the situation when there came a change
in the national administration. And, gentlemen, it was
March, 1933. At this moment, the Roosevelt Admin-
354 istration came into office.

What did the President do? He at once announced that two of his principal objectives were to bring about national recovery, and to conserve our national resources. The oil industry, he saw, required immediate attention. Now, what did he do?

He had his Secretary of the Interior, Mr. Ickes, who had long been interested in conservation, call a conference of the governors of the oil-producing states; and when he called that conference, Mr. Ickes said this: "That the purpose of the conference was to grapple with this situation, in an attempt finally to keep production down to what can profitably be marketed."

At this conference, the representatives of these governors asked that the Federal Government help them to cut down production of crude oil to the level of market demand. Why? In order to prevent waste of crude oil, and the extinction of the small, independent producer through the effect of depressed crude prices.

Now, on May 7, President Roosevelt announced his plan for a National Industrial Recovery Act, and stated that the purposes of that Act were to bring about recovery, relieve unemployment, eliminate unfair trade practices, and conserve the nation's natural resources.

Now, that was the period, gentlemen, of codes under
the N.R.A. All of America's industry was suffering,
355 and the Government was dealing with each industry
on the same principles as it dealt with agriculture,
with mining, and with this industry. The plight of the oil industry, however, was so serious, as I have already told you, that it was dealt with separately under the law.

Now, by a certain section, which the lawyers in the oil industry and the members of the industry best knew as Section 9-C of the N.R.A., Congress authorized President Roosevelt to forbid the shipment in interstate commerce of gasoline manufactured from crude oil produced in violation of the pro-ration laws—which is what I will call hot oil. That provision of the law authorized the President to forbid it.

Soon after the President was given this authority, he was asked, both by State Conservation Commissions and by independent producers, to exercise this authority. And he did. He issued an order forbidding the shipment in interstate commerce of hot oil.

Now, the Oil Code, then, was turned over to a separate department of the Government, the Department of the Interior. It, as you know, is charged with the duty of conserving our resources. And in the Secretary of the Interior was vested by the President all of the power which had been delegated to him, the President, by the Congress. In other words, he said:

356 "Now, Mr. Ickes, all of the authority that this legislative body has given to me, I give to you, and you act as my agent."

Now, what was the purpose of the National Industrial Recovery Act? In his talk to the nation on March 7, President Roosevelt said this:

> "Government ought to have the right, after surveying and planning for an industry, to prevent, with the assistance of the overwhelming majority of that industry, unfair practices; and to enforce this agreement—to enforce this agreement by the authority of Government."

Now, if you have been able to follow what I have said, if I have made it at all intelligent, you will see for the first time there came in the action of Government to carry out what all conservationists had felt for many years was necessary.

Now, what were the purposes of the Oil Code? At the foreground, it was to meet the emergency in this industry; to increase employment; to establish fair and adequate wages; to restrain abuses; to prevent unfair competition. And then, in the words of the preamble itself, which I wish to quote to you:

357 "To protect the nation from the unnecessary, wasteful depletion of this national resource, essential for the national defense and safety; to assure the continued function of the nation's transportation facilities, that are dependent for operation upon an adequate and economical supply of petroleum and its products."

Now, under the N.R.A., gentlemen, members of the industry—this N.R.A., which was in force during the period of time dealt with by this indictment—members of the industry were not only permitted, but were required, but were required to take concerted action to accomplish the objectives of the Act. If they did not adopt a code, the President could impose one. And the Oil Code was laid down within the letter and the spirit of the words used by President Roosevelt on March 7, when he said:

> "The so-called anti-trust laws were intended to prevent the creation of monopolies, and to forbid unreasonable profits to those monopolies. That purpose of the anti-trust laws must be continued. But these laws were never intended to encourage the kind of unfair competition that results in long hours, starvation wages, and overproduction."

Gentlemen, that is what he said. And that code, designed within that letter and that spirit, was the law of the
358 land for the oil industry.

The administration of this code, as a part of the partnership laid down by the President, was divided between the industry and Government. The Secretary of the Interior was designated as the Administrator of the Petroleum Industry. And he was Administrator, in fact, as well as in law.

Now, he had a board of advisors; that was the Petroleum Administrative Board. I give you this now, because the terms are going to be used, and I would like to get them fixed in your mind. And that Board, the Petroleum Administrative Board, was generally called the P.A.B. You will hear a great deal about it, because it had a very important function to perform. It was really the eyes, ears and right hand of the Administrator. It was the ruler of the industry, under Mr. Ickes, during this period.

Now, the industry itself was represented by what was called the Planning and Coordination Committee. This was sometimes called the P. and C. Committee— the Planning and Coordination Committee, the P. and C. Committee. That committee and its membership was representative of every element in the industry, both large and small. The committee was selected at the outset of the Oil Code by the President himself. Its members were his per-
359 sonal employees—his personal appointees. Yet, in this indictment are named as conspirators seven of the twenty-four members of this committee that he appointed.

Now, that organization, the P. and C. Committee was set up to make effective the provisions of the Oil Code in the regulation of the industry.

From the beginning, the President recognized, the Secretary of the Interior, the Oil Administrator recognized that neither re-employment nor improvement of working conditions nor the conservation of oil could be accomplished unless prices were restored to normal. That is what they said; that is what we will prove.

As the first step towards this objective, the President, the Secretary of the Interior, and later the Petroleum Administrative Board urged a minimum of a dollar a barrel as the objective for crude oil, as the objective towards which the industry should work.

You will remember what I said. The Government, the nation, as represented by the Government, has always felt that unless they should get, unless these producers of stripper wells should get a dollar a barrel for their crude oil, they wouldn't be able to stay in business. And this comes back as a fundamental motivating principle of the action of the Government here, as we will show.

It was at the inducement, the direct request and 360 insistence of the highest officers of the Government—yes, the very highest officer of the Government, that the important producers of crude oil raised their crude oil prices to this level.

There, at once, you had something fixed; and this step was the keystone of a structure designed by the Government to preserve an irreplaceable natural resource. After that, of course, the whole Code program was designed to assure refiners and marketers a fair price, in order to protect the crude price. And the conservation program was dependent upon that.

Now, this compulsion and direction came not from the industry, gentlemen, that must be made clear; but it came from the officials of the Government, specifically.

The problem of the Secretary of the Interior was to do this: He had established the price of crude oil; it had been done at his direction. Then he had to deal with other elements of the industry;—with the problem of restoring the price of gasoline, so that a refiner could pay a dollar for his crude and still recover his cost from the sale of gasoline. If he had to pay a dollar for his crude, he had to make enough after he refined his crude and made his gasoline and went out into his market, he had to make enough to pay for that dollar barrel.

361 Now, the history of the Code, gentlemen, is the history of the difficulty of dealing with this problem.

In spite of all that the Administration could do, the tank car price did not reach a point at which the refiner could pay a dollar for his crude and remain in business. Now, you want to know, why not?

He couldn't do that, because the supply of illegal crude, this hot oil, this bootleg product, was not shut off completely. Even though this Section 9-C, which gave the President the power to declare that illegal was being enforced, its enforcement was not sufficient to cut it off.

This crude oil, this bootleg oil was available at a quarter a barrel, as against a dollar a barrel for the legal crude. Producers were willing to sell this hot crude for anything they could get, since it was stolen from other producers who were abiding by the law. And the refiners of this hot crude were equally willing to sell their gasoline for a song. This left the law-abiding refiners squeezed between the dollar crude and the low gasoline price set by their competitors, who were dealing in hot gasoline.

Now, you have got to remember, gentlemen, that in order to conceal their illicit traffic, the hot oilers paid neither
taxes to the Government nor royalty to the farmer
362 from whose land they produced the oil. Naturally, the
small, law-abiding refiner was threatened with extinction.

Now, the Administration recognized this, and saw that it had to deal with it. Having fixed the price of crude, it thought that the only way out was to fix the minimum price of all products.

And on October 16, 1933, the Administrator actually signed an order, actually signed an order fixing the wholesale price of gasoline at 6½ cents—which was higher than it reached during any period of this indictment, and even today. That was fixed by the Secretary of the Interior. And that was done at the insistence of the President of the United States, as we will show. This price of gasoline was more than a cent above the then existing market.

Because it was felt, finally, that the enforcing of price-fixing would be impractical—although the orders were drawn and signed—in such a highly competitive industry, that plan was abandoned. But, in abandoning that plan, the Administrator did not escape the problem of depressed gasoline prices. That problem still had to be met. Now how did they try to meet that?

They tried to meet it by a series of buying programs, to take from the market what the industry called distress
gasoline. And let me say again what that is, because
363 I find that I often have to remind myself of what it is
—and what the proof will show: It is gasoline which the refiner, out of the necessities of his business, is forced

to produce, and for which he has no outlet, except at prices below the cost of production.

Now, the first attempt to deal with this problem occurred in December, 1935—1934, I should say—yes, December, 1933.

This program was a proposed purchasing agreement, which was approved by the Administration, and never disapproved by the Department of Justice. This agreement specifically recited that its purpose was this:

> "To purchase, hold, and in an orderly way dispose of surplus gasoline which threatened the stability of the oil price structure, in an effort to bring the price of gasoline into a proper relationship with the present price of crude oil; and to maintain and support such relationship."

Now, what did this agreement specifically declare? That the proper relationship between Mid-Continent crude oil and gasoline of regular grade in the Mid-Continent was 18½ to 1, as set forth in the Code. This meant that the price of gasoline should be raised to 5½ cents, since the price of crude oil, which this agreement was designed to support, was already fixed at a dollar per barrel.

364 Now, how was this agreement to work? The refiners, including practically most of these defendants, were to contribute $10,000,000 to the pool, which was to be used to purchase distress gasoline and hold it off the market—this was the plan of the Administrator—hold it off the market until it could be marketed at a fair price, which would not drive the tank car market down below cost.

During the winter of 1934 the price of gasoline at the refinery continued downward, to levels still further below cost.

In March, an amendment to the Refining Article of the Code was proposed. The independent refiners demanded that the Code be amended to provide for the effective regulation of refinery output. In making this demand, the independent refiners expressly stated that the purpose of this amendment was to reduce the gasoline production of the major company refiners, so as to force them, to force the major companies to purchase distress gasoline from the independents. This amendment was supported, and formally approved by the Administration. It was adopted by the industry, as an attempt to bring gasoline prices into line with crude prices.

Now, in the spring of 1934, Secretary Ickes and the in-

dustry set up machinery together, at the insistence of the Administration, set up machinery together which was
365 intended, by cutting down the refinery allocation of the major companies, to compel those major companies to buy from the small refiners.

I want you to note that the petroleum administrator was approving a plan to force these defendants to do the very thing they now stand before you accused of having done.

And we will show that pursuant to this amendment the law limited—the Code was the law—the law limited the amount of gasoline which these defendants could produce, so they were forced to buy a part of their gasoline from small refiners.

Now, when the President first attempted by his order to stop the shipment of hot oil and forbade any producers to ship crude oil into interstate commerce, he required the producers to state in that affidavit that the oil was legal crude.

But as soon as the producers of hot oil understood that they could get away with hidden companies and hidden pipe lines, and the thousands of ways of getting away with the law and evading the tax, hot crude oil became available to refiners who were not squeamish about price. The going price for legal crude was still at a dollar, but illegal crude could be had in unlimited amounts at a quarter to fifty cents.

Gasoline made from this hot crude was sold at bargain prices and was shipped all over the country. It was not confined to East Texas. And wherever it went, the
366 legitimate refiner, operating on legal crude, either lost his market or was forced to sell his gasoline manufactured from the dollar crude at a price as low as that for gasoline manufactured from twenty five cent or fifty cent hot oil.

In June, 1934, the Oil Administrator sponsored a plan whereby these defendants and other companies were to buy gasoline from the East Texas refiners who were causing the trouble. Even though they had been violating the law, he felt something had to be done. And in return for them being dealt with, they were to agree not to run hot oil. And this plan became known as the Bennette Plan. By it the Secretary of the Interior hoped to protect the independent refiner, and he expected to remove from the market the depressing effect of the excessive stock of gasoline manufactured from illicit oil.

Now, what did he say? He stated that he approved this plan to decrease the disparity between the price of crude and the wholesale price of gasoline, and to prevent the over-production of crude.

Now, as a result of that, contracts were approved, under which refiners agreed not to use hot oil and the Administrator was made a party to that contract. The contracts also legalized hot gasoline in storage, so it could be pur-
367 chased and eliminated from the market.

But this plan failed. It didn't work. It didn't stop the flow of hot oil. But the legal refiner of distressed gasoline was still buying at the market. The independent refiner was still selling gasoline at less than cost, and was calling upon his Government for aid.

Now, then, gentlemen, there followed, in an effort to meet this situation, a program approved in the same manner to accomplish the same purpose by the same means.

All of them failed to bring the wholesale price of gasoline in line with the price of crude. Under each program of 1934, all these Government programs, the purchasing companies were assigned to independent refiners. I want you to get that in your mind, because I want to show you the contrast to what I am going to talk about later.

Under some of these programs, the contract price was specified by a committee approved by the Government. These formal buying programs continued through the year 1934, and more and more it became evident that buying alone could not restore and maintain a normal wholesale and retail market in the face of a continuous flood of hot oil.

368 All through the winter and spring of 1934, hot gasoline and distressed gasoline had eaten into the wholesale and retail markets. It resulted in price wars and all the evil practices of secret concessions and rebates. The Code Marketing Committee made no further effort to administer the marketing provisions of the Code, which prohibited sales below cost, and other destructive practices, although that law was there to be obeyed and men were required to obey it, but the marketing committee, in hopelessness, had to discontinue any attempt to enforce it.

The compliance program of the Department of the Interior had failed, and enforcement depended upon the Department of Justice, and although that Department often promised enforcement, it was not even attempted.

Local price wars were breaking out all over the country. Gasoline was being sold at ruinous and absurd prices. The wholesale gasoline was sold for as little as one and seven-eighths cents a gallon in some localities. Gasoline actually sold for less than the taxes on it. Representatives of the Oil Administration went from state to state trying to check marketing practices destructive to field and station operators. There were thousands of leaks in this dam.

369 Now, in this disastrous situation, there was again a cry from the small refiner for more law. They asked the Government for an order forbidding the sale of gasoline at less than a set minimum price. They wanted to go back to what the Government had first undertaken itself. Some of the states responded with such measures. Your own state government by rules of the state marketing commission here, sought to prevent cut-throat competition by attempting to prevent the sale of gasoline below a fixed minimum price during the very time covered by this indictment.

The Federal Government, however, was reluctant to add more law where it had already failed to enforce the law that it did have. Compulsion having failed, they felt that voluntary cooperation was the last resort.

370 Mr. Donovan: May it please the court, and gentlemen of the jury: At our close yesterday I had said that the refiners and those affected by the conditions in the industry had called upon the Government to enact more laws, and that the Government, feeling that it was useless to enact more laws when they were unable to enforce those that were already enacted, resolved to turn from compulsion, and turn to the industry in an effort to secure, by persuasion and negotiation, the results they desired.

And now it appears, gentlemen,—and it will appear from the testimony presented to you, why the letter of July 20, 1934, was sent. It was sent because something had to be done, and done quickly.

Now, why was Mr. Arnott called upon? And I think it may be well for me now, since the Government has described him as the "master mind," and the sinister 371 influence here—it might be well for you to see what kind of a human being he is. If Mr. Arnott is here—and I assume that he is—I would like to ask him to stand up.

(At this point Mr. Arnott rose to his feet, in the court room.)

Mr. Donovan: Thank you, Mr. Arnott.

Now, why was Mr. Arnott called upon? Why did the Secretary of the Interior ask him to undertake this work, at the time this letter was sent? Because, at that time there was wide diversity of views, among many of the larger companies, and there were many misunderstandings.

Through all of this Mr. Arnott was chairman of the Marketing Committee of the P. and C. Committee, which I tried to explain to you was the Planning and Coordinating Committee, representing the industry, and upon which all shades of opinion of the industry were represented, through appointees of the President himself, and on which I do not believe I did say to you there were three representatives of the administration appointed by the President himself.

372 Now, through all of these difficulties, in this work as chairman of the Marketing Committee, Mr. Arnott, as it will appear, emerged as a man in whom people could and did have confidence. He reconciled opposing views and interests, and he was successful in this—and this is important to know—he was successful in this because his method was to secure a fair and free examination of all points of view of a given problem, and all diverse interests, and then a conclusion could come as a result of that full and free discussion.

Now, that kind of a man was needed in that kind of work, and that is why the letter was sent to him. Let me call your attention now to what was said in that letter. In that letter Mr. Ickes said to Mr. Arnott, therefore, because of these facts,—that he had recited, of the condition of the industry,—therefore, I am requesting and authorizing you, as chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer, and, more, to negotiate, and to hold due public hearings, with a view of ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level—to stabilize the price level to conform to that normally prevailing in contiguous areas, where marketing conditions

373 are similar.

Now, there was a lawyer for that committee, the Planning and Coordinating Committee, and that lawyer, having the letter, acted for the Planning and Coordinating Committee, because he was its general counsel, and he sent a memorandum about this letter, which we will offer in evidence, and of which I will only at this moment call your attention to a simple provision.

This memorandum was received by Mr. Arnott, and in this Mr. Titus, the general counsel for the Planning and Coordinating Committee, said—

Mr. Crawford: Now, if the court please, I do not want to be objecting, but I think this is so entirely incompetent and immaterial, to tell the jury the contents of that letter, that it ought to be objected to, and counsel should be instructed to refrain from even quoting the substance of it. It is a letter passing from a lawyer in a certain department,—a lawyer for the chairman of the committee, who is one of the indicted defendants here.

Mr. Donovan: Now, if Mr. Crawford has not listened to me—and I hoped that he would listen to me carefully, because I said that Mr. Titus was general counsel for the
Planning and Coordinating Committee, and that upon
374 receipt of this letter from Mr. Ickes he prepared a
letter, which he sent to Mr. Arnott, and in which he described Arnott's authority under that letter, which is one of the very vital elements in this case.

Mr. Lewin: May it please the court, supporting further Mr. Crawford's objection, I would like to say this,—that this letter that has been alluded to as being in the possession of Mr. Arnott, from Secretary Ickes, is a plain and unambiguous letter. It does not refer in one iota to anything that is charged in this indictment. That is, the construction of that letter—

Mr. Donovan: May it please the court,—

The Court: Now, let us take this—

Mr. Donovan: I object to that statement, now, as being argument before this jury, in the midst of my opening.

Mr. Lewin: I should like to object to it on this ground, may it please the court: The construction of that letter is for the court. It is not for any one else, and particularly it is not for Mr. Arnott's own lawyer to construe it.

Mr. Thomas: Now, if the court please, I have not taken much part in this proceeding so far, but I object to the
remarks of counsel in the presence of the jury; and I
375 ask now that the court instruct the jury to disregard
the remarks made by counsel representing the Government.

Mr. Crawford: Which counsel?

Mr. Thomas: Mr. Lewin.

Mr. Lewin: Are you referring to me?

Mr. Thomas: Yes.

Mr. Lewin: Well, my objection is still before the court on that letter, and I ask the court to limit this opening statement, to prevent him from reading to the jury what Mr. Arnott's lawyer told him was the meaning of a letter, the construction of which is for this court alone.

Mr. Donovan: I object to the statement of counsel characterizing Mr. Titus as Mr. Arnott's lawyer.

The Court: Let us speed along. For the time being, just refrain from reading that letter.

Mr. Donovan: May I refer to it?

The Court: Refer to the fact that he was sent that letter.

Mr. Donovan: And may I tell what was said?

The Court: Not the contents of the letter.

Mr. Donovan: I will not go into detail, but I did want to say—

The Court: Did the letter contain certain authority,
376 or describe the authority of Mr. Arnott?

Mr. Donovan: It stated that this letter, for all practical purposes, was complete protection to Mr. Arnott and to his committee, to negotiate in all reasonable activities to restore prices to normal levels.

The Court: All right. That is sufficient.

Mr. Donovan: Now, upon the receipt of that communication from Mr. Ickes, Mr. Arnott set immediately to organizing stabilization work.

Now, what did he do? He took these old code committees, men who were versed in dealing with these problems, and who had been active in carrying out the provisions of the code, and he, with them, undertook to go into the territory that was affected, and deal with the problems that were presented.

Those committees had upon them men of different shades of opinion, and different interests, from all branches of the industry, from large companies, and from small companies; and whatever was done, as will appear from the evidence, was the result of a full discussion of all points of view.

Now, what did he try to do first? He tried first to rescue the industry from local price cutting wars, which were then raging, and as the evidence will show, were ruinous to everyone, but in which the little fellow, who began
377 to "holler" more and more, was hurt worse.

Now, this was attempted, gentlemen, through local committees, by men who were on the ground, and familiar with local situations.

Mr. Arnott was successful to some degree in creating a new spirit of cooperation, and in quieting conditions. Temporarily he did obtain a measure of success in slowing up, at any rate, if not stopping, local price wars. Mr. Arnott, as well as the oil industry, recognized, as will appear from the evidence, in the discussions at that time, that you could not prevent for long local price wars without dealing with the basic cause of such wars, which was distress gasoline.

Now, gentlemen, it will appear, as this evidence is unfolded to you, the dilemma in which the Government found itself, as well as the problem that Mr. Arnott, had to face,—that it was impossible, as was pointed out at that time, for crude to remain at a dollar, if the refiner could not get the price for his gasoline reasonably based on dollar crude.

As things stood, the refiner was not getting such a price yet, as was made very clear by those in authority, on the Petroleum Administrative Board, even all the work done by the Government, and the industry, to stabilize crude at that level, as I explained to you yesterday, if that
378 were undone, the industry would be again started on its downward destructive course.

Standards and hours of employment would be torn down. And that is what they were trying to prevent. And further, gentlemen, the continued sale of this distress gasoline at the refinery price would make it impossible to prevent the outbreak of new wars.

Now, it was a critical situation. The efforts of a year and a half by the Government and the industry were at stake. Labor recognized this danger, and we will see that its representatives were insisting that steps be taken to stabilize refinery prices of gasoline at a figure which would permit them to pay a fair wage.

Now, like jobbers and retailers, the refineries had been suffering heavily from the price wars which spread in the wake of "hot gasoline," which I have explained to you, in order to remain—and this had happened—in order to remain in business, and to enable their jobbers to remain in business, also, the larger companies made a practice of giving their jobbers protection against depressed prices, even though these larger companies had to sell at a loss.

379 The result was that the jobbers turned to the major companies who could hold an umbrella over them. This took from the independents numbers of their outlets and left them worse off than they were before.

Now, in the Fall of 1934 the small refiners were getting desperate, and they had made these complaints to the Department of the Interior and the Secretary of the Interior, himself, to the P. A. B., to every official in Washington they could get to. The disparity between crude and gasoline prices was worse than ever. They lost outlets, as I have said before, due to their inability to guarantee margins to these jobbers, which made them lose even more money.

All of this came to a head at a meeting of a group of these refiners at Wichita, Kansas, on December 20, 1934. At that meeting these men discussed their problems and their grievances and their difficulties, and finally they sent a telegram to Mr. Arnott, demanding that something be done to help them. They sent that telegram to Mr. Arnott. After the receipt of this telegram Mr. Arnott called a stabilization meeting in Chicago on January 4th and 5th, 1935. At this meeting the situation of the small refiners was reviewed, and the whole problem of the disparity between the price of crude and the price of gasoline refined from it was again emphasized. 380

Now, then, Mr. Arnott appointed a committee to consider it, because it had been made clear that these local price wars had expanded in the Mid-Continent territory so far that they now embraced the whole Mid-Continent area, and something had to be done to check it. This committee was called the Tank Car Stabilization Committee.

Gentlemen, all the members of this committee are defendants in this case. What was this committee asked to do? What was it asked to do by Mr. Arnott, who appointed it? This committee was asked to survey the situation and to make recommendations to him.

Now, here is something that happened even before they were able to have their first meeting, that tended to destroy all the stabilization efforts of the Government and the industry. Now, what was it? I have said to you that the efforts of the Government to stabilize the industry was based on what I described as a provision of the Recovery Act called 9C, and that was the authority to the President to prohibit and prevent the shipment of hot oil in interstate commerce. It was the only barrier to the flood of hot oil that was coming from the East Texas territory into the markets, the bootlegged oil that I have described to you.

381 After this stabilization committee meeting in Chicago, at which the Tank Car Stabilization Committee was appointed, the Supreme Court threw out those provisions of the N. R. A., and at once this decision created uncertainty. The industry was faced with the threat of a greater flood of hot gasoline from East Texas.

But the Administration, recognizing that, at once had Senator Connally of Texas introduce a law, which is known as the Connally Act, which was designed to stop the movement of hot oil in gasoline outside of Texas. Then, when that was introduced and before it was passed, but with the knowledge that it would probably soon be enacted into law, the Tank Car Stabilization Committee met in Chicago on February 5, 1935.

Now, I think that the evidence will show that that meeting was attended by all the members of that committee. They had a survey of the conditions in the Mid-Continent field, and this survey showed the amount of distress gasoline each refiner, operating in compliance with the code, would have, each refiner, operating in compliance with the code, would have of distress gasoline.

At that meeting there were a number of suggestions. Opposition was expressed by certain members of the committee to the adoption of any kind of buying plan
382 such as that which had been used by the Government
in the preceding months, and which I have described.

Now, these critics thought that no such plan would work, that it would fail again, as it had failed before. Then there was offered a suggestion that was different from the buying programs previously operated by the Government. What did this suggestion amount to? This suggestion was simply this: It was a suggestion that these major companies present should purchase only distressed gasoline, the distress gasoline I have described to you a number of times, from small refiners, and that these purchases were to be made only if the major companies needed gasoline, and they should be made from those refiners who had upon their hands this distress gasoline.

Now, they thought that was a very sensible, a very simple, and a very honest thing to do. There wasn't to be any pool buying, and there was no pool buying. There was no proposal that there be a contractual commitment such as had been done under the national agreement that I have described to you, about binding anyone to take the particular amount of gasoline, or any stated percentage of the total. Nothing in the buying which actually took place under this, as the months went on—there was the widest variation in the amounts purchased by a par-
383 ticular company at different times. There was to be
no central buying. There was to be no group buying. Price was a matter to be settled between each purchaser and each seller. It was suggested, however, that instead of these companies taking advantage of that situation in which these small refiners found themselves, that buying should be done at the going market instead of at distress prices.

Now, the Government, in this indictment, repeatedly used the words "dancing partners," and Mr. Crawford, in his opening talk to you about that, said that at this dance he wondered who furnished the music. I think I have said enough to you so that you have in your minds now clearly the answer to Mr. Crawford's question, that the Government not only furnished the music but taught these men how to dance and made them dance. But let us see if a sinister inference can be drawn from the expression, "dancing partners" and how that was used at the meeting of February 5th.

I am perfectly willing to have you know the origin of that term. It was something like this: Someone said there, "We have an economic dance going on here," they said, "that is not giving satisfaction to some of those in attendance, because they are wallflowers, and no one is bringing them out into this economic stabilization
384 dance. Now, some of us are sturdy dancers, and we
are not partners." Now, in your terms and in my terms they said—what they meant by that—they will say what they meant by that is this: That those major companies who normally purchased gasoline in this market, in this Mid-Continent market, should make their purchases from independent refiners having distress or homeless gasoline, that is, that gasoline for which they had no market, at prices which would enable them to realize the cost of their crude and the cost of the refining of that crude.

Now, on February 11th the committee met again, and on that occasion representatives of other buying companies were invited to the meeting. There was explained at this meeting the substance of the suggestion which the committee had considered on February 5th. There was a general discussion, and there were a good many speeches made.

At the meeting in Chicago on February 11th a so-called Mechanical Sub-Committee was set up, from which the prosecution, in their opening, would have you draw some inference that would indicate that it was a committee designed to carry out a price-fixing arrangement.

Now, what was the function of that committee? It was to keep the major companies at all times informed as
385 to any independent refiners who had surplus gasoline
which they needed to move. Now, they stated very frankly the reason for this. And what was that reason? The reason was a planned one that would facilitate the bringing together the purchasers who needed to buy gasoline and the sellers who had distress gasoline to dispose of.

This sub-committee was instructed further to make surveys to locate distress gasoline and report what they found to the prospective purchaser.

Now, I talked to you for a minute about the Connally Act being introduced, and I want to call your attention again to the fact that the prosecution, in its presentation, has made no reference to that Act. But it became effective on March 1st, and with that becoming effective, with the power of the Federal Government behind that law to stop the passage in interstate commerce of this bootlegged, so-called hot oil, Mr. Arnott became convinced that this Act would be effective in stopping the shipment of this illegal oil into these legal markets. And he felt assured that the members of the East Texas Refiners Association would not run illegal oil.

And I am going to talk to you, when I finish with this Mid-Continent, about this East Texas situation. So, under these circumstances purchasing in the Mid-Con-
386 tinent was commenced. Under these circumstances there was buying in that area."

Now, there is one point on which I don't want you to misunderstand me. During the period of the buying activity, during that period, the fact is that the price of gasoline in the refinery did rise higher than it had been before. Prices rose to about the parity level at which the Government had been seeking by one expedient after another to restore them for a year and a half. They could never have reached that level, as the evidence will show, but for the enactment of the Connally Act.

The reviving demand for gasoline at this period, we will show, contributed to that result. The buying activities of the defendants, by giving the small refiners some natural, established outlet, which would otherwise have been denied them for their distressed gasoline, may have contributed to this restoration of gasoline price at the refinery.

Now, how much, if anything, contributed to that no one can really answer, but that it offered some outside aid in this was believed at the time by most of those who were concerned with the matter in the Department of the Interior and by most of those in the industry.

Now, gentlemen, so far as that may have contrib-
387 uted to this result the defendants had no apology to offer. Their objectives were the same as the objectives of the Secretary of the Interior and of the officials of the P. A. B. The Government did not apologize. Neither do these defendants.

Now, gentlemen, in point of fact the rise in price began before the buying began. Immediately after the Connally Act went into effect on March 1st, we will show you, that almost coincident with the signing of that Bill prices began to go up. The market had gone up twice before the buying began in the Mid-Continent field.

In his opening Mr. Chaffetz referred to a graph of prices on an exhibit that he had before you, and his talk to you was directed to having you draw the inference that the rise began coincident with the date of the indictment of February 1, 1935. We will show that it really began in November of 1934, and that its second rise, as I have said, began immediately upon the enactment of the Connally Act.

Now, not only the machinery for the enforcement of the Connally Act against hot oil, but the prospect that the distress of the smaller refineries—the prospect that the distress gasoline of the smaller refiners would find regular outlets, restored confidence, and of course helped that rise to the point where a refiner would be able to stay in business.

388 Now, that is exactly what the Government had been trying to do for a year and a half. What these defendants did do, gentlemen, as the evidence will unqualifiedly show, was to pay at or about the low of the market price, as reflected in the publications, and what they have had to say about the publications, in their opening, I will discuss with you in a few minutes.

These major companies did not take advantage of their stronger position to try to secure the lowest, distress price possible from the smaller refineries from whom they were buying. They paid, in the main, as we will show you, they paid in the main about the same price or less than the same price received by the small refiners in spot sales to jobbers.

Now, in the meantime, gentlemen, the problem of distress and illegal gasoline in the East Texas field was being given a lot of attention by the small refiners in that field.

The Government, in its opening, would have you believe that what was done about the organization of the small refiners in East Texas was done by the defendants here. We will show you what really happened. We will establish by the evidence that conditions in East Texas were much as I have already described as existing in the Mid-Continent. From that evidence will appear this, that

the small refiners there had lost their legitimate mar-
389 ket. This meant that the gasoline that they had to
sell increased by just so much the distress gasoline pressing upon the market. It was a problem that demanded attention there, but, as the proof will show, it was got at in a different way than in the Mid-Continent field.

In East Texas the small refiners, themselves, undertook to deal with that. Now, they were, like the Mid-Continent themselves, they had to pay a dollar for legally produced crude, and they got a price so low that they did not make enough to pay for the cost of production. This condition had existed there for a long time, and being only human, many of them tried to protect themselves by using hot oil in their refinery operations.

Now, the Texas hot oil was crude produced in violation of the Railroad Commission's orders, and that commission was a state conservation agency charged with the control of oil production. This hot oil they could buy for a small fraction of the going price of legal crude. Many of those who carried on that practice evaded the payment of the production tax, the gasoline tax, but were able to buy this cheap, illegal gasoline, and by evading the taxes they could produce and sell gasoline at prevailing market prices at a profit, while those who were acting legally were sustaining heavy losses.

390 Now, this hot gasoline was sold not only in East
Texas, but it was transported across the state lines to distant points throughout the nation, and sold at prices far below the cost of gasoline from legally produced oil. This resulted in the depression of the market price of gasoline, and caused those who were obeying the law to sustain enormous losses through the necessity of selling gasoline at a price below the cost of production.

Now, by the latter part of January, 1935, this traffic in hot oil was getting shot, because the Connally Act was then in process of being legislated into law. Now, let me try to fix in your mind that under this Act transportation across the state line of crude oil produced in violation of Railroad Commission orders, or of products manufactured from such oil, was prohibited under severe penalties. Now, here was the position of these refiners who had been using that hot oil: They were faced with ruin, because they felt that they wouldn't be able to get it any more; or with the necessity of devising some means of selling their gasoline at prices that would enable them to make use of legally produced oil at the prevailing price.

Now, among these East Texas refiners were a group who really wanted to obey the law, and to cooperate with the state and federal authorities in their effort to 391 save this great East Texas field. This group comprised the great majority of those who had a substantial investment in their business. They felt that the only way this could be done, particularly in view of the fact that the Connally Act was certain to pass, was to operate on a legitimate basis, and to persuade others to do so, because they felt that if they didn't do that, they were going to be forced out of business. Accordingly twelve to fifteen of this group got together, and they organized an association which became the East Texas Marketing Association. They did it themselves.

This association was made up of these small refiners, and no one else. Each one pledged himself to use only legally produced oil. From a practical standpoint, their chief object in forming the association, as they will say themselves, was to locate market outlets for their gasoline and other products, at prices that would enable them to have a fair chance to continue in business while still obeying the law. They were faced with the danger of accumulation of surplus stocks. They had to find a market with marketing companies, which had facilities to transport and sell gasoline at distant points.

Now, they set up their association to accomplish this purpose. They obtained the services of a paid secretary, who was named Cline. Now, what was his job? His 392 job was to keep informed and to keep the association informed of the stocks of gasoline which the members of the association might have to sell from time to time, and also to keep in touch with those who might buy that gasoline.

Now, this gasoline, he wanted to, it was his duty to try and dispose of it, and in this way: He was not confined to any particular group of buyers, because these refiners had their own local contacts individually, and they were already in touch with local outlets. The association, through Cline, tried to reach those companies who needed gasoline shipped to different points.

Now, they were in this position, however: Their former practice of using hot oil in their operations had put them in bad repute with the major oil companies, because they were producing, they were using this illegally produced crude, and all of those major companies had consistently refused to deal in hot oil or its products. They were obeying the law, and a number of these major companies had

withdrawn entirely from purchasing in that field. So, these refiners realized that before they would be able to interest legitimate marketing companies which might be purchasers of gasoline, to do business with them, it would be necessary to convince them of their good faith in
393 their declared purpose to obey the law.

Now, what did they decide to do? They decided that they had to get somebody in whom the legitimate marketing companies might have confidence, and whom they themselves could trust, to call on these companies and present their case, and to demonstrate their good faith.

Now, they selected the man that the prosecution has referred to, and that man was Neil Buckley, because they had confidence in him, and they believed that he enjoyed the confidence of the legitimate marketing companies. They asked him, as their special representative, to intercede with those companies on their behalf. They hoped in this way to find a market for the legal gasoline from their East Texas refineries.

Now, who was Neil Buckley? He was an employee of the Cities Service Export Oil Company, representing that company in the Mid-Continent oil fields for many years. He had bought gasoline from these East Texas refiners over a long period of time. He was a man of wide acquaintance in the oil business. He was a likeable man. He was a man in whom these refiners and the marketing companies both had confidence. He was a trustworthy man. This was why these East Texas refiners asked him to investigate their claim of sincerity; and, if satisfied as to their sincerity, to represent them.

Now, this was kind of an unusual request for
394 an employee such as Mr. Buckley to receive; so he went to his superiors in his company and they in turn took the matter up with the officials in Washington.

Now, these men at Washington said that they had heard of the efforts of these East Texas refiners; that, from what they had heard, they believed that they should be aided; and that, if the East Texas refiners felt that Mr. Buckley could help, that the officers of the Cities Service Export Oil Company should permit him to do so. Accordingly, Mr. Buckley received permission to go to East Texas and help the refiners who had solicited his assistance.

Now, he went to East Texas. He talked with the refiners, he learned of their plight and of their hopes, and then proceeded to call upon representatives of various oil companies in an endeavor to bring them back into the field as buyers. He received a pretty cold reception. Few were willing to trust the East Texas refiners, and he was told by a good many that he was only wasting his time.

Now, what did Buckley do then? He went to Mr. Arnott as a last resort. He looked to him for help. He pointed out to him that some aid should be given to these refiners, so that they would not be forced to return to the production and purchase of hot oil in order to stay in business.

He told Mr. Arnott that his purpose in seeing him
395 was to convince him of the good faith of these East
Texas refiners who had organized this marketing
association; and to enlist the good offices of Mr. Arnott as Stabilizer, appointed by Mr. Ickes, in convincing the large oil companies which might be interested in purchasing East Texas gasoline, of the good faith of these East Texas refiners.

Mr. Arnott talked with him. He went into the situation, and after what Buckley told him, became convinced that these refiners wanted to go straight, and that they ought to be helped, and that this help should be through the purchase from them of their distress gasoline by those major companies who might be in the market.

Now, then, he asked, Mr. Arnott asked Mr. Buckley to appear and state his case,—or, I should have said, the case of the East Texas refiners, to various meetings which Mr. Arnott called as Stabilizer under the authority of his letter. Mr. Arnott himself stated at these meetings that he was convinced of the good faith of these refiners, and that he believed they were entitled to the patronage of prospective purchasers who could use gasoline from East Texas. And, at those same meetings, Mr. Buckley made substantially the same statement as I have already described to you.

Now, there is no use denying, because Mr. Arnott
396 is proud of the fact, that he was pleased that this
work was started. He encouraged it. He told the Mid-Continent people about it. He told the Government officials what was going on.

No agreement was ever made, undertaking to bind any of the defendants or any other company to purchase gasoline in East Texas. No understanding was entered into of any kind, or of any nature. Companies which were the natural outlets for this gasoline were encouraged to accept the declaration of the East Texas refiners as being made in good faith.

Now, Mr. Arnott considered it very important to the stabilization work, to aid in establishing outlets for what otherwise would have been distress products. Some of the companies may have purchased gasoline in East Texas that they would have purchased elsewhere; but each individual purchaser was free to buy, and did buy, in any quantity it might desire, from any refiner that it might choose, at such times as it might meet its convenience, and at such price as it might be able to negotiate with the seller, and that, either as an individual with this refiner, or through the instrumentality of the East Texas Marketing Association.

So, gentlemen, it will appear clearly from the evidence that the program organized in East Texas was a
397 selling program, organized and run by the East
Texas independent refiners who had gasoline to sell; that its activities were all directed to an effort to find those who were willing to buy gasoline, whether major purchasing companies, independent purchasing companies, brokers, or jobbers.

Now, some of these defendants bought the gasoline in East Texas and elsewhere, as they had always done, without regard to the buying and selling program I have mentioned.

The prosecution has already indicated, gentlemen, that they will make much of the fact that there was a large amount of buying by these defendants, beginning in March of 1935. And they will ask you to believe that these defendants were buying gasoline to hold it off the market. But that was not the case.

In March and during the remainder of 1935, the gasoline stocks of some of these defendants, when measured in days' supply, were lower than they had been for four years.

Under the refinery allocation which I described to you yesterday—and without a retention of that in your mind, you can not follow the evidence as it will go in, and the reason for the act—the amount under the refinery allocation, the amount of gasoline which these defendants could manufacture was limited by law. And one of
398 the purposes of adopting the refinery control program
was to compel these major companies to buy a part of their gasoline from independent refineries.

The month of March was not only the beginning of the demand season, but there was an unexpectedly large increased demand for gasoline. As a matter of fact, as the situation developed, there was a compelling reason for the purchase of the gasoline which these defendants bought.

The facts which I have tried to outline to you, we will prove from the mouths of witnesses, some of them still employed in the Government. We will also establish these facts from documents and correspondence written at the time these alleged buying and selling programs were being carried on; and many of these documents and much of this correspondence comes directly from the files of the Department of the Interior, and will bear the certification of the Secretary of the Interior.

Now, we feel, gentlemen, that such evidence will conclusively and overwhelmingly establish the innocence of these defendants; and that it will also establish that they were conducting a program which resulted from the instigation and inducement of the Government itself. But we will submit additional evidence that these programs are not what the Government here would have 399 you believe; and this evidence, we say, they can not deny or controvert.

Further, the prosecution has laid great weight upon the charge that the purchases by these defendants in the course of the so-called Mid-Continent program—and I think I say substantially, if not accurately, the words of the indictment—amounted to nearly 50 per cent of all the gasoline sold by the Mid-Continent independent refiners listed in the indictment. And it has made much of the claim that purchases from the listed independent refiners through the East Texas association have amounted to more than 50 per cent of all the gasoline produced by these independent refiners.

Now, we must assume that these allegations were not made deliberately and maliciously for the purpose of misleading you gentlemen—and I do assume that. But they are so far wrong that the Government must have recklessly failed to inquire into the facts before accusing these defendants.

The same records, gentlemen, that have been available to us, have been available to them. An examination of these records will show these charges to be untrue. The Mid-Continent purchases amount to 15 per cent—not nearly 50 per cent—of the 1935 sales of the refiners listed; and to less than 19 per cent of their 1935 sales.

In East Texas, the mistake is equally glaring—I should have said, to less than 19 per cent of their 1936 sales.

I want you to correct me. In East Texas the mistake 400 is equally bad. In 1935 these defendants bought less than 25 per cent, not 50 per cent, of the total production of the refiners listed; and in 1936 only 24 per cent.

You will ask, and I think quite properly, what difference does it make whether these defendants purchased 50 per cent or 17 per cent? The answer is simply this, and you have already gathered it from the opening of the prosecution:

The prosecution is going to try to prove, and they have said so, that these defendants were cornering the market; that, by reason of their purchases, others were unable to buy gasoline. Our proof will show that the proportion of the total available gasoline which these companies bought has been grossly exaggerated and overstated by the Government; and that in fact, only a very small proportion of the total gasoline available in the open market was bought by these defendants.

Now, second, the indictment charges that the trade journals, pursuant to an agreement with these defendants, knowingly published the high and artificial prices for gasoline—this is the allegation of the indictment—the high and artificial prices for gasoline paid by these defendants, as prices paid by the jobbers in the spot market.

Now, as I read this indictment, it simply means 401 this: That the defendants were paying more than the jobbers; and that these journals were falsely representing these as the jobbers' prices, which the prosecution claimed were lower.

Now, as the proof in this case develops, you will find that the prosecution has made its charge without knowing whether or not the prices being paid by these defendants were in line with the prices being paid at the same time by jobbers and other buyers of gasoline in tank car lots.

On the other hand, we will show you that the prices paid by these defendant companies, compared with the most accurate source available, namely, the records of the independent refiners who were making the sales, were not only not higher than the prices being paid by jobbers and the general trade; but were, in a very large proportion of cases, lower.

The prosecution, I assume, will offer you specific instances where prices paid by jobbers were lower than those generally paid on the market. It may even offer you, or try to offer you general statements, based on impressions, rather than on figures.

But we intend to present to you this: We intend to present to you the results of an actual study of the records. We shall show you transactions in the spot market, not by the dozen or by the score, but by the hundred,

402 which prove our point.

Now, when you have heard that evidence, gentlemen, I am confident that, as fair-minded men, you can not help being convinced that the Chicago Journal of Commerce and Platt's Oilgram accurately reported prices paid by jobbers; that the prices paid by these defendants, instead of being arbitrary as alleged in the indictment, were reasonable, competitive, and in line with the prices being paid by buyers generally throughout the Middle West for the same quality of gasoline.

More than that, I believe that even the prosecution, when for the first time it sees the full facts in regard to the defendants' purchases as we shall present them to you, gentlemen, will be forced to agree that, had the trade papers really reflected the prices paid by the companies whom I represent here, rather than the prices paid by the jobbers, which they did reflect, their quotations would, day after day, have been substantially lower than the quotations they actually carried.

The prosecution would have you believe that the prices for gasoline at the refinery, to dealers, and at the service station, were made high, arbitrary, artificial and noncompetitive by virtue of a conspiracy of these defendants.

We will show you that on the basis of the Govern-

403 ment's own economic statistics, the price of gasoline has not improved either as rapidly or as completely as have the prices for practically all other commodities sold in the United States.

Specifically, we shall show you that the rise in the refinery price of gasoline has been substantially less than the rise in the wholesale prices of all commodities and all other fuels and lighting materials. We shall show you that the tank wagon price of gasoline has advanced far more slowly than the advance in the price of all commodities; and far slower than the rise in the cost of living; and that it has been far slower than the rise in the price of food, than the rise in the price of textile goods, housefurnishing goods, building materials and dairy products.

We shall show you that the rise in the retail price of gasoline has been far slower than the rise in the prices of eggs, butter, milk, bread, sugar, and flour, if we take representative commodities for purposes of illustration.

We shall show you also that the rises in prices and the drop in prices of all commodities sold in the United States have occurred at practically the same time; that these rises and falls have been due to economic causes, and not to any conspiracy among these defendants or among
the dealers in these other commodities. And, although
404 all these rises in prices of all commodities have
occurred at the same time, the improvement in the price of gasoline—

The Court: Well, if you have something to say, make your objection. What is it, Mr. Donovan?

Mr. Donovan: No, I just wanted to wait for a minute—the improvement in the price of gasoline in every instance has been far less than the improvement in the prices of other commodities.

Then we shall show you, gentlemen, that the prices of gasoline in the ten states involved in this litigation have been less than in the 38 states not involved; and less, also, than the average prices for the 50 representative cities of the United States.

Now, gentlemen, another fact of outstanding importance is the fact that prices of gasoline from 1918 to 1936 have been downward in their trend. So that, today, gasoline is the cheapest commodity that can be bought in these United States.

This decrease from year to year in the price of gasoline has been accomplished in the face of improved wages of the workers in the petroleum industry. The Government would now endeavor to cast a blot on this record, by charging that an industry which has done everything
in its power to contribute to this general improvement
405 is composed of conspirators, operating contrary to
the public welfare.

Gentlemen, I meant to say, during the course of my discussion with you of the percentage of purchases, this further fact: That the purchases made by these defendants constituted only one and a half to two per cent of the total gasoline produced in this territory.

And I should have directed your attention also to certain provisions of the Code, that were in operation during the period in which it is alleged by the Government that this conspiracy was in existence.

One was Rule 6 of Article V. This rule provided, in effect, that the business of the major companies should be so conducted that every branch thereof; that is, the producing of petroleum, and the refining, and marketing of refined products, would be carried on upon a profitable basis.

And also, Rule 4 of Article V flatly provided, flatly prohibited the sale of gasoline below cost.

Now, what did these rules mean?

You will remember, because I have reminded you of it so often, that the price of crude had been fixed at one dollar. You will remember also that, on the date the prosecution says the conspiracy began, the price of gasoline was so low that the small refiners could not pay 406 a dollar for their crude, and refine the crude into gasoline and sell the gasoline refined except at a substantial loss. Yet, these rules in existence during the period of this alleged conspiracy, provided by their very terms that these defendants should conduct their business so that their refinery operations would be profitable. That was the law.

The law was directed against major companies. It was intended to compel the major companies to do what they could to restore the price of gasoline to a level that would comply with it. The refinery amendment of the Petroleum Code was adopted at the emphatic demand of the independent refiners, and for the announced purpose of so limiting the amount of gasoline which the major companies could refine, that they would be compelled to purchase their gasoline from the independent refiners.

Now, gentlemen, the prosecution has talked to you about the dark furtiveness and secrecy. What was done in relation to these buying and selling programs that reflected any such improper or furtive or secret or devious methods?

The proof will show that there was no secrecy about them. They were published in the papers. They were discussed whenever members of the industry and the Government got together—and that happened very often.

407 The members of the P. A. B., the real executive arm of Mr. Ickes in this work, anxious to help, were active in the field. At their Washington office, they interviewed refiners, jobbers, brokers and dealers. These men of the P. A. B. knew what was going on. It was

their job to know what was going on. But the information came to them more directly. It came to them from defendants in this case, by telegram, by letter, by personal interview. The proof will show that certain of the defendants informed the Board as early as January, 1935, that something was going to be done about the tank car market in Mid-Continent. The chairman of the P. A. B. as we will show, not only expressed no surprise, but said he saw nothing to prevent this being done. There was no secrecy there. There was no darkness there.

They received information, the P. A. B. received information from Mr. Arnott, not only from the transcript of the minutes of Allocators' meetings at which he had explained these programs, but by reports from him, given during March and April, 1935, directly to the Board.

The P. A. B. knew from Mr. Blazer, who had been appointed by Secretary Ickes, and who became an employee of the Department, paid by the Department, to inquire into this very question. The P. A. B. learned from frequent discussions with him, during the course of his inquiry and the preparation of his reports, just what was being discussed and what was being done in
408 relation to these programs.

We will show that, far from being displeased at this information, the members of the Board welcomed it. For fifteen months they had been trying by various methods to achieve this very thing; and, far from putting obstacles in its path, by May, 1935, they were begging Mr. Arnott to go to Pennsylvania and do for the Pennsylvania refiners what he was doing for the Mid-Continent refiners.

Now, gentlemen, when the P. A. B. requested Mr. Arnott to do this, they placed the authority, or they requested Mr. Arnott to exercise the authority which they requested him to exercise, squarely upon the letter of July 20, 1934. And they did all this, as the proof will show, because they did not want to pass up even one chance that would aid them in their fifteen months' fight to save the stripper well owners, and to maintain the price of crude oil.

Now, gentlemen, I would not be frank with you if I did not refer to those events following the period of the code, and which are embraced within the allegations of this indictment.

On May 27, 1935, the Supreme Court held unconstitutional the Act of Congress which was known as the National Industrial Recovery Act. So, by that decision, there was struck down that partnership of Govern-

409 ment and industry which had been built up at the
request of the Government during the last two years, to meet the perils of the emergency which the Government had declared existed.

Now, as I have already said, that decision took place on May 27th. It was the decision embodied in what was generally known as the Schechter case, of which you all have heard. And that declared the Industrial Act to be violative of the Constitution.

Why, then, you have a right to ask, why, then, did the buying program and the selling program continue for approximately eight months after that decision?

There are two answers that we shall offer:

The first I have already given you. That was, that what they did was a proper and legitimate thing to do; that it was justified by the condition of the industry, and needed the sanction of no code and of no recovery Act.

For the second, it was undertaken to obtain the objects and purposes of the National Industrial Recovery Act. The object and purposes, gentlemen, were as truly desirable after the Schechter decision as before; and this fact can not be controverted, because the President of the United States, the Secretary of the Interior, the National Recovery Administration, Mr. Richberg, and other officials of the N. I. R. A. repeatedly pointed out to
industry its moral responsibility to maintain the
410 gains established under the code.

As late as November, 1935, the Secretary of the Interior issued the warning that, unless the oil industry prevented economic and physical waste of oil and its products, the public would demand that it be made a public utility.

In November, 1935, the Independent Petroleum Association of America met at Dallas, Texas. At this meeting a statement, approved by the President, was read before the convention—

Mr. Crawford: Now, if the court please, I think counsel is going far beyond any limit, the widest margin of any limit that was set down before, where he pretends to quote matters from the Secretary of the Interior. And now he is going into quoting or referring to some matters and statements made at a certain meeting, about which this case has absolutely nothing to do. We object to it.

The Court: Objection will be sustained to any reference to what the President said, that was said at that convention.

Mr. Donovan: And will your Honor give me an exception to that ruling?

The Court: You may have an exception.

Mr. Donovan: These buying programs, gentlemen, were undertaken by these defendants during the
411 Petroleum Code, and were in direct furtherance of
its provisions. They were encouraged, as I have already said, and as we will prove; they were encouraged and supported, done in the open, supported by the Oil Administration. The requests that efforts be undertaken under the code to stabilize marketing practices were received by these defendants in good faith. After the Schechter decision, these objectives were still the same objectives; and they did so, and they followed that—and I want to be within your Honor's ruling now—they followed that at the instance of officials of the Oil Administration.

Now, I say at the close, gentlemen, as I said at the beginning, that the prosecution has told only part of the story; that here was an industry which, through the evils of destructive competition, had been brought to the edge of disaster. Its demoralization was a threat to every principle of conservation laid down by the Government. The abuses of unintelligent competition menaced not only the marketing structure of the business, but the wage and hour scale of those employed.

What was done by these defendants was not a conspiracy to fix prices; but was to attempt to correct the abuses, and to improve conditions, so that all elements in the industry would be able to profit from their labors.
Proof will show that what they did was decent in
412 purpose, honest in intent, and useful in effect.

Gentlemen, however the motives of these defendants may be questioned, certainly the motives of our Government will not be questioned. Yet, the proof will show that during the very period alleged in this indictment, that during that very period, for the same reasons and because of the same conditions, our Government laid down, in the interests of the public, as the proper course of conduct for this industry to follow the very course followed by these defendants. And the proof will show more.

Not only did the Government commission an agent, Mr. Arnott, to secure industry's cooperation in this stabilization movement, not only were these defendants encouraged to cooperate; but, throughout the whole of this buying program, there was no hint of wrongdoing from any officer of the Government, no warning that any governmental agency deemed these defendants' conduct illegal.

On the contrary, the final report of the Petroleum Administrative Board, the active and responsible representative of the Secretary of the Interior under the oil code, was published by the Department of the Interior in June of 1936, a short time before this indictment was returned; a document which this prosecution must have in its possession.

412 (a) Mr. Crawford pointed out to you, the long, long, crooked trail that had to be followed, and the darkness, and the furtiveness, and the secrecy.

I desire to show here that there was no long, dark, crooked trail; that there was no secrecy; that there was no furtiveness; and that this was made known, in full to the papers, not only to the members of the industry, but to the officers of the Government themselves.

413 Thereafter, Samuel T. Lawton, on behalf of the defendants he represented, and Morris F. Hanning, on behalf of the defendants he represented, respectively made their opening addresses to the jury.

Thereafter, the following statement was made by the Court:

> "The Court: Let the record show that all adverse rulings may carry an exception."

Whereupon, the plaintiff, the United States of America, to maintain the issues on its part, called the following witnesses to testify and introduced the following evidence:

Mr. Crawford offered in evidence EXHIBIT 1, being a stipulation with respect to the status of the various defendants.

(Document referred to received in evidence as EXHIBIT 1.)

HERBERT C. HALE, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I am clerk of the United States District Court for the Western District of Wisconsin. In the spring of 1936 I issued subpoenas duces tecum to various oil companies and individuals at the request of the United States, and pursuant to such subpoenas large quantities of documents were produced by those companies and individuals. These 414 documents have been impounded by order of this Court, and have been in my custody continuously since that time. Government counsel here have asked me to produce certain of these documents. I have them here.

(Documents so produced were respectively marked Exhibits 11 to 614, inclusive.)

No cross-examination.

415 CARL O. BEROTH, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I live at Chicago, Illinois, and am president of the Acme Petroleum Company in that city. I am 56. I was educated in public schools, high school and Chicago Law School. I have been engaged actively in the gasoline business for the past 20 years.

Acme Petroleum Company, incorporated in June 1917, has been active in the oil and gasoline business ever since. Its capital originally was a little over $200,000, and now is close to $110,000. We have offices in Chicago and Kansas City.

This Company buys tank car lots of gasoline, burning oils and industrial fuel oils from so-called independent refiners in Texas, Oklahoma, Louisiana, Arkansas, Michigan, Pennsylvania, Missouri, and Kansas. These tank cars contain from 8,000 to 10,000 gallons. We resell to jobbers in the 10 states known in this district as the Mid-Western or Mid-Continent area. We usually sell this gasoline to independent jobbers located in North Dakota, South Dakota, Iowa, Missouri, Minnesota, Wisconsin, Illinois, Indiana and Kansas. These are the states in which Acme Petroleum Company does business.

416 We buy outright from independent refiners, pay for the gasoline and take title for ourselves and resell it. We do not sell their gasoline for them on a commission. We are frequently referred to as a broker, but we are not a broker. That term "broker" of gasoline means a company that buys gasoline or handles gasoline for refineries, and resells it to the jobbing or the consuming trade.

A large number of independent refiners in the southwest, in the states I named, have no sales organization in large cities like Chicago, Kansas City, Minneapolis, Cleveland and St. Louis. To get rid of their products they need sales outlets in those particular cities and other smaller cities. Frequently these refiners have no brands on their gasoline; they are sold entirely on strict specifications. Then the marketer, at times called broker, handles this gasoline or fuel oil, or whatever the products are, for those small refiners, and resells it to the jobbers and to the consuming trade in the territory I have mentioned.

A broker or a jobber performs an important function to this extent: We frequently may have calls from jobbers for a price on a carload of Michigan kerosene, a car of Texas natural gasoline, a car of Oklahoma or South Texas naphtha, and perhaps some Pennsylvania lubricating oils. There is no large company in Chicago to my knowledge
that the jobber can go to and get a price on all those
417 products at the same time, but he can get it from several so-called brokers or marketers. They get the prices every day and know what they are. They give the jobber that information by telephone, wire, or letter. That saves him a number of calls to states where these products are manufactured or are on hand. For the independent refiners we are a sort of sales department, whereas for the independent jobbers we act as their sort of buying department. That is the way the broker acts, and our company also.

There are many such persons in the industry performing the functions I have mentioned as brokers in those particular states, the Standard of Indiana territory. The number of such brokers now is very much smaller than the number of such brokers in the past.

The Standard of Indiana territory comprises the states of North Dakota, South Dakota, Minnesota, Iowa, Missouri, Kansas, Illinois, Wisconsin, Michigan and Indiana. That is the territory which surrounds Chicago and Wisconsin. It is called the Standard of Indiana territory in the trade because Standard Oil Company of Indiana, one of the defendants in this case, is the leader in the marketing of gasoline in that territory. Our understanding is that it does the most marketing business in each of these states. It is the market leader, so called, for two reasons;
first, because for many years the Standard of Indiana
418 posted what was known as the service station price
whenever changes were made; and second, because the volume of gasoline according to state tax reports is the largest with Standard of Indiana in those states. It has generally been the custom for it, by reason of that position, to post the normal retail service station price at which

gasoline is sold to the consuming trade. The other companies in the trade usually follow that retail price. That has been the custom until just recently, when the so-called Iowa plan went into effect in about August or September, 1936, but they do not now post the retail price.

I explain this Iowa plan of marketing as follows: The State of Iowa passed what is known as the chain store tax law. They graduated the fees to be collected on the number of stations owned. Those fees were heavy on a company that had a great many stations. The large oil companies then leased out their stations to individuals, and retired from active marketing themselves in Iowa. Then that same procedure followed in a number of other states. Although there are some exceptions, the large companies, including Standard of Indiana, have now withdrawn generally from the retail business, have leased out the stations to the dealers, and the dealers are now independently in the retail business. It is generally true now that the
419 refining companies sell the gasoline outright to those dealers, and do not attempt to post the retail price at which those dealers resell.

Standard of Indiana, and the other large companies that follow it, post what is known as the tank wagon price. It is the price at which gasoline is sold in tank wagon lots to retailers or consumers.

The prices at which Standard of Indiana sold gasoline at their stations was carried in the trade publications as the service station price at the particular point where the gasoline was sold. Since the Iowa plan went into effect that has been discontinued. The companies now post the tank wagon price, although they are still selling at their own stations, or controlled stations, at a service station price above the tank wagon price. These companies, who used to follow Standard of Indiana with regard to the retail prices, now follow it with regard to the tank wagon prices throughout the Standard of Indiana territory. It is sometimes referred to as the Mid Western area.

Acme Petroleum Company handled as brokers during the last few years from 150 to 225 or 250 tank cars of gasoline per month. Each tank car contains 8,000 gallons. Gasoline ordinarily is not sold, or talked of in barrels but in gallons.

Over the last 3 or 4 years our volume had been declining. The volume we handled in 1935 and 1936 was
420 considerably smaller than that which we handled in the years previous to that.

Acme Petroleum Company has at the present time 10 employees. 4 are engaged in the buying and selling of gasoline; 1 is connected with and works out of the Kansas City office, and 3, the Chicago office. That number of employees represents about one-fourth of what we had a few years ago. Several years ago we had offices at Dallas, Shreveport, Tulsa, and St. Louis.

A broker, such as I have described, for performing this service in the industry, first as the selling department of the independent refiners, and second as the sort of buying department of the independent jobbers, gets usually ⅛¢ to ¼¢ per gallon, which amounts to $10 or $20 per tank car. That is the difference between what we buy the gasoline for and what we sell it for to the jobbers. It is our gross margin. The broker usually is able to buy at that fraction of a cent under the price at which the jobber himself could buy it if he went directly to the refiner. The normal broker's margin in this territory during 1935 and 1936 was from ⅛¢ to ¼¢. Out of that gross intake the broker must pay his office rent, help, salesmen, telephone bills, telegraph bills and bookkeeping items, and all other office or road expenses that are connected with the sale of his products. So, speaking generally, whether the broker can prosper de-
421 pends upon the volume that he is able to handle at that margin.

The principal grades of gasoline that Acme Petroleum Company purchases and sells are what is known as U. S. Motor gasoline, another grade known in the trade as "regular", high-test gasoline, and also blended gasolines. We have three principal grades.

U. S. Motor grade gasoline is commonly known in the trade as "third grade gasoline." The Bureau of Mines at Washington have set specifications for U. S. Motor gasoline, and the Government buys on those specifications. Those specifications are followed by the refiners in making their product, so that they will not only conform to the United States standard, but also to the various State standards, which have adopted the U. S. Government standard for that grade of gasoline.

The principal specification that determines this grading of gasoline into these three main classes is what is known as octane, or anti-knock, rating. This is a term used in the trade to determine just what the anti-knock properties of a gasoline are. For instance, if 70 octane gasoline is put into a motor practically no knock occurs during the operation of the motor. A gasoline having a 60 octane rating will knock a little in the motor. A Michigan gasoline

having maybe only a 20 or 30 octane rating, will cause considerable knocking in the motor. Knock in the motor is
422 that disagreeable sort of ringing noise we hear when
we put our foot down on the accelerator. The higher octane rating gasoline you have in your motor, the less of that ringing noise you get.

Third grade gasoline, or this U. S. Motor, coming from the Mid-Continent field usually has an octane rating somewhere between 58 and 62. So-called regular gasoline has been between 68 and 70. I am referring to the present day. In 1935 and 1936, a great deal of regular gasoline had an octane rating of only 65, 66 and 67; and U. S. Motor frequently had an octane rating of only 57 or 58. Our higher test or premium gasoline will run all the way from 72 to 78 and even 80 octane, depending upon how it is made. A benzol blend high premium gasoline can be made to run even 80 or 85 octane; whereas an ethyl gasoline will run lower than that.

It is customary for most of the companies that sell a branded product to handle these three general grades of gasoline that I have mentioned. Standard of Indiana's highest test gasoline is known as Red Crown Ethyl. The regular grade is known as Red Crown. Its third grade is known as Stanolind. Sinclair has two grades of the high test. It has a third grade, which it calls U. S. Motor. Texas Company calls its third grade Indian Red gas.

Which is the most popular grade with the motorists depends upon the section you are in, and how the mo-
423 torist feels about the prices he wants to pay. Gen-
erally the regular grade is the favored grade in the Standard of Indiana territory. A larger volume of regular is handled than of these other grades I mentioned.

You can improve octane rating, generally speaking, either through what is known as the cracking process, that is, making gasoline under real high temperatures and real high pressures; or by adding what is known as tetraethyl lead to the gasoline, or adding benzol to the gasoline.

Acme Petroleum Company does not handle any of these higher octane gasolines in the premium grade made by the addition of tetraethyl lead. We can't get them. When we get a gasoline that falls into the premium grade it is made by a cracking process and not by the addition of tetraethyl lead. We handle some premium gasoline that is made premium by the addition of benzol.

Gasoline is manufactured from what is known as crude oil, which is found in the ground by drilling a hole or a well in order to bring it to the surface.

Crude oil is refined in a plant or refinery that has a number of large steel boilers, tanks, towers and pipes. This crude oil is cooked or boiled in these stills; and then, as the vapors come off during this boiling or cooking process they are re-distilled, and are later processed into gasoline and other products. There are two processes of making
424 gasoline:

The small, independent refiner with little capital has only what is called a skimming plant. It is skimmed by applying heat, and then collecting the vapors that come off this crude oil. He usually makes a gasoline with a low octane, and gets only a yield of from 20 to 40% out of his crude oil.

The other, larger refiner has what is known as a combination skimming and cracking plant. He can get a yield out of his crude oil as high as 60 or 65% of good gasoline of a much higher octane rating.

Cracking is where a part of the first refined oil is put into high pressure tanks or boilers and there, under extreme pressures and heat, the particles are broken up into a fluid that has a much higher octane rating than if not put through that process. That gives us a higher octane gasoline.

About 60% of the gasoline that our company bought and sold during 1935 and 1936 fell into this third grade or U. S. Motor grade with the low octane. About 30% for 1935 and 1936 fell into the regular gasoline grade. The balance was divided between our premium grade and other blended high test grades.

In carrying on our business of buying and selling we contact the independent refiners principally by telephone or telegram, very rarely by letter. Also we call on these
425 refiners at their various sales offices, or at their refinery plants if they have no sales offices; and the refinery representatives, when they come to Chicago or Kansas City, call on us at our offices.

The jobbers we generally contact by telephone. They will call us up and ask us what the prices are on various products; or we will call them up and try to sell them various products.

We also send out circular letters or bulletins from time to time telling the jobber what prices are prevailing at that particular time for various grades of gasoline. Jobbers frequently will come to our offices and buy from us, or get market information. I personally engage in both buying and selling gasoline. I personally supervise the activities of our assistants in buying and selling gasoline. Every day I am in active contact with everything that goes on.

I am personally acquainted with the location, character and extent of the principal crude oil fields east of the Rocky Mountains. I have been in those fields many times. I have done business in them.

There is a rough grouping of the principal crude oil fields from which the gasoline used in Standard of Indiana territory usually comes, namely: the Mid-Continent field, which comprises Oklahoma, southeastern Kansas,
426 northern Louisiana, southern Arkansas, and northern and western Texas, and the East Texas field, which is around Kilgore, Long View, and Gladewater, Texas.

There are also the Texas and Louisiana coastal fields. A big part of the crude oil produced in these coastal fields or the gasoline manufactured from it goes to Gulf or Atlantic coast ports or for export. That gasoline is usually shipped by tanker several million gallons at a time. A large part of this crude oil also goes to Houston, Texas for refining. It is a very large refining center.

New pools are being found. There are other fields east of the Rocky Mountains not as extensive as those I have pointed out. Small production has just been discovered near Olney, Illinois. There are between 40 and 50 thousand barrels daily produced in Michigan at the present time. There are a number of crude oil fields in Pennsylvania but not large producers.

The Mid-Continent field is older than the East Texas field which was coming into production in 1930 and 1931.

Gasoline is refined by a number of refineries down in those two fields.

In the Mid-Continent field you have a number of refiners. For instance, at Enid, Oklahoma, Champlin Refining Company has a very large refinery; and also Eason Oil Company. At Cushing, Oklahoma, Cushing Refining Company has a large one. At Cleveland, Oklahoma, Johnson Oil Refining. At West Tulsa, Mid-Continent Petro-
427 leum Company, a defendant in this case, have a large refinery.

At Borger, Texas, Phillips Petroleum Company has a big plant. Phillips is referred to as a major company, and is a defendant in this case. It also has a refinery at Kansas City, Missouri. In Kansas, there is Globe Oil & Refining Company, at McPherson, a large plant; Kanotex Refining Company, at Arkansas City; Vickers Petroleum Company, at Potwin. At Blackwell, Oklahoma, is Omar Refining Company.

In the East Texas field there are a great many but not nearly as many plants as there were some time ago. There are Southport Petroleum Company; McMurray Refining Company; Louisiana Oil Refining at Shreveport; Grogan Oil Company at Shreveport; Grogan Oil at Overton, Louisiana; Premier, at Longview; Solvex, at Gladewater, Ocean, at Kilgore. I have named some of the major oil companies, and some of the so-called independent refiners.

Roughly speaking, most of the independent refiners from whom we buy gasoline are located in the East Texas and Mid-Continent fields. Some are in the Michigan field.

A great deal of crude oil produced in those two big producing fields is transported by pipe lines from Texas and Oklahoma into other territories where the large companies have their refineries.

Surrounding Tulsa, Oklahoma is the large center where
a large number of pipe lines come through from there
428 into Indiana principally. Also, there are pipe lines
coming through Missouri, and from the East Texas
field.

Sinclair has a large pipe line from Casper, Wyoming, that was formerly known as the Prairie Pipe Line.

Standard has a pipe line; Shell has one; and Texas Empire have one to transport crude oil from Oklahoma, Kansas and Texas into East Chicago and Whiting, Indiana, for refining purposes, and also into Sugar Creek, Missouri, and over to Neodesha, Kansas.

Pipe lines usually vary in inside diameter from 6 to 10 inches. These pipes are usually welded together so as to form one continuous, tight line. There are pumping stations about every 35 or 50 miles that push this oil through the pipe line to the next station, and so on, until it reaches its destination, which may be 800, 1,000 or 1,200 miles distant. There are also pipe lines that go all the way to the Atlantic Coast.

The so-called major companies own or make use of these
crude oil pipe lines. The little fellows do not have access
to them. They do not have any pipe lines. The majority
of the independent refiners are located where the crude oil
is produced, or very close to there. They may have a small
2 or 4 inch pipe line from a field to their refinery, maybe
10, 15 or 20 miles. Then they will refine the crude oil there,
and ship the gasoline, kerosene or fuel oil in tank car
429 lots to the various places where they sell their prod-
ucts. We just built a pipe line of a little less than 2
miles, and it cost us $22,000, so we think it is pretty expen-
sive.

There is the Great Lakes pipe line that brings gasoline from the Mid-Continent territory to one of the suburbs in the western part of Chicago. That line also goes north and connects up at Des Moines, and goes on to Minneapolis its northern terminus. It is my understanding that Skelly Oil, Pure Oil, Continental, Mid-Continent Petroleum Company, and one or two others own, operate and use the Great Lakes Pipe Line. These are major oil companies and are defendants in this case.

We have never had one case where the independent refiners, located down there in the Mid-Continent field of the type with which we do business, have been able to make use of that Great Lakes pipe line. There are regulations imposed that they would have to comply with in order to make use of that Great Lakes pipe line. I know what the regulations are, but I don't know if they are in writing. I understand the Interstate Commerce Commission publishes a regular tariff on the transportation of oil and gasoline in pipe lines. I consider a tariff to be a regulation.

Phillips has a gasoline pipe line from Texas to St. Louis. There is no use made of that pipe line by these independent refiners of the class with whom we do business that I know of.

430 The independent refiners located in the Mid-Continent field transport their gasoline into the Standard of Indiana territory in what is known as railroad tank cars. The majors usually do not ship gasoline refined down there in the producing fields into this territory by tank cars. They bring crude oil up here, refine it, and then ship the gasoline from the refineries here.

Shell and Standard of Indiana each have a large refinery at Wood River, Illinois, close to St. Louis. Socony-Vacuum has a refinery at Augusta, Kansas. Sinclair has one at Argentine, Kansas. Standard Oil has a large one at Sugar Creek, Missouri and another at Neodesha, Kansas. The largest one of Standard Oil of Indiana is at Whiting, Indiana. Cities Service, known as the Empire Refineries, and Shell, each have large plants, and Socony-Vacuum has what is called the Bartels and Maguire, at East Chicago, Indiana. At Lockport, Illinois, Texas Company has a very large refinery that is connected with a pipe line.

Gasoline refined in those states, at those points I have mentioned, is distributed throughout the Standard of Indiana territory in tank cars.

The refineries I named that are actually refining in the East Texas field belong to the class of independents. They usually ship their gasoline out of East Texas in tank
431 cars. At various times a substantial amount of gasoline manufactured by them down in East Texas comes

into this Standard of Indiana territory for sale in tank cars.

Most of the gasoline refined in the Gulf Coast crude oil fields moved around by tankers. Very little gasoline manufactured down there on the Gulf Coast moves into this Standard of Indiana territory by rail on account of the high freight rates. I do know a little bit about freight rates, because we have paid thousands of freight bills.

Gasoline shipped from the Mid-Continent field is usually shipped on what is known as the Group 3 freight rates. That means there are a number of refining points in Oklahoma, northern Texas, and Kansas that the railroads have grouped together. All gasoline that comes from those particular points, and is shipped to Chicago or Milwaukee has exactly the same freight rates no matter from which point you ship it. Then if you go a little farther back, for instance, in Texas, they will charge ⅛¢ up to sometimes 20 points, 14 points, 16 points higher for shipping in tank car from there to Chicago or Milwaukee. If you come to some Kansas point, or closer to Chicago or Milwaukee, then the railroads have a Group 2 rating from the refining point where the freight rate is less. For instance, the freight rate from Group 3 to Chicago is .0238¢, a little over 2⅓¢ a gallon.

432 If you ship gasoline from East Texas, a little bit farther off, the freight rate to Chicago would be approximately 14 points higher which would make it .0252¢, or a little over 2½¢ per gallon.

If you ship from Kansas and get out of Group 3 into the northern part of the Mid-Continent field, you get a lower freight rate because the distance from Kansas to Chicago is shorter. It usually runs around ⅛¢ a gallon difference. This is very important, because it frequently is the difference between our ability or lack of ability to sell to a jobber in competition with others.

The various elements of cost that go into making up the price of a gallon of gasoline that is brought up here into the Standard of Indiana territory are first, the cost of the gasoline per gallon at the refinery. The first cost would be the 5¢ a gallon at the refinery. That is not the market today, but I am using that as an easy figure to illustrate. Then your freight from the refining point to where the tank car is shipped. I don't know what the freight rate is to Madison, but to Milwaukee it is 2.61¢. After that you take your state tax of 4¢ and add that to the 7.61¢. That would be 11.61¢. Then add 1¢ more for federal tax. That would be 12.61¢. And if there was any occupational 433 tax of any kind in the state, like there is in Illinois, 3%, that would be added to it. Then you have to add to that figure the price which the jobber has to receive for feeding the gasoline in a tank wagon to a retail service station, and add to that price again what the service station man has to have for his expense in maintaining a service station and delivering the gasoline to the consumer. Adding all those elements together means generally what you have got to pay for gasoline. I assign 1½¢ to 2¢ for the jobber and 3½¢ ordinarily to the retailer, per gallon.

434 In the trade a major oil company means one that owns its oil wells, or leases places where crude oil is produced; that transports that oil by pipe lines usually to its refinery; then refines the oil into various kinds of products, and transports those products by tank cars or tank trucks to jobbers who can handle it in tank wagons. Also they will transport it themselves to these jobbers by tank wagon or tank car, and also to the retailers who sell it to the consuming public. A company that is engaged in all of those activities is known in the trade as a major integrated company.

The independent refiner is one who only refines crude oil. He has usually no long pipe lines nor wells. He simply refines the crude oil that he either buys or has transported to him, and then sells his products by contract or on the open market in tank car lots to those who buy from him.

An independent producer is one who is engaged only in the production of crude oil, and is not associated with a major company.

An independent jobber is one who owns tanks which are capable of holding at least one tank car of gasoline of at least 8,000 or 10,000 gallons capacity. Usually those tanks are 12,000 or 14,000 gallons capacity, so that he will never be out of gasoline before a car reaches him. 435 He must have a switching track into his bulk plant in order to unload this tank car. Then, he has tank wagons by which he resells this tank car of gasoline in smaller quantities, from 50 to 100 gallons and up, to dealers and consumers. A jobber may buy his gasoline either from a major company or from an independent refiner direct; or he may buy it from a broker like myself. The jobber is sort of a middle man. A broker, such as myself, is sort of a middleman.

By a dealer we mean one that either owns or leases a site upon which he has what is commonly known as a gas station, where he has a number of pumps through which he sells the motorists gasoline or perhaps a small station where he handles accessories, tires, grease, and things of that kind. The dealer may buy his supply of gasoline direct from a major company or from an independent refiner, or he may buy his supply from one of these middlemen, a broker or a jobber.

A major or integrated company is one that combines functions of production, refining, transportation and the functions of the jobber and the dealer. I know the names of the principal major oil companies that do business in the Standard of Indiana territory very well. Standard Oil Company, Socony-Vacuum Oil Company, Inc., Cities Service Company, Continental Oil Company, Gulf Oil
436 Corporation, The Pure Oil Company, Shell Petroleum
Corporation, Sinclair Refining Company, The Texas Company, Tide Water Associated Oil Company are majors. Mid-Continent Petroleum Corporation is also sometimes known as semi-major. "Semi-major" means in the trade a company that is not as big as the other companies just read.

A major company usually has more than one refinery and operates in a number of different territories. Mid-Continent Petroleum Corporation falls within that class as far as refining, marketing and jobbing are concerned, but not as far as being an owner of pipe lines, or a driller of wells is concerned. That is my understanding.

Phillips Petroleum Company, Skelly Oil Company and Barnsdall Refining Corporations are majors. The Globe Oil & Refining Company is a semi-major, because of only one refinery and a very limited pipe line facility. There is also a Globe Oil & Refining Company in Blackwell, Oklahoma, and one in Lemont, Illinois. The classification of these two is semi-major.

Deep Rock Oil Corporation is a semi-major because of one refinery only and no extensive pipe line. Louisiana Oil Refining Corporation is a major because they are a subsidiary of Cities Service, which is very large. The same holds true with Empire Oil & Refining Company. Cities Service Export Oil Company and Wadhams Oil Company are majors.

437 McMurray Refining Company, East Texas Refining
Company, Dominant Refining Company, Cascade Refining Company, Grogan Oil Company, Trinity Refining Company, Tower Refining Company, La Pren Refining Company, Southport Petroleum Company, Century Refin-

ing Company, Tyreco Refining Company, Wabash Refining Company, Texover Refining Company, Ocean Refining Company, Solvex Refineries, Inc., Arrow Producing & Refining Company, Chief Refining Company, Gilliland Refining Company, Texas Oil Products Company, Matthews Refining Company, Utah Refining Company, and Premier Oil Refining Company are all independent refiners located in the East Texas field. They belong in that class of independent refiners with which we, as an independent broker, do business.

Champlin Refining Company and Eason Oil Company, located at Enid, Oklahoma, Bell Oil & Gas Company, Omar Refining Company, and Danciger Oil & Refining Company, with their office at Tulsa, Oklahoma, Panhandle Refining Company and Taxman Refining Company, Wichita Falls, Texas, Olney Oil & Refining Company, Olney Texas, Cushing Refining & Gasoline Company, Cushing, Oklahoma, Waggoner Refining Company, Inc., Electra, Texas, Rock Island Refining Company, Duncan, Oklahoma, Dickey Oil & Refining Company, Inc., Wichita, Kansas, Shamrock Oil & Gas Company, Amarillo, Texas, and Wilcox Oil & Gas Company, Oklahoma, are all independent companies
438 located in the so-called Mid-Continent field. They belong
to that general class of independent refiners with which we, as an independent broker, generally do business. I would say that those two lists of independent refiners that I have just testified to are representative independent refiners in those two fields. By "representative," I mean they sell most of their products in the mid-western area. Those named are the principal independent refiners in those two fields and the group of independent refiners in those fields that do the largest amount of independent business up here in the Standard of Indiana territory. Over the past 20 years I have been in their plants and offices many times, and have bought from them, and sometimes have sold to them.

I know where the principal refineries of the major companies and semi-major companies I have named are located. In addition to those previously named Socony-Vacuum Company, Inc. has the Lubrite plant in the St. Louis district, and a plant at Trenton, Michigan, just south of Detroit.

It has been my understanding that Cities Service has a plant in the Shreveport, Louisiana District.

Continental Oil Company has a plant at Ponca City, Oklahoma.

I am not familiar with the Gulf Companies because of the fact that they do very little marketing in the Indiana territory. They do some, in Illinois, Michigan and Indiana.

The Pure Oil Company has a plant known as Smith's
439 Bluffs, I think it is, Texas, and there is one at Muskogee,
Oklahoma. I do not recall that it has any refineries in the Standard of Indiana territory, excepting a small plant at Midland, Michigan.

Shell has a plant at Arkansas City, Kansas. It also has a plant on the Gulf Coast at Houston; but gasoline manufactured there does not usually and normally come into this territory.

Sinclair's big plant is at East Chicago, Indiana, and it also has one at Parco, Wyoming.

I am not familiar with the Tide Water Companies' refineries. To my best knowledge they have none in the Indiana territory. They market and their products are marketed in this territory.

Mid-Continent Corporation has a refinery at West Tulsa, Oklahoma; Phillips Company, at Borger, Texas, and Kansas City, Missouri; Skelly, at El Dorado, Kansas. Barnsdall has one plant at Wichita, and another one in Oklahoma, and it is building one now, I am informed at Corpus Christi, Texas. The three Globe Companies have plants at McPherson, Kansas; Blackwell, Oklahoma, and Lemont, Illinois; Deep Rock Oil Corporation at Cushing, Oklahoma.

According to state tax reports from which we get our information, between 5 and 6 billion gallons of gasoline are marketed yearly in the Standard of Indiana territory. My understanding is that that would be true roughly for
1935 and 1936. Approximately 85% of that is handled
440 by the majors and semi-majors. The so-called inde-
pendent refiners manufacture or refine the balance, or about 15%. I would say that those percentages were generally true of the years 1935 and 1936.

Better than 4000 jobbers are doing business in the Standard of Indiana territory according to the tax reports that we have checked. They are scattered pretty generally throughout the territory. Some of those jobbers get their supplies from the major companies; and some from the independents, and some get them from the brokers like myself. Jobbers get at least 50% of the gasoline they handle from these major company and semi-major company defendants. Those figures I have given would be generally true for 1935 and 1936.

That number of jobbers, 4000, was smaller than the number in years previous to 1935. We checked with our office cards and found the number less. We make out a card for every jobber in the states in which we operate, and then at the end of a six month period or a year period we take out the cards of the jobbers that have gone out of business, or are inactive, and then the remaining jobbers are the current list. That means whether we do business with them or not. We get our cards from the State Gasoline Departments, and make up cards for every jobber that is listed there, whether he is a customer or not.

The major companies sell their gasoline by contract to the jobbers, and by spot sales to the jobbers in tank
441 car lots. We have never found a substantial portion sold by the major companies on the spot market to the jobbers. Most of the sales by majors to jobbers are under written and printed contracts. Of the 15% of all the gasoline that is handled and sold in the Standard of Indiana territory, which I say is refined by the independent refiners, about 7½%, possibly or maybe 10% I would say is sold by the independent refiners under written or printed contracts with the jobbers. That would leave either 7½% or 5% which is sold in some other way by these independent refiners. Normally, that 5 or 7½% is sold in what is known as day to day sales or separate transactions to the jobbers or concerns like ourselves who inquire for prices.

A spot sale is a sale where a refiner sells on, say, today's market, 1, 2, 3 or more cars of gasoline for prompt shipment, which means within 48 hours at the going price that day. For instance, if I wanted to buy 5 cars of gasoline today, and I called Cushing Oil & Refining Company at Cushing, Oklahoma, I would ask them, "What price can you give me on 5 cars of 68-70 gasoline for immediate shipment, or prompt shipment." Immediate meaning within 24 hours, and prompt within 48 hours. If they said 5¾¢ or 6¢, and I thought the price was right, I would buy that number of cars, and that would be termed a spot sale or a spot transaction. That is the type of transaction that represents the sale of this 5 or 7½%.

442 There is no general location where anybody goes with his wares, a sort of fair grounds, or anything like that.

The spot market is this price, as we understand it. For instance, if 50 cars are sold today, say, some at 5¢, some 5¼¢—say the highest 5¼¢, and the lowest 5¢—then if that is being bought by the jobbers, then we understand that that is the spot price. Maybe 10, 15 or 20 refiners might bid on any part of those 50 cars. The spot market, then, is a term which describes the grouping of these spot transactions.

There are agencies or publications that purport to report the spot market prices from day to day. The leading publications that purport to do that are the Chicago Journal of Commerce published at Chicago, Illinois; and Platt's Oilgram published at Cleveland, Ohio, with a Tulsa edition.

We keep records in our own business which embrace the sales we make each day, the number of cars, to whom we sell, on what basis we sell, the price at which we sell, the date of shipment, the number of cars we buy, from whom we buy, the kind of material we buy, the price at which we buy, the date of shipment, and the offerings which we receive that day which we might not buy, as well as quotations which we make to jobbers on which we did not make sales. We subscribe to only the Journal of Commerce, one of the publications I mentioned. But we also sub-
443 scribe to the National Petroleum News, which gives the Platt's Oilgram spot quotations in weekly form, rather than daily form.

The National Petroleum News weekly quotations purport to represent the low and high spot prices for that week for the respective grades of products listed. The Chicago Journal of Commerce quotations purport to represent the spot market from day to day on various products according to the grades published in the paper. The principal grades quoted in those two papers are third grade (U. S. Motor), regular, and premium. By the low and the high I mean the lowest price at which that product was offered, and the highest price at which the same product was offered, on that particular day. For instance, if the price is 5¢ low and 5¼¢ high, it is my understanding that some material or products were bought that day at 5¢, some may have been bought at 5⅛, but the highest price was 5¼¢.

For years, it has been the practice for these publications to publish a high quotation and a low quotation for each of these grades.

We check the Chicago Journal of Commerce every day for the news regarding the markets, and compare their prices before we start quoting or buying for that particular day so that we will know the prices which jobbers, who take that same paper, see in the Journal. I do that personally. I personally keep in contact with the
444 records of our actual transactions on the spot market.

The Journal of Commerce comes to my desk the first thing every morning that I am in town; and if I am out of town, the market section of the Journal is held there for my return. I have read every one of those sections for several years.

We constantly make a comparison between the prices that we pay on the spot market for the gasoline that we handle and the gasoline prices in the journals. We also compare the prices on fuel oil because we also sell fuel oils. We pay no attention to any of the other markets.

Normally in this business the broker, such as ourselves, is able to buy for from ⅛¢ to ¼¢ under the price at which the jobber is able to buy direct.

My understanding is that those quotations are supposed to represent the spot market. When I pick up that market sheet and read it it discloses to me the price which a jobber would ask, what the going price was on spot shipments for that day. We do not do business on the basis of those quotations because we always have to buy under those quotations; otherwise we would be out of business.

The price that we pay the independent refiner is determined by our calling the refiner and asking him for a price on a product for that particular day for immediate shipment; and then, if we believe that we can sell it at ⅛¢ or ¼¢ above that we will buy on that basis, irrespective of what the Journal or any other publication may say.

445 Since the broker normally must buy at from ⅛¢ to ¼¢ under the price to jobbers, I would normally expect that our price as a broker would be from ⅛¢ to ¼¢ under that of the Journal.

During the period beginning March 1, 1935, and through the rest of 1935 and 1936, we bought all the way from ⅛¢ under the low of the Journal for the respective grades to as much as ⅝¢ under the low of the Journal for U. S. Motor and regular gasoline. The ¼¢ margin was general and the ⅜¢ margin was almost general.

Beginning March 1, 1935, the market on both U. S. Motor and regular gasoline started upwards. In the case of U. S. Motor gasoline from a low of 3⅛¢ it went up, according to purchases we made, to 4¼¢ per gallon, f.o.b. Group 3, Oklahoma. The same relationship was true with reference to regular gasoline. I am speaking now of the trend of the prices that we paid. The Journal advanced during that same period, and the prices of the low of the U. S. motor and the regular grades, their low prices, were from ¼¢, ⅜¢ up to ⅝¢ higher than our purchasing prices.

From June until October, 1935, the markets remained fairly stationary. By that, I mean there were no fluctuations of any great consequence.

In November and December, 1935, and January, 1936,

there was a period when there were greater fluctua-
446 tions, so far as we were concerned. We were able to
buy at the lower margins that I mentioned, ⅝¢ below,
rather than ¼¢ under. I am now telling the trend of the
prices that we paid.

The general trend of the Chicago Journal of Commerce during that period beginning in the early part of the summer of 1935, running through the year 1935, and on into 1936, continued just on a very slight variation, and was stationary for quite a little period.

We paid from ¼¢ to ⅝¢ under what the Journal prices were for gasoline we bought in tank car lots depending upon the time of the year. When we came into the winter of 1935 and 1936, the spread between our price and the price quoted in the Journal widened.

Q. Will you tell us how this period of time, June 1st, or around the first of June, 1935, on through the rest of '35 and into '36 compared with previous years or previous periods of time, as to the trend of the Journal prices.

The Court: With what, with the prices he paid?

Mr. Lewin: No, with the prices of the Journal, which he was studying from day to day.

The Court: How did that compare with what?

Mr. Lewin: How did that compare with the trend of the Journal prices in previous years?

447 Mr. Donovan: I object. He is taking a period of years, and not any one year.

This witness is not qualified as an expert economist. That is what the question calls for.

There is no showing here that business conditions were the same. There is no showing of what conditions were. I object to the question on the ground—

Mr. Lewin: I didn't ask for that. I asked for a simple comparison between the trend of the Journal prices in this period and the trend of the Journal prices in prior periods. This gentleman is the very best source of information on that subject.

Mr. Lawton: If the Court please, I desire to make the same objection as to the 1935 testimony. The best evidence is the Journal of Commerce, which is available for that year; and his actual sales records. And we shouldn't be bound by his general statement of a comparison, when we have no means of cross examining him; no means have been offered to us for cross examining him upon the truth of his statements.

The Court: Q. The information—you are stating certain facts now, and you obtained that, I suppose from your files?

448 A. Yes sir.

Mr. Donovan: If it please the Court, if he is undertaking to testify from files and records, those files and records ought to be in Court so we would have an opportunity of examining them and cross examining this witness upon them; and I object further on that ground.

Mr. Lawton: The Court understands that that is the exact nature of my objection also; that is, it is included in my objection that he is making a comparison of his written records with the printed record of the Chicago Journal of Commerce, which is the best evidence, so far as the Journal is concerned.

449 Mr. Lewin: I say, take 1934 or 1933 or 1932 or 1931, any period of time. I want to know whether there was any other period of time, that was comparable to that, that you know of?

Mr. Lawton: In what respect?

Mr. Lewin: In respect to stability and uniformity of this price that he has described as being at a constant level.

The Court: Oh, I see what you are getting at.

Mr. Donovan: May I have an objection, your Honor?

The Court: Yes.

Mr. Donovan: And the exception?

The Court: Yes. You may answer that.

A. There had been no other period from 1930, in fact previous to that time, where prices were so uniform as during the period you state.

Mr. Donovan: I move to strike out the answer on the ground that it does not appear either from the question or the answer of the witness that the conditions of the country—the financial situation of the national—

The Court: We are not interested in that. We are interested now in the price of gasoline.

Mr. Donovan: Yes, your Honor, but he is drawing—

450 The Court: You may go into that later on. Motion denied. Exception allowed.

Mr. Donovan: If I may state my objection, your Honor? I make the objection on the ground that he has established no standard of comparison.

The Court: We are talking about the price of gasoline now, aren't we? (Addressing the witness)

A. Yes.

The Court: That is all we are interested in.

Mr. Lewin: The quotations in this Journal.

The Court: It appears the price of gasoline varied in 1936? (Addressing the witness)

A. 1935—to start with, in 1935 it went up, and then there was a period they were almost level for many months, practically no change at all. And that had not occurred in previous years.

The Court: Previous years?

A. Back to 1930.

The Court: Well, in 1930, 1931, 1932, 1933, and 1934, what would you say about the trend of prices during those years?

A. There was a much greater fluctuation, so the line would go more like this (indicating) than like this (indicating).

Q. Now, for the record—I don't know whether that appeared in the record—in the previous years the line went up and down?

451 A. Yes, frequently.

Q. And that is to be contrasted now with this period in the summer of 1935 and on into the winter of 1936, where the line was horizontal and rigid.

Mr. Donovan: Now, I object—

Mr. Lewin: I must get it into the record. I think the record ought to show that.

Mr. Donovan: I still have a right to make an objection, and I still object to the testimony of counsel.

The Court: Let me ask the question. Maybe we can clarify it and speed it up. Were you familiar with the price of gasoline during the years 1930, 1931, 1932, 1933, 1934 and 1935?

A. I was, yes, sir.

The Court: And during the years 1931, 1932, 1933 and 1934, was there any period during those four years where from month to month there was no variation in the price of gasoline, in the prices we have referred to?

Mr. Donovan: Very respectfully, if the Court please, I must object to your Honor's question, for the same reasons I have already stated.

The Court: Objection overruled. I want to know whether this witness has that knowledge. Exception

452 allowed.

A. I have.

Mr. Donovan: I only want to submit that that is not the way to obtain it.

Q. Now, Mr. Beroth—

The Court: Just a minute. I want to get from this witness facts from his own knowledge independent of the Journal of Commerce or other journals. What you have testified to now is variations in the price of gasoline during those years. Is that a recollection of your business experience?

A. That is our business experience, and also, the reading of the Journal during that period.

The Court: And your own file?

A. Yes, and my own file.

The Court: I think we ought to have—yes. All right, go ahead.

December, 1935 and January and February, 1936, were during the bad winter period, and not much gasoline was being used. We had more severe weather during that period than we had had for several years previously. Bad weather has very much effect on the amount of gasoline that is consumed. If the farmer cannot get out to the main road, he doesn't use gasoline to come to
453 town in his car, and only where the highways are plowed is there an appreciable amount of gasoline used in trucks. A great many pleasure cars do not make the trips in the winter time, in the short days and long nights, that they do in the summer periods or in other periods where the weather is milder. A bad consuming season has a very large effect upon the demand for gasoline on the market, because there are less inquiries to purchase gasoline, and the result is that the refiner has to either curtail his runs, which means making less gasoline during that period, or store it in tanks until the market condition improves.

That bad consuming season, because of bad winter months, lowered the price at which we were able to buy tank car gasoline quite a bit. The trend of the Chicago Journal of Commerce quotations during that same period, December, 1935 and the first part of January, 1936, was practically stationary. My best recollection is that the Journal of Commerce figures remained stationary at the same level that they had been at during the summer.

There was an upward trend in the spot market prices as quoted by the Journal in January, 1936. That took place about January 17, 1936. It went up to 6¢ per gallon. That was a rise of ½¢ in the Journal quotations from the level that they had been on before. The 454 trend of the gasoline quotations as reported by the Journal after that rise in January and down until the early part of the summer of 1936 stayed practically stationary at the higher level. I was talking about regular gasoline. Third-grade gasoline increased in price also at that time. The trend of the quotations for third-grade gasoline after that rise in January stayed practically stationary for some months.

There were some small breaks in 1936 in the price as quoted by the Journal for those two grades. They first occurred about May or June, 1936.

I testified before a Grand Jury in this jurisdiction in May, 1936 which was investigating the oil case. I do not remember any appreciable break in those quotation trends until around May or June, 1936.

There was an advance of 15¢ a barrel in the general posted price of crude oil in January, 1936. That change was just about the same time as the change that I just described in the price of gasoline as quoted in the Journals. Crude, prior to January, 1936, was $1.00 a barrel, and had been for some time. That was what is known as Mid-Continent crude. Then there are variations in the prices of crude oil for the different gravities.

The bad weather affecting the demand for gasoline, which I testified to this morning, occurred in January, 1936.

455 *By the Court*

I believe it was within a day or two of January 17th that the price of crude oil rose from $1.00 per barrel at the well in the Mid-Continent field to $1.15. There have been no variations in the price since January, 1936 that I know of.

By Mr. Lewin

I do not recall any changes in the price of crude after that rise of 1936 in the Mid-Continent. There have been changes in various grades of crude that I have not kept up on. The one that stands out in my mind is this one in January, 1936, and I do not remember any decline in that price later.

We purchased gasoline, both regular and U. S. Motor, at from ¼¢ to ⅞¢ a gallon under the low at various times. Not regularly straight through, but at various times from January, 1936 up to and including September, 1936. By "the low" I mean the low quotation in the Journal of Commerce for either the Motor or the regular. That was the same privilege that any broker had.

We were buying on the spot market, during the years 1935 and 1936, what is known as U. S. Motor specification gasoline for the cheaper grade, and we were buying from 65 up to 70 octane for regular grade.

456 U. S. Motor is what the ordinary consumer calls low grade or third-grade gasoline. The regular 68 to 70 octane rating is what the ordinary consumer calls regular gasoline. The ethyl wouldn't run as high as 80, but some high test would. The three kinds of gasoline we were buying were U. S. Motor, regular grade, and some high test, although a much smaller quantity of high test than of the others.

The low grade gasoline was what we sold to dealers who were buying the low grade product, and all during 1935 and 1936 I do not recall out of hundreds or thousands of cars we sold that there were any rejections from either the state on specifications or from the jobber on account of quality. The same holds true with reference to the regular gasoline.

We never purchased, to my knowledge and honest belief, one pint or gallon of "hot oil." I know what "hot oil" means very well. Every purchase order that we make contains the clause printed right in it that all products under this order must be according to municipal, state and federal regulations and laws, and we won't accept it unless it is.

Keith Fanshier is the petroleum editor of the Chicago Journal of Commerce and a very fine man. From 1930 to 1934 he called me several times, and then for some unknown reason I did not receive any calls for over a

457 year. I do not recall receiving any telephone calls from Keith Fanshier inquiring as to the prices I was paying during those years covered by this indictment, until after it was announced that I had appeared before the Grand Jury. Then he called me one day to ascertain some information about the prices. That was after May of 1936.

There was a change in the amount of gasoline that was available to me after March 1, 1935, as compared with the years previous to that date. We tried to buy gasoline several times from the same sources from which we had previously purchased, and we were told that they were sold up and had made large sales to the major companies.

I was down in the fields in the years 1935 and 1936 trying to buy gasoline.

We had bought from McMurray Refining Company prior to March, 1935, and during 1935 we at several times got some small lots, but when we wanted to buy in one instance I recall I wanted to buy 25 cars, and they told us they did not have it.

We bought from East Texas Refining Company previous to 1935, but none after that. I tried to buy after that. I was in Dallas personally, and tried to buy. They told us that a large part of their gasoline, which we had been getting before, had been sold to the majors, and the balance had been shipped to local points. When I had these conversations with them, I talked to Mr. Free-
458 man Burford, the president, and Mr. Ralph Bishop, the sales manager.

Regarding each company I name, I never had my negotiations with anybody any lower in rank than the sales manager, and frequently my negotiations were with the officers of the company, whom I previously knew.

We did no business with Dominant Refining Company at any time.

We did have business with Cascade Refining Company prior to 1935 and tried to buy in 1935 and also in 1936, and they informed us that they had made large sales. In one case it was Mr. Kennedy who told me he had sold 75 cars to the majors and consequently had no gasoline for us.

We had bought from Grogan Oil Company prior to and after that time, but there were at least 4 or 5 times during 1935, and at least that many times in 1936 when they advised us that they had sold bulk products to the major companies. When I was in Shreveport at their refinery I saw a large number of Cities Service cars on the tracks, and was told by Mr. Grogan, the president, that that gasoline was going out to them, and therefore he had none to sell to me.

We bought some from Mr. Jackson of Trinity Refining Company before 1935 and also a few cars afterwards, but no appreciable quantity, and less than we had bought before.

We bought none from Tower Refining Company at any time, as I recall.

459 I recall just a few purchases from La Pren, but they were very small. We never considered them as a regular source of supply.

We frequently bought from Southport Petroleum Company, and I was informed when I was at Kilgore, Texas, in the East Texas field, that they had made some large sales for several months, and therefore would be unable to quote us on what we wanted. I was told by Mr. Herzog, the sales manager at that time, that those sales were made to the major companies.

When we went into the market to buy after March 1, 1935, we were ready and offered to pay what any other marketer would have paid for the gasoline at the particular time.

We bought some from Century Refining Company, but not very much before 1935; and very little after 1935, less after than before. We purchased several lots from Tyreco Refining Company; we purchased considerable in 1934, very little in 1935 and 1936.

We purchased none from Wabash Refining Company that I can recall. We purchased none from Texover Refining Company.

We bought a few cars from Ocean Refining Company, but their Mr. Robinson, sales manager, told me that they had a number of big purchases from majors, and consequently with that and what they were shipping in 460 tank wagons, they did not have any to sell to the North. We bought from them in 1934, and we bought a few cars in the months of February and March, 1935, to my best recollection. Those purchases after March, 1935 were very much smaller than those prior to that time.

We bought nothing from Solvex Refineries.

We bought a little from Arrow Producing & Refining Company prior to 1935, and some during 1935, but we never asked for any big quantities because we figured they did not have it.

We bought none from Chief Refining Company.

We bought quite a little from Gilliland Refining Company before March 5, 1935, and after that time a few times we bought not to exceed, as I recall it, 10 cars at any one time. They also informed us they had made large commitments to the major companies.

We bought some from Texas Oil Products Company, some prior to that time and some after, but no large quantities because they were selling most of their gasoline by tank trucks from their plant, and shipping to the Gulf. We bought none from Matthews Refining Company, and none from Utah Refining Company.

We bought a little from Premier Oil Refining Company, from Mr. Dason down at Longview, Texas, prior to

1935, and we bought some during 1935, but in 1936 we could not get any of this gasoline for 7 or 8 months' time because he told us that he had large orders. They 461 were shipping a part of it to the Gulf and part of it he was selling, he said, to the majors. We inquired from Premier from 3 to 4 times a month during that 7 or 8 months period in 1936, and we received the answer that it had no gasoline to quote us.

Out of that list of 22 companies I have named over half that we had business with in substantial amounts before March 1935, we were able to do substantially less business with after March 1, 1935, for the reasons I have stated.

We bought practically no gasoline after 1934 from Champlin Refining Company. Prior to 1934 we bought odd lots of gasoline from time to time, but we never considered them a large supplier of gasoline. We did not try to buy from them after March 1, 1935. Champlin has a lot of jobber contract customers and sells a lot of gasoline locally and through a pipe line up to Superior, Nebraska, from Enid, Oklahoma, and they told us their gasoline offerings were pretty well taken care of on that account.

We bought none from Eason Oil Company.

We bought frequently from Bell Oil & Gas prior to 1935. During 1935 and 1936 we still bought some gasoline from them, but when we asked them for larger quantities, say 25 to 35 cars at a time, they told us twice in 1935 that they were sold out and had large orders going to the majors.

462 We were never attempting to buy in odd lots, partial tank cars, or anything like that. We buy nothing less than 1 tank car at a time. That is the smallest unit we handle.

We bought from Panhandle for at least 10 or 15 years. In 1935 and 1936 we tried several times to get some fair quantities of gasoline, 25 to 35 cars, and were informed several times that they were sold up and had quite a lot going to the Gulf and to the majors.

We bought from Olney Oil & Refining Company for many years, and we continued buying during 1935 and 1936, but only small quantities of less than 5 cars each. They advised us that they were in on a program of shipping to the Gulf and also to the majors, several times during that period.

We have bought from Omar Refining Company, but we did not consider them a regular source of supply. We knew they had certain contracts which took the major part of their gasoline, and consequently we deemed it was useless to ask them in 1935 and 1936.

Before 1935 we bought many times from Cushing Refining & Gasoline Company and considered them a good source of supply for us, because the president of their company and I used to work together. Several times when we came in 1935 and 1936, we were told that they had made large commitments and were in what they stated to be a buying program of the majors.

463 We did business regularly with Waggoner Refining Company for more than 10 years. But during 1935 and 1936 they were in on a so-called major buying program, and several times we could not get the quantities we needed.

What I have said about Waggoner applies to Taxman Refining Company.

We did very little business with Rock Island Refining Company. Prior to 1934 we did, but after 1934 we did not, because they had a great many of their own outlets, and consequently we figured they didn't have any gasoline to offer us.

Q. Dickey Oil & Refining Company?

A. We bought very many years from the Dickey Company in and prior to 1935, and also after 1935 or 1936, but we met with the same response there when we tried to buy two lots of 25 cars each during 1935 and 1936,—that they were committed on a large number of cars on a buying program with the majors.

Mr. Donovan: I object to this characterization for this reason; the charge here is a conspiracy to fix prices. No such attempt has yet been made to establish any such agreement. I object to any such testimony at this time until such proffer has been made.

464 Mr. Lewin: That is what we were attempting to prove.

Mr. Donovan: I move to strike out the part of the answer relating to buying programs.

The Court: Objection overruled. Exception allowed.

We bought from Dickey for several years prior to 1935 and have bought during 1935, 1936 and up to 1937. And the Dickey Company has sold out to another company and we are still buying from them. In 1935, when we were looking for 25 cars of gasoline in that territory, on a couple of occasions, they told us that they were sold up because they were supplying a major buying program. The sales manager of the Dickey Refining Company told me.

Mr. Donovan: If it please the Court, in view of your Honor's ruling, I ask your Honor to instruct the jury that these statements of the witness that any of these independent refiners now referred to told him that they were supplying a buying program, I ask that you instruct the jury that any such statement be disregarded as not binding upon any of the defendants here on trial before you.

Mr. Lewin: Until the connection is shown.

Mr. Donovan: I am making that objection now, and I ask that you instruct the jury to that effect.

465 Mr. Crawford: Of course the time to make the objection was when the question was asked, and counsel let these questions go uninterrupted clear through thus far. Certainly to strike out testimony he has not objected to is something that is not known.

Mr. Donovan: If it please the Court, I could not tell from the question what the answer of the witness was going to be. I now repeat my request that the jury be so instructed, in view of the present answer of the witness.

Mr. Lewin: The Government position is this. We proffer to show, and will show by later evidence that these companies, through their agents who have made those statements were co-conspirators in this indictment, and therefore their statement is a part of the res gestae and is admissible against the other conspirators.

The Court: For the time being I will reserve the decision on that motion. I want to go a little bit further into this. I will reconsider it. Your motion was to strike out his answer.

Mr. Donovan: In regard to the buying program. Do I understand that the answer still stands, your Honor?

466 The Court: It does, until I rule otherwise.

Mr. Donovan: May I take an exception, for the refusal so to instruct the jury?

The Court: Yes, you may.

I have testified as to my attempt to buy from these refiners. We had those conversations directly with some of the officers. We communicated with them principally by telephone; that is our method of doing business principally.

By the Court

Our office is in Chicago, and when we telephone we always ask for some individual in the company. They are person to person calls. We usually asked for the man that handled the sales of the company who had previously sold us products for a long time. In the East Texas field, when I was down there, naturally I talked with every one of them personally. I was down there in September 1936; also, I think, in July 1935.

Mr. Donovan: May it please the Court, I renew my request upon the further ground that it appears from the statement of the witness that it is a relation of a past event, and it does not appear that this was in the course of the conspiracy alleged in the indictment and in furtherance of that conspiracy.

467 The Court: Objection overruled.

Mr. Donovan: My exception. So that I will not be misunderstood, I am asking your Honor to instruct the jury to the effect that this shall not be considered as binding upon these defendants who are here on trial before your Honor, and I take an exception.

The Court: Proceed.

Mr. Lewin: We are agreeable to that instruction subject to our connecting it up; subject to our showing evidence here that these persons who made the statements are co-conspirators, which we expect to do by evidence aliunde.

Mr. Donovan: I have my exception, your Honor.

The Court: With counsel's statement that he intends to tie this up with additional evidence, we will let it stand for the time being.

Mr. Donovan: Then I merely suggest to your Honor, in view of all that is transpired, I am asking your Honor to give that instruction to the jury that I have asked, that in view of what counsel has said, and what has transpired, all is prejudicial and against the right of these defendants.

The Court: Proceed. Motion is denied. Exception allowed.

468 We bought from Danciger for several years from their refinery at Pampa, Texas. They moved their offices to Tulsa, Oklahoma, and during 1935 and 1936 we did not contact them on any gasoline. I don't recall any particular reason. We just passed them up.

We were buying from Shamrock Oil & Gas Company prior to that time, and have been buying up to the present time. In 1935 and 1936 I was told several times by Mr. Snyder, when he was in our office twice during 1935 and at least once in 1936 and we were then discussing purchases, that at that time they had large commitments with the major buyers. Mr. Snyder is sales manager of that company.

We bought considerably before 1935 but very little afterward from Wilcox Oil & Gas Company. We rarely contacted them.

I don't just at the moment recall any other independent refiners in the field with whom I had similar experiences.

I notice a correspondence between the prices for the same grade and quality of gasoline in the spot market from these independent refiners up to the Mid-Continent field with the prices for the same quality and grade of gasoline purchased in the East Texas field. We bought for several years out of the Mid-Continent field and in the East Texas field at identical prices. Assuming a freight differential, which is approximately 14 points, if it were 6¢ in the Mid-Continent field and we buy the same grade of gasoline in the East
469 Texas field, it would be 6¢ plus that differential. The normal differential is simply a freight differential.

In our experience the Mid-Continent and East Texas markets are practically the same. Very seldom different during the last 5 years up to the present time. We can buy in East Texas just as cheaply as we can in the Mid-Continent, and vice versa.

There were two reasons for the decline in the volume of our business in the last few years: First that so many jobbers took contracts with the majors and semi-majors for all of their gasoline. The second, that we were unable to get all the gasoline that we could have sold on account of the major buying program at high prices.

I am a member of two marketers' associations.

Mr. Donovan: If the Court please, so there be no mistake, as I stated before, my further objection was that the testimony of the witness, in so far as this period is concerned, is only a narration of the past events.

Mr. Lawton: I understand any objection made is an objection for all defendants. Is that not correct?

The Court: Yes.

Mr. Lawton: This witness is not testifying to any associations with any independent refiner, but he has now stated as a conclusion that the reason he

could not buy gasoline was because of a buying pro-
470 gram of the majors. That is entirely his conclusion, and I move to strike it out because it is a conclusion of the witness.

The Court: He is relating what dealers in gasoline told him when he endeavored to buy from them. I think it is a statement of fact. Objection overruled.

Mr. Lawton: May we have the exception?

The Court: Yes.

Mr. Donovan: Then, if I have not already done so,—but I thought I had—I move to strike out the testimony of the witness upon the ground as stated by myself and General Lawton.

The Court: Again, your motion is denied. Exception allowed.

I am a director of the Illinois Petroleum Marketers Association, which has its principal office at Springfield, Illinois. I am also a member of the National Oil Marketers Association, which has its principal office at Washington, D. C.

Paul Hadlick, Secretary of the National Oil Marketers Association in Washington, D. C., on complaint of several jobber members, lodged a complaint with the Department of Justice regarding the major company buying.

471 *Cross-Examination by Mr. Donovan.*

I have been down in the East Texas field many times and am familiar with it. The last time was in September, 1936, when I spent close to a week or ten days down there. Before 1936, I recall I was there in July, 1935. I am not positive as to that. It wouldn't be fair to say that I have been there some time in each year over a period of 5 or 10 years. In 1934 I wasn't in the East Texas field. However, I was at Shreveport, Louisiana, which is close to it, and saw a number of the refiners.

I have driven through the East Texas field. I had to drive through it in order to get to the sales offices of the refineries. I feel that I am very familiar with the conditions in both the Mid-Continent and the East Texas fields, as far as marketing goes, but not as to the details of the mechanics. I know how oil is produced and how it is refined. My business required me to know something about it. I have seen thousands of wells in operation. I also have seen refineries in operation.

Usually if new oil is found, a great many derricks are
put up. Everybody is very anxious to get oil as quickly
as possible in order to get their money out of the well be-
fore the pressure is exhausted. I heard one other reason,
that they wanted to pay their stockholders, and then make
a little money for themselves. The natural procedure
472 is for the oil to come from the other property to the
well of the first man in. So they all start in, to get in
there and start their operations. My understanding of
the law of capture is that the man that gets there first gets
that oil. Any oil that he can pump out of that field, no mat-
ter if it is under another man's land, he will get, excepting
for state proration laws.

I saw what is called a seismograph crew working in East Texas. They have certain kinds of electrical instruments, and they explode in some fashion and obtain the reaction to that explosion in the earth. That is as much as I know about it.

I have been in the oil business for 20 years, and before that I was a practicing attorney in Chicago.

When a well is drilled and the oil comes in, as it is called, they have tanks set up in the field to get that first oil. I have seen these tanks built of wood, and I have seen them built of steel; they are small tanks, what they call gathering tanks.

Then that oil is allowed to settle, and it is pumped out in smaller pipe lines to a larger tank, and then, from that larger tank, it goes into the pumping stations, and into the pipe line, and comes to the refining centers.

Settled production is the term given to those wells that
are on the pump. I have heard of the term "stripper
473 wells". My understanding of that term is that they
are usually very small wells that may produce only
from 1 barrel up to possibly 5 barrels in every 24 hours.
When I say a barrel of oil, I mean 42 gallons; that is the
standard in the oil business.

When the oil is out it is moved from Tulsa, Oklahoma, just using that as an illustration, from these large tanks it is pumped into the pipe line; and then there is a pumping station every 35 to 50 miles that keeps pushing it on until it reaches the refinery. And then, at the refinery, it is put into large tanks.

Some of those large tanks hold over 2,300,000 gallons; some of them hold over 3,200,000 gallons; and I am informed there are some now that hold between 4 and 5 million gallons of crude oil.

As to whether or not it is possible to have sufficient ca-

pacity of the tanks in the field to take care of the production, as it is termed, out of the wells, depends upon how the production comes in. If it is only a small well, you can have a tank or tanks that will take care of it temporarily until it is hooked up with the main big tank. I have seen production come in, 1,000 barrels a day, 1,500 barrels a day, and it was called flush production. I was in East Texas only once during the period of their flush production. I do not know whether or not they had capacity there to take care of that flush production in the field, but I
474 understand they did not.

Then this oil comes into these large tanks, usually called 55,000, 80,000 or 100,000 barrel tanks. Those oil tanks are connected so that the oil is fed into the stills or whatever kind of apparatus they have for refining. I have not had any experience in refining except what I have discovered on my visits to refineries. We have a bulk plant at Riverdale, Illinois, that has over 7,000,000 gallons capacity in 20 different tanks; and we have been thinking seriously for several years of building a refining unit at that plant. With that in mind, I have made some study of refining methods.

I have heard the term dumping used in the oil business. I know one meaning, dumping of fuel oil at times when stocks were heavy; also dumping of gasoline at times when stocks were heavy. Years ago the term "dumping" was also used in this sense: if a refiner did not have an outlet for his gasoline and he moved it to market without a customer, he sold it at whatever price he could get for it, even though it was below the market. I don't know if it is still used. We haven't come across anything like that for years. I think a fair definition of dumping is selling below cost.

It is my understanding that pipe lines which go across state lines are regulated as common carriers by the Interstate Commerce Commission, and they publish rates,
475 and must carry products for anyone who will pay the rate.

We make our profit by buying gasoline and reselling it at a higher price. It is not always the case that the cheaper we can buy it the more we can make, because we figure that a certain margin is all we want on that gasoline.

For instance, if we bought it at 1¢ a gallon under the market, we would not go ahead and try and get ¾¢ a gallon from our jobber more than what our ordinary margin is. That is true in every market, whether rising or not. The way we do business it is not true that the cheaper we can buy it the more we can make on it, because we generally limit our margin on a car of gasoline to ¼¢ a gallon. There are times when we have received higher than that, but then it has usually been in a gasoline where there is a lot of evaporation, in a blended gasoline, and where we would take a loss in mixing and storage.

We do not run any service stations any more. We had 2 service stations several years ago, but haven't had any since that time. We sold both of them.

Jobbers can and do in many cases buy direct from refiners.

At the present time, regular gasoline is 68-70 octane, but a few years ago regular gasoline was not 68-70. It
476 is not the same now as it was several years ago, because improvements have been made in the refining of gasolines, and the refiners have given the public a better grade of gasoline in late years than they did years ago. When I first started in business we sold gasoline that was worse than U. S. motor for a good grade of gasoline; because there wasn't any other gasoline manufactured at that time. We didn't know what octane rating was in those days; never heard of it.

My understanding is that hot gasoline is gasoline refined from crude oil produced in violation of a state proration law. In order to ship gasoline from states having proration laws, the shipper must get an O. K. on the bill of lading, a permit on the bill of lading to ship that out of the state. It is called just simply a tender permit in the business. I knew that there were tenders used during that period. I do not know anything about whether such oil was shipped on false tenders.

I don't recall that we ever bought gasoline as low as 1⅞¢. The lowest figure we ever bought any for was 2⅛¢. That was when the flush production came in, in the East Texas fields. The price of crude oil a barrel ran down to 10 or 15¢ a barrel at that time. The price of crude oil was placed at $1. a barrel about 2 or 3 years ago, I believe.

477 The jobber sometimes owns the service station so that he would get, besides his jobber margin, whatever the dealer would get. The total of the two, according to our information, is usually 5½¢.

The effect of the Iowa plan was to set up many more small businesses than there were before. It started in Iowa, I believe in 1936 or maybe 1935, and then it spread to other states. I know it is so in Illinois in a great many places.

We are only a jobber because we buy everything with our own money, take title to the products, and then resell them. And that, I am told, legally is the definition of a jobber.

"Broker" is the general title applied in the trade to our company and companies similar to it. We do not operate bulk stations, except this Riverdale plant. A jobber operates bulk stations. We do not now deliver to dealers, excepting in tank car lots. The jobber does deliver to dealers. We do not deliver to consumers in tank wagon. A jobber does that.

The independent refiners had no sales organizations in cities like Chicago, Kansas City, Cleveland, Minneapolis or places of that kind, and did not want to put on a separate sales organization at those places.

In later years some of those independent refiners have set up selling organizations, and then closed them up.
478 But there has been in general a setting up of selling organizations that didn't exist before. Also, some of the consumers have now begun to buy directly from refiners, instead of doing it through brokers. That would have its effect in the falling off in our business.

There has been a development recently of cooperatives. I don't know much about them, but I do know that they have increased their purchases of gasoline in various parts of the 10 states, according to the records published by the State Gas Tax Departments. We haven't a single cooperative on our books, to my knowledge. We are in competition with cooperatives; that is, the jobbers to whom we sell are. Between the cooperatives and the jobbers, there is active competition. I don't know whether or not the cooperatives are increasing in number, nor when they started coming in but I have noticed that their gallonage is going up, according to tax reports. We haven't noticed enough of that competition to amount to anything, maybe 10 or 15 cars a month, but it would be a factor in our sales falling off.

We did not buy from certain East Texas refiners during 1935 and 1936.

As to East Texas Refining Company, I talked with Ralph Bishop and Freeman Burford. We tried to buy some gasoline from them at that time, in 1935 and 1936. Mr. Freeman Burford is president of the company, and Mr.
479 Ralph Bishop is sales manager. I don't recall the month in 1935. I do know that in 1936 it was in September, because that is the time I made that long trip through there. I don't know whether or not East Texas

Refining Company was operating on federal tenders at that time. I did not ask about that when I talked to the sales manager.

We did not do any business with Dominant Refining Company to my knowledge. We did not attempt to do so in 1935 and 1936.

We did do business with Cascade Refining Company in 1935 and 1936. They were operating on Federal tender. Mr. Kennedy was the man I contacted. I did not ask them at the time if they were operating on Federal tender. I do not recall the total number of cars we bought during that period from Cascade Refining Company. Our records show both our purchases and our sales. We still have them, excepting for those that are here at Madison.

As to Grogan Oil Company, I talked with Mr. Kostelka, the vice-president and sales manager, and with Martin J. Grogan, the president of the company, who formerly worked for us. That was in September, 1936. During that period that I talked with him we did not get any gasoline from them.

I did not ask whether they were on Federal tender at that time. I did not make an offer to buy any particular amount. I asked whether they could let us have 25
480 cars of gasoline for shipment over the next week. They said, "We cannot, no; we are sold up." We asked the Grogan Oil Company several times. I did not ask the Chicago office whether they were on Federal tender.

We did business with Trinity Refining Company with Mr. Jackson. I don't know whether they were on Federal tender. I didn't inquire. We knew if we got the bill of lading and a notice came from them, they had complied with the Tender Board. We knew that they were on Federal tender only from the bills of lading that came into the office for those particular shipments. They might not be operating on Federal tender later, but they were on the shipments that we got.

I do not recall any business with Tower Refining Company, or having talked with any one there at any time.

We only bought a few cars from LaPren Refining Company during 1935 and 1936. So far as I know, that shipment came through on Federal tender.

We bought from Southport Petroleum Company. I do not recall the number of cars we bought from them. We easily bought 50 cars. We bought a few cars in 1935. It was not 50 cars at one time. Each of those shipments had the bills of lading with the Federal tender noted on them. I do not know what the notation on the bill of lading

stated. I have seen Federal tenders and affidavits on the desk of our traffic man, but I have never looked into
481 that proposition.

(Papers were handed to the witness).

I have never seen any papers like these before. The only thing that we received at the office was a bill of lading with some kind of a rubber stamp on it, and our traffic man, Mr. Alger, was instructed by me that if any bill of lading came in without one he was to bring it to me immediately, and he did not bring any bills of lading. But I paid no particular attention to what was on that bill of lading. I knew that the notice legalized the transportation of the gasoline.

We did only a very little business with the Century Refining Company, a very few cars. We did not consider them very responsible, so we did not try to do much business with them. We got probably 5 or 10 cars from them. We were not refused at any time. We just did not want to do business with them.

We did have a little business with Tyreco Refining Company. I do not recall whether we asked to do business with them over a period or whether we were refused by them.

When I was down there I talked with the men directly in each of these companies I have referred to here. I talked with them by telephone from Chicago and in a number of cases they came up there and I talked with them. On the occasions where purchases were made, those were direct conversations, and also where we tried to make
482 purchases and could not.

We did not do any business with Wabash Refining Company at any time. We did not consider them reliable. That is why we did not try.

The same applies to Texover Refining Company, not because they were dealing in hot oil, but they were a small outfit that we did not think could furnish what we wanted. So we did not call them up.

We did business with Ocean Refining Company during this period. I would say we got anywhere from 25 to 50 cars from them. It is correct to assume that when we did business with any of these people and got the gasoline, there were Federal tenders or permits or bills of lading with those notices upon them, and this as to each of those companies from which we received gasoline.

We did no business with Solvex Refineries. We did not try. That is a new concern that just started in, as I recall it, in 1935, and the output of that refinery was handled by Bell Oil & Gas from Tulsa.

We did some business with Arrow Producing & Refining Company in 1935 and 1936. I do not recall the name of the particular individual with whom we did business there. My recollection would be that we got at least 25 cars from them.

483 I do not recall Chief Refining Company at all. I never tried to do business with them personally. I don't think any of our employees did.

We did considerable business with Gilliland Refining Company. By "considerable", I would say I mean better than 100 cars during 1935, and the same in 1936.

So far as I knew, to the best of my knowledge, we never dealt in any gasoline produced from hot oil. Those refining companies, which I called on direct examination, during 1935 and 1936 were complying with the terms of the Connally Act and of the Code so far as I knew.

I did not know that McMurray was not on Federal tenders until June of 1935. I think this bill of lading shows that we had tried to buy from him prior to July, 1935. This shows June 28, 1935. So far as I know, I told you the other day that I had not inquired from McMurray. We wouldn't have done business with him if we knew he wasn't operating on Federal tenders.

I did not make a careful check of what companies were on Federal tenders. The fact that I say that, to the best of my knowledge, I didn't deal with those that were dealing in hot oil, is explained very easily, because when we bought from these various refiners, if they couldn't furnish a bill of lading we would reject the car, and not take it; and to my best knowledge, we had no rejections.

484 We bought indirectly from East Texas Refining Company; that is, we bought through a broker frequently, and we didn't know where the gasoline would be coming from. They would go and place the orders with various refiners. I believe that there were a few cars shipped by East Texas Refining Company on some orders that we had placed with a broker, but I don't recall that they were bought direct.

I did not make the statement that we had been unable to buy any cars of gasoline from Grogan Oil Company in 1935. I said we were not able to buy the quantities from the Grogan Oil Company that we wanted to buy.

My recollection is that we bought from Trinity Refining Company in 1934. I would not recall how many cars we bought at that time. I was not and am not aware that Trinity Refining Company in 1935 was not operating on

Federal tenders. If I knew of it at the time, I wouldn't do business with them.

The proration law of Texas, as we understood it, was where the State of Texas limited the production of each well to a certain number of barrels per day, so the refiner could get only a certain number of barrels from that well to his refinery each day.

When I asked the Grogan Oil Company if they would sell us 15 cars we didn't make a price.

485 If, in fact, Trinity Refining Company was not on Federal tender until the last month of 1935, I would think that would explain in some measure any difficulty we might have had in buying from them at that period.

I testified also that we made some purchases from La Pren Refining Company, and that we bought some few cars in 1935 and 1936. I have no knowledge and was not aware of the fact at that time that the only time between March 1, 1935 and the end of 1936 that La Pren Refining Company was operated under Federal tender was during the months of May and June, 1935. If La Pren was not operating under Federal tender, excepting during the months of May and June, 1935, that might be a reason why we were not doing business with them.

I did not know as a fact that the only time the Southport Petroleum Company was on Federal tenders, operated on Federal tenders, was from March to December 1935. If Southport Refining Company were not on those Federal tenders except between March and December 1935 and I knew it, I would not have an opportunity of buying there outside of that period.

To my knowledge we did no business directly with the Matthews Refining Company. I do not know whether or not Matthews Refining Company was on Federal tender at any time between March 1, 1935 and the end of 1936, except during the months of September and October, 1935.
486 If I had known at that time, I would not have done business with them, and they could not have sold us.

It is my recollection that we did no business with the Utah Refining Company. I do not know whether or not Utah Refining Company was operating on Federal tender at any time during 1935 or 1936. I do not know that the only time that they were operating was during the month of April, 1935. If I had known, I would not have done business with them, and they couldn't have done business with us.

I never heard of Acme Refining Company, Alton Refining

Company, American Oil Products Company, or Artex Refining Company at Artex.

As to Beacon Oil & Refining Company, I know there is a refinery up near Beacon, but we never bought anything from them, [illegible] don't recall that we ever tried to buy any from them.

We bought from several brokers in East Texas. One was Bradshaw of Dallas. We bought from him in 1935 and 1936. Richardson was another. He was in Tulsa part of the time and in Gladewater part of the time. There may have been more but I don't recall them just now.

We got some shipments indirectly from Primrose Petroleum Company. By "indirectly" I mean that we purchased from some broker, and he bought from Primrose and shipped to us.

487 I don't recall Blackstone Refining Company, Overton, Texas, nor that we bought 8 cars from them in October, 1934. I never tried to buy from them in 1935 or 1936.

I do not recall Blue Diamond Refining Company, Gladewater, Texas, Big Sandy Refining Company at Big Sandy, Texas, Carnation Refining Company, or Radio Petroleum Company.

I have heard of Chief Refining Company. I do not recall of any direct dealings with it. There may have been a car or two shipped by some broker, but I do not remember when it was. We were not refused in 1935 by Chief Refining Company, to my knowledge.

I did not try to buy from Condor Refining Company in 1935 or 1936. I never heard of Condor Refining Company, Consolidated Refining Company, Crescent Refining Company, Culver Refining Company, Friar-Topping Company, Gladewater Refining Company, Great Production, or Hub Refining Company.

If Herzog Petroleum Company is the same Mr. Herzog that is with Kilgore Petroleum Company at Kilgore, Texas, we may have made some purchases. He was doing some brokering, and he was also selling the products. We did some business with him in 1934 through Kilgore Refining Company, I believe. We didn't try to do any business through Herzog Petroleum Company at any time after that, that I recall.

488 I do not recall Keystone Refining Company at Gladewater, Texas. I didn't buy 1 car from them which was consigned to me at Acme Petroleum Company in March, 1934, to my recollection.

I believe we tried to buy from Kilgore Refining Company in 1935 and 1936. I know I saw Mr. Herzog in Kilgore, Texas, in September. I didn't ask whether they were on tenders in 1935 and 1936. Nothing was said about tenders.

Mr. Herzog, if he could buy from other refiners, would tell me, "I will try and get you something."

I would frequently talk to these men and say, "If you haven't anything, tell me where I can get something." They were friendly with us, and their sales managers would say go to such-and-such refiners, or I will get it for you, and they would do so. Even though we dealt with one man to buy it would be shipped by other people. I do not recall that I asked Kilgore if he would ship or sell us anything, and he refused me. I never heard of Kilgore-Topping Company of Kilgore, Texas, or Kiltax Refining Company, or L. & G. Refining Company, or Lake Refining Company.

We did business with Lone Star Refining Company. I do not recall whether or not that became Trinity Refining Company of which I have already spoken. We did not follow the changes in the corporate names down
489 there. There were a good many changes. I doubt whether some of them were in business.

I do not recall Modern Refining Company, nor the Outdoor.

If Overton Refining Company is the same plant as Hurricane Company at Overton, Texas, we did business with them in 1934. If you are speaking now of the same plant that Grogan Oil Company controls, we have done business with them, but not for several years, through Grogan Oil Company; not direct.

I remember Panama Refining Company, but I do not recall as to whether we ever did any business with them. To the best of my recollection we did not try to buy from them in 1935.

I never heard of Pelican Refining Company at Gladewater, Penant Refining Company, nor Badger Refining Company.

We have done business with Shore Line Refining Company at Shreveport, but not in Texas. I never heard of Shore Line in Texas.

I never heard of Sterling Refining Company in Gladewater, nor of Solarine Refining Company. I don't know whether that was taken over by Tyreco Company. I haven't any recollection that we purchased 2 cars in March, 1934, and 2 cars, in June, 1934, from Solarine. If we bought from them, it was indirectly.

490 We bought from Taylor Refining Company. My recollection is that it was in 1934. I think some cars came through in 1935. Mr. Kahoon was the manager down there.

My recollection is that we bought in 1934 and 1935 from Texas Oil Products. I do not believe we did in 1936, although we may have bought some. My recollection now is that we did not. We dealt there with Mr. McCallium. I have a letter to him written September 23, 1936. I had no difficulty in doing business with him, but I could not get enough. We did not discuss prices, because he didn't have anything to sell me. He told me he didn't have any. He told me he was sold up. He didn't say he would not sell us. He did not tell me he could not sell us because he was not on tender in 1935 and 1936. I knew nothing about whether he was or was not on tender. If he were not on tender he could not sell us.

I do not recall Texas Refining Company at Kilgore. So far as I know, we never did business with them.

I do not recall Tower Refining Company at Overton, Texas.

I never heard of Texas Refining Company at Willow Springs, Texas, Texas State Refinery, Kilgore, Texas, Texover Refining Company at Overton, Texas, Union Oil Refining Company near Longview, Texas, Union Refining Company at Willow Springs, Texas, Upshur Re-
491 fining Company, nor Linzie Refining Company at Gladewater, Texas.

I think that, under questioning from the Government counsel the other day, I was asked whether I attempted to purchase from 14 refineries operating in the Mid-Continent field. I didn't say Champlin was not a large supplier of gasoline. Champlin is at Enid, Oklahoma; they are large refiners, and make a lot of gasoline, but our understanding is that a great portion of that gasoline is under contract, and they ship a lot of it, I believe you will find in my answer, by pipe line to Superior, Nebraska, and from there it is shipped out, as I understand it, in the tank cars and the tank trucks. At any rate, I did not intend to say that Champlin was not a large supplier of gasoline.

We inquired several times from Mr. Snyder of Champlin and were told that they did not have any gasoline to offer. He did not say they were selling to jobbers; we knew that. What we wanted was gasoline below the price the jobbers were paying. We would have to have it, because we in turn sold to jobbers. We were in between the refiner and the jobber. Our customer was the jobber.

We knew that we did not need to ask Champlin if he was selling to jobbers; Champlin knew we were a broker. If he sold to us, he would have to sell at a lower price than he sold to jobbers. One of those jobbers, 492 Champlin's customer, was located at Galesburg, Illinois, and some up in Wisconsin. We did not keep any particular record of them, but we would frequently, in getting jobbers, find out they had a Champlin contract.

My recollection is that during 1936 we did not buy any gasoline from Eason. We may have bought some other products, or we may have bought a few cars, I am not sure about that. I don't know what the daily capacity of Eason was.

We didn't ask these various companies what their capacities were or try to find out what the daily capacity was. There is a list published in the Oil and Gas Journal giving the name of the refinery, the barrels capacity, and the barrels they run. We follow that list more or less regularly to determine which refiners we shall contact.

My recollection is that I contacted Joe Whittaker of Omar Refining Company once. He had called me from Milwaukee. Omar was supplying Dixie stations with quite a lot. The same reason applies to my testimony about Omar as I said applied to Champlin. It was serving jobbers. To sell to us it would have to sell at a lower price than it would sell to jobbers. Omar knew that. My understanding is that it is selling to jobbers in Wisconsin.

In the August 12, 1937 issue of the Oil & Gas Journal Omar Refining Company is listed as having a daily capacity of 4,000 barrels of crude oil, and in August that 493 year, 3,500 barrels, and in July, 3,000 barrels. That means a refinery capacity of 4,000 barrels of crude oil capacity per day.

We have bought from the Rock Island Refining Company off and on for several years. I don't recall just what purchases were made in 1935 and 1936, but I doubt if it was very much, if any. We inquired from Mr. Glover, sales manager at that time, several times. I imagine that having their own jobber outlets, they didn't need our services as a broker. It is probably right that I hoped they would, but they didn't and I knew if they sold to us, it would have to be below the price at which they sold to the jobbers. I don't know if Rock Island Refining Company were selling through other brokers or not.

We attempted to buy from Danciger during 1935 and 1936. I don't know whether in 1935 and 1936 we bought 26 cars from Danciger. The records would show the exact number. We did buy from them. It is correct that we bought from Danciger for several years from their refinery at Pampa, Texas. And they also have a refinery at Longview, Texas. The same company would ship from either plant. We may have gotten a few cars outside of these 26 cars from Danciger, but I don't recall any. Whatever the record shows is correct.

These 14 refineries, concerning which I was asked questions, were not the only refineries operating in the Mid-Continent field during 1935 and 1936.

My recollection is that we purchased some gasoline from Vickers Petroleum Company of Wichita, Kan-
494 sas, during 1935 and 1936, but we purchased principally fuel oils from that company. I believe we did try to purchase some gasoline from that company in 1935 and 1936. I don't recall whether we purchased any from that company during those years. We have bought from Vickers Petroleum Company for over 10 years. As to whether they sell through brokers or direct to jobbers, all I know is they sold us during that period.

We may have purchased a few cars of gasoline from Black Gold Refining Company of Oklahoma City, in 1935 and 1936, but our understanding was that their gasoline was sold principally around Oklahoma City by tank trucks. I don't know who bought it, but it was shipped out by tank trucks. We made some attempt to buy from them, but were told that they sold most of their gasoline in trucks around Oklahoma City. We have done very little business with them. I couldn't say if it was in 1935 or 1934.

I don't recall any purchases of gasoline from Anderson-Pritchard Oil Corporation in Oklahoma City in 1935 and 1936. I talked to Paul Mayhall, sales manager of that company, whom I knew very well, several times at Chicago during that period, and asked him to let us have any over and above what he was selling to others. I knew that he was selling to jobbers. I asked him to let us have what offerings he could, and my recollection is that during no time during 1935 and 1936 did we get a single offer
495 of a car of gasoline. In 1935 and 1936 I made further requests of him every time I saw him. During this

period, I saw him 5 or 6 times. I had lunch with him every time he came to Chicago.

He could sell us only under the price that he sold to his jobbers. There was no use discussing price with him. He didn't have any to offer. As to whether he knew that he would have to sell us below the price at which he sold to his jobbers, I don't know what he knew. I know what I knew. He knew I was experienced in this business, and he knew what I was accustomed to get.

My recollection is that we purchased from Sun Ray Oil Company prior to 1935, and kept purchasing from them right along. I would say we purchased from them in 1935 and 1936.

We didn't purchase from Lion Oil and Refining Company at Eldorado, Arkansas; we couldn't get any from them. I don't think we have done any business with them for 4 or 5 years prior to 1935. I don't know and made no inquiry whether other brokers did business with them during that period or subsequently. I know they had some jobbers of their own in the form of jobbers, because I saw their signs through Arkansas.

As to whether or not they were using other brokers, there was at one time one company—I believe it was the Petroleum Exchange in Chicago—that had a call on some of their products, but what number or to what extent, I couldn't answer.

496 I would say that ordinarily it is a fact in the business that if a refiner has sufficient jobber outlets, it isn't necessary for him to go to a broker.

I tried to buy from Atlas Refining Company at Shreveport several times. In fact, in September, 1936, when I was there, I saw both Mr. Jackson and Mr. Hardwick. I know that at some prior years to 1935 we had done some business with them. I don't know whether 1933 is the year or not. I do not know that they went into bankruptcy and closed down about September, 1936.

We didn't purchase anything from Root Refining Company for several years prior to 1936.

We had bought from Eldorado Refining Company, Eldorado, Kansas, prior to 1935. We were buying from them right along, and I believe we are still buying from them, but principally fuel oil. There may be a few cars of gasoline, but very little.

We bought none at all from Cosden Refining Company. They have what we understand is an exclusive sales agency in Chicago.

We bought from Johnson Oil Refining Company for several years from time to time.

We had bought gasoline from Henry H. Cross Company at Chicago prior to 1935. We called them several times in 1935 and 1936 and tried to buy. They were selling some of it directly to jobbers, and some of it not.

497 We had bought from Sun Oil Company at Yale, Oklahoma, prior to 1935. We tried to buy from them in 1935 and 1936. We were sometimes able to buy from them, sometimes not. Sometimes yes and sometimes no was true in 1934, also, I would say. That is always true, so it was nothing unusual.

While Russell Refining Company was operating, we bought some products from them. They were at Russell, Kansas. I don't remember the date when they ceased to operate. I don't believe they are operating now by the name Russell Refining Company.

A number of years ago we did business with McMillan Refining Company in Arkansas. I don't recall any at all in 1935 and 1936. I don't recall trying to do any business with them.

We did business with Falcon Refining Company in Kansas. We continued to do business with them in 1935 and 1936. We got both gasoline and fuel oils from them.

I don't recall any dealings with Western Refining Company at Chase, Kansas.

We haven't done any business with Major Petroleum Products in Oklahoma City. We never tried to do any business with them, to my recollection.

I don't recall any business with Monarch Refining Company at Oklahoma City. I don't know the concern.

I don't know Paramount Refining Company at Oklahoma City, or Triangle Producing and Refining Company at Oklahoma City.

498 We have done some business with Wickett Petroleum Company at Wickett, Texas, through Central States Oil Company of St. Louis. My recollection is that we did do business with them in 1935 and 1936.

We did some business with Texas-Pacific Coal and Oil Company at Fort Worth. There was some change in the set-up of the company, and up to the time that change occurred, we had bought gasoline from them. I don't believe there was any business after that time. I don't recall any attempt to do any business with them.

We bought principally fuel oils and distillates from Kanotex Refining Company.

The most of our distributing business is in Illinois, Indiana, Wisconsin, Michigan and Iowa; that is, the bulk of the business. I haven't checked on whether Illinois is our biggest. We have records for that.

We bought from Waggoner Refining Company in the year 1934. I don't know the dates in that year when we purchased.

(Witness examines letter handed to him by counsel. This letter marked Exhibit 4 for identification.)

I never saw that before. Our name is not mentioned on that letter. I do not know whether or not, as a fact, Waggoner Refining Company completed arrangements whereby American Petroleum Company would handle the exclusive sale of their products in Illinois, Indiana and Ohio. I did not say that I never received such a letter from Waggoner Refining Company. I don't know whether I did or not.

499 I do not know a Mr. D. J. Gray of Waggoner Refining Company. I don't recall ever having talked with him on the phone. The man we are dealing with now is Mr. Cocanower. We are doing business with Waggoner Refining Company now. We buy gasoline from them.

My recollection is that that buying program that I referred to in my testimony about our course of business with Waggoner started sometime in 1935, and continued through 1936. I couldn't answer whether it is a fact that we did not make a purchase from Waggoner Refining Company from October 23, 1934 until the date I say the buying program started without checking up on our records.

My statement was that Standard Oil of Indiana did more business than any other single company in the ten states I mentioned. This was based on information from the reports we get on tax payments. I don't know exactly what percentage of business Standard of Indiana does in these 10 states.

I would classify Champlin as independent, in spite of the fact that they have some production. I do not know how much. My understanding of where to draw the line, in order to classify a company as a semi-major or an independent, would be as to the size of the company. If Champlin Company produces, refines and distributes, as a larger company does, I still would call it an independent. Mr. Champlin was the man who ran the company, and practically owned the majority of it. That 500 would be my reason, in the Champlin case, for classifying him as an independent.

Cushing operates two refineries. I don't know whether they have production or marketing.

I don't know anything about the production of Eason Oil Company, or if they have stations. So I can't classify them very well except on the same basis as my answer about Champlin Company.

Waggoner Refining Company has large production in Texas, and do their own refining. I don't know whether they perform all the functions of a major company. My answer would be the same as to Wilcox Oil & Gas Company.

I described the trend of gasoline prices between 1930 and 1935 as a series of peaks and valleys. Then beginning in March, 1935, it went up, and then levelled off. That might allow for slight variations. I can now give you the exact prices from the Journal of Commerce from January 1, 1936 to December 21, 1936, showing just what I meant. I testified to my best recollection at that time, and I now have the figures.

The East Texas oil field came in about 1930. My understanding is that that is supposed to be the largest single oil field ever discovered.

When East Texas field first came in between 10¢ and
15¢ was the information we had as to what crude oil
501 could be bought for. At the same time, the price of
gasoline dropped down to 2⅛¢ a gallon. As I remember it, that was at a time when there were no restrictions of any kind in moving gasoline made from this hot oil in interstate commerce. I don't know whether it is true that there was much more hot oil produced in Texas during the months from January to July, 1933, than in the preceding year and a half, because I didn't check any records. That was the general report current through the trade, as I recall it.

The prices of gasoline went up after the regulation but I don't know what the figures were.

I read that, beginning in August, 1933, and running through for some months, there was a period of litigation in Texas in which injunctions were brought against the application of these regulations.

I haven't any recollection as to the definite dates on which there were price changes. I told the Court and Jury that prior to 1935 there were peaks and valleys. What I intended to convey was that prior to 1935, that is, in March, 1935, there were more changes, larger changes in the prices of gasoline, and more frequent changes in the prices of gasoline, than occurred during 1935 and 1936. That, I believe, was the question asked, and that was intended to be my answer.

In years back the fluctuations in prices would run
502 1, 2 and 3¢ per gallon, over a period of a year. There were frequent fluctuations, and I know of no period—I am saying this honestly—within the past 10 years where the market remained so constant as it did during part of 1935 and 1936. I cannot give you the dates or the information, but I am giving you my general statement.

I do not know any period prior to March, 1935, when there were in existence any effective Federal regulations such as under the Connally Act, over a long period of time. I don't know about the Federal restrictions. I don't know as to whether a time came when the Federal tender boards were disbanded in January, 1935. I heard of the decision of the Supreme Court in the Panama Refining case through the newspaper. I read it. I did not follow it to the extent of knowing that as a result of that decision the Federal tender boards were out. My understanding is that the Federal tender boards were operating under the law which the Supreme Court declared unconstitutional. I did not follow at all as to whether after that decision, for a period of 2 months, there was no Federal law which forbade the shipment in interstate commerce of illegal gasoline. I don't know about the production of crude oil in January and February, 1935.

I do not recall that the price of gasoline in East Texas in that period decreased from 4⅛¢ to 3⅜¢ per gallon.
503 I do not recall whether there was a decrease. I have no recollection now. My understanding was that about March 1, 1935, the Connally Act became effective in East Texas. My understanding is that since the Connally Act gasoline made from illegal oil has not been permitted to be shipped in interstate commerce. I would say that the enforcement of that law has resulted in preventing the shipment of gasoline made from illegal oil in East Texas. I do not know it to be a fact that during the period of 1935 and 1936 the illegal production of crude oil in East Texas has been reduced, but only what I have read occasionally. I do not know whether the volume of gasoline moving in interstate commerce from East Texas has been reduced as a result of the reduction of illegal crude, because I don't know what was shipped before or after.

We have been buying gasoline in the manner that I have described below the cost to the jobber, all during the time we have been in business, practically.

I have testified that we have purchased gasoline for as little as 3⅛¢ a gallon in 1935, f. o. b. Group 3, Oklahoma.

I do not know what the posted price for crude oil was in 1934 without looking up the records. The posted price of Mid-Continent crude Kansas, Oklahoma, for the first part of 1935, was $1 per barrel for 36 gravity. The Journal of Commerce usually printed the correct crude oil quotations.

504 On January 9, 1936, Stanolind and Sinclair advanced the Mid-Continent crude 10¢ per barrel. I got that from our office records. Frequently the reporters on the Journal telephone us and say that tomorrow there is going to be an advance, or today different companies advance so many cents per barrel, and that same day there was an advance in East Texas crude of 15¢ a barrel. I read from my records that the Sun Oil Company advanced East Texas crude on January 9, 1936.

The Mid-Continent field is a district in Oklahoma and Kansas where crude oil is produced, and it is grouped by the companies who buy oil in that particular field. They take a number of points where crude oil is produced, and they group them together, and they call that the Mid-Continent field, and say, "We will pay so much a barrel for crude oil coming out of that particular field of a particular gravity." If a lower gravity they pay less. They have each gravity from maybe 29 or 30 up. For each one or two points they will add a little to it. So that, for instance, today the Mid-Continent crude at low gravity is 95¢ and the high price is $1.42 per barrel. That is what they pay at the well. There is a gathering charge for that. If somebody wants to bring it to Chicago, they have to pay the pipe line charge for that crude from the pumping station to the place where they want that delivered, in Chicago, or East Chicago, or Whiting, or whatever place it may be.

505 The question of whether or not the price of crude would rise or fall is a very important question in the oil industry.

I know nothing about crude stocks. It doesn't affect our business. It affects our business to the extent it affects the price of gasoline. Gasoline prices will either go up or down when crude changes. The price of gasoline is an important element in our business. We go principally by what we are able to buy for each day, irrespective of what changes there may be.

Crude oil may remain the same for months, and the prices of gasoline may vary during that period. We are then only concerned with day to day trading at which we can buy gasoline and at which we can sell gasoline. Ordinarily, if the price of crude goes up, we expect an advance in the price of gasoline, and if it goes down, we expect a reduction in the price of gasoline.

We are watching only changes in prices that occur as a rule. We watch the price in anticipation of the changes. I would say that this territory differs from the general territory very materially in the respect of the amount of gasoline sold in December, 1935. There are plenty of states down South where gasoline from East Texas and the Mid-Continent field is shipped all winter long. They have no winters, and that same gasoline piped up to 506 northern Wisconsin, when you are snowed in, is absolutely out of place. But whether the consumption was in the Mid-Continent, or whether it was in the South, if it were a large consumption it would ordinarily affect the price.

(Copy of Order dated October 18, 1934, establishing Federal Tender Board, with attachments consisting of tenders for crude petroleum, Forms 1, 2 and 3, and tender for protection, Form No. 4, received in evidence as EXHIBIT 6.)

(Copy of Order dated October 22, 1934 appointing members of Federal Tender Board received in evidence as EXHIBIT 7.)

507 WALTER H. WINGROVE, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I am an oil jobber from Sheboygan, Wisconsin. I have lived in Wisconsin all my life. My company, Wingrove Oil Company, is a partnership located in Sheboygan, Wisconsin. I am one of the two partners. The partnership was formed in July, 1931.

Prior to that time I was a commission agent with Wadhams Oil Company.

Wadhams Oil Company was acquired first by Vacuum Oil Company. Shortly after the consolidation between

Socony and Vacuum I left the employ of Wadhams Oil Company to go into business for myself.

The function of an oil jobber is receiving petroleum products in tank car lots and distributing them to resellers, consumers, the farm trade, or anybody with a larger storage than just a tank on his automobile. Some of these persons may have their own retail outlets. We purchase in tank car quantities, and store the gasoline in bulk storage plants when it is delivered to us. We deliver from such plants to our reseller accounts or to our consumer purchasers by tank truck.

As an oil jobber we operate only one bulk storage plant. The capacity of that plant is 175,000 gallons
508 of light oils. That would be 20 some odd tank cars.

We distributed about 800,000 gallons of gasoline in 1935 and about 1,000,000 in 1936. 90% of it was so-called regular or house brand gasoline.

The capital investment in our business is approximately $60,000 or $70,000. We own 2 retail stations of our own, and operate 1. We had approximately 15 independent dealer accounts in 1935 and 1936. It may have been a few less in 1935 and a few more in 1936. We do the greater part of our business through independent dealer accounts, and not through our own stations.

From June 3, 1931 to June 3, 1936 we purchased our gasoline from Barnsdall Refineries, Inc. under a contract. The document you show me is that contract.

> (Contract referred to received in evidence as EXHIBIT 615.)

"B Square" is the house brand of Barnsdall gasoline. It is also known as regular.

> (Mr. Chaffetz reads the paragraph of this contract, Exhibit 615, entitled, "Number Five, Price B Square Gasoline.")

To simplify that provision of the contract in my own words, the Chicago Journal of Commerce, in its daily quotations, quotes prices on a gasoline corresponding with that described, and that gasoline would be invoiced
509 to us by the shipper on the date of delivery, the date
of shipment, taking the high and low of the quotations in the Journal of Commerce, and dividing them by two to arrive at the average.

> (Mr. Chaffetz reads paragraph number seven, "Guaranteed Margin.")

That provision means that in case the spot market price arrived at from the terms of the contract did not permit a margin equal to 5½¢, the shipper reduced the price of gasoline to us in an amount to make up the difference, and in doing so set up a debit against us. In case the margin exceeded 5½¢ the contract permitted the shipper to take half of that excess up to an amount equal to ⅜¢. Anything above that they did not deduct from the invoice and again credited that as a credit against this debit. So that the basic price, under this contract, is determined by averaging the high and the low price, quoted in the Chicago Journal of Commerce on date of shipment.

I don't think it is right to say that if the average of the prices quoted in the Chicago Journal of Commerce on the particular day of shipment was more than 5½¢ below the normal prevailing retail price in our area, 510 then only the prices quoted in the Chicago Journal of Commerce determine the prices that we pay.

In the absence of the marginal protection provision the prices quoted daily in the Chicago Journal of Commerce determine the price that we paid, only in case there was no debit on the debit side.

My explanation as far as it has gone, of what this contract meant to me, was true down until this contract expired in June of 1936.

Our new contract with The Texas Company was dated June 10, 1936.

(Contract referred to received in evidence as EXHIBIT 616.)

We received a letter dated December 16, 1936, from our supplier, The Texas Company. This is the letter you show me. I cannot make out by whom it is signed. My signature is also on the letter.

(Letter referred to received in evidence as EXHIBIT 617.)

511 The Texas Company, the other party to this contract, is a defendant in this case.

(Mr. Chaffetz reads the price provisions in the contract, Exhibit 616, which the witness then explained, such explanation is here omitted as the contract provisions speak for themselves.)

This was known as a split contract, a split 5½¢ marginal guarantee contract. By margins I mean the difference between the wholesale laid down price and the retail price; thus, if the margin between the normal prevailing retail price in our territory and the average of the tank car price as published in the Chicago Journal of Commerce doesn't equal 5½¢, then The Texas Company and ourselves split the difference. As an example, if it equaled 5¼¢ we would make 5⅜¢ instead of 5½¢ per gallon.

If the margin which prevailed between the retail price and the published tank car price was more than 5½¢ then the price we would pay would be the average of the high and the low of the price published in the Chicago Journal of Commerce. Then we would pay no attention to the margin at all.

In other words, our price is the average price published
in the Chicago Journal of Commerce as the going
512 normal price of the tank car gasoline to jobbers on
date of shipment.

If the Chicago Journal of Commerce today quoted a tank car price of from 5½¢ to 5¾¢ and if the normal prevailing retail price in our area was 12¢ for the same quality of gasoline, leaving out freight and taxes, we would pay only the spot market price as quoted in the Chicago Journal of Commerce. 5¾¢ and 12¢ would give you a difference of 6¼¢. And under our contract, what we would pay would be the average of the high and low spot market price, the average of 5½¢ and 5¾¢ or 5⅝¢. If the normal prevailing retail price should be reduced to 11¢, then, under our contract, the marginal protection provision would go into operation. We would determine the price that we would be required to pay under our contract for gasoline delivered at that time by splitting the difference. In other words, we would take the average of 5½¢ and 5¾¢, and would find that the average spot market price was 5⅝¢. We would subtract that from the going retail price of 11¢ and would get a difference of 5⅜¢. That 5⅜¢ is less than 5½¢ and, under our contract, if the margin between the normal retail price and the average spot market price is less than 5½¢, then we and the supplying company are to share half of the difference,
which in this case would be ½ of ⅛¢. We get that
513 ⅛¢ by subtracting 5⅜¢ which is the margin, from
5½¢, leaving ⅛¢, and then, splitting that, we would
have 1/16¢. We would add this 1/16¢ to the prevailing margin of 5⅜¢ and would pay 5 7/16¢ for our gasoline on that day.

I obtained my supply from a major oil company because the supply would be a little bit more sure, more uniform, and because I think that an advertised brand of a major oil company has a better consumer acceptance than an unknown brand.

Mr. Chaffetz: Q. I direct your attention to both contracts and tell us, if you will, what your experience under those contracts was during the years 1935 and 1936?

Mr. Donovan: I object to that question as too vague and general and indefinite and immaterial to this issue.

The Court: It is rather general, but we will see what it is.

The Witness: A. Well, assuming that I was going to have a contract with some major company, the contracts work out advantageously to us. They did not work out advantageously to us if we could not have done the same kind of business buying from independents, disregarding contracts, just buying on the open market.

514 Mr. Chaffetz: Q. Did you operate at a reasonable profit during 1935 and 1936?

The Witness: A. We did not.

Mr. Donovan: I object to that question and move to have the answer stricken, as to reasonable profit. That is determined, can be determined upon the presentation of figures, your Honor, and it is not an issue in this case.

Mr. Chaffetz: I am only getting at the question whether he was satisfied or not with the contract or whether he wanted to get a better contract.

The Court: Many things may enter into it.

In 1935 and 1936, we were tied to a contract with Barnsdall so we did not make any effort to obtain a more advantageous contract. When our contract was about to expire, we did make an effort. We got in touch with many of the companies, letting them know that our contract was expiring, and we were open for propositions. I got in touch with Mr. Stacy of Mid-Continent, their state representative; Mr. Walter Hare, their Chicago representative and district manager; and Mr. Fitzgerald. That was about May, 1936. We asked them what kind of a deal they could make with us. Stacy, Hare and Fitzgerald told us what kind of a proposition they could make us. As I can recall, they stated their contracts were
515 the same as other companies were presenting, but they could do a little something for us along the lines of local advertising. They said to me that the kind of contract they could offer us was identical with the kind of contract that other major companies were offering to jobbers at that time.

By the Court

That was the substance of the entire conversation. At that time, they did not submit copies of their contracts to me. They merely stated that the contracts were all very, very similar, or identical. I didn't make any agreement with them, because a salesman of The Texas Company sold me on the idea that it had better consumer acceptance. We are now doing business with The Texas Company.

By Mr. Chaffetz

During the time that we had these conversations with representatives of Mid-Continent Petroleum Corporation, we consulted with Sinclair. We talked to a gentleman by the name of Mr. Hamm, and a gentleman from their Chicago office, whose name I cannot recall, but who represented himself as being in tank car sales. I talked with these men in May, 1936 in our office in Sheboygan. They came to visit us in answer to a letter I wrote to Mr. Carnes, Vice-president of Sinclair Refining Company, in New York, in which I told him our contract was
516 expiring with our present source of supply, and inasmuch as they had no representative along the Lake Shore, I asked him if they would care to talk over a deal with us.

The man from Chicago stated to me that they had two methods of doing business. He said, "Our regular contract policy, or jobber contract proposition, there is no use of going into that, and you know all about that. It is just the same as all the rest." He did not show me the contract.

By the Court:

The conversation was relative to making a deal with us for the handling of gasoline and Sinclair products in our bulk plant and throughout our territory. I asked him what kind of a contract he would offer us, and he stated they had two methods of doing business, one was the regular jobbers' contract, and he said, "You understand what that is." He said, "Our other method of doing business is leasing our plant." He said, "That particular deal I know nothing about, and it will have to be handled through our real estate department." Later on Sinclair sent the head of their real estate department.

We did not have any other conversation with any representatives of Sinclair with reference to a jobber contract.

517 We discussed a contract with Anderson-Pritchard Company.

We discussed a contract with the present Barnsdall Company, of course, with Mr. Lee Potter, Mr. Hanson and Mr. Gluck, representing that company. Mr. Potter represents them in Minneapolis, and I believe has charge of this district. Mr. Hanson has charge of the operations in Milwaukee. Mr. Gluck is, I would say, an assistant under Mr. Hanson, and was at that time.

By Mr. Chaffetz

My discussions with each of these gentlemen, at that time, were with reference to a jobber contract. The place was in our office. I talked to Mr. Potter; Mr. Hanson and Mr. Gluck were not with Mr. Potter at the time I talked to him; and it was along generalities of making a new contract. This was sometime in May of 1936 in our office in Sheboygan. We discussed the deal in general, and they agreed that they would be a little bit more liberal than they had been the past year with advertising, and that is about all. There was very little said about the form of jobber contract that they would offer us. We did not ask Mr. Potter for a different type of contract.

I don't think we discussed the matter with representatives of any other company.

We did have negotiations with The Texas Company.

518 We negotiated our Texas Company contract with a Mr. Crabb. He was the salesman in Wisconsin in charge of the jobbing trade. We commenced our negotiations with him possibly 2 years prior to May, 1936. Those negotiations were all in anticipation of the ultimate expiration of the 5 year contract we were operating under at that time. We had negotiations with him just prior to the expiration of that contract in 1936. Those negotiations between Mr. Crabb and me took place in Sheboygan, in our office.

Mr. Crabb submitted to me a form of contract. That was the form that we later signed. There were only two changes in the form when we signed it. One part of the contract read, in arriving at the prices, it should be the average of the Chicago Journal of Commerce and Platt's Oilgram, Tulsa edition. We objected to the Tulsa edition of Platt's Oilgram because we knew nothing about it; and it was stricken from the contract.

The other change was in reference to the purchasing of motor oils and greases. We insisted on the right to include in the contract that we should be allowed to purchase and advertise a certain amount of Pennsylvania motor oil.

Those were the only two changes. We did not discuss with the representatives of The Texas Company any other type of jobber contract. Mr. Crabb did not make any statements to me with respect to the type of contract that he offered us, and which we accepted.

519 During the period from June 1935 to June 1936, I do recall getting some gasoline from the Great Lakes pipe line in Chicago. That is the north terminal of that pipe line. To my knowledge, that gasoline is shipped from the refineries in Oklahoma by the pipe line to Chicago, and then transported by tank car to Sheboygan.

Wherever this gasoline was shipped from, and by whatever means, which we received from Barnsdall Company between June 1935 and June 1936, under this contract, the freight we pay is based upon Group 3. The district in the Mid-Continent that we all understand as Group 3, around Oklahoma and a part of Kansas, I guess.

Referring to the period from June, 1936 down to the end of 1936, gasoline shipped under our contract with The Texas Company was sent to us from their refinery at Lockport, Illinois. There may be a few exceptions.

On the gasoline that we purchased from The Texas Company, that is delivered to us from Lockport, we pay the Chicago freight rate, but the difference between the Group 3 and the Chicago freight is added to the price of the gasoline, so, laid down, it costs us the same. In other words, we pay a total of the cost of the freight from Group 3, or Tulsa, Oklahoma, to Sheboygan; we pay part of that to the railroad company, covering the transportation from Lockport to Sheboygan; the balance we pay on our invoice to The Texas Company.

520 I am a member of some jobbers' association: Wisconsin Petroleum Association, and National Oil Marketers' Association. We have approximately 300 members in the Wisconsin Petroleum Association. I happen to be the president of the Wisconsin Petroleum Association at present, and a director in the National Oil Marketers' Association.

Cross-Examination by Mr. Donovan.

When we started in business in 1931, we had gasoline gallonage of approximately 500,000. We have increased each year. Now we have a gallonage of 1,250,000 gallons a year.

When I started in business, I found that I had run into a pretty heavily competitive business. But in spite of that fact, during the past 5 or 6 years I have built up my gallonage, and I feel that I have a good business now. When I started, the marketing outlets of these various refineries were pretty well developed.

During some periods there we had price wars while we were operating. The time came, also, when they would guarantee us the 5½¢ guarantee provided for in the contract, and we got that guarantee. And during that time, the operation was, under the contract, that they sold us at a lesser price than the price as reported in the Journal of Commerce.

521 At the time this contract expired, there was due and owing Barnsdall Company from us, as a result of the operation of that contract approximately between $8,000 and $10,000. When that contract expired in June, 1936, we were not obligated, under the terms of the contract, to pay that back. We didn't pay that back. I presume that Barnsdall wrote that off their books at that time.

The contract under which we were operating with Barnsdall was different from the contract that Sinclair talked to us about. I did not see a Sinclair contract, but it differed from the contract we are operating under now. I can't say in what respect, because I didn't see the Sinclair contract. The Barnsdall contract was different from The Texas contract under which we are operating now.

The marginal guarantee in The Texas contract was a splitting below 5½¢ instead of 5½¢ minimum guarantee. There is no pay-back in The Texas contract.

When we talked with these various companies relative to whether or not we would enter into any contract with them, we never inquired into the outlets they had in and about our neighborhood. The Texas Company told us.

We found that The Texas Company had several dealer service stations in and about Sheboygan County. The stations did not belong to The Texas Company. We
522 figured we would, and we did, get that business. Between June 1935 and June 1936, the gallonage of those stations was approximately 200,000 gallons. As a result of our dealing with Texas, we had a right to sell gasoline to those outlets, and we are still selling to them, so that we expanded our business by about 20%, maybe 25%, as the result of that deal.

That was one reason we wanted to enter into The Texas contract, because we would get those outlets. We wanted to expand our business.

Redirect Examination by Mr. Chaffetz.

In answer to Colonel Donovan, I said that one of the reasons why we took The Texas contract was that we wanted to get that additional gallonage resulting from the fact that we were to take over some dealer accounts that The Texas Company had in our neighborhood. Other factors that persuaded us were that of all the lines that were offered to us, The Texas Company had the best consumer acceptance. Also, I liked their advertising, and everything else.

There was no difference in the contracts that the various companies offered us.

Q. On examination by defense counsel, you testified to a very substantial increase in your business during the years from 1931 down to date, that is, so
523 far as the gallonage that you have handled is concerned. Will you tell us whether your financial operations during the same period improved in the same ratio—your financial result, I would say improved in the same ratio?

Mr. Donovan: I am going to have no objection to what the witness may say as to what he made or what he lost, if it is said in terms, but I do object to any question that will call for a conclusion as to whether he made money or not.

The Court: He may state what the fact is. You may answer that. Exception allowed.

A. Our best year in business was when we had the smallest gallonage, the first year we were in business. Our profits have been on a general decline since, in spite of the fact that our gallonage has been on the incline.

Q. Can you explain that phenomena?

The Court: That is, your net profits were more at that time?

A. Speaking of our net profit.

Mr. Chaffetz: Confining yourself to gasoline, and not accessories or anything else you handled.

A. The reason, as near as I could figure it, was
524 in 1931 and 1932 our margins exceeded the minimum guarantee of 5½¢.

Redirect Examination by Mr. Chaffetz.

We were at that time buying on the basis of the published journal prices only. Since that time there has been a steady decline in the margin, so that we are right around the minimum guarantee at the present time, all the time. The minimum guarantee does not give us a sufficient margin to operate on, so far as our gasoline is concerned. When we are operating close to or at or around the guaranteed margin of 5½¢, I mean we have a gross operating margin of 5½¢ at our own retail outlet.

We make 2¢ a gallon off the service station dealer's business. The dealer did get 3½¢ during the period we have been discussing. That is, out of a gross margin of 5½¢, 3½¢ went to the dealer, and we retained 2¢. That covered everything; that was the gross margin we had to operate on.

My understanding is that after June of 1935 we were being supplied with gasoline by the presently existing Barnsdall Company, whatever its real name may be. I do not remember whether we had any dealing with either Barnsdall Company with respect to who would supply us with gasoline when the former Barnsdall Company went
out of existence in June, 1935. There was not any
525 change in our course of business under that Barnsdall
contract with reference to our source of supply and the manner in which the gasoline was sold and delivered to us.

Cross-Examination by Mr. Lawton.

The term "regular grade" in gasoline, as used by the gasoline industry in 1935 and 1936, meant a grade equal to that of the house brand of the major oil companies. Under our contract with Texas, we purchase Fire-Chief gasoline, the name used by Texas to denote its house brand or regular gasoline in the year 1936.

In 1935 and 1936 the regular or house brand gasoline had an octane rating of 68 to 70. It was gasoline of that rating which we bought from Barnsdall and Texas during 1935 and 1936. When we paid the average price of the Journal for regular gasoline, we were paying for gasoline of an octane rating of 68 to 70.

Redirect Examination by Mr. Chaffetz.

90% of all the gasoline that we sold under that contract in our own operation was a regular house brand gasoline during 1935 and 1936.

526 **ELMER H. PEDLEY,** a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live at Kenosha, Wisconsin. I am 46 and always have lived in Wisconsin. I am an oil jobber. An oil jobber is a man who has storage capacity in a bulk plant for at least one carload of gasoline, buys in tank car lots, and redistributes to the reseller in tank wagon lots.

My company, D. B. Pedley & Son, was established in 1903 by my father. I entered the business in 1914. My father and I were partners until he died in 1931. I then became sole owner. Our capital investment is about $30,000.

The business handles gasoline, lubricating oil and greases. It owns a bulk storage plant with total capacity of about 120,000 gallons in Kenosha, Wisconsin.

In 1935 and 1936 our volume was 600,000 gallons of gasoline a year. About 90% of that was regular or house brand.

We own one retail service station, now leased to an independent operator. We have about 10 independent dealer accounts. We purchase our gasoline in tank car lots, and distribute it from our bulk plant to independent dealers by tank wagon.

527 In 1935 and 1936, all our gasoline was supplied by Mid-Continent Petroleum Corporation, Tulsa, Oklahoma, with whom I have been doing business since 1933 under a series of one year contracts. The gasoline purchased from Mid-Continent, under contract was shipped to us from the point of origin of our gasoline, Tulsa, Oklahoma; some by the Great Lakes pipe line to Franklin Park, and thence by rail to Kenosha; and some direct from Tulsa by rail.

One of the contracts that we had with Mid-Continent Petroleum Corporation was dated March 16, 1935. We operated under that contract for one year. It was executed June 12, 1935, but the delivery of gasoline was to commence March 16, 1935.

(Contract referred to received in evidence as EXHIBIT 618.)

The brand name of Mid-Continent regular is "D-X Lubricating Motor Fuel".

My experience under this contract is that the basic price we were required to pay for our gasoline was determined by the spot market as defined in this contract, that is, the price determined by averaging the low and high published prices in the Chicago Journal of Commerce and Platt's Oilgram, Tulsa, edition. None of the eventualities mentioned in clause 6 ever occurred.

> (The witness then explained the price provisions and the provision defining spot market in the contract, Exhibit 618, which Mr. Chaffetz reads to the
> 528 jury, the explanation being here omitted because such contract provisions speak for themselves.)

After the contract expired on March 15, 1936, we secured our supply of gasoline from Mid-Continent Petroleum Corporation, but not under contract.

After the contract expired and until the end of the year the price I paid for house brand gasoline was based on the 5½¢ split margin basis, using the same definition for spot market price as appeared in the contract. Under the contract there was a guarantee, but we had no guarantee provision from March 1936 until the end of that year.

I preferred to purchase from a major oil company because I felt that a nationally advertised brand had more consumer acceptance. I didn't renew this contract with Mid-Continent because I felt possibly something good might appear in the picture, and I wanted to be free to go in whatever direction I desired when it occurred.

We were on a basis of 5½¢ margin, and as a jobber, I figured that perhaps during the immediate future, or perhaps during the next 6 months or year, there might be a change in that particular situation, and that there might be something more advantageous offered. I distinctly desired to be in a position to take advantage of it, if I could.

I also felt I might perhaps like to conduct my business
529 by buying gasoline on the market and selling it under
my own name as I did for several years prior to the time that I entered into a contract with a major company.

I made some efforts to secure another contract from Mid-Continent when this contract was about to expire. I discussed the matter with Walter Herr, division manager of their Chicago office, to ascertain whether or not there could be any better contract offered by their company. He told me that they had nothing better to offer than the last contract and in his judgment he would not have anything better to offer until someone else indicated that they would make a better offer. He did not indicate whom he meant by someone else.

I did not approach any other companies myself, but they did approach me, knowing that my contract was to expire.

Champlin Refining Company, Enid, Oklahoma, approached me. They had nothing better to offer. Anderson-Pritchard Oil Corporation also approached me. The sales representative for the territory came to me representing Champlin; I can't recall his name. He did not exhibit to me the type of contract he was offering.

In my business I ordinarily do not follow the trend of tank car prices of gasoline in the quotations of the Chicago Journal of Commerce and Platt's Oilgram. I have kept rather accurate track of the prices that I myself have been required to pay.

530 In March, 1935 we were in the midst of a fluctuating market the trend of which was generally upward. That continued on in that year, as I recall, until somewhere about June 10th at which time the peak was reached; and from that point on until the termination of the year 1935 that point remained stationary.

Q. Now, can you recall to the jury, from your long experience in the oil business, any other period of time when the prices that you paid for gasoline bore the same trend for a similar period of time?

Mr. Donovan: I object to that question as no comparison having been shown, no conditions of any other period having appeared, and no conditions in this period having been described.

The Court: Overruled. Exception allowed.

Mr. Donovan: And no foundation having been laid.

The Court: Let me ask you this question, first: How long have you been in the oil business?

A. I have been in the oil business since 1914.

The Court: All right, go ahead.

A. No, I cannot recall any other period.

Beginning in 1936 we had a series of fluctuations in the market, extending over a period of time, with
531 the trend generally upward until just about the end of May at which time prices attained a peak. During the months of June, July and August we had another series of fluctuations in the market, the trend of which was generally downward. At the end of that period the price again levelled off and remained stationary until the end of 1936, the price generally being at the end of 1936 1¢ higher than it was at the beginning of 1935.

I was a witness before the grand jury in Madison in May, 1936.

To my knowledge I never dealt in so-called hot oil; if I did, it came from my usual source of supply.

I am a member of the Wisconsin Petroleum Association, and of the National Oil Marketers Association. The qualification for a member of the Wisconsin Petroleum Association is that he must be an independent jobber. There are approximately 300 members in that association. I do not know but believe there are approximately 600 jobbers of gasoline in Wisconsin.

No cross-examination.

532 SAMUEL H. TRAINOR, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have lived in Wisconsin since 1915 and in Wausau for 10 years. I am president and majority stockholder of Marathon County Oil Company, a corporation organized in 1926, which is engaged in oil jobbing, and retailing. We have about 12 employees and 5 trucks on the road. Our capital investment is about $46,000.

We buy our gasoline wholesale in tank car quantities. We resell, usually in quantities less than tank cars, to some dealer accounts, some through our own stations; and some to large consumers directly from the tank trucks. We operate within a radius of 25 miles from Wausau. We operate two of our own service stations. We have about 25 independent dealers, just about the same as in 1935 and 1936, through whom the great bulk of our gasoline is sold.

We own or control 2 bulk plants, 1 at Wausau, and 1 at Edgar, in Marathon County, Wisconsin. The capacity of those bulk plants is about 75,000 gallons together.

We sold approximately 1,250,000 gallons of gasoline in 1935 and 1936. 85 to 90% was so-called regular or house brand gasoline.

Our source of supply of gasoline in 1935 and 1936 was Phillips Petroleum Company. Most of it was shipped
533 by rail from East St. Louis, Illinois. I don't think they have a refinery there. Most of the gasoline was pipe-lined into East St. Louis. Regardless of where the gasoline was actually shipped from, and the route, the freight was charged to me from what they call "Group 3 Tulsa".

All the gasoline I purchased from Phillips, during 1935 and 1936 was purchased under three contracts.

The first was the contract between us and Phillips Petroleum Company, executed April 17, 1934, under which we operated in the purchase of gasoline from April 6, 1934 until April 5, 1935.

(Contract referred to received in evidence as EXHIBIT 619.)

On November 26, 1934, I received a letter from Phillips Petroleum Company, signed by John Getgood, advising me of a change in that contract.

(Letter referred to received in evidence as EXHIBIT 620.)

I operated without a contract from April to June, 1935, but the contract, I think, carried over from month to month unless it was cancelled. On June 5, 1935 I entered into another contract with the Phillips Petroleum Company. I operated under this contract until September, 1936.

(Contract referred to received in evidence as EXHIBIT 621.)

534 That contract was what we call a 5½¢ split contract. The provision is for the price of gasoline to be determined upon the basis of the spot market price, and the spot market price is defined as the average of the average of the prices published in the Chicago Journal of Commerce, and Platt's Oilgram, Tulsa edition.

Then there is the additional provision with respect to a 5½¢ split margin guarantee. If, at any time, the average of the gasoline prices quoted in the Journal of Commerce went higher than the 5½¢ margin, then they refunded the difference, so that I would have a 5½¢ margin. The effect of the so-called split provision was that we divided that difference. If there was a difference between the margin between the published spot prices and the normal retail price on the one hand, and 5½¢ on the other hand, then we subtracted the former from 5½¢, and then divided the difference by two. I never paid any more; I didn't pay anything back to them. If the price allowed me only 5¢ instead of 5½¢ then they refunded that ¼¢, or one-half of that half. There was no refund to us in dollars; the price was determined on the basis of what I have told you, and taken off our invoices.

I have a preference for handling the major company brands because they are nationally advertised, and because of public acceptance. I think that the average consumer prefers to buy a nationally advertised brand.

535 Before I bought my gasoline from Phillips, I bought it on the open market, and through Omar Refining

Company. I had no contract. I have been buying from Phillips Petroleum since 1932. I have been selling to more filling stations and purchasers the last two years than I was prior to 1932.

I attempted to obtain a more favorable contract during the years 1935 and 1936. I talked about this with E. M. Kelly, and John Getgood, Phillips' tank car salesmen, two or three different times in 1934, ~~1935~~ and 1936. Once was at the signing of that contract in 1935. Getgood is the one who signed that contract.

> Q. What was the nature of this discussion that you had with Mr. Getgood on this subject, prior to the signing of that contract in 1935?
>
> Mr. Donovan: Just a minute.
>
> The Court: I think you better ask what the conversation was.
>
> Mr. Donovan: If that be the question, I object to it on the ground that it is hearsay and narration of past events, it is not in furtherance of this conspiracy, and cannot be binding upon anyone excepting those concerned with this immediate contract, and is not to be considered as testimony against these defendants.
>
> The Court: Overruled. Exception allowed.
>
> A. Well, I tried to impress on him that we needed more margin in order to continue in business with the jobber's end of it.

536 He said that was the best contract they had to offer. He said other things that I do not recall. He said it was the same contract they were giving all their jobbers.

I did not approach any other major oil company with reference to obtaining a contract for the supply of my gasoline during the years 1935 and 1936.

A representative of Shell Petroleum Company named Cooksie concerned with tank car sales called on me in the early summer or spring of 1935, with reference to jobber contracts. I don't know how he happened to come to me at that time. He asked me when my contract expired. He called on me several times during that same general period. Our contract did expire, I think, in June. He said that they wanted distribution in that territory, they had very little, and that if I signed their contract, they would put men into the territory to help me work up a business. He did not show me any form of contract. He offered me a contract. He said their contract was the same as I had; 5½¢ split contract. He referred to it in that way. I did not show him my contract but explained to him what I had.

He said the only thing that he had to offer me was a better grade of gasoline and help to sell it. He told me that Shell gasoline would be better than Phillips.

I have followed the trend of the prices that I have been paying for gasoline to Phillips Petroleum Company in 1935 and 1936. The trend was up in 1935. In 1935,
537 the prices fluctuated quite a bit, there was a fluctuation of a full cent.

To my knowledge, I never bought or dealt in so-called "hot-oil".

I am a member of two jobbers' associations: the Wisconsin Petroleum Association, and the National Oil Marketers.

No cross-examination.

538 **WILLIAM LANZER**, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I live in Chicago, Illinois. I went to public school and high school.

I have been with W. H. Barber & Company, a Delaware Corporation, for 13 years, and now am manager of refined oil sales. I held that position in 1935 and 1936. The principal office of W. H. Barber & Company is located in Minneapolis. I am in its other office in Chicago. It compounds lubricating oils and greases, handles and distributes linseed oil, turpentine, resin, and kindred products. It is sales representative of two refineries: In Chicago, Globe Oil & Refining Company of Illinois and Globe Oil & Refining Company of Oklahoma, defendants in this case; in Minneapolis, some Tidewater companies.

Our Chicago division has done a business since 1935 of about 60 million gallons of gasoline a year. Approximately the same quantity is handled each year by the Minneapolis division.

The principal states in which Barber Company does business and distributes gasoline are Illinois, Indiana, Michigan, Wisconsin, Iowa, Minnesota, North and South Dakota, and a little in Ohio. That territory has the name, in the oil business, of the Standard of Indiana terri-
539 tory, with the exception of Ohio. The Standard of Indiana territory has been a trade designation ever since I have been in the oil business, I presume because of the

position Standard Oil Company of Indiana holds in this territory. Standard of Indiana holds a dominant position in that territory being the largest single oil company doing business in that territory.

W. H. Barber & Company buys outright the gasoline it distributes. We have done business with the Globe Company under contract since 1931. The Chicago Division does not sell the gasoline output of any independent refiner other than Globe under a contract.

For about 5 years we have purchased material from Panhandle Refining Company that we weren't able to secure from our regular source, which was the Globe. We originally had a contract. It is my best recollection that that contract expired, but we carried on just the same. During 1935 and 1936 we bought from them at our selling price less ¼¢ a gallon. This was an unbranded product.

In 1935 and 1936 in our purchases from the Globe Company we paid ¼¢ a gallon under our selling prices in most instances.

For the Globe Companies we sold their Utility gasoline, which is third grade gasoline, their Globe Super-Bronze, which is regular, and their Globe Ethyl, which is premium. We also bought from the Globe Companies
540 great quantities of unbranded gasoline. Generally
speaking, the price on each grade was ¼¢ under our selling price.

We sell gasoline to jobbers. A jobber is an organization having facilities for accepting merchandise in tank car quantities, the storage of that merchandise, and the distribution of it in smaller quantities to resellers or consumers. Our Chicago Division sold to over 200 jobbers in 1935 and 1936. Those jobbers were not scattered throughout the states of the Standard of Indiana territory, but were located in Illinois, Indiana, a part of Wisconsin, Michigan and Iowa.

Our contract on branded merchandise negotiated in 1935 and 1936 involved a spot market price ranging from the low to the average of the Chicago Journal of Commerce with a 5½¢ split margin.

Our contracts to jobbers are predicated upon those quotations in the Chicago Journal of Commerce. By "predicated", I mean they are based on those prices, and the prices at which we sell are in terms of those quotations. That is true of all the gasoline that we sell under contracts to jobbers, with this qualification: we don't sell all our gasoline based upon the octane classification shown in the paper. We may sell the 68-70 octane gasoline based upon the price of third grade in a publication. In other 541 words, in the case of some of the grades of gasoline that we sell, we sell it at a differential either higher or lower than some quotation in the Journal of Commerce.

It is also correct that our prices for all of our contract gasoline are based largely upon those quotations in the Chicago Journal of Commerce in all cases, except where we employ the Oilgram. The Oilgram is another trade publication.

Approximately 90% of the volume of gasoline that our company bought in the years 1935 and 1936 was sold under these contracts that I have described.

The Globe Company's refineries are located at Lemont, Illinois; Blackwell, Oklahoma; and McPherson, Kansas. We do not handle any of the output of the McPherson Refinery, but we handle between 60 and 70% of the output of the other two refineries. Globe markets the balance.

We submit some of the jobber contracts that we make with these Globe outlets to the Globe Company since they underwrite some of their contracts. I would say approximately 90% of our business was done in those years under those underwritten contracts. By underwriting I mean this: We make contracts with jobbers on certain price bases. Those contracts are submitted to Globe, who in turn underwrite them for us and protect us for a margin of profit against the sales price.

542 In addition to buying gasoline under contract from Globe, and buying gasoline from Panhandle Refining Company, we buy gasoline on the spot market occasionally. The spot market is the market at which we can buy gasoline from sources with which we are not "under contract." They are day to day transactions. Our spot market purchases and sales are so very limited that our transactions were in small quantities. We buy on the spot market in tank cars.

We occasionally sell some jobbers gasoline on the spot market. We sold more to them on the spot market than we buy on it. We sell some of this gasoline that we buy under contract to jobbers on the spot market. They are day to day sales in tank car quantities.

When we buy on the spot market and sell on it, we act as a broker. That does not mean we get a commission. We buy it outright, pay our own money for it, turn around and sell it outright, and are paid by the jobbers buying from us on the spot market.

There are other persons transacting that kind of business in the Standard of Indiana territory. I think there was a substantial volume of business that used to be handled in that way in the former years in the Standard of Indiana territory.

I feel that the spot transactions were diminishing during 1935 and 1936 as against previous years. The
543 volume of broker spot market business was doing the same thing. I think there are a number of reasons for it. The jobbers are much more inclined, and were in 1935 and 1936, to know definitely where their merchandise was coming from and to know that it was of uniform quality. Marginal guarantees were beginning to cut in, in that period, necessitating or making it advantageous for the jobber to operate under a contract as opposed to a spot market set-up. By marginal guarantees cutting in, in that period, I mean that the margin of profit to the jobber based on his delivered cost figured against the spot price was less than it was under the marginal contract provision of the contracts.

That began around 1935. I mean by that that in former years prior to 1935, the jobber by buying on the spot market, or buying under contract, was able to sell the gasoline for a price which gave him a margin that was wider than the guarantees that were contained in the contracts. I don't think it began in 1935. I think it began in the latter part of 1934 by reason of the reduction in the service station price and the marginal provisions of the contract affording the jobber a lower cost than the spot market did. I mean that in 1934 the actual difference or spread between the tank car price and the retail price narrowed. It narrowed, generally speaking, 1¢ to 1½¢ a gallon.

544 The average total spread between the tank car price and the retail price that came about in the fall of 1934 ranged from 5⅜¢ to 5⅝¢ margin in that period. That contraction in the spread brought into operation these guarantees of 5½¢ that were in the contracts, in some instances. Beginning in the latter part of 1934 these marginal guarantee provisions in the contracts came into operation, and therefore, the contracts continued and then became more attractive to the jobber.

There was one other reason why the jobber tended to get away from the spot market business and to go over on contract in these years and that is the tendency of the jobber towards the refiner's brand as opposed to his own brand.

Prior to the period in question a great many jobbers were marketing gasoline under their own brands. There has been a swing from that to the major company brand.

Jobbers tell us it is because they want the public acceptance that has been created by those brands.

A jobber may have his own brand. It might be Colonial; it might be Johnsonite. The best known brands are the brands of the major companies. There was some advertising advantage that came about with the use of the major company brands. The advertising that they were doing
would naturally be a benefit to the jobber. Advertising
545 might be one of the reasons for the jobber to sign up
under contract and leave the spot market.

The major companies that market through jobbers in the Standard of Indiana territory are Sinclair, Shell, Socony-Vacuum, Texas Company, Pure, Barnsdall, Cities Service, Continental, Phillips, Mid-Continent, Skelly and Deep Rock.

During the year 1934 our company bought some gasoline in tank cars on the spot market. Those purchases were made through J. M. Bradshaw, a buyer located at Dallas, Texas and operating as Hercules Oil Company, from Gilliland Refining Company, Gladewater, Texas; from Danciger Refineries with its office in Tulsa, I don't know where their plant is; from Southport Petroleum Company, Kilgore, Texas; Shamrock Oil Company, Amarillo, Texas; Union Refining Company, Longview, Texas; Chief Refining Company, Gladewater, Texas; Blackstone Refining Company, Overton, Texas; Artex Refining Company, Kilgore, Texas; McMurray Refining Company, Arp, Texas; Panama Refining Company, Kilgore, Texas; Primrose Refining Company, Dallas, Texas; Waggoner Refining Company, Electra, Texas; and Cuiver Refining Company, Gladewater, Texas.

These companies are referred to in the oil business as independent refiners. They don't compare in size with the group of major companies, defendants in this case, that I
have named as marketing in this territory. They are
546 very much smaller. Most of them are located in the
East Texas field. I have named some in North Texas and some at Tulsa. All those independent refiners I have named are located either in the East Texas or Mid-Continent oil fields.

We didn't buy any appreciable quantity on the spot market in the year 1934. We bought 96 tank cars from these refiners from April until December, 1934.

We bought some gasoline on the spot market from the independent refiners located in those fields in 1935, but less than we did in 1934. We bought those cars in 1935 through Bradshaw.

We bought that gasoline in 1935 from Grogan Oil Company, Shreveport, Louisiana; Arrow Refining Company, Fort Worth, Texas; East Texas Refining Company, Dallas; Century Refining Company, Overton, Texas; Gilliland Refining Company, Gladewater, Texas; Marimac Oil Company, Tyler, Texas; and Octane Oil Company, Longview, Texas. They are all independent refiners. Most of them are located in the East Texas field. The one at Shreveport would fall into the general Mid-Continent field. We bought 37 tank cars in 1935.

In 1935 the purchases of gasoline on the spot market that we are specifically talking about averaged from ½¢ to ⅝¢ below the low of the Journal quotations. 26 out of the
37 cars were as much as ⅝¢ under the low quotations
547 of the Journal of Commerce for the day on which I
bought it for the same quality of gasoline. I bought 1 car of gasoline on the spot market from independent refiners in the year 1936. We sold this gasoline which we purchased in the spot market in the year 1935 to jobbers in tank cars.

I know the general trend of tank car spot market prices during the years 1935 and 1936. The market began to advance in the spring of 1935 in March, I believe. It advanced steadily until June at which time it leveled off and held constantly level for the balance of the year. In the early part of 1936 there was a crude advance, and with it an advance in the tank car market. That occurred in January, if I remember.

Gasoline prices, spot market prices, after the crude advance, advanced. Then they leveled off reasonably, and then they fluctuated, ending at the end of the year somewhat lower than they were at the peak. When I say they leveled off after the advance, my recollection is that that level remained in operation a couple of months into 1936 before the prices broke at all. My recollection is that they held level for a couple of months at the high level that they had reached after that crude advance in January, 1936.

There was no appreciable change in the market in that
period from June, 1935, through the year. There was
548 an advance in the level of the tank car spot market
prices from early in January, 1936 for several months into 1936. There was some fluctuation after that advance took place. My recollection is that the fluctuation started in June or July.

From January, 1936, when the crude oil price advanced and the tank car price advanced to where they broke in June of 1936, the prices were at a level; they were steady in that time.

Q. All right. Now, state whether or not that situation that you have just described, from June of 1935 down to about June of 1936, was unusual or usual?

Mr. Donovan: I object to that question, upon the ground that no foundation has been laid for it; it is not contrasted with any other period; there has been no foundation for it being contrasted with any other period.

The Court: Q. How long have you been in the oil business?

A. 14 years.

Q. Buying and selling gasoline?

A. For about 9.

The Court: You may answer that. Exception allowed.

A. There was an unusual stability to the market
549 in that period.

Q. Do you know of any other period in your experience in which the prices acted that same way, or anything like that same way.

Mr. Donovan: May I have the same objection, your Honor?

The Court: You may. Overruled. Exception allowed.

Mr. Lewin: Q. With respect to stability, and leveling uniformity and rigidity?

A. I have no recollection of it, no sir.

I have no recollection of any other comparable time through my whole experience.

In general, I have described not only the trend of one grade of gasoline, but the trend of all other grades of gasoline. They work pretty closely together. I would say that, in general, the trend of the prices of one grade parallels the trend of the prices of another grade.

Bradshaw functioned as a purchasing agent for us for which he received a remuneration of $2.50 for each car he bought. He handled these spot market transactions for us in 1935, 1934 and 1936 that I have testified about. He did not perform any other service for us. We kept in contact with him to see what the character of the market was. Bradshaw kept in touch with us more frequently than we did with him. He would wire us, with considerable
550 regularity his observations of the market.

From time to time we requested him to give us his observations on the market. The purpose of our having that information from J. M. Bradshaw was that it had a great deal of value to us with respect to our competitive picture from a sales standpoint. In other words, it was information that we had to have in order to know how to properly operate our business. We did rely on Mr. Bradshaw to give us that information. He was the principal source of our information as to the tank car price and the tank car market down there in East Texas in 1934 and 1935. We did, as a matter of fact, rely on and make use of that information that he gave us.

I don't recall having had any information from him over the telephone. Generally telegrams were used between us.

This paper, handed to me, Exhibit 153 for identification, is a telegram dated May 31, 1935, from Bradshaw to W. H. Barber Company giving us certain data with respect to the market, and conditions in the East Texas field. It is one of the communications that I have just described.

Mr. Lewis: I offer this telegram in evidence.

Mr. Donovan: Now, I object to the acceptance of that in evidence, your Honor, upon the ground that it is hearsay; that it is opinion; that it now appears 551 from the examination of this witness that it comes from a buyer that he had in East Texas, informing him of his opinion of conditions in East Texas; that it therefore cannot be considered as any evidence against any of these defendants.

Mr. Lewin: Coupled with that offer, may it please the Court, the Government proffers to show by competent evidence at a later time, and in orderly process, that Mr. J. M. Bradshaw is the buyer for the Gulf Refining Company and the Gulf Oil Corporation, defendants in this case, and was himself a co-conspirator in the conspiracy that is charged in this indictment.

Mr. Donovan: Now, I would like to have the counsel point out where Mr. Bradshaw is named as a co-conspirator in this indictment.

Mr. Lewin: It says, "And others to the grand jurors unknown," and groups a whole lot of people, and we are going to prove by competent evidence that he was a co-conspirator.

The Court: He has assured the Court that he is going to connect this up later on. For the time being, your motion is overruled. Exception allowed.

I can identify these telegrams marked Exhibits 153, 158-A and—no, 155-A, 155-B, 156, 159, 161, 162, 158, 157, 165, 167, 152 and 151 as being telegrams that were sent to me by

J. M. Bradshaw. I received these telegrams in the
552 usual course of business on or about the dates shown
on them.

Mr. Lewin: They are offered in evidence.

Mr. Donovan: I want to object on the ground they are incompetent, as not being the best evidence.

The Court: I think I will withhold ruling on those exhibits at this time. You have identified them, and have made your offer.

I testified yesterday that in 1935 I purchased 37 tank cars of gasoline on the spot market from independent refiners located in East Texas and the Mid-Continent field. I purchased 26 out of these 37 cars at ⅝¢ lower than the low quotation of the Journal of Commerce and the rest of them were all purchased under the Chicago Journal of Commerce.

I compared the prices that we obtained for cars of gasoline I sold to the jobbers with the low quotations for a similar grade of gasoline as carried in the Chicago Journal of Commerce on the day of the sale.

We sold it all the way down from the low to approximately ½¢ under the low. We sold 5 cars at ¼¢ below the low. This material was sold between April 25, 1935 and the early part of May, 1935. The material was 65 octane for which we paid 4⅝¢.

The Journal of Commerce figure that we compared
553 it with was the 63-70 quotation. The quotation in the
Journal was 5¼¢.

This is all 65 octane; and the price of the Journal in each instance, until I make further remarks, will be the low price quoted for 63-70 octane. The Journal lows don't change during the period from April 23 to early May, 1935. They are still 5¼¢.

We sold 5 cars at 5¢; 1 at 5.12¢; one at 5¢; 1 car at 5.16¢; 1 car at 4.81¢; 4 cars at 5¢; 1 car at 4⅞¢; 1 car at 5¢; 1 car at 5.15¢; 2 cars at 4⅞¢; 2 cars at 5¼¢; 1 car at 5⅛¢; 1 car at 5¼¢ and 3 cars at 5⅛¢.

Thus out of 26 there were 3 cars sold at the low and 23 cars below the low price in the Journal of Commerce for 63-70 octane.

The quotations that are published in the Chicago Journal of Commerce and in Platt's Oilgram for tank car gasoline have some effect upon the prices that the jobbers throughout the Standard of Indiana territory have to pay for the gasoline they buy. The jobbers' cost will fluctuate with those quotations. If the quotations advance, the jobber will pay more money, and if they decline, he will pay less.

Almost all contracts use as the basic price the posted or quoted price for gasoline of comparable specifications in the publications. Where marginal contracts are in-
554 volved, the publication price is subject to the operation of the marginal guaranty, so that when the marginal guaranty feature of the contract is operative the price which the jobbers pays is not the posted price in the Journal of Commerce, but some figure arrived at from the service station prices at which the jobber is selling in that territory.

When these guarantees are not operating then the prices the jobber pays under the majority of these contracts varies directly with the prices quoted in the Chicago Journal of Commerce and Platt's Oilgram.

During 1935 and 1936 there was a movement of the service station price with a movement in the tank car market. To what extent they were inter-related, I don't know, but the record shows that there was a movement. Thus if the tank car price went up the consumers' price at the station went up. If the tank car price lowered then the station price lowered.

During that period the usual difference between the normal retail price through this area and the tank car price, as published by the Journal of Commerce and Platt's Oilgram, was about 5½¢. It became less than 5½¢. That came about by an advance in the tank car market. It was not immediately reflected in the service station market. I would say that advance was eventually reflected in the service station market, from our records.

555 There was sometimes a lag between the amount of the tank car price, as reflected in the Journals, and these retail prices at the service stations. That delay in raising the retail price narrowed the spread between the tank car price and the retail price to below 5½¢ in some instances. That would reduce the margin that the jobbers would get and bring into effect this guaranty provision in the contract I have mentioned.

I can't say exactly how long a delay took place before the retail price was raised to meet a raise in the tank car price; generally there would be an advance in the service station prices after the tank car prices had advanced approximately ⅜¢ a gallon. As to whether this would be the same day or within 24 hours, I don't think that there was any general rule on that. My recollection is that it would be perhaps a week or two.

It is approximately correct to say that after that week or two expired, the normal retail price as posted throughout this territory in those years, rose to within 5½¢ above that raised tank car price. I mean that there were a few little fluctuations in there that didn't make that definitely true in every instance. My recollection is that, generally speaking, that was true during the period of 1935 and the first half of 1936.

As to whether, when there was merely ¼¢ advance in the tank car price, there was a corresponding advance
556 in the retail market, that is so fine a question, I don't know.

It was my observation that the service station price would advance or decline 3/10¢ a gallon with similar or closely similar advance or decline in the tank car price. The matter of cutting it to eighths is something I couldn't do.

In the period in which these marginal guarantees operated, the price the jobber paid for gasoline out of his own pocket through this area was directly connected up with the tank car price.

As to how the filling station owner fixed his price—excluding those areas in which the Iowa plan was adopted in 1935 and excluding that part of 1936 in which the Iowa plan was put in operation in all of the Standard of Indiana territory the service station price was established by the leaders in the field, by the major companies. I would say by primarily the Standard Oil Company of Indiana. They were the people who established the retail price. The dealers did not establish it at that time. In 1935 and 1936, presuming that I was buying from a jobber handling a branded product, I would sell that product at the same price as that established for a comparable product by Standard of Indiana Company. To the best of my knowledge that was the practice followed by practically all of the filling stations.

557 The price posted by the market leader is generally posted in a small bracketed sign attached to the pump.

The source of supply of the filling station owner is acquainted with the normal structure of prices in that particular city at that time, and I suppose if the filling station owner wanted to know what the price was he would go to his source of supply for the information.

These changes in the posting by the market leader in certain towns are carried in these journals we have been talking about. You could determine the general posting in the towns listed by looking in the Journal of Commerce.

During 1935, part of 1936, and the years prior to that time, the major oil company owners of service stations all operated those service stations themselves. They employed attendants, and conducted the business entirely within their own organization. The adoption of this Iowa plan involves the leasing of the stations by the major oil companies and by others to private individuals who then become a separate entity, so far as their business operations are concerned, from their source of supply. In other words they lease this place of business and go in business for themselves instead of being an employee of the supplying company. With the adoption of that plan of marketing, a dealer's price was established, which was the
558 price that the dealer, the lessee, pays for his merchandise. He then has the right to sell it at whatever price he pleases. The price that the dealer pays under that plan is called the dealer tank wagon price.

Since the Iowa plan came into effect, the spread between the tank car price that the jobber pays under these contracts and this dealer or tank wagon price that he receives from the dealer when he sells it is 1⅞¢ to 2¢ a gallon in the spot market, and 2¢ a gallon under a contract.

I don't know whether the owner of the filling station under the local price practice was prohibited from selling that gasoline under his contract below a certain price. There is now no large operator available for the naming of this price so that the rest of them can follow this price, today it is an individual proposition with the operator of the station. The amount that the filling station owner is expected to sell his gasoline for over and above what it cost him is a matter of his own judgment, but as a general rule the service station price will range 3½¢ a gallon over his costs.

3½¢, plus the 2¢, now takes the place of that 5½¢ we were talking about before. 3½¢ to the dealer, and 5½¢ to the jobber, if he operates his own station, takes the place of the over-all margin that we were talking about in 1935 and the first part of 1936.

559 During 1935 and that part of 1936 before the Iowa plan came into effect there were in this Standard of Indiana territory at least two different kinds of service stations; one, a service station that was owned and operated by the major companies; and the other, a service station that was operated by independent dealers. It was the cus-

tom, usually, for the independent dealers to follow the price that was posted by the major companies in their own service stations on branded products.

Since the Iowa plan, these major companies, who used to have these owned and operated stations of their own, have leased them out to independent dealers. Now, instead of having two classes of dealers, one, a dealer who is employed by a major company and is working the major company station, and the second, the independent dealer, you have one big class of dealers who are the independents selling under lease. I assume that the major companies have leased, rather than sold, these service stations throughout this territory to the independent dealers, so-called. I don't know their business. I can't definitely say that they haven't sold any of their stations. In general, I would say that it is correct that the Iowa plan has caused the major companies to lease out these service stations to these dealers rather than sell them outright to the dealers.

The jobber sells his gasoline to the dealer for 2¢
560 more than it costs him. The dealer ordinarily sells
this gasoline to the man who drives up and gets it in his car or tank wagon for about 3½¢ more than it costs him from the jobber. That was true in 1935 and 1936 and is still true with some exceptions. There are places where the dealers today are getting 4¢ to 4½¢ margin. There are others where they are working on a 2¢ margin or even 1¢ margin, but, generally, it is 3½¢.

Formerly when the jobber got this over-all 5½¢ margin, he usually paid out 3½¢ of it to the dealer, and retained 2¢ himself.

Even under the Iowa plan, the market leader, Standard of Indiana in this territory, still posts the tank wagon price. I think it is generally true that the other companies throughout usually follow that posting.

It does not follow from my testimony that under the Iowa plan the tank wagon price that the jobber receives from the dealer under the present contracts is affected by a variation with the tank car price as published in the Chicago Journal of Commerce and Platt's Oilgram, because at least our contracts at present are on a straight marginal basis. That is to say, if at any time the prices in these publications give the jobber less than 2¢ under the dealer prices, we will adjust the prices to that, an equivalent to 2¢ under the dealer margin. There is no split arrangement.

561 This thing under the Iowa plan is so new to me that I personally haven't any knowledge of the relationship between the posted or the published tank car prices and the dealers' prices to date. I don't know whether the dealer prices will or will not fluctuate with the tank car price.

This development I have been speaking about has come about since 1936 in the majority of the territory. The Iowa plan started in 1935 in Iowa.

562 *Cross-Examination by Mr. Donovan.*

From my experience in the oil business, I am familiar with the characteristics which distinguish an independent refining company from a so-called major refining company.

I don't think necessarily a major company could be defined strictly on the basis of crude production. It would be one factor. I think that there are other factors which, as a unit, would more clearly define a major as distinguished from an independent. Definitely it would be correct to distinguish its characteristics by saying that an independent refiner has either no investment at all, or no substantial investment, in facilities for the distribution of gasoline which he refines, as distinguished from a major. That is, it owns no bulk storage stations, and has no service stations.

I have done business with Globe Oil & Refining Company for a number of years. There are three Globe Oil & Refining companies. To the best of my knowledge it is a fact that no one of these three companies owns or controls any service station outlets. It is a fact that no one of these companies owns any bulk storage plants other than storage for their own refinery purposes. So it is very true that the Globe companies are entirely dependent upon independent jobbers for their marketing outlets. To the best of my knowledge, none of these companies own any crude production.

563 During 1935 and 1936, we were selling the product of Globe Company of Illinois and of Oklahoma, as I described. I think we started to do business with Globe in 1918 or 1920, and have conducted our business with them since that time without interruption.

My company contracts with the jobbers on certain price bases. Those contracts are underwritten by Globe Oil & Refining Company, which has the effect of requiring them o furnish the material against our contract commitment to he jobber, and also to protect us for a margin of profit, enerally ¼¢ per gallon.

By the Court

We make a commitment with the jobber to furnish this gasoline, and the Globe, by underwriting it, makes a commitment to us to furnish it to us for the account of the jobber at a price below that at which we sold them. There is no relationship between the buyer and the Globe Oil & Refining Company. The relationship is between Globe and Barber Company, and between Barber Company and the buyer.

By Mr. Donovan

By "underwritten" I don't mean the Globe guarantees the accounts of the jobbers to us.

> The Court: If Jones buys from you, and you have your accounts underwritten by Globe, wouldn't Mr. Jones have a claim against Globe if you didn't furnish it.

564 A. No.

Globe merely undertakes to deliver to us at a price less than that at which we sold the merchandise.

It is true that the major portion of this gasoline which is refined by Globe which we sell to jobbers, the jobbers sell under their own independent brand. The great proportion of the Globe gasoline that we sell is not sold under the Globe brand at all, but is sold under independent brands. The greater proportion of gasoline distributed by independent refiners is not sold by them under their own brand, but is sold under the independent brands of the independent jobbers.

It it also true, in the case of major oil companies, that they sell their gasoline under their own brands, or they sell it to jobbers who sell it under the brand of the major companies. So another characteristic of the independent refiner is that an independent refiner either does not sell any of his gasoline, or only a small part of his gasoline, under his own brand.

Barber Company markets a large proportion of the gasoline refined by the Globe of Illinois and Globe of Oklahoma. We distribute all of that gasoline to independent jobbers. But we also distribute a considerable amount of that gasoline to cooperative associations.

Those associations are associations of farmers who have collectively in certain counties established an oil job-
565 bing business, have provided facilities for receiving gasoline in tank car quantities, and facilities for the distribution of that gasoline by tank wagon to its members or any other consumer, and to dealers. They are inde-

pendent jobbing organizations. They differ, however, in that they distribute their earnings under the cooperative law generally at the end of their fiscal year.

These cooperatives to which I refer are located in the states of Illinois, Indiana and Michigan. It would not be very far off to say that we supply as much as half of the gasoline which we market for the Globe Company to these cooperatives. This gasoline, as I understand it, is not marketed under the Globe Company brand, and it may be designated by any name that the cooperatives choose to select.

Barber Company buys gasoline at times from independent refiners, and resells it to independent jobbers. When Barber Company buys and sells it in that way, it is acting as a broker. Independent brokers frequently buy gasoline direct from independent refiners. That was quite general. I cannot tell you what percentage of jobbers are buying from independents, but there are a substantial quantity of them. They can and do buy gasoline from the same independent refiners from which Barber Company buys gasoline to resell to the jobbers.

566 When Barber Company buys gasoline from an independent refiner and resells it to an independent jobber, Barber Company makes its profit by buying the gasoline at one price from the independent refiner and reselling it at a higher price to the independent jobber. In order to make that profit Barber Company has to buy the gasoline from independent refiners at a lower price than independent refiners would sell it direct to jobbers. In order for us to carry on a brokerage business, it is necessary for us to buy from a refiner at a less price than we sell it to a jobber.

I don't know if it is correct to say that whatever we make on a brokerage transaction comes out of the independent refiner. If you reduce it to the matter of the price that is paid him for the merchandise, that is correct.

So, when we are in the market for gasoline to resell to jobbers, we are never in the market for gasoline at the going market price to jobbers, but only to buy below the going price to jobbers. If we cannot get gasoline from the refiners at a price less than those refiners are selling direct to jobbers, we don't do business with them. If an independent refiner can sell his output direct to jobbers at one price, he is not going to sell it to the broker at a lower price.

567 I testified yesterday that during 1935 and 1936, I found that the volume of broker's business was declining. I said that one reason for that was because at the present time and in 1935 and 1936 jobbers became more inclined to want to know definitely where their merchandise

was coming from, and to know that it was of uniform quality. When a jobber buys from a broker, the jobber does not have such definite assurance of the source of the gasoline and of the quality, as when he deals directly. That is correct in a straight brokerage operation.

In 1934 and 1935 we bought gasoline for reselling to jobbers from the following refiners located in East Texas: Southport Petroleum Company at Kilgore; Union Refining Company at Longview; Chief Refining Company at Gladewater; Blackstone Refining Company at Overton; Solvex Refining Company at Kilgore; McMurray Refining Company at Arp; Panama Refining Company at Kilgore; Primrose Refining Company at Dallas, and Culver Refining Company at Gladewater. Primrose Refining Company, I think, has a small refinery. They also broker quantities of gasoline themselves.

We bought 96 tank cars of gasoline from those refineries in 1934. We may have bought from Ocean Refining Company, but I have no recollection of it. Those transactions are through Bradshaw.

568 We bought from Century Refining Company in 1935.

With the exception of Panhandle Refining Company, all our purchases were so entirely incidental to our operation that I have no recollection of them. With the passage of the Connally Bill, there was a considerable reduction in refining operations in Texas, but whether or not those particular refiners we bought from were unable to ship, I cannot tell you.

The Connally Act was to prevent the shipment of hot gasoline out of Texas. Based on my experience, I believe that the Connally Act was effective in preventing the shipment of hot gasoline out of Texas. There was a partial control of the shipment of hot gasoline out of Texas in the latter part of 1934 with the Federal Tender Board, but the Connally Bill seemed to be much more effective. My recollection is that that Tender Board that I speak of was effective in October and November, 1934. I think that something happened in December that made it rather ineffective.

As I recall, the first Tender Board regulations were in effect down there for 3 or 4 months. During that period, the price rose.

It is true that, after the passage of the Connally Act, the number of refineries in East Texas who had gasoline to ship out of Texas were greatly decreased.

569 Prior to the time the Connally Act went into effect, prices for gasoline were generally lower than they were afterwards.

I testified here that I have bought gasoline from Panhandle Refining Company. I bought this gasoline under contract from that company. I bought from them in 1935 and also in 1934. I recall having difficulty in getting them to supply our gasoline under that contract in 1934. I have a recollection of having had correspondence with Panhandle Company with regard to its inability to furnish us with gasoline under that contract. I do not specifically recall having written Panhandle Company in October 1934.

I have testified that beginning March 1, 1935 the price of gasoline in the Mid-Western area increased and beginning in June, 1935 it reached a level which was fairly constant until January, 1936. I also stated that beginning in January, 1936 there was a rise in the price in this Mid-Western area, and some levelling off thereafter.

Q. Is it not a fact that during this time the general trend of gasoline prices in the Mid-Western area was substantially similar to the trend of gasoline prices throughout the United States?

570 Mr. Crawford: That is objected to, if the Court please, as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

I am slightly familiar with the state proration laws. To my knowledge, proration laws were for the purpose of preventing waste of a natural resource. They limited the amount of oil that could be produced in any given area. I think that, prior to proration laws, there was little effort to curtail crude production.

Since March, 1935, when the Connally Act became effective, the shipment in interstate commerce of illegal gasoline has been practically eliminated.

From my own experience I know about the shipment of what is called hot gasoline, but I have not bought and sold it.

I don't think I have the same impression of hot gasoline as a lot of people do. Hot gasoline is made from crude production in excess of the allowables. Under this Federal Tender Board it was forbidden that such gasoline be shipped out of the state in which it was produced. Consequently, I can't see how any hot gasoline gets into this territory.

I do know that the condition which I have already described, connected with the existence of the Connally
571 Act, under which the Court has permitted me to say
that the shipment of illegal gasoline in interstate com-

merce has been practically eliminated, distinguishes this period from March 1st on to 1936 from any preceding period. As to whether, in my opinion, the existence of the Connally Act and its application during that period accounts, in some measure at least for the increased levelling off of prices beginning in March, 1935, I think it does have an effect. I know of no illegal gasoline that ever came into Wisconsin in 1935 and 1936, or this territory I am talking about.

I classify Globe definitely as an independent. My purchases from Bradshaw in 1935 had nothing to do with any Globe business or any of our contracts which Globe had underwritten.

I testified yesterday that 37 cars which we purchased through Bradshaw in 1935 were purchased for resale to jobbers in the open spot market. I believe I said that a number of those cars were purchased at from ½¢ to ⅝¢ below the low of the Journal of Commerce of the grade shipped. I said that the octane of this gasoline was 65, and that the Chicago Journal bracket was 63-70. I think the bracket was marked "regular" in the Journal.

Regular gasoline is synonomous with house brand gasoline. It was commonly accepted in the trade that regular or house brand gasoline was 68-70 octane, and that 65 octane gasoline would bring a lower price than regular.

572 *Redirect Examination by Mr. Lewin.*

I do not know of any regular gasoline during the period that had a higher octane than 68-70. 68-70 gasoline was the highest octane rating gasoline in that entire bracket for regular gasoline that the Chicago Journal of Commerce quoted. The Chicago Journal quotation for regular gasoline was 68-70 for that period.

Referring to the Chicago Journal of Commerce of Friday, April 26, 1935, the octane rating is for "U. S. Motor, 63-70 (regular)" gasoline. During that day the word "regular" in the trade meant 68-70 octane gasoline. The low quotation on that day for 63-70 octane gasoline was 5¼¢.

By Mr. Chaffetz

The high bracket for that would be 5⅜¢. The difference between the two is ⅛¢. I don't know whether the low grade gasoline in the bracket read would be bringing 5¼¢, and a high grade gasoline in the bracket would be bringing ⅛¢

above that, according to the Journal. I don't know how they figured this.

70 was the highest octane rating that fell into that bracket. The next highest was 69, and the next was 68. The high price in there would not necessarily be the price at which this octane gasoline should move. The way I understand it is that this minimum quotation is the price at which gasoline falling into that classification was offered according to the Chicago Journal of Commerce. The high is the price which the seller thought the product was
573 worth and wanted for it. I presume this is so, as I don't know how those figures are got up.

If I were to buy this gasoline, I would prefer the 70 octane rating. I would not expect to buy the 70 octane for the same price I bought the 63. I would not expect to pay the high for the 70 and the low for the 63. I would expect to pay lower than the low for the 63. I would expect to pay lower than the low for the 65, and actually did that through the year 1935. We were buying 65 octane gasoline for less than the low quoted in the Chicago Journal of Commerce for 63-70 gasoline, regular.

I don't personally know of any transactions moving on the spot market that moved during 1935 and 1936, at the high that is quoted there in the Chicago Journal of Commerce.

In my experience, I have not encountered a spot market price which was up to that high in the Journal of Commerce for that same gasoline. I think it is the seller's quotation, and I think he has a right to make that quotation, but I don't think he gets it in actual practice.

On cross examination, I testified to the fact that the existence of the Connally Act and its effect on hot oil being shipped in interstate commerce was an element distinguishing the period from March 1, 1935, as compared with periods prior to that time. As to whether from my experience, it was the only distinguishing element as affects
574 the price of gasoline, I think perhaps the time of the year maybe had something to do with it, the fact that the country was more optimistic at that time, and the fact that general price levels were advancing. In addition, there was some buying, naturally, to support a market. I think almost everybody was doing that buying.

My recollection could be refreshed on this subject of whether or not the buying during that period which supported the market was by any particular group.

By the Court

The factors entering into the price of gasoline in the Mid-Continent during 1935 and 1936 were these.

I think the Connally Act was a factor. I think that the time of the year had something to do with it. Jobbers generally buy gasoline in the spring. I think that the general advance in price levels of all commodities had a bearing; and I think also that the balancing of supply and demand was a factor in raising these prices. There were certain people buying gasoline, lots of people buying gasoline. This gasoline was also being purchased to some extent, so I am told, by major companies. I know nothing about the thing beyond that.

Severe weather conditions would affect the consumption. I don't recall the conditions in those years. Everyone of us knows that during some of the severe days in the
575 winter months in Wisconsin there are not many cars or trucks on the highways. That would cut down the consumption of gasoline. There is much more gasoline sold during the summer months than there is during those three winter months.

By Mr. Lewin

I don't think the season of the year that I spoke of was one of these causes of the advance of tank car prices in 1935 and in January 1936 and maintenance of that price from June, 1935 through 1935 and to the spring of 1936. Generally starting in March the season of the year had an effect on the price.

As to what I would think were the causes of holding that price up through the winter of December 1935 and January 1936, there was a crude advance in that period. In my judgment, the gasoline advance in January 1936 was primarily due to crude advance.

I think the Connally Act had an appreciable effect on those prices in the winter of 1935 and 1936. I don't think the season of the year did, though—not in the dead of winter. I don't think increased jobber demand did it. In my opinion, there was a balancing of supply and demand in that period. The business doesn't stop as soon as the winter comes.

By the Court

We had no difficulty in obtaining gasoline during the winters of 1935 and 1936 and no difficulty in obtaining gas in October, 1935.

576 ***By Mr. Lewin***

I mentioned "buying" as one factor affecting the price of gasoline. I don't think that I said that it wasn't jobber buying. I said that jobber buying at that time wouldn't be sufficiently strong enough to advance the market. However, the jobbers were buying gasoline.

I don't know whether the jobber buying would be sufficiently strong enough to keep that price up there on the level that it had been in December of 1935.

Beginning in 1935, the market was rather erratic. In March of that year, it began to advance. The advance, in my judgment, was due to a number of factors, particularly the Connally Bill, the season of the year, the general rise in commodity prices, and purchasing by various interests. As to what various interests I had in mind when I gave that answer, I had the jobbers in mind, and from certain data which I have I understood that the major companies were also buying at that period.

Q. Did you have in mind any program of buying then?

Mr. Donovan: I object to the question on the grounds that it calls for the conclusion of the witness as to whether or not there was any program, and it assumes there was one in existence, that it is pure hearsay, that the witness has answered the question and has stated the various factors that he had in

577 mind, and further, on the ground that this is cross examination of the prosecution's own witness.

Mr. Lewin: I want to refresh the recollection of this witness, if I can.

Mr. Crawford: We declare to the Court now that we are frankly surprised at the answer of this witness, and we have very good reasons for that surprise, which we will assert if permitted to do so.

The Court: Objection overruled. He may answer. Exception allowed.

A. It is my recollection that in March of that year there was a buying program, yes, sir.

Mr. Donovan: Now, I move to have that answer stricken out.

The Court: The motion is denied. Exception allowed.

Mr. Lewin: Who was conducting that buying program?

Mr. Donovan: The same objection, your Honor. He does not show that the witness knows, and it is improper, anyway, as coming from this witness, as being pure hearsay, and it is not proper redirect examination.

The Court: Objection overruled. Exception allowed. He may answer.

578 The Witness: A. I am not definitely or clearly familiar with that buying program. There was, as I recollect, a buying program in operation during the Code period, and if I also recollect correctly the Code was still in effect at that time, and the buying was being conducted by a group, the nature or details of which I am not familiar with, because we never became involved with it.

Mr. Lewin: Q. Did you testify before the grand jury that was investigating this case?

A. I did, yes.

Q. Did you testify before the grand jury on May 7, 1936?

Mr. Thomas: Just a moment. I object to this question on the ground that it is too remote in point of time. I ask the privilege of asking a preliminary question.

The Court: Very well.

Mr. Thomas: Q. When was it you testified before the grand jury?

A. As I recall, in May of 1936.

Mr. Lewin: Now, I want to know if I might be able to refresh your memory by reading you a question and answer from your grand jury testimony. Was this question—

579 Mr. Donovan: May it please the Court, I object to this upon the ground that it is an effort on the part of the counsel to impeach his own witness.

Mr. Lewin: No, no.

The Court: It is rather apparent to the Court that this witness may be just a little hostile right now.

Mr. Donovan: I respectfully object to that statement of the Court.

The Court: Well, that is the Court's impression. I am just giving you the Court's impression. You may proceed. Exception allowed.

Mr. Lewin: Q. On page 572 of that record of the grand jury proceedings for May 7, 1936, was this question put to you by counsel for the United States, and—

Mr. Donovan: If it please the Court, I must object to this mode of questioning.

Mr. Lewin: You have already done it.

Mr. Donovan: I think the proper procedure is that the counsel should show the minutes of the grand jury to the witness.

The Court: No, that is not necessary. Proceed. Exception allowed.

580 Mr. Lewin: (Reading) "Question: What about the price at which you are able to buy from independent refiners? Has that become stabilized any during the past year or two?" And did you answer: "Oh, yes, sir."

Mr. Francis: I ask the jury not to consider that question and answer because it is in no way impeaching the witness in what he said.

The Court: That seems to be consistent with what he says.

Mr. Lewin: Q. Were you asked that question before the grand jury investigating this case, and did you answer it as shown?

Mr. Thomas: I object to the use of the testimony before the grand jury because it is too remote in the point of time.

The Court: Objection overruled. Exception allowed.

The Witness: A. That question was asked, and that was my answer.

Mr. Lewin: Q. That was your answer. Was that a true answer?

Mr. Thomas: Same objection.

The Court: Overruled. Exception allowed.

The Witness: A. Yes.

581 Mr. Lewin: Q. Were you asked this question immediately following:

"Q. Did you know why that is?"

And did you answer:

"Yes, sir, because there has been a buying program inaugurated down in that territory supported by the majors."

Were you asked that question, and did you give that answer?

A. I did.

Q. Was that a correct answer?

A. To my knowledge, yes, sir.

Q. To your knowledge it was?

Mr. Donovan: Same objection as to the redirect examination of counsel. Furthermore, it appears upon the face of the answer that it could have been nothing but hearsay. However, it might have been available before the grand jury; it certainly is not proper here.

The Court: Overruled. Exception allowed.

Mr. Francis: I would like to make a motion in that connection. I would like to ask the Court to instruct the jury not to consider that question and answer because there is nothing in it that is inconsistent with what this witness has testified. It does not impeach him.

582 The Court: It does not seem to be.

Mr. Francis: It does not. He said there was buying by refiners and jobbers, and I would like the Court to instruct the jury to disregard that.

The Court: He has practically made the same statement this afternoon that he made before. Overruled. Exception allowed.

Mr. Thomas: I wish to make objection to the use of the grand jury testimony on the ground that it is too remote in point of time, it appearing this witness testified some time in May, 1936.

The Court: Objection overruled. Exception allowed.

Mr. Francis: The Court did sustain my motion?

The Court: It is apparent to the Court that his testimony this afternoon was similar in all respects to that before the grand jury, so there is nothing in the testimony before the grand jury that impeaches his testimony here this afternoon.

By Mr. Lewin

I kept pretty well informed as to the market conditions in Texas and Oklahoma during the years 1935 and 1936. My source of information was the trade publications and information sent us by J. M. Bradshaw down in the field. He was a buying agent for us. He kept us advised by the telegrams that were shown to me yesterday as to the
583 market conditions in that locality during that period.

Relying upon the information and telegrams we obtained from him, we were guided in some respects as to the price we paid for gasoline.

I have heard of the Artex Refinery in Oklahoma. I think it is a very small concern. By "very small", I would mean perhaps 1,000 or 2,000 barrel capacity.

Cross-Examination by Mr. Lawton.

I said that jobbers' prices are affected by the Journal of Commerce quotations, and that in turn the prices beyond the jobber are likewise affected. In turn the quotation of the Journal is itself affected by a rise or a fall in the market. My understanding of the way the Journal functions is that any rise in the market directly affects the Journal's prices, and then the Journal's prices directly affect other prices. I should say, ordinarily, the rise in price would come first.

It is my observation of events in the oil industry, that a rise in the tank car price of gasoline does affect the prices quoted in the Journal of Commerce.

Barber Company was not a large factor in the spot jobber market in 1935 and 1936. In 1936 we bought only 1 car. In 1935 we bought 37 cars on the spot market,
584 practically all in the space of the week of April 25th,
to May 1st. In the rest of the year, we were not purchasing in the spot market.

All of these 37 cars were 65 octane gasoline which was not what was known as regular gasoline. That quality was and is inferior to 68-70, or house brand gasoline. Gasolines of the 63 and 64 octane rating are not regular grade gasolines. I would call them intermediate grade. From general practice, I would end the third grade at 60. I would say 61 and 62, 63 and 64 are intermediate.

Many jobbers at that time used 67 octane for regular gasoline. In other words, some jobbers use 67 to 70 as regular gasoline, others use 68 to 70. By far the vast majority of majors, refiners, jobbers and brokers used 68 to 70 as regular gasoline. So far as our house brand was concerned it was 68-70. We quoted on a grade known as 67-70. That was one point lower than the octane number. 67 to 70 would not permit me to deliver a 67 octane gasoline. We sold it on its specifications. It was slightly inferior in quality to 68-70 regular, but it was better than 65. There was at some time in 1934, 1935, or 1936 a grading of gasoline used in industry known as 63-70. That was a recognized grading for the purposes of sale. Any octane from 63 on up was deliverable under that grade. So we could deliver 63, 64, or 65, if you could get the jobber
585 to accept it. We did some trading under such a restriction as 63 to 70 gasoline. Under that we delivered 68 to 70. In selling these lower octane gasolines you named your own price. Dealers never quoted a grade of gasoline of 63 to 70 to their buyers.

There was not such a grading as 63 to 70 at any time in 1935 or 1936, to my knowledge, where a refiner sold to a jobber.

I said before that there was such a grading as 63-70, but it was not used by sellers of gasoline. When I said there was such a grading, earlier in my answers, I was referring to that description or quotation in the Journal of Commerce. I am quite sure that Platt's Oilgram used 63-70.

In order to dispose of 65 octane gasoline, it was necessary, during the years 1935 and 1936, and particularly in April, 1935, that it be sold at a price under 68-70, or regular gasoline.

(Letter produced and marked Exhibit 622 for identification and handed to witness.)

Exhibit 622 for identification bears my name and signature. I wrote that letter.

> Q. Mr. Lanzer, I will call your attention to the letter I have just shown you, written on January 4, 1935, and to the following statement contained in that letter:
>
> 586 "'The established market to the trade on 65 octane motor method gasoline is one-half cent per gallon above the low price of U. S. motor 62 octane and below, as shown in the Journal of Commerce; and on 67-70 octane motor method gasoline, an alternative basis of three-quarters of a cent per gallon over the low price of U. S. motor, 62 octane and below, as shown in the Journal of Commerce, or the low price of U. S. standard 63-70 octane as shown in the Chicago Journal of Commerce, whichever is lower. We are using these prices in writing contracts with the trade, for material originating with our other sources.''

I understand the purport of what you have just read from my letter.

The relationship between the market values and the trading values of third grade gasoline, 65 octane gasoline, and 67-70 gasoline was correctly stated by me in that letter. I think those relations continued to exist throughout the year 1935 without any substantial change.

We found on branded merchandise that, throughout the year 1935, the general market price for 65 octane gasoline was ½¢ over the low for third grade gasoline as published in the Journal of Commerce upon the date of comparison. We found that the general market price for 65-70 gasoline

throughout the year 1935 was one of two things; either
587 ¾¢ above the low for third grade gasoline as published
in the Journal of Commerce, or the low of the bracket for regular gasoline published by the Journal. As to whether the low of the Journal for regular gasoline tended to be, and was substantially ¾¢ over the market for third grade, that relationship was in there some place; I don't know whether it was ¾¢. It was approximately around ¾¢. It is essentially correct that the difference in the selling value of 65 octane gasoline and 67-70 or 68-70 according to which one was used as regular, was ¼¢.

We would expect to buy 65 octane gasoline at ¼¢ over the Journal's quotation for third grade, and we would expect to sell it at ½¢ over. Our selling price for 65 was ½¢ over the low of third grade. That was general throughout the trade. As to whether the low of 67-70 or 68-70, the regular, should be ¾¢ above the low for third grade, I don't know what it should be. I know what we sold it for. The generally prevailing price was ¾¢ above the low for third grade for a 67 octane unbranded gasoline. There was generally a spread of ¼¢ between 65 octane gasoline and the low for regular gasoline on the assumption that there was ¾¢ differential in the quotations. In that vicinity, I don't know the exact differential.

588 I gave this morning our cost for the 65 octane gasoline, our selling price, and the Journal quotation for that grade. We would expect to find our cost at least ½¢ below the Journal's low for 65 grade. As to whether we would in turn sell it for about ¼¢ below the Journal's low for the 63-70 regular, that was about the way it lined up at the time.

I would say that would be a fair relationship between the worth of 63 and 65 octane gasoline, although the sale of 63 was extremely limited. I would think ¼¢ below 65 would be a fair market value. I told you that a fair price for 65 is ¼¢ under 67. Using your figures there, the difference between a low for 63 and a low for 67, using 67 and 68 synonymous for the present, would be ½¢. Then I would say this was essentially correct that, allowing for a bracket of ⅛¢ only between the high and the low for 67, it would be reasonable to find a spread of ⅝¢ between the high and the low of a bracket which included 63 and 70 gasoline.

If the quotation in the Journal of Commerce on 63-70 octane reflected the price of 63 and the price of 70, there should be ⅝¢ spread between the two prices. I would say that was true in April 1935, and throughout 1935. I think the spread between the high and the low for 63-70 regular

gasoline in the Chicago Journal of Commerce for the period from April 25 to May 1, 1935, was about ⅛¢. Based
589 purely upon our experience in the field, the Journal of Commerce quotations could not be justified on a 63 octane gasoline. I mean they were too high for a 63. The spread was too narrow. My recollection is that the spread was ⅛¢.

I told you that the difference between the low of third grade and the low of regular gasoline should be ¾¢, including 67 as a regular for the present. I did not tell you that the normal relationship between the low price of third grade gasoline and the low price of regular gasoline was ¾¢; I said that the normal relationship between the price of third grade and the price of 67 octane gasoline was ¾¢. I didn't say anything about the regular. The spread between the low of third grade and regular gasoline was generally at least ¾¢, possibly a trifle more.

(Witness examines the Chicago Journal of Commerce for several dates.)

The spread between the low of third grade gasoline and the low of 63-70 regular gasoline, as shown by the Journal of Commerce on April 27, 1935, was ¾¢; on April 29, 1935, ¾¢; on April 30, 1936, ¾¢; and on May 1, 1935, ¾¢. Those figures 63-70 came to be used in the petroleum industry as a group figure, or as an expression in August, 1934. At that time, the classifications were changed
590 in the publications. That 63-70 was a classification adopted by the Western Petroleum Refiners' Association, a Refiners' Association. The journals didn't adopt it initially.

By the Court

Before August 1934 gasoline was classified U. S. Motor below 59 octane; U. S. Motor 60-64 octane; and U. S. Motor 65 octane—not anything else that I have.

I think ethyl gasoline was placed on the market earlier than 1934.

By Mr. Lawton

I think the classification adopted in 1934 contained the word "regular" as a part of the classification. However, I don't have all my memoranda. In the memorandum of classification, just "63-70" is shown. I have no record of any classification other than 63-70 regular. Immediately upon that classification being founded, I do not know whether or not the Journal of Commerce commenced the publication of a classification 63-70.

The Journals you showed me of April, 1935, included the word "regular" as a part of their quotations. To my best recollection that had existed in the Journal for some time prior to that week. Then it continued to quote that way throughout the year 1935.

(Witness referred to documents.)

591 It continued to quote 63-70 regular gasoline in that fashion until April 20, 1936. As to whether it wasn't April 15 or 16, 1936, it may have been a day or two around in there.

At that time the same refiners' association which had made this bracket 63-70 back in 1934, now broke down that 63-70, and made two brackets of it, 63-67 and 68-70.

By looking at the Journal of Commerce for April 15, 1936, I see that the Journal quoted 63-70 octane, parenthesis regular, end of parenthesis at 6¢ to 6¼¢, a bracket of ¼¢. That bracket of ¼¢ was far smaller than the brackets that existed between the selling price of 63 and 68 gasoline, and far smaller than the bracket which existed at that time between 65 and 68.

There was no quotation 63-67 gasoline on April 15, 1936 in the Journal. On April 16, 1936 the Journal carried a quotation of 63-67 gasoline. There is also a quotation of 68-70 regular gasoline. The quotations on April 16, 1936 for 68-70 regular gasoline and on April 15 for 63-70 regular are the same price. The 63-67 gasoline on the 16th was ¼¢ less than 68-70 regular gasoline. That is the first time that appeared on those classifications. That continued for some months thereafter, and until September, 1936 at least.

There were other changes in classification made in 1937.

592 *By Mr. Hanning*

To the best of my knowledge, the classifications carried by the Oilgram were identical with the classifications carried by the Journal of Commerce as to the third-grade and as to regular gasoline in that period. In other words, they carried third-grade, 62 octane and below; and they carried 63-70 octane with the word, "regular" after it, as I remember it.

Redirect Examination by Mr. Leiwin.

In response to questions by counsel for the Chicago Journal of Commerce, Mr. Lawton, I was giving here what I thought was the proper relationship between the

spot market prices for various octane grades of gasoline. I was not attempting to vouch for or trying to testify to the accuracy of any of the Chicago Journal of Commerce quotations for any of that gasoline. I merely set forth the relationship between the grades as we have to sell them. I was asked this question also by Mr. Lawton, "From your observation and efforts in the oil industry, is it your experience that a rise in price paid for tank car gasoline would affect the prices quoted in the Journal of Commerce," and I answered, "I would say so." I did not necessarily mean by that to say that the Journal of Commerce correctly reflects any rise or fall in the tank car price. I simply stated that the
593 Journal of Commerce recorded the rise and drop in prices. I said this: If the market were advanced or declined, the advance or the decline was generally reflected in the publications.

I know of many transactions over a period of time that are made at lower prices than those quoted in the Journal of Commerce, for that grade of material. Those transactions are essentially our transactions, and it is the only thing from which I can judge the correctness of their prices.

By the Court

I have followed the actual market prices. We got those prices on the spot transactions from day to day from the seller, whatever price he would sell to us for. The lowest one was, quality considered, the source with whom we placed the business.

As to how the price we paid for it from day to day compared with the price paid for that same grade of gasoline in the Journal of Commerce, it depended on the market condition. Sometimes it was ¼¢ below those figures and sometimes a greater differential. It was at no time at the same figure; we couldn't afford to pay the Journal price.

By Mr. Lewin

We frequently sell spot gasoline at the low of the bracket in the Journal price. We frequently sell be-
594 low that Journal price. We do not sell at higher than the low of the bracket.

Spot transactions with us are generally at a price below the publication price, when we are on the selling end, and also when we are on the buying end.

By the Court

When we entered the buyers' market, we attempted to buy our gasoline at the very lowest price we could buy it, and others did the same. I have no knowledge as to what the other buyers paid for their gasoline except what I obtained from these trade journals.

Recross Examination by Mr. Lawton.

When I talk of our buying price, I am talking of our buying price as a broker. In order to do business, we must buy below the Journal's low. I know that the Journal does not include in its quotation of ruling prices any price paid by brokers.

595 A. C. BREUCH, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I am 44 and have always resided in Madison. For 18 years my occupation has been oil jobbing, which includes gasoline, oils, and accessories. Our company, Pennsylvania Oil Company of Wisconsin, incorporated in February 1919, carries on our business of jobbing gasoline in Madison and the immediate vicinity for about 50 miles. Our office is in Madison.

Last year our gallonage was about 3,250,000. Probably prior to the last 3 years our gallonage amounted to very close to 3,000,000.

We handle the third grade or competitive grade, also the regular, or what they call the refiner's house brand; and also Ethyl gasoline, which we call high test. The trade name of the third grade is Barnsdall Motor Fuel; that of the regular or house brand gasoline is B Square regular, and the brand name of the Ethyl or premium grade is Barnsdall Super Gas Ethyl. The Super Gas Ethyl and the B Square contain tetraethyl lead. The other high test gasoline I mentioned has no brand name. There is very little of it sold. The gravity specifications for these high test gasolines are about 64-66 gravity. I think about 65 is its octane rating.

596 Roughly, about 90% of our business is regular gasoline that is, B Square. About 3% is the third grade, or Barnsdall Motor Fuel, and 7% is the Ethyl or premium.

$450,000 is approximately the amount of capital we have invested in this business. That is a smaller capitalization than formerly.

Our plant and equipment cost about $250,000. We have 2 bulk plants in Madison, and 1 in Barneveld. These consist of tanks of 20,000 gallons capacity and 11,000 capacity, those two. We get our gasoline in tank cars. It is brought by rail, or partly rail and pipe line, to Madison where we put it in these tanks. There is no pipe line into Madison. From there we put it into our tank trucks and haul it to customers, to service stations, to dealer accounts, and also consumer accounts.

I think it is the Great Lakes pipe line, I referred to, that comes into Chicago. I understand that starts down in the Mid-Continent field, but I really don't know. I do know the northern terminus is about Chicago; the neighborhood of Chicago is where our gasoline is sometimes billed from.

Our gasoline in the last 5 years has come from either Barnsdall, Oklahoma; Okmulgee, Oklahoma; or from Wichita, Kansas. Not much has come from that refinery, or from the pipe line. When it comes by pipe line it comes from some point near Chicago.

597 We own 5 service stations. 3 are located in Madison; 1 is out of town; and 1 is at Barneveld in the country. At present, our company is operating 2 of those owned stations. We have leased the other 3 to some of our old service station employees. We sell gasoline to these men who have those 3 leased stations.

We do business with about 14 other independent retail dealers or service stations in Madison. I don't know how many retail service stations we do business with outside of Madison. We have about 50 dealers accounts. Some of those persons might have a number of stations.

In addition to selling to dealers, we sell to consumers. We sell to fairly large consumers direct, and deliver to them from our tank trucks. About 50% of our gasoline we sell to dealers. That leaves 50% that we sell either through the 2 service stations that we operate, or direct to the consumer.

I hardly know how to describe a normal service station price today. Before the Iowa plan went in, of course, Standard Oil Company of Indiana had always set the retail prices; that is, they were the aggressors, and the rest of the stations followed. Therefore, we had to post that price in the service station. There was a posted service station price which could be put on any ordinary piece of

stationery, but the price of the gasoline to the retail
598 trade had to be posted at those service stations. We have always followed Standard of Indiana in that posting. I believe that has been true of the business in this general vicinity.

A normal service station price is where there are no price cuts in that immediate vicinity. It is to be contrasted with a "subnormal" price. If we had, for instance, a sub-normal market in Madison, there would probably be a price cut in here. The service station margin—that is, our over-all margin to the jobber—has been 5½¢ in normal times. If there was a price cut in Madison, the margin would, of course, be less than 5½¢. By price cut I mean a price war. That is what usually happens to make a sub-normal market. When there is no price war going on, the price that is posted is regarded as the normal service station price.

By the Court

When a price war is on, the jobber usually suffers the loss. If a jobber is on contract, he is on protection.

By Mr. Lewin

He gets some protection from his refiner in a case of that kind. Whether he gets full protection or part protection depends on what his contract reads. He may get full, and he may get part. I don't know which he usually gets.

599 Our over-all jobber margin is 5½¢. It would be 5½¢ if we operated our own service stations, that is, if we sold it at our own service stations, which we hired men for and who just work for us on a salary. However, the jobbers have leased out most of the service stations today, as this Iowa plan has done; and our margin, therefore, is 2¢ a gallon, because the service station operator gets his 3½¢ margin.

The "margin" is the difference between the price that we pay for a gallon of gasoline and the price at which it is sold to the public. It includes the 2¢ we get, and the 3½¢ the dealer gets.

That over-all margin includes everything we get. Out of that we have to defray our expenses; we cannot put it all in our pocket as profit. Out of the 2¢ margin today, we would have to pay all our business overhead, all of our salaries, our equipment, repairs to equipment, taxes, insurance, interest, in fact, any overhead that applies to any business. Then, after we have paid out those expenses, what we have left out of that 2¢, if anything, would be profit.

Dealer margin is the difference between what we sell the dealer the gas for and what he is able to sell it to the consumer for. Out of that margin he has to pay his 600 expenses. If he owns his own service station, he, of course, has to pay the taxes and interest, if any, his own salary, and his help. If it is a leased service station, he will probably have to pay his rent; he would also have to pay his help.

Spot market is supposed to be the price for which we can buy gasoline on the open market. It is supposed to be an open market price. That is what I would call a spot market. "Open" would mean if you were not under a contract. I would distinguish spot market from contract market.

When we were on spot market we usually had our regular source of supply. You would usually send in your orders ahead of time, probably 30 days ahead of time—you can pretty well anticipate—and on the dates you specified for that month's shipment the cars moved.

I suppose those independent refiners from whom you can buy on the spot market at times are in any of the oil fields, but the only ones we ever did business with are in Oklahoma, that is, in the Group 3 area. They are located down there in the oil fields so that their crude will be accessible, and not up here near the consuming markets.

Most of them have no pipe lines to gather the crude; they usually buy their own crude. That means, then, that most of these small independent refiners who sell on the spot market have located themselves down there 601 near the crude supply. Then, when they sell on the spot market, they usually ship their gasoline by tank car. I haven't heard of one who uses pipe lines for that.

We subscribe to and receive the Chicago Journal of Commerce every day.

There are always two quotations, I believe. I guess both of them are supposed to be prices for which gasoline is sold on that particular day, or the day before. I don't know how they work that, but they are supposed to be on sales, as I understand. I mean to say that for each grade that is quoted in the Chicago Journal of Commerce you have a high quotation for that grade and a low quotation for that grade. To find the average spot market quotations carried in the Journal you add the high quotation and the low quotation for that grade and divide by two, and that would give you the average of the spot market quotation for that grade in the Journal.

We bought our gasoline under contract from Mid-Continent Petroleum Corporation, a defendant in this case, in the years prior to 1933.

We started doing business with Barnsdall Refineries, Inc. in 1933. Between June 15 and 19, 1934 I stopped doing business with that company, and started doing business with Barnsdall Oil Company. On May 31, 1935 we ceased doing business with Barnsdall Oil Company, and started doing business with Barnsdall Refining Cor-
602 poration, with whom we have since done business, and which is a defendant in this case.

By the Court

Our contract with that company was dated June 1, 1935. We are continuing to operate on that same contract, drawn in 1933, by one of the predecessors of the present company.

By Mr. Lewin

The Barnsdall Refining Corporation invoices shipments to us. We order from the refinery about the 20th of every month for the next month's supply; and then we specify the dates. In the summertime, of course, we order much more than we do in the wintertime; but the order will probably run from 15 or 20 or 40 cars a month. That was our practice in 1935 and 1936; it always has been.

Invoices come through the mail. I haven't any here with me. As to a description of these invoices, there is an invoice number, the date of the invoice, the shipping point, the routing, and the description of the gasoline; the car number, the capacity of the car, degrees of temperature, the price, and showing the tax, also separately.

By the Court

My estimate of the difference between the amount of gasoline we sell during December, January and Feb-
603 ruary, and other months of the year, the summer months, for instance would be probably 40 to 50% less in the wintertime. There is a falling off in the sales during the winter months. This is because people don't drive as much in the wintertime as they do in the summer.

By Mr. Lewin

Part of that contract that you have handed to me is typewritten, and part of it is printed.

(Document, being contract referred to received in evidence as EXHIBIT 623.)

Mr. E. B. Reeser, a defendant in this case, is the president of Barnsdall Refining Corporation. We did business with him while he was connected with Barnsdall Oil Company. I always thought, when we did business with him, that he was an officer of the company, and did business on that basis. I would not want to say whether or not he was the president of Barnsdall Oil Company because I don't know definitely. E. B. Reeser is an officer of Barnsdall Refineries, Inc. We did business with him on the assumption he was an officer of Barnsdall Refineries, Inc.

By the Court

I can tell by looking at the signature on the contract, who the representative who acted for the company with us in our business transactions was. The signature under Barnsdall Refinery, Incorporated, is by Mr. E. B. Reeser, the president of Barnsdall Refineries, Inc.

604 *By Mr. Lewin*

That is the original contract. I don't know if there was any change in his official position with the next Barnsdall Oil Company. I know that he is president of the company we are now doing business with, Barnsdall Refining Company. Before we did that business we had been doing business with Barnsdall Companies; Mr. Reeser was active in that business, and we have done business with him.

That is a standard form of contract, I imagine. I did not have anything to do with printing that form. It was on there, and presented to me when the negotiations for the contract were entered into. I did not make any changes in that printed form at all.

(Witness then explained the price provisions of the printed supply contract, Exhibit 623, which explanation is here omitted because such contract provisions speak for themselves.)

There has been a change in the differential between Super Gas Ethyl and regular.

Even when that protection feature is operated the price we pay Barnsdall Refining Corporation is directly tied up with the spot market quotations as published in the Chicago Journal of Commerce. When the Journal quotations for the spot market gasoline goes up, our invoices go up, and we pay out of our pockets that much more money to Barnsdall Refining Company. If the Journal
605 nal quotations go down, our billings go down, and

the money we pay out of our pockets to Barnsdall Refining Corporation also goes down.

The tank car prices as published in the Journal of Commerce affected the price at which our gasoline was sold to the consuming trade. If the price in the Journal for spot market gasoline went up, I would not say the retail price went up exactly at that time, but it eventually went up. And if the price in the Journal should go down, the retail price would come down.

By the Court

As to what regulates the price the consumer pays at the filling station, I would say it depends entirely on the Chicago Journal of Commerce quotations. Thus, the consumer price at the pump has to go up to correspond to this 5½¢ margin.

Mr. Lewin: Q. Now, have you been satisfied with that contract with the Barnsdall Company that I have offered in evidence?

A. No, sir.

Q. Have you been satisfied with the price arrangements in that contract?

Mr. Donovan: I object whether he is satisfied or not. None of us are ever satisfied.

There is a provision in that contract by which we may terminate it at the end of 5 years. Mr. Reeser has
606 given us privilege of cancelling on different conditions.

The chief thing in our business by which we can determine whether we can make money on gasoline is the margin. By the "margin", I mean the difference between what we pay for our gasoline under the contract and what we can sell it for. I believe there is nothing else that approaches that in importance, and of course, the reasonable overhead.

The retail prices during 1935 and 1936 varied at about 5½¢ above the tank car price as published in the journals.

I complained to several people in the Barnsdall Refining Corporation, one of whom was Mr. E. B. Reeser. One conversation with him was about 2 years ago, about Christmas time. I have complained at other times.

Q. Now, will you state for the jury the substance of Mr. Reeser's remarks to you on that subject.

Mr. Donovan: I object to that, if the Court please, being hearsay and improper and being an attempt to have this evidence adduced as against these defendants not made in the course of the alleged conspiracy, being a narration of a past event, and certainly not in furtherance of the conspiracy.

607 Mr. Lewin: Your Honor, one of the allegations of the indictment we are trying here is that these contracts were uniform and that money was exacted from the jobber. This is certainly a conversation of one of the defendants with this witness and certainly admissible against him, at least.

The Court: Objection overruled. He may answer. Exception allowed.

Mr. Donovan: May I ask the Court to instruct the jury that, if admitted, it shall not be considered as evidence against any of these defendants, excepting the person named.

Mr. Lewin: And the company. I am agreeable to that.

The Court: Yes, for the time being.

A year ago last Christmas, in Tulsa, Oklahoma, Mr. Reeser told me in substance, "I know that you can't make money on a 5½¢ margin. However, I can't do anything for you. If better contracts are written, we will be glad to write you a better contract." I don't believe he said better contracts were written by him.

To follow that up and find that there are better contracts written is a pretty hard thing to do. I know in my own mind from conversations with other jobbers there are better contracts, but I can't say that definitely,

608 because I never saw a better contract.

I subscribed to the Chicago Journal of Commerce. I make use of that in my business. The invoices that I have described contain on their face the basic price as of the date of that invoice. I have our office compare that basic price as appears on our invoice when we receive it with the quotations in the Chicago Journal of Commerce to see whether they compare to that average on the B Square, and in the case of the low, to see whether they compare on the low. That check is made from day to day.

We keep a record in our files of those clippings from the Chicago Journal of Commerce, showing price quotations and our invoices, to show that comparison. At your request I made a study of those records to see whether there were any changes in those basic prices as compared in our invoices for 1933, 1934, 1935 and 1936. I have that here.

Mr. Donovan: I object to any comparison between two periods.

The Court: Objection overruled. Exception allowed.

I have the records here from January, 1933, the time that we started on our contracts with Barnsdall.

There were 4 changes in February, 1933 in the basic prices which have been checked against the quotations in the Chicago Journal of Commerce; 6 in March; 7 in
609 April; 4 in May; 13 in June; 6 in July; 7 in August; 16 in September; 7 in October; 2 in November; and 2 in December; or a total of 74 for the year of 1933.

The grade of gasoline is regular only. There were 12 changes in January, 1934; 11 in February; 6 in March; 10 in April; 7 in May; 5 in June; 1 in July; 9 in October; 6 in November; 5 in December; or a total of 72 changes during the year 1934.

There were 4 changes in January, 1935; 1 in February; 6 in March; 5 in April; 3 in May, and 1 in June. These changes were all up. There were no changes from June 6, 1935 until January 13, 1936. That is the way my records show. The prices were absolutely level and uniform.

By the Court

I mean the prices as quoted in the Chicago Journal of Commerce were uniform. Our price was uniform.

From June 6, 1935 until January 13, 1936, we paid the average of between 5⅝¢ to 5¾¢ for regular gasoline.

By Mr. Lewin

In January, 1936, there were 5 changes, and all of them were up. As to the total raise in price in January, 1936 from the low to the high, they changed from 5¾¢ to 6⅛¢ in the low bracket, and from 5⅞¢ to 6¼¢ in the high bracket.

610 In February, 1936, there were 2 changes. Both of those were down. As to the amount of the total drop, the high quotation on regular stayed the same, 6¼¢, and the low dropped to 5⅞¢. On February 27th, there was a change from the one previously in February, down to 5⅞¢ to 6¼¢; that was ⅛¢ change down. That is the last change in February. The change in the average as a result of the first drop is 1/16¢. You have 1/16¢ plus 1/16¢ or ⅛¢, in the average, change down in February.

The prices changed again on March 4th. The average went up 1/16¢. There were no further changes in March or April, 1936. There was 1 change on May 27, 1936 the high dropped ⅛¢.

I appeared before the grand jury that was investigating this case in the first part of May, 1936.

There was no change in June or July. There were 3 changes in August. The total amount of that change was 5⅞¢ down to 5¾¢ on the low quotation, and from 6⅛¢ to 6¢ on the high quotation. In September there were 3 changes down. In October, there was 1 change, ⅛¢ rise on the low quotation. In November, 1936 there was 1 change down ⅛¢ on the low, and the high also changed. On October 10, 1936 the low was 5⅝¢, the high 5¾¢; on November 14, 1936 the low was 5¾¢ and the high 5⅞¢.

611 From March 1 to June 6, 1935 the trend of prices published in the Chicago Journal of Commerce and of prices that I paid was upward. That was a steady rise. The trend of the prices after June 6, 1935 on through the rest of the year was steady; they were the same, all on a level. The general trend of prices in January, 1936 was up.

The general trend of prices after January, 1936 and down to May, 1936 was down. I told you about some changes down in February, and a change up again in March. There were two drops in February. The price would run level to a little drop in February, and that drop is recovered. And then the prices continued on a level through the rest of March, through April and to May 27th. Then there is a drop in May 1936, and then not much drop until you get to August 1936, and then you begin getting some drops off.

The trend of third grade prices would not be substantially different; they are somewhat the same. I would say the price for the third grade, based on the low of the Chicago Journal of Commerce for third-grade gasoline, varied in about the same way throughout that period, and held steady in about the same way during those periods.

612 *Cross-Examination by Mr. Donovan.*

At the time of this contract (Exhibit 623) I purchased the interest of a partner, and I had several bank loans. Barnsdall Refineries, Inc. loaned me enough money to do that; that is the part of the financial contract. That was all part of the contract that I entered into with them.

I said that now we were doing a business of about 3,250,-

000 gallons a year. Besides gasoline, we sell oils, greases and accessories, such as tires and batteries. As I recall, I think our business was very close to 20% accessories, and 80% gasoline.

I don't want to say that conditions were the same in 1933 and 1934 as they were in 1935 and 1936.

Q. Now, I am going to ask you to go back to the conditions that existed at that time. Don't you know as a fact that all commodity prices were going down in that period of 1933?

Mr. Lewin: That is objected to.

Mr. Donovan: If it please the Court—

The Court: Objection sustained. Exception allowed.

Mr. Donovan: But it is very important as bearing upon conditions at that time, your Honor. What
613 this witness has been permitted to testify to under the questioning of counsel is this—

The Court: He has just testified to the rise and drop in the price of gasoline.

Mr. Donovan: And we objected unless it was shown that there was some standard of comparison, and unless it was shown that conditions were similar or the same. Now, it is a matter of real unfairness to these defendants, and of absolute injustice, your Honor, if as a result of this questioning we are not permitted to show exactly what those conditions were, because—

The Court: Just what conditions have you in mind?

Mr. Donovan: I have in mind exactly this: I want to show from this witness, because I am sure he will be able to testify, that at the period that he has testified to, in 1933 and 1934, that there was a general depressed condition of the country; that there was a bank holiday; that banks were being closed; that conditions got so bad that it was necessary for the Government to intervene—

The Court: Now, this man testified just as to the rise and fall in the prices of gasoline.

614 Mr. Lewin: That is right.

The Court: Now, that is all. Just confine your cross-examination to that.

Mr. Donovan: This man testified to a change that occurred, and to a series of changes that occurred;

and then he said that when it came to '35 and to '36, that there was a levelling off. Are we not going to be permitted to explain to this jury, so that they will comprehend the reasons for that?

The Court: You may on your defense, perhaps, but on cross-examination of this witness—he has testified simply to the fact that prices went up and down. Now, I don't know whether he knows the causes or not. If he does—

Mr. Donovan: Then all I want to ask is if he knows.

The Court: He hasn't testified as to the causes, or have you?

The Witness: No, sir.

Mr. Donovan: But isn't he permitted to testify what the causes were?

The Court: No.

Mr. Chaffetz: And he did not purport to state the
615 causes; and I am sure that if we asked the witness what the causes were after the time of the indictment, objection would be raised, and we would be told that the witness doesn't know of his own knowledge. That is the same situation we ran into with Mr. Lanzer.

The Court: Well, the objection to that type of cross-examination will be sustained. Exception allowed.

Mr. Donovan: Well, your Honor, I don't want to do anything that will be objectionable to your Honor, but shall I proceed with the form of my question, and each question, and have your Honor rule; or am I to consider that your Honor has now ruled that I will not be permitted to ask this witness if he knew of specific conditions that were in existence at the time that these specific changes were made and noted by him in gasoline prices?

The Court: This witness hasn't testified as to the cause of that fluctuation, so don't go any further with that. Exception allowed.

Mr. Donovan: Well, I want to have a ruling—

The Court: You may later, on your defensive
616 matter, go into that and show the causes; but that isn't proper cross-examination of this witness.

It is true that I was able to buy gasoline more cheaply in the period of 1933, 1934, 1935 and 1936 than I had ever done in my experience of 18 years in the gasoline and oil business. It was down as low at that time, in 1933, as 1⅞¢ per gallon or very close to it. I know that during that period refineries were closing down. During 1933 and 1934, there were a great many price wars through this territory, and I think that stabilization meetings were held in these local communities to try to settle them.

Q. And that the Government had set up these stabilization committees to deal with them?

Mr. Lewin: That is objected to.

Mr. Crawford: That is the very thing that the Court has said that counsel may not go into, except on direct examination.

The Court: Yes, objection sustained. Exception allowed.

I believe that during the period 1933 and 1934 the prices of all commodities were going down.

When you come to 1935 and 1936, you find a different condition; you find that there was an increased consumption of gasoline over 1933 and 1934.

617 I know what conditions are in other parts of the country. I know that the winters in other parts of the country aren't as severe as here. It is true that even though the consumption of gasoline may be low in Wisconsin, it may be high at the same time in other parts of the country.

I believe that production in certain of the oil states is regulated in accordance with consumptive demand. I believe that the consumptive demand in the winter of 1935 and 1936 was higher than the consumptive demand in the winter of 1934 and 1935 in Wisconsin. I do not know how much more.

Q. Now, also in '35 and '36, you know, do you not, that the price of wholesale dairy products increased, don't you?

Mr. Crawford: That is objected to as incompetent, irrelevant and immaterial; not proper cross-examination. Aside from not being proper cross-examination—

The Court: Objection sustained. Exception allowed.

In addition to selling to jobbers, we also sold to farmers, during the period beginning in 1933 and continuing to date. We sold to farmers at 1½¢ above the dealer price. We don't sell a great volume to farmers. We sold to farmers in lots of 50 gallons at a time.

618 We also sold to industrial plants direct. It seems to me that around 40% of our business is sales to these industrial concerns, to farmers, to large trucking accounts, and to such other accounts, large consumers as distinct from our jobbing business. The margin to our industrial concerns is 2¢, and to our farmers it is 1½¢ above the dealer's price, which would make a total of 3½¢. That was 2¢ less per gallon than the price that the farmer would pay, at the filling station.

By Mr. Francis

On that part of those total sales that we make to dealers, I said we let our dealers or retail service station man have 3½¢ out of our 5½¢ commission.

There was a time when the dealer got 3¢. Just what date I don't recall. When he got 3¢, we got 2¢. And then the dealer got 3½¢, and we still made 2¢ on that business. 50% of our total volume is sold to these dealer accounts under which the dealer gets 3¢ for part of the time and 3½¢ for the other, and we got the other 2¢. A very substantial percentage of the other half of our volume is sold to a class of customers under which we get a larger margin than 2¢.

At the two stations which we operate we get a full 5½¢. However, we have to take the overhead of the service station.

619 The farmer pays tank wagon prices, 1½¢ above our dealer's tank wagon price. That would be 3½¢ we would make on that volume of business in some instances. We have a great share of the farm business up at Barneveld and there we have a man strictly on a commission basis who hauls our gasoline.

In that class of business, there are places where we make a larger per cent than this differential of 2¢ which exists in these non-owned service station accounts.

There are quite a few commercial consumers' accounts that we handle, in which we make a larger commission than 2¢, that is delivered at tank wagon price. They get the same price as dealers provided they use 1,000 gallons a month. But if they don't use 1,000 a month, we charge them 1½¢ more than the dealer's tank wagon price. On that volume of commercial business we make 3½¢ instead of 2¢. There is quite a considerable amount of business done that way.

In handling branded quality gasoline at service stations, we figure we attract a lot of persons to these stations who buy gasoline who will also buy oils, greases and accessories. Of course there is a substantial profit in our oil, grease and accessory business which is separate and distinct from the profit made in gasoline, but which goes right along with it under our contract. But I have never made a study to find out how many tenths of a cent a gallon it would mean.

620 *Redirect Examination by Mr. Lewin.*

When I was talking about profits in answer to Mr. Francis' question, I was talking about just gross margin on this gasoline business. Our expenses come out of that.

Cross-Examination by Mr. Lawton.

There is a drop in the tank car price in September. Generally in the 10 states, you reach a consumption peak of gasoline in the month of August, about Labor Day, ordinarily, although September in Wisconsin is considered one of the best months of the year. Gasoline consumption declines around that time.

Redirect Examination by Mr. Lewin.

You can't call Labor Day the peak of the consumption season. That is a change. From that time on business usually drops off. The price in 1936 would drop off a little in September. You do not get a peak in the consumption for November, 1936; you get a decline in consumption. It was after Labor Day in 1935 that we looked for and there was a decline in the consuming season. The last change in the Chicago Journal of Commerce prices in June, 1935 was 5⅝¢ to 5¾¢. So that price carried through all the way to January 13, 1936. There was not any decline after Labor Day in that year in those prices.

621 **HARRY FEE**, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have lived in Waterloo, Iowa, for 47 years. I am an oil jobber. I have a company entirely my own, the Harry Fee Oil Company. That company has operated as an oil jobber the greater part of at least 12 years. I have a bulk plant in Waterloo with total capacity of 30,000 gallons. My capital investment in the oil business, including property, trucks, and everything, is $65,000.

My volume of gasoline for 1935 was about 250,000 gallons. We paid taxes in 1936 on 306,000 gallons. 90% or more of all the gasoline that we sold in those 2 years was so-called regular or house brand gasoline. I operate 3 retail service stations. I own 2, and lease 1 from Socony-Vacuum Oil Company. I had 1 independent dealer account in 1935 and 1936.

My source of supply of gasoline was Kanotex Refining Company in the early part of 1935; after that, in 1935 and 1936, it was Socony-Vacuum, White Eagle Division. I entered into a contract with Socony-Vacuum Oil Company, White Eagle, about June 1, 1935 for the supply of gasoline to me.

Kanotex Refining Company has only a refinery at Ar-
kansas City, Kansas, and no service stations. I de-
622 scribe it as an independent refiner. I did not sell the
Kanotex gasoline direct under my own brand name;
I sold it under the Dixie brand.

I ceased doing business with Kanotex and took a contract with Socony-Vacuum, because of the fact that in 1935 an advertising campaign was trying to be put on by Dixie Distributors, and there were many of those fellows living in small towns who did not want to spend their share of the advertising. For that reason, I felt I should have a national brand on account of public acceptance.

The gasoline I purchased from Socony-Vacuum had been shipped to me from Augusta, Kansas. I think it has all been bought from Augusta in 1936.

I have here a copy of my contract with Socony-Vacuum Oil Company, Inc., dated May 24, 1935. That contract was in effect until sometime in November, 1935.

(Contract referred to received in evidence as EXHIBIT 624.)

I have here a copy of a subsequent contract between me and Socony-Vacuum Oil Company, Inc., dated November 19, 1935.

(Contract referred to received in evidence as EXHIBIT 625.)

The first contract, Exhibit 624, was a split contract,
whereby they assumed half of anything under a 5½¢
623 margin, and I assumed the other half of the differ-
ential. The basic price provision in the contract was
the average of averages of the Chicago Journal of Commerce and Platt's Oilgram, Tulsa edition.

About July 1, 1935, the Chain Store Tax Bill became effective in Iowa. It then became a custom there for the various companies to re-write their contracts. While our contract hadn't expired, they asked me to write or to sign a new one, which I did.

The price provisions of both contracts were not alike. The second contract was based upon tank wagon price, which was 2¢ a gallon less than service station price, or a 3½¢ split contract. When the Iowa Plan was adopted in Iowa, the Standard Oil Company of Indiana ceased to post a service station price for that state. In the first place, they posted a tank wagon price, at which they sold 1½¢ under; and later, as I remember, they posted what was called a dealer tank wagon price, which was 1½¢ under normal tank wagon price, which gave the dealer a 3½¢ margin. I mean that there was a difference in contracts of 5½¢ to 3½¢. Then, later on, when the dealer tank wagon came in, the new contracts that were written upon that were based upon dealer tank wagon, and not upon consumer tank wagon. In other words, where originally you had a 5½¢ margin under a dealer tank wagon price, you then had a 3½¢ margin under a consumer tank wagon,
and 2¢ under a dealer tank wagon. When I talk about
624 a service station price, I refer to the price to the con-
sumer.

I mentioned two types of tank wagon prices. There is what they call a consumer tank wagon price, where the purchaser takes delivery in tank truck quantities, but not more than 1,000 gallons a month. That price is usually 2¢ below the normal service station price, or 1½¢ above the dealer tank wagon price.

So, we have this situation: We have a service station price, and then, 2¢ below that we have a consumer tank wagon price.

Assuming that a wholesale grocer operates 8 or 10 trucks, he buys his gasoline either through the service station, or has a pump and a tank. If he buys it and supplies his own pump and tank, or the company supplies it, he buys that off the tank wagon. If he buys less than 1,000 gallons a month, in Iowa, he pays consumer tank wagon. If he buys 1,000 gallons or more per month, he receives an additional 1½¢, or dealer tank wagon price.

Then we deliver to the fellow that is running the corner filling station; with him, we use the expression "dealer tank wagon price". When we are delivering to this wholesale grocer who has his own tanks near his garage, we refer to the price at which he buys as a consumer's tank wagon price. But if he buys 1000 gallons or more per month, he gets the same price as the dealer tank wagon.

625 Prior to the inauguration of the so-called Iowa Plan in our state, Standard Oil Company of Indiana used to post publicly a so-called normal retail service station price. With the adoption of that Iowa Plan, Standard Oil Company of Indiana turned its retail stations over to its dealers under lease and discontinued the posting of normal retail service station prices. It thereafter posted a consumer tank wagon price. The consumer tank wagon price which Standard Oil Company of Indiana posted was normally about 2¢ below the retail price that it formerly posted.

The retail price that it formerly posted bore approximately a 5½¢ differential to the published tank car market, after adding the cost of the gasoline at the refinery as indicated in the published market journal, plus the tax, plus the freight, or laid in tank car price. Of that gross jobber margin of 5½¢, 3½¢ was allowed to the person operating the service station, leaving the jobber a balance roughly of 2¢.

When the Iowa Plan was adopted, and the Standard Oil Company of Indiana published a tank wagon price instead of a retail price, I testified that that made our gross margin 3½¢ on consumer tank wagon business instead of 5½¢ on business done through the service stations. Our margin in our business with dealers was not affected at all. We
626 continued to allow our dealer 3½¢. We retained 2¢ gross over all margin to cover all our operations.

(The witness then explained the price provisions of his contract, Exhibit 625, which explanation is omitted because such provisions speak for themselves.)

The actual spread between the retail price and the tank car price during that period when I was operating under the May, 1935 contract depended entirely upon the price posted by Standard Oil Company of Indiana. The normal spread between the retail price and the tank car price would be roughly 5½¢.

During 1935, there was a gradual increase of tank car prices on through to some time in June, I would imagine, and there it leveled out and stayed about the same price. There might have been a very slight fluctuation in the market.

The retail price was advanced at times, and at other times it was not advanced, as the tank car price went up. The trend of the retail price was up, of course. When there was a raise in the tank car price, the retail price did not always rise at the same time. The retail price at times advanced, but it advanced by 3/10¢ in each advance. It didn't advance ⅛¢ or ¼¢, but it was advanced 3/10¢ on each advance. When there was a rise in the tank car price, if it was less than 3/10¢ that rise wasn't reflected in the retail price. But when the increase in the tank car 627 price did total 3/10¢ or more, then my experience was that the retail price went up. It didn't advance until there was 3/10¢ in differential between the laid-in cost and the 5½¢.

We followed the market maker's price. If the tank car price and the retail price both went up at the same time, I paid more for my gasoline, and obtained more for it by passing on to the consumer any increase to me. If the price was raised to me, it was raised to the dealer, provided the market maker raised.

We couldn't pass any part of the increased cost on to the consumer until the market maker did. So that for any increased cost that I had to pay to the supplier when the tank car price was raised, as reflected in the market journals, unless the retail price went up at the same time and to the same extent on a split contract, the refinery assumed half of it. We assumed the difference.

In 1935 the retail price didn't always go up when the tank car price went up. There were periods when the retail price did not go up with the tank car price, and we had to bear some additional cost that we couldn't pass on to our consumers, because of the fact that the price was never advanced less than 3/10¢, and whenever the tank car price was advanced less than 3/10¢, we had to stand our share of that. The split provision would be operating, but we 628 would have to stand the difference. But we were splitting the difference; we stood it then, however. Then we were in a situation where the retail price had not risen to a price 5½¢ above the tank car price. During 1935 we were always on an up-grade market, and would have to assume the difference between 5½¢ and actual margin. We had such a market during part of 1935, and the dealer market was on the up-grade. Of course we were asking our supplier for more margin; I think everybody did that.

By the Court

Assuming that in my business I lost $10,000 in one year, under my contract, I assumed half of that and my supplier assumed a half. Under the term of my contract, as to whether I could make up that $5,000 loss, the top was open, but the spread was never great enough so we would exceed a 5½¢ margin. Only once, I believe in 1936, for a few days we exceeded the 5½¢ margin and that was due to a drop in the tank car market, when they did not drop the dealer tank wagon or the consumer tank wagon price in that particular time.

During the life of my contract I suffered some small amounts of loss where I had to bear half of it. There was no time where the market fluctuations under my contract permitted me to recover that loss in 1935 or 1936, that I remember, because of the fact that it was an up-grade market. If it had been a down-grade market, we might
629 have been able to make a little profit.

But there was a provision in our contract which permitted us to make up that loss if the market was higher and there was more spread, but we were operating and purely following the market maker's price. We couldn't over sell the market maker.

I think there was a provision in the first contract on the 5½¢ that we would adhere to the market maker's price. It was generally understood in the industry that there was a market to follow.

By Mr. Chaffetz

I discussed the question of obtaining a more favorable contract during the years 1935 and 1936 with several representatives of Socony-Vacuum Oil Company. I discussed it with Ray Mering of the Kansas City office. I used to consider he was vice president of the White Eagle. I don't know whether he is now or not. I presume this was when he was assistant to Mr. Marcel. I don't know. White Eagle is a division of Socony-Vacuum Oil Company. I talked to him in 1935 and 1936.

Q. What was the nature of your conversation with him in 1935?

Mr. Donovan: I object to that question, your Honor, on the same grounds that I have made an objection to such conversations with any representa-
630 tives of these companies by these jobbers; more particularly being hearsay and does not relate to any issue involved in this case; that it is not a matter in furtherance of any alleged conspiracy or any act done in furtherance of any conspiracy; and for those reasons cannot be taken as evidence against any of these defendants, excepting the person making the statement.

Mr. Chaffetz: I have no objection to the jury being instructed to regard this statement as being binding only on the person making it and his company, the Socony-Vacuum Oil Company, which is a defendant here.

The Court: That is the only way in which it will be received, only on that basis. Objection overruled. Exception allowed.

The Court: What this witness may say will have no bearing, of course, on any of the defendants, except Socony-Vacuum Oil Company and the man making the statement.

I asked Mr. Mering if it was possible to get an increase in margin. He said they only had the one contract. He couldn't see how they could increase the margins, but that if later on there was an increase in margins, he would be one of the first ones to give us the increase in margin regardless of the length of contract. Mr. Mering told me
631 at that time there wasn't any better contract available. In other words, he meant by that if our contract was dated on November 19, and there was a better contract available, I presume, from his company or any other company, before that contract expired, he would give us another contract.

Mr. Fred Elliot was the man with whom I signed the contract, and he is the man with whom I signed the second contract. At that time he was working out of the St. Paul, which is under the Kansas City office. He was assistant to Mr. Halverson over there, and I presume he would be classified as assistant manager at the St. Paul office. I had a conversation with him.

Mr. Chaffetz: Q. Can you give us the substance of such conversation?

Mr. Donovan: May the record show that the same objection I made to the other question relating to a conversation with any representative of the company is objected to?

The Court: Objection overruled. Exception allowed.

At the time I was negotiating for this contract, I asked Mr. Elliott for a better contract, and he informed me that that was the standard contract, and the only contract that was being written by the St. Paul office.

632 I never bought or sold any so-called hot oil that I know of.

I am a member of the former Iowa Petroleum Association, and the new Association which is being formed in there, called the Iowa Independent Oilman's Association, and the National Oil Marketers Association.

No cross-examination.

633 OSCAR L. PETERSON, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in Evanston, Illinois. My place of business is Chicago. I am vice-president and financially interested in George C. Peterson Company, a corporation, which has been in the oil jobbing business since 1916, about 22 years. I was one of its organizers.

The nature of my business as an oil jobber generally is buying gasoline, fuel oil and lubricating oils in wholesale lots in tank cars, and redistributing through bulk plants to dealers and consumers. The company has 7 bulk plants located in Chicago and vicinity. Those plants have a total capacity of about 1,500,000 gallons of gasoline.

The annual volume of our sales in 1935 and 1936 in gallons of gasoline, both at wholesale and retail was about 15,000,000 gallons each year. Of our total volume of sales about 50% was resold in tank cars, that is, we performed a brokerage business as well as a jobbing business. About 88% of the gasoline sold in our jobbing business in 1935 and 1936 was regular or housebrand gasoline. We have more than $1,000,000 capital invested in the oil business.

I think we are the largest independent oil jobbing company in Illinois. We perform a jobbing business practically the same as the other jobbers who have testified here, except on a larger scale. 634

A jobber buys his gasoline from refiners, has it shipped to him in bulk lots either by freight cars or large trucks, unloads it, puts it in his tanks; then re-loads it in smaller tank trucks, and delivers it to resellers or retailers, popularly known as dealers. The oil jobber also sells to commercial consumers, such as trucking companies or industrial concerns. Likewise, an oil jobber may own and operate his own service station, may hire the help, and run a regular retail business; or he may own property and lease it out to others. He would then become an independent contractor. His principal business is supplying these outlets with the products they sell.

In a general way the expenses a jobber has to pay out of the gross margin on which he operates are rents on property, real estate taxes if he owned real estate, personal property taxes, light bill, heat and power, fuel bills, repairs and maintenance of automobiles, traveling expenses and salaries and commissions to the sales department; just about the same kind of an expense that would enter into any business that was operating in any selling and distributing line.

George C. Peterson Company owns 24 retail stations,
most of which are leased out to re-sellers. It also
635 operates 25 or 26 stations itself. The great bulk of
our gasoline is sold to independent service station
dealers.

We received our gasoline from Socony-Vacuum Oil Company under successive one-year contracts dated December 1, 1934, and December 30, 1935.

(Copies of contracts referred to received in evidence as EXHIBITS 626 and 627.)

The price clause in our 1935 contract is known in the oil business as a 5½¢ split protection contract. I have heard it described this morning by several of the jobbers, and ours is substantially the same as any 5½¢ split protection contract that has been described here before. Our contract happens to state 6¢ because the margin is based on the dealer margin, or was at that time, that is, the allowance to the customer, and wherever that allowance is greater or less than 3½¢ then the margin is adjusted accordingly. It so happened in the Chicago metropolitan area when this contract was written that the dealer margin instead of being 3½¢ was 4¢, and consequently the contract was then written with a 6¢ marginal provision instead of a 5½¢ provision.

The basic price provisions in both these contracts relate to published market journals, and provide that we are to pay the average of the averages of the prices for comparable grades of gasoline, as published in the Chicago Journal of Commerce and Platt's Oilgram.

We had an understanding with Socony-Vacuum that
636 was not embodied in the contract that, since the Chicago Metropolitan area had been set up in a Government division when the Oil Code was in effect, that the Socony-Vacuum Company regarded the Chicago Metropolitan area, such as described in the old Chicago Code, as a separate district, so if there were a price change in the district instead of it being then subnormal, the selling price would be considered normal for that particular territory which at that time was an advantage to us. In other words, the split protection feature of the contract would operate in the Chicago Metropolitan area even though the prices were different than they were over the balance of the Standard of Indiana territory which comprises some 10 states. We did not, on that ground, ask Socony-Vacuum Company to give us a different contract. We accepted the written contract which they offered to us.

(Here occurred a colloquy between counsel during which Mr. Chaffetz made the following statement: "There is no charge in the indictment, and counsel has stated it repeatedly during the trial, there is no charge in the indictment of an agreement with respect to these contracts.")

We asked Socony-Vacuum for a different type of contract, one that would include the description of the territory, and the price as indicated in that territory; but Socony-Vacuum Company wanted us to sign their regular agreement, and take their word for the balance of it; and we, knowing that that was the practice that they pre-
637 viously indulged in, and had given to other jobbers in our territory, were willing to accept their spoken word for that part of the contract.

We had our negotiations with William J. Gerwe, sales manager of Socony-Vacuum Company at Chicago. He said that the contract that they had prepared for us was the same kind of a contract that they had had with all of their distributors.

During the period of 1935 and 1936 I discussed the question of a jobber contract with Empire Refineries, Phillips Petroleum Company, Skelly Company and Continental Oil Company.

I think Cities Service and Empire were the same, or substantially the same, or are now, at least. It was Empire at that time. I discussed the matter with Mr. E. C. Steffey of Chicago, a wholesale tank car salesman for them in the Chicago district.

Q. And what conversation did you have with him on the subject that we were discussing?

Mr. Donovan: The same objection as before as at Record pp. 241 and 292-293.

The Court: Objection overruled. Same ruling. Exception allowed.

(The following two paragraphs were admitted in evidence, at the suggestion of counsel for the Government, only against Cities Service Oil Company and Empire Oil & Refining Company:)

Mr. Steffey came out to our office to discuss with me a gasoline contract in August or September, 1935, and 638 I said that we had a contract, as he knew, with Socony-Vacuum Oil Company, which would expire later in the year, under which we were unable to make a living, and we were in the market for a few connections, if we could obtain a different proposition. Mr. Steffey said, "Well, our contract is no different from the one you have now; in fact, it is the general contract that is being used in the oil business by most of the suppliers, but we may have something else to offer you, which will be enough of an inducement so that you could better afford to have our contract than the one you have, even though they might be the same." And then I said, "Well, Mr. Steffey, what have you in mind?" And he said, "Well, you do a large fuel oil business, and we are large manufacturers of fuel oil, and perhaps we could supply you to a degree that would make quite a difference in your balance sheet." I said, "Well, that sounds interesting; what have you got to offer?" He said, "Well, that is rather a big proposition, and I will have to communicate with our sales office at Tulsa, to see just what the situation is."

A little later on, perhaps 10 days or 2 weeks, he again came out to see me and said that on account of the marketing set-up of Cities Service Company, which was then the marketing division of the Empire Refineries, that if they provided us with their gasoline to sell in that territory, that there would be duplication of outlets, in 639 other words, we would be selling in the same territory as they were selling, and at the present time they did not think it was a practical thing to do, and therefore they would be unable to go any further in their negotiations with us. However, we did come to an agreement about a supply of fuel oil.

There were many contracts in existence with jobbers and between many supplying companies, and, while they may have varied in some slight detail, the price provisions would come out the same in the end.

In the last 20 years there has been a great change in the type of contract. Going back as far as 1922, I think every refiner had his own type of contract, and his own idea of how he wanted to make a contract, and that carried on for a good many years.

For many years, there were periods when no publication was used, and no price except the posted price of the market leader in the district.

Then, along about 1929 or 1930 contracts began to appear more or less alike. The wording seemed to be a great deal the same, and the provisions the same; and then the price basis commenced to be based on the trade publications, with a split protection feature based on, generally, the price of Red Crown gasoline in the Standard of Indiana territory.

And then, a little later on, when the Iowa plan was
640 adopted, the price basis was changed from the service station price to the tank wagon price.

During 1935 and 1936, in my experience, I found that the contracts offered by the large major oil companies were generally pretty much alike.

In years gone by, we sometimes had no contract at all; we simply bought our supplies from whom we could get to supply us, and at an open market price. Other times, we had maybe a very simple contract with a refiner; it might last for a short period of time, or it might last over a number of years. There was no time prior to 1930 that we weren't free to buy from practically anyone, because at that time we sold all of our gasoline under our own brand, our own trade mark.

After that time we commenced selling major company brands. Naturally, if a jobber is selling the product of a major company that has an established brand, he sells under that brand. Then, of course, we became more or less restricted to that particular brand which we happen to be selling of the major company. In general, there was a greater latitude in which to buy than there has been of late. That was prior to 1930.

Our company preferred to handle a major company brand of gasoline because the major companies have ad-

vertised their brands extensively, and have a national system of distribution, so that a jobber, in our opinion,
641 is better off with a nationally known brand than he
would be to try to promote his own brand in any given territory. In other words, we found that consumer acceptance made it advisable for us, persuaded us, to deal in the product of a major oil company.

The tendency of the tank car price trend, as reflected in the Chicago Journal of Commerce and in Platt's Oilgram, from the beginning of 1935 until the first of June was upward; and then, for the balance of the year, it was practically stationary; it didn't move up or down. From June 1st until November 26, the price was stationary. On November 26, it was reduced ⅛¢ a gallon on the low bracket, and went back again on December 11 to the same level and stayed there until January 13, 1936.

I am referring to the price that was published in the Chicago Journal of Commerce for third grade gasoline. I do not have here the same information with respect to regular gasoline. The trend of prices on regular gasoline was substantially the same, as published in the Chicago Journal of Commerce, as third grade.

We had a very cold winter throughout this territory in 1935-1936. Cold winters normally affect the tank car market price of gasoline. If we had a normal market and a severe winter, and the demand for gasoline was not so great, we would have a weak market, and it would generally decline. In that winter the published market advanced during those 3 months.

642 We did business on the open tank car spot market
during those months. We bought gasoline from independent refiners during those 3 months, January, February and March, 1936. We bought from Phillips Petroleum Company, Waggoner Refining Company—Phillips isn't an independent refiner under the definition of a major company that has been made here—Grogan, Atlas, Danciger, Imperial, Eason Oil Company, Wilcox Oil & Gas, Kanotex, Deep Rock, and Henry H. Cross Company.

In these purchases on the spot market from the independent refiners I named, we bought some at the market, none above the market, and some below. By "the market" I mean the low of the published prices in the Chicago Journal of Commerce. We bought 84 cars of third grade gasoline below the low. We made those purchases from Henry H. Cross Company, Grogan, Danciger, Imperial, Eason Oil Company, Wilcox Oil & Gas Company. Whatever we bought from Atlas, we paid the low Journal quotation.

It is a general expression in the oil business, when you refer to the market, that you refer to the published quotation in the Journal of Commerce. Sometimes, depending upon the product spoken about, it would be the general assumption that the low would be referred to, and other times the average. It just seems to be that generally, when you talk about third grade gasoline, you talk about the low and when you talk about regular, you talk about the average.

643 I believe that it would get back to the prevailing type of jobber contract, because in these contracts, generally, regular is based on the average of the Journal; and the general thing, the third grade is based on the low of the Journal.

On December 27, 1935, we bought 3 carloads from Henry M. Cross Company. The low of the Journal was 4¾¢ for the third grade, and we bought at 4½¢.

This particular comparison I made with the published price and the actual buying price on the same day. The purchase was made on the same date as the Journal of Commerce carries for that quotation. The Journal price didn't change between those two dates. So, if I had used the Journal price for the following day, I would have reached the same result.

Next, January 6, 1936, we purchased from Grogan Company 1 car at 4¼¢. The Journal of Commerce was still 4¾¢. That purchase was ½¢ below the low. January 24, 1936, 5 cars at 4¾¢ and 10 cars at 4¾¢; both purchases from Danciger. The Journal low on third grade gasoline on that day was 5¼¢. The following day, it was the same. So that I bought a total of 15 cars from Danciger at ½¢ below the low.

On March 13, 1936, 15 cars purchased from Wilcox at 4¾¢. The low price published by the Journal for the comparable grade of gasoline the same day was 5¢.

644 On the following day the Journal price was 5¢.

From Eason Oil Company we bought 3 cars on March 11 at 4½¢, and 4 cars on March 11 at 4½¢. On that day the Journal price was 5¢. Those purchases were made at ½¢ below the low.

On March 5, 1936, we bought 5 cars from Imperial at 4⅝¢, and on that date the Journal was 5¢. On the next day it was the same. So we bought that gasoline at ⅜¢ below the low as published by the Journal.

In addition to these purchases I have enumerated I made some purchases at the low during that same period. We made no purchases above the low published by the Journal.

From my experience in purchasing on the open spot market during that period, I found that the actual open tank car spot market seemed to be less than the published price in the Journal of Commerce. The fact is that these purchases clearly show that they were made at less than the Journal published price.

To my knowledge our company has never purchased or sold any hot oil. Our company belongs to the Illinois Petroleum Marketers' Association, a jobber's association. This association has about 300 members.

Cross-Examination by Mr. Donovan.

I think I said the tank car market rose in the spring
645 of 1935. The price of third grade gasoline declined
from January 2 to February 1, 1935. It declined from
the high of 3¾¢ a gallon to 3¼¢ a gallon.

I have a memorandum taken from our records of the transactions we had during the period of January and February, 1935. I have the details. These memoranda are all of our spot sales except the spot purchases made from Phillips Petroleum Company. No Phillips cars are in these records. I believe there are several hundred spot purchases and sales beginning March 1, 1935.

On March 2, 1935, 1 car of gasoline, 65 octane, purchased from Grogan Oil Company at 3¾¢ a gallon and sold at 3⅞¢. There was no price in the Journal for 65 octane that day, unless the price of 63-70.

On March 2, 1935, 1 carload, 68-70 octane, purchased from Petroleum Exchange at 4¢ a gallon, and sold at 4¼¢. I haven't the record here of to whom the cars were sold. Generally these were all sold to jobbers. On that day the Journal of Commerce low was 4⅜¢ a gallon.

On March 4, 1935, 2 cars of third-grade purchased from Globe at 3¼¢ a gallon. That is the same price as the Chicago Journal of Commerce low. The price at which we sold it doesn't appear here on this record.

On March 4, 1935, 5 cars of third-grade purchased at
3⅜¢ from Shamrock, and sold at the same price. We sell
to both jobbers and brokers. On that day, according
646 to this record, the Journal price was 3¼¢. I will have
to correct my statement that we bought nothing above
the low of the Journal of Commerce. If we sold to a

broker, it generally would be lower than if we sold to a jobber.

On March 4, 1 car 65 octane, purchased from Grogan at 3⅞¢ and sold at 4¢. That is not quoted in the Journal.

On March 4, another car, 65 octane, purchased at 4¢ from Carson Petroleum Company and sold at 4⅛¢. The 63-70 low when we sold the 65 was 4⅜¢.

On March 5, 1 car, 65 octane, bought from Danciger at 4¢ and sold for 4⅛¢. There is no record of the date of sale, but the sales are generally made on the same day as bought. I can't say to whom it was sold.

March 5, 3 cars, 68-70 octane, purchased from Petroleum Exchange Company for 4⅛¢ and sold at 4¼¢. The low of the Journal for 63-70 octane was 4⅜¢.

On March 7, 1 car, 65 octane, purchased from Carson Petroleum Company at 4¢, and no record of selling price here. I have no record what became of it.

On March 8, 2 cars, third-grade gasoline, purchased from Globe at 3½¢ and sold at the same price, and the Journal on that day was 3½¢. I have no record to whom we sold that.

On March 8, 1935, 10 cars, 68-70 octane, purchased from Henry H. Cross at 4⅛¢ a gallon, and sold at 4¼¢ a gallon. On the same day the Journal of Commerce low
647 for 63-70 was 4⅜¢. I have no record of to whom we sold that.

On March 8th, 1 car of third-grade purchased from T. R. Vaughn, who is a broker, at 3½¢ and sold it at 3⅝¢. The Journal on that date was 3½¢.

I have prepared a summary showing the prices at which gasoline we purchased from independent refiners was resold and what sales were made to jobbers and what sales were made to brokers and consumers.

From January, 1935 to the end of March 1936, we sold 588 cars to jobbers, 76 to brokers, and 10 cars to consumers. All of those sales were spot sales in the spot market. The octane rating of some of these cars that I sold to jobbers ran between 63 and 67 octanes. I have a line which I call cars not classified. That includes cars that do not conform in specification to any bracket shown in the Chicago Journal of Commerce. That would include 375 end point material, and 360 end point, anything odd. That is not in my total of 588 to jobbers. I segregate that. The total sales of all cars equals 674. The cars not classified are 91; which would make a difference of 583 cars. That balance was third grade and 68-70 octane material.

I have compared the prices at which we sold those cars

with the low prices for the respective grade published in the Chicago Journal of Commerce for the day on
648 which the sales were made. 89 cars were sold above the low quoted in the Chicago Journal of Commerce for the days on which they were sold. 155 cars sold at the same price as the low of the Journal quotations for the days on which they were sold. The number of cars sold below the low of the Journal for the days on which the sales were made was 339.

We bought some third grade gasoline from Phillips Petroleum Company between April 1, 1935 and the end of May, 1936, which we resold to jobbers in the spot market. From April, 1935 to the end of May, 1936, we bought 366 such cars. 25 cars were sold at prices above the low of the Chicago Journal of Commerce on the day on which the sale was made. 281 cars were sold at prices equal to the low for the day on which the sale was made. 60 cars were sold at prices below the low of the Journal for the days on which these sales were made.

Taking all those sales to jobbers about which I have testified, both the independent refiners and' the sales we made of the products of Phillips Petroleum Company, 114 were made at prices above the low, 436 at prices equal to the low, 399 at prices below the low. There would be 550 at and above the low, and below would be 399. So that most of our sales to jobbers were at or above the low of the Journal during that period.

Some of the prices I have just given were prices in sales to brokers. There were 76 cars sold to brokers, and 10
649 cars to consumers. I haven't the information here whether they were at the low, above, or below the low. Generally they would be below what we would get from jobbers. Normally, that would decrease, in my total calculations, the number that we sold to jobbers below the low.

I have been in the brokerage business a long time. The volume of business we did in 1935 and 1936, compared with what we had done in previous years, was as good as the average years.

We are also in the jobbing business. We operate in Illinois, Wisconsin and Minnesota. I couldn't tell the number of jobbers there were in business in 1935 and 1936 compared to other years, but my opinion is that there were just as many then as there were previously, if not a few more.

By Mr. Lawton

I have a compilation of the sources of the gasoline sold to jobbers as well as that which came from other brokers

or majors or independent refiners. 366 cars came from Phillips Petroleum Company; 246 cars were bought from brokers; 409 cars bought from independent refiners; and 19 cars bought from major refiners. I do not know the source of the gasoline which we bought from the brokers at the time we bought it. There were 20 or 25 different
refiners from whom this material was assembled. We
650 buy a car from this independent refiner and a car from
that one, and so on, on different days, no extremely large quantities at any one time. There may have been as many as 10 cars in one purchase. They were not as large as those we purchased from Phillips. We purchased steadily from Phillips. I might describe the gasoline we sold to the jobbers, secured from the independent refiners and from the brokers, as an assemblage of gasoline.

Although I am not sure, I don't believe we sold gasoline on the same day of the same octane rating, sometimes above the low of the Journal, and sometimes at the low, and sometimes below the low. Perhaps within a week we did so. Generally speaking, when we sold at or above the low of the Journal we were always fully confident of our ability to guarantee quality and date of delivery; otherwise, we wouldn't sell. That was fully as true of the gasoline we sold below the low of the Journal. We knew the source of all of that gasoline, and we were as fully able to guarantee quality and date of delivery as fully as in the case of gasoline sold at or above the low of the Journal, since we always guarantee quality on anything we sell, regardless of price. The gasoline we sold at the various prices, at any grade, was not the same; that is, all we sold at ⅛¢ below and at or above that were not all of the same quality; there might
have been different specifications. The matter of spe-
651 cifications, however, would not enter into whether we
asked the low or above the low or below the low of the Journal. All third-grade gasoline would come within the third grade specifications, and within the third grade bracket, but there might be some variations with respect to cars we sold. That might be true of regular as well as third grade. During that period it seems we bought about 40% from Phillips and about 60% from others. Most of the Phillips was sold at or above the low of the Journal.

Redirect Examination by Mr. Chaffetz.

When a sale is made at above the market, above the low of the Journal, it is generally to either consumers or jobbers whose credit isn't so good. The low of the Journal is what we generally regard as the market.

If we have a jobber whom we think might not pay his bills, we might charge him ⅛¢ or ¼¢ above the market. We have to have a little insurance for credit risks.

652 H. E. MILLER, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live at Festus, Missouri, on the Mississippi about 30 miles south of St. Louis. I have been an oil jobber since 1910. My company, H. E. Miller Oil Company, a corporation, has been in the business since 1920. The business of this company consists of buying gasoline in tank car lots and reselling it to dealers and consumers, and also working some on motor oils. We perform the usual functions of an oil jobber. We own 1 bulk storage plant having a capacity of 45,000 gallons. In 1935 and 1936 we had 3 retail stations, which we leased, and 20 to 25 independent dealer accounts. In 1935 we sold about 520,000 gallons and in 1936, 606,000 gallons of gasoline. In 1935 about 75% of that gasoline was so-called regular or house-brand gasoline, and in 1936 it was 85%. After depreciation, our books show about $42,000 capital invested in the business.

Our source of supply of gasoline in 1935 and 1936 was part of the time Barnsdall Oil Company and part of the time Barnsdall Refining Corporation. We commenced to do business with Barnsdall Oil Company under a 3-year contract beginning on August 1, 1934. We did business with Barnsdall Oil Company from August 1, 1934 until some time in June, 1935, and from then on it was
653 Barnsdall Refining Corporation, a successor corporation, under the same contract.

(Contract referred to received in evidence as EXHIBIT 628.)

On July 25, 1935, I received a letter from Barnsdall Refining Corporation, signed by G. F. Racette, vice president, with reference to that contract. Attached to that letter there was an enclosure addressed to Barnsdall Oil Company and Barnsdall Refining Corporation containing a place for my signature. I did as I was requested and signed that consent. The document attached to that letter is a copy of that consent.

(Letter and enclosure referred to are received in evidence as EXHIBIT 629.)

(The witness then explained the price provisions of his contract, Exhibit 628, which explanation is omitted here because such provisions speak for themselves.)

At that particular time, on the 6¢ margin, there was a 4¢ dealer discount. That was based on the 4¢ dealer discount, and whenever that dealer discount was reduced, our spread was reduced accordingly; or, if it was increased, our spread was increased accordingly.

(Witness continued his explanation.)

During the greater part of 1935 the prevailing spread between the retail price and the tank car price, plus freight,
plus taxes, was never up to the amount of our basic
654 guarantee. By that I mean 6¢ while the 4¢ dealer dis-
count was in operation, and 5½¢ while the 3½¢ dealer discount was in operation. I can't recall exactly when the 3½¢ dealer margin came into operation. I think it was sometime in 1935. After the dealer margin became 3½¢, our guarantee became 5½¢. The actual spread between the tank car price, plus freight, plus taxes, and the prevailing retail price hardly at all exceeded 5½¢ during 1935. There were some times in 1936 when it did, not very long periods of time.

Now, take during 1935, when it wasn't there, we really weren't getting 5½¢ because we were standing half of that excess, and sometimes it amounted to $8, $9, $10 and up to $30 a car, if I remember right. That condition was very general in 1935. The dealer got 3½¢ out of whatever margin we got. So our split, so far as we were concerned, was below 2¢. Part of the time we only had 1.7¢, part of the time 1.8¢, part of the time 1.9¢. We had to pay all of our expenses out of that margin.

Gasoline supplied under that contract was shipped during 1935 and 1936, some from Barnsdall, Oklahoma; some from Okmulgee, Oklahoma; and some from Wichita, Kansas. It was all shipped in tank cars by rail.

We preferred to do business with a major oil company
on account of the national advertising of their prod-
655 ucts, and better trade acceptance.

I have discussed with representatives of our supplier, during 1935 and 1936, the possibility of a change in the form of our contract.

Q. On what occasions, and with whom?

Mr. Donovan: I object to that upon the same grounds that I have stated before, may it please the Court: That it is hearsay; that it has no relation to any of the issues in this case; that it cannot be considered as evidence against any of these defendants on the issues presented under this indictment.

Mr. Chaffetz: We again yield to a ruling from the Court that any such testimony is limited in its effect to persons making the statements to the witness and to the company of which he is an authorized agent, and officers of that company who may be defendants here.

The Court: Any testimony of this witness as to those conversations will be so limited, and the jury may understand that.

The Witness: Should I answer?

Mr. Chaffetz: Yes.

The Court: Objection overruled, with that exception. Proceed.

656 In 1935, I made 2 or 3 trips to Oklahoma in regard to it, and again in 1936 to see the Barnsdall Company in regard to the price conditions set up on my contract. On both trips, I talked to Mr. G. F. Racette, who was vice president in charge of marketing.

I told Mr. Racette that it was impossible to continue in business with the present margin on our contract, and wanted to know if anything could be done about it. He said there wasn't anything that could be done, and I asked him what he thought the future of the jobber was in this business. I told him that it was impossible to go ahead on a 2¢ margin and stay in business, and I asked, "Is this going to be just temporary, this low margin for the jobber, or as time goes on, is there going to be a better margin?" And he told me, "Well, I don't see much hope for the jobber." And then I said, "Well, there ought to be some kind of relief on a condition of this kind." He said "Well, the only relief that I can offer is to lease your plant to us." He said, "We would consider leasing your plant, if you would be the agent down there." "Mr. Racette," I said, "That is putting me right back where I was 27 years ago. I wouldn't be interested in that proposition, being a commission agent." That finished the conversation at that particular time with him.

Then I talked, either on that trip or in September, with Mr. E. B. Reeser, the president of Barnsdall Company.

657 Mr. Donovan: Same objection.

Mr. Chaffetz: The Government suggests this evidence be admitted on against Mr. Reeser and the Barnsdall Company.

The Court: Yes. Same ruling. Exception allowed.

I asked Mr. Reeser if something couldn't be done in regard to a longer marginal contract, that it cost us more to do business than what our margin was, and we were losing money down there. He told me, "Well, Harry, it is a sad state of affairs when our good customers are losing money on our products", and I added: "Yes, even on a normal market". And I said, "Why don't you do something about it? You are a big company; why don't you put out a contract we can live on and let live?" And he said, "I can't change that contract one iota," or something to that effect. That was all he said.

I never contacted any other major oil company, but several have contacted me. My contract had a six months' cancellation notice on it, and they all knew it, and from time to time I was contacted by other major oil companies with respect to my signing a jobber contract with them.

Mr. Tom Koneke, tank car sales representative of Mid-Continent Petroleum Company called on me I would say 5 or 6 times during the course of 1935, and maybe 3 or 4 times in the early part of 1936. On most occasions I discussed the matter of a jobber contract with him. I
658 told him I would only be interested in a change if I could get a better contract, and he said, "Well, we have no better contract to offer than what you have, but we believe our merchandise would sell better and has better trade acceptance, and is better advertised." I said, "Well, Barnsdall is well known around here; we have no sales resistance on it, and the only thing I am looking for is a contract that is better than the one I have got. If you have one, I will talk with you", and he said he did not have it. I did not talk with any of the other representatives of that company.

I talked with Mr. Oscar Whateley of Lubrite Division of Socony-Vacuum. He and one other sales representative made 8 or 10 trips to see me, and my conversation with them was practically the same as with Mid-Continent.

Mr. Donovan: Same objection. (See objection stated at R. p. 292-3.)

The Court: Yes. Same ruling. (See ruling at R. p. 293.) Exception allowed.

Mr. Chaffetz: The Government suggests that this evidence be admitted only against Socony-Vacuum Oil Company, Inc.

I said that I was not interested in making any change until I could get a better contract; that the trade acceptance of Barnsdall was very satisfactory, and I was only looking for a better margin. He said they didn't have any to offer, but he believed that with their advertising
659 campaign, we would have more gallonage, and I said, "I am not interested in more gallonage unless there is a profit in it."

I talked with the St. Louis representative of Tidewater Company, but I do not recall his name. He called upon me in 1935 and once or twice in 1936. He was a tank car sales representative.

I discussed the matter with Mr. H. A. or W. A. Perriquey of Continental Oil Company during 1935 and 1936. He was in my office at least 5 times during the course of each year, and I cannot say when it was. It might have been one call in January, maybe another one in March, or April. They were 2 or 3 months apart. He was jobber or tank car salesman. I told him the same thing; that I was not interested in a change from Barnsdall unless I could secure a better contract, and he said "Our contract is the same as theirs, and I have nothing to offer you in that way unless it is a change in the merchandise which might be better."

The Court: I want the jury to understand that the testimony as introduced on this subject as to any company is binding on that company only.

Mr. Chaffetz: Q. Mr. Miller,—

Mr. Donovan: Just a moment.

(Mr. Donovan and Mr. Chaffetz conferred with the Court out of the hearing of the jury.)

660 (The following occurred in the hearing of the jury:)

The Court: Gentlemen of the jury, there seems to be some misunderstanding here. I want to say to you this; I say this to you now; that this witness has testified as to conversations he had with representatives of the Barnsdall and Socony and Continental Oil Companies, and any statement he has made as to conversations with each of those companies' representatives is binding thus far only on that company, and not upon the other defendants in the case.

Mr. Chaffetz: And we understand that the Court has made —

Mr. Donovan: I must object to the statement "is binding." It may be admissible, but it certainly cannot be binding.

Mr. Chaffetz: The defense counsel used the word "binding."

The Court: Can you suggest a better word? The evidence is admissible against these corporations and not as against the other defendants.

Mr. Lawton: I think I may have used the word "binding" the first day. It is a word we use down in Illinois, and it may be unfortunate.

661 The Court: So the jury understands they have made an objection to the admission of that evidence, your consideration of that, I am saying to you now that it is admissible as against the corporations or the officers of those corporations that this witness has had conversations with, and against them only.

Mr. Chaffetz: And the Government understands the Court has made the same ruling with respect to similar testimony from other witnesses.

The Court: Yes, let the jury understand that. Anything I may have said to you is qualified so as to correspond with what I have now said.

I am a member of the Missouri Jobbers' Association, and National Oil Marketers Association. I don't know exactly, but I think there are around 100 or 150 members in the Missouri Association. I have never to my own knowledge bought or sold any hot oil.

No Cross-Examination.

662 JACOB H. MIDDLETON, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I am 44 years old and reside at Bowling Green, Missouri. I was an oil jobber during the years 1935 and 1936, but discontinued that business in September, 1937. During that time I was also in the general insurance business. That is my business now. I am at present presiding judge of the County Court in Pike County, Missouri. That is not a legal position. I am not a lawyer.

My oil jobbing company during 1935 and 1936 was Pike County Oil Company, located at Bowling Green, Missouri, and established in 1930. I was a part owner of that company. My position was secretary, treasurer and manager. We owned 2 bulk plants and had storage for 56,000 gallons of gasoline. We did not own and operate retail service stations. We distributed to about 18 independent dealers in 1935 and 1936. The total capital investment in our business was about $11,000. Our annual gallonage of gasoline in 1935 and 1936 was between 300,000 and 400,000, and between 90 and 95% of that was regular house brand gasoline.

Tidewater Oil Company, an Oklahoma Corporation, supplied us with gasoline in 1935 and 1936. Until No-
663 vember 15, 1935, we were operating under our contract. There was no contract in effect after that date until September, 1936, but we operated under the terms of the contract and the price we paid for gasoline was determined by that contract. I have handed you a set of documents clipped together. They were all a part of a single contract. This separate document which you now show me is a contract I had with Tidewater Oil Company of Oklahoma and which was executed November 15, 1934. That is the contract under which we operated until November, 1935.

(Document referred to received in evidence as EXHIBIT 630.)

(The witness then explained the price provisions of his contract, Exhibit 630, which explanation is omitted here as such provisions speak for themselves.)

We permitted our contract to expire without making any further contract or without renewing that contract in November, 1935, because we couldn't make any money on the contract as it was, and we informed our source of supply, Tidewater Oil Company, that we wouldn't renew the contract, hoping that someone else or possibly they would have a better contract, and we would be free then to accept a better contract. They didn't offer us a better contract at that time. I discussed it with Mr. H. E. Perkins of Tidewater at about the time that the contract expired. Mr. Perkins, I think was sales manager for the Southwest Department of Tidewater Oil Company.

I can't say without refreshing my memory from these
664 contracts whether that was Tidewater Oil Company of Oklahoma or Tidewater Oil Company of New Jersey.

During the spring and summer of 1935 I had some discussion on the subject of jobber contracts with representatives of other major oil companies. I had such a discussion with the sales representative of Continental Oil Company, Mr. Perriquey, probably in April or May, 1935. A number of jobbers in northeast Missouri thought that possibly by pooling their purchases, they might be able to obtain a better contract, and with that in mind I talked the matter over with Mr. Perriquey and gave him something of a line-up of what we proposed to do if we could get a better contract. I was speaking to Mr. Perriquey on behalf of this group of jobbers. I couldn't say offhand how many jobbers there were in that group. Probably 8 or 10. I asked him if they would be interested in gallonage of that quantity at better than a 5½¢ split contract, and his reply was that they wouldn't. He said that they had nothing better than the 5½¢ split contract.

I had such a conversation with Mr. Lipps, jobber salesman representative of Deep Rock Oil Company at about the same time. I don't know that they would classify as a major. I presented the matter of the gallonage that we
could pool, providing we could get better than a 5½¢
665 split contract, and he said that they had no contract
different from that.

I remember, in a general way, the trend of the published spot market tank car prices in the spring and summer of 1935. I am familiar with the prices published in the Chicago Journal of Commerce. We did not subscribe to Platt's Oilgram, but I think it followed. In the spring of 1935 there was a gradual increase in the tank car spot market prices for several months. They then leveled off; and as I remember it, there was very little, if any change during the balance of 1935.

When the tank car prices would increase as much as 3/10¢ a gallon, then the retail price in our area would be increased 3/10¢ a gallon. When the tank car price went up ⅛¢, there was no increase in retail price. That affected us as a jobber, in that during practically the entire time our margin was less than 5½¢. The difference ran from $6.00 to $8.00 a car. That is, we paid from $6.00 to $8.00 a car more than we would have paid if we had received the full 5½¢. If the retail price had fluctuated directly with the tank car price we would have received the full 5½¢ margin. But if the tank car price went up and if the retail price didn't go up at the same time and to the same extent, then my margin was reduced below 5½¢.

Of that $6.00 or $8.00 a car, a half of it or from $3.00 to

$4.00 was taken care of by our source of supply. That
666 was due to the so-called split provision in our contract.

As a usual thing the retail prices would follow the tank car prices up in a few days, possibly a week. If the retail price went up at the same time that the tank car price went up, and went up exactly to the same extent, the consumer would pay that increase. The jobber would, through the retail price, pass that increase directly on to the consumer, and the consumer would pay the whole of it. If the tank car price went up and the retail price didn't go up, the jobber paid to the extent of one-half of the increase. That amount was never passed on to the consumer. That condition prevailed most of the time during 1935, namely, when the tank car price went up, the retail price didn't go up at the same time and to the same extent.

I was a member of the National Oil Marketers Association and the Missouri Oil Jobbers Association. I did not deal in hot oil.

Cross-Examination by Mr. Donovan.

I have been in the courtroom throughout these proceedings, for, I believe, 11 days. I have been listening to what has been going on here all of this time. I heard most of the various witnesses upon the stand. If one were taking
inventory of the cost price, it would be true that when
667 the tank car prices go up, the value of our inventory
increases. But the value that one received for that inventory does not necessarily increase. If you are inventorying at the market it is true that the inventory, what you have there on hand, increases in value.

If the tank car price decreases and the retail price does not come down correspondingly our margin widens. I think it is true that there is just as long a lag and just as long delay in the retail price, if it should lag, following the tank car price, as there is when the tank car price is going up.

I heard Mr. H. E. Miller on the stand. My contract was different from Mr. Miller's.

In addition to the provisions of my contract from Tide Water, in 1935 they took care of I believe half my local city tax. There was a price cut in Bowling Green, and during 1936 they took care of all of it. They also gave us protection on our local price wars in that instance in 1934, when we had a local price war.

I think a better way of stating the city tax matter was that there was a local 1¢ price cut in Bowling Green; that is, the price in Bowling Green was 1¢ sub-normal, whi they took care of. There was a 1¢ city tax in Bowling Gree and normally the price in Bowling Green would have bee 1¢ per gallon higher than it would be outside the cit

668 limits. All of that was in addition to the margin provision of my contract. I don't recall exactly ho many gallons I sold in Bowling Green in 1935 and 193 while the price war was on. They reimbursed me prob ably $600 a year, during those years. At one time, the took half of it. That might have been in 1934; but I thin it was in 1935 that they took care of half of it, and all o it in 1936.

Redirect Examination by Mr. Chaffetz.

When we had this sub-normal price situation in Bowlin Green, if our supplier hadn't taken care of all or part o that 1¢ differential between the normal price and the prevailing price it would have reduced the gross margin fro 5½¢ to 4½¢, as far as the city of Bowling Green is concerned. Out of that 5½¢, 3½¢ went to the dealer. I ha only 2¢ to start with. It would have reduced my margi from 2¢ to 1¢. That would have been my over-all margi in Bowling Green.

Cross-Examination by Mr. Lawton.

I think it is true that if the tank car price goes dow there is a lag of a few days before that is reflected in lowering of the price at the retail station. If the drop i the tank car price does not equal 3/10¢, then there is n drop at all in the retail station price. I think that was tru in 1935 and 1936.

669 *Redirect Examination by Mr. Chaffetz.*

To the best of my recollection, the tank car price didn go down after March, 1935. If it did, it was only a fe times. For the most part, during that year, the price were going up; tank car prices were going up, when ther were any fluctuations at all.

670 **HERBERT F. DAVIS**, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live at Sullivan, Indiana. From November 12, 1934 until May 17, 1937, I was in the oil jobbing business. The name of my company was Wabash Oil Company. I was interested financially in it and was its vice-president and treasurer. The company from 1924 to January 1, 1932, was a partnership, and after that date was a corporation.

We owned 2 bulk storage plants, 1 of 90,000 and 1 of 47,000 gallons capacity. We had 8 retail stations of our own. We operated 1 and leased out 7. We had 34 independent dealer accounts. Our annual volume of business in gallons of gasoline in 1935 and 1936 was in excess of 1,070,000 gallons. About 92% of that gasoline was regular or housebrand gasoline. The capital invested in our business was $40,000, all paid in.

Our supplier of gasoline in 1935 and 1936 was Socony-Vacuum Oil Company, Inc., Lubrite Division. We operated under contract during those 2 years. Our gasoline came from Augusta, Kansas, from East Chicago, from East St. Louis, and from Robinson, Illinois. Socony-Vacuum Company has refineries at these places except Robinson, Illinois.

671 The gasoline happened to come to us from Robinson on what was known as an exchange arrangement. Refineries trade a certain amount of gasoline, to points where they have a more advantageous freight rate. In other words, Robinson, Illinois, was a nearer shipping point than East St. Louis, or some other point.

The gasoline that came to us from Robinson was supposed to be Socony-Vacuum specifications. I assumed that Ohio Oil Company made that gasoline. It came from its refinery. It was billed to me by Socony-Vacuum Oil Company. We paid a total freight charge equal to the cost of shipping from Tulsa, Oklahoma.

The gasoline that came to us from East Chicago, came from a subsidiary of Socony-Vacuum Oil Company. It has a refinery there.

All this gasoline came to us in tank cars from states outside of Indiana, excepting that which came from East Chicago, Indiana.

I have with me the contract under which I purchased gasoline from Socony-Vacuum Company in 1935 and 1936, dated April 13, 1935.

> (Contract with Socony-Vacuum Oil Co. dated April 13, 1935, received in evidence as EXHIBIT 631.)

Attached to the contract is a rider, dated August 11, 1936, modifying the printed language of the contract when the Iowa Plan became effective in Indiana. It is intended
672 to take into consideration the effect of the Iowa Plan upon our relations with Socony-Vacuum Company.

I am not certain whether the Iowa Plan became effective in Indiana before the date of the rider, August 11, 1936.

> (The witness then explained the price provisions of his contract, Exhibit 631, which are here omitted as such provisions speak for themselves.)

We preferred to purchase our supply of gasoline from a major company for many reasons. The line had a very fine acceptance, and we were able to secure their advertising material such as signs, globes and other material, which would cost us a lot of money. We also wanted the benefit of their national advertising program.

We planned to take the contract (Exhibit 631) when it was offered, the 5½¢ contract, in 1935. I had such a discussion with Earl Whatley, who is the manager of the tank car sales department of the Lubrite Division, Socony-Vacuum Oil Company, Inc.

When a new contract was presented—we had just gone through a disastrous price war, and we were willing to take it, but reluctantly, but we were told that this was the going contract, and that this was similar to all other contracts Socony-Vacuum Oil Company, Inc. was writing. We did not solicit any contract from any other company
673 in 1935 and 1936. But we discussed it with two salesmen in the course of their calls at our office. They were Mr. Johnson of the W. H. Barber Company; and C. H. Browning of the Empire Oil Company, a subsidiary of the Cities Service Company. I think Mr. Browning is a tank car representative, as I remember. He did not discuss with me in detail the basis of our taking a contract with his company.

I am familiar with, and recall, in a general way, the trend of published tank car spot market prices for gasoline during 1935 and 1936. I normally and regularly read the Chicago Journal of Commerce.

As I remember, the price of regular gasoline early in 1935 was about 4½¢. We were billed on the average, so that is what I am familiar with. I am now giving my prices. Either late in May or early in June the prices advanced to around a figure slightly in excess of 5⅝¢, and continued on almost an even keel until the end of the year. Early in January, 1936, we had a crude advance. Then the price of gasoline advanced to around 6⅛¢, and throughout the year it advanced and declined some, and about the end of the year it closed at around or approximately 5⅝¢. We were invoiced at 5⅝¢ from June down to the end of the year. The price of gasoline had not previously re-
674 mained constant in that way, not at any time that I have any recollection of, since I was in business.

I have never bought or sold any hot oil to my knowledge.

No cross-examination.

675 G. H. FALDER, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have lived in Rock Island, Illinois since 1916. I have been in the oil jobbing business for myself since 1920. Prior to that time I was in the oil business with Sinclair Refining Company, as manager of the Ottumwa, Iowa, branch.

My oil jobbing company, Midway Oil Company, located at Rock Island, Illinois, operates in eastern Iowa and western Illinois. It has been in the oil jobbing business since 1920. The capital investment in it is about $550,000. I own a substantial part of that company.

The volume of business with respect to gasoline only in 1935 was approximately 1,800,000 gallons; in 1936 about 2,250,000. Approximately between 85% and 90% of this was regular or housebrand gasoline. Our company owns 8 bulk storage plants distributed through our distributing territory with a capacity ranging from 30,000 up to 300,000 gallons. The total storage capacity in gallons of gasoline is in excess of 1,000,000 gallons.

We have 2 retail stations which we operate ourselves. We supply about 90 independent dealers. I would judge around 50 to 60% of our distribution is through independent dealer outlets. We have a consumer business be-
676 sides. In our own outlets we probably use about 15%.

Our source of supply of gasoline in 1935 and 1936 was Empire Oil & Refining Company, which is now part of the Cities Service organization. Either December 1936, or January 1937, the two companies were merged or the Empire Company was merged into the Cities Service. That is what they told me.

We have been receiving invoices from the Cities Service Company since that time. We did business under contract with the Empire Company in 1935 and 1936, down to the time when there was a change in the corporate set-up. We made a contract on February 14, 1935 with Empire Oil & Refining Company. The price provisions of that contract were ¼¢ below the average of the Chicago Journal of Commerce.

We had a contract which had been in effect since 1931. This contract was based on the tank wagon price, and it was also based on the average of the Chicago Journal of Commerce and the National Petroleum News, the two taken together. The average of those two papers was the price that we were to pay. We would buy on a Thursday, and the prices that came out on a Thursday would be our ruling prices for the following week. We had a guaranteed margin below the tank wagon price of about 5¢, just a fraction over 5¢, which gave us about a 7¢ a gallon spread under the retail service station price.

677 That contract, made in 1931, had a 30 day cancellation clause in it, but it kept on. It never had been renewed, but the same thing was operative until October or September, 1934, when they cut the tank wagon price. Prior to that time it had never given us any benefits at all; in fact, it cost us more, really, than if we had bought on the open market. But in 1934 when they cut the tank wagon price, and the retail price was also cut automatically, the contract became operative, and worked to our benefit.

In January, 1935, O. J. Tuttle of Tulsa, Oklahoma, a defendant in this case, sales manager, and E. C. Steffy, district sales manager at Chicago, both representing Empire Oil & Refining Company, which is now Cities Service, came to Rock Island and said they wanted to negotiate a new contract.

They said they wanted to negotiate a new contract. I said, "Well, the contract we have is all right." At that time, it was giving us about ¼¢ a gallon benefit under the posted prices of the Chicago Journal of Commerce. I knew that if we didn't take a new contract, they were going to make the 30 day cancellation clause effective. So we negotiated a contract, ¼¢ below the average of the Journal of Commerce, and that was made for a period of 1 year.

678 They told me that the new contract was different from the type of contract that Empire Oil & Refining Company was making with jobbers at that time. They told me that the 50-50 basis contract was mostly in effect, a 5½¢ split contract.

Q. When you say the 50-50 split, do you mean the contract based on the average of the averages of the Chicago Journal of Commerce and Platt's Oilgram, with a provision for a 5½¢ guaranteed margin, subject to that split?

A. Well, we asked to be released from Platt's Oilgram ourselves, or the National Petroleum News, rather; and they did that at our own request.

We do not and never during 1935 and 1936 did operate under the brand name of the Empire Company, or Cities Service Company. We operate under the brand name, Midway Oil Company, Midway brand, our own brand.

The contract you show me, dated Tulsa, Oklahoma, February 14, 1935, between Empire Oil & Refining Company and Midway Oil Company, is the contract to which I have testified. I operated under that contract down until I entered into the new contract with the Empire Company on March 11, 1936.

(Contracts referred to received in evidence, respectively as EXHIBITS 632 and 633.)

679 I had a discussion with E. C. Steffy, division manager at Chicago of Empire Oil Refining Company at the time that the contract in 1936 was made.

Q. Now, will you tell us what discussion you had with him at that time with reference to a jobber contract?

Mr. Chaffetz: The Government has no objection to this evidence being admitted only against Empire Oil & Refining Company.

Mr. Donovan: The same objection, if it please the Court to this discussion as appears at R. p. 241 and 292-293.

The Court: The same ruling. Objection overruled and testimony admissible only against Empire Oil & Refining Company. Exception allowed.

I told Mr. Steffy that we didn't feel that we were getting enough margin, that we couldn't operate on that basis. He said, "I realize it, as well as you do, but can you get any better?" I said, "Not that I know of. I would like to shop around a while." "Well," he said, "I will tell you, while I haven't seen all of them, I have seen a great many of the contracts and they are all exactly alike even to the dotting of the I's and the crossing of the T's, and I am satisfied that we will have to have a little more margin ourselves. 680 We feel that the jobber isn't getting enough margin, and for that reason we are willing to go a quarter below the low," which he gave us. Instead of the average, he made us a new contract, a quarter below the low.

Our contract was a little better than the other contracts, due to the fact that we operate under our own brand name, and not under the major's brand. That is what Mr. Steffy told me.

Cross-Examination by Mr. Donovan.

In my contract of February 14, 1935, the price was ¼¢ below the average of the quotations in the Journal of Commerce, and in the new contract of March 11, 1936 I was given ¼¢ below the low of the Journal of Commerce.

By Mr. Brazeau

The invoices were from Cities Service Oil Company, beginning in either December 1936 or January 1937, when the change came. Prior to that time they had been from Empire Oil Refining Company, which became Cities Service Oil Company.

By Mr. Lawton

Prior to our contract in February 1935, we bought on a different type of contract from Cities Service. Prior to 1935 it was not more advantageous to buy under that contract than to buy on the open market, but we had the contract because of the fact that we wanted a uniform product, and also a reliable source of supply. We never did use an advertised brand.

681 **J. MARSHALL THOMPSON**, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live in De Soto, Missouri. I am 32 years old.

I am an oil jobber. My oil jobbing company, General Oil Products, Incorporated, has operated since February, 1929. I have been president of the company since that time. I have a substantial financial interest in it.

We do the usual business of an oil jobber, as has been testified to here by previous witnesses. We own a bulk storage plant with a capacity of 35,000 gallons of gasoline. We own a retail station, but do not operate it; it is under lease. We have somewhere between 12 and 18 independent dealer outlets.

The capital investment of our company is approximately $30,000. Our annual gasoline gallonage in 1935 and 1936 was around 300,000. Of the gasoline that my company sold during those years 96 to 97% was regular or house brand gasoline. Our source of supply of gasoline in 1935 and 1936 was Continental Oil Company. We bought from that company under contract. The point of origin from which our gasoline was shipped to us was Ponca City, Oklahoma. It was shipped in tank cars by rail as a general rule. Sometimes it was shipped out of the pipe line at East St. Louis.

682 The contract with Continental Oil Company which we made is dated on August 15, 1934. We purchased gasoline and operated under that contract for one year.

(Contract dated August 15, 1934, referred to received in evidence as EXHIBIT 634.)

On August 22, 1935 we made a further contract for a continued supply of gasoline to us by Continental Oil Company. The contract was in force from August 15, 1935 to August 15, 1936.

(Contract, dated August 22, 1935, referred to received in evidence as EXHIBIT 635.)

We made a subsequent contract with the same company on August 25, 1936.

(Contract, dated August 25, 1936, referred to received in evidence as EXHIBIT 636.)

The contract dated 1934 was based on the average of the averages of the Chicago Journal of Commerce and Platt's Oilgram, Tulsa edition. It carried a 6¢ split guarantee, which fluctuated according to the dealer margin. The 6¢ guarantee was based on a 4¢ dealer margin. I believe the dealer margin was changed during the life of the 1934 contract, Exhibit 634. The dealer margin was reduced from 4¢ to 3½¢ and the over-all guaranteed margin was changed from 6¢ to 5½¢ at the same time.

683 The contract dated in 1935 carried the same provisions except it was based on 5½¢ instead of a 3½¢ dealer margin. That was a 5½¢ split margin contract.

The contract of 1936 was essentially the same except it carried a provision that if Standard of Indiana discontinues the practice of posting normal service station prices throughout the state in which destination is located, then and in that event, paragraph three of paragraph B of the contract will be inoperative and the price to be paid thereafter will be determined by the remaining provisions of this agreement.

The contract of 1936 was modified by a rider on September 16, 1936. The rider became a part of the 1936 contract. It was related to the Iowa Plan for the State of Missouri. It put a clause in the contract so that the guarantee provisions were based on dealer tank wagon price instead of retail price. Instead of our guarantee margin being 5½¢ below the prevailing retail price it became 2¢ below the dealer tank wagon price, as posted by Standard of Indiana. The relation between that dealer tank wagon price and the previously prevailing normal retail price was 3½¢, so that the margin of the jobber was not changed in any way providing we received the guaranteed margin of 5½¢ under the retail price. Of that 5½¢, if we received it at all, we passed 3½¢ on to the dealer, leaving ourselves 2¢.
684 When the Iowa Plan was adopted, we just got the 2¢ under the dealer price. In each case the 5½¢ and the 2¢ guarantee was subject to the so-called split provision.

When the 5½¢ split margin contract was in effect, the split provision operated at times. I can't give you the dates. I believe it did during 1935 and 1936. The split provisions as contained in our contract mean that if the price which was determined by the average of the two journals mentioned plus rail freight, plus 5½¢, was in excess of the posted retail service station price of Standard of Indiana, the invoice price was reduced by half of the excess. Thus we didn't have a guarantee of 5½¢. Out of the 5½¢ guarantee, if we had gotten it, 3½¢ would go to the dealer anyway. So with respect to our own business, our guarantee was really a 2¢ guarantee both before and after the adoption of the Iowa Plan. If the margin was less than 2¢, the Continental Oil Company reduced our invoice prices by half of that difference.

Our company has preferred to purchase from a major oil company because of better consumer acceptance.

We have discussed with our supplier the subject of a new or different type of jobber contract every time a contract came up and many times between. In 1935 and 1936 we discussed it at frequent intervals with Henry Perriquey who was the jobber salesman for Continental in that territory.

685 Mr. Chaffetz: I asked you what was the discussion you had in 1935 and 1936 with Mr. Perriquey with respect to a jobber contract?

Mr. Donovan: I object to that question, if the Court please, because it is immaterial and incompetent and because it is necessarily calling for hearsay, because it is not pursuant to any allegation of conspiracy set forth in the indictment, because there is not proof of authority or agency of the party making the declaration, and it is not admissible against any defendant, individually or corporate, here, and because it is not within the allegations of the indictment.

Mr. Chaffetz: The Government suggests that this evidence be admitted only against Continental Oil Company.

The Court: Objection overruled, but so the jury may understand, the evidence of this conversation will be admissible only as against the Continental Oil Company. Exception allowed.

I knew what Mr. Perriquey's position was with the Continental Oil Company. I had done business with him over a period of time, and had occasion to confirm that he was in truth an employee of the company.

686 We simply asked if there wasn't some possibility of supplying a contract that would yield the company a better margin, and Perriquey said that of all the contracts he had seen it carried the same price provisions as the rest of them, and as far as his company was concerned, there was nothing better to be had.

Under our contract we were not required to sell the dealer at a certain price but we had to compete with the dealer margin offered by the Standard of Indiana. There was no provision of the contract that required us to sell our gasoline according to that figure. That was just a custom of the trade. We might sell a little gasoline, but certainly wouldn't sell much at a price higher than that posted by Standard of Indiana. Our dealers wouldn't get any business if they tried to sell at a higher price. I never saw it tried.

I talked at various times with J. S. Curtis, a division manager of Continental Oil Company at Kansas City, on the same subject as I talked with Mr. Perriquey. He was division manager and I had done business with him over a period of quite some time.

Q. Can you tell us what were your discussions with him on that subject during 1935 and 1936?

Mr. Donovan: Same objection as appears at Record pages 241 and 292-293.

687 Mr. Chaffetz: The Government makes the same suggestion that this evidence be admitted only against Continental Oil Company.

The Court: Same ruling. It is admissible only as to the Continental Oil Company. Exception allowed.

A. I would be unable to fix any definite time. There has been a number of conversations during the years we have done business with them, over this 5½¢ margin. But I discussed it with Mr. Curtis during the period 1935-36.

I never, to my knowledge, bought or sold any hot oil. I am a member of the Missouri Independent Oil Jobbers Association, and National Oil Marketers Association. The Missouri Oil Jobbers Association has somewhere between 100 and 150 members.

Cross-Examination by Mr. Donovan.

Under the contract I could sell at any price I pleased. We sell at a price which enables us to meet competition. We don't attempt to meet all competition, but any reasonable competition.

If I am a jobber and have a service station, and operate that service station in addition to my jobber business, I get my jobber margin and also my dealer margin. As we have discussed here, that might be 5½¢.

688 Q. Let's suppose that your station is standing at a very desirable corner, and you have an advertised brand, and you are doing a good business, in fact, in that sector you perhaps have the dominant business. Let's say I come along, and I get a good brand, and I get a store nicely painted up and some good tanks on the corner opposite to you. Now, I am a dealer, and I am getting only 3½¢. Suppose that I am green in this business, and I am foolish enough to think I can compete with you, and I, at the same time that you are selling at 20¢, I cut my price to 19½¢. If you began to see the business come to me after a week or so and you began to see your business decline, what would you do?

A. If I began to see the business declining, then I would meet your price.

By Mr. Kirkland

I believe Standard of Indiana has 1 or 2 jobbers in Missouri. But it is generally true in the Mid-Western territory that Standard of Indiana does not make contracts with jobbers.

689 *Redirect Examination by Mr. Chaffetz.*

In 1935 and until August or September, 1936 Standard of Indiana owned and operated retail stations through our territory. I think it is the only major oil company that operated their own stations during that period. The others were all operated by jobbers. It was known as the market leader, as far as retail prices were concerned, during that period. That term "market leader" signifies in the trade that it is the company that posts the price that is generally followed by all other marketers. Usually in practice, both major oil companies, jobbers and independent dealers, in their retail prices, have followed the prices posted by Standard of Indiana.

Recross Examination by Mr. Kirkland.

When Standard of Indiana operated its own stations in Missouri, it posted a retail service price at the station. When it ceased to operate stations, of course, it ceased posting retail service station prices. From then on, it posted at its bulk plants the tank wagon price to dealers, and the commercial consumers tank wagon price.

690 *Redirect Examination by Mr. Chaffetz.*

When the price was posted at the bulk plant by Standard of Indiana as the dealer's tank wagon price, after it had ceased posting the retail price, the dealer's tank wagon price posted by that company had the relation to the previously prevailing retail price of about 3½¢ less. It also posted a consumer's tank wagon price about the time the Iowa Plan was adopted in the fall of 1936. The relationship between the consumer's tank wagon price as compared with the previously prevailing retail service station price of the Standard of Indiana was 2¢ under. As far as the jobber was concerned, whether he bought at 5½¢ under the retail price, or 3½¢ under the consumer's tank wagon price, or 2¢ under the dealer's tank wagon price, his margin was 2¢.

691 J. H. CROWLEY, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Beloit, Wisconsin. I have lived in Wisconsin all my life, about 50 years. I have been in the oil jobbing business, wholesale and retail, for 10 years. My company, Goodall-Crowley Oil Company, has operated as an oil jobber during all that time. The trade name is Goodall's. I am president and manager and am financially interested in the company. It operates in Beloit, Janesville, Clinton, South Beloit; we have a reseller in Milton Junction, and did have one in Edgerton.

The capital investment of our company is approximately $125,000. It sold, as a jobber, in 1935 and 1936 about 1,250,000 gallons of gasoline annually. We have 1 bulk plant now. We had 2 up until the last year or two. The capacity of that one bulk plant is about 275,000 gallons, and about 150,000 of it is for gasoline. Approximately 80% of that was regular or housebrand gasoline. We had about 13 company controlled retail stations and 5 independent dealer accounts in 1935 and 1936.

During 1935 and 1936 we bought most of our regular and Ethyl gasolines from Mid-Continent Petroleum Corporation under a 4 year contract made on February 21, 1933.
692 It continued in effect until February, 1937. Under it the gasoline was shipped to us, as a rule, out of Franklin Park, out of the pipe line; occasionally, out of Tulsa. By "out of the pipe line," I mean the gasoline is transported from Tulsa or the Mid-Continent into Chicago by pipe line, and then is put into tank cars and is shipped by tank car from Chicago or from Franklin Park to me. Under this contract the gasoline was to be billed on the average of the Chicago Journal of Commerce, subject to a 5½¢ guarantee.

(Copy of contract referred to received in evidence as EXHIBIT 637.)

We preferred to purchase our gasoline from a major oil company, because at the time we signed this contract Mid-

Continent was coming out with a new gasoline, a lubricated gasoline, and we hoped that it would improve our sales. Previous to that time we sold and distributed our gas at our own stations under our own name. After that time, the brand name we used was D-X, the nationally advertised brand name of Mid-Continent gasoline.

I have discussed the margins in jobber contracts with Walter Herr, the division manager of Mid-Continent Company. Possibly I had several such discussions in 1935 and 1936, but a specific discussion with him was in Milwaukee in January or February, 1936. That discussion concerned the subject of the jobber contract between our company and his.

693 Q. Will you relate to us the substance of that discussion?

Mr. Donovan: I object to that, your Honor, upon the ground that it is immaterial and incompetent; because necessarily calling for hearsay; because not pursuant to any alleged conspiracy set forth in the indictment; and as not within the allegations of the indictment, and not evidence against any of the defendants here.

Mr. Chaffetz: The Government suggests this evidence be admitted only against Mid-Continent Petroleum Corporation.

The Court: It will be so admitted. Objection overruled. Exception allowed.

The substance of the conversation was that I told Walter that we couldn't do business on a 5½¢ margin, and I suggested that he get us a confidential ½¢, with no results. I don't know that he said anything with reference to whether I could obtain a different contract.

I have discussed the same subject in a general way with a great many different representatives of major oil companies. I couldn't name the companies, only in a general way.

I never bought or sold any hot oil, to my knowledge. We have been buying our gasoline on the open market since February 1937.

694 We are a member of the Wisconsin Petroleum Association, and the National Oil Marketers Association.

Cross-Examination by Mr. Donovan.

We had a 5½¢ margin. That was not a local protection. That was guaranteed over the general reduction of Standard of Indiana service stations. There was no split provision in it.

We lease or own 15 service stations. We operate 13. We have a station that we rent out at Rockton. In 1935 and 1936 we sold to 6 dealer stations. We only have 3 at the present time. In addition to gasoline we handle fuel oil, lubricating oil, distillate, greases, alcohol, tires, batteries and other accessories and coal. We retail naphtha.

We try to take a profit on all of those items; and that is in addition to our gross margin on gasoline and on lubricating oil and on grease. Exclusive of gasoline our gross margin on those other items that we deal in is maybe 20% over-all.

When we delivered gasoline to our station, the gross over-all margin we had in 1935 and 1936 between our delivered tank car price and the price we charged the party at our station was approximately 5½¢. We make 3½¢ more on retail sales at our own service stations than we
695 do on our dealer business.

Our gallonage at the present time is something over 1,250,000. We do not have a contract with our dealers. We follow Standard of Indiana as to price. It is customary for us to bill the dealer at the prevailing tank wagon dealer price.

I think other jobbers charge the same price to dealers, and I think on the same margin. I presume some of those dealers have contracts. I don't know for a certainty. We have never followed any contracts. If a dealer asked us to sell at a margin below the margin that the other jobbers sold their dealers, I would tell him we could not afford to do it.

Redirect Examination by Mr. Chaffetz.

The margin that we make on those accessories and lubricants, other things that we handle in addition to gasoline, is very important to us in our business. The margin that we earned on lubricants and other accessories in 1935, affected the financial results of our entire operation. We don't break down our business, but I think we made a profit there. The financial results of our entire operation in 1935 was that I think we had a very slight loss. That includes gasoline lubricants and accessories combined.

696 *Recross Examination by Mr. Donovan.*

I think there is a vice-president, and secretary and treasurer of our company. The secretary and treasurer might be one office, or the two offices in one person. Usually the vice-president is not paid a salary. Occasionally the secretary is paid a salary, not regularly. But I as president and manager have been paid a salary.

By Mr. Dougherty

On the whole, with respect to price wars, Beloit has been quite stable during the past 2 or 3 years.

By Mr. Donovan

In 1936 I think I got a salary of around $8,000; in 1935, I would say $5,000.

Redirect Examination by Mr. Chaffetz.

The total investment we had in that business was about $125,000. In 1936, the secretary received $2,000, as I remember. None of the other officers received any salaries. We had approximately 35 employees.

697 WILLIAM J. O'BRIEN, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have lived in Superior, Wisconsin practically all my life, 44 years. I am an oil jobber, and proprietor of O'Brien Oil Company, a one-man company. It started in business in 1922 and has continued in business down to date. I think the capital invested in that business is about $34,000, approximately the same as in 1935 and 1936.

In 1935 we sold around 725,000 gallons of gasoline; and in 1936 about 800,000. Of that 90% was regular or house brand gasoline.

In 1935 and 1936 we had 4 retail service stations of our own which we operated, and 1 that we leased and operated. In 1935 and 1936 we had 3 bulk storage plants, 2 in Superior, and 1 in Duluth. The total capacity in gallons of gasoline of those 3 plants was 96,000. About 70% of all our gasoline is sold through independent dealer accounts. We sell 9 independent dealers.

Our source of supply of gasoline in 1935 and 1936 was Empire Oil & Refining Company. We bought from that company under contract. Under that contract some of our gasoline was shipped from Okmulgee, Oklahoma, by tank car to Superior; and the last year and a half it has come

from the East Chicago refinery by tank car. My un-
698 derstanding was that the crude came by pipe line to
East Chicago and was refined at Empire's refinery at East Chicago.

The contract under which we operated for one year was entered into between us and Empire Oil & Refining Company on July 11, 1935, effective August 8th. We had been buying gasoline from Empire Oil & Refining Company prior to that date, likewise under contract.

(Contract with Empire Oil & Refining Co., dated July 11, 1935, with attached sheet, received in evidence as EXHIBIT 638.)

That was what was known as 5½¢ split contract. The margin that I in my jobbing operations had under that contract during the period it was in effect was 2¢ or less. 3½¢ was the margin that the retailer was receiving.

The expenses that I as a jobber have run something like this: to begin with, this gasoline, as everyone knows, is a very hazardous liquid. It has to be protected by safe tanks and dikes in case of accidents; and if you are handling kerosene in connection with gasoline one mistake in delivery might cost you your business. You have to be protected with insurance to cover that particular item. Your bulk plant must be covered with insurance, and your men must be of course covered very thoroughly with all kinds
of insurance. As jobber in Minnesota and Wisconsin I
699 am required to have a license to operate in each state,
and that requires a cash bond, and that cash bond costs me about $60 in both states. I guess it cost about $80 in Wisconsin. In addition to that we are responsible to the state for all gasoline shipped in both states. We are audited by the State of Wisconsin and this end of it, I think, is very expensive to the jobber. We necessarily have got to do a substantial credit business in order to compete with other jobbers, and for them the larger oil companies usually furnish coupon books, credit cards, and all sorts of things. Necessarily we must do some credit business. We run into some bankruptcies; we run into some accounts that cannot be collected, and as a jobber we must absorb that.

I am referring now to State and Federal taxes. The jobber is responsible to the state for taxes on all gasoline distributed by him. He is responsible whether he actually collects this tax from the retailer to whom he sells. And it is one of the important functions of the jobber and it is one of the distinct differences between a jobber and a so-called agent, because we are directly responsible and must pay

that out of our pocket. And when we are collecting a 5¢ gas tax on a 1 7/10¢ or 2¢ gross profit, it is a difficult job. It is one of our expensive items. Of course, added to that has been an increase in wages and an increase in price of
equipment, especially new computing pumps that we
700 must have and install. These pumps used to be bought
for probably $100 or $125, and the best type of pump
now is $225.

Jobbers are often required to buy these. On a 2¢ margin, it requires a long time to pay for them. Then, of course, we have the accounting and bookkeeping demanded by two states, or any state if you are operating only in one state, as to your records and gas tax. In addition to these things, we have the usual expense of a wholesale business such as maintenance of equipment. We have bulk plant, salaries of employees, and insurance.

Our type of business I think is distinct from any other merchant. Another merchant is not responsible after he sells. He is not responsible for this tax, but the jobber is. That, as I understand it, is one of the difficult parts of a jobbing business.

In the early days of the jobbing business there was no tax. We have had a tax about 5 or 6 years. But the taxes have been increased. On a 2¢ gasoline tax our hazard of collection is not so great of course as on a 4¢ tax.

During 1935 and 1936 we had occasion to discuss with a representative of our supplier the subject of a change in the form of our jobber contract. On account of the narrow margin, and our expense increasing, we went to them sev-
eral times in 1935 for a better contract. I talked prin-
701 cipally to L. C. Trapp, assistant sales manager of the
Empire Company.

Q. What conversation did you have with him in 1935 and 1936 on that subject, and give us if you can the time and place of such conversation if you can recall it.

Mr. Donovan: I object to that, may it please the Court, as incompetent, and immaterial because necessarily calling for hearsay. It was not made in furtherance of any alleged conspiracy under this indictment, and certainly is not within the issues of the allegations set forth in this indictment, and not evidence against any of these defendants.

Mr. Chaffetz: The Government suggests this evidence be admitted only against Empire Oil & Refining Company.

The Court: Objection overruled, with this qualification; that it is admissible as to the Empire Oil & Refining Company. Exception allowed.

We spoke to Mr. Trapp regarding this contract at the time of the renewal. That would be in September, 1935, and like all jobbers, we complained of the narrow spread, and of course asked for a better contract, but could not secure it. Mr. Trapp did not tell me why he could not give
me a better contract, but he did tell me that if there
702 were better contracts obtainable then he would give me
the same kind of a contract, that is, as I understood.

During that same period I talked with Fred Wibert of Duluth, Minnesota, who I understood was the jobber salesman of Shell Petroleum, on that same subject. I asked him what kind of a contract the Shell was offering. I thought they were a big organization and might have a better contract. He told me it was the usual 5½¢ split and he could do nothing better; he said, "I can do nothing for you."

The house brand gasoline that we handle for the Empire Company is known as "Koolmotor". If I make a comparison, Red Crown would be the house brand of Standard Oil and Cities Service "Koolmotor" is the house brand, the name of the leading brand of Empire.

We prefer to handle a major company brand of gasoline because of the public or consumer acceptance, and the advertising. I find consumers prefer to buy an advertised brand of gasoline for this reason: that when you are dealing, like most jobbers have to, with re-sellers, they prefer a nationally advertised brand. So it is necessary for us as jobbers oftentimes to carry a major line if we hope to do business with re-sellers, which is the principal part of our business.

703 *By the Court*

The jobber suffers loss through the evaporation of gasoline in two ways: one, through evaporation, and especially in northern Wisconsin and Minnesota, what is known as shrinkage. That is 1% for every 20 degrees in temperature. For instance, if we have a car of gasoline shipped to us, which we often have, at 10 below zero, we would have an equivalent of 3% shrinkage, and on an 8,000 gallon car it would amount to 240 gallons of gas that we never could sell as long as the weather stays 10 below. It gets 40 below in Superior. In hot weather, of course, there is an expansion, but we have to buy this gasoline at 60 and in northern Wisconsin we don't have very many days much over 60. The mean temperature is 39 for the year. So we do stand a substantial loss in shrinkage.

Cross-Examination by Mr. Donovan.

I started in the oil busines in a small way in 1922. Since 1930 I have given pretty much 100% of my attention to this business. Over this period I inquired into the different phases of the business and into its business hazards and difficulties. The hazards that we happen to encounter certainly are the same kind of hazards that the whole industry has to encounter.

The refiners and the producers have to pay taxes, and all have to encounter the same kind of danger up to 704 the point where we buy. After a refiner, independent or major oil company ships a car of gas into a town, then he is relieved at that moment from any gasoline state tax.

Our expenses come out of our total income on all the products that we sell. 70% of the total income is the 2¢ margin on gasoline. We deduct our expenses from our total income when we make our income tax return.

When we sell to a dealer, we sell under an arrangement or a contract that allows him 3½¢ margin. When other jobbers have contracts or arrangements with other dealers they allow the same margin, to the best of my knowledge.

Q. So that normally, that margin of 3½¢ which the jobbers allow the dealers, normally, that margin is uniform throughout the trade, is it not?

A. It is based on the contract.

Q. Whatever it is based on, the margin is the same as allowed by the jobbers to the dealers; is that correct?

A. It is true, but it is right in our contract. It is based on the Standard Oil tank wagon market. 3½¢ to the dealer, and that is in the contract.

Q. Where is it in your contract that you must allow 3½¢ to your dealers?

705 A. I said it was based on that. That is why we compute our protection.

Q. You can sell at any price you please.

A. I couldn't sell it over that amount.

Q. Where is it in your contract that provides you are to do that?

A. It is not provided, but it would be bad practice to do it. You can't and be successful.

There is nothing in the contract that obligates me to sell at any particular price to a dealer. If we want our protection, if we want this 2¢ margin, we have to sell it at 3½¢. It is a common practice in the industry, among jobbers and majors—direct operators, to allow 3½¢ established by the price maker. I will explain it this way. If we were going to operate on that split contract, we surely couldn't allow more than that 3½¢.

The Court: The question is, was there any provision in your contract that prohibited you from selling to your dealer for less than 3½¢?

A. There is no provision in the contract that would prohibit you to sell. You couldn't do it,—

The Court: You have answered the question.

Mr. Donovan: Q. And as I understand you, you say that that 3½¢ margin to dealers is uniform normally throughout the trade; is that right? Yes or no?

A. Yes.

706 M. H. TEIGE, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have lived in Stoughton, about 17 miles from Madison, since 1922. I have been an oil jobber in the wholesale and retail oil business for 15 years at Stoughton. I run our corporation, the Wisconsin Petroleum Company. I am its president, treasurer, and manager, and own about half its stock. The capital invested in the company is about $70,000.

From our 3 bulk plants, located at Stoughton, Brooklyn and Belleville, we distribute gasoline to the 4 retail service stations we own but lease to dealers, to our 10 other dealers, and to consumers.

In 1935 and 1936 our total volume of gasoline sales was between 650,000 and 700,000 gallons each year. Between 90% and 95% of that was regular or house-brand gasoline.

We have been doing business with Mid-Continent Petroleum Corporation for about 7 years under contract. We secured our gasoline during 1935 and 1936 from Mid-Continent under contract dated April 3, 1933.

(A copy of contract with Mid-Continent Petroleum Corporation, executed May 3, and dated April 3, 1933, received in evidence as EXHIBIT 639.)

We operated under that contract from April 3, 1933
707 until March 1, 1934, as far as my source of supply was concerned; but until the expiration date, as far as we were concerned. There is some controversy, not yet settled, between us and our supplier as to the application of the contract after March, 1934.

All gasoline supplied to us under the contract was shipped to us in tank cars, and to a great extent came from the Chicago district; but some came from Tulsa, Oklahoma. The gasoline from the Chicago district was not refined there; it got there through pipe line from Tulsa. We paid full freight of 2.77¢ a gallon on the gasoline from Tulsa, except for a short period when it was practically 2.84¢, even where the gasoline came from Chicago.

On April 11, 1936, upon the expiration of this contract, we executed another contract with Mid-Continent Petroleum Corporation under which we have operated to April 1937 in much the same way that we did business under the preceding contract.

(Contract referred to received in evidence as EXHIBIT 640.)

Just previous to the time when this first contract expired and before we entered into the 1936 contract, in the course of our negotiations for the new contract I had a discussion with Mr. Berger, a jobber salesman of Mid-Continent Company, with respect to a jobber contract.

708 Q. Now, will you tell us the conversation that you had with him?

Mr. Donovan: I object, your Honor, because it is immaterial and irrelevant; because it is hearsay; because it is not made in furtherance of any alleged conspiracy in this indictment; because there is no proof of authority or agency of the party making the declaration; because it is not within the issues or the allegations of this indictment, and cannot be considered as evidence against any corporation or individual defendant involved in this proceeding.

Mr. Chaffetz: The Government suggests that this evidence be admitted only against Mid-Continent Petroleum Corporation.

> **The Court:** Objection overruled. Exception allowed. I will say to the jury that, at this state of the proceedings, it is admissible as to the Mid-Continent Petroleum Corporation only.

I told Mr. Berger I was dissatisfied with the new contract. The earlier contract, under which I had been operating, provided for a 2½¢ guaranteed margin, and they were cutting me down to 2¢. According to their invoices, they had cut me down to 2¢, beginning March, 1934. Of course, I realized that when the first contract was over the 2½¢ guaranteed margin would not apply to future shipments. I hated to be cut down to 2¢, so I ob-
709 jected to it. However, Mr. Berger stated that that was the best contract they would give; it was the same kind of a contract as others were giving, and I might just as well sign this contract, because I couldn't get anything better; and if there was a better one offered to me from the larger companies, that their company would no doubt go along with any similar contract.

I knew that I had to negotiate a new contract if I wanted to continue with them. Mr. Berger did make some concessions to me. He omitted the split of guarantee of 2¢, which provision was stricken from the printed form. I was given a flat 2¢ guarantee. Also, I endorsed a clause to the effect that if their company, any time during the continuance of this contract, presented a better contract, I had the privilege of cancelling this contract, and accepting the better contract.

Cross-Examination by Mr. Donovan.

I am now operating under a 5½¢ guarantee open top.

710 W. J. MILLER, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I have resided in Philadelphia, Pennsylvania approximately a year. I have been a special agent for the Federal Bureau of Investigation in the Department of Justice for something over 3 years, making investigations involving the examination of records. I had practiced as an accountant about 10 years before going with the Bureau. I am a certified public accountant in Texas.

At the request of Government counsel, I have made a study of certain provisions of jobber contracts that prevailed in the Standard of Indiana territory. I examined specimen contracts that had been sent here in response to a subpoena issued in October, 1936 by this Court. Pursuant to those subpoenas each of the several companies produced here certain forms of contracts, contracts and data pertaining thereto. That material was turned over to me at that time. It covered, I think, the period from January 1, 1930 to September 30, 1936. I segregated the material which pertained to the contracts made in the years 1935 and 1936. I have some of that material here. Some of it was impounded.

711 Mr. Chaffetz: These materials were supplied by the respective defendants, by their counsel, mostly, and I want to offer them in evidence. And I should like to offer it, if I may, company by company, according to the defendants here, and have noted in each exhibit all the material the company produced for that particular company.

These contracts are offered, your Honor, in order to establish the facts as alleged in the indictment, in which the conspiracy is alleged to have operated, and an understanding of them is essential to an understanding of the nature and effect of the conspiracy found in the indictment.

The Court: I will say to the jury that the contracts offered are received as evidence as to the corporations named in the contracts only.

(The forms of jobber contracts, referred to, used in the Standard of Indiana territory by the following companies were then received in evidence, as indicated below:

The 3 Globe Oil & Refining Companies (Oklahoma, Kansas and Illinois)	Exhibit	641
Mid-Continent Petroleum Corporation	“	642
The Texas Company	“	643
The Pure Oil Company	“	644
The Gulf Companies	“	645
Wadhams Oil Company	“	646
Continental Oil Company	“	647
Socony-Vacuum Oil Company, White Eagle Division	“	648
712 Socony-Vacuum Oil Company, Chicago Division	“	649
Socony-Vacuum Oil Company, Lubrite Division	“	650
Cities Service Oil Company	“	651
Phillips Petroleum Corporation	“	652
Barnsdall Refining Corporation	“	653
Standard Oil Company (Indiana)	“	654
Shell Petroleum Corporation	“	655
Barnsdall Refining Company	“	658
Sinclair Refining Company	“	659)

I have made a study of these materials for the purpose of determining the extent to which the various defendant major oil companies, in making contracts with jobbers in the Standard of Indiana territory, provide in those contracts that the basic price to be paid by the jobber shall be determined on the basis of prices on tank car gasoline published in the Chicago Journal of Commerce, or Platt's Oilgram, Tulsa Edition, or both.

I believe that one or two defendant major oil companies did not submit contracts. I have got the names of those that did. Those that my study covered are: Socony-Vacuum Oil Company; Wadhams Oil Company; Continental Oil Company; Gulf Refining Company; The Pure Oil Company; Shell Petroleum Corporation; Sinclair Refining Company; The Texas Company; Tide Water Oil Company; 713 Mid-Continent Petroleum Corporation; Phillips Petroleum Company; Barnsdall Refining Corporation; Globe Oil & Refining Company; Deep Rock Oil Corporation; Standard Oil Company (Indiana); Cities Service Oil Company. I think that covers all of them. Skelly was one that did not submit contracts for 1935 and 1936; their material covered previous years.

The total number of contracts covered by the data submitted by all those companies was 1729 contracts in 1935 and 537 contracts in 1936. In addition to the 537 in 1936, there was data submitted by Socony-Vacuum, Mid-Continent and Continental, I believe, in which they did not give us the number of contracts.

Specimen contracts, not actual contracts, were submitted in most instances. In one or two instances, I think they were photostatic copies of actual contracts in existence. But in general they were forms of contract.

In addition to the forms of contracts, there was submitted data indicating the number of the various types of contracts which were made by the respective companies, so that, for my purposes, I had all the material I needed just as if I had all the actual contracts.

That doesn't cover the whole year 1936, as the subpoena
was issued in October, so I think they covered up
714 through September 30. These cover only contracts that
were entered into in 1935 and 1936, and do not cover
contracts made in earlier years, which carried over.

Out of the total of 1729 contracts made with jobbers in the Standard of Indiana territory in 1935 by the defendant major oil companies whom I have enumerated, 1461 out of the 1729 provided that the basic price shall be determined on the basis of the average of the averages of the high and low quotations of the Chicago Journal of Commerce and Platt's Oilgram on spot market tank car gasoline.

The number of contracts that I actually examined, of course, was not 1461. I examined specimen contracts of each different type, but from the speciment contracts submitted, plus the other data supplied, I was able to determine that they made a total of 1729 contracts with jobbers in 1935. The data that I examined purported to cover all of the jobber contracts made by the respective companies with jobbers in the Standard of Indiana territory in the years in question, which is what the subpoena called for. The "other data", to which I referred, means the other data which was supplied by the companies in connection with the specimen contracts.

Of all the contracts or specimens and data, which I examined, made by each of the defendant major oil companies
mentioned by me with jobbers in the Standard of In-
715 diana territory in 1935, 84.5% provided that the basic
price shall be determined by reference to the average
of the averages of the high and low quotations of the Chicago Journal of Commerce and Platt's Oilgram. No contracts were based on Platt's Oilgram alone. Included in that group were 100 contracts based on the Chicago Journal of Commerce quotations alone, that is, the basic price paid by the jobber shall be determined by reference to prices

published in the Chicago Journal of Commerce on spot market tank car gasoline.

There were 168 contracts out of a total of 1729 on which the basic price was calculated on some basis other than those quotations in the Chicago Journal of Commerce or Platt's Oilgram. That group principally concerned itself with Sinclair Refining Company. Sinclair Refining Company had 122 contracts which were not based on either the Chicago Journal of Commerce or Platt's Oilgram. The basic price in their contract was the seller's open market tank car price. The Sinclair Company had 1 contract entered into in 1935 in which the basic price related to the Chicago Journal of Commerce or Platt's Oilgram. Included in that 122 contracts there was 1 contract with a supplemental agreement which defined the seller's open tank car market, as being the low of the Chicago Journal of Commerce, Oklahoma market.

716 For the year 1936 until September 30, there were 537 contracts made with jobbers by the defendant major oil companies I named in the Standard of Indiana territory. Out of the total of 537, I found 429 contracts on which I have the figures contained a provision that the basic price shall be determined by reference to the average of the averages of the high and the low quotations of the Chicago Journal of Commerce on spot market tank car gasoline. That is 79.9%. I did not find any contracts based on Platt's Oilgram alone. I found 90 based on the Chicago Journal of Commerce alone. 18 were not based on either journal.

In addition to those, there were specimen contracts submitted by Socony-Vacuum, Continental and Mid-Continent, in which the basic price was calculated in the same manner, but the number of those contracts was not given. So that, if I had the number of those contracts that were made in 1936, that would increase both the total number and the percentage of the total contracts that were made on the basis of the average of the averages of the two journals.

Cross-Examination by Mr. Francis.

I did not purport to list the number of contracts which were in effect in the Mid-Western area during the years 1935 and 1936, which had been signed in previous years.

717 All I purported to do, directing it with reference to The Pure Oil Company, was to list the number of contracts which they showed in their subpoena duces tecum,

as new contracts which were entered into with jobbers during each of those named years.

By Mr. Kirkland

I think there is just 1 contract from Standard of Indiana in 1936. None in 1935. There was 1 specimen contract, which I understood to be the only contract they entered into. It didn't purport to cover the number of contracts they had existing. That is for that one year only.

I don't know of any other jobber contract that Standard of Indiana entered into at that time, in that year.

By Mr. Gray

I received 14 contracts entered into by Gulf Refining Company in 1935; and there were none in 1936.

As far as the basic price was concerned, there was just one kind of specimen included in that 14. There may have been more than that, but the basic price was calculated in the same manner. All 14 of them contained the provision referring to the average of the averages of the high and low of these two journals. I don't believe Gulf Oil Company submitted any; just Gulf Refining Company.

718 *By Mr. Lawton*

Sinclair had a form of contract under which the buyer's price was to be the seller's open market tank car price. There was one contract which defined the open market tank car price of Sinclair to be the low of the Journal for that one contract only. It limited it for the purpose of that contract only. The low of the Journal shall be taken to be their open market tank car price for that one contract only. It had no application to a general definition.

Direct Examination (continued) by Mr. Chaffetz.

During my testimony about the percentage of contracts made by defendant major companies I named in the Standard of Indiana territory which contained price provisions based upon the average of the averages of the high and the low quotations of the Chicago Journal of Commerce and Platt's Oilgram, I said I didn't have the data as to Skelly. Skelly submitted the specimen contracts, with the data as required in the subpoena. The data submitted showed that there were 207 contracts adopted in December, 1934 which were in effect up through the date of the subpoena, October, 1936. Those 207 contracts all contained that same provision that the price would be based on the average

of the high and low of the Chicago Journal of Commerce
and Platt's Oilgram. I do not mean all the contracts
719 of Skelly in force during 1935 and 1936, but only those
that were adopted or put into force subseqnent to December, 1934.

If they had contracts made in 1933, which were 4 or 5 year contracts, they might still be in effect in 1935 and 1936, but I didn't consider those. There were no new contract forms adopted between December, 1934 and September 30, 1936, according to the data submitted. I don't know the exact date on which these contracts were made; but I do know that as to Skelly, all contracts made between those dates had the price provision that I have described.

Cross-Examination by Mr. Kirkland.

The subpoena asked for all the forms of contracts entered into by Standard of Indiana—taking that company for an illustration—with jobbers, not only for the year 1936, but for the years 1930 to some date in October, 1936, inclusive. I don't recall what the reply of Standard of Indiana was to the subpoena.

I had no reason to doubt the authenticity of that letter or the statements in that letter, wherein it is stated that the only 2 jobber contracts that company entered into from January 1, 1930 to October 1, 1936, inclusive, were enclosed, and that the company has never during this period had any form or type of contract for use in negotiating contracts
with jobbers.
720 I segregated the 1935 and 1936 material, and that is
what I testified from. I didn't attempt to testify to any information that was furnished for the period 1930 to 1934, inclusive, although the subpoena called for 1930 to 1936.

I don't know that the indictment in this case alleges that Standard does no business with jobbers. I don't believe the one contract that Standard of Indiana had and sent me made any reference to the prices of the Journal of Commerce, or to Platt's Oilgram or to any trade journal.

By Mr. Donovan

I used the term "basic price." All of these contracts use the term "basic price." By that term I mean the calculation is based on something to begin with. For instance, a contract might state that the price will be based on the Chicago Journal of Commerce and Platt's Oilgram, with further qualifications as to that price; it might be higher or it might be lower, but the basic prices are those quotations.

(Mr. Donovan read the following provision from a jobber contract:)

"For Texaco Fire-Chief Gasoline in tank car lots, F.O.B. Group Three, the average spot market price determined by averaging the high and low spot market prices quoted in the Chicago Journal of Com-721 merce and Platt's Oilgram (Tulsa Edition) F.O.B. Group Three on date of shipment, for gasoline of the grade corresponding to the Fire-Chief Gasoline shipped under this agreement; provided, however, (1) that if said average spot market price plus freight to point of distribution allows the Purchaser a margin (determined on the basis of Seller's normal price structure without regard to local price deflations) of less than .... below Seller's normal service station price, exclusive of tax, for Fire-Chief Gasoline at point of distribution, then the Purchaser and Seller shall share equally the difference between the actual margin and .... and the price shall be adjusted accordingly; (2) if the Seller increases or decreases Seller's regular posted discount to dealers substantially throughout the State of .... then there shall be substituted in the preceding part of paragraph for the words '.......... cents' wherever they appear an amount of cents equal to .... cents plus or minus, respectively, the amount of said increase or decrease; and (3) in no event shall the price to Purchaser hereunder be less than .... cents per gallon, F.O.B. Group Three."

722 I say the basic price in that paragraph of that contract is calculated from the average of the Journal of Commerce and Platt's Oilgram.

I examined all the specimen contracts. I haven't tabulated any figures. I understand there are a lot of qualifications to the basic price. I don't think I am familiar with the different types because there are an awful lot of them. I have read them. They qualify the basic price.

When the spread between the quotations used in the basic price provisions and the service station price, excluding freight, is such as to bring the marginal provisions of the contract into force, then the price is no longer determined by the publications' quotations. There might be several different reasons that might change that price. I have read in some of the contracts the so-called Q.D.A. clause, quantity discount agreement clause, by which the amount of the marginal protection varies with the amount of the various discounts. I do not know to what extent this clause was used in these contracts. I am sufficiently familiar with the above clause to know that there may be at least two other provisions in that contract which would prevent the so-called basic price from being the price paid under the contract.

723 For the most part, my examination was confined to printed forms or skeleton forms. There were some copies of actual contracts. For each jobber there could be additions to the contract, made out separately by the addition of certain typewritten sheets or handwriting. In fact, there were in many instances. These additions were called for and produced under the subpoenas. It is true that the extent to which the so-called basic price is the price paid by the jobber under the contract, it could vary according to the particular typewritten matter in each contract.

They told us in each instance how many of those typewritten pages applied to various contracts in various states; and I have taken that into consideration in compiling my figures.

By Mr. Morgan

I believe The Texas Company had entered into 80 contracts during 1935, and I don't believe there were any in 1936. I got that information from the tabulations submitted under the subpoena by The Texas Company. That tabulation shows the date the form was adopted by the company. It doesn't show when any of the contracts were entered into.

The first item on the list is Form Number S-1411. There
were two in effect on October 1, 1936. The next form
724 is S-1412. There were 20 in effect. I did not take those
into account at all in my tabulation; I assumed these
were all made in 1933, because that was the date that was
given there, the date the form was adopted.

I can't say how many of those forms that I did not take into account at all in my tabulation were executed during those two years; I didn't take into account any figures for contracts that were adopted prior to January 1, 1935. I say "contract adopted"; I mean "form adopted." I ignored all of those contracts if the form was adopted prior to 1935, regardless of when they may have been entered into.

My statement as to how many contracts were entered into during those two years is based on that assumption that I have just stated. If any of those contracts were put into effect in 1935, they are not considered. There seemed to be quite a few of them in effect during those two years and were still in effect on October 1, 1936.

I do not remember the provisions of Form S-1411 with reference to the price basis. That won't be on my tabulation; it is either impounded or it is in the file.

I don't know the number of forms that were still in use at that time that were submitted in response to the subpoena. I examined a good many of them. If the communication shows 12, that is probably what it was.

725 From that material submitted in response to the subpoena have been detached 9 of the 13 exhibits that were submitted in response to the subpoena. I have just taken out those in 1935 and 1936. I don't recall that there was a difference in the price provisions of those forms that were detached from those that were left attached to the letter. They weren't taken out because there was a difference, because in most instances throughout this entire period the basic price was the same. I don't know that these contracts, S-1411 forms, provided for a flat discount without regard to publication, or anything of that sort; I don't know what that was because I examined so many contracts.

I gave consideration to every contract listed on the tabulation. I was requested to segregate the material for 1935 and 1936. I can't say what the provisions of those forms S-1411 were with reference to price.

Direct Examination (continued) by Mr. Chaffetz.

At the request of Government counsel, I have conducted some studies of the trends of published prices of gasoline during the period covered by the indictment. I used the Oil Price Handbook published by the National Petroleum News Publishing Company, a defendant in this case, and
the Chicago Journal of Commerce, daily editions, as the
726 sources for those published prices. There are certain
data in the Oil Price Handbook which I used to compute the tabulations and graphs I made, namely, the spot market prices for house brand gasoline and third-grade gasoline, Oklahoma market, and the service station prices for 28 cities in the Standard Oil Company of Indiana district.

This book purports to be a summary of the prices as published in Platt's Oilgram on particular days during the preceding year. They published only the Monday quotations or prices in each week. I used the years 1934, 1935 and 1936. The publication of 1936 contains data for 1936.

I segregated from the Oil Price Handbook for the years 1935 and 1936, the prices published therein with respect to the low quotations on third-grade gasoline in the so-called Oklahoma or Mid-Continent market.

This first schedule purports to show all the Oil Price Handbook Monday low quotations of third grade gasoline, Oklahoma market, from March 4, 1935 to May 4, 1936. The Oil Price Handbook purports to cover only the Monday prices of each week.

(Schedule referred to received in evidence as EXHIBIT 663.)

I have prepared, at the request of Government counsel, a graph entitled "U. S. Motor Gasoline third grade 62 727 octane and below, Oklahoma market," which correctly represents the quotations shown on the schedule which is Exhibit 663.

(Graph referred to received in evidence as EXHIBIT 664.)

Platt's Oilgram also published prices for Tuesday, Wednesday, Thursday, Friday and Saturday in 1936. They are not in the book we have reference to. My chart or graph is merely based on quotations for one day out of six, just Monday's price quotations. The chart in no sense shows the price changes which may occur within a week. This chart only shows the low quotations on the Mondays named.

I have testified that a large proportion of the jobber contracts were based on an average of the averages of Platt's Oilgram, Oklahoma market, and the Chicago Journal of Commerce. To arrive at the average of the quotations of Platt's Oilgram we add the high and low quotations and divide by two. On those contracts the high and the low is what they call for. The basic price is considered when taking the high. According to the contracts to get the prices on any particular day we would have to add the high and low of the Chicago Journal of Commerce and Platt's Oilgram, and divide it by four. We would have to have that the day the gasoline was shipped.

There are very ~~few times when~~ the high quotation 728 would change and the low quotation remain stationary. It occurs now and then.

Each one of these vertical lines on that graph represents one week, and each one of these horizontal lines represents ¼¢. In other words, four lines up represents 1¢.

> (The witness then stated the Monday prices and price changes from March 4, 1935 to May 4, 1936 as they appear on the graph Exhibit 664, such statement being here omitted because Exhibits 663 and 664 show such prices and changes.)

I made a similar study of prices of third grade gasoline in the Oklahoma market as shown in the Oil Price Handbook for Monday of each week, which continues beyond May 4, 1936 down to December 31, 1936. I have a schedule of those prices. This schedule was compiled in exactly the same way as the schedule which is marked Exhibit 663, from the same source, and it continues the data down to December 31, 1936.

> (Schedule referred to received in evidence as EXHIBIT 665.)

I have similarly prepared a graph which accurately reflects graphically the prices stated on this schedule which is Exhibit 665. This chart merely carries the same low quotations for third-grade gasoline for Mondays through to December 21, 1936.

> (Graph referred to received in evidence as EXHIBIT 666.)

729 (The witness then stated the Monday prices and price changes from March 4; 1935 through December 20, 1936 as they appear on the graph Exhibit 666, such statement being omitted here because Exhibits 665 and 666 show such prices and changes.)

I have prepared from the same source, that is, the Oil Price Handbook showing Platt's Oilgram prices, a schedule of prices published as low quotations for regular or house brand gasoline, which I have entitled, "Monday Low Quotations, House Brand Gasoline, March 4, 1935, to December 21, 1936, Oil Price Handbook, Oklahoma Market". This schedule covers the low prices only published as of Monday of each week during the period covered for regular or house brand gasoline, as shown in the Platt's Oilgram.

> (Schedule referred to received in evidence as EXHIBIT 667.)

I have prepared a graph which is intended to reflect accurately the prices listed on this schedule, Exhibit 667, that is, Monday low quotations as published in the Platt's Oilgram and reprinted in the Oil Price Handbook for the period from March 4, 1935 until December 21, 1936.

(Graph referred to received in evidence as EXHIBIT 668.)

(The witness then stated each Monday price from March 4, 1935 to December 21, 1936, as each appears on the graph Exhibit 668, such statement being here omitted because Exhibits 667 and 668 show such prices.)

730 I attempted to make a study of the trend of average prices on regular or house brand gasoline as reflected in the Oil Price Handbook or Platt's Oilgram. I first prepared a schedule reflecting the average prices by months. The average monthly price is calculated on the average of the Monday quotations. There is a figure in the Oil Price Handbook which purports to show the average monthly price, and that is the manner in which it is calculated. For house brand gasoline, Oklahoma market, on any one of these weeks, they quote a high and a low of what they call the January average. It is based on the average of the high and low quotations for Monday only.

On page 13 of the Oil Price Handbook for 1935 are quotations of U. S. Motor gasoline, Oklahoma market, regular grade, 63 to 70 octane. Those quotations are the average monthly high and low Monday quotations. I have merely copied correctly these figures onto a schedule, and then I have plotted them on a graph.

I re-calculated those monthly averages and found they were accurate, as shown in the several books. On my graph the averages are by months of the Monday low and high quotations, as published in the Oil Price Handbook and reproduced from the daily Platt's Oilgrams for the preceding year. In my schedule on this data, I have 1934 and 1935 and 1936.

731 This document is a schedule of prices during 1935 and 1936, which are supposed to be the average of the Monday high and low quotations of the Platt's Oilgram during the years in question averaged on a monthly basis. I took the high and low for each Monday in a particular month, added them together, first averaged the high and low, and then divided by four to get the monthly average. When there were 5 Mondays in the month, I divided by 10.

(Schedule referred to received in evidence as EXHIBIT 670, such exhibit being later withdrawn from evidence.)

I have prepared a graph which accurately reflects the prices contained on the schedule to which I have just referred.

(Graph referred to received in evidence as EXHIBIT 671.)

The prices reflected in that graph are the average of the Monday high and low quotations on regular or house brand gasoline by months. I have prepared a comparative study of low quotations on third-grade gasoline with low quotations on house brand gasoline at retail price in the Standard of Indiana territory. I have also prepared a schedule reflecting low quotations for house brand gasoline as reflected in the Oil Price Handbook from January 2, 1934 to December 2, 1936. Those prices are Monday prices. This is the schedule of those Monday prices that I used in connection with the graph.

732 (Schedule referred to received in evidence as EXHIBIT 672.)

I also got my data with respect to retail prices from the Oil Price Handbook. It publishes retail prices for approximately 150 cities in the United States. I took 28 of those cities, which represent all of the cities for which they publish prices in the Standard of Indiana territory. I was unable to find any other sources which would give me the prevailing retail price data for a larger number of cities in the Standard of Indiana territory during the period which I studied.

This schedule covers the service station price, less city, State and Federal gasoline tax, for Standard Red Crown gasoline as posted and as reflected by the Oil Price Handbook for the period December 3, 1934 to December 21, 1936, and these averages are based on the 28 cities which I have also listed here. I computed the averages myself. I took the price as shown in the Oil Price Handbook for each city, deducted from those prices the gasoline tax, and then divided by 28 to get the average prices. Again the prices are Monday prices. Attached to my schedule I have listed the cities that were covered by my study.

(Schedule, with list of cities, referred to received in evidence as EXHIBIT 673.)

733 I have prepared a graph which accurately reflects the retail prices taken from the Oil Price Handbook which I have described, in comparison with a graph of housebrand gasoline published prices; and also a graph of published prices for third-grade gasoline.

The Standard of Indiana territory comprises the 10 states North Dakota, South Dakota, Iowa, Minnesota, Missouri, Illinois, Indiana, Kansas, Wisconsin and Michigan.

(Graph referred to marked Exhibit 674 for identification.)

Exhibit 674 purports to show, as listed by the Oil Price Handbook for the period March 4, 1935 to December 21, 1936, the Monday low quotations for third-grade gasoline; the Monday low quotations for housebrand gasoline; and the average service station price, less gasoline tax, for Standard of Indiana Red Crown gasoline for 28 cities in Standard of Indiana territory. Standard Red Crown is what they call their regular gasoline.

The lower graph is identical with that contained in previous graphs Exhibits 664 and 666 which I have identified here and refers to the Monday low quotations on third-grade gasoline. The middle graph relates to the low quotations on housebrand gasoline; and again it is identical with the graph Exhibit 668 which I have previously referred to here. The only thing new on this graph is
734 the graph of retail price.

(Graph, previously marked Exhibit 674 for identification, received in evidence as EXHIBIT 674.)

The names of the 28 cities represented by this graph are Chicago, Illinois; Decatur, Illinois; Joliet, Illinois; Peoria, Illinois; Quincy, Illinois; Indianapolis, Indiana; Evansville, Indiana; South Bend, Indiana; Detroit, Michigan; Grand Rapids, Michigan; Saginaw, Michigan; Green Bay, Wisconsin; La Crosse, Wisconsin; Milwaukee, Wisconsin; Minneapolis, Minnesota; Duluth, Minnesota; Mankato, Minnesota; St. Louis, Missouri; Kansas City, Missouri; St. Joseph, Missouri; Davenport, Iowa; Des Moines, Iowa; Mason City, Iowa; Sioux City, Iowa; Fargo, North Dakota; Minot, North Dakota; Huron, South Dakota; and Wichita, Kansas. Those were the only cities listed.

This graph Exhibit 674 purports to show the relationship existing between the prices for the Monday low quotations of third grade gasoline, Oklahoma market; Monday low quotation of regular gasoline, Oklahoma market; and retail prices, on the same date. These are all drawn on the same scale; and the space between each of these two heavy lines represents 2¢, and the space between each of the vertical lines represents a week. This graph contains the same data as the other graph. The only thing is the service station prices are superimposed on this one.

735 Illustrating that last graph Exhibit 674: on May 6, 1935, the low quotation for third grade gasoline was 4⅝¢. The low quotation for house brand gasoline was 5¼¢. And the service station price for regular grade gasoline was 13.56¢. On January 20, 1936, the low quotation on third grade gasoline as published in Platt's Oilgram on that Monday was 5¼¢. The low quotation on regular gasoline, as shown in Platt's Oilgram, on the same Monday was 6⅛¢. The graph doesn't take into consideration the possible high quotation on the same day at all. The average retail price in the 28 cities was 13.93¢ on that same date.

At the request of counsel, I have made a study of quotations on third grade gasoline in the East Texas market, as shown in Platt's Oilgram, during the period in question. I have taken those prices from the Oil Price Handbook, which reflect the low quotations on Monday in the East Texas market for third grade gasoline. These prices are prices quoted as pertaining to the East Texas market, whereas the comparable prices that I have described earlier purported to come from the Oklahoma market. In this study I covered the full year of 1935 and to December 21, 1936; practically two full years. I have prepared a graph depicting those prices during that period.

736 (Graph referred to is received in evidence as EXHIBIT 676.)

Thus far I have dealt only with prices published by Platt's Oilgram and reproduced in the Oil Price Handbook. I have made a study which includes the quotations of the Chicago Journal of Commerce during this period. I have attempted to make a comparison between the prices of the Chicago Journal of Commerce and the Platt's Oilgram prices as shown in the Oil Price Handbook on the same days. In order to do that I have prepared a schedule of averages that I compiled from the Chicago Journal of Commerce quotations and the Oil Price Handbook. Those are the averages of the high and low Monday quotations of each month for 1934 and 1936, inclusive. The quotations on this schedule from the Oil Price Handbook are identical with those used in connection with the previous exhibit which I said was based on a monthly average of the Monday high and low prices of Platt's Oilgram. I made a similar computation of monthly averages of Monday prices both high and low, as published in the Chicago Journal of Commerce, for third grade gasoline, covering the period January, 1934 until December, 1936. Those averages are contained on this schedule.

(Schedule referred to received in evidence as EXHIBIT 677, such exhibit being later withdrawn from evidence.)

737 These averages are accurate computations and accurately reflect the data derived from the Chicago Journal of Commerce and the Oil Price Handbook. The Oil Price Handhook shows the Oklahoma market.

The Chicago Journal of Commerce publishes only one set of spot market prices for the entire Mid-Continent area, whereas Platt's Oilgram publishes a different set of prices for different spot markets, particularly Chicago, the Mid-Continent field, the Tulsa, and East Texas.

I have attempted to reflect the price quotations or the average of the price quotations contained in the schedule, which is contained in Exhibit 677, on a graph. The graph which I have prepared accurately reflects the prices listed in my schedule. I superimposed a graph of Chicago Journal of Commerce prices taken from my schedule upon a graph of the Platt's Oilgram prices taken from the same schedule, and the result is contained in the graph which I have in my hand.

(Graph referred to received in evidence as EXHIBIT 678, such exhibit being later withdrawn from evidence.)

The Chicago Journal of Commerce purports to publish a composite quotation covering sales in the spot market in tank car lots for the entire Mid-Continent area, whereas the prices I used for Platt's Oilgram are prices which purport to be going prices in the spot market in the Okla-
738 homa refinery district.

The solid line on the graph represents the Oil Price Handbook, and the dotted line represents the Chicago Journal of Commerce, and of course where there is just one line, that represents both quotations. That indicates that on each of the Mondays, during the period from June, 1935 until December, 1935, both journals published identically the same average prices.

Cross-Examination by Mr. Donovan.

A chart similar to the chart you show me, which purports to be a composite of price quotations, Platt's Oilgram, Oklahoma refinery market and Chicago Journal of Commerce f.o.b. Group 3, showing the change in prices from day to day from January to December within that year, has been shown to me prior to this moment. The chart similar to the one you now show me for the year 1936 has been submitted to me. As a general picture they appear to be accurate, but I have not examined them in detail.

(Charts referred to marked Exhibits 679 and 680 for identification.)

I think in most instances I have taken March 4, 1935, as the beginning for my own charts. I don't know that March 4th was the day that the Tender Boards began operating under the Connally Act in Texas.

739 The price range for third-grade gasoline on January 7, 1935 was between 3⅞¢ and 4¢, and on March 4, 1935, when I began my comparison, the range was 3⅜¢ to 3⅝¢. So if you compare the rise from January 7th to any one of these other points, there would be a difference of ½¢.

On January 28, 1935, third-grade gasoline is 3⅝¢ to 3⅞¢ in Platt's Oilgram. On January 29, 1935, it is 3⅜¢ to 3⅝¢. On March 4, 1935, it is 3⅜¢ to 3⅝¢. March 5, 1935, is 3½¢ to 3¾¢. On January 27, 1936 it is 5¼¢ to 5⅜¢. On Tuesday, January 28, 1936, it is 5¼¢, just one quotation. February 24, 1936, it is 5⅛¢ to 5¼¢; Tuesday, February 25, 1936, 5¢ to 5⅛¢.

August 17, 1936, 4⅞¢ to 5¢, and on Tuesday, August 18, 1936, 4¾¢ to 5¢. September 7th apparently is missing. September 8, 1936, 4⅝¢ to 4⅞¢, comparing that with September 4th, 4¾¢ to 5¢. Now, September 14, 1936, 4½¢ to 4⅞¢.

(Stipulated by counsel that in 1935 and in 1936, there were 70 changes on the high and low quotations for house brand and third-grade, and that only 17 of these changes occurred on Mondays in the Platt's Oilgram. And as to the Chicago Journal of Commerce, that in 1935 and 1936 there were 83 changes in all of the high and low quotations on house brand and third-grade, only 13 of which occurred on a Monday.)

740 Looking at Platt's Oilgram, Tulsa edition, for January 27 and 28, 1936, on 62 octane and below, third-grade, the quotation on the 27th was 5¼¢ to 5⅜¢; on the 28th, 5¼¢, just one quotation.

Looking at my chart, Exhibit 674, the quotation reflects January 27th, but it doesn't reflect whatever change occurred between January 27th and 28th. January 28th was Tuesday.

Looking at the Oilgram for April 14, 1936, third-grade gasoline was quoted at 5¢ to 5⅛¢. On April 15, 1936, it was quoted at 5¢ to 5¼¢. On April 14, 1936, regular is quoted at 6¢ to 6⅛¢, and April 15, 1936, regular is quoted at 6¢ to 6¼¢, showing a rise in the high quotations of ⅛¢ on the 15th. April 14th is Tuesday; April 15th is Wednesday.

Looking at the Oilgram for June 5, 1936 regular gasoline was quoted at 6¢ to 6¼¢, and on June 8th it was quoted at 6¢ to 6⅛¢. June 8th was Monday, and June 5th was Friday, and the comparison I made was with Monday, June 8th.

> (Stipulated by counsel that in Platt's Oilgram Monday quotations are Monday's prices; but in the Chicago Journal of Commerce they are Saturday's prices, and that there is no Saturday edition of Platt's Oilgram.)

Looking at Platt's Oilgram, Oklahoma refinery market quotations, on May 4 and 6, 1935, the high quotations
741 of house brand gasoline increased ⅛¢, from 5¼¢ to 5⅜¢. May 4th doesn't show on my chart Exhibit 674. If it was below this, it would not be indicated whether it was below or above. These prices are merely the low quotations on those particular dates. They don't purport to be prices to jobbers.

Looking at the portion of my chart Exhibit 674 which shows June quotations for 1936, the low quotations are level. The Oilgram shows that the high quotation went down ⅛¢ between Friday, June 5th and Monday, June 8th.

The level on the average monthly chart, Exhibit 678, indicates the average monthly quotations based on Monday quotations. I think the Chicago Journal of Commerce is published every day except Sunday, and in preparing this chart Exhibit 678 as it now appears, I disregarded all of those days excepting Monday. I made no attempt to give effect to the prices paid on the other 26 days of the month, or to take into consideration the number of days in a month during which a given price was in effect. I have just taken the Monday quotations.

The Oil Price Handbook for 1936 under the Oklahoma refinery market shows the average price for third-grade gasoline for September, 1936 to be 4.6719¢. The figure for October, 1936 was the same. What I did was to plot these correctly on my chart by drawing a straight line across between the two for those two months. There 742 was a fluctuation in the market price in September and October, 1936.

By the Court

The Oil Price Handbook publishes Monday prices of each week except when legal holidays fall on Monday, in which case prices are as of Tuesday. In each September there was at least one holiday. I took that into consideration. Throughout the period there may have been another one, I would not say for sure just now, but I have taken just the dates that they give.

By Mr. Hanning

I disregarded all prices of the Chicago Journal of Commerce except the prices published in its Monday editions. I heard the statement made that the Chicago Journal of Commerce Monday's published price is the price of the Saturday before; so as a matter of fact, what I did here in making up these charts was to take the Monday price as published in the Oilgram, which is the Monday price, and take the Saturday price as published by the Chicago Journal of Commerce and which is the price that appears in the Monday edition of the Chicago Journal of Commerce.

(Exhibit 670, 677 and 678 withdrawn by government counsel.)

The Oil Price Handbook is published about January 15th of each year, and there is printed in it the Monday price 743 for the preceding year. It doesn't purport to set forth any price except that Monday price. It is my understanding that the Oilgram itself, which is the original record from which this Monday price in the Handbook is taken, is published each day except Saturday and Sunday and holidays, and it shows the daily prices.

Redirect Examination by Mr. Chaffetz.

If in the course of the period covered by my graphs there were a change in any week which lasted as much as a week, that change would be reflected on my graph. The only changes which are not reflected on my graph are those which did not continue for as much as a week.

If there is a change that occurs within a period shorter than a week, but if that change occurred on a Monday, then my graph would show it. In other words, if there was a change from Friday until Monday, my graph would show it. It would show the change on Monday. Any change that continued through Monday would be reflected even if it didn't continue for a full week.

744 **WALTER PAUL JACOBI**, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I live in Tulsa, Oklahoma. I am a buyer of petroleum products, and I work for Wadhams Oil Company and for various divisions of Socony-Vacuum Oil Company, Inc. I have been engaged in that work since 1922. I have an office and carry on my operations in and around Tulsa.

I post those companies and divisions as to conditions in the field. In my business I do, and it is necessary, to follow tank car prices on gasoline pretty closely.

Q. Is it necessary for you also to check on other wholesale and retail prices of gasoline?
A. Wholesale in particular.

I am not very well posted on the retail price that prevails generally throughout the Standard of Indiana territory, because my business is buying, not selling. However, I have from time to time checked on the retail price, and I am generally familiar with it. I was in active daily touch with the tank car market in the Mid-Continent field and in East Texas, particularly in the Mid-Continent field. The Mid-Continent fields where I operate center around the district known as Group 3, which determines certain freight rates to the north. I had this occupation in Tulsa and this contract with the market and active participation in it through the years 1935 and 1936.

745 The various divisions of Socony-Vacuum Oil Company, Inc., that I worked for in the way I described are the White Star Division at Detroit, Michigan; the Lubrite Division at St. Louis; the White Eagle Division at Kansas City; the Chicago Division, Chicago; and, of course, Wadhams Oil Company. The latter is a wholly-owned subsidiary of Socony-Vacuum Oil Company, Inc. The Perfect Oil Company, as I understand it, is a subsidiary of Wadhams. It transacts the business of marketing gasoline in Wisconsin. Wadhams also transacts business throughout Wisconsin in gasoline and sells to jobbers, dealers and retail customers. But my understanding is it has only a few jobbers. Socony-Vacuum, with its numerous divisions, does

business generally over the Standard of Indiana territory.

Charles E. Arnott is vice-president of Socony-Vacuum. His office is in New York City. I understand that he was president in 1935.

Charles L. Jones was active as a vice-president of Socony-Vacuum during the years 1935 and 1936. His work related mainly to the marketing phases in connection with the Western Divisions I mentioned, but his home office was in New York City. He left the company January 1, 1937. It may be true, but I am not certain, that as vice-president he was regarded as in charge of the Domestic Trade Department.

746 H. T. Ashton is general manager of the Lubrite Division of Socony-Vacuum at St. Louis. The next man in line in that division is Mr. Ware, the assistant general manager, although I have very few contacts with him. My main contacts with the Lubrite Division are with the traffic department, and Mr. Whatley.

In the Wadhams Oil Company I am responsible to A. G. Maguire, and report to him. He is located at Milwaukee, Wisconsin, and is chairman of the board of directors and head of the company. I have some contacts with him, but practically all my contacts are with the traffic division. My salary and office expenses are paid by Wadhams, but the other divisions contribute thereto according to the amount of business I do for them. I believe that they are charged by Wadhams.

Mr. McNally retired from Wadhams Oil Company on January 1, 1937. Before that time he was its vice-president, and I had some contact with him.

R. R. Irwin is assistant general manager of Socony-Vacuum White Eagle Division, and his office is in Kansas City. I have some contacts with him, but most of my contacts with the White Eagle Division, as with other divisions, are with the traffic department, and with Mr. McReynolds, traffic manager.

Bryan S. Reid is head and general manager of the Chicago Division. In that division, as in the other divi-
747 sions, and particularly so in the Chicago Division, my
contacts are with Harry Dolan, who is in charge of refiners' sales, and I was in touch with him with reference to the supplying of various products that he needed.

In the case of the White Star Division at Detroit, I was responsible to Howard Coffin, who was its general manager. The traffic man there is a Mr. Faharner, but I have other contacts there with Mr. Pike, the purchasing agent. Until he received a promotion, Mr. Sullivan was purchasing agent in the White Star Division. In 1935 and 1936 I had contacts with him in regard to lubricating oils mainly, and natural gasoline, not refinery fuels or gasoline.

At times I buy gasoline, usually in tank car lots, on the spot market in the Mid-Continent fields and East Texas field for these various divisions of Socony-Vacuum and for Wadhams.

I have occasion to make written reports to a superior officer, and I have sent a weekly market letter for a number of years, at Mr. Maguire's request. He asked me to send him a gossipy letter of news as I saw it and as I got it down in Oklahoma. I addressed the weekly letter to Wadhams Oil Company, attention Mr. Maguire. I sent copies to various divisions of Socony-Vacuum; for instance, to
Mr. Ashton's office at Lubrite, Mr. Irwin's office at
748 White Eagle, Mr. Reid's office in Chicago, and Mr.
Coffin's office in the ~~White~~ Star Division at Detroit.
Copies of that letter also were sent to the New York office, but that was a little later on. What I have said is true of 1935 and 1936.

I recall generally what the tank car prices of gasoline in the Mid-Continent fields and in East Texas were in the months of January and February, 1935. That is shortly after the Governmental buying program—

Q. I didn't ask you for that. I ask you whether you recall those prices?

A. Yes, I do. They were around 3¼¢ for third-grade gasoline and 4¼¢ for regular gasoline.

I am speaking of the price in the Mid-Continent fields. I don't remember what the prices of those two grades of gasoline were at about that same time in East Texas, probably ⅛¢ a gallon less. Generally speaking, the tank car prices of gasoline sold in East Texas are about ⅛¢ under the tank car prices for equivalent gasoline sold in the Mid-Continent fields. That difference is a matter of freight. When the East Texas refiner ships his gasoline north, he has to equalize the Group 3 freight, and that costs him about ⅛¢ a gallon.

As a general rule in January and February, 1935,
749 if the price for regular gasoline in the Mid-Continent
was 4¼¢, the price in East Texas would be about 4⅛¢.
That is for house brand gasoline which is also called regular gasoline, and which had an octane rating of 68-70. The third-grade gasoline had an octane rating of 62 and below. I don't remember whether or not the trend of those tank car prices in those two fields was irregular and fluctuating dur-

ing January and February, 1935. I remember it ranged around the figures that I mentioned. There may have been some changes; I don't know.

I testified three times before the Grand Juries which considered this case in Wisconsin in 1936. It was May 19, 20 and 21 when I first appeared before the first Grand Jury, and July 24 when I appeared the second time before that Jury; and December 18, 1936, when I appeared before the second Grand Jury. On those occasions I was subpoenaed and gave testimony. I claimed immunity from any prosecution.

Mr. Donovan: I don't see the purpose of this kind of examination. I object to the form of the examination at this time, and I move to strike it out and that the Jury should be instructed to disregard it.

The Court: Objection overruled. Exception allowed.

Mr. Lewin: Now, I wonder if you recall testifying on your third appearance in December, 1936, in 750 answer to questions from the Government counsel, that the price—

Mr. Donovan: It now appears from the question of counsel that he is directing attention to the Grand Jury testimony, and I object to the form of the question directing his attention to the Grand Jury testimony.

Mr. Lewin: I am merely trying to refresh his memory. If he doesn't remember, I am not going to press him.

The Court: You may do so. Objection overruled. Exception allowed.

Mr. Donovan: I object further, your Honor, on the ground that the events were too far removed from the date on which he is said to have testified to be a proper form or basis for recollection.

The Court: Objection overruled. Exception allowed.

Mr. Lewin: I wonder if you don't recall on that occasion of giving as your evidence the statement that during those months the prices of—tank car prices in those two fields were low, in your opinion, and fluctuating and irregular?

Mr. Donovan: I renew my objection and direct your Honor's attention to *Putnam* v. *United States*, 751 162 U. S. 687, which holds that the very essence of the right thus to refresh the memory of the witness is that the matter used for that purpose be contemporaneous with the occurrences as to which the witness is called upon to testify. Indeed, the rule which allows a witness to refresh his memory by writings or memoranda is founded solely on the reason that the law presupposes that the matter, used for the purpose, was reduced to writing so shortly after the occurrence, when the facts were fresh in the mind of the witness, that he can with safety be allowed to recur to them in order to remove any weakening of memory on his part which may have supervened from lapse of time.

Now, the Government witness has testified contrary to his testimony, and that does not appear here, but in the Grand Jury was interrogated—

The Court: What counsel is trying to do is to stimulate this witness' memory, and he may do so by referring to his former testimony before the Grand Jury.

Mr. Donovan: May I have my objection and exception?

The Court: Yes; go ahead.

Mr. Lewin: Mr. Jacobi, does that suggestion I made to you about your former testimony, refresh 752 your memory as to that point?

Mr. Donovan: May I state this, your Honor, that the witness should be shown the minutes of the Grand Jury—

The Court: It isn't necessary to show him. He may examine him without it.

Mr. Donovan: I object to that, your Honor, on that ground.

The Court: Objection overruled. Exception allowed. Now proceed.

I remember definitely stating to the Grand Jury that the price was low, and I may have said it was fluctuating. I am sure the price was low throughout those winter months and up until about the beginning of March, 1935 and it may have been fluctuating. I believe it was.

This paper you show me is a copy of one of my weekly letters to Mr. Maguire. It is dated February 8, 1935, and signed in typewriting: W. P. Jacobi. I don't know whose initials are the T. T. M. which appear in pencil on this copy. J. G. Pike is with Socony-Vacuum, White Star Division. I am pretty sure that this is his signature. This is the copy which I sent to Mr. H. M. Sullivan, and I recognize his initials on the copy.

The Court: Let me ask you this question:

Q. In making these reports by letter were you trying to give to the individuals receiving that letter 753 a true picture of the market conditions, and true information, correct and true information that they were interested in?

A. As I saw at the time—

Mr. Thomas: I object to that as calling for a conclusion and invading the province of the jury.

The Court: Objection overruled.

(Letter referred to marked Exhibit 71 for identification.)

Mr. Lewin: This letter, dated February 8, 1935, is not offered to refresh the witness' memory at this time. It is offered as a piece of original evidence in and of itself. This witness has testified this is a report that he made of conditions in this field. The relevancy of it will appear from looking at the letter itself. It went to Mr. Maguire, it went to Mr. Irwin, it went to Mr. Ashton, it went to Mr. Reid, it went to Mr. Jones.

Mr. Donovan: Objected to on the following grounds: that the letter is only the expression of opinion of the witness, and cannot be taken as a statement of fact. Therefore, it is hearsay. It is only the narration of something that has already taken place. It does not yet appear that the witness cannot testify as to those facts. No proper foundation has been laid for its introduction, it is not the 754 best evidence; and is not a statement that will bind anybody, if admissible at all, except the defendants that the witness says he wrote it to.

(Document previously so marked for identification received in evidence as EXHIBIT 71 only as to the defendants Socony-Vacuum Company, Wadhams Oil Company, and the officers of those companies who are named as defendants, upon condition that it will be tied up with later evidence. Objection overruled. Exception allowed.)

It was a part of my employment and duties to submit this report to Mr. Maguire and Wadhams Oil Company. He asked for a weekly letter.

This paper which you handed me is a copy of a weekly letter that I wrote to Mr. Maguire on February 15, 1935.

I sent this particular copy to Mr. Sullivan of the White Star Division.

Mr. Lewin: I offer this letter in evidence.

Mr. Donovan: On behalf of all the defendants—

The Court: Let the record show the same objections as were made by various counsel and the same request for instructions as appears at R. p. 361, and the same rulings.

(Letter, dated February 15, 1935, received in evidence as EXHIBIT 72 only as to the defendants Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, and the officers of those companies who are named as defendants.)

I was invited by H. T. Ashton over the telephone to come to a meeting in St. Louis to be held March 5,
755 1935. When I got to St. Louis in the morning right after breakfast, I went right from the train to Mr. Ashton's office where there were some other men already gathered. I was in Mr. Ashton's office until noon; I would say for an hour or an hour and a half. I was in St. Louis until 5 o'clock.

There were present Robert W. McDowell, vice-president in charge of sales of Mid-Continent Petroleum Corporation; O. J. Tuttle, sales manager of Empire Refining Company, its name during 1935 and 1936; Mr. Ashton; I. A. O'Shaughnessy, president, I believe, of all three of The Globe Oil & Refining Companies; P. E. Lakin, then in charge of sales for Shell Petroleum Corporation, whose title I am not sure about, but whose office was in St. Louis; and Edward M. Karstedt who was then with Continental Oil Company of Ponca City, but who retired a few months later. All those men were representatives of major or semi-major oil companies.

There were also present Clyde M. Boggs, president of Kanotex Refining Company at Arkansas City, and, I believe, at that time president of the Western Petroleum Refiners Association; Mr. Cocanower, who was then sales manager of Olney Oil & Refining Company of Olney, Texas, and who later left Olney and took a similar position with Waggoner Refining Company; Rex Winget,
756 president or general manager of Cushing Refining & Gasoline Company of Cushing, Oklahoma; and a Mr. Simmons, who I understand is president of Rock Island Refining Company of Duncan, Oklahoma. Kanotex, Olney, Rock Island, Cushing and the Waggoner are independent refiners located in the Mid-Continent field.

My above statements are true as of the date of the meeting and for the rest of 1935 and 1936, except for Mr. Karstedt. So far as I know, we have covered everyone who was present at that meeting.

757 Q. State whether or not some kind of a proposed plan was outlined at that meeting in Mr. Ashton's office on that day?

Mr. Donovan: I object to that question as calling for a conclusion. That is a question for the jury.

The Court: He may state what was said and done.

Mr. Loucks: On behalf of the Barnsdall Refining Company and the defendant Reeser, we wish to make a specific objection on the ground that it is incompetent, so far as we are concerned because we were not born at that time.

The Court: Do you want to re-state your question?

Mr. Lewin: Your Honor, I prefer to narrow these questions, if we can. I think we will make more speed. I believe this is a preliminary question. I haven't asked him what the plan was, yet.

Mr. Donovan: I object to that form of question, for the reasons already stated, your Honor.

The Court: The objection is overruled.

Read the question, please.

Mr. Donovan: I thought you had sustained my objection, as calling for a conclusion.

The Court: No, he is just asking if a plan was made.

Read that question.

758 (Pending question read by reporter.)

The Court: Answer that Yes or No.

Mr. Donovan: Your Honor has overruled my objection?

The Court: Yes, I have.

Mr. Donovan: If it please the Court, I desire to object further upon the ground that it is immaterial and irrelevant and hearsay, for the reason that there has not yet been established that there has been any crime or any alleged conspiracy; and, second, that if there is any testimony here relative to what was said on that occasion, it can be considered as testimony only against those who were present and not as against any of these defendants here who were not present.

Mr. Lewin: Again, this is all subject to the offer on the part of the Government of the United States to connect this up completely with evidence.

The Court: Objection overruled.

Mr. Loucks: May I have my objection to the same line of testimony, without renewing it each time, if your Honor please?

The Court: Yes.

Mr. Lawton: May that be true also as to the Journal of Commerce? I don't care to interrupt each time.

759 The Court: Yes, it may.

Mr. Donovan: Now, in order to avoid unnecessarily interposing objections, your Honor, may I have the same objection as against this line of questioning?

The Court: Yes, you may.

Mr. Donovan: And I will interpose only when I feel that it is necessary to do so.

The Court: Yes.

Mr. Hanning: Your Honor, I understand that those objections go to the benefit of each of the defendants, do they not?

The Court: That is my understanding.

Mr. Hanning: All right. That was my understanding.

Mr. Lewin: Q. Will you answer that question, yes or no?

A. Yes.

Q. Yes. Now, state whether or not that proposed plan had to do with the purchase by these major oil companies named, of gasoline from independent refiners located in Oklahoma, Kansas and North Texas.

The Court: That question is leading.

Mr. Lewin: All right, I will withdraw that question.

Q. State, confining yourself simply to the plan itself, the proposed plan, state briefly what that proposed plan was.

760 Mr. Donovan: Now, I object to that, your Honor. If he is asking—

The Court: I think we will get further if you ask this witness to tell just what the discussion was there, between these men.

Mr. Donovan: That is right.

Mr. Lewin: All right. I prefer the other question, but if your Honor says—

The Court: No, I think we had better reach it this way.

Mr. Lewin: All right.

Q. Will you state what the discussion was with regard to that plan?

Mr. Donovan: No, I object to that, your Honor. If he is undertaking to ask what took place—

The Court: Let him state what the discussion was, that was had there at this meeting.

Mr. Donovan: The whole discussion.

Mr. Lewin: Now, your Honor—will you hear me a moment on that?

The Court: Yes.

Mr. Lewin: I don't believe the Government should be required to bring out from this witness any other discussions they may have had, relevant or irrelevant to the matters at hand. He has testified now 761 that they discussed a plan. I want him to confine his answer on the discussion of the plan to that plan itself, and I think we are entitled to prove our case in that manner.

Mr. Donovan: Now, if it please the Court, may I say this? This witness should not be asked to distinguish where the plan ends or where it begins. That is a question for these gentlemen here, who are sitting on the jury—

Mr. Lewin: I didn't ask him—

Mr. Donovan: Now, may I finish?

Mr. Lewin: Yes, excuse me.

Mr. Donovan: If he has chosen to ask what conversation took place at a meeting, the jury is entitled to know all that took place at the meeting, and counsel—

Mr. Chaffetz: Counsel will have an opportunity to cross examine.

Mr. Donovan: (continuing) —should not be permitted to direct attention to a particular plan or a particular episode. The jury must be permitted to determine from the whole conversation what is the fair inference to be drawn, and not the witness select what may have been the plan or may not have been.

Mr. Lewin: Now, we want this jury to have all relevant facts, but we don't think we should be re- 762 quired to ask this witness to give us something else that isn't directed to the issues.

The Court: No. You may direct your question to what the discussion was with reference to the plan.

Mr. Lewin: Yes.

Q. Now, will you state the discussion that took place at that meeting in Mr. Ashton's office on that day, with reference to this plan that you have testified about?

Mr. Hanning: If your Honor please, before the witness answers that question—

The Court: "To a plan", I think you had better put it.

Mr. Hanning: On behalf of the National Petroleum News and the Oilgram and Mr. Platt, I am certainly going to object; because, first of all, the Prosecutor in asking the question assumes that there was a plan; secondly, he is designating it "a plan". Now, his question should be, "What, if any," instead of these direct questions ne is asking.

The Court: I think—

Mr. Chaffetz: If your Honor please, he has already asked whether there was a plan, and the witness has said there was one.

Mr. Hanning: That is his designation, and an 763 assumption on his part that it is a plan, and that is what we are here to determine. What, if any, was there?

Mr. Donovan: I objected to that question primarily on the basis of its being a conclusion, your Honor, at the time.

Mr. Crawford: I am willing to take Mr. Hanning's correction of the question.

The Court: I think so, too.

Mr. Lewin: All right.

Q. Can you answer that question?

The Witness: This last?

Mr. Lewin: Yes. I want you to give what if any discussion there was at that meeting that had reference to this plan.

Mr. Crawford: No. The question was, "What, if any, plan was there?"

The Court: To a plan.

Mr. Lewin: To a plan?

The Court: Yes.

Mr. Lewin: But I don't want other plans than the one he said he discussed at this meeting.

The Court: Well, this is an intelligent witness.

He knows what happened at that meeting. Now, go ahead and tell us.

Mr. Morgan: That is right, tell the facts.

764 The Witness: I greeted the men present when I arrived at Mr. Ashton's meeting room, where they were congregated, and left them for half an hour or so, because I wanted to see Mr. Whatley before he left the office. When I went back to the meeting room, everyone was seated around the table, and I sat down also; and there was a discussion going on. Mr. Ashton or Mr. McDowell, one or the other, had a piece of paper before them, and one or both of them mentioned that this piece of paper was supplied by Mr. Bourque. And on this piece of paper there were—

The Court: Q. By Mr. who?

Mr. Lewin: Yes. Can I interrupt to ask who Mr. Bourque is?

A. Mr. Bourque is the Secretary of the Western Petroleum Refiners Association.

Q. Is that A. V. Bourque?

A. Yes, sir.

Q. And that is spelled B-o-u-r-q-u-e?

A. That is right.

Q. And is Mr. Bourque a defendant in this case?

A. Yes.

Q. He is. Is he in court?

The Court: I think I excused him some time ago, unless he has returned.

765 Mr. Horween: He is back now.

The Court: Yes, all right. Go ahead.

Mr. A. V. Bourque: (Rising) Did you call for me, your Honor?

The Court: Oh, you are here? All right.

Q. Is that the Mr. Bourque?

A. Yes. There were a number of names of small refiners on this list, and opposite each name was set a figure, and this figure purported to show the number of cars of distress gasoline that these various refiners would have available for sale in the month of March, 1935. The various representatives there of the larger companies, whom I understand were members of a Tank Car Stabilization Committee appointed by Mr. Arnott back in January—

Mr. Lewin: Now, I object to that and ask that that answer be stricken out. That is just what you see when you give the witness the chance to bring something in here that hasn't been called for.

Mr. Donovan: No—

The Court: Now, just a minute. We don't care who those men were, except what office they held with these corporations. Now, you just state what discussion was had. Don't go off on any side issues at all; just confine yourself to what discussion was had there that day, that you heard.

766 Mr. Donovan: If it please the Court—

Mr. Lewin: Yes. I move that that statement of the witness, the last part, be stricken out as not responsive.

The Court: It may be stricken.

Mr. Lewin: Yes, sir.

Mr. Donovan: May I say this to your Honor? That if it should appear that at this meeting this witness learned, while present at the meeting, that these men were members of the Committee, and that they were so acting, isn't that important?

The Court: We are asking now for the discussion they had. He knows what they want, and I want to let him answer it. If you don't interrupt quite so often, counsel for the Government as well as for the defense, we will get along faster.

Mr. Donovan: I am sorry, your Honor. I interrupt only when I find it necessary.

The Court: I understand that, Mr. Donovan. Now, go ahead in your own way.

A. The various gentlemen present, it seemed apparent to me, were—

Mr. Lewin: Wait a minute. That is objected to.

The Court: No, this discussion, what was said and done, what you heard discussed between those men.

Mr. Lewin: Q. What was discussed there about 767 the major companies buying this gasoline that was on that paper?

Mr. Donovan: Now, I object to that question. Your Honor has already told the witness what he is to say.

A. These men were attempting to figure out whether they could buy this gasoline that appeared on Mr. Bourque's survey.

Mr. Lewin: Q. Now, who were these men that were figuring that out, these representatives that you have named of the major oil companies, is that right?

A. Yes, sir.

Q. All of them were attempting to figure that, is that right?

A. Yes.

Q. And that answer doesn't apply to Mr. Cocanower, Mr. Boggs, Mr. Winget or Mr. Simmons?

A. No.

Q. That is right. They were figuring out whether they could buy it. Now, what conclusion did they come to, if any, on that subject?

Mr. Donovan: I object to what conclusion—

The Court: Go ahead with your answer. You know what we want.

Mr. Donovan: What was said?

768 A. Mr. Cocanower, Winget, Boggs and Simmons were—made various comments and were greatly interested in the conversation. They told us that they were in—

Mr. Lewin: Now, that is—I don't want that.

The Court: Go ahead.

A. (continuing) —in difficulty, due to the very unfavorable conditions then existing in the refining industry, and were quite encouraged over the efforts being made at this meeting, in trying to purchase this gasoline that appeared on this list.

As the meeting progressed, I was asked if I could take the gasoline set after the name of the Champlin Refining Company, and I told them that I thought that I could, and stated that I would have to check with the Champlin Refining Company as to quality and price. Various other of the representatives of the buying companies there indicated they could use the gasoline of other of the selling companies, whose names appeared on this list. And the names of certain companies were mentioned, who were not present; these were Sinclair, Barnsdall, Pure Oil, Skelly and Deep Rock.

Mr. Lewin: Q. How about Phillips?

Mr. Loucks: If your Honor please, I move to
769 strike out the reference of the witness to the word "Barnsdall". It appears definitely that it could not have meant this defendant, because it was not in existence at that time.

The Court: Q. Do you know the name of the Barnsdall Company, or the names at that time?

A. Well, it was whatever their name was at the time. I don't remember.

Mr. Lewin: Q. Could I refresh your memory by calling your attention to the fact that the name was Barnsdall Oil Company?

A. Yes.

Q. At that time, and do you know who was president at that time of the Barnsdall Oil Company?

Mr. Loucks: Oh, I object to that.

The Witness: Shall I answer?

The Court: Yes.

A. Mr. Reeser, as I understand.

Mr. Lewin: Q. Mr. Reeser, is he a defendant in this case?

A. Yes, sir.

770 *By Mr. Lewin*

Mr. Ashton or Mr. McDowell—I believe Mr. Ashton indicated that he would contact these companies, that I have just named, to ascertain whether it would be possible for them to take any of this distress gasoline appearing on this list.

If I didn't mention A. M. Hughes, I am sure he was at the meeting also. He is a defendant in this case, and has an office at Bartlesville, Oklahoma. He was then sales manager of Phillips Petroleum Company, a defendant in this case and a major oil company.

Q. Now, your recollection has been refreshed somewhat; were there any other representatives of any of the major oil companies there that you haven't named?

A. I believe I stated to you, Mr. Lewin, before, that Mr. McElroy of the Pure was there. That was an error.

Mr. Lewin: No—

The Court: You haven't testified to that.

Mr. Lewin: You haven't testified, and I don't think you testified before the Grand Jury to that effect.

The Witness: Didn't I?

771 Mr. Lewin: I might refresh your recollection by calling your attention to the fact that you did testify positively that Mr. McElroy was present at the Coronado Hotel meeting on the same day, in St. Louis, which followed this one; but we haven't reached that meeting yet.

The Court: Go ahead.

The Witness: Well, could I comment on that?

The Court: No, just confine your testimony to the discussion had at the first meeting.

Mr. Francis: Just a minute, your Honor. It seems to me like that is a very improper statement of the Government counsel to this witness, his own witness. This witness is not a party to this lawsuit, and for counsel to suggest that those things—

The Court: No—

Mr. Lewin: No—

The Court: I assume that counsel was going to follow up that with testimony as to some second meeting; if not, it was an improper statement.

Mr. Lewin: The Government intends to do that.

The Court: Yes, I understand so—at least, I assume so from what you have said. All right, proceed.

772 Many comments were made at this morning meeting as to the refining situation at that time and the very bad state of affairs that the refining industry was in. After staying in Mr. Ashton's office an hour or an hour and a half, we went to the Coronado Hotel for lunch.

By the Court

I, as a representative for Socony and Wadhams, was to contact Champlin Refining Company of Enid, Oklahoma. I don't remember exactly whom Globe and Phillips were to contact. I believe Shell said that it would contact Cushing Refining Company of Cushing, Oklahoma. My recollection is that Continental Oil Company was to get in touch with Shamrock Refining Company of Amarilla; Mid-Continent Corporation was to contact Johnson Oil & Refining Company of Cleveland, Oklahoma; Empire Oil & Refining Company was to contact Olney Oil & Refining Company of Olney, Texas.

This preliminary discussion was had at Mr. Ashton's office. Nothing was completed definitely there. We continued the discussion right after lunch, at the Coronado Hotel.

There were many comments made with reference to a plan to take care of the condition the refiners found themselves in. There was a distinct effort on the part of these buying companies to try and figure out something that 773 would relieve these small refiners of distress gasoline, which they had on track and in tanks and which they couldn't sell at the time. I have given you about what happened up until 12 o'clock. I was to contact these men with a view of purchasing this distress gasoline that they had on hand.

> The Court: Q. I see. And did each one of the companies represented at that meeting agree to do that?
>
> A. They indicated that they would try to work out their plans so that they could, after contacting their refiner, like I did.

By Mr. Lewin

I don't know what became of that paper that Mr. Ashton said Mr. Bourque had prepared. I have never seen it since that day and I don't know whether it is in existence.

When we adjourned last night I had almost, but not quite, completed a review of the morning session of March 5, 1935 in St. Louis. I had completed what was said about this plan except to say that Mr. Ashton made a rather comprehensive statement as to the purpose of the plan. I carried away the thought that the main purpose of the plan was to remove this distress gasoline from the plants and tanks of the small refiners, and in doing so, these
774 refiners would get the money to pay for their crude, they
would be put in a better frame of mind, and they would be in a position psychologically to go out and ask more money for their regular run product.

The 4 small refiners that I mentioned yesterday were asked in particular what their situation was. As I remember it, Mr. Lakin of Shell said that he felt sure that he could take such distress gasoline as the Cushing people had to offer. Mr. Tuttle indicated that he was going to need some gasoline in Texas, and could take such gasoline as Mr. Cocanower of Olney Oil & Refining Company had to offer.

Mr. Ashton brought out clearly that the purchasing was voluntary, that there was nothing compulsory about it, and that the men present would go back and call these small refiners whose gasoline they had indicated they would take, and try to get closer to them and find out what their problems were, and their specifications and so on, and make an honest attempt to work closer with them—something that I don't believe had been done before.

The only purpose of the plan that was discussed by Mr. Ashton and the other members of the major companies there was to remove this distress gasoline at fair prices.

Distress gasoline is gasoline that is on the hands
775 of the small selling refiners, in tanks or in cars on the

track, for which they have no market except at distress prices.

The men present at the meeting indicated that they were going to be buying some gasoline anyway, and that they always bought some gasoline. Mr. Ashton's and Mr. McDowell's idea was to get some coordination in the purchasing, and not to buy here and here and here, but to try and keep in touch with one refiner more particularly if he met their requirements on specifications and location.

Mr. Lewin: Your Honor, the Government is distinctly surprised by this testimony, which is in direct contradiction to testimony given before the grand jury; and the Government asks permission to lead this witness, and to confront him with his grand jury testimony for the purpose of refreshing his recollection.

The Court: You may do so.

Mr. Donovan: Now I enter the same objection to this as I did yesterday, your Honor, at R. pp. 359-360. In my opinion, as I already stated, this line of questioning is governed by the case that I cited to your Honor yesterday. So that there will be no mistake about it, I object to any reference to the grand 776 jury minutes at this time by counsel for the Prosecution, for these reasons: Because the transcript of testimony of the witness before the grand jury has not been properly authenticated; and there is no showing that such testimony was reduced to writing in the presence of the witness, or read over or examined by him at the time; and furthermore, the record of such testimony, if properly authenticated, is not contemporaneous with the facts or occurrences as to which he is now asked to testify; and because such testimony was given at a time too remote from the date of the occurrence or fact inquired about; and likewise too remote from the date of trial.

The Court: Objection overruled. Exception allowed.

Mr. Donovan: And I further move, your Honor, that the statement of Mr. Lewin that this is highly contradictory of the testimony before the grand jury, be stricken out as highly prejudicial, as being made in the presence of the jury.

The Court: Your motion is denied. Exception allowed.

Mr. Donovan: And furthermore, your Honor, if he is undertaking to examine this witness from the 777 testimony of the grand jury, that the testimony should be submitted to us in order that we shall be able to examine and determine and see whether or not the witness is being asked questions directly from the grand jury minutes.

The Court: I am clearly of the opinion that that motion should be denied. There is no necessity on the part of the District Attorney to even show the witness that testimony, to say nothing about showing it to counsel for the defense. Exception allowed.

Mr. Donovan: Your Honor, I would be glad to show your Honor the authority—

The Court: I am very familiar with that law, Mr. Donovan: I have made an examination of that law myself, and I know what I am talking about there.

Mr. Donovan: Further, may it please the Court, I am asking for it in order that we may properly cross-examine the witness.

The Court: Proceed with the witness. Objection overruled. Exception allowed.

Mr. Lewin: Q. Now, I understand that you have given as the main purpose, as expressed at that meeting, the altruistic motive of helping the independent refiners; is that right?

778 Mr. Donovan: I object to that characterization. He can state the facts, and not characterize it. I object to the form of the question, your Honor.

The Court: Leave out the word "altruistic." Go ahead, proceed with the examination.

The Witness: What is the question, please?

Mr. Lewin: That question has been overruled.

Mr. Lewin: Q. Let me see whether this refreshes your memory as to the purpose of that meeting. Do you recall this testimony given before the grand jury, in response to a question by the Special Assistant to the Attorney General, examining you?

The question:

"Wasn't your primary interest to raise the tank car price?"?

And your answer:

"The primary interest we had when this movement started, in March, 1935, was to remove from the market the surplus gasoline that these smaller refiners could not sell themselves.

"'Yes.

"A. That was the primary reason.

"Q. All right, and the major companies were not going into this program from any altruistic motive, were they?

779 "A. Naturally not. We felt that the removal of this distress gasoline, and the general improvement in conditions, which we felt were coming in 1935, that the price would respond."

Do you recall that testimony?

Mr. Donovan: I submit, your Honor, that there is nothing contradictory in that statement, to what the witness has already said.

Mr. Lewin: Q. Do you remember that? Do you remember giving that testimony?

A. Yes.

Q. Was that correct?

A. If you have it, I suppose it is correct.

Q. Well, isn't it correct now? Doesn't that refresh your mind?

Mr. Thomas: We renew the objection, your Honor, that was made to the use of the grand jury testimony for the purpose of refreshing recollection—

The Court: Objection overruled. Exception allowed.

Mr. Thomas: And we renew our motion to be permitted to examine—

The Court: I have heard that request. You don't have to renew it. I have heard it once, and I have ruled on it. Exception allowed. Proceed.

780 Mr. Thomas: Will it be understood, your Honor, that further testimony along that line will be received the same as if the same objection were made and the same ruling?

The Court: Surely, yes.

Q. Now, your memory has been refreshed, has it, by the reading of that former testimony?

A. Yes, sir.

Q. Now state what the fact was.

Mr. Lewin: Q. Now, wasn't the primary purpose to raise the tank car price?

Mr. Donovan: If it please the Court, I submit that that is a conclusion. Now, what he may have been asked to state as a conclusion, that may be called for in a grand jury hearing, but it can't be called for—

Mr. Lewin: However is it a conclusion?

Mr. Donovan: May I finish—but it cannot be called for here, before this jury. I submit, your Honor, that no matter what may be the purpose of counsel for the Government, words should not be permitted to be put in the mouth of the witness. The witness should be called on to state what occurred.

Mr. Lewin: There is no danger to your case from this witness. He is your own employee—

781 The Court: Never mind. Just forget your side remarks, both of you.

Q. Now, you have heard that question; have you got it in mind?

A. Yes.

Q. All right. Now, answer it.

Mr. Lewin: Q. Will you answer that question?

Mr. Donovan: May we have—

Mr. Crawford: I don't think, if the Court please, we are ever going to get any testimony in this case if there is going to be an interruption every time a question is asked.

The Court: I don't either. Answer that question, will you?

The Witness: Yes, sir. Could I have the question again, please?

The Court: Yes. Read the question.

(Question read by reporter, as follows: "Wasn't the primary purpose to raise the tank car price?")

A. No, the primary purpose was to remove the distress gasoline from the market.

Mr. Lewin: Q. Wasn't that for the purpose of raising the tank car price?

A. We hoped that that would result, yes, sir.

Q. Wasn't that the most important thing in the purpose?

A. It was very important to me, yes.

782 Q. Didn't you so testify, that it was the most important thing in the minds of those people present at that meeting, and that they so expressed themselves?

Mr. Donovan: If it please the Court, I must object to that question, because there has already been read the question that was put to the witness before the grand jury—

The Court: That objection is overruled. Proceed.

The Witness: Now, what was the last question again, please?

(Question read by reporter, as follows: "Didn't you so testify, that it was the most important thing in the minds of those people present at that meeting, and that they so expressed themselves?")

Mr. Donovan: I object further, your Honor, that this witness should not be asked to state what was in the minds of the other men present at the meeting. He can state what was said, and we are perfectly willing to have him state what was said.

Mr. Lewin: As expressed to you—you may add that to that question, as expressed to you by those people at the meeting.

The Court: With the correction, you may answer. Have you the question clearly in mind?

The Witness: No, sir.

783 The Court: Will you read the question as amended?

(Question read by reporter, as follows: "Didn't you so testify, that it was the most important thing in the minds of those people present at—")

The Court: Oh, no, wait a minute. He doesn't know what was in the minds of those men. There have been so many objections here, coming from every direction—I wish we could carry this thing on in a little more orderly manner. Ask another question, please.

Mr. Lewin: Q. I want to know whether the members of that group of major companies didn't express themselves at that meeting, that the attempt to raise the tank car price was the most important purpose of that plan.

A. They certainly discussed price, and expressed the opinion that they hoped the price would advance.

The Court: Q. Price of what?

A. Of gasoline.

Q. What price, the tank car price?

A. Tank car price.

Mr. Lewin: Q. Now, will you answer my question? Didn't they express themselves that that was the most important purpose of the plan?

784 A. I may have remembered it then, Mr. Lewin, but I don't remember it now.

Q. Now, I wonder if this will refresh your recollection:

> "Q. Of course, there was a feeling in your mind, and a hope and expectation, that the tank car price would respond?"
>
> "A. Yes, sir.
>
> "Q. As a result of the program's activities?
>
> "A. Yes, sir.
>
> "Q. And you feel that the members of the two committees felt so too, from what they said?
>
> "A. The committee and the sub-committee.
>
> "Q. Yes.
>
> "A. Yes, sir."

Does that refresh your recollection?

Mr. Donovan: Now, if it please the Court: You see what happens here if that course be pursued. The questions before the grand jury were directed to what was in the minds of people who were present, what was felt—

Mr. Lewin: What they said.

Mr. Donovan: No, that isn't the question, your Honor.

785 Mr. Lewin: That is the question.

Mr. Donovan: Will you read it again, so it will be made clear?

The Court: Q. Now, certain testimony has been read to you?

A. Yes, sir.

Q. Now, from what has been read, has your mind been refreshed as to just what the discussion was at that meeting, and as to the ends that were to be obtained, that were discussed?

A. Yes, sir.

Q. All right. Now, state it.

A. The purpose of that meeting was to find buyers for the distress gasoline, and remove it from the market at fair prices.

Q. What was the necessity of buying, or of finding markets for the distress gasoline?

A. It was evident that they couldn't find it themselves.

Q. Well, why were the major companies at that meeting interested in assisting these refiners in finding a market for it? Was that discussed?

A. Yes, sir. It must have been discussed.

Q. All right. What was the discussion as to that?

786 A. The major companies were interested, naturally, in trying to not only help the small refiners, but help themselves.

Mr. Lewin: Q. Now, how would they help themselves?

A. By the removal of this distress gasoline.

Q. Through the raising of the price?

A. Naturally, the price would respond.

Q. That would be the way in which they would help themselves; isn't that right?

A. Yes, sir.

Q. And I ask again whether they didn't express themselves at that meeting, that that was the most important thing they had in mind, to help themselves by raising that tank car price?

A. I don't remember that now.

Q. Now, let's see if I can't refresh your recollection. Do you recall these questions being put to you by the counsel for the United States, and your giving these answers before the grand jury:

Mr. Thomas: What was the date, Mr. Lewin?

Mr. Lewin: I don't know.

Mr. Thomas: Well, could we have the date?

Mr. Lewin: I don't think it is necessary for you to have the date. Do you?

787 The Court: Proceed. Go ahead.

Mr. Lewin: Q. (continuing.):

> "Q. Why did you take 600 or 800 cars per month, then, if not for that purpose?
>
> "A. We hoped that that would have the effect on the price."

Mr. Donovan: Now, if it please the Court, may I object to that question? It doesn't appear that any such thing was said at the meeting, and he is asking for what was said at the meeting.

Mr. Lewin: It does so appear—

The Court: Just a minute. The purpose of reading this is to refresh the witness' memory as to what did occur at that meeting. Proceed.

Mr. Donovan: I may have my objection, your Honor?

The Court: You may have your objection. Exception allowed.

Mr. Lewin: Q. (continuing to read.):

"Q. And that was your intent and hope, that it would?

"A. Yes, sir.

"Q. That was the primary intent, that that hope would be realized?

788 "A. That was very important.

"Q. And the specific purpose for meeting was to realize that hope, wasn't it, and that it would have effect upon that price?

"A. That was important, yes, sir.

"Q. And that was the purpose of the meeting, wasn't it?

"A. To a great extent, yes.

"Q. That was the major purpose, wasn't it?

"A. Well, it was an important part, yes.

"Q. And it practically remained constant from the inception of this association in February, 1935 until this day?

"A. Yes, sir."

The Court: Well, now, just a minute. There is nothing in that testimony that you have read that in any way is inconsistent with what he has already testified to.

Mr. Lewin: Well, I didn't so understand his testimony. I understood him to testify here—

The Court: Well, I did.

Mr. Lewin: (continuing.) —that his main purpose, as expressed there, was to help out the independent refiners.

789 The Court: He has qualified that.

Mr. Lewin: Oh, he has qualified it?

The Court: Q. Haven't you?

A. Yes, sir.

The Court: Yes. The jury may disregard what was read as to what this witness testified to before the grand jury, because it is not in any way inconsistent with what he has said here.

By Mr. Lewin

The same people were present at the meeting in the Coronado Hotel on the afternoon of March 5, 1935 as were present at the morning meeting with the exception of the 4 small refiners. That brings me to the point that I started to talk about yesterday regarding R. H. McElroy, Jr., who is and was at that time the sales manager, as I understand it, for The Pure Oil Company. He is a defendant in this case. I am positive that Mr. McElroy was not at that afternoon meeting. I was undecided about that, and after I was relieved from the oath of secrecy I asked Mr. McElroy and he told me that he was not there. He told me that he had sent telegrams from Chicago on March 5th and that he was in New York on March 6th and that he had never been in Mr. Ashton's office.

790 Q. But you testified, didn't you, 5 times before the grand jury that he was present at that first meeting?

Mr. Donovan: Same objection as appears at R. pp. 373-374.

The Court: Same ruling; exception allowed.

A. Three times.

Q. Five times. You appeared three times before the grand jury, but in the course of one of your sessions before the grand jury you testified a number of times to that same fact, didn't you?

A. Yes, sir, and it came about in this way, if I remember correctly. You asked me who was present at the Coronado meeting, and Mr. Ashton's meeting, and I stated that I was sure of several people; and I named them; and then I think you asked me if, on my second appearance, if I couldn't refresh my recollection and give you the names of others, and either you mentioned Mr. McElroy's name or I did, because I was honestly sure up until the time I talked to him, that he was there.

Q. Now, what made you believe that he was there?

A. I wonder that myself, Mr. Lewin.

I do not recall seeing Mr. McElroy at any of these other meetings. He never attended any other meetings. 791 Pure Oil's name was mentioned by Mr. Ashton, and I believe Mr. Ashton said he had talked to Mr. McElroy about buying some distress gasoline. My recollection now is that Mr. Ashton mentioned Mr. McElroy's name several times. That is why I might have pictured him in the meeting.

I never saw Mr. McElroy at some of these other meetings. We had a series of meetings after this one, but I am positive now that I didn't see Mr. McElroy at one of those meetings. I am positive I never talked to Mr. McElroy myself with regard to this plan at all or anything relating to it until I was released from my oath of secrecy. While the plan was in operation I did not discuss it with other persons at any time when Mr. McElroy was present. I did, however, have a discussion with Dewey K. Chamberlain, The Pure Oil representative in Tulsa, who is a defendant in this case.

We had luncheon in a private dining room at the Coronado Hotel and we stayed in the same room. That meeting lasted all afternoon. The character of our discussions at that afternoon meeting was not similar, however, to the ones I have given for the morning session. We went into the thing a little more extensively in the afternoon.

It is rather hard for me to differentiate exactly what 792 happened in the morning from the afternoon proceedings.

In the afternoon, after lunch, Mr. Ashton called me aside and asked me if I would be willing to serve on a subcommittee to the Tank Car Stabilization Committee. I said that I would be glad to, and I asked him who the other members were. Mr. Ashton told me that Mr. McDowell was chairman of the Tank Car Stabilization Committee and would serve with me in Tulsa, and that Mr. Tuttle would also serve. I asked Mr. Ashton why he selected me and he stated that he had felt that I was closely in touch with the small refiners and that I knew most of the other members of the committee that were present at the morning and afternoon meetings, and that he felt that I could do a great deal to help and assist in the operation of the plan. I agreed to serve in that way, and I am sure that Mr. McDowell and Mr. Tuttle did also.

The plan was to remove distress gasoline at fair prices from the plants of the small refiners in Oklahoma, Kansas and North Texas. We had nothing to do with the East Texas field; at least at that time. The plan contemplated removing distress gasoline when those independent refiners indicated to us it was distress and that they wanted to sell it.

793 Q. Over how long a period of time?

A. Over an indefinite period of time, but at that meeting we were considering March primarily; and we hoped that the plan would continue for a number of months thereafter.

The plan did contemplate buying from the independent refiners gasoline that they would manufacture later during March and thereafter. We were to buy that gasoline which we all felt might otherwise be sold by those independent refiners at lower prices. That is what I meant by distress. We were talking about the month of March, primarily, at this meeting in St. Louis; but Mr. Ashton stated that we should give consideration to the continuance of the plan, if we found that we could buy gasoline in the months thereafter.

At the meeting in the Coronado Hotel in the afternoon we took the name of each refiner appearing on Mr. Bourque's list, as I have stated. In the morning meeting, in Mr. Ashton's office, the Shell people indicated that they would be glad to take the distress gasoline as offered by Mr. Winget of Cushing Company. Mr. Cocanower and Mr. Tuttle seemed to feel that they could work the thing out so that the distress gasoline of Olney Oil & Refining Company would be moved. That took up the morning pretty well and the discussion continued more in detail in the afternoon.

794 As I stated yesterday, either at the morning or at the afternoon meeting I was asked if I could take the gasoline from one of these refiners appearing on the list. I looked over the names and saw the name of Champlin Refining Company, and I indicated that I had done business with them for years. They were a reputable firm, and I knew their products; and my people had told me that we were going to be short of gasoline. I talked to Mr. Ashton and he said he would need some, so I stated that I was reasonably sure that I could take that gasoline offered by Champlin, which, as I remember it, amounted to 40 cars for the month of March.

Then other people there stated that they felt they could take the gasoline from certain of the other firms whose names appeared on this list. Then Mr. Ashton stated that those firms not present,—I think I mentioned them yesterday, namely, Pure, Sinclair, Barnsdall, Skelly and Deep Rock,—he felt would be able to take some of this gasoline and he stated that they would be contacted.

By the Court

I had purchased gasoline and oil from Champlin off and on for 15 years prior to this meeting. I don't know the total amount of gasoline this company had on hand ready for delivery in March, but I know there were 40 cars of distress gasoline because it was so stated on this survey of Mr. Bourque.

795 Mr. Lewin: Q. I want to know whether each and every one of these representatives of the major companies attending that meeting did not then and there signify their approval of the plan and commit their companies to take certain definite quantities of gasoline. First, tell us about the approval. Didn't everyone there signify his approval of the plan?

I certainly got the impression that every one approved of it. I don't remember anything specifically being said. I heard no objection to the plan made by anybody present.

> Mr. Lewin: Q. Now tell us whether each and every one of those representatives of major companies there didn't commit their companies then and there to take certain quantities of this gasoline from independent refiners?
>
> A. My recollection now is that they stated they would check the specifications of the small refiners and get in touch with them and do that particular thing, and if they found that the products met their requirements they would issue orders for as much of that gasoline as they could take.

By Mr. Lewin

Mr. Ashton is my employer with Socony-Vacuum; Lubrite Division. He is the one who instructed me to 796 serve on the committee if I would. The offices of these 3 active committeemen—McDowell, Tuttle and myself, all are and then were in Tulsa.

The main part of my work was to contact the various independent refiners and find out where this gasoline was that the majors would have to buy. We divided that work up among us three. On March 6 or 7 when we returned to Tulsa, we took the list of the companies that were mentioned at the Coronado meeting as being probable buyers of this distress gasoline and divided it up. I stated that I knew the Sinclair representative in Fort Worth, Mr. Tracey, very well, and also Mr. Chamberlain of The Pure Oil in Tulsa. I also stated to Mr. McDowell and Mr. Tuttle that I was doing quite a little business with Mr. Lakin of Shell and with Mr. O'Shaughnessy of Globe, and I felt I could keep them posted as to any distress gasoline that might make its appearance and also any other developments. Our operations were confined to Oklahoma, North Texas and Kansas except that early in the program we did give some consideration to small amounts of East Texas gasoline in the hands of brokers.

Immediately after we returned to Tulsa, I got in touch with a number of refiners whose names were on that list in St. Louis and checked with them the amounts of distress gasoline that they had. I worked with Mr. Bourque in 797 the final analysis of the amounts of distress gasoline.

We differentiated distress from other gasoline by the statement of the refiners that it was distress gasoline they couldn't move.

Some of those independent refiners have contracts with jobbers under which they sell their gasoline. They then sell the rest of it on the spot market. This gasoline that I undertook to buy was gasoline to be bought on the spot market.

798 Q. When you say that a gasoline is homeless or distressed, it means they haven't got a regular purchaser for it?

A. That is true.

Q. That is right. And when they want to sell it they would have to sell it at a price lower than the price you wanted to see maintained? Is that right?

Mr. Donovan: I submit to your Honor that the witness has already described what distress gasoline was, and I don't see that that is the description the witness gave.

Mr. Lewin: We will ask the witness if that isn't it.

The Court: If he knows, he may answer.

A. May I have the question read?

(Question read)

Mr. Donovan: I submit that that isn't a correct statement of what the witness said.

Mr. Lewin: I am going to ask if that is what the witness means.

A. Your Honor, I don't understand the question. I understand part of it.

The Court: All right. Reframe the question.

Mr. Lewin: Q. All right. Let us see if I can make you understand it. This distressed gasoline was gasoline that wouldn't be sold to regular purchasers by the independent refiners, is that right?

799 The Court: Under contract?

Mr. Lewin: Under contract?

A. Yes, sir.

Q. It is gasoline they would have to shop around to get a purchaser for?

A. Yes.

Q. When they sold it they would sell it on the spot market?

A. Yes.

Q. And if your plan didn't take it up, they would sell it at prices, lower prices than each of you all wanted to maintain by the plan, isn't that right?

A. They would have to sell at any price they could get for it.

Q. And those prices you were afraid would be lower than t. prices you wanted to maintain by the plan?

A. Lower than the market, yes, sir.

Q. Lower than the price you wanted to maintain as a price?

Mr. Donovan: I submit he has answered the question, "lower than the market."

The Court: He may answer.

A. Well, I can only answer that "yes."

Mr. Lewin: Q. If it was permitted to be sold at those lower prices, it would in turn make a lower market, wouldn't it?

A. Yes.

800 Q. And therefore the purpose of your plan was to prevent that and make a higher market, isn't that right?

Mr. Donovan: I object to that question, if the Court please. The witness has already said that if the distressed gasoline was sold it would be sold below the market. That was one of the elements of distressed gasoline.

Mr. Lewin: The market is a varying thing. The market is made by the spot market. There has been testimony after testimony in this record as to that.

The Court: Read the question.

(Record read as follows:

"Q. If it was permitted to be sold at those lower prices, it would in turn make a lower market, wouldn't it?

"A. Yes.

"Q. And therefore the purpose of your plan was to prevent that and make a higher market, isn't that right?")

The Court: He may answer that.

A. Yes, we hoped a higher market would result.

801 After our committee met for the first time, on March 6 and 7, we split the list up, as I have told you, so we could keep the various companies that were doing the buying posted. At that time we also talked to these 10 or 12 small refineries to get the accurate number of cars of distress gasoline that they desired to move in March. Mr. Bourque had supplied this original survey, and I worked with him and finalized it at Tulsa.

I contacted some of the independent refiners and Bourque contacted some and I suppose McDowell and Tuttle did, too. I have read the list of independent refiners in Oklahoma, North Texas and Kansas that is set forth in paragraph 22 of the indictment. I don't think the committee contacted all of them because as the plan progressed other refiners called up and wanted to move distress gasoline.

(Indictment passed by Mr. Lewin to the witness)

The Court: Just read from that list those you did contact.

A. You mean myself personally?

The Court: Q. Or the committee? Every member of that committee, I suppose, was familiar with what other members of the committee were doing, wasn't it?

802 A. Yes. I can say that I contacted Champlin Refining Company on March 7th and made an appointment with them and went over to see them on March 8th.

I am sure Eason, Bell and Panhandle were contacted, but I don't know by whom. I am sure Mr. Tuttle talked with Olney. Some one of us talked to Omar. I believe I talked to Cushing. Waggoner Refining Company was called by one of the committee. I don't remember about Taxman, I don't know whether they were mentioned on this original list.

By Mr. Lewin

If Taxman was not on the original list they were contacted later. One of the committee called Rock Island. Dickey came into the picture later on, contacted by one of us. One of us, probably myself, contacted Danciger. I think one of us talked to Shamrock. I don't know who. Wilcox came into the picture later, but was contacted by one of us at that time. I have read the complete list of independent refiners set forth in paragraph 22 of this indictment and it is my testimony that everyone of them was contacted at some time by some member of our committee.

Other independent refiners generally called us up, and as a result of such calls some of these major oil companies would do business with them. One company 803 that called us was Russell Refining Company in Kansas; and there were several others whose names I don't remember.

I would say that the independent refiners that I have read from the indictment are the principal independent refiners in those fields.

Q. In addition to those that you contacted yourself and those who came in to see you, isn't it true that you also contacted others, a lot more?

A. Well, very possibly, but I don't remember who they were.

Q. I wonder if I can refresh your recollection. You were asked this question, were you not—

Mr. Donovan: Same objection as appears at R. pp. 373-374.

The Court: Same ruling; exception allowed.

The Court: Go ahead.

Mr. Lewin: (Reading) "Q. Will you tell us who and when?" And your answer was: "Well, we called a lot more than those listed, because a good many of them indicated that they were moving their gasoline all right."

"Q. Yes. Those 13 are really the ones you were mostly concerned with?

"A. That is true."

Is that testimony right?

A. Yes.

804 Q. Then you did contact a lot more than those listed, is that right?

The Court: He has already so stated to you.

A. Yes, or we contacted others. I don't know whether there were a lot more. I know we contacted others.

Q. Isn't it true you made a comprehensive survey of that entire field to try and find all the gasoline that might be sold at lower than the prices you wanted to be maintained?

A. Mr. Bourque made the most comprehensive survey, and we helped him, and when we arrived at the final figure, we felt that all plants that had distress gasoline in Oklahoma, North Texas, and Kansas, were on our list, and the amount was indicated.

Q. State how much gasoline your survey showed that the major companies would be expected to buy under your program in this area for the month of March.

Mr. Donovan: I submit the question assumes too much, and if we could have the question simpler, it would certainly be easier for all of us to follow. I do not like to object to this, but I must as the question is put.

The Court: You may answer that. Exception allowed.

805 A. 600 to 800 cars.

I don't know exactly how many cars they actually did buy but it was between 600 and 800 cars. As far as

I know the major companies took all that the survey showed.

The Court: Q. Just a moment. Do you know how much of that gasoline did move pursuant to this program during that month?

A. I know between 600 and 800 cars, yes.

By Mr. Lewin

I did not make a memorandum of that survey that Mr. Bourque had. If I did I did not keep it. I never saw it again after that first meeting. I don't remember meeting with Mr. Bourque on March 6th. Perhaps the committee met with him after March 6th, with reference to this same matter, but I don't remember. He lived in Tulsa and we were in constant touch by telephone.

All the gasoline purchased under the plan in March was purchased from those independent refiners whose names are listed in paragraph 22 of the indictment with the exception of Taxman, Wilcox and Dickey. I don't believe that in my survey I contacted Johnson Oil & Refining Company. Mr. McDowell told me that he contacted the Johnson people. They indicated that they would have surplus
806 gasoline in March and later, after Mr. McDowell contacted them, he said that they did not have any. I don't remember whether they had any later in the summer or fall of 1935.

807 Q. Give us now the names of major companies that bought that gasoline in the month of March, the 600 or 800 cars?

Mr. Donovan: It seems to me, your Honor, the question should be directed to who bought and how much, if he knows.

The Court: He just wants the names now. (To the witness) State the names.

A. I can give you the names of the major companies that bought gasoline on the program, your Honor, but I don't know whether that applies to the month of March specifically.

Mr. Donovan: That is just what my objection related to, your Honor.

The Court: (To the witness) Try and stimulate your memory now. Go back to that time; that was at the very beginning of the program, and that ought to be fresh in your mind, who bought gasoline in March. Now, just refresh your mind and give us your best recollection.

A. I will be glad to.

Mr. Donovan: May it please the Court, it seems to me with this witness he ought to be asked directly if he knows what each company bought, and how much.

Mr. Chaffetz: Counsel can ask that on cross examination.

808 The Court: We are not interested in that just now. The question directed to this witness was, who were the major companies that bought. Now, answer that.

Mr. Lewin: Your honor, may I assist the witness by giving him a copy of the indictment?

The Court: Yes.

Mr. Lewin: (To the witness) I direct your attention to a list of major companies, defendants in this case, listed in paragraph 22 of the indictment (showing indictment to witness).

Mr. Donovan: Excuse me, Mr. Lewin; may I have my objection to this unless it appears he knows.

The Court: I do not think he needs that indictment.

Mr. Chaffetz: I do not understand counsel objects to the indictment.

Mr. Donovan: I object to the question asked unless he knows.

The Court: Your objection is overruled. He is not going to answer if he does not know. Just leave the witness alone for a minute, and let him answer.

A. I can only say this, your Honor; that, as I have said before, there were certain tank car stabilization committee members at the Coronado—

809 Q. Just forget that. You are asked the direct question now what major companies bought that gasoline in March, 1935. Now, that is a separate question, and I wish you would answer it.

A. I am sure that those companies—

Mr. Donovan: If it please the Court—

The Court: Let him answer the question.

Mr. Donovan: If the Court pleases—

The Court: Will you sit down, please.

Mr. Donovan: I must ask this; I think it is only fair to your Honor and the witness and the jury; I am only asking that he should be asked if he knows.

The Court: You may answer the question I have put to you. Now, go ahead and tell us what major companies bought that gasoline in March, 1935?

A. I can only give you my recollection.
Q. Give it to us.
A. Socony-Vacuum. I know about that one.

810 *By the Court*

I am sure that Socony-Vacuum did. I feel sure Empire bought in March. I am reasonably sure Phillips, Midcontinent, Continental, and Globe bought in March, and I am not sure about the others. I don't remember whether they did; I think they came in.

By Mr. Lewin

When I said that Socony-Vacuum bought, I meant that Wadhams Oil Company, Socony-Vacuum White Eagle Division, and Socony-Vacuum Lubrite Division bought.

I had several conversations with Ira Smith but I don't remember when. I would not say that it was around the month of March. I think it was later on that I had my conversations with him. I do not know how much later,—a month or two. I feel now that I didn't talk to Mr. Smith until a month or so after March 1st. Ira Smith is the local representative in Tulsa of Standard of Indiana and he handles their purchases. I did not at that time contact anybody else of Standard of Indiana. I talked with Mr. McDowell regarding Mr. Smith shortly after the meeting in St. Louis. As I remember it, Mr. McDowell said that he had talked to Mr. Smith and had suggested that Standard of Indiana buy some of this distress gasoline. Mr. McDowell told me that Mr. Smith said that he would have to wait until he heard from his superiors in Chicago.

811 Right after this meeting in St. Louis I got in contact with Dewey K. Chamberlain of The Pure Oil Company, who is a defendant in this case. I told him that I had attended a meeting in St. Louis on March 5 and that there very probably would be some distress gasoline purchased by the larger companies. He told me he hadn't heard anything about it, and I told him that The Pure Oil Company's name had been mentioned at St. Louis and Mr. Ashton felt that it also would do some buying on the program. Mr. Chamberlain told me that he no doubt would hear direct from his Chicago office about it.

The Court: Now, for the information of counsel, it has been the practice in this court to make your objections fully, the Court makes a ruling, you have your exception, and there has been no further discussion. Now, that practice will be maintained from now on. Make your objections fully, the Court will make its ruling, and I don't want to hear from counsel on that particular motion after that. We will get along much better. All right, proceed.

Mr. Francis: Your Honor, may I ask a question right there, of your Honor? That objection and ruling carries along to all similar testimony, doesn't it, of the same kind and character, so you don't have to renew them?

The Court: Yes, but if at any time counsel is of the opinion that it doesn't carry, you have a perfect
812 right to make an objection. I just want to eliminate all of this needless jumping up and objecting, that is rather disconcerting, to say the least. Proceed.

According to my records I called William Tracey of Sinclair Refining Company on March 14th on the long distance telephone. Mr. Tracey is the representative of Sinclair Refining Company in Fort Worth who handles matters relating to the purchase and, I believe, sale of gasoline and lubricating oils. As I remember it I called Mr. Tracey on March 14 and told him that there had been a meeting in St. Louis, and that Mr. Ashton had indicated that his company would buy certain distress gasoline if it could, and I asked him if he had heard about it. As I remember the conversation Mr. Tracey said "I don't believe I have, but I will no doubt hear from my superiors on it." It was about the same conversation that I had had with Mr. Chamberlain of Pure. I told Mr. Tracey over the telephone about the plan as I understood it.

I don't remember having any similar conversation with James Nagle of Skelly Oil Company at that time. I have already told you that it was our practice to divide the list up, and Mr. Tuttle kept in touch with Skelly Oil Company. I don't know that Mr. Tuttle had a conversation with Mr. Nagle, sales manager of Skelly in Tulsa, but I understood that he was to do so. I don't remember hearing from Mr. Tuttle later that he did that.

813 I knew that Skelly Oil Company was contacted by someone, either Mr. Ashton or Mr. Tuttle, in March, for the purpose of interesting it in this plan. They didn't tell me who they contacted in Skelly Company in March. Mr. Nagle is the man that I talked to on matters relating to this program later during 1935 and 1936 when Mr. Tuttle was out of town. I talked once to Miss Clara Gartman of Skelly Oil Company, probably in March, 1936. I do not know whether she was the one who was approached in March 1935. I believe Miss Gartman was assistant to Mr. Nagle. Mr. Nagle's position has been changed since. I

talked to her about this plan and the Skelly Company did later make purchases of gasoline in our plan.

I am sure that I didn't have any conversations with Mr. Evans of Barnsdall Oil Company in March 1935. I did have at least 2 conversations with him between March 5 and April 1, 1936. I don't know who, if anybody, on our committee talked with Mr. Evans in March. The same situation applies there as with Mr. Nagle. Mr. McDowell said that he would keep Mr. Evans advised regarding matters on this program. I don't remember Mr. McDowell later telling me that he had been in contact with Mr. Evans about this time, but I remember him telling me about the Ira Smith talk. ~~I can't~~ remember all these details.

814 I had many conversations with Mr. Tracey of Sinclair Company after March 14th about this plan. I don't remember what Mr. Tracey said. My best recollection is that he seemed to know what this plan was all about. He did not state that in substance. He let me do most of the talking. I did not explain to Mr. Tracey in detail just what this plan was. I told him about the plan and what had transpired at St. Louis.

I told Mr. Tracey that it was my understanding that he was to take the gasoline from a certain small refiner and in that conversation, as I remember it, I told him about what had transpired on the program to date, and he said that he would have to get in touch with his superiors and he felt no doubt that he would purchase the gasoline I indicated. I don't remember that Mr. Tracey said with what superior he would have to get in contact. Mr. Tracey's superior in such matters was J. W. Carnes and Mr. Tracey worked directly under him. As I understand it, Mr. Carnes then was in charge of all the sales of Sinclair Refining Company. I don't know his title, but I think that he was vice president of that Company. His office was in New York City. He is a defendant in this case.

I heard nothing regarding the attitude of Standard of Indiana in March, 1935.

815 Mr. Lewin: Q. Do you recall testifying before the grand jury that the following companies when first approached signified that they were already well posted on the plan: Standard of Indiana, Sinclair, Skelly, Barnsdall and Pure?

The Court: You say, "when first approached." Does that mean April, May or June or at some later date?

Mr. Lewin: No, sir. May I read the testimony? It does bear out exactly what I said.

The Court: Go ahead.

Mr. Donovan: Your Honor, may I have an objection to that? The same objection as appears at R. pp. 373-374.

The Court: You may have an objection. Objection overruled. Exception allowed.

Mr. Lewin: Q. See if you didn't testify as follows before the grand jury and whether or not this doesn't refresh your recollection: The point I am making is that those men, particularly, Sinclair, Standard of Indiana and Skelly and Barnsdall and Pure were local; their local men were posted.

"Question: Yes.

"Answer: So I judge that the Tank Car Stabilization Committee members had informed them of 816 the plan so that they knew what the sub-committee was talking about when we returned."

Mr. Thomas: That is objected to as calling for a conclusion.

The Court: Objection sustained. You are trying to refresh this witness' memory on a conversation that he or some other member of the committee had in March, 1935, with the Standard of Indiana.

Q. Do you recall this testimony; was this testimony correct when you gave it?

A. Yes, I remember it was.

Mr. Donovan: May I have an objection?

The Court: Yes. That testimony has no bearing on this particular question. You are directing this witness' attention to what these companies knew about the proposed plan after March 5th—or before March 5th.

Mr. Lewin: The grand jury testimony shows that when they got back after March 5th, in Tulsa, they found that these companies were well posted, or posted. That is what this testimony says.

Mr. McDowell told me that he had talked to Standard of Indiana in March and had asked them if they would not participate in this buying. He told me that Mr. Smith 817 would have to check with his superior to see if he could. I don't remember him telling me that Smith said they already knew about it. Some time in March, I felt Mr. Tracey was well posted on the plan by someone; I don't remember the date. I knew that he was.

I feel sure that Skelly Oil Company was posted on the plan in March. The same applies to Barnsdall. I talked to Pure myself about the plan. Later in March Mr. Chamberlain apparently knew what the plan was. It is just contrary to my understanding, to my belief now, that when I first called Mr. Chamberlain he told me, in substance, that he and The Pure Oil Company already knew about the plan. In my first conversation with Mr. Chamberlain, as I have already stated, he said that he didn't know about it but would contact his Chicago office.

After our committee had made a survey of the amount of gasoline to be purchased, the next important part of the work was to keep in close touch with the smaller refiners. They had a lot of questions to ask, and we had a lot of questions to ask them, and we called them repeatedly throughout March, 1935. We likewise kept in close contact with the major companies along the lines I have mentioned. We were closely in touch with them in line with this list we divided up.

818 The Court: Have you stated what your testimony is here with reference to the whole buying program in your own way?

A. Yes, sir.

Q. And what was done pursuant to that?

A. I have already testified that when I returned from Tulsa, we had gained the impression at St. Louis that my particular part of this plan was to pass on information to the tank car stabilization members or their representatives in Tulsa as to the availability of distressed gasoline in the north Texas area and Oklahoma and Kansas. That was my main—that was the part that I played in the plan, the main part, in fact, passing on to these other companies information with reference to the availability of distressed gasoline.

Mr. Lewin: Q. Yes, and state whether or not you didn't also undertake to contact these major companies to urge them to buy more of this gasoline under the plan?

A. Well, in my enthusiasm I no doubt did that, and there was nothing obligatory on their part to take it, if they—

Mr. Lewin: I ask that that be stricken out.

819 Mr. Donovan: It was responsive, your Honor. He asked him what he did.

Mr. Lewin: I asked him whether he didn't urge them to buy more and more. Now, he says it wasn't obligatory upon them to take it.

The Court: That part, "it wasn't obligatory upon them to take it", may be stricken out. Exception allowed.

A. The question, please?

(Question read.)

A. Yes, I have urged them to buy.

The other members of that small committee, Mr. McDowell and Mr. Tuttle, certainly passed on information the same as I did to the companies that they were posting, but whether they urged them to buy it, I don't know.

Mr. McDowell and Mr. Tuttle and I got together to discuss our plan and its operations a number of times between March 6 and June 1, and then later on we discussed it in a general way, too. I believe you asked me before how often we got together to discuss our plan and I estimated 5 to 7 times between March and June, 1935. I also was in contact with Mr. McDowell and Mr. Tuttle by telephone more often than I met them face to face. I was in touch with them during the period March 5 to June 1, 1935 and even after that when they were in town. I was in touch with 820 them on the subject of our plan and our operations under it as well as on other matters. I kept in contact with the other members of the committee with reference to the matters we were handling under this plan until I was asked to appear before the grand jury some time in May, 1936.

For the most part our efforts at getting buyers for this gasoline were confined to getting major companies to buy. We did ask one or two of the smaller refiners to buy at times, people like Kanotex, and I think Anderson-Pritchard, and probably a few more that I don't remember. Mr. Clyde M. Boggs, a defendant here, was president of Kanotex Company. I don't believe that Kanotex responded to that request and made purchases. I called Anderson-Pritchard several times and asked them to buy and they always seemed to have some good reason for not buying. I don't remember anyone else other than those major or semi-major companies that we were able to get as buyers in this plan.

The Court: What we want to know is after this plan began to operate, what companies bought gasoline in that territory under that plan?

The companies were Standard of Indiana, Socony-Vacuum Oil Company, Inc., Wadhams Oil Corporation, Sinclair Refining Company, Shell Petroleum Corporation,

Empire Oil & Refining Company, Pure Oil Company,
Phillips Petroleum Company, Mid-Continent Petro-
821 leum Corporation, Continental Oil Company, Skelly
Oil Company, Barnsdall Oil—I don't know their cor-
rect name—but it was the company in existence in 1935
after March 5th. It was the company that Mr. Julius
Evans worked for. It is true that Mr. Julius Evans worked
for two companies. During the first part of the period he
worked for Barnsdall Oil Company, and from June 1, 1935
he worked for Barnsdall Refining Corporation. The Globe
Oil & Refining Company—I have no way of telling whether
I mean all 3 Globe Oil & Refining Companies. It has
headquarters in Chicago.

I have already testified that as far as I know Deep Rock did not purchase any gasoline in our program. I have named all the major oil companies, with the exception of Deep Rock, which are listed in paragraph 22 in the indictment as defendants in this case. There may have been other purchasers of gasoline in our plan besides those I have named, but I don't remember any now.

The same men held other meetings similar to the one
in the Coronado Hotel in St. Louis. The purpose of hav-
ing other meetings of this group of representatives of ma-
jor companies after the first meeting in March, 1935, was
to sit down and analyze another survey made by Mr.
Bourque near the end of each month or early in the month
following. At those meetings the buying companies
sat around and discussed the amount of gasoline on
822 the survey and indicated that they would be glad to
take it. In that way most of the gasoline was spoken
for at these various meetings. At these meetings it was
determined as a rule among those companies that were
represented which company each was going to buy from
and as the plan went along they continued to buy in many
instances from the same selling company through 1935
and part of 1936.

I have gone to a little trouble to check over my itinerary and telephone list and one thing and another, and I have here what I think are approximately the correct dates and places of the meetings.

The second meeting was held early in April, 1935 at Excelsior Springs, Missouri. My recollection of that meeting is a little vague, but I think a number of these men that I mentioned or their representatives attended. I am not sure that at that meeting all the major companies which were represented at the first meeting were again represented. I am afraid I could not list the persons who attended that meeting. I don't think it would refresh my recollection if you should call over the list of men who attended the first meeting. Approximately the same men or their representatives that attended the first meeting on March 5th at St. Louis attended the second, third and subsequent meetings, although, of course, there sometimes were some that didn't come.

823 Usually in attendance during the early part of the program were Mr. Ashton and myself. Mr. McDowell attended some of the later meetings, but he was away a good deal and in his absence Mr. Thomas Fitzgerald, of Tulsa, Oklahoma, who then was assistant to Mr. McDowell, and who is a defendant in this case, attended some of the meetings. There may have been a few meetings that neither Mr. McDowell or Mr. Fitzgerald attended, but usually one or the other was there.

The other men who usually were present at these meetings were Mr. Tuttle of Empire and Mr. Hughes or Mr. Gardner of Phillips. That is H. A. Gardner of Bartlesville, Oklahoma, who then was assistant to Mr. Hughes of the Phillips Company. I believe that Mr. Gardner's title was tank car sales manager and that he held that office through 1935 and 1936. He is a defendant in this case.

I only remember the Globe Company being represented at the Coronado meeting and possibly at one other. Mr. O'Shaughnessy was there. Mr. O'Shaughnessy never had a representative there.

I only remember Mr. Smith of Standard of Indiana being at 2 or 3 meetings late in 1935 or early in 1936. I remember Mr. Edward J. Bullock of Chicago, Illinois being at one meeting in Chicago. I don't know what Mr. Bullock's title then was with Standard of Indiana.

824 Mr. Kirkland: I will admit that he was Vice President in charge of purchasing.

So far as I know Mr. Bullock held that office through 1935 and 1936. I can't tell you when that meeting was held in Chicago without referring to my list.

(Witness referred to memorandum.)

That was at the Blackstone Hotel in Chicago either on or about May 6, 1935, or early in October 1935, or on December 4, 1935.

Mr. Lakin usually attended the meetings for Shell Petroleum Corporation, although I now recall that Mr. Ruether attended one or two in Mr. Lakin's place. I don't know Mr. Ruether's title, but he was an assistant to Mr. Lakin. I don't remember that any other persons from Shell Petroleum Corporation attended any of these meetings.

The Pure Oil Company never attended any of these stabilization meetings.

There was one representative of Phillips other than Mr. Hughes and Mr. Gardner at one of the meetings with Mr. Gardner, but I don't remember who he was. I do not think my memory could be refreshed if I heard his name. I never saw him before that time or since.

Mr. L. T. Cramer, who was assistant to Mr. Harry J. Kennedy, the sales manager of Continental Oil Company, usually attended for Continental. I thought that
825 Mr. Kennedy was sales manager, but he may have been
an officer of the company. He succeeded Mr. Edward Karstedt. Mr. Kennedy and Mr. Cramer are defendants in this case. There were no other persons present at any of these meetings for Continental Oil Company.

I don't recall any other representatives of any other major companies that attended any of these meetings.

I can't remember what the conversation was at that second meeting at Excelsior Springs. The conversations were all along the same lines. That is, this distress gasoline appearing on the survey of Mr. Bourque was discussed, and taken, in most instances, by the buying companies, present or represented.

Mr. Bourque was in touch with the small refiners and so was I. Whenever any distress gasoline was offered to me by the small refiners I would usually communicate with Mr. Bourque and tell him about it. If I didn't call him it usually meant that I was able to find someone that was interested in buying the gasoline, or in many cases I bought it myself. I believe that Mr. Tuttle and Mr. McDowell assisted in a minor way in getting up the first monthly estimate when we returned from the meeting in March. They did not to my knowledge assist in any of the later surveys. Mr. Tuttle and Mr. McDowell and I did not
826 have any discussions with regard to those surveys before we presented them to these meetings. Mr. Bourque attended many of the meetings himself after the Coronado meeting so he always had that material there. After the first meeting Mr. Bourque usually prepared the survey without any help from us except such help as I said I gave him from time to time.

My notes show that there were 13 of these meetings of these buyers such as that held in the Coronado Hotel in March 1935.

These dates and places of the meetings are right, to my best knowledge: March 5, 1935, I have already given you; April 5, 1935, Excelsior Springs, Missouri; May 6, 1935, Blackstone Hotel, Chicago; early June, 1935, in the Western Petroleum Refiners Association office in Tulsa. Sometime in July, 1935, at the Western Petroleum Refiners Association office in Tulsa; early August, 1935, at the same place; early September, 1935, at the same place. Early October 1935, at the Blackstone Hotel, Chicago. I did not attend that meeting, and therefore I could not have seen Mr. Bullock at that particular meeting. That leads me to believe that I saw him at one of those other two meetings. November 5, 1935, in St. Louis, at Mr. Ashton's office. December 4, 1935, at Chicago, Blackstone Hotel; December 27, 1935, at the Western Petroleum Refiners Office in 827 Tulsa; January 28, 1936, at the same place; February 27, 1936, in Chicago, at the Blackstone.

I do not recall any other similar meetings after February 27, 1936. The February 27 meeting was rather informal and there were only a few people there. I only remember myself and Mr. Ashton and Mr. Bourque as being there, but there were a few more that I don't remember.

I don't remember what the survey made up in the last part of March, 1935 for discussion at the April, 1935 meeting showed as to the amount of gasoline to be taken. It was about 600 to 800 cars. I don't remember whether that amount varied very much in the various surveys that were made from month to month after that date. The quantity as I remember it ran from 600 to 800 cars a month through the whole program. The quantity may have increased somewhat as the program went on but I don't remember. That was third grade and regular gasoline. One company bought a very small quantity of 65 octane gasoline. I believe that was Shell. Buying continued under that arrangement through April, 1936. I do not know what happened after that.

I discontinued my activities that I have described when I appeared before the Grand Jury in May, 1936. I had been active in it through the entire period until the day I appeared before the grand jury on May 19, 1936.

828 I am familiar with the Chicago Journal of Commerce and Platt's Oilgram. The Chicago Journal of Commerce is a financial newspaper as well as a newspa-

per that reports data and news on very many products. They have an oil page and it is considered in the trade a very good one, very responsible. They report a number of prices on products and those prices are representative of the ruling quotations f. o. b. Group 3 as shown by that paper. I believe ruling quotations is the way the paper reads. I believe the paper says they are on spot transactions to jobbers.

Platt's Oilgram is a daily sheet that is published from various centers, I believe New York and Cleveland and Tulsa, and Chicago. It reports ruling prices in spot transactions to jobbers on various grades of gasoline and also reports the ruling prices of a great many products. They are quotations on gasoline in tank car lots sold in the spot market. I have been familiar with those journals and with those quotations over a long period of years and I have taken them both. I use them and observe them.

829 Q. Now, tell us whether Mr. McDowell, Mr. Tuttle and you had any discussion in March of 1935 with regard to those tank car quotations for gasoline on the spot market carried in those two journals?

A. Yes, I remember—

Mr. Lawton: If the Court please, on behalf of the Journal I object to any conversation; so far as the Chicago Journal of Commerce is concerned, it is inadmissible against the Jounrnal.

The Court: Objection sustained.

Mr. Hanning: The same objection in regard to Platt's Oilgram.

The Court: The same ruling.

Mr. Donovan: And I understand that my objection is already in, in relation to those questions. That is why I haven't objected.

The Court: Yes, let the record show the objections were made, and have been overruled.

Mr. Lewin: Q. State what those discussions were.

A. The first one, Mr. Lewin, I now recall, occurred on March 14, 1936.

Q. 1936?

A. 1935?

Q. 1935.

830 A. And that particular discussion was brought about by the fact that reports had come from us—come to us, to one of us that some of these hard-

boiled buyers of these companies were trying to buy this distress gasoline at a price under the going price or a fair price.

Q. Could they do that?

A. What is that?

Q. Could they do that?

A. Yes, sir, they could have.

Q. They could have. All right. Where did these reports come from?

A. I don't know exactly, from one or two of the small refiners in North Texas, Oklahoma or Kansas. And that situation precipitated our discussion; and we felt that if that practice continued that it would have a very detrimental effect. That is, the idea of this whole plan, as I got it from the meeting at St. Louis, was to pay a fair price for this distress gasoline. I felt that if some of these companies started to purchase this gasoline at a price below the market, that the trade journals would hear of these prices, that the small refiner would be discouraged, as apparently was the case of these one or two that called us; their mental frame of mind would be affected; and that other buyers 831 hearing of those prices would hold off their buying; and the gist of the whole thing was that I felt that prices would go lower with that situation existing.

Q. Now, give us the discussion, will you? I didn't ask you for all of those reasons; will you give us the discussion.

A. Well, that was the discussion.

Q. Well, tell us whether you did not get a suggestion from one or more of the participating major companies as to how these trade journals would operate in quoting their prices?

Mr. Hanning: Can you understand that all of these questions are objected to on the part of both journals and are not binding on us at this time.

The Court: Yes. Let the record show that.

The Witness: Will you read that question, again.

(Pending question read by reporter.)

A. No, I remember no suggestion from any major company or any other company.

832 Q. Now, could your memory be refreshed if your attention was called to certain testimony on that point that you gave before the grand jury?

Mr. Donovan: The same objection to this, your Honor, as appears at R. pp. 373-374.

The Court: Yes, the same ruling. Exception allowed.

The Witness: What should my answer to that question be?

Mr. Lawton: May I say this: I don't believe that his memory needs refreshing according to the answer, in any event. He said there was no such thing said. If it is to impeach him, that is a different thing.

Mr. Lewin: I don't desire to impeach him.

Q. Are you positive that nothing was said or is it that you don't just recall what was said about that?

A. I am positive that nothing was said to us about the trade journals suggesting anything to us at that time or any other time.

Q. I didn't ask you that: I asked you whether your committee, McDowell, Tuttle and yourself, didn't get a suggestion from one of the participating major companies as to how the trade journals
33 operate in making their quotations, and how those quotations could be affected by you?

A. No, the only suggestion we got was the suggestion that originated from this situation of the small refiners who major companies were trying to buy from at too cheap a price.

Q. Well, did you get a suggestion from those independent refiners with regard—

A. Yes, they mentioned the effect of those smaller—these lower prices, its possible effect on the trade journals.

Q. And did they mention the possible effect on these trade journals of higher prices, if you paid them?

A. I believe so, yes.

The Court: I might say right now. I have been a little tolerant of these leading questions. From now on, let's eliminate leading questions.

Mr. Lewin: Q. State what if any suggestion was made to you and your committee, in March of 1935, as to what effect higher prices paid by the major companies in this program would have upon the quotations of the two journals that you have mentioned?

A. The suggestion was that we should pay a fair market price for this gasoline instead of a distress price.

834 Q. Did that have any reference to the trade journals and the way in which they operated?

A. Yes, because the price that the larger companies paid for gasoline certainly indicates the trend of the trade journals, even if they don't report the price.

Q. Even if they don't?

A. They report the jobber prices, as I understand it.

835 Q. Come back to my question, will you: State what suggestion, if any, was made to you in March, 1935, as to what, if any, effect your paying higher prices in this program would have on those trade journals' quotations. That is a simple question, I think.

Mr. Hanning: Your Honor, please, as simple as it is, the witness has already answered it. I don't believe counsel should be permitted to repeat questions all of the time. I submit that for your consideration.

The Court: He may answer it once more, if he has already answered it.

A. Will you read it again, please?

(Question read as follows:

"Q. State what suggestion, if any, was made to you in March, 1935, as to what, if any, effect your paying higher prices on this program would have on those trade journals' quotations.")

A. Your Honor, I have answered the question. I have stated that these smaller refiners that called us told us about these low prices, and suggested that we pay a fair price, and whatever the fair price was, that price would be indicated as the trend of the journal, and a small refiner could, when he sold that distressed gasoline, could then 836 ask and obtain higher prices for the gasoline that he sold to his jobbing trade, which the trade journals report.

Mr. Lewin: Q. Did you get any suggestion as to what consideration the trade journals gave to the preponderance of the transactions on the spot market in making their quotations?

Mr. Lawton: I object to that, your Honor. Why should you be bound by what they say among themselves?

Mr. Chaffetz: The journals were not bound, but that is very important as far as the other defendants are concerned, as they may be bound. The journals aren't bound by this testimony at this time, but counsel shouldn't insist on his objection.

Mr. Donovan: The Court has my objection already, and also I think he has answered it.

Mr. Lewin: I don't think any of his answers are responsive to my questions. I think I should be permitted to refresh his memory on the Grand Jury testimony.

The Court: Read the question.

(Question read as follows:

> "Q. Did you get any suggestion as to what consideration the trade journals gave to the preponderance of the transactions on the spot market in making up their quotations?")

The Court: That isn't binding on any trade 837 journals.

Mr. Chaffetz: Not at this time.

The Court: Not at this time.

A. Yes, we got the suggestion that I mentioned.

Mr. Lewin: Q. That wasn't any suggestion about their using a preponderance. Did you get any suggestion about their making use of a preponderance of the transactions in making up their quotations?

A. We discussed that—

Mr. Lawton: In what market?

Mr. Lewin: Q. You say you discussed that?

A. Yes.

Q. What discussion did you have about that, about the major companies using a preponderance of the transactions on the spot market in making up their quotations?

Mr. Hanning: Your Honor, let me say this—

Mr. Lewin: Trade journals, of course.

Mr. Hanning: You mean trade journals instead of major companies.

Mr. Lewin: Yes, that is a slip of the tongue.

Mr. Hanning: But the first question was a leading question, because it put in the witness' mouth the kind of answer that Mr. Lewin wants. And he answered it yes or no. Read back there and see if that isn't correct. Now, he comes along with a

838 follow-through question. Now, I submit he ought not to cross-examine his own witness. That is, your Honor, what is going on.

The Court: It is apparent to me that this witness is a little reluctant to relate all that transpired, and I think counsel may, if necessary, use leading questions.

Mr. Donovan: May I submit to your Honor that the witness is doing his best—

The Court: I know he is, but he has hesitated at times and then answered the questions.

Mr. Donovan: I think your Honor would say that his only hesitance is due to the fact that he wants to be accurate.

Mr. Crawford: All we can see is that he is doing the best he can to do the things he wants to do.

Mr. Donovan: Which is to tell the truth.

Mr. Lewin: Now, you can't help him by those remarks, I don't think.

The Court: I have made it pretty plain that I don't want any side remarks between counsel. I want you to proceed with the trial of this lawsuit in a lawyer-like way on both sides. Proceed with your questions.

Mr. Lewin: I think there is a question pending, 839 your Honor.

The Court: Read the question.

(Question read as follows:

"Q. You say you discussed that?

"A. Yes.

"Q. What discussion did you have about that, about the trade journals using a preponderance of the transactions on the spot market, in making up their quotations?")

The Court: If you understand that question, answer it.

A. That was my way of expressing myself in my testimony. We had this discussion, the subcommittee did, and we all felt that if the trade journals found that the preponderance of sales by small refiners to major companies were a preponderance, that those prices that the trade journals discovered would be very important to them as indicating a trend at least, because I understand now that all the trade journals do is report jobbers' prices.

840 Q. I am not talking about what your under-

standing was. In March, 1935, didn't you all discuss there that if you paid higher prices for your gasoline on the spot market, you major companies, that the trade journals would then raise their quotations and conform with them if your transactions were in the preponderance.

The Court: Try to put it this way: What consideration did your committee give to quotations on the market quotations or prices of gasoline as quoted in the journals?

A. Well, we gave a lot of consideration to them.

Q. Tell us what it was?

A. We felt that in paying a fair price for this gasoline, that the small refiners would move—would move this gasoline at a fair price. That would affect—they would be able to ask a higher price with their regular trade and would obtain a higher price, and the trade journals in contacting those small refiners, from whom I understand they obtain most of their information, would hear of those higher prices as sold to jobbers, and so report them.

Mr. Lewin: The Government is not satisfied with that answer, and is still completely surprised, 841 and I would like to cross-examine the witness.

The Court: All right, go ahead. We will save time if you go ahead, and break your questions down and measure your words.

Mr. Lewin: Q. Did you testify as a witness before the Grand Jury?

The Court: Before you get to that, just ask the witness what you want to ask him, ask it again and then—

Mr. Donovan: To this line I wish my same objection to stand as appears at R. pp. 373-374.

The Court: You may have your objection. Exception allowed.

Mr. Lewin: Q. (Reading) "Did you and McDowell and Tuttle in March, 1935, discuss among yourselves whether if the major companies in this program paid higher prices, and those transactions were in the preponderance on the spot market, that the trade journals would raise their quotations of that spot market accordingly?"

The Court: You can answer that.

A. In those words, no, sir.

The Court: Well, answer it in your own words, then.

A. We discussed the trade journals' prices. We discussed the price of gasoline that these major 842 companies were paying. We felt that if the trade journals reported a—that if the small refiners reported a preponderance of sales to major companies that the trade journals would certainly take that as a trend. That must be true, because I understand the trade journals don't report major companies' sales.

Mr. Lewin: Q. Mr. Jacobi, you are telling us now, adding gratuitously what you now understand. I ask you about discussions you had in March, and only that. Didn't you understand in March that if the major companies in this program paid higher prices, the trade journals would carry those higher prices if the transactions were in the preponderance?

The Court: That question is clear. Answer that.

A. If I said, that I certainly—well, I remember saying that or approximately that, Mr. Lewin, but if I said it in those words it certainly indicates that I didn't understand the methods of the trade journals.

The Court: Let me ask a question: How long have you been taking those two journals?

A. Probably 10 years.

Q. And I suppose you had some knowledge of 843 how they gathered their information that made up those quotations?

A. Some, but I testified that I didn't know how they gathered the information, and government attorneys asked me, and I gave them the best information I could on it.

Q. When your committee had this meeting in March, you knew at that time that if the prices of gasoline in that field were raised, that they would be reflected in the quotations in the Journal?

A. Yes, sir, we felt they would for the reasons that I mentioned.

Mr. Lewin: Q. All right. Now, will you answer my question as to the discussion between you and Mr. McDowell and Mr. Tuttle?

A. Yes, sir, I will give it to you again.

Q. If you are going to give me the same thing, I don't want it, and I object to it at this moment, your Honor.

A. We felt that the prices paid by the major companies would certainly have an effect upon the trade journals as they were reported to the trade journals in a—in many cases.

Q. Did you discuss that together?

A. Yes, sir. This whole discussion was together.

844 Q. Did you do anything with the result of that discussion? Did you pass it on to anyone else?

A. Yes, sir.

This discussion took place on March 14, and the subcommittee, Mr. Tuttle, Mr. McDowell and myself, arrived at what we thought was a fair market price for the week following. We arrived at what we thought the fair market price was. The prices were 3¾¢ and 4¾¢, and I called up Tracey of Sinclair at Fort Worth, Chamberlain of Pure, Mr. O'Shaughnessy of Globe, or one of his assistants, and Mr. Lakin of Shell as I remember it. I told them about some of the small selling companies giving us these reports that some of the major companies were buying too cheap, and its effect on the trade journals, and I passed on to them my idea of what the fair price was for shipments the following week, Monday to Saturday.

That price was 3¾¢ and 4¾¢. On March 8 I paid 3⅝¢ for 10 cars of U. S. Motor from Champlin. The Journal price on March 8 was 3½¢ and on March 9 the Journal reflected 3⅝¢.

The Court: Q. Right on that point, what kind of steps did your committee or representatives of the companies buying gasoline take to convey that message to representatives of the Journals?

A. Well, the journals called me every few days—

845 that is, the Oilgram does in Tulsa—and I tell them what I am paying on all products, and I told them I am sure in this case what I paid for gasoline.

That had been their practice for many years. I only talked to Mr. Fanshier of the Chicago Journal of Commerce 2 or 3 times in my life, I believe. That was after March, 1935, and during the period covered by the indictment.

I don't know what Mr. McDowell and Mr. Tuttle did with reference to the Oilgram and the Chicago Journal of Commerce. Mr. Bourque was in close contact with our committee. Mr. Bourque has told me that he has talked to Mr.

Fanshier on a number of occasions since March, 1935. He did not tell me what, if any, prices he gave Mr. Fanshier. Mr. Bourque just told me he talked to Mr. Fanshier and the market was so and so, whatever it was at time,—strong or weak. In this conversation, as I recall, Mr. Bourque called Mr. Fanshier and asked him how he found conditions in the Chicago area, and Mr. Fanshier evidently told him, and Mr. Bourque told me. Mr. Bourque told me on one occasion that he told Mr. Fanshier about market prices for Oklahoma, Kansas and North Texas. Those were all telephone calls. I don't know who made the calls; Mr. Bourque just told me that he had talked to Mr. Fanshier. No representative of either of the journals attended any of the meetings.

846 Mr. Bourque attended a number of our meetings. I don't remember his ever being present at a meeting where we discussed what the spot market prices were or the prices that I termed "recommended prices". We did not have those discussions of recommended prices at those meetings of buyers that I said we had about every month. Those discussions occurred when Mr. McDowell, Mr. Tuttle and I met. "Recommended prices" was a term I placed on it. Mr, Tuttle and Mr. McDowell and I arrived at what we thought the fair market price should be for the next week, Monday to Saturday, inclusive. When I left the meeting my practice was to go back to my office and call Mr. Tracey, Mr. Chamberlain, the Globe office, and the Shell office, and give them my idea as to what the fair market price was. I did not tell them that that was a recommendation from us three. I told them that that was my idea of the fair market price for the following week. I don't remember telling them that that was the committee's idea. Maybe I did, but I don't remember doing it. It was the committee's idea. I have told you exactly the people I called and gave my price recommendation to. I would call whenever we discussed the thing, which was usually towards the end of the week between March 5th and the early part of June. I don't know whether the prices that I recommended were paid by the major companies which participated in this plan. I did hear once or twice specifi-
847 cally from small refiners that a major company had paid a certain price. Some times they agreed with the prices I paid, and some times they did not.

The Court: Q. As those purchases were made on that market, did you and other members of the committee keep pretty close contact and keep well informed as to what prices were being paid by the major companies for this distress gasoline?

A. No, sir, because the whole plan was for the buying company to get in touch with the selling company direct and make their own price arrangements with them.

Q. But you say the committee called these various representatives of the different companies and gave them their suggestions as to what the price should be?

A. That is correct.

Q. Didn't you follow up to find out whether they followed your suggestion or not?

A. No, sir, I did not.

Q. So you carried on in the year 1935, giving them your suggestions as to what the price should be and what they should pay for distressed gasoline, but still did not follow up to find out if they followed it?

A. No, sir, I did not follow up, but in some cases 848 I learned that they were paying approximately the same prices I was.

Q. How did you learn that?

A. From the small refiner if he happened to tell me. Maybe I asked them; I don't remember.

Mr. Lewin: Q. Maybe you asked whom?

A. The small refiner.

The committee operated for the whole period until May, 1935, but we did not make any recommended prices after June 1, 1935 except for one instance, on January 10, 1936. In that instance I called those buyers and gave them the information as to what my idea was as to the fair market price for the week following.

The Court: Q. Let me get this straight. Did you make just weekly reports to those you were to report to on this plan?

A. Did I make the weekly reports to whom?

Q. To the company you represented. For instance, you had certain concerns you were going to buy for?

A. Yes, sir.

Mr. Donovan: Your Honor, there is an error in that. As I understand it, he was buying only for his own company.

The Witness: That is true. The other companies bought their own gasoline, your Honor.

849 The Court: Q. But there were other companies that you were contacting?

A. Yes, those four that I have mentioned.

Q. Yes. Well, did you contact them every week with reference to this program?

A. Yes, sir, more than that. Maybe several times a week.

By Mr. Lewin

I may on a few occasions have asked some of the major companies who were participating whether they paid my recommended prices. I don't remember what companies I asked. When I asked them they said they were or they were not. I don't remember them saying they were not.

Our committee of McDowell, Tuttle and myself met on 5 or 7 occasions after March 5th and arrived at what we thought was the fair market price and I recommended that price to these 4 companies that I mentioned.

The Court: Q. Do you know what the other members of the committee did with respect to recommending a price?

A. Well, I did not hear them, your Honor, naturally.

I know what companies they were in contact with. Tuttle was in contact with Skelly and Continental. Mr. McDowell was in contact with Standard of Indiana, Phillips and Barnsdall.

850 *By Mr. Lewin*

The only recommendation as to price that I recall definitely is the one made at the meeting of March 14. At that time the price was 3¾¢ and 4¾¢. That was the price I recommended to those 4 companies. I don't know whether that represented an advance over the price before. I don't remember.

851 The Court: Q. What is your best recollection on that?

A. Yes, it represented an advance of perhaps ⅛¢ on 68-70 octane.

The Court: Now, let me say to the witness, you have this pretty well in mind. Don't hesitate on that. Let us have your answer.

Mr. Donovan: Well, if your Honor please,—

The Court: That is a very good illustration. He had the answer in his mind—

Mr. Donovan: But the answer may be wrong. I think the best evidence is the journal itself.

The Court: No, I just suggest this witness should not be quite so reluctant about answering the questions. We will take a recess of 15 minutes.

Mr. Donovan: I take an exception to the statement of the Court.

852 I called Mr. Tracey, Mr. Chamberlain, Mr. O'Shaughnessy and Mr. Lakin, or some one in their office, probably 5 or 7 times during the period March 5, 1935, until June 7, 1935, and gave them the price recommendations of the committee. I called those men every time we made a price recommendation. When I called Mr. Tracey I told him that I was paying that recommended price or was going to for the following week and suggested that he do the same if he found that he could and if he approved of it. Mr. Tracey didn't have much to say except, "Well, I will see what I can do," or "I will check it up," or something of that sort. I don't remember that he said anything more than that. I cannot exactly remember his conversation. I told him what the price was, and he indicated that he would pay it if he checked it up and found it reasonable and in line with his views.

Mr. Tracey usually said he would have to check back with his superior officer in the company when I offered him gasoline and when I talked to him about these prices. I never checked Mr. Tracey up to see whether he paid the recommended price. Mr. Tracey did not say with whom he would check back on the prices. His immediate superior so far as I know was Mr. Carnes, and when Mr. Tracey said "check back" I presumed that he meant with Mr. Carnes. I knew that Mr. Carnes was Mr. Tracey's
853 superior officer, Mr. Tracey never told me that Mr. Carnes was the man he checked back with.

When I called Mr. Chamberlain on prices I told him about the same thing; that that was my idea of the fair price for next week, that I intended to pay that price, and that if he saw his way clear to do the same thing that would be fine, or words to that effect. I never remember Mr. Chamberlain saying whether he would or would not.

By the Court

His response on the matter of price, as well as on the matter of gasoline, when I called him about it, was this, "Well, I will check it up," i. e., check it up with his superiors. His superior was Mr. McElroy, I believe, in Chicago.

The Court: You see, you can help us along if you will just answer those questions. Otherwise, we will be here a long time.

By Mr. Lewin

I don't remember Mr. Chamberlain at any time when I made that price recommendation to him indicated to me in what he said that he, for The Pure Oil Company, would pay those prices. I don't ever remember his saying he wouldn't.

854 Q. Could your recollection be refreshed on that subject?

Mr. Francis: Now, just a minute. Your Honor, I want to object on behalf of the Pure Oil Company, keeping in mind that the Pure Oil Company, this gentleman doesn't work for the Pure Oil Company, he has got no connection with it. Bearing on my objection here, he said that he talked to Mr. Chamberlain, gave him a recommendation of what he thought was a fair price; that Mr. Chamberlain never said he would or wouldn't, but, "I will take it up with my superiors." We ought not to let, as against Pure Oil Company, this Prosecutor try to put more words in this witness' mouth—

The Court: But we ought to get all the conversation out of the witness, and if it has to be pried out of him—

Mr. Donovan: Now, your Honor—

Mr. Lewin: Colonel Donovan, just a minute.

Mr. Donovan: May I have an exception to that?

Mr. Lewin: Mr. Francis has misquoted the witness. He hasn't said that Mr. Chamberlain always said that he would or wouldn't. This witness said at one time that he couldn't remember whether he ever said he would or he wouldn't.

The Court: Well, the jury has heard what the
855 witness has said. Let's not have any dispute about that. Is there a question unanswered?

Mr. Lewin: I think there is a pending question. I am not positive of it. Well, let me put it again.

856 Q. Could I refresh your recollection from your testimony before the grand jury, as to whether or not Mr. Chamberlain indicated to you by what he said in these conversations that he, for The Pure Oil Company, would pay your recommended price?

A. Yes.

Q. You think if you were—

The Court: Well, maybe he knows it without refreshing his memory.

Q. Do you know? Will you answer that question?

A. Could I have the question again, please?

Q. State whether or not Mr. Chamberlain didn't say to you on some of these occasions when you gave him a recommended price, that he, for The Pure Oil Company, would pay those recommended prices, or that recommended price.

A. At this time, I can't remember him telling me that.

The substance of my conversations on these various occasions with Mr. O'Shaughnessy, the president of the Globe Companies, was the same as my conversations with Tracey and with Chamberlain. I gave Mr. O'Shaughnessy my idea of the fair market price on shipments for the week following. I mentioned the price to him, and
857 he said, "Fine, Paul", or words to that effect. My
purpose in passing along information regarding this buying program was that I felt these participating companies would be interested in it. I don't definitely know whether Mr. O'Shaughnessy followed my suggestions. My purpose was to give him the prices, and then it was up to him whether he wanted to pay them or not. I wanted to give him our idea of what we thought the fair market price was, down in Tulsa, and I hoped that he would follow them in his purchases. I don't know what he paid, I gave him those prices to give him an indication as to the going price, the fair price in our territory down there. He was in Chicago. I did this over the telephone. When I called him, I paid for it.

It was entirely optional with Mr. O'Shaugnessy whether or not he wanted to follow the price when I gave it to him. The members of the committee certainly hoped that the other buyers would pay the recommended prices.

By the Court

In making the recommendations, we had in mind conveying to them our idea of what the fair market price was, expecting them to act upon it if they saw fit. I don't know in how many cases they acted upon it. But I kept on, week after week, giving them that information. I
know they acted upon that, and purchased on those
858 recommendations, only in the few instances where the
refiners told me what the price was, or if they told me themselves. In those instances, I know that they did buy upon my recommendations.

By Mr. Lewin

During the period of time I was making these price recommendations, Mr. McDowell and Mr. Tuttle and I were watching the Chicago Journal of Commerce and Platt's Oilgram to see how their prices were going. I saw an increase in the price of probably 1¢ a gallon, maybe slightly more, in those trade journals from March 1, 1935 to June 7, 1935. Those price changes were made gradually throughout that period.

I don't remember any further price advances in 1935 after June 7. I believe there was one further price advance in January, 1936. I made my last price recommendation for 1935 some time near the end of May. Around June 6 or 7, 1935, is not correct. My understanding and recollection is that we didn't make any price recommendation after June 1. There may have been one price recommendation in the first week of June, 1935, but I don't remember now. I don't know whether I testified to that before the grand jury.

I don't remember how many changes there were in the tank car price quotations in the Journals from March 1, 1935 to June 7, 1935 on regular and third grade 859 gasoline. I don't remember how the number corresponded with the number of price recommendations I made. All I remember is that the price went up a little over 1¢ a gallon, ⅛¢ or ¼¢ at a time. During that period we made 5 or 7 recommendations of an advance of ⅛¢ or ¼¢ at a time.

I remember specifically the March 14 meeting and the price I recommended then but I don't remember specifically what the prices were after that time.

I don't remember whether the recommended prices were raised or not each time that I made a new recommendation. The recommended prices were not decreased when I made those recommendations. I don't remember making any recommendation that was the same. If I didn't make any declining recommendation and I didn't make any of the same, all of my recommendations must have been advances.

I believe I would say that there were between 5 and 7 of those recommended advances during that period. They were all advances of ⅛¢ to ¼¢ in price over the previous recommendation.

I looked in the trade papers before and after we made such a recommended price to see how changes in those prices compared with the price advances that I recommended. I made a comparison between what the trade journals carried and my recommended price for the 860 same time. Sometimes the recommended price was slightly above the trade journals' price because we considered shipments for the following week in our recommended price. Sometimes the recommended price was the same as the trade journals' low price. I don't remember whether the trade journals' price ever was lower than the price I recommended for shipments on the day for which the trade journal published its quotation. I don't remember any lower at all on that basis. There was no specific day on which the distress gasoline was purchased. It was bought by the various companies when they placed their orders. Saturday or Monday is of no significance.

We knew what the trade journals quoted for the same quality of material on the same day for which I recommended a price and I compared that quotation with what I recommended. As I said before, sometimes the trade journals were higher than the price I had recommended for the week past. Sometimes in that situation the trade journal price was higher, and we got up in line with the trade journal figure, and occasionally my recommendation to these 4 firms was over the trade journals' posting.

I don't remember what the comparison was between the prices I recommended and the prices carried by the journals on the date on which the recommendation was intended to be followed. Those prices did not cor- 861 respond. Sometimes the price was slightly over the low of the trade papers. That was because we were recommending the price for future delivery.

By the Court

The recommendation that I made to these 4 companies I mentioned was a certain price on third-grade gasoline, 62 and below; and a certain price on 68-70 octane gasoline, regular, for purchases and shipments that they might make for the week following; and as I have already stated, we generally discussed this thing about Thursday or Friday.

862 Mr. Lewin: Q. Now, I want to know what the comparison was between those recommended prices for the week following and the quotations in these two journals for the week following, and whether they didn't correspond?

Mr. Donovan: I submit, your Honor, that that question calls for knowledge which would be almost impossible to have, unless you had a record before you. It seems to me that if this is to be carried on, that a chart or record should be placed for the convenience of the witness, and certainly it would be for the information of the Court and the jury.

The Court: Well, if he can answer it, he may.

The Witness: Will you read the question again.

(Pending question read by reporter.)

The Witness: I can't answer that question.

The Court: (To witness.) Don't you understand that?

The Witness: No, sir.

The Court: Q. On Thursday or Friday of each week you made recommendations to the Globe—

A. Yes, sir.

Q. And the other companies that you have named?

A. Yes, sir.

Q. What did you expect to result from your recommendation?

863 A. In some cases the recommended price that I made for the week prior was under the trade journal's—

The Court: I don't care for that. What did you expect to result? For instance, if you made a recommendation, then the price of gasoline purchased in that territory, for the week following, would be a certain price?

A. Yes, sir.

Q. What did you expect would result from your recommendation?

A. Expected that the companies that I talked to would purchase at that price.

Q. Beginning on Monday?

A. Beginning on Monday.

Q. Did you examine the quotations in the journals which purported to give the price for that following Monday?

A. At the time I made the recommendation, your Honor—

Q. No, no, after the recommendation was made.

A. Did I examine them on Monday?

Q. Yes.

A. Yes, sir.

Q. How did they correspond with your recommendation?

864 A. For what period.

Q. For that following week. You made a recommendation on Thursday of the price which would be paid on Monday. And certain quotations appeared in the journals as to the price?

A. The trade journal prices were usually up slightly.

Q. All right. Why didn't you answer that long before? We have wasted 10 or 15 minutes here.

A. I was trying to understand.

The Court: You understood it.

Mr. Donovan: May it please the Court, I am sorry, I must take an exception to that statement.

Mr. Crawford: It does seem to me that these questions are so perfectly plain, that there is no excuse at all for the witness not answering.

The Court: They were very clear.

Mr. Donovan: I object to the remark of counsel.

The Court: They were very clear to me, Mr. Donovan. Go ahead.

Mr. Donovan: I am sorry, they weren't clear to me.

The Court: Go ahead. Proceed.

865 *By Mr. Lewin*

I have already stated that the trend of my recommended prices from March 5, 1935 to June 7, 1935 was upward.

(The witness was shown the chart Exhibit 664.)

I understand that chart and what it purports to show. My recommended prices would correspond pretty closely with the shape of the trend on this graph of the Monday low prices for third grade gasoline in the Oklahoma market between the first part of March and sometime in May, 1935. The shape or trend after June, 1935 to the end of 1935 would correspond to the prices that I was paying in the program. It is very much like it.

The last recommendation similar to the others I made here was sometime at the end of May, 1935. It might have been the first week in June, 1935. All my purchases of third grade gasoline for the period from June 1 or 7 on through the rest of 1935 were either at the low or under the low with the exception of a week in October and November when they were slightly above the low.

The trend of the prices I paid is the same as the trend

on that graph, Exhibit 664, for the same period. I note on the graph a slight dip in the third grade trend on the chart for December, 1935. On third grade I paid 4⅝¢ and 4¾¢ from November 25, 1935 to December 9, 1935.
866 On November 26, 4⅝¢. November 27, ditto. November 27, ditto. November 27, ditto. December 4, 4⅝¢. That was not an increase. December 5, 4⅝¢. December 6, 4⅝¢. December 6, 4⅝¢. December 6, 4⅝¢. December 11, 4¾¢. That shows an increase there. My purchases over that period from November 25, 1935 to December 11, 1935, conformed with the dip on the chart.

The trend of the prices I paid from December 11, 1935 until in January, 1936, on third-grade, was December 10, 4¾¢. December 11, ditto. December 10, ditto. December 11, ditto. December 12, ditto. December 17, ditto. December 18, 4⅝¢. December 18, 4⅝¢. December 26, 4⅝¢. December 27, 4¾¢. December 30, 4¾¢. The trend of those prices compares with the trend according to the chart.

The trend of prices in January, 1936, on the purchases of third grade I made for these 2 companies was January 2, 4¾¢. January 2, 4¾¢. January 3, 4¾¢. January 8, 4¾¢. January 9, ditto. January 9, ditto. January 10, ditto. January 10, ditto. January 14, 5¢. January 15, 5¼¢. January 15, ditto. January 17, ditto. January 22, ditto. January 23, 5¢. January 27, 5¼¢. January 29, 5¼¢. The trend on my purchases compared with the chart's prices is the same through January.

867 During the period when I was making recommendations for advancing prices, that is from March 4, 1935, up until some time in the early part of June, 1935, my price for the same quality of gasoline, house brand gasoline, as shown on this chart, Exhibit 668, went up with the chart. The trend of my prices during that period compared with the trend on that chart during that same period. On a quick examination, the prices I paid between June 7, 1935 and December 31, 1935, seem to compare with the trend of prices on this chart for that same kind of gasoline in the Oklahoma market. The trend of my prices shows this rise in January, 1936, and then the flat line following, as shown on this chart for the same kind of gasoline during the same period, January, 1936.

When I had these discussions with McDowell and Tuttle about the price recommendations, Mr. McDowell never said whether he would pay the recommended prices or whether he would not. I believe I did ask him whether he did pay them and he said in some instances he did, and in some instances he did not. I could not tell you when I asked him—from time to time. I only remember one instance when I did ask him. He said that he would pay that or he would not pay that, depending upon the price deal that he made with the refiner. He did not tell me whether or not he had paid the recommended price. I was not particularly interested in finding out

868 whether he had paid that or not. The three of us discussed the price, and I recommended it to these 4 people.

The Court: Q. This committee agreed on about Thursday of each week what the price would be for the following week, at least that you ought to recommend to certain corporations and representatives of the corporations; do you understand that?

A. Yes, sir.

Q. After you had your discussion, when you discussed this matter thoroughly?

A. Yes, sir.

Q. You decided then upon what the price should be, didn't you?

A. Yes.

Q. And that was the price you recommended to those you represented?

A. That was the price that I recommended to those four companies.

Mr. Lewin: Q. And that was the price Mr. Tuttle agreed his company would pay, and the price Mr. McDowell agreed his company would pay; isn't that right?

A. We didn't ever agree that any of them would pay these prices.

Q. Could I refresh your recollection on that

869 subject from your grand jury testimony?

A. Yes.

Mr. Lewin: Your Honor, may I have leave to do so?

Mr. Donovan: May I have that same objection, your Honor, as appears at R. pp. 373-74.

The Court: Objection overruled. Exception allowed.

Mr. Lewin: Q. Didn't you testify as follows, on your appearance before the grand jury:

> "Q. But who in the small group of McDowell, Tuttle and yourself was personally familiar with the situation?"

Your attention was being addressed to the price situation.

"A. Well, I think Mr. McDowell and Mr. Tuttle both were a little better versed on price matters than I was.

"Q. And they took more of the active responsibility than you did in deciding the price questions, that is, when to raise the price a little more, and when to stop, and what the objective should be?

"A. Yes, and they generally consulted with me as to what I thought about it. I would like to say that they always consulted with me as to what I thought. 870

"Q. Although you did not draw up any formal agreement, you all agreed as to the recommendations of the Committee?

"A. Yes, we all agreed, or we all decided that a certain recommended or objective price was advisable."

The Court: That is just what he testified to here.

The Witness: That is what I said.

Mr. Lewin: I didn't so understand it. Your Honor, I am at fault, then, because I certainly didn't so understand it.

The Court: It was very clear to me.

Mr. Lewin: Q. Now, that testimony is correct as I read it to you?

A. If it is there, it must be correct.

Q. Well, it is correct independently of being there, it is a fact, isn't it?

Mr. Donovan: I object to that.

The Court: It is exactly what he has testified to this afternoon. There is nothing inconsistent at all with what he has said here. Now let's just jog your memory a little. You have some knowledge of what the other members of this committee recommended to the people they were to contact?

871 *By the Court*

I don't know what the other members of the committee did with respect to recommending prices to the people they were to contact. I knew who they were contacting, so they didn't have to tell me that. As far as I know, they passed this price on to the companies they were calling, but I don't know whether they did or not definitely. The three of us met each week for a purpose. We finally decided in our mind as to what ought to be a fair market price for the following week, beginning Monday. That was one of the matters that we discussed every time we met during the period. I don't have any definite knowledge as to whether or not these men passed that information on to the people they were representing.

So far as I know Mr. Ashton had nothing to do with the prices that we men recommended each week. We three men discussed that subject and I don't remember ever discussing it with Mr. Ashton.

Mr. Lewin: Q. Now, I wonder if I might refresh your recollection on that? Didn't you testify before the grand jury as follows:

Mr. Donovan: May I have the same objection, your Honor, as appears at R. pp. 373-74.

The Court: You may. Exception allowed.

Mr. Lewin: Q. (Continuing)

> "Q. When you talked to Mr. Ashton, either
872 you or Tuttle or McDowell got Mr. Ashton's concurrence to the next step that was contemplated in prices?"

And your answer:

> "A. Yes, we all agreed."

Mr. Lewin: I want to address your mind to these meetings of this sub-committee in the period from March 5, 1935, to June 7, 1935.

The Witness: Yes, sir.

Q. The meetings at which you all came to an understanding about the price recommendations.

A. Yes.

Q. All right. Now, I want to know whether you didn't, each time you made one of those price recommendations, seek the concurrence or agreement of Mr. Ashton to those recommendations?

A. Well, I can speak for myself, and say that I didn't.

The Court: Q. You didn't?

A. No, sir.

Mr. Lewin: Q. Now, weren't you asked this question before the grand jury:

> "Q. When you talked to Mr. Ashton, either you or Tuttle or McDowell, you got Mr. Ashton's concurrence to the next step that was contemplated in prices?"

873 And your answer—didn't you give this answer?

> "A. Yes, we all agreed."

Mr. Donovan: Now—

The Court: Now, just a minute.

Q. Do you recall that question and answer, and what it related to?

A. No, sir. There might have been something else in the testimony about it. I don't know, your Honor.

Mr. Donovan: From the form of the question, that question is clearly incompetent and improper here, because he would not be permitted to be asked the question here. "Did you agree, or did you have concurrence?" This jury is entitled to know what took place. And, under the guise of refreshing recollection, this should not be adduced before this jury, and I move that it be stricken from the record.

Mr. Lewin: Your Honor, it is certainly very good refreshing material. It is perfectly clear in all I have asked—

Mr. Thomas: I object to the remark of the counsel that it is certainly very good refreshing material, and ask the Court to instruct the jury to disregard it.

The Court: Let me ask the witness a question.

874 *By the Court*

I attended all of the larger meetings which Mr. Ashton attended. Mr. Ashton did not attend any meetings which only members of the sub-committee attended. The only time I ever remember talking to Mr. Ashton about price was in January, February or March, 1936, when I told him the price that I was paying for gasoline.

Mr. Lewin: Q. May I see whether or not this testimony before the grand jury might refresh your recollection?

Mr. Donovan: May I have the same objection, your Honor, as appears at R. pp. 373-74?

The Court: The same objection, and the same ruling. Exception allowed.

Mr. Lewin: Q. Were you not asked:

> "Q. And, as I recall your testimony, your best inference was that presumably Mr. Ashton kept himself informed as to what you were doing.
>
> "A. All I can say is that I talked to Mr. Ashton about the plan. What he did, I don't know.
>
> "Q. You talked to him about the price?
>
> "A. Well, some of us did. I have at times, yes, sir."

Is that your testimony before the grand jury?

The Witness: That is what I said.

875 Mr. Lewin: It seems to me to be directly inconsistent with it.

The Court: Well, there is a little variance there.

Q. Now, do you want to explain that, or clarify that answer?

A. Well, all I can say is that Mr. McDowell was chairman of the Tank Car Stabilization Committee, and Mr. Ashton was vice-chairman. In answering that question, I was of the opinion that Mr. McDowell kept Mr. Ashton advised. As far as I am concerned, what I said before is true: I only talked to Mr. Ashton myself once, that I remember definitely, about the price I was paying for gasoline, and that was in February or March, 1936.

Mr. Donovan: In view of the fact, your Honor, that the recollection of the witness has not been refreshed, I move that the question and answer as quoted from the grand jury minutes be stricken from the record.

The Court: Yes, it may be stricken.

Mr. Lewin: May I attempt to refresh the witness further with other testimony before the grand jury on the same point?

The Court: You may.

Mr. Donovan: The same objection, your Honor,
876 as appears at R. pp. 373-74.

The Court: Yes, the same ruling. Exception allowed.

Mr. Lewin: Q. Were you not asked these questions before the grand jury, Mr. Jacobi, and did you not give these answers in response thereto—you were being asked about these price recommendations:

> "Q. So you think that your small committee as a group, McDowell and Tuttle and yourself, took all of the responsibility for determining on this matter, except for the fact that you communicated with each of the companies and got their approval?
>
> "A. As far as I know, that was the case.
>
> "Q. And of course, Mr. Ashton?
>
> "A. Yes, Mr. Ashton."

Mr. Donovan: Now—

The Court: Now, you are talking there about the weekly meetings for fixing the prices?

Mr. Lewin: Talking about prices, yes, your Honor.

The Court: Or the plan itself?

Mr. Lewin: Now, I will check that again, but I have it down here "for prices" in my notebook.

Mr. Donovan: I would only like to call the atten-
877 tion of the Court to the fact again that these questions would not be proper if submitted here in this Court.

Mr. Lewin: In response to your question, the question in the grand jury testimony immediately preceding the colloquy I have just read from the witness himself, is as follows:

> "A. My testimony would be on that, that as far as I know, Mr. Tuttle and Mr. McDowell, outside of occasional conversations on the matter of price with Mr. Ashton, talked to no one else about it."

Then follows the colloquy I have read to the witness in an effort to refresh his mind on his talks with Mr. Ashton about these price matters.

The Court: You have heard the questions and answers read from your former testimony. Have you anything further to say as to whether or not Mr. Ashton participated in any of these meetings of the committee?

A. Mr. Ashton never participated in a meeting of the sub-committee, as far as I remember; and as far as price is concerned, what I said before is my recollection at the present.

Mr. Lewin: Q. Well, what do you say about that testimony that you gave before the grand jury, which
878 was read to you?

Mr. Donovan: Now, I object to that question, your Honor, as improper. It was used only for the purpose of refreshing your recollection.

The Court: Objection sustained.

Mr. Lewin: Q. Will you state whether or not that testimony, read to you from your grand jury testimony, was the testimony that you gave?

Mr. Donovan: I object to that question as immaterial.

The Court: Well, he may answer. Exception allowed.

Q. Were those questions asked you, and did you make those answers?

A. If it is there, I must have made those answers, yes, sir.

Mr. Lewin: Q. And were those answers true when you gave them in response to those questions?

Mr. Donovan: The same objection, your Honor.

The Court: He may answer. Overruled. Exception allowed.

Mr. Donovan: May it please the Court, may I just make a further objection? It seems to me the question is incompetent at this time and improper as well.

The Court: Objection overruled. Exception allowed. 879

A. Yes, I was giving the facts as I remembered them at that time.

I am familiar with the Western Petroleum Refiners Association, which has been in existence for many years. Its members are small and large refiners, independent refiners and also major companies. It issues bulletins, and its main work is statistical. Its office is in Tulsa. My company, Wadhams Oil Company, is a member. I have attended a few special meetings of the Association.

Some of the independent refiners, that I testified about yesterday as being the principal sellers to the program, were members of that association. I don't know how many. I don't know whether all of them were members.

I testified yesterday that at times, in addition to these regular sellers in the program, there were some incidental sellers from time to time. The only one I could recall was Russell Refining Company. There were some purchases made from brokers. A broker is a marketer of tank car products, and he buys his gasoline in tank car lots and resells it. He buys outright, and then sells again. Certain brokers had gasoline at times, which apparently was distress gasoline, and that gasoline was purchased by various of the larger companies participating.

I believe Dale W. Moore was one of those brokers. His headquarters are in Tulsa. Tancel Petroleum Company, 880 of Tulsa, is another. I don't think Tancel Petroleum Company is a corporation. The owner of that business is R. B. Tancel. I cannot remember any others at the moment.

Purchases were made from those brokers throughout this period. I bought a few cars from them, as I remember it, and one or two of the other companies bought some; Mid-Continent, I believe, bought some.

The purpose of buying that gasoline from those brokers was that they had the gasoline available and wanted to sell it, and sometimes these companies called in to the committee and had orders for gasoline, and at the moment we didn't have any particular outlet in mind for them, so, if at that time the broker had called us, we suggested that he get in touch with that broker, and buy it.

Q. State whether or not your purpose in buying from the brokers this gasoline which he calls distress wasn't to prevent it from being sold by the brokers below the price that he was recommending?

Mr. Donovan: He cannot testify, your Honor, certainly, as to what anyone else's purpose was.

The Court: Objection overruled. He may answer that. Exception allowed.

A. Yes, we thought it would be advisable to purchase the gasoline.

881 Mr. Donovan: If it please the Court, just in the interest of accuracy here, the witness said "we thought." If he is undertaking to speak for what anyone else thought, then he ought to be made to say what was said, because that is the only way we can judge what someone else thought. He cannot express another man's thought except through that man's words.

The Court: Objection overruled. Let the answer stand. Exception allowed.

Purchases of this character were not made in our program from time to time from Johnson Oil & Refining Company. I remember buying 10 cars of gasoline from that company, but I don't know whether that was distress gasoline, or whether it was gasoline that I happened to require at the time.

There is a title attached to my position with Wadhams Oil Company. I am the purchasing agent of the Mid-Continent Division of Wadhams Oil Company, and for the Socony Divisions. That was my position in 1934, 1935 and 1936.

I aided particularly in making up the monthly survey after we returned from St. Louis on March 5th, and I checked with various refiners at that time and discussed the survey with Mr. Bourque. As time went on, I reported gasoline that came to my attention to him, but he was
882 mainly responsible for these surveys. As I assisted in making up the surveys, I was not necessarily confining myself to these regular sellers to the program. I told Mr. Bourque about any distress gasoline that came to my attention, in whatever hands I might find it. When I heard of this distress gasoline, I told Mr. Bourque about it when I

couldn't buy it myself; and as the plan went on, the practice became this, that he tried to find buyers for the distress gasoline when I told him about it. I don't know whether or not it got on the survey that we discussed at each month.

I told Mr. Bourque about this distress gasoline with the express purpose in mind that he could find buyers for it among the larger companies doing the purchasing. I have already stated that I didn't have much to do about the surveys after that first one; and this gasoline that showed up during the month, from April on, my express purpose in telling Mr. Bourque about it was to try to find buyers for it. If he used that for the surveys, I don't know. I wanted him to find buyers during the month for it. But if he didn't find buyers for it among the major companies during the month, then I intended it to be considered on the survey and be considered at our next meeting.

I know Mr. Warner of Tidewater, I am not sure whether his initials are "J. W." He is a defendant here. My understanding was that he was in charge of the sales in
883 the Tulsa office of Tidewater, and for the territory in the Mid-Continent field.

I know R. O. Audrain, a defendant in this case. During 1935 and 1936, my understanding was that he was Mr. Warner's assistant.

During the year 1935, while this program was operating, I had some discussions with Mr. Warner about it. I only remember one conversation with him specifically. He and some other men were having luncheon at the Tulsa Club, and Mr. McDowell and I were in there, and we stopped at Mr. Warner's table, and Mr. McDowell asked Mr. Warner if he couldn't purchase some distress gasoline on this program. The substance of what he said was that he hadn't been able to get any satisfaction from his New York office regarding it, and regretted that he couldn't give us any definite answer on it.

> The Court: Let me say now to the jury: The testimony of this witness as to conversations and transactions with certain corporations and their representatives is admissible as to those corporations and as to those individuals, and not as to others until you are otherwise instructed. Just bear that in mind.

Mr. Warner did not say anything more about the necessity for getting approval from his New York office. We didn't stay there very long. At least I didn't. I
884 don't remember whether Mr. McDowell left with me or not.

I don't remember any further talks with Mr. Warner about this subject. I wouldn't say that I did or did not have further talks with him. I don't remember. I do not recall having any conversations with him over the telephone on this subject.

I called Mr. Audrain on this subject twice, as I remember. I am sure it wasn't more than 3 times. I don't know whether it was more than 3 times. I am positive of two. I made these calls sometime in 1935. These 2 or 3 calls were not scattered through the year 1935. I believe they were rather early in the program. I think this conversation with Mr. Warner in the Tulsa Club was rather early, too.

I can relate the substance of the conversations with Mr. Audrain. There was some distress gasoline somewhere that I asked if he couldn't purchase, and I got a rather disinterested reply from Mr. Audrain, and as far as I know, he didn't purchase any that I suggested. That answer is confined to the particular gasoline that I suggested to Mr. Audrain.

I don't know whether the Tidewater Company, which Mr. Warner and Mr. Audrain represented, made some small purchases of distress gasoline in this field during the program. They may have. I cannot be more definite about that, because probably Mr. McDowell or Mr.
885 Tuttle or Mr. Bourque talked to them. I don't know about that.

I do not recall that the Tidewater that was in existence at that time made a few purchases in our program. I don't know.

Mr. Audrain handled the purchases for the Tidewater Company that was in existence at that time. He was an assistant to Mr. Warner. If I were told of purchases by this company in the Mid-Continent field from certain independent refiners and brokers and given the number of cars, it would not refresh my recollection as to whether or not Tidewater participated, because they might have bought that gasoline from a broker or refiner as they needed it, without being solicited by one of the sub-committee.

Referring to the conversations with Mr. Warner in the Tulsa Club, Mr. Warner seemed to know of the program. I cannot remember what Mr. Warner said which disclosed to me that he knew about the program. As I said, I was just there a short while, and I have told you what I know of that conversation. I can't remember his exact language on that point. All I can remember is that he indicated that he did know about the program.

I always tried to reach defendant P. E. Lakin of Shell Petroleum Corporation about these price recommendations each time we made them. My best recollection of my conversations with Lakin is: I told him that I was 886 going to pay such and such a price for the following week, and suggested that he pay the same price if he found it on check, to be the fair market price in his opinion. I did mention market to him. I was not referring to trade journals, but the market as I saw it down there in Oklahoma at the time. I mean my opinion of what the market ought to be. Sometimes the prices I gave him as my recommendation were higher than the market was then and sometimes they were not. I gave Mr. Lakin information a number of times during the first part of the plan, maybe 4 or 5. In some instances the price that I recommended to Mr. Lakin was higher than the market price on the day I called him.

Q. Now, in those instances did you tell him to check and see whether that price you were recommending was the market or did you tell him to pay that price, whether it was the market or not?

A. I never told him to pay any price.

Q. Well, you were suggesting to him to pay it, weren't you?

A. Yes.

Q. In those instances in which you recommended to Mr. Lakin to pay a price that was ⅛¢ higher than the market, when you made the recommendation, you did not ask him then, did you, to check and see whether your recommendation was at the market?

887 A. I know I did at times. I don't remember whether I did every time.

Mr. McDowell and Mr. Tuttle and I were particularly active during the start of the program. There were times when one or more of us was away from town. That is true of all three of us at times, but I believe Mr. McDowell and Mr. Tuttle were away more than I was. When Mr. Tuttle was out of town, if there was anything of interest, I called those people that he usually talked to, about quantities, not about price. I only talked to these four that I mentioned, on price.

Mr. McDowell posted Barnsdall, Standard of Indiana, and Phillips on all matters relating to the program, as far as I know. What he did specifically, I don't know. Mr. Tuttle contacted Skelly and Continental.

By the Court

I posted those companies when either Tuttle or McDowell was out of the city. When I say "posted", I mean I posted them as regards the availability of distress gasoline or other matters that I thought would be of interest. I don't ever remember talking price. If they asked me, I told them about prices. That was a matter that they would be interested in.

By Mr. Lewin

That is true of all of those 5 companies, Skelly, Continental, Standard, Phillips and Barnsdall. I have 888 talked to them all on a number of occasions, but not on this subject of price. If they asked me about the price I was paying, I told them. I don't remember whether they asked me about the price. I talked to those companies only when McDowell and Tuttle were out of town.

When I mentioned Barnsdall in that connection I was referring to the entire year 1935, and the portion of 1936 in which I was active. I referred to the Barnsdall Company that was in existence at that time. There are still several Barnsdall companies in existence, and I don't know them. The official of that company that I talked to after June 1, 1935 was Mr. Evans.

I talked to Mr. Cramer of Continental during 1935 on this subject of the program and many other subjects. I do not recall whether or not I talked to Mr. Cramer on the subject of price at any time during this program.

After our committee had ascertained that there were each month 600 or 800 cars for the program, the committee didn't do anything about dividing it up. All the buying companies at these meetings stated which gasoline they wanted to purchase. These major company participants took all of this gasoline that appeared there in the survey,—600 to 800 cars. Those that weren't present were contacted.

889 *By the Court*

The companies arrived at the amount that they were to take by stating how much they could use of the gasoline that the particular refiner had to offer. Sometimes there were several companies that bought from the same refiner, if the quantity was large.

By Mr. Lewin

I can only estimate the amount of gasoline that each defendant who participated in the program took each month.

I was at the meeting in March at which the survey was discussed and at which the major companies indicated what gasoline out of that survey each one would take. At the meeting what Mr. Ashton and the others felt they could take was discussed, and then they were contacted and asked if they could take that amount.

I can only estimate how much each one took out of that 600 or 800 cars that they all took for the month of March.

By the Court

The only one I know about definitely, of course, is Socony-Vacuum and Wadhams; and I took 40 cars.

Standard of Indiana, Sinclair, Pure Oil, Skelly, Barnsdall and Deep Rock were not represented.

Shell was represented, and my recollection now is that they didn't take any in March, but took some later, probably the latter part of March or April. I don't know the amount.

890 Empire was represented, and I believe they said they would take around 30 or 40 cars. I don't know exactly what they took. Phillips took 40 or 50 cars. That is purely an estimate. Mid-Continent, 20 or 30. Continental, the same. Globe, 20 or 30. That is my best recollection for the month of March, 1935.

At the March, 1935 meeting there were some companies not represented, and Mr. Ashton indicated that he felt that those companies would take certain quantities of the distress gasoline that the others hadn't spoken for.

The amount taken was not determined somewhat upon the size of the company, its financial size. It was the amount of gasoline that they wanted to take and needed at that time, their requirements. That was what determined the allocation, and the size of the company had nothing to do with it.

By Mr. Lewin

My best recollection is that 600 or 800 cars approximately were taken on that program during March. There were a number of companies that I couldn't answer on, that weren't represented. I gave an estimate and that is that was wanted. That is my best recollection.

By the Court

We talked with a representative of Standard of Indiana who said he would confer with his superior officer.

891 *By Mr. Lewin*

I don't know whether Standard of Indiana bought any of that gasoline in March. They may have, but I don't know.

By the Court

My recollection now is that those who took, took about 260 cars.

The companies that I did not refer to before are Standard of Indiana, Sinclair, Pure Oil, Skelly, and Barnsdall. They bought gasoline on the program, either in March or in April 1935, I don't remember which.

By Mr. Lewin

My estimates of the amounts of gasoline taken by each one of the major company participants in April, 1935 are: Standard of Indiana, 75; Socony and Wadhams, 40; Sinclair, 50 or 60; Shell, 40 or 50; Empire, the same. Pure, 20, 25 or 30; Phillips, 60 or 80; Mid-Continent, 25 to 35; Continental, 40 to 50; Skelly, 25 to 35; Barnsdall, 20 or 25; Globe, the same.

It ran about the same, probably a little more in the month of May. I don't know whether it was more for each company; the total quantity was a little larger, I believe. I know Socony-Vacuum took more later on.

My estimates of the average which each took through the program are: Standard of Indiana, 75; Socony, ditto—
that includes Wadhams. Sinclair, 60 or 70. Shell 40
892 or 50. Empire the same. Pure, 30 to 40. Phillips,
70 or 80. Mid-Continent, 25 to 35. Continental, 40 to 50. Skelly, 30 to 40. Barnsdall, 20 to 30. Globe, 20 to 30.

That is my best recollection of the average throughout the months of 1935 and 1936.

Those companies represented at the meetings spoke for that part of the total of gasoline that they felt they could use and wanted. The quantities that the various companies took depended upon their requirements and what they wanted. There was no other method of determining the amount which they were to purchase. That was the only method. They said what they wanted, and they knew what their business was and how much they needed and how much they could use. It was up to the company itself to say how much it wanted. There wasn't any yardstick to measure except by their requirements. They said what they wanted.

By the Court

When we arrived or attempted to arrive at our buying program there was consideration given as to what amount of gasoline each company would take. All of us who were present said what we wanted.

I could judge pretty accurately from my experience down there about how much gasoline I could take during that month. We have a refinery in Kansas. The monthly output or capacity of that refinery was about 14,000
893 barrels a day. We also have a refinery at East Chicago, Indiana, having the capacity of about 11,000 barrels a day. I know the requirements of our company per day. I was in touch with our various offices and knew from month to month approximately what their requirements would be, and I have always done that.

As to whether or not our company was capable of supplying its different requirements for the month of March without going out into the market to buy, speaking for Wadhams at East Chicago we were putting a new installation in our refinery, and I knew that we would use a little more gasoline in March and in April. In May and June our requirements were very, very much heavier, and as the year went on our refinery at Augusta ran short. It normally supplied our various divisions with a lot of their requirements. I was buying some distress gasoline elsewhere, and I discussed the matter with Mr. Ashton, and I knew from what Mr. Ashton would need and what Wadhams would need, in March, that I could take those 40 cars from Champlin without any difficulty. It was on that information that I spoke for the company.

The representative of the Phillips Company who was present at that meeting did not say anything with reference to their requirements and how their requirements were arrived at for March. The represent-
894 ative determined what amount he was to take himself, because he had the same information about his operations no doubt as I did for those of my company.

At that meeting each company indicated what they could take each month. They knew their own operations better than I did or any member of the sub-committee. I did not in our discussion make a statement as to how much I would take each month for any period of time—just for March.

By Mr. Lewin

Our requirements governed our buying for Socony-Vacuum and Wadhams in this program. I do not mean orders on hand. I knew about what we would require each month, and I have known that for years. I usually know that from orders that are sent to me from the various divisions, but I can estimate what the requirements will be, and then the orders come in. I did not have orders from my division at the time I committed Socony-Vacuum and Wadhams to this program.

I told you what I did about stimulating orders from the various divisions. I talked with Mr. Ashton at St. Louis and he told me he would need some. I was buying some gasoline at the time, so I knew between the two of us we could supply orders for Champlin's 40 cars. I felt reasonably sure we could. My testimony is that the only
part I took for Socony-Vacuum and Wadhams in the
895 program was based on the requirements of those
companies. We always had need for it, or I wouldn't have bought it. I was not governed in making those purchases in the program for those two companies by what I thought our fair share of the burden was of taking that gasoline.

I determined how much I would buy this way: I wanted to do my part in the program, and I also knew what our company would need and that is only what I said I would take.

Q. Were you motivated, then, by two reasons, one to do your fair share or what you thought was your fair share, and the other to supply your requirements?

A. Yes, both reasons were important to me.

By the Court

When I made these purchases of distress gasoline for my company, it was shipped to the various divisions of my company for which I purchased.

By Mr. Lewin

I did not make the allotments among the divisions. They sent me their orders as they needed. They sent me orders throughout the whole year. At times, I stimulated orders from them for this so-called distress gasoline. If a small refiner needed instructions, I would call the traffic departments, and after I had purchased, ask them

if they didn't have some instructions so that I could
896 give them to the small refiner. Upon receipt of those instructions, I gave them to the small refiner, and he shipped the gasoline out immediately. I only remember one or two instances. I talked to Mr. McReynolds of White Eagle once in that connection, and I believe I talked to Mr. Schuder of Wadhams, Milwaukee office. I never talked to the Chicago division about it. They sent me their orders. I never talked to Mr. Ashton that I remember, in that connection.

Q. Let me see if I can refresh your recollection on it. Did you give this testimony before the Grand Jury—

Mr. Donovan: May I have that same objection as appears at R. pp. 373-74?

The Court: Yes. Same objection overruled; exception allowed.

Mr. Lewin: Q. (Reading.) "Well, do you want your testimony to be now that you only bought what you required to fulfill the orders that came to you from these divisions, and that nothing was done to stimulate those orders or increase them?" And your answer, "Regarding the stimulation of orders, it is quite possible at times that I conversed with Mr. Ashton."

"Question: And with representatives of some other division?

897 "Answer: Yes, sir."

Does that refresh your recollection as to whether you talked to Mr. Ashton on the subject of the stimulation of orders?

A. I mentioned then and now, speaking of it to other divisions, and I might have mentioned that to Mr. Ashton, too.

By the Court

By "stimulating orders" I mean: When I place an order for 25 cars of gasoline, I notify the particular division that I have bought that gasoline. Then, they send me shipping orders against that 25 cars. Sometimes a small refiner has accumulated a few cars, and my shipping instructions are coming in slowly, so I would call that division and try to get a few more shipping instructions at that particular time to give to the small refiner.

By Mr. Lewin

I remember no consideration or discussion had in that meeting in March as to the ability of a larger company to take more of this surplus.

Mr. Lewin: Q. Let's see if I can refresh your recollection from your grand jury testimony—

Mr. Donovan: The same objection to this, your Honor, as appears at R. pp. 373-74.

The Court: Objection overruled. Exception al-
898 lowed.

Mr. Lewin: Q. Do you recall giving this testimony.

> "In that February meeting, when you allocated various independent refiners to various majors, were you somewhat governed in making those allocations by the sizes, the relative sizes of the majors?"

And your answer:

> "Yes, because we knew that, the larger the company, the better position they were in to take a larger quantity of gasoline."

Do you recall that testimony?

A. I don't recall it, no, sir.

Q. Well, the next question:

> "Yes, and you also felt that the larger the company, the more they would derive advantage from the program, too, didn't you?"

And your answer:

> "Yes, and the more we could call on them for."

Now do you recall giving that testimony?

A. No, sir, I don't, but I presume I did if it is there.

Q. Well is that correct testimony?

A. It is not the way I understand it now, no,
899 sir.

Q. Does it refresh your recollection as to whether or not you discussed the sizes of the companies and their abilities by reason of their sizes to take more of this gasoline, and discussed the relative benefits that these companies might derive from participating in the program?

A. No, sir, I never remember having that kind of a discussion at this March meeting you are talking about, as to the size of the company.

Q. All right. Did you have any discussion of that character at any of these meetings?

A. I don't remember it now, Mr. Lewin, no, sir.

Q. Would you say that you hadn't?

A. I would say that we might have, but I don't remember it now.

Q. You would say that you might have. Would you say that was a natural consideration?

Mr. Thomas: Objected to as calling for a conclusion, incompetent and improper.

The Court: Objection sustained.

Mr. Lewin: Q. Now, as a matter of fact, this gasoline—

Mr. Denton: If the Court please, I would like to move to have stricken from the record the questions 900 and answers read from the grand jury testimony, in view of the fact that the witness says his memory is not refreshed by the reading of it. In view of that fact, they are prejudicial, and I think should be excluded.

Mr. Chaffetz: The witness has said he might have had such discussion.

The Court: Objection overruled. Exception allowed.

Mr. Lewin: Q. Didn't, as a matter of fact, the larger companies take the larger amounts of gasoline in this program?

A. Well, I gave you the amounts of gasoline that the companies bought—

The Court: You can answer that.

A. The larger the company, as I have indicated, the more gasoline they took, yes, sir.

I have heard of the term "dancing partner." I have made use of that term occasionally. I heard it during this program. Mr. Ashton explained it to me one time. My understanding of the term "dancing partners" is the association of the name of the small refiner with the large refiner.

Q. All right. Did you work out a system of dancing partners in these meetings?

A. Well, it might be termed that, yes, sir.

901 It is true that these various independent refiners were selected by the majors, because of business location, or previous dealings, or whatever it may have been. Standard of Indiana's dancing partner was Waggoner Refining Company. Socony-Vacuum, Danciger—first of all, Champlin, Danciger and Wilcox—and that includes Wadhams, of course; Sinclair, Panhandle Refining Company; Shell, Cushing Refining Company; Empire, Olney Oil and Refining Company; Pure Oil Company, Eason, I believe; Phillips Petroleum Company, Taxman and one or two

others; Mid-Continent, Johnson Oil & Refining Company; Continental Oil Company, Shamrock Oil & Gas Company; Skelly Oil Company, I am not sure about, but I believe it was Rock Island Refining Company; Barnsdall, I don't know; Globe, I don't know. I don't believe Dickey had any regular company that purchased from them; they only called at times.

Q. Didn't you testify before the grand jury that Globe had Dickey?

Mr. Donovan: Same objection as appears at R. pp. 373-74.

The Court: Overruled. Exception allowed.

A. I think they did buy some gasoline with them, but I don't believe with any regularity, Mr. Lewin.

I believe Pure bought some from Omar. Pure bought from Eason, I don't know with what regularity. Eason
902 was another from whom Sinclair purchased.

Q. Now, was that same dancing partner arrangement carried on about the same throughout the program?

A. As far as I am concerned, I bought from the same firms with some degree of regularity throughout the whole program.

I am not sure about the others, but there was some regularity in the purchasing on those that I have mentioned.

At later meetings we either continued with those same dancing partners, or else some slight change was made. Generally speaking that is true of each one of our meetings. We all bought from about the same people. Each month, this company, for example, would state whether it would be able to buy the gasoline from that same party, the month that we were talking about, and would usually indicate whether it would or not.

I don't remember that there were any independent refiners in particular that no major company particularly wanted to take as a partner. The major companies selected these refiners that they wanted to do business with. I don't remember any one at these meetings being persuaded to take on any one.

Q. Don't you recall testifying before the grand jury that in certain cases where there might be an
903 independent refiner that the major companies did not particularly want to take, that major company was persuaded by the committee to take it?

Mr. Donovan: May I have the same objection, your Honor, as appears at R. pp. 373-74?

The Court: You may. Same ruling. You may answer that. Exception allowed.

Mr. Lewin: Q. Do you remember testifying to that?

A. I am sorry, Mr. Lewin, I do not.

Q. Does my suggestion to you refresh your recollection at all?

A. No, sir.

There were some independent refiners selling in the program that at times made more gasoline than any one major wanted to take. I testified this morning that in one or two instances there was gasoline offered by a refiner that several of the companies had to purchase from. I remember that Taxman Refining Company offered quite a little gasoline on several of the monthly surveys, and several of the companies participated in purchasing that gasoline that they offered. I don't remember any other independent refiners in that same situation. I don't remember any others at the time. I believe I stated Phillips bought from Taxman, and Socony-Vacuum bought from Taxman in late
904 1935 and early 1936, and I don't remember who else.

Q. Do you recall testifying before the grand jury that Taxman's output was so much that it had to be divided up among Phillips, Sinclair and Socony-Vacuum?

Mr. Donovan: May I have the same objection to that question as appears at R. pp. 373-74?

The Court: You may. Same ruling. Exception allowed.

A. Well, I forgot—Sinclair did you say?

Mr. Lewin: Q. I think you said Sinclair, didn't you?

A. Well, then, Sinclair bought from Taxman, if I said it.

These three companies bought it.

As to who called these monthly meetings, I believe I usually received word from Mr. McDowell or Mr. Ashton, but in most cases from Mr. McDowell. I got that word over the telephone, because I was right in Tulsa. I don't know who called the meetings. I just got word that there was to be a meeting. When I got the word from Mr. Ashton and Mr. McDowell, it would be my impression that those two men were calling and meeting.

At those meetings, each month was taken up by itself, and, as I stated before, at the first meeting it was hoped

that the program would continue for an indefinite
905 period, but every month was a month in itself. I don't know why that was. The only reference to a continuation of the program was at the Coronado meeting where I heard an expression that it would be a good thing to continue the plan for an indefinite period. After that they talked about continuing the plan simply for a month.

There was no agreement to continue it for a month. The men said they would take the gasoline for that month or the following month. You must keep in mind that some of the meetings were held around the 27th or the 28th. Some at that meeting said their companies would take gasoline in the program for the rest of that month, and some indicated they would have to check the quantity up, and so on. I don't remember any definite agreement. I don't remember any one agreeing to do anything. They said they would take this gasoline if they could use it, and as far as I know in most instances they did.

Mr. Lewin: May I endeavor to refresh his recollection on this subject from his grand jury testimony?

The Court: On what point?

Mr. Lewin: On the point as to whether there was an agreement at this meeting to continue for a month.

906 The Court: Yes, you may.

Mr. Donovan: I may have the same objection as appears at R. pp. 373-74?

The Court: Yes. Exception allowed.

Mr. Lewin: Was this your testimony before the grand jury:

"Q. Now, about March what was discussed there?

"A. March came along, and I believe the members had responded, and the survey indicated that the quantity was approximately the same, and everybody went ahead as before.

"Q. Agreed to continue on the same basis?

"A. That is right.

"Q. Did you take a vote, or was it just a nodding of heads?

"A. No, there was no vote.

"Q. No vote. Did you draw up a paper to express the agreement? It was simply an oral one?

"A. That is right They were all there, and discussed it, and that was all there was to it. We went on our way and placed our orders.

"Q. Is the same thing true of the April meeting?

"A. Well, I don't remember.

"Q. Do you recall any meeting which was different from that typical meeting in February?

907 "A. No, they were all about the same.

"Q. All just about the same?

"A. Yes.

"Q. They all came in, discussed the general situation, and some times they made little changes in the allocations to be fair?

"A. That is right.

"Q. And all agreed orally and verbally there to continue?

"A. That is right.

"Q. Did they say how long they would continue? Was it simply to continue for a month, or did they agree to keep on supporting it throughout the year?

"A. They agreed to continue. No definite time was set as to how long."

Q. Does that refresh your recollection?

A. Yes, I heard what was said.

Q. Did you give that testimony before the grand jury?

A. I must have.

Q. Was it correct testimony?

Mr. Thomas: Objected to as calling for a conclusion and invading the province of the jury.

Mr. Donovan: The questions themselves before the grand jury all call for conclusions. He cannot 908 use this now to ask him if that was the substance of the testimony.

The Court: The witness' memory has been refreshed now. You asked him the question you want him to answer.

Mr. Lewin: Q. I want to know what the discussion was at those meetings in regard to agreeing to continuing and whether you entered into an oral agreement at each of these meetings to continue for a month?

Mr. Donovan: I submit that question is improper, as calling for a conclusion.

The Court: He may answer. Exception allowed.

A. I never remember any agreement at those meetings. These men said that they would take this gasoline if they could. As far as I know, they took most of it, a part of it. I don't remember any agreement.

Mr. Lewin: Q. How do you reconcile that with the testimony you say you remember you gave before the grand jury?

The Court: I think that is improper. He said that they took what gasoline they could.

Mr. Lewin: Q. Did you, as representing Socony-Vacuum and Wadhams, receive assurances from the other representatives of major companies that they
909 would support that program for a time longer?

Mr. Donovan: That calls for a conclusion.

The Court: You may answer that. Exception allowed.

A. I heard them say that they would take the gasoline that a certain refiner had to offer for that month, and that was true in every one of those 13 meetings.

Mr. James Nagle of the Skelly Company did not attend any of these meetings.

Q. Did you testify before the grand jury that he did?

Mr. Donovan: Same objection as appears at R. pp. 373-74.

The Court: Objection overruled; exception allowed.

A. I am sure I did not.

My testimony is that at the meetings there was no representative from Sinclair or from Barnsdall or from Skelly.

Q. Now, was there anything done by you or your associates to inform these companies of what had transpired at those meetings?

Mr. Donovan: It strikes me the question should be limited to what the witness did, not what his associates did.

910 Mr. Lewin: Your Honor, it is perfectly clear that they were all working together.

Mr. Donovan: I object to that statement, your Honor.

The Court: He may answer that. Exception allowed.

A. Yes, sir, it was my practice, when I returned from one of these meetings, I am sure, to call Mr. Chamberlain and—

Mr. Chamberlain of Pure was never at these meetings.

As to doing anything to inform these companies of what transpired at the meetings—Sinclair, yes. I talked to Mr. Tracey occasionally about what transpired in the meetings, and told him in a general way what had happened. Barnsdall was the other firm. That is all there was about my conversation with Mr. Tracey. I made a note of what gasoline had been mentioned at the meeting that Sinclair might be interested in; and passed that information on to Mr. Tracey. I called him after most of the meetings. I may have called him after each one.

Q. Wasn't that your testimony before the grand jury, that you called him after each one of the meetings?

Mr. Donovan: Same objection as appears at R. pp. 373-74.

911 The Court: Objection overruled; exception allowed.

A. It may be, I don't know.

Q. Would you say that is correct now?

A. I would think so, yes.

Q. You would think so. All right. Now, then, proceed with what you asked him to do on those occasions.

On those occasions, I told him about the meeting and mentioned this gasoline that I had made a note of, and suggested that he buy it, if he could. I don't remember telling him in detail what had transpired. I don't remember telling him anything more unless he asked me some questions, and I can't remember what questions he asked me.

I mentioned the particular companies that had the gasoline. I told him the quantity and told him to buy it if he could. I don't remember the quantities now; there might have been 2 or 3 different small refiners. I think on some occasions he asked me what the others were going to do. If he asked me, I told him. I told him what I was going to buy, if he asked me. I don't remember that he asked me about the others. I told him that the others had indicated they were willing to continue for that month.

912 I did not have a similar conversation with Mr. Evans after each one of these meetings. I only called Mr. Evans on two or three occasions, and that was relating to distress gasoline that appeared during the month, and when Mr. McDowell was out of town.

Q. Did you go to see him in Tulsa and tell him about the meetings?

A. I don't remember doing so.

Q. Could I refresh your recollection on that point, do you suppose?

A. Yes.

Q. Did you give this testimony before the grand jury—

Mr. Francis: Just a minute. In addition to the objections that Colonel Donovan has made about this continuous detailing of matters from some source unknown to me, which I have had no opportunity to verify, and about which there has been no proof offered here, I would like to make the objection that this is a prejudicial and unfair method of examination being conducted by the prosecution; that it is a detailed narration of conclusions and opinions and in improper form, not relevant or competent testimony to be adduced before this jury; and yet, in the very method and way in which counsel is conducting the examination of this, a Government witness, he is reading from some unknown source, which we cannot verify or check on as to its accuracy, and trying 913 to put that in and is continuously putting that in as testimony, to which we object.

The Court: All right. I assume that when counsel asked this witness if he testified before the grand jury and reads questions and answers, that he is reading from the transcript of testimony of this witness before the grand jury. Am I right?

Mr. Lewin: I am reading a copy of it, made in my notes.

The Court: Have you the transcript there?

Mr. Lewin: Yes, the transcript is here.

Mr. Francis: Can't we be afforded a copy of that to see if there is further testimony on that?

The Court: What transpired in the grand jury room is confidential.

Mr. Donovan: I submit, your Honor, that the Government has waived that.

The Court: The Government has not waived that. Go ahead.

Mr. Chaffetz: Counsel is distinctly in error when he said that anything that transpired in the grand jury room is offered here as evidence. I think we have followed the practice very carefully of asking the witness whether he remembers giving that testimony; and whether that testimony refreshes his recollection; and I think on one or two occasions when 914 it didn't refresh his recollection we passed on. No effort was made to use that testimony as affirmative testimony.

Mr. Francis: Your Honor, they have been asking this witness if this testimony isn't true, from which they have been reading; and in that way trying to get into this record opinions and conclusions upon improper and misleading questions.

Mr. Lewin: I don't want to refresh his memory with false testimony. I just asked him if that is true. I assume it was.

The Court: Hereafter I think you better refresh his memory, and then ask him the question what the fact is.

Mr. Donovan: Your Honor, as to that question I objected on the grounds that I have already stated with reference to these grand jury minutes (R. pp. 373-74), and I understood Mr. Francis supplemented that objection.

The Court: Yes, the record so shows. Exception allowed.

Mr. Denton: In view of the statement by counsel that he is refreshing the witness' recollection as to what he testified to before the grand jury, that he is reading from counsel's notes rather than from the transcript of the evidence I would like to make the

915 request that Government counsel submit to the defendant counsel the notes from which he is reading, and from which he is attempting to refresh the witness' recollection.

The Court: I suggested, and asked counsel hereafter when you want to refresh his memory as to some other statements he made outside of this case—

Mr. Chaffetz: We have the transcript beside us, and almost invariably we have checked the transcript with the notes as we have read it.

The Court: Use the transcript.

Mr. Denton: I want to add to my objection, which is necessary to complete this record, a motion to exclude the questions and answers that have been read to the witness so far in this case by Government counsel, on the ground that the questions and answers appear to have been read from notes made by Government counsel and not from the transcript of the testimony taken before the grand jury.

The Court: Objection overruled. Exception allowed.

Mr. Lewin: Q. I want to know whether you didn't at the end of any of these meetings call on Mr. Evans or call him on the telephone, and tell 916 him what transpired at the meetings—Mr. Evans of the Barnsdall Company.

A. I don't remember doing so, no sir.

Q. You remember giving this testimony before the Grand Jury? You were being asked about companies represented at any of the meetings:

"Question: Barnsdall?

"Answer: I never remember of Barnsdall having any one present.

"Question: How did you communicate with Barnsdall?

"Answer: Well, they are right in Tulsa, their office.

"Question: So you would go around and tell them? Who would tell them?

"Answer: I would talk to Evans.

"Question: Mr. Evans?

"Answer: Yes.

"Question: And he always agreed with what transpired at the meetings?

"Answer: —."

The Court: Wait a moment. Does that refresh your memory as to any conversations you had with Mr. Evans at some time after one of these meetings?

A. I still never remember telling Mr. Evans about anything that transpired at the meetings. I 917 do remember talking to him several times about distressed gasoline that appeared and I suggested that if he could,—

Mr. Lewin: Q. Do you recall giving that testimony before the Grand Jury?

A. No.

Mr. Francis: Your Honor, would it be permissive if counsel for the defendants—this man doesn't work for my company—he has given testimony relating to my company. Would it be permissive for me to have an opportunity to examine what these gentlemen say is in the record in the Grand Jury proceedings to the end that I can see whether or not this witness in his testimony there didn't corroborate in other parts of the record what he testifies to?

The Court: There is nothing inconsistent with the witness' answer as to what—

Mr. Francis: I don't think there is, either.

Mr. Lewin: That is right.

The Court: And the jury may disregard what was read from the Grand Jury proceedings.

Mr. Francis: And that has happened a dozen times, your Honor.

Mr. Chaffetz: Your Honor, I think we have got to protect ourselves against these statements. The witness said he didn't remember. The Grand Jury 918 minutes said expressly in his own words, "I used to call Evans." The name "Evans" was suggested by the witness in his answer. I object to the criticism being made by counsel and object to that criticism being in the record.

Mr. Lewin: He does not now admit that he talked with him. I have read the minutes, and he denies that, and denies—his denial is in direct conflict with what I read from the minutes.

Mr. Loucks: I object to that statement, if the Court please. Improper.

(Mr. Lewin passes document to the Court.)

Mr. Donovan: If the Court please, would the Court instruct the Reporter that the record should show that counsel is showing all this to the Court.

The Court: Let the record show that the Court is now reading from the transcript of testimony taken before the Grand Jury. Do you think I have no right to read these Grand Jury minutes?

Mr. Donovan: I think that it ought to appear that counsel has the Grand Jury minutes here and that it is submitted to the Court, and that contrary to the request of Mr. Francis that he has not submitted it to Mr. Francis or counsel for the defendants.

The Court: Let me state for your information: That the transcript of testimony and the proceed- 919 ings in Grand Jury, the Court considers confidential, and no one should have access to them except Government counsel and Court.

Mr. Donovan: Your Honor, I have our objection and exception.

(Court examines Grand Jury transcript of testimony.)

The Court: Q. Now, just think back as to what conversations, if any, you had with Mr. Evans after the meeting and tell us in your own words just what that conversation was.

A. Yes, sir, I will be glad to. I have already testified that Mr. McDowell stated early in March, that he would talk to Barnsdall Company and to the Phillips Petroleum Company and to the Standard of Indiana on matters relating to this stabilization effort. And Mr. Tuttle said he would talk to certain other refiners. I said I would talk to certain others. I am sure that I talked to Mr. Evans on matters relating to the removal of some distress gasoline or the purchase of some distress gasoline during the month, but I am so sure about this, not talking to Mr. Evans about what transpired at the meetings, because that company was the company that Mr. McDowell talked to, as a rule. It was only an exceptional case when Mr. McDowell was out of town, that I ever talked to 920 Evans.

The Court: Q. And when you did talk to him, in the absence of Mr. McDowell, did that conversation cover what transpired at the meetings?

A. I don't think so. I don't ever remember talking to Mr. Evans about what transpired at the meetings.

Q. Were these questions asked you, and did you make these answers when you testified before the Grand Jury—

> "Question: How did you communicate with Barnsdall?
>
> "Answer: Well, they are right in Tulsa, their office.
>
> "Question: So you would go around and tell them? Who would tell them?
>
> "Answer: I would talk to Mr. Evans.
>
> "Question: Mr. Evans?
>
> "Answer: Yes.
>
> "Question: And he always agreed with what transpired at the meetings?
>
> "Answer: Yes."

The Court: Were those questions asked you and did you make those answers?

Mr. Donovan: Your Honor, may I have the same objection as appears at R. pp. 373-74, 446?

921 The Court: Yes. Exception allowed.

A. Yes, sir. If they are there, I answered that way.

Q. Now, with that in mind, does it refresh your memory as to what the actual fact was as to whether or not you talked to Mr. Evans with reference to what transpired at any of these meetings?

A. If I said that, your Honor, in Grand Jury, I clearly must have been in error, thinking about something else, because I don't remember it now.

The Court: All right, that is all.

By Mr. Lewin

I am sure that after some of these meetings, I called up Mr. Chamberlain of Pure and told him what transpired at the meetings. On those occasions, I told him that we had had a meeting and that certain things transpired—I don't remember what they were—that the companies had had their representatives there, and the meeting was at such and such a place, and that it was felt that his company could probably use a certain quantity of gasoline from so and so and so and so, and suggested that they buy it if they could. And Mr. Evans—or, Mr. Chamberlain's usual reply was, "Well, I will check it up and see." And that is about all I can think of that I would have said to him unless he would have asked me some questions and I
would have answered them. If he would ask me what
922 the other companies were going to do, I told him.
I don't remember that he asked me what other companies were going to do. I don't have any recollection on that point.

The situation as to calling Mr. Nagle on these occasions is exactly the same as Barnsdall. Mr. Tuttle was clearing these matters with Mr. Nagle of Skelly, and if Mr. Tuttle was out of town, and anything of that kind came up, I would call Mr. Nagle. I don't remember calling Mr. Nagle over two or three times over the entire period. When I did talk to him, it related to distress gasoline that some refiners wanted to move, and I called him and asked him if he could buy it. Sometimes he could and sometimes he couldn't. I don't remember ever talking to him with regard to these meetings.

I talked to Miss Gartman along the same lines as Mr. Nagle. She was his assistant and the only reason I talked to her was when Mr. Nagle was away. I think that happened once. I am positive that I did not talk with her about these meetings.

As to how Skelly Oil Company was informed of meetings, I know only that Skelly was talked to by Mr. Tuttle on almost all matters relating to the plan. I don't know what I talked to him about. I talked to him on various matters relating to the plan that he wanted to know.

On those occasions when there were absentees of the companies that were usually in attendance, I don't
923 know whether the absentees were informed about the
meetings, but certainly word was gotten to them as to the amount of gasoline that it was felt they could take in that month. I don't remember what persons in that class I called. My memory could not be refreshed by looking at a list of the persons who usually attended, because I don't know who the absentees were definitely, whether anyone was absent or not. I do not know definitely that there were absentees. My definite recollection is that at most meetings most of these men were present and in their absence they sent someone else to handle the matter for them.

I remember making a contact with some of these persons between the meetings, in addition to when I called them about my price recommendations; I called a number of them on the subject of distress gasoline that appeared during the month that Mr. Bourque didn't have on his survey. I couldn't give the jury a list of those persons that I called at any time during the program. I called many of them on that subject. I don't know that I called all of them.

I may have called Mr. Lakin. I believe I did tell Mr. Bacon, his man in Tulsa, on several occasions about distress gasoline. They have a direct wire from Tulsa to St. Louis, and he sent these messages up to Mr. Lakin for
me. I think I did sometimes get in touch with Lakin
924 personally between the meetings. I am sure I did
at some time during the program ask him to buy up gasoline.

I know Mr. Fred Koopman, a defendant in this case. He was with Phillips Petroleum Company. I believe he is assistant to Mr. Gardner, and Mr. Hughes. I remember getting in touch with him after these meetings on the subject of extra gasoline. I would get in touch with him on the telephone. He is in Bartlesville and I am in Tulsa.

I have called Mr. O'Shaughnessy on several occasions at least. If I didn't talk to him I talked to one of his assistants in Chicago. Sometimes I talked direct with Mr. O'Shaughnessy.

I don't remember talking to Mr. Cramer of Continental about this subject. I believe Mr. Tuttle talked to him if that situation arose. I am not positive I didn't talk to Mr. Cramer.

Q. Could your mind be refreshed by referring to your Grand Jury testimony?

A. Yes, sir.

Mr. Lewin: Give me 7332.

Mr. Donovan: May I have the same objection to this, your Honor, as appears at R. pp. 373-74, 446?

The Court: You may have. Exception allowed.

Mr. Lewin: Q. Were you asked this question when you were before the Grand Jury, and did you give this answer: 925

"Q. Mr. Cramer, you talked to him about quantity, I suppose; not about price?"

That question being in a list of questions about who you contacted outside of the meetings.

"A. That is right."

A. About quantity?

Q. Yes. Does that refresh your recollection?

A. Well, my memory was fresher then than it is now, and if that is what I said there, I must have—

Q. No, does it refresh your recollection now?

A. No, sir.

Q. Would this help to refresh your recollection? Were you asked these questions, and did you give these answers before the grand jury?

Mr. Donovan: The same objection as appears at R. pp. 373-74, 446.

The Court: The same ruling: Exception allowed.

Mr. Lewin: Q. (continuing)

"My contacts with Continental on the stabilization work were almost entirely with Mr. Cramer.

"Q. With Mr. Cramer?

"A. Yes, sir.

"Q. With Mr. Cramer; his initials are what?

"A. I don't know.

"Q. It is K-r-a-m-e-r?

926 "A. I don't know that. It is one or the other, a K or a C.

"Q. What is his position?

"A. He is assistant on sales to Mr. Kennedy."

Do you recall giving that testimony?

A. No, sir, I don't.

Q. Does that refresh your recollection as to whether or not you talked with Mr. Cramer about this program outside of the meetings?

A. Yes, I must have done so, or I wouldn't have so stated.

Q. Well, does it refresh your recollection, your present recollection?

A. No, sir.

Q. It doesn't do so?

A. No, sir.

I had 2 or 3 conversations with Ira Smith of Standard Oil Company of Indiana outside of the meetings during the plan, but I don't ever remember calling him on the subject of extra gasoline that appeared during the month. I talked with him about the plan in some form or other, but I don't remember what the subject was at this time. I cannot remember whether I told him what quantities Standard Oil Company was expected to take; I don't believe I did, because Mr. McDowell talked to Standard of Indiana on matters relating to the plan. I can't
927 specifically remember any of the details of my talks with Mr. Smith or anything that he said to me about the program. I can't give the substance of them. I am sure I got the impression from Mr. Smith that he knew about the plan; and, as I have already stated, he attended 2 or 3 meetings in 1936.

I had such conversations outside of the meetings with Thomas Fitzgerald, a defendant in this case. I talked to Mr. Fitzgerald about many matters relating to the plan. Mr. Fitzgerald was an assistant to Mr. McDowell during this time. I had quite a few conversations with Mr. Fitzgerald about the program. It would have to be a guess, but I would say 8 or 10 anyway. He represented Mr. McDowell in these monthly meetings when Mr. McDowell was away; and during the month I talked to him about subjects relating to the plan. The substance of my conversations with Fitzgerald related mostly to the purchase of distress gasoline that was called to his attention by some small refiner during the month, or that was called to my attention during the month. An effort was made between us to try to notify someone as to the availability of it. We discussed what various major compa nies were doing that particular month in the taking of this gasoline.

I am not at all sure I ever had any conversation with reference to this program with Harry J. Kennedy.

928 I never remember talking to Mr. Kennedy about the plan until sometime in February 1936. I can't say positively, but I think that he was one of the men present at the last meeting that I mentioned at the Blackstone Hotel, where there were only a few men present. That is the only time I remember talking to him, this meeting of buyers when there were a few of us there. I don't remember anything about the conversation with Mr. Kennedy. He was in the room, as I recollect it now. I do not know whether or not he was familiar with the program. I only saw him that one time in the whole 13 months, as I remember it.

Mr. Lewin: Q. Did you give this testimony before the grand jury:

> "A. I think I talked to Kennedy once, and he seemed to be pretty well posted on the general plan."

Mr. Donovan: Now, I object to that upon the grounds that I have already stated at R. pp. 373-74, 446; and, if your Honor will permit me, I would like to state another: That the cross examination from these grand jury minutes is improper because the prosecution singles out certain small portions of witness' testimony, and, so far as it appears, the witness might very well have explained in another part of his testimony, or corrected or amplified—

929 Mr. Chaffetz: There is no effort here, your Honor, to impeach the witness, or to show that he made a different statement at a different time.

The Court: No.

Mr. Chaffetz: It is purely for the purpose of refreshing, and any part of his testimony may refresh; if it doesn't refresh his recollection, nothing is lost.

The Court: I understand that is all you are using this testimony for, is to refresh his memory? Exception allowed.

Mr. Lewin: That is right.

The Court: It hasn't been offered in evidence at all.

Mr. Lewin: No, sir.

The Court: Q. Now, does that refresh your memory any?

A. No, sir, your Honor. I have told you all I know about it.

The Court: All right. That is all, then.

Mr. Lewin: (referring to document purporting to be transcript of grand jury testimony). State whether or not—

The Court: I think the safer practice would be for you to mark the questions, and let me look at them first.

930 Mr. Lewin: Yes, sir.

Mr. Chaffetz: Your Honor, counsel was not going to read from the grand jury minutes at that point. He was phrasing a question—

Mr. Lewin: Well, I was going to if I had to.

Mr. Chaffetz: Yes.

(Mr. Lewin submits indicated portion of document purporting to be transcript of grand jury testimony to the Court.)

The Court: You covered that yesterday afternoon.

Mr. Lewin: Not fully, your Honor.

The Court: What?

Mr. Lewin: Not fully.

The Court: It seems to me that you have. Ask your questions, before you read that.

Mr. Lewin: All right.

(Witness is shown Exhibit 73 for identification.)

I recall sending that letter. I sent the original to Mr. Maguire, and a copy to each one of the divisions; I circulated them. They did not always get one. I sent a copy to Mr. Ashton's office, a copy to Mr. Marcel's office, and a copy to Mr. Reed's office. I did not send a copy to Mr. Jones' office in New York. I sent it to Mr. Muller in the New York office. He is a statistician, I believe. I really don't know who it is that he works under. Mr. Muller wrote me and asked me for it.

931 I can tell you what the pencil notations on that letter are. That is the name Pyke written on there. He is not one of the officials of the White Star Division; he is its purchasing agent. His office is in Detroit. I believe he works under Mr. Sullivan. That was true at the time I wrote that letter. I don't know whose those initials are. I know a party with the initials "C. B. M." in that organ-

ization. That is C. B. McCullough. He is assistant under Mr. Coffin.

Mr. Lewin: This is EXHIBIT 73, marked for identification. The Government offers it in evidence. (Handing exhibit to the Court.)

Mr. Donovan: I object to that, your Honor, on all grounds stated a few days ago when this other weekly letter was offered, at R. p. 361, and on the additional ground it is not admissible against these defendants for any purpose in the absence of showing that the author of the letter, the witness who identified it, has no present recollection concerning the facts that are stated, and that his recollection cannot be refreshed after looking at it. I think I have already based my objection previously on the hearsay rule as against the other defendants, your Honor. Further, that this cannot be taken as evidence of the fact. That must be testified to by
932 the witness: I further object because it appears upon the face that they could not aid or be in furtherance of any alleged conspiracy because they are a narration of something that this witness has been doing, and simply refers to his personal opinion.

Mr. Lewin: Your Honor, they are clearly admissible, if for no reason, to show notice of the program and the way it is operating and what it is doing to these defendants who received it.

Mr. Donovan: No, if it please the Court, if counsel are correct in their statement that if it be an admission, that this should be construed as an admission, then it can be construed as an admission only against the witness who wrote it, and the witness is not on trial. It cannot be construed as an admission against any of these other defendants.

The Court: The objections are overruled. The exhibit may be received. Exception allowed.

Mr. Francis: I ask the Court to instruct the jury that, until otherwise instructed, this document will not be considered as any evidence whatsoever against The Pure Oil Company or any of its officials.

Mr. Donovan: I submit, your Honor, on behalf
933 of all the other defendants, it should be limited only to those immediately concerned with the letter.

The Court: Well, I will say to the jury that you have heard the evidence as to what major companies purchased gasoline under the program, as outlined by this witness, and which this witness has testified to. Now, this Exhibit 73 is admissible at this time as against those companies, and not as against the others, and may not be considered as evidence against the others until you are otherwise so instructed.

Mr. Donovan: May I have an exception, your Honor?

The Court: Yes.

Mr. Donovan: I ask that your Honor instruct the jury that the letter be considered as limited only to acts that may be adduced in furtherance of the alleged conspiracy, and not for any other purpose.

The Court: Let the record show, gentlemen of the jury, Exhibit 73 is received in evidence as affecting only the individuals and the corporations that participated in this buying program as described by the witness now on the stand, and is not received as evidence against any of the other individual defendants or corporations.

934 Mr. Francis: Let the record show that the motion of The Pure Oil Company is denied. Exception allowed.

Mr. Donovan: And my motion is denied, with an exception.

Mr. Kirkland: May I show my objection was made specifically upon behalf of the defendants Seubert, Bullock, Jackson and Ira Smith, as well as on behalf of the Standard Oil Company.

The Court: As I recall, they were not named by the witness as participating. Then they are excluded.

Mr. Donovan: Without reciting the roster of the names, may I not have that applied to all other individual defendants, as well as corporations?

The Court: Yes, who were not named as participating in the program as described by this witness.

(Letter referred to, dated June 7, 1935, received in evidence as EXHIBIT 73. It was later admitted as evidence against all the defendants generally at R. p. 907.)

(Exhibit 73 read to the jury by Mr. Lewin.)

The price recommendation around June 7, 1935, was the last advance that I recommended in 1935. As to the pre-

diction in Exhibit 73 that there would be no more
935 advances in the retail prices and in the tank car prices until there was an advance in the crude, I don't know about retail prices, but the chart there indicates that there were no more advances in the wholesale prices. After I wrote this letter of June 7, 1935, Exhibit 73, I don't believe there were any further advances in the wholesale price for gasoline in the Mid-Continent field for the rest of the year 1935, or until there was a crude advance. There were not.

The next advance in the crude oil price came in January, 1936. It was then that the first advance in the tank car price of gasoline occurred. At that time I called several of these buyers participating in the program. I told them that I had talked to various refiners, and they were asking me for ½¢ per gallon more because of this crude advance; and I said that I was going to pay the ½¢ more. I don't remember making any suggestion to them. My purpose in calling was to tell them what I was doing. As in the past I hoped that they would follow that price that I mentioned. I gave them information at that time.

Q. Had you had any previous discussion about that recommendation in your committee?

A. Well, yes, I called Mr. McDowell and Tuttle as soon as the crude advance occurred. I had a num-
936 ber of calls from small refiners, and the whole industry was talking about the advance. As I remember it, it came suddenly; and Mr. McDowell and Tuttle told me that they were raising their spot prices on gasoline as sold by their companies; and our own people had called me on the phone and asked me about the market, and the whole thing was in the air at that time. And I raised my prices, as I remember it, on the material that I was buying ½¢ on or about January 13.

Q. Raised the price on the material you were buying in this program at that time; is that right?

A. On that material I was buying from these small plants, yes, sir.

I don't remember discussing recommendations with McDowell and Tuttle at that time. I remember talking to them on the subject. I don't know what they were going to do. I don't recall anything about what they indicated they would do. I talked to them on the phone. I am sure we didn't have a meeting of our committee at that time.

We talked about the market after June 1, 1935. The last time that I called these 4 companies and gave them my idea of the fair market price was in June, 1935, with the exception of this January 13th period.

937 Mr. McDowell, Mr. Tuttle and I had had lunch off and on all through 1935. I did not have lunch with those gentlemen just before this recommendation of a price advance in January.

I told the other companies I had raised my price ½¢ a gallon, and as I mentioned to them before back in June, I told them that I hoped that they could see their way clear to do the same thing if they found that to be the market.

I believe there was a rise in the Chicago Journal of Commerce quotations or in the Platt's Oilgram at that time. As I remember, the Journal and Oilgram each raised its price ½¢ around the time of the crude advance in January, 1936. Platt's Oilgram advanced before the Journal did at that time. I don't remember how far before.

I wrote that letter marked Exhibit 75 for identification.

Mr. Lewin: I now offer in evidence Exhibit 75 for identification.

Mr. Donovan: May I object to it on the grounds stated at R. pp. 361, 457-58, not only by myself but other counsel, with regard to the other letter, Exhibit 73, and object to it on the additional grounds that it is immaterial and irrelevant.

938 The Court: You may take your objections. Objection overruled. Exception allowed.

Mr. Donovan: And if the Court please, following these series of letters, if they should be admitted over objections, may we have the same request for instructions and exceptions as were requested as to the others at R. pp. 361, 457-58?

The Court: They are admissible on the same conditions as I have already enumerated to the jury,—the same conditions as the last exhibit was admissible, 73, which counsel read to the jury. Exception allowed.

(Document offered received in evidence as EXHIBIT 75 upon the condition stated at R. pp. 457-58. It was later admitted at R. p. 907 against all defendants generally.)

(Exhibit 75 was read to the jury by Mr. Lewin.)

I recall sending that letter marked Exhibit 76 for identification. It went to Mr. Maguire and copies to the various offices as I have narrated with respect to the others.

Mr. Lewin: I offer that letter in evidence.

Mr. Donovan: May I have the same objections on the same grounds and the same exceptions as appear at R. pp. 361, 457-58, 460 for all defendants?

939 The Court: Yes. And this Exhibit 76 is admitted on the same conditions as the last two letters were received and will be so considered by the jury.

(Letter offered received in evidence as EXHIBIT 76 upon the conditions stated. It was later admitted at R. p. 907 against all defendants generally. Exhibit 76 read to the jury by Mr. Lewin.)

I meant 1936 in the seventh paragraph of that letter, Exhibit 76. What I mean by natural gas in those letters was 26-70 natural gas, a grade that is most popular from a consumption standpoint. Natural gas is gasoline that is made in natural gasoline plants, made from natural gas not made from crude oil. Natural gas was not involved at all in the program.

I am sure that during the period from March 1, 1935, through 1935 and 1936, I purchased on the spot market gasoline from independent refiners in the mid-continent field other than Champlain, Danciger, Wilcox, and Taxman which I named as our dancing partners. I don't remember exactly. I would have to refer to my records. I don't remember who they were.

When I purchased from those other independent refiners, I always paid the prices that the refiner and I agreed upon at the time. I bought some gasoline on the basis
940 of the trade publications as well as on the spot market, and of course they were based on my deal with the refiner at the time. Some of them were under contract.

In buying gasoline on the spot market from independent refiners other than our dancing partners, I paid all kinds of prices in some instances lower than the prices I paid our dancing partners. It isn't true that when I did that usually there was some question of lower specifications on that gasoline; I never bought anything except within our specification range even when I paid a lower price.

I have done business with Danciger for years, and every time I buy from it the basis is decided at the time.

I might have bought for a time from Danciger at about ⅛¢ under the price I was paying our other dancing partners. I don't know.

Q. Don't you recall giving that testimony before the grand jury?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446.

The Court: Objection overruled; exception allowed.

A. No, sir; I remember testifying before the grand jury that I had been doing business with Danciger for years on the basis of the trade journals, yes, sir.

941 Q. And didn't you testify that during a portion of this period when you did business with Danciger by reason of that old association you usually paid ⅛¢ below the journals, the trade journals, for the Danciger material?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446.

The Court: Objection overruled, exception allowed.

A. I believe that is true.

Q. You believe that is true. Then when you did that you did not regard those purchases from Danciger as being program purchases, did you?

A. You mean before the program started?

Q. No, during the time the program started.

A. Well, I bought lots of gasoline during the program in this way: Early in the month, right after the meeting of those buying companies, I called these refiners and told them what gasoline I would take over the month, and usually arrived at a price basis with them. That was my custom. Then during the month I had buying orders in 1935 that came in during the month unexpectedly, and I placed additional gasoline with any one that could meet my requirements on specifications.

942 Q. And that was no program business, was it? That was not the program purchases?

A. That was gasoline—additional gasoline that I needed during the month.

Some times I bought from Danciger at flat prices, and some times on a Journal basis. I believe I bought gasoline from Danciger a little cheaper than the others. I had been doing business with them for many years. There was no obligation on my part to pay them any set price.

When I bought independent gasoline on the program for various divisions of Socony-Vacuum and Wadhams, that material would be invoiced and billed to the respective divisions by the independent refiners.

L. Olson, is and was in 1935 and 1936 an assistant to Mr. Dolan who is in charge of our refinery sales in Chicago. Mr. Dolan's superior is Mr. Bryan Reid, a defendant in this case. From time to time during this period I received telegraphic communications from Miss Olson to ship a certain number of cars to a certain point, giving me orders for material. They were orders for the Chicago division of Socony-Vacuum. I filled those orders. I believe as a rule I filled those orders by buying gasoline from our dancing partners. That would include Wilcox Oil & Gas Company and Taxman Company.

I incurred extra expenses in my program work, 943 telephone expense, some travelling expense, not much, and telegraph expense. Until June 1, 1935, the Planning and Coordination Committee paid my telephone expenses. I received a check from the Planning and Coordination Committee directly, through Mr. Ashton. I don't remember who signed the check, not Mr. Ashton or some official of the Socony Company. I don't remember who signed it. I haven't got that check.

Q. Did you give that information to the grand jury when you appeared before it?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446.

The Court: Overruled; exception allowed.

A. No, sir, I don't think you asked me.

Q. Weren't you asked who paid your expenses, and didn't you reply that you were paid by the Wadhams Oil Company?

A. The Wadhams Oil Company paid the rest of my expenses, yes, sir.

I mean through the rest of the year 1935 and through 1936, these extra expenses that I incurred on the program, such as they were. I was paid my regular salary by Wadhams Oil Company. I did not get any additional compensation for this extra work.

I talked to Mr. Maguire every week or so on various subjects. I told him what I was doing on this program, 944 off and on through the whole year and a half. When he called me up or when I went to Milwaukee, every

60 days or so, I told him in a general way what I was doing.

I talked with Mr. Irwin of the White Eagle Division on this subject only once that I remember. When he came to Tulsa on a trip in the early part of the program, I told him what I was doing. My other contacts, relative to orders and application of orders, were with Mr. McReynolds, his Traffic Manager.

I talked with Mr. Marcell on this subject only once. He came to Tulsa at one time, and I visited with him a few minutes and told him what I was doing, approximately, and in a general way, on the program. He is the general manager of the White Eagle Division. He didn't know anything about the program.

I never talked to Mr. Bryan S. Reid or Mr. Dolan about it. All my contacts with Mr. Dolan were through the telegrams that I received from him.

Q. Did you give this testimony before the grand jury with regard to Mr. Reid and Mr. Irwin:

"Now, for Socony"—

The Court: Now, wait a minute. Are you reading from the transcript of the grand jury?

Mr. Lewin: I am going to do that.

The Court: Why not ask him if he knows.

945 Mr. Donovan: Your Honor, may I have the objection to this that I have had before at R. pp. 373-74, 446?

The Court: Yes, you may. Exception allowed. Let me see that transcript before you start reading from it.

(Mr. Lewin hands document purporting to be transcript of grand jury testimony to the Court.)

(Discussion between the Court, Mr. Lewin and Mr. Donovan, out of hearing of the jury and reporters.)

The Court: Maybe I can help you out here.

Q. You know Mr. Reid?

A. Very well, yes, sir.

Q. Now, just try and recollect whether or not you did talk with him at any time about the matter counsel has referred to. Just give us your best recollection on it.

A. My best recollection is that I never talked to him about the stabilization program.

The Court: All right.

By Mr. Lewin

There is usually a distinct relationship between the trend of spot market prices in the East Texas and the Mid-Continent markets. The two prices keep fairly well in line usually going up and down together.

During the time we were operating our program, I 946 knew of the East Texas Refiners Marketing Association. It was formed sometime in January or February, 1935. I knew that this group of refiners, some 10 or 12 of them, had decided to form this association, and that they were going to run legal crude only, and that their idea was to provide for themselves a more orderly sale for their gasoline. I did not know definitely but I believe they sold some to the major companies.

I didn't make purchases through that Association for Socony and Wadhams. I made some inquiries to know whether I could make purchases through it. I called Mr. Cline on one occasion that I remember, when Mr. Bradshaw was out of town, and I needed some gasoline. Mr. Cline suggested the name of two small refiners there. The reason I called him was that I wanted gasoline from responsible refiners that were running on legal crude. I don't even remember now who these small refiners were. Cline recommended them to me. I didn't and still don't know whether they were members of that association. I knew that Cline was acting as secretary for that Association, beginning in February of 1935 and running all the way through 1935 and 1936.

I have known Neil Buckley for years. He represents Cities Service Export Corporation in Tulsa, and did in 1935 and 1936. I sometimes do business with him on natural gasoline. I think the East Texas Refiners 947 Marketing Association desired his services, and he agreed to work with them. I believe he was working with them during this period of time. I do not know exactly what his work was. He never told me. My understanding of Mr. Buckley's activities was that he was to help these small refiners in the sale of their gasoline, with major companies and any other company that he could help in that sale.

I have with me my memorandum of the dates of the various meetings with the other buyers in the program during 1935.

We had one of these meetings in early October, 1935 at Chicago. That is the one I didn't attend. We had one

November 5th which I attended. I do not know any particular occasions for that meeting. I don't remember what happened at the meeting.

I don't remember the general conditions of demand for spot market gasoline in November, 1935, whether it was good or weak. In many years we have had very fine consumption in November. In January, February and March, consumption is lower. The demand is always smaller in the winter months. That is particularly true for third-grade gasoline. That fact did not have anything to do with the necessity for this meeting in November, 1935, because we had meetings there in August, September, October, November and December.

948 In January, 1936, the demand was lower, of course, than in the fall of 1935. But I don't remember anything particular after January, 1936, that would indicate a great falling off in demand. Weather conditions weren't so bad in January, as I remember it; but they were bad in February and March. I think our conditions became worse in February.

I don't remember that Shell, Standard or any other of the buying companies found it difficult to absorb the gasoline and use it at that time. It is my recollection that these same companies took about the same amount during the winter months that they took during the fall and summer.

(Mr. Lewin hands document purporting to be transcript of grand jury testimony to the Court.).

By the Court

I have not testified that during those winter months some of the major companies were having difficulties in handling the amount of distress gasoline that the committee wanted them to take. They all took the gasoline, as far as I know, that they indicated they would in the December meeting. However, it may be that they did not take it fast enough for some of these small refiners. On one or two occasions a small refiner may have called me, and then I might have called one or two of these companies, and asked if they couldn't give the small refiner some more instructions.

949 I do not remember calling Shell and Standard of Indiana in that connection.

The Court: You recall making this answer to one of the questions:

> "Answer: I think that many of the buying companies were having a little difficulty taking this gasoline, due to weather conditions."

Was that true, that some of them were having at that time a little trouble?

A. Yes, sir, as I have already stated.

The Court: Yes, you have, I know you have. This testimony relates to a meeting in January. (Reading.)

> "Question: Now at that meeting, how did you meet the problem?
>
> "Answer: We suggested that they find a way, insofar as they could, to keep up their schedule with the smaller selling refiners who needed the instructions at that time, particularly."

Was that the fact?

A. Well, I have already stated, your Honor, that at these meetings these companies said what gasoline they would take, and what they needed. Now, it may be that in January, when weather conditions were poor, after they said what gasoline they would take and after they bought it from the small refiner, 950 for some reason or other, due to weather conditions they were not still not giving instructions. It may be that at that time the fellows they bought from called me, and I called them, and asked them if they couldn't give them instructions.

Q. Was this question asked: "Which refiners had this problem at the January meeting?" "Answer: I think Shell was one." "Question: Shell was one?" "Answer: Yes." "Question: Any others?" "Answer: I believe Standard of Indiana was indicating that their sales were off." "Question: Any others?" "Answer: I don't remember any others." "Question: What did you say to Shell or Standard of Indiana in the meeting to induce them to take it notwithstanding the problem that they had?" "Answer: We asked them if they couldn't find ways and means of taking it, anyway, which they did."

Does that refresh your recollection?

A. I never remember urging anyone in any of these meetings to take gasoline that they didn't want. They said what they wanted, and went out and bought it.

Mr. Thomas: May we have the same objection to the testimony that was read to the witness as appears at R. pp. 373-74, 446?

951 The Court: Yes. Exception allowed.

By Mr. Lewin

Q. You remember giving that testimony before the Grand Jury that his Honor read to you?

A. I remember something about it, yes. I don't remember it exactly.

Q. In substance, do you remember that testimony?

A. Yes, sir.

We had no meeting in March or April, 1936. What I did was to call Globe, Shell, Pure and Sinclair, and suggest to them that they continue to buy from the same firms that they were buying from, if they could. I did that same thing the following month. McDowell, Tuttle and I discussed that method of giving information instead of having a meeting in those months. That was discussed at this last, February 27 meeting, as I remember it. I don't remember whether McDowell said anything about his calling any of these companies. I know I called them. I don't remember whether Mr. Tuttle said he would call the companies he usually called on program matters.

I remember something about these Exhibits for identification 83, 84 and 80. Exhibit 84 is a copy of a letter to me, dated August 16, 1935, from Charles L. Jones. The other exhibits you have handed me now are copies of enclosures in that letter to me at that time. I remember receiving that letter from Mr. Jones and these enclosures in the
952 letter.

(Thereupon a recess was taken, during which time documents submitted by Mr. Lewin were marked Exhibits 681 to 707, inclusive, for identification.)

I wrote the originals of which Exhibits 681 to 707, inclusive, are copies; they begin March 8, 1935, and the last one is April 24, 1936.

Mr. Lewin: The Government offers those letters in evidence (passing exhibits to the Court).

Mr. Donovan: May I have the same objection, your Honor, as appears at R. pp. 361, 457-58, 460?

The Court: Yes. They may be received and are admissible on the conditions that the other letters were admitted, and in the way I have already instructed the jury at R. pp. 457-58. Exception allowed.

Mr. Thomas: If the Court please, I understand the offer is general, that these various exhibits counsel has, being photostatic copies, I object to their re-

ception generally for the reason that any recital that may be contained in those letters, facts, purported facts, and rumors, such as we found in those other letters yesterday, are not established upon the writing of the letters and can be established only by
953 other competent testimony, according to such recitals.

The Court: Objection overruled. Exception allowed.

(EXHIBITS 681-707 received in evidence upon the conditions stated at R. pp. 457-58. They were later admitted at R. p. 907 against all defendants generally.)

Mr. Olberg is manager of Perfect Oil Corporation at La Crosse, Wisconsin, which I said was a subsidiary of Wadhams Oil Company. Exhibit 681 is a copy of the copy that went to Mr. Olberg.

(Exhibits 681 and 682 read to the jury by Mr. Lewin.)

The reference to "Q" there means regular gasoline. By "jobbers" in that letter, I meant the jobber demand, the orders from jobbers as they came into the field down there. Someone had made some remark to me about it, and I had put it in the letter. By "jobbers," I mean a company that buys gasoline in tank car lots and resells it to dealers in the territory. I was not referring principally to jobbers in the Standard of Indiana territory, because jobbing orders come into Tulsa from all territories, including the Standard of Indiana territory.

(Exhibit 684 was read to the jury by Mr. Lewin.)

By "pool" I mean a pool of crude oil, not a buying pool.

When I said "the bulk of the East Texas gasoline con-
954 tinues its movement south," I meant movement toward the Gulf of Mexico.

(Exhibit 686 was read to the jury by Mr. Lewin.)

(Exhibit 688 was read to the jury by Mr. Lewin.)

When I said, "The steady improvement in prices for products is having a stabilizing influence on the dollar posted price for crude," I meant all products made from petroleum, including gasoline.

(Exhibit 690 was read to the jury by Mr. Lewin.)

"Natural prices are holding," refers to natural gasoline.

Mr. Romer is in our New York office, and is in charge of gasoline exchanges. During 1935 Mr. Romer had the same office. I don't know what his title is. He worked directly under Mr. Jones. Exhibits 86 and 88 for identification are copies of letters from Mr. Romer to me; and Exhibit 87 for identification is an original letter from me to Mr. Romer.

The gasoline exchange might be described in this way: That if a large refining company has gasoline for sale at the Gulf, we will say, and another company has gasoline in Chicago, the firm that has gasoline at the Gulf can supply the Gulf needs of the other company and vice versa.

955 Mr. Lewin: I offer these three exhibits in evidence.

Mr. Donovan: Your Honor, may I object, on all the grounds already stated, as appears at R. pp. 361 457-58, 460, and on the additional ground that upon the faces of the correspondence it appears that this is an exchange of letters between the witness and a man who is not a defendant in this case. It seems to me that brings it clearly within the hearsay rule which we have already stated so many times to your Honor, and is therefore not admissible on that ground; it is immaterial and irrelevant to this issue.

By the Court

In Socony-Vacuum Oil Company, Inc., Mr. Romer handled one line of work, and I handled another. His particular work applied to gasoline exchanges, and my particular work applied to the purchase of products in the field. His work involved a large territory. My work involved the Mid-Continent area. I had some contacts with him, but my contacts with him related, as I remember it, particularly to the exchange deals that he was working on, and I don't remember anything else. He never was an officer of the company, I don't believe.

The Court: Objection overruled. Exception allowed.

956 Mr. Thomas: If the Court please, I further object to the reception of these exhibits as evidence against the other defendants, particularly the individual defendants in this case, unless shown that it was brought to the attention of such individual defendants.

The Court: They are admissible on the same condition as the other letters are.

Mr. Thomas: And will the Court so instruct the jury at this time, please?

The Court: I have already instructed the jury at

R. pp. 457-58 on the conditions under which they were admitted. These letters are admitted upon the same condition, and are not admissible as against any one or corporation who was not participating in the buying program as described by the witness. Exception allowed.

(Documents previously so marked for identification are received, respectively in evidence as EXHIBITS 86, 87 and 88 upon the conditions stated at R. pp. 457-58. They were later admitted as evidence at R. p. 907 against all defendants generally.)

(Exhibit 87 was read to the jury by Mr. Lewin.)

"Mag" refers to Magnolia.

I can identify Exhibit 85 for identification, purporting to be a letter directed to Mr. Jones, dated August 19, 1935.

I wrote that letter. The pencil notations on it read:
957 "Mr. Romer, note and return, C. L. J." C. L. J. is the defendant C. L. Jones. I recognize that signature.

Mr. Thomas: If the Court please, before the cross examination of the witness Jacobi starts, I have a motion that I would like to make with respect to grand jury testimony.

Counsel for the defense respectfully move this Court to direct counsel for the Government to make available for the purpose of the cross-examination of the witness, Walter Paul Jacobi, the transcripts of the testimony of said witness before the December 1935 Grand Jury and the December 1936 Grand Jury, which transcripts the counsel for the Government have utilized, both by reading from said transcripts to the witness and by commenting to the witness with regard to said transcripts in its direct examination of said witness, in order to refresh his recollection on points which are material to the issues in this case and material to the defense in exercising that right of full cross-examination to which it is lawfully entitled. Such an examination of each of said transcripts, in so far as they concern this witness, is necessary for the cross-examination of this wit-
958 ness, especially since, as stated by the counsel for the Government and testified to by this witness, he appeared twice before the December 1935 Grand Jury and once before the December 1936 Grand Jury, and each time testified to substantially the same matters which were referred to by counsel for the Government in order to refresh the witness' rec-

ollection. Counsel for the defense should, therefore, be permitted to examine said transcripts in order to determine if explanations or qualifications of any of said testimony were made by said witness on any of said occasions referred to by said witness or counsel for the government on direct examination of this witness.

The Court: There was nothing in anything that counsel for the Government read from the testimony of this witness before the grand jury that in any way impeached his testimony on the stand. That reading from the transcript was done simply to refresh this witness' memory; and the proceedings before the grand jury, as I said before, are confidential, except to the Court and to the Government counsel; and your motion is denied.

Mr. Thomas: And may we have an exception?

The Court: You may have an exception.

959 Mr. Thomas: Now, I have an alternative motion, may it please the Court:

Counsel for the defendants respectfully move this Court to direct counsel for the Government to make available for cross-examination of the witness, Walter Paul Jacobi, the transcripts of the testimony of said witness before the Grand Juries, utilized by the counsel for the Government in their direct examination in refreshing the recollection of said witness on points which are material to the issues in this case and material to the defense in exercising that right of full cross-examination to which it is lawfully entitled.

The Court: For the same reasons, that motion is denied also. You may have an exception.

960 *Cross-Examination by Mr. Donovan.*

I recall the questions asked by the Government relative to the payment of telephone calls that I made up to June 1st in the year 1935. I said that I had paid for those calls, and that I was reimbursed. My company did not reimburse me. I was reimbursed by the Planning and Coordination Committee of the Petroleum Code. Mr. Ashton did not sign the check. I was asked if I had the check. And I said no.

Mr. Donovan: Now, if it please the Court, a subpoena has issued to the custodian of the records of the Planning and Coordination Committee of the

Code, and I would like to ask if that custodian is now here in Court.

(One of the spectators in the rear of the courtroom came forward and handed certain documents to Mr. Donovan.)

The paper purporting to be a check of the Planning and Coordination Committee under the Code for the petroleum industry, made payable to me for $366.25, together with a voucher of the Planning and Coordination Committee, F-52, dated 6/18/35, "to cover telephone expenses in connection with code work, for a period ending 5/31/35, $366.25," are the check and the voucher that I received to cover telephone expenses in connection with code work, for a period ending 5/31/35.

961 I believe Mr. Collett was Chairman of the Planning and Coordination Committee at that time. Mr. Collett was an independent producer.

(Check and voucher above mentioned offered and received in evidence as EXHIBITS 708-A and 708-B, respectively.)

The only calls included in this voucher were the calls that I made in connection with the Code work. Those were the calls that I referred to in answer to the questions of the Government and to these various men that I called up in relation to the purchase under the plan which I described.

Mr. Donovan: I desire to offer the Code of Fair Competition for the Petroleum Industry, together with the certification of the Secretary of the Interior as to the approval of the Code, in evidence.

(A true photostatic copy of Executive Order No. 6256, signed by Franklin D. Roosevelt, August 19, 1933, titled "Executive Order. Code of Fair Competition for the Petroleum Industry," is marked Exhibit 709 for identification.)

(Document being the "Code of Fair Competition for the Petroleum Industry," as submitted to the Administrator and approved by President Roosevelt on August 19, 1933, is marked Exhibit 710 for identification.)

Mr. Crawford: We object to those as incompetent, irrelevant and immaterial for any purpose; because they are not admissible, in any event, under 962 any of the issues which are presented by this indictment; and it is not proper cross-examination.

The Court: Well, I don't think they are admissible at this time, at least, as proper cross-examination of this witness. But they may be offered at some other stage of the proceedings. For the time being, the objection is sustained.

Mr. Donovan: Your Honor, my first offer was, as I said, to show the authority of the Committee authorizing the payment of the check.

Mr. Chaffetz: We admit the fact that it was paid by that Committee, and that is proved, and that is all. Beyond that, I can't conceive of any other issue in this case—

The Court: That is the point I had in mind, and for that reason I don't think it is material at this time. However, if counsel offers them at some later time, it may be material. Exception allowed.

By the Court

Prior to May 31, 1935, I had about 3 or 4 telephone calls a day which I charged the Planning and Coordination Committee. All the long distance calls made in connection with this work were to small refiners and to companies doing the purchasing. I live in Tulsa. Those calls were
963 made to St. Louis—all around the Mid-Continent field —Wichita Falls, Chicago, various points in Kansas, Oklahoma and Texas. I did not submit a bill for those telephone calls to this Committee. I took my long distance records and added those calls that applied to the work, and gave the total to Mr. Ashton. It was after that that I received this check from the Planning and Coordination Committee.

(The jury retired to the jury room.)

(The attorneys and the Court continued the discussion out of the hearing and presence of the jury and the reporter.)

The Court: I think I have heard enough on this. The question now before the Court is simply this: How far on cross-examination can the defense go? Now, the Government has submitted proof of those meetings. On the cross-examination you may interrogate this witness to find out what he knows about those meetings, when they originated, and by what authority, and so on.

Mr. Donovan: Your Honor, as a preparation for that then may I have admitted in evidence the Code and the Executive Order as a basis, so that the jury will understand what we are talking about?

964 The Court: I think you must pursue your cross-

examination a little further before we really get to that, to the Code. Exception allowed.

(A certified copy of the Code of Fair Competition for the Petroleum Industry and Administrative Orders pertaining thereto, as of March 1, 1935, marked Exhibit 711 for identification.)

(The following proceedings were had, in the presence and hearing of the jury.)

By Mr. Donovan

On my direct examination I said that I went to St. Louis on March 5, 1935, in response to a telephone call from Mr. Ashton. I left Tulsa on the night of March 4. I got into St. Louis the next day.

In the course of our meeting there Mr. Ashton told me that he wanted me to serve as a member of a sub-committee of the Tank Car Stabilization Committee.

He told me that the Tank Car Stabilization Committee had been appointed by Mr. Arnott, the chief stabilizer. He told me or I knew that the Tank Car Stabilization Committee was operating under the Petroleum Code. We were operating under that code, under the refinery allocation provision.

I was buying for my company, from refiners.

Q. And you knew, did you not, that those refiners had allocations made to them, for the production of gasoline, by the Oil Administrator.

965 Mr. Crawford: Objected to as incompetent, irrelevant and immaterial; and the question is what he did.

The Court: Objection sustained.

Mr. Donovan: Exception.

966 Q. Now, you said on direct examination, did you not, that Mr. Ashton made a statement of the purposes of the Tank Car Stabilization Committee; is that right?

A. Yes, sir.

Q. And in the course of that statement did he say that the plan that was being discussed there did not involve any pool buying?

A. Yes, sir.

Q. Did he explain that the companies who would be asked to buy were companies that had been regular buyers in that market for several years past?

A. Yes, sir.

Q. When he said that, did certain members of the committee there present state their situation with reference to their plans and their needs and their requirements for gasoline during the coming months?

A. Yes, they discussed those things.

Q. Was any comment made by any member there present representing, and who were identified with the major companies, that they were having difficulty in getting their gasoline allocations through the National Coordinator and that they would be obliged to make purchases for that reason during
967 the coming months?

A. Yes, sir, there was some reference to that by several of the firms.

Q. Did Mr. Ashton also explain that there was to be no definite assignment of a given quantity to each buyer in each month?

A. Yes, sir.

Q. And did he say that the amount to be bought should be determined by the amount of distress gasoline in the particular month and by the amount each company in that particular month might find it necessary to buy in the regular course of its business?

A. Yes.

Q. Did he explain, Mr. Jacobi, that purchases by these companies were to be purely voluntary?

A. Absolutely.

Q. Did he say that each buying company would be asked to contact a particular seller having a distress gasoline in the particular month with a view to buying that distress gasoline if it suited the buyer's requirements and if the buyer needed that much gasoline at that time?

A. Yes, sir.

Q. Now, did he say, Mr. Jacobi, that the committee's function was completed when it put the buyer in touch with the seller and that the buyer ~~and~~ seller were to work out their deal themselves as to all de-
968 tails?

A. Yes.

Q. I believe you said in your direct examination that the only reference to prices at the March 5th meeting was the statement by Mr. Ashton or Mr. McDowell that the companies ought to be willing to pay a fair market price for the gasoline as contrasted with distressed prices?

A. That is true.

Q. Was there any reference made to the fact that the Connally Act had been passed, and that the Federal Tender Board had gone into effect on March 1st, which was four days before, and that the market was already on the up-grade, was there any reference made to that fact?

A. Yes, I remember the Connally Act being mentioned.

969 It had been the practice among buyers for major companies as well as others to take advantage of refiners who were in a distress position, and beat down those refiners in their prices. I had done it myself. I think I had the reputation as a hard trader in the industry. And it had been my practice, if I would find a buyer or seller in a distress position, to get the best price I could. What Mr. Ashton said was directed to that. That is, that advantage should not be taken of a distress situation and that a fair market or going market price should be paid.

The chart that has just been unrolled was prepared under my direction and supervision. It accurately represents to the best of my knowledge the purchase prices paid by Socony-Vacuum Oil Company, including Wadhams, to independent refiners on a flat price basis, excluding intermediate specifications, compared with the composite of the price quotations of the Chicago Journal of Commerce, f. o. b., Group 3, Oklahoma, and Platt's Oilgram, Oklahoma refinery market for the year 1935.

(Chart referred to received in evidence as EXHIBIT 712.)

Each line, right and left, on the chart represents the cents per gallon, subdivided into ⅛¢. As you look at it longitudinally, it is divided into months from January to December, both inclusive. In the lines below the lines January, February, and so on of the months, those designations,
970 "5, 10, 15, 20, and 25," indicate respectively the 5th, 10th, 15th, 20th, and 25th of the month. In the middle line from January to June is the designation, also, of the days of the week. And just above the middle line from July to December, the same designations.

In the legend, blue represents the Platt's Oilgram. The ash grey square represents the Chicago Journal of Commerce. The quotations of the Journal are on the dates which the prices shown are stated to have been paid. The issue on which such quotations are published is dated one or two days later. In other words, it shows the date of the price. The upper line there marked "regular 63-70 octane," indicate the course of the quotations for regular 63-70 octane during those 12 months, and the line below that indicates the quotations for third-grade 62 octane and below for that period of 12 months. The red dots indicate the days on which we made a purchase or purchases of third-grade 62-octane and below, and the green dots indicate the days on which we made a purchase or purchases of 63-70 octane or "regular."

These legends for Platt's Oilgram and the Chicago Journal of Commerce show the range of prices on that particular day.

There were 3 purchases of third grade in December made
at the average price of the Chicago Journal of Com-
971 merce and the low price of Platt's Oilgram. The rest
were all made at or under the low.

On 46 days we made purchases of third-grade gasoline at the low of the journals during that year. On 68 days I made a purchase or purchases below the low of the quotations as reported in the Journal.

There were occasions when I made more than 1 purchase on a particular day. There were some days when I bought 3 times. They are all shown by 1 dot on that particular day.

As it appears from this chart, the market for third grade gasoline had been as reported in the journals, on a level from February 10 to March 1, at a range of 3¼¢ to 3½¢. On March 2, there was an increase in the market as reported in Platt's Oilgram from a low of ¼¢ to a low of ⅜¢, whereas, the Chicago Journal still reported the market in a range from 3¼¢ to 3½¢.

On Monday, March 4, Platt's Oilgram reported the market as having a range from ⅜¢ to ⅞¢, and the Chicago Journal of Commerce as having a range of ⅜¢ to ½¢. On the following day, as reported in the Oilgram, there was a range from 3½¢ to 3¾¢, and, as reported in the Journal, a range of 3½¢ to 3⅜¢. On March 6 there was a range of the Oilgram from 3½¢ to 3¾¢; and, as reported in the Journal,
3½¢ to 3⅝¢.

972 There had been 4 increases in the market as reflected in the journals prior to my return from St. Louis.

On March 8, as appears from this chart, Exhibit 712, there was a purchase or purchases made by me in the market as reported in the Platt's Oilgram, at the low, the Oilgram having a range on that date from 3⅝¢ to 3⅞¢; and the Journal from 3⅝¢ to 3¾¢. That was a 10 car purchase of 62 and below octane gasoline that

I bought from Champlin Refining Company on March 8. On March 14, I made a purchase at the low of the market, as reported in the Journal, which was 3¾¢ and ⅛¢ below the low of the Oilgram, which had a range on that day of 3⅞¢ to 4¢.

(Witness examines Exhibit 682.)

I recognize that letter, dated March 15, 1935, which I wrote to Mr. Maguire. In that letter, I said, "Our committee decided on a price of 3¾¢ for third grade and 4¾¢ for Q. for next week." Q is regular gasoline. At the time that I wrote that letter, as appears from the chart, the market, as reported in both journals, since March 11 and 12 had been at 3¾¢. In Platt's Oilgram on the 13th, it ranged from 3⅞¢ to 4¢.

On March 14, when I made that purchase, the range of the market in Platt's Oilgram was 3⅞¢ to 4¢; and in the Chicago Journal of Commerce, 3¾¢ to 4¢. I said our Committee had decided on a price of 3¾¢ for
973 third grade and 4¾¢ for Q for next week, meaning beginning on Monday, March 18th and ending the following Saturday.

I said, in answer to questions by counsel for the Government, that whenever I recommended a price, I paid that price for purchases made on the program. When I made a recommended price, I was simply estimating, or giving my opinion of what the market would be. During that week, the price as reported in both journals on March 15, the day I wrote that letter, had risen so that the range was 3⅞¢ to 4¢. That price continued on the 14th, 15th, and 16th. The same price was in existence on Monday, Tuesday, and Wednesday of the next week. On Thursday the Chicago Journal reported the market as at a price from 4¢ to 4⅛¢, and Platt's Oilgram from 3⅞¢ to 4¢.

Mr. Ashton at the St. Louis meeting told what was meant by a dancing partner. He said that he had observed the situation, and it seemed to him that the thing looked like a ballroom with a lot of wall flowers around the wall, with nobody to dance with, and there was a lot of other people who wanted to dance but didn't have any partners. He thought it would be a good thing if the partners and the wall flowers could get together, so that they would have a good time.

Champlin was one of our dancing partners. This purchase that I made on March 14 from Champlin was
974 made under the so-called plan. I tried to buy at the price I recommended during the week beginning

March 18. I bought 5 cars of regular gasoline on March 18 at 4¾¢ from Champlin. I bought on the 22nd 9 cars of U. S. motor gasoline, 62 and below octane, at 3⅞¢ from Champlin. That was not gasoline that I had to pay a premium for. It was just the ordinary third grade. I, nevertheless, paid ⅛¢ more than the price that I had recommended on that day for this reason: On the first purchases of gasoline I bought from Champlin, I went over to Enid on March 8, and asked him if he could meet Wadhams requirements on octane, and he said that he could. This was rather important to me. Wadhams required a 55 octane gasoline. Socony-Vacuum Divisions did not. When this gasoline was shipped to Wadhams we checked it and found that it didn't quite meet our specifications; so I went back to him and told him I couldn't take the gasoline any more on Wadhams' order unless he did meet our octane requirements. He segregated a certain amount of cracked material from his cracking unit to meet my octane requirements, and guaranteed me what I had to have. He said this would cost him more money, so on their shipments I paid him ⅛¢ more. That was on March 22.

On March 21, I bought 1 car. That was regular, though.

On Monday, March 25, I made a purchase. On
975 Monday the price as reported in both papers had the
same range, that is, from 4¢ to 4⅛¢, that it had had the two last days of the preceding week, that is, Friday and Saturday. That purchase was at 4¢ from Champlin refining Company. It was a car of 62 and below, U. S. motor, guaranteed 55 octane. It differs from the ordinary third grade. The ordinary third grade in Oklahoma runs about 48 to 53 octane, as a maximum; most of it runs 48 to 52. Particularly in the case of Wadhams, that was below our requirements on octane.

On Tuesday, the 26th, as designated by the red mark on this chart, I purchased at 3⅞¢ a car of U. S. motor gasoline, but it wasn't guaranteed 55 octane. We paid ⅛¢ more for it when it was guaranteed than when it was not.

Both of those purchases at 4¢ and 3⅞¢ were under the plan.

I made purchases on March 21, 22 and 26 at 3⅞¢. On the 22nd and 26th, the purchases were ⅛¢ under the market as reported by both journals. The 1 purchase I made on the 25th, which I said was guaranteed, was at the low of both the journals. The price range in both journals from the 22nd to and including the 27th remained the same.

My purchases in the spot market were characterized as being refinery purchases.

976 The black line on this chart represents the Chicago Journal of Commerce. At this particular time, February 4 to 10, the Chicago Journal of Commerce showed a price range of 3¼¢ to 3⅞¢, while the Oilgram showed a price range of 3¼¢ to 3½¢.

"Inter-refinery purchases" are those purchases made by one refinery from another refinery.

I testified in relation to the recommendation that I made for the week of March 18th, as reported in my letter of the 15th, which recommendation was 3¾¢. At the time I made that recommendation for the following week the price had already been the low of both the Journal and Platt's Oilgram since the 11th and 12th, and was the low for the 14th and 15th of the Journal of Commerce, and was ⅛¢ below the low of Platt's Oilgram.

My recommended price from March to June was never higher in any given week than the highest red dot on this chart. I never paid higher than the recommended price as shown by the dots on that chart. Some times my recommended price was lower than the highest red dot. The highest red dot as appears here was never higher than the low of both Journals during that period.

I have my records with me. The purchase of 1 car which I made of third grade gasoline at the low of the Journal and Platt's on March 25 was 55 octane gasoline from Champlin Refining Company of Enid, Oklahoma.

977 I purchased that for Wadhams Oil Company.

On the next day, March 26, I purchased a car of third grade gasoline from Champlin Refining Company at 3⅞¢. I would have to refer to my records, but it was not purchased for Wadhams. It went to White Eagle at Lemmon, South Dakota. I also show a car going to Fond du Lac on March 26, 1935. Those dots on the chart represent the days purchased. On the purchase that went to White Eagle, I paid ⅛¢ below the low, whereas I paid at the low for the purchase for Wadhams.

I have said that that price which I recommended on March 14 had for 4 days been at the low of both journals for part of that time, and ⅛¢ below the low of Platt's Oilgram for 2 days. As appears from this chart, during the succeeding week, that recommended price was for 4 days ⅛¢ below the low, and for the remainder of the week ¼¢ below the low. When I say "¼¢ below the low," I mean ¼¢ a gallon below the low quotation.

The purchase I made on Monday, April 1, was a car of 62 and below octane gasoline, purchased from Champlin Refining Company. There wasn't any more purchased on that day. That purchase was at 4¢, as appears from the chart, and was ⅛¢ below the low of both journals on that day.

On the next day, as shown by the chart, I made a purchase or purchases at the low of both journals, and a purchase or purchases at ⅛¢ below the low of both jour-
nals. The 1 car purchased at 4⅛¢ went to a Wad-
978 hams destination, on account of our octane require-
ments. The 4¢ car went to 1 of our other divisions, because they didn't insist on the same octane at that time that Wadhams did.

I show a purchase here on April 3 of 4 cars at 4⅛¢ from Champlin. That was for Wadhams.

On the 4th, I show a purchase of 2 cars at 4¢. Those shipments were made from Champlin. Those were for shipment to Davenport, Iowa, on that order. It moved on April 5. That would be for Lubrite.

The spot market shown from this chart had remained at a low of 4⅛¢ as reported in both journals on April 1, 2, 3 and 4.

On the 5th, as reported in the Journal of Commerce, it was at a low of 4¼¢ and on the 6th, both journals reported the low as 4¼¢. I made, as shown on that date, a purchase or purchases at the low of both journals, and a purchase or purchases at ⅛¢ below the low. I made a purchase of 2 cars from Champlin on April 6, and 4 cars from Champlin on the same date, both of which went to Wadhams. They were not different in grade or quality, because Wadhams was buying 55 octane guaranteed at that time. The only explanation I can make on that is that Champlin would give me 2 cars only, perhaps 1 purchase was made in the morning and the other in the afternoon. At any rate, I paid Champlin ⅛¢ higher on the same day for 4 cars than I did for the 2 cars that I bought earlier in the day.

979 As it appears here, the low of both journals was
the same on Monday, April 8; and on the 9th the low of both journals was still 4¼¢, remaining the same, but the Journal of Commerce high had gone up ⅛¢. That continued to the 10th. I made certain purchases on the 10th, one or more at the low of both journals,

and the other at ⅛¢ below the low. 3 cars went to Wadhams points and were guaranteed 55 octane; and the other purchase was for one of the other divisions which did not require the 55 minimum octane at the time.

On the ~~next~~ day the market remained the same, and I made a purchase on that day at ⅛¢ below the low. That was at 4⅛¢. That was 2 cars of gasoline from Champlin, purchased on April 11. It went to divisions other than Wadhams.

I purchased on April 12, according to my records, 1 car of third grade gasoline at 4⅛¢. That car apparently, from my records, went to a division other than Wadhams.

I made a purchase or purchases which were ¼¢ below the low of both journals on the 16th. That was 2 cars of U. S. motor gasoline purchased from Champlin Refining Company at 4⅛¢, for divisions other than Wadhams.

On the 17th, as appears from the chart, I made a purchase at the low of both journals, which low was the same as the preceding day. I have a purchase listed on April 17, 1935, of 3 cars of U. S. motor gasoline from Champlin Refining Company at 4⅜¢. That was 55 octane guaranteed gasoline for Wadhams Oil Company.

980 On the following days, when the low of both journals was still the same as the day before, although the market had lifted ⅛¢ as reported in the Journal of Commerce, I made a purchase at ¼¢ below the low of both journals. On the 18th, I bought 3 cars of U. S. motor gasoline from Champlin at 4⅛¢; and according to my record here, that was for divisions other than Wadhams. These 3 cars that I have just mentioned at 4⅛¢, went to the White Eagle Division in Minnesota.

On April 20, as appears from this chart, the market as reported in both journals had a range from 4½¢ to 4⅝¢, and that remained the same during the succeeding 8 days. On the 23rd, I made 2 purchases, 1 car at 4½¢, and the other at 4⅜¢. One purchase on April 23 was for 1 car U. S. motor from Danciger Refining Company at 4½¢, Group 3, for Lubrite Division. There was no special specification on that. I have no notation on anything except that Danciger always supplies me with an octane ranging from 56 to 59. I also made a purchase on that day at 4⅜¢. That was a purchase from Champlin for 1 car, U. S. Motor gasoline, for White Eagle division, that car going to Mitchell, South Dakota. I also made a purchase at 4⅛¢ on that day. That was a purchase of 1 car of U. S. Motor gasoline from Champlin at 4⅛¢,

that car going to Socony-Vacuum, White Eagle division, at Hawarden, Iowa. That was ⅜¢ below the low of
981 both journals on that day. It appears from this chart that on 8 days preceding that day, April 23, I had purchased gasoline at that same price. It was the same kind and quality of gasoline and from the same company, Champlin.

On April 6th, I bought at ⅛¢ below the low of both journals. That price was 4⅛¢. I made purchases also on the 10th, 11th, and 12th. On the 10th, and 11th, the prices were ⅛¢ below the low of both journals, and on the 12th, ¼¢ below the low of Platt's Oilgram, and ⅛¢ below the low of the Journal of Commerce. These purchases were all at 4⅛¢. I show 1 purchase for Wadhams on April 6 at 4⅛¢, and the others are for divisions other than Wadhams.

On April 24, there is a purchase of 2 cars at ⅛¢ below the low of both journals. That was 4⅜¢, from Cushing Refining Company at Cushing, Oklahoma. That went to Kimball, South Dakota, and Red Oak, Iowa, for the account of Socony-Vacuum, White Eagle division.

On the next day, the 25th, from this chart it appears that I made another purchase at the same price which was still ⅛¢ below the low of both journals. I bought 1 car of U. S. Motor gasoline from Champlin for the White Eagle division at 4⅜¢, the car going to Lemmon, South Dakota.

On the 26th, I show the purchase of 1 car from Cushing Refining Company at 4⅜¢. That went to Lubrite
982 division at Decatur, Illinois. There was another purchase on that day of 4½¢, which was the low of both journals. That was a Wadhams purchase from Danciger Refining Company at 4½¢ for shipment to Wadhams Oil Company. The octane rating of the Cushing purchase was no guarantee octane, as I remember it. It might have been below 55.

It appears from this chart, that I made a purchase at ⅛¢ below the low of the market as reported in both journals on April 30. That was at 4⅜¢. It was for the account of Socony-Vacuum, White Eagle division, 1 car U. S. motor, from Cushing Refining Company, at 4⅜¢, the car going to De Smet, South Dakota. This was no guarantee octane.

On May 1, the market, as reported in both journals, was still the same as the preceding 6 or 7 days, and I made a purchase or purchases at the low of the market, as so reported, and a purchase or purchases at ⅛¢ below the low. 1 at 4½¢, and 1 at 4⅜¢. The 4½¢ purchase was 4 cars from Danciger. It was for the account of Wadhams Oil Company going to various points in Wisconsin. The purchase at ⅛¢ below the market as reported in both journals on that same day was on May 1, 1935, for the account of Socony-Vacuum, White Eagle division, of 2 cars, of U. S. Motor, from Cushing at 4⅜¢.

On the next day, May 2, I made a purchase at the low
of the market as reported in the Journal of Com-
983 merce, and ⅛¢ below the low of the market as re-
ported in Platt's Oilgram, or at 4½¢. I made another purchase or purchases at ¼¢ below the Journal of Commerce or at 4⅜¢. I made 1 purchase at 4½¢ from Danciger Refining Company on May 2 for the account of Wadhams Oil Company. The purchase at 4⅜¢ was of 2 cars of U. S. Motor gasoline from Cushing Refining & Gasoline Company for the account of Socony-Vacuum, Lubrite division.

I made purchases at ⅛¢ below the low of the Journal of Commerce, and ¼¢ below Platt's Oilgram or at 4⅜¢ on May 4. I have 2 purchases listed on May 4, 1935: 1 car from Cushing Refining & Gasoline Company at 4⅜¢ for the account of Socony-Vacuum, White Eagle division; and 1 purchase May 4 for the account of Wadhams Oil Company at 4⅜¢, Group 3, from Simms Oil Company.

On the following Monday and Tuesday, the market, as reported in both journals, remained the same as the preceding 2 days, and on May 7, it appears that I made a purchase at ¼¢ below the market as reported in Platt's Oilgram, and ⅛¢ below the low of the market, as reported in the Chicago Journal of Commerce, or at 4⅜¢. I show a purchase to the account of Socony-Vacuum, White Eagle division, 3 cars, U. S. Motor gasoline, from Cushing Refining and Gasoline Company at 4⅜¢, Group 3.

On the next day, the 8th, the market, as reported in both
journals, was from a low of 3⅞¢ to a high of 4¾¢.
984 It appears from the chart that I made 1 purchase at
⅛¢ below the low of both journals and 1 at ¼¢ below the low of both journals. I show on May 8 a purchase of 3 cars of U. S. Motor gasoline from Danciger Refining Company for the account of Wadhams Oil Company at 4½¢, Group 3; and a car of U. S. Motor gasoline from Cushing Refining & Gasoline Company for the account of Socony-Vacuum, White Eagle division, at 4⅜¢, Group 3.

On May 9 I have a purchase listed for 2 cars of U. S. Motor gasoline from Cushing Refining & Gasoline Company to the account of Socony-Vacuum, White Eagle, at 4⅜¢, Group 3. On May 10 I show a purchase from the same firm for the account of Socony-Vacuum, White Eagle Division, and at the same price, 4⅜¢, Group 3. That last one went to Grafton, North Dakota.

On the following day, May 11, the market as reported in both journals remained the same as it had been for 3 days preceding. I made a purchase at the low of the market of both journals at 4⅝¢. That purchase was from Danciger Refining Company of 4 cars of U. S. Motor gasoline for account of Wadhams, going to various Wisconsin points. That was the special octane rating that I have already described that was the requirement for Wadhams. Danciger always supplied us with an octane meeting our requirements.

985 On Monday and Tuesday the market remained the same as on the preceding 4 or 5 days, which was between 4⅝¢ and 4¾¢. I have a purchase listed here on May 14, 1935, 4 cars of U. S. Motor from Cushing at 4⅝¢, Group 3, for Socony-Vacuum, White Eagle division.

I show a purchase on May 15 for account of Wadhams, 11 cars of U. S. Motor gasoline from Danciger at 4⅝¢, Group 3, shipment to various Wisconsin points. It was not made specially for us. It was desirable for us because of the octane rating they have on their gasoline.

Generally speaking, I paid ⅛¢ a gallon more for the Wadhams shipments than on the other divisions.

When I say unguaranteed, that means third grade 62 octane and below meeting all specifications. It isn't off-specification, but the point is that on the Wadhams there is a distinct requirement, as regards octane, that the other divisions don't have. That requirement is 55 minimum. As I testified the other day, the average octane on third grade gasoline in the Mid-Continent field runs 48 to 53, maximum, I would say. That is what I was referring to in relation to these purchases other than the 55 octane.

By Mr. Lewin

It is not true that I can send the lower octane stuff to these divisions of Socony-Vacuum other than Wadhams because they know how to reform or retreat it. They
986 don't have the specific requirements on octane that Wadhams does. They don't have any definite minimum on octane.

By Mr. Donovan

The third grade to which I referred on this other chart you now show me is the regular third grade, the specifications being such as I have designated and that 55 octane is a premium grade, so to speak. In the case of Champlin, particularly, it was a premium.

(Document referred to marked Exhibit 713, for identification.)

Exhibit 713 for identification is a chart that has been prepared from records or documents under my direction and supervision. It shows the purchase prices paid independent refiners on a flat price basis by Socony-Vacuum, including Wadhams and excluding intermediate specifications compared with composite of price quotations Chicago Journal of Commerce F. O. B. Group 3, Oklahoma, and Platt's Oilgram, Oklahoma refinery market, for 1936. This chart is based upon the same kind of data as my chart for 1935 which I have just discussed.

(Chart referred to received in evidence as EXHIBIT 713.)

The Government has all the records from which this chart was prepared. The record from which I was reading was based on the records and documents which have been impounded by the Government. When I got back I prepared these from the same records and then turned the records back to them.

987 This chart, Exhibit 713, is a little different than the other, Exhibit 712, in coloring. The Chicago Journal of Commerce is represented by green and Platt's Oilgram is the gray hatching. The green dots represent purchases that I made of regular gasoline during the period designated on the chart. The red dots represent the purchases I made of third grade over that period. There were 22 of the red dots of third grade gasoline between January and April, 1936, at the low of the Journal. There were 2 below the low of both journals.

There were 7 purchases of regular shown on that chart. 5 were at the low of both journals. 1 was at the high of the Journal, and the low of the Oilgram; and the other was at the high of the Oilgram and at the average of the Journal.

The dots show the days on which I made a purchase or purchases. There are no dots for third grade at the high of both the Oilgram and the Journal.

I recall that about January 9, 1936, there was an advance in the price of crude oil. That advance in the East Texas field was 15¢ per barrel, from $1.00 to $1.15 on 36-40 gravity. That was followed a few days later by an advance in the Mid-Continent crude price of 10¢ per barrel, from $1.00 to $1.10 on 36 gravity crude.

The price paid for crude oil is an element in the cost to the refiner in producing gasoline, probably the most
988 important thing. If the price of crude goes up, the gasoline price advances. When the price of crude went up, I had certain conversations with refiners, small refiners and others, relative to the increase in the price of crude.

I talked to a great many people at that time, in my own firm, many small refiners, particularly those that I was doing business with at the time; I talked to various individuals. I talked to Tuttle and McDowell, and they told me that they were advancing their spot price of gasoline; that is, their price that they sell on. They were sellers as well as buyers. I was a buyer. At that time the crude advance was causing quite a little comment and quite a little excitement in the industry. The refiners were all talking higher prices and asking everyone what the price of gasoline would be in their opinion. The old rule of thumb formula, that the industry has recognized and used for a long time, was mentioned; that is, ¼¢ advance in the price of gasoline for each 5¢ advance in the price of crude. That seemed to be on many people's minds.

The small refiners that I talked to were particularly anxious to get more money for their gasoline, and they asked me, and I agreed to pay them ½¢ a gallon more, which advance, according to my records, occurred on January 13, 1936.

989 (Exhibit 690, being a letter dated May 24, 1935, from Mr. Jacobi to Mr. Maguire, was handed to the witness.)

(The following was read from Exhibit 690:

"With tank car gasoline prices at the highest point in months the only concern one hears expressed in the immediate outlook is the possibility of refiners disregarding allocations and increasing runs. Chiseling on runs could very quickly start prices downward.")

Yesterday the Court, in asking me whether major companies had need for gasoline they were buying, asked me to give the capacity of the Socony-Vacuum refineries. When I wrote that letter, I was, when I spoke of refinery allocations, referring to allocations made by the allocating committee under the Code of crude runs for all refiners, large and small. Those allocations limited the amount that refineries might run. The allocating committee gave them this allocation, and that governed the amount they could run. When I referred to refiners disregarding allocations, I referred to their violation of the allocation orders pursuant to the Code. My understanding was that the allocating committee told the refiners how much crude they could produce. I may be wrong on that.

When I spoke of chiseling on runs, I meant that some
refiners would run more crude than their last allocation
990 had been, and of course make more gasoline from that
additional crude run.

I testified that I attended several meetings of the Tank Car Stabilization Committee. I was never a member of that Committee. I was a member of the so-called Mechanical Sub-Committee.

In my testimony the other day I referred to the fact that 600 or 800 cars of distress gasoline as shown on the survey were bought in various months during this period that I described. I have already testified that Mr. Ashton made a rather comprehensive statement of the plans at the meeting in St. Louis on March 5. I remember a reference to this distress gasoline, 600 or 800 cars shown on the survey, being 1½% of the total gasoline sold in the Mid-Continent area.

The amount of distress gasoline they offered on the program in comparison with the total they manufactured varied considerably with the refiner. In some cases it was very small, and in some cases it ran considerably larger.

In March, 1935, as I have already testified, Champlin only indicated 40 cars of distress gasoline, and that was what I bought from them. I estimate that Champlin, being a rather large independent refiner, on the basis of 100% sold 70% of their gasoline on contract, perhaps 30% on the
spot market; so that the 40 cars I bought from Champ-
991 lin approximated only 3% of the gasoline that they
actually sold on the spot market. About 27% of the product that they manufactured was sold in the spot market to persons other than Socony-Vacuum. That would be my estimate for the period I bought from them. I didn't buy more than 40 cars in the succeeding months. I bought 40 cars in March, and I think 38 in April from Champlin.

Champlin had been in business a good many years and had built up quite an outlet for their gasoline. In the case of the other refiners that sold us distress gasoline the relationship of the distress gasoline to other sales ran higher than the Champlin Refinery.

By Mr. Treadwell

In speaking about the work I did for Wadhams and Socony-Vacuum, I named persons in each of the divisions with whom I had contact. I named the person in each of the divisions who was the head of the division and so my ultimate superior, and then some person in the traffic department with whom my regular day to day transactions in buying orders for the purchase of gasoline were carried on.

L. L. Marcell was manager of the White Eagle division of Socony-Vacuum. Mr. McReynolds was the person in that division with whom I carried on my day to day business of buying orders for the purchase of gasoline. R. R.
992 Irwin is assistant general manager of that company.
He is described in the indictment as manager of that division. That is incorrect. Mr. Marcell is the manager of that division and was in 1935.

During that period Irwin was neither the manager of the division nor the person with whom I had contacts on the daily carrying on of my business.

By Mr. Francis

After I returned from the meeting in St. Louis on March 5, 1935, which was a meeting of the Tank Car Stabilization Committee, I called Mr. Chamberlain, who was purchasing and sales agent of The Pure Oil Company, who resided at Tulsa. My best recollection is that it was sometime prior to March 14 when I called Mr. Chamberlain. I made inquiry from Mr. Chamberlain as to whether or not his company would be interested in purchasing some gasoline. I told him that I had attended a meeting at the Coronado Hotel in St. Louis, and that no doubt he would hear further details, and mentioned the fact that his firm's name was mentioned at that meeting, and that certain quantities of gasoline were mentioned there which Mr. Ashton felt The Pure Oil Company would be interested in buying. Mr. Chamberlain said he didn't know anything about it but would check with his superiors.
993 Chamberlain never reported back to me that he had consulted with his superiors. I don't remember him telling me afterward in response to any inquiry from me what his superiors had advised him.

Mr. Chamberlain never agreed with me nor did he ever tell me, so far as he or Pure Oil was concerned, that he would buy a particular amount of gasoline at any specified price.

By Mr. Brazeau

I stated that, at the meeting in St. Louis on March 5, Mr. Tuttle of Empire Oil & Refining Company stated he would be able to take gasoline from the Olney Refining Company. Tuttle stated to me as a reason why he would be able to take gasoline of Olney Refining Company that the plant of Empire at Gainesville, Texas, had permanently closed down, and he would have to buy gasoline from other sources.

By Mr. Marshutz

The Court asked the other day as to the capacity of the Wadhams plant at East Chicago. I understood his question to mean at the present time, and I replied 11,000 barrels. In 1935, it was between 5,000 and 6,000 barrels. I remember that in February, 1935, 1 of the cracking units of this refinery went down, and in March, its other cracking unit went down. So, instead of running 5,000 or 6,000 bar-
rels a day, we were running 2,000 barrels a day. That
994 refinery has only two cracking units. That necessarily
reduced its output materially during 1935. Its rehabilitation was completed in November. I was required on behalf of Wadhams to purchase large excess amounts of gasoline during 1935 by reason of the condition of its own refinery.

I know that Wadhams furnishes a very substantial amount of the requirements of the Chicago division of Socony-Vacuum Oil Company from its East Chicago refinery. By reason of the condition of the Wadhams refinery in 1935, I know it could not meet the requirements of the Chicago division of Socony-Vacuum. That likewise necessitated purchasing large additional amounts of gasoline for that division of Socony-Vacuum.

By Mr. Kirkland

(One of the defendants stood up.)

This is Ira Smith, one of the defendants, who is standing. He is a buyer at Tulsa for Standard Oil. I have known him many, many years, and very favorably. I had an office in the same building as he did at one time.

I have a recollection of Mr. Smith attending meetings of this tank car committee. I think it was in the latter part of 1935, or the early part of 1936. Mr. Smith never attended
any meeting unless it was in the Western Petroleum
995 Refiners' Association office in Tulsa. There were a
number of meetings in the W. P. R. A. offices in Tulsa
that he didn't attend. He lived in Tulsa all that time.

I was familiar enough with him and with the oil business to know something about the authority he had in 1935 and 1936. He has always worked very closely with Mr. Bullock.

Q. And you know he had no authority to even buy a gallon of gas, without taking it up with Chicago?
A. No, I don't know that.
Q. You didn't know that?
A. No.

I do not know how he happpened to come to this meeting the latter part of 1935 after this plan had been continuing since March. I didn't invite him. He hadn't been at any meeting before that. I do not remember anything that he said at that meeting. I don't remember Mr. Smith saying very much. He did a lot of listening. He is a quiet man. He was very quiet in the meeting.

Waggoner Refining Company has a very favorable reputation as being a good refining company in that part of the world. They have their own production. They had a 996 ranch upon which oil was discovered. I have been there many times. I am quite familiar with their outfit. They are able to produce enough crude for their own needs, and have crude to sell.

They have some retail outlets of their own. They have pipe lines from their crude production wells to their refineries. They also have their own storage. So they differ from the average independent refiner, in those respects. They are quite a little larger than the average small refiner. Their financial reputation was absolutely of the best.

I didn't know Standard of Indiana was buying in 1934 from Waggoner. I have no record now to show what Standard may have bought in 1935 from Waggoner. I don't know whether they bought any more from them in 1935 than they bought in 1931 or in 1933 or in 1934, or whether they bought any differently in 1935 than they did in 1934.

Mr. Bullock wasn't at the St. Louis meeting on March 5. My recollection is that he attended one meeting, which might have been in May or December. I did not keep any record as to who were present at each meeting. We had 13 meetings. We also had meetings of our sub-committee. I have told you all that I remember as to who was there. That is my best recollection. Mr. Bullock was a quiet man, too, like Mr. Smith. He was worse.

997 *By Mr. Loucks*

I stated on my direct examination that I had 1 or 2 conversations with Mr. Evans. He never stated to me that he would purchase any specific quantity of gasoline, or that he would pay any specific price for it. I just told him about the gasoline that I had in mind, and he didn't tell me whether he would or would not buy it, or what price he would pay for it.

By Mr. Foster

Mr. Hughes attended several meetings. To my best recollection, he was at the meeting on March 5, either the morning or the afternoon. If Mr. Hughes' records show that he was in Bartlesville on that day, I would absolutely say that I was mistaken about that, and that it was some other meeting. I have told you what I think on that matter, and which I believe to be true.

By Mr. Horween

I testified that I believed that all the participating companies in this so-called plan purchased about the same amounts from the same independent refiners during the course of the year. I gave you the average of what I thought Globe bought over the period that this distress gasoline was being purchased. I believe I said they bought about 20 or 30 cars a month. I believe I said that they bought from about the same independent refiners consistently. I don't know that. I am not positive of it.
998 When I made that statement, I was talking about the group as a whole, I believe. I never knew they bought anything in cargo lots. I would be surprised to learn that they didn't buy anything at all for 2 or 3 months at a stretch.

By Mr. Lawton

In speaking of the recommendations of buying prices which I made between March 14 and June 1, 1935, I stated that I based my recommendations upon the fair prices for gasoline. Independent refiners in 1935 sold some of their products upon contract, and they disposed of some in spot transactions to their jobber outlets. They also sold some through brokers. Generally speaking, what they couldn't dispose of in these channels was distress gasoline.

I don't remember stating in connection with recommended prices that it was my idea that a fair price for distress gasoline would be either the low or the average of the journals. I stated that the trend in my recommended buying price was always up, from March 14 to my last recommendation around June 7.

I don't remember that I stated that the trend of published prices in the journals was up, and that the upward trend in the journals' prices closely paralleled the up-

ward trend in my buying prices. I said that the
999 trend of published prices in the journals was up during that same period. The upward trend in published prices in the journals, in the period from March 14 to June 7, closely paralled the upward trend in my buying prices.

It is a fact that the upward trend in my buying prices and in the journals' prices, during the period in question, closely paralled a similar upward trend in the spot market prices to jobbers.

I recall that I made a price recommendation on March 14, 1935, which was a Thursday. I made from 5 to 7 recommendations between March 14 and June 7. I don't know whether all of my recommendations were made either on a Thursday or on a Friday. I stated that I usually made them towards the middle or end of the week. Generally speaking, every recommendation I made of a buying price was to go in effect for the week beginning the following Monday.

I believe that I recall stating, in response to a question by Government counsel, that I sometimes made a comparison with my buying price on Monday, with prices quoted by the Journal for the same day; and I found the Journal prices were usually up slightly.

There were some weeks during the period from March 14 to June 7, when I didn't make any recommendation for a price change for my own buying or those with whom I came in contact.

1000 *By the Court*

I said generally speaking that I was familiar with the outlets that some of these refiners had to jobbers in 1935. I was fairly familiar with what the outlets of Champlin Refining Company were to jobbers during the early part of 1935, just from what Mr. Snider told me over a period of years. Just in the same way I was familiar with their outlet to jobbers from June 1, 1935 to January 1, 1936. I couldn't tell you whether the number of jobbers that they were selling in that period decreased over the number that they were selling to, the first part of that year. I just said I was familiar in a general way with the set-up of Champlin, and I have told you what that set-up was. If they got more jobbers or less jobbers during any period, I wouldn't have known that.

By Mr. Lawton

Q. State whether or not it is a fact that there was no price change shown in the Journal of Commerce for any Monday, any change in either the high or the low for the entire period from March 14 to June 7, 1935?

Mr. Chaffetz: If counsel is trying to point out that there was no price change reported in the Chicago Journal of Commerce for Monday, as compared with the preceding Saturday, and if that is a fact, subject to our check, we will admit it.

1001 (Witness examines chart, Exhibit 712.)

The only definite price recommendation I know about is this one on March 14, when 3¾¢ for third grade and 4¾¢ for regular was mentioned.

I do know I made recommendations and that I followed them. I did not buy third grade at any time during the period March 14 to June 7, 1935, at a price above the low of the Journal. I check two or three instances on the regular, where I paid a price over the low of the Journal.

Limiting myself to third grade, it is a fact that every new price I paid, starting with a Monday, reflected a price or was in keeping with a price which had already been published prior to that time in the Journal; in other words, there was no change made on any Monday. I believe it is true that the price I paid on any Monday, or thereafter in any week, had already been reflected in the Journal of Commerce prior to that Monday.

My first price recommendation is the one I know definitely about, and that was ⅛¢ higher than my previous price. I don't remember now any times during the period from March 14 to June 1 when I made price recommendations or changes as high as ¼¢. I believe I said ¼¢, but I don't remember that definitely. I would rather say ⅛¢ now. I don't remember definitely making any changes of ¼¢.

1002 The prices of the journals during all or part of some week during the period we have been discussing were higher than the prices I had been paying during the same week, in a great many instances. In making my recommendations of fair prices for the following week, to use my own words as stated on page 417 of the record, "we got up in line with the trade journal figure."

The presence of a large amount of distress gasoline in the hands of a refiner tended to soften or decrease his spot jobber prices. If an outlet could be found for the refiner's surplus gasoline at a fair price it would enable him to secure a fair price for the gasoline he sold to his jobbers.

In attempting to determine the amount of distress on the market at any time, our sub-committee considered that the movement of refiners' gasoline, other than that which might be purchased by majors, would proceed on a normal basis. We considered the normal outlets of the refiners in their sales to their contract people, we considered the ordinary sales they made to brokers, and sales made to jobbers in the spot market. If they had no outlet for anything beyond those outlets, that would be distress gasoline.

I knew markets in the Mid-Continent area, not mar-
1003 keting, because I am not in the marketing end of the
business. I had a good idea of what the outlets were of the independent refiners. I knew that they sold a large part of their output to jobbers.

The possibility of major purchases of distress gasoline had been discussed by the tank car committee immediately prior to March 5, 1935. I had read about it and heard rumors about it.

In the course of my duties I came into contact with the subject of broker buying from the independent refiners, I have some friends who are brokers. I was not very well acquainted with the quantity sold by the independent refiners to brokers during the period from November, 1934 down to July, 1937.

I do not know whether or not the buying by brokers increased during the early part of 1935 in relation to the amount they had bought at the end of 1934. I know nothing about that.

Referring to my letter of March 8, Exhibit 681, to Mr. Maguire where I stated that jobbers are showing more interest in the market, it is a fact that jobbers were buying in the market at that time, in addition to any buying that took place by the majors. I cannot state whether or not there was any broker buying at that time. I don't know definitely whether or not broker buying in March, 1935
was far larger than it had been in February, 1935,
1004 or January, 1935, or December, 1934. I am unable
to state what effect, if any, any broker buying had on the spot market as early as March 8, 1935, or during the month of March.

Referring to my letters of March 15, 1935, Exhibit 682, and March 29, 1935, Exhibit 684, I recall stating in my letter of March 15, "Jobber demand has decreased somewhat"; and in my letter of March 29 I stated that prices were holding firm in spite of a light jobber demand during the month of March. Referring to the statement in my letter of March 29, 1935, that the light jobber demand was due to several things, among others to a feeling that present market prices would not hold, the prices did hold. My prediction was that the jobbers would be fooled on the market. What I meant to say was that the jobbers were holding off because they thought the price would get lower. But it did not get lower. I knew purchasing conditions pretty well at the time.

Referring to the statement as to jobber demand being slow, and that jobbers were buying light because prices were going up and they were skeptical as to prices holding up, if I wrote that on March 29, it is what I thought then. I thought that the week before. I do not know specifically whether or not the market price to spot jobbers on March 29, 1935, was affected in any way by large jobber or broker purchases.

1005 I recall the statement in my letter of March 29, Exhibit 684, as to third-grade, "A price of 4⅛¢, Group 3, for this grade, is expected next week." Third grade gasoline had been at the low of 4¢ and high of 4⅛¢ in both of the journals beginning March 22, 1935, one week before I made that statement. On March 28, the day before I wrote that letter, it was at low of 4⅛¢ and at high of 4¼¢ in the Journal.

It was generally true that each time I made a prediction of a price increase, both third-grade and regular, the journals had been carrying that price for several days prior to that time. I was merely following that price when I made the prediction, or made the change.

I stated in my letter on May 10, 1935, Exhibit 688, that an increase of ⅛¢ may be looked for next week, and on May 10 the journals generally were 4⅝¢ to 4¾¢ on third-grade; and the Oilgram had been that ever since May 2. There was no increase in the Journal of Commerce during the entire next week and the week after that. There was a holiday there, May 30, and the price advanced on May 31st, according to this chart, Exhibit 712, from a low of 4⅝¢ to 4¾¢ in the Journal. There was no change at all from May 8 to 29 on the low or the high, so that the change 1006 in the Journal low or high came 21 days after I wrote that letter that there would be a change in a week.

I recall my letter of September 20, 1935, Exhibit 75, in which you say I stated in substance that some softening in third-grade had been removed by distress buying. If I said that, there had been some softening prior to the 20th in the third-grade market, spot market. The Journal reflected that softening on September 15 and 16 by dropping its price ⅛¢.

In my testimony I made a comparison of my buying prices with the trend of the prices as shown in the journals at about the end of November and December 1, 1935. I do not recall saying it was true that the trend of my buying prices and the trend of the prices in the journals were the same or substantially the same, but I will take your word for it. Based on my knowledge at the time, I am sure that the spot jobber market declined in the same relative proportion as my buying prices and the published prices at that time.

I was asked whether or not crude oil advanced in the early part of January, 1936, and I said yes. Then I stated that the refiners called me up and some refiners told me they would have to have ½¢ more for their gasoline, and I said I would pay ½¢ more. Then it was pointed out to me that the prices of the journals jumped ½¢ also at
1007 the same time. Specifically, the spot price to jobbers went up ½¢ also at the same time. So that when that change was made in 1936 in the journals, that truthfully reflected the increase in the spot jobber market.

When the journals made these changes in prices in the end of November and the first part of December, 1935, they also truthfully reflected the changes in the spot jobber market at that time.

By Mr. Hanning

It simplifies discussion of the chart, Exhibit 712, to speak of fractions of a cent in ⅛¢, 4/8¢ instead of ½¢.

Third-grade gasoline 62 and below octane was quoted in the Oilgram on March 8 at 3⅝¢ to 3⅞¢. I paid Champlin on March 8 the low price that the Oilgram carried on that date for spot market sales.

On March 7, the price of the same grade was 3⅝¢ to 3¾¢. So the day before I bought this 10 cars of gasoline from Champlin, the Oilgram was carrying a spot market published price of 3⅝¢. When I called Steiger on March 8 and told him I paid Champlin 3⅝¢ for 10 cars of gasoline, I wasn't telling him anything new at all, according to this, because the day before that was the Oilgram low for spot market shipments on sales to jobbers.

1008 In the Oilgram of March 14 the jobber price in the going or open spot market for third-grade was 3⅞¢ to 4¢. So on March 14, 1935, the first day our sub-committee met, we arrived at what we thought was the fair price of 3 6/8¢, but the price in the Oilgram that day was 3⅞¢. In other words, it was ⅛¢ higher than even the price we thought was a fair price.

Referring back to March 13, the day before, under the

Tulsa market the price for that grade of gasoline, 62 and below octane, was 3⅞¢ to 4¢. So the day before we met, the going spot market price to jobbers was 3⅞¢, or, in other words, ⅛¢ higher than the price recommended for the 14th.

I said that I thought I recommended a price of 4¾¢ on regular. Of course, 4¾¢ is 4 6/8¢. Referring again to the Oilgram of March 14, it is a fact that the quotations as of that date on regular gasoline were 4⅝¢ to 4⅞¢. My price is 4 6/8¢ that I recommended. So what I did was to take the average of the high and the low in the Oilgram of March 14 as my recommendation on regular.

Referring back to March 13, the day before, I find that, on that day, the price of regular gasoline as quoted in the Oilgram was 4⅝¢ and 4⅞¢. In other words, my price of March 14 on regular was the average of the high and the
low for regular quoted in the Oilgram, not only on
1009 March 14, but also on the preceding day, namely,
March 13.

By the Court

That was not the manner in which I arrived at that price. We discussed the price and we had reports from small refiners as to what they were getting from jobbers, and the 4¾¢ price was our idea of what the fair market price was on that day, and we discussed it. It may be that we were posted on what the journals were on that day; I don't remember.

By Mr. Hanning

The price was based on what the jobbers were paying, as shown by the prices in the Oilgram and the Chicago Journal of Commerce.

Q. In other words, what you were doing was following the going price to jobbers in the spot market all the time, weren't you? In other words, these prices were reflected in the trade journals ahead of time?

A. That is right.

They were the going prices to jobbers in the spot market, and all I was doing was to recommend the fair going price in the spot market to jobbers when I made my recommendations, so that those who accepted my recommendations would not go in and chisel on the market and cut
the market.
1010 Referring back to March 12 of the Oilgram at
Tulsa, I find that the going price to jobbers in the
spot market for regular gasoline as reported in the Oilgram

was 4⅝¢ and 4⅞¢. So that 2 days before I made this recommendation as to what we thought was the fair price, the jobber price as reported in the Oilgram was 4⅝¢ and 4⅞¢.

Referring back to March 11th, 3 days ahead of time, I find 4⅝¢ to 4⅞¢.

1011 *Redirect Examination by Mr. Lewin.*

I kept no memorandum of the dates on which I made the price recommendations. The only definite memorandum I have is the letter, Exhibit 682, I wrote on March 15, 1935 to Mr. Maguire. When I said "we discussed" what the recommended price should be, I meant McDowell and Tuttle and myself.

I kept no memorandum of the various discussions as we made those price recommendations throughout that period. I don't see why I should have kept any memorandum. There were just two prices to remember. I don't remember them now. I have nothing to remember them by.

I never saw any minutes made in the meetings of our sub-committee. It wasn't my business to suggest it, and I don't even remember any discussion about minutes. Mr. McDowell was chairman of the meeting in Mr. Ashton's office. There was no secretary named at that meeting, nor anyone acting as secretary at any one of the meetings. I made a few memoranda of what happened at the meetings. I think others did, too.

I have none of these memoranda with me. I threw them away. It is my recollection that there were 5 to 7 different price recommendations.

Q. Don't you recall testifying before the grand jury that there were from 6 to 8?

Mr. Thomas: I object to that, your Honor, as immaterial.

1012 It may have been 8 times. I don't remember how many. I only remember McDowell, Tuttle and myself discussing this. I estimated 5 to 7 times during that period, March 5 to June 7. I recently talked to them about this after I was released from the oath of secrecy.

By the Court

We have small pools within a radius of 2 miles from Tulsa. There are a number in North Texas, in Kansas and all over Oklahoma. That would be all the way from 2 to 200 miles from my office.

The refiners I have named have offices or representatives in Tulsa. The small refiners from whom I was buying gasoline were spread all over.

The trade journals must have got the information they published from the buyers and sellers in that particular locality. They called many people in the business.

The 3 members of our sub-committee were in touch with small refiners every day. McDowell and Tuttle were well posted on the matter of sales. They had many contacts on sales matters that I didn't. They sold to jobbers, and with their information and with what information I had assimilated from talking to the small refiners, we used all of those things as a basis for our conversation at our meetings.

1013 It wasn't any information we got from any of the journals, except that we knew what the journals were quoting, because we all subscribed to them.

By Mr. Lewin

I have given information to the journals for years. I was doing it during this period.

At that first meeting Mr. Boggs, Mr. Simmons and Mr. Winget were all very much pleased with this prospect that we opened up to them.

At the Coronado Hotel meeting and the meeting in Mr. Ashton's room, the price was mentioned, and it was felt by everyone that a fair market price for this distress gasoline should be paid. I could not differentiate between the conversations had in the morning and those in the afternoon.

1014 The Court: Q. Why were the majors so interested in raising the price to these refiners?

A. Because, if they all felt like I did, your Honor, we wanted to pay a fair price for this gasoline.

Q. You have already said you were pretty hard, you drove pretty hard bargains down there, and that you had that reputation.

A. Yes, I did, and after attending that Coronado Hotel meeting I was very enthusiastic, and very happy to be associated with the plan, and at that time I changed from the—in my attitude of being a hard-boiled buyer, into one that wanted to pay a fair price for this distress gasoline.

Q. What was it that influenced you to have a change of heart?

A. From the conversation and the discussion of the plan, as outlined by Mr. Ashton and the others at this meeting.

Mr. Lewin: Q. You knew how important it was to the major companies at that meeting to get that price up, didn't you?

A. I have already testified—

Q. Isn't that right? Didn't you?

A. I have already testified to that, Mr. Lewin.

1015 The Court: All right, answer it again.

Mr. Lewin: Q. That you did?

A. Yes, sir. We wanted to see that price go up.

Q. And that is what gave you the change of heart and made you enthusiastic, wasn't it?

A. No, sir. The main discussion at that Coronado meeting—

Mr. Lewin: I am not asking you about that.

Mr. Donovan: I submit, your Honor, he ought to be permitted to answer the question.

Mr. Lewin: No, I didn't ask about the Coronado meeting.

The Witness: That is what we were talking about.

Mr. Lewin: That is the reason—

Mr. Donovan: Your Honor—I am speaking to the Court—I submit, your Honor that the witness should be permitted to answer.

The Court: Well, he is, if you give him a chance. Let him answer. Read the question, please.

(Question read by reporter, as follows: "Q. And that is what gave you the change of heart and made you enthusiastic, wasn't it?")

A. No, sir, I don't care to say yes to that question.

Mr. Lewin: Q. You don't care to say it.

1016 A. No, sir.

Q. You knew that these major companies represented at that meeting, and in your program, were selling millions of gallons of gasoline under contract to jobbers, at prices published in those journals, didn't you? Is that right?

A. Yes.

Q. And you knew, the higher that journal price went up, the more money they would get under those contracts with these jobbers up here in the Standard of Indiana territory, didn't you?

A. Why, certainly, I knew that they would get more money.

Q. All right. And you knew they would get a great deal more money than a few small independent refiners down there in the field, that you weren't even associated with, didn't you?

A. I have been associated with those refiners for 15 years.

Q. They paid your salary, did they?

A. No, sir.

Q. You were being paid by a major company, and you were working for a major company, weren't you?

A. Yes, sir.

Q. And that is true of McDowell?

A. I have already told you who he works for.

Q. And that is true of Tuttle?

A. Yes.

1017 Q. And the rest of these people that were in that meeting, that made that agreement to buy; isn't that right?

A. Yes.

Mr. Donovan: Now, if it please the Court, I submit that that is not a fair question—

Mr. Lewin: Oh, it is very fair, I think.

Mr. Donovan: I am speaking to the Court.

The Court: Read the last question. Tuttle was employed by a major?

A. Yes, sir.

The Court: Exception allowed. Now, what is your next question?

Mr. Hanning: If your Honor please, let me suggest this to your Honor: I think you have been very gracious with the prosecution here, in permitting them to cross-examine their own witness—

The Court: Now, just let me tell you this: It is very apparent that this witness is hostile to the Prosecution. If you noticed, when he was taken over on cross-examination by counsel for the defense he was very responsive; there was nothing evasive; he answered fully. Right now, on direct, he is hesitating, he is reluctant, he is hostile. They have a perfect right to cross-examine.

1018 Mr. Donovan: May we have an exception to your Honor's statement as to the witness being hostile?

The Court: Yes.

Recross Examination by Mr. Horween.

Q. Calling your attention to the March 5 meeting at St. Louis, did you know whether any of the men present there were members of any code committee?

Mr. Crawford: Object to that as immaterial, and not proper cross-examination.

The Court: Yes; objection sustained. Exception allowed.

Mr. Horween: Q. Mr. Jacobi, I would like to call your attention to at least two of your market letters, in which you refer to refinery allocations. Now, I take it that you were referring to the entire system whereby the Code Authority, under supervision and direction of the United States Government, prescribed the manufacturing quotas for each refinery in the country?

A. Yes, sir.

Mr. Crawford: Object to that, not proper cross-examination, and because it does not represent what the witness has said at all.

1019 The Court: Objection sustained. Exception allowed.

> (Stipulation signed by counsel for W. G. Skelly, James Nagle and Skelly Oil Company, relating to identification of certain documents marked for identification as Exhibits 93 to 128, inclusive, received in evidence as EXHIBIT 714.)

Mr. Chaffetz: The following Exhibits are offered in evidence by the government: 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 122, 123, 124, 125, 126 and 127, each of the several documents offered at this time as being admissible in evidence only against such of the defendants who have been implicated by testimony thus far adduced, particularly the testimony of Jacobi with respect to the operations of the so-called Mid-Continent buying program.

Mr. Donovan: The following objections and requests for instruction are made on behalf of the defendants with respect to each of said Exhibits:

(1) It is hearsay.

(2) It does not appear that the letter (memo-

randum or telegram) was made in the regular course of business.

(3) It does not appear that it was the regular course of such business to make such memorandum, letter, telegram or record.

1020 (4) It appears on the face of the letter, telegram or memorandum that (a) it is a mere narration of a past event and therefore, not within the scope of any agency of the person making the memorandum; and (b) it is not in furtherance of any alleged conspiracy.

(5) Each and all of the defendants, excepting the defendant who signed the letter (or telegram), and the defendant company which he was authorized to represent, and the defendant who received the letter (or telegram), and the defendant company which he was authorized to represent, objects to said letter (or telegram) on the ground that said letter (or telegram) is not competent evidence and has no probative force or value to either establish the conspiracy alleged in the indictment as against these objecting defendants, or any of them, or to establish the connection with, or participation in, said alleged conspiracy by these objecting defendants, or any of them; and further request the Court to instruct the jury that said letter (or telegram) cannot and must not be considered by the jury in determining whether there was a conspiracy as alleged in the indictment, as against these objecting defendants, or any of them, or whether they or any of them were parties to such conspiracy; that the con-

1021 spiracy, if any existed, and the participation therein of these objecting defendants, or any of them, can only be established by evidence independent, separate and apart from any statements in this letter (or telegram); and also that the court further instruct the jury that this letter (or telegram) cannot and must not be considered by them as any evidence against these objecting defendants, or any of them, of the truth of matters and statements recited or set forth in said letter (or telegram).

The Court: Each and every such objection is overruled, and each and every such request for instruction is denied and the letters may be received on the condition in which they are described by counsel for the government. They are admissible only against those you have indicated. Exception allowed.

(Documents previously so marked for identification are received in evidence as EXHIBITS 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 122, 123, 124, 125, 126, and 127, respectively, upon the conditions stated. All of these exhibits were admitted at R. p. 907 against all defendants generally.)

(Mr. Chaffetz reads Exhibits 94, 95, 96, 98, 99, 101, 102, 103, 112, 113, 120, 124, 126 and 127 to the jury.)

1022 JULIUS C. EVANS, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I am employed by Barnsdall Refining Corporation as assistant to the sales manager. I have been associated with Barnsdall Companies since December, 1920, performing similar duties for 10 or 12 years. I worked for Barnsdall Oil Company until June 1, 1935, and since then for Barnsdall Refining Corporation. Mr. E. B. Reeser, a defendant in this case, was president of Barnsdall Oil Company during the first 6 months of 1935 and for 2 years prior to January 1, 1935.

In the first 5 months of 1935 Barnsdall Oil Company engaged in the business of producing crude oil, and refining and marketing petroleum products. It owned 3 refineries, 1 in Okmulgee, Oklahoma; 1 in Barnsdall, Oklahoma; and 1 in Wichita, Kansas. Barnsdall Refining Corporation, the company I am now with has owned and operated those refineries since June 1, 1935. Barnsdall Oil Company, a Delaware Corporation, was engaged in marketing gasoline during the first 5 months of 1935, but since June 1, 1935 it has been producing and selling crude oil, but not refining and marketing gasoline. On that date the refining and marketing of gasoline was taken over by Barnsdall Refining Corporation. The activ-
1023 ities of Barnsdall Refining Corporation are confined to operating these 3 refineries and marketing gasoline and other petroleum products; it produces no crude oil.

E. B. Reeser has been president of Barnsdall Refining

Corporation from June 1, 1935 down to date, and was active in exercising his duties as president. The principal office of Barnsdall Refining Corporation is in Tulsa, Oklahoma. My headquarters are at Tulsa. Mr. Reeser is there part of the time. His principal office has been at Tulsa since June 1, 1935.

I have not worked so very closely with E. B. Reeser during the period from March 1, 1935 to date. His time is pretty well divided between the Tulsa and New York offices. I usually see him some time on most of the days that he is in the Tulsa office. I do not now conduct my duties under his general supervision. During 1934 and until May 1, 1935, I had no immediate superior in my department at Tulsa. Until May 1, 1935, at least, Mr. Reeser was my immediate superior. Since that time G. F. Racette, the vice president in charge of sales, has been my immediate superior. Since June 1, 1935 I have continued to have practically the same close contact with Mr. Reeser, seeing him every day when he is there, but not to the extent that I did previously.

Barnsdall Motor fuel is our third-grade. It is made at Okmulgee and Wichita. B-Square, the regular
1024 gasoline, is made in all 3 plants, but principally at
Barnsdall, and Wichita when Okmulgee is closed. The Okmulgee plant was closed during the latter part of 1934, for approximately 3 or 4 months. I don't remember if it was closed in December, 1935, but I remember it was closed from January to April, 1936.

Approximately 45% to 50% of Barnsdall Refining Corporation's crude oil was purchased during 1935 and 1936 from Barnsdall Oil Company, and the rest was purchased from independent suppliers. Since I have very little if any contact with the crude oil supply of the company, I couldn't give you a definite answer on whether the available supply of crude oil to our company was scarce in 1936. There were reports of scarcity in the latter part of 1935 and early January, 1936. I do not know at what per cent capacity our refineries were running in 1936. I have very little contact with the actual refinery operations.

Q. Didn't you testify before the Grand Jury that you were running at about 60% capacity in that period?

A. I don't know. That is not far from true in my present opinion, however.

I would like to explain that these are the total years' operations. It might not be true each month.

I believe that on the average throughout 1935 and 1936 our plants were only running about 60% of
1025 their capacity. By capacity of a refinery I mean skimming capacity, or the amount of crude that could be run and the stills would accommodate, by taking off gasoline and light oil products but not running the rest through the pressure stills. If our plant is running at 100%, that means it is taking all the crude oil it is designed to take on a skimming plant basis. If it is run only 60% capacity through the year, it means that it could refine very much more crude oil if we had the cracking capacity to take the residue after the skimming plant operation. The main reason why we only ran 60% was because we didn't have the equipment. In skimming operations you can skim much more crude oil, and take the gasoline and light oils off and sell the balance. We can run much more through our crude stills than we could put through the higher pressure cracking stills; and if we don't have the cracking still capacity we don't need to run more crude oil to obtain cracking stock. Our cracking stills were running more than 60% capacity but I don't know whether they went to 100% or not.

Our officials decided it would be better to close the Okmulgee plant in the first 4 months of 1936. What the actual reason was, I don't know.

Q. Wasn't it because you had excess stocks of gasoline at that time?

A. If that is true, I don't know it to be the fact, no.

1026 Q. Now, didn't you so testify before the grand jury?

A. I don't remember if I did.

Q. Could I refresh your memory by reference to your grand jury testimony on that point?

Mr. Donovan: May I have the same objection as appears at R. pp. 373-74, 446?

The Court: Exception allowed. Mark it and let me see it.

Mr. Lewin: Yes, sir.

(Document purporting to be transcript of grand jury testimony handed to the Court.)

The Court: Q. I am reading from the transcript of testimony taken before the grand jury. Was this question asked you and did you make this answer? "Why didn't you shut down your plant and buy gasoline instead?"

"Answer: We were shut down for six months there.

"Question: For what purpose?

"Answer: Because we had enough gasoline without running any more."

Does that refresh your recollection as to the reason why the plant was closed during that period?

A. No, your Honor, it does not, except that if

1027 we planned,—or our officials planned to close down that plant, we usually made up a sufficient stock to take care of the shipments we had to make on account of the freight differential out of that plant for the contemplated shut-down period.

Q. Were these questions asked you and did you make these answers:

"Question: At one plant, and you were not operating the same plant in all of the first four months of 1936?

"Answer: And December, I believe, wasn't it?

"Mr. Chaffetz: And December of 1935?

"Answer: As I recall it, December, 1935, and the first four months of 1936, our Okmulgee plant was shut down.

"Question: Is that your biggest plant?

"Answer: In total capacity throughput of crude from skim standpoint, yes.

"Mr. Lewin: And that was done solely because of excess stocks?

"Answer: Well, that is the governing factor.

"Question: That is, the governing factor?

"Answer: Yes."

1028 Does that refresh your memory as to the reason why the plant was closed during December, 1935, and the first four months of 1936?

A. Yes.

Q. With that in mind, will you answer why it was closed?

A. That was undoubtedly my opinion at that time, but as I said, I had no direct connection with it being closed down, and all I could do was merely express an opinion.

Mr. Lewin: Q. Is that your opinion now, as to why that plant was shut down during those months?

A. I don't see how I could give you a definite answer to that without consulting some records. You see this plant—

The Court: Q. Have you records here that would help you?

A. I am afraid not.

The Court: You were going to answer when I interrupted you. Finish the answer.

A. I wanted to say, your Honor, I think it will be fair to explain here that the operations of the refinery as a skimming plant is a very, very, costly operation. You can't take the cracking stock for 1029 24/26 fuel oil and 32/36 gas oil which is left from the skimming operation when the gasoline is taken off, if you can't take that cracking stock and put it through your pressure stills it is a losing operation to operate a refinery on the skimming plant basis. Of course, that had to be taken into account, I am sure, at the time this plant was closed down.

Crude oil is put through a crude still, and the light vapors are taken off and condensed into an average gravity of gasoline. There is another cut which is kerosene or naphtha or distillate, or whatever it might be required in that particular refinery operation to take care of its sales. Some refiners leave a residue of 32/36 gas oil and some probably 24/26 fuel. Those charging stocks or cracking stocks are then put through the higher pressure stills or crackers. Third grade gasoline is made mostly by skimming.

Mr. Lewin: Q. So was it your opinion that the reason Okmulgee was closed down during those months was because you had excess stocks of third grade gasoline there?

A. I am sorry, I know nothing only what I have said. What I have expressed is a mere opinion, and our officials always govern those things in the light of our operating problems and the cost of making the gasoline, crude cost and all that sort of thing.

1030 Barnsdall Refining Corporation makes the following grades of gasoline: third grade, which is our cheapest motor fuel; B-Square, which is the regular; and super-gas ethyl, which is our ethyl gasoline. During 1935 and 1936 we refined for the market approximately 20% to 30% of third grade; and from 2% to 4% ethyl. The balance was regular.

The marketing territory of our companies for gasoline in 1935 and 1936 has been the Standard of Indiana territory, and Arkansas, Oklahoma and Colorado. We have some distribution in all 10 states of the Standard of Indiana territory, but in some of them not very extensive distribution. We market, and did in 1935 and 1936, some of our gasoline through jobbers, some through independent dealers to whom we sell gasoline at the tank stations, and some directly through our own service stations.

We own very few service stations in some of these states since the Iowa Plan. We have never owned a great many. We have leased and then operated more than we owned, particularly prior to the Iowa Plan. There were different dates in the different states when our company came under the Iowa Plan in the Standard of Indiana territory. I had in mind July 1, 1935 for Iowa. This plan spread gradually into the rest of the territory, not becoming general until sometime in 1936.

1031 I know Al Breuch of Madison, but not intimately. I was not here when he testified. He is one of the Barnsdall jobbers in Wisconsin under contract. He was a jobber for Barnsdall Oil Company during the first 5 months of 1935, and then for Barnsdall Refining Corporation after June 1, 1935. Jobber contracts that Barnsdall Oil Company had in the first 5 months of 1935 were adopted and taken over by Barnsdall Refining Corporation since June 1, 1935.

I would rather not try to say what volume of gasoline our company marketed in the year 1935 unless I had some records before me. I have records that I would like to refer to.

Q. Would you want to refer to those records, or could you give me the approximate figure? Do you recall testifying about that before the grand jury?

A. I recall some questions about that but I do not recall what I told you.

The Court: If you have anything that will refresh your memory now, you may resort to those records, any memorandum that you may have made.

A. I would like to do that.

This is going down as a matter of record, and I would rather have it than what I said before the grand jury.

1032 In 1935 we sold 99,568,286 gallons; in 1936, 88,556,480. Those figures are the total of all grades of gasoline that was sold by our company in all our territory.

I would hate to guess how much of that total gallonage was marketed in the Standard of Indiana territory. I would say nearer 80% than 90% of it was marketed in the Standard of Indiana territory for both those years. From 40% to 50% of the total gallonage sold in Standard of Indiana territory in 1935 and 1936 was marketed through independent jobbers under contract with us. The other, the 50% to 60%, would be marketed or sold through our bulk plants to independent dealers and through our service stations.

We sell some gasoline to large consumers in tank cars or in tank trucks. We do not have a regular arrangement with Ford Motor Company. We have sold them during that period. We sell from time to time to state and political subdivisions. Whether we sell to them on accepted bids depends on what they require. Most of them buy only on that basis.

We do not sell any substantial amount of gasoline on the spot market, usually just a car or two at a time.

It has been my duty for 6 or 7 years to make up monthly estimates for the refining department of our company as to the amount we expected to ship during the following
1033 month. A copy goes to Mr. Reeser, the president, and
a copy to Mr. Holsten, the vice-president, general manager and chairman of the operating committee of Barnsdall Refining Corporation. He is in charge of refining operations. The purpose of giving Mr. Holsten those monthly estimates is to show the quantity of gasoline I think we will need to fill our requirements for the succeeding month. I usually make those up the latter part of the previous month. Mr. Holsten might use it to govern him in the amount of his refinery operations. Whatever the Executive Committee decides about the refining operation is another matter; but, it is for their information. The purpose of my giving it to Mr. Holsten is not primarily to govern him in the amount of crude he will run, and the amount of gasoline he will make, because he might be building up storage for delivery to the pipe line, or something else so his crude runs might not be based on that estimate every month. My purpose in giving him the monthly estimates is so that he can be governed as to his refinery operations.

During 1935 and 1936, our companies had a form of marginal contract with their jobbers. The last form was adopted in April 1936. I do not have anything to do with the making of those contracts with the jobbers. As assistant sales manager of our company, these jobber contracts come to my department, and I am familiar with them.
1034 I didn't have any authority to say what would be put
in the printed form that is now used, and had nothing to do with framing it, but I did know what was being

printed. The forms of our contracts are determined by our officials.

We had several forms of jobber contracts in force for the Standard of Indiana territory prior to April, 1936. Before April 1936, the last time we adopted a form of jobber contract for use in the Standard of Indiana territory was December, 1935, and before that, April 1935, and before that, December 1934. We had some 20 different forms of contracts, from the period 1921 to the end of 1936. I can't remember all the changes we made; but every time we reprinted, we usually made some change in the form.

By the Court

My position with this company was in charge of sales. I was the assistant to the sales manager. These contracts came to my desk from our various division offices to be checked over before they were executed. That was one of my duties. Another duty was the purchasing of gasoline, including natural gasoline for our refineries. At that time I was familiar with every provision of those contracts. I am familiar now with our latest form. It is hard to keep up with 20 of them over a 6 year period, and remember all the changes in them. The price provision was an
1035 important part of that contract, and I was familiar at
the time with the price provision of the prevailing jobber's contract in force in this territory in 1935 and 1936. As we marketed in competition with what we found to be existing, we changed our contracts. We changed it in April, and again in December 1935. I don't know the changes just now. Every jobber had the same kind of a contract on new business. We had contracts in existence, which hadn't expired, that had been going for some time. When we adopted the new contract in 1935, we used it with all of our jobbers that made contracts with us after its adoption with very few exceptions.

By Mr. Lewin

Reverting to those monthly estimates that I said I made up for Mr. Holsten of the amounts we expected to ship during the following month, I can tell you how close the estimates came to the amounts we did actually ship for those months. For instance, in March, 1935, we estimated we would ship 7,250,000 gallons. We actually shipped 6,679,694. We were usually as close as that. For the whole year 1935, our estimates were off 86/100 of 1%. July, I believe, was the month in which we had the greatest variation during 1935. We estimated 9,750,000 and we shipped

10,759,713. We never were farther away in that year than 10% in our monthly estimate, and some time we were
1036 very, very close, so that the average was very close.

That was true of 1936 also. The greatest variation in 1936 was for October. We estimated 6,900,000, and we shipped 8,022,000.

In 1935 and 1936 we had our marketing territory divided up into 8 marketing divisions. All but 2 were in the Standard of Indiana territory. Those division headquarters were in Tulsa, Toledo, Chicago, Milwaukee, Council Bluffs, Minneapolis and Kansas City. We maintain offices and a permanent staff of from 10 to 50 in each of those centers.

During recess I looked over the forms of jobber contract that our company had in force in the Standard of Indiana territory in 1935 and 1936. We had 3 forms we were using then. At the beginning of the year the price provision on B-Square gasoline was the average of the two publications, Chicago Journal of Commerce and Platt's Oilgram. On the next form of contract, that provision was not changed. It continued that way throughout the rest of 1935 and through the first part of 1936. When we made our new form in April, 1936, we made no change in that provision.

At the beginning of 1935 the basic price in the first form of contract for third grade was the average of the low of the Journal of Commerce and Platt's Oilgram. The next form, adopted in December 1935, remained the same. The new price provision on third grade, in April, 1936
1037 was the average of the averages of the two publications. That is, the average of the highest and the lowest of Platt's Oilgram and of the Journal of Commerce. We had some in which you add all 4 of those quotations together and divide that by 4, and some that were just the average of the 2 averages.

If you take 99,000,000 gallons shipped in 1935, and take 80% of that for the Standard of Indiana territory, you get about 79,000,000 gallons, and if half of that is sold to jobbers, you would have approximately 40,000,000 that year sold to jobbers. That is about right on the basis of the estimate I gave you. About 40,000,000 in that year was sold at a price based on those quotations in the two journals in the spot market, but this 80% is only an estimate. I do not have the actual figures.

In selling gasoline to dealers and through our own service stations and to consumers in the Standard of Indiana territory we followed the price set by the so-called market leader in the territory. Generally the retail price set by Standard of Indiana during the period that we are discussing was about 5½¢ plus freight and taxes above the quotations on the spot market in those journals.

The gasoline we sold through retail service stations of
our own, we sold at about 5½¢, plus freight and taxes,
over the spot market quotations in the journals, but
1038 during this period, 1935 and 1936, we sold to dealers
at a discount under the normal service station price.
However, the price that we got from the dealers was based
finally on the spot market quotations in the journals.

The retail market structure is a complicated thing but the quotations in the journals were a factor in the prices that we got in the Standard of Indiana territory for approximately 79,000,000 of gallons in 1935 and something less than that in 1936.

I am familiar with the so-called major company buying activities which commenced in the spring of 1935, to the extent that they informed us. I first learned of them from Mr. McDowell. Going back to the trade papers prior to any information I had from Mr. McDowell, I first discussed it with Mr. Reeser sometime during March of 1935.

Mr. Lewin: Did you have any connection with that work?

Mr. Donovan: I object to that question. Too indefinite, "Did you have any connection with that work."

The Court: You are still speaking about the buying program?

Mr. Lewin: Yes.

The Court: He may answer that.

A. That is still a rather indefinite question as
1039 far as I am concerned personally. No, I didn't.

Mr. Lewin: On behalf of your company, did you have any connection with that work?

A. We bought distress gasoline.

Q. Did you have something to do with that?

A. Yes.

The Court: You weren't in the oil business independently of the Barnsdall people?

A. No.

Q. All you did do during 1935 and 1936 in the oil industry was work you were doing for Barnsdall?

A. Yes.

By Mr. Lewin

I talked to Mr. Reeser about this and I got instructions from him that where we could use gasoline, it would be agreeable to purchase distress gasoline which was being offered as such.

Q. Did you learn from him that that so-called distress gasoline was being offered through a committee?

A. Well, my recollection is that Mr. McDowell told me that.

I can't say that I also learned it from Mr. Reeser.

1040 I am sure I already knew it at whatever time it was in March that I talked to him. We two discussed it together, our purchasing gasoline, the supply of distress gasoline and our requirements. I am sure we discussed the committee, and the fact that this distress gasoline was going to be offered to us through a committee.

As I remember, Mr. McDowell told me that he and Mr. Tuttle and Mr. Jacobi were members of what I believe he called the Tank Car Sub-Committee of the Stabilization Committee. R. W. McDowell was vice president of Mid-Continent Petroleum Corporation. O. J. Tuttle was with Empire Oil & Refining Company. W. P. Jacobi was connected with Wadhams Oil Company.

Q. Now, what did Mr. Reeser tell you in March of 1935 about what you should do?

The Court: Do about what?

Mr. Lewin: About buying this distressed gasoline through the committee.

Mr. Denton: If the Court please, I object to the question. It assumes something not in evidence, contrary to the evidence the Government has put in. No evidence yet that this committee sold any gasoline.

Mr. Chaffetz: We want to know what the facts are.

1041 Mr. Lewin: Q. I want you to tell us what Mr. Reeser told you you should do, if anything, with regard to buying distress gasoline that the committee might offer?

The Witness: A. The buying of gasoline was left to me, and he said: "Any time we need the gasoline", he said, "you have my permission to buy distress gasoline to apply against what we need to purchase from month to month".

He did not tell me that recommendations would come from this committee from time to time. I don't remember that he said "We will have recommendations for gasoline purchases offered to us, and subject to my instructions, we can probably buy some gasoline".

Mr. Lewin: Q. Did you so testify before the Grand Jury?

A. I don't remember.

Mr. Thomas: What was the date, if the Court please, of the Grand Jury testimony to which you are referring? What date was it given?

The Court: Q. You may state just what knowledge you had of this buying program and what you did under that program for your company.

1042 *By the Court*

Let me go back to the first conversation I had with Mr. McDowell. That is the first information I had other than the notices in the trade papers that some buying was being contemplated. Mr. McDowell said to me at that time that he was one of this sub-committee. However, he didn't say how many were on it, but he did mention the other two names which I have already given. And as I recall the conversation, he said, "We have some gasoline, I can tell you where to buy some gasoline, some distress gasoline, and we probably will be calling you from time to time." That was, as I remember, 3 or 4 days prior to March 11th. He mentioned and suggested places of purchases at that time, but I didn't take any action on it until I talked to Mr. Reeser on March 11th. As I remember, he suggested that we buy from Waggoner Refining Company.

When I talked to Mr. Reeser he said, "We are always buying gasoline anyway,"—and we were from month to month; had been for a long time—"And I have no objection to our using some distress gasoline as long as we can fit it into our picture." That is the substance of the conversation with Mr. Reeser on March 11th.

I had a half dozen or more conversations with Mr. McDowell after that date about this business of buying distress gasoline. I don't remember any other talks 1043 with Mr. Reeser about buying distress gasoline after that date, except sometimes when he was passing my office, if he asked me what we were buying or what we were doing, I told him. In this conversation I had with Mr. Reeser, he did not tell me anything about what the set-up would be for the buying of this distress gasoline.

The Court: Q. Was this question asked you when you appeared before the grand jury:

> "Question: What did he tell you were the objectives of that committee?
>
> "Answer: He didn't tell me. He said that we will have recommendations for gasoline purchases offered to us and subject to my instructions we can probably buy some gasoline."

Now, was that question asked you and did you make that answer at that time?

Mr. Thomas: If the Court please, on behalf of the defendants we wish to make this objection: We object, because the transcript of testimony of the witness before the grand jury has not been properly authenticated, and there is no showing that such testimony was reduced to writing in the presence of the witness or read over, or examined by him at the time. And, furthermore, the record of such testimony, if properly authenticated, is not contemporaneous with the facts or occurrences

1044 as to which he is now asked to testify; and because such testimony was given at a time too remote from the date of the occurrence or facts inquired about, and likewise too remote from the date of trial. I understand this testimony was given about a year after the date of the conversation with Mr. Reeser and with Mr. McDowell; is that correct, Mr. Lewin?

The Court: Yes, I think that is. He said his conversation was in March with Mr. McDowell, and he testified in July of 1936. Objection overruled. Exception allowed.

Mr. Thomas: Before he proceeds, if the Court please, in order to obviate the necessity of making this same objection to further use of the grand jury testimony with this witness, will it be considered that the same objection is made to the further use and the same ruling made by the Court?

The Court: Yes, let the record so show.

Mr. Thomas: Without making an objection each time.

The Court: Any use of the transcript of the testimony before the grand jury will be made subject to that objection.

1045 The Court: Q. Now I will read your answer that you made at that time: "He didn't tell me. He said that we will have recommendations for gasoline purchases offered to us and subject to my instructions we can probably buy some gasoline."

Did you make that answer at that time?

A. I suppose I did.

Q. Now, does that refresh your memory as to just what conversation you did have with Mr. Reeser?

Mr. Donovan: May I suggest to your Honor that the answer of the witness is in substance not inconsistent with what your Honor has read.

The Court: No, it is not, but I think while we are on the subject if he can,—if it does refresh his memory,—

Q. Will you state now what your recollection is as to whatever conversations you had with Mr. Reeser about this subject matter.

A. I don't remember his saying that. I don't definitely remember testifying to that effect before the grand jury. But at the time of our conversation I undoubtedly assumed that he had knowledge of it,—the fact that distress gasoline was being offered and some work was being done to formulate plans to purchase it. In substance he
1046 said to me about this: "You are authorized to buy such distress gasoline as we have a place for and will fit in with our regular estimates of what we need."

We bought 24 tank cars of this distress gasoline in March of 1935; in April, 29 cars; May, 20; June, 26; July, 15; August, 8; September, 17; October, 29. The amounts varied each month. One reason the amounts varied was because our requirements varied. Another reason was that we were buying other gasoline all the time, and we didn't take this distress material unless we could find a place for it among our other purchases. We purchased for freight saving and things of that sort.

Mr. Lewin: Q. Have you a record there of your purchases through the committee during 1935.

Mr. Denton: I object to the question because it is assuming something that is not in evidence. There is no testimony in this record so far, as I understand it, that the committee sold any gasoline.

The Court: This witness has not testified that he purchased through any committee.

We made the purchases of distress gasoline direct from the refiner from whom we purchased. The committee suggested sources of supply, and sometimes possibly amounts. But we didn't pay any attention 1047 to that if it didn't work into our picture.

Mr. Lewin: Q. Did Mr. Reeser tell you that you would get telephone calls from members of this Committee?

A. That I don't remember that he did.

Q. Did he tell you that most of the calls would come from Mr. McDowell?

A. No, he didn't tell me where the calls would come from.

(Mr. Lewin hands documents purporting to be transcript of grand jury testimony to the Court.)

At the time of that conversation with Mr. Reeser there was no object in my trying to tell him anything about some buying or his telling me anything about it. I assumed we knew each other knew about it. He only authorized me to purchase such of our requirements as we could apply as against such distress material as was offered. I told him that I had had a call from Mr. McDowell, and he may have said, "Well, you may have some more from him." I don't remember him telling me that sometimes he might handle the matter himself.

(Mr. Lewin hands document purporting to be transcript of grand jury testimony to the Court.)

The Court: That one question is too indefinite, but I will ask this question:

Q. Did Mr. Reeser in his conversation with you 1048 as to the distress gasoline that was to be purchased designate any company that you were to buy from?

A. Not except that he may have said, in his first conversation, that he had no objection to our buying from Waggoner. I don't remember at any other time he said to buy it from anybody, or that he did in that instance.

Q. I will read an answer that appears in this testimony taken before the grand jury:

"Answer: And some of the gasoline that was purchased early in 1935 he told me, let's buy it from certain companies, and he designated the companies."

Is it your recollection now that there was only one company?

Mr. Donovan: The same objection as appears at R. p. 518.

The Court: Overruled; exception allowed.

A. That is all I remember right now. May I have leave to explain that? I remember Waggoner, because we had not previously been buying from them. If there were others, I certainly don't recall.

By the Court

In 1935 we bought distress gasoline from different 1049 sources: Bell Oil & Gas Company; Waggoner Refining Company; Rock Island Refining Company; Danciger Refineries, Incorporated; Vickers Petroleum Company, Simms Petroleum Company; Omar Refining Company; McMurray Refining Company; L. O. Carter Company; Tansel Petroleum Company; Dale W. Moore Oil Company; Hercules Oil Company; Taxman Refining Company; Grogan Oil Company; Acme Petroleum Company; Falcon Refining Company; and Russell Refining Company.

As I remember it now, in practically every instance all of those companies were people that we had done business with before 1935, except probably Waggoner. There may have been one or two others.

By Mr. Lewin

We had not done much business with Rock Island before; apparently that is another one of the exceptions.

Mr. Reeser did not tell me that this buying was to be a month to month proposition, and that he would instruct me definitely as to the quantities that we would take.

(Document purporting to be transcript of grand jury testimony handed to the Court by Mr. Lewin for examination.)

The Court: Q. Now, for the purpose of refreshing your memory, I will ask you if, when you appeared before the grand jury, these questions were asked you and did you make these answers:

1050 "Q. No. I was interested in there from '35 on. What instructions did Mr. Reeser give you with regard to this extra purchasing that you were doing?

"A. That it was to be a month to month proposition, and he would instruct me definitely as to the quantity."

Now, after hearing that question, and that answer read; does that refresh your memory as to what your instructions were from Mr. Reeser, with reference to the monthly purchases of gasoline?

Mr. Donovan: Same objection as appears at R. p. 518.

The Court: Overruled; exception allowed.

A. I am sorry, your Honor; it does not. There is so much that has gone on since, that it is hard to remember back what was actually the fact at that time.

Q. Well, this buying program, was that something unusual or was it the usual thing in your business down there?

A. So far as our buying was concerned, it was nothing at all unusual.

Q. It wasn't?

1051 A. No, sir. We had a record of purchases, away back, in 1931.

By Mr. Lewin

I don't remember talking to Mr. Reeser about this buying of distress gasoline any more after that time in March; except when he might ask me from time to time what we were buying, not only from them, but from anybody. From that time on I operated on those standing instructions.

Q. Didn't Mr. Reeser tell you in March that there would be a committee that would suggest to you where to buy, and didn't he tell you to follow the suggestions of that committee, subject to his final orders?

A. No.

(Document purporting to be transcript of grand jury testimony handed to Court by Mr. Lewin for examination, and examined by the Court.)

The Court: The questions are so leading in there that I am not going to ask him that.

By Mr. Lewin

Mr. McDowell told me that there would be gasoline offered to Barnsdall Company through a buying committee. I don't remember that Mr. Reeser told me that too. I don't remember anything definite now that Mr. Reeser said about a committee, or the buying, after that conversation in March.

1052 The Court: I think you can help us out a lot.

You have that whole set-up in mind down there, just as clear as anyone. Now, you know what Mr. Reeser said to you, and you know what conversations you had with this committee, don't you?

A. Yes, sir.

Q. And you know what they were doing, and what Mr. Reeser was doing.

(Document purporting to be transcript of grand jury testimony handed to the Court by Mr. Lewin.)

Q. Well, did you know whether or not there would be gasoline offered to you through this committee, or by this committee?

A. As I remember it, Mr. McDowell told me that they would be telling us of this gasoline from time to time.

The Court: Yes. All right, that is sufficient.

Mr. Lewin: Q. Have you ever heard the term "dancing partner" used in connection with this buying committee?

A. Yes, I have.

I don't believe I ever used that term myself outside of our own office. It just meant the company that we made that particular purchase from. In 1935 all those com-
1053 panies I read to you a while ago were our dancing partners.

In March, 1935, we bought 25 cars from Waggoner, the last 10 of which were bought March 29th for shipment in April, and 1 from Omar, and 3 from Rock Island.

In April, 1935, we bought 30 cars from Waggoner or 40 cars if you include the 10 cars purchased March 29th, 1 from Cushing; and 1 from Danciger. There was 1 car from Bell Oil & Gas, but I don't know whether it was distress gasoline, or a special grade.

We bought some of both grades, regular and third, from dancing partners during the period. We bought some third from Waggoner, and the purchase from Danciger was third grade. We bought more regular gasoline from Waggoner than any one of the others during the first part of this period. Waggoner and Rock Island were our principal sources for distress gasoline or regular grade.

(Witness examines memorandum.)

The exact number of cars for March, 1935, is 35 from Waggoner; 3 from Rock Island; 1 from Omar; and 1 from Bell. That would be 40 for March, 1935, from independent refiners located in the Mid-Continent field that is Oklahoma, Kansas and North Texas.

In February, 1935, we bought a total of 34 cars from independent refiners located in these fields. 4 cars were from Bell and 9 from Anderson-Prichard. They were
bought on the month to month basis. There were 4
1054 cars that we bought on the spot market from inde-
pendent refiners in those fields in February from the Tulsa office. All these distress gasoline purchases that I am speaking of were bought out of the Tulsa office. Those 4 cars were from Bell. There weren't any others in February.

The way I have this, 6 cars would be about right for purchases in January, 1935, on the spot market, from independent refiners located in those fields. They came from American Petroleum, Tansel, and L. O. Carter Company, all brokers. As to purchases on the spot market in January, 1935, from independent refiners located in those fields, we had 1 car here from Bell Oil & Gas. There were no others, except those we have mentioned.

I can't tell you from this record when the orders were placed, but we had 4 cars from Tansel, 1 from Boutell. I am sure that the Boutell order was in January, and most of the Tansel. That changes the final figure for January: Tansel, 4; Boutell, 1; James B. Berry, 2; L. O. Carter, 1; American Petroleum, 1; Bell, 1. That is 10 in January, all from brokers, except 1 from Bell.

Then 4 cars in February from Bell. The others in February from the brokers were: James B. Berry, 1; Hurley Gasoline Sales, 2; Boutell, 2; Sun Oil, 2. That makes 11 for February. January and February were months before I had this conversation with Mr. McDowell. After my conversation with Mr. McDowell, I took 40 in March.

1055 In April we purchased 31. They were purchased from Waggoner and Danciger; some of the others were carried over from the previous month, which were purchased on the 29th. 30 of them came from Waggoner.

We purchased 30 from Waggoner in May and 5 from Vickers. 1 is all I have here from Western Oil & Fuel. I am not sure about Western Oil & Fuel; it may have been purchased by our Minneapolis office. I have some more here, than 36 or 35 cars. The list I read to the Judge was the list of the cars that were shipped, that actually went out in that month. You see, purchasing these in the latter few days of the month, there will be a lap over. Now, I am giving you the dates the purchase orders were placed. There were 50 cars in May. Dividing them among the independent refiners from whom we purchased them—30 from Waggoner, 5 from Sims, 5 from Omar, 5 from Bell, and 5 from Vickers.

In June, Waggoner, 5; and McMurray, 5. The 5 from Omar and 5 from Bell, given you in May, were on the 29th so they were shipped in June. There were only orders for 10 cars placed in June.

Now, July: Waggoner, 10; L. O. Carter, 2; Tansel, 5; Dale W. Moore, 5; Hercules, 5. All except Waggoner are brokers. The total amount for July is 27 cars.

Now, August: L. O. Carter, 3; Tansel, 3; Hercules, 5. We did not buy any from Western Oil & Fuel unless it
1056 was handled through the Minneapolis office. That would be 11 for August.

Now, September: Dale W. Moore, 7; Tansel, 5; Taxman, 10; Grogan, 3. There was none from L. O. Carter unless it was handled by our brokerage department in Minneapolis. There was none from Omar. If there were, the same thing would be true there. There was 105,000 gallons from Anderson-Prichard but there was not a purchase order placed that month. I have 25 cars as the total amount bought on the spot market from those independents in that month.

Now, October: Waggoner, 25; Rock Island, 5. That is all. We had 2 cars from Omar and 1 from Tansel in that month, but they were probably handled by our brokerage department. That would be 30 that I handled, and possibly 3 more handled by our brokerage department, or a total of 33 for October.

Now, November: Rock Island, 5; Bell, 15; Rock Island, 10 more; Tansel, 1; Acme, 3. There was none from Waggoner. There may have been some carried over from the previous month. There was no new purchase placed during November with Waggoner. The total for November is 34.

December, 1935: Bell, 15; Rock Island, 15; Dale W. Moore, 2; Russell Refining Company, 1. I am giving them on the date of order basis. We placed an order with
1057 Falcon on December 2nd for 40 cars, or our requirements out of that quantity to be shipped as we needed it at the rate of 10 cars per month. I think over a 2 or 3 months' period we only took 13 cars. I don't know how it will show up in your tabulation. We had 1 car purchased from Omar in December, 1935, for Minneapolis. I don't

know how many were taken from Falcon. Excluding Falcon, the total for that month was 33. That 1 from Omar I am not counting because I did not place the order.

Now, January of 1936: Bell, 15; Russell, 3; Rock Island, 15. My figures show 33 for January, 1936.

Now, February, 1936: Bell, 15; Rock Island, 15. 1 from Omar was a brokerage transaction for us. I did not place the order. Wilson Oil Products Company took that. That was on March 29. It may not have been shipped in February. There was 1 more purchase for Bell, 15 cars for shipment in March. That makes a total of 46 in February, 1936.

Now, March, 1936: Rock Island, 15; Sunray, 1. There were no others. Any others would be carried over from the other month.

April, 1936: Bell, 15; Rock Island, 15; Tansel, 1; Bell,
another 15 on the 28th, many of which were carried over
like all of them where they were purchased for May ship-
ment. On the 28th, 15 for Rock Island for May ship-
1058 ment. 1 from Wilcox on the 15th. That is all except
some compartment car shipments. The total for
April, 1936 is 62.

Looking at that whole period, beginning March 1, 1935 and running through April 1936, I would hesitate to answer for a matter of record without checking it what percentage roughly of these purchases would be third grade and what percentage would be regular, but most of it was regular. We had some purchases of both grades from Bell. There is a little confusion in my mind as to just what you mean about third grade purchases from Bell. Up to April, 1936, it is true that we bought our third grade usually from Bell, but we probably bought some regular also.

During this time I remember only one or two telephone conversations with Mr. Jacobi with regard to purchasing this gasoline, and I don't remember what time during the year. It was undoubtedly after March 1, 1935. I cannot recount the conversation. The substance is that he was advising me of distress gasoline, the source of supply, and the quantity suggested to me. He suggested the place to purchase it. I don't remember now who it was or anything about it.

Q. Did he suggest the names of the companies from whom you should purchase it?

A. Well, he did that by saying where the gasoline was available, yes.

1059 Q. And named the quantities from each one?

A. I don't remember the exact conversations about that, but he undoubtedly did suggest some quantity as being available from a certain refinery.

I had some talks with Mr. McDowell on these six occasions when I talked to him about the buying of this gasoline. On those occasions McDowell suggested the source of supply and the amounts they had to offer.

I don't remember the names he may have told me in any particular time, but he probably included those that we bought from during this period. I live and work in Tulsa. I do not see R. W. McDowell often; 3 or 4 times probably during this period. I probably saw Jacobi 2 or 3 times. I think I saw O. J. Tuttle a little oftener than that during this time, probably a dozen times going and coming from his office. His office was a little closer. When I got these suggestions from Mr. McDowell or Mr. Jacobi, I did not refer them to Mr. Reeser, except on the first occasion.

We did not pay our dancing partners the same price for the same quality of gasoline at each time we bought from them, because the price was determined by my idea of the market on the day of the purchase. I don't remember any purchases from different dancing partners on the same
day, but if there were any we probably paid the
1060 same price to those different dancing partners when
we bought the same quality. I don't remember that
we gave any of them special treatment.

Q. Did you during this period get any recommendations as to special prices from anybody?

A. No, I got no prices from anybody. I checked markets with Mr. McDowell, I know. I don't remember whether I even discussed market prices or anything else with Mr. Jacobi or Mr. Tuttle.

Mr. Reeser did not tell me that I would get a price from this committee that I was to follow. The committee never suggested a price that I was to pay. My only discussion of price with the committee was as one refiner to another. I asked them their idea of the market from time to time.

By the Court

I was here a part of the time while Mr. Jacobi was testifying. I heard his testimony with reference to calling up certain individuals, certain oil men, about what the price was to be the following week. I never received any calls of that kind from McDowell or any of the committee, stating what the price was to be on Monday.

By Mr. Lewin

I understand this Exhibit 712 is a chart of the quo-
1061 tations carried in the Journal of Commerce and Platt's Oilgram for the period from January 1, 1935 to December 31, 1935. I recall that the trend of quotations carried in those journals during that period corresponded to the representation made on that chart. In the period from March 5, 1935 to June 7, 1935, I notice that chart shows the prices are rising step by step. During that time I was not getting suggestions from this committee to pay higher prices than the quotations in the Journal of Commerce.

By the Court

I never got a suggestion from any member of that committee to pay a higher price than is quoted in the Journal. I discussed prices with them. I am sure I asked them what they were paying on their purchases. The discussion was, "What is your idea of the market today?" Or something like that. That information we exchanged every day between various refiners as such. It was the same kind of conversation with one of this committee of three as a refiner rather than as a committee.

Q. We are talking about conversations with this committee. You heard Mr. Jacobi testify that the committee told him what the price would be on the following Monday—on Friday what it would be on the following Monday?

A. Yes.

1062 Q. Were you interested in that information the committee was disposing of after their meeting?

A. I never received any such information as such.

Q. Did you make this answer to this question when you were before the Grand Jury:

> "Question: Yes. Well, I think that is all right. I have no quarrel with that. My only point is that you testified that while that price was rising, you were getting suggestions from this committee to pay higher prices than the Journal.
>
> "Answer: Yes."

Does that refresh your memory any?

Mr. Donovan: Same objection as appears at R. p. 518.

The Court: Objection overruled; exception allowed.

A. Well, I must have confused a suggested price with a discussion about a going price.

Q. What is the fact as to whether or not any member of this committee ever phoned you advising you what price they had agreed upon should be the Monday price?

A. No, your Honor.

1063 Q. You never got any information of that kind from any member of that committee?

A. Not as such, no. I talked price with them, but not like that.

My discussion of prices with members of that committee would be the same as with any other refiner. That is, if they called and said so and so had some gasoline, I might say, "Are you buying gasoline now? And if so, what are you paying?" I don't remember even such a conversation with Mr. Tuttle or Mr. Jacobi, but I do remember such a conversation with Mr. McDowell. In substance, it was about what I have already said, "What is your idea of the price? Are you buying gasoline, and if so, what are you paying for it?" and without any promise on my part to pay the same price. He was buying gasoline for Mid-Continent Petroleum Corporation at that time.

Q. How many times did you have a conversation with Mr. McDowell or any member of that committee about the prices to be paid the following week?

A. I am unable to make a separation of—such a separation of prices and discussions that there was agreed prices for the following week.

Q. Well, what discussion did you have with Mr.
1064 McDowell as to prices that were to be paid on this program of buying distressed gasoline?

A. Nothing except a price—asked him, "What is your idea of the market now?" It was always left up to me, as far as Mr. McDowell was concerned, to make my own purchases at my own price.

Q. You asked him what his ideas were. Did you follow his suggestions—or, did you pay the price that he said he thought ought to be paid?

A. I don't remember I ever did, and if I did, it was entirely accidental.

I don't remember calling Mr. McDowell at all during 1935 except probably to discuss the market with him. I heard from him every month for a while when he was in town, I should say. I did not call him or discuss the market with him very often. Probably 2 or 3 times a year. I wouldn't want to say he called me every month. On these calls he would suggest gasoline available from certain refineries, and that is about all there was to it. He would not say anything about a price the committee thought ought to be the fair market price. He never gave me a committee price.

By Mr. Lewin

I made purchases of distress gasoline during the period after March 1, 1935 on the same basis and with the
1065 same authority I had had all of the time. Mr. Reeser
said it was up to me to handle it. I did not get instructions from Mr. Reeser during that period to pay a certain price for the gasoline we were buying, except my authority was from him because of the fact that my superior at that time lived in Milwaukee and he was hardly ever in Tulsa.

Q. But you do recall definitely receiving instructions from Mr. Reeser from time to time during this period that you were to pay a particular price which you understood was higher than the Journal of Commerce?

A. He left that entirely up to me.

(Mr. Lewin passes document purporting to be transcript of testimony before grand jury to the Court.)

The Court: The question was, do you remember receiving instructions of that kind from Mr. Reeser?

A. No. He relied entirely on my own judgment.

The Court: Q. You never received any such instructions from him?

A. Except in a general way as given to me to apply the distress gasoline purchases against our total requirements. If he asked me any time later what was done, I had the record.

1066 Q. Did you ever receive any instructions from him that you were to pay a particular price that you understood was higher that the Journal of Commerce price?

A. Only in the blanket authority given me to act in purchasing.

Q. How many times did you get that blanket authority?

A. Well, I had it all the time until March, 1935. He was out of the city in February, and came back to Tulsa on March 11th. He was in California, in fact. And on March 11th, we had this first conversation, and he turned this part of it up to me, and left it up to my own judgment.

Q. That was the only time you ever received any instructions from Mr. Reeser—about purchasing distress gasoline?

A. Yes. I undoubtedly talked to him some time later and we would make purchases when we needed them, and he probably would ask me.

Q. How many times did he talk to you on those occasions?

A. Mr. Reeser had a habit of strolling up and down the hall, and when I met him, he would tell me. That is all there is to that. In other words, 1067 your Honor, I was acting in the capacity of sales manager, and this was turned over to me to handle, and if Mr. Reeser had any condemnation or commendation for the way I did, he didn't say it.

Q. Did he ever have any suggestions for you about what you ought to do in buying gasoline?

A. I don't recall that he ever did. I am sure, though, that he was in accord with me that we should pay a fair market price for our purchases.

Q. Was this question asked you and did you make this answer when you testified before the Grand Jury:

> "Question: And did he say, 'Buy an eighth above the Journal,' or did he say, 'Five and three-quarters'?
>
> "Answer: I don't know that he discussed it in that way.
>
> "Question: But you recall very definitely receiving instructions from Mr. Reeser from time to time that you were to pay a particular price that you understood was higher than the Journal?
>
> 1068 "Answer: Yes, from time to time. I do not recall a great many times, but I do remember some times."

Does that refresh your memory as to what instructions you received from Mr. Reeser with reference to buying this distressed gasoline higher or lower than the quotations of the Journal?

Mr. Donovan: Same objection as appears at R. p. 518.

The Court: Objection overruled; exception allowed.

A. What time was that supposed to have been, in early 1935?

Mr. Chaffetz: In the spring of 1935.

A. Undoubtedly we discussed those purchases. It was after the fact rather than before.

The Court: Q. Now, was this question asked you and did you make this answer:

> "Question: Do you remember that during that time the tank car price of gasoline was rising?
>
> "Answer: Yes.
>
> "Question: And it reached its peak in June, 1935. Now, it probably was during that period when the price was rising that you were in-
> 1069 structed at that particular time to buy above the Journal of Commerce. I want you to tell us all you know about that, any particular instructions of that sort that came from Mr. Reeser. What were the instructions when you buy at such and such a price? Did he say, 'Buy an eighth above the Journal' or did he say 'Five and three quarters?'
>
> "Answer: I don't know that he discussed it in that way.
>
> "Question: But you do recall very definitely receiving instructions from Mr. Reeser from time to time that you were to pay a particular price which you understood was higher than the Journal of Commerce?
>
> "Answer: Yes, from time to time. I do not mean a great many times, but I do remember some times."

Does that refresh your memory as to what those instructions were from Mr. Reeser?

A. I know I never received any instructions from him to buy by the Journal. I don't remember all of this or what the circumstances were surrounding it. The only price discussions I remember of are those after the fact.

Q. What do you mean "After the fact"?

1070 A. After the purchases had been made.

Q. What was your reason for discussing it after that?

A. He quite often would go by and ask me what I was doing.

Q. Wasn't he also equally interested in what prices you were going to pay?

A. No, he seemed to have confidence in my ability to pay the fair market price.

Q. But he was interested in what you had done after you had done it, without making any suggestion to you as to what you ought to do in the case, is that right?

A. That is the way I recall it. I might say that the testimony before the Grand Jury there—

(Discussion off the record and out of the hearing of the jury between Mr. Lewin and the Court.)

(The following occurred in the hearing of the jury:)

The Court: Q. You testified twice before the Grand Jury, didn't you?

A. Yes.

Q. Do you remember testifying in relation to the same—giving substantially the same testimony the second time as you did the first time?

1071 A. No, I do not, your Honor.

Q. I am going to ask this particular question we are discussing now.

A. I don't recall it on the second appearance at all.

The Court: I will read from the testimony that you gave before the grand jury on December 21, 1936:

"Question: You remember that during that time the tank car price of gasoline was rising?

"Answer: Yes."

Q. Now, that time was from March, 1935, to June, 1935?

A. Yes.

"Question: And that it reached such a peak in 1935, in June, 1935. Now, it probably was during that period when the price was rising that you were instructed, at particular times, to buy above the Journal of Commerce. Now, I want you to tell us all about it.

"Answer: Any particular purchases of that sort, those instructions came from Mr. Reeser.

"Question: What were the instructions?

1072 "Answer: To buy at such and such a price.

"Question: Did he say an eighth above the Journal or did he say five and three-quarters?

> "Answer: I don't know whether he designated it in that way.
>
> "Question: But you recall very definitely receiving instructions from Mr. Reeser from time to time that you were to pay a particular price that you understood was higher than the Journal of Commerce?
>
> "Answer: Yes, from time to time; I do not mean a great many times, but I do remember some times.
>
> "Question; Is that your testimony?"

Was your answer this: "Yes, the thing that I didn't seem to get over to you there in that testimony is that if we made a purchase at the suggested committee price, it was checked back to him for confirmation"?

Do you remember giving that answer?

A. I do not, your Honor. I don't remember that second reading at all.

The Court: That appears to be a qualification of what your former answer was before the first grand jury.

1073 The Witness: My authority for making these purchases—

Mr. Donovan: Your Honor, if I may respectfully suggest: I think it would be fair to the witness since he has said that he does not remember that taking place, if we could find in the second grand jury how these first questions were called to his mind.

The Court: I should have gone back a question before that. Q. Is this your testimony before the former grand jury, at page 7050:

> "Question: You do remember that during that time the tank car price of gasoline was rising?"

And then after reading that, then the answers:

> "Yes. The thing that I didn't seem to get over to you there in that testimony is that if we made a purchase at the suggested committee price, it was checked back to him for confirmation."

Now, that is what was done. I didn't read the first two questions.

Mr. Francis: Did you read the date of that?

The Court: December 21, 1936.

1074 Mr. Donovan: And as I understand it now, your

Honor then read question and answer from the previous grand jury and said, "Was that your testimony."

The Court: The question is, was this your testimony before the grand jury at page 7050. Then they read it to him, and his answer was: "Yes. The thing that I didn't get over to you there in that testimony is that if we made a purchase at the suggested committee price, it was checked back to him for confirmation."

Q. And by "to him", who did you mean,—Mr. Reeser?

A. That is what I meant by that. Of course, as I say, by the time it got back to him it was already done. If he had objected to it, there was nothing that I could do except probably—

Q. Did he ever object to it?

A. I have no recollection that he did.

Mr. Lewin: Your Honor, will you look at page 738 of that record?

(Mr. Lewin hands document purporting to be transcript of testimony before grant jury to the Court)

The Court: Those questions are too leading.

1075 Mr. Lewin: Q. Wasn't Reeser telling you to buy at higher than the Journal of Commerce during that time?

A. I remember of no such instances?

Q. Do you recall giving this testimony before the grand jury—

(Mr. Lewin hands document purporting to be transcript of testimony before grand jury to the Court)

The Court: Q. Now, will you say now Mr. Reeser never told you to pay a price higher than quoted in the Journal of that date?

A. Except under his general authority to me to purchase at my own best judgment.

Q. What was that general authority?

A. Shall I say, by virtue of my position, that was my position, to make the purchases.

Q. What was there in that—

A. The authority I refer to was to apply our purchases of distress gasoline against our total requirements.

By the Court

There was nothing in that general authority, or specific authority, that directed me at any time to pay a price for gasoline higher than that quoted in the Journal. We didn't buy higher than some of the prices of the Journal.
1076 The Journal quotes a range of prices each day.
Taking our total record of shipments for the year, they compare very favorably with the low prices on the day of purchase; some below the low; a few above; and many at the low. In 1935, we had 32 purchase transactions which were below the low of the Oilgram; 23, which is 39%, at the low of the Oilgram; 4 purchases, or 6.8%, were above the low of the Oilgram on the day of the purchase. We have no purchases at all during 1935 that were above the high price shown in the Oilgram. I can give you the same comparison in the Chicago Journal of Commerce. Still speaking of 1935, 30 purchases or transactions, or 50.8%, were on a basis below the low price in the Chicago Journal of Commerce; 21 transactions, or 35.6%, were at the low price of the Chicago Journal of Commerce; 8 transactions were above the low. There were none above the high price published in the Chicago Journal of Commerce.

Q. Now, referring to your testimony before the grand jury on July 23, 1936, was this question asked you and did you make this answer:

"Question: When he told you to buy at higher than the Journal of Commerce, what he was doing was boosting the price and telling you to pay it?
1077 "Answer: Well, he was telling me to do it.
"Question: It was Reeser boosting the price?
"Answer: As far as instructions to me, that is right, yes."

Now, with that in mind, will you answer this question: Did he ever tell you to pay a higher price than that quoted in the Journal of Commerce?

Mr. Donovan: Same objection to the use of the grand jury testimony as appears at R. p. 518.

The Court: Objection overruled; exception allowed.

A. No, your Honor.

In explanation I only want to say this: That after it was all over, if he had any objections to those prices, he would have told me.

Q. That is the way you want to reconcile your testimony now with that?

A. Yes.

Q. But you never had any talk with him about the prices that you were to pay until after the sale was made?

A. That is right.

1078 *By Mr. Lewin*,

I have a purchase here from Bell on January 2, 1936, my only purchase in January, of 15 cars of third grade at 4¾¢ to be shipped over January. I have no record of what the quotation of the low in the Journal was on that day, except by referring to the chart. On January 2nd the low of the Chicago Journal of Commerce was 4¾¢. On January 9 there was an increase of 10¢ per barrel in the crude oil price.

Q. I asked you whether you didn't in that month buy 4 cars from Bell Oil & Gas, 3 of them at ⅛¢ above the low of the Chicago Journal of Commerce; and one at ¼¢ above. Will you answer that?

A. I don't know the 4 cars that you refer to. On account of a request from the seller of this gasoline, we adjusted that price on January 11th.

Q. Then is it true you bought 4 cars from Bell Oil & Gas in January of 1936 at above the low of the Chicago Journal of Commerce; 3 of them ⅛¢ above; and 1 at ¼¢ above?

A. I am sorry you are dealing with certain shipments as taken from invoices, and all I know is that on the 9th we adjusted the price to 5¼¢ at the request of the seller.

1079 The Court: He wants to know what price you paid for the gasoline.

A. The only way I can answer is, take the 5¼¢ price and compare it with the date the cars had been shipped. The 15 cars were purchased, to be shipped over January. I don't remember how many had been shipped up to January 9th, but at the seller's request we changed the price on the balance of the order, to 5¼¢. I think—

Q. Changed it from what?

A. From 4¾¢ to 5¼¢, on account of the crude advance. Now, some had been shipped, but not very much—I don't have the record of the dates of those cars; that is the reason I can't answer your question.

By Mr. Lewin

That is the best answer I can give you.

On February 29, I placed an order to be shipped as instructed for 15 cars of third grade from Bell, which must have been carried over into March. I am sure they were to be taken out in March. We bought them at 5⅛¢ until further advised. We made some purchases subject to correction, and I believe at that time that was ⅛¢ over the low of the Chicago Journal. That was third grade.

1080 Q. Look at January 1936, and tell us whether you didn't buy 3 cars from Rock Island at ⅛¢ above the low of the Journal of Commerce in that month, and 1 car at ¼¢ above the low—no, at ⅜¢ above the low of the Journal of Commerce?

A. The cars you refer to were out of a total purchased of 15 cars, on January 2nd. This was regular gasoline, purchased at 5⅝¢. That was the low on that date.

The price was understood at the date the purchase was made, and if there is any discrepancy between the price at which the shipment was invoiced and the price on the purchase order, it is because the price was adjusted.

By the Court

As to the terms on which we bought our gasoline during that period, we went out in the market and bought it and agreed to pay 4½¢ for instance. Some of these purchases about this time were made on the basis of a definite price agreed upon, which were later adjusted. Some of them were made on a basis of the publications.

In January, 1936 we bought from Bell and from Rock Island. The 15 cars of regular were purchased from Rock Island at 5⅝¢, without any adjustments of any kind, to
be shipped over January. That was a closed deal.
1081 We did not buy any gasoline during that month on
any other terms or conditions except a closed deal.
This was our only purchase. The purchase order was placed on January 2nd. 3 cars were shipped on the 8th, 3 cars on the 9th, and 1 car on the 10th. Now, at the seller's request, we adjusted the price on the balance. That was a closed deal when we bought the cars. It was closed at that time, but we reopened it. There were no conditions that if the price of crude changed, we were to make an alteration in the price we were to pay for the gas. We made the adjustment because they requested it on account of the higher cost for crude. We were not under any obligation to make the adjustment under our contract under which the purchase was made, but the price no longer remained a fair market price after crude oil went up. It had long been a practice of changing gasoline prices, when

there was a crude change, at the rate of ¼¢ a gallon for each 5¢ change in the crude oil price.

We made some other adjustments of price in the first 6 months that year. We had a purchase of 15 cars from Bell on February 1st, third grade at 5¼¢ a gallon. We later, by agreement with the seller, adjusted the price to 5⅛¢, and finally wound up with a price of 5¢, so that was adjusted downward. We worked closely with these sellers; we wanted to be satisfied, and we wanted them to be satisfied.

1082 *By Mr. Lewin*

On March 2, 1936, the low was 5⅞¢, which was the low of Platt's Oilgram for a number of days at the first of March. Then the low went up to 6¢ in both these journals for the rest of March. We made a purchase on March 2nd from Rock Island of 15 cars of regular at 6⅛¢ until further advised. That is ⅛¢ above the low of both those journals during March. We made no further adjustment of that price. It was probably an oversight on my part.

The only record I have of a purchase from Rock Island in February, 1936 is February 1st, 15 cars of regular at 6⅛¢, for shipment over February. There was no adjustment made on that price. I have no record that we bought 5 cars in that month at ⅛¢ above the low of the Journal of Commerce. If there was any adjustment made in the last part of February when the low went down to 5⅞¢, I have no record of it here. We made no purchases in the latter part of February, except third grade.

By the Court

On February 29th, we made a purchase from Bell of 15 cars third grade at 5⅛¢ until further advised. I believe that was ⅛¢ over the low of the Chicago Journal. 5¼¢ was the price in the Journal that day. Apparently the prices we paid during April were all at the low of the Jour-
1083 nal. The prices we paid were all at or below the low quotations in the Journal in May. The same thing was true in June of the same year.

By Mr. Lewin

I know Thomas Fitzgerald. He was Mr. Robert McDowell's assistant during this period in Mid-Continent Petroleum Corporation. I had conversations with him during this period, with regard to these purchases, probably a similar number as with Mr. McDowell, probably 6 or 8. I don't remember that my conversations with him were in any way particularly different from those with Mr. Mc-

Dowell. When he called me and suggested sources of supply for gasoline, I didn't understand that they were to be my sources unless I wanted to take them. In a very few instances I called those sources dancing partners. We called them dancing partners.

I am sure he recommended these companies that I have named here, from whom I bought. He did not suggest how much we should buy from each one. With respect to quantities, he may have said how much they had. He told me that to be sure there was enough for my needs, I guess. We did not have any particular difficulty in buying gasoline. Sometimes these companies when we would ask them to fill our orders, urged us to take more. That was generally true throughout this period; I think we could have bought more.

1084 Mr. Fitzgerald never suggested a definite quantity on any particular occasion for me to take. He may have told me that they had 10 cars, but he didn't suggest that I take them. That depends on the point of view. I didn't understand it to be so.

It is my best recollection now that Mr. Fitzgerald called me 6 or 7 times. I had only 1 call from O. J. Tuttle that I recall. His conversation with me was very similar to these others. I don't remember that he even mentioned dancing partners. He mentioned companies, but he did not say I was to buy from them. Undoubtedly the companies he mentioned were out of that list. I don't know any individual ones at this time. I don't remember that he mentioned quantities at any time for me to purchase.

I know John Steiger. He is an employee of Platt's Oilgram at Tulsa. He was calling me throughout this period, probably 2 or 3 times a week. He calls me on Monday morning I know particularly for market information, for prices if we had any sales to report. I don't recall ever reporting any purchases to him. If I did I told him it was from another refinery. I probably did some time or other if he asked me. I don't remember definitely that I ever told him any price I ever paid for gasoline, but if he asked me and I had purchased from someone, I undoubtedly told him. I don't remember whether he asked me.
1085 Unless he asked for refinery purchases I seldom had any prices on gasoline to give him because I only reported spot sales which were very few. I have given him our spot market quotations, but not very often, because if we made no sales we had nothing to report. We could give him what our idea of price was. I did that many times.

By the Court

I don't believe Mr. Steiger was with the Oilgram during the years of 1934 and 1933, but somebody from the Oilgram called me for information during 1932, 1933 and 1934 similar to the information I gave Mr. Steiger in 1935. Many of those calls never mentioned gasoline. They mentioned burning oil and fuel oil, and things of that sort.

One of Mr. Steiger's favorite expressions would be, "Anything new in the market today?" I understood he was asking for the market in oil products, and anything of particular interest. Then we would probably branch off on fuel oil, bright supplies, kerosene, gas oil, and so on. He never asked me the price any one else was paying than ourselves. That is about all he asked me or talked to me about. It was the same information they were gathering for years past. They have been gathering information since.

1086 *By Mr. Lewin*

Our company posts a spot market quotation for regular gasoline and third grade. We do not, at this time, publish it and post it in these 8 different division offices throughout our marketing territory. It is quite probable that we did some time during the period of 1935 and 1936. That quotation was what our idea of the market was at that time. We arrived at it by our contacts in the markets and with particular refiners. We are now taking the average of the Journal of Commerce quotations as our spot market quotation, but I don't know that we have always done it. As I recall, that was generally true throughout 1935 and 1936.

Q. And when you gave Steiger your spot market quotations you were simply giving him the average of what the Journal carried; is that right?

A. It is not.

Q. When you gave Mr. Steiger that spot market quotation wasn't that the same as the average of the Journal of Commerce?

A. I do not recall giving him spot market quotations unless we made sales. If he asked me the price I told him what I thought the market ought to be.

1087 A conservative figure of the average amounts of cars that we purchased on spot from independent refiners from March 1, 1935 through April 1936 would be about 32 cars a month. That would be about 3% of our monthly sales during that period.

The estimates for Mr. Holsten of the amounts we would probably ship over the succeeding month included all our gallonage, regardless of the source from which it was to be shipped. I would take into account how much we were purchasing. I received from Mr. Holsten or other of our officials, based on that estimate, a rough guess as to what we would need to purchase outside for that month. When I made up the estimate and gave it to Mr. Holsten I did not subtract from the final figure I gave him the amount of gasoline we would purchase from outside sources. Mr. Holsten would make the calculation of how much he ought to run at the refinery. I would not say that Mr. Holsten had to cut down his refinery run a small part so that our company could accommodate this 3% purchase. We did not have enough gallonage to operate our 3 refineries at capacity all the time, and it became necessary some times to close one down. It was costing us more to make the gasoline than we could buy it for practically all the time.

Q. I think you said he was probably running at 60% of capacity. When you buy 3% on the spot
1088 market, wouldn't he have to cut his runs down to something below 60% capacity in order to accommodate this outside material.

A. From one standpoint, yes.

Q. And is my illustration right? If you were running at 60% capacity, then when you buy 3% of the total of your monthly sales, he would cut down to say 58% or 57%. Is that the principle?

A. Yes, only it won't hold true all the way through.

The Court: Q. Why did you buy this distress gasoline in 1935 and 1936?

A. We had always made similar purchases, and it took them to make out our total shipments added to what we actually shipped from our own refineries.

We had the crude oil and equipment to supply our own demands without going out in the market and buying from smaller refineries at that time, but it cost us more to make it than to buy it. We have 3 plants, and not enough business for all 3 of them, so we cannot run them all 3 together. We have more than enough business for 2, but not enough for the third. They cannot all at the same time be operating on a profitable basis. 2 of them operated every day of the year. The Okmulgee 1089 plant was the one where fluctuation occurred. There was a certain amount of investment in that plant, a certain number of employees there, and it was a proposition to close it down altogether. Even the other 2 refineries were not run at full capacity. We are getting into that question of a skimming plant operation, or cracking plant operation. From the standpoint of skimming we did not run 1 at full capacity. From the standpoint of cracking what we do skim, we do part of the time.

By the Court

If we had run 2 of our refineries during 1935 and 1936 at full capacity, I am sure we would not have been able to produce enough gasoline to supply our needs. I am at a loss to explain exactly the difficult situation we are in. At some plants we do not have enough cracking capacity to handle all the residue we could skim. If a plant was so set up that we could run as much as possible to the skimming operation and have the capacity to further break that down by cracking, it would be an ideal operation, and on a reasonable amount every day it would be profitable at reasonable prices. But our situation is that we do not have cracking capacity at either of these plants sufficient to take care of all we could skim in the skimming operation. The skimming operation is not a profitable one, but the profitable operation would come as the result of the cracking plant operation.

1090 During the period we are discussing our plants were run down. We had made some improvements and betterments where we could put on a better operation. As they were set up at that time I do not believe it was possible to have operated them profitably or we would not have gotten the maximum amount of gasoline through them.

The Barnsdall plant is our oldest plant and most complete. There we make some 150 products. We may make them in one month, and part of them the next month, and all of that has to be taken into account in the daily operation, whether it is lubricating oil and all that sort of thing, or gas oil and residual fuel to put through the high pressure still. I am unable to answer by gallons by plants how much gasoline would be produced a day with every machine operating and every man working full time. I do not believe if our refinery man was here himself, he could do that.

We could run through the Barnsdall plant in one month, operating under such conditions, 3,000 or 3,500 barrels of crude oil a day. Two of those plants operating at full capacity, during this period we have in mind, would not have supplied our demands for gasoline that we were to furnish our trade. But if we had operated a third plant, it would have been too much.

Q. So it is your idea that it was cheaper for you to go out into the market and buy the gasoline
1091 that you needed, over and above the amount produced by the two plants.

A. We didn't buy that much, your Honor, but we did buy a part of it. We could produce gasoline at a cheaper figure in two plants, operating at something near capacity, than we could in two plants at capacity and the third at half capacity.

We were operating all 3 plants during all of 1935. During the first 4 months of 1936 only the 2 plants were operating; Okmulgee was closed. After that the 3 plants operated.

I don't recall Mr. McDowell ever suggesting a definite amount to be purchased.

Q. Do you remember him saying, when he did make a suggestion as to amounts, "Do you think this is more than your share?"

A. No, I do not.

Q. Do you remember telling him that you had no way of knowing what your share was?

A. I may have. I didn't consider that we had any share.

Q. Well, do you think you told him that you didn't have any way of knowing that your share was?

A. I have said I may have, because I didn't
1092 know that we had any share.

Q. Did you tell him, "I have never known what percentage of the total ours was?"

A. I might have. I don't recall.

Q. Let's see if we may refresh your recollection. Do you remember him saying during that conversation, "Well, this amount I am recommending is not too much for you to take?"

A. Well, I must confess I don't remember that particular conversation.

Q. All right, let's see if we can refresh your recollection.

(Document purporting to be transcript of testimony before grand jury handed to Court by Mr. Lewin, and examined by the Court.)

The Court: I don't think there is anything inconsistent at all there.

Mr. Chaffetz: If your Honor please, it does seem to me that that testimony is directly inconsistent with his entire—

Mr. Donovan: I object to that statement before the jury.

The Court: I must disagree with you. I have made my ruling, and I don't want any more discussion from anybody.

Mr. Chaffetz: I beg your pardon.

1093 Mr. Lewin: Q. Did Mr. McDowell usually say to you, using the word "dancing partner," that your dancing partner is such and such a company for such and such a month, and for such and such an amount?

A. No, I don't remember it in so many words. I remember the expression, "the dancing partner".

Q. Do you remember his telling you who your dancing partner was, and using those words?

A. I do not.

Q. Do you remember him using the words that your dancing partners were such and such companies?

(Mr. Lewin presents document purporting to be transcript of testimony before grand jury to the Court.)

The Court: Now, try and recollect what it was, without having to go through all this.

A. I don't recall any time when he said, "You are supposed to take such and such a company for a dancing partner," or a certain quantity to be purchased.

By Mr. Lewin:

I said before that I used the term "dancing partners" in my office, and heard it used outside. We used it to apply to any such gasoline we bought, regardless of

1094 the source of the information. We referred to the person we bought it from as a dancing partner, but he didn't know we referred to him as a dancing partner.

By the Court

Mr. McDowell may have mentioned the name of a company in connection with the term "dancing partner." He probably did use the term. He never told me I was to buy from anyone. His were merely suggestions.

Mr. Lewin: Q. Do you remember times when you weren't desirous of buying more than this 30 cars average?

A. Why, no, I can't remember that.

Mr. McDowell may have suggested that we take some more, after we had all we could take, or all we wanted. I don't remember that he urged it. A suggestion from him wasn't an urge. We had many chances to purchase gasoline which we did not do, when we had already covered our requirements. I know only by report that other major companies were buying gasoline on suggestions from this committee.

I do not know what, if any, effect the amount of distress gasoline we were buying ~~was~~ having on the quoted prices.

I knew A. V. Bourque, a defendant in this case, through 1935 and 1936. During those years he was secretary
1095 of the Western Petroleum Refiners Association. I sent him written reports each week for a few weeks of 1935, but I don't remember how many, of the amount of distress gasoline we were buying. I don't remember now when I started to send him those reports. I am sure we did not start sending reports when the buying activities started in March. April or May would be my best recollection. I don't remember how long I continued to send these reports, but I should say about 2 months, maybe 3. I don't remember sending them beyond the end of June 1935. He requested such reports and I sent them without any instructions. I sent them only on his request, and on my own initiative. Mr. Reeser did not tell me to make those reports to Mr. Bourque.

Mr. Lewin: Give me 7112.

(Document purporting to be transcript of grand jury testimony handed to Court by Mr. Lewin.)

The Court: Listen to this—

Mr. Thomas: If the Court please, on behalf of the defendants I object to the method being pursued here, for the purpose, as I understand it, of refreshing the recollection of the witness. I object to the reading of questions and answers from this grand

jury testimony, to which we are denied all access, in the presence of the jury. It appeared here yes-
1096 terday afternoon that considerable of the questions and answers were read. The proper method of refreshing the recollection of the witness is to show him the document.

The Court: Let me say to you right now, Mr. Thomas, you know and I know it is the law if I submit this testimony to this witness then it is available to all the defendants and to you.

Mr. Thomas: Yes, and that is my contention. Now I want—

The Court: That is a little suggestion on your part that you, by a round-about way, get testimony that you are not entitled to.

Mr. Thomas: Well, I am entitled to the testimony, and I am making the objection for the purpose of this record, and I ask that hereafter that method be followed of refreshing the witness' recollection instead of reading the questions and answers in the presence of the jury.

The Court: Your objection is overruled, and I will say to you again, for your information, that if this testimony is submitted to this witness then it becomes available to you and the others, which the law does not contemplate. Exception allowed.

Mr. Thomas: I have asserted, your Honor, in good
1097 faith that I think this testimony should be available to us, and I assert that is our position.

The Court: I have said before, testimony taken before the grand jury is confidential.

Mr. Thomas: I would like the record to show that I except to the statement of the Court in the presence of the jury—

The Court: It may show that.

Mr. Thomas: (Continuing)—with reference to our right to have testimony.

The Court: Q. On July 23, 1936, you appeared before the grand jury, and were these questions asked you, and did you make these answers:

> "Question: Both. Was that pretty regular, every month?
>
> "Answer: Yes, it was—not so much from the standpoint of calling, but we sent him a memorandum. We sent him just a memorandum of our purchases.

“Question: What was the purpose of that?

“Answer: Well, I don't know.

“Question: Did he ask for it originally?

“Answer: As I recall it, Mr. Reeser instructed that we report once a week.

“Question: Once a week?

1098 “Answer: To Mr. Bourque.

“Question: From the very start?

“Answer: No, we didn't—by the start, you mean February, 1936?

“Question: Yes.

“Answer: No, I don't think so.”

Now, you have heard the reading of those questions and answers: Does that refresh your memory any as to whether or not Mr. Reeser instructed you to send these reports to Mr. Bourque?

A. Since I appeared before the grand jury, I have always thought that Mr. Bourque requested those reports; and I know that his office called us from week to week, and I furnished them. I don't remember now that Mr. Reeser even knew that the reports were being sent. It is quite possible that might have been my impression at that time.

Mr. Lewin: Your Honor, would you look at page 7115 on that same point.

The Witness: I believe, your Honor, if you will permit me this explanation.

The Court: All right.

The Witness: Our company has, ever since I can
remember, been members of the Western Petroleum
Refiners Association; and any information pertain-
1099 ing to our activities that they wanted, we never hesitated to give it to them.

The Court: Q. Well, you hadn't been sending Mr. Bourque reports on gasoline you were buying prior to February 1, 1935, were you?

A. No, your Honor, we had not.

Mr. Lewin: Q. Well, was that a full report that you sent Mr. Bourque, showing the companies from whom you purchased, the price and the amounts?

A. That is what the reports contained, yes.

By Mr. Lewin

I don't recall that the report was written on the letter head of Barnsdall Company. It may have been. It was merely a memorandum signed by me and addressed to Mr.

Bourque. In practically every instance it was sent him by mail. It may have been delivered by messenger. We kept the copies of that memoranda for about a month at a time, and discarded them because they were not a part of our permanent file. Our purchase order record stood for this. Our company usually keeps carbon copies of letters that we send, matters of importance.

Q. Why did you depart from that practice in this instance?

A. It was a duplication of other records we had in the office.

1100 (Exhibit 113, being a letter dated May 6, 1935, from Skelly Oil Company to Mr. A. V. Bourque, was handed to the witness.)

The report that I sent to Mr. Bourque did not look like that. It was listed like this: since the date of the last report we have purchased the following: and the name of the company, the amount and the price.

It was very much like Exhibit 111, letter from Skelly Oil Co. to Mr. Bourque, June 5, 1935, which reads: "Confirming telephone conversation with your office today, you were advised that we have purchased gasoline as follows:" then comes the dates; purchased from; then comes the independent refiners listed; then quantity and grade in the next column; and then the price in the next column. It may or may not have been in response to a conversation.

As I remember it, Mr. Bourque called us from week to week, if we overlooked sending those reports. When they quit calling for them, we quit sending them. I do not know why they quit calling us. I sent them because they asked for them. It is my memory now that we sent them at intervals of every week or 10 days.

I have no records at all of my conversations with McDowell, Jacobi, Tuttle or Fitzgerald, or of my conferences with Bourque, on this subject. I did not have any 1101 records at all that showed our participation in this committee's efforts. I don't remember that my contacts with this committee on this subject ceased at any time during this period.

I am not still getting calls from McDowell, Tuttle, Jacobi and Fitzgerald on this subject. I believe it stopped in the spring of 1936.

Since May, 1936 we have continued purchasing of gasoline, including distress gasoline, clear on down to date.

We have continued to purchase gasoline from some of the independent refiners I have named or all of them even down to date. We bought more gasoline the first part of 1937 than we did the whole year of 1936. During May, June, July, August, September, October, November and the first 22 days of December, 1936, we bought from them as we needed gasoline. As to the regularity of the buying, I am not prepared to say. My recollection is that our total purchases increased during that period.

I never did call A. V. Bourque to find out about any distress gasoline at any time. In 1936 we received information from his office regarding distress gasoline, but I don't recall talking to Mr. Bourque direct. I just talked to his office. His office called me on that same subject during this period. I don't recall any regularity in connection with those calls. I can't say that my talks with Bourque 1102 on the subject of where distress gasoline was, were a substitute for my talks with the committee prior to 1936.

When we bought from these independent refiners during this period of 1935 and 1936 on a spot transaction for immediate shipment, in some cases we just paid the low of the Journal of Commerce, and some times we paid a flat price, usually the same as the low of the Journal of Commerce.

Mr. Thomas: If the Court please, before the cross examination of the witness commences, I have some motions that I would like to make with respect to this witness the same as was made with respect to Mr. Jacobi's cross examination.

Counsel for the defense respectfully move this Court to direct counsel for the Government to make available for the purpose of the cross examination of the witness, Julius C. Evans, the transcripts of the testimony of said witness before the December, 1935 Grand Jury and the December, 1936 Grand Jury, which transcripts the counsel for the Government have utilized, both by reading from said transcripts to the witness and by commmenting to the witness with regard to said transcripts in its direct examination of said witness, in order to refresh his recollection on points which are material to the is- 1103 sues in this case and material to the defense in exercising that right of full cross examination to which it is lawfully entitled. Such an examination of each of said transcripts, in so far as they concern this witness, is necessary for the cross examination of this witness, especially since, as stated by the counsel for the Government and testified to by this witness, he appeared once before the July, 1936 Grand Jury and once before the December, 1936 Grand Jury, and each time testified to substantially the same matters which were referred to by counsel for the Government in order to refresh the witness' recollection. Counsel for the defense should, therefore, be permitted to examine said transcripts in order to determine if explanations or qualifications of any of said testimony were made by said witness on any of said occasions referred to by said witness or counsel for the Government on direct examination of this witness.

The Court: I think you will agree with me, Mr. Thomas, that counsel in the examination of this witness did not read from a transcript; all the reading from that transcript was done by the Court.

Mr. Thomas: With that correction.

The Court: With that correction, your motion is overruled. Exception allowed.

1104 Mr. Thomas: I have a further motion, your Honor. Counsel for the defendants respectfully move this Court to direct counsel for the Government to make available for cross examination of the witness, Julius C. Evans, the transcripts of the testimony of said witness before the grand juries, utilized by the counsel for the Government in their direct examination, or by the Court, in refreshing the recollection of said witness on points which are material to the issues in this case and material to the defense in exercising that right of full cross examination to which it is lawfully entitled.

The Court: Motion overruled.

Mr. Thomas: I take it an exception follows to those rulings?

The Court: It does.

Cross-Examination by Mr. Donovan.

Q. Mr. Evans, you testified on your direct examination that in 1935 and in 1936 you purchased gasoline from independent refiners for your company?

A. I did.

Q. Was this a new policy on the part of your company?

1105 A. No, it was not.

Q. Is it true that for years you had been purchasing gasoline from independent refiners?

A. That is true.

Q. Isn't it a fact that for Barnsdall and its predecessor or predecessors that there had been some 33 independent refiners from which you had bought in the prior years? Is that correct?

A. That is right.

Q. And you also bought from major refiners in 1935 and in 1936 and in prior years, is that correct?

A. We did.

I have a record of the purchases of all grades gasoline from brokers, independent refiners and majors beginning with January, 1931 down to date. The total number of purchases are:

For 1931, 5,340,346 gallons.
For 1932, 5,159,838 gallons.
For 1933, 7,670,497 gallons.
For 1934, 9,700,927 gallons.
For 1935, 8,970,878 gallons.
For 1936, 10,618,547 gallons.
For 1937, 12,539,795 gallons (January to October 1, 1937).

Mr. Donovan. Q. And one reason for buying
1106 from other companies is that, I thought you said,
you sometimes effected a freight saving?

Mr. Lewin: That is objected to, leading a friendly witness, who is obviously hostile to the Government.

The Court: Objection overruled. He may answer.

A. We did buy some gasoline from other refiners for the reason that the place of delivery was closer to their refinery, and a cheaper freight rate than from ours.

Mr. Donovan: Q. And another reason is that you sometimes, you would buy gasoline cheaper than buying the crude and making it into gasoline?

Mr. Lewin: Objected to. Leading a friendly witness.

Mr. Donovan: The witness was permitted to answer.

The Court: We can take the answer. No necessity for leading the witness at all, Mr. Donovan.

Mr. Donovan: Your Honor, I understood this was cross examination.

The Court: That is proper cross examination except where you have a witness that is hostile to the other side and friendly to—

1107 Mr. Donovan: If the Court please, simply because the witness is called from the company doesn't make him hostile.

The Court: Just eliminate the leading questions.

A. Could I have the question again, please?

(Question read by reporter.)

A. Yes, practically all the time, especially during 1935 and 1936.

Mr. Donovan: Q. How did the amount of gasoline you purchased from the independent refiners named in the indictment compare with the total amount you bought from other refiners during the year 1935, from March to December?

A. Out of a total of 86 cars shipped in March, 1935, 24 were purchased from independent refiners named in the indictment.

The total bought from March to December 1935, in gallons and in tank cars, from independent refiners named in the indictment was 2,011,133 gallons, or 250 tank cars. The percentage of our total purchases in 1935 which were made from the refiners named in the indictment as selling companies was 25.7%.

In 1936 we bought a total of 10,512,920 gallons or 1,314 cars. Of that we bought from independent refiners named in this indictment 3,124,224 gallons, or 390 tank cars, or 29.7%.

1108 According to my records, the first instance during 1935 when we made 2 purchases from different refineries of the same quality of gasoline, within 2 or 3 days of each other, was: April 13 from Waggoner Refining Company 10 cars of third grade at 4⅛¢ and on the 15th from Danciger 1 car of third grade at 4⅜¢. The next instance that my records show that we made such purchases is August 27 from Western Oil & Fuel Company 1 car of third grade at 4½¢; on the 28th from L. O. Carter Company 4 cars of third grade at 4⅝¢; and on August 31st from Dale W. Moore 5 cars of third grade at 4⅝¢. The next instance is September 17th from Taxman Refining Company 10 cars of third grade at 4¾¢; on the 18th from Tansel Petroleum Company 1 car of third grade at 4½¢; on September 21st from Grogan Oil Company 2 cars of third grade at 4⅝¢; and on the 21st another purchase from Grogan of the same product at the same price.

The next instance was on December 4th from Bell Oil & Gas 15 cars of third grade at 4¾¢; on the 2nd from Falcon Refining Company 1 car of third grade at 4⅜¢; and on the 6th from Dale W. Moore Oil Company 2 cars of third grade at 4½¢.

I have only 2 instances in 1936. On January 2nd from Bell Oil & Gas Company 3 cars of third grade at 4¾¢; and on January 3rd from Russell Refining Company 3
cars of third grade at 4¼¢. The June instance:
1109 both cars on June 4th; 1 from Omar of the 66-70
water white product at 5⅜¢, and on the same date from Tansel, a car of the same product at 5⅛¢.

I testified yesterday that we made no purchases in the latter part of February, 1936, except third grade. That is correct. I have only 1 car listed here in the latter part of February.

As I remember, I also testified yesterday that I was afraid I could not locate 5 cars about which I was questioned, but that we had some hold-over from January, probably, into February. I have made an examination of my record as to purchases from Rock Island in February, 1936. That purchase was 15 cars of regular from Rock Island on February 1st for shipment over the balance of the month of February at 6⅛¢. The price, as reported in the Journal on that day, was 6⅛¢. That was the low of the Journal. The purchase was at a flat price. A flat price means that all the shipments on that purchase would be invoiced at the price specified on the purchase order. The low of the Chicago Journal of Commerce was unchanged until the 20th, and the high remained constant. It was purchased for shipment over the month. By the end of the month the low of the Chicago Journal had declined; also, the low in the other publication. The low
price in both publications had gone down. The pur-
1110 chase was made at 6⅛¢ on February 1st, and the
price was specified, and was not changed. These quotations that I am referring to here, I take from Exhibit 713, which is the chart before me. Apparently that was our only purchase of regular gasoline during February 1936.

I estimated 6,250,000 gallons as our requirements for shipment for February. I turned that in to our refinery department on the 25th of the month. There were no other written communications between the refinery department and me. After I gave that estimate to the refinery, I was told to purchase a certain quantity for the shipments we made in February by the vice-president in charge of the manufacturing and the refinery, F. E. Holsten.

The refinery just took my word for it that this estimate was a good guess of what we would ship, and out of that total we purchased so many cars. They told me the approximate quantity to purchase each month. Mr. Holsten told me that after considering the estimate. He knew his stock situation at the refineries, his operating problems and all that, and it was a matter of policy as to whether we would buy more or buy less, or any.

These estimates were made up each month for several years, and they are still being made up from month
to month. It was the usual rule that I received
1111 instructions from the refinery department as to what
quantity I should buy. I have no record of how
much it was, in quantity, that I was to buy.

I don't believe I have any information which would show me the number of flat price purchases of third grade and regular gasoline which we made in 1936. I have the figures on the percentages of the low and above the low. Compared to Platt's Oilgram, out of a total of 25 purchases 11, or approximately 44%, were at a price below the low of the Platt's Oilgram; 11, or approximately 44%, were placed at the low; there were 3 orders which were above the low of the Oilgram during 1936.

As an illustration of what we do when we make a purchase on the spot market, if we have a need for a certain kind of gasoline, or so much gasoline, we contact the seller and agree on a price, and send him a written order. We agree at that time on the time it is to be shipped, and the specifications of the material to be furnished. I have a photostated sample of one of those blanks that we used in giving orders. That is the only order blank, the only written document that is used in making our purchases. There is no down payment.

By Mr. Lawton

I have the same figures as to 1936 with reference to
the Journal of Commerce that I gave as to the Oil-
1112 gram of how many purchases we made from re-
fineries that appear in the price of the Journal.
Compared with the Journal of Commerce prices 10 of those purchases, or 38.5%, were below the low of the Journal of Commerce; 12, or 46%, were at the low; and 4 of those purchases were at a price above the low.

Our purchases have been known as purchases by majors from independent refiners. Our purchases cannot be classified as jobbers' purchases.

When we bought at or below the low of the Journal some of our purchases were at a flat price. Others were based on the Journal prices, whatever the price may have been on the date the shipment actually moved out over that month.

The figures I gave as to purchases in 1935 and 1936 at the low or below the low of the Journal amounted to about 85% or 87.5% of our purchases.

Referring to Exhibit 713, on February 1st we bought from Rock Island 15 cars of regular at 6⅛¢. That was the low of the Journal on that day. The high of the Journal at that time was 6¼¢. That high and low continued in both the journals from January 16 until February 20.

On February 29, 1936 we made a purchase from Bell of 15 cars third-grade at 5⅛¢, which was stated to be ⅛¢ over the low of the Journal of Commerce. On
1113 February 29 the low in both journals was 5¢. The high was 5¼¢. The high was at that point for 4 or 5 days prior to that date, and continued for several weeks after that time. So that when we purchased at 5⅛¢ on February 29th, while we purchased over the low of the Journal, we were purchasing at the average.

(Stipulation signed by Rayburn L. Foster, as attorney for Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, and Phillips Petroleum Company, concerning the authenticity of names appearing on certain correspondence produced from the files of Phillips Petroleum Company pursuant to subpoena, is received in evidence as EXHIBIT 715 and read to the jury.)

Mr. Chaffetz: The following Exhibits are offered in evidence by the Government: 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 516, each of the several documents being offered at this time as being admissible in evidence only against such of the individual and corporate defendants who have been connected up with the Mid-Continent buying program, or the conspiracy to the extent that it has been established by the Government to date.

Mr. Donovan: I now offer the same objection as we made to the series of letters in relation to the

Skelly Oil Company as appears at R. pp. 504-05, and on the further grounds that there is no proof of 1114 authority in the maker of the writing so offered in evidence to make the same for or on behalf of said corporation; that as to all other defendants in the action, individual and corporate, other than the writer of the document, and the corporation represented by him, there is no proof that such writing was made by a person having knowledge of the facts purported to be stated in said writing, and the facts therein stated are not corroborated by the testimony of such person, who wrote the letter, or any other person; that the writing itself is not proof of the fact or facts which it purports to record unless supported by the testimony of the writer thereof or some other witness; that such writing is inadmissible in evidence against the individual defendants connected with the corporation which employed the writer, as officers or principals, because not shown to have been made by his agent or any person with authority to act for him, and it is likewise not shown that such writing was made with his knowledge or consent, or under his supervision and direction, and for the same reason such writing is inadmissible against any other individual or corporate defendant in this suit.

1115 The Court: Each and every such objection is overruled, and the letters may be received on the condition in which they are described by counsel for the Government. They are admissible only against those you have indicated. Exception allowed.

(Documents previously so marked for identification are received in evidence, as EXHIBITS 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 516. All these exhibits were later admitted against all the defendants generally, R. p. 907.)

(Exhibits 489, 509, 516 were read to the jury by Mr. Chaffetz.)

1116 **NEIL BUCKLEY**, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I am and have been since June 1936 field representative, with headquarters in Tulsa, Oklahoma, for the export department of Cities Service Oil Company, a Pennsylvania Corporation. I have held that position with that Company and predecessor companies since 1921. Before June, 1936, I was with the defendant Cities Service Export Oil Company in a similar position.

My duties in that office were to observe conditions in the Mid-Continent field, particularly in Texas, Louisiana, Arkansas, Oklahoma and Kansas, although in recent years not to any considerable extent in either of the last 2 states. Part of my duty was to travel over the territory I have named. I have reported gasoline prices, lubricating oil prices, crude oil prices, and any other information that I could gather that I thought might be of interest to my company. I was the exclusive representative of my company in that territory for that kind of work throughout 1935 and 1936 and to the present date.

I was a buyer of gasoline and other petroleum products for those companies during those years. I bought very
little gasoline in 1935; none after March 1935. I
1117 bought some gasoline for Cities Service Export Oil
Company in January, February and March, 1935. I
received the equivalent of a salary from Cities Service Export Oil Company as compensation for my work.

I was required to be in contact with independent refiners throughout 1935 and 1936. My contacts with them were almost exclusively with refiners in East Texas, Louisiana, Arkansas and on the Gulf Coast. I did not continue to observe to any extent marketing conditions in the so-called Mid-Continent field. What I did was more for reference purposes than anything else. We were not buyers there.

I made rather infrequent reports to my superiors in the last 2 or 3 years. During 1935, I might possibly have made monthly reports. Usually that report was in writing to H. E. Brandli, a defendant in this case, who was vice-president and general manager of Cities Service Export Oil Company. His office was in New York City. When he was present I reported directly to him throughout 1935 and 1936, otherwise I didn't report to anyone. During 1935 and 1936 when Mr. Brandli was not at his office, his work was carried on by his office force.

The Court: We can simplify matters if you will keep in mind that all questions relate to 1935 and 1936 unless otherwise indicated. My understanding
1118 is that Mr. Brandli's immediate superiors were Frank Coates and H. D. Frueauff, both defendants in this case. Mr. Frueauff was vice-president of Cities Service Export Oil Company. I believe he was a vice-president of Empire Oil & Refining Company.

I believe Cities Service Export Oil Company and Empire Oil and Refining Company were subsidiaries of Cities Service Company.

(Mr. Lewin read to the jury paragraph 2 on page 3, and paragraph 7 on page 2 of Exhibit 1.)

I was required to keep as familiar as I could with the state of the gasoline market in the fields in which I did business, and I tried to do so. I followed the tank car prices of gasoline in the East Texas field as closely as I could, but I was not particularly interested in Mid-Continent because we had not purchased there for 7 or 8 years, to my understanding. I did keep just generally informed about the prices in Mid-Continent. I was well acquainted with how the gasoline marketing business was operated in the wholesale market in the East Texas field, but less well acquainted with the Mid-Continent field.

I wasn't required to know the names, sizes and locations of the principal independent refiners in the Mid-Continent field. I did know the location of many of them from past experience. I did know them in the East Texas field. In the East Texas field, I knew companies that were
1119 buying gasoline during that period, that is, I was told that certain companies were buying, and I had a general knowledge that certain companies were buying.

I was required to know and knew generally what companies were buying gasoline in the Mid-Continent field from time to time during that period only as related to the export business, and there was no export business to my knowledge out of the Mid-Continent field during that period. I didn't try to keep in touch generally with the operations of our competitor major companies in those two fields during that period as we had no competitor major companies in that field.

I wasn't interested in the Cities Service group. I was interested only in Cities Service Export Oil Company throughout 1935 and 1936, although there may have been times when I told Mr. Brandli of the existence of material which might have been used by some of the Cities Service companies on the East Coast. I recall no other particular references, except quotations or reports of what people might have bought.

Most of the time in January, 1935, I was in Tulsa.

Exhibit 11 for identification is a letter that I wrote to Mr. Brandli, dated January 12, 1935, on the letterhead of Cities Service Export Oil Company. That is not one of the reports I made to Mr. Brandli. That was a repetition of gossip that I had heard in the field some place
1120 concerning a meeting.

Mr. Lewin: I offer the letter in evidence.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Objection overruled. Exception allowed.

Mr. Chaffetz: This letter and subsequent letters to be offered through this witness are offered subject to the parties being connected up by subsequent testimony. We are now dealing more with the East Texas buying program alleged in the indictment, and of course if that is not established, the Court may later want to restrict its ruling as to the scope of the admission of these documents.

The Court: On those conditions you may introduce it.

(Letter so marked received in evidence as EXHIBIT 11, upon the conditions above stated. Exhibit 11 later, at R. p. 907, admitted in evidence against all defendants.)

(Mr. Lewin read Exhibit 11 to the jury.)

Mr. Arnott referred to in Exhibit 11 is Charles E. Arnott, a defendant in this case. I don't know whether at that time he was vice-president of Socony-Vacuum Company. At that time, I didn't realize he was an officer of
1121 Socony-Vacuum Oil Company. I mailed this letter to Mr. Brandli. I knew very little about Mr. Arnott. I knew he was connected with Socony-Vacuum Oil Company and found out later than he had been president and later vice-president.

Mr. Robert McDowell was vice-president of Mid-Continent Petroleum Corporation. Mr. Van Eeghen was connected in some capacity with Shell Petroleum Corporation. H. T. Ashton was general manager of Lubrite Division of

Socony-Vacuum Company. He and McDowell are defendants in this case. O. J. Tuttle was tank car sales manager of Empire Oil & Refining Company. He and his company are defendants in this case. Edward J. Bullock was connected in some capacity with Standard of Indiana. I knew he held a high office in that company. Mr. Edward Karstedt I knew as sales manager of Continental Oil Company. I did not know he was vice-president.

Middle grade gasoline was at that time a grade in between third grade gasoline and regular gasoline. I believe at that time it was referred to as 60 to 65 octane, maybe 60 to 67; some place in there.

Exhibit 12 for identification is a telegram I sent to Mr. Brandli, dated January 16, 1935.

Mr. Lewin: I offer this telegram in evidence with the same limitations stated at R. p. 560.

Mr. Donovan: May I have the same objection to 1122 all these as appears at R. pp. 504-05, 556-57?

The Court: Yes, same objection and same ruling. Exception allowed.

(Letter so marked received in evidence as EXHIBIT 12, with the limitations mentioned above. Exhibit 12 later at R. p. 907 was admitted as evidence against all defendants.)

Mr. Lewin: This exhibit reads:

"January 16, 1935, Tulsa, Oklahoma.
"H. E. Brandli,
"1525, 70 Pine Street,
"New York."

Q. Is that Mr. Brandli's office address?

A. It was at that time.

Mr. Lewin: (Continuing reading:)

"Uplift purchasing continues but prices continue unchanged and approximately fifty cars EaTex."—

Q. That means East Texas?

A. Yes, sir.

Mr. Lewin: (Continuing reading:)

"Eatex motor sold at three quarter on news from Supreme Court overhangs market bought five additional cars Extex kerosene three half could you absorb few cars forty forty one gravity otherwise meeting specifications basis three half Gladewater."

Q. Let me ask you, what does "uplift purchasing" mean?

1123 A. That is a term that Mr. Brandli and myself thoroughly understand from years of experience.

Q. I ask you what it means?

A. That means in our parlance purchasing by regular people that are steadily in the market for supplies for their needs.

Q. What does "uplift" mean? Does that have reference to price?

A. No, sir, it does not.

Q. Well, what are you lifting up?

A. Lifting up supplies that are on the market, sir.

Q. Lifting up supplies?

A. Lifting up gasoline that is on the market and available apparently for their needs.

Q. Are you testifying now that in this phrase "Uplift purchasing continues but prices continue unchanged," that "uplift purchases" does not mean purchases to uplift the price?

A. It does not in our parlance, no, sir. I would like to correct that to this extent: That, if I happened to be on the telephone, talking to Mr. Brandli at some time, and we know that someone that is an in and out buyer and is pretending to be an uplifter is on the market buying gasoline, it might have 1124 a different reference; but over a period of years, we have used that phrase just exactly the way it is used there.

The Court: Q. What is an uplifter in the market?

A. An uplifter in the market, in our parlance, sir, is a steady, more or less regular buyer, apparently buying for his needs or claimed needs. That has been our definition of it, between Mr. Brandli and myself, like we have various code words—

Q. Is anyone in the market buying for anything else than his needs?

A. At times, we have suspected there were buyers in the market to obtain cheap stuff, or to get material off the market for their own benefit, yes, sir.

Mr. Lewin: Q. Doesn't "uplift purchasing" in that telegram refer to the same sort of thing that you were talking about in that letter of January 12, 1935, which was read to the jury?

A. I wouldn't say that, sir, no, sir.

The Court: Q. What kind of purchasers were there in the field? There were the uplifters, and what other purchasers, and how were they designated?

A. Well, there would be so-called uplift purchasers and inter-refiner purchasers—

Q. What?

1125 A. Inter-refiner purchasers; that is, refiners that bought from each other from time to time; brokers, jobbers, marketers, exporters.

By Mr. Lewin

Exhibit 13 for identification is a letter, dated January 26, 1935, I wrote and sent to Mr. Brandli.

Mr. Lewin: I offer this letter in evidence with the same limitations as appear at R. p. 560.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57.

The Court: Overrule the objection. Exception allowed.

(Letter so marked received in evidence as EXHIBIT 13 upon the limitations mentioned. Later at R. p. 907 Exhibit 13 was admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 13 to the jury.)

John Bradshaw is a broker in Dallas, Texas, operating under the name of Hercules Oil Company. I presume he is the head of that company. Gulf Refining Company, a defendant in this case, is one of the people he buys for.

As a general rule, "Motor" is third grade gasoline. When I say price "refinery" that means f. o. b. the refinery in tank car. When I say "f. o. b. Group Three" that means sold on the basis of freight from Group 3, which is a district around Tulsa, Oklahoma. The re-
1126 finers listed in Exhibit 13 were independent refiners in East Texas.

By the Court

In Exhibit 13 I had in mind as to the operations of the uplift buyers that part of them would be buyers who were buying for their own needs at the cheapest price they could get; and part of them would be buyers who would be buying in an effort to protect their position on the market.

Mr. Lewin: Q. Are you testifying now that "uplift buyers" there doesn't mean a buyer who is buying to lift up the price?

A. He might have been, sir.

Q. He might have been?

A. I wouldn't know what every particular buyer's method or desire would be.

Q. I didn't ask you that. I asked you whether an uplift buyer, as you use it in that paragraph, doesn't mean a buyer who is down there buying gasoline to get the price up?

A. In East Texas?

Q. Yes, sir.

A. May I read the paragraph, please?

(Exhibit 13 handed to the witness by Mr. Lewin.)

The Witness: Well, this gasoline wasn't in East
1127 Texas—

Mr. Lewin: Wait a minute. His Honor is busy.

The Court: Make your objection now in the record, then.

Mr. Donovan: Put in addition to the other objections, R. pp. 504-05, 556-57, the fact that these letters were written prior to the beginning of the alleged conspiracy in the indictment.

The Court: That objection is overruled, also. Exception allowed.

The Witness: This letter, if I am correct in reading it, sir, states that that gasoline has been shipped to Kansas City and various other places.

Mr. Lewin: Well, Mr. Buckley, that may be true. I am asking you now, one simple question:

Q. When you wrote that paragraph, didn't you mean by "uplift buyers", buyers of gasoline who were buying to strengthen the price? Yes or no.

A. I don't know whether I can answer yes or no, sir, to a question of that kind.

Mr. Lewin: Your Honor, I submit that he can.

The Court: Well, it looks like plain English to me. I think the jury can understand it just as well as anyone, but if you want to put an interpretation on that you may. (Reading from Exhibit 13)

> "However, at a time when demand is at a
> 1128 very low ebb"—

How would that affect the prices?

A. It would lower prices.

Q. It would lower the prices?

A. Yes, sir, unless there was buying.

Q. (Continuing to read from Exhibit 13-B)

> "* * * the dumping of a hundred or more cars of gasoline at 3⅛¢ to 3¼¢ Group Three

> will undoubtedly make difficult the operations of the uplift buyers for the next two or three weeks."

Now, all I want you ~~to~~ answer is this: What were the operations that you had in mind?

A. People that were buying gasoline at that time, sir.

Q. "Operations of the uplift buyers." Well, what concerns did you have in mind at that time?

A. I didn't know any list of concerns, sir, outside of the fact that there were—

Q. Well, who were the uplift buyers at that particular time, in that field?

A. In East Texas?

Q. Yes, that you knew.

A. There were no uplift buyers in East Texas, sir. There were buyers of this gasoline that had been shoved into the terminals—

Q. What uplift buyers did you have in mind
1129 when you wrote this letter?

A. I believe that I had principally in mind companies like the Phillips Petroleum Company, who had bought a lot of gasoline, and who were described here in that letter, or another one he read, as one of them; and I don't believe I can recall the names of other companies who were buying at that time. You see, your Honor, these were field reports made by me, based on gossip, sir.

Q. There is much of it that isn't gossip, too.

A. But that buying—

Q. You named one, Phillips. What other buyers do you have in mind that were carrying on these operations you had in mind?

A. Well, very possibly that list that was mentioned in that other telegram. If they were buying, but I don't know who bought. If you want to know who I had in mind—

Q. Yes.

A. I would say these people that were on Mr. Arnott's Tank Car Committee.

By Mr. Lewin

The natural gasoline referred to in Exhibit 13 is that which is produced from natural gas and not from crude oil. The last paragraph in Exhibit 13 deals solely with kerosene.

1130 With reference to whether or not the independent refiners listed in paragraph 20 of the indictment

were the principal independent refiners in the East Texas field during 1935: McMurray Refining Company was. East Texas Refining Company was. Dominant Refining Company was not. For a while it operated a plant at Kilgore, Texas, I believe in 1935. In 1936 I am sure it operated for a little while. Cascade Refining Company was a small refiner in 1935 and later enlarged. Grogan Oil Company was not a refiner, but a broker who handled sales for refineries. In 1935 it had a refinery in East Texas, that is, it handled sales of two refineries. Trinity Refining Company was for a while. Tower Refining Company was for the last half of 1935, possibly more than that. La Pren Refining Company was for the early part of 1935. Southport Petroleum Company was all of 1935. I don't believe Century operated very much in 1935. Tyreco Refining Company was a predecessor company to some extent to Tower Refining Company. Wabash Refining Company started to operate, but I do not know how long they continued to operate. They operated in 1935. Texover Refining Company operated for a month or more in 1935. Ocean Refining Company operated a part of 1935. I don't think Solvex Refineries actually operated in 1935. It operated through 1936. Arrow Producing &
Refining Company operated for the first half of
1131 1935, and Chief Refining Company for a part of
1935. Gilliland Refining Company and Texas Oil Products Company operated all of 1935. Matthews Refining Company and Utah Refining Company operated part of 1935, and Premier Oil Refining Company for some part of 1935.

I have read the whole list from that paragraph of the indictment. They were all independent refiners in the East Texas field. In that list are a number of principal independent refiners in that field as of that time.

Henry B. May was president of Arrow Refining Company in the early part of 1935. I knew Mr. Marion Travis and Mr. Kroll, officers of Southport Petroleum Company, but I do not know what positions they occupied. I first met Mr. Travis in 1917 and renewed my acquaintance with him in 1921 or 1922. I have known Henry May since 1921. I received a telephone call January 29, 1935. Mr. May talked to me first and then handed the telephone to Mr. Travis. They called me from some place in East Texas; I don't know whether they were at Kilgore or Overton. They told me they were talking for a group of East Texas refiners.

As clearly as I recall the substance of the telephone

conversation, Mr. Travis or Mr. May or both of them stated that a group was gathered together to complete a central marketing agency for the East Texas re-
1132 finers; that they were going to join together to cooperate with the state and federal authorities to eliminate hot oil, and try to produce a standard product which they could go on the market with and be recognized by buyers; that they had already employed a lawyer to draw up their articles of incorporation; and that same lawyer was preparing a bill to be introduced in the Texas legislature for the outlawing of the movement of hot oil not only in interstate commerce but more particularly in trucks in the field, to try to collect the taxes for the state and put themselves in a position where they could cooperate with the law and continue in existence.

They wanted to revive a program where not only the major companies but any companies could buy their gasoline through the central purchasing agency.

Q. Did they tell you they had in mind a program for selling the gasoline to major oil companies?

A. Not altogether, no, sir; they wanted to sell to major companies if they could, yes, sir.

Prior to the receipt of the telephone call from Mr. May and Mr. Travis, I had written Mr. Brandli a letter, or rather dictated him a letter concerning a report which had been prevalent in the East Texas field for several days. Exhibit 14 for identification is the letter I wrote to
1133 Mr. Brandli before I received the telephone call, and the postscript that I wrote after I received the telephone call. I did not write the postscript to this letter, dated January 30th, after getting a second telephone call.

Mr. Lewin: This is Exhibit 14. We offer this letter in evidence, your Honor, subject to the limitations appearing at R. p. 560.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Letter so marked received in evidence as EXHIBIT 14 upon the limitations mentioned. Exhibit 14 was later at R. p. 907 admitted as evidence against all defendants.)

During my telephone conversation with Mr. Travis and Mr. May on January 29, 1935 they asked me if I would come down and look into what they proposed to do, and if I felt that they were honest and sincere in their effort, to go out and try to help them. They asked me that during the first conversation.

(Mr. Lewin read Exhibit 14 to the jury.)

Judge Starns mentioned in Exhibit 14 was the operator of Texas Oil Products Company. I believe he was the president and principal owner. It is an independent refinery in East Texas. Jules Constantin mentioned in Exhibit 14 at that time was operating Solarine Refining Company, another independent refiner in East Texas.
1134 Several included in the list of potential members in Exhibit 14 are on the list in paragraph 20 of the indictment.

The entire body of this letter, Exhibit 14, was written upon hearsay reports which I obtained from talking with various refiners or salesmen in the East Texas field. A letter was dictated on January 29th, and some place along the line the stenographer writing it, or I, said the meeting was held in Judge Starns' quarters on the evening of the 29th, so the following morning, after Mr. Brandli received the letter, it would be past tense. When I wrote the letter I only had gossip and hearsay to go upon. It was late that same afternoon, very close to the closing time of my office, that I received the telephone call from Mr. May and Mr. Travis telling me that they wanted to try and get together and form an association for the various aims that I have heretofore described, and I added that as a postscript. The stenographer probably didn't write the letter until the next day, and I either changed the tense or she changed the tense. In the telephone conversation with May and Travis on the 29th, they invited me down there to help them.

(Mr. Lewin read to the jury the postscript to the letter, Exhibit 14.)

After I had mailed the letter, Exhibit 14, not before, I placed a long distance telephone call to Mr. Brandli
1135 in New York. It was, evidently, on the same day that I mailed the letter. Following that first telephone call in which I told these East Texas people they would have to go to my superiors, I received a second telephone call from them in which they stated that they didn't know my superiors, and wouldn't I go to them myself and ask for permission to come down and talk with them. That call came from Mr. Travis, either late the night of January 29 or the following morning. I did not immediately put in the call to Mr. Brandli. The call was some time on the 30th.

I didn't tell Mr. Brandli the substance of what was in that letter or the postscript that I had already mailed him. I told him the substance of the second conversation with

Mr. Travis, that I had been asked to come down there and investigate the sincerity of this group of refiners in their proposition. I told him that Mr. Travis had told me that he didn't know my people, and wouldn't I go to them myself and ask for such permission, and if I found that they were sincere in their effort, to try to secure help for them. I told Mr. Brandli about the central marketing agency and the desire of the East Texas Refiners to get together, and end the hot oil racket in East Texas. I don't know whether I told him they wanted an experienced man to operate the association for them, but I said they had asked me to come down.

1136 I received the telegram, Exhibit 36 for identification, dated February 1, 1935 from Mr. Brandli.

(Letter so marked received in evidence as EXHIBIT 36, upon the limitations stated at R. p. 560. Exhibit 36 was later at R. p. 907 admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 36 to the jury.)

I sent the letter, Exhibit 15, dated February 2, 1935, to Mr. Brandli.

(Letter so marked received in evidence as EXHIBIT 15, upon the limitations stated at R. p. 560. Exhibit 15 was later at R. p. 907 admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 15 to the jury.)

Exhibit 16 is a letter I wrote and sent to Mr. Brandli, dated February 2, 1935.

Mr. Lewin: I offer this letter in evidence.

Mr. Thomas: If the Court please, so as to remove any uncertainty, defense counsel haven't been objecting to these exhibits that have been coming in separately, because our understanding was that they were received subject to the same objection, and with the same ruling—

The Court: Yes.

Mr. Thomas: (continuing) —that your Honor made with reference to Exhibit 494, which was this letter by the stenographer in the employ of the Phillips Company, the first exhibit that came in this morning, as appears at R. pp. 504-05. 1137

Mr. Chaffetz: I understand the objections governing these documents are the ones made by Colonel Donovan with respect to the first document that was offered, written by this witness.

Mr. Donovan: And in that was included the objection that was made this morning, to all the documents offered this morning, at R. pp. 556-57, and subject to the limitations appearing at R. p. 560.

The Court: Yes, it is understood that these are received subject to your objection, and with the limitations. Exception allowed.

Mr. Denton: If the Court please, I would like to have the same right to file such additional objections as I might care to, after these exhibits are in and I have an opportunity to examine them.

The Court: You may have that right.

> (Letter so marked received in evidence as EXHIBIT 16 upon the limitations mentioned. Exhibit 16 later at R. p. 907 was admitted as evidence against all defendants.)

> (Mr. Lewin read Exhibit 16 to the jury.)

When I got to East Texas on February 4, 1935, I went to Gladewater immediately, where I got off the train. I believe I was met there at the train by Mr. Campbell
1138 of Gilliland Refining Company.

I don't know whether I went to Kilgore that afternoon. I went to Overton that evening. I talked with Mr. Henry May of Arrow Refining Company that evening for a short time. I talked with Mr. Campbell of that same company quite a bit that afternoon. I did not talk with Mr. Grogan of Grogan Oil Company. I talked with Mr. Travis that day, but I don't remember talking with Mr. Constantin.

I did not discuss with those men I have named the formation of a corporation by them for the marketing of their products to major companies. I was in the investigative stage, as to whether I wanted to have anything to do with their association at that time.

I discussed with Campbell, and maybe with some of the others I met at Mr. May's home that evening, the organization of their corporation and the purpose of the corporation to sell their gasoline to major companies.

By the Court

The meeting was at the home of Mr. Henry May at Overton, Texas, on February 4. Those that I remember who attended that meeting were Mr. Campbell, Mr. Travis, Mr. May, Mr. Potter—maybe two Mr. Potters,—Mr. Sole or Soule, Mr. Kraker, and there were a large number of others. I did not actually attend the meeting as I will explain as I go along and tell what happened.

The meeting was called to form the East Texas
1139 Marketing Association to carry on the business of
marketing their refined products, particularly gasoline.

I went to the meeting and talked with those various individuals before they called the meeting to order. They said they were going to have the meeting later, but, knowing what they had told me during the afternoon, wouldn't I please go to these other companies and see if I couldn't get help. I left Overton on the 8:30 train. The meeting had not started when I left Mr. May's house. There was no business transacted at the meeting while I was there. It was not called to order at the time I was there.

By Mr. Lewin

I did not at that time discuss with them an idea of theirs to have the membership of this association limited, and a $1,000 assessment imposed on each member. That was not their original idea as explained to me. There were two or three ideas advanced in the group as to what kind of an association they should have. The first idea that was put forward to me was a central marketing association. The association was not at first described to me in detail. It was not one of the first ideas that they had during this formative period, to have a central sales agency, with an assessment of $1,000 on members that would enjoy it, a limited membership.

1140 I left East Texas on the night of February 4th, about 8:30 and went to Houston, Texas. I called first upon Ben Brown of Humble Oil & Refining Company, a subsidiary of Standard Oil Company of New Jersey.

I then called upon Mr. O. H. Carlisle of the Gulf Company, a defendant in this case. It was the Gulf Company of Texas, which operated in Texas at that time. I don't know what you call it. It was my understanding that O. H. Carlisle was head of the marketing department of the Gulf Company for Texas. I couldn't state for certain whether or not he was manager of that division of the company in Texas.

Mr. Gray: He was district sales manager at that time in the Houston Division.

I started to see Mr. Leach in the marketing department of The Texas Company, but he wasn't there. I saw one of his assistants whose name I do not recall. The Texas Company is a defendant in this case. I didn't know exactly what was the position of Mr. Leach at that time.

I went to the offices of each of these three men. I met

Mr. Carlisle of the Gulf Company in his office in Houston, Texas on February 5, 1935. As I recall the conversation, it was to the effect that the East Texas refiners were forming an organization, and that they wanted to cooperate with the state and federal authorities to do everything they
1141 could to end the production of hot oil and curb the stealing of oil, and that furthermore they were preparing and were introducing through their attorney and a senator in the Texas Senate a bill which would absolutely outlaw the transportation of stolen or over-produced or illegal oil on the highways of the state. I told Mr. Carlisle further that they were going to offer their surplus products through this agency and wanted to get buyers back in the field with the legitimate refiners and asked if he would consider doing his business through that association.

I had known Mr. Carlisle before, but didn't know him well. I did not introduce myself as an employee of Citie Service Export Oil Company and did not know if he knew I was connected with that company. I told Mr. Carlisle that the East Texas refiners wanted, if possible, to get the major companies to come back and buy from this group of refiners, and, if possible, to buy direct from refiners. I asked Mr. Carlisle to buy from them on behalf of the Gulf Company, the only company he would be buying for.

By the Court

Mr. Carlisle told me he had considerable experience in East Texas in the two previous years, that he had been connected with the Code, and that under no condition would he be interested in going back and helping that
1142 class of operators at all—the refiners, as then represented in East Texas. I did not have any further conversation with him that day. I left his office feeling rather depressed over my reception there. He may have told me that he was interested, but he wasn't going to fuss with the thing. That is my best recollection of what he said.

That is all I remember at this time of the conversation I had with him that day. I know I got no hope whatsoever from him in what I was trying to do. I don't recall that I got any hope from him, or any encouragement. He was one gentleman that told me I was wasting my time.

By Mr. Lewin

I had a conversation with an assistant to Mr. Leach of The Texas Company. I told him about the same story I had previously told Mr. Carlisle. He told me that he had no authority to discuss the subject with me, and I would have to come back and talk with Mr. Leach or someone else in the company. I did not go back and talk with Mr. Leach, or anyone else connected with the company.

I left Houston that night and went to Dallas, Texas.
There I talked with independent refiners of East Texas,
with Mr. May, Mr. Travis, Mr. Grogan, and I believe Mr.
Kraker. I did not offer to go to the eastern seaboard
1143 in their behalf. They asked me to go there based
on a conversation that I had had with Mr. Brown in
Texas. I went.

I left Dallas in an airplane that night, February 6, 1935. I arrived in Pittsburgh quite late the following night, February 7, 1935. In Pittsburgh I tried to see Mr. William Hartmann, at that time vice president of the two Gulf companies, or anyone else I could reach. I went to their office and was unable to see Mr. Hartmann. They told me he was out of the city. I asked for someone in the sales department or the marketing department. I saw a young man that was evidently an assistant along the line, and asked him whether there was anyone there I could see about selling East Texas gasoline. He said there wasn't anyone there, so I left my name and that was the end of my visit there. I don't recall the name of the man I saw on that occasion. He was quite a young man, I recall that.

Q. Do you recall testifying before the grand jury?

A. Yes, sir.

Q. Did you say that on that occasion in Pittsburgh, you talked with McEldowney of Gulf?

A. I don't recall. The man's name was Mc something, McElvaney or McEldowney. I don't recall what it was.

1144 Q. Did you explain this plan to him?

A. No. I don't remember whether I did or not. I judge that Mr. McElvaney or Mr. McEldowney, whatever it was, had come out in the hall as a courtesy to see me, as any company would send a man out to see a visitor that came around.

I didn't leave a card. I left my name and address or the Association address. I did not tell him I was an employee of Cities Service. I told him I was representing the East Texas refiners, because the Cities Service Company wouldn't have meant anything to him.

I believe Mr. Hartmann would have known me by name, so I left my name for Mr. Hartmann. I couldn't tell if Mr. Hartmann would have known what company I was associated with, because I didn't meet Mr. Hartmann for some time afterward. Many years ago my company was a brokerage and marketing company and bought considerable gasoline for the Gulf Company through the office we had in Pittsburgh, and I purchased that gasoline. It is possible that Mr. Hartmann may have recognized my name from hearing it in those days. That is the only reason I have for believing he might recognize the name.

I left Pittsburgh that night and went to New York City. There I saw my superior officer, Mr. Brandli, and told him why I was in the East. I left New York the following
1145 day; stopped in Washington during the late afternoon and evening, and from Washington went to Pinehurst, North Carolina, to see Mr. Charles E. Arnott, a defendant in this case.

I told Mr. Arnott in Pinehurst that I was representing a group of East Texas refiners who were endeavoring to get together to operate legally within the law, and explained to him, as clearly as I can recall, everything that I have previously testified that I explained to these other individuals. I believe I asked Mr. Arnott to see if he could get the major companies to cooperate and buy that East Texas gasoline. I have no recollection of discussing the Mid-Continent situation with him, too, as well as East Texas. We might have, but I don't recall.

Mr. Arnott told me that he wanted to investigate the East Texas Refiners Association and get some information on it, and that if he thought it was a matter of interest, I would hear from him upon his return from New York or Washington. He told me he was on his vacation in Pinehurst. He was at a hotel or club—semi-hotel.

Q. When did he say he would finish his vacation?

A. I believe it was to be in about two weeks from that time.

Q. And then he would call you from New York, in Tulsa, from New York?

1146 A. Either from New York or from his office in Washington.

Q. And you left Pinehurst and returned to East Texas?

A. Yes.

Q. First going to Tulsa?

A. No, first going to East Texas.

Mr. Donovan: It seems to me that while your Honor has given counsel a great deal of latitude, the witness should be permitted to testify.

The Court: He is. We will get along all right. I think counsel should be permitted to ask him leading questions.

Mr. Donovan: I don't object to leading questions, your Honor, if the questions are directed to the full conversation that the witness had. It seems that is the only fair thing for the jury and for these defendants.

The Court: That can be covered on cross examination.

After I left East Texas I went to Tulsa. I don't know whether I received a telephone call from Mr. Arnott in Tulsa, or whether I called him. I had a telephone communication with him. He told me that there was a meeting planned for the Blackstone Hotel in Chicago, and that 1147 if I wished to attend, either myself or with other East Texas refiners, to discuss the plan of the East Texas refiners for their marketing agency, that I could do so. I believe the meeting that I attended was on the morning of February 25, 1935.

I went to Chicago to that meeting. Henry May, head of Arrow, and Martin Grogan, head of Grogan Oil, went with me. When I got to Chicago I went to this meeting. Mr. Arnott was there. I believe Mr. Hartmann of the Gulf Company was there. I have no recollection of O. H. Carlisle being at that meeting. He may have been there, but I don't recall him at this time—not during the time that I was in the meeting, at least.

Q. Didn't you testify before the grand jury that you were reasonably certain that Mr. Carlisle was there?

A. I don't know, sir. I can't recall my grand jury testimony.

Q. Would that refresh your recollection, if that were pointed out to you?

Mr. Donovan: May we have the objection to this refreshment of recollection from the grand jury minutes that we had before, your Honor, as appears at R. pp. 373-74, 446, 518, 546-47?

The Court: You may. Objection overruled. Exception allowed.

A. Well, Mr. Carlisle may or may not have been 1148 in the meeting. I have tried to place Mr. Carlisle in the meeting, but I just simply can't do it. I have got to picture where each person would sit in a big room of that kind, and I can't place Mr. Carlisle there.

Mr. Lewin: Q. Now, you saw him in Chicago on that occasion, didn't you?

A. No, sir. I saw him on the train, going to Chicago; but I don't recall talking with him or seeing him actually in Chicago.

Q. Would your grand jury testimony, do you think, refresh your recollection on that point?

Mr. Gray: Your Honor, I object to a continuation—

The Court: Let me see that grand jury testimony that you are talking about.

Mr. Lewin: Yes, sir (presenting document purporting to be transcript of grand jury testimony to the Court).

Mr. Gray: The witness has already testified that he didn't recall the man being present there.

The Court: He has given a definite answer. There is nothing inconsistent in that.

By Mr. Lewin

I remember Mr. Legge of Magnolia Petroleum Company at the meeting, and I believe that Mr. Carnes of the
1149 Sinclair Company was there. Those are the only ones I recall. Most of the men at the meeting were men connected with either the marketing or traffic departments of Texas refineries, independent refineries, principally.

Mr. Arnott asked me to explain the plan of the East Texas refiners to that meeting and I did. I did not ask the representatives of major companies there to come in and buy East Texas gasoline. At Mr. Arnott's request, I arose and stated what the East Texas refiners had in mind with reference to the formation of their association.

The Court: Q. Was that about the same statement that you made to these other men in East Texas?

A. Well, I don't know, your Honor. It was the first time I addressed a body of men of that size, and I think it was—yes, that was what I had in mind, going into.

Q. In substance.

A. The substance of it, yes, sir.

By Mr. Lewin

The Mr. Carnes I mentioned is J. W. Carnes, vice president of Sinclair Refining Company, a defendant in this case. I am quite sure that I saw Mr. Carnes at the table.

I had known Robert N. Cline for a long number of years. At one time, some 5 or 6 years before, he was employed by what was called Tidol Refining Company, which was 1150 later taken over, I believe, by Tide Water Company. The East Texas Refiners Association employed Mr. Cline to be their first secretary. I think they put him on the pay roll some time between February 1 and 15, 1935. Prior to that time he had been working for the Marine Export Company for a while. I am not sure but what he had been employed part time, at least, by Arrow Refining & Producing Company, Mr. May's company.

Mr. May discussed with me the employment of Mr. Cline for the East Texas Refiners Association. When he asked me about the employment of Cline, I had no power of approval. I was glad to see him. He was a wounded war veteran who needed the job, and I was tickled to death to see him get it. After the Chicago meeting I returned to East Texas on the morning of February 27th. I believe Mr. Cline met me at Gladewater, Texas. From there I went to Tyler, Texas.

On the train going to Chicago I discussed with Mr. May and Mr. Grogan the formation of a simple association. When I got back to East Texas I talked about their association with Judge Fisher.

By the Court

My discussion with Judge Fisher was this: The refiners were divided, when they started their association, into two groups; one of them had money, the other didn't. The group with money wished to try to tie a terminal as- 1151 sociation into the marketing association, and each person joining that association was to be assessed $5,000. Those that didn't have the money felt that they were being frozen out of participating in the association, and any benefits that might accrue to a person that was operating legally.

On the train, going to Chicago, Mr. May and Mr. Grogan told me that under no conditions were they going to tie in the terminal association with the marketing association. That worried me, because I had been talking to people about this terminal association idea, which I got from Mr. Campbell, and later from Mr. Travis. So I talked with Mr. May on the way back to Texas, and asked him what they were going to do; whether it was going to be a terminal association or a marketing association. He said, "It is going to be a marketing association or nothing, as far as I am concerned, and you heard what Martin Grogan said."

So I then went to see Judge Fisher, and told him I had been running around the country representing these refiners and I thought I ought to know where I stood. He told me I didn't have to worry about where I stood, that he was running the affairs of that association for those refiners, and that he was going to attend their dinner that night and straighten them out on what they wanted to do. That is the conversation.

1152 *By Mr. Lewin*

The East Texas Marketing Association, as it began operations in March, was formed with my assistance, but I can't say that it was formed at my suggestion, because it was already discussed back in January by Mr. May and his associates.

Q. Well, hadn't that been a discussion of a different type of association; and didn't you, now, in the first part of March, suggest this simple type of association, where you didn't have this $5,000 assessment?

A. No, sir. I have tried to explain to his Honor that this conversation concerning this simple type of marketing association occurred with Judge Fisher on the 27th of February. I wasn't in East Texas early in March.

Mr. Lewin: Your Honor, I don't want to consume a lot of time over it, but I wish your Honor would look at that (presenting transcript of testimony before the grand jury to the Court).

The Court: Q. Do you remember when the East Texas Marketing Association was formed?

A. I believe they held the meeting to form the association on February 13th, sir.

Q. 1935?

A. When the actual articles of incorporation were
1153 put out, I don't know, your Honor.

Q. Just try and recall now. Was it formed at your suggestion?

A. I may have said heretofore that it was, your Honor, but I have studied every item and every move that I have made, and I am certain now that what I have related to you is the absolute truth.

By Mr. Lewin

I made an arrangement with the Association for the payment of my travelling expenses in Dallas, Texas, on February 5, 1935. I never received any salary from the

Association, only my travelling expenses and expenses for telephone calls I made in their behalf. I continued to draw my salary or my compensation from Cities Service Export Oil Company during this time.

Early in March I got either a call or a telegram from Mr. Arnott inviting me to come to New York for a meeting at the Waldorf Hotel. I attended. I believe the meeting was on either March 5 or 6. It was a Wednesday morning. Mr. Arnott, William B. Hartmann of Gulf, and J. W. Carnes of Sinclair were there. I am not sure about Noel Robinson of Tide Water. The only picture I have of Mr. Noel Robinson in any meeting was at Washington. I won't say that Noel Robinson was not there, but I cannot recall at this moment. Mr. Dodge of The Texas Company was not at that meeting. He
1154 was not at any later meeting in New York in March.
I saw Mr. Dodge in Washington in March. I believe I met Mr. Dodge in May, 1935, at a meeting in New York, but I don't recall meeting him in March in New York. Mr. Ewing of the sales department of Socony-Vacuum was there. At one meeting—I don't know which one—I saw a representative from the Shell, but I cannot tell you his name, Von-something or other. At one meeting there was Mr. Gould of Shell, but I do not recall whether he was at the same meeting as these other gentlemen.

Mr. Arnott asked me to discuss the East Texas situation before those gentlemen at that time. I explained to them the plan of the East Texas refiners, except that I said nothing about a terminal association. I told them about the marketing association. I don't know who at that meeting asked me how much these independents down there would have to sell. Someone asked me. I couldn't honestly answer whether Mr. Hartmann or Mr. Carnes asked me that.

I called Robert N. Cline to find out how much gasoline would be available of surplus from the refiners in the field after they handled their regular commitments. I don't know if I called Cline on my own account or whether some one asked me to do so. I was advertising, trying to sell that association to these people, and I wanted to answer the question.

1155 Mr. Donovan: Your Honor, I should like to put in here my objection to this whole form of examination.

By Mr. Lewin

Mr. Cline reported to me that, as closely as they could estimate, the amount that was there was some place between 240,000 and 250,000 barrels of gasoline unsold the beginning of each month, based on the allocation that the refiners had received from the Federal Allocating Board. I did not stay through the whole meeting. After I finished my address to the meeting, I asked Mr. Arnott if he wanted anything further from me, and he said, "Not before the afternoon." I left that meeting, and came back into it some time during the afternoon. When I left the meeting, I was told I would hear from them at a later date. I believe it was Mr. Arnott who told me that I would hear from him further if anything could be done toward handling the surplus gasoline.

Q. Do you recall anything being said at that meeting at the Waldorf by any of those men which indicated that they had an interest in how much gasoline there was to be purchased in Texas?

The Court: The March 5th meeting.

A. I can't quite answer that question. I presume that there were some people there that had an interest in it, but I can't recall specifically 1156 anyone asking me that question.

I had little or no conversation with any individuals. My remarks were addressed to the meeting as a whole. There was no particular response at that time from any of those in attendance at that meeting to my suggestions. There were other plans or other matters discussed later, and when I found they didn't involve me I left the meeting. I don't know whether it was a Code meeting or what it was.

I don't know whether or not they asked me what gasoline was available. I do not recall anything else that they asked me about. These gentlemen that I met, with the exception of Mr. Carnes, whom I had known for a long number of years, and Mr. Arnott, through my short association with him, and one or two others, were strangers to me, and it was unlikely that they would be addressing any particular questions to me. But they were interested in this matter. Their principal interest was what the association was going to do about hot oil. Everyone was scared to death of handling East Texas gasoline and of going back to East Texas to buy; and they wanted to know from me whether I thought these refiners were sincere. Some of them wanted to know whether they were supporting passage of the Connally Act and were going to cooperate with Connally. I told them, yes.

There are several definitions of hot oil, but my 1157 own definition is crude oil that is stolen from pipe lines of one man or stolen from his leased tanks or taken out of the ground in an amount greater than he was entitled to under the state and federal regulations, —oil that was obtained in such a way that it could be sold under the market prices by the people who had obtained it illegally. Hot oil is not primarily oil that is produced in excess of allocations under state laws. Hot oil is primarily, in my definition, stolen oil. It may be actually stolen from the property, or it may be taken out from someone else's property without their knowledge. That is released from their leases.

I don't recall any other inquiries made of me at that meeting.

Mr. May and Mr. Grogan did not go into the February 25 meeting in Chicago with me. They stayed at their hotel.

I attended a meeting at the Waldorf Hotel on March 15, 1935. I do not remember two men from The Pure Oil Company at that meeting. I remember seeing Mr. McElroy of The Pure Oil Company at a meeting on March 6th, but I don't remember meeting any one from The Pure Oil Company after that.

Mr. Arnott was present at that second New York meeting on March 15th. I met Harry D. Frueauff at one meeting. I cannot identify him as either in the March 6th or the March 15th meeting. I met him at either one 1158 or the other. The March 15th meeting was at the Waldorf Hotel in New York. I don't remember meeting Mr. Dodge at any of the March meetings except in Washington. I cannot place Mr. Dodge in either of the meetings that I attended in New York.

At the March 15th meeting at the Waldorf there were present about the same people that were at the meeting on March 6th. There was Mr. Carnes, Mr. Hartmann, through part of the meeting Mr. O. D. Robinson of the Republic Oil Company, an independent refiner of Pittsburgh, Mr. Gould of the Shell Company. No other representative of Shell was at that meeting. I think Mr. Gould was the man that attended that meeting, and the other man at the first meeting, as I recall it. Mr. Frueauff of Cities Service was either at that meeting or the March 6th meeting, either one of the two. I do not recall whether Mr. Noel Robinson was present on March 15th. As I have said, the only picture I have of Mr. Noel Robinson is at that meeting in Washington. Mr. Arnott was there on the 15th. I cannot place Mr. Dodge in either of the meetings of March 6th or 15th. I won't say that he was not there, but I just can't picture him in that room.

Q. Would your testimony before the grand jury refresh your recollection, do you think, as to those men that were at the meeting?

A. No, sir, because I have tried to refresh my memory since I testified before the grand jury and 1159 picture everything as I saw it, and I just can't put Mr. Dodge in that room.

I believe there was a man from Continental Oil Company on March 6th, but I do not recall him on March 15th. I believe it was Batson, some one in the New York office by that name.

Mr. Lewin: Your Honor, I have Exhibits 17 and 481 for identification. I would like to offer them in evidence at this time. The authenticity of them has been admitted. (Showing exhibits to the Court.)

Mr. Donovan: The same objections as appear at R. pp. 504-05, 556-57.

The Court: The same ruling. Exception allowed.

(Documents so marked received in evidence as EXHIBITS 17 and 481, respectively upon the limitations stated at R. p. 560. Exhibits 17 and 481 were later admitted at R. p. 907 as evidence against all defendants.)

(Mr. Lewin read Exhibits 17 and 481 to the jury.)

By the Court

As clearly as I recall the March 15 meeting in New York, Mr. Arnott called it to order and stated that I was there and the East Texas refiners were pressing me for some answer to their problem, and he wanted suggestions from various people or from any one as to how the situation could be handled. Some one arose with a slip 1160 of paper in his hand and stated that it had been suggested that if a group of companies, some 12 to 15 companies, all of them larger companies, would consent to absorbing a certain percentage of the surplus gasoline in East Texas, that it had been suggested that each company take so much gasoline, the amounts being read off as to what each company would take. After the reading of those amounts, there was a discussion as to what companies were represented there in the meeting, and whether there was anyone there who had talked with the companies who were not represented, and knew their attitudes toward buying such gasoline. There were several companies who were not represented in the meeting. Someone had talked with one or two of those companies, and stated that they knew that they would not buy any East Texas gasoline, or participate in any program for the buying of East Texas gasoline.

There was then a poll made of the companies who were present to ascertain whether those represented would buy the gasoline. Most of the representatives present stated they had no authority to discuss the subject of taking gasoline without going back to the officers or higher officers of their company, discussing it with them and with their manufacturing departments. There followed a discussion which lasted an hour. At the end of that hour nothing had been decided as to who would buy gasoline, or
how much they would buy, or whether they would
1161 buy at all. I sat in the room for some time after
that, visiting with individuals and trying to press them to give me some answer; and finally, discouraged, left the meeting, telling Mr. Arnott that I would be back.

I went back just before the close of the meeting, and Mr. Arnott was busy talking with some of the gentlemen that were dispersing. I followed him down to the first floor of the hotel and walked to the entrance with him, and asked him if he couldn't give me any hope at all; that I had been there for about two weeks, had accomplished nothing, and was thoroughly discouraged, and that I personally felt I had better go home and let them talk to me later, or talk to the East Texas refiners in the event they wished to do anything at all for them. That was the general discussion of the meeting.

> Mr. Lewin: Q. Now, Mr. Buckley, in that discussion that you say took place, didn't someone present a plan for dividing the gasoline up among the major companies in certain definite proportions?
>
> A. Yes, on this slip that was read there was a certain amount set opposite the names of companies.

By Mr. Lewin

I don't remember the names of all the companies listed as being potential buyers, but on the list was practically

every company represented in marketing in Texas and along the East Coast. They were large compa-
1162 nies on the East Coast—majors and some that couldn't be considered exactly majors. I mean their names were on that list. I believe the man that read the list was Mr. Carnes.

The list of people that I remember, as being present, is the same list that I previously repeated. Mr. Carnes was, I believe, vice president in charge of wholesale sales with the Sinclair Company. Mr. Hartmann was with the Gulf Company. I have learned since then that he was vice president of that company. O. D. Robinson was president of the Republic Company. Mr. Gould was with Shell Eastern. Frueauff was with Cities Service. Mr. Arnott was with Socony. I don't remember the name of the Continental representative, but I think it was a man by the name of Batson, but I am not sure whether he was in that meeting or at the March 6th meeting. I can't recall Noel Robinson at that second meeting. I saw Mr. Robinson in one meeting in New York, some time during the spring of 1935, but whether it was in either of these March meetings or whether it was in the May meeting, I can't tell you. It was at one of the three meetings I attended in New York.

After the meeting in New York on March 15th, I met Mr. William V. Hartmann and had a conversation with him in Washington. I believe it would have been on March 20th.

1163 I met Mr. Hartmann in the P. and C. Building in Washington, the Planning and Coordinating Committee. I reached Mr. Hartmann late in the afternoon, 4:30 to 5 o'clock, after waiting all day to see him and other people who were in Washington.

I told Mr. Hartmann that I was going to have to return to Texas, and I felt rather badly over not having accomplished any results; that he was buying gasoline in East Texas, and couldn't he do something to recognize the Association and furnish them with some encouragement for the work that they were trying to do down there.

To the best of my recollection, his reply was, "Buckley, you have known about our buying for a long time, and you probably know that we do our buying through a broker, Bradshaw. We are not unsympathetic with these refiners, but, frankly, we prefer to continue to do business with Bradshaw."

And I said, "Well, Mr. Hartmann, would there be any objection to Bradshaw getting in touch with the Marketing Association?"

He said "Not if Bradshaw wants to get in touch with the Association; I haven't any objection to him buying in any way that he wishes to, but as far as I am concerned, I will be glad to have him do it if it will furnish any encouragement to the refiners down there."

I believe I asked Mr. Hartmann to ask Bradshaw
1164 to do that. Mr. Hartmann did not say he would. I think he said there wouldn't be any objection on their part to Bradshaw doing it. He did not tell me that he would communicate with Bradshaw and tell him to buy through our Association. If he had he wouldn't have told me to communicate with Bradshaw because he wasn't in touch with Bradshaw.

Mr. Bradshaw was a general broker buying for several companies, and he had bought gasoline for Gulf for about 15 years to my knowledge. I never heard of the Gulf Company buying down there except through Mr. Bradshaw.

On the same date, March 20th, I had a conversation with Mr. Dodge in Washington. I asked him whether The Texas Company was going to buy gasoline. He said he was quite sure that they were going to have to buy gasoline.

I said, "Well, will they buy gasoline in East Texas, do you know?"

He said, "Buckley, I can't tell you anything about that; that is something that comes under another department, and you will have to find out from them."

I pressed Mr. Dodge for further information, and asked him if their buying would be handled by his Houston office or his New York office. He said that he didn't know that, but if I was going back to New York, I could drop in and see his New York people and ascertain whether they would buy gasoline in East Texas or not; that
1165 he couldn't tell me. All he could tell me was that he was sure they were going to buy gasoline, but he didn't know where.

On that same occasion or around that same time, I had a conversation with Mr. Carnes. I asked Mr. Carnes if he would be willing to buy his gasoline through the Marketing Association, and endeavor to lend some encouragement to the members of the association. He told me that they were continuously buying gasoline, were probably going to buy more gasoline, and as far as he was concerned, he saw no reason why they shouldn't deal through the Association, but that it was up to Mr. Tracey and he would talk to him about it. Mr. Tracey is an employee of the Sinclair Company in Fort Worth, Texas.

Q. Did Mr. Carnes tell you to go on back to Texas, and that his company would buy through your Association?

A. Providing Mr. Tracey was willing. I will relate the exact conversation as I remember it, if you wish.

Q. Did he tell you that Sinclair was going to buy?

A. Yes, sir.

Q. Did he say that Sinclair would cooperate with the refiners to the extent of having Tracey buy through the Association?

1166 A. His words were to that effect.

I went back to New York from Washington and interviewed Mr. Cottingham of The Texas Company in New York. I tried to explain our plan fully to him. Mr. Cottingham was in the purchasing department, and the man that Mr. Dodge said I might see, if I was going back to New York.

I also saw Mr. Brandli in New York on this occasion. I believe I did see Noel Robinson of Tide Water Company on that visit to New York. I talked with him on this occasion about the possibility of having Tide Water Company buy through our association.

I went from New York to Tulsa. I had a conversation with independent refiners in East Texas as to what I had accomplished in New York. I met them at a dinner attended by the members of the East Texas Marketing Association at the home of Judge Starns in Gladewater, Texas. Those present at this meeting were Judge Starns, Mr. Henry May, Mr. Martin Grogan, his assistant, Mr. Kostalka, Mr. Kraker, Mr. Campbell, Mr. Travis, I believe Mr. Robertson, Mr. Haberle and Mr. Anderson. Either Judge Starns, Mr. Cline or Mr. May assembled these men. I learned of this meeting through either Mr. May or Mr. Cline, and I was asked to come and report. I made a verbal report to them that I was disappointed in the results that I had accomplished in their behalf; that no definite plan for purchasing could be established in East
1167 Texas, because of the refusal of a large number of companies to recognize the association or do any buying through the association or even in East Texas; that I

had been forced to contact individual companies in an effort to try and get them to deal through this association, some of them that were already in there buying; that I felt sure that as the work of the association progressed and as buyers became convinced that the refiners were sincere in their effort to eliminate the hot oil situation, and as they became convinced that the Tender Board was going to control the movement of oil in interstate commerce, buyers would return to the field to obtain their supplies as they had in the past; that I felt certain that Sinclair would buy and I felt sure that the Gulf Company would buy; that I had been told that The Texas Company might buy, and there were two or three other prospects that I thought were potential buyers among the larger companies. I don't know whether I told them I would continue to work with various major companies to get them to buy, but I did.

By the Court

I met Mr. Cottingham in New York and told him, first of all, that I had had a conversation with Mr. Dodge in Washington and that I understood from him that The Texas Company was going to buy some gasoline during 1935. 1168 I tried to explain to Mr. Cottingham what the East Texas Association was. He said that was the first time he personally had heard about it, and stated that they had their own method of buying, they wouldn't be interested. I pressed him further, and told him that regardless of what method he had of buying, the East Texas Marketing Association was a service organization, that it could absolutely protect, it felt, the buyer against getting illegally produced products and without any cost whatsoever to the buyer. Mr. Cottingham said that he wasn't interested in talking about the East Texas Association; and, well—he dismissed me from his office, is the truth of the matter.

I reported to them at this meeting in the Judge's home that The Texas Company, I felt, was going to buy gasoline, but I couldn't find out whether it was going to buy in East Texas or not, and urged Mr. Cline to see if he couldn't get any information as to whether or not it was going to buy in East Texas.

Q. You certainly did not reach that conclusion from your conversation with Mr. Cottingham?

A. No, but The Texas Company were buying some gasoline in East Texas, I heard when I got down in East Texas; and my hope was to try to get them to buy through the association.

Q. And was it on that that you based your belief?

1169 A. That I hoped that I could work them around to buy through the association.

I called Mr. Robinson in New York, asking him for an appointment. Over the luncheon table we discussed the possibility of purchasing gasoline in East Texas. He told me that they had a terminal arrangement or transit arrangement—I don't recall which—with a refiner in a terminal on the Gulf Coast; that while they would not be in the market directly for gasoline, they thought that this other refiner or terminal operator would buy some gasoline in East Texas which, in turn, might go for their account.

Mr. Lewin: Q. And did he say anything that they would buy through your Association?

A. He wasn't buying the gasoline. These other people were buying it for them.

The Court: Q. Have you stated all of your conversation with Mr. Robinson?

A. All of it except that Mr. Robinson apparently was enthusiastic over what I was trying to do to help the refiners down there.

Q. Did he say, too, their representative down there that was operating this terminal would buy through the refiners organization, or not?

A. I don't recall that, your Honor, but I do know, from checking up later, that terminal 1170 organization did buy some gasoline through the association.

By Mr. Lewin

Looking at paragraph 20 of the indictment containing a list of names of independent refiners, from reports that I have seen from time to time, all were members of the East Texas Association, except I am not sure of Dominant Refining Company, Wabash Refining Company and Matthews Refining Company. They may have been members, but I don't recall them. To the best of my belief, all the others named in the indictment were members at the time of the indictment. Some of them may have dropped out; but sometime or other during the period of 1935 they were members of the association. Now, whether the Solvex Company was a member in 1935, I can't say because I don't think that they operated until 1936. I believe this list substantially represents the principal members.

I worked for the East Texas Refiners Association in the way I have described from the last of March 1935 until May 1935. I continued to communicate with various prospective buyers over the telephone until October 1935. Thereafter, except in one month, I believe it was January 1936, I was quite active on the telephone. I made a trip to New York in May and October 1935, and at the request of the refiners I went to the American Petroleum Institute meeting in Los Angeles in November 1935. 1171

The last active participation I had in so far as traveling or personal soliciting was really in October 1935. Although I did communicate on the telephone, at their request, with buyers until April 1936. In April 1936, they asked me to make a general approach to major companies. They had been after me to make a trip for the first 3 or 4 months of 1936 to make a plea to buyers that were not buying through the Association to try to come in and buy. I attended a dinner in East Texas in April 1936. I saw two or three people in Houston at that time for them at their request.

My main activities for the Association were in trying to get buyers to go back into the East Texas field and buy products from the East Texas refiners. Other activities consisted in interceding with buyers for favors for the refiners, as, for example, many purchasers wanted to buy in their own tank cars, and refiners would have material on track and be unable to ship it except in their own cars. They had contracts with tank car companies, and the buyers used to come in and insist on buying in their cars, which didn't furnish relief to the refiner that had gasoline already loaded to sell. They would call me and ask for permission to ship in their cars instead of the buyers' cars. On frequent occasions the specifications of buyers were very rigid, and they asked me personally to call different buyers and ask if they wouldn't relent a little on their specifications. 1172 At times buyers turned down gasoline on account of quality, and they would call me and ask if I wouldn't intercede with the purchaser of that gasoline and ascertain whether he wouldn't reduce the penalty for it. I have continually tried to advertise their refineries, their service, and their aims.

The buyers I speak of were major companies principally. I believe they would all be classed as major companies or large independent companies. Some place along the line I was asked what the refiners felt they were going to get for their material, what their object was, their attitude was, on a price. I told them what the refiners told me, they wanted a fair, going market price. I asked the major companies to buy from the refiners on a fair going market price.

Q. Did you ask them to support the market?

A. I asked them to support the refiners, if that means supporting the market.

(Mr. Lewin passes documents to the Court.)

Mr. Dougherty: If the Court please, whenever there comes a slight conflict between the conception of counsel for the Government as to what the witness should testify to and what the witness testifies to, I object to counsel running up to the bench 1173 with this transcript of the Grand Jury testimony, and I object to it particularly for this reason, that it leaves a bad impression in the mind of the jury. I think it creates a bad atmosphere. I don't know that it is intentionally done.

Mr. Chaffetz: I think the history speaks for itself, what the history was with respect to the two preceding witnesses who were on the stand. The jury and all present know without counsel trying to characterize it. Everybody knows that your Honor said the other day that these witnesses whom the Government is compelled to call to obtain the facts are employees of the defendant companies. They are under pressure—

Mr. Donovan: I object to such a statement, if the Court please, as highly improper.

Mr. Chaffetz: This is from—

Mr. Donovan: And an intent to be inflammatory.

Mr. Chaffetz: It is not intended to be at all.

Mr. Donovan: It is a fact that it is a fact.

The Court: The jury will disregard that statement, "the witnesses are under pressure."

Mr. Chaffetz: I don't mean that in that way—

The Court: It is a fact that they were employees—

Mr. Chaffetz: I don't mean in my—

1174 Mr. Denton: I object to it, and I want to say in answer to that, that the pressure is from the Government side on these witnesses.

The Court: (Addressing the jury:) These witnesses have testified before the Grand Jury the witnesses that have been on the stand. I have examined some of this testimony before the Grand Jury, and I refused to question witnesses on some of the questions before the Grand Jury; most of them were very, very leading, and I haven't done so. And I have used some of the testimony and read some of it for the purpose only of refreshing the witnesses' memories, and many times I have indicated that there was no conflict or nothing inconsistent between the testimony of the witness and the transcript of testimony. The only reason we use this transcript of testimony of each witness before the Grand Jury is to, if we can, refresh their memories so as to enable them to recall correctly what the fact is.

Mr. Lewin: Your Honor, would you tell the jury that in your opinion, my coming to you with the transcript is not improper conduct?

The Court: No, there is nothing improper about that at all. You would have no other way of conveying the transcript to the Court. That is perfectly proper. Exception allowed. (The Court reads document silently). 1175

The Court: Will you ask your question again, please?

Mr. Lewin: Q. Didn't you tell these buyers, the major company buyers, when you solicited them, that you wanted them to support the market?

The Court: The going market price?

Mr. Lewin: The going market price.

A. I wanted them to buy gasoline from the refiners at the going market price, if they would.

By Mr. Lewin

I asked Sinclair Refining Company to direct its purchases through the marketing association, if it would, that is, the East Texas Association. I asked Mr. Hartmann of the Gulf to allow his buyer to approach the Association, if he would. I talked to Mr. Cottingham of The Texas Company. I talked to Mr. Dodge of The Texas Company. I talked to Scullin of The Texas Company of Houston, Texas.

The Court: Q. As you talked with them is that the same conversation you had with the Sinclair, about the same?

A. No, I was done with the East Texas work, and I merely dropped in to say the association was still functioning.

1176 Q. I tell you what you do. Take a list of those defendants and tell us briefly the nature of the conversation with them or some representative.

By the Court

Concerning the Sinclair buying, I talked to Mr. Carnes and with Mr. Tracey. Concerning the purchasing of gasoline by The Gulf I originally talked with Mr. Hartmann and later with the Gulf buyer, Mr. Bradshaw. Concerning The Texas Company, I talked with Mr. Will Dodge of The Texas Company and Mr. Cottingham of The Texas Company. I talked with Mr. McElroy and Mr. Chamberlain of The Pure Oil Company.

I talked in the Continental Oil Company with a Mr. Batson in New York and with Mr. Karstedt and with Mr. Kennedy, and I believe once with a man, Morgan. Concerning Tidewater Company I talked with Noel Robinson, J. W. Warner and Mr. Audrain. Cities Services Company I talked with Mr. Frueauff. Cities Service Export Company, Mr. Brandli. Louisiana Oil & Refining Company, Mr. Welch and Mr. Brakefield. The subject matter of the conversation with each of these people would be different.

As relates to Mr. Chamberlain of The Pure Oil Company and Mr. Audrain of the Tidewater Company, I merely passed on to them information concerning the availability of material, at the request of Mr. Cline. He was at
1177 Tyler and gave me information over the telephone.
I gave them information that there were certain refiners and that they had certain gasoline to meet their specifications. I didn't discuss buying for the companies with either one of those gentlemen.

Concerning the Sinclair Company, I talked with Mr. Carnes and asked him to buy, and with Mr. Tracey about shipments, about the amount he purchased, or that he could purchase, or whether he would purchase any more.

With the Gulf Company I talked with Mr. Hartmann and the Gulf Company's buying representative, Mr. Bradshaw, about how much they had bought. First of all, I talked with Mr. Hartmann concerning the amount of gasoline that they would buy or whether they would buy. Then with Mr. Bradshaw about how much they have bought, or whether they would buy any more. In some particular week, how much he had bought that week. I had frequent telephone calls with Mr. Bradshaw; some times two or three times a week, during 1935 after March 1st, not so much in 1936.

With The Texas Company, I asked Mr. Dodge if his company was going to buy gasoline. I asked Mr. Cottingham of The Texas Company if they would buy it through the Association. I asked Mr. Scullin of The Texas Company if they would direct their purchases to the Association. I talked with Mr. Scullin on telephone calls in
1178 the fall of 1935, and met him for the first time some time in April, 1936. I had heard they were going to buy a considerable quantity of gasoline in East Texas, and called Mr. Scullin and asked him if he wouldn't let the Association help him assemble the gasoline, and he told me no.

With The Pure Oil Company I talked with Mr. McElroy concerning purchases of East Texas gasoline. My first conversation with Mr. McElroy was in New York, I believe it was on March 6, 1935. I have known Mr. McElroy a long number of years, and I told him that I was off on another tour to try and get help for the East Texas refiners, and did he think his company was going to buy in that market. He told me they badly needed gasoline but they were afraid to buy it in East Texas, and would not buy it in East Texas unless they could be assured that the Tender Board was going to function properly, but if they did not function, they were going to have to buy on the Gulf Coast or some place else, and it would depend on his manufacturing department what they bought and where they bought. Subsequently, I talked with Mr. McElroy once on the telephone some time along during the summer, pleading for a let-down in their very rigid specifications. My conversations after that were principally with Mr. Chamberlain. In that territory, Mr. Chamberlain did the buying.

My first conversation with Mr. Chamberlain was over the telephone. He called me and told me that he had
1179 been referred to the Association by Mr. McElroy, and he called Mr. Cline and asked him about the availability of gasoline that would meet their specifications. Mr. Cline had given him assurance that there were two or three refineries in the field who could meet their

specifications. He called me and asked me if I thought that Cline knew what he was talking about and if they could get the material there, because if they couldn't it would very seriously interfere with their operations. I told him I knew at least two of the plants that Cline had named could if they would produce that kind of gasoline, and referred him back to Mr. Cline for a further checkup on his specifications.

Concerning Continental Oil Company, in New York in late March I talked with Mr. Batson about the possibility of his company buying gasoline in East Texas. He told me that that was a matter which would have to be referred to Ponca City.

In April 1935, at the meeting of the Western Petroleum Refiners Association, I secured an introduction to Mr. Karstedt of Continental. He told me that he would not buy any gasoline in East Texas under any conditions; that the reputation that had been given him of the Association and the refiners there was such that he didn't wish to have anything to do with them. Later, I asked Mr. Cline to keep in touch with the Continental Company at Fort
1180 Worth, and see if he could interest them in dealing through the Association.

I am not sure when my next contact with Continental was; I believe it was in the summer. I tried to reach Mr. Cramer, and couldn't get him, and talked with someone else, whose name I don't recall. My next approach was either to Mr. Morgan or to Mr. Kennedy in the fall of 1935. I met Mr. Kennedy in Los Angeles, and particularly pressed him to try to have his Fort Worth office deal through the Marketing Association.

As to Tide Water Company, I talked first with Noel Robinson, who explained to me that they were dealing through a refiner and terminal organization at Houston, and that in all probability that refiner might buy part of their material from the East Texas refiners, and possibly through the Association. I later learned that that company, the Republic Company, was buying some gasoline through the Marketing Association.

As to Cities Service Company, I talked with Mr. Frueauff in February 1935 and told him what I was doing in New York, and asked him if the company would support the East Texas refiners. He told me that Cities Service Company itself did not buy gasoline, but that if Mr. Brandli or Louisiana Oil Company were interested in buy-

ing gasoline, I could go and see them; that whatever they needed, or whatever they wanted, or whatever they
1181 wanted to do, was what would be done.

In Cities Service Export Oil Company, I talked with my superior, Mr. Brandli, who was not interested in buying anything except for our own needs.

As to Louisiana Oil Company, I talked with Mr. Welch, I believe, in April 1935. He told me that they had an arrangement of some sort with an East Texas refiner to supply them with gasoline; that that arrangement would run for several months, and until it expired, they would not be interested in discussing purchasing through the Association. I later talked with Mr. Brakefield, and asked him if, on the small spot purchases he was making from East Texas he wouldn't consult the Association. He told me he felt he could do better, dealing right in Shreveport, where the Grogan Oil Company was, and continuing his arrangement with the company that he was already dealing with.

By Mr. Lewin

I talked with Mr. Brakefield several times, to try and get him to buy over there; but I couldn't secure any encouragement from him on buying directly through the Association. Mr. Brakefield's company did not buy through the Association to my knowledge. The Association may have charged refiners for gasoline that he bought from some of the refiners, but I don't know that he bought through the Association.

1182 I used every argument I possibly could when I approached these various major companies to get them to buy through the Association. I told them that I thought that the refiners ought to be allowed to live, and that is what I wanted to see them do. On one or two instances I may have told them that I felt that if the East Texas refiners survived, the whole industry would benefit; that is, if they survived on an orderly basis, the whole petroleum industry would benefit.

Q. Did you point out to them that buying through that Association at going market prices, would have a good effect on raising the market price?

A. Well, Mr. Lewin, I don't want to get into an argument with you on these prices, but I have tried to make it plain, and I will make it plain now, that I felt and always have felt that market prices were regulated by the law of supply and demand. I have never fixed a price, never suggested a price to any refiner; I never have, and I never will.

Q. Weren't you trying to stimulate demand?

A. I certainly was, for the East Texas refiners.

Q. And in that way, you were trying to affect prices, is that right?

1183 A. If prices would be affected by the demand, yes, sir.

Q. Well, didn't you say that it would be?

A. I said if demand affects price, yes, the price would be stimulated.

Q. Well, didn't you say that demand did affect price?

A. It would affect price, naturally.

Q. All right. Now, did you use that argument with any of these major companies?

A. No, sir. It was up to the refiners themselves to get prices up; I was not regulating prices.

During this time, I was keeping in close contact with Robert N. Cline, the secretary of the Association. His duties, according to the best of my understanding, were to keep in touch with all of the independent refiners in the East Texas field who were operating on federally tendered oil, and to see that they listed with him from time to time, once each week, I believe, the amount of gasoline that they expected to produce the following week, over and above their then commitments. He obtained the specifications on that gasoline, checked with the various state and federal tender boards to see that the refiners had sufficient crude to produce that gasoline legally; and 1184 when any buyers called him, that is, brokers, marketers, jobbers or major companies, he would put them in touch with refiners who had gasoline to meet their specifications.

I do not know how many independents bought gasoline through that Association. Mr. Cline told me that he had frequent calls from brokers and marketers, inquiring where gasoline was available. I would have no idea what the independents bought through the Association. Mr. Cline may have definitely arranged for the purchase of 50 cars by brokers; but, once a broker established himself with a refiner, he would go directly to the refiner, and not to Mr. Cline, so there would be no way of knowing what he did.

I can give you no record on the amount of buying through the Association by independents. I have never had a record on it. It might have been 50, 100 or 500 cars, I don't know.

Q. Didn't you testify that you thought 50 was the proper estimate?

Mr. Donovan: When?

Mr. Lewin: Q. Before the grand jury?

A. I may have, but I don't know what an estimate—what it would be.

My understanding is that the Sinclair Company bought
regularly through the Association; that the Gulf Company,
through Mr. Bradshaw, bought regularly;
1185 that, The Pure Oil Company bought regularly; that
from some time in the spring or early summer of 1935,
Tide Water Oil Company bought regularly; that, beginning
either late in 1935 or in early 1936, the Continental
bought gasoline. Whether they bought all their gasoline
there or not, I don't know, but I understand they bought
some. I was pretty much out of touch with the thing by
that time. They were not buying during the time that I
was getting reports from Mr. Cline on the buying by various
companies. I knew that they were buying some gasoline,
but whether they were every week or not, I don't
know. But my understanding was they bought through
the association sometime, beginning late in 1935. Cities
Service Export Oil Company bought gasoline, beginning
in January, and in February and March, 1935. We bought
nothing after March 1935. I bought some of it through the
Association. I bought it all myself, but I learned the
whereabouts of it through the Association. I don't know
that Louisiana Oil bought directly through the Association.
I know Mr. Cline told me that the Association was
taking credit for some sales to the Louisiana Oil Company.

The Association charged an assessment to the independent
refiners for gasoline sold through it. They supported
their Association by an assessment. I believe they charged
$2.50 a tank car at first, and lowered the charge to
$2.00 a tank car, and then for a while, when
1186 their finances were in fairly good shape, they discontinued
the charge altogether, and later replaced the
$2.00 charge. These assessments were levied on cars that
were sold to a certain list of large companies wherein
purchases were made at what were considered the going

market prices. It is my understanding that assessments were made only on such purchases.

My understanding is that on the purchases by Sinclair at the going market price, the Association charged the refiner a commission; that on the purchases of Mr. Bradshaw for the Gulf at the going market price, the Association charged the refiners a commission. On the purchases by The Texas Company, reported to the Association by refiners, the Association charged a commission whenever they could find out what the price was. The records on the Texas Company were obtained from the refiners themselves.

> The Court: Q. The major companies that bought had nothing to do with this assessment, had they?
>
> A. I don't think they knew anything about it, no, sir.

By the Court

As to what The Pure Oil Company bought at the going market price, I understand the Association charged an assessment. As to Continental Oil Company, on 1187 anything that was bought directly through the Association at the going market prices, an assessment was charged. Tide Water Oil Company: on anything that was bought directly through the Association, an assessment was charged. Cities Service Company made no purchases. As to Cities Service Export Oil Company, I understand the Association charged an assessment on part of their purchases. As to Louisiana Oil Company, I don't know what percentage of the purchases which they made the Association charged a commission for.

By Mr. Lewin

As I haven't a list, I don't know whether there were any others on whose purchases commissions were charged to the independent refiners. I don't know whether commissions were charged on purchases by brokers or small companies.

> Q. Now, what was this "going market price" that you talk about? Did it have reference to the trade journals?
>
> A. To some extent, yes, sir, and whatever the buyer and the seller could get together on as the going market price.

I believe Platt's Oilgram reports an East Texas market price which has recently been rather consistently ⅛¢ below the Mid-Continent price. At one time, it was above.

1188 (Exhibit 676 is shown to witness and the jury.)

Mr. Lewin: This chart is supposed to be a representation of the trend of quotations for third grade gasoline published every Monday in Platt's Oilgram for the East Texas market. It represents a graph of the low quotations of that publication. It begins January, 1935, runs through the rest of the year 1935 into the beginning of 1936, and runs through the rest of the year 1936, in that fashion.

The East Texas refiners who were members of this Association produced from their skimming plants principally a straight run gasoline of from 58 to 60 gravity and under 437 endpoint motor, and a 60-62 gravity 400 endpoint gasoline, and a 63-66, 375 endpoint gasoline. The third grade gasoline is generally regarded as U. S. Motor. The largest percentage, I believe, of gasoline made by the skimming plants was 400 endpoint gasoline and 375 endpoint gasoline which, while it may be third grade in octane, is not commonly regarded as third grade gasoline.

I believe Platt's Oilgram carried a separate price for U. S. Motor and a separate price for 400 endpoint gasoline. All the straight run gasoline that I refer to moved in about the same general trend, although there were fluctuations in the 400 endpoint and in the 375.

Generally I remember the price was low in 1935. I think it was down around 3¼¢. I recall that 1189 beginning about March—it shows on this graph, Exhibit 676, about March 5th, I think—that the price began to come up in stair steps. That was during the month in which I was in New York working on behalf of the East Texas refiners trying to get them buyers. I was active in that work on the telephone or trying to make personal calls until about October. I spent quite a bit of my time in February away from home on that work. From March 4 or 6 up until about the 25th or thereabouts, I was away from home, so I guess my work in that period was more intensive than it was at any other time. On the telephone I worked about the same rate all the way down to October.

Sometimes along in May prices came up to about this level of 4⅝¢. (Indicating on chart). The published East Texas market prices generally remain on that level throughout the rest of the year. There is a break in there, according to my recollection there was a break right in here in the end of May, when the Supreme Court knocked out

the Code. The chart does not show any break, but my recollection is that there was a break. It recovered and then went back to the level again, until along some time I believe in September there was another slight break for a few days. Then it came back up to level again when crude was advanced. But generally I would say prices re-
mained pretty close on that level right straight
1190 through. During all that time I was working for
the Association trying to get buyers. That represents a fair picture of the prices paid by the major companies that were buying through the Association.

Q. Is it true that when the major companies buying through your Association paid prices along this level they were regarded by the Association as paying that market price, and the purchases were those in which a commission was charged to the independent refiners in your Association?

A. I believe I previously stated I regarded the going market price as the price on which the buyer and seller could agree as a fair going market price. Now, not being acquainted with what major companies paid except along general lines, I cannot answer the question without knowing what each company paid, but I regard personally any deal that was acceptable to both buyer and seller as a going market price, was the price on which the Association charged its commission. Now, whether that was in all cases strictly that price, or whether it was an eighth lower on part of their purchases, or above that is something on which I cannot inform the Court because I did not keep the records.

I remember that refiners down there in East Texas
advanced their quotations following the crude oil
1191 price in January 1936, but what anybody paid after
I got through in October, I had no information except general hearsay information, but I know that the quotations in the publications were up after the rise in the price of crude oil.

Q. Didn't you continue to observe prices so that you could report them to your superior, Mr. Brandli, throughout this period?

A. Oh, I reported the prices I heard to Mr. Brandli, yes.

Q. Now, I am asking about the reported prices that you were observing. They were the prices that the major companies were paying at the Association, weren't they?

A. I believe some of them paid those prices, and I recall distinctly that some others told me they were not paying those prices.

Q. I asked you, whether the prices you were reporting to Mr. Brandli, to keep in touch with the market, weren't those prices the major companies were paying through the association,—regular purchases?

A. The prices I reported to Mr. Brandli were the prices that were quoted to me and prices they wanted us to pay if we bought material.

Q. Weren't they the prices which the major

1192 companies were paying in this association?

A. Mr. Lewin, I am trying my best to explain that to you and to his Honor, and I think I have explained it.

Q. It wasn't satisfactory to me.

The Court: Q. What prices did you report to your superior officer?

A. I reported to my superior officer at that time that the price quoted to me, and I thought they were generally being quoted by refiners, were five and one-eighth cents in East Texas.

Q. How did that price compare with the price in the Journal for the same days?

A. In the Oilgram, you mean?

Q. Or, the Oilgram, yes.

A. Well, I don't know. I think the refiners raised their prices before the Oilgram went up. Just what the dates were, I don't know.

By Mr. Lewin

Looking at this chart, Exhibit 676, I see that the quotations on Monday of the low of the Oilgram after that rise, throughout the rest of January and half of February, were exactly at 5⅛¢. My recollection is that the price went up to 5⅛¢, and was supported at that figure for a while, and then gradually dropped off; and that the drop off came some time early in February,

1193 and I think it came sooner than the journals. I think it came before shown on that chart, which is based on quotations.

I didn't study the trend of prices for 1936 so I can't say that chart, Exhibit 676, represents the picture of the trend of price through the rest of 1936. I was still trying to get orders for the Association down to April, 1936. Beginning with 1936 down until April 1936, I don't know how far the price dropped, but I do know that the price held at 5⅛¢ for 2 or 3 weeks, maybe longer than that, but not much over 2 or 3 weeks, and then it went down. What level it dropped to, I don't know, but it may have reached 4⅞¢.

I believe the prices came up again in March. Prices might have been on a level from April into May, but I can't testify without comparing them with the Oilgram or copies of it.

Q. Is it your testimony that the going market price at what you suggested to these major oil companies, didn't have any reference to the trade journals in their quotations?

A. It would have a reference, yes, sir.

Q. Is that what you meant when you said "going market prices?"

A. I meant the closest to these trade journals that the buyer and the seller could get together on.

1194 By trade journals I meant the Oilgram with which I was familiar. I knew nothing about the Journal of Commerce and never read it.

Prices had gotten to 4⅛¢ on April 8, 1935. At that time I had been working for the Association about two months.

Exhibit 18 for identification is a letter I wrote to Mr. Brandli, dated April 8, 1935.

Mr. Lewin: I offer it in evidence, your Honor, as Exhibit 18 upon the same limitations as stated at R. p. 560.

Mr. Donovan: Same objection your Honor, as before at R. pp. 504-05, 556-57.

Mr. Lewin: That is offered subject to the same limitations as the other letters.

The Court: It may be received with the limitation expressed by counsel. Exception allowed.

(Letter referred to received in evidence as EXHIBIT 18 upon the conditions mentioned and read to the jury. Exhibit 18 later at R. p. 907 was admitted as evidence against all defendants.)

There was a meeting of the Western Petroleum Refiners Association at Excelsior Springs, April 5, 1935. Referring to the last sentence of Exhibit 18, I did not suggest a successor, in the work, to Mr. Arnott. I had in mind John Bradshaw as my successor.

Exhibit 39 for identification is a letter from
1195 LaPren Refining Company to me, signed by A. S. Robertson, dated April 16, 1935.

Exhibit 40 for identification is a letter I wrote to Mr. Robertson, dated April 18, 1935.

Mr. Lewin: I offer these letters in evidence, Exhibits 39 and 40.

Mr. Donovan: Same objection, your Honor, as appears at R. pp. 504-05, 556-57.

The Court: Yes, offered with the same limitations?

Mr. Lewin: Yes, sir.

The Court: Received, with the same limitations as appear at R. p. 560. Exception allowed.

(Letters so marked respectively received in evidence as EXHIBITS 39 and 40 upon the limitations mentioned. Exhibits 39 and 40 later at R. p. 907 were admitted as evidence against all defendants.)

I don't know whether LaPren Refining Company was a member of the East Texas Marketing Association in April, 1935. It was sometime during 1935. During the early part of this period Mr. Robertson used to come to some of their dinners but I don't know whether he had actually paid for his membership or not. I bought some gasoline from LaPren Refining Company for Cities Service Export Oil Company after February 13th, 4, 5 or 6 orders in February and March. I don't know whether the Association took credit for the early February purchases or not.
1196 I presume they did for the later February purchases and part of the March purchases.

Mr. Robertson was not president of LaPren; he was general all-around man, assistant manager of the refining operations and everything else of LaPren.

The price on Monday, April 8, 1935 was 4⅛¢ and on April 22, 1935 was 4⅜¢ according to the chart, Exhibit 676.

(Mr. Lewin read Exhibits 39 and 40 to the jury.)

The circumstances of that letter, Exhibit 40, were these: This man in his letter to me had promised several times to ship this gasoline and proposed to ship the higher priced gasoline and cancel out the low priced gasoline. I made repeated requests of him to ship the gasoline, and he submitted this proposal of his. So I sat down and wrote what is known as a "high-toned" letter. We were so short of gasoline we couldn't get enough for our cargoes, and the reason we wanted that gasoline was because we had to put it in cargoes. I told a fib to put back his lie when he told me he was going to ship that gasoline.

Q. Can you explain to the jury this sentence in your letter: "Through my persuasion Cities Service Export Oil Company was induced to buy from
1197 East Texas Refiners during the latter part of February and March, more than 600 cars of gasoline, very little of which, at the time of purchase, we had reason to believe we would need."

A. That is what I have tried to explain, that we badly needed the gasoline, and I didn't want to tell him so, and I wrote a "high-toned" letter, and told about the same lie that he told.

Q. This, you say, was a lie?

A. Yes, I was matching mine with his.

Q. Will you explain this: "The results of such purchasing is plainly apparent?" The next sentence in your letter. Is that a lie?

A. No, that is not a lie.

Q. Were you referring to the results of purchases as reflected on the graph?

A. The results of not only my purchases, but their effort was plainly apparent.

Q. Were you referring to the advance in prices?

A. Possibly so, yes.

Exhibit 19 for identification is a letter I wrote and sent to Mr. Brandli, dated April 20, 1935.

Mr. Lewin: Your Honor, I offer it in evidence under the same limitations as appear at R. p. 560.

1198 Mr. Donovan: Same objection, your Honor, as appears at R. pp. 504-05, 556-57.

The Court: Received with the same limitations (passing document to Mr. Lewin). Exception allowed.

(Letter so marked received in evidence as EXHIBIT 19 upon the limitations mentioned. Exhibit 19 later at R. p. 907 was admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 19 to the jury.)

When I say in my letter, Exhibit 19:

"Therefore, a return which will show any considerable amount of profit to a refiner will increase crude runs to the extent where the handling of surplus gasoline will be difficult," I was referring to the independent refiners in the East Texas field. That would increase crude runs because, if they got to the stage where they could make money, they would go out and offer additional premiums for crude to increase their runs. That would increase surplus gasoline if there wasn't a market for it and make the handling of surplus gasoline difficult by their Association. The Association was trying to find a market for their surplus gasoline.

Exhibit 20 for identification is a letter I wrote and mailed Mr. Brandli, dated April 27, 1935.

Throughout this period shown on this graph, Ex-
1199 hibit 676, I was working for Cities Service Export Oil Company and receiving my salary from that company. I was working for the East Texas Refiners Association strictly on my own, after May, 1935, with the permission of my company to continue trying to help the East Texas refiners if I wished, and entirely on my own responsibility.

Mr. Lewin: Here is the letter of April 27, 1935, again to Mr. Brandli—

Mr. Donovan: May I have the same objection to this letter, Exhibit 20, your Honor, as appears at R. pp. 504-05, 556-57?

The Court: Objection overruled. It may be received with the same limitations as heretofore at R. p. 560.

(Letter so marked received in evidence as EXHIBIT 20 upon the limitations stated. Exhibit 20 later at R. p. 907 admitted as evidence against all defendants.)

Mr. Lewin: Q. Mr. Buckley, can you point approximately to the place on that price graph, April 27th?

The Witness: It would be right about in here some place, on this graph (indicating).

Q. Yes. Now that is very close to the last step that that graph takes up, there, isn't it, in that time?

1200 A. Yes, sir, it is getting up there pretty close.

(Mr. Lewin read Exhibit 20 to the jury.)

I cannot tell you exactly how much of this surplus gasoline the regular major company buyers took through the Association each month, but I can tell you from my recollection of figures given to me from time to time by Mr. Cline how much the Association took credit for. I believe that that ranged from around 100 and some odd cars in the first month, February, to 500 and some odd in March. I think it reached a peak of 900 and some odd cars in August or September, and then gradually went back down again. I do not recall what it was in October or November, which was about the last time I had any figures. I cannot give you any figures after October or November or early December, whenever it was I had the last information. It would be difficult to strike an average, but from 600 to 700 cars a month were taken by the major company buyers on the spot market from March, 1935, to December, 1935. That would be about as close as I could come to it.

Q. And could you tell us roughly the amounts of that gasoline that each one of those regular buyers took?

A. That is pretty far back to remember, sir. I don't know. I can give—I might—

1201 Q. Did you give that sort of testimony before the grand jury?

A. I think I made a guess. That was about all it was, an estimate or a guess.

I wouldn't know which company took the most because I couldn't give the details. Probably either Sinclair or Gulf took the most. I believe possibly The Pure Oil Company might have been next. Possibly Cities Service Export Oil Company might have been next on the list, on the total purchases they made in the first three months of the year. I have a hard time recalling them. Probably either Pure or Tide Water, whatever Tide Water Company was doing the purchasing, occupied about third and fourth positions. Texas was next and Continental last. I could not tell you whether Louisiana Oil ever bought anything through the Association, or what the details were for that year.

Mr. Cline used to give me information on the figures at that time, but not about Louisiana Oil's purchases. I obtained information once in a while from Louisiana Oil as to what they were buying in East Texas, but not as to whether it was through the Association. I think, if I recall, it was probably buying from 5 to 10 cars a week; might have been 12 some weeks, and 2 others.

Part of the orders from those major company regular buyers would come to Mr. Cline. My understanding is that Sinclair would approach Mr. Cline, or he would ap-
1202 proach it for the amount of gasoline that it would use or need in the next week. When he secured the offer-

ings from the refiners, he would give Sinclair a list of refiners who would have material available to match its specifications. When he was on the job, I presume Mr. William Tracey would approach Mr. Cline in that way for Sinclair. I believe the way Mr. Cline operated was to take that order and divide it up among the independent refiners, the members of his Association.

As to Gulf, Mr. Cline would receive information from Mr. Bradshaw, and tell Mr. Bradshaw where he could get suitable material. I believe Mr. Cline would divide the amount that the Gulf Company was inquiring about as far as he could among the independent refiners who were members of his Association. However, I believe what Mr. Cline actually did was give the purchaser the names of refiners and how much gasoline they had available and the purchaser then could buy from those refiners, if he wished, or if he did not want to buy from them he would give some material to some other refiner.

Q. Did Mr. Cline communicate with the independent refiners and tell them how much of that order was allotted to them?

A. Well, I can only presume on that. I presume he did.

Q. Don't you understand that was the practice?

1203 A. In some cases it was the practice, and in other cases otherwise.

With respect to Pure, the only knowledge I have was that Mr. Cline frequently on the telephone would call me, and, to save telephone expense, ask me if I would call The Pure Oil Company and tell it that certain refiners that week had so much gasoline which would meet its specifications. What Pure did after that, I don't know. I would call either Mr. Chamberlain or his office when I was asked to by Mr. Cline. Mr. Chamberlain was not always there. Mr. Chamberlain's office did the buying for Pure.

As to Tide Water Oil Company, Mr. Cline quite frequently asked me to communicate with the Tide Water and tell them, if they were going to buy gasoline, that week, that such and such refiners had their gasoline. Tide Water had an arrangement with one or two refiners to use their tank cars, and it tried to favor those refiners with its orders. I cannot say whether Mr. Cline divided some of the Tide Water orders among the independent refiners. He would tell me the names of the refiners who had material to meet Tide Water's specifications. I communicated either with Mr. Audrain on that subject or with somebody else in his office and told him what Mr. Cline had told me. I do not believe I ever handled that with Mr. Warner. Mr. Andrains was more or less in the shipping department. When 1204 Mr. Cline divided these orders among the various independent refiners in this Association he would have to consider first of all specifications, and then the amount of gasoline the refiners offered, and then the allocation by the Federal Allocation Board. I guess that is the only rule he had. I don't think he would generally divide it up among these companies in accordance with their capacities because some refiners had sales departments that handled a large per cent of their material, and there might be small refiners who had no sales department, and who offered Mr. Cline all their material.

Orders from Cities Service Export Oil Company during March and April, 1935, were not divided by Mr. Cline among the independent refiners in the Association. I approved all the purchases that were made. I was given the names of some refiners whose material I did not care to accept, and I went to other refiners to get it. I bought from a number of independent refiners who were members of the Association and from some that weren't members of the Association.

Mr. Lewin: Your Honor, I have at this time Exhibit 454 for identification, Exhibit 456 for identification, and Exhibit 478 for identification. I understand that the authenticity of these letters is conceded, and I offer them in evidence (handing exhibits to the 1205 Court).

Mr. Donovan: May I have the same objection, your Honor, as appears at R. pp. 504-05, 556-57?

The Court: You may, the same objection. Are you offering these with the same limitations?

Mr. Lewin: Yes, sir, as appear at R. p. 560.

The Court: Those may be received. Exception allowed.

(Documents so marked are received, respectively, in evidence as EXHIBITS 454, 456 and 478, upon the limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

On this purchasing you asked me about, there was one time in February, 1935, when Mr. Cline and Mr. Travis tried to locate material for me, when I was not in the field; and it happened in two or three instances in March, when I was not in the field, that Mr. Cline did handle work for me. But outside of that, I tried to do my own communicating.

I didn't personally assist Mr. O. D. Robinson of Republic Company in making purchases for Tide Water in the East Texas field. Mr. O. D. Robinson, and I believe Mr. Noel Robinson, told me that they were working with Tide Water Oil Company in its terminal and handling of its gasoline, but I don't think that I could be called an assistant in that.

My understanding is that on several occasions during
1206 the early part of 1935 Tide Water assembled at the
Gulf partial cargoes, making its purchases in East Texas. I did not make those purchases for them in East Texas, nor did I assist them, as I recall. I may have, but I don't recall it.

(Mr. Lewin read Exhibits 454 and 456 to the jury.)

The initials on Exhibit 456 are "H D" something, but I can't read the third initial as "f." I don't know that signature. F. R. Coates was vice president of Cities Service Export, and I had the idea he was president of some other Cities Service company.

(Mr. Lewin read Exhibit 478 to the jury.)

I wouldn't know, without totalling my figures, whether this 3,202,000 gallons of gasoline purchased in East Texas, according to this memorandum, was purchased by me. I wouldn't want to guess at whether 3,202,000 gallons was approximately the amount.

Cities Service Company didn't buy through me. Cities Service Export Oil Company did. During that time no other Cities Service company purchased in East Texas unless Louisiana Oil Refining Company could be called a Cities Service company, and I don't know the extent of its buying. I would rather imagine that that 2,000,000 gallons he mentioned as for export was either all or in part Cities
Service Export Oil Company, but without checking
1207 the figures, I couldn't tell.

Exhibits 21 and 22 for identification are letters I wrote and sent to Mr. Brandli, each dated May 17, 1935.

Mr. Lewin: I offer it in evidence, with the same limitations as appear at R. p. 560.

Mr. Donovan: The same objection, your Honor, as appears at R. pp. 504-05, 556-57.

The Court: The same ruling. Exception allowed.

(Letters so marked received in evidence as, respectively, EXHIBITS 21 and 22 upon the limitations mentioned. Exhibits 21 and 22 later at

R. p. 907 were admitted as evidence against all defendants.)

(Mr. Lewin read Exhibits 21 and 22 to the jury.)

In one of my letters to Mr. Brandli, I believe there was a remark to the effect that reports coming from the East were to the effect that the major companies were satisfied with their purchasing ventures. I was referring to companies that had bought gasoline in East Texas.

Exhibit 23 for identification is a letter I wrote and sent to Mr. Brandli, dated May 25, 1935. Exhibit 25 for identification is a telegram I sent to Mr. Brandli, dated July 8, 1935.

Mr. Lewin: I offer this letter and telegram in evidence under the same limitations as appear at R. p. 560.

Mr. Donovan: Same objection as appears at R. 1208 pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Documents so marked are received in evidence as EXHIBITS 23 and 25 upon the limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 25 to the jury.)

Integrated company purchasing means large companies that have their own crude oil production and their own pipe lines. Generally speaking it is the same as these major companies we have been speaking of.

Exhibit 26 for identification is a telegram I sent to Mr. Brandli, dated July 10, 1935.

Mr. Lewin: I offer Exhibit 26 in evidence under the same limitations as appear at R. p. 560.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Telegram so marked is received in evidence as EXHIBIT 26 upon the limitations mentioned. Exhibit 26 later at R. p. 907 was admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 26 to the jury.)

Referring to Exhibit 26, "any under market material" means material that would be available at bargain prices. "Material that appears quickly absorbed by inter-refiner buying" refers to this buying by major companies or 1209 by independent companies.

Exhibit 29 for identification is a letter I wrote and sent to Mr. Brandli, dated September 14, 1935. Exhibit 30 for identification is a letter I wrote and sent to Mr. Brandli of September 28, 1935. Exhibit 31 for identification is a letter I wrote Mr. Brandli dated October 12, 1935.

Mr. Lewin: I offer these three letters in evidence under the same limitations as appear at R. p. 560.

Mr. Donovan: Same objection, your Honor, as appears at R. pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Letters so marked are received in evidence as EXHIBITS 29, 30 and 31, respectively, upon the limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

(Mr. Lewin read Exhibits 29 and 31 to the jury.)

Sinsheimer is connected with the crude oil and pipe line department of Cities Service Oil Company of Pennsylvania. The writing "Sinsheimer, note and return. B" is that of Mr. Brandli on Exhibit 31. I don't think the writing on Exhibit 31, "See second page," is that of Mr. Brandli. The initial on the second page after "get your export price where it should be" is not Mr. Brandli's. It looks like an "S" and it may be Sinsheimer. Exhibit 32 for identification is a letter which I sent to Mr. 1210 Brandli, dated October 19, 1935. I believe Exhibit 42 for identification is a copy of a telegram I sent Mr. Brandli, dated December 2, 1935.

Mr. Lewin: I offer this letter and telegram in evidence, your Honor, under the same limitations as appear at R. p. 560.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Letter and telegram referred to received in evidence as EXHIBITS 32 and 42, respectively, upon the limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

(Mr. Lewin read Exhibits 32 and 42 to the jury.)

By Mr. Lewin

Referring to Exhibit 42, East Texas aviation is a gasoline or naphtha of 375 endpoint. "For movement Gulf" means for some terminal in the Gulf.

When gasoline moves from Texas to the Gulf of Mexico, it is not intended to be loaded in tank cars. There are different uses for the gasoline. What happens to the gasoline depends on the operations of the refiners at the coast. Some refiners use a heavy Gulf coast crude, and require a heavy inland gasoline to balance with their material to bring out a well balanced product.

All the gasoline purchased by Cities Service Export 1211 Company from the Association during this period was moved down to the Gulf of Mexico.

I believe Sinclair moved quite a bit of gasoline to the Gulf also. That would not be loaded on tank cars there. I believe that gasoline would go in their refinery tanks. I believe the Gulf Company bought some for the Gulf and some for distribution in the eastern half of Texas. I heard the Pure Oil Company sent some to the Gulf for reprocessing. Their refineries are at the Gulf.

Tide Water Oil Company, as I understand it, moved their material to the Republic Refining terminal in Texas City. I don't know whether that was reloaded for eastern shipment. Maybe they blended it with other grades for eastern shipment.

I don't know whether any appreciable amount of this gasoline purchased through the association in East Texas moved up there into the Standard of Indiana territory. Some of it probably did, because they had built up trade in that grade, and would have to move it there. I have no record of whether any substantial amount went to Oklahoma.

Exhibit 47 for identification is a telegram I sent to Mr. Brandli, dated January 6, 1936.

Mr. Lewin: I offer this telegram in evidence, your 1212 Honor, subject to the same limitations as appear at R. p. 560.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Same ruling. Exception allowed.

(Telegram referred to received in evidence as EXHIBIT 47 upon the limitations mentioned. Exhibit 47 later at R. p. 907 was admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 47 to the jury.)

Q. Will you straighten me out on this? What is "Douba"?

A. It is an old-time expression for a certain grade of natural gasoline, double A.

(Referring to Exhibit 47.)

Q. Now, Mr. Buckley, did those prices go lower in January 1936, as you suggested they might?

A. Than what?

Q. (Passing document to witness) Well, take a look at this chart.

Mr. Donovan: That is different. Natural gasoline, aviation.

A. This is natural gasoline.

Mr. Lewin: Q. Double A is natural gasoline?

A. Yes, sir.

I don't remember whether natural gasoline got lower or not in January, 1936. I don't remember whether "early support developed".

1213 Q. Did you mean early market support?

A. In buying—the buyers coming in that needed supplies in the natural gasoline market.

Q. Are you talking about early support to the price?

A. No, buying of it; needing supplies by buyers, so they had to come in and buy; otherwise, if buyers didn't come, that was a prediction of a price drop.

Q. So when you talked about early support, you talked about early support of that price to prevent it from dropping, didn't you?

A. If there wasn't buying, the price would drop. People would sell at the best price they could get.

I attended a meeting in East Texas about the end of the first week in February, or the 6th or 7th, or thereabouts some place. I made some remarks at that dinner.

The Court: Q. Did you say anything that evening about curtailment by the independent refiners?

A. I spoke to them about their operating conditions, yes, sir.

The refiners were having the celebration of the first 1214 anniversary of the formation of their Association, and they asked me to come down and be a guest and talk to them about their markets. During the course of the evening, Mr. May, who was the presiding officer at the dinner, asked me if I would talk to them.

I reviewed the activities of the Association during the past year, as I had recalled them, from the time I had been associated with them. I told them that they were then in a very trying period of their existence; that the Bureau of Mines and various other agencies were calling attention to the fact that stocks of gasoline were very high, that the market at that time couldn't absorb them, and various trade journals were preaching curtailment, and that everyone interested in the industry was asking for stabilization of operations.

I told them that I never had and never would tell any man how to run his business, but that, as I viewed the situation, there were three or four courses open to them.

They could shut down, and sell the crude oil; or they could continue to run on part time, and store the balance of their crude oil for better markets; or they could curtail their operations and sell part of their gasoline and store the rest of it; or they could run their heads off and dump the gasoline for the best price they could get; that it was their choice and I had no recommendations; every
1215 man had to make the choice for himself. That is the substance of what I had to say.

During February, 1936, the month in which I made that speech, I believe these major companies were still buying through the Association.

Exhibits 54 to 68 for identification, I believe, are my telephone expense accounts for telephone expense incurred for the account of the East Texas Marketing Association, although my name is not signed to all of them. They start March 1935 and run through each month, through April, 1936. "L D" signifies long distance.

Mr. Lewin: Your Honor, I would like to offer them in evidence upon the limitations stated at R. p. 560.

Mr. Donovan: The same objection as appears at R. pp. 504-05, 556-57.

Mr. Denton: If the Court please, I would like to make an objection to these as incompetent, irrelevant and immaterial. I can't see, in the interests of economy of this record, any necessity of putting all that detail in here, after he has proved the fact.

The Court: Objection overruled. Exception allowed.

(Documents so marked are received in evidence, respectively, as EXHIBITS 54 to 68, both inclusive, upon the limitations mentioned. Said
1216 exhibits later at R. p. 907 were admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 65 to the jury.)

Referring to Exhibit 65, Mr. Robinson of Pittsburgh is O. D. Robinson; Mr. Tracey at Fort Worth, Texas, is William Tracey of Sinclair.

Mr. Lewin: Your Honor, I now offer in evidence Exhibit 35 for identification, which purports to be a telegram from Mr. C. E. Arnott to Mr. Harry Frueauff, Cities Service Company, and I would like to offer it in evidence. The authenticity of it has been admitted.

Mr. Donovan: The same objection, your Honor, as appears at R. pp. 504-05, 556-57.

The Court: The same ruling. Exception allowed.

(Telegram so marked received in evidence as EXHIBIT 35 upon the limitations mentioned at R. p. 560. Exhibit 35 later at R. p. 907 was admitted as evidence against all defendants.)

(Mr. Lewin read Exhibit 35 to the jury.)

Cross-Examination by Mr. Donovan.

About July, 1916 I went into the oil business, working for the Oil Marketing Company in Detroit. After the war I went to Wyoming, and prospected for oil, gas and coal until about April, 1921. I then returned East, and 1217 went to work for Carson Petroleum Company, a predecessor of the company I am now working for. I have been working in the same position since then.

I believe the first time I went to East Texas was in 1931. I was there on trips involving the purchase of crude oil in 1931 and in 1932, and I started to do business with the refiners there on gasoline and other products in 1933, and worked with them continuously since then, that is, whenever we were in the market and could use their material.

The East Texas field was first discovered, I believe, in 1930. I am not absolutely sure of the exact date.

I made certain purchases in 1935 in East Texas for Cities Service Export Oil Company. I have a record of the purchases I made between January and March, 1935.

(Chart representing purchases made by Mr. Buckley for Cities Service Export Oil Company in 1935, marked for identification, defendant's Exhibit 716, and was checked by witness.)

There is one place here (indicating) where I think one of the dots is misplaced, but the price seems to be the same. I think it is this one right here (indicating); this looks like the 21st. It is not quite right. I made a purchase on the 17th and none on the 21st. However, my purchase orders may show those dates.

With that exception, I believe the chart is correct.

1218 The purchases recorded on that chart, Exhibit 716, of refinery gasoline were the only ones that I made in East Texas in 1935 and 1936. I made a purchase in what might be called the Mid-Continent field from Olney Refining Company in February, 1935. That is the only one I made in the Mid-Continent field.

The chart, Exhibit 716, shows the purchases by Cities Service Export Oil Company from independent refiners compared with Platt's Oilgram, F.O.B. East Texas refineries. The legend shows that this dotted square represents the market price as reported by Platt's Oilgram for U. S. Motor 62 octane and below. The green square represents the market price as quoted by Platt's Oilgram, U. S. Motor 60 to 62, 400 end point. I don't recall this 60 to 62, 400 end point, but that is the grade.

These black marks, here, represent the purchase or purchases on the days recorded on the chart of 400 end point. The red dots represent the purchase or purchases of 420 to 425 end point. That was U. S. Motor. The brown dots represent the purchases made of 375 end point.

I made 35 purchases during January, February and March 1935. There was one purchase here shown at the low, but that is for the low of U. S. Motor, and the purchase was 375 end point gasoline. 34 purchases were below the low, if that low (referring to chart) is correctly drawn.

1219 I did not make my purchases on Journal or Oilgram quotations. I made my purchases on prices that were given me to buy at by my superior, Mr. Brandli.

(Chart referred to is received in evidence as EXHIBIT 716.)

None of those purchases were above the low on this chart.

I didn't actually attend the meeting on February 4, 1935, in Overton, Texas, with the East Texas refiners. I was in East Texas on February 4, and at the place of the meeting, but I left there before they started the meeting. I had several talks with several individuals and groups of individuals that were there. I presume they held the meeting afterwards. Those individuals and groups included Mr. Henry May, at whose home the meeting was held, Mr. Travis, Mr. Sowell, Mr. Campbell, Mr. Kraker, and either one or both of the two Potter brothers. There were others there, but I can't remember their names at the present moment.

I had spent a considerable part of the afternoon in the field visiting several independent refiners, particularly in the Gladewater area. I went to the place of the meeting, and was greeted by Mr. May. Individual refiners and groups of refiners repeated considerable of what had been told during the afternoon, that they were very definitely going to try to get together and remove the stigma
1220 of hot oil from themselves, and from as much of the
field as they could, and that they were going to cooperate with the state authorities on the question of the collection of taxes on material that was moved on trucks, the taxes for which were being evaded, that they were cooperating with the Federal Allocation Board, and were going to cooperate with the Government to the extent of trying to see what they could do to bring about the passage of the Connally Act, and the reestablishment of the Tender Board. That was the substance of what various of them said, except—whether the remark is permissible—they said, "For God's sakes, get out and get us some help!"

The Federal Allocation Board was a sub-division of the Petroleum Code under N.R.A., under which the various refining districts of the country were divided into groups. The Federal Allocation Board secured from the various federal agencies, Bureau of Mines, and Petroleum Administrative Board, and others, recommendations for the manufacture of gasoline for the next following month. Then each of the allocators for the district sat together and discussed the allocations for the various districts, and they then went back to their respective districts and assigned the quantity of gasoline which would be manufactured by each refiner for the next succeeding month.

I left Overton and went to Houston, Texas that night, February 4. I visited three representatives of three
1221 large companies there: Mr. Brown of Humble Com-
pany, Mr. Carlisle of the Gulf Company, and a man in the marketing or sales department of The Texas Company whose name I don't recall. I also talked with one independent refiner in Houston, Mr. Irvin of American Petroleum Company.

I next went to Dallas, Texas.

I had made arrangements with Mr. May to meet him and other refiners at Dallas where they were attending a meeting of East Texas producers, who were sending a delegation to Washington to ask Congress to pass the Connally Act and return the Federal Tender Board to Texas.

I met with Mr. Grogan, Mr. May, Mr. Travis, and I believe Mr. Kraker was over there, and there was some refiner from the Shreveport district that was using East Texas crude. I related my experience in Houston with the people that I visited, and related the telephone conversation with Mr. Legge of Magnolia Petroleum Company, and told them that in a conversation with one man I had been told that his superior, the man that would have to do the buying of gasoline in East Texas, if they did buy it, was in New York, and that I would have to communicate with him there.

I applied to the refiners and told them as far as I was concerned I would like to go home and let them get some one else to try, that evidently I wasn't making much
headway. But they persuaded me then to go on East
1222 and see other people if I could, particularly these
men that I had been referred to. One of them said
he would like to put me in touch if he could with Dr. Lederer.

Dr. Lederer was the allocation representative for the Federal Allocating Board for East Texas which was District 5-C, and he was also employed in what I believe was called the Petroleum Labor Section of the Planning and Coordination Committee.

I am not sure of Jim Collett's exact title, but I think he was called Chairman of the Planning and Coordination Committee. I don't know the name of his company, but he was and is an independent producer in Texas of crude oil.

I did not know Mr. Arnott before I saw him at Pinehurst. Dr. Lederer introduced me over the telephone to Mr. Arnott from Pittsburgh. I talked with Mr. Arnott on the telephone after Dr. Lederer introduced me, and I saw Mr. Arnott in Pinehurst.

I went to see Mr. Arnott in Pinehurst because of what Dr. Lederer told me. I told him of my talk with Dr. Lederer. I told him of my experience along the line, and that Dr. Lederer had told me that he felt he was the only man he could reach from whom he could get help. I told Mr. Arnott I was representing a group of East Texas refiners who were forming a marketing association. I

told him why they were forming an association,—
1223 first of all to curb in such manner as they could the production of hot oil, to cooperate with the state and Federal authorities under the Code in obedience to the law. I told them of the plan they had to put a so-called truck bill in the legislature of Texas so they could eliminate what they called the stealing of taxes. I told him that the refiners had asked me to make this trip, and that I was there if possible to seek help or suggestions from him if he could give them to me.

By the Court

I went to Mr. Arnott as the stabilization agent for refining and marketing under Secretary Ickes of the Planning and Coordinating Committee. I did not go to Mr. Arnott because he was president or an officer of Socony-Vacuum Company. I went to him because Dr. Lederer told me that he was the only man that could give me help, and why, because of his position, he could give me help. Dr. Lederer said he was Chief Stabilizer under the Planning and Coordinating Committee for refining and marketing. That is what I understood him to say the position was.

By Mr. Donovan

I explained the situation of the East Texas refiners to Mr. Arnott, and as clearly as I can recall it, he said that he wanted to do some investigating, and that I would hear from him later if he could give me any information of interest, or if he was interested in taking up the
1224 position of the East Texas refiners.

By Mr. Morgan

I had a telephone conversation with Mr. Scullin at Houston, but I don't remember whether I talked with him once or twice. I was of the opinion that I talked with him twice, but the number of charges on my bills would indicate the number of calls.

(Witness excused.)

Mr. Chaffetz: This document, Exhibit 510, is a document from the files of the Phillips Company, and one, the authenticity of which has been admitted. It is dated February 8th, 1935, and is another one of the reports of F. L. Koopman to the Budget and Operating Committee. This document we offer only as against the Phillips Company and the Phillips defendants, and no other defendant. (Showing exhibit to the Court.)

Mr. Donovan: May we have the same objection as appears at R. pp. 504-05, 556-57?

Mr. Thomas: If the Court please, before you
rule, in order to identify the objection, instead of
repeating over and over the same objection, I would
like to have the record show that the objections
1225 which we make to the reception of this document
now offered in evidence, Exhibit 510, are the same
objections that we offered to Exhibit 494 (R. pp.
556-57) which was the letter from the stenographer
to the Phillips Company. It is just a means of
identifying the objection. I also object to the reception of Exhibit 510 on the ground it is immaterial, as I understand it relates solely to natural gasoline.

The Court: Objection overruled. Exception allowed.

(Document referred to received in evidence as EXHIBIT 510 against Phillips Petroleum Company, Frank Phillips, Fred L. Koopman, A. M. Hughes, and H. A. Gardner only.)

(Mr. Chaffetz read Exhibit 510 to the jury.)

(Stipulation signed by Charles I. Francis, pertaining to authenticity of documents taken from the files of The Pure Oil Company received in evidence as Exhibit 717.)

Mr. Chaffetz: The government offers in evidence Exhibits 488, 482, 483 for identification.

Mr. Thomas: The same objection as appears at R. pp. 504-05, 556-57, 620.

The Court: It may be received as against such defendants as the record shows so far, the testimony shows have participated in the buying program. Exception allowed.

(Documents referred to received in evidence
as EXHIBITS 488, 482 and 483, respectively,
upon the limitations stated. Said exhibits later
1226 at R. p. 907 were admitted as evidence against
all defendants.)

(Mr. Chaffetz read Exhibits 488, 482 and 483 to the jury.)

Mr. Chaffetz: "Mac". I understand, is Mr. Mc-

Elroy, a defendant in this case, the "Mac" referred to in the telegram I just read.

Mr. Chaffetz: I offer in evidence Exhibits 485 and 487 for identification.

The Court: They may be received upon the same limitations.

> (Documents referred to are received in evidence, respectively, as EXHIBITS 485 and 487, upon the same limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

> (Mr. Chaffetz read Exhibits 487 and 485 to the jury.)

The Court: Let the record show the same objection and the same ruling to those last exhibits as appears at R. pp. 504-05, 556-57, 620. Exception allowed.

Mr. Chaffetz: Now, your Honor, I have a series of reports written by J. W. Warner, a defendant in this case, and associated with the Tide Water Oil Company, to J. D. Collins of that company, they are all very much alike, if your Honor would like to look at samples of them, it would save my handing them up one at a time (handing exhibits to
1227 the Court).

I shan't offer them all, only some of them, the exhibit numbers beginning at No. 251.

I propose to offer them separately, your Honor, I just wanted your Honor to see them before I started offering them one at a time, but I will make a separate offer of each one.

> (Stipulation signed by Bethuel M. Webster, dated October 3, 1937, was received in evidence as EXHIBIT 718.)

Mr. Chaffetz: The following Exhibits are offered in evidence by the Government: 251, 252, 253, 254, 256, 257, 258, 259, 260, 262, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 284, 285, 286.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 620.

The Court: Each and every such objection is overruled, and each and every such request for instruction is denied, and the letters may be received against the defendant Warner only for the present. Exception allowed.

(Documents previously so marked for identification are received in evidence as EXHIBITS 251, 252, 253, 254, 256, 257, 258, 259, 260, 262, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 284, 285, and 286, respectively. Said Exhibits later at R. p. 907 were admitted as evidence against all defendants generally.)

(Each of these Exhibits was read to the jury.)

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USSCt

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER
vs.
SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
PETITIONERS
vs.
THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
Defendants-Appellants.

Counsel for all
Defendants-Appellants:

MR. WILLIAM J. DONOVAN,
MR. HERBERT H. THOMAS,
MR. RALSTONE R. IRVINE,
MR. CARBERY O'SHEA.

Counsel for Certain
Defendants-Appellants:

MR. LOUIS MEAD TREADWELL,
Socony-Vacuum Oil Company, Inc.,
Wadhams Oil Company,
Charles E. Arnott, and
H. T. Ashton.

MR. GOLDTHWAITE H. DORR,
Charles E. Arnott.

MR. JOSEPH H. MARSHUTZ,
Wadhams Oil Company.

MR. CHARLES A. FRUEAUFF,
MR. CHARLES E. GATELY,
MR. THEODORE W. BRAZEAU,
MR. EMMERT L. WINGERT,
Empire Oil & Refining Company
(now Cities Service Oil Company).

MR. DAN MOODY,
MR. W. H. ZWICK,
MR. JAMES J. COSGROVE,
Continental Oil Company.

Counsel for Certain
Defendants-Appellants:

MR. CHARLES I. FRANCIS,
The Pure Oil Company and
R. H. McElroy, Jr.

MR. SAMUEL A. MITCHELL,
MR. TRUMAN POST YOUNG,
Shell Petroleum Corporation and
P. E. Lakin.

MR. G. T. STANFORD,
MR. ROY T. OSBORN,
MR. FREDERICK H. WOOD,
MR. THOMAS T. COOKE,
Sinclair Refining Company.

MR. J. C. DENTON,
Mid-Continent Petroleum Corporation and Robert W. McDowell.

MR. DON EMERY,
MR. R. H. HUDSON,
MR. RAYBURN L. FOSTER,
MR. WALTER L. BARNES,
Phillips Petroleum Company.

MR. W. P. Z. GERMAN,
MR. A. F. MOLONY,
MR. CLIFF V. PEERY,
Skelly Oil Company.

MR. RALPH HORWEEN,
MR. SAMUEL TOPLIFF,
The Globe Oil & Refining Company
(Illinois) (Oklahoma).

Counsel for Plaintiff-Appellee:

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MR. JOHN HENRY LEWIN,
MR. W. P. CRAWFORD,
MR. GRANT KELLEHER,
MR. W. B. WATSON SNYDER,
MR. JOHN J. BOYLE.

Appeal from the District Court of the United States for the Western District of Wisconsin.

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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G 35	Telegram, Jan. 29, 1936, C. E. Arnott to Harry Frueauff	615 907	2634
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G 39	Letter, April 16, 1935, LaPren Refining Company to Neil Buckley	603 907	2635
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G 42	Telegram, Dec. 2, 1935, Neil Buekley to H. E. Brandli	611 907	2637
G 47	Telegram, Jan. 6, 1936, Neil Buckley to H. E. Brandli	612 907	2637
G 52	Letter, March 7, 1936, Neil Buckley to H. E. Brandli	1876	2638
G 54	Letter, May 6, 1935, Neil Buckley to E. P. Engelke, listing March 1935 telephone calls	614 907	2638
G 55	Letter, May 7, 1935, Neil Buckley to E. P. Engelke, attaching Government Exhibit 56	614 907	2639
G 56	Long distance telephone charges, April 1935, by Neil Buckley	614 907	2640
G 57	Letter, June 12, 1935, Neil Buckley to R. N. Cline, listing telephone calls for May 1935	614 907	2641
G 58	Letter, July 9, 1935, Neil Buckley to R. N. Cline, listing telephone calls for June 1935	614 907	2642
G 59	Letter, Aug. 14, 1935, Neil Buckley to R. N. Cline, listing telephone calls for July 1935	614 907	2643
G 60	Letter, Sept. 10, 1935, Neil Buckley to R. N. Cline, listing telephone calls for August 1935	614 907	2644
G 61	Letter, Oct. 11, 1935, Neil Buckley to R. N. Cline, listing telephone calls for September 1935	614 907	2645
G.62	Letter, Nov. 7, 1935, Neil Buckley to R. N. Cline, listing telephone calls for October 1935	614 907	2646
G 63	Letter, Dec. 10, 1935, Neil Buckley to R. N. Cline, listing telephone calls for November 1935	614 907	2647

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
G 64	Letter, Jan. 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for December 1935	614 907	2648
G 65	Letter, Feb. 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for January 1936	614 907	2649
G 66	Letter, March 9, 1936, Neil Buckley to R. N. Cline, listing telephone calls for February 1936	614 907	2650
G 67	Letter, April 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for March 1936	614 907	2651
G 68	Letter, May 18, 1936, Neil Buckley to R. N. Cline, listing telephone calls for April 1936	614 907	2652
D 69	Transcript of District Allocators' Meeting, March 13, 1935	1720	2653
G 71	Weekly Letter, Feb. 8, 1935, W. P. Jacobi to A. G. Maguire	361	2686
G 72	Weekly Letter, Feb. 15, 1935, W. P. Jacobi to A. G. Maguire	362	2687
G 73	Weekly Letter, June 7, 1935, W. P. Jacobi to A. G. Maguire	458 907	2688
G 75	Weekly Letter, Sept. 20, 1935, W. P. Jacobi to A. G. Maguire	460 907	2689
G 76	Weekly Letter, Dec. 21, 1935, W. P. Jacobi to A. G. Maguire	461 907	2690
G 80	Letter, Aug. 10, 1935, Dale W. Moore to Charles E. Arnott	866	2691
G 83	Letter, Aug. 16, 1935, C. L. Jones to D. W. Moore	866	2693
G 84	Letter, Aug. 16, 1935, C. L. Jones to W. P. Jacobi, enclosing Government Exhibits 80 and 83	866	2693

Exhibit No.		Rec'd in evidence at page	Repro-duced at page
G 86	Letter, Aug. 27, 1935, R. H. Romer, Socony-Vacuum Oil Company, Inc., to W. P. Jacobi	471 907	2694
G 87	Letter, Sept. 3, 1935, W. P. Jacobi to J. H. Romer	471 907	2695
G 88	Letter, Sept. 16, 1935, J. H. Romer to W. P. Jacobi	471 907	2696
G 93	Letter, Dec. 27, 1935, W. T. Atkins to J. F. Nagle	1876	2697
G 94	Letter, Dec. 24, 1935, J. F. Nagle to W. T. Atkins	506 907	2697
G 95	Letter, Jan. 9, 1936, W. T. Atkins to Emby Kaye	506	2699
G 96	Letter, Jan. 9, 1936, W. T. Atkins to J. F. Nagle	506 907	2699
G 97	Letter, Jan. 22, 1936, J. F. Nagle to W. T. Atkins	1876	2700
G 98	Letter, Jan. 21, 1936, A. G. Pendergrass to Clara Gartman	506 907	2701
G 99	Letter, Nov. 5, 1935, L. H. Poland to J. F. Nagle	506 907	2701
G 100	Letter, Nov. 20, 1935, J. F. Nagle to L. H. Poland	506 907	2702
G 101	Letter, Jan. 8, 1936, J. F. Nagle to W. T. Atkins	506 907	2702
G 102	Letter, March 18, 1935, O. J. Tuttle to J. F. Nagle	506 907	2703
G 103	Letter, Oct. 22, 1935, J. F. Nagle to A. V. Bourque	506 907	2704
G 104	Letter, Oct. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2705
G 105	Letter, Sept. 20, 1935, Clara Gartman to A. V. Bourque	506 907	2706

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G 106	Letter, Sept. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2707
G 107	Letter, Sept. 5, 1935, Clara Gartman to A. V. Bourque	506 907	2708
G 108	Letter, June 21, 1935, Clara Gartman to A. V. Bourque	506 907	2709
G 109	Letter, July 27, 1935, Clara Gartman to A. V. Bourque	506 907	2710
G 110	Letter, July 13, 1935, Clara Gartman to A. V. Bourque	506 907	2711
G 111	Letter, June 5, 1935, Clara Gartman to A. V. Bourque	506 907	2712
G 112	Letter, May 17, 1935, Clara Gartman to A. V. Bourque	506 907	2713
G 113	Letter, May 6, 1935, Clara Gartman to A. V. Bourque	506 907	2713
G 114	Letter, April 23, 1935, Clara Gartman to A. V. Bourque	506 907	2714
G 115	Letter, April 9, 1935, Clara Gartman to A. V. Bourque	506 907	2714
G 116	Letter, April 2, 1935, Clara Gartman to A. V. Bourque	506 907	2715
G 117	Letter, March 29, 1935, Clara Gartman to A. V. Bourque	506 907	2715
G 118	Letter, March 19, 1935, Clara Gartman to A. V. Bourque	506 907	2716
G 120	Letter, May 7, 1935, J. F. Nagle to W. T. Atkins	506 907	2716
G 121	Letter, Sept. 11, 1935, J. F. Nagle to A. H. Pendergrass	1876	2719
G 122	Letter, Aug. 27, 1935, J. F. Nagle to L. H. Poland	506 907	2720
G 123	Letter, Nov. 15, 1935, Clara Gartman to L. H. Poland	506 907	2721

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
G 124	Letter, Oct. 17, 1935, J. F. Nagle to L. H. Poland	506 907	2722
G 125	Letter, Dec. 20, 1935, L. H. Poland to E. F. Underwood	506 907	2723
G 126	Letter, Dec. 21, 1935, J. F. Nagle to L. H. Poland	506 907	2723
G 127	Letter, Dec. 23, 1935, W. T. Atkins to L. H. Poland	506 907	2724
G 128	Letter, December 23, 1935, W. T. Atkins to J. F. Nagle	1876	2724
G 135	Telegram, Dec. 7, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 136	Telegram, Nov. 23, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 137	Telegram, Feb. 23, 1935, C. E. Arnott to J. J. Taxman	1703	2725
G 148	Letter, Oct. 8, 1935, C. M. Boggs to Dan Danciger	901	2726
G 168	Telegram, Jan. 4, 1935, A. P. Ruether to Crude Oil Department, Tulsa, Petroleum Corporation	724	2726
G 169	Weekly memorandum, Jan. 11, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2727
G-170	Weekly memorandum, Jan. 15, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2728
G 171	Telegram, March 18, 1935, McNair to A. P. Ruether	724	2730
G 173	Telegram, February 2, 1935, R. W. McDowell to P. E. Lakin	825 907	2731
G 174	Telegram, Feb. 13, 1935, G. L. Shoemaker to A. P. Ruether	825	2732

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G 175	Telegram, March 6, 1935, McNair to A. P. Ruether	826	2732
G 176	Weekly memorandum, March 8, 1935, A. P. Ruether to P. E. Lakin and R. P. Bascom	826 907	2732
G 177	Weekly memorandum, Feb. 6, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	832 907	2733
G 178	Weekly memorandum, March 15, 1935 A. P. Ruether to P. E. Lakin	827 907	2734
G 179	Weekly memorandum, March 20, 1935, A. P. Ruether to R. P. Bascom	827 907	2735
G 180	Telegram, March 20, 1935, E. A. Bacon to A. P. Ruether	827 907	2735
G 181	List of refiners from whom "buying group" are purchasing, compiled April 4, 1935, by Harry Jacobs	827 907	2736
G 182	Weekly price review, March 13, 1935, L. van Eeghen to A. Fraser, prepared by Harry Jacobs	829 907	2737
G 183	Weekly price review, March 20, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	829 907	2739
G 184	Weekly price review, April 3, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2742
G 185	Weekly price review, April 10, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2746
G 186	Weekly price review, April 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2751

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G-187	Weekly price review, April 24, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2754
G 188	Weekly price review, May 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2757
G 189	Weekly price review, May 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2760
G 190	Weekly price review, June 7, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2764
G 191	Weekly price review, June 14, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2768
G 192	Weekly price review, June 21, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2771
G 193	Weekly price review, Aug. 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1889	2774
G 194	Weekly price review, August 23, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2777
G 197	Weekly price review, Sept. 25, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2780
G 198	Weekly price review, Oct. 2, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2782
G 199	Weekly price review, Oct. 9, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2785

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G 200	Weekly price review, Oct. 16, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2789
G 201	Weekly price review, Oct. 23, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2792
G 202	Weekly price review, Oct. 30, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2795
G 203	Weekly price review, Nov. 20, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2798
G 204	Weekly price review, Dec. 6, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2800
G 209	Weekly price review, March 28, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs................	1876	2802
G 210	Weekly price review, March 21, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2805
G 212	Weekly price review, Feb. 14, 1936, P. E. Lakin to A. Fraser, prepared By Harry Jacobs	832 907	2808
G 214	Weekly price review, Feb. 1, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2811
G 215	Weekly price review, Jan. 24, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2814
G 217	Weekly price review, Dec. 19, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2817

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G 218	Weekly price review, Dec. 14, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2819
G 220	Weekly memorandum, Jan. 2, 1935, A. P. Ruether to Fraser, Bascom and Lakin	833	2821
G 221	Telegram, Aug. 26, 1935, G. L. Shoemaker to A. P. Ruether	833 907	2822
G 222	Telegram, Aug. 23, 1935, H. L. Stegall to A. P. Ruether	725 907	2822
G 230	Letter, May 24, 1935, A. V. Bourgue to P. E. Lakin	1876	2823
G 231-A	Tabulation of cars purchased in March 1935, being enclosure with Government Ex. 230	1876	2824
G 231-B	Tabulation of cars purchased in April 1935, being enclosure with Government Ex. 230	1876	2825
G 231-C	Tabulation of cars purchased in May 1935, being enclosure with Government Ex. 230	1876	2826
G 232	Letter, May 17, 1935, P. E. Lakin to A. V. Bourque	834 907	2827
G 233	Telegram, Dec. 3, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	907	2827
G 234	Telegram, Dec. 9, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2828
G 235	Weekly Gulf Coast bulk market review, April 9, 1935, C. E. Davis to A. Fraser	834 907	2829
G 237	Telegram, Feb. 15, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2833

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G 238	Telegram, Feb. 25, 1936, Shoemaker to A. P. Ruether	725 907	2834
G 239	Telegram, Feb. 27, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2834
G 240	Letter, Dec. 19, 1935, R. W. McDowell to P. E. Lakin	835 907	2835
G 243	Letter, February 3, 1936, J. E. Fritts to F. L. Schafer	724	2836
G 244	Letter, Jan. 29, 1936, Harry Jenkins to H. A. Bingle, being enclosure with Government Ex. 243	724	2837
G 246	Memorandum, Oct. 3, 1935, J. H. Salmon to Crude Oil Department, received by Harry Jacobs	835 907	2837
G 247	Memorandum, July 26, 1935, A. W. Frey to A. P. Ruether	724	2838
G 248	Weekly Gulf Coast bulk market review, April 23, 1935, C. E. Davis to A. Fraser	1876	2839
G 250	Memorandum, March 6, 1936, A. P. Ruether to P. E. Lakin	836 907	2844
G 251	Weekly Market Letter, April 6, 1935, J. W. Warner to J. D. Collins.....	622 907	2846
G 252	Weekly Market Letter, April 13, 1935, J. W. Warner to J. D. Collins.....	622 907	2849
G 253	Weekly Market Letter, April 20, 1935, J. W. Warner to J. D. Collins.....	622 907	2852
G 254	Weekly Market Letter, April 27, 1935, J. W. Warner to J. D. Collins.....	622 907	2855
G 256	Weekly Market Letter, May 11, 1935, J. W. Warner to J. D. Collins.....	622 907	2858
G 257	Weekly Market Letter, May 18, 1935, J. W. Warner to J. D. Collins.....	622 907	2861

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G 258	Weekly Market Letter, June 1, 1935, J. W. Warner to J. D. Collins.....	622 907	2864
G 259	Weekly Market Letter, June 8, 1935, J. W. Warner to J. D. Collins.....	622 907	2867
G 260	Weekly Market Letter, June 22, 1935. J. W. Warner to J. D. Collins.....	622 907	2870
G 262	Weekly Market Letter, July 20, 1935, J. W. Warner to J. D. Collins.....	622 907	2872
G 265	Weekly Market Letter, Aug. 17, 1935, J. W. Warner to J. D. Collins.....	1876	2876
G 267	Weekly Market Letter, Aug. 31, 1935, J. W. Warner to J. D. Collins.....	622 907	2879
G 268	Weekly Market Letter, Sept. 14, 1935, J. W. Warner to J. D. Collins.....	622 907	2882
G 269	Weekly Market Letter, Sept. 21, 1935, J. W. Warner to J. D. Collins.....	622 907	2885
G 270	Weekly Market Letter, Sept. 28, 1935, J. W. Warner to J. D. Collins.....	622 907	2888
G 271	Weekly Market Letter, Oct. 5, 1935, J. W. Warner to J. D. Collins.....	622 907	2891
G 272	Weekly Market Letter, Oct. 12, 1935, J. W. Warner to J. D. Collins.....	622 907	2894
G 273	Weekly Market Letter, Oct. 19, 1935, J. W. Warner to J. D. Collins.....	622 907	2897
G 274	Weekly Market Letter, Oct. 26, 1935, J. W. Warner to J. D. Collins.....	622 907	2899
G 275	Weekly Market Letter, Nov. 2, 1935, J. W. Warner to J. D. Collins.....	622 907	2903
G 276	Weekly Market Letter, Nov. 9, 1935, J. W. Warner to J. D. Collins.....	622 907	2906
G 277	Weekly Market Letter, Nov. 18, 1935, J. W. Warner to J. D. Collins.....	622 907	2909
G 278	Weekly Market Letter, Nov. 23, 1935, J. W. Warner to J. D. Collins.....	622 907	2912

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G 279	Weekly Market Letter, Nov. 30, 1935, J. W. Warner to J. D. Collins.....	622 907	2915
G 280	Weekly Market Letter, Dec. 7, 1935, J. W. Warner to J. D. Collins.....	622 907	2918
G 281	Weekly Market Letter, Dec. 14, 1935, J. W. Warner to J. D. Collins.....	622 907	2921
G 284	Weekly Market Letter, Jan. 4, 1936, J. W. Warner to J. D. Collins.....	622 907	2924
G 285	Weekly Market Letter, Jan. 11, 1936, J. W. Warner to J. D. Collins.....	622 907	2927
G 286	Weekly Market Letter, Jan. 18, 1936, J. W. Warner to J. D. Collins.....	622 907	2930
G 287	Weekly Market Letter, Jan. 25, 1936, J. W. Warner to J. D. Collins.....	786 907	2933
G 291	Weekly Market Letter, Feb. 22, 1936, J. W. Warner to J. D. Collins.....	837	2936
G 292	Weekly Market Letter, Feb. 29, 1936, J. W. Warner to J. D. Collins.....	786 907	2940
G 293	Weekly Market Letter, March 7, 1936, J. W. Warner to J. D. Collins.....	1876	2944
G 294	Weekly Market Letter, March 14, 1936, J. W. Warner to J. D. Collins	786 907	2947
G 295	Weekly Market Letter, March 28, 1936, J. W. Warner to J. D. Collins	786 907	2950
G 296	Weekly Market Letter, April 4, 1936, J. W. Warner to J. D. Collins.....	786 907	2953
D 305	Letter, March 12, 1935, C. E. Arnott to L. L. Marcell	1705	2956
G 306	Letter, March 27, 1935, L. L. Marcell to C. E. Arnott	1787	2957
G 311	Letter, March 12, 1935, L. L. Marcell to C. E. Arnott	1783	2958
G 316	Letter, Aug. 22, 1935, R. O. Audrain to R. N. Cline	1876	2959

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G 317	Letter, Aug. 12, 1935, R. O. Audrain to R. N. Cline, re Texas Oil Products Company	1876	2960
G 318	Letter, Aug. 12, 1935, R. O. Audrain to R. N. Cline, re Century Refining Company	1876	2960
G 319	Letter, Aug. 8, 1935, R. O. Audrain to R. N. Cline	1876	2961
G 320	Telegram, July 31, 1935, Pure Oil Company, Chamberlin, to R. D. Klein	1876	2961
G 321	Telegram, Aug. 6, 1935, Pure Oil Company, Chamberlin, to R. D. Klein	1876	2962
G 327	Letter, June 29, 1935, K. D. Chamberlin to R. D. Klein	650	2962
G 329	Letter, Dec. 16, 1935, K. D. Chamberlin to Grogan Oil Company	1876	2963
D 331	Telegram, March 14, 1935, C. E. Arnott to H. W. Dodge; (identical with Government Exhibit 17)	1720	2964
D 332	Telegram, March 14, 1935, C. E. Arnott to H. W. Dodge	1720	2964
G 334	Letter, Oct. 11, 1935, A. G. Maguire to J. H. Romer	723 907	2964
G 335	Letter, Feb. 13, 1936, Louis McNally to George A. Booth	723 907	2965
G 336	Letter, Feb. 11, 1936, G. A. Booth to F. E. Scuder	723 907	2966
G 337	Letter, Feb. 27, 1936, Ray Williamson to H. B. May, Gilliland Refining Company	866	2967
G 338	Letter, Feb. 28, 1936, H. B. May to Ray Williamson	866	2968

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G 339	Letter, April 17, 1935, Robert W. McDowell to C. S. Smith	845	2969
G 345	Telegram, April 1, 1935, J. W. Carnes to W. A. Tracey	788 907	2970
G 346	Telegram, March 30, 1935, D. A. McDougald to W. A. Tracey and J. V. Dippel	788 907	2970
G 347	Teletype, March 29, 1935, W. A. Tracey to J. W. Carnes	788 907	2971
G 350	Teletype, March 16, 1935, W. A. Tracey to J. W. Carnes	788 907	2971
G 351	Telegram, March 16, 1935, J. W. Carnes to W. A. Tracey	788 907	2972
G 352	Telegram, March 18, 1935, J. W. Carnes to W. A. Tracey	788 907	2972
G 353	Teletype, March 22, 1935, W. A. Tracey to J. W. Carnes	788 907	2973
G 356	Teletype, March 26, 1935, W. A. Tracey to J. W. Carnes	788 907	2973
G 358	Teletype, May 7, 1935, W. A. Tracey to J. W. Carnes	788 907	2974
G 359	Teletype, June 13, 1935, W. A. Tracey to J. W. Carnes	788 907	2974
G 360	Teletype, Feb. 13, 1936, W. A. Tracey to J. W. Carnes	788 907	2975
G 362	Teletype, April 2, 1935, W. A. Tracey to J. W. Carnes	1876	2975
G 365	Teletype, April 4, 1935, W. A. Tracey to J. W. Carnes	788 907	2976
G 369	Telegram, April 7, 1935, C. E. Arnott to Jack Carnes	788 907	2976
G 370	Telegram, April 8, 1935, K. C. Wells to J. W. Carnes	788 907	2977

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G 376	Memorandum by A. H. Sus relative to meeting of Feb. 11, 1935	1868	2977
G 415	Telegram, Feb. 10, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2979
G 416	Telegram, Feb. 17, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2980
G 417	Telegram, Feb. 19, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2980
G 421	Telegram, March 4, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2981
G 422	Telegram, March 15, 1935, W. T. Dinkins to J. W. Carnes	788	2981
G 424	Telegram, May 22, 1935, J. W. Carnes to W. T. Tracey	788 907	2982
G 426	Letter, March 15, 1935, W. A. Tracey to D. A. Brown	788 907	2983
G 430	Telegram, Jan. 25, 1936, W. A. Tracey to J. W. Carnes	788 907	2984
G 432	Telegram, June 5, 1935, W. T. Dinkins to J. W. Carnes, written by W. A. Tracey	788 907	2984
G 442	Telegram, July 16, 1935, W. A. Tracey to J. W. Carnes	788 907	2985
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D 833	(For identification.) Press release by Department of Interior setting forth letter, March 29, 1933, from Committee of Fifteen to the Secretary of the Interior	969	970
D 834	(For identification.) Letter, Dec. 11, 1934, Harold L. Ickes to R. G. Cocanower	990	3345
D 835	Order, April 24, 1934, by Harold L. Ickes, amending Articles IV and VII of Petroleum Code	1008	3347
D 836	Letter, Jan. 2, 1935, Harold L. Ickes to J. D. Collett	1013	3353
D 838	Letter, March 1, 1935, John E. Shatford to F. E. Holsten	1026	3355

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D 841	Tabulation showing voluntary refinery curtailment in March 1935 by defendant companies in Districts 3 and 4	1034	3358
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D 843	Chart of stocks of finished and unfinished gasoline in March 1935	1036	3365
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D 845	(For identification.) Order, June 23, 1934, by Harold L. Ickes, approving three-party plan of purchasing distress gasoline, with form of contract attached	1055	3372
D 846	(For identification.) Order, Sept. 8, 1934, by Harold L. Ickes, approving Program Committee plan of purchasing distress gasoline, with forms of purchase agreement attached	1055	3376

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D 848	(For identification.) Press release, April 6, 1934, issued by Department of Interior, setting forth proposed amendment to Article IV (refinery section) of Code	1056	3389
D 849	(For identification.) Composite price chart for October, November and December, 1934, of third grade gasoline	1059	3397
D 850	Letter, Aug. 23, 1935, Harold L. Ickes to John E. Shatford	1073	3399
D 852	Tabulation of crude oil required by Pure Oil Company to supply gasoline sales, Nov. 1934 to Dec. 1936	1133	3400
D 853	Tabulation of gasoline acquired by Pure Oil Company, by months, Jan. 1934 to Dec. 1936	1136	3401
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D 854	Tabulation of source of gasoline supply of Pure Oil Company, 1933-1937	1137	3405
D-854-A	Chart of figures in Defendants' Exhibit 854 (source of gasoline supply of Pure Oil Company)	1137	3407
D 855	Tabulation comparing Pure Oil Company's gasoline days' supply by months with total for United States, Nov. 1934 to Dec. 1936	1138	3409

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D 864	Stipulation of testimony of Mason Lyons concerning Vickers Petroleum Company gasoline production and sales, 1934-1936, with figures attached	1146	3427
D 865	Tabulation of Roct Petroleum Company gasoline production and sales, 1934-1936	1147	3429
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D 867	Tabulation of Col-Tex Refining Company gasoline production and sales, 1934-1936	1147	3430

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D 868	Chart of Danciger Oil & Refineries, Inc. flat price sales in 1935 to jobbers, consumers and major companies, compared with Oklahoma quotations of journals	1549	3433
D 869	Chart of tank car purchases by Mid-Continent Petroleum Corporation from independent refiners in 1935, compared with Oklahoma quotations of journals	1553	3437
D 870	Block chart showing percentage of purchases by Mid-Continent Petroleum Corporation from independent refiners at and below low Oilgram quotations, Mar. 1 to May 31, 1935	1553	3443
D 871	Block chart showing percentage of purchases by Mid-Continent Petroleum Corporation from independent refiners at and below low quotations, Chicago Journal of Commerce Group 3, Mar. 1 to May 31, 1935	1555	3447
D 872	Block chart showing percentage of cars purchased by Mid-Continent Petroleum Corporation from independent refiners above, at and below low quotations, Chicago Journal of Commerce Group 3, for 1935	1555	3451
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D 875	Tabulation of number of flat price purchases by major oil companies from independent refiners, compared with price ranges for third grade gasoline, Oklahoma market, for April 1935	1560	3458
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D 890	Chart of flat price sales by Deep Rock Oil Corporation in 1935 to jobbers and consumers, compared with Oklahoma quotations of journals	1590	3485
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G 891	Letter, July 20, 1934, Harold L. Ickes to C. E. Arnott	1174	3487
D 892	(For identification.) Memorandum, July 31, 1934, Louis Titus to C. E. Arnott	1173	3489
D 893	Telegram, Jan. 28, 1935, I. A. O'Shaughnessy to Charles Fahy	1182	3491

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D 895	Stipulation of testimony of L. B. Simmons concerning Rock Island Refining Company gasoline production sales, 1934-1936, with monthly figures attached	1228	3493
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D 898	Tabulation of El Dorado Refining Company gasoline production and sales, 1934-1936	1230	3496
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D 912	Tabulation of number and amount of subnormal prices to dealers for housebrand gasoline, 1935-1936	1243	3511
D 913	Tabulation of number and amount of subnormal prices to dealers for third grade gasoline, 1935-1936	1243	3511
D 914	(for identification) Excerpts from Final Report of Marketing Division, Petroleum Administrative Board, issued June 1936, concerning stabilization	1281	3512
D 915	(for identification) Letter, May 18, 1935, E. B. Swanson to W. J. Brundred	1287 1735 1841	3519
D 916	(for identification) Telegram, May 14, 1935, Charles Fahy to C. E. Arnott; and telegram, May 17, 1935, C. E. Arnott to Charles Fahy	1287 1735 1841	3520
D 917	(for identification) Excerpts from Annual Report of the Secretary of the Interior, June 30, 1935 (Reference to)	1290	3522
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D 924	(for identification) Press release, March 28, 1935, by Department of the Interior, concerning and attaching Report of Petroleum Code Survey Committee on Small Enterprises	1324	3530
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D 926	Tabulation of spot sales by Continental Oil Company to jobbers in Mid-Western area, 1935 and 1936	1369	3582
D 927	Stipulation of testimony of George Collins concerning Omar Refining Company gasoline production and sales, Feb. 1, 1935 to Dec. 31, 1936, with tabulation of figures attached	1370	3587

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D 929	Stipulation of testimony of L. D. Hinman concerning Eason Oil Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1370	3590
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D 973	(for identification) Letter, May 17, 1935, E. B. Swanson to James J. Davis	1353 1735 1841	1353 3695
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D 993	(for identification) Letter, April 30, 1935, Paul G. Blazer to Charles Fahy	1830	3746
D 994	(for identification) Letter, May 7, 1935, Chairman of Petroleum Administrative Board to Paul G. Blazer	1830	3748
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D 999	Tabulation of gasoline production, purchases, shipments, and inventories, Globe Oil & Refining Company (Oklahoma) and (Illinois), Jan. 1, 1933 to Aug. 31, 1937	1609	3757
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D 1003	Tabulation of crude oil runs to stills by Globe Oil & Refining Company plants, Jan. 1, 1931 to Aug. 31, 1937	1609	3768
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D 1023 (1017–1022)	Chart showing volume of East Texas and Mid-Continent gasoline sales and purchases by all East Texas independent refiners, 29 Mid-Continent independent and semi-major refiners, East Texas independent refiners named in the indictment, and Mid-Continent independent refiners named in the indictment, in 1935 and 1936........	1644 1646 1679	3803
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D 1027	Tabulation—operating refinery capacity, Tide Water Associated Oil Company, Gulf Refining Company, The Texas Company and Deep Rock Oil Company, as of Jan. 1, 1935 to Jan. 1, 1936	1536	3811
D 1028	Stipulation concerning gasoline sales by defendant companies in Mid-Western area, 1935 and first seven months of 1936	1536	3812
D 1029	(for identification) Certified copy, Order, June 23, 1934, by Harold L. Ickes, approving Pacific Coast Agency Agreement and Refiners' Agreement and supplemental agreements thereto	1680	3817
D 1030	(for identification) Certified copy, memorandum, March 22, 1935, Charles Fahy to Administrator of Petroleum Code	1678	3869
G 1031	Letter, Sept. 8, 1936, M. G. Peeters to Clayton W. Haswell, together with enclosure of letter, July 24, 1934, A. G. Maguire to Chairmen of State Petroleum Committees	1683	3874

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D 1038	Letter, Sept. 20, 1935, J. M. Alexander to T. R. Vaughn Oils	1864	3888
D 1040	Identical with Gov. Ex. 1035, except handwritten notations (sales acknowledgment, Sept. 18, 1935, T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois)) (Reference to)	1864	3890
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D 1050	Letter, Oct. 4, 1935, W. H. Barber Company to Globe Oil & Refining Company, with enclosure of letter, Oct. 3, 1935, Illinois Farm Supply Company to W. H. Barber Company	1880	3893
D 1051	Letter, Oct. 7, 1935, W. H. Barber Company to Globe Oil & Refining Company	1880	3895
D 1052	Statement re purchase orders and invoices of Globe Oil & Refining Company (Oklahoma) and (Illinois), concerning sales at a loss in 1931 and 1933		3895
G 1053	Stipulation of testimony of H. Russell Richards concerning sales of gasoline by Continental Oil Company, with Exhibit A attached	1889	3896
D 1054	Statement re letter, Oct. 8, 1935, Globe Oil & Refining Company (Illinois) to Globe Oil & Refining Company (Oklahoma), and telephone statements from Aug. 21, 2935, through Sept. 25, 1935, attached	1878	3902
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1228 ROBERT N. CLINE, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I am secretary of the East Texas Marketing Association with headquarters at Tyler, Texas, where I reside.

I have been in the oil business since 1919. I was with Illinois Oil Company in Rock Island, Illinois, for one year; then with Western Oil Corporation at Tulsa for about 9 months; then with Tidal Refining Company in the Mid-Continent district, first in a clerical capacity and finally as sales manager at Tulsa. In 1929 I left the Tidal Company, and went with Cosden Oil Corporation for about a year. Then I was not engaged in any business for a little over a year, then I entered the oil business myself in St. Louis for about two years.

In 1934 I went to Overton, Texas, and have been in East Texas ever since. In East Texas I was first employed by Arrow Producing & Refining Company, an independent refiner, at Overton. It was a charter member of our Association. The Arrow was sold in June 1935 to Gilliland Refining Company, also a charter member of our Association, which, in turn, was sold in June, 1936, to General American Oil Company.

Henry B. May was president of the Arrow Company. He went to Gilliland when it acquired Arrow. He was the first and only president of the Association. I became 1229 secretary of the East Texas Refiners Association on February 5 or 6, 1935. At least, that is when my salary started.

(Copy of the indictment handed to witness.)

The original or charter members of that Association were: Arrow Producing & Refining Company; Grogan Oil Company, which was not a refiner itself, but handled the output of two refiners in East Texas; Southport Petroleum Company; La Pren Refining Company; Lake Refining Company; Texas Oil Products Company; Chief Refining Company; Gilliland Refining Company, and Utah Refining Company. All of these companies are listed on page 18 of the indictment, except Lake Refining Company. Lake stayed in existence for several months after the Association was formed, but its business consisted largely of intra-state Texas business. I don't believe it is in the refining business today.

The following companies, from the list of independent refiners on page 18 of the indictment, became members of the Association at some time during 1935: McMurray Refining Company, East Texas Refining Company, Cascade Refining Company, Grogan Oil Company, Trinity Refining Company, La Pren Refining Company, Southport Petroleum Company, Wabash Refining Company, Texover Refining Company, Ocean Refining Company, Solvex Refineries, Inc., Arrow Producing & Refining Company, Chief Refining Company, Gilliland Refining Company, Tex-
1230 as Oil Products Company, Utah Refining Company, and Premier Oil Refining Company.

Dominant Refining Company, Tower Refining Company, Century Refining Company, Tyreco Refining Company, and Matthews Refining Company operated for a short time on federally tendered gasoline when they could ship in tank cars interstate. While they didn't become full-fledged members, they enjoyed the full privileges of the Association, and the cooperation of the Association office for the time that they were in business, so to my mind they would be considered members just the same as any of the others.

The 22 named independent refiners were the principal members of our Association.

In addition to Henry B. May, the president, Tom Potter was treasurer, J. H. Campbell was secretary, and I was known as assistant secretary of the Association when the organization was first formed. The officers have never been changed. There has never been an election since the first.

I conduct the business of the Association from my home in Tyler, Texas. I am now secretary. We didn't hold an election. They just told me one day that from then on I was secretary. That was about 6 or 8 months ago. I had been performing the duties of secretary throughout the entire period. I didn't get any increase in salary when they made me secretary.

1231 Sinclair Refining Company has a refinery at Gladewater which is small in comparison to other refineries in the country. There are no other major companies that have refineries in East Texas. All the refineries there are owned and operated by so-called independents.

Through the period 1935 and 1936, the independent refiners in East Texas marketed their gasoline practically altogether on the spot market. By "spot market" I mean day to day transactions.

Platt's Oilgram, Tulsa Edition, carries the East Texas spot market quotations in their daily publication. It is possible that all of the editions carry the East Texas market. Platt's Oilgram publishes a high and a low spot market quotation for East Texas gasoline in that market when there is a range. As I didn't take the Oilgram and didn't keep in close contact, I can't say how the East Texas spot market quotations through this period compared with the Mid-Continent spot market quotations. I didn't read Platt's Oilgram from day to day. At times I would check either with ~~the~~ Oilgram or with some of our members who took it to find out what they were quoting. I did that with no particular degree of regularity, only probably 3 or 4 or 5 times a month to keep in touch with the published market.

As secretary for the Association I keep just as closely
in contact as I can with the independent refiners in
1232 the East Texas field and with the prices at which they
sell their gasoline on the spot market. That is part
of my duty. I make a check with all of them at least once a week, sometimes oftener. I keep quite familiar with their sales prices and the amounts they sell.

Everyone in the East Texas field sells on the spot market. If I knew how much gasoline was sold in the field, I could tell about how much was sold on the spot market. About 30,000 tank cars were sold in the year 1935, as a very broad estimate. That would be 6,000,000 barrels, if my arithmetic is right. The amount for 1936 would be approximately the same. I am assuming that practically all of the gasoline made in East Texas is sold on the spot market so that is my estimate of all the sales of East Texas gasoline during those years. I base that estimate on what I can remember the refiners made down there per month.

As a very broad estimate, I assume that two-thirds of the 30,000 tank cars in 1935, about the same in 1936, moved in interstate commerce or coastwise commerce. By "coastwise" I mean the gasoline which is delivered to the Gulf Coast for trans-shipment by boat, either to other parts of the United States or in foreign commerce.

The independent refiners in East Texas manufacture a
58-60 gravity, 437 endpoint gasoline with an octane
1233 rating that is below 62. That is classed as third grade.
A 60-62 gravity, 400 endpoint is a slightly better grade of gasoline. That wouldn't be classed as regular gasoline as it is known in the trade unless the octane rating met house brand specifications. Straight run gasoline would not have that high an octane rating. It would have to be cracked or treated in some way. They also make a 64-66 gravity, 375 endpoint, or, really, it is a 375 endpoint with a gravity ranging anywhere from 59 up. That cov-

ers practically all of the grades made. Of course, there are some plants that make naphthas of various kinds. There isn't any gasoline made there now that wouldn't be as good as or better than the 437 endpoint. In 1935 and 1936, I did not know of any quantity of gasoline made down there that didn't fall into these classes.

These three gasolines, if they are made in a skimming plant as straight run gasolines, are low octane. But in the cracking plants, they make a similar grade of gasoline which may be 63 plus or 65 plus or 68 plus octane, depending upon the equipment the refiner happens to have. There were not many of these independent refiners that could make a 68 plus octane gasoline in 1935, but there were quite a few who could make 65 plus.

Giving very rough figures, about two-thirds of the gasoline produced in 1935 was straight run gasoline, which
1234 would have an octane under 62. The other third would have octanes varying from 63 to 65 or 66. There were one or two plants that were coming pretty close to a 68 octane in 1936. Approximately two-thirds was third grade in 1936, and one-third was in this middle bracket. In those years, most of the gasoline that was shipped in tank cars was either 60-62 gravity, 400 endpoint, or was the 375 endpoint. The 437 endpoint went largely to trucks.

Our Association concerned itself with the gasoline that our refiners had on hand to move, regardless of which specification it was; although one of the reasons for the formation of our Association was to teach our members how to make specification gasoline. To a very great extent we succeeded in doing that. So for the most part, during 1935 and 1936, our Association handled only this specification material. Our Association when it started was concerned with all of the products that the refiners made, but it developed that most of our time was spent on gasoline.

The amount of gasoline in 1935 that was purchased by major oil companies in East Texas is, of course, another estimate as far as I am concerned, but I would say, 7,000 or 8,000 cars, as nearly as I can remember back over a year and a half. I thought our Association sales were around 700 cars a month which, for the 11 months we
1235 operated, would be a little over 7,000 cars.

I am not familiar with how much gasoline the majors may have bought outside of the Association. If they did buy, I have not the slightest idea of how much they may have bought.

I was in very close touch with all these independent refiners all through this period. I knew almost exactly what they were selling through the Association. I knew nothing about our Association members' business outside the Association other than what they wished to tell me, and the only thing I asked them was what gasoline they wished the Association to try to help them move from week to week. What they did with the balance of their gasoline, I have no knowledge of except in a very, very general way.

Q. Did you testify on that subject before the grand jury when you appeared before them?

A. I possibly may have. I testified to so much before the Grand Jury that it is all a jumble.

Q. Is it just because your mind is hazy on those figures or that you don't know it now?

A. I don't remember testifying before the Grand Jury to any figures. I may have.

Q. Don't you remember testifying that your Association didn't handle all the gasoline that the major companies bought, but handled the greater part 1236 of it, and you estimated that the major companies bought several hundred cars a month in addition to that handled through your Association? Do you remember that?

A. No, I feel very sure that I told you that the major companies bought gasoline outside of the Association, because I knew they did. But if I estimated 10 cars a month or several hundred cars a month, it was just a wild guess.

There were several companies that bought with a varying degree of regularity through our Association in varying amounts. During 1935, Sinclair Refining Company, The Pure Oil Company and Gulf Oil Corporation were fairly regular buyers. Tide Water Oil Company bought over 4 or 5 months. Cities Service Export Oil Company bought considerable material from us in February and March, 1935. Louisiana Oil bought some material in the field on occasions. It was buying single car lots for its stations off and on through the year, but not through the Association. It was buying that mostly direct. It didn't buy regularly through this Association, although on one or two occasions I was called to help it place some fairly sizeable orders. I wouldn't call it a regular buyer through the Association.

Our Association levied an assessment on its members. We charged our members a commission on all of the busi-
1237 ness the Association was able to assist them in obtaining from buyers in our primary trade territory,

that is, the territory where we had a freight advantage over all other refining groups as compared with other territories where we were at a disadvantage on freight rates as compared with other groups. In levying assessment, we were governed by sales made at the going spot market price. The going spot market price was the price at which we were able consistently to sell our gasoline. There was such a price throughout that period. It varied from day to day.

The gasoline market is just like the spot market or the stock market; it is based on the law of supply and demand. A refiner is naturally interested in getting as good a price as he can. And the buyer is interested in getting as low a price as he can. The point where the two of them get together is the going spot market. As an example of a price that wouldn't be the going market price under that definition, supposing a refiner had 50 cars of gasoline that he had to sell before night, and he had to take the best price he could get for it. We would not charge a commission on that sale. That would be a distress price. The proper price would be whatever the normal trade was going at, whatever we were able to sell for regularly, day to day.

I presume the published quoted prices were more
1238 or less in line with our going market price, more or
less the same figure, because they were a reflection of our prices. Our market price was a result of arm length trading between the buyer and the seller from day to day. As I didn't take any publications, I wasn't thoroughly familiar with the prices that were published in these publications, so I cannot say at this time exactly whether our prices were the same as the published prices or not.

The going market price which governed our assessing commissions was never figured by me or our members in terms of the low of Platt's Oilgram for the East Texas market or ⅛¢ below the Chicago Journal of Commerce quotations. I made out the commission statements myself.

Q. Well, didn't the major companies usually offer you the published market prices during that period of time?

A. I tried to explain, Mr. Lewin, I don't know what the published market prices were.

Q. Did you testify that most of the times they did offer you the published market prices, when you appeared before the grand jury?

A. As I said before, I don't remember that testimony.

(Mr. Lewin passes document purporting to be transcript of the grand jury testimony to the Court.)

1239 (Court reads silently.)

The Court: Q. You were here before the grand jury on Saturday, May 16, 1936?

Mr. Donovan: May it please the Court, just before that question might I interpose? I don't know for what purpose counsel has submitted the grand jury minutes to you now.

The Court: They are received by me simply for the purpose of refreshing the witness' memory.

Mr. Donovan: I want to object then, your Honor, that the witness has already said that he has no uncertainty as to the facts. He stated what he believed the facts to be. Now, he did say that he might have an uncertainty as to what he testified to, but that is entirely a different thing. If it is used for the purpose of refreshing his recollection, there is no recollection to refresh, because he states now what the fact is.

The Court: Well, we will see how much of it will refresh his memory. Objection overruled. Exception allowed.

Q. When you appeared before the Grand Jury, were these questions asked you and did you make these answers:

"Question: Whether or not you recall the prices paid by the major companies to you continued at the same uniform level throughout that period? 1240

"Answer: Most of them did. As I said before, we attempted to get published market prices.

"Question: When they used to call you, they used to offer you the published market prices, did they not?

"Answer: Most of the time.

"Question: On the purchases they volunteered—when they called you and told you what those prices were, did they not say, 'We will pay 4⅛¢ or 4½¢,' whatever the published price was?

"Answer: Sometimes they would offer us the published price."

Does that refresh your memory?

Mr. Thomas: Now, if the Court please, before the witness answers, the defendants object because the transcript of testimony of the witness before the Grand Jury referred to by the Court has not been properly authenticated, and there is no showing that such testimony was reduced to writing in the presence of the witness or read over or examined by him at the time; and, furthermore, the record of such testimony, if properly authenticated, is not
1241 contemporaneous with the facts or occurrences as to which he is now asked to testify, and because such testimony was given at a time too remote from the date of the occurrence or fact inquired about, and likewise too remote from the date of the trial. And if the transcript is being used for the purpose of refreshing the recollection of the witness, then we wish to ask that the transcript be identified so we may have it available for use by counsel on cross-examination.

The Court: Again, as I said before, the transcript of the testimony of the Grand Jury is confidential, to be used by the prosecution and by the Court. Your motion is overruled. Exception allowed. Now, you may ask your question, Mr. Lewin.

Mr. Lewin: Q. Mr. Cline, is your mind refreshed now on whether or not the major companies who bought through your association bought at the —in terms of the published prices?

A. I have testified that I thought the published prices and our going spot price were approximately in line. And the testimony that is read before the—from the Grand Jury testimony there, refers to the period when the published prices stayed on a level for several months, and I did know what
1242 that level was, and during that period I would say we got right at the published price, and I believe that testimony refers to that particular period.

We charged commissions on sales made in our trade territory that were made at what we considered the going market price. The going market price was one of the things we took into consideration in determining that a commission should be charged. Regularity of buying was not a thing that we took into consideration. If I had obtained a single order from some company down in that territory, I might have charged a commission on it, and he might never have bought from us again.

Louisiana Oil might be in that category. It bought a few times. I cannot remember how many. As well as I can remember we charged it on a couple of pretty good sized purchases.

I don't remember whether Socony-Vacuum Oil Company ever bought anything through the Association, or whether it bought through Bradshaw. I think it bought occasionally. I believe Jacobi called me once. If he asked for assistance in getting some material from members in our Association, I certainly gave him my assistance. I don't believe we charged commission on that material. It was not moving in our trade territory.

Humble never bought anything through the Asso-
1243 ciation. It bought once or twice that I know in the
East Texas field. I didn't handle it at all, and, of course, did not charge any commissions on it.

We charged commissions on Sinclair Refining Company, Gulf, Pure, Tide Water and Cities Service Export purchases, and on some of Continental's and Louisiana Oil's purchases.

For several months we charged commissions on Texas Company's shipments even though it was not buying through the Association. In my mind there was some period there where we did not charge it. We stopped doing that in April or May, 1937. I do not have commission accounts here.

We charged commissions on those sales to The Texas Company because when we first started the Association we were rather poor, and the commissions on the sales that were actually being handled through the Association were not sufficient to defray our expenses. So at one of our dinners, in discussing the matter, some one suggested that inasmuch as The Texas Company was buying gasoline from certain of our members, those members should be willing to pay commissions on those purchases in order to build up the financial structure of our Association. Those refiners agreed to do that, and I started putting The Texas Company on the list. We were supposed to
charge commissions only on sales that were handled
1244 through the Association, and the only reason we ever
started to charge The Texas Company was because we wanted a little bit more money in the treasury, and that was a good way to get it. Texas was the only company, other than those I have named, located in our trade territory, to which we were selling. In our own trade territory we were able to get a fair market price on sales,

whereas if we had to ship out into some other trade territory we had to pay a freight differential, and couldn't get a fair price.

Sales of our members to the Humble Company were in our trade territory, but they were never reported to me, and by the time Humble bought, our finances were in good shape, and we did not need the commission. The Texas purchases were reported to me by the members of our Association. The Humble purchases were not reported to me. I heard about them but they were not reported to me. The only difference between the Humble purchases and the Texas purchases was that when the Humble Company bought from us there was no need for additional financing, and the question was never brought up as to whether commissions should have been charged. I presume that if we had been in bad financial shape when the Humble Company bought, we would have charged commissions on them as well.

The first company that we put on the list for the
charging of commissions on its purchases was Cities
1245 Service Export Oil Company, because it was the
first purchaser through the Association. I don't
know the order that the other companies went in, but I would say the next company we put on the list was either Gulf or Sinclair. We added them to the list, because they were buying through the Association.

I think Pure was about the next that we put on the list, because it gave us an order through the Association. I think the first contract I had with Pure was when Mr. Chamberlain called me and gave me an order for 10 cars. He did not say anything about when he might want any more. Mr. Chamberlain might have told me that he would probably be buying gasoline down there right along if we could furnish the specifications he desired, but I don't remember. That wasn't the reason we put them on the list. In the early days of the Association we put everybody on the list that bought through the Association.

Tide Water and Continental were also on that list. I believe that is all on that list for commissions. That is all of the large companies that bought from us the first couple of months that I can remember. We didn't have any independents buying from us in the first couple of months that I can remember.

The government has the record of our commissions. At first I sent a weekly, and then later a monthly statement to each one of our members as a bill for commissions

and kept copies of it. Those copies are the records
1246 I brought up to the Government.

(Documents handed to witness.)

These are my files. I believe Mr. Buckley told me at one time that he understood The Texas Company was going to need gasoline and would buy in the East Texas field. I can't remember at the present time whether he told me how much it would buy each month or each week, or whether he gave me a figure.

I knew a man named Whitey May in 1935 and 1936. He was a field man for The Texas Company. As I understand Whitey May's position at that time, he was a scout, and spent most of his time going around the field picking up bits of information about drilling wells and all of the gossip that he could to turn in to his home office. About once a week or so I got information from him as to what The Texas Company had bought in the field. I used that information when I found it was true, and I can't remember when it wasn't true. I didn't use his information in charging commissions. The actual information I used to base my commission charges on came directly from the members of our Association. Sometimes he might tell me before, and sometimes after, my check with our members. This information I got from him checked against the other information I got, as far as I can remember. There wasn't any holding out.

I gave Mr. May information as to where he could
1247 buy gasoline every time he came and asked for it
and he came to me pretty regularly throughout this period, 1935 and 1936. We charged the commissions for the reason I explained previously,—that we needed the money to operate our association.

Q. Wasn't it because of your relationship with Whitey May, and of the knowledge that you got from him, that you put The Texas Company on that list, for the charging of commissions on purchases to The Texas Company?

A. I don't know how to answer that, Mr. Lewin. I have explained why we put The Texas Company on the list; and I have explained that Whitey May came to visit me and I gave him information—

(Mr. Lewin presents document purporting to be transcript of testimony before grand jury to the Court.)

The Court: All right, finish your answer.

A. (Continuing)—but I can't remember at this time that his visits had anything to do with commission charges that were made.

Mr. Lewin: Q. Well, didn't you give that as your reason before the grand jury?

A. If I did, I don't remember it. And if I gave that as a reason, it was because you pressed me for some reason, and I had to give something—

Mr. Lewin: No.—

1248 The Court: Well, you were giving truthful answers, weren't you, the same as we expect from you now?

A. I was giving just the best I could, yes, sir.

Q. We are pressing you for information now, too; and you are giving truthful answers, aren't you?

A. Yes, sir, I am trying to.

By Mr. Lewin

My best remembrance at this time is that at one of our dinners I brought up the subject of additional finances, and the members of the Association who were receiving orders from The Texas Company were agreeable that they should be added to the commission list, and I was instructed to put them on. Whether I brought up at that meeting, the fact that Whitey May had been visiting me, and that I was giving him any information or he was giving me any, I cannot remember at this time.

I don't remember Mr. May discussing with me how many cars The Texas Company was buying a week. I think I discussed The Texas Company with Mr. Buckley, but I can't remember now discussing it with Mr. May.

(Mr. Lewin presents document purporting to be transcript of testimony before the grand jury to the Court.)

I never gave out any reports to the Longview or Tyler newspapers on gasoline purchases. I heard that some reports, that came originally from me, were published 1249 in those papers. I remember seeing only one, which was a somewhat distorted report. Those papers could have obtained the information through several sources. I believe they got it through Whitey May. That was information that I had given Whitey May. I saw a report at one time that held substantially the same information I had given Mr. May. That report was in a little daily oil field paper, published in Longview, Texas. I don't remember the name of it nor who published it.

I believe the information I gave Mr. May was made a part of his weekly report to The Texas Company. I was perfectly willing that The Texas Company should have it. That is why I gave it to Mr. May. I don't know at this time whether Mr. May gave the information to the Longview Reporter, or whether someone else in the organization, or someone that he may have told it to, did so.

Q. Well, did you know whether it got to the papers through the Houston office of The Texas Company?

Mr. Donovan: If it please the Court, I must object to this, hearsay upon hearsay.

The Court: He can answer that question, does he know? You may answer that. Exception allowed.

A. Well, I am just trying to study that answer, your Honor. I have a hazy recollection on that thing, 1250 but I can't bring it to mind, right at the moment.

Mr. Lewin: Well, would this refresh your recollection?

(Presenting document purporting to be transcript of testimony before the grand jury to the Court.)

By the Court

This publication published just general oil news of some value to the oil men. I think it was pretty well limited to the East Texas field.

Q. Did you ever learn through the Houston office that any information you gave to Mr. Whitey May went out of that office for publication in the field, in the Longview Reporter?

A. It has been so long ago, I can't get that clear in my mind at the present time, your Honor.

Mr. Lewin: Q. Isn't that your best recollection?

A. Well, I am afraid my best recollection is that I don't know whether it came from the Houston office or from Whitey May in Tyler.

Q. Was it clear in your mind when you testified before the grand jury?

A. If I testified to a certain thing, I imagine it must have been clearer than it is now.

By Mr. Lewin

In the exact sense that I use the term surplus gasoline, I would say that The Texas Company was buying surplus gasoline during 1935 and 1936 from members 1251
of the Association. I do not know definitely why they didn't buy through our Association.

The fact that Whitey May was in the business of collecting general information for his Houston office naturally led me to believe that the information he obtained from me would also go to the Houston office of The Texas Company. I assume that the Houston office knew that I was in communication with Whitey May because I was sure he was obtaining this information from me to make a part of his weekly report to the Houston office. Whether or not he mentioned me by name I don't know. The information Whitey May was giving me about The Texas Company purchases turned out to be correct.

I knew that The Texas Company was buying on the basis of the low East Texas quotations in Platt's Oilgram. I may have got that information from Whitey May, but I knew it from my contracts with our own members.

For a while I had a practice with Louisiana Oil Refining Corporation that they would give me reports from time to time as to purchases in the East Texas field, with the idea of trying to charge commissions on them. I used to get in touch with Mr. Brakefield quite often on the phone, and I believe on a few occasions he would drop me a short letter to tell me that he had purchased some material.
1252 Mr. Brakefield was a buyer for Louisiana Oil Refining Corporation, and I believe also handled sales. I don't know anyone in the corporation except Mr. Brakefield, and I only know him through telephone contacts. His office was in Shreveport. I got letters from him, but I don't believe I ever wrote to him.

I did not get pretty regular reports of Louisiana Oil Refining Corporation purchases during 1935 and 1936. I did for 3 or 4 or 5 months in 1935. I don't remember any after that time. I handled two fairly good-sized orders of 65 cars each for that company, both of which I believe were in 1935, one in December, 1935, and another either just prior to that or just after that. According to my definition it was surplus gasoline. It was covered by these independent refiners' reports to the Association. We considered in the Association that "surplus gasoline" was the amount of gasoline a refiner manufactured over and above his fairly steady outlet to jobbers and brokers.

I knew what Mr. Buckley was doing for our Association during 1935 and 1936. I didn't know it was his chief duty to contact only major oil companies. I know it was his duty to contact large buyers of gasoline, and major oil companies are among the large buyers. I couldn't say for sure whether he was contacting others than major oil companies. I didn't know of any except major oil com-
1253 panies that he was contacting. I don't know how many he did contact.

There were very few cars actually purchased through our Association by others than major oil companies in 1935 and 1936. There might have been more than 25 cars purchased during that whole time, but the amount was not very great. It might have been fifty or more.

Q. Didn't you give an estimate of about 50 cars before the grand jury?

A. I may have.

Q. And didn't you say that of those 50 cars, you didn't know but what most of those transactions had never been consummated. Do you remember that?

Mr. Donovan: Your Honor, I think that is an improper way to refer to the grand jury minutes.

A. I may have said that.

Q. And didn't you say in that estimate you had included some purchases made by the Republic Company?

A. I don't remember that. I may have said it.

Q. Wouldn't that be true today, that in that general estimate of 50 cars you are giving now, you are including purchases made by the Republic Company?

1254 A. I don't remember the Republic making any purchases through the Association office, that is, purchases we actually handled through the office. Although the Republic purchased considerable through the field.

Q. You didn't handle all these 50 cars in the field?

A. I didn't know there were 50. You asked me for a guess.

Q. No, I didn't ask you for a guess. I asked you for your best judgment as to the amount. Now, in this best judgment of 50 cars, don't you think that there were included purchases by the Republic Company?

A. I don't believe there were.

Q. Didn't you testify to that?

A. I don't remember what I testified to, but at this time I don't believe it.

50 cars is a very small percentage of the amount of gasoline that was sold through our Association during that whole year. It would be less than 1%.

I contacted buyers from time to time following up Mr. Buckley's contacts. The principal ones I contacted were major oil companies and their representatives.

I contacted William A. Tracey, a representative from

Sinclair Refining Company, during 1935 and 1936
1255 at least once a week; possibly oftener. I was urging
him to buy gasoline from our Association. He was paying this going price on all the purchases that Sinclair made through our Association. I did not take Platt's Oilgram, but I presume it was around the low. I didn't understand that it was to be at the low. Every purchase he made was at a flat price. I think it was around the low of Platt's Oilgram at that time. I never saw the petroleum quotations in the Chicago Journal of Commerce while I was in East Texas.

I know that over a period of years the differential between the North Texas market as reported in the Oilgram and the Oklahoma or Chicago market as reported in the Chicago Journal of Commerce, varied by about ⅛¢ to make up for a freight differential into northern territory, but during the period that I was in East Texas, I don't know that the East Texas market exactly followed the North Texas market or the Oklahoma market or Oilgram, so therefore I would not know that it exactly stayed ⅛¢ below the Chicago Journal of Commerce.

I did not have contact with the Gulf Company direct. I had contact with J. M. Bradshaw, a Dallas broker, who did all the buying for Gulf in East Texas that I knew about. All that I knew about was bought through the Association. During this period I contacted Bradshaw
1256 more often than Tracey. Some weeks I might talk
to him 4 or 5 times. I was urging him to find gasoline buyers for us, and to buy from us for the Gulf or for any one else that he bought for.

I know that he bought material for William H. Barber Company occasionally. He did not buy for Barber Company through our Association. He did not buy for anybody except the Gulf Company through our Association, that I remember.

I was in contact with Dewey Chamberlain of Tulsa, a representative of The Pure Oil Company, 4 or 5 times a month throughout this period, 1935 and 1936. He was buying some gasoline through the Association. I did not treat him any differently than I did Tracey and Bradshaw. I was acting as sales manager down there, and I tried to get business. I was urging him to buy through our Association and he bought through it for The Pure Oil Company. He was buying at the going market price that I had in mind.

I was the sales agent for this organization. If we sold the same kind of gasoline to two concerns in one day, we

tried to get the same price. Ordinarily we would get the same price. I do not know any instance when I did not get the same price, because I was in this position: I would have as many as 14 refiners to whom I would have to
1257 allocate this business, or divide up these orders I got in. I had to, on a single day's transaction, stick to the same price, because if I did not the fellow who got the lower price would be all over me for not trading with him.

There were many times, however, when a buyer would come in and try to buy at a lower price. I would not handle that order through the Association, but I might put that buyer in contact with some member of our Association who had intimated to me that he was anxious to move gasoline and was willing to sell it at a lower price.

In the transactions that went through my office, the buyer and seller were treated alike.

It happened a great many times that companies on whose purchases we charged commission came in and tried to buy at a lower price than the others were buying for on that same day.

All the material we handled was specification material, but there are different specifications.

The first thing every Monday morning I contact all of the members in our Association. I find out two things from them; first, how much gasoline they will make during the week over and above their regular commitments and which they desire the Association to attempt to help them move. At the same time I get from that refiner an idea of what he wants for the product.

1258 The first man I talk to may tell me he has 10 cars of gasoline to move, and he is not going to sell a car of it under 4¾¢ a gallon. Then I go to the next man. He has 5 cars he wants to move, and he wants to get 4¾¢, but he will take 4⅝¢. And I go on down the line. Maybe I will come to one man that has 40 cars of gasoline on hand and wants 4⅝¢, which he considers the market, but he has to move that gasoline within the next 24 or 48 hours to prevent a shut-down, and he might tell me, "If you cannot get that, and you hear of anything else, let me know." That might be the same specification of gasoline as this first fellow that wanted 4¾¢.

I get all that information on my desk. I find that most of the refiners want 4⅝¢ for their gasoline that week; that is the consensus. Then when the buyers call me or I contact the buyers I use that 4⅝¢ price as a basis to try and sell them. If we get together with the buyers on that basis, I take the orders and distribute them around to our members. But if I contact one buyer, or some buyer contacts me, and he says, "Now I have got an order for 25 cars of gasoline, but I will only pay 4½¢ for it, that is all my people will let me pay", I tell him that I cannot handle that, but I tell him he might call this other refiner who has already told me that he wished to move some material at a lower price if he could not move it all at the market, 1259 and I say, "If you ask that man I believe you will get your 25 cars." I might tell him, "I know one refiner down here that will probably take that, and I will have him call you right away," and I have him do it.

Now, those 25 cars I would not consider as handled through the Association. The other orders that I got at 4⅝¢ which was what the majority of our people wanted that day, I consider as fair spot market price sales, and charge commission on them.

I don't know whether the major companies usually told me the prices that they would pay. There were a great many instances when they did, and a great many instances when they called me and told me they would need some material, and asked what they could buy it for.

These buyers that I dealt with would quite often call me on Mondays, because most of them bought gasoline the first part of the week for their week's requirements. They would ascertain from me what they could buy gasoline for in the field, and maybe 2 or 4 hours later, or the next morning, they would call me and place an order at a specified price. So they would specify the price which they would pay for the gasoline. In a lot of cases it was based on information that they had previously obtained from our office.

1260 I exchanged market information with these major companies who would buy through our Association just the same as any other sales manager. I don't remember giving them the amount of gasoline produced in the field. I don't see how I could hardly have given them the amount of gasoline that was being produced by our Association members. I might have at times told them the amount of surplus gasoline that was available in the field.

By the Court

I made no written reports of any kind. Suppose Mr. Bradshaw called me and wanted to know what the conditions were in the field. I would tell him the condition of the various refiners, whether they were sold up on gasoline or whether they had a certain amount to sell, what they considered the market was, and any other information I had regarding that. I would not say to Mr. Bradshaw, "Now, we have 1,000 cars to dispose of this week. Will you take 100 of those cars?" I never made a statement like that.

I have advised Bradshaw from time to time as to how much gasoline was down there, because he was continually buying, every day, not only for the Gulf Companies, but for buyers scattered through the whole Mid-Continent section; and he was very much interested in that infor-
1261 mation. I would tell him how much gasoline each refiner had, if I knew; and the grade they had.

We had no understanding as to what any major company was going to buy for the following week. Each order they gave us was a spot order, and we hoped they would continue buying every week, but we had no intimation from them that they would.

By Mr. Lewin

I just explained that by 11 o'clock every Monday morning I know the amount of surplus gasoline that is in the field for that week. I have that information available for every buyer that calls me, and I would give it to them if they ask me for it. I would not say they usually ask me for it. Sometimes they ask for it.

I can't ever remember, for instance, Dewey Chamberlain of Pure or Williamson of Continental ever asking me how much surplus gasoline there was in the field. I remember Bradshaw asking me quite often, because he was a broker, and I was glad to give him that information. I don't remember Tracey asking for it very often; I think he has, occasionally. I don't remember anyone else asking me, but if they wanted to know, I was glad to give them the information.

These major company buyers depend on me to find out whether there is any surplus gasoline that they can pur-
chase down there. They ask me quite often who
1262 else is buying down there, and how much they are
buying, and I tell them that.

Bradshaw might call me on a Monday morning and tell me he has an order for 50 cars of gasoline. He would either tell me, "I can pay 4½¢ for this gasoline," or he will say, "What can I buy it for?" If he tells me he can pay 4½¢, I try to get it for him, if that is what we consider a fair market price. And if he asks me what it is going to cost him, I give him the prices that the members of our Association have given to me.

On quite a few orders I have handled, a buyer like Mr. Bradshaw has called me and given me an order for 50 cars of gasoline, we will say, and has told me that he will pay such and such a price for it; and then I have called up the members of our Association and have said, "I have an order here for 50 cars of gasoline; you can have 10 of it, or 15 of it, and the price is so and so," but the member of our Association had already told me that he was willing to sell gasoline at that price.

On gasoline that they own, the members of our Association certainly can make the price, where they are selling surplus gasoline. The major company buyers have a right to offer a price, and our members have a right to ask
1263 a price; and if they can get together, we make a deal.

The way we considered it, it was surplus gasoline that we were selling to these major companies through the Association, but I don't believe I have made clear what we consider to be a surplus gasoline. Here is a refiner that makes 5 cars of gasoline a day; that is 35 cars a week. He is selling a certain number to jobbers, possibly brokers, week after week, and has been for an extended period of time. He knows just about how much business he will get from them each week. Suppose that totals 25 cars. Then there are 10 cars left over that he has no immediate home for. He could sell it in half a dozen places at a bargain price, at whatever he could get for it, or whatever the buyer he approached would pay. All that we try to do is find a market for the 10 cars he hasn't a sale for. That is what we consider, for the purposes of our Association, surplus gasoline. The Association was formed to try to find a market for that in an orderly fashion and that was what we were selling to the major companies.

If the refiner ships that 10 cars north, he has to absorb a freight rate differential; and if he sells it to a broker, he has to allow the broker slightly under the market, so the broker can resell it at the market. Here are 10 cars that the refiner has no contract for, and no definite
1264 purchaser in mind. There may be a good many men in that field, buying on that particular morning, and I can do some dickering about the price. I don't have to take the first price that is offered to me.

I don't believe it is true that if the refiner started out to sell that gasoline to jobbers, and not through our Association, he usually would have to take a lower price for it. I believe he might have to take a little lower price if he sold to a broker.

This surplus gasoline did actually move at a lower figure before we had our Association; but that was before the Connally Act or any Federal regulation down there, and we had all kinds of prices.

Surplus gasoline is more gasoline than the refiners have a regular market for. That is the way I have explained that we used it in our Association.

> Q. All right. Now, when you have more gasoline than you have a regular market for, can you dictate the price to a person that is taking surplus gasoline?
>
> A. You certainly don't have to take any price that is offered to you.
>
> Q. You can store it if you want to; is that right?
>
> A. No. You can go out and build new markets, just exactly what we did.
>
> 1265 Q. You built new markets among the jobbers and brokers, did you?
>
> A. There are other people that buy gasoline.

After the Connally Act was put into effect and our new Tender Board was set up, the refiners in the East Texas field were selling to practically every independent jobber and filling station owner in the eastern part of Texas. We wanted to find further markets in that territory; that is, the eastern part of Texas and the Texas Gulf Coast. We had no one to turn to, inasmuch as we were already supplying the independent trade, except the major companies or the large companies who were operating distribution plants and filling stations in the eastern part of Texas, and the people who were operating terminals on the Texas Gulf Coast. That is what we did.

We didn't attempt to build up a market among the brokers and jobbers outside of Texas because we were up against a 1/6¢ a gallon freight equalization any place we went; and it would have meant that we would have had to take approximately $13 a car less for our gasoline. We could get more money from anyone we sell to in Texas, or in the eastern part of Texas, or on the Texas Gulf Coast. We were diverting that $13 a car from the railroads' pockets into our own.

1266 *By the Court*

If we would ship a car up into the north, for instance, here to Madison, we would have to sell on the basis of Group 3, which is the refining center in Oklahoma. And I don't know what the freight rate to Madison is from Oklahoma, but say it is 30¢ or 40¢. If we shipped a car from East Texas, the railroads would charge us 42½¢ and we would only be able to get the same price that the refiners in Oklahoma could get, into this territory. So, by reason of paying that extra 2½¢ a hundredweight freight, we would have to absorb the differential, or repay the customer for the extra freight he paid on our shipments. The customer pays the freight. The freight charge is $13 a car more from East Texas than it is from Oklahoma to Madison. The jobber up here in Madison pays that freight bill, but he charges that $13 back to the refiner; or, the way it actually operates, the refiner deducts $13 from his invoice in order to repay this Madison jobber for the extra freight he has had to pay from East Texas. When the major company buys the gasoline in Texas from our companies, there isn't that $13 to take care of. That is why I say that that is our primary territory, because we have a better freight rate into East Texas and to the Texas Gulf Coast than any other refining center in the country.

1267 Practically all the gasoline our refiners sold to the majors was kept right here in Texas, or it went to the Texas Gulf Coast and then possibly was put in tankers and shipped in foreign commerce, or around to the East Coast. If there was any of it that went up into the 10 states that are known as the Standard of Indiana territory, it was so small that I can't even remember it.

By Mr. Lewin

I was talking about all the sales we make in Texas, whether to major companies or to jobbers for use in Texas.

Q. Where does that Texas oil or gasoline we buy up here come from?

A. I don't know where they refine that. I think they have refineries pretty well scattered all over the country.

Jobbers and brokers up here in the Standard of Indiana territory went to East Texas and bought gasoline and had it shipped up here and sold in the Standard of Indiana territory before our Association started. They still do it today. Before the Connally Act, they did an awful lot of it. Certainly there is less of it now than there was before our Association started. We had 80 odd refineries running before the Connally Act, and we have a dozen or less now.

1268 Jobbers and brokers from the Standard of Indiana territory can still buy our gasoline, and at a price that competes with those major oil companies prices. I never saw a day when any northern jobber couldn't buy gasoline in East Texas. They can't buy this gasoline that the major oil companies are taking after the major oil companies get it.

After the Association was operating, we did not attempt to sell the jobbing trade because the members were paying the Association only $2.50 a car, and in order to circularize the small jobber trade, it costs almost $10 a car to make a sale. That is why we would rather sell to brokers and give them ⅛¢ reduction in price, which is equivalent to $10 a car, and allow them to resell to the jobber. It is impossible for any small refinery, without a good-sized sales organization, to do much business directly with the jobbing trade. They have to do it through a third party.

(Mr. Lewin read 3rd paragraph from Exhibit 273, memorandum dated October 19, 1935, from J. W. Warner to Mr. Collins, both of Tide Water Oil Company.)

Q. Now, isn't that what usually happens to jobbers and brokers when major oil companies take up the gasoline in East Texas?

A. I still say there wasn't a day when a jobber or a broker from the north couldn't buy gasoline 1269 in East Texas. The major companies may have bought up this 10 cars I had over here (indicating) listed under "surplus", but those small refiners down there are still protecting their regular trade.

Q. At a price above what the majors are paying, is that right?

A. I don't know what price they were getting from their trade.

I do not believe the major companies were buying any substantial amount of gasoline in East Texas in January, 1935. Right at that time I think the most of them had pulled out of that market. I don't remember that Pure or Tide Water Oil Company were buying anything in January. Louisiana Oil Company may have been buying a few cars for their stations. I believe Cities Service Export Oil Company bought some material in January, but I am not familiar enough with it to say definitely. I would be afraid to try to estimate the amount, but I don't remember that the company I was with sold them any.

I understand what that chart, Exhibit 716, is supposed

to represent. It shows that Cities Service Export Oil Company only made 3 purchases in January, 1935. The Texas Company and Continental Oil Company were not to my knowledge buying any substantial amount in the
East Texas field in January, 1935. Continental Oil
1270 Company may have bought for their stations in
Texas. As far as I know, all these companies named, with the exception of Cities Service Export, were buying very little in the East Texas field during February 1935.

I have stated that I had certain conversations with Dewey C. Chamberlain of Pure Oil Company during 1935 and 1936 with regard to that company buying gasoline through our Association. I believe the first order I received from The Pure Oil Company was in the latter part of March, and was the result either of a call from me to Mr. Chamberlain, or a call from him. A small order of 10 cars was placed and commissions were charged on it.

At some subsequent time Mr. Chamberlain told me that over the next month his people would require a certain number of cars of gasoline,—I don't remember the exact figure,—and that he expected to place it with us in weekly quantities. If it was 100 cars he would possibly give us an order for 25 cars a week over the month. I don't remember that he told me early in the Association's history that Pure Oil Company felt that they were going to be steady buyers down there in East Texas from then on, but in conversation with Mr. Chamberlain I was given to understand that they would need gasoline for their refinery on the Coast. I
think he did tell me that he thought they would need
1271 gasoline pretty consistently over the summer. It is
quite possible that he did say that he would probably be buying gasoline down there right along if we could furnish him the gasoline of his required specifications. I cannot remember any such conversation. That wasn't the reason that we started charging commissions on sales to Pure Oil Company; we started charging commissions on the very first order that was received.

We charged commissions on orders to the large buyers located in Texas or the Texas Gulf Coast, and of course when they started to buy from us we did not know definitely whether they were going to continue to buy or be steady customers from month to month. We hoped that they would be. When the Association was new, when it was first formed, I believe we charged commissions on every order from major companies we got for that territory. We didn't charge small buyers, because we did not sell any jobbers in the state since they were already buying from our members.

Our sellers did not add on any additional charge to the buyer over and above the published prices, for example, in the Journal to take care of this very small commission. They couldn't very well do that, and our commission was very small. The graduations in price on tank car
1272 sales of gasoline were on the basis of ⅛¢ per gallon. When we were quoting prices we would quote 4½¢, or 4⅝¢, or 4¾¢, or 4⅞¢. ⅛¢ is the smallest graduation we make on our quotations, while the commission we charged of $2.50 a car was only ¼ of ⅛¢, or 1/32¢ a gallon. There was no attempt made to put that very small amount on to the price charged our customers.

I believe, now, that we started charging commissions on that very first 10 car order we received from The Pure Oil Company, and that at some later date I may have had an intimation from Mr. Chamberlain that if we could furnish the proper grade of gasoline at the proper price, they might be pretty steady customers for it. That was not the reason we charged commissions on The Pure Oil Company purchases. That was not the reason we started to charge them. We charged that with everybody when the Association first started.

Q. How did you testify on that point before the grand jury, do you remember?

(Mr. Lewin shows to the Court a document purporting to be the transcript of the testimony before the grand jury.)

A. No, sir, I do not.

The Court: Q. Do you recall testifying before the grand jury at Madison, on Tuesday, May 19, 1936?

1273 A. Yes, sir.

Q. Do you remember if this question was asked you, and did you make this answer:

"Q. Whether you did or not, did you commence to charge commissions on Pure transactions because Pure called you and gave you an order at a price which was the market price?

"A. We started to charge commissions on Pure because we felt they were going to be steady buyers down there.

"Q. And you thought they were going to be steady buyers because when they purchased from you, they purchased in the same way that your other steady buyers did; is that right?

"A. That is right.

"Q. That is, they called you and gave you an order, and fixed a price which was the market price, and told you they would pay that price; is that right?

"A. On most occasions, they told me the price they would pay."

Now, after hearing that, does that refresh your memory?

Mr. Thomas: May I have the same objection, 1274 your Honor, as appears at R. pp. 373-74, 446, 546-47, 630, 637, that I made yesterday to this line of examination?

The Court: Yes, the record may show the same objection, and the same ruling. Exception allowed.

Mr. Francis: If it please the Court, is there any inconsistency in that?

The Court: Not so far, no.

Mr. Francis: I can't see any, and it is a play on words, to ask somebody what he said a year ago.

By the Court

The commission statement on the first order for Pure, which I think was taken in the last week in March, was made out at the end of that week; and it may be that before I made out that commission statement I had had a conversation with Mr. Chamberlain, wherein he told me that if we could furnish the proper grade of gasoline at the proper price, he might be a steady customer of ours. Or it may have been after I made out the first commission statement. It is so far away that I just can't remember now.

Mr. Lewin: Q. Now, Mr. Cline, is your mind refreshed from that portion of your grand jury testimony, on whether or not the market price that Pure 1275 would pay had anything to do with the charging of commissions?

Mr. Thomas: I renew the objection that appears at R. pp. 373-74, 446, 546-47, 630, 637.

The Court: Overruled; exception allowed.

A. I don't believe I quite understand that, Mr. Lewin.

Mr. Lewin. Would your Honor be willing to read that part of the grand jury testimony to him again?

Q. Let me put this question to you, Mr. Cline——

The Court: All he says here is that on most occasions they told him the price they would pay.

Mr. Lewin: Q. On most occasions, did The Pure Oil Company tell you the price they would pay?

A. I think they did on quite a great many occasions, yes, sir.

That was usually the market price, and it was usually based on information that I had given Mr. Chamberlain as to the state of the market in East Texas. The fact that we did charge commissions on The Pure Oil purchases indicates that the purchases on which we did charge commis-
1276 sions were placed at what we considered a fair market price, because if they had bought under a fair market price we would not have charged commissions. Ordinarily, the East Texas quotation in the Oilgram would very closely reflect our fair market price.

I don't know that The Pure Oil Company had any specific amount of gasoline that they intended to buy from month to month in the East Texas field.

I have looked at Exhibit 488. I do not know anything about that allocation of 5 cars per day mentioned there. Mr. Chamberlain never told me that he had an allocation of any sort. He told me varying amounts that he might take a week. I would like to make myself plain on this point: The Pure Oil Company's specifications were very difficult to meet, and we had only one or two refiners in East Texas who could supply their material with any degree of certainty; and for that reason, after Mr. Chamberlain had been advised by his manufacturing department, how much gasoline they would need for the ensuing month, he would quite often call me and tell me that during that month he would require 100 or 50 cars, or some certain amount, from East Texas. He would tell me that he wouldn't buy it all in a lump, but would buy it from week to week, if it was 100 cars, probably split it up on the basis of 25 cars a week. But he told me about the whole
1277 month, so I could make arrangements with these refiners to keep a supply on hand for him.

There were some months when his purchases were 100 cars. I believe they varied from possibly as low as 40 cars in some months to possibly over 100 in some months.

Mr. Chamberlain did not always take, each month, the amount that he told me in the first part of the month that he expected to take. There were 2 or 3 months when apparently his picture had changed, and he found he could take less than he might have told me at the first. And then there were several months when we were unable to find enough material to suit his specifications.

I have the figures here of what Mr. Chamberlain actually took; March, 1935, 10 cars; April, 67 cars; May, 90 cars; June, 163 cars; July, 135 cars; August, 151 cars; September, 117 cars; October, 88 cars; November, 60 cars; December, 95 cars; January, 1936, 90 cars; February, 125 cars; March, 94 cars; April, 158 cars; making a total for 14 months of 1443 cars. By dividing 14 into 1443 cars you get 103 cars a month as the average purchase.

In making up these figures last night, I took the total amount that we had charged commissions on; and there were certain cancellations of some of these cars after
1278 the orders had actually been placed, because the refiner with whom they were placed found that he couldn't meet the specifications. And I didn't have time, between last night and now, to make those deductions.

Mr. Chamberlain never gave me any information beyond the current month. At times, I believe, through the summer of 1935, he tried to get 150 or 175 cars in certain months; and then, at other seasons of the year, he would drop down to 40 or 50. I can remember that at one time he dropped to 10 cars a week.

Originally, I tried out 4 or 5 different refineries for Mr. Chamberlain's orders, but the bulk of his business was shipped by one of the Grogan Oil Company plants, and by Chief Refining Company in Gladewater, when they were operating. Gilliland shipped some, but I believe it had considerable difficulty in meeting specifications. Mr. Chamberlain used to complain quite a bit about the specifications of this gasoline that he was purchasing. He made some complaints about the gasoline of Grogan. There may have been some complaints about the gasoline of Chief and Gilliland, too.

I recall receiving the letter which is marked Exhibit 327 for identification.

Mr. Lewin: I offer it in evidence, may it please
1279 the Court (handing Exhibit 327 for identification to the Court).

Mr. Donovan: May we have the same objection, your Honor as appears at R. pp. 504-05, 556-57?

The Court: You may. Objection overruled. It may be received. Exception allowed.

(Letter referred to received in evidence as EXHIBIT 327.)

(Mr. Lewin read Exhibit 327 to the jury.)

The "apple cart" referred to in that letter means that I had known Mr. Chamberlain for several years before I became secretary of our Association, and Mr. Chamberlain was given the idea that I personally received a commission on every carload of gasoline the Association handled. I didn't disabuse his mind as to that; but he, through friendship, was very glad to do his East Texas buying through me. I believe he was warning me that if I couldn't do a better job for him, he would quit buying from me.

By the Court

I had no position other than secretary to this refiners organization during 1935. My sole compensation for services rendered it during 1935 was $250 per month. My salary didn't vary regardless of how much gasoline we handled. I was not employed by anybody else. I
1280 devoted all of my time to that.

I wouldn't think that the phrase "apple cart" in that letter would refer to any buying except The Pure Oil Company buying. I didn't give Mr. Chamberlain the impression that I was getting a commission individually on all purchases made. I say now that I think he had that impression because he told me that, possibly a year ago. After that letter was written he told me in 1936 or 1937 that he thought I was getting a commission.

Mr. Lewin: Q. Now, weren't you asked about that letter before the grand jury?

The Court: Just wait a minute. See if we can't stimulate his memory.

Q. When you got that letter what did you understand he meant by "apple cart"—upsetting the apple cart?

A. Well, I didn't give the matter any thought at that time, your Honor.

Q. Didn't you think that he had in mind, under the terms of this program, that you were handling —selling gasoline to the majors, through your organization?

A. I can't see how it could affect any one except The Pure Oil Company, because—

Q. Well, if they would make purchases else-
1281 where, it might affect somebody other than The Pure Oil, wouldn't it?

A. I don't feel that the other companies would necessarily quit buying from us because we had a squabble with The Pure Oil Company, no, sir.

Q. They were buying on the average of 103 cars a month?

A. Yes, sir; and we were very anxious to keep that business.

Q. Do you recall testifying before the grand jury, on Tuesday, May 19, 1936, at Madison?

A. Yes, sir.

Q. Was any question asked you with reference to the letter that has just been read?

A. I don't remember, at this time.

Q. Was this question asked you, and did you make this answer:

> "Question: I see. Now, the last sentence of that letter which immediately follows the one I have just read is: 'However, before taking this action, would appreciate an expression from you.' Well, that bears you out, doesn't it? The
> 1282 last sentence is. 'We don't want to do anything to upset the apple cart or work an undue hardship on you, but are getting damned tired of the neglect and indifference exhibited by these refiners. Yours very truly, D. K. Chamberlain.' Now, what apple cart is he referring to in that sentence?
>
> "Answer: I presume he is referring to the buying of his company and several other companies, if they have an agreement.
>
> "Question: That rather indicated to you, doesn't it"—

Wait a minute.

The Court: The next questions, I don't think I will ask him.

Q. Just jog your memory and see if you can't truthfully tell us what you had in mind when you received that letter, when he was referring to about upsetting the apple cart.

A. Well, I believe my grand jury testimony explains it pretty well.

Q. What was your grand jury testimony?

A. Just what you have read there.

Q. Will you tell us now what you had in mind?

A. When I said that it might affect The Pure
1283 Oil Company buying and the buying of the other companies if they had an agreement,—but if my whole grand jury testimony was read it would be found that I knew nothing of any agreement there.

Q. You knew nothing of any agreement with the majors?

A. That the major companies had.

Mr. Lewin: Q. It would show that you suspected an agreement?

Mr. Donovan: I object to that question.

The Court: We don't care about that.

Mr. Donovan: That is just what he has been driving at throughout.

The Court: Objection sustained.

Mr. Francis: That is unfair in this whole proceeding of the prosecution, and I ask the Court to instruct the jury not to consider this because, regardless, your Honor, of what the prosecution says is their purpose here of refreshing the witness' recollection, it is clear in a lot of instances that they are trying to give the impression to the jury that they are impeaching the testimony of their own witness, and I object to it.

The Court: I think the Government counsel is trying
1284 to do what I am trying to do and what everybody is trying to do, to find out what the truth is and what the facts actually are. Exception allowed. Proceed.

By Mr. Lewin

I believe Mr. Tracey, the buyer for Sinclair Company, did tell me on several occasions, making the statement that they were very short of gasoline and they would probably be buying considerable quantities from us from month to month.

The only representative of Continental Oil Company that I talked with about buying was Ray Williamson of Fort Worth. He told me, as well as I can remember, that if he could get the specification gasoline he required, they would be buying for their East Texas stations and would call on the Association whenever they had any difficulty in making the purchases. He may have used the term that they would by buying a few cars each week in East Texas; at least, he inferred it. The first gasoline that went through the Association for Continental was some time in the month of April, 1935. I would place my first conversation with Mr. Williamson in that month.

Mr. Bradshaw told me in 1935 that he would be buying right along through our Association. Mr. Bradshaw was a very good friend of most of the refiners in our
1285 group; and he told both Mr. May and me that he
would be glad to use the Association as much as he could. I don't know that he said that he would be buying right along, regularly, but that was the impression, because

he was buying gasoline down there every week, sometimes several times a week.

We put Tide Water Oil Company purchases on the commission basis that we charged our members because their shipments were moving to Texas City, a point on the Texas Gulf Coast. My only contact with the Tide Water was with Mr. R. O. Audrain, of the Oklahoma Company. He is a defendant in this case. I believe I talked to him at least once a week. I cannot give any definite conversation because I cannot recall any.

Tide Water had been buying from the field for some time before I ever contacted Mr. Audrain or he contacted me. We had already been charging commissions on Tide Water shipments. He told me in one of our early contacts over the phone that they were assembling a cargo or part of a cargo of material at the Republic plant in Texas City, and they expected to buy at least a portion of that material from East Texas, and would probably be buying for several weeks. I believe that at a later time he told me that they had shipped one cargo to the Republic plant and were going to assemble some more gasoline there and 1286 would probably continue to be in the market for some more weeks. Those purchases were made through our Association.

I believe Mr. Buckley and I talked about The Texas Company on several occasions during 1935 and 1936, but I can't remember the substance of our conversation. I believe when Mr. Buckley and I would meet we would discuss our general picture down there, which would probably include The Texas Company. I know that Mr. Buckley made certain statements to me about The Texas Company buying. I presume he made them from time to time to me during this program.

Mr. Buckley told me that he understood The Texas Company would be needing gasoline in the East Texas field, and thought it would buy down there. He told me further that he did not think it would buy through the Association, and he saw no reason for me to get in touch with its office. I don't remember at this time any quantity that he mentioned.

Mr. Lewin: All right. I wonder if your mind could be refreshed by looking at or hearing the grand jury testimony (presenting document purporting to be the transcript of testimony before grand jury to the Court.)

The Court: Referring to that same testimony you

gave before the grand jury at Madison, in answer to
1287 a question, did you make this answer:

> "He told me The Texas Company were going to buy down there at the rate of 100 to 150 cars a month for Texas consumption, but they would not buy through me."

A. If I made that answer, that was my best recollection then, yes, sir.

Q. And it is your best recollection now?

A. I don't remember the figure, but it is entirely possible that he did give me some figure to indicate how much he thought they might buy.

Q. Was this question asked you:

> "Question: Did he tell you they would buy at the market price?
>
> "Answer: No, I do not believe he actually told me that, but I know for a fact that The Texas Company buys only at the market price."

A. That is right, because The Texas Company were buying down there for some time before I came before the grand jury, at the Oilgram price.

Q. And was this question asked you, and did you make this answer:

> "And that is the reason why you charge a commission on their transactions, even though
> 1288 they are not through your Association?
>
> "Answer: That is right. They are reported through the Association to a representative in Tyler, but I know they buy everything at the low of Platt's Oilgram quotations on third grade gasoline; that is, this particular grade."

Is that correct?

A. That is correct.

By Mr. Lewin

By their representative in Tyler, I meant Whitey May. I gave Mr. May information with regard to prices that other companies were paying in the East Texas field. I gave Mr. May my best idea of prices, not only on gasoline, but on every product we made down there. I told Mr. May the amount of business that was being done through our Association in gasoline, what major companies were buying, and, I believe, how much each one was buying. I may have made guesses or estimates of what I thought we might be able to sell in the future, based on our past experience, and I presume I would give those estimates to Mr. May from time to time if he asked for them.

100% of my sales business is through personal contacts and over the telephone, and not in writing. There are not
many records of my communications and conversa-
1289 tions with major company buyers that I know of, nor
are there many records of my communications and correspondence and conversations with members of our Association. I had no correspondence with members of the Association. My contacts were either personal or over the telephone.

When our Association was formed, we discussed at one time what records we should keep. I was informed, after we had discussed the matter thoroughly, that they saw no particular reason for any records, other than what I would need for tax purposes. The statement was made in a joking way that I should keep my records in my head. It came up this way: I was told to find office space in Tyler, and it was the original idea to hire a stenographer to stay in that office. I was unable to find any desirable space that would fit our limited pocketbook, so we finally decided that I would open an office in my own home, and would dispense with the services of a stenographer, because I could operate a typewriter to some extent. During that discussion, we discussed the amount of records that it would be necessary for me to keep; and I said I would have to keep a simple set of books, and a record of gasoline available from various refiners in the organization, and the specifications of
their gasoline, and such other information as I would
1290 need to assist me in the sales work. I was told that,
outside of my actual book work, I ought to be able to keep my records in my head.

I had to keep a simple set of books for income tax purposes; the ledger and the cash sheet, and things like that. That showed the amount of commissions I took in and the amount of expenditures I made. I did not keep a running record of the amount of purchases made, and the prices at which they were made. My copies of bills for commissions to our members gave the total amount of gasoline that the Association handled, and indicated the company that purchased it, and the refiner that supplied it. I never saw copies of the invoices of shipments from the members of our Association to the major companies. I mean the invoices that you refer to as my commission statements—these bills for commissions.

I started out originally to render those bills for commissions after each order was received. Then I changed to a weekly basis, and finally to a monthly basis. That is the only record I have of the amount of purchases made and prices paid by the major companies through our Association.

Q. And did Mr. Buckley ever tell you that he didn't want you to keep any records?

A. I don't remember Mr. Buckley telling me that, no, sir.

1291 I can't remember him saying that he didn't want any records from me or from the Association, in writing.

Q. Didn't you testify to that before the grand jury?

A. I don't recollect it.

(Document purporting to be transcript of testimony before grand jury handed to the Court by Mr. Lewin.)

The Court: Q. Did Mr. Buckley ever tell you that he didn't want to receive any records from you, of your transactions in this Association?

A. I don't remember it at this time, your Honor.

Q. Well, what did Mr. Buckley say to you about keeping books or records?

A. I can't remember discussing that with Mr. Buckley.

Q. Was this question asked you when you testified before the grand jury, and did you make these answers:

"Question: Well, who said it at anytime—" I don't think I will ask that question.

Mr. Lewin: Dropping down a little bit further, your Honor.

The Court: What is that?

Mr. Lewin: Dropping down a little bit further in that column.

1292 The Court: "Question: Can you repeat what he said on that subject?"

And you were talking about Mr. Buckley, before this.

"Answer: As to our records, and so on, down there?

"Question: Yes.

"Answer: I can only repeat that, what I know definitely?

"Question: Yes.

"Answer: That he told me he didn't want any records from me.

"Question: Yes, why?

"Answer: Or from the Association, and in writing."

Now, does that refresh your memory?

A. Your Honor, if I testified to that, it is—

By the Court

Before this testimony was read I couldn't remember any conversation I had with Mr. Buckley with reference to keeping books or records for the Association, or supplying him with information in writing about the Association, but it is entirely possible that Mr. Buckley told me that he wouldn't want any regular reports on the progress of the Association in writing, because we were in
1293 contact over the telephone, for a while almost daily, and after that several times a week, wherein I gave him as complete information as I could as to what we were doing, who was buying material from us, and so on.

I do not have the copies of the bills that I sent out to our independent refiners for these commissions. I have the statement that I made up from the bills. There are a great many of these bills.

(Papers handed to witness by Mr. Lewin)

This sheaf of bills here are some of those bills. I sent bills like these to all of our independent refiners who sold through the Association. All the bills are typed up like that on that kind of paper.

Mr. Lewin: Your Honor, I would like to offer all these bills in evidence as one exhibit, but there are a great many pages. I don't know how your Honor would suggest they be marked (showing papers to the Court).

(Document referred to received in evidence as EXHIBIT 719.)

By Mr. Lewin

We charge commissions on sales at the going market price, and I believe I have already testified that our going market price was about the same as the Texas quotations as listed in Platt's Oilgram. I never made it a habit to check the published market price in determining on
1294 what sales commission should be charged.

Q. When you made that determination to charge commissions did you understand that the sales on which you charged commissions were at the published market price, and was that a rule of your Association?

A. No, sir.

Mr. Lewin: Your Honor, will you look at page 1884 of that record? (Handing document purporting to be transcript of grand jury testimony to the Court.)

The Court: Q. Referring again to your testimony before the grand jury on May 19, 1936, were these questions asked you, and did you make these answers:

> "Question: Transactions on which you collected a commission.
>
> "Answer: No, sir, I collect commissions only on the gasoline sales at the published market price, and that is the rule of our Association, and that is the only way we charge them; but I handled, at times, several cars each week at lower prices."

Now, with that in mind, will you answer the question?

A. If that is in there, I may have said that be-
1295 fore the grand jury, but I have actually checked sales considerably since I was before the grand jury, and I find that they were not all at the published price.

By the Court

I looked over probably several hundred sales during the last four months. I used the records, invoices of the refiners, of the members of our Association. I went to the refiners' offices and made these checks to satisfy myself as to what prices we were obtaining. I estimate that there may have been 30% or 40% of the sales that were not made at the published market price. Those sales were scattered through the period of 1935 and 1936. They were made to some of these major companies. Some were made to Sinclair.

Q. What percentage of your sales were made at the published market price, on which you charged a commission?

A. During those periods—

Q. I am talking about the entire period, now. You have heard my question; now don't hesitate on that and try to evade it. Just answer it.

A. Well, from the number I looked over, I believe over half of them were probably made on the
1296 market price.

During the 14 months that I have a record of, we sold something over 9,000 cars. That would probably represent 600 or 700 sales. I checked several hundred cars, not that many sales, to determine at what price the sales were made. I believe 30% or 40% of those several hundred cars were sold at a price other than the published market price. I didn't make any memorandum of any kind. I went there for the purpose of checking those to ascertain that information.

Q. Your testimony before the grand jury is:

"I collect commissions only on the gasoline sales at the published market price, and that is the rule of our Association, and that is the only way we charge them; but I handled at times several cars each week at lower prices."

Now, what is the fact? Did you charge any commissions on any of the sales that you made, except the sales made at the published market price?

A. I say now, your Honor, that I did.

Mr. Francis: May I make an inquiry of the Court at that point? That testimony was, there, that several cars each week were sold at lower than the published prices? 1297

The Court: (reading from document purporting to be the transcript of the testimony before grand jury).

"But I handled, at times, several cars each week at lower prices."

But the question is, whether he has charged commissions on those or not; that is the question.

Q. Did you charge commissions on those cars that you sold at prices lower than the published price? Now, answer that, yes or no.

A. Yes, I did.

Mr. Lewin: Q. On all of them?

A. Oh, no.

(Chart, Exhibit 676, is exhibited before the jury.)

By Mr. Lewin

As nearly as I can remember, the market was quite slow the first part of January, 1936, and then there was a crude advance on about January 8 or 9, which temporarily stiffened the market quite a little bit. After a few days, it gradually weakened. There were instances in January and

February, 1936 when the market was weak. By that I mean the actual market down there in Texas, the prices that were actually being paid through our Association.

1298 I didn't take the publications. I checked them at least once a week. When the market was changing from day to day I probably checked it nearly every day. When the market was pretty stable, I probably wouldn't check it, except when the Oilgram representative would call me for information.

In February and March, 1936 I was putting major company buyers in touch with independent refiners all the time.

Q. Wasn't it true that when you did so a great many of the sales that were made, were as much as ⅜¢ under the published market price in Platt's Oilgram for the same kind of gasoline?

A. That is entirely possible at a time when the market is weak, but it is too long for me now to remember any exact transaction during the period.

Q. I wonder if your mind could be refreshed on that point?

The Court: I think—let that go.

By the Court

The market was actually weak during that period, January and February, 1936, and ordinarily when the market is weak, it is possible to buy under the published price, but it is so long ago now that I can't remember any 1299 single transactions. We were selling every week, and were probably selling under the published price, if the market was weak, probably through January and February, at least.

During this period I didn't know of every sale made by these independent refiners to the small jobbers and to the brokers, but I kept in fairly close touch with our membership, and they would tell me about various sales that they made. That was the only knowledge I had of sales made to jobbers and brokers at that time.

By Mr. Lewin

I may have known of sales during January and February, 1936, in which jobbers, brokers and major companies in East Texas were buying gasoline as much as ⅜¢ under the published market price in Platt's Oilgram, but I cannot remember them at this time. I don't remember whether a price as much as ⅜¢ under the published market in Platt's Oilgram during those months was the going market. If we were selling to major companies at a higher price, which constituted the going market, and also sold to them for ¼¢ or ⅜¢ less, we didn't charge commissions on the lower priced sales.

The Court: Q. You do know on what sales you charged a commission?

A. Yes, sir.

Q. Now, you just tell us now on what sales
1300 you made, with reference to the market price, those sales which were made at the published prices.

A. I don't know exactly how to make myself clear on that. We charged commissions on the sales at the going market price, which, as I have said, I thought reflected closely the published market price.

Q. Did you charge any commissions on prices that you were—you knew to be lower than the published prices?

A. Well, yes, as a matter of fact, we did, your Honor.

Q. All right.

By the Court

I do not have records with which I could check back any particular transaction because the refiners didn't give me copies of their invoices, and, while I have a record of the orders that were placed with the refiners, I have no way of going back and telling from my records at exactly what price that order was placed. When I took an order I wrote it down on a piece of paper, just "Gulf Oil Corporation, 50 cars," and then I showed underneath to whom I distributed or allocated that order, and then from that I made up my commission slips. Those commission slips
1301 were just offered in evidence. I cannot tell from any of those commission slips what the price of the oil was on that day. I didn't carry the prices on the slips.

By Mr. Lewin

When I kept these records of bills for commissions I thought that was a record of sales at the going market price, and I thought that conformed in a general way to the published prices when I made the charge.

Q. All right. Weren't you also putting sellers and buyers in contact with each other in February and January of 1936, where you knew they were

making sales at the time at a number of prices below that low, sometimes as low as ⅜¢?

Mr. Hanning: Sales to whom?

Mr. Lewin: Sales to major companies.

A. I may have, but, as I say, I cannot remember the details of that at this time.

There might have been one or two sales a week where our organization or I put the buyer and seller in contact with each other and on which we did not charge a commission. We didn't charge commission on those sales because they were under the going market price and were considered distress sales, and they weren't orders that were divided up among several members of the Association.

I cannot check back to that particular period of January and February 1936 in my mind and say whether
1302 the going market price and the published price were the same.

Looking at my records, we charged commission on 717 cars in January, 1936, and on 611 in February, 1936. At the time those sales were made and at the time we charged commissions on them, I thought that they were at the going market price. But I can't tell whether they were at the low of Platt's Oilgram, or whether they were substantially under.

The fact that I now remember that the market was weak in January and February, 1936 refreshes my recollection as to what those published prices were only insofar as I told you previously, that when the market is weak the going market price or the actual trading price is usually slightly under the published price.

I previously gave all the purchases of The Pure Oil Company on which commissions were charged. That information for each of the other companies is:

Sinclair Refining Company: March, 1935, 110 cars; April, 251 cars; May, 321 cars; June, 279 cars; July, 340 cars; August, 465 cars; September, 342 cars; October, 454 cars; November, 337 cars; December, 182 cars; January, 1936, 232 cars; February, 136 cars; March, 124 cars; April, 209 cars; a total of 3,782 cars for the 14 months. These purchases average approximately 270 cars a month.

Gulf: March, 1935, 75 cars; April, 160 cars; May,
1303 161 cars; June, 120 cars; July, 140 cars; August, 165 cars; September, 135 cars; October, 150 cars; November, 150 cars; December, 185 cars; January, 1936, 215

cars; February, 205 cars; March 200 cars; April, 230 cars. A total for 14 months of 2,291 cars. The monthly purchases during that period averaged about 160 cars.

The Texas Company: May, 1935, 15 cars; August, 30 cars; December, 135 cars; January, 1936, 180 cars; February, 125 cars; March, 140 cars, April, 175 cars; total, 800 cars. The monthly purchases averaged during this period 57 cars. The average of the period December, 1935, through April, 1936, inclusive, is 151 cars. The average from April to November, 1935 inclusive, is 5 cars.

Continental Oil Company: April, 1935, 15 cars; December, 20 cars; March, 1936, 5 cars; April, 10 cars; a total of 50 cars. The average on that during the months in which Continental was buying would be 12½ cars a month for 4 months. The average over the entire period of 14 months for the Continental is 3 6/10 cars per month.

Tide Water Oil Company: April, 1935, 54 cars; May, 50 cars; June, 125 cars; July, 145 cars; August, 150 cars; September, 125 cars; October, 120 cars; November, 33 cars; February, 1936, 20 cars; March, 20 cars; April, 25 cars; total of 867 cars. The average of Tide Water Oil Company's purchases for the period beginning April,
1304 1935, and ending December 1, 1935, is 100 cars per month. Then that company did not buy from us at all during December, 1935, and January, 1936, and then started out again in February, 1936 and took an average of around 20 cars a month.

Cities Service Export Oil Company: February, 1935, 127 cars; March, 407 cars, which was all that I have a record of. Total of 534 cars. That company did not buy anything any more through the Association through the rest of 1935 and 1936.

I just have one figure for Louisiana Oil Company, which is December, 1935, 65 cars. That is the only purchase on which I charged a commission to Louisiana Oil, or rather it is the only one on which I collected a commission.

The total of all purchases by major companies through our Association for the 16 months ending April, 1936, was 9832 cars. The total for 1935 was 7114 cars.

Those companies continued to purchase through our Association after April, 1936. I do not have a record of those purchases. The approximate number of cars which each company took per month for the balance of 1936 after April, are as follows: Sinclair, 150 cars; Gulf Company, 175 to 200 cars, and Pure Oil Company, 75 to 100 cars. That is just an estimate.

The Texas Company purchases were not through
1305 the Association. I estimate it bought about 150 cars each month during that period of 1936 in the East Texas field. I believe we continued to charge commissions on them all through 1936.

After April, 1936, until December 22nd, we charged commissions on some of Continental purchases; I estimate that it bought 10 or 15 cars a month. We possibly charged a commission on a third or half of those.

Tide Water Oil Company, after April, 1936, may have taken gasoline in the East Texas field for a month or two more. My best recollection is that they bought a little gasoline from us up until June, 1936, and none after that. They took approximately 20 or 25 cars in May, 1936, and if they bought in June, they probably took about the same. There were no purchases by that company, that I know of, in that field, on which we didn't charge commissions during those months. I don't know what Tide Water Company was actually buying the gasoline, because I didn't see the purchase orders. My dealings were all with Mr. Audrain of the Oklahoma Company. I don't think Tide Water Associated Oil Company made any purchases of gasoline in East Texas in 1936, or on the spot market in December, 1936. Mr. Warner and Mr. Audrain did not make any purchases during that month that I know of.

1306 There were no purchases by Louisiana Oil & Refining Company after April, 1936, through our Association. I think Louisiana Oil bought occasional spot cars of gasoline from members of our Association, but they were not reported to me, and I didn't have anything to do with them.

I know John Steiger. He was employed by Platt's Oilgram in Tulsa during 1935 and 1936. I know he collected market information for the paper. I did not know whether or not he was editing the petroleum quotations for Platt's Oilgram in Tulsa.

Mr. Steiger got in communication with me over the telephone through 1935 and 1936, probably on an average of once a week after our Association was formed. I may have seen Mr. Steiger once in either 1936 or 1937. I was in Tulsa at one time, and saw him. He asked me for prices of gasoline, and I gave him the prices at which our members were selling to major companies.

Cross-Examination by Mr. Donovan.

The total number of cars purchased by major companies through the Association in 1935 was 7,114. In making my examination of those purchases I found that sometimes cars were ordered and later cancelled. I did not take these cancellations into account in the figures I have given. The 1307 figures here are the total orders placed. I would think there would be at least 100 cars that were cancelled in 1935. The net amount bought through the Association, at any rate, would be about 7,000 cars in 1935. That would be the number on which I charged commissions.

I don't have the records of the Federal Tender Board showing the number of cars which were shipped from East Texas in 1935, but I believe I estimated approximately 30,000 cars. That would mean that the sales through the Association in 1935 on which commissions were charged were just about one-quarter of the total interstate shipments. If those other cars which were sold through the Association but on which the Association did not charge a commission were in there, it would probably raise the total from 7,000 to around 8,000 cars. So it would be a little over 25%.

(Witness refers to memorandum.)

In the first four months of 1936 the majors bought through the Association 2,718 cars. I did not take into account cancellations in determining those figures. I do not have the figures from the Federal Tender Board records showing over 12,000 cars shipped out of East Texas in that period. That would be a third of the year; and I believe I testified that there were 30,000 cars over the entire year, so that 12,000 would be pretty close to a third.

1308 30,000 cars was my estimate of interstate shipment of gasoline from East Texas for each year, 1935 and 1936. That wasn't the total amount of gasoline made down there. In addition to the 30,000 cars that were shipped each year, there was approximately 10,000,000 gallons a month of gasoline made in East Texas, which was shipped out in tank trucks. That would amount to the equivalent of 1,200 cars a month, or about 14,000 more tank cars per year. Our office had nothing to do with those shipments, but the members of our Association actually shipped some of that material.

I first contacted Ray Williamson at the Fort Worth office, and asked him to purchase Continental's requirements through our Association. That was in March or April, 1935. Some time after that Mr. Williamson communicated with me and told me that the refiner from whom he had been buying gasoline was temporarily shut down, and asked me what other refiners were operating in the north and south ends of the field that he could buy some gasoline from for shipment to his bulk plants. I gave him the names of the refiners that were operating in Gladewater, which is in the north end of the field, and one or two refiners that were operating in Overton, at the south end of the field.

Mr. Williamson then told me that he would call one of
the refiners I named, and place an order with him if
1309 he could get together with him. He told me who he
intended to call. I called the one that he told me he
intended to call. The company he called was Gilliland Refining Company, at Gladewater. The same day, or the next day, I checked with Gilliland Company to find out whether it had obtained the order, and how large an order it was. When I found that it had obtained an order at the market price, I placed that sale on my commission list, and charged that commission against the company that sold to Continental.

Independently of what Mr. Williamson said, I had a very good idea of where the gasoline purchased for Continental went. I knew where it was intended to go, because he wanted to know refiners operating in the north and south ends of the field because he intended to ship this gasoline to points in East Texas where they had bulk plants, and the bulk plants took a cheaper freight rate from the north end of the field than the bulk plants from the south end of the field.

I know, or believe I do, why the major companies discontinued buying in January, 1935. The Federal Tender Board, which had been set up in October, 1934, was discontinued right after January 1, 1935. At the discontinuation of the Federal supervision, a great many plants again
started to operate on illegal or hot oil, and the com-
1310 panies who had theretofore been buying in the field
were unable to ascertain who was running on legal
oil and who was running on illegal oil; and, therefore, they were afraid to buy it from anyone in the field.

When the Federal Board was in existence, excess or illegal oil could not be shipped in interstate commerce. I think the Federal Tender Board went out in the first week in January, 1935. What caused it to go out was a decision of the United States Supreme Court which affected section 9-C of the N. R. A. statute, under which the Federal Tender Board had been set up.

Our Association was formed because a group of the larger, more substantial East Texas refiners met sometime in January to talk over the future of the refining business in East Texas. They were of the opinion that the days of hot or illegal oil were over, and that in order to survive, the refiners would have to find a way to operate at a profit on legal crude oil, which at that time would cost them $1 per barrel.

The upshot of this, or subsequent meetings, led to the formation of our Association with the principles in mind that the members thereof would operate only on legal crude oil, and that they would support legislation for the outlawing of illegal or hot oil. Then it was decided to establish a central marketing agency, and get in touch with the 1311 buyers who had formerly purchased gasoline in the East Texas field, and inform them that an Association had banded together which could guarantee delivery of legal crude and legal products from crude, and could guarantee the specifications of their products, and try to get these buyers back into the East Texas field as purchasers.

The Connally Act went into effect the latter part of February, 1935.

The East Texas Refiners' Marketing Association is still operating as a selling agency for its members, these independent refiners. It is still negotiating sales to major companies.

I appeared before the Grand Jury once in May, 1936, and once in December, 1936. At that time our marketing Association was in operation. I told counsel for the Government so in May. I don't remember whether I was asked about it in December.

No member of this Association has been indicted in this proceeding here. No officer of the East Texas Marketing Association was indicted in this case. We are still continuing to operate as I have described here to this jury.

By Mr. Francis

I stated I was familiar with what I called the going market price there in the East Texas field. I believe all of the sales which were made through our organization 1312 to The Pure Oil Company were made at that going market price, not higher, but at substantially that price.

By Mr. Walker

Mr. Brakefield of Louisiana Oil Refining Corporation and I had several telephone conversations on general market topics. At my request Mr. Brakefield occasionally dropped me a letter or usually a note on scratch paper, advising that he had bought a car or more from some members of our Association. He had not bought those cars through the Association. I made no charge to the seller on those small sales.

I believe the East Texas Refining Company became a member of our Association about June, 1935. From January, 1935 to June, 1935, East Texas Refining Company was the only company in the East Texas field that made ethyl or Q-gasoline. It was the only company there at that time having a permit from the Ethyl Corporation. I knew Louisiana Oil bought from East Texas Refining Company, and I knew also that they bought spot cars from Grogan Oil Company, but the East Texas Company had not become a member of our Association.

I said something about the Louisiana Company having purchased a few cars early in January or February, 1935. I don't know that it purchased 58 cars in January, 1935. I do not know what amount they purchased in February, 1935. I don't believe I was in touch with Mr. Brake-
1313 field until March or April of 1935.

The Pullman Oil Company is not a member of our Association. I do not know whether in February, 1935, Louisiana Oil Refining Corporation bought 97 cars from East Texas Refining Company and 81 from Pullman Oil.

The purchase by Louisiana in December, 1935, on which a commission was paid, was from East Texas Refining Company. Louisiana made a purchase from East Texas Refining Company also in November 1935. Each purchase was 65 cars. Mr. Brakefield bought directly from Mr. Bishop. I didn't handle the actual negotiations of that purchase. I happened to talk to Mr. Brakefield before he made the purchase, and when he advised me that he wanted to buy that number of cars, I informed him that East Texas Refining Company could take care of him; but I did not negotiate the purchase or the price. I did not take it and allocate it in any way. That was my usual practice.

I charged Mr. Ralph Bishop of East Texas Refining Company on both of the purchases. He didn't think he should pay it, so we finally compromised, and I canceled one, and he paid the other. His original contention was that he did not owe a commission on either purchase.

1314 *Redirect Examination by Mr. Lewin.*

During 1935 and 1936, the buying of gasoline for The Texas Company was done under the direction of Mr. P. C. Scullin, a defendant in this case.

1315 JOHN M. BRADSHAW, a witness for the Government, testified as follows:

Direct Examination by Mr. Crawford.

I have lived in Dallas, Texas, for 6 years. I am, and for 6 years have been, a commission buying agent of petroleum products. I am not an independent buyer; I am a commission buying agent. Before that I was in the brokerage business for 11 years in Wichita Falls buying and reselling petroleum products.

I was buying gasoline during 1935 and 1936 for a considerable number of people.

Q. Was there any one for whom you bought a greater amount than others?

A. Well, I would buy for Sinclair and Gulf.

Q. That is not the question. Was there any one for whom you bought a greater amount than for others?

A. Well, I haven't got the figures. I bought considerable for quite a few people, and I don't know —I imagine I bought a lot for the American Petroleum Company.

The Court: Now, just stop and think. Who was your best customer, who were you buying the most for during that period? Now, you know that. Don't be so hesitant about giving the facts in the case.

1316 A. I was buying considerable for Gulf and Sinclair.

Q. Who was your best customer?

A. Well, Judge, I haven't got the exact figures because I was buying considerable for quite a few different customers there.

By Mr. Crawford

About 15% of all the gasoline I bought during 1935 and 1936 was bought for the Gulf Company.

I am familiar with the East Texas Field and with the Gulf Coast and so-called Mid-Continent fields to a certain extent. I know where the Standard of Indiana territory is, and what states it comprises.

In carrying on my work it is necessary for me to keep familiar with market conditions, and with what the refiners are selling for. I am not familiar with service station prices.

My work includes the buying for brokers and jobbers. I buy more for brokers than for jobbers. I buy for very few jobbers.

I buy for W. H. Barber Company, Henry H. Cross & Company, Acme Petroleum Company, and Gustafson Brothers, all in Chicago.

I know Mr. Lanzer of the Barber Company pretty well. I know Carl O. Beroth and Mr. Kruger, who are with Acme Petroleum Company. I have had business transactions with all these people.

1317 I was acquainted with Neil Buckley, Robert N. Cline and Paul Jacobi during 1935 and 1936. I have known of Robert N. Cline for about 10 years, but not as well as I have for the last few years. Before 1935 and 1936, Mr. Cline was in the oil business. The last time I knew him, he was sales manager for Cosden at Fort Worth.

In 1935, I knew of the formation of the East Texas Refiners' Marketing Association. I think it was formed in February, 1935. I heard in Dallas that it was organized, and I called up Mr. Cline and Mr. Henry B. May and asked about it. They told me they had organized it. Mr. May told me for what purpose it was organized. He is a refiner located at Tyler, Texas. I bought from him. I also learned from Cline what the purpose of the Association was several days after it was formed.

I am familiar with most of these terms that are used in the oil industry, such as "spot market" and "tank car price" and "trade journals".

My understanding was that excess or surplus gasoline meant a surplus amount of gasoline for which it was hard to find a market, because there wasn't a demand for it. I presume the price had something to do with the difficulty in finding a market for it. I did not understand it to mean that it was more gasoline than they could find a market for at any price. 1318

My understanding of the term "tank car spot market price" is the price for which gasoline can be sold on a spot market. When I use the term "spot market" the way

I just did, I mean the price at which I can buy gasoline from anybody. That is my definition of it.

I am familiar with the difference between a major oil company and an independent. I do not know whether the majors were selling gasoline on the spot market in 1935 and 1936. I wasn't buying any from them.

I was buying for some of the majors in 1935 and 1936 from independent refiners, whose refineries were located mostly in East Texas. I didn't buy much out of the Mid-Continent. I have forgotten whether I bought any in the Mid-Continent field.

In carrying on the kind of business I do, it is necessary for me to keep in mind from day to day the different movements of prices of the kind of gasoline that I am buying. To do that, I must have a pretty good memory. I think I have a fairly good memory.

I testified for the Government before the grand jury investigations held here in Madison in May and December, 1936. I had never been before a grand jury before.

1319 Q. All right. So you remember pretty well what occurred on that occasion, do you not, or do you?

A. Well, yes, sir, I remember certain parts of it.

Q. And do you remember pretty well what you testified to there?

Mr. Donovan: I object to that question, your Honor, as to what he testified to before the grand jury. There is no occasion for such an examination as this.

The Court: Overruled. Exception allowed.

A. I have got a certain recollection, yes, sir, of what I testified to.

Mr. Crawford: Q. Uh-huh. And you said a little while ago that your purchases for the Gulf during '35 and '36 were about 15% of your total purchases of gasoline in those years?

A. I estimated that, because I haven't checked those figures.

Q. Yes. You also made an estimate on that when you testified before the grand jury here, didn't you?

A. I don't recall whether I did or not.

Q. And didn't you estimate that at 1/3 or 33 1/3%?

1320 A. I don't remember.

Q. Your memory isn't good when it comes to that, is it?

Mr. Donovan: Now, I object.

Mr. Dougherty: I object to badgering the witness, and getting into an argument with him.

Mr. Gray: Your Honor, if Mr. Crawford intends to attempt at this point of the proceedings to impeach the witness on something by the use of his grand jury testimony, I think a proper predicate should be laid for it. If he is trying to refresh his recollection, that is a different matter; but the manner in which he has referred to his grand jury testimony, I submit, is improper.

The Court: What was that last question?

(Question read by reporter, as follows:

"Q. Your memory isn't good when it comes to that, is it?")

Mr. Crawford: I will withdraw the question.

Q. What do you say now as to the percentage of gasoline that you bought for the Gulf, out of the total that you bought in 1935?

A. Well, I would have to work those figures up, because I just don't recall. I was doing business for quite a few people down there, and I have no way of estimating that without my figures, which the Government has now.

1321 Q. Do you recall the estimate of that which you gave when you testified before the grand jury?

Mr. Donovan: If it please the Court—

A. No, sir, I do not.

Mr. Donovan: I think that this form of examination is improper. The Government certainly has the data and the records and the figures; they can produce those records and those figures.

The Court: Objection overruled. Exception allowed.

You sell gasoline on endpoint; 64-66, 375 endpoint, or 400 endpoint, or 437 endpoint. "Endpoint" indicates something about the quality of the gasoline. It depends entirely on the intended use of the gasoline whether 400 endpoint gasoline is better than 375 endpoint. That is my definition of "endpoint"; I am no expert on endpoint.

I submit the following as an example of the mechanics of my making a purchase of gasoline for a major company from an independent: An independent refiner will call and tell me he wants to sell some gasoline. I then tell some of the companies that I know are buying gasoline all the time that I have 50 cars of a certain grade of gasoline to sell, and the price, and see if they are interested in it. If they are, they call me back and tell me that they are

interested, and I in turn call the refiner and
1322 buy it from him. After I tell the refiner that I will
buy, I give him shipping instructions, or tell him who
I am buying it for. I have an order form that I confirm
the deal with, which states who I bought it from, who it is
going to, and what the shipping date on it is, the price, the
terms, and if in buyer's or seller's cars, all the details of
the transaction. I send the refiner and buyer each a copy
and retain a copy myself. That order form indicates
where the gasoline purchased is located, from what plant
it is bought, the location of the plant, and what the terms
are; the price, f. o. b. refinery or Group 3, or whatever
basis I should happen to buy it on.

The Gulf Company office with which I did business was located in Houston, Texas. I did most of my business with H. S. Gwyn, assistant district sales manager of that division. I did some business with Mr. Carlisle, but only when Mr. Gwyn was out of town. Mr. Carlisle was district sales manager, above Mr. Gwyn. My business with him was mostly over the telephone.

After the East Texas Refiners' Market Association was
formed, I frequently communicated with Mr. Cline. In a
general way, the communications I had with him were
about buying gasoline. When I heard that that Refiners'
Association was organized, I had been buying consid-
1323 erable cars of various products in the East Texas
area, and I understood that he was to be sales man-
ager for a group of those refiners there.

I was vitally interested as to whether it would affect my business and whether I was going to be able to continue buying gasoline there as I had in the past. At that particular time, I had an inquiry for a cargo of export gasoline. I drove to Tyler and asked Bob Cline how this thing was going to work, or how it was going to affect my business. He explained the set-up there, saying that the Connally bill had become effective, and a few refiners there were going to start running on strictly legally produced crude, and they were going to try to find a market for East Texas gasoline. He said that it wouldn't affect me at all, that I could still buy gasoline down there as I always had.

I bought some gasoline through his Association. The mechanics of that operation were: Mr. Cline would have gasoline to sell. He would call me at various times and ask me if I couldn't find a market for some of it. I would call different people and try to sell some of it. I wanted to work with him, because he was the sales representative of quite a group of refiners.

1324 I bought some gasoline for the Gulf through his Association in 1935 and 1936, which was handled as follows: In order for me to save telephone, I would call Bob Cline sometimes when I was in the market to find out where gasoline was, or he would call me and say he wanted to sell gasoline. If I got an order, I would call him back and he would place the gasoline with various members of the Association who needed business, and then notify me how he placed them. I would issue my order in accordance with the way he told me he placed the business, sending a copy of the order to the buyer and to the seller. I wouldn't send a copy to Cline. I kept the triplicate myself, sent the original to the seller, and the duplicate to the buyer. I indicated whether or not the gasoline was bought through the Association.

I bought about 15 to 20% of the gasoline that I bought for the Gulf Company during 1935 and 1936 through the East Texas Marketing Association. I am just guessing at that; I have no figures with which to work that out right at present. That is my best judgment without reference to the record.

I was getting the usual commission of $2.50 a car for gasoline I purchased. That commission was paid by the buyer, principally, but in some cases by the seller.

I did not make any reports to Cline of gasoline
1325 which I did not buy through his Association. I did not give him any regular information as to that. Sometimes I told Cline where I placed the gasoline that I bought outside his Association, but not usually. We discussed the market conditions, and I would give him some information as to where I bought some gasoline. I never made any habit of it.

I talked with Neil Buckley about markets once or twice during 1935 and 1936. He told me he was contacting some major companies to try to develop business for those refiners in East Texas that were operating on legally produced crude down there, to find a market for their products.

Q. Did you know during that period that the major companies were buying gasoline through Jacobi and Cline?

A. Yes, sir. I didn't know anything about Jacobi except what I heard. I knew they were buying through Cline. I knew they were buying in the Mid-Continent field, that is, in the Oklahoma territory.

Q. Did the buying for the major companies by

Cline begin shortly after the formation of the Association?

A. Yes, sir.

1326 Mr. Donovan: It doesn't appear that Cline did any buying for the major companies, your Honor. I think possibly Mr. Crawford mis-spoke.

Mr. Crawford: Q. Was Cline selling gasoline to the majors?

A. He was a clearing house there.

Q. He was acting as a go-between between the refiners and independents and major, is that right?

Mr. Donovan: If the Court please, the evidence shows he is not acting as a go-between. He is acting as a selling agent—

A. A selling agent for those independent refiners.

Cline was secretary of the East Texas Refiners' Marketing Association. As such, its members would call him and tell him they had so many cars of gasoline to sell, and he would contact buyers as their sales representative, and try to make deals for them. That is what he did to me, and I presume that is what he did to other buyers of gasoline. It is my understanding that most of the buyers of gasoline through Cline's Association were major companies.

I kept in contact with the business, what the market was doing down there, and the amount of gasoline being sold. That was my business.

I wasn't familiar with which of the major companies Cline was negotiating for the sale of the gasoline of the independent refiners. I had an idea, but my vital interest was in what the market was doing. I didn't know what Cline's business was all of the time, or who he was contacting. 1327

My recollection is that the market began to rise shortly after the Cline Association got to functioning. That was April 1935. After that, I think that we gradually got a stronger market, and it continued to rise for some considerable period of time, until June or August, somewhere along in there. I, of course, kept in touch with that situation. It was absolutely necessary for me.

It was my recollection that the rise ceased along in July. I can't remember all those things, the way prices went along in there, except that the market got better. I subscribed for both the Chicago Journal of Commerce and Platt's Oilgram during 1935 and 1936 and observed their publications of market prices of gasoline in the East Texas field during that period. I had to do that to keep those prices in mind from day to day as I was buying gasoline.

When I bought gasoline for the Gulf in 1935 and 1936, I bought at the best price I could. That was usually about the market price.

1328 I am familiar with the two trade publications. The quotations in the Chicago Journal of Commerce are somewhere along the same line as those in Platt's Oilgram for East Texas for the same grade of gasoline.

Q. Is there a freight differential taken into consideration.

A. You always—I always figure—my way of figuring is the Journal price on Group 3 basis and Platt's publication price in Texas.

Q. Was this difference on account of freight, what is the difference?

A. 2½¢ a hundredweight on—

Q. No. Is there about ⅛¢ a gallon difference?

A. $13 on a thousand gallon car—

Q. Doesn't the Chicago Journal of Commerce price take into consideration ⅛¢ a gallon between East Texas and the Mid-Continent?

A. Yes, your freight differential.

I bought below the low of Platt's Oilgram practically all of the time for Gulf, anywhere from ⅛¢ to ¼¢ below. I always bought at a flat price. When the flat price was not the market price, it was usually fixed by the seller. He gave me a price and I tried to sell it at his price, and if I couldn't I would go back and trade with him. Sometimes the buyer gave me a price, and I tried to buy it 1329 at his price, and if I did, that would be a flat price.

There were several independent refiners that were not members of this Refiners' Association that I bought gasoline from after March, 1935. I think Wabash Refining Company was one. It afterwards became a member. East Texas Refining was another. It became a member, too, along in May or June, 1935. Practically all those plants that I did business with eventually became members of that Association or sold their gasoline through that Association. I bought quite a lot of gasoline from Danciger direct. I understand that it eventually joined up, but I never had any authentic information on that.

I bought gasoline in the Panhandle and some in North Texas, but I don't recall buying any in Oklahoma during that period.

During the winter of 1935 and 1936 the major companies continued to buy through the Cline Association.

Some of the gasoline that I bought for Gulf moved to Port Arthur, Texas, on the Gulf Coast; some of it moved to the local stations right around in the immediate area of East Texas, where they had a freight differential and would save freight.

The winter season of 1935 and 1936 I think was a pretty good consuming season throughout the country. The demand was a little better than normal.

1330 *I can find out whether or not there* was a poor demand and a bad consuming season in the winter of 1935 and 1936 by just making a comparison of the amount of gasoline that was consumed over that particular period with 1934. The sales to jobbers and brokers during the winter season, January, February and March, 1936, dropped away down from normal, fell off some. I can't answer whether sales fell off to such an extent that it was generally called in the trade a very bad consuming season. Prices nevertheless did remain fairly firm during that period. This is not an unusual condition.

The demand was fairly normal, according to my recollection, in 1935 and 1936. I mean it was normal for that time of the year, because the demand at that time of the year was about the same as it was every other winter.

I haven't all the figures on gasoline consumption for January, February and March, 1936. I just don't know whether it dropped off. My recollection was that my business was just about as good as it ever was. That was all I was interested in. I don't remember whether or not I looked for weakness in the tank car market then.

I think that during that winter season we had difficulty
on account of the weather conditions in getting burn-
1331 ing oils and materials of that kind shipped into Minne-
apolis. I was selling to the Barber Company in Minneapolis. I sell several brokers in Minneapolis, Western Oil and Fuel, H. K. Stahl. I don't remember whether or not there was any lowering of the tank car market price during that period.

A representative of Platt's Oilgram called me from time to time during the period of 1935 and 1936. He was in contact with me from time to time during January, February and March, 1936, to find out the condition of the market.

Q. In response to those calls were you sometimes telling him during that period of about 45 days that there wasn't any gasoline moving?

A. I don't recall. I can't remember those conversations. I want to answer your questions, but I can't remember those things.

Q. Do you remember that in the beginning of this examination this morning you told me what a good memory you had. Do you want to change that now?

Mr. Thomas: That is objected to as argumentative.

Mr. Crawford: Q. You still say you have a good memory?

1332 A. I can't remember conversations, when all my business is over the telephone, and I talk on the telephone from eight o'clock in the morning until six o'clock at night; and I can't recall every telephone conversation. I don't have that kind of memory, no, sir.

Q. Do you have a memory of having testified on the subject I have just asked you about, when you were before the grand jury, as to whether Platt's Oilgram was calling you and you were telling them that there wasn't any gasoline moving during the 45 day period; do you remember that or not?

A. I don't remember that, no, sir.

Q. Was there a period of about 45 days, from January, February and March of 1936, when the consuming season was bad; gasoline was scarce; Platt's Oilgram was calling you for information as to markets; when you were telling them that there wasn't any gasoline moving?

A. I just answered that—I don't remember what I told them.

Q. Do you remember testifying to that before the grand jury?

A. No, sir, I do not.

Q. Did Mr. Gwyn or Mr. Carlisle tell you at any
1333 time to buy gasoline through the Association?

A. No, sir.

Q. Sure about that, are you?

A. Yes, sir.

Q. Very positive, are you?

A. I am.

Q. And you don't think you testified any differently before the grand jury, do you?

A. No, sir.

Q. Well, was your buying for the Gulf through the Association just a matter of judgment on your own part, without any suggestion from anybody?

A. Yes, sir.

Q. If you find that you testified before the grand jury that you got instructions from either Cline or Carlisle—Gwyn or Carlisle, to buy through Cline's Association, would you now say that that was the fact?

Mr. Donovan: Well, I object to that question as highly improper.

Mr. Crawford: All right, I will withdraw the question. And I ask the Court to consider the testimony before the grand jury on that point.

(Two volumes of documents purporting to be transcript of testimony before grand jury are presented to the Court by Mr. Crawford, and examined by the Court.)

1334 The Court: Now, will you ask the question you want answered, Mr. Crawford?

Mr. Crawford: Q. Did Mr. Gwyn or Mr. Carlisle or anybody else from the Gulf Company give you any instructions to buy through Cline, or Cline's Association?

A. No, sir.

The Court: Q. Do you recall testifying before the grand jury on Saturday, December 19, 1936, at Madison?

A. Yes, sir.

Q. Now, was this question asked you, and did you make this answer—

Mr. Thomas: May we have this objection before it is read, your Honor?

The Court: You may have the same objection that you made before.

Mr. Thomas: Well, I think we had better get this record cleared up. We have gone so long, day after day—

The Court: Well, it is the same objection that you made before, I suppose, is it, to the reading of the transcript of the grand jury?

Mr. Thomas: Well, the objection is to the use of the grand jury testimony, within the rule of Putnam versus United States, and I would like to read it into the record, if I may. 1335

We object to the use of the grand jury testimony of this witness because the transcript of testimony of the witness before the grand jury has not been shown to be properly authenticated, and there is now showing that such testimony was reduced to writing in the presence of the witness or read or examined by him at the time; and, furthermore, the record of such testimony, even if properly authenticated, is not contemporaneous with the facts or occurrences as to which he is now asked to testify, and because such testimony was given at a time too remote from the occurrence or fact inquired about; and, likewise, too remote from the date of trial to render said grand jury testimony competent for the purpose of refreshing the witnesses' recollection within the rule of Putnam versus United States, 162 U. S. 687; and further, if the testimony is so used for the purpose of refreshing recollection or for the purpose of impeaching the witness, we ask that the transcript be marked as an exhibit and made a part of the record, and be made available to defense counsel for the purpose of cross-examination.

The Court: Objection overruled. Exception allowed.

1336 "Question: You will have to listen sharp to these questions, because we have got to make time. The point is, who told you in the Gulf organization to place most of your orders through Cline during this period from February 1935 on?

"Answer: Well, I can't answer that question.

"Question: Well, now, do you think it might have been Gwyn, Carlisle, or Meyer, or all three of them?

"Answer: It wasn't Meyers, and it wasn't 'dash, dash, dash' it was either Mr. Carlisle or Mr. Gwyn when they started there."

Now, do you remember those questions being asked you?

A. I remember the question, and I told him if anybody would have told me it would have been Mr. Gwyn or Mr. Carlisle, that nobody had told me.

The Court: I will ask you this question: Recalling that you did testify before the Grand Jury, did you—were those questions asked you and did you make those answers?

A. Yes, sir, I—

1337 Mr. Thomas: I renew the objection as appears at R. pp. 373-74, 446, 630, 680-81.

The Court: That is all.

Mr. Gray: Now, your Honor, if it is offered for the purpose of impeachment, now that they are asked, the question is, "Does that refresh his recollection?"

The Court: I asked him, now, were those questions asked and did he make those answers. Now, we can go on from there.

Mr. Gray: No, your Honor. In other words, it is in the record now as though his grand jury testimony were a part of his testimony, and a part of this record now; and the point I make is that the witness answered your question a while ago, and may I have that read again?

The Court: Yes, you may.

> (Former answer of witness read, as follows:
> "Answer: I remember the question, and I told him if anybody would have told me, it would have been Mr. Gwyn or Mr. Carlisle; that nobody had told me.")

Mr. Chaffetz: That was just the witness' interpretation of that grand jury testimony.

Mr. Gray: That is what the witness testified to, just a moment ago, as I understood it, as to the facts, Mr. Chaffetz. Your Honor, may I move at this time 1338 to strike from the record that portion of the witness' grand jury testimony referred to by your Honor a while ago, when you asked that question?

Mr. Chaffetz: We object to that. The witness testified that he gave those answers.

The Court: Yes. Exception allowed. Just let me read a little further here. I want to see—

> (Further inspection of documents purporting to be transcript of testimony before grand jury by the Court.)

Mr. Crawford: Your Honor, there is a little more reference here (presenting another volume of documents purporting to be transcript of testimony before grand jury to the Court).

Mr. Dougherty: If your Honor please, it is perfectly apparent that this witness doesn't need his recollection refreshed as to the fact.

Now, if they are seeking to impeach this witness by his testimony before the grand jury, I submit that it is not proper to impeach him by asking a vagrant question here and there. We object to it, because it does not take into consideration all of his grand jury testimony. That is demonstrated by the fact that we have now held an inquest here for fifteen minutes upon this proposition, and we haven't 1339 got any headway with it. This witness doesn't need his recollection refreshed. He has testified positively upon the subject.

Mr. Crawford: Enough has already been read by the Court, and enough questions have been asked the witness to indicate that he should have his recollection refreshed, or something else.

Mr. Dougherty: If the Court please, I object to that as an improper statement and characterization of the witness' testimony.

Mr. Crawford: I think it is a proper reply to what you said.

The Court: There has been a reference here, prior to this, as to his testimony before the grand jury as to the percentages of gasoline he was buying through, buying for the Gulf Company through the Association. I think, in connection with that, I ought to read this:

> "Question: Now, I understand that your order blanks show on their face how the order is placed. For instance, all the orders that you placed for the Gulf through the East Texas Refiners Association would show on its face that way.
>
> "Answer: Yes, sir.
>
> "Question: And that you send to Dallas.
>
> 1340 "Answer: To the Houston office.
>
> "Question: The Houston office of the Gulf Company.
>
> "Answer: Yes, sir.
>
> "Question: You do that regularly, and have throughout the period?
>
> "Answer: Yes, sir.
>
> "Question: Now, isn't it true that, starting in February or March of 1935 and continuing on through the rest of the year 1935, that you did place most of your orders for the Gulf through Cline's Association?
>
> "Answer: No, sir.
>
> "Question: You didn't?
>
> "Answer: A very small percentage of them —a very small per cent of them.
>
> "Question: A very small per cent of them. Now, how did you decide which ones you would and which ones you wouldn't?
>
> "Answer: Well, I would call Cline, and if he had the gasoline available, why, if he knew

somebody that needed it, belonging to his organization that needed business, why, I would place the business through them.

"Question: You would call him first, and if 1341 he could take it, you would give it to him; but if he couldn't take it, you would take it elsewhere?

"Answer: If he couldn't do it, the Gulf would tell me to buy the gasoline, or Sinclair, whoever happened to need it; and I would get busy and find it myself. I am in very close contact with those refiners every day down there.

"Question: Yes."

Were those questions asked you, and did you make those answers before the grand jury?

Mr. Thomas: The same objection as heretofore made at R. pp. 373-74, 446, 630, 680-83.

A. I recollect that—

Mr. Donovan: I submit there is certainly nothing inconsistent—

The Court: That isn't on this particular point now. Just that there was some reference here to the witness' testimony.

Mr. Gray: It is my understanding, your Honor, that is substantially the way the witness testified on the witness stand.

The Court: Yes, I think it is.

Mr. Crawford: Now, on the next page is a question— 1342

The Court: What did you say?

Mr. Crawford: Page 1415.

The Court: 1415?

Mr. Lewin: Yes, sir.

(Further inspection by Court of document purporting to be transcript of testimony before the grand jury.)

The Court: Q. Was this question asked you on Thursday, May 14, 1936, when you appeared before the grand jury, and did you make this answer—

The Witness: A. What day was that, Judge?

The Court: Q. May 14, 1936—I think you had better go to a different line of questions, until I go over this a little more thoroughly.

By Mr. Crawford

During January, February and March 1936, I was buying some gasoline below the low of Platt's Oilgram. I think I bought some off-specification gasoline for as much as ¾¢ a gallon below the low of Platt's Oilgram during that period. Most of the orders which I gave will show whether it was off-specification or not. All of them should show it.

In carrying on my business I communicate by telegraph with a good many of my customers. One of my customers during 1935 and 1936 was Mr. Boswell of Cincinnati, Ohio.

I was doing business under the name of Hercules
1343 Oil Company, by J. M. Bradshaw.

(Telegram market Exhibit 720 for identification.)

I have no recollection of any communication made to Mr. Boswell on April 10, 1935, unless I could see the telegram and refresh my memory.

Q. And if you did that you would be able to tell us at least just what you said to him by wire on that occasion, would you?

A. I think so, yes, sir.

Mr. Donovan: I object to any such testimony because what we have here is the communication of a stranger to this alleged conspiracy, by a stranger to this conspiracy to another stranger. I think it has no bearing on this case at all.

Mr. Gray: Your Honor, I have not read this telegram. I think the record is absolutely plain that Mr. Bradshaw is an independent broker, or, as he said, an independent commission agent in East Texas; and we are going to object to the introduction of any telegram he may have sent to somebody in Cincinnati, Ohio, or anyone else, on the ground that he did not represent us as an agent, he is not a
1344 salaried employee of our company; he did not represent us in any way; he is an independent jobber, independent commission agent, and what he might have said in that telegram—for I don't know what its contents are—certainly could not be binding on us, and we therefore certainly object to its admission in evidence as against these Gulf Companies.

Mr. Crawford: Q. About April 10, 1935, were conditions in the oil business changing hourly, practically that way?

A. I cannot remember conditions unless I have some way of refreshing my memory. I don't know how to answer all these questions that you ask me like that unless I have some way to check up on it.

Q. Was the situation such on April 10 that there was no chance to make any deal at the present moment?

A. Are you talking about 1935 or 1936?

Q. Talking about 1935.

A. I remember, and so testified, that I thought the market was on an upward turn over that period.

The Boswell Oil Company were brokers buying from independent refiners.

1345 Q. About that time, April 10, 1935, were the independent refiners refusing to sell to independent brokers and jobbers—

A. They never refused—

Q. —at 4¢ for the reason that they could get 4¼¢ from the majors?

A. They refused—

Q. Answer the question.

A. I don't know.

Q. Did you so state in your wire to the Boswell Oil Company on April 10th?

Mr. Donovan: I object to that on the same ground I have already stated.

Mr. Gray: And my objection to that on the same ground I have already stated.

Mr. Thomas: The wire is the best evidence.

Mr. Crawford: I will put the wire in evidence.

The Court: Objections overruled. Exception allowed.

Mr. Denton: I object to it on the ground it is hearsay, and an attempt to get before the jury hearsay evidence.

(Question read by the Reporter.)

A. I could not answer that if I did not see the wire. I don't remember.

1346 Q. If you did see the wire, you would be likely to recall it, wouldn't you?

A. Yes, sir.

Q. At that time, Aprl 10, 1935, was the picture of the oil industry entirely different than what it was a year ago, a year before that time, due to the tight situation in Texas?

A. Yes, sir.

Q. I now show the witness Exhibit No. 720, and after looking at this I ask you to state whether or not the condition of the oil business was changing hourly on or about April 10, 1935 (showing exhibit to witness)?

A. Well, I said it was changing hourly, I meant like it was changing pretty fast right at that period. The Connally Bill and other things were making it that way.

Q. What do you say now, after looking at this exhibit, as to whether or not it was a fact on April 10, 1935, that the independent refiners would not sell to the independent jobbers at 4¢ because they could get 4¼¢ from the majors?

A. That they could get 4⅛¢ and 4¼¢.

Q. What did that mean to you? What did that mean?

1347 A. That they were able to get that, and he wanted to buy it at 4¢.

Q. Now, this telegram, Exhibit 720, is a correct word by word statement of what you said to Boswell Oil Company on April 10, is it?

A. Yes, sir.

Mr. Crawford: I offer this EXHIBIT 720 for identification in evidence (handing exhibit to the Court.)

Mr. Donovan: Your Honor, may I have the same objection as appears at R. pp. 504-05, 685?

The Court: I will reserve my ruling.

By Mr. Crawford

Along about April 9, 1935, the major oil companies were buying gasoline through the Cline Association from independents. It was generally known. I communicated that information to my customers, particularly brokers. That major company buying was influencing the price of gasoline upward.

Mr. Donovan: May I have the objection to all this line as appears at R. pp. 685-86? I don't want to interrupt.

The Court: Yes, same ruling. Exception allowed.

This telegram, Exhibit 721 for identification, is a copy of a day letter that I sent to W. H. Barber Company, 1348 dated April 17, 1935. In that telegram I was conveying market information, especially of the East Texas market field. Without the copy of this telegram I would not have been able to have told what market information I had given to the Barber Company at that time.

Mr. Crawford: I offer this day letter in evidence, your Honor (passing document to the Court.)

Mr. Donovan: Now, if the Court please, I would like to make the same objection as I did before at R. pp. 504-05, 685, and call the Court's attention to the testimony of Mr. Lanzer at R. p. 248 from which it appears that Mr. Bradshaw was acting at that time as purchasing agent of the W. H. Barber Company, and what transpired between him and that company can certainly have no bearing on this case, both of them being strangers to this proceedings.

The Court: Well, as to this, I will also reserve my ruling, that is, as to Exhibit 721 for identification. (Exhibits 720 and 721 for identification were not later admitted in evidence.)

By Mr. Crawford

I am still engaged in the same line of business
1349 and in the same way at Dallas that I was in 1935 and
1936, doing business with the major oil companies or
some of them, particularly with Gulf. My relations with
Gulf are very friendly.

Exhibit 722 for identification is a teletype message from me to Acme Petroleum Company at Chicago, on March 4, 1936. It accurately records the conversation.

Q. Did you have a conversation with somebody in the Acme Petroleum office on or about February 4, 1936?

A. Yes, sir.

Mr. Donovan: I object to that upon the ground that it is immaterial and irrelevant, and hearsay.

The Court: Objection overruled for the present. Exception allowed.

I had the conversation with Mr. Kruger, who is Beroth's assistant.

Q. What was the general subject of the conversation?

Mr. Donovan: I object to that. Those are two strangers to this indictment.

The Court: I will take the answer. You may answer. Exception allowed.

1350 A. Gasoline and the oil business in general.

Mr. Crawford: Q. Were you or were you not communicating information to him as to market conditions in the field, and he communicating to you market conditions from his point of view in Chicago?

A. We were giving our opinions, yes, sir.

Q. Did you or did you not also discuss the question of making sales of some quantities of gasoline of certain kinds and quality?

Mr. Donovan: May I have the same objection to this whole line of questions without going over it each time as I had at R. pp. 685-86, 688?

The Court: Yes, you may. Objection overruled. Exception allowed.

A. Yes, sir, he wanted to buy some gasoline, the way I remember it.

By the Court

I have been buying and selling gasoline down there for 6 years. I handle gasoline, gas oil, fuel oil and petroleum products like that. During the peak days of East Texas, when they were running excess oil, I used to handle anywhere from 1,500 to 3,000 or 4,000 cars a month of all products. Of course, when they regulated the field
1351 down there that dropped down considerably. I would say that I was handling from the interior around 1,500 to 2,000 cars a month of various products.

Mr. Crawford: Q. Do you have any independent recollection of your conversation by way of the teletype with Mr. Kruger on the subject of whether or not major companies were buying?

A. We discussed buying, and I told him that it was my understanding that major companies were still buying gasoline.

Q. Do you have now an independent recollection of whether or not on the morning of this teletype conversation that the Journal prices went up?

A. Well, I think I told him in there they went up.

Q. Well, that was true, was it?

A. Yes, sir. If I told him so, it was.

Q. I am sure that must be. What was the fact as to whether or not—if you know, tell us—there were large quantities of gasoline in storage at that time, at or about that time?

A. Well, he told me in that teletype there that there were 75,000,000 barrels kept in storage, and
1352 wanted to know how the market could advance under that condition, and I told him that I wasn't smart

enough to tell him what the situation was, but talking over East Texas that situation looked like it was in good shape down there.

Q. Did you tell him he was correct in his estimate of 75,000,000 barrels?

A. I said he might be correct. I didn't—

Mr. Morgan: Now, if the Court please, it doesn't appear very plainly here what is being done. Under the pretext of refreshing the witness' memory, the Prosecution is here putting in a hearsay conversation between this witness, who is not a party to this suit, and the Acme Petroleum Company, which is not a party to this suit—a hearsay conversation which, if he wasn't offering it as against these defendants, he wouldn't be offering it at all—and he is refreshing his memory, trying to refresh his memory in order to get him to say something which, in itself, is not admissible. The thing which he is refreshing his memory about is no more admissible than the estimate by which he says he is refreshing his memory. It is a hearsay conversation to which none of these defendants are parties, and they couldn't 1353 be bound by anything said in that conversation, and it is therefore not admissible under the hearsay rule.

Mr. Donovan: Now, if it please the Court, in view of the objection that I made to his being asked about any such conversations, I now move that all that the witness has said in relation to the conversation with the Acme Petroleum Company be stricken, and the jury be instructed to disregard it.

Mr. Dougherty: If the Court please, we are objecting precisely, whether his memory is refreshed or whether it isn't refreshed isn't the consideration. Even with his refreshed memory, he is testifying to facts that are immaterial because they are hearsay. They are just as immaterial and irrelevant to the issue in this case with his mind unrefreshed as they are with his mind refreshed.

The Court: What the man in Chicago said, I think that is entirely incompetent and should be eliminated; but what this man said to the man in Chicago as to the market condition as he observed it, I think is competent evidence.

Mr. Donovan: May I say this: What was said in the conversation is not material. It is the fact 1354 that is material. What is the fact, and is his recollection refreshed as to the fact? Now, if his recollection is not refreshed as to the fact—

The Court: It appears to have been.

A man who is down there in the market, buying for Sinclair, Continental, Gulf and many others, whose business it was to know the market, whose business it was to know who was buying, and undoubtedly he saw Mr. Cline who operated the clearing house, every day—I say clearing house—

Mr. Morgan: He was trying to sell some gasoline, and Acme wanted to buy some. This is just trade banter.

The Court: Don't you think that this man knew every buyer down there in that field, if any were buying? Buying in lots or buying in quantities?

Mr. Morgan: These defendants ought not to be bound by having admitted against them the conversation between a man here whose business it is to buy and sell gasoline and a man with whom he is trying to make a deal.

The Court: No, I think you better try to limit
it as to just what the facts are, and bring out the
1355 facts, and not so much conversation that he had with
others. Your motion to strike out is denied. Exception allowed.

The Court: I think you better ask this witness what the facts are and then let him refresh his memory.

Mr. Crawford: Q. Now, Mr. Bradshaw, since you kept in such close contact with what was going on in the industry, especially in the East Texas field, did you on or about the 4th of March, 1936, have some knowledge as to about the quantity of gasoline that was in storage?

A. I had an idea that the Bureau of Mines, what they put out every week—

Q. What knowledge did you have?

A. (Continuing) I don't remember what the figures were. The figures he gave me. Those figures there, you see.

Q. Then you did know on the 4th of March, when you had this teletype conversation with Kruger and Beroth?

A. I knew that there was some gasoline in storage, yes, sir.

Q. You knew, too, what the figures were?

A. Well, I didn't have the actual figures, no, sir, because that is—

1356 Q. What do you mean by the actual figures?

A. I mean I had—I knew that there was an excessive amount of gasoline in storage at that particular time, because it was a time of year it is in storage. I had the figures there in my office, but I don't recall what they were.

Q. Would a reproduction of the conversation you had with the Acme Petroleum Company refresh your recollection?

A. Not what the Bureau of Mines gave, unless—

Q. Answer the question.

A. No, sir.

Q. All right. Let's see about that.

Mr. Donovan: If it please the Court, your Honor has already ruled that what the Acme Petroleum Company said to this witness is not admissible.

The Court: He is not going to testify to it, but he can at least say whether it refreshes his memory.

Mr. Crawford: Q. Calling your attention again to Exhibit 722 for identification, did you state—and if you didn't, do so now—whether or not this is a correct record of the conversation between yourself and the Acme Petroleum Company? 1357

A. I said it was a correct record, yes, sir.

Q. If it is, do you still say that an examination of it would not refresh your recollection as to the number of barrels of gasoline in storage? Answer the question, please.

A. No, sir.

Q. It would refresh your recollection, would it not?

A. It would refresh my recollection of the conversation I had with him.

Q. All right. Look at it now and tell us what you considered at that time—strike that.

Mr. Donovan: No, I object to that question. He said it refreshed his recollection as to the conversation, not as to the facts.

Mr. Crawford: (Continuing) —as to the quantity of gasoline in storage on the 4th of March, 1936.

Mr. Donovan: I object to that, for the reasons I have stated at R. pp. 685, 688, 690-91.

1358 The Court: You may answer that. Exception allowed.

A. This fellow gave me—

Mr. Crawford: Answer the question.

The Witness: I don't know how to answer that question. If the Judge will let me explain it in my own way—

Mr. Crawford: Q. You told me in the first place that if you had a record of the conversation—between your teletype conversation, between yourself and the Acme Petroleum Company, it would refresh your recollection?

Mr. Donovan: As to the conversation.

Mr. Crawford: Your recollection as to the quan[redacted]of gasoline in storage. Do you remember me asking you that?

The Witness: Yes, sir.

Mr. Crawford: You see, he is right, and you are all wrong.

The Witness: I said—

Mr. Crawford: Q. Now, let me ask you this: After having refreshed your recollection by looking at this exhibit, number 722 for identification, tell me what the fact is as to the quantity of gasoline in storage.

A. I don't know what it was. He tells me
1359 how much gasoline, and I told him he was correct as far as I knew.

Q. Do you think that is something different than your telling us what the quantity was.

A. Well, I am not qualified to testify how much gasoline was in storage. This man gives me an amount that was in storage, and he mentions it.

Q. And you said that was correct?

A. I said, "You are correct."

During the week of March 4, 1936, I sold 125 cars of gasoline to the majors at 4⅞¢ a gallon.

I cannot remember what the market price of 62 octane bronze for immediate shipment was about January 16, 1936, without referring to my records. On January 16, 1936 the major companies were still buying gasoline. I don't know whether about January 16 there was another major company that came back into the buying of gasoline through the Cline Association.

Mr. Crawford: Q. I am showing you now Exhibit 723 for identification, and ask you to tell us what it is (passing document to the witness).

Mr. Donovan: I have no desire to make these
1360 objections, and I have called—I have made my objections, your Honor, to this form of examination

at R. pp. 685, 688, 690-91. It is very clear now from the methods pursued by counsel what he intends to do. I think it is highly improper. It is certainly not a method that should be pursued in this kind of a case. I make my objection now, and hope it will be unnecessary to make any further objections during the examination of the witness.

The Court: I think it is proper. Proceed. You may have the same objection and exception.

Exhibit 723 for identification is a teletype with Mr. Kruger at Dallas, Texas, on January 16, 1936. It is a record of the conversation between Mr. Kruger and myself.

Q. And with that teletype before you, do you have an independent recollection of what the conversation was?

A. No, I don't remember those things. He was asking me for prices on gasolines, and general market conditions, and I tried to tell him to the best of my ability.

Q. And what were the prices on that date?

A. I will have to look at those, and see, Mr. Crawford. I don't know. (Reading document) I quoted him 4⅞¢ refinery on some bronze gasoline.

1361 Q. And what was the condition of the market on that day, as to being strong or weak?

A. Well, I think the market was fairly firm.

Q. Did you call it strong?

A. Yes, I told him it was strong.

Q. And that was true?

A. Yes, sir.

Q. At that time did you see any reason why the market might weaken?

A. No, sir. I don't recall any reason why it should. I just was giving him the facts like they were at the time he talked to me, the best of my ability.

Q. Did you know of a reason why it should not weaken?

A. Well, I tell him there the market is very unsettled. I don't remember the conditions or what the situation was, but I make that statement there. I must have had some reason at that time for giving him that information.

Q. By looking at this exhibit, the record of your teletype conversation with him, don't you find that you did have a reason?

A. I told him I didn't see why it should weaken.

Q. And you told him why?

1362 A. Yes.

Q. Why?

A. Major companies buying up surplus gasoline.

Q. That was your judgment at the time?

A. Yes.

Mr. Donovan: I move that that question and answer be stricken out on the ground that the statement is a mere statement of opinion, a repetition of a hearsay statement made now more than two years ago between two people who are not parties to this suit.

The Court: He can say what the fact is after his memory is refreshed after reading the teletype. Exception allowed.

Mr. Francis: This Exhibit 723 for identification, which the witness identified, was that offered in evidence, Mr. Crawford?

Mr. Crawford: No. I am very glad to let you have it for your use, or let you have it in evidence, whatever you like. I would like to do it, but I am afraid you wouldn't let me.

Mr. Francis: But you are getting it in by questioning the witness.

1363 The Court: I understand he asked him for the facts after refreshing his memory. Is that right?

A. Yes, sir, as far as my judgment goes.

The Court: That settles that.

On June 14, 1935, I was still actively engaged in the work I described down there in Texas, keeping in touch with the market and with my customers. One of my very good customers was the Barber Company of Chicago and Minneapolis. I do not know now what the market was on that day for U. S. Motor without checking my records. I do not recall whether or not at that time I expected to see a stronger market. There was some major company buying in June, 1935.

Q. I am showing you now Exhibit No. 155 for identification and ask you to state what that is.

Mr. Donovan: May I have the same line of objection as appears at R. pp. 685, 686, 688, 690-91, both as to the substance and the form of this examination?

The Court: You may have. Same ruling. Exception allowed.

A. That is a telegram that I sent to W. H. Barber Company either to Chicago or Minneapolis.

1364 Mr. Crawford: Q. By looking at that Exhibit, please refresh your recollection, if you can, as to whether or not it was your judgment at that time that the market—that you would see a stronger gasoline market, and tell us what the fact is.

A. He had wired me—

Q. Answer the question. Were you listening to it?

A. Yes, sir.

Q. Answer it.

A. I thought the market would get stronger.

Q. That was the fact?

A. Yes, that was my opinion.

Q. And, also, did this telegram refresh your recollection as to why you would see a stronger market?

A. Yes, sir.

Q. What was the reason?

A. On account of the major company buying.

I think some of the major companies were still doing considerable buying through the Cline Association in the East Texas market on or about May 37, 1935. I don't recall whether jobbers were doing much buying in May, 1935.

The telegram, Exhibit 153 for identification, is a 1365 telegram from me to W. H. Barber Company at Chicago or Minneapolis, on the subject of general market conditions in the East Texas field.

Q. You said a moment ago in answer to my question you didn't remember whether or not there was little buying by the jobbers at that time. Does this telegram refresh your recollection on that, and if it does, tell us what the fact is.

Mr. Donovan: Same objection as appears at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

A. It refers to where I tell him we will see a little stronger market. The jobbers are not doing much buying.

Mr. Crawford: Q. And that was the situation at that time?

A. That was the way he asked it, yes, sir.

On July 2, 1935, I was still doing business at the same place in the same way. I don't recall whether or not I had any information or knowledge at that time as to the quantity of gasoline that was bought on or about that date by the major oil companies in the East Texas Cline Association.

The telegram, Exhibit 724 for identification, is a copy of a telegram that I sent to W. H. Barber
1366 Company at Chicago on July 2, 1935, in regard to general market conditions.

Q. Does it refresh your recollection as to the number of cars of gasoline that were bought within the last couple of days, speaking of couple days after July 2, 1935?

Mr. Donovan: Same objection as appears at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

A. I gave the figures of what was bought.

300 cars was the information that I had. The price was 4⅝¢, f. o. b. refinery Group 3. I had orders on my desk for more cars of gasoline, 100 cars at 4½¢. At that time, on July 2nd, the market looked firm to me and it was my opinion that it would continue firm for some considerable time in the future, because we were right in the consuming season of the year, and major buying had something to do with it, and other circumstances.

Q. On July 2, 1935 was it your opinion that this firming of the market and its continuing to remain firm was due to major company buying?

A. Yes, sir, and other conditions.

Q. As long as the major company buying continued, your idea was that the market would continue firm?

1367 A. That, and other conditions.

Q. Yes. Well, on July 2, when you were giving your customer, your good customer, Barber, information about the market, you didn't talk about any other conditions except major company buying, did you, as to making the market firm?

A. That was all that I said in that wire.

Mr. Morgan: If the Court please, again I want to suggest that all he is doing is putting these telegrams in here—

The Court: I can't agree with you. I think he has refreshed the witness' memory as to those telegrams, and the witness has testified as to the facts; and here and there he adds something on to what was stated in the telegram, which I have no objection to. Exception allowed.

Mr. Morgan: If he has another reason than that stated in the telegram, your Honor, for the statement made in the telegram, why should he be taken to task for bringing it out? The point I am making is that they don't want him to say anything that isn't in this telegram. They are putting this telegram in this record, is what they are doing, and it is an improper thing to do, and has been so held a hundred times.

1368 *By Mr. Crawford*

I do not remember right off what the market conditions were in the East Texas field on or about December 12, 1935. I have no recollection at all on the subject, not without refreshing my memory. It might be a good way to refresh my memory to show me a telegram I sent on that subject at about that time.

Exhibit 725 for identification is a day letter that I sent to W. H. Barber Company in answer to an inquiry that I got from them for some gasoline, on December 12, 1935.

Mr. Donovan: May I have the same objection as made at R. pp. 685, 686, 688, 690-91?

The Court: The same objection, and the same ruling. Exception allowed.

Mr. Morgan: I take it that we all have the same objections, your Honor, without making the same objections over and over?

The Court: Yes, you may. The same ruling. Exception allowed.

Mr. Crawford: Q. Now, what is the fact—I think you just said that you have no independent recollection of market conditions or general conditions in the field at that time, unless it could be refreshed by something like this; is that right?

1369 A. That is right, yes, sir.

Q. Now, after looking at this exhibit, what do you say as to whether or not the gasoline market got a little weak "the latter part of last week," meaning the week just preceding December 12th?

A. That is right.

Q. And what do you say the fact is as to whether or not the majors, the major companies came in and bought all the surplus gasoline?

A. I said that they came in and bought all the surplus—

Q. What is the fact? Is that the fact?

A. That is what I told him there.

Q. You told him what the fact was, didn't you?

A. As far as I knew, yes, sir.

Q. And about what was the market price at that time?

A. 4½¢. He tells me about some lower prices, and you see what I answered, the way I answered him (indicating).

I don't have any independent recollection right offhand as to whether the market was strong or weak about January 22, 1936. I do not have any independent recollection, whatever its condition was, as to the cause of 1370 it, without refreshing my memory.

Exhibit 152 for identification is a day letter from me to W. H. Barber Company, dated January 22, 1936, referring to market conditions in the East Texas field, market prices, and so forth. That was in answer to a telegram from them.

Q. Does that refresh your recollection as to whether the market was firm or not, and, if, so, please state what the fact is?

Mr. Donovan: Same objection as at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

A. Well, the market was firm.

Q. And to what was it due?

A. Purchasing by major companies.

I have no independent recollection of what market conditions were in the East Texas field on February 21, 1936. I do not recall. It is my impression that major companies were still buying considerable quantities. I presume I would be able to refresh my recollection on that by examining a telegram which I sent to Barber.

Exhibit 151 for identification is a telegram that I sent to W. H. Barber Company on February 21, 1936, relating to general market conditions.

1371 Q. At that time was the market backing up some in East Texas?

Mr. Donovan: Same objection as at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

At that time the market was backing up some in East Texas.

Q. Were the major companies still buying any considerable quantity in that territory?

A. They were buying, yes, sir.

By reference to the telegram, Exhibit No. 151 for identification, my recollection is refreshed that I had some gasoline to offer at 4⅝¢. I quoted some other gasoline down there at another price.

In the conduct of my business down there as I have described it, I gave information and reports to Mr. Gwyn of the Gulf Company, and to Mr. Carlisle at times, similar to those I gave to Barber. I was not informing him from time to time as to what the situation was with respect to the operation of the Cline Association in making purchases. I was giving him information in regard to market conditions in East Texas generally as to what Cline's operations were as sales representative for the re-
1372 fineries. I was giving Mr. Carlisle and Mr. Gwyn information as to what Cline was selling. I was buying some gasoline for Gulf through the Association.

Mr. Cline would call me from time to time and tell me he was having trouble moving gasoline. He wrote me from time to time to get more orders and send them to him through the Association. Sometimes I communicated that kind of information to Mr. Carlisle and Mr. Gwyn.

Exhibit 605 for identification is a telegram that I sent to Mr. O. H. Carlisle on June 28, 1935.

Mr. Crawford: We offer this in evidence.

Mr. Francis: If it please the Court, I make the objection that as to The Pure Oil Company the statement in this telegram is hearsay.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57.

The Court: Objection overruled. Exception allowed.

(Telegram referred to is received in evidence as EXHIBIT 605 and read to jury by Mr. Crawford.)

1373

Cross-Examination by Mr. Gray.

I did not receive an answer to the telegram, Exhibit 605, I sent Mr. Carlisle on June 28, 1935. Mr. Carlisle did not ask me to send him the information contained therein. I meant to give Mr. Carlisle market information in that telegram. My idea in sending that telegram, Exhibit 605, was that the market was in bad shape and getting weaker, and if he wanted to buy any gasoline, it wasn't the time to buy it at that time. I kept him posted as to market conditions.

I didn't buy any gasoline on June 28, 1935, for the Gulf Company. The first time after June 28, 1935, that I made any purchase for Gulf in East Texas was on July 2, 1935, when I bought one car, consigned to Jacksonville, Texas, which is 25 miles from the East Texas oil field.

I have been buying gasoline for the Gulf Companies for 15 years and buying in the East Texas oil field for them for 6 years.

I have been in the oil business as a broker or as an independent commission agent since 1920. I bought gasoline for a good many other people besides the Gulf Companies during 1934, 1935 and 1936. Among my customers during
that period were a good many independent brokers
1374 for whom I bought gasoline.

O. H. Carlisle, H. S. Gwyn, J. F. Drake, Mr. Meyers or Mr. Hartmann never instructed me or suggested to me that I make the Gulf purchases of gasoline through this East Texas Association. No person connected with the Gulf Companies ever gave me any such instructions or suggestions.

A typical illustration of how I buy gasoline for the Gulf Companies is: If Mr. Gwyn wants to buy 50 cars of gasoline, he calls me up and tells me he wants to buy 50 cars at a certain price. I, in turn, get out and try to buy it. Then I place the orders with maybe three or four different refiners, or maybe one refinery. Then I wire J. P. Gudger, traffic manager of the Gulf Companies for routing. I tell him that I placed so many cars of gasoline with East Texas Refining Company, or Premier Refining Company, or just whatever number of refiners I buy it from; and he in turn wires me the routing. I then have the orders made out, and send them to the various refineries that I made the purchases from with the instructions. Sometimes I phone the instructions to them.

Oftentimes Mr. Gwyn will name a price he is willing to pay for particular gasoline, and I am unable to procure
the gasoline at that figure. It has happened that
1375 I have had orders on my desk for 200 cars or 300
cars at the same time I received an order from Mr. Gwyn for 50 cars. Those orders might be from various people: American Petroleum Company, Eastern States

Petroleum Company, Mid-Continent, Sinclair, Wadhams, or any of those companies that I have bought for in the past.

To get this gasoline to fill these orders I call the various refiners and buy the gasoline. I call East Texas Refining Company in Dallas where they have their sales office, and I tell them I want to buy 50 cars of gasoline. I do not tell them who I want to buy it for. If they want to take the 50 cars, I tell them to book it and I will give them shipping instructions later. I call Premier, Danciger, Grogan, or Henry May, or anybody I think has gasoline to sell, and tell them I want 25 or 40 cars, whatever number I happen to want to give to that particular refinery. In that same manner I buy up the entire 200 or 300 cars for which I might have orders on that particular day, and among them will be the 50 cars for which I have an order from the Gulf Companies. I make no distinction between that Gulf order and the other orders I may have on that same date for my other clients.

When Mr. Gwyn calls me or I call him with respect
1376 to his order for gasoline on that particular day, he
does not tell me from what refiner he wants me to buy this gasoline for him. He never has done so, nor has anyone connected with Gulf Companies. He does not tell me he would like me to place a portion of this order through the East Texas Refiners' Marketing Association. What I do after he places with me his order for 50 tank cars, or any amount of gasoline that he might desire, is independent of anybody connected with the Gulf Companies.

The first time that Gulf knows from whom this gasoline has been bought is when it receives my telegram asking for the routing. Part of the gasoline I buy for Gulf goes to Port Arthur, and some of it goes into local areas, where Gulf has freight savings, for their various retail stations around East Texas. I don't know where the gasoline goes that is shipped to Port Arthur.

I prepared or had prepared a statement showing the record of Gulf purchases made by me in the East Texas oil field from July, 1934 until December 31, 1936. The statement shows the prices of the gasoline that I bought, the high and low of Platt's Oilgram, and the date the purchase was made, where it was made from, and where the
shipment was shipped to, where the gasoline moved
1377 to. It shows the number of cars that I bought during
any one month.

In December, 1934, I bought 277 tank cars of gasoline for Gulf in the East Texas oil field. Gulf bought 50 additional cars of gasoline direct from Grogan Oil. In January, 1935, I bought 120 tank cars of gasoline for Gulf in East Texas. Gulf bought direct 30 additional cars of gasoline.

In 1935, in February, I bought 140 cars for Gulf; March, 230 cars; April, 165 cars; May, 161; June, 152; July, 215; August, 184; September, 207; October, 167; November, 201; December, 256; January, 1936, 283; February, 667; March, 376; April, 271; May, 380; June, 472; July, 552; August, 478; September, 491; October, 384; November, 387; December, 329.

I have examined Platt's Oilgram, showing third grade
quotations on East Texas gasoline for December, 1934. I
made a similar examination for each of the succeeding
months thereafter, through December 1936. In December,
1934, of the 277 cars I bought for Gulf, 37 were bought
⅛¢ below the low of Platt's Oilgram. In January, 1935,
of the 120 cars I purchased for Gulf, 120 were bought below
the low of Platt's Oilgram; 115 cars were bought at ⅛¢
below, and 5 cars were bought at ¼¢ below. In February,
1935, of the 140 cars I purchased for Gulf, 100 were
1378 bought at ⅛¢ below the low of Platt's Oilgram. In
March, 1935, of the 230 tank cars I purchased for
Gulf, 50 cars were bought at ¼¢ below the low of Platt's
Oilgram and 180 cars at ⅛¢ below. In April, 1935, 85 out
of 165 were purchased at ⅛¢ below the low of Platt's Oil-
gram. I bought 161 cars in May, 1935, and 109 of them
were at ⅛¢ under the low. In June, 1935, I bought 152
cars, and all of them were bought at the low. In July, 1935,
I bought 215 cars, and 30 of them were under the low, 18
were at 1⅛¢ under the low, and 12 cars were ⅞¢ under the
low. I couldn't say without looking at my orders whether
that was all specification gasoline or the same grade gaso-
line that I had always bought for them. In August, Sep-
tember, October, November and December, 1935, I did not
buy any gasoline under the low of Platt's Oilgram; they
were all bought at the low. In January, 1936, I bought 283
cars; 40 of them were under the low; 5 cars were ⅛¢ under
the low, and 35 were ¼¢ under the low. In February, 1936,
I bought 667 cars, and 444 of them were bought under the
low; 155 of them at ⅜¢ under the low; 200 of them at
13/16¢ under the low; 38 cars at ¼¢ under the low; 1 car
at ⅛¢ under the low; and 50 cars at 11/16¢ under the low.
In March, 1936, I bought 376 cars, and of that 119
1379 were bought under the low; 112 at ¼¢ under the low;
and 7 cars at ⅛¢ under the low. In April, 1936, I
bought 271 cars; 30 of them at ¼¢ under the low. In May,

1936, I bought 380 cars; 293 cars were under the low; 50 cars at ½¢ under the low; 60 cars ⅜¢ under the low; 105 cars at ¼¢ under the low; and 78 cars at ⅛¢ under the low. In June, 1936, I bought 472 cars, and 328 of them were under the low; 115 cars at ⅜¢ under the low; 135 cars at ¼¢ under the low; and 78 cars at ⅛¢ under the low. In July, 1936, I bought 522 cars; 391 cars under the low; 165 cars at ⅜¢ under the low; 165 cars at ¼¢ under the low; 59 cars at ⅛¢ under the low; and 2 cars at 1/20¢ under the low. In August, 1936, I bought 478 cars, and 392 cars were under the low; 25 cars at ¼¢ under the low; 102 cars at ⅛¢ under the low; and 265 cars at ⅜¢ under the low. In September, 1936, I bought 491 cars; 292 cars under the low; 75 at ¼¢ under the low, and 217 at ⅛¢ under the low. In October, 1936, I bought 384 cars, and 198 cars were under the low; 130 cars at ¼¢ under the low; 43 cars at ⅛¢ under the low; and 25 cars at ⅜¢ under the low. In November, 1936, I bought 387 cars, and 155 cars were under the low; 75 cars at ¼¢ under the low; 30 cars at ⅛¢ under the low; and 50 cars at ⅜¢ under
the low. In December, 1936, I bought 329 cars; 154
1380 of them at ¼¢ under the low.

These prices that I have referred to as being under the low of Platt's Oilgram were the prices that Gulf actually paid for this gasoline in East Texas during the months I have testified about. Gulf gave me a commission of $2.50 a car for buying this gasoline for them. They have been paying me a commission for 6 years. Prior to that time, I used to buy the gasoline outright myself and resell it to them. I deal with all my other customers in the same way that I deal with Gulf.

During 1934, 1935 and 1936, I had neither a written nor an oral contract with Gulf with respect to buying gasoline for them. I am not at this time, nor during 1935 and 1936 was I employed by either one of the two Gulf companies named as defendants in this case.

I don't know which Gulf Company I made the purchases for in 1935 and 1936. These purchases that I have testified about were based on East Texas freight rate, f. o. b. refinery. No purchase ever made by me for Gulf during the period from December, 1934, and each succeeding month thereafter until December 31, 1936, was ever made at the high of Platt's Oilgram. It is my recollection that they
were all below the high of Platt's Oilgram as quoted
1381 in the East Texas oil field. None was above the low
of Platt's Oilgram for the days I made these purchases.

No officer or representative of the Gulf Oil Corporation or Gulf Refining Company ever requested me, instructed me or suggested to me, that I make a purchase of gasoline in East Texas for the purpose of supporting the market. The gasoline that I have been testifying about was all third grade gasoline.

By Mr. Donovan

I purchased most of the gasoline during 1935 and 1936 from refiners who were members of the East Texas Refiners' Marketing Association. Most of my customers' orders for gasoline called for shipment out of Texas.

After March 1, 1935, there were only a limited number of refiners who had gasoline for sale which could legally be shipped out of Texas; and there were very few, if any, refiners who could ship gasoline legally out of Texas who were not members of the East Texas Refiners' Marketing Association.

Most of my gasoline went to Port Arthur, Houston, and Texas City, on the Gulf Coast. From there it went to the Atlantic seaboard, and for export. I think I sold some gasoline to the Indiana territory. None of the gasoline that moved to the Gulf Coast would come into the Standard territory.

I do not operate the same way as other brokers.
1382 Most brokers try to buy low and sell high; but they
buy and re-sell various petroleum products. They make their profit by reselling to jobbers the gasoline that they bought at one price and sell to the jobbers at a higher price. There was a time when I operated as a broker in that manner.

My company is Hercules Oil Company, and I have been connected with that company for 6 years. We just find out where gasoline is and who wants to buy it. We do not purchase gasoline for our own account, only for the account of others. We don't resell any gasoline, and we don't buy unless we have an order. That is the way we did business in 1935 and 1936.

If I get an order for 50 cars of gasoline, I just locate where it is. I make it my business to know where the suppliers are. I check up almost every day with the ones who have the gasoline down in East Texas and I go to those particular people, or the Shreveport area, where I have been operating mostly lately, and find out if they want to sell it; if we get together on a price, we make a trade. I make $2.50 a car out of it. The refinery invoices the car direct to the buyer.

I act for large independent companies, some major companies, brokers and foreign buyers. I think I bought more
for Eastern States Petroleum Company than I have
1383 for anybody in the last 5 years. I represent a London company in the United States called Bartz-Williams; they buy quite a bit of export crude and gasoline.

Some of the brokers I bought for in this country in the last 5 years are:

Barber; Henry H. Cross and Company, Gustafson Brothers; Acme Petroleum Company; Tansel Petroleum Company; Dale Moore; Saunders Petroleum Company; Boswell Oil Company; Cooper-Keller Company; Western Oil and Fuel Company; H. K. Stahl and Company; Midwest Oil Company; Calloway Fuel Company; L. K. Coryell Company; Atlas Petroleum Company; Falley Petroleum Company; Smith Oil and Refining Company. I bought for brokers in the same manner that I bought for others.

During the last 5 years I purchased from the following independent refiners:

East Texas Refining Company; Danciger Refining Company; Atlas Petroleum Company; General American Oil Company; Hurricane Petroleum Company; Trinity Refining Company; Coltex Refining Company; Cosden Oil Company; Shamrock Oil and Gas Company; Shoreline Refining Company; Texas Oil Products Company; Cascade Refining Company; Tower Refining Company.

During the last 5 years, I purchased from independent refiners on account of orders given me by major companies
as well as by others.

1384 The Connally Act did have a big bearing on the situation in East Texas. It created the Federal Tender Board. They couldn't ship gasoline out without getting Federal Tenders. They had to go before the Federal Tender Board to get them. They had to prove that the crude was legally produced crude before they could get tenders for their refined products. The railroad companies would not accept any shipments unless they were shown the Tender numbers on the bill of lading.

Before the Connally Act went into effect there were various regulations down there, which were knocked out at various times, and there was quite a bit of hot oil that was being run down there. The Connally Act and its enforcement cut down considerably my source of supply after March 1, 1935. There were 79 so-called refineries operating down there prior to the Connally Act. After the Connally Act became law and the Federal Tender Board was created, they got down to 12 or 15 refiners that were really operating in East Texas.

The Connally Act cut out these other refiners by creating this Tender Board. They had to stay within the state proration on crude, and they couldn't go buying so-called
excess oil down there like they had been previously
1385 doing. At various times in East Texas hot oil was
purchased at from 10¢ a barrel on up to 25¢ a barrel.
At the particular time I think the price of legal crude was anywhere from 25¢ to 83¢ a barrel.

The operation of the Connally Act forced all those other refiners out of business because they didn't have their own crude production nor any source of supply of raw material. The East Texas field went on proration, and there just wasn't enough crude available for them.

Those plants that had no production were able to buy crude down there at 10¢ and 15¢ a barrel before the Connally Act went into effect. They put up these plants over night, literally speaking, and when this became law, these wells were put under proration. They could produce, according to the law, only so many barrels a day.

After the enactment of the Connally Act, the price of legal crude went to $1. I haven't any knowledge, without checking it up, of the extent to which the amount of gasoline available for shipment out of Texas was reduced right after March 1, 1935.

A refiner, in order to obtain Federal Tenders, would buy legally produced crude from General American Oil Company for instance. He would buy in 5,000 barrels a day.
He would get the proper pipe-line run tickets, to show
1386 that it was legally produced crude, and to have sup-
porting evidence so he could get his tender from the
Federal Tender Board. I am not thoroughly familiar with that end of it, as I never got any tenders, but that is my understanding about it. I buy everything on Federal Tenders.

We have a proration law in Texas. I am not familiar with it. I think it was first adopted in 1931, but they never could enforce it. It is administered by the Texas Railroad Commission, which determined the total amount of crude oil to be produced in the State during the month in accordance with its estimate of what the demand during the month would be. The amount of crude oil to be produced during the month is divided up among the oil wells in the State by the various fields. The object of the proration law, as I understand it was to curtail production and put some stability in the oil market down there, since too much crude was being produced.

I testified on direct examination that major company buying was one of the reasons the market was firm during 1935 and 1936. On other occasions in other years major companies had bought gasoline and in my letters to our customers I had commented upon that fact. There was nothing unusual about major companies buying. The 1387 buying or lack of buying by the majors was always a factor in the strength or weakness of the market, and the buying or lack of buying by brokers or by jobbers is a factor in the strength or weakness of the market.

When I was in Texas in January, 1935 I heard of the Panama case. The Panama Refining Company sued with respect to Section 9-C of the N.I.R.A., and terminated the then Federal Tender Board down there. When Section 9-C was knocked out and the Tender Boards were knocked out, it broke the market wide open again. The market weakened; it was flooded with gasoline, and the large buyers were reluctant to buy hot gasoline down there at that time. So the legitimate buyers practically got out of the market.

Q. Let me show you Exhibit 720 for identification, and let me direct your attention to the expression you used there: "We have an entirely different picture now than a year ago, due to the tight situation in East Texas."

Mr. Crawford: I object to that as incompetent, irrelevant and immaterial, and because the exhibit is not in evidence. It was objected to and it was ruled out.

Mr. Donovan: I am just following the formula that Mr. Crawford laid down yesterday.

1388 The Court: That exhibit is not in evidence.

Mr. Donovan: I am not asking it be in evidence. I am directing his attention to it and I want to ask him if that refreshes his recollection as to what caused the tight situation.

Mr. Crawford: No objection.

My recollection is refreshed and was refreshed yesterday in answering the question by Mr. Crawford as to what caused the tight situation in East Texas at that time. That tight situation was due to the Federal Tender Board under the Connally bill becoming active down there.

The document you show me is a letter that I wrote to H. E. Bangert of Roosevelt Oil Company, on April 9, 1935. Mr. Bangert was one of my customers, and I was conveying information and reporting my opinion of conditions in the East Texas field to him. In my opinion, I was telling him the truth, the facts as I found them, to the best of my ability. Without referring to that document, I would not have any present recollection of my opinion of the facts that I then stated to Mr. Bangert. My recollection is refreshed as to my opinion of conditions at that time in that field after looking at this document.

We had a firm situation in East Texas in April, 1935.
It had tightened up. The Federal Tender Boards
1389 were operating efficiently at that time. Hot oil had
practically passed out of the picture at that time in
East Texas.

This telegram you show me I sent to W. H. Barber Company, one of my customers, on March 5, 1935. In it I was conveying market information of the East Texas field and reporting my opinion of conditions as I found they existed then. I would not have any recollection of what I reported at that time unless I referred to this telegram.

The situation in East Texas in April was as I explained. The Tender Board had started operating and we had a situation that was getting tighter all the time down there due to its efficient operation. I recall that major companies were buying considerable gasoline in East Texas at the time of my letter of April 9, 1935.

This telegram you show me I sent to Boswell Oil Company under date of August 6, 1935. The Boswell Oil Company was a customer of ours and I was conveying to them information concerning my opinion of the market. I would not have any recollection of the opinion I gave him unless I referred to this telegram. With my recollection refreshed, I can say that in East Texas on August 6, 1935,
the market was firm, and the refiners were experienc-
1390 ing quite a bit of difficulty in getting federal tenders,
and there were but 6 refineries operating.

This telegram you show me I sent to Henry H. Cross & Company, one of my customers, on September 20, 1935, in the course of conveying information as to conditions. Without looking at that, I could not tell what I reported to him at that time. My recollection is refreshed after looking at that telegram. On September 20, 1935, the market in East Texas was very firm. There were only 5 plants operating down there on federal tenders.

This telegram you show me I sent to Boswell Oil Company, one of my customers, under date of October 5, 1935. I was sending market information in that telegram to the Boswell Oil Company. Without looking at that telegram my recollection would not be refreshed as to what I told him. My recollection is now refreshed from looking at that telegram. Conditions on October 5 in East Texas were tight due to the fact that refiners were having trouble getting tenders, and there were very few plants running. To my recollection, there were only 4, as I told him in that telegram.

This letter you show me I wrote to W. T. Dunbar on December 11, 1935. W. T. Dunbar was one of my prospective customers. I didn't do any business with him,
1391 but I was trying to. This letter was sent to him for the purpose of giving him information as to conditions in the market. My recollection is refreshed as to what conditions were at that time in East Texas from a refinery standpoint on this grade of gasoline after looking at this letter. The refiners were having trouble on their tenders, and a cargo of gasoline he wanted was just impossible to buy down there at that time, because we couldn't line it up with any responsible sources of supply, nor with refineries to ship, due to their unsettled condition and the way they were operating at that time, on account of this trouble they were experiencing in getting tenders.

Boswell Company, one of my customers, sometimes inquired as to whether it could buy gasoline from me and when it did I told it the fact. On October 5, 1935, I told Boswell that I could not buy one car of gasoline at 4¼¢ for it because on that particular day there were only 4 plants running down there; and due to that situation, we had a temporarily tight situation, and I just couldn't buy it at the price he wanted to pay for it.

I had a customer in London, England, to whom I sent cables. The cable address was Telbarks. I don't remember whether I received a cable on October 5, 1935, from
1392 this company asking me to quote on gasoline.

This copy of a cable you show me I sent to Bartz-Williams, on October 4, 1935, in answer to an inquiry from Telbarks. On October 4, 1935, the condition on cargoes was very tight. That was due to war conditions. There was quite a bit of crude oil moving to Italy on account of that Ethiopian situation, and the grade of stuff he wanted was pretty hard to buy at that time.

These letters and telegrams with which I have refreshed my recollection today were turned over by me to the Government in response to the subpoena at the time I was called to appear here before the grand jury some months ago. Since then I have had them back in my possession for only 10 days.

On April 9, 1935 the major companies were buying gasoline. I don't know how you use that "distress gasoline." They were buying gasoline, that is the only way I can give you that. I reported that they were buying excess gasoline, by which I meant they were buying gasoline that was on the market for sale.

I purchased 2,198 cars for the Gulf Companies in 1935 if that is what those figures total. The purchases by the Gulf Companies and other major companies I considered a factor in the market. In 1936 I purchased 5,040 cars for Gulf Companies, or more than twice as much as I 1393 purchased in 1935, that is, if those figures are correctly added.

It is my opinion that the purchases I made for the other major companies in those two years increased approximately in the same proportion as the purchases I made for the Gulf Companies in those two years, but I would want to check my figures before I made a positive statement. I think I was buying more for everybody in 1936 than I was in 1935.

I said yesterday that it was my recollection that consumption was normal or a little better during the winter of 1935-1936; that is my recollection of what I testified to. I have now checked figures to determine whether or not the consumption in the months of December, January, February, March and April of the winters of 1935 and 1936 was heavier than in the corresponding months in the preceding year. I looked at some figures of the American Petroleum Institute and the Bureau of Mines. The consumption in December, 1934 was 1,286,856,000 gallons.

I shipped some of the gasoline I dealt in in East Texas to the Standard of Indiana territory, but the biggest part of it went south. The consumption throughout the country is affected to a certain extent by what is bought or sold down there.

(Document is received in evidence as EXHIBIT 726.)

1394 I am still buying such gasoline as I desire through the East Texas Refiners' Association and in the same manner as I did in 1935 and 1936.

The Tender Boards are still in operation in East Texas and are operating in the same manner as they did in 1935 and 1936.

By Mr. Lawton

There was major buying of gasoline in the East Texas field in years other than 1935 and 1936. I am not as familiar with the Oklahoma field. There was such buying in

1937 in the East Texas field. I don't recall just how much, but there was some buying by majors in the East Texas field in 1934.

By Mr. Francis

In third grade gasoline, octane is one criterion of value; and the initial and end boiling points of the gasoline are others. When I speak of buying third grade gasoline of such and such an octane content, or below, there are other factors which enter into the price which a refiner will pay, to wit, vapor pressure, end point, initial boiling point, and the like.

They make several grades of gasoline, 400, 375, 390, 437 end point. The lower the end point, the higher the price of the gasoline. End point is just the end point they get on the gasoline.

1395 I am a marketer. I would never make a sale to a customer, for example, The Pure Oil Company or Gulf Company of a particular gasoline, as a general rule, without their giving me some specifications in addition to octane. They would generally want to know not only what the octane of the gasoline is, but also the vapor pressure, the gravity, the end point and the initial boiling point of that gasoline.

All of those things which I have mentioned are the predominant factors which make either good gasoline or rotten gasoline, a gasoline that is serviceable or not serviceable in your car. As a general rule and under certain conditions, a low vapor pressure means a better gasoline. A lower end point, as a general rule, not too far away from your initial boiling point, means a better gasoline. And a lower specific gravity, that is the weight of the gasoline makes a better gasoline. 57 to 60 gravity is usually recognized as a standard grade of gasoline.

Comparing two gasolines having the same octane, the same initial boiling point, and the same end point, if gasoline number one had a lower specific gravity, that is, it was a heavier gasoline, you would get more mileage out of that gasoline because it is of a greater specific gravity, a greater weight, there is more hydrocarbon in there that burns.

1396 Octane rating of gasoline is just the measure of the chemical composition of gasoline which relates to its anti-knock quality.

Redirect Examination by Mr. Crawford.

The average automobile driver buys what is known as regular gasoline. Most of the major companies sell that grade. What they call branded gasoline is regular.

I presume the average automobile owner who buys gasoline doesn't know anything about the octane or end point and other qualities that go into it at all, and he is getting the same grade, presumably, from any company that produces that kind of gasoline. I have no way of knowing what the average automobile owner thinks, except my own opinion.

There is a difference in the quality and value for operating purposes of regular gasoline; some of it may be better than others.

I don't know, up here, whether if you went into a Standard Oil filling station and asked for a gallon of regular you would get the same kind and quality of gasoline that you would get if you asked for the same thing in a Phillips station or a Sinclair. You get practically the same thing down in our country if you go to a Gulf station or a Sinclair station. A regular gasoline must contain the 1397 same ingredients, whether it is sold in one station or another. In other words, under the same driving conditions, with the same car, you get about the same mileage. That is my understanding about it.

Ordinarily one gets about the same quality of gasoline if it is sold as regular from the Standard Oil Company or Sinclair or Phillips, and you also pay the same price.

I said in answer to Colonel Donovan's questions that the major companies bought gasoline in other years in East Texas before and besides 1935 and 1936. The East Texas Refiners' Marketing Association was organized in 1935 for the first time, so that the majors never did buy in East Texas through an Association like Cline's until March, 1935.

I said that when the Tender Board went out the supply of gasoline increased in East Texas. An increase in the quantity of gasoline available throughout the country would naturally have an effect on the gasoline market and did have such an effect. The jobber and consumer could buy gasoline cheaper than they could after the Tender Board and the major company buying was operating. When the Tender Board was functioning that reduced the supply of gasoline for the country from the East Texas field.

1398 There still was at certain times in 1935 and 1936 an excess over demand with the Tender Board operating efficiently. I can't answer whether there was any time in 1935 when there wasn't an excess over demand; I don't know.

The Tender Board operations tended to reduce the supply of gasoline available from the East Texas field. The Tender Board is a part of the set-up under the Connally Act, which went into effect some time the first part of March, 1935. I don't know the exact date.

The major companies buying in the East Texas field also lessened the quantity of gasoline. So there were two things that contributed to the lessening of the quantity of gasoline in that field, and one was the major company buying through the Association.

In my telegram to Mr. Carlisle on June 28, 1935, Exhibit 605, I said: "Cline very anxious move some additional gasoline. He advises things getting little shaky, and he is afraid market will break if he doesn't get some business stop." I said that the first purchase made by the Gulf Company through me, through the Cline Association, after that telegram was July 2.

Q. On July 2, you sent a telegram to the Barber Company to which we referred yesterday, in which you told him what the fact was as you understood
1399 it down there, "that the major oil companies have purchased approximately 300 cars East Texas gasoline in last couple days." Do you recall that?

A. I don't know without referring to the telegram.

Q. Didn't you testify to that yesterday, that the telegram refreshed your recollection as to the fact, and that was the fact?

A. If that is what I testified to, yes, sir.

Q. Didn't you also say that you expected the market to continue firm?

A. Well, if that was the date of the telegram.

Q. You testified yesterday, as shown on page 697 of the record:

> "Q. And did you expect it to continue firm at that time for some considerable time in the future?"

and you answered,

> "Yes, sir, that was my opinion."

Do you recall that now?

A. Yes, sir, I remember testifying to that.

Q. So in the telegram to Carlisle on the 28th of June, you were telling him about the market being weak, and in the telegram to Barber on the 2nd of July, you were telling him it was firm and it would continue firm. Now, which of the two was correct? Were they both?

A. Well, both were correct.

1400 The purchase for Gulf on July 2 was just 1 car; the shipment was to Jacksonville. I bought 2 cars on July 3 for Gulf from Merrimac Oil Company of Tyler through the Association. That is the date of purchase, the date of my purchase order. I got instructions from Houston from Gulf Company for that purchase.

I placed an order for 18 cars of gasoline for Gulf Company for shipment to Port Arthur, through the Association from East Texas Refining Company on July 3. My records show that I purchased in the same way 5 cars from Texas Oil Products Company for shipment to Gladewater on the 3rd, and 1 car from the East Texas refiners for shipment to Long View on July 6.

On July 3, I bought 1 car for Gulf Company from East Texas Refining Company at Long View for shipment to Bronson. My record shows July 3. I do not know what Gulf Company's record shows on that. On July 3 I again bought 1 car from East Texas Refining Company at Long View for shipment to Marshall. I did not buy 28 cars of gasoline on July 2 for Gulf through the Association for shipment to various points instead of the 1 I referred to yesterday, which was referred to as the date of purchase.

Usually even under normal winter conditions, the demand in January, February, and March in the Standard of Indiana territory is lower than summer demand.

In December, 1935, I purchased for Gulf Company 1401 256 cars; it all went to the Gulf Coast. The gasoline in the summer went to the Gulf coast. My purchases in December, January, and February were larger than they were in April, May and June of the previous year.

Referring to Exhibit 605, my telegram to Carlisle, I told Mr. Gray what I meant by "Cline very anxious for some additional gasoline. He advises things getting little shaky and he is afraid market will break if he does not get some business stop." That was the picture. That was what I was giving him, that if Cline could get business, the market would not break. But I would not say that it was the successful operation of Cline's Association that held the market in East Texas. I gave him the picture of what I thought the situation was.

Q. You gave me the interpretation of this telegram yesterday.

A. Yes, sir.

Q. You told us yesterday that the meaning in short, the meaning of this telegram from you to Carlisle, was, it was not a good time for him to buy. Is that what you meant?

A. Yes, sir.

Q. Did you also mean in that telegram to indicate to him that it was necessary that Cline get some more business in order to prevent the market from breaking?

A. I wanted to give him the picture.

1402 Q. Didn't you intend to convey to him the information that unless Cline got busy, the market would break?

A. I wanted to paint the picture to him as it was.

Q. Did you intend that by your telegram?

A. Yes, sir.

Q. All right. Now, I presume the fact is—I will ask you to state whether it is or not—that the major companies were interested at that time in not having the market break?

A. I don't know what the major companies were interested in.

Q. Then why were you saying this to Carlisle?

A. Because I sold Gulf Refining Company gasoline for 15 years.

Q. You don't know whether the majors were interested in preventing a break in the market or not, I understand you to say?

A. I don't know, no, sir.

Q. If you did not know, then why were you saying this to Carlisle, "He is afraid market will break if he does not get some business?"

A. I was giving him the information as to market conditions which I have done for 15 years.

1403 Q. Because you knew he was interested in whether the market would break or hold, weren't you?

A. Because he was—

Q. Answer the question.

Mr. Donovan: Let him answer.

The Court: If he will answer, he will get along all right. This witness will take care of himself. I think he ought to be permitted to answer without any interruption. Now, answer that question.

A. Yes.

I thought also that he was interested in what I next said in the telegram. "Sinclair and Pure only two that have made purchases this week, and they have bought 75 cars." I thought Carlisle was interested in that because he is in the oil business, he is interested in market conditions. By "Sinclair and Pure only two that have made purchases this week," I meant the only two companies, independents or majors, that made purchases that week that I had heard about.

Q. But in your telegram of July 2 to Barber, as we saw from reading, or referring you to your testimony yesterday, you told him that the "Major companies have purchased approximately 300 cars East Texas gasoline in couple of days," did you not?

1404 A. Well, that was—

Q. Didn't you tell him that?

A. Yes, sir.

(Witness examined a calendar.)

A Sunday intervened between June 28, when I sent the telegram to Carlisle, and July 2, 1935, when I made the next purchase. June 28 was Friday, the 30th was Sunday, and Monday was July 1, and Tuesday was the 2nd. I have in the record to which I referred my purchases for Gulf during June, 1935.

(Witness examined memorandum.)

My record shows that on June 24, I bought 6 cars from Gilliland Refining Company. In the week of June 24 I bought 44 cars for Gulf. I imagine I also bought cars for other people in the same week. I have my record of that, too.

(Producing memorandum.)

I am sure I bought substantially, because I was doing business every day.

Q. Then will you tell us why it was that you said in your telegram to Carlisle, which is dated June 28th, quote: "Sinclair and Pure only two that have made purchases this week."

A. Well, I do business with a lot of people. I don't tell him every time I make a deal.

1405 Along in there, I was selling Pure Oil and Sinclair some gasoline. I don't remember the dates, whether I sold them right along in there or not, without refreshing my memory on it, because I sell gas oil and fuel oil and a lot of different products down there, and I just can't remember all these things without going to the records on them. I just have my record on gasoline.

(Referring to memorandum.)

In this telegram to Carlisle, in which I spoke of Pure and Sinclair as the only two that "made purchases this week," I meant the only two that made purchases through Cline's Association.

I remember that in answer to Colonel Donovan's question, I referred to a wire I sent to Boswell Company on October 5, 1935, telling it that the market was tight as there were no tenders. I couldn't say whether or not the market on October 10, which was 5 days later, was still tight or whether it had become loose. I haven't any recollection on that, not without getting my memory refreshed.

The document which is marked Exhibit 157 for identification is a night letter telegram from me to Barber, dated October 10, 1935. In that telegram I was giving some expression as to the facts as I had them down there as to the condition of the market.

1406 Q. Now, after having refreshed your recollection as to what the fact was down there, will you state whether or not the cause of the tight market was something more than the operation of the Connally Act and the tender board program under it?

Mr. Donovan: Same objection as at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

A. (Reading from exhibit) "Due to heavy purchasing plus export business picking up due to war conditions market"—

Q. Yes.

Mr. Lewin: "Heavy purchasing," by whom?

Mr. Crawford: Q. Oh, of course, you mean heavy purchases by major companies?

A. Yes, sir.

The "war" I referred to was the Ethiopian war. We sold a lot of oil over there.

I also referred to a cable that I sent to Telbarks, London, on October 4, 1935.

(Document handed to witness.)

I remember this document. I was not able to get them any oil on the Coast then.

1407 Q. No—you didn't say on the Coast. You said here—you didn't limit it to the Coast, did you?

A. Well, that is what I am saying, I couldn't get it on the Coast.

Q. In your telegram, you said this—

A. No, sir, I didn't limit it to the Coast in my telegram, no, sir.

I got an inquiry from them as to whether or not I could provide them with some gasoline and crude oil, too. It was an inquiry as to petroleum products.

Q. O. K. "Recable account so many inquiries in market all grades petroleum products major companies and independents reluctant give any quotations today will quote Monday." That was your wire to the Telbarks, in London?

A. Yes, sir.

I recall Colonel Donovan calling my attention, to refresh my recollection, to a letter which I wrote on April 10, 1935, to Harry Bangert of Mount Pleasant, Michigan.

Mr. Donovan: Same objection as at R. pp. 685, 686, 688, 690-91.

The Court: Overruled; exception allowed.

Q. In which you told them your views or reasons as to why the market appeared to be tight?

1408 A. My opinion of what it was.

Q. Your opinion. And did you also tell them what you believe then to be the fact, this, quote: "The major companies have been doing quite a bit of buying of gasoline and they have this situation pretty well cleaned up on excess gasoline"?

A. Yes, sir.

Q. And that was true, was it?

A. Yes, sir, that was my opinion.

Q. The major companies were cleaning up, and then had cleaned up the excess gasoline?

A. That was my opinion, yes, sir.

That was in April, 1935, and the market price of gasoline was then on the rise, and I think it kept going up until June.

I also recall Colonel Donovan calling my attention to a letter I wrote on December 11, 1935, in which I said that the refiners were having trouble with tenders as a cause of the market being strong.

Exhibit 165 for identification, which you show me, is a telegram from me to W. H. Barber Company, as to the market conditions, dated December 11, 1935, the same date as the date of the letter to which I referred in answer to Colonel Donovan's questions. But in that letter I was quoting on a certain grade of gasoline in the letter, which had no bearing on the grade I was talking about in

1409 the telegram.

Q. Yes, but whatever grade you were talking about here in this Exhibit 165, you were talking about the market having gotten a little weak, but the majors came in and bought all surplus, did you not?

Mr. Donovan: Same objection as at R. pp. 685, 686, 688, 690-91.

The Court: Objection overruled; exception allowed.

A. Yes, sir.

Q. That was the fact, wasn't it?

A. Yes, sir.

Q. So the surplus gasoline was taken off the market by the major companies' buying, wasn't it?

A. Certain grades, yes, sir.

Q. You didn't limit this information to him to any particular grade, though, did you? Look at the telegram.

A. No, not to him.

Q. No.

A. In that letter, I did.

Q. Well, which did he get first, the letter or the telegram?

1410 A. Dunbar got the letter. They are two different people. I wrote the letter to one person, and sent Barber the wire.

Q. Oh, yes, I see. But evidently you weren't giving both of them the same information, were you?

A. No, because I was talking about two different grades of gasoline.

Q. In here (indicating), you were talking about all grades, weren't you?

A. Well, Barber knows it is about third grade gasoline, that is what he was referring to.

(Witness excused.)

(Document being stipulation relative to the authenticity of Socony-Vacuum Oil Company, Inc. documents is received in evidence as EXHIBIT 727).

(The following proceedings were had out of the hearing of the jury:)

Mr. Chaffetz: The Government offers in evidence EXHIBITS 334, 335 and 336, each of said exhibits being offered at this time as admissible in evidence only against the defendants who have been shown to have participated in the alleged conspiracy, whom the Government claims have been connected up with the conspiracy.

Mr. Treadwell: Now, in addition to the general objection on behalf of all the defendants, I would 1411 like to take particularly an objection to the letters marked Exhibit 336 for identification and Exhibit 335 for identification, on the ground that they were hearsay between persons who are strangers to this case. The other, Exhibit 335, is the reply. In this first letter your Honor is looking at, Exhibit 336, Mr. Booth states what his idea of Mr. Reid's idea of the company policy is. Well, now, I will object to it as against the corporation on the ground that Mr. Booth wasn't in a position to know. Assuming that that objection is overruled, I would still say it isn't binding against Mr. Reid because it is hearsay. I merely want to save on the record the objection to it as hearsay. It seems clear it shouldn't be admitted as against Mr. Reid, because it is clearly hearsay as to him.

The Court: Objection overruled. Exception allowed. I am in doubt whether this is binding on Reid.

Mr. Chaffetz: The point is Reid has already been connected up. There has been some testimony with respect to Mr. Reid, and this is just one of those additional tid-bits which show—

Mr. Treadwell: Then it is offered subject to that other connection?

1412 The Court: He wants that all to be connected up, and if it isn't, I will keep that in mind.

Mr. Treadwell: If it isn't, it isn't material.

The Court: If it isn't, it is hearsay.

Mr. Donovan: Now, I make this objection in general terms on the same grounds as before at R. pp. 504-05, 556-57, and in addition, upon the grounds that:

The reception of these documents are objected to because it does not appear that the documents offered in evidence were made in the regular course of any business of the Socony-Vacuum Company, Inc., or any of its subsidiaries; further, because it does not appear from the evidence that it was the regular course of business of said corporation to make or cause to be made such written memorandum or record at the time of the act, transaction, occurrence, or event sought to be shown, or within a reasonable time thereafter; that there is no evidence of authority in the maker of the writings now offered in evidence to make the same for or on behalf of said corporation; that as to all other defendants in the action, individual and corporate, other than said defendant corporation and the 1413 writers of the documents, there is no evidence that such writings were so made by a person having knowledge of the facts purported to be set forth in said writings and the facts therein purported to be stated are not corroborated by the testimony on oath of such person or any other person; the writings themselves [illegible] not proof of the fact or facts which it purports to record unless testified to by the writers thereof or some other competent witness, and their admission deprive the defendants of their constitutional right to be confronted by the witnesses against them, together with the right of cross-examination; that such writings are inadmissible in evidence against the individual officers of Socony-Vacuum Company, Inc. or any of its subsidiaries now under indictment in this action because not shown to have been made by the agent of such defendants or of any person with authority to act for them, and the evidence fails to show that such writing were made with the knowledge or consent or under the direction and supervision of any of said individual defendants, and for this same reason said writings are inadmissible in evidence against any individual or corporate defendant named in the indictment; because there is no evidence that 1414 these writings, now so offered in evidence, were made in aid of or in furtherance of the conspiracy alleged in the indictment, or of any overt act in pursuance of such alleged conspiracy; and because the same are incompetent and hearsay as to all of the defendants, individual and corporate, other than the writers, and cannot be received for the purpose of showing consent or agreement on the part of any individual or corporate defendant to the alleged conspiracy.

The reception of the said documents are further objected to because:

1. The reading thereof to the jury, without identification by the writers, is a denial to this defendant and to any of its subsidiaries of the rights guaranteed by the Sixth Amendment to the Constitution of the United States; as these defendants have a right to be confronted with the witnesses against them; and these documents are offered as evidence without opportunity being afforded these defendants to cross examine the witnesses by whom same are proved.

2. They are hearsay, as to these defendants.

3. Prejudicial.

1415 The Court: The objections are overruled. They may be received with the limitations as indicated. Exception allowed..

(EXHIBITS 334, 335, and 336 are received in evidence upon the limitations mentioned. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

Mr. Donovan: I want also to make the same objection with reference to the limitations that you (addressing Mr. Chaffetz) have made to the failure of the Court to rule as requested, and object to the limitations as made.

Mr. Donovan: This deals with the Mid-Continent area, isn't that right?

Mr. Chaffetz: But if we establish a conspiracy, covering the Mid-Continent and East Texas, then this is binding on everybody—

The Court: The objections are overruled, and the exhibits will be admitted subject to the limitations as indicated by counsel for the Government.

(The open court proceedings in the hearing of the jury were then resumed.)

(Mr. Chaffetz read Exhibits 334, 335 and 336 to the jury.)

May we understand that Metro is third-grade gasoline handled by Socony-Vacuum?

Mr. Donovan: That is right.

Mr. Chaffetz: By agreement with counsel I 1416 should like the record to show that the pencilled notations at the bottom of Exhibit 336 are authentic marks and were on that letter when the letter was produced pursuant to the subpoena.

Mr. Treadwell: We will agree that those notations were on there when the letter was turned over to the Government.

Mr. Chaffetz: With the assent of counsel I ask that the record show also that the initials in handwriting, "B. S. R." on Exhibit 336 are intended to signify "Bryan S. Reid," a defendant in this case.

(Document being stipulation relative to the authenticity of Shell Petroleum Company documents is received in evidence as EXHIBIT 728.)

(Thereupon the following proceedings were had at the bar of the Court, out of the hearing of the jury:)

Mr. Chaffetz: I offer EXHIBITS 168, 171, 243, 244, and 247 only as against the Shell defendants (handing document to the Court).

Mr. Donovan: The same objection as appears at R. pp. 504-05, 556-57, 721-23, and on the same grounds, and for the same reasons that I have made to all the documents submitted and offered by the Government just preceding this offer, particularly Exhibits 334, 335 and 336, as appears at R. pp. 721-23.

1417

And the further objection in regard to the offer of the Government, on the ground that nowhere does it appear in these documents so offered, any reference to Mr. Lakin or Mr. Fraser, or anything to show that in any way they were informed or advised.

Mr. Mitchell: That they ever saw it or ever heard of them.

The Court: Let the record show that Exhibits 168, 171, 243, 244 and 247 are offered only as against Alexander Fraser, the defendant Lakin and the defendant Shell Petroleum Corporation, and are admitted over the objection and admitted as to those defendants only subject to their being connected up with Mr. Fraser and Mr. Lakin. Exception allowed.

(Documents are received in evidence as EXHIBITS 168, 171, 243, 244 and 247 upon the limitations stated.)

Mr. Chaffetz: I will now offer Exhibits for identification 222, 233, 234, 237, 238 and 239; and ask that they be received as admissible as against all of the defendants shown by the record to have participated in this buying program.

Mr. Donovan: Now, may I have the same objec-
1418 tion to the introduction of all of these documents that I have already made, on the same grounds and for the same reasons as appears at R. pp. 504-05, 556-57, 721-23.

The Court: Objection overruled. Exception allowed.

Mr. Mitchell: We want to make an additional objection on the part of Shell, Mr. Lakin and Mr. Fraser, as to Exhibits 171, 222, 233, 234, 237, 238 and 239, on the grounds that they are incompetent, irrelevant and immaterial; that they are hearsay; for the additional reason that they refer to matters in East Texas, and that Shell Petroleum Corporation, Mr. Fraser, and Mr. Lakin are not charged under the indictment with participating in any way in any East Texas transactions, or any alleged conspiracy in East Texas; and for the same reason, they would be inadmissible against all other defendants.

Mr. Chaffetz: Of course, we charge everybody with participating in the entire, over-all program.

The Court: Objection overruled. Exception allowed.

(Documents are received in evidence as EXHIBITS 222, 234, 237, 238, and 239 against the Shell defendants only. Said exhibits later at R. p. 907 were admitted as evidence against all defendants.)

1419 (Thereupon the following proceedings were had in the presence and hearing of the jury:)

(Mr. Chaffetz read Exhibits 168, 171, 222, 233, 234, 237, 238, 239, 243, 244 and 247 to the jury.)

(Document being stipulation relative to documents from Cities Service Company, its affiliated companies, and Louisiana Oil Refining Corporation is received in evidence as EXHIBIT 729.)

Mr. Chaffetz: The Government offers in evidence EXHIBITS 457, 458, 473, 474, 475 and 476. These are documents from the files of Cities Service Company or Cities Service affiliated companies; one, Louisiana Oil Refining Corporation, and an enclosure, addressed from J. A. Welch to H. D. Frueauff, dated April 6, 1935.

Mr. Donovan: I object on the same ground and for the same reasons that I have stated to the admission of the other documents at R. pp. 504-05, 556-57, 721-23.

The Court: Objection overruled. Exception allowed.

(Documents referred to are received in evidence as EXHIBITS 475, 476, 473, 474, 457 and 458, respectively.)

1420 RALPH E. EVERITT, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in Wichita, Kansas, and have been secretary of The Globe Oil and Refining Company of Oklahoma for approximately 18 years. I am assistant secretary of the other two Globe companies.

Each of those companies is engaged in the manufacture and distribution of gasoline. The principal marketing territory of each of those companies is the Standard of Indiana territory. Each does business with jobbers in this territory, and markets under contract and on the spot market. Around 80% to 85% is marketed under contract.

Mr. I. A. O'Shaughnessy is, and in 1935 and 1936 was, president of the 3 Globe Oil and Refining companies. He is a defendant in this case. He is a stockholder in those companies. He personally only owns about 40% of the stock of each of the companies. It is possible that I stated at some other time that he controls as much as from 55% to 70%, but he doesn't own it personally. In speaking of control I had reference to the fact and there are other stockholders that are also officials of the company
1421 that hold stock; and they have been connected with
the company for a long period of time that would, in my opinion—some of them are relatives; others are just long-time business associates. From my knowledge of the facts, I would say that Mr. O'Shaughnessy had actual control over from 55% to 70% of the stock of each of those companies in 1935 and 1936.

I don't recall from memory that in January, February and March, 1936, the sales of gasoline by our companies diminished substantially over what they had been in preceding months. I don't recall what the weather conditions were in the marketing territory of our companies during that period.

Q. Would it refresh your memory if testimony given by you before the grand jury were shown to you, or read to you?

A. I doubt very much whether it would. I don't recall ever having testified to weather conditions.

Q. Do you remember testifying with respect to to the amount of stocks on hand that your company had during that period?

A. If I testified—

Mr. Donovan: I object to this form of questioning on the grounds that appear at R. pp. 373-74, 446, 630, 680-81, 682.

1422 Mr. Chaffetz: I want to see whether his memory can be refreshed, your Honor.

The Court: He may answer. Exception allowed.

A. (Continuing.) If I testified in regard to stocks, it was from memory only.

Mr. Chaffetz: Q. Yes. And do you remember what the fact was as to the stocks that your company had on hand at that time?

A. No, sir, I do not.

Q. You did know those facts when you testified before the grand jury?

A. I did not. If I did, it was an estimate pure and simple.

Q. If in your testimony before the grand jury you said, "I know," wouldn't that indicate to you that you did know?

A. No, it would not.

I do not recall that our storage at our plant at Blackwell, Oklahoma, was full in February 1936. I think our Blackwell plant was closed down in February 1936.

Q. And don't you recall that it was closed down after the storage capacity had become filled?

A. Not necessarily.

1423 Q. No, not necessarily. I am asking you what the fact was.

A. No. I don't think that was the fundamental factor in closing down the plant.

I do not remember that due to severe weather in that period our inventory ran up pretty high. What the storage capacity of the Blackwell plant is would have to be purely and simply an estimate. That storage capacity has changed pretty frequently in the past years. It has increased from time to time throughout the years from 1918 on up to date, but it is pretty hard to keep track of it. The storage capacity of that plant in February, 1936, was somewhere around 60,000 to 100,000 barrels, but that is a pretty wide spread. I don't know exactly. I don't think it might have been as much as 300,000 to 325,000 barrels.

Q. Do you remember testifying to that before the grand jury?

A. Not for one plant, only, no. I don't think we ever had 300,000 storage. You are referring to gasoline?

Q. Referring to gasoline.

A. We never had that much, I don't think.

1424 *By the Court*

My duties as secretary are principally accounting, insurance, and taxes. I am an accountant, and have charge of the accounts of the company. As accountant, I have knowledge of what gasoline there is in storage, and what business the company does, but I don't try to carry those figures in my mind. We have here with us now records of purchases and sales of gasoline. I don't have the amount of gasoline in storage at the time Government counsel asked, January, February, and March, 1936.

(Witness excused at request of Government counsel subject to recall. The witness was not later recalled to testify.)

1425 JOHN STEIGER, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I reside in Tulsa. My age is 25. My present occupation is market checker for Platt's Oilgram and National Petroleum News. I have been market checker for Platt's Oilgram in Tulsa since July, 1934. I am, and for the last few years have been, the only market checker for Platt's Oilgram in that territory.

When I check the market I make up quotations for Platt's Oilgram of prices of gasoline for the spot, open market. Those quotations that I make up are the ones published every day in Platt's Oilgram for the Mid-Continent markets. Really I am the reporter or checker of the spot market quotations for the Tulsa edition of Platt's Oilgram.

Warren C. Platt, president of W. C. Platt Company, is my superior in that company. He is a defendant in this case.

W. C. Platt Company owns the publication, Platt's Oilgram. Cleveland is the main office. Mr. Platt has his office there.

J. P. Mosher, Jr. is another superior officer in this company to whom I report. He has charge of circulation and similar matters of the Oilgram. I don't know
1426 that general manager is his official title. We haven't many official titles in the company. I imagine he does perform some of the duties of general manager. I report to him on the work I do in Tulsa.

The Oilgram has an office in Tulsa, with two employees and a stenographer.

I know a little about The National Petroleum News. It is published by the National Petroleum Publishing Company and comes out each Wednesday. In it the Monday prices for the different petroleum products appear. The National Petroleum Publishing Company, a defendant in this case, publishes The National Petroleum News.

Warren C. Platt is president of The National Petroleum News. I don't know whether or not he is the principal owner of The National Petroleum News and the W. C. Platt Company. It seems to me as though I did read some sort of a report in the magazine that he and Mrs. Platt were the principal owners. I wouldn't say for sure.

I might say these two companies are under the same management, as they are both under Mr. Platt. They have the same staff. Mr. Mosher takes charge of the price section of The National Petroleum News, but I wouldn't say that he was general manager of The National Petroleum News. These two companies are in the same building in Cleveland, with offices on the same floor. I write market stories for The National Petroleum News every week
1427 and articles occasionally. I understand that Mr. Mosher has charge of the market section of The N. P. N., so I imagine from that angle it would be right that I am working directly under him. When I write stories, however, I address the envelope, "National Petroleum News, Editorial Department".

The National Petroleum Publishing Company has an office in Tulsa, too, in the same office with us. In 1935 and 1936 it had a staff of 3, comprised of two editorial men, an advertising man, and a stenographer.

W. C. Platt Company publishes 4 editions of Platt's Oilgram: Tulsa, Chicago, New York, and Cleveland editions. They come out simultaneously every day. Each one carries substantially all gasoline markets that are reported by all others, but there are a few of the purely local markets that aren't carried in each edition.

There is a market reporter or checker like myself in Chicago. He is responsible for the Chicago quotations of the Chicago edition. During 1935 and 1936, Lawrence D. McGuan was the reporter or checker. Mr. Barringer was Mr. McGuan's superior in Chicago.

There is also a market checker in Cleveland, New York and Los Angeles. The market checker in Los Angeles checks the market on the Los Angeles basin market.

In a sense I have full responsibility for these quotations in the Tulsa edition of Platt's Oilgram. We
1428 consult with Mr. Mosher, or some of our superiors in
W. C. Platt Company, if something turns up that we think it is necessary to. Except for that, we act under his general instructions.

The policies are outlined to us from time to time, and we try to follow them. You see, we are more or less broken in. I started out in the Tulsa office as an office boy. They train us up to do the work, as is the case with most of the Oilgram checkers; they have been trained into the job. When I first went into that work, Allen S. James was the market checker. He is now editorial writer for The National Petroleum News.

It would be hard to say how often I am in communication with Mr. Mosher. Indirectly we are in contact with Mr. Mosher daily through our teletype hook-up, since we teletype information from Tulsa to Chicago, and Chicago in turn teletypes it on to Cleveland. In that way we are more or less indirectly contacting the Cleveland office almost daily or more than that. I am pretty sure that those communications go through Mr. Mosher's hands. I was in communication with Mr. Mosher during 1935 and 1936 over the telephone once or twice a month as a rough estimate. Mr. Mosher occasionally came down to Tulsa to inspect our work. Once in 1935 and once in 1936 is my best recollection. He didn't give us general instructions, because we already had general instructions,
1429 but we did talk markets on the occasion of those
visits.

Mr. Platt was out of the office and out of town quite a bit during 1935 and 1936. I imagine we were in communication with him over the telephone during 1935 and 1936, but I can't say definitely how often. Mr. Platt came down to our Tulsa office to inspect our work once or twice in 1935, and about twice in 1936. I saw him on those occasions.

In 1935, I don't believe I went to Cleveland at all, but during 1936 I did possibly twice. When I went there, I talked with just about everyone in the concern, including Mr. Platt and Mr. Mosher. I went there on business to talk about my work.

My work requires me to be in pretty close contact with major and independent companies selling gasoline on the spot market in the Mid-Continent and East Texas fields. We check with major companies not only on gasoline but on other products, because they are also active in the open market.

My work requires me to be familiar with the prices at which gasoline is sold on the spot market, and I am familiar with these prices and with the number of persons and different companies selling on the spot market in those fields. In 1935 and 1936 I was familiar with the
1430 number selling and with the volume of gasoline that was sold on the spot market in those fields. We do our best to check as much of that volume as we can.

When we check, we call those various sellers on the telephone and have a conversation with them about marketing conditions. I have visited several of the local companies in Tulsa, but I am pretty well tied down to my desk and do not have much time to get out. Mostly I collect this market information over the telephone. That was true in 1935 and 1936. I make a great many calls a day and am almost constantly on the telephone. I call East Texas, the Panhandle in Texas, and throughout Oklahoma, Kansas, Arkansas, and Louisiana.

We attempt to get all the actual sales made in the spot open market, and failing to do that we attempt to get, or we do get, the prices at which the refiners will sell to jobbers in that spot open market. It is our regular procedure to collect as nearly as we can the actual selling prices they give us and their mere quotations that have been made. If they have made no sales, then we have to check the next best thing.

There is a little bit of disagreement between what the spot market has been called here in this court room and our understanding. Our understanding is to describe what

the Oilgram reflects. We should say "spot open
1431 market sales". In other words, the word "spot"
refers to the period of shipment, and in the Oilgram we consider spot shipment as shipment within 10 or 15 days after the order is placed. "Open market" refers to sales that are not made on contract nor based on future publications. It refers to sales which reflect the price at which a buyer and seller contact each other and arrive at a flat price. The buyer says he will buy at a certain price, and the seller agrees to sell at that flat price.

Thus, if a sale were made based on a future publication, there would not be any way in which the buyer or the seller would know what price they were going to pay for it until such time as that publication came out. It would not be a sale on the open market, in our classification, because we have no price. The price is very indefinite until the day comes, so we don't consider that type of sale.

We report quotations for gasoline on the Oklahoma, North Texas, West Texas, East Texas, and the Panhandle Texas refinery markets. The Panhandle is a little local market all its own. We also quote the North Louisiana, Arkansas, and Kansas refinery markets. The Louisiana and Arkansas markets were quoted in 1935 and 1936 as two separate markets.

The two largest markets in volume of sales on the
1432 spot market that we report are possibly the Oklahoma
and the East Texas markets. For the Oklahoma refinery market for the years 1935 and 1936 we published quotations for U. S. Motor gasoline 62 octane and below. That is generally what we call third grade. The next bracket was 63 to 70 octane. We had that bracket up to April 22, 1935. At that time we inserted the word "regular" after it, and that was reflecting the general trade's understandng of what regular gasoline was. That understanding was 68-70, and it was a qualification of 63-70 bracket.

On April 15, 1936, the brackets were changed to 62 and below, and 63-67, and 68-70 regular. For U. S. Motor up to April 15, 1936, for the Oklahoma refinery market, we published quotations of third grade, and also for regular which was known as 63 to 70. After April 15, 1936, we published quotations for that market in three different octane brackets: for U. S. Motor, called third grade; for the middle bracket, 63 to 67 octane; and for the regular bracket, which then became 68 to 70 octane. In addition to that, we published quotations for other gasoline of different specifications, based usually on their gravity and end point. That was true for the North Texas, West Texas, and Louisiana-Arkansas markets.

For the East Texas market, during the first part of 1935 we quoted prices for 62 and below, that would be 1433 third grade, and for 63-70. Then on April 23, we discontinued that 63-70 octane bracket because there just weren't enough transactions on that product. So that through most of 1935, and through all of 1936, we published quotations on only one bracket, U. S. Motor, in East Texas, and that was third grade. In addition to that we carried quotations on 60-62, 400 end point in 1936.

We did not make any differences in the Kansas market so that we would be safe in saying that all of those markets, except East Texas, were treated alike.

I understand that most of the major oil companies use the average of the average of the high and low quotations in our Oilgram, taken sometimes in combination with the average of the high and low quotations of the Chicago Journal of Commerce, as their basic price in writing contracts with jobbers in the Standard of Indiana territory. My understanding is that they use the average of our quotations of regular 68-70 when they are finding their basic price for the contracts for regular gasoline they sell the jobbers, and the average of our high and low quotations on third grade when they are determining their basic price on third grade in some of their contracts.

Through 1935 and 1936 I understand that our Okla- 1434 homa refinery market quotations were generally used in the way I have described in the Standard of Indiana territory. I don't believe those contracts made use of our East Texas, Kansas, Louisiana-Arkansas, West Texas, or North Texas markets. During 1935 and 1936 our market quotations for each of those 5 markets may have closely paralleled each other, but I do not recall definitely. I would be glad to look it up for you. I would rather give you something definite than an idea.

There is always a freight differential of roughly 1/8¢ between our Tulsa, Oklahoma, and our East Texas quotations on third grade gasoline due to the fact that East Texas is further away from the marketing area up here. In other words, our East Texas market is figured on the basis of f.o.b. East Texas refineries, and our Oklahoma refinery market, of course, is f.o.b. Oklahoma refineries, which is Group 3. I would hate to say that through 1935 and 1936 our quotations on East Texas third grade gasoline closely paralleled our quotations on Oklahoma refinery third grade gasoline about ⅛¢ apart to account for the freight, unless I definitely looked it up. I would be glad to look it up during a recess.

There must be some inter-relation, I suppose, between these markets for the same quality of gasoline from a competitive standpoint. As a matter of fact, there 1435 is a close relationship between each of the 5 markets we quote due to this competitive situation. That was true in 1935 and 1936.

That paper which you show me is the Tulsa edition of Platt's Oilgram for May 9, 1936. This fine printing at the top is the masthead, that goes out with every edition of the Oilgram, and describes what these quotations down here are.

Mr. Lewin: I wonder if I might offer that one in evidence, your Honor, and describe it here as a typical illustration of Platt's Oilgram?

The Court: You may.

Mr. McAfee: I understand this is being offered merely to show the contents of the paper.

Mr. Lewin: That is all.

The Court: It may be received.

(Copy of Platt's Oilgram, Tulsa edition, May 9, 1936, received in evidence as EXHIBIT 730, and portions read to the jury by Mr. Lewin.)

I don't know what "C. F. R." means in Exhibit 730. "A. S. T. M." is American Society of Testing Materials, and "D. 357-33T" is just a description of a test, as I understand it. "F. O. B. refinery in the district designated" means free on board refinery and that means the price is determined where the refiner delivers it into the tank 1436 car at the railroad, right at his refinery. When we say in the trade prices, "F. O. B. Group 3", we mean that the price is figured as though it were delivered in the tank car to the purchaser in the Group 3 district, even though it may have been delivered into the purchaser's hands in his tank car at some other place. You could, if you wanted, load a tank car in East Texas for shipment to Chicago and you could be paid on the basis of f. o. b. Group 3. If you were paid on that basis, the parties would be regarding it as though you had loaded it and delivered it to the buyer up in Group 3. They would stand the freight differential between East Texas and Group 3. Group 3 is a freight rate district around Tulsa, Oklahoma. Most of the Oklahoma refineries are in that district, as I understand it. Group 3 does not go down into Texas.

In the Oilgram summary, Louisiana and Arkansas are grouped together, but in the regular markets they are not. They are the markets, the ones you have read there, the ones I have in charge and report on.

I write the Mid-Continent news comment which comes next. Then comes the actual quotations reported in detail for each one of these markets. If a jobber up here who has a contract based on the Tulsa edition of Platt's Oilgram wants to know how to figure his basic price, he will
1437 look in this first group of quotations for the Oklahoma
refinery market, and generally he will find for third grade a high and a low, although there have been flat prices. If his contract is based on the average of that high and the low, he would average that figure, and that would give him his basic price on third grade. And if the jobber up here had a contract for regular gasoline based on the Tulsa edition of Platt's Oilgram quotations for regular, average, he would average the high and low quotations for regular.

Most of the major and semi-major companies sell their gasoline to jobbers under contract. Some of the majors sell some gasoline on the spot market, but not a great quantity.

I don't know anything about Standard Oil Company of Indiana's sales. I don't know that it sells anything on the spot market in Oklahoma. I don't believe Socony-Vacuum Oil Company makes very many. The Cities Service Companies, like Empire, do make open market sales occasionally. I wouldn't limit it to one car at a time, but it isn't in large quantities. Everybody is a factor in the spot market, but I don't imagine the Cities Service Companies would be a significant factor. I understand that Cities Service Export Oil Company doesn't sell anything on the spot market. Empire Oil & Refining Company makes
1438 small and infrequent sales in the spot market.

I don't know anything about Gulf Refining Company's sales. I don't believe I have ever checked with Gulf. It hasn't a refinery in Oklahoma. I don't recall any sales by it in Oklahoma or in these other markets that I report. We are now speaking of 1935 and 1936. I don't check with The Texas Company. It would be in about the same category as Gulf. I don't recall it selling in the open market in Oklahoma.

The Pure Oil Company sells in the open market; but there, again, the volume isn't, as I recall, very large, and the sales are rather infrequent. The same thing was true of the Shell Company, Sinclair Refining Company, Pure, Empire, Phillips, and Mid-Continent Petroleum Corporation. The Tide Water Oil Company, which was doing business down there in 1935 and 1936, doesn't sell very much in the open market.

As I recall, Barnsdall Refining Corporation sells on the spot market a little bit more frequently than the other companies I mentioned, and possibly in a little bit larger volume. The maximum amount that it sells on the spot market in a year is something I couldn't estimate. It would be such a wild guess it wouldn't be worth anything.

The Globe Companies have a refinery in Oklahoma,
1439 but they don't sell much from that Oklahoma refinery
in the open market.

Deep Rock Oil Corporation does sell a little in the open market in Oklahoma, possibly the same as Barnsdall.

From Skelly Oil Company's Kansas plant they sell on a Group 3 basis, but we don't include that in our Oklahoma refinery market. In the Oklahoma refinery market Skelly doesn't sell anything on the spot market that I recall. It doesn't sell anything on the Texas markets or the Louisiana-Arkansas markets. It sells something on the spot market in Kansas, both f. o. b. Kansas refinery and on a Group 3 basis from Kansas.

Louisiana Oil Refining Corporation does not sell much on the spot market in the Louisiana-Arkansas field, nor does Wadhams Oil Company. Through 1935 and 1936, I don't recall that we got spot market quotations from Socony-Vacuum Company from time to time, nor do I recall that we got them from Wadhams. We occasionally got open market quotations from Empire and from Continental. Continental doesn't sell a great deal on the spot market in my market—I should say a little bit more like Barnsdall than like Pure and Shell. We do not get spot market seller's quotations from the Gulf Companies, Shell Company, Texas Company, nor Sinclair. Occasionally, we
1440 do from some of Tide Water Companies; we do from
Mid-Continent Petroleum Corporations; very occasionally from Phillips; and we do from Barnsdall, Globe and Louisiana Oil.

The independent refiners sell most of the gasoline that is sold on the spot market in our markets. Champlin, Eason, Bell Oil & Gas, Panhandle, Olney, Omar, Cushing, Waggoner, Taxman, Rock Island, Dickey, Danciger, Shamrock and Wilcox Oil & Gas sell quite a bit in the open market. There are others who sell. I wouldn't say that those were the principal ones that supply most of the gasoline sold on the spot market in the Mid-Continent field. We would have to add some more independents. I would add Anderson-Prichard, Black Gold, Sun Ray, and Johnson Oil & Refining. Johnson is located at Cleveland, Oklahoma, near Tulsa. I would add Vickers Petroleum, and Derby, also, in the Kansas market. Sun Oil Company, at Tulsa, would have to be included on third grade. I think that would just about cover it. With those additions, I would say that group would be the main sellers on the spot market in the Mid-Continent fields.

Looking at the Oklahoma refinery market alone, as to whether we have the principal sellers there, Champlin, Eason, Bell Oil & Gas, Omar, Cushing, Rock Island, Taxman—no, they are in North Texas. Dickey—no, they are in Kansas. Danciger does some brokering of Oklahoma material, and are a factor in that Oklahoma
1441 market. Shamrock, no; they are out in the Panhandle. Wilcox, yes. We would have to add Anderson-Prichard at Oklahoma City, Black Gold at Oklahoma City, Johnson Oil & Refining, and Sun Oil Company, with an office in Tulsa and a refinery in Oklahoma, to have in that list the principal sellers in the Oklahoma refinery market on the spot market. Sun Ray is in Tulsa; they have an Oklahoma plant.

The spot market for gasoline during 1935 and 1936 was generally considered thin. In North Texas, in 1935 and 1936 I think Panhandle and Waggoner sold 68-70 octane gasoline on the spot market. I am not sure about the Taxman Company, whether they sold 68-70 octane in 1935 and 1936 or not.

Q. Do you recall testifying before the grand jury on this subject?

A. I think I did.

Q. Do you recall saying that the only two you knew of in that field was Panhandle and Waggoner?

A. I don't recall, no.

Q. What is your judgment now? Panhandle, Waggoner and maybe Taxman?

A. Yes, sir.

1442 Q. And you can give us some idea of the volume of gasoline that those companies would sell on the spot market, in a month, of that kind of gasoline?

A. I couldn't give you that estimate.

Q. Do you remember giving your best judgment before the grand jury on that at 5 cars a months?

A. I may have, but I don't recall definitely what I said.

Q. Does that refresh your recollection now?

A. No, sir, it does not. I am sorry.

Q. What would be your best judgment of the amount that those companies sold on the spot market during 1935 and 1936?

A. I really would hate to say on that because I don't know definitely.

Q. Would you think it would be more than 5 cars a month?

Mr. Donovan: He said he didn't know, your Honor.

Mr. Lewin: I am trying to refresh his recollection, Mr. Donovan.

Mr. Donovan: He said it wasn't refreshed.

Mr. Lewin: If it eventually turns out that he doesn't know, that is all right.

1443 The Court: Q. Do you know? Do you recall?

A. No, I don't.

It is my recollection that Cosden Oil Company is the only company in West Texas that manufactures 68-70 octane gasoline and sells it on the spot market. I really have no information on which to base an estimate of its sales.

The spot market sellers of that grade of gasoline in the Oklahoma market back in 1935 and 1936 were: Eason Oil Company, Deep Rock—an occasional car, the way I have described, Johnson Oil & Refining Company, Rock Island, Barnsdall, Anderson-Prichard, and Sunray. It would be hard to make a definite estimate as to how many cars a month of that kind of gasoline they would sell in the Oklahoma refinery market, on the spot. I am sure it would exceed 10 cars a month, but as to just exactly how much—

Q. Do you remember testifying on that subject before the grand jury?

A. I probably did, but I don't recall my grand jury testimony.

Q. Do you remember testifying that you would regard the amount of gasoline sold of that character in the spot market in Oklahoma as being largely nominal?

1444 A. No, I don't recall that testimony.

Q. Is your mind refreshed at all by my suggestion?

A. Well, "nominal" could mean anything.

I would hate to estimate, and it would be an estimate, as to how much was moving in the open spot market back in 1935 and 1936 in the Oklahoma refinery market. I have forgotten.

Q. Well, now, could your mind be refreshed by reference to your grand jury testimony on that?

A. Well, I will do my best.

There isn't a great deal of leaded or tetra-ethyl gasoline sold on the spot market. There isn't much of that sold on the spot market because most of it comes under contract. Jobbers have to have a license from the Ethyl Gasoline Corporation in order to handle it. There was only, I imagine, an insignificant amount of leaded gasoline that would be sold on the spot market during these 2 years. We can get gasoline that is 68-70 octane by using tetra-ethyl lead, or by cracking. The 68-70 gasoline that was sold on the spot market in 1935 and 1936 would be cracked gasoline. I think there was some leaded gasoline sold in the open market.

1445 Q. Well, now, I am sorry. I misquoted your grand jury testimony to you when I said that I thought you testified that the amount that was sold in the Oklahoma market of this 68-70 on the spot was largely nominal. I meant to say that you testified that your quotation price you carried on that grade of gasoline in the Oilgram was largely nominal.

Do you recall giving that testimony?

A. No, I don't.

Q. Do you think the grand jury minutes would refresh your recollection?

Mr. Donovan: May we have the same objection, your Honor, as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727?

The Court: Objection overruled; exception allowed.

(Document purporting to be transcript of testimony before grand jury handed to the Court.)

The Court: Q. Speaking about 68-70 bracket. Do you recall testifying before the grand jury on Monday, June 1, 1936, at Madison?

A. I think that was the date, yes, sir.

Mr. Hanning: May I offer an objection to the use of the grand jury testimony as far as this witness is concerned, for this reason: I don't know, of course,

1446 what he testified to before the grand jury. I don't care what he testified to before the grand jury. I don't think that he has indicated by either word or action that he is not trying to tell us what the facts are, as he remembers them.

The Court: I think he is a very refreshing witness compared with what we have had.

Mr. Hanning: Thank you. I just wonder why it is necessary.

The Court: I don't either. I desire to refer to this. I think this boy is trying to be honest.

The Lewin: The Government hasn't made any suggestion at all. He doesn't seem to remember.

Mr. Hanning: Ask him what the facts are.

Mr. Lewin: He doesn't remember. You see, I asked him the facts, and he doesn't remember, and he seems to think that his testimony before the grand jury, which was given over a year ago, might refresh his recollection.

The Court: Ask him the question, and I think he will give us his best recollection on it.

Mr. Lewis: Q. Would you say now that the price you carried in your Oilgram in 1935 and 1936 for 68-70 gasoline in the Oklahoma market were largely nominal?

1447 A. Well, we had sales and quotations to back those prices up.

The Court: Just let me read what he has here. I don't know whether you understand each other. Now, (Reading) "Question: Yes. Therefore, these prices must be based upon only the cracked gasoline data. Am I right?

> "Answer: Yes.
>
> "Question: What is the source of your information for the quotation on 68-70 octane in the Oklahoma market?
>
> "Answer: That price is largely nominal.
>
> "Question: Do you mean it is just a judgment figure, not based on any data? Is that right?
>
> "Answer: That is right."

The Witness: Your Honor, right now I would say that I was just a little bit hazy when I gave that grand jury testimony, and that really from looking over the situation now—

The Court: I don't exactly know what he means, myself, reading this testimony. Do you?

Mr. Lewin: Yes, I think I do.

The Court: Just what is it you want to know?

1448 Mr. Lewin: I would like to know if this witness can tell us about how much data there was in 1935 and 1936 on spot market sales of 68-70 gasoline in the Oklahoma market on which he could base a quotation.

The Witness: Well, we got actual quotations and actual sales during that period. I can't tell you how many quotations we got or how many sales we got.

I would not say that the source of our quotations was first the major companies; they were one of the sources in addition to the independent refiners who were selling and quoting in the open market. With reference to the independents you name, our sources were: Johnson Oil & Refining Company, Eason, Sunray, Deep Rock, a semi-major, and Anderson-Prichard. Barnsdall gave us a few open market sales. I wouldn't make it as broad as a few during the year but they did report sales. I can't remember how often, as it was back in 1935 and 1936.

If sales of 68-70 octane were made in the Oklahoma market and in the spot market and were classified as U. S. Motor and reported to us, we would consider them. I really could not give you the specific information on the volume of 68-70 sold in the open market in Oklahoma 1449 in 1935 and 1936. Comparing it with third grade, it would be smaller in volume. There again you have me, when you ask how much smaller. I don't have any information as to the amount of data that there is to go on there, how much moves on the spot market at our quotations. I don't have any idea of the total amount of gasoline that is sold in the Standard of Indiana territory.

By the Court

I get to work in the morning at 8:30. Generally from 8:30 until 9:30 we handle correspondence and get routine matters laid out. Then, about 9:30, we start checking our markets, either by long-distance or local telephone.

We will call up a refiner and ask him how the market looks to him, and he will say, "Well, it is steady", or "Just a little bit wobbly". "Well, have you made any sales?" "Yes, we made two cars, a two-car sale."

"Well, what grade was that?" "62 and below", or "63-70", or whatever the octane bracket was. "Well, it was third grade." "Well, was that sold in the open market?"

“Yes, it was sold in the open market.” “To a jobber?”
“Yes”, or if he said it wasn't a jobber, we would find out
where that sale was made, whether it was made to a broker
or to another refiner. And if he hadn't made open
1450 market sales that day, we would get his quotations, in
other words, the price at which he would sell to a
jobber if the jobber came to him and wanted to buy gaso-
line, and we would ascertain if that quotation that he gave
us was to a jobber or to a broker or to another refiner. Our
Oilgram prices reflect all that, because those price sales and
quotations are made directly to jobbers in the open market.
Our subscribers are interested very much in another type
of buying, which is contract buying. In other words, ship-
ments against contracts. They are interested in broker
buying. They are interested in the volume of gasoline
that is sold to other refiners for the reason that if your
broker buying is active and the volume is large, that means
that there is just that much less gasoline that has to be—
well, let us refer back to contract buying. If contract buy-
ing is heavy, and there is quite a bit of it moving under
contract to jobbers, that means that there is just that much
gasoline that doesn't have to be sold in the open market.
It is the same way with sales made to other refiners. While
we don't take into consideration those transactions between
refiners, our subscribers are very much interested in it,
because the extent of that inter-refinery buying and the
extent of that contract buying removes just that much
1451 gasoline that has to be sold in the open market. Broker
buying is also a factor in that it removes gasoline
from the market.

I call up this man to inquire the volume of gasoline he has sold, the number of cars, the grade, and the price. On the average we call everywhere from 15 on up to as high as 30 or 35 refiners a day. In arriving at the price inserted in the Oilgram we take into consideration the volume of sales at each price, and, for instance, if we have sales reported at 5⅛¢ and 5¼¢ and 5⅜¢, our price range would be 5⅛¢ to 5⅜¢.

We have to take into consideration also the factor of volume. In other words, if there had been quite a bit of material sold at 5¼¢ and there is just one car at 5⅛¢, it could hardly be said that that 5⅛¢ sale was really representative of the market. So we do consider and give consideration to the volume or the number of cars sold.

By Mr. Lewin

In West Texas, Cosden was the only concern in 1935 and 1936 that sold 68-70 gasoline on the spot market, and was the sole source of information on 68-70 gasoline as I recall. I checked with Cosden very frequently in order to ascertain his quotations. Of course, that was just a local market. I will give my best recollection about how
1452 much gasoline was sold in that market by Cosden on spot of 68-70 during those years, but I have very little recollection to base it on.

Mr. Lewin: Your Honor, I don't mean any sinister implication at all, but I wonder if I might ask the witness to help him at all by refreshing his recollection? I don't mean to imply that I am impeaching him in the slightest degree.

The Court: No, I know.

Mr. Lewin: Q. Mr. Steiger, do you remember testifying on that subject before the grand jury about Cosden?

A. I may have. I don't recall just what I said, though.

Q. Do you think your mind is fresher about Cosden since 1935 and 1936 over a year ago before the grand jury?

A. I imagine.

Q. If I told you that in your opinion Cosden sold 1 or 2 a month in the spot market during 1935 and 1936, would that refresh your recollection at all?

A. My idea would be that there was more sold by Cosden in the open market.

Q. Than 1 or 2 cars?

1453 A. Yes, sir.

Q. Would it more likely be 2 to 4?

A. Really, it should be increased considerably more than that. I don't know what basis I said that on. I may have meant—what was that again?

Q. 1 or 2 cars a month sold by Cosden on the spot market of 68-70 gasoline.

A. I would be inclined to say I mistook your question for daily sales rather than monthly sales.

The Court: Q. Now, your best recollection now is that it would be that many cars a day?

A. That would be my best recollection, yes, sir. The Tulsa, Oklahoma market, compared with the West Texas market of 68-70 on spot market gasoline in 1935 and

1936, naturally would be more moving. My best recollection is that the amount of sales on spot would possibly be around 10 or 15 cars a day in Oklahoma. I really have nothing definite to back that up with.

I think Mr. Platt instructed me to make a survey of the extent and volume of the spot market gasoline in 1936.

1454 I made that survey, but I do not have it; the grand jury has it, I am sure. That is my impression, that they did have it. I conducted the survey of our markets, and I did the checking. The survey covered a week or 10 days, but it may have been longer than that; let us say about 2 weeks.

I recall that I had trouble in getting sales of some of the companies. I called them, but they were a little bit negligent in giving that information to me. I recall that several of them indicated it would be too much trouble getting that every day, and, "so we will lump the figure up at the end of the week." We did have a little trouble getting information for that survey. Sometimes fellows in the oil offices just forget to get it for us.

I don't know the percentage of gasoline moving from East Texas into the open market on spot. I recall that most of it moved on spot. In 1935 or 1936, quite a bit of that spot market gasoline in East Texas moved to the major companies. I can't tell you whether 70% of it did.

Q. Do you remember giving that figure before the grand jury?

A. No, I don't.

Q. That doesn't refresh your recollection at all?

The Court: He says it doesn't.

1455 In the Mid-Continent field, compared to the total volume of material sold, the percentage of gasoline that is refined in the Mid-Continent field and sold on the spot market, that is third grade and regular and any other specification gasoline, isn't so very large, but I don't know it just exactly. It would be a rough estimate.

Q. Would you say from 3% to 5%?

A. Why, I don't know.

Q. Well, was that the figure you gave before the grand jury?

A. I don't recall—it seems it was somewhere around there, but—

Q. Somewhere around there?

A. Is that what I said?

Q. Yes, sir, that is what you said.

Mr. Donovan: If the Court please—

A. 3% to 5%?

Mr. Lewin: Q. 3% to 5%.

Mr. Donovan: This is an improper way to carry on a cross-examination. I object to it; calling for a guess.

Mr. Lewin: Q. Is that your best recollection now?

The Court: The jury will give what weight they 1456 wish to it. The man says it is a rough estimate. It is his best memory on it. If he doesn't know, he doesn't know. That is all. Exception allowed.

Mr. Lewin: This is true, isn't it, Mr. Steiger: You did know in those years, didn't you?

A. Oh, no, I didn't know the percentage, no, sir.

Q. Didn't you know the approximate percentage?

A. No, I think that estimate that I gave before the grand jury was also just an estimate, and I don't believe—I am sure I didn't have any figures to back me up on it. It was just an estimate.

Our usual source of information on sales and quotations comes from the sellers; we check the buyers as well, but it would be an impossibility to check all the buyers. We check with the brokers who buy, and we also check with Purity Oil Company, a jobber, at Springfield, Missouri. Purity Oil Company is the only jobber we checked with, but you have got to consider that there are very few jobbers within our Mid-Continent refining area down there. Most of those jobbers are up here in the Standard of 1457 Indiana territory. Of course, we get a double check from our Chicago office. They quite often give us information as to what the jobbers report as their buying prices; so that would act as a sort of a double check. When we ask an independent refiner for his sales, he tells us first the amount that he has sold, but he doesn't generally tell us to whom he sold it. What I mean is that our Chicago market checks with jobbers, and they relay to us information that they are able to obtain by talking to jobbers up here in the Indiana territory. We can't definitely tell from that whether they are the jobbers that these independent refiners sold to or not.

Q. Doesn't it come down to this: You have to take the word of the independent refiner who gives you his quotation or his sale price; and you can't, except in unusual cases, find out the name of the purchaser and check with him to see whether he paid that price.

A. Well, I imagine the refiners would give me that information if I asked for it, but generally I don't.

Q. Now, through 1935 and 1936, then, you did as I say, take the word of the seller in the usual case?

A. Yes, that is right.

1458 Q. And you didn't, as a matter of fact, check with the purchasers, except with the Purity Oil Company?

A. Yes, that is right, because there are very few jobbers down in our refining area who buy in the open market.

Q. Now, then, your data for making up your quotations is confined to sales prices that the independent refiners give you, quotations that the independent refiners give you, and quotations that some of these major oil companies give you?

A. And sales that they should happen to report to us.

We don't publish or reflect brokers' prices in our Oilgram markets, but we do check, and they, in turn, act as a double check as to jobber prices. For instance, the average broker generally, in an ordinary market, can buy ⅛¢ and possibly ¼¢ below what the jobber buys at, and he keeps that ⅛¢ or ¼¢ as his commission. Therefore, if we should happen to find that a broker is able to buy at ⅜¢ or ½¢ under the jobber price, and if we are pretty sure that the material is up to specification, that might immediately put us on our guard that there was some possible weak-
1459 ness in the market. In that way, we would use brokers' sales as a double check against jobber prices. Of course, we never took into direct consideration these resale or broker transactions.

Q. Well, now, do you do this in the usual case: Call Champlin, for instance, and say, "How much gasoline have you sold today on the spot market." He says, "I have sold 10 cars."

Then do you find out from him the broker to whom he may have sold it, and go and see that broker, or call him on the phone, and say, "How much did you pay for those 10 cars?"

A. No, Champlin, if they reported a resale deal, would report to us the price at which it was sold.

We would not take that as being the price on which to base our quotations. We wouldn't use that broker deal directly, because we don't consider broker deals in our

prices. We would not make an adjustment for the jobber
sales, because we never make any adjustments. In other
words, if it isn't sold directly to a jobber, we don't con-
sider it in our prices. It has got to be made to a jobber
before we consider it. As an illustration, I call
1460 Champlin and say, "How many cars have you sold
today?" "Well," he says, "I have sold 15 cars; 5
of them to brokers, and 10 to jobbers." And I say, "At
what price did you sell to brokers?" He gives me a price,
and I probably would write that down on a slip. I then
would say, "What price did you sell the 10 cars to the
jobbers at?" He gives me another price, usually about
⅛¢ higher than he has sold the jobber; and I write that
down. It is pretty hard for me to check on Champlin to
be sure he has told me the right prices. I generally don't
do it. We don't check specific instances like that. But we
use broker purchase prices as a sort of barometer of what
might be going on in the open market. If brokers generally
can buy at, say, ⅜¢ or ½¢ under the market, that imme-
diately makes us wonder if the market isn't weak.

We call the independent refiners, and get from them the
amounts of sales, the character of sales, and the prices;
and we do that with all the independent refiners that are
selling on our spot market. Then we call these various
major companies, and get from them the same information.
Then, in addition to that, we call Purity Oil Company every
once in a while, and ask Purity Oil Company how they find
the market. Generally, Mr. McKane of Purity Oil
1461 Company says, "Well, I am able to buy at a certain
price." Then we call the brokers and ask them how
they find the market. We don't specifically try to put these
two things together, the buyers on the one side, with the
sellers on the other, to determine whether the data we have
gotten from the sellers correctly checks with the buyers,
but in a general sense we do.

It is on the basis of that data, plus the information we get from brokers as to their selling prices to jobbers, that we then apply our judgment and make up our quotations for the Oilgram. In the case of a broker's sale to a jobber, if we are talking about the Oklahoma refinery market and if that gasoline originates in Oklahoma, we would consider that broker's sale to a jobber in our Oklahoma market, providing it met all the qualifications.

Q. Then your quotations, as I understand it, in the Oilgram, are judgment figures, based on the data such as you have described here, mainly from the selling companies, as to volume and price?

A. They are the result of that check, yes, sir.

Q. Well, is it a check? I wonder if it is?

A. Why, it certainly is a check.

1462 Q. All right. Well, I just wondered if we understood each other. My idea of "check" was that you get a price here (indicating), and then you check it against some other data here (indicating), to see if it is right. You don't do that?

A. Well, I was using it in the sense that we are asking for information.

(Exhibit 716 is displayed before the jury and the witness.)

It is my recollection that the major oil companies were buying gasoline on the spot market in January and February, 1935. I don't believe there was as much bought during January and February as later on. I remember that during that time the spot market quotations, as published in the Oilgram, were fairly low and somewhat fluctuating, as compared with the rest of 1935.

I have used a term here, the term "inter-refinery buying", which signifies just what it says. "Inter" means between, and "Inter-refinery" would be transactions between refineries. As applied to 1935 and 1936, it would mean transactions between independent refiners selling on the one hand and major oil companies buying on the other.

In the strict sense of the word, that is not what we
1463 really mean by "inter-refinery buying." We would
consider a purchase made by an independent from another independent as an inter-refinery deal, of course. You would be surprised how many of those there were in 1935 and 1936. There were quite a few of them. Of course, the major company buying was heavier in volume. There was more buying by majors from independents in 1935 and 1936 than there was by one independent refiner from another independent refiner.

I believe that, beginning about March, 1935, there was an increase in that kind of inter-refinery buying between major companies and independents, over what it had been in January and February. It is my recollection that that kind of inter-refinery buying continued from March 3, 1935 on through the rest of 1935, both in the East Texas and Mid-Continent fields. We kept in contact with that situation and repeatedly pointed it out in our market leads.

We found out about the major company buying directly from the major companies. We got some of our information from the East Texas Marketing Association; we con-

tacted Mr. Bradshaw on that. We got information from him regarding the purchases that he had handled. We got information along that line from Mr. Jacobi of Wad-
1464 hams Company; he told us of the volume of purchases in the Mid-Continent field, and sometimes gave us the price at which that was purchased. Mr. Neil Buckley would give us information as to his company buying, and also quite often he would indicate to us that there had been inter-refinery major company buying down there, and sometimes gave us the volume and the prices. Generally he did not specify to me any major companies, but I understood it was the price, if he gave it to me, which they were paying.

I knew that Shell was buying fairly consistently down there in East Texas during March, 1935, down to the end of the year and into 1936. This is just my recollection, of course. I remember Pure having bought down there. I don't know about Cities Service. It is my recollection that in the first couple of months Cities Service Export Oil Company bought large quantities in East Texas. I understood Sinclair was buying.

I understood that Mr. Bradshaw was buying for Gulf; he told me of a lot of purchases that he had made for Gulf, in addition to other purchases. It seems to me as though he bought for Texas Company, but I am a little hazy on that. I understood that Texas Company was
1465 buying in that field in 1935; although I did not get the information directly from Texas Company. I do not recall from whom I got that information. I think Continental Oil Company was buying in the East Texas field. Tide Water Oil Company was buying, but I don't know where. I think Louisiana Oil & Refining Company was buying. I think it was buying in the East Texas field, but it would be a guess.

I do not recall that Standard of Indiana was buying from the independent refiners in the Mid-Continent field during this period. I know its representative in Tulsa, Mr. Ira Smith. I do not believe he ever reported that it was buying. Walter Paul Jacobi did not tell me that Standard of Indiana was buying. I understood Socony-Vacuum Oil Company was buying in the Mid-Continent. I generally class Socony-Vacuum and Wadhams as one. I would not be sure on Sinclair. I think Shell bought in Oklahoma. It is my recollection that Empire bought. I think Pure bought in East Texas, but I would not say in Oklahoma. I think Phillips bought during that period. Mid-Continent did. I think Continental did. Skelly bought in Oklahoma.

It is my impression that Barnsdall bought, too. I don't know about Globe.

1466 Mr. Lewin: Q. What did Mr. Jacobi tell you about the buying by major companies in the Mid-Continent field?

A. In our conversation, Mr. Jacobi quite often gave us the volume of gasoline that had been bought. Occasionally he gave us the price at which it had been bought. I do not recall that he ever indicated who was doing that buying; and that is about the extent of our conversations with Mr. Jacobi.

Q. Did he mention the phrase "dancing partner"?

A. I do not recall that he did.

Q. You recall hearing that phrase, don't you?

A. I have heard of that phrase, yes.

Q. Did you hear of it during this period we are speaking of?

A. I think I did.

Q. Are you sure that you did not hear it from Mr. Jacobi?

A. I am pretty sure that I did not.

Q. Well, did you testify on that subject before the grand jury?

A. I don't know. I may have.

1467 Q. Would your mind be refreshed if you were referred to your grand jury testimony on that subject?

A. I will do my best.

Q. 3646.

Mr. McAfee: May it be understood we have an objection to this entire line of testimony now being asked by counsel?

Mr. Donovan: May I have the same objection also as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727?

The Court: The record will show your objections. Exception allowed.

I was talking with Mr. Jacobi a couple or three times each week during 1935 and 1936, but I would not say that I talked to him each time on major company buying. I should say that on most of those occasions I did talk about that. I would not call him my principal source of information on the subject. He was a good source of information, I think. He did not give me any of the details about the way in which that buying was being conducted in the Mid-Continent field.

I do not recall that it was Mr. Jacobi who mentioned the word "dancing partner". I know it was men-
1468 tioned, or that I knew of it, and that it was mentioned
back during 1935 and 1936, but I don't know whether it was Mr. Jacobi who mentioned it or not. The word "dancing partner" just meant to me that one major company was buying fairly regularly from an independent company.

I didn't know who the dancing partners were, or what the line-up was, but I was pretty sure that this interrefinery buying, the buying by majors from independents, was fairly regular during that period. It was my idea that, during that period, there were dancing partner arrangements so that one major would be buying from a certain independent or certain number of independents, but I didn't know who they were buying from. I did not know the names of the dancing partners. It was my belief that throughout that period there was that arrangement. Now, if you pin me down as to just exactly what facts I did know, I do not believe I really definitely know so much about it, but it was my belief that that arrangement was throughout 1935 and 1936.

I testified that I talked with Mr. Buckley throughout 1935 and 1936, but it was not on the same subject. Of course, Mr. Buckley was, one might say, lent to the East Texas Marketing Association, and as such he tried
1469 to help them in their program of getting a wider
outlet for that East Texas gasoline. As far as Mr. Buckley was concerned, his information was mostly along the line that there has been so much gasoline bought down there, and sometimes he gave me the price, too. That was about all definitely that I knew down there. Down there it was mostly a selling program on the part of those East Texas refiners who were members of that Association.

I knew that Buckley was contacting various major companies to get them to buy there. I understand that his efforts were not confined to his own Cities Service Export Company. I would not say that he was doing that generally throughout 1935 and 1936, although he was active at times during that period. It was my understanding that the major companies were the principal purchasers through the East Texas Association.

We knew that the major companies were buying surplus gasoline in these two fields and we so stated in our market leads. Our ideas of surplus gasoline was the gasoline that was left over after the refiner's contract customers had taken out their requirements, after his regular buyers in the open market had come in and taken theirs, and it was that gasoline left after they had exerted all efforts to attempt to sell it. That gasoline 1470 left over was distress.

Q. Do you mean after they had exhausted their efforts to sell it at the going market price, or after they had exhausted their efforts to sell it at any price?

A. Well, that is rather a broad question, and it would have to be a broad answer, but there were attempts to sell it at lower prices, too, and that was a factor in there. I should say that really—you really could not pin me down to a direct answer on that, because some of those refiners did try to get rid of it at possibly lower prices.

From my knowledge of market conditions there I understood that that gasoline might have been sold at lower prices. It probably could have been if they had shaved that price quite a bit. I feel that most of it was not sold at lower prices because the major companies bought it; and we pointed that out also in our market leads.

I could not directly attribute my understanding of this to what Mr. Jacobi and Mr. Buckley said. I could not say definitely that I got that information directly from Mr. Jacobi or from Mr. Buckley, because we were checking many reports at that time, and I would hate to 1471 pin it down on any two people.

The major companies were taking a substantial part of this gasoline on the spot market during those years, although I couldn't definitely give you any idea of the amount. Quite often in East Texas there were several hundred cars bought a week, and it is my impression there was more bought in East Texas than there was up in Oklahoma and North Texas and Kansas. The major companies were buying possibly somewhere around 700 or 800 cars a month of this surplus gasoline in East Texas during this period. My guess is that up in the Mid-Continent the major companies were taking just a little bit less than in East Texas. That is my impression, looking back now. I do not understand that the amount the major companies were taking in those two markets was fairly constant throughout 1935 and 1936, because I remember that, in looking over my Oilgram leads, the amounts that we reported varied from week to week.

This buying by the major companies of surplus gaso-

line was one of the factors that lent support to that steadiness in the market. Of course, it would take an expert economist to figure out just exactly how much effect that major company buying had, and just exactly how much effect those other factors had, or the degree of their effect on that market. It was diminishing
1472 the supply of gasoline that otherwise would be sold
in the trade to the jobbers and brokers in the open market.

I do not believe that in our market leads we labeled this major company buying as a "buying program," because just the previous year, back in 1934, we had had some buying pools and buying programs. Back in those days there were pools and programs in that the resources of the companies were pooled together, and out of that central fund gasoline was supposed to be bought. Well, now, in our mind that was a pool or a program. It was a highly organized sort of thing, and in my way of thinking the line-up in 1935 was different from that. It was looser, and it was more individualized. The individual companies were buying individually, so from that angle in our mind it would not be a highly organized program or pool, and that is why we did not call it a pool or a program. We repeatedly mentioned it as inter-refinery buying and major company buying, and told just exactly what effect it was having on the market; that it was a factor, but we did not call it a program or a pool for that reason.

In Mr. Jacobi's talks he generally said, "Well, I understand there has been 200 cars bought up by majors". I do not recall him ever calling it a program or a
1473 pool. Of course down there in East Texas it was
mostly a selling program. In talks with Mr. Buckley he would give me the volume that had been bought by major companies. I do not believe he ever called it a pool or a program there, that is, I do not recall him having mentioned it.

I did not discuss this question very often with Mr. Fitzgerald. He has told me of this major company buying at times, but not as frequently as Mr. Jacobi and Mr. Buckley. I do not recall any long discussion with Mr. Fitzgerald on this subject. I recall that I was planning to write an article for the National Petroleum News at the end of the year, and that I wanted to get more detailed information with regard to the causes for the shape of the price graph during 1935. I contacted Mr. Fitzgerald and many other refiners for that story. It was a resume of

the market during 1935. I had a discussion with Mr. Fitzgerald in December, 1935; he discussed major company buying and its effect. It was a factor in the market; I think he discussed it with me and said so. He did not go into details about this major company buying in that discussion with me. We just described the effects of major company buying on the market, as I recall it. In other words, it was a market resume of 1935 and major
1474 company buying was a factor in 1935, and as such we tried to get information and did get information as to that major company buying.

Mr. Fitzgerald didn't tell me in substance in that discussion that small independent refiners had been allotted to the major companies. I don't recall whether that was a personal interview, or whether it was over the telephone.

Q. Do you remember testifying that he did in substance tell you that small independent refiners had been allotted to each one of the majors?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 727.

The Court: Objection overruled; exception allowed.

A. Well, that wasn't my understanding. I knew, and he probably discussed that refiners were buying fairly regularly from independents.

(Document purporting to be transcript of testimony before grand jury presented to the Court by Mr. Lewin, and examined by the Court.)

The Court: There is nothing inconsistent in that.

Mr. Lewin: Q. Is it your testimony now that he didn't go into the details of this major company
1475 buying with you?

A. That is my recollection now, that he didn't go into those details.

Mr. Lewin: Would your Honor look at this portion?

(Presenting document purporting to be transcript of testimony before grand jury to the Court.)

The Court: Q. When you appeared before the grand jury in Madison, on June 2, 1936, were these questions asked you, and did you make those answers?

"I probably talked to Fitzgerald.

“Question: Of whom?

“Answer: Mid-Continent.

“Question: What is his full name?

“Answer: T. E.

“Question: And his position?

“Answer: He is assistant to Mr. McDowell, who is sales manager and vice-president.

“Question: You do not say probably. You know you talked to him, don't you?

“Answer: All right, I did.

“Question: Be as positive as you can be, without telling an untruth.

“Answer: All right.

1476 “Question: You wrote this article in January, wasn't it?

“Answer: Yes, sir.

“Question: What did Fitzgerald tell you, in substance?

“Answer: He explained the buying by inter-refineries—

“Question: Not by ‘inter-refineries’. He explained the buying by major companies from smaller companies?

“Answer: Yes.

“Question: He did?

“Answer: Yes.

“Question: Won't you tell us that?

“Answer: All right.

“Question: You are not writing an article for The Petroleum News now. You are testifying under oath in a federal investigation.

“Answer: All right.

“Question: What did he tell you?

“Answer: He went into some details.

“Question: He did? Will you go into detail and tell us how that worked?

“Answer: Well, as I remember, there was merely a summing up of what had happened and the buying by these major companies.

1477 “Question: Did he tell you that started in March?

“Answer: I don't believe he told me when it started.

“Question: Did he tell you it was still going on?

“Answer: I am pretty sure he did.”

The Court: I don't see anything at all inconsistent.

Mr. Chaffetz: He did say Mr. Fitzgerald went into some details.

The Court: Well, if you are going to pick out one answer, but when you read it all and get the color and the shading and the full understanding, there is a different light on it. I think, as to this witness, there is nothing inconsistent in his testimony now with his testimony before the grand jury.

Mr. Lewin: Q. Now, did Mr. Fitzgerald tell you in substance that one major company was supposed to buy from one of the independent refiners?

A. I don't believe he did.

Q. Did you so testify before the grand jury?

1478 A. That they did?

Q. That he did tell you that?

A. In substance, I don't believe that I said that he did.

Q. All right—

Mr. Hanning: Your Honor, they just got through asking him.

Mr. Lewin: All right, give me 3644. I respectfully ask your Honor to look at that, and if you see fit to question the witness about it (presenting document purporting to be transcript of testimony before grand jury to the Court).

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

The Court: Q. Again referring to your testimony before the grand jury on that date:

> "Mr. Boyle: Can't you state what that was?
>
> "Answer: That was it.
>
> "Question: State it in your own words, into this record.
>
> "Answer: In this talk with me, he said, the substance of his talk was that the major companies were buying from certain other refiners.
>
> 1479 "Mr. Lewin: That is, that the majors had gotten together and agreed that each one that participated in the program should look after a small refiner who had excess stocks, is that right?
>
> "Answer: In his conversation, that was sub-

stantially it, that one major company was supposed to buy from one of the independent refiners."

Now, there is nothing inconsistent with his testimony here, in that testimony before the grand jury.

Mr. Chaffetz: May the witness be asked whether his testimony there is the fact, is true?

The Court: He has already answered that there was inter-refinery buying, and the majors were buying from the small refiners; and he has also said he knew something about the dancing partners. He has covered that thoroughly.

Mr. Lewin: But he hasn't testified that Mr. Fitzgerald told him that, Mr. Fitzgerald being a defendant in this case.

The Court: Q. Did Mr. Fitzgerald tell you that?

A. He told us that refiners, that major companies
1480 were buying rather regularly from independent refiners.

Mr. Lewin: Q. Now, did he tell you that they were allotted, one major company to certain independent refiners under this dancing partner arrangement, or the substance of that?

A. I don't believe he did.

Q. Does this grand jury testimony refresh your recollection, that was read to you?

Mr. Hanning: I object, your Honor, because it is very evident from what was read out of the grand jury record, that Mr. Lewin was putting words in the witness' mouth. Mr. Boyle asked a question, and the witness answered it in front of the grand jury just as he has answered it in this courtroom; and I don't believe the Prosecutor ought to be permitted to continue to put words in the witness' mouth.

The Court: It is very apparent that that was done before the grand jury.

Mr. Lewin: I submit that it was perfectly proper procedure.

The Court: It is very apparent that it was a very leading question, and suggesting the answer you wanted before the grand jury.

1481 Mr. Lewin: And I submit that this witness could take care of himself and answer it in his own way, and he answered truthfully.

The Court: I still say it was a very leading question. Now, let's have no more discussion on it.

By Mr. Lewin

Mr. Fitzgerald was Mr. McDowell's assistant. Mr. McDowell is vice president in charge of sales, as I understand it. I did not learn from Mr. Jacobi anything about Mr. McDowell. I knew that Mid-Continent was buying, but I don't recall that Mr. Jacobi indicated that Mr. McDowell was in the program. I don't believe Mr. Jacobi indicated that Mr. Tuttle was in the program, although I knew that Empire was buying. I don't recall ever having talked to Mr. Tuttle on that subject, because I didn't talk with Mr. Tuttle very often. I generally talked with Mr. Trapp, his assistant. I don't remember having any discussion with Mr. Tuttle in which he mentioned the program.

Q. Do you remember so testifying before the grand jury?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

1482 A. No, I don't.

Q. Do you remember having a discussion, one talk with Mr. Tuttle during this period, in which he mentioned the program?

A. I can't recall it, no, sir.

(Document purporting to be transcript of testimony before grand jury presented to the Court by Mr. Lewin, and examined by the Court.)

The Court: Q. Again referring to your grand jury testimony:

"Question: Now, Tuttle.

"Answer: I very seldom talked with him.

"Question: Very seldom.

"Answer: Yes, very seldom.

"Question: But how about those few times where you did?

"Answer: I venture to say I only talked with him one time during the period in question.

"Question: What?

"Answer: I only talked with Mr. Tuttle one time during the period in question.

"Question: In that conversation he told you about the program, didn't he?

"Answer: He mentioned the program, yes, sir.

"Question: What did he call it—inter-refinery buying?

1483 "Answer: I don't recall what Mr. Tuttle,—how he explained it or how he expressed it.

"Question: When you talked with Mr. Tuttle you discussed the program, and you don't know what he called it?

"Answer: I don't remember what he called it.

"Question: You called it inter-refinery buying?

"Answer: That was usually my—that was my expression of the major buying—major company buying.

"Question: But he discussed it in some detail?

"Answer: No, he never did go into detail much on that.

"Question: He said he was active in it, didn't he?

"Answer: That was the intimation, yes. He did not come out and say definitely.

"Question: And he mentioned McDowell, Bourque and Buckley?

"Answer: He did not mention them."

The Court: Any more?

(no response)

1484 Mr. Lewin: Q. I wonder, Mr. Steiger, if that refreshes your recollection as to whether or not you did have one conversation with Mr. Tuttle in 1935 or 1936, in which he mentioned the program?

A. I am sorry, but it doesn't refresh my memory.

Q. All right, sir.

A. I would like to be able to answer it, but I can't. It just doesn't click.

I have talked with Mr. Bacon, who is in charge of crude oil purchases for Shell Petroleum Company, quite frequently. His headquarters are in Tulsa. We discussed inter-refinery buying; and Mr. Bacon some time or other told me of purchases that his company made. My best recollection is that we were talking of just individual buying by Shell Petroleum, not about any program.

Q. Could your mind be refreshed, you think, on that subject?

A. I will do my best.

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

Mr. Lewin: Will your Honor look at page 3678 of that record.

1485 (Mr. Lewin hands document purporting to be transcript of testimony before grand jury to the Court.)

The Witness: You see, we were talking with refiners every day and it is hard to isolate what one of those refiners said at any time.

Mr. Lewin: Q. I appreciate that. And that is my only purpose in trying to refresh your recollection now.

A. Well, I am trying.

The Court: Q. The question is this, again referring to your testimony before the grand jury:

> "Mr. Lewin: Now, you told me that you talked with Mr. Bacon of Shell, about the program.
>
> "Answer: That is right."

Mr. Lewin: Q. Does that refresh your recollection?

A. No, sir, it does not, because it doesn't give me anything concrete to think back to.

I have talked with Mr. Cunningham of Continental Oil Company quite frequently and he probably told me of his company buying. I don't believe he talked to me about any major company buying program. I don't recall anyway.

I had a talk with Mr. Chamberlain of The Pure Oil Company on this subject. There a specific instance stands 1486 out in my mind. I talked with him quite frequently; and at one time he told me that he was buying fairly regularly from the East Texas refiners. At that time I am sure that he mentioned the name, but I can't recall who that East Texas refiner was. He probably did say something about other major companies buying, but I don't recall what he said about that.

I had some talk with William Tracey of the Sinclair Company on the subject. He never discussed the East Texas buying program. He discussed his company purchases; and, as I recall, he sometimes gave us information that he had picked up regarding the volume of gasoline that other refiners had bought in East Texas. Certainly, we all knew about the Texas Marketing Association.

Q. I wanted to know whether Mr. Tracey talked to you about an East Texas program of any kind.

A. Well, if you consider this East Texas Marketing Association more or less of a selling association and a selling program, consider the selling program, we did talk about that.

I don't recall any specific instance that he did actually say a certain company is buying, but it seems to me that he has passed on to me information that he has obtained in his checking of the market situation down there.
1487 He passed on to me the fact that there has been major company buying.

Q. Do you remember when I was examining you before the grand jury I tried to get you to distinguish between Mr. Tracey's own purchases and major company purchases, that is, by a number of major companies?

A. I don't recall that. That grand jury testimony is rather hazy because it has been so long ago; and I was on there for—I don't know—I think about three days, and I just can't recall.

My calls with Mr. Landsittel of the Globe Company weren't so frequent as with Mr. Chamberlain and the others that I have named; but we possibly did talk about his company buying from independents. I don't recall that a buying program was mentioned by Mr. Landsittel in that conversation.

I don't recall that I ever talked with Harry J. Kennedy of Continental Company. I can almost definitely say that when I called Continental Oil Company I either talked with Mr. Cunningham, or Mr. Cunningham's assistant. I don't recall ever having talked with Mr. Kennedy.

Q. Do you recall testifying upon your appearance before the second grand jury on December 21st that
1488 you talked with Mr. Kennedy of the Continental Company consistently?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. If I did, I was wrong. If I said that, I was wrong. Because we talked with Mr. Cunningham generally when we called Continental, we talked with Mr. Cunningham or Mr. Norris, his assistant.

Q. Did you talk with Mr. Kennedy on several occasions after March 1, 1935, on this subject?

A. I don't recall any time that we called Mr. Kennedy.

Mr. Lewin: All right. I respectfully ask the

Court to look at this testimony before the second grand jury.

(Mr. Lewin hands document purporting to be transcript of testimony before grand jury to the Court.)

The Court: Q. Again referring to your testimony before the grand jury on Monday, December 21, 1936:

"Mr. Lewin: Mr. Steiger, I neglected to ask you this morning whether you knew Harry J. Kennedy of the Continental Company?

1489 "Answer: I talked with him consistently, yes.

"Question: He, I understand, is vice-president in charge of marketing for that company?

"Answer: I think that is his position.

"Question: Was his office at Ponca City, Oklahoma?

"Answer: Right.

"Question: And he succeeded Mr. Edward Karstedt in that position?

"Answer: Yes.

"Question: You talked with him on several occasions since March 1, 1935?—

"Answer: Right.

"Question: And in the course of those discussions you and he have discussed the major company buying program and the way in which it was stabilizing the markets, in general terms?

"Answer: Yes, I am very sure that that is the truth.

"Question: So that from things he said to you, you felt confident that he knew all about the situation?

"Answer: Yes.

"Question: Do you know Mr. William H. Tracey of Sinclair?"

1490 The Court: Now, what do you want to know?

Mr. Lewin: Q. Did you hear his Honor read that testimony?

A. Yes, sir.

Q. Would you say that at the time you gave that testimony that your recollection on that subject was better than it is now?

A. No, sir, because I tell you,—I must have misunderstood your question. I must have misunderstood you as having said "Cunningham" because really I don't recall ever having talked with Mr. Kennedy.

Q. Did Mr. Cunningham succeed Mr. Edward Karstedt in his position with the Continental Oil Company?

A. I don't believe so.

Q. Who did?

A. Mr. Kennedy, is my best recollection,—that it was Mr. Kennedy.

Q. Do you recall upon that testimony that you were asked whether this man you talked with wasn't the man who succeeded Mr. Karstedt?

A. Well, in the testimony I did say, if that is the testimony I did say that Mr. Kennedy succeeded Mr. Karstedt; but I must have been laboring under the 1491 impression that you were talking of Mr. Cunningham all the time; because I don't recall ever having talked with Mr. Kennedy of Continental Oil. I must have just had the wrong impression of who you were talking about.

Q. Mr. Steiger, would you say that that testimony which you gave in regard to Mr. Kennedy was true as regards Mr. Cunningham?

A. Well, now, I can tell you—

The Court: Just wait a minute. You asked a question about Mr. Cunningham. Now, if you want to know about Mr. Cunningham, ask the question directly.

Mr. Lewin: I did do so.

Mr. Lewin: Q. When you got prices from Mr. Jacobi as to what major companies were paying in this inter-refinery buying, how did those prices that he gave you compare with the prices you were getting at the same time from independent refiners as to their selling prices?

A. Well, of course, we checked with the refiners for their sales and quotations directly to jobbers in the open market; and after finding that information out, it is my recollection—now, this is just a recol-1492 lection, too—that after finding out those jobber prices, the prices at which independents or others who were selling in the open market to jobbers,—after finding that price, it seems to me as though those prices, which the major companies purchased it, was lower than that,—lower than the jobber prices in the open market.

I don't recall that the major company buying prices reported to me by Jacobi were at times higher than the prices I was getting from the independent refineries at the same time. It seems to me that there were times when the major company buying prices were the same as what we found were the prices on sales which refiners had made to jobbers.

The Court: Restate your question. You want to know whether from June 7th on, Jacobi's prices were identical with the prices that you got from refiners?

Mr. Lewin: Precisely it.

The Court: Q. Then, answer it.

A. Sometimes they were.

Mr. Lewin: Q. Were they generally so during that period.

A. It is a pretty broad statement.

Q. Can you answer it?

1493 A. I don't believe they were generally at the low or the same as our low.

Q. Were they generally the same during that period?

A. I don't believe they were the same. There were times when they were the same, but I don't believe you could say they generally were.

Q. Were there times during the period, March 1, 1935, throughout the rest of that year, in which they were higher than—Jacobi's prices given you were higher than the prices you were getting from independent refiners?

A. I don't recall that they were.

Q. If we read the testimony to you on that subject before the grand jury, would it refresh your recollection?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. I will do my best.

(Document purporting to be transcript of testimony before grand jury passed to the Court by Mr. Lewin.)

(The Court reads silently.)

1494 The Court: Q. Were you before the grand jury on Wednesday, June 3, 1936—I will read the questions you were asked and the answers you made, and then you may, if it refreshes your memory, you may answer the question asked you by Government counsel.

(Reading:)

"Mr. Lewin: Now don't you know that the major buying under the programs was buying at or a little better than the price quotations made in the price-quoting service, the journals?

"Answer: There were times when their buying prices were higher, but there was also times when it was identical.

"Question: When it was identical?

"Answer: When those prices were identical.

"Question: Now, I suggest to you that the times in which they were generally higher were between March, 1935, and the first week in June, 1935. Is that right.

"Answer: Yes.

"Question: That is right, and the times in which they were right at the quotation was from the first week of June, 1935, to the first week in January, 1936?

"Answer: Yes.

1495 "Question: That is right?

"Answer: As far as I can recall.

"Question: At another time, when they were a little bit higher than the quotation, was the first week in January, 1936?

"Answer: Was that when there was that little—

"Question: Rise.

"Answer: That little rise. Yes, I am sure that was true.

"Question: And the time when they were just at the quotation was in the first week of March, 1936, when there was a little dip in the curve; is that right?

"Answer: As I remember there was major company buying at those prices.

"Question: I am now addressing your mind to March, 1936.

"Answer: As I remember—

"Question: Do you recall the graph?"

The Court: Q. Was there a graph there?

A. Yes, sir.

The Court: Q. (Reading:)

"Answer: Yes, I recall it.

"Question: Do you remember a little dip?

"Answer: Yes.

1496 "Question: That little dip indicates major buying at the quotation of a little bit less, doesn't it?

"Answer: That is my impression, yes.

"Question: And that little dip was restored immediately, wasn't it?

"Answer: Yes, there was only—I don't know—

"Question: A week?

"Answer: Well, that is about right; about a week.

"Question: A week of slackening off on the major buying at the price, wasn't it?

"Answer: Yes.

"Question: And then the little restoration?

"Answer: Yes, it immediately went up.

"Question: Now, when it went up, that indicates the majors buying a little bit heavier than the quotation, doesn't it?

"Answer: Yes.

"Question: And to date your quotations and the price curve to illustrate them, show that the majors since the first week in March, 1936, to date, have been buying at the quotation exactly?

"Answer: That is my impression, yes.

1497 "Question: Then a graph of your quotations is a representation of prices paid by majors under these concerted pools, isn't it?

"Answer: Yes.

"Question: And nothing more than that?

"Answer: It follows that graph, yes.

"Question: Exactly?

"Answer: Yes.

"Question: And the major company buying is so important, and has been given so much importance by you, that it is almost the sole reason for the shape of that graph?

"Answer: It is an important factor, yes.

"Question: Well, the one is identical with the other?

"Answer: Yes.

"Question: All you have done then since March of 1935 is report to the trade, without stating so, the major company program prices; is that right?

"Answer: In so far as it is reflected in quotations and sales reported to us by refiners, yes.

"Question: And 'in so far' means altogether, doesn't it, because that is just where you got it?

1498 "Answer: We got it from the independent refiners in their reports to us, and quotations.

"Question: And the data that brought about that series of quotations in your paper, the effective data, were the sales to majors under the concerted pools?

"Answer: Those sales were included, were probably included in the refiners—jobbers' sales, to us.

"Question: And the sales to jobbers, pure jobbers at lower prices, were usually outweighed by the concerted buying pool prices that they never did pull that quotation of yours down throughout that period?

"Answer: They outweighed the jobbers' sales that were reported to us, yes.

"Question: The major company buying?

"Answer: Yes.

"Question: And since they outweighed them, they alone were given effect by you?

"Answer: Well, now, let's not make that quite so strong.

"Question: All right.

"Answer: The independent refiners reported to us their district sales.

"Question: That is right.

1499 "Answer: Now, we indicated that many, probably most of those district sales that they reported to us as jobber sales were major company purchases.

"Question: You could have done this, and arrived at the same result: You could have gone to the major companies and learned from them exactly what they would pay under these programs, or what they thought it was necessary to pay, to keep the prices where they wanted them and reported it, and you would have got exactly the same result that you did get, from March, 1935, to date; is that right?

"Answer: That is right, but it is not true.

"Question: You did not go to them and ask them for that?

"Answer: We went to the refiners, yes, and asked for jobbers' sales.

"Question: That is the practice you followed?

"Answer: Yes.

"Question: But you knew when you did that, that in substance, in actuality, in truth, and in fact, what you really were reporting to the trade were major company concerted buying program prices?

1500 "Answer: In substance, yes.

"Question: And that followed throughout the entire Mid-Continent field that you were reporting?

"Answer: Yes.

"Question: The Oklahoma market, the three Texas markets, the Kansas market, and the Louisiana-Arkansas market?

"Answer: If you look at it that way, yes."

Mr. Lewin: That is as far as I—

The Witness: May I explain myself on that?

The Court: Well, the question—does the reading of this refresh your memory?

Mr. Lewin: Q. Just let me ask you: Did you give the testimony that his Honor read, before the grand jury?

A. I imagine I did, but I was certainly mixed up when I did.

Mr. Lawton: What is the question now?

Mr. Chaffetz: There is a question pending.

The Court: What is that question?

(Question read as follows:

"Q. Were there times during the period, March 1, 1935, and throughout the rest of that year in which they were higher than—Jacobi's prices given you were higher than the prices you were getting from the independent refiners?")

1501 Mr. Donovan: If we are going to refer to any graph, it ought to be the graph that was used before the grand jury.

Mr. Lewin: My recollection, your Honor, was that before the grand jury, I, with the witness, marked the graph in the air in the way in which that graph looks there (indicating). And I think there was a blackboard there, and I believe as he told me how to do it, we made these steps up here and here, with respect to that line (indicating), and that was the way the graph looked.

The Court: Q. Does this reading of the testimony before the grand jury refresh you recollection, so that you can answer it now?

A. It doesn't because I have gone back and checked the prices that we indicated in our market leads, with what we quoted, and I don't believe there was a time when those prices were higher.

Q. When what prices were higher?

A. When the major company buying prices were higher than our, than the Oilgram prices, and I would like to have a chance to explain that—

Q. You may. Go ahead.

A. Well, in the first place, that grand jury tes-
1502 timony is all wrong. It just—it is built on a pyramid of hypothetical questions or answers, and it was a build-up and, really, I must not have known what I was saying when I said some of those things there, because I know they weren't true.

The Court: Now, you have heard the reading of your testimony, and you say it doesn't refresh your recollection?

A. Along that line, no, sir, it does not. I must have—

The Court: All right, go ahead. Proceed with your questions.

Mr. Lewin: Q. Now, wasn't it true, Mr. Steiger, that when you asked the independent refiners for their selling prices and quotations, you did not instruct them to break those prices and quotations down as between their sales to pure jobbers and their sales to major oil companies?

A. We asked for jobber sales, sales directly to jobbers.

Q. Well, did you—hadn't you given them general instructions to that effect sometime before, but —is that right?

A. That we wanted only jobber prices?

Q. Yes.

1503 A. Yes, we wanted only jobber prices.

Q. Now, did you instruct them during this period, when you asked them for their prices, to make a distinction between their sales to major companies and their sales to jobbers, or were they lumped together?

A. Well, I must have gotten their major company, their major company sales, because I remember distinctly of having checked back on some of these—in other words, I remember distinctly sometimes of having gotten the fact from a major that there had been so many cars purchased; and I remember distinctly that we have checked back with independent refiners against the information that we got from majors, and we had found out that these independents had actually sold to major companies certain quantities. Now—and we did get reports of their sales to majors.

During this period March 1, 1935, and through 1935 and 1936, there were times when I went to the extent of asking the refiners to divide the number of cars or the prices between the major purchases and the regular jobber purchases. I do not recall testifying on that subject before the grand jury. I have been reading back through my market leads and trying to refresh my memory
1504 about this whole thing, and it is my recollection that I did check up and try to distinguish between the refinery and jobber purchases.

Q. Well, did you ask the independent refiners to break that down and give you first the sales to the major companies and the prices, and second the sales to jobbers and the prices?

A. It is my understanding that that is what most of them did, that they gave us their jobber prices when we asked for it, and if they had made sales to jobbers that they would—they have told us about these sales to majors, and given us the prices and the volume.

Q. Well, weren't you convinced during that time that there were some inter-refinery sales in prices included in those reports of sales to jobbers?

A. There may have been, but not to my knowledge. I was asking for jobber, for sales directly to jobbers.

Q. Now, be sure we understand each other. I am asking you whether you were not convinced during that time that there were some inter-refinery sales in prices included in those reports of jobber sales that you were getting from independents?

1505 Mr. Hanning: I object to that. The answer was, there may have been some, but not to my knowledge, and, I asked the price to jobbers. Now, that was the answer.

Mr. Lewin: If that is what his testimony is, I am refreshing him by calling his attention—(showing document purporting to be transcript of testimony before grand jury to the Court.)

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

The Court: Q. Referring to your testimony before the grand jury, June 2, 1936:

"Question: As a matter of fact, your jobber prices were asking prices that the majors would pay for gasoline, and not the jobbers' prices?

"Answer: To the extent that we checked with the refiners and the refiners reported jobber prices, and there was a possibility that they reported to us the inter-refinery purchases at those prices, yes.

"Question: Did you ever go to the extent of asking the majors to divide the number of 1506 cars, the prices between the major purchases and the regular jobber purchases?

"Answer: I don't remember having asked them to do that.

"Question: You are fairly well convinced that you were obtaining from them prices which the major companies were buying at rather than jobber prices?

"Answer: I was convinced that there were some inter-refinery sales included in those jobber reports. Does that answer your question?

"Question: I think so."

Mr. Lewin: Q. Did you make any investigation to find out whether there were two prices in East Texas, one a price to the majors, and the other a price to jobbers who buy regularly on the open market?

A. Well, we continued to ask for those sales to jobbers, and I knew what the majors were buying, the volume that they were buying at the time, and sometimes the price at which they were buying; and I knew what the jobbers—what the East Texas refiners were quoting and selling to the jobbers.

Q. Did you make any investigation—

1507 A. Well, I must have to have gotten that information.

Mr. Lewin: All right. Then, your Honor, I ask you if you will refresh the recollection of the witness if possible by reference to the testimony on page 3601?

The Court: He has answered it now, he must have made the investigation.

Mr. Lewin: An investigation.

The Court: He has answered he made the investigation. Do you think he did not make that investigation?

Mr. Lewin: I do.

The Court: Q. You are stating a positive fact now, that you did make that investigation?

A. Well, your Honor, we knew what the majors were buying at, and we knew quite often what they were paying, and we knew what the jobbers were being quoted, so it stands to reason we must have made some sort of a check on it.

The Court: I do not see any necessity of refreshing his memory on anything in that particular score, is there?

Mr. Lewin: Well, I would like to know—

The Court: Ask your question.

1508 Mr. Lewin: Q. If your testimony before the grand jury was to the effect that you made no such investigation—would that refresh your recollection on that point?

A. I do not not recall having testified to that.

Q. Do you think your mind might be refreshened from your grand jury testimony on that point?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. Well, I will always do my best. If it will refresh my memory, I want to get the facts before this Court.

Q. All right.

A. And anything that will help me, I want to do that. But that is my best recollection now.

The Court: Q. Again referring to your testimony before the grand jury on Monday, June 1, 1936:

> "Mr. Chaffetz: Q. If that is true, will you tell us why you haven't made any investigation to determine what prices they are paying, as compared with the prices at which the jobbers, the regular jobbers are buying gasoline in East Texas?

1509 "Answer: Because our prices cover jobber sales, and we understand them as jobber sales.

"Question: If you are sincerely trying to find out what the jobbers are being required to pay, you would be curious to know what the major company purchases are made at, the lowest possible price, the arbitrary price and the high price.

"Answer: I would be interested, surely.

"Question: But you testify that you made no inquiry to find out whether there are really two prices today in East Texas: One, a price to major prices, and another a price to jobbers who buy regularly on the open market.

"Answer: We made no such investigation. We stood by our refiners, that our prices represented jobber sales.

"Question: But included in your prices were those sales made to major companies?

"Answer: It is possible that some of the refiners included those sales in their jobber reports to us.

"Question: So that, if the major companies persisted in buying at the same price over a period of time—

"Answer: Yes."

1510 Now, what does that refresh your memory on?

Mr. Lewin: Q. Is your mind refreshed as to whether you made such an investigation.

Mr. Hanning: As to what?

Mr. Chaffetz: As to whether there were different prices being paid by majors and by jobbers.

Mr. Hanning: He just said he had.

Mr. Lewin: He said he did not make such investigation.

The Court: (Reading from document purporting to be transcript of testimony before grand jury:)

"We stood by our refiners, that our prices represented jobber sales."

Mr. Lewin: And we want to know whether his mind can be refreshed—

The Court: He says now that he made investigations in order to obtain that information.

Mr. Lewin: No, your Honor. He has just now said on this stand that he did not make such investigation.

The Court: Why what are you talking about?

Mr. Lewin: Oh, yes, he said he did; and this testimony is that he did not.

The Court: Well, I think this last explanation has
1511 a little more force to it than this answer to these questions. Go ahead.

Mr. Lewin: Yes, sir.

Mr. Lewin: Q. Didn't you tell the independent refiners about that time, that you wanted them, in making their reports, to you, to include the major sales in their reports of jobber sales?

A. No, sir.

Q. You did not?

A. I did not.

Q. Did you testify that way before the grand jury?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Overruled. Exception allowed.

A. I don't recall what I testified before the grand jury.

In reporting our jobber quotations, I didn't regard major companies as jobbers. I never regarded major company purchases as jobber purchases for the purposes of our quotations. I may have testified on that subject before the grand jury, but I don't recall it.

The Court: He doesn't say he doesn't remember. He positively says, "No, sir," so what is the use of trying to refresh his memory with something that he
1512 may have said also? If you want to impeach him, that is a different question.

Mr. Lewin: No, I would like to see whether we couldn't refresh his recollection—

The Court: If you want to impeach him, this transcript of this grand jury testimony goes into this record. He has made a positive statement there, "No." You can't refresh his recollection on that.

Mr. Lewin: Q. When the major companies bought for their own service stations, didn't you regard them in that case as a jobber?

A. Well, it was impossible to differentiate their purchases, as to what purchases went where, and it would have been impossible to have done that.

I was our only market checker, covering that entire Mid-Continent field; I had one stenographer. I know that sometimes major companies bought gasoline during this period, and shipped that gasoline to their own service stations.

Q. When they did that, would you regard and did you regard them as jobbers?

A. Well, we couldn't differentiate, or couldn't find out what gasoline went to the major companies' service stations, and what did not. It was just an impossible task to find that out; it was just a real impossibility.

1513 Q. Well, do you recollect what you testified to on that point before the grand jury?

A. It seems as though we touched on that point, but I don't recall just exactly what we discussed along that line.

Q. Now, do you think your grand jury testimony on that point might refresh your recollection as to how you considered those sales?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. I will do my best, again.

Mr. Lewin: All right. Now, your Honor, I would like to refer you to 3856 and 3857 (presenting document purporting to be transcript of testimony before grand jury to the Court.)

The Court: Again referring to your testimony before the grand jury, on June 3, 1936:

"Mr. Chaffetz:—"

I am reading now the questions and answers:

> "It was a form, in so far as you call a major company a jobber, as you would an independent in Wisconsin a jobber?"
>
> "Answer: They reported to us.
>
> 1514 "Question: But you were not misled?
>
> "Answer: In some cases, those major companies bought for their own service stations. In that case, they were a jobber. They shipped it directly to their own service stations. In that case, they were considered a jobber, pure and simple."

Mr. Lewin: Q. Now, do you remember giving that testimony before the grand jury?

Mr. Hanning: I object, your Honor. I just want to interpose this: I want to know what it has got to do with the situation? In other words, the witness has testified that, in working out his price structure, he never took into consideration sales by refiners to majors, or inter-refinery sales, wherever they went, wherever the shipments went. Now, the question is, "Do you know what major company material went to jobbers?" And the boy answered, "Why no, that is impossible for me to know." But the fact is, it makes no difference because he didn't take it into consideration in arriving at his price structure. The only thing he took into consideration was refiners' sales to jobbers, direct to jobbers, and it is not material, your Honor, that a major may have shipped something to his own jobber station.

1515 Mr. Chaffetz: But it is material that, when the witness testified before the grand jury that when a major company shipped it to their own service station, then it was considered a jobber, pure and simple.

Mr. Hanning: But he didn't say, however, because he was considered a jobber pure and simple, that he took that into consideration in arriving at his price structure.

Mr. Lewin: That is the next step. As soon as we get the definition of jobber and know whether that includes major companies, we have gone a long ways.

Mr. Hanning: Then, your Honor, I ask whether that is refreshment of memory or impeachment?

The Court: Yes. Let's find that out now.

Mr. Lewin: This is refreshment. I asked this witness whether it would refresh him, and he said it would; that is all I want to do.

The Court: All right. Let's stay right by that. Otherwise, we may get into some deep water here.

Mr. Lewin: Yes, your Honor, I want to hew to that line. Then, if it doesn't refresh his recollection, he has got to give the other answer; that is all.

1516 Q. Is your mind refreshed at all on that subject, from the reading of that grand jury testimony?

A. Well, it refreshes it a little, in that—

Q. All right. Now, that your mind has been refreshed, what is the fact? Did you consider jobbers —did you consider major companies, when they sold through their own service stations during this period, as jobbers?

A. Well, in the strict sense of the word, they would be considered jobbers; but, as far as the practical sense of the word, it was impossible to check just exactly what material was going to jobbers, to their own service stations; and it was just as impractical, and impossible to make that break-down; so we just couldn't consider inter-refinery purchases as jobber prices, because it was impossible to break down those inter-refinery purchases.

Mr. Lewin: Q. Weren't you trying to draw a distinction, in making your quotations, between the jobber and the broker?

A. Well, we didn't report brokers' buying prices, no, sir.

Q. All right. I understand so. Now, I wonder if you would answer my question, Mr. Steiger? Did you make a distinction between the broker and the jobber?

1517 A. In obtaining prices, or sales?

Q. In making up your quotations?

A. Why, certainly, we made a distinction in that the brokers' sales, the brokers' purchasing prices, the brokers' purchases were disregarded.

Q. All right. Now, didn't you disregard them because the broker usually resells to the jobber, is that right?

A. That is right.

Q. All right. Now, wasn't that the criterion that you had in mind when you made up your jobber quotations? Didn't you regard everybody a jobber who sold directly to dealers; and regard everybody as a broker who sold directly to jobbers?

A. Well, I think we could go back to our standing lead in the Oilgram and get that straightened out, right there.

Mr. Lewin: I am not talking about what your Oilgram says—

The Court: Q. What is that standing lead?

A. Well, in that lead, we say that jobbers are those who sell directly to the consuming trade—

(producing copy of Oilgram, and reading)

> "They represent prices made only to domestic jobbers who resell to the consuming public."

1518 In the strict sense of the word, a major company who sells through their own service stations to the consuming public could be called a jobber; but as far as we were concerned, we couldn't make the distinction as to which of those sales that those major companies bought were going to their own service stations and could be included, could be classed as a jobber, and which were being shipped on contract, and all that.

Our quotations in the Oilgram during this period did not reflect some of the major companies' prices that they paid the independent refiners. We tried at one time to make a distinction there, but it was impossible. In other words, the major companies themselves didn't know where this gasoline that they had bought was going, and it was impossible for us to find out. They didn't know, themselves, whether that was going to their own service stations, whether it was going to apply on some contract, or just exactly where the destination of that gasoline was.

Q. Well, do you remember testifying before the grand jury—

The Court: Now, just wait a minute. Do you want to impeach him, or do you want to refresh his recollection.

Mr. Lewin: I want to refresh his recollection.

1519 The Court: Well, ask your question, and let's find out if his memory can be refreshed on the question.

Mr. Lewin: Yes, your Honor.

Q. Do you remember testifying before the grand jury—

The Court: Just a minute. Ask him a question, and see if his recollection can be refreshed.

Mr. Lewin: That is what I was going to do.

The Court: Well, don't refer to what he testified before the grand jury. Ask your question, and then if you want to refresh his memory, do so.

Mr. Lewin: All right.

Q. Do you remember that, in making up your quotations, you reflected the sales to major companies?

A. No, sir, because we couldn't make that distinction.

Mr. Lewin: Q. Yes. Now, could your mind be refreshed as to whether or not they reflected the major sales?

A. Well, I am certain they didn't, because it was impossible to make that distinction. It is just a physical impossibility to make that distinction.

1520 Q. Since you couldn't make the distinction, didn't you lump them altogether, the major prices as well as the jobber prices?

A. We did not, no, sir.

Q. Didn't you discuss with Mr. Mosher as to whether or not you should make a distinction between the jobbers'—the pure jobbers' prices and the major company prices?

Mr. Hanning: I object. He has already positively testified what he did. Therefore, you can't refresh his recollection.

Mr. Chaffetz: Now, your Honor, we are entitled to all the facts here. We have been told that two or three times. And here is an important fact as to what this man discussed with his superior, a vital issue. I think we are entitled to those facts.

The Court: Objection sustained.

The Court: I will say to the witness, just try and refresh your memory the best you can, and recall; use your best recollection so there won't be any necessity of wasting any time on your testimony before the grand jury.

A. I will, your Honor.

Mr. Lewin: Q. Mr. Steiger, did you at any time 1521 discuss with Mr. Warren C. Platt the subject of major company buying?

A. No, I never did.

Q. Did you testify before the grand jury that you did?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. My recollection is hazy along that line, but if I did so—if I did say so in front of that grand jury it was wrong, because I did not talk to him on this.

Q. What is your best recollection as to whether or not you did so testify before the grand jury?

A. Well, it is my impression that I did. I would not be sure of that, though.

Q. Did you discuss the subject of major company buying with Mr. Mosher?

A. No, sir, there again I did not.

Q. Again, did you testify before the grand jury that you did?

A. You have got me there. I don't know.

Q. What is your best recollection whether or not you so testified before the grand jury, that you discussed that subject with Mr. Mosher?

1522 A. I may have.

Q. Were you trying to tell what you knew when you so testified before the grand jury?

A. Well, I don't—that is the truth; that is the truth, that I did not talk with them, and if I said that I did, before the grand jury, I was wrong along that line, and apparently I was being pushed, because I did not talk it over with them.

Q. Might you not be wrong here and right there?

A. No, sir.

Q. Why are you so sure now?

A. Well, I have been—before that grand jury we went up there without any refreshing of recollection at all. We just were dumped in that grand jury room—

The Court: Now, don't have any discussion on that. That is all right with reference to figures and records, but your conversation with others is entirely different. You may have refreshed your memory and examined your figures before you came back here to testify.

A. Well—

The Court: Your conversation with others is not something of that nature.

1523 A. I cannot recall ever having talked that over with Mr. Platt or Mr. Mosher, and I can say definitely so.

Mr. Lewin: Q. How do you account for the fact that you testified before the grand jury that you did discuss that with both Platt and Mosher?

A. Well, I don't know. If I did, I was wrong.

Mr. Hanning: If your Honor please, I submit to you that is impeachment. That is not refreshing his recollection. If they want to refresh his recollection, all right. That is impeachment, and if they keep on I will have to ask for the whole record.

The Court: I think it is.

By Mr. Lewin

During the years 1935 and 1936, there were actual sales of gasoline on the spot market at the high quotations of Platt's Oilgram, although I don't know how many such sales there were. I know there were sales at those highs to jobbers in the open market because we checked them. I do not recall any day when there were no sales at the high. I have no records of the sales to jobbers. The only memos we used were from day to day as we were 1524 talking to our sources of information. We did jot down little bits of information as we checked with them, but we do not have those now, with the exception of the notes for a week or two that we sent up to the grand jury. Of course, on those notes you may not find notations of actual sales, because you see we were taking down in longhand what the fellow at the other end of the line was giving to us, and we may not have put down on those notes every fact that we got from them.

During that period there were sales made at the high. I don't know whether we so noted on those notation slips or not. As I said before, they were just my efforts at trying to take down in longhand conversation over the phone, and generally I would take down the quotations with the sales prices, on that pad. Now, in some instances I may have had time to note the number of cars made at those prices, or the fact that there were no sales. But at other times, in trying to keep up with the person who is talking at the other end of the line, it would be impossible to note down all the information. In that case I would just have to remember, or make a mental note as to whether there were sales or quotations at those prices. I generally had an Oilgram in front of me, and I could compare that with those Oilgram prices.

1525 During that period our high quotations did not rest mainly on quotations; I would say there were actual sales. I cannot say definitely what companies made those sales to jobbers at the high during that period, because I would have to remember just about every day's transactions.

I could not name any specific company that I knew made sales of 68-70 octane gasoline at the high during that period. I can give you a guess. I do not recall any specific company making sales regularly during that period at the high. I cannot name any jobber that during that period bought 68-70 gasoline at the high of our quotations because we only checked one jobber. I do not recall whether he did or did not. I don't know.

My testimony with respect to third grade is the same.

I discussed the subject of major company buying with Arthur V. Bourque rather frequently. Mr. Bourque kept in close contact with the independent refiners down there, and he occasionally would know how much gasoline had been bought by majors, and would pass that information along to me. I would say that he gave me prices paid by

the major companies through 1935 and 1936. Generally I contacted him about 2 or 3 times a week, and I imagine during most of those conversations he did pass on information along that line. I knew that Mr. Bourque was
1526 working with Mr. Jacobi during this period. I didn't know that Robert M. McDowell was working with Mr. Jacobi during this period, but it was my impression that he was. I very seldom talked with Mr. McDowell, so I couldn't have gotten the information directly from him. I did not know that Mr. Tuttle was working with Mr. Jacobi during this period, not definitely. There again, I will have to say that I didn't know definitely, but there were reports in the trade that both Mr. Tuttle and Mr. McDowell were active in it. That information was just passed on to us while we were just checking markets. It was not my duty to go out and get that information. My recollection is that it came from fairly reliable sources.

When Bourque told us prices that the major companies were paying during this period, generally it was the prices at which majors collectively, or a bunch of majors were paying. He didn't single out any one major and say, "Well, now, this certain major is paying a certain price." It was generally, "Well, I understand that there has been so much bought at a certain price". The same thing is true of Mr. Jacobi's and Mr. Buckley's statements to us about prices the majors were paying. Of course, they would sometimes give me their individual transactions; but, as for other individual companies or major company buying, they didn't give us that definite information.

1527 Q. Did you know that the majors were paying uniform prices when they bought on the same day?

A. I don't believe that I could say that I knew that.

Q. Did you testify on that subject before the grand jury?

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. I don't recall. I may have.

Q. When you did talk to two or three major company buyers and get prices that they were paying from them, did they always give you the same price, at the same time?

A. I don't recall such an instance.

Q. Did you so testify—did you testify on that point before the grand jury?

A. I don't know.

Q. Did you testify before the grand jury—

The Court: Q. Wait a minute. You don't recall now whether there was such an instance; do you think your memory could be refreshed by a reference to your grand jury testimony on that question?

1528 A. Well, I don't recall now, ever running across a situation like that.

Q. Well, I say, do you think your testimony before the grand jury might stimulate your recollection on that point?

A. It might.

(Document purporting to be transcript of testimony before grand jury handed to the Court by Mr. Lewin.)

The Court: Q. Again referring to your testimony before the grand jury on Wednesday, June 3, 1936, do you recall these questions being asked and your making these answers:

> "Question: When you called two or three major company buyers, did they name different prices to you, or did they always give you the same price?
>
> "Answer: They were, almost without exception, the same prices."

Now, does that refresh your memory, so that you are able to answer the question now? And if so, what is the fact?

A. Well, your Honor, it doesn't refresh my memory, and I can't see any—I can't recall instances where they were all the same. I do remember, in one of our market stories, that we did say that sev-1529 eral major companies were quoting a certain price; but I can't recall definitely, that is the only recollection I have of it. I did bring out in the market story that there were several quoting one price, a certain price.

Mr. Lewin: Q. If you consulted two or three major buyers the same day, did they all tell you they were paying the same prices, or did they all name a price which was the same price as the others named?

A. Well, I can't recollect anything on that, Mr. Lewin.

Mr. Lewin: Would your Honor be willing to attempt to refresh the witness' recollection by reference to another portion of his grand jury testimony on the same point? 3949.

The Court: (Referring to document) Listen to the reading of the transcript of your testimony before the grand jury on June 3, 1936. Was this question asked you, and did you make these answers:

"Question: If you consulted two or three major buyers on the same day, did they all tell you they were paying the same prices, or did they all name a price which was the same price?

1530 "Answer: It is my impression that they did name the same price.

"Question: So far as you can recall, whenever you called these major buyers, whether the price was going down or whether the price was going up, the price that each of them quoted you was always the same?

"Answer: As far as I can recall, they were the same."

Now, does that refresh your memory, so that you can tell us now what the fact is?

A. I am sorry, it doesn't.

The Court: All right.

Cross-Examination by Mr. Hanning.

I didn't do anything different, as a market reporter, in gathering market information for Platt's Oilgram, in 1935 and 1936 than I did in 1934. Back in 1933 I was just helping to check those markets and, as I recall, we didn't do anything different in 1933 than we did in 1935 and 1936. The procedure we followed in 1933 and in 1934 was the same as we did in 1935 and 1936, and in 1937. What we do, and what we did in 1933, 1934, 1935, 1936 and 1937, was to call the refiners, independent and otherwise, and ask them what their sales and quotations were in the open spot market to jobbers. That is what the Oilgram, in the 1531 masthead, says that we do. The prices we published or quoted were the prices that I, as a market checker, got when I called refiners that were selling on the open spot market, sales that they made to jobbers.

The news lead is a commentary of the little bits of information that we obtain in checking our markets, pertaining to the Mid-Continent markets in general. It refers to gasoline, kerosene, lubricating oils and all the other products that we check in the course of the day's work. We include in those price tables in the daily Oilgram only sales made directly to jobbers in the open spot market.

By Mr. Lawton

I can refer to the Oilgram early in 1935, and tell you on what date I first made reference to the organization of the East Texas Refiners' Association. Here it is, on February 12th, page two. As I recall, I obtained that information myself over long distance phone from Tyler. I don't recall ever having heard of that Association before that day. I will see if I had any comment about that corporation prior to that time.

(Witness examines volume of Oilgram.)

We did, on February 9. (Reading from copy of Oilgram referred to) "A meeting of members of the newly organized sales agency in East Texas has been called at
1532 Tyler, February 13th. Election of officers, discussion of new charter, which is expected to have been approved by then, and other business will be brought up. General offices of the organization will be at Tyler, according to reports." That was in the Oilgram mailed on the night of Saturday, the 9th, and was in the hands of readers on Monday, the 11th.

Here is an earlier reference on February 6th (Reading from Oilgram) "Organization of a centralized sales agency for disposal of petroleum products was being pushed forward by 12 East Texas refiners today.

> "Those interested in the organization of such an agency are:
>
> "Southport Petroleum, Kilgore; Arrow Refining Company, Overton; Texas Oil Products Company, Gladewater; Utah Refining Company, Kilgore; La Pren Refining Company, Kilgore; Gilliland Refining Company, Gladewater; Chief Refining Company, Gladewater; Oil Refineries, Incorporated, Overton; Lone Star Refining Company, Gladewater; Trio Refining Corporation, Arp; Panhandle Refining Company, Kilgore; J. D. Wrather Interests with refineries at Kilgore and Overton.
>
> "Refining capacity of the 12 refiners active in formation of the agency is approximately 49,000 barrels daily. Last report of Railroad Commission,
> 1533 dated January 1, indicated that the 73 plants in the field were capable of running 219,900 barrels of crude daily. Other refiners in East Texas were expected to join the move shortly, according to reports."

Here is one on February 5th. There seems to be a lot of this. (Reading) "East Texas Refiners to have centralized sales agency." My article of February 5th was put in the mail the night of the 5th, and was sent out to all our subscribers on that night. It was in most of their hands by the next day—surely by the 7th.

Very frequently our publications contained stories about the activities of the major companies buying in the Oklahoma field. I imagine we carried a story of that activity several times a week. I have some references here in which they mentioned them.

(Witness excused.)

Mr. Chaffetz: The Government offers in evidence EXHIBITS 287, 292, 294, 295 and 296 which are others of the series of reports from Warner to Collins of the Tide Water Oil Company, as admissible at this time only against the defendant Warner.

Mr. Thomas: May it be understood, your Honor,
that these documents that are now being offered by
counsel are subject to the same objections that we
1534 made yesterday to Exhibits 334, 335 and 336, and
we will not have to repeat the objections which appear at R. pp. 504-05, 556-57, 721-23.

The Court: The exhibits now offered will be received as against the defendant Warner for the time being. Exception allowed.

Mr. Chaffetz: I would like the record to show also at this time that where the initials "R. O. A." appear on these reports, in the lower left-hand corner of the last page, by agreement with counsel it is to be understood that those initials are the initials of R. O. Audrain, a defendant in this case. That is true, Mr. Webster, is it not?

Mr. Webster: Yes, that is true. I don't happen to know whether Mr. Audrain actually dictated the letter or whether it was done by someone else, but the initials, "R. O. A." are the initials of the defendant, Audrain.

(Documents referred to are received in evidence, respectively, as EXHIBITS 287, 292, 294, 295, and 296 against the defendant J. W. Warner only. Said exhibits were later at R. p. 907 admitted as evidence against all defendants.)

(Mr. Chaffetz read to the jury Exhibits 287, 292, 294 and 296.)

1535 Mr. Chaffetz: We understand that Tydol is regular or house brand, and Tidox is third-grade, is that true?

Mr. Webster: Yes.

(Document being a stipulation relative to the authenticity of documents from the files of Sinclair Refining Company is received in evidence as EXHIBIT 731.)

Mr. Chaffetz: The Government offers in evidence EXHIBITS 345, 346, 347, 350, 351, 352, 353, 356, 358, 359, 360, 365, 369, 370, 415, 416, 417, 421, 422, 424, 426, 430, 432, 442 and 450 from the files of Sinclair Refining Company as being admissible at this time as against the defendants whom the record thus far may show have participated in the alleged conspiracy.

Mr. Thomas: Now, as to each of the exhibits so offered, the defendants interpose the same objections as stated at R. pp. 504-05, 556-57, 721-23, as were interposed yesterday to Exhibits 334, 335, 336, and 337. This objection is made, your Honor, on behalf of all the defendants.

Mr. Wood: In addition to the objection made by Mr. Thomas on behalf of all the defendants, I desire on behalf of the defendants, Sinclair Refining Company, and the defendant J. W. Carnes, to
1536 object to the introduction of each of these documents, first on the ground that if offered as evidence of the fact purported to be stated within the documents themselves, each document is inadmissible for that purpose, but if offered for any other purpose, no foundation has been laid for their introduction, and they are immaterial. And I desire to have that motion—or, this objection, although made—stated to have been made for the Sinclair Refining Company and Mr. Carnes, understood to be made separately for each of these defendants as to each of the documents.

Mr. Thomas: Well, on behalf of all the other defendants, they are inadmissible, generally, and I move the Court to instruct the jury at this time that they are not to be considered as evidence against any of the other defendants in the case other than possibly the Sinclair Company and the writer of the document. And we join the motion made by Mr. Wood.

Mr. Wood: On behalf of the defendant Sinclair Refining Company and J. W. Carnes, I also wish to object to the introduction of Exhibit 422 on the ground and on its face—it relates to a proposal on

1537 the part of a refiner located neither in the Mid-Continent field nor in the East Texas field to sell some gasoline. And it seems to us it is wholly immaterial on any issue involved in this case.

Mr. Thomas: If the Court please, I would like to make the same objection on behalf of all the other defendants.

Mr. Gray: In the first place, this relates to a matter of the Gulf coast, neither East Texas nor the Mid-Continent field, and, of course, in addition to the objection already made, it is immaterial and irrelevant.

Mr. Morgan: We join in the objection made by Mr. Wood.

The Court: Referring to Exhibit 422, your objection is overruled. And all of your objections to these exhibits are overruled. Exception allowed.

(Documents so offered are received in evidence as EXHIBITS 345, 346, 347, 350, 351, 352, 353, 356, 358, 359, 360, 365, 369, 370, 415, 416, 417, 421, 422, 424, 426, 430, 432, 442, and 450 upon the conditions stated at R. p. 787. They were later admitted as evidence at R. p. 907 against all defendants generally, except EXHIBIT 422 which was received only against Sinclair Refining Company and the Sinclair defendants.)

1538 (Mr. Chaffetz read Exhibit 422 to the jury.)

Mr. Chaffetz: The claim is not made that this was made in the course of the conspiracy, and on that ground I offer it only against the company and the Sinclair defendants.

The Court: Exhibit 422 is received with that limitation. Exception allowed.

(Mr. Chaffetz read Exhibits 345, 350, and 347 to the jury.)

Mr. Chaffetz: May we have it understood that "HC" refers to the regular or house brand gasoline of the Sinclair Refining Company?

Mr. Wood: Yes, that is all right.

(Mr. Chaffetz read Exhibits 346, 351, 352, 353, and 356 to the jury.)

Mr. Chaffetz: Where these telegrams end with the word "joint", with series of initials, ~~I assume~~ they refer to initials of persons to whom the telegram is intended to be sent, as well as the name at the top of the telegram; is that true?

Mr. Wood: That is right.

(Mr. Chaffetz read Exhibits 358, 359, 360, 365, 369, 370, 415, 416, 417, 421, 424, 426, 430, 432, 442 and 450 to the jury.)

1539 J. P. MOSHER, JR., a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

My present address is Cleveland, Ohio. I am in more or less of a managerial capacity on Platt's Oilgram with offices at Cleveland. I am not an officer of the company, and I have no title.

At times I report directly to Warren C. Platt, president of the company. At times he is active in the affairs of the Oilgram, but was not very active in 1935 and 1936. He was away from the office a good bit of that time on account of ill health and out-of-town trips. As I recall, he was away from his office in Cleveland on account of ill health quite a good bit within the first 2 or 3 months of 1935, but just how much of that period I couldn't say. As I recall, around March 1, 1935 Mr. Platt was out of the United States. I don't know just what time it was. I think he was on a trip to Europe for 5 or 6 weeks. I think it was in March and April. He was still in ill health when he got back from this trip. I don't remember just how regularly he was at the office after some time in April, 1935, on through 1935. I know he was away a good bit of the time.

There was a good bit of the last 9 months of 1935 that Mr. Platt was not in touch with the Oilgram. I don't 1540 remember definitely whether he was away occasionally or for an extended period after April, 1935. Many times even when he would be in the office, I wouldn't see him for a week or two. Sometimes he would be in the office just for an hour or two. I think he was in better health starting some time along in the summer. Even after that time, in the summer, down through the rest of the year, I don't think he was active in the affairs of the Oilgram. He was in and out of the office during the latter half of 1935.

I had occasional conferences with Mr. Platt about the affairs of the Oilgram in the latter half of 1935. I don't recall definitely that I kept him in touch with what the Oilgram was doing during that period. I remember seeing him in New York at one time in the fall of 1935. As for other conversations during that time, I don't recall. I occasionally saw him and had conversations with him on business matters in Cleveland through 1935 and 1936.

Mr. Platt was actively engaged in the business of the Oilgram through 1936 in a general overseeing capacity. He was away quite a bit on business in 1936. It was Oilgram and National Petroleum News business. As far as I know, those are the only businesses that Mr. Platt has. So I feel that during 1935 and 1936, except for this time 1541 when he was in ill health, when he was away from the office, he was traveling on the business of the Oilgram and the National Petroleum News. He was working more on the National Petroleum News than he was on the Oilgram.

As far as I know Mr. Platt is the principal owner of W. C. Platt Company and The National Petroleum Publishing Company, defendants in this case. When he is absent from the work for an extended period of time, the managerial work of W. C. Platt Company is distributed around among various individuals. Mr. Guthrie, managing editor of the National Petroleum News, acts in practically the same capacity on the Oilgram.

Q. Would you say that the W. C. Platt Company is largely a one-man organization?

A. In what respect do you mean, Mr. Lewin?

Q. In the sense that Mr. Platt is the principal dominating force in its management.

A. I don't know just how to answer that.

Q. Well, do you remember being asked that question before the grand jury?

A. No, I don't.

Q. Would your testimony on that point refresh your recollection?

A. It might, yes, sir.

1542 Mr. Platt was responsible for the policies and practices of these publications; first, the Oilgram; and then the National Petroleum News, during 1935 and 1936.

I try to keep familiar with the work which is done for the Oilgram of gathering price quotations for gasoline. That is only one of my duties. Mr. Steiger reports to me occasionally. I am his next superior. When he makes reports to the company, he doesn't always make them to me; some of them are direct to other members of the organization—to Mr. Platt many times on the quotations of gasoline. I couldn't say definitely whether Mr. Platt and I are the only persons in the Oilgram to whom Mr. Steiger reports on the subject of gasoline quotations. I know he has made reports on various matters to Mr. Guthrie and Mr. Chatfield. He reports to them on news articles. Any report in connection with his work for the Oilgram on gasoline quotations he is supposed to make and makes either to me or to Mr. Platt and to no one else in that organization.

I try to keep myself fairly familiar with market quotations in the markets that Mr. Steiger reports on. I try to keep familiar with all of the markets, as much as it is possible, along with my other duties.

I heard Mr. Steiger's testimony here as to the number
of markets that are covered by the various offices
1543 of the Oilgram. That testimony is substantially cor-
rect, I should say offhand. If I were asked the same
questions, I would make the same answers.

Anything I would know about the size of the various spot markets, and the volume of gasoline sold in the open spot markets would be purely a guess. I wouldn't have any knowledge at all of the volume sold on the open spot market in Oklahoma refinery market, not being in close touch with it every day. It would be purely a guess for me to say how the volume of gasoline sold on the open spot market in the Oklahoma refinery market would compare to the total amount of gasoline that is manufactured in that market and sold.

I have been engaged in the work I am doing as manager of the Oilgram since the spring of 1929; that is, handling the general managerial work of the Oilgram. It might be well for me to know the amount of gasoline that is sold on these spot markets, that our Oilgram reports, under my management, but I have no definite information on which to base an estimate of the volume. I think we have pointed out quite continuously over the past few years that the open spot market has been gradually getting thinner. I don't know how thin it was in 1935 and 1936. I don't recall having testified on that point before the grand jury.

During 1935 and 1936 Mr. Steiger had authority to con-
sider quotations given him by sellers in making up
1544 his quotations in the Oilgram. By quotations he
considered I mean quotations that he would get from
various classes of sellers. For example, quotations in
our price tables were quotations to jobbers. That was

what we were primarily interested in because that was what the prices in our price tables represented. The classes of sellers he could get quotations from and use were refiners and brokers, on broker's sales, prices to jobbers. The refiners from whom he could get quotations and use in making up his quotations were independent refiners and major companies if they sold in the open spot market to jobbers.

Q. Did you know that Mr. Steiger throughout the period of 1935 and 1936 was getting and using quotations of major companies?

A. His market leads indicated that he was in contact with major companies from the frequency that he reported major company buying.

Q. I wonder if my question is answered. Did you know that he was getting quotations on the spot market from the major companies, and using them in making up his quotations throughout this period, along with other data?

A. Not definitely, no; only in so far as he indicated in his market leads, that is, his news leads, what he was doing.

1545 Notwithstanding the fact that I was at that time the manager of the Oilgram, I did not know that the major companies during 1935 and 1936 sold very little gasoline, comparatively, on the spot market. I knew that over a period of years the major companies had been a diminishing factor in the open spot market to jobbers. In 1935 and 1936, I believe that major companies' sales on the spot market were small, but I did not know definitely. My belief was based on just general gossip, reports of the men that indicated that the major companies were not a factor in the open spot market to jobbers.

Q. Why would Mr. Steiger be given authority to use mere quotations in his work?

A. I don't know that he ever was given authority to use mere quotations in his work.

[illegible] Did I misunderstand you? Didn't you testify that Mr. Steiger had authority to use quotations given him by sellers as well as actual sales prices during 1935 and 1936?

A. I probably was a bit confused on that. What I meant was quotations in our markets based on sales prices.

Mr. Lewin: Mr. Holmes, will you read the first question I asked?

(Question read as follows:)

1546 "Mr. Mosher, during 1935 and 1936, did Mr. Steiger have authority to consider quotations given him by sellers in making up his quotations in the Oilgram?"

Mr. Lewin: And what was the answer?

(Answer read as follows:)

"Yes, he did."

Q. Do you want to change that testimony?

A. Well, by that I mean prices, whether they were quotations or sales.

Q. Well, then, did he have authority to use quotations as well as sales prices?

A. I don't know.

Q. Were you the source of Mr. Steiger's authority, or was somebody else the source of his authority?

A. If I knew that he was doing that, I suppose I would be the source for that authority.

Q. Did you know whether he was doing that or not?

A. No, I did not.

Q. Well, if he was doing it, do you now claim it was unauthorized?

A. I don't remember of it ever having been authorized, no, sir.

May I explain that this way; there have never been any general instructions to our men. As Mr. Steiger 1547 explained, he grew up with the organization from office boy, and I think that is true with all of our men. That question never came up.

Q. Did Mr. Steiger have full general authority to do anything he pleased in making up the quotations for the Mid-Continent markets?

A. Well, we had confidence in Mr. Steiger, yes, in his ability and his integrity, covering those markets.

Q. So, as a matter of fact, Mr. Steiger made use of quotations as well as actual sales. It is your testimony that he had full authority to do so; is that right?

A. Yes.

I don't know that his prices were confined to quotations, but if he used quotations and did it in the absence of actual sales, it was the next best thing. I am under the impression that in a large majority of cases his prices were based on actual sales.

Q. Do you also know that in a large number of instances during 1935 and 1936 his prices were based on quotations as well?

A. No, I do not.

Q. Did you know that in some instances his quotations in the Oilgram were based on quotations only?

1548 A. No, I don't know definitely. He may have at times quoted prices and carried a footnote "Quotations only," or something to that effect, but I cannot recall.

Q. Did you testify on that point before the grand jury?

A. I don't know. I might have.

Q. Did you testify that when the market was thin throughout the period March 1, 1935 to date, Steiger has got to consider quotations and going prices as well as actual sales in order to arrive at his quotations in the Oilgram?

A. No.

Mr. Thomas: Is this offered for the purpose of impeachment?

Mr. Lewin: This is offered for the purpose of refreshing his memory.

Mr. Thomas: I object to the form in which it is being offered. If there is any testimony it should be submitted to the witness for the purpose of refreshing his recollection.

Q. You say you have no recollection of giving that testimony?

A. No, I have not.

Q. What would you say about that fact now?

1549 Mr. Hanning: What fact?

Mr. Lewin: Q. Had the market been thin from March 1, 1935, on through 1935 and 1936, so that Steiger was required to use mere quotations as well as actual sales in making up his quotations in the Oilgram?

A. I don't know.

Q. Did you testify before the grand jury that during that period the spot market was extremely thin?

Mr. Thomas: If the Court please, without renewing this objection all the time, may we have the same objection heretofore given at R. pp. 373-74, 446, 630, 680-81, 682, 727?

The Court: Yes. Objection sustained. I think you ought to ask this witness if his memory may be refreshed by some former statement he may have made at some other time and place.

Mr. Lewin: Yes.

A. I do not recall testifying to that before the grand jury. I do remember a conversation with Mr. Chaffetz outside the grand jury on that subject.

Q. Can you recall that conversation now?

1550 A. Well, it was a discussion of the volume in the open spot market, and, as I recall, there was some discussion of the number of jobbers in the—

Mr. Hanning: Pardon me, Mr. Lewin, your Honor, the Prosecution saw fit to ask this witness if he did not testify to a certain thing in front of the grand jury. The witness has now said "I did not do it in front of the grand jury, but I did have a talk with Mr. Chaffetz outside the grand jury." I am perfectly willing to have him tell whatever that conversation is.

Mr. Lewin: That is what I have asked him here.

Mr. Hanning: What I am interested in is whether or not the record before the grand jury shows whether or not he had a conversation before the grand jury, and what that question was based on when he asked this witness.

Mr. Lewin: I do not mind showing it to his Honor.

Mr. Hanning: All right, show it to his Honor.

Mr. Lewin: All right; give me 5456 and 5481.

(Handing document purporting to be transcript of testimony before grand jury to the Court.)

1551 The Court: Q. Referring to your testimony you did testify, didn't you, on July 10, 1936, before the grand jury at Madison?

A. Yes, sir.

Q. I will read some of the questions that were asked and the answers made at that time by you, and see if that will refresh your memory on the question you have been asked:

"Mr. Lewin: Would it be practical to differentiate? After all, that spot market is just about as thin as you would want it to be, to be a basis for any quotations at all, isn't it; and has been so since March 1, 1935; isn't that right?

"Answer: Yes, it was extremely thin.

"Question: Extremely thin for all the brackets; and in the case of some of the brackets, like 68-70, for instance, it is so thin that it is almost non-existent. I mean, he goes to, for instance, one of the East Texas markets to get the quotations on 68-70 octane, he goes to Cosden alone, doesn't he, and that is the only one?

"Answer: It may be limited to Cosden, I don't know.

"Question: You wouldn't be surprised at all, would you, if he told you it is that thin?

1552 "Answer: From what areas, from West Texas?

"Question: West Texas.

"Answer: West Texas, yes—well, there aren't more than two or three companies in West Texas.

"Question: I know, and there is only one that makes 68-70 octane gas there, isn't there, by cracking, and that is Cosden?

"Answer: As far as I know, there is only one.

"Question: As far as you know; so that you have known all along, when he is quoting 68-70 octane for West Texas, he is quoting Cosden's price, that is how thin it is, isn't it?

"Answer: Well, if those are the facts, that is true, but I didn't know that Cosden was the only one making the 68-70 down there."

Now, with that in mind, does that refresh your memory as to the question you have been asked?

Mr. Thomas: May it please the Court, without interposing that objection all the time and interrupting the Court, may it be understood that the testimony that is received where the Grand Jury testi-1553 mony is read to the witness, may be received the same as if the objections heretofore made were made in each instance and overruled? The grounds of said objections appear at R. pp. 264; 373-74; 446; 518, 546-47, 590, 630, 637, 680-81, 682, 727, 750.

The Court: The record may so show. Exception allowed.

Now, ask him and see whether his memory has been refreshed.

Mr. Lewin: Q. Has your memory been refreshed on the question of the thinness of the spot markets that Mr. Steiger was reporting in 1935 and 1936?

A. Yes, it was thin, but I don't know how thin.

Q. Well, now, has it been refreshed so that you could testify now that it was extremely thin?

Mr. Hanning: If your Honor please, the question has been answered.

The Court: He says he doesn't know how thin.

Mr. Lewin: And I was trying to see if we couldn't arrive at an approximation.

Q. When you say you don't know how thin it is, you mean you don't know the exact volume in gallons, is that it?

A. No, I couldn't estimate how thin it was.

1554 I had a conversation with Mr. Chaffetz outside of the grand jury room at the time when I came up here to the grand jury to testify. I talked with him about statistics of the spot markets, and gave him certain judgment figures as to the amount of spot market gasoline that there was in 1935 and 1936 on the spot market. I think I told him that they were only a rough guess, though. I had nothing definite to base them on. I don't recall the figures I discussed with Mr. Chaffetz at the time, but I could only approximate the conversation now; I don't recall it definitely. Mr. Chaffetz made certain suggestions to me as to statistics on the size of the spot market. As I recall, I pondered over some of the figures he suggested; however, when he named other sources as having been pretty much in agreement with my estimates, or his estimates as I recall they were now, I agreed that maybe that was correct. I don't recall the estimates that I gave him on the size of the spot market. I don't recall definitely what estimates Mr. Chaffetz gave me.

The Court: Give us your best recollection.

The Witness: Of the conversation, your Honor?

Mr. Hanning: Yes.

A. I think Mr. Chaffetz was trying to find out just how thick or thin the open spot market was. I

1555 don't recall definitely the figures that he suggested, or the figures that I concurred in; but it started on this basis. That if—about how much of the crude produced in Oklahoma is refined there, and how much is sent to some other territory for refining? And I don't recall the figure, but I think it was around 50%. Well, that left 50%, say, to be refined in Oklahoma.

Well, out of that 50%, how much was refined by major companies, and how much by independent refiners? I don't recall the figures, but it seems to me they were around 30% or 35% refined by majors, and 15% to 20% by independent refiners.

Well, out of the 30% or 35% refined by the majors, how much was sold in the open market, and how much was under contract or used by their own stations or in their own outlets? And I think I concurred in the fact that it was nearly all of it; which left only 15% to 20% as being sold by the independent refiners.

Well, then, if—as I recall—the independent refiners sold half of their output under contract, that left only 7½% to 10%, or 5% to 10% available for the open spot market.

Then there was some discussion of how many jobbers there were in the Middle West.

1556 As to the amount of spot market gasoline there is in comparison to the total amount that is sold and marketed in the Mid-Western area, I think 5% would be low; 10% would be maximum; that is just a rough guess. My best judgment would be between 5% and 10%, but it is, as I say, just a rough guess. I couldn't even estimate how much of that sold on the spot market was third grade. I don't know whether the largest percentage would be third grade.

The Court: Q. Well, what business were you in? If you don't know—you were publishing facts for the public, in the oil business, weren't you?

A. Yes, your Honor, but I was in touch with that information only casually, or in a general way.

Q. Well, just what was your job? What did you do?

A. I work in the main office of the publication. I try to keep an eye on all of the markets we publish in the four editions of the Oilgram. In addition to that, I have charge of circulation of the Oilgram; I sell the Oil Price Handbook, which we publish annually. I am in charge of the physical operation of the Oilgram, keep the teletypes in running order, and see that there is no interruption in our routine 1557 at the end of the day, when we are rushing to get the publication out.

Q. I suppose one of the most important duties was to make sure that the data you gathered was correct, and the data you imported to your subscribers was correct?

A. Yes, we had confidence in all of our men, your Honor, and—

Q. But you had something to do with that, didn't you?

A. Yes.

Q. You kept in pretty close touch with that business you were in?

A. Well, most of the men had been with us for quite some time, and we believed they were doing their jobs well, yes, sir.

Mr. Lewin: Q. Wasn't the responsibility—

Mr. Hanning: If your Honor please, not even the Bureau of Mines itself knows how much gasoline moves on the spot market.

Mr. Crawford: I think that is an entirely gratuitous statement, which may not be supported by any evidence, and I think it is improper to make it.

The Court: Here is a man who had nothing else to do except to know and publish just exactly—

1558 Mr. Crawford: And, if the Court please, he had a very, very high responsibility in that respect, too, as the evidence already shows, and as he knows.

By Mr. Lewin

I didn't know it was a notorious fact throughout the industry that by far the largest amount of spot market gasoline in 1935 and 1936 was third grade gasoline. Only as the reports came in from our branch offices every day, over the teletype, and I looked them over and kept in touch with the markets in that way, did I know anything about it at all. Third grade was discussed mostly in the market leads. It was a larger factor, I would assume from that, than the regular grade, the 68-70. I don't know whether I made that assumption through the entire period, 1935 and 1936. I don't recall that I gave Mr. Chaffetz figures on that when he was discussing it with me, the percentage of third grade as compared with regular on the spot market.

I understood that there were contracts between majors and jobbers during those years, based on our quotations, as well as on quotations of other publications. They were quite extensively used throughout the Standard of Indiana

territory. I didn't know that a great many of those contracts provided that the basic price that the jobber
1559 had to pay for his gasoline was the average of our quotations, or the average of our quotations with the average of the Chicago Journal of Commerce. As I recall, I was under the impression it was the low of our quotations. I didn't believe that they used the low for third grade in the usual cases, and the average for regular; my impression at that time was that it was the low in both instances. I have since learned differently.

I had occasion to observe the trend of retail prices on gasoline in the Standard of Indiana territory during 1935 and 1936. I only knew whether or not there was any relationship between our spot market quotations published in the Oilgram and the retail prices that were charged normally in the Standard of Indiana territory in this respect: as the tank car market moved up, the general retail market moved up, and as the tank car market went down the general retail market went down. As I recall the correspondence between the two, it was quite close. I don't know what I mean, in cents, by "quite close". I had heard, but I don't know. The two moved up and down together pretty much. I don't know that the retail prices went up the day after the tank car prices went up; I don't recall that, or vice versa. The normal spread, or difference, during that period between the retail prices and the tank car prices, as published by our journals, was about 5½¢.
1560 I can't remember whether the retail prices went up when only one of our markets went up, or whether it moved up only when all of our markets were in line. I don't remember testifying to that before the grand jury.

Q. Did you know whether or not the retail price varied, as you have described, with the Oklahoma price alone; or, did it vary, as you have described, with a composite of your markets, including the Chicago market?

A. I don't remember just how it did. I was thinking of the general markets; just the general market situation; and the retail price moved up with the tank car market.

Q. If you don't remember now, do you suppose your recollection would be refreshed by any previous statement made on the subject?

A. It might be, yes.

The Standard of Indiana is generally understood to be the market leader. When the normal retail prices went up, that meant that the Standard of Indiana had posted a higher retail price.

Q. Well, now, did you observe that the Standard of Indiana would not raise that retail price during that period until all 3 markets that you reported—no, until 3 markets were—tank car markets were up, and by all 3 I mean the Platt's Oilgram quotations for Oklahoma, the Platt's Oilgram quotations for Chicago and the Chicago Journal of Commerce? 1561

A. No, I don't—

Mr. Kirkland: There is no evidence in this record to sustain that question.

Mr. Lewin: I wondered whether his recollection can be refreshed on that.

(Mr. Lewin hands document purporting to be transcript of testimony before grand jury to the Court.)

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

The Court: Again referring to your testimony before the grand jury, I will read these questions and answers:

"Mr. Chaffetz: Why were they interested in the Chicago prices so much?

"Answer: As I understand it, the Standard of Indiana will not raise its retail price, along the lines of what we were talking about, until all three markets are up to, say, a given point; that is, the Journal of Commerce market, whether it is Oklahoma or what it is, I can't say for that; but our Oklahoma market and our Chicago market.

1562 "Question: In other words, the Standard of Indiana doesn't look only at the Tulsa market, but it looks at all the markets?

"Answer: From that, it does, yes.

"Question: In other words, if the Tulsa market was a quarter above the Chicago market, would they average the two or would they look at the lowest one?

"Answer: No, I think I have known them to advance the retail price when our Chicago market was an eighth of a cent under the Oklahoma market, possibly a quarter of a cent, but not any more than that.

> "Question: Is this true, that the Chicago market is used by the Standard of Indiana in the Chicago metropolitan area?
>
> "Answer: I don't know definitely."

Do these questions that I have read refresh your memory on the question asked you?

The Witness: No, sir, your Honor, it does not.

Mr. Lewin: All right.

By Mr. Lewin

Our Chicago spot market quotation and our Tulsa spot market quotation are not always the same, but there is no set differential between them. Our Chicago quota-
1563 tions are not usually about ⅛¢ under the Tulsa quotations. They have been ⅛¢ under the Tulsa quotations, and quite often more than that.

I can't recall any specific instance in which I supervised Mr. Steiger's work in making up price quotations. I have suggested that he write stories, at times. He may sometimes have asked me for specific instructions as to how to handle an unusual case, although I don't recall that he has. I sometimes get complaints from our readers of the Oilgram as to our quotations. I take up those complaints with Mr. Steiger when they affect the market. I ask him to make a thorough check, and let me know what the results of his check are on the point involved. I have sometimes compared his quotations with quotations in other markets. I wouldn't say that is my regular procedure. There may have been times when one market was out of line with another market. Only if it was brought to my attention did I take up those discrepancies or those instances in which those markets were out of line with Mr. Steiger, and ask for an explanation of them. Sometimes I observed on my own motion those discrepancies. It is a part of my duties to watch and see whether there are any discrepancies, and see whether or not our markets are in line, but I don't watch them continually like that all the time.

I have at times discussed with Steiger the details of his activities through 1935 and 1936. If there was any-
1564 thing unusual, I think I kept Mr. Platt informed. There was a very steady market during that time, if that could be called unusual. I don't recall discussing that with Mr. Platt. I don't recall anything unusual in that period that I discussed with Mr. Platt. I don't remember any conversation with Mr. Platt on Steiger's activities during that time. It is possible that my memory could be refreshed from the former testimony.

I don't remember discussing major company buying with Mr. Platt. I don't recall that I learned from Mr. Steiger during this period that he was in contact with Walter Paul Jacobi in getting price information from him. I did know that Jacobi had been for years one of our sources of market information. I am sure I didn't know definitely that Mr. Steiger during this period, 1935 and 1936, was in contact with Jacobi. He may have been in touch with him quite frequently. I think he was.

I did not definitely know that Steiger was in contact with O. J. Tuttle. Both Tuttle and Jacobi were on his regular source of information. I suppose that at the time he was in contact with them all the time, but I don't know definitely that he was.

I did not know that Steiger was in touch with H. T. Ashton of Socony-Vacuum Oil Company during this
1565 period. Mr. Ashton, as far as I know, has never been a source of information for our market checker there.

Mr. Lewin: Q. Did you testify upon that point before the grand jury?

A. I don't think I did, no.

Q. You think your memory could be refreshed on that point if you were given the grand jury testimony?

(Mr. Lewin hands document purporting to be transcript of testimony before grand jury to the Court.)

Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 680-81, 682, 727.

The Court: Objection overruled; exception allowed.

A. Yes, it might be.

The Court: Q. Again referring to your testimony before the grand jury, were these questions asked you, and did you make these answers; and if you did, do they refresh your memory?

"Question: You knew he was in contact with Tuttle, didn't you?

"Answer: I believe that he was. I don't think he called Tuttle as frequently as some of the other companies but he was in touch with him.

1566 "Question: Maybe not, but he was in touch with Tuttle during this period and you knew that he was in touch with Ashton, didn't you?

"Answer: Yes."

Mr. Lewin: Q. Does that refresh your recollection at all on whether or not you knew that Mr. Steiger was in touch with H. T. Ashton during this period?

A. If that was my testimony I was wrong, because I didn't know it definitely, and he is not one of our sources of information down there.

Q. Did you give that testimony?

A. I don't think I did. I don't recall it.

Q. Do you mean to say that you did not give that testimony before the grand jury?

A. I don't recall that I did.

Mr. Thomas: I object to that line of examination. What he is doing is impeaching the witness.

The Court: He may have gotten off the reservation a little that time.

Mr. Thomas: I ask that the jury be instructed to disregard the answer to the question.

Mr. Crawford: We will get back on the reservation quickly.

The Court: All right. Ask your question.

1567 *By Mr. Lewin*

Only insofar as I said before regarding the others, that he was a source of information there and I assumed that he was, did I know that during this period, 1935 and 1936, Mr. Steiger was in touch with Mr. Thomas Fitzgerald and A. V. Bourque, defendants in this case. I knew that he was in touch with them for the purpose of getting price information on all products, including gasoline on the spot market, if it was sold in the spot market.

I knew that Mr. Steiger was unable to make very many checks with jobber buyers during that period, because there are very few jobbers close to Tulsa with whom he can check. I knew that his main source of information was selling refiners and brokers.

In the same manner I knew that Mr. Steiger was in touch throughout this period with Neil Buckley. I knew that the East Texas Marketing Association had been formed in February, 1935.

I knew that certain major oil companies had been buying gasoline in the East Texas field and in the Mid-Continent field all along. I didn't know it started early in 1935. We had been reporting major company buying for some time.

The Court: Was there any increase in their buying in those localities?

1568 A. Only insofar as had been mentioned in our leads. It was quite frequent, yes.

Q. More frequent than in the past?

A. Yes, I should say so; it had been quite frequent during the latter part of 1934 and early 1935.

By Mr. Lewin

I don't recall any conversation with Mr. Steiger during 1935 on the subject of major company buying and its effect on prices. I heard of major company buying from Mr. Steiger only through his market leads. I may have mentioned it in other instances. I don't recall. But his market reports every day showed the major company buying. I don't recall any references to this major company buying as a so-called pool in 1935; I think we did in 1934. I knew that the major company buying was one of the important factors in supporting the market from March, 1935, on through the year and 1936.

I don't recall any conversation with Mr. Platt during 1935 on the subject of major company buying and its effect on the market.

Q. Do you think that your mind could be refreshed on that from your grand jury testimony?

A. No, I don't think so. I don't recall any conversation with him.

1569 Q. I wonder if it might refresh your recollection?

A. It might, yes.

Q. All right.

(Mr. Lewin passes document purporting to be the transcript of testimony before the grand jury to the Court.)

(The Court reads silently.)

(Consultation between Court and Mr. Lewin off the record and out of the hearing of the jury.)

By the Court

My position in the organization was general supervisory work over all phases of the work. Mr. Guthrie was my immediate superior. Mr. Platt, Mr. Guthrie, then myself.

By Mr. Lewin

I have testified that this major company buying during 1935 and 1936 was one of the factors in the tank car prices. It influenced the tank car market. In the volume it took off the market, it did help. That had to be one of the influ-

ences in the market. It indirectly influenced the spot market price of gasoline during that time in that it relieved the market of gasoline. It did not influence the quotations that we published in the spot market, except, as I say, indirectly, in relieving the market of gasoline, taking volume out
1570 of the market. We quoted prices to jobbers. Only in reporting it as news were we interested in buying. In relieving the market volume it influenced the spot market prices up.

I am familiar with the way in which the spot market quotations as published in our Journal reacted. There was that rise in the early part of 1935. I was familiar with this rise that is shown on this graph of our quotations in East Texas beginning about the first of March and running up into the last of May. There was a similar rise for our Oklahoma refinery market. As I recall, I think all markets were on a steady upward trend during that period. It was a steady rise. Major company buying was one of the important factors influencing that rise. Quoting of prices in all products and news was the main business of Platt's Oilgrams during that time.

Q. Wasn't your main business in quoting quotations on spot market in gasoline at that time?

Mr. Hanning: In East Texas.

Mr. Lewin: In East Texas, and he has also said the graph of Oklahoma went the same way.

A. That was only one of the markets out of 10 or 12 that we covered daily.

Q. Wasn't your main business to quote spot market quotations in all those markets?

1571 A. Along with other products, yes.

Q. Do you mean to tell this jury that you did not discuss with Warren C. Platt, your chief, what was one of the main factors causing that rise?

A. I do not recall any conversation with Mr. Platt on that subject, no, sir.

The Court: What did you talk to him about in your business visits?

A. Circulation mostly, your Honor. He was pushing for increased circulation, as I recall now.

Q. Was that market in an unusual condition in 1935 and 1936, more than in previous years?

A. Early 1935 was nothing unusual. The market had gone up and down, up and down, and leveling off in summer of 1935.

Q. I mean had it made the steady advance that it made in previous years?

A. Yes, there had been steady advance like that.

Q. Had it advanced in 1935?

A. Yes, I think so, as I recall it.

Q. And levelled off and continued off in May 1935 as it did later in 1935?

A. No, that part was unusual.

Q. Did you discuss that matter with Mr. Platt?

A. No, sir, I do not recall discussing it with him.

1572 Q. There was an unusual market, but you did not discuss that with Mr. Platt or with Mr. Guthrie?

A. No, I do not recall that I did.

By Mr. Lewin

I only recall one telephone call from Arthur V. Bourque, a defendant in this case, in 1935. I do not think I had any calls from him in 1936. I don't know whether Mr. Platt was getting calls from Mr. Bourque during 1935. I do not think I was in Mr. Platt's room on any occasion in which Mr. Platt was called by Mr. Bourque during 1935. I do not recall any such. I do not think I testified on that subject before the grand jury. I was not in Mr. Platt's office nor in any room anywhere at any time in 1935 or 1936 when Mr. Bourque called Mr. Platt. It is not true that Mr. Bourque was calling me through 1935 and 1936 as often as once a month, nor is it true that during that time some times he would call 3 or 4 times in one day.

This one conversation with Mr. Bourque, as I recall now, was in the early part of March. It was a discussion of octane brackets which the Oilgram, or trade publications generally, were quoting. He did not call me to register a complaint against our spot market quotations. It was about the octane brackets that we were carrying at the time.

1573 Q. Do you think we might refresh your recollection on that subject?

The Court: I think we will take about a 15 minute recess, and in the meantime you take this witness into the library and read over some of that grand jury testimony.

Mr. Lewin: All right.

Mr. Thomas: May we have an exception to the order of the Court with reference to the submitting of the grand jury testimony to the witness outside of the court room, the order being made in the presence of the jury?

The Court: Yes.

Mr. Crawford: Let the record also show that this statement of Mr. Thomas is made after and not before the witness retired with counsel.

Mr. Thomas: That is correct. Recess was called, and immediately after recess, the statement was made, and this exception is taken after the recess.

The Court: Let the record show also that it was a practice suggested by Mr. Thomas the other day, indicating in one of our cases in our Court of Appeals, and I thought this might be a better way than to have the testimony read here where it might have some—

1574 Mr. Thomas: That is the Jelke case, 255 Federal.

The Court: Yes.

Mr. Thomas: My objection was that it was made in the presence of the jury, your Honor. That is the point I am making.

The Court: I thought we might save some time, I thought we might save some time by having it refresh the witness' memory rather than by reading it in here as I have before.

Cross-Examination by Mr. Hanning.

I am 35 years old, and have been working for Platt's Oilgram for a little over 13 years. I started out as an assistant market checker and mostly office boy in the Chicago office. I was there as assistant checker and office boy about a year and a half. Then I went to the Tulsa office, where I helped check markets for a period of about 6 months. Then I went to the New York office as market checker and was there for about 2 years. Then I went to the Cleveland office. My first job there was mainly checking the Pennsylvania market and handling the main office detail on the Oilgram, also circulation. Ever since that time my job has been taking care of the circulation and office detail of the Oilgram and market checking at times.

1575 Prices on markets are gathered in each of these offices, Tulsa, Chicago, New York, and Cleveland. Prices on gasoline, kerosene, gas oil, fuel oil, lubricating oils, petroleum coke, and petrolatums are gathered at each of those offices. Gasoline is only one product, one of the main products, of the oil industry. When the boys out in the field offices call up for prices, they do not call up for prices only on gasoline, but all these other products, if the company that they are checking with handles those products. And each day as the Oilgram is issued, we have to carry prices on each of those many products that are sold and made in this oil business.

It is part of my duties in Cleveland to check the Pennsylvania markets at times; however, it hasn't been for over a year or a year and a half now. When I did do that, the procedure I followed, that is, the mechanical or detailed procedure, was not much different than that followed by the boys in other offices. It is practically the same in all our offices. In gathering the details that make up our price table, we call as many sellers as we can; from the Cleveland office it is all handled from the long-distance phone, because our sources of information are quite some distance from Cleveland. We call as many sources as we possibly can.

I get to work in the morning at 8:30; the first thing
I do when I get to the office is to look over cor-
1576 respondence that has come in. It takes me any-
where from half an hour to an hour and a half to
look over and clear my correspondence. Then a good bit of my time is spent on checking prospect lists for circulation on both the Oilgram and the Oil Price Handbook. I spend anywhere from an hour and a half to two hours on that daily. Then it is about lunch time.

By the time I get back to the office some of our market reports, preliminary reports, have started coming in. Some of the news has started coming in. And I try to get the news for the news section lined up for the day, that is, for the market leads we have been talking about, and the schedule of the news that we run in the news section. What we do is to take that stuff that comes into the office and arrange it.

The bulk of our material comes in to the Cleveland office via the teletype from any one of our 4 offices. We get wire reports also from our Los Angeles office, and sometimes men traveling out in the field send in wire stories, telegraphic, I mean. But most of it comes in over the teletypewriter.

When we get back after lunch, this teletype starts operating in the Cleveland, Tulsa, Chicago, New York and Washington offices, and probably in the Los Angeles office.

We have two of them in our Cleveland office, because
1577 of the volume of the material that is coming in. This
volume of material rolls in, and when it gets to the

Cleveland office, it is cleared for the other offices. The Cleveland office is a clearing house, or relay point, for this volume of material that is rolling in. It is midway from some of these points. The Chicago office is a relay point, it isn't a clearing house. We relay this material that comes in from Tulsa or the New York office, and the stuff that comes in from Chicago, and the same thing is true for each of the office points.

When that material comes in, we read it over for grammatical errors or poor sentence construction and polish it up like that, and send it on as quickly as we can to the other offices. In other words, we are working against time when our teletypes are running. I watch for grammatical errors as I quickly run this through; that is one of our main troubles. If some construction doesn't look proper, I might rearrange the construction of the sentence. As far as the price table is concerned, when that comes into Cleveland, I note the changes, if any, that have been made that day. On the things that come in, we do nothing except to quote the price, and relay them to the other offices. That comes in pretty continuously, I should say, between 1:30 and 4:15, or 4:30.
1578 I am not then through for the day. I then try to write circulation letters, and clean up any further correspondence that has come through in the day, and a dozen and one things.

My salary is $350 a month. After I take care of the circulation letters, I go home to dinner, and come back. I work evenings quite a bit, but not all the time. There are many little details that I have to take care of.

I haven't the right to hire and fire anybody working for the Oilgram, nor do I have any right or power to determine any policies of the Oilgram.

Redirect Examination by Mr. Lewin.

Mr. Platt has the right to hire and fire employees of the Oilgram and he determines the policies of the Oilgram; he is the only one.

There are quite a few jobbers scattered throughout the country who subscribe to our Oilgram; I don't know what percentage of the circulation, though. Our circulation is around 800.

The full, complete Oilgram service costs $100 a year. Subscription to The National Petroleum News is $2 a year, now. The number of subscribers to The National

Petroleum News has increased somewhat recently. I don't know the number, offhand. I think it is around 15,000.

(Witness excused.)

1579 HAROLD F. PARSONS, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in East Orange, New Jersey, and am assistant vice-president and assistant to the executive vice-president, Edward L. Shea, of Tide Water Associated Oil Company. Mr. Shea is a defendant in this case. I have been associated with Tide Water Associated Oil Company since the merger on November 30, 1936. From 1933, when Edward L. Shea was elected president of Tide Water Oil Company of New Jersey, through the greater part of 1936, I was his assistant. For a short period, in connection with the merger, I was connected with Tide Water Oil Company of Delaware. Mr. Shea was for a short time president of Tide Water Oil Company of Delaware. My duties as assistant to the president were carrying out his instructions, assisting him in the operating policies of the company, secretary, and a member of the executive staff and the operating committee. I work very closely with Mr. Shea. Most of his incoming business correspondence comes over my desk, but not all of the outgoing.

The executive staff is composed of the executives of the various departments, and is an advisory body to the president. The members of the executive staff are the managers of manufacturing, transportation, retail 1580 sales, export, wholesale and industrial sales, comptroller,—who are also on the operating committee—the treasurer, director of personnel, the head of the law division, Mr. Noel Robinson, vice-president, who is a defendant in this case, and myself.

The executive staff holds weekly meetings. In addition, meetings may be called by the president on special occasions. During 1935 and 1936 Mr. Shea, the president, was usually in attendance at those meetings when he was in the city. He was usually in the city, except when he was on business trips to the fields, or on vacation.

The operating committee is composed of Mr. Noel Robinson, a defendant here, vice-president, as chairman; the manager of transportation, the manager of manufacturing, the manager in charge of retail sales, the sales manager in charge of wholesale export and industrial sales, the comptroller, a statistician, another man who takes part in general statistical information in connection with the oil industry, and myself. The operating committee meets once each week, and is subject to call for any special meetings that may be desired to take up any business. Occasionally the president has come in to operating committee meetings.

I was familiar with purchases of gasoline made on behalf of our company in the East Texas field in April, May, June, July, August, September, October and Novem-
1581 ber, 1935. The purchases were authorized by the op-
erating committee and approved by Mr. Shea, president of Tide Water Oil Company of New Jersey, and Noel Robinson, chairman of the operating committee. Some time in November, 1935 our company discontinued making purchases in the East Texas field. It did not resume purchases in that field until February, 1936. From February at least until April, 1936, they made purchases there at the rate of approximately 5 cars a week. Those purchases were likewise made with the knowledge and approval of Noel Robinson and Edward L. Shea.

The purchases of gasoline which were made in East Texas by Tide Water Oil Company of New Jersey were to supplement the production of the company as they were required for sale purposes. In 1933 and 1934 we made purchases both from the Gulf Coast and from East Texas, as these locations were economic sources of supply used to supplement the production of our Bayonne refinery. In 1935 and 1936 purchases from East Texas and the Gulf Coast were continued, not only for the reason that we needed gasoline, but also because by purchasing in East Texas there was an advantage to the company in using its tank cars and securing a mileage allowance from the railroads, equivalent to approximately ⅛¢ a gallon, and further because we found that it was a good thing to endeavor to take gasoline from East Texas and help to stabilize the market.

1582 *Cross-Examination by Mr. Webster.*

Tide Water Associated Oil Company, prior to November 30, 1936, was strictly a holding company. It was a Delaware corporation qualified to do business in New York and California. It held approximately 99% of the outstanding stock of Tide Water Oil Company of New Jersey, and later, of Delaware; and approximately 98% of Associated Oil Company of California.

Tide Water Oil Company of New Jersey was strictly an operating company. It operated principally along the Atlantic seaboard and the territory from Maine to Virginia; and in New York and Pennsylvania. In 1935 and 1936 it was not qualified to do business, nor did it do business, in the so-called Standard of Indiana Territory with the exception of Michigan, where we had an office in Detroit.

Tydol gasoline is one of our products. I couldn't say whether we have any distribution in Wisconsin right at the moment or not.

Tide Water Oil Company of Oklahoma was an operating company that operated in the so-called Mid-Continent area. I do not recall its exact date of incorporation, but the company was dissolved in November, 1936. It was a 100% subsidiary of Tide Water Oil Company of New Jersey.

I am generally familiar with the steps taken in connection with the merger in November, 1936, which I
1583 referred to in my direct examination. They were
taken shortly after the Revenue Act of 1936 was approved on June 22, 1936.

(Witness states several factors that led to the merger and describes the steps taken to effect the consolidation.)

During the indictment period, that is, February, 1935, to the end of 1936, Tide Water Oil Company of Oklahoma operated in the so-called Standard of Indiana territory from February 1, 1935, to August 4, 1936; Tide Water of Delaware, from August 4, 1936, to November 30, 1936; Tide Water Associated, from November 30, 1936, to December 22, 1936.

Mr. Shea was the president of Tide Water Oil Company of New Jersey, and of Tide Water Oil Company of Oklahoma. Since December, 1936, he has been the executive vice president of Tide Water Associated Oil Company, a defendant in this case.

Mr. Noel Robinson was a vice president of Tide Water Oil Company of New Jersey, but was not an officer or director of Tide Water Associated Oil Company during 1935 or 1936, up until the time of and after the merger. After December 17, 1936, Mr. Robinson was a vice president of Tide Water Associated Oil Company.

Until the consolidation, Mr. J. W. Warner was a vice

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President of Tide Water Oil Company of Oklahoma, and
sales manager in charge of sales in the Mid-Conti-
1584 nent Division. When the Delaware Company took
over the Oklahoma Company, Mr. Warner still continued as general sales manager in the Mid-Continent area; and Mr. Warner, under Tide Water Associated, is still sales manager in the Mid-Continent area. Prior to December, 1936, Mr. Warner did not hold any position in Tide Water Associated Oil Company, nor did he hold any position in Tide Water Oil Compay of New Jersey.

During 1935 and 1936, Mr. R. O. Andrain, another defendant here, was connected with Tide Water Oil Company, Oklahoma, and was an employee who handled and worked on tank car purchases and sales of gasoline and other petroleum products manufactured by Tide Water Oklahoma at its Drumright refinery. His work was both buying and selling. I don't know whether Mr. Andrain had any particular title. Mr. Andrain was one of Mr. Warner's assistants in the Mid-Continent and in Tulsa.

Whatever purchases were made in East Texas in 1935 and 1936 by Tide Water Oil Company of Oklahoma were made by it for and on behalf of Tide Water Oil Company of New Jersey. However, in April and May, 1935, some purchases were made by Tide Water of New Jersey through Mr. O. D. Robinson of Republic Oil & Refining Company. Subsequent to that purchases were made by Tidewater of Oklahoma through the East Texas Refiners'
Association for Tide Water Oil Company of New
1585 Jersey.

Mr. Warner and Mr. Andrain with the Oklahoma Company made the purchases actually for the account of the New Jersey Company. They were instructed to purchase a certain volume in barrels at the going price or the best price that they could get. Whatever purchases they made, they made pursuant to instructions from New York.

I have seen this paper which you show me, dated November 3, 1937, attached to which are certain schedules showing the boards of directors and the officers of Tide Water Oil Company of Oklahoma, Tide Water Oil Company of New Jersey, Associated Oil Company of California, and the Tide Water Associated Oil Company of Delaware, for 1935 and 1936; also one for 1934 and 1935. I have seen this before, and it does contain a true statement of the facts as shown in the schedule.

(Document marked EXHIBIT 733, 733-A, 733-B, 733-C and 733-D, is received in evidence.)

Tide Water Associated Oil Company did not have an executive staff or an operating committee, because Tide Water Associated was purely a holding company. Tide Water Associated had nothing to do with the operating problems of the two main underlying companies. However, occasionally when a major expenditure was to be made for either of the underlying companies, say, an expenditure of $1,000,000 or $1,500,000, for some refinery
equipment, or something of that nature, it would be
1586 referred to the board of directors of Tide Water
Associated for approval.

Tide Water Oil Company of Oklahoma had an operating committee comparable to the operating committee of Tide Water Oil Company of New Jersey.

The boards of directors of Tide Water Associated Oil Company, Tide Water Oil Company of New Jersey and the Tide Water Oil Company of Oklahoma held separate board meetings. Prior to the merger, these companies had separate bank accounts. Separate financial reports were issued by the two underlying companies, Associated Oil Company and Tide Water Oil Company of New Jersey; and then the Tide Water Associated had its own. Each of these companies paid its own debts and obligations. Tide Water Associated had no purchasing and no legal department, any legal questions that they had being taken care of by outside counsel. Tide Water Oil Company of New Jersey, Associated Oil Company and Tide Water of Oklahoma each had a purchasing department and its own legal staff.

The accounting work for Tide Water Associated was handled by Tide Water Oil Company of New Jersey, and Delaware during that short transitional period, for which there was a certain fee paid to Tide Water Oil Company of New Jersey by Tide Water Associated. I don't recall what that exact figure was. Tide Water of Oklahoma
maintained its own accounting department. The
1587 same is true with reference to the credit department.

Tide Water Associated, being a holding company and not an operating company, had no departments whatsoever. The Oklahoma and New Jersey Companies had their own personnel, advertising and credit departments.

Redirect Examination by Mr. Chaffetz.

Prior to the merger Mr. Humphrey was president of Tide Water Associated Oil Company, chairman of the board of Tide Water Oil Company of New Jersey and president of

Associated Oil Company of California. He was in communication with Mr. Shea from time to time during 1935 and 1936, with whom he would discuss the policies of Tide Water of New Jersey. Mr. Humphrey was the controlling official of Associated Oil Company and Tide Water of New Jersey prior to the merger and superior to Mr. Shea. The policies of Tide Water of New Jersey and Associated Oil Company of California were received from the boards of directors.

Recross Examination by Mr. Webster.

The purchases in East Texas by Tide Water of New Jersey in 1935 and 1936 were not to my knowledge ever referred to or considered by the board of directors of Tide Water Associated Oil Company.

1588 *Redirect Examination by Mr. Chaffetz (continued).*

I would not say that the affairs and policies of the Oklahoma company were generally controlled by the New Jersey company prior to the merger. Tide Water of Oklahoma had its own officers and board of directors, and if I am not mistaken, all of them except Mr. Shea and possibly some assistant secretaries or assistant treasurers or the like, were located in Oklahoma, in Tulsa and in the Mid-Continent.

The Oklahoma company's operations were largely different from the activities of Tide Water Company in the East. One of the principal activities of the Tide Water Oil Company of Oklahoma was production. And the only person in New York who had anything at all to do with that was Mr. Shea. When questions came up, they would be taken up directly with him.

So far as I know, the question of the effect that such a merger might have upon the indictment then pending against Tide Water of New Jersey, returned at Madison, Wisconsin, some months prior to that merger, was never discussed among the officials of either Tide Water Associated or Tide Water of New Jersey. The question of the merger of these companies was one that had been under discussion for a period of years, and there were a number of successive steps taken to accomplish the merger.

1589 *Cross-Examination by Mr. Donovan.*

The operating committee of Tide Water of New Jersey had something to do with the purchase of gasoline. The principal factors considered in connection with the purchase of gasoline are the available supply that we have compared with our sales requirements or anticipated sales. When I say "available supply" I have in mind the gasoline that is produced by our own refinery. For the sales of Tide Water of New Jersey, we have only one plant, located at Bayonne, New Jersey.

If you take a solid block of New England states, New York, Pennsylvania, and down as far as Virginia, you have the market territory for Tide Water of New Jersey.

That is the only refinery we have to supply the needs of the market in that territory. Over the past 10 years it has been the practice to run the refinery to the full capacity, making as much gasoline as we could. If you are selling gasoline, you like to sell your own production rather than purchased gasoline. However, the production of the refinery has been insufficient to meet our sales requirements, and we have had to purchase gasoline on the outside. That would be true during the past 10 years.

Sales were greater than production at the Bayonne refinery. I haven't got the percentage by which sales exceeded production during the past 10 years, but I have
1590 it for the last 5.

Production of gasoline in the year 1932 was 5,582,394 barrels at the Bayonne refinery. Sales in the Eastern Division, which is the territory I mentioned, amounted to 8,136,474 barrels. That was 2,554,080 over our production. We bought 2,286,110 barrels of refined gasoline in 1932 to make up that deficit. Our purchases of refined gasoline were 28.1% of our total sales.

In 1933 our Bayonne production amounted to 6,771,725 barrels, an increase of 21.3% over the preceding year. Sales amounted to 8,489,177 barrels. We bought in that year 1,433,416 barrels or 16.9% of our total sales.

Our production in 1934 increased over our production in 1933 by 11.2%. Unfortunately, the 1934 increase in production was not sufficient to meet our sales requirements. It fell short 1,333,040 barrels. Then, as in prior years, our committee authorized the purchase of refined gasoline to meet sales requirements. In 1934 we purchased 1,152,669 barrels of motor gasoline. This was 13% of our sales requirements.

In 1935 our production was not sufficient to take care of our sales. It fell short 1,150,094 barrels in that year, and we purchased 599,746 barrels of refined motor gasoline. That was authorized by the Operating Committee. We bought part of it from sources other than the refineries in

East Texas. Part of it was bought on the Gulf
1591 Coast, and part was bought in New York Harbor. As
to the difference, we also purchased natural gasoline, and I haven't included the natural purchases here. I was only talking about the purchases of motor gasoline. In some cases the purchases of natural gasoline go up, in some cases they go down; but the two of them will pretty well balance out the total short requirements.

The motor gasoline that we bought in 1935 was less than we bought in 1932. In 1935 purchases were 1,787,000 barrels less of motor gasoline than they were in 1932. 2,286,000 in 1932 would be approximately 4 times as much as the 599,000 or the 1935 figure would be approximately 24%, on a quick calculation.

Our 1935 purchases were less than our 1933 purchases, 600,000 against 1,433,000; roughly, they were 800,000 barrels less. Our 1935 purchases were approximately 50% of our 1934 purchases, being 599,000 against 1,152,000.

6.6% of our sales requirements in 1935 were supplied by our purchase of motor gasoline. In 1932 the percentage of purchases to total sales was 28.1%; 1933, 16.9%; 1934, 13%; 1935, 6.6%; 1936, 12%. But bear in mind, again, the possibility of difference in these figures because of natural purchases which have not been included.

We did not curtail our production in 1935 as compared
to prior years. We increased it over 1934 by 361,000
1592 barrels. The 1936 production was 474,000,000 barrels
more than the production of gasoline in 1935. This increased production in 1936 over 1935 was not enough to take care of our sales, because we have still continued to purchase gasoline in 1937. In 1936 we purchased 12% of our motor gasoline, and then there was some natural gasoline included in there, in addition to that.

In 1936 we continued our policy of buying refined gasoline to make up for our deficiency in production, to meet our requirements. In 1936, we bought 1,161,885 barrels. That is approximately twice as much as we bought in 1935, and approximately the same as it was in 1934. Purchases in 1936 were 270,000 barrels less than in 1933; and, in comparison with 1932, they were 1,125,000 barrels less.

The amount of crude oil which we processed in our refinery increased during 1935 and 1936, as compared with prior years.

I am generally familiar with the prices which our company paid East Texas refiners for gasoline in 1935 and 1936. So far as I know, purchases were made below the low or at

the low of the East Texas refinery price. There was one period, I think, during April and May of 1935—approximately 25% of our purchases for the year were made during that period—when the market was rising, when some of our purchases were ⅛¢ and some were ¼¢ under the
1593 low East Texas quotation.

In one particular instance a purchase was authorized through Republic Oil Company, and it was told that it could purchase at the going market. It came back with an offer which we refused, and later it bought the gasoline under that order at ¼¢ less.

Then, when the price level flattened out, practically all of the purchases after the price level had become, you might say, in a straight line, were made at the low of the East Texas price, f. o. b. the refineries.

In the East 33.2% of our sales were made to jobbers in 1935, and 35.9% in 1936; and in the Mid-Continent or Standard of Indiana territory, 91.2% in 1935, and 90.7% in 1936.

Those jobbers are our most important outlet for gasoline. If we did not have jobbers to sell to, we would have to get other outlets to do business here, and I don't know where we would get them, without a tremendous expenditure of money for service stations or facilities.

In 1935 we bought 600,000 barrels, and of this we purchased in East Texas, I believe, 800 cars, which is roughly 160,000 barrels, figuring 200 barrels in a tank car. That is approximately 27% of our total purchases.

In 1936 the purchases were 1,161,000 barrels and there were 150 tank car purchases in East Texas. 150 cars purchased in 1936 is a considerably smaller percentage
1594 than we purchased in 1935.

I do not know whether the data I have is based on the data that was supplied before the grand jury. All through my testimony I was talking in terms of barrels, 42 gallons to each barrel, which is the regular refinery barrel.

By the Court

I haven't the details from whom we bought in East Texas in 1932. We bought in 1932 our gasoline on the Gulf Coast in cargo lots, and without having our records here, I think we might have bought some in California and some in New York harbor. In 1935 it was split up amongst 11 refineries. In 1936 the purchases were all from the Hurricane Petroleum Company. Not having the records here with me, I could not answer the question whether we bought as much in the East Texas field in 1932 as we did in 1935.

Redirect Examination by Mr. Chaffetz.

25% of our 1935 purchases were made in April and May, 1935. A part of these purchases were made a fraction below the low of Platt's Oilgram, East Texas market. When I said 25% of our purchases, I did not mean to signify by that 25% of all the gasoline that we bought in East Texas during 1935. That was 25% of the purchase orders that were filled. I haven't got the exact figure but prob-
1595 ably between 10% and 15% of the volume was purchased on that price level below the low.

The total volume we purchased in April and May was about 75 cars, in both months together. There is a total of 725 cars here for the succeeding months. All of those 725 cars were purchased at the low of Platt's Oilgram, East Texas market, except for 1 car at 4½¢. I don't know whether there was a temporary dip in the market just on that day.

By the Court

Our overhead in 1935 and 1936 was slightly less than it was in 1932 and 1933, because of the increased volume of sales. As you increase the throughput through the plant it reduces your operating expenses per gallon of product put through.

I haven't got the profits of the company for the period with me, but I think it is a safe assumption to say that in 1935 and 1936 the profits were higher than they were in 1932 and 1933. The fact, however, can be developed very quickly from the published financial statements of the company. They are higher because of the fact that in 1935 and 1936 the earnings of the company were higher than they were in 1932. The dividends paid were higher because of increased earnings of the company.

There are several factors that go in to make up the earnings of the company; there is profit on refining and
1596 marketing, profit on crude produced, and all of your ramifications; profit on the tank cars, profit on any number of items, direct service station operations, and all of your sales of lubricating oils.

I believe the price of our gasoline sold to jobbers in 1935 and 1936 was higher than it was in 1932. I haven't got the 1932 figures before me, but I would say somewhere between 1¢ to 1½¢ per gallon higher.

Recross Examination by Mr. Donovan.

Our company was improving the volume of its business and its position in the production field. It is much more economical to use your own crude than it is to use purchased crude.

I knew quite well that there was a depression in 1932 and 1933.

It would be practically impossible for me to say accurately without referring to the cost of manufactured gasoline and the cost of purchased gasoline for the two periods, whether we made more of a profit on the same quantity of gasoline we sold in 1932 and 1933, because 1932 was the period when the crude price was cut down very low, and you had a smaller manufacturing cost on gasoline. You could buy gasoline at a low price, and then when the price of crude rose to its new point, it was reflected in the cost of the finished product. And
1597 likewise when the value of crude oil was low you could buy gasoline at a lower cost than you could during 1935 and 1936 when the price had been stabilized on crude, somewhere around $1.25 or $1.30 a barrel in East Texas.

I am not sure whether it was 1932 or 1933, but I think at one time East Texas crude got down to 10¢ or 15¢ a barrel. I know it was practically given away. I do not recall which year it was, but it was somewhere along in that period. In 1935 and 1936 it was $1.25, and then went to $1.35. I cannot remember offhand the exact dates when those changes took place.

I couldn't state how low the price of gasoline was in the Standard of Indiana territory in April, 1932 without referring to the records.

I haven't got a statement here showing those companies we purchased from in 1932 and 1933, but I believe we can get it in New York certainly.

Mr. Webster: May it please the Court: I have here a schedule showing the names of each East Texas refiner, from whom purchases were made from 1931 down to 1936, and the amount purchased, and whether or not they were purchased from members of the East Texas Marketers Association or otherwise.

This is complete, except that it does not contain
1598 reference to the 75 cars that were purchased in April and May, 1935, through the Republic Oil

Company on the Gulf; I ask to have that received in evidence.

The Court: It may be received.

(Document is received in evidence as EXHIBIT 735.)

1599 HARRY JACOBS, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in a suburb of St. Louis, Missouri. I am assistant to the marketing vice president of Shell Petroleum Corporation, and have held that position since the end of January 1935. I have been connected with the Shell Company since 1923.

Mr. van Eeghen, was vice president in charge of marketing during 1935 and until, I believe, March, 1936. Mr. P. E. Lakin, who had been general sales manager since January 1934, succeeded Mr. van Eeghen, his superior, and combined the position of vice president in charge of marketing and general sales manager since March 1936. Technically I was assistant to Mr. van Eeghen during 1935 and the first part of 1936; practically, I was assistant to Mr. Lakin throughout 1935 and 1936.

The function of the vice president in charge of marketing was to sell the output of the refineries to the best advantage. It also involved the purchasing of gasoline, but that was delegated to me sometime towards the end of March or early April, 1935.

1600 I keep Mr. Lakin informed on any price changes and any price matters. I assist him in the formulation of the sales policies. I make any special studies he requests. Besides passing on capital expenditure in the building or improvement of service stations and bulk plants, I have the special assignment of purchasing gasoline. I assist Mr. Lakin generally in all the duties of the vice president in charge of marketing.

I don't think all of the correspondence, including letters, memoranda, and so forth, directed to Mr. Lakin goes over my desk. It depends very largely upon his secretary. If she thinks I should see it, she passes it to me. That does not apply both to incoming and outgoing. I never see any of the outgoing, unless Mr. Lakin should happen to mark a copy for my special attention. He does that from time to time.

Mr. Lakin's superior in the company in 1936, after he became vice president, was Mr. Alexander Fraser, the president of the company. I think he was elected president some time in the fall of 1933. He had been with the company prior to that time as vice president. Mr. Fraser and Mr. Lakin are defendants in this case.

I came in contact with the president of the com-
1601 pany an average of twice a month during 1935 and 1936. The president and vice president have their offices in St. Louis, Missouri, where the general offices of Shell Petroleum Corporation are located.

During 1935 and 1936 Mr. Lakin was actively on the job. He was out of town, of course, at periodic intervals. Insofar as I know, that holds true of Mr. Fraser, but, of course, I don't keep track of Mr. Fraser's movements. I would say very decidedly that Mr. Fraser was actively in charge of the affairs and policies of Shell Petroleum Corporation. He keeps in close touch with the operations of the company.

I don't know that all questions of policy are submitted to Mr. Fraser for approval. The marketing policies are pretty clearly defined in our own office. Whether they go to Mr. Fraser for clearance before they are actually put into effect, I can't say. I am sure Mr. Fraser would be interested in the prevailing prices for gasoline sold by our company and would keep in touch with what the trend of prices was at any particular time, and what the factors are that affect that trend. That was true during 1935 and 1936.

The document marked Exhibit 169 for identification appears to be a carbon copy of a letter from our crude oil department, dated January 11, 1935, addressed to Messrs. Fraser, Bascom, van Eeghen and Lakin.

1602 Q. And who would you say wrote that letter?

A. The initials are "A P R", which is Mr. A. P. Ruether, manager of our crude oil department.

Mr. Chaffetz: I ask that this letter be received in evidence as Exhibit 169 against the Shell Petroleum Corporation and the defendants Fraser and Lakin, and no other defendants. This is Exhibit 169.

Mr. Thomas: We object upon the grounds heretofore stated at R. pp. 504-05, 556-57, 721-23.

The Court: The objection is overruled. Exception allowed.

(Document received in evidence as EXHIBIT 169 against the defendants Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin only.)

Exhibit 170 for identification is apparently a carbon copy of a memorandum from the crude oil department, dated January 15, 1935, addressed to Messrs. Fraser, Bascom, van Eeghen and Lakin. The Mr. Ruether who signed this was the same Mr. Ruether who was the general manager of the crude oil department of Shell,
1603 if he signed the original; but there is no signature on this carbon copy. The fact that it is marked "Crude Oil Department", would indicate that it came from his office, and presumably came from him. In the ordinary course, such a memorandum would go to Messrs. Fraser, Bascom, van Eeghen and Lakin. Mr. Bascom is vice president of Shell Petroleum Corporation.

Mr. Chaffetz: I ask that Exhibit 170 be received in evidence against Shell Petroleum Corporation and the defendants Fraser and Lakin.

Mr. Thomas: Same objection as appears at R. pp. 504-05, 556-57, 721-23.

The Court: Overruled. Exception allowed.

(Document referred to received in evidence as EXHIBIT 170 against the defendants Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin only.)

Exhibit 173 for identification is apparently a copy of a wire addressed to Mr. P. E. Lakin, Shell Petroleum Company, St. Louis, from Mr. R. W. McDowell, dated February 2, 1935. That copy was made in the telegraphic department of our office. It is customary for the telegraphic department of our company to make copies of telegrams received. I know, from looking at that document, that several copies were made and distributed to several persons in the organization. It was marked for the attention of Mr. Lakin, with copy to Mr. Fraser, Mr. Anderson, Mr. Galloway, Mr. van Eeghen, Mr.
1604 Wagner and Mr. Jacobs. In the ordinary course of functioning of our organization, copies would go to the gentlemen whose names are mentioned. The handwriting on Exhibit 173 for identification appears to be Mr. Lakin's.

Mr. Chaffetz: I offer Exhibit 173 in evidence.

Mr. Thomas: Same objection as appears at R. pp. 504-05, 556-57, 721-23.

Mr. Chaffetz: (continuing)—against the defendants whom the record shows thus far have been connected up with the alleged conspiracy.

The Court: It will be received. Exception allowed.

> (Document referred to received in evidence as EXHIBIT 173. Later at R. p. 907 said Exhibit was admitted as evidence against all defendants generally.)

Exhibit 174 for identification is apparently the original telegram received from Kilgore, Texas, signed G. L. Shoemaker, addressed to A. P. Ruether, and dated February 13, 1935. The marks on the lower righthand corner on that document indicate that the telegram was marked for the attention of Mr. Ruether, with a copy to Mr. Bascom, and a copy to the production department. The practice of our office is to take an original telegram as it comes in, and somebody marks on the telegram the persons who should receive copies of it. The telegraphic department does that. It is left to their discretion.

1605 Mr. Chaffetz: I now offer Exhibit 174 as against the Shell Petroleum Corporation. Do I understand, your Honor, that that exhibit is received over the objections?

The Court: It will be received subject to the objections. Exception allowed.

> (Document referred to received in evidence as EXHIBIT 174 against Shell Petroleum Corporation only.)

Exhibit 175 for identification is an original of a wire dated March 6, 1935, addressed to A. P. Ruether, signed McNair, and originating at Tyler, Texas. I believe Mr. McNair is a scout in the crude oil department.

A scout works out of the district office into the field, scouting for information, gossip, anything he can, that he thinks will interest us. He keeps us advised in St. Louis of what is going on out in the field, in a general way. I don't know how true everything he sends in is, or whether it is gossip, rumor, exaggeration, his personal opinion. He may send in half a dozen telegrams merely to give the home office an idea that he is working very hard. But presumably he is a good man if he has held his job and his purpose is to send us reliable information. I presume that the information he sends to us is reliable, but how carefully it has been checked, I wouldn't say. We do rely on it as a source of information.

Mr. Chaffetz: I offer Exhibit 175 in evidence against Shell Petroleum Corporation.

1606 Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57, 721-23.

The Court: It will be received on that condition. Exception allowed.

(Document referred to received in evidence as EXHIBIT 175 against Shell Petroleum Corporation only.)

Exhibit 176 for identification is apparently a carbon copy of a memorandum from A. P. Ruether, dated March 8, 1935, addressed to P. E. Lakin and R. P. Bascom. I believe it is a bona fide copy of an original memorandum.

Mr. Chaffetz: I offer Exhibit 176 in evidence as against all of the defendants whom the record may show have this far been connected up with the alleged conspiracy.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: It will be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 176. Said Exhibit later at R. p. 907 was admitted as evidence against all defendants generally.)

Exhibit 177 for identification is apparently an unsigned memorandum from A. P. Ruether, dated February 6, 1935, addressed to Fraser, Bascom, van Eeghen and Lakin. It is on the stationery of Shell Corporation, but it is unsigned. I could not say that that was an original, as it is unsigned. I would say if it came from our files, it may be a copy of an original, although it isn't on carbon paper. It is original type, but it bears no signature.

1607 Exhibit 178 for identification is apparently a carbon copy of a memorandum from the crude oil department dated March 15, 1935, addressed to P. E. Lakin, with a copy to R. P. Bascom.

Mr. Chaffetz: I offer Exhibit 178 in evidence on the same basis as Exhibit 176 was offered.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: It will be received. Exception allowed.

> (Document referred to received in evidence as EXHIBIT 178 against all defendants who the record shows have been connected with the alleged conspiracy. Later at R. p. 907 Exhibit 178 was admitted as evidence against all defendants.)

Exhibit 179 for identification is not on regular memorandum paper. It is apparently a typed note to Messrs. Lakin and Bascom, from A. P. Ruether, dated March 20, 1935. I am not quite sure, but I think that is Mr. Ruether's handwriting. On Exhibit 179 are the words, "Will you please discuss PEL"; they are Mr. Lakin's initials and it looks like his handwriting. I think the words "Spoke to Mr. Lakin, 3-22-35", were written by Mr. Ruether, although I do not recognize his writing.

Mr. Chaffetz: I offer Exhibit 179 in evidence on the same basis as I offered Exhibit 176.

1608 Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57, 721-23.

The Court: It will be so received. Exception allowed.

> (Document referred to received in evidence as EXHIBIT 179 on the same basis as Exhibit 176. Later at R. p. 907 Exhibit was admitted as evidence against all defendants generally.)

Exhibit 180 for identification is the original of a telegram from Tulsa, Oklahoma, dated March 20, 1935, addressed, St. Louis Office, A. P. Ruether, signed Crude Oil Department, E. A. Bacon. The telegraphic division of our company marked that telegram for the attention of Mr. Ruether and copies to Mr. Bascom. I think that is Shell Pipe Line Company file. Mr. Bacon is in charge of our crude oil department at Tulsa, Oklahoma. I prepared Exhibit 181 for identification.

Mr. Chaffetz: I offer Exhibits 180 and 181 on the same basis as Exhibit 176 was offered.

Mr. Donovan: The same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: It may be received. Exception allowed.

> (Documents referred to received in evidence as EXHIBITS 180 and 181 on the basis stated. Later at R. p. 907 said Exhibits were admitted as evidence against all defendants generally.)

I prepared the original of Exhibit 182 for identi-
1609 fication, and this is a copy. The initials, "H. J.",
in the lower left-hand corner of the third page indicate that I prepared it. I think I prepared it for the signature of Mr. van Eeghen. This document was intended to be sent from Mr. van Eeghen to Mr. Fraser, the president of the company and a defendant in this case. In the ordinary course of business, if nothing interfered, it would go to Mr. Fraser.

By Mr. Donovan

Sometime in the end of February, 1935, or the beginning of March, 1935, Mr. Lakin asked me to prepare a concise digest of weekly market prices and trends based on information taken from trade publications, supplemented with material obtained from our scout reports, and any other gossip or rumors I heard in the trade, and to give my views, opinions, and conclusions on the market based on the information obtained from the sources I have just described. The source of material for this letter was the same sources as I have just described. I prepared a series of reviews in the same manner.

By Mr. Chaffetz

I did not have access to all of the information inside our company, as to our own company's operations. I wasn't permitted to go wandering around every department and looking through their files. I wasn't authorized to obtain
information for that report from any other source
1610 than those I have mentioned. If I got any infor-
mation from Mr. Lakin, I was not unauthorized to incorporate that in these reports, but I have a recollection of only putting in one item I got from Mr. Lakin. If I got any information from any of my other associates in the St. Louis office, I was not authorized to put such information in those reports.

My purpose in these reports was to incorporate in them the best information that was available to me from those particular sources on the subjects covered in those reports. As I say, I might have picked something up in conversation, and I would probably turn it over in my own mind and transpose it in my own words. I tried to give in those reports the most accurate picture of the situation as I was able to develop it at the time. It was intended to be a gossipy news letter.

Normally, I would say those reports were sent from the office of Mr. Lakin to the office of the president in the regular course of our company's business.

By Mr. Donovan

I was asked to prepare those reports so as to enable the executives of the company to get an idea of the market instead of wading through all the trade publications to obtain that information.

Q. Would it be right to say that principally it took the information obtained from the trade journals and put it in simpler and more digested form? 1611

Mr. Chaffetz: He said just the contrary.

Mr. Donovan: I asked him.

The Court: I think he has already covered it where he obtained that information.

Mr. Donovan: Then, your Honor, may I be permitted to make a further objection upon the statement of the witness that it appears that the information obtained was purely hearsay, embodied by him in such letters.

The Court: Objection overruled. Exception allowed.

By Mr. Chaffetz

Exhibit 183 for identification is similar to Exhibit 182 previously identified, except this one is dated March 20, 1935. It was prepared by me.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: Same ruling. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 182 and 183 against Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin only. Later at R. p. 907 said Exhibits were admitted as evidence against all defendants generally.)

Mr. Francis: Is it clear in the record whether it is as to each of the several defendants?

1612 Mr. Donovan: Yes. In addition to the other objection, is it clear to his Honor that the objection we have entered applies to each and every document for each and every defendant?

The Court: Let the record show you have every objection known to the law.

Exhibits 184 and 185 for identification are price reviews dated April 3 and April 10 from P. E. Lakin to A. Fraser, but signed by me, at least, I put Mr. Lakin's name on them, but they are not signed personally by Mr. Lakin.

Exhibits 186 and 187 for identification are price reviews dated April 17 and April 24, 1935, signed by Mr. Lakin and addressed to Mr. Fraser.

Exhibit 188 for identification is a price review dated May 9, 1935, from Mr. Lakin to Mr. Fraser, which is signed by me.

Exhibit 189 for identification is apparently a carbon copy of a price review dated May 17, 1935, from Mr. Lakin to Mr. Fraser. I am uncertain as to whether I signed the original of that or whether Mr. Lakin signed it. I can't tell without seeing the original. If Mr. Lakin was in town, he would sign it.

Mr. Chaffetz: I now offer in evidence EXHIBITS 184, 185, 186, 187, 188, and 189.

The Court: They may be received subject to the
1613 same objections as appear at R. pp. 504-05, 556-57, 721-23. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 184, 185, 186, 187, 188 and 189, respectively.)

(The following occurred out of the hearing of the jury.)

Mr. Morgan: This is in addition to all other objections made to the exhibits which we desire to apply to this exhibit. We object to Exhibit 185 and ask that that paragraph in which Texas is mentioned along with Sinclair and Phillips be stricken for the reason that it shows on its face it is based on reports and not on knowledge of the witness and applies to natural gasoline, which is a raw product, and which doesn't apply in this case.

Mr. Gray: I have this further objection to make in addition to the one already made to Exhibit 188 (passing paper to the Court). On that paragraph labelled "retail prices" there.

Mr. Chaffetz: On Louisiana territory?

Mr. Gray: Yes.

Mr. Chaffetz: On Exhibit 185 I ask that the motion to strike out the paragraph in question on page one be granted as against all defendants other than Shell and the Shell individuals. And then on
1614 that paragraph headed "retail prices, general," the rest of that last paragraph of Exhibit 188, I will

not object to a motion to strike out that paragraph as to all defendants other than Shell and the Shell individuals.

The Court: It may be stricken out.

Mr. Chaffetz: In accordance with the statement of Government counsel?

The Court: Yes.

(The following occurred in the hearing of the jury.)

By Mr. Chaffetz

I have had an opportunity to examine Exhibits 194, 197, 198, 199, 200, 201, 202, 203 and 204, all for identification. Exhibit 194 for identification is a price review, dated August 23, 1935, from P. E. Lakin to A. Fraser, signed by myself with Mr. Lakin's name and my initials.

It is my belief that the pencil mark on Exhibit 194 for identification is Mr. McGaw's initials. I could only say I believe that that mark, which appears on Exhibits 197, 198, 199 and 200, and Exhibits 202 and 204, is Mr. McGaw's initials, or Mr. McGaw's mark of some sort. I can't say that that might be Mr. McGaw's mark indicating that Mr. Fraser had seen this, putting Mr. Fraser's name or Mr. Fraser's initial on it. I think that handwriting on Exhibit 194 for identification is Mr. McGaw's
writing. I think it is M. C. or M. G. Mr. McGaw was
1615 in charge of the president's department during 1935
up to the end of 1936, or almost the end.

Exhibits 197, 199, 200, 201, 203 for identification are price reviews addressed to Alexander Fraser dated respectively September 25, October 9, 16, 23 and November 20, 1935, written by J. H. Wagner, signed by P. E. Lakin. J. H. Wagner is a clerk in the sales department. He was an assistant of mine at the time he wrote these reports. He acted in my stead in writing them.

Exhibit 198 for identification is a price review, dated October 2, 1935, prepared by J. H. Wagner, and signed by him, with Mr. Lakin's name.

Exhibit 202 for identification is a price review, dated October 30, 1935, prepared by Mr. Wagner and addressed to Mr. Fraser.

Exhibits 204, 214, 218 for identification are price reviews, dated respectively December 6, 1935, February 1, 1936, and December 14, 1935, prepared by myself, addressed to Mr. Fraser, signed by me with Mr. Lakin's signature, followed by my initials.

Mr. Chaffetz: I offer in evidence, on the same

conditions stated with respect to earlier exhibits of the same character, that is, as against all defendants whom the record now shows may have been connected up with the conspiracy, Exhibits
1616 194, 197, 198, 199, 200, 201, 202, 203, 204, 214 and 218.

The Court: They may be received subject to the same objections as appear at R. pp. 504-05, 556-57, 721-23, and elsewhere heretofore. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 194, 197, 198, 199, 200, 201, 202, 203, 204, 214 and 218, respectively as stated. Later at R. p. 907 said Exhibits were received as evidence against all defendants generally.)

Mr. Chaffetz: Exhibit 177 was identified yesterday by the witness. I now offer this exhibit as against all the defendants whom the record may show have been connected with the conspiracy, with the exception that at this time this letter is not offered against Mr. Allan Jackson, defendant.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: Yes, same objection and same ruling. Exception allowed.

(Document referred to received in evidence as EXHIBIT 177 against the defendants mentioned. Exhibit 177 later at R. p. 907 was admitted as evidence against all defendants.)

Exhibits 210, 212, 215 and 217 for identification are price reviews dated respectively March 21, 1936, February 14, 1936, January 24, 1936, and December 19, 1935, from P. E. Lakin to A. Fraser, written by me and signed
1617 by Mr. Lakin.

Mr. Chaffetz: I offer Exhibits 210, 212, 215 and 217 in evidence on the same conditions, and I assume over the same objections.

The Court: Yes. They may be received. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 210, 212, 215 and 217 against all defendants shown by the record to be connected with the alleged conspiracy. Later at R. p. 907 said exhibits were admitted as evidence against all defendants generally.)

Exhibit 220 for identification is a memorandum dated January 2, 1935, from the Crude Oil Department to Messrs. Fraser, Bascom and Lakin, signed by A. P. Ruether. The writing in lead pencil on the upper portion of the left hand margin appears to be Mr. Fraser's writing. It is addressed to Mr. Ruether, and it looks like "please discuss." They appear to be Mr. Fraser's initials, A. F. "Spoke to Mr. Fraser 1/3/35 p.m." appears to be in Mr. Ruether's handwriting. "Think we should participate up to 10 cars." is apparently Mr. Lakin's. I am not sure, but I believe the initials just below Mr. Lakin's writing are Mr. Ruether's. I cannot be sure they are not Mr. Fraser's initials. I am rather inclined to believe they are Mr. Ruether's initials.

Mr. Chaffetz: This Exhibit 220 I offer as against the Shell Petroleum Corporation and Mr. Fraser
1618 and Mr. Lakin only.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: It may be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 220 against Shell Petroleum Corporation, Alexander Fraser and P. E. Lakin only.)

Exhibit 221 for identification is apparently the original of a telegram dated August 26, 1935, from Kilgore, Texas, to A. P. Ruether, St. Louis, from G. L. Shoemaker.

Mr. Chaffetz: Exhibit 221 offered on the same conditions as Exhibit 218, and the preceding exhibits were offered, that is, as against the defendants generally whom the record may show have been connected up with the conspiracy.

Mr. Donovan: Same objection as appears at R. pp. 504-05, 556-57, 721-23.

The Court: It may be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 221 against the defendants stated. Exhibit 221 later at R. p. 907 was admitted as evidence against all defendants generally.)

Exhibit 232 for identification is a carbon copy of a letter dated May 17, 1935, written by myself, signed by
1619 Mr. Lakin, and addressed to Mr. A. V. Bourque of the Western Petroleum Refiners Association. The fact that that carbon was in our files would indicate that

the letter was sent to Mr. Bourque on that date. On it there is some writing in ink, "mailed May 20." That is not my writing.

Mr. Chaffetz: I offer Exhibit 232 in evidence on the same basis as the preceding exhibit.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

The Court: It may be received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 232 upon the basis stated. At R. p. 907 Exhibit 232 was admitted as evidence against all defendants generally.)

Exhibit 235 for identification is apparently a carbon copy of a report, originating in the Manufacturing Department, headed "Review of Gulf Coast Bulk Market, Week Ending April 6, 1935." There is a rubber stamp, C. E. Davis. Mr. Davis is, I think, assistant to the manager of the Manufacturing Department. This document was addressed to Mr. A. Fraser. The date it was written is not perfectly clear. It might be April 9, 1935.

Mr. Chaffetz: I offer Exhibit 235 in evidence, on the same basis as the previous exhibit.

Mr. Donovan: Same objections as appear at R. pp. 504-05, 556-57, 721-23.

1620 The Court: It may be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 235 upon the basis stated. At R. p. 907 it was admitted as evidence against all defendants generally.)

Exhibit 240 for identification is an original letter from Mid-Continent Petroleum Corporation, dated December 19, 1935, addressed to P. E. Lakin, signed apparently "R. W. McDowell." I don't know Mr. McDowell's signature; that is what it appears to be. I think this notation to Mr. Ruether is Mr. Lakin's handwriting. It is "To note as per conversation McDowell informed you will be there." The initials are "P. E. L." Those initials are the initials of Mr. Lakin. It is my belief that the other set of initials are Mr. Ruether's. Just below the body of the letter, appears "Noted," and I think it is followed by Mr. Ruether's initials.

Mr. Chaffetz: I offer Exhibit 240 in evidence on the same basis as the preceding exhibit.

Mr. Donovan: Same objections as appear in the record at pp. 504-05, 556-57, 721-23.

The Court: It may be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 240 upon the basis stated. At R. p. 907 it was admitted as evidence against all defendants generally.)

Exhibit 246 for identification is a copy of a letter 1621 from the shipping and supplies department, to the crude oil department, dated October 3, 1935, with a copy to myself, in connection with market stabilization gasoline purchases. It was written by a clerk in the shipping and supplies department, whose name is Kieselhorst, I think. That handwriting might be Mr. Lakin's initials, although I am not sure of that. It looks like "P. E. L." The stamp, "Please return to P. E. Lakin's file," would lead me to believe that my interpretation of those initials is fairly correct.

Mr. Chaffetz: I offer Exhibit 246 in evidence on the same basis as the preceding exhibit.

Mr. Donovan: Same objections as appear in the record at pp. 504-05, 556-57, 721-23.

The Court: It may be so received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 246 upon the basis stated. At R. p. 907 it was admitted as evidence against all defendants generally.)

Exhibit 250 for identification is an original memorandum from the crude oil department, dated March 6, 1936, signed by Mr. Ruether, quoting an East Texas scout's report of March 4th. The pencilled handwriting is apparently Mr. Lakin's handwriting. It says "For the next tank car meeting I will give you date."

Mr. Chaffetz: I offer Exhibit 250 in evidence on the same basis as the preceding exhibit.

1622 Mr. Donovan: Same objections as appear in the record at pp. 504-05, 556-57, 721-23.

Mr. Morgan: We make the special objection to that exhibit, if the Court please, that it shows on its face to be based on a scout report. The scout is not charged in this indictment with being a party to this conspiracy; it is hearsay, by a third person, concerning facts, and in which a number of the defendants are named, stating the mere fact that they purchased gasoline, and it is not admissible for any purpose against the clients we represent,

Mr. Chaffetz: If your Honor please, the letter shows on its face that it is based only in part on such a scout report. In addition, it contains a list of major company purchasers in East Texas, and that does not appear from the face of the document to have come from the scout report. But, in any event, this is a memorandum from A. P. Ruether, who is the head of the Crude Oil Department, is he not, of the Shell Petroleum Corporation?

A. Yes.

Mr. Chaffetz: To Mr. P. E. Lakin, a defendant in this case, a member of the Tank Car Committee; and apparently Mr. Lakin intended that this should be used in connection with the next meeting of the 1623 Tank Car Committee. He says, "For next tank car meeting I will give you date."

The Court: Objection overruled. Exception allowed.

> (Document referred to received in evidence as EXHIBIT 250 upon the basis stated. At R. p. 907 it was admitted as evidence against all defendants generally.)

Mr. Thomas: In order to complete the record, your Honor, as they are all received, I assume that they are all received subject to the same objections that we made when the first offer was made, and subject to the same rulings?

The Court: You are correct. That is right. Exceptions allowed.

Mr. Lewin: May it please the Court, Exhibit 291, marked for identification, has at the top in pencil a check mark, and on the side in pencil the initials "E L S." The exhibit purports to be a report or weekly market letter No. 8, from defendant J. W. Warner of the Tide Water Company, to Mr. J. D. Collins of Tide Water Company, dated February 22, 1936.

May it be agreed and stipulated by and between counsel for defendant Edward L. Shea and counsel for the Government that that pencil check mark is the check mark of Edward L. Shea; that the initials "ELS" signify that this letter, Exhibit 291, was brought to the attention of Edward L. Shea and read by him; and is it further stipulated that Mr.

1624 Parsons, Harold Parsons, if recalled to the stand would so testify; and that Mr. Shea waives any confrontation of Mr. Parsons on that point?

Mr. Webster: It will be conceded or stipulated that the witness Parsons, if recalled, would testify that the appearance there of the initials "ELS" indicate that Mr. Shea saw this particular market letter.

Mr. Lewin: Then I offer this Exhibit 291 in evidence.

Mr. Donovan: Same objection.

The Court: It will be received. Exception allowed.

Mr. Lewin: As against defendants Shea and Warner.

(Document previously so marked for identification is received in evidence as EXHIBIT 291.)

(Mr. Chaffetz read Exhibits 169 and 170 to the jury.)

Mr. Beatty: Please the Court, and Mr. Lewin, those references to Phillips mean the Phillips Petroleum Company. That can be stipulated, I think, throughout these documents, and for the record.

The Court: Yes.

Mr. Lewin: I so understood it.

1625 (Mr. Chaffetz read Exhibits 173, 174, 175, 176, and 177 to the jury.)

Mr. Zwick: May I ask counsel for the Government if the Karstedt referred to in Exhibit 177 which was read, is E. S. Karstedt, a defendant in this case, but not on trial at this time on account of illness?

Mr. Chaffetz: I assume that is so.

Mr. Zwick: And I assume you will stipulate he was vice president of Continental Oil Company at the time that this meeting was held?

Mr. Chaffetz: That is true.

(Mr. Chaffetz read Exhibits 178 and 179 to the jury.)

Mr. Francis I would like to ask the Court to instruct the jury not to consider any references in that letter to the defendant, Mr. McElroy, who has not in any way been identified, even remotely, in connection with any of these programs as yet that I know of.

The Court: For the present, it will be admitted. Objections overruled. Exception allowed.

(Mr. Chaffetz read Exhibits 180, 181 and the first four paragraphs of 182, except for the quotations, and the second entitled "Gasoline" of Exhibit 183, except for quotations.)

(Mr. Lewin read the sections of Exhibits 184, 185, 186, 187, 188 & 189, entitled "Tank-Car markets", except for the quotations.)

1626 (Mr. Lewin read Exhibit 220, the parts of Exhibit 235 entitled "Gasoline", except for quotations, Exhibit 232, and the parts of Exhibit 194 entitled "Tank Car Markets", except for quotations, and most of retail prices.)

No Cross-Examination.

1627 E. M. KELLY, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I am employed by Phillips Petroleum Company, Bartlesville, Oklahoma, where it has its operating office, and where I reside. I have been connected with Phillips Petroleum Company for 12 years. From July 1, 1934 to date I have been assistant to the assistant sales manager, Mr. H. A. Gardner, a defendant in this case. Since March 1, 1931 he has been assistant to the sales manager, Mr. A. M. Hughes, who is in charge of all tank car sales, wholesale sales. I think Mr. Hughes has held that position since July 1934. Mr. Hughes is a defendant. My work in that connection has been in the operating office of Phillips Petroleum Company. I spend about 50% of my time in the office, and 50% out in the territory.

Mr. F. L. Koopman, a defendant in this case, is also assistant to H. A. Gardner. His position coordinates 1628 and is parallel with mine; he does not report to me. He has something to do with the purchase of gasoline. I don't know if he is termed an official or not. He is the employee who does the buying. I don't know whether he buys all the gasoline that our company buys. I am not familiar with the buying end of it.

In 1935 and 1936, the superior to A. M. Hughes was H. A. Trower. His official title was vice-president in charge of marketing. Mr. Trower was not active throughout 1935 and 1936 due to illness. I don't know if Mr. Hughes acted as vice-president or not, but he, as far as I know, handled the functions of that office in place of Mr. Trower.

I am not entirely familiar with what department of our company the purchase of gasoline came under during 1935 and 1936. I think that the sales department handled the purchasing of gasoline, and probably synchronized with the manufacturing department. At least they conferred with them.

There is an operating committee in our organization. During that period the treasurer of the company was chairman of the operating committee, and the assistant to the president, and the following were members: vice-president in charge of production; vice-president in charge of land and geology; vice-president in charge of traffic; vice-president in charge of natural gas and natural
1629 gasoline; the comptroller; chief engineer; vice-president in charge of economics; vice-president in charge of marketing; and vice-president in charge of refining.

I don't know whether A. M. Hughes acted in the stead of H. A. Trower on that committee in 1935 and 1936, never having been in that committee meeting, but I assume that he did.

The operating committee meets irregularly, but averages about 4 meetings per week. It is subject to call at any time when business requires it.

We also have an executive committee. During that period the members of the executive committee were the president of the company, acting as chairman, the senior vice-president and general counsel, assistant to the president, vice-president in charge of research, and another vice-president at large. The executive committee meets irregularly, but on an average of 3 times a week.

Frank Phillips, a defendant in this case, is the president of the company. He is chairman of the board and chairman of the executive committee. I would say he was active in the affairs of the company during 1935 and 1936. His residence is in New York. We also have an executive office in New York City. Mr. Phillips divides his time about 50-50 between the operating office and the executive office.

1630 During 1935 and 1936, and prior to the time that this case commenced, I knew of a concerted buying movement participated in by major oil companies for the purchase of gasoline in the Mid-Continent area. I didn't know that our company was participating in any agreement or understanding on a program. We had been purchasing gasoline regularly since 1931, and I read in the various publications with regard to certain meetings and arrangements on buying, but I had no knowledge of what our participation was in it.

Cross-Examination by Mr. Donovan.

Our company manufactures and sells natural gasoline. Natural gasoline is manufactured from natural gas which is produced along with the crude oil, and is taken off and separated through separators in the field. That gas is pulled in by vacuum pumps into a plant. We may have 15 or 16 miles of collecting lines. They pull that in and run it through a compressor and manufacture natural gasoline, which is a more volatile product than gasoline made from crude oil. The plant that the natural gasoline is made in is a differently designed plant entirely than the ordinary refinery.

Natural gasoline is used generally to blend with cracked gasoline to give it more volatility. Generally it is not
used directly as a motor fuel, but there are cases
1631 where factionated, stabilized natural can be used as
a motor fuel.

26 pounds denotes the vapor pressure of the gasoline, and in the industry it commonly is known as a 26-70. 26 pounds vapor pressure is taken; that would equal 26 pounds per square inch at 100 Fahrenheit temperature. That is a test that they make to denote the vapor pressure of the gasoline.

There is a separate market for natural gasoline. The trade papers carry separate quotations. The Chicago Journal of Commerce does not carry a market on natural gasoline. The Platt's Oilgram carries a separate market.

The only business of Warren Petroleum Company and Hanlon-Buchanan Company, named in Exhibit 510, is the manufacture, purchase and sale of natural gasoline. Lone Star Gasoline Company is in the same business, but I am not so familiar with its operations.

Our company has a terminal at Houston, Texas. It is not used for the handling of motor fuel, but is used exclusively for the shipment and terminaling of natural gasoline. The designation "No. 26" in Exhibit 510, is the 26 pounds that I referred to. That is never referred to as No. 26, to my knowledge.

I know our company was purchasing refined gasoline in tank cars in 1935 and 1936, but I had no knowledge of the details, who it was purchased from, or prices, or anything.

1632 Our company's production of refined gasoline, has increased each year that we have been in the business, including 1935-1936.

The increase in 1934 over 1933, including natural gasoline, which was blended with the refinery-produced gasoline, was 519,888 barrels. That was equal to slightly in excess of 5%.

In 1935 over 1934, including the natural blended, the increase amounted to 1,001,066 barrels. That was equal to an increase of 9.3%.

In 1936 over 1935, including natural blended, the increase amounted to 519,137 barrels, equal to an increase of 4.4%.

From the correlational reports and reports from the manufacturing department, our company's refineries have continuously operated at capacity; in fact, in the last year or so, we have actually run in excess of our capacity.

As to whether our company sells any substantial portion of its gasoline through jobbers, our percentage of total gasoline sales in 1935 amounted to 32.8% of the total. And in 1936, it amounted to slightly over 40%; and in 1937, the first 10 months, it was 44% of the total. We think that those jobbers furnish an outlet for gasoline which is essential to our company. Less than 1% of our company's jobbers have gone out of business in the last 5 years.

1633 *Redirect Examination by Mr. Chaffetz.*

When I said that our company or our refineries sometimes operated in excess of capacity, I meant that they have a normal capacity, which would be a safe operating capacity and we have actually run over that line. We could do that for a short period of time, but we couldn't continue to do that, because something would blow up. Every so often in refining, you have to shut down one still and work on it. We have been running these consistently, right straight through, which would reflect about 110% capacity, based on that safe capacity range.

Around a refinery, they are usually doing a lot of repair work. You have certain units shut down, and the capacity of a refinery would vary. With the same plants, our capacity might vary a good deal during the same year. I am not an expert on refinery operations, but our position has been that our sales have been running at such an increase that we have been compelled to keep our plants running right up to capacity.

We might have a variation of as much as 10% during a particular year in the same plants with respect to the capacity of those plants, because we have increased our facilities to the point where we have increased our capacity by 10% or more.

The jobbers with whom our company does business 1634 are located in 18 states. The principal operation is in the northern section of the country. Most of our jobbers are in the Standard of Indiana territory.

Cross-Examination by Mr. Lawton.

I have no figures to show the proportion of sales to brokers by our company in 1935 and 1936. Of our total sales, I would say 1% went to brokers in 1935. It would be less than 1% in 1936.

Recross Examination by Mr. Donovan.

I think I have a record of our total shipments in each year, from 1931 through 1936. The total sales in 1931 amounted to 8,038,748 barrels; in 1932, 9,434,943 barrels; 1933, 10,215,431 barrels; 1934, 10,973,608 barrels; 1935, 11,768,305 barrels; 1936, 12,721,646 barrels. In the 10 months of this year, it has increased approximately 13% over 1936.

1635 E. McCLURE ROUZER, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Baltimore, Maryland. I have been associated with Mid-Continent Petroleum Corporation as secretary since it was organized in 1917, and as vice president since about 1929. I am also a lawyer.

The principal office of Mid-Continent Petroleum Corporation is now and was during 1935 and 1936 located in Tulsa, Oklahoma. We have an office in Baltimore for the payment of dividends, where Mr. France and myself have our offices.

There are two Mid-Continent Petroleum Corporations: Mid-Continent Petroleum Corporation of Delaware which is the producing, refining and marketing company; and prior to 1937 we had a Mid-Continent Petroleum Corporation of Kentucky, which was a marketing company. The capital stock of the Kentucky company was wholly owned by the Delaware company. The Delaware company did all the producing and refining. I believe foreign business was done direct with the Delaware Company. The company that marketed in the Standard of Indiana territory was the Kentucky company.

The Kentucky company did not have the same officers as the Delaware company. Jacob France was presi-
1636 dent of both companies. George O. Moody, J. C.
Denton, F. B. Coomtz, and R. W. McDowell were vice presidents of both companies. I am vice president and secretary of the Delaware company and also assistant secretary and assistant treasurer of the Kentucky company. Charles Klein was treasurer and assistant secretary of the Delaware company and was secretary and treasurer of the Kentucky company. A. D. Kneale was an assistant secretary and assistant treasurer of both companies. Jess Scorborough was elected vice president of the Delaware company August 4, 1936, but was not an officer of the Kentucky company. E. F. Lawrence was an assistant secretary and an assistant treasurer of the Delaware company but was not an officer of the Kentucky company. J. T. McDonnell was not an officer of the Delaware company, but was an assistant treasurer of the Kentucky company.

I don't consider myself an operating man. Mr. Scorborough is an operating man and is vice president in charge of the Land and Geological Departments of the Delaware company, but has no position with the Kentucky company. Otherwise the officers are the same, except as I have stated.

In those instances where the officers are the same, during 1935 and 1936, the salaries were pro-rated between the two companies except in the case of Mr. Mc-
Dowell. He was paid in full by the Kentucky com-
1637 pany. The salaries were paid by the Delaware com-
pany and then pro-rated in the bookkeeping depart-

ment, except as to McDowell's salary and I don't know how that was handled.

The directors of the two companies were not the same. The board of directors of the Delaware company had a membership of 14. There were 3 directors in the Kentucky company. They were Mr. Klein, Mr. France, and myself. Mr. Jacob France, a defendant, was the only operating man who was on the board of directors of the Kentucky company. At that time he was president and chief executive officer of the Delaware company, and actively in charge of the affairs of the company in 1935-1936.

Our company did not have a general manager. The only other executive officers besides Mr. France were these vice presidents. They were in charge of separate departments. The production department was headed by George O. Moody; the legal department, by J. C. Denton; the refining departments, by F. B. Coemtz; the marketing department, by R. W. McDowell, who is a defendant in this case; and the land and geological departments, by Jess Scorborough.

Our company during 1935 and 1936 did not have any executive committee or operating committee. The various vice presidents had complete charge of their departments. They reported to the board of directors through the president; occasionally one of them would attend
1638 a board meeting.

Mr. France has a general supervision. There is a provision in the by-laws that, subject to the control of the board of directors, he has general supervision over the affairs of the company.

Mr. France lives in Baltimore. He is in the chief office of the company at Tulsa part of the time. He spent 102 days in Tulsa in 1935, and 91 days in 1936. When in Baltimore, he receives reports of the department heads in the Tulsa office, and is in communication with them by telephone and otherwise.

Exhibit 339 for identification is a letter written on the letterhead of Mid-Continent Petroleum Corporation, the stationery of R. W. McDowell, vice president. Mr. McDowell's signature is on the letter.

> Mr. Chaffetz: I offer EXHIBIT 339 in evidence, generally, against the defendants whom the record may show have been connected up with the conspiracy charged by the Government.
>
> Mr. Thomas: We object, on behalf of all the de-

fendants in the case, to the reception of this exhibit, on the same grounds and for the same reasons as heretofore stated, relative to reception in evidence of Exhibits 334, 335 and 336, and for the same reasons and on the same grounds as assigned to the reception of Exhibit 287, and the other documents designated by the prosecution as being pro-
1639 duced pursuant to subpoena from the Shell Company file. These objections are at R. pp. 504-05, 556-57, 721-23, 786.

The Court: Objection overruled. It may be received. Exception allowed.

(Document referred to received in evidence as EXHIBIT 339 and read to the jury.)

Mr. Thomas: I move that the Court instruct the jury that the exhibit is not receivable in evidence against any defendant, corporation or individual, other than the writer of the letter.

The Court: Motion denied. Exception allowed.

I don't know what is meant by Q gasoline. Thomas E. Fitzgerald was assistant to Mr. McDowell during the years 1935 and 1936. He is a defendant in this case. Their offices are in Tulsa.

Cross-Examination by Mr. Donovan.

The principal departments of our company are headed by vice presidents, having complete control and discretion over their departments—practically like a separate organization,—who report at the end of the month to the president. The president also gets almost daily reports on products, refinery runs, sales and so on.

I have a copy of the by-laws which would denote the duties of a vice president. It reads:

1640 "Vice president or vice presidents shall perform the duties of the president in his absence or during his inability to act. Any action taken by a vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken. The vice presidents shall also have such other and further powers and shall perform such other and further duties as may be assigned to them respectively by the board of directors."

By the Court

Those vice presidents run their respective departments whether the president is there or whether he isn't there. The president was abroad a month in 1935. I think it was in October. Except for that time, he was where he could be reached.

By Mr. Donovan

Mr. France was in Florida in 1935 from about the middle of January to the middle of February.

Redirect Examination by Mr. Chaffetz.

Each department is run by its department head, and they report to Mr. France for transmission to the board of directors, and keep him informed from time to time. He wants to know what his production is, and what his refinery is doing. At the end of each month he knows what the financial results of the operation of the company are.

1641 ROBERT L. BOSWORTH, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in New York City. I am associated with Continental Oil Company, defendant herein, as assistant secretary and assistant treasurer. I have been connected with that company and its predecessor, Marland Oil Company, since 1923.

The principal office of Continental Oil Company is now and was in 1935 at Ponca City, Oklahoma. My office is in New York City, where we have 3 employees, myself and an assistant and a stenographer. The majority of the operating officials of the company are located at the chief office of the company in Ponca City; there are about 3 who are not located in Ponca City.

The chief executive officer of our company during 1935 and 1936 was Dan Moran, a defendant in this case. He had been president since November, 1928, and during the period from November, 1928, to 1929, he acted as president of Marland Oil Company. Throughout 1935 and 1936, Mr. Moran was an active president of the organization and was actively in charge of the affairs of the company.

The company also has three executive vice presidents and one general manager, in charge of departments.

1642 W. H. Ferguson is executive vice president located at Denver, Colorado, in charge of the operations of the company in the Rocky Mountain territory, largely production. W. W. Bruce is executive vice president at Ponca City, in charge directly of service operations of the company, and serves as chief executive officer at that location, or as chief administrative officer. Walter Miller is vice president in charge of manufacturing; Harry J. Kennedy, vice president in charge of marketing.

Mr. Kennedy, a defendant herein, has been vice president in charge of marketing since May. From June, 1935, until the following May, he served as general manager in charge of sales. Prior to that he had been general sales manager for 3 or 4 years. The vice president in charge of marketing before Mr. Kennedy was E. S. Karstedt.

An executive committee serves in lieu of the board of directors at such times as the board does not meet. The president of the company is a member of the executive committee. It is scheduled to meet 8 times a year. None of the operating officials of the company, other than the president, are members of that executive committee. They are all outside directors, I would say, except the president.

The operating committee is composed chiefly of the vice-presidents and department heads and certain other key men, which meets each Tuesday.

1643 The purchase of gasoline is handled by the Order and Distribution Department, a division under the Marketing Department. That would be under Mr. Kennedy's department. L. J. Morgan is in charge of that division. He reports to L. T. Cramer, assistant to Mr. Kennedy and a defendant in this case.

Mr. Karstedt's resignation was effective June 1, 1935. Before that he was semi-inactive, and Mr. Kennedy then succeeded to substantially all his duties and functions but did not assume the title of vice-president until approximately a year later.

The president of our company has resided at Houston, Texas, where our company has an office, since the early spring of 1935. He spends a great deal of time in the field and on the road. Generally speaking, his time is divided between those two offices. Mr. Moran is an oil man and a mechanical engineer by training.

Cross-Examination by Mr. Donovan.

I do not recall of any year in which our company's production of gasoline has equaled refinery sales of those products. For that reason our company has pursued a policy of purchasing considerable amounts of gasoline each year. To my knowledge the company has purchased
gasoline in substantial quantities ever since in 1929
1644 from independent refineries.

The amount purchased each year between 1931 and 1934, both inclusive, would average around 1,300,000 barrels each year. Its purchases in 1935 would be slightly less than in 1934. Our 1936 purchases were less than 1935 or 1934.

I have a memorandum showing the approximate proportion of our total purchases of refined gasoline from independent refiners as follows: 17% in 1934, 19% in 1935, and 14% in 1936.

By the Court

I don't know what our production costs were per unit. What exact costs are in the manufacture of gasoline is a highly debatable point. I am not really qualified to answer whether we could produce our gasoline for less than we could buy it from independent refiners in 1935 and 1936.

I am at the present time more of a contact man for the New York Office. I handle most of the correspondence and personal interviews with stockholders. I prepare most of the statistical data on the financial condition of the company, and its over-all operating figures for directors' meetings. I also handle certain matters of insurance, banking and marine.

By Mr. Donovan

Our Houston office is altogether a land and pro-
1645 duction office. At the present time Mr. Moran spends
a majority of his time in Houston or that vicinity, in the field.

In our own organization we have three divisions: lands, which has to do with the leasing of all properties or prospective properties; physical, which determines the likelihood of those lands as being productive; and production, which carries out the actual drilling or exploitation of those properties. We have representatives of those operations or departments at Houston.

Redirect Examination by Mr. Chaffetz.

Our principal refinery is located at Ponca City, Oklahoma. We have other refineries at Denver, Colorado; Albuquerque, New Mexico; Florence or Artesia, New Mexico; Baltimore, Maryland; Glen Rock, Wyoming; Wichita Falls, Texas; Lewiston, Montana; and Farmington, New Mexico. Conoco is the advertising name of our housebrand gasoline.

I do not know whether any of the purchases of gasoline made by our company from independent refiners during 1935 and 1936 were made in connection with any major company buying program. I had no connection with the buying. I just don't know one way or the other.

I believe that Conoco gasoline, our housebrand gasoline, is sold to jobbers in the Standard of Indiana territory, and in Wisconsin, where the company has service stations of its own, but I don't know how many.

1646 **FRANCIS T. HOPP**, a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

My residence is Tulsa, Oklahoma. I am secretary, treasurer and director of Skelly Oil Company, a defendant in this case. I have been connected with that company since May 1, 1923, and have been secretary and director since that date.

Skelly Oil Company was incorporated in August, 1919. It is engaged in the production of crude oil and in the refining of crude oil into gasoline and other petroleum products, and the marketing of those products. Its principal production is located in the Mid-Continent field. Its principal office is at Tulsa, Oklahoma. It has one refinery located at Eldorado, Kansas, with a crude throughput in 1935 and 1936 of 20,000 barrels a day.

The principal marketing territory of Skelly Oil Company for gasoline is the Standard of Indiana territory, together with some contiguous territory. The company maintains bulk plants in that territory and markets gasoline through jobbers, dealers and through its own service stations.

It markets gasoline in Wisconsin in the ways in which I have described. I could not tell whether it is through-

out Wisconsin or in any particular portion, how
1647 extensive it is. I don't know that we own any retail
marketing facilities in Wisconsin.

Skelly Oil Company has an interest in a gasoline pipe line, the Great Lakes Pipe Line Company. The Great Lakes Pipe Line originates as far south as Okmulgee and Muskogee, in Oklahoma; goes north to Tulsa, and through Kansas City, to Omaha, to Chicago on the east, and to the Twin Cities, Minneapolis and St. Paul, on the north. I am not familiar with the detail, but a branch line goes north to Minneapolis, and a branch goes over to Omaha.

Our company's interest in that pipe line in 1935 and 1936 was 15% of the whole. It has decreased a little less than ½% this year, and is 14.5% now. The other owners of the Great Lakes Pipe Line are: Continental Oil Company, Barnsdall Corporation, Mid-Continent Petroleum Corporation, Pure Oil Company, Phillips Petroleum Company, Texas Corporation, and Sinclair Refining Company.

The line connects with each company's refineries. Skelly Oil Company makes use of that pipe line in transmitting gasoline. Not all the gasoline that goes into that pipe is the same quality and material. A number of grades go into that pipe line. I am not competent to tell you how it operates. I don't know whether it is cheaper to transport gasoline by the Great Lakes Pipe Line than
it is to transport it by tank car over the railroad
1648 from Tulsa to points like Chicago. I presume it is.

I have known William G. Skelly, a defendant in this case, since 1921. He is president of Skelly Oil Company and has been since its incorporation. He presides at the meetings of the board of directors and was usually present, active and on the job, during 1935 and 1936. He is active in the operations of the company as well as in its financial side. His principal office is Tulsa, where he resides.

The company does not have a general manager so designated. I don't know what the functions of general manager are, but Mr. Skelly has charge of the company.

I have known the defendant, James Nagle, since 1921. In 1935 or 1936, he was in charge of the branch sales office of the company at Tulsa. His office was in the Skelly Building in Tulsa, in the same building with Mr. Skelly. I think Mr. Nagle had charge of making those purchases. Mr. Nagle now has the title of executive assistant, which he has held since November, 1936. Before that time and throughout 1935 and up until November, 1936, he held this other position that I have described.

I would not know, except as I would learn from records of our company, whether during 1935 and 1936 it made any purchases of gasoline on the spot market from independent refiners. Our records disclose what they purchased, and from whom.

1649 Our company has an executive committee. In 1935 and 1936 the principal functions of the executive committee were to receive and consider requests for capital expenditures proposed by the various operating departments, and inquire into the financial condition of the company, consider the company's prospects, and if necessary, to pass on those things. It did not receive reports from various other officials of the company with any regularity, or any schedule. Its functions were to do such things as the board of directors of a company would do. It was empowered to do everything that the board could do when the board was not in session, and it did that; pass on resolutions, lost stock certificates, and sundry other things. In general it concerned itself with the important affairs of the company.

By the Court

I don't know that Mr. Nagle did the buying from the refiners. It does not come under my jurisdiction, and isn't discussed in the directors' meeting. The buying was usually done down in Tulsa. He had charge of sales. The Tulsa office, that Mr. Nagle had charge of, was under the jurisdiction of the Kansas City office, which had charge of all marketing, including the Chicago, Minneapolis and Omaha offices. He was the man representing the company at Tulsa who did the buying and selling.

1650 *By Mr. Lewin*

I know Clara G. Gartman. She was employed by Skelly Oil Company during 1935 and 1936 in Mr. Nagle's office as an assistant or clerk.

William G. Skelly is a member of the executive committee and attends most of its meetings. That was true during 1935 and 1936. I couldn't answer whether during 1935 and 1936 he attended all the meetings of the board of directors. I think he attended most of them, perhaps not all of them.

The board of directors had no set regular meeting date. It had an annual meeting day, following the stockholders' meeting in October; but otherwise, it met on call or on notice. I can't tell you about how many times it met during 1935 and 1936.

We have no operating committee. The executive committee is scheduled to meet monthly, and did a pretty good job of it. All members of the executive committee are members of the board of directors.

Cross-Examination by Mr. Donovan:

When I was referring to the ownership of the Great Lakes Pipe Line Company, and I mentioned Barnsdall, I meant the Barnsdall Oil Company; I think that is the name of it now.

1651 The records of our company disclose that it purchased gasoline in 1935-1936. Our company purchased gasoline for years. I think they did that even when their production was enough to take care of the sales.

It has been the custom of the company to build inventories through the winter, to take care of the demand through the summer. We have always sold more gasoline than we produced.

The information that I have here, from the company's records, says that our company's production of gasoline exceeded its sales in 1931 by 65,526 barrels. Our purchases during that year were 162,288 barrels. I am quoting from records furnished me on all of these questions.

Our production exceeded our sales in 1933 by 55,275 barrels. We purchased 220,034 barrels that year.

Our production of gasoline in 1934 increased over our production in 1933. The percentage of increase is 8.2%. That increase was not enough to take care of our sales in 1934. Our sales exceeded our production in that year by 338,415 barrels. We purchased 253,766 barrels of gasoline in 1934. From the records, we drew on our stocks in 1934 in order to meet the necessity of our sales.

In 1935, our company increased its production of gasoline by 11.8%. This increase in production was not enough to take care of our 1935 sales. The shortage was 409,393 barrels. In 1935 our company bought 411,910 barrels of gasoline. How our sales balanced with 1652 our purchases, plus our production, in 1935, is shown on this schedule which was taken from the company's records. It was balanced within ½ of 1%. It was 5/100 of 1%.

In 1936 our company increased its production of gasoline over 1935 by 6.6%. I have no figures in November. The increase in production was not enough to take care of our sales. The shortage was 387,425 barrels. In 1936 we purchased 391,457 barrels of gasoline. Our sales balanced against our production in 1936, plus purchases, within 8/100 of 1%.

Of the 411,000 barrels that our company purchased in 1935, according to the records that I have, approximately 196,000 barrels, or approximately 47% of the total purchases was bought from independent refiners.

In 1936, of the 391,000 barrels that we purchased, 193,000 barrels were bought from independent refiners. That was slightly under 50% of our total purchases.

I do not know what percentage of the Skelly Oil Company's sales was made to jobbers in 1935 and 1936. I have the figures here for some prior years, and I know how we generally figured it. The percentage of jobber sales to all sales of gasoline, I have in 1931, 64%; 1932, 60%; 1933, 57%; 1934, 54%. We have always considered that we were selling 60 to 65% to jobbers, and the balance
through our own facilities. Jobbers provide our
1653 most important sales outlets.

Redirect Examination by Mr. Lewin.

I can't tell you the percentage our total purchases of gasoline were of our total sales of gasoline in 1935; I can give you the figures. The total sales, 4,455,645 barrels, and the purchases, 411,910 barrels. That is a little less than 10%.

In 1936, 4,678,920 barrels, sales; 391,457, purchases. That is something about 8%, I would judge.

Of those total purchases in 1935, there were 196,000 barrels, against 411,910—about 47% from independent refiners. In 1935, a little less than 5% of our total sales were purchased from independent refiners.

In 1936, a little over 4% of our total sales were purchased from independent refiners. This may include gasoline purchased under long-term arrangements, as well as gasoline purchased on the spot market. I would judge it includes all purchases of all kinds.

I couldn't tell you whether it includes exchanges. I know what some exchanges are, as the term is used in the gasoline business, but I couldn't explain. I think our company sometimes sells gasoline to another major company at one point, we will say, and takes in exchange
an equivalent amount of gasoline from that same
1654 major company at another point. I don't know
whether this includes any of that or not. These purchases, on the one hand, during 1935 and 1936, and our sales, on the other, may have large exchanges there that balance each other.

By the Court

I couldn't tell you how many bulk stations our company owned in the Standard of Indiana territory in 1936 or in 1934, and do not know how they are operated.

A bulk station is one where you unload a tank car at a time, and sell it out to tank wagons. We have our own bulk stations where we have tank car storage facilities and storage facilities for tank car lots, shipped in by tank cars, and retail it or wholesale it to dealers in tank wagons. We do the same thing a jobber does.

Recross Examination by Mr. Donovan.

I perform the function of liquidating the company's obligations, collecting its accounts and keep it in good credit standing with its banks and its vendors. I don't tend to the books, I supervise. And I have nothing to do with the production or refining end, except as I come in contact with it in the performance of those duties.

By the Court

I am not a member of the executive committee. I am secretary of the executive committee, and as such attend their meetings and keep the minutes.

1655 L. S. WESCOAT, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I reside in Chicago, Illinois. I have been associated with The Pure Oil Company, a defendant, something over 12 years and have been a vice president since 1927 and secretary since 1932.

The principal office of the company is in Columbus, and the executive offices are in Chicago, Illinois. The affairs of the company are directed from the Chicago office. We have a large number of executives of the company, and principal executives maintain their offices in Chicago.

The president of the company, Henry M. Dawes, is the head executive officer of the company. He is a defendant in this case. He was active in the affairs of the company during 1935 and 1936, probably to a lesser degree than he had been some time prior to 1933, when he became a member of the Planning and Coordination Committee, which took a great deal of his time in Washington; and that continued up until June of 1935. He was consuming a lot of time with the Planning and Coordination Committee during the first 6 months of 1935. I think his activity increased with the company after June, 1935.

He kept in pretty close touch—not specifically with the operation of the company—with the results of
1656 the operations of the company, during the period
June 1935 through 1936. He was regularly at his office during that period, with the usual visits out of town on business. He wasn't very often away on any extended trips, except for business trips and a vacation occasionally. I don't know what his salary was during that period, except to the extent I happened to see it in the public press. I don't handle the finances of the company. I am very sure he earned his salary that year. He worked very hard.

There are a number of executives of the company under Mr. Dawes. Each is charged with responsibility for individual operations in different departments.

C. B. Watson is vice president and in charge of refining, marketing. He supervises the operations of our transport group and similar operations which are under D. D. Irwin, consisting of our pipe line, steamships, inland waterways, crude oil purchasing, tank car operation and motor transport operations. He is also a director of the company. The purchase of gasoline would be a part of the function of his department. He would have authority over that subject. Mr. Watson has been connected with The Pure Oil Company since before 1923. I am not positive as to the exact period, but I would say that 20 years or more as of this time.

R. H. McElroy, Jr., in his department, had immediate responsibility of the subject of purchasing of gaso-
1657 line. He is also a defendant in this case. During
1935 and 1936, he was sales manager of the Wholesale Sales Department. Mr. McElroy's association with The Pure Oil Company preceded mine. I would think about 1924.

Our company does not have any general manager. The president doesn't have general supervision over all the operations of the company. That is broken down individually as between the various vice presidents and operating heads of those departments. There is no one man, with the possible exception of the president, who has jurisdiction over all of the departments. The president has jurisdiction over the heads of those departments, but he doesn't exercise the function of supervising those departments individually.

Cross-Examination by Mr. Francis.

In 1914 the Ohio Cities Gas Company was formed. In 1917 it took over The Pure Oil Company of New Jersey, which was a refining and marketing company, doing business on the Atlantic Seaboard. In 1920 it changed its name from Ohio Cities Gas Company to the name of The Pure Oil Company. As secretary of The Pure Oil Company, I have under my direct supervision the books and records of our company and I am charged with the responsibility for the accounting records of the company.

1658 In addition to being vice president and a member of the board of directors, I assist Mr. Dawes in such administrative matters as he may direct to me.

I have had prepared under my direction and at my request the record of The Pure Oil Company sales by months from 1931 through June, 1937; also, for the same period: figures showing the amount of gasoline manufactured from crude oil and natural gasoline in refineries owned by the company; figures showing the amount of gasoline purchased from independent refiners in East Texas and Mid-Continent areas, as well as the figures on all other gasoline purchased by our company, and records of the gasoline which was acquired by the company through processing contracts with other refiners. This statistical data has been illustrated by a graph.

Mr. Francis: The statistical data is the exhibit number; and the graph is "A" of that exhibit.

(Document referred to received in evidence as EXHIBIT 739.)

The total amount of gasoline The Pure Oil Company manufactured from crude oil and natural gasoline for the year 1931 was 485 million gallons plus. On this Exhibit 739, the exact figures are shown month by month. The Pure Oil Company manufactured 498 million gallons plus in 1933, and 463 million gallons plus in 1934. The total gasoline refined in 1935 was 527 million gallons plus,
1659 and 530 million gallons plus in 1936, and 293 million
gallons plus in the first 6 months of 1937.

We bought 320,022 gallons from independent refiners in the East Texas and Mid-Continent area in 1931, 8,201,594 gallons from sources other than independent refiners in the East Texas and Mid-Continent area. We purchased 449,985 gallons from independent refiners in the East Texas and Mid-Continent areas during the year 1932, and 11,912,029 gallons from others; 647,000 gallons from these independent refiners in 1933, and 31,336,900 gallons from others; 3,619,350 gallons from independent refiners in the East Texas and Mid-Continent areas in 1934, when the total of all our other purchases was 18,423,793 gallons. In 1935, we purchased 10,339,505 gallons from the independent refiners in these two areas, and 18,906,464 gallons from others; in 1936, 16,919,899 gallons from these refiners, and 23,205,085 gallons from others; and the first 6 months of 1937, 6,828,864 gallons from the refiners in the East Texas and Mid-Continent areas, and 12,602,076 gallons from others.

These processing contracts, and gasoline which was acquired under them, commenced in February, 1935. A gasoline processing contract as used by my company is a contract whereby another refiner processes crude oil for you which you supply at a fixed price per barrel, returning to you a fixed number of gallons of gasoline from each
1660 barrel, and in some cases a fixed number of gallons of by-products resulting from such refining process.

(From Exhibit 739 the witness reads the amount of gasoline derived by The Pure Oil Company through gasoline processing contracts, for February, March, April, May and June, 1935.)

That is in addition to purchases from independent refiners, and purchases made from other refiners than those in the Mid-Continent and East Texas fields. Those processing contracts or similar contracts are still in effect.

The total amount of gasoline which was acquired during the year 1935 was approximately 60 million gallons; approximately 79 million gallons during 1936; and in the first half of 1937, 45 million gallons.

By the Court

The highest amount acquired through processing contracts in 1936 in any one month was 9,921,507 gallons, in September. The lowest amount in 1936 was in January, which was 3,742,573 gallons.

Perhaps I should explain that these totals are not truly indicative of the monthly results, because sometimes there will be an over-lapping, and deliveries will be made early in a succeeding month on crude which has been supplied during the preceding month, and vice versa; so that it requires an over-all year's figures in order to get the total.

1661 *By Mr. Francis*

Our third source of supply, outside of our own gasoline manufactured in our own plant, was this gasoline derived under processing contracts; and deliveries under those commenced during the first few days of February, 1935.

I have had prepared the figures which show the gasoline inventory of The Pure Oil Company, commencing in January of 1931, and going down to July of 1937, both the total inventory and the number of days of available supply.

(Document handed to witness.)

That is the record which I have prepared from the books and records of the company.

(Document referred to received in evidence as EXHIBIT 740.)

I could tell the Court what the total gasoline inventory of The Pure Oil Company was at the end of any month which he desires to know about, from January, 1931 to June 1937. As an illustration, the total inventory, regardless of its availability, of The Pure Oil Company at the end of December, 1931 was 40,695,628 gallons. All of that inventory was not available for immediate sale.

A certain part of your inventory is what we call frozen. You at all times have in pipe lines, steamships, barges,
1662 a certain amount of gasoline that is constantly in transit. It runs in varying amounts, lighter during the winter, of course, heavier during the summer, at which time your sales are higher. And, in addition to that, you have what we call tank bottoms, which is gasoline in the bottom of tanks, below which what is known as swing line does not go. There is always a certain amount of water in the bottom of those tanks, which is condensation, and therefore you do not get your swing line within 4 or 5 feet of the bottom, because if you do you are apt to pump up a little of that water, which causes trouble in the gasoline. That also is a part of what we term frozen stocks. So that that part of your inventory which is in transit, in tank bottoms, and under similar situations, is not available for

immediate sale. The thing that is important, then, to any oil company, which is in the business of selling gasoline, when the matter of inventories is considered, is how many days of supply of gasoline there are available for shipment.

(The witness then discussed total inventory and sales figures appearing on Exhibit 740 for December, 1931, December 1932, December 1933, December 1934, December 1935 and December 1936.)

Our total inventories at the end of 1931 were running just about what our total monthly sales were running at that particular month. At the end of 1934, our inventory was less by 35,000,000 gallons than it was at the end of
the preceding year. For the months indicated, our
1663 inventories were substantially less in 1936 than in
1935, and our sales were up. During the year of
1936, our inventories declined 12,000,000 gallons.

In December, 1931, we had available for immediate shipment, 17 days supply; in 1932, 21 days, plus; in December of 1933, 39 days, plus; and in December of 1934, 12 plus days. This chart is drawn as of the end of each month, so in order to give February 1 figures, it will be necessary to give the end of January. As of the end of January, 1935, we had 11.80 days of supply of gasoline available for immediate shipment, and at the end of February, 1935, 16 days, plus.

This exhibit shows at any time the total inventories and then the amount of gasoline that is available for sale. I have stated the difference between available and total.

I have compiled from the books and records of The Pure Oil Company a statement which shows, commencing on January 1, 1935, and ending December 30, 1936, the gasoline which we purchased from all Mid-Continent and East Texas refiners; which statement gives the name of the refiner, who shipped the gasoline, the date of the order, the number of the cars, what the price was, whether it was a flat price or contract price, the amount that we paid for it; the octane rating, the gravity of the gasoline and all the specifications which The Pure Oil Company required of the gasoline which it purchased.

1664 (Document handed to witness.)

That statement is correct.

(Document referred to received in evidence as EXHIBIT 741.)

Looking at Exhibit 741, The Pure Oil Company bought during the year 1935, 1,011 cars of 62 octane or below gasoline in East Texas.

In 1935 we bought our first gasoline out of East Texas on March 25. We bought 10 cars from Chief Refining Company, paying 3⅞¢ f.o.b. Gladewater, Texas. The specifications which The Pure Oil Company required of the supplier of that gasoline were that it should be 59 octane or better, 60-62 gravity, nine pound vapor pressure. Our specifications, then, related to more items than just octane of the gasoline.

In 1932 The Pure Oil Company's total gasoline sales exceeded 1931 by approximately 2%; in 1933 sales declined 3% from 1932; 1934 increased 6% over 1933; 1935 increased 13% over 1934; 1936 increased 13% over 1935. In the first 6 months of 1937 the sales increased 8% over a corresponding period in 1936.

The biggest increase in sales that The Pure Oil Company has had since 1930 over preceding years were the years 1935 and 1936.

Considering November to March as being the winter, the winter of 1935 and 1936 showed an increase of over 9% in our sales over the winter of 1934 and 1935.
1665 Total sales in January, 1936, showed an increase of 10% plus over sales in January, 1935.

It is generally true and it is so reflected by our books and records, that in the business of The Pure Oil Company, we have to build up a large increase in our inventory in the winter months to take care of our sales in the summer months.

Our inventories in the winter of 1934 and 1935, instead of the normal seasonal increase, declined during that period. So we entered into the spring of 1935 with relatively low inventories in comparison with sales demand with respect to previous years.

Of the 36 companies listed in this indictment as being independent refiners in the East Texas and Mid-Continent fields, from whom it is said these different companies purchased, The Pure Oil Company had purchased, prior to the time indicated, from 12. We bought from other independent refiners prior to 1935 who were in the Mid-Continent and East Texas, but whose names are not detailed in the indictment.

The Pure Oil Company does business in 32 states, but probably in about 6 we just touch the borders by virtue of operations in adjoining states.

Our refineries are located at Smiths Bluff, Texas; Mus-

kogee, Oklahoma; Midland, Michigan; Toledo, Ohio;
1666 Newark, Ohio; Cabin Creek, West Virginia; and we have another refinery at Marcus Hook, Pennsylvania, which has not been operating for the last few months in the production of gasoline.

In the Mid-Continent field The Pure Oil Company purchased one car from Wilcox Oil & Gas Company in January, 1935, and the next purchase was from Panhandle, on March 21, 1935. Omar Refining Company was the next Mid-Continent refiner from which the company purchased, the date being May 24, 1935. The first purchase the company made from Eason Refining Company was ½ car on June 7. The only other 63-70 octane purchased from Eason was 2/3 car on October 14, 1935.

We sell to jobbers in Wisconsin.

Redirect Examination by Mr. Chaffetz.

Our first purchase in the Mid-Continent field, after March of 1935, was from Panhandle Refining Company. I mentioned one car which we had purchased from Wilcox in January.

The next purchase we made in the Mid-Continent field was from Vickers Petroleum Company on May 11, third grade gasoline. All purchases from Panhandle in 1935 were of 63-70, except 5 cars. Purchases of 63-70 octane from Mid-Continent refiners after February, 1935, were:

Panhandle, March 21, 29, April 2, April 3, 4, 18
1667 (two purchases), 19, 22, May 3, 6, 10, 16; Omar Refining Company, May 24, June 3; Eason Oil Company, June 7; Omar, June 7 (delivery of this order went forward on June 8 down to July 1); Waggoner, July 5, 16; Wirt Franklin, July 16; Omar, August 7, 22, September 6, October 3; Eason Oil, October 14 (2/3 car); Omar, November 1 (35 cars), December 7 (3 cars), 11 (32 cars); Wilcox, December 11.

Q. So that you would say that your company purchased 63-70 octane gasoline pretty regularly during the months of March, April and May from Panhandle, and quite regularly during the months of June and July, August, September, October, November and December from Omar?

A. Well, toward the end of the year, those purchases I wouldn't classify as frequent, one or two purchases a month.

1668 **GEORGE G. BROWNELL,** a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Westfield, New Jersey. I am associated with Cities Service Company, and my office is at 60 Wall Street, the principal place of business of the company. Cities Service Company is a holding company, owning stocks and securities of public utility, oil and miscellaneous corporations. That company has been in business since October, 1910.

Henry L. Doherty and Company, which was organized in 1906 as a partnership, with Henry L. Doherty and Mr. Frank W. Frueauff, now deceased, as partners, until September 30, 1935 operated as a staff of technical advisors to the subsidiary properties of Cities Service Company. At that time the Cities Service Company took over this staff directly.

This organization counselled and coordinated the various activities of the subsidiaries of the Cities Service Company, by a system of reporting to the New York office from the subsidiary companies the facts respecting all operations of the subsidiaries. This enabled the New York office to advise them properly as to their general activities and give them any suggestions and recommendations.

1669 One of the members of the New York office of Henry L. Doherty, and his assistants advised and kept in touch with the marketing operations of the respective subsidiary companies. The activities of the various subsidiaries of the Cities Service Company were coordinated to eliminate overlapping of activities, but not in the sense of directing the activities and operations.

I have known Harry D. Frueauff since about 1905 or 1906. He has been an employee of Cities Service Company since September 30, 1935. He had been an employee of Henry L. Doherty Company since 1917. I think he came with one of the subsidiaries of Cities Service Company or one of its public utilities in 1907. Harry D. Frueauff was a brother of Mr. Doherty's first partner with the Henry L. Doherty and Company. He had been connected with the Cities Service organization practically throughout its life. Mr. Frueauff's duties were to keep in touch with the activities of the marketing and refining problems and affairs of the Cities Service subsidiaries.

In the main he would report in 1935 to 1936 to F. R. Coates, a director of Cities Service Company and a member of the committee of executives whose particular function was to look after general petroleum interests in all its phases and the natural gas interests.

Cities Service Company has no natural gas and petroleum interests but it has stock interests.

1670 Mr. Coates also protected the interests of Cities Service Company in the various subsidiaries and affiliated companies. Mr. Frueauff's interests were mainly in the marketing and refining activities of petroleum production.

Cities Service Company had a number of subsidiary and affiliated companies that were interested in the marketing and refining of gasoline. Among them was Empire Oil and Refining Company. It had eastern companies operating in the eastern fields. Through the ownership of common stock of Arkansas Natural Gas Company which in turn owned common stock in Louisiana Oil Refining Company, the Cities Service Company indirectly owned through stock ownership those refining and producing and marketing companies.

Mr. Frueauff is vice-president of the Empire Company. He was also an officer of several other subsidiary or affiliated companies, generally, the companies that were engaged in the marketing and refining of gasoline.

Q. If Mr. Frueauff were to refer to the over-all company, or the operation of the over-all company, what would he mean?

A. The over-all company?

Q. Yes, the over-all company.

A. Well, of course, in our financial statements we give a consolidated balance sheet of the Cities

1671 Service Company and subsidiaries, and earning statements the same way.

Q. You don't show in your reports, in your earning statements anything about the over-all companies participating in a general buying movement, do you?

A. Not to my knowledge whatever.

Q. So that any information of that sort wouldn't be collected by Mr. Frueauff for the purpose of putting it in a financial statement?

A. I don't know as I could answer it, just who would accumulate such information.

Q. You are sure, though, that if Mr. Frueauff referred to the over-all company, he meant the

Cities Service Company and its various subsidiary and affiliated companies?

A. Well, it depends entirely on what the question was. I might speak of the over-all company, and I might refer to the Empire Oil and Refining Company.

Q. You wouldn't call the Empire Oil and Refining Company an over-all company?

A. When speaking about marketing and production companies, yes. I would. It depends entirely on the occasion for his answer.

By the Court

I heard that term used in some of the business meetings. They had in mind when they used it, the
1672 over-all picture of Cities Service Company and its subsidiaries, and presumably the Cities Service organization to an extent, but that is a misnomer, because Cities Service Company is a holding company and merely holds and controls the voting stock, control of some of which, unfortunately, since dividends weren't paid on the first stock of some of the subsidiaries, has passed out of the Cities Service organization. The stockholders had a right to vote themselves and have taken the voting control away from Cities Service Company. But that is about an entirely different occasion. That was talked of in 1935 and 1936.

Presumably, if the term was used in a meeting of our people—for instance, the American Petroleum Institute where some of the Cities Service men were present—the over-all picture would be the various oil representatives or oil subsidiaries that are joined together under the operating staff of New York, so far as their receiving advice, but it is a term that I don't know has had general use.

The annual report of December 31, 1936, showed 98 subsidiaries of the Cities Service Company.

The Court: You wouldn't speak of any of those 98 companies as the over-all company, would you?

A. Judge, I don't know just in what manner I would want to express myself.

1673 *By Mr. Chaffetz*

Since the letter, Exhibit 454, is directed to a subsidiary of Cities Service Company, I am afraid I would have to be forced to the conclusion that the over-all company referred to was the Cities Service Company and all its companies together; I know nothing about the significance of that letter or the reference of your question.

Q. We are dealing only with the significance of the term "over-all company," and that is the way you would understand that letter if you read it?

A. Over-all marketing situation.

I testified that during the year 1935 the activities of Henry L. Doherty and Company were transferred to Cities Service Company itself. Since then they have been carried on by Cities Service Company.

(The witness was excused.)

(Mr. Lewin read Exhibits 221, 246, 240 and 250, and the sections of the following indicated; Exhibit 198, "Tank Car Markets", except for quotations, and "Standard of Indiana Territory"; Exhibits 200, 201, 203, 204, 217, 215, "Tank Car Markets", except quotations; Exhibit 218, "Tank Car Markets", except quotations, and "Standard of Indiana Territory".)

Mr. Chaffetz: Exhibit 742 is a stipulation with respect to the receipt of certain documents by A. V. Bourque. I offer this exhibit in evidence.

The Court: It may be received.

1674 (Document referred to received in evidence as EXHIBIT 742.)

Mr. Chaffetz: I offer Exhibit 743 in evidence, being a stipulation signed by Louis Mead Treadwell as attorney for the Socony-Vacuum Oil Company, Inc., Bryan S. Reid, and C. L. Jones, defendants.

The Court: It will be received.

(Document referred to received in evidence as EXHIBIT 743.)

Mr. Chaffetz: Exhibit 744 is a stipulation signed by counsel for The Texas Company, W. S. S. Rodgers, H. W. Dodge, R. D. Cottingham, and P. C. Scullin. I offer that exhibit in evidence, and ask permission to read it.

(Mr. Chaffetz read Exhibit 744 to the Jury.)

Mr. Lewin: May it please the Court; the witness Jacobi has identified Exhibit for identification 84 as being a copy of a letter to him from the defendant Charles L. Jones. He also identified Exhibits 83 and 80 for identification as enclosures in that letter. The Government now offers those four Exhibits in evidence against the defendant Charles L. Jones alone.

Mr. Thomas: If the Court please, we object to the admission of the Exhibits now offered on the same grounds as heretofore stated relative to the reception in evidence of Exhibits 334, 335, and Exhibit 287, and the other documents designated as being produced from the files of the Shell Company.

1675 I wish to add to the objection the further ground that the documents which the Court is now examining and which are now offered in evidence refer to a cargo of gasoline on the Gulf of Mexico, and not to any transaction within the Mid-Continent or East Texas field, and is consequently outside of the purview of the indictment.

The Court: Objection overruled. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 84, 83 and 80.)

Mr. Chaffetz: Exhibit 745 for identification is a stipulation identifying certain documents that were heretofore marked in evidence for identification.

I now offer in evidence two documents that are thus identified, Exhibits 337 and 338.

Mr. Thomas: If the Court please, the defendants make the same objection to the receipt in evidence of Exhibits 337 and 338 as was previously made to the offer by Mr. Lewin this morning, the objection being on the same grounds to those exhibits as heretofore stated relative to the reception in evidence of Exhibits 334, 335, 336 and likewise to Exhibit 287, and other documents designated as having been produced from the Shell Company files. These grounds appear at R. pp. 504-05, 556-57, 721-23.

The Court: Objection overruled. Exception allowed.

(Documents referred to received in evidence as EXHIBITS 745, 746, 337 and 338.)

1676 **CHARLES J. BARKDULL**, a witness for the Government, testified as follows:

Direct Examination by Mr. Chaffets.

I live in Evanston, Illinois. I have been connected with Standard Oil Company of Indiana since August 1916. My position since May 1933 has been executive vice-president and treasurer. Just previous to 1933 I was treasurer and vice-president.

My experience with the company has been on the financial side largely, accounting and auditing. I have not been engaged in the operating end of the business, but there are problems in connection with everything that we handle in our different departments that are coordinated; and naturally their problems are the general problems of the board of directors.

Our company has its principal place of business in Chicago, Illinois. That has been true for many years. All of the executives of the company are located in that office.

The defendant Allan Jackson is a director, and the vice-president in charge of sales. He has been a director about 17 years, during which period he was in charge of sales as vice-president. He directs the activities in connection with our marketing in the states in which the Indiana Company operates.

All policies in respect to sales are the duties of 1677 the head of the sales organization. The determination of prices of gasoline sold in the Standard of Indiana territory is only one of his numerous problems. His chief duty in my estimation would be the obligation to dispose of the products manufactured by our manufacturing department at a fair price if possible. I would say at the best price he is able to obtain, recognizing other facts. I wouldn't say necessarily always at the best price he is able to obtain. The determination of price policies comes under his department.

Mr. Allan Jackson was active in the company during 1935 and 1936. Most of the time that he was not making field trips or taking time out in respect to a vacation he was present at his desk in the general offices in Chicago.

The defendant E. J. Bullock is now and for the last 15 years has been director and vice president in charge of purchases. He heads up the activities of our purchasing department, which I characterize as a service department on behalf of the sales and manufacturing department in making purchases. It is his duty to purchase all the gasoline for the sales department from time to time. I know that he would consult the manufacturing department which has the obligation to supply the sales department with their requirements, and I would assume that he would consult the sales department.

The defendant E. G. Seubert is and has been 1678 since May, 1927, president of our company and chief executive officer. He has been connected with the Standard Oil Company of Indiana approximately 40 years. He was very active during 1935 and 1936. He is accustomed to paying as close attention to the detail affairs of the company as his time permits. He does watch the business very closely. I would characterize him as an extremely active chief executive. He supervises the operations of the company closely with the assistance of his vice-presidents and others.

I think it is true that the level of tank car prices is a matter of vital concern to Standard Oil Company of Indiana and to the president of our company. In the normal course of his duties, I think he would keep in close touch with the trend of tank car prices, in respect to the general trend, though he wouldn't assume the obligation of watching day to day quotations. He might put his own interpretation on the causes of the trend of tank car prices, as we all do, on a lot of these situations on these trends.

I think the duties of the chief executive officer of our company would include knowledge on his part of any activities by our company, affecting the level of tank car prices.

Q. In other words, if Mr. Bullock were purchasing gasoline in a movement or program directed at the raising of tank car prices, he wouldn't do it without Mr. Seubert's approval, would he?

1679 Mr. Kirkland: Now, that is objected to. How can he tell what Mr. Bullock would do?

The Court: He may answer that. Exception allowed.

A. I don't think he would, logically.

Mr. Chaffetz: Q. No, and he would probably discuss it with Mr. Jackson and Mr. Seubert before he proceeded, wouldn't he?

A. Who do you mean, Mr. Bullock?

Q. Yes.

Mr. Kirkland: The same objection, and for the same reasons.

The Court: Overruled. He may answer. Exception allowed.

A. I don't see why he would discuss it with Mr. Jackson.

Mr. Jackson is the head of the sales department. It is the obligation of the refinery department to take care of the requirements of the sales department, and I don't know whether the sales department cares where the products come from or not, just so they meet their specifications.

Q. No, they may not care where the products come from, but they may be interested in anything that may be done to affect the level of the prices, isn't that true?

Mr. Kirkland: I object to arguing with the witness.

1680 Mr. Chaffetz: Q. I think you already told me that. You already told me that the vice president in charge of sales is interested in prices.

A. Well, I think generally all directors and officers of the corporation are.

Q. Yes, and particularly the man who is selling the gasoline is interested in the price he is going to get for it.

A. That is true.

Q. All right. Now, if Mr. Bullock was engaging in a program to affect prices, affect the level of prices, that would be a matter of interest to the vice president in charge of sales, wouldn't it?

A. I think it would be of interest to all of us.

Q. Yes, and wouldn't Mr. Bullock discuss that with Mr. Jackson before proceeding?

A. Well, I can't answer that, because I don't know.

Q. Your testimony is that you don't know, yourself, whether your company was participating in any program such as I have described?

A. It was never brought to my knowledge.

Cross-Examination by Mr. Kirkland.

As the executive vice president I keep myself as well informed as I can of the doings of the company. 1681 Part of my duties are to coordinate the work of the different departments as well as to act as treasurer, and look after the finances of the company. Those were my duties in 1934, 1935 and 1936.

The defendant Ira Smith is an employee of the Standard Oil of Indiana. He lives in Tulsa. As far as I know, Mr. Smith had no authority in 1935 and 1936, in regard to buying gas. I assumed that Mr. Smith was Mr. Bullock's contact man in Tulsa. If he wanted to purchase 20 or 25 cars of gas, he would consult his superior, and get approval. He did not have any authority, to my knowledge, to fix prices in 1935 or 1936 on gasoline.

The defendant Mr. Seubert was not in Chicago during February, 1935. He never, at any time in my presence, said anything to me from which I would judge that he knew or from which I could conclude that Standard of Indiana or any of its officers in concert with any other companies was engaged in a program of buying contrary to the law.

Q. Did he say anything in your presence in 1935 or '6, that the Standard of Indiana or any of its officers were engaged in any buying program, whether it was contrary to law or not?

A. I never heard him discuss any program.

I know enough about the sales department to know whether or not they try to sell at the very best price they can get. There are a number of questions that enter into whether a gallon of gas should be sold at the very 1682 best price they can get for it. They have got to take into consideration what the traffic will bear, and what their competitors are doing, too.

As to what factors we take into consideration in determining what the sales price of gasoline is, either today, in Madison, or in 1935, I think the primary factor is what the competitor is doing in the community in which the price is created.

By the Court

If we want to continue in business we take into consideration the cost of that gasoline. I guess there have been periods when gasoline has been sold at less than cost, by all of us. We try to buy at the lowest price also.

Q. Did your officers in 1935 know that there was an upward trend of the price of gasoline purchased by the major companies?

A. According to the quotations, that is true.

Q. Were you interested in that?

A. Yes, sir.

Q. Did you do anything to try to break down that upward trend?

A. No, sir.

Q. But you were still trying to buy gasoline at the lowest price?

A. At the going market price.

1683 *By Mr. Kirkland*

The company has no chairman of the board, so Mr. Seubert, the president, is the chief executive. Numerous matters of importance come to his attention every day.

To my knowledge not every order for the purchase of a car of gas would come to Mr. Jackson's attention. I don't think he would have time for that.

I was not in Chicago in March, 1935. I was on my vacation.

At your request, I got some figures upon the purchase of tank car gasoline from independent refiners in the years 1931 to 1936 inclusive. Those figures were taken from the books of the company. I believe them to be accurate.

The number of tank cars of gasoline purchased by Standard Oil of Indiana from independent refiners in 1931 was 841 cars; in 1932, no purchases. 80 cars were purchased in 1933, all after October; in 1934, 1230 cars; in 1935, 795 cars. The date of the first purchase in 1935 was January 14, 25 cars.

Mr. Chaffetz: Are you sure that is right, Mr. Barkdull? You mean during the whole month of January, 1935, 25 cars?

A. Yes, sir.

Q. Total purchases?

A. In January, 1935, our records disclose that we purchased 25 cars, yes, sir.

1684 Q. Don't you have a record—I am sorry, Mr. Kirkland, for interrupting—do you have a 10 car purchase from Panhandle in January, 1935?

A. I haven't the detail as to whom it was purchased from.

By Mr. Kirkland

In February, 1935, 25 cars were purchased. That purchase was February 21st. In March, 75 cars were purchased. The date of the first purchase in March was March 8, 25 cars. In April, 1935, 85 cars were purchased; in May, 75 cars; in June, 60 cars; July, 50; August, 60; September, 65; October, 100; November, 50; December, 125. That totals 795.

In the year 1936: 100 cars were purchased in January; in February, 100 cars; in March, 75 cars; April, 100 cars; May, 100 cars; June, 100 cars; July, 100 cars; August, 100 cars; September, 50; October, 50; November, none; December, 50. The total for 1936 is 925.

This gasoline was bought on specifications in the years 1934 to 1936 inclusive.

Standard of Indiana turns out at the peak, possibly in excess of 600 tank cars of gasoline a day.

When I made inquiry in respect to the preparation of this statement, I scrutinized the purchase orders. Most of the purchases in 1935 and 1936 were placed with Waggoner Refining Company. Of the gas purchased in 1935, the octane on house brand gasoline was 69.5. That is all leaded gas. I think we purchased 200 cars in 1937
1685 from Waggoner. Our records show at least 200 cars.

I have some figures showing the refinery inventory of Standard Oil of Indiana for the years 1932 to 1936, inclusive. These are in 42-gallon barrels.

At the termination of May, 1932, the month in which the highest point was reached by the gasoline inventory in that year, we had on hand 6,625,000 odd barrels. As to the low for that year, in October, we were down to 4,891,000.

At the end of April, 1933, the high for the year, we had 6,425,000 barrels on hand. October 31 of that year, the low, we had 5,186,000 barrels. March was high in 1934, 5,628,000 barrels. November was the low that year; it was down to 3,188,000 barrels. June was the high in 1935; we had 4,708,000 barrels. The low was January 31st, 3,706,000 barrels. The high in 1936 was at the end of February; we had 5,260,000 barrels of gasoline on hand. The low was October 31st, 4,161,000 barrels.

The figures I have given you follow the practice of the Bureau of Mines, and show the ultimate volume of gasoline that would be available as completely finished in the same month. There would be as much as 20% of the January, 1936, figure of 5,260,000 barrels, that I would say was not

available for shipment. Refineries have to have available
certain working stocks, and they can't entirely deplete all
their tankage or their working stock. Furthermore,
1686 there is tank bottoms. We sell what we refer to as
a balanced gasoline, which is a little more volatile in
the summer time than in the winter. And we store up light
ends in the summer and put in the light ends in the winter
months. We have furnished the Bureau of Mines for years
with our inventories of gasoline on hand at our refineries.
That is a United States Government Bureau, of the Department of the Interior.

The people that live with the problem have contended that approximately a 45 day supply of gasoline in storage at the refinery is necessary in order for Standard of Indiana to transact the business it did in 1934, 1935 and 1936.

Before June 1, 1935, and particularly during 1934 and 1935, Standard of Indiana could not refine and produce all the gasoline that it wished to. There was a governmental agency to control the crude run in the refinery or the volume of gasoline produced. That was the Code. Those restrictions were removed at the end of May, 1935. Standard of Indiana then, in regard to its refinery inventory of gasoline, began to step up its runs.

Consumption is not as heavy in the winter months as in
the summer months, and this results in variations in refinery inventory figures from month to month. Recognizing the ability or capacity of the refinery and the projection of sales, it is necessary for the refiners to anticipate
the peaks of high consumption, say, from May to Octo-
1687 ber 1, inclusive, and build up stocks in the winter
months; furthermore there is the obligation that at
least one refinery has, to supply our lake bulk terminal
points, five of which are supplied out of Whiting, Indiana.
They start building up refinery stocks first as soon as the
peak season is off in the fall of each year to take care of
the peak shipping periods, beginning on or about March 1
of each year. The Standard of Indiana transports by boat
a large amount of gasoline.

At your request I made a record of the sales of Standard of Indiana in the years 1932, 1933, 1934, 1935, and 1936, stated in 42-gallon barrels.

In those cars bought from independent refiners, there were about 160 barrels to the car. 50-gallon barrels were bought from the refineries.

The sales for 1932, by the parent corporation alone, were 27,802,000 barrels; for 1933, 25,789,000 barrels.

In 1932, the company made no purchases from independent companies. The high refinery figures in 1932 were 6,625,000. That is a monthly figure, at the end of the high month. The figure at the close of December, 1932, was 5,187,000 barrels. Our sales in 1932 were not as high as were anticipated at the start of the year.

Our inventory in November, 1933, was down to 4,970,000 barrels, off a couple of hundred thousand barrels from the
closing figure at the end of 1932. The December in-
1688 ventory was approximately 5,000,000.

Q. So in the year 1933 when you didn't start buying until the end of the year, you had a low inventory, is that correct, and your sales had dropped off over 1932?

A. Well, it was low—I mean it was rather high because we couldn't dispose of it. Our sales had dropped off.

Our sales in 1934 were 26,921,000 barrels; in 1935, 27,537,000 barrels; and in 1936, 30,836,000 barrels.

At the end of December, 1934, our inventory of gas at the refinery was 3,383,000 barrels. The conclusions of our refining people were that that inventory was inadequate to efficiently conduct a business of the volume of Standard of Indiana. There was an increase in consumptive demand of gasoline and also other petroleum products in 1935 over 1934. The general business conditions were better in 1935 than in 1934.

Taking into consideration the conditions as they existed in 1935, as far as Standard of Indiana was concerned, and also taking into consideration the conditions in regard to consumptive demand of gasoline generally throughout the Standard of Indiana territory, I would say a reasonable figure, a proper figure, that our refineries should reach in order to conduct a business of the volume of Standard of
Indiana would be 5,500,000 barrels. We did not reach
1689 that figure in our refinery inventory in the year 1935.

At the end of February, 1936, we were short about 240,000 barrels. We never reached the 5,500,000.

When I said in answer to Mr. Chaffetz' question that Mr. Bullock probably would consult the manufacturing department and the sales department in the purchase of gasoline, I meant he contacted a committee or group that we have in the manufacturing department that have the obligation to watch the statistics on inventory and production and all statistical figures in connection with operating the refineries. That is the department that Dr. Paulus is the head of.

Outside of the man that I speak of in the sales department, this accountant in the auditing department of the sales department, aside from him, it wouldn't be necessary to contact anybody in the sales department. So in the purchase of this gasoline, whether Mr. Bullock contacted anyone in the sales department, I of my own personal knowledge, do not know.

The purchase of 800 or 900 or 1200 tank cars of gasoline in one year is a matter that would be within the authority of the head of the purchasing department, without conference or consultation with anyone else.

Redirect Examination by Mr. Chaffetz.

In response to a question of Mr. Kirkland, I said that the head of the purchasing department, meaning Mr. Bullock, wouldn't have to get authority from anybody else 1690 to purchase as much as 800 cars a year. The question whether he would have to get authority if we were buying 800 cars of gasoline as a part of the major company purchasing program directed at the raising of prices, is an entirely different one.

Q. If Mr. Bullock were to buy not 800 cars, but if he were to buy 10 cars of gasoline in any one year as a part of the major company purchasing program directed at raising prices, he wouldn't do it without further authority, would he?

A. Well, I hope he wouldn't if he thought it was contrary to the law.

Whether or not he thought it was contrary to the law, I don't imagine he would.

I have the total amount of our inventories on March 1, 1935. I have the end of February 4,135,000 forty-two gallon barrels. It would be about 168 million gallons. At that time we should have 45 days' supply on hand. 45 days' supply in gallons would be about 210 million gallons. I would say we were short about 42 million gallons.

We purchased 75 cars in March, 1935. It would be about 8,000 gallons to the car, making about 600,000 gallons. We bought a little over 500,000 gallons during March; whereas we were short, in order to have the supply on hand that we think is necessary in order to run our business, 42 million. We had a very low inventory, as I have ex- 1691 plained here, at the termination of 1934. Our refiners were making applications to the Refinery Subdivision for relief in respect to running additional volume of crude; and while this amount might not have been material, it would help to the extent of that number of gallons you have referred to, namely, 600,000 gallons.

We were short, from the viewpoint of what we would like to have as the minimum inventory. I don't know how Mr. Bullock reached the conclusion that we required 75 cars. That 75 cars is an insignificant amount for our company. I don't think it was necessary to prepare an estimate on that volume of purchase.

Q. And those 75 cars were not bought in order to carry out a prediction that you would need 75 cars additional for that month?

A. No, I don't think it fitted into any program of purchase at all.

In June 1935 we increased our runs to stills. There was no restriction after May as to the amount that we could run. We didn't increase our inventory at the end of June over the end of May at all because we were getting into the period of rather high consumption here. Our inventory at the end of May, 1935, was 4,464,000 barrels in excess of 160 million gallons.

In June 1935 we purchased 60 cars of gasoline. That is less than 500,000 gallons. We were free to run our refineries
as full as we wanted to at that time, but sometimes
1692 there are mechanical difficulties that the refiners have
to look into before they can set them up over night. There were no mechanical difficulties in June that I could relate to you that made it necessary for us to purchase 60 cars of gasoline. I think it is true that 60 cars is too insignificant an amount to have any relation to mechanical difficulties, capacity of our refineries, our inventories on hand or our program of sales and purchases.

By the Court

There has been some testimony here that Standard of Indiana is what they call the market leader. I think when they refer to our company as the market leader, it is because of the position we have attained in respect to the volume that we sell compared to any other individual competitor in the states in which we operate. With respect to this volume that the Standard Oil Company sells versus a competitor, I think we would be a market leader if the competition followed our price. As long as we can post prices at our service stations that competitors elect to follow, presumably we are a market leader; in other words, if we post a decline at the service stations and the competitors all follow our price posting reductions, we are the market leader in that respect; but if we elect to increase prices and the other fellows don't follow we are not much of a market leader.

The price charged to the consumer at the filling station was not arrived at by any conference or consultation
1693 with the oil companies doing business in that particular territory, not to my knowledge.

Certainly we care what the other fellow does. We hope that in posting that price he will follow; but if he doesn't follow and increase his price—if this happens to be an increase—why, we have to change our ideas of the situation, if we want to hold our volume of business, and we may back down.

I can't say specifically how many times our company has increased the price of gasoline in Wisconsin during 1935, but after September, 1934 and the adoption of this formula, unless there was some local situation that confronted them, at Milwaukee or Rockford, or some place else, I don't think that there was any increase in the last half of 1935.

There were no changes in the tank car price during the latter half of 1935, and there wasn't so much hot oil after they adopted this Connally Act there. I think there were some increases in price in 1936.

I think I could show you numerous instances when we had to lower our price because of the failure of other oil companies to come up to our price. I won't confine it to Wisconsin, but in the states in which we operate. Quite generally they follow the price set by Standard of Indiana where we reduce. And where we raise, generally it won't take long for the individual or the company that posted the lowest price in the community, all other things being
1694 equal in respect to service specifications of his product, to get the majority of the business in that particular community; and if we don't follow the competitive prices as posted, we won't stay in business in that particular community very long, in my estimate.

I don't know whether it was in the year 1935 or 1936, but there have been prices posted by other companies in Wisconsin that it was necessary for us to follow. I think generally the statement is true that the price fixed by Standard of Indiana in Wisconsin is followed by the other oil companies, doing business in this state.

By Mr. Chaffetz

I can't answer to my knowledge, whether in March, April, May and into June 1935, when the tank car price was rising, our company increased its retail prices in the Indiana territory. I know that the tank car price did level off in the latter part of 1935. But whether the retail price in the early part of 1935, say up to the end of May, responded to that increase, as far as the retail price to consumers at service stations is concerned, I don't know. It is natural to suppose that as the tank car prices went up, the retail price would respond, if they were stabilized.

The total sales of our company in 1935, Indiana territory, figures, were 27,537,000 barrels. That would be about 1,155 million gallons. I think it is true that I said our purchases during that year were about 800 cars, or about
1695 6,400,000 gallons. Our sales in 1935 were 1,155,000,000 gallons, and our purchases were 6,400,000 gallons. Our purchases would be approximately ½ of 1% of our sales.

Cross-Examination by Mr. Kirkland.

It is a fact that beginning in the latter part of 1934, our company was attempting to build its inventory up to the figure I have stated as the necessary figure to conduct the business.

Standard of Indiana started business in this territory, in what they refer to as the Standard of Indiana territory, these 10 states, after the 1911 dissolution of the so-called Standard Oil Trust. This company was a subsidiary at that time of the Standard Oil of New Jersey. After the dissolution the stock in this company was distributed to the stockholders of Standard Oil Company of New Jersey, and Standard of Indiana then started in doing business separately or independently of the so-called Trust, or Standard of New Jersey.

I do not believe that any of the present day majors, or the defendants in this case, were doing business in the Standard of Indiana territory at the time Standard of Indiana started. Gradually as time went on down until the present day competition in the shape of the other major companies and other oil companies began coming into the territory, until gradually the percentage of the whole
1696 business in the territory that was enjoyed by the Standard began to be reduced very definitely. There has been a material loss in our percentage of the whole territory for the last 10 or 15 years.

Standard of Indiana was the pioneer in this territory. I believe it was because of that that it became known as the Standard of Indiana territory.

Today, or in 1935 and 1936, Standard of Indiana does not, in determining the price at which to sell its gas, confer with any of these other major companies. If the Standard of Indiana conferred with any of these other major companies, or with any oil or gas companies, jobber or broker, in determining what their sales price shall be, I would assume that I, as executive vice president and treasurer, would have knowledge of it, but I do not. I think I can say that if, in 1935, Standard of Indiana had decided to raise the price of its gas, I would be in position to know whether they sat down and conferred with other major companies as to what price they should put upon it. I never heard of any such conferences that occurred.

Redirect Examination by Mr. Chaffetz.

I did not know about a meeting held in the office of Mr. Bullock on February 5, 1935, at which representatives of other major oil companies were present.

1697 Q. So that meetings could be held by executives of your company with executives of other oil companies, and you would not know about it?

Mr. Kirkland: That is objected to, assuming that such a meeting was held.

The Court: Overruled. Exception allowed.

A. That is true.

By the Court

There are several factors I think that are recognized in the increase of prices of gasoline. If there is an increase in the price of the raw material, namely, the posted price of crude oil, and if that increase is reflected in the spot tank car market by the refiners that purchase Mid-Continent crude, we would recognize that increase also in our price to the consumer, whether we bought any cars on the spot market or not. There was no increase in the prices carried during 1935.

Offhand I could not say that there was any definite increase in our retail price to the consumer during that March, April, May and June, 1935, period. There may have been. It is not part of my duties, and the sales department and their group watch that situation quite carefully. I do not.

Cross-Examination by Mr. Kirkland (continued).

Approximately 70% of the crude used by Standard of Indiana in 1935 was purchased, in 1936, about 65%.

1698 Q. You said something about the amount of gas you were allowed to make in 1933 and 1934, down until the end of the Code in 1935. Do you know whether or not the company at different times appealed from the order of the allocator limiting their run as to the amount of gasoline?

Mr. Crawford: I object to that.

A. Yes, sir.

Mr. Crawford: I object to that as incompetent, irrelevant, and immaterial. It has no bearing on any issue or side issue in the case, their appeal to the board.

The Court: Objection sustained. Exception allowed.

By Mr. Donovan

In 1935 Standard of Indiana had to raise its price because of the price-fixing order of the Wisconsin Department of Markets.

I know the gasoline tank car price was subnormally low through 1934. That was also true in the early part of 1935. I don't know whether the retail price responded to the tank car price in the early part of 1935.

1699 W. J. MILLER, recalled as a witness for the Government, testified as follows:

Direct Examination by Mr. Lewin.

I have reviewed the figures given in evidence by the witness Bradshaw on his cross-examination with respect to tank cars of gasoline purchased on the spot market in East Texas from March 1, 1935, to April 30, 1936.

For each of the months from March, 1935, to April, 1936, inclusive, Mr. Bradshaw purchased for the Gulf Company at the low of Platt's Oilgram, the following number of cars: March, 1935, none; April, 80; May, 52; June, 152; July, 185; August, 184; September, 207; October, 167; November, 201; December, 256; January, 1936, 243; February, 243; March, 257; April, 241; Total, 2468.

Mr. Bradshaw testified to the purchase of 3535 cars during that 14 months period for the Gulf Company in East Texas. 70% of that total, according to my computation, was purchased at the low of Platt's Oilgram.

For each of the months from March, 1935, to April, 1936, inclusive, Mr. Bradshaw purchased through 1700 Mr. Cline of the East Texas Refiners Association for the Gulf Company the following number of cars: in March, 1935, 75; April, 139; May, 131; June, 95; July, 165; August, 120; September, 165; October, 109; November, 161; December, 220; January, 1936, 210; February, 196; March, 233; April, 195; Total, 2214.

The purchase orders and invoices of those cars disclosed the prices at which they were purchased. I have compared those prices with the prices on the same day contained in Platt's Oilgram for the same type of material. All the cars purchased in March, 1935, were purchased at ⅛¢ below the low of Platt's Oilgram; in April there were 71 purchased at the low; May, 48; June, 95; July, 165; August, 120; September, 165; October, 109; November, 161; December, 220; January, 1936, 210; February, 191; March, 233; April, 195; Total, 1983.

The total number of cars purchased at the low was 90% of the total purchased through the Association. All of the cars purchased by Mr. Bradshaw for the Gulf Company through the Association in the months of June, 1935, July, August, September, October, November, December and January, 1936, and March and April, 1936, were purchased at the low of Platt's Oilgram. And all of those purchases by Mr. Bradshaw through the Association for the Gulf Company in February, 1936, ex-
1701 cept 5 cars, were purchased at the low.

During the entire period 226 cars, or approximately 10% of his total purchases, through the Association, were purchased at ⅛¢ below the low. There were no purchases at ¼¢ below the low. There were 5 cars purchased in February, 1936, at ⅜¢ below the low. The 5 cars were less than 1% of the total, about ½%.

During this period 62% of the total purchases by Mr. Bradshaw for Gulf were made through the Association, that is, of the total of 3535 cars purchased during the period 2214 were purchased through the Association.

Almost 400 of the 667 cars purchased by Mr. Bradshaw for the Gulf Company in February, 1936, were purchased below the low. That was the largest amount purchased in any one month by Mr. Bradshaw for the Gulf Company. The next largest month is March, 1936, when 367 cars were purchased. That was approximately half of Bradshaw's February purchases for Gulf.

In February, 1936, when 667 cars were purchased, 196 were purchased through the Association. 191 were purchased at the low through the Association. The total amount purchased at the low during that month was 243.

I have prepared an exhibit (Exhibit 747) showing the total purchases of house brand, i. e. regular, and third grade gasoline made by the defendant companies other than Sinclair Refining Company from independent refiners during the period from March 1, 1935, to April
1702 30, 1936, inclusive. It is a schedule which reflects the purchases by tank cars over the period from March, 1935, to April, 1936, 14 months. This schedule is divided into two sections: those purchases in the East Texas field, and those in the Mid-Continent field. Then I show the number of purchases in tank cars for each month, in separate columns, through that period. And then, at the end, I have a column of the totals for each company and the grand total at the bottom.

The defendant companies I have considered are: Barnsdall Refining Corporation; that is, I have considered Barnsdall purchases before and after June of 1935 and I have simply taken the Barnsdall name as applying to the company that was doing business at that time; Cities Service Export Oil Company; Empire Oil & Refining Company; Louisiana Oil Refining Corporation; Continental Oil Company; Globe Oil & Refining Company. All 3 Globe Oil & Refining Companies made purchases from independent refiners in the period, March, 1935, through April, 1936. Gulf Refining Company; Mid-Continent Petroleum Corporation; Phillips Petroleum Company; The Pure Oil Company; Socony-Vacuum Oil Company, Inc.; Wadhams Oil Company; Shell Petroleum Corporation; Skelly Oil Company; Tide Water Oil Company; The Texas Company; Standard Oil Company (Indiana). I think that takes in all of them.

This exhibit shows the total number of cars purchased by those companies, both in East Texas and in the
1703 Mid-Continent field, during that period. The information was obtained from purchase orders and invoices submitted to this Court pursuant to subpoena, which have been in the custody of the Clerk. We have examined them in this building in the custody of the Clerk. This is a reasonably accurate computation.

The total number purchased by these defendants, other than Sinclair Refining Company, in each of the months starting with March, 1935, in the East Texas field were: March, 1935, 691; April, 401; May, 413; June, 649; July, 771; August, 652; September, 580; October, 502; November, 600; December, 640; January, 1936, 593; February, 1005; March, 674; April, 626; a total of 8797. They include cars purchased through the East Texas Refiners Association, as well as cars purchased directly and out of the Association.

The same figures for each month of the totals purchased in the Mid-Continent field by these defendants are: March, 1935, 757; April, 914; May, 891; June, 885; July, 1070; August, 876; September, 741; October, 666; November, 601; December, 788; January, 732; February, 610; March, 928; April, 925; total of 11,384.

I have prepared a study, Exhibit 748, of the prices paid by the defendant companies, exclusive of Sinclair Refining Company, for house-brand and third grade gasoline purchased by them from independent refiners in East
1704 Texas compared with the low quotations published in Platt's Oilgram for East Texas for the date of purchase, throughout the period from March 1, 1935, to April 30, 1936.

This schedule reflects the number of cars purchased in East Texas as being 8797, the same as included in that other schedule, Exhibit 747. That is the total of all purchased in the East Texas field, including those purchased through the East Texas Refiners Association.

(Documents marked Exhibits 747 and 748 for identification.)

The data I had on which I based this study were the invoices, purchase orders and shipping instructions, and correspondence pertaining to purchases, submitted here by these companies in obedience to a subpoena and which are in the custody of the Clerk. That data disclosed the prices paid for the gasoline. I did not make any classifications here of the kind of gasoline that I studied. In this East Texas area it was all third grade gasoline. We didn't classify any further than that. We regarded all the gasoline represented by these invoices as third grade gasoline.

Some of it was called U. S. Motor; some was called 60-62, 400 endpoint; some was described as 437 endpoint; some was described as gasoline under 62 octane; some was described by various brand names. It was all below 62 octane. Some of it did have endpoint specifications, but
1705 nevertheless we regarded that all on the basis of the octane rating and felt that it fell into the third grade

classification for comparison with Platt's Oilgram quotations.

In making up this study I had occasion to compare the quotations in the trade journals of 62 and below with the 400 endpoint gasoline. These quotations in the journals are usually exactly the same. I think there may have been a day or two occasionally when there was a slight variation. Roughly, these journals carry the same quotation for the 400 endpoint gasoline as they do for what is United States Motor third grade, 62 octane and below.

I think there are approximately 15 cars of 375 endpoint that we noted in our study. I don't just now recall in what fields they were. That is a negligible quantity when compared to the total number of cars involved in these fields. We classified it as third grade.

There were a few, I think approximately 500, sales in East Texas of leaded gasoline during this period. We didn't have quotations in the journals for regular grade gasoline in East Texas, so they have been omitted from these figures. Platt's Oilgram for East Texas doesn't publish a quotation for regular gasoline.

In each of these months some of the cars were purchased on the basis of Platt's Oilgram quotations. During the entire period there were 1305 cars purchased by defend-
1706 ant major companies on the basis of the low quotation
of Platt's Oilgram for East Texas. I have shown them separately by months on this study. The rest were purchased at flat prices. 7492 were purchased during that period at a specific price. 5430 cars were purchased at specific prices at the low of Platt's Oilgram. That is the second figure in the last column, totals. There were 39 cars purchased at ⅛¢ above the low of Platt's.

The difference was purchased below the low. I have them separated into various classifications. I have shown the number of cars purchased respectively, at 1/16¢, ⅛¢, ¼¢, 5/16¢, ⅜¢, ½¢, ⅝¢, 11/16¢, ¾¢, 13/16¢, ⅞¢, 1¢, and 1¼¢ below the low, and "miscellaneous." The "miscellaneous" were some cars for which we couldn't locate the original purchase invoices, but we did find some sales invoices indicating that the gasoline had been sold, but we didn't know exactly the prices it was purchased at. There were 22 such cars in the entire study.

There was 1 car purchased at 1/16¢ below the low. 837 cars were purchased at ⅛¢ below the low. 73% were purchased at the low or above the low. Five-tenths of 1% was purchased at ⅛¢ above the low. The percentage at the low is 72.5%. Adding the two together, we get 73%.

1707 My exhibit shows the percentages purchased at 1/16¢ below, ¼¢ below, and ⅛¢ below. The percentage purchased at ⅛¢ below the low was 11.2%. Adding that to 73%, we get 84.2%. 84.2% of all the gasoline purchased was purchased at ⅛¢ below the low or higher.

If I included the cars purchased on the basis of Platt's Oilgram low quotations, that would increase the percentage a little, probably 4 or 5 points. Instead of having 72.5% we would probably have 77% purchased below the low.

I think occasionally there may have been off-specification material included in here. I don't have the figures on that.

I have made a similar study, Exhibit 749, comparing these purchases of 8797 cars in East Texas during this period with quotations f.o.b. Group 3, in the Chicago Journal of Commerce.

(Document referred to marked Exhibit 749 for identification.)

79.4% were purchased at ⅛¢ below the Chicago Journal of Commerce or higher. 18.3% were purchased at the low of the Chicago Journal of Commerce. Those that were purchased on the basis of Platt's Oilgram quotations I just put in the total and didn't make any comparison. I only compared those 7492 cars which were purchased at specific prices.

I have prepared also a study, Exhibit 750, of the prices paid by the defendant companies, with the exception of Sinclair, for house brand and third-grade gasoline that was purchased from the independent refiners in the Mid-Continent field. On that study I have compared those prices with the quotations in Platt's Oilgram published for the Tulsa, Oklahoma market for the date of purchase during the period from March 1, 1935 to April 30, 1936.

(Document referred to marked Exhibit 750 for identification.)

1708 There are 11,384 cars total, and included in that were 9204 which were purchased at a specific price, that is, at a flat price. I compared those cars purchased at those flat prices with the quotations of Platt's Oilgram for the Oklahoma refinery market.

There were 77.7% purchased at the low or higher of Platt's Oilgram for the Tulsa market. At the low, 69.6%. 1/16¢ above, one-tenth of 1%. ⅛¢ above, 5.8%. 3/16¢ above, two-tenths of 1%. ¼¢ above, 1.5%. ⅜¢ above, one-tenth of 1%. ½¢ above, four-tenths of 1%. Then, there were 3 other cars purchased at other rates. That was too small to compute the percentage.

There were 153 cars purchased on the basis of Platt's Oilgram quotations. They were purchased by Continental Oil Company. There were 2027 purchased on a basis of the Chicago Journal of Commerce quotations.

I have prepared one more study of price, Exhibit 751-A, and Exhibit 751-B. I have the comparison of the Chicago Journal of Commerce quotations with the prices for the Mid-Continent purchases. My study is similar in form to Exhibit 750. I have it on two pages here instead of one. The only difference is that the comparison I make is with the quotations of the Chicago Journal of Commerce. It covers the same number of cars, 9204 purchased at flat prices and a total of 11,384 cars, and it covers the same months.

71.3% of the 9204 cars purchased at flat prices were purchased at the low of the Chicago Journal of Commerce; one-
tenth of 1% at 1/16¢ above; 8.1% at ⅛¢ above; two-
1709 tenths of 1% at 3/16¢ above; 1.7% at ¼¢ above; three-
tenths of 1% at ⅜¢ above; and two-tenths of 1% at ½¢ above. The total is 81.9% purchased at the low or higher.

My exhibit also shows here 2027 cars purchased on the basis of the Chicago Journal of Commerce. 1350 of those cars purchased at the low or higher; 1330 of those purchased at the low of the Journal; 5 cars at the high; and 15 cars at the low of the Journal plus $6.60 a car. That would increase to about 85%, I think, the total number of cars so purchased at the low or higher in comparison with the Chicago Journal of Commerce quotations.

There were 81.9% of the specific price purchases at the low or higher, and in addition to that there were 15 cars purchased at the low or higher which was on a basis of the Chicago Journal of Commerce. You have to add this to that. I haven't got that percentage split up.

At the low was 71.3%. 1/16¢ above, one-tenth of 1%. ⅛¢ above, 8.1%. 3/16 above, two-tenths of 1%. ¼¢ above, 1.7%. ⅜¢ above, three-tenths of 1%. ½¢ above, two-tenths of 1%. 3/16¢ below, three-tenths of 1%. ⅛¢ below, 12.4%. ¼¢ below and others, 5.4%.

The number of cars purchased each month by the defendants in the Mid-Continent field at the low of the Chicago Journal of Commerce, where the purchases were made at
flat prices which compare directly with the low of the
1710 Journal, were: March, 1935, 349; April, 317; May,
580; June, 499; July, 677; August, 614; September, 536; October, 461; November, 499; December, 481; January, 1936, 380; February, 354; March, 397; April, 520; total, 6564.

I would add to that those purchases when the price was determined by the low of the Journal. That is 1330. It is divided over the months, and shown on my exhibit.

(Document referred to marked Exhibit 751-A and 751-B for identification.)

Cross-Examination by Mr. Donovan.

I can't give you the name of the independent supplier from which the cars were purchased at 13/16¢ above the low, as shown in Exhibit 751-A.

Mr. Donovan: What I would like to have is a schedule, both for Mid-Continent and for East Texas, showing as to each purchase which you claim in your exhibits here were made above the low, this information.

First, the name of the purchaser.

Second, the name of the independent supplier.

Third, the date of purchase.

Fourth, the date of shipment.

Fifth, whether purchase date or shipment date was used in making the comparison.

1711 Sixth, the purchase price.

Seventh, the freight basis; that is, whether the purchase was f.o.b. Group 3 or f.o.b. refinery.

Eighth, octane rating of gasoline purchased.

Ninth, how the gasoline was classified by you for price comparison purposes.

And, tenth, destination of shipment.

As to question one, the schedule itself shows the name of the purchaser, all the way through.

As to question two, the independent suppliers were all added together. In other words, if there is one figure in there representing 100 cars purchased at the low in a certain month, that might represent 1 supplier or it might represent 40.

As to questions three and four: These figures record the date of purchase; the date of shipment might have been in a subsequent month. I think, for instance, in that purchase of 200 cars by Gulf in February at 13/16¢ below, I think that shipment was made over the months of February, March and April. The date of shipment in each case is different. There are 20,000 cars there, and to get the actual date on each one of those will mean listing 20,000 cars.

As to question five, the purchase order date was the date we used where we had a purchase order. In some instances,

we didn't have purchase orders; in that event, we used the invoice date, which was the date of shipment, or the
1712 date of the bill of lading; but there were relatively few cases that fell within that category.

As to question six, the purchase price is the price listed on the invoice.

You have to take individual cases as to the freight basis, the octane rating, and the destination.

As to question seven: The invoices usually showed the freight basis, and in many instances gasoline purchased in East Texas had a freight differential deducted from the total invoice. In other words, a purchase in East Texas at a certain rate would be calculated to get the amount of the gasoline at that rate, and that is the rate we used. Now, there was a freight differential, which runs anywhere from $12 to $13 or $13.50 a car deducted. The purchaser, in other words, gets the benefit of that difference in that freight rate. They buy it as though it was purchased in the Mid-Continent area, as far as freight rates are concerned.

In other words, if I had $1,000 to buy gasoline with, I could buy the same amount from East Texas that I could in Oklahoma, although the distance would be farther from Chicago, providing the rate of purchase was the same. They deducted the $13 or whatever it was from the invoice price. We didn't attempt to take the net invoice price and divide it by the number of gallons to get the exact purchase price. We took the price as it was listed on the invoice itself.
1713 There is a freight differential there that would make these figures all a little bit different, of course. It doesn't figure out in eighths or sixteenths; it is just a flat figure that is deducted from the total invoice.

On questions eight and nine: I couldn't always give the specification of endpoint or gravity from my work sheets. In many instances the purchase orders possibly as a whole paragraph, described the gasoline. I then decided whether that was regular gasoline or third grade gasoline, and called it such, without making any copy or notation as to whether it was 62 octane and below, or described as U. S. Motor gasoline or described as 60-62 gravity, 400 endpoint, or 437 endpoint, or whether, as occurred in many cases, it was described on the invoices by brand name, it was figured as third grade gasoline. 63 to 70 was regular. Above that was the premium or better gasoline. In many instances the regular was also described by the brand name. If Gulf, for instance, would buy gasoline from, possibly, Root Refining Company, and Root would bill them as so many cars of "Good Gulf" gasoline, I just considered that regular gasoline.

I think there were 10 or 15 items of 375 and 360 end-point which we classified as third grade.

If the octane rating was over 70, we didn't consider it; and if it was 62 or under, we called it third grade. If it was 63 to 70, we called it regular grade. If there
1714 were any 70 to 73 octane, we left those out. 65 octane
would have been classified as regular grade. During that period when the octane rating was 63 to 70, it would have been classified as regular. After April 20, 1936, if there were any 63-70 octane, we would have left that out, because the octane rating after that point was 68-70 for regular. If there were any that we had any doubt about, we didn't take them into our calculation.

Question ten is destination. I didn't consider destination in my work sheets. I think I have destination in most cases, on every one of those 20,000 cars in my work papers, but I didn't consider that in these tabulations. Usually, the invoice shows where it has been shipped to.

You can take any one of those purchases that are above the low, and determine what month it was purchased in, and who bought it, from that Exhibit. Now, then, you can go to those purchases and find the purchases during that month, and you will find those.

We took all the material they presented here under subpoena, and determined from that material. In some cases there were letters that affected the situation, and telegrams; but ordinarily it was the purchase orders and the invoices that we used. Now, the only material we have is the material that is in these files as presented here; we didn't go outside of that, naturally.

1715 I believe there may possibly have been some purchases included from independent refiners that were not named in the indictment. I am not positive of that, but I can check up on that and give you the names of any that are not named in the indictment.

By Mr. Gray

I considered Gulf purchases from the Root refinery in my compilation. Root Refining Company is classified as Mid-Continent area. I believe it is located somewhere in Louisiana. I do not recall just now whether it is in Shreveport, but it is not in East Texas.

By Mr. Horween

I have taken into consideration in my tabulation all the purchases of Globe Oil & Refining Company. I do not recall just now whether there were any f. o. b. Kansas points. If those invoices have been submitted here we have taken them into consideration. I believe there were some purchases from Vickers.

By Mr. Donovan

In classifying this material as to third grade or regular, I did not take into account the gravity, vapor pressure and gum content of the material purchased. I did not check those. I am afraid I cannot answer whether or not it is a fact that, in general, in those cases where the prices paid were over the low of the journals, the specifica-
1716 tions as to gravity, vapor pressure and gum content
were more rigid than in those cases where the prices were not above the low.

In my examination of these records I found that in most cases purchases were for shipment within 15 days. However, there were a few instances, I think I mentioned one this morning, where the shipments were made over a period of 3 or 4 months. I do not recall very many such instances. In fact, I do not recall more than that one right now in which the shipments were for a period of more than 2 weeks or 15 days.

I have 9 cars shipped by Anderson-Prichard to Skelly Oil Company in August, 1935. The first shipment of those 9 cars was on August 1st, and the last one was on the 23rd. That is 23 days. That is more than a period of 15 days.

That is not one I had in mind. I do not have any in mind. There are so many that I just can't recall them. The only one I had in mind was the one I referred to this morning in which there was a purchase of 200 cars. They were spread over a period of 2 months.

I have 5 cars shipped by Anderson-Prichard to Skelly Oil Company in September, 1935; 2 on the 3rd, 1 on the 12th, 1 on the 13th, and 1 on the 28th. That last one could possibly have been carried over from the preceding month.

I do not have the purchase orders on those. If they
1717 were, the shipping period on that purchase was the
3rd to the 28th. That is 26 days. I know there were 5 cars shipped over a period of 26 days, but I don't know when they were ordered. I do not have the purchase order on that particular one in this company. I know the

shipments were over that period. Those were taken on a shipment date basis and not on the date of purchase.

I have 1 shipment on November 19, and 1 on the 30th, and 1 on December 3rd, from Anderson-Prichard to Skelly Oil Company. I have no purchase order for them. I don't know on what date the purchase was made. It could be for a period over 15 days.

I have the purchase by Skelly Oil Company from Anderson-Prichard of 8 cars over a period from June 3 until June 24, 1935. That is over 15 days. I don't have the purchase order for that.

I have a purchase by Skelly Oil Company from Anderson-Prichard of 8 cars showing shipments between July 2 and July 24. That is 23 days. I don't have the purchase order for that.

I have not included in my tabulation for Skelly Oil Company any purchase by that company from Russell Refining Company in February, 1936. I do not have a record of that. I do not recall that we examined those invoices.

I have a purchase by Standard of Indiana on No-
1718 vember 5, 1935, of 50 cars from Waggoner Refining
Company. I have included those in my tabulation.
I think that was for the remainder of November. The date of the purchase order was November 5 so that was over a period of 15 days. It amounted to almost a month.

I have a purchase by Standard Oil Company of Indiana from Waggoner Refining Company, the date of purchase being February 4, 1936, of 35 cars. It may be true that 35 were ordered and 34 shipped, but my record indicated 35. The purchase order indicated that those should all be shipped by February 29. That was over a period of 15 days. My figures there were taken from the purchase order. We attempted to check the voucher to see how many were actually shipped. We may have made a mistake on that particular one. This work was done by several individuals, and I did not do this particular one myself, so I cannot say that they checked each individual car against that purchase order. This was all done under my direction and we attempted in all cases to have the practice established of checking.

I have purchases by The Pure Oil Company on June 3, 1935, from Omar Refining Company of 25 cars. The shipping period was from June 7, 1935, until July 1, 1935. That was more than 15 days. Those shipments are included in the month of June in this schedule, although 1 was shipped in July.

1719 I have 20 cars shipped by Cushing Refining & Gasoline Company to Shell Petroleum Corporation over the period of March 7 to March 18, 1936. I don't have that purchase date; I used the invoice dates in that case. We included in our tabulation this shipment of 20 cars. I do not know in what month they were ordered. The shipment was between the 7th and the 18th. All shipments in March from Cushing to Shell amounted to 33 cars. I don't have the purchase date. If that was all bought on the same date, it was for a period of more than 15 days. If that was all bought on March 7, or prior, it would necessarily have been over more than 15 days, because some of the shipments were on March 25. I don't know whether it was for 15 days or less. I haven't seen the purchase order. Those were all included in our tabulations in March.

I don't have anything for April 10, 1936, about 40 cars from Cushing Refining & Gasoline Company. I don't have the purchase order date. The shipments in April were from April 8 through April 29. That was more than 15 days. There were 40 cars.

I have 23 cars shipped in January, 1936, on a purchase on January 7 by Shell Petroleum Corporation from Bell Oil & Gas Company of 25 cars. There may have been some part of that shipment early in February. I
1720 have 23 cars. I have also 4 cars on February 1, so
they may have been purchased the same date. The date, January 7, was the date we used for making our comprison over that whole period.

I have a purchase on February 5, 1936, by Shell Petroleum Corporation from Bell Oil & Gas Company of 25 cars. I included that in my tabulation. Those cars were shipped over the remainder of the month through the 29th and it went over into the next month. The last one, I believe, was on March 7. The purchase order was dated February 5. I checked against that purchase order. The shipping period was about 30 days.

I have included in my tabulation a purchase by Shell Petroleum Corporation on March 6, 1936, from Bell Oil & Gas Company of 25 cars. I think April 9 or 10 was the last date on which that order was shipped, so that it ran from March 14 to April 10. That is more than 15 days. Most of them look like they are about 30 days.

I don't believe we have included in the tabulation a purchase made by the Lubrite Division of Socony-Vacuum Oil Company from Wilcox Oil & Gas Company on April 27, 1936, of 15 cars. The reason we didn't include it was because we couldn't find the invoices for it. I don't know what the shipping period was. I don't have the information on that.

1721 I did not include in my tabulation purchases by the White Eagle Division of Socony-Vacuum on April 27, 1936, from Wilcox Oil & Gas Company of 15 cars. I didn't include any of those Wilcox invoices on White Eagle, because I couldn't find the invoices. I think I have a record of about 245 cars that were purchased from them, but I couldn't find all the data to support those purchases.

I have the information on a purchase by the White Eagle Division of Socony-Vacuum from Champlin Refining Company. I don't have the date of July 18, 1935, of 20 cars. I have 1 purchase on the 20th and 1 on July 22 from Champlin. On the 20th there were 11 cars and on the 22nd, 9 cars, but I don't have that July 18 date. I have a different date. I determined July 22 in 1 instance and July 20 in the other to be the date on which I compared the price. I don't recall whether I took it from the purchase order. In some instances with Socony-Vacuum I took that information from letters.

The sentence at the masthead on Exhibit 730 is, that spot shipment is defined by trade practice as Gulf Coast bulk market for shipment in 90 days; all other markets for shipments in 10 to 15 days. These were not Gulf Coast shipments that you have been asking me about, they were all Mid-Continent except that 200 cars. I believe that was a Gulf Coast shipment. That was 200 purchased by the Gulf Company over a period of 4 months.

1722 I didn't check the indictment in this case. I compiled these figures as requested to do so. I didn't have the books of the companies. I had the invoices.

By Mr. Morgan

The caption to Exhibit 748, I think, has been changed. There has been a word crossed off on Exhibit 748 which hasn't been changed on Exhibit 749. In its final form, it is on Exhibit 748: "Prices paid by defendant companies, exclusive of Sinclair Refining Company, for third grade gasoline purchased from independent refineries in East Texas, compared with low quotations published in Platt's Oilgram for the date of purchase, during the period, March 1, 1935 to April 30, 1936." That means compared with the low of Platt's Oilgram at the date of purchase. That is the comparison that I made in what follows in the body of the Exhibit. When I had the date of purchase, I used that. I used the date of purchase regardless of whether the shipment was made at that time or at a later time.

The caption in Exhibit 749 is the same, with the exception of "Chicago Journal of Commerce."

I have some purchases of gasoline by The Texas Company from Trio Refining Company which were shipped in May. I don't have the purchase order dates here. I don't have May 7, 1935 as the date of a purchase 1723 of 10 cars of gasoline by The Texas Company from Trio Refining Company. I don't recall now whether I had that available to me. I don't recall whether all the purchase orders were submitted among the impounded documents of The Texas Company, including this one. I didn't work this one myself. I just don't remember it. I didn't examine the purchase orders for The Texas Company personally.

I think there were 50 cars purchased by The Texas Company that were not based on Platt's low, date of shipment. If they are based on Platt's Oilgram, it is included in a separate classification on the Exhibit 748.

There is no price comparison where the price is based on Platt's date of shipment. Where the price is based on Platt's Oilgram, we have made no comparison as to whether it was over or under.

The purchases of The Texas Company were not made as of Platt's Oilgram, date of purchase, so far as I know. They were made on date of shipment. There were 1,305 cars which were purchased on the basis of Platt's Oilgram alone.

If I used just that portion, I believe The Texas Company have 50 cars included in the upper portion of Exhibit 748. The 50 cars were not purchased on the basis of Platt's low so for that reason they are included up in this group, the upper portion. That shows with 1724 reference to the other cars that The Texas Company purchased that 50 cars were purchased at the low, but I don't show on here from whom they were purchased. It shows that the 1,190 cars were purchased on the basis of Platt's low. It shows under a sub-caption that the cars purchased on the basis of Platt's Oilgram low were 1,305 cars. Included in that 1,305 were 1,190 of The Texas Company.

With reference to The Texas Company purchases, Exhibit 748 shows there were 50 cars purchased at a specific price, which was the low of Platt's Oilgram; and those 50 cars are not included, of course, in the other total, which shows the cars that were purchased on the basis of Platt's quotation. In other words, when the purchase orders were issued for those 1,190 cars, the statement in the purchase orders was that the governing price would be the low of Platt's Oilgram on the date of shipment. Therefore, we didn't make any attempt to distribute that in this classification, which shows cars purchased on the low, or above or below, but we do show how they were purchased. We show in a separate classification just exactly what basis they were purchased on; that they were purchased on a basis of Platt's low.

Redirect Examination by Mr. Lewin.

As to the amount of purchases made by The Texas Company each month during that period, on the 1725 basis of the low of Platt's Oilgram on date of shipment, in March, 1935, there were 25 cars; April, 40 cars; May, 40; June, 65; July, 55; August, 70; September, 40; October, 40; November, 70; December, 140; January, 1936, 170; February, 1936, 155, March, 1936, 140; April, 1936, 140. They were all purchased from independent refiners in the East Texas field on the basis of the low of Platt's Oilgram on date of shipment.

Cross-Examination by Mr. Kirkland.

I don't recall that Standard of Indiana purchased after October, 1935, the payment to be the low of the Journal on date of shipment.

I can't give you the date that the change was made from these papers; but there were 495 cars purchased on a specific price, and there were 615 purchased on the basis of the Chicago Journal of Commerce quotations on the date of shipment.

By the Court

Exhibit 747 is intended to show the number of cars purchased by months in each field, East Texas and Mid-Continent, by companies, during the period from March 1, 1935 to April, 1936, 14 months. That is all that purports to show. All these figures do not include Sinclair's figures.

Exhibit 748 purports to show the price comparison, in comparison with the low quotations in Platt's 1726 Oilgram for East Texas for those cars that were purchased at a specific price, and in addition lists those cars that were purchased on the basis of Platt's Oilgram low quotations, and this schedule is divided to show this classification by months and also by companies.

Exhibit 749 is the same thing as Exhibit 748, with the exception that the comparisons are made on the basis of the Chicago Journal of Commerce low quotations rather than Platt's.

Exhibit 750 purports to show the price comparison in the Mid-Continent area with Platt's Oilgram low quotations for that area, and in addition shows the number of cars which were purchased on the basis of the Chicago Journal of Commerce quotations, and also the number of cars which were purchased on the basis of Platt's quotations. I refer to the Mid-Continent quotations for the Mid-Continent, and the East Texas quotations for East Texas.

Exhibits 751-A and 751-B reflect the prices paid in the Mid-Continent compared to the Chicago Journal of Commerce low quotations, and to that are also added the cars which were purchased on the basis of the Chicago Journal of Commerce quotations, and the cars which were purchased on the basis of Platt's Oilgram quotations, and that is also distributed by months and by companies.

(EXHIBITS 747, 748, 749, 750, and 751-A and B were received in evidence.)

1727 *By Mr. Walker*

I said this morning that I did not consider "Q" gasoline that was purchased in East Texas in making up my exhibit, and I gave the reason why I did not consider it. I stated there were about 500 cars purchased, and Platt's quoted I think two months during the year for prices on regular. I threw out the purchases that were made by any of those corporations in East Texas of "Q" gasoline. I believe Platt's Oilgram did quote on "Q" gasoline up to and including April, 1935, two months I believe in this period. My exhibit shows from March, 1935 to April, 1936. So in March and April there were quotations. I think about 500 cars was the number of all the purchases of "Q" gasoline which I examined. There were about 585 cars of "Q" gasoline purchased by Louisiana Oil Refining Corporation itself during that period from East

Texas Refining Company. That is about the figure. I am not certain. That was the only corporation buying "Q" gasoline in East Texas.

I think I showed the Louisiana Company as having purchased 1,108 cars in the Mid-Continent area. I do not have a division as to how many were "Q" gasoline. The data that I examined showed the division as to that, but I do not have the details. I threw out all "Q" gasoline in East Texas.

1728 Mr. Walker: We will stipulate that of 1,108 cars all but 11 of them were "Q" gasoline, purchased from Root Refineries and Lion.

(Documents produced by counsel for the Government were marked for identification Exhibits 755 to 821, inclusive.)

Mr. Chaffetz: If the Court please, during the recess Mr. Walker and I have been able to agree, and we stipulate that jobbers who sell leaded gasoline under the brand name of their supplier must buy the gasoline from the supplier, and are licensed to sell only the leaded gasoline of their supplier or suppliers, but there are some jobbers who are licensed by the Ethyl Gasoline Corporation to sell gasoline under their own brand name, and such jobbers can purchase leaded gasoline from whatever source they are able to obtain leaded gasoline from. Is that true?

Mr. Walker: Yes.

In making the study or comparison of the prices at which Louisiana Oil Company bought the 1,108 cars from the Eldorado, Arkansas, refineries, Root and Lion, I used Platt's Oilgram, the Tulsa quotations. I do not recall whether Platt's Oilgram quotes Arkansas quotations. We use the Mid-Continent quotations all the way through. I possibly would concede that I should have used Arkansas quotations if Platt's Oilgram published Arkansas quotations.

1729 *By Mr. Horween*

The Omar purchases by The Globe companies that were above the low were f. o. b. Garber, Oklahoma. There are 6 cars. My tabulation shows that as compared with the Journal of Commerce 33 were above the low, as compared with Platt's 32 above the low.

The Cushing purchases are all f. o. b. Blackwell, Oklahoma. I think Cushing Oil & Refining Company has a refinery at Blackwell, Oklahoma.

This gasoline was sold to the Globe Refining Company at Blackwell, Oklahoma, shipped to The Globe Refining Company at Blackwell, Oklahoma, and is f. o. b. Blackwell, Oklahoma. I see on the invoice, "Santa Fe switch".

I haven't gone into the situation as to whether or not in the case of delivery f. o. b. local points, higher prices are paid by the purchasers than are usually obtained by the sellers. I haven't heard about that in the industry. I could probably examine a lot of invoices with that in mind and establish that.

On an invoice, taken from the subpoenaed records of the Globe Oil & Refining Company, which happens to be a purchase from Vickers Petroleum Company in Kansas, the special provision as to price, in the right-hand column, is, "For Kansas destination price to be average quotation of the Chicago Journal of Commerce for 1730 U. S. Motor gasoline under 62 octane f. o. b. Potwin, Kansas. If destination other than Kansas price to be the low quotation of the Chicago Journal of Commerce for U. S. motor gasoline under 62 octane f. o. b. Group 3." On that particular order there are two different prices. However, there were no cars shipped to Kansas on that order.

I will take your word for it that all the purchases above the low, March 8, 5 cars; April 6, 5 cars; April 10, 5 cars; April 20, 5 cars are Cushing purchases f. o. b. Blackwell switch, delivery to Blackwell, but I don't know. The notation "taken into our tank number," which means taken into stock, appears on these particular invoices with relation to the Cushing purchases.

At any rate my compilation shows that Globe purchased a total of 384 cars of which 289 cars were purchased at a flat price. Of those 289 cars 33 were above the low. If those 20 cars were eliminated because, subject to my verification, they were purchased from Cushing Oil & Refining Company on this peculiar basis, it would reduce the number of cars purchased by The Globe Oil & Refining Company above the low of the Chicago Journal of Commerce by the number of those invoices.

There were 5 purchases from Cushing in April 1935, and 15 from Vickers in May, 1935 on the basis of the Chicago Journal of Commerce quotation. The latter is the one we just read, where there are two different prices, one for Kansas and one outside of Kansas. That

1731 moved out of the state. 10 cars from Olney, in December, on the basis of the low. 10 in January at the low; 10 in February at the low. 10 in March at the low; and 15 in April at the low. And then I think there were another 15 cars purchased in April which were to be shipped in May, all at the low of the Chicago Journal of Commerce.

By Mr. Denton

On Exhibits 747 to 751, A and B, inclusive, I have listed the name of Mid-Continent Petroleum Corporation. As I recall, those invoices were listed Mid-Continent Petroleum Corporation without any indication as to whether it was Mid-Continent Petroleum Corporation of Kentucky or some other state, but I am not sure. I don't know what it is, whether it is a corporation of Delaware or Kentucky that I intended to put on this exhibit. I don't know that the Kentucky company does business in the Standard of Indiana territory. I am not familiar with any stipulation that the defendant Mid-Continent Petroleum Corporation of Delaware is a refinery company, and that it didn't do business in the Standard of Indiana territory until after January 7, 1937. This Exhibit is intended to list the name Mid-Continent Petroleum Corporation of Delaware, the defendant in this case. I don't recall what those invoices said, but they were invoices that your company produced under subpoena. I read the subpoena duces tecum under which they were presented about a year ago. I don't recall that it doesn't name Mid-Continent Petroleum Corporation
1732 of Delaware the defendant in this case. I thought I had information from which I prepared these Exhibits to show that it was the defendant in this case. I don't have it here now.

By Mr. Francis

During the recess I had a chance to ascertain from my associates who assisted in the compiling of the statements whether or not in listing some of the prices paid by The Pure Oil Company, which were prices above the low of the Chicago Journal of Commerce, we took into consideration certain purchases of The Pure Oil Company of 68-70 gravity gasoline, 360 end point, which is known as illumination gasoline. I referred this morning to approximately 15 cars, and I have determined since that there were 16 cars that were so purchased. That was a mistake and oversight on our part, and we intended to take those out of our final compilation before I read it here but we did not get a chance to do so. That will account for 16 of these high prices paid in the Mid-Continent area that I read, because it is a different type of gasoline than house brand gasoline. I don't believe there are any more. There were some more of those cars purchased, but we eliminated those. I do not think there are any more.

Redirect Examination by Mr. Lewin.

I used the purchase order and purchase order date in most of the cases. Where we had no purchase order, 1733 we used the invoice. I wouldn't state it as being where the defendants didn't deliver a purchase order. It is a possibility that we may have overlooked them. We searched very diligently through the files, but didn't find them. There may have been some instances where they were returned with some of the other papers. Another case where we didn't use the purchase order date was when the invoice was dated prior to the purchase order. In some instances the purchase order appears to be more or less a confirmation rather than a purchase order, because the invoice was dated one date, and the purchase order may have been dated 3 or 4 days later. In that case we might have invoices starting before the purchase order. And then we used the invoice date of the first invoice.

When we found a car where the actual purchase was on a date other than the one on the purchase order, we used the other date, and in some cases the purchase order would be dated one date, and there was a notation that "this is confirming a telephone conversation of yesterday", and in that event we used the date previous as the purchase date.

We didn't use the purchase order where the purchase was based on a market price quotation of one of the journals for the date of the shipment. We didn't make any comparison for those particular types of shipments.

1734 There were a few cases where the prices changed over a period of shipments. The July shipments we used the invoice date of August 1st as the date, and when they changed the price, we used the invoice date, the date August 1st, for the remainder of that particular audit.

Thereupon Mr. Chaffetz offered in evidence EXHIBIT 753, a stipulation signed by counsel for defendant Boggs;

also a series of communications, being EXHIBITS 755-787, inclusive, and also EXHIBITS 788, 604, and 148.

> Mr. Thomas: We object separately to each of the documents now offered, to their reception in evidence, on the same grounds as heretofore stated relative to the reception in evidence of Exhibits 334, 335, 336 and 337, and likewise on the same grounds as objection was made to Exhibit 387-A, B and C, and other documents designated as being produced from the files of the Shell Company. These grounds appear at R. pp. 504-05, 556-57 and 727.
>
> The Court: Objection overruled. They may be received. Exception allowed.

Thereupon, Mr. Chaffetz offered in evidence a stipulation by counsel for the defendant A. V. Bourque, marked as Exhibit 820, and documents marked as Exhibits 789-819, inclusive, referred to in said stipulation.

1735 Mr. Thomas: I make the same objection to the reception in evidence of Exhibits 789-819, separately, as to each exhibit, as just made to the previous offer.

> The Court: Objection overruled. Exception allowed.
>
> (Document and stipulation referred to received in evidence, respectively, as EXHIBITS 789-819, inclusive, and EXHIBIT 820.)

Thereupon, Mr. Chaffetz offered in evidence a stipulation relative to the testimony of A. P. Ruether.

(Stipulation referred to received in evidence as EXHIBIT 821.)

Thereupon the following proceedings occurred in the presence of the jury.

> Mr. Chaffetz: Now, before concluding the Government's case, having finished with our evidence, the Government desires to make certain motions.
>
> There are certain corporations and one individual as to whom the Government desires to move to dismiss for the reasons I am about to state.
>
> Tide Water Associated Oil Company. The evidence, I think, shows that the activities charged by the Government were carried on by the Tide Water Oil Company. The Tide Water Oil Com-

pany was dissolved, and your Honor recalls having dismissed the indictment as to that company some time ago. We do not think the evidence shows the parent company, the Tide Water Associated Oil Company, has been connected up, and we move the
1736 Court to dismiss the indictment as to that company.

The Deep Rock Oil Corporation. The facts as shown to the Government indicate that the affairs—the assets and affairs of that corporation were in the hands of certain trustees appointed by the court during the period covered by the indictment, and we are satisfied that that corporation cannot be held legally liable in this case; and therefore, the Government moves to dismiss as to the Deep Rock Oil Corporation.

As to the Louisiana Oil and Refining Corporation, the facts in the possession of the Government indicate that that company's affairs were wound up after the period covered by the indictment, the corporation is no longer in existence; and the Government is satisfied that that corporation cannot be held legally liable in this case; and the Government moves, therefore, to dismiss as to Louisiana Oil and Refining Corporation.

Cities Service Export Oil Company: The facts indicate that that company was merged with certain other companies in June of 1936, prior to the return of this indictment; and that company the Government is satisfied, following your Honor's ruling in the Tide Water Oil Company matter, would not be held by your Honor in this case; and
1737 we voluntarily move to dismiss as to Cities Service Export Oil Company.

As to Journal of Commerce Publishing Company, W. C. Platt Company, National Petroleum Publishing Company, and Warren C. Platt, the Government feels that it has been unable to adduce sufficient evidence to connect up those defendants with the conspiracy charged in the indictment; and the Government respectfully moves to dismiss as to those several defendants.

(The following proceedings occurred in the absence of the jury.)

Thereupon the attorneys for the defendants W. C. Platt Company, The National Petroleum Publishing Company, Warren C. Platt, The Journal of Commerce Publishing

Company, and Tide Water Associated Oil Company objected to the above-mentioned motion of the Government as to the said defendants, and moved the Court that the prosecution be directed to proceed in the case with the prosecution against them, or, in the alternative, that the jury be instructed at the close of the Government's case to return a verdict of not guilty in favor of these defendants.

Thereupon, the Court overruled the motions of the said defendants, and allowed an exception.

1738 The Court: Well, I am satisfied, as far as the journals are concerned, both journals, there is no competent and substantial evidence in this record which would support a finding of guilty against them; and the motion of the Government is granted as to each of the defendants named by the Government, over the objection of those defendants.

Thereupon the Court granted the above-mentioned motions of the Government to dismiss as to the various defendants named by Mr. Chaffetz, and the Indictment was thereupon, by order of the Court, dismissed as to the said defendants Tide Water Associated Oil Company, Deep Rock Oil Corporation, Louisiana Oil & Refining Corporation, Cities Service Export Oil Company, The Journal of Commerce Publishing Company, W. C. Platt Company, The National Petroleum Publishing Company, and Warren C. Platt.

(The following proceedings occurred in the presence of the jury.)

Mr. Chaffetz: Your Honor may want to take this under consideration.

I am going to ask now that all documents that were received in evidence as against the defendants who were connected up, up to the point when they were offered, be now received generally against all the defendants whom the record may show have been connected up with the conspiracy.

1739 I have a list of the exhibits that were offered on that basis, and I should like to read that list into the record.

It will be satisfactory to us if your Honor reserves that ruling, and will make the instruction to the jury before the opening of the defendant's case.

The Court: Yes. All right, the jury may retire.

Mr. Donovan: May we have a reservation of our right to object to that offer, just made, instead of interrupting counsel now? May we reserve the right to object to the offer just made by counsel; that is, that these should be received as against all defendants?

The Court: Yes.

(Thereupon the jury retired from the courtroom, and the following proceedings were had in the absence of the jury.)

Mr. Chaffetz: Now, if the record may show that the Government has requested that each and every exhibit offered by the Government in this case against defendants generally, who were connected up, up to the time when the exhibit was offered—and I desire this motion to apply to all exhibits other than those that were offered only against particular named defendants—that all these documents should now be regarded as admitted against
1740 all the defendants remaining in the case; in addition—and that the jury should be instructed to consider all of those documents as having been admitted against the defendants generally.

Mr. Donovan: Your Honor, may we have on behalf of the other defendants, the same objection that we have had to these other documents, and the same ruling?

The Court: Yes. Exception allowed.

Mr. Chaffetz: Subject to further check, the Government will stipulate that the purchase orders used by the witness Miller in compiling his data and making his exhibits, refer to, or have the name on them, "Mid-Continent Petroleum Corporation", and do not state which Mid-Continent Petroleum Corporation specifically is referred to.

Mr. Denton: Of course, they do show, as you know that they were shipped to certain division points in Kentucky.

The Court: They do show the name of the Mid-Continent Petroleum Corporation?

Mr. Denton: Right.

The Court: And that is all?

Mr. Denton: And they show a lot of other details.

Witness Miller: The name that is printed on here is "Mid-Continent Petroleum Corporation". Now, 1741 here is one, the typewritten information is, "Ship to Mid-Continent Petroleum Corporation of Kentucky," This other one is the same.

Witness Miller: The shipping instructions just have "Mid-Continent Petroleum Corporation" printed.

Mr. Thomas: I move the Court that the prosecution be required to produce and have marked for identification the grand jury testimony of the witness Jacobi, which was used for the purpose of refreshing recollection in the course of his examination, in order that the defense may have it before presenting their case to the jury.

And I make a like motion with reference to the transcript of testimony of other witnesses, where it was used for the purpose of refreshing recollection while they were testifying before the Court.

The Court: Your motion is denied.

Mr. Thomas: And may we note an exception, if your Honor please?

The Court: Yes.

(Thereupon, on motion of the Government, Exhibits 171 and 172 were withdrawn from evidence with leave of Court.)

(The following proceedings occurred in the presence of the jury.)

Mr. Chaffetz: I have now the list of documents, the list of exhibit numbers that I referred to in my 1742 motion last evening. They are the exhibits listed here to which I referred, and it is those exhibits which I now wish to have your Honor instruct the jury to regard as having been admitted as against all of the defendants, and I ask that these exhibit numbers be read into the record.

I might say that as to these exhibits all of them were originally offered against the defendants generally who were connected up, up until the time of the offer. Some of them, namely, the documents signed by the defendant Warner, those Warner reports, were offered generally, but at the time the Court limited them to the defendant Warner, and reserved ruling as to whether they would be admissible as against the defendants generally.

We think now, in view of the Government the conspiracy having been established, they are admissible generally in the same way like the other reports, like the Shell reports, the Buckley reports, the Jacobi reports, are admissible generally as against the co-conspirators if made in the course of the conspiracy by one of the co-conspirators.

May I have this list of exhibit numbers included in the record as part of my motion.

The Court: You may.

1743 Mr. Chaffetz: I have given a copy of it to opposing counsel.

(The following is the list of exhibits presented by Mr. Chaffetz:)

11-23, 25, 26, 29-32, 35, 36, 39, 40, 42, 47, 54-68, 73, 75, 76, 86-88, 94-96, 98-118, 120, 122-127, 173, 176-183, 194, 197-204, 210, 212, 214, 215, 217, 218, 221, 222, 232-235, 237-240, 246, 250-254, 256-260, 262, 267-281, 284-287, 292, 294-296, 334-336, 345-347, 350-353, 356, 358-360, 365, 369, 370, 415-417, 421, 424, 426, 430, 432, 442, 450, 454, 456, 478, 481-483, 485, 487-509, 516, 681-707.

Mr. Thomas: If the Court please; last evening the defendants having reserved the right, with the permission of the Court, to object to the offer made by Mr. Chaffetz of the documents heretofore offered in evidence in the course of the trial, a list of which has this morning been filed with the Court and given to the reporters, the defendants, and each and all of them, object to said offer on the same grounds set forth in the objections made to the reception of each of said exhibits as they were offered in evidence, and upon the further grounds:

1. Because statements in said documents purporting to state facts are not competent evidence of the facts, of said alleged facts so related in said exhibits, or as to the truth or falsity of such statements, and the truth or falsity of such statements has not been established by any witness, and the Government has failed to offer any proof in support thereof, without any showing that such proof could not be supplied by witnesses who would be subject to cross examination by the defendants. 1744

2. Because as to all intra-company correspondence and writings there is no proof that the writer or the recipient of such documents so now offered was in any wise authorized to or in fact represented

any of the other individual or corporate defendants, and as to all other individual and corporate defendants except the writer of the letter and the corporation employing him, or of which he is an officer or employee are incompetent as hearsay.

3. Because as to such intra-company correspondence or writings listed in said exhibits and claimed to contain admissions or declarations of a co-conspirator, such are incompetent for the purpose of proving that any other defendant, individual or corporate, was a member of the alleged conspiracy and as to all such other defendants, individual or corporate, such declarations and admissions are hearsay: and

4. Because, as pointed out in the course of the trial when certain of these exhibits were offered, they
1745 show on their face that many of the statements made therein are hearsay and incompetent.

The Court: The objection is overruled. I will say to the jury during the trial of the case the exhibits just received now were received with certain limitations. They are now received generally as against all the defendants. Exception allowed.

> (EXHIBITS mentioned in motion of Mr. Chaffetz are received as evidence against all the defendants generally.)

Mr. Morgan: If the Court please, on behalf of the Texas Company and the other defendants I represent, I move the Court to instruct the jury that they cannot be considered against any of these defendants, for the reason that there is no evidence, no competent evidence before the Court connecting The Texas Company with any alleged violation of the law set forth in the indictment.

The Court: Your motion is denied. Exception allowed.

Mr. Morgan: Now, in the alternative I move the Court to instruct the jury that none of that evidence, evidenced by the exhibits just offered generally in evidence and received under order of the Court, may be considered as against The Texas Company or any of the defendants I represent for the purpose of determining as against them the existences of any
1746 conspiracy, or the connection of them or any of them with any alleged conspiracy.

The Court: At the proper time the jury will be properly instructed as to that. Exception allowed.

Mr. Francis: May it please the Court, may those two motions be assumed as applicable to each of the several defendants, so as not to require each one of us to get up and make like motions?

The Court: Yes, that motion is made for and on behalf of all the defendants.

Mr. Chaffetz: The record shows that Exhibit 782 was withdrawn upon order of the Court.

(Exhibit 782 withdrawn.)

Mr. Donovan: If it please the Court, before the Prosecution closes, I would like to recall to your Honor's mind that at the time that I offered the Code and the Executive Order of the President in evidence, you said to me that you wanted that to pass for the time, and that at a later date I might make application. I do so now, for this reason:

There are several things that have happened since I first offered the Code in evidence. Some that occur to me now are these:

1747 There has been discussion of refinery allocations, and reference to the Code in reference to refinery allocations. There have been introduced in evidence the various contracts between the major companies and the jobbers; and, if your Honor had had the time to examine those contracts, you would have found that most of those contracts—I think I am accurate in that statement—most of them refer to the fact that these contracts relate to the Code of Fair Trade Practices of the Petroleum Industry; so that, if we come to consider those contracts on argument, they cannot be understood without reference to the Code itself.

Now, in addition to that, your Honor, there were references to various other matters under the Code; such as, for example, the setting up of committees under the Code, the P. & C. Committee, and the P. A. B.

Now when we come to our argument on these motions, it would seem to me that the Court can do one of two things: Either take judicial notice of that Code and of the Executive Order signed by the President, or it can have it in evidence.

And I desire at this time, for the reasons that I have said, to renew my request to have the Executive Order, Exhibit 709, and the Code, Exhibit 710, received in evidence.

1748 The Court: I will deny your motion at this time; but the Court will take judicial knowledge of the Code for the purpose of motions for a directed verdict, and with your right to renew your motion to offer it later on. Exception allowed.

Mr. Crawford: The Government now rests.

(The following proceedings were had before the Court, the jury being absent from the Courtroom.)

Mr. Donovan: May it please the Court; Mr. Thomas and myself desire to file a motion to strike on behalf of all defendants that we have enumerated here in this motion. I desire to file it with your Honor now (handing document to the Court).

Mr. Horween: If the Court please, I ask leave to have the record show that Colonel Donovan's motion and the arguments may apply equally to the defendants I represent as well.

The Court: The record may show that.

(The said Motion to Strike was thereupon filed with the Court. Thereafter the Court denied said Motion as shown at R. p. 912. Said Motion to Strike related to a large number of exhibits introduced in evidence by the plaintiff. At the close of all the evidence the defendants filed a Motion to Strike the same exhibits mentioned in the Motion to Strike filed at the close of the plaintiff's case.)

Thereupon Mr. Wood moved the Court in behalf of the defendant J. W. Carnes as well as the other defendants to strike out all the testimony of the witness Jacobi, in-
1749 cluding particularly the testimony as to the meeting at St. Louis and at subsequent monthly meetings, and all evidence of conversations between Jacobi and McDowell and Tuttle, in which prices were discussed; and all evidence of conversations between Jacobi and Smith, Chamberlain, Nagle, Gartman, and Evans; and all conversations between Jacobi and Tracey; and all evidence of Jacobi as to purchases, if any, made upon a plan and as to the quantities purchased by the several companies. The motion was made as to all testimony of Jacobi in the aggregate and as to each item.

Mr. Wood: The grounds of the motion are that if this evidence is offered against the defendant Carnes as evidence tending to connect him with the conspiracy that it is inadmissible for this purpose, because it consists of conversations or acts done out of his presence and without any other evidence connecting him therewith.

Second, that if admitted for any other purpose it is inadmissible because unless and until the defendant Carnes has been connected with the conspiracy by competent testimony the acts and declarations of others, even though it may be assumed that they are co-conspirators, are inadmissible against him for any purpose.

It was thereupon stated by Mr. Donovan that the motion made by Mr. Wood should be taken as made for all
1750 of the defendants so far as applicable.

Thereupon motions to dismiss and for directed verdict were filed by the following named defendants: Socony-Vacuum Oil Company, Inc., Charles E. Arnott, Charles L. Jones, Bryan S. Reid, H. T. Ashton, R. R. Irwin, Wadhams Oil Company, A. G. Maguire, Shell Petroleum Corporation, Alexander Fraser, P. E. Lakin, Empire Oil and Refining Company, Cities Service Company, O. J. Tuttle, H. E. Brandli, Harry D. Frueauff, Edward L. Shea, Noel Robinson, J. W. Warner, R. O. Audrain, Sinclair Refining Company, J. W. Carnes, Dan Moran, Harry J. Kennedy, L. T. Cramer, Continental Oil Company, Barnsdall Refining Corporation, E. B. Reeser, The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, The Texas Company, W. S. S. Rodgers, R. D. Cottingham, H. W. Dodge, P. C. Scullin, John A. Welch, Gulf Oil Corporation, Gulf Refining Company, Standard Oil Company (Indiana), Allan Jackson, Edward G. Seubert, Edward J. Bullock, Ira A. Smith, Phillips Petroleum Company, Frank Phillips, A. M. Hughes, H. A. Gardner, F. L. Koopman, Skelly Oil Company, W. G. Skelly, James Nagle, Jacob France, Robert W. McDowell, Thomas Fitzgerald, Mid-Continent Petroleum Corporation, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Oklahoma), The Globe Oil and Refining Company, (Kansas), I. A. O'Shaughnessy, Arthur V.
1751 Bourque, and Clyde M. Boggs.

Thereupon, counsel for the Government and counsel for the defendants presented to the Court their arguments on motions to dismiss the indictment and for a directed verdict.

During the course of such arguments Mr. Chaffetz made the following statements:

"When we were before your Honor in connection with the arguments on the demurrers we took the position that this was a price-fixing case, and that we relied in this case on the Trenton Potteries case, that the indictment in this case was framed on the theory of the Trenton Potteries case. That argument of the Government was sharply contested by the chief counsel for the defense, and others, and counsel read at great length at that time from Chicago Board of Trade case and the Appalachian Coal case.

* * * * *

"Now, our position at the time of the argument on demurrer was that this was a price-fixing case, and it still is.

"We think we have shown conclusively that there was nothing of importance involved in this case than the fixing of prices. There were some other incidental effects and results. The independent refiners were benefited. * * *

1752 "Then we say to your Honor that the rule of law applicable to this case is the rule of law laid down in the Trenton Potteries case, and that the only issue, the only issue for this jury is whether or not the defendants did conspire to raise and fix the level of those tank car prices. If they did, under the statute they are guilty, and the burden is not upon the Court or upon the Government to inquire into the reasonableness of the prices fixed.

* * * * *

"Our argument is this: That they controlled, regulated and fixed that tank car price at a level agreed upon among themselves, a level that they wanted to maintain. And, under the law, that action is illegal, under the Trenton Potteries case."

After hearing arguments on the said motions for directed verdicts, the following proceedings occurred in the absence of the jury:

The Court: I don't think I want to hear any further argument. I have considered the briefs submitted last night by Colonel Donovan, and spent two days and a half now arguing this question. The Court is of the opinion that there is competent and substantial evidence in this record to sustain the charges in the indictment that there was an unlawful agreement and combination entered into by a number of these defendants, and I don't feel that

1753 I would be justified in taking this case away from the jury and finding, as a matter of law, that the defendants did not so combine. Exception allowed.

However, the Court will—the Court has some doubt in its mind as to whether some of the defendants actually participated in this combination and alleged conspiracy, and as to those, I will hear arguments on those later this afternoon.

Thereafter, further arguments were made by attorneys for defendants and attorneys for the plaintiff and thereafter the following proceedings occurred:

The Court: I have had time to consider the motions in behalf of the Gulf and the Texas Companies, the officers of The Texas Company; and the Court has concluded that your motions for a directed verdict for both Gulf Companies, for The Texas Company, and the officers of The Texas Company, should be granted, and will be granted.

(Judgment granting motions for directed verdicts as to the defendants named and entering verdicts of not guilty as to each said defendant is printed, ante, page 2473 of the Record.)

The Court: I have been giving this matter some consideration, and the Court is of the opinion that there is competent and substantial evidence in the record to support a finding of guilt as far as the 1754 other corporate defendants are concerned. Motions for directed verdicts denied. Exceptions allowed.

Now, as to the individual defendants, that has given me very much concern, and while there is substantial evidence in the record to support a finding of guilt as to a number of them, I want to give that motion more consideration, and I shall withhold and reserve my ruling thereon until some later time.

Mr. Thomas: If the Court please: I understand the ruling of the Court to be that the motions to strike are all denied?

The Court: That is correct.

Mr. Thomas: And, with the permission of the Court, I would like to have this exception:

We except to the ruling of the Court denying each and every of the separate motions to strike, which motions are in writing and on file with the Clerk; such exception being made to the ruling of the Court, separately, as to each exhibit, and, likewise, separately as to the testimony received relating thereto as set forth in said motion papers, said exception being made on behalf of each and every defendant, individual and corporate, in whose behalf said motions were made, separately, and not as a group, with the same force and effect as if this exception were repeated in the record as to 1755 each exhibit so listed and as to the testimony relative to each such exhibit, each and every defendant, individual and corporate, objecting for himself or itself, as the case may be, with the same force and effect as if this exception were repeated on behalf of each and every defendant in behalf of whom the motion was made.

Now, if the Court please, in view of the fact that the ruling of the Court with reference to some of the motions that are pending with reference to the dismissal of some defendants is reserved, may it be understood that the defense may reserve the right to make exceptions to the rulings after such time as the Court announces his decision?

The Court: It may be so understood.

Mr. Thomas: And at the same time, can we make the exceptions with reference to the rulings as to the corporations, or shall I go through that—

The Court: You have already made your exceptions here, haven't you?

Mr. Thomas: No, I will have to make a separate exception as to each corporate defendant, your Honor, in order to comply with the rule laid down by the Circuit Court of Appeals for the Seventh Circuit.

The Court: This last one you have made just now, related to your motions to strike the evidence?

1756 Mr. Thomas: Yes.

The Court: Oh, yes, you may have that reservation.

Mr. Thomas: I thought we could probably do it better if, after the Court announces his ruling, we could except for the corporations and the individuals who are left in the case.

Mr. Francis: So I understand it, your Honor, as to the individual motions not passed upon by the Court this time, as to which you have reserved ruling, the procedure forward is without prejudice to those motions while you have them under advisement; isn't that correct?

The Court: That is right.

And thereupon the defendants, to maintain the issues on their part, called the following witnesses and introduced the following testimony, to wit:

1757 WIRT FRANKLIN, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Ardmore, Oklahoma. I am 54 and have been an independent oil producer for about 25 years. I never have been connected with a major oil company.

(The witness describes his education and early employment and how he became an oil producer.)

I got into the oil business rather accidentally. In driving over the southern Oklahoma country, I had noticed indications of oil in water wells and outcroppings of asphalt. The discovery well of the Healdton Field was brought in in August, 1913. A hundred-barrel well is a well capable of producing and producing about 100 barrels per day. That was the first real discovery of oil in southern Indian territory.

(The witness then named the various oil fields in Oklahoma and North Texas where he operated as an independent producer. Such statement is omitted because it is immaterial to the issues on this appeal.)

As a producer, I have become familiar with the production methods and activities in the East Texas and other fields. I have been in those fields. However, I have had no operation of my own in East Texas.

1758 In the refining end of the business I was one of the six to organize the Cameron Refining Company at Ardmore, Oklahoma, about 1916. It operated on crude from the Healdton and Cushing fields. That refinery continued to operate uninterruptedly until March, 1935, when it was shut down because it could no longer break even on its operations. We made use of our own crude. The percentage of our own crude varied; at times we had enough production to more than supply the refinery, but it wasn't always located adjacent to our gathering line so that we could collect our own oil. Sometimes we found it cheaper to sell our oil, and buy other oil in place of it that we could reach with our gathering line.

I did not participate actively in the operation of this refinery as I am not an expert refiner. My company had a vice-president who was in charge of the refining operations, but I kept track of them very closely.

As an independent oil producer I have been connected with the Independent Petroleum Association of America. That is an organization of independent oil men that was formed in June, 1929, at the Colorado Springs, Colorado conservation conference that was called by President Hoover. It was organized principally to protect the domestic independent oil men from imports of foreign oil. It developed at the Colorado Springs conference that certain elements in the industry proposed to shut in the American production and save it for some future national emergency, which meant absolute destruction to the
1759 whole Southwestern part of the United States, whose
civilization was built on oil. And when that developed, the independents there organized to protect themselves from such a move, and instead demanded of Congress the limitation of imports of oil, and a tariff on imported oil equal to the difference in cost of production of the foreign and the domestic product.

I was also president and organizer of the Ardmore Oil Producers Association, organized in 1914 when the Healdton and Cushing fields in Oklahoma had great overproduction and waste. Demoralized conditions occurred, the price of oil went to 30¢ a barrel, and we organized for self-protection.

I was president of the Independent Oil Producers Association from its organization in June, 1929 until November, 1935.

I was a member of the Oil Code Authority, the Planning and Coordination Committee, from September, 1933. The Planning and Coordination Committee was the Oil Code Authority representing the oil industry in the administration of the Oil Code. It was appointed by President Roosevelt in 1933 from nominations made by different groups within the oil industry. It was composed of 15 members, 3 of whom, appointed by the President, represented the Government, without vote, and 12 of whom were appointed from the oil industry.

The duties of the Committee were to plan and make recommendations to the Petroleum Administrator for the administration of the Code, to coordinate the activities of the industry; to cooperate with the state authorities
1760 having jurisdiction over the regulation of the output of oil and proration matters in the several oil producing states; and generally to aid the Administrator in carrying out and obtaining the objectives of the Code

and the National Industrial Recovery Act under which it was created.

As president of the Independent Petroleum Association of America I took quite a leading part in the formulation of the Code, in the presentation of the Code to General Johnson, National Recovery Administrator, and in the hearings on the Code at Washington; and then I was one of those nominated by the Independent Petroleum Association to the President for appointment, and I was appointed by the President, as were all of the other members of the Committee.

I was elected the first chairman of the Committee. At the beginning of the Code, we made the term six months with the purpose of rotating the chairmanship. I held the office during the first six months of the Code, retiring as Chairman on March 15, 1934.

I continued my work as a member of that committee, and was then appointed chairman of the Production Sub-Committee, which position I held until the expiration of the Code. That Committee had charge of recommendations on all matters pertaining to the production and the withdrawal of oil from storage. It assisted in the work of balancing production with consumptive demand, and it had charge of all other matters relating to production, particularly of recommendations about the orderly and
1761 planned development of new pools.

We have always considered that the Code expired with the Schechter decision of the Supreme Court, May 27, 1935. The Committee continued to function for a few days after that, but more to wind up its affairs than anything else. We realized that that decision meant that we no longer had authority.

As a member of the Planning and Coordination Committee and as president of the Independent Petroleum Association of America, I studied the problems of the oil industry in the United States. Our study had to cover the entire operations of the oil industry: production; conservation of oil; regulation of the production by the state authorities; balancing production and consumption, and in that connection we had to take into consideration imports and withdrawals from storage; and all the factors generally that were necessary to accomplish our objective. That objective was the stabilization of the oil industry on a profitable basis so that we could pay the wages and comply with the hours of employment provisions, and could re-employ those who had lost out during the demoralized state of the oil industry in the years preceding. Generally, it was to carry out and secure the objectives of the Code and of the Act of Congress under which it was formed.

Conservation, as it is understood in the oil industry, is a rather broad term. We don't understand by conservation the hoarding of oil in the ground, but rather its
1762 production without economic waste; its wise use; and its use for its higher purposes rather than for burning under boilers, where some other fuel could just as well be used—all this so as to obtain the greatest ultimate benefit from our reserves of petroleum; to make them last as long as possible; and to make them accomplish as great a good for our civilization as could ultimately be obtained. Conservation also takes into consideration the prevention of underground waste and the waste of the reservoir energy from the pool, which is the propulsive force that causes the oil to flow to the surface. By wise conservation we have found, in recent years, that the ultimate recovery of an oil pool can be doubled or trebled by proper handling, and proper development and operation methods.

Crude petroleum is a liquid mineral oil. It varies in its component parts considerably in the different areas and fields in which it is produced. It is generally composed of hydrogen and carbon, or hydrocarbons, as we refer to them, and at times has foreign substances in it, such as sulphur. Crude oil is either of an asphaltic or a paraffin base, or sometimes of a mixed base. It varies in color from black, amber, various shades of green, and brown. I have seen some crude oil come from the ground white, white as gasoline.

It varies in volatility considerably. Some oils of a heavy asphaltic base are thick or viscous. Those heavy oils usually contain a very small percentage of gasoline. Other oils are light or very volatile. The very volatile or
1763 high-gravity oils contain greater percentages of gasoline, kerosene, and the lighter constituents of petroleum, which are the most valuable.

In its natural state crude oil contains gas. When it is confined under pressure in the ground, there is considerable gas in solution in the oil.

Gravity is the measure or yardstick to denote the weight of the oil as compared with water. Oil is lighter than water. This gravity does not refer to specific gravity, but to Baume gravity, more recently called A.P.I. gravity. The higher the gravity, the lighter the oil, and the lower the gravity, the heavier the oil. The higher the gravity, the more gasoline content, as a general rule, and the lower the gravity, the less gasoline content.

The normal Mid-Continent crude is from 36 to 36.9 gravity. It has a very fair degree of gasoline content, depending upon the method of refining, the distillation percentage ranging from 20% to 30%, and, as you go into the higher processes of refining, a great deal more than that.

Crude petroleum is produced to some extent now in 19 states. The principal sources of supply at the present time are in the southwestern states: Kansas, Oklahoma, Texas, Louisiana, Arkansas, and New Mexico. California is a great producing state. In the eastern states, New York, Pennsylvania, West Virginia, Ohio, Indiana, Illinois, and Kentucky and Michigan produce varying quantities of oil. In the Rocky Mountain states, Montana, Wyoming and Colorado are all producing states. There has been
1764 prospecting and some oil has been found, in Idaho
and Utah.

The crude petroleum found in these different states is not of the same quality. It varies greatly in quality in the same state, and at different depths in the same pool, in the same structure.

The oil that is known as Pennsylvania grade oil is produced in West Virginia, New York, Pennsylvania, and southeastern Ohio, and is a very high grade of lubricating oil. Its gasoline content is negligible in its quality and quantity. Its chief value lies in high quality lubricating stock.

We have some fields in Oklahoma which have a high quality of lubricating content, but not so great a percentage of lubricating content. The Oklahoma City, Seminole and Burbank fields in Oklahoma have very fine lubricating content, as well as a high gasoline content..

I don't think anybody knows accurately how much crude oil exists in this country, but the estimates placed now on our total reserves in discovered and developed oil pools is around 13 billion barrels. We produce at the present time over a billion barrels a year. In the last three years consumption has increased from about 8% to 10% a year. We are now producing about 3,500,000 barrels a day.

Crude oil is found at varying depths. The first commercial well drilled in 1859 in Pennsylvania found oil at 69 feet. It has been found from that depth in different localities to more than 2 miles down. In recent years we have had to go deeper and deeper to discover new supplies of oil.

In the Mid-Continent area in recent years we have
1765 been drilling from 4,000 to 7,500 feet, and in one well
in Oklahoma, oil was found at over 10,000 feet. In East Texas, crude oil is found at about 3,500 to 3,700 feet. Those wells on the coast of Louisiana and Texas vary from 5,000 to 12,000 feet.

The cost of drilling increases at high ratio the deeper you go. The deep wells are very expensive, and some of them cost as much as $250,000 apiece when you go down to depths of 10,000 to 12,000 feet, and even more, depending on what kind of luck you have in your operations.

Sometimes we get into what are known as fishing jobs: the drill pipe twists off and gets stuck in the ground, and we have to work with fishing tools and fish it out before we can go deeper. Sometimes those fishing jobs cost thousands and thousands of dollars before you get over them, and then again, you may never get over a fishing job. After you have drilled 7,000 feet deep, you have to plug the hole and start over again. Unfortunately we have lots of dry holes and the public never hears about them.

The cost of drilling a well in Oklahoma varies with the depth. The Healdton field was developed at an average cost for wells ready to produce of about $5,000. In the Oklahoma City field, where production was found at 6,000 to 6,500 feet, the average cost of the wells drilled during the period of greatest development was $150,000.

Crude oil is found under a great variance of geological
structural conditions. The most common and the
1766 simplest form of geological structure is what is known
as the anticlinal dome. It might be likened to an inverted saucer in the structure of the earth, oval in shape, with the rocks at the different strata of the earth dipping or slanting in all directions from a high point so as to make a dome. They usually are elongated, not usually round, but they may be a mile wide, and 7 or 8 miles long.

In an anticlinal dome the form of the rocks or the structure of the rocks or the earth formation runs in an oval, or like a cross-section of an inverted saucer, as I have already described.

Now, there are geological structures which are suitable for the trapping of oil and which do trap oil. The oil is usually found in a porous sandstone or limestone. Where oil is trapped, it is always overlaid with an impervious formation through which oil cannot penetrate. It is usually known as a limestone caprock and commonly referred to as the caprock.

Sometimes, however, the caprock is not immediately above the sand, but intervening between the sand and the caprock may be a layer of shale, but shale itself is also impervious to oil when it is not sandy. Oil can't get through. Oil being lighter than water, the water is found at the base, the oil next, and gas, being lighter than oil, is found at the top. The water level is usually constant, and about the same on each side of the dome.

Oil is not found in a lake or pool. In its natural state it is found in the porous rocks, usually sandstones or
1767 porous limestones in the earth, the oil being contained
in the portions of the porous interstices between the different sand particles or stone particles. Limestone is of a honeycombed nature with cavities in it, and in those cavities oil will be trapped.

The geologists usually attempt to find a structural condition as I have described. You are never sure of it until you drill the well and find it.

Now, as a well drilled on the surface goes down, it penetrates this caprock lying above the oil sand, and if it were drilled only a few feet thereafter and not any deeper, you may find only a dry gas well. That is, at that point, at the commencement of the flow of that well, it would produce only dry gas.

However, that same well, if drilled deeper, would reach the level of the oil in the porous sand and would produce both oil and gas. It would produce a large quantity of gas, and would be a wasteful well, because the gas-oil ratio, that is, the ratio of the gas to the amount of oil produced, would be very high, which would waste the pressure from the structure. As that gas is removed and allowed to escape, the oil moves up through the sand to the bottom of the well. As the oil moves up the water at the bottom or sides of the formation also moves up to take the place of the space that was formerly occupied by the gas.

Now, there is no movement of the oil until the caprock has been penetrated by the drill. We used to think, in the early days of the oil business, that oil was in lakes or
1768 rivers or creeks, and that these rivers and creeks of
oil flowed past a man's land, and if he did not catch it as it went by it was gone. The early decisions of the courts are based upon that law of capture, and upon this mistaken idea that the oil was flowing by. We have since learned that the oil is in a static condition in the ground, trapped by the water on each side of the structure, and that there is no movement whatever until you tap it, and then the movement is started both of the oil and gas toward the open hole.

A well might be drilled at a point so that, instead of first reaching the dry gas in the formation, it strikes a point where there is only oil. But while it contains only oil, on account of the terrific pressure that is involved here, and the fact that there is a large amount of gas at the top, even here at this point, the oil would contain considerable quantities of gas in solution. This gas in solution, having the pressure released, tends to come out of the oil. So wells, in the flush days of the field, would produce considerable volumes of gas, and it is the pressure of that gas and the expansion as it comes out of the oil that helps bring the oil into the hole and causes it to flow. That would be a gusher or a flush well.

The geologist made a slight error, say of half a mile, and as a result the well may be drilled so that they get white sand with no oil in it. They would get a dry hole, and it might condemn that structure for many years before anybody else would want to drill another well in that area.

This pool might remain here undiscovered because the
1769 first well got salt water, which would prove there was
no oil in that immediate locality. We call a water well a dry hole. Nobody else would want to undertake to spend a lot of money drilling another wildcat well in this area.

Another problem you have is where you drill a well down to a point where you get oil in the top of the sand, but your production may not be as great at that point as it is at other places where these big flush wells are. You have got a comparatively small well. You say, "Well, I will drill it a little deeper into the sand, and maybe I will get as big a well as these other fellows did." So you keep on drilling, but you strike water which encroaches into your well. You have a problem on your hands, because it is almost impossible in these open porous sands to plug up the water where you have penetrated it.

There is another factor about conservation. If the flow of these wells is maintained, that is, if you maintain that pressure on the sand at all times, taking only a moderate quantity, you can prolong the flowing life of this field for years and years, so that nearly all the production will be flowed out at comparatively small expense.

On the other hand, if you allow a well to produce wide open, allowing that gas to escape and flow into the air, it is wasted; whereas if it is produced at a slow rate it can be utilized for domestic consumption.

In a well that comes in all at once, unrestrained, the tendency is to create a suction in that sand, that is, water

will be pulled up and pulled into the well and do
1770 what is known as coning. The water will form like
a cone and shut that oil out, and the remainder of that oil is left in the ground and is never recovered. That is the greatest waste that can occur, and under the competitive method of production it does occur quite often, because if one man in a common pool produces his well at full capacity, every other man in the pool is compelled to do likewise or lose the oil from under his land.

That is because of the terms of the leases and the implied covenants that the courts have put into every lease: that we are all drawing from, so to speak, a common pool or source of supply, and if one producer in a pool insists on violating the rules of safety, you might say, and preventing waste, and produces his well to capacity, then his neighbor across the fence or across the road on another tract of land that is owned by another man, must also produce his well to an equal capacity, or drainage will set up and he will lose his oil.

He has to do that or forfeit his lease. His lease is subject to cancellation if he does not produce as much oil as his neighbor. But if he does produce as much oil as his neighbor, that brings about overproduction, and permits of waste and demoralization. It results in an immediate large flush production of oil, usually beyond the capacity of the pipe line and storage facilities to handle. Before we had our conservation laws in the states and the enforcement
of proration, it caused the oil to be stored in open pits
1771 where it was subject to being washed away, and where
the lighter, most volatile constituent parts of the oil evaporated, and large seepages took place under ground, and great loss occurred. Some states haven't any conservation laws yet.

The amount of oil you usually get from an acre varies very greatly. It depends upon the thickness of the producing sand, upon its porosity, upon the pressure, and upon varying factors, so there is no rule to go by. Some fields produce only 5,000 or 6,000 barrels per acre, and others produce 100,000 barrels per acre. The average in Oklahoma will run around 10,000 to 15,000 barrels to the acre.

The term "wildcatting" is applied to the drilling of a well that is somewhat removed from a proven area, or a proven oil field, and where an attempted new discovery is in progress. Wildcats are wells that are pretty close to production, but still outside of a proven area.

As soon as a well starts flowing, it also begins to decline in production. The more rapid the flow and the greater the number of wells that are drilled into the pool, the more rapid the decline in pressure. With the decline in the pressure the production, of course, also declines.

So there comes a time in the life of every field when the
wells cease to flow, when the gas has been exhausted, or
practically so, and when the gas that is in solution with
the oil has been to a large measure released. The
1772 gas that is in solution with the oil expands when the
pressure is released and tends to move the oil along
through the porous places in the rock toward the hole.

When that gas has come out of solution with the oil, and there is no longer anything to keep that oil alive, it gets to be somewhat dead, what we call "dead oil," and it moves very slowly. It then becomes more viscous, the gravity of the oil declines, and it moves with less freedom through the porous formation.

After the well ceases to flow it is necessary to install pumping equipment to lift the oil out of the ground. The deeper the well, the greater is the difficulty of keeping it on the pump. There are many things that can happen to it.

The oil is pumped out and goes through a line over to the separator; and from the separator, by gravity into the stock tanks; and from there the pipe line company which owns the oil makes connections with the stock tanks.

After the wells get to the pumping stage, that gas has a
great deal of gasoline that may be recovered; and connections are made at the top of the tank, and this gas is collected to go to what is known as a casing-head gasoline
plant, where the gasoline is stripped out of the gas. There
are several methods of that. The gasoline is taken out of
the gas, and the gas then is returned back to the field for
operating purposes. It may be used for the drilling of
other wells or to run this gas engine here in the pump
1773 house which is pumping the well.

It is necessary to pump constantly, 24 hours a day, to get all the production.

As time goes on, even this pumping well declines, and you get down to what is known as the stripper well stage. They are wells that have gotten down to less than 5 barrels a day, and in some cases down to less than a barrel a day, so that they only have to be pumped, sometimes, an hour or two a day to get all of the oil they will produce at that stage of the game.

At this stage, of course, the operating cost per barrel very materially advances. At the same time it is very important to this nation and it is very important to the consumers as well as to the oil industry, that these pumping wells be maintained on production. When they have gotten to that stage, they are also pumping some water with the oil. If you shut down those wells from pumping, that water encroaches into the well and shuts off the oil; and after that, if they are shut down for any length of time, it is very difficult to get the well back on production of any kind. You may pump water for 6 or 8 weeks before you get any oil at all.

In the aggregate there are over 250,000 of these stripper wells in the United States, although the cost of their production is high. They are on farms, where the men live who operate the wells and take care of the pumping,
1774 the cleaning out, and the reconditioning of the wells.
The stripper wells contain about 40% of our reserves of oil; and if they are abandoned, it is a very serious problem for the whole country.

The percentage of dry holes in wildcat drilling is running now about 1 producing well in 20 drilled. It used to run about 1 in 60, but that was before we had discovered the scientific methods for locating structure that are now used, and which has reduced the number of dry holes in wildcatting to some extent, but not very greatly. It is still only about 1 in about every 20 or 25 wildcat wells that finds any oil at all; and very frequently that one may not be enough to be commercial. Taking all wells drilled, whether wildcat or on a proven field, the percentage of dry holes runs about 1 dry hole out of every 3 wells drilled, even now. It varies somewhat in different years. Sometimes 20% of the wells drilled in one year may be dry holes, while in the next year it might run 35%.

Out of the wells that come in, the producer must make his money and make up his losses on the wells that do not come in. Those dry holes are just as necessarily a part of the business as the wells that are drilled and produce, because you never know, when you start a well, whether you are going to get production or not.

These stripper wells are what is known as settled production. They operate about the same every day, day
1775 in and day out, and their decline is almost negligible
over the years. Of course, they finally get to the point where they won't produce anything but water. There are probably, at this time, about 325,000 wells altogether in the country. About 250,000 are in the stripper well class. Then there are about 50,000 more that are in the pumping class, and verging on the stripper class.

The combined production from the stripper and pumping wells averages about 500,000 barrels daily. That is very aptly referred to as the backbone of the industry, because it is a production we can rely on. The flush fields are here today and gone tomorrow, and those flush wells in a comparatively short time have to take their place with the pumping wells, and they settle on down into strippers eventually.

It is more costly to operate a stripper well than a flush well. As the production declines, the cost per barrel, of course, increases, and the lifting cost per barrel increases with the least production. If the price of oil which the operator of a stripper well gets continues for any considerable period below the cost of production, it results in the abandonment of the well.

I have made a study of the relation of the price of crude oil to conservation.

> (During an argument before the Court, counsel for the defendants made the following statement:)
>
> Mr. Donovan: I only want to make clear my position; in our view of this case, what we did was 1776 justified under the law, whether there had been a Code or not. We feel that we are entitled to show what was done under the Code, not to give us immunity from anything we feel may have been wrong—because we deny that we did anything wrong—but as showing that the intent and purpose that we were seeking to accomplish was the same intent and purpose and objective that the Government had in mind. It is not because we were in under the protection of any Code. It is bearing upon our purpose and on our intent, and we are entitled to show that.

By Mr. Donovan

There can be no conservation of crude oil in any rational meaning of the word without taking into consideration the price of crude oil. I think that is well accepted throughout all the oil producing states, and by the state authorities themselves, in the enactment of their conservation laws.

After the crude oil reaches the top of the well and is run through the measuring tanks, as a general rule, it is transported through pipe lines. The purchasing companies usually have their own pipe line facilities. In the oil fields there are gathering systems, a regular network of smaller pipe lines that connect with the stock tanks into larger tanks. From there the oil is pumped to refining centers

which may be close by. From the Mid-Continent field,
it is pumped to Kansas City, St. Louis, Chicago, points in
Ohio, and Pittsburgh. Other trunk lines run south
1777 to the Gulf of Mexico where the oil is loaded on tank
steamers and is transferred to refineries on the Atlantic coast. Some transportation from the field, especially in the new fields, before the pipe lines have been completed, is done in tank cars from the wells to the refineries, but that is the more costly method, and is only resorted to in necessity.

All the producers in the field usually have a few days' storage facilities on the leases, but outside of that it is seldom, except in cases of great emergency, that they would have storage of any consequence. I am speaking in this as to both the ordinary independent producer and the larger ones.

The independent producer as a general rule has facilities of storage for 8 to 10 days' production at the outside. To build the large storage tanks costs about 25¢ a barrel of storage space.

The independent producer who has not sufficient facilities for storage must sell the crude oil that he produces from day to day on a day to day basis if he continues to produce his allowable share of the production from the common pool.

In order to take care of that, the oil is sold under what
is known as a division order. That is a contract between
the operator of the oil wells and the purchaser who usually
owns the pipe lines that connect to the stock tanks. That
division order sets up the division of interest in the
1778 oil that is produced. For instance, the farmer gets
one-eighth of the oil, and usually the operator gets
seven-eighths. The farmer's share is called "royalty interest", and the seven-eighths is called the "working interest". Frequently this is divided between several companies, and frequently the farmer sells undivided interests in his royalties, so that some division orders may have 25 to 30 names in them, showing the division of oil produced. The oil is paid for direct under the division order, and the money does not pass through the hands of the operating oil company.

The division order has a provision obligating the purchaser to take from the producer all the allowable oil on the lease which the division order covers. He has to take it as it is produced. He takes it from the tank. While they are filling one tank, they are usually emptying another into the pipe line. The purchaser pays the posted price. Each purchaser posts a price at which it buys oil, and the oil is paid for under the division order at the posted price on the day that the oil is run from the tank.

The small independent producer is not usually also a refiner. When a producer does not operate a refinery, he must sell his crude oil from day to day as it is produced, unless he has storage facilities. He can't close down his well when the price of crude oil goes down, or when 1779 he has not sufficient storage facilities, because if he did so, he would lose a part of his market to other operators in the pool. There is always somebody in a pool, some owner, some operator, that wants to produce his wells to the limit, and he will continue to produce. Then if he continues to produce, every owner or operator in the same pool must produce, or lose at least a portion of the oil from under his property. Also, if he fails to produce and protect the property from drainage, his lease is subject to cancellation.

The small independent producer does not build storage facilities to store the oil until he can find a purchaser, because the building of storage is usually for an immediate emergency; and in the ordinary course of business of the small producer that storage would be used but one time, and would be a loss involving a considerable investment. Usually the small producer is not able to make that kind of an investment, where these 80,000 barrel tanks cost about $20,000 to $25,000 apiece, depending upon the price of steel at the time.

An emergency would be either when the price had fallen abnormally low, or when every producer in the field was violating the orders of regulatory authorities and producing hot oil, or oil in excess of the allowable as determined by the state law under the authorities. In that emergency the producer, if he does not protect himself, loses his 1780 oil.

When the price of crude oil goes down below recovery cost, the producer has to keep on producing. It takes more barrels at a low price than it does at a fair or higher price to pay his operating costs and the interest on the money he probably has borrowed, so he is almost compelled to produce a greater number of barrels when the price is low than he otherwise would.

Q. Well, when that happens, in your experience do some of those producers begin to violate the proration laws?

Mr. Crawford: I object to that as incompetent, irrelevant and immaterial.

Mr. Donovan: I am asking if he knows.

Mr. Crawford: I object to it.

The Court: Objection sustained. Exception allowed.

The producers hurt themselves by the fact that they produce a greater quantity of crude oil in the sense that I have just related. It only aggravates their troubles, because the increasing amount of oil there is in the market makes the price go still lower. That period that I refer to was in 1933, for several years.

The larger companies have storage facilities for crude oil which are adequate to deal with their problems of storage. They own these trunk pipe lines; they own the
1781 pump stations, and they have adequate storage facilities adjacent to the oil fields at the pump stations along the trunk lines, where the oil is gathered into the pump stations. In times past, when there was an overproduction of oil, they filled up those tanks with the oil at a low price. This storage, some of it built years ago, is still in existence, and is there to be used whenever they need it. They use it over and over again, while the producer might not use it but once if he built it.

There are two general types of refining: the skimming plant and the cracking plant. The skimming plant operation is merely a straight distillation process. The oil is run into tanks or boilers, where it is heated; and the vapors arising from the oil, very similar to the steam arising from boiling water, are caught and run through condensing tubes. Usually there is cold water sprinkling over the condensing tubes, and when that vapor passes through the condensing tubes it is condensed back into liquid. The first vapors that come off are gasoline, then naphthas, and then next below that are kerosenes, the gas oil, and lastly there is a residuum that can be made into asphalts or road oils or left as fuel oil. That is the straight skimming plant operation.

The other method, known as the cracking plant, consists in heating the oil in receptacles or tanks that are able to withstand enormous pressures and high temperatures.
[illegible]82 They take the heavy, base oil for this cracking operation, after it has been skimmed and when there is no more gasoline in it that could be obtained by simple distillation. The high temperature and high pressure has the effect of cracking up the molecules of oil in such a manner, that when they are cracked and reformed, they go back together and form a certain percentage of gasoline. By

that method they have been enabled to get a very largely increased yield of gasoline out of what was formerly burnt as fuel oil.

I can't explain why these molecules act in this manner, I can't go into the chemistry of it. I know generally what the effect of it is, but as to why they do it and all that, I am not an expert in that line, and I can't explain it.

The cracking plant is more efficient than the skimming plant and is used when oil is of a sufficiently high price to amount to anything.

Back in the days when we had 10¢ oil, the skimming plant operation was just about as efficient on 10¢ oil as any other plant, because it was a waste anyhow. The skimming plant operations increase very materially when oil gets cheap. As oil becomes of a higher price, more of it is cracked and a greater percentage of gasoline is obtained from it. It is very much more efficient, from that standpoint. It is more costly to obtain gasoline by cracking than by skimming.

The cracking plants are very expensive to construct.
1783 It takes a big investment to put in cracking units.

There are hundreds of products that are made from crude oil. The most regular ones that are made in commerce are gasoline, kerosene, gas oil, Diesel engine oil, lubricating oils of the various grades and for various uses, asphalts, paraffin wax, the fuel oil that is used for the purpose of generating heat, and domestic burning oil that is used for heating homes. Then, in the more complete refineries, they make chemicals and dyes and various other things. There are hundreds of household articles, and just a myriad of products that are made from crude oil.

After the gasoline is manufactured by the refiner, as a general rule, in normal times, he puts it on the market. Each refining plant has a normal amount of storage facilities to maintain inventories necessary for working stocks. But it is the general rule among the so-called independent refiners not to have tankage for working stocks beyond a reasonable limit, and they do not usually have storage facilities beyond their necessary working stocks to take care of current business.

In times of overproduction, they are compelled to throw their product on the market at whatever price it will bring. That gasoline is called distress gasoline in the trade.

An independent refiner doesn't build sufficient stor-
1784 age tanks for his gasoline for several reasons. For
one thing, it is very costly; and for another, when he puts it in storage he is gambling on the markets, more or less, as to whether it is going to go lower or higher. Most

of them are not able to take those chances, beyond a certain limited amount of storage. It also ties up his capital, and he doesn't get any returns to pay for his runs of crude oil, and he has got to pay the producer for them every month. If he hasn't sufficient storage facilities, he sells the gasoline he produces from day to day at whatever price it will bring on the market.

When the price of refined products goes down below the cost of operating, the small, independent refiner can't close down his plant until prices rise, unless he expects to go out of business permanently, because of a variety of reasons. The most important is that he would lose his crude oil connections in the field. If he once cuts loose from the producer, the producer has to seek some other market or outlet for his daily runs of crude oil. And if he shuts down, he will also lose his marketing outlets for his refined products, as some other refiner will immediately take over that business.

As a general rule the independent refiner had certain customers that took from him pretty steadily. I know we did. We had other brokers and jobbers that bought from us from time to time. If we had shut down, those that 1785 were our steady customers would necessarily have had to go some place else to buy their gasoline and make other alignments and contracts with other people.

Of course, the independent refiners sell a certain amount on the daily market, whatever that is, the spot market.

It is a characteristic of the refining business that it is necessary for the average independent refiner to keep his refinery operating, regardless of the price of crude oil or the price which he obtains for his refined products. He has to keep it running continuously, or go out of business permanently. He has no choice in the matter.

I had an experience such as that from 1916 to 1935. My company was in receivership in 1933, but I maintained close contact with its operations every month because I was very heavily interested in it, owning 74% of the stock of the corporation. The refinery was shut down in March, 1935, because it couldn't recover from a barrel of crude oil enough products in value to pay for the crude.

By the Court

It wasn't the refinery that put us into the receivership. The Oklahoma City field was being developed at a very alarming rate, and the wells averaged $150,000 apiece. We had a pretty big acreage there to protect from the drainage of off-set wells. The company had to borrow a consider-

able sum of money and it bought a considerable amount of its oil field supplies from the supply companies on credit terms. We got big oil wells every time we drilled,
1786 but the Oklahoma proration finally got us down to only about one-half of 1% of our production. It was producing conditions back there in 1931 to 1935 that put us in the hands of the receivers and not the refinery, because we couldn't meet those bills. That was due to the producing conditions and the low price of oil. That is the reason we went into receivership. The refinery continued to run after the receivership until 1935, when it was shut down for the reason I have stated.

Mr. Donovan: Q. Mr. Franklin, why didn't the refinery close down in the late fall of 1934 when there was so much money?

Mr. Lewin: That is objected to as totally irrelevant.

The Court: He may answer that.

A. Because at that time there was a plan under consideration by the Petroleum Administrator to bring about a rise in the gasoline tank car price sufficient to return to the refiners the cost of their crude oil plus the cost of refining and enable them to keep going.

Mr. Crawford: We ask to have that answer stricken out.

The Court: It may be stricken out.

Mr. Donovan: May I except to that because it
1787 seems to me that is a proper answer to the question, and it shows exactly the circumstances.

The Court: Exception allowed.

By the Court

This refinery was in operation continuously from March, 1916 to March, 1935. The company's trouble in 1933 was caused by production trouble. That was what put us in the hands of the receiver. We weren't able to meet our current bills and went into receivership, and one of the officers of the company was appointed receiver. My right-hand man and vice-president continued to operate the company very much the same after the receivership as before.

Our refinery is not running now. It was closed by order of the court on March 4, 1935. There were some runs made through the refinery after that to clean up stocks of crude oil on hand. We were able to operate at a profit during 1933, 1934 and 1935 only at times. For short periods we would be able to operate at a profit, but generally we

couldn't operate at a profit from 1933 to 1935, because the price of crude oil had been maintained at $1.00 a barrel all through that period, and we couldn't recover enough from the refined products to get back the cost of crude oil and our refining costs and the transportation of crude oil so as to break even most of the time. Some months we would make a very slight profit, but most of the time we were in the red from $5,000 to $20,000 a month on the refinery.
1788 It was not costing us more to produce it than these others. That was the general condition of the independent refiner during that whole period, 1933, 1934, and part of 1935. In the early part of 1935, there was just about the same condition as there had been in 1933 and 1934.

By Mr. Donovan

Our company was using part of its own crude. The percentage varied. We used our own crude that was easily accessible to our own gathering system, and then we would sell the crude that we produced that was not accessible, because it would cost so much to extend the pipe lines and gathering facilities, and would buy crude of like kind where our lines reached. We had enough production at that time for our refinery, but it wasn't accessible to our pipe line.

By the Court

We were making some money on the production end. We were more than breaking even on that. One corporation owned the production end and the refining end.

By Mr. Donovan

Our production had been cut down by proration laws very materially. In the Oklahoma City field, we were running less than 1% of our production, which made it very difficult to get along from the production standpoint. We were making kind of a production, but we hadn't been able to pay back the money for the drilling of these wells at $150,000 each.

1789 *By the Court*

If we could have produced and sold 10% of our oil at reduced prices, say below $1.00 a barrel, we could have got along in fine shape. The price would have gone down below $1.00. But we had this oil reserve underground which we were not permitted to produce at that time in larger quantities.

It wasn't very much over-expansion that caused our financial troubles. You see, we were forced into drilling those necessary offset wells or losing our rights by forfeiture. We had to borrow money on the assumption that we could continue to produce 10% or 15% of our production. But in the meantime, after we had drilled these wells, the East Texas field was discovered, which wasn't in the picture at all when we borrowed the money. Until the East Texas field came in, we were running enough oil so I could have paid off these debts in the regular run of business without any difficulty. When the East Texas production was added it became necessary to curtail the Oklahoma City field from month to month until we got down to less than 1% of our production. Those were difficulties that nobody could foresee.

We had enough production in the company to run the refinery, but the fact remains that we bought most of our crude because our gathering system was out in the Healdton and Graham fields. We sold the crude oil that we produced ourselves and bought oil out of the other fields.
1790 The effect of it was an exchange, but it didn't make any difference at what we bought our product. The price was the same. I could have sold our oil for the basic price of $1.00 a barrel whether the refinery was running or not.

The Court: Wasn't he expecting the refinery end to carry the load of his production?

The Witness: No, the production was carrying the load for the refinery during that period.

The Court: The whole trouble with this kind of testimony is that there are so many variations that may enter into it, which may explain the downfall of one industry and not another; and after all, what I want to get before the jury is the picture of the entire industry at this time.

The Witness: Our refinery record, your Honor, is kept separate from the production, just as much as if it were two separate companies, or two separate businesses.

The Court: Let me ask this question:

Q. If you had started out in 1933 with your refinery out of debt, with your business out of debt, would you have been able to weather the storm?

A. Not for any great length of time. And I will
1791 say this, your Honor: That the major, integrated companies, if the conditions had remained the same as they were in 1933 and 1934, they would all have been closed by now.

Mr. Crawford: I ask that that statement of the witness be stricken.

The Court: That will be stricken. Exception allowed.

Well, we can get at the whole thing by finding out the cost of oil and finding the cost of refining a gallon of gasoline, just as well as we would by going into the reason for this man's going out of business. There may be some question of management involved there. Some men may be more fit to manage that business than other men. There are so many things that enter into the question as to why a man goes out of business, that I think we would be mixed up in a lot of collateral issues here. But I want this jury to know the condition that existed down there at that time.

They may know the price of petroleum and they may know what it costs to refine a barrel of petroleum.

Mr. Donovan: Then I would like to ask the witness, your Honor, in accordance with your sugges-
1792 tion, if you knew the conditions at that time among the independent refiners in your territory?

A. I did.

The price of crude oil in 1935 was $1.00 a barrel for 36 gravity Mid-Continent crude, and it had been at $1.00 a barrel since September 29, 1933.

I was generally familiar with the price which the average non-integrated independent refiner in the Mid-Continent field had to get for a gallon of gasoline in order to obtain cost recovery. I acquired that knowledge through the general studies made by the Planning and Coordination Committee and from my dealings as chairman of that Committee with the independent refiners during the Code period.

The Court: Q. Do you know what the cost was of refining crude oil that cost $1.00 up?

A. Yes sir.

Q. What was it?

Mr. Chaffetz: If your Honor please, that question relates not to what it costs to 85% of the manufacturers industry, but the question is what is the cost to the little non-integrated refiner.

The Court: There is some merit to that objection. Do you know what it costs the major companies to refine?

1793 A. No, I do not.

The Court: Then the objection is sustained. I want this jury to know what the petroleum oil was selling for, and what it cost to refine it, and I want them to know what it cost to refine not only the 15% but the 85%. If you are prepared to show that you may do so. If not, I want to end it.

Mr. Donovan: I am trying to do it step by step, your Honor.

By Mr. Donovan

My study showed that the average cost of recovery price, when paying $1.00 a barrel for 36 gravity Mid-Continent crude, was 5½¢ a gallon for the kind of gasoline that these independent refiners in the Mid-Continent made. By recovery cost, I mean taking into consideration all the costs involved in the transaction: First, the payment of $1.00 a barrel for the crude oil; the gathering charges in the oil field, where the oil was purchased; the transportation to the refinery; the processing or refining cost, and the overhead charges for the running and operation of the refinery. I am speaking about the kind of gasoline that the independent refiners of the Mid-Continent field made at that time without special treatment.

The small refiner doesn't need to give any special treatment to third grade, but he does to higher grades.
1794 The cost of refining is raised when he has to make the higher grades, and when he is compelled to use tetraethyl lead.

By the Court

All of these refiners down in that locality do not have the same kind and size of equipment.

The cost of transporting that oil from the well to the refinery varies somewhat in different localities, depending on the distance, but it usually costs about 5¢ a barrel to gather the oil in the field, and about 10¢ to 15¢ a barrel to transport it to the refinery. You see, they are not all the same. This figure that I have given is based upon the studies made, as a general average.

The 5½¢ per gallon recovery cost is made up of all these charges that I started to enumerate. There are 42 gallons of crude oil in a barrel, but the average recovery is about 44% gasoline, where they have some method of cracking. This 44% recovery would give them about 18½ gallons of gasoline in a barrel of crude oil. The general study has shown that the total cost of refining, outside of the cost of the crude oil, and these other charges that I have mentioned, will generally average somewhere from 43¢ to 45¢ a barrel.

The other products that the independent refiner gets from a barrel of crude oil, besides the gasoline, are a small percentage of kerosene, gas oil, domestic burner oil 1795 and fuel oil. As a general average, the Mid-Continent independent refiners could sell those other products for just about enough to equal the additional costs of refining and transportation, and so forth, over and above the cost of the crude oil itself, which left the gasoline to bear the burden of the cost of the $1.00 crude oil, which is about 5½¢ a gallon on an average.

Besides the gathering and transportation costs, there are refining costs. They will run from 20¢ to 25¢ a barrel in the different refineries. The total costs will average around 45¢ a barrel.

The average distance from the wells to the refinery varies. In some places the refineries are close to the production; in other places they are 25 to 50 miles away. Sometimes a part of the oil is gathered close by; sometimes a part of it is from a greater distance. These figures I have given were the general average that were shown by the studies made by the Planning and Coordination Committee and its sub-committees during the Code period, 1933, 1934, and the first part of 1935.

Dollar crude was in existence in 1935 as well as in 1933, and conditions so far as costs were concerned were about the same.

By Mr. Chaffetz

I don't see how the marked increase in consumption since 1934 could have any bearing on cost, unless, of course, the runs of the refiner involved were increased, and 1796 there was a greater volume run through the same refinery at approximately the same cost. Then the unit cost would be a little bit less. But experience showed that during this period, instead of running more through the refinery, the independent refiners were compelled to run less. That was true in 1935.

I was not ill all the time in 1935. I was ill at different times in 1935, including May.

Conditions in 1936 and the latter part of 1935 improved, the consumption increased, and some of the refiners were enabled to regain some of their markets and to run a greater volume of crude oil. To the extent that they did that, their unit cost, of course, was reduced slightly, but not enough to affect the general average situation.

I don't see the reasoning of saying that another factor that affects the costs of an independent refiner is the extent to which he has his own crude production, because if you have your own crude production, and your crude is worth $1.00 a barrel, and you can sell it for $1.00 a barrel, the cost of that crude is just the same, so far as the refiner is concerned, as to whether you produced it or bought it.

By the Court

In the flush fields, we made a considerable profit on the crude oil that we sold at $1.00 a barrel where we were allowed to run an appreciable amount of the oil. It is pretty hard to answer offhand as to how much we made. We were producing oil under all kinds of conditions and from different kinds of wells.

1797 At the Oklahoma City field, it was costing us, at that period, from our wells in what was known as the Lime area, about 50¢ a barrel to lift it with gas lift, and we were selling the oil at $1.00 a barrel and the difference there, between the lifting cost and the sale price was 50¢ a barrel. But that did not all represent profit, because entering into that was the amortization on the cost of drilling the wells, and the other development expenses. I can't give you that offhand.

Mr. Chaffetz: I move to strike out the testimony of the witness with respect to average cost.

The Court: I will withhold a ruling on that, until after you have completed your cross-examination on motion to strike.

By Mr. Donovan

The independent refiners attempted to cut the price of crude in October, 1934.

Q. And do you know why the independent refiners did not carry that threat into effect?

Mr. Crawford: We object to that as incompetent, irrelevant and immaterial.

Mr. Chaffetz: Certainly has no bearing on the issues in this case.

The Court: Objection sustained. Exception allowed.

1798 ***By the Court***

I am familiar with the refiners in that locality although I don't know them all personally. I suppose I know somewhere between 25% and 30% of the refiners. Most of that 25% have a little production, but not enough to run their refineries.

Mr. Francis: I don't think your Honor sustained that objection. You have no objection, I take it, your Honor, if this witness knows why the refiners didn't go ahead with their contemplated cut. If he knows why they didn't go ahead with it, then you have no objection to his answering it?

The Court: He may state whether or not the he knows.

The Witness: Yes, I do know.

The Court: All right.

Mr. Donovan: Q. What was the reason?

Mr. Crawford: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

(In absence of jury):

Mr. Donovan: May it please your Honor, on behalf of the defendants I desire to make this offer of proof. If the witness, Wirt Franklin, were allowed 1799 to testify concerning the threatened cut in the price of crude oil in October, 1934, he would testify as follows:

That at meetings of the Planning and Coordination Committee of the Petroleum Code, commencing on Monday, October 8, 1934, there were discussions at which the members stated that a group of independent refiners in the Mid-Continent area were planning to cut the price they would pay for crude oil.

It was stated that these refiners had not gotten any relief in the tank car price of gasoline, which at that time was way below the price necessary for them to recover their costs; that these refiners had held a meeting in Kansas City that week or the week before, at which they had determined to cut the price of crude oil from $1.00 a barrel to 60¢ a barrel.

At the meetings of the Planning and Coordination Committee from October 8th to October 11th, the subject of this threatened cut was discussed.

At these meetings the members who were refiners argued that the time had come when it was necessary for the price of crude oil to be cut as they could no longer stand the loss which had been accumulating for months past and that they were compelled 1800 to sell their refined products at a loss of 40¢ a barrel due to the low price of refinery gasoline.

At these meetings the numerous price wars which were raging throughout the Mid-Western states, which were the principal markets of the independent refiners in the Mid-Continent area, were discussed; and it was stated that such price wars resulted from the enormous quantities of hot oil then being produced in the East Texas oil field which was being manufactured into gasoline, that this hot gasoline was being dumped on the markets in the Mid-Western states at tank prices as low as 2¢ below the usual quoted refinery prices.

The Planning and Coordination Committee took no formal action in the nature of a resolution in connection with this threatened cut in the price of crude oil. However, at a meeting of the Planning and Coordination Committee with the Petroleum Administrator, Mr. Ickes, on October 12, 1934, the threatened cut in the price of crude oil was brought to the attention of Mr. Ickes.

At this conference with Mr. Ickes, the witness recalls that C. B. Ames, Amos L. Beaty, Henry M. Dawes, C. F. Roeser, E. G. Seubert, John E. Shatford and probably other members of the Planning 1801 and Coordination Committee were present. Mr. Seubert and Mr. Dawes are defendants in this case.

After some discussion concerning other problems relating to the petroleum industry, the witness brought to the attention of Mr. Ickes the threatened cut in the price of crude oil in the Mid-Continent area. He arose at the meeting and stated in substance as follows:

"Mr. Administrator, in our discussions with you this morning, we have not yet brought before you what I consider to be the most important matter now pending. It is the threatened cut in the price of crude oil from $1.00 a barrel to 60¢ a barrel for 36 gravity crude. Mr. Secretary, there are two cancers gnawing at the vitals of the petroleum industry. One is the hot oil being produced in East Texas, which now amounts to nearly 200,000 barrels per day. The other is the recurring price wars which are increasing in number throughout the country, particularly in the Mid-Western states, which is the principal market of the Mid-Continent refiners. These refiners have, in a meeting in Kansas City—I understand more than thirty of them—determined on a cut in the price of crude oil to 60¢ a barrel, effective tomorrow morning. In our discussions of this question in the Committee this week, it has developed 1802 that if this price cut is made by the independent refiners, it will be followed by at least one major company, and if this major posts a 40¢ cut in the price of crude, it will be followed by all major purchasers immediately, with corresponding cuts in the price of crude throughout the United States.

"Mr. Secretary—" the witness continued—"if this cut takes place, the Oil Code is out the window. We can no longer pay the wages prescribed by the Code and employ the number of men that are employed under the Code with the shorter hours under the Code. No power on earth can require these producers to pay these men the wages prescribed under the Code if they cannot recover enough from the oil sold to pay the wages.

"Then again—" he said— "a cut of this character will not cure the evil. It will only bring about a condition where the same practices, the same hot oil, will be produced and the same price wars will continue but only on a lower level of prices, so that in ten days the same condition will exist as now exists and the same excuse for additional cuts will exist. If the price is cut, it will not stop until the crude price has reached a level of 10¢ a barrel. 1803 Now, this cut must not be made. I appeal to you to act on the resolution of the Planning and Coordination Committee which was sent over here last July for action and which has never been acted upon. I refer to the resolution to put in force minimum prices for crude oil and stop this price cutting. You have the authority to do it and no one else has."

After Mr. Franklin made that statement, Mr. Shatford arose. Mr. Shatford represented the independent refiners; and he contended for the price cut, pointing out the plight of the independent refiners and saying that they could no longer exist with the low price of tank car gasoline and pay $1.00 a barrel for legally produced crude; that they either had to cut the price or go out of business.

When Mr. Shatford concluded, Mr. Roeser, an independent producer from Texas, arose, and supported the position that Mr. Franklin had taken, demanding that the Secretary act upon the resolution fixing minimum prices.

The Administrator thereupon asked if anybody else had anything to say; and no other member of the committee responding, the Secretary said this: "Gentlemen, this price cut must not take place."
1804 He sent for one of his assistants and in the presence of all those there directed that assistant to get in touch with the refiners who were to meet at Chicago the next morning and ask them to postpone any action with reference to a cut in the price of crude until he could get there. The price cut did not take place.

At this conference, your Honor, the witness recalls that the Secretary of the Interior then called in a stenographer and dictated the following telegram to Mr. I. A. O'Shaughnessy, the president of the Globe Oil and Refining Company, who was one of the leaders of the independent refiners in the Mid-Continent area who were threatening to cut the price of crude oil, and who is one of the defendants in this case. And here is the telegram:

It is dated October 12, 1934, 12:56 P. M. It is sent as a Government message:

"NF 272 85 Government, Washinton, D. C.
12 122 P. M., Eastern Standard Time.

"I. A. O'Shaughnessy, President, Globe Oil and Refining Company,
59 East Van Buren Street,
Chicago.

"Have been advised possibility cut in crude price by independent refiners Stop As a result favorable action Department of Justice in
1805 sending fully authorized representative to East Texas with complete authority and with my division of investigation and other relief plans to strengthen refining prices I feel strongly optimistic for better conditions in refinery and

> marketing branch of the industry Stop I personally urge you make no reduction at this crucial time and thus hinder effectuation constructive plans Stop Horween will see you tomorrow morning.
>
> "Harold L. Ickes,
> *Administrator of Petroleum Code.*"

The witness will say that he knew the telegram was sent to Mr. I. A. O'Shaughnessy.

Now, in connection with this testimony, your Honor, the defendants would offer in evidence a copy of a telegram dated October 15, 1934, from I. A. O'Shaughnessy to Harold L. Ickes, duly authenticated by the Secretary of the Interior, and that telegram is this:

> "Retel October 12 my wire addressed to you September 6th outlined the position of the independent refiner quite clearly Stop Have discussed with Mr. Horween what to my mind would be the practical way to solve not only the independent refiners' position but the entire industry as well Stop This I am sure 1806 he has transmitted to you so there is no use of my going into further detail at this time Stop I might mention that Mr. Horween during the past few months has through personal contact with large numbers in all branches of the industry secured a very definite and concise picture of our various problems Stop If after hearing our message from him you still believe that it will not be workable we are willing to accede to your request and will not reduce the price of crude at this time Stop In all fairness to the independent refiner you will of course not ask us to remain in this position indefinitely Stop We believe that if anything constructive is to be accomplished in East Texas ten days or two weeks at the most should be sufficient time to determine whether or not your plans will get results Stop If at that time we feel that nothing can be accomplished to restore the tank car price of gasoline to a comparable basis of present crude prices we will of necessity be forced to reduce our price Stop In our case should your present plans fail 1807 it will mean an additional loss to us of at least

one hundred thousand dollars other companies' loss of course will be proportionate Stop I am sure you will agree with me that it is the inalienable right of all people to protect their position eventually and this of course we will endeavor to do Stop Our only prayer is that your plans will succeed so that we can all survive Stop Understand Mr. Boggs, President of the Kanotex Refining Company will be in Washington Wednesday to see you Stop He is quite familiar with the present deplorable position of the independent refiner and I am sure he can give you some very interesting data.

"I. A. O'Shaughnessy."

At that time, your Honor, it will appear that Mr. Horween was executive assistant to Mr. Ickes, the Petroleum Administrator.

And the witness will testify further, in connection with that, that as a member of the Planning and Coordination Committee and from his discussions as such member with the Oil Administrator, Mr. Ickes, and with the members of the Petroleum Administrative Board, that Mr. Ickes and the Petroleum Administrative Board wanted the price of 1808 crude oil to be maintained at at least $1.00 a barrel for 36—36.9 gravity Mid-Continent crude, and that it was the duty of the Petroleum Administrator and the Petroleum Administrative Board to accomplish the objectives and aims of the National Industrial Recovery Act, and particularly the Code of Fair Competition for the Petroleum Industry, and that the Petroleum Administrator and the members of the Petroleum Administrative Board recognized and admitted that these aims and objectives could be carried out only by the maintenance of a fair price for crude oil and refinery gasoline and that $1.00 per barrel for crude oil approached a fair price.

That, your Honor, is our offer of proof.

Mr. Crawford: We object to that offer, if the Court please, on the ground that the testimony, if offered and received, is incompetent and irrelevant and immaterial. And one might very well pause and inquire what has that got to do with the question of whether they entered into a conspiracy to rig the market, unless you get back to the question of whether it was unreasonable for them to expect to and to assist in arbitrarily raising the tank car spot market price of gasoline.

The Court: The defense will have an opportunity
to present any evidence in defense that this Court
1809 thinks is competent and relevant and material.
They should be permitted to show anything that
might affect the tank car price of gasoline during
1935 and 1936. The record shows that in September, 1933 to January, 1936 the price of crude oil
remained the same and thereafter there was a rise
in the price. Now, the offer of proof tends to show
that an offer was made at one time to reduce the
price of crude. That is back in 1934. In considering the offer of proof as to that particular offer, the
Government has objected to that for the reason
that it is incompetent, irrelevant and immaterial,
and that objection will be sustained. But that
doesn't indicate what I may do on other offers of
other testimony that may be offered later on. I
think that the defense should be permitted to show
anything that affected the price of gasoline during
1935 and 1936, the tank car price, and that they
have based their defense upon the Appalachian
Coals case and the principles laid down there, and
they ought to be permitted to offer evidence on
that, and make a defense on that theory; and the
Court will rule on every offer of evidence as it
comes. If they have prepared their defense upon
the law as laid down in the Appalachian Coals
case, and prove it, they have a perfect right to
do so.

1810 The offer of proof that they have made now, to which the Government has objected, that objection has been sustained. Exception allowed.

Mr. Donovan: May it be considered, your Honor, for the purpose of the record, that I make that offer of proof not only against the whole, but as to each particular element or part of the offer of proof.

The Court: Yes, that may be shown.

Mr. Francis: That will be deemed to be in question and answer form to which this witness answers here and to which they have objected to each question and answer, and it is denied.

~~The Court:~~ Yes. The offer was made on the theory that this witness would testify as to those facts. But any other defensive matter you have, you certainly have a right to ask those questions, and the Court will make its ruling at that time.

(The following proceedings were had in the presence and hearing of the jury:)

By Mr. Donovan

I was a member of the Planning and Coordination Committee in 1935, and during that year it was active in the administration of the Petroleum Code. During this period its work affected the refining process of gasoline in respect to the allocations that were made to the re-
1811 fining districts, the regional districts, and in turn the allocations of allowed throughput to the individual refineries. Throughput is the term generally applied to the crude oil that is processed in the refinery.

The work of the Committee also affected the refining process of gasoline materially in respect of the Code wages and the hours of labor which had been reduced under the Code and maintained. The cost of refining had been increased under the Code, as compared with the cost prior to the Code, because of the shorter hours and the higher wages.

The N.R.A. did not administer the Petroleum Code; it was taken out from under the general administration of the National Recovery Administration, and placed under the administration of Harold L. Ickes, the Secretary of the Interior. That was done because oil was a natural resource, and the Department of the Interior was the conservation authority of the Federal Government. Mr. Ickes was appointed Oil Administrator.

(Document received in evidence as EXHIBIT 825, and read to jury by Mr. Donovan.)

It is pretty hard for me to separate the duties of the Secretary of the Interior as to allocations from other activities all along the same line of administration. But speaking of allocations, the allocations were made by the
1812 Coordinator in conjunction with allocators in the districts approved by the Planning and Coordination Committee; and subsequently considered and approved by the Petroleum Administrator.

The Secretary set up two boards to assist him. He set up the board called the Petroleum Administrative Board, early in September, or about the middle of September, 1933. Nathan R. Margold, who was Solicitor of the Interior Department, was chairman; Charles Fahy, who was assistant solicitor, was vice-chairman; Norman L. Meyers was secretary; Dr. John W. Frey, E. B. Swanson and J. Howard Marshall were members. Elmer Thomas was the technical advisor, as I recall it, not a member of the Board.

(Document received in evidence as EXHIBIT 826, and read to jury by Mr. Donovan.)

The members of the Board were Government employees paid by the Government, and not connected with the oil industry at that time.

The Planning and Coordination Committe was appointed from the oil industry by the President, on recommendation of groups within the industry, and represented the oil industry in the administration of the Code. It was a Planning Committee to recommend matters having to do with carrying out the objectives of the Code, to make recommendations to the Petroleum Administrator, and to coordinate the activities of the oil industry to gain compliance with the provisions of the Code and the National Industrial
1813 Recovery Act. Also it was specifically provided for in the Code to try to get the coordination and cooperation of the regulatory authorities in the oil producing states in the administration of the Code, and in all matters in connection with it.

The Planning and Coordination Committee at first was composed of 15 members. All of them did not represent the industry; three of them represented the Government, without vote. The Government representatives were Donald R. Richberg, who was General Counsel of the National Recovery Administration; James A. Moffett and Mr. L. Benedum. Mr. Moffett was a vice-president of Standard Oil Company of New Jersey, I think, at the time he was appointed, or shortly prior thereto. I think he resigned from Standard of New Jersey. I don't remember the date of his resignation, but it was along about the time of his appointment, or shortly after that. Mr. Benedum was in the oil industry, and located at Pittsburgh, Pa. Mr. Moffett did not subsequently resign from the P. and C. Committee but was appointed by the President as Federal Housing Administrator.

The members of the original Planning and Coordination Committee, selected from the industry, were Charles F. Roeser, an independent producer from Texas, and at that time president of the Texas Oil & Gas Conservation Association; Howard Bennette, president of the Western Petroleum Refiners Association, an independent; Wirt Franklin, myself, independent producer; B. L. Majewski, of
1814 Deep Rock Oil Company, independent; E. B. Reeser, of Barnsdall Oil Company, independent producer and

refiner; Ralph T. Zook, of Bradford, Pennsylvania, an independent producer.

Barnsdall Company has been considered as an independent, and was so classified by the President when he made these appointments, dividing them between the majors and the independents. I consider it such.

I distinguish between an independent refiner and a major company by their actions, largely. Also, other factors are taken into consideration. The independent refiner usually does not have a fully integrated unit, although some of them, since the time they commenced business and were independent and non-integrated, have gradually acquired some production, and their own gathering systems and short pipe lines from their production to their refinery. However, even after they had done that, they continued to be sometimes independents, and sometimes they got over into the other class. The Barnsdall Company could be in the class of majors. It doesn't lack anything, or didn't lack anything of being in the class with the majors, but it was classified at that time as an independent in the appointment of Mr. Reeser to the Planning and Coordination Committee.

Those that were appointed to the Planning and Coordination Committee, representing the major companies, were: K. R. Kingsbury, president of Standard Oil Company of California; Amos L. Beaty, who had been a representative
1815 of the American Petroleum Institute in the Code hearings. He had previously been president of Texas Company. I think he was a director but not a vice-president of Phillips Company at that time. Henry M. Dawes, president of The Pure Oil Company; C. E. Arnott, at that time president of Socony-Vacuum; Axel J. Byles, president of the American Petroleum Institute; and W. T. Holliday, president of Standard Oil Company of Ohio.

Mr. C. E. Arnott is a defendant in this case, as are Mr. Henry M. Dawes, Mr. Reeser and Mr. B. L. Majewski, although I understand Mr. Majewski is not on trial at this time.

Under an Order of April 24, 1934, the Petroleum Administrator appointed 11 new members to the Planning and Coordination Committee. That brought the membership up to 26. The new members were: J. D. Collett, Fort Worth, Texas, independent producer, I. A. O'Shaughnessy, independent refiner, president of Globe Company, a defendant in this case, W. J. Reid, independent refiner from California, John E. Shatford, independent refiner from Arkansas, and M. K. Tillman, independent marketer and president of one of the marketing associations.

The representatives of the majors appointed were: C. B. Ames, who was chairman of the board of Texas Company, F. R. Coates, I think was vice-president of Cities Service, a defendant in this case, E. G. Seubert, president of
1816 Standard of Indiana, a defendant in this case, L. P.
St. Clair, president of Union Oil Co. of California, Walter C. Teagle, president of Standard Oil Co. of New Jersey, and A. E. Watts, vice-president of Consolidated Oil Corporation.

M. K. Tillman, appointed April 24, 1934 to the Planning and Coordination Committee, was succeeded two or three months later by William R. Schuh of the National Association of Petroleum Retailers. Mr. Schuh continued as a member of that Committee until the expiration of the Code.

I was just a member when the Planning and Coordination Committee was appointed. The officers were elected by the Committee itself. I was chosen as the first chairman on September 19, 1933, and I ceased to be chairman on March 15, 1934. I continued to be a member of the Committee until the end of the Code.

During the first six months of the Code I was in Washington practically all the time, and had my office in the office of the Planning and Coordination Committee.

That chart, Exhibit 827 for identification, shows accurately the organization of the industry under the Code of Fair Competition. It is a photostatic copy of a chart that was prepared by the Statistical Committee of the Planning and Coordination Committee to show the organization.

The Planning and Coordination Committee set up committees for the purpose of administering the Code.

1817 *By the Court*

This Committee functioned from September, 1933 to May or June, 1935. Its purpose was to cooperate with the Administrator as a planning and fair practice agency for the petroleum industry. From time to time it presented recommendations to the Administrator which would tend to effectuate the operation and provisions of the Code and the policy of the National Industrial Recovery Act. It also made estimates of petroleum requirements and such recommendations, allocations and inventories as were required for the effectuation of the Code.

The district allocators, I think, were appointed by the Coordinator, but with the advice of the Regional Refining Committee, and I think also it was with the approval, maybe not the formal approval, but with the approval of the Administrator. That is, a list of them went to the Administrator and if they were not satisfactory he would ask that they be replaced.

There was only one allocator in the district that had to do with the oil fields in Oklahoma. But the allocators worked in conjunction with the Refining Committee. A part of Texas was in the same district with Oklahoma. As I recall it, the Gulf coast was in a separate district.

I think there were 8 districts. In some of them the allocator was never appointed, but the work was handled
by another agency out of the Refining Committee. In
1818 the principal districts, however, allocators were ap-
pointed. Allocators were appointed for the district that took in Oklahoma and Texas.

Their duties were to allocate to the refineries in their districts the amount of oil which should be run to the refinery in any one month, so as to bring about a balance in the supply of gasoline manufactured with the estimated consumptive demand that had been made by the Federal Agency. They continued to so function until May or June, 1935.

By Mr. Donovan

Exhibit 828 for identification is a letter from Amos L. Beaty, chairman of the Planning and Coordination Committee, dated March 24, 1934, appointing an agency for the purpose of making refinery allocations. It is addressed to C. M. Boggs, Chairman, Regional District No. 4 of Arkansas City, Kansas. Letters similar to that were sent to those who designated the men as allocators in the various districts. I did not send such letters because these allocators were created after my term as chairman.

(Document referred to received in evidence as EXHIBIT 828, and read to jury by Mr. Donovan.)

There were production committees and refining committees appointed by the Planning and Coordination Committee. There was a committee known as the Production Committee, but that referred to crude oil production. There
were also the refineries' allocations committees and
1819 the allocators, which had to do with gasoline produc-
tion.

The agency that was appointed in the letter that was introduced a while ago had as its duty the allocation to the various refiners in that district of their individual quota of allowable refinery throughput from month to month after having received from the coordinator the amount that has been allocated to the district as a whole. It was their duty to divide it up equitably among the individual refiners in the district.

These refiners were not supposed to produce more gasoline than the amount allocated under the provisions of the Code, and if they obeyed the Code they didn't produce any more than that.

During the year 1935 the price of crude oil was $1.00 per barrel for 36 gravity Mid-Continent crude. The price of crude affects the price of gasoline very directly. It is the large part of the cost of the refined gasoline. The price of crude oil affected directly and substantially the price of gasoline in 1935.

During the period from February 1 until June 1, 1935, the price of crude oil was maintained at this figure of $1.00 per barrel.

One of the objectives of the Planning and Coordination Committee was to help the independent refiners.

Mr. Donovan: How did you propose to do that?

1820 Mr. Crawford: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

(The jury then retired from the Courtroom. During the argument before the Court the following statements were made by counsel for defendants.)

Mr. Donovan: Your Honor, what I would like to do now is this: We have offered certain proof, certain evidence. We have offered that evidence upon the ground that your Honor laid down, the principles of the Appalachian case. We say that we are entitled to show, as proof of the correctness of our motives, that at the very same time that these objectives laid down by the Planning and Coordination Committee were the objectives to which we were conforming. That is the question. That is the question under the Sherman law. We are not coming in here and asking for immunity under the Code. We say that what we did required no immunity, because we were not violating the Code, nor were we violating the National Recovery Act.

Mr. Francis: Your Honor, the Refinery Amendment to the Code provided for certain kinds and types of pool buying in 1934—

In 1934, there were several buying programs, under that, which were written agreements, under which The Pure Oil Company would come in, and we would agree to take so many gallons at such and such a price, and that was helped by a pool, to be distributed out in an orderly way over the market at a period of time as might be stipulated.

1821 Now, your Honor asked us a specific question: Did we get an approval for these activities, under this particular provision? No, because we did not conduct any buying pool where there were commitments for definite amounts at specific prices. That is the answer to your question.

(The following proceedings were had before the Court in the presence and hearing of the jury:)

The Court: The Court will say this for the record: that the purpose of the N. R. A. was to stabilize all industry, including the oil industry which asked for such protection, such stabilization. And another purpose of the N. R. A. was to restore employment and better conditions of industry in this country. Now, that is as far as we ought to go. Exception allowed.

I may say that I don't think there is any dispute as to the fact that the price of crude oil was raised to $1.00 a barrel during the period of the N. R. A. and maintained at that price until January, 1936.

Mr. Donovan: At whose insistence was the price of crude maintained at $1.00?

The Witness: A. The Petroleum Administrator.

Q. And by the "Petroleum Administrator" do you mean Mr. Ickes?

A. I do.

1822 Q. Did the insistence of the Administrator upon the maintenance of the price of crude oil at $1.00 a barrel directly and substantially affect the price of gasoline during 1935?

Mr. Chaffetz: That is objected to as argument.

Mr. Lewin: Leading and improper.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: What effect, if any, did it have on the price of gasoline during the year 1935?

Mr. Chaffetz: That is objected to as immaterial and also objected to as a conclusion for the jury. The fact is crude was $1.00 and any man who made gasoline out of purchased crude paid $1.00.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. If it had not been maintained, do you know what would have happened to the price, as an oil man, with an experience of 25 years?

Mr. Lewin: Same objection.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. In your opinion, from your experience of over 25 years, would there have been a rise if it had not been maintained at that price?

Mr. Lewin: I object. Same grounds.

Mr. Donovan: Q. Rise in the price of gasoline which took place between March and June, 1935?

Mr. Lewin: Same question in a different form.

1823 Mr. Chaffetz: Depends on a lot of factors.

Mr. Donovan: Q. Would that have been one factor affecting the price of gasoline during that period?

Mr. Crawford: Same objection.

(Question read as follows:

> "Q. In your opinion, from your experience of over twenty-five years, would there have been a rise if it had not been maintained at that price, a rise in the price of gasoline, which took place between March and June, 1935?")

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Did you learn from your conversation with the Secretary of the Interior why he insisted on the maintenance of crude at $1.00?

Mr. Chaffetz: Objected to. Immaterial. Same question that was argued all day Monday.

The Court: Objection sustained. Exception allowed.

Crude oil reached the price of $1.00 a barrel in 1933 because an Order was made fixing the minimum price.

By the Court

That Order was made on October 16, 1933. Immediately after the effective date of the Code, when the price of oil was 74¢ a barrel, the Planning and Coordination Committee started the preparation of schedules of minimum prices based on the cost of recovery for submission to the Secretary of the Interior as the Petroleum Administrator, upon which he could fix a minimum price for both crude and the refined products. There were two very discordant

factions over that issue in the petroleum industry.
1824 The major companies with only two exceptions opposed it.

While that was under consideration by the Petroleum Administrator, the price was raised to 89¢ on about September 8, 1933 by members of the industry. Then the recommendation was sent over to the Petroleum Administrator on September 25, 1933 recommending fixing minimum prices of crude at 36 gravity at $1.11 a barrel. On September 29, 1933, the price was raised voluntarily by several of the major companies to $1.00 a barrel and met by all the others. On October 16, 1933, the Petroleum Administrator made the Order approving the recommendations of the Planning and Coordination Committee both as to crude and refined products to be made effective December 1st. I might say also that the Order provided for hearings for those who wanted to protest against the fixing of these prices. Those hearings were to be held between the middle and the 20th of November.

Those in the industry who opposed the fixing of a price by the Government, or even minimum prices based on cost, came into the Planning and Coordination Committee and also to the Administrator, and suggested a substitute plan which they said would accomplish the same result without the Government entering into the fixing of minimum prices. There was then an understanding reached between the Committee and the Petroleum Administrator and these other gentlemen who opposed the fixing of minimum
1825 prices to see if that plan could be worked out.

While those negotiations were under way to work out an alternate or substitute plan to accomplish the same purposes, the Petroleum Administrator extended the effective date of the price-fixing order to January 1, 1934. This other plan was worked out, and was in turn submitted to the Petroleum Administrator as a substitute. Later on, while that was pending, the effective date of the Order was again extended to February 1, 1934; and on January 31, 1934, it was revoked upon the determination of the Petroleum Administrator to approve the other plan and use it as a substitute to bring about the same results.

Mr. Lewin: Did the substitute plan ever go into effect?

Mr. Donovan: If it please the Court, can't I finish with this witness?

The Court: Let me find out.

By the Court

Before the Order was made cancelling the Order of October 16th, the Petroleum Administrator had approved the substitute plan. The substitute plan didn't fix the price. The price had been gotten to $1.00 and the program that was adopted and approved by the Petroleum Administrator was based on $1.00 crude and provided for certain things to be done to maintain the price of gasoline and petroleum products in normal relationship to $1.00 crude.

1826 January 19th was the date that the Petroleum Administrator approved the alternate arrangement, which was a Petroleum Agency Agreement, and approved it with modifications, changed some of the provisions of it, and January 31st was the date that the Petroleum Administrator revoked the Order fixing minimum prices. The changes or modifications which the Administrator required necessitated the Agency Agreement being signed and submitted all over again, as the Agreement was different, of course, from that which the members of the industry had signed.

On April 25, 1934, the Planning and Coordination Committee approved again the National Petroleum Agency Agreement, after it had been resigned and forwarded to the Petroleum Administrator for approval. My recollection is that after it got to the Administrator it was forwarded over to the Department of Justice and held over there for several months, neither approved nor disapproved. It was never approved again, but was just held there, and finally some of the signers withdrew their signatures, because it had been held so long, and then it couldn't become effective.

That is not the full part of the story as to how they arrived at the price of crude oil at $1.00.

Mr. Donovan: I want to ask him some questions relative to that, your Honor, if I may. But now, in view of your Honor's questions, I would like to have 1827 marked for identification the Order under Code of Fair Competition relative to minimum prices, referred to by the witness in answer to your Honor's question, of which I have a certified copy.

(Document produced by counsel is marked Exhibit 829 for identification.)

Mr. Donovan: And I offer that in evidence. (Submitting Exhibit 829 for identification to the Court.)

Mr. Chaffetz: We object to each and all of these documents, of course.

Mr. Donovan: I also would like to have marked for identification an Order dated January 31, 1934, signed by Harold L. Ickes, revoking the minimum price schedules attached to the Order of October 16, 1933.

(Document produced by counsel is marked Exhibit 830 for identification.)

Mr. Donovan: I offer in evidence also, Exhibit 830 for identification. (Submitting document to the Court.)

I would like also to have marked for identification Order dated January 19, 1934, signed by Harold L. Ickes, relative to the approval of the purchase agreement referred to by the witness.

(Document produced by counsel is marked Exhibit 831 for identification.)

Mr. Donovan: I offer in evidence also Exhibit 831 for identification. (Submitting exhibit to the Court.)

1828 And I ask that there be marked for identification letter dated December 8th, 1933, signed "Wirt Franklin, chairman of the Joint Committee representing the Planning and Coordination Committee and the group of major companies opposed to fixing the minimum prices," and addressed to Harold L. Ickes, together with its enclosure of two agreements, each dated December 7, 1933, all of which have the certification of the Secretary of the Interior. I ask that that be marked for identification.

(Document produced by counsel is marked Exhibit 832 for identification.)

Mr. Donovan: I offer in evidence also, your Honor, Exhibit 832 for identification. (Submitting exhibit to the Court.)

Mr. Chaffetz: If the Court please, I call attention to the fact that these documents are all dated in the latter part of 1933 or the early part of 1934, more than a year before the conspiracy started; and, even if they were effective orders, they could have no relation to the conditions that existed at the time the conspiracy charged by the Government commenced.

I point out the additional fact that none of these things ever took effect; they were all suggestions, set down for hearing, changes that were made, submitted by the P. and C. Committee to the Interior Department for approval, submitted to the Department of Justice, which never took effect. So that, if they weren't put into effect, even if they occurred during the time of the conspiracy, they wouldn't have any bearing on the case.

1829 Having all taken place more than a year before the conspiracy, I don't think much more has to be said as to their bearing on this case.

The Court: Objection sustained. The witness really testified to the material parts of these documents, anyway.

Mr. Donovan: I think not, your Honor; but, in view of your ruling, I hope that I may have the opportunity of renewing the presentation later of these documents; and may I take an exception now to your ruling?

The Court: Yes, you may.

Mr. Donovan: Q. Mr. Franklin, do you know what Mr. Ickes did relative to the rise in the price of crude oil in early September, 1933?

Mr. Lewin: I object.

Mr. Chaffetz: That is objected to.

Mr. Donovan: Your Honor, the witness has said that he has told only a part of that. I should think that we should have the whole.

Your Honor has permitted us to offer proof, now, that this price had been maintained at the insistence of the Administrator.

Now, I desire to show by this witness, if I may do so, just what occurred relative to the action by Mr. Ickes in having the price of crude oil established at $1.00. And I want to do that by showing what talks, if any, this witness, as Chairman of the Planning and Coordination Committee, had with Mr. Ickes.

1830 Mr. Chaffetz: The point we make, your Honor, is that this entire subject is irrelevant to this case, because we started our case on the assumption that the price of crude was $1.00.

The Court: The objection is sustained. Exception allowed.

Mr. Donovan: Then I only want to ask this question:

Q. Have you stated the entire story as you know it relative to the rise in the price of crude, and how the price of crude finally reached $1.00 and was established at that price?

Mr. Lewin: Objected to as irrelevant. It doesn't matter what he has stated, letting him characterize whether his story has been long or short wouldn't make any difference to the case.

The Court: Q. You have stated how the price was reached, haven't you?

A. Not the entire story, no, sir.

Mr. Chaffetz: We contend the entire story is irrelevant and immaterial and prejudicial.

Mr. Donovan: If a part of the story is relative, your Honor, I think all of it is.

The Court: He has answered the question fully enough to the satisfaction of the Court, and don't go into it any further. Exception allowed.

1831 Mr. Donovan: Well, your Honor, in view of that, may I be permitted to make an offer of proof on this?

The Court: Yes, you may.

(In absence of jury:)

Mr. Donovan: If the witness were allowed to testify, he would testify as follows:

The posted prices for crude oil, 36 gravity, in the Mid-Continent area on January 18, 1933, was 44¢ per barrel.

On May 6th the price was reduced to 25¢ per barrel.

On June 17th, the day after the National Industrial Recovery Act was passed, it rose to 44¢ per barrel.

On July 6th there was an increase in the crude price to 77 cents per barrel. This increase was initiated by Continental Oil Company and was followed later by other smaller companies.

On July 6, 1933, Carter Oil Company raised its posted price for this type of crude to 54¢ a barrel and such price was followed a day or two later by most of the major purchasing companies, and after several weeks the small companies which had posted a price of 77¢ a barrel reduced that price to the price posted by Carter Oil Company and others of 54¢ a barrel.

On August 25, 1933, 6 days after the Petroleum Code was signed by President Roosevelt, the price

1832 for this type of crude oil increased to 64¢ a barrel.

On September 6th it was increased to 74¢ a barrel.

On September 8th it was increased to 89¢ a barrel.

And on September 29, 1933, the posted price for this type of crude oil was increased to $1.00 a barrel, at which figure it remained all during the remainder of the year 1933, and all during 1934 and 1935.

The witness would say: I knew early in September, 1933, that Mr. Ickes, as Administrator of the Petroleum Code, was in favor of a rise in crude oil. I learned this from my discussions with him. During those discussions, as a member of the Planning and Coordinating Committee, I told him that in order to attain the objectives of the Code and to stabilize the petroleum industry, the price for 36 gravity Mid-Continent crude oil should be $1.11 a barrel, with corresponding price for other crude oils in the United States in relation to that price.

At one of these discussions, about September 6, 1935, the Secretary of the Interior told me that he was in accord with the view of the Planning and Coordination Committee that the price of crude oil should be raised to a point which would at least equal the average cost of production as a minimum price, and that price should at least be $1.00 a barrel.

1833 Just prior to one of these discussions with the Petroleum Administrator, Mr. Ickes, I had a discussion with Mr. C. E. Arnott in regard to the minimum price schedules for petroleum and its products, then under consideration by the Planning and Coordination Committee. During this discussion with Mr. Arnott, who was at that time a member of the Planning and Coordination Committee, I told him that the major oil companies should raise the price of crude oil.

Soon after this discussion I had a conference with Oil Administrator Ickes, at which I told him that if he would contact the executives of the major oil companies I believed that he would be able to get them to raise the prices they posted for crude oil in the Mid-Continent area.

The Secretary replied to me that he would take up the matter with the executives of major oil companies at the first opportunity that he had. A few days after this discussion, the Secretary of the Interior told me that he had discussed with executives of major oil companies the necessity of raising the price of crude oil in the Mid-Continent area. I do not recall what price the Secretary said he would ask them to post.

At a later discussion, probably early in October, 1933, I had another discussion with the Petroleum
1834 Administrator, Mr. Ickes, at which I told him that the Planning and Coordination Committee believed that the price of 36 gravity Mid-Continent crude oil should be increased to $1.11. I recall distinctly that the Secretary told me that he thought that since the price of crude oil was $1.00 a barrel, it should remain there for the present.

Mr. Ickes did not tell me how long he thought the price of crude oil should remain at $1.00 a barrel, but I do know from my later discussions with him from time to time that he did not want the price to go below $1.00 a barrel for 36 gravity Mid-Continent crude oil.

Mr. Crawford: We object, if the Court please, on the grounds already stated; and that the testimony, if offered, would be immaterial, irrelevant and incompetent.

Mr. Donovan: Your Honor, I assume we will have a ruling on each of these offers separately?

The Court: Yes.

Mr. Young: We are trying here, as best we can, to present to this Court a true picture of the economic situation in which this industry found itself in the spring of 1935. One outstanding fact—

The Court: Let me say to you right there, that you may do that, in 1935—

1835 Mr. Young: Yes. Now, if we may do that—

The Court: You may go back further than that. You may go back to the middle of 1934, and from there on, show it.

The objections of the Government to the offer of proof are sustained, but this witness will be permitted to testify as to conditions and factors in the oil industry in Oklahoma and in Texas that did exist in 1935 and 1936 which did not exist in prior years that may have caused a constant or practically unvaried price in 1935, of months of 1935, of the tank car price of gasoline. That is as far as I am going to let you go. Bring the jury in. Exception allowed.

(In presence of jury.).

Mr. Donovan: Q. Now, Mr. Franklin, do you know what the conditions generally in the country were at the time the Code went into effect?

Mr. Chaffetz: That is objected to as irrelevant and immaterial. The Code went into effect in September, 1933. Now, I don't see what bearing that can have on this case.

Mr. Donovan: It has this bearing, your Honor: We are offering this for the purpose of showing the history and background of the industry, and as furnishing a basis to explain what was done in 1935 and why it was done.

1836 And also, your Honor, this is most important: During the presentation of the case by the Prosecution they were permitted to show the prices as they existed between 1931 and 1936. We objected to that, unless it was shown that conditions were similar and comparable throughout all of that period. We desire now to offer this evidence also for the purpose of showing that conditions were dissimilar, and that those conditions in these various periods were factors as bearing upon the prices at those particular times.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, may I make an offer of proof on this?

The Court: Yes, you may.

(In absence of the jury.)

Mr. Donovan: May I have it appear, your Honor, that this will be offered, these several parts, as well as the whole, as if the question were asked and the answer made?

The Court: Yes, you may. The record may so show.

Mr. Donovan: This is an offer of proof of the conditions in the oil industry, at the beginning and prior to September 2, 1933, which was the effective date of the Petroleum Code.

1837 If allowed to testify, the witness would testify as follows:

As an independent oil producer and as president of the Independent Petroleum Association of America I knew of the conditions which existed in the oil industry for some months prior to September 2, 1933, the effective date of the Petroleum Code. As I saw these conditions for several years prior to the Petroleum Code the oil industry had been in a very demoralized state. This was brought about principally by the production of oil greatly in excess of consumptive demands.

The state regulatory authorities in the principal oil states in the Mid-Continent area, particularly in Texas, Kansas and Oklahoma, had attempted by proration laws to prevent this over-production and to balance supply and demand in accordance with the broad principles which the Federal Government had enunciated through the Federal Oil Conservation Board. However, the discovery of large flush fields, which were rapidly developed, and the inadequacy of state proration laws led to a flood of crude oil in excess of demand which the state authorities could not control. The failure of state authorities to get the cooperation of the small percentage of oil producers in these large flush fields who insisted upon producing, regardless of the state regulatory au-
1838 thorities, large quantities from their wells in excess of the allowables, caused other producers to necessarily produce in like manner. These conditions resulted in terrific waste of crude oil, the dissipation of gas pressure and the burning of billions of cubic feet of gas. This over-production and waste resulted in the posted prices for crude oil being reduced to as low as 18¢ in Oklahoma in the spring of 1933, and 10¢ in East Texas.

In Texas, crude oil was cheaper than drinking water. Since there was not adequate storage facilities for this crude oil, it had to be refined, with the result that there was thrown on the market large quantities of gasoline at half or less than the price which a refiner should obtain in order to recover his cost. This excess quantity of gasoline which all of the companies had at that time led to races for gallonage or outlets. The price wars which resulted from this great quantity of gasoline being dumped on the market led to further confusion and distress to all persons in the oil industry. Stripper wells had to close down; wages were reduced; inefficient equipment was used; and our oil resources were being rapidly depleted.

Mr. Crawford: We object, if the Court please, on the grounds already stated; and that the testimony, if offered, would be immaterial, irrelevant and incompetent.

1839 Mr. Donovan: Your Honor, I assume we will have a ruling on each of these offers separately?

The Court: Yes.

The Court: The objections of the Government to the offer of proof are sustained, but this witness will be permitted to testify as to conditions and factors in the oil industry in Oklahoma and in Texas that did exist in 1935 and 1936 which did not exist in prior years that may have caused a constant or practically unvaried price in 1935, of months of 1935, of the tank car price of gasoline. That is as far as I am going to let you go. Bring the jury in. Exception allowed.

(In presence of jury.)

Mr. Donovan: Q. Mr. Franklin, do you know whether Mr. Ickes knew the conditions, that the conditions in the oil industry were brought to the attention of Mr. Ickes in 1933, and whether or not he took any steps to relieve the situation of the industry?

Mr. Lewin: Objected to.

Mr. Chaffetz: I think that is the same question that was already asked, and it comes clearly within your Honor's ruling, and is prejudicial and should not have been asked.

1840 Mr. Donovan: It is part of our defense, your Honor. I hope it will be prejudicial to the government, because if we are entitled to show it—

Mr. Lewin: It is undoubtedly prejudicial.

Mr. Crawford: I think it is improper for counsel to ask questions when he knows the question is going to be prejudicial.

The Court: I think we will all assume Mr. Ickes had some knowledge of the conditions in the oil industry.

Mr. Donovan: Well, but I would like to show what particular knowledge he had and what he did in order to meet that condition.

The Court: The objection to that is sustained. Exception allowed.

Mr. Donovan: Then, your Honor, may I only say this: That I desire to make an offer of proof upon that.

The Court: You may.

Mr. Donovan: Now, your Honor, in order that I may not ask further questions of the witness relative to that, I assume your Honor's ruling would apply to all questions that I would ask concerning the Governors' Conference called by Secretary Ickes, at the instance of President Roosevelt in 1933.

The Court: Yes.

1841 Mr. Donovan: Is that correct?

The Court: Back in 1933 is a long way back of 1935. It is rather remote.

(In absence of jury.)

Mr. Donovan: Here is an offer of proof, as I say, of the Governors' Conference at Washington in March, 1933.

If allowed to testify, the witness would testify as follows:

The conditions in the oil industry which existed immediately prior to the Governors' Conference were brought to the attention of the Secretary of the Interior, Mr. Ickes, who later became the Administrator of the Petroleum Code, and also to the attention of other Government officials as a result of the discussions which took place and the recommendations which were made at the conference of the Governors of the oil-producing states, held in Washington on March 27-29, 1933.

That conference was called by the Secretary of the Interior at the request of President Roosevelt. It was the initial step taken to relieve the condition which had existed for some months in the petroleum industry.

The Governors of the various oil-producing states and representatives of the more prominent oil associations were invited to the conference which was 1842 held in the Department of the Interior building in Washington.

I was invited and attended the conference as one of the representatives of the Independent Petroleum Association of America.

The other persons who attended the conference were the Governors of most of the oil-producing states or their personal representatives.

Also there were present the representatives of the principal associations representing each branch of the petroleum industry.

One of the defendants in this case, whom I recall at present, and who attended, was Dan Moran, the president of the Continental Oil Company.

This conference was held for the purpose of determining the means necessary to remedy the demoralized condition of the oil industry, which then existed and which had existed for some time past.

At the opening date of the conference, Secretary Ickes personally made an address, which I heard. This address was published in the trade journals, in the newspapers, and was the subject of considerable comment among the members of the oil industry for some time.

At that conference the Secretary of the Interior made the following statement. It is this:

1843 "Gentlemen:

"This conference between the governors of the oil producing states or their representatives, and officials of the Department of the Interior, has been called for the purpose of determining, if possible, what can properly be done to bring about a greater degree of stabilization in the oil industry. The governors of the interested states were asked to attend personally or to delegate representatives. It was also suggested to responsible leaders of the industry representing the major companies as well as the independents that they be present in Washington on the occasion of this conference so that they might be available for consultation.

"You, gentlemen, are, of course, cognizant of the adverse conditions affecting the industry. Widespread tax evasion, the illegal production and irregular distribution of unmarketable production, the failure or inability to enforce existing state statutes—all have had a tendency to break down the legitimate conservation programs of the various states. Evasion of both the federal and state gasoline taxes has in itself unsettled the market for gasoline, the chief product of petroleum, the country over.

1844 "The public is concerned with the necessity for bringing production of crude into balance with the market demand for petroleum products. If this balance can be maintained, stabilization will follow, with protection to royalty owners, land owners, the consuming public, and manufacturing and marketing agencies.

"The present condition of the industry is due primarily to lack of observance of the oil conservation laws in effect in the larger oil producing states. Failure by a minority in the industry to cooperate for the betterment of conditions by refusing to purchase or transport oil illegally produced has also contributed serious problems. It is my understanding that the oil produced and run illegally over and above the official figures reported is variously estimated at from 100,000 to 300,000 barrels per day, which means that this amount of crude oil is being produced in excess of market or national requirements. This condition, coupled with the gradually decreasing demand for petroleum products, has served to aggravate the effect of excess production.

"It has been suggested that the Federal Government should cooperate with the oil produc-
1845 ing states to bring about uniform production not in excess of two million barrels of crude per day for the United States during the remainder of the present year, and that equitable allocation of this total be fixed definitely as between the various states and the individual pools therein. Acceptance of this production figure, I am advised, would approximately bring production and consumption into balance for the immediate future.

"Conditions affecting imports and exports would seem to require additional study at this time by the industry. There has recently been an increase in the importation of crude and refined oil in sharp contrast to the decline of imports registered when the excise tax was imposed.

"Every one knows that it is utter folly to produce oil unless there is a market for it, and that to produce largely in excess of consumption requirements is worse than folly. Every one knows, too, that oil produced in violation of the laws and regulations made pursuant thereto should not be run by pipe lines or received into pipe lines at any point, and further, that such unlawfully produced oil should not be purchased.

1846 Industry leaders should make every effort to assist enforcement agencies to the end that no individual or unit identified with the industry can evade or circumvent enforcement efforts.

"Destructive influences and clashing interests are bringing the oil industry, ranking among the great industries of the country, to its knees. The state and federal governments are receiving diminished returns in taxes; the land owner is receiving reduced royalties; owners and operators of 300,000 odd wells in the United States are operating under conditions which, if not corrected, ultimately will lead to the abandonment of these wells, for the price of crude oil paid to the producer is below cost of production in many areas. The refiner and marketer who evades taxation is, as the result of unfair competition, undermining the capital structure of the entire industry.

"What is needed most at this time is a display of sound sense and a readjustment of practices that will give to those engaged in the industry an opportunity for profitable operation of their business.

1847 "This conference is dealing with a great and most essential natural resource, limited in quantity by nature, which is dwindling from day to day because of unscientific management, with no present necessity for surplus production, as above-ground supply already is in excess of an economic stock level. Petroleum is being consumed at the rate of approximately 800,000,000 barrels per annum, and it must be remembered that this oil can not be either reproduced or indefinitely replenished. With the passing of time, this most valuable and necessary resource must inevitably reach a stage of practical exhaustion, at least so far as any practical use is concerned.

"In all human probability, the production of this limited supply of petroleum has reached or nearly reached its peak. Oil has been squandered for some years past and still is being squandered at a riotous rate by the reckless and improvident methods of capture and by ruthless dissipation of the energy of the natural gas dissolved in the oil in its natural state beneath the surface. We must not lose sight of the fact that the oil now being produced and likely to be produced in the future is essential to our national defense and general welfare.

1848 "During the past few years new oil fields of large producing capacity have deluged the market with so great a supply that petroleum has been forced into keen and violent competition with coal. The result is that probably one-half of America's oil production is being used to displace the equally effective use of coal, of which there is an almost inexhaustible supply. The waste of natural gas incident to the past and present methods of capturing oil at the surface is prodigal and extravagant. This waste is quite reliably estimated to be equivalent in value and effectiveness to a very large percentage of all the petroleum actually subjected to control and ownership.

"Rivalry in production from flush pools arises principally out of the fact that oil in the sands beneath the surface and the natural gas associated with it are migratory in character, and the general rule of law that there is no absolute title in either until capture and control at the surface. The incentive thus given to production has resulted in a promiscuous drilling of unnecessary, rival and wasteful wells, a sheer waste of a very large part of the associated gas,
1849 greatly lessening the amount of oil that can be ultimately recovered by flowing and pumping; and the waste of large quantities of the oil itself because of inability either properly to store or quickly market it.

"The supply of the future is and must be limited to resources yet undiscovered, because the reserve outside of the fields now being exhaustively drawn upon is comparatively negligible when we measure time by the yardstick of a few years.

"The rapid exploitation and depletion of new fields can not be controlled or even checked under existing conditions of private surface ownership with its resulting insensate rivalry in acquiring title to the oil at the surface, unless and until some competent superior authority assumes actual and positive control and exercises sane regulatory power, consonant with an intelligent public policy.

"If the country continues to produce and consume petroleum improvidently and extravagantly, as it has been doing without regard to the character or quantity of the resource or the uses to which it should be put, the result will be that at a comparatively early period we will find our oil resources so seriously curtailed as
1850 to affect adversely the standard of living of the American people.

"It has frequently been asserted that the Federal Government is without power to control or even regulate the production of petroleum from privately owned lands, except in case of drainage from Government lands. But it is by no means certain that the people of the United States are helpless to prevent the reckless dissipation of an indispensable natural resource. The states can, of course, under their reserved police power, respectively regulate and control the capture of petroleum within their respective territories to any extent which will prevent waste and loss of oil, and also natural gas, and in aid of such purpose can prevent owners of surface rights from drawing oil in a manner wasteful of the oil and gas beneath the surface of other owners.

"For two years proration of production in the major Mid-Continent fields has been in operation. State regulatory bodies and industry leaders have sought in vain for a balancing of supply and demand. During this period there has been an upbuilding of potentials, price has turned downward, production upward, and bootlegging of illicit oil has flourished. The whole
1851 price structure has collapsed. Out of this maze of confusion and conflicting interests must come a means of control or limitation of production that will assure a continuing, adequate domestic supply of oil that will not and must not exceed actual consumption requirements. Only by this means can the industry right itself.

"Fourteen billion dollars constitutes the capital investment of the petroleum industry. A million and a half of stock and bondholders and royalty owners have a common interest in the proper conduct. A million and a quarter presently employed workers keep this vast business alive—and themselves too. The first concern of the recognized leaders of an industry so essential to our industrial needs and our happiness and well-being as people should be the adoption of principles and practices that will with certainty prevent the unnecessary depletion of a limited natural resource, vital to the nation, in which 120,000,000 Americans have a vested interest.

"The solution of this problem is in your hands. And the problem, difficult and complex as it is, can be immediately solved if we all ap-1852 proach it unselfishly and patriotically. It ought to be an incentive to a determination to solve it to realize that its happy solution will be for the best interests of both the oil industry and the country."

The witness would further testify, your Honor, to this: I recall that the bad conditions existing in the oil industry were discussed very keenly and forcibly at the Governors' Oil Conference by a number of the delegates.

At the first session of the conference they divided into three groups: First, the representatives of the Governors; second, the representatives of the major oil companies, and third, the representatives of the independent groups in the petroleum industry. I was in the independent group. Each of these groups appointed a committee of five to make up what was known as the Committee of Fifteen. This Committee was to work out recommendations to remedy the existing conditions in the oil industry. I was selected on this Committee.

May I have this marked for identification, as part of this offer of proof, your Honor?

(Document referred to marked Exhibit 833 for identification. Said exhibit is in the words and figures following, to wit:)

1853

Washington, D. C.
March 29, 1933.

The Honorable
The Secretary of the Interior.

Dear Mr. Secretary:

The three committees respectively representing (1) The Governors of the oil producing States or their duly authorized delegates; (2) the oil and gas associations representing independent producers of oil and gas in the United States, and (3) the major oil and gas producing and importing companies, after conferring together, have unanimously agreed to recommend the following program to you, in order to meet the existing emergency in the oil and gas industry and to provide the basis for conservation and scientific future development of the oil and gas resources of our country:

A. To meet the existing emergency, the committees unanimously recommend:

1. That the President of the United States be requested to transmit this report to the Governors of California, Kansas, Oklahoma, Texas, and New Mexico, and to call upon them immediately to close all flush pools in their respective States until the 15th day of April next, excepting wells producing more than 10 per cent of water, which would be damaged irreparably by a complete shutdown.

1854 2. That the President of the United States be requested to call upon the Governors and legislatures of the principal oil producing states which have no adequate or no general conservancy statute to adopt such a statute immediately in order to further the conservation and scientific and more orderly development of the oil and gas resources of such States and in order to enable full cooperation toward those ends between all the principal producing States.

3. That the President of the United States be requested immediately to recommend to Congress the adoption of a law prohibiting the transportation in interstate and foreign commerce of any oil or the products thereof produced or manufactured in any State in violation of the laws thereof, and providing adequate penalties for violations of the said law.

4. That the President of the United States be requested (a) to require strict enforcement of the Federal gasoline tax and pipe line tax and vigorous prosecution of evaders

thereof, so long as the said taxes remain in effect, and (b) to instruct the Bureau of Internal Revenue to ascertain, at the time of collecting the tax, the consignor, consignee, destination and quantity being shipped by each refinery, and
(c) to instruct the said Bureau to transmit the said
1855 information to the tax collecting authorities of those
States into which the gasoline is to be moved.

5. That the President of the United States be requested fully to endorse the recommendations made herein and to appeal to the States, and to all those engaged in the oil and gas industry, faithfully to cooperate in the enforcement and observance of the said recommendations and in the limitation of production in harmony with a fair allocation of the national consumptive demand.

6. We further recommend that the President submit to Congress a request for emergency legislation authorizing him to appoint a personal representative to cooperate with the duly constituted authorities of the several oil producing States in bringing about a compliance on the part of said States with the program covered by these recommendations, and to advise and cooperate with the industry in complying with that portion of the program recommended for action by the industry, such Act of Congress to be effective during the emergency only, and whenever in the opinion of the President of the United States the emergency in the oil industry has passed, thereupon, by proclamation, the President may declare the emergency ended and the office, thereby created, abolished.

1856 B. To provide a basis for conservation of the oil and gas resources of the United States and the scientific future development of the oil and gas industry therein, the committees are unanimously of the opinion:

1. That the Government of the United States can aid and assist in the following respects:

(a) By initiating a comprehensive and scientific study of the entire subject and publishing, as soon as possible, a report of the facts found, conclusions reached and recommendations made with reference thereto.

(b) By imposing an adequate competitive tariff on crude petroleum and the products thereof.

(c) By eliminating the tax on domestic refined products and the Federal pipe line tax.

(d) By vigorous prosecution for evasion of the Federal gasoline tax and pipe line tax if such taxes are to be continued.

(e) By permitting drilling on the public lands to be delayed.

(f) By limiting imports to the average for the last six months of 1932.

(g) By continuing the Federal Oil Conservation Board as an advisory body.

2. That the producing States can aid and assist in the following respects:

1857 (a) By the enactment, where necessary, of adequate State laws under which conservation can be enforced.

(b) By the issuance of valid orders under such conservation statutes.

(c) By strict enforcement of the orders issued.

(d) By the equitable allocation of the allowed production as between pools.

(e) By limiting production of crude oil to the requirements of the consumer of refined products, or crude petroleum as such.

(f) By reaching an agreement with each other on the total market demand for crude petroleum and a proper allocation of this demand as between the producing States.

Note: Pending a more complete study of the subject, the production in the United States should for the time being be limited to 2,000,000 barrels per day, allocated as follows:

Texas	786,242	Barrels
Oklahoma	417,690	"
Kansas	93,366	"
California	432,432	"
All other states	270,270	"

(g) By rigidly enforcing the gasoline tax laws so as to prevent tax evasion, by preventing the diversion of the tax from highway uses, and by a reduction of the tax wherever at all possible.

1858 (h) By encouraging permissive unit operation under voluntary agreement.

3. That the industry can aid and assist in the following respects.

(a) By actively supporting governmental agencies in their efforts to make and enforce valid orders.

(b) By refraining from producing oil unlawfully and refusing to transport or purchase oil unlawfully produced.

(c) By marketing arrangements with limited areas conforming to the principle announced by the Supreme Court in the Appalachian Coals case.

(d) By diligent efforts to promote permissive unit operation under voluntary agreements.

(e) By avoiding excessive withdrawals from storage.

(f) By limiting drilling to the absolute minimum.

(g) By limiting imports to the average for the last six months of 1932.

C. If the foregoing conservation program is to succeed, the committees respectfully submit that it must be based on a price for crude oil which will allow a margin of profit to the producer and a price for the refined products which will allow a margin of profit for the refinery and the
1859 retail dealer.

Respectfully submitted
W. J. Brandred
W. N. Davis
Wirt Franklin
Chas. F. Roeser
C. B. Ames
R. C. Holmes
K. R. Kingsbury
D. F. Moran
W. C. Teagle
Alfred M. Landon, Chairman—(Kansas)
Wm. H. Cooley (California)
I. C. Crimm (Ohio)
C. C. McDonald (Texas)
Cicero I. Murray (Oklahoma)
T. H. Barton
Committee of Fifteen representing Governors' Conference, and major and independent oil producers.

On Monday morning, March 27, 1933, before the organization of the said Committees and before the emergency measures recommended in subdivision A hereof were proposed, the representatives of oil and gas associations adopted, in meeting assembled, the principles and recommendations covered by subdivisions B and C hereof. The vote was as follows:

California Oil & Gas Association	Not voting.
Central Penna. District Oil & Gas Association	Yes.
East Texas Land Association	Yes.
East Texas Producers & Royalty Owners Association	Yes.
General Mid-Continent Oil & Gas Association	Yes.
Independent Petroleum Association of America	Yes.
Independent Petroleum Association of Arkansas	Yes.
1860 Independent Petroleum Association of California	Not present.
Independent Petroleum Association of Texas	No.

Mid-Continent Oil & Gas Association, Kansas-Oklahoma Division	Yes.
Mid-Continent Oil & Gas Association, Louisiana-Arkansas Division	Yes.
Mid-Continent Oil & Gas Association, Texas Division	Yes.
North Texas Oil & Gas Association	Yes.
Oil Producers Sales Agency of California	Yes.
Southeastern Ohio Oil & Gas Association	Yes.
Texas Oil & Gas Conservation Association	Yes.
West Central Texas Oil & Gas Association	Yes.
West Virginia Oil & Gas Association	Yes.
Middle District Producers Association (Penna.)	Yes.
American Petroleum Institute	Yes.

Mr. Donovan: The witness would say that he was present at the conference, and heard the discussions which took place with Secretary Ickes.

Further, your Honor, I would like to make an offer of proof of the conference on March 29, 1933, between Secretary Ickes and the Committee of Fifteen: If allowed to testify, the witness would testify as follows:

I was one of the Committee of Fifteen which met
with the Secretary of the Interior, in the Department
1861 of the Interior Building in Washington on March
29th, 1933. At that time, the Committee presented
to the Secretary the written recommendations which
it had unanimously adopted at the Governors' Oil
Conference.

I do not remember at that time whether the Secretary said anything specific with reference to higher prices for crude oil.

I do, however, recall a general discussion that there could not be conservation of our oil resources, pro-ration of production and limitation of imports into this country, without adequate prices for crude oil, sufficiently high to cover the cost of production in the stripper well areas of the United States.

I do remember that the Secretary of the Interior was in full accord with this idea; and that he agreed that it was necessary to preserve the stripper and pumper wells in the United States in order that oil resources under these wells be not lost.

The reasons why it was necessary to maintain stripper and pumper wells were brought to the attention of the Secretary at this conference. It was one of the main points of discussion.

1862 At the same time, some member of the Committee pointed out to the Secretary that it was necessary to maintain stripper and pumper wells because probably 225,000 people made their living from them; and that the families of these persons were dependent upon the continuation of the production of these wells; and the abandonment of them would force these people and their families on public charity, since these people had been operating these wells for a number of years, and had not been trained to do any other line of work.

I recall it was pointed out to the Secretary that other lines of industry were overcrowded, and that unemployment was general throughout the country; and that, in consequence, it was absolutely necessary that the strippev and pumper wells be maintained in existence; and that, in order to do this, the operators of these wells had to obtain a sufficient price for their crude oil to cover their costs.

And, furthermore, as part of the Governors' Conference, the conference between the Committee of Fifteen of which he was a member and the Secretary, he would testify to this:

I presented that part of the written recommendation of the Committee of Fifteen which relates to the 1863 importation of crude oil into the United States.

I recall that I told the Secretary of the Interior that, in the plan to stabilize the petroleum industry by the curtailment of production by state authorities in oil producing states to meet the consumptive demand, it was necessary to take into consideration the importation of petroleum and its products into the United States. I told him that there should be enacted by the Federal Government adequate tariff laws on import of crude oil and its products, so as to equalize the difference in the cost of production of Mid-Continent crude and the crude oil shipped to the Atlantic Seaboard from foreign countries.

At this conference, I told the Secretary of the Interior that Standard Oil Company of New Jersey and Shell Union Oil Company had both agreed to reduce their importations in accordance with the recommendation of the Committee of Fifteen; and that Mr. Walter C. Teagle of Standard Oil Company of New Jersey, and Mr. J. C. van Eyck of Shell Union Oil Company, had both publicly made statements to this effect to a representative of the Associated Press.

1864 The Secretary of the Interior said that he was in full accord with this program.

I submit that offer of proof, your Honor.

Mr. Crawford: We object, if the Court please, on the grounds already stated; and that the testimony, if offered, would be immaterial, irrelevant and incompetent.

Mr. Donovan: Your Honor, I assume we will have a ruling on each of these offers separately?

The Court: Yes.

The Court: The objections of the Government to the offer of proof are sustained, but this witness will be permitted to testify as to conditions and factors in the oil industry in Oklahoma and in Texas that did exist in 1935 and 1936 which did not exist in prior years that may have caused a constant or practically unvaried price in 1935, of months of 1935, of the tank car price of gasoline. That is as far as I am going to let you go. Bring the jury in. Exception allowed.

(In presence of jury.)

By Mr. Donovan

The limitation of imports had an effect upon the prices of gasoline in this country in 1933 and 1935.
1865 The limitation of imports helped to raise the price of gasoline.

(In absence of jury.)

Mr. Dorr: I have one supplemental offer of proof to make, possibly two.

You will remember that Colonel Donovan has offered to prove through this witness the conditions in the industry immediately preceding and in 1933. And that offer of proof tends to show the existence of hot oil, the existence of completely demoralized conditions in that industry at that time.

Now, we offer to prove further, from this same witness, that those conditions described in the offer of proof already made tended to produce and did produce numerous price fluctuations in that period; that is, these conditions which we have offered to show that he can prove; and that conditions in that period, as to such causes of fluctuations, are in no way comparable to the period from June 1, 1935 to December 22, 1936.

Now, in support of that offer of proof, let me say

this: In view of the evidence offered by the Government of the fluctuations in the earlier period, because
1866 they went into that; we didn't, in view of the evidence offered by the Government of the fluctuations in the earlier period, and their contrasting of those fluctuations with the leveling price in that period from June 1, 1935, to December 22; and the argument they have already made, that the leveling off of prices in the latter period in contrast with the earlier fluctuations is circumstantial evidence of the alleged agreed price during the period of June, 1935, to December 22, 1935, the refusal to permit them proof would not only be prejudicial to the defendants, but might be fatally prejudicial.

Supplementing and renewing the offer of proof heretofore made of evidence as to the importance of the conservation of crude supplies and of an adequate price of crude to permit the conservation of oil by permitting the operation of stripper wells, and supplementing and renewing the offer of proof heretofore made of the proposed cut in the price of crude in October, 1934, because of the lack of parity between the tank car price of gasoline and the price of dollar crude then prevailing, and of the efforts of Mr. Ickes, the Oil Administrator, to hold the price of crude at a dollar while efforts were being made to raise the tank car price of gasoline to parity with crude.

1867 We offer to prove, through this witness:

(1) That the tank car price of gasoline in the Mid-Continent area in January and February, 1935, was far below parity with dollar crude.

(2) That when the tank car price of gasoline is substantially below parity with the price of crude oil, the distress occasioned to refiners, and particularly independent refiners, tends to force down the price of crude so that reasonable parity may be restored and such refiners be able to operate at some profit, or at any rate at cost.

We further offer to prove,

(1) That the price of one dollar for Mid-Continent crude at 36-36.9 gravity was the lowest price for crude that was at all consistent with the conservation of our crude resources.

(2) That this was recognized by the governmental authorities of the state and nation charged

with the administration of laws dealing with conservation of our petroleum resources; and

(3) That measures tending to restore the tank car price of gasoline to a reasonable parity with dollar crude would have the effect of helping to relieve the pressure on the price of dollar crude that existed
1868 in January and February, 1935, and thus tend to aid in the conservation of our national resources and to effectuate the policy of the state and nation with regard thereto.

We further offer to prove that one of the causes of the subnormal tank car price of gasoline existing in January and February, and its lack of reasonable parity with the price of dollar crude, was the sale at distress prices of the gasoline necessarily produced by the independent refiners in the course of their operations over and above that for which they had normal outlets to jobbers and consumers. That is the offer of proof.

This evidence which we are offering is directed to the issue of whether or not, in view of the adverse effect on conservation of natural resources and the adverse effect on the established policy of the state and federal governments of maintaining a price of at least one dolla: for crude, the buying activities of the defendants in buying distress gasoline of the independent refiners at or near the low of the market instead of at lower distress prices, was a reasonable concerted effort, promotive of the public interests in the conservation of natural resources, and a reasonable attempt to remedy an abuse in the industry rather than an unlawful restraint of trade.

1869 Now, the question is, you have a situation, whether rightly or wrongly, where it was thought necessary that the price of crude should be established at a particular figure and maintained at a particular figure, and we want to show why that was. We want to show that any price below that would mean a waste through the shutting down of stripper wells and the marginal wells, and if that were done then there would be a permanent waste of a natural resource.

We want to show that the policy of the Government was to prevent that waste, and it was because of that in the very beginning of the Code the Government and the states had taken measures to try to keep that price at least at $1.00, possibly higher.

Now, here we are in a situation when this alleged conspiracy is supposed to have started. We did have that $1.00 crude. On the other hand, we had a price prevailing for the tank car market, the price for the gasoline that was refined from that crude that had to be bought at $1.00, which was out of line with that, so out of line with it that the independent refiners in the important sections of the industry, and refiners generally, could not buy crude at $1.00 and refine it and sell it at cost.

1870 Now, what was the natural effect of that? The natural effect of that was illustrated by the evidence we offered to show that in October certain of the independent refiners started to reduce that price from $1.00, started to cut that price down to 60¢ so as to bring it into line, bring the cost of raw material into line with what they had to sell the finished product at.

Now, that situation did not end in October. It continued, as we propose to show, in January and February. The price there was such as to continually threaten the price of crude.

Now, then, in that situation what are the causes of that lower price, lack of parity?

Now, we propose to show that one of those causes was the fact that these independent refiners had to keep running at a certain level, that certain of their markets had been lost by changes in freight rates, and so forth; but nevertheless, in order to keep their crude connections up, they had to keep producing about the same amount of gasoline. Now, that left a surplus over what would normally find its way into the hands of jobbers and consumer customers and the balance would be thrown on the market at a distress price, any price that a buyer who was holding off, and had the power to hold off, would ultimately buy at. 1871

Now, that tended to hold down the refinery price, by that abnormal competitive situation, destructive competitive situation.

Now, we say in determining whether the efforts, the activities, and that was one of the causes of the situation that tended to reduce the price of crude, which was against the public interest.

Now, we say that in determining whether that was a reasonable concerted activity to remedy an abuse in an industry which was lawful under the Appalachian Coal case, we say that in determining that we are entitled to show its effect, the effect of the removal of that abuse in relieving this pressure on the conservation policy, the adverse effect on the conservation policy.

Mr. Lewin: The Government objects to the offer of proof.

The Court: The objections of the Government to the offer of proof are sustained, but this witness will be permitted to testify as to conditions and factors in the oil industry in Oklahoma and in Texas that did exist in 1935 and 1936 which did not exist in prior years that may have caused a constant or practically unvaried price in 1935—of months of 1935, of 1872 the tank car price of gasoline. That is as far as I am going to let you go. Exception allowed.

You want to show what factors entered into that variation in price, back in those years, that did not exist in 1935 and 1936?

Mr. Dorr: Exactly.

The Court: All right, what are they, that you expect to prove?

Mr. Dorr: Two things. In the first place, the price of crude, before it was stabilized at $1.00, by the action of the Government, back in 1930 and 1931, 1932, and the early part of 1933, that there the actual price of crude, which the refiner was paying, was going up and down very rapidly because of changes in production and the introduction of new fields, and so forth; and that the state control, so far as it was attempted to be exercised, was not effective; and the lack of tariff, and so forth, and all of those conditions which tended to make that price go up and down; and it did go up and down, of course. It fluctuated wildly with every change in the effectiveness of the state proration laws or the amount of allowables under the proration laws, and those varied constantly.

1873 All of those things had a direct effect on the tank car refinery price because they affected the cost to the refiner of his major cost of operation.

Now, then, after you had your $1.00 price established for what you might call a legal crude, then you had a very considerable and constant variation in the effectiveness of the control over hot oil.

Now, for example: When the N. I. R. A. first went into effect in the summer of 1933, down there in these states where hot oil was being produced in violation of state laws very extensively, for a moment there was a thought, Well, now, the Federal Government is coming in,—that was a new element and it had an effect.

The Court: I don't think much of your theory about conservation. If the Government wanted to conserve this natural resource, they could have done so. I don't think that any group of men ought to assume that responsibility. I do think you ought to be permitted to show what factors entered into the price of gasoline that caused the variation during those years that did not exist in 1935 and 1936.

Mr. Dorr: Yes.

1874 The Court: We are not going into the history of the entire country conditions. I want you to stay right by the oil industry.

Mr. Francis: May it please the Court; before your Honor rules there are one or two matters that have been dealt with informally, and I want to see if the record properly reflects my understanding of what has been done.

First, it is understood by everybody, is it, that the records may reflect that the offer of proof by Colonel Donovan would have been that proof given as a result of questions and answers propounded to the witness. Colonel Donovan has summarized, for the sake of saving time, what Mr. Franklin would testify to in question and answer form.

The Court: That is my understanding.

Mr. Francis: That is my understanding.

Then, your Honor, it must be understood that we offer through this witness proof of changed conditions in 1935 and 1936 from conditions existing in years prior thereto, and that we propose to prove conditions different in the following respects which apply to either all or some of the years preceding 1935 as distinguished from the years 1935 and 1936, to wit:

1875 First: During a part of 1935 Section 9 (c) of the National Recovery Act was in effect, with Tender Boards thereunder, and such was not the case in prior years.

Second: During a part of the year 1935 there was in effect a Code of Fair Competition for the Petroleum Industry, and thereunder there was exerted certain administrative pressure, which was not the case in the years preceding 1935.

Third: On March 1, 1935, the Connally Act became effective, and Federal Tender Boards were set up thereunder, and this condition did not exist in the years prior thereto.

Fourth: Freight and pipe line rates were different in 1935 and 1936 from prior years.

Fifth: Tariff restrictions and limitations were different in 1935 and 1936 from years prior thereto, and in this connection the restrictions upon imports of foreign oils had been very much curtailed, commencing in the latter part of 1933, as distinguished from preceding years.

Sixth: In 1935 and 1936 scientific knowledge had been very much perfected as compared with preceding years in reference to the control of flush oil fields by proper utilization of underground pres-
1876 sures, such leading to more orderly production.

Seventh: In 1935 and 1936 there was a notable increase in consumption, whereas in the years prior thereto consumption had been declining along with a notable increase in production from prolific flush fields, such fields being unregulated in market demand statutes, as was true in 1935 and 1936.

Eighth: There was no state compact in existence in the years prior to 1935, and this state compact adopted in February, 1935 tended to stabilize prices both of crude and of gasoline.

Ninth: Refineries during the years 1935 and 1936 were worn out as a result of failure to improve and modernize same during the preceding depression years. This was a factor in keeping a stabilized market.

Tenth: Foreign demand for petroleum products materially increased in the summer and fall of 1935 and in 1936 as compared with the several years preceding 1935.

Your Honor will note that our offer of proof covers each of the above subjects, and I want it distinctly understood that if your Honor overrules this offer of proof there will be no question about the fact that we make a tender of each and all of the fore-
1877 going points to be brought out from the witness, Mr. Franklin.

It is our contention that these several things are different, some of them in all those years, and some in particular years that we want to prove as distinguishing 1935 and other years. Is that correct, Colonel Donovan?

Mr. Donovan: Yes.

Mr. Francis: Counsel understands that, and I do not want to have the record confused on account of the Court's ruling.

Mr. Lewin: The Government objects to that offer of proof.

The Court: The objections of the Government to the offer of proof are sustained, but this witness will be permitted to testify as to conditions and factors in the oil industry in Oklahoma and in Texas that did exist in 1935 and 1936 which did not exist in prior years that may have caused a constant or practically unvaried price in 1935, of months of 1935, of the tank car price of gasoline. That is as far as I am going to let you go. Bring the jury in. Exception allowed.

(In presence of jury):

The Court: In view of what I said before, that the Government has offered some testimony as to 1878 the variations in prices in these prior years, prior to 1935, the defense will be permitted to show the conditions and factors in the oil industry in Texas and Oklahoma that existed in 1935 and 1936 that did not exist in prior years that may have caused a constant or practically unvaried price in certain months in 1935 in the tank car price of gasoline. All right.

Mr. Donovan: Q. Mr. Franklin, you have heard the statement of the Court?

A. Yes.

Q. And I will ask you to discuss those factors affecting the price in 1935 as indicated by the Court that were not in operation in previous years.

The Court: Before you get to that I will ask Mr. Franklin this: Will you just give us without any argument or too much detail, just sketch for us the discovery and about the time of the discovery of the oil pools that affected the market, starting back in 1911, was it, that you—when was it that you discovered that pool?

The Healdton field, in southern Oklahoma, was discovered in 1913, and about that time the Cushing field in the northern part of the state was discovered. The two together created an excess supply of oil. In both fields there were

large, flush wells. The Healdton field had about be-
1879 tween 6,000 and 7,000 acres in its outlines, and the
Cushing field was probably 3,000 or 4,000 acres larger than that, with all of its extensions.

There were smaller pools, then, in the succeeding years. Almost every year there is some pool discovered of some consequence. The Hewitt field was discovered in about 1920 in Oklahoma, and it was a considerable field. Then smaller fields were discovered in the intervening years all over Oklahoma, but they were not of sufficient consequence to affect the market situation.

There was a series of fields discovered in Texas in 1921, 1922 and 1923, that affected the market temporarily, down in the area of Corsicana, the Mexia field and other fields there that were discovered along the Balcony Fault line, as it is called.

The next serious threat to the stability of the industry was a series of pools discovered in the Seminole area in Oklahoma, and at or about the same time, or maybe a little previous to the Yates field.

That was a very large field. The wells were shallow with a very large capacity, although the oil was rather heavy. The Seminole area and the Yates field in Texas, and also the Winckler and numerous other smaller fields were discovered along about that time. The Seminole area was developed and they were discovering new pools in that area
frequently and were adding to the area until there
1880 were some twenty pools there between 1926 and 1930.

In 1928, the Oklahoma City field was discovered, and while the area of that field probably wasn't over 10,000 acres, the size of the wells, that is, the capacity of the wells to produce a high grade oil, seriously affected the whole market situation in the United States, both in crude oil and refined products.

Oklahoma City had been going good from December, 1928, and was just beginning to be controlled by the Corporation Commission of Oklahoma under the regulatory statute when the East Texas field was discovered. Much of the land in that area being owned in small tracts brought into the industry a new group of oil producers that had never been in it before. They drilled wells very rapidly, spaced them close together, and produced a flush production, the like of which has never been known in the history of oil in the United States Up to the present time over 23,000 wells have been drilled in the East Texas field alone.

Because of the conditions, every time the immense production came on and was not controlled by the state au-

thorities, as they attempted to control it, all the barriers would break down, due to various causes, and hot oil in excess of the legal allowables would be produced. And whenever that happened, the price of crude would fall, and the price of gasoline would go down with it, and a
1881 very serious demoralization of the entire industry would occur. At one time in East Texas the prices were ten cents—

The Court: Q. I don't care about that. I just want to know about where the oil wells were. Now, proceed (addressing Mr. Donovan).

By Mr. Donovan

The first two or three months of 1935 were very similar to the years 1934 and 1933, in that there was no effective control of production to balance supply and demand. In January, 1935, that authority had broken down because of the Panama decision which invalidated the first Tender Board in the East Texas field. Immediately thereafter, the excessive production of hot oil produced over and above the allowables of the Railroad Commission of Texas brought a flood of oil which was refined and thrown on the market for whatever it would bring. That condition had existed off and on during 1933 and 1934, and in that respect was similar to those previous years, except that in this case the price of legally produced crude oil was maintained in 1935 at $1.00 a barrel for 36 gravity crude.

It had also been maintained during the year 1934, and from September 29, 1933, to the end of 1933. There had been no change in the price of crude from that time on, but there were violent fluctuations in 1933 in the price of crude oil before September 29th.

1882 The Tender Board with which the Panama case dealt was set up in October, 1934, and its authority ceased with the rendering of the Panama decision by the Supreme Court of the United States, holding it was a delegation of legislative authority and therefore void.

After that happened, the industry, the Petroleum Administrator, and the Planning and Coordination Committee all joined in asking Congress to pass remedial legislation, which was passed in a bill known as the Connally Bill in February, 1935, which prohibited the transportation in interstate commerce of oil produced in violation of the laws or lawful orders of regulatory authorities in the oil producing states. That oil that is so produced is commonly known as hot oil.

The authority to enforce that law was delegated by the

President to the Secretary of the Interior, and he immediately established another tender board known as Federal Tender Board No. 1 in the East Texas areas to control the movement in interstate commerce of this hot oil. That Board was established about the 1st of March, and the hot oil production was immediately decreased to a very great extent, but it was not entirely shut off until the Tender Board got under full way. In fact, hot oil never was entirely shut off, but it was finally reduced in the course of
30 to 60 days to approximately 5,000 barrels that was
1883 going out of the East Texas field.

Along about the same time, the Texas Railroad Commission, seeing the example set by the federal authority, and that things could actually be done, also made their restrictions a little tighter, and for the first time since the administration of the Code began, there actually was an approach to a balance of supply of production of oil with the demand.

Also, another factor that had a bearing in 1935 with previous years was that, with the recovery of the country from the depression, the consumption of products increased over the previous years. The consumption of gasoline and other petroleum products increased very materially in the spring and summer of 1935. There had been a decrease in the consumption during the period of the depression; the consumptive demand for petroleum products had dropped from 2,500,000 barrels of crude oil to about 2,000,000 barrels at one time. It got above 3,000,000 barrels in 1935. And during 1936 and 1937, it increased up to over 3,500,000 barrels.

For the first time since 1926, in fact, but especially during all the Code operations, the first time we really had a balance of production of supply with the consumptive demand was after the Connally law was passed and the Federal Tender Board was established and controlled this hot
oil to an extent sufficient, along with the increase in
1884 consumptive demand, to bring about a stabilized con-
dition of the oil industry in the late spring of 1935.

All during this period the imports of petroleum had been limited, by order of the Petroleum Administrator, to the average daily imports for the last six months of 1932. That, in terms of crude oil, was about 108,000 barrels a day of crude. That limitation was a necessary factor in the whole situation.

Also, there was a limitation of withdrawals of crude oil from storage, a complete prevention under the orders. Only upon a showing made by application to the Planning and Coordination Committee and proof of the necessity of withdrawal from storage was it legal under the operation of the Code, and then when allowed by the Planning and Coordination Committee, with the approval of the Secretary of the Interior.

By the Court

That prohibition of withdrawal from storage went all through the Code to the end in 1935. The same prohibition extended over other years. Imports were limited throughout the Code period, but they all had a bearing on the balance situation. Prior to the Code period, imports had been limited by an understanding with the Secretary of the Interior, commencing in the Governors' Oil Conference in March, 1933. Prior to 1933 there had not been any limitation on imports.

1885 Prior to that, in the Revenue Bill of 1932, Congress placed an excise tax on the importation of crude oil and gasoline, and that had an effect of slightly reducing the imports. But the limitation itself did not take place until that understanding with importers in the Governors' Oil Conference, and it was made an order of the Petroleum Administrator in October, 1933, which continued to the end of the Code.

By Mr. Donovan

That is the first time that that had been done that I know anything about.

The knowledge of the science and control of reservoir pressures has been increasing constantly; and knowledge of new and improved methods of preserving the gas energy and controlling underground water in the oil-producing formations has been added to and has continued to grow with the passing of each succeeding year, so that the knowledge in that respect and the ability to control those factors was greater in 1935 than it was in previous years. In 1935, as contrasted with 10 years previously, the improvement had been very marked; but it has been a very gradual development.

The interstate compacts dealt with the general conservation of oil and conservation methods in the production of oil; the coordination of the states activities to balance supply with demand; and all the factors having to do with
1886 the conservation of the oil states' petroleum resources, and their production in an orderly manner so as to bring about the greatest ultimate recovery of oil

through conservation practices and proper practices of production. Kansas, Oklahoma, Texas, New Mexico, Illinois and Colorado are in that compact.

While the compact itself has very little authority in its own right and of its own authority to control the production of oil, its method of operation has been to bring the different great oil-producing states together for the purpose of conference, so that each state may see all the other states' pictures. The effect of it has been an enlightenment on the part of the regulatory authorities of each state as to the whole national situation, and therefore a more willing attitude on the part of the different states to curtail their production and to let each state let the other state have what is considered its equitable share of the entire market without wasting oil by over-production. Its effect has been very marked in that regard, although without any authority itself to do anything or to issue any orders.

They have gotten practically all their information as to national demand from the Bureau of Mines of the Department of the Interior, from the figures on production and consumption of the Bureau of Mines. Once a month the
Bureau of Mines issues an estimate of the consump-
1887 tive demand for petroleum products for the succeed-
ing month, and reduces that to terms of crude oil supply, that is, the amount of crude oil that it would be necessary to produce to supply that consumptive demand, and the estimated amount that each state should produce as its fair share of that market.

These states do not always stay within that recommendation. Oklahoma and Kansas have stayed fairly well within it, in the orders of their regulatory authorities. Texas has stayed within it a part of the time, but frequently has gone over it a considerable amount in their orders, but on the average, Texas has attempted to stay within it, because it has later cut back to kind of make up the excess they had previously produced.

The general aim on the part of the regulatory authorities has been to follow and track closely the recommendations of the Department of the Interior or the Bureau of Mines in that Department.

There is no doubt but that this compact was one factor in stabilizing prices in 1935 and 1936, along with the stoppage of hot oil, the balancing of supply and demand, and the general stabilization influence that that had on the industry to bring things back to a normal situation.

There had not been any balancing of supply and demand in the years 1930, 1931, 1932, 1933, and 1934. Those first

years were years of violent fluctuation, due to alter-
1888 nate oversupply and cutting off of hot oil, and then
the flood coming on again and going off again. It was just up and down, in a violent manner. When I say "fluctuation," I mean fluctuation in the production of oil and the price of crude oil and also of gasoline and other products.

Beginning in 1935 there was an approximate balancing of consumption and supply. There was an adjustment in crude production to take care of the decreasing demand in the winter of 1935 and 1936. The allowable oil production fixed by the regulatory bodies and the estimates of the Bureau of Mines takes into consideration the declining consumption in the winter months, and the allowables are less in the winter months than they are in the summer months.

Prior to 1933 there had been a code of fair practices under the Federal Trade Commission. It was not a code similar to the N. I. R. A. Code, but it was a code of a sort. But there had never been any code such as has been described here under the administration of Mr. Ickes, or under the Department of the Interior.

General business conditions in 1935 were much improved over 1934, 1933, 1932 and 1931 and back to the commencement of the depression. We were coming out of the depression in 1935, and conditions were much improved in 1935 and 1936 over previous years. That tended to stabil-
ize all industry on a more profitable basis than had
1889 existed before that time. The effect was to increase
prices all along the line.

In the early part of 1935, the refinery allocations would have had some effect on the price. Also the buying of gasoline by the majors would have had some effect, depending upon its details, with which I am not familiar. But there had been buying also in previous years, although I do not know to what extent it had taken place, but I think that along with the other factors that would have had some effect.

While I was a member of the Planning and Coordination Committee, I heard of the Tank Car Stabilization Committee. I first heard of it at a meeting of the Planning and Coördination Committee in January, 1935. Mr. Arnott, who was a member of the Planning and Coordination Committee, was the one that told the whole Committee. He didn't just tell me. He told the Committee about it.

At that same time, Mr. Arnott was chairman of the

Marketing Sub-committee of the Planning and Coordination Committee.

Q. And of any other committee?

A. And had been appointed stabilizer in price wars, stabilizer generally.

Mr. Chaffetz: I move that be stricken out. That does not state the facts. It is a conclusion of the 1890 witness. He says he was a stabilizer generally.

The Court: I think that last part may be stricken out. Exception allowed.

The Tank Car Stabilization Committee functioned from January, 1935 on until the end of the Code. I know that as a member of the P. and C. Committee. If it did function after that time, I don't know it. The condition of the independent refiner was brought to the attention of the Planning and Coordination Committee at a meeting of the Committee during the session held from July 10 to 13th inclusive, 1934.

By Mr. Donovan

I know the Secretary of the Interior and have seen him sign his name; I am quite sure I can identify his signature. It is the signature of Harold L. Ickes on this letter dated December 11, 1934, under the heading of "Administrator for the Petroleum Industry, Interior Department Building, Washington," addressed to R. C. Cocanower, General Manager, Olney Oil and Refining Company, Wichita Falls, Texas. I don't know whether or not Olney Oil & Refining Company is a co-conspirator named in this indictment.

(Letter produced by counsel is marked Exhibit 834 for identification.)

Mr. Chaffetz: We object to it, Exhibit 834 for identification, on the ground that it is incompetent, 1891 irrelevant and immaterial, unless it is to be followed up by proof that the Secretary of the Interior approved the alleged buying program. In the absence of any such proof, we think any statements such as contained in that letter are immaterial to this case.

The Court: Let me ask you now, then, are you going to prove that there was such a buying program approved by Secretary Ickes as provided by statute?

Mr. Donovan: We are going to prove, your Honor, that there was no such buying program as is alleged in the indictment and therefore no such written approval was necessary.

The Court: That isn't what I have in mind at all.

Mr. Donovan: Well, I think that answers your Honor's question exactly, because, over what we did, we required no written approval. For what they allege there would be written approval required, and we say we did no such thing. I think it answers your Honor's question.

The Court: The Court will reserve its ruling on this until some later time.

(Later at R. p. 1062, the objection to Exhibit was sustained, and an exception allowed.)

1892 *Cross-Examination by Mr. Chaffetz.*

I testified to the Act of Congress approving the Interstate Oil Compact and I testified also that that Act of Congress was re-enacted. I think it was last June. I am familiar with that Act of Congress only to the extent that it approved the renewal of the Interstate Oil Compact.

Mr. Chaffetz: I ask the Court to take judicial notice of the Act of Congress, Chapter 572, Public Resolution No. 57, Interstate Oil Compact; and I read from Article 5 of that statute, which reads as follows:

> "It is not the purpose of this compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof or create or perpetuate monopoly or promote regimentation, but it is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations."

Redirect Examination by Mr. Donovan.

The enactment of the interstate compact law had the effect of assisting to balance production with consumption by enabling the authorities to get together and can-1893 vass the whole national picture, each to see the conditions existing in the other states, and thereby each to be willing to cut production in order to bring about balance between supply and demand. Up to the time of the interstate compact, there was a great contest between the different states over the national market, and one commission would allow more production than had been recommended, and then another state would retaliate by raising the ante, until in that way we would get too much oil; but when they all got together and looked at the whole picture, the tendency was for each of them to be reasonable and make concessions.

Recross Examination by Mr. Chaffetz.

I think the provision with reference to pure scientific conservation, and not stabilization, was in the compact. I was present at the meeting when Governor Allred of Texas insisted upon that provision being put in. It came from Texas, and not from Congress.

Redirect Examination by Mr. Donovan.

I said that the effect of this law was to aid in balancing supply and demand. I think that aiding the balancing of supply and demand does materially stabilize prices.

1894 Mr. Donovan: Q. Now, if supply exceeds demand, what is the result?

Mr. Lewin: Objected to. That is just laboring this same point. He already answered.

The Court: Objection sustained. Exception allowed.

Q. Mr. Franklin, do you recall a conference in October, 1933, between the P. and C. Committee and members of the Petroleum Administrative Board in regard to a crude purchasing plan in East Texas?

A. I do.

Q. Will you tell us the discussion that took place at the meeting concerning that plan?

Mr. Lewin: Objection.

The Court: Objection sustained. Exception allowed.

(In absence of jury.)

Mr. Donovan: If allowed to testify the witness would testify as follows:

I was present at a meeting of the Planning and Coordination Committee on October 11, 1933. I

was chairman of the P. and C. Committee at that time. Mr. Norman L. Meyers and Mr. John Howard Marshall, members of the Petroleum Administrative
1895 Board, attended the meeting of that Committee. They told the Committee that there existed several million barrels of crude oil in storage on the leases of independent oil producers in the East Texas field. They said that this was a menace to the stability of the oil industry since there was the temptation to move the oil at prices below the regular posted prices of crude oil. Mr. Marshall told us that he had recently returned from East Texas. He pointed out the plight of the independent producer and the need of the independent producer. He then suggested that it would be advisable to remove this menace of crude storage from the market. He suggested to the Committee that some of the major companies purchasing crude oil in East Texas buy up this stored oil at the posted price and hold it until sometime in the future when it might be drawn upon and liquidated in an orderly manner. Mr. Marshall also stated that the major oil companies who purchased in East Texas co-ordinate their efforts to clean up the entire amount. He said that the purchases should be in individual accounts of each purchaser and that the crude oil should be put into his individual storage. Mr. C. E. Arnott, a defendant in this case, and
1896 a member of the Planning and Coordination Committee, was present at that meeting. Before the meeting was over, it is my recollection that Mr. Arnott consented to the request made at the conference that he contact some of the major oil companies purchasing in East Texas and determine if they were willing to enter into a plan with other companies to clean up this crude oil storage.

About a week later, on October 17, 1933, there was a further meeting of the Planning and Coordination Committee in Washington. At that meeting Mr. Arnott was not present. Mr. J. Howard Marshall of the P. A. B. was present. By that time it had been determined that the major oil companies were willing to undertake the burden of purchasing this crude oil by the informal buying group at the posted price and hold this oil for a reasonable length of time. However, the members of this group wanted the assurance of the Planning and Coordi-

nation Committee that before initiating this purchasing plan that this crude oil would be the first crude withdrawn from storage, if the Planning and Coordination Committee, in accordance with Article III, Section 2, permitted net withdrawals of crude from storage. All of this was discussed at the meet-
1897 ing, in the presence of Mr. Marshall of the P. A. B.

At the meeting it was decided that assurance be given to the major oil companies in the purchasing group that the crude oil purchased under this plan be the first crude oil permitted to be withdrawn from storage. At the meeting it was decided to send a telegram, which was done, to Mr. C. E. Arnott, at New York, giving him this assurance. I saw the telegram before it was sent and know it was sent.

Now, I read that telegram, which is dated October 17, 1933, addressed to C. E. Arnott, Socony-Vacuum Corporation, 26 Broadway, New York:

> "Best we can do is assure purchasers of these small lots of East Texas oil in storage that if they will purchase same at currently posted prices of principal purchases we will approve orderly liquidation or use of this or corresponding quantity of crude after March 1st, in which event those resulting withdrawals from storage will be approved. Sellers will be required, before withdrawing from their storage, to obtain the approval of regional committee and our approval in each individual case. In this way abuses can be prevented."
>
> Signed "Planning and Coordination Committee."

1898 At the meeting, Mr. Marshall, who was extremely anxious that this plan get under way, suggested that he go to New York and see Mr. Arnott in connection with this matter. At this meeting, Mr. Marshall stated in substance: that this large volume of crude oil in the hands of independent producers was legally produced crude, some of it having been held in storage a long time; that their tanks were full, and it was necessary that they have relief; that they were financially unable to hold the oil much longer, and if some orderly process was not developed by which they could be relieved, it would inevitably happen that they would be compelled to dump this oil on the market at any price it would bring. He

stated the object of the Petroleum Administrative Board, in asking us to assist in this matter, was twofold: first, to help the independent producer in the emergency with which he was faced; and second, to prevent this oil from being surreptitiously withdrawn from storage and dumped at a price much less than the regular posted price for that grade of crude oil, having the same refined into gasoline, and the gasoline in turn dumped on the refined market, with the inevitable consequence of bringing the tank
1899 car price and the retail price of gasoline still further below parity with crude than existed at that time.

I know that Mr. Arnott later undertook to get some of the major oil companies to purchase this crude oil in the hands of independent producers in East Texas. I do not know the detailed steps that he took to carry out the plan except that I understood that he asked major companies to buy crude oil in the East Texas field at the posted prices and to keep on buying until the excess storage was cleaned up. I learned this information as chairman of the Planning and Coordination Committee because I was then keeping in close touch with all of the matters on which the Committee had acted. I know that some purchases did occur in East Texas, but to what extent, I do not know.

The Court: Let the record show that the objections of the Government are sustained, to the offer of proof. Exception allowed.

1900 JOHN E. SHATFORD, a witness for the defendants, testified as follows:

Direct Examination by Mr. Dohovan.

My residence is El Dorado, Arkansas. I am 48. After leaving school I was employed by various independent refiners until 1921. From 1921 to 1935 I operated Ouachita Refining Company at El Dorado.

I was in Washington in 1934 and 1935 as a member of the Planning and Coordination Committee under the Petroleum Code of Fair Competition. From April 24, 1934 until March 25, 1935, I was alternate National Coordinator, and from March 25 until the close of the Code I was National Coordinator. The National Coordinator chiefly administered what was known as the refinery section of the Code.

My duties had to do with the administration of the refinery allocations under the Code.

The terms "independent refiner" and "non-integrated refiner" are used interchangeably in describing the small refiner. A non-integrated refiner is one who is in the refining business primarily. Sometimes he owns a little production. Frequently he owns none. Sometimes he owns some filling stations, and bulk stations or jobbing stations. Usually he owns none.

An integrated company is one which engages in each of the several phases of the oil business. It engages in
production; that is, the drilling of wells and selling
1901 of crude oil; in transporting crude oil through pipe
lines from the fields to the refineries; in the refining of that crude oil and the making of many products; and in the distribution of the products through both bulk stations and service stations to the consumer. Some integrated companies are what we call balanced companies; that is, they produce about enough oil to refine and sell. Others buy some of their crude. Others don't own enough stations to take care of all their supply and have to sell some on the outside.

A non-integrated refiner might be said to be a dependent unit; that is, he must buy his crude oil at the market, and sell his product the best way he can. Whereas, an integrated refiner is somewhat self-sufficient; he has his own raw material and sells his own product.

In relation to the retail market, an integrated refiner is not located in approximately the same place as a non-integrated refiner. There is quite a fundamental difference in the location of the two.

When the oil business began to grow out of infancy into an industry of some size, somewhere from 1910 to 1915, the automobile began to become a factor. At that time, just before the growth, the few large refineries were located
at the market, but there were not very many of them.
1902 Ohio and Pennsylvania were the two states that
formed the cradle of this industry, but there weren't very many refineries in those days. Then came the automobile, and the extended and urgent search for crude oil. Then came these southwestern fields, in Oklahoma and Kansas principally at that time; Texas had not yet become a factor.

About that time, the automobile caused a greater demand for gasoline than the refiners could supply. The larger companies at that time didn't have refining capacity sufficient for the demand of gasoline. Consequently, plants began to be built in this southwestern field where this new production was occurring.

Under those conditions, these small refineries located in Kansas and Oklahoma had a very urgent demand for their gasoline. They could ship it clear up here into what is now known as the Mid-Western section. They were the largest marketing factors in that territory. They could also ship their gasoline over into Ohio and into Pennsylvania, even into southern New York.

The major companies began to catch up in their refining facilities with the demand for gasoline in about 1920. They had enlarged their refineries at the market. They began to build plants on the Gulf Coast because crude production had occurred in Texas in very large quantities.
1903 They had pipe lines running across to the Atlantic seaboard; and they used them to take oil from Kansas, Oklahoma and Texas and pipe it across the country and refine it on the Atlantic seaboard. They would export their product to Europe and supply all the concentrated market, in the East. But they found that that was pretty expensive. They found that they could lay their pipe lines to the Gulf coast and then take tankers and come around Florida to the Atlantic seaboard and supply those refineries very much cheaper than they could do it by pipe line. That resulted in a huge saving in the cost of transportation. It was a very substantial saving in cents per barrel and a somewhat substantial saving in at least fractions of a cent per gallon and enabled the refineries along the Atlantic seaboard to grow very rapidly.

They used this saving in transportation, not to put in their pockets in the form of profits, but to expand their markets. Because they were able to refine cheaply as a result of cheaper transportation costs, they were able to compete with gasoline moving to the East in tank cars, and to compete farther west from the Atlantic seaboard.

And so this Atlantic seaboard market began to cross the Appalachian Mountains. It encroached in western Pennsylvania, West Virginia and Ohio and drove the
1904 smaller refiner practically out of northern Ohio. So that as a result of that single factor, practically all of the market in these states was lost to the independent refiner.

The independent refiner was shipping his product from his field refineries in Kansas, Oklahoma and Texas, up into the Chicago market in tank cars. The same saving in transportation which resulted through this movement to the East, of course, always existed in the transportation of crude oil from Oklahoma to the neighborhood of Chicago. That is, you could take crude oil by pipe line from the southwestern fields into Chicago, and refine it there, and then distribute the products from there by tank cars on short hauls, very much cheaper than you could take the finished products from a refinery in a southwestern field and send it up to the Chicago area by railroad.

As the gasoline demand increased and these markets became more concentrated, the refineries at the market were built larger and larger, and more and more of what we call back hauling took place. That is, instead of having a market that was just a narrow circle around Chicago, for example, this market began to expand. As it expanded, of course, it drove the independent refiners back against their own refineries.

A little bit later came the Kentucky fields. The Kentucky refineries located there began to ship up into
1905 Ohio, western Indiana, Kentucky, and some into
West Virginia. So that market was finally lost to the Mid-Continent refiner, who could no longer ship into that territory advantageously.

Then came oil in Michigan and the Michigan refineries took Michigan away from the Mid-Continent refiners.

This went on from year to year, so that the Mid-Continent refiner, who used to command the Mid-Western market, and almost the Eastern markets, was finally driven back into a small area in Iowa, Missouri, Southern Illinois, Kansas, Nebraska, North and South Dakota. Even some of that territory isn't as advantageous as it was a few years ago.

Then we had a new development in the industry: the gasoline pipe line. All of these pipe lines I have talked about were crude oil pipe lines, carrying raw material to where it could be refined cheaper at the market. But a group of companies got together down in the southwest and built pipe lines into Illinois, Indiana, Missouri, and Minnesota that carried finished gasoline.

I think 7 companies, each of which would be regarded as a major, own the Great Lakes Pipe Line. The Phillips Petroleum Company has a pipe line. I think altogether those companies transport about 50,000 to 60,000 barrels of gasoline a day. It is a very substantial factor from the standpoint of market encroachment.

1906 These pipe lines are either owned or controlled by the major companies and are a part of the integrated organization of these companies. My point has been to describe the gradual shrinkage that has taken place in the market of the small refiner which fundamentally, more than any of this other business, has caused his situation to become a very difficult one from the standpoint of getting rid of his product.

The small or non-integrated refiner has three principal market outlets. The first one is very small. Some small refiners have gone into the distribution of gasoline directly from their plants by trucks. In the aggregate that is not an important factor. The second one is their direct market, or what might be said to be their own market. It is principally the shipment of gasoline in tank cars to independent jobbers. The third market of the independent refiner is the sale of gasoline in tank cars to major companies.

During the period that I described in which the major companies had not caught up with the demand for gasoline that grew from the extended use of automobiles, the major companies had to buy gasoline. So they bought from the small refiners, who were located in the Southwestern states. But a change took place in that situation
as a result of the technical advancement of the refin-
1907 ing industry. The major companies began to in-
crease their refining facilities, so they soon reached a point at which they could manufacture all of the gasoline that they needed for their own customers.

In addition to that, they had enough gasoline so that they had some to spare. The consequence was that they were compelled by competitive circumstances to cease buying from the small refiner. To make a bad matter worse, they not only ceased to buy from him, but, because they had more product than they could conveniently dispose of, they began to compete with the small refiner for the small refiner's own customers. In effect, as a generality, it might be said that that competition was the result primarily of the development of the facilities of an industry. The consequence was that the small refiner not only wasn't able to sell major companies that he used to, but he wasn't able in all cases to hold his own customers.

One of the competitive conditions that resulted from this surplus supply of gasoline in the hands of the major companies was a new form of contract which, as I remember it, came along about 1924 or 1925. If you were an oil jobber, the refining company would come to you and say, "Now, if you will buy my gasoline for one, two or three years, I will give you a contract that will provide a fixed margin for you, on which you can do business, so

much per gallon. If the market goes up, your margin is fixed. If the market goes down, your margin 1908
is still the same. So you can go ahead and do business, but use my product and no one's else."

This contract, of course, was one that no company wanted to give unless it had to give it. Rather than give these contracts too willingly, competitive conditions compelled these major companies to start buying up or buying out independent jobbers who had good distribution through their stations. So the majors began to buy up this market that the small refiners had and their competitors had.

The result was that they went as far as they could go with that sort of thing. But some jobbers didn't want to sell out. They insisted upon these contracts. They insisted that the small refiner who was selling them meet competition, and, of course, it was a very hazardous thing for the small refiner to guarantee for a long term of years that he would give his customer protection under all circumstances.

I have described the condition at the time the Code went into effect. That condition was quite prevalent at the time that the East Texas field came in. The discovery of the East Texas field, of course, created a very severe surplus of oil. The small refiner found himself in rather a serious predicament, because there was a market price for 1909 crude oil which was paid by the major purchasers of oil. This was called the posted market price. The small refiner, adjacent to any oil field, had to pay that price; he had no choice, except, generally speaking, those in the East Texas field were able to buy oil very much below the posted price. That was called excess oil or hot oil, oil that was produced in excess of allowables. The condition that existed there, that permitted those different prices for crude oil in that field, was the unsuccessful attempt to enforce proration laws. There may be an exception here and there, but that situation did not apply to refiners outside of the East Texas field.

Refiners in Louisiana and Arkansas, for example, weren't able to get very much hot oil. Nearly all of us got some of it, and we all tried to get all we could. But, generally speaking, we couldn't get very much, because of the fact that the rules and regulations passed by the Railroad Commission of Texas were being enforced and policed in such a way that a man who attempted to get that oil across state lines was harassed and threatened with prosecution. The average refiner didn't want to undertake that risk.

At the time of the adoption of the Code, or say, in 1933, all the conditions affecting the small refiner that I have described existed. We who were buying so-called legal crude oil had to sell our gasoline in competition
1910 with those who were getting their oil at a very much lower price. The consequence was that we had to sell gasoline at far below the cost to manufacture. In fact, that condition had gone on to such an extent that we were all about broke.

The inventories of gasoline, i. e., gasoline that was held in storage by the larger companies, were entirely too high; so high that the major companies themselves were dumping gasoline on the market. In fact, I think about March 31, 1933, inventories were regarded to be about 10,000,000 barrels higher than they should be, which is a lot of gasoline if it is in excess of what you need. The major companies were trying to get rid of it; the small companies were trying to dump their gasoline; everybody was trying to get on the market at once. The cost of raw material was high, and the return was low.

At the time the Code was adopted there was inserted in the Code a very weak and ineffective sort of allocating system. It provided for allocations by districts not for allocations to individual refineries. The method of doing it was changed in April, 1934.

Mr. Chaffetz: And, if your Honor asks the question, I think the witness will answer that the one thing that was in effect in 1935, the only thing that is pertinent here, was something started in April, 1934.

1911 The Court: I gathered that from what he has said now.

Mr. Chaffetz: Yes.

The Court: Q. Is that true?

A. What was that, sir?

Q. The allocation program in effect in 1935 was the one that was started in April, 1934.

A. Yes, sir, that is exactly correct.

By Mr. Donovan

Crude oil remained at the same price, $1.00 a barrel from September, 1933 to January, 1936.

In January and February, 1934, the posted price of crude oil paid by the principal marketing companies was $1.00 per barrel. All refiners were not paying $1.00 a barrel for crude oil, because they could buy cheaper oil produced in excess of the state allowables, hot oil. The producers in Kansas and Oklahoma never admitted it was hot oil. They produced some over-allowables, but they just called it "excess production".

This resulted in creating two prices for crude oil, whereas there was only one price for gasoline. There was a $1.00 price for crude, and then, say, a 25¢ price for crude. The $1.00 crude cost 2½¢ a gallon; the 25¢ crude oil costs ⅝¢ a gallon. The man who paid ⅝¢ a gallon for his crude oil could sell gasoline at 2¢ or 2½¢, whereas
1912 the man who paid 2½¢ for crude oil at the well and then had to transport it and refine it, could not very well sell it at that price. The refiners who were using this hot oil were located principally in East Texas.

Section 9 (c) of the National Recovery Act had stopped all of us outside of East Texas who were getting this hot oil. My own plant was getting some of it before Section 9 (c), but we had to stop then, and we did stop. From that point on we were up against it. Refiners outside of Texas couldn't get hot oil because it involved the interstate transportation of oil, and the Government had put a stop to that very successfully. The manufacture of gasoline from illegal oil, in addition to making it possible to manufacture cheap gasoline, created a large, excessive product, which we called distress gasoline, which could not find a market, and the consequence was that inventories of gasoline began to build up.

The major companies found that they could not sell gasoline to some of these jobber customers, that used to belong to the independent refiners years ago, at prices that would compete with the illegal gasoline that was getting into the market. The consequence was that their supplies at their refineries started to build up and that created excess inventories.

During the period of the Code, 1934 and 1935,
1913 there were estimated allowables of crude oil which were made by the Petroleum Administrative Board, assisted by the Bureau of Mines. Each month they would estimate the consumptive demand of gasoline that was necessary to meet the requirements, both for domestic demand and for export and for building up gasoline stocks at one season of the year, or for discharging stocks at another season of the year. When they had determined the quantity of gasoline that was necessary, they would figure from that gasoline figure the quantity of crude oil that was needed to supply that gasoline. That crude oil

figure was the quantity that was to be produced by the industry for the effective period. That allowable was then broken up into states, and recommended to the states.

Under the Code those states were not compelled to accept those recommendations, but they did agree that those recommendations would be what they called prima facie evidence of need. In other words, the states would say, "Those estimates are all right," and they would go ahead and approximately conform to them. The basis for fixing state allowables was the recommendation of the Bureau of Mines.

Producing more crude oil than the state allowable created excess crude oil for which there was no market, and resulted in the manufacture of gasoline that was not needed.

There also were regulations under the Code which
1914 prohibited the withdrawal of crude oil from storage.
If you had some oil wells, and you put crude oil in storage, you couldn't take it out without permission. So, if you had a refinery, you would just convert your crude oil into gasoline, and put the gasoline instead of the crude oil into tanks. Consequently, in order to get rid of that excessive crude oil you would make it into gasoline and pile it up.

Refining more gasoline than is needed to meet the current demand creates an excess, distress gasoline and low prices. From the standpoint of a small refiner, distress gasoline is a product which he has on his hands for which he has no immediate sale except at a price below the current market.

The small refiner cannot hold his gasoline until it is possible for him to get a better price. He hasn't any or very much storage. If he built storage, he would not have the money to meet his crude pay-day, that is, the day when he has to pay the producers for their oil. So, generally speaking, he has to sell his stuff as he makes it.

Distress gasoline also can come from excessive inventories. A little weakness hits the market and the major companies, to get rid of the gasoline, dump it just as the
small refiner does. Distress gasoline depresses or
1915 reduces the general tank car price to the refiners.
It is not necessary to have a large quantity of distress gasoline on the market to create this effect. In some circumstances a very small quantity of gasoline will do the trick.

Assume that the market is just a little shaky, say in the fall of the year when everybody is looking for a drop in the consumptive demand and the movement slows up a little, and a refiner has 10 or 15 cars of gasoline on his track that he hasn't sold. He usually wires a broker or a jobber and offers him that 10 cars of gasoline. He probably wires 10 brokers. Then each of those brokers starts calling each other up trying to sell that same 10 cars to each other and starts calling up the jobbers. The first thing you know, it sounds like 100 cars of gasoline, and the market will be hurt.

My illustration applies to the spot market. It is the market on which the small refiner usually trades, or on which he usually sells his current manufacture of gasoline.

When the market is pretty well saturated with gasoline, it won't absorb the surplus offers, and it is under those circumstances that distress gasoline gives the most trouble. The market was decidedly saturated during the first 3 months of 1934.

By the Court

1916 I think the definition of spot market is one that ought to be generalized about. I think people may differ as to a proper definition of "spot market." I don't know that there is any firm, clear definition of the phrase "spot market." A spot market might easily be a spot market to one refiner, and wouldn't be to another. I don't think there is any number of days that you can set as limiting the spot market, unless you get up to the point at which the whole trade doesn't take place. That is, if you make a trade where delivery and acceptance depend upon circumstances that are not included in the original transaction, then I think certainly you are getting away from spot market sales.

In my own experience, I have always operated very small refineries. When we made a spot sale we did not consider very much the number of days that were involved just so they didn't go beyond the time to which we limited our sales. As a matter of policy, we couldn't go very far. In our definition of spot sales, I think if we made a sale on a thirty-day basis, it would be a spot sale in our circumstances.

In the circumstances of some other refiner, who had a large contract business and who did open market trading, which is trading with customers of long standing, where they just ship them goods and put a price on the invoice, I think that would be properly called open
1917 market trading. With them, I think spot sales were infrequently made and were for very, very short

shipments, usually gasoline loaded on track. That explanation is very indefinite and very unsatisfactory. It is hard for me to adopt a trade definition of a sale on the spot market. I don't think there is one. If you show me an order, I will tell you whether I think it is a spot sale or not. That is the best way I can get at it.

Q. Would you say, if I purchased by written contract 1,000 cars of gasoline from you to be shipped, say, in thirty days,—written contract, would that be a spot sale?

A. I don't believe that any sale of 1,000 cars could properly be called a spot sale, because any refiner—

Q. Well, then, what is a spot sale? We have heard so much of it. There must be some definite meaning in the trade.

A. Well, I have heard so much of it, your Honor, that that is my trouble. I thought I knew what a spot sale was.

A spot sale, as far as I am concerned, and so far as my business is concerned, my definition is anything up to 30 days, usually tending toward 10 to 15 days; but in my own experience, going beyond that.

1918 The small refiner usually calls his customer—they don't call the refiner—and asks him if he wants to buy 5 cars or 10 cars of gasoline. Or he wires a broker: "We offer you 10 cars of gasoline for immediate shipment, subject to prior sale," so much per gallon, f. o. b. refinery. Or: "We offer you 10 cars of gasoline, shipment over the next 10 or 15 days," at so much per gallon, subject to prior sale. I don't represent this as a general rule in the trade, but in our own experience, because we made no contracts, if we took a jobber's business for a month, 5, 15 or 20 cars, I would consider that a spot sale, and have so considered it in all my experience. Such sales would be at a flat price.

By Mr. Donovan

By "saturated" market I mean that the market has taken up all the gasoline that it wants, and is beginning to pick and choose on the basis, not of need, but on the basis of price. Inventory position has a very strong effect in some circumstances. In the case of a saturated market it has a very strong effect, because in that type of market the holders of those inventories do not want to be required to carry perhaps large quantities of gasoline over such a market as that, and they begin to offer it in competition with currently manufactured gasoline.

Gasoline inventories were excessive as of March
1919 31, 1934. Crude oil had been produced in excess of
allowables, and had been manufactured into gasoline
and piled up, and there was a little too much gearing up
of refining any way in the spring of 1934.

Q. Now, will you describe the effect upon the small refiner of this market condition which you have described as existing in the early months of 1934?

Mr. Chaffetz: I think we ought to object to that, your Honor. We are still in the spring of 1934. We haven't come to the period that is material to this case.

Mr. Lewin: This question calls for the effect upon the independent refiners, not the cause of the price rise, and not a factor or a feature. He is going to show the effect on these independent refiners way back in 1934. That is what this question is.

The Court: Objection sustained. Exception allowed.

The proposal for refinery control was made about February 1, 1934.

Mr. Donovan: Q. Well at that time was there any provision in the Code designed to protect the small refiner?

Mr. Chaffetz: That is objected to, your Honor.

1920 Mr. Lewin: That is a question of law.

The Court: The Code will speak for itself. Objection sustained. Exception allowed.

Mr. Donovan: I have offered the Code in evidence, and have not been permitted to do it.

Mr. Lewin: It is not relevant.

Mr. Chaffetz: It is irrelevant. Whether there was a provision in the Code to help the refiner is utterly irrelevant in this case.

The Court: You were talking about the allocations then, and the system of allocations was of no value, but in 1934 there was a system.

Mr. Donovan: That is what we are trying to deal with now.

Mr. Lewin: No, the question is whether there was some other provision of the Code in February, 1934.

The Court: We are talking about in April, 1934.

A. Yes, there was an allocation of districts prior to 1934, and after that allocations to individual refiners.

Mr. Donovan: Now, I ask him when the suggestion was made that was incorporated in the Code in April, 1934.

1921 Mr. Chaffetz: You have already asked that, and he answered it, and he said it was in February, 1934.

The Court: Objection sustained. Exception allowed.

I was in Washington in April, 1934 in regard to refinery allocations. I was there as representative of a group and we were attempting to get an amendment to the Code which would provide for a more effective system of refinery control.

Q. In order to do that, did you see the Petroleum Administrative Board, or any members of that Board?

Mr. Lewin: We object to this. It is going back to the formation of that law. I think we ought to start with the amendment itself in April, 1934, as a starting place. This is an attempt to go back to negotiations between this gentleman and some of his associates with regard to forming that amendment. It certainly cannot be competent.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Now, will you tell us the circumstances of the preparation of that amendment to which you refer?

1922 Mr. Lewin: That is the same question, your Honor, and we object to it on the same grounds.

The Court: Objection sustained. Exception allowed.

I proposed an amendment to the Code for refinery control.

Mr. Donovan: Q. What was the nature of your proposal?

Mr. Lewin: We object to that. A proposal would not have anything to do with it. It is the final law.

The Court: No, the results. Objection sustained. Exception allowed.

I accomplished the purpose for which I went to Washington in January, 1934. My purpose was to have a better allocation program worked out.

Mr. Donovan: I ask to have marked for identification the so-called refinery amendment referred to by the witness, certified by the Department of the Interior.

(Document referred to was marked EXHIBIT 835 for identification and received in evidence and read to the jury.)

By Mr. Donovan

Under the refinery amendment the monthly production allowable for the country as a whole was determined 1923 by the Petroleum Administrative Board, with the assistance of the Bureau of Mines. Each month they would calculate the estimated quantity of gasoline that would be needed to meet consumptive demand. They would calculate this by taking the number of motor vehicles that would be in use and multiplying that by the number of gallons of gasoline which experience showed each car would consume within that period. They also would take into account the trend of business conditions. Then they would add to that quantity whatever gasoline was necessary to put into tanks, above and beyond what would be used within that period, that would be used in some later season of higher demand; or, in other seasons of the year, they would subtract from that quantity that would be consumed the quantity that would come out of tanks to help supply the demand. There were other factors taken into account, of course, but in the main those were the ones used.

The country was divided into what finally became 11 districts. Each district was given or awarded its proportion of that gasoline manufactured. That award, or that quota, was fixed each month at a meeting between the National Coordinator and each of the district representatives. These district representatives represented the refiners of each territory, and also were supposed to represent in an 1924 impartial sense the whole national situation. At these meetings, they divided up the national allowable based upon certain rules and regulations, and then they took their quotas home.

Each of these district representatives would go home and call together the representatives of all of the refineries within the district. Based upon certain considerations that were used, this district quantity of gasoline was divided up among each of the individual refiners. That was called a manufacturing quota, and represented the quantity of gasoline that each refiner was allowed to make during that period.

There are a good many of these rules and regulations. In fixing the quantity of gasoline that each refiner got, consideration was given to the quantity of gasoline which that refiner had been accustomed to shipping, considering the season of the year. Also consideration was given to the quantity of gasoline that he needed to store, above what he would ship; or there was deducted from the quantity given him the quantity that he would need to take out of storage to supplement his current manufacture, in those parts of the year when demand was greater than current manufacture.

If a refiner was dissatisfied with his allocation he could appeal to the Board of Review for an increased allo-
1925 cation. The Board of Review consisted of 5 men, who were chosen upon the basis of their experience and the type of operation which they represented in the industry. They were members of the industry. They met each month in Washington. Any refiner dissatisfied with his quota could appeal to that Board in person or by mail.

After the decision of the Board of Review, a refiner could go to the Planning and Coordination Committee, which was an industry body, administrative, rather, more of an advisory body. It had some administrative functions, but not many. From there the refiner could appeal to the Administrator, Harold L. Ickes.

The Code provided for the administration of this article by a National Coordinator. I was appointed Alternate Coordinator on May 1, 1934. I became National Coordinator on March 25, 1935 and continued in that position to the end of the Code.

My duties in that office, in connection with the operation of the Refinery Article of the Code chiefly were to try to avoid, in an administrative way, inequities, to adjust allocations where rules and regulations manifestly had been overlooked or interpreted in the wrong way; in a general way, to administer the operation of the district organizations to the extent only of seeing that they abided by the rules and regulations.

1926 I advised district allocators concerning complaints which were made to such allocators by major companies who felt that their allocations were too small. If we felt the circumstances permitted it, I urged the district allocators to influence the companies to supplement their supply of gasoline by going on the market and buying. Some district allocators followed our advice and some didn't.

A result of that policy, and of what I told the district allocators, in dealing with these major companies who asked for increased allocation, was to cause, in many cases, the major companies in the various districts to buy gasoline. In some cases they made such purchases from semi-integrated companies; in a few cases, from integrated companies. I think in the main, they made those purchases from small, non-integrated refiners.

Q. Was the policy that you pursued consistent with the purpose and policy which brought into being this amendment?

Mr. Crawford: We object to that as irrelevant, immaterial, a conclusion of the witness, argumentative, and everything else is the matter with it, too.

The Court: Objection sustained. Exception allowed.

Q. Will you state to the Court and jury the purpose of the Planning and Coordination Committee 1927 and of the Secretary of the Interior in drawing up this amendment?

Mr. Chaffetz: That is objected to, your Honor; the purposes recited in the amendment were read to the jury.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, may I have the opportunity of presenting a—

The Court: You may—offer of proof?

Mr. Donovan: Have you ruled on the other question that I have asked about?

The Court: Yes, I have, and I won't disturb that ruling.

Independents or non-integrated refiners do not have any substantial storage capacity. They do not have any appreciable refinery stocks of gasoline because they haven't even the storage in which to put it nor the money with which to pay for it as a general rule. There are exceptions.

There was an inventory sub-committee of the Planning and Coordination Committee. I was a member of that subcommittee. It made recommendations respecting the quantity of gasoline that should be held in storage from time to time. Over any period about 25 major companies hold most of the gasoline inventories in the country. As 1928 far as I know there never has been a time when the so-called small refiner had any considerable quantity of storage gasoline. The 25 majors would include every defendant in this case who is a major company.

The gasoline inventory levels as of January 1, 1935 were about 53,900,000 barrels, or approximately 54,000,000 barrels. That was very low. On January 1, 1934, the inventories were slightly higher than that. The gasoline stocks at that time, January 1, 1934, were excessive. The stocks on January 1, 1935 were quite low, and it was that situation that I wanted to have, as National Coordinator, because of the fact that it would create a firm situation in the market. As a result of such a firm situation, we would have a higher price for gasoline. The effect of low inventories upon major company purchases was to increase the purchases.

As National Coordinator, I did not feel that we could keep the major companies at such an inventory position as they were in on January 1, 1935. I made an attempt to devise a system to maintain this advantage.

Mr. Donovan: Q. What did you do?

Mr. Lewin: Objected to.

The Court: Overruled. You may answer.

1929 A. We had a situation during that period, January and February, 1935, that was disappointing.

Mr. Lewin: I object to this as not responsive to the question.

The Court: The question is, what did you do. What did you do?

Mr. Chaffetz: May that answer be stricken out, your Honor?

The Court: It may be stricken out. Exception allowed.

Q. Did you see the Administrator about it, about the situation?

Mr. Lewin: That is objected to.

The Court: You may answer that.

A. I saw members of the Petroleum Administrative Board.

Mr. Lewin: I move that be stricken out as not responsive.

The Witness: I figured that he was the Administrator, your Honor.

Mr. Lewin: The Administrative Board was not the Administrator.

The Court: That isn't my understanding. I understand Mr. Ickes was the Administrator.

The Witness: They were his representatives.

1930 The Court: Q. The question was, did you see Mr. Ickes?

A. No, sir.

Mr. Donovan: Q. Did you see any members of the Petroleum Administrative Board?

Mr. Lewin: I object to that as totally irrelevant and immaterial. They had no power at all. The administrator was the only man that had power under that Act. The Petroleum Administrative Board simply assisted him in an administrative way; and any conversations this gentleman had with them could have no effect.

Mr. Donovan: I will ask this witness what the duties of the Petroleum Administrative Board were.

Mr. Lewin: I object to that, as a matter of law. This gentleman is not qualified to testify as to questions of law.

Mr. Donovan: May it please the Court, I offer the Code of Fair Competition in order simply to avoid further dispute as to the duties of the Petroleum Administrative Board, and I ask—

Mr. Lewin: I object to that.

Mr. Donovan: Just a moment. That is Exhibit 710 for identification.

1931 Mr. Lewin: I object to that as an attempt to do indirectly what can't be done directly. That is all it could possibly mean. That has been ruled on a number of times.

Mr. Donovan: I am now offering the Code, your Honor, Exhibit 710 for identification.

Mr. Lewin: We object to it.

The Court: Objection sustained. Exception allowed. The witness may testify as to what the duties of that Board were—if you remember.

The duties of that board were to advise and assist the Administrator, and they had certain administrative functions. I went to the Petroleum Administrative Board in ~~January, 1935~~.

The Court: Q. What did you do yourself after January 1, 1935, about increasing the purchase of gasoline in that locality?

A. In several instances I discussed with representatives of the major companies their individual inventory situations, in relation to their requirements for gasoline. They wanted to get more—larger quotas—and in many cases we urged them to buy gasoline. That bears directly on your question. Indirectly, we did other things to accomplish the same purpose.

1932 The Court: You have answered the question. That answers it.

The Administrator wrote a letter to Mr. J. D. Collett, Chairman of the Planning and Coordination Committee, relating to this subject, on January 2, 1935. That is Mr. Ickes' signature on this letter headed "Administrator for the Petroleum Industry; Interior Department Building, Washington," dated January 2, 1935, addressed to Mr. J. D. Collett, Chairman, Planning and Coordination Committee, Investment Building, Washington, D. C.

(Letter referred to received in evidence as EXHIBIT 836.)

The stocks were lower on January 1, 1935 than they were on January 1, 1934.

The tendency was to increase inventories in the winter, up until March 31st; and at every point the National Coordinator's Office wanted to have them a little on the low side instead of a little on the high side, because we knew it was easier to step up manufacturing a little bit than it was to dispose of distress gasoline. So we tried to keep them on the low side.

Fundamentally, of course, the purpose of stocks of gasoline was to have enough for folks to use. The incidental purpose and the purpose from the standpoint of the 1933 administration of the refinery section of the Code, was not only to provide enough gasoline to supply the demand, but to create a market condition which would be firm. We thought that was the underlying purpose of the whole works.

(Mr. Donovan read Exhibit 836 to the jury.)

In Exhibit 836 Mr. Ickes mentioned an objective figure of 65,000,000 barrels for March 31, 1935. During the first 2 months of 1935, this objective inventory was changed from time to time. I don't remember the dates. It was changed once to 65,100,000 barrels; and then it was changed to 65,700,000 barrels; and then it was finally advanced to 66,280,000 barrels. That was the final objective for March 31, 1935.

We had an objective inventory for each company. The total of all the companies had to come within the objective figure that I have mentioned of 66,280,000 barrels.

We arrived at that figure of 66,280,000 barrels in this way: There were about 25 large companies that held practically all of this gasoline. We just called them all in, and asked them to tell us how much gasoline they thought they should have. They told us. Then we held hearings of the Inventory Sub-Committee, of which I was a member. We took each company at a time and went over its

1934 figures. We knew that those companies knew better than we did what they ought to have. But we had on that committee men who were qualified to criticize the figures they submitted, men who carried on operations just the same as those men did, practical men. We analyzed all of those requests that they made for the purpose of deciding whether or not they were a proper basis. These 25 companies asked for more than they got. My recollection is that adding up all that each company asked for and putting it all in one basket, it amounted to 71,000,000 plus barrels.

I know Mr. E. B. Swanson. He was a member of the Petroleum Administrative Board in the Department of the Interior in 1935. He is now a member of the Petroleum Conservation Board of the Department of the Interior.

Q. And in the latter part of February 1935, did you have a talk with Mr. Swanson relative to the condition of the independent refiner?

Mr. Chaffetz: That is objected to, as not material.

Mr. Lewin: It seemed to me that, if I understood your Honor's ruling, your Honor's overall ruling correctly, that you were going to permit the defendants by this witness to give the jury some factors
1935 other than major company buying activities that might account for that rise in price and the stabilization through 1935 and 1936. One of those factors you were going to permit the jury to hear about were these allocations, cutting down on the amount of supply.

Now this question, although asked under the guise of that objective, is now going into a conversation which can't have the force of law, or the force of reason, or any other force—between a member of the Petroleum Administrative Board, which was an administrative agency in the Department of the Interior. He is not going to talk about any conversation with the Board, he is not going to talk about a conversation with the Administrator, but with one member. What about? Not about these allocations, which might, under their theory, tend to explain to some extent that sharp rise in prices and that maintenance, but about the plight of some independent refiners. Now, I say, that obviously, that lies totally outside of your Honor's very generous ruling, we think, to the defendants, to go into that kind of subject at all.

Mr. Donovan: And may I, before your Honor rules, may I ask one other question?

1936 The Court: Yes.

Mr. Donovan: Q. Did your conversation with Mr. Swanson relate to refinery allocations?

A. It related to inventories and refinery allocations.

The Court: Q. What authority or power did Mr. Swanson have that you didn't have with reference to these allocations?

A. Your Honor, the Petroleum Administrative Board was the Board which fixed the figure which made up the total gasoline we could manufacture; and if I may, I will state the purpose of the visit—

The Court: No. Was he on that—I am asking you, what authority or what power he had that you didn't have, with reference to making these allocations?

A. He had it all, and we had none; that is this national figure, the national figure—

Q. I am not talking about Mr. Ickes; I am talking about Mr. Swanson, one of his employees.

A. I say, the national gasoline manufacturing figure was made by the Board of which Mr. Swanson was a member.

Q. Yes, but he had no more authority than you had, did he? You were both members of the same

1937 Board?

A. Oh, no, your Honor. He was a member of Mr. Ickes' Board, the Petroleum Administrative Board; and I was a member of the Planning and Coordination Committee.

Mr. Chaffetz: Q. Was he chairman of the Board?

A. Mr. Chaffetz, the single word answer to that is no. But may I add that he was the member of the Board directly charged, by reason of his particular knowledge, with the initial review of refinery matters.

Mr. Lewin: Q. Were his decisions final?

A. They were not.

Mr. Lewin: All right. He was nothing, nothing in the world but an employee in the Government department, like I am an employee in the Department of Justice,—just in such a capacity, having no more power to administer law and to hand out law and to make law, he had no more power to do that than

I have, and I have absolutely none. Now, it certainly can't have any bearing.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: On that, your Honor, I should like to submit an offer of proof.

1938 The Court: Yes, you may.

(In the absence of the jury.)

Mr. Donovan: May it be understood that the same ruling would apply that your Honor made the other day, as to these offers of proof, as if made in question and answer form; and as to each of the several parts, as well as the whole?

The Court: Yes, the record may so show.

Mr. Donovan: The first offer of proof, your Honor, is in relation to the conversation had by the witness Shatford with Mr. E. B. Swanson of the Petroleum Administrative Board, on February 28 or March 1, 1935.

"If John E. Shatford were permitted to testify, he would testify as follows:

"In February, 1935, the office of the National Coordinator made an investigation of the effect of the Code on small refiners. It was found that 20% of the refiners operating at the time the Code was adopted had gone out of business by January 1, 1935. This information was turned over to a representative of Platt's Oilgram, who published an article on February 27th concerning such facts.

"On February 28, 1935, E. B. Swanson, a member of the Petroleum Administrative 1939 Board knowing that the information for this article must have emanated from the National Coordinator's office, went to the office of the National Coordinator and discussed the situation of the small refiner with Mr. Shatford. Mr. Swanson took issue with Mr. Shatford on the number of refineries that had shut down due to the operation of the Code, but stated that he knew the situation was bad and something must be done quickly to help the small refineries. During this conversation, Mr. Shatford and Mr. Swanson discussed the latest American Petroleum Institute figures on inventories. The figures for the week ending February 23, 1935 were available at that time. The available weekly inventory figures for February disclosed that inventories were rising more rapidly than had been estimated. Shatford and Swanson recognized the fatal effect upon the market of this situation. In their discussion they stated that instead of eliminating a buyers market, this accumulation of inventories would accentuate the unfortunate plight of the small refiner. They also stated that the situation could be corrected by bringing the inventory level down to the objective for March 31, 1935.

"It was decided by Mr. Shatford and Mr. 1940 Swanson that something had to be done, and knowing that any action would have to be based on accurate information, Mr. Shatford, after informing Mr. Swanson, sent a request on March 1st to 25 or 30 major companies asking for a revised estimate of each company's inventory position as of the end of February, 1935."

Mr. Donovan: Now, the next is in relation to conversations with E. B. Swanson and Charles Fahy, both of the P. A. B., and J. D. Collett—

The Court: Before you get to that: Everything except the fact that he had the conversation is in the record now.

Mr. Donovan: Your Honor, the conversation, we claim, has a very important bearing on this whole proceeding, as showing the relation between the National Coordinator and the Petroleum Administrative Board and the recognition of this situation by the Petroleum Administrative Board.

Mr. Chaffetz: If there was an issue of the legality of the allocations, and the question was whether that was being done with authority, then that kind of testimony conceivably could be pertinent, but we are not dealing with what the relations were between the Interior Department and the National Coordinator with respect to allocations. The only 1941 thing that is pertinent in this case is what were the effects of allocation upon price during this period; and I am sure that has been covered just as fully as it possibly could be.

The Court: The objection to that offer of proof will be sustained. Exception allowed.

Mr. Donovan: In these conversations with Mr. E. B. Swanson and Charles Fahy, both of the Petroleum Administrative Board, and J. D. Collett, Chairman of the P and C Committee, on March 7 and 8, 1935:

"If John E. Shatford were permitted to testify, he would testify as follows:

"On March 7th Mr. Shatford again saw Mr. Swanson and solicited his further advice and help. They discussed the advisability of requesting the major companies to reduce the March manufacture of gasoline so that the majors would be forced to buy part of their requirements. Mr. Swanson told Mr. Shatford that he thought the best basis to adopt for requesting the curtailment would be to ask each major to curtail its March production by the amount by which each had underestimated its inventory position as of February 28th. Mr. Swanson stated that, if requests were made for 1942 voluntary curtailment, Mr. Shatford should have the approval of the Administrator. On March 8, 1935, Mr. Shatford saw Mr. Collett and discussed the plan for making the request for voluntary curtailment.

"On the same day, March 8, 1935, Mr. Shatford conferred with Mr. Swanson again after preparing a draft of the wire which he proposed to send out. Mr. Swanson read the draft, but stated that Mr. Fahy, Chairman of the Petroleum Administrative Board, was the person who should handle the approval of the wire.

"Following the conversation with Mr. Swanson on March 8th, Mr. Shatford saw Mr. Fahy. Mr. Fahy stated that he approved of the plan, but that it would be necessary for him to get the Administrator's approval and to do that he would have to see the Administrator personally. Mr. Fahy was afraid it would take some time for him to be able to see the Administrator, but later on the same day, March 8, 1935. Mr. Fahy talked with Mr. Shatford and told him that the telegram was satisfactory and could go out."

Mr. Donovan: Now, your Honor, I am directing this to the point I tried to make, as I made proffer of this testimony during the course of this trial; and it was to show the manner in which the witness, 1943 the National Coordinator, cooperated with the Petroleum Administrative Board, how that Board cooperated with him in the accomplishment of the purposes of the refinery amendment.

I want to show the entirely informal way in which all of these things were done, and the way in which Mr. Shatford dealt with Mr. Ickes.

Mr. Chaffetz: Let's deal with it once and for all. It is the question of informal as against formal approval.

Mr. Donovan: Now, if it please the Court, I was just thinking as Mr. Chaffetz was making his argument, that every time we make an offer of proof directed to a specific thing here, where Mr. Chaffetz thinks it may hurt the contention of the Government, we are led off into a long discussion of what is not presently before your Honor now.

But on that, let me say finally what I have said many times: We claim that what was done by us did not come within the provisions of this section of the Code to which he refers, just as Mr. Francis has said. I have said repeatedly, your Honor, that we are not coming in here and claiming exemptions or immunity under that section. We say what we did was right and proper, and we will
1944 undertake to show the circumstances under which the Govermental bodies had knowledge of what we did and what they did in relation to that. That is perfectly simple.

And now all our proof is directed to here, and all our questions were directed to, was to show an administrative interpretation of the conduct of things, which is this, by the P. A. B. Board, by the National Coordinator and by those charged with the administration of the Code. Judge Beaty makes that clear. And that is all we are trying to do here.

Mr. Lewin: I got up here the other day and gave you my assurance that there isn't such written approval. Your Honor knows the law and knows that oral approval isn't enough. The law is perfectly clear as to what is approval. If you don't have that approval, then you are under the Sherman Act, and no amount of oral talky-talky between these people and people in the Department of the Interior can do them one iota of good in taking them out from under the Sherman Act.

Now, that certainly is the issue.

Every time we try to get a categorical answer to that question, we get evasions, your Honor, 1945 until Mr. Francis the other day, I thought, hit the question on the head. He put it this way: He says we are not under that amendment. Well, if he is not under that amendment, he is not under anything, because that is the only provision of the Code they could be under. The only way you can run an arrangement to buy distress gasoline is to be under Article 4, Section 6. If you are not under that amendment, and that is the position they want to take, and Mr. Francis speaks for them, then they can't get any approval, oral, written, implied, expressed, or anything else, and then only the Sherman Act applies, and then the N. I. R. A. has no relevancy whatever. If they are not under Article 4, Section 6, then they are not under the Code at all, and all this talk about the Code, except insofar as it affects that price, is irrelevant.

That is what I understood your Honor's view was. And I didn't totally agree with it. I thought we might get a more narrow ruling. I thought we were entitled to it, but I felt there was a great deal to be said for the other point, and that was when you come to explain that price rise, they might be entitled to show that something in addition to 1946 those pools had an effect upon it. Allocations might have an effect on it, and since allocations were allowed under the Code, you took that portion of the Code into the evidence, although I didn't like it. I felt that it was giving them much more than they were entitled to under the law, because it doesn't seem to me that it makes any difference whether there was some other effect on that price rise or not, so long as this had its effect; nevertheless, we have acquiesced in that ruling of the Court, and we have allowed a lot of evidence to be admitted without any quarrel about it at all.

I thought that was going to be a fairly narrow thing; I thought your Honor was going to permit them to show that there was a provision of the Code in 1934 for allocations, and those allocations were applied by the National Coordinator, Mr. Shatford, and they sent out telegrams, making prognostications of inventories, and if not on legal authority, they had to hold those inventories down, and let the jury, though finally conclude as to whether or not that cutting down of supply affected that price.

Now, that is what I thought you were going to do. This particular offer of Mr. Donovan says, "We have got this Code into the record. Let us 1947 look at it." Now, he wants to show not only that Mr. Shatford did that, and that had an effect upon the price, but that Mr. Swanson and Mr. Fahy of the Petroleum Administrative Board knew that he was doing it and gave their oral consent. And he wants to go even further and show some hearsay statement of the Secretary of the Interior that he knew what they were doing.

Now, I say that is totally irrelevant. That didn't have an effect upon the price. What they said didn't have an effect on the price. If this had any effect on the price, it was because Mr. Shatford did nothing to keep it from affecting the price. We haven't challenged the legality of that. We have just taken that as an objective fact.

No other reason for going into conversations with Fahy and Swanson on this stand now except to lay a basis for some kind of highly inadequate oral acquiescence or approval of the Secretary of the Interior of the thing charged in this case.

The Court: I have already ruled that he will not be permitted to relate any conversations he had with Mr. Swanson, and I am not going to change that ruling. Exception allowed.

1948 Mr. Dorr: We are not saying that what the government says or does gives us immunity against the Sherman Law. We say what the government is trying to do is one of the facts of the business, one of the facts of the circumstances of the situation, which must be taken into consideration, which the court will take into consideration in determining whether or not the restraint was reasonable.

Mr. Wood: I say, if your Honor please, that this evidence is admissible to show not only facts and circumstances upon which we rely as indicating that we didn't do what we are charged with having done, that this was some different kind of a program from that which the Government says it was; but also as bearing upon the administrative interpretation of the Code by those charged with this administration, including the Administrator himself, and his immediate advisers, the Petroleum Administrative Board, for what bearing that has upon our objectives and purposes, and upon the legality of what we did.

If you read those two official documents together, Annual Report of Secretary of Interior for 1935 and Final Report of Petroleum Administrative Board—
1949 Marketing Division, it is perfectly plain that this cooperation to which the Secretary refers in his report of 1935 was the cooperation with this Tank Car Stabilization Committee. I think it is plain on its face.

But my point is, plain or not, we are entitled to offer the facts as to this cooperation. If it was cooperation with something else; then what I have read here, standing alone, doesn't get us anywhere. If this was cooperation with this, it certainly does.

The Court: Oh, well, if you are going to have anything as important as this, that regulates an industry so important as this—

Mr. Donovan: But, your Honor, there were a hundred things done that way.

The Court: (continuing) —you would certainly expect written approval.

On the last offer of proof the objection of the Government is sustained. Exception allowed.

(In the presence and hearing of the jury)

By Mr. Donovan

I think Mr. Swanson was not also in the Bureau of Mines at that time, but I may be mistaken about that. I am not entirely sure on that point. My impression is that he was not.

1950 The administration of the Refinery Amendment, with which I was concerned, was subject to rules and regulations made by the Planning and Coordination Committee, and subject to quantities of manufacture fixed by the Petroleum Administrative Board and approved by the Administrator. The Administrator had final approval of the figures that were used as a basis for allocations.

Q. How was that information brought to him? He could not determine it himself, I assume.

Mr. Lewin: Well, now, why should you assume any such thing, and how does this man know?

Mr. Donovan: Because I am just an ordinary human being, and I know the capacity of one man to work.

Mr. Lewin: Well—

Mr. Chaffetz: Counsel isn't testifying.

Mr. Donovan: Well, I was asked the question.

Mr. Lewin: Your Honor, regardless of his capacity, he is charged with a duty of law. If he can't do it, nobody can do it; that is the size of it. He may have people that work for him, that bring him papers, that hand him a pen and all that sort of thing, but he has got to do it, if anybody can. Nobody else can exercise the Administrator's functions 1951 but himself. And if your Honor could only know all the conversations that go on down in Washington, between the underlings, you just wouldn't have any patience with this at all.

Mr. Thomas: I except to the statement of counsel that if the Court and jury could know what went on in Washington, and so forth, as prejudicial; and the jury ought to be instructed to disregard it.

Mr. Lewin: They are asking for conversations between people that are minutiae in Washington; that is all they are. We talk about everything—

Mr. Thomas: I except to the statement of counsel just made in the presence of the jury. It is unnecessary to have those statements.

The Court: Well, the jury may disregard what has been said here.

The Code fixed the method for determining the national allocation. It was fixed by the Petroleum Administrative Board, and taken to the Administrator and approved by him.

In carrying on my duties as National Coordinator I usually carried refinery matters to Mr. E. B. Swanson. I would consult with him about all refinery matters that I had to take up with the Petroleum Administrative Board if 1952 he was there, and if he were not, then with Mr. Charles Fahy, who was chairman of the Board. There were 5 members on that Board. During the period of early 1935, the chairman was Charles Fahy. The secretary of the Board, and a member of it, was Norman Meyers. The additional members were E. B. Swanson, J. Howard Marshall and Dr. John Frey. Mr. Swanson submitted the matters which I took up with him to the Board.

After receiving the approval from the Administrator, Mr. Ickes, for the March gasoline manufacturing schedules, which was received early in February, and which provided for the manufacture of a definite quantity of gasoline for current consumption, and additional definite quantity to be put into inventory to be used in June, July, August and September, we investigated the question of accumulation of inventories or stocks of gasoline which had currently taken place during the months of January and up to that time in February.

Q. And then what did you do after you had accomplished that?

A. Your Honor, am I barred from talking about conversations with the Petroleum Administrative Board? They were the boss on this gasoline business.

1953 Mr. Lewin: Well, now, we—

The Court: No, they weren't. Mr. Ickes was the boss. Get that straight.

A. The Code says otherwise, your Honor.

The Court: You just take it from our understanding now here that Mr. Ickes was the man that approved.

Mr. Chaffetz: As long as he is permitted to state what they actually did—.

The Court: Yes, you can tell us what you did after any action was approved by Mr. Ickes.

About March 1, 1935, we wrote letters to all of the major companies who stored gasoline, asking them to wire in and give us the actual quantities of gasoline which they had in their tanks on February 28th. We did this so we might compare the figure of the gasoline they actually had with the figure which early in February they had estimated that they would have.

(The witness then explained a model of a refinery.)

This plant costs about 20 to 25 million dollars; it was built in about 1912.

Small refineries suffered a great deal from the fact that technological development—that is, the increased skill in the art of refining—proceeded so rapidly that it caused the obsolescence, or the junking, of equipment almost as fast as it was built, as new ways were found of cracking gasoline from year to year. 1954

But the outstanding feature is that those 4 little cracking units and that one there (indicating), do all of the work that was formerly done by all of these stills here (indicating);

and this equipment, costing between 4 and 5 million dollars, is out of use—is just junked.

A large company can absorb that kind of a loss. But think what it means to a small company to invest 4 or 5 million dollars in a cracking plant; to have repeated cases of that, where you build a cracking plant and find out in a year that it is no good; you have to add to it and add to it, and then finally tear it all down and build another one—because that is just exactly what happened.

The Petroleum Code provided that the total allocation of the country should be made by a Federal agency, not refinery allocations. The Department of the Interior was the Federal agency referred to in the Code. I knew that the Department of the Interior designated one agency to carry on the work. The Petroleum Administrative Board, aided by the Bureau of Mines, would fix the national total. They would do that in consultation, as provided in the Code, with the Planning and Coordination Committee, and such other agencies as they saw fit to advise with.

1955 Then they would pass that national figure to us, the industry code authority. Then our refinery organization would break it up into districts and send it back; and the Administrator would take a look at that break-up to see if he thought it was all right. In doing that, he received the advice and consent of this Federal agency. If he approved it, then we could send it back to the districts, and the district agencies would break it up to individual plants.

On March 1, 1935, a representative of this Federal agency talked with me in connection with the March allocation.

Q. Did he discuss with you the question of March allocations?

Mr. Lewin: Now, that is objected to. That is the same thing that your Honor ruled on before, except the other time he asked whether Mr. Swanson had this conversation with him.

Mr. Donovan: Well, the other time, your Honor, there was some question of the source of authority, and of the right of the representative to discuss this matter with the witness. Now, I have tried to show just what that source of authority was.

Mr. Chaffetz: I think the situation today is identical with what it was when your Honor ruled this morning: Conversations with individuals are not

1956 helpful; and we are still talking about a conversation with an individual. There is no showing that that individual was the agency.

Mr. Lewin: We still have the distinction, your

Honor, between the action of the Board within its powers and the action of some individual on the Board having a conversation with this gentleman.

Mr. Chaffetz: And it isn't even action we are talking about; it is purely a conversation that is sought to be adduced here.

The Court: Objection sustained. Exception allowed.

Mr. Margold, Chairman of the Petroleum Administrative Board, at the outset of the Code, had instructed me, as he expressed it, in order to facilitate the handling of refinery matters, to deal with Mr. Swanson; on marketing matters, to deal with Mr. Frey; on production matters, to deal with Mr. Marshall and Mr. Meyers.

(Copy of letter produced by counsel is marked Exhibit 838 for identification.)

Exhibit 838 for identification, dated March 1, 1935, addressed to F. H. Holsten, Barnsdall Oil Corporation, Petroleum Building, Tulsa, Oklahoma, is one of the letters that I sent out on March 1, 1935. I signed the name "Howard Bennette" to the letter. I was then the Alternate National Coordinator, and Mr. Bennette was my
1957 superior, and I signed his name at that time.

(Document referred to received in evidence as EXHIBIT 838 and read to the jury by Mr. Donovan.)

Similar letters were sent to all major companies. I received replies to those letters. We prepared a summary of those replies. The sheaf of papers containing figures, headed, "Comparison of Gasoline Stocks, Estimated February 28, 1935, Summary," is the summary to which I have referred. That summary was made on or about March 8th as of February 28.

(Document referred to is received in evidence as EXHIBIT 839.)

When we got this information we found from an examination of it that gasoline stocks, inventories, in the hands of these companies as of March 1st were 1,400,000 barrels higher than those companies had said early in February that they thought they would be, when they made the best estimates that they possibly could in advance of March 1.

After that we undertook to procure authority to withdraw or to persuade these companies to withdraw from manufacture during March a quantity of gasoline approximately equal to the quantity of gasoline, 1,400,000 barrels, that we found they had in excess on March 1st, of what they had expected to have.

1958 Mr. Lewin: Your Honor, in order for that answer to stand I think it ought to appear what companies they were going to persuade, because he is talking about major companies generally all over the country.

I have further objection to the answer, and that is that he undertook to obtain authority. I thought the question was only going to be what they did and not what they attempted to do.

The Court: That is what I thought the witness was to keep in mind.

A. It is obvious he couldn't do it without authority, and I thought you would want to know what the authority was.

The Court: I assume you wouldn't do anything without authority.

Mr. Donovan: Your Honor, in order to find out what these companies did, it is necessary to find out what they were asked to do. That is what I am going to do.

The Court: Q. Can you name those companies? What companies were they? Have you any record of those?

A. Yes, sir. They (indicating defense counsel) have the record. I could name the 23, but it would waste your time.

1959 *By Mr. Donovan*

I consulted with those 23 companies to make that curtailment that I spoke of.

Mr. Lewin: Do I understand this was by authority of the Administrator?

A. Yes, sir.

To ask those companies for action to make that curtailment, I sent them telegrams.

Mr. Donovan: Q. First of all, I give you a list and ask you if those are the companies to which you sent the telegram (handing paper to the witness)?

A. Yes, sir.

Mr. Lewin: Does that mean the companies that had the excess stocks?

A. They were the companies to whom we sent the telegram, not all of whom, from our point of view, had excess stocks.

Mr. Lewin: I think we are more interested in the ones that had excess stocks rather than the ones they sent the telegram to.

The Court: Read it. As you read along there, can you indicate which ones did have excess stocks?

A. Your Honor, may I say this that in saying which had excess stocks, I am expressing the point 1960 of view of the administration of the refineries code. I am not attempting to say from their point of view which one had excess stocks.

The Court: Q. In excess of what it ought to be?

A. That is correct. These companies in the aggregate had 1,400,000 barrels too much, and some of them had most of that, most of that excess over what we thought there ought to be.

By Mr. Donovan

May I explain that the weather in February, 1935 was terribly bad, and the country's consumption did not measure up to our expectations of the demand, and it was for that reason that there were excess stocks.

Telegrams were sent to the following: Atlantic Refining Company; Barnsdall Refining Company; Cities Service Oil Company; Continental Oil Company; Gulf Refining Company; Mid-Continent Petroleum Corporation; National Refining Company; Phillips Petroleum Company; Pure Oil Company; Richfield Oil Company of California; Rio Grande Oil Company; Shell Union Oil Corporation; Sinclair Refining Company; Skelly Oil Company; Socony-Vacuum Company, Inc.; Standard Oil Company, California; Standard Oil Company, Indiana; Standard Oil Company, New Jersey; Standard Oil Company, Ohio; Sun Oil Company; Texas Company; Tide Water Associated Oil Company; and Union Oil Company.

1961 We sent the same telegram as the telegram to E. B. Reeser, president of Barnsdall Oil Company, Petroleum Building, Tulsa, Oklahoma, which is dated March 8— the only variance, I think, being the quantity of gasoline which we asked them to withdraw from manufacture— to all of the above-mentioned companies. That variance depended on the extent to which their stocks were too high, as we saw it.

(Telegram referred to is received in evidence as EXHIBIT 840, and read to the jury.)

This curtailment program had the approval of Mr. Ickes.

I received replies to these telegrams by telegram, letter and personal visits, principally in writing.

Most of the companies complied with the request. A few of them did not, but in those cases their replies indicated a situation which made it impossible, from their point of view, to comply.

There was a curtailment by those companies as the result of my request of 960,000 odd barrels, I think. This curtailment had the effect of reducing refinery production.

Q. What effect did that have on the market situation?

1962 Mr. Chaffetz: That is objected to. That would be purely a conclusion of the witness and involves a lot of factors.

The Court: It just took that much gasoline off the market.

The Witness: That is correct.

Mr. Donovan: Q. Did that affect the price?

Mr. Chaffetz: That is objected to. That is a question for the jury, clearly.

Mr. Donovan: Well, your Honor, the witness has said before this that a part of his entire program was an endeavor to, what he said, firm the market, and force the major companies to buy. He said that two or three times. I want to find out—

The Court: That is a pretty big order for him to tell us just how much effect it had on the market. There might have been some other things entered into it. If he can answer that question he may. Did that alone—

Mr. Chaffetz: I will say this: This is just a question of the amount of inventories that we are dealing with.

The month which we call the month in balance is perhaps the last 2 weeks of September and the first 2 weeks of October. Taking it by months, in October we begin to build inventories; build them during October, November and December, January, February and March; and on March 31 we reach what we call our spring objective.

1963 Mr. Chaffetz: I understand it, the witness testifies that this did have reference to the amount of their inventories as of that time. That is what I think he was dealing with during this period, not the amount of gasoline that was being sold on the market.

The Court: Q. At that time, these communications you had with these major companies, was that pertaining to their inventory?

A. It pertained to their inventory alone.

Q. You wanted to get this down to what you thought it ought to be at the end of March?

A. Down to what we thought it ought to be to produce a certain effect.

Mr. Donovan: Q. How did you want them to get it down; get their inventories down?

The Court: You may answer that.

A. By reducing the manufacture.

Mr. Donovan: Q. By reducing their production?

A. That is correct.

Q. Now, what effect—I ask what effect that had upon price?

Mr. Lewin: Your Honor, as a basis for intelligent objection, I would like the witness to be asked some more questions about this. In the first place, 1964 the point at issue, as I understand it, is what effect did that have on the Mid-Continent and East Texas tank car price. Here comes a lot of general testimony about efforts made to major companies as a group. Finally, he did give us a list of a lot of major companies—some of them not involved in this case at all—some of them their transactions may not affect the Mid-Continent price an iota. I asked them to have a list of those companies that had excess stocks. I was told that some of them had excess stocks, and some of them maybe did not. Some of them curtailed or said they were going to curtail. Four or five of them did not—

Mr. Thomas: If the Court please, I don't like to interrupt counsel, but he is making a statement that is improper before the jury.

The Court: He is making a re-statement of what I think this witness has testified.

Mr. Lewin: Your Honor, I think, before we go any further, we ought to know now, so that we can tell what bearing it has on the issues here, which, at least, of the particular defendants, which of these companies in March, when we say this buying started, had more gasoline than they ought to have. Now, I think we ought to have that right now before we

go any further along this line, since the particular
1965 issue is whether or not these activities had an effect on that tank car price, which is the subject of
this suit.

The Court: I think you are right.

Q. Have you that information with you?

A. I can undertake to provide that to you, if you want it.

The Court: I think we ought to have it.

The Witness: May I make a statement to you, either one way or the other, out of the hearing of the jury, or somewhere else, so that I can properly know what I am to take into account in determining whether or not they had excess stocks.

The Court: I think what we have in mind is this: Take the defendant companies named here who did business in this Mid-Western district.

The Witness: Yes, sir.

The Court: In working out your allocations, you had certain expectations as to what their inventory would be at the end of March 31—

The Witness: March 31, yes, sir.

The Court: From your records can you show what your expectations were—

The Witness: Yes, sir.

The Court: And then from your records show what that actually was or would be about March 31?

1966 The Witness: Yes, sir, we have all of that.

The Court: All right. Just work that out.

The Witness: If you intend to confine it to the gasoline they held in these 10 states, it is not worked out.

The Court: That is, of course, all we are concerned with.

When we speak of excess stock, we speak of it in terms of how we viewed it for our purposes, not the way the companies viewed it for their purposes. This excess stock had to do with the inventory objective which I, as National Coordinator, felt was the desirable objec[illegible] on March 1, 1935, for our purposes.

Our records were all worked out, and we knew what the stock on hand on March 31, 1935 ought to be in order to stabilize the price.

Mr. Lewin: Before we proceed further with this kind of testimony, because I think unless it is narrowed it is harmful, may we not know which of these companies held these excess stocks in March?

The Court: That is exactly what he will find out by Monday morning. He will not have time to do that now.

A. Yes, I think I can give it as to those 10 states.

1967 (Testimony resumed after a recess.)

I have a compilation here which is not exactly what was asked for. It comes as close to it as practical circumstances will permit, and if I may, I will show you in just a moment on the map the difference between what you asked for and what we have. Oklahoma does not lie within the 10 states defined.

We have included in the gasoline stocks which we have reported on this chart the gasoline stocks which were held in what we call refinery district 3, which comprises this central territory here (indicating) and the district 4 which includes Kansas and Oklahoma. The reason for that is this: The stocks of gasoline which move into this market, the Mid-Western area, and which supply this market are both manufactured and held to a considerable extent in this area; consequently it was necessary to include that to give a proper picture of the thing.

We did not include any gasoline held in East Texas, in spite of the fact that that gasoline does move at times into this territory, that is, the 10 states that the Court defined as the Mid-West territory. It may appear that we should have done that, but the fact is that there are no stocks held there. This is what we call a demand territory, 1968 where all the refineries ship their gasoline as they make it to meet current demands. So we did not include any gasoline there.

This gasoline in East Texas (indicating) moves back and forth. Sometimes it moves to the Gulf Coast and around to the Atlantic seaboard. Sometimes under certain competitive conditions it will move north.

Now, the same thing can be said for Kentucky. We did include that because that is within refining district 3. All gasoline held in that state, it isn't very much, will sometimes swing to the east and to the west, depending upon competitive conditions. It will move up into Indiana and then into Ohio, depending upon the price situation.

We included no gasoline held in the eastern half of Ohio. We did include some of the gasoline held in the western half of Ohio because that was within district 3, and that gasoline, the same as the gasoline from Kentucky, swings east and west, depending upon competitive conditions. Sometimes it will move over into Indiana; sometimes it will swing into the eastern part of Ohio.

So there is overlapping in those districts due to competitive conditions, and it is impossible to give any clear definition of gasoline stocks moved in different states as they affect the states within the district. We have done just what you would have wanted us to do under the circumstances.

1969 (Tabulation referred to marked Exhibit 841 for identification.)

The purpose of this compilation, Exhibit 841, is to show that late in February and early in March we undertook to find out the gasoline stock position of the companies which held inventories in the industry. The purpose of this was to see whether or not those stocks exceeded what we thought they should be. This includes only the companies that are defendants here, and only the area which is within the scope of this case, as I understand it.

In the 1st column there is shown the quantity of gasoline which these companies early in February estimated that they would have on hand at the close of February. At the close of February we did an unusual thing: we wrote these companies and asked them to wire us and tell us just how much gasoline they really did have.

By the inventories which we thought the companies should have I meant, fundamentally, the proper inventories for the purpose of carrying out the objectives of the refinery amendment, and those objectives were, first, to balance supply and demand; and second, to avoid concentrations of gasoline, that is, too large inventories in any territory, and third, to affect marketing conditions in such a way as to create a stabilized condition.

1970 The 2nd column indicates the replies we received from these companies telling us how much they actually had.

In the 3rd column we have shown a quantity of gasoline which it was found these companies had in excess of what we felt they should have for our purposes; or, in a few cases, the quantity which they held less than we felt they might properly have, and, at the same time, accomplish our purposes.

In the final column, the 4th column, we show the quantity of gasoline which each of these companies in response to our request voluntarily retired from manufacture in March. This last quantity that I have named, that withdrawn from manufacture voluntarily, should be related to the figure in the 3rd column which showed how much they were over. If they were over what we thought they should have, we asked them to curtail that quantity.

In the 4th column you will find the extent to which they found themselves able to comply.

The total voluntary curtailment by the defendant companies, as indicated in Exhibit 841, was 214,386 barrels of gasoline, each barrel containing 42 gallons, and that is a net figure after setting over against those who curtailed the plusses or the excesses of those who did not. In other words, that is a net accomplishment, a reduction of 214,386 barrels.

1971 Curtailing the March manufacture by 214,000 barrels in refinery districts 3 and 4 as an element in the whole situation had the effect of firming the market, which perhaps is another way of saying firming the price.

To the extent that the major companies were found with less gasoline than they needed, they were compelled to replace that quantity from some other source; the only other source was purchases.

When the majors voluntarily curtailed their own production they had to go out on the market and buy it. That was the purpose of getting them to do it. We were trying to open a gap in the market, and get the small refiners' gasoline into the market at a price.

(Tabulation previously so marked for identification is received in evidence as EXHIBIT 841.)

I also have prepared a tabulation that shows the curtailment made throughout the entire country by all the major companies to whom I sent my request.

(Tabulation showing curtailment by all majors, marked Exhibit 842 for identification.)

This compilation, Exhibit 842, shows in the first column the quantity of gasoline that each of the 23 major companies to whom we sent the wires of March 9, asking them to curtail, was authorized to make during the month of March.

1972 In the next column is shown the quantity that those companies actually made.

Now, this is not confined to the 10 states; this is over the country as a whole.

The third column shows the quantity of curtailment, or the quantity of gasoline that the companies made less than they had a right to make, over the country as a whole. That total is 965,454 barrels.

That total that I just gave is the aggregate quantity of curtailment. When I said curtailment, I meant voluntary curtailment at the request of the National Coordinator's office.

(Tabulation previously so marked for identification is received in evidence as EXHIBIT 842.)

(Chart produced by counsel is marked Exhibit 843 for identification; is displayed on an easel before the jury, and explained by the witness.)

This chart, Exhibit 843, is designed to show the condition which we faced at the time this voluntary curtailment about which we have been talking took place.

This (indicating) is March 1, 1935. On that date the gasoline stocks over the United States amounted to 64,888,000 barrels. We felt, I mean the Code Authority felt, that these stocks were too high, and that some activity should be undertaken which would result in curbing manufacture, so that on March 31 the industry would stand in a better position.

1973 Each month the Administrator, Harold L. Ickes, told the industry how much gasoline it might make. He told them how much they might make to sell, and he told them how much they might make to put into storage; and that is what he did for March, 1935. He told us we might make so many million barrels, but that of that quantity 2,940,000 barrels were to go into storage. Those who received a part of that 2,940,000 barrels were in duty bound to put that gasoline into storage. That is, that was the implied agreement when they got the allocation. However, it was understood that if conditions didn't permit them to put it into storage, they would have to supply the demand with it.

We calculated that the 2,940,000 barrels which the companies were authorized to put into storage, if put there, would run up stocks at the end of the month to 67,828,000 barrels.

We knew that that was a conservative figure because each month there was a little over-production, and possibly, if March weather conditions were the same as Feb-

ruary, there might be a disappointment in demand. If there was, as much gasoline wouldn't be consumed as we thought, and the storage figure might run up higher. We had a right only to figure that there would be 2,940,000 barrels put in storage and that we would wind up at this point (indicating), which was too high. This was the
1974 objective point that we had fixed, right down here (indicating) 66,130,000 barrels,—that was what we called our March 31 objective.

We watched the thing the first few days in March to see what was going to happen. And this is what happened. Not only did gasoline stocks show promise of mounting as rapidly as we figured they would, but they showed definite evidence of mounting very much more rapidly; so that by the 8th or 9th of March they had mounted more than we had calculated. It was right in this period here (indicating) that we took our action with respect to a voluntary curtailment.

It took some several days to get this curtailment under way. Those companies were large; their operations, of course, couldn't be adjusted over night. The American Petroleum Institute on the 16th day of March published their weekly report of gasoline stocks, and they showed those stocks at or about that figure (indicating). This indicated to us one of two things: Either the industry had gone hog-wild on manufacture, or the weather was bad and gasoline wasn't moving. We had already reached this agreement, and curtailment was in effect under the voluntary plan. This is what took place: gasoline stocks immediately began to fall, and in the last of the month they fell sharply; and by the 31st of March we had come down virtually to the objective of March 31 (indicating).

1975 This distinction should be made clear to you: This accomplishment was not entirely due to this March curtailment program. In fact, it was only half due to that. The other half of this accomplishment came about through the effect of something over which we had no control. Gasoline demand just jumped away up in March, beyond any expectations, and ran approximately 900,000 barrels above Government estimates, which are ordinarily very, very accurate. A considerable part of this saving in position, therefore, was not due to the voluntary curtailment, but a considerable part of it was.

(Chart previously so marked for identification is received in evidence as EXHIBIT 843.)

Mr. Donovan: Q. I believe you said, Mr. Shatford, that the operation of this refinery control program under the Code had the effect in forcing major companies to buy gasoline. Do you know whether or not this was the purpose for which the Refinery Amendment was enacted, one of the purposes for which it was enacted?

Mr. Lewin: Now, that is the same objection we had last week.

Mr. Chaffetz: The same question was asked two or three times.

The Witness: I answered that a minute ago, anyway.

1976 The Court: He answered it a minute ago, anyway, he says. Objection sustained. Exception allowed.

Mr. Donovan: Now, your Honor, if I may on that, at a later moment, make an offer of proof?

The Court: Yes.

(Jury not present.)

Mr. Donovan: Now, Amendment to Refinery Article of Code:

This, your Honor, is based upon certain questions that I asked in several forms, and in several manners, during the time I was asking the witness to show what the purpose of that refinery amendment was.

Now, with the same—predicated upon the same assumption as to this offer, in question and answer form, and severally and as a whole, Mr. Shatford if he were permitted to testify, would testify as follows:

In January, 1934, the independent refiners in Louisiana and Arkansas, as well as those in other parts of the Mid-Continent, were caught between a high crude oil price on the one hand and a depressed tank car market, on the other. Refiners who had any substantial investment in their plants were afraid to use crude oil produced in excess of state allowables for fear of endangering their investments by reason of violating Section 9 (c) of the N. I. 1977 R. A. The majority of small refiners outside of East Texas, therefore, paid the full price of $1.00 for legal crude oil and they were forced to sell their gasoline in competition with gasoline produced from hot oil. Hence, small refiners were forced to sell their gasoline below cost.

During the first 6 months of the Code, the inventories of gasoline increased rapidly. This had a further depressing effect upon the tank car price. This increase was partially due to the operation of Article III of the Code, which prohibited the withdrawal of crude oil without approval once it went into storage. Rather than freeze the crude supply, therefore, many refiners manufactured gasoline and put the gasoline in storage.

The Court: This witness has already testified to that very fact, haven't you?

A. Yes, your Honor.

The Court: You don't need to cover that.

Mr. Donovan: It leads up to this, your Honor:

It was also true that the Code had not helped the small refiner regain any of the market which he had lost over a period of years.

1978 Because of the condition of the small refiner in January, 1934, the Louisiana-Arkansas Association sent John E. Shatford to Washington to see if he could obtain some relief for them. Mr. Shatford saw Howard Bennette, who was a member of the Planning and Coordination Committee. Mr. Bennette agreed to attempt to persuade the Planning and Coordination Committee to recommend to the Administrator some type of refinery control. Mr. Shatford also saw other members of the Planning and Coordination Committee, including Wirt Franklin and Amos L. Beaty.

During the early part of February, 1934, Mr. Shatford saw members of the Petroleum Administrative Board and discussed with them the need for some plan under which gasoline manufacturing schedules would be adjusted so as to create a real trading condition in the industry, one in which the independent or non-integrated refinery would have a place in the picture. Those members of the Board with whom he talked recognized that over a period of time merely balancing the supply of gasoline with the demand therefor would not serve to improve the condition of the small refiner. The members of the Board stated, however, that in order to introduce any such plan, it would have to be recommended by the Planning and Coordination Committee.

1979 On February 28, 1934, the Planning and Coordination Committee passed a resolution recommending that the Administrator apply what was known as the "quotas in Commerce" provision. "Quotas in Commerce" meant that the quantities of gasoline which entered interstate commerce would be controlled.

The major companies were not anxious to have any system of refinery allocations adopted which would take out of their hands the control of their manufacturing operations. As a counter proposal, a group of majors met in New York on March 20, 1934, and signified their willingness to sign an agreement calling for a small reduction of gasoline inventories.

On March 29, 1934, the Administrator issued a call for a hearing to discuss the two proposals for refinery control. The first hearing was set for April 4th.

On April 6, 1934, the Administrator issued a draft of an amendment to the Refinery Code. In making this public, the following press release was prepared and issued,—and I would like to have marked for identification, without reading it to your Honor, the press release.

Mr. Shatford spoke at the hearing on April 4, 1934. Among other things he said—he spoke at the 1980 hearing which I have referred to, set and called for by Mr. Ickes:

> "The liquidation of inventories in this industry of excess gasoline must have at the heart and center of it the realization that a large number of the independents' outlets have been wiped out and destroyed by what you might call legitimate means under the old regime. By the purchase of independent outlets, by all of the prestige that is inherent in a big organization, that the small man cannot cope with. The spot market for gasoline is largely gone, and until it is restored the independent refiner cannot live. So, the allocation itself rests upon the prospect that the spot market will be restored.
>
> "From time immemorial the big companies have bought gasoline, but under their present plan they do not want to buy gasoline. We insist they shall buy gasoline through allocations. They claim they have all the plant capacity they need to supply all the gasoline that they require, and that they will not buy gasoline

on the spot market. If that proposition pre-
1981 vails, then we are done. We are through, and that is all there is to it, and there is not any use for talking any further, if that is to be the interpretation of this Code. If these men assert the right to manufacture all the gasoline that they use, then the independent refineries are through.

"Under the allocations plan the big company will continue as in the past to buy gasoline, and we say there is a moral obligation on him to do it, due to the fact that the Anti-Trust laws have been released to give him a chance to do as he pleases, or to do as he needs under the present situation; and we do not think that he should take advantage of that and manufacture all his gasoline and buy none.

"So, the purpose of this plan is to compel him to buy gasoline. And they very frankly say they will not do it unless they are compelled to do it."

On April 11, 1934, there was a second hearing on the proposals for refinery control. Prior to this, on April 6th, the Petroleum Administrator made public a proposal for an amendment to Article IV of the Petroleum Code. At the hearing on the
1982 11th, Axtell Byles, as spokesman for 23 major companies, stated that while the companies whom he represented did not want to surrender the control of their manufacturing operations, they would consent to a refinery control program as a contribution to stabilization.

The proposal submitted by the Administrator was not entirely acceptable and a committee was appointed by Mr. Fahy of the Petroleum Administrative Board to re-draft the amendment. This committee, consisting of Amos L. Beaty, John E. Shatford, Howard Bennette, Jules Constantin, C. E. Arnott, Fayette Dow, and Mr. Fremming, met twice with the Petroleum Administrative Board.

At these meetings the proposed amendment was discussed sentence by sentence and each question was discussed to the point of understanding. During these deliberations the objectives and purposes of the amendment were discussed. Certain major companies felt that merely balancing supply with demand would be sufficient. Those spon-

soring the amendment, however, stated that it was necessary to go farther than balancing supply with demand, that it was necessary to adjust manufacturing schedules so as to give effect to a definite policy of opening the market for the prod-
1983 uct of the small refiner. It was this view which was adopted in principle by the Petroleum Administrative Board at the hearing as the objective of the amendment. The amendment as finally drafted at the second conference in the Petroleum Administrative Board's office was the one approved by the Administrator on April 24, 1934.

Mr. Crawford: Except as testified to by the witness already, we object to the offer, and object to the testimony contained therein, on the ground it is immaterial and irrelevant.

The Court: Objection sustained. Exception allowed.

(Jury present)

Mr. Donovan: Q. Now, during the period when this Amendment was in process of adoption, had the conditions affecting the small refiner improved?

Mr. Lewin: Objected to. That is away back in the spring of 1934, and it comes absolutely outside of your Honor's ruling as to the condition of the independent refiner.

The Court: Is that '34 or '35?

Mr. Lewin: '34.

1984 The Witness: The Refinery Amendment was adopted April 24, 1934, and Colonel Donovan has asked whether there was any improvement under the administration of the Code, any improvement in the small refiner's condition.

Mr. Lewin: Your Honor, that is a year before, a full year before the period involved in this case.

Mr. Donovan: It seems to me, your Honor, if we want to show the condition in 1935, and what the situation was, just as we were permitted to show conditions leading up to the Refinery Amendment, we ought to be permitted to show what the condition of the small refiner was; because it was designed, as now appears, to aid the small refiner. Now, how are we going to know what the condition of the small refiner was—

The Court: He may answer that.

"Question: Now during the period when this Amendment was in process of adoption, had the conditions affecting the small refiner improved?"

A. During the period of adoption, you mean, during the period when it was being negotiated?

Mr. Donovan: That is right.

A. The condition of the small refiner had not improved.

1985 Q. What had become of the small refiner during that period? What was his actual condition during this period he has described?

Mr. Lewin: That is objected to.

The Court: What had become of the small refiner?

A. During the period when the refinery amendment to the Code in April, 1934, was being adopted the condition of the small refiner had not improved. During this period prior to the adoption of the Refinery Amendment in April of 1934, the small refiner was in a very difficult position, because he was having to pay $1.00 a barrel for his crude oil, and having to sell his gasoline at prices that would compete with the price being charged by those who were paying very much less than that for crude oil, those who were buying illegal production. In addition—

Mr. Chaffetz: Excuse me. I now move to strike out all the witness has said and object to any further testimony along this line.

It is now perfectly apparent that we are getting into the back door what was not permitted to come into the front door; because, all this kind of testimony, we argued for hours about, as to its admissibility, and the Court ruled it out; and we have now got a new device for going back into it. Our 1986 original objection still stands. We are dealing with the price of gasoline in 1935, and so far as allocation provisions are concerned, there is no contest here with respect to those at all. The question here isn't as to the validity or legality of those allegations. The only matter that is important here with respect to allocations is what was its collateral effect, what was its effect during 1935, during that first 3 months while allocation was in effect, during the period charged in the indictment as being covered by the alleged conspiracy.

Mr. Donovan: We have an entirely different situation now than we had before, your Honor.

It now appears, what the design and purpose of the Code authorities were; and if part of that design and purpose was to aid the small refiner and, as a means of aiding the small refiner, to force the major companies to buy, then those aids that were adopted by the National Coordinator or by the P. and C. Committee have an important bearing on this case, as to why this buying was conducted.

We simply say this, your Honor: There were
1987 other and further aids administered here to the small refiners, as bearing on the major companies. If there were such, we are entitled to show that; and in order to show that, we must make this preliminary explanation of the condition of the small refiner.

Mr. Lewin: That gets away, if your Honor please, from the objective upon which this testimony was first offered, because they offered it to show, if they could, whether it had any effect on that price rise. Now, may it please the Court, they are going into the entire rule of reason, and not only during this period of alleged conspiracy, when it is certainly of doubtful validity, but in 1934, a year before.

Mr. Donovan: Well, we want to try to show, your Honor, what was done in aid of this anticipated refinery control, what was done in aid of that by other means employed, just the same as the Refinery Control Amendment may do so.

1988 Mr. Chaffetz: I think we have allowed these witnesses to testify fully as to what the effects were in 1935. The witness was asked the broad question as to what were the facts in 1935, and now we are trying to paint a picture which we can't paint in 1935, so we go back to 1933 or 1934 in order to draw another red herring into the case.

Mr. Donovan: I certainly object to this talk of red herrings, your Honor.

The Court: Yes.

Mr. Donovan: We will offer definite proof, and I think these gentlemen should be admonished now to not characterize our honest efforts here to establish our theory of this case.

Mr. Lewin: We feel, your Honor, sincerely, that this effort is improper and doesn't follow under your Honor's ruling. It is like the conservation point,—

The Court: I said you could establish by the offer of what proof you had, to show what factors existed in '35 and '36 did not exist prior to that time. I think you had better confine your testimony to that.

Your motion to strike out is granted. Exception allowed.

Mr. Donovan: Your Honor, may we have the jury instructed about this red herring once and for all?

The Court: Yes. Pay no attention to those remarks about drawing a red herring across the trail. You just listen to the evidence and pay no attention to any statement that counsel might make, until the proper time comes. Unless you are 1989 told to, just listen to the evidence, and you will decide this case upon that and upon the instructions of the Court, and not upon questions or remarks of counsel on either side.

Mr. Donovan: Q. Was anything done in May, 1934, to aid what you believed would be the effect of the refinery control system?

Mr. Lewin: That is objected to as leading. It calls for a Yes or No answer.

Mr. Chaffetz: I have no objection, your Honor, if he asked, was there any other factor in 1935 that was supplementing the refinery control system; but what was done in May, 1934, can't have any effect, as I say, on the issues in this case, and we object to it on that ground.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, I would like to make an offer of proof on that.

The Court: I want this witness to tell the jury everything that occurred in—all the factors that entered into the price of 1935 and 1936 that did not exist in 1934 and 1933. And I think he has covered that the other day very well.

Mr. Donovan: Q. Was there anything more, Mr. Shatford, that you now have in mind that was done to aid or supplement this refinery control program?

Mr. Chaffetz: That is objected to. That is the same question, leaving out the date.

1990 Mr. Donovan: I am only following out the suggestion of the Court. I don't think that there is anything leading about it.

Mr. Chaffetz: That is not the question the Court put.

The Witness: (To the Court) I think the thought is that in 1934 we undertook a buying program that failed. I think the purpose is to show what was lacking in 1934 that was necessary to make the buying program succeed. I think that is what he is trying to do.

Mr. Chaffetz: If we go into that subject, we are going very far afield. We are going to deal with controversial matters that are going to take a great deal of testimony; and, as we contend, can't show what the effects were on price in 1935 and 1936.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, if I may, before we go any further I would like to make these offers of proof now, if we could.

The Court: All right. The jury may retire.

(Whereupon the jury left the court room, and the following proceedings were had out of the hearing and presence of the jury.)

(During the argument before the Court the following statements of counsel were made:)

Mr. Donovan: Now, if it please the Court, I was just thinking as Mr. Chaffetz was making his argument, that every time we make an offer of proof directed to a specific thing here, where Mr. Chaffetz thinks it may hurt the contention of the Government, we are led off into a long discussion of what is not presently before your Honor now. 1991

But on that, let me say finally what I have said many times: We claim that what was done by us did not come within the provisions of this section of the Code to which he refers, just as Mr. Francis has said. I have said repeatedly, your Honor, that we are not coming in here and claiming exemptions or immunity to that section. We say what we did was right and proper, and we will undertake to show the circumstances under which the governmental bodies had knowledge of what we did and what they did in relation to that. That is perfectly simple.

Mr. Dorr: Now, "approval" may mean a whole lot of things. It may mean when the President signs an act; until he has signed his name to that law as it comes through Congress you cannot properly say he has approved that act of Congress, in one sense of approval; but if that is the kind of measures which he regards as proper, and has said is proper, and is in line with what he says is an objective, then in that sense there has been approval, and approval for a long time. We are dealing with a word, your Honor, that has different meanings.

Now, in the sense that Secretary Ickes before any buying was done, of the P. A. B. before any buying was done, sat down and wrote something equivalent to signing a law on this, of course there never was and we do not so contend. And so far
1992 as the doing of that act would be necessary to give us immunity from the Sherman Act, there never was anything of that kind in my conception of it.

Mr. Chaffetz: There is no question pending that I know of, your Honor.

The Court: No, but I am going to find out something for my own information.

Q. What did this Petroleum Administrative Board do? What were its functions?

The Witness: Do you mean officially or actually?

The Court: Both.

A. Officially, they were appointed to advise and assist the Administrator. In practical effect, this is what took place: We could not see the Administrator except at very rare intervals. We had matters coming up every day; and so we dealt almost exclusively with individual members of the Petroleum Administrative Board because they, too, were not only busy with their own affairs but were shot all over the United States; and so we had to deal sometimes with 1 or 2 or 3 members of the 6-man board—sometimes 4 members.

And in order to facilitate the business we were doing with them, they specialized the duties of each of these members of the Petroleum Administrative Board, and we made contact with them. We would explain our problem, what we wanted to do. They,

in turn, would take it up with the sitting members, that is, the members in Washington at the time. And they would confer and decide; and if it were
1993 a matter requiring the Administrator's approval, they would prepare for the Administrator an order, all written out, with a place to sign, and they would carry it over to his desk; and somebody, if they thought it necessary, would go and explain it to him and tell him what it meant; and if he thought it wise, he would sign it. And that signature about describes his participation, in most of these decisions, unless they involved an important matter of policy. I think that is a perfectly fair statement of what took place.

Mr. Donovan: Q. In answer to the Court's question, Mr. Shatford, were there instances such as you have described, in this curtailment, where there was no formal order and Mr. Fahy communicated to you that fact?

A. Time without number, your Honor. Everybody was running around carrying water in his hat, trying to put out the fire. We didn't know what the law was; we didn't know what the rules were. We were just doing the best we could under the circumstances, and trying to get under cover every way we could, in what we did, meeting one emergency after another. And in a practical effect, we took hold of the Government's hand every time we could.

Mr. Lewin: Q. What do you mean by "covered up?"

A. I would say we intended to get, where there was any doubt—and there was doubt on everything, nothing was certain—and where there was doubt we would want to feel that the Government, the
1994 governmental authorities, felt that they would bless the thing and say, "Go ahead, and do this." And when they did that, we felt that we had the law and the necessary authority to go ahead and do it. It was the only way we had to act.

Q. You are speaking now of the allocations?

A. I am speaking of purchasing programs; and, your Honor, in connection with that matter of purchases—buying programs, there seems to be an important question as to whether or not this one should have been approved under the refiners' section of the Code. I don't know; I am not a lawyer, but if I were going to find out and try to make up my mind intelligently, I would like to know what kind of buying programs we did get approved; and I know what kind we got approved, and then compare it.

The Court: Q. Tell me what you did to get it approved.

A. Well, in the first place, in May, 1934, we undertook the first buying program, so to speak. It was a mere shadow of a buying program. It consisted of a resolution, which I personally introduced to the Planning and Coordination Committee, asking certain of the major companies to buy a quantity of gasoline in May, equal to 3% of their sales.

Now, this undertaking, of course, failed.

Then in June we undertook what was called the 1995 Bennette buying program. The outstanding characteristic of that program was this: that we adopted what was called a standard form of contract; and under that contract the purchasing companies agreed to take a certain quantity of gasoline, providing the selling companies would agree to abide by the Code and rules and regulations, and so forth, and by their allocations.

That program was formalized to a greater extent than any other had been; and so we felt that because of this uniform type of contract and because we set up an office in East Texas where we brought the buyer and the seller together and helped to carry on the negotiations as to price and quantity and issued definite quotas to the buying companies and determined exactly how much there would be to sell—because of that degree of formalizing, we felt it necessary to get approval under the Code.

Let me point out one thing: Under the code it says this, that we should get approval for buying arrangements, where the arrangements provided for the purchase and resale of gasoline. Now, we threw that interpretation out of the window. We got approval of the buying program where there was no resale of gasoline.

The reason the Code was worded that way was this: That at the time that amendment was passed, they had in view only the National Agency Agreement, which was proposed in the late winter of 1933.

1996 It was a buying pool calling for the—a pool of $10,000,000 to be paid in by the major companies. They had to buy gasoline and store it in a definite place physically, and later ship it, export it, perhaps, do what they wanted with it, and resell it out of the pool. That was the buying program, the type of buying arrangement that they had in mind when the language of the code was drawn, the buying and reselling. But because of the fact that this formalized the last Bennette program, we felt we should get approval. We did get approval for the Bennette program.

Then, in August, we went a step further. An organization was called the France program. It was called the France program because Jacob France was the chairman of the committee.

Mr. Chaffetz: That was Jacob France, one of the defendants in this case?

The Witness: Yes. And under that plan, we had the formalized program, but we went a step further. We established offices all over the country. One in Tulsa; one in East Texas. And we established, I think, one in Chicago; one all over the country. And we went the limit. We brought the buyer and seller together and talked price and all that sort of thing.

Mr. Lewin: Did you have a program committee for that work?

The Witness: We had a program committee, a 1997 very elaborate affair, a very elaborate failure.

Mr. Lewin: Did it work under the Arnott letter of July, 1934?

The Witness: No. It operated under Section 6, Article 4. It was a failure. And that was approved by the Administrator.

Then we tried to revive that under what was called the Horween plan, the Horween program, which was an attempt to renew the France buying program. It was under the same authority, using the same forms, with the exception of two alterations which were made in the contracts. But it was highly formalized, and we requested approval of that program. There were certain outstanding characteristics of all these programs that we had approved:

First, there was a uniform type of contract which the buyer and seller were negotiating. In them were certain provisions respecting compliance with special provisions in the refinery amendment of the Code. There were offices and agencies. There was a consideration of price, which was practically everything involved in the way of formalization except the pooling arrangement where you take the gasoline and distribute it.

In these arrangements we would let A buy from A and B from B, in other words bought from a purchaser of their own. But otherwise it had all the characteristics of that pool. This buying program that is under
1998 discussion here is something else. I don't know what it is.

Mr. Lewin: Would you tell his Honor about the Beaty Suggestion, the one Mr. Beaty suggested be approved in the fall of 1934? There was another one that was handed to the Secretary for his approval, and the Secretary didn't approve of it. Will you tell us about that?

The Witness: I did, Mr. Lewin. That is the Horween program.

Mr. Lewin: No, there is another one.

The Witness: Oh, yes. I will go back—

Mr. Chaffetz: The one that was mentioned to the Secretary—

The Witness: When we started the Horween program, objection was made to the fact that the program didn't work out in the way the Administrator had expected it would when he approved it. That is, he had felt that only a small quantity of gasoline in East Texas would be bought under these contracts which he had approved, but the practical effect of it was this was what happened—the price was above the market, so the refiners down there were very happy to dump all their gasoline in the laps of this committee and say, "here, at that price, take it all," which they did. So in effect these buyers were signing this for the practical side of it.

1999 The Court: Who was furnishing the money?

The Witness: The major companies who bought the gasoline.

Mr. Chaffetz: Who pointed out that objection that you just referred to?

The Witness: You mean within my personal knowledge?

Mr. Lewin: Your general knowledge. I take it you are giving your general knowledge?

Mr. Chaffetz: You don't have personal knowledge in all of these things?

The Witness: No. More or less general in most cases.

Mr. Lewin: Who pointed out the objection to the Horween plan?

The Witness: Mr. Secretary Ickes—Mr. Horween just told the members of the program committee that the contents of the program was objectionable and asked us to stand by until the Administrator could reach Dallas. The Administrator reached Dallas. Now, as I understand it, he issued a statement in the paper which I wouldn't attempt to quote, but Mr. Horween was our contact man, and he was the executive assistant to the Administrator. He was the man whom we had negotiated with when we got the program adopted, because I was the one who negotiated with him and the 2000 Secretary, myself, and heard the Secretary's approval of the program. And Mr. Horween went to Texas under definite instructions to do this thing.

Then when this objection was voiced to the Administrator and he gave this statement to the paper, we stood by. Mr. Horween told us, the program committee, that he had orders that we were to stand by. We immediately undertook to meet the objections that were made. We held a meeting, and we tried to cure our contract—

The Court: You know about when that was?

The Witness: Yes, sir, that was on November 12, 1934. We met at the Baker Hotel in Dallas. We tried to work out certain changes in the contract to avoid the abuses that were complained of. We worked those out, and they were submitted to the Planning and Coordination Committee. The Planning and Coordination Committee submitted them to the Administrator, and the Administrator advised us that he had sent them to the Department of Justice. He advised Judge Beaty of that, and Judge Beaty advised the Planning and Coordination Committee and we stood by in the full expectation and assurance that we were to go ahead if and when the Department of Justice blessed the new idea.

Mr. Chaffetz: Which it never did?

The Witness: So far as I know, they never did.

Mr. Chaffetz: And then these buying programs 2001 started without any blessing from anybody? Is that right?

(No response.)

Mr. Lewin: Would you tell his Honor, Mr. Shatford—

Mr. Thomas: Is this cross examination, now?

The Court: I want to get the general picture. I think I have got it. Wait a moment. I can see—can you see any good reason why this jury shouldn't have the benefit of this statement this man (indicating the witness) has made?

Mr. Chaffetz: We think so. We think it is entirely confusing, and one of the results — talking about the kind of argument to the jury—this is one of the results of that kind of argument to the jury, "We did exactly what the Government did." That is the argument they made when this case started.

The Court: He said if the program had failed.

The Witness: That is correct.

Mr. Chaffetz: Under entirely different conditions, your Honor.

The Court: I thought this: If we could give them a thumbnail sketch, without too much detail, then you can come to the point where the Government ceased to handle it and left them where they were, and from that time anything they did was a violation of the law. But I really do think that a little 2002 history of that wouldn't be amiss and wouldn't be confusing here. I was afraid you might get away off into a thousand tributaries that would leave the jury up in the air.

Mr. Chaffetz: I am not satisfied with the witness' thumbnail sketches. We couldn't stop there. We would have to show all the factors. We would like to show how the first one was changed into the form of the second; we would like to show how the France buying program was repudiated by the Secretary of the Interior.

The Court: Q. Is this witness ready now to make an honest and frank statement, and perhaps can clear up what he has in mind?

The Witness: I moved every buying program before the Planning and Coordination Committee that was had.

The Court: I think we can, without going into too many offshoots—

Mr. Chaffetz: We have discovered in this case that if they start with a thumbnail sketch that they then get down into the controversy of whether or not allocation was done in cooperation with the Government—

Mr. Lewin: To help the independent refiners, we even got into.

Mr. Crawford: I think, if the Court please, that 2003 is the first time where I have seen a situation where the Court was considering, really considering admitting into the record testimony which is immaterial and irrelevant and incompetent, for the purpose of giving the other side an opportunity to base an argument on it. And I hope that I will not see it here.

The Court: Well, I said this—at least, I wanted to convey the idea that, while it is irrelevant and immaterial, I suggested to you, would you have any objection to its going in? That is all I had in mind, and that is the last thing I said.

Mr. Crawford: Well, I am sorry if my two colleagues have not already made it plain to your Honor, that we consider it very questionable and very prejudicial.

The Court: Well, I know—I thought they might relent. There is no question in my mind that it is immaterial and irrelevant, but it is somewhat helpful to me in understanding this whole situation, and I thought it might be helpful to the jury. Well, you have made your objection, and the objection is sustained. But I still think it might have been helpful to the jury. Exception allowed.

Mr. Donovan: Your Honor, then may I include this statement made by the witness in answer to your Honor's and other questions, as a formal offer of proof?

2004 The Court: Yes, you may.

Mr. Donovan: Together with the exhibits that I will have marked? It may save us time.

Mr. Chaffetz: In view of the fact that Government counsel asked some questions of the witness, I would like the record to show that we did not ask all of the questions we would have asked had we cross examined the witness.

Mr. Crawford: We have no objection to this testimony taking the form of an offer of proof. That is about what you want, isn't it?

Mr. Donovan: That is what I want, with the addition of one question.

Q. Mr. Shatford, you have characterized this as the Horween program, and I would like to ask you if you know whether there was ever any formal order entered, withdrawing that program, any written order of Secretary Ickes withdrawing that program?

A. No, sir.

Q. There was not?

A. There was not.

The Court: What the witness has said is your offer of proof, to be considered a part of it?

Mr. Donovan: Yes, included in our offer of proof, yes, sir.

The Court: To which objection is made?

2005 Mr. Lewin: To which objection is made.

The Court: Because it is irrelevant, incompetent and immaterial?

Mr. Lewin: Irrelevant, incompetent and immaterial.

The Court: On that offer of proof, the objection of the Government is sustained. Exception allowed.

I do think, however, there can be no objection to this witness outlining the way in which the Petroleum Administration Board operated with his board, and how he operated with them.

Mr. Lewin: We haven't challenged the allocations; they are in now. And they can take those allocations as a basis for argument that that caused that price rise. Isn't that all there is?

The Court: Well, we will wait until after you have written up this witness' testimony, and I think at the outset, he said something about how he conducted this Petroleum Administrative Board.

Mr. Beaty: May we have an understanding with counsel that what the witness refers to as the Horween program was the proposed revival of the France program?

Mr. Chaffetz: That is right.

Mr. Beaty: That goes in the record, in connection with the offer?

2006 Mr. Chaffetz: That is right.

The Court: Have you any further offer of proof?

Mr. Donovan: Yes, we have, your Honor. I just want to get these straight, now.

I would like to have marked for identification, in connection with the offer of proof through the witness, a certified copy of an order dated November 2, 1934, signed by Harold L. Ickes, together with the document attached thereto, which is a form of contract with order attached, under date of September 8, 1934.

(Document produced by counsel was marked Exhibit 844 for identification.)

Mr. Donovan: Also, certified copy of an order dated June 23, 1934, signed by Harold L. Ickes, together with the document attached thereto, being form of contract for the purchase of gasoline relating to the accumulated storage of excess gasoline.

(Document produced by counsel is marked Exhibit 845 for identification.)

Mr. Donovan: Also certified copy of an order dated September 8, 1934, signed by Harold L. Ickes, together with the documents attached thereto, as follows:

Exhibit A, being a form of purchase agreement;

And Exhibit B, being a form of contract for the sale of gasoline.

(Document produced by counsel is marked Exhibit 846 for identification.)

2007 Mr. Donovan: Also certified copy of an order dated August 13, 1934, signed by Harold L. Ickes, together with the document attached thereto, being a form of agreement under a so-called order or promulgation of a standard form of contract for the purchase of excess stocks of gasoline.

(Document produced by counsel is marked Exhibit No. 847 for identification and made a part of this offer of proof.)

Mr. Donovan: It is understood, your Honor, that these are marked for identification in connection with the offer of proof made as to what this witness would testify, and based upon the examination of the witness here, and are offered as a part of the offer of proof?

Mr. Chaffetz: Over the objection of the Government; and the objection of the Government, I understand, is sustained?

The Court: Yes. Exception allowed.

Mr. Francis: Your Honor, I have mentioned the matter once before, and I don't think it is necessary to mention it again, but I think it goes along with this record, that we offer each one of these separate statements in our general offer, as separate and distinct from the whole; we offer the whole, and each separate part thereof as a part of the offer, and you object to it all?

2008 Mr. Chaffetz: That is right.

Mr. Francis: I want to get the distinction that we are offering each and every part, separate and individual and apart from all the balance, so that it is not just one whole general offer, but it is a several offer.

The Court: That is the Court's understanding.

Mr. Donovan: I want to have this marked for identification, as part of the last offer of proof I made, which is a certified copy of a press release numbered 83,317, dated April 6, 1934, issued by the Department of the Interior.

The Court: It may be marked for identification, as a part of the offer.

> (Document produced by counsel is marked Exhibit 848 for identification.)

Mr. Donovan: In addition to the offer of proof made to the court based upon the questions and answers to questions directed by the court to the witness, Mr. Shatford, in addition, if permitted to testify would testify as follows:

That under the France program the program committee determined the prices at which contracts would be negotiated. These prices were arbitrary and were in all cases 1¢ or more above the prevailing tank car quotations.

2009 In addition the program made hot oil regulations more difficult of enforcement, because where under the program the buying started out in taking up excess gasoline from the market, it actually undertook to buy all the gasoline.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, I only have two more offers now:

> Proposal of Petroleum Administrative Board to Have Refiners Hold Products for a Minimum Price.

And this is offered under the same conditions that have just been referred to by Mr. Francis, separately and as a whole, and in question and answer form:

If John E. Shatford were permitted to testify, he would testify as follows:

On August 27, 1934, a group of independent refiners met in Kansas City, and discussed means of relieving the situation in which they found themselves.

The discussion on the subject was crystallized into a telegram which was sent to the Administrator on August 27, 1934. As a result of this telegram, Mr. O'Shaughnessy was invited to come to Washington to meet with the Petroleum Administrative Board concerning the subject. On August 30, Mr. 2010 O'Shaughnessy accompanied by Mr. Shatford, went to the Petroleum Administrative Board and had a conference with its members.

At that meeting, the Petroleum Administrative Board, through Mr. Margold, its chairman, proposed to Mr. O'Shaughnessy and to Mr. Shatford that the refiners meet and determine how much gasoline they would have available for sale from time to time, and that they agree to withhold this gasoline from the market until such time as it could be sold on a cost recovery basis. The Board was asked whether it would be necessary to draw and execute a formal agreement for administrative approval. Mr. O'Shaughnessy and Mr. Shatford were assured that this would not be necessary. They then asked the Board whether or not such an informal arrangement would be in violation of the Sherman Anti-Trust law, and they were assured that this was not so; that they would be protected by the rules of the Code.

A detailed and extended discussion was had of the merits of the plan, and all of the influences and effects were considered quite carefully, after which Mr. O'Shaughnessy returned to Chicago for the purpose of submitting this suggestion to his associates. After discussing it with them, it was agreed that the plan was not workable, due to the threat of en- 2011 croachment of gasoline from other refining districts, which might result in even more serious dislocation of the market.

Mr. Crawford: We object to that as immaterial, irrelevant and incompetent.

The Court: Objection sustained. Exception allowed.

(Jury present)

By the Court

I did not regard my position as a government position. Under the Petroleum Code of Fair Competition I was a member of the Planning and Coordination Committee, which was known as the Code Authority. In addition to that I was National Coordinator under that Code, which position embraced the duties of administrative head of the refinery amendment or refinery section of the Code.

In the performance of my duties I had more or less contact with the Petroleum Administrative Board. The Petroleum Administrative Board was a Board consisting at the outset of 6 men appointed by Administrator Harold L. Ickes, to advise and assist him, and in that connection he assigned to that Board certain administrative duties, routine more or less, and then additional duties with which they were called upon to procure special approvals and that sort of thing.

As the coordinator, in contacting the Petroleum Administrative Board, I customarily saw Mr. E. B. Swanson first on almost any subject. 2012 He had been designated by the Petroleum Administrative Board as the member whom we should contact in connection with refinery matters. He also had production matters under his supervision. Then from that point we would go to perhaps a meeting of 2 or 3 members of the Petroleum Administrative Board, and finally, if it were convenient or expedient, we would go before the whole Board..

I might add that as a practical matter, the members of this Board were frequently, in fact, some of them usually, out of the City of Washington carrying on their duties in connection with their then special work for the committee or for the Board. Under those circumstances, there would be only 2 or 3 members sitting in Washington, and in those cases, we were compelled to contact and deal with just those who were there.

My duties as coordinator were to administer the rules and regulations that were set out in the refinery amendment of the Code, in connection with the making of allocations, and carrying on the other provisions of that section.

The Court: I think that covers it.

Mr. Donovan: Your Honor, would your Honor ask his direct contact, if any, with the Administrator? Would you include that in your question, whether or not he had direct contacts with the Administrator?

2013 The Court: Q. You may answer that. Did you? A. At very infrequent intervals we could get to Administrator Ickes himself, but ordinarily our matters were carried to him by members of his board, ready for his signature.

Mr. Donovan: May I have this chart marked for identification?

(Chart referred to marked Exhibit 849 for identification.)

Mr. Donovan: Q. I show you chart, Exhibit 849 for identification, purporting to show the market as reported in the Journal of Commerce and the Oilgram for the months of October, November and December, 1934, and ask if you can tell us the influences at work on that price rise as disclosed by that chart in October, November and December?

Mr. Lewin: For what year?

Mr. Donovan: 1934.

Mr. Lewin: We object to it.

Mr. Donovan: Your Honor has already said we might deal with the questions arising from October and November, 1934.

Mr. Chaffetz: Your Honor, for the reasons we just argued a few moments ago—and your Honor sustained our objection—we think that is objectionable.

Mr. Lewin: That is 1934. That is right in line
2014 with your Honor's suggestion.

The Court: I want this witness to testify as to the factors that entered into the price rise in 1935.

Mr. Donovan: Yes, and I think if he should do this it will have a strong bearing in exemplifying what happened in 1935. I am limiting it strictly within 3 months.

Mr. Lewin: Your Honor, it will open up all that question that we debated to your Honor.

The Court: I think it will.

Mr. Chaffetz: It will make two controversies instead of one. We will have a controversy on this price rise in addition to the price rise on the other.

The Court: Yes.

Mr. Donovan: Well, let me ask one question, and if your Honor feels I should not ask it I will not.

Q. Was there a Federal Tender Board set up on or about October 14, 1934?

Mr. Lewin: That is distinctly leading, and right within your Honor's ruling. They have attempted time and time again to go into that subject, a Tender Board in 1934. The Tender Board that is important is the Tender Board under the Connally Act. Your Honor has consistently ruled on that, and here is another attempt to go into the next question.

2015 Mr. Thomas: We are going back 3 months. One of the important questions in this case of course is: What was the cause of the rise in March, 1935? We have the Connally Act as one of the elements that the witnesses have mentioned in their testimony. We have here the Federal Tender Board.

We want to show, and I think we have the right to show, what effect restrictions such as the Connally Act had upon production, or what effect the Tender Boards had upon the price. I think it is material for that reason.

Mr. Dorr: Now, what we are doing here is to take one of their fluctuations which they have shown, and which I have compared with the subsequent season, and explain why that fluctuation took place. I think that is sufficient, but there is an additional ground on which I think we should be allowed to do this, and that is this:

That here we have operating at this time the introduction of a new factor in the price situation, in the market situation, just as we have the introduction of a new factor at the end of February. We want to show, and I think we are entitled to show, that that factor, the Federal Tender Board, when it was introduced in October, 1934, produced the same kind of effect that it produced when it was introduced in 1935, namely, the factor of the Government 2016 control of hot oil. Your Honor will remember that control came in effectively in October, 1934, went out when the Supreme Court threw it out, and came back again in March.

In both cases it tended to produce, and it was a strong contributing factor in producing a rise in price, and that rise in price was commented upon again and again before this jury.

Mr. Donovan: They offered no proof to show what caused it, but they wanted to leave the inference to be drawn here by these gentlemen, that, because there was a rise here, and that was different than other years, that therefore this was the result of some nefarious agreement—

Mr. Lewin: That isn't it at all.

Mr. Donovan: And we objected at that time, your Honor, upon the ground that they did not show comparable conditions, and it was for that reason that your Honor permitted us to show what factors were at work, which were different here, than were in other years.

Now, what we are trying to do is simply to show that, when you have the same kind of thing in 1934 as you have in 1935, as Mr. Dorr has said, the same result occurs. And that was due to the action of the
2017 Government itself, and not to any action on the part of these defendants.

The Court: We are concerned here with what affected the market in 1935 and 1936.

Now, as I said before, if there are any factors that entered into the market trend in 1935 that did not exist prior to January 1, 1935, why, you may prove that; and I think you have gone into that very thoroughly; and that is as far as you ought to go. If you go into this, we will be here until Doomsday. I don't think it is material. I have outlined the kind of proof I think you are entitled to offer, and I think you should be confined to that.

Mr. Donovan: Then do I understand, your Honor, that the objection to the testimony of this witness is sustained?

The Court: Yes. Exception allowed.

Mr. Donovan: And we may make an offer on that particular subject?

The Court: Yes.

(Following occurred in the absence of the jury):

Mr. Donovan: Your Honor, I would like to make this offer of proof that I asked to make yesterday, in relation to the October price rise. I assume that it may be considered that this is in question and answer form.

2018 The Court: Yes.

Mr. Donovan: And it refers to each one specifically as well as generally.

The Court: Yes.

Mr. Donovan: If John E. Shatford were permitted to testify he would testify as follows:

From the middle of October, 1934, to November 6 or 7, 1934, the published quotations for the tank car price of third grade gasoline, Oklahoma market, Group 3, increased 1½¢. There was an identical increase in the published quotations for the same market on the same grade of gasoline in the spring of 1935. Instead of occurring in 3 weeks, however, the increase occurring in 1935 took 3 months—from the first week of March to the first week of June.

The increase in October and November of 1934 was largely due to the establishment of the Federal Tender Board on October 25, and its subsequent operations. For months the market had been flooded with cheap gasoline manufactured from "hot oil." The Petroleum Administration had attempted to stop the flow of hot oil but no efforts, prior to the establishment of the Tender Board, were effective. The Tender Board gave promise of being the instrumentality which would cut off the supply of hot oil, and, from the day it was approved, majors expressed a willingness to reenter the market. The government 2019 also promised to prosecute violators.

The result was a quick upswing in price to a better level.

Mr. Chaffetz: We object to that offer on the grounds already stated.

The Court: Objection sustained. Exception allowed.

(The jury returned to the jury box.)

Mr. Donovan: May it please the court, I offer in evidence Exhibit 834 which I have already submitted to your Honor, and which your Honor said that I might submit at a later time. (Handing exhibit to the court.)

The Court: Have you seen this?

Mr. Chaffetz: Yes, we have, your Honor, and we think the objection to it is apparent upon its face. It opens up the same issues we discussed yesterday, and we do not think it is proper.

The Court: Objection sustained. I think it is included in what you covered yesterday. Exception allowed.

(The following proceedings were had in the presence of the jury.)

Mr. Donovan: I should have offered that chart, Exhibit 849, in evidence—

2020 The Court: Yes.

Mr. Lewin: We object to the chart, on the same grounds. We object to it as being incompetent, irrelevant, immaterial, outside of the scope of the issues in this case, and having no bearing whatever on the issues before this jury.

Mr. Donovan: Certainly he can't object to the chart, your Honor, as a chart, when they have their own chart—

Mr. Lewin: We object to it as a chart, because it is incomplete and partial; because it singles out one particular month in 1934—there are a host of other objections.

Mr. Donovan: If you see it correctly, there are three months there, Mr. Lewin.

Mr. Lewin: Two months, then.

The Court: Objection sustained.

Mr. Donovan: October, November and December. That objection is sustained?

The Court: Yes. Exception allowed.

Mr. Donovan: Mr. Hale, what is the number of this chart (referring to a Government exhibit)?

The Witness: 712, Colonel.

Mr. Donovan: 712? All right.

(Witness refers to Exhibit 712.)

From the 1st of March to June 1, 1935, third grade
2021 gasoline advanced from 3¼¢ to 4¾¢, which would be
a 1½¢ per gallon advance.

Prior to March 1, we had two prices for crude oil. We had a $1.00 price which was charged for oil that was legally produced. That was called the posted market price. Then we had a second price. That price was anything from perhaps 20¢ or 25¢ to as much as 40¢ a barrel.

I am disregarding the talk about stolen oil, because at this point there wasn't enough of that to make any difference.

While there were two prices for crude oil, there was only one price for gasoline. That price for gasoline in tank cars, f.o.b. refineries in East Texas in substantial quantities was at a level which reflected the cost of this illegal or low-priced crude oil. After March 1st the Connally Act went into effect, and in connection with the Connally Act there was set up in East Texas what was known as the Federal Tender Board, and it was the duty of that Board to see that no crude oil or any of its products that were produced or manufactured in excess of the state allowables fixed by the Railroad Commission of that state were to be permitted to enter interstate commerce, that is, leave the State of Texas.

The prices in East Texas and in Group 3, or Tulsa, Oklahoma, are competitive, and to the extent that they differ,
it is only a very small fraction of a cent, and that
2022 difference depends, if there is any difference, frequently upon the direction in which it is shipped. For all practical purposes, the prices are competitive. When you refer to the price of one, you refer to the price of the other. This describes the advance in the price of gasoline as quoted in the official journals, representing the market upon which the gasoline is traded in.

Mr. Lewin: May I ask whether the testimony of the witness is that the factors affecting the East Texas market also affect directly the Oklahoma market?

A. Because the gasolines go to a common market.

Mr. Lewin: That is your testimony, that that is so?

A. That is my testimony.

When this Tender Board was set up, after March 1, this flow of crude oil and gasoline stopped. Following that, there was only one price for crude oil, and that was the $1.00 price, insofar as interstate commerce was concerned. There was only one price for crude oil, and therefore, there very rapidly came to be only one price for gasoline, because the man who paid $1.00 for crude oil had to sell it on a cost recovery basis or deliberately lose money.

When that change came about, this rise began, and it appeared to be an irresistible thing, because the pressure
which had held the price down had been removed, and
2023 the price of gasoline irresistibly started to go up, and found its parity in the proper cost of raw material.

Mr. Chaffetz: We object to the last statement because it is a discussion of the factors.

Mr. Donovan: It is a statement of fact.

The Court: I think you better state what the facts are. Exception allowed.

A. (Addressing the Court) You mean you don't want me to state the effect of these things, only state they existed?

Mr. Chaffetz: Describe what the facts are.

The Court: You know whether or not there was a buying program down here during that period by reason of the major companies—

A. When is my knowledge—at what period is that question effective?

The Court: Now, any time. You are trying to tell us what the factors were that entered into this trend of prices?

A. Yes.

Q. Are you taking into consideration whether or not there was, as the Government contends, a buying program?

A. I am taking into consideration, your Honor, the whole question of demand—

Mr. Crawford: I don't think that is an answer, 2024 your Honor.

A. I just want to make an answer to his question and say this, that a buying program would be an element of demand.

The Court: That is what you said the other day?

A. Yes.

Mr. Lewin: You didn't answer his Honor's question as to whether you knew there was a buying program working there. I say that is a thing he must know before he can enter into a conclusive explanation of that—

The Court: He knows there was a Connally Act.

Mr. Lewin: Yes.

The Court: What else do you know that went into the factors that affected that price? You don't have to refer to the chart here. In 1935.

A factor that affected price was low inventories. The inventories in the hands of the buying companies were so low that I firmly believe, if the demand of March, April, May and June had been just as we had estimated it would be, these companies would have felt the pinch of low gasoline stocks, but that is not what happened.

In the month of March, demand exceeded estimated demand by approximately 900,000 barrels, and in April, May, and June, demand in each of those months approached record-breaking levels, and when I say "record-breaking," I mean reached levels which approached the highest 2025 for those same months in the history of the industry.

Mr. Chaffetz: That is for the United States as a whole?

A. That is for the United States as a whole, yes, sir.

In the month of March, we had taken away from the inventories of these major companies, over the country as a whole, approximately 960,000 barrels of gasoline. In early February, when we gave gasoline allocations to them, we had made the best estimates we could of what the demand would be in the month of March, but we couldn't foresee and didn't foresee that actual demand would exceed our estimates about 900,000 barrels. But it did. So in the month of March, these companies were caught short not only the 965,000 barrels which we curtailed them but an additional 900,000 barrels by which demand exceeded estimates. This goes to the question of the effect of this increasing demand under the circumstances. Had we been doing business outside of the Code, the industry could have met this surge of demand by increasing its refining operations.

Each month we estimated how much gasoline the refineries might be permitted to make, and that schedule of manufacturing was based on their estimates of demand. In the month of March our estimates, made in early February, were 900,000 barrels too low. In
2026 addition to that is the 965,000 barrels we curtailed.
There is 1,865,000 barrels of gasoline that the majors were caught short by March.

On March 13 we met and made allocations, based on estimates for the 1st of April. When we met on March 13, we had no way of knowing that the month of March was going to show this increase of 900,000 barrels in demand, nor was there any account taken at that time of the volume of curtailment. So in our allocations for the month of April we proved to be approximately 800,000 barrels too low, because in April the demand exceeded the estimates by that quantity. And so that 800,000 barrels needs to be added to the 1,865,000 barrels, so that it gives a total approaching 2,750,000 barrels of gasoline by which the major companies were short at the end of April over the entire country.

In April when we met to handle the May situation, we had learned of this increase of demand in March and we knew of our curtailment in March. It is only proper to point out that when we met in April to fix the May quotas, we did very largely take into account the March situation. But we did not take into account the fact that in May estimates of demand would be approximately 2,000,000 barrels below what the demand actually was.

By rough calculation, by the end of May, the companies had been caught short approximately 3,000,000 barrels—

Mr. Lewin: Q. You mean in their inventories?

2027 A. They were caught short that much gasoline, whichever way you view it. They were caught short 3,000,000 barrels of gasoline that they would have had with which to meet demand.

When a major company faces the question of meeting demand, it has two hands. It can take gasoline here, from its current manufacture; or it can take it from its inventory; or it can buy the gasoline on the market.

In this situation, the major companies faced the need to find 3,000,000 barrels of gasoline somewhere. They were short that much, on account of this increase in demand.

Now, 3,000,000 barrels of gasoline is about—well, perhaps I had better not make that comparison—

Mr. Chaffetz: No, go ahead. About how many tank cars, were you going to say?

It amounts to about 15,000 tank cars of gasoline, which is about equal to the quantity of gasoline, I believe, that was purchased according to the record here, as I understand it, during the first several months of the buying program.

I might add that throughout the year 1935 there was a demand in excess of expectations or estimates, of about 20,000,000 barrels of gasoline. Now, a great deal of that excess demand was due to an increase in exports which began in about June. I think prior to June, 1935, exports had been perhaps a little bit below normal, or
2028 a litle bit lower than the previous year; but in June
there was a sudden increase in exports of gasoline, and at that point a good deal of additional gasoline was required for that purpose.

I should say that the gasoline demand in the Middle West was about in direct proportion to the rest of the country, after subtracting the increase due to an increase of exports.

Q. Would you say—

Mr. Chaffetz: If the witness doesn't know—he said, "I should say"—if he doesn't know, I would rather that that be stricken.

The Court: Q. Would you say it would be 10%, 15%, 50% or 90%?

A. I think the actual increase over the country as a whole, if I remember the figures correctly—and I am only quoting the figures from memory, and it is a long time back—were between 6% and 7%, during the year.

The Court: Q. Let me put it this way: From the information you have, can you tell us what percentage of the gasoline produced in this country is consumed in the Mid-Western section, in these 10 states?

A. Oh, I would say perhaps 20% to 25%. It
might be a little more than that. Now, your Honor,
2029 if I attempt to sum this thing up, I am afraid I
will get into argument. I will just give the factors
as I see them.

There was the Connally Act, which stopped the flow of illegal and cheap product into the market. There was the March curtailment, which came at a very critical time.

Then there was this sudden increase in the demand for gasoline, which ran approximately 3,000,000 barrels over a period of 3 or 4 months, in addition to what we had estimated, which demand the refinery was not permitted to meet on account of refinery control. In other words, the industry was under hobbles.

And I think that those factors—leaving out of consideration the factors that you gentlemen know, probably better than I do, with respect to general recovery and that sort of thing—these are the factors which I think, directly connected with oil, directly within the industry itself, made an especial contribution to this rise in price.

Mr. Donovan: Q. Now, Mr. Shatford, I direct your attention to the level line on that chart from June through December. I wonder if you can tell us what influences were at work which may have caused that level line?

Mr. Chaffetz: Object to that, unless it is shown that the witness is an expert with respect to the alleged buying programs during that period.

2030 Mr. Lewin: And he must be an expert with re-
spect to those price recommendations of Jacobi's
committee and all the rest of the tremendous
amount of evidence that is in this case. And yet
he has given you three factors here, and not once
has he mentioned that factor, the buying program,
as even having an iota of influence.

The Witness: Your Honor, I thought I covered the buying program under the general heading of demand. It was part of demand. I can't assess the relative value of that particular demand as against the demand as a whole. For instance, I can't assess the relative value between buying and export. If I could do that, I would.

Mr. Chaffetz: I stand on my objection to this witness testifying as to what the factors were that entered into that level price during that period, unless he is first qualified as an expert in buying programs.

Mr. Donovan: Your Honor—

The Witness: Well, I am no expert on the buying program.

Mr. Chaffetz: You are not?

The Witness: No, sir.

Mr. Chaffetz: All right. On that basis—

The Court: Objection sustained. Exception allowed.

2031 Mr. Lewin: Now, we move to strike all that long answer, then, as coming from a man who is totally incompetent to talk on any such subject.

The Court: We will let the jury give what weight they think his testimony is entitled to.

Mr. Chaffetz: I have an objection now that I didn't think of before. I want to know what this witness was, what his business was during that period of the latter half of 1935.

Mr. Donovan: I object to any further cross-examination of this witness at this time, your Honor.

Mr. Chaffetz: No, that is as a basis for the assertion that he wasn't in intimate contact with the factors affecting price during that period.

The Witness: I think, your Honor, it is fair for me to say that after August, right here (indicating), right after that period right in there (indicating), I ceased having any direct or active connection with any Code work, and my business at that time and since was tank cars, leasing them to refineries. And I was a little bit in the position that a football player is, that had been called to the side lines. I could see the game, but I just couldn't feel it like I could before, so I don't know—

Mr. Donovan: Q. But you saw it, nevertheless?

A. Well, I could see some of what was going on.

2032 Mr. Donovan: Then, your Honor, may I ask him this question:

Q. Were you familiar with the factors that were at work during that period, some of the factors?

A. Yes; sir.

Q. Now, may I ask you the question again: What were those factors with which you were familiar?

In the first place, the same old Connally Act was for the first time giving effective control respecting the quantity of crude oil that was coming into the market.

Under proration, the valve, you might say, which opened and closed, and let more or less crude oil on to the market from month to month, was not in the hands of the industry. It was in the hands of the state governments, who had these regulatory laws. And so they, accepting in some cases, and always considering the recommendations of the Bureau of Mines, each month, would open or close the valve and admit to the market just as much or just as little crude oil as it appeared, from expert estimates, would be needed to meet the demand for gasoline.

The allowances respecting crude oil were based on the requirements of crude oil to make the necessary gasoline that was needed in the national market, and for exports, and so on. That nice control was going on during this period for the first time. And so they would open and close this valve to meet or offset or compensate for 2033 any of the influences which under ordinary conditions, assuming there were no proration, would have had a tendency to influence the price of crude oil up or down.

For that reason and for other reasons too we had a stable price, or a level price for crude oil.

It is true the price of crude oil had been level before this time, but that was due to different influences, arbitrary influences under the Code. During the period June-December, 1935, we had a situation where we had a real economic control.

The extent to which that control was effective can be shown much better than just by merely stating that it was so, by pointing out to you that during 1935 the industry withdrew from storage approximately 25,000,000 barrels of crude oil, reduced its stocks that much in order to meet an unexpected demand for gasoline of approximately 18,000,000 barrels—without any repercussions at all being felt in the market of crude oil as to price.

Under ordinary conditions of doing business, I believe it is a fair statement to make that that important shift in the conditions of crude oil stocks in the industry, and that major shift in the manufacturing schedules of the industry, in making 18,000,000 barrels more gasoline, or 20,000,000 more, than we had expected to, would have had a very strong effect on the price. It would have had a very bullish effect, and would have had a tendency to lift the price 2034 of crude oil.

Under the influence in part, at least, and certainly a very important part, of proration, the price situation in the industry survived that shock, and showed absolutely no effect of that major operation which ordinarily would have caused a severe price change.

That level condition of the crude price we might call a floor; we might say that that acted somewhat as a floor under this price of gasoline here, this tank car price.

In former years there had always been a relationship in a general way between the price of gasoline and the price of crude oil. It was not any such relationship as we have here (indicating), not at all, because, in former years the relationship had been a natural relationship. That is, the crude oil market would feel the repercussion of a low gasoline price, and vice versa. It would take some time. There would be a lag, but in a general way one price would follow the other.

But here, June to December, 1935, we had an artificial floor built under this price (indicating), absolutely level. And, as we had a new condition affecting the price of crude, we found a new effect in the price of gasoline. There that price of gasoline sat, just as the crude price sat. That might go on, and still we might have a fluctuation. We might have a level price of crude and still, as I see it, we might have a fluctuating tank car price here (indicat-2035 ing), providing we had the usual violent disturbances that take place normally in the retail markets.

In this period we are discussing now, from May to the end of 1935, we had an unusual situation there; and I will call that, for the moment, the ceiling above this tank car price (indicating). During that period, the retail prices for gasoline averaged, fluctuated, I think, not more than ½¢ a gallon. That is a very, very small fluctuation in a retail price structure. Here was an unusually firm retail market price situation; underneath, here (indicating), an absolutely firm proration administration; giving us a firm price for crude oil. In between those two prices sat your tank car gasoline price (indicating).

I think it is perhaps pressing the point just a little bit too much to say that, so long as those remained reasonably level, this crude oil price and the retail price, that that would fix or freeze that tank car price (indicating). I think that presses the thing too far, but the fact is that it did stay in that relationship. It was like all other prices that year for petroleum products; all of them stayed that way, not just this price. When I say all of them, that is a generality, and is subject to exception.

The price of crude advanced early in January, 1936. I think it advanced 10¢ in the Mid-Continent field; and 15¢ in East Texas, or the other way around. I forget which it was. The first companies to post the advance were 2036 Carter Oil Company, which is a subsidiary of the Standard Oil of New Jersey, in the Mid-Continent field; and the Sun Company was the first company to post it in East Texas. There was a little company, I think the Liberty, or somebody, that posted it the day before the Sun did in East Texas. Neither one of those is a defendant.

Q. Now, what effect did this increased price of crude have upon the tank car gasoline market?

Mr. Chaffetz: That is objected to. There is a lot of testimony here, by persons who were directly concerned with the situation, as to that price rise; and this witness here was off in another business, leasing tank cars, at that time. I think there is some limit—

The Court: Objection sustained. Exception allowed.

Mr. Donovan: I ask to have a certified copy of a letter dated August 23, 1935, to Mr. John E. Shatford, marked for identification.

(Document produced by counsel is marked Exhibit 850 for identification.)

Mr. Donovan: Q. I show you certified copy of a letter dated August 23, 1935, addressed to you, Mr. John E. Shatford, under signature of Harold L. Ickes, and ask you if you received that letter from Mr. Ickes?

A. I did.

2037 The Court: If he wants to come up here and testify, he may, but I don't think you ought to put it in in this way.

Mr. Donovan: But this is a statement signed by Mr. Ickes, your Honor.

The Court: I know, but if they want to cross-examine Mr. Ickes and put him on the witness stand, that is another thing.

Mr. Lewin: We will withdraw our objection.

The Court: All right. I don't think it is material, but it may go in.

(Document, previously so marked for identification, is received in evidence as EXHIBIT 850 and read to the jury.)

By Mr. Francis.

I testified about sending out certain telegrams to certain named companies on March 9, 1935. In response to these telegrams, I received certain replies.

(A document was marked Exhibit 851 for identification.)

Document marked for identification Exhibit No. 851 is not addressed to the party who sent the wire, but is an answer to it. It is addressed to Mr. Fred Van Covern, who, I am sure, was chairman of the Statistical Sub-committee of the Planning & Coordination Committee, and finally chairman of the Inventory Sub-committee.

Mr. Francis: I offer EXHIBIT 851 in evidence.

Mr. Lewin: We object to it, your Honor, as just a 2038 self-serving statement of The Pure Oil Company, as pure hearsay, and the counsel has rested as regards C. B. Watson and Dawes (handing Exhibit 851 for identification to the Court.)

Mr. Francis: Well, I offer this for the company.

Mr. Lewin: I might add, your Honor, to those grounds of objection: First, that it is hearsay; second, that it is self-serving; third, that it has not been authenticated.

I don't raise the question of the best evidence rule, but I don't think it is authenticated. It is a telegram, evidently by a man named Watson, to a man named Van Covern. I don't know whether it is authentic—

The Court: Objection overruled.

Mr. Chaffetz: May I state another objection, your Honor? The further objection that the Government has no opportunity at all to cross-examine as to the facts contained in that telegram, and it is offered for the facts contained. This isn't a question of the ultimate result of curtailment that the witness knows about; this is offered for the facts stated in there; a telegram written by the defendant, offered by the defendant, without giving the

Government any chance to cross-examine anybody as to the truth of the facts stated therein.

Mr. Kirkland: I thought the Court had ruled.

The Court: I think I will just reserve ruling on that, Mr. Francis.

2039 Mr. Francis: Your Honor, I would rather have an exception, in view of the objection made by Government counsel.

The Court: Objection sustained, and there won't be any further discussion on it.

Mr. Francis: All right. Note an exception.

It is my understanding that after the Schechter decision in May 1935, the Department of the Interior, through the Bureau of Mines, did not continue to make estimates of gasoline demand by the several districts and certify those out as official Government information.

At the close of the Code they stopped sending the gasoline figures out by districts, and resumed it again on January 1, 1936. I offer that as a statement made to me very recently by a man in the Government service. Between May 1935 and January 1, 1936, the national consumptive demand was certified and sent out although not broken down by districts. After May of 1935 the national consumptive demand was estimated and figured by the Government and given out to the industry as official information, and then after January 1, 1936, that total figure was broken down by districts.

I was familiar with what happened in the meetings in the districts where the districts' shares of the national consumptive demand were parcelled out among the several individual refiners in each district. The District Allocators were directed, in general, to distribute their 2040 quotas to the several refiners in their districts, fundamentally in compliance with the rules and regulations that affected this distribution.

Those rules were applicable, with different emphasis, in each district.

The Oklahoma district was District 4.

In general outline, and I think within the frame-work of all the rules there are specific rules that might seem to contradict this policy, but as the rules applied in their entirety to District 4, we had this situation: We had two types of operators in that district. One was the demand operator, who sold his gasoline as he made it, from day to day, largely on the spot market, and to some extent on the contract market. Then we had the integrated or inventory company, who carried stocks of gasoline.

There was rather a natural contest in District 4, in these meetings, to see which type of company would get the larger portion, relatively speaking, of the gasoline.

So far as the National Coordinator's office was concerned, we stressed, laid emphasis on the need to give rather special consideration to the requirements of the small refiner; for the reason that if he were cut too low in his operations, his business was on an uneconomic basis. In other words, he couldn't go below a certain output per month and live. We wanted to be perfectly sure that he was kept up to an economic level of operations; that is, one that would permit him, in the first
2041 place, to make enough gasoline to make his operation an economic one; and in the second place, to have enough gasoline to sell on the open market actively.

The converse of that proposition is that the large company should have enough gasoline to carry on its business in a proper and convenient way, and at the same time be on the low side of self-sufficiency, so they would have to buy a little gasoline.

By Mr. Horween

I would say that the Globe refineries are non-integrated refineries. I pass over the word "independent" because I don't think it has any significance. A non-integrated refiner doesn't carry stocks as a rule. He more or less sells continuously as he produces his gasoline. I did not send a letter on March 1 or a telegram on March 9 to the Globe Companies, along with the other companies I sent them to, because they are a non-integrated refiner, and a non-integrated refiner does not carry gasoline stocks, and we were sending telegrams to companies who did carry gasoline stocks.

2042 *Cross-Examination by Mr. Chaffetz.*

I would say that the Globe Company gasoline stocks, and I describe them as a type, would be one thing one day, and another thing the next. They carry all of the stocks that any other refinery would carry, in relation to their operations, except one, and that is seasonal stocks. They have tank bottoms, and they have shipping stocks, enough gasoline on hand to take care of their current business in the event of a breakdown or a short strike or something of that kind; they want enough gasoline on hand, but they don't build up gasoline inventories on a seasonal basis. That is the principal distinction between one type and the other. They don't literally have to market each day the amount of oil produced that day. That isn't true of any refiner, from today to tomorrow; but the rough expression, "from day to day" or "from hand to mouth," is used.

I don't believe the Globe Company could store 30 days of gasoline, unless they cleaned out some crude tanks and put it in the crude tanks. That is my best judgment. I would say that a maximum for the Globe would be maybe 15 or 20 days, but I don't pretend to know. I only pretend to characterize them as a type that does not carry seasonal stocks.

2043 I think the Globe was possibly in a little bit better position with respect to needing to sell its gasoline as it made it than many another smaller plant. Generally, Globe Company is in the class of the refiner who does not store gasoline in advance of the current consumption.

Q. That is right. They all store gasoline; but the integrated companies, as I understand it, build up an excessive storage during the off season to take care of their seasonal requirements?

A. I think that is true, as a generalization, but we must not get away from the fact that there are many smaller refiners who do literally make their gasoline on Monday, treat it on Tuesday, settle it out and ship it on Wednesday. I know that because I did that for a good many years.

I should say that every defendant oil company is in the seasonal inventory type, except The Globe. They have what we call seasonal build-up of inventories.

Q. Referring to the independent refiners again: Did I correctly understand your direct testimony to be that each of them runs through its stills every month the same quantity of crude oil, month by month, throughout the year?

A. You mean, are they level operations?

2044 Q. Yes, that is right—running the same amount of crude through their stills.

A. I would say that would be rather an ideal condition. They are subject to so many vicissitudes I don't think any of them quite accomplishes that.

Q. I thought you said they had certain crude connections and had to run all the crude that came. I thought you gave the impression it was necessary to keep the crude running, day by day, month by month, during the year, or a certain amount of crude continuously running. If that is not the impression you intended to give, I would like to know it.

A. I didn't want to apply the point in that way. I made that point in connection with losing crude oil connections in this sense. If the small refiner shut his plant down and gave up his crude connections, someone else would step in and take it, and then when he wanted his crude oil back, he could not get it. He would be without a supply of raw material.

Q. But he does have a certain amount of leeway in his operations so that he can operate more one month and less the following month?

A. You are speaking under the refinery amend-
2045 ment?

Q. Oh, no, normal operations.

A. Yes, I should say that he can do about as he pleases.

There has been a fluctuation in the operations of individual independents, so-called independent refineries, throughout their history, so far as I know. Under the refinery amendment they were given no minimum limit. They didn't have to make the gasoline that was awarded to them, but they were not permitted to make more than was awarded to them. I think within reasonable limits it is true that the amount that these independent refiners did produce, from month to month, varied through the year.

In the spring of 1935 when the unprecedented consumer demand developed we did not abandon the allocation system under the refinery amendment. That unprecedented demand continued in April and May of 1935. But we still found it necessary to continue to allocate production to the various refiners. There isn't any question that they could have produced enough to meet that demand. They could have produced more than enough gasoline with their existing facilities.

I officially became National Coordinator on March 25, 1935, and continued in that capacity until May 28, which was the date that the Code ceased to operate and
2046 my authority was lost. I understood that I had no authority to continue thereafter, and I didn't continue.

As National Coordinator I was employed, not by the Government, but by the P. and C. Committee, which was the industry Code Authority.

The industry paid the expenses of the Code Authority through a system of assessments, I believe, made on all companies in the industry. They were not paid out of the treasury of the United States. My expenses were paid by the Planning and Coordination Committee, from industry funds and not from Government funds. As National Coordinator I drew a salary of $18,000 a year. That was paid to me from March 25, 1935, until the expiration of the Code, and it was paid out of the industry fund.

Before me, Mr. Bennette was National Coordinator. Mr. Bennette drew a salary at the rate of $25,000 a year. A few months after he took the position of National Coordinator he found that he could not spend very much time in Washington, and so the Committee arranged to pay him at that rate for the days that he was there. For the days that he was not there, he got nothing.

I assisted Mr. Bennette part of the time he was Coordinator. For the first 5½ months I worked for nothing. Then Judge Beaty, who was chairman of the Planning and Coordination Committee, discovered that fact and insisted that I be paid on the days when Bennette was 2047 not in Washington. When he was in Washington I got nothing.

Mr. Arnott was not a member of any allocation committee, nor was Mr. Carnes. I think Mr. Hartmann was not. I know C. D. Robinson of the Republic very well. He was not a member of any allocation committee. I know Mr. Neil Buckley. He was not a member of any allocation committee.

During 1934 and 1935 the period of the operation of the refinery amendment, we almost constantly overproduced. That is, every month the actual amount of production was in excess of the amount that we had intended to allocate as the probable consumer demand. The total production throughout the period was in excess of the total amount predicted as the probable consumer demand. In some months that excess was substantial.

The March, 1935 voluntary curtailment program began some time during the middle of the month, not at the beginning of the month. I think there is no exact date on which it took effect. The major oil companies curtailed just as rapidly as they could shift their operations, I should say beginning about the 11th or 12th of March.

That voluntary curtailment plan did not apply only to the major oil companies which I named. We applied it to the major companies specifically, but so that there would be not even the appearance of inequity about the thing, feeling that we should apply pressure to all alike, we
2048 urged the allocating agencies to persuade the small
refiner not to take advantage of the efforts the major companies were making by overrunning their allowables.

This list is the one I prepared of the names of the individuals to whom I sent those wires of March 9, asking them to cooperate in the voluntary curtailment. Dan J. Moran is president of the Continental Oil Company. Robert McDowell is vice-president in charge of sales of Mid-Continent Petroleum Company. R. G. H. van der Woude is one of the officials, I think president of the Shell Union. I would not attempt to say whether Shell Union is the holding company that owns the stock of the Shell Petroleum Corporation. I know H. R. Gallagher very well. He is president of Consolidated, and I am sure, president of Sinclair Refining Company, too. W. G. Skelly is president of the Skelly Oil Company. C. E. Arnott is vice-president of Socony-Vacuum. K. R. Kingsbury was president of the Standard Oil Company of California, a company not a defendant in this case. E. G. Seubert is president of the Standard Oil Company of Indiana. Walter C. Teagle was president of the Standard Oil Company of New Jersey at that time, a company not a defendant in this case. W. T. Holliday is president of Standard of Ohio. I think J. Howard Pew is president of the Sun Company. W. S. S. Rodgers is president of The Texas Company. E. L. Shea is president of Tide Water. C. B. Watson
is vice-president of The Pure Oil Company; I think
2049 he is executive vice-president.

I sent those wires to those men because I thought that they were the men to whom that matter should be directed.

The companies to whom I sent the wires of March 9 were companies that normally, in the winter season, built up large inventories to take care of the succeeding summer demand. At the beginning of the spring season, in March so far as I know, each of these companies had sufficient gasoline to meet all of its current demands.

There was not a shortage of gasoline as to current demands, except in this sense. I think this explanation is required at this point. So far as an integrated company, or an inventory company, we will express it, is concerned, their requirements for seasonal purposes are almost as important to them as their day to day requirements are. In fact, in one sense they are perhaps a little more important, because if they were a little short today, so far as their current requirements are concerned, they might turn and buy, but they might not want to use their inventory and take a chance on being able to buy 4 or 5 months later. So that in that sense their inventories are almost as separate a thing as if they didn't have gasoline.

Q. It is a question of policy as to each company, to which extent they will draw on inventory, and to what extent they will buy?

2050 A. I believe the word "necessity" is a better word than "policy." Building up a seasonal inventory is a necessity. For instance, it isn't a policy in the sense that they could suddenly decide they didn't want to build up an inventory.

Q. I started to state this hypothetical case: One of these defendant major oil companies purchasing, we will say—

Mr. Francis: Just a minute. He has started on a different line. I want to object to any statement of a hypothetical case, as to which there are no facts in this case.

The Court: Objection overruled, exception allowed.

Mr. Chaffetz: Q. Let us take the Standard Oil of Indiana. Assume, if you will, that the record shows that the Standard of Indiana purchased 75 cars in March. Would you say that that indicated that the Standard of Indiana, as a matter of necessity, bought that 75 cars rather than to draw that 75 cars from its storage throughout the country?

A. I would say that the purchase of 75 cars of gasoline a month on the part of the Standard of Indiana would signify nothing as to their necessity.

2051 Q. The quantity is insignificant, isn't it, 75 cars for a company as large as the Standard of Indiana?

A. I would say so. In my judgment. Now, my judgment may be wrong.

Q. And similarly as to other defendant major oil companies?

A. No, I don't want to answer that.

Mr. Donovan: I object to that. It doesn't appear what the situation is, how much they purchased.

Mr. Chaffetz: Q. Assume, if you will, that the Shell Company purchased from 40 to 50 cars a month in the Mid-Continent area, would you gather from that that it was a matter of necessity?

Mr. Donovan: I object to that. An assumption, your Honor.

The Court: Overruled. Exception allowed.

Mr. Donovan: This question is directed to a certain assumption, which doesn't appear as a matter of fact, and the witness' opinion is asked upon that assumption.

Mr. Chaffetz: I am directing myself, your Honor, to the testimony that was adduced on direct, and the purpose for which the testimony was adduced—it
2052 is perfectly evident they were trying to show that the purchases made by the defendants in the so-called buying pools, were purchases made to meet their needs—and this was general testimony—to meet their needs brought about by these voluntary curtailments, and it was sought to bring out by this witness the fact as to each and every company, because there was no distinction made.

Now, I am trying to bring out that this witness is not qualified to show—was not qualified on direct examination to make that broad statement. And I am now making on this examination, by reference to the testimony in this record as to what each of these companies did buy during that period.

The Court: You may proceed.

A. I would like to say, your Honor, that Mr. Chaffetz' description of my testimony isn't entirely accurate. I said that the buying program was one of the factors.

By Mr. Chaffetz

Assuming that the consumer demand increased very sharply in March, we were not, as a practical matter, free to increase the allocations of these companies in April.

In the first place, we had nothing to do with the de-
2053 termination of the national manufacturing schedule.

That was done by the Government, by the Petroleum Administrative Board, assisted by the Bureau of Mines. That was entirely out of our control.

The P. & C. Committee did not each month recommend a figure for the national allowable to the Department of Interior. We, the P. & C. Committee, sometimes did, and that was when we felt that the market situation or the inventory situation was in a critical phase. Then we would deal with them. But we always felt diffident about it, because we felt it was a trespass upon the government's prerogatives. They were supposed to do it.

Members of my committee and members of the P. & C. Committee did consult with the P. A. B. from time to time about what the estimates should be. The refinery amendment provides for consultation at the offices of the Petroleum Administrative Board. Sometimes they consulted that office and sometimes they did not. The Interior Department relied, I am sure, on the Bureau of Mines' determination as to demand from time to time. Those determinations were not forthcoming within the period necessary to give effect within 30 days to an increase in demand. Now, I make that statement as a generality.

Q. That is right. But in any event, each of those
companies as you say did maintain substantial in-
ventories, generally speaking, to take care of just
2054 that situation, where there was an unprecedented or
unexpected increase in consumer demand; isn't that
true?

A. Their operations were budgeted, Mr. Chaffetz, depending on a forecast, and they used about the same factors in making their forecast that the Department did. I would assume that their errors in estimates would be about alike.

Q. And of course, being a private company, they could change their budget or their plans on any day in the month, any given day they saw fit; isn't that true?

A. You say their budget and plans. They could change their budget, but that would be only a paper change, unless they would change their operation.

They could decide to withdraw 50 cars from inventory on any day if they wanted to, subsequent to the first of 1935, and when I say they could do that, I am disposing of the question of legality, and I am just asking you to assume that this compliance all the way through they insisted was voluntary and it was on that basis that they did it.

Subsequent to January 1, 1935, they were bound by a di-
vision of their allocations, so much of it for inven-
2055 tory, and so much of it for demand. Now, it was pro-
vided that if they found that current demand was
greater than was estimated they could make application to
withdraw a part of that from inventory, or transfer it to
current manufacture to meet such a situation, if and when
they saw fit.

If they put gasoline into their inventories because their current sales were less than their current production, that would reflect a decline in demand and would leave their inventories too high at the end of the month, and penalize them the following month. They would be cut off that much in their right to manufacture. So they met that situation as a rule, I think, as nearly as they could, by curtailing their operation.

I would not qualify as being familiar with the way in which each of the defendant companies does business in the Standard of Indiana territory, but I know that a large quantity of gasoline is sold in this territory through jobbers and service stations. Each of the major companies does business through its own outlets and to some extent they sell to independent dealers also. The major companies do not sell on the spot market to any substantial extent. Generally speaking, I know that jobber contracts in the Indiana territory have basic price provisions which are determined by reference to the market journals. In a 2056 general way I know also that the price to the dealer shall be determined by reference to the retail price at which gasoline is sold. I understand, in a general way, that jobbers doing business with dealers do business in the same way that major companies do when they deal directly with dealers, that is, they use a dealer form of contract. I know also that the defendant major oil companies together sell the greater part of all gasoline that is sold in the Indiana territory. I cannot say that the defendant companies sold more than 85% of the gasoline sold in the Indiana territory in 1935 and 1936 without looking it up. In that general way I could say they sell a substantial part of the gasoline sold in the Mid-West. I think it would be unfair for me to attempt to name a percentage. I should say that they sell much more than one-half.

There are some other majors doing business in the Indiana territory. The Sun Company does business in Michigan. They do not get in the rest of the territory. The National has its chief distribution in this territory.

I cannot say whether the only other companies doing business in this territory are the small independent refiners to whom I referred in my direct testimony. Off-hand, I can't think of any other company that does business here.

I would want to think about that a great deal more.

2057 In a general way, I know that many of the independent refiners that I referred to sell gasoline to jobbers, and some through their own outlets in this territory under contracts.

Q. They do business in much the same way that the major companies do, in a general way?

A. You mean with reference to making contracts with jobbers?

Q. That is right, and with reference to selling through their own outlets?

A. I think they sell some in a competitive way.

Some of the refiners in and around Oklahoma sell some gasoline to jobbers in the Standard of Indiana territory on the spot market. That is in addition to the gasoline that such refiners sell here under contract to jobbers.

And in times past independent refiners in East Texas have sold gasoline in the Indiana territory on the spot market and not under contract. They have been in and out of this market.

Pretty largely all the gasoline that is sold in this territory on the spot market is sold by the independent refiners, either in the Mid-Continent territory or in East Texas.

Of course a little comes up from Kentucky, not very 2058 much; and perhaps a little from Southern Illinois. Some comes out of Michigan.

In any jobber contract which is based on the spot market the price of the gasoline sold under that contract would necessarily be influenced by spot market transactions between the refiners and the buyers, whoever they might be.

Q. The only substantial spot markets that you know of that could determine those prices are the spot markets in Oklahoma and East Texas?

A. I would say that is the principal spot market.

Q. Yes. Do you know also that during 1935 and 1936, the retail prices posted by the Standard Oil Company of Indiana as the price leader bore some relation to the published spot market prices?

A. Well, I can't state that specifically. I can't answer that question specifically.

I think I said in my testimony that there was a relationship between the two that had always prevailed. I had knowledge in a general way that, during that period of 1935 and the early part of 1936, it was the policy of Standard of Indiana, in fixing its retail prices, to base its normal retail prices on a fixed level above the prevailing spot market tank car prices.

Q. Yes. So that, if that was the policy of the 2059 Standard of Indiana, and if the Standard of Indiana did fix the retail prices as price leader; then, if the spot market prices remained uniform during that period, you would expect the retail prices generally to remain uniform similarly, wouldn't you?

A. To the extent that their policy affected the market, I would answer that yes. I would think their policy had some effect on the market.

Q. Don't you know that they are the price leader in this territory?

A. They might lead a price down, but I don't think they could lead it up.

Q. Well, now, don't you know as a matter of history, over the period 1935 and 1936, that the Standard of Indiana was the price leader in the retail price field?

A. I think in—I don't know just what the definition of "price leader" is. You say it has been used in this case. If it is defined, I will be glad to answer the question.

Q. Have you ever heard the term "price leader" before?

A. Yes, in this sense: The Standard Oil Company of Indiana is the largest marketer of gaso-
2060 line; it is the largest single influence in the market. Now, if that establishes the Standard Oil Company of Indiana as the price leader, then I think that is what they are.

Q. Now, and you know also that usually its posted prices are followed by all the other companies in the same territory?

A. I couldn't say yes to that, under competitive conditions in the retail markets.

Q. Now, I think we have come to this point, then: That the prices for gasoline in this territory, whether in sales to jobbers or in sales to dealers, or in sales through major company owned retail outlets to consumers—the prices are determined by the spot market transactions between independent refiners, largely in Oklahoma and East Texas, and jobbers in this territory. Is that a fair deduction from your testimony?

A. There are other factors, it seems to me, that might influence the price; but I think that is an influence, of course.

Mr. Chaffetz: Q. That is the major influence, isn't it?

A. Well, it is an important influence.

Q. Well, isn't it the device whereby those prices

2061 are normally determined, or were normally determined during the period, 1935 and 1936?

A. I would say that theoretically that is the way the thing would work; but competitive conditions often upset that pretty badly, and the relationship that you have described doesn't exist at all.

That those jobber contracts specifically provided that the basic prices paid by the jobber shall be the prices published as the spot market prices is true to an extent. To what extent, I don't know. A great many of the contracts so provide. It is typical.

The price paid by the jobber under contracts containing that provision would fluctuate with the spot market.

Q. Yes, under those contracts. All right. And assuming that the retail price bore a standard or a standing relationship with the spot market price as published in the trade journals, then the retail price would depend on fluctuations in the spot market; isn't that true?

Mr. Donovan: Just a moment, Mr. Shatford. I must object again, your Honor. Here are hypothetical questions, here are assumptions put to this witness; there is no statement here that there 2062 is any such testimony in the record. I should think that we had gone far enough on ifs and assumptions, your Honor.

Mr. Kirkland: All I want to say, your Honor, is just this: I am afraid we are getting away from the original objection.

What I object to is that counsel in his question assumes, or at least would give the inference to any person sitting in the jury box, or to your Honor, that Standard just arbitrarily raised that price, any time they wanted to; and that isn't the proof in this case. And I am willing to stipulate with the Government as to what Standard actually did, if they want to.

The Court: The witness gave a long discourse yesterday on the prices of gasoline, and I think counsel should be permitted to find out just how much he does know.

Mr. Chaffetz: It may be important to know that he didn't know some of these factors.

The Court: Go ahead. Exception allowed.

Mr. Chaffetz: Q. I was about to suggest, Mr.

Shatford, that the retail prices prevailing in the Standard of Indiana territory during 1935 and 1936 were based on the spot market, in view of the
2063 policy of the market leader, to vary its retail prices as the spot market varied, and ask you whether you didn't know that to be a fact?

A. I would say that was only a factor, Mr. Chaffetz. I don't think there was such an absolute control of the thing as your question implies. My judgment would be there wasn't. I can only have a judgment on that question.

Q. That is right. You don't know, do you, that during this period the retail prices did, in fact, fluctuate directly with the spot market prices, subject only to a slight lag each time the spot market price changed?

A. I think there was a very definite relationship between them during this period.

Q. Yes. So that you would say that the retail price did vary during this period with the spot market price?

A. In a general way it did, yes.

In cases in which those contracts provided for that, the price to the jobbers varied with the spot market prices. In cases where gasoline was sold to jobbers on the spot market, that is also true.

Q. Yes. So that you would say that the principal factor, at least, that governed prices in the
2064 Standard of Indiana territory was the spot market price of gasoline during the period in question?

A. My judgment is it was an important factor.

I wouldn't say it was the most important factor. I think there were, perhaps, other stabilizing influences on retail prices, but as far as the mechanics of the price is concerned, insofar as there is a mechanical relationship between the tank car price of gasoline and the retail price, the situation you describe was an important factor. As far as the mechanical relationship is concerned, it was the most important factor. Insofar as the contracts were concerned, it was the most important factor, because that is what the contract was.

Q. Insofar as the retail price, that would be the same?

A. To the extent that took place, that would be a factor, yes, sir.

The sales on the spot market in the Mid-Continent and East Texas fields were made almost entirely by independent refiners or by non-integrated refiners. In fact, I know that to be a fact.

Q. As I remember, the spot market prices, as published in the journals—they must have published the
2065 spot market prices of the independent refiners, isn't that true, since they were the only ones that sold on the spot market, according to your testimony?

A. I said that by far the larger part of the spot sales were made by independent refiners and the Journal did publish the prices, as I understand, at which these independents refiners sold to jobbers.

Q. The price at which the independent refiners sold on the spot market necessarily made the spot market; isn't that right?

A. That is the spot market which is generally used, I understand, by the trade journals in making up the spot market quotations.

Q. And it is the only spot market the independent refiners could use, because they are the only ones that sold on the spot market?

A. Yes.

The spot price which is made by transactions between small refiners and jobbers and brokers makes up the spot market published in the journals, and in many cases, in fact in a very large part of the business, the selling, or rather the marginal contracts, are based upon that spot price, and during the period in question here, 1935 and 1936, the retail price was tied to the spot market.
2066 That was the method used in establishing the normal market price.

In the mechanics of determining the normal prices of gasoline in the Standard of Indiana territory you look to see the prices that the independent refiners in the Mid-Continent and East Texas fields get in their spot sales.

Without any question, there would be a relationship between the price received by the independent refiner for his gasoline in tank cars and the normal retail price.

Q. That is right, and I thought we had gone beyond that. I thought your testimony was that virtually the only factor that determines the prevailing prices in the Indiana territory, looking at it from the standpoint of the mechanics, as you put it, is the spot market business of the independent refiners.

A. That is, between the independent refiner, the broker and the jobber, and normal markets, there is the relationship, and that is a very, very large factor, and probably the most important one.

Q. Yes.

A. That theoretical structure.

Q. And so with the sales to the jobber; the jobber 2067 contracts, as you have testified here, based directly on the spot market.

A. Many of them do.

In those circumstances, if I wanted to determine what the factors were that during 1935 and 1936 produced the levels of prices that prevailed in the Standard of Indiana territory, the factors that determined the prices received by the independent refiners in their spot sales would be one very important consideration.

I would look first, I think, however, to the condition of the retail prices themselves as to whether or not they were normal. If retail prices were normal, then I think you might expect to find quite a definite relationship between the retail price and the tank car price, not in toto, but be a very large factor.

There would be a relationship between the general level of retail prices and the spot market, whether the retail prices were normal or abnormal, if the practice was to fix the normal price in relation to the tank car price. It might be a varying relationship, depending upon the degree of subnormality of retail price, but there would be some relationship if you established averages, without any question.

There certainly never was a time after March, 1935, and in 1936, when the entire retail market was subnormal. I don't suppose there has ever been a time when the whole market was subnormal.

2068 I think the general level of prices in theory is of course dependent upon the market price structure. There may be conditions in short periods in which the general level of prices is below that desirable level.

Q. But you would first have to have that normal level to know what the trend of prices is going to be. I can make myself perhaps a little clearer. If the policy of the market leaders in a theoretical situation was to fix retail price, the normal retail price, at 6¢ above the spot market price, we will say, then your subnormal condition would relate to that 6¢ margin over the tank car price, wouldn't it?

A. If you undertake to describe that as subnormal, that would be the inference.

Q. That is, it is the test of what is subnormal?

A. I think so.

Q. It is below the level fixed as the normal retail price?

A. Yes, if you use that as a theoretical structure.

Q. That is right.

A. Providing a marginal contract as the normal. Then of course anything below that would be subnormal.

2069 Q. And that entire retail structure then would fluctuate with the fluctuations in the spot market?

A. Not necessarily in direct proportion. There might be competitive conditions which would cause the spot market to go up and the retail price tend down.

Q. My assumption was that it was the policy of the market leaders to establish a normal retail price that bore a specific relation to the tank car price. That being true as the spot market fluctuated the retail price level would fluctuate too; isn't that true?

A, I was describing a successful policy; under your assumption, that is right.

Q. Now, come back to the question I asked you a little while ago: Assuming the situation that we just described, then in determining the factors that brought about the price levels prevailing for gasoline in the Standard of Indiana territory during 1935 and 1936, I suggest to you, and ask you to confirm, that you would look, first, to the factors that determined the prices obtained on that spot market by the independent refiners in the Oklahoma and

2070 East Texas fields.

A. That is, you would look there first for what purpose? To justify those prices?

Q. No, to find out what brought those prices about.

Mr. Lewin: What determined them?

A. I think that the spot market price would certainly be a basis to which you would look to determine a normal price structure in the Standard of Indiana territory.

It is not right that if the retail price were tied to the spot market, and if the prices to the jobbers were tied to the spot market, I would look to the spot market to find out what the factors were that produced fluctuations or lack of fluctuations in a given period, because of this fact: it is necessary to look, not alone to the factors which cause fluctuations in the spot market price of gasoline, but also to factors that cause fluctuations in the retail markets, the jobbers' markets, unless you are going to assume a theoretical condition in which everything is lovely and all prices are normal.

In referring to Exhibit 674, it seems that trend of retail prices followed the same general line as the trend of the spot market prices during the same period. I think that is correct, with the lag that was referred to this
2071 morning.

Q. Yes, and there is testimony here that it was the policy of the market leader specifically to post retail prices for this territory which bore a direct relationship to the prevailing spot market price, with only a lag between the time when the spot market price was up, we will say, and the time when the retail prices were raised. Now, I ask you to assume those facts. And you necessarily must assume from those facts that fluctuations in the spot market bring about fluctuations in the retail prices; isn't that true?

Mr. Thomas: Objected to as argumentative, calling for a conclusion, and not proper cross-examination.

The Court: Objection overruled. Go ahead. Exception allowed.

Mr. Thomas: And, if the Court please, instead of renewing that objection, may it be considered as though the objection were made and the same ruling and exception on all this line of cross-examination?

The Court: You may have that. Now, let the Reporter read that question.

(Question read by Reporter)

A. Assuming the conditions that you hypothecate, the answer is yes.

2072 Q. And then, in those conditions, if you wanted to find out what made the prices, the retail prices, we will say, fluctuate; and you say in order to do that you have to look and see what made the spot market prices fluctuate, because one fluctuated with the other; then I ask you whether it isn't true that, in order to find out what made the spot market prices fluctuate, you inquire into the factors that determined the prices obtained by the independent refiners in their spot sales?

A. You don't look alone to the fluctuation of the refiners' spot prices, to determine fluctuations in retail markets.

Mr. Chaffetz: That isn't the question.

A. I have made no study of the actual facts in this territory.

Q. We have assumed—we are assuming that the retail prices fluctuate with the spot market prices. That is an assumption I have asked you to make.

A. All right.

Q. I understand that you have made no study of that situation in this territory, have you?

A. No, sir.

Q. So that you don't know what the actual facts
2073 are; isn~~'t that~~ right?

A. That is pretty largely true, just in a general way, as I said yesterday, and said again today.

Q. I ask you again to assume the facts as I have stated them to you; that is, that the retail prices did fluctuate during that period, in direct relation with the spot market price. And, making that assumption, I suggest to you that, in order to find out what produced the fluctuations in either the retail prices or the spot market prices, the thing that you look to is the spot market prices obtained by the independent refiners, because their prices are the only spot market prices there are, and what the factors are that made those prices during that time?

A. You would look to the spot market prices of the refiners as a factor, there is no question about it, in determining the movement of retail prices.

Q. And under the assumption that I have asked you to make, you would look to that as the essential factor?

A. You mean assuming perfect relationship between the two in the normal market?

Q. That is right.

2074 A. I think that would be an important factor.

Q. It would probably be the only factor under that assumption?

A. No, I wouldn't go that far. I think conditions of demand, general business conditions and consumption in the retail market—

Q. Well, all right, we will come to that in a minute. You will agree with me to this extent: That it is the most important factor, that is, I shouldn't say the most important factor, the most important indication of the reasons for the fluctuation in the spot market prices, would be the factors that entered into the prices obtained by the independent refiners?

A. I wouldn't agree with that, no, sir.

Q. Now, let's see why not?

A. I would agree with the relationship that exists between the two but I certainly wouldn't agree that the influences that play on the price of gasoline, the retail price of gasoline, come from the price of gasoline at the refinery.

Q. Now, you refuse to make the assumption that I have asked you to make. I am asking you to assume, if you will, that the retail prices fluctuate di-
2075 rectly with the spot market prices; so that, when the spot market went up, the retail prices went up; and when the spot market when down, the retail market went down in the same proportion. I am asking you to assume that. You can do that, can't you?

A. Yes, sir.

Q. All right. Now, if, once you assume that, then the only things that made either one of those prices go up or down, were the factors that went into the prices obtained on the spot market by the independent refiners; isn't that right?

A. I would say that under those circumstances, the prices of gasoline to the independent refiner in tank cars would be a basic factor in that particular structure of prices.

Q. It would be the only factor, because those were the prices that made the spot market; isn't that true?

A. Assuming that that were true, the answer would be yes.

Q. Now, taking, then, the prices obtained by the independent refiners on the spot market, in order to find out what the factors were that entered into those prices, you would first look, would you not, to the
2076 supply and demand situation of that group of refiners who sold on the spot market?

If the independent refiner obtained orders for more gasoline than he could make, and if that were generally true of the class of independent refiners to whom we are referring, it would have the effect of firming the market. It would tend to bring prices up. Conversely, if the same class of independent refiners were making more gasoline than they had an immediate demand for, that would tend to weaken the market more or less.

If you had a situation where, over a period of time, the class of independent refiners in the Mid-Continent and East Texas who were selling on the open market were manufacturing more gasoline than they had an immediate demand for, during the period of time in which that condition existed, I would expect to find a weak market.

Q. And you would expect to find such a weak market, irrespective of whether in the country as a whole there was a sharp increase in consumptive demand?

A. If there were a very sharp increase in consumptive demand over the rest of the country, it would be hard to assume a distress situation or a surplus of gasoline long continuing in any refinery area.

2077 I testified on direct examination why it was that the independent refiner was gradually losing his markets.

Q. And it is possible that during the time that the independent refiner is losing his markets and his business is falling down, that the major companies as a group may be increasing their business and expanding their markets; isn't that true?

A. Yes, sir, there have been times of that sort.

Q. Yes. And it may also be true that, at a time when there is increased consumer demand, that that demand would be supplied largely and in greater relative proportion by the major companies than by the independent refiners; isn't that true?

A. Yes. Of course, under those circumstances, the major company would look to the small refiner, probably, for his resources of gasoline with which to meet that increased demand.

I would say it is intensely practical because that is precisely what happens. The major company, when he has more gasoline sold than he can deliver, buys from the small refiner.

During the spring of 1935, when the increased consumer demand to which I have referred developed in actuality, the condition changed very rapidly. During the first part 2078 of that period the independent refiners in East Texas and in the Mid-Continent fields had a surplus of gasoline; during the latter part of the period they had no surplus.

I would say that there was a time in the late spring or early summer of 1935 when the small refiners had an actual demand for such gasoline as they offered for sale.

Part of that excellent demand was certainly the sales made by them to the major companies. I think it is fair to say that the small refiners probably would have had a surplus of gasoline if they had not sold to the major companies. I think that is true.

Q. All right. And, having that surplus of gasoline, you would have expected to find a weak market, a weak spot market?

A. Well, I don't know that that would necessarily follow. The fact that the major companies came in and bought some gasoline, of course, leaves the question of what would happen, if they hadn't done that, highly speculative.

It is barely possible that, through brokers or otherwise, they would have found another market. Certainly they would have found another market after June, when that immense increase came due to exports. In fact, in the month of June, that began to take effect. There would
2079 have been a market there, for example.

Q. You think, then, that the gasoline that the major companies were buying in June from the independent refiners would not have been surplus gasoline, but would have been sold in the open market?

A. I don't know about that. I would say it would be hard to distinguish between the gasoline they bought from these companies and the gasoline they shipped from their own plants; it all went into a common market, and it is pretty hard to distinguish one from the other.

Q. In order to determine what the true situation was, then, you would want to have a good deal of information that you do not now have; isn't that true?

A. Not as to general effect and general outline on the market. As to the number of cars that went to one place or another, we would need a lot of information, and as to just what channels this gasoline moved through—

Q. No, no, that is not what I have asked you at all.

A. Well, I am sorry.

Q. You agreed with me, I thought, that if the independent refiners had a surplus of gasoline over 2080 their immediate demand, you would expect to find a weak market, no matter what other conditions existed in the country as a whole, did you not?

A. I think I hesitated in accepting that, because I had difficulty in imagining a weak market in one spot, and a strong market elsewhere, because refinery markets don't go that way, Mr. Chaffetz, they are too flexible.

I think they had a good market in the summer of 1935. There was a tremendous consumer demand throughout the country.

Q. That is right. That satisfies you that the independent refiners also had a strong consumer demand, and wouldn't have had any surplus gasoline on hand if the major companies hadn't purchased from them?

A. There was a very strong consumer demand, and it is my personal opinion that they might have found a market if the major companies had not bought, but that is my judgment.

The small refiner needed to sell his gasoline, of course, into the market in the summer of 1935. Now, whether he needed to sell it to the major companies or not, I don't know. I am not prepared to say that. My personal opinion is, he could have found a market. I think there 2081 was a very strong demand, and a very good market. That was true, in my opinion, throughout the entire summer of 1935.

I think the first really soft spot in the refinery market, and when I say soft spot, I refer to demand, price and so on, occurred along in late February and early March of 1936, after this additional price rise had taken place. We had a very disappointing demand, as I remember it, at that time.

I think, generally speaking, it was a pretty good refinery market throughout the year 1935, and I am judging that by the movement of tank cars.

Q. All right. So that you think that during the entire year 1935 the independent refiners would have found a market for all their gasoline in the regular markets on which they sold, if they had not sold to the major companies?

A. Now, that is a difficult question because one

of the regular markets on which they sold was the
major companies. You can't take part of their regu-
lar market away and leave them with their regular
market.

Q. I can eliminate the major company purchases
if I want to, can't I?

A. Then you will have to eliminate part of their
regular market, and send them into a new market.
2082 Mr. Chaffetz: Q. Let us not talk of regular mar-
kets or new markets. Let us talk about a particular
kind of markets. I ask you this question whether if
the major companies had not been buying gasoline
from the independent refiners in the group to which
we have been directing our talk during the year 1935,
whether in your opinion, those independent refin-
ers would have found a market for their gasoline to
jobbers?

A. My answer is that there was a very, very
strong consumer demand, a very large increase in
consumer demand, and it is my personal judgment
that if the small refiner had abandoned that part of
his regular market, which is made up of major com-
pany purchases and had sought a market elsewhere,
he could have found it, it might be, at prices of an
upset or market disturbance. Any readjustments of
markets of that type is usually accompanied by that
sort of result.

I have nothing better than hearsay knowledge person-
ally about periodical surveys made during the year 1935 of
the amount of surplus gasoline that the independent refin-
ers in the Mid-Continent area had on hand or would have
on hand during the coming months.

Q. Now, let us assume that situation, and as-
sume the situation to have been that the independent
2083 refiners did have surplus gasoline on hand continu-
ously in each month of 1935, and let us assume that
that surplus gasoline totalled in the Mid-Continent
fields from 700 to 800 cars a month. Now, I ask you,
under that state of facts, assuming that that 700 or
800 cars of gasoline were not sold to major com-
panies, but the independent refiners sought a mark-
ket for it in the open markets to brokers, jobbers
and dealers, what would you have expected to have
found with respect to the trend of the spot market
during that period?

A. I think that with some definite but temporary disturbance in the market, which would be an incident to this shift of market position, so far as the small refiner is concerned, that the firm consumer demand would have permitted those prices to have been maintained and kept about as they were. I grant you now a market disturbance while that shift was taking place. But all of this, of course, is very hypothetical.

If you will add brokers to your outlets, I think that with a reasonable disturbance in the market and a temporary one, there would have been a recovery of price and the outlet would have been established.

Q. Why would you say that there would be only temporary disturbance in view of my assumption 2084 that the amount of surplus continued to exist constantly through that period?

A. Your Honor, that is what makes the assumption so difficult, because the demand kept increasing—

The Court: When you are asked to assume a thing, you assume it to be a fact, whether it is or not.

A. Of course, if surplus continued to exist, that would mean the refiner would not have found a market. So long as a surplus exists, he hasn't got a market.

Mr. Chaffetz: Q. That is right, and so long as a surplus exists from month to month, so long as the independent refiners are making more than they have an immediate demand for, you are bound to have a weak spot market, isn't that right?

A. Yes, that is correct, as long as there is an excess of distress gasoline on the market, the market tends to be soft.

Q. That is right. Now, I am going to ask you to assume another thing, another fact. I direct your attention to any arbitrary period during the time when the tank car price remained uniform and level. We will take the 15th of July, 1935, and I am now pointing to Exhibit 712. Let us assume an inde- 2085 pendent refiner on this date has, we will say, 100 cars of gasoline in storage which he wants to move. You would say that if he had no immediate sale, no customer who was immediately prepared to take that gasoline from that refiner at the then market price of 4¾¢, you would call that distress gasoline, wouldn't you, if he was an independent refiner?

A. Yes, if he had that gasoline, and couldn't sell it at the market price, that would be distress for the time being.

Q. If he had it in the storage tanks on that date, you would call that distress gasoline?

A. One of the elements of distress gasoline is the ability of the owner to hold it. One of the elements of distress gasoline, Mr. Chaffetz, is if the man who has it is in a position where he needs to sell it, if you will assume that he has got to sell it.

Q. You want to limit the definition of distress gasoline to a man who has got to sell it? For what reason must he sell it?

A. He must meet his payroll or crude payroll or light bill. He might have to sell it in a week or he might have to sell it in 2 or 3 days.

Q. Then in your definition distress gasoline is not gasoline which the refiner has on hand which
2086 he has no market for today in the going market price, but is gasoline which he is compelled to dump on the market?

A. That is my definition, and I think general.

Q. All right. Let us avoid the use of definitions. Let us say a refiner has 100 cars of gasoline in his storage tanks on that date, July 15, for which he has no immediate sale at the price of 4¾¢, and he wants to sell. He can sell at a fraction below 4¾¢, can't he?

A. I think so, especially in the market as it was in the summer of 1935.

Q. But if he had an assured outlet for that and protected, at 4¾¢, he would not sell it to anybody else at 4⅜¢—at 4⅝¢, would he?

A. No.

Q. No, suppose this independent refiner is doing business with jobbers in the Indiana territory o[illegible]e spot market, and he has this 100 cars of gasoline, and on that day he had no jobber who would pay him 4¾¢ for it. If he had in back of him a major company buying program which took from him all the gasoline which he could sell at below that price, if you were that independent refiner, you would sell

2087 that gasoline to the major company buying program at that price, wouldn't you?

A. I would have to, yes.

Q. Now, conversely, if you were such an independent refiner on that date, and you were able to sell all your so-called surplus gasoline to a major company buying program at 4¾¢, what would be the lowest price at which you would sell that gasoline in the open market to a jobber?

A. 4¾¢. That is assuming we have no special relationship that we want to protect. That would be the proper answer.

Q. That is right. Your open market sales to jobbers who want to do business with you on that day?

A. That is right.

I would say that the broker price would be possibly just the broker's margin, which is usually ⅛¢ a gallon, below what you would have to give a jobber on that day. I think ⅛¢ for the broker is usual but some brokers might get ¼¢ a gallon. If the market was strong you might require that the broker get his commission from the man he was selling to. I think it is fair to say that usually, if you sold to a broker, you would expect to sell to him at ⅛¢ below
2088 the price you would expect to sell to a jobber. In a strong market, you might not do it, but I am perfectly willing to admit here that you would do it.

Q. Now, if you were an independent refiner who did business with brokers, and if the going market price was 4¾¢ and you sold to a broker, and you know you have to sell to the broker at 4⅝¢, if you were selling at the market, your price would be 4⅝¢?

A. Yes, under that assumption.

Q. And if you could sell to a major company at 4¾¢, you wouldn't want to sell at 4⅝¢ to that broker?

A. I assume that I would go to the major.

Q. If during that period you always knew you had back of you a major buying program which could take from you all the gasoline which you had that you couldn't sell at that market and you knowing the major buying program would take it at 4¾¢, that would be your going market price throughout that period, wouldn't it?

A. Yes, sir.

Q. Now, I want to discuss with you now some of the other factors—some of the factors that you emphasized that go into the price charged by the independent refiner for his gasoline. 2089

Let's take first, the Connally Act, during the period beginning March 1, 1935 and continuing down through the rest of 1935; the Connally Act was in effect, wasn't it?

A. Yes, sir.

In reality, what that signified was that there was a Tender Board operating in East Texas, which had the effect of prohibiting ~~and~~ preventing the movement out of East Texas, into other states, of illegal oil and its products.

There was no Tender Board in the Oklahoma field at all, or any place else in the Mid-Continent field.

The independent refiner in the Mid-Continent fields had not, generally speaking, been selling hot oil. The hot oil problem was largely confined to East Texas.

The Connally Act went into operation about the 1st of March. That prevented the independent refiner in East Texas from selling hot gasoline for interstate movement. Many of the independent refiners down there folded up and ceased to function at the time the Connally Act began to operate.

Q. Now, assuming that those who were left and who were now operating on legal crude only—assuming that they were manufacturing more gasoline than they had an immediate market for, would you not say that, despite the introduction of the Connally Act, you would expect to find a weak rather than a strong spot market in East Texas? 2090

A. Yes, sir.

Q. And if throughout the period that the Connally Act operated, the independent refiners in East Texas, were, week by week, manufacturing more gasoline than they had an immediate sale for and were looking around for places to sell it on the open market to brokers and jobbers, you would expect to find a weak market throughout that period?

A. Yes, sir.

Q. Now, in the Mid-Continent fields we didn't have the hot oil problem, but we did have the surplus gasoline problem; did we not?

A. To some extent, yes.

Q. So that I ask you whether, regardless of the operation of the Connally Act, if the independent refiners in the Mid-Continent fields were, month by month, producing more gasoline than they had an immediate sale for, wouldn't you expect that, so long as that condition existed, the spot market in the Mid-Continent field would be weak?

A. Yes, sir.

Q. Now, let's take the factor of increased consumer demand: No matter what the increased consumer demand in the country as a whole may have
2091 been, if nevertheless the independent refiners—

A. Pardon me. Is this an assumption?

Q. Yes. (Continuing) —if nevertheless the independent refiners in the Mid-Continent and the East Texas fields were actually producing month by month, more gasoline than that for which they had an immediate market, it would again follow that you would expect to find a weak spot market?

A. Yes, sir.

Q. And now let's take the allocation provisions of the refinery amendment, concerning which you testified at great length: and you told us how it was the function of your group to allot the total production that each refiner in the country could produce during the period beginning April of 1934 down until May of 1935; isn't that right?

A. Yes, sir.

Q. And if despite the allocations that you made under that refinery amendment, the independent refiners in the Mid-Continent fields and in the East Texas were actually producing, week by week, and month by month, more gasoline than they had an immediate market for, you would expect to find a weak spot market price?

A. Yes, sir.

Q. And, now, if, as you testified, through a volun-
2092 tary curtailment plan, about this period here (indicating) in the middle of March, you induced a large group of major oil companies to curtail their current operations, that alone—that curtailment of operations by the major companies at that time in and of itself would not have directly influenced the spot market prices in the Mid-Continent and East Texas fields—I will stop there.

A. You stop there. Did you start with an assumption that this excess existed?

Q. No, I am going to deal with that separately.

A. Then we have no assumption here?

Q. No assumption.

A. I would say that the effect of that curtailment, Mr. Chaffetz, under the conditions that existed would be to increase the desire of the major companies to purchase gasoline in proportion to the extent that it increased their need for the product.

Q. I was trying to eliminate that with this question. I was going to deal with that in the next question.

I wanted you to say that the mere curtailment of the production of the major companies, in and of itself, the mere fact that the major companies' operations were cut down would have no effect on the spot market in the Mid-Continent and East Texas fields.

2093 A. Oh, just of itself I would say that the effect would be imperceptible.

Q. Imperceptible. That is right. Its effect on the spot market is brought about only in so far as the major companies buy gasoline from the independent refiners on the spot market?

A. In those circumstances?

Q. Yes.

A. That is correct.

Q. And then if you wanted to inquire into the precise effect of that buying, you would want to know, wouldn't you, whether that buying was done in concert, by the major companies acting as a group, under a plan, the purpose of which was to raise the spot market price or whether each of the major companies, competing with the others, went out to buy gasoline on the spot market at the best price at which it could buy, wouldn't you?

A. I wonder if your question follows the other one, that was the form of it; but I just wonder if it does. Would you mind considering the other question, and then this one, because I really don't understand.

Q. I will ask you three or four questions, then.

A. That will be fine.

Q. You agree with me that curtailment in the operations of the major companies does not by itself affect the spot market?

2094 A. I would say that it would have an effect, Mr. Chaffetz.

Q. But it would be imperceptible, that is what you said?

A. That is what I said.

Q. It might have a psychological effect?

A. We were dealing with this particular case, were we not?

Q. That is right.

A. I think of and by itself it would not have a major effect; it would have had a very small effect.

Q. And the same is true of any reduction in the amount of inventories in the country as a whole at that time?

A. Well, the effect would be in proportion to the reduction.

Q. The effect on the spot market?

A. Yes.

Q. Suppose the inventories of the major companies were sharply decreased, just the inventories, the mere decrease, by itself, without reference to any buying by the major companies, but just a mere decrease in the inventories, would not have any perceptible effect upon the spot market, would it?

The Witness: We are assuming, your Honor, a decrease in the inventories? And that the major companies don't do any buying? 2095

Mr. Chaffetz: Q. Don't do anything about it.

The Witness: And we just have a mathematical or statistical change?

Mr. Chaffetz: That is right.

The Witness: And we are just defying all economic effect.

Mr. Chaffetz: That is right.

A. Well, then, under those conditions, of course, if they did not buy there would not be any effect on the spot market.

Q. Variations in the inventories of the major companies do not by themselves affect the spot markets in which only the independent refiners sell? Isn't that right?

A. We still have that same assumption?

Q. That is right.

A. If they don't buy?

Q. Yes, without reference to the buying by the major companies.

A. I would say that if they did not buy, of course you would destroy the cause and effect there—have no effect at all.

Q. There is no effect on the spot market.

A. That is right.

Q. And then I say that the only effect that comes 2096 to the spot market by reason of any of those things, either by reduction in inventories or curtailment in the daily operations of the major companies, comes when and to the extent that such major companies buy in the spot markets?

A. Trading is the very life of a spot market. Of course, if you don't have it, you don't have a spot market.

The Court: You haven't answered the question.

Mr. Chaffetz: I ask that the answer be stricken. I don't quarrel with it, but it isn't the answer the question calls for.

Will you read the question, please?

(Whereupon the pending question was read by the reporter.)

A. Insofar as the spot market is affected by major company purchases, of course they have to buy.

Mr. Chaffetz: That is not the answer, either. Will you please read the question again?

(Whereupon the pending question was re-read by the reporter.)

A. You are entitled to an answer of yes to that. I misunderstood your question. I didn't realize that you had confined the first part of it to major companies. That is all right. The answer is yes.

Q. And in order to determine what the effect on the spot market of such purchases was, you would 2097 have to know all the facts and circumstances under which such purchases were made; isn't that true?

A. You mean—all of them?

Q. Generally.

A. I think we would have to know the—we would have to know the purpose and motive of the buyer, Mr. Chaffetz.

Q. That is right; that is right.

A. To a reasonable extent.

Q. That is one thing. You would want to know, for example, whether the buying was regular, continued regularly over a period of time, wouldn't you, or whether it was sporadic; that would have an effect on the level of the spot market prices, wouldn't it?

A. Well, I wonder about that. I think that the spot market is an immediate thing, and I think the important thing is that the buying exists and not that it might exist 6 months from that time.

Q. But if we are dealing with the trend of the spot market from day to day the continuity of the buying would have much to do with it?

A. Oh, yes, it would.

Q. And you would want to know whether the major companies were buying the market up or whether they were buying the market down, wouldn't you?

A. I think that the market going up is an effect, 2098 isn't it, that comes from the buying?

Q. It might come from the buying, isn't that what you mean?

A. Under normal conditions. Under ordinary conditions of spot market trading, doesn't the advance of prices come from the buying, rather than the buying come from the advance of prices.

Q. Wouldn't, for example, an increase in prices come quicker and be more accentuated if the purpose of the buyer was to buy the price upward?

A. It might come quicker, yes.

Q. And much might depend on the manner in which the buying was done by the particular refiner, as, for example, if the purchasing refiner was intent on keeping the price down, he might shop around?

The major company would shop around for a place where he could buy the gasoline more cheaply, as distinguished from the major company who is interested in bringing the price up; in which case he would be pleased to pay a higher price for the same quality of gasoline; isn't that true?

A. You mean, if he was trying to buy the market up?

Q. Yes.

A. Yes, he would be pleased to pay a higher price.

Q. And if there were a system of recommenda-2099 tions, whereby a committee recommended to the major company buyers, from time to time, as to what price they should pay, so that they accumulated and would be buying a certain quantity at such a recommended price, that would tend to improve the spot market price, wouldn't it?

A. I think that would depend on what they recommended.

Q. And if the recommendations were for the purpose of making prices higher, then you would certainly agree with me?

A. So long as they kept recommending higher prices, the market would certainly continue to rise.

Q. If a major company needing gasoline, we will assume, could buy gasoline in several different places, as, for example, from another major company, or from the Gulf Coast, from refiners on the Gulf Coast, independent refiners on the Gulf Coast, or from refiners in East Texas, and if that refiner-buyer, major company buyer should add its purchasing to that of other major companies buying in East Texas instead of from major companies, or instead of from refiners on the Gulf Coast, that would have the effect of improving the price in the East Texas spot market, wouldn't it?

A. You are not dealing now with the recommended price?

Q. No.

2100 A. You are dealing now with competitive prices.

Q. That is right.

A. Oh, yes, as you increase competition you increase the price.

Q. Have you heard the term "judicious placement" of orders?

A. No, sir, I have not.

Q. If a group of refiners interested in raising the spot market price should place their orders judiciously where it would do the most good, that would have the effect of improving the spot market where those purchases were made, wouldn't it?

A. So long as that activity was maintained I think that would have the effect of strengthening the market.

Q. Now, I ask you whether in testifying with respect to the causes that brought about, first, the increased prices in the spring of 1935, and the uniformity of prices from spring until the end of that year, you would not have to be informed with respect to the very things which you and I have been discussing in the last 5 minutes, mainly, the character of the buying that was done by the major companies during that period?

Mr. Donovan: Now, your Honor, I object to that question. He has proceeded upon a basis of assumption. Now he asks the witness to take those assumptions as facts. 2101

Mr. Chaffetz: I did not.

Mr. Donovan: That is specific in your question.

Mr. Chaffetz: I purposely avoided that. All I said to the witness was that he would want to know whether those assumptions were true, and what extent, and what other facts were true. He would have to know what the facts are before he could intelligently tell this jury what the causes were that brought about that trend of prices.

The Court: He may answer that. Exception allowed.

A. On the basis of your assumption that such an activity was going on in the way you have described, with constantly higher recommendations, I think that certainly would be a factor that would have to be taken into account, and I would need to know something about it if I attempted to describe conditions.

Mr. Chaffetz: Q. What I am driving at is this: If there were major company buying programs going on during that period, you would have to know a good deal about those major company buying programs, before you could express any opinion as to what the essential factors were, the important factors were, that brought about that trend of prices.

A. Assuming that it was of any size or importance, I think that is true. 2102

Q. Yes, that is right. I think you testified—I know you testified that at the end of May you ceased to function under the refinery amendment.

A. That is correct.

Mr. Lewin: Can he point out there (referring to Exhibit 674) when the Code went out, on that chart?

Mr. Chaffetz: Q. I think you testified May 28?

A. Yes, that is correct. Right here (indicating).

The Court: Just mark an "X" on there, a large X.

A. Do you want a heavy one? (marking on exhibit)

Q. Yes. Now write on there "date of expiration of code". Will you write that on there?

A. Yes, sir (witness writes on exhibit).

The Code stood to expire June 16. We made allocations on the understanding that they were good until June 16 if the Code expired and was not immediately extended. The Code did expire, and those allocations for June were not affected.

Beginning on this date, May 28, and throughout the rest of that year, all the refiners, both major and independent, were under no legal restriction with respect to the operation of their plants, within their respective capacities.

I think it is true that there was no shortage of refining capacity in the country at that time, but I would like 2103 to qualify that by saying there might have been individual plants here and there, but I am speaking of the country as a whole. I think the same is true for the Standard of Indiana territory as a whole, as to the aggregate of plants supplying that territory. I think they had enough capacity to meet the demand. I think they had enough capacity to more than meet the demand the year around. That is, assuming the right to build up seasonal inventories that we do in this case.

Q. They have had more since May 28 than they had before because there has been no restriction?

A. The industry could manufacture in its full stride.

Q. As a matter of fact, the seasonal inventories built up in the winter of 1935 and 1936 were so great as to have become a matter of concern in the industry; isn't that true?

A. Yes, they were high. They were not high in the number of days, I think. They were high, I think, in the aggregate. I think that was giving some concern in the industry.

Q. When you testified on yesterday you referred to a ceiling above the tank car price which I think you sought to indicate had some effect upon the uniformity of the tank car price. You said, I think, that where you have a uniform ceiling, uniform retail 2104 price, you might expect to find a uniform tank car price level, didn't you?

A. Yes, I think I stated that there was a relationship ordinarily, that I felt that under those circumstances at this time the relationship was very close. And I think I predicated that on proration, and so forth.

Q. No, we are talking now between the retail price and the tank car price. But all you meant to point out, though, as I understood your testimony yesterday and today, was that there was that relationship between the retail price level and the tank car price level?

A. My testimony then and today, Mr. Chaffetz, would both need to be predicated upon this crude situation, because if we did not have this stable crude situation we could not even have normal retail markets, and without normal retail markets there is a tendency for the relationship in that retail price and the tank car price at the refinery to be destroyed.

Q. Assuming the crude situation that you have described, if the fact was during 1935 and 1936 in the Standard of Indiana territory that the level of retail prices was tied to the tank car market and fluctuated with it, then the fact that the tank car price was level would be the factor that would tend to in-
2105 dicate why the retail price level remained uniform, rather than vice-versa; isn't that so?

A. Granting that assumption, that is true.

Q. That is true. And you had made no study to determine what the actual factors were that brought about the relative uniformity in the tank car price and retail price in the Standard of Indiana territory?

A. Mr. Chaffetz, I have never in all my life made a detailed study. It is just my observation over a good many years, over a period of years.

Q. But you have made no specific study in this territory during the years 1935 and 1936?

A. Nothing that would rise, I don't think, to the level of a close study.

Redirect Examination by Mr. Donovan.

The factors that go to make up the tank car spot market price of gasoline, of course, start with the price of crude oil, the cost of transportation, and all of the ordinary costs of doing business. Those things are basic. Then, of course, would come the effect, the influence of marketing conditions. In 1935 and 1936 there was some gasoline sold by independent refiners to brokers on the spot market.

I think major companies were selling very little gasoline to jobbers on the spot market in 1935 and 1936.
2106 They were selling gasoline to one another, there were inter-company sales between large companies, but I don't think there was a great deal of gasoline sold on the spot market by major companies to jobbers.

Sales from brokers to jobbers are spot market sales.

A decline in the retail price has an effect on the spot market. If the retail price has a declining trend, or if it is spotty or sub-normal, particularly in large consuming centers, it will have a depressing effect on the tank car market for gasoline.

The refinery allocations stopped on June 14th.

(Witness marks date on the chart, Exhibit 674.)

Assuming that the Code expired, the allocations would cease on June 16th.

Mr. Lewin: Q. Do I understand they actually ceased with the Schechter decision, is that right?

A. That is, as far as I know, more of a legal question than anything else, because I don't know when we stopped, when the refineries stopped observing them. They had a figure for June, and whether they went clear through June or not, I don't know. I have no way of knowing.

Mr. Chaffetz: I understood the witness to say they gave them the statements that they were to be effective for the month of June if the Act was extended.

A. Yes, Mr. Chaffetz. We met as we always
2107 did, and went through all the regular routine, and then at the end, qualified it in that way, said, "Of course, if the thing goes out, this is off the 16th." Those allocations were made on May 13, your Honor.

The Court: Q. May 13th?

A. Yes, sir.

Q. But you don't know whether they abided by those or not?

A. I have no way of knowing.

By Mr. Kirkland

I know the Waggoner Company that is in Texas. They are a quite well known refinery in Texas. They have a modern refinery. I don't know if they have an Ethyl license. I know they have production. They are able to take care of their needs from their production.

Q. You know, do you not, that they have a large ranch with very valuable oil producing wells on it?

A. I don't know whether it is the same company that has the refinery. I know the Waggoner family. I know that.

Mr. Kirkland: Q. The same family?

A. Yes.

In regard to having sufficient production of crude for their own requirements, Waggoner differs from the ordinary independent refiner.

2108 Mr. Kirkland: Q. Now, you stated that one of the elements of distress gas was the ability of the refiner to hold it. In what respect do you mean, his ability or inability to hold it?

A. Well, he needs two things, storage and money. In regard to storage capacity, I know this, that at one time under the Code, and I believe that it was early in the year 1935, the Waggoner Refining Company had accumulated a very large quantity of gasoline which had been made over a considerable period of time. They had to have sufficient storage to hold it. There was quite a substantial quantity. They are reputed to be well financed.

I testified that the purchase of 75 cars by the Standard of Indiana from the Waggoner Company in March, 1935, would signify nothing as to necessity. I think the same would apply if I were asked about the purchase of 25 cars in February, 1935. I would make the same answer as to a purchase of 25 cars in January, 1935. I would make the same answer as to the purchase of 1230 cars in the year 1934 from Waggoner.

When I said it indicated nothing as to necessity, I meant to indicate that they had no need for it. Obviously they had some use for it.

Q. Some use for it. And that would be the same as to all these purchases, not only in 1935, but in 1934, and also in 1933, if questions were put to you, 2109 isn't that true?

The Court: You don't think the Standard of Indiana would go out and purchase gasoline if they didn't make use of it?

A. That is right, and having bought it, I don't think they would have thrown it away.

Mr. Kirkland: Q. That is right. A refinery, situated as the Waggoner Company was, both financially and with its production and storage, it was a rather good connection for any major oil company, wasn't it?

A. You mean a good connection for future purchases in case you would want some gasoline worse than you needed it then?

Q. Yes.

A. I think so.

Recross Examination by Mr. Chaffetz.

Q. Mr. Shatford, if the Standard of Indiana Company was buying gasoline from the Waggoner Company under a buying program, knowing what you know about the Waggoner Company, as you have just testified, you wouldn't think they were buying distress gasoline as you defined it?

A. No, sir, they would not.

Q. And any other major companies, defendants 2110 here, if they were buying gasoline from any independent refiners in the Mid-Continent or in East Texas, unless they were buying particular gasoline, particular gasoline that the refiner had on hand and couldn't keep any longer, either because he had no storage or for pecuniary reasons, financial reasons, you would say that such major companies were not buying distress gasoline?

A. Mr. Chaffetz, I can go all the way with you and say, "yes," except for one element in your question, and that is that you require under the terms of your question that the gasoline be made, and a small refiner has distress gasoline in his crude oil, because he takes his crude oil in today and puts it through his plant, and he sells his gasoline tomorrow or the next day, or the next day, and under my definition of spot sale, it might run for 30 days, and obviously it might be in the crude.

Q. But there would have to be the factor of no storage or lack of finances so that he had to dispose of it immediately?

A. That is my definition of distress gasoline, but, of course, in strong hands gasoline might ultimately become distress when it comes to over-burdening the market to a certain extent, and then strong hands become weak, and they have to let it go.

2111 Q. But they become weak only if the situation so develops that there is no longer any market in sight or for financial reason it has to be sold?

A. Or, because in their best judgment it is time to sell. You remember I testified on direct that inventories might easily be distress gasoline.

Q. Inventories of independent refiners?

A. No, inventories of major companies sometimes go on the market and become distress gasoline.

Q. We were talking about independent refiners, were we not?

A. If we were, I should apologize, because I didn't have that in mind in my answer.

Q. If you were talking about independent refiners, what I said was true?

A. If I was talking about independent refiners, what you said was true, because my talk about inventories wouldn't apply.

Q. All right. That is all.

2112 **F. W. FISCHER**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I live at Tyler, Texas. I have been engaged in the practice of the law about 30 years. My business has been mostly litigation in connection with the oil producing and refinery business.

For the last 6 years, I represented practically all the independent refineries and independent producers in the East Texas oil field. McMurray Refining Company, Dominant Refining Company and Cascade Refining Company were my clients. Also I represented Trinity Refining Company in 1934, but not in 1935. I represented Tower Refining Company in 1934 and previous years. I still represent Southport Petroleum Company. Century Refining Company and Arrow Refining Company are my clients. Tyreco Refining Company was in 1934, and Wabash Refining Company while it was in existence. It is not in existence now. I never represented Chief Refining Company. I represented Gilliland Refining Company, Utah Refining Company, Panama Refining Company, Petroleum Processing Company, and Roco Refining Company. I represented Texas Oil Products Company in 1934 and 1935. I represented Canyon Refining Company while it did business.

I represented Union Refining Company part-time. I
2113 never represented Treo Refining Company. I represented independent oil companies. I never represented a major oil company.

In addition to my law practice, I happen to have 39 oil wells in the East Texas field that I accumulated along while I was representing these folks. The Railroad Commission's estimate on the production capacity of each one of my wells is a little over 800 barrels an hour. But I am restricted to 20 barrels a day from each one.

The East Texas oil field is about 50 miles long and an average of about 10 miles wide. At the present time there are approximately 25,000 wells in the field. About 20,000 wells were located in the field during 1935 and 1936.

During the years 1933, 1934, 1935 and 1936 on the Railroad Commission's figures of the producing capacity of the wells, I think that field would have been capable of producing something like 300,000,000 barrels a day. It did not actually produce that quantity of oil during each of those years respectively because the production was restricted under what they call proration. The Railroad Commission of Texas had control of that proration, and restricted the production.

The Railroad Commission, ever since this Petroleum Code was started, would receive each month a statement from the United States Bureau of Mines informing
2114 the Railroad Commission what was the consumptive
demand for Texas for the next month. The Commission would then fix the allowable, or fix the amount of oil that would be permitted to be produced for January. It would divide that up into days. It runs, usually, about 1,300,000 barrels a day for Texas. The Commission would divide that around among the various pools in the state. The amount of oil that is permitted to be produced in the East Texas field is something like about 475,000 barrels a day.

As I understand the Interstate Compact Act, it is authority by Congress for the executive branches of the different oil producing states to get together and talk over how they are going to restrict the production of oil. That Act, of course, gives them immunity from any prosecution under the Anti-Trust laws. Oklahoma will say, "We will produce so much this month," and Texas, "We will produce so much," and they sort of agree on a restricted production between all of them.

The Railroad Commission of Texas attempted to restrict the production of crude oil in East Texas in 1933 and 1934. In 1933, it was restricted from 350,000 to 400,000 barrels a day. And in 1934, it was a little more, I think, about 400,000 barrels a day. That was what the Commission permitted to be produced. However, that wasn't what
2115 was produced, by any means. The Commission was
unable to enforce its restriction orders.

I know how much hot oil was produced, but only by general estimate. Nobody knows exactly how much was produced. The Railroad Commission didn't have any record. Their statements estimate it. I think my idea about it is better than anybody else's, because I was more intimately connected with it than anybody else, not as a producer, but as a representative of the folks that produced the excess oil.

I estimate from 150,000 to 200,000 barrels of excess oil were produced each day, over and above that permitted by the Railroad Commission's orders during those years. It was not like that all the time that I am speaking of now. It wouldn't be just a regular stream of excess oil produced each day. It would vary from time to time according to the markets. The market would become saturated, and you couldn't sell gasoline for 1½¢ a gallon, and you couldn't dispose of gasoline made from excess oil.

I want to make this explanation: when I say that I was connected with this as the attorney for those that ran the excess oil, I don't mean to convey by that that these men that produced this excess oil went out flagrantly and violated the law. Every bit of oil that they ran was run under the protection of injunctions issued by the State and
2116 Federal courts against the orders that were in effect.

I was the attorney for those refiners. There was one injunction issued by a 3-judge court, Judge Hutchinson was the presiding judge, that remained in effect from early in 1933 up until pretty late in 1934. That was the injunction that protected the refiner buying oil, producing it and transporting it, because there was no statutory authority yet in the State that gave the Commission control over refineries in the State.

The posted price for legally produced crude oil in April, 1933 was 10¢ a barrel.

Mr. Lewin: Just a minute. I move that that be stricken, your Honor. We weren't going to make any objection to the price of crude oil that obtained from the time the Code started, which was $1.00. That has been testified to here, time and time again. We don't think it is relevant, but we weren't going to make any objection to it. Now, this witness has gone back into April of 1933.

The Court: Your motion to strike will be granted. Exception allowed.

I think the price of crude was advanced to $1.00 along some time in September or October of 1933, and continued at that price, I think, up until 1935. I don't remember right now the prices of crude oil after January, 1936,
2117 and through the remainder of that year. It was above $1.00.

I know how the price of hot oil compared with that of crude oil which was produced within the allowables fixed by the Railroad Commission, in that period from September, 1933 through 1935. It averaged all the way from 20¢

up to about 35¢ a barrel. This so-called hot oil was used by the various refiners in the East Texas field, and shipped out to other refiners in the Texas area, Fort Worth and Waco.

Q. Did those refiners sell this gasoline, made from the hot oil, for the same price that refiners that made their gasoline from legally produced oil were asking?

Mr. Lewin: The same objection, your Honor. This is the price of gasoline, back in 1933 and 1934.

The Court: Objection sustained. Exception allowed.

The refiners who utilized this hot oil sold it in commerce to purchasers and users of gasoline. This production and utilization of hot oil in East Texas did not continue throughout 1935 and 1936. There was no excess oil produced in 1935 and 1936 that is, very little, if there was any produced. After about January or February, 1935, there might have been a little excess oil produced and used, made into
2118 gasoline which went into intrastate markets, sold in Texas; but there was none shipped in interstate commerce after March 1, 1935.

Something occurred about December, 1934, affecting the production of hot oil in East Texas. That was an order of the Railroad Commission put into effect on December 10, 1934, which was based upon a statute passed by the legislature of Texas that became effective at that time.

Until that time there was not statute in the State that authorized the Railroad Commission to require tenders to cover the shipment of refined products. When that statute became effective, then the Railroad Commission put into effect an order which prohibited the railroad companies or any other carrier from transporting, receiving or transporting oil or the products of oil unless the shipment was accompanied by what is known as a tender from the Railroad Commission's Tender Board, that they established there in the East Texas oil field. In other words, the tender is, in effect, a certificate from this Tender Board of the Railroad Commission that the oil accompanied by this tender or the gasoline accompanied by the tender was manufactured from legally produced oil.

That had the effect of immediately stopping the shipment on the railroads of all gasoline that didn't have
2119 a tender accompanying it. However, one of the Federal judges down there, Judge Duval West, had held

that a state law did not apply to an interstate shipment. This order of the Railroad Commission stopped the transportation of refined products in the State of Texas, unless it had a tender with it. Nevertheless, the railroads accepted this hot gasoline for interstate shipment and shipped it in interstate commerce, until finally an injunction was granted against the railroads from accepting those products for interstate shipment unless they had a tender accompanying them.

That injunction finally was granted about the last of January, I think, and remained in effect until the Federal Tender Board went into effect on March 1st.

The list of names that you read of certain independent companies I mentioned were clients of mine. Those companies were dealing in excess gasoline, in excess gasoline over the allowables, or hot oil, during December, 1934. Every one of those refiners was protected by injunction issued by the Federal court, in which the court held that Texas had no jurisdiction over refineries, and that the refiners had the right to buy and sell their products without any interference from the Railroad Commission. Consequently, they did deal in considerable hot oil. When I say hot oil, I don't mean stolen oil; I mean that which was produced from their own properties, or bought from
2120 some man who had produced it from his own property, but it was in excess of what the Railroad Commission permitted.

I am familiar with the organization of the East Texas Refiners' Marketing Association. I know the events leading up to the organization and consummation of that Association.

As I stated, the statute that the Legislature of Texas passed, giving the Commission authority to issue orders restricting the shipment of oil and the products of oil on common carriers, unless such shipments were accompanied by tenders issued by the Railroad Commission, went into effect in December, 1934. The Commission got out an order which, in compliance with this statute, would prohibit the shipment of these products by the carriers without a tender.

To my way of thinking, and in my judgment, that statute was valid, and those orders were valid, and my clients would consequently be left there with these products on hand and unable to ship them, in view of that order. Of course, at that time, Section 9(c) of the Recovery Act was still in effect. But I had it under attack at the same time in the Supreme Court of the United States, and I figured on winning that lawsuit, which I did. I represented these refiners in that suit. But this State statute, in my judgment, was valid.

2121 So I had a meeting of these refiners, and told them that they would have to prepare themselves to do business and carry on their business on legally produced oil thereafter; that we couldn't get rid of the products of this excess production because of the law, and from now on, since we had valid laws, we would have to obey them. So they got busy. They said, "All right, where are we going to find a market for our gasoline."

They got together to create an organization, a selling organization. I had in mind that we would make a central organization, so that each refiner could turn over its surplus gasoline to this central organization and dispose of it, something on the order of those coal companies up there in the East, that had an organization of that kind, a selling organization, and the Supreme Court of the United States said that was all right. That was the planning of this organization, a central selling organization. Each refiner was to sell his products to his own customers, and his surplus was to be turned over to the central selling organization, and he was to dispose of it through new customers, wherever he could find them.

We went to the extent of purchasing a terminal down on the Coast, so if we couldn't sell our products in this inland country, they could be shipped to the Coast and 2122 exported, or sold on the Atlantic Seaboard. That was the mechanics of it.

I drew up the papers for this organization. It was called the East Texas Refiners' Marketing Association.

I am acquainted with Neil Buckley. The first time I ever met him, I think, was about February 1, 1935. I don't know what connection he had with the East Texas Refiners' Marketing Association. He came into my office in Texas and told me that he was going to see if he could call on some of the major oil companies and see if he could get them to buy some gasoline from our organization. He wanted to know whether or not these people that went into this organization were now in good faith, and were going to obey the law and not run any more excess oil. He said that he didn't want to go to his friends and attempt to sell any gasoline if these refiners were not in good faith. He came to me, as their attorney, to find out whether they were in good faith.

I advised him that they were in good faith, because they were obliged to be in good faith, and there wasn't any question about it. I told him why they were obliged to be in good faith. They were obliged to because the law prohibited it, because the law was in effect; it was valid, and they could no longer run any excess oil. I don't know 2123 whether Neil Buckley knew that without coming to me for information. Mr. Buckley did not live in Texas. I understood he lived in Tulsa.

I continued to keep myself informed concerning the conditions in East Texas during the period beginning March 1, 1935 and continuing on through the year 1936.

I had a second conversation with Mr. Buckley after the one I have just related. He came up there about a month later after he was there the first time.

Q. Will you tell us what the conversation was?

Mr. Lewin: That is objected to, your Honor.

Mr. Chaffetz: I wonder on what theory counsel asks this.

Mr. Donovan: I just remind your Honor they brought out this conversation from Mr. Buckley themselves. In addition to that, here these defendants have been charged with the instigating the formation of this Association. Now, I think we should be permitted to find out just what occurred, and we cannot find out unless we know what those conversations were.

Mr. Lewin: My recollection is very clear on that. Mr. Buckley volunteered the fact that he had a conversation with Judge Fischer, and he wanted to go on and relate it, and I cut it off, and you asked me—I remember your question—"Do you want the 2124 conversation with the Judge?" And I said, "No, I don't want the conversation with the Judge because I do not think it is material." Now, that is the basis for going into this conversation, not with Neil Buckley who was on the stand and was testifying as to facts, but with Mr. Fischer.

Mr. Donovan: He says himself he would not let Buckley talk about it.

Mr. Lewin: Well, there wasn't any point in talking about that. It was purely a self-serving statement. Now it is worse to come from somebody else. If it was inadmissible from Neil Buckley it is all the more inadmissible now.

The Court: Objection sustained. Exception allowed.

I was familiar with conditions in East Texas in the period beginning March 1, 1935, and that I am now. I do not think there was any excess oil produced in that period, except a little bit that went to trucks out through the state. By "excess oil" I mean hot oil, that was what it was called.

During 1935 and 1936 all the wells producing in East Texas were connected with pipe line outlets for the marketing of crude oil produced by them. I don't know of any wells that were shut down. I could not tell you
2125 definitely how many were new wells completed in the field during that period. There was no difficulty in obtaining pipe line outlets for those new wells as they were completed in 1935 and 1936. Connections were very much sought after by the pipe line companies. There was competition for these new wells among companies purchasing in the field.

It was not practicable from the standpoint of a refiner to utilize crude oil from the East Texas field and to obtain additional wells from which to purchase crude oil in the event of increased refinery demands, unless he would buy some pipe line system out. That was the only way he could get it, because every well was connected either to some major line or to some independent pipe line, and there were no wells to be had. Those producers did not just swap their connections off from one to another. When they get connected to one outfit and they pay them they just stay with them; and of course if he is producing to a measurer his new well goes to the measurer, and if he is running to an independent, his new well goes to the independent. There is no switching around from one to another.

It was not practicable in East Texas to speed up the production from wells already producing in order to obtain additional crude, because the Railroad Commission had a restriction upon the production. I think in
2126 1935 the maximum amount that could be produced from any well was about 23 or 24 barrels, and the rest of them, 20 barrels apiece in 1934 and 1935.

They couldn't speed it up because of the restriction. The Commission had restricted the production to what they called the consumers' demand, based upon that which the Bureau of Mines had furnished them.

Q. Let me ask you this question, Mr. Fischer, with reference to the price of gasoline: What factors relating to East Texas gasoline existed in 1935 and 1936 that did not exist in previous years?

Mr. Lewin: That is objected to because the witness has not been shown to be qualified as an expert on prices.

Mr. Donovan: He owns 39 wells.

Mr. Lewin: He owns 39 crude oil wells; he is a highly competent lawyer. I do not think that qualifies him to talk about the factors that enter into the prices of gasoline during that period.

The Court: Q. You are not a refiner, are you, Mr. Fischer?

A. No, sir, I am not in the refining business.

Q. You represented all these refiners?

A. Yes, sir; I am attorney for them.

2127 Q. Over a period of years?

A. Yes, sir.

Mr. Chaffetz: As a lawyer, and not an expert.

Mr. Donovan: Q. As their attorney did you become familiar with the factors that enter into the price of gasoline?

A. Yes, sir, I think so. I think I could answer that question all right from the information I obtained by reason of representing the refiners.

Mr. Lewin: It certainly would be very interesting to have a lawyer's comment on this information, but it certainly cannot be good evidence.

The Court: Objection sustained. We would rather have the man right in the refinery that knows something about it.

Mr. Donovan: Your Honor, may I present to the stenographer to copy into the record this offer of proof?

The Court: Yes.

Mr. Donovan: May we have it appear that this offer of proof was made under the same conditions as the other offers of proof which appear at R. p. 960 and R. p. 981?

The Court: Yes.

2128 Mr. Chaffetz: And that the government objected, and the court sustained the objection?

The Court: Yes. Exception allowed.

(The following offer of proof was made out of the hearing of the jury:)

Mr. Donovan: Mr. Fischer, if permitted to testify with respect to conditions in the East Texas field in 1933 and 1934, would testify as follows:

In February and March, 1933, crude oil was being produced in excess of the amount legally permitted of the allowables of the Texas Railroad Commission estimated as high as 210,000 barrels a day. Approximately 10,000 wells were producing in the field. In some portions of the field natural field pressures had dropped to a point where salt water was already coming into the wells.

Under these conditions the Railroad Commission of Texas shut down the entire field on April 2, 1933, and made a survey of the field to measure and determine natural field pressures. The field was permitted to reopen on April 24th. In an effort to induce operators in the field to produce in some measure at least within the allowables set by the Railroad Commission, the allowables for the entire field were increased to over 800,000 barrels a day. 2129 This was by far the highest allowable ever granted before or since by the Railroad Commission.

The granting of these allowables did not stop overproduction. The field produced at a rate of nearly 1,000,000 barrels a day. This figure included over 100,000 barrels a day in excess of the allowables. The price of crude oil in East Texas dropped to 10¢ a barrel.

In July 1933 the Department of the Interior under Section 9 (c) of the National Recovery Act, which prohibited the shipment in interstate commerce of crude oil produced in excess of State allowables or products manufactured from such crude oil, sent enforcement officers to the field to enforce this section of the Recovery Act. This action was successful for a period of approximately 60 days in stopping the movement in interstate commere of hot oil and products manufactured from hot oil.

During this period of 60 days over-production of crude oil in the East Texas field gradually decreased. As over-production decreased the natural pressures in the field returned to normal, and engineering estimates of the recoverable oil in the field were approximately doubled. In September 1933 operators in the field resumed production of 2130 crude oil in excess of state allowables, and hot oil production again mounted rapidly. On September 29, 1933, the posted price for legally produced crude oil became $1.00 a barrel. Over-produced or hot oil was at the same time selling from 20¢ to 35¢ a barrel. Approximately 80% of this hot oil or products manufactured therefrom was being shipped in interstate commerce, some of which moved into the Standard of Indiana territory. Refiners in the field operating on this hot oil were selling the gasoline manufactured therefrom in interstate commerce in competition with refiners who were operating on legally produced crude oil produced at $1.00.

During the first 10 months of 1934 over-production of crude oil continued at a rate averaging approximately 100,000 barrels a day. This over-produced or hot crude oil and gasoline manufactured therefrom continued to be shipped in interstate commerce. The price of third grade gasoline in the Mid-Western area fluctuated during the year from 4¢ to 2½¢ a gallon.

On October 24th the Department of the Interior under Section 9 (c) of the NRA established a Federal Tender Board in East Texas under the regulations of which persons wishing to ship crude oil or
2131 products therefrom in interstate commerce were required to establish that such crude oil had been produced in accordance with the allowables set by the Railroad Commission, or that gasoline sought to be shipped had been manufactured from crude oil so produced.

Following the establishment of these regulations under this Federal Tender Board over-production of crude oil dropped to approximately 5000 barrels a day. Prices of third grade gasoline in the Mid-Western area rose between October 17 and November 7 from 2½¢ to 4¢.

Mr. Chaffetz: Objection.

The Court: Sustained; exception allowed.

2132 **MARION M. TRAVIS**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My residence is Houston, Texas. I have been engaged in the producing and refining business all my life. I have engaged in that business in Ohio, Oklahoma, Kansas, Texas, Arkansas, and what is generally known as the Mid-Continent field. My business is conducted at this time by Southport Petroleum Company and affiliated companies. This company was engaged in the same business during 1935 and 1936.

Q. Will you tell us, did you utilize in your refineries crude oil produced in excess of Railroad Commission allowables or so-called hot oil in the East Texas field during the years 1933, 1934 and part of 1935?

A. Not so much crude oil as reduced oil.

By that I mean we bought reduced crude, that is, crude from which the gasoline and the kerosene had been refined through what is known as a topping operation, and we bought the residue which we utilized for cracking purposes. When I speak of the topping operations I mean by that a skimming plant.

The term "hot oil" is a popular known term, referring to oil produced in excess of allowables set by the 2133 Railroad Commission of Texas.

Q. Could you tell us whether or not this hot oil could be bought for a lower price than oil produced within the allowables?

Mr. Lewin: What time, please?

Mr. Donovan: I was just asking him during this period, 1933, 1934 and part of 1935.

Mr. Lewin: The same objection I made to Judge Fischer being asked the same question as appears at R. p. 1116. I move that it be broken down and limited to 1935, and we won't object.

The Court: The objection as to 1933 and 1934 are sustained. Exception allowed.

Mr. Donovan: Your Honor, may I present to the stenographer to copy into the record this offer of proof?

The Court: Yes.

Mr. Donovan: May we have it appear that this offer of proof was made under the same conditions as the other offers of proof, as appears at R. pp. 960, 981?

The Court: Yes.

Mr. Chaffetz: And that the government objected, and the court sustained the objection?

The Court: Yes. Exception allowed.

2134 (The following offer of proof was made out of the hearing of the jury:)

Mr. Donovan: Mr. Travis, if permitted to testify with respect to conditions in the East Texas field in 1933 and 1934, would testify as follows:

That he was operating a refinery in the East Texas field during this period of time and was intimately familiar with producing, transportation and refining conditions in the field.

That in the early part of 1933 there were 10,000 or 12,000 producing wells in this field and that said wells were being pro-rated under the regulations of the Railroad Commission of Texas which had, by order of that body, reduced the allowables of said wells to amounts averaging from 28 to 46 barrels per day for each well. At that time there was serious question about the validity of these orders and enforcement thereof was very lax.

As a result, there existed in the East Texas field an over-production or excess above allowable amounting from 50,000 to 210,000 barrels of oil per day. During this time there were two prices for crude: one a price for legally produced crude, and the other a price for excess crude.

2135 During the spring and summer of 1933 the total allowable for the field was increased from time to time, but enforcement of the orders of the Commission remained lax. The price of crude oil dropped as low as 10¢ per barrel.

After July, 1933, when the Department of the Interior commenced enforcement under the provisions of Section 9(c) of the National Industrial Recovery Act, there was a considerable improvement in the field conditions. Over-production materially decreased and the price of legally produced crude oil rose to $1.00 per barrel about September 29, 1933. But even at that time and thereafter, the price of excess or hot oil was from 20 to 35¢ per barrel and continued at about that level for more than a year thereafter.

Refiners in the East Texas field numbered some 75 or 80 during the year of 1933, and in 1934 there were some 60 or 70 refiners. Practically every one of these refiners were operating to a large degree upon excess or illegal crude or upon what was commonly called "topped" crude. As a result of this, these refiners could sell gasoline at prices from 2 to 4¢ per gallon and make a profit. It was then impossible for refiners operating on legal crude to sell gasoline for

any such price because such price would not yield
2136 recovery costs.

(This ends the offer of proof.)

The Witness: May I answer?

The Court: Answer for the year 1935.

I do not recall of excess crude oil being offered on the market in 1935. I certainly wasn't acquainted with sales or purchases to be made during 1935 with excess crude oil.

I am familiar with the organization known as the East Texas Refiners Marketing Association. My company is not now a member of that organization. It was a member. I was present at some of the organization meetings leading up to that Association. That Association was organized to act as a central agency through which the surpluses of gasoline produced by the independent refiners in the East Texas field, belonging to this organization, could be sold, beyond their markets that they had established, or channels for regular distribution. It was to act as a central agency, offering impartially for sale all of the gasoline that various refiners belonging to that Association would have for sale, with the idea of securing the best price obtainable.

I have known Neil Buckley since 1930. I know how he became connected with the East Texas Refiners Association. I suggested his name to a committee, of which
2137 I happened to be chairman, as the most likely man
that we all knew who would be apt to have contact with major oil companies and whom we trusted because of our past dealings with him. No major oil company ever discussed Neil Buckley with me in any connection prior to the formation of the East Texas Marketers Refining Association.

I never discussed the matter with Neil Buckley until the day that this committee met, after the meeting that we had held, I think, the night previous at Gladewater, where it was agreed that the formation of such a central agency would be desirable, and that this committee was appointed to work out the plans and the acquisition of somebody in connection with these plans for the sale of gasoline through this central agency. This committee was made up of independent East Texas refiners.

As to why Neil Buckley, and not someone else, was selected to contact the major companies, our choice was very limited. We couldn't very well go to a broker because this meant the elimination of brokers. We couldn't use one of our own people, because we had a job of selling to do which the refiners in the East Texas field were not in a position

to do. Neil Buckley was the only major oil company representative, with the possible exception of, Bill Tracey of Sinclair, with whom the East Texas refiners had con-
2138 tact. Neil Buckley came through the East Texas field occasionally, and was known to the East Texas refiners. The East Texas refiners had had previous business with him; had found him to be a square shooter, to use our Texas term; and we had confidence in him. It was for these reasons that his name appealed to me and to the rest of the committee as a man that we could engage for the job, or request for the job. At the time I suggested his name, he was employed by Cities Service Export Company.

Almost immediately after that first meeting our organization became fully organized. As a matter of fact, we did not contemplate even having a charter. Frankly, I don't know whether we ever got a charter.

None of these defendant major oil companies had anything to do with the formation of the East Texas Refiners Association, absolutely nothing whatever. Our organization, through its secretary, Mr. Cline, devoted itself largely to contacting major gasoline purchasers rather than the general run of independent jobbers or brokers, because we all marketed direct to the general run of jobbers and brokers ourselves, and what we were concerned with in this agency was to handle, through it, our surplus of gasoline that we could not sell ourselves. Major oil companies had been buying gasoline from us right along. The ob-
2139 jective here was this: Certain of the refiners were better acquainted with some of the major oil company brokers, such men as Jim Bradshaw, or Louie Green, and the idea was that such major oil company buying as would be made would be allocated equally among refiners having a surplus of gasoline in this agency. And Neil Buckley was requested to contact these major oil companies on behalf of this agency so that such buying as they would do would be done through the agency rather than from individual refiners, as they had done in the past, or through their own brokers.

By Mr. Francis

My company and I were members of this Association from the time it was originally started.

I know Mr. Arnott when I see him; and I met him, just for a moment, I think yesterday, or the day before. Mr. Arnott certainly never urged me, or with my knowledge, any other of the members in our Association, to curtail our gasoline production during 1935 and 1936.

Cross-Examination by Mr. Lewin.

I did not attend a meeting at Judge Starns' place in 1936, at which Mr. Buckley spoke, and at which he urged the refiners to curtail production. I don't think I attended any meeting at Starns' place in 1936. I don't recall attending any meetings in 1936 at Gladewater. I might have
2140 attended a meeting, but I do not recall having attended any meetings in 1936.

Mr. Cline never urged me to curtail my production. I could not say whether or not he urged other members of the Association to curtail their production.

I can't say whether or not Mr. Neil Buckley was in constant touch with Mr. Arnott during 1935. I knew he was in touch with him early in 1935, that is, Mr. Buckley told me that he was, but I don't know whether he was throughout the year. I do not know whether Mr. Buckley reported to Mr. Arnott during the summer of 1935 on the subject of whether or not the independent refiners were curtailing runs.

When our organization, the East Texas Marketing Association, was founded I requested Mr. Buckley to come down. I asked him if it would be possible for him to assist us. He advised that he would take it up with his superiors and let us know. He evidently did, because he informed us within a day that they would grant him a leave of absence to assist us. I assume his superiors were officials of Cities Service Company. Cities Service Export Company, I would assume.

It was the last part of January, 1935, that I first contacted Mr. Buckley for this position. It was very soon thereafter that I contacted him again. I think it is correct that he appeared in East Texas in response to that request as early as February 4, 1935. He worked with us
2141 continuously after that time for quite a while contacting major oil companies and urging them to buy gasoline from us as we requested him to come down to help us do.

Mr. Buckley had nothing to do with allocating among the members of our Association the orders from major companies that they placed through our Association; that was Mr. Cline's job. It wasn't Mr. Buckley's job, that I know of. Mr. Buckley's main job was contacting major oil companies.

Major oil companies constituted most of the customers through the Association. All the gasoline sold through that Association was surplus gasoline, surplus above what we could sell ourselves through our own regular channels. If that surplus gasoline hadn't been sold to the major oil companies through the Association, the refiners would have been forced to dump it on the market at lower prices.

As to whether it was the purpose of forming our Association to get the major oil companies to take it off our hands, I want to point out that, for instance, in our own company we didn't sell the major oil companies substantially any more gasoline after the Association was formed than we did sell them before the Association was formed.

Q. Well, Mr. Travis, I didn't ask you that. I
2142 asked you whether the purpose of your Association
wasn't to get the major oil companies to take your
surplus gasoline off your hands at a fairly high
price?

A. The best price obtainable.

Q. And isn't it true that you weren't selling very much to the major oil companies, and by "you", I mean the independent refiners in the East Texas field, during January, 1935?

A. I am only speaking for myself, and I sold them, the Cities Service Export Company, one order of 125 carloads in January, as I recall.

Q. How about the other independent refiners? Were they able to sell to major oil companies?

A. I am quite sure they were.

Q. Do you think all of them were in January, 1935?

A. That is just the point of this organization—all of them were—the major oil companies in buying would buy preferably through some refinery, probably because the gasoline was better, but that was the purpose of the organization, to centralize all the major oil company purchases.

I cannot say whether the Tide Water Oil Company was
buying any substantial quantity in January, 1935, from in-
dependent refiners in East Texas. I can't say whether
2143 The Texas Company was buying any substantial
quantity of gasoline from East Texas refiners in Jan-
uary, 1935. I could probably state it by telling you who I
did remember did buy.

Q. I would rather take it this way. Was the Continental Oil Company buying any substantial quantity of gasoline from the independent refiners in East Texas in January, 1935?

A. May I say that they didn't always buy every month. They sometimes bought one month and didn't buy the next month.

I don't recall any purchases made by Continental Oil Company in East Texas in January and February, 1935. That would be difficult for me to remember, about the Tide Water. The Tide Water Oil Company, it seems they had bought some gasoline, during that time or possibly prior. They hadn't bought any from us. I am not prepared to say from what independent refiners they had bought.

Q. Now, did The Pure Oil Company buy any substantial amount of gasoline from independent refiners in East Texas in January and February, 1935?

A. I don't know whether January or February, but in that very period, I think they did.

Q. You mean after March?

2144 A. No, I am not sure whether they bought after March or before March.

Q. You just don't know? How about The Texas Company; was The Texas Company buying any substantial amount of gasoline in the East Texas in January and February, 1935?

A. They didn't buy any from us.

Sinclair, Gulf, Cities Service Export Company, and I think, possibly the Sun are the only companies I can really recall that were making substantial purchases down in the East Texas field during January and February, 1935. Substantially the purpose of the Association was to get more major companies than those to come in and buy, and to get all the major companies who would come in and buy to buy more.

I certainly did not know, at the time we formed our Association, that the major companies were about to begin a buying program or pool to take up surplus gasoline, and I don't think any other members of the East Texas Association knew anything about that.

Q. Did you know of any plan on the part of the major oil companies at that time to take up surplus gasoline in the Mid-Continent field?

A. Frankly there had been so many plans of buying—

Q. I didn't ask you about that, Mr. Travis—

2145 A. —It would be a matter of confusion—I didn't know of any such plans personally.

Q. I asked you a simple question. Didn't you and your associates know at the time you formed that Association, which was at the end of January, 1935, and in February, 1935, that the major oil companies were inaugurating then a buying program in the Mid-Continent field to take up surplus gasoline?

A. I certainly didn't know.

By the Court

We always competed for customers. I sold some to Cities Service in January prior to the formation of this organization in January. I had no difficulty in selling to the majors.

Q. Why were you the moving party in this organization to form a selling agency if you had no difficulty in marketing your product with the majors?

A. This selling agency happened to be one of the two points with the program that I had suggested.

We had trouble marketing oil. There was always the competition and the question of having to market it on a basis that we would get back our cost and such profits as we possibly could get. We had to pay a valid price
2146 for crude or the posted price for crude.

It would be difficult for me to say whether we made a profit or not out of what we sold to the Cities Service Company in January, but it is very questionable at that time, because since December 10th—I believe we sold 125 car-loads to Cities Service in January, 1935. In our own particular case, I would have to explain just one thing: I testified a while ago that we were engaged principally in the processing of reduced crude, not crude. We sold to Cities Service gasoline produced from this reduced crude. And this reduced crude was eligible for interstate commerce, because it had been produced prior to December. Under those circumstances, as I think about it, we must have made a profit on that sale.

2147 L. S. WESCOAT, a witness for the defendants, testified as follows:

Direct Examination by Mr. Francis.

I have testified once before in this case and described my duties. One of those duties is the supervision of the books and records of The Pure Oil Company and the statistical organization of that company.

(Document previously so marked for identification received in evidence as EXHIBIT 739-A.)

Exhibit 739-A is a chart designed to show the sales of gasoline by The Pure Oil Company from January of 1931 to June of 1937 inclusive. It includes the months at the bottom of the chart, and on the side the number of gallons per month. As an illustration, in January, 1931 the sales were approximately 30,000,000 gallons, or 1,000,000 gallons a day. In June of 1937 the sales were slightly over 60,000,000 gallons, or approximately 2,000,000 gallons per day.

The variation of sales through the months of a year reflect naturally the varying motor conditions which create larger sales, larger demand in the summer months, and of course much smaller demands in the winter months.

Months also vary due to the number of days, and that is particularly illustrated in the month of February which usually declines out of proportion to the other months
2148 of the year because, generally speaking, it has only 28 days.

Certain of this information can be accounted for by ordinary and extraordinary occasions. For instance, in 1932 at this particular time (indicating on the exhibit) ½¢ additional tax on gasoline was being imposed by the federal government, and most of our customers ordered large quantities of gasoline the preceding months in order to get in under the wire before that tax became effective. Then there are other factors in here somewhat along the same line that will in a measure affect these curves.

(Witness describes graph of sales on chart, Exhibit 739-A.)

The years of 1935 and 1936 reflect the largest increase which I believe the company had ever had in any preceding year in its history. Having that sales demand, The Pure Oil Company had to get gasoline to supply it. I have prepared statistical data from our books and records, which will show the net crude oil produced and refined by The Pure, as compared with the quantity of crude oil required to supply gasoline sales. This is a correct tabulation.

(Document referred to received in evidence as EXHIBIT 852.)

I assumed that about 21 gallons of gasoline will come out of a barrel of crude, for the purpose of that tabulation—approximately 50%.

2149 The decline in the company's production results from its inability to produce from its reserves the amount of crude which it would like to produce, the reason being that, due to the proration laws in the several states in which we operate, the crude is prorated between all producers in the State on a formula basis, as prescribed by the particular Commission in that State charged with that responsibility.

The result is, that, in spite of the fact that during this period the company has been able to produce several times its requirements, it has necessarily had to supply that deficit through other channels, because of that situation.

As an illustration, at the end of 1934, we were obtaining from one of our principal fields in Van, Texas, an allowable of about 40,000 barrels of crude oil a day. That field is still able to produce more than the company requires for its entire needs throughout the country, and yet today our allowable, due to proration, is 19,000 barrels per day.

We also buy oil, some of which is run through our own refineries.

To make it clear, the difference between our own crude oil which we produced and refined, and the crude necessary to supply our gasoline sales can be gotten either in the
form of crude purchased from some one else and run
2150 through our own refineries or other people's refineries,
or in gasoline purchases.

We buy a substantial amount of crude, part of which goes through our own refineries, and part of which goes through other outside refineries, to enable us to get the gasoline from it, since we do not have the capacity to refine it. We would have had crude during 1935 and 1936 in excess of our requirements to cover our entire gasoline needs; but we did not have the capacity to run that crude, had we been able to bring it above the ground. In addition we could have produced several times our requirements of crude from our own reserves, but were permitted to produce only, as I recall, approximately 70% of our total requirements, and had to buy approximately 30%. So it was necessary for us to go out on the market and buy the gasoline.

I am not prepared to say whether we had as much crude oil of our own production processed by other refineries as we could have had processed, but I assume that we did under the conditions existing in the particular areas where that gasoline was required. In other words, this is a composite picture.

Exhibit 739-A also reflects the company's manufacture; the yellow area showing the gasoline manufactured by the company from crude oil and natural gasoline. Therefore, the area above reflects the amount of gasoline which 2151 the company is short, by months, and which it is required to acquire from some source in order to meet its sales demand during the period.

On this chart, the yellow area includes not only crude oil of the company which goes through our refineries, but crude oil purchased and run through our refineries. The yellow area represents all gasoline manufactured by The Pure from crude oil and natural gasoline, whether owned by the company, or whether bought by the company.

Having run our own refineries with our own crude and purchased crude, and gotten the amount of gasoline shown by the yellow, we are still short of gasoline with which to supply our sales demand, as indicated.

The four different sources—all shown on Exhibit 739A—from which we got our gasoline in 1935 and 1936 were: our own manufacture through our own plants, to the extent of their capacity, which includes both our own crude oil and crude oil purchased, to the extent that it is manufactured in our plants; the second or green area, representing the gasoline purchased from other than East Texas and Mid-Continent independent refiners; the third, or blue area, representing gasoline purchased from independent refiners in East Texas and in the Mid-Continent; the fourth area, or the orange, representing gasoline acquired through processing contracts with other refiners.

The area of purple running above the line of supply 2152 represents gasoline which, of course, is a reduction in inventories, and to the extent that it runs below net during the year, it represents additions to inventory.

The processing contract, as understood by us, is a contract whereby we furnish crude oil to another refiner who processes it for us into its finished products, at a fixed price per barrel, returning to us a given amount or a fixed number of gallons of gasoline; and in some cases all or part of the residue products; or in other cases, none of the residue products, paying us the market price for those products at the time the gasoline is delivered to us. In that way we acquire additional gasoline which we require for our needs. We started negotiations in December of 1934; and concluded them in January of 1935, under which we started to receive, early in February of 1935, gasoline under processing contract or contracts. We had this gasoline processed for the account of The Pure Oil Company in order to meet our gasoline sales demand.

The orange area, representing the gasoline received through the processing contracts, is in addition to that purchased through these two channels reflected by the green and the blue on the chart.

I am not in charge of our refinery operations. I know only from conversations that our refineries were running
at capacity—at economical capacity, at all times. So,
2153 we had these processing contracts made with some of
our competitors to make gasoline for our account. This source of supply still continues to be a substantial factor in our total supply of gasoline.

I have had a chart made just for the period 1934 and 1935 and 1936, which shows the amount of gasoline received or purchased by The Pure Oil Company from independent refiners in the East Texas and Mid-Continent area and from other refiners than those, and from our processing contracts. This reflects the statistical data which has been put in evidence in support of Exhibit 739-A.

(Documents offered are marked EXHIBITS 853 and 853-A respectively, and are received in evidence.)

Exhibit 853-A covers from January, 1934, to and including December of 1936. The green area represents gasoline purchased from other than East Texas and Mid-Continent independent refiners.

In January, 1934, we purchased approximately 1,500,000 gallons of gasoline. We were buying gasoline in 1934 from independent refiners in East Texas and the Mid-Continent area. That is shown by the blue area. Our purchases from independent refiners in East Texas and Mid-Continent areas practically vanished in November of 1934. It diminished to a very small amount. Our purchases from other
refiners increased about that time. Commencing in
2154 February of 1935, this chart reflects a tremendous in-
crease in the amount of gasoline being acquired through channels other than the company's own manufacture, going from approximately 1,000,000 gallons in February of 1935, to a top of over 13,000,000 gallons, in August of 1936. The top that was reached in 1935 was slightly under 11,000,000 gallons, in the month of June.

We increased both our purchases from independent refiners in the East Texas and Mid-Continent areas, and our purchases from other refiners.

I have had prepared statistics which reflect the source of gasoline supply of The Pure Oil Company expressed not only in quantities but in percentages for the years 1933, 1934, 1935, 1936 and 1937.

(Document referred to received in evidence as EXHIBIT 854.)

(Chart marked for identification received in evidence as EXHIBIT 854-A.)

This Chart 854-A reflects the source of the company's gasoline supply for the years 1933 to 1936, inclusive, and the first 6 months of 1937.

The yellow area represents the gasoline obtained from the company's own manufacturing operations, including natural gasoline. It shows a total of approximately 90% of its total requirements were produced through that channel in the year 1933; 92% in 1934; and it declined to 82% in 1935; 78% in 1936; and increased slightly to 79%
2155 in the first half of 1937.

That is a result of capacity operation of the refineries during the period up to 1936, when we installed some additional capacity to take care of our rising sales. The same thing applies in 1937, when additional refining facilities were included.

(The witness states the percentages shown on Chart Exhibit 854-A reflecting purchases from independent refiners in East Texas and Mid-Continent areas.)

That chart shows, in 1935, that the gasoline turned out through our own refineries increased very materially over 1934. It shows that our purchases from independent refiners in the East Texas and the Mid-Continent fields, increased in 1935 over those made in 1934. Those purchases from these refiners did not increase relatively as much as purchases made from refiners other than those in the East Texas and Mid-Continent areas.

I would say that our purchases from other than independent refiners in the Mid-Continent and East Texas areas were approximately 3 times as much in 1935 as in 1934; and from independents in the East Texas and Mid-Continent areas, our purchases were just about twice as much. So the proportion of our increase from others was larger than from independent refiners in the Mid-Continent and East Texas.

I have prepared some statistical data which shows
2156 the comparison between The Pure Oil Company's total gasoline supply and the total gasoline supply for

the oil industry in the United States in terms of days' supply for the period, November, 1934, down to December, 1936. This (indicating paper) is correct.

(Document referred to received in evidence as EXHIBIT 855.)

This tabulation sets out a comparison between the Bureau of Mine's figures of the Department of the Interior of the United States Government in terms of the days' supply at different periods from November, 1934 to and including December, 1936.

The Pure Oil Company's inventory of available supply has been computed on the same formula, and reflects, in November, 1934, an over-all inventory of approximately 23 days, including what we term "frozen stocks," which are not available for shipment or sale at any particular time. The total inventory in terms of days' supply of The Pure Oil Company in February, 1935 was approximately 31 days' supply. That is the over-all, including the frozen inventory. The industry's at that time was approximately 54 days' supply.

All of that for The Pure Oil Company as well as for the industry as a whole is not available for immediate use. The proportion of any company's inventory unavailable for immediate use is: Your pipe line content; your steamship cargo, which is constantly in transit; your tank car content, which is constantly in transit; and your car tank
2157 bottoms, which is a proportion of every tank in the
bottom which is never drawn down for operating reasons until the tank is cleaned out. That represents a substantial proportion, at least, of The Pure Oil Company's inventory during this period.

(Chart illustrating the data shown on Exhibit 740, received in evidence as EXHIBIT 740-A.)

Chart Exhibit 740-A contains the same type of information as the previous tabulation, running from January of 1931 to and including June, 1937, the top black line representing The Pure Oil Company's inventory at the end of each month during the period, the red line reflecting the company's gasoline sales during the period, and the bottom line representing the inventory, included in the total figures, which is not available for immediate sale.

Across the top of the chart are reflected the number of days' supply available for immediate shipment, not inventory, but those days' supply available for immediate shipment for the month indicated on the chart.

Looking at the chart, at the end of February, 1935, there was a stock unavailable for immediate shipment of approximately 26,000,000 gallons out of the total. I get that by looking at the figures over to the left.

At the end of February, the company had 16 days' supply of gasoline available for shipment. At the end of January, we had 11 days' supply. I get those figures off the top.

2158 (The witness reads from Chart Exhibit 740-A. The number of days of available gasoline supply on hand to meet sales requirements as of the end of December, 1931; December, 1932; December, 1933; October, November, December, 1934; January, February, March, 1935; and July, 1936.)

At the end of December, 1935, there were 28 days of supply available. That is when we were building up our winter inventory. That was the normal custom to build up the winter inventory.

During the period November and December, 1934, and January and February, 1935, the normal upbuilding of stocks was reversed, due to a number of causes. The inventory control allocations of the Code were in effect, and we were permitted to run only the amount of gasoline which was prescribed for us at that time by the Government. Difficulties existed in getting regular tender gasoline in the East Texas area due to the operation of hot oil merchants down there, and the situation was such generally in the industry that it was difficult to purchase gasoline at the points where this company particularly required it. And it wasn't until the turn came in 1935 and gasoline became more available, that we were able to start to build our inventory to a point where we didn't have to borrow gasoline by the tank wagon, as we were doing in the late fall of 1934.

2159 I think it is correct to say that our company in the latter part of 1934 and in the early part of 1935 from an inventory standpoint was in a worse shape than it had ever been.

(Chart supplemental to Exhibit 741 received in evidence as EXHIBIT 741-A.)

Exhibit 741-A represents the line of prices of the publications of Platt's Oilgram, Oklahoma refinery market, and the Chicago Journal of Commerce, together with a number of red dots each representing the purchase date and the cost per gallon of gasoline which was bought at a flat price by The Pure Oil Company from independent refiners in the Mid-Continent area, reflecting both regular grade and third grade.

Commencing in February of 1935 and until about June of 1935 there was an advance in the price of gasoline which is correctly shown by this chart.

As reflected on this chart, this company's first purchase of third grade gasoline on a flat price basis after the first of March, 1935, was on May 11, 1935 at ⅛¢ below Platt's Oilgram and the Journal of Commerce as of that date. Our next purchase at a flat price was on May 21, 1935, at the low of the Journal of Commerce, and ⅛¢ below Platt's Oilgram. The trend from that date on is practically at that level.

2160 During the period of the price rise we never made a purchase of gasoline for The Pure Oil Company on a flat price basis other than is shown on this chart. And considering the price rise prior to May 10, we made no purchases during that price rise at even the low of the publication.

67-70 octane was commonly referred to as housebrand in 1935.

Chart Exhibit 856 for identification shows flat price purchases of The Pure Oil Company for both third grade and so-called housebrand gasoline for the year 1936 as compared with the price quotations in Platt's Oilgram and the Chicago Journal of Commerce f.o.b. group 3. During January and February of 1936, we made no flat price purchases of third grade gasoline. We made a total of 4 different purchases of third grade gasoline during the year 1936 at flat prices, in the Mid-Continent area. They were all at the low of either Platt's Oilgram or the Chicago Journal of Commerce. None were above the low. We bought housebrand gasoline in 1936 11 times on 11 different days. There were no occasions during the year 1936 on which we purchased housebrand gasoline at a price which was above the low of both publications. The top line indicates the regular gasoline.

(Chart referred to received in evidence as EXHIBIT 856.)

2161 (Chart offered is marked EXHIBIT 857 and received in evidence.)

(Chart offered is marked EXHIBIT 858 and received in evidence.)

Exhibit 857 reflects the prices paid by The Pure Oil Company for third grade gasoline purchased at flat prices from independent refiners in East Texas, compared with Platt's Oilgram, f.o.b. East Texas refineries, date of purchase; reflecting the prices as indicated in that publication for the calendar year of 1935.

Our first purchase in East Texas in 1935 was March 25 at ⅛¢ below the low of Platt's Oilgram for that day. Our next purchase was made March 28 at ⅛¢ below the low. The next purchase was April 6, 1935.

That plat shows these stairsteps again, these increased prices during the period from March to June, 1935. The red dots show the days on which we purchased gasoline and the price which we paid for that gasoline, on a flat basis. We do not show the number of cars that we bought, but we have put in statistical data which shows the number of cars on each day purchased, Exhibit 741.

During the time of the price rise, from February to June, we purchased at no time above the low of Platt's Oilgram. We purchased below the low 7 times. We purchased 6 times at the low up to the first of June. So we bought below the low more often than we bought at the low.

2162 Chart Exhibit 858 reflects the price paid by The Pure Oil Company for third grade gasoline purchased at flat prices in 1936 from independent refiners in the East Texas field, compared with Platt's Oilgram, f. o. b. East Texas refineries, on date of purchase.

No regular gasoline was purchased in the East Texas field by us. It was just third grade. We did have some specifications for our gasoline, which I described in my original testimony, in which we gave the vapor pressure, the gravity and the octane, which we required of the plants that made our gasoline. Those were our standard specifications pertaining to third grade material which we were buying in that area.

During the year 1936 The Pure Oil Company bought gasoline above the low of Platt's Oilgram once. We did not buy any above the low during the whole year of 1935. We bought 13 times below the low of Platt's Oilgram in 1936, in the East Texas field. Before that price broke on February 15, 1936, in the publications, The Pure Oil Company bought gasoline below the low 3 times. It was ⅜¢ per gallon below the low on two occasions and on the other ⅛¢ below the low. The several dots that are shown on this plat, for 1936, show how much below the low we purchased at other times, during the course of that year.

I am familiar with the method used by The Pure Oil Company in arriving at a determination as to how 2163 much gasoline will be required to purchase at any particular time. It is a part of the regular office routine to make this determination and the records are available in the office. I am in charge of those records. In the course of my dealings as vice president I became familiar with it, and knew about it during 1935 and 1936.

Each month, in the field, forecasts or estimates are made, which come into the so-called Material Forecast Department in the office, as to the requirements, which they will need for the succeeding period in order to supply their estimated sales demand.

The refineries furnish the information to the same Material Forecast Department, indicating the total amount of products which they will be able to make during the corresponding period. They are then matched by the Forecast Department, who, in turn, advise the Buying Department what will be required in order to maintain what they consider to be normal inventories and to meet the sales demand. That is the manner and way in which we determined how much gasoline we would have to buy and when we would have to buy it.

The head of the Wholesale Sales Department, which department is charged with the responsibility of buying the gasoline, is R. H. McElroy, Jr. He has purchasers in different parts of the field.

He has one at Tulsa, Dewey K. Chamberlain. He is 2164 on a salary for the company. I don't know of my own knowledge whether or not he gets his directions from Mr. McElroy, as to how much gasoline to buy. As normal routine in the office, of course, he, Chamberlain, would have received his instructions from his superior.

Cross-Examination by Mr. Lewin.

Referring to Exhibit 858, I think The Pure Oil Company purchased gasoline a total of 55 times in East Texas on the spot market at exactly the low of that journal on a flat price basis. If you added 55 to the 13 which I said were purchased at various times during the year at prices under the journal, you would get the total number of purchases made by The Pure Oil Company in that field during 1936.

If you drew a line through the 50 some days on which we made purchases at the low of Platt's Oilgram, you would get a line which would correspond exactly with a line representing the Platt's Oilgram quotations.

Referring to Chart Exhibit 857, East Texas 1935 purchases, on 47 days we made purchases which were at the low of Platt's Oilgram. On 7 days, we made purchases below the low of Platt's Oilgram during that year. If you added the 7 and the 47 together, the total number of days on which we made purchases in the East Texas field would be 54 days.

2165 If you drew a line between those dots representing purchases made at the low of the quotations in that field, you would get a line which would conform exactly with the graph of Platt's Oilgram quotation.

During 1935 and 1936 The Pure Oil Company made purchases from independent refiners in terms of the publications which are not shown on these graphs. They were at the low of the publications. To get a fair picture of the way in which we purchased during 1935 and 1936, compared with the quotations, you would not have to add these purchases not shown on these graphs, not if you wanted to make a comparison with the spot market, because those were not spot market purchases, as we understand them.

Starting in the first part of March and running through the rest of the year, we did not make purchases at flat prices in the Mid-Continent field below the low of the Chicago Journal of Commerce and Platt's Oilgram quotations for regular or housebrand gasoline. We did make a number of purchases as disclosed by Chart Exhibit 741-A at exactly the low of those publications through that period. If you made a graph of our purchases of regular gasoline during that period in the Mid-Continent field it would correspond exactly with a graph of the low of those journal quotations.

With regard to the third grade in the Mid-Continent
2166 field, with the exception of 4 times in which we purchased below the low of both of those journals, a graph of such purchases, though it would be pretty spotty, to the extent that it applied would conform exactly with the low of the journals.

We made other purchases in the Mid-Continent field in addition to those shown here that were in terms of the low of the publications.

I can prepare a list of the companies from which we made these purchases, represented by the green on Exhibit 853-A, in the Mid-Continent and East Texas areas. I do not have it with me. That includes purchases from major companies. Whether it includes purchases from semi-major companies depends upon the definition of a semi-major company. I do not know whether it includes purchases from any defendants in this case. I haven't a list of those quantities from month to month, giving the name of the seller.

> Mr. Francis: I will furnish a list of names from whom we bought, represented by the green, for counsel for the Government.

I appeared as a witness before the grand jury which investigated the matters which led up to this indictment, approximately around June, 1936.

I introduced before the grand jury a chart prepared by our Refinery Department headed "Pure Oil Company 2167 Gasoline Chart for Years 1931, 1932, 1933, 1934, 1935 and part of 1936" for the purpose of illustration of what I was saying to the grand jury at that time. I would assume that this is the chart that I introduced.

I would like to say in that connection that that chart is, for all practical purposes, correct. When it became apparent that it would be necessary to introduce testimony before the Court, we had all our figures audited, checked to the last gallon, and they reflect possibly a very minor difference, but not very much. There are some slight differences, but not enough to affect the picture. It gives substantially the same general information.

This chart shows purchases, contract processing from other refiners, manufacture, sales and inventories also, superimposed one on the other.

At any point during the period covered by the study I can ascertain generally and compare the situations with regard to each of those elements as to the information shown there.

The purchases are shown at the bottom, both refined gasoline purchases and natural gasoline purchases. That includes purchases from all sources.

Beginning in February, 1935, it shows the amount of gasoline that we got under processing contracts with other refiners.

2168 This is not total manufactured (indicating). It is the total of purchases of ordinary gasoline, natural gasoline, that secured through processing contracts, and that through manufacture; which gives your total of gasoline supply. In other words, the chart reflects total manufacture. So that you cannot use the side figures as saying that this is the manufacture for a month. You must take the difference between the two points (indicating). This top line would not necessarily show the trend of our manufacture. On the contrary, it would not show the trend of our manufacture, because included in it are purchases and contract processing, which I have just explained. That is more truly reflected on the charts I have just presented, because there we have manufacture alone. Sales are shown in this chart, as are the inventories at each point for that particular month.

Mr. Lewin: I offer that chart in evidence, may it please the Court.

The Court: For what purpose? To contradict this (indicating)?

Mr. Lewin: No, for the purpose of elaborating that.

Mr. Chaffetz: It supplements the other charts, your Honor. It presents a different type of picture, based on the same figures.

(Chart referred to is received in evidence and marked EXHIBIT 859.)

2169 I am not competent to judge the requirements of this case, but I say that this chart, Exhibit 859, is substantially correct.

2170 PORTER LANGFITT, a witness for the defendants, testified as follows:

Direct Examination by Mr. Francis.

I live in Winnetka, Illinois. I have been with The Pure Oil Company since 1925. I am in charge of its 7 refineries. They are located at Smith's Bluff, Texas; Muskogee, Oklahoma; Health, Ohio; Toledo, Ohio; Midland, Michigan; Cabin Creek, West Virginia; and Marcus Hook, Pennsylvania.

I am familiar with the operations conducted in those refineries in 1935 and 1936. In those years our refineries operated at capacity, with the exception of the early months in 1935, when we were operating on allocations from the Code Committee until June of that year. After that time we increased the output of gasoline from our refineries and operated them at their maximum capacity.

If we had operated those refineries for the sole and only purpose of producing every drop of gasoline that they could have produced and if we paid no regard whatsoever to any of the by-products of crude oil, or their value, we could not have produced, through the refineries of the Pure Oil Company, sufficient gasoline to supply our sales demand.

In December, 1934, and January and February,
2171 1935, we made some processing contracts whereby we got certain other companies to refine gasoline for The Pure Oil Company. That was in addition to the gasoline our company purchased. These processing contracts were with Gulf Oil Company, Standard Oil Company of Louisiana, and Standard Oil Company of Ohio. Some of those contracts were on a month to month basis, and some were for a period of a month at the start, and then on a month to month basis. I do not believe I am in a position to say whether the gasoline from these processing contracts that I spoke about, the gasoline we acquired there or some of it, came from the Standard of Indiana territory.

Cross-Examination by Mr. Chaffetz.

We could not have produced more gasoline of the quality that our sales department asked for, and less fuel oil and other by-products from our refineries at any times during 1935 and 1936.

Even when our refineries are operating at full capacity, the production fluctuates from time to time.

Mr. Donovan: I would like to have marked for identification and to offer a stipulation between counsel for the Government and attorneys for certain defendants relative to the production and sales figures of Vickers Refining Company.

2172 The Court: It may be received.

(Document referred to is received in evidence as EXHIBIT 864, and read to the jury by Mr. Donovan.)

2173 A. L. REID, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Shreveport, Louisiana. I am now and was in 1934, 1935 and 1936 employed by Root Petroleum Company as auditor in its general office at Shreveport, Louisiana. Its refinery is at El Dorado, Arkansas.

I have prepared from the regular records of the company, which I kept, a schedule of figures showing our monthly production and sales of gasoline during the years 1934 to 1936, inclusive.

(Schedule referred to received in evidence as EXHIBIT 865.)

(The witness then stated the total production and sales figures of gasoline for the years 1934 to 1936, inclusive, such statement being omitted because such figures appear on the face of the schedule.)

No Cross-Examination.

2174 D. R. GRABLE, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Oklahoma City, Oklahoma. Since March, 1934, I have been employed by Anderson-Prichard Refining Corporation and by Coltex Refining Company as general auditor, part of my duties being to keep records of gasoline production and sales.

Anderson-Prichard Refining Corporation is an independent refiner. Its refinery is located at Cyril, Oklahoma. The refinery of Coltex Refining Company is at Colorado in West Texas.

I have prepared from the records which I kept two schedules showing the production and sales of gasoline by these companies during the years 1934 to 1936, inclusive.

(Schedules referred to received in evidence as EXHIBITS 866 and 867 respectively.)

(The witness then stated the gasoline production and sales figures for the years 1934 to 1936, inclusive, of Anderson-Prichard Refining Corporation and Coltex Refining Company, such statement being omitted because the figures appear on the face of the schedules.)

Cross-Examination by Mr. Lewin.

The figures on the schedules are on the production 2175 of finished gasoline as motor fuel. Anderson-Prichard Company is not engaged in the production of natural gasoline. It is engaged in the general petroleum business. Anderson-Prichard Refining Corporation is the refining part of the business. It has its own production of crude oil, but not adjacent to the refinery. The production of crude oil is the largest part of its business.

We do not refine all the crude oil we produce. We produce crude oil for sale. The refining of gasoline is not simply incidental to the rest of our business; it is part of the entire business.

We sell our gasoline in the Mid-Continent area, principally in Iowa, the Dakotas, Nebraska, Missouri and Indiana, practically exclusively to jobbers. We do not sell through our own service stations. We sell to jobbers under a formal contract covering a period of a year, based on the average of the averages of the quotations in Platt's Oilgram and the Journal of Commerce.

We sell gasoline on the spot market but infrequently and only a very small percentage of our sales in Oklahoma. Practically all of it goes into the northern area outside of Oklahoma under these contracts I have mentioned. Anderson-Prichard Company buys some gasoline on the spot market, but resales are very small in proportion to the regular refinery output. It buys more on
2176 the spot market than it sells, and these purchases are to fill the jobbers' contracts.

The Coltex Refining Company makes a few local tank wagon refinery sales. They are a very small percentage of the business. Coltex sells its gasoline in the same trade area as Anderson-Prichard Refining Corporation does, under identical jobber contracts. The only spot sales of Coltex are small, and they are in Texas, but none in East Texas.

(The following occurred in absence of jury:)

The Court: The Court has concluded its consideration of the motions of the individual defendants for directed verdicts, and is of the opinion that the motion of the defendant Audrain for a directed verdict will be and is granted.

The motions of the other defendants for a directed verdict will be denied.

The defendants may, if necessary, by proper motions after verdict, seek the same objectives that they have sought in their motions for a directed verdict. We all understand that. But in the present state of the record, the Court is of the opinion that the Government is entitled to have the issues in this ~~case submitted~~ to the jury.

2177 Mr. Thomas: May it please the Court; in compliance with the reservation we made and motions to dismiss and for directed verdict having been made as shown by the record herein, as to each defendant, both individual and corporate, said motions having been separately made as to each such defendant, and the Court having granted such motions as to certain individual defendants and corporate defendants, as appears by the record, and having now denied each and all the separate motions so made on behalf of the remaining individual and corporate defendants, each such individual and each such corporate defendant whose motion was denied excepts to the order so made denying his or its separate motion to dismiss and for directed verdict.

The Court: Exception allowed.

(A memorandum of the Order granting the Motion for Directed Verdict, filed at the close of the Government's case, as to the defendant R. O. Audrain is printed at p. 2475 of the Record.)

2178 JAMES A. MOFFETT, called as a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is New York City. I am chairman of the board of California-Texas Oil Company, Limited. I have been in the oil business approximately 31 years. I was vice-president of the Standard Oil Company of New Jersey until July, 1933. For a short time in 1934 I was vice-president of the Standard Oil Company of California, and since 1936 I have been chairman of the board of that company.

I was invited to Washington by Secretary Ickes before the passage of the Petroleum Code. I was appointed to the advisory committee of General Hugh Johnson of the N. R. A. by the President, and later, when the Petroleum Code was passed, I was made one of the N. R. A. members on the P. and C. Committee. That means I was one of the Government representatives. Mr. Richberg, Mr. Benedum and myself were appointed by either the President, or the Secretary with the President's approval.

Q. Now, on March 8, 1933, as a committee of one representing the American petroleum industry, did you have a talk concerning crude oil and its products with the President of the United States?

A. I did.

2179 Mr. Chaffetz: That question is objected to. Please don't answer.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Will you tell us the substance of your talk with the President at that time?

Mr. Crawford: That is objected to as incompetent, irrelevant and immaterial.

Mr. Chaffetz: This, as I understand, was early in 1933. Is that the question?

Mr. Donovan: That is right.

Mr. Chaffetz: That is objected to.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Now, your Honor, I will make an offer of proof—

(In absence of jury.)

I make this offer of proof concerning the meeting on March 8th, 1933 between the witness and the President of the United States; and I ask that it be received with the same force and effect as if it were in question and answer form:

If James A. Moffett were permitted to testify, he would testify as follows:

2180 On March 7, 1933, I was appointed a committee of one by the American Petroleum Institute directors to secure a conference with President Roosevelt and to present to him a resolution adopted by the Board of Directors of the American Petroleum Institute, an organization in which almost all defendants here are members, and to discuss generally with him the plight of the industry.

An appointment for conference was granted, and on March 8, 1933, at 12:30 p. m., I saw the President at the White House, presented to him the resolution, and discussed with him generally the petroleum industry's situation.

The resolution dealt mainly with the existing over-production, production of hot oil which was in excess of the existing consumption; the fact that, due to this over-production, price levels had dropped to a ruinously low level, unemployment had increased, wages had decreased, and the general financial structure of the industry had been weakened. The resolution also recommended that a fixed daily allowable be established for the United States as a whole, and suggested daily allowables for the individual States. It was pointed out that the existing posted price for crude oil was 50¢ a barrel.

2181 The President stated that the situation was similar to the wheat situation, and that we should have a price of $1.00 per barrel. The President asked what effect this would have on the gasoline price structure.

I stated that the existing wholesale price for cargo lots in United States Gulf ports was approximately 4¼¢ a gallon, and to support a crude level of $1.00 per barrel would require approximately a 6¢ to 6¼¢ price at the United States Gulf, or an advance of roughly 2¢ a gallon.

The President stated to me that this was not an excessive advance or price. I pointed out that the only exhaustive study of producing costs for the United States that I knew of was the study made by the Tariff Commission Report of 1930 and 1931, which showed that crude oil east of the Rockies cost approximately $1.15 per barrel at the well, and this did not include all accounting costs.

In the general discussion of prices for crude and its products, I reminded the President that when he was Assistant Secretary of the Navy during the World War and I was Secretary of the National Petroleum War Service Committee and a member 2182 of the Committee on Allocation of Petroleum Supplies of the United States Fuel Administration, that the industry had established a price schedule of crude oil and its products, used for the United States forces and its Allies, and that this price schedule had been accepted and had had the approval of all Government agencies during the War. After our discussion, the President called his secretary, Colonel McIntyre, and asked him to arrange an appointment with Secretary Ickes for me immediately, as the President was anxious to have me discuss this general situation with Secretary Ickes before the Cabinet meeting which would be held at 2 o'clock that afternoon.

I went to Secretary Ickes' office and went over the whole situation with him, of my talk with the President. I was informed by him that afternoon, after the Cabinet meeting, that a conference of the Governors of the principal oil producing states had been called for the end of the month in Washington.

After receiving information from Secretary Ickes that notice of the Governors' Conference had been 2183 sent out, I returned to New York and reported to the officers and directors of the American Petroleum Institute the nature of the conference, its outcome, and specifically that the President had suggested that the industry should have $1.00 crude; that he did not consider the supporting price of approximately 6¢ for gasoline excessive; and that the Governors' Conference had been called to consider the general question of daily production in the United States, and suggested allocation for the individual States.

To my knowledge, this information that I communicated to the National Petroleum Institute became a matter of general knowledge in the industry.

Mr. Chaffetz: This offer of proof is objected to for the reasons previously stated.

The Court: Objection sustained.

Mr. Donovan: I understand, your Honor, we have an exception?

The Court: Yes.

(In presence of jury.)

By Mr. Donovan

At some time in September, 1933, together with 2184 Secretary Ickes and members of the P. A. B. and the P. and C. Committee, I attended a conference with the President of the United States.

Q. And do you know who were present at that conference?

Mr. Chaffetz: That is objected to. It might be prejudicial and couldn't have any bearing on the issues in this case, September, 1933.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. At this conference, was there any discussion regarding the price of crude oil and of petroleum products?

Mr. Lewin: Now, I object to that. That is leading and I thought he had said he wasn't going to ask leading questions here.

Mr. Chaffetz: Objected to because it is incompetent, irrelevant and immaterial, also.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Now, I desire to make an offer of proof, your Honor.

(In absence of jury.)

I make this offer of proof and ask that it be received with the same force and effect as if it were in question and answer form:

If James A. Moffett were permitted to testify, he would testify as follows:

2185 On September 26th, I had a conference with President Roosevelt, at which Secretary Ickes, Messrs. Margold, Fahy, Meyers, and Marshall of the Petroleum Administrative Board, Mr. Benedum and myself as representatives of the Government of the P. and C. Committee, and Messrs. Dawes, Beaty, Kingsbury and Franklin, representing the industry on the P. and C. Committee, were present.

By September 26, 1933, Section 9(c) of the N. I. R. A. was in operation, and crude production had been shut back. In order to compensate for this shut back, and in order to increase employment and wages, there was a desire to get the price of petroleum products higher. It was thought that the way to increase prices of petroleum products was for the Government to establish minimum prices.

The Secretary of the Interior, as Administrator, felt that, since he only had this delegated power of the President, the President himself should decide whether or not minimum prices should be established for petroleum products. The purpose of this conference was to outline the problems to the President.

I went to the conference with a figure of $1.10
2186 worked out as the minimum price which should be established for crude oil. The price at that time was 90¢, but I felt, and the others present felt that a price of 90¢ would not cover the situation, that such a price would not cover the cost of production.

The President indicated a willingness to approve the fixing of minimum prices. Everyone present at this meeting felt that the price of crude oil should be at least $1.00. The decision as to the exact price was left to the Administrator, Mr. Ickes. The President told the Administrator to proceed with further investigation, and draw up minimum price schedules.

The industry generally knew of this conference with President Roosevelt, and was informed of the discussion which had taken place, and of the attitude of the Petroleum Administrator.

Mr. Chaffetz: This offer of proof is objected to, for the reasons previously stated.

The Court: Objection sustained. Exception allowed.

(Thereupon the jury were returned into the courtroom.)

2187 Mr. Donovan: Q. Now, on September 26, 1933, did you have a talk with Mr. Arnott?

Mr. Chaffetz: That is objected to. Any talk he may have had with Mr. Arnott in September, 1933, two years before this alleged conspiracy started, couldn't have any bearing on this case. I don't know what that talk was, but I think obviously it isn't—

The Court: You may answer that yes or no.

A. Yes.

Mr. Donovan: Q. Will you tell us what that talk was?

Mr. Chaffetz: Objected to for the same reasons I have just stated.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Can you tell us what that talk related to?

Mr. Chaffetz: Objected to no matter what it relates to. It couldn't have any bearing on the issues in this case.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: I would like to offer proof on that.

The Court: You may offer proof on that.

(In absence of jury.)

2188 Mr. Donovan: I make offer of proof and ask that it be received with the same force and effect as if in question and answer form. I offer it, as on previous occasions, specifically as to each part and as to the whole.

The Court: It may be so received.

Mr. Donovan: This is an offer of proof concerning the talk with Mr. Arnott.

If Mr. Moffett were permitted to testify, he would testify as follows:

> After the White House conference of September 26, 1933, and having been advised by Mr. M. L. Benedum, one Government representative on the Planning and Coordination Committee, that Secretary Ickes desired that the price of crude oil go up, I talked with Mr. C. E. Arnott regarding certain sections, particularly in the Middle West, where certain local price wars and price competition had brought the level of gasoline prices below a cost recovery point on the basis of the posted price of $1.00 crude, and asked him if he could not contact these marketing people where this situation existed and have this cut-throat price competition eliminated and the structure restored to its natural, normal level.

2189 I assume that is objected to?

Mr. Crawford: Objected to as incompetent, immaterial, and irrelevant.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: As to all other offers of proof that I have made, as I stated previously, there, that in my exceptions I hope your Honor will permit your ruling to stand that this kind of exception would be applied, that it would apply, as your Honor ruled, as to each specific question and each specific matter.

The Court: Let the record show that the offer of proof you have made has been overruled, and you may have an exception.

Mr. Donovan: As to each particular part, your Honor.

The Court: Yes.

(In presence of jury.)

On October 7, 1933, I had a conference with President Roosevelt.

Mr. Donovan: Q. Can you tell us who were present at that conference?

Mr. Chaffetz: That is objected to. Immaterial, incompetent, and irrelevant.

The Court: Objection sustained. Exception allowed.

2190 Mr. Donovan: Q. Can you tell us what was the subject of the discussion at that conference?

Mr. Chaffetz: That is objected to. No matter what the subject was, it can't have any bearing on this case.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Then, I must make my offer now.

(In absence of jury.)

Mr. Donovan: I now make an offer of proof concerning the conference of October 7, 1933, at the White House. I make this offer of proof, your Honor, and ask that it be received with the same force and effect as if it were in question and answer form, and offer it specifically and as a whole.

If James A. Moffett were permitted to testify, he would testify as follows:

> On October 7, 1933, I had a conference with President Roosevelt at which Messrs. Benedum and Beaty and myself, representing the Planning and Coordination Committee, and Administrator Ickes, accompanied by Messrs. Margold, Swanson and Meyers of the Petroleum Administrative Board, were present.
>
> 2191 After the price of crude oil went up to $1.00 a barrel a general price schedule for all products based on $1,11 crude, which was 11¢ above the then price, was worked out or attempted to be worked out, covering basic prices at various refinery points throughout the country. This conference was called for the purpose of discussing the schedules as had been worked out. Mr. Margold raised some question about price fixing in connection with the Code, but the President left the matter of price fixing largely to the Administrator to work out.
>
> At this conference the President stated that we had price fixing during the World War and found it satisfactory, and he thought we had no assurance of either $1.00 crude or a price higher than that unless the refined products brought a cost recovery return. There was some discussion at this conference that since the price of crude had been settled to some extent, that the remainder of the price structure of the petroleum industry would work itself out. I recall,

however, that the President favored the adoption of minimum prices for petroleum products. Under the schedules as worked out at that time and based upon $1.11 crude, the price for gasoline 2192 was to be 6½¢ in order to establish a proper parity or relationship between the two.

Soon after this conference, schedules of minimum prices for petroleum products were made public by order of Secretary Ickes.

A report of this conference was made to the P. and C. Committee, and afterwards came to be a matter of general knowledge throughout the industry.

Mr. Crawford: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Donovan: May we have the same exceptions, your Honor?

The Court: Yes.

No Cross-Examination.

2193 SAMUEL W. EVERETT, a witness for the defendants, testified as follows:

Direct Examination by Mr. Wood.

My residence is Valhalla, New York. I have been chief statistician for Sinclair Refining Company since June 1930, and have been in accounting or statistical work for 30 years. I have had prepared under my supervision a tabulation of figures and also a chart showing the total gasoline requirements, production, purchases, and inventories of gasoline of Sinclair Refining Company for the years 1931 to 1936, inclusive. Those figures on the tabulation and chart were obtained from the regular records and books of the company.

(Chart referred to received in evidence as EXHIBIT 878.)

(The witness then described to the jury the form of the chart, Exhibit 878.)

The gasoline requirements of the company are the sum of the sales of gasoline made during the year, plus the amount of gasoline consumed by the company itself in its own operations.

The column representing inventory at the close of the year is in reality the gasoline available to meet the demands in the succeeding year as represented by the blue column. The first column is the gasoline in storage at the
beginning of 1932. The gasoline that is included in the
inventory figures that I have depicted is all finished
2194 gasoline at all bulk plants, service stations, refineries,
terminals, and in transit. In other words, it represents the complete stock of unsold finished gasoline in the possession of the company, anywhere, at the end of the year.

The total gasoline requirements of the company in 1931, the blue column, is 907,000,000 gallons. During that year Sinclair Refining Company manufactured 849,000,000 gallons. That is shown by the red column. The relation between requirements, or demand, and manufacture, is the difference in the height of those two columns. During 1931 Sinclair Refining Company's total purchases of gasoline, shown by the yellow column, were about 75,000,000 gallons. This was purchased in addition to the production shown by the red column, in order to meet the demand shown by the blue column.

Then at the end of the year, the green column on that chart represents the amount of gasoline in storage to be carried over into the next year, 1932. There were 98,000,000 gallons of gasoline in storage or in the possession of the company, in all places, at the end of the year. So that, in 1932, to meet the demands shown by the blue column, we start off with the inventory shown by the green column on the left-hand side, representing some 98,000,000 gallons.

The total gasoline requirement of the company in 1932,
as shown by the second blue column, was 880,000,000
2195 gallons. During that year Sinclair Refining Company
manufactured 819,000,000 gallons of gasoline to fill this demand of 880,000,000. That is shown by the red column. During that year, to supplement its production, it purchased 73,000,000 gallons of gasoline. That is shown by the second of the yellow columns. What it had left in storage at the close of the year is represented by the second of the green columns. That was 109,000,000. That is more than it had had in 1931.

It went into 1933 with that amount of gasoline in storage. The third blue column shows the total requirements or demand for gasoline of the company in 1933; that was 965,000,000 gallons, substantially more than it had been in either 1931 or 1932. The company manufactured 924,000,-

000 gallons of gasoline during that year to meet that demand, materially less, as shown by the chart, than the total requirements. It bought 67,000,000 gallons of gasoline. That is shown by the third yellow column.

At the end of that year, and to go into the succeeding year, it had left in storage the amount shown by the third green column; that was 135,000,000 gallons.

Then in 1934, the total requirements, sales and plant consumption, as shown by the fourth blue column, were 1,041,000,000 gallons. That is substantially more than it had been in any of the preceding years. 928,000,000 gallons
were manufactured by the company. To supplement
2196 that, and in order to meet the demand represented by
the blue column, we bought 81,000,000 gallons.

At the end of 1934 there were 103,000,000 gallons in the way of inventory or stock with which to go into the next year. That is the amount of gasoline we had in storage at the beginning of the year 1935.

We look at the blue column to see the demand or requirements for the calendar year of 1935. That amounted to 1,162,000,000 gallons during the course of the year, as total requirements or demand for 1935. Roughly, that was 125,000,000 gallons in excess of the total requirements for 1934, and 254,000,000 gallons in excess of the demand or total requirements for 1931. So that, as shown on the chart itself, the demand in 1935, the total gasoline requirements of Sinclair Refining Company during that year, was largely in excess of what it had been in any one of the 4 preceding years.

At the end of 1934, the inventory position of the company was 103,000,000 gallons. At the beginning of 1934, there was in inventory 135,000,000, an excess of 32,000,000 gallons over the inventory position at the beginning of 1935. At the beginning of 1933, the inventory was 109,000,000 gallons. At the beginning of 1935 it was 103,000,000. The inventory at the beginning of 1933 exceeded the inventory at the beginning of 1935 by 6,000,000 gallons. The total
requirements or demand for 1935 exceeded the total
2197 requirements or demand for 1933 by 197,000,000 gallons.

To meet this up to date peak demand or requirements of 1935, the company manufactured 1,073,000,000 gallons of gasoline. That is shown by the fifth of the red columns. The relation of the amount which the company itself produced to its total requirements is shown by the difference in the height between the next to the last red column and the next to the last blue column.

The amount of gasoline that the company purchased during 1935 is shown on the chart by the next to the last yellow column; it was 86,000,000 gallons. At the end of the year, 116,000,000 gallons remained in stock to go into the year 1936.

The demand increased in 1936 over 1935. That appears upon the face of the chart itself. The demand or total requirements for 1936 is shown by the last of the blue columns; that is 1,292,000,000 gallons.

1,200,000,000 gallons of gasoline were manufactured by the company during that period, 1936. That is the last red column. Its relation to the demand is represented by the difference in the height of the red column and the blue column. We bought 114,000,000 gallons of gasoline in 1936.

In respect of ~~each of~~ these years, you can visualize the difference between the amount produced and the amount
sold or required in the operations of the company, by
2198 merely looking at the red and blue columns that are
there, side by side.

I have made a calculation or tabulation, from the company records kept under my supervision, showing the percentage of total requirements represented by the gasoline produced by the company in each of these years.

(Tabulation referred to received in evidence as EXHIBIT 879.)

In 1931, the production to requirements was 93.59%. In 1932, 93.03%. In 1933, 95.80%. In 1934, 89.16%. In 1935, 93.76%. In 1936, 92.83%.

In 1931, purchases to requirements were 8.31%; in 1932, 8.28%; in 1933, 6.92%; in 1934, 7.77%; in 1935, 7.39%; and in 1936, 8.84%.

As to the inventory on hand at the beginning of each of these years, in 1931 there were 38 days' supply; in 1932, 55 days' supply; in 1933, 43 days' supply; and in 1934, 57 days' supply. The average number of days' supply in each of the 4 years preceding 1935, at the beginning of the year, was 49 days. At the beginning of 1935, the number of days' supply on hand was 40 days. At the beginning of 1936, there was 43 days' supply on hand.

The per cent of inventory to requirements for the year 1931, was 10.81; for 1932, 12.44; for 1933, 14.07; for 1934, 9.97; for 1935, 10.01; and for 1936, 10.74.

In order to arrive at the total requirements, you
2199 must add the aggregate sales and the plant consump-
tion, and that addition has not been made on the sheet itself.

Cross-Examination by Mr. Chaffetz.

We determine days' supply by taking the inventory at the last of the year or the first of the year, which is one and the same, taking the inventory December 31, and basing it against January in this way: Divide the total requirements for January by the number of days, and then use the result as the divisor against the amount on hand in inventory.

2200 G. C. LILLY, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Wilmette, Illinois. I am and have been since August, 1916, employed in the capacity of secretary by Johnson Oil Refining Company, an independent refiner, with general offices in Chicago and refinery at Cleveland, Oklahoma.

During 1934, 1935 and 1936, Johnson Oil Refining Company sold gasoline to jobbers in the Mid-Continent or Mid-Western area; and it does so now. It did not sell any gasoline during those years to any of the major companies who are defendants. It also distributes gasoline through its own stations; it has a few stations in and near Madison.

From 1934 to 1936 inclusive, I kept and am familiar with regular records of the company's production and sales of gasoline by months. I have prepared a statement showing those figures by months. My record opens with June, 1934, because in the limited time I had to prepare I was unable to refer to prior records in remote storage.

Exhibit 880 for identification gives the figures of the monthly gasoline production for the last 7 months of 1934, and all of 1935 and 1936.

(Document referred to is received in evidence as EXHIBIT 880.)

Exhibit 881 for identification is a tabulation of the
2201 monthly gasoline shipments or sales during the last 7 months of 1934 and all of 1935 and 1936.

(Document referred to is received in evidence as EXHIBIT 881.)

(The witness then stated the gasoline production and sales figures of his company for the first 7 months of 1934, and all of 1935 and 1936. Such statement is omitted because such figures appear on the face of Exhibits 880 and 881.)

No Cross-Examination

2202 JOHN D. BRIGHT, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I live in Vernon, Texas. I have been employed for 7 years in the capacity of chief accountant by Waggoner Refining Company, an independent refiner that sells in the Mid-Western area. Its refinery is located near Electra, Texas.

I prepared a tabulation from the regular records I kept, showing the company's production and sales of gasoline by months during the years 1934 to 1936, both inclusive.

(Tabulation referred to is received in evidence as EXHIBIT 882.)

(The witness then stated the gasoline production and sales figures of his company for the years 1935 and 1936. Such statement is omitted because such figures appear on the face of Exhibit 882.)

No Cross-Examination

2203 CREED B. BATSON, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Tulsa, Oklahoma. I am employed by Mid-Continent Petroleum Corporation. In 1935 and 1936 I was price clerk in its shipping department, and handled tank car orders for gasoline received from the company's different division offices. All tank car orders for gasoline sold by the company passed through the Tulsa office, where I was employed, and the tank car invoices for gasoline were handled and made up through our office. After the invoices and orders are filled, they are filed in our department.

I have prepared a tabulation showing all gasoline sales by Mid-Continent Petroleum Corporation during 1935 and 1936, other than sales made under contract.

> (The witness then described how he prepared such tabulation and the records from which the figures on the tabulation were taken.)

This tabulation shows the price which appeared on the shipping order. If any of these sales were on the low of the Chicago Journal of Commerce, date of shipment, that would show on my tabulation. My tabulation shows the shipment was made f.o.b. the shipping point. These sales are sales to consumers. I ascertained whether these customers to whom sales were made were consumers or whether they were jobbers by checking with our sales department, 2204 who are familiar with the customer and the type of business. I have that tabulation.

> (Tabulation referred to is received in evidence as EXHIBIT 883.)

No Cross-Examination

2205 **ROBERT W. McDOWELL**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am a defendant in this case. I am 41. I was connected with Mid-Continent Petroleum Corporation during 1935 and 1936 as vice president in charge of marketing.

After first being with an independent refiner, Producers & Refiners Corporation at Tulsa, Oklahoma, and then with a large oil jobbing company, Hawkeye Oil Company at Waterloo, Iowa, for 10 years, in 1928 I went with Mid-Continent Petroleum Corporation when it bought the Hawkeye Company. I was made a division manager a little later on at Waterloo. About 6 or 7 months later I was called to Tulsa to take the position of sort of assistant to D. W. Moffett, who was then vice president in charge of sales. After his death, I became vice president with complete charge of all of the sales and marketing activities of the company, both domestic and export, wholesale and retail.

I have been with Mid-Continent Petroleum Corporation between 9 and 10 years. I have been vice president about 7 years. I am not a member of its board of directors. My office is at the principal office of Mid-Continent Petroleum Corporation in Tulsa, Oklahoma.

2206 Beginning in June and July, 1933, I took part in the drafting of the Code of Fair Competition for the Petroleum Industry of the National Industrial Recovery Act. I was interested primarily in the marketing section of the proposed Code at that time. I attended all of the preliminary meetings in the Middle West, during which the Code was being discussed pro and con by the entire industry of the Middle West. In late July, after the industry had pretty well decided what it would like to have in the Code, certain committees went to Washington and presented this draft of the Code to Hugh Johnson. I attended most of the conferences in Washington connected with the final preparation of the draft of the Code. That Code was finally signed by the President, I believe, in August, and it became effective early in September, 1933.

The objectives of the Code, as I understood them, were to enable the petroleum industry to take its part along with all industry in the rehabilitation of the country under the N.I.R.A., and the specific objectives of the Petroleum Code were to stabilize the prices within the industry, to bring about fair marketing practices, to place proper controls upon production so that we might have conservation, all to the end that higher wages and shorter hours could be put into force by the people in the industry.

2207 After the Code went into effect, I took part in its administration. Under the Planning and Coordination Committee there was a Marketing Sub-Committee that operated in or out of Washington. Then, the country was divided up into districts, and these were called Regions, and there were Regional Marketing Committees. Under the Regional Committees there were State Committees, and County Committees, and sometimes committees in some of the larger cities. I was a member of 2 different Regional Committees: Region 3, which comprised generally the so-called Standard of Indiana territory, which is the Mid-Western area; and Region No. 4, which was comprised of Oklahoma, Arkansas and Texas.

From 40% to 50% of my time was taken up with the discussion of the Code and with Code work from June, 1933 to May 27, 1935. While I was devoting that part of my time to Code activity, Mid-Continent Petroleum Corporation continued to pay my salary as vice president. That was, I am sure, the general practice with respect to other oil company executives who were doing similar Code work.

In the course of my work with the Code, in January, February and the early part of 1935, I knew the conditions of the small independent refiner in the Mid-Continent area quite well. The independent refiner had been in a very bad way financially for some time. He was 2208 caught between the price of crude oil, which was pegged at $1.00 a barrel, and the competition in the market of gasoline made from hot oil from East Texas, which was put on the market at prices 1½¢ or 2¢ under the price for which any refiner operating on legal market price crude could afford to sell it. This had been going on for months, with very short intervals of improvement; so that many independent refiners had either gone broke or were closed down. The independent refiner just couldn't get enough money out of his gasoline to pay for his crude. The independent refiner had to pay $1.00 for crude, and he wasn't getting $1.00 out of the products that he made from that barrel of crude.

The price wars of 1934 had further aggravated the independent refiner's position, because the independent refiner had customers among the jobbers of the Middle West; and when we had these bad local price wars, the independent refiner was confronted with making even a lower price than the regular going market, in order to try to keep his jobber customers alive. If he didn't or couldn't do that, then he ran the danger of losing this jobber as a customer. So that, in addition to losing money, he was confronted with the situation, because of the retail price wars, that caused him actually to lose a lot of his customers.

Then there was another factor that affected all 2209 of us, and that is this hot gasoline that came out of East Texas at such ridiculously cheap prices. The customers of major companies as well as the customers of independent companies, even though they were under contract, would buy that cheaper gasoline because it was so cheap, and that, of course, affected the volume of business that we were doing.

The retail price wars were raging all through the Middle West here. It is just like a fire; it starts in one place, and it doesn't get very far for a while, and then it will spread over into another town. The price wars started in July or August, 1934, and reached their peak in October and November. At that time the retail price situation through the Middle West was terrible. There were prices as much as 5¢ and 6¢ below so-called normal.

Mr. Chaffetz: We ask that the witness' testimony with respect to retail price wars be stricken, because it is a period that antedates the alleged conspiracy, and can't have any bearing on the issues in this case.

The Court: That was in July to October—

Mr. Chaffetz: July to October, 1934.

The Court: Q. How long did they continue? You say the peak was reached in October or November, 1934?

2210 A. It was pretty well cleaned up in December, your Honor.

Mr. Chaffetz: I renew my motion that the testimony be stricken.

The Court: That may be stricken.

Mr. Donovan: And I may have an exception to that?

The Court: Yes, you may.

Due to this competition of much lower priced material in January, February and March, 1935, the independent refiner of our area who was operating on legally produced crude had lost a lot of his customers. So that he was having to dump a certain amount of his monthly production into the market as distress gasoline. Distress gasoline is that part of any company's manufacture that it has no regular sales outlets for, and that it must sell at prices substantially below the market. Not very many independent refiners could store this gasoline until they could get a better price, because they had neither the storage nor the money to finance the storing of large quantities of gasoline. And you know, crude oil has to be paid for twice a month.

The main market for the gasoline outlet of the independent refiners of the Mid-Continent area was jobbers and consumers of the Middle West, in this so-called Standard of Indiana territory.

2211 The condition I have described was the condition of the independent refiner in the Mid-Continent area at the time that I was invited to attend a meeting in Chicago, called by Mr. Arnott, in January, 1935.

(Chart of P. and C. Committee organization received in evidence as EXHIBIT 827.)

Starting in late September, 1934, there were several stabilization meetings of marketers held by Mr. Arnott with reference to stabilizing the retail prices. The retail prices where this price war existed and other things were taken up at these meetings. September 20 or 21 was the first meeting as a result of Mr. Ickes' letter, Exhibit 891 for identification. I was invited by Mr. Arnott to that meeting. This meeting called by Mr. Arnott in September was a meeting of the Stabilization Committee.

I attended these stabilization meetings. The meeting in

March, 1935 was a meeting of the Tank Car Stabilization Committee which was appointed at a meeting in January, 1935 of the general stabilization meeting.

Mr. Arnott is a defendant in this case. He held many positions at the time of the September 1934 meeting. He was vice president or president of Socony-Vacuum Oil Company, a member of the P. and C. Committee, chairman of the Marketing Sub-Committee of the P. and C. Committee, and he was known as Chief Stabilizer in
2212 all our activities as a result of Mr. Ickes' letter of July 20, 1934.

I attended a meeting at Mr. Arnott's invitation on January 4, 1935, in Chicago. There were 40 or 50 members of the industry present. I have a list of those I remember who were present. There was Mr. Adams and Mr. Reeser of the Barnsdall Company. Mr. Merritt of Cities Service. Mr. Karstedt and Mr. Wood of Continental Oil Company. I will try to state whether or not each man is a defendant in this case. Mr. Reeser is a defendant. Mr. Karstedt is a defendant, but I understand he is not on trial. Then there was Mr. Majewski and Mr. Carthaus, of Deep Rock. Mr. Majewski is a defendant, but not on trial. There was Mr. Miskell of Empire Oil & Refining. Mr. O'Shaughnessy of Globe. He is a defendant. Mr. Johnson of Gulf Refining Company. Mr. Carpenter and Mr. Stover of Lincoln Oil Refining Company, a subsidiary of Ohio Oil Company. Its refinery is located at Lawrenceville, Illinois, and its executive headquarters are at Findley, Ohio. Mr. Ashton of Lubrite Division of Socony-Vacuum. He is a defendant. Mr. McKay of Marathon Oil Company. Mr. Smith of National Refining Company. Mr. Hughes, Mr. Gardner and Mr. Moon of Phillips Petroleum. Mr. Hughes and Mr. Gardner are both defendants, I believe. Mr. Snyder
2213 and Mr. McElroy of Pure. Mr. McElroy is a defendant. Mr. van Eeghen and Mr. Lakin of Shell. Mr. Lakin is a defendant. Mr. Sus of Sinclair. Mr. Atkins and Mr. Skelly of Skelly Oil Company. Mr. Skelly is a defendant. Mr. Arnott and Mr. C. L. Jones of Socony-Vacuum. Both are defendants. Mr. Bullock, Mr. Ball, Mr. Jackson and Mr. Lewis of Standard of Indiana. Mr. Bullock and Mr. Jackson are defendants. Mr. Hu[illegible]rey of Standard of Nebraska. Mr. Wright of The Texas Company. Mr. Warner of Tide Water. He is a defendant. Mr. Maguire and Mr. Peters of Wadhams Oil. Mr. Maguire is a defendant. Mr. Marcell and Mr. Mering of White Eagle division of Socony-Vacuum. And Mr. Coffin of White Star division of Socony-Vacuum.

There were 16 defendants at that meeting, and there were others present besides these 39 I have named. I can't just remember who they were.

At that meeting there was a committee appointed that was called the Tank Car Stabilization Committee.

Mr. Arnott, the chairman, opened the meeting. He stated that the meeting was called to consider various problems of general stabilization. He pointed out that during the past month or so many local price wars had been relieved by the work of the Stabilization Committee in line with and as a result of Mr. Ickes' request to him. Mr. Arnott complimented the group there for the cooperation that had 2214 been given. He stated, however, that he and others felt that all of this improvement, which had been brought about in the retail price structure through either the elimination or improvement in these local price wars, would go for naught unless another factor was considered, and that was in the influx of cheap gasoline into the territory, which continued to tend to undermine the retail price structures, even after they had been improved. He stated that Washington had been deluged with complaints from independent refiners about their plight and the competition that they were receiving from hot gasoline and cheap gasoline. He also referred very briefly to a telegram that he had just recently received from a group of refiners down in the Southwest, in which they demanded that some action be taken through stabilization to relieve their terrible plight of having to sell gasoline at these very low prices and having to dump gasoline because of the loss of their business through other channels.

Mr. Arnott stated that it was his opinion, and the opinion of many people in Washington, that unless something was done to bring about a parity between crude and gasoline prices, that crude would probably have to be cut. He said that no one wanted to see crude cut, and he felt this Stabilization Committee should try to do something con-2215 structive rather than to see a crude cut forced upon the producer. Mr. Arnott said the Code authorities in Washington, the Administration, P. and C. Committee, and Petroleum Administrative Board all wanted to see a parity brought about between gasoline and crude prices.

There was a general discussion provoked by Mr. Arnott's remarks. Following his speech, the only thing in particular I remember was a speech that Mr. Majewski of Deep Rock made. Mr. Majewski said he wanted to speak for the group of 20 or 25 independent refiners that he and Mr. O'Shaughnessy had been representing in all stabilization efforts. He said that these refiners were going broke, and that something had to be done. He pointed out that they were having to pay $1.00 for crude, and that they were selling their gasoline way below cost. He stated that under the Code there was a formula that involved the refining industry's getting 5½¢ for gasoline when crude was at $1.00 a barrel.

Mr. Majewski said a lot of things, but I will just shorten it. He wound up by saying that unless something was done, this group of independent refiners was going to be forced to either close down and throw people out of work, or withdraw from Code activities so that they would no longer have to pay Code wages and adhere to Code hours. Furthermore, as a last resort, they would unite to try to cut the price of crude oil.

2216 Mr. O'Shaughnessy was president of Globe Oil & Refining Company and a member of the P. and C. Committee. Mr. Majewski was a member of the P. and C. Committee. Mr. O'Shaughnessy is a defendant in this case and is on trial here.

Mr. O'Shaughnessy simply supported Mr. Majewski's remarks and said that he felt that Mr. Arnott, Chief Stabilizer, should take some action.

I made a brief statement at this meeting in which I said that I felt we all realized the plight of the independent refiner and that something should be done, if a way could be found to bring about an improvement in the situation. There was a general discussion by a lot of people there, but I don't remember the details.

Mr. Majewski made another short speech, in which he stated that from all the discussions it seemed obvious to him that everyone realized that if we were going to have general stabilization in retail markets, we must have some sort of a firm market in the tank car market, and, so that something might be done, he recommended to the chairman that a committee be appointed to study this situation. I don't think there was any debate on this motion to appoint such a committee.

When the motion was passed, the Chairman, Mr. Arnott, stated that he would appoint the committee before the meeting was over. Later in the day he appointed the committee composed of Mr. Ashton as vice-chairman, Mr. van Eeghen, Mr. Karstedt, Mr. Hughes, Mr. Miskell, Mr. Bullock, O'Shaughnessy, and myself, as chairman. I tried to stay off the committee, as I had too many other things to do. Several of those there prevailed upon me

2217

that it was something that should be done, and they felt that I should serve, and I did.

When Mr. Arnott appointed this committee, he simply charged us with the job of making a study of the tank car market situation in the Middle West, and reporting back to him.

I have seen the letter of July 20, 1934, as a result of which this meeting was called. I first received knowledge of that letter by reading about it in the trade papers, right after it was written. Shortly thereafter, Mr. Miskell of the Empire Company, in Tulsa, who was chairman of the Regional Marketing Committee of Region 4, Oklahoma, Arkansas and Texas, showed me a copy of the letter. That was the first time I had ever seen it. When he called that letter to my attention, he called another paper to my attention. There was a memorandum attached to the letter, which was an opinion by a Mr. Titus, who was general counsel for the P. and C. Committee.

Q. Now, I show you a letter dated July 20, 1934, addressed to Mr. C. E. Arnott, Chairman, Marketing 2218 Division, Planning and Coordination Committee, Investment Building, Washington, D. C. signed by Harold L. Ickes, Administrator, Petroleum Industry, and ask you if that is the letter that you referred to, that Mr. Miskell showed you?

A. Yes, sir, that is the letter.

Q. Did you read that letter at that time?

A. I did.

Q. Did you believe that that letter authorized Mr. Arnott to do the things decided in that—

Mr. Lewin: I object to that. That is the most leading question I have ever heard addressed to a defendant on the witness stand.

The Court: You may answer that.

A. Yes, sir, I did.

(Letter of July 20, 1934, referred to marked Exhibit 891 for identification.)

The Court: Do you want to be heard on this?

Mr. Chaffetz: Yes, your Honor.

The Court: The jury may retire.

(Whereupon the jury left the court room, and the following proceedings were had out of the hearing and presence of the jury:)

Mr. Chaffetz: Are you about to offer this?

Mr. Donovan: I am not going to offer it right away. I am going to offer it in a few minutes. We haven't completed the basis for the offer of Exhibit 2219 891 for identification at this time. This witness has testified that he read this letter, shown him by Mr. Miskell, when it first came out; and now I intend to ask him if this letter and the memorandum attached were read at the first meeting held, as a result of these meetings which Mr. Arnott called, following the letter. The witness has already testified that he relied upon this letter as indicating the authority of Mr. Arnott to call these meetings.

We intend to offer that letter for more than one reason: First, because it is part of the res gestae, it is part of the entire transaction; second, because it is one of the elements in the circumstances leading up to the appointment and action of this Tank Car Committee. Third, this witness now says that he believed that letter and relied upon it; and whether the letter conferred authority or not, is a question here, whether he believed it conferred authority or not is a question for the jury. Certainly, he is entitled to have that submitted on the question of his intent. Contemporaneously with the submission of this letter to the witness, a memorandum was submitted which had been prepared, written and sent to Mr. Arnott by the counsel for the P. & C. Committee. 2220

Now this defendant is on the stand and this defendant says that he read this letter, that he read this memorandum written by Mr. Titus, counsel for the P. & C. Committee, and that he relies on them.

Mr. Chaffetz: From the Government's point of view, the only purpose of offering this letter and the witness' testimony that he relied on it, is to show the good faith of the defendants. If we do that, we must go into all the circumstances which would test their good faith.

The Government's position is that anybody reading that letter could see on its face that it did not authorize any such thing as the defendants here are charged with doing.

It is the Court's function to construe the letter; and if, in fact, that letter has no such authority and could not be construed as to suggest authority to deal with the tank car price, then the Court ought to rule that this letter is in any event remote, so far as this case is concerned, and improperly prejudicial, in the way in which the defense proposed to use it.

The Court should rule, that as a matter of law, the defendants should not have believed that that letter gave them authority to do what they are charged with doing.

2221 It is not reasonable to assume that this gentleman would read that letter and think, by that alone, he was authorized to go out and engage in a conspiracy to fix the tank car price of gasoline. Furthermore, this gentleman well knew about buying programs in 1934. He wants to have this jury believe that although this letter was dated July 20, 1934, and although subsequent to that date there was a series of buying programs, not under that letter at all, now, all of a sudden, this letter becomes authority to carry on buying programs without any separate authority from the Secretary of the Interior. It is just plain unreasonable.

(Ruling reserved on offer of Exhibit 891 for identification.)

(The following proceedings were had in the hearing and presence of the jury.)

By the Court

The price wars reached their peak about October, 1934, and they were about over in December, 1934. I attended several stabilization meetings that were called from time to time, some of them being general meetings in Chicago, others being state meetings, and some being local meetings, to treat with various situations.

A trackage operator is a retailer who has bulk storage,
but he does not as a rule sell to other dealers or to
2222 consumers other than through the service station that
he has right at the same point usually where he has his
bulk storage. So that that physical arrangement can be worked out they have to be located on railroad trackage, and that is the way the term "trackage operator" sprang up.

These local price wars started from many, many different causes. No one ever really knew the reason why, in many instances. Sometimes we had operators in these areas who were known as just out and out price cutters, people who always sell under the market. But regardless of how it started, the situation would grow, because if the price of gasoline is down 2¢ or 3¢ in Madison, for example, it is not very long before it will spread out to Portage or Baraboo or some of the other towns closer around, and then unless there is some distance, or some reason for its stopping, it will eventually spread all over the entire state. Local price wars that started in certain areas in the summer and fall of 1934 had spread and spread and spread until you could hardly go into any area of any importance where the price was not cut to some extent.

For several months they attempted to handle the price war trouble locally. But if you get the fire put out at one place, and if you do not handle it over here, then that other one might come back to this one that you had improved.

So during the early part of December, 1934, following a general stabilization meeting at which this terrifically terrible local price situation was discussed from all angles, there was a series of meetings held that lasted all week. The general stabilizer, Mr. Arnott, called in literally thousands of people who came in day by day from the various states. And an attempt was made, and it was reasonably successful, to get all of those local price wars eliminated at one time, on the theory that unless some general improvement was made it would not do any good, because if you leave any important markets down substantially below normal, sooner or later price wars will start to spread again just like a disease. 2223

So during this week, early in December, 1934 the industry, large and small, including major companies and representatives of jobbers' associations and state associations, and representatives of dealers' organizations, had that series of meetings. As a result of that, a very large percentage of those local price disturbances were eliminated, and the retail market structure was much more nearly back to normal, or greatly improved from what it had been for many, many months.

Those local price wars hurt everybody. The jobbers and the dealers were greatly disturbed about them, as were the refiners. Every branch of the industry was disturbed by that situation.

2224 *By Mr. Donovan*

The memorandum dated July 31, 1934, under heading "Planning and Coordination Committee, address memorandum for Mr. Arnott," signed "Louis C. Titus, chairman Legal Committee," is the memorandum to which I referred as having been shown to me by Mr. Miskell.

(Document referred to marked Exhibit 892 for identification.)

There was another occasion when my attention was called to Exhibits 891 and 892 for identification. Shortly after the first general stabilization meeting, called by Mr. Arnott around September 20 or 21, 1934, was opened Mr. Majewski read both the letter from Mr. Ickes and the Titus opinion to the entire meeting. I would say that substantially the same group of people that I mentioned this morning as being present at the January 4 meeting were present at that meeting. The letter was given wide publicity in our trade papers at the time it was written. Everyone in the industry reads the trade papers, I assume.

Mr. Donovan: I offer in evidence, your Honor, the letter of July 20, 1934, EXHIBIT 891 for identification. Now, I offer too, so that we can pass upon the entire question, EXHIBIT 892 for identification, which is the memorandum from Mr. Titus, chairman of the Legal Committee, to Mr. Arnott.

2225 The Court: It is very clear to me that there is nothing ambiguous about that letter at all. The witness has already testified why he attended these meetings and what they were for. He has already told us about what was done, to correct a difficulty that arose in the sections where the price war was on. My view of that letter is very clear, that the authority was limited, to stabilize the prices where the price war was on.

Mr. Lewin: Retail prices, your Honor?

The Court: Retail prices, yes. The objection to that letter is sustained and to the other exhibit.

Mr. Donovan: May I take exceptions to that?

The Court: You may.

By the Court

I have told you in some detail just what was done to eliminate those price wars and the condition brought about by reason of the price wars in certain localities. If I inferred that we had completed that work in December, 1934, I gave you the wrong impression. The condition was greatly improved, as compared with what it had been.

Q. Well, then, tell us just exactly what was done by this Stabilization Committee up to January 1, 1935, to eliminate price wars?

2226 A. Well, that meeting in early December, 1934 that I mentioned, was also the last general meeting of that sort in the year, but when a few weeks following that other price wars started breaking out, as the tank car price weakened early in January—there is always a direct relationship, and the things just go from one to another. Long price wars, for example, cause the suppliers of gasoline who are—

Mr. Chaffetz: That isn't responsive to your Honor's question.

The Court: Q. What I want to know is just what was done.

I didn't tell these men who were selling below the normal price that they would no longer be permitted to receive gas from any major company unless they brought the price up to normal.

Many of the companies had in their contract forms a provision, that was authorized under the Code, which gave us the right to dictate the price at which they resold our merchandise, and it was through those provisions in those contracts that we would use influence on our own suppliers if they were guilty of selling at below market or below cost. At stabilization meetings, other companies would agree to do likewise.

2227 The cooperative influence had to be brought to bear on people who were buying from concerns who had no such provisions in their contracts. Supposing we are supplying a jobber and there are 7 or 8 others in town, and there is a local price war on. We feel that we have to take care of our jobber, as we say, give him local protection, something that wasn't provided for in the contract. That means we reduce our price under what it would have been under the terms of the contract so that he may live.

Some other supplier in that market has to meet that situation. And if that goes on, that affects the man who is selling on the spot market, and drives his price down, because sooner or later they all become competitive.

During the period of the Code, I think the contract that most of the major companies had, contained a provision that permitted them to dictate to the retailer just what price he should sell the gasoline at. I know it was in ours and many others. We quoted a clause that was in the Petroleum Code which gave us the legal option to direct the price and name the price at which the retailer would sell, which we could exercise if we so desired.

I was asked a moment ago something about the intensity of this local price disturbance. I am afraid

2228 I gave the impression that we did not have it after 1934. We did, of course.

By Mr. Donovan

There were some price wars in every month in 1935, but it didn't get to the general, territorially wide intensity that it had in 1934. That was what Mr. Arnott was undertaking to prevent. On January 4, 1935, on or about that time, there were price wars in existence in the Mid-Continent territory.

At this meeting on January 4th statements were made as to the proper manner of dealing with or preventing these price wars. Both Mr. Arnott and Mr. Majewski made the statement that the ground that had been gained in improving this retail situation would be lost unless there was some improvement in the tank car market structure, because of the direct relationship between the two and the effect one had on the other.

By the Court

I know that some major companies had a provision in their contracts during the time the Code was in force, which gave them the right to name the price the retailer would sell at. I don't think any of the small companies ever did that. I couldn't say that all the major companies had that provision. That provision in the contract only took care of a small percentage of the real causes of the price wars during the latter part of
2229 1934.

In order to limit these price wars we held these meetings and tried to persuade these various people that were cutting the price to get their prices up. Sometimes their suppliers were talked to to see if they couldn't use their influence on them, but the small companies, in my opinion, didn't have and didn't exercise influence over their outlets. That was one of our big problems in stabilization.

That was what Mr. Arnott talked about. We were attempting to get the support of the independent refiners for stabilization. And that meant that we wanted them and thought it was proper for them to follow their product through to the market and see that the people distributing their product sold at a fair price and didn't sell below cost. In my opinion, I don't think one out of ten of those people had any control over the distributors of their products at all.

So we were faced with this situation: We had to have their support in general stabilization, and they announced to us at that meeting of January 4th, through their spokesmen, Mr. Majewski and Mr. O'Shaughnessy, that

they weren't going to have any so-called stabilization in the future unless something was done about this tank car price, because they were going broke and
2230 losing their customers.

Mr. Donovan: Now, your Honor, in view of the testimony given, I desire to renew my offer and offer in evidence EXHIBITS 891 and 892 for identification, the letter and the memorandum.

Mr. Lewin: We renew our objections.

The Court: Objection sustained. Exception allowed.

By Mr. Donovan

I have stated what Mr. Arnott and Mr. Majewski gave as their opinion as to what was necessary to be done to correct price wars. As a practical oil man, I certainly agreed with that.

On January 7, 1935, the Panama decision was handed down by the Supreme Court, and knocked out Section 9 (c) of the Code. It made illegal the Tender Board that had been in operation in East Texas. The result of that decision was a great and renewed influx of hot gasoline into this Mid-Western territory with the result the refiners in our own area were confronted with still lower prices to have to compete with, and that started eating into the retail structure.

In January, 1935, distress gasoline had the effect of further weakening our retail markets because of the matter of hot gasoline still coming back into the Mid-Western area out of East Texas. It pushed just that
2231 same amount of gasoline from the independent refiners of Oklahoma and Kansas out of a market, and then made that much more distress gasoline on their hands. They had to sell it some place. They sold it for a lower price than the market, in order to dump it. And then that cheap gasoline in the hands of certain distributors was sold at lower prices, because from a practical standpoint, we have learned over many, many years in the industry that most people who buy at bargain prices can't keep the profit themselves, and they have to give part of it away, and so there we had the retail price trouble starting all over again.

Mr. Donovan: Now, your Honor, in view of this testimony, I must renew my offer of Exhibits 891 and 892.

Mr. Chaffetz: I don't see that this testimony has any bearing on that issue.

The Court: Same objection, I suppose?
Mr. Chaffetz: Same objection.
The Court: Same ruling. Exception allowed.

I have stated that I accepted the position of chairman of the Tank Car Stabilization Committee on January 4, 1935. There was a meeting of that Committee on February 5, 1935. Between the time of the appointment of the Committee and February 5th, I had made two attempts to get the Committee together, one around
2232 January 15 or 16, and one a week later.

In the meantime, between January 4, 1935 and February 5 of that year, an event occurred which affected conditions in the industry. On January 7th this Panama decision had very definitely thrown the industry into a new chaotic condition. Prior to that decision the amount of hot oil moving into our territory had been minimized to a very small amount, because the Federal authorities were regulating and controlling the amount of gasoline and the nature of the gasoline that could be shipped out of East Texas. After the Panama decision, the tank car market went down.

Between the appointment of my Committee on January 4 and the first meeting on February 5, Mr. Arnott called me either once or twice during the latter part of January. He urged me to try to get the Committee together. He told me in the course of at least one of the conversations that the Connally Bill, which had been introduced in Congress very shortly following the Panama decision, had splendid chances of passing, and if it did that would put a tender board into East Texas, and that would help the general situation. He said everyone in Washington was enthusiastic about the possibility of that legislation being passed, and that they were after him to get some activities on the part of this Committee. I told Mr. Arnott that I had been trying to get the Committee
2233 together, but they were pretty busy men, and scattered all over the Middle West, and that I would get them together as soon as I could.

The first meeting of the Tank Car Stabilization Committee was held on February 5, 1935 in Chicago, in Mr. Bullock's office. He is a defendant in this case. All the members of the Tank Car Stabilization Committee were present at that meeting. In addition there were 2 or 3 guests. Mr. Hughes was present. There were others present who were not members of the Tank Car Stabilization Committee. Mr. van Eeghen of Shell brought Mr. Ruether of Shell with him; Mr. O'Shaughnessy brought

Mr. Woodruff with him. Mr. Bourque, secretary of the Western Petroleum Refiners' Association and a defendant in this case, was there. Mr. Ruether and Mr. Woodruff are not defendants in this case.

I called the meeting to order, making a very brief statement about why we were there. I commented briefly upon what had taken place since the Committee was appointed, namely, the further reduction in an already very unsatisfactory price situation, and told them that I hoped we could come to some constructive suggestion to make to Mr. Arnott.

After I spoke, there was a general discussion of the market situation, and of the fact that the market was worse than it had been in January, due to this new 2234 influx of hot gasoline from East Texas. Mr. Ashton spoke. He made the statement that, although he agreed that there was a lot of cheap gasoline coming out of East Texas, he didn't think the situation in the Mid-Continent area was as bad as might be inferred; and he asked Mr. Bourque, who was there, to read a list of independent refiners, and the amount of distress gasoline which they had for the month of February.

Mr. Bourque was secretary of the Western Petroleum Refiners' Association, which is a 25 year old trade association made up of major and independent refiners, primarily in the Mid-Continent area. 80% of the members by number are independents, or small companies. The Western Petroleum Refiners' Association always has carried on statistical work. It gathers data with reference to the production, sales and inventory of its members on all products, and issues bulletins on that information; and then it passes information with reference to national figures on to its membership.

I think Mr. Bourque read the figures off the list. They indicated that the independent refiners on the list had between 600 and 700 cars of distress gasoline for sale during February, 1935. There were a number of questions asked about the detail of those figures. I think Mr. Ashton asked most of them. Mr. Ashton, after asking Mr. Bourque 2235 a few questions, made quite a point of the fact that here were only 600 or 700 cars of distress gasoline, covering the entire month, scattered among some 16 or 17 independent refiners, and that there were some 10 or 12 major companies in that same area who were known to be regular and normal buyers of gasoline.

I think some one immediately suggested: Why not get the major companies to buy this distress gasoline? Some disagreed with that suggestion and it provoked quite an argument. I remember particularly that Mr. Karstedt and Mr. Bullock stated that they didn't think major company buying would do any good, would have any value. They had a good many reasons for that statement, as I remember it.

First, they said that with hot gasoline moving out of East Texas as it was, any buying in the Mid-Continent would be just like mopping up the ocean. They said, furthermore, that they wouldn't have anything to do with any more buying programs; they had had some experience with some in 1934; they didn't think they had done any good; and they just didn't want to have any part in anything that was like the 1934 buying programs.

They said why the 1934 programs hadn't done any good. Hot oil had continued to be uncontrolled during several of those 1934 programs. They also made a very definite 2236 point of this: that they didn't want to have anything to do with anything where there were any allotments or commitments, or where anybody could tell them how much they would have to pay for gasoline. Those were principles of some of the buying programs in 1934. And they expressed the opinion that they thought those were some of the reasons that those plans had failed, because people were being asked to do things that they didn't want to do.

Q. Were those 1934 programs under the Code?

Mr. Chaffetz: That is objected to. He now brings this in by first talking of conversations at these meetings, and then he is going to go back into an entirely new field. I think he should confine himself to conversations at the meeting.

Mr. Donovan: If it please the Court, there is testimony here about the 1934 programs. What were those 1934 programs?

Mr. Lewin: No, now, we didn't object heretofore, because he was talking about conversations taking place at these meetings. We thought that was of doubtful validity, but we didn't object to it. Now, he is going back to those programs in 1934, which open up a number of different cases, and fall directly under your Honor's rulings before.

The Court: Objection sustained. Exception allowed.

2237 As an alternative to the suggestion that was made, Mr. Karstedt and Mr. Bullock said that in their opinion the only thing to do was to have a cut in the price of crude. They didn't think anything else could be done.

I took the position that I didn't agree with the pessimistic attitude of Mr. Karstedt and Mr. Bullock; that, although the situation was fairly bad right at that time, I thought we should be encouraged by the attempts on the part of the Administration to get the Connally Bill passed, which we knew had as one of its purposes the establishment of the Tender Board, which would, we hoped, put a stop to the trafficking of hot oil and hot gasoline out of East Texas. I called their attention to the fact that we were a committee, appointed by Mr. Arnott, representing a section of our industry, and that I thought we should attempt to do something.

I referred to the fact that, under the Code, there was a provision covering a parity between crude and the price of gasoline, and that evidently the Administration didn't want the price of crude cut.

The price of crude at that time was $1.00 per barrel. So I felt we still had a problem to deal with, in this very sub-normal price of gasoline.

Section 6 of Article 3 of the Code provided that crude oil should be 18½ times the price of gasoline; so that, with crude oil pegged at $1.00 a barrel, 2238 we divided $1.00 by 18½ and got a figure that equalled 5 4/10¢ plus per gallon. That referred to the wholesale or tank car price of gasoline at the refinery.

Mr. O'Shaughnessy then said that he certainly felt that I was right, and that the Committee should attempt to do something. He again stated that the group that he was representing in all stabilization activities were desperate and that they had to have some help; and, as an indication of how he felt about it, and how earnestly he felt about it, and what he had been doing, he read to us at that time an exchange of correspondence on the subject of parity between crude and gasoline, that he had had with Mr. Fahy, a member of the Petroleum Administrative Board. I believe he was either chairman or vice-chairman.

The certified copy of a telegram, dated January 28, 1935, from I. A. O'Shaughnessy to Charles Fahy, which you show me, is a copy of the telegram read at that meeting by Mr. O'Shaughnessy. The certified copy of a duplicate original of a letter, dated February 1, 1935, signed by Charles Fahy and sent to I. A. O'Shaughnessy, which you show me, is the letter which I referred to in my testimony as being read by Mr. O'Shaughnessy at this meeting on February 5, 1935.

2239 (Telegram and letter referred to are received in evidence as EXHIBITS 893 and 894, respectively, and read to jury by Mr. Donovan.)

After that letter and telegram were read, Mr. O'Shaughnessy followed up with a few remarks, urging us to take some action. Shortly thereafter Mr. Ashton stated that he thought that was encouraging, and that he felt that he would like to make a suggestion.

At this meeting of February 5th there was a plan of action proposed. Mr. Ashton made a suggestion that became the topic for general conversation. Mr. Ashton said that the plan he would suggest was quite a simple one. He pointed out again that this survey showed about 600 or 700 cars of distress gasoline in the hands of some 15 or 17 independent refiners; on the other hand, there were some 10 or 12 major companies who were known to be regular and normal buyers of gasoline. He thought that if this information of the availability of distress gasoline could be put in the hands of these major companies on an intelligent basis, that it would be a helpful thing for this Committee to do. He further stated that he thought it might be a proper function of this Committee to continue to gather this information from month to month.

There was quite a discussion as a result of that 2240 proposal, but as I remember it, Mr. Karstedt immediately challenged Mr. Ashton's suggestion by stating that if anything of that sort would do any good, why hadn't it accomplished something in the past; that there had been major company buying. He evidently didn't see any significance to Mr. Ashton's remarks. He said that major company buying had taken place in previous years, in 1934. He didn't at that time go into any details as to how it had taken place. He just said there had been this buying, and some of it had been on a very large scale, but he wondered what Mr. Ashton was driving at.

In reply to Mr. Karstedt, Mr. Ashton stated that he felt the manner in which this previous buying had been done was responsible for the failure to accomplish anything. He stated that in the first place he had observed that the major companies followed the line of least resistance in their purchasing, and bought from those companies that they were well acquainted with, with the bet-

ter known and larger of the independent refiners. In many instances, this had resulted in giving those refiners more business than they really needed, so that they had been over-running their Federal allocations; and, on the other hand, this had left some of the smaller and lesser
2241 known independent refiners with distress gasoline to sell.

Mr. Ashton suggested how this could be improved. He said that his suggestion would include the thought that the major companies should consider scattering their purchases around amongst the various independent refiners who had distress gasoline to sell; and that it would be the function of this Committee to make known all of the companies who did have distress gasoline to sell, so that there would be better distribution of the buying.

Mr. Ashton gave further reasons why he thought the previous purchasing had not been helpful. He stated that he also felt that some of the major companies, at least, had allowed their field buyers to chisel on the sellers and take advantage of their economic distress because they needed to sell gasoline, which drove the market down further under an already distressed price. He said he felt that the major companies should consider being willing to pay a fair going market price, rather than chiseling on the small refiners.

Mr. Ashton reflected what had been discussed and stated by many people throughout the morning: that there would be no commitments or no allocations under his plan; that this buying was to be, if there was any buying, in line with the actual needs of the company, and that to this ex-
2242 tent his suggestion differed from several of the 1934
programs, which had included commitments and allocations and fixed prices, and things of that sort. Mr. Ashton just sensed that the attitude of every one there was that they wouldn't have anything to do with a plan following the policy in 1934, and he was trying to suggest a plan that got away from those objectionable features.

After Mr. Ashton had stated the plan, I stated that I thought his plan had some merit. I said that I knew that our company was going to have to buy gasoline, that our inventories were very low, that our allocations had been continually reduced by the Federal allocating agencies, and that I felt that we would be buying gasoline from these independent refiners, or from some independent refiners, and that we would consider such a plan, and that I always felt that we had paid a fair price in our dealings with these refiners.

The Connally Bill was discussed many times during the morning. Mr. Ashton stated that he felt that if the bill were passed and the Federal Tender Board put back into effect, that could assure us that hot gasoline from East Texas would no longer slop over into our market, and that gasoline made from legally produced crude in East Texas would very naturally move into its normal markets, which
we considered to be the southeastern states, the Gulf
2243 Coast, the East Coast and the export market.

I think most of the gentlemen present expressed their opinions on Mr. Ashton's plan, and they all seemed to be favorably impressed with it. Every one there indicated, as I did, that they were going to have to buy gasoline. Some of them stated they were already buying gasoline and had been for some time. As I recall it, most of them indicated that they felt the plan was worthy of consideration, and they saw no reason why they couldn't fit their purchasing into those sorts of suggestions.

I was asked to advise Mr. Arnott of our deliberations, and the plan that we had arrived at.

I think when the list was read off, or some time during the meeting, some of those present made the statement that they had been purchasing in the past from several of the companies on the list, and therefore knew them and knew what their product was. There was nothing definitely stated about buying, however.

After we got through with all this talk pro and con, some one asked Mr. Ashton to sum up just what his suggestion was. Mr. Ashton said that there were to be no pools or
no central buying agencies; that the suggestion would
2244 be that every one buy in line with his needs, and make
his own deals with the selling refiners; second, that there were to be no allocations, no commitments, no percentage quotas, such as there had been in some of the previous plans, but that each company would buy in line with his actual needs; third, that the Committee would urge and suggest to the buying companies that they consider paying a fair going market price in their individual transactions, rather than chiseling down on an already distressed price.

Then Mr. Ashton made the statement, because so much had been said about the East Texas situation, that he thought, in recommending this plan to Mr. Arnott, we should make it very plain that in studying this situation as requested by him, it was our opinion that there were two principal factors having something to do with the depressed

tank car market situation: first, the shipment of hot gasoline out of East Texas, and that until such time as there was Federal legislation that would definitely stop that, we rather felt that the situation was hopeless; and second, there was the continual sale of distress gasoline, or the dumping of gasoline in our own territory, and we felt that that was partially due to this competition from East Texas. We wanted to make it clear to Mr. Arnott that we didn't suggest that the plan be put into operation or consid-
2245 ered until such time as hot gasoline out of East Texas
was definitely stopped as a market factor in our territory.

There was an arrangement made at this time for a future meeting of the Committee. We had already received notice from Mr. Arnott of a general stabilization meeting to be held in Chicago on February 11, so I suggested to the members of my Committee that we attempt to have a meeting following that, because I felt we would all be in Chicago anyhow.

My Committee did not have a secretary. We did not keep any minutes of what occurred at any meeting. We were just discussing a report to be made to Mr. Arnott. We didn't have any power other than suggestion. So there was no reason for keeping any minutes.

I reported the result of the meeting of February 5 to Mr. Arnott within the next day or so. He was down in Pinehurst, I believe. I told him of the plan that had been developed at the meeting. I told him also that I had asked the Committee to reconvene on the 11th after his general Stabilization Committee meeting, and that I assumed we would have an opportunity at that time to talk to him in more detail, but I wanted him to know briefly what our suggested plan was, so that he could be thinking it over.

Between February 5th and February 11th, I did not
2246 do anything to put the plan into effect. I did not have
any further conversation with Mr. Arnott before February 11th.

Mr. Arnott phoned me on the 11th, at Chicago. Something happened, and he didn't come to the general Stabilization Committee meeting. It was held, but he wasn't there. He first told me that he was sorry that he wasn't going to be at the meeting. He stated that he had been giving considerable thought to the suggested plan and that he thought it had a lot of merit. He also told me that he was quite encouraged about the possibility of the passage of the Connally Bill; and he felt that that was almost assured;

and if it was, in his opinion, the hot gasoline situation would be taken care of.

We held a meeting of the Tank Car Stabilization Committee on February 11, 1935, in the evening, following the general Stabilization Committee meeting. It was held in the Blackstone Hotel, Chicago. All the members of the Tank Car Stabilization Committee were present and in addition to them we invited into the meeting several representatives of other major companies who we knew were regular and normal buyers of gasoline but who were not represented on the Committee, and therefore did not know anything about what we had been doing. Those other persons were Mr. Sus of Sinclair; Mr. Atkins
2247 of Skelly Oil Company; Mr. Reeser of Barnsdall;
Mr. McElroy of The Pure Oil Company; and, I believe, Mr. Dippel was there with Mr. Sus of Sinclair Refining Company.

I presided at this meeting. On opening it, I made just a few brief remarks about the Committee's appointment, and why I felt that Mr. Arnott had appointed it. I reviewed briefly the things that had taken place in the industry between the appointment of the Committee and the present time; I told them of the fact that the Committee had had considerable deliberation on this subject, and that we had arrived at a plan that we had recommended to Mr. Arnott, and that we wanted to talk to them about it. I might add that in my discussion that morning with Mr. Arnott I had told him that I would like to do this; and he said to go ahead and explain it to these other people, but to take no action.

I told the meeting of my talk with Mr. Arnott. I told them I had talked to Mr. Arnott that day, and that he had encouraged me to believe that the hot gasoline situation in East Texas would probably be taken care of by the passage of the Connally Bill; he also had authorized me to tell these people that he knew about this plan and thought that it was a good one.

After I opened the meeting, there was a general, rather a pro and con discussion about the general situation,
2248 about buying where they wanted to buy and what
could be done. In order to get down to the thing that we wanted to do, I asked Mr. Ashton to explain the plan that he had suggested to the Committee, and which the Committee had recommended to Mr. Arnott.

At this meeting of February 11, Mr. Ashton outlined the plan for the benefit of those whom we had invited into this Committee meeting. The plan that Mr. Ashton outlined there was identically the same plan he had outlined on February 5th.

There was a general discussion as a result of Mr. Ashton outlining this plan. In the discussion that his explanation provoked, I remember there were a number of people who took the position that they were going to have to buy gasoline; they did not know exactly in what quantities, but it looked like they were going to have to buy considerable gasoline; but that they were not going to be committed to anything; they were not going to be told where they had to buy it or how they should buy it. Mr. Ashton kept coming back to his plan and pointing out that the plan aimed at eliminating all of those objectionable features.

Following that discussion Mr. Ashton made reference to a survey which he had in his pocket, which was very similar to the one that we had discussed at our meeting in Chicago the week previously. We had data or
2249 figures available at that meeting of the current amount of distress gasoline. Mr. Ashton had a survey that had been furnished him by Mr. Bourque. I am sure the survey isn't in existence. It was a list of some 16 or 17 or 18 independent refiners in Oklahoma, Kansas and North Central Texas; and opposite their names it showed a certain number of cars and the grade of gasoline, whether it was third grade or "Q" gasoline; and then, I think, it also showed the Federal allocation that had been given each of these refiners by their district allocating agency.

With that information in his hand, Mr. Ashton stated that he was somewhat encouraged by the general reaction to his suggestion and that he would like to see how it would work out from a practical standpoint. He started around the table and read the names of these refiners off again; and then asked different people if there were any particular concerns there that they would like to consider buying from.

As he went around the table, it developed that some of the companies were already buying. Some of the major companies were already buying from some of the small refiners that were on this list; and in that event they so stated, and said that their relationships had been satisfactory and that they no doubt would continue to buy from those companies. Others stated a prefer
2250 ence for companies, based on many reasons. Some said they were selling crude to them. Most of those

independent refiners have to buy their crude, and some of them were buying crude from some of those major companies. Other major companies had lubricating oil contracts with some of these small companies. Others were selling natural gasoline to the smaller companies. As Mr. Ashton went around the room and asked for this indication from the people, those various factors were developed, and Mr. Ashton made notes, I believe, on this survey. After he had concluded going around the table, prospective buyers had not been found for all the distress gasoline. As I remember it, there were about 7 or 8 of these independent refiners who were unmentioned.

The phrase "dancing partners" came up right there after Mr. Ashton had gone around the room. There were these 7 or 8 small refiners whom no one had mentioned. He said this situation reminded him of the dances that he used to go to when he was a young fellow. He said, "Here we are at a great economic ball." He said, "We have these major companies who have to buy gasoline and are buying gasoline, and they are the strong dancers." And he said, "They have asked certain people to dance with them. They are the better known independent refiners." He said,
2251 "Here are 7 or 8 that no one seems to know." He
said, "They remind me of the wallflowers that always used to be present at those old country dances." He said, "I think it is going to be one of the jobs of this Committee to introduce some of these wallflowers to some of the strong dancers, so that everybody can dance." And from that simile, or whatever you want to call it, the term "dancing partner" arose.

Something was said at this meeting of February 11 about the prices at which purchases should be made. That question was raised several times in the general discussion and by different people, and Mr. Ashton always answered the question by stating that this plan was not a price-fixing plan; there was no basis for the setting of any price; but the plan would suggest that the buying companies be willing to pay a fair going market price for such purchases as they did make.

Nothing was said at this meeting as to how much gasoline would be purchased by any buying company. Many of the men there stated very definitely that although they knew that their companies were buying and that they were going to have to buy, that they were not acquainted with the details and were unable to get into that situation.

2252 Something was said at this meeting about the Connally Act. I had mentioned it in my opening remarks. I told them of Mr. Arnott's advise to me about it and his feeling that it would be passed. Mr. Ashton made it very plain that this plan was not recommended for operation until the Connally Act or some other legislation was passed that would definitely put a stop to hot gasoline slopping over into the Mid-Continent territory.

Something was said at this meeting about publicity. Several people made the statement that there had been quite a lot in the trade journals about the activities of this Committee since the time of its appointment, called attention to the fact that there had always been considerable publicity about previous buying programs, and they thought it would be a good idea to give the trade papers any information they sought on it. I afterwards saw a good many articles in the trade papers about this buying plan.

I remember no discussion at this meeting of curtailment of their refinery runs by the buying companies if the distress gasoline were purchased from the independent refiners. I remember no discussion of curtailment from that standpoint. We did discuss quite at length that we had all been drastically curtailed by the Federal allocating agencies, and that was one of the reasons why our purchasing was going to be on the increase.

2253 The list that Mr. Ashton read covered between 600 and 700 cars of distress gasoline on the market, as I remember it. I remember that Mr. Ashton, in trying to point out how small a quantity this was, made the statement that it was between 1½% and 2% of the production of the entire field.

In the February 11th telephone conversation I had with Mr. Arnott he said something to me about the East Texas Marketers Association. He simply asked me first if I had read anything about it. I told him that I had, and he said that he was in touch with that situation, that he had heard something about it, and that he felt that some constructive good might come out of it, provided the Connally Bill was passed and East Texas was really regulated. That was the only talk I had with him at that time concerning the East Texas Marketers Association. It was very brief. I think I had one other short talk later on.

At this meeting of February 11th a sub-committee was appointed. Mr. Ashton proposed it. In the discussion, pro and con, about the plan, a good many suggestions were made and angles came up that involved problems of

this sort: Who was going to keep this information of the availability of this distress gasoline before the buying companies? It was also suggested, and we had seen
2254 in the surveys or lists that Mr. Bourque had given
us, that over a month's period there were changes, a few different names and different amounts. We also realized that there would be errors in the thing, that during the month some companies who thought they were going to have gasoline to sell wouldn't have it, and others that thought they wouldn't have it, would have. So that out of all that Mr. Ashton proposed to me that a sub-committee be appointed to handle this sort of detail, and pointed out, further, that he thought that it was necessary because the Tank Car Stabilization Committee membership was pretty well scattered all over the Middle West.

Mr. Ashton made a motion that a mechanical sub-committee be appointed, and the motion was carried, and the Committee was appointed.

I think Mr. Ashton outlined what he felt were the functions of the Sub-committee. He said that it would be our duty to handle these detailed problems that arose between the monthly surveys, to pass on information on the availability of distress gasoline to buyers, and to receive any information from buyers. Some of the buyers had stated that they might like to be able to call someone and find out if they knew where they could get some gasoline in a hurry.

2255 At that meeting, I appointed the members of the Sub-committee with the help of the Committee. The Sub-committee, as appointed, was made up of Mr. Ashton and Mr. Tuttle and myself. Mr. Tuttle's office and my own were in Tulsa, and Mr. Ashton's was in St. Louis.

The offices of the other members of the Tank Car Stabilization Committee were as follows: Mr. O'Shaughnessy's offices were in Minneapolis; Mr. Karstedt's offices were in Ponca City, Oklahoma; Mr. Bullock's offices were in Chicago; Mr. van Eeghen's offices were in St. Louis; Mr. Hughes' offices were in Bartlesville, Oklahoma.

The fact of the distance between those various members and their offices had a bearing on the appointment of the Sub-committee.

I had a talk with Mr. Arnott in the latter part of February about the work of the Tank Car Stabilization Committee. It took place in Chicago on February 26, 1935. In the meantime, between February 11 and February 25 or 26, the Tank Car Stabilization Committee had not begun to function. Mr. Ashton and myself were present at that meeting with Mr. Arnott on February 25 or 26. Mr. Bourque was there for a portion of the conference.

Mr. Ashton advised me several days prior to that meeting that Mr. Arnott was going to be in Chicago on
2256 the 25th and 26th, and wanted me to be present. I
wired Mr. Ashton that I could be there. I saw Mr. Ashton and Mr. Arnott. We explained to Mr. Arnott in complete detail the plan that had been developed by the Committee in Chicago on February 5th. We told him of our meeting on February 11th and that the plan had been explained to other people that we thought would be logical buyers. In fact, we told Mr. Arnott of everything that the Committee had done up to that time, in substance, as I have told it here. That was the first time I had seen Mr. Arnott since the meeting of January 4th.

Mr. Arnott stated that he had continued to give the matter consideration, and he felt it was a very practical and workable plan, as soon as something was actually done in East Texas. By that time the Connally Bill had been passed but no action for its enforcement had been taken. So he stated that as soon as something of that sort was done, he would get in touch with us and suggest when to put the plan into operation. But he did give us at that time his definite approval of the plan.

Mr. Bourque was present during this conversation which we had with Mr. Arnott for a short while but not during
the entire conversation. Mr. Bourque had with him
2257 a current list of the distress gasoline in the Mid-Conti-
nent area, and we had a brief discussion on that. Mr. Arnott asked Mr. Bourque some questions, and Mr. Bourque's activity was along the line of furnishing information about the amount and availability of distress gasoline.

The totals of those figures were about the same as the figures that had been discussed at the February 11th meeting, as I remember it. There were a few changes in the make-up of the list, both as to the names of the companies and the amounts of distress gasoline that they had, but it was substantially the same information.

The time when the work of this Committee should commence was left just this way: That the Committee had definitely recommended to Mr. Arnott that this plan should not be put into operation until the hot gasoline was effectively stopped, and Mr. Arnott understood that and stated that we should just stand by and that he would get in touch with us later whenever he felt that the proper enforcement was going to be set up in East Texas.

2258 Our Committee wished to wait until the Connally Act became operative before putting our plan into operation because throughout all of our discussions and studies we had taken the definite position that this influx of hot gasoline into our territory at these terribly low prices was a factor that nothing else could overcome. Although our plan did contemplate trying to find buyers for distress gasoline in our own area, thus avoiding the necessity of dumping on the part of these independent refiners, we all felt, from a practical standpoint, that with hot gasoline flooding our territory as it had been since the Federal Tender Board had gone out of existence early in January, we would continue to have rotten markets.

On February 25 or 26, 1935, I learned that Mr. Arnott was holding a number of meetings in connection with stabilization work. I did not attend any of these meetings. In the morning of the 25th, I went to the hotel to locate Mr. Arnott and learned that he was in a meeting. I went in, and discovered they were discussing a local marketing situation down in Texas in which I wasn't interested. I left after having left word with Mr. Arnott that he could 2259 reach me when he wanted to see me later. I saw him later, as I have previously testified. That was the occasion of the talk which I have just described. I had other business in Chicago and I went about it.

The next meeting of the Tank Car Stabilization Committee was held in St. Louis, on March 5, 1935; in the morning in Mr. Ashton's office, and in the afternoon in the Coronado Hotel.

I know how this meeting came about. On March 1st or 2nd, Mr. Ashton telephoned me in Tulsa from Kansas City. He told me that he had been in Kansas City at Mr. Arnott's invitation and stated that the previous day, or that day, I don't remember which it was, he had attended a meeting of a large group of independent refiners that Mr. Arnott had called and had held. He said that Mr. Arnott during that meeting had asked Mr. Ashton to talk to the meeting about this plan of the Tank Car Stabilization Committee. Mr. Ashton stated that as a result of the general discussion growing out of his explanation of the plan, this group of independent refiners had appointed a committee and 2260 that they wanted to talk with our Committee to get a little better idea as to how this thing might work out. Mr. Ashton suggested that I set a date when our Tank Car

Stabilization Committee could see this committee that had been appointed by these independent refiners.

As a result of Mr. Ashton's suggestion, I called a meeting for March 5th in St. Louis. I got in touch with each member of the Tank Car Stabilization Committee to find out if he could be there.

At the meeting on March 5th, in Mr. Ashton's office, there were the following members of the Tank Car Stabilization Committee: Mr. O'Shaughnessy, Mr. Karstedt, Mr. Ashton, Mr. Tuttle, serving on the Committee at the request of Mr. Miskell, Mr. Lakin, serving on the Committee in place of his superior, Mr. van Eeghen, at his request, and myself. Mr. Hughes and Mr. Bullock were not there. There was also this committee from the independent refiners, which was made up of Messrs. Cocanower, Simmons and Boggs.

I understood the committee was made up of the
2261 three, but Mr. Winget was there as an observer,
I guess. In addition to that, late in the morning, about 11:00 or 11:30, Mr. Jacobi came into the meeting. Mr. Jacobi had not been present at any of the prior meetings of our Tank Car Stabilization Committee, nor at our talk with Mr. Arnott. He came there at Mr. Ashton's invitation.

Inasmuch as Mr. Ashton had suggested the meeting, I asked him to more or less take charge. He made some opening remarks and briefly told the other members of the Tank Car Stabilization Committee that, as a result of his brief discussion of this proposed plan at the Kansas City meeting at Mr. Arnott's request, the general group of independent refiners had appointed this committee to meet with us and to ask some questions that were on their minds as to the operation of the plan in the event it was put in operation.

Right after Mr. Ashton spoke, I think all of the independent refiners spoke. They seemed to be trying to impress our Committee with the seriousness of their situ-
ation. They told us their troubles over again, and
2262 impressed us with the fact that they were going
broke if something wasn't done. Mr. Ashton replied to them that we understood and realized all that, and that was the reason our Committee had been appointed, and that we felt that the suggestions that we had made might eventually be of some benefit to them.

There were a lot of questions asked of members of our Committee by those independent refiners. I remember specifically that Mr. Winget asked whether, if this plan went into operation, it would mean that the independent refiner could not sell brokers any more. I answered that I did not know where he got that idea, but certainly the plan did not have any such idea, that the plan simply involved an effort to put buying companies in contact with these independent refiners in the event they had distress gasoline to sell, and that if they could sell their output through brokers that it was just fine.

Some questions were asked by the independent refiners in respect to price. Mr. Simmons of Rock Island
2263 Refining Company asked a question about what price was going to be paid, and Mr. Ashton answered that this plan did not involve any price-fixing scheme at all, that there was no authority on the part of the Committee to set any price, but that we were earnestly suggesting that the buying companies consider paying the fair going market price in the event they did make purchases from the independent refiners.

Mr. Simmons said that he did not think that was much of an answer, that the price of gasoline was so low that he could not continue to operate very much longer unless something was done about it, and I think he spoke quite at length on the subject. Mr. Ashton simply told him that the plan did not involve anything of that sort, that the companies were going to make their own deals, and that it would be up to the selling companies to get the best price they could from the companies that approached them for the purchase of the gasoline.

As I remember, the figures that had been prepared by Mr. Bourque relative to the independent refiners and the amount of distress gasoline were referred to only generally by Mr. Ashton, sometime or other during the conversation, in dealing with the total amount of distress gasoline. I do not recall that the list was read off in detail, or that there was any discussion about the individual location of this gasoline.

2264 We told this committee of three independent refiners that if this plan was put into operation, the Tank Car Stabilization Committee suggested that we get the information as to the availability and location of this distress gasoline from Mr. Bourque once each month, and we asked this committee of independent refiners to explain that to their entire group and urge them to give Mr. Bourque accurate and honest figures.

We explained also to this committee of small refiners the development that would be made of that so-called Sub-committee and its functions. Mr. Ashton told them who made up the Sub-committee, and explained that this Sub-committee would be around in the field and in a position to receive information as to the availability of distress gasoline that was not on the monthly survey; that the Sub-committee would then attempt to find buyers for this gasoline; and that the Sub-committee would also at times have information as to the concerns who were buying. In other words, the Sub-committee was to act as sort of a clearing house or a medium through which information would be passed between the buying companies and the selling companies with reference to the quantities of this distress gasoline.

Mr. Ashton also pointed out that the Tank Car Stabi-
lization Committee suggested to the Sub-committee
2265 that in their contacts with the field buyers—not all
of the major companies had field buyers—but in
their contacts with those that have field buyers, they should urge those field buyers to pay a fair going market price.

We told the committee of independent refiners very definitely that the sales would all be negotiated directly between the buying companies and the selling companies, and that this Sub-committee would make no purchases or make no sales, would have no buying power, and would not be a sales agency at all; that it would simply serve to pass on information between buyers and sellers.

Several of the independent refiners stated that they felt that this plan was encouraging. But, frankly, they seemed to be very impatient for action, and they seemed rather disappointed, I think, in the extent to which the plan expected to go. Furthermore, we could not tell them at that time whether the plan was going into operation or not, because we were still awaiting word from Mr. Arnott. But I think, in general, they felt somewhat encouraged, and so expressed themselves.

After that discussion, we adjourned along about 12 o'clock, and I did not see any of the members of this independent refiners committee again. Our Tank Car
Stabilization Committee went to the Coronado Hotel
2266 for lunch. We continued the meeting after lunch.
None of the independent refiners were present either
at lunch or at the meeting that followed. All of the members of the Tank Car Stabilization Committee who were present at the morning session were present at the afternoon session.

At the afternoon session I asked Mr. Ashton to explain, for the benefit of those members of the Committee who had not been at the Chicago meeting on February 11th, what had taken place at that time. Neither Mr. Jacobi nor Mr. Tuttle had been there. Mr. Ashton briefly told of the general reaction of that part of the industry that we had talked to at the Chicago meeting to this proposed plan. He stated in substance what I have already related here, as to what he stated on February 5th and February 11th.

Mr. Ashton then took a more recent survey, one that had been sent to him, I learned later, by Mr. Bourque, and asked the members of the Tank Car Stabilization Committee who were present if they had developed any new or different ideas about their purchasing desires or contacts since the Chicago meeting.

Mr. Ashton had a list of independent refiners, showing the quantity of distress gasoline that they would have available for the month of March. Several of the
2267 members of the Committee said something about
the independent refiners from which they would like to purchase.

I stated that we were going to have to do some buying, and that I was interested in contacting Johnson Oil Refining Company and Cushing Oil Refining Company. Other members of the Committee mentioned companies from whom they would like to buy. Mr. Jacobi mentioned Champlain Refining Company. I remember that particularly. Other members of the Committee were asked for their preferences. Mr. Karstedt of Continental stated that his company was interested in buying from Shamrock Refining Company out in the Panhandle of Texas. He stated that that gasoline at that particular location fitted into their marketing picture quite well, because of freight saving possibilities. He said that he was quite sure they would be interested in buying gasoline from Shamrock.

When these men spoke there they were speaking for their individual companies, what their companies would need, what their companies would want, and what their companies would do.

Mr. Tuttle told us that due to the fact that Empire Oil & Refining Company had recently closed down its Gainesville, Texas, refinery, he had already been in negotiation with Olney Oil & Refining Company at Olney,
2268 Texas, and that his company very definitely was going
to be interested in buying gasoline from that source. He said the reason it wanted to do that was because it had closed down the Gainesville refinery and the location

of the Olney plant fitted into its picture there from a freight standpoint.

I stated why our company wished to purchase from Johnson and from Cushing. With respect to Johnson Oil & Refining Company I stated that we were selling them some crude oil and also we had sold them considerable quantities of burning oils each winter for several years; and there were several men in its sales department who were old personal friends of mine. The reason I mentioned Cushing Oil Refining Company was my personal friendship with Mr. Winget, and the fact that we had bought gasoline from it previously and its plant was located reasonably close to Tulsa.

Mr. Lakin stated that they were interested in buying from the Cushing Oil Refining Company at Cushing, Oklahoma. He said that they had had pleasant relationships with it in the past, and there were certain reasons why they wished to continue that.

It is my recollection that Mr. O'Shaughnessy stated that he would be desirous of buying from Omar Refining
Company at Garber, Oklahoma, and Cushing Refin-
2269 ing Company at Cushing, due to the fact that both of
these refineries were located reasonably close to Blackwell, where Mr. O'Shaughnessy's company, the Globe, has a refinery which, I think, was closed down at that time. Mr. O'Shaughnessy said that it would be convenient for them to get their tank cars into these other refineries to take care of the purchases that they would need to make.

After these various members of the Tank Car Stabilization Committee had suggested those refiners from whom they would like to buy, all the independent refiners on the list were not taken care of.

I don't recall that there was anything said there definitely about the amount of gasoline that any company could or would purchase. They were stating at that time more particularly the places where they wanted to make contacts, what could be worked out from the standpoint of the quality of the gasoline and the quantity, and many other things. I think Mr. Jacobi, at that meeting, did indicate that he could buy a certain number of cars from Champlain. I don't remember the number of cars, but I do believe that Mr. Jacobi said that he knew what Champlain's material was, and that he had orders on hand and that he could buy a certain quantity of gasoline. He is the only one that I remember who said he would take a definite quantity.

2270 After we had gone over the list in the way I have described, there remained a good many independent refiners whose names had not been mentioned by the members of our Committee. Mr. Ashton asked the members of the Committee, who were there, to consider some of those other refiners and see if they could not fit them into their picture in some way. I think a few of them indicated that they would think the matter over further or discuss it with whoever in their organization did the actual buying; but there was nothing definitely concluded on that.

Mr. Ashton said that he would get in touch with the buying companies that were not present at the meeting. It is pretty hard to say how much of the gasoline, as shown on the list, was spoken for by one or another of the various companies, either directly or indirectly, because, as I recall it, although several companies indicated that they were interested in, and would contact certain companies, they did not say that they would need to buy the amount of gasoline that that company had down on the list. So, due to that fact and the fact that not all of the companies were even mentioned, I should say that probably not over 60% or 70% of the number of cars of gasoline on that list was spoken for.

2271 Distress material in the hands of independent refiners which did not appear on the list was mentioned as one of the very definite possibilities that we would be confronted with from time to time. There was a suggestion as to the possibility of interesting other buying companies who might want to purchase gasoline. Some were mentioned as possibilities, but there was no action taken with respect to them at this meeting.

At this afternoon meeting on March 5th, there was a change made in the personnel of the Sub-committee. Mr. Ashton requested that Mr. Jacobi serve on the Sub-committee in his place, due principally to the fact that Mr. Jacobi lived in Tulsa, where the other two members lived and had their offices. Mr. Ashton stated that he felt that that would facilitate the work of the Sub-committee. The Committee discussed that request of Mr. Ashton very briefly and decided that it was a constructive suggestion. That Sub-committee, then, consisted of Mr. Jacobi, Mr. Tuttle and myself.

At this meeting at the Coronado Hotel we had the duties of the Sub-committee explained, and how it would

operate. Mr. Ashton covered the duties, as he saw them, again stating that the Sub-committee would be down there in the field close to the information that would
2272 arise from time to time; that it would be its duty to pass on information as to the availability of this distress gasoline to the buying companies; that when additional distress gasoline showed up, which had not been on the survey, the Sub-committee would try to find somebody who was interested in buying it; and that the Sub-committee in its contacts with the buying representatives in the field would urge that they pay a fair, going market price in these transactions.

There was talk about future meetings of the Tank Car Stabilization Committee, and it was decided that we should attempt to have a meeting once a month, if possible, around the latter part of the month or the early part of the next month, so that the information on these surveys would be reasonably current and accurate. At that time we did not set a date for the next meeting, because it was too far ahead. These men were all busy men, and it wasn't possible. Also, we didn't at that time know whether the plan was ever going into operation, because we hadn't had the final approval of Mr. Arnott.

After the meeting at the Coronado Hotel on March 5th, I went back home. Sometime during the afternoon of the 6th I received a wire from Mr. Ashton which stated very briefly that he had received word from Mr.
2273 Arnott to go ahead and put the plan in operation.

The first thing the next morning I called Mr. Ashton on long-distance telephone to find out more about what Mr. Arnott had said to him. I asked him if Mr. Arnott had said anything about the East Texas situation, about the Tender Board, and things of that sort. Mr. Ashton told me that Mr. Arnott hadn't gone into any great detail with him, and that Mr. Arnott simply told him that he was convinced that it was time to put the plan in operation, that the Code authorities that he was talking to in Washington felt that we should go ahead, and therefore he had given us those instructions.

I presume the Tender Board under the Connally Act was in active operation by that time. I think it was set up on March 1st.

As a result of my talk with Mr. Ashton, I telephoned Mr. Jacobi and Mr. Tuttle and told them of this word that I had received from Mr. Arnott, and I asked them to meet at lunch that day so that we could discuss how we would proceed.

At lunch we had just a brief discussion. I told them what information I had received from Mr. Arnott through Mr. Ashton, and that I felt that the first thing we should do was to phone this information to all of the com-
2274 panies who had indicated a desire to buy gasoline.

In order to divide up this work of phoning, we at that time made a division of the twelve companies that we considered to be logical buyers of gasoline.

I think there were articles in the Chicago Journal of Commerce and other trade papers about the meeting of March 5th at St. Louis. I know there were about all our meetings.

In the discussion at lunch with the other members of the Sub-committee I said that I would contact Phillips Petroleum Company, Barnsdall Refining Company, and Standard of Indiana. Mr. Jacobi said that he would contact Shell, Globe, Sinclair, and Pure. That left Skelly and Continental for Mr. Tuttle.

I don't think I went into what information should be given to the various companies in any great detail with the other members of the Sub-committee. I simply suggested that they phone these companies as quickly as possible and tell them that we had received word from Mr. Arnott to put the plan into operation, and to suggest to them that if they needed to buy they have their field men start making contacts with the independent refiners from whom they desired to purchase. Of course, some of these companies had already been buying.

2275 I remember no discussion at all at our lunch meeting about the price at which the purchasing companies could buy gasoline from the independent refiners. We had some discussion about price. We had a general discussion about the market situation, I am quite sure, because I don't believe any two oil men can ever get together any place that they don't talk shop, and part of our shop talk is, "What is the market?" And, "What are prices?"

What the market is, is quite a complex thing, in my opinion. There are several important factors, however. One would be the price at which you either knew that you could buy, or the price at which you had bought. Another would be the price that you might have learned on good authority that other people had sold gasoline for, or that other people had bought gasoline for. I always go to the brokers to get market information, because they often times have slants on the market that we, as refiners, don't have.

Then, there are the trade papers. You see what their ideas of the market are. You put all those four or five factors together and you arrive at an idea of what is the market. Even then it is not a definite, fixed figure, because you have a range in your ideas, like 4½¢ to 4¾¢, or 4½¢ to 5¢.

I think my explanation of how I would arrive at
2276 what the market is indicates that the market price as
reflected in the trade journals is only one of the elements I take into account. That is just one of the factors, because the trade papers only purport to publish their ideas about a certain section of the market. They purport to publish their ideas of the prices upon transactions between refiners and jobbers and consumers in spot transactions.

I think I have with me the published prices for third-grade material in the Chicago Journal of Commerce and Platt's Oilgram for the Oklahoma refinery market between March 1 and March 7, 1935. The Chicago Journal of Commerce for third-grade material on March 1 showed a price range of 3¼¢ to 3½¢. On March 2, it showed the same prices. March 3 apparently was a Sunday; no prices. March 4, the low had increased ⅛¢ to 3⅜¢, and the high was still 3½¢. On the 5th, the quotations were still the same as on the 4th, 3⅜¢ to 3½¢. On the 6th, the low increased another ⅛¢ to 3½¢, and the high increased ⅛¢ to 3⅝¢. On the 7th, the low remained at 3½¢, but the high was increased ⅛¢ to 3¾¢.

The first meeting of our Sub-committee was on March 7th.

Platt's Oilgram, Oklahoma market, third-grade gasoline,
on March 1 was a low of 3¼¢ to a high of 3½¢. On
2277 the 2nd, the low increased ⅛¢ to 3⅜¢, and the high
remained at 3½¢. There was no market on the 3rd. On the 4th, the low remained at 3⅜¢, but the high was increased to 3⅝¢. On the 5th, the low was increased to 3½¢, and the high was increased to 3¾¢. On the 6th, the prices were the same as on the 5th. But the 7th, the low increased another ⅛¢, to 3⅝¢, and the high to 3¾¢.

That advance had taken place before the date of our first meeting of the Sub-committee. The total net advance of third-grade gasoline, as reflected in the trade journals, between March 1 and March 7, 1935, was: in the Oilgram, the low quotation had gone ⅜¢ per gallon, and the high had gone up ¼¢ per gallon; and in the Chicago Journal of Commerce both the high and the low had gone up ¼¢ per gallon.

After this luncheon meeting on March 7, I phoned each of the companies that I said I would advise of the operation of the plan—Phillips, Barnsdall and Standard of Indiana.

In Standard of Indiana, I talked very briefly to Mr. Bullock, who was a member of the Committee. I simply told him that I had received word from Mr. Arnott to put the plan into operation, and that the Sub-committee was phoning that information to all of the known buying companies, and I hoped if he had gasoline to buy that they would put their field representatives in contact with whoever 2278 they wanted to buy from. Mr. Bullock thanked me for the information, and he didn't tell me anything definitely as to what they would do. That is the only conversation I had with Mr. Bullock at that time.

I talked with Mr. Hughes in Phillips Petroleum Company. I told him of the word that we had received from Mr. Arnott, and that we were phoning various companies to give them this information and suggested to him that they contact the companies that they had previously indicated their desire to contact.

I talked with Mr. Evans in Barnsdall. I talked with him a little more at length and on a little different basis because he wasn't a member of the Tank Car Stabilization Committee and these other two gentlemen were and knew as much about the matter as I did. I told Mr. Evans that I understood that they were buying gasoline and that I didn't remember any indication as to just who it was they desired to buy from. I told him briefly of this Committee's plan, and that Mr. Arnott had that day given us word to put it into operation. I told him of the Sub-committee and who it was made up of, and that I would be telephoning him from time to time to call his attention to the availability of distress gasoline. He told me that Barnsdall was going to have to buy gasoline and that he would appreciate receiving this information. I am quite sure I mentioned to him the 2279 name of a prospective seller, but I can't remember who it was.

I know definitely that I didn't discuss price with either Mr. Bullock or Mr. Evans. I do seem to recall that in my discussion with Mr. Hughes he referred to the fact that they had been doing considerable buying, and to the fact that the market had strengthened considerably in the past week or ten days. I think we had a little discussion about the market, but it had nothing to do with the thing that I particularly called him about.

The Sub-committee had its next meeting on March 14th. I called this meeting. I had been out of town for several days, and I think upon my return I had a phone call from Mr. Jacobi. He stated that he had some information with reference to additional distress gasoline, and that he would like to talk to me about it. In view of the fact that I had been away, I suggested that we have a meeting. I called Mr. Tuttle. We met at lunch.

At the luncheon with Mr. Tuttle and Mr. Jacobi, we first discussed the information that Mr. Jacobi had with reference to some additional distress gasoline that had come to his attention. We had quite a discussion about who would be logical people to approach in an attempt to interest them in buying this gasoline. In doing that, we considered the quality of the gasoline, its location, and other matters
2280 of that sort which we felt were pertinent to the subject.

We had quite a discussion about markets from at least two different angles. In the first place Mr. Jacobi, after we had discussed this additional gasoline that he had memoranda on, mentioned to us that some independent refiner during that week had complained to him that some major company in attempting to buy from them had tried to chisel, as he expressed it, on the price. That provoked quite a discussion among us. I took the position that I thought that that was the wrong thing to do; that I didn't think that any one should try to chisel on these independent refiners. I said, however, that, after all, this plan didn't give the Sub-committee any authority to make prices, and that these deals had to be worked out between the buyers and the sellers. My position was that although I thought we should use such influence as we could, if we knew of any specific instance, to urge people to pay a fair going market price, after all we couldn't enter with any authority into price quarrels between buyers and sellers; and that the independent refiner would simply have to take care of himself.

We also had a general discussion as to our ideas about the market at that time. Before going over to this meeting, due to the fact that I had been out of town for several days, I had had a brief discussion with the men in my
2281 office who actually handled the bulk of the buying, and had attempted to get from them their impression of what the market was. They had told me that the market was much stronger, and that several refiners with whom they had been dickering had withdrawn offerings from the market; and that some of them were asking prices in excess of what we figured the market was, with the general

result that we hadn't been able to buy any gasoline. I remember that they stated that they had been offering to pay 3⅝¢ and that it looked to them as though we would have to pay at least 3¾¢ if we wanted to buy. That is on third grade gasoline, and I am referring to discussions I had in my own office before going to the meeting.

Then, in our meeting, when we discussed the market situation, I expressed the opinion that I had gained from these other fellows. It was my impression that both Mr. Jacobi and Mr. Tuttle had actually done some buying at that time. At least Mr. Jacobi stated that he had paid 3¾¢ for gasoline previously that week. Our conversation was built around the impressions that we all had of the market, from our own individual buying or attempts to buy at that time. We certainly discussed the fact that the market had been strengthening, and had strengthened considerably over the past two weeks; and I imagine we discussed the fact that the market, because it was strong and moving up, would probably be higher later on.

2282 In my discussions on that day, I was discussing my impressions of the market at that time, because they were based on information I had received that morning in my own office as to what they thought the market was.

There was no discussion at this Sub-committee meeting on March 14 as to what prices our company or Mr. Tuttle's company or Mr. Jacobi's company should pay for gasoline.

After the meeting of our Sub-committee on March 14th, I did not order nor urge nor recommend nor suggest to any purchasing company that it pay 3¾¢ as a minimum for gasoline.

In my discussions with anyone in the industry, if he would ask me the question, I would tell him the price I was paying for gasoline.

After that meeting I have a recollection of just one discussion, and that was with Mr. Hughes. I was back in my office, and I had some memoranda on some additional distress gasoline and I was trying to find somebody who could buy it. One of the people to whom I telephoned was Mr. Hughes. I remember I told him about some of this additional distress gasoline. He didn't tell me anything definitely at that time, whether he could buy it or not. But I do remember very distinctly that he said they had 2283 been having to buy quite a lot of gasoline, and the market looked very strong to him, and he was quite optimistic. As a feeler, I asked him what he had been paying, and if I remember correctly, he had been paying either 3⅞¢ or 4¢. He then asked me if we had been doing any buying, and I told him that we hadn't during March up until that afternoon when we had made a purchase at 3¾¢. I think he made some remark about our being better buyers than he was. That is the reason I remember the incident. The afternoon of March 14th was the first time that we had bought during that month.

Without knowing what was in another man's mind, it is a little difficult to account for the statement "Our committee decided on a price of 3¾¢ for third grade, and 4¾¢ for 'Q' for next week," contained in Exhibit 682, which is Mr. Jacobi's letter of March 15, 1935 to Mr. A. G. Maguire of Wadhams Oil Company. I think I could reconcile that statement reasonably well with the facts that I have just testified to. In our discussions of the market in that meeting of the 14th, the day prior to this letter, Mr. Jacobi, I know, had stated that he had been buying at 3¾¢. I stated that we had been unable to buy at 3⅝¢ and were going to have to pay 3¾¢. Obviously 3¾¢ was the bottom of the market, and I think he just used words there a little carelessly, and really meant that the three of us in
2284 discussing our individual ideas about the market all
felt that the market was 3¾¢ on third grade gasoline. As to the "Q" gasoline, I don't remember any discussions about it at all at that time. However, it usually sells for a differential of ⅞¢ to 1¢ a gallon above the third grade gasoline; so that the 4¾¢ price on "Q" would be in line with the 3¾¢ market on third grade gasoline.

"Q" gasoline is a term that is used to describe a house-brand gasoline of 68-70 octane. The word "Q" came into being due to the fact that when the Ethyl Gasoline Corporation licensed refiners to blend lead into non-premium gasoline, they did it on a contract that they called "Contract Q," and the industry simply picked that up and referred to that grade of gasoline as "Q" gasoline. "Q" gasoline usually would be ethyl gasoline, but in market parlance it refers to any gasoline of 68-70 octane regardless of whether it was arrived at by cracking or by the use of lead. There are refiners who can make 68-70 octane without the use of lead, and do it.

Our Sub-committee continued to meet after March 14th. Our meetings were quite irregular, due to the fact that both Mr. Tuttle and myself were out of town quite a lot. Sometimes we had two, maybe three, meetings a

week; other times the meetings would be a week or
2285 ten days apart. There must have been times when
they were two weeks apart, so far as I am concerned, because of my absences from the office. But we met whenever we could get together, and whenever there was distress gasoline to consider, except for this: that we did handle quite a little of that over the telephone. We didn't always have to have a meeting. Mr. Jacobi might call me, or I could call him, or he could call Mr. Tuttle, and maybe we could work whatever the problem was out over the phone. I don't recall any meetings of the Sub-committee after December, 1935.

I should imagine that we discussed the market at every meeting we had. I don't remember the specific discussions as I did on this first one because of the many circumstances that surrounded it. As I said before, any time any two or three oil men get together, they usually talk prices; so I am sure we talked about the market most of the time.

I made telephone calls to representatives of various purchasing companies from time to time. Here is a typical conversation: After arriving in my own mind as to who would be a most logical purchaser—and many times I was mistaken—I would call this company and say, "Well, are you buying any gasoline? Do you need any more gasoline this week?"

2286 Maybe they would say yes, or maybe they would
say no, or maybe they would say they didn't know. But, regardless of their answer, I would say, "Well, so-and-so"—being an independent refiner—"has 10 or 15 or 20 cars of gasoline he would like to sell the balance of this month," or whenever he needed to sell it, if I knew. And I would say, "If you can fit this in with your needs, why, I know this fellow will appreciate it if you will get in contact with him."

Sometimes the party to whom I was talking would say, "Well, we do need some additional gasoline, and we will get in touch with this concern." Other times, they would say, "Well, I don't know; I will have to check it up with the fellows that are doing the buying." I usually talked to men who weren't doing the actual, routine buying. On many occasions they would say, "Well, I happen to know that we are not in the market at the present time for any more gasoline." Then I would have to put in some more phone calls.

That represents typically what I would do in talking to these prospective purchasers, in an effort to find out whether they were in the market for gasoline. I think that sometimes some of these people to whom I would talk would say, "Well, what kind of gasoline is it, or how much do they want for it?" And I never knew how much this independent refiner wanted for the gasoline. I didn't seek 2287 that information, and it wasn't given to me. I usually tried to know what grade of gasoline it was, so that I could answer that question intelligently.

The next meeting of the Tank Car Stabilization Committee after the meeting at St. Louis on March 5th, was in Excelsior Springs, Missouri, during the first week of April, between April 4 and 6, 1935, at which time the Western Petroleum Refiners' Association was holding its annual meeting. There were between 300 and 400 oil men at Excelsior Springs during those few days.

With one or possibly two exceptions, all of the members of the Tank Car Stabilization Committee were members of the Western Petroleum Refiners' Association. I had reason to believe that they would be at this annual meeting and convention of the Western Petroleum Refiners' Association, so I simply tried to work in a meeting that would eliminate the necessity of the Committee going some place else away from their homes at another date.

I called the meeting of the Committee. As I recall, the following members of the Committee attended: Mr. O'Shaughnessy, Mr. Ashton, Mr. Karstedt, Mr. Tuttle, Mr. Miskell, one of the last times that I remember his 2288 showing up, and myself. Mr. Jacobi was there, but he was not a member; he was a member of the Subcommittee, but he was not a member of the Tank Car Stabilization Committee. It runs through my mind that we invited into the meeting of the Committee a few representatives of major buying companies who were there, but I can't tell you who they were; I don't remember.

I should say that the procedure at the meeting on April 4 and 5 of the Tank Car Stabilization Committee at Excelsior Springs was substantially the same as that followed at the St. Louis meeting.

I believe the Tank Car Stabilization Committee held meetings each month during the remainder of 1935. I did not attend all the meetings. I think I can tell which meetings I did attend if I may refer to a memorandum here. I attended a meeting in Chicago on June 6 or 7, 1935. I attended one meeting in September in Tulsa, and another one in December in Tulsa. The last meeting of the Tank Car Stabilization Committee that I attended was in January, 1936. I did not attend a meeting in February, 1936, in Chicago.

The procedure at the meetings that I attended of the Tank Car Stabilization Committee in 1935 and 1936 was substantially the same as that which was followed at the Excelsior Springs meeting and in St. Louis.

2289 I did not call any meetings after the January, 1936 meeting. The Tank Car Stabilization Committee did not, to my knowledge, have any meetings after February, 1936. There were several reasons for that. The principal reason was because rather substantial and well worked out contacts had been established between buyers and sellers. The sellers were getting directly in touch with the buyers, and it was just one of those constructive things that comes to a point where it carries on. Furthermore, it had been quite difficult the last two or three meetings to get the members of the Committee to attend, so it was just dropped.

I attended at Mr. Arnott's invitation a meeting in the Blackstone Hotel in Chicago about June 6 or 7, 1935. The group present at this meeting was substantially the same group that he invited to all of his general stabilization meetings.

Mr. Arnott said a good many things at that meeting. He spoke primarily of the effect of the Schechter decision upon the petroleum industry and Code activities. The Schechter decision was the decision of the Supreme Court that knocked out the N. I. R. A., and that knocked out our Petroleum Code.

Mr. Arnott stated that he had come from Washington particularly to discuss this subject with the industry 2290 of the Middle West. He said that he had talked to a number of rather important people in the petroleum industry; that he had talked to various code authorities in Washington and to the P. and C. Committee; and that all concerned were of the opinion that our industry should attempt to carry on; that even though the Code had been knocked out, we should attempt to hold the advantages that had been gained through codes and fair trade practices, and to carry on in a voluntary manner all those constructive things that we had learned to do under the Code.

Mr. Arnott made definite reference, as did other people in the discussions that arose, to various press releases that had appeared in the papers, quoting gentlemen like Mr. Richberg, Mr. Fahy, and the President himself in his famous "horse and buggy" statement.

Mr. Arnott used those releases and statements to indicate further that the whole attitude of official Washington, although one of some confusion, was one in which they were asking all industry, including our industry, to carry on with the constructive objectives that had been a part of our Code itself, so that industry could operate along 2291 on a profit and continue to pay code wages and code hours.

Prior to this meeting in Chicago, press releases of the nature which Arnott mentioned had come to our attention. I had read several in our local papers.

I was at home in Tulsa, Oklahoma, between May 27th and June 5th. I read the Tulsa World in the morning and the Tulsa Tribune in the evening.

Q. I show you a photostatic copy of the Tulsa World dated Tuesday, May 28, 1935, and direct your attention to that article under the heading that you see there, and ask if that is the article you refer to (showing photostat to witness)?

A. That is the Richberg article that I referred to, that particular reference to the oil industry.

(Document referred to marked Exhibit 899 for identification.)

The article in the Tulsa Daily World dated Wednesday, May 29th, which you show me, is an article containing a press release referred to by Mr. Arnott in regard to Mr. Fahy's statement.

(Document referred to marked Exhibit 900 for identification.)

The photostatic copy of the Tulsa Tribune dated 2292 May 31, 1935, which you show me, is the press release referred to by Mr. Arnott in the meeting at Chicago that I have described in reference to the "horse and buggy" speech.

(Document referred to marked Exhibit 901 for identification.)

I should say that the subject matter of these releases certainly did become a matter of general information throughout the oil industry, because we were all interested in knowing what the future of our industry was going to be, and we had been operating under a code for practically two years. I know my own reaction was that I searched every paper every day for anything out of official Washington as to what we might expect, and it was the general discussion every place you ran into anybody, as to what we were going to do and what anyone else was going to do.

Mr. Donovan: Your Honor, that argument seems to be directed to the point that our position here is that we are claiming exemption of the Sherman law. I have said repeatedly in answer to the contention of the Government, that we make no such claim. We claim that what we did was justified under the Sherman law.

2293 (Copies of newspaper articles, previously so marked for identification, are received in evidence, respectively, as EXHIBITS 899, 900 and 901.)

(Exhibit 900 read to jury.)

The Court: I don't think what Mr. Richberg said at that time amounts to that (snapping fingers). But it went to the jury and they heard it and they know themselves about as much what happened at the time of the N. I. R. A. decision and the effect that that decision had, that the Code collapsed and went out. That is all. And I think that is as far as we ought to go with these articles.

Mr. Donovan: Your Honor, may I respectfully take exception to your Honor's remark, that what Mr. Richberg said—

The Court: I had the impression that Mr. Richberg was spokesman for Mr. Ickes and the White House, but after looking over this chart I find that he was just a member of the Planning and Coordination Committee.

And he had no authority to speak for anybody but himself.

Mr. Donovan: May I say this, that I respectfully take exception to your Honor's statement that what Mr. Richberg said did not amount to the snap of the fingers, because I think your Honor must take judi- 2294 cial notice of the fact that whatever position Mr. Richberg held at that time, it was generally recognized throughout the industry that he was in a position in Washington relative to the National Recovery Act which meant something to these men in the industry, so what he did say must have come as a word of authority to these men. Otherwise, there would not have been any publication of his statement; and I think that in view of that fact—

The Court: Well, I presume there were a lot of men in Washington would like to speak at times to hear themselves.

Mr. Donovan: They might have liked to have spoken but it would not have been received with any degree of authority.

The Court: What he said was well said, and it was very timely, and I approve of what he said, but as far as having any effect upon this lawsuit is concerned—

Mr. Donovan: The only purpose of this offer was in relation to the effect that what he said had upon this defendant and upon other members of the industry, as to the continuance of their work. That is the purpose of it. And so far as they were concerned, it would mean infinitely more than the snap of the fingers.

2295 The Court: These defendants knew just about as much about the whole situation as Mr. Richberg; and I suppose they were inspired by the same patriotic motives that he was inspired with at the time.

Mr. Chaffetz: If these people—Mr. McDowell—went to Mr. Richberg and asked him specifically, shall I carry on these buying programs, Mr. Richberg did not have any authority to tell him to go on, and Mr. Richberg didn't purport to talk about buying programs; so, what effect would a general statement have?

If this is in the record we have got something that we would like to add—we would just as soon keep the whole thing out, but the jury has heard what was said—we can't withdraw that; but I would like for the record, your Honor, to have your Honor grant our motion to strike all of the newspaper articles, which would also bar the Government from bringing in similar articles.

The Court: No, I will let that stand.

Mr. Donovan: May I read the statement of Mr. Richberg?

The Court: You may read that statement of Mr. Richberg. You have talked so much about it now that I think the jury ought to know what it is.

2296 (The sixth, beginning, "It would be most harmful * * *," and the seventh paragraphs of Exhibit 899 read to the jury by Mr. Donovan.)

We held a meeting of the Tank Car Stabilization Committee in Chicago on June 6 or 7, 1935. We held it shortly following the adjournment of the general meeting called by Mr. Arnott. I believe all the members of the Committee were there with the exception of Mr. Bullock. They had all attended the general meeting just preceding, and were there at the time that Mr. Arnott made his speech.

At this meeting of the Tank Car Stabilization Committee, we discussed briefly amongst ourselves the general attitude of the industry that we had heard expressed in the other meeting, and we asked ourselves the question about the future of this Committee. After considerable discussion pro and con, we concluded that this activity that we had been engaged in was a proper and constructive one in that it had been aimed at aiding in the elimination of the destructive and unfair practice of dumping distress gasoline on the market. We even stated that our own companies, individually, were going to have to continue to buy gasoline, regardless of the Schechter decision, because our business was increasing in splendid shape that summer, and we said we would like to continue to get that in-
2297 formation of these monthly surveys. So it was decided to continue to request this information from Mr. Bourque and to hold meetings whenever convenient.

The objectives of the Tank Car Stabilization Committee that we talked of and had were three or four in number. The first objective was to aid in the general stabilization activities of Mr. Arnott under his letter from Secretary Ickes. Second, we hoped that this activity would aid in the elimination of the dumping of distress gasoline, which we considered to be an unfair and uneconomic practice in the industry. And third, we felt that this activity of ours was directed to and would aid in accomplishing two of the objectives of the Petroleum Code itself; one being the parity between gasoline and crude, and the second being the provision in Article 4, Section 5, I believe it was, which provided against selling any product at less than cost.

After the meeting of the Tank Car Committee on June 6th or 7th, I reported to Mr. Arnott, very briefly. I told him of our discussion and the conclusion that the Committee had reached. I told him that in view of the expressions to the General Committee and in view of these trade releases that we had all discussed, and an apparent attitude not only of officials but of the individuals of our own industry, that the industry should attempt to hold onto the advantages that it had gained, and in so doing,
2298 that we were going to continue to gather this information and hold monthly meetings. He said he thought that was fine.

I was reimbursed for expenses I incurred for this work on the Tank Car Stabilization Committee. I discussed the question of reimbursement with Mr. Arnott several times, and at one time with Mr. Majewski, who was a member of the P. and C. Committee. I was requested to submit the expense to which our company had been put by my activities on this Committee to the P. and C. Committee for reimbursement.

(Documents referred to marked Exhibits 903-A, and 903-B, and 903-C, for identification.)

Exhibit 903-B for identification is a statement, dated June 11, 1935, made out under my instruction to the Planning and Coordination Committee, Washington, D. C., to cover telephone expenses in connection with Code work for the period ending June 5, 1935. That was the first and only bill I submitted and it covered the entire period.

Exhibit 903-A for identification is a check in the amount of $322.10 made payable to me, a check of the Planning and Coordination Committee.

Exhibit 903-C for identification apparently is an inter-office check voucher of the P. and C. Committee covering this transaction.

2299 Mr. Erance, the president, was my immediate superior in my own company. The telephoning included in that voucher I submitted included only the telephoning I did in my work as chairman of the Tank Car Stabilization Committee.

(Documents referred to are received in evidence, respectively, as EXHIBITS 903-A, 903-B and 903-C.)

I endorsed the check which was made payable to me, R. W. McDowell, by the Planning and Coordination Committee under the Code for the Petroleum Industry, check number 1550, dated June 18, 1935, and deposited it to my own personal account. I then wrote my own personal check to the company for the same amount. None of the proceeds of that check went into my pockets. It all went to the company. That is on the theory that my company had paid my expenses all the way along. When I said "my company" I meant Mid-Continent Petroleum Corporation. I cannot say whether it was Mid-Continent Corporation of Delaware or of Kentucky.

At the present time I work for Mid-Continent Petroleum Corporation of Delaware. There is no Kentucky Company. I was an officer of both companies in 1935 and

1936. I cannot tell you who signed my pay check. I believe it was the Kentucky Company, but I am not sure. The Kentucky Company was the subsidiary of the Delaware Company. It owned the retail marketing 2300 outlets. The Delaware Company owned the refinery and the production and the pipe lines. In our office set-up there was no distinction between the two companies. There was a distinction between the companies officially and from a bookkeeping standpoint, but I had just one office and I worked for both companies.

Under my supervision, I had charge of buying such petroleum products as we needed to buy to augment our own production, but the principal job was to sell, because we are large manufacturers of all petroleum products. I had under me the wholesale and retail sales, that is, the tank car sales and, then, the retail station operations were under me too.

I operated those other various division offices where we had managers and things of that sort. But they all headed in under me. I was in direct and complete charge of all our sales and marketing activities of every kind whatsoever. In addition to that, I had charge of the buying of everything but crude oil. That was a separate department.

It is not true as charged in paragraph 8 of the indictment that I and other persons beginning in the month of of February, 1935 and continning down to December, 1936, combined and conspired together for the purpose of artificially raising and fixing tank car prices of gasoline in the East Texas and Mid-Continent spot markets.

2301 It is not true as charged in the indictment that, as intended by us, we artificially raised and fixed the spot market price of gasoline.

It is not true as charged in the indictment that I and other defendants maintained these prices at artificially high and non-competitive levels, and at levels agreed upon among us, to thereby intentionally increase and fix the tank car price of gasoline contracted to be sold and sold in interstate commerce in the Mid-Western area.

I did not knew of any Mid-Continent buying program for the purchase from independent refiners in spot transactions of large quantities of gasoline at uniform high, and at times progressively increased prices, as alleged in the indictment.

I knew of the plan of this Tank Car Stabilization Committee which has been referred to by many people as a buying program. It may well be called one, I presume. The plan that I have described to the jury is the only thing I know anything about.

I did not agree with any of the other defendants or defendant companies to make purchases at uniform prices. We made our purchases at competitive prices.

It is not true as charged in paragraph 23 of the indictment that each of the defendant major oil companies has taken a part of the large quantity of gasoline purchased as from time to time was allotted to such companies by Mr. Tuttle, Mr. Bourque, Mr. Jacobi and me. I never allotted any gasoline. I do not think the others did either. 2302

With reference to the charge that the purchases from these independent refiners have been in excess of the amount which the defendant major oil companies would have purchased apart from their participation in the alleged buying program, I can only speak for my own company. Speaking for Mid-Continent Petroleum Corporation, we bought only such gasoline as we needed, and we would have bought that amount of gasoline whether there had been any Tank Car Stabilization Committee or not, because our sales during that entire period ran greatly in excess of our ability to produce.

I did not ever intend to induce any independent to curtail his production of gasoline. It was no part of the plan I have described here that I or any other person was to induce or attempt to induce any curtailment of production by the independent refiners.

The indictment charges that the trade journals, namely, Platt's Oilgram, the Chicago Journal of Commerce and National Petroleum News conspired with us falsely to report the prices paid by the major companies as prices paid by jobbers. I did not ever report the prices paid by Mid-Continent in any buying that I have described as prices paid by jobbers. 2303

I never requested any representative of any trade journal to report the prices paid by Mid-Continent or by any other major company in making purchases as prices paid by jobbers.

I did not at any meeting of the Tank Car Stabilization Committee, or of the Sub-committee, or at any other meeting during 1935 and 1936, ever hear anyone suggest that the prices paid by the major companies were to be falsely reported by the trade journals as the prices paid by jobbers.

By Mr. Loucks

I stated that on March 7th, at our meeting at lunch with Jacobi and Tuttle, I was assigned to contact Barnsdall Refining Corporation. I presume it is a fact that I meant Barnsdall Oil Company.

By Mr. Brazeau

I testified that Mr. Merritt of Cities Service attended the meeting January 4th. I think that was Mr. William H. Merritt of Cities Service Oil Company, not of the Cities Service Company.

Cross-Examination by Mr. Lewin.

I undertook to keep in contact with Phillips, Standard
of Indiana and Barnsdall Oil Company. Whenever I
was active I carried out that undertaking and kept in
2304 contact with them each month. That was a Sub-
committee activity, and I have no recollection of
doing any contacting during 1936. I passed out of the
picture in December, 1935.

I contacted Barnsdall Refining Corporation in that way a few times after June 1, 1935. I contacted Mr. Julius C. Evans. I don't know what company he worked for.

During that period of a week immediately following the Schechter decision, I watched the papers very closely for anything in the newspapers that might bear upon the effect of the Schechter decision, upon the N. I. R. A. codes, and so forth. Our local papers were those that I watched. I subscribed to the Chicago Journal of Commerce and trade papers like that. I was out of town on June 7th. I may or may not have seen an account in the papers of June 7th and June 8th of a statement of President Roosevelt at his press conferences with regard to the necessity of enforcing the anti-trust laws.

(Paper shown witness.)

I was in Chicago on June 8, 1935.

When I am in Chicago, I read the Chicago Tribune but
not with the regularity that I read my home paper, and
I read the Chicago Journal of Commerce if I can get
hold of it. I usually look at the first oil page first. (Examin-
ing paper.) I don't remember that other article in
2305 the June 8 issue, the article on the front page headed
"President puts O. K. on trade profit" with sub-head
"Cautions against anti-trust law violations". I may have
read it.

(Newspaper referred to is received in evidence as EXHIBIT 904, and read to jury by Mr. Lewin.)

The Court: Let the record show that that same article was published in most of the papers throughout the country.

Mr. Donovan: That is Exhibit 904, your Honor, and that is admitted in evidence; is that correct?

The Court: Yes.

My company is a subscriber to Platt's Oilgram and to the Chicago Journal of Commerce.

I met John Steiger for the first time about three weeks ago. I don't believe I ever had any talks with him over the telephone before that time. I knew who he was; but he never called me. Mr. Fitzgerald and Mr. Smith in my office have communications with him. That is Mr. Thomas Fitzgerald, a defendant in this case. I am sure Mr. Fitzgerald and Mr. Steiger had some telephone conversations during 1935 and 1936. I don't know whether or not Mr. Fitzgerald was telling Mr. Steiger the prices that Mid-Continent Petroleum Company was paying on the spot market.

2306 I know Mr. Keith Fanshier, the petroleum editor of the Chicago Journal of Commerce. I was in communication with him during 1935 and 1936. I talked to him probably five or six times during that period. I don't know whether he makes up the price quotations that are contained in the Chicago Journal of Commerce for the gasoline spot market. I understand he has something to do with it.

The quotations in the Chicago Journal are one of the factors that we use in our jobber contracts in the Standard of Indiana territory. In arriving at the spot price provisions of our contract Platt's Oilgram quotation is the other factor.

I have no definite recollection of giving Mr. Fanshier the prices we were paying during 1935 and 1936. However, if he ever asked me what we were paying in the spot market, I would tell him. It has been my custom for many years. I really have no definite recollection on whether or not he asked me that.

I was not telling Mr. Fanshier about this plan, when I called him. Mr. Fanshier learned about the plan from someone other than me, because the first time that he and I ever discussed it, he called me and made some reference to the thing, so I never did tell him about the plan.

He had articles in the paper long before I ever talked to him about it. He appeared to be familiar with the plan when he talked with me.

2307 I don't believe Mr. Fitzgerald, my assistant, ever was in contact with Mr. Fanshier during 1935 and 1936. I think that is a correct statement. Mr. Fitzgerald wasn't acquainted with Fanshier. I talked with Mr. Fanshier; and Mr. Fitzgerald talked to Steiger. That has been our custom over many years.

I testified that at the meeting of our Committee on February 5, 1935, Mr. Bourque had a survey of distress gasoline which was discussed at the meeting. He had a list of independent refiners. My recollection is that the list that he had involved between 600 and 700 cars. That was the estimate of these independent refiners as to the amount of distress gasoline they would have for that particular month; it didn't mean that they had that much on hand right at that time. I don't believe the list showed what they had on hand at that time. I have no recollection of it, if it did. I am quite sure a number of the independent refiners had gasoline on their hands available for sale on February 5th, but the list did not purport to show that information. It was a monthly survey.

It is my recollection that the list covered 16 or 17 independent refiners, all located in the Mid-Continent field, as distinguished from East Texas. This was not a survey of illegal gasoline manufactured from hot oil that these companies would have on hand.

2308 I don't believe it is correct to say that at that meeting we discussed the possibility of having some 12 or 13 major companies purchase that amount of distress gasoline from these Mid-Continent independent refiners, or that I put it just that way. I said that we discussed at that meeting the fact that we felt there were some 10 or 12 companies who were regular and normal purchasers of gasoline, and that this Committee might attempt to put these purchasers in touch with the sellers, for the purpose of giving these independent refiners an outlet that already existed for their distress gasoline. These major companies were buying gasoline and had to buy gasoline, and, as I tried to explain, they had been buying it from just a few companies. Our plan contemplated trying to get them acquainted with some of the smaller and lesser known independent refiners.

In an indirect way I knew of distress gasoline in the Mid-Continent field other than that which appeared on the survey. I don't know whether there was any large quantity of it. We never had any idea as to how much it was, but one of the reasons the Sub-committee was set up was to take cognizance of anything that showed up that wasn't on the survey, and attempt to find someone who was interested in buying it.

Mr. Bourque made these surveys. I did not say that
our Sub-committee was set up to make monthly surveys.
I said the Sub-committee was set up to take cog-
2309 nizance of any additional distress that came to our
attention. We didn't go out looking for it. I didn't,
at least. We got that information through many channels.

Q. I ask you again whether the plan wasn't for some 12 or 13 major companies, that you say were fairly regular buyers of gasoline in that field, to buy this distress gasoline that appeared on the surveys from the independent refiners?

A. The plan was to attempt to get them to buy gasoline, if they needed it, from some one or more of those companies on that survey, yes, sir. The plan was to get them to buy up this distress gasoline that we were having surveyed, if they needed it. The plan absolutely didn't contemplate getting them to buy it, if they didn't need it. I think these 12 or 13 major companies are all among the defendants. They included: Standard of Indiana, Socony-Vacuum and Wadhams—we considered them as one company—Sinclair, Shell, Empire, Pure, Phillips, Mid-Continent Petroleum Company, Continental Oil Company, Skelly, Barnsdall Oil Company, later Barnsdall Refining Corporation, and Globe. Wadhams is in there and brings that up to thirteen. That is a complete list of possible purchasers we discussed at that meeting.

2310 Mid-Continent Petroleum Corporation about that time had fairly low storage stocks. All of the product that we ever purchase is shipped direct to bulk storage out in the field. None of it is shipped into refineries or terminals; so that we had to have storage facilities, or it would have to be put on the ground.

We had some storage available for gasoline at the bulk plants in January and February, 1935. At that time our storage wasn't full. That is a period of the year when our sales on the particular grade of gasoline that we purchase from independent refiners are comparably low. That would not necessarily be true in 1936. There was a situation existing in 1935 that I think was unusual right at that time. Our storage was low. Our sales were not low. The way we felt was low. The Panama decision had thrown the industry into chaos, and there were threats of a crude cut. The Panama decision had nothing to do with the storage space we had on hand at that time, but it had something to do with whether we could fill that space or not. I think we had some storage space. I don't recall, but at that time we weren't trying to fill it, so I don't remember.

I said that prior relationships and knowledge of particular independent refiners was the basis of the choices that most of these buyers made, as I remember
2311 it. For instance, I gave as illustrations Empire selecting Olney on that basis; Socony-Vacuum selecting Champlain; and Shell Company selecting Cushing on that basis. We wanted to buy from Cushing and Johnson Oil & Refining Company. We had a prior relation with Cushing and knew something about them and the quality of their gasoline. The same wasn't true with regard to Johnson. It was because we had sold them some crude and burning oils and other products for many years. That was the basis on which the initial sales were made. When purchasing actually started we and other companies bought from dozens of independent refiners. This survey that Mr. Bourque had showed an estimate of how much distress gasoline there would be in February, and the companies who said they would have it. The plan was that major companies were to be asked to buy it only as they needed it.

I did not say that generally storage stocks were low at that time. At the refineries the inventories were quite low because they had all been suffering from restricted refinery allocations through 1934, and the general level of inventories was down.

As far as I know, the stocks of the independent refiners weren't illegally produced and weren't manufactured from hot oil.

Q. Does anything occur to you to prevent any
2312 one of those major companies, if they needed that gasoline, from buying it individually from them as they had done just the week before in January and February, 1935?

A. I don't know what prevented them from doing it. Some of them were buying.

Mid-Continent Petroleum Corporation, my own company, made only one purchase on the spot market in the Mid-Continent field in January and February, 1935. That appeared as one of the little black dots on the chart of the Mid-Continent Petroleum Corporation that was offered in evidence here. It was just on there as a purchase.

In my opinion, there was a very good reason to prevent my company in January and February, 1935, from buying up distress gasoline from independent refiners in the Mid-Continent field with whom we had done business before. We were uncertain about the future of the industry. The Panama decision on January 7th had knocked the control out of East Texas, and markets were in a very chaotic condition. There were continual and perpetual threats of a crude cut. With that situation staring us in the face, we didn't care to buy gasoline at any price. If we needed it for any immediate current demand, we may have purchased it. We may have taken a little out of inventory.

2313 Here is the situation on what I mean by companies needing gasoline. A company doing business in large quantities as we do has to project their requirements beyond a week or ten days. And we often times buy gasoline that may not actually be sold out of the bulk plant for some little time, but we have to project for stock levels throughout the period of the year. It would depend on the individual policies and ideas of the various companies.

In January or February, 1935, we knew that we were going to have to buy gasoline that year. It was on the basis of the major companies needing gasoline that we assumed they could and would buy. The plan was that we weren't going to ask them to buy anything they didn't need.

There was distress gasoline for purchase in the hands of these Mid-Continent independent refiners in January and February, 1935. If there were major companies then who needed it, I presume they were buying. They were buying on the low, but it was going down. Often times you don't want to buy on a downward market. We were going to wait until we saw what happened to the industry. Obviously it would help the independent refiners more to buy it sooner and not to wait until the prices went lower.

2314 This Committee was assigned the job of making a study of a situation, and our plan was based on the control of hot oil in East Texas. And we didn't suggest the plan for operation until that was done. Of course it would have helped the independent refiner just as much for the major companies to have relieved him in January and February of his distress gasoline as to wait. We waited for the Connally Bill to pass, simply because that was the principle upon which the plan was suggested to Mr. Arnott, as far as the plan itself is concerned.

The reason why Mid-Continent wasn't buying in January and February may be entirely this: We buy, as I tried to tell you a moment ago, third-grade gasoline. We bought quite a little gasoline in December, 1934, and we just didn't need it.

It was necessary, in order for us to help the independent refiner, for us to have the Connally Act passed, because from a practical standpoint we felt until that was passed nothing would aid anything. Our whole reason wasn't just to help the independent refiner. We all felt that with hot oil slopping over into our territory, there wasn't any sense in attempting any stabilization effort of any sort. I mentioned the effect of the plan on the general stabilization and the retail markets. The stabilization committees were dealing with the retail price of gasoline.

2315 Q. So your idea was by this plan to help the independent refiner by getting the price up, isn't that right?

A. No.

Q. Well, was this help that you were giving the independent refiner merely taking distress gasoline off his hands, or was it to give him a better price for the rest of his gasoline, or both?

A. The primary purpose of the plan suggested by the Committee was to relieve this market of this unnatural pressure of distress gasoline.

Q. And by "market", you mean the market price?

A. No, I mean its ability to float on the market.

Q. Well, what would that do to the market price?

A. Well, distress gasoline has a depressing factor—one of the depressing factors on price.

Q. Yes. Now, I ask you this: How did you, as one of the principles of your objective, to help the independent refiner, did you mean to help him by simply taking off his hands distress gasoline that he didn't have a market for, or did you mean to help him by getting his price up so that he could sell the rest of his gasoline at the better price?

2316 A. I don't think we ever conjectured as to what that had to do with the rest of his gasoline or anything else. Our theory can—in my opinion—can be best illustrated by our attitude and our opinion.

Suppose we had a windstorm, and two or three trees blew down a telephone wire. One is a great big tree and

the other one is a small tree. That brings the wire down. Well, that is the situation with the market at the time we were making this study. The big tree was hot gasoline coming out of East Texas, which was sold at ridiculously low prices, a price that people operating on legally produced crude could not afford to compete with. The small tree might be illustrated by the distress gasoline that was in our own territory. It was a minor factor in this low price. It wouldn't do any good to lift that small tree off the wire, because the heavy tree would still be laying down. But if we take that big tree off, then that wire—if it hasn't lost its stretch—will probably resume a more normal level. That was the theory behind our study. That hot gasoline in East Texas was the primary factor that was causing this extremely low price of gasoline, but we recognized there was some homeless, distress gasoline in the Mid-Continent area, and there were people there who wanted to buy. This
wire which I said was depressed by the two trees was
2317 the price of gasoline that was depressed—the normal
price.

Q. And the object, you think, of both the Connally Act and your plan was to remove these two trees so that price would go up?

A. Well, we knew the result would be that.

We didn't have anything to do with the Connally Bill. The object of our plan was to remove the small tree. It was not the object of our plan to remove the small tree in order to get the price to go up. We felt that we knew that if the Connally Bill was passed and the Tender Board was put back into East Texas, the price would go up because that had happened in October, 1934. When the first Tender Board was put in, the price of gasoline went up about 2¢ a gallon in less than 30 days. We had that in the back of our mind. We didn't know, but we felt, that if the Tender Board were put into East Texas again, the gasoline prices would seek a more normal level, because the refineries in East Texas which had been running on hot oil would have to run on dollar crude, and they would have to compete on that basis with the refiners in other areas.

Our plan was not addressed to handling this hot oil situation. There was no appreciable amount of hot oil in Oklahoma. Our plan was designed to handle distress gasoline.
The Connally Act was the thing that was going to
2318 take care of the hot oil situation and did take care of
it. Our plan wasn't to take care of the hot oil situation at all, but it was tied into that.

The object and result of the plan wasn't to remove the distress gasoline in order to get the price up in the same way that the Connally Act was removing hot oil in order to get the price up. The purpose of our plan was not to help the major companies. Any part that this plan might play in helping to stabilize the retail price structure would help the jobber. The major company refiner naturally would profit by any stabilization of markets, and by "stabilization" I mean increase in prices in this particular instance. It does not always mean this.

I am vice-president in charge of sales of my company. I think the gallonage of gasoline sold by my company in the Standard of Indiana territory during 1935 was around 200,000,000 gallons. In 1936, it was about 10% more than that. That would be 220,000,000. That is sold to jobbers under this contract that I have described. It is sold also through our own retail stations to consumers, to dealers in the Standard of Indiana territory, and to large consumers directly.

The basic price with our contract sales is determined by the spot market quotations in the Chicago Journal of Commerce and Platt's Oilgram, the Oklahoma 2319 edition.

In the retail sales we follow substantially the normal retail service station price fixed by Standard of Indiana in the Standard of Indiana territory, but we meet competition in the retail market, whatever it is.

An increase in the tank car quotations published by the Chicago Journal of Commerce and Platt's Oilgram of 1¢ in the years 1935 and 1936 would be in excess of $4,000,000 to my company. If the tank car price published there should be raised 2¢ on an average for that period, it would be twice that. We would get in excess of $8,000,000.

Q. So that your company was very vitally interested, wasn't it, in whether the quotations were as published in the Chicago Journal of Commerce and Platt's Oilgram?

A. Yes, we were interested in making a profit.

Q. Now, I ask you again whether this plan that you had of removing distress gasoline, which was a depressing effect as you say on the tank car price, was not to help major companies, including yours?

A. Well, the Committee was not appointed for that purpose and it did not make its study for that 2320 purpose. The plan was for the purpose that I have described. Now, we as part of the industry very naturally profited to the extent that the industry reached stabilized and improved conditions, but we could not avoid doing that.

Q. You could not avoid doing that? You thought it was just a by-product of your efforts; is that right?

A. Well, Mr. Lewin, I did not go into the effort to raise the price of gasoline for my company.

Q. Look here. Didn't you know and didn't all the rest of you know, who met in those meetings, that the basic price for the millions of gallons that those companies were selling in the Standard of Indiana territory was fixed by those journals? Didn't you know that and didn't the rest of them know that?

A. Yes, I knew—

Mr. Donovan: I object to that characterization, "fixed by those journals".

The Court: Objection overruled. Exception allowed.

The Witness: (Continuing answer to last question) —that the quantity of our output that was sold 2321 on jobber contracts the price was based upon the Journal prices.

Q. And didn't you know and didn't they know that that quantity of gasoline that they sold in 1935 and 1936 at retail was also based upon the Chicago Journal of Commerce and Platt's Oilgram quotations for the tank car market?

A. Well, I don't know how we would know that, because the retail prices were competitive, and they were many different things.

Q. Didn't you know that throughout that period beginning in March, 1935, before that really, and running down through 1935 and 1936, that the normal retail service station price published by the Standard of Indiana and followed generally by the other major companies, ranged about 5½¢ above the published tank car prices in those journals?

A. Yes, sir, I knew that their normal price was about that.

Q. And didn't you know that when the tank car price as published in those journals went up and stayed up, that you would get very soon a corresponding rise in the retail price, normal retail price?

A. We assumed that. We had no right to know how long that could exist.

2322 Q. Then I say that with regard to all those millions of gallons that this group of major companies were selling in the Standard of Indiana territory, an increase in the tank car price meant just so many dollars in their pockets. Isn't that right?

A. Well, if we had been asked to look at it that way we probably would have considered it.

Q. Do you mean to say that you, and other men, high executives of those companies, have not ever considered that factor?

A. Yes, we probably did.

Q. You probably did.

A. I knew it, but what I am trying to say is we did not sit around and talk about it.

Q. No, that was one of the kind of things you would not want to talk about too much. You would rather talk about helping the independent refiner, wouldn't you?

A. No, no. I would be just as willing to talk about that as—

Exhibit 339 is a letter from me to Mr. Smith of the National Refining Company, dated April 17, 1935. At that time our plan had been in operation just about a month. Charles S. Smith is the vice president of National Refining Company, which is one of the smaller semi-major 2323 companies. I don't know how you would classify them. It has headquarters at Cleveland, Ohio. I think it does business throughout this Standard of Indiana territory pretty generally.

Redirect Examination by Mr. Kirkland.

I know Mr. Allan Jackson, vice-president of Standard of Indiana. He is one of the defendants in this case.

I spoke about a meeting on January 5, 1935, in Mr. Bullock's office. Mr. Bullock is also an officer of Standard of Indiana. I am quite positive that Mr. Jackson was not at that meeting.

I stated that after I returned to Tulsa in March, 1935, shortly after, or a few days, whatever it was, I telephoned Mr. Bullock in Chicago.

I kept in contact with Standard of Indiana principally through telephone conversations with Mr. Bullock during the early part of 1935, along in the summer and fall. Of course, I was away quite a lot. Frankly, I got so little satisfaction out of Mr. Bullock in some of my conversations that I wanted to save the telephone expense, so I just quit telephoning him.

By Mr. Donovan

At the time the plan was discussed and suggested our principal purpose was to make some suggestion that 2324 we thought would assist the entire industry in getting out of the red and into profitable operations in line with what we knew to be the general objectives of all code authorities and the Government and the industry itself. In fact the Code, as I said yesterday, provided for a parity between gasoline and crude.

In the progress of my work in this stabilization committee, I did get in touch with a few other major companies. The ones that I personally talked to were Tide Water, Anderson-Prichard and National Refining Company. I did not put National Refining Company in touch with any independent refiner because they did not respond to my salesmanship. I think Tide Water bought a few cars. I am not positive about Anderson-Prichard. I think they did, but I don't know.

Mr. Donovan: Your Honor, I would like to have this marked for identification. I think your Honor said yesterday in our part of the case I would be permitted to put in this statement that I submitted to you as part of the newspaper account.

Mr. Chaffetz: Without arguing the question again, we object to any more newspapers.

The Court: I think we have had enough. Objection sustained. Exception allowed.

2325 Mr. Donovan: May I have it marked?

(Document referred to marked Exhibit 907 for identification.)

Recross Examination by Mr. Lewin.

I would not say that I tried to get National Refining Company to come into the plan. I suggested at one time that if they wanted to buy gasoline I could tell them where some distress gasoline was available. I did not get any response. National Refining Company was not indicted and is not a defendant in this case.

Redirect Examination by Mr. Donovan.

I don't believe I said that Mr. Bourque was present at all the meetings of the Tank Car Stabilization Committee, but at those at which he was present, he was there at our invitation to bring this current list of distress gasoline.

2326 Mr. Donovan: I desire to introduce a stipulation entered into between counsel for the defendants and counsel for the Government, under the title of this case, and Exhibit A attached thereto relative to the gasoline production and sales of Rock Island from January 1, 1934, to December 31, 1936, inclusive.

I offer that stipulation, together with Exhibit A, in evidence.

Mr. Chaffetz: No objection.

(Documents referred to received in evidence as EXHIBIT 895.)

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

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Defendants-Appellants.

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Appeal from the District Court of the United States for the Western District of Wisconsin.

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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2327 **SAMUEL F. McCLUNEY**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am employed as chief accountant by Sunray Oil Company, Tulsa, Oklahoma, an independent refiner, and was so employed from 1934 through 1936. The refinery is located in Allen, southern Oklahoma.

During each of those years, 1934 to 1936, our company sold small quantities of gasoline to major companies, about 2% or 3%. These sales were for local shipments, on account of freight advantages. The balance of our sales was to brokers and jobbers on the spot market, not under contract. This gasoline sold to jobbers and brokers was sent into the Mid-West and North.

During this period I was in charge of and am familiar with the regularly kept books and records showing production and sales of gasoline. I have a schedule I prepared from the records for the years 1934 through 1936, showing the monthly production and sales in gallons and the total for each year. It is practically all regular grade gasoline.

The production by years is: 1934, 11,595,721 gallons; 1935, 20,679,713; 1936, 24,852,696. The sales: 1934, 11,787,190 gallons; 1935, 20,556,544; 1936, 25,022,275.

(Schedule referred to marked EXHIBIT 896, and offered and received in evidence.)

2328 *Cross-Examination by Mr. Lewin.*

I don't know whether or not I am familiar with the Standard of Indiana territory. We sell most of our gasoline in Indiana, Ohio, Missouri, Illinois and those states. We sell very little in Oklahoma, some in Nebraska, and some in Wisconsin.

F. L. Martin was in charge of sales of Sunray Oil Company in October, 1935, but I don't know whether he was vice-president at that time or not. He is vice-president now. His initials are F.L.M. He has a secretary with the initials D.D. Her name is Daisy Duckworth.

Our company, Sunray Oil Company, is not named in the indictment in this case.

2329 **GEORGE J. PETERSMITH**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is El Dorado, Kansas. I am employed as chief accountant by El Dorado Refining Company, an independent refiner. The refinery is located at El Dorado, Kansas.

From 1934 through 1936 I was in charge of and am familiar with the regularly kept books and records showing the production and sales of gasoline.

During those 3 years, our company sold very little gasoline to major companies, less than 1%, and none to brokers. We sold gasoline to jobbers during those 3 years in Kansas, Colorado, Nebraska, Minnesota, Iowa, Missouri, Illinois and South Dakota.

Our gasoline production for 1934 was 859,854 barrels; for 1935, 903,032 barrels; and for 1936, 937,834 barrels. Our gasoline sales for 1934 were 914,842 barrels; for 1935, 876,035 barrels; and for 1936, 948,670 barrels.

I have prepared a schedule breaking down these figures into months.

(Schedule referred to is received in evidence as EXHIBIT 898.)

No Cross-Examination.

2330 **JOHN C. MARSHALL**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Kirkland.

My address is Chicago, Illinois. I am employed by Standard Oil Company of Indiana in its general Chicago office as assistant to the general manager of sales. I am 57, and have been with Standard Oil of Indiana more than 32 years. I started in the office of the general manager of sales as a clerk and stenographer. When I took that position, there was only one other employee in the department. As the department grew I was in charge of it, under the general manager. I became secretary and assistant to the assistant general manager. I finally became a field assistant.

As a field assistant I traveled throughout the territory, inspected the properties, investigated the sales situation and discussed the sales problems with the managers and their staff.

In the latter part of 1919 I became manager at Grand Rapids, Michigan. The manager in a place like Grand Rapids has entire charge of the operations in the territory from every angle. His duties are to see that sales are made, and everything is operated as economically as possible, in the best interests of the company and in conformance to the policies and the prices that are given
to him from the general office. He is mostly in the
2331 sales end, although he has certain operating prob-
lems. He has nothing to do with the buying of the gasoline; everything is furnished to him.

I was in Grand Rapids, Michigan, for two years. In the latter part of 1922, I went to Indianapolis as manager. I was there until April, 1929.

Then I became an assistant general manager, and as such I was in charge of sales in some of what we call our grand divisions. We have 4 grand divisions: the Northern Division, the Western Division, the Central Division and the Eastern Division. That is a split-up of 28 main stations or territories. The sales in those 4 divisions were not under me, only 1 of them at a time. I first went out to the Western Division, and later into the Northern Division.

That brings me down to the latter part of 1935. In October, 1935, I was appointed assistant to the general manager, which brought me into the general office, where I was permanently located, and I didn't do any more traveling to speak of. Due to some special assignments which I had to finish up, I didn't actually get on the job until the end of the year. I have held that position down to the present day. I occupy it now.

My 32 years with the Company have been spent almost entirely in the sales end, with the exception of 2 or 3 weeks in my first years of employment when I was temporarily in the Purchasing Department.

During my entire experience I have come in very close
contact with the different methods of competition
2332 that prevailed among the major oil companies in
the Mid-West territory, or what is called the Standard of Indiana territory, ever since there were other major oil companies.

I know or have a general knowledge of the names of the major oil companies who are indicted in this case.

There has been at all times during the period of 1935 and 1936 very vigorous competition between the major oil companies in the so-called Standard of Indiana territory; not only between Standard of Indiana and other majors, but between the majors themselves, for dealer outlets, primarily. By "dealer outlets" I mean service stations not owned or controlled by the companies themselves. I mean garages and other places that sell gasoline; independent service stations that sell the branded products of the major companies. There has also been, during the same period, quite vigorous competition between all of those majors for consuming business, both farm business and industrial business. By "consuming business," I don't have in mind the man who buys for his automobile. I had in mind the farmer, who buys either for his automobile or for his stationary engine or his tractor, or his kerosene for the farm, and all that sort of thing.

That competition in 1935 and 1936 probably was more severe than at any prior period. I do not know of any of the major companies, that I now recall, that do business or did business in those 2 years in the Mid-Western area, that didn't engage in that competition. They
2333 were all at it, anxious to secure outlets and increase their business, undoubtedly. During those years, they took dealers away from each other, there was a certain transference of dealer business at all times. We lose some dealers to various majors or to jobbers, and we occasionally pick one up here and there.

The farmer and the consumer business is what is known as tank wagon distribution. As to how that competition was evidenced, our agents and drivers would go out over their customary routes and solicit trade whose business they might have been enjoying, and they would be confronted with the statement by the customer that he wasn't going to buy their product any longer, because he could get a similar product from somebody else at a lower price. Sometimes that someone else was a major company, and sometimes an independent oil company. Jobbers operate tank wagons.

In the years 1935 and 1936 I was familiar with the method by which Standard of Indiana arrived at its selling price to the consumers and also to the service station and tank wagons. After 1935 that was in my particular line of duty. I was familiar with the price structure at all times for that was a very important element of my work.

By Mr. Crawford

The policy I refer to, how Standard of Indiana arrived at its selling price of gasoline to the consumer, to the service station and to the dealer in 1935 and 2334 1936, was not necessarily represented by any written or printed document. I wouldn't think so. There was a recommendation made when this method was originally established, and quite possibly there might have been a memorandum made that it was approved, although I am not aware of that myself. I have nothing in my possession—I know it was approved and it is in existence. I can't tell you about anything written on the subject. I say there is not, within my knowledge.

By Mr. Kirkland

The fundamental basis of this price policy is to take an average of the averages of the low prices quoted in Platt's Oilgram, either Chicago or Oklahoma quotations, and the corresponding price for Oklahoma quoted in the Chicago Journal of Commerce, and add that to a certain differential or spread or margin, or whatever you may choose to call it. To that is added freight to destination, and applicable taxes. That gave our service station price, when we had a service station price. Since that time, we have been making a tank wagon price.

In the early part of 1935 the Company operated some service stations of its own. The Company was then in the retail business as well as the wholesale. The original date when we discontinued posting service station prices in a portion of the territory was July, 1935. That was in Iowa. That was where the plan became known 2335 as the Iowa Plan; it originated in Iowa. And from then on, the Company proceeded to dispose in some way, or get out of the retail business entirely; it followed that Plan, and ultimately discontinued posting service station prices all over the territory. It discontinued posting service station prices when it had no retail outlets of its own to post them in. After that, when it had no retail service station outlets of its own where it could post service station prices, it posted prices to dealers, and the prices to tank wagons, at the bulk plants. Standard of Indiana has bulk plants scattered throughout the entire area. It has approximately 4000 of them in the 10 States of the Middle West.

As to how this formula or method of arriving at the price was determined upon:—as Group 3, or products coming out of Group 3, increased in volume and became more

and more competitive in the territory, it appeared to our Sales Department that the then existing method of arriving at our price structure was no longer suitable and applicable, and it resulted in our having a rather chaotic condition, due to the very large number of sub-normal or cut prices. It was a very difficult situation to follow, because at many times we had approximately as many cut prices as we had normal prices. Realizing that the greater part of the competition was coming out of the Group 3 area, it seemed logical, fair and reasonable to the members
of the Sales Department that the normal price struc-
2336 ture should be predicated to some degree, at least,
upon the published quotations in these trade journals of the spot market. In other words, Standard had found itself being undersold in that particular part of the area. So then they used what you might call, in arriving at this new price, a different base from what they had previously used.

On January 1, 1935, the base used was the average of the averages of the quotations on house brand gasoline in Platt's Oilgram, either Chicago or Oklahoma, whichever was lower. The base was really the spot market, but we arrived at it in a different way. Our base, beginning in January, 1935, was the spot market. In January, 1935, we determined what the spot market was by taking the average, first of Platt's Oilgram, Oklahoma or Chicago market, whichever was the lower. Assuming that Platt's Oklahoma market was a little lower than Platt's Chicago market on December 1st, let us say, we would take the Oklahoma market, but the contrary was usually the case. Usually it is the other way. We would average that with the average of the high and the low in the Chicago Journal of Commerce, and the average of the two of them gave us the base from which we started.

I used the average of the averages as the beginning in 1935, because early in 1935 we changed to the average of
the lows. It was either late in January or early in
2337 February; it runs in my mind that it was late in
January, 1935. Anyway, we got the spot, and we started with that. To that you add the taxes, Federal and State, whatever taxes apply to it; that is a necessary part of the computation on all prices. And you add the freight from Tulsa to wherever the gasoline goes. To get the price to the service station and the consumer, at that time, we added 5½¢ per gallon to arrive at the service station price.

That figure of 5½¢ was determined after very exhaustive computations of prices then existing throughout the territory generally, and it was found that those prices bore a relationship, approximately, of an average of 5½¢ above the spot market, Group 3 figure, as indicated by my previous statement. That was then considered by our people, and they decided, as long as the computation showed that situation, they were willing to experiment with it to see whether it was a satisfactory method of building the price. It gave us a price that was more nearly in line with competition, but in spite of that price, we still had many subnormal or cut prices. That is how we got the average—some above and some below.

Q. In other words, in determining upon that method which you have just described, you took into consideration the number of subnormal or cut prices existing in the territory for some time previous to the time you meant it for, is that correct?

2338 A. For the sake of accuracy, I would say we took into consideration the actual number of cut prices. We took into consideration other things that enter into competition.

As described, this method was first put into effect on September 11, 1934. And it was in effect, with the exception of going from the average of the averages to the average of the lows of the Journal all through 1935 and 1936. As a matter of fact, the sales department had been promoting the idea, an idea of that kind, for several years. I think we first started promoting it in 1925. During the interval from 1925 to 1934 suggestions had been made to the executives about the change.

At the time the change was made in September, 1934, no executives or officials or employees of any other major oil company were consulted by Standard before making it. We considered that a very confidential matter.

The spot market changes, of course, from time to time. We recommended and were authorized to make our changes only if necessary or desirable when the spot market had gone up or down and stayed thus to the extent of at least 3/10¢ a gallon for a period of 7 days or more. It is a rather burdensome job to change the prices in 3000 bulk stations. Many of them don't get their mail every day. And we needed the period to determine whether it was right or proper and whether competition would permit us to make the change. In other words, we wait 7 days.
2339 It wouldn't be a practical thing to follow all the variations of the spot market, because it goes down ⅛¢ one day and another day it goes back ⅛¢. We usually didn't determine that we should make the change until the

7 days had elapsed. Then it would take some days to put it into effect. It would be 8 to 10 days on the average after the condition had been established. We would have to notify all our bulk plants; we have to prepare these price postings which are put up. In 1935 we had to notify service stations when we were operating service stations.

There is nothing sacred about it. It is purely an internal affair of the Standard of Indiana Company. There have been occasions when we haven't changed. Not always have we changed it exactly in accordance with that formula as described. As a matter of fact, as already expressed to you, we changed the method of arriving—or computing the average prices at Tulsa—we have since changed them the second time, and we have changed in addition this margin or spread that we used. 5½¢, we have since changed. And of course, you appreciate that we never are exactly on this 5½¢, unless it be merely a matter of coincidence.

Assuming that sometime during 1935 the spot market went up 3/10¢ for 7 days, in determining whether we will increase our base so as to change the retail figures, we take into consideration this spot market merely as a starting point. I might say it is a peg to hang the price
2340 structure on. The fundamental in our price structure is necessarily competition, as it necessarily is in relation to all products which we distribute and use. In determining whether we will keep up with a 3/10¢ change and follow the market, we certainly take into consideration whether competition will permit it.

My recollection is we changed the base four times, 3/10¢ at a time, in arriving at our retail figures during the period from about March 8, 1935 until somewhere around the first part of June, 1935, when the spot market according to the quotations of the journals went up about 1½¢. In making that change we certainly took into consideration the question of competition; competition was very extreme at that time.

I think my recollection is that in the early part of 1935, January, February, and the first few days of March, the spot market price was unusually low. I don't know actually what the market did 6 months prior to March 1, 1935. My recollection is that it had gone down and had been considerably depressed during that period from former high levels, but I wasn't watching the spot market.

As far as the retail price is concerned, the effect of our change in method of computing the retail price, effective September 11, 1934, was an average reduction of 1.6¢ per gallon throughout the entire territory. That wasn't 1.6¢

everywhere. It would be considerably more than that
2341 in some places, and less than that, but by and large over the territory the average reduction was 1.6¢. There may have been a price change in the meantime during the 6 months prior to March, 1935. I have a memorandum that would refresh my recollection if I may refer to it. I am not entirely clear as to all these dates. There was this average reduction of 1.6¢ on September 11, 1934, and there was a further reduction of 3/10¢ on October 20, followed by an advance of 3/10¢ on November 13, so these two washed themselves out. On February 2, 1935, there was a reduction of 3/10¢. That was followed by the four 3/10¢ advances that I spoke of previously, the last one being on June 14, 1935. The net reduction for the 6 months prior to March, 1935, was 1.9¢ per gallon.

In 1934, 1935 and 1936, the company kept records of subnormal prices in effect at its service stations or at its dealer stations or in its tank wagon prices. Whenever we post or authorize a subnormal price, we get a report from the field showing the date on which that subnormal price was put into effect. We keep those records together, and at certain periods, usually the end of the month, we compile them, and we have a composite statement, which shows the total number of price cuts, from tank wagon and service stations where we post a service station price, and then we break it down as to how many price cuts were between 1¢ to 2¢; or 2¢ to 3¢; or 3¢ to 4¢.

2342 Our managers are authorized only to sell at the normal prices, unless they can produce some acceptable evidence that the price is being reduced by some competitor. If that condition existed in Madison, then he would either make a purchase at that price and secure a receipt, or he might take a photograph of the price sign, or he might secure an affidavit from someone who had made a purchase. They would submit that to the general office, and it would come into my department. I would review it, and if I was convinced, in my own mind, that a real necessity existed for us to meet that competition, and thought that the evidence was satisfactory, I would authorize them to meet that price.

As to the purpose in collecting this evidence, aside from showing it to the main office, it isn't a practical thing to allow all of your field representatives to make their own price at their own discretion. In some states we have price laws which we comply with, and we want to be in a position to show why if we are compelled to reduce our prices from normal. Then, generally speaking, under the one-price law you have to sell at the same price to everybody in the same class in the area. The freight is the only allowance. You are privileged to meet competition in the one-price states. So one of the purposes in collecting this evidence is to show that you are not violating the law.

2343 A record is kept of that particular subnormal price, or a price cut, in my office, as well as in the field office. When I refer to a subnormal price, I mean I had to meet a lower price being made by some competitor. I don't know just how far those records run back. I know they run back 8 or 10 years. In 1934, 1935 and 1936 they were kept under the supervision of my superior. But since 1936 they have been under my personal supervision. I have access to them.

A few moments ago I stated how a subnormal price to meet competition with the tank wagons going out from our bulk plants operates. Our driver or agent might have been unable to make sales. His trade, being a long-time customer, will usually tell him why. It is usually because the customer can get gasoline from a competitor company at a lower price. If that condition persists, and our man is losing his business on which he is dependent for his livelihood, he makes every effort to secure some evidence, because he knows we won't act on conversation. It is becoming increasingly difficult to secure this evidence, but we eventually get it, as a rule, and then it is submitted, as I have described before, and I use my discretion.

Records are kept of the tank car cuts, the same as service station cuts.

I have made a tabulation for the years 1934 and 1935 showing the tank wagon subnormal prices in effect at our bulk stations and also showing the service station subnormal prices in effect at our service stations. These

2344 tabulations I made from the records of the price cuts in the office of Standard of Indiana. I have the records here available to the Government. I have some samples of the evidence on which some of them were based.

(First page of document entitled "House Brand Gasoline, Number of Subnormal Prices, 1934," marked Exhibit 910 for identification.)

(Second page of document entitled "House Brand Gasoline, Number of Subnormal Prices, 1935," marked Exhibit 910-A for identification.)

(Third page of document entitled "House Brand Gasoline, Number of Subnormal Prices, 1936," marked Exhibit 910-B for identification.)

(First page of document entitled "Third Grade Gasoline, Number of Subnormal Prices, 1934," marked Exhibit 911 for identification.)

(Second page of document entitled "Third Grade Gasoline, Number of Subnormal Prices, 1935," marked Exhibit 911-A for identification.)

(Third page of document entitled "Third Grade Gasoline, Number of Subnormal Prices, 1936," marked Exhibit 911-B for identification.)

(Document entitled "House Brand Gasoline, Number of Subnormal Prices to Dealers, 1935 and 1936," marked Exhibit 912 for identification.)

(Document entitled "Third Grade Gasoline, Number of Subnormal Prices to Dealers, 1935 and 1936," marked Exhibit 913 for identification.)

On Exhibit 910-A, headed, "House Brand Gasoline, Number of Subnormal Prices, 1935," the column on the left is headed "as of" and then follows pretty generally the month, with the last day of the month. That means that this is the number of subnormal prices we had at tank wagon distribution as of January 31, 1935. And the number represents the number of bulk stations.

2345 "T W," in the next column, is the abbreviation for tank wagon price to consumers. As of January 31, under "T W" I have the figures 370. That means that the price for delivery by tank wagon out of 370 of our bulk stations was subnormal. We determine it on this Exhibit by bulk stations. Each bulk station is a unit, regardless of how much territory it covers. There were 370 bulk station units as of January 31, 1935, where they had in effect a subnormal price to meet competition.

There is no fixed number of towns taken care of by one bulk plant. They probably average about 5 circuit points to each bulk plant. At Madison there happen to be only 2. We have a bulk plant in the City of Madison. Outside of Madison that bulk plant services only 2 towns for Standard of Indiana. One is McFarland; and the other is Verona.

If you have a subnormal condition prevailing in Madison, that necessarily follows in McFarland and Verona as far as the tank wagon price is concerned, and also in the rural, and the parts surrounding. By the rural, I mean the territory that the tank wagon travels through selling gasoline. If we were confronted with tank wagon competition, as frequently happens in the rural areas, it would not be a logical thing and it would not be a practical thing to reduce our price in the rural and not reduce it in the City of Madison.

2346 Mr. Chaffetz: May I interrupt. He doesn't mean to say that all the gasoline sold out of bulk plant is cut when that—

The Witness: Only that gasoline that is sold by tank wagons.

If you meet a condition in McFarland where you have to cut the tank wagon price to meet competition in that town, that tank wagon price is cut in Madison and Verona at the same time, whether there is any condition existing in Madison or Verona that requires it. So that when you have 370 tank bulk station plants or bulk plants where you have to reduce the normal price to meet competition, that may include, and probably does include, 5 or 6 towns and cities to the extent of 5 or 6 times 370. All the rest of the column means the same thing.

The heading of the next column, the initials "S S", is an abbreviation for the service station price, which is the retail price to consumers. A total of 497 as of January 31st means that there were 497 towns in bulk station points at which our service station prices were sub-normal. Each town is regarded as 1, without reference to the size of it. Take the widest comparison you can have: the city of Chicago with many hundred service stations and dealers. It is only counted as 1 on this Exhibit 910-A. And if the cut were in the town of Verona, it would still appear just as 1. So that 497 places where we had at least one or more subnormal prices in our service station or with our
2347 dealers probably would include a considerable number of the larger cities. And in any one of those cities, there might be only one cut, but 200 or 300 outlets.

We once made, in an experimental way, a cut in part of Chicago and not in another part, limited to an area out on the south side close to the Indiana line. But it was not a satisfactory experiment and it only lasted a very brief period. So that if we make a cut it includes the whole city.

The City of Madison and the towns or villages of McFarland and Verona each would be an individual problem in that 497 from the service station price standpoint. A cut made to meet competition in Madison service stations would not be effective in Verona, unless we secured evidence in Verona. A service station is a fixed post. We feel that we are compelled to give all dealers, and consequently our own service stations when we operate them within a municipality, the same price. But just because we have reduced retail price in Madison, we do not consider it necessary to carry it out to McFarland or to Verona when that condition exists in Madison. It isn't very long, as a rule, before some other oil company operating in Madison feels it necessary to carry it out to one of these other places and then we meet the price.

If it existed in all 3 of these places, Madison, McFarland, Verona, it would still appear as 1. In any city where the tank wagon service extends to 4 or 5 or 6 circuit points,
other towns, if the price cut prevailing in each of the
2348 5 or 6 circuit points, it would be counted here only
as 1.

Exhibit 910-A shows 497 subnormal prices, not 497 service stations. They may be scattered over a large part of the so-called Standard of Indiana territory; I have those details.

The next column, headed "1¢ or less," means that out of the total 370 subnormal tank wagon prices, 363 of them were 1¢ or less. 388 service station prices were 1¢ or less below the normal out of a total of 497.

In 4 tank wagon stations the subnormal price was 1¢ to 2¢. 72 service station prices were 1¢ to 2¢ sub-normal.

3 tank wagon, and 25 service station were 2¢ to 3¢. There were 2 service station prices where the reduction was over 4¢.

These other Exhibits for the years 1934 and 1936 are made up on identically the same basis. I have the year 1934, for instance, both for house brand and third grade. House brand is known as regular gasoline, generally accepted as such. Standard Red Crown is our brand. The third grade is Stanolind.

The third grade is the grade in which we meet more competition. In June, 1934, under the heading "Total Tank Wagon," I have 1,090.

When I talk about sub-normal prices, I mean prices that
are below the normal price which Standard Oil Com-
2349 pany of Indiana has established. And the normal
price we arrive at by taking the spot, plus the freight,
and so forth.

Referring to Exhibit 911 for identification, which is the third grade gasoline for the year 1934, in June we had 1,090 bulk plant units where we had to meet competition by lowering the price. These figures mean that they were in effect in those months. We had 1,353 bulk station units where we had to reduce the service station price to meet competition.

This Exhibit shows that as to the service station, there were 127 in that month where the competition was selling at 4¢ or more under our normal price. And as to the tank wagons, there were 65 bulk wagon units where they were selling at 4¢ or more under our normal price.

And as to the 3¢ to 4¢ reductions, there were 199 bulk plant units, where the competition was selling at that reduction. And there were 177 service stations where the reduction was 3¢ to 4¢ below our normal price.

And then the Exhibit also shows 1¢ or less, and from 1¢ to 2¢, and from 2¢ to 3¢.

In June, 1934, we had 1,090 bulk plants where we had to meet reductions, and probably all of them held over into July. There were that many in June and in July, where we had to meet reductions. In other words, we had to add 147 additional units during July, which increased the total
to 1,237. The Exhibit states that in July, 1934,
2350 there were 109 bulk plant districts where we had to
meet competition, where the reduction was 4¢ or more under the normal tank wagon price.

There were some of those reductions on third grade gasoline in 1935 and 1936 up to as high as 5½¢ or 6¢. I don't recall that there were any, although there might have been an odd one over 6¢. About 5½¢ to 6¢ was about as high as they got.

As to the service station reductions in July, 1934, there were 148 bulk plant units where we had to meet reductions of 4¢ or over.

According to Exhibit 910 for identification relating to house brand gasoline for the year 1934, in the month of November, 1934, we had 550 bulk plant units where we had to meet price reductions. Those, of course, included on an average of 5 to 6 towns. We had 1,288 service station reductions, which might include a town with 200 or 300 outlets that were affected.

In 210 of those service station incidents, we had to meet a cut of 4¢ or over from our normal price. And we had to meet a cut in 110 instances of 3¢ to 4¢ below our normal price. And a cut in 234 instances in service station prices of 2¢ to 3¢ below our normal price. And in 294 service station places, where we had service stations in
those 294 bulk plant units, we had to meet a cut of
2351 from 1¢ to 2¢ below our normal price.

I have Exhibit 912 for identification, headed "House Brand Gasoline, Number of Subnormal Prices to Dealers, Year 1935 and 1936." I start there as of July 31st in 1935 instead of as in the other instances in 1934, because, as I have previously explained, July, 1935 was the first month when in any portion of the territory we ceased to post a service station price and posted a dealer price. That state was Iowa, where we had gone out of the retail business entirely. An additional 7 states came in under the Iowa plan in September 1936, and the other 2 states came in October 1st. That accounts for the jump from 13 to 406 subnormal prices. Until August 1st, these figures cover only Iowa. Now, on September 30th they cover all states except North Dakota and Illinois.

When I say that, as of July 31, 1935, there was a total of 27 subnormal prices to dealers on house brand gasoline, that should be added, on Exhibit 910-A, house brand gasoline for 1935, to the service station price to make the total cuts in that class of business. So the total cuts as of July 31st, for instance, would be 107, as shown on Exhibit 910-A, plus 27 as shown on Exhibit 912 for identification.

On August 31, 1936 we had 13 of these dealers that should be added to the service station cuts on the other Ex-
2352 hibits; and as of September 30th it goes to 406, because at that time in 7 additional states we had ceased to post service station prices. Out of those 406 there were 280 instances where we had to meet a cut of from 1¢ to 2¢. And there were 12 where we had to meet a cut of from 2¢ to 3¢.

(Schedules previously so marked for identification are received in evidence as EXHIBITS 910, 910-A, 910-B, 911, 911-A, 911-B, 912 and 913, respectively.)

In 1935, before the Iowa Plan, our Company had approximately 4000 service stations. The meeting of these subnormal prices, as shown on these Exhibits, by Standard of Indiana reached very substantial proportions.

This record that we have just read speaks for itself on 1935 and 1936. There were a substantial number of price cuts at all times. Even after we had established this new method on September 11, 1934, we were not able to maintain the normal price structure throughout the entire territory. I don't recall any occasion when the so-called normal price structure lasted any length of time throughout the entire territory. We may have established the normal for a few days, but inevitably in a few days we were compelled to meet competition somewhere.

Unfortunately, some of these subnormal prices stay in effect a year or more. Conditions don't change a
2353 great deal. When a subnormal price is in effect, somebody has got to lead off in a rise or an increase in the price towards normal, and most frequently it is

Standard Oil Company of Indiana that does it. That is fairly logical, because, with the wide distribution and acceptance of our product, it is hardly to be expected that other people could sell at a higher price than we sell at, if we stayed below them very long. Then we also regard the situation from that standpoint the same as we do in meeting competition. When the competition is removed, if it is removed, we feel privileged to and our duty is to advance the price correspondingly. It is our object, at all times, to sell our product at our own established normal market.

When we cut our price at a service station to meet competition in any town, we also cut the price to dealers in the same town or city. When we had dealers, they were competitive with our service stations, and they are competitive with all other service stations; and necessarily they are entitled to the benefit of the same price. They are in the same classification. When we had service stations of our own, and had to cut to meet a price, we reduced the dealers' price correspondingly.

I wouldn't say that what I refer to as the normal service station price is really more or less of a
2354 theoretical price. It is an actual price, established
by Standard Oil Company of Indiana, at which it would like to sell its products if competition would permit it.

In view of what I say about the necessity of meeting these cut prices, and in view of what these Exhibits show of the places and instances in which we have to sell at subnormal prices, in my opinion the spot market price is not the controlling element that determines what the retail price is in the Standard of Indiana territory, or it was not in 1935 and in 1936. In my opinion the controlling element that determines what the retail price is in the Standard of Indiana territory, or it was in 1935 and 1936, is the price at which the low seller decided to sell his product. In other words, competition, and that is evidenced by these subnormal prices that I have shown you here.

It is correct to say, that because the spot market in 1935 may have gone up 1¢, that meant an increase in the realization or income of any particular company by 1¢ a gallon, only to the extent that that company was able to reflect that increase in its actual selling price.

Q. If they were selling—take the Standard of Indiana, for instance, or any other company. If they were selling at sub-normal prices to an extent that it would substantially affect its business, then

it wouldn't be correct to say that an increase of 1¢
2355 meant an increase of 1¢ in the realization to the company, would it?

A. As I have said before, only to the extent to which we were able to apply that advance to our local selling price. We would probably apply it, but it might not last more than a few days or a week, and we would have to come back to meet competition.

When you use the word "realization," I understand you to mean gross income of the company, if I understand what you mean. You mean gross revenue.

As to Standard of Indiana being the market leader and the price leader in the Standard of Indiana territory and these 10 Mid-Western states, and how that expression came to be used and what it really means, that is quite a story, but I will try to be as brief as possible.

When I went with Standard of Indiana in 1905, it was then operating as a subsidiary of Standard Oil of New Jersey. It then was distributing its products in the Mid-Western states. It was then occupying all these 10 Mid-Western states and was engaged in increasing its facilities by the establishment of new bulk plants as the development of the business necessitated. It so continued until it had distribution throughout this entire length and breadth of these 10 states.

At that time there was very little competition.
Most of the competition we had then came from Ohio,
2356 Kansas, and Pennsylvania. There were some competitors, but of the major companies involved in this proceeding, as I recall the names, there was only one, I think, that was then in existence. That was National Refining Company. If it is not involved in this case, there were none of them. I recall that National Refining Company operated out of Cleveland and had some distribution in Michigan and Indiana. Consequently, the Standard Oil Company was a pioneer in this territory. It developed it from the standpoint of the distribution of petroleum products.

When Standard Oil Company of New Jersey was dissolved in 1911, the various 32 or 33 component units were left to occupy the territory which they had previously served.

Consequently, Standard of Indiana continued to occupy these 10 Mid-Western states, and quite naturally, and maybe even because of something in the decision or in the progress of the lawsuit, this territory became known as the Standard of Indiana territory, just as Ohio became known as the Standard of Ohio, and Kentucky as the Standard of Kentucky, and Louisiana and so forth.

At that time, due to the very mild competition, which was not at all general—there were lots of places where the Standard of Indiana was exclusive—we enjoyed probably 80% of the available business. There wasn't very much gasoline business in those days. It was not an important product such as it is today. And, of course, in a great deal of that territory today, we are still the
2357 most important factor. Taking the territory as a whole today, we still enjoy a larger percentage of the available business than any other one unit, I don't care what it is.

Competition from the Group 3 area began to be felt along about 1911, when it began to be really noticeable seriously and some of these other major companies began to get into the territory and expand their facilities and go out after business. There was a very rapid development of competition. Where there had been only 1 bulk plant before, there were as many as 3, or 4, or 5 going into these one-station towns and they were usually in the same town as ours. A similar situation existed from the service station angle. And then along came the Texas Company. It wanted an outlet, and it would put up service stations, and perhaps on the opposite corner from Standard. Along came Phillips, and it wanted one, and it would get one, maybe a block away. And along came Skelly or Continental or somebody. So the outlets multiplied very fast.

Our percentage of the whole business of the territory immediately from that time on began decreasing very rapidly. In 1930, it got down to about 29.9%. In 1936, it was down to 21.2%.

That loss of our percentage of the total business decidedly was one of the reasons for the change in the method of arriving at our prices that we put into effect in
2358 September. That was one of the important arguments the sales department had, that the outmoded price structure, which had been good enough maybe 20 years before, was no longer applicable.

When I say it was down to 29.9% I don't mean the sales decreased. I mean the percentage of our total business decreased. The sales were increasing very rapidly, since 1911 until 1930. We reached the peak in 1930, and it fell off during the depression and has not yet come back to the same peak of 1930. In 1930 it was about 29.9% as much as it was in 1911. Our percentage of the total available business in 1930 was only 29.9% and that dropped in 1936. In 1911, I testified, without any competition we got up to about 75 or 80% of the entire business in the area. Gradually competition cut it down to 21.2% in 1936. I think it was 22 and a fraction % in 1935.

Because of the fact that we were pioneers and because of the additional fact that we have at all times enjoyed a larger percentage of the available business than any other single unit, and because we have always acted independently in price matters, we have come to be regarded as the market leader in the so-called Indiana territory, but this expression, "market leader," "price leader", is very much abused.

These records I have disclosed to you here today prove to me, at least, that one cannot be a market leader with
2359 a high price which your competitors don't follow. And my impression is that you can be a market leader if you make a low price which your competitors are, maybe, compelled to follow, if they are going to stay in business. But it sometimes looks today that our price structure is pretty much a mark for the other companies to shoot at today.

Twelve of the major companies in this case are in competition. They are all represented in that area. They don't all market through their own units. Many of them are represented in a considerable portion of the territory by their jobbers.

Standard of Indiana never did business through jobbers; we do our own jobbing business. We have these tank wagons covering the whole territory, as I told you, operated by our own agents and dealers. It wouldn't be very logical to have a jobber competing with us. We occasionally sell a tank car to a jobber, but we have no jobber business as the term would be generally understood except in one instance. We sell direct to dealers.

Eight out of the ten states in the Standard of Indiana territory have these one-price laws, all except Illinois and Indiana, but we get along in Illinois and Indiana just as though they had them.

Those tabulations that I made and which have been received in evidence do not contain all of the price cuts,
2360 only those that we met. There were a great many cases where I got prices on house brand products so-called that I did not meet. I customarily do not meet such competition unless it is of a major company's branded product, well advertised and generally accepted product.

I have no record of how many of those there were in 1935 and 1936. There are some exceptions, but as a rule I usually meet the third grade prices within limits. I do not always go all the way, that is, if the cut is very deep I may only go part way in meeting it.

I think it is the general understanding that when the competition which started the cut gets back to what you might call the normal price, we are required under these one-price laws to do the same thing, but as a matter of policy we believe when our competition is removed we should remove the cut price and we simply act, although that does not very often happen. When I refer to the competition being removed, I mean the cut price eliminated.

Cross-Examination by Mr. Chaffetz.

The percentage of all the gasoline sold by our company in the Indiana territory that is third grade gasoline varies according to the seasons of the year. My best recollection, and that is all I am speaking from, is that it runs about 13% to 15% over all. I would think that true generally during 1933 and 1936.

2361 I would not be in position to state what part of this regular gasoline that is sold in the Standard of Indiana territory is not a major brand of gasoline. It is not inconsequential, it is considerable, but I would not be able to give a satisfactory estimate. I would say it was as much as 10%; I think it is more than that, because there are a great many open market jobbers. There are some private brand jobbers, and jobbers who really don't work under any brand at all, who handle non-branded major products.

The subnormal prices as to which I testified are retail prices in local areas and tank wagon prices too, also in local areas. Tank wagon prices are not prices to retailers but to consumers who buy not less than 25 gallons at a time. They are sales to consumers, at any rate, just the same as to service stations.

The competition that I refer to that brings about the subnormal price in a particular local area sometimes would be a local dealer who cuts the price, or a local tank wagon distributor, or driver for a major oil company or for a jobber. That is the kind of cut price that I refer to when I talk about the cut price competition that brings about subnormal prices. I talk about any price that is lower than our established normal as being a cut price, merely in relation to our established normal.

Q. And the people who are responsible for initiating a cut price in any particular locality, however, buy their gasoline, do they not, either from 2362
major companies or on the open market? Is that right?

A. Jobbers do, yes.

Q. And when they buy on the open market they buy on the spot market; isn't that right?

A. Well, I am not familiar with the conditions under which they buy, all of them.

I have been in the oil business 32 years. I have been with Standard of Indiana all that time. I have a general idea how a jobber buys gasoline but I don't know the details of the purchases they make. A jobber who does not buy from a major buys on the spot market.

Q. So the price he has to pay for his product is determined by the spot market; isn't that right?

A. I would think that would have a relation to it, yes.

Q. If he is the one that is responsible for cutting the price, the extent to which he can cut the price must depend upon what he has to pay for his gasoline; isn't that right?

A. I would think that had considerable effect on it, yes.

Q. And if the spot market price went up that would decrease his ability to cut the price; isn't that right?

2363 A. Well, it might cause him to pause, anyway.

Q. During 1935 and 1936 was there ever a time when any major company generally throughout the Indiana territory failed to follow a retail price increase posted by the Standard of Indiana?

A. Do you mean upwards or downwards?

Q. Upwards.

A. Oh, I think I have got lots of evidence where major companies and all of them, not anyone in particular, but all of them—

Q. I said in 1935 and 1936.

A. Yes, my files are full of evidence.

Q. Generally throughout the territory?

A. Where they were selling at lower prices than our established normal.

Q. No, that is not what I asked you. I asked you whether there was any instance in 1935 or 1936 where the Standard of Indiana posted general increases in normal retail prices throughout the territory. I understand those increases were three-tenths of a cent?

A. Yes, sir.

Q. I ask you whether there was any instance where a major company announced that it would not follow that general increase by the Standard 2364 of Indiana?

A. I do not think there was any instance when they announced it.

Q. Was there any instance where they failed to announce it generally through the territory?

A. I can see this evidence in my files. I would not know whether they did it all over the 10 states in the middle west, but I know they did do it because I immediately began to receive evidence that they sold at lower prices, all proving that they sold at lower prices.

Q. Did you ever reduce the retail price generally; normal price?

A. Oh, yes.

I do not recall that after we had announced an increase of 3/10¢ we ever withdrew such an increase because the major companies refused to follow, in 1935 and 1936. Every time we made an increase of 3/10¢ it stuck partially during 1935 and 1936. It stuck as a normal price, but not as an actual.

When I talk about price competition in the local retail areas I talk about competition with persons who are selling in that particular area. It is my testimony that all persons selling in any particular area have to buy their gasoline either under contract or on the open spot market, unless they happen to be refining gasoline them-
2365 selves. And if the general level of spot market prices
went up all persons, with the exception possibly of those who are refiners themselves, all persons competing in any particular local retail area, presumably would have to pay a higher price for their gasoline, unless they had some arrangement to the contrary.

It is pretty generally known that some jobbers have a certain amount of protection against the local market.

Q. And that price follows the spot market price, does it not?

A. No, it follows the market, the selling price.

Q. The normal local market, doesn't it?

A. Well, no, I don't think that is a correct statement, because they would not require any protection if it was based on the normal price.

Q. Don't you know the normal protection provision is based on the normal retail price?

A. My answer was directed to the condition where the situation is subnormal. It is generally known in the oil business that some jobbers get protection against a subnormal market. I am not in position to testify to the extent of that.

Q. Under contract?

A. Yes, sir.

2366 I think there are contract provisions that give jobbers local protection. I am not familiar with it. I think there are quite a few.

Q. Don't you know it is the practice of companies dealing with jobbers not to give any contractual local protection? Isn't that commonly known in the business?

A. I would think the other was more commonly known.

I think it is commonly known that jobbers are given some local protection in their contracts.

Q. And you think that is general in the contracts major companies have with jobbers?

A. Whether it is in the contracts or not I cannot say, but I am positive—

Q. That is what I am asking about.

A. I am not testifying to the contract, because I am not familiar with them.

Q. You don't know?

A. I am not familiar with the exact wording of the contracts, no.

In 1935, when the tank car price went up during the spring of 1935, from March until June, the general level of retail prices, the average level of retail prices through the Indiana territory went up too. I referred to four specific increases in price of 3/10¢ each between
2367 March and the first of June.

Q. And it was generally known in the industry that it was the policy of your company to increase the level of retail prices as the tank car price went up; isn't that right?

A. Well, I don't know how the industry could have a very thorough understanding or belief on that subject, because that policy had been in effect so short a period of time.

There was some publicity in the trade journals about it. I know of no meetings where there was any publicity given to it. I know of no meetings where that policy of Standard of Indiana was discussed. I attended one stabilization meeting in Chicago, merely as an observer. I took no part in it.

The policy I testified to this morning was a secret with our company until it was in effect long enough for other people to figure out what it was. It went into effect September 11, 1934. That was more than 6 months prior to March 1, 1935.

The policy was one of fixing the normal retail price at 5½¢ above the tank car price. Up until January, 1935, the policy was to fix the price at 5½¢ above the average of the averages of the Journal of Commerce and Platt's Oilgram. And after January, 1935, we fixed the 2368 normal prices throughout the Standard of Indiana territory at 5½¢ above the average of the low of the Chicago Journal of Commerce and Platt's Oilgram.

Q. And I ask you whether it wasn't generally known in the Indiana territory, by all persons doing business, doing a gasoline business there, that the Standard of Indiana did have that type of policy, whether they knew the actual details of it or not, I am not interested in?

A. The general policy would probably be understood, but I don't know when the general publicity in the journals took place, but probably a lot of these other companies figured out what it was for themselves.

Q. Yes, and they knew that if the tank car price went up, the retail price would probably go up following it, didn't they?

A. I don't know how they would know that.

Q. Well, if they knew in a general way what your policy was, and they knew in a general way that your policy was to fix the retail price 5½¢ above the normal tank car price, then they would know that if the tank car price went up the retail price would follow it up, wouldn't they?

2369 A. The thought I have in mind, sir, is that they might figure out our price at the moment, but I don't know how they would know what we would do under some later set of circumstances.

Q. If they knew what your policy was, and if your policy was as you have described it, then they might reasonably expect that if the tank car price went up the retail price would go up, too?

A. Well, if they knew the entire policy, of course, that is a fact, but I don't know how they would know our entire policy.

Q. And if they didn't know your entire policy, but knew the substance of the policy, that would be true, too, wouldn't it?

A. Well, I am not prepared to admit that.

Mr. Lewin: Make him say yes or no.

Mr. Chaffetz: Q. I ask you again whether you didn't know that this policy that you have described here wasn't generally known about in the industry in 1935 and 1936?

A. I recall that there were some articles in the trade journals, but I do not know now, do not remember now how much in detail they went. I don't know whether they described what would happen, or what they thought would happen under a 2370 given set of circumstances. I do know that they exhibited the fact that the price was then built on the basis of the current average of the Chicago Journal of Commerce and Platt's Oilgram, plus 5½¢.

I know that was generally known in the industry. And as the time went on during 1935 and 1936, and the retail prices did change in conformity with the tank car prices, it became better known that that was the policy of Standard of Indiana. When we followed those movements two or three times, no doubt they assumed that we might always follow them.

Q. So that it was during 1935 and 1936, commonly understood in the industry that if the tank car price went up the retail price as posted by the Standard of Indiana would go up; isn't that right?

A. Well, it occurs to me that that is an assumption that I can't say yes or no on. I want to be helpful, but I don't think I am justified in admitting that assumption. I don't know what the knowledge of other people was, or how well they understood our policy.

Q. It would be a matter of interest to you, wouldn't it, to know how well known your policy was, whether it was a secret with your company, 2371 or whether it was commonly known in the industry, wouldn't it?

A. Oh, I think some times it would be helpful if they knew just what we were doing, but I don't know that they did understand that.

This policy was used during 1935 and 1936; it was experimental with us but we in fact tried it out. The first change we made was in January 1935 when we changed from the average of the averages to the average of the lows. In June 1937 we changed to the average of the lows of the two Oklahoma markets, disregarding the Chicago quotations. There was only one change during 1935 and 1936 but we did not consistently follow this policy throughout all of those years. There was an advance in the price of crude of 10¢ a barrel in January 1936 and we made a change in our price structure then, which was primarily on that advance, and without regard to the actual position of the Group 3 market at the time. It was only when the crude advance occurred in 1936 that the tank car price increased. On January 17, 1936 our normal retail prices advanced ½¢. The tank car price of gasoline had gone up between January 13th and 20th, and reached its high point on January 20th. Our retail price went up at approximately the same time, but I call attention to the fact that there was a departure from this alleged policy that everybody understood when
2372 we went up ½¢ and not 3/10¢. The tank car price
went up from about 5⅞¢ to 6⅛¢. According to the chart or graph, the original policy I spoke of called for 3/10¢ advance after the tank car market had been up that much or more for a period of 7 days. Instead of waiting 7 days, we advanced it immediately ½¢. If we had applied our policy literally we would have advanced 1/10¢ more, that is, if we had made two advances, the total would have been 6/10¢ instead of 5/10¢. If we raised our retail price exactly the same amount it was just a coincidence, because we didn't know how far the tank market was going, or whether it was going at all. I think it was just a coincidence that the company happened to raise its retail price ½¢ at the time the tank car price went up ½¢. We paid attention and watched very closely the movements of the tank car market, but when we made that ½¢ advance, we, of course, had no knowledge of how far the tank car market was going. We did know what it was on the day we made the advance, and how much it had been for 7 days prior to that advance, but we didn't know and couldn't tell whether it would go up or stay up or go back down. If it went up after we had changed our retail

price, we could have changed our retail price upwards some more and if it went down we could have reduced our retail price.

2373 Q. I don't care what your reason was for it. Your policy was to maintain your retail price 5½¢ above the tank car price, and that is what you did, isn't that right?

A. Well, it probably wasn't even exactly 5½¢ that day. It might have been 5, 4, or 5, 6—I don't know.

Q. You didn't intend to abandon your policy at the time of that crude advance?

A. No, sir.

Q. You were carrying out substantially your policy, the same as you had?

A. We were to the extent that we were still making our computation in that manner.

Q. Yes, and, that was true, then, generally throughout 1936, the same as 1935?

A. Yes, sir.

Q. That is right. All right. Coming back to these subnormal localities that you referred to, when the tank car price went up and that was followed by an increase in the level of normal retail prices, was there any change in any of these subnormal areas?

A. Yes, quite frequently in such instances, and I would say in the majority of such instances, the subnormal prices went up correspondingly.

2374 If the subnormal area was 1¢ below normal, and if the normal price went up 3/10¢, the subnormal price went up 3/10¢, too. Every time there was an increase in the tank car price, not only the normal prices went up 3/10¢ as our policy was carried out, but the subnormal prices, generally speaking, went up to the same extent. If the tank car prices were raised 1¢, and we wanted to find out how much additional revenue would come to our Company, we wouldn't ignore the subnormal prices, except to this degree: That we know from long experience that raising subnormal prices is very frequently merely a gesture, and it only lasts a little while.

Q. But where the tank car price goes up, you have already testified that that affects the ability of anybody to cut the retail price; isn't that right?

A. It should.

Q. It forms a new basis on which the competition above takes place, the competition in the retail market takes place?

A. Yes.

It is literally true that, as the tank car price moved upwards, retail prices generally, whether normal or subnormal, moved up in the same relative proportion, momentarily, anyway. That was true during 1935 and 1936 for various periods, briefly.

2375 I gave some testimony this morning about the power of our Company or any group of companies to control the price in any local retail area.

Q. I want to direct your attention to the question of the power of the same companies to control the tank car price. First, I ask you whether those aren't two separate questions?

A. Well, I am trying to recall the testimony that I gave this morning, that you are crediting me with. I am sorry; I don't just recall that particular answer that you refer to.

Q. Do you recall testifying about the ability of your Company to fix the price in any retail area?

A. Fix the normal price?

Q. And I think you said it depended on competition, what the actual price was?

A. Yes, that is right.

Q. Now, I want to take you over to the tank car market. You have now testified that the tank car market during 1935 and 1936 did exert a controlling influence upon the level of retail prices?

A. Oh, no, I didn't testify to that.

Q. I thought we just finished with that?

A. No, we didn't.

2376 Q. Didn't you just tell me that if the tank car price went up, the retail price level went up generally in the same relative proportion?

A. I said generally it went up, but I didn't say it controlled it.

Q. I said, exerted a controlling influence on it?

A. No, I didn't say it exerted a controlling influence on it, if you will pardon me—I didn't intend to say that, at least. The actual situation was that prices went up. Now, whether they stayed there or not, is evidenced by my cut price records.

Q. Now, I ask you whether, generally speaking during 1935 and 1936, the prevailing level of retail prices didn't fluctuate—I am talking about average prices now—didn't fluctuate pretty much in relation to the tank car price?

A. At the time, yes.

Q. Yes, all right. And now I want to direct your attention to the spot market price and to the factors that affected the spot market price, which in turn affected the retail price. And I ask you this question: Whether if all of the major companies doing business in the Standard of Indiana territory, combined with the independent refiners who sold gasoline in the
2377 same territory for the purpose of influencing the tank car price, whether they wouldn't have the power to influence that price upwards?

A. Any concerted buying movement involving a sufficiently substantial quantity of the product would undoubtedly have the influence of raising the tank car market.

Q. And so, in order to determine the question of the power to control the tank car price, which in turn affects the general level of retail prices, you wouldn't look to see what the competitive factors were in the particular local—in particular local communities; you would look to see what the factors were that were determining the level of the tank car prices, wouldn't you?

A. No—no, I can't admit that. As a matter of fact, from a sales standpoint, the ultimate question is, what can you get for your product at the point of sale? And in your question you injected that word "control," again.

I have told you that a concerted buying program of sufficient volume would undoubtedly influence the tank car market upward, but I didn't say it would control it, and I do not now say that the tank car market moving upwards would necessarily and ultimately over a period—it might briefly, but not for over a period—affect the
2378 retail price structure. It is a question of what you can get for it. It is a question of what your competitors in that locality are willing to sell it for, regardless of what the tank car market is. And there have been cases where there was apparently no spread at all between the local price structure and the tank car market, after deducting freight and applicable taxes, when we have had these 5¢ and 5½¢ cuts, and we were admittedly on the

theoretical 5½¢ margin, and there just wasn't any spread; so the tank car market would not absolutely control the retail price, in my judgment.

Q. That would be true particularly during a period like 1934 when there was a quantity of illegal gasoline that was being sold on the market, this so-called hot oil. Is that right?

A. I think that hot oil is a factor in the situation.

Q. You do know that in 1935 and 1936 there wasn't any hot oil in the picture?

A. Yes.

Q. In 1935 and 1936 anybody who was selling at retail, other than the refiner who manufactured his own gasoline, had to pay a price for gasoline that was based on the spot market or the level of the spot market for gasoline, isn't that right?

A. He didn't necessarily pay the spot market. 2379 It may have been a quarter or an eighth—some relation to the spot market.

Q. Some relation to the spot market, so that if the spot market went up, he had to pay more for his gasoline than previously?

A. It would just depend if he got in contact with some fellow that had some gasoline to sell and was willing to turn it into cash; even though he didn't get the spot market.

During 1935 and 1936, if I wanted to inquire into what factors entered into the operation of the spot market, which had the effect of increasing the level of retail prices, if I had any information which would lead me to believe there was a buying program in operation during that period, I might inquire—I don't know where I would inquire—but I would just get such information as was available to me. I don't know who I could inquire of about it. I had no knowledge of the buying program other than the things I may have seen in the trade journals.

The Court: Sitting in your office in Chicago, if the tank car price of gasoline in Oklahoma and Texas was going up each week, would it arouse your interest, for the reason of it?

A. Decidedly so. I would look at the trade journals to see if I could see any explanation for it.

2380 *By Mr. Chaffetz*

I don't believe I would have called in Mr. Bullock to ask him if he knew the cause of the rise; and I don't think I would have called in Mr. Seubert. Mr. Ball and I frequently discussed the tank car market, but I did not discuss the buying program during 1935 and 1936 because I was unaware of any buying program, if it existed. So that if I were asked now to tell what the factors were that determined the spot market in 1935 and 1936, I would feel qualified to discuss that only in a general way—certain economic factors at work, of course.

By the Court

Q. You did read the trade papers, didn't you?

A. I read them very closely.

Q. Were you here yesterday?

A. Yes.

Q. A witness testified yesterday about some objective, about some program—

A. I think, your Honor, I said that the only way I had, the only knowledge I had, of anything was what I read in the trade journals.

Q. You said a minute ago you didn't know anything about any program.

A. I didn't know of my own knowledge.

2381 Q. You did read about it?

A. Yes, but that didn't really impress me very much.

The Court: That is all.

By Mr. Chaffetz

As a matter of fact, anything that I may have read in the trade journals regarding this question of a buying program didn't make much impression on me, and I again remind you that during this period you have been speaking about, 1935 and 1936, I was still engaged in travelling from the Great Lakes to the Montana and Colorado borders and away from my desk 2 weeks at a stretch. I was in Minneapolis on union negotiation matters for a period of 4 or 5 weeks at one time and 3 or 4 weeks at another; that went to arbitration, which caused me to devote my time practically entirely to it to the exclusion of other matters. During that time I didn't even see the Journal of Commerce and I don't suppose I read the National Petroleum News two or three times in several months. I am not even clear that I ever read anything about it; if it was there, and I happended to read that particular issue, I probably read of it. If I did read in the paper that there was some sort of a concerted program going on, it would have been a matter of interest to me as I am interested in every angle of the oil business.

2382 Up until the close of 1935, I was assistant general manager of Standard of Indiana and during that year I was in charge of the northern division, which includes the greater part of Wisconsin, northern Michigan, Minnesota, North and South Dakota, and 8 or 9—I think 9 main stations in that area when I had it. It was my duty then to supervise all sales activities in that area and to contact the larger places to see that they were following the policies and to consult with them and advise them and inspect our properties and all that sort of thing.

Q. Did you have anything to do directly with the formulation of that policy that we have discussed in fixing the normal retail price?

A. You mean the policy adopted as of September 11, 1934?

Q. Yes.

A. I was in consultation on it. I was one of the—

Q. Were you one of the members of the committee?

A. I wasn't on the committee that actually made the recommendation, but as a member of the service department I would add my little bit to the necessity for a change.

2383 The Court: Q. Does the Standard of Indiana sell gasoline in all the ten states?

A. Oh, yes. Yes, your Honor.

The percentage of the total gasoline business in the Indiana territory done by our Company was down to 21.2% in 1936, I think that is the exact figure. That decreasing percentage did not mean a decrease in the total gallonage of our Company nor total sales of gasoline. There is an element in there. Over this period of years when the automobile industry was developing very rapidly, and the increasing consumption of gasoline was simply remarkable, we were somewhat blinded by our increasing sales, and probably didn't realize right along how much we were losing percentage of position in our business with relation to the total volume. Our decreasing percentage is no indication at all the way in which our company did grow in actual business done by it. But it is a very strong indication of a rapidly increasing competition and the effectiveness of that competition. The total business grew by leaps and bounds.

I think the total gallonage of our Company in 1935 in
50 gallon barrels—the sales department deals with 50 gal-
lon barrels, and our statistics are made up that way—the
total sales of gasoline in the 10 states were 20,985,647 bar-
rels. That would be something over a billion gallons
2384 of gasoline. That was the year 1935. The 1936 figure
is again in 50 gallon barrels, and was 23,051,513 bar-
rels. That would be about 1,150,000,000 gallons of gaso-
line.

I testified that from March until June, 1935, there were 4 increases in price in the general retail price of gasoline, and each of those increases was 3/10¢, making a total of 1.2¢ increase in normal retail prices. And I testified that the subnormal prices, generally speaking, went up in like proportion for the time being. How long they stayed is problematical.

Q. And so, to find out the amount of money that went into the treasury of your Company as a result of those 4 increases during that period you would get some indication of that, wouldn't you, if you multiplied 1.2¢ by the total amount of gasoline sold by your Company during the remainder of that year?

A. That would be an erroneous figure.

Q. It would give some indication, wouldn't it?

A. No, because the first advance didn't take place until March or April—

Q. I said during the remainder of the year.

A. You would have the difficulty of knowing the
number of barrels—finding the number of barrels
2385 that were sold during each period succeeding an ad-
vance, and you have not forgotten, I hope, that I
testified also that within the six months prior to the
time the prices had been reduced 1.9¢.

Q. I didn't ask you about that.

A. I know you didn't ask me about that, but I wanted to remind you, because I think if you want to consider the one, you should consider the other.

Q. Let us look at this for a minute. You say there was a decrease in price on September 11, 1934?

A. Yes, sir.

Q. That decrease in price substantially reduced the margin between the tank car price and the retail price, didn't it?

A. In some places, yes.

Q. In most places?

A. In order to arrive at an average, it reduced it in some places, and possibly increased it in some places a little bit.

Q. Didn't it increase it in most places?

A. Yes, I think that is a true statement.

Q. Generally speaking, just prior to September 11, 1934, the jobber in this territory who was buying his gasoline on the spot market, was making a margin in excess of 5½¢, wasn't he?

A. I think that was true.

2386 Q. Usually his margin was somewhere between 6¢ and 7¢?

A. In some places.

Mr. Donovan: We weren't permitted to go back to September, 1934.

Mr. Chaffetz: This was opened up on direct examination of this particular witness over our objection.

The Court: I think that is right.

Mr. Chaffetz: And I am going—

Mr. Donovan: May I have exception to that?

The Court: Yes.

Mr. Chaffetz: I want to make it clear, your Honor, that I am going to limit myself entirely to the particular question opened up on direct examination by this witness, not going into other factors at all.

Mr. Kirkland: There wasn't anything said about jobbers on direct. I understand this man doesn't do any business with jobbers.

Mr. Chaffetz: I am talking about the prevailing level of retail prices.

Mr. Kirkland: I submit that this question about jobbers is not cross-examination. This man doesn't have anything to do with jobbers.

2387 Mr. Chaffetz: Q. The last question that I asked you—and I think you answered it in the affirmative—was whether the usual jobber margin in this territory prior to September 11, 1934, was not between 6¢ and 7¢.

A. No, you didn't ask me the "usual" jobber margin. You asked me if there were cases where the jobber margin was as high as that.

Q. And on which, I think, you testified it was over 5½¢.

A. And in order to arrive at our average and the method I described this morning, in computing the price, we found that the general average was about 5½¢.

Q. The average between the retail price—the normal prevailing retail price and the tank car price was 5½¢ before you changed your policy?

A. The average was. And that was one reason why we selected 5½¢. We found that that would about meet the general situation.

Q. You said you reduced your normal retail price by how much?

A. By 1.6¢.

Q. 1.6¢ average?

A. Yes; yes.

2388 Q. And you brought it down to 5½¢ when you reduced it by 1.6¢ average.

A. Yes.

Q. So that the average could not have been 5½¢ when you began, could it?

A. I am talking about the average actual prices.

Q. But I am talking about the average normal price.

A. Oh, well, that is something else again. That is something else again.

Q. And I was talking about the margin between the tank car price and the normal prevailing retail price.

A. Well, that, of course, was a very variable factor, because of the method we pursued prior to September, 1934 of computing our normal price.

Q. Wasn't one of the purposes of reducing that price to reduce the margin to the jobber?

A. Not one of the purposes, no, sir.

2389 **JOHN W. FREY**, a witness for defendants, testified as follows:

Direct Examination by Mr. Donovan.

I live in Washington, D. C. I am associate director of the Petroleum Conservation Division, Department of Interior, in charge of refining and marketing. That Division is the administrative office used by the Secretary of Interior, as Administrator, in the enforcement of the Connally Act. My position is more advisory and administrative than having to do particularly with direct enforcement of the Connally Act. The Federal Tender Board in East Texas and special attorneys of the Department of Justice have more to do with the enforcement than I have.

It is part of my duty to make an analysis of markets and possible adverse effects of the Connally Act. I try to keep informed on marketing conditions. I do not directly advise the Secretary of the Interior of the operation of the Act in relation to markets. There is a director in the Division who has more immediate contact with the Secretary of the Interior. Of course, if the Secretary of the Interior should raise a question concerning such a subject, it probably would be referred to me.

2390 By education, I am a geologist, with a great deal of geographic training along that line, and I have done considerable work in economics. My particular type of training is a mineral economist, with special emphasis on petroleum. I have a bachelor of science degree from the University of Chicago, and a doctor of philosophy degree from the University of Wisconsin.

I have had experience in dealing with economic problems, particularly with those of the petroleum industry, during the past 9½ years. I have been a student of general geology, especially economic geology, and also marketing, for more than 20 years.

I taught at the University of Wisconsin from 1920 to 1928, and also at the University of Chicago. I have assisted in writing books on minerals, and I have written and edited pamphlets having to do with phases of the petroleum industry. I was responsible for the final report of the Petroleum Administrative Board.

I have held my present position with the Department of the Interior since April 1, 1936. Before that I was a member of the Petroleum Administrative Board. Before that I was chief of the Petroleum Section, Minerals Division, Bureau of Foreign and Domestic Commerce. And before that I was temporarily employed by the Bureau of Mines to make a study on the rights of Americans to 2391 explore and exploit minerals in foreign countries. I was a member of the Voluntary Committee on Petroleum Economics of the Petroleum Conservation Board. At one time I was chairman of that Committee.

The Petroleum Conservation Board was originally appointed by President Coolidge, consisting of the Secretaries of Commerce, Navy, War, and Interior. They were studying and doing what they could, informally, to preserve the American petroleum reserves.

September 11, 1933 was the date when I became a member of the Petroleum Administrative Board. When the Board was organized, Mr. Margold, solicitor of the Department, was chairman; Mr. Fahy was vice-chairman; Mr. Myers and Mr. Marshall were members; Mr. Swanson was a member in charge of the Production and Refining Division. I was the member in charge of the Marketing Division. For a brief period we had a special technical adviser by the name of Thomas.

The functions of the Petroleum Administrative Board with respect to marketing were to carry out the purposes of Article V of the Code of Fair Competition for the Petroleum Industry. Those purposes briefly were essentially to do away with many of the abuses that had developed in marketing, and to create conditions which would make it possible for the marketing branch of
2392 the oil industry to operate at a profit, so that it would be possible for that branch to pay living wages to those employed.

The Board was normally not conducted as a solid group; it was rather departmentalized. We had a group of men who were in law; Mr. Marshall, Mr. Myers, Mr. Fahy, and Mr. Margold were lawyers; Mr. Swanson gave his attention to production and refining; and I gave mine to marketing. We rarely met as a Board. We usually reported what was happening in our particular field to the chairman of the Board. If he felt it was necessary for all of us to get together, he called a meeting; but normally we operated independently, each more or less in his own division. Insofar as I could solve any problems that had to do with marketing, I did that myself. If necessary, I called in help.

Q. Now, in connection with your work as chief of the Marketing Division of the Petroleum Administrative Board, did you deal on behalf of the Board with the stabilization activities, carried on by Mr. Arnott and committees appointed by him under the authority of a letter of the Secretary of the Interior to Charles E. Arnott, dated July 20, 1934?

Mr. Chaffetz: That is objected to.

2393 A. I did.

Mr. Chaffetz: That is objected to, and I ask that the answer be stricken. It is objected to as incompetent, irrelevant, and immaterial, and having no bearing on the issues in this case.

Mr. Donovan: Your Honor, I hope to establish that it is—

Mr. Crawford: If the Court please, this can have no relevancy at all unless it is followed up by the use of the letter to which he refers, which has been excluded from evidence on three definite and particular times after days and days of argument. The question is objectionable for that reason alone.

Mr. Lewin: That is the retail letter, your Honor.

The Court: Objection sustained. I think if this witness tells what he did at that time, if it is material—objection sustained. Exception allowed.

Mr. Donovan: Q. Well, will you tell us what you did in connection with the activities carried on by Mr. Charles E. Arnott and committees appointed by him, dealing with the tank car stabilization work?

2394 A. Your Honor, there is a confusion here on that, because the first committee was the Stabilization Committee, and the Tank Car Stabilization Committee was more like an off-shoot of it, and I think it is a question of sequence that makes it very difficult for me to answer.

Mr. Chaffetz: The question is with relation to the Tank Car Stabilization Committee.

The Court: Yes, you can answer that question—

Mr. Lewin: So-called.

The Court: (Continuing)—no matter whether it is difficult or not.

A. All right. So far as direct participation of sitting in at all meetings and knowing everything that happened in connection with the Tank Car Stabilization Committee, I can't testify that I did. But I was acquainted with the work that Mr. Arnott was doing in connection with general stabilization and I also was acquainted with the objectives of the Tank Car Stabilization Committee.

Mr. Donovan: Q. Now, do you know what the objectives of the Tank Car Stabilization Committee were?

2395 Mr. Chaffetz: That is objected to. He wasn't a member of that Committee. I don't see how he could know.

Mr. Donovan: He said he was acquainted with the objectives, your Honor.

Mr. Chaffetz: Find out how he was acquainted.

Mr. Lewin: Certainly he had no official connection with it whatever.

The Court: Q. Just what contact did you have with that Committee, that you have described now as a Tank Car Stabilization Committee?

A. Mr. Arnott was General Stabilizer. He reported to us—

Mr. Donovan: When you say to "us" whom do you mean?

A. The Petroleum Administrative Board.

Mr. Crawford: He gives Mr. Arnott a brand new title here, so far as I know, and he hasn't any right to do it. Where does he get it?

Mr. Donovan: Will you let him cross examine the witness, your Honor? I am examining the witness now.

Mr. Lewin: What possible relevancy can it have, that Mr. Arnott had a talk with him and reported to him, when he had no authority whatever
2396 to get such reports?

Mr. Donovan: Now, your Honor—

The Court: Just a moment. I have asked him what contact he had with the work of that Committee.

The Witness: The answer is, sir, no direct connection.

The Court: You don't have to describe Mr. Arnott in any way. You say, no direct connection.

A. That is right.

Mr. Donovan: Q. Did Mr. Arnott report to you?

A. Yes.

Q. Did he report to you in 1935?

A. He reported to me in 1935, in March; I think the date was the 12th.

Q. Who were present at that time, when he reported to you?

The Court: Q. Did he report in writing, or orally?

A. Orally.

Q. Where?

A. In Washington, at our office.

By Mr. Donovan

Our office was at 1729 New York Avenue, Washington. This was the Petroleum Administrative Board office 2397 of the Department of the Interior. When Mr. Arnott reported to me there were present Mr. Fahy, at that time chairman of the Board, Mr. Swanson, a member of the Board, I think Mr. O'Shaughnessy, one of the legal advisers of the Petroleum Administrative Board, Mr. Collender, Mr. Furlow, Mr. Majewski, Mr. Jackson—

Mr. Chaffetz: Q. Is that Mr. Allan Jackson?

A. Mr. Allan Jackson; Mr. Carnes—

Mr. Lewin: Q. Is that Mr. Bernard L. Majewski?

A. That is right.

Mr. Donovan: Q. Is that meeting of March 12th that we are talking about now? You have said that he saw you on March [illegible]th, Mr. Arnott saw you then?

A. Yes.

Q. Now, were these other gentlemen present on March 12th, or isn't that confused with another meeting?

A. Let me see—yes, that—I will have to strike that out, back—let's see—Mr. Arnott was there, that is sure. And the gentlemen of the Board that I referred to were there. Mr. Allan Jackson and Mr. Carnes were not there. I can't remember now whether Mr. Majewski was or not.

2398 Q. Well, what was discussed at this meeting?

Mr. Crawford: Object to that as incompetent, irrelevant, and immaterial. We are getting right now into conversations between this witness and another group of people, and there isn't any conceivable ground upon which they can have any bearing at all upon this controversy, unless it is that there is going to be some admission or declaration here, testified to by this witness, supporting the Government's case, and we don't expect that.

Mr. Donovan: Your Honor, I only wish to point this out in answer to the objection made by counsel for the Government: This gentleman here was a member of the Petroleum Administrative Board. He said that he had to make an analysis of the activities of the work of the Stabilization Committee, conducted by Mr. Arnott. He said that he was familiar with the Tank Car Stabilization work.

He said that Mr. Arnott reported to him on this day. I think we are entitled to know what Mr. Arnott reported.

Mr. Chaffetz: Unless, your Honor, they can show that this witness had authority to grant approval of a buying program, I don't think that anything
2399 that was said between him and anybody else is of any significance, unless they intend to show that that led up to the kind of approval that would be required. I don't understand they can or are going to attempt to make that proof, and therefore I think this testimony is all immaterial.

Mr. Donovan: Your Honor, I have said repeatedly that we are not here for the violation of the Code. I have said repeatedly that our contention is, under our theory of the case, that what we did was right and proper. I have urged, too, upon your Honor, that we are entitled to show all the facts and circumstances bearing upon what was done by these men during that period. And this has relation to the charge in this indictment—

Mr. Crawford: The Court has made a very definite limitation of how far they can go in that regard. And counsel has said something about what they are claiming here. They mustn't overlook what is being claimed by the Government here, that there was a conspiracy, a gigantic one, in which all the major oil companies referred to. And this class of testimony to which counsel now
2400 refers, I submit, it would have no possible bearing upon that question. And that is the question here, did they or did they not engage in the conspiracy alleged in the indictment?

Mr. Donovan: Let us take the words of Mr. Crawford himself, your Honor, improper though they may be before this jury.

He says we are charged with a gigantic conspiracy. We are therefore charged with something unlawful. We are entitled to show that what we did was lawful; that it was not furtive, that it was in the open; that here was a representative of the Government, to whom Mr. Arnott went to report the activities of this Tank Car Stabilization Committee. If that isn't relevant and material, I don't know what is.

Mr. Lewin: The witness can't possibly give approval to this thing.

Mr. Chaffetz: As a matter of fact, they ought to show that this witness had some official connection, if they can, with the buying program, and I don't believe he did. And if they can't show that, then all this material is clearly irrelevant and immaterial.

Mr. Lewin: Your Honor, are they to be permitted to go into that office and, because a man appears 2401 to hold a job in Washington, they can show conversations between any one of these conspirators and that man working in Washington? That is just as relevant as this is. This man had no more authority to approve these buying programs than I had, and I had none. We are right back to that question.

The Court: I will ask him that question:

Q. Did you have any authority to approve any buying pool?

A. The Secretary of the Interior was the only—

Q. Did you have, I am asking you?

A. No, I didn't.

The Court: Well—

Mr. Donovan: Now, your Honor, in view of your Honor's question there, I desire to show just what this gentleman did, who was on the Petroleum Administrative Board, the adviser to Mr. Ickes; what he did in relation to Mr. Arnott, particularly bearing upon the question of furtiveness and secrecy, as showing what was revealed to the Government at the time; and what if anything, what if anything this gentleman or other members of the Board or those connected with the administration of the oil industry 2402 did with Mr. Arnott. Now, it seems to me we are entitled to show that, if we can.

Mr. Chaffetz: On that question, your Honor, it is perfectly obvious that they didn't reveal to this gentleman or to anybody the things they now deny they were doing—

Mr. Donovan: I object to that statement.

Mr. Chaffetz: Just a minute. You didn't hear me out—

Mr. Donovan: If it please the Court, I ask—I must ask, your Honor, that the Court instruct the jury to disregard such a statement by counsel as highly improper.

Mr. Chaffetz: You didn't even hear me out.

Mr. Donovan: I heard enough.

The Court: Just a minute, gentlemen.

Mr. Donovan: I ask for that ruling.

Mr. Chaffetz: No, he can't have any objection to what I said, your Honor.

Mr. Donovan: I ask for a ruling by your Honor.

Mr. Chaffetz: All I said was this: That it is obvious that he didn't tell this gentleman that they were doing things which they now deny that they were doing—

2403 Mr. Donovan: That isn't what he said, and I ask for a ruling.

Mr. Chaffetz: I ask the Reporter to read what I said.

The Court: Just a moment—

Mr. Chaffetz: I ask the Reporter to read what I said previously.

The Court: Go ahead, read the statement.

(Statement of Mr. Chaffetz read by the Reporter, as follows:)

> "On that question, your Honor, it is perfectly obvious that they didn't reveal to this gentleman or to anybody the things they now deny they were doing."

Mr. Chaffetz: That is all I said.

Mr. Donovan: I still ask for that, your Honor, that the jury be instructed to disregard that statement.

Mr. Chaffetz: Now, I say this—

Mr. Lewin: Why not concede it? I wouldn't mind.

Mr. Chaffetz: Now, I say this: That being so, we still come back to the question of what they were doing, which is the question in this case, the facts of what they were doing. We claim they were doing one thing; they claim they were doing something else. 2404 And what they told somebody they were doing in 1935 doesn't help us at all to the decision of what they did do.

Mr. Donovan: Your Honor, if we don't—the question is this, what did we tell Dr. Frey?

Mr. Lewin: What difference does it make?

Mr. Donovan: Now, we ought to be given the opportunity of showing what we did tell him. We have heard testimony here of Mr. McDowell—

The Court: Q. Well, you had this talk with Mr. Arnott, where was it had?

A. In our office.

Q. And by that, you mean the Petroleum Administrative Board's office?

A. Yes, sir.

Q. And what members of the Board were present, Mr. Fahy?

A. Mr. Fahy, Mr. Swanson, and then we had assistants, but we were the only members, the three of us.

Q. And was any record made of his report to you for that Board?

A. There was a memorandum—no, there wasn't.

Q. When was that report made?

Mr. Lewin: He said there wasn't any, your Honor.

2405 The Witness: I say there wasn't any.

The Court: Q. No. I say, what was the date of that report he made to you; was it in March, 1935?

A. That is right, March 12th.

Q. And there was no record made of any kind?

A. No.

Mr. Lewin: Unofficial.

The Court: Q. Was there a minute book or record kept of the meetings of this board?

A. No, sir.

Q. There wasn't?

A. No, sir.

Mr. Chaffetz: If your Honor please—

Mr. Donovan: I wish—

Mr. Chaffetz: If you were asking that, I would just as soon that you would ask the witness whether this report that was made was an official report; and secondly, whether it was made in connection with asking for approval of what was being done.

Mr. Donovan: Now, your Honor—

Mr. Chaffetz: Those are the things that are pertinent.

Mr. Donovan: Now, your Honor, I think I should be permitted to conduct my examination—

The Court: Well, I just want to find out just
what authority this man had, and what this Board
2406 did. They kept no records of any kind, or minutes
of their meetings?

A. No, sir, we never kept minutes.

Mr. Donovan: I think it might aid, your Honor, if I were to ask him just how the work of the P. A. B. Board was conducted. I do ask him that question.

Mr. Lewin: Your Honor, would you ask him whether or not this was an official report, or whether this wasn't simply an unofficial conversation.

Mr. Donovan: I object to such a question, your Honor. Let us get the facts—

Mr. Lewin: I want the facts.

Mr. Donovan: Let us get the facts.

By Mr. Donovan

Our contact was very informal with the industry in carrying on the work of the P. A. B. We had frequent occasion to arrange various things with them, controversies of one type or another would develop, and in just a few minutes we might rush into a particular situation. The period was extremely hectic. We didn't have time to sit down and assemble the Board formally to deal with every detail. Every fellow was out to do as much as he could to restore the industry to normal.

2407 Sometimes it was necessary to meet with members of the P. & C. Committee in Washington, in Chicago, in Detroit, in New York, wherever it happened to be convenient. All of us were at these meetings in very few instances.

We were sort of a buffer between the committee of the industry, that is, the Planning and Coordination Committee, and the Administrator of the Code, the Secretary of the Interior. Very frequently all preliminary negotiations were carried out in that informal way; and in some instances they were formalized by an order of the Secretary; in other instances, they were not.

The Court: Q. Did you make a detailed report to Secretary Ickes of the report Mr. Arnott made to you and your Board?

A. I rarely reported directly to Mr. Ickes—

Q. Well, I am asking you if you did make a report to Mr. Ickes?

A. Personally—no, I did not.

By Mr. Donovan

The chairman of the Board, Mr. Fahy, was there. I do not know whether he made a report to Mr. Ickes or not. It was the duty of the Chairman of the Board to report to the Secretary of the Interior.

Q. Now, will you tell us what took place—

2408 Mr. Chaffetz: Just a minute.

Mr. Lewin: Your Honor, will you ask him whether he doesn't know that there was no such report ever in existence, not only then, but at all times before and after?

Mr. Donovan: I object to that question at this time, your Honor. He can ask that on cross-examination.

The Court: Q. There is nothing in writing now with reference to any report of Mr. Arnott to you and your Board now, is there, that you made at or about the time the report was made?

A. No, I can't recall that there was, that there is any memorandum to the Secretary exactly coincident with the act. Is that—

Q. Do you know how long the price war was in existence that Mr. Arnott was dealing with?

A. Oh, months and months. If—

Q. When did it start, and when did it end?

A. Well, to begin with, we came into the Code period with tremendous price disturbances, and fought them all through 1933 and 1934. We were just beginning to get things—

Q. I am talking now about the price war that was on after November 30, was it?

Mr. Chaffetz: July 20, 1934, your Honor.

2409 The Court: Q. July 20, 1934, from that time on?

Q. After July 20, 1934, and on July 20, 1934, there was a price war on?

A. Yes.

Q. Now, what do you mean by a price war?

A. I mean a condition in which there is general price demoralization, where there is a large amount of selling below normal prices, and where the competition is so bitter, that, in cases, it may lead to selling below cost.

Q. You mean where the service stations are, one is selling lower than the other, and they are trying to meet that competition?

A. Yes, sir.

Q. And that is where the price war existed, among the service station men, and the jobbers?

A. Yes, sir. Of course, the tank car price was very subnormal, too; that is an incident—

Q. Well, I am talking now about the price war that Mr. Ickes was telling him to stabilize.

A. Yes.

Q. The price war existed between the service station men and owners?

A. Between service stations, between jobbers, between integrated companies, between refiners—everything was in turmoil.

2410 Q. Well, what did you understand to be the price war that was raging in July, 1934, and continued, and reached its peak in October, and practically ended in December? Now do you know anything about that price war?

A. Yes, sir.

Q. What was it?

A. Do you mean what was happening during that period? That price war was very extensive all through the Middle West, and I was in that; in the position that I occupied I was trying right along to see what could be done to get the prices normalized.

Q. The prices at the service stations?

A. At the service stations, and between jobbers, and between track-side operators. Everyone that was engaged in marketing in any way seemed to be in that embroilment; and it was part of my job to see if I couldn't iron out that difficulty.

Q. What did you do during that time?

A. I worked very closely with Mr. Arnott as the Chief Stabilizer of the Stabilization Committee, to iron out these difficulties between various contending forces. We held meetings in quite a number of places in the Middle West, trying to get the companies to determine what was wrong and what could 2411 be done to get prices back to normal.

Mr. Chaffetz: Q. That is, retail prices?

A. All prices.

By Mr. Donovan

When I say all prices, I mean the general price structure. I mean retail prices, jobber prices, tank wagon prices, tank car, right back to the refinery.

The Court: Q. What was done to eliminate the price war between July, 1934, and January 1, 1935?

A. Well, many, many meetings were held to get —to overcome the abuses that were partly responsible—

Q. What were those abuses? Well, let's just start out; you first felt the effects of this price war among the service stations, did you, one was underselling the other?

A. Yes.

Q. Now, what did you do to eliminate that?

A. We went into that—at first, we went in and tried to hold local meetings.

Mr. Donovan: Q. When you say "we" whom do you mean?

A. The Petroleum Administrative Board, acting with Mr. Arnott's Stabilization Committee. Now, 2412 this is the period late in 1934. And we very soon found that it was impractical to try to solve the problem just locally, where we would get a group of dealers or jobbers to agree that they would eliminate underselling, under-price posting, chiseling of one variety or another. And gradually our activities expanded. The first—

The Court: Q. Did you have any success at all dealing locally with the service station owners?

A. It was very unsatisfactory.

Q. What was the next step?

A. The next step was to take a larger area. For instance, the first large area that we dealt with was, as I recall, Michigan, in which we tried to handle the entire state. Our efforts in Michigan were not entirely successful either. Then we tried to handle a very much larger area, such as the Standard of Indiana territory, but it was a gradual movement outward from a very local situation to a state, to several states, to a large territory. In some of those meetings we discussed conditions all the way from the Rocky Mountains to the Ohio line.

Q. You discussed conditions, but what did you do to cure that trouble?

2413 A. We got companies to enter into agreements with each other to—in some instances we even got a company to volunteer for a period to raise the general price level to see whether it would stick, as an example.

Mr. Donovan: Q. When was that, Doctor?

A. Well, we tried that experiment in a small way as early as the beginning of 1934. I tried that personally all through the summer of 1934, and then in connection with the stabilization committees through the fall and winter of 1934 and into 1935.

Q. Do I understand—

The Court: What was the result of that?

A. That work was more successful.

Q. What did you do after that?

A. Co-incident with that this buying started, and we had also—

Q. What do you mean by the buying started?

A. Buying by the major companies of distress gasoline from independent refiners.

Q. When did that start?

A. Oh, there were several periods of that, but—

Q. When did it start?

A. February.

2414 Q. Of 1935?

A. Of 1934—no, 1935.

Q. 1935. Now, up to that time, up to February 1, 1935, what was the condition of the price wars? Had they been pretty well eliminated then?

A. Sometimes they were. We would get a period in which there was a decided benefit from our activities, but usually they would slide back after a relatively short time.

Q. What percent of the price wars were wiped out in January, 1935, would you say?

A. Oh, a very high percentage in this territory had been wiped out by January, 1935.

Q. By "this territory" you mean—

A. Indiana territory.

Q. In 1935?

A. Yes.

Q. So there was very little of it existing after January 1, 1935?

A. The condition was very much better after January, 1935.

Mr. Donovan: Q. Were there any price wars during that period, January, 1935?

A. Yes, yes. I never have seen the market when it did not have a price war at some place or another.

2415 The Court: Well, you kept in pretty close touch with what was going on? You worked with this stabilization during the price wars?

A. Yes, sir.

Q. And worked with it up until December, 1934?

A. Yes, sir.

Q. And you continued the work after that?

A. Yes, sir.

Q. January, 1935, and February?

A. Yes, sir, we worked with them right up to the end of the Code. That was May 25th or 27th.

Mr. Chaffetz: Colonel.

Mr. Donovan: No, I want to finish with this witness.

Mr. Chaffetz: Well, I want to—

Mr. Donovan: Now, your Honor, I should think I would be permitted to have this question answered.

The Court: That is what I am trying to find out.

Mr. Donovan: Yes, I know your Honor is, and I am not going up to the bench at this time.

(Mr. Chaffetz went to the bench and conferred with the Court.)

Mr. Donovan: Now, your Honor, I want to enter this objection at this time to counsel for the Govern-
2416 ment interrupting the examination of the witness in the manner he is doing at this moment.

The Court: Overruled. Exception allowed.

Mr. Crawford: Let the record show just what he is referring to.

Mr. Donovan: I think, your Honor, that I am entitled to an uninterrupted examination of this witness.

The Court: Counsel is referring to a letter written by the witness to somebody.

Mr. Chaffetz. Another member of his staff.

Mr. Donovan: I object to that action by counsel for the government in view of the question that is now addressed to the witness.

The Court: Overruled; exceptional allowed.

Mr. Chaffetz: I have an objection pending to all this line of testimony.

The Court: You have, and I am trying to find out whether it is material or not.

Mr. Chaffetz: The objection is this, your Honor; that there is no showing that this witness had any authority to approve anything that was done along the lines involved in this case. Your Honor has seen the letter which was Mr. Arnott's authority, and you construed that; it shows the scope of his authority under that letter.

2417 There is no showing here that the head of the Department, Mr. Ickes, knew about this or authorized it or acquiesced in it in any way.

There is no showing as to why they call this man instead of calling the chairman of the Board. There is some evidence here that the chairman of the Board may have had authority to report to the Secretary of the Interior. The chairman of the Board has not been called as a witness.

We think nothing can be gained in testimony along this line in the way of supporting the defendants' case, and we ask that the entire line of questioning be stricken out.

Mr. Francis: Now, we think there can be something gained in support of defendants' case, by showing that there was an administrative approval of the things which we did, and that will certainly be beneficial to our case.

Mr. Chaffetz: I wish you would ask the witness whether he had the authority to approve, or whether he did approve, or whether he—

The Court: (To the witness) Answer that question. Did you have authority to approve any action of Mr. Arnott or anyone else?

Mr. Chaffetz: With respect to buying programs.

2418 The Court: With respect to buying programs. Answer that.

A. We could not formalize any buying programs.

Q. Did you have any authority or any power to approve any action of Mr. Arnott or anyone else in the buying programs?

Mr. Francis: I said administrative approval.

The Court: I am asking him.

A. Well, I think we did approve many things. Now, whether we had the authority to approve I am not sure, but we did approve.

Mr. Crawford: But that is not the question.

Mr. Donovan: Your Honor—

The Court: Q. You know what authority you had, don't you?

A. Well, even the question of authority was indefinite. We had no written instructions from the Secretary of the Interior as to just how far that authority runs and no further.

Mr. Chaffetz: I would suggest to your Honor you ask him whether he was asked for approval of any of those things.

Mr. Donovan: Now, may it please the court, can't I proceed in a proper manner with my examination?

2419 The Court: Yes, but I want to find out about this.

Mr. Donovan: I have no objection to the questions, but I wish to proceed with my examination.

The Court: I will ask the question:

Q. Did Mr. Arnott ask for approval to conduct a buying program?

A. No.

Mr. Donovan: Now, I would like to ask just what the conference was, your Honor, and what was said.

Mr. Chaffetz: I think, your Honor, the last question you asked is conclusive; they did not ask for approval. There are some legal questions involved. Your Honor has read Article 6 of Section 4 of the

Refinery Amendment of the Code, and that section of the Code describes exactly the thing that the defendants were doing. It says arrangement may be made for the purchase of gasoline from refiners and for the orderly resale thereof by and with the approval of the President.

The Court: Let me ask the witness:

Q. Did you ever hear that section he has referred to?

A. Yes, sir.

2420 Q. Did you know it was in existence at the time you were on this Board?

A. Yes, sir,

Mr. Chaffetz: I think in view of the fact that no approval was asked of this witness, not asking for the approval of the President or the Secretary of the Interior, that we certainly ought not to go any further with this.

Mr. Donovan: Now, in view of those questions which counsel for the Government has asked, I submit we are entitled to hear the entire conversation that took place there. We cannot have go before this jury a question that amounts to a conclusion, when they are the ones that must pass on that very question. Now, I am entitled to know, and these defendants are entitled to know, what was said at that meeting, particularly since it now appears in response to your Honor's question that this gentleman was cooperating with Mr. Arnott's committee in stabilization work throughout this whole territory, that he was in constant contact with him, that he knew the condition that was going on, and that Mr. Arnott would make a report to him—what did Mr. Arnott say? What did Dr. Frey say? What occurred there? What happened subsequently? Those things we are entitled to know.

2421 The Court: Dr. Frey had no power to bind the United States.

Mr. Donovan: Your Honor, to listen to such a technical argument by counsel for the Government—

Mr. Lewin: It is not technical.

The Court: Nevertheless I think it is irrelevant and immaterial, but I will let him state what report Mr. Arnott made. I think it is entirely irrelevant and immaterial.

Mr. Crawford: Now, if the court please—

Mr. Donovan: Now, I must ask for an exception to your Honor's statement that this is irrelevant.

The Court: Then it is sustained because I don't think it is material. Exception allowed.

By Mr. Donovan

(Document submitted by Mr. Donovan marked Exhibit 914 for identification.)

It is stated on the face of Exhibit 914, "The Final Report of the Marketing Division, Petroleum Administrative Board." It was prepared in my division under my direction following the close of the Code period. My division was under the Department of the Interior, of which Secretary Ickes was the head. Page 120 of that report under the head, "Stabilization," was prepared under my supervision, and at my direction. That Final Report is a 2422 publication of the Department of the Interior, and was submitted to the Secretary of the Interior. It refers to the Code period and subsequent to the Code up to the end of October, 1935.

Mr. Lewin: And written in 1936?

A. The writing was started immediately after the reports came in. The bulk of the writing was done in December, January, February of 1936.

Mr. Donovan: Now, your Honor, I offer in evidence this Final Report, 914, and particularly that portion of it running from page 120 to 126, both inclusive, headed: "Stabilization."

(Passing exhibit to the Court.)

Mr. Chaffetz: If the Court please, the Government objects to the introduction of that document on the ground that it is an ex parte report, is not evidence in any event. The statement is not evidence of the facts.

Second reason, that it was written a year after the expiration of the Code, and doesn't purport to be any sanction by the Secretary of the Interior of anything that was done during the Code period. It is an historical statement a year later of some things that had taken place, without any indication at all of whether they had been approved at the time they were being carried on.

2423 I think the report is—

The Court: Who is this report by? By the Secretary of the Interior?

Mr. Chaffetz: No. It was written by this man (indicating the witness). He is head of his branch—marketing division. It was written, as he said, in June—published in June, 1936, and can't be any evidence of any official sanction of what was being done at the time the Code was in operation in the spring of 1935.

The Court: I want to give some consideration to this. I started to read part of it, but I haven't yet finished it.

Mr. Chaffetz: All right.

The Court: But I want to give a little more attention to this other question, about this report that Mr. Arnott is supposed to have made to you (addressing the witness) in March, 1935. You did not communicate that report to Secretary Ickes?

A. I did not.

Q. You kept no record of it?

A. No, sir, we kept no record of it.

Q. Do you think you would remember now what he said to you?

A. Yes, sir.

2424 The Court: (Addressing counsel) On this question of whether or not everything was done secretively, it may be admissible.

Mr. Chaffetz: I don't think it matters a great deal whether it was done secretively or not. The question is whether they did the things that were changed in the indictment, and, as I said to your Honor before, obviously any statement that was made at that time would be a self-serving statement by one of the defendants and would be stated in the light in which he would want to state it.

The Court: You wouldn't expect it to be self-serving if he was making it to a man on the Petroleum Administrative Board?

Mr. Chaffetz: That is when we would expect it to be self-serving. He would state it in the light in which he wanted to state it; therefore—

Mr. Donovan: I object. That is a statement—

The Court: We won't have any more argument about it. You may answer that.

A. What is that?

The Court: He made a report in March, 1935?

Mr. Donovan: March 12, 1935.

By the Court

Mr. Arnott told the members of the Petroleum Administrative Board present that arrangements had been

2425 made by which quite a large number of major companies would buy distress gasoline from independent refiners.

He also stated that there was no pool made for such purchases, that the buying was strictly informal, that no refiner was committed to a definite quantity of gasoline which he would have to buy, and that the hope was that by such informal buying the price of gasoline at the refinery could be improved so that the lack of parity which had existed between the crude oil and the tank car market could be eliminated. In other words, they would have a stabilized market as between the crude price, the tank car price, and the wholesale and retail price.

Mr. Donovan: Q. What did you say to him when he made that report, Doctor?

Mr. Crawford: Same objection.

The Court: He may answer that.

Mr. Chaffetz: I wonder whether the witness purports to have said anything Mr. Arnott said to him.

The Court: Q. Have you told us all? If not, do so.

A. All that I can recall now.

Q. You haven't missed anything at all?

A. Nothing at all.

Q. You have thought about this a great deal before you came on the witness stand, have you?

2426 A. Well, we have talked it over with Government attorneys for a year and a half now and—

Q. Have you talked it over with the defendants' attorneys?

A. No, sir.

Q. You mean to say you haven't talked with any of the defendants' attorneys before you got there on this witness stand?

A. Yes, sir.

Mr. Donovan: Your Honor, we are absolutely prevented from talking with him except in the presence of Government counsel. I want to show this to your Honor (producing paper). And here is a letter which I think in view of the statement I should read to the Court.

(Document passed by Mr. Donovan to the Court.)

The Court: What I had in mind was that the attorney talked to the witness before he put him on the stand.

Mr. Thomas: The Government isn't the only one.

Mr. Chaffetz: Since that was said: With every counsel's witness who got up on the stand except Judge Denton's, there was a lawyer present.

2427 Mr. Donovan: I object to that statement before the jury, and ask that the jury be instructed to disregard it.

Mr. Chaffetz: Now the attempt was made by Mr. Thomas to say that the Government was the only one who followed that, that counsel be present when opposing counsel talked to the witness. I say I talked to 6 or 7 or 8 witnesses, and with every one there was a lawyer present except Judge Denton's.

Mr. Donovan: It is an entirely different position, your Honor, with counsel for the Government.

The Court: We are getting way off. I want to say to the jury that counsel has a perfect right to talk to his witness before he goes on the witness stand, and we expect every counsel to do so, and it may be that counsel for the defense have talked with other witnesses, did so in the presence of counsel, opposing counsel, which was perfectly all right, also, but—(addressing the witness) well, it is a fact you did not talk to defense counsel before you went on the witness stand?

A. That is true.

2428 Mr. Crawford: I think in that connection he ought to be asked whether he ever told Government counsel this story that he is telling here.

Mr. Donovan: Now, I think again that is an improper question.

The Court: You may go into that on cross-examination, Mr. Crawford.

Q. Now, have you told us all?

A. Yes, sir.

Q. On that report?

A. Yes, sir.

Q. Nothing that you—

A. Nothing that I know of—I am not holding back anything. If there is anything more, it has slipped my mind.

Q. Now, have you told us all—everything you said to Mr. Arnott?

Mr. Donovan: He hasn't told that, your Honor.

A. I didn't reply to that question, but the—I made no particular reply. It wasn't necessary for me to. Mr. Fahy was content in making—

The Court: Q. Were you familiar with Section 6 of Article 4 that we have been discussing here at that time?

A. Yes, sir.

2429 Q. Did you call his attention to that?

A. No.

Mr. Donovan: Your Honor, I must—I am sorry, but I must object to the last question of your Honor to the witness.

The Court: You may have your objection and exception; objection overruled.

By Mr. Donovan

At that meeting, Mr. Fahy asked Mr. Arnott whether there was any question about their violating the Sherman Anti-Trust, whether their purchases would be in violation of the Anti-Trust law. Mr. Arnott replied that he didn't think that they were in violation of the Anti-Trust laws.

Q. Was Mr. Arnott told to discontinue this work or told to go on with it or anything said about that?

Mr. Crawford: I object; incompetent, irrelevant and immaterial. We now get to this acquiescence.

The Court: Objection sustained. Exception allowed. We have had the report. That is as far as I think we ought to go.

Mr. Donovan: Your Honor, may I not ask any particular thing that was said at the conference?

The Court: The witness told us now that he has told us all the report he can remember.

2430 Mr. Donovan: I would like to ask him further on that, but in view of your Honor's ruling—

The Court: I think that is as far as we ought to go.

Mr. Donovan: May I ask him if he has told us all that Mr. Fahy said?

The Court: Mr. Fahy? I think we ought to leave that alone. Exception allowed.

Mr. Donovan: I understand your Honor's ruling bars any line of questions that I might ask pertaining to what was further said in this conference?

The Court: He has told us about the report Mr. Arnott made and what he said to Mr. Arnott, and that is as far as I want to go. Exception allowed.

Mr. Donovan: And as to any further questions regarding that, your Honor would sustain the objection?

The Court: Yes.

Mr. Donovan: I want an exception to that.

I knew about a month or a month and a half before March 12 about the Tank Car Committee. I knew that a Tank Car Committee had been talked about and was under the impression it had been appointed, but I didn't know definitely until Mr. Arnott reported.

2431 Q. In May, 1935, did you become aware of the condition of the independent refiners in Western Pennsylvania?

Mr. Crawford: I object to that. Wholly immaterial to anything involved here.

Mr. Donovan: It may not be, your Honor. Just move one step at a time here.

Mr. Crawford: Pennsylvania!

Mr. Chaffetz: I think it is clearly immaterial and irrelevant.

The Court: Yes. Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, may I ask a few questions without violating your Honor's ruling and consider the objection made on them and the objection sustained?

The Court: Go ahead.

Mr. Donovan: I would like to ask the witness:

Q. You must not answer these questions—

Mr. Chaffetz: Well, I object to that procedure. That is improper.

Mr. Donovan: How can I make my offer of proof unless I have the questions present here?

Mr. Chaffetz: He can make his offer of proof at the proper time.

2432 Mr. Lewin: In former cases he has made his offer of proof in question and answer form.

Mr. Donovan: But I am not permitted to talk to this witness.

Mr. Lewin: That is unfair—

The Court: You have a perfect right to talk to the witness whenever you want to.

Mr. Donovan: I am glad of that, your Honor. In view of that, we will prepare an offer of proof and submit it for this witness.

The Court: Q. The orders you got not to discuss this case with defendants' counsel were not from the attorneys?

A. No.

Q. It was from somebody in Washington?

A. It was from the Secretary of the Interior.

Q. Secretary Ickes? I see.

Mr. Lewin: And you were authorized to talk with any counsel if Government lawyers were present? You were told not to discuss it at all except in the presence of Government lawyers?

A. That was the understanding.

The Court: Q. Were those instructions from the Secretary of the Interior?

A. Those instructions were from the Secretary of the Interior.

2433 The Court: It is clear you were permitted to discuss this case with defense counsel if Government attorneys were present?

A. Secretary Ickes instructed me to talk with counsel for the defendants only in the presence of a representative of the Department of Justice.

The Court: He got instructions from his superior officer, and I think he better carry them out. If you talk with counsel for the defendants, do so in the presence of Government attorneys. I don't want you to lose your job.

(Documents submitted by Mr. Donovan, marked Exhibits 915 and 916 for identification.)

Mr. Donovan: Those are marked for identification in connection with our offer of proof.

(After a conference with the witness in the presence of Government counsel the following offer of proof was made.)

(The following proceedings were had in the absence of the jury.)

Mr. Donovan: This is an offer of proof in question and answer form which would be made in question and answer form if Dr. Frey were on the stand; and I ask that it be considered in that form now: (Reading offer of proof.)

"On May 13 and 14, 1935, the Petroleum Ad- 2434 ministrative Board had a conference with Mr. G. E. Willy and Mr. S. M. Vockel of the Waverly Oil Works of Pittsburgh, Pennsylvania.

"On behalf of the Petroleum Administrative Board those present were Mr. Charles Fahy, Chairman of the Board, and Mr. E. B. Swanson, and myself, members of the Board.

"At the conference on May 13th, Mr. Vockel did most of the talking. He stated that in the prior conference that he had with the Petroleum Administrative Board on April 8, 1934, he had told the Board that he wanted a 30¢ cut in the price of Pennsylvania grade crude oil. Mr. Vockel said that at this prior meeting the Petroleum Administrative Board had informed him that if he waited 30 days they felt that the situation of the small Pennsylvania refiner would be alleviated and that they had said that the prices of the refinery products in Pennsylvania would rise because of the useful and constructive work that had been going on in the southwestern states under the sponsorship of the Stabilization Committee of the Planning and Coordination Committee in connection with the refinery gasoline market, and that within 30 days this condition would benefit the entire oil industry and would be reflected back in the Pennsylvania prices. Mr. Vockel said that the 30 days had elapsed and the condition of the small Pennsylvania refiner was just the same. He then again asked the Board to take steps to reduce the price of Pennsylvania grade crude oil 30¢ a barrel. 2435

"We told Mr. Vockel that he would have to wait a little while longer, and that we still expected that the work of the Stabilization Committee in connection with refinery gasoline in the southwestern states would have a good effect on the prices for finished products in Pennsylvania within 30 days. We did not tell them that we would do anything about causing the price of crude oil in Pennsylvania to be cut. That is all I can recall about this conference. Mr. Vockel and Mr. Willy then left the Board.

"There was another conference on May 14, 1935. Mr. Willy and Mr. Vockel came back to the Petroleum Administrative Board. Mr. Fahy and Mr. Swanson were present, and I was present. The conference only lasted a few minutes.

"Mr. Fahy said that the Petroleum Administrative Board had been thinking over the situation of the Pennsylvania refiner since the conference the day before and had arrived at a solution of the difficulties. Mr. Fahy then said that he was sending a telegram to Mr. Arnott, who was in charge of stabilization work, asking him to go into Pennsylvania and work out some immediate adjustment to save the small Pennsylvania refiner. 2436

"No member of the Petroleum Administrative Board explained to Mr. Vockel and Mr. Willy what steps Mr. Arnott was to take in connection with the refinery lubricant market in Pennsylvania. We told them that we thought Mr. Arnott would look into the situation and would be able to help them in a very short time. That was all there was to the conference.

"On May 14, 1935, I was familiar with the situation of the small Pennsylvania refiner and the difficulties in the Pennsylvania situation.

"The price of crude oil was then below the normal price. I think it was selling in western Pennsylvania at $2.02 a barrel. The prices of refined products were very low and had been declining for some months. The small Pennsylvania refiners were losing 30¢ to 40¢ on each barrel of crude oil that ran through their stills.
2437 There had been overproduction of Pennsylvania grade crude oil and too much crude oil had been run through stills. The result of this was that excessive inventories of lubricants had been built up and were in the hands of the small Pennsylvania refiners and in the hands of the larger refiners. These products could be sold only at distress prices. A number of the small Pennsylvania refiners were going out of business and some of these refiners had been in business for a great many years.

"Both Mr. Swanson and Mr. Fahy at that time knew about the plight of the refiners in Pennsylvania. Messrs. Meyers and Marshall probably did not because they had been away from Washington for some months.

"As a member of the Petroleum Administrative Board I discussed the telegram Mr. Fahy sent to Mr. Arnott on May 14, 1935, with Mr. Fahy and Mr. Swanson before it was sent.

"The Petroleum Administrative Board wanted Mr. Arnott to go into Pennsylvania to help out the refinery lubricant market by the same method that the Stabilization Committee had taken in the Mid-Continent area in regard to the
2438 refinery price of gasoline. Because of the excessive inventories of Pennsylvania lubricants we believe that Mr. Arnott could make some arrangements whereby the major companies would

purchase these excessive lubricants which were overhanging the market in Pennsylvania from the small independent refiner and in that way both relieve the plight of the independent refiner and cause the prices of refinery finished products to rise to their proper parity with the price of Pennsylvania grade crude oil.

"Before sending the telegram of May 14, 1935, the Petroleum Administrative Board considered that Mr. Arnott had the Authority to undertake this work in Pennsylvania because it was part of the stabilization work which he was authorized to undertake.

"Thereafter Mr. Arnott undertook to help the Pennsylvania refiners. He made some survey in Pennsylvania and called a meeting of the Pennsylvania refiners for May 28, 1935, at the Waldorf Hotel in New York. Mr. Swanson was invited to that meeting, but the day before the Schechter decision was passed and consequently Mr. Swanson did not go. It was my understanding that the meeting was never held."

2439 Mr. Chaffetz: That proffer is objected to, for the reasons previously stated.

The Court: Objection sustained. Exception allowed.

(The following proceedings were had in the presence of the jury.)

Mr. Donovan: I would also like to have marked for identification the Annual Report of the Secretary of the Interior for the fiscal year ending June 30, 1935, with particular attention to the chapter entitled "Petroleum Administrative Board, Charles Fahy, Chairman," and more particularly to page 36 of that report.

(Document referred to be marked Exhibit 917 for identification.)

Mr. Donovan: Your Honor, in connection with the Stabilization Report I also offer this report in evidence.

Mr. Craword: Objected to as immaterial and irrelevant.

The Court: The Court will reserve its ruling on that.

Mr. Chaffetz: We are familiar with this. We object to it on the ground it is incompetent, irrele-

vant and immaterial. They don't show anything at
2440 all with respect to the issues in this case. They have nothing to do with it, and they don't even show with respect to what was taken up there, that anything was authorized of the kind of thing that is involved here.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, accepting the ruling, I only say that I want to offer those as administrative authority—administrative recognition of authority.

Mr. Chaffetz: I don't see anything—I don't see any basis for the statement of counsel now.

The Court: You may make your offer of proof.

By Mr. Donovan

Mr. Arnott appointed the Stabilization Committee under authority of the letter of July 20, 1934.

Mr. Donovan: Q. Now, did you consider that the letter, you referred to of July 20, 1934, from Mr. Ickes to Mr. Arnott, gave authority to Mr. Arnott, if the circumstances required, to deal with the problem of stabilization and markets, including the tank car market?

Mr. Crawford: I suppose that letter tells its own story. I object to it.

Mr. Donovan: I am only asking for his construction of that letter.

2441 Mr. Lewin: I would rather have the Court's construction.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, I simply renew my offer again, of this letter marked Exhibit 891 from Mr. Ickes to Mr. Arnott.

Mr. Chaffetz: We object to it. That is the same letter that was offered before. We object to it for the same reason.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Would you tell us what interpretation you, as a member of the Petroleum Administrative Board, charged with the Marketing Division, placed upon that letter of Mr. Ickes to Mr. Arnott?

Mr. Lewin: That is the same question, your

Honor. That is objected to. The letter speaks for itself. It has already been construed by the Court. The construction was that it was unambiguous and it had nothing to do with the issues in this case, as I understand it.

The Court: Objection sustained. Exception allowed.

2442 *Cross-Examination by Mr. Chaffetz.*

Q. You testified that you have exhausted your recollection and you have told us everything that Mr. Arnott said to you on that occasion, on March 12th; is that right?

A. Everything pertaining to buying.

The occasion for Mr. Arnott talking with the members of the Committee on that day was to report on general stabilization. I would not say that he mentioned this subject of buying somewhat casually and incidentally on March 12th, after reporting on his stabilization activities.

Q. Didn't he say to you that he was conducting some buying activities on his own responsibility and that he didn't want your approval—and by "you" I mean the approval of the Board—and didn't he say to you that he didn't want your blessing or your criticism?

Mr. Donovan: Awful lot of questions in that one question.

The Court: The question is clear. You may answer.

The Witness: Mr. Arnott said that—

Mr. Chaffetz: No, no.

The Court: Just answer that question.

The Witness: Repeat it, please.

2443 (Question read.)

The Court: All right. Answer that.

The Witness: Mr. Arnott stated—

Mr. Crawford: I think we are entitled to an answer to that question.

The Witness: I am trying to. If I don't give it—

The Court: Can you answer that yes or no?

The Witness: I can't answer those four questions yes or no.

The Court: Break that up.

Mr. Chaffetz: Take the first one:

Q. Did he say he was doing this sort of thing on his own responsibility?

A. Yes.

Q. Didn't he say it was purely an industrial activity and not a Code activity?

A. He did not.

Q. Are you sure of that?

A. I am.

Q. Did you ever say to anybody that he said that it was an industrial activity and not a Code activity?

A. I said that it was work that was being done by the industry—if that is what you mean.

Q. Did you say that it was being done unofficially and had no official standing?

2444 A. Yes.

Q. Yes. What do you mean by that?

A. What I said.

Q. And what does that mean?

A. That it was not definitely approved by anybody in the Petroleum Administrative Board nor by the Secretary of Interior.

Q. And he stated to you specifically that he didn't want your approval; isn't that true?

Mr. Francis: May it please the Court, I think the Court ought to stop Government counsel from using bulldozing methods on this witness. It is certainly highly improper.

Mr. Lewin: This witness can take care of himself.

The Court: He may answer that.

Mr. Francis: I want an exception.

Mr. Chaffetz: (To the witness) Is that true?

The Witness: Repeat it again, please.

The Court: Will the reporter read the question.

(Whereupon the question was read by the reporter.)

A. Mr. Arnott stated that he did not ask our blessing.

Mr. Chaffetz: Yes.

Q. And he told you, also, that he didn't want any criticism from you or from any of the members of your Board; isn't that true?

2445 A. I don't think so.

Q. Have you ever said any such thing as that to anybody else?

A. I can't recall.

Q. Did Mr. Arnott say that to you at any other time?

A. What—that he didn't want any criticism?

Q. Yes, he didn't want any criticisms or suggestions from you or from the members of the board.

Mr. Donovan: About the buying program, you are asking? Let's find out about that. Is it about the buying program?

Mr. Chaffetz: Yes, about the buying program.

The Witness: I don't think—Mr. Arnott didn't ask our approval, and he didn't ask any constructive criticism.

Mr. Chaffetz: Q. He didn't ask for any suggestions or criticism whatsoever from you with respect to the buying programs?

A. He didn't ask for it.

Q. And he said he didn't want it?

A. He didn't ask for our blessing.

Q. Yes. And he said he didn't want—he didn't ask for your blessing, and he also said he didn't want any suggestions from you, or criticism; isn't that true?

2446 A. I can't remember that.

Q. I ask you whether you remember Mr. Arnott saying that on any occasion, at that meeting, or any subsequent occasion, whether he didn't say to you—whether he didn't say to you—that he didn't invite any suggestions or criticisms from you or other members of the board.

Mr. Donovan: I would like to know if that relates to the buying program.

Mr. Chaffetz: With respect to the buying program.

A. If I ever did make such a statement, I have forgotten it.

The Court: The question is, did he ever make such a statement to you?

The Witness: I can't be sure.

I suppose Mr. Fahy raised the question as to whether there was a question of a violation of the anti-trust law involved because in the letter of July 20 it was pointed out that the stabilization work should not do anything in violation of the anti-trust laws; and naturally Mr. Fahy would raise the question, or sort of throw out the suggestion, have you considered it from this aspect. Mr. Fahy is a lawyer.

2447 Q. Dr. Frey, I want to try to clear up one or two matters that we were dealing with at the close of your previous testimony before adjournment. Do you recall when you were before the grand jury you testified in part as follows:

> "It was definitely stated to him"—that is, Mr. Arnott in your presence—"that the letter of July 20th gave him no authority, that he had no authority under the Code, and anything that was being done in that respect"—that is, with respect to the buying program—"was being done by him on his own responsibility?
>
> "Answer: And the"—

Mr. Donovan: Now, if it please the Court, I object to this form of examination, anything to do with the grand jury minutes, and I submit, as I submitted before, that those minutes if brought to the attention of Dr. Frey should be brought by the minutes themselves and not in this manner of questioning. I make the further objection so we won't have any question about this, and if he is going to ask him anything about any conference, we must place it as to what date—

Mr. Chaffetz: I am going to ask him.

Mr. Donovan: Because I am going to object to anything beyond our direct examination. Your 2448 Honor held me down to the March 12th conference, and did not permit me to go into all that occurred at that time. Now, I am going to object to anything other than March 12th.

Mr. Crawford: Although that may be true, that his direct examination was confined somewhat to March 12th, nevertheless if another conference at another time and place, or a conversation occurred which might reflect on and discredit or entirely break down what he testified to about March 12th, we are not shut out under the rules of cross-examination from going into that.

Mr. Donovan: I want to state my objection, if I may, to this manner of directing his attention to the grand jury minutes, and in order that I may be accurate about it I want to refer particularly to the objection already made upon the direct case of prosecution at R. pp. 373-74, 446, 630, 680-81, 682.

We object to the use of the grand jury testimony of this witness because the transcript of testimony of the witness before the grand jury has not been shown to be properly authenticated, and there is

no showing that such testimony was reduced to writing in the presence of the witness by the right authority, or examined by him at the time, and
2449 furthermore the record of such testimony, even if properly authenticated when contemporaneous with the facts or occurrences as to which he is now asked to testify and give such testimony was given at a time too remote from the occurrence of the fact inquired about, and likewise too remote from the date of trial to render said grand jury testimony competent for the purpose of refreshing the recollection of the witness, within the rule of *Putman* v. *United States*, 162 U. S. 687.

Mr. Thomas: I would like to add to that objection this: The use that is being made of the testimony before the grand jury in this instance is impeachment and not to refresh the recollection of the witness. If he wants to refresh the recollection of the witness the proper way to do it is to show the witness the testimony in the absence of the jury.

Mr. Chaffetz: Let me ask this question of the witness—

Mr. Donovan: Furthermore, your Honor, there is no showing here that this question is relevant to anything he said upon direct, and furthermore, there is no showing that the witness needs to have his recollection refreshed.

2450 Mr. Chaffetz: I think you will recall the proceedings before the recess. The question that I just read to the witness bears directly on the entire substance of this witness' testimony. The only purpose for which he was called was to talk about the report that he says Mr. Arnott made to him, and that testimony was offered by the defense for that purpose. Now, this deals specifically with just what it is that was said by Mr. Arnott, and what the effect is of what he says. I think it is relevant to the entire direct examination. On the question of showing the minutes—

The Court: Are you offering it to refresh his memory?

Mr. Chaffetz: To refresh his memory.

Mr. Donovan: He has not shown his recollection needs refreshing. That is the first ground, and it is not the proper way to do it.

Mr. Chaffetz: I think I have shown on the previous day—

The Court: Will you read some of the last of the cross examination, just to refresh our memory? Not the grand jury testimony, but the cross examination. How many pages is there of this witness' testimony?

Mr. Chaffetz: All his testimony is quite long, your Honor, from page 1263 to 1294.

2451 Mr. Lewin: Here is a question that may bear on that: Mr. Chaffetz' first question on cross examination was this: "Dr. Frey, you testified that you have exhausted your recollection and you have told us everything that Mr. Arnott said to you on that occasion, on March 12; isn't that right?" And his answer is: "Everything pertaining to buying."

Mr. Francis: That refers to a letter from Arnott that you mentioned.

The Court: Will you read the question now before the witness?

Mr. Chaffetz: The question now is whether he recalls having given this testimony.

Mr. Donovan: I have made my objection to that, your Honor.

The Court: Yes.

Mr. Chaffetz: It is this: There are three questions and answers about the same subject successively that I wanted to call to his mind:

> "Was it definitely stated to him in your presence"—that is, to Mr. Arnott—"that the letter of July 20th gave him no authority and that he had no authority under the code, and anything that was being done in that respect" —referring to buying programs—"was being done by him"—

2452 Mr. Donovan: What do you mean? Is that in your question, referring to buying programs?

Mr. Chaffetz: It is in my question.

Mr. Donovan: I mean is it in your question, part of your question?

Mr. Chaffetz: I am asking this witness whether he remembers having given such testimony.

Mr. Donovan: Your Honor has heard my objection. I am not going to—

Mr. Chaffetz: "And anything that was being done in that respect was being done by him on his own responsibility?

"Answer: Absolutely."

The Court: Are you making your objection?

Mr. Donovan: I made my objection, and I move to strike out that question, furthermore, your Honor.

Mr. Chaffetz: I will withdraw the question, and ask another question.

Mr. Donovan: If it please the Court, counsel now withdraws the question, having submitted it, and I ask the court to instruct the jury to disregard that question.

The Court: The jury will disregard that question and all that was said with reference to it.

2453 Mr. Chaffetz: Q. Dr. Frey, you were present at a conference on the day that court last adjourned, together with certain of opposing counsel and certain of Government counsel isn't that true?

A. Yes, sir.

Q. That conference was called for the purpose of giving the defense counsel an opportunity to ask you certain questions; isn't that true?

A. Yes, sir.

Q. In the presence of Government counsel?

A. Yes, sir.

Q. And during that conference did I read to you a small portion of your grand jury testimony?

It is true that you did read to me a portion of my grand jury testimony, and I said I remembered having so testified.

Q. Can you remember what the substance of that was that you said you remembered giving before the grand jury?

Mr. Donovan: If it please the Court, I object to this further unless it is directed to what the witness testified on his direct examination, and is directed particularly to March 12.

The Court: You may answer that question. Objection overruled. Exception allowed.

2454 Mr. Chaffetz: Q. I asked you whether you remembered the substance of that testimony.

A. Yes, I do.

Q. Can you state it?

Mr. Donovan: I object to that, your Honor.

The Court: I think you better ask your question.

Mr. Donovan: Your Honor, I think we may save time and trouble if I make the objection now. I make it particularly on the ground that it is obvious that this is done for the purpose of refreshing the recollection of the witness, and the witness, as I understand it, does not need his recollection refreshed.

The Court: It now appears the witness' recollection has been refreshed.

Mr. Donovan: That is what I object to. There is no showing he needs his recollection refreshed.

Q. Dr. Frey, do you recall that on some occasions between March and June of 1935 that it was definitely stated by a member of the Petroleum Administrative Board to Mr. Arnott in your presence that the letter of July 20, 1934, from Mr. Ickes to Mr. Arnott gave him no authority with respect to the operation of a buying program—

Mr. Donovan: I object to that.

2455 Mr. Chaffetz: Q. —and that Mr. Arnott had no authority under the Code, and anything that was being done by Mr. Arnott in that respect was being done by him on his own responsibility?

Mr. Donovan: In the first place, your Honor, the letter of July 20th was excluded. If he is going to ask the witness anything about the letter of July 20th, we ought to have it in evidence. That is number one.

Number two: There is no reference here specifically to any date other than March 12th. If he is going to any date other than March 12th, I have a further objection I wish to make, and upon which I wish to make argument, which I cannot make with propriety before this jury.

The Court: March 12th was the date he made the report?

Mr. Donovan: Yes, your Honor.

Mr. Chaffetz: Yes.

The Court: I think I have confined the defense to that report, and that report only.

Mr. Donovan: That is right.

Mr. Chaffetz: No, your Honor, the witness testified that he was in contact with Mr. Arnott down until June; and the witness was never asked 2456 by counsel about the conference of May 8th. Had they asked, we never would have objected.

The Court: My recollection was that up to now most of the witness' testimony was with relation to the report Mr. Arnott made to the Board.

Mr. Chaffetz: I ask the witness whether the subject matter of the questions I have been dealing with didn't relate to the March 12th meeting.

A. March 12th and May 8th.

Q. And May 8th, both?

A. Yes.

Mr. Chaffetz: Very well, then.

The Court: Objection sustained.

Mr. Chaffetz: Q. And do you recall at the March 12th meeting, that it was definitely stated to Mr. Arnott in your presence that the letter of July 20th gave him no authority, that he had no authority under the Code, and anything that was being done by him in respect to buying programs was being done by him on his own responsibility?

Mr. Donovan: Are you directing that to March 12th, now?

The Court: Yes, March 12th.

Mr. Chaffetz: Directing that to March 12th.

The Court: You may answer that.

2457 Mr. Donovan: Your Honor, I desire to call your Honor's attention to the fact that the letter is not in evidence.

The Court: I know that.

Mr. Chaffetz: Yes, and this shows why it shouldn't be in evidence.

The Court: This deals with the report.

The Witness: As I recall, the question of whether Mr. Arnott was operating under the letter of May, or—

Mr. Crawford: Object to that.

The Court: You understood that question?

A. Yes, sir.

The Court: Well, answer it.

Mr. Thomas: Do you want the question read, Doctor?

The Court: Do you want the question read?

The Witness: Yes, please.

The Court: Read the question.

(Question read by Reporter.)

A. I can't remember that that statement was made March 12th.

Mr. Chaffetz: Q. Do you think it may have been made on March 12th?

A. There is a possibility that it may have, but I can't recall that it was.

Q. Let me ask you this: When I asked you that question in this conference with opposing counsel, 2458 I asked you when you thought that statement was made, didn't I?

A. I don't remember.

Q. Don't you recall that you answered that it was made on March 12th? Wasn't that your best recollection when I first asked you that question.

A. Well, Mr. Chaffetz, part of it was in March 12th, but not all of it. The reason I answered the way I did is because I think part of it was on March 12th and part of it was on May 8th.

Mr. Chaffetz: All right—

Mr. Donovan: Now, I move to strike out that portion of the answer that related to May 8th.

The Court: It may stand. Exception allowed.

Mr. Chaffetz: Q. And you can't recall now which part was on March 12th, and which part was on May 8th; is that right?

Mr. Donovan: Did your Honor rule on that motion?

The Court: Yes, objection overruled, as to striking out that part. Exception by defendants.

Mr. Donovan: Then I ask also that the jury be instructed to disregard that portion of the answer that relates to May 8th.

The Court: Well, he simply says he doesn't know whether the statement was all made on March 12th or May 8th.

2459 The Witness: No, your Honor, part of it was made on March 12th, and part on May 8th.

Q. Do you know what part was made on March 12th?

A. I think I do.

Q. What was it?

A. The "anything that was being done by him was being done on his own responsibility" was made on March 12th.

Mr. Chaffetz: Q. And all the rest was made on May 8th.

A. May 8th.

Mr. Donovan: Now, may I ask a preliminary question, in view of this examination?

The Court: Yes, you may.

Mr. Donovan: Q. Did the meeting of May 8th, Dr. Frey, relate to buying, or did it relate to some other subject matter?

A. The question of buying was incidental at the May 8th meeting. The main purpose of the May 8th meeting was to discuss methods to be used by the Stabilization Committee in the carrying on of meetings and various things of that sort. It was not specifically directed to the buying.

2460 Q. Then I ask you, did the conference of May 8th relate to the subject you have discussed, and not to buying?

A. It is related to the subject which I have described, but there was an incidental discussion on buying.

Q. And did the remark to which you have referred relate to buying, or did it relate to the subject matter you have discussed?

A. It related to buying.

Mr. Chaffetz: Q. At the March 12th meeting, didn't Mr. Arnott state in his own words that what he was doing with respect to buying, he was doing on his own responsibility?

A. I have always answered that the same way—

The Court: Well, answer it now.

A. (Continuing)—that Mr. Arnott did not ask our authority for the buying program, and that he was doing it on his own responsibility.

Mr. Donovan: Q. Is that what he said, or did you characterize it—

A. That is a characterization. It is not an exact statement. I don't remember exactly what the words were that Mr. Arnott used.

Mr. Chaffetz: Q. It is a characterization of what Mr. Arnott said?

2461 A. That is right.

Q. All right. And it is your best recollection of what he said?

A. Yes.

I was not familiar with the detailed operation of the Tank Car Stabilization Committee. The Committee did not report to me from time to time. I did not attend any meetings of the Committee.

Q. On how many occasions after March 12th did Mr. Arnott report to you with respect to major company buying?

Mr. Donovan: Objection; it is beyond the direct examination, your Honor.

Mr. Lewin: He said he reported to him right along.

Mr. Chaffetz: I think he testified on direct examination, talking generally, not with respect to buying, that Mr. Arnott reported to him from time to time.

Mr. Donovan: No. He said, as I remember the testimony of the witness, he said that he kept touch with the stabilization activities under the Committee.

Mr. Chaffetz: That is right, and I want to see—

The Court: Objection overruled. Exception allowed.

2462 Mr. Donovan: And he is asking for a conference—

The Court: Overruled. He may answer. Read the question again, please.

(Question read.)

A. Several times, I don't remember exactly how many.

The occasions of those reports after March 12th were usually informal occasions when I happened to meet Mr. Arnott, or when he happened to be in the office. The only time he came in to report to us after March 12th in the way I say he reported on March 12th, when he reported at any length, was May 8th.

Q. Will you tell us how that meeting of May 8th came to be called?

Mr. Donovan: Now, if it please the Court: For the reasons I have already said at R. p. 1299, I object to that question, and if counsel persists in it, I must ask that we be permitted to make argument on it, and I think it could not be properly made before the jury.

Mr. Chaffetz: I think there is no—Colonel Donovan himself just asked the witness the question a little while ago, as to what the purpose of the May 8th conference was, and the witness answered; and he now states that he didn't state the full purpose.

2463 Mr. Donovan: Well, I make that objection, your Honor, and I ask permission that we submit argument on it.

The Court: You can, but I think we ought to find out all about it. You have asked a part; now let's find out—

Mr. Donovan: Well, your Honor, it relates to a subject that has no materiality to this case, and it is something that affects these defendants very materially, and I think that your Honor should be advised before you make a ruling on it.

The Court: Well, the jury may retire for a few moments.

(Jury retires.)

(During the course of argument before the Court the following statements were made by counsel:)

Mr. Dorr: We are not here, your Honor,—we are not here saying that we have got an iota of immunity out of the letter of July 20th, or anything else. That is not our claim, never has been. We are here to say that that is important as showing how these voluntary cooperative efforts came into effect. We are here to say that these gentlemen, the Petroleum Administration Board, thought that what we were doing was useful, and useful in the stabilization of retail markets because distress gasoline, sold as it 2464 was, was one of the contributing causes of these very price wars that the Administration was setting out to carry out. We do not claim for an instant that that letter of July 20th was a license to violate the anti-trust laws. Right in that letter, as your Honor has read, is a provision that there must be no agreement, and if Mr. Arnott finds that there is any agreement—comes across any agreement which violates—which tends toward a monopoly, which creates a monopoly, which is the very essence of the Sherman law, if any of those things appear in any of these stabilization efforts, he is to report it.

Now, we are not here claiming any immunity against the anti-trust laws. We don't think we need it.

The Court: Bring in the jury. The objections to the questions are overruled. Exception allowed.

Mr. Thomas: May there be considered the same objection relating to all the questions relating to this May 8th meeting and the same ruling?

The Court: Yes, the same objections are made and the same rulings.

(Thereupon the witness was recalled into the court room and resumed the stand, following which the jury was recalled into the court room and resumed the jury box.)

2465 Mr. Chaffetz: I will withdraw that question and ask another question.

The Court: All right.

Mr. Chaffetz: Q. Will you tell us more fully what the purpose was in calling the so-called May 8th conference?

Mr. Thomas: Now, if the Court please, I would like to have the same objections appear in the record at R. pp. 1302-04 to this question as was made to the question that was withdrawn and upon which your Honor ruled, and I would like to have the same ruling as your Honor made, and the objection need not be repeated, because I assume that the same objections will be made to the same questions as to this May 8th meeting and the same ruling by the Court.

The Court: The record may so show.

A. On April 22, we wrote a letter to Mr. Arnott, imposing three conditions on general stabilization work. At the same time we had had some complaints, especially from jobbers and also from dealers' association as to the employment of moratoria, the question of representation on stabilization committees, and some protest as to the closed meetings, or sometimes called secret meetings, which were held by stabilization committees.

2466 The stabilization committee objected to our letter of April 22nd, because they didn't think it was practical to operate under the three conditions which we imposed, and their coming to Washington to talk with us at that time was primarily to see if something couldn't be done to change those conditions so that it would be possible to work more effectively in stabilization.

It was contended that it was not always possible to have a government representative present. It was also contended that it was not always desirable to have all elements involved present at any one meeting. There were a number of considerations of that type, and this meeting of May 8th was primarily on the general problem of stabilization.

Do you want me to go on with their conclusions?

Q. No.

Mr. Donovan: Your Honor, it seems to me that if we are going into the May 8th meeting, we ought to have the whole story of May 8th.

Mr. Chaffetz: I asked only one question, your Honor. That was the only question.

A. The purpose was to adjust these difficulties which had arisen in stabilization.

Q. And wasn't the purpose also to find out just
2467 what it was that Mr. Arnott and his committees were doing, because you didn't know?

A. We always wanted to know what Mr. Arnott was doing and didn't always know.

Q. And specifically when you called this meeting, didn't you call it for the purpose of asking him to tell you what it was he was doing so that you would know?

A. Yes. We had reports from our field men as to what was being done, and we wanted Mr. Arnott to confirm or deny.

Q. Did you know—did you think you knew all the things he was doing?

A. No, sir.

Q. You thought you didn't know, isn't that right?

A. There were so many things being done, we couldn't have known everything.

Q. Didn't you think you were calling Mr. Arnott on the carpet for his failure to keep you informed?

Mr. Donovan: I object to any such characterization and ask that the jury be instructed to disregard it.

Mr. Chaffetz: Cross-examination.

Mr. Donovan: I don't care what kind of examination it is. It is an improper question.

2468 Mr. Chaffetz: I am trying to get the facts.

The Court: This witness may answer that. Exception allowed.

A. Well, if you want to put it that way, Mr. Arnott was always on the carpet, as far as we were concerned.

Q. I didn't ask you whether he was always on the carpet. I wish you would answer my question: In calling that specific conference on May 8th, wasn't your Board calling Mr. Arnott on the carpet to request him to explain to you what he had been doing?

A. Yes.

Mr. Chaffetz: I want to know only what I want to know about that conference. If he wants to ask additional questions—I asked him what representa-

Mr. J. W. Carnes was present at that meeting. He is vice-president in charge of sales of Sinclair Refining Company, and, as far as I know, he is a defendant in this case. I never looked at a complete list of the defendants. Mr. Allan Jackson was there. He is vice-president of Standard Oil Company of Indiana, and was occupying that position at that time. Mr. H. T. Ashton was there. I am not certain of Mr. Ashton's position, but I know he is connected with Socony-Vacuum in one of the subsidiaries, and was
2469 at the time. I don't know his official position. Mr. Arnott was there.

I told you at that meeting there was some discussion with respect to buying programs.

Q. And I ask you whether at that meeting with respect to buying programs, it wasn't stated to Mr. Arnott in your presence that he had no authority under the Code or under the letter of July 20th to operate any buying programs?

A. I don't know whether that statement was made exactly that way, but that subject matter of that type was incident to the conference.

Q. And that was the substance of what was said to him?

A. Yes.

Q. In your presence?

A. Yes.

The Court: Q. By whom?

A. Mr. Fahy.

Mr. Chaffetz: Q. And did not Mr. Arnott expressly state that he was not acting under any governmental authority in the operation of his buying program or buying programs?

A. He didn't put it that way. But he didn't ask for any authority from us in any of his operations.

Q. Do you remember Mr. Meyers being present at that meeting?

2470 A. I don't recall that he was.

Q. I think you are right. I don't think he was. Do you remember Mr. Arnott turning to anybody in that meeting and saying picturesquely, "We do not ask your blessing"?

A. That is my characterization of Mr. Arnott's conversation.

Q. At that meeting of May 8th?

A. That—well—I made that characterization on the meeting of March 12th. As you remember, I wrote to Mr. Meyers on March—

Q. Well, we are past March 12th now. I want to know only what was said at that meeting on May 8th. Now, I ask you whether Mr. Arnott didn't use some such language on May 8th with respect to his buying programs?

A. It is entirely possible that he did, but I characterized that conversation as of March 12th.

Q. You can't recall whether he said substantially the same thing at the May 8th conference?

A. Oh, he probably did, but I can't say for sure.

Q. Did you at that meeting of May 8th, or any time between March 12th and May 8th, have any discussion with Mr. Carnes with respect to the buying program?

Mr. Thomas: Objected to. Not cross-examination.

2471 Mr. Donovan: Certainly that hasn't been opened up on direct examination.

Mr. Lewin: Mr. Carnes was present at that same meeting.

Mr. Donovan: That doesn't make any difference.

The Court: Overruled. Exception allowed.

A. I can't remember whether I saw Mr. Carnes between March 12th and May 8th or not. I may have, but I wouldn't be sure. I certainly saw Mr. Carnes sometime between March 12th and May 25th, but I don't know just exactly when.

Mr. Chaffetz: Q. Do you recall Mr. Carnes saying to you that his company, Sinclair Refining Company, was buying more gasoline than it had any immediate need for, but they felt they had to do it, in order to bring about stabilization?

Mr. Thomas: Objected to. Not cross-examination.

Mr. Chaffetz: The broad question was asked the witness on direct examination, "What was your contact with the activities of the Tank Car Stabilization Committee?" This is information that he got.

The Court: Objection overruled. Exception allowed.

2472 The Court: Mr. Carnes was a sales representative of Sinclair?

Mr. Chaffetz: Vice-president in charge of sales, of Sinclair Refining Company, shown in this case to be buying in the Mid-Continent buying program—

Mr. Lewin: And in East Texas.

Mr. Chaffetz: (Continuing)—and also in East Texas.

Mr. Thomas: And on the direct examination, no reference was made whatever to any conversation with Mr. Carnes, and I object to going into it at this time on cross-examination, because it isn't proper unless they make this man their own witness. If they want to make him their own witness, of course, that is different.

Mr. Chaffetz: Q. Wasn't Mr. Carnes a member of the General Stabilization Committee?

A. Yes, he was.

Mr. Chaffetz: Yes—

The Court: Objection overruled. You may answer. Exception allowed.

The Witness: Will you repeat the question, please?

(Question read.)

A. I remember that Mr. Carnes reported to 2473 me—or, not reported—it wasn't necessary for him to report—he said to me, one time when I saw him—exactly when, I don't know—that their company was continuing buying. I am not sure about the rest of the statement.

Mr. Chaffetz: Q. If your testimony before the grand jury was read to you, might that refresh your mind?

A. It wouldn't make any difference, because that was a year later, too, and I couldn't be positive.

Q. If you volunteered that testimony before the grand jury, without any introduction at all from anybody else, wouldn't that lead you to believe that you were telling the truth?

Mr. Donovan: I object to that question, your Honor, as a means of refreshing the recollection.

The Court: If you want to refresh his recollection, you may do so, if you want to ask him the question.

Mr. Lewin: Show that to the Court.

Mr. Chaffetz: If your Honor please—

Mr. Donovan: May it please the Court: If counsel intends asking that question, referring to the grand jury minutes, I make the same objection that 2474 I made before, your Honor, in relation to refreshing by means of grand jury minutes—

Mr. Chaffetz: I will ask the question—

Mr. Donovan: Just a minute—and the method that should be followed. Such objections appear at R. pp. 373-74, 446, 630, 680-81, 682, 1295-97.

Mr. Chaffetz: Q. I will ask this question: Between March and May, 1935, did you hear one man, Jack Carnes, say that they were buying more than they had any immediate need for, but they felt they had to do it in order to bring about stabilization?

Mr. Donovan: Now, if it please the Court: I submit to your Honor that this cannot be for the purpose of refreshing; it must be for the purpose of impeaching.

The Court: He is not reading now from the grand jury testimony, as I understand.

Mr. Donovan: Yes, he is, your Honor.

Mr. Francis: He is supposed to be.

The Court: He asked this as an independent question, as I understood, right now.

Mr. Donovan: But as he read that, he was holding in his hand what appeared to be grand jury minutes.

Mr. Chaffetz: You don't know that.

Mr. Donovan: I said what appeared to be.

2475. Mr. Chaffetz: And I understand, your Honor, that I have got to ask the direct question before I can use the grand jury minutes.

The Court: Yes. You may answer that question. Exception allowed.

(Question read by Reporter.)

A. It would have to be the same answer I made before. I do remember that Mr. Carnes talked with me, and he indicated that the Sinclair Company was buying gasoline. I can't remember for sure at this time whether he said that it was necessary for stabilization or not; that may have been said. If it was, I don't recall it exactly now.

Q. Do you recall testifying before the grand jury on July 21, 1936?

A. I remember testifying before the grand jury, somewhere about that time, yes.

Q. Yes. And you recall, before that grand jury, you were asked about conversations you may have had with different individuals; is that right?

Mr. Donovan: Well, I object, your Honor. It is very clear, it seems to me, and it must be to your Honor, that this is not for the purpose of refreshing recollection; this is for the purpose of impeachment.

Mr. Crawford: All right. That is what it is for. 2476

The Court: Well, let's find out.

Mr. Donovan: Then, if it is for impeachment, this is an improper way to do it.

The Court: As I understand, it is to refresh recollection.

Mr. Chaffetz: It is, your Honor.

Mr. Donovan: But counsel just said it was for the purpose of impeachment.

Mr. Chaffetz: I may use it for impeachment later on. At this stage, it is for the purpose of refreshing recollection.

Mr. Thomas: If you are asking it for the purpose of impeachment, we must ask that his document which you are using be marked for identification, and be made available to the defendants on the redirect examination.

Mr. Crawford: Counsel knows what he is doing it for, and I didn't, and I withdraw the statement that it was for impeachment purposes.

Mr. Francis: But it was so obvious to everybody in the court room that Mr. Crawford would have to characterize it for what it was.

Mr. Chaffetz: This testimony isn't going to do me any good for impeachment; I want it for affirmative evidence, if I can get it.

2477 Mr. Donovan: Your Honor, I still make the same objection I made at R. pp. 373-74, 446, 518-19, 630, 680-81, 682, 1295-97.

Mr. Chaffetz: The pending question, as I understand it is: Were you asked before the grand jury about conversations you may have had with various individuals who were named?

Mr. Donovan: Your Honor, I ask for a ruling.

The Court: Objection sustained. We are getting too close to the edge here. If you want that grand jury record in here, you will get it, I am afraid—

Mr. Chaffetz: I am not offering it for impeachment, your Honor. It won't do me any good for impeachment; I want it for affirmative evidence—

The Court: Yes.

Mr. Chaffetz: Q. I ask you this question now: If you volunteered such a statement to the grand jury at the time you were before the grand jury, then must that statement not have been true, and didn't you believe it to be true at the time you volunteered it?

Mr. Donovan: Now, if it please the Court: Just think of the ifs and the assumptions in that question. Furthermore, I object to it upon the ground 2478 that your Honor has already ruled on, when it had fewer ifs than it has now.

Mr. Chaffetz: It has only one if, and that is: If you said it, wasn't it true? That is all I am asking.

The Court: You may answer that. Exception allowed.

Mr. Thomas: Before the witness answers, I make the same objection which was made originally this morning, and read into the record by Colonel Donovan. I also object to it on the ground that it is not cross-examination; I object to it on the ground that it is impeachment, and the proper foundation has not been laid; and if the grand jury testimony is to be used in that manner, I ask that the testimony be marked for identification, and be made available to the defense so that we may have it for use on the redirect.

The Court: I think I will have to sustain the objection to that.

Mr. Kelleher: Ask him if he said it.

Mr. Chaffetz: Q. Did you state before the grand jury that you heard one man, Jack Carnes, say that they were buying more than they had any immmediate need for, but they felt they had to do it in order to bring about stabilization?

Mr. Thomas: I object to that.

2479 Mr. Wood: May I ask Mr. Chaffetz if he is reading from the grand jury minutes in framing that question?

Mr. Lewin: What difference does it make? He can phrase his question with reference to any notes he may have.

Mr. Francis: You don't mean to say that those are notes that he has there, do you?

Mr. Lewin: Of course, they are notes.

Mr. Wood: Your Honor, I am addressing my question to Mr. Chaffetz, and not to Mr. Lewin. May I ask Mr. Chaffetz if he is reading from the grand jury minutes?

Mr. Lewin: Don't answer it at all.

Mr. Chaffetz: I would rather not answer the question at this time; but I will answer, if your Honor instructs me to.

The Court: You may answer it.

Mr. Chaffetz: I am reading from the grand jury minutes.

Mr. Wood: Then I ask that the minutes be marked for identification, and be made available on the further examination of this witness, as it is perfectly apparent that the question is not asked for the purpose of refreshing recollection, but for the purpose of impeachment.

2480 Mr. Chaffetz: I can only re-affirm my statement that this is important testimony; I want it as affirmative testimony in the record. It is a long time ago, and I am trying to refresh the witness' memory.

The Court: All right. Objection overruled. Exception allowed.

Mr. Donovan: Then, your Honor, in view of the statement of the counsel that he wants it for affirmative testimony, grand jury questions and answers cannot be used for affirmative testimony. It can only be used for the purpose of refreshing recollection or for impeachment.

The Court: As I understand, counsel is now attempting to refresh the witness' memory; and he may do so by reference to the grand jury testimony.

Mr. Wood: He has asked that question twice, if your Honor please.

The Court: All right. Then let the witness answer it.

Mr. Wood: I renew my motion, and I would like a ruling on it, that the paper which Mr. Chaffetz has in his hand be marked for identification and be made available on the redirect examination of this witness.

The Court: Your motion is denied. Exception al-
2481 lowed.

Now, you have heard the question. Does that refresh your memory?

Mr. Chaffetz: No, your Honor. The question was, did he so testify when he was before the grand jury? That is the question.

Mr. Donovan: That is an improper question, your Honor. It is obvious that it is not being used for the purpose of refreshment.

Mr. Chaffetz: No. Then the next question will be whether it refreshes his recollection.

Mr. Lewin: Your Honor, that was just the form your Honor followed when we had the other witnesses—

The Court: Let me see that.

(Document purporting to be the transcript of testimony before the grand jury is handed to the Court by Mr. Chaffetz, and examined by the Court.)

Mr. Wood: In view of counsel's last question, I renew my motion that the paper be marked for identification, and be made available on redirect examination.

Mr. Francis: May the record now, your Honor, reflect that the Court is reading from the same document that Mr. Chaffetz was reading from?

The Court: Yes. I think the procedure we will follow in this case, a little later on, or now, if you wish—the witness may retire, and you may—the witness may retire to another room, and you may read that testimony to him that he gave before the grand jury, for the purpose of refreshing his memory, and then recall him later.

Mr. Chaffetz: We will do that later, your Honor.

The Court: All right.

Mr. Chaffetz: Q. Were any reports by Mr. Arnott or any member of any stabilization committee, with reference to buying programs, made to you after May 27, 1935?

A. No.

Mr. Chaffetz: That is all I have of this witness, your Honor, except for that one question; so, if we may have a recess, now, we will follow the procedure your Honor suggested.

The Court: We will take a recess.

(Following the recess, the following proceedings were had before the Court and jury.)

Mr. Chaffetz: Q. Now, I ask you, Dr. Frey, whether you recall having a conversation with Mr. J. W. Carnes in the spring of 1935 with respect to the buying programs?

A. Yes.

Q. Do you recall Mr. Carnes making a personal remark to you at that time to the effect that his com-

2483 pany, the Sinclair Refining Company, was buying more gasoline than it had any immediate need for, and that they were doing it in order to aid in bringing about stabilization?

A. I remember that he made the statement that they were buying gasoline, more gasoline than they had immediate need for. The last part of the question I cannot be sure about.

Redirect Examination by Mr. Donovan.

Q. When was it that you talked with Mr. Carnes?

A. I don't remember the date, but sometime between March 12th and May 25th.

Q. Did you tell him to stop buying.

A. No.

Q. Why didn't you tell him to stop?

Mr. Chaffetz. That is objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Could you have stopped him if you wanted to?

Mr. Chaffetz: That is objected to as incompetent, irrelevant and immaterial.

The Court: Same ruling. Exception allowed.

2484 The Court: Q. You had no authority, did you? Could you tell him to buy or not to buy?

A. If we had told him to stop that I think he would have.

Mr. Chaffetz: I ask that answer be stricken out. It is not responsive to your Honor's question.

The Court: It is not responsive. I asked you if you had any authority to stop him from buying?

A. No.

Mr. Chaffetz: Then I ask that answer be stricken out.

The Court: The answer may be stricken out. Exception allowed.

Mr. Donovan: Q. Then I ask you the question, if you had told him to stop would he have stopped?

Mr. Lewin: We object on the same ground.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Did you believe that buying was helpful to stabilization?

Mr. Chaffetz: That is objected to as incompetent, irrelevant and immaterial.

The Court: I will let him answer that.

A. Yes.

Those gentlemen who were present at the meeting
2485 of May 8th, and whom I have named, were members
of the Stabilization Committee of which Mr. Arnott was chairman. They were there in that capacity. James D. Collett, chairman of the P. and C. Committee, was present on that occasion.

Q. Was not the purpose of that meeting to discuss the so-called Chicago moratorium?

A. That was one of the subjects.

The Chicago moratorium was a recommendation on the part of the stabilization committee in Illinois to have a period in which there would not be any transfer of dealers between jobbers.

Q. That was the purpose of calling this meeting?

Mr. Chaffetz: That is objected to. We have what the witness said. It is contrary to his testimony, and is leading.

The Court: He said that was one of the things discussed.

Mr. Chaffetz: He said that was one of the things.

The Court: Objection sustained. Exception allowed.

I cannot recall that we had prepared an agenda or a schedule of what was to be discussed at that meeting. Mr. Shaughnessy, as I recall, did not prepare an agenda,
2486 but he did prepare a summary of stabilization work.

Q. You don't know whether or not he prepared any agenda or schedule for the meeting of May 8th? Do you recall that?

A. I think the question is rather as to the meaning of the word "agenda" there. It was not a definite program in the sense that you usually think of the word "agenda." It was a report made to Mr. Fahy by Mr. Shaughnessy covering the entire question of stabilization. That is, it was more comprehensive than just a program of events that was to be taken up.

I do not recall that before the meeting of May 8th, Mr. Shaughnessy prepared a memorandum or program or a list of matters that were to be discussed at the meeting of

May 8th. Mr. Shaughnessy was one of the attorneys of the P. A. B. at that time.

Q. Now, Doctor, did you as a member of the Petroleum Administrative Board consider the dumping of distress gasoline upon the market as an unfair practice in the oil industry?

Mr. Chaffetz: That is objected to. "Unfair practice" is a legal term. It is a question for the court and jury to decide what is fair and what is not fair. The question calls for a conclusion.

2487 Mr. Lewin: I was objecting to it on this ground: that after all the issue here, as we have debated so many times, is whether or not there was a conspiracy to fix prices. That is our issue. And if that was so, then it does not make any difference what anybody thought about the wisdom or unwisdom of dumping distress gasoline on the market. The term "distress gasoline" is susceptible of all kinds of construction. There is not anything here we think that could be gained by having Dr. Frey's personal opinion about whether it would be wise to stop the dumping of distress gasoline, if there was dumping of distress gasoline, all of which is assumed.

We think the question of the "rule of reason" so-called is eliminated from this case. There was some suggestion that perhaps this case might be one within the Appalachian Coals case. It is perfectly apparent now that it cannot be; that the evidence brings it within the Trenton Potteries case, which is the law of the land, and prevents these opinions from the people who had no authority to carry out their opinions.

It might be well to have had legislation to have dealt with lots of these things, but that is not the question before the court. The question is whether these people conspired to fix prices. 2488

Mr. Chaffetz: May I supplement my colleague's objection?

The Court: Yes.

Mr. Chaffetz: By pointing out that if this was an unfair practice, if it was, the way to deal with it was through the Code. The N. R. A. was in force at that time. The Code was supposed to have dealt with unfair practices. There was the provision in the Code, with which your Honor is familiar, that dealt with this subject, which indicated the way it was to be dealt with under the Code.

It appearing that there is no evidence that this was submitted under the Code, I think we go very far afield when we go into the question of one man's opinion as to what should be done or should not be done, when nothing was done in compliance with the law.

Mr. Donovan: Now, we desire to show exactly what was done between the members of the P. A. B. Board and these defendants in relation to this matter of distress gasoline, and as bearing upon that it is very important for us to show that this witness, who was a member of the P. A. B., who was charged specifically with dealing with these marketing con-2489 ditions, as to how he, in the administration of the marketing provisions of the Code, how he regarded the dumping of distress gasoline.

The Court: The objection is sustained. Exception allowed.

Mr. Donovan: Q. Did you, as a member of the Petroleum Administrative Board, know that there were large quantities of distress gasoline in the hands of independent refiners, both in the East Texas and in the Mid-Continent fields, during the period from February 1 to June 1, 1935?

Mr. Lewin: Now, your Honor, we submit that nothing short of approval could matter. His knowledge of what independent refiners had, or of their plight, or of how much they had or anything of the sort, couldn't possibly justify these gentlemen in buying up the gasoline, could it?

Mr Donovan: I am asking for his knowledge.

Mr. Chaffetz: There is the further objection that this isn't proper redirect examination. The subject wasn't gone into on either direct or cross, and Mr. Thomas was laying down some rules for me to follow on cross-examination.

The Court: Objection sustained. Exception allowed.

Q. Now, as a member of the Petroleum Admin-2490 istrative Board, did you, Dr. Frey, encourage industry action to bring about a parity between the price of crude oil and the tank car price of gasoline?

Mr. Chaffetz: That is objected to, in view of the testimony from this very witness that, with respect to the matters now in controversy, they specifically said in his presence that they were not asking for approval under the Code; that what they were doing, they were doing on their own responsibility—I submit to the Court that the question is immaterial and irrelevant.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Doctor, do you know of your own knowledge whether or not the chairman of the Petroleum Administrative Board, Mr. Fahy, urged industrial action to bring about this parity?

Mr. Lewin: That is the same objection; the same question exactly.

The Court: Q. Did Mr. Fahy have any more authority than any other member of the Board?

A. No, he didn't have any more authority.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Do you know whether or not 2491 Administrator Ickes urged industry action to bring about a parity between the price of crude and the price of gasoline?

Mr. Chaffetz: That is objected to. If he urged it, he obviously urged it in compliance with the law. If he told anybody to do anything, or asked anybody to do it, he did it lawfully.

The Court: Well, I will say this: What Mr. Ickes said after March, 1935, I think would be material. You may answer that, after March of 1935.

A. Secretary Ickes favored parity between crude—

Mr. Chaffetz: That isn't answering the question.

The Court: You just answer the question. You can answer that by yes or no; don't go off on a long speech.

A. Yes.

Q. What did he say?

Mr. Chaffetz: After March 12, 1935?

The Court: Q. And where did he say it, and whom did he say it to?

2492 A. He said it in the presence of members of the P. A. B. in his office, following the submission of the Blazer report—that would be following March 15th —that if a parity between crude oil prices and gasoline was not, did not come about soon, that within three or four weeks, he would call a meeting of representatives of the industry to see what could be done about it.

Mr. Donovan: Q. What was the Blazer report, that you speak of?

A. The Blazer report was the so-called report on small industries; it was called for by Secretary Ickes at our request, to get recommendations as to what should be done to overcome the difficulties which were then facing the industry.

Q. And who appointed that committee?

A. Secretary Ickes.

Q. And when did he appoint that committee?

A. I don't remember the exact date, but it must have been about January, 1935; somewhere early in January, 1935; I don't know the exact date.

Q. I show you Exhibit 894 in evidence, which is a letter dated February 1, from Charles Fahy, chairman, to Mr. I. A. O'Shaughnessy, Globe Oil & Refining Company, and direct your attention to this sentence:

2493 > "We are hoping soon for a report from the special committee which the Secretary appointed to look into this kind of thing and make recommendations."

Do you know whether or not that special committee to which he refers is the Blazer committee?

A. Yes, I think it was.

That Blazer committee made a report to Secretary Ickes.

(Document submitted by Mr. Donovan marked Exhibit 918 for identification.)

Exhibit 918 for identification is a copy of the Blazer report.

The members of that committee were on special duty for the Government. They were paid a per diem. I think I recall the membership: Mr. Blazer, Mr. Swensrud, Mr. Hoagland, Mr. Allen, and Mr. Fell. I didn't confer with that committee during the progress of their work. After their report was completed, I did not discuss that report with them as a committee, but I talked with various individuals on that committee afterwards. It was our object not to talk with them during the period that they were writing it.

I know the positions in the industry that those various members of the committee held. Mr. Blazer was president of Ashland Refining Company, an independent re-
2494 finer in Kentucky. Mr. Swensrud was in the office of the president of Standard Oil Company of Ohio. Mr. Allen was a member of the Central Proration Committee

of California. Mr. Hoagland was president of Spur Distributing Company. Mr. Fell was a labor leader. I am not so sure about Mr. Fell, because I think the Labor Relations Board suggested Mr. Fell.

Mr. Donovan: Referring to Exhibit 918 for identification, which is the so-called Blazer report, I offer in evidence pages 30 to 32, both inclusive.

Mr. Chaffetz: Q. Dr. Frey, was that Blazer report ever adopted by the Secretary of the Interior?

A. No action was taken on it.

Mr. Chaffetz: We object to the introduction of the report on that ground, your Honor.

The Court: Objection sustained. Exception allowed.

(Document submitted by Mr. Donovan marked Exhibit 919 for identification.)

Mr. Donovan: I offer in evidence EXHIBIT 919, which is the certified copy of a duplicate original of five letters, dated March 26, 1935, signed by Harold L. Ickes, and addressed to H. B. Fell; Mason Hoag-
2495 land; Robert E. Allen; Sidney Swensrud; and Paul G. Blazer, these being the gentlemen referred to by the witness as members of the Blazer Committee.

Your Honor, I would like to offer at the same time, because it may have a bearing upon your ruling, EXHIBIT 920 for identification, which is a duplicate original of a letter dated April 8, 1935, signed by Charles Fahy, who is the chairman of the P. A. B. Board, and sent to J. D. Collett, who was the chairman of the P. and C. Committee; and I offer that letter in evidence, which shows or indicates that action was taken on that report.

Mr. Chaffetz: I think it indicates that action was not taken; and I think the letter confirms the statement of the witness that no action was taken; and I object to each of these exhibits severally on the ground that they are immaterial and irrelevant.

(Document submitted by Mr. Donovan marked Exhibit 921 for identification.)

Mr. Donovan: I offer in evidence certified copy, being EXHIBIT 921 for identification, duplicate original of a telegram dated April 23, 1935, from Charles Fahy, who was chairman of the P. A. B.
2496 Board, to Paul G. Blazer, who is chairman of the Blazer Committee.

Mr. Chaffetz: I object to that, also on the same ground, your Honor; immaterial and irrelevant.

Mr. Donovan: And also a telegram dated April 23, 1935, from Paul G. Blazer to Charles Fahy, being a reply to that telegram.

(Document referred to marked Exhibit 922 for identification.)

Mr. Chaffetz: Same objection.

(Document submitted by Mr. Donovan marked Exhibit 923 for identification.)

Mr. Donovan: Press release, dated May 7, 1935, issued by the Department of the Interior, relative to the report of the Blazer Committee; and I offer that in evidence.

Mr. Chaffetz: I object to it on the same ground.

Mr. Donovan: Your Honor, may I say this: This goes directly to the point that knowledge of these activities were brought to the attention of the Secretary of the Interior; that a press release was issued in relation to the Blazer report, which referred to these activities; that action was taken by the P. A. B., in referring the matter to the P. and C. Committee; and that final action was not taken for the reason stated in that press release.

2497 The Court: (To the witness.) Q. You are familiar with that release, are you?

The Witness: A. Yes, I remember that.

The Court: Q. You are familiar with that release?

A. Yes, sir.

Q. Who gave that out?

A. It went through the Secretary's office. It originated in our office. That was the usual custom. We prepared all press releases, and then they went to the Secretary's office for approval.

Q. And were released from his office?

A. Released in his office. We had no section ourselves. Everything went through the publicity—I think it was the Publicity Division of the Department of the Interior, by way of the Secretary's office.

Mr. Chaffetz: Q. You don't mean to say that this went over the Secretary's desk personally; that he saw it personally?

A. I cannot say without following this thing through, whether the Secretary signed that personally or not, but it was the custom for him to do it.

Q. And isn't this true, that you and one or two other members of the board made the decision not to 2498 take any action on the Blazer report, and your decision was that you just publish it?

A. We decided not to answer the report one way or the other—that is, not to challenge the report nor to agree with it, but to put it out as is.

Q. Just to publish it?

A. Yes.

Q. And that is what you did?

A. Yes.

The Court: Q. Were all the press releases we are concerned here with issued out of the Secretary of the Interior's office? I am now referring to the release of the Blazer report.

A. The Blazer Committee was the Secretary's committee, and we tried to keep clear of it as far as we could because it was their recommendation to the Secretary, so it was the Secretary's office that was responsible.

Mr. Lewin: The press release itself shows on the top of it that it was issued from the Petroleum Administrative Board.

Mr. Chaffetz: Q. And didn't you testify five minutes ago in answer to my question that you and one or two members of the board were the ones who made the decision as to what to do about that report, and 2499 you decided to do nothing? Isn't that right?

A. We decided not to act, neither to take up the cudgel for it nor against it.

Q. That is right.

A. But to have it published.

Q. That is right, and that was what was done.

Mr. Donovan: Q. Whatever action you took, you had it published?

A. We did.

The Court: Q. Just how did that get into the hands of the press, who prepared it, and by what—(showing exhibit to witness)

A. Without having the full carbon I would not be positive, but the usual procedure was for this to be prepared by the Petroleum Administrative Board, usually signed by three members of the Board. It was then sent to the office of the Secretary. Now, just exactly what happened in the office of the Secretary I cannot be positive about, except that it went to his office first, and then from there to the press section or this mimeographing section where it is prepared for the press.

Q. Then who releases it?

A. It is released by the Department.

Q. Who in the Department of the Interior re-

2500 leased this particular document?

A. This would be released by the press section, that is, the information given to the information division; that was the official contact with the newspaper people.

The Court: Exhibits 919, 920, 921, 918, 922 and 923 have been offered in evidence. The objection of the government to all of these exhibits except Exhibit 923 is sustained. The objection to Exhibit 923 is overruled.

Mr. Donovan: I may have an exception to that, your Honor?

The Court: Yes.

(Document referred to is received in evidence as EXHIBIT 923, and read to the jury.)

(Document submitted by Mr. Donovan marked Exhibit 924 for identification.)

Mr. Chaffetz: You might tell the Court you are offering the Blazer report in another form.

Mr. Donovan: No, I am not. I never offered the Blazer report as a whole. I offered a particular part of the Blazer report. (Handing document to the Court.)

The Court: (To the witness) Q. Was that last release that was just read to the jury, was that published by the papers?

A. Yes, sir, I think quite extensively.

2501 (The Court reads document silently.)

Mr. Chaffetz: Does your Honor understand that is the same document you had in your hands a few minutes ago?

The Court: I know it is. Objection sustained. Exception allowed.

Mr. Donovan: Your Honor, now having offered it generally, I offer it specially for the purpose of showing that there was no secretiveness or furtiveness on the part of these defendants and that this particular activity of buying referred to in the report was brought directly to the attention of Secretary Ickes. I offer it specially for that purpose.

The Court: The objection is made, and the objection is sustained. Exception allowed.

Mr. Wood: Your Honor please, I would also like to offer this report, preceding report, in the evidence of this witness, as to his subsequent conversations and his beliefs in respect to various questions that have been asked of him on these further grounds:

First, upon the ground that they establish knowledge and acquiescence on the part of the governmental authorities, irrespective of whether, taken with other circumstances, they established approval.

2502 And also upon the ground that they bear on the reasonableness of the conduct of the defendants and of their objective.

The Court: The objection is sustained. Exception allowed.

Mr. Donovan: Q. Now, Doctor, after the meeting in March—after the meeting in March, on March 12, 1935, you told us that Mr. Arnott explained to you the buying activities that were then going on; is that correct? Am I right about that?

Mr. Lewin: Yes.

A. Yes.

Mr. Donovan: Q. And after that meeting, did you regard those buying activities as a contributing factor in bringing about parity between the price of crude and the price of gasoline?

Mr. Chaffetz: That is objected to, your Honor. It doesn't make any difference what this witness regarded.

Mr. Lewin: It is the same question. We had a number of those before. He wants this man's opinion.

Mr. Donovan: Here is the man who was in charge of marketing—

2503 Mr. Lewin: They ought to have gotten the opinion of Congress, we think.

Mr. Chaffetz: If they wanted his sanction or his approval, there was only one way to do it. When Mr. Arnott was in there that day, he should have said, "We want the approval of the Government." He said the contrary; and they can't now, two years later, get that approval through any subordinate of the department.

Mr. Donovan: I am not asking for any sanction at all, your Honor. I am asking if he believed that these activities were a contributing factor in bringing about parity between the price of crude and the price of gasoline.

Mr. Lewin: Suppose he believed it was so lily-white that it ought to be a portion of the Bible, it still wouldn't have any effect in this case. His opinion doesn't amount to a row of beans in this case; this gentleman's opinion couldn't possibly have any bearing.

The Court: This man had no authority to act, one way or the other. This witness has already testified that he didn't make any report of Mr. Arnott's report to him to Secretary Ickes. All right. Apparently you didn't attach enough importance to that report he made to you to convey it to Mr. Ickes; is 2504 that true?

A. No, sir.

Q. Then why didn't you convey it to Mr. Ickes?

A. I am not the responsible reporting officer. Mr. Fahy is the responsible reporting officer.

Q. Just what are your duties down there—what were your duties at this time?

A. I was a member of the Petroleum Administrative Board. Mr. Fahy was the chairman of the Petroleum Administrative Board.

Q. I asked you this morning if he had any more authority than you had on that Board, and you said no.

A. He had no more authority, but he was the direct reporting officer. We always reported through Mr. Fahy to the Secretary.

Q. In writing?

A. No, not necessarily; sometimes yes, and sometimes no; but Mr. Fahy, we always assumed, was the person that should go from our group and talk with the Secretary, or have us prepare a memorandum for his signature, for the Secretary. He had more responsibility; he didn't have any more authority. None of us were given the authority to sign anything for the Secretary.

Mr. Chaffetz: I think we have gotten away from 2505 the objection, your Honor. The objection—the question was, the narrow question, was this thing that was done outside the Code the contributing factor to carrying out what counsel referred to as an objective of the Code?

Your Honor has said that the only question, so far as the Court is concerned, is whether they acted within the Code in carrying out the objectives of the Code. If they did, it is immaterial whether what they did had any relation to those objectives.

The Court: The objection to this last question is sustained. Exception allowed.

By Mr. Donovan:

Distress gasoline is gasoline that is forced on the market for one circumstance or another, usually at a lower price than that prevailing in the market. It is almost always due to a condition of over-supply, where the refiner is not in a position to finance the holding of that gasoline over a longer period of time.

Q. Was it your observation, as a member of the Petroleum Administrative Board, that distress gasoline, the distress gasoline of independent refiners, was one of the obstacles which, in January and February, 1935, was preventing the price of gasoline
2506 from rising to parity with the price of $1.00 crude?

A. Yes.

Q. Was hot oil an obstacle to such parity at that time?

A. Up to March 1st, yes; that is, between the break-down of one—

Q. In January and February?

A. Yes.

Q. What was the policy of the Oil Administration in relation to these obstacles which existed to the restoration of the price of refined gasoline to parity with crude?

Mr. Chaffetz: That is objected to. The policy of the Administration is disclosed in the Code and the lawful orders issued under the Code; and there is nothing in the Code that deals with the subject of buying programs, except the provision that your Honor is familiar with; and, as we have said time and again, they haven't brought themselves under that provision.

The Court: Objection sustained. Exception allowed.

Q. Was it recognized by the Oil Administrator that, after the price of crude oil reached a dollar, that the price of gasoline was below parity with dollar crude?

2507 Mr. Chaffetz: That is objected to on the same reasons; it is the same question in another form.

The Court: Objection sustained. Exception allowed.

The Secretary did consider that it was an undesirable state of affairs for the price of gasoline at the refinery not to be in parity with crude, and it was particularly hard on independent refiners.

Q. What relation, if any, did the sale of gasoline at distress prices have to price wars?

A. It encouraged the number of them, and intensified the price differentials.

By intensifying the price differentials, I mean that those who normally sold below the regular price of the majors had a large differential; that is, they could sell at a greater difference through the presence of distress gasoline. That was very frequently responsible for price wars.

Q. And at the March 12th conference, did you, or to your knowledge did any other member of the P. A. B. Board, the Petroleum Administrative Board, tell Mr. Arnott to stop buying activities?

Mr. Chaffetz: I object to it, your Honor, on any ground. As I say, when they came in here and said they weren't asking for any approval, that they were 2508 going ahead and doing it on their own responsibility, I don't think it matters an iota whether anybody said they should stop or shouldn't stop. They said they were going on, and they were going on their own responsibility, they don't want your approval. Talk about—what is the word that Judge Denton likes to use—

Mr. Lewin: Entrapment

Mr. Chaffetz: (Continuing) —instigation or entrapment—where you come to a Government officer and say, "I don't want your approval; I am going to do this, and I am going to do it on my own responsibility"—and then, when you are charged with doing it on your own responsibility, you say; "Well, you didn't tell me to stop."

Mr. Donovan: Let's find out about this, your Honor. Let's hear what took place there.

Mr. Chaffetz: We have heard it.

Mr. Donovan: We have heard your side of it.

Mr. Chaffetz: We have heard it already. I object to that question.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: At the March 12th meeting did Mr. Arnott use the words, "I am not asking your blessing"? Did he use those words?

2509 Mr. Lewin: Your Honor, that has already been testified to.

Mr. Donovan: Well, I have not asked about that, your Honor. I have not had a chance to ask it.

The Court: He has already testified to the use of those words. Now you may ask him.

Mr. Donovan: Well, I am asking if Mr. Arnott used that expression?

A. I do not recall the exact words that Mr. Arnott used. That is my own characterization.

Q. Then is your answer that he did not use those words?

Mr. Crawford: Now, I object to that.

The Court: Yes; objection sustained. Exception allowed. Now, let me see the cross-examination of this witness.

Mr. Donovan: Q. In May, 1935, subsequent to May 8th, was the question of lack of parity between the production of the Pennsylvania refineries of crude oil brought to the attention of the Petroleum Administration Board?

Mr. Chaffetz: That is objected to as immaterial and irrelevant, something about Pennsylvania.

Mr. Donovan: I would like to show why that

2510 is material.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: I would like to ask some questions on that in order to make an offer of proof.

The Court: Make your offer of proof in writing, and I will determine whether any of that shall be received.

Mr. Donovan: May the jury be excused, and I ask the witness these questions now without the presence of the jury?

Mr. Chaffetz: I do not see any basis.

Mr. Donovan: Obviously if I undertake to make an offer of proof when I have not asked the questions of the witness, I have not laid any proper foundation for my offer of proof. That is obvious.

The Court: If in your offer of proof you also indicate the questions you wish to ask the witness, to lay the foundation, the Court will pass upon them.

Mr. Donovan: But that has not been made, and it is not in the record by questions to the witness.

The Court: I can determine it.

Mr. Donovan: I can ask these. It will be simpler if the jury be excused and I ask the questions 2511 of the witness in order to lay the foundation for my offer of proof.

The Court: I am not going to take this jury back and forth. If you have an offer of proof you may submit it in writing.

Q. Did you and other members of the Petroleum Administrative Board confer with certain Pennsylvania refiners?

Mr. Chaffetz: Objected to.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. On May 14, 1935?

Mr. Chaffetz: Objected to.

The Court: Objection sustained. Exception allowed.

Mr. Chaffetz: I object to this line of questioning for the further reason that it is not proper redirect. It was opened up on direct and was not touched on on cross-examination at all. I would like the records to show that.

The Court: It is not properly redirect.

Mr. Donovan: I would like to submit that it is proper redirect, that we be permitted to proceed. I think it has great materiality as bearing upon the line of question pursued by the Government and by 2512 ourselves as bearing upon this very question of acquiescence and administrative action.

Q. Did Mr. Fahy as chairman of the board, with the concurrence of you and Mr. Swanson send a telegram to Mr. Arnott on May 14, 1935?

Mr. Chaffetz: That is the same telegram that was offered on direct examination and was excluded. The same objection is now made that was made on direct examination.

The Court: If it is, the objection is sustained. Is it the same telegram with reference to Pennsylvania?

Mr. Donovan: This is it (showing paper to the Court.) Your Honor, I only had that marked for identification, and it was not offered at the time.

The Court: My recollection was that it was offered and objection was sustained. Objection is now made to it, and the objection is sustained. Exception allowed.

(Exhibits 915 and 916 for identification were offered in evidence, the same objections made and sustained and exceptions allowed.)

Q. Was the problem presented by the Pennsylvania refiners the same kind of problem, lack of parity and surplus production, that Mr. Arnott had been dealing with by the buying activities in the Mid-Continent?

2513 Mr. Chaffetz: That is objected to.

Mr. Lewin: Objected to on the same grounds.

The Court: Objection sustained. It is rather leading and suggestive also. Exception allowed.

Mr. Donovan: Q. What was the problem in Pennsylvania?

Mr. Lewin: Objected to as incompetent, irrelevant, and immaterial.

The Court: Objection sustained. Exception allowed.

Mr. Donovan: Q. Was it your judgment that the stabilization of the—

Mr. Chaffetz: That is objected to as leading, obviously going to be leading.

The Court: Refrain from asking leading questions.

Mr. Donovan: Q. What was your judgment, if any, as to the stabilization of retail markets being maintained without stabilization of the tank car market?

Mr. Lewin: Objected to as calling for an opinion from this witness that could not have any bearing whatever on the issues, and it is incompetent, irrelevant and immaterial.

Mr. Donovan: I am asking him for his judgment,
2514 as having charge of that.

The Court: How much of an expert is this man in the oil industry?

Mr. Donovan: Well, I will ask him how much of an expert in the oil business—

The Court: Q. Did you ever sell any gasoline?

A. Yes.

Q. Where?

A. At Peoria, Illinois, when I was a child.

Q. Did you ever work in a refinery?

A. No.

Q. Did you ever work in an oil field?

A. I haven't worked for any oil company under any circumstances whatsoever.

Q. Then you have not had any actual experience?

A. I have been a student of the problem for 20 years.

Mr. Chaffetz: I object to the pending question on the ground it is immaterial and irrelevant to the issues in this case.

By Mr. Donovan

I have testified as an expert for the Government more
than once. I testified as an expert witness in the Mills
2515 case before the District Court in Baltimore, and in
the Victor Silverman case in Detroit. The Mills case
was an oil case under the Code.

The Court: Proceed with your questioning. You may answer the question. Put the question.

Q. Did you have any judgment as to the effect—as to whether or not retail markets could be stabilized without maintaining stabilization of tank car markets?

A. Yes, I did have a judgment in such—

Q. What was that judgment?

A. That it was impossible to maintain a normal retail market with a subnormal tank car market. Likewise it would be impossible to maintain a normal tank car market with a very extensive subnormal retail market.

Q. Then as a member of the P. A. B. did you consider the work of the tank car stabilization committee as a useful means of stabilizing the retail situation?

Mr. Chaffetz: I must again object to that question, and also—

The Court: Your objection is sustained. Exception allowed.

I would not consider it unusual for a major company
to be buying in anticipation of its needs at a later date,
such as getting ready for the summer traffic,
2516 even though they might buy beyond the needs of the
moment.

Q. Dr. Frey, do you know how much distress gasoline there was on the market in January and February, 1935?

Mr. Chaffetz: Object to that question, unless he is asked how he knew.

The Court: You may answer it Yes or No. You may answer the question Yes or No. If you know.

A. I know approximately how much was in distress.

The Court: Q. How did you know?

A. From reports.

Q. Reports from where?

A. Reports of the Bureau of Mines and also reports from Mr. Arnott.

Mr. Chaffetz: What reports of the Bureau of Mines does the witness have reference to? Are they published reports?

The Witness: That is just like you get the Bureau of Mines Statements; on the monthly statements, you know.

Mr. Chaffetz: Q. Could we find out how much distress gasoline at any time by looking at the Bureau of Mines reports?

2517 A. You could do this: you could take the East Texas allowable, for instance, and subtract that from the Bureau of Mines, monthly report on East Texas, and that would give you about how much crude there was there in distress; and you can also tell the condition of the stock in the Bureau of Mines report. And then you remember, too, that there were the reports that were made by the committee that Mr. France headed—let's see, what is the name of that—the Program Committee, also had reported and—

Mr. Chaffetz: We are talking about the spring of 1935—how much there was in the spring of 1935?

The Witness: Yes, sir. And then, of course, the Federal Tender Board was in there in March; so that we know from them about how much distress there was down there.

The Court: Q. Have you made a study to determine from the records and reports, to determine how much distress gasoline there was on hand during those months?

A. We tried to keep current on that information.

Q. Well, I am asking you now if you have made a study so that you can testify.

A. Oh, yes, I have made a study of that.

Q. And have you prepared that in writing?

2518 A. No, sir.

Q. Have you got your figures here in writing?

A. No, I do not.

Q. Have you any of the data that you worked out in reaching your conclusion?

A. No, sir. I haven't any data here.

The Court: Well, if this witness has made a study for the purpose of coming here to testify and furnishes Government counsel with reports which he used to arrive at that figure, I think we will take the testimony.

The Witness: I haven't done that, your Honor. You see, I didn't know what I would be asked to testify on, so I haven't made any particular reports for that purpose. I simply am trying to get a background in the situation, have a statistical picture as of that time; and I am only speaking in general terms. I cannot give specific figures, because I don't have them in mind; and I have no data with me to refer to.

Mr. Donovan: I am asking him your Honor, only about January and February.

Mr. Chaffetz: Is that right?

Mr. Donovan: 1935.

Mr. Chaffetz: I think I will withdraw the objection, your Honor.

2519 The Court: You may answer.

A. I can answer in general terms, that there was a very large quantity of distress gasoline on the market—a quantity approximating 600 to 700 carloads a month, in the Mid-Continent, and about that same amount in East Texas. There was also some in Louisiana, but I can't tell you what that amounted to. I know that there was distress gasoline in Louisiana also.

I have stated that Mr. Arnott and his Stabilization Committee reported from time to time to the Petroleum Administrative Board.

Q. Under what provisions of the Code were the stabilization activities carried on?

Mr. Chaffetz: That is objected to. The stabilization activities, apart from the buying program, have nothing to do with this case.

Mr. Lewin: It is an attempt to go back into the same old subject time and time again.

The Court: Objection sustained. Exception allowed.

Q. Can you tell us how the Stabilization Committee obtained compliance with the provisions of the Code?

2520 Mr. Chaffetz: That is objected to as immaterial and irrelevant. It has nothing to do with the issues in this case; and counsel himself made the objection when I asked a similar question this morning, that we would have to go into some other case and deal with something that isn't involved here. I make the same objection that he made.

The Court: Objection sustained. Exception allowed.

Q. I haven't clearly gotten in my mind, Dr. Frey, and I wish you would help me, as to just how this question arose, when Mr. Arnott said that he wasn't asking for any authority at the meeting of March 12th and May 8th. I would like to understand, if you can tell us, just how that arose. I think it was "approval", and not "authority". I will substitute the word "approval" for "authority." Let's deal with March 12, first.

A. I think the question was raised by Mr. Fahy as to whether or not there was any possibility that the buying which was going on was in violation of the anti-trust laws; and Mr. Arnott replied, as I stated the other day, that he didn't believe there was; and then described what they were doing.

Q. Now, is that all that occurred on March 12th?

2521 A. Oh, no, there were many other things that were discussed on March 12th. Mr. Arnott discussed the whole problem of—not the whole problem, rather—but discussed some of the important problems in stabilization at that same meeting.

Q. Was there anything said at that time about approval?

A. Mr. Arnott did not ask for our approval at that meeting.

Q. Did Mr. Arnott point out that there was an informal program?

Mr. Crawford: I think these questions are leading.

The Court: Objection sustained. That is leading. Exception allowed.

On that occasion, there was nothing said one way or the other about our approval. It arose in a very incidental way on May 8th. That was a very warm session. The principal subject was not the buying program. It came up incidentally towards the close of the meeting, in which there were a few remarks exchanged on whether the buying was continuing and whether Mr. Arnott was taking the letter of July 20th as the authority for his work. I think those questions were asked by Mr. Fahy. I would not be certain about that, though.

Mr. Arnott said that he was not relying on the 2522 letter of July 20th, for approval; and that the buying was still on an informal basis; more or less repeating what he had said before. He didn't ask for our approval at that time, either. I think that there were many things talked of, but I think that was the essential—

Q. You say he said that he was going forward on an informal basis. What did you understand by that?

A. I understood that the tank car committee was supplying information as to where distress gasoline was, who had it, and in what quantities, and bringing that to the attention of the companies that were in position to buy, and that companies were buying gasoline. I did not understand that there was any pool; there were no required purchases by any company. It was purely on an informal basis, in which the Tank Car Committee supplied the information, and the major companies acted.

Q. Now, in previous years, more particularly in 1934, had there been what were called formal buying plans?

Mr. Lewin: Objected to as leading, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

2523 Mr. Donovan: Q. Was anything said at this meeting of May 8th, one way or the other, about approval or disapproval?

A. Not by us, no.

Q. You say that the meeting opened up rather warmly. How did it end?

A. Well, it ended much better. I mean, there was a good deal of heat at the beginning of the meeting. Mr. Arnott came in a rather rebellious frame of mind. He thought that we had double-crossed him by dealing with a man by the name of Blackwell, I think it was—Blackhawk or Blackwell—without first giving him some information on what we had been doing, so he came in prepared to tear up the place, and proceeded to do it for a considerable length of time. There were some very hot exchanges between Mr. Fahy and Mr. Arnott at that meeting, both of whom, I think, said things that would have been better left unsaid. But after we got to understand each other, things calmed down, and we decided on how we would proceed.

This group of Mr. Arnott considered that our requests in the letter of April 22nd were just impossible. They couldn't have someone present. There were many thing that they objected to. We decided at the end of that meeting to have one of our men 2524 from Chicago, Mr. Moore and Mr. Shaughnessy, the attorney, work with Mr. Majewski, who had come with Mr. Arnott on that occasion.

The Court: You may confine yourself to what was said about what related to buying programs. Confine your answer to what was said by Mr. Arnott and Mr. Fahy and yourself about the buying programs.

A. Then at the close just before this meeting broke up, the remarks which I have previously made, Mr. Arnott's statement concerning the buying program were made.

The Court: Just what was that statement?

A. That they were continuing to buy informally, that there wasn't any pool, that no one had to make the purchases, there was nothing obligatory about it, but they were working toward lifting from the independent refiners this distress gasoline which was burdening the market. Those are not the exact words.

Recross Examination by Mr. Chaffetz.

Q. Dr. Frey, on your redirect examination, did you intend to change any of your testimony on cross-examination in response to questions that I asked?

A. No.

2525 Q. You are thoroughly conscious of all your answers you gave to me, are you?

Mr. Donovan: I object to that question, your Honor. That is argument before the jury.

Mr. Chaffetz: I want to make sure.

The Court: Objection overruled. Exception allowed. You remember your testimony, don't you, both direct and cross-examination, don't you?

A. Well, I suppose I—

The Court: All right, go ahead.

Mr. Chaffetz: Q. Didn't I ask you and didn't you tell me in your cross-examination this, that you recalled that it was definitely stated to Mr. Arnott in your presence that the letter of July 20th gave him no authority, that he had no authority under the

Code with reference to buying programs? Do you remember giving that testimony?

A. Yes. I don't think I have changed that any.

Q. And you don't want to change that any?

A. No.

Q. All right.

A. I have said right along, Mr. Chaffetz, that Mr. Arnott didn't ask our authority.

Q. And I asked you and didn't you answer in
2526 fact what I just said to you in your own words?

A. Yes.

Q. Yes. And then I asked you and you told me that he said that they were acting on their own responsibility?

A. Yes.

Q. And on the advice of their own lawyers?

Mr. Donovan: There was no such—that isn't my recollection, your Honor, as to any such question. What page is that?

Mr. Chaffetz: I have the testimony before me.

Mr. Arnott: —

Mr. Donovan: What page?

Mr. Chaffetz: Page 1302.

> Q. (Reading.) "Q. At the March 12 meeting, didn't Mr. Arnott state in his own words that what he was doing with respect to buying, he was doing on his own responsibility?
>
> "A. I have always answered that the same way—
>
> "The Court: Well, answer it now.
>
> "A. —that Mr. Arnott did not ask our authority for the buying program, and that he was doing it on his own responsibility.
>
> "Mr. Donovan: Q. Is that what he said, or did you characterize it—
>
> 2527 "A. That is a characterization. It is not an exact statement. I don't remember exactly what the words were that Mr. Arnott used.
>
> "Mr. Chaffetz: Q. It is a characterization of what Mr. Arnott said?
>
> "A. That is right."

A. Yes.

Q. You don't want to change that testimony?

A. No, sir.

Mr. Chaffetz: That is all.

The Court: That is all.

Mr. Donovan: Now, your Honor, on the question of the authority of the Petroleum Administrative Board, and particularly of Dr. Frey, we have never contended that this Board had the authority to do what only the President of the United States had to do. But we do contend that they had the power of approval, such as was exercised, both in the Steel case and in the Hawaiian case, which I presented to your Honor, and which Mr. Wood made more argument about.

Now, let's deal directly with this question of what authority this Board had. There have been a lot of words bandied about concerning that; now let us get the fact.

I have in my hand now, your Honor, a certified copy by the Secretary of the Interior himself, Mr. 2528 Ickes, which was signed yesterday, which gives here the classification of authority of these members of this Board, and delegates, on their classification sheet, the specific power and authority that they had. And, in view of the question raised by Mr. Lewin, I now offer that certification of their powers and their authority and their duties in evidence. I ask to have it first marked for identification.

(Document referred to is marked Exhibit 974 for identification.)

Mr. Donovan: Now, I offer that in evidence, your Honor; and I direct your Honor's attention particularly to the definition of duties of Dr. Frey.

(Handing exhibit to the Court.)

Our contention here is not—we are not talking about the kind of approval that they are talking about.

We say this: That these men, under the definition of their powers and duties and authority in these classification sheets, which the Secretary of the Interior himself has certified, gave them the power to deal with this subject matter, and to encourage or prevent. And we are entitled to offer that proof.

2529 Mr. Lewin: Your Honor, the only kind of approval that ought to be talked about in this case—and I am glad to hear counsel say that he is not talking about the kind of approval that the Government is talking about. The only kind of approval in this case to be talked about, I submit, is legal approval; that kind of approval that would have some effect; upon which intelligent, smart men like

Mr. Arnott would be entitled to rely. Not on what he says he imagined he had, but on what he had. That is the only kind of approval that ought to be considered in this case.

And why is that? I suggest to your Honor, why is that?

If, by walking into minor officials' offices in Washington—and there are hundreds of them, maybe thousands of them, of the same dignity as Dr. Frey and Mr. Fahy; Washington is full of them, of public officials that have the same sort of thing—perhaps as Special Assistants to the Attorney General, for instance. Suppose you could walk into those offices and talk over great big problems like this in a more or less half-baked way, and get a more or less acquiescence or good-will toward what you were doing, 2530 which might be based on all kinds of assumptions, and that could be the equivalent of an approval of the President of the United States, established by Congress—just think where the law of the country would be.

It would be a complete suspension of all the statutes and of all the law, if all we had in the government in this United States, in order to do anything we pleased as against jobbers or in favor of independent refiners or anybody else, was to get on the train and go down and find some subordinate official in Washington, who would listen to your tale of woe and pat you on the back, perhaps, or anything else, and say, "Fine, old fellow, go to it." If that was the law, then we might just as well repeal all the statutes. That would be a Government of men—not of responsible men; not of high officials, not even of that dignity; but a Government of thousands of subordinate office holders. That is what our Government would come to, if they can go in there and chat with these minor officials and come out of there with approval which is the equivalent of what the law says, Presidential approval, then law is gone.

2531 There are two documents there that relate to Frey. One has some bearing about his duties. It is signed by Nathan Margold, the Solicitor of the Department of the Interior; and it is approved by Harold L. Ickes. Now that is one short sheet in there. And that shows the duties of Dr. Frey.

Plus another document, which is the order of the

Secretary appointing the Petroleum Administrative Board itself.

Now, those two documents, and those two documents only, I submit to your Honor, are the expression of Frey's authority; first, the document appointing the Board, which is to advise and make recommendations, and to do certain administrative duties that may be delegated to it—administrative duties that may be delegated to it by the Administrator. That is the first authority: No authority on the part of this Board can rise about that document. And the second document that is pertinent is the one I am telling you about, that is signed by Nathan Margold and approved by the Secretary.

Now, in addition to that—in addition to that you will find a document that is well known in Washington. It is a write-up of a lot of detail, of various functions that a man does come in contact with. And
2532 it is a salary write-up. It is to justify a certain classification of salary, and it isn't approved by any Secretary of the Interior; it never gets to any such official as that.

It is written up, down in the subordinate offices, and it goes into your personnel file as an outline of the various things that you consider. And of course, it is to your credit, the more that you can pack in there about things you can consider, the more authority that you feel you have, and can swell your chest out about, and all the rest of it. And it is the justification for your salary; that is what it is.

Mr. Francis: Certainly in view of those remarks, your Honor, we will let the Exhibit go to the jury, in view of counsel's misinterpretation.

Mr. Donovan: I understand that Exhibit Number 974 is received in evidence.

The Court: Exhibit 974 will be received.

(Document received in evidence as EXHIBIT 974, and read to the jury by Mr. Donovan.)

Mr. Donovan: There has been received in evidence a certification by Mr. Ickes of the power and authority of the various members of the P. A. B. Board with the exception, which I didn't have at the
2533 time, of Mr. Fahy; and I will now offer that, which is Exhibit 988.

(Document referred to is received in evidence as EXHIBIT 988, and read to the jury by Mr. Donovan.)

Mr. Thomas: Exhibit 996 for identification is an uncertified document, your Honor, being a telegram to R. R. Irvine, one of the attorneys for the defense, from Harold L. Ickes, Secretary of the Interior, and unless certification is insisted on by the Government, I would like to offer it for the purpose of showing allocation of positions to salary grades on job sheets, the action of the Secretary of the Interior taken and the date the action was taken.

(Document referred to is received in evidence as EXHIBIT 996 and read to the jury.)

2534 STEWART M. VOCKEL, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Pittsburgh, Pennsylvania. I have been president of Waverly Oil Works Company since May, 1932. I look after financial matters, make contacts for business purposes, and have something to do with the purchase of crude oil.

George E. Willey is vice president in charge of sales of Waverly Oil Works Company, and William H. Millhiser is purchasing agent and vice president in charge of refining operations.

The business of Waverly Oil Works Company since 1880 has been refining. Our company does not own its own producing wells. We purchase all our crude oil.

It is a very small independent refinery, having no connection with any major companies in any manner. We are below the average size refinery in Pennsylvania.

Right now we have monthly production of 45,000 barrels. In the spring of 1935, we were running about 24,000 barrels per month. We use Pennsylvania grade crude oil. We get somewhere around 10 gallons of lubricating oil out of a barrel of our Pennsylvania crude. A barrel is 42 gallons.

The principal products of our company are cylinder
2535 stocks, neutrals and bright stocks. Gasolines and kerosenes are more or less by-products.

On April 8, 1935, we had a conference with the Petroleum Administrative Board.

Q. Did you personally arrange for that conference?

Mr. Lewin: Your Honor, we object. It is purely killing time and it can't have any—

Mr. Donovan: I object to any such statement, "purely killing time."

Mr. Lewin: We haven't—we feel—

Mr. Donovan: No matter how he feels, I ask that the jury be instructed to disregard it. Mr. Lewin is making too many of those statements.

The Court: Just a minute. The jury may disregard that remark. Is this leading up to the matter that was referred to in those telegrams?

Mr. Donovan: Yes, your Honor.

The Court: I think we are wasting time, then. Go ahead and ask your question.

Mr. Donovan: Well, now, your Honor, I don't think your Honor should make—

The Court: I don't care what you think. Those telegrams are immaterial.

Mr. Donovan: Now, your Honor, I don't think any such statement should be made in relation to
2536 my offer before this jury.

The Court: I will say it again. I think it is immaterial.

Mr. Donovan: And then I object, your Honor, also, to the statement of your Honor's that it is any waste of time. I don't think it is a thing your Honor should do. I don't think it is fair to me or these defendants.

The Court: I don't care what you think or anyone else thinks. I made the statement, and the statement will stand. Proceed with the case.

Mr. Donovan: I take an exception.

The Court: I am telling you now that it is immaterial and irrelevant and has no basis in this case. No more discussion.

Mr. Donovan: I have a right to make a statement, and your Honor must permit me to do it. I objected to your Honor's statement that it is a waste of time, and I think your Honor must recognize that it is an unfair thing to say in relation to me as an officer of this Court and unfair to these defendants, when I have stated frankly to your Honor as to what I desired to prove.

Mr. Chaffetz: May I say a word—

The Court: I am saying to you it is immaterial and irrelevant and we shouldn't waste time with it.

2537 Mr. Chaffetz: I just want to say this, your Honor—

The Court: What do you want to say?

Mr. Chaffetz: This particular proof was proffered twice already, and your Honor has said that counsel may make offer of proof, and I understand counsel has reserved the right to make that offer of proof.

Mr. Donovan: Does your Honor rule on that?

The Court: Yes. I have seen the telegrams and read them, and I don't think they are relevant and material, and when they were objected to, I sustained the objection. I don't think we should waste any more time with them. You can make your offer of proof, if you wish.

Mr. Donovan: Now, your Honor, I think in view of the statement of the Court to me in relation to what has been said about the waste of time, I am with great reluctance forced to ask for the withdrawal of a juror, and a continuance of this case.

The Court: Oh, motion is denied.

Mr. Donovan: I take exception.

The Court: You may have your exception; proceed.

Mr. Donovan: Now, I understand, your Honor, that the evidence that I attempted to adduce from 2538 the testimony of this witness is to be made as an offer of proof, and it would be unnecessary for me to ask any more questions of this witness.

Mr. Crawford: I don't think the Court should be bound by any such statement.

The Court: I asked counsel if it referred to the subject matter of those telegrams, and he said, "yes", and I say now it is irrelevant and immaterial and has no bearing on the case at all. If you want to, you may submit that proof in writing without any more discussion on it.

Mr. Donovan: Well, I will make submission of offer of proof, your Honor, and this witness may step down.

The Court: You may step down.

(The following preceedings were had in the absence of the jury.)

Mr. Donovan: I first make an offer of proof in regard to the testimony of Stewart M. Vockel. This offer of proof is made by reason of the fact that the Court has sustained the objection to any line of testimony relating, First, to the situation of the independent refiners of Pennsylvania in April, 1935; and

Second, the conference between S. M. Vockel, G. E. Willey, and the Petroleum Administrative Board on April 8, 1935; and 2539

Third, conferences between S. M. Vockel, G. E. Willey and the Petroleum Administrative Board on May 13 and 14, 1935; and

Fourth, correspondence by the Petroleum Administrative Board relative to the above subjects during April and May, 1935.

And I am sure your Honor will permit it to be understood that proper questions will be asked as to each sentence and statement set forth in the offer of proof which I make in question and answer form.

If allowed to testify, the witness would testify as follows:

> "I am Stewart M. Vockel, president of the Waverly Oil Works Company, Pittsburgh, Pennsylvania. I have been president since May, 1932. I am chief executive of the company, make the necessary contacts, handle financial matters, and generally run the business. The other officers of the company are G. E. Willey, vice president in charge of sales, and W. H. Millhiser, vice president in charge of refinery operations and also chief engineer and purchasing agent for the company."
>
> "The Waverly Oil Works Company is in the refinery business. It has been in that business for 57 years, having been established in 1880. 2540 It has continually operated except for a short time during the flood in the spring of 1936. The Waverly Oil Works Company does not own its own producing wells, but purchases all its crude oil. It is a very small refinery; it is below the average size refinery in Pennsylvania. The Waverly Oil Works Company has always been an independent company. Its only connection with a major company is that it sells a sizable amount of its products to major companies. The operating capacity of the refinery is now 35,000 barrels a month. During the year 1935 it ran approximately 24,000 barrels of crude oil per month through

its stills. The only kind of crude oil it uses is Pennsylvania grade crude oil. It obtains about 10 gallons of lubricating oils out of every barrel of Pennsylvania grade crude oil. Pennsylvania grade crude oil contains about 10 times as much lubricating oil per barrel as Mid-Continent 36 gravity crude oil.

"The principal products of the Waverly Oil Works Company are lubricants. Its main products are cylinder stocks and neutral oils. It makes kerosene and gasoline, but these are considered merely by-products. Pennsylvania gasoline is of low octane value and is manufactured merely in the process of making lubricants.

2541 "On April 2, 1935, I telephoned the Petroleum Administrative Board in Washington and told someone I wanted to talk about the price of Pennsylvania grade crude oil. I was put in contact with Mr. E. B. Swanson, a member of the Board. I told him that our company was having difficulty in Pennsylvania because of the price of crude oil. He suggested that I come to Washington to confer with the Board. He suggested a conference at ten o'clock Monday morning, April 8, 1935. On the same date I sent him a confirming letter regarding the proposed conference. On April 2, 1935, I wanted to see the Petroleum Administrative Board as soon as possible. My reason was that the Blazer Committee report had just been released and had pointed out vividly the difficulties of the small independent refiners in Pennsylvania. It showed that Pennsylvania refiners were losing 32¢ on each barrel of crude oil refined. I wanted to use this report as an argument to show why the Petroleum Administrative Board should help the small Pennsylvania refiners. April 8th was the first date that a conference could be arranged.

"On April 8, 1935, Mr. G. E. Willey, our vice president, and I had a conference with the Petroleum Administrative Board in Washington. The conference lasted about two hours. 2542 The persons present on behalf of the Petroleum Administrative Board were Mr. Charles

Fahy, the chairman, Mr. E. B. Swanson, a member of the Board who, we understood, was in charge of production and refining, and Mr. Ben Lindsey, a geologist who was familiar with the general situation in Pennsylvania.

"At this conference I told the Petroleum Administrative Board that our company secured Pennsylvania grade crude oil in the southwestern district of Pennsylvania. I said that at that time we were having to pay $2.02 a barrel for such crude oil. I pointed out that there had been two recent rises in the price of Pennsylvania grade crude oil. The first rise was on January 4, 1935, when the price rose 15¢ from $1.72 to $1.87. The second rise was on February 4, 1935, when the price rose another 15¢ from $1.87 to $2.02 per barrel.

"I told the Petroleum Administrative Board that we could see no justification for the 30¢ rise in the price of crude oil. I said that at this time the market prices for finished products were decidedly weak and that the prices for finished products had been dropping month by month. By finished products I mean cylinder stocks and neutral oils. I pointed out to the Petroleum Administrative Board that 2543 the 30¢ crude price rise in Pennsylvania was hurting the small Pennsylvania refiner because he could not get back enough to recover his costs when he sold his finished products. I pointed out that the prices for finished products were below normal prices in relation to the price of crude oil. My recollection is that I mentioned the gasoline price then existing. I explained to the Petroleum Administrative Board that we were not interested in gasoline because it was merely one of our by-products in Pennsylvania.

"The Petroleum Administrative Board recognized that the prices we were receiving for our finished products were too low in relation to the price we were having to pay for crude oil in Pennsylvania.

"I asked the Petroleum Administrative Board to take steps to cancel the 30¢ price rise for crude in Pennsylvania. The persons pres-

ent on the Board at this conference were evasive to my request. I also told the Petroleum Administrative Board that we were losing money because of the price of crude oil and the prices of refined products. I pointed out that there were 10 or 15 people in the refining and marketing end of the oil business in Pennsylvania, compared to one in the producing end. I said that unless something was done about the price situation in Pennsylvania many
2544 people would be thrown out of work. I specifically told the Board that we had men in our refinery who had been working over 40 years and knew no other line of work if we had to shut down our plant.

"The Petroleum Administrative Board, through Mr. Swanson, told us that the Stabilization Committee of the Planning and Coordination Committee was doing a very useful and constructive job in stabilizing the refinery gasoline market in the southwestern states. They said that they expected that this Stabilization Committee work would continue and that there would be further rises in the price of refinery gasoline in the Mid-Continent area. They said that the effect of this stabilization work and these price rises would soon be reflected through the entire industry. They said that within 30 days they expected that this fine work of the Stabilization Committee in the Mid-Continent area would cause prices for refined products in Pennsylvania to rise. They said that the Stabilization Committee work was helping the refiners and others in the Midwestern states.

"The Petroleum Administrative Board did not state whether the Stabilization Committee had authority to handle matters pertaining to the gasoline refinery market in the Midwestern
2545 area. However, they made some statement that gives me the present impression, I cannot recall what it was, that the Petroleum Administrative Board was backing the Stabilization Committee work in the Mid-Continent area.

"I said that we would wait 30 days to see whether we in Pennsylvania would be benefited by the work of the Stabilization Committee in the southwestern states in connection with refinery gasoline markets. The Petroleum Administrative Board told us that if our situation in Pennsylvania had not improved within 30 days to come back and they would again consider our problem.

"On May 7, I received the following letter from E. B. Swanson, for the Board."

(Exhibit 972 for identification was here read in full into this offer of proof by Mr. Donovan.)

"By the statements contained in the second paragraph of Mr. Swanson's letter I understood him to mean that under the Petroleum Code the Stabilization Committee in the Midwestern area was removing the difficulties or forces which were holding down refinery prices for gasoline in the Mid-Continent area. Mr. Swanson at our conference on April 8, 1935, had said that during the next several weeks the price of refinery gasoline in the Mid-Continent area would be brought more in line with the price of Mid-Continent crude oil, due to the useful and constructive work of the Stabilization Committee in the Mid-Continent area.

2546

"On May 8, 1935, I sent the following letter to Mr. E. B. Swanson of the Petroleum Administrative Board."

This letter is dated May 8, 1935, addressed to Honorable E. B. Swanson, Member, Petroleum Administrative Board, U. S. Department of the Interior, Washington, D. C.:

"Dear Mr. Swanson:

Thank you for your letter of May 7th. If we were operating on Mid-Continent crude I would agree with the premises as expressed in your letter. With the present quotations on United States Motor Gasoline and with Mid-Continent Crude selling at $1.00 per barrel you are correct. However, Pennsylvania crude is valued at twice that of Mid-Continent, but unfortunately with the same prices ruling on the finished products as far as light ends are concerned, you can see the predicament of the Pennsylvania refiners. It is with this thought in mind and the seriousness of our situation that I would like very much to

see you either Monday or Tuesday of next week.
2547 As advised you by telephone yesterday, I will wire you Friday as to the day I will be in Washington and trust it will be convenient for you to see me some time during that day.

"Thanking you, I beg to remain,

"Yours very truly,

"Waverly Oil Works Company,

"President."

"I used the words 'Mid-Continent crude' in that letter because I believed that Mr. Swanson was trying to inform us that our situation was improved because of the accomplishments of the Stabilization Committee in the Mid-Continent area in connection with refinery gasoline prices. I wanted to point out to him that our situation had not improved as he had predicted. I wanted to arrange for another conference.

"On May 13, 1935, Mr. G. E. Willey and I had another conference with the Petroleum Administrative Board. Those present on behalf of the Board at this conference were Mr. Charles Fahy, the Chairman, and Messrs. E. B. Swanson and John W. Frey, members of the Board. The other members of the Board, Messrs. Norman Meyers and J. Howard Marshall, were out of town at that time. This conference lasted about 15 minutes.

2548 "I brought to the attention of the Board the then existing condition of the Waverly Oil Works Company. I told the Board that the conditions in Pennsylvania had not improved. I said that the prices of our refined products had not risen. I said that the Stabilization Committee work in the Mid-Continent area had not been reflected back into Pennsylvania as the Board had predicted at the conference on April 8, 1935. I again asked that the Board take steps to cause the price of crude oil in Pennsylvania to be reduced 30¢ a barrel.

"The Petroleum Administrative Board said that we would have to be patient for a few weeks more. They said nothing could be done by the Board to cause the price of crude oil in Pennsylvania to be reduced. Nothing was accomplished at the conference.

"Mr. Willey and I then went back to the hotel

in Washington at which we were staying. We sat up until 3 o'clock in the morning trying to determine whether or not we would close our refinery which had been operating for 57 years. We decided to ask our Senator to intercede for us with the Petroleum Administrative Board. The next morning I went to see Senator Davis of Pennsylvania, who was a friend of mine. He was ill. I talked with his executive assistant, Mr. Boal. Mr. Boal telephoned the Petroleum Ad-
2549 ministrative Board in my presence and asked that something be done to help the small Pennsylvania refiners, particularly the Waverly Oil Works Company.

"When I got back to the hotel Mr. Swanson phoned us and arranged for a conference at 12 o'clock on May 14, 1935. At 12 o'clock, May 14, 1935, Mr. Willey and I again went to see the Petroleum Administrative Board. Mr. Fahy and Mr. Swanson were present at that conference. I do not recall whether Dr. Frey was present. The conference lasted about 5 or 10 minutes.

"Mr. Fahy said that they had been considering our situation. He said that the Board felt that it had arrived at a plan which would help us. They read to us a telegram they had sent, or were about to send, to Mr. C. E. Arnott, at Tulsa, Oklahoma. The telegram that they read to us is as follows:

(Exhibit 916 for identification was here read in full into this offer of proof by Mr. Donovan.)

"This was the first time that the Petroleum Administrative Board had mentioned Mr. Arnott's name at any of our conferences. I had heard of Mr. Arnott for many years. I read the trade journals and knew that he was head of the Stabilization Committee. Upon hearing
2550 the telegram from Mr. Fahy to Mr. Arnott, I realized for the first time that Mr. Arnott was in charge of the Stabilization Committee work which was going on in connection with the refinery gasoline market in the southwestern States. I knew of this Stabilization Committee work in connection with refinery gasoline markets in the southwestern states because of the statements by the Petroleum Administrative Board at our conference on April 8, 1935.

"The members of the Petroleum Administrative Board on May 14 did not state what they thought Mr. Arnott could do to help the Pennsylvania refiners. They made some comments along the line that the Petroleum Administrative Board had gotten in back of our problem and would help us out. They did not state that Mr. Arnott had the authority to deal in only local price situations in the retail and tank wagon markets. They did not state that Mr. Arnott had no authority to handle matters in connection with tank car refinery markets.

"I did not understand, nor did the Petroleum Administrative Board state at the conference on May 14, that the telegram to Mr. Arnott meant that he was to come into Pennsylvania to cause the price of crude oil to drop. I understood that Mr. Arnott and the Stabilization Committee had 2551 authority under the telegram to take whatever steps were being taken in the Mid-Continent area, to bring about a more normal relation between the price of crude oil in Pennsylvania and the price the refiners were receiving for their finished products.

"Neither Mr. Willey nor I at any time suggested to the Petroleum Administrative Board that Mr. Arnott or the Stabilization Committee go into Pennsylvania and start a buying program of Pennsylvania lubricants. The Board indicated, however, that Mr. Arnott and the Stabilization Committee would do for the refiners in Pennsylvania regarding their lubricants what was being done for the independent refiners in the Mid-Continent area regarding their gasoline.

"I know that Mr. Arnott replied to the telegram of May 14, 1935. Soon after the Petroleum Code was declared invalid on May 27, 1935, I was in the office of Senator Davis of Pennsylvania. Mr. Boal showed me a letter, dated May 17, 1935, which Senator Davis had received from Mr. E. B. Swanson on behalf of the Petroleum Administrative Board. I read this letter. Mr. Boal let me make a copy of it, which I have. The letter contains a reply by Mr. Arnott to the telegram of May 14, 1935. The letter of May 17,

1935, from Mr. Swanson to Senator Davis reads
2552 as follows:

(Exhibit 973 for identification was here read in full into this offer of proof by Mr. Donovan.)

"After the conferences on May 13 and 14 I went back to Pittsburgh. I kept in touch with the Petroleum Administrative Board by letter and telephone.

"On Friday, May 24, 1935, I telephoned Mr. Swanson in Washington. I told him that we were still having difficulty in Pennsylvania because the price of crude oil had been cut only 10¢ a barrel. I asked him whether the Board had received any reply to the telegram that they read to us at our conference on May 14, 1935, which was addressed to Mr. C. E. Arnott. Mr. Swanson told me that a reply had been received. He said that the reply stated that Mr. Arnott and his Stabilization Committee would get to work in Pennsylvania very shortly. He said that the matter of the Pennsylvania refiners would soon be taken care of by the Stabilization Committee.

"I do not know whether Mr. Arnott or the Stabilization Committee in fact took any steps to help out the situation of the small Pennsylvania refiners. The Petroleum Code was declared invalid on May 27, 1935. There was not much time to help us in Pennsylvania.

"I do not recall a conference that Mr. Arnott
2553 called in New York on May 28, 1935, for the purpose of considering the difficulties of the Pennsylvania refiners. I was not invited to any such conference. The Waverly Oil Works Company did not go out of business after the Code was over. Prices became more in line soon after the Petroleum Code was declared invalid. Our company was able to remain in business."

Mr. Chaffetz: Is that all of that offer?

Mr. Donovan: Yes.

Mr. Chaffetz: That is objected to, on the grounds we have previously stated.

The Court: Objection sustained. Exception allowed.

2554 **W. J. BRUNDRED**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Oil City, Pennsylvania. I am 55. I am an independent oil producer and have been since 1904. I produce oil principally in western Pennsylvania and a very little in Kansas.

I am vice-president of the Central Pennsylvania Oil Producers' Association, with a membership in excess of 700. I am a director of the Pennsylvania Grade Crude Oil Association, which is an association of producers and refiners and marketers that deal in Pennsylvania grade oil. And I am a director and past vice-president of the Independent Petroleum Association of America.

Q. Will you tell us whether you imparted any information to the Petroleum Administrative Board from time to time as to the conditions of the oil industry in Pennsylvania during the years 1934 and 1935?

Mr. Lewin: I object. Incompetent, irrelevant and immaterial.

The Court: Objection sustained. Exception allowed.

2555 Mr. Donovan: Now, your Honor, without pressing the witness any further, I desire to make offer of proof—

The Court: You may.

Mr. Donovan: —in regard to the testimony we would submit from him. Your Honor, since these witnesses would like to leave town, I would like to make that offer of proof now.

The Court: All right; the jury may retire.

(Thereupon, the jury retired from the court room, and the following proceedings were had in the absence of the jury:)

Mr. Donovan: Here is the statement of Mr. Brundred. This is in question and answer form, and I make this as an offer of proof (reading offer of proof:)

"Q. Mr. Brundred, I show you a photostatic document certified by the Department of the Interior as being a true copy of a letter dated May 9, 1935, signed by you and addressed to

Charles Fahy, chairman of the Petroleum Administrative Board, and ask you whether you wrote and sent the original of this letter to Mr. Fahy?

"A. Yes, I did. I have the carbon copy of the letter with me.

2556 "Q. I show you a photostatic document certified by the Department of the Interior as being a true copy of the duplicate original of a letter dated May 18, 1935, signed by Mr. E. B. Swanson for the Petroleum Administrative Board, and as being sent to you and ask you whether you recall receiving the original of this letter?

"A. Yes, I do. I have the original letter with me."

Mr. Donovan: I would like to have this marked for identification.

(Letter referred to marked Exhibit 925 for identification.)

Mr. Donovan: Also the reply letter dated May 18, 1935, from Mr. E. B. Swanson to W. J. Brundred. That is marked Exhibit 915. I think your Honor has read that letter, so I won't read it now.

(Continuing reading offer of proof:)

"Q. Mr. Brundred, in the letter of May 18th signed by Mr. Swanson for the Board, it is stated that Mr. Fahy telegraphed Mr. Arnott, who replied that he would take the matter up and thought some good could be accomplished for the Pennsylvania refiners and others. It

2557 also states that as a result of the conference with Messrs. Vockel and Willey of the Waverly Oil Works Company, it was 'felt that the Stabilization Committee of the Planning and Coordination Committee which is under the chairmanship of Mr. C. E. Arnott might be of definite assistance in connection with lubricants as they have been in connection with gasoline.' We want to know what the P. A. B. wanted done by the Stabilization Committee in Pennsylvania. Do you know whether the difficulties in the oil business existing in Pennsylvania were known to the Petroleum Administrative Board before May 14, 1935?

"A. Yes. I think the P. A. B. knew all about our situation before that time.

"Q. Will you tell us whether you imparted any information to the Petroleum Administrative Board from time to time as to the conditions in the oil industry in Pennsylvania during the years 1934 and 1935?

"A. Yes, I did.

"Q. How did you impart such information to the P. A. B.?

2558 "A. By personal conference and by letters.

"Q. During the period I have mentioned how often did you have conferences with the members of the P. A. B. relative to the conditions existing in Pennsylvania?

"A. Every time I went to Washington I believe I dropped in at the P. A. B. and talked with one of its members; usually I saw Mr. Swanson or Mr. Fahy.

"Q. Do you recall whether at most of these conferences you discussed the situation in Pennsylvania?

"A. Yes, I did.

"Q. I wonder if you can recall what letters you wrote to the P. A. B.?

"A. I wrote quite a number of letters to the P. A. B. I recall that on June 19, 1934 I wrote to the P. A. B. in which I enclosed a copy of a speech I had made before the Pennsylvania Crude Oil Association at Pennsylvania State College. In this speech I described the condition of the small Pennsylvania producer and of the refiner in Pennsylvania. The P. A. B. acknowledged this letter on June 29. 2559 Apparently they were interested in the facts and statements that I had made. Most of the speech related to the economic situation which existed in Pennsylvania.

"I also recall writing letters to the P. A. B. on August 29, 1934, and on January 18, 1935. In these letters I discussed the overproduction of crude oil in Pennsylvania and how the increased volume of lubricants manufactured from this oil was demoralizing the refinery lubricant market in Pennsylvania.

"I recall that on October 4, 1934, I gave the P. A. B. a very detailed picture of the cost of producing in Pennsylvania, and from time to time I informed the members of the board of the difficulties of both the small producer and the small refiners in Pennsylvania.

"Q. Mr. Brundred, in the letter of May 9, which you wrote to Mr. Fahy, I notice that you stated that there was a meeting in Pittsburgh at which Mr. Shaughnessy was in attendance. Can you tell us who Mr. Shaughnessy was at that time?

2560 "A. Mr. Shaughnessy was at that time a lawyer with the Petroleum Administrative Board.

"Q. When was this meeting held?

"A. February 1, 1935.

"Q. Was Mr. Shaughnessy invited to the meeting?

"A. Yes, we had written to Mr. Fahy, the Chairman of the P. A. B., and told him we were having a meeting and wanted an attorney from the P. A. B. there so that he could advise us as to a supplemental code in Pennsylvania as we wanted to control overproduction in Pennsylvania. Mr. Shaughnessy was sent to help us.

"Q. Mr. Shaughnessy then attended that meeting as a representative of the P. A. B.?

"A. Yes. He was there to learn our troubles and by taking them back to the P. A. B. see what could be done to help us.

"Q. How many persons were present at that meeting?

"A. About 30 Pennsylvania producers. Some producers were also refiners.

"Q. At that meeting when Mr. Shaughnessy
2561 was present, were the difficulties of the Pennsylvania producers and refiners discussed?

"A. Yes, there was an extensive discussion.

"Q. Now, so far as prices for Pennsylvania grade crude are concerned, what facts were brought out at the meeting when Mr. Shaughnessy was present?

"A. The need of restoring a better price for Pennsylvania grade crude oil was the principal subject discussed. My best recollection is that it was pointed out that the crude oil price had risen from $1.72 per barrel to $1.87 per barrel on January 4, 1935. That was an advance of 15¢. These were the posted prices of the South Penn Oil Company for crude oil in Southwestern Pennsylvania.

"Q. You mentioned that the price of Pennsylvania crude oil rose to $1.87 on January 4, 1935. How does this compare with the average price of Pennsylvania crude oil over a period of time?

"A. It was low and the Pennsylvania refiners had a hard time. For the 12 years from 2562 1918 to 1929 inclusive, the average price of Pennsylvania grade crude was $3.80 a barrel, and extending the period to include 1932, was $3.46 per barrel, so you can see that the $1.87 price was far below the usual price.

"Q. What facts were brought out at this meeting as to the better prices for crude?

"A. It was pointed out that we are in a completely stripper well area. Of our 80,000 stripper wells in Pennsylvania, the average production is slightly over one-half barrel a day. It costs a lot to produce crude in Pennsylvania. The fact that we get 85,000 barrels a day of Pennsylvania grade crude and supply 20% of the nation's lubricants was also mentioned.

"Q. Let me get this clear; do you mean that you Pennsylvania refiners get more lubricating oil from a barrel of crude oil than the refiners in the Mid-Continent area?

"A. Yes, it has been generally estimated that the Pennsylvania refiner gets about 9.9 gallons of lubricating oil from a barrel of crude, 2563 while in the Mid-Continent area, the amount of lubricating oil per barrel of crude is about .95 gallons. In other words, we get about 9 or 10 times more lubricating oil than the Mid-Continent refiners do.

"Q. Were the prices of refined products also brought out at the meeting?

"A. My recollection is that they were.

"Q. What were those prices for refined products at that time?

"A. At that time prices for cylinder stocks were going down. Thus, on February 1, 1935 the price of 600 steamed refined cylinder stock was 8¢ a gallon. It had gone down from 16¢ on July 1, 1934. At the same time the price of Pennsylvania neutral oils was going down. On February 1, 1935, the price of 25 pour-test 200 neutral oil was 28¢ a gallon. On July 1, 1934, it was 29½¢ a gallon. On February 1, 1935, the price of 25 pour-test Bright Stock was 15½¢ a gallon. On July 1, 1934, it was 26¢ a gallon.

"Q. What about the price of Pennsylvania gasoline?

"A. We were not worrying about that.
2564 In Pennsylvania, gasoline isn't our principal product. It has a very low octane. It is considered a by-product. We usually can dispose of it without trouble. We get most of our recovery from bright stock, neutral oils, cylinder stock and lubricating oils. They are our 'money crop.' Gasoline is a by-product with most of the Pennsylvania refiners.

"Q. At the meeting in Pittsburgh which Mr. Shaughnessy attended, was there any discussion as to the amount of crude oil being produced and the amount of oil being refined?

"A. Yes. It was pointed out that the crude production allocations to Pennsylvania producers had been gradually increased and were too high. Too much crude was being run through stills. At the meeting, it was agreed that the Pennsylvania refiners were producing too much crude oil and were running too much oil to stills. Later, a committee of seven producers was appointed to confer with seven representatives of refiners to see if the situation could be remedied.

2565 "Q. At the meeting which Mr. Shaughnessy attended, was anything said about the amount of inventories in the hands of small Pennsylvania refiners?

"A. Yes. I can't recall who said it, or the exact words, but I recall that it was brought out at the meeting that both the major companies and the independents agreed that there were top-heavy inventories which had been accumulating for some time past, and that these inventories were demoralizing not only to the

Pennsylvania crude lubricating market, but also the national lubricating markets as well.

"Q. So that what you say will be perfectly clear, will you tell us whether there is any relation between the Pennsylvania grade lubricating market and the lubricating markets in other parts of the country?

"A. Yes. When the prices for Pennsylvania lubricants decreased, usually it causes the prices of lubricants in other parts of the country to decrease. But if there are large quantities of lubricants produced in other fields, say the Mid-

2566 Western area, these large stocks have a tendency to cause the Pennsylvania grade lubricants to pile up and the Pennsylvania prices to be lowered.

"Q. What about the relation between the price of Pennsylvania gasoline and of Mid-Continent gasoline?

"A. The price of Pennsylvania gasoline is more immediately affected by over-production in Oklahoma and Texas and the prices in those states because when the price is very low in Texas the gasoline can be shipped into Pennsylvania and compete with our gasoline just like our gasoline will move into the Mid-West if their price gets too high.

"Q. Would you say that it is your recollection that at this meeting at which Mr. Shaughnessy representing the P. A. B. was present, the situation of the Pennsylvania independent refiners was brought out?

"A. It was.

"Q. To the best of your recollection, what was the situation of independent Pennsylvania

2567 refiners which was pointed out at that meeting?

"A. It was brought out that the Pennsylvania independent refiners, particularly the small ones, were not able to operate profitably. Some of them were closing which had been in existence for many years. Excess production and runs tc stills caused excess stocks which depressed prices and caused them great difficulty.

"Q. How long had these refiners been in business?

"A. Many of the refiners who were having difficulty and who had to go out of business in the spring of 1935, had been in business and been operating for 30 or 40 years.

"Q. Do you know whether Mr. Shaughnessy brought these factors you have described as existing in Pennsylvania, to the attention of the P. A. B.?

"A. I understand he did; that was why he was at our meeting.

"Q. Did you bring to the attention of the P. A. B. any of these factors in regard to the 2568 situation of the Pennsylvania refiners at any time after the February 1, 1935, meeting in Pittsburgh?

"A. Yes, in my letter of May 9th I pointed out that there were top-heavy inventories of lubricants which had been accumulated for some time past and which had demoralized not only the Pennsylvania market for lubricants but the national market as well. I also pointed out how there was too much producing and refining of oil and that two refineries had to stop.

"Q. In reply to your letter, you then received Mr. Swanson's letter of May 18th?

"A. Yes.

"Q. Do you know Mr. S. M. Vockel and Mr. C. E. Willey of the Waverly Oil Works Company at Pittsburgh, Pennsylvania?

"A. I do not. I may have met them, but I do not recall.

"Q. Before you wrote the letter of May 9, 1935, did you talk with Mr. Vockel or Mr. Willey or anybody connected with the Waverly Oil Works Company?

"A. No, I didn't.

2569 "Q. Did you write the letter without instigation or suggestion from anyone?

"A. Yes. I wrote the letter because I saw the plight of the small Pennsylvania producers and refiners and believed it should be brought to the attention of the Petroleum Administration so that steps could be taken to save them from bankruptcy. At that time I was trying to get production allocations reduced and runs through stills reduced so that the prices would go up by limiting the supply to the demand.

"Q. When you received that letter, did you know what Mr. Swanson in his letter for the Board meant when he said that 'as a result of these conferences it was felt that the stabilization committee of the Planning and Coordination Committee which is under the chairmanship of Mr. C. E. Arnott might be of definite assistance in connection with gasoline'?

"A. Yes, because I knew from my reading of trade journals and my conversations with various persons that Mr. Arnott, as head of the Stabilization Committee, was sponsoring some kind 2570 of arrangement in the Mid-Continent area whereby the major companies were purchasing distress gasoline from independent refiners. I concluded that Swanson was telling me that the P. A. B. had asked Arnott to set up a Stabilization Committee in Pennsylvania to conduct a buying arrangement of excess Pennsylvania lubricants then in the hands of small Pennsylvania refiners which were depressing the market for lubricants as described in my letter of May 9th to the P. A. B.

"Q. Did you show the letter you received from Mr. Swanson to Messrs. Vockel or Willey or anyone else in the Waverly Oil Works?

"A. I did not.

"Q. Did you see any of the letters which they sent or received from the P. A. B.?

"A. No.

"Q. Did you in May, 1935, discuss the P. A. B. action with them?

"A. No, I did not."

Mr. Chaffetz: That is objected to for the same reasons urged in the preceding offer.

The Court: Objection sustained. Exception allowed.

2571 Mr. Donovan: Your Honor, I would like to file a short statement in connection with that offer, to be made a part of the record of the offer of proof, as to why we think it is material; and I think I can reduce it to short form, if your Honor will permit me to file it.

The Court: You may do so.

Mr. Chaffetz: We have no objection.

(During the absence of the jury at the recess, counsel for the defendants presented to the Court the following statement of reasons for the admissibility of certain testimony as to the situation of the Pennsylvania refiners, on which an offer of proof was made heretofore; which statement of reasons is made a part of the record by leave of the Court:)

Reasons why the testimony proferred as to the situation of the Pennsylvania refiners is material and relevant.

This statement is made pursuant to the defendant's request of yesterday afternoon granted by the Court, to file its statement reduced to short form as to why the defendants contend that the testimony set forth in the offers of proof and the exhibits relative thereto, pertaining to the situation of the independent refiners in Pennsylvania, is material and relevant in this case and should have been admitted in evidence.

The defendants contend that the testimony which 2572 the witnesses, John W. Frey, S. M. Vockel, and W. J. Brundred would have given and which testimony was read into the record as offers of proof, together with the exhibits relative thereto, is material and relevant in this case for the following reasons:

From the testimony in the offers of proof pertaining to the conference of April 8, 1935, with the Petroleum Administrative Board, and the correspondence in connection therewith, the jury would know, and could draw the inferences and conclusions that during April and May, 1935:

I. The Petroleum Administrative Board (a) knew of the activities in the Mid-Continent area then being conducted by the Stabilization Committee to aid the independent refiners and to stabilize the refinery gasoline market; (b) knew that such activities were being conducted by the Tank Car Stabilization Committee appointed by Mr. Arnott, purporting to act under the letter of July 20, 1934, which he had received from Mr. Ickes; and (c) that such activities were not secretly nor furtively conducted, but were publicly and openly discussed among persons in the oil business and among persons in the Petroleum Administration.

II. The Petroleum Administrative Board knew

2573 that the work of the Stabilization Committee in the Mid-Continent area in aiding independent refiners and in stabilizing the refinery gasoline market was being conducted under the Petroleum Code, and that the Stabilization Committee conducting this work was a sub-committee of the Planning and Coordination Committee.

III. The Petroleum Administrative Board encouraged, sanctioned, acquiesced in, and was gratified with the work of the Tank Car Stabilization Committee in the Mid-Continent area in aiding independent refiners in removing distress gasoline from the market and in attempting to stabilize the refinery gasoline market, and wanted such work to continue until refinery gasoline prices reached the proper parity with the price of crude oil, and recognized that such work was useful and constructive.

IV. The Petroleum Administrative Board considered (a) that the work of the Stabilization Committee in the Mid-Continent area relative to independent refiners and the gasoline refinery market
was a proper activity, within the scope of the stabilization work which had been authorized by the
Petroleum Administration, (b) that such work was
a proper activity to carry out the objectives of the
2574 Petroleum Code and to effectuate Rules ~~4~~ and 6 of
Article V of the Code, and (c) that such work did
not need specific approval under Article IV, Section 6 of the Code, as that section had been administratively interpreted by the action of the Petroleum Administration.

From the testimony in the offers of proof relative to the conferences of May 13 and 14, 1935, and the correspondence pertaining thereto, together with the testimony showing that the Petroleum Administrative Board (a) knew of the conditions of the oil industry in Pennsylvania, and particularly the conditions of the independent refiners in that state, (b) knew that there was a lack of parity between the price of Pennsylvania grade crude oil and the prices for refined products in Pennsylvania, and (c) knew that there were excessive inventories of lubricants in the hands of Pennsylvania refiners, the jury would know and could draw the inferences and conclusions that:

I. The Petroleum Administrative Board recognized that the situation of the refinery lubricating

market in Pennsylvania and of the small Pennsylvania refiners in May 1935 was similar to the con-
2575 dition of the independent refiners which had existed in the Mid-Continent area, and that in sending the telegram of May 14, 1935 to Mr. Arnott, the Petroleum Administration recognized during the spring of 1935 that Mr. Arnott and the Stabilization Committee had authority under the letter of July 20, 1934 and under the stabilization work, as that letter and work had evolved and expanded in prior months with the knowledge and approval of the Petroleum Administrative Board, to assist independent refiners by removing their distress products by means of a buying program conducted as part of the stabilization work without having to obtain specific approval from the Petroleum Administrator to such program.

II. The Petroleum Administration, recognizing the situation in Pennsylvania, urged and requested Mr. Arnott to undertake in Pennsylvania as part of the Stabilization Committee work, such activities as he deemed necessary or were necessary to remove excessive stocks of lubricants in the hands of Pennsylvania independent refiners and to bring about a proper parity between the price of Pennsylvania grade crude oil and the prices of Pennsylvania lubricants, by the same means, which Mr. Arnott had
2576 described to the Petroleum Administrative Board, that the Stabilization Committee were using in the Mid-Continent area in connection with the refinery gasoline market and independent refiners, thereby sanctioning such work in the Mid-Continent area.

III. The Petroleum Administrative Board, in asking Mr. Arnott to undertake refinery lubricant stabilization work in Pennsylvania, was again urging cooperative action on the part of the oil industry as it had urged many times before to accomplish the objectives of the Petroleum Code, to raise refinery prices to normal levels and to proper parity with the price of crude oil, to effectuate Rules 4 and 6 of Article V of the Code, to eliminate excessive inventories which depressed markets, and to stabilize refinery and other prices.

IV. The Petroleum Administrative Board, by its action regarding the Pennsylvania situation, confirmed that it had administratively interpreted Article IV, Section 6 of the Code as not covering informal cooperative buying activities of the kind conducted by the Stabilization Committee in the Mid-Continent area in connection with refinery gasoline market, the removing of distress gasoline, and the 2577 aiding of independent refiners.

V. The Petroleum Administrative Board and its members led Mr. Arnott and his associates of the Stabilization Committee, by the telegram of May 14, 1935, to believe: (a) that they could properly undertake the work of the Tank Car Stabilization Committee of stabilizing refinery markets anywhere as a proper stabilization activity under the Code; (b) that such work was properly authorized by the Petroleum Administration and should continue; (c) that such work properly came within the scope of the letter of July 20, 1934, as that letter and the work done under it had evolved and expanded with the knowledge and approval of the Petroleum Administration; (d) that such work did not necessitate specific approval by the Petroleum Administrator under Article IV, Section 6 of the Code or any other section of the Code; and (e) that such work was properly conducted under the provisions of the Petroleum Code, or at least came within the objectives of that Code and did not create a monopoly, cause monopolistic tendencies or practices, nor discriminate against small enterprises.

VI. Neither Mr. Fahy, the Chairman of the Petroleum Administrative Board, nor any other member of the Board, considered at the conference of 2578 March 12, 1935, or the conference of May 8, 1935, or at any other time, that the activities of the Stabilization Committee in the Mid-Continent area relative to refinery gasoline markets, the removal of distress gasoline, or the aiding of independent refiners, violated the anti-trust laws, needed specific approval under the Petroleum Code, or was contrary to either the provisions or the objectives of the Petroleum Code since Mr. Fahy asked (a) Mr. Arnott to undertake in Pennsylvania such similar activities as he deemed necessary in connection with refinery lubricating markets to aid the small Pennsylvania refiner, without placing any limitations or conditions upon such activities, and (b) recognized that such activities properly came within the scope of the Stabilization Committee's activities.

From all of the evidence in the offers of proof relative to the situation in Pennsylvania, the jury is entitled to draw the inferences and conclusions that no conspiracy to fix high and arbitrary prices as alleged in the indictment could, or did exist, since the 2579 actions of the defendants in the Mid-Continent area were known, encouraged, and acquiesced in by the responsible government officials charged with the duty of carrying out the Petroleum Code and its objectives and preventing any action purporting to be under that Code which would create a monopoly, have a tendency to monopolize, be a monopolistic practice, would discriminate against small enterprises, or in any way would be contrary to law or to the Petroleum Code.

From all of the facts in the offers of proof relative to the Pennsylvania situation, the jury is entitled to draw the inferences and conclusions that the defendants had no intent or purpose to violate the antitrust laws, or to conspire to fix prices as charged by the Government in this indictment, but that the defendants involved in the buying activities in the Mid-Continent area had the purpose and intent to abide by the Petroleum Code and the objectives thereof and to assist in carrying out such activities as they thought, and were justified in believing, were authorized by the Petroleum Administrator or his authorized agents.

(Document previously so marked for identification is received in evidence as EXHIBIT 936.)

2580 (The following proceedings were had in the presence of the jury.)

H. RUSSELL RICHARDS, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am, and during 1934, 1935 and 1936 was, employed by Continental Oil Company, at Ponca City, Oklahoma, as a clerk in the order and distribution divisions, which is a branch of the marketing department, and which directs the distribution of products to the marketing outlets and customers. It defines the territories that will be supplied by our refineries and terminals; it handles purchases; and it receives copies of all tank car gasoline orders placed with the company.

In the case of orders which have not already been assigned or placed with one of our refineries by the division with which the order was placed, our division designates which one of the company's refineries will supply the gasoline. In the case of orders which have already been assigned to one of the refineries by the division in which the order was placed, we merely file the order, except in the case of orders covering non-contract sales to customers we send the order to the general sales department for the checking of price before filing the order.

2581 I have prepared a tabulation showing all non-contract sales to jobbers made by the company during the years 1935 and 1936 within the Mid-Western area described in the indictment.

In preparing this tabulation, I first went to the files of the general marketing accounting department, which receives a copy of every tank car invoice issued by the company, and sorted all contract invoices from non-contract invoices. The invoices are marked "contract" on sales to contract customers, and are marked "spot" on sales to non-contract customers. The invoices are made in the division office where the sale is made, and from the original order for the gasoline. The original order is called a stock purchase and shipping order. At the time this original order is prepared the person making out the order consults the file of contract customers and if the sale is made to a customer under contract, the order is marked "contract", and if it is made not to a contract customer it is marked "spot".

After that sorting out of those invoices, I associated the spot invoices with the stock purchase and shipping orders, which are kept in the files of the order and distribution division. The invoices were matched up with the orders because the order shows the date that it was placed with the refinery, and also the price or price basis agreed upon at the time the order was placed.

2582 If the customer telegraphed or wired his order in to the division office the date the order was placed with the refinery would be the same date that the customer placed his order. If it was mailed in it would be the date on which the order was received. The company routine requires that the stock purchase and shipping order be made out on the date the customer's order is received and accepted.

If one of our division offices were to sell an order of gasoline to a customer, and the price agreed on was the low of the Chicago Journal of Commerce on date of shipment, the fact that the gasoline had been sold on that basis would appear on the stock purchase and shipping order. The invoicing clerk in the division office who makes out the invoice would have to know the price basis that the material was sold upon in order that he might make out his invoice. Also, company routine requires that the price or price basis be shown upon all orders covering sales to non-contract customers.

I have here with me the original invoices and orders from which I made the tabulation.

(Tabulation referred to is received in evidence as EXHIBIT 926.)

Cross-Examination by Mr. Lewin.

I am not in the sales department and do not make the sales. I prepared the records, but am not qualified to testify as to the length of time that has elapsed between the making of a sale and the consummation of 2583
it, or what the company considers as a spot basis. I examined these records. All that information is contained in the tabulation, the date of the order and the date it was shipped.

I am not an auditor. I am in the order and distribution division, and handle the order work of the company, and in connection with that work I have charge of the records, and am familiar with the records. As I testified, I separated the spot sales from the contract sales by the markings on the invoices, and by associating them with the orders; and then, to insure that I had spot sales to jobbers, I sent the tabulation sheets to our division offices, who made the sales and were familiar with the nature of the business, to identify the type of customer, to identify the jobber customers.

A customer not under a yearly contract or any written contract with the company would be considered in the classification as a spot customer.

The "date shipped" on this tabulation means the actual date on which the shipment was made. I had nothing to do with the shipping. The shipments are made by the refinery.

I examined these purchase orders. Many purchase orders do not require any shipping date. There may 2584 be some exceptions that they did not ship on the date that it specified on the order, due to refinery difficulties or some other reason why the customer's request for a shipping date was not observed. In most cases the shipping date agrees with the date specified on the order, however. It is possible that in some cases it doesn't agree.

The purchase order covers the date that it was placed, the order number, the consignee and destination, the quantity ordered and the description of the product; and if the customer had specified a shipping date, that would appear on the purchase order. The purchase order is made up and dated the day that it is received from the customer.

I would have to examine these invoices to answer the question as to the longest period of time that elapsed between the date of the purchase order and the date specified in any of those purchase orders for the shipment to be made. The invoices do not contain all the information the purchase orders contain. They are made up from the purchase order as to the order date and the consignee and that information, but if the shipping date was written on the purchase order that would not appear on the invoice.

None of the purchase orders that I have examined and listed in this tabulation call for shipments of the material over a period of time in the future. There were no such purchase orders for gasoline lodged with Continental Oil Company during 1935 and 1936 that were not under a written contract. 2585

(Stipulations as to (1) the testimony of George Collins of Omar Refining Company, (2) the testimony of M. L. Smith of Kanotex Refining Company, (3) the testimony of L. D. Hinman of Eason Oil Company, (4) the testimony of J. D. Miller relative to Black Gold Refining Company, were offered by Mr. Donovan and were received in evidence, respectively, as EXHIBITS 927, 928, 929 and 930.)

2586 JOSEPH W. BURRELL, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am, and was in 1935 and 1936, employed as an accountant by Cosden Petroleum Corporation, an independent refiner at Fort Worth, Texas. Its refinery is located at Big Spring, West Texas.

During the years 1934 through 1936, I kept or supervised the keeping by our company of records showing its gasoline production and gasoline sales.

During those three years approximately 3% to 5% of our gasoline sales were to major companies; it varied from month to month. These sales were made to points in New Mexico within a radius of 100 to 150 miles from our refinery in West Texas.

Approximately 80% of the sales during that period were made to brokers, and distributed to them by tank car shipment. Shipments were made into Illinois, Michigan, Minnesota, Wisconsin, Missouri, and this territory.

During this time the company made sales direct to jobbers, and to jobbers in the Mid-Western area.

I have prepared a schedule showing the monthly production and sales of gasoline in terms of gallons by
2587 Cosden Petroleum Corporation for the years 1934 through 1936.

(Schedule referred to received in evidence as EXHIBIT 931.)

The production of gasoline in gallons for 1934 was 50,353,355 gallons; for 1935, 52,968,256 gallons; and for 1936, 70,505,059 gallons.

The gasoline sales for 1934, 49,101,172 gallons; for 1935, 53,613,513 gallons; and for 1936, 69,581,998 gallons.

During the years 1934 through 1936 our company had its own crude production, but used only the part of its own crude that was produced in areas conveniently located to its refinery. During that period we bought 90% of the crude used in our own refinery.

During those years the company manufactured third grade gasoline, and also unleaded gasoline having an octane rating between 68 and 70. About 65% or better of our gasoline sales were sales of 68 to 70 octane gasoline.

Cross-Examination by Mr. Lewin.

Our company has subsidiaries: Cosden Oil Company of Illinois, a marketing company with no refineries or production; Cosden Oil Company of Arkansas, an inactive company operated for the purchase of leases in that state; J. S. Cosden Company, Incorporated, which produces oil in
2588 Oklahoma. It is a production company only and it has no refineries. And also Cosden Pipe Line Company.

There is no Talbot Petroleum Company that I know of. I know a man in the oil business in Chicago named Talbot. He is connected with Petroleum Exchange Corporation. Our company has a business relationship with the Petroleum Exchange Corporation, a brokerage concern. It handles the majority of our gasoline coming into this territory.

We sell it to it directly. I believe there was a written contract between our company and Petroleum Exchange Company during 1935 and 1936. I know we make some sales in this territory that are not sold to Talbot.

Of the 80% of our total gasoline sales which we sold to brokers, I would say the majority of it was sold to Petroleum Exchange Corporation. In fact, I believe, during 1935 and 1936, the entire 80% sold to brokers was sold to the one broker, Petroleum Exchange. It is my understanding that that broker in turn sells to jobbers in this territory.

I know of no loan ever made to our company by Petroleum Exchange Company or interests connected with it, nor is there to my knowledge any connection of a financial nature between Petroleum Exchange Company and Cosden Company, whereby Petroleum Exchange Company finances to any extent Cosden Company.

2589 I estimated that about 80% of our company's gasoline production was sold to Petroleum Exchange Company during 1935. I said 3% to 5% during that year was sold to major companies, say 4%, roughly. Of the 16% remaining, I don't believe any was sold direct to consumers during that period. Some of that 16% was sold to other refiners except major companies, 1% to 2%, possibly, say 2%.

The remaining 14%, roughly, would be the amount in that year sold to jobbers. I don't suppose, during 1935 and 1936, there was over 1% sold to jobbers in the Standard of Indiana territory. I couldn't tell you how much of that 1% was sold under contracts with jobbers and how much sold on the spot market. I have heard that some of that 1% was sold under contract. That leaves approximately 13% sold in Texas to jobbers. Just like the Petroleum Exchange contract, it is hearsay with me. I have never seen the contracts. I don't know anything about them.

2590 R. E. FOWLER, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am, and was in 1934 through 1936, employed by Sun Oil Company at Yale, Oklahoma, as its refinery office manager. During those year the company had a Chicago sales office and the orders for gasoline from that office came to the Yale refinery. A small percentage of the orders for that refinery were from the Tulsa office.

The company sold its gasoline on the spot market from the refinery at Yale, Oklahoma, during the years 1934 through 1936, into Oklahoma, Kansas, Nebraska, Missouri, Illinois, North and South Dakota, Minnesota, Wisconsin, and some few shipments in the western part of Michigan. During that period the company sold not more than 4% of its gasoline in Oklahoma and Colorado.

We sold during that period two grades of gasoline in the states I have referred to. 17% was our grade known as 68-70, 350 endpoint; and the other 83% was third grade gasoline.

I have prepared a schedule breaking down our annual totals for gasoline production and sales in gallons into months. I have that schedule with me for the years 1934, 1935 and 1936.

(Schedule referred to is received in evidence as EXHIBIT 932.)

2591 Our gasoline production in 1934 was 9,393,906 gallons, and the gasoline sales were 9,742,313 gallons.

In 1935, the production was 10,293,795 gallons, and the sales were 10,349,048 gallons.

In 1936, the production was 8,519,371 gallons, and the sales were 8,339,483 gallons.

No cross-examination.

2592 W. E. SWOR, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am employed as chief accountant by Rodessa Refining Corporation at Shreveport, Louisiana. I have been with this company since its inception in September, 1935. It is an independent refiner and its refinery is located approximately 5 miles from Shreveport. Since the company has been in business I have been in charge of the records showing its production and sales of gasoline.

During that period the company sold gasoline to both jobbers and brokers, in the spot market. It sells a portion of its gasoline in the Mid-Western area.

The gasoline production of the company for 1935 was 3,319,596 gallons, and sales were 2,819,502 gallons.

In 1936 the gasoline production was 27,909,042 gallons, and sales were 27,636,252 gallons.

My sales figures do not include any quantities of finished gasoline purchased outside and resold by the company.

I have prepared a tabulation from the company records breaking down these figures I have just given by months. I have that tabulation with me.

(Tabulation referred to is received in evidence as EXHIBIT 933.)

2593 *Cross-Examination by Mr. Lewin.*

I am not in a position to say what percentage it was, but I know that gasoline was sold in North and South Dakota, Illinois and Oklahoma. Our principal market is in the Arkansas, Louisiana, and Texas area. When I say it is sold on the spot market, I refer to every place that it is sold. It is sold at spot, except the brokerage. A portion of it is sold on the spot market of Oklahoma. I do not know the percentage. I am really not in a position to say whether it is a large or small percentage. I am not in the sales department, and therefore, wouldn't know that.

2594 ARTHUR L. TREASHER, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I am employed by Deep Rock Oil Corporation, which is now in trusteeship. I am auditor of the distributing division, and acting assistant secretary. I was acting as its assistant secretary during 1934, 1935 and 1936.

The company's refinery is located, and was from 1934 through 1936, at Cushing, Oklahoma. The company sells its gasoline in the Mid-West area: in Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Illinois, Indiana, Missouri, Arkansas and Oklahoma.

During 1934, 1935, and 1936, the company sold gasoline to jobbers in those states, but sold very little gasoline to brokers. It also sold gasoline through its own stations. The gasoline that we sold to jobbers was sold both under contract and on the spot market. During those years the company sold some gasoline to major companies who are defendants in this case.

I have made a tabulation, from the regular records of the company, showing the monthly sales of gasoline in gallons by the company from January 1, 1934, to December, 1936. Those sales figures do not include purchases of finished gasoline made by our company and resold. They are limited to sales of gasoline produced by the refinery.

2595 The total refinery sales of gasoline by our company during each of these three years were: in 1934, 64,247,774 gallons; in 1935, 64,996,976 gallons; and in 1936, 72,490,262 gallons.

I also have a tabulation showing the company's monthly production of gasoline in gallons during the years 1934 to 1936 inclusive. Those figures are: in 1934, 62,420,232 gallons; in 1935, 68,438,160 gallons; and in 1936, 73,511,513 gallons.

(Tabulation of sales figures referred to is received in evidence as EXHIBIT 934.)

(Tabulation of production figures referred to is received in evidence as EXHIBIT 935.)

Cross-Examination by Mr. Lewin.

I think Deep Rock Oil Company is known generally in the trade as a semi-major company.

2596 SIDNEY A. SWENSRUD, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I live in Cleveland, Ohio and am assistant to the president of the Standard Oil Company of Ohio. That company is not an integrated company; it is primarily a refining and marketing company. Up to a few years ago, we had no crude oil production at all, and no interest in transportation by pipe lines. We now have a very small amount of each of those, but, substantially speaking, we are still almost exclusively a refining and marketing company.

I have charge of a number of departments, including the traffic, purchasing, and the so-called distributing departments, the latter handling the shipping of products; and I have charge of our pipe line companies. I am also a director and participate in the management of Fleetwing Corporation, which is a subsidiary that sells gasoline to jobbers. I assist in the formulation of policies, and most of the time I have been with the company I have had charge of the commercial research, primarily in the marketing end, and, as a director participating in the management of Fleetwing Corporation, of course, I have a direct contact with the marketing there.

I am concerned very largely with marketing and do 2597 a certain amount of direct selling of tank car gasoline from time to time. We are constantly trying to learn all we can about the marketing of gasoline in our territory and elsewhere. We operate service stations and tank trucks. We sell to jobbers. That means we have to try to know what we can about what is going on in those fields, and try to improve our operations.

For example, we might do some research into why customers come into our stations, in order to try to find out how we might get more of them in. And we might study the question of how to determine the best location for a service station, what factors enter into that question, what accounts for the volume at any given station, and that sort of thing.

I have done much of price research also, because, as any one in this business knows, the problem of price is ever-present. We have so many parts of a price structure that it requires constant study to work out intelligent policies. I spend a great deal of time studying those questions.

Fleetwing Corporation sells gasoline and other products to its jobbers under the name Fleetwing. It sells to jobbers in New York, Pennsylvania, Kentucky, West Virginia, Indiana, Michigan, and Ohio.

I have been with Standard of Ohio since August 1, 1928.

Prior to that I was on the faculty of the Harvard 2598 Business School. I worked there for a few years after graduating from that school, and did work mostly in the marketing division of the school, primarily making studies into the costs of doing business and other marketing practices and the like, in a number of wholesale and retail trades, including groceries, jewelry, stationery, building materials, plumbing and heating supplies, and several other lines of business that we were studying there. I made a rather exhaustive study of the relationship between the price of raw cotton and the price of cotton goods. It covered a period of about 6 years, and we studied the day to day quotations for all that period.

I am and have been for several years chairman of the economic part of the petroleum section of the American Mining and Metallurgical Institute.

I was a member of the Price Research Committee of the National Bureau of Economic Research. The purpose of that Committee was to make certain recommendations of profitable research that could be done in regard to prices and costs in the oil industry. There were similar committees for the various other industries many research institutions in this country doing research on various subjects, and we have been working to try to coordinate and suggest a general plan of research that might be followed.

The first work I ever did for the Government was 2599 on the Committee on Petroleum Economics, of the Federal Oil Conservation Board. I was appointed by Secretary Wilbur, who was then Secretary of the Interior and Chairman of the Federal Oil Conservation Board. I was on that Committee for several years.

Then, during the formulation of the Oil Code, I was asked to and did consult with the Deputy Administrators who were assisting Hugh Johnson in formulating the Oil Code.

Later I spent time on several occasions with the Petroleum Administrative Board, consulting with them on various subjects, particularly the price fixing schedule that was at one time devised and was going to be issued, but never was.

I was also a witness for the Government in two of the premium cases that it brought during the Code days against certain marketers who were giving way premiums with the sale of gasoline.

I was a member of the Petroleum Code Survey Committee for Small Enterprise, known as the Blazer Committee. That Committee was appointed by Secretary Ickes. The purpose of it was to study the plight, or the condition and status of the small units in the oil industry, and to see how they had fared under the Code.

Mr. Ickes told us that he had got a lot of complaints from various sections of the industry, particularly 2600 from the small refiners, the independent refiners, and to a considerable extent also from certain sections of the independent marketers. He wanted a committee of people who were familiar with those problems to study them and make recommendations to him as to what, in our judgment, could be done under the Code to help the situation of those small units. We worked at that from about early in January, 1935, until late in February or the early part of March, when we submitted our report to the Secretary. I would say I have made a continuous study of marketing conditions and problems in the oil industry, and various special studies from time to time. Some of my published articles are entitled, "Distribution Problems in the Oil Industry," "Domestic Marketing of Oil Products," "Economics of Domestic Distribution," and others on such subjects as marketing in the oil industry, the factors affecting the supply and demand, and the effect of gasoline taxation on the consumption of gasoline.

Standard Oil Company of Ohio itself does business almost exclusively in Ohio. Fleetwing Corporation sells only to jobbers under the Fleetwing name in Ohio and in the surrounding states, including, in the Mid-western area, Indiana and Michigan.

Our company does not produce any crude, with the exception of a few barrels. We get our crude from a number
of different sources. About half of it we get from
2601 Oklahoma where we buy it from the Carter Oil Com-
pany, and we get lesser portions from Michigan, Illinois, Kentucky and Ohio. I do not believe we buy a barrel of crude oil from any defendant in this case.

I have made several special studies of particular questions in the Standard of Indiana territory, and have become familiar with some of the aspects of marketing in Indiana and Michigan where we market through Fleetwing Corporation.

In the course of my marketing studies I have had occasion to look into the classes of users of gasoline. I was asked at one time to attempt to determine where gasoline finally goes. I found 60% of the gasoline went to passenger cars, and the other 40% went to what we may call the commercial users, primarily, trucks, busses, taxicabs, aviation, and stationary engines on farms, farm tractors and that sort of thing. Trucks take approximately 30%, perhaps a little less than that. Buses and taxicabs take probably about 4%. The aviation industry is, of course, taking more and more, probably 2% or 3% now. It was about a little over 1%, as I recall it, when I made my analysis 4 or 5 years ago. Then the farm agricultural consumption, including stationary engines and tractors and that sort of thing, probably 3% or 4%.

And there is another use; contractors and road builders
and people who have commercial use for stationary
2602 engines and also tractors. That would be probably
3% or 4%. There is a decided difference in the way in which these various classes of users, consumers of gasoline, obtain their gasoline. The passenger car owner, of course, buys most of his gasoline at service stations, but the other classes that I have mentioned get a very large part of their gasoline delivered direct to the storage of the owner by tank truck, commonly called tank wagon delivery in this industry, dating back to the time before they had tank trucks. In that case, of course, the gasoline is hauled direct by the jobber or the distributor to the final consumer in the tank truck.

Now, that typically would be the case of a taxicab company, for example. It would probably have a garage where it keeps its cars and has tanks, and the gasoline would be brought right there in trucks and put in that storage.

The farmer gets most of his gasoline in that manner. The trucks bring it right up to his farm. The same would be true with a good many users of trucks, like a department store. If such a consumer were large enough, he might even short-circuit the tank truck and buy direct in tank cars. If he used say 5,000 to 10,000 gallons a month he would probably get delivery direct by tank car.

Now, of course, the purpose of this tank wagon and
2603 tank car delivery is to get a lower price than the consumer would get if he went to the service station and bought his gasoline there. The discount for tank truck delivery ranges from 2¢ to 4¢, I would say, below the service station price.

About 20% at least of all the gasoline sold is delivered direct to the consumer in tank trucks, and I think probably it is nearer 25%. I would like to put the figure about 30%, as representing the total deliveries direct to the consumer that did not go through service stations. That 30% consists of about 25% tank truck and 5% tank car deliveries.

For those tank truck and tank car deliveries the consumer gets a lower price. For the tank truck delivery depending on the volume he buys, and also depending on the —the thing changes from time to time—but I would say, by and large, he gets a discount of from 2¢ to 4¢ under the service station price by taking tank truck deliveries; and if he buys in tank cars he pays about the same price the jobber would pay, probably 5½¢ to 6¢ below the service station price.

I have been describing the wholesale types of delivery. It is possible to contend that those are really retail deliveries. The oil industry, however, considers them wholesale deliveries. It is perhaps a loose use of the word, but it is considered wholesale as compared with sales
2604 through a service station.

The rest of the gasoline is marketed through service stations, that is the retail outlets, including not only the service stations you see on the corners, but the garage and curb pumps that handle gasoline. Service stations painted alike, and bearing similar signs, with the name of some refining company does not mean that those stations are operated by the companies whose signs they bear. It would almost never mean that today in this territory. Back in 1935 many of the refining companies owned and operated service stations themselves, so that in that year it is quite possible that a service station you saw would have been owned and operated by one of the refining companies. It would not necessarily mean it was so operated. Even in that year the great majority of retail outlets were owned and operated by the independent dealer and not by the company. The mere display of the sign of a company is no indication of the ownership by the company of that station. In fact today it would almost never indicate the operation of the station.

You have to consider the fact that gasoline service stations are different than a lot of other retail establishments, in that they handle the products of just one company, ordinarily. A grocery store or a hardware store or a drugstore handles the products of hundreds of manufacturers, and could not very well identify itself with the insignia
2605 or colors or signs of any one particular manufacturer.

But a gasoline service station typically handles the production of just one supplying company. There are small exceptions, like spark plugs, batteries, and a few things like that, but his main product is gasoline and oil which are usually supplied to him by one company. Naturally, therefore, he takes advantage of the fullest advertising he can. That company does a lot of advertising, and he wants to get in on it, so to speak, so he displays all the identification that he can to show his connection with that supplying company. He also gets a lot of things that way that he would have to pay for otherwise. He might get his station painted up, parts of it at any rate, and he would have his pumps supplied to him, and also the tanks that hold the gasoline under the ground. Those would be furnished to him by the supplying company, and kept in operation by him. All that saves his money and adds to his business by giving him free advertising, so to speak.

On the pumps at these various stations there is the price at which gasoline is sold. Those stations do not always charge buyers the price which is shown on the pump. There are many exceptions to that. The service station price is paid by the average passenger car operator who sim-
2606 ply drives in, but I suppose the great majority of trucks—to take one example—even though they buy at a service station they do not pay the price which is posted there for that gasoline. They get a discount, and that is true of a good many other classes of buyers.

For example, a salesman driving a car for his company may have an arrangement with that service station under which he gets a discount under that posted service station price.

You cannot generalize very much about how the seller identifies the person to whom he will give a discount because the methods change so much from time to time and place to place. At times there have been official published commercial discount schedules under which the company operating the station says we will give to a commercial operator a certain discount. But now especially, under the Iowa plan, I would say there is very little in the way of published schedules or statements of discounts that will be offered.

That is, the supplying company may make an arrangement with the owner of a large number of trucks under which they agree to give him a certain price below the service station price—on his purchases at those service stations.

I would say that in the majority of cases it is a
2607 private arrangement between the particular customer
and the particular service station operator. You may have a truck, and you may go to Mr. John Jones, a dealer who operates an independent service station, and you make an arrangement with him under which you buy your gasoline there for your truck, and he will give you a discount of 2¢ off the service station price. If you are a big operator he might even do better than that and you may not need any identification at all.

You go down the road and you may see some signs, "Trucks Welcome Here," and you are not left in much doubt as to what that means. It means, if you drive in and if you have got a truck, you will get a discount. Now that practice varies. In some cities that I know of today the vast majority of gasoline is sold at a discount under the service station price.

I would say, by and large, the retailer who operates the station stands the discount himself. However, where the schedules have been formally or officially formalized, the supplying company might underwrite those discounts, and it might be in connection with the charge account system.

In other words, you might have a bunch of trucks and make an arrangement with a certain supplying company under which they would agree to supply you at a number
of stations, perhaps scattered all over the country;
2608 and then the operators of those stations would turn in
the charge—bills—of those purchases to the supplying company; and at the end of the month you would send a bill to this account and collect the money that was due, and you would then probably underwrite those discounts of that dealer, so that he would get his full margin on those

sales, as well as the others. But I would say that is not the typical situation.

Typically, the dealer makes his own discount, and suits himself as to what amount, if any, he wants to give. His incentive is to get the extra business, because even at a 2¢ discount he still makes say, 1½¢ to 2¢ a gallon on that business.

He figures, well, if I don't give a discount I don't get the business; therefore, I better give a discount and at least get that 2¢. I can't get the full price, but I can get at least something that I would not get otherwise. I think that is his typical psychology, and it probably is good business on the whole.

In my studies I would say I have almost invariably found the same price for the same grade of gasoline in the same locality. There isn't any mystery about it, although there seems to be. If you will just think about it a little bit.

Suppose you are a Phillips dealer on one corner of the
2609 street, and across the street is a Barnsdall dealer, or
any other company you might mention, and let's say that your competitor has a brand of gasoline that is essentially the same general kind as you have. Each of them claims certain superiorities, of course, but you can't get away from the fact that they are largely the same type of gasoline. And if he cuts his price, you are just going to lose your business pretty fast, if you don't meet it.

Now, then, you have got to remember that your gasoline stations are practically out on the street and it doesn't take long for every service station operator up and down the street to find out what the Barnsdall dealer's price is, if he happens to be the one that is cutting it. So before night I would say that every station on that street and so on until every station in the town would have adopted the price of the one who cut the price. In other words, it is almost instantaneous.

Now, there is another circumstance that often does make it absolutely simultaneous, because the company that wants to change the price,—it takes a little time ~~to do~~ it. You can't just decide at 8 o'clock this morning to put in a new price today. You have got to get notices out to dealers, to your own stations. You have to take inventories to see what the condition of the stocks were before the price
changed, and so forth. It takes a couple of days to
2610 do it effectively and to get it down so that everything
is right. Now that means that a lot of people have got to know that you are going to change the price within a day or two. And this inevitably gets into the newspapers.

The public is very much interested in the price of gasoline. I don't believe that our company has ever made a change in the price of gasoline that wasn't on the front page of the Cleveland papers and probably of all other papers in Ohio the day before we were going to make it. Even if we don't issue any announcement to the public they find it out in one way or another, and it becomes a public news item.

Naturally every other company sees that announcement. They are not going to open up the next morning with a higher price than we have, so the next morning the prices are all the same, and that apparently is why people think it is queer.

It is not peculiar to the oil business. If you will think a minute, you will realize that if the drug store on one corner puts the price of Pebeco Tooth Paste down to 39¢, it won't be very long before the drug store on the other corner will adopt that same price.

Similarly you go down the street and look at the grocery stores along in a row. If you see that one is sell-
2611 ing 3 heads of lettuce for 25¢, it won't be long until they all adopted that same price for the same kind of lettuce.

The retailers are so much concerned, to be sure that their prices are not higher than other people's prices, that they go to great lengths to make sure that that is not the case. The average large department store maintains a number of so-called shoppers, who do nothing but go around to different stores, comparing the prices at those other stores with the price of the store for which they work, just to make sure that no one is under-selling them for similar merchandise.

And it is not uncommon, as you know, for stores to have a public slogan, "We will not be undersold."

The only difference I can see in the oil business is that the time element in which the change is—by which they all arrive at the same price, is much shorter, due to the fact of the necessity of information leaking out about the price change coming along with all the stations right out on the street, so to speak, with the signs right there where everyone can see them; and so when one price changes, they all change very soon, and that may be a little quicker than it happens in some other lines. The principle is exactly the same as in all competitive business, I would say.

The mobility of the car is another factor that
2612 accentuates uniformity. For instance, even though you know there is a cutrate drugstore downtown, if

you live in the suburb ordinarily you will buy at the neighborhood drugstore if there isn't too much difference as it is too inconvenient to go downtown.

But now, when you are in an automobile—and you are necessarily driving around anyway—you are going to pass a number of stations, and it is not inconvenient for you to stop in at the one that has the cut price rather than the one that has the high price. We all know that there are plenty of gasoline stations. I would say that the flow of patronage in the retail gasoline market was extremely sensitive and responsive to variations in price.

We must remember that the demand for gasoline, after all, is what economists would call a derived demand—secondary demand. What we really want is transportation. You want to get your car to move. You don't buy gasoline to drink or to look at or to wear. You buy it to put in your car, so that you are not willing to pay very much more. Ordinarily, other things being equal, you are not willing to pay any more for the kind of gasoline that you prefer. If the man who sells the kind of gasoline you want wants to charge you a higher price for it, you will say, "Well, I will go across the street and buy it from the other fellow."

2613 And you must remember, too, that the average purchase of gasoline is only a few gallons, and that you might possibly prefer the gasoline that is selling at a higher price; but if you did patronize the price cutter and found that the gasoline didn't work quite as well—it would be gone in a day or two, and your tank would be empty, and then you could resume your normal source of supply. So that there is very little resistance to trying out a cut price product. It isn't like buying a necktie that you will have to wear for the next 5 years, or a pair of shoes that might not fit. You don't care. You are not willing to pay very much, in fact, hardly any more for the product you prefer than for any other product. The whole business is an illustration of that, you might say. I have been at pains to look up a few special cases where there were differences in price that made it possible to study just what went on. Two or three examples come to my mind.

One of them was the study I made of the situation out in California. There is crude oil production right in the city of Los Angeles and a number of small refineries and cut price marketing is rather prevalent there.

I took a period in 1933, when, during the months of April, May and June, I got the tax figures from the State of California, by companies, and I took the figures 2614 for the 7 major companies who constituted the largest part of what we call the major company operations in California; and then I deducted that from the total and got the rest of them which, you might say, represented the low price sellers.

Well, in the quarter I speak of—April, May and June—the prices of the two groups were about as near as they ever got together. They were roughly on a parity because competition had been pretty keen there, and they had what they called a price war that had brought all prices within reasonable parity with each other, so that you might say that they were all selling at about the same level. In that quarter those 7 major companies did 81% of the business in California. Then the price separated again. The cut price marketers began to sell at lower prices, and I believe that most of the 7 major companies had an increase in price, so that the variation spread out, and I don't know just what the variation might have been. It was probably as much as 2¢ or 3¢ a gallon, at times.

But for the second quarter, which this study covered—July, August and September of that year—the sales of these 7 major companies who had sold 81% of the business in California in the previous quarter, dropped to 66% of the business of California. In other words, dropped from 81% to 66% within a period of 3 months.

2615 The Court: Q. During that time they maintained their price; they didn't cut their price?

A. Well, the price of the major companies and the price of the other groups came farther and farther apart. I think it was the function of both.

By Mr. Donovan

In other words, the cut price marketers, I would say, dropped their prices further, I believe, and at the very beginning of this period the major companies had advanced their price, I suppose, in the hope that they might be able to stabilize things or for whatever reason they did advance the price. And the cut price marketers stayed down, and possibly went farther down, so that at any rate the price of the two groups came to be farther and farther apart.

What the effect upon the patronage was is marked, as I have mentioned.

Now, then, if you think what happened to the other group, you will realize that they increased from 19% to 34%. In other words, they almost doubled their business.

There is a very startling example in our own company's experience in the City of Columbus, Ohio. We, of course, have a number of service stations in Columbus, one
2616 of the large cities in Ohio—and I will have to make
sure what period that covered. I believe it was 1932.

A track-side station is a cut price marketer, who sets up a service station along the junction of a railroad track and a leading highway—opened up a station which happened to be just across the street from a station that we had on that same railroad track, and he started to cut the price.

Well, we didn't feel that we wanted to try to meet that price all over the City of Columbus but we did decide to just meet it at that one station that we had across the street, so that we simply adopted his price—whatever price he charged, we charged; and that meant that our prices at the station that we had became a good deal lower than the prices at the rest of our stations in Columbus.

In April—just to give you an idea of what the normal volume of the station was—we sold 8,254 gallons in that station, just an ordinary moderate-sized service station. In May we began to meet the price changes of the marketer across the street, and the business at our station increased from 8,000 in the previous month to 24,696 gallons in the month of May, when we started this experiment. In the next month, June, that gallonage increased to 261,350.

2617 Now, I think that illustrates as dramatically as any-
thing could the attraction of the lower price for gasoline. It was exactly the same kind of gasoline that we were selling in every other station in Columbus, exactly the same kind of service—in fact, the service was much poorer, because people were lining up for a block to get in and buy. So that from any standpoint of convenience, it had a great disadvantage to the customer.

As to what the price differential was, how far the cut price was below the normal price, I tried to get that information, expecting someone might be curious about it, but, as a matter of fact, we don't know exactly what it was. I wasn't able to get the information, I am sorry to say, but we simply adopted the price of the man across the street, and whatever price he chose we chose. I would say the price was at least 1¢ or 2¢, probably around 1½¢ or 2¢, below the level of the surrounding stations. We discontinued the experiment in June. In July, it dropped from 45,000 back to the normal level, about 9,000 gallons.

You see we couldn't continue that. We hadn't expected it would have such a drastic effect as that and our dealers in the rest of the town were losing their gallonage to this one station, and it wouldn't be fair to them to throw it all to this one station. But it illustrates the sensitiveness of patronage to changes in price.

Another example of that is ethyl gasoline. Two years ago people were buying ethyl because they thought it was
2618 necessary for their cars, as it was then, before the
regular grade was improved. Now we know ethyl is better in practically any car, but when regular grade is brought up to the point where it is satisfactory, very few people are willing now to pay the extra 2¢ for ethyl gasoline, which shows the sensitiveness of patronage to price. Our sales of ethyl gasoline used to be almost 50%. Now they are almost negligible.

Another illustration comes to my mind in the case with some stations we had in the northern part of Toledo, Ohio. Now, Toledo, Ohio, as you know, is right at the northern edge of the state of Ohio, as you enter Michigan. The Michigan line is just a few miles above Toledo, and Detroit is about 55 or 60 miles north of Toledo.

Now, during 1931 and 1932, there began to be some very serious price wars in Detroit. Gasoline would come all the way from Rumania into Detroit, and there was a general depression in the Detroit prices that got more and more pronounced as compared with normal prices in the surrounding area. And our men in those stations on the north side of Toledo—we had 3 stations that were on the main highway from Toledo to Detroit, and where sales were primarly to people who were driving through. The boys in these stations began to complain that customers were not buying there, they were waiting until they got into Detroit, 55 or 60 miles away, but still they were
2619 waiting. Likewise when anyone came from Detroit
they would fill up there; instead of stopping in Toledo to buy, they would get all the gasoline they could hold in Detroit.

I was interested to see what happened in those stations. So I got the figures for those 3 stations.

In 1930, before this disturbance started, these stations did a certain average gallonage. Figures are of no particular importance, but the next year the sales of those 3 stations—this is 1931, and the price wars in Detroit had just begun to get under way—and the sales in those 3 stations in Toledo in 1931 dropped 12% below 1930.

Now, you may say, "Well, that is maybe just the depression in general." But that is not the case, because we sold more, I think as a whole, in the year 1931 over 1930, and so did the typical highway stations around the state. So we lost 12% in 1931, drawn into an area of 60 miles.

In 1932, the sales at those stations had dropped to 39% below 1930. In 1932 we did have a little general decline in gallonage but it didn't amount to more than 5% or 6%. At least 34% or 35% of this 39% was a shift of gallonage out of our stations into the Detroit area.

This sensitivity of the gasoline market has the effect of making gasoline prices very realistic. Nobody could expect to get away with a very much higher price,
2620 not any higher price than the competition would warrant, because the minute that they did and someone cut that price, the effect through the loss of gallonage would be immediate and drastic, and to hold their business they would have to put their price down to the level of the competitors selling other similar goods.

I suppose it is impossible to give an absolute figure, but I would say a very small percentage, 10% to 15% of total gasoline sales made at the low prices would be sufficient to keep the price of the market as a whole down to a realistic level that I speak of. When I speak of "realistic" I mean right down to earth.

This sensitiveness of the market applies also to the wholesale market, and I should say that the wholesale markets were even more sensitive to price changes than the retail market is, because a jobber, for example, might likely shift his patronage for as little as 1/8¢ a gallon change in price between one supplier and another. He is naturally concerned with larger quantities, and a small change would be very influential with him.

The retail price of gasoline has a very direct effect on the tank car or wholesale price. If the retail price is depressed it would have a direct tendency, both direct and indirect, of depressing that tank car price.

Suppose that a retail price has been cut in a certain locality. The other retailers have got to meet that
2621 price cut as we have just seen. If they do not, they will lose their business. That means that the companies supplying those dealers, to take the first of them, must cut their dealer prices, and when the dealer price is cut the jobber finds himself with a narrower margin. Various provisions of contracts, and where there are no particular provisions the supplying company would in any event, tend to protect that jobber by lowering the price to

that jobber. Well, the jobber price is the tank car price, and through that chain of the retail price crushing down the dealer price, and the dealer price crushing down the jobber price, you have a direct effect upon your tank car price. If the price to the jobber is depressed the tank car prices are bound to be depressed.

Now there are some contracts—some contracts specify the jobber price will be a certain amount, a definite, fixed amount under the retail price in the area, or in the general area, and in those cases the jobber price just automatically goes down with the reduction in the retail price. That type of contract is not so prevalent as it was at one time, but practically all the contracts have some provision that makes the jobber price responsive to changes in the retail price.

Where a jobber or dealer has a contract with his supplier the retail price still affects the wholesale price because even though the contract gave the jobber the
2622 right to charge a higher price, or continue charging the same price even though retail prices had gone down, it would not be practicable for the supplier of that jobber to try to maintain that position and those prices.

Suppose the retail price went down 2¢ a gallon so that it would absolutely wipe out the jobber's margin on sales to dealers. Of course a jobber could not continue in business at no margin and the supplier wanting to have distribution in that area would naturally give his jobber a price that would enable that jobber to stay in the business and compete. Now, he might not give the jobber full protection, by cutting the jobber's price to the full extent the retail price had been cut,—but the tendency would be inevitably for the jobber prices to go down on reductions in the retail and the tank car prices.

If one refiner makes a price concession to his jobber that indeed affects the other refiners. Let us suppose that one supplier makes a concession to his jobber. Now, the next supplier's jobber comes to him and says, "I want you to give me the same kind of a price protection that the other company gave its jobbers, my competitors." Well, if the supplier did not give his jobber reasonable protection, when that jobber came to renew his contract he would not be in a very good frame of mind. So in order to keep in relationship with a jobbing account a supplier must and naturally does take care of trying to protect him
2623 during the times when the retail price would be reduced.

So I think there is not any question but that the sharp reduction in the retail price would affect the jobber price and the tank car price generally.

I think I made some approximations of percentages of use by the various consumers that were not right down to the last decimal point. In accounting for the 100% I have gotten some figures that I did not have with me this morning, and I will read those to give the actual breakdown which I was referring to as nearly as I could then recollect it.

The passenger cars represented 60%, trucks represented 27.4%, busses represented 2.9%, taxicabs 2.2%, aviation, motor boats and railroads .5%, agriculture 3.3%, and the balance, representing miscellaneous contractors, government agencies and the like 3.7%. That makes a total of 100%. I said that those figures were—perhaps the aviation especially would be somewhat higher now, and correspondingly some other figure would be somewhat lower; but those are the figures I have compiled.

(Indictment handed to the witness.)

The question which you asked me, as I understand it, is whether, assuming the truth of the allegations of the indictment, paragraph 6, p. 8, lines 12 through 23; p. 9, lines 2-8; paragraph 12, p. 13, lines 1-4; paragraph 16, p. 14, lines 29-31; p. 14, lines 1-5; paragraph 16, p.
2624 15, lines 6-15; paragraphs 18, 20 and 22, these defendants, assumed to manufacture around 85% of the gasoline consumed in the Mid-Western area, could have raised the prices in these tank car markets and the prices in the marketing territory itself, to artificially high and non-competitive levels, I believe is what the term is. I do not think they could have. My answer is that in my opinion they could not. Because if they did what you ask me to assume, that is, agreed to establish artificially high and non-competitive price levels, gasoline would immediately begin to flow into this area from refineries, some of whom are already located in the area, that are not in the group of defendants or alleged co-conspirators, but who have refineries in this area. In addition, there would come into the area gasoline from refining companies whose refineries are located outside the normal sources of supply, that are shipped into this area. In other words, there are a good many areas outside of this particular one that supply the territory.

Another way I think we could put it is this: That it is a good deal like a dike. Suppose that you build a dike along the banks of a river, and you extend it only

85% of the distance along the said stream or lake; it would not be possible with such a dike to maintain the water in that stream above its normal level. Nothing but a dike that extended substantially the entire distance 2625 and was maintained in that position would be sufficient to hold the waters in that stream or lake above its normal level. Just so, if only those representing 85% of the market attempt to do something along the lines you have suggested, raising the price to artificial heights, they just wouldn't be successful. If the group sold less than 75% instead of 85%, that would not change my answer, in principle. It would merely make the conclusion more obvious, just as if the dike extended only 50% of the way, it would be even more apparent that it wouldn't be able to hold the water up.

I am familiar with the names of the defendants in this case. I know it is a fact that a portion of the gasoline sold in the Mid-Western area by companies other than these defendants is sold under contracts to jobbers. I believe that some of the companies who are not mentioned in this list of defendants do market in this territory to jobbers under contracts. I don't know what proportion, but I know that it is a substantial proportion.

We do business in Michigan and Indiana; but, quite apart from that, I do know in general the ways in which these various companies conduct their marketing. For example, National Refining Company is one of the companies not included in this indictment. It has its offices in Cleveland, and I know their president and the man in charge of their sales. Ohio Oil Company is another 2626 of the large companies that is not a defendant here, and I know the sales manager of that company. I have talked to him from time to time, and I have a general knowledge of the way in which they do business in this territory.

I make it a part of my business to keep informed about what my competitors are doing. I think that a good many of these contracts have price clauses of the general nature as that described in paragraph 11 of the indictment in this case.

If an arbitrary tank car price for gasoline which was above the cost of manufacture was set, there would be a definite tendency for refiners to sell gasoline on contract to jobbers at a lower price. Suppose such a price has been fixed, as I have been asked to assume, in other words, a high and artificial price. Now let's suppose that I am an independent refiner, that I am not in this alleged conspiracy and some one has raised the price up to an artificial level. It is certainly a fine opportunity for me to increase my business—which is what I have been wanting to do, it is fair to assume, for a good, long time—and I would naturally try to take advantage of this situation and increase my business, sign up some more jobbers, and perhaps offer them a little wider margin. And I might even build some service stations, and cut the service station price.

There are all sorts of ways of cutting the price,
2627 indirectly, as well as directly.

I could give the jobber wider advertising allowance. I could build some service stations and rent to him for a small amount, and things like that would be additional ways in which I could influence jobbers to come with me under such circumstances as we would assume; and I might even set up new accounts, and induce people to go into the jobbing business in view of the fine conditions that were being maintained by this conspiracy.

If that were done it would have a very noticeable effect on the tank car price very soon, because the minute that this process started, the companies that were in this alleged conspiracy would recognize the fact that they were losing their business; and I think it is quite obvious that shortly they would have to reduce their price in order to hold their business. We have seen what happens when a marketer is allowed to have a lower price than another, and the amount of gallonage that he can get as a result of that lower price.

Now, if you ask me to assume that an artificially high price is being maintained; and then we know there are plenty of people who would be glad to come into the area, it is perfectly obvious that they would just be handed the market on a silver platter, so to speak. That would still be true if the jobber customers of these defendants
were tied up in yearly contracts. I don't believe
2628 that would make any substantial difference. We
have to remember that these contracts are not all expiring at the same time.

In other words, let's suppose that I want to get some existing jobbers, who are now tied up with some other companies who are in this conspiracy. Well, I don't have to look very far before I find several jobbers whose contracts will be expiring in a week or two; and I can offer them a lower price or other inducements, and quite likely enable or persuade some of them to sign up with me.

Many of these contracts have cancellation clauses—

it is quite a common practice for a jobber contract to run for a year, and then to be extended thereafter from month to month, or with 30 days notice of cancellation, or 2 months or various practices.

Suffice it to say that at all times there are contracts expiring, or which are subject to cancellation on short notice; so that if the jobbers generally became aware that I, one of these refiners trying to get into the area and offering quite a nice deal to jobbers, was looking for jobbers, they would be coming around quite quickly. The fact that some of these non-defendant refiners sold gasoline under contract to jobbers would not eliminate them as potential or possible competition for these defendants.

The Court: Q. Do you know of any refiners in the East Texas field or the Oklahoma field, after 2629 April 1, 1935, that were carrying on the price war among themselves? Do you know of any of them that were really underselling others? Can you name any of them?

A. No. I wouldn't have any specific information on that particular point.

Q. Would the fact that the gasoline was allocated to these producers have anything to do with the possibility of fixing the artificial price?

A. There is no allocation of crude oil among refiners. There is nothing to stop a refiner from buying all the crude oil he wants.

Q. Where, in those fields?

A. Oh, no, anywhere.

Q. I am talking about those fields?

A. Well, not in those fields, there never has been to my knowledge.

Q. That is allocated, isn't it?

A. No, sir, the crude oil is not apportioned out among the refiners.

Q. No, but isn't there a limit on how much crude oil they may produce?

A. There is a limit on how much crude oil the producers may produce.

Q. That is what I mean.

A. But that does not, in my opinion, limit the 2630 amount of crude oil that any refiner could obtain to refine in his plant.

Q. And make a profit?

A. Well, the question of the profit would depend upon what his selling price was. Now, if some one was holding up an umbrella for him, as I have been asked to assume, of course, the profit would follow. In other words, if someone was holding up a nice, high price, it would be easy to make a nice profit.

Q. Where would they get their supplies of crude oil, down in Texas and Oklahoma?

A. They would get it from the sellers of crude.

Q. From what fields?

A. Well, practically all the fields are interconnected with various pipe lines.

Q. In what states?

A. In the states of Oklahoma, Kansas, Louisiana, Arizona and Texas; and also those pipe lines, I think some of them go clear out into New Mexico; and they even go up into Wyoming. There is a pipe line from Wyoming clear down to Kansas City.

Q. Would you think it was safe to assume that most of the crude oil that goes to those refineries in Texas and Oklahoma is furnished from the fields in Texas and Oklahoma?

A. Yes, I should say so.

2631 *By Mr. Donovan*

The apportionment of proration in the various states has a relation to demand. The allowable production in each state is arrived at by the state commission or body—in Texas, it is the Texas Railroad Commission; in Oklahoma, I believe it is the Oklahoma Corporation Commission; and in Kansas, I think it is the Conservation Commission. But suffice it to say that in each state there is a body which has as its duty the determination of how much crude oil should be produced in that state for each given month.

Now, they arrive at that figure by giving consideration to the so-called nominations, that is, the estimates on the part of different refiners as to how much crude they would be willing to buy or how much they want for that month. That evidence is brought before the Commission, and on the basis of that and other facts that they may have, they finally arrive at a figure as to how much crude production there shall be allowed in that state in that month. Then they apportion that among the different pools in the state.

Therefore, so far as the refiner is concerned, I would say that he is never in difficulty in getting plenty of crude. Our great problem for at least a generation, or at least 10 years and more in the oil business, has been the overproduction of crude oil; so that the problem is not for the refiner to find crude oil, but for the crude oil to find refiners.

2632 In addition to what he may purchase actually in the field, he has an opportunity of purchasing oil that may be in storage. As an immediate step, there is a great supply of oil in storage at all times, and there are many companies who are interested in selling crude oil to refiners, because they make a profit on doing so. They gather the oil from the producers, through their pipe lines that extend out to the wells, and they bring it into a central pipe line, from which pipe line they can deliver it to any one of many refiners. They get a satisfactory revenue for that that gives them an interest in trying to get the market of the small refiners as well as large ones.

I believe it can be said that no refiner would have any difficulty in obtaining a sufficient quantity of crude to make all the gasoline he wanted to make—subject only to his financial ability to buy the crude. Withdrawals from storage are not pro-rated any more, so far as I know. There was some attempt during the Code days to determine the amount that was to be withdrawn from storage. I think the Secretary of the Interior limited that at one time to, my recollection is, 100,000 barrels a day, but I wouldn't be sure of the figure. But there was a limit at one time.

I am familiar with the names of the 10 states referred to in this indictment as comprising the Standard of Indiana territory. There are a good many refineries outside of these 10 states which ship gasoline into this Mid-
2633 western area. Generally, the areas, outside of the Indiana territory, from which gasoline moves into that territory are: the Oklahoma area, which is the Group 3, so-called.

Then there is the Louisiana—the northern Louisiana and Arkansas, which is often spoken of as the Arkansas and Louisiana Inland. In other words, right practically along the borderline between Louisiana and Arkansas there has been a lot of crude oil discovered, and there is quite a refining center in there. In northern Texas, there is another considerable refining area.

In addition to those, which I believe are thought of as the normal source of supply for this area, there are quite a number of other refining areas close by,—some of them actually closer than those I have mentioned.

For example, at Toledo, Ohio, there are 4 refineries, and there is a refinery in both Lima and Findlay, Ohio.

Ohio borders Indiana and Toledo is near the western edge, so that those refineries I have just mentioned are practically on the edge of Indiana.

Going farther south, at Cincinnati, there are refineries both in Cincinnati and across the river, in Latonia, Kentucky—those are opposite Indiana, also.

Going down the Ohio River there is a refining center in Louisville, Kentucky, which is right across the river from Indiana—about opposite Evansville, Indiana, or, rather, it is farther north than that.

2634 According to the indictment, gasoline comes in the Mid-western area from Arkansas, North Louisiana, North and Eastern and Western Texas and Oklahoma. Freight rates definitely do not keep gasoline from Ohio, western Pennsylvania, Kentucky, south Louisiana, Central and Gulf Coast Texas, Montana and Wyoming out of this territory.

In fact the freight rates from some of these other refining areas I have mentioned to points in this territory are lower than the freight rates from the areas mentioned in the indictment.

For example, the freight rate from Louisville across the river into Indiana would be very small and, likewise, from Toledo, Ohio, to Detroit, for example, is a very small freight cost, compared with the cost of getting gasoline from Oklahoma up there.

The largest refining area in the world is down on the Gulf Coast. That is only a little ways beyond the areas that have been mentioned here of northern Texas.

In other words, that is the southern part of Texas and the Gulf Coast, and the freight rate from that area and from New Orleans, which is also in effect on the Gulf Coast, into this territory, is only a fraction of a cent higher than the rate from Oklahoma.

I have prepared a map which shows the general location of these areas and the Mid-western area.

(Map referred to is received in evidence as EXHIBIT 936.)

2635 Standard of Indiana territory is indicated by this light yellow color outlined in red and including the 10 states which we have just enumerated. These green areas are the several refining districts that we have just been talking about.

Here is Oklahoma which is commonly known in freight circles and in the trade as Group 3. That takes in all the refineries in Oklahoma for all practical purposes.

We have another group, the Fort Worth group, which includes the northern Panhandle, the northern part of Texas, and East Texas.

Then we have the El Dorado-Shreveport group. That is the Arkansas and Louisiana Inland, that I have mentioned, where the refineries lie along the borderline between Arkansas and Louisiana.

Here is a little group called the Waco group. Just a few refineries in there. The same is true of the Ranger group, where there is the Ranger crude field. Perhaps a few refineries there.

Then we come down to these important Gulf Coast groups. The San Antonio, which includes a number of the refineries in that area and in San Antonio.

Then, the Houston group.

Now, this is what we call the Gulf Coast, the largest refining area in the world, in terms of output. Most of those refineries are down at Port Arthur or at
2636 Houston, somewhere on tidewater, where ocean-going tankers can come and get that gasoline and haul it away.

And here is the New Orleans group, includes the refineries in the neighborhood of New Orleans itself, and also up the Mississippi a little ways. Baton Rouge, for example, is included in this area. The largest refinery in the area, I would say, is in Baton Rouge.

That describes the refining areas that are located in this big crude production section of the country.

I also mentioned the Toledo refining area. That is right adjacent to Detroit and Indiana.

Here is the Louisville area where there are a number of refineries and that, again, is right at the edge of this area.

Here is the oldest refining area in the country, the birthplace of the oil industry, over in western Pennsylvania. There they are still flourishing—not always flourishing, as we heard yesterday—a large number of small refiners, mostly engaged in the making of lubricating oil. That is their main purpose, because of the peculiar nature of the Pennsylvania crude. But they do make a great deal of gasoline, too. I think there are 25 or 30 of those refiners still operating and making gasoline every day.

Another of the large refining areas in the world is along the Atlantic seaboard. The shipments from the east-
2637 ern seaboard into this Mid-Western territory would normally come into Baltimore. It could come coastwise up the Chesapeake and it often does. Shipments from Bayonne, New Jersey, would not ordinarily come to Baltimore by way of Chesapeake Bay. I dare say some of them do. We have bought gasoline in Ohio, for example, from

the Humble Oil Company, where it was hauled all the way around by steamer, and shipped by rail from there to Ohio.

I have forgotten these refiners out in Montana and in Wyoming. There are substantial crude fields here, and it is becoming quite a refining center. There have been refiners there quite a time. There are more being built now, I believe.

I do not see any scale on this map, but I know enough about the geography of Ohio to tell you that would be about 50 miles to the inch.

In comparing the freight rates from one part of these areas with those from another part, for shipment into the Mid-Western area, Oklahoma is the most notable; that is Group 3. There are a lot of refineries spread over a good many places in Oklahoma, due to the fact that crude oil has been discovered in a good many places in Oklahoma; and I suppose the railroads, in serving these customers, have found it necessary to meet the competition of other railroads from different points. The result is that with the approval of the Interstate Commerce Commission it 2638 has been called a freight group, so that the rates from any point within this area to any point out here (indicating), say, in Illinois, are the same, no matter whether the refinery is located at Tulsa, or some other place farther west, we will say. It would not matter whether it was a little farther away or not. The rate from that refinery to the destination, let us say Chicago, would be the same. That is so there won't be any disadvantage to the refiner who happens to be a little farther away.

The same is true of all these areas designated as groups on Exhibit 936. In other areas such as Montana, Toledo and Pennsylvania, rates are not equalized.

These dots in the Indiana territory represent typical cities along the edges of the so-called Standard of Indiana territory. Those cities are Detroit, Michigan, Indianapolis, Indiana, St. Louis, Missouri, and Bismark, North Dakota. Each of those is an important city along the fringe of these areas. You might say Bismark isn't as important, but it is important in North Dakota where there aren't very many large cities. Those lines running from these refinery areas to those 4 dots represent the cost of shipping 1 gallon of gasoline from the various sources into the destination point.

(The witness describes the freight rates shown on Exhibit 926.)

2639 We haven't shown lines in Group 3, for the purpose of simplification.

As shown by Exhibit 936, gasoline can be shipped into Bismark more cheaply from Wyoming or Montana than it can be shipped into Bismark from Oklahoma.

These lines are different types. A solid line means that the rate is lower than the rate from Oklahoma to that point. A dash line means the rate is the same as from Oklahoma. A line constituted of dots and dashes means the rate is higher than from Oklahoma.

The rate to Indianapolis is the same from Eldorado and Shreveport as it is from Oklahoma, and it is the same from Baton Rouge or New Orleans as it is from Oklahoma. From Baltimore you can ship gasoline into Indianapolis at a lower rate per gallon than you can get it in from Oklahoma. From Toledo into Indianapolis the rate is 1.518¢, compared with 2.97¢ from Oklahoma. From Louisville the rate is less than 1¢ a gallon. The freight cost from western Pennsylvania to Indianapolis is just about 1¢ per gallon less than from Oklahoma.

The freight rate to Detroit is the same, 3.894¢ from the Oklahoma, Eldorado, Shreveport, Baton Rouge and New Orleans groups. But the rate from Toledo to Detroit is only .52¢ a gallon. The rate from Louisville to Detroit is 1.84¢ a gallon. You could ship gasoline from Baltimore into Detroit for 2.44¢ a gallon. I don't have the rate
2640 from East Texas to Detroit on this map. I could look that up and give it to you, but my impression is that it would be just a little bit higher, probably about .2¢ higher, than from Oklahoma, but that is merely my best recollection.

St. Louis has a rate from the Group 3 Oklahoma area of 2.17¢ per gallon. From this East Texas group the rate is .04¢ a gallon more, about 1/25¢, into St. Louis than from Oklahoma into St. Louis. It is actually cheaper to get gasoline from Eldorado and Shreveport group into St. Louis than it is to get it into St. Louis from Oklahoma. To get gasoline into St. Louis from the Gulf Coast, from Houston or Port Arthur or any of these big refinery points, it only costs about .07¢ more than from Oklahoma. From New Orleans to St. Louis the rate is less than from Oklahoma. In other words, it is 2.14 from New Orleans, as compared with 2.17 from Oklahoma.

At your request I have examined the amount of independent refinery capacity in Oklahoma, northern Louisiana, southern Arkansas, eastern and northern and western parts of Texas, the area mentioned in paragraph 6 of the indictment, and the Standard of Indiana territory which, in 1935 and 1936, was not controlled by any of the alleged conspirators in this case. My information is based on statistics gathered by the United States Bureau of Mines, which is now in the Department of the Interior. About every 2641 year they collect information on the capacity of each refinery in the United States, that is, how many barrels of crude a day it can run and also how many barrels a day it can crack. I believe the terms are already understood.

I have familiarized myself with the names of the companies which are still defendants in this case. In the area which has been mentioned as being the general source of supply for this territory, those companies still defendants had a refining capacity as of January 1, 1936, for the running of crude oil of 643,500 barrels per day operating capacity. That is their refining capacity in the areas that were mentioned in your indictment as being the normal source of supply for this territory. That is skimming, or crude distillation capacity. As for cracking capacity, they have an operating capacity of 436,470 barrels a day. You do not add these two together to get the total capacity. The best index to the total capacity would be the crude still capacity, this 643,500 barrels per day.

Mr. Donovan: Q. Now, what percentage was this of the total refinery capacity in the Mid-western area and in these outside districts from which, according to the indictment, the Mid-western area is supplied?

A. That constituted 56.8% of all the operating 2642 refining capacity in the area in question.

Q. When you say that, you mean the total straight run capacity?

A. Yes, the total straight run capacity and, of course, of the total cracking capacity as of January 1, 1936, these defendant companies had 65.1%.

The "area in question" is the area mentioned in the indictment—I mean the Standard of Indiana territory and 10 states, including the refineries, for example, in Chicago, and including also in the Oklahoma area; it included the north, central, and western Texas—and eastern Texas area. I believe it was called the western, central and eastern parts of Texas. And it included the Eldorado and Shreveport area, and that is all.

Perhaps it would simplify it, if I would simply mention the different groups we have been considering here. We have considered the defendants in this case, who are now in the case, their capacity, and in the second place, we have taken those who are alleged to have been conspiring with the defendants—in other words, this group of independent refiners. That is No. 2. Now, No. 3, we take all the other independents who have refineries but who are not cited in the indictment as co-conspirators. In other words, the independents who were presumably alone in the conspiracy.

And, No. 4, we have taken the group of major com-
2643 panies who were not named as defendants or who are
not now defendants. Those who were named as defendants in this indictment, who are not now defendants, are assumed to be among the other major companies who are not now defendants. I believe Root and Lion were among the non-conspiring group. I took the list as I found it in the indictment on page 18. I have a list of names of those refiners in each group. Among these independent refiners who are not either defendants or mentioned as co-conspirators or alleged co-conspirators there are 5 in Arkansas.

I have the capacities of these companies available here. In Arkansas, these refineries consist of the Henry H. Cross Company at Smackover, having a refinery with a distillation capacity of 6,000 barrels and cracking capacity of 6,000 barrels. These figures are in terms of barrels per day and this is the number of 42 gallon barrels of crude oil in the first case, and of cracking stock in the second case, they can run through their refinery in one day.

I will try to describe the refining process.

A complete refinery consists of two units, a crude still, and cracking unit.

Now, those terms don't mean anything as such; but a crude still, that is the part of the refinery which does the original distillation of the crude, is just like a tea kettle;
in other words, you put the crude in, and you boil it.
2644 Distillation is merely the boiling off of the vapors.
Now, when you boil water, it all vaporizes at 212 degrees Fahrenheit, as you doubtless know.

Now, when you boil crude, however, some of it begins to vaporize at a very low temperature; at under 100 degrees, the gasoline will begin to come off. Crude oil is not like water. It consists of a lot of different mixtures, some of which boil off at one temperature, and some of which boil off at another. The trick is to catch these different vapors as they come off.

You first boil up to a certain temperature, and all the gasoline comes off. You collect that and condense it, and you have gasoline. Then you boil it some more, and you get kerosene, in a higher temperature range. And then, when you get that off, or as much as you want, you boil it some more, and you get what we call heating oils; which are the oils that you may burn in your furnace at home, if you burn furnace oil.

Now, we have left in the bottom of the still a lot of heavy, pitchy stuff which is called reduced crude, or tar. We sell it for road oil, or we make asphalt out of it.

In the range of distillation below the kerosene, ordinarily the refiner has no use for as much of that as he would ordinarily get. To give you some idea of what these percentages are, the gasoline which would just come off in the way I have described would be around 25 to 30%; then 2645 the kerosene would be perhaps 10%, but nobody could sell 10% of kerosene, so they don't use that all as kerosene. They hold that in reserve. And the same with this distillate that I have mentioned as being suitable for burning in your furnace; there isn't a market for all of that type of material that could be made from the straight distillation of crude. In fact, about 40% of your barrel of crude will be in that range of stuff that you do not have a market for as such. Now, that is where cracking comes in.

You don't take the best part of the gasoline and crack it, and you don't take this heavy stuff and crack it. You take the stuff in between to a unit called a cracking plant, and turn it into other products, the leading one of which is gasoline. Now, a molecular change takes place under the influence of high temperatures and great pressures, and it turns part of this kerosene and furnace oil into gasoline. The residue is again a heavy pitchy substance called cracking oil, or cracking residue; which, in turn, is sold for heavy fuel oil, and for steel plants and that sort of thing, or it may be reduced to petroleum coke.

Some refiners do not have cracking equipment. They simply take the crude and make the combinations that they can get in the crude stills. If they have an excess of kerosene and gas oil, which is what the charging stock is 2646 called for the cracking equipment, they sell that to some concern that does have cracking equipment. Or they may sell a larger percentage of that particular type of material as kerosene, or as tractor distillate, or furnace oil. There is a market for it. They can sell it all, but it pays some refiners to crack up that stuff.

I find that on January 1, 1936 this group of independent refiners who were not included among the defendants or among those alleged co-conspirators and who were named in the indictment had a refining operating capacity of 183,450 barrels per day, and a cracking capacity of 57,600 barrels per day. That was in operation.

You will notice there are two designations. One is operating, and we have not come to the other. Some of the capacity is shut down from time to time, and these refineries when they are made up list the capacity as being operating or shut down, and I am now talking about the capacity that was being operated. All these figures are in barrels of 42 gallons, per day. By capacity being operated, I mean capacity of plants that were in operation. I am quite sure that is the definition of the Bureau of Mines.

In 1935 that same group of refiners had an operating capacity of 183,450 barrels per day. That is the same figure as a matter of fact. They apparently had not changed. It is quite reasonable to suppose that they did not change
during the year. There was not much refinery capacity
2647 being built in that particular year, I would say.

The cracking capacity of that group as of the beginning of 1935 was 51,400 barrels per day.

There are 2 groups of independents; those who are not mentioned as having been alleged co-conspirators, and those that were so mentioned. We will consider the percentage of those who were not mentioned in the indictment to the total of the 2 groups, that is, of all independents.

Taking both groups together, the crude distillation refining capacity of the independent group not named as co-conspirators was 62.4% of the total crude distillation refining capacity of all independent refiners in the same territory in 1935; on cracking the percentage in 1935 was 55.3%. In 1936 the percentage for the crude distillation was 56.85%, the cracking was 46.95% of the total. That is the percentage of the capacity of the independent refiners who were not mentioned as co-conspirators to the total capacity of all independents. Some of this independent capacity was actually inside the Mid-Western area, in the 10 states. In the states of Illinois, Indiana, Kansas and Michigan these other independents had 59,150 barrels capacity per day of crude distillation at the beginning of 1936, and of the cracking capacity they had 14,000 barrels per day operating capacity. These refiners had a competitive advantage over the Oklahoma and Texas refiners. I should say that
on the whole they would be nearer to the market. We
2648 are talking about the ones outside the area. They
would have some advantage on that account.

Q. In the indictment, it is charged that the defendants bought about 50% of the production of the alleged co-conspirator independents. Now, I ask you to assume that is true, and ask you to state to the

Court and to the jury whether, if 56.85% of the independent refinery capacity were not in the alleged combination; and, second, a substantial proportion of that percentage was located nearer to market than the alleged co-conspirators; and, third, that the defendants bought only 50% of the production of these independents who were alleged co-conspirators; whether it would be possible for these defendants to fix and maintain a price?

A. No, I do not believe it would.

I believe the capacity that we have been considering; that is, half of the capacity of the independents who were alleged to be co-conspirators, but half of whose gasoline was being purchased, as I am asked to assume, plus all the gasoline of the other—or a large part, at any rate, of the gasoline of this other group, which had a large refining capacity, as I have mentioned, would be sufficient to invade this area and prevent an arbitrary fixed price being maintained. I would certainly say that if the major com-
2649 panies, if the defendant companies only bought 15%
instead of 50% then it would be more obvious that they could not hold an arbitrary fixed, high price.

There were independent refineries in these refining areas named in the indictment, and in the Mid-Western area, which were not owned by a defendant or alleged co-conspirator company, which in 1936 were shut down. The capacity of the same type of independent refiner, not included in the indictment, that was shut down at that particular time—January 1, 1935, those refiners had 142,250 barrels of crude distillation capacity, and they had 19,850 barrels of capacity to crack. That was either the plants that were not operating at all, or it was part of the plants that may have been operating some of their equipment, and some of it they were not operating. In any case, this is the part of the plants or the plants as a whole that were shut down at that particular time. I got that information also from the Bureau of Mines reports. They were not included in these other figures I gave. This is additional capacity.

Q. Now, would shut-down refineries be a market factor if an attempt were made to fix and maintain an artificial price?

A. I should certainly say yes.

Mr. Lewin: Now wait—I object to that. I think the question would have to be "if an attempt was
2650 made to fix a certain price"—fix a certain price, be-
cause certainly idle refineries wouldn't come into

operation simply because one price is fixed. It might be a price that was fixed below their cost of operation. It might be a particular type, with a particular reason for being shut down. They must be shut down for some cause. They may be inefficient, and that may be the cause. Something has got to attract them to come into operation. This witness can't be permitted to say that those companies are going to come into operation, regardless of the price fixed.

The Court: I don't think we ought to give any consideration to anything except actual plants operating at that time. Your motion to strike is granted.

Mr. Donovan: And I may have an exception to that?

The Court: Yes.

By Mr. Donovan

It is true that a number of the refiners that I inquired into in making my estimate here, produced only third grade gasoline. These refiners which produce only third grade gasoline would have to be considered as potential competitors for those defendants whose main business is the selling of house brand gasoline. All grades of gasoline are
2651 interrelated, and if the price of one grade of gasoline
became very low, relative to the others, it would inevitably attract business from those other grades to the lower priced grades. Suppose that I come into Madison, Ohio, with a service station, and I am selling a grade of gasoline that is not 70 octane, that is not quite as high as the regular house brand; it is something less than that; but I cut the price very substantially. I will get a great deal of business from people who, if the price were the same, would be buying the regular grade; because, after all, they are willing to take a little less perfect performance in their car for a certain saving of money. Just so the average buyer today, even though he could get a little better performance from the use of ethyl gasoline, is not willing to pay the 2¢ extra for it, and buys the regular. And if the price of third grade got substantially below the price of regular, he would turn to that, and if his motor knocked a little it wouldn't knock him out of the car.

I think I can illustrate that a little further. There are about 28,000,000 cars in this country, which is a car for every 5 or 6 people. That means there are all kinds of buyers of gasoline. Some people who are on relief can hardly afford to buy anything; other people can afford to buy whatever they may want. But out of 28,000,000 people,

the majority are bound to be people to whom the price
2652 of gasoline is important, just as it is to most of us.

If the price of third grade gasoline were cut, they would be tempted to try it.

There were other refineries operating in these areas mentioned in the indictment, and in the Mid-Western area, which were not owned or affiliated with any alleged conspirator, other than the ones I have mentioned. There were a number of refineries in the area owned by what are called major companies, who are not defendants in this case. Taking them as a whole, they were operating refining facilities that had a capacity for crude distillation at the beginning of 1935 of 159,000 barrels per day. That is the straight-run, and they had a cracking capacity of 108,000 barrels per day. That is just in this same area that we are speaking of. And in 1936 those same major companies had refining capacity in this area of 159,000 barrels for crude oil; and 110,200 barrels per day for cracking. When I say "in this area," I mean that the refinery itself would be physically located either in the 10 states—Standard of Indiana territory—or in Oklahoma, the western, central or eastern part of Texas, or in the El Dorado-Shreveport area (indicating). These are the areas named in the indictment as being the ordinary source of supply for gasoline sold in these 10 states.

I have testified that in 1935 something over 60% of
2653 the independent refiner capacity in the indictment area
was not owned or affiliated with any defendant or alleged co-conspirator. I excluded from that computation all major refiners, whether defendants or not.

These 2 groups, independents and majors not defendants, or alleged co-conspirators, which were situated in the Mid-Western area and the refinery districts which, according to the indictment, supplied it, had a total capacity of 345,600 barrels per day, crude still. And 167,900 barrels per day of cracking capacity as of January 1, 1936. For 1935, the comparable figures for the crude still capacity were 342,450 barrels per day; and for the cracking, they were 159,400 barrels per day.

Of the straight run capacity which was owned by the defendants and alleged co-conspirators, that leaves at the beginning of 1935, 68.3% and for 1936, 69.4% of the crude still capacity. I don't have the percentages worked out on the cracking. I can probably estimate it here if you want it.

At the beginning of 1935, these two groups had 448,994 barrels of cracking capacity, and at the beginning of 1936, 501,670 barrels. I don't have the percentage worked out

for these 2 years, but the total to which those figures should be related would be 608,394 for the beginning of 1935; and the beginning of 1936, 669,570. It would be a very much
larger percentage than the 68 and 69. I think the
2654 major companies, who were among the defendants,
tend to have a larger percentage of cracking capacity than the independents.

(The witness makes calculations.)

I make it about 74.0% for 1935; and about 74.9% for 1936.

I do not believe that a combination with only those percentages of the total refinery capacity in the area we are talking about could maintain arbitrarily high prices for gasoline in this area. Because the capacity of the other group would have been, in the case of crude distillation capacity, about 31% and in the case of cracking capacity, about 25% to 26%.. And I believe that those percentages of the capacity that was being operated in the area would be sufficient to prevent any artificially high prices being maintained, because those companies would be very glad to increase their operations in this area. I think that can be assumed from the very nature of the business.

There were refineries from other areas supplying this territory during 1935 and 1936. There were refiners in Toledo, who were shipping into that area. There were refiners—I won't be able to tell you all the states into which they might be shipping. The movements of gasoline are not particularly secret, either within the industry or outside of it, for that matter. The state tax reports show the sales of all companies that do business in each state. And
I know enough about the individual companies' opera-
2655 tions to have some immediate knowledge of those
movements.

For example, I have here the state tax reports for the state of Michigan. And one of the companies I am going to mention is the Sun Oil Company, which has a refinery at Toledo.

The Sun Oil Company, the main office of which is in Philadelphia, does business in Michigan, and sells a great deal of gasoline there.

For example, in October, 1936, Sun Oil Company sold 5,227,013 gallons of gasoline in Michigan.

Sun Oil Company, I believe, gets most, if not all, of its gasoline that it sells in Michigan from the refinery it has right here in Toledo.

Now, I further know that Sun Oil Company owns an interest in a pipe line that was built for the sole purpose of transporting gasoline from Toledo into Detroit for it and certain other companies.

Another company which ships through that same pipe line is Gulf Refining Company, which also has a refinery in Toledo, Ohio. Gulf in October, 1936, it is reported in this tax report of the state of Michigan, shipped 3,933,685 gallons. I would say that a large part of it, if not all of it, was shipped from the refinery Gulf has at Toledo.

Now, I don't want to go on record as saying that
2656 there might not be other gasoline that Gulf sells in Michigan than that which is shipped in from Toledo; but I think it is reasonable to suppose that a very large percentage of it is, because that is the place they set up to refine gasoline for that area, and they have gone to the trouble of participating in a pipe line to get the gasoline there.

Our own company is a third example of a company having a refinery in Toledo which ships gasoline into Michigan; and all the gasoline, practically, that we sell in Detroit is shipped in there from Toledo. We ship into Indiana also; I would say a large part of the gasoline we sell in Indiana is shipped in from the refinery we have in Toledo. We also have a refinery at Lima, Ohio, which is about 70 or 80 miles south of Toledo, and we make some shipments to some points in Indiana from that refinery.

Now, coming down the line: These western Pennsylvania refiners. I can't give you specific refineries that have made specific shipments to particular points there.

I have some records for the state of Indiana. Aetna Oil Company of Louisville, Kentucky, is listed as one of those selling gasoline in Indiana, and I happen to know that that company has a refinery in Louisville. The Texas Company has a refinery within the area and also outside the
2657 area.

I have mentioned the three of them in Toledo, and I mentioned the Louisville refiners in the Kentucky area. The Gulf Oil Company has a refinery in Cincinnati, Ohio. Cincinnati is at the junction of Ohio and Indiana along the Ohio River and within a few miles of the Indiana border. I think, strictly speaking, Gulf's refinery is at Hooven, a suburb of Cincinnati.

We own a company which has a refinery at Covington, Kentucky, which is just across the river from Cincinnati. It so happens that we bought out an existing refinery there some years ago. So we have a plant there on the Kentucky side. That covers Kentucky and Ohio.

I have given the western Pennsylvania refineries as being among those who ship into this area from time to time.

Mr. Chaffetz: Q. In negligible quantities, would you say?

A. I would say they varied with the rate and prices in the two zones. Sometimes it is quite substantial.

By Mr. Donovan

In Montana and Wyoming there are a number of refineries which ship into the western part of the Dakotas.

2658 The National Refining Company has, I believe, two refineries that are involved in the picture. One of them is, I think, at Coffeyville, Kansas, just right inside the area, and one is at Findlay, Ohio, which is about 50 miles south of Toledo, within a few miles of the Indiana border. It sells to the Mid-Western area.

The Texas Company I have mentioned. It has a refinery at Lawrenceville, Illinois, and one at Lockport, Illinois, which is on the Illinois River waterway, between the Great Lakes and the Mississippi. And it has a third refinery at Pryse, in the eastern part of Kentucky.

The Ohio Oil Company has a refinery at Robinson, Illinois, within the territory. That is near Lawrenceville, where I mentioned The Texas Company was. I think Marathon Oil Company, which is owned by Ohio Oil Company, has a refinery at Fort Worth. I should also add that The Texas Company has two refineries in Texas. And the Gulf Company has a refinery in the part of Texas that we have been including in this normal supply area. The Texas Company has a large refinery in West Tulsa, which is just outside of Tulsa. The Standard Oil of Louisiana has a refinery at Bossier City, in the northern part of Louisiana.

2659 Tide Water Oil Company has a refinery at Drumright, Oklahoma. And the Deep Rock Oil Company has a refinery in Oklahoma. It is one of the companies that is not included in the list of defendants or co-conspirators.

Standard of New Jersey, which owns Standard of Louisiana, began to market in St. Louis, Missouri, I believe, the latter part of 1934, or the early part of 1935. Now, I cannot testify how it got the gasoline to those stations at which it sold it in St. Louis. They have a large refinery at Baton Rouge, which is on the Mississippi River, and I do know the Standard Oil of New Jersey moved a tremendous quantity up the Mississippi. I don't know whether they moved any of that up from Baton Rouge to St. Louis.

There was some independent refinery capacity in the area I have just described outside the Mid-Western area during that period.

Q. And would you give us the figures for 1935 and 1936 on that refinery capacity?

A. Now, we are talking about refineries located in areas outside the ones which normally supply this territory.

Mr. Lewin: The question was outside the Mid-Western area, which is defined by the indictment.

A. Yes. Well, as of beginning 1935, there were 2660 companies which we have classified as independents, having a capacity of 160,175 barrels per day of crude oil, and a cracking capacity of 36,500 barrels daily.

Now, those were the refineries that are located in such as Louisiana, the Gulf coast, Montana, Kentucky, Ohio, and other parts of Texas.

The Court: Q. Did they ship into this area?

A. I was only testifying that there were independent refineries not connected with defendants or co-conspirators who had refineries located at those points we mention.

Mr. Lewin: I move to strike out the answer. I wonder if we might—if the witness might state whether or not this is offered to show that the price that was maintained wasn't high and arbitrary? If it is, then I say it is simply a quarrel with relative English. That is all it is. I don't see how that can help us. The fact that it is characterized as high and arbitrary. It means high and fixed. While it could be fixed by competition, part of it stayed out, what wasn't attracted in. The meaning of those words in the indictment as they have been construed 2661 by the Government applies to this particular case. I want to say one thing before I sit down, and that will be the end of it. I say that on the question of the definition of "high and arbitrary" we have now defined it. I do not believe anybody can use English that somebody else would not quarrel with. We have now defined it to be in numerals, and given the actual figures to which it went, in actual cents. We have also defined it as being higher than would have obtained if the conspiracy had not existed.

We have defined "arbitrary" to mean as a result of conspiracy, effected by a conspiracy.

Now, why quarrel any more about these terms? The terms mean nothing. The substance is here. Was the price defined in terms of cents that was level? We cite that here all through those months. Was that actually effected by combination? Now, that is the whole question. Now, why should we quarrel about whether it is high and arbitrary?

Mr. Dorr: I just want to take exception to the repeated remark of counsel for the government that the price was maintained. That I think is an improper statement for counsel for the government to
2662 make here.

Mr. Lewin: Your Honor, when the evidence shows the price rose and stayed there on that level during all that time I did not think there would be any quarrel between any of us. I did not think there would be any quarrel between anybody in this case that that price was not maintained by some force. Mr. Dorr thinks it was maintained by the Connally Act. I think he made a long argument along this line.

The Government maintains it was maintained by this conspiracy. How he can say there was any departure between our minds as to the fact that it was maintained, after all the evidence shows there was something there fixed, just as though it was a straight line, I do not understand.

Mr. Thomas: I object to the remark of counsel—

Mr. Dorr: I except to the remarks of counsel in the presence of the jury.

Mr. Thomas: That is not proper before the jury, and I object to it.

The Court: I hope the reporter is getting all of that—all talking at the same time. We are not going to allow this case to get away from us now.

2663 I have given some consideration to the question before the Court. While it is for the jury to determine whether or not the defendants had the power to fix a monopoly price, and did that actually during 1935 and 1936, fix the market price, nevertheless the defendants should be permitted to show what competitive price existed at that market, and the motion of the government to strike is overruled.

By Mr. Donovan

It is part of my duty in connection with my work for the Fleetwing Company, and in other connections of my work also, to be informed generally as to the sources of gasoline sold in competition with that which my company sells.

I think I have already testified that I know that gasoline comes into the Standard of Indiana territory from refiners in Toledo and Findlay, and I think I said Hooven. Hooven is the suburb of Cincinnati in which the Gulf's refinery is located.

I testified that the Kentucky Refineries around Louisville ship into the Mid-western area. I also testified on the basis of this general knowledge of mine that the refineries out in Wyoming and Montana ship into this area; into the western part of these northwestern states.

2664 I said at times refineries in western Pennsylvania did so ship into the Indiana territory.

Q. Can you tell the court and jury what was the total refining capacity in these areas, which capacity was not owned or associated with any alleged conspirator company?

A. Well, in the areas we have just been mentioning and referring to, the Gulf Coast areas of Texas and Louisiana, there was a capacity for crude distillation in 1935 of 230,000 barrels, and in 1936, 224,300 barrels per day.

The cracking capacity in those same districts was 101,000 barrels per day in 1935, and 95,200 barrels per day, in the beginning of 1936.

There was refinery capacity in the other parts of Texas and Louisiana which I have not already mentioned. The Gulf Coast region, I mentioned it by excluding it, but it was not included in the figures I just recited. The largest refinery district in the world, as I said yesterday, is the Gulf Coast region of Texas and Louisiana. More gasoline is made there than anywhere else in the world. That could be shipped into the Mid-Western area.

The total capacity of those refineries that have no connection with the defendants at the beginning of 1935 was 506,550 barrels of crude running capacity, and cracking capacity at that same date was 271,248 barrels a 2665 day.

Now in 1936 at the beginning of the year the crude running capacity of those refineries was 511,300 barrels per day, and the cracking capacity 298,448 barrels.

Q. Could you tell us whether or not this refinery capacity located on the margin of the Mid-Western area as you have already indicated on that map, Exhibit 936, would be a marked factor in the event that an attempt was made to fix and maintain an artificial non-competitive price?

A. Yes; in my opinion it would be very definitely a factor. If the prices were raised in the 10 states that are shown there outlined in red, the gasoline would tend to move in from the Gulf Coast area, very definitely, in my opinion.

That is because the freight rates, in the first place, are very little higher than the rates from the Oklahoma region. It is just a matter of a fraction of a cent. And furthermore, as we will see a little later, there is an excellent means of getting that gasoline into this territory by water up the Mississippi River.

(Referring to Exhibit 936.) This refinery capacity I speak of is along the Gulf Coast of Texas and Louisiana. You must remember that Texas is the largest oil-producing state in the United States, and that crude, generally speaking, comes down from—here is East Texas 2666 right in here (indicating) for example. There are pipe lines that run down from East Texas to this Gulf Coast refining section.

Here (indicating) is Houston. Pipe lines also come from out here in west Texas, even taking it from New Mexico, coming down here (indicating) to the Gulf Coast. And from here—there are even pipe lines that come up into Oklahoma, bringing crude down to these great refineries on the Gulf Coast, and there they get a happy combination of crude oil and water transportation, and that is why they are located there.

And there is a good market for fuel oil there. There is a large residue of crude oil, as I mentioned yesterday, which has to be sold for some purpose other than propelling automobiles. That amounts to around 25% of all the crude that is run, and it has got to be sold for heating purposes or power. These ports are very large ports. I believe Galveston, for example, is one of the largest ports in the United States, if not the largest, because so much cotton goes out from the Galveston port by boats. Most of these boats burn fuel oil, and that means there is a tremendous market for fuel oil on the Gulf Coast.

So as I say, that is a combination of water trans- 2667 portation and a market for fuel oil, cheap crude, and therefore it becomes the largest refinery center in the world.

Now, as we have seen, most of these refineries in these areas are owned by companies other than the defendants in this case.

The freight rates from this group—to take some specific examples again—into St. Louis, for example, the freight rate is 2.24¢ a gallon, whereas the freight rate from Oklahoma to St. Louis is 2.17¢ a gallon. Now, that is only

7/100¢ a gallon higher to ship from this point to St. Louis than from Oklahoma to St. Louis.

Therefore, it seems to me very obvious that a very slight rise in the price in this area would attract gasoline from here (indicating) which would come in almost as cheaply, a matter of 7/100¢ a gallon, about 1/15¢ a gallon extra over the cost.

Q. Well, would you or would you not say that this refinery capacity outside the Mid-western area in those refinery districts you have been describing would furnish competition for the Oklahoma refineries in case an attempt were made to set and maintain a price?

A. Yes, indeed I do.

I would say that the existence of the refinery capacity which I have just described and to which I have just 2668 referred on the map, would have a very decided effect in preventing the fixing of an artificially high price, because it is well known that that capacity is there, it is a common fact known in the oil business, and the ease of transportation is everywhere recognized, so that there would be no basis for assuming that it would not come in, because everybody in the oil business knows those are the facts. Perhaps I should not say "everybody in the oil business", but everybody who is concerned with these matters of prices in the Indiana territory would know that.

As I looked at that map I dealt with cities that were all around the area of the Mid-Western area like St. Louis and Indianapolis. That would not mean that the competition of those refineries I have described in Kentucky, Ohio, Pennsylvania, Montana and Wyoming would not affect prices in the heart of the area—for example, in Madison.

We chose those cities partly for two reasons, to see what happened to the rate around the edges, where the freight rates were less than from the Oklahoma points; and partly because we could not get so many points on one map.

For one thing, the first area that would be invaded would be undoubtedly the edges of the territory if an artificially high price were attempted. That would tend to force 2669 the gasoline that formerly supplied that entire area toward the center of the area, and it would pile up on top of what was already there and tend to drive down the prices in the center of the area.

But in addition to that same comparison of freight rates, that applies to the center of the area, so that there is both a direct and an indirect effect, both the effect of this edge pushing in to the center and driving it down from that side, and the invasion at the center itself.

I would say that the information with respect to the capacity of various plants that is in the documents handed to government counsel came from the same source that the summaries I have been reading from came from, and I have copies of the same information government counsel has, I believe. I would say that all of the figures I have used here are in these documents (indicating). They all came out of the Bureau of Mines reports, with certain supplementary information from the records of the Texas Railroad Commission concerning East Texas refineries.

This is a chart gotten up to show the same type information that was on the other chart, as to a city in the center. We picked Madison, Wisconsin, because it is centrally lo-
cated and would be familiar geographically to this
2670 region (indicating).

(Chart referred to received in evidence as EXHIBIT 937.)

The yellow area surrounded by a red line represents the Mid-Western area; and these green areas represent refining areas and refining sources of supply just as they did on the other map.

Here again we have the rail rates on tank car shipments from different refinery centers and sources of supply, to Madison, in cents per gallon.

(The witness describes the freight rates shown on Exhibit 937.)

If the price of gasoline in Madison were artificially raised, I would say the same thing that we have been talking about here before would happen. It would become an attractive territory for these groups that are outside, these refinery sources that are outside the usual, normal source of supply as mentioned in the indictment, and gasoline would tend to begin flowing into Madison from those areas.

I have examined the City of Chicago from a freight standpoint. The freight rates are very similar to those at Madison. It is not very far away, and to give just a very few examples, the rate from Oklahoma to Chicago is 2.44¢ a gallon. The same rate applies from the El Dorado-Shreveport area. From New Orleans, the rate is 2.54¢ a gallon;
from Louisville, 1.7¢; from Oil City, Pennsylvania,
2671 2.1¢; from Toledo, Ohio, 1.58¢. From this Fort Worth
area, and from East Texas, the rate would be 2.6¢ a gallon. So the rates to Chicago from these various groups are all within a small fraction of a cent of each other.

I would say it would require a very small increase in the price of gasoline to bring an increased flow of gasoline from these outside areas. With the rate from Houston to Chicago 2.6¢, and from Oklahoma 2.44¢, it is not difficult to see that a very small increase would yield a basis for shipments to commence moving from the Gulf Coast into Chicago.

I mentioned yesterday that we, in 1930, bought several million gallons of gasoline that originated down here on this Gulf Coast, came around by water to Baltimore, and was shipped in. During the years 1934 and 1935, there was a great deal of gasoline shipped into Ohio from Baltimore. I don't have the figures for a later period than that with me here, but I do know that in those years I speak of, a great deal of gasoline came in from Baltimore; and I would say that at all times there is a considerable quantity of gasoline shipped into Ohio from Baltimore. That could have an effect on the Mid-Western area. Indiana is just the next state over and it wouldn't be much farther to come from Baltimore into this territory than into Ohio,
2672 just one state removed.

Now, I don't know that gasoline doesn't come from Baltimore into this area; I say that I should doubt that a great deal of it comes typically. I wouldn't say it would be a very extreme case if it were to come into the Mid-Western area, because the freight rate from Baltimore to Chicago, for example, is only 2.83¢ a gallon; that is .39¢, or a little over ⅓¢, more than it is from Oklahoma.

The Bureau of Mines figures cover Pennsylvania, but it doesn't have it separate, that is, the production of gasoline; but the refinery capacity in Pennsylvania as of January 1, 1936, totaled 310,475 barrels of crude. I would say that 50% of that crude would be turned into gasoline on the average, or 150,000 barrels a day. I am giving capacity and not actual runs, I don't have the actual runs. I would say—I don't have the consumption here in Pennsylvania, but from my general knowledge of the state, I would think it would be—oh, 1,250,000.000 gallons a year, of gasoline. That is about 4,000,000 gallons or 100,000 barrels a day.

(Exhibit 726 is produced and handed to the witness.)

The Witness: Well, we have the figures here; I had better verify this supposition I made.

(Examining Exhibit 726.)

2673 Well, I said 1,250,000,000, and it actually is 1,177,000,000, so it is substantially correct.

I testified yesterday that according to the Bureau of Mines' reports there was a shutdown in the independent refinery capacity in the Mid-Western area amounting to 142,250 barrels as of January 1, 1935. The fact that a refinery was shut down January 1, 1935, would be an indication that it did not operate during the balance of the year. Those figures are as of a different date. It wouldn't indicate the status at any other time. I would not say that such refinery capacity would have to be excluded in determining what competition there actually was in the Mid-Western area. I think you would have to give consideration to shutdown capacity as a potential factor.

The Court: Q. You would have to know the condition of the factory; you would have to know the finances of the owners; and a great many things?

A. Yes.

Q. You couldn't be positive—

A. I would say this, that most of the operating refineries have some capacity they are not using. Let me give an illustration: We built a new refinery in Toledo, or a new unit to replace the old equipment to a large extent, but then there came along a fellow 2674 with some crude that someone wanted refined, and we opened up the old refinery.

Q. The Standard Oil might be able to do that, but we had a man here a while ago, Wirt Franklin; he was in the hands of a receiver. The Standard Oil might do a lot of things a smaller refiner couldn't do.

A. I will give you another example of another small refiner. It ceased operations because of financial inability of the operator—

Q. These refineries were closed down?

A. Yes.

Q. You would have to know why they were closed down, or you couldn't give us an intelligent answer.

A. I am trying to give you an example.

Q. We would like to know if you have information as to why these were shut down, because the owner couldn't finance them, or because there was no necessity for running. All those things have to enter into it. Have you got that information?

A. Yes, I believe I have a good deal of information on that point.

Q. Well, I think you better take each refinery that has shut down and tell us what you know about that 2675 refinery and why it has shut down.

A. Well, I can give you a number of illustrations: Back in about 1932 or—

Q. Unless you have that definite and positive information, it is too speculative—

A. The point I am trying to make is that in my opinion in considering this potential competition, you have to take into consideration the shut-down capacity which is just a factor—

Q. And in arriving at that opinion, you have to take into consideration why they shut down, and how long they were shut down?

A. Yes—I know why they were shut down, your Honor, because it was my duty, as a member of the Blazer committee, to ascertain a great deal of information on that particular point.

Q. You were on that committee?

A. I was on that committee, and we collected information from a great many small refiners, some of whom had to shut down their plants, because of the extreme distress in which they found themselves and their inability to go on. I know some of them opened up again after conditions became better, and within the last year the refineries that I spoke of in Ohio that had shut down reopened.

2676 In Michigan, there are a number of small refiners that sometimes might shut down for a few months and then open up again for a few months, all depending on conditions and the price from time to time.

Q. We are dealing with conditions as of 1935 and 1936.

A. I will confine myself to the period of March, 1935, when a great many were shut down because of the conditions that existed at that time.

Those refineries were not operating in that period because they couldn't afford to operate. The price of gasoline had got to such a low point, they couldn't make ends meet, and they were forced to shut down. That—in my opinion—was the principal—and certainly in anybody's opinion, would be one of the reasons for the appointment of the Blazer committee to give study to that very situation, and we got a great many complaints, and collected a great deal of information upon the status of those independent refiners, many of whom were located right out in this area we are talking about, out in Oklahoma, Kansas, and Texas.

And they had been forced to shut down, a great many of them, on account of the lack of parity between 2677 the high price of crude relative to the low price of gasoline that then existed.

Well, then if the price of gasoline had been raised to artificial heights, no question in my mind but that a great deal of that shut down capacity would have been reopened.

Mr. Chaffetz: I thought you said many of them did reopen.

A. I did say so, because there was a great improvement in the price of gasoline relative to the price of crude after the Connally Act was passed and hot oil was gotten in hand. I feel rather strongly on this point, because we are an independent refiner, also, and I do know something about the situation of the refiners.

2678 So far I have been talking entirely about transportation by rail. It is possible to reach various points in the Indiana territory by other methods than by rail. I have had a chart prepared to show the situation with respect to water transportation into this territory.

This chart, Exhibit 938 for identification, I had prepared to show the accessibility of this territory we are discussing, these 10 states that comprise the so-called Standard of Indiana territory. I am speaking of 1935 and 1936.

(Document referred to received in evidence as EXHIBIT 938.)

The navigable waters were there in 1935 and 1936. There have been a few dams put into the Mississippi River but I think most of that program had been completed at that time. This line here represents the Mississippi River. And the Ohio River off here. The Mississippi River coming up to St. Louis and on up to Minneapolis, and the Missouri River branching off from the Mississippi at St. Louis, moving over toward the west and into Kansas City, and on up north.

Then here we have the Chicago drainage canal which empties from the Great Lakes into the Illinois River and called the Illinois Waterways. That has by 1935 already been dredged out and made navigable, you know. Where the lines have been broadened out here I have indicated those parts of these streams are navigable during the 2679 period we are talking about.

There is a perfectly easy way to get to Superior, Wisconsin, by water from New Orleans. You go up the Mississippi River up to the Great Lakes, up around here (indicating) through Sault Ste. Marie and then down to Superior.

Mr. Crawford: You can go to Europe and back three times while you are doing that.

The length of time it would take to make that trip with a load of gasoline depends on how much gasoline you are carrying along, I guess. They travel the Mississippi River at the rate of 5 or 6 miles an hour. There are a lot of locks in the canal through Chicago and I think it would be rather slow.

Now, we have the Hudson River, which is capable of taking large, ocean-going steamers up quite a ways, then when we get up around in the district of Albany, you have the New York barge canal. This is the old Erie Canal of canal days that you have all heard so much about. We are accustomed to hearing of these canals having been abandoned years ago, but there is more traffic on this canal now than there ever was in the gaudy days, the steamboat days, the gay nineties. There was petroleum traffic moving up through this route onto the Great Lakes and we have again navigation through all the Great Lakes. There was in 1935 substantial shipments of gasoline through these waters, very large traffic of petroleum products on all these waterways that I have indicated. And it is increasing very,
2680 very rapidly, because it is a very sound method of
transportation. I have a number of figures showing what has been going on there.

The United States Engineers Office of the United States War Department has charge of the navigable waters of the United States. As everyone knows, the navigable waters come under the jurisdiction of the Federal Government, and they keep very exact records of all tonnage moving up and down all these streams.

For example, in 1933 on the Mississippi and its tributaries there were 10,000,000 barrels of gasoline moved. In the Great Lakes there were 21,000,000 barrels of gasoline moved.

Now, to show the trend of those movements,—here is an article based on information from the War Department figures entitled, "Biggest Gain in Water-Borne Oil is from the Mississippi and Ohio Rivers." This is the National Petroleum News, dated June 30, 1937, beginning on page 52.

Now, that shows figures taken from the War Department. It shows, for example, in the Louisville District, in 1935, there was 3,500,000 barrels upbound on the Mississippi River. In the next year, 1936, that increased to 6,251,000 barrels. This navigation on these waters has increased at a great rate.

This is to show the accessibility by water transportation of gasoline into this area; and I am trying 2681 to show that this is not a fantastic idea; that it is something that actually goes on from day to day.

The Court: Q. During 1935 and 1936 was there actually much transportation to Minneapolis and St. Paul and south, say, for 200 or 300 miles on the Mississippi River while those dams were being constructed?

A. There was some traffic as far as Minneapolis, I believe, even then. I know I lived in Minneapolis back in 1925.

The Court: I am talking about 1935 and 1936, during the time that the Government was putting in these dams in there.

A. It was already navigable, but they improved it a great deal.

Mr. Crawford: Oh!

The Court: Q. What I want to know is, at the time the Government was building these dams in there on the Mississippi River, when all that construction work was going on, was there navigation during those years, whether they went up the Mississippi River at the time that this construction work was going on.

The Witness: Here are some figures for 1934: Oil traffic on the Mississippi River for 1934. Now, 2682 let me see. Wisconsin River to Minneapolis. I believe that would be the section we were talking about.

The Court: Yes, that would be all right.

Well, there was a little gasoline—very little gasoline. There was 1,000 barrels of lube oils. There was 41,000 barrels of coke—41,000 tons, I suppose that is. And there was some 335 barrels of asphalt.

Now, I should say that was a very small traffic at that time to Minneapolis. But it does show that there was navigation open as far as Minneapolis, I think. I think up to that time the principal shipments had been coal and coke.

Now, we have noticed that recently—I do know that some time in the last couple of years—whether it was actually in 1936, I would not say—but I do know that several of the major companies have established water terminals in Minneapolis, and I believe there is a large independent terminal there now. There was a good deal of publicity recently given to the Socony-Vacuum's beginning of a very large movement from Kansas City down the Missouri River and up the Mississippi River to Minneapolis.

I should say there was a fair amount of trans-shipment in that territory. You get large tankers coming up as far as Baton Rouge. I think they can go up as far as Memphis, but I would not say for certain. And there
2683 they can transfer their cargo to small barges that
can navigate through the locks. Now, the same thing is true from the eastern seaboard into the Great Lakes. Our company owns an interest in a boat company that does quite a good deal of hauling on the Great Lakes of petroleum products. And, for example, we go over to Buffalo and pick up cargoes of various products that have been brought up through the Erie Barge Canal. It takes a smaller boat to navigate that than to navigate the Great Lakes, naturally.

So that the typical situation is for barges to bring the material up to the region of Buffalo and then to have it transferred into large lake boats, which in turn carry it to the ultimate destination.

Now, from Buffalo around to Chicago would cost around ½¢ a gallon to bring it in an ordinary Great Lakes tanker.

And I think I am safe in saying that from New Orleans to Chicago gasoline could be hauled for somewhere in the neighborhood of 1¢ a gallon.

There are several inter-coastal canals in this country, but the one that is most important, so far as petroleum traffic is concerned, is the canal which runs inland along the Gulf Coast through all these bayous and little inlets here (indicating) and there are canals that connect
2684 these that are not—this canal is not shown on the
map. I am merely indicating where it is. It starts somewhere around Corpus Christi, Texas, which is about in here (indicating), and goes around in here in the region of Galveston, and extends all the way to New Orleans, to the Mississippi River and there is a cut-off about in here (indicating), which cuts up to the Mississippi River and makes it possible then to short-circuit this route out into the Delta of the Mississippi River. So that it is unnecessary for shipping to go out into the Gulf. Transportation on the inter-coastal canal would

be by barge. In other words, barges could pick up the gasoline at these various refineries and take it directly into the Mississippi River and on up. Those are rather modern barges, with Diesel engines, I should say. I believe those step along a little bit faster. There isn't a downstream current there to contend with, and I would say they moved perhaps 10 or 12 miles an hour.

In the early part of my testimony when I was discussing the situation in Detroit, I said that gasoline had come from Rumania. That gasoline was brought in by ocean-going tanker from Rumania as far as Montreal, up through the St. Lawrence River. We haven't shown that on here as one of the navigable streams, but everybody knows that the St. Lawrence can be navigated—can accomodate ocean-going boats as far as Montreal; and from there it can
accomodate smaller boats down through the St. Law-
2685 rence River through various locks, and they bring
it in there—did bring it in there, and on up into Detroit.

Now, that began coming in, as I recollect it, about September of that year; and after this the St. Lawrence became inaccessible for navigation and it was brought in by Steamer to Baltimore and then trans-shipped by rail into Detroit.

There is a great deal of trans-shipment of gasoline from water to rail transportation in this area. Most of the large refineries in Chicago maintain terminals at various points around the Great Lakes. For example, the Standard Oil Company of Indiana, I believe, has terminals at Green Bay, Wisconsin, at Superior, Wisconsin, at Muskegon, Michigan, at Bay City, Michigan, and at Detroit, Michigan. They haul gasoline from Chicago and then trans-ship it by rail or by truck from those terminals into the surrounding territory; and we ourselves have terminal facilities at Bay City and St. Joseph, Michigan, for our distribution.

This transportation by water is not a particularly recent development. The navigation of these rivers began to become a real factor again within the last 8 or 10 years,
I would say. It has been growing very rapidly since.
2686 I mentioned a while ago that I was a student at
the University of Minnesota when I think the first barge load of coal was brought up there by the Government barge line, and they were attempting to show that navigation was possible.

Now, the Government during the late '20's and the early '30's worked very hard to get these dams in there, and

I would say that probably during the early '30's navigation began to be a real factor.

I remember when I was studying the navigation of the Ohio River, which we use in our own territory; we take gasoline from our refineries at Latonia, Kentucky, and other points. We get gasoline from other sources along the river. and we haul the gasoline to all the points along the southern part of Ohio.

Now, then, in 1929 or 1930 we began to study that barge problem. I am trying to place these dates as nearly as I can.

And I can remember we concluded that navigation was really feasible by that time. The locks had become constructed, and it was a feasible thing to go ahead with it, and I remember we bought a new tow-boat at that time and went ahead and built up our serving of these edge points with barges.

I would say from that time on the thing has been
2687 growing very rapidly and it has become recognized now as a successful method of transportation.

Q. And would you say that was a factor in potential competition of those units outside of the Midwestern area?

A. Yes, it has become an increasingly important factor in this potential picture that we are talking about.

These dots on the map are cities of 25,000 people or over. The size of the dot doesn't indicate the size of the city. For example, we show that Chicago isn't any bigger than Wichita, Kansas, but there is a large collection of these dots around the heavily populated areas. We picked 25,000 as our unit just to show the concentration of population in cities; and that happened to be just what seemed to me a fair sized city. And I had an additional reason for showing the cities, because that is where the gasoline market is, after all—in the population centers, and I wanted to show where someone who was trying to enter this territory would want to go to market gasoline, if they were going to invade the territory. So I put these dots on to show where the markets were. And it will be noted here that most of them are along these navigable waters—along the
2688 Great Lakes and along the Mississippi River—Kansas City, Minneapolis, Chicago, Milwaukee would be right there (indicating). Detroit over here. And I think all but about 20 of these cities of 25,000 people or over are within a few miles of these navigable waters. The shaded

area is a belt that is 50 miles along each side of the navigable waters. And the reason I put that on was because people don't only ship to a given point by water. They haul it out from there by truck, radiating out from whereever they might bring the gasoline by truck. They would bring it typically into a terminal and then they trans-ship from there by trucks. I happen to be very familiar with the trucking of gasoline in large transports, and I know that 50 miles is a very conservative distance to assume for the movement of gasoline in large transport trucks. Those trucks haul about 6,000 gallons apiece. And you can truck gasoline quite a little bit cheaper in that kind of equipment than you can ship it by rail, for short distances. So that this would be an area, in my opinion, that would be influenced by the supplies coming up these navigable streams; and it is interesting to note that about 70% of all the people in these 10 states live within 50 miles of these waterways, that is, within this shaded area that is shown. I
took 50 miles because it is just an easy trucking dis-
2689 tance. Now you can truck farther than that, and I
think most companies that do truck in the kind of equipment that I mentioned do go farther than that. We do in Ohio. We go up to 100 miles, but I picked 50 to be conservative. To truck 50 miles would cost about ½¢ a gallon for 50 miles. In other words, if you went to the outside edge you would have ½¢. Most of it you wouldn't have to truck that far, so that the average would be something less than ¼¢, to truck it from the terminal on the river or lakes into the 50 mile belt. ¼¢ would do it, on the average. The cost of transporting gasoline by water is very, very much lower than the cost of transporting gasoline by rail. There are no published rates for water transportation as there are for rail transportation, of course, because most water transportation is under private operation; and the cost also varies a great deal, depending on the type of equipment and so on, but one needs to make no qualification whatever to say that it is a great deal cheaper. I would say less than half as expensive, definitely.

In determining whether or not a fixed, artificial and noncompetitive price could be maintained in the Mid-Western area by any given group, I would ask myself several
questions. First, I would ask myself, is there ca-
2690 pacity somewhere in this neighborhood of this region
that could make the gasoline to come in here in excess

of their other requirements, and in looking at that I would find, as we have found, that there is ample capacity for that purpose. In the second place, I would look to see how it could come in, whether it could come in advantageously, and under what penalties it would come in. And then, again, as we have seen, it wouldn't take but a fraction of a cent more for it to come in from these outside areas than from the very areas that normally supply the territory; and with the navigation of these rivers the possibility of your accessibility is greatly increased, so that I would say that the accessibility is there beyond question. Now, I would look further to see whether the people that might come in would care to come in. And I think that we can answer that in the affirmative because in the very nature of business, pretty nearly every company wants to expand its operations, if it can; and I know of no industry of which that is more true than the oil business, because of the fact that, with increased volume, you usually get an economy in manufacturing and in transportation and in other elements, so that there is a decided urge to try to increase your business. I think the desire, then, to come in can easily be assumed.

2691 I would look then further to see whether, if they have the capacity to get in, if they can get in, and if they want to get in, whether there is some place they could land when they got in. And if we look at that, we find that the great majority of all the marketing outlets are owned by independent marketers, who are not bound to any particular supplier except for short periods of time. I think it would have to be concluded, then, that there would be no difficulty in finding marketers available to handle your products if you wanted to bring them in, and if you were willing to take advantage of the high price that we are assuming now was being maintained. The marketers are there.

Lastly, I would ask myself, if you wanted to get in there, and you wanted to take advantage of this allegedly high price by increasing your volume through cut prices, would it be effective? Could you increase it quickly by giving price concessions here and there? And I think the figures that we showed yesterday, of the sensitiveness of gasoline consumption to changes in price, amply illustrate the ease with which a marketer that wanted to come into that area could line himself up with outlets there. Or he could build new outlets, for that matter, of course. He would have no trouble in captivating a good deal of gallonage in a short time by a few price concessions, directly or indirectly.

2692 I have had experience with refinery operation and management. Our company, as I have said, is primarily a marketing and refining company, and my own work involves considerable activity in both those departments.

These War Department figures don't show the percentage of gasoline consumed in this area that is moved into the area by water. Of course, the War Department wasn't interested in any such study; they simply reported the traffic that moved.

I am in constant, or almost constant, contact with our refining problems and our refining department. It is a part of my duties to work out operating schedules for the refineries of the company from month to month. That will include the costs of all the factors that enter into the question of where should we refine the gasoline that we need next month, and how much of each product should we make. It happens to be my duty to coordinate the refineries to the marketing requirements. And I also have contact with that through the working out of various arrangements under which we sometimes do refining for other companies, and I have usually handled the negotiating of those deals, and the following of them. I would say I had been doing that for 5 years.

I call our company an independent refiner because 2693 we don't own our crude that we refine. I believe that is the best single basis you could establish for that category.

For the period a little earlier than 1935 and 1936, I have made studies of refining costs in various areas, including Oklahoma and mid-western areas.

Q. Did you make such a study in the beginning of 1935, in January and February?

A. Well, in connection with the Blazer Code Survey Committee, we—I tried to get all the information I could then on refinery costs, in order to be able to appraise as accurately as I could the condition of those refiners at that time. That was our job, and I was more or less in charge of trying to work out those figures; that is, the refining situation of those small independent refiners during that Code period, and up to that time of our report.

Q. I wonder if you could tell us what you found in that connection?

Mr. Chaffetz: That is objected to, as immaterial and irrelevant.

The Court: Objection sustained. Exception allowed.

2694 Mr. Donovan: Your Honor will permit us to make an offer on that?

The Court: Yes, you may make an offer.

(The following proceedings were had in the absence of the jury.)

Mr. Donovan: If he had been permitted to do so, Sidney A. Swensrud would have testified that as a result of his study of the condition of independent refiners in the Mid-Continent area in the first 2 months of 1935 he found the following facts to be true as to the economic position of these refiners at that time:

1. During the year 1934 low gasoline prices and increased refinery costs caused the shutting down of many refineries, and the dismantling of some of them; that the number of refineries operating declined from 454 on January 1, 1934 to 435 on January 1, 1935; that the number of inactive plants increased from 137 as of January 1, 1934, to 196, which was the highest number shut down in the history of the country. The construction of new refineries was at a minimum in 1934, and that on January 1, 1935 only 7 new plants were being built in the entire United States. The decline in the number of refineries in operation, the considerable increase in the number of inactive plants, and the smallness of the number of new plants under construction indicates 2695 that independent refiners were losing money during the year 1934, and that many were unable to continue operations owing to their losses.

2. Under the NIRA Code refinery labor costs were increased by 25 to 30%. This increase was greatest among the independent refineries. Refiners' fuel costs in 1934 were 25 to 50% greater than in the years prior to the NIRA Code. The cost of steel products used in refineries and the costs of installing such equipment increased under the NIRA Code by from 25 to 30%. Nearly all other operating expenses also increased substantially. Under the NIRA Code there was an average increase in independent refinery operating costs of around 6¢ for every barrel of crude oil put through the refinery.

3. In January and February, 1935 virtually all independent refineries east of the Rocky Mountains which were operating on legally produced crude oil, were operating at a serious loss. The case of an independent Mid-Continent refiner who made a net refinery profit of $2,781.00 in 1932, had a refinery loss in 1933 of $6,795.00 and in the first 11 months of 1934 sustained a net refinery loss of $56,450.00, or more than 9 times his loss in 1933, was typical.

This increased loss occurred in 1934, although refinery operating expenses were relatively low and 2696 the management of the business was competent. Other refineries in this area which had been making substantial profits in 1931 and 1932 began to lose money after the Code was adopted and sustained annual losses of as much as $75,000.00 in 1934, in spite of increased operating efficiency in that year over prior years. One independent refiner in the Mid-Continent area showed a profit in 1933, and a loss in 1934, the refinery receipts amounting to approximately 21¢ a barrel less in 1934 than in 1933.

10 Western Pennsylvania refiners, who, in regard to their size, type and location, could be considered typical, as a group, sustained a net loss of 32¢ for each barrel of crude oil run, or more than $950,000.00.

These losses were all calculated without inclusion of interest on the investment.

4. Independent refinery operating costs for the 16 months from September, 1933, through the end of 1934, averaged 38½¢ higher for each barrel of crude oil refined than such costs in the 16 months preceding this period. The realization from the products of a barrel of crude oil increased only 27¢ a barrel as compared with the same 16 months prior to the N. I. R. A. Code of Fair Competition for the Oil Industry. The independent refiner was therefore worse off during the Code period by 11½¢ a barrel, compared to what he had been during the period 2697 immediately preceding the N. I. R. A. Code. The refining industry was already suffering losses prior to the N. I. R. A. Code, so that refinery losses were in general at least 11½¢ for each barrel of crude oil which was refined.

5. The original price fixing schedule under the N. I. R. A. Code, based on a crude price of $1.11

recommended a wholesale price of 6.5¢ a gallon as the minimum price which would assure a fair profit to a refiner. Adjusting this for crude oil price of $1, the minimum gasoline price to enable a refiner to meet his costs and realize no more than a fair profit would have been 6¢ a gallon. During the last 3 months of 1933 and the year 1934, however, the price averaged only 4.67¢ a gallon. In February 1935 the price averaged 4.57¢. This deficiency below the price at which the independent refiner could realize his costs and make no more than a reasonable profit, amounted to approximately .30¢ a barrel on each barrel of crude oil.

6. The Petroleum Administration under Secretary Ickes had determined at the outset of its work that the ratio between the price of crude oil and the wholesale price of gasoline should be 18.5 to 1. It established this ratio in Rule 6, Article III of the N. I. R. A. Code of Fair Competition for the Oil Industry. If this ratio of 18.5 to 1 had actually
2698 prevailed during the period from the adoption of the Code up to February, 1935, the crude price based upon the tank car prices which actually existed from October 1933 through February 1935, would have ranged from 95¢ in October 1933 down to 78¢ in October 1934 and 81¢ in February 1935. Instead of that, the price of crude oil remained at $1.00 per barrel throughout this entire period. In other words, in 1934 and the first 2 months of 1935 the independent refiner was forced to pay a price for crude oil which was out of porportion to the price of gasoline and which inevitably caused him a loss.

7. Oklahoma refineries reporting in October, 1934, had an average cost, exclusive of interest on the investment, of 5.3¢ a gallon. Including interest, the average cost was 5.6¢ a gallon. However, in that month, the average tank car price was 4.5¢ in the Oklahoma market and 4¢ in the Chicago resale market. In February, 1935, prices in the Oklahoma market were just about the same and prices in the Chicago market only about .3¢ higher. In other words, on the basis of these average costs, independent refiners were losing from .7¢ to .9¢ a gallon in October 1934 and about the same in February 1935.

2699 8. On the basis of the cost formula used by the United States Tariff Commission, the cost of gasoline on the Gulf Coast was, in 1934 and 1935 6¢ per gallon, whereas the average price which actually prevailed in February 1935 was only 5.07¢ per gallon.

9. During 1934 and the early part of 1935, there was considerable production of crude oil in excess of state allowables. This excess production, which was sold at prices below the posted price for legal crude, depressed the price at which independent refiners, who were paying the posted price for their crude oil, were able to sell their gasoline, and thereby contributed largely to their losses.

10. It was often impossible for independent refiners during 1934 and the first 2 months of 1935 to secure for their gasoline even the published tank car price, owing to the existence of retail price wars and the fact that in order to compete with the larger companies and keep their customers in business, it was necessary for them to give protection and price concessions to their distributors.

11. As a result of the lack of parity between gasoline prices and crude prices, the independent refiners were being forced in 1934 and the first 2 months of 1935 to absorb the difference between the
2700 prevailing price posted for crude oil and the lower price which would ordinarily have prevailed had crude oil prices been in line with the price of gasoline, and in effect to subsidize the marginal producers of crude oil.

12. Under ordinary circumstances where prices of gasoline and crude oil were in normal relationship, independent refiners could continue to do business and compete with the larger integrated refiners. Inefficient refiners had been virtually eliminated before the beginning of the N. I. R. A. Code.

However, under the conditions which prevailed in 1934 and the first 2 months of 1935, these independent refiners, no matter how efficient they were, were being driven out of business. Many of them had been forced to shut down their refiners and some to dismantle them completely. As a result of the factors discussed above, namely, the high price for crude oil and the low price for gasoline, resulting from illegally produced crude oil and from the necessity of frequently making price concessions to customers to enable them to continue in business, caused by local price wars, and the sharp increase in refinery

costs, independent refiners had by January and February of 1935 been put into a position where they could not long continue in business. If conditions had continued as they were in 1934 and the first 2
2701 months of 1935, a great number of such refiners would soon have been forced to shut down and the refining business would have been left almost entirely in the hands of large integrated companies. Many hundreds of independent marketers in Standard of Indiana territory depend on independent refiners for their gasoline supply.

If permitted to do so, Mr. Swensrud would have testified that he wrote the Refinery Section of the Report of the Petroleum Code Survey Committee on Small Enterprises, excepting that portion dealing with recommendations.

Mr. Swensrud would further have testified, if permitted to do so, that independent refiners complained to the Petroleum Code Survey Committee on Small Enterprises that under the N. I. R. A. Code they had suffered severe losses, largely due to (1) the fixing and maintaining of the price of crude oil at $1.00 while the price of refined products was affected by cheap, illegally produced crude oil; (2) increased operating costs as a result of the N. I. R. A. Code; (3) inability to realize even the quoted tank car prices because of the necessity of making price concessions to customers affected by local price wars in order to keep them in business and enable them to meet the competition of dealers supplied by other refiners.

2702 This testimony showing the distressed condition of independent refiners in January and February, 1935, is relevant for the following reasons, among others:

I. Counsel for the Government have sought to show that the buying that was done by these defendants was done solely for the purpose of enriching themselves. One of the defendants, on the other hand, has already testified that a chief purpose of the buying was to do something to relieve the severely distressed conditions which prevailed among independent refiners in the early winter of 1935. The defendants offer, by this testimony, to show what the situation of those refiners actually was, as proving that the explanation offered was not something which was thought of after the fact, but something which was a major problem of the oil industry, which was necessarily and in fact in the minds of these defendants, which called for immediate action to relieve the condition, and which led to the program for buying gasoline from independent refiners. The testimony in other words is offered as circumstantial evidence bearing on the question of whether or not the defendants made what purchases they did for the purpose of relieving a serious distressed condition in the independent refining section of the oil industry.

II. The defendants also offer this testimony showing the distressed condition of the independent refiner and the complaints from independent refiners 2703 to a committee set up by the Petroleum Administration as circumstantial evidence bearing on the issue of whether or not the Petroleum Administration knew of the action of these defendants in buying gasoline and believed it was a necessary and proper activity which it should permit to continue and even informally encourage, particularly because some of its activities and some of the provisions of the N. I. R. A. Code had increased the difficulties of the independent refiner.

III. The defendants further offer to show by this testimony that their purchasing from independent refiners did not cause an unreasonable restraint of interstate trade, but on the contrary furthered that commerce and preserved the business of many independent refiners who otherwise would have soon been forced to shut down. The effect of this buying was to save from extinction and to preserve as competitive factors, a great number of independent refinery enterprises, to prevent the unemployment of thousands of persons and to keep from destruction the sources of supply of many hundreds of independent marketers in the Standard of Indiana territory.

Mr. Chaffetz: Now, we would object strenuously to any further testimony, particularly going into details about the cost of particular independent refiners, 2704 without any comparable testimony as to the costs of the industry as a whole.

The Court: A pretty clear picture in my mind, in view of the record, is that the refiners were really in difficulties down there. They were in distressed condition. No question about it at all.

Mr. Lewin: We know that Mr. Fahy, and Dr. Frey, and these other men on the Board had no power to authorize this kind of thing, to relieve them.

The Court: I thought they had a duty to advise Mr. Ickes that something was happening. They had that duty.

We won't have any more discussion on it. I think there is ample testimony in here as to the condition of the refiners, and I don't think the testimony of this witness would be competent. Objection to this testimony is sustained. Exception allowed.

(The following proceedings were had in the presence of the jury.)

Mr. Donovan: Your Honor, this is an extract from the Crude Petroleum and Petroleum Products which you asked for, the Minerals Yearbook, published by the Department of the Interior—I think that is the Bureau of Mines, isn't it, Mr. Swensrud?

2705 A. The Bureau of Mines is now in the Department of the Interior, yes.

Mr. Donovan: Yes, for 1934, which is the last figure available by states. The production in 1934 in Pennsylvania was 38,900,000 barrels of gasoline.

By Mr. Donovan

Most of the crude oil refined in Pennsylvania comes from outside the state of Pennsylvania. To illustrate that point, most of the refineries in Pennsylvania, on the Seaboard, of course, operate on crude brought around by tankers. That is, like Sun Oil Company. And in Western Pennsylvania—the Gulf, for example, has a refinery at Pittsburgh, or in that neighborhood, Neville Island.

Now, the crude for that refinery is brought in from Oklahoma and Texas through the Gulf's own pipe lines—or, it is brought most of the way through their own pipe line, and then by connecting lines. There are quite a number of refineries around Philadelphia.

In talking about an independent refiner, I classified our company as an independent refiner because we did not produce our own crude. We are generally thought of as a major company, but we are an independent refiner. In other words, in our refinery, we buy all the crude that we refine. I suppose most of the refiners produce some of their own crude, but I think on the whole they would buy most of it. There would be a great variation in 2706 individual cases. The words, "independent" and "major" are very loose words; we have to recognize that. We are not fully integrated, and I would call us an independent refiner in the usual sense that that term has any meaning.

Cross-Examination by Mr. Chaffetz.

Our company is very large, compared with the average small independent refiner. We are generally thought of as the price leader in the state of Ohio. We don't always lead though. I think the reason we are known as the price leader in Ohio is historic; there are two explanations. One is historic, and the other is that we have the largest volume of business in Ohio. We are the largest distributor of gasoline in Ohio. Our annual sales of gasoline are about 250,000,000 gallons.

I imagine the Black Gold Refining Company is an independent refiner. Their total sales in 1936 were 10,000,000 gallons. As far as I know, Omar Refining Company would be called an independent. Exhibit 927 shows sales in 1935 of 23,000,000 gallons; in 1936, 31,000,000 gallons. The Eason Oil Company is an independent, I believe, located at Enid, Oklahoma. Exhibit 929 shows total sales, 1935, 24,000,000; 1936, 26,000,000.

2707 Mr. Chaffetz: There was evidence yesterday, in the form of Exhibit 928, with respect to the Kanotex Refining Company; and its total sales in 1935 were 53,000,000 gallons; in 1936, 50,000,000 gallons.

A. Our sales in either of those years were roughly 250,000,000 gallons.

Carter Oil Company, a crude producing company, is a subsidiary of Standard Oil Company of New Jersey. We purchase a good deal of our crude from Carter Oil Company. We have done that since 1931, I believe.

Standard of Ohio does business almost exclusively in Ohio, but Fleetwing Corporation does business in the Standard of Indiana territory, in the states of Michigan and Indiana. I think the Fleetwing Company sells 15,000,000 or 20,000,000 gallons a year of gasoline in Michigan, and substantially lesser quantities than that in Indiana. In Michigan and Indiana we sell entirely to jobbers, under the name Fleetwing. We have a contract which we use, or Fleetwing does, in making sales to jobbers. We do not sell to jobbers in those areas on the spot market. All the jobbers to which we sell are jobbers with whom we have contracts. We tried to sell gasoline

in Detroit in December, 1935, I believe. But I would
2708 not say for certain that that was the first time our company did business there.

Q. And that is when you started to do business in any substantial amount in the Indiana territory?

A. Well, that was the largest single piece of business we did, I think, that comes to my mind.

At that time we negotiated a contract with a jobber—The Red Indian Oil Company, Mr. I. A. Dworman's Company. I would not want to say exactly when we first began to do business in the State of Indiana. I would say sometime in 1935 or 1936. You see the Fleetwing Company is a company we bought out some time in the thirties, and it has been expanding its operations. I mentioned that it has been expanding in New York and Pennsylvania and Kentucky, and we have in the last few years begun to sell some gasoline in Michigan and Indiana.

We were not persuaded to enter this territory, Michigan and Indiana, because the prevailing price of gasoline there was right. We did not think it was a good price there. We were, I would say, almost dissuaded because it was so low. What persuaded us to go in there was the fact that in the long run we wanted to have a little wider distribution of gasoline, and therefore we were willing to sustain a rather low realization for the moment.

I cannot tell you how many jobbers we have in the
2709 State of Michigan. I don't know how many we had during 1936. I could say perhaps a dozen, and I would not be far off, I should imagine. We had maybe 5 to 10 in the State of Indiana.

We have a regular form of jobber contract that we use in most cases. There is no absolute guaranty provision in these contracts. The provision in most of our contracts is that the price shall be 2¢ under the undivided dealer price. We call the "undivided dealer" the one who handles our products exclusively; but that is just a trade term. Now, if that does not net back a certain minimum amount, then we have the privilege of charging that higher amount or cancelling out. And in some cases there is a so-called "split" provision. There are quite a number of different types of contracts that we have. That we have had from time to time.

I should certainly think that the contract we made in Michigan and Indiana at the time we made it was similar to the contract used in the same areas by the defendant companies in this case, because you cannot get busi-

ness without knowing about what your competitors are doing. If we offered a better contract, it would be easier to get more business, unless our competitors met it, and I think we would consider the fact that if we gave a better contract, others would meet it, and all would
2710 be down on a low level. If we are going into a new territory with a lot of companies doing business there, and a fairly uniform type of jobber contract prevailing there, we have to consider what kind of contract we are going to offer and what price we are going to charge.

Q. And you say to yourself "if I charge a lower price than the others are charging their jobber they will meet me and we will all get a lower price, and therefore I had better not give the jobber a better contract". Isn't that right?

A. Why, I don't think that follows at all. There are many ways of giving reduced prices besides merely cutting the price.

We made the jobber contract, but we do not always charge the jobber what that contract provides. In fact, I would say in our case that is very rarely the situation. This is not because of the local price wars prevailing in the city of Detroit, but because for various reasons we may not want to charge the jobber as high a price as our contract would permit us to charge. When you enter into a contract with a jobber, that means that you are going to do business with him for a period of time. Now, he is a man, or a company, that usually has quite a large investment in this business. It cannot be changing suppliers every day. There are a lot of things it must do to accommodate itself to this new source of supply.
2711 It must persuade all its dealers to take on a new brand of gasoline. Let's say the Fleetwing has been selling certain of the other leading brands. Well, this jobber has got to convince these dealers that they should change.

Now, on the supplier's side, he makes quite an investment. He may have to make new transportation facilities. He will certainly have to do something in the way of supplying advertising material and signs and globes for the pumps, and a great many different things that all add up to a nice round sum that the supplier must spend in order to take on a jobber.

You cannot do that without having some attraction of continuity, so a contract would be entered into with each one to continue the relationship in order to justify the expenditure. You cannot make a contract without putting a price provision in. And I do not believe that any one can foresee a year ahead what the price situation may be, and what price it may be in fact necessary to charge the jobber as a practical matter of marketing policy from time to time during that contract period.

Now, in our own case I made a check before I came up here to see in how many cases we were charging the jobber the price the contract permitted us to charge, and 2712 I checked it on about three different dates just selected at random, and on none of those dates were we charging any substantial portion of those jobbers what those contracts permitted us to charge.

Q. Now, let's assume the prevailing price of gasoline in Madison is high and arbitrary under your definition of it. A jobber is doing business there. Now, suppose the Fleetwing Company came to a jobber in Madison and said "We can give you a better deal. The price is high here and we can undersell it, and sell to you for ¼¢ less than you are paying now." That jobber would have to consider whether he would do business with you nevertherless, wouldn't he?

A. Yes. I should think he would consider the trade acceptance of our product in his territory, and the amount of advertising he would have to do in order to change his customer's attitude. Assuming that we are offering a contract for the year at ¼¢ less than the jobber is paying at the time, and assuming that the price is high and arbitrary and that we can undersell by ¼¢, I agree that the jobber would stop to consider before he would do business with us. He would consider what the trade acceptance of our brand is in his territory.

2713 I don't know that he would probably consider that nobody ever heard of Fleetwing in Madison. They have certainly heard of it by now; but I think that would be a fair assumption.

I don't believe this man would have a chance of losing any part of his business, if he gave up his present brand to do business with us. The business he has doesn't depend on the brand he sells. It depends on him. He is an independent merchant, and he gets his business through personal efforts, and not because he sells this brand or that brand. I think one brand against another is of less importance to a jobber than other factors under his control. I said I did not think, assuming that he changed brands, that he would lose business, and I don't think so. I think that would be normal for a jobber—largely to advertise the brand he was selling. If he had been doing business with Phillips over a period of years, he would be persuading his customers to buy with him primarily, and I suppose he would be telling them that Phillips was a good grade of gasoline. I think customers buy with him primarily, and buy Phillips gasoline secondarily. I am convinced of this because of a great many studies made on what the customers buy.

I would say that the usual tourists typically go to a
2714 station that sells a brand that they have reason to believe is all right—not necessarily one that they have been using before. I think my own feeling, and I think I am right, is that he wouldn't look so much for the brand he has been buying before, because usually the tourist is interested very much in the service and location on his route and the type of station. Now, clean restrooms, and that sort of thing are much more influential to the tourist.

I would not say that most of the big concerns maintain the same kind of restrooms. Since the Iowa Plan has been adopted, very few operate stations themselves. A filling station that maintains a filthy restroom will do little business. I cannot agree that most of them maintain clean, sanitary restrooms. The average customer will be more influenced by clean restrooms than by the brand of gasoline sold at a station.

The advantage to the jobber in having a major company brand to sell is that he has a recognized brand which doesn't, at least, constitute a resistance to the customer that he is selling. It would depend where the tourist was coming from. If from down in Oklahoma, he would have heard of Phillips more than Fleetwing. If coming from Ohio, he probably would never have heard of Phillips, but he would have heard of Fleetwing. As for a man living in La Crosse, Wisconsin, I would say if he was coming
2715 into Madison and needed gasoline, he would do the very thing I have been talking about, he would look for a clean station, a brand that would be all right, and where he would get good service.

Although he had been buying Phillips at home, I think when he came to Madison he would buy Fleetwing just as readily as Phillips, if it was sold at a good station; that is, if there was any difference in the stations. If there were no difference, the balance would be thrown in favor of

Phillips. I cannot say how often an automobile owner changes his brand of gasoline. I would say the majority of people have a slight preference for some station or some brand, more often for a particular station. Most people have one station in the neighborhood of their home where they buy most of their gasoline. They would change their brand as often as this station changed. I have already told you that regular grade is substantially the same at all stations among the brands of gasoline.

Assuming I was a jobber in this vicinity, and had to decide what brand of gasoline I was going to handle, or whether I would handle an unbranded gasoline, I would have to qualify my answer by saying that if everything else was equal I probably would have a preference for a brand that was well-known in the community, and that
2716 would depend on other things. I don't have any doubt that I would prefer to have a brand that was well-known in this community and well-regarded.

If I had been handling a particular brand for a period of time, my resistance towards changing to any other brand would depend on the kind of relations I had had with that supplier, and whether the gasoline itself had been suitable to my customers and how I liked the relationship with that supplier in general, both as to the product I was selling, not only gasoline but other products, oil, and so on.

Assuming my relations with the supplier had been satisfactory and friendly, and assuming the gasoline was about as satisfactory as all other brands to my customers, under those conditions, I would not necessarily be resistant to changes, but I wouldn't want to look for changes.

I think that a jobber likes to stay with the same brand if it gives him all he could get from any other brand and if his relations with the supplier have been satisfactory.

Whether he would expect to get more from that brand which has been known in his community than from a brand that was unknown in his community would depend on how much the new supplier would do in the way of adver-
2717 tising in regard to the previous supplier. Where the supplier had not done a good advertising job the new supplier comes in and convinces him that in a very short time he can overcome any real resistance to speak of and put in the new brand in a better state than the old one.

In the case of jobbers who are handling Phillips or Shell or Pure Oil and others, and the Fleetwing comes around and wants to do business with the jobbers, we would not necessarily—or even probably—have to offer something in the way of concessions to those jobbers, ordinarily to get them to give up their present brands in order to go into this territory. I will tell you the particular appeal that we think Fleetwing has for jobbers, and that is that it is essentially the jobbers' own brand. And he is, above all, an independent merchant, and he wants the brand that is not in competition with the brand that is being sold by the major company itself through its own bulk stations. That is the basis which we with the Fleetwing brand try to interest the jobbers to handle that brand, and a great many of them are very much influenced by that. They say, "Here is a brand that the parent company that owns the brand won't be coming in and putting in bulk stations and going into competition with me on that same brand."

2718 We do some sectional radio advertising with Fleetwing, in the section where it is distributed. We advertise Fleetwing gasoline throughout the territory where we market—We do not advertise over the radio nationally, only one or two or three companies do that.

The Texas Company program and the Skelly program is not a national hook-up. There are 2 or 3 or 4 that probably have a national hook-up. I think it in general increases their sales.

Taking the Root Refining Company, which I think is located down here somewhere near Shreveport, I think I pointed to the refineries in the area where Root is, as companies which could come here and sell gasoline if the price was high and artificial. I included Root in the refineries I referred to.

So far as I know, Root has no advertised brand known in this area around Madison. If Root should say to a jobber here, "The price here is high and arbitrary. We will sell to you for ¼¢ less than you are paying. Our freight rate is only a fraction of a cent greater than the freight rate from Oklahoma," I don't think the jobber would be reluctant to make the change. Let us assume that he sells 1,000,000 gallons a year. That would be $2,500 a year.

I would say that would be quite influential in an average independent marketer's financial thinking. I
2719 think that quite a number of the branded jobbers up here would give up their brands in order to purchase independent gasoline at ¼¢ less than they are paying. As I say, there is a continual shift of accounts from one brand to another, thinking over a period; otherwise, the Socony-Vacuum and the Gulf wouldn't be marketing in these new territories that they are marketing in. They generally get into these new territories by taking on existing jobbers.

That $2,500 would be quite an influential inducement to the man handling Pure Oil, widely advertised in this State, or handling Gulf, which is also widely advertised in this State, or Sinclair, or most of these other companies, to give up that product.

If he took off his Pure signs and put up Root gasoline, we will have to assume that the Root Company would try to do something to put its brand before the public, would do some advertising and—

Not making any other assumptions for the moment, except that Root gave him ¼¢ below, he wouldn't be making a price concession if he did that. He is giving him ¼¢ less, but there are many elements that enter into the question of cost or of price. In other words, suppose that the Root Company, or the Pure Oil Company sells him his oil at 10¢ a gallon, and Root won't match that. Now,
2720 you are making one assumption that involves one of
the many elements that enter into the ultimate costs of that jobber.

Assuming that the Root Company did everything that the Phillips Company did, and in addition thereto, sold the same kind of gasoline, delivered here, for ¼¢ less, I would say that would be quite influential, and the jobber would think a long time before he would say not to accept that offer. He would think a long time before he would decide not to give up the Phillips Company and take over Root.

I don't think it is true that the average jobber business is built up on the basis of his handling a particular brand.

I was not in court when the jobbers were testifying, earlier in the case. I wouldn't say that many of the jobbers would take on major company brands because of the trade acceptance of those brands in their area; some of them would. That would depend, again, on whether they thought there were any disadvantages in doing that, that would overcome the advantage of it. The jobbers have more and more taken on national brands or sectional brands because I would say there is some advantage in a brand that is well known; whereas, the average jobber's own par-
2721 ticular brand, that he sells nowhere except in that
particular town, is a disadvantage, because it does create some resistance.

Now, then, it doesn't take a very terrifically widely known brand, it doesn't have to be one that is known all the way from Maine to California, to give him the type of advantage that he wants to get out of his brand, namely, a general recognition that this is not just his particular brand, that doesn't mean a thing except it is John Jones' gasoline. He wants a brand that, in the public's mind will mean that he has got a known product; that is, something just a little bit more than that particular town. Now, there are many brands that will fulfill those requirements. And the additional fact that the companies that maintain those brands usually do a lot of advertising at their expense, and not at his; whereas, if he has a private brand, he has to do his own advertising.

If Root, seeing a high and arbitrary price prevailing up here in Madison, and thinking that it can undersell that price, wants to come in to do business in this territory, it has to consider the cost of overcoming the advantage that the companies have who are already here. It would have to do something to create acceptance for its brand. Everybody does. You have to build up an acceptance for
2722 your product in that territory. And you have to maintain that by continued expenditures along those lines.

As for the length of time it would take for this jobber to convince his dealers that they ought to switch over from Pure Oil to Root, and establish that business, I would say that if the jobber had his business established, I don't believe he would need to worry about a very large diminution in his gallonage as a result of the change in brand, if he prepared his dealers and his customers for it by a little advance publicity, and so on.

The jobber would have to do some advertising, too. He would want to do some word of mouth advertising, certainly. His dealers would be told of the switch that was to come about; and if they agreed about it, they would go along; and they would begin to tell their customers, and they would probably get a story about Root's gasoline being much better than Phillips, or whoever it was that it was displacing. And they would picture it as a big step in progress that they were making this shift, and they were adopting the Root gasoline which had all those fine qualities. It is just natural for people to try to play up the qualities they are selling, or getting ready to sell.

Q. Don't you think that these major companies
2723 feel that they have expended large sums of money, tremendous sums of money, if you please, and tremendous amounts of energy, in getting their products accepted in the trade with which they do business?

A. Why, certainly.

Q. And they feel that it has taken them a long time to do it; isn't that true?

Mr. Donovon: Now, if it please the Court, what the major companies feel, I object to.

The Court: Oh, I think it is a matter of common knowledge that they are endeavoring to do all of the business that they can—

Mr. Donovan: Yes, but that isn't the question—

The Court: (Continuing.) —and they are advertising, and it is a perfectly legitimate thing to do.

Mr. Donovan: I know, your Honor, but that isn't the question. The question is, what the witness thinks they feel—

Mr. Lewin: Your Honor, this witness went into the most opinion stuff you ever heard, on direct—

The Court: I know he did.

Mr. Donovan: I object to that statement by Mr. Lewin.

2724 The Court: He is an expert witness, and—

Mr. Donovan: If your Honor please, I object to that statement by Mr. Lewin in the presence of the jury.

The Court: Why he did go into a lot of expert opinions.

Mr. Donovan: I am objecting to his manner of making the statement, also.

The Court: Oh, well, I can't control his manner.

Mr. Donovan: Well, that is something that is obvious to the Court and to the jury.

The Court: Mr. Lewin did say that this witness testified and gave his opinion as to a great many things; and he has. And I think the method of cross-examining an expert, which has been adopted by Mr. Chaffetz, is proper. Exception allowed.

Mr. Donovan: I would like to put in some tabulations. I will do it now because I think counsel may want to use them in cross-examination.

I would like to have marked for identification tabulation giving refining capacity of present defendant companies and subsidiaries in refining areas alleged by the indictment to supply the Mid-Western area as of January 1, 1935, according to the 2725 United States Bureau of Mines Information Circular No. 6850.

(Document referred to marked Exhibit 939 for identification.)

By Mr. Donovan

Exhibit 939 is a tabulation that I prepared relative to the refinery capacity of present refineries presented in the tabulation. That was based upon the information in the circular of the Department of the Interior.

(Document previously so marked for identification is received in evidence as EXHIBIT 939.)

Mr. Donovan: I offer in evidence refinery capacity controlled by defendants in the area surrounding the Standard of Indiana territory January 1, according to United States Bureau of Mines Information Circular 6850.

(Document referred to marked Exhibit 940 for identification.)

Mr. Donovan: Refining capacity of present defendant companies and subsidiaries in refining areas alleged by the indictment to supply the Mid-Western area, as of January 1, 1936, according to the United States Bureau of Mines Information Circular No. 6906. I offer that in evidence. 2726

(Document referred to marked Exhibit 941 for identification.)

Mr. Donovan: Also daily refinery capacity of defendant company subsidiaries and dismissed defendants in area surrounding the Standard of Indiana territory as of January 1, 1936, according to the United States Bureau of Mines Information Circular No. 6906.

(Document referred to marked Exhibit 942 for identification.)

Mr. Donovan: I would like to have marked for identification Information Circular, the Department of the Interior United States Bureau of Mines, the Petroleum Refineries including Cracking Plants in the United States January 1, 1935.

(Document referred to marked Exhibit 943 for identification.)

Mr. Donovan: Also Information Circular Department of the Interior, United States Bureau of Mines, Petroleum Refineries including Cracking Plants in the United States, January 1, 1936.

(Document referred to marked Exhibit 944 for identification.)

(Documents previously so marked for identification are received in evidence as EXHIBITS 939, 940, 941, and 942.)

2727 *By Mr. Chaffetz*

As for the Rumanian gasoline which I said in my direct testimony came in the Indiana territory, I cannot tell you the number of gallons that were imported. There was quite a quantity of it, I believe. Its distribution in the Indiana territory, I believe, was confined to a rather local area in Michigan. I would not be certain as to how many companies might have distributed it, but I believe most of it was sold by one company. The particular shipment that I was referring to I think was all sold by one company, and that was the Sunny Service Company. I believe a man named Austin ran that company. I don't know where he is located now. He and his company were in Detroit. I believe he sold out part of his interest. I am not sure though.

I don't think there was a mystery surrounding that particular Rumanian gasoline. There was a lot of publicity concerning it. That was one of the things that led to the imposition of a tariff. I do not recall when that was done, 1932 or 1933.

The Rumanian oil was not a competitive factor in 1935 and 1936. I mentioned it as to the fact of the cut price at that time that led to a cut price in Detroit. There is not much of that oil coming down the St. Lawrence River now. That was an unusual situation where
2728 there was some cheap gasoline.

I would say it is important to a jobber to have assurance of a continued supply from his supplier. Of course, it is important to any business to have a continuous supply. I do not think he needs to be assured he would always get it from one supplier. I know he needs to have assurance that he can get more gasoline if he wants it.

If he had been advertising a particular brand and was unable to get enough of it, I don't think that would stop him from getting gasoline in general. A substantial number of jobbers, but a small part of the total, sell from more than one source of supply. Most jobbers are exclusive patrons for particular advertised brands during the time they continue to sell the goods of one company. This supposed jobber in Madison, trying to decide whether to take on the Root product, I think would want to have assurance that he would have a continuous supply of gasoline from Root if he established that name in the territory. If Root should offer a lower price because of the high, arbitrary and artificial price in Madison, I don't think the jobber would necessarily concern himself as to whether

Root would always want to be shipping gasoline to that territory, so long as he had assurance that he could get it by a reasonable time.

You must remember this jobber business is not in 2729 people driving into a service station and demanding a particular brand. Very little of it is of that type. As I testified yesterday, about 40% of the gasoline sold is to people who run trucks, and where delivery is made in tank trucks to some customers, and most of those customers, or a large number of them, do not give a rap about what brand it is. It is a matter of getting the grade of gasoline they want, primarily, and a matter of price. If he had ¼¢ advantage which you are asking me to assume, I would say he could increase his business very definitely through getting more of that kind of business. He could corner a good deal of business in Madison.

The Fiore Coal & Coke Company, which has been handling Phillips 66 for a number of years in Madison, could increase it business if it took on an independent brand, not known here, at ¼¢ less and passed on that ¼¢ to the consuming public.

You see an extra ¼¢ for advertising would go a long ways to take care of the jobber in this matter. ¼¢ is about all that is spent. For example, Fleetwing, we spent about ⅛¢ a gallon on advertising Fleetwing name, and the jobber spends about another ⅛¢. If any jobber wanted to spend ¼¢ a gallon in addition to what he would ordinarily have spent, he could greatly increase his business.

2730 My own opinion is that he would use that ¼¢ not entirely in advertising. He would use it also in other ways. If he wanted to offer the leading taxicab companies in town ¼¢ less price on this new gasoline, he would get a very large percentage of that business as compared with the business he could get with Phillips at ¼¢ higher, in my opinion, and that would more than make up for any loss in sales to people who were insistent upon getting Phillips gasoline.

Q. Now, I would like to go back to my question. Here is a jobber in Madison who is thinking of changing over from Phillips 66 to Root.

And Root is trying to sell him some gasoline. I ask you whether this jobber would not want to make certain as far as he could that if he took on the Root name and spent money advertising it, that

Root would be a continual source of supply for him over a period of time?

A. I think he would want to know what Root's ultimate purpose was, whether he was trying to expand into a new territory, or get some short run sales. From Root's standpoint, if they did not care to have it—

The Court: All the question asked was, he would want some assurance that Root would deliver over a length of time so he could make some plans. Can you answer that?

2731 A. I would say 6 months to a year would be plenty for that.

Mr. Chaffetz: Q. You think if he thought Root could supply him over 6 months he would turn to Root, figuring that at the end of 6 months he would again have to advertise some new brand if Root stopped sending gasoline?

A. I think it would depend in part upon the nature of his own business. Now, if he had nothing but his own service stations that he had been distributing this brand of gasoline in for many years—

Q. No, that is not usual, a jobber having nothing but his own stations, is it?

A. Well, the usual jobber is rather a hard thing to describe—

Q. Yes, the usual one is not one who has all his own stations?

A. No, and that is why I am saying that you might have a jobber who had no stations of his own, and only a few dealers, where most of his business was the type of commercial accounts I am describing—

Q. Now, do we have to have so much difficulty over that simple question? Is it a fact that any jobber, whether he has his own service stations, or has half his own stations, and half stations of independent dealers, or none of his own stations, isn't it 2732 true, before he undertakes to establish a new brand in his community, a brand that is unknown there, doesn't he want to be able to be assured that he will be able to get that brand of gasoline for a long period of time, and for a longer period of time than 6 months?

A. Well—

The Court: You can answer that yes or no.

A. I can only answer it in terms of jobbers—

The Court: Well, assuming the things he told you to assume, now, answer it.

A. Well, if he will tell me what he assumes as to how the jobber's business is divided among his own service stations, his dealers and his commercial business, I think I can probably help him.

Mr. Chaffetz: Q. The bulk of the jobber's business is to retail stations, isn't it, most of it?

A. I think more than half, in most cases.

Q. And certainly most of it is to retail stations and to consumers who buy branded product, who buy on the basis of a brand?

A. No, sir. The latter part of the business, I would say, is primarily not bought on the basis of brand.

Q. Not at all?

2733 A. I said that a commercial user—let's take the taxicab companies in Madison.

I don't believe that they would let the difference between one brand and another stand in the way of saving ¼¢ a gallon, unless they had positive knowledge that that brand on which they would save it wouldn't work in those taxicabs.

Q. And even they wouldn't take on Root just as quickly as they would take on Phillips 66, would they? You would have to persuade them that it was a good grade of gasoline first, wouldn't you?

A. Well, I don't think that follows. They might have tests made, they would get information about the gasoline, which would give them some idea of the mileage they would get.

The Court: Now, let's get back to the original question you were asked. Will you read that question?

I said I thought that 6 months or a year would be long enough, unless he was a jobber who had only or almost only retail stations, where brand was of somewhat more importance than in the commercial. I said that if he had a large commercial business, or thought that as a result of a lower cost gasoline he could develop a large commercial business, then he might not care very much how long he had the supply, because then he might be changing the sources—

2734 As I said, about 60% of the gasoline is sold to automobile drivers. The jobber would consider that, but there again I think the question of patronage depends more upon him than upon the brand he sells.

Now, for example, you asked me about the jobber that we took on in Detroit. Fleetwing hadn't been sold in Detroit before. That jobber did not lose business in the first year that he took on that new brand. And, speaking of Detroit, you have raised this name of Sunny Service. You must be familiar with the rapidity with which, in that case, a new brand, never heard of in Detroit, became a leading, had more volume in a year or two in Detroit than any other brand sold there.

I don't believe they did any excessive amount of advertising. They did undersell. I am not familiar with any large amount of advertising that Sunny Service did.

I don't know whether I ever saw any Detroit papers during the period when Sunny Service was organized. I think their trade name was "Zip." That name became pretty widely known in a short period. It does not take very long to establish a new brand in a community, especially if you can cut the price. They did it in a year or so. They cut the price 2¢ a gallon, increased their volume, and made a lot of money. I don't know what became of the Sunny Service, whether they sold out or not.

2735 Looking at the matter from the standpoint of the Root Company, I assume that it sees in Madison that the price is high, arbitrary and artificial, and that it can sell gasoline there cheaper and make a good profit notwithstanding the freight rate. I think one of the things that Root would consider would be whether it desired to establish a sales organization and create a distribution area for itself in that territory over a period of time. They might just look at the price and say, "We will go up there tomorrow and sell our gasoline."

That would depend on the nature of that refiner's business. In the particular case you mention, I think they might, because Root Refining Company, from what I know of it, makes a high octane gasoline that is rather a good brand to sell to jobbers or distributors having their own brand. It is a fairly high octane, unleaded gasoline, at least the kind of gasoline that I am familiar with that company selling—down there in Shreveport, the crude oil down there has to be the kind from which you can make a pretty high octane gasoline without its being leaded, and that makes an easy gasoline to sell to a low price marketer, who might have his own brand, or no brand at all. So that it would be an ideal kind of an example of a company, a refining company simply wanting to go in and take advantage of a high price while it lasted, and depart when the going wasn't so good, if you please.

2736 It would be an ideal example of what I have been talking about, of the kind of gasoline that would move under the hands of cut price marketers and break down this high, artificial price you are asking me to suppose.

The number of jobbers who handle unbranded products, who sell gasoline under their own brand names, are small in quantity compared with those who handle a branded product in the Indiana territory, but their volume might be very large. They are small in number, but large in importance. A number of them are established in cut rate stations. It is partly true that they substitute cut price for brand as a means of selling. Now, if Root were trying to establish the Root brand as a big brand in this territory, it might be true that it would have to consider over how long a period of time it could undersell competition in this territory before seeking to establish a market here. If it is merely trying to sell some gasoline, to take advantage of a high and artificial price, then I would say that it might be interested in selling one tank car to some cut price marketer here. If Root wanted to get jobbers away from others who were selling under contracts the branded products of, let us say, Phillips, it would have to be able to show the jobber that it really meant to try to establish itself over a period of time in this territory on a competitive basis.

2737 It would have to be able to show the jobber that it really meant to try to do that, I suppose, most jobbers, at least. But, as you say, it might not decide that that was the way it ought to enter into the market. It might decide that the better way was not to try to get an established jobber, selling one of the main brands. It might try to get a marketer who wouldn't rely upon a brand as much as upon cut price.

I have told you that that type of marketer is a small part of a number of marketers in this territory, but I have also said that he can become a very large element in the market if he has a cut price. Some of them sell as low as 2¢ below the other prices. They haven't taken away all the business of the other companies, but they have taken away a good deal. If I were employed by the Root Company and sent up here to establish a market for them, I would take into consideration the major company brands that were being sold here. If I was interested in a period of 2 or 3 years, I would take into consideration what kind of competition they could give and could maintain over that period. If I was merely trying to take advantage of an artificially high price maintained here, I don't know that I would be interested in any particular length of time. I would be interested in making some money on an immediate sale, and perhaps not making any commitment that required me to give any consideration to how long I could continue that.

2738 It might not cost more than my traveling expenses up here to establish a business and do our advertising, say for a month or so. There might be a post office business in this town that might be up for public bidding, and I might simply come in and underbid and ship in tank cars. If I were trying to establish the Root brand here to do business for a long time, I would give consideration to whether the price over a long period of time up here would be attractive. I would look into the factors that made the price; would want to know what kind of a price it was.

I would try to size up the territory—and, assuming now that I want to get established in Wisconsin—that I am not just trying to take advantage of a temporary high price, then I must have motives for believing that in the long run I can economically distribute in this state. That is the only basis on which I can assume that I would want to come up here and do this analyzing.

If I found the price prevailing today was high, artificial and arbitrary, I still might not care to come up here to compete and establish a business if I thought that that price might not last.

If I am the Root salesman coming up here, if my
2739 object is to spread the Root brand, then maybe I want to give consideration to the transportation factors, and how much it will cost me to put a terminal up here, and what the long run situation is in the industry, and a great many things. If that is my objective, I am willing to spend some money to get it established.

Q. Now, that isn't at all what I asked you, and it isn't responsive to my question at all, I submit to you. I said to you this: That if you found today that the price prevailing here was high, arbitrary and artificial, a price that you could beat despite an adverse freight differential, you might still hesitate to try to establish a business here if you didn't believe that that price was going to continue over a period of time, if you weren't sure it was going to continue over a period of time?

A. I don't think I would necessarily be concerned with the long time factors. I don't think Root is, as a matter of fact. I have in my file here some records of its sales in Ohio. It sells in Ohio one month;

the next month it doesn't sell, and the next month it sells again.

Mr. Chaffetz: Oh, that isn't my question.

Q. Let's take any company in that field, any company in the Louisiana-Arkansas area. It finds 2740 that the price in Wisconsin is high, artificial and arbitrary, a price that it can beat despite an adverse freight differential. If it could compete on the basis of that price, it would be worth that company's while to come in and establish a business here, because it could undersell that price. Now, I suggest to you that, if they found that that price was being artificially maintained there, so that it might not be the same high, artificial price tomorrow, they would hesitate before going in to compete on the basis of that high and artificial price.

A. With a long term investment in a brand, yes —but not necessarily.

Q. That was my question, though. I said, come in and establish a business here.

A. Well, establish a business—one tank car establishes a business.

Q. Does one tank car establish a business?

A. It is business, yes, but—

Q. Let's have no misunderstanding. I am talking about their making contracts with jobbers in the same way that Pure and Shell and Skelly and Barnsdall and the others do.

A. I think if Root was anxious to try to estab- 2741 lish a business in this state it would find no better opportunity than during the period you have mentioned because under those circumstances we can assume that it has been trying for years to try to—

Q. I must cut you off because that was not my question. I am not assuming that Root wanted to establish a business here at all.

A. I thought you wanted me to assume that.

Q. I am assuming that there is a high price here which Root can beat, and the question is, because the price is high could they come in here and establish a business?

A. Well, that would be—

Q. Can't you see the difference between those two situations?

A. I say that in the case of Root I don't think they would come in and—

Q. Take any company in the Louisiana-Arkansas area, the "X" company.

A. Well, there would be—

Q. You are an economist, aren't you? Isn't tha what you qualified as?

A. I believe so.

Q. Now, let's take another illustration. Let' put the oil producer out of it. Let's take iodine

2742 Do you know anything about iodine?

A. Not very much, nothing but seaweed.

Q. Do you know that iodine comes in here fron Chile in large quantities?

A. No, I don't.

Q. Let's take a hypothetical situation—We wil assume that iodine does come in here from Chile It can be produced in Chile for 25¢ a unit. It i sold in the United States—let's eliminate tariffs— it is sold in the United States for $2.00 a unit Iodine can be produced in the United States, w will say, for $1.00 a unit, and can be sold at profit of $1.00 a unit. Somebody comes to you and asks your advice, as a business manager, as t whether he should establish a business in the Unite States in the manufacture and sale of iodine. He says the current price is $2.00, we can sell it at good profit, at $1.00. Would you advise that man to go into the iodine business?

A. Why, I think I would, if he could make $1.0 profit on it for the time being—

Q. Don't you know that the very day he starts to sell his brand for $1.00, the Chile man would sell it for 75¢, because it only costs him 25¢ to produce it?

A. I don't know that.

2743 Q. I told you that in my assumption. I told you it cost 25¢ to produce it in Chile. They sell it in the United States for $2.00, and the American producer could sell it for $1.00. Would it be worth his while to invest money in the business of producing iodine in this country? And I ask you, wouldn't he be a fool to do it because he would know that the very day he offered his first gallon of iodine at $1.00, he would be undersold by the Chile producer?

A. Well, if he positively knew that, and he was—

The Court: Q. What would you do?

A. Well, if I positively knew—

Mr. Chaffetz: Q. Would you positively have to know it before you decided not to go into business?

A. I think so.

Q. You wouldn't go into that business unless you were positive that the facts I stated were true?

A. You would have to know how much money you would have to invest to go into that business.

Q. Suppose it would be a small investment.

A. If it were small enough, he might go in just to make a few days' sales, yes. There are all kinds of people in this world. Some are willing
2744 to take a profit for a day, and be done. And some are—if it was a matter involving a $50,000,000 investment, he would have to think it over very, very carefully and consider it from all angles.

For example, take the people that are picking up coal over in the—truckers that are hauling coal in here all the time. They get an old truck and they make a trip out to some coal field, pick up a load of coal and come in and sell it. They are not trying to establish a brand name for some particular owner. They will take a profit on one load—

The Court: We are not talking about the trucking business. We are talking about the oil business.

The Witness: We have hundreds of little refiners—

Mr. Chaffetz: Q. What percentage of all the gasoline sold in the Indiana territory is sold under brand name of a large distributor?

A. I should think perhaps ¾.

Q. Wouldn't you think it was much more than that?

A. No, I wouldn't think so.

Q. Wouldn't you think it was 85%.

A. I wouldn't think it would be much over
2745 75%, but it might be as high as 80% or more.

Q. Or 85%?

A. Well, I really would not—now, when you say a branded name, a major company?

Q. Either a major company brand name or a well-established company like the National and the Deep Rock—I don't know whether you consider the Deep Rock as a major—other companies who have an established brand name.

A. Somewhere in the range of 75% to 85%, ordinarily.

Q. So that by far the great bulk of the business done in this area is done in branded products; isn't that right?

A. Branded, yes, but I mentioned the case of Detroit, where no—where there was a difference between—

Q. Well, we will call it a national brand or a sectionally branded product, if you insist.

A. Yes, I think 75% or more.

But a company wanting to establish any substantial business in this area would not have to do business with distributors dealing in branded products, indeed not. The possibilities of selling to cut-price marketers are very great. If there is somebody holding up the high price,
that would be the ideal way to come in. One little
2746 service station can get a very large volume of gasoline.
Now, that little service station doesn't require a big investment.

The cut-price marketer hasn't driven the branded product marketer out of business because the branded price of the branded marketer has not been high enough, in general, to permit the unbranded product to be sold at enough lower than the price of the branded products to change that volume as much as that. But whenever the price cutter gets the advantage of a few cents differential, or even 1½¢ or 2¢, he rapidly becomes a very important factor in that market.

Now, then, under the assumption that here is maintained a high and artificial price, the percentage that the unbranded cut-price marketer would soon have in that market would be tremendous, just as it was in the case that I mentioned, where the price cut was relative to the other price in the area. It would be a question of degree, depending on the amount of differential that he could offer to the customer.

Q. In some cases he already offers and has constantly offered as much as ½¢?

A. Yes.

Q. Or 1¢? And there are areas where there are cut-price marketers offering as much as 2¢ differential?

2747 A. Not necessarily 2¢ below the comparable product of major companies. You see, you are talking about two different grades of gasoline when you talk about those differentials.

Now, the cut-price marketer doesn't sell ordinarily a high octane, leaded gasoline. He sells what in the trade is known as third grade gasoline; and the price that he sells at, as compared with the price at which the major company sells its third grade gasoline, is rarely very far apart. Now, if he cuts his third grade price 2¢ or 3¢ below the third grade price of the major company, he would get a whale of a business.

He would begin to get—these things are rapidly convertible into one another. I mean, the regular brand business would soon drop down with the third grade business. I believe that the refiners in the Louisiana-Arkansas field think of their normal marketing territory as over to the east there. If I may illustrate,—largely in this section here (indicating). They do sell some up this way, for example, in Ohio. There is a certain amount of gasoline goes from the refiners in this group into Ohio, you might say just beyond the Indiana territory here.

2748 I would say that the normal marketing area of the refiners located in Montana and Wyoming would be in the states themselves and in the western portion of North Dakota, South Dakota and Nebraska.

The Rocky Mountains come down in here (indicating), and there isn't much gasoline that moves across the Rocky Mountains.

Generally speaking, the side west of the Rockies would be supplied from the Pacific Coast; but east of the Rockies, from the east.

Q. Is there enough gasoline produced in the states of Montana and Wyoming to meet the needs of those states and also to supply a substantial part of the—any substantial part of the needs of the Indiana territory?

Montana had a capacity to refine 26,600 barrels a day of crude oil. And Wyoming—this is the beginning of 1936—had a capacity of 51,430 barrels a day. That makes a total of 78,000 barrels a day. And 50% yield—that would be about, roughly, 40,000 barrels of gasoline a day.

Q. Is that gasoline you are talking about now gasoline produced out of crude produced in those states?

A. I will have to go another step and look up the

2749 production in those states. I think, as a matter of fact, I should say that there is more crude produced in those states than is refined in those states.

I translated capacity in barrels per day of crude oil into gasoline by assuming a 50% yield. Now, in Montana gasoline consumption was—(computing) well, the way these figures work out, they had a capacity to make 584,000,000 gallons. And the total consumption in the state was 167,000,000; which would make it appear that they had a capacity of about 3 to 4 times the consumption in those states.

I said I think that goes—you see, these states (indicating on chart) are the most sparsely settled states in the country, and a good deal of it goes to the western part of these states and down into Denver, a fairly good center, and Salt Lake City. I dare say if I could draw a line, I would say about like that (indicating) would be the area.

That is a circle running over toward the edge of the Rockies. This is a pretty good territory over here—Eastern Idaho. In a general way, it covers the western part of those states. It is obvious that they don't sell it all in Wyoming and Montana. I took the consumption in Wyoming and Montana in 1936. I got those figures out of
2750 this book, which is tax figures for those states. We have got a capacity of 40,000 barrels a day of gasoline, running 365 days a year. Refiners run on Sunday.

The Court: Q. I want to know the amount that is produced in those states compared with the amount consumed.

On January 1, 1936, daily average crude runs to stills were about 2,750,000 barrels, indicating that the operating plants run about 73% of capacity. I don't know anything about the price of crude refined in Montana. I don't know anything about the cost of plants in those states compared with the states in the Mid-Western territory. I should think that the retail price of gasoline in Montana would be higher than in other parts of the country because of the distance from the center of the crude business of the industry. Completing the figures that your Honor asked for, we found a gasoline production capacity of 40,000 barrels a day, assuming 50% yield. That, I feel, is conservative. That makes 40,000 barrels a day for 365 days. I make it to be 14,600,000 barrels. Every one of those barrels has 42 gallons, but, with Mr. Chaffetz' permission, I will use 40. I still make that to be 584 million gallons. We have to take 73% of that. I will use 70 for round figures. I make that to be 408 million gallons plus.

2751 Now, the consumption in those states for 1936, reading from this book which is taken from the tax figures, Wyoming, 58,000,000 gallons, and Montana with 109,-

000,000 gallons, which, added together, make 167,000,000 gallons, plus the odd numbers. That is about 16—about something like—well, around a little over ⅓ of this capacity, so that refining capacity there would supply the states almost 3 times over.

So I should say that supply now goes partly into North Dakota, the western part of South Dakota, Nebraska, Colorado, Idaho, and Colorado—or Utah.

The retail price of gasoline generally throughout this area, Montana, Wyoming, Idaho and so forth, is higher than the retail price over the central portion of the Indiana territory—considerably higher, I would not say—several cents higher. Yet the producers and refiners in those Western states might sell in the Indiana territory. They might have sold all they could in their own territory, but continue to take a little lower price in the Indiana territory, provided it was a remunerative price. That would be true no matter whether you had a high and arbitrary price in the Indiana territory or not. The higher it was, the more attractive it would be. It might get high enough so they would be willing to leave off sales in the area they had been selling and move into the new area. They
2752 might increase their runs if there was an incentive to make more gasoline. With a 73% of capacity, they could increase their output and get hold of some new business and still have their own. That would depend on what it would cost to produce gasoline in Montana and Wyoming and the price in the area they were going to ship to. The price in Montana and Wyoming is higher than Wisconsin because the price on practically all products that have to be shipped farther is higher.

Q. They don't have to go farther. Take the gasoline that is produced by refiners located at Billings, Montana. They put it in their trucks and truck it around. They wouldn't have any freight at all. I understand from you that the price he gets is probably higher than the price the dealer in Madison gets for gasoline that comes from Oklahoma?

A. Well, I have said I don't know what the prices are there. My opinion would be that they would be higher out there in general than in a thickly populated section of the country. If you have ever been in Montana, you know you couldn't have a very concentrated distribution of gasoline. You might have to haul it 40 miles from one city to another.

2753 Hauling cost is bound to be reflected in the general price level in the area. It is not necessarily cheaper to haul by truck in Montana than by tank car through Oklahoma to Madison—not over those mountains. The retail price prevailing in the Indiana territory is lower than the prices prevailing in the country as a whole. That is because the Indiana territory is closer to the largest sources of supply of raw materials. By the same token, the price in the Dakotas, being farther away, is relatively higher. It is true that it is the farness away from the principal source of raw material, and not the trucking over the mountains, that creates the higher price. Generally speaking, the price should be lower in the Indiana territory as a whole, but not in Dakota. It is unlikely that the Western refiner would ship to Madison or Chicago. I think he would be more sensible to stop at Minneapolis. He normally gets a higher price in Montana than the Indiana company gets in the Indiana territory, but he is always shipping a part into this area, which indicates that in general he is able to do that.

Now, if this price is raised, it just means he can go that much farther. How much farther he can go depends on how much it was raised, but certainly if the price were raised, he can do it, because the capacity is there, and the incentive is there.

2754 Q. And you wouldn't know from the facts we have got on this record so far whether these refiners in Montana and Wyoming are not now getting rid of their surplus production in the states of North Dakota and South Dakota at lower prices than they are getting for the greater bulk of it trucked in their home territory?

A. No, I wouldn't know.

Q. They may be already getting rid of their surplus by selling at a lower price in North Dakota and South Dakota?

A. You asked me to assume they were operating at a 73% capacity. Then by that token they would have 27% more to invade farther east.

Q. That again would depend on the nature of that 27% of capacity that was left?

A. Yes. I do not mean that those plants could produce during the year 365 times the capacity for one day, nor to convey the impression that they could operate at 100%. We mustn't get the impression,

however, that they can only operate on an average of 73%. I think a refinery could operate above 90% of its rated capacity, on the average. Generally speaking, there is no difficulty in a refinery getting
2755 all the crude it wants. There might be an exception here and there.

Q. Assuming the prevailing retail price in the Indiana territory was ½¢ below the average prevailing retail price in the remoter states like Montana and Wyoming on the one side and Kentucky, Ohio, and Pennsylvania on the other side, could not the price of gasoline in the Indiana territory be raised that ½¢ before companies in those other territories would be persuaded to come in there to compete?

The assumption that the price in the Indiana territory was ½¢ below the areas around the fringe of it is one that does not exist. Generally speaking, the retail price in the Indiana territory was lower than the rest of the country as a whole, but not lower than the fringe around the territory. I would say it would be the opposite of that. I think the retail price in Ohio would be a little lower than in the Indiana territory. In the western part of Kentucky, in the mountainous section where transportation is difficult, the price might be higher. In terms of transportation, those states are not farther away from Oklahoma and East Texas than the states of Illinois and
2756 Wisconsin. In order to compare prices in the Indiana territory and elsewhere, I have considered 40 cities outside this territory and 10 cities inside. That is more or less standard—50 cities. It is the index that most people look to as an index of prices—50 cities, one in each state in the Union and two extra. In 1934, in the 40 cities outside the Indiana territory, exclusive of tax, regular grade gasoline was 13.74¢ a gallon. In the next year, 1935, it dropped to 13.67¢. That was a decline of .07¢. Now, in the 10 cities inside the Indiana territory, the average price in 1934 was 13.23¢. In 1935 it was 13.05¢, so that it dropped .18¢. The price within the area dropped lower in 1935, as compared with 1934, than the price outside did. During 1935, I don't believe prices increased in this territory, that is, for the year. I know the prices were higher during parts of 1935 than they were during parts of 1934. About the first of March, 1935, the price began to increase in the Indiana territory and everywhere else, I should say, as compared with the immediately proceeding period. My information

is that the price increased less in the Indiana terri-
2757 tory during that year than the retail price increased
for the country as a whole.

The question was: How did the price within this area, the increase in the price within this area between March 1st and June 1st compare with the increase in price outside the area between the same dates?

Now, I had an index of 50 city prices that has been considered standard for this industry for many years. I took the ten cities inside the area and compared the price there with the forty cities outside the area. Inside the area the average price on March 1st was 12.63¢ per gallon. On June 1st it had increased to 13.35¢, which is an increase of 72/100 of 1¢. In the forty cities outside this area the price on March 1st averaged 13.26¢, and by June 1st it had increased to 14¢, an increase of 74 points, or slightly greater than within the area between the same dates. These are the ten cities that have been used for years in this industry.

Gasoline produced in Oklahoma, Kansas and Texas has an effect on the price of gasoline in areas other than the Indiana territory and other than the states where produced. If prices were unduly depressed in Oklahoma, that would tend to bring down the prices elsewhere—for example, down
the coast and also on the Atlantic seaboard—through
2758 a chain of effects. I am referring to general prices.
The retail price in Oklahoma would hardly affect the retail price on the Atlantic coast.

I have with me a form of a Fleetwing jobber contract in Michigan. It is not a contract with anybody. On the outside I see the name "Orion Gas & Oil Company." That is physically attached. It is not a part of the contract. That is just a form, simply a piece of paper, I would say. I do not know whether it is the form of a contract between our company and the Orion Gas & Oil Company. I am familiar with the jobber contracts of our company in a general way. The provision of the contract beginning "Provided, however," which is a part of Section 3, "Prices Payable," is, I suppose, in general similar to the ones we use in Michigan. That paragraph provides that if the price we charge does not net them back at least 5½¢ under the service station price, they are to get some special concession, I believe. That is under the service station price of the Standard of Indiana. In other words, if the price we charge does not give them a 5½¢ margin under that price, we will lower the price we charge. It does not say that we guarantee the jobber a 5½¢ margin below the 2759 Standard of Indiana price (retail service station price). It says that if it does not net him that much, we will refund to him one half of the amount of the deficit below that. It is the so-called split provision. It is a guarantee of 5½¢, subject to a split. It does not guarantee a full margin. It is based on the normal prevailing retail price or the actual prevailing retail price. We do not have our own retail price, so we have to refer to somebody else's retail price.

Q. Do you know what the policy of the Standard of Indiana was in 1935 in posting its retail prices in the Indiana territory?

A. Well, I know that it had a different policy in Michigan and Detroit than it did elsewhere. That is my understanding at any rate.

I think the policy in Michigan was to meet the price that competition showed was necessary to have. I do not think the policy differed at all in Michigan in principle from the rest of the Indiana territory, except that prices in Detroit - - - it would be more difficult to collect a price representing the full freight differential over Group 3 than elsewhere, that is all.

I think all the Standard of Indiana did in any state was to meet competition. I think prices everywhere have to be based on what you can get.

2760 *Redirect Examination by Mr. Kirkland.*

The Standard of Ohio is an entirely separate company from Standard of Indiana. There is no stock relationship between the two that I know of.

This reference in our jobber contract to the price of Standard of Indiana was put in there without any consultation with Standard of Indiana, just as we have many contracts specifying our price in Ohio, simply because we are the price leader in Ohio just as the Standard Oil Company of Indiana would be in Michigan, I would say. And if you want to make prices in a contract that has reference to some retail prices, then you have got to refer to some prices that are well known, somebody that covers the territory. There is nothing sinister about that, and if that impression has been created I want to—

Recross Examination by Mr. Chaffets.

Q. You say your company is entirely disassociated from the Standard of Indiana?

A. Yes, sir.

Q. You do not go so far as to say there are no common stock holders?

A. People that own stock in both companies?

Q. Yes.

2761 A. Oh, I think there are several people—I own stock in several companies.

Q. Do you know the dominant stockholders in the two companies, who they are?

A. I suppose you refer to the Rockefeller Group.

Q. I was going to ask you whether you know there is a similar dominant stock-holding influence in both companies.

A. I think in general the Rockefeller interests, so-called—that is rather a loose term—for example, Chicago University which owns a good deal of stock in our company, and I imagine it owns some in Indiana. Now, that is an educational institution that was endowed by Mr. Rockefeller. I do not believe Mr. Rockefeller—what he has to do with that money now, I don't know.

The Rockefeller Foundation, which is a foundation devoted entirely to research in the field of medicine, I believe, and in other things,—purely a philanthropic institution—also owns stock in our company, and it depends upon dividends from our company, among others, for doing that type of work.

Mr. John D. Rockefeller, Jr., I don't know whether he owns any stock in our company or not. 2762 I don't know whether he owns any in the Standard Oil of Indiana or not.

I believe at one time there was an attempt made to put together all those interests that at one time or another had had some connection with the Rockefeller family, and as I recall it at that time those represented about 20% of the stock of our company, but that was before we increased the stock by about 50%, so I imagine here now that would be down to say 15%, or something of that sort.

Q. Is there any other larger interest, larger group, interested in the company?

A. Well, I don't know as to that.

(Witness excused.)

2763 Mr. Donovan: Now, your Honor, without objection by counsel for the Government, in order that there be no question on these tabulations here if some of them might be inaccurate, I would like to put in as Exhibits 943 and 944, which relate to the figures upon which these tabulations are based, and the conditions there. These are the 1935 and 1936 circulars of the Department of the Interior on the Petroleum Refineries in this country.

Mr. Chaffetz: I would rather not have those go into the record, because I do not want to have to take the trouble to study them and deal with everything in there that may not deal with this case. There is a lot of that kind of material. Some of it was offered at one time by Mr. Francis. It is not necessary.

We asked they be put in subject to check, and if either side find any errors at any time I have no objection, but I see no reason for putting in the basic documents, some of them voluminous, from which that particular information came in.

The Court: I don't really see any need of adding this to the record. We have the facts, and if there is any dispute as to the facts, then we can put them in; but for the time being, I don't see any necessity for them.

Mr. Donovan: All right, your Honor.

2764 ARTHUR P. DYER, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Dallas, Texas. I am district manager of the Southwest Pump Company, a manufacturer of service station pumps, airport gasoline equipment, and so forth.

From 1922 till 1933 I was sales manager for Oriental Oil Company, an independent company in Dallas. Then for a year I was an independent jobber in Dallas. Then I was associated with Waverly Oil Works Company of Pittsburgh, and Pennzoil Company of Oil City, Pennsylvania.

During the first part of 1935, until March 1st, I was the field representative for the State Chairman for Marketing under the Petroleum Code and then I became the State Chairman myself. After the discontinuance of the Code, and for the remainder of 1935, I conducted a statistical bureau for the principal purpose of investigating marketing conditions in Texas, furnishing that information to the subscribers.

Under the Oil Code, all during 1935 and since the late summer of 1934, our principal activity was price stabilization work. This involved working with independent refiners operating in East Texas. In Texas the practice
2765 is to engage in what we call dock sales. That is where
a trucker comes to a refinery and buys a truck load of gasoline at or about the same price that another customer probably would pay for it in a tank car. Therefore it was necessary to work with those refiners. Many of them were on our Stabilization Committees.

Our work at that time brought us into contact with the refineries operating in East Texas, because hot gasoline made it an almost insurmountable task to try to do anything with gasoline prices, and therefore we worked with them in an effort to get their cooperation in this work.

As to this hot gasoline problem, I was talking about 1934 and 1935. After March 1, 1935, hot gasoline continued to be manufactured in East Texas, but virtually none of this gasoline moved out of Texas in interstate commerce. That was due to the effectiveness of the Connally Act, which went into effect approximately March 1st, and the operations of the Federal Tender Board. The railroads were prohibited from transporting gasoline without Federal tenders. After March 1st, hot gasoline was a market factor within Texas. I know how much hot gasoline moved out of Texas in January and February, 1935.

Section 9 (c) of the National Industrial Recovery Act provided for the prevention of the shipment in interstate commerce of crude oil or its products made in excess of state allowabies. That would be a definition of hot
2766 gasoline. Under that Section, a Federal authority
was set up in Texas to control the shipment in interstate commerce of hot gasoline. A Federal Tender Board was set up at Kilgore, Texas, in October, 1934. The Board operated until January 7, 1935.

I found from my investigation that shipments of hot gasoline were made in interstate commerce after January 7, 1935. Such shipments were made January 9th.

On January 7th the Supreme Court of the United States declared Section 9 (c) of the N. I. R. A. unconstitutional. For a short while, through the unusually active efforts of the Railroad Commission of Texas, a great deal of hot gasoline did not move in interstate commerce. But that was a very temporary situation. It lasted for 6 or 7 days.

I have the names of the independent refiners who are alleged in the indictment as members of the East Texas Refiners' Marketing Association. I have made an investigation to determine the amount of gasoline sold by these refiners during the 4 months prior and during the 4 months subsequent to March 1, 1935.

In order to determine the amount of gasoline sold in East Texas, the records of the Federal Tender Board were investigated for the purpose of determining the number of tank cars of gasoline which were shipped. The records of the Railroad Commission also were used as a check. The
State Comptroller's office of Texas was used for the
2767 purpose of determining the taxes paid on all gasoline
shipped by the refiner, and particularly the amount that he sold in truck quantities. Any figure that I quote, of course, is the minimum figure, because if there were many tax evasions or shipment by subterfuge, that is, gasoline billed as crude tops, or something of that kind, it won't show in my figures. The records of the Railroad Commission of Texas to which I refer are in my possession.

The members of the East Texas Refiners' Association named in the indictment shipped 56,473,956 gallons of gasoline during the 4 months preceding March 1, 1935. These same refiners sold during the 4 months after March 1, 1935, that is, during March, April, May and June, 81,299,358 gallons. This was an increase of 24,825,402 gallons.

Not all of these companies were operating during the period of 4 months prior and 4 months subsequent to March 1, 1935. Matthews and Premier did not sell any gasoline. Solvex and Cascade did not operate. Wabash sold only in November, 1934, and June, 1935.

During the year 1935 these members of the East Texas Refiners' Association sold 285,592,188 gallons. The amount of gasoline sold during 1935 by all refiners operating in the East Texas field was 378,920,346 gallons.

I have examined my records that show the ship-
2768 ments of hot gasoline made in January and February,
1935 from East Texas into the Mid-Western area as distinguished from interstate shipments of hot gasoline as a whole. I understand the Mid-Western area to be the Standard of Indiana territory. I have the Railroad Commission records here.

The total amount of hot gasoline shipped into the mid-western area, as indicated by my records, in January, 1935, was 116 cars or 933,800 gallons. The first of those shipments occurred on January 9th. 25 cars were shipped on that date. That was two days after the decision of the

Supreme Court knocking out Section 9 (c) of the National Industrial Recovery Act.

The remainder of the shipments of hot gasoline made during January occurred on the 14th, 4 cars; on the 15th, 1 car; on the 16th, 5 cars; on the 17th, 9 cars; and on the 19th, 1 car; and from January 20th through the 31st inclusive there were 71 more cars shipped, making the total of 116 cars. The bulk of those shipments of hot gasoline during January, 1935, occurred during the last 10 or 14 days of that month. 61% was shipped the last 10 days.

There were 287 cars, or 2,310,250 gallons, of hot gasoline shipped out of East Texas into Mid-Western area during February, 1935.

Comparing those amounts of hot gasoline shipped
2769 into the Mid-Western area with the total hot gasoline
shipped in interstate commerce during those two months as shown by my records, there were 116 cars of hot gasoline shipped into the Mid-Western area against a total of 118 cars in January; and in February there were 287 cars of hot gasoline shipped into the Mid-Western area as compared with the total of 317 cars. The bulk of those shipments was in the Mid-Western area.

I determined whether or not particular shipments of gasoline during January and February, 1935, were shipments of hot gasoline from the records of the Texas Railroad Commission's tender board at Kilgore which show the number of tank cars of gasoline that are shipped. In selecting the refiners whose shipments I have quoted here, I took those where the records reflected that no tender, either crude or products tender, had been issued to that refiner. Those are State tenders, and, of course, were the only tenders effective during this particular period, because the Federal Act had been knocked out. The Railroad Commission of Texas issues tenders to refiners who can prove that the products from which they are going to refine their gasoline were legally produced, that is, produced within the state allowable.

In February that same method was followed with the exception of one refiner, and in his case he showed that he
had a State tender, which of course was still the
2770 tender effective in February. He had some State
tenders, but he had shipped far in excess of his state tenders, so in selecting the tank cars of that refiner, I selected only those that were shipped under a restraining order by the court. That was a practice indulged in extensively during that period by refiners in East Texas who wanted to move hot gasoline. It was a mere subterfuge,

and by the time the injunction proceedings would be acted on, of course, all of his gasoline would be shipped, and therefore the court action came to naught. It was the natural deduction, of course, that if a shipper had no tender of any kind or sort, the gasoline must have been hot gasoline.

The figures I have just given reflect probably a small amount of the total of hot gasoline that was shipped in the Mid-Western area, because there were a number of subterfuges indulged in by refiners at that time such as billing gasoline as crude tops to some intrastate point in Texas, then rebilling it, and shipping it out of the State when they got away from the jurisdiction of the State tender board. Then there was a practice of shipping gasoline by truck to the state line, piping it across, putting it in tank cars and re-billing it to other points in the United States. That was practiced particularly on the Louisiana-Texas border.

2771 There was quite a bit of activity along that line in January and February, 1935. I only specifically remember one case, because it was the first case filed under the Connally Act, which was signed and actually became effective on February 22nd, although the Federal Tender Board did not begin to operate in East Texas until about March 1st or 2nd; but during that period suit was filed in the Western District of Louisiana against 8 truckers for transporting illegal products to the Texas-Louisiana line, and there piping it across that line, putting it into tank cars, and reshipping it. It was hauled by the truckers, as the newspaper account at the time stated, within a few inches of the Louisiana line, the trucks remaining on the Texas side.

The records as I examine them show no shipments of hot gasoline between January 1 and January 7, 1935. During that period there was a Federal Tender Board operating in East Texas under Section 9 (c) of the N. I. R. A. That Federal Tender Board was brought to an end by a decision of the Supreme Court on January 9th.

On March 1st the Federal Tender Board went into operation in East Texas under the Connally Act, and there were no further shipments of hot gasoline out of East Texas. I made an examination upon which I base the statement that there were no shipments of hot gasoline out of East Texas after the Federal Board went into operation on March

2772 1st. We have a record of all refiners who were operating under Federal tenders. I examined the Railroad Commission records first to determine all refiners who were shipping in tank car lots out of East Texas. I then compared that list of refiners with the list of refiners who were shipping on Federal tenders. There were 2 or 3, who had shipped in tank car lots but who did not have Federal tenders. I, therefore, checked their shipments and found that none of those tank car shipments had been interstate; they were intrastate shipments.

After March 1st the interstate shipments were made under Federal tenders. Under the Connally Act, the railroads would not accept shipments of gasoline without a Federal tender; and the Federal Tender Board, of course, would not issue a tender if the gasoline was hot.

During July, August, September and October 1935 those refiners shipped 114,209,676 gallons of gasoline. It was an increase over the previous 4 months of 32,910,318 gallons.

The amount of gasoline shipped by these refiners during the next 4 months from November 1, 1935 to the end of February, 1936 was 99,654,308 gallons. That is a decrease of 14,555,368 gallons over the previous 4 months. These shipments in this period, that is, the last four months, show an increase of 43,180,353 gallons over the same 2773 period of 4 months the year before.

These figures indicate that in each of the 3 four months' periods following March 1, 1935 the amount of gasoline shipped by the members of the East Texas Refiners' Marketing Association named in the indictment was greater by at least 24,000,000 gallons than the amount of gasoline shipped by these refiners during the 4 months period prior to March 1, 1935.

Cross-Examination by Mr. Chaffetz.

These shipments that I speak of by members of the Association are not only interstate shipments; these are their total shipments. I do not have figures to show what their interstate shipments were during the same period. That includes all of their shipments, truck and tank car. I would hesitate to say exactly how much of intrastate truck shipments is in those figures. That varies, of course, with the refiners. Some of them aren't even on a railroad, and would probably ship a large portion of their stuff by truck; whereas, on the other hand, some of them didn't ship any by truck at all but shipped entirely by tank car, and that was particularly true of some of the larger ones.

I did not give testimony about non-members of the East Texas Refiners' Association. I gave the total ship-2774 ments in 1935 of the members of the Association and the total shipments of all refiners operating in East

Texas, including non-members. I could not tell you who the non-members were without looking at the record on it. Among those non-members there were many refiners who didn't ship any at all in interstate commerce. That was not true of most of the non-members of the East Texas Refiners' Association after March 1, 1935.

I cannot name some of the non-members of the Association who shipped in interstate commerce without checking the record each month to determine where their shipments went. Specifically, I couldn't state who made these shipments that I say were fraudulently described in the bills of lading as gasoline when they weren't gasoline, and I couldn't even state whether or not they were made by members of this Association. I have no specific information about those shipments at all. I just remember that cases were filed against them. In fact, I think there were 102 cars at one time shipped from East Texas to Waco, Texas, which were misbilled. That was intrastate. The idea was that possibly they were going to re-bill it, but they happened to catch that shipment and stop it. That was just the common supposition. It was to get it away from the jurisdiction of the State Tender Board, and we only had the State Tender Board at Kilgore. Products shipped from North Texas and West Texas weren't shipped under
2775 tenders.

I could name some destination points of the hot oil shipments in January and February, 1935 that were into the Indiana territory; I have the records that show who the purchasers were. Those records will be available to representatives of the Government to examine sometime today.

2776 **FRED VAN COVERN**, a witness for the defendants, testified as follows:

Direct Examination by Mr. Francis.

I live in New York. I was connected with the Planning and Coordination Committee during the entire period of the Code, which went up to the Supreme Court's decision of May 28, 1935. I was a member and secretary of the Statistical Sub-Committee, and also a member and secretary of the National Gasoline Inventory Committee.

I am familiar with the telegrams which have been testified about here which were sent out to different refiners on March 9, 1935, by John Shatford, and to which he signed the name of Howard Bennette, National Coordinator.

I remember receiving a reply to that telegram which Mr. Shatford sent to The Pure Oil Company. The reply telegram was signed C. B. Watson for The Pure Oil Company.

(Document handed to witness)

This is the original telegram which I received in reply. My own pencil notations are at the bottom of it.

Mr. Francis: Now, your Honor, without using the original telegram which I want to keep, I want to offer a photostatic copy of that telegram which I offered as EXHIBIT 851, but which counsel objected to as not being properly identified. I now want to

2777 offer it as being properly identified by this witness.

Mr. Chaffetz: No, your Honor, the real ground of our objection wasn't that it wasn't properly identified. We didn't object to the use of the photostat, and bringing this witness doesn't meet our real objection at all.

We say it is a self-serving statement of one of the defendants, made by one of the defendants, and offered through a third party to prove the truth of what is stated in it.

It is pure hearsay, and if that is admissible, then I suppose we could have any number of witnesses coming in to tell us what different defendants said to them during the period of the conspiracy, all self-serving statements, without any chance for the Government to cross-examine the persons making the statement with regard to the truth of what was said.

There is no theory that I can conceive of, on which that kind of statement may be admissible.

The Court: Oh, I think everything you have in here is on those charts.

Mr. Francis: I think it is too, Judge. I was just trying to support them.

The Court: But I think, while this is offered in corroboration, nevertheless, I think the objection will be sustained. Exception allowed.

2778 *By Mr. Donovan*

I have been in the oil business about 21 years. Very early in 1917 I took a position with Carter Oil Company in New York, where I remained until late in 1919. During that time I did statistical and map work in connection with the production of oil, and spent a very short time in the producing fields of Mexico.

Late in 1919 I went to work in the fields in the eastern United States, in production, drilling and natural gasoline work, and also pipe lines, for just over 2 years.

During that time, I studied the oil business. I was sent into the field for that purpose. I did everything. I unloaded freight cars, roustabouted, worked on producing wells, handled the drill stem for a while, and did pipe line work and natural gasoline work.

After 2 years in that work, I was sent to Rumania by Standard Oil Company of New Jersey, and worked there for the Romano-Americana. In Rumania I worked for 2 years in pipe line work, in connection with drilling and production. Then I went to Poland to work for the Standard Oil Company of New Jersey subsidiary, which was called Olej Skalny, as assistant field superintendent in charge of drilling and production.

After leaving Poland in late 1923 I returned to New
York and took a position with the American Petro-
2779 leum Institute, where I have been until now, with the
exception of the period from late 1933 until the middle of 1935. I was during that time on leave of absence from the Institute to take charge of the Department of Statistics of the Planning and Coordination Committee. During that time, however, I remained in charge of statistics for the Institute.

The American Petroleum Institute is a national association of the petroleum industry. The members of the Institute are individuals connected with the petroleum industry or allied industries. I am acquainted with most of the individual defendants in this case. I think most of these individual defendants are members of the American Petroleum Institute.

The Institute has approximately 3,000 members. It is financed by membership fees paid by its members and also through contributions by companies in the industry. I think most of the defendant companies here made contributions to the support of that Institute.

I was not a member of the Planning and Coordination Committee. I was a member and secretary of the Statistical Sub-Committee; a member and secretary of the National Gasoline Inventory Committee; also a member of the Refinery Sub-Committee; a member of the Program Committee, and also assistant treasurer of the P. and C. Committee.

The Program Committee was a group or committee
2780 set up to carry out the details of the France buying program.

I went to the American Petroleum Institute as an assistant statistician, and worked as such for about 2 years, and then became head of the department. I am still head of the department, with the title of director of the Department of Statistics.

In the Department of Statistics we collect, compile and interpret for our own use all kinds of statistics relative to the operating phases of the industry, such as gasoline production, gasoline stocks, crude oil production, cracked gasoline production, stocks of fuel oil, and stocks of gasoline, and make a detailed study each week, by fields, in the United States, of the amount of crude oil produced in each. We also collect and compile a complete refinery report, showing crude runs to stills, cracked gasoline production, gasoline stocks, and gas and fuel oil stocks. Then, also, we gather information such as the Bureau of Mines publishes in its regular monthly and annual statistical summary. We also interpret those figures for use by the officers of the Institute.

During the 13 years that I have been with the American Petroleum Institute, I have been continuously engaged in the statistical work I have described, and I have directed my attention particularly to the statistical position of
2781 the petroleum industry. I have been able to tell from
my observation when the industry was in good statistical position, and therefore on a profitable basis, or in a bad statistical position. There are very definite signs and details and relationships that we watch in order to determine whether or not the industry is in a sound statistical position.

The factors we observe with reference to the statistical position are the relationship between the price of gasoline and the price of crude oil, and the relationship between the current production of gasoline and the inventories of that product in relation to the demand for gasoline. We also set up for ourselves what we think are minimum required levels of operations, levels under which the industry can conveniently and economically operate. We also watch the relationship between the current production of crude oil and the demand for crude oil, and the trend of inventories of that raw material. We always use those several items in order to determine whether the industry is in a condition of balance or of unbalance.

We have to watch the raw material, that is, crude oil, as well as the refined products, because there are instances where the crude oil position or picture, as such, might denote strength, and you might think the industry was in a
strong position, if you only looked at the crude oil
2782 situation. But if you go over into the product situ-
ation you can see where there is real weakness, and
the reason why the strength in the crude oil situation has not made itself felt otherwise.

My opinion for that is that you take the situation in crude oil and, if I may speak of the present time, we say that the crude oil picture as such is strong. It denotes real strength. But if you look over into the product situation you find that there is weakness there.

In summing up the effect of all forces upon the economic condition of the industry you have to look at the entire picture of the industry before you can find the answer to what might appear to be a simple question. If the supply of raw material overbalances the demand for refined products, the situation that usually follows is an unstable condition. If more crude oil is forced upon refiners than the market can absorb, they are inclined to run it and build up inventories to such an extent that it forces refined products on the market and price instability results. If too much gasoline is forced on the market the result is price disturbance. That means lowering of prices. Very many times it lowers the price considerably. Many times that has lowered prices below profitable levels.

In determining whether or not the petroleum industry is in a good statistical condition, one should watch both products and crude oil. One should watch the production
of gasoline and other products in relation to demand
2783 and inventories thereof, as well as the same for other
products. And one should always watch the current rate of production of crude oil, the demand for crude oil, both in the domestic and export market, and particularly the trend of stocks of raw material. The trend of gasoline inventories as well as other product inventories is very, very important, particularly should they go counter-seasonal.

In watching this statistical position that I have just described as I have been doing for 13 years, I have had an opportunity to observe the effect of the national statistical position of the industry upon an area such as the so-called Standard of Indiana territory, because the national picture ties into a whole. Usually when the national picture is out of whack, it means that other districts are out of whack, and then when it is only related to one or two districts it usually spreads and the effect is cumulative, and a bad condition throughout results.

When the statistical position is absolutely in balance, that is, all factors working smoothly with each other, a condition of price stability usually exists. If such a condition exists over a long period of time, and, for instance, stocks of raw materials above ground are withdrawn heavily, there is usually an increase in the price. The conclusion from my experience in dealing with these
statistics is that in order to properly understand
2784 the statistical situation in the Mid-Western area, I
would be compelled to ascertain the facts in respect
to the country as a whole.

At the request of counsel for the defense I have prepared statistical data involving the factors that entered into the statistical position of the industry for the years 1935 and 1936. I have prepared a statement by months for those years showing the domestic demand for gasoline in the United States, and the export shipments of gasoline from the United States to foreign countries, and a total of that demand. I have also indicated the percentage change for each month, when compared with the corresponding month of the previous year on a total demand basis. The sources of this information were the American Petroleum Institute's Annual Statistical Bulletin, No. 16, of May 27, 1937. The basic information contained in that bulletin has been taken from the United States Bureau of Mines monthly petroleum summaries. That bulletin was prepared under my direction. I have with me one of the American Petroleum Institute Bulletins and the United States Bureau of Mines reports containing this basic material to which I referred. This is the tabulation that I have described.

(Tabulation referred to received in evidence as EXHIBIT 946.)

2785 At the left hand side of Exhibit 946 there are indicated the months of 1935 and 1936. The next column to the right indicates figures of domestic demand in barrels for each of those months. The third column shows the export shipments by months for these 2 years. And the fourth column is a total of both domestic and export demand. The column at the right hand side indicates the percentage change, showing the decrease or increase indicated in any given month, when compared with the corresponding month of the previous year.

The Exhibit shows that the demand during the month of January, 1935 was 4.8% below the demand in January, 1934.

The trend changed in February, 1935, that month showing a slight increase. The rate of increase itself increased during March and April. April, 1935 showed an increase in demand for gasoline of almost 6%, when compared with April of the previous year. The increase in demand for gasoline in May, 1935 was approximately 3%. The increase in June, 1935 was almost 7%, when compared with the previous corresponding period. We then jump up to very large increases, showing the demand for July, 1935, which registered an increase over the corresponding period of 1934 of 12.7%. The increase during August, 1935 was 10.6%, and in September, 1935 11.7%.

October, 1935 continued that high level, showing an
2786 increase of 10.6% above October, 1934. November,
1935 declined to 5%, but December registered an increase over December, 1934 of 14.7%.

It will be noted there that, during the high consuming season of 1935, there were increases registered anywhere from 10.6% to almost 13%; that December showed a record for the year of 14.7%. The year as a whole registered an increase of 7% when compared with 1934. I am talking about an increase in total gasoline demand upon refiners in the United States, both for domestic and export shipment.

The year 1936 opened with January continuing the trend established in December, 1935, the increase in the demand for gasoline during January, 1936 being 15½%. February, 1936 fell down to 3.8% due to the extreme weather of that month. There are specific reasons why that was. In March, 1936 the increase was 7.6%; while in April, 1936 9.3% more gasoline was shipped than in April, 1935, which itself indicated an increase of 6%. In May, 1936 we had an increase of 7.7%. Again, the high consuming season registered large increases. June, 1936 showed an increase of 13.6%; July, 1936, 10.1%; August, 1936, 5.6%; and September, 1936, 14%.

We note unusually large increases again in the high consuming season; and, comparing these 4 months with
the corresponding period of 1934, we find increases
2787 ranging during that 4 months period, June, July,
August and September, 1936, anywhere from 17 to 27% above the corresponding period 2 years previous.

In October, 1936 demand for gasoline increased 6.2%; in November, 1936, 8.6%; and in December, 1936, 11.8%;

or a total increase during 1936 of 9.5% immediately after 1935, indicating an increase of 7% over 1934. That completes the outstanding facts there.

I have had prepared under my supervision a chart which shows, both statistically and graphically, the consumption of gasoline in the United States as compared with the consumption of gasoline in the Mid-Western area for the period of 1930 through 1936. The source of the data used in showing the demand for the entire United States was taken from the United States Bureau of Mines monthly petroleum statements recomputed by the American Petroleum Institute, and so stated in the bulletin just referred to. The material for the Mid-Western area was taken from the A. P. I. gasoline consumption bulletins, which are published monthly.

We gather those figures from the state tax departments. Each month we send the state tax departments a questionnaire, asking them to report to us the total amount of gasoline taxed or inspected in their state. Those figures indicate the total amount of gasoline consumed in each state. During February, when the December 2788 figures become available, we compile tabulations and send to each state the figures that we have published during the year. We tell them that we are going to publish those figures in bulletin form and that the figures indicated on this sheet are those which we expect to include in that publication, and ask them to comment and say whether or not the figures truly reflect the demand in each of their states. If it doesn't, they have the opportunity to change the figures, which they do on occasions, and then we republish them in bulletin form.

I have those bulletins with me and they will be available to counsel for the Government. The chart to which I referred accurately records the statistical data contained in this source.

(Chart referred to is received in evidence as EXHIBIT 947.)

This chart, Exhibit 947, shows a comparison for the years 1930 through 1936 of the demand in the entire United States, which is the blue column, and in the Mid-Western ten-state area, which is the orange column, for each of those years. There is a scale along each side of the chart, indicated in millions of gallons, so that the tops of these columns can be read in gallons.

The long column to which I have referred is blue; and the short column to which I have referred is orange.

At the top of each long column, beginning with 1931, and at the top of each short column, beginning with
2789 1931, there is indicated the percentage of change that occurred during that year, when compared with the previous year.

We find in 1931 that the demand for gasoline in the entire United States increased about 2½% when compared with 1930. We find in the ten-state area, that is the Mid-Western area, that in 1931 demand there increased 4.4% when compared with 1930.

In 1932, the demand in the entire United States decreased 7.4%, when compared with the demand in the entire United States during 1931. While in 1932 the demand for gasoline in the Mid-Western area decreased approximately 9.4% when compared with 1931.

There was a greater decrease in the Mid-Western area in 1932 than there was in the entire United States. Just like in 1931, there was slightly greater increase in the demand in the Mid-Western area than there was in the country as a whole.

Coming to the year 1933, we find that demand in the entire United States increased 7/10 of 1% when compared with the demand in the United States in 1932. While in the Mid-Western area there was a decrease of 69/100 of 1%. In other words, there was a slight decrease just under 1% in the Mid-Western area in 1933, but for the United States as a whole there was an increase of approximately the same amount as that decrease, as
2790 compared with 1932. In the Mid-Western area the consumption slumped 7/10 of 1%, even more than in 1932.

In 1934 we find the beginning of several increases. The United States as a whole increased 7.8% when compared with 1933. Gasoline demand in the Mid-Western area in 1934 increased 6.6% when compared with the demand in 1933.

In 1935 we find that the demand in the entire United States increased almost 7% when compared with the previous year; and that in the Mid-Western area the demand increased approximately 6%.

We come to 1936 now, and find that in the United States as a whole demand increased 10.8%, approximately, when compared with 1935; and that demand in the Mid-Western area in 1936 increased 10.6%, approximately, when compared with 1935.

In other words, we had, beginning with 1933, a series of increases right through 1936, ranging from 6% to almost 11% for the country as a whole, whereas in the Mid-Western area we began a series of increases beginning in 1934, ranging between 6.6% and 10.6%.

I would say that generally speaking, and the figures bear it out, I think, the trend of gasoline consumption in the Mid-Western area follows the trend of gasoline consumption throughout the United States.

2791 I have made a tabulation comparing the gasoline forecast and the actual demand for 1935 and 1936. The figures on forecasts or expected gasoline demand for the months from January through June, 1935, are the figures distributed by the Petroleum Administrative Board; for the period from July, 1935, through 1936 they are the forecasts of the United States Bureau of Mines. The actual figures have been taken from the American Petroleum Institute's Annual Statistical Bulletin, Number 16, of May 27, 1937, the basic information contained therein being taken from the monthly and annual statistical summaries of the United States Bureau of Mines. That bulletin was prepared under my direction. I have with me the sources of the tabulations which I have just described. The tabulation to which I have referred accurately records the data which is contained in the source material.

(Document referred to is received in evidence as EXHIBIT 948.)

In January, 1935 the Bureau of Mines slightly under-estimated demand. In February, 1935 they slightly over-estimated demand. From then on through the rest of the year, with the one exception of September, the Bureau under-estimated demand. For example, in March they under-estimated demand by 1,500,000 barrels; May, approximately 2,000,000 barrels; July, 3,800,000 barrels; August, approximately 2,700,000 barrels; October, 4,350,000 barrels; in November, 2,300,000 barrels; and in 2792 December, about 2,000,000. Summing up the year, we find the Bureau under-estimated demand during 1935 by 20,000,000 barrels or 850,000,000 gallons.

In 1936, January shows that the forecast of the Bureau under-estimated demand by slightly over 2,000,000. During the following three months they anticipated a demand greater than the actual. In May, 1936 they changed the trend again, and in June, 1936 they forecast a demand which was 2,200,000 barrels, approximately, less than actual demand. In July, 1936 they missed it only slightly. In August, 1936, they forecast a demand somewhat greater than the actual demand. But for September, October, November, and December, 1936 they under-estimated demand. In other words, they forecast a demand less than the actual demand by various amounts, ranging from 1,400,000 barrels to almost 3,000,000 barrels a month. For 1936 as a whole the Bureau of Mines under-estimated the actual demand. In other words, their forecast of demand was 8,332,000 barrels less than the actual demand, or approximately 350,000,000 gallons.

I wouldn't say that the actual demand is usually higher than the estimated demand. I would say the Bureau of Mines had a very excellent reputation. I think they did an excellent job prior to this time. I can say that not only did the Bureau under-estimate demand, but I think
2793 practically all of us throughout the industry were
surprised at the unexpected increase in this demand. It was foreseen by a very, very small number of people.

I have prepared a tabulation dealing with gasoline inventories in the United States for the period from January 1, 1935 to December 31, 1936.

The United States Bureau of Mines sends a questionnaire each month to all refiners and all companies holding gasoline stocks in the United States. Among other things, they ask for figures on gasoline inventories as of the end of each month. Companies throughout the industry report that to the Bureau of Mines. That questionnaire asks for unfinished gasoline as well as for finished, and it asks for natural gasoline.

The figures show 58,600,000 barrels for January 31, 1935. Stocks increased during February. These figures do not include any figures on blended gasoline.

Unfinished gasoline is the amount of gasoline contained in naphtha distillates, both naphtha distillates and unfinished gasoline being unavailable in the market without further processing. In other words, they are not a finished motor fuel and must be sent through additional processes before being available for the market.

I have made a breakdown of these total gasoline inventories into stocks available for shipment and stocks unavailable for shipment. By stocks unavailable for
2794 shipment I mean the amount of gasoline that the
industry must retain in its plant and operating equipment, including pipe lines, tankers, barges, and other equipment in order that it may conveniently and economically operate. In other words its plant and equipment has to be full at all times before it can ship gasoline. A considerable amount of gasoline must remain in these

facilities if the industry is to continue to operate and supply gasoline to the motorists.

The first item of unavailable stocks is composed of gasoline which we call tank bottoms, that is, the amount of gasoline below the connection. It is allowed as more or less of a place for foreign matter and water to settle down in the bottom of the tank so that only pure gasoline may be withdrawn.

The second item for unavailable stocks is unblended and finished gasoline. These are various ingredients that go into the blend you buy at the corner filling station.

The third item is unavailable unfinished gasoline contained in naphtha distillate.

The fourth item is gasoline in pipe lines and the operating equipment of the refinery, the pipes running through the refinery and the various processing equipment.

Another item is the gasoline contained in pipe lines running throughout the country. The amount in transit
2795 during that operation is also unavailable. Large numbers of tankers ply between Gulf ports and to the East coast, and otherwise, which require gasoline during half of their journey. There must be provision made for that and the return of the tanker. The same holds for tank cars and barges.

Terminals must be protected against the next arrival of a tanker, a group of tankers, or a barge. Icebound terminals must be provided for, particularly later in the summer before such date as waterways freeze over and they are not permitted further transportation by water to those locations, in order that they may supply surrounding territories with gasoline during the winter season when the terminals themselves are ice-bound.

There are a number of items, but these are 90 to 95% of them.

Unavailable stocks must be maintained in order to keep the system operating.

Studies have been made as to the amount of the unavailable supply of gasoline. The National Gasoline Inventories Committee of the Planning and Coordination Committee made such studies covering the large part of 1935, and they found that for the period from March, 1935, through September of that year, the industry needed a minimum of 37,000,000 barrels of gasoline monthly as unavailable.

2796 Stocks available for shipment means the amount of gasoline represented by the difference between the total amount of gasoline in storage and the unavailable gasoline which cannot be shipped. That is the stock that can be shipped if the industry is to remain operating.

The unavailable storage stocks in a sense remain stationary the year around. For instance, in the way I think of it, and I think all of us do, the refining year runs from September 30 to September 30, and we must have in storage at all times as unavailable during this period of time a certain amount of gasoline to operate our equipment. As we come to the end of any given refining year, we look back and see where we added another tank, added another unit to our refinery, added another tanker or barge; and whether or not we did operate conveniently and economically. As we look back there we might see that next year our unavailable stocks should be increased because of one or two of these additions, and it is a fact that during this period such increased amounts were allowed.

The industry finds it is necessary to build up its seasonal stocks of gasoline during the low consuming season or during the months of October, November, December, January, February, and March, in order that they may have sufficient gasoline on hand to supply the following season's 2797 high demand. That is because the industry as a whole cannot currently produce the large demand of a summer seasonal period.

Inventories always reach their high level for the country as a whole and in many districts on March 31 of any year, and their low level on September 30.

The source of my statistical data concerning finished and unfinished gasoline inventories is the American Petroleum Institute Annual Statistical Bulletin No. 16 of March 27, 1937. Those figures were based on information contained in the monthly and annual statistical statements of the United States Bureau of Mines. That tabulation to which I have referred accurately reports the data contained in the source material. I have those bulletins and statements here with me.

(Tabulation referred to is received in evidence as EXHIBIT 949.)

At the end of January, 1935 there were about 59,000,000 barrels of finished and unfinished gasoline in storage. During February and March these inventories increased seasonally, until, at the end of the latter months, there were 66,290,000 barrels in storage.

From then on, through September, 1935, we find seasonal withdrawals amounting to various amounts, but showing about 3,000,000 barrels withdrawn in July, and almost

5,000,000 barrels withdrawn in August. Seasonal 2798 stocks at the end of March were 66,000,000 barrels, approximately, and at the end of September, approximately 51,000,000 barrels.

The trend, instead of changing there, as is usual, and going on up through October, November and December, showed the reverse, in that October, 1935 continued on down below September, registering a low for the year of 49,800,000 barrels, approximately.

As we would expect, from October, 1935 through to the end of the year, stocks increased seasonally, which trend continued during January, February and March, 1936.

Again, in 1936 we start a downward trend beginning in March and running through October, a second year in succession in which in October the trend of inventories went against the usual seasonal trend.

At the end of March, 1936, we find 74,485,000 barrels in storage, and at the end of October 57,662,000 barrels, individual months showing withdrawals as much as 4,000,000 and 5,000,000 barrels.

At the end of December, 1936 stocks had increased seasonally again through November and December, until on December 31, 1936, we had 62,885,000 barrels of finished and unfinished gasoline in storage.

By minimum gasoline inventory requirements, I mean the minimum amount of gasoline that the industry 2799 should have on hand at the beginning of a high consuming season. In other words, they should have all of their fixed unavailables, plus a certain seasonal amount which would be helpful and which they absolutely need during the following high consuming season. I have made a study of such minimum requirements. I did that as a member of the National Gasoline Inventory Committee in Washington, in the early part of 1935.

In January, 1935 we find no more than minimum gasoline inventory requirements. In February, 1935, we find a seasonal build-up in accordance with the studies made by the National Gasoline Inventory Committee of the Planning and Coordination Committee.

In March, 1935, we find inventories of 66,290,000 barrels, as compared with 66,130,000 barrels, which the National Gasoline Inventory Committee, after exhaustive studies by companies and by districts, determined to be the minimum requirements.

At the end of April, 1935, we find gasoline inventories going down seasonally in accordance, again, with minimums; and that same trend existed through September, at which date we arrived, September 30th, with very slightly more than these minimum requirements, practically nothing more.

In October, 1935, the trend of gasoline inventories continued downward, which indicated an amount lower 2800 than minimum requirements as of that date, plus seasonals. In November and December, 1935, and January and February, 1936 the stocks increased seasonally, but during February stocks went up slightly above minimum requirements, due to disappointing demand and other causes.

Stocks increased during March, 1936, and were slightly above minimum requirements at the end of the month.

During April, 1936, the trend started downward, and continued through May, June and July, indicating a draft of 5,000,000 barrels in July. It went on down through August and September, arriving at September 30th with somewhat more than minimum seasonal requirements. The trend went down again in October, however, against the usual seasonal trend, and up in November and December.

For the year 1935, month by month, the gasoline inventory position was in complete balance during the entire year. In fact, I would say that in October, stocks were below seasonal and unavailable requirements. The situation was very strong.

In 1936, at the beginning of the year stocks were at the minimum required levels; during the early spring, they rose slightly above those minimums, which excess continued toward the end of the high consuming season, and was at its peak in September, and dropped off slightly toward the end of the year.

We have a method in the industry for the calcula- 2801 tion of inventories in terms of demand. It is expressed in terms of days' supply, which means the number of days that the industry could supply motor fuel to the motorists of the country, first, if they stopped refining operations completely; and, second, if they continued to operate and had to retain in the system the unavailable amounts required for economic operation.

I have prepared a tabulation of gasoline inventories by months for the years 1935 and 1936, in terms of days' supply. In preparing that tabulation, I used the finished gasoline inventory only, because the unfinished is not available for the motorist, having to undergo considerable further processing.

I obtained the statistical data as to the amount of finished gasoline in storage from the American Petroleum Institute's Annual Statistical Bulletin No. 16 of March 27, 1937. Then I also took the demand for gasoline from the United States Bureau of Mines monthly petroleum statements. And I took those two amounts, the demand in the form of daily average and the actual inventories of finished gasoline at the end of each month, and found how many days that amount of finished gasoline would supply the motorist with his gasoline. I have those source bulletins and statements with me. I have accurately recorded the data that I compiled in this tabulation.

(Tabulation referred to received in evidence as EXHIBIT 950.)

2802 Exhibit 950 shows that at the end of January, 1935, there were 50.6 days' supply of finished gasoline in storage. The trend is then downward through February, March, April, May, June, July, August and September, coming down rapidly, reducing as many as 4 days at a time, until at the end of September we find 32.2 days of gasoline supply in the form of finished motor fuel. That is the lowest point of days' supply during this entire 2 year period.

In October, 1935, the trend starts upward again seasonally, and continues through November and December and goes on up to a high point in January, 1936, which shows 51 days of gasoline in storage as compared with 50.6 days in storage at the end of January, 1935.

In February, 1936, the trend starts downward again, March, April, May, June, July and August indicating decreases in some months of approximately 4 days until August had 34.1 days.

At the end of September, 1936, which month usually shows a little less than August, we find a change upward to 34.3 days, and the trend upward continues through October, November and December. At the end of December of 1936, however, we find approximately the same number of days' supply available as were in storage at the end of December, 1935, or approximately 46.8 days.

As of January, 1935, there were 50.6 days' supply.

2803 That means that there was enough in storage at that time to run the automobiles for 50.6 days if the industry discontinued to operate and would ship out to the market all the finished gasoline it had in storage in its plants at that time.

September, 1935, had come down 18.4 days' supply to the lowest point during that entire 2 year period.

The balance of supply and demand in the petroleum industry involves both raw materials and refined products.

If those were out of balance the industry from a statistical position would be unsound.

I have given the figures in relation to gasoline production and demand and stocks on hand during the years 1935 and 1936. I have similar statistics in relation to crude oil.

In the first 4 months of 1935, the Petroleum Administrative Board, and afterward the Bureau of Mines, forecasted the probable amount of gasoline production necessary to meet demand. The same thing was done by those bodies in relation to the production of crude oil each month. These recommendations of production were published for the period from January through June, 1935, by the Petroleum Administrative Board of the Department of the Interior. They were published in the form of recommended crude oil production allowables. For the period from July, 1935, and extending through December, 1936, the Department of
2804 the Interior issued monthly figures recommending certain allowables of crude oil production by states and for the total United States.

I have prepared accurately from the bulletins and statements to which I have referred, a tabulation comparing by months for 1935 and 1936 the recommended production with actual production. I have those documents and bulletins with me.

(Document referred to is received in evidence as EXHIBIT 951.)

The figures in comparison show that the Bureau of Mines' recommended crude oil production was exceeded actually in every month during 1935. They were exceeded to amounts as high as 10,000,000 barrels, which occurred in November, 1935. Lesser amounts were 9,000,000 barrels, 6,000,000 barrels and 3,000,000 barrels.

During 1935 there were 997,000,000 barrels, approximately, actually produced after a recommendation of the Bureau of Mines that the country as a whole produce 938,000,000. In other words, there were approximately 60,000,000 barrels more crude oil produced than the Bureau recommended during 1935.

In 1936 again we find the industry producing crude oil in excess of the Bureau's recommendations during every month.

For 1936 the industry actually produced 1,099,000,000 barrels, compared with 1,030,000,000 barrels recom-
2805 mended by the Bureau, or an actual production of almost 69,000,000 barrels above the Bureau's recommendation.

I have prepared a tabulation showing the crude oil inventories in the United States at the end of each month in 1935 and 1936. I have prepared a tabulation which shows the increase and decrease of crude oil inventories in the United States during each month of those 2 years. I have put those on the same sheet of paper.

I took the inventory figures from the American Petroleum Institute's bulletins, previously referred to, which are a tabulation of the crude oil inventory figures contained in the United States Bureau of Mines monthly petroleum statements. That statement correctly records the information that I obtained.

(Document referred to received in evidence as EXHIBIT 952.)

At the end of January, 1935, we had 338,000,000 barrels of crude oil in storage. During the year 1935 there were 22,000,000 barrels of crude oil withdrawn from storage, with individual monthly figures showing as high as 5,000,000 barrels.

During the year 1936 there were approximately 27,000,000 barrels of crude oil withdrawn from storage, showing September withdrawing 6,000,000.

2806 I account for the decrease in crude oil stocks in this two-year period, in the face of the large production of crude oil just previously mentioned and above the recommendations of the Bureau of Mines, by showing that the demand for gasoline and other products during both of those years was so great as not only to absorb the overproduction of crude oil in relation to the Bureau of Mines' recommendations, but also to have necessitated these large withdrawals of crude oil from storage, to the extent of approximately 50,000,000 barrels during the two-year period.

The crude inventories in January, 1935, were at the lowest point they had been for some time.

It would be fair to say that the unexpected increase in the demand for gasoline in the years 1935 and 1936 accounts for the reduction in crude oil stocks during that period.

Q. Now, I want to direct your attention to Exhibit 869, and have you look at the trend of gasoline prices as indicated on that Exhibit, and ask you to state whether or not, in your opinion, based upon the studies that you have described you made, that trend is the result of the forces which you have just described to us?

Mr. Chaffetz: That is objected to, your Honor. It 2807 is not only leading, but it is a question that the jury has to determine and decide in this case. This witness hasn't testified at all about the buying programs and what effect they might have on prices. Apparently he is going to exclude them entirely, and deal with other factors; and I think it is irrelevant, immaterial and incompetent.

The Court: I am going to sustain that objection; but I think the witness ought to be permitted to tell us in what manner, and to what extent, and how the factors he has referred to in these statistics influenced that trend.

Mr. Donovan: Then, your Honor, in view of that, could we, since I know the time is getting short and we want to get into that, I will follow your Honor's suggestion—I would like to have that followed at a later time. Can we do that? We will leave that question as it stands. I understand that the objection is sustained.

The Court: Yes. Exception allowed.

Referring to Exhibit 869 and the price rise which apparently started in March, 1935, it is my opinion, based on the statistical position of the industry that I have related and my interpretation of that position, that the price rise did not start in March, but that it started back in October, 1934.

Mr. Donovan: Q. Now, in view of that opinion 2808 do you consider it necessary to describe to this Court and to this jury the statistical condition of the industry during the months of October, November and December of 1934 in order to interpret just what is set forth?

Mr. Chaffetz: If your Honor please, I regret to have to say this—that it is in my opinion an attempt, in a different way, to introduce the same evidence that has been offered here at least on a dozen previous occasions and was ruled out; and the way in which it is now offered is not in any substantial way different from the way it was offered before. We then pointed out to your Honor that if we were going into a discussion of the factors that made the price in 1934, we were going to have several other cases, and a lot of other factors to deal with, and we have urged your Honor not to require us now to go into a discussion of the factors that entered into the price in 1934. There were different factors.

The Court: I understand when the price started rising was in October, 1934?

A. Yes, sir.

The Court: He can answer the question by telling what the price of gasoline was at that time in November and December without going into the factors—

2809 Mr. Chaffetz: Then we are going into other factors, your Honor, that enter into the price at that time, factors that we have been urgently requesting your Honor to exclude, and we argued at very great length while the jury were excluded, and you remember certain graphs they wanted to offer. They tried once and they tried again, and each time they were excluded, and this is a flimsy excuse that this witness gives that you have to consider when your Honor has—

The Court: I think we excluded that at that time, what the factors were in 1935 and 1936 that did not exist at that time.

Mr. Donovan: Now, your Honor, I hope that Mr. Chaffetz will withdraw that remark about a flimsy excuse because it isn't a flimsy excuse. It is a very substantial reason. Certainly Mr. Chaffetz would be the last, if it be the fact, to have excluded from this jury, if it be the fact, that there was a price rise, and this was part of that price rise prior to March 1, 1935.

Mr. Chaffetz: And that is going to lead us into a subject which your Honor has said we should not be concerned with here. This question will lead to other questions, and then we are going to get into—

The Court: Objection sustained. Exception allowed.

Mr. Donovan: The witness is not permitted to go 2810 back and show the factors that were in operation in 1934?

The Court: No.

Mr. Donovan: Your Honor, I have already stated the purpose of that and may I now make an offer on relation to that?

The Court; Yes, you may.

(The following proceedings were had in the absence of the jury.)

Offer of proof re factors affecting price trend in October, November and December, 1934.

Mr. Donovan: The following question was submitted to the witness, Fred Van Covern:

Q. Now, in view of that opinion, do you consider it necessary to describe to this Court and to this jury the statistical condition of the industry during the months of October, November, and December of 1934 in order to interpret just what is set forth?

The Government objected on the ground that such evidence was irrelevant and immaterial. The objection was sustained.

The indictment, paragraph 18, alleges that the defendants "combined and conspired together for the purpose of artificially raising and fixing the tank 2811 car prices of gasoline in the aforementioned spot market, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline * * *."

The Government claims that the rise in the spot market prices began around the first of March, 1935. There was, in fact, an advance in the tank car market during the period March 1 to in June, 1935, and that advance was uninterrupted by any temporary decline. The Government infers that March 1, 1935, was the date on which the advance began, and that this advance had no connection with any larger trend, and was due primarily to the alleged conspiracy. The witness, Fred Van Covern, has testified that, in his opinion, the advance began in October, 1934.

The witness, Van Covern, would testify that the price of gasoline on the spot market, as reflected by the quotations in the Chicago Journal of Commerce and Platt's Oilgram, Group 3, on third grade gasoline reached a low of 2½¢ in October, 1934. He would also say that regular grade gasoline was at a correspondingly low point at the same time, and spot market tank car gasoline prices began to rise around October 25th. The trend from that time until June, 1935, was upward, and the same factors affected this whole trend. This was not an uninterrupted ad- 2812 vance. There were two price drops. The two price drops in this period did not by any means push the price of gasoline back to the lows reached in October, 1934. The trend was always upward.

The witness, Fred Van Covern, would testify that from his study of the factors affecting price, it is clearly indicated that beginning about October 25, 1934, and continuing throughout 1934 the balance of supply and demand was such that, except for the influence of the threat of a flood of hot oil, the price of gasoline would have inevitably risen to approximate parity with dollar crude prior to the passage of the Connally Act. We are entitled to show that this would have happened, except for the threat of a flood of hot oil, and to show further that when this factor was removed the price of gasoline did reach an approximate parity.

If the witness, Fred Van Covern, is not permitted to explain the factors affecting the price trends during October, November, and December, 1934, he will be able to tell only half a story. Comparison should be made, one month with another, and one event with another. For example, the Government has admitted that the Federal Tender Board established on March 1, 1935, influenced prices. One of the questions of fact to be settled in this case is the degree to which this Federal Tender Board influ-
2813 enced prices. The Government apparently contends that even though the Federal Tender Board had some influence, prices would not have advanced 1½¢ without the alleged buying programs. The witness, Fred Van Covern, would testify that there was a prior Federal Tender Board which operated in October, November, and December, 1934, during the beginning of this price rise, and he should be permitted to testify as to the effect of the first Federal Tender Board on prices.

The defendants are charged with raising prices. They should be permitted to show the whole price rise and explain the factors causing it. By excluding October, November, and December, 1934, one-third of the rise on third grade gasoline, for example, is left unexplained. The total rise from around October 25, 1934 to June 1, 1935, was 2½¢; from March 1, 1935, to June 1, 1935, the rise was 1½¢.

This testimony of the witness, Fred Van Covern, concerning the factors affecting price in October, November and December, 1934, would conclusively rebut the inference which the Government seeks to make from the mere fact that the price of gasoline went up after the passage of the Connally Act.

If Fred Van Covern were permitted to answer the first question below and other questions which would have followed this one concerning the tank car price 2814 of gasoline and the factors affecting such during the months of October, November, and December, 1934, he would testify as follows:

Q. Now, in view of that opinion, did you consider it necessary to describe to this court and to this jury the statistical condition of the industry during the months of October, November, and December of 1934 in connection with the tank car market trend of prices on Chart 849?

A. Yes, because without an understanding of the developments which occurred during the last quarter of 1934, since the prices during that period are part of a rising trend, it is my opinion that it would be hard, if not impossible to make a complete explanation of the trend of tank car prices in 1935 and 1936.

Q. What was the statistical position of the industry on October 1, 1934?

A. Gasoline inventories in the United States as a whole were very low, were below minimum requirements. Inventories of gasoline in terms of days' supply were also at a very low level. Gasoline demand in the country as a whole was increasing over the demand for the previous year. The estimate for the month of October proved to be far short of the actual demand for gasoline. Crude oil inventories were at about a proper level. There was in 2815 fact only one factor which influenced the price of gasoline adversely—this was the lack of control of the production of hot oil. The production of such hot oil had increased and it looked as though the production in October would be very great. The effect of this one adverse factor was so great that it was forcing the price of gasoline downward.

Q. Have you prepared statistical data relating to gasoline demand, both domestic and export, for the months of October, November and December, 1934?

A. Yes.

Q. Will you please state the source of such data?

A. The figures have been taken from the American Petroleum Institute's Annual Statistical Bulletin No. 26 of May 22, 1936. The basic information used therein is from the Bureau of Mines' monthly petroleum statement.

Q. Will you please state the domestic demand, the export demand, the total demand for each of those three months; also will you please indicate the percentage of increase or decrease of such total demand over the same month of 1933?

A. These figures are as follows:

2816

1934	Domestic Demand (Barrels)	Exports (Barrels)	Total Demand (Barrels)	Total Demand Increase or Decrease Over Same Month Previous Year (Percent)
Oct.	37,834,000	1,965,000	39,709,000	10.37
Nov.	35,065,000	2,210,000	37,275,000	11.58
Dec.	30,724,000	1,635,000	32,359,000	5.91

Q. Have you prepared data concerning the forecast of United States domestic plus export demand compared with the actual demand for the months of October, November, and December, 1934?

A. Yes.

Q. Will you please state the source of this data?

A. The forecasts are those of the Petroleum Administrative Board. The figures concerning actual demand were taken from the American Petroleum Institute's Annual Statistical Bulletin No. 26 of May 22, 1936.

Q. Will you please state the forecast of demand, and actual demand, and the amount by which the actual demand was over or under the forecast for these three months?

A. These figures are as follows:

2817

1934	Forecast (Barrels)	Actual (Barrels)	Actual Over Forecast (Barrels)
October	35,640,000	39,799,000	4,159,000
November	33,580,000	37,275,000	3,695,000
December	31,320,000	32,359,000	1,129,000

Q. Have you prepared data showing the inventories of gasoline in the United States for the months of October, November, and December, 1934?

A. Yes.

Q. What is the source of this data?

A. The figures are taken from the American Petroleum Institute's Annual Statistical Bulletin No. 26 of May 22, 1936. The figures in that bulletin were calculated from basic information obtained from the Bureau of Mines' petroleum statements.

Q. Will you please state the amount of finished gasoline, unfinished gasoline, and the total of finished and unfinished gasoline in storage in each of these three months?

A. These figures are as follows:

1934	Finished Gasoline (Barrels)	Unfinished Gasoline (Barrels)	Total (Barrels)
October	45,212,000	4,888,000	50,100,000
November	43,958,000	4,957,000	48,915,000
December	48,205,000	5,014,000	53,219,000

2818 Q. Were these inventories at a high or low level?

A. These inventories were at extremely low levels.

Q. Were they below minimum inventory requirements?

A. Yes.

Q. Had the industry made the usual seasonal build-up during these three months?

A. No. In November the inventories were at the lowest point for the entire year. As I have stated before, September is the month in which inventories are customarily at the lowest level.

Q. What caused the inventories to be at this low level during these three months?

A. The refinery control system under the revised Article IV of the Petroleum Code had operated to force refiners, primarily major companies, to reduce inventories. In addition the demand for gasoline during those three months, as I have already shown, was greater than had been anticipated.

Q. In October, will you state whether or not the Administrator took cognizance of the fact that gasoline inventories were at a dangerously low level?

A. He did.

2819 Q. What did the Administrator do?

A. On October 18, 1934, Administrator Ickes ordered that if, after all possible adjustments within the limits of the November allocation order indicated that gasoline inventories had reached a dangerously low level, and if, as a result of appeals to the Board of Review it was indicated that inventories had fallen below levels which would permit even and economical operations, the company so affected, upon the recommendation of the P. & C. Committee, after approval by the Administrator, would be permitted to manufacture such additional amounts of gasoline as might be necessary to adjust the gasoline inventory situation.

Q. Have you prepared data concerning days' supply of finished gasoline on hand, or in inventories in the United States for October, November, and December, 1934?

A. Yes.

Q. What is the source of such data?

A. The information concerning gasoline demand and finished gasoline inventories at the end of each of these 3 months was obtained from the American Petroleum Institute's Annual Statistical Bulletin No. 26 of May 22, 1936. The days' supply calculation was made by me.

2820 Q. Will you please state the gasoline demand, domestic plus export, for each of these months and the daily average of such demand for each of these months as well as the finished gasoline inventory at the end of each of these months, and gasoline on hand in terms of days' supply at the end of each of these months?

A. These figures are as follows:

	Gasoline Demand			
	Domestic & Export			
1934	Monthly Total (Barrels)	Average Per Day (Barrels)	Finished Gasoline Inventory End of Month (Barrels)	Days Supply (Days)
October	39,799,000	1,283,800	45,212,000	37.6
November	37,275,000	1,242,500	43,958,000	42.9
December	32,359,000	1,043,800	48,205,000	49.0

Q. Have you prepared data concerning recommended crude oil production compared with actual crude oil production in the United States for October, November and December, 1934?

A. Yes.

Q. Will you please state the source of this data?

A. The recommended production levels are those of the Department of the Interior. The actual production figures have been taken from the American Petroleum Institute's Annual Statistical Bulletin No.

26, May 22, 1936. The figures contained in the statistical 2821 bulletin were taken from the monthly petroleum statements published by the United States Bureau of Mines.

Q. Will you please state the recommended production per day and per month in the United States for each of these months, as well as the actual production for each of these months?

A. These figures are as follows:

	Recommended Production		Actual Production
Year 1934	Per Day (Barrels)	Computed Per Month (Barrels)	Per Month (Barrels)
October	2,325,800	72,099,800	76,593,000
November	2,340,300	70,209,000	72,399,000
Dec. 1 to 16	2,307,000	36,912,000	
Dec. 17 to 31	2,460,300	36,904,500	
Total Dec.	2,381,177	73,816,500	72,797,000

Q. Will you please state, if you know, why the recommended production for December was broken up into two periods, the first period covering the 1st to the 16th, and the second from the 17th to the 31st?

A. The production level recommended for the period from December 1 to 16 was made in the latter part of November, but in recognition of the condition of gasoline inventories which was discovered as a result of the allocators' meeting and a special session 2822 of the Board of Review, called under the authority of the Administrator's Order of October 18, 1934, and also in recognition of the increased gasoline demand, the Administrator increased his recommendation of crude oil production on December 17 for the period from that date to the end of the month.

Q. Have you prepared data concerning crude inventories in the United States for the months of October, November and December, 1934?

A. Yes.

Q. What was the source of this data?

A. The source of this data is the American Petroleum Institute's Annual Statistical Bulletin No. 26 of May 22, 1936. The basic information in that bulletin is contained in the monthly petroleum statements published by the United States Bureau of Mines.

Q. Will you please state the inventory of crude oil at the end of each of these three months and the increase or decrease in such inventory during each of these three months?

A. These figures are as follows:

2823

1934	Inventory End of Month (Barrels)	Increase Decrease — During Month—Barrels
October	346,800,000	2,607,000 —
November	341,403,000	5,397,000 —
December	337,254,000	4,149,000 —
Total Year ..		16,969,000 —

Q. Can you state the quotations as published in the Oilgram and Chicago Journal of Commerce for third grade and regular grade gasoline for the month of October, 1934?

A. Yes.

Q. Will you please do so?

A. Those are as follows:

2824

	Third Grade		Regular	
1934	Oilgram Okla. Market 62 Oct. & Below	Chi. Jour. of Commerce 62 Oct. & Below	Oilgram Okla. Market 63-70	Chicago Jour. of Commerce 63-70
Oct. 1	3⅝ to 3¾	3⅝ to 3¾	4⅝ to 5	4⅝ to 4¾
2	3½ to 3⅝	do	4½ to 4⅝	do
3	do	3¼ to 3⅝	do	4½ to 4⅝
4	do	3⅛ to 3½	do	4⅜ to 4⅝
5	3⅜ to 3⅝	do	4⅜ to 4⅝	do
6	do	3 to 3½	do	4⅜ to 4¾
7	....	....	....	....
8	3¼ to 3½	2⅞ to 3⅜	4⅜ to 4⅞	4¼ to 4¾
9	do	2¾ to 3¼	do	4¼ to 4⅝
10	3 to 3¼	2¾ to 3	4⅛ to 4¾	4⅛ to 4½
11	do	2⅝ to 3	do	4 to 4½
12	2⅞ to 3¼	2½ to 3	4⅛ to 4⅝	4 to 4⅜
13	do	do	do	do
14	....	....	....	....
15	do	do	do	do
16	do	do	do	do
17	do	do	do	do
18	do	2⅝ to 3	do	do
19	do	do	do	do
20	do	do	do	do
21	....	....	....	....
22	do	do	do	do
23	2¾ to 3⅛	do	do	do
24	do	2¾ to 3	do	do
25	2⅞ to 3⅛	do	do	do
26	3 to 3¼	2⅞ to 3	do	do
27	do	3 to 3⅛	do	4 to 4½
28	....	....	....	....
29	do	3⅛ to 3¼	do	do
30	3⅛ to 3⅜	3¼ to 3⅜	4⅜ to 4⅝	4⅛ to 4½
31	3⅛ to 3⅜	3⅜ to 3½	do	4¼ to 4⅝

Q. During the period, October 1 to October 12, 1934, what happened to the trend of the tank car price of gasoline as reflected by the quotations published in Platt's Oilgram and the Chicago Journal of Commerce?

A. The price declined during that period.

Q. Will you please state why, in your opinion, those prices declined?

2825 A. The primary reason for the decline in this price trend was the overproduction of crude oil in East Texas. In that month this overproduction reached the highest point in sixteen months. The production of hot crude made possible the potential manufacture of cheap gasoline which would inevitably compete with gasoline manufactured from legal crude.

Q. Did the level of total inventories in the United States, the level of the days' supply of gasoline on hand, and the actual demand for gasoline, have any effect on price?

A. Those factors always have an influence on price.

Q. During this period what was the influence of these factors on price?

A. They should have influenced the price upward since the demand for gasoline was greater than had been estimated, gasoline inventories were dangerously low, and the days' supply of gasoline was low; but the effect of the actual overproduction and the threat of additional production of illegal crude oil in East Texas outweighed these influences and the price declined.

Q. What happened to the trend of tank car prices in the last part of October and the first part of November, 1934?

A. The prices rose sharply.

2826 Q. What was the actual rise in the price of third grade gasoline during this period, as reflected by the quotations in the Oilgram and the Chicago Journal of Commerce?

A. The low quotations of these journals raised 1½¢.

Q. What was the amount of the rise in the prices of the same grade of gasoline in these journals during the period from March 1 to June 1, 1935?

A. The low quotations advanced 1½¢.

Q. Will you please state why, in your opinion, the trend of prices rose during the latter part of October and the first part of November, 1934?

A. As was just pointed out, there was only one really unfavorable factor influencing prices during the first part of October. This was the overproduction of crude oil in East Texas. The situation in that field was immediately improved with the creation and subsequent operation of the Federal Tender Board. It held its first hearing on October 25, 1934. Many of the refineries previously operating on hot oil closed down, and the number of tank cars of hot gasoline in interstate commerce was reduced to almost nothing. The trend of gasoline prices reversed its trend and advanced sharply.

2827 Q. What happened to the trend of tank car gasoline prices during the latter part of November and early part of December, 1934?

A. The prices remained substantially on a level.

Q. What, in your opinion, caused this levelling off?

A. Gasoline demand was considerably higher than forecast, inventories of gasoline continued downward, the overproduction of gasoline in East Texas was reduced to a small amount, crude oil inventories throughout the country declined substantially. These factors would have tended to push the price up further. The upward trend did not continue because the Federal Tender Board could not exclude hot gasoline from interstate commerce and was under attack in the courts, and there was a fear that the tremendous potentialities of the East Texas field might again be turned loose as a result of the possible success of hot oil operators in overcoming the authority of the Federal Tender Board.

Q. What was the trend of tank car prices in the rest of December, 1934?

A. The price declined, then recovered a part of the decline, and then levelled off.

Q. Will you please state why, in your opinion, the price acted thus?

2828 A. In my opinion the drop in price was the result of the continued uncertainty in East Texas concerning the operation of the Federal Tender Board. Further, the Tender Board could not be entirely effective as long as the interstate shipment of the products of petroleum was not prevented. Some time after the Tender Board was set up hot oil refiners learned that they could ship illegal gasoline from one point to another within the State of Texas and then divert it into interstate commerce. The Federal Tender Board was unable to prevent such diversion. The movement of illegal gasoline in Texas also displaced some legal gasoline within the state which consequently had to be dumped into interstate commerce at low prices. The partial recovery subsequently was due to the fact that the State of Texas adopted regulations which required tenders for the shipment of petroleum products in intrastate commerce which effectively prevented the movement of illegal gasoline within Texas. In addition, the overproduction of crude oil in East Texas was further decreased. Crude oil inventories also declined during that month and gasoline demand continued above the estimates of the Bureau of Mines.

Q. In addition to these factors which you have mentioned, with particular reference to individual parts of the three month period—October, November, and December, 1934—were there any other factors affecting the price of gasoline during that period? 2829

A. Yes.

Q. What were they?

A. During this period the price of crude oil remained at $1.00. The price of gasoline is, of course, affected by the price of the raw material.

Another factor affecting the price of the gasoline was that there were 84 refineries, many of them using hot oil, which existed on October 1, 1934. As the Federal Tender Board began to operate effectively the number of such refineries was substantially reduced.

Q. Can you compare the number of refineries in operation in East Texas on October 1, 1934, and during the first part of March, 1935?

A. Yes.

Q. Will you please do so?

A. I have already stated that there were 84 refineries in operation on October 1, 1934, and this compared with a figure of 14 refineries operating after the second Federal Tender Board started functioning. This decrease was due to the fact that most of those who shut down could not operate on legal crude, which cost $1.00 a barrel.

2830 Q. Will you please summarize the factors affecting prices for the period October, November, and December, 1934?

A. Gasoline demand increased substantially in each of the months—October, November, and December—over the consumptive levels of the comparable months of the previous year, and the consumption for the period was 9,000,000 barrels in excess of the Petroleum Administrative Board's forecast.

Gasoline inventories in the United States approached dangerously low levels in November and were built up to a point near minimum requirements by the end of December, 1934. During the period there was a draft on crude oil stocks of approximately 12,000,000 barrels; the overproduction of crude oil in East Texas dropped sharply. These factors all tended to cause an increase in the price. There was only one loose end, only one factor tending to keep the price down. That was the threat of having the East Texas field opened wide again. The situation in East Texas was uncertain because there was litigation attacking the validity of the National Industrial Recovery Act.

Q. Had there been no uncertainty concerning the authority for the Federal Tender Board, created under Section 9(C) of the National Industrial Recovery Act, what, in your opinion, would have been the trend of gasoline prices? 2831

A. I believe that there would have been a sustained increase in the price of gasoline to a level bringing it into an approximate parity with the price of crude oil. It is my opinion that the price of gasoline would have risen to higher levels and would have continued to rise until it reached this approximate parity.

Q. In making this assumption, when do you think this parity would have been reached?

A. I feel that this approximate parity would have been reached much sooner than June, 1935, had the Federal Tender Board remained in operation, and had its authority been definitely determined.

Q. How did the situation in connection with gasoline demand, estimated demand, gasoline inventories, crude oil inventories, and crude oil production for the period October, November, and December, 1934, compare with the period March, April and May, 1935?

A. During both periods these factors were in ap-

proximate balance. There was not a surplus of gasoline during either period and gasoline demand was far ahead of comparable months in the previous year
2832 and was greater than had been estimated. Crude inventories declined during both periods.

Q. You have stated that the threat of a flood of hot oil was a depressing influence on gasoline prices in October, November, and December, 1934. Was there a similar influence during March, April and May, 1935?

A. No.

Q. Under those circumstances and with the supply and demand of gasoline and crude oil in approximate balance, what would you expect would happen concerning gasoline prices?

A. In my opinion, they would reach an approximate parity with the price of crude.

Q. Did that occur?

A. Yes.

Mr. Chaffetz: Objection to the offer of proof.

The Court: Objection sustained. Exception allowed.

(The following proceedings were had in the presence of the jury.)

By Mr. Donovan

I have had prepared under my supervision certain charts which set forth statistically and graphically the conditions for the period from January 1, 1935 to December, 1936. I have those charts with me. They are here.

2833 Mr. Donovan: I ask to have these marked for identification.

(Charts referred to are received in evidence as EXHIBITS 953, 954, respectively.)

Exhibits 953 and 954 accurately record what I have already testified to in relation to the matters referred to on the charts. The charts accurately represent just what is represented on these charts.

These charts are all based upon United States Bureau of Mines statistics as concerns gasoline, on this side (indicating) and crude oil on this side (indicating).

On this chart (indicating) we find graphically illustrated the trend of total demand within the United States. This is demand for gasoline, both domestic and amounts shipped to export trade. We have traced in the orange block the domestic sale of gasoline, with the green at the top of each column showing the export shipments.

Immediately above the top of the column is shown the total amount of gasoline shipped, while the figure in the green block indicates the export shipments, with the amounts indicated in the orange section, the domestic demand for gasoline.

Immediately above the figure indicating the total amount of gasoline shipped there is shown the percentage change in each month when compared with the corresponding month of the previous year. That is the percentage of
increase or decrease in any given month when com-
2834 pared with the corresponding month of the previous
year.

It shows for 1935 the demand for the year, demand for gasoline increased 7%, while in 1936 the total demand for gasoline increased about 9½%. For the month of January, 1935 it shows a decline of 4.8% when compared with the corresponding period of the previous year, due no doubt to the extreme weather of that month. The rest of 1935 is all above, showing a small increase in February and larger increases as we go into the year. The same is true for 1936. January started out with a high rate of increase. February fell down again also due to the extreme weather of that month, and then the increase started up again, showing as high as 14% for the month of September, 1936 as compared with September, 1935.

It is basically correct that the 14% increase in September, 1936 is in addition to the 10% increase in 1935 over 1934, so that there was a total increase of 24% in 1936 over 1934; only this 14 is 14% increase over this (indicating on chart) which is 12% increase approximately with 1934, but when you compare September, 1934, in connection with September, 1936, you cannot add those two up. That would understate the increase.

In this section here (indicating) we have gasoline demand again shown by months in green. The green column
over each month of the 2 year period shows the
2835 actual demand for gasoline. The red line drawn
across each green column shows the amount of gasoline that the Bureau of Mines forecast or estimated, in other words, the amount they thought would be sold during each of those months.

The Bureau underestimated demand slightly in January, 1935; they overestimated demand slightly in February. From March through August we find that they continuously under-estimated demand, as high as 4,000,000 barrels in a given month, July, 1935. In September, 1935 they slightly over-estimated demand, while in August they under-estimated demand considerably, almost 4,500,000 barrels.

We then come over into 1936, and find that February was also over-estimated. That again was the very extreme weather in that year. Temperatures all over the country at that time were very low, and weather conditions were extremely bad, and road conditions bad. In March and April the demand was also over-estimated.

This section shows gasoline inventories at the end of each month. This is a total of finished and unfinished gasoline as reported by the Bureau of Mines. We find that in January, February and March stocks increased and then there was a seasonal decline all the way through October. We know that usually in October the trend
2836 of seasonal stocks starts upward through March of
the following year, but in this particular October we find stocks going on down below seasonal levels.

The trend started up in November again, through December and on up to March, 1936 (indicating); and then it started down, but rather slowly and hesitantly, up in this area here, through March, April and May, 1936 (indicating).

Then it comes on down again (indicating), showing heavy withdrawals in June, and continuing in July and August, 1936, with a very slight decline in September, and then October was very, very slightly less than September again; and then we find the usual seasonal increase, running on towards the next high consuming season (indicating).

The red line (indicating) indicates the amount of unavailable stocks of gasoline that the industry must have on hand at all times in order to operate conveniently. You will remember that that is the amount we said that they could not ship if they were to remain operating. Therefore, this amount above the red line, to the top of the column (indicating), is available for shipment.

You will see that the largest amount of seasonal inventories is in storage at the end of March, and that the amount that can be shipped to the motorist, after deducting the unavailables, continues down to its lowest
2837 point, usually about September, or, in this particular
year, it happened to be October, the trend of inventories being against the usual seasonal upturn in that month.

In October, 1935 (indicating), we give credit for the additional amount of gasoline that the industry must have on hand to meet the higher demand, and to supply increased facilities, new pipe lines, new barges, new terminals, new tanks and other items that require additional gasoline before they can be operated. I am talking now about unavailables. Again in October, 1936, we show an increased amount due to the increased facilities required (indicating). That also is unavailable. Anything below this red dotted line (indicating), through this 2 year period is unavailable for shipment if the industry is to continue to operate; anything above the red line is available for shipment to the motorist.

Down below the inventory chart (indicating), we have another one indicating the days' supply of finished gasoline. Both finished and unfinished gasoline were in this section (indicating); but here, since only finished gasoline can be shipped to the motorist, we only considered that type of gasoline in making up this section (indicating), which shows the days' supply of finished gasoline available for shipment to the motorist at the end of each month.

2838 We find here that there were 50.6 days of finished gasoline in storage and available for shipment at the end of January, 1935, continually going downward through the month of September, 1935, where we find 32.2 days' supply available. That, you will notice, is the lowest point of days' supply during this entire 2 year period. Then we start upward again, to a high point in January, 1936 of 51.4 (indicating), and then on down continuously again through August, with 34.1 days (indicating), and September, which usually shows a little less than August, just slightly higher than August. Then we go on upward through the remainder of the year, according to seasonal requirements of gasoline.

Not all of this gasoline that I have just referred to under the heading of days' supply of finished gasoline, is available for shipment if the industry is to continue operating. It is all, however, contained in this section.

This chart, Exhibit 953, we call "Statistics of Crude Oil and Gasoline, Section 1," showing the gasoline supply and demand situation during this 2 year period.

Exhibit 954 is the chart headed, "No. 2, Statistics of Crude Oil and Gasoline." Again, at the top, we present the gasoline price line which is the same as that on No. 1, Exhibit 953 (indicating), and also the crude oil price line, which is the same as on Exhibit 953, exactly the same prices (indicating). The gasoline prices and crude oil posted prices are the same on No. 2 as they are on No. 1.

2839 Coming down to this section here (indicating), we find the United States crude oil production, the total for each month during the period from January, 1935 through December, 1936. The figure at the top of each brown column indicates the actual production of crude oil in each month.

In January, 1935 (indicating) actual production in the United States of crude oil was 78,720,000 barrels. The figures immediately below there, or in each instance the figure immediately above the red line, indicates the amount of crude oil that the Bureau of Mines of the United States Department of the Interior recommended be produced during that month. Back here in the months of January, February, March, April, May and June, 1935, the recommendations were those of the Petroleum Administrative Board, acting under the Oil Administrator. From then on, that is, from July, 1935 through December, 1936, they were estimates of the United States Bureau of Mines.

The Bureau recommended a crude oil production which was continuously under the actual production. In other words, the actual production through this entire period from January, 1935 through December, 1936, was above that which was recommended by the Bureau of Mines.

We find that the crude oil production was very
2840 much higher than that recommended by the Bureau.

In September, 1935, there were 6,000,000 barrels more crude oil produced than the Bureau of Mines recommended.

In October, 1935 (indicating) there was 9,500,000 barrels more crude oil produced than the Bureau recommended. In November, there was almost 10,000,000 more barrels produced than the Bureau recommended; and the same held true in December, 1935.

Coming over into 1936, we find that January production was very much higher than the Bureau recommended, almost 9,000,000 again (indicating); and the trend generally continued throughout the year, in some cases, the over-production being smaller than in others. In July (indicating) we find that the over-production was about 1,600,000 barrels; and then we go on into larger ones, showing October, 1936 with an over-production of almost 10,000,000 barrels during that one month.

The chart shows the total over-production of each year. During the year 1935 the Bureau of Mines and the Petroleum Administrative Board, working during different periods of that year, together recommended a production of approximately 938,000,000 barrels of crude oil. Actual production was 997,000,000. There is almost 60,000,000 barrels more crude oil produced than the Bureau of Mines and the Petroleum Administrative Board recommended.

2841 In 1936 the Bureau of Mines recommended a production of 1,030,000,000. Actual production was approximately 1,099,000,000 barrels. In other words, the actual production during that year was almost 70,000,000 barrels more than the Bureau of Mines recommended.

This chart (indicating) again shows by months during 1935 and 1936 the actual amount of crude oil in storage at the end of each month. Immediately above the column representing each month during that 2 year period, we find the amount of crude oil in storage, expressed in barrels.

These figures run pretty high. Along the side here (indicating), we have figures indicating a scale, whereby each column can be read. We have, however, provided the actual figures. That is true in all these other charts. But in this one, we have figures running up as high as 340,000,000 barrels. For that reason this particular chart would take up pretty nearly this whole sheet of linen and so we have had to break it here (indicating), and have indicated a break, and pulled the scale down to the very interesting point of the chart. For that reason, we have shown a break in this, through the medium of that white line (indicating). Stocks declined slightly during February and then went on up slightly during March and April.

2842 From then on, the trend was continuously downward, showing a decline from about 340,000,000 barrels at the end of April, to about 315,000,000 barrels at the end of December, 1935. That is a draft during that year of about 25,000,000 barrels. The crude oil inventories were establishing new lows over a period of many years during all of that period from April through December.

In January, and through February, 1936, the trend downward continued. The trend then changed upward through March and April, and started on down again through December, 1936, at which point it established the lowest level of crude oil in storage above ground since 1922. You will find that the down trend started at the end of April, with 315,000,000 barrels of crude oil in storage. The year ended with 288,000,000. That is a draft of almost 27,000,000 barrels in 8 months.

In spite of producing more crude oil than was recommended by the Bureau of Mines and the Petroleum Administrative Board, the demand was so high that stocks steadily declined in 1935 and 1936. That is the significant part of these two charts.

In 1935 the industry produced almost 60,000,000 barrels more than the Bureau recommended, but nevertheless withdrew, I don't have the other figure here, but during the 11 months withdrew almost 25,000,000 barrels in order to satisfy the demand for gasoline and other refined products, gasoline being the only one shown here.

2843 The story for 1936 is that, even though the industry produced almost 70,000,000 barrels more than the Bureau of Mines recommended, crude oil was withdrawn to the extent of about 28,000,000 barrels in order to supply the demand for gasoline. That is why I say inventories were brought to the lowest point since 1922. All through this latter part of 1936 and up through the latter part of 1935, we were establishing new lows of crude oil in storage above ground for about 15 years.

The graph at the bottom of this chart (indicating), Exhibit 954, Chart No. 2, shows graphically the trend of the inventories of crude oil. There is a black line drawn across the chart from left to right, indicating a zero line (indicating). Anything above that line is an increase in crude oil inventories, while anything below it shows a decrease in those inventories. There is a total for each month during that 2 year period, which shows the change in that month.

You will notice up here, in the crude oil inventories, the actual figures on Chart No. 2, that the crude oil stocks declined in February of 1935. That is shown in a block below the zero line, which runs across the chart from left to right. Here in March (indicating) we find that crude oil inventories increased from 337,000,000, approximately, to 339,000,000. That is shown in a brown column down here (indicating). In other words, out of the
2844 24 months in the two years, crude oil inventories
increased in 5 months, and decreased in 19 months.

There were particularly large withdrawals of crude oil in June, July, August and September, 1935. The withdrawals declined slightly towards the end of the year and then they began again in January and February, 1936. In March and April, 1936 there were increases. You see that right up here in this chart of crude oil inventories, the total amount in storage at the end of the month (indicating).

During May, 1936 there was a slight decline, and beginning with June, July, August and September we have very heavy withdrawals. In June, 1936 the figure was 4,100,000 barrels withdrawn; July, 4,700,000 approximately, and the same amount in August, while during September we find a draft of over 6,000,000 barrels. During October and November the average was about 3,300,000 barrels withdrawn, and in December about 800,000 barrels.

Referring to these charts, I will explain the factors which affected the price of gasoline in the Mid-Continent spot market, as reflected by the graph at the top of each chart.

We find, on January 1, 1935, a strong situation. We find the price of crude oil in both East Texas and Oklahoma at $1.00. We find the gasoline demand for January slightly over the amount forecast by the Bureau of Mines, but showing a decline when compared with January of the
previous year. That was, as we said, beyond doubt
2845 due to the extreme weather during that month, and
not indicative of any change in the trend. Due to seasonal requirements, at the end of January we find a days' supply of 50.6 days. We find the crude oil production running a little bit above that recommended by the Bureau of Mines. We find crude oil inventories high, but at a low level compared with previous periods, crude oil inventories being absolutely under control because it was necessary when withdrawing crude oil from storage during that period from January through May, 1935 to obtain permission from the Petroleum Administrator to make such drafts.

In other words, we find a strong situation throughout the industry, with the exception of the situation in East Texas. The hot oil situation in East Texas was one denoting considerable anxiety, due to the tremendous potentialities of that field and the tremendous potentialities in interstate commerce, and commerce in general, of the hot oil refineries in that locality at that time.

The Federal Tender Board was operating during the first of January under authority of Section 9(c) of the National Industrial Recovery Act. We find the Board operating but we also find that the authority of the Board was being attacked in the Supreme Court by the hot oil operators in East Texas, and that as a result, there was considerable anxiety in the field.

2846 With January, in which the Supreme Court declared Section 9(c) of the Industrial Recovery Act invalid, we began loosening the tremendous potentialities of the field and also of the hot oil refineries there, and after a period of steadiness of prices, we find following that decision a recession in price coming down to about February 4th. The price dropped down through January until the beginning of February, 1935. During February we find the price levelling off, and also find the crude oil price at $1.00.

We find there the gasoline demand increasing slightly but yet slightly below that which was expected by the Bureau of Mines. In other words, that was the first month in which the Bureau, for some time, had over-estimated the demand.

We find also that during the month of February, 1935 the gasoline stocks tended to increase slightly more than seasonal. In other words, the gasoline demand was less than expected and stocks went up. We find that crude oil production was again higher than that recommended by the Bureau of Mines, but there was a slight draft on crude oil inventories during that month.

Also we know that during the period immediately following the Supreme Court invalidation of Section 9(c) there was considerable thought in Congress as to this situation which was developing again in East Texas
2847 and was for the moment out of control, and after approximately a period of a few weeks, Congress passed the Connally Act, which made it illegal to pass into interstate commerce any crude oil produced in excess of state allowables or the products of that hot crude oil in the form of hot gasoline.

We come into the period immediately following the President's signing of the Connally Act when we have the appointment on March 1st of the Federal Tender Board, and the first issuance of tenders by that Board on March 4th.

This Connally Act was written to meet the objections made by the Supreme Court to the original Section 9(c) of the NIRA. It was written specifically to overcome those objections, and finally the industry knew, and the men who were running the hot oil in East Texas realized, that here was a law that they had to obey, and they immediately set out obeying it, apparently. It made it necessary for them to run on legally produced, $1.00 crude oil.

During this period, here between the end of the first

Federal Tender Board, on January 7, 1935, and March 1st, when the Connally Act was passed, which shut out of interstate commerce hot gasoline and hot crude oil, the number of hot crude oil refineries first increased and then after the Connally Act declined considerably until there were only 14 in number; 8 of them shipping in interstate commerce and 6 of them shipping on tenders in Texas.

2848 We then come to the period from March 4 through to June 6, 1935, which is one of increasing gasoline prices. It is significant that the first increase in price took place on March 4th, which was the date of the issuance of the first Federal tenders under the Connally Act. We find a situation there that indicates strength.

However, we recall that during February stocks had increased slightly more than seasonal; the strength in this entire situation was such that barring any abnormal depressing factors the price of gasoline would be driven upward to approximate parity with crude oil.

During this entire period gasoline demand went up considerably. During March the increase was 4.2%; during April approximately 6%; during May approximately 3%. The demand of the retail market, therefore, was continually higher than the Bureau had anticipated.

It is my opinion that this situation was inherently strong enough to have pushed the price of gasoline up to an approximate parity with crude. However, I had general knowledge of buying by major companies of so-called distress gasoline from independent refiners. I did not know the extent or nature of such buying, but in that it removed so-called distress gasoline, which was overhanging and depressing this market, it did have an effect on price. But the situation was so strong here during the period from March 4 to June 1, 1935, (indicating on chart) with 2849 respect to gasoline demand, it being considerably above the demand anticipated by the Bureau of Mines, that there was a continuous decline in the gasoline stocks to below seasonal requirements. The days' supply, and the strong situation here (indicating) of crude oil, even though it was much above that recommended by the Bureau of Mines, necessitated further withdrawals from storage in order to meet the demand for refined products.

It is my opinion that whatever buying was done had only a temporary and incidental effect and that it did not in any way tend to increase the price of gasoline to a level higher than the natural working of the law of supply and demand would have forced it.

We now come to the period from ~~about~~ June 7, 1935 to approximately January 10, 1936. We find this large demand for gasoline continuing, June, 1935 showing 6.8% increase when compared with June, 1934, and all subsequent months except November showing increases.

During that entire period, with the exception of September, the Bureau of Mines under-estimated demand to as high as approximately 4,500,000 barrels in October. In September the Bureau of Mines over-estimated demand by slightly over 100,000 barrels.

Gasoline inventories, we noted, were coming down (indicating on chart), gradually establishing a low level at
the end of October. Crude oil production was con-
2850 siderably higher than recommended by the Bureau
of Mines, but there was a terrific draft on stocks during the entire year, the total there being 22,000,000 barrels of crude oil withdrawn from storage during 1935.

During that period, June 7, 1935 to January 10, 1936, we find a level price for crude oil at $1.00 a barrel for both grades indicated on this chart; something we didn't expect to occur back in February, 1935 when the interstate compact was made.

We considered the interstate compact in February, 1935 and it became effective in August, 1935. It was passed first by Congress, of course, and it gave the six states signatory to it, Oklahoma, Kansas, Texas, New Mexico, Colorado, and Illinois, beginning with August, the right to get around a table and discuss their mutual problems of keeping the actual crude oil production within the market demand therefor. Prior to that date these States did not have the legal right to get together and keep the crude oil production of the United States in balance with demand. In other words, they didn't have the legal right to discuss their mutual problems and keep within the total demand for crude oil as recommended by those whom they consulted in the Bureau of Mines.

The states didn't have the right to keep the state production within the estimated demand for the United States because it was illegal. I presume the anti-trust laws had something to do with it, but the Circuit Court of Appeals
held that that was so.

2851 I think the Constitution of the United States pro-
vides that in order for states to make a compact, there has to be an authorization by Congress. Congress authorized this compact, and it became effective in August, 1935. Anyway, the fact is that the states had not done it prior to that.

On January 10 to 12, 1936, we find an increase in both grades of gasoline. That was, beyond a doubt, due to the increased price of crude oil which took effect on January 9, 1936, the price of East Texas grade crude being increased from $1.00 to $1.15 on that day, and the price of Oklahoma crude being increased from $1.00 to $1.10.

However, we still find the situation continuing strong during January, 1936, demand increasing 15.5%.

Stocks during January, 1936 did not increase any more than the seasonal requirements necessitated. Crude oil production was considerably higher than the amount recommended by the Bureau of Mines, almost 9,500,000, but there was a withdrawal of crude oil from storage during that month of 1,800,000 barrels.

It is unusual over a long period of time to have that amount of withdrawal of stocks in January. It is to the best interests of producers, I think, for crude to increase during the winter and be drawn on during summer. It is of considerable assistance to the state regulatory body to keep crude oil production running along at a level rate
2852 rather than to have the opening and closing of the
valves. It is a little easier, I think, to suggest to the producer that he open the valve rather than that he close it. And for that reason it is so desirable to keep the level of crude oil production on this line (indicating) over a long period of time, or, as was the case here, to have an increasing upward trend moving along at a slightly accelerating pace all the time.

We found the price of gasoline increasing between January 10th and 12th as a result of the increase in the price of crude oil on January 9, 1936.

Through the second two-thirds of January, 1936 the price levels off, but weakens during the middle and the end of February, 1936.

We notice that the demand for gasoline during February, 1936 was for the first time in many months under the demand anticipated by the Bureau of Mines. As a result of that condition, gasoline demand less than anticipated and refineries anticipating higher demand, gasoline inventories went up during February, 1936 more than seasonally.

The demand in February, 1936 was very greatly affected by the extreme weather during that month, and resulted in a more than seasonal increase in gasoline inventories. The days' supply, however, didn't change much. In February we find again a large amount of crude oil production in excess of that recommended by the Bureau of Mines, but we also find a decline in crude oil inventories.

2853 We know up here (indicating) that this point was affected by the conditions of demand here (indicating), but less than anticipated; and also by the fact that for the first time "no-octane" gasoline produced in the Rodessa field in Louisiana made its appearance in the market. The Rodessa field is in the general vicinity of the East Texas field. It is a point where Arkansas and Louisiana and Texas meet, the geographical area which was thought to be favorable to the accumulation of oil stretching across those three states. It was considered at one time that Rodessa would perhaps create another East Texas problem, Arkansas and Louisiana not having at that time a state proration law, while Texas did. Production was found in Louisiana, and later it spread over into Texas. However, Louisiana later began regulating crude oil production in the state under their conservation laws. That field was opened in 1935, but the production did not come up to sizeable amounts until the latter part of January and February, 1936.

From then on, the gasoline price came along on a level point through March. In April we find it strengthening a little bit. Rodessa gasoline was not in the market as strongly as it was at that time, and the state began to regulate production there in accordance with the state conservation laws, and the situation improved to some extent.

Seasonal stocks of gasoline had increased more than seasonal requirements required during February, 1936, and at the end of March there was slightly more seasonal gasoline in storage than legal requirements called for.

2854 After the price levelled off during March and April, 1936 we come into a period in the latter part of May which shows a decline in the price of gasoline. That decline was in the face of an otherwise strong situation in the demand for gasoline. Again, during that period the Bureau of Mines had under-estimated actual demand, but it was a period following rather slightly declining seasonal inventories. However, no-octane gasoline from Rodessa really came into the market during May, 1936.

Rodessa crude is not a very desirable grade of crude oil, and the gasoline produced from it is a very low anti-knock quality, and we say "no-octane" or "no-octane rating."

This gasoline came into the market from Rodessa in increased quantities during May, 1936, the situation down there not being in as good control as it had been during this level period of March and April.

We now come to June, July and August, 1936, which shows during June the continued effect of the no-octane gasoline from Rodessa, which straightened itself out again in July and the early part of August.

During this entire period we have been carrying higher than seasonal inventories in gasoline. There had been a seasonal increase that was larger than minimum requirements indicated in February, 1936, which carried through March, 1936, and which did not liquidate itself during the early part of the high consuming season.

2855 Normally when there is an inventory above minimum seasonal requirements at the beginning of a high consuming season, one watches for a price reaction. However, he may not be as definitely concerned when such amounts above the minimum requirements exist at the beginning of a season as when they exist toward the end of the season. In other words, seasonal inventories other than minimum requirements are not the menace to prices early in the season that they are toward the close of the season, or the beginning of the low consuming months.

During August and September, 1936 there was a surplus in seasonal requirements in the Oklahoma-Kansas region, and a slight surplus of seasonal requirements in the Indiana-Illinois region.

During October and the early part of November, 1936, the price remained fairly stationary, the demand coming along beautifully during that period of the year. September showed a 14% increase in demand, October a 6.2% increase, November an 8.6% increase. Seasonal stocks were at a low level during September and October, with November showing only a very slight increase. The price rose in November very, very slightly, and then levelled off during the year.

During December, 1936 demand increased 11.8% when compared with December, 1935, which was 14.7% above December, 1934. In other words, the demand for gasoline in December, 1936 was approximately 27% above the
2856 demand for gasoline during December, 1934.

We find the price of crude oil during this entire period remained steady. Crude oil production in every month was above that recommended by the Bureau of Mines, but crude oil inventories declined from the peak for that year of 315,000,000 barrels at the end of April to 288,000,000 at the end of 1936. That 288,000,000, as we said earlier, was a new low in crude oil inventories above ground since 1922.

The actual withdrawals of crude oil from storage in those months are indicated in the lowest section of the chart, running to as much as 4,500,000 to 6,000,000 barrels a month.

Summing up for 1936, we find that the demand for gasoline actually increased about 9½%, an actual increase of about 9,500,000 barrels above that which was expected by the Bureau of Mines, or approximately 350,000,000 gallons; that crude oil production during the year was about 70,000,000 barrels above that recommended by the Bureau of Mines, but that nevertheless in order to supply the large demand for gasoline and other products crude oil was withdrawn from storage to the extent of approximately 27,000,000 barrels during 1936.

In the American Petroleum Institute we have records which reflect the prices of gasoline and the trend of those prices in the United States. Those records have been kept under my direction and I have custody of them. 2857 We have prepared a chart setting forth statistically and graphically gasoline prices and price trends. This chart sets forth the data contained in the records in my custody.

We have records showing the tank wagon price of gasoline from 1918 through 1936 in 50 representative cities throughout the United States, two in New York state, one in each of the other states, and one in the District of Columbia. Those prices also represent the service station price of gasoline, the state tax and the federal tax; also the service station price including the tax. That same series exists since 1918. They were selected in 1918 as representative of marketing and demand conditions within each city.

Q. And what does that chart reflect?

Mr. Chaffetz: That is objected to. If your Honor please, we object to any charts or any data about trend of prices from 1918. If we are going back to 1918 to find out what prices were, then we have got to make an inquiry year by year as to what the factors were that entered into the price, and all the varying factors that enter into the industry over a period—how far back is 1918 from 1937?

The Court: Objection sustained. Exception allowed.

2858 Mr. Thomas: It hasn't been offered yet.

Mr. Chaffetz: My objection was to the entire line of testimony.

The Court: There is an objection to the admission of this exhibit?

Mr. Chaffetz: Oh, we don't object to it on the ground of the authenticity. We object on the grounds we have stated.

Mr. Donovan: Yes, of the materiality?

Mr. Chaffetz: The materiality, yes.

(Chart referred to is marked Exhibit 955 for identification.)

Mr. Donovan: Now, I offer in evidence the chart referred to by the witness, Exhibit 955, being "Gasoline Prices, 1918 to 1936, of the Major Marketing Companies, Average United States, Fifty Representative Cities," with simple averages each year. Also showing the weighted monthly average of crude oil prices in the United States for the same period.

The Court: The offer has been made, and you have made your objection?

Mr. Chaffetz: Objection made, yes, sir.

The Court: Have you stated your objection, your reasons?

Mr. Chaffetz: Immateriality, and irrelevancy.

2859 The Court: Objection sustained. Exception allowed.

(Copy of Exhibit 955 for identification is handed to the Court by Mr. Donovan.)

(The following proceedings were had in the absence of the jury.)

Offer of Proof re Trend of Gasoline and Crude Prices 1918-1936.

Mr. Donovan: If Fred Van Covern were permitted to answer the first question below, and other questions which would have followed this one concerning Exhibit 955 for identification, he would testify as follows:

Q. And what does that chart, Exhibit 955 for identification, reflect?

A. It indicates the weighted monthly average crude oil prices in the United States, the tank wagon price of gasoline in 50 representative cities throughout the United States, the service station price exclusive of tax, and the service station price including tax, for the period January, 1918 to and including December, 1936.

Q. State whether or not this chart reflects the relationship, if any, between crude prices and gasoline prices.

A. It does.

Q. Will you please describe such relationship?

2860 A. In the period from January, 1918 through August, 1933, the trend of prices in crude oil and gasoline rose and fell, generally with each other. This is strikingly illustrated, for example, in the year 1920, when the price of crude oil rose rapidly during the first few months of that year, levelled off during the latter part of the year, and fell rapidly during the first few months of 1921. The price of gasoline followed the trend of crude oil almost exactly. From then until August, 1933 the peaks and valleys in price trends of both crude oil and gasoline followed each other. In September, 1933 the price of crude oil was moved up to $1.00 and was maintained at that level from then through the summer of 1935. In March, 1936 the price of crude rose to a level slightly above $1.00 as an average for the United States as a whole. The price of gasoline during the period from September, 1933, through June, 1935, followed a very different course. In October, 1933 a decline in gasoline prices set in, but the trend changed in about May, 1934, rising slightly, but soon after that a very rapid descent began which terminated in December, 1934. Gasoline prices then began to rise and reached a high point in 1935 on September 1st. There was
2861 then a slight decline, with a levelling off during the end of 1935. Early in 1936, apparently responding to the rise in crude oil prices, the price of gasoline rose slightly, fell off through March and April, but again rose in May to a level where it remained steady through August. The trend throughout the remainder of 1936 was slightly downward.

Q. What was the general trend of service station gasoline prices from 1920 to 1936?

A. The general trend during that period was consistently downward from a high in 1920 of 32¢ to a low of about 11¢ in 1933. After this low it rose and established a level of about 14¢ in 1936. These figures are exclusive of taxes.

Q. Comparing the service station price in 1920 with the service station price in 1936, excluding taxes in both cases, what is the percentage of changes?

A. The 1936 station price, excluding taxes, is about 47% of the 1920 service station price, excluding taxes.

Mr. Chaffetz: The Government objects to that offer of proof.

The Court: Objection sustained; exception allowed.

(The following proceedings were had in the presence of the jury.)

There has been a very definite relationship between
2862 the prices of crude and of gasoline through a long period of time.

The general economic conditions of the country improved in 1935 and 1936 over the conditions that existed in the years immediately preceding. This improvement was accompanied by increases in the prices of all commodities and materials. I have compared the prices of gasoline, including the refinery tank car market prices, the tank wagon prices and the retail prices in effect during the years 1935 and 1936, with the prices of other commodities and materials.

Mr. Donovan: The following Exhibits for identification are offered in evidence: 956, 957, 958, and 959.

Mr. Chaffetz: Those are objected to, if your Honor please. If we are going to take up the comparison of the prices of those commodities with the prices of [illegible] then we have got to find out what factors entered into the prices of those other commodities.

I didn't object when he asked the general questions as to whether there weren't better economic conditions in these years and whether prices generally weren't up, but I object to taking up specific commodities.

2863 Mr. Lewin: We would have 18 different cases to try if we should go back to 1918. Here, depending upon the number of commodities they select, we have got just that many other cases to try.

Mr. Donovan: The charge made by these gentlemen against us is that these prices were high, arbitrary and non-competitive. And they have asked the jury to draw the inference that that was so because of the rise in price during a particular period.

Now, I think that we ought to be entitled to show that this rise in price which appeared there in relation to the oil industry was not something abnormal and unnatural and improper and illegal, but that the same thing was happening at the same period, during the same time with other commodities. And it seems to me that it is a perfectly proper thing to do.

The Court: I think you ought not to specify certain articles, for instance, dairy products, textiles, household furniture, and so on. I think it is sufficient that the jury—we all know that prices of all commodities have risen during the past 2 years.

The objections to these exhibits are sustained. Exception allowed.

2864 Mr. Donovan: You do not raise the question of its authenticity?

Mr. Lewin: No, sir, we don't raise any question except materiality, relevancy and competency.

The Court: These exhibits are interesting, but I think they would mean just that many more suits.

Mr. Donovan: Now, in your study of statistical —your Honor, may we reserve the right—I don't want to upset it now, but we have offers of proof on that last material.

The Court: ~~Yes, you~~ may make those.

(The following proceedings were had in the absence of the jury.)

Offer of Proof Re Various Commodity Prices Compared With Gasoline Prices.

Mr. Donovan: Exhibits 956, 957, 958 and 959 for identification were offered in evidence. The Government objected to the introduction of these charts on the ground that they were irrelevant, immaterial and incompetent. The objection as to each was sustained by the Court.

The Court granted permission to defense counsel to make offers of proof on the subject matter contained in the above mentioned charts.

There can be no question of the competency of this testimony of Fred Van Covern concerning price
2865 comparisons. The witness went to the only available source to obtain the data for his comparisons, which, in the majority of cases, was one department or another of the United States Government.

The Government charges the defendants with conspiring to fix high, arbitrary and artificial prices. One test or method of determining whether prices are fixed or are high is to compare such prices with prices for other commodities. If, in making price comparisons, it is found that the price for the commodity in question is below the prices of other commodities generally, there is, of course, an inference that the price for the commodity in question was not fixed. Gasoline prices were uniformly lower than other commodity prices throughout 1935 and 1936. It is submitted that the defendants are entitled to whatever inferences the jury may draw from such price comparisons and that this testimony would create an inference that no combination to fix prices was effected by the defendants in this case.

The Government, admittedly, has sought to establish its case by circumstantial evidence. There is, in fact, no direct evidence of an agreement to fix prices. 2866 Their case depends on inferences to be drawn from circumstances. The defendants, therefore, should be permitted to introduce any circumstances from which an inference of innocence can reasonably be drawn.

If Fred Van Covern were permitted to testify concerning the comparisons of various commodity prices with gasoline prices during the years 1935 and 1936, he would testify as follows:

Q. Were Exhibits 956, 957, 958 and 959 for identification prepared under your supervision?

A. Yes.

Q. On the bottom of each of these charts, Exhibits 956, 957, 958 and 959 for identification, there is a legend entitled "Source". What is included in each of these legends?

A. In each legend I have indicated the source from which I took the data reflected on each chart.

Q. Most of the source material seems to have been taken from data compiled by some department of the United States Government. In such statistical data, state, if you know, what standard is employed by Government statisticians for the purpose of making price comparisons.

A. They use what is called the Index Number to compare the prices indicated for the various years included on these charts, and they have assumed that 2867 the 1926 price equals 100% or par.

Q. State, if you know, why the prices in effect during the year 1926 were selected as the standard for the purpose of comparison.

A. The year 1926 was selected as the standard for purposes of comparison by Government statisticians because it was considered that prices during that year represented levels more nearly normal than any other years since that time.

Q. Do each of the Exhibits 956, 957, 958 and 959 for identification, accurately set forth in graphic form the statistical data obtained from the source material indicated at the bottom of each chart?

A. They do.

Q. Exhibit 956 for identification reflects nine charts. On each chart the wholesale price of gasoline is compared with the trend of prices of some other product or products. These other trends are all commodities, all farm products, grains, foods, dairy products, textile products, fuel and lighting, building materials, house furnishing goods. Will you please describe these various comparisons and explain the method employed in making such comparisons?

A. This chart compares the relationship between 2868 the wholesale Oklahoma market refining prices for gasoline and other commodity groups, during the years 1926 to and including 1936, and again 1926 equals 100 or par. In comparing the prices of all commodities with gasoline, we find that the prices of gasoline were under the level of the prices of all commodities during the entire period, when these prices are related to the 1926 level. The price of gasoline went down considerably in 1927, rose some in 1928 to a point about 15% below its 1926 level. Another decline set in and rapid decreases occurred through 1931. The price of gasoline increased slightly in 1932 and fell off again in 1933 to approximately the 1931 level. From then on, through 1934, 1935 and 1936 the price of gasoline increased until for the entire year of 1936 there was indicated a price about 31% below the 1926 level. In the all commodity group, prices fell under their 1926 level only slightly during 1927, 1928 and 1929. In the latter year they were about 5% below their 1926 level. Prices in this group began a decline in 1929 which ran through 1932. They were then indicating a price level of about 35% less than the 1926 level.

The all commodity group rose slightly in 1933 and then began a rapid increase which lasted through 2869 1934 and 1935 and went still higher in 1936. The significant part of this chart is that the price of gasoline not only was lower than the prices of all commodities throughout the entire period in relation to 1936, but that also for the entire period they average about 15% lower than the all commodity group.

The same situation generally exists as existed in the gasoline and oil commodities in comparison with respect to foods, fuel and lighting, all farm products, dairy products, building materials groups, textile products and house furnishing goods. All farm products, however, showed an increase in 1928 and 1929, as related to their 1926 level, dairy products indicated an increase in 1927, 1928 and 1929 above 1926, and in the case of grains, an increase in 1927 and 1928. But there is one other difference between the trend of grains and gasoline in that the price of gasoline in the year 1932 was slightly higher than the price of grains, the grain price in relation to its 1926 level being 60% below, while gasoline was about 57% below the 1926 price. Grain prices rose very rapidly, however, from 1932 through 1936, while the price of gasoline rose very much more slowly.

Q. Exhibit 957 for identification reflects 8 charts. On each chart the wholesale price of gasoline is com-
2870 pared with the wholesale price of one individual food. These individual foods are corn, wheat, flour, potatoes, eggs, cattle, hogs and lambs. Will you please describe these various comparisons and explain the method employed in making such comparisons?

A. The method of comparison that has been used on this chart is the same as on the other price charts, again 1926 equalling 100, or par.

The wholesale Oklahoma refinery price of gasoline was less during the entire period than the prices of flour, eggs and cattle.. In the case of corn, prices rose very rapidly in 1927 and 1928 when it reached a level of 29% above its 1926 price, fell off quite rapidly during the period from 1929 to 1932, which was the only year in this entire period in which corn was lower in price relatively than gasoline, both groups showing a decrease as compared with the 1926 level of about 58%. Corn prices then rose very rapidly and went above their 1926 level in 1935. They continued upward through 1936 until they were 13% above their 1926 prices, while gasoline in 1936 was 43% below its 1926 level.

In the case of wheat, we find again that 1932 is the only year in which the price of wheat was less than the price of gasoline. The relationship there
2871 indicates that while gasoline prices were 57% below their 1926 level, the price of wheat was 61% below

its level of 1926. As in the case of corn, wheat prices rose very rapidly from 1932 to 1936, indicating the price in the latter year about 19% below the 1926 level, while gasoline shows a decline from its 1926 level of about 43%.

Potatoes fluctuated considerably during this entire period, being under the price of gasoline 3 times during the 11 years, the fluctuation in the price of potatoes being very pronounced as compared with the price of gasoline.

In the case of hogs relative to gasoline, we find that prices would have been less than the price of gasoline in 192[illegible] 1932, 1933 and 1934, but that during 1935 and 1936 the price of hogs recovered very rapidly when compared with gasoline. The relationships at the end of 1936 indicate that the price of hogs was 21% less than its 1926 level, while the gasoline price was 43% below.

In the case of lambs, we again find the price of that commodity less than gasoline in 1932, but only very slightly. In that year gasoline prices were 57% less than in 1926, while the price of lambs was about 58% less. Gasoline went down in 1933 while the price of lambs went up. From there on, recovery in the price of that commodity was somewhat faster
2872 than was the recovery in the price of gasoline, until at the end of 1936 we find the price of lambs 31% below their 1926 level, while gasoline was about 43% below its 1926 level.

Q. Exhibit 958 for identification is a chart showing index of gasoline prices (tank wagon, exclusive of tax) compared to index of cost of living and index of wholesale price of all commodities in the United States. Will you please describe the comparisons of these trends throughout the period 1918 to and including 1936?

A. It should be noted that in this chart, as well as in the others presented, the 1926 level of three items mentioned, all commodities, gasoline tank wagon, excluding tax, and the cost of living, has been placed at 100 or par. The cost of living rose from about 93 in 1918 to about 115 in 1920. During the following year it fell very sharply and indicated in 1921 a level just below par. In 1922 there was another slight decrease, but in 1923 and 1924 the cost of living rose slightly and in 1924 it reached 98%, while 1925 was at 100 or par, as was 1926 also. During 1927 there was a decline which leveled off at about 96 in 1928 and 1929.

2873 The cost of living dropped in 1930 to about 93 or 7% less than in 1926. In 1931 it registered about 84 and by 1932 had declined to 75. It rose in 1933 to about 72, and that began a continuous upward trend through to 1936, which registered about 82, indicating that the cost of living in that year was about 18% less than the cost of living in 1926. In relation to the cost of living, the gasoline prices travelled in a very much similar trend. Gasoline prices peaked in 1920, indicating that during that year they were slightly more than 50% higher than the 1926 level, and then began a continuous decline in those prices through 1921, 1922, and 1923, and in 1924 the level indicated is 92, showing a decline from 152 in 1920 to 92 in 1924, or a decrease of about 40% in four years. The 1925 figure is 95, and of course the 1926 figure is par. 1927 prices dropped to about 85, where they stayed through 1929. There was a drop in 1930 and by 1931 a low level of 64 was reached. 1932 fluctuated up slightly and then down in 1933 to about 63. A rise is indicated in 1934 to about 67 and in 1935 a drop to about 66. In 1936 the gasoline price level registered about 69, showing that the prices of gasoline during this year were about 31% less than the 1926 level, indicating, in the

2874 case of gasoline, that the recovery in the price of that product was very much slower than the increase in all other commodities and in the level of the cost of living during the years 1933, 1934, 1935 and 1936.

In the case of all commodities, the high price level was registered in 1920 when we had an index number of about 154, or the indication that prices of all commodities combined in that year were 56 above par. There was a sharp decline in 1921 to a price level of about 98. 1922 was slightly lower, and 1923 rose to about 101, which was just slightly above par. 1924 showed a level of about 98, with 104 being registered in 1925, and again 1926 is indicated at par. The levels for 1927, 1928 and 1929 were constantly around 96. A price decline then set in and ran through 1932, which is indicated at 65 or about 35% below the 1926 level. 1933 rose to 66 and then, gaining momentum, went up in 1934 to 75, 1935 to 80 and in 1936 to about 81.

Q. Referring specifically to the period 1926 to 1936, how does the trend of gasoline prices, as reflected by chart, Exhibit 958 for identification, compare with the trend of all commodity prices and the cost of living?

2875 A. With the exception of 1932, the gasoline price trend was below both of the others, but even in that year it was below the cost of living index and only slightly higher than the cost of all commodities.

Q. What was the trend of the gasoline prices, as reflected on Exhibit 958 for identification, for the years 1935 and 1936?

A. In 1935 the gasoline level was slightly less than in 1934. It increased during 1936, however, but in spite of that it was 13 points, or practically 16% below both the cost of living and the all commodities index.

Q. Referring to Exhibit 959 for identification, will you please compare and describe the trend of the index of gasoline tank wagon price, exclusive of tax, with the index of wholesale dairy products for the period 1918 through 1936?

A. As in each of the other charts the 1926 level of prices for dairy products and for gasoline is indicated as 100 or par. The prices of dairy products rose during 1927, 1928, and 1929 to about 106, or 6% above the 1926 level. Then set in a rapid decline, passing through 1930, 1931 and 1932, the latter year registering about 61 or 39% below the level of 1926.
2876 1933 also established a level of about 39% below 1926, and then a recovery set in, the level climbing to 73 in 1934, 80 in 1935, and about 84 in 1936. Gasoline, in relation to dairy products, indicates a constantly lower level through 1927, 1928, 1929, 1930 and 1931, indicating in the latter year about 64 in comparison with about 82 for dairy products. The price of gasoline recovered slightly in 1932 and in that year was above dairy products and remained slightly above dairy products in 1933. Dairy products went above gasoline in 1934 and continued in 1934 to about 67, while 1935 registered about 65, when dairy products were at about 80. Gasoline for 1936 registered about 69, while dairy products were about 84. In other words, during 1935 and 1936 gasoline was about

15 points below the level of the prices of dairy products in relation to the par of 1926.

Q. Have you made studies similar to those reflected on the four charts, Exhibits 956, 957, and 959 for identification, concerning the tank wagon price, exclusive of tax, with prices for food, fuel and lighting, building materials, textile products and house furnishing goods?

A. I have.

2877 Q. In making this study, did you examine the Government's statistics taken from the same sources in ascertaining price levels of the various commodities and materials, gasoline excepted, mentioned in the last question?

A. I did.

Q. Will you please compare the tank wagon price of gasoline with the price of food in relation to the 1926 levels of these commodities, confining yourself to 1935 and 1936?

A. The levels of prices of food products during 1935 stood at about 84, or 16% less than the 1926 level; tank wagon gasoline prices, exclusive of tax, in 1935 were about 35% less than the 1926 level. The level of food prices in 1936 was about 82, while the gasoline price level was at 68, indicating that the level of gasoline prices in 1936 was 31% below 1926 and food prices were only 18% less than in 1926.

Q. During the period 1926 to 1936, how did the index of tank wagon gasoline prices, exclusive of tax, compare with the index of the food prices?

A. Gasoline prices, with the exception of 1931, 1932 and 1933, were consistently below the level of food prices during this entire period.

2878 Q. Again confining yourself to 1935 and 1936, will you state the situation in respect to the tank wagon prices of gasoline as compared with prices of fuel and lighting?

A. The prices of fuel and lighting in 1935 were about 26% less than the 1926 level. Gasoline prices in that year were about 35% less than the 1926 level. In 1936 fuel and lighting registered a level about 24% less than par, or less than 1926, while gasoline in that year was 31% less than the 1926 level.

Q. How does this situation compare with the situation in prior years?

A. From 1926 through 1930 the price of the fuel and lighting group and gasoline followed very closely. The two groups diverged in 1931, gasoline falling several points below fuel and li[illegible] From then on through 1936, the fuel and lighting group continued to improve more rapidly than gasoline did, until in 1936 there is indicated an increase in the fuel and lighting group of about twice that of gasoline.

Q. Again confining yourself to 1935 and 1936, will you state the situation in respect to tank wagon gasoline prices as compared to the prices of building material?

2879 A. In the year 1935 the level of prices of building materials stood at 85, or about 15% less than the 1926 level. Gasoline prices in that year stood at 65, indicating that the gasoline prices were 35% less than the 1926 level. In 1936, building materials were 13% less than the 1926 level, while gasoline prices were 31% less than the 1926 level.

Q. How does this situation compare with the situation in prior years?

A. For the entire period from 1926 through 1936 the price of gasoline was consistently below the level of building materials. The extent of the difference, however, was greater during 1934, 1935, and 1936 than in any previous year back to 1926, building material prices showing a much more rapid recovery than gasoline prices during the period from 1932 through 1936.

Q. Now state the situation respecting tank wagon gasoline price levels in relation to the 1926 price level and textile products price levels in relation to their 1926 price levels.

A. In 1935 textile products were about 28% less
than their 1926 price level. Gasoline for 1935 was
35% below its 1926 level. Textile products recov-
2880 ered slightly in 1936 and were only 28% less, while
gasoline was 31% less than in 1926.

Q. How does this situation compare with the situation in prior years?

A. Gasoline registered prices consistently below those of textile products from 1926 through 1936, with the exception of the year 1932 when gasoline prices stood at a level 32% less than 1926, while textile products had declined to about 45% less than the 1926 level. Textile products then recovered very rapidly during 1933 and 1934, while gasoline fluctuated downward during 1933 and slightly upward in 1934, textile products leveling off considerably in 1935 and 1936, but remaining above the gasoline level for those 2 years.

Q. Now, will you please state the situation respecting tank wagon prices of gasoline in comparison with price levels of house furnishing goods?

A. During 1935 the price of house furnishing goods was almost 20% below the level of 1926, while gasoline in that year was 35% below its 1926 level. In 1936 house furnishings were about 18% below the 1926 level while gasoline was about 31% below its level of 1926.

Q. How does this situation of 1935 and 1936 compare with prior years?

A. The price of gasoline was consistently lower than the prices of house furnishing goods for the 2881 entire period from 1926 through 1936. The price of house furnishing goods declined consistently through the 1926-1932 period, then increased slightly in 1933 and 1934, at which level the trend held fairly well through 1935 and 1936. Gasoline in relation dropped rapidly through 1931, recovered slightly in 1932, but the recovery in house furnishing goods was more rapid from the year 1932 through 1936 than was the recovery in the price of gasoline.

Q. Have you also compared the retail prices of gasoline as reflected in Government statistics heretofore mentioned by you, with the prices of eggs, butter, milk, bread and flour?

A. I have.

Q. And was the same method of comparison employed in making this study as previously described by you?

A. It was.

Q. Was the price level of 1926 taken as par in this instance as in the instance of wholesale prices and tank wagon prices?

A. It was.

Q. And for the same reason?

A. Yes, sir.

Q. Will you state the situation with respect 2882 to gasoline and eggs for the years 1935 and 1936?

A. In 1935 the price of eggs was 25% below its 1926 level. Gasoline prices in that year were 35% below their 1926 level. In 1936 the price of eggs was

22% below the 1926 level, while gasoline prices were about 31% below their 1926 level.

Q. How does this situation compare with previous years?

A. The price of eggs, after falling below its 1926 level in 1927, rose sharply in 1928 and 1929, indicating a price slightly above par. A rapid decline then set in through the years of 1930, 1931, 1932 and 1933, until in the latter year it registered 46% below the 1926 level. Recovery during 1934 and 1935 was very rapid, the latter year indicating in comparison a level 25% below 1926. There was further improvement in 1936 to a level about 22% below par. Gasoline prices dropped sharply in 1927 where they leveled off at 16% below par and continued at practically the same rate through 1928 and 1929. Another rapid decline set in which carried the price downward through 1930 and in 1931 to a level of about 38% below 1926. All through this period gasoline prices were at lower levels than was the price of eggs. In its decline the price of eggs dropped below the price of gasoline in 1932, 1933 and 1934, when it passed above the price of gasoline, registering the levels I have heretofore stated in comparison with gasoline in 1935 and 1936. 2883

Q. Will you please state the situation in respect to butter and gasoline during 1935 and 1936?

A. In 1935 the price of butter was only slightly higher in relation to 1926 than was the price of gasoline, butter indicating a level about 23% below 1926, while gasoline was about 35% below its 1926 level. The price of butter rose more rapidly than the price of gasoline in 1936 until it reached a level about 25% below par, while gasoline in 1936 was about 31% below par.

Q. How did the situation in 1935 and 1936 compare with prior years?

A. The price of gasoline was consistently lower than the price of butter through 1927, 1928, 1929, 1930 and 1931. The trend of gasoline was almost consistently downward during that period except in 1927, 1928 and 1929 which years leveled off at about 15% below 1926, while butter rose sharply in 1927 and 1928 to a level about 6% above par. It declined slightly in 1929, and then began a very rapid decline through 1932, falling under gasoline in the latter years. It continued below the level of gasoline

2884 prices during 1933 and then rose sharply during 1934 and 1935, in which year it registered a level above that of gasoline and indicated the relationship previously referred to for the year 1936.

Q. State the situation in respect to retail prices of gasoline as compared with the retail prices of milk during 1935 and 1936?

A. In 1935 the retail prices of milk were about 16% below the 1926 price. The price of milk in 1936 improved slightly to a level about 14% below 1926. Gasoline prices in 1935 were about 35% below the 1926 level and in 1936 were about 31% below the 1926 level.

Q. How did the situation in 1935 and 1936 compare with the situation in prior years?

A. The retail price of gasoline was consistently lower than the retail price of milk during the entire period. As was indicated in the previous comparisons, the price of gasoline dropped sharply from 1926 through 1931, except for a leveling off period in 1927, 1928 and 1929, while the price of milk was consistently above par during the years 1927, 1928 and 1929, and above par in 1930. Milk prices then declined rapidly during 1931 and 1932 and slightly in 1933, when they reached a level about 24% below the 1926 level. The price of milk then recovered
2885 quite rapidly in 1934 and 1935 and continued upward in 1936, the improvement in the price of milk being much more rapid in the 1933-1936 period than was the recovery in the price of gasoline.

Q. Now state the situation in respect to retail prices of gasoline and the retail prices of bread during 1935 and 1936?

A. In 1935 the retail prices of bread were only 11% below the 1926 level, while gasoline prices were 35% below the 1926 level. In 1936 bread prices fell off slightly to a level about 18% below 1926. Gasoline prices during that year were about 31% below their 1926 level. Again we find that gasoline was consistently below the price of bread through the entire period. The significant fact about this comparison is that bread recovered very rapidly during 1932-1935 period, while gasoline prices during the same period increased more slowly. Bread improved its position during 1932-1935 period by almost 20 points, while the price of gasoline increased only 4 or 5 points.

Q. Please state the situation in respect to retail prices of gasoline and retail prices of flour during 1935 and 1936.

A. The retail price of flour during 1935 was about 15% below its 1926 level. Gasoline was 35% below its 1926 level. In 1936 the price of flour was 20% 2886 below its 1926 level, while gasoline was 31% below its 1926 price. The significant thing indicated in this comparison is that the price of flour increased very rapidly in 1933, 1934, and 1935, improving its position to the extent of almost 33 points, while gasoline during the 1932-1935 period increased only 4 or 5 points.

Mr. Chaffetz: I object to the offer of proof.

The Court: Objection sustained; exception allowed.

(The following proceedings were had in the presence of the jury.)

In my study of statistics dealing with the petroleum industry, I have considered the wages paid to workmen in the industry. I have confined it to petroleum refining and petroleum producing, because there are no figures available for marketing or in connection with pipe lines. I went to the United States Department of Labor statistics in making that study and I studied the period from November, 1932 through 1936.

Cross-Examination by Mr. Chaffetz.

The Bureau of Mines recommends increases or decreases in gasoline stocks. I would have to look at their reports to tell by what amounts the actual storage stocks of gasoline in February and March, 1936 exceeded the amounts of storage stocks that were recommended for those two months by the Bureau of Mines. I do not 2887 know how much they recommended for February and March, 1936. I have the records, no doubt, in my office. I do not have them here with me. They did not recommend 66,000,000 for March 31, 1936. The Bureau of Mines did recommend 66,130,000 barrels of gasoline, finished and unfinished, at the end of March, 1935.

I do not think the Bureau of Mines recommended in 1936 a comparable figure to the 66,130,000 which they recommended in March, 1935. They did, however, recommend an increase or decrease in gasoline stocks for each month from then on, but without recommending a total economic or minimum requirement. The boys at the Bureau of Mines did not set up, to my knowledge, economic or minimum requirements for the end of March, 1936. In my conversations with them they have told me that they did not have any recommended minimum levels beyond March, 1935, with the possible exception of September. 1935.

Outside of court a few moments ago a published forecast of the Bureau of Mines for January, 1936 was shown to me. 66,500,000 barrels of gasoline to be in storage at the end of March, 1936, is what the Bureau thought the economic level should be. There were approximately 74,485,000 barrels of finished and unfinished gasoline actually in storage at the end of March, 1936.

There was an excess of seasonal gasoline in February and March, 1936, in storage, but not the excess that is
2888 indicated between the Bureau's figures of 66,500,000 and the 74,000,000. My opinion differs with the Bureau's very decidedly but I do agree that there was some excess. I would say it was about 4,000,000, between 3,500,000 to 4,000,000 barrels. According to the Bureau of Mines' figures, the excess was 8,000,000 barrels.

That excess was built up starting with February, 1936. At the end of January, 1936, there were 62,754,000 barrels of finished and unfinished gasoline in storage. That was slightly higher than economic seasonal levels required.

Then in February that level increased considerably, about 9,000,000 barrels.

Part of it was because of the very disappointing demand in February, a demand which for the first time in several months fell below the anticipated demand of the Bureau of Mines, and in that month we began to build up this surplus that I am talking about.

When I talk about some increase over economic levels in January, I mean in my opinion.

I didn't know what the level was that was recommended by the Bureau of Mines for the end of January. 1936. I don't know the figure that they recommended, but I can say that the figure that they recommended for the end of March was considerably lower than I thought the industry ought to have at that time.

2889 These figures are relative, and I think I could make that explanation more complete by going back to the end of March, 1935.

To my knowledge, without looking up the figures, I would say in a general way that this excess storage was probably evenly distributed. However, the various companies' figures indicate that very clearly. I don't have the various companies' figures.

I wouldn't say that that storage was virtually all in the hands of the major companies without looking it up. I would say that it was in the hands of any company, major or minor, using the two terms that way, who carried seasonal inventories. It isn't only the major companies that carried seasonal inventories. Any seasonal operator like Skelly or Kanotex, any of that type, carried seasonal inventories, and many small operators who didn't have the capacity to run to their peak seasonal demand. I would have to look up the companies in the Mid-Continent field who are not major companies, who made seasonal storage stocks. I can't recall them.

Direct Examination by Mr. Donovan.

I have prepared a tabulation showing the refineries' capacity owned by defendants and affiliated companies in
the entire United States, as of January, 1, 1935, and
2890 January 1, 1936. The source of my information in
this tabulation was the refinery and cracking plant capacity information circulars of the United States Bureau of Mines. My tabulation also shows total operating capacity as of January 1, 1935, and January 1, 1936, in the entire United States.

I have calculated what percentage of the total operating refining capacity in the United States was owned by these defendants and by their subsidiaries and affiliates. I have done that both for cracking capacity and straight run.

(Tabulation referred to is received in evidence as EXHIBIT 1016.)

Exhibit 1016 for identification is the tabulation I have prepared. I have done it accurately in accordance with the information I testified was the source of the material here.

No Cross-Examination.

(Witness excused.)

Mr. Chaffetz: With the permission of the defense counsel, I should like the record to show that it is stipulated that if Mr. Van Covern was recalled for further examination, he would give the testimony covered by Exhibit 1027 for identification, and that that Exhibit and Exhibit 1028 are offered in evidence.

2891 The Court: They may be received.

(Documents referred to are received in evidence as EXHIBITS 1027 and 1028 respectively.)

(Stipulations were offered by Mr. Donovan, and received in evidence as EXHIBITS 961 to 966, inclusive.)

2892 LESLIE M. WOODWARD, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Wichita, Kansas. I have been since 1930 assistant secretary of Derby Oil Company, an independent refiner, located at Wichita, Kansas.

From 1934 through 1936, I was in charge of and familiar with the company's books and records showing the production and sales of gasoline.

During 1934, 1935 and 1936 the company sold its gasoline in Kansas, Nebraska, Eastern Colorado, Southwestern Iowa, and Kansas City and St. Jo., Missouri.

During those years our company sold very little, if any, gasoline to major companies. 1930 was the only year we sold any appreciable amount to major companies.

The total gasoline production of our company was: 1934, 40,022,572 gallons; 1935, 45,008,762 gallons; 1936, 45,663,945 gallons. The total sales in gallons were: 1934, 40,906,625 gallons; 1935, 45,254,115 gallons; 1936, 46,385,930 gallons.

These sales figures include outside purchases of finished gasoline which was resold by the company. To get the total refinery sales you would have to deduct the outside purchases. I set up those figures so that I could make that deduction. The amount of outside purchases that I deducted for each of those years was: in 1934, 223,694
2893 gallons; in 1935, 1,216,746 gallons; and in 1936,
611,096 gallons. In order to get the actual refinery sales of the company for those three years I would have to subtract those amounts I have just mentioned from the total sales for each of those respective years.

I have prepared a schedule accurately setting forth these various figures that I mentioned, and also giving the monthly breakdown for those three years of our gasoline production and our gasoline sales. I have that schedule with me.

(Tabulation referred to is received in evidence as EXHIBIT 960.)

Cross-Examination by Mr. Lewin.

I haven't any definite knowledge of whether our company in 1935 and 1936 sold gasoline on the spot market. I believe not. Our sales were contract, but I cannot say definitely. I know of no spot sales.

During 1935 and 1936 we sold in Missouri, Iowa, and Kansas. Those are the only three states in the Standard of Indiana territory in which I know we sold. We had a service station in Kansas City, and in Des Moines and Shenandoah in Iowa. They are the only stations that we had. We did not sell a great deal from them. We did not sell very much directly to consumers in those states.

2894 Q. Most of the gasoline that you sell in those states you sell to jobbers under contracts?

A. No, we only had one jobber in Missouri outside of our own station at Kansas City, and that is at St. Jo. We have none in Iowa.

Q. Do you sell more to that jobber in Missouri than you sell through your own stations in Missouri?

A. I do not know. I do not think so. We have no jobber customers in Iowa. We have jobber customers in Kansas. I could not give you the figures on that nor the approximate number. As to how it compares with our sales in Missouri to jobbers, Kansas and Nebraska will take the bulk of our sales.

2895 C. A. CARLSON, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is Cushing, Oklahoma. I have been employed for over 11 years by Cushing Refining and Gasoline Company, an independent refiner located at Cushing, Oklahoma, and with a sales office at Minneapolis, Minnesota. I am employed in the capacity of accountant.

In 1934, 84.02% of our total gasoline sales were to jobbers and brokers in the Mid-Western area; in 1935, 89.62%; and in 1936, 86.24%.

During these same years, the company sold some gasoline to major companies. It sold a greater per cent of its gasoline to major companies in 1934 than it did to major companies in 1935. The total per cent of sales to major companies in 1934 was 15.98%; in 1935, 10.38%; in 1936, 13.26%. It would appear that during those years the company sold a greater portion of its gasoline to jobbers and brokers.

Nearly all of the sales to jobbers and brokers were on the spot market, as we only have 4 or 5 customers on contracts. That was true for all 3 years.

I have prepared a tabulation from records I kept, showing the production of gasoline and gasoline sales, by months, during those 3 years. The total gasoline
2896 production of the company for 1934 was 494,826 barrels; for 1935, 803,471 barrels; and for 1936, 842,743 barrels. The total gasoline sales for 1934 were 513,320 barrels; for 1935, 798,501 barrels; and for 1936, 836,979 barrels.

The tabulation which I have prepared accurately reflects and breaks down these yearly figures into months, both in production and in sales. It also shows the percentage of its sales to majors and to jobbers and brokers during those years.

(Tabulation referred to is received in evidence as EXHIBIT 887.)

Cross-Examination by Mr. Lewin.

We maintain or operate a skimming plant at Blackwell, Oklahoma, and a skimming plant and a cracking unit at Cushing, Oklahoma. The total daily crude capacity of our refinery at Blackwell is 1700 barrels, and at Cushing, 4200 barrels.

I could not say why our production of gasoline declined from 76,492 barrels in November, 1935 to 58,379 in December, 1935, and to 60,398 in January, 1936. These sales in 1934 that I spoke of were made to White Eagle; Socony-Vacuum; Sinclair Refining Company; Skelly Oil; Phillips Petroleum; Mid-Continent Petroleum; Tide Water; Lubrite; Wadhams; and Shell Pipe Line Com-

pany. It might be Shell Pipe Line or Shell Pe-
2897 troleum. Less than 1% of sales delivered during 1934 were made to Shell Petroleum, approximately 5% of all the sales to major companies and approximately 50 tank cars. Approximately 175 tank cars were sold to Shell Petroleum Corporation in the period from March 1, 1935 through the end of 1935. There were no sales to Shell Petroleum or Shell Pipe Line in January and February, 1935.

Q. Then, I understand your testimony that in 1934 throughout that entire year 50 cars were sold to Shell, and in January and February, 1935, no cars were sold to Shell, and then the period from March 1, 1935, through the rest of that year 175 cars were sold to Shell, is that right? And tell us how many cars were sold to Shell in 1936?

A. My figures are incomplete on that—that is, for lack of totals—(witness computing)—about 410 tank cars.

Redirect Examination by Mr. Donovan.

I have made a tabulation of gasoline sales to majors in 1934, 1935, and the first 6 months of 1936. In 1934, our total sales to major companies were 72,044 barrels; and in 1935, 82,913 barrels. So that was about the same in both years. The total per cent of sales to major companies for the year 1934 as to total sales was 15.98%.

(Tabulation referred to received in evidence as EXHIBIT 888.)

2898 JAMES D. MILLER, a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

I reside at Bronxville, New York. I am a certified public accountant, licensed under the laws of New York, and a member of W. F. Weiss and Company, New York, a firm of certified public accountants. They have been in the public practice of accountancy about 40 years. I have been connected with them for over 16 years. During that time I have been continuously engaged in the practice of public accounting. We have been retained by the defendants in this case.

We made an audit of the books and records of Danciger Oil and Refineries, Inc. It is known in the industry as an independent refiner. The records by which we made this audit are presently available. The program of audit was laid out by me. In the later stages of the field work I actively supervised it, personally supervising all the checking and the tabulation of stocks.

This audit shows all the spot open market sales made by Danciger to independent refiners, to brokers, to jobbers and to consumers, for a period of 21 months, that is, from November 1, 1934 to July 31, 1936.

2899 I have completed a comparison of the prices at which Danciger made sales to jobbers and consumers at flat prices from November 1, 1934 to December 31, 1935 with the daily range of prices quoted by Platt's Oilgram for the Oklahoma refinery market, and by the Chicago Journal of Commerce.

I can tell from my comparison how many of those prices were above the high quotations quoted by the trade papers, at the highest of both papers, or at the composite high, within the range of the trade paper quotations, and below the composite low.

During that 14 month period there was a total of 538 sales, made at flat prices to jobbers and consumers, of third grade gasoline in tank car lots. Those were sales that were made on a Group 3 basis. Of those transactions 84 were made above the high, 47 at the composite high, 24 within the range of the high and low, 294 at the low, and 89 below the low.

During the first 4 months of this period, the period before the price rise, that is, from November 1, 1934 to March 1, 1935, there were 118 sales transactions of this type, and of these, 7 were made above the high, 12 at the high, 10 within the range, 53 at the low, and 36 below the low. These were sales to jobbers and consumers—very few to consumers, most of them to jobbers. None were to major companies, none to other refiners, and none 2900 to brokers. So we are dealing now only with sales to jobbers and consumers.

These are all open spot market sales for prompt delivery, and at flat prices. By "prompt delivery" I mean within 15 days. There were no jobber and consumer sales for delivery within 30 days.

During the 3 months when the market was rising there were 134 sales transactions of this type. The period of the price rise is March, April and May, 1935. There were 11 made above the high, 20 at the high, 10 within the range, 76 at the low, and 17 below the low. There were more above the high in this period than there were in the preceding period, and less below the low than in the preceding period. That would be true of jobbers alone.

During the 3 months starting with March when the market was rising, the number of flat price sales to jobbers increased over the number of such sales to jobbers in the 4 months before the time the market was rising; it increased during the rising period.

Likewise I have made an audit of the sales of gasoline made by Danciger to the major companies who are defendants in this case, for the calendar year 1935. I made that audit from the books and records of these defendant major companies which were subpoenaed by the Government in this case and from the Danciger records.

I have prepared a chart showing the flat price
2901 sales on a Group 3 basis of third grade and regular
grade made by Danciger to jobbers and consumers and to those major company defendants. The chart was made by us under my supervision and direction. It correctly records the audit to which I have referred. This chart compares jobber, consumer, and major company sales, which I have mentioned, with the prices published from day to day in Platt's Oilgram, Oklahoma refinery market, and the Chicago Journal of Commerce.

(Chart referred to marked Exhibit 868 for identification.)

The black dots are sales to jobbers of third-grade gasoline. The green dots are sales to jobbers of regular grade gasoline. The blue dots are sales to consumers of third grade. There are not many of those, and they are all third-grade. The red dots are sales to majors of third-grade.

The first red dot is in January, 1935. No more appear on the chart until we come to April, 1935.

Occasionally there was more than one sale on the same date at the same price. The number under a dot indicates the number of sales transactions, in the event there was more than one at the same price on the same date. If there is a number "4" or "2", that would mean there were 4 or 2 flat price sales made on that particular day to that particular type of customer.

On this chart on April 15, 1935, I find on the
2902 4⅜¢ line a red dot with a black dot beside it. That
red dot represents a sale to a major company. The black dot represents a sale to a jobber. On the same day, there is another black dot which represents a sale to a

jobber at a price of 4½¢; that is above the first black dot on the chart. There is also a black dot representing a sale to a jobber at a price of 4¼¢ that is right below it. That means that on April 15, Danciger made a spot sale of third-grade gasoline to one jobber at 4¼¢ and that that was the price equal to the low of the Chicago Journal of Commerce on that day; they made another sale of third-grade gasoline to a jobber at a price of 4⅜¢ and that was equal to the low of Platt's Oilgram on that day; there was still a third flat price sale to a jobber at 4½¢, and that was equal to the high of both Oilgram and Journal of Commerce on that day, and on the same day Danciger made a sale to a major at a price half way between the prices at which it was, on that day, also selling to jobbers. Half way between and also at the same price. There was a sale in the middle there to a jobber, also.

Prior to April 15, when Danciger sold third-grade gasoline to a major company at 4⅜¢, it already had sold third-grade gasoline to jobbers at that price. It had made 2 sales, 1 here on April 5, and then there is 1 on April 13.

2903 Prior to April 15, when Danciger sold third-grade gasoline to a major company at 4⅜¢, it had sold third-grade gasoline to jobbers at even higher prices than 4⅜¢. It had made several sales at 4½¢. The first sale is on April 6. And then there is another sale on April 11. Another on April 12. All 3 of those were at 4½¢.

Mr. Lewin: May I ask whether or not the witness took into consideration the particular specifications of gasoline and whether the specifications were guaranteed?

A. They don't guarantee octane on third grade. We are dealing here with third-grade, but I can assure you that we examined all this carefully to make sure that it was third-grade.

Between March 1, 1935 and April 14, 1935 Danciger made 2 sales to major companies. They made 1 in April of 2 cars on a publication basis. It was not made on a flat price basis. That will not be reflected on this chart, because this chart deals only with flat price sales. There was still another for 7 cars which happened to have been made on an f. o. b. refinery basis. This chart deals with flat price sales on Group 3 basis. The refinery, out of which that material was shipped, is located in the Panhandle. Therefore f. o. b. refinery would not be f. o. b. Oklahoma, or f. o. b. Group 3.

On April 23 Danciger made 1 sale of third grade gaso-

line to a major company at 4½¢. That price was
2904 equal to the low of the published market on that day
of both publications, Oilgram and Journal of Commerce. The low of this published market had been 4½¢ for 3 days before in both trade journals.

Before Danciger had made this sale of third grade gasoline to a major company at 4½¢ on April 23, it had already made 5 sales to jobbers in the spot market, at that same price, and 5 sales to jobbers in the spot market at ⅛¢ to ¼¢ above that price.

When I refer to major companies I mean present defendant major companies. During 1935 Danciger made some sales of third grade gasoline to major companies at prices below the published spot market quotations. On May 8, there were 2 sales on the same day, at the same price, to majors, at ⅛¢ below the low of both publications.

At no time during 1935 did Danciger make any sales to the defendant major companies at a price higher than the trade paper quotations. During 1935 Danciger made some sales of third grade gasoline to defendant major companies at a price equal to the high of the published spot market. There is one on June 7th; and another on June 18th; and another on July 2d.

Generally it is true that during the greater part of 1935 the prices which defendant major companies were paying to Danciger were at or below the levels at which
2905 Danciger was selling to jobbers.

These dots on this chart do not represent all of the spot sales made by Danciger between November 1, 1934 and the end of 1935. This is just a small part of them. Among those not shown on the chart you would have spot sales to refiners; you would have spot sales to brokers; you would have sales on a publication basis to jobbers and to consumers; you would have flat price sales to jobbers and consumers on an f. o. b. refinery basis; you would have sales of intermediate bracket and premium gasoline. And by premium gasoline I mean gasoline that would rank higher than regular grade. I haven't shown those spot sales because they are not comparable to these published prices. We have included here every spot market transaction that is comparable with these published prices.

I got my information as to the volume of sales from the Danciger records, the same place I obtained all of this.

There was a very substantial increase in the amount of gasoline bought from Danciger by brokers in March,

1935. There was over a million gallons sold in March, 1935 to brokers. Brokers never bought that much from Danciger in any other month out of the 21 months that we examined. And in March, 1935, that represented about 20% of Danciger's total sales, whereas, over
2906 the 21 month period Danciger did not sell more than
about 6% of its gasoline to brokers. I know who the brokers were.

During the calendar year 1935 Danciger made about 3% of their total sales to majors and 97% to all other types of customers. We don't know who those brokers were buying for. We know the destination of the shipments sometimes, but sometimes the shipments were rerouted, while the car was rolling, so we don't always know to whom that material was ultimately destined.

If all of Danciger's contract sales were eliminated, the percentage of defendant major purchases of all types from Danciger, as compared to Danciger non-contract sales to others, would be less than 4%.

During 1935 seven different defendant major companies bought gasoline from Danciger. The aggregate for all defendant major companies for the year 1935 was 195 cars. But there was no uniformity as between majors. It varied from 1 car up to 92 cars in volume.

Some of these majors purchased exclusively on the flat price basis. Others purchased exclusively on a publication basis. There was no uniformity whatever in the method of purchasing. Those purchasing exclusively at a flat price were Barnsdall, Mid-Continent, Shell and Skelly. Those purchasing exclusively on a publication basis were Empire and the White Eagle Division of Socony-Vacuum. Phillips, Wadhams, and the Lubrite Division of Socony-Vacuum purchased on both bases; that is, on a flat
2907 price basis and on a publication basis.

As to those that purchased at a flat price basis, some purchased at a flat price on an f. o. b. Group 3 basis, and others on an f. o. b. refinery basis. I might illustrate that: The purchases that Phillips made at a flat price were made on the basis of f. o. b. refinery; and those purchases made by Wadhams at a flat price were made on the basis of f. o. b. Group 3. Now, Lubrite purchased at a flat price, but both on a basis of f. o. b. Group 3 and f. o. b. refinery.

I might say that practically all of this material came out of the Pampa refinery of the Danciger Company, which is located in the Panhandle. On shipments moving north, there would be a differential in freight between Group 3, which is Oklahoma, and Pampa, Texas. So there would be some variation in price to take into consideration, the freight differential, whether the purchase was made on an f. o. b. Group 3 basis or f. o. b. refinery basis. But there was no uniformity by these majors as to how they bought, as to whether it was f. o. b. Group 3 or f. o. b. refinery.

Assuming that we are talking about a northern shipment, the lower price would be the f. o. b. refinery price because the purchaser would have to pay more freight.

As to the purchases made on a publication basis, there was no uniformity in that regard either. Phillips
2908 and Socony-Vacuum bought on the basis of the Chicago Journal of Commerce. That is, it would be a certain price, or a certain relationship to the price as published in the Chicago Journal of Commerce on the date of shipment. The Empire, for instance, bought on the basis of Platt's Oilgram, and Platt's Oilgram for the North Texas refinery market. Phillips bought on the basis of Chicago Journal of Commerce, Group 3; and they bought at the low on the date of shipment. Lubrite bought at ⅛¢ under the low, and Wadhams bought both at the low and ⅛¢ under the low. The White Eagle Division split an order for 50 cars, placing one-half at the low, and one-half at ⅛¢ under the low.

Now, the specifications on the material varied, too. For instance, Lubrite's orders always specified 60 to 62 gravity, 400 endpoint, except for 1 purchase in January, 1935 that called for a 62 octane guarantee. These 3 purchases there by Wadhams—there was one on June 7th, another on June 18th, another on July 2d. Those were the ones that were purchased at the high of the published quotations, and those called for a 62 octane guarantee.

I can give you also the volume of purchases by months. There was a great deal of fluctuation in that, too. For instance, there was one month, the month of December, in which there were no purchases by a major at all.
2909 Then there were two months, February and October, when there was only 1 car purchased in each month. There were two months, January and August, when there were only 2 cars purchased in a month. There was one month, September, when there were 3 cars purchased. There was one month, March, when there were 7 cars purchased. There was another month, April, when there were 8 cars purchased. There was another month, July, when there were 15 cars purchased. There was one month, December, when there were 50 cars purchased. Then there were two months, May and June, when there were 53 cars purchased in each month.

By Mr. Francis

During those months when this price was advancing, March, April and May, 1935, beginning March 1st, there isn't any red dot that is above the low of either publication, except this one here, on April 15th. That is above the low of one publication, but at the low of another publication. There is no time during the price rise that there is a purchase by a major company at above the low of both publications.

Cross-Examination by Mr. Chaffetz.

If you took off only the purchases by the major companies that appear on this chart, and drew a graph of those major company prices, you wouldn't have a graph that 2910 would reflect exactly the same trend of prices as published in the Chicago Journal of Commerce. You would have something radically different. As to the respects in which the two graphs would differ, to begin with, you would have no graphs at all during March and the first half of April since there were no purchases.

In running a line from one major purchase to another you would get considerable variation. From April 15th, your line would run on up to here on the 23rd; whereas that doesn't follow either publication.

Both prices were the same as the low of the Journal of Commerce on those days. But, you see, there were days when there were no purchases.

If you come over to the period when the line is level, then except for the 3 special purchases that I referred to, that were made above the low, all of the purchases were made at the low throughout that year except for one day. On that day it would be the low of Platt's Oilgram, but it would be the average of the Chicago Journal of Commerce, and it would be above the low of the Journal.

I am not an employee of the Danciger Company. But I know of their contract relations with certain customers. I do not know anything about the relations of Danciger with customers who are not contract customers. With regard to independent refiners who have special relationships 2911 with particular jobbers or brokers, that may not be in the form of contracts, but which have an effect as though they were written, I will say this: We made a lot of audits of a lot of independent refiners, and we always informed ourselves of any agreement that they had with their customers, whether it was a formal contract or whether it was an agreement of a different sort. We always knew of any such relationship existing between the company and its customers.

Now, the customers that Danciger has under contract, they are not the formal contracts of the type that you have been discussing in this case before. They are in writing, but they are not that type.

Q. I am leaving contracts out. I had in mind a situation like this, where an independent refiner sells to a particular jobber and has been over a period of time, and has customarily been selling to that jobber for ⅛¢ or 1/16¢ below the market; no contract, nothing binding upon either side, but the usual custom had developed over a period of time.

A. We would know about that, because we examine all the purchase orders. We examined every purchase order, covering every sale made to a jobber throughout this whole 21-month period. And if there was any such arrangement, we would know
2912 about it.

Q. Did you ever run into any such arrangement with any of the independent refiners that you have examined?

A. Yes, we did.

Q. And did you exclude all such purchases or sales?

A. We excluded them as being on a publication basis, yes. When you say exclude, we would exclude them in comparing them with published prices, because they would not be comparable. In the first place, you couldn't compare them because you don't know what is the price on the date of purchase.

Q. No, I am not sure you understand me yet. I am not talking about a sale made on the basis of ⅛¢ below the Journal. I am talking about a sale made at a flat price, but where the parties among themselves understand that the flat price that will be quoted by the independent refiner to this particular jobber will be ⅛¢ below—I am assuming a situation where there is nothing in writing to show that.

A. I will answer you—

Q. I have in mind the specific thing Mr. Shatford spoke about when he referred to special relation-
2913 ships that sometimes exist between independent refiners and particular customers.

A. We always examine the purchase price for consistency with the publications; and if we found any consistency, we went to the sales department, the head of the sales department, and asked him whether any such relationship might exist; so we always attempted to run those down.

Q. And where you did run them down, you excluded them as not being sales on the spot market at flat prices?

A. We found that there was an agreement, and that those customers were to be classified as contract customers; and those sales were contract sales, as distinguished from spot sales.

I was here for I think the first two hours of the first day when Mr. Jacobi was testifying. I don't remember his testifying that he had a relationship of some sort with Danciger whereby he had, prior to March of 1935, purchased at ⅛¢ below the low, and that he continued to purchase on that basis in view of that prior relationship. I don't know whether that was the fact. What purchases were made by Socony-Vacuum, or any division, or a subsidiary of Socony-Vacuum prior to 1935, we didn't go into.

We did take all the purchases made by Socony-
2914 Vacuum or any division or department from January
1, 1935, on, and we found no such thing.

I didn't say there were no instances of guaranteed specifications of third grade gasoline. There are a few. Just as I pointed out there (indicating), there are 3 of Wadhams. You did ask me about this one on April 15th; and that does happen to be a little unusual. The specifications on that are 60-62 gravity, 400 endpoint, which very often commands a premium of ⅛¢ over ordinary third grade gasoline. That was bought by Barnsdall.

Q. So that you have covered some instances of guaranteed octane, or guaranteed specifications in your third grade gasoline?

A. We have included everything that we felt belonged in third grade material. Now as a matter of fact, there are a lot of sales made by Danciger, which were made as third grade, which we have not included in here, which were made at even higher prices; because we found, by looking at the distillation report, that the material ran 63 and 64 octane. But the customer ordered third grade, it was shipped as third grade, and they were billed for it as third grade; but the distillation test showed 63 or 64 octane, and we leaned over backwards and left those out, and they are all higher priced sales. And the same is true
2915 with regular grade. Those are all sales to jobbers.

> Now, on regular grade, this Danciger Company has a plant at Columbia, that turns out a premium gasoline which runs from 70 to 74 octane. At times, they filled orders for jobbers for regular gasoline out of that plant and it was sold as regular grade, but the octane test would show it was a quality gasoline, and we left all of those out. Those were all sold at high prices.

All the 63-70 we show on there is non-leaded gasoline. The precise octane rating of that gasoline was 68 to 70. With every invoice there is a distillation report which shows the octane rating. If there was anything marked 70 plus, we excluded it.

On May 8, 1935, where I show transactions below the low of both journals in sales to major companies, both those sales were made to Wadhams at 4½¢. One of them was for 3 cars, and the other was for 10 cars. There are 2 sales transactions. They were not guaranteed specification materials, but were ordinary third-grade material. Except for those sales, I don't know whether all sales to Wadhams called for guaranteed specification material.

(Chart previously so marked for identification is received in evidence as EXHIBIT 868.)

2916 *Direct Examination (Continued) by Mr. Donovan.*

I have had made under my supervision an audit of the purchases made by Mid-Continent Petroleum Corporation from independent refiners and brokers in 1935. The audit was made for the purpose of ascertaining the prices paid as compared with trade publication quotations for similar grades of gasoline. In making this audit we had the purchase orders issued by Mid-Continent, their shipping instructions, the suppliers' invoices and the suppliers' sales confirmations, if there were any.

During the period from March 1, 1935 to the end of May, 1935, the tank car prices as shown in the trade publications were rising. From my examination and the comparison that I made, I found that the prices paid by Mid-Continent for purchases from independent refiners and brokers followed this rise consistently. The Mid-Continent purchase prices were always lagging behind the rise.

The prices paid by Mid-Continent on the majority of the purchases during the balance of 1935 were below the low of the Platt's Oilgram quotations, but as the market steadied there were more purchases made at the low than there were during the period of the rise.

2917 I have prepared charts for 1935 illustrating the facts concerning which I have just testified.

(Chart referred to below is marked as Exhibit 869 for identification.)

This chart, which was prepared at my direction and under my supervision, covers the whole year 1935. It contains on here all the spot open market purchases from independent refiners and brokers made by Mid-Continent Petroleum Corporation during the year 1935. They are all on an f. o. b. Group 3 basis, and are all made at a flat price. It shows the price paid on those purchases in relation to the published quotations, as they appeared in the Chicago Journal of Commerce and also Platt's Oilgram for the Oklahoma refinery market. This chart accurately shows those prices.

Each of the horizontal lines across the chart represents ⅛¢ a gallon. The amount of the eighths is shown here on the margin. The heavy line is 1¢. Everything colored in red is Platt's Oilgram. All the hatched lines represent the Chicago Journal of Commerce.

I might explain that the Journal quotes on an f. o. b. Group 3 basis, but the Oilgram quotes on many different bases, many different local markets. It quotes an f. o. b. refinery market and also f. o. b. Oklahoma; but this is Platt's Oilgram for the Oklahoma refinery market, which is the nearest thing you could get to compare with the Chicago Journal of Commerce, f. o. b. Group 3.

2918 This chart represents the quotations appearing in the two trade publications. They purport to represent the going market at which brokers and refiners, both independents and majors, sell on the spot market to jobbers and consumers.

There is a top line and a bottom line on the chart. The top line represents the top of the range as quoted in the publications. For instance, on April 1, 1935, the range as quoted in the Chicago Journal of Commerce for third grade was a high of 4⅜¢ and a low of 4⅛¢. In other words, there is a range there of ¼¢ between the high and the low. In Platt's Oilgram, there is a narrower range. The high for the Oilgram on April 1st for third grade is 4¼¢, as compared with 4⅜¢ in the Journal; and the low for the Oilgram is in agreement with the Journal, and that is 4⅛¢.

Every one of the black dots on that chart represents purchases by Mid-Continent in a spot, open market transaction. The dots are plotted on the chart on the date the purchase was made. All those purchases were made at a flat price, so that we are able to show the price that was agreed to be paid by Mid-Continent from an independent refiner or from a broker on the date that the order was consummated.

The space between every one of these vertical lines represents a day. We plot that on the date on which the order was made, the date the order was entered
2919 into; and we plot it on the line corresponding with the price that was paid. Take, for instance, the first one here (indicating). This is plotted on the line, 3¾¢, and that was the third grade material bought on that particular date by the Mid-Continent, from either a broker or an independent refiner, at that price.

The small numbers indicate, not the number of cars purchased, but the number of purchases, and that might include 1 car or 10 cars. There are some dates here when there was more than one purchase made at the same price (indicating), so we put a number under the dots indicating how many purchases were made on that particular date at the same price.

There are 112 purchases shown on this 1935 chart, 73 of them being below the low of the market as shown by Platt's Oilgram. A little over 65% of the total number of purchases were made below the low of the Oilgram. 37 of these 112 purchases were at the low of the Oilgram. That is a little over 33%. Just 2 were above the low of the Oilgram. That is less than 2%.

I have made a similar study or summary of the number of purchases at, above, or below the low of the Chicago Journal of Commerce in 1935. The number purchased below the low of the Journal was 67, which is about 60% of the total. There were 40 in number at the low, which is about 36%. There were 3 above the low, but
2920 below the high, which is less than 3%. The percentages below the low in connection with the Journal are slightly lower than those as compared with the Oilgram.

Those that were above the high were 2 in number, which is less than 2%.

Mr. Donovan: Q. Let me ask you the same question about these purchases by Mid-Continent that Mr. Chaffetz asked you yesterday about major company purchases from Danciger, and that is this. It appears at 1546 of the record; he said:

> "Mr. Miller, if you took off only the purchases by the major companies that appear on this chart, and drew a graph of those prices, I ask you whether you wouldn't have a graph that would reflect exactly the same trend of prices as published in the Chicago Journal of Commerce?"

Now, I ask you that question that he asked you.

A. Well, during the period of the rise in price you wouldn't be able to show any range at all, because the line would go out below the range of both publications, consistently below it (indicating), and you would have generally just a single line; you wouldn't have a high and a low; you would 2921 just have a single line up through here (indicating), below these price ranges, during this period of the market rise in March and April.

Now, when you get over here into May (indicating) even here you would have largely a single line. You would have practically nothing in the way of a range. When you get over here, from here over (indicating) into June, when the price rise has been completed, and then the majority of the sales, or of the purchases, were made at 1/8¢ below the range of the publications; and therefore your line for the low would be about 1/8¢ below the low of both publications. Whereas, the high, if you were to construct a high there, you would find that it would be in agreement with the low of both publications. That is, from June on to the end of the year, that is the way it would run.

Of course, after you get beyond October, November and December, the number of transactions thins out and becomes somewhat irregular.

There would be fluctuations in the low of that range that I would draw during this period. There were a substantial number of purchases that were made even lower than 1/8¢ below the low of both publications: For instance, on June 21 one was bought at 3/8¢ below the 2922 low. On August 28th one was bought 3/8¢ below the low of both publications. Then there is another on September 27th. There is still another on October 10th; then of course, there are more of them, that are 1/4¢ below the low.

This chart does not show anything about the amount of gasoline purchased at, above, and below the low. It deals only with the number of transactions. It doesn't show volume. We have prepared a chart which shows the number of cars bought at, above, and below the low of the trade journal quotations. This chart is designed only to show the relation of the prices paid in the various purchase transactions. The other chart would show pretty much the same thing with respect to volume.

(Chart marked EXHIBIT 869 was received in evidence.)

(Another chart is marked 870 for identification.)

Exhibit 870 for identification takes into account the same purchases appearing on Exhibit 869, but limited to the period of the price rise, that is, March, April and May of 1935, and it is dealing with tank cars rather than the number of purchases. It shows more graphically the relationship of the purchase price, dealing in quantities, rather than the number of purchase transactions, a comparison of the price paid in relationship to Platt's 2923 Oilgram for the Oklahoma Refinery market.

During the 3 month period of the price rise, there were only 15 cars purchased at the low of Platt's Oilgram quotations. And that is slightly over 7% of the total purchases made in that period. The total number of cars bought in that period was 212; and 15 of those cars were bought during that period at the low. There were no cars bought during that period above the low of Platt's Oilgram. That chart shows accurately the facts that I have just described. The number of cars bought below the low is 197 cars out of the total of 212. That represents about 93% of the total.

(Chart previously so marked was received in evidence as EXHIBIT 870.)

I have made the same kind of a chart dealing with the Chicago Journal of Commerce.

(Chart marked Exhibit 871 for identification.)

This chart, Exhibit 871, was prepared under my direction and supervision, on the basis of the data which I secured from my office. The plan of this chart is the same as the one I have just described, Exhibit 870.

Now here we are dealing with just a portion of the year, that is, the period of the price rise in March, April and May. And we are dealing here with only 27 of those

112 purchases. But again we are dealing with the
2924 number of tank cars rather than transactions, the same as this other chart, Exhibit 870; but this makes a comparison with the quotations in the Chicago Journal of Commerce as distinguished from Platt's Oilgram.

The whole block, both red and blue, purports to show the entire number of cars, which is 212. This entire block here (indicating) represents the total, that is, 100%. These segments here (indicating) will total up to 100%. And the number of cars will total up to 212.

Those figures on the side are the number of cars. These 63 cars were purchased at the low of the Journal during that period. That is about 30%. Now, this figure here (indicating) is 149 cars. That represents the number out of a total of 212 that were purchased below the low of the Journal quotations; and that is about 70% of the total. There were no purchases above the low of the Journal during those 3 months.

I prepared other charts, showing the whole period of 1935, both of the Journal and Oilgram. They are similar to this except that they cover the entire year 1935; this chart covers only the period of the price rise in March, April and May, 1935.

(Chart marked Exhibit 872 for identification.)

Exhibit 872 is a chart similar to Exhibits 871 and 870. That is, it is dealing again with tank cars; whereas,
2925 Exhibit 869, the very first chart, was dealing with the number of purchase transactions. Exhibit 872 covers the entire year 1935, and shows a comparison of the purchase price with the quotations appearing in the Journal which is on an f. o. b. Group 3 basis.

To begin with, we are dealing here with a total of 691 cars. This column (indicating) on the right will add up to 691 cars. That is the total number of cars bought by Mid-Continent Petroleum Corporation from independent refiners and brokers, on a flat price basis during 1935. This chart shows that during the entire year 1935, out of 691 cars there were 50 that were bought at a price that was above the low of the Journal quotations prevailing at the time the purchases were made; and that represents a little over 7%. There is one here that I overlooked. There were 4 cars purchased above the low and above the high. That represents less than ½ of 1%. There were 310 cars that were purchased at the low; and that represents about 45% of the total purchased, in volume. And there were 327 cars purchased below the low, which is about 47% of the total, in number of cars. All of those purchases are on an f. o. b. Group 3 basis and all at a flat price.

On the chart I compared the purchases with the quotations of the trade journals. Those 4 cars that were above the low and above the high appear on June 5 at 5¢
2926 and August 21 at a price of 5⅛¢. I might say there are only 2 purchases, but they aggregate 4 cars.

(Charts marked, respectively, EXHIBITS 871 and 872 were received in evidence.)

I have made a similar chart of the percentage and number of cars bought at, above and below the low of Platt's Oilgram during the year 1935.

(Chart referred to marked Exhibit 873 for identification.)

This chart, marked Exhibit 873, is similar to the preceding chart, Exhibit 872. It is dealing in tank cars with all the purchases made at a flat price by Mid-Continent Petroleum Corporation during 1935, but unlike the other chart, this compares the purchase price with the quotations in Platt's Oilgram for the Oklahoma refinery market; whereas, the preceding chart made the comparison with quotations in the Chicago Journal of Commerce. We are still dealing here with 691 cars purchased in the year.

The white area shows those 4 cars that were purchased above the high of the price range as it appeared in Platt's Oilgram in the Oklahoma refinery market on the date of purchase. That is, again, about ½ of 1% of the total cars purchased during the year. The colored area, this block here (indicating), represents a total of 308 cars of the total of 691, and it is about 44.5% of the total. And those 308 cars were purchased at the low of Platt's Oilgram
2927 quotations on the date of purchase. Now, the lower segment here represents the 379 cars that were purchased during 1935 at a price below the low of Oilgram quotations as they appeared on the date of purchase for the Oklahoma refinery market. That lower block is about 55% of the total.

(Chart previously so marked for identification is received in evidence as EXHIBIT 873.)

Cross-Examination by Mr. Chaffetz.

There were only 10 cars bought in 1935 on a publication basis. That is, a total of 701 cars bought by Mid-Continent in 1935 from independent refiners and brokers, but out of the 701, 691 were bought at a flat price. I am not familiar with any Mid-Continent buying program, but I can tell you from whom everyone of these purchases was made, that is, from what refiner or what broker.

When I say, "Mid-Continent Petroleum Corporation," I am dealing with only one of the defendants in this case. The term "Mid-Continent" doesn't refer to the Mid-Continent field. It is the corporate name of Mid-Continent Petroleum Corporation.

Direct Examination by Mr. Donovan (Continued).

2928 I have caused to be examined records of the defendant major oil companies, showing purchases of third-grade gasoline made by them from independent refiners on a flat price basis during March, April, May and June, 1935. That study was made from the impounded records that were sent here pursuant to a subpoena, I presume, by the defendant major companies. These records are now in this building.

I noted which of these purchases were made on a flat price basis. I also noted which of those flat price purchases were made on a Group 3 basis, and Oklahoma refinery basis. I have done that for all companies but Sinclair. I haven't completed Sinclair yet. I can tell the price at which flat price purchases on a Group 3 basis or an Oklahoma refinery basis were made by these companies, except Sinclair, during the months of March, April, May and June, 1935.

There were 5 purchases made by the defendant companies at flat prices on a Group 3 basis or on an Oklahoma refinery basis between March 1 and March 8, 1935. The prices at which those purchases were made varied. On March 1 there was 1 purchase at 3¼¢. There was no further purchase then until March 5, at which time 1 was made at 3⅜¢. Then, on March 6, there were 2, both of them at 3½¢. And on March 7 there was 1 at 3½¢. Now, this is all third grade gasoline.

2929 On March 8 there were 2 purchases made, 1 at 3⅝¢, and 1 at 4¢. Phillips made the 1 at 3⅝¢, and Globe made the 1 at 4¢

There were 2 made on March 9, both of them at 3¾¢; 1 by Continental, and 1 by Phillips.

The 10th was Sunday. On March 11 there were 2 purchases; 1 at 3⅝¢, and 1 at 3¾¢. The 1 at the lower price was made by the White Eagle Division of Socony-Vacuum, and the 1 at the higher price, that is, at 3¾¢, was made by

Phillips. Those were the only purchases made on that day on that basis.

On March 12 there were 2 purchases, both at the same price, that is, at 3⅝¢. One of them was made by Wadhams, a subsidiary of Socony-Vacuum; and the other was made by the White Eagle Division of Socony-Vacuum.

On March 13 there were 3 purchases made: 1 at 3⅝¢, and 2 at 3⅞¢. The 1 at the lower price, that is, 3⅝¢ was made by Wadhams, a subsidiary of Socony-Vacuum; and the 2 at the higher price, 3⅞¢ were both made by Phillips.

We have 6 purchases on the 14th. 1 was made at 3⅝¢, 4 of them at 3¾¢, and 1 at 3⅞¢. The 1 at the lower price, that is, 3⅝¢ was made by the White Eagle Division of Socony-Vacuum. On that same date, the White Eagle Division made another purchase, but at a different price; namely, 3¾¢. Phillips made on that date 3 different purchases; 2 at 3¾¢, and the third at 3⅞¢. Mid-Conti-
2930 nent also made a purchase on that date at 3¾¢.

There were no purchases on March 15, and there was 1 on March 16. That was made at 3¾¢ by the White Eagle Division of Socony-Vacuum.

March 17 was Sunday. On March 18 there were 3, all at the same price, and by Mid-Continent.

On March 19 there was only 1; it was by Barnsdall, at 3⅞¢.

I have 2 purchases for March 20 at different prices; 1 by Globe at 3½¢, and 1 by White Eagle Division of Socony-Vacuum at 3¾¢.

There were quite a large number of purchases on March 21. There were 7 made at 3 different prices. There was 1 made at 3¾¢ by White Eagle Division of Socony-Vacuum. On that same date, that Division made another purchase at a different price, that is, at 3⅞¢. Phillips made 3 purchases on that date, all at the same price; that is, 3⅞¢. Continental made 1 purchase at 4⅛¢; and Standard of Indiana made 1 purchase on that date at 3⅞¢. 5 different majors bought on that date, at 3 different prices. White Eagle Division of Socony-Vacuum paid 2 different prices.

There were 3 purchases on March 22, all at 1 price. They were all made within the Socony-Vacuum organization. 2
of them were made by White Eagle Division, and 1 by
2931 Wadhams, a subsidiary of Socony-Vacuum. On March
23 there were 2; 1 by the White Eagle Division of Socony-Vacuum, and 1 by Barnsdall. Both were made at the same price, 3⅞¢.

There were 3 purchases on March 25, at 2 different prices; 2 by Mid-Continent at 3⅞¢, and 1 by Wadhams at 4¢.

On March 26 there were 4 purchases, at 3 different prices. White Eagle Division of Socony-Vacuum made 1 at 3⅞¢. Phillips made the remaining 3 purchases, but at 2 different prices; 2 purchases were made at 4¢, and 1 at 4⅜¢.

I have no purchases for March 27th.

On the 28th there were 4 purchases at 3 different prices. Globe made 1 at 3¾¢, Mid-Continent made 2 at 3⅞¢, and Phillips made 1 at 4⅛¢.

In the whole month of March there were 13 days when more than 1 company purchased on the same day. Of those 13 days, there were 9 when different prices were paid. On 5 of those days 2 different prices were paid, and on 4 of those days 3 different prices were paid. That covers all defendant major purchases on a Group 3 basis, with the exception of Sinclair, during the month of March.

The paper you show me is the tabulation that I made, setting forth the facts I have just described.

(Document referred to is marked EXHIBIT 874 and received in evidence.)

2932 In the month of April, 1935, there were 22 days when more than 1 company purchased.

On April 2 there were 3 purchases at 2 different prices. I am still talking about purchase transactions and not the number of cars purchased.

On this date the Lubrite Division purchased at 1 price and Wadhams, a subsidiary of Socony-Vacuum, purchased at another price. Lubrite bought at 4¢ and Wadhams bought at 4⅛¢.

On April 3 there were 2 purchases, 1 by Phillips and 1 by Wadhams, and both at the same price, 4⅛¢.

There were 3 purchases on April 4, all at the same price, 4¢. The Lubrite Division and the White Eagle Division of Socony-Vacuum each made a purchase, and Mid-Continent made the third purchase.

On the next day, April 5, there were 2 purchases by the White Eagle Division.

The following day, April 6, there were 2 purchases at different prices, but both made by Wadhams; 1 purchase made at 4⅛¢ and the other at 4¼¢.

The next day is Sunday. The following day, Monday, there were no purchases by any majors. But on the day following, on April 9, there were 2 purchases, both at the same price. 1 was made by Phillips, and the other was made by Shell. They were both made at 4⅛¢.

2933 On April 10th there were 5 at 3 different prices. The prices were 4⅛¢, 4¼¢, and 4½¢. The 2 purchases at 4⅛¢ were made by Mid-Continent and White Eagle Division of Socony-Vacuum. The purchase at 4¼¢ was made by Wadhams, a subsidiary of Socony-Vacuum. The 2 at 4½¢ were made by Globe and Phillips.

The following day, April 11th, 2 purchases were made at the same price, 4⅛¢, 1 by White Eagle Division and the other by Lubrite Division of Socony-Vacuum, and 3 more on that same date, that is, on April 11, and at the same price as paid by White Eagle and Lubrite, but all 3 of those were made by Phillips. They were all made at 4⅛¢.

On April 12th, 2 purchases were made at 2 different prices, 1 by White Eagle and the other by Phillips. There was quite a spread that day. 1 at 4⅛¢, and the other at 4⅝¢. White Eagle paid the low price.

The following day, April 13, there were 3 purchases at 2 different prices. Barnsdall and Phillips bought at 4⅛¢ and Mid-Continent bought at 4¼¢.

The 14th was Sunday. The next business day, April 15, there were 2 purchases at 2 different prices, 1 by Mid-Continent at 4⅛¢, and 1 by Barnsdall, ¼¢ higher, that is, 4⅜¢.

On April 16, there were 3 purchases. They were all at the same price. 2 of those were made within the
2934 Socony-Vacuum organization, 1 by White Eagle and the other by Lubrite; the third was made by Phillips. They were at 4⅛¢.

2 purchases were made on the 17th at 2 different prices, 1 by Empire at 4¼¢, and 1 by Wadhams at 4⅜¢.

On the following day, April 18th, there were 4 purchases at 2 different prices. 1 of them was made by White Eagle Division of Socony-Vacuum at 4⅛¢. The remaining 3 were all made by Phillips at ¼¢ higher, 4⅜¢.

On the 19th there were 2 purchases, both at the same price, 4⅜¢, one made by Globe, and the other made by Phillips.

On the 20th there were 3 purchases at 3 different prices. 2 of them were by Phillips, but at different prices. 1 was at 4⅜¢ and the other at 4½¢. And the third was by Globe at 4⅝¢.

The day following is Sunday, but the next business day, April 22, there were 7 purchases, at 2 different prices. 3 of them were by Phillips at different prices: 2 at 4⅜¢, and 1 at 4½¢. Globe bought on that day at 4⅜¢. Shell made 2 purchases at 4⅜¢, and Skelly made 1 purchase at 4⅜¢.

On April 23rd there were 6 purchases at 3 different prices. 1 was made by White Eagle Division of Socony-
Vacuum at 4⅛¢. 2 more were made by White Eagle
2935 at 4⅜¢. 1 was made by Lubrite Division of Socony-
Vacuum at 4½¢. The other 2 purchases were made by Phillips at 4⅜¢.

On April 24 there were 3 purchases made at 2 different prices: 1 was made by White Eagle Division of Socony-Vacuum, at 4⅜¢, and 2 were made by Phillips at 4½¢. On April 25th there were 8 purchases made, at 2 different prices. 1 was made by Mid-Continent at 4⅜¢. Empire made 2, at the same price. Lubrite made 1. And White Eagle made 2 purchases. All of those were at 4⅜¢. Phillips made 2 purchases at 4½¢.

We have a lot of them for the 26th. We have 12 of them, at 2 different prices. Mid-Continent made 2 of them at 4⅜¢. Lubrite made 3 of them at 4⅜¢. White Eagle, another division of Socony, made 1 at 4⅜¢. And then Wadhams, a subsidiary of Socony-Vacuum, made 1 at 4½¢. And Phillips made 5, at 4½¢.

On April 27th there were 3 purchases at 2 different prices. 1 was made by White Eagle Division of Socony-Vacuum, at 4⅜¢. And 2 were made by Phillips at 4½¢.

On the 29th there were 4 purchases at 2 different prices. 1 was made by Mid-Continent, 1 by Phillips, and 1 by Skelly. All at the same price, of 4⅜¢. And then Globe made a purchase at 4½¢.

On April 30, there were again 4 purchases at 2 differ-
ent prices. 1 by White Eagle Division of Socony-
2936 Vacuum, at 4⅜¢, and 3 by Phillips at 4½¢.
There was 1 purchase by Lubrite on April 1 at 4¢.

In the month of April there were 22 days on which more than one company purchased. I am treating the divisions of Socony-Vacuum as separate entities—that is, Lubrite and White Eagle.

Out of those 22 days there were 17 days when different prices were paid. Out of those 17 days there were 14 days when 2 different prices were paid, and 3 days when 3 different prices were paid.

I have the tabulation of April which I have made of those various purchases.

(Tabulation referred to marked Exhibit 875 for identification, and received in evidence as EXHIBIT 875.)

On May 1, 1935, there were 3 purchases by defendant major companies at 2 different prices. 1 was made for

Barnsdall at 4⅜¢, 1 was made for White Eagle Division of Socony-Vacuum at the same price, that is, 4⅜¢, and 1 for Wadhams, a subsidiary of Socony-Vacuum, at 4½¢.

On May 2, there were 7 purchases, 5 at 4⅜¢, and 2 at 4½¢. The purchases at 4⅜¢ were made by Mid-Continent, Phillips, Skelly, Lubrite Division of Socony-Vacuum, and the White Eagle Division of Socony-Vacuum. But on the same date Phillips and Wadhams, a subsidiary of Socony-Vacuum, each made a purchase at 4½¢.

2937 On the 3rd there was only 1 purchase. That was by Phillips at 4½¢.

There was 1 purchase on May 4th, at 4⅜¢. That was by Wadhams.

The 5th was a Sunday. The next business day, May 6, there were 4 purchases at 2 different prices. Skelly made 1 at 4⅜¢, 2 were made by Phillips and 1 by Wadhams at 4½¢.

There were 3 purchases on the 7th at 2 different prices. 1 was made by the White Eagle Division of Socony-Vacuum at 4⅜¢. 2 were made by Phillips at 4½¢.

The next was the 8th, and there were 6 purchases made on that date at 2 different prices. There were 3 made at 4⅜¢, 1 of them by White Eagle Division, and 2 by Mid-Continent. Now, the other 3 were made at 4½¢. 1 of them was made by Phillips, and 2 were made by Wadhams.

On the 9th there were 4 purchases at 2 different prices. There were 2 made at 4⅜¢, 1 of which was made by Skelly, and the other by White Eagle Division. The other 2 at 4½¢ were both made by Phillips.

On the 10th there were 3 purchases at 2 different prices. 2 at 4⅜¢ were made by White Eagle, and the other, at 4½¢, was by Mid-Continent.

On the 11th there were 2 purchases at different prices. 1 was made by Pure at 4½¢. 1 was made by
2938 Wadhams at 4⅝¢.

The 12th was Sunday. The 13th there were 3 purchases at 2 different prices. 2 of those were made at 4½¢, 1 by Globe and 1 by Phillips. Phillips also made another purchase on that same day at 4⅝¢.

On the 14th there were 8 purchases made at 2 different prices, 4 of them at 4½¢ and 4 at 4⅝¢. Phillips made all 4 purchases at 4½¢ and 1 of the purchases at 4⅝¢. The other 3 at 4⅝¢ were made by Empire, Mid-Continent and White Eagle Division of Socony-Vacuum.

There were 5 purchases on the 15th, all at 4⅝¢. Continental made 2, White Eagle, Wadhams and Skelly each making one.

On the 16th there were 5 purchases made, all at the same price. Phillips made 2, Lubrite, White Eagle and Empire each making one.

On the 17th there were 6 purchases made, all at the same price. Phillips made 4 of them. White Eagle made 1, and Mid-Continent made another. The price was 4⅝¢.

On the 18th there were 7 purchases at the same price, Phillips making 6 out of them. The seventh was by Wadhams. The price was 4⅝¢, the same as the day before.

On the 20th there were 4 purchases made all at the same
price, that is, at 4⅝¢. 2 of those were made by
2939 Empire. Barnsdall and Mid-Continent each made 1.
The price was the same as the day before.

On the 21st there were 5 purchases all at the same price, 4⅝¢. That was the same price as for the 2 preceding days. Continental made 2, Phillips made 2, and Pure 1.

On the 22nd there were 4, all at the same price as the last few days, 4⅝¢. Phillips and Wadhams made 2 each.

On May 23rd there were 4 purchases all at the same price as the last week or so, 4⅝¢. Phillips made 3 of them, and Skelly 1.

On the 24th there were 9 purchases at 2 different prices, 4⅝¢ and 4¾¢. Phillips made 5 of the purchases at 4⅝¢. Globe made 1. Empire made 1, and Continental made 1. And Phillips made a purchase at 4¾¢, that is, made 6 purchases all told that day, 5 at 1 price and 1 at the other price.

On the 25th there were 5 purchases, all by Phillips at 4⅝¢.

The 26th was Sunday. On the 27th there were 5 purchases made at 2 different prices. Pure made 1 at 4⅝¢, and Mid-Continent 1 at the same price. Phillips made 2 purchases at the same price, and a third at 5¢.

On the 28th, there were 8 purchases made at 2 dif-
ferent prices. Mid-Continent made 1 purchase at
2940 4 9/16¢; Pillips made 4 purchases, Skelly 2 purchases,
and Pure 1 purchase, all at the same price of 4⅝¢.

On the 29th, there were 16 purchases, at four different prices. Wadhams made the purchase at the lowest price, 4⅜¢. Barnsdall made 1 purchase, and Globe made 2 purchases, at 4½¢. Globe also made 5 purchases at 4⅝¢. Skelly made a purchase at 4⅝¢. The White Eagle Division of Socony-Vacuum made 2 purchases at 4⅝¢. Phillips made 3 purchases at 4⅝¢, and still another purchase at 4¾¢.

On the 30th, there were just 2 purchases, both made at the same price, 4⅝¢. 1 was made by Mid-Continent, and the other by Phillips.

There were 10 purchases on the 31st, at 2 different prices. Phillips made 7 purchases, and Pure 1, at 4⅝¢. Continental made 2 at 4¾¢.

That finishes the purchases for the month of May, 1935.

When I used the word "Barnsdall" I was not referring to Barnsdall Refining Corporation, the defendant herein, but to its predecessor, the Barnsdall Oil Company.

There were 24 different days in May when more than 1 company purchased. Out of those 24 days there were 15 days when different prices were paid. Out of those 15 days, 2 different prices were paid on 14 days. On none of those days were 3 different prices paid; there
2941 was 1 day on which more than 3 prices were paid.

I have here the tabulation for the prices paid in the month of May.

(Tabulation referred to is marked EXHIBIT 876 and received in evidence.)

By Mr. Francis

Mr. Francis: I would like for the record to show, if the Government would agree—it is a fact that those shipments he mentioned here, of The Pure Oil Company's purchases on three dates, May 21, 27 and 28, were from Simms Oil Company at Harry's, Texas.

Mr. Chaffetz: Subject to our check, the record may so show.

Harry's, Texas is either in the Panhandle or North Texas.

By Mr. Beatty

All of these purchases that I have enumerated were purchased on the basis of either f. o. b. Group 3 or f. o. b. refinery, Oklahoma.

I haven't divided these in my computations or audit for this month, because I consider that those two are comparable; that is, there is a freight equalization, so that the freight would not be a factor; they ought to sell pretty much on a parity.

A purchase made in Oklahoma City, for delivery in
2942 Oklahoma City, would not necessarily reach a parity with Group 3 basis. I haven't made a classification that would cover that point. If there are any local deliveries from an Oklahoma refinery there could well be a dif-

ference; that is, there would not necessarily be a parity with the price paid for a northern shipment, and I have made no distinction on that at all.

By Mr. Donovan

There were 4 purchases made by defendant major companies on June 1, 1935 at 2 different prices. 1 was made at 4½¢, and 3 were made at 4¾¢. The 1 made at the lower price was by Wadhams; and there was 1 each by Continental, Empire and Phillips at the higher price.

June 2 was a Sunday. But on June 3, the next business day, there were 4 purchases made at 2 different prices. Empire, Wadhams and Pure each bought at 4⅝¢. Phillips made 1 purchase at 4⅞¢.

There were 8 purchases made at 3 different prices the following day, the 4th. Wadhams made 1 purchase at 4⅝¢. Empire made a purchase at 4¾¢. Phillips made 2 purchases at 4¾¢. Skelly made 1 purchase at 4¾¢. Mid-Continent made 2 purchases at 4¾¢, and another at 5¢.

On June 5, there was just 1 purchase. That was made at 4¾¢ by Phillips.

On the 6th, there were 7 purchases made, at 4
2943 different prices. Skelly made 1 at 4½¢. Mid-Conti-
nent and Globe each made 1 at 4⅝¢. Skelly made 1
purchase and Phillips 2 at 4¾¢. Skelly made another at
4⅞¢. On that day, Skelly made 3 at 3 different prices.

On the 7th, there were 5 purchases at 3 different prices. Globe made 2 of those at 4⅝¢. Pure made 1, and Empire made 1, at 4¾¢. Wadhams made another at 4⅞¢.

On June 8 there were 4 purchases made at 2 different prices. Wadhams made 1 at 4⅝¢; the White Eagle Division of Socony made another at 4¾¢. Then Phillips made 2 purchases at 4¾¢.

The 9th was a Sunday. On the 10th there were 6 purchases at 3 different prices. Wadhams made 1 at 4½¢; then it made another at 4⅝¢. Mid-Continent made a purchase at 4⅝¢, and made another at 4¾¢. Both those companies made their purchases at 2 different prices on the same day. Phillips and Skelly each made a purchase on that date, at 4¾¢.

There were 11 purchases on the 11th of June, at 2 different prices. 4 were made by Phillips at 4⅝¢, and 2 more at 4¾¢. Mid-Continent, Skelly and White Eagle each made 1 purchase at 4⅝¢, Skelly made another at 4¾¢, and Empire made a purchase at 4¾¢.

On the 12th, there were 7 purchases at 2 different prices.

Phillips made 5 on that date at 4⅝¢. Mid-Continent
2944 made 1 purchase at 4⅝¢, and 1 at 4¾¢.

The 13th, there were 6 purchases, at 3 different prices. On this particular day, Skelly again made a purchase at 3 different prices; 1 was at 4⅝¢, another at 4¾¢, and still another at 4⅞¢. Wadhams, a subsidiary of Socony-Vacuum, made 1 purchase at 4⅝¢, and the Lubrite Division of Socony-Vacuum made 1 purchase at 4¾¢. Mid-Continent also made 1 at 4⅝¢.

There were 4 purchases on the 14th at 2 different prices. Mid-Continent made 1 at 4⅝¢, and Phillips, Empire and Skelly each made 1 purchase at 4¾¢.

There were 2 purchases made on the 15th, both at the same price, and both by Wadhams.

The 16th was a Sunday. There were 3 purchases on the 17th at 2 different prices. Skelly made a purchase at 4⅝¢, and still another purchase at 4¾¢. Phillips also bought at 4¾¢.

I have 7 purchases on the 18th at 3 different prices. Mid-Continent made 2 at 4⅝¢. Empire made 1 at 4¾¢. Continental made 3 purchases at the same price, and Wadhams made 1 at 4⅞¢.

There were 3 purchases on the 19th, at 2 different prices. Mid-Continent made 1 at 4½¢. White Eagle and Phillips each made 1 at 4¾¢.

On the 20th there were 11 purchases, at 2 different prices. Mid-Continent made 3, and Wadhams 1 purchase, at 4⅝¢.
Pure made 5 at 4¾¢. Empire and Skelly each made
2945 1 at that same price.

I have only 1 purchase on the 21st, and that was made by Mid-Continent at 4⅜¢.

The 22nd, there was only 1 purchase. That was at 4¾¢, by the White Eagle Division of Socony-Vacuum.

The 23rd was a Sunday. On the 24th, there were 3 purchases, all at the same price. 2 were by Phillips, and 1 by Skelly.

On the 25th, 4 purchases, at 2 different prices. Mid-Continent bought at 2 different prices on this date, making 1 purchase at 4⅝¢, and 1 at 4¾¢. Wadhams made a purchase at 4⅝¢, and Skelly made 1 at 4¾¢.

On the 26th, there were 2 purchases, both at the same price. 1 was by Phillips, and 1 by Skelly.

The 27th, there were 9 purchases at 3 different prices. Empire and Mid-Continent each made a purchase at 4½¢. Mid-Continent made another at 4⅝¢. Phillips and Wadhams each made 1 at 4⅝¢, and Phillips made another at 4¾¢. Empire made 1, and Continental 2 at 4¾¢.

On the 28th there were 2 purchases at the same price, Barnsdall and Phillips each making a purchase.

The 29th: 5 purchases at 2 different prices. Mid-Continent made 2 at 4⅝¢, and Empire made 1 and Phillips 2 at 4¾¢.

2946 Those are all the purchases for June, 1935.

There were 21 days out of the month of June when more than 1 company purchased on the same day. Out of these 21 days, there were 18 days when different prices were paid. 2 different prices were paid by these major company defendants on 11 days out of those 18: 3 different prices were paid on 6 of those 18 days. There were 4 different prices on 1 of those 18 days.

I have here the tabulation for June, 1935.

(Table referred to marked EXHIBIT 877 and received in evidence.)

I have a copy of Exhibit 748.

I have been furnished with a list prepared by the Government's auditors showing those purchases claimed to have been made by the defendant major companies in the East Texas field above the low quotations for the trade publications, both publications. I have made an analysis of these purchases.

At the suggestion of the auditors for the Government I have had some discussion of my analysis of these figures supplied by the Government with Mr. W. J. Miller and his assistants, the Government's auditors. We were asked, when this list was furnished us, to state, after going over them, just what exceptions we might take—what would be the general nature of any difference of opinion, and that is what we took up with them.

2947 I think, to explain the way I have analyzed the list of purchases supplied to me by the Government auditors, it would be best to first describe what these Government exhibits show. There were 5 exhibits put in evidence, numbered 747 to 751, both inclusive. Exhibit 751 was in 2 parts, A and B.

The first, Exhibit 747, contains this heading, "Purchases of house brand and third-grade gasoline by defendant companies other than Sinclair Refining Company from independent refineries during the period, March 1, 1935, to April 30, 1936." This first Exhibit shows the volume of purchases by the defendant major companies other than Sinclair.

At the time this Exhibit was made up, of course, there were more defendant companies than there are now. That is, this contains the purchases by Cities Service Export

Oil Company, Louisiana Oil Refining Corporation, Tide Water Oil Company, The Texas Company, and Gulf Refining Company, which are no longer in this case. So I have ignored those in my study, if there were any.

This first Exhibit 747 shows purchases by each of the defendant companies monthly. It is further divided up as to whether the material came out of the East Texas or the Mid-Continent field. And, of course, it is confined to regular grade gasoline and third-grade gasoline. It
2948 covers a 14 month period from March 1, 1935, through
to April 30, 1936. That Exhibit is designed primarily to show: Volume of purchases, where the material came from, who made the purchases, and in what months they made them.

Exhibit 748 deals primarily with a price comparison of the purchase prices paid by these major companies in buying this material from the East Texas field. It deals solely with the East Texas purchases, and the price comparison made is with the quotations appearing in Platt's Oilgram on the date of purchase. Not the date of shipment, but the date of purchase. The heading on Exhibit 748 doesn't state which Platt's Oilgram is used, but the oral testimony at the time this exhibit was introduced indicates that the comparison was made with Platt's Oilgram quotations for the f. o. b. East Texas refinery market.

I might describe what that is. That is the price that a purchaser would pay a refinery located in East Texas buying f. o. b. refinery. We will say the refinery is at Gladewater in the East Texas field. That refiner might quote one price, f. o. b. refinery, and might quote still a different price, f. o. b. Group 3. F. o. b. Group 3 is Oklahoma or what is often referred to as the Tulsa area. If a shipment goes north out of the East Texas field and if the purchaser bought it on a basis of f. o. b. refinery, the purchaser
2949 would pay the freight from the refinery the whole way
north to its destination. That distance would be greater than the distance from Tulsa north. Therefore, the purchaser would pay more freight on that shipment than if he bought it f. o. b. Group 3, because if he bought it on that basis the refinery, that is, the seller, would pay the difference between the total freight and the freight on an f. o. b. Group 3 basis.

That difference was equalized where a man at Chicago bought gas in Texas for the same price delivered in Chicago as he bought it in Oklahoma delivered in Chicago, if he bought it on a basis delivered, but that was very seldom done. He either paid a certain price f. o. b. Group 3, or perhaps a greater—maybe he paid a lesser price f. o. b. refinery.

The Court: Q. And in order for the East Texas field to compete with the Oklahoma fields, wasn't there some allowance made there?

A. Yes, that would be if they were in competition. Now, of course, they weren't always in competition, because a lot of material in East Texas moved down to the Gulf, and as a matter of fact, sometimes it happened that the prices that were quoted at f. o. b. refinery in East Texas were even higher than Oklahoma refinery prices. Just dependent upon what the competitive situation was at any one time.

The Court: All right.

2950 There is a term, "equalizing," used in some such situation. If there was to be a freight equalization, it would be roughly 1/6¢, that is, on a northern shipment, and occasionally you would see on an invoice some adjustment, usually figured out on so much a hundred-weight rather than a fraction of a cent a gallon.

As I stated, Exhibit 748 compares purchase prices on the date of the order with Platt's Oilgram quotations for the f. o. b. East Texas refinery market.

Exhibit 749, that is the next exhibit, makes the same comparison with the same purchases; that is, the purchases out of the East Texas field, except that the comparison is made with quotations in the Chicago Journal of Commerce. And those are on an f. o. b. Group 3 basis. So, the comparison is made here with two different markets; one, f. o. b. Group 3, as reported in the Chicago Journal of Commerce; and one, f. o. b. refinery in the East Texas field, as shown in Platt's Oilgram.

The remaining exhibits deal with purchases made in the Mid-Continent field; and I haven't completed my examination yet of the list furnished us by the Government of the Mid-Continent purchases—only of the East Texas, so that we are dealing only with East Texas.

We found about 5 different types of errors in this computation dealing with materials coming out of the East 2951 Texas field. We found an error of this type: erroneous classification as to field itself; then we found errors in the classification.

The Government's list covered only those cars shown to have been purchased above the low of the two different publications. Exhibit 748 shows 39 cars to have been purchased ⅛¢ above the low of Platt's Oilgram. 1 of those cars was purchased by Louisiana Oil Refining Corporation, no longer a defendant in this case. So I am dealing with 38 cars shown in Exhibit 748 to have been purchased above the low of Platt's Oilgram. Exhibit 749 shows 16 cars to have been purchased above the low of the Chicago Journal of Commerce out of the East Texas field. So that I am dealing with the 16 shown on Exhibit 749, and the 38 cars shown on Exhibit 748. That is a total of 54 cars.

These exhibits divide up the gasoline as to the origin of shipment by fields; that is, whether it came out of the East Texas or whether it came out of the Mid-Continent field. And there is an error here in the classification as to field—where the shipment originated. I can illustrate that: The very first one on the Government's list is a purchase by Barnsdall Refining Company of 1 car out of the East Texas field shown to have been purchased at 1/8¢ above the Platt's Oilgram quotation. That particular car was bought through the Tansel Petroleum Company. Now, Tansel is a
2952 broker, with offices in Tulsa, and the origin of that shipment was Oklahoma City, and Oklahoma City is in the Mid-Continent field. It isn't in the East Texas field. So, to that extent, there was a mistake made in setting up this chart, this tabulation, by the Government. That did not belong to the East Texas field.

Mr Chaffetz: Q. Only one car?

A. One car out of 54 that I checked into.

That gasoline was refined in Oklahoma City. The records don't show by what refinery. They only show the origin of the shipment, and the origin of the shipment is Oklahoma City, from Tansel, the broker. I know Tansel got it from Oklahoma City.

The other type of error that I said we found was the erroneous classification of purchases as to months. These exhibits deal with the volume of purchases by the majors by months. Now, there were times, I think, when the Government accountants weren't able to locate the purchase orders, so they weren't able to determine when the material was bought, and in that event I assume that they classified it as to the month of shipment rather than the month of purchase. We found, for instance—you will note on Exhibit 748—it shows that The Pure Oil Company bought 15 cars at 1/8¢ above the low quotation of Platt's Oilgram; and the Government list shows that those cars were bought, 11 in June, 1935 and 4 in July, 1935. Now,
2953 as a matter of fact, those cars were bought as follows: 5 cars on June 20th. 6 cars on June 24th. 1 car on

June 27th. 2 cars on June 28th. 1 car on June 29th. All 15 cars were bought in June. Now, that may be rather important when it comes to comparing the purchase price with the quotation in the publications because the quotations may change from day to day or from month to month; and you have got to compare the purchase price with the quotations on the date of purchase; because all these comparisons in these exhibits are made with the publications on the date of purchase. These are flat price purchases. And if you are going to make any comparison with trade publications you have got to make comparison on the date that the purchase was made.

Mr. Lewin: Q. As a matter of fact, there wasn't any change between June and July, was there?

A. Not on this one that I illustrated, no.

Then I found still another type of error; and that was the classification of the material. These exhibits purport to show only purchases made by majors of regular grade and third grade gasoline. Now, we found, in going back to this car, again, that it was purchased by Barnsdall from Tansel Petroleum; that material was 68 to 70 gravity, 360 endpoint material. That is a special grade. That is a grade of gasoline all by itself. It cannot be compared with
2954 regular grade quotations nor third grade quotations. That is a type of material that usually commands a substantial premium in price over third grade material. As a matter of fact, it was compared with third grade quotations on that date.

Mr. Chaffetz: Q. I understand that is the same one car that you referred to previously,—not a different one?

A. Yes, that is the same.

As a matter of fact, I might say that there were four different mistakes in the handling of that car.

There is still another error in connection with that particular shipment. Those exhibits purport to show the purchases made by the major companies from independent refiners, and, of course, Tansel is not a refiner of any type. He is a broker.

Then we found errors of this type, too: We found material was classified in these exhibits as having been purchased on a flat price basis when as a matter of fact it was purchased on a publication basis. We did not find any of that type of errors in connection with these East Texas purchases, but we have gone far enough in our check of the material going out of the Mid-Continent field to find that type of errors. I will have a list of those very shortly.

But now here are some clerical errors we found in
2955 connection with the purchases out of the East Texas
field. For instance, here were these clerical errors: The Government's list shows 7 cars to have been bought by Wadhams from East Texas Refining Company in October, 1935, and all 7 of those to have been purchased at ⅛¢ over the low quotation appearing in Platt's Oilgram on the date of the order. Now, this is wrong in several particulars. In the first place the number of cars is wrong. There were 8 cars, and not 7. Then as to the price comparison it must be distinctly wrong, because the purchase was made at 4⅝¢ and Platt's Oilgram did not quote a price, a low at that time of less than 4⅝¢. In fact it did not quote a price of less than 4⅝¢ at any time throughout the month of October.

The most serious error is the use of improper comparison by ignoring the f. o. b. point, and we find that the majority of these are wrong in that regard. I mentioned different dates of purchase by Barnsdall from Tansel. Now, here was a comparison of an f. o. b. Group 3 purchase with quotations on an f. o. b. refinery basis down in East Texas. That, of course, was erroneous, but, as I stated before, it never should figure here because it was not third grade material. I might say, too, incidentally, in connection with
that, that it was not purchased above the low as
2956 quoted by Platt's Oilgram for 360 endpoint material.

I mentioned before the 15 cars purchased by Pure Oil Company. Those were purchased from Texas Oil & Products Company, and they were all purchased on an f. o. b. Group 3 basis. Consequently the price paid is not at all comparable with those quoted in Platt's Oilgram for the f. o. b. East Texas refiners' market. Now, Platt's Oilgram does contain quotations for material coming out of the East Texas field if purchased on an f. o. b. Group 3 basis. That is the comparison that should be made if you are going to compare with Platt's Oilgram, and if the comparison had been made with that it would be found that not a single one of those 15 cars was purchased over the low. There was no purchase made over the low of Platt's Oilgram if the proper comparison was made, taking into account the f. o. b. point.

The same is true with reference to one more purchase by Socony-Vacuum from the East Texas Refining Company, which is shown in Exhibit 748. That purchase was made in March, 1936. Exhibit 748 shows that to have been purchased at ⅛¢ over the low. If the proper comparison was made with the proper market in Platt's Oilgram, you would find it was not purchased over the low.

2957 That is true also with respect to those 8 cars purchased by Wadhams that I mentioned a little while ago as having been purchased from the East Texas Refining Company in October, 1935. They were purchased on an f. o. b. Group 3 basis.

Now, Wadhams made another purchase from the East Texas Refining Company. This was made on March 25, 1936, 4 cars purchased on an f. o. b. Group 3 basis. The Government Exhibit 748 shows these to have been purchased at ⅛¢ over the low. They were actually purchased at the low as quoted in Platt's Oilgram for third grade material coming out of East Texas if purchased on an f. o. b. Group 3 basis.

We have the same situation with respect to 10 cars purchased by Skelly from the East Texas Refining Company in July, 1935. Those were purchased on an f. o. b. Group 3 basis. That purchase was made at the low as reflected in Platt's Oilgram, if you use the Group 3 quotations on material coming out of East Texas.

You will find the same type of error if you refer to Exhibit 749, because here again improper comparison is made, because some of these purchases were made on an f. o. b. refinery basis out of East Texas, and in Exhibit 749 they are compared with the Chicago Journal of Commerce which is on a Group 3 basis.

That Barnsdall item, I covered before. It also appears in Exhibit 749.

2958 Continental purchased 10 cars from Radio Petroleum Company in March, 1935. Exhibit 749 shows that to have been purchased over the low of the Chicago Journal of Commerce, which quotations are on a Group 3 basis. Those 10 cars were purchased on an f. o. b. East Texas refinery basis, and Platt's Oilgram quoted material coming out of East Texas on an f. o. b. refinery basis on the date this purchase was made at 3½¢. That is exactly what this purchase was made on. It was made at 3½¢ f. o. b. refinery, so that it was not purchased over the low, and it could not be compared with the Chicago Journal of Commerce because that is limited to a Group 3 basis.

That covers all the improper comparisons with the wrong market.

I was dealing with 55 cars but if we eliminate the one of Louisiana Oil, that brings it down to 54. Now, Barnsdall recurs in the later exhibit, so that we are actually dealing here with about 53 cars.

In dealing with 53 cars, we found all of them wrong but 5 on one account or another. That is, we found mistakes in 48 cars out of 53.

Mr. Crawford: One car had 5 mistakes.

A. Yes, but I am not repeating that.

There is something special about those 5 cars that we
did not find any mistakes in. 1 of those cars was
2959 purchased for the Socony-Vacuum from East Texas
Refining Company on March 24, 1936, on an f.o.b.
Group 3 basis, and it was purchased at 1/8¢ over the low quotation in the Chicago Journal of Commerce for third grade material, but it so happened that this order specified 60 to 62 gravity 400 endpoint material, and this type of material quite frequently commanded a premium of 1/8¢.

Now, as to the other 4 cars, they were purchased by Wadhams from the East Texas Refining Company on March 25, 1936 on a Group 3 basis. The purchase consideration was just as shown in the Government exhibit, 1/8¢ over the low quotation of the Chicago Journal of Commerce, but on that particular date Platt's Oilgram quoted a low for East Texas material on a Group 3 basis at the very price at which this was purchased, so that although it was purchased above the low of one publication, it was purchased at the low of the other.

That completes my analysis of those 54 cars in the East Texas field.

Cross-Examination by Mr. Chaffetz.

Those 15 cars purchased by Pure as shown by the Government exhibit purchased in July, were actually purchased
on various dates in June, 1935. I got my information
2960 as to the actual dates of purchase from the purchase
orders among the records on file here. As to those 15
cars there were some very rigid specifications too, on vapor pressure, and in other regards. I do not recall, but the specifications were quite rigid on that material. It did not make any difference whether the date was in July or in June, as the published price on all those dates was exactly the same on that particular order. That is what I was talking about, that particular order, but I am describing the

types of error made, which could be made in other instances.

Q. But the only errors you found are in connection with those 15 cars?

A. Out of those 54 cars.

Q. And the error as to those 15 cars did not make any difference because the published price was the same; isn't that true?

A. No, it might make a difference.

Q. I asked whether it did make a difference with respect to those 15 cars?

A. Well, it does make a difference if you are dealing with Exhibit 747, the very first exhibit which shows your volume of purchases by months. Now, that is wrong.

Direct Examination (Continued) by Mr. Donovan.

I have had made under my supervision an audit of
2961 the purchases made by Shell Petroleum Corporation
from independent refiners in 1935 and 1936. The objective of my audit was to ascertain the quantity of purchases by Shell, the type of material bought, the price paid, the basis upon which it was purchased, and to compare the prices with the proper quotations in the trade publications.

In our examination, we did not find that all of the gasoline purchased by Shell was either regular or third-grade. They bought so-called intermediate bracket material, and they also bought premium gasoline. That would be a grade higher than regular grade. They bought a great deal of this intermediate grade from the Cushing Refining Company. It was the premium grade that they bought from the East Columbia refinery of Danciger. I did not make any comparison between the trade paper prices and the prices paid for the 70-73 octane and the intermediate octane gasoline which I have mentioned, because there were no such quotations in the trade journals during the period that I made the examination. There are now, I think.

We were making a comparison to April 30, 1936, and I think it was the middle of April, 1936, that the publications began to quote for the first time on the intermediate bracket.

Shell made some but not all of its purchases from
2962 independent refiners on a Group 3 basis. They
bought in both ways, f. o. b. Group 3 and also f. o. b. refinery.

I have made a comparison of the prices paid by Shell with the Group 3 prices shown in the trade journals in 1935 and up through April, 1936, only as to the regular grade and third-grade bought on f. o. b. Group 3 basis or on f. o. b. refinery basis, Texas or Oklahoma. I have the price, also, of the material bought out of East Texas on an f. o. b. refinery basis.

During the period of March, April and May, 1935, when the tank car prices were going up, all purchases made by Shell of regular grade and third-grade gasoline out of any field, as long as it is purchased on f. o. b. Group 3 basis, or f. o. b. refinery basis out of Oklahoma, are included, so that if there was any material that was bought out of the East Texas field, but bought at a flat price on f. o. b. Group 3 basis, it is included in that tabulation. Shell did not make any purchases in any field except on a Group 3 basis during the period of the price rise—that is limited to regular grade and third-grade gasoline, of course.

During the period March, April, and May, 1935, the prices paid by Shell on Group 3 basis lagged behind the market. During this period of March, April, and May, 1935 100% of Shell purchases of regular and third-grade gasoline were at prices below the low of the market as shown on
2963 both trade journals.

I have prepared a chart which would illustrate the comparison between the prices paid by Shell and the prices shown in the trade publications. That chart was prepared at my direction and under my supervision.

(Chart referred to marked Exhibit 889 for identification.)

This chart, Exhibit 889, shows the purchases made by Shell Petroleum Corporation from independent refiners on a flat price basis, either f. o. b. Group 3 or f. o. b. refinery out of Oklahoma. It covers the entire year 1935, and runs down to April 30, 1936. It shows the purchases made of regular grade, if any; as a matter of fact, there were none, and of third grade material. It excludes intermediate bracket and premium gasoline. It excludes any purchase made on a publication basis because you couldn't plot a purchase on here which is made on such basis, since those purchases are plotted as of the date of the order. If you make a purchase on a publication basis, you wouldn't know what price you are going to pay when you make the order. You only know when it is shipped, because the price is fixed by the publication of the date of shipment so you have to wait to the date of shipment to determine what the price is. You don't know when you make the purchase.

This exhibit that I have here is set up in the same way
as the chart I explained day before yesterday in re-
2964 gard to Mid-Continent's purchases.

This chart, Exhibit 889, doesn't include any purchases made at a flat price if they were made f. o. b. refinery from refineries out of the Oklahoma market. For instance, there may be purchases made from a refinery down in North Texas or in East Texas or in Kansas or in Louisiana or Arkansas. Now, all those have their special markets. They may vary somewhat with the Oklahoma refinery market price, and they would not be comparable with these quotations.

These quotations on this chart are Chicago Journal of Commerce for one publication, which is limited to an f. o. b. Group 3 basis. The Platt's Oilgram quotation shown on here is for the Oklahoma refinery market, which is comparable with f. o. b. Group 3.

Everything that is here in red (indicating) shows the quotations in Platt's Oilgram for the Oklahoma refinery market; the upper line being regular grade, and the lower line being third grade.

The part that is hatched (indicating) represents the quotations appearing in the Journal of Commerce; the upper line again being for regular grade, and the lower line for third grade.

The horizontal lines are the same as on the charts that have appeared here before, each line here (indicating) rep-
resenting a difference of 1/8¢. These are the fractions
2965 of a cent per gallon. Practically all gasoline is sold
on the basis of a fraction of 1/8¢; that is, that is the
fraction used, 1/8¢.

These vertical lines (indicating) represent days; each space in between is a day. Wherever you happen to see blank spaces in there, that indicates a Sunday or a holiday.

These black dots (indicating) represent all the purchases during this entire period of 1935 and the first 4 months of 1936, which were made by Shell of third grade gasoline on either an f. o. b. Group 3 basis or an f. o. b. refinery basis out of Oklahoma. Those dots are plotted as the date of the order. The first one is on April 9, at a price of 4 1/8¢. That means that on that particular day Shell made a purchase from an independent refiner at 4 1/8¢ of third grade material.

There are cases where there was more than one purchase on the same day. There is one December 10. Under that particular dot we put the number 2. That indicates that on that particular day there were 2 purchases made by Shell of third grade material at the same price. That price appears to be 4¾¢. I followed the same practice in preparing this chart as I followed in preparing the Mid-Continent chart, in first looking up the day when the purchase was made, and then putting it on the chart on the appropriate day.

2966 The total for f. o. b. Group 3 purchases and f. o. b. Oklahoma refinery purchases is 13 transactions. 10 of them were at the low of Platt's Oilgram. That is about 77%. 3 were priced below the low. It would be about 23% of the total. None were at a price above the low of the market, as shown by Platt's Oilgram or the Chicago Journal of Commerce during this period.

A total of 174 cars were bought by Shell on a flat price basis, f. o. b. Group 3, or f. o. b. Oklahoma refinery market, from January 1, 1935, through April 30, 1936. No cars were bought above the low. 149 cars, i. e. about 85.5%, were bought at the low. 25 cars, i. e. about 14.5%, were bought below the low; no cars at above the low.

The publication I have been referring to has been Platt's Oilgram; and it so happens in this particular case, it would make no difference if the figures were calculated as against the Chicago Journal of Commerce.

All the cars purchased during the period of March, April and May in 1935 were under the low. There are 2 transactions here, in April; 1 on April 9, 1935; and April 22, 1935. The April 9, 1935 transaction represents 5 cars. In both instances these were below the low of both publications. Those are all the transactions that occurred in that period, in March, April and May, 1935, when the market was rising—on a Group 3 basis.

2967 Of course, you can't make any comparison of purchases f. o. b. a refinery market other than the Oklahoma refinery market with the Chicago Journal of Commerce, because the Journal is limited to f. o. b. Group 3. I wouldn't include such purchases in a comparison with the Journal. I think the comparison is erroneous, to begin with. But I would compare them, if I were making any comparison with a trade journal, with Platt's Oilgram for that particular market. In the Oilgram, as I said before, we have quotations for material bought f. o. b. refinery, out of the various refinery districts. By refinery districts, I mean Louisiana and Arkansas and North Texas, West Texas, East Texas and Kansas. So any purchases made f. o. b. refinery out of those particular districts, we have quotations for. I would limit my comparison to that. But if I had included such purchases as compared with the Journal, there would have been an increase in the proportion of purchases below the low. There would not have been any above the low.

I have made a comparison between the prices paid in these f. o. b. refinery purchases and the various f. o. b. refinery markets quoted in the Oilgram. I have no chart for it, but I have those quotations available.

There was a purchase of third grade gasoline on June 3,
1935 at 4½¢, flat price. That was bought f. o. b. re-
2968 finery, East Texas. Now, on that particular day, the
low of the Oilgram for f. o. b. Texas refinery market
was 4⅝¢, so that that was bought at ⅛¢ under the low quotation for third grade material in that particular refinery district. I don't know whether it was bought through the East Texas Refiners' Association.

There was a purchase on July 12, 1935 of third grade gasoline again at 4½¢ bought f. o. b. refinery out of the East Texas district, at which date the low of the Oilgram f. o. b. East Texas refineries was still 4⅝¢. So that was bought under the low.

There was another purchase on August 14, 1935, at 4⅝¢, f. o. b. refinery out of East Texas. That purchase was only 2 cars, and was at the low of the Oilgram quotations.

Another purchase was made on November 11, 1935, of third grade gasoline f. o. b. refinery at 4½¢, at which time the low of the Oilgram was 4⅝¢.

I think that about covers all the purchases made at a flat price, f. o. b. refinery out of East Texas during this period.

I want to make this clear. In talking about these refinery markets, you can get 2 quotations in the refinery district out of the Oilgram; one is f. o. b. refinery and the other
is f. o. b. Group 3 out of that refinery district. I am
2969 dealing with quotations on an f. o. b. refinery basis
out of these various refinery districts.

There was a purchase made of third grade gasoline on September 26, 1935, at 4¾¢; that was bought f. o. b. refinery out of the North Texas district. At that time the low quotation in the Oilgram for that particular market was 4¾¢; so that was bought at the low. That is the only one bought f. o. b. refinery out of the North Texas refinery district.

There was 1 purchase of third grade material on January 20, 1936, bought at 5¼¢, f. o. b. refinery out of Kansas, at which date the Oilgram quoted for that district 5⅜¢; so that that was bought ⅛¢ under the low of Platt's Oilgram. The seller was the Dickey Oil & Refining Company located in Kansas. That is the only purchase on a Kansas refinery basis.

There were some for Louisiana and Arkansas in March and April 1936 of regular grade, but unfortunately I don't have the Oilgram quotations for that market available at the present time. There were none in 1935; they were limited to March and April, 1936.

Cross-Examination by Mr. Lewin.

The seller in the East Texas field from whom the June
3rd purchase was made at ⅛¢ below the low was the
2970 Century Refining Company. The seller in the August
14th transaction where the price paid was exactly at
the low was the East Texas Refining Company.

The fact that there are no black dots on this chart in the months of January, February or March, signified that there were no purchases of the kind I mention made by Shell Petroleum Corporation in that field during those months. It first starts purchasing on the spot market in that field in the way I have mentioned here in April. 2 in April; no more until July.

I could point out which of those dots represent purchases from Cushing Oil & Refining Company.

Q. Are you familiar with the testimony already in the case, that the Cushing Company was Shell's dancing partner?

A. No, I am not.

The first sale on April 9, 1935 was made by Cushing.
That is the very first one. That one on July 16th or 17th
wasn't from Cushing, nor the one in August. September
12, 1935 is the next date of a sale by Cushing representing
15 cars. The first purchase on April 9 represented 10 cars.
The next one on October 10 or 9 is from Cushing; that is
10 cars. The one on October 23 isn't. November 6 is not.
November 20, that is 15 cars purchased from Cushing. One
of the two purchases on December 10th was from
2971 Cushing, amounting to 20 cars. The purchase apparently
on December 17th was not from Cushing. So
that, for 1935, I show transactions with Cushing throughout
that period, totaling only 70 cars.

Q. Now, the witness that preceded you on the stand, I think, testified that Cushing sold Shell Company during 1935 175 cars. Do you know where those other 105 cars are that Cushing sold to Shell, its dancing partner, during this period?

A. Well, I don't know anything about dancing partners, but I know they sold a substantial amount of intermediate bracket material to—that is, Cushing sold a substantial amount of intermediate bracket material to Shell during this period. I think I stated that in my direct examination, at the very beginning.

Q. I didn't recall that. Did Cushing sell Shell during this period any third grade gasoline in terms of the Journal or Platt's Oilgram?

A. Not that I recall.

I knew of a purchase of 10 cars of 63-70 octane under 400 endpoint made by Shell from Cushing on May 27, 1935. That was a purchase of intermediate bracket material. The invoice shows it as 63-70 octane under 400 endpoint,
2972 but it was material that ran from 65 to 67 octane.
That was purchased at 4¾¢. The low of the Journal for regular gasoline on that day was 4¾¢, exactly the same price.

I had another purchase, April 26, 1935, of 10 cars by Shell from Cushing. That is 65-70 octane under 400 endpoint. That is another purchase of intermediate bracket. The price was 5¼¢. The Journal low for regular gasoline on that day was 5¼¢, exactly the same price.

In my study I found a purchase of 10 cars on May 7 by Shell from Cushing of 65-70 octane under 400 endpoint, lemon color. That is another purchase of intermediate bracket gasoline. The price was 5¼¢. The low of the Journal for regular gasoline on that date was 5¼¢. That is the same price exactly. I know that that gasoline was of a lower grade than regular gasoline.

I do not think that the Shell Company was paying a premium for that gasoline. While it was paying the low for regular, it wasn't many octanes below the regular grade, and it might concededly pay the low of the regular grade.

I found a purchase by Shell from Cushing on May 24, 1935, 5 cars at 5½¢, billed at 65 octane. The Journal low on that day for regular gasoline was 5½¢, the same price
exactly. I would not know that lemon color is less
2973 desirable than white gasoline. That particular speci-
fication shows 65 octane. That is all I know about the specification of that material.

Q. I wonder if you overlooked another transaction—concerning June 6, 1935?

A. There is no oversight.

Shell Company did not make a purchase of 65-70 octane 400 endpoint, lemon color, of 5 cars on June 6, 1935, and pay the low of the Journal for regular gasoline. That purchase was made at 5⅝¢, but that was 65 to 67 material. That is the way it is described on the invoice.

65-67 would not necessarily be a lower grade than 65-70. If you have a range stated on the invoice you do not know what your octane is. It is something in that range. If you say 65 to 70, it can be anything within that. It might be 70. But if it is 65 to 67 it is something within a narrower range. If it is 65 to 67 it cannot be higher than 67, whereas if it is from 65 to 70 it might go as high as or higher than 70. It is possible that it would indicate it was even less desirable material than 65-70. We find Shell paying the low of the Journal for 65-70 on that date. That does not appear on my chart as it is intermediate bracket material.

On June 27, 1935, Shell Company purchased from Cushing 10 cars of 65-67 octane. They paid 5⅝¢, which
2974 was the low of the Journal for 68-70 on that date.

I have a purchase of 15 cars on October 1, 1935, of 60-62 U. S. Motor straight run gasoline. It was third grade material. It was bought on a publication basis at the low of the Journal, date of shipment.

I have a transaction representing 2 purchases by Shell from Cushing of 15 cars on November 8, 1935 of 67 to 70 octane U. S. Motor. The price was 5⅝¢. The low of the Journal for regular gasoline on that date was the same price, 5⅝¢.

For December 20, 1935, I have a transaction representing a purchase by Shell from Cushing of 20 cars of 67-70 octane gasoline. That was purchased on a publication basis, based on the Chicago Journal of Commerce on the date of shipment. It wasn't a price which was the low of the Journal for the middle bracket; it was the low for the regular bracket. We made a check to find out what was the actual octane of that shipment, and we found that Cushing at that time was running their cracked gasoline around 65 to 67 octane. They made daily tests of it.

Q. And they were selling it to Shell at the low of the Chicago Journal of Commerce for a bracket which embraces 68-70?

A. Well, the price is based upon a bracket—I wouldn't say at that bracket.

2975 When you are buying intermediate bracket gasoline at a time that no publication publishes a quotation for that particular bracket, you have got to base it on some other bracket. If you are buying it on a publication basis, you must. There is no other way. They could have based it on the bracket, and bought it at ⅛¢ below, but it wasn't done in this case. It was done in the only way it could have been done. Well, it could have been purchased at ⅛¢ below the higher bracket, but instead of doing that, they purchased it at the low of the higher published bracket.

I haven't a transaction for January 7, 1936 between the 2 companies representing a purchase of 20 cars. I haven't one on the 8th, or on the 6th. I have one on January 7th for 10 cars. That was billed as middle bracket. It was sold at the low of the Journal for the regular bracket.

Q. Which is higher?

A. That is right,—well, when you say higher, there was no quotation for the middle bracket.

Q. I didn't ask you that, I asked you whether it wasn't a higher grade?

A. Well, it isn't higher than any quotation for the middle bracket, because there wasn't any.

I have a transaction between these two companies on January 25, 1936, involving 30 cars, third grade gasoline. That was purchased at the low of the Journal for 2976 third grade gasoline on the date of shipment.

I have on February 5, 1936, a transaction of 15 cars of U. S. Motor gasoline purchased by Shell from Cushing. That is third grade gasoline.

Q. Tell me whether it wasn't purchased at a premium over the low of the Chicago Journal of Commerce for that bracket of $6.60 a car?

A. I think that was a switching charge, Mr. Lewin. I don't think that was any premium.

Q. Well, at least, they paid a price which was $6.60 a car higher than the low of the Chicago Journal of Commerce, didn't they?

A. That I wouldn't be able to say. If there was such a thing as a switching charge, we wouldn't have noted it.

Q. Did you find the $6.60?

A. I don't recall. I know it was purchased at the low of the Chicago Journal of Commerce for third grade on the date of shipment.

For February 19, 1936, I have a transaction between these two companies, representing a purchase of 5 cars of U. S. Motor below 63 octane. That was purchased at the low of the Journal for third grade on the date of shipment.

On the same date, we have a transaction between these two companies of 20 cars of 65-70 octane. We examined to see just exactly what octane that gasoline rated. At that time, they were still running the 65 to 67 for cracked gasoline. This was 65 to 67 octane. The price paid was the low of the Chicago Journal of Commerce for regular grade gasoline of 68-70 as of the date of shipment. 2977

For March 6, 1936, I have a transaction involving 40 cars of third grade purchased by Shell from Cushing. They were bought on a publication basis, date of shipment, at the low of the Journal for third grade on the date of shipment.

For April 10, 1936, there is another transaction between these companies, representing a purchase by Shell from Cushing of 40 cars of U. S. Motor, straight run gasoline. That was purchased at the low of the Journal for third grade on date of shipment.

Q. Yes. Now, isn't it true that all the questions that I have asked you since lunch cover all of the purchases made by Shell from Cushing during the period of 1935 and the first 4 months of 1936, in addition to those 70 cars that you testified concerning this morning; and that appear on your chart?

A. I didn't check you on that. You would have to call them off again.

Q. I can give you the table from which I was working, and see if that doesn't embrace the entire transaction between these two companies during that portion of the conspiracy—of the indictment? 2978

A. Well, I will say this: That all of these that I have called off do not appear on that chart, for the reason, either they were bought on the publication basis, or because they are not regular or third grade material.

Q. And I haven't called off any transaction where the material was bought under the corresponding quotation, have I?

A. There is no corresponding quotation for middle bracket.

Q. Well, I ask you whether these transactions for the middle bracket are not all at the low for the higher bracket?

A. They are.

Q. Very well. And are there any there that are lower than the corresponding quotation?

A. No—no, again I disagree with you on "corresponding quotation."

Q. Very well. And have I covered all transactions between Cushing and Shell during that period of time, except these 70 you have mentioned here (indicating the chart)? I think I have covered
2979 all of the transactions, and if I have, isn't it true that the only transaction between these two so-called dancing partners that is under the quotations, the corresponding quotations, is this very first transaction here (indicating), that you pointed out to us on your chart?

A. No, I don't agree with that.

Q. And the reason you don't agree with it is because of this qualification you have made, is that right?

A. No. There were other purchases between Shell and Cushing made on the basis "f. o. b. Refinery," other than Oklahoma, which were bought under the corresponding low quotations; and I testified to that this morning. Now, they are on that chart, and they are not on this sheet.

Q. All right. I ask you again if this doesn't represent all the transactions between Cushing and Shell?

A. Subject to check.

Q. And isn't this one (indicating), the first one appearing on your chart, the only one where the price paid is below the corresponding Journal quotation, where there is a corresponding Journal quota-
2980 tion? And if it is the only one, it appears to be ⅛¢ under, is that right?

A. That particular one is ⅛¢ under, yes.

Q. And represents how many cars, did you say?

A. 10 cars.

Redirect Examination by Mr. Donovan.

I stated at the outset on direct examination that the transactions which Mr. Lewin asked me about, which were made on a publication basis, were not included in the chart.

When I speak of publication basis, to confine it to this examination here, I mean purchases that were made, based on quotations in the Chicago Journal of Commerce as of the date of shipment. By that I mean this: The buyer and the seller agree on a transaction involving so many cars. They do not agree on the price to be paid at the time but merely on a basis upon which that price is to be determined, in relation to quotations for a certain grade of gasoline as they appear in a certain trade journal on the date of shipment.

In this particular instance, it was confined to the Chicago Journal of Commerce. The price could not be determined until the Journal was issued, which showed the quotations that appeared on the date of shipment.

Now, as a matter of fact, that publication wouldn't be printed until the day following. The Chicago Journal of Commerce will come out, for instance, this morning, and will reflect quotations for regular and third grade gasoline on transactions and quotations of yesterday. So that, if a car was to be shipped today, and the price was based on publications, the buyer and the seller would not know until tomorrow what was going to be the price for that gasoline. 2981

That means that they merely agreed to abide by whatever price would be published in the paper for the date of shipment. So in such cases, since they agree to do it, the price paid must follow the price published in the Journal.

Many of these purchases were made by Shell and the origin of the shipment and the destination of the shipment were both Cushing, Oklahoma. Now, that might involve a switching charge from the refinery of Cushing to the destination around Cushing. It is in lieu of a freight charge; it is the same thing. Whether it is part of the purchase price would be a matter of agreement. It is not, as a rule. It is a transportation charge, as a rule, which is made by the railroad.

Recross Examination by Mr. Lewin.

Q. On June 1st, let us say, Shell makes a contract with Cushing to take 10 cars June 15th at the low of the Chicago Journal of Commerce. And on June 15th, Shell makes another contract to take from Cushing 15 cars on July 1st at the low of the Chicago Journal of Commerce, and so on throughout the rest of that year. I ask you whether those transactions don't prevent the gasoline covered by them from being sold by Cushing at a price lower than the Chicago Journal of Commerce? 2982

A. They do not.

The Court: Q. That is, they are there to be sold?

A. They are there to be sold, but—

Q. For delivery on a certain day? Cushing gets that much to sell on that day.

A. Not necessarily, no. Cushing can change its crude runs—

Q. Nevertheless, they have only so much to sell, and if they sell 1000 cars—

A. Their sales would be reduced, if they hadn't been made to Shell. But they might reduce their crude runs, so they still have the same amount of gasoline for sale.

Mr. Lewin: Q. Well, let me see if I can make it plain to you. If these transactions were not entered into the gasoline covered by them would be available for sale by Cushing to somebody else?

A. I don't agree with you on that, no. You 2983 must bear in mind refiners regulate their crude runs based on demand. We have had a lot of evidence in this case to illustrate that.

Q. Have you ever heard the term "surplus gasoline"?

A. Yes, indeed.

Q. Supposing the Shell Company bought all of the surplus gasoline manufactured by the Cushing Company in terms of the low of the Chicago Journal of Commerce on the date of delivery, date of shipment. Would that, in your opinion, have any effect on the market in preventing it from becoming depressed?

A. That could not be determined. It would be absolutely undeterminable.

Redirect Examination by Mr. Donovan.

I think the chart, Exhibit 889, was made for several purposes. It was to show, as one phase, that Shell was not paying a price which would lead the market upward, but it was also intended to show what they did pay on their flat price purchases with relation to published quotations. And it didn't include and didn't intend to include those paid at a publication basis for the reason I have already stated.

2984 *Direct Examination (Continued) by Mr. Donovan.*

We audited the sales acknowledgments, the invoices of all sales made at a flat price by Deep Rock Oil Corporation to jobbers and consumers of regular and third-grade gasoline over a period throughout 1935 and down to April 30, 1936. We included the purchase orders in that, if there were any. The invoices would show what the material was billed to the customer at, who the customer was, the grade of material furnished, and the f. o. b. point.

I have prepared a chart showing prices paid in flat-price sales of third-grade and regular gasoline by jobbers and consumers to Deep Rock Oil Corporation by its purchase orders, invoices, and acknowledgments, which I have described. This chart shows all those transactions, reflected by these documents, made at a flat price and limited to third-grade gasoline and regular-grade gasoline and further limited to those particular customers, jobbers and consumers.

There are transactions which have been eliminated. First, we had to eliminate certain materials. Deep Rock makes a premium leaded gasoline. That is what they call their Ethyl Kant-Nock, a trade name. That runs around 78 octane. That isn't regular grade gasoline. They also make a 60 to 62 gravity 400 endpoint gasoline, 2985 which ranges from 64 to 66 octane. That is neither regular grade nor third-grade. They also market what is known as "fighting grade aviation" gasoline. We eliminated that. They also make a domestic grade aviation gasoline. They produce a 68 to 70 gravity 350 endpoint gasoline. They produce still another odd type of material. That is 64 to 66 gravity, 390 endpoint. Now, there are 6 different types of gasoline that are marketed by Deep Rock, which cannot be classified as either regular grade, or third-grade, and which we have eliminated.

There were other eliminations. Of course, as I stated before, this is limited to consumers and jobbers. As to consumers, we eliminated the municipalities, states, and other political subdivisions, because it is our understanding that the publications do not reflect sales of that type. That is, they try to get down to what may be called industrial consumers.

There were other eliminations. Deep Rock sells to some jobbers and consumers on a contract basis, or under contract. Some of them are sold pursuant to oral agree-

ments. Some are sold on a publication basis; and under publication basis we might include some that are sold under what is called the sellers' spot market, date of shipment. We eliminated that type of sale because it is not a flat price transaction. It is not what you would call a spot open market sale. At the time the order was
2986 placed you could not compare it because you would not know what the purchase price was going to be. You would not know that until the date of shipment.

We did not make any other elimination. These shipments were made on the basis of f. o. b. refinery, and the Deep Rock refinery is located in Cushing, Oklahoma. That is equivalent to f. o. b. Group 3. My chart shows a comparison with the prices in Platt's Oilgram for the Oklahoma refinery market and the Chicago Journal of Commerce.

(Chart referred to marked Exhibit 890 for identification.)

This chart shows only the sales to jobbers and consumers on a flat price basis.

First of all, it will be noted that the chart covers a period throughout 1935 and the first 4 months of 1936. This is the same type of chart as we have been using heretofore.

There are two different types of markings on this chart. Some of them are dots and others are crosses. The crosses are put on there to indicate a consumer customer. The dots are the jobber sales. They are by far the more numerous.

These numbers appearing under the dots indicate the number of transactions on that particular date at that same price, if there were more than one. If there is no number under the dot it means there was one sales
2987 transaction on that particular day at that price.

The dots represent purchases by jobbers in the spot market. The blue dots are third grade, and the black dots on the upper range are regular grade.

There is a very large number of purchases by jobbers at the high of the 63-70 octane bracket; the so-called regular bracket. They predominate. Those were the prices paid by jobbers at the high of that bracket in the spot market. The purchase orders and invoices supporting those sales showed the price.

There are two types of regular grade gasoline sold by Deep Rock. One is a leaded gasoline, 68 to 70 octane, going under the trade name of Super Kant-Nock, "Q" indicates a leaded gas in the trade. There is also another type of regular gasoline that is billed as 67-70 octane but that averages about 68.5 octane; it is consistently over 68. That appears on what the company calls monthly analytical reports, which show the octane test of every tank car of gasoline as the tank is filled. The actual octane rating of that gasoline was higher than 67 octane; that always ran 68 or higher.

There were 334 sales of third grade to jobbers and consumers in the entire period in that spot market at a flat price basis. And of those there were 14 made above the high; 79 at the high; 31 within the range, that is 2988 between the composite high and the composite low of the two trade publications. There were 168 at the low; and 42 below the low.

I can give that comparison in terms of percentage of transactions. Those made above the high were about 4%; those at the high, about 24%; those within the range, 9%; those at the low, 50%, and those below the low, about 12½%.

There were just 34 transactions in third grade in January and February, 1935. Of those, 3 were made above the high; 2, at the high; 7, within the range; 11, at the low; and 11, below the low.

In percentage, there were about 9% made above the high; 6%, at the high; 21%, within the range; 32%, at the low, and 32% below the low.

During the next 3 months of 1935, when the market was rising, March, April and May, there were 98 such transactions of which 4 were made above the high; 14, at the high; 13, within the range; 52, at the low, and 15, below the low.

In percentages, about 4% were made above the high; 14%, at the high; 13%, within the range; 53%, at the low; and 15%, below the low.

That was all for jobbers and consumers, of purchases by them, of third grade gasoline, on the spot market, during that period when the market was rising.

2989 As to the sales to jobbers and consumers of regular gasoline, there were 39 transactions in that first two-month period of 1935; and of those, 4 were made above the high; 12, at the high; 15, within the range; 8, at the low; and none, below the low.

In per cent, 10% was made above the high; 31%, at the high; 38% within the range; 20%, at the low, and none below the low.

In March, April and May, when the market was rising, there were 51 such sales, of which 6 were made above the high; 27, at the high; 10, within the range; 3, at the low; and 5, below the low.

In per cent, there were 12% above the high; 53% at the high; 20% within the range; 6% at the low; and 10% below the low.

Regular grade: There were 241 such sales in the whole period of which 11 were made above the high; 153, at the high; 40, within the range; 27, at the low, and 10, below the low.

In per cent: That would be 5% above the high; 63% at the high; 17% within the range; 11% at the low; and 4% below the low.

That covers the entire calendar year of 1935; and the first 4 months of 1936.

None of the sales that are shown on that chart there
before the jury, and which I have been talking
2990 about, were sales made to major oil companies. They
were exclusively to jobbers and consumers.

(Chart previously so marked for identification, is received in evidence as EXHIBIT 890.)

(Chart previously so marked for identification, is received in evidence as EXHIBIT 889.)

I have a copy of Exhibits 750 and 751. They were put in at a time when a group of exhibits were put in, numbering 747 to 751, inclusive. They were put in by Mr. W. J. Miller, the accountant for the Government. Exhibits 750 and 751 were preceded by 747, 748, and 749.

Exhibit 747 doesn't deal with price at all. It shows the volume of purchases by the defendant majors; and it divides that volume of purchasing into the fields in which the purchases were made; that is, the East Texas field and the Mid-Continent field. It also divides those purchases as to the month in which they were made.

Those purchases are set forth in tank cars, not gallons. They are limited to third grade material and regular grade gasoline. The period covered is a 14 months period, from March 1, 1935, to April 30, 1936. It includes all defendant majors with the exception of Sinclair.

These Exhibits include 6 defendant majors against
2991 which the indictment has been dismissed. They are
Cities Service Export Oil Company, Louisiana Oil Refining Corporation, Gulf Refining Company, Tide Water Oil Company, The Texas Company, and Deep Rock Oil Corporation.

Exhibits 748 and 749 then deal with price comparisons of these purchases, which were made only in the East Texas field. They have a segregation also as to which of these purchases were made at a specific price, that is, a flat price; and they also show which of these purchases were made on a publication basis.

Exhibit 748 makes the price comparison with the low of Platt's Oilgram quotations; not the range, not the high, but the low of the Oilgram.

The testimony in this case at the time these exhibits were introduced was that the Oilgram quotation that was utilized in Exhibit 748 was the East Texas refinery market, that is, f. o. b. Refinery, East Texas.

Exhibit 749 makes a similar price comparison of these same purchases made in the East Texas field with Chicago Journal of Commerce low quotations which are on an f. o. b. Group 3 basis, not on f. o. b. Refinery at all.

As I have explained, Exhibits 748 and 749 deal with the purchases in East Texas. Exhibits 750 and 751 deal with purchases made in the Mid-Continent field.

Exhibit 750 makes a price comparison with the quo-
2992 tations contained in Platt's Oilgram; but, here, the
Oilgram quotations used are f. o. b. Oklahoma refinery. These purchases made in the Mid-Continent field will include purchases made out of such refinery districts as Oklahoma, so that any comparison with the Oilgram, Oklahoma refinery quotations, is quite correct. But these purchases also come out of the North Texas refinery district, the Kansas refinery district, the Louisiana and Arkansas refinery district and West Texas.

Now, these refineries from which these purchases were made are scattered all over that area; but the comparison is made here with Oilgram quotations for the Oklahoma refinery market.

Passing on to Exhibit 751. There, the price comparison is made with the Chicago Journal of Commerce, which is on a strictly Group 3 basis, which means Oklahoma.

Exhibit 750 shows how many of these tank cars were purchased above the low of the Oilgram for the Oklahoma refinery market, and, if above the low, at what fraction of a cent above it. It shows how many were purchased at the low. It shows how many were purchased below the low, and, if below the low, at what fraction of a cent below it. It also shows the purchases made on a publication basis, as distinguished from those made on a flat price basis. It

shows which major made the purchases, and at a specified price; and it shows percentages then, as to how 2993
many were bought at various prices, above the low, and at the low, and below the low.

I have made a study of the accuracy of these Exhibits 750 and 751 in respect to various things: In respect to the price, to the type of material, to the f. o. b. point, to the origin of the material, and to the type of the supplier. Our study was confined to those cars shown on these Exhibits 750 and 751 to have been bought above the low. We found ourselves unable to identify these purchases as they appear in these exhibits. The result was that Government counsel was asked for a list of those purchases shown in these Exhibits to have been made above the low and at the low. They gave us a list only of those above the low. To have included those made at the low would have been a tremendous job, so the thing was confined to those above the low.

Those lists show the name of the major that did the buying; the source of supply; the independent refiner or the broker that supplied the material, that is, it gave the seller as well as the buyer. It gave the month in which the purchase was made. It gave the number of cars. It didn't give the price, but it gave the fraction in cents of the price that was over the respective publication low.

We went to the impounded records in checking the 2994 accuracy of this Exhibit. Those are invoices, purchase orders, confirmations; you may have distillation sheets in some instances. There might be shipping instructions. In a few instances, we had to go beyond that. There are two majors that didn't always have purchase orders, so that you won't find the purchase orders in the impounded records. So, we had to go to our own audits to find out the date of the purchases of a few of these majors.

When we got these records, we checked the accuracy of what was stated on these lists furnished by Government counsel, as to whether or not they were purchased above the low; whether they were purchased from independent refiners; whether the material was third grade gasoline or regular grade gasoline; whether the material did come out of the Mid-Continent field; whether it was purchased at that particular amount over the publication low; and whether that particular publication was a proper comparison of this particular purchase transaction.

Exhibits 750 and 751 classify or attempt to classify purchases on the basis of whether they were made at a flat price or a price based on one of the trade publication quotations on the date of shipment. That is another thing that we checked, to see whether that was accurately computed and determined.

In studying the accuracy of these Exhibits, I have
2995 examined into all the purchases made during 1935 and
1936 by the defendant majors. For this purpose I ignored those 6 major companies which were originally defendants, and are no longer in the case.

The chart, Exhibit 750, shows 674 cars were purchased at a price higher than the low of Platt's Oilgram for the Oklahoma Refinery market, excluding the 6 companies no longer in the case. There were 71 cars in addition that were purchased by those 6 companies. I made no study of those 71 cars.

There were 92 purchases above the low of the Chicago Journal of Commerce by these companies that are no longer defendants and of which I made no study. I confined my examination to the 892 shown to have been bought over the low of the Journal in connection with the defendants still in the case.

There were 10 companies whose purchases I did study in connection with Exhibit 750. Listing them as 10 companies, I count Wadhams as a separate entity, but I include the 3 Globe companies as one entity.

This Exhibit does not show that Standard of Indiana bought any cars over the low of the Oilgram out of the Mid-Continent field. It doesn't show any with respect to Shell. So I didn't study anything in regard to Indiana or Shell.

In regard to Exhibit 751, I studied 11 companies.
2996 We excluded Shell, but we included Standard of Indiana, because this Exhibit shows that it purchased 25 cars over the low of the Journal during this 14 months period.

Exhibit 750 shows that Barnsdall bought 121 cars over the low. Now, that comparison and determination is correct with respect to just 32 out of the 121 cars. 32 out of the 121 were correctly compared and actually bought over the low.

Mr. Chaffetz: Q. I would like to know what the witness means when he says "correctly". Does he mean that all of the others, except 32, were not, as this Exhibit shows, bought at prices that were above the low of Platt's Oilgram?

The Witness: I will explain that. 86 out of these 121 cars were bought on publication basis; they were not bought on flat price basis at all.

Mr. Chaffetz: In your opinion.

The Witness: I know they weren't.

The Court: Q. How do you know? Just produce the records that you ascertained that fact from.

The Witness: The invoices, first of all, put you on notice of that. You will find that most of the prices here are figured in sixteenths. The common practice in the oil industry is to buy on fractions of 2997 an eighth. That put me on notice that there was something unusual about these transactions, and I checked into it and I found they were bought on the basis of the average of Chicago Journal of Commerce quotations, plus ⅛¢ or plus ¼¢. They were also bought f. o. b. refinery in Arkansas; so that they were not bought f. o. b. Group Three at all. They were not bought on an Oklahoma refinery basis. That is true with respect to 86 out of the 121 cars.

Q. What difference did that make, that you have just described?

A. The price comparison would not be correct, or proper, to compare this purchase price on purchases made f. o. b. refinery in Arkansas with quotations for f. o. b. Oklahoma refinery, because of the freight differential.

Mr. Lewin: Q. So you compared it with something else then?

The Witness: I made no comparison.

Mr. Chaffetz: Q. What you mean is you went back to Barnsdall Company and got some purchase orders that were not in the Clerk's files here and you checked with those records.

A. I didn't get the purchase orders.

The Court: Q. Did you make a check from any other records except those here in the Clerk's office?

2998 A. In this particular instance, I did, because there were no purchase orders covering these particular invoices. This is one of the few audits we know that was made in the Barnsdall office last summer. When we saw these audit prices we went to the Chief Accountant for Barnsdall and asked him how they were accounted for. They showed us their computation as to checking the invoices, and they showed us just—that they were bought on publication basis, and showed how they were figured.

These purchases were all made from one independent refiner in Arkansas that furnishes their requirements for that particular area in a freight differential territory. All shipments were made, I think, to Missouri and Arkansas and possibly Louisiana.

Mr. Chaffetz: Q. You do know, as a fact, that the Barnsdall Company didn't submit its purchase orders, as the other companies did, in response to the subpoena?

A. That I don't know, Mr. Chaffetz, but I know on these particular purchases there were no purchase orders at all; because the arrangement with this supplier is that they send requisitions for their requirements in that particular area. I don't think there ever were purchase orders on these particular 2999 transactions. That is a frequent practice where you are buying in a freight differential territory.

The Court: Q. Did you find any Barnsdall purchase orders in the records in the Clerk's custody?

A. I wouldn't be able to say—all of their transactions. I know there are none in connection with these transactions.

Mr. Chaffetz: That is all.

By Mr. Donovan

While I have Barnsdall right here in front of me, I might finish it. There are 4 cars in here that are not motor fuel at all; and they were furthermore f. o. b. purchases from a broker rather than an independent refiner.

Then there are quite a few clerical errors. I won't go into all the details, but it means a net overstatement of 1 car. That brings us down to 32 cars. There are 32 of those cars which the Government includes in here as having been purchased over the low that were correctly compared and purchased over the low.

In relation to Western Oil & Fuel Company, I found they were a broker. They supplied 1 car. That car, incidentally, was special endpoint material.

I found other mistakes, such as that there are 3 more cars here; for instance, a car of natural gasoline. Natural gasoline is not a motor fuel. It is 3000 used for blending purposes in the manufacture of gasoline, but it is not a motor fuel in itself. There are quotations carried in the publications for that kind of material. When natural gasoline is sold to a refiner it is purchased for blending purposes. If it is sold to a jobber—it is a special kind of natural gasoline that is used for fuel purposes, or lighting purposes, and not used as a motor fuel and they should not have been compared with third grade.

Mr. Chaffetz: Q. How many cars did you say of that, talking about that?

A. Talking about 4 cars.

By Mr. Donovan

Exhibits 750 and 751 show that the Government claims the Continental Oil Company bought 9 cars at a price above the low of Platt's Oilgram and Chicago Journal of Commerce. There are 6 of them shown to have been purchased in April, 1935; 1 in March, 1935; 2 in May, 1935.

The Government claims that 7 of them were purchased from Dickey Oil and Refining Company. Those were bought in March and April, 1935; and 2 more from Taxman Refining Company in May, 1935. I looked at the records of Continental to see whether that was a fact. As a matter of fact, Continental didn't purchase any cars from Dickey in April, 1935, but in this particular instance the Government list gives the invoice numbers, so we
3001 checked those invoice numbers, and we found that
6 of those had been purchased from Dickey, but the purchaser was not Continental Oil Company, it was Phillips Petroleum Company.

The May purchase was from Taxman. The Taxman refinery is down in the North Texas refinery district, and these cars were bought on an f. o. b. refinery basis, so that the purchase price here is not comparable with the Oilgram quotations on Oklahoma refinery district. 1 car was purchased at 4¾¢. That one was purchased f. o. b. refinery. Now, there was another car purchased that was purchased on a Group 3 basis. That was purchased at 4¾¢.

I was wrong when I said the 2 were purchased f. o. b. refinery. 1 was purchased Group 3 and 1 was purchased f. o. b. refinery. The one purchased f. o. b. refinery was on May 29, 1935, and the one purchased on Group 3 basis was May 31, 1935. The Oilgram for the Oklahoma refinery market on May 31 had a low of 4¾¢, which is the same as the purchase price. It had been at that price since May 15. These purchases were claimed to have been bought above the low, and they were bought at the low of the Oilgram, Oklahoma refinery market.

On Continental, of course, what I said with respect to

6 cars purchased by Phillips is equally applicable
3002 to Exhibit 751 in comparison with the Journal prices.
That is, they were not purchased by Continental.

There is 1 car here shown to have been purchased from Dickey on March 15th at ⅛¢ over the Chicago Journal of Commerce low. That is incorrect, because the car wa[illegible] bought on an f. o. b. Kansas refinery basis. You can[illegible] compare a price paid f. o. b. refinery out of Kansas with a Group 3 price, because Kansas is so much nearer the consuming market that it enjoys a freight differential of about ¼¢ over Oklahoma refineries.

Then, of course, we have this other car here bought from Taxman. That was bought f. o. b. North Texas refinery basis, so that you can't compare that price with f. o. b. Group 3 prices.

There are 4 cars claimed to have been bought by Wadhams over the low of both publications. According to the Government list, 1 car was purchased from Danciger in August, 1935. 3 other cars were purchased from Danciger, 2 of them in June and 1 in July.

The 3 cars grouped together as having been purchased in June and July were third-grade, although they were 62 octane guaranteed. Nevertheless, I would call that third-grade gasoline. The other car bought in August was neither third-grade nor regular grade. That was 63 octane guaranteed.

Mr. Chaffetz: Q. May I ask do you draw a
3003 distinction between 63 and 62? You think 62 is third-grade and 63 is not?

A. If the purchase order would specify 63 octane or 63 octane guaranteed, it wouldn't be third-grade gasoline. If the customer was ordering third-grade gasoline, and if the distillation report might show it was 63 octane, I would still consider that a third-grade transaction.

By Mr. Donovan

The 3 cars of third-grade were an unusual specification. The other wasn't third-grade. That 1 car was not third-grade. It was improperly included and the price was not properly compared with third-grade.

Exhibit 750 shows 39 cars to have been bought by the various divisions of Socony-Vacuum Company at various prices over the low of Platt's Oilgram. 5 cars at ¼¢ over the low and 34 cars at ⅛¢ over the low.

Exhibit 751 shows 44 cars to have been bought over the low of the Chicago Journal of Commerce, 5 cars ¼¢ over, and 39 cars ⅛¢ over.

The 5 cars at ¼¢ above were bought by the White Eagle Division from Champlin Refining Company in July, 1935, at 5¢ f. o. b. Hutchinson, Kansas. They were not bought on Group 3 basis or Oklahoma refinery basis. These cars weren't properly classified.

3004 I might say this: The Champlin refinery is in Oklahoma, but it has a pipe line running up to Superior, Nebraska, and that pipe line can be tapped in at Hutchinson, Kansas. The sales were made to the White Eagle Division which is up around there, and on a basis, f. o. b. Hutchinson, Kansas. So you can't make a comparison on an f. o. b. Group 3 basis or an Oklahoma refinery basis, because the freight differential is about ¼¢.

I think that the Oilgram for the Kansas refinery market quoted 5¢ at that time, July 5, 1935, which is the purchase price, as the low. So it would have been bought at the low of the market and not above the low.

I have run across a number of other instances where the price was improperly compared. The White Eagle Division made another purchase from Dickey Oil & Refining Company of 10 cars. Dickey Oil & Refining Company is an independent refinery located at McPherson, Kansas, and these cars were bought on f. o. b. McPherson, Kansas basis. That is f. o. b. refinery. So there, again, you have got an improper comparison of the purchase price with Group 3 and Oklahoma refinery quotations. The exhibit claims purchases made at a price above the publications, when, if the comparisons were made with the proper market, it would be found they were below, because the purchase price here was 5⅛¢ f. o. b. Kansas, and Platt's Oilgram for the Kansas refinery market had a low at that time of 5¼¢.

3005 I found other inaccuracies in Exhibit 750 with respect to Socony-Vacuum. It bought 20 cars from Taxman Refining Company. These were bought in February, March and April, 1936. The Government showed them to have been purchased at ⅛¢ over the low of the Oilgram for the Oklahoma refinery market. 1 of those cars was bought at 5⅛¢. That was the low of the Oilgram on the date of purchase. So that it was not bought at above the low of the Oilgram.

The Government shows 39 cars to have been bought above the low of Platt's Oilgram. I am talking now about Socony-Vacuum, the various divisions. This hasn't anything to do with Wadhams. Of those 39 there are only 23 that are correctly compared. They were actually bought over the low.

As to Chicago Journal of Commerce, the Government showed 44 cars to have been purchased over the low, and of those 29 were properly compared and were bought over the low.

Socony-Vacuum Company, exclusive of Wadhams, bought 364 cars out of the Mid-Continent field, according to Exhibit 750, at a specified price. Wadhams, according to the Exhibit, bought 165 cars at a specified price out of the Mid-Continent field. That is an aggregate for the two of 529 cars on a flat price basis. There were actually 26 of them bought over the low of Platt's Oilgram.

3006 The percentage on those figures I have just described would be about 5% of the total purchases at a specified price as compared with the Oilgram.

There would be 32 of them that are correctly compared and were bought over the low of the Chicago Journal of Commerce. That would be about 6%.

Exhibits 750 and 751 show purchases below the low, as far as I know.

Exhibit 750 shows that Socony-Vacuum bought 98 cars below the low and Wadhams 107 cars below the low. That is a total of 205 cars bought by both of them, according to this Exhibit, below the low of Platt's Oilgram.

It would not be true that 10 of the cars classified above the low should have been classified as below the low, if you are confining yourself to the Oilgram for the Oklahoma refinery market. Those 10 cars were bought below the low of the Oilgram for the Kansas refinery market. There may be a great number of those that are classified in this exhibit as bought at the low, which would really be bought under the low if properly compared with the Oilgram refinery market.

(Document previously so marked for identification is received in evidence as Exhibit 997.)

205 is the number of cars which the Government admits were bought below the low of the Oilgram by Socony.

3007 I do not believe I gave the figures as to the number bought below the low of the Chicago Journal of Commerce. Those were 95 for Socony-Vacuum and 72 for Wadhams, a total of 167 cars.

Socony-Vacuum and Wadhams never bought a car over the low of a publication when they bought on a publication basis, and they bought a large number of cars on a publication basis below the low of the publication.

I would like to point out one thing, in connection with that. The White Eagle division bought 20 cars from Champlin at the low of the Journal plus ⅜¢, but they bought that on a basis of f. o. b. Hutchinson, Kansas, so that making the proper comparison with the Chicago Journal of Commerce, that is group 3, it can be said that neither Socony-Vacuum nor Wadhams ever bought a car on a publication basis over the low of the publication.

As to an over-all computation of the amount bought at, above and below the low by these companies for which Jacobi purchased, I can say this: That for every car bought over the low, there were about 20 cars bought under the low. I haven't made any more detailed comparison than that. I haven't worked out the percentages.

Exhibits 750 and 751 do not show correctly the amounts purchased by Skelly Oil Company at prices above the low of the Oilgram and the Journal. I found errors
3008 there.

There are 3 cars shown to have been bought over the low of the Oilgram in Exhibit 750. These are shown to have been bought at a specified price. As a matter of fact, they were bought on a publication basis. That is true also with respect to Exhibit 751, which makes a comparison with the Journal.

Now, there are other errors, too. There are 11 cars shown on Exhibit 750 to have been bought over the low of the Oilgram. Now, those cars were bought on January 11, 1936, and the Oilgram wasn't even published on January 11, 1936.

Then there is another error in price comparison. There is 1 car shown to have been purchased above the low. As a matter of fact, it was bought at the low of the Oilgram, but it is shown in this exhibit, in the Government list, to have been bought above the low. The Rock Island Refining Company shipment on January 3rd is the one that was shown to have been bought over the low, and it was actually bought at the low. That car was ordered on January 3, 1936. On January 14th, that was following the advance in crude, there was a price adjustment, and the price was advanced ½¢; but that price was in agreement with the low of the Oilgram on that date.

There were no cars which the Government listed
3009 as having been purchased by Skelly at a price above
the low of the Journal, purchased during March, April, or May, 1935, insofar as a comparison with the Oilgram is concerned. There were 2 cars purchased in April, 1935, which were bought over the low of

the Journal on the date of purchase. Those involved a local destination.

Exhibit 750 shows Skelly to have bought 30 cars at a specified price over the low of the Oilgram on the date of the order. As a matter of fact, only 15 of those cars were bought over the low of the Oilgram on the date of the order.

Exhibit 751 shows that, out of a total of 643 cars bought at a specified price in the Mid-Continent field, 32 were bought over the low of the Journal. As a matter of fact, there were 29.

As far as the Oilgram is concerned, there were just a little over 2% of the total cars purchased by Skelly in the Mid-Continent field at a specified price that were bought over the low of Platt's Oilgram.

As to the comparison with the Chicago Journal of Commerce, there were less than 5% bought by Skelly over the low.

Exhibit 750 shows that Skelly, out of a total of 643 purchases at a flat price in the Mid-Continent field, bought
122 of those below the low of the Oilgram. That
3010 would be more than ⅕. It shows 30 above; but, as
I stated, only 15 of those are correctly determined.

Purchases below the low of the Journal are shown on Exhibit 751. That shows that out of the 643 cars, 107 were bought under the low of the Journal. That would be about ⅙, which is around 16% or 17%.

Exhibits 750 and 751 are not correct in regard to Pure Oil Company. Exhibit 750 shows that, out of a total of 584 cars purchased in the Mid-Continent field at a flat price, 101 were purchased over the low of the Oilgram on the date of purchase.

Exhibit 751 shows that, out of that same number of cars purchased in the Mid-Continent field at a flat price, 100 were purchased over the low of the Chicago Journal of Commerce on the date of the purchase.

Going back to Exhibit 750, out of that 101 cars shown to have been purchased over the low, 16 cars are not motor fuel, but illuminating gasoline. 4 more cars were not bought at a flat price at all but on the publication basis. Then there are 21 cars in which an error was made in comparing the purchase price with the publication low on the date of purchase. Then there is still another error of 1 car as to the number of cars involved in the transaction. So that, taking all those into account, there are 59 cars, and not 101, that were bought over the low of Platt's Oilgram.

3011 Going back to the Journal, the comparison on Exhibit 751, we have those same 16 cars that are not motor fuel, but illuminating gasoline. There is an error in the comparison of the purchase price with the low of the Journal on the date of the purchase with respect to 14 cars. And there is also that other error as to the number of cars, amounting to 1 car. So that there are 69 out of the 100 that were correctly compared and found to be over the low of the Chicago Journal of Commerce.

The mistakes I have just described are not the only ones I found in regard to those purchases. There are 7 cars shown on Exhibit 751 to have been purchased at ½¢ over the Journal low. As a matter of fact, they were purchased over the low of the Journal, but the excess was not ½¢, but only ⅛¢.

Then there are 25 cars shown on Exhibit 751 to have been purchased at ¼¢ over the low of the Chicago Journal of Commerce. They were purchased over the low of the Journal but the margin was just ⅛¢, not ¼¢.

Out of these 101 cars, 42 were wrongly classified in Exhibit 750. That would be just about 42%.

In Exhibit 751 about 63% were wrong. In about 63% of the 100 cars, there are errors in the determination.

I don't recall finding any more errors, But we did find that of the 62 cars purchased ⅛¢ over the low, in fact, all of these cars that were really purchased over
3012 the low of the publications were of unusual specifications. They called for 70 to 71 octane. That is, there were 59 cars that were purchased over the low of Platt's Oilgram and 69 cars purchased over the low of the Chicago Journal of Commerce, and all of them were regular grade gasoline of unusual specifications, that is 70-71 octane.

None of those cars that were bought above the low was bought above the market.

Purchases were being made above the high of the market range by jobbers in 1935 and in 1936.

Confining myself to Exhibit 750, which makes a comparison with Platt's Oilgram, out of the 59 cars bought by Pure over the low, there were 4 cars bought in April, 1935. The remaining 55 were bought in March, 1936. Of the 69 cars which were bought over the low of the Journal, which comparison is shown in Exhibit 751, just 7 cars were bought in that three months period when the price was arising, that is, in March, April and May, 1935. The remainder were all bought in 1936.

Empire Oil & Refining Company was not one of those cases in which the number of cars bought above the low was stated correctly in Exhibit 750. Exhibit 750 shows that Empire bought 756 cars in the Mid-Continent field at a flat price; and it shows that of the 756 cars, 82 were purchased over the low of the Oilgram on the date of 3013 purchase. Of those 82 we found that 5 were not purchased in the Mid-Continent field, but in what we call the Gulf Coast, that is, the lower part of Texas. They came from Wood-Moore Corporation, which has a refinery down at Port LaVaca. They were bought on a publication basis, and not at a flat price.

Then, there are 37 additional cars out of the 82 that were bought on an f. o. b. refinery North Texas basis; so that the purchase price is not comparable with the Oilgram for the Oklahoma refinery market, because there will frequently be a difference in the price quoted by the Oilgram for the North Texas refinery market and the Oklahoma refinery market. The price in North Texas may be either higher or it may be lower. As a matter of fact, today it happens to be ½¢ higher than the Oklahoma refinery market. There can be a considerable variation there.

There is still another error in respect to Exhibit 750. There is an error in the price comparison of 7 more cars, so that instead of there being 82 cars purchased over the low of the Oilgram, there are only 33 that are properly compared and were really purchased over the low.

Going to Exhibit 751, we have not 5 cars purchased from Wood-Moore Corporation, which is outside of the Mid-Continent area, but 6 cars. And there are not 3014 37 cars, purchased f. o. b. North Texas refinery, but 42 cars. So that out of the 102 cars shown on Exhibit 751 to have been purchased in the Mid-Continent field at a price over the low of the Journal there are actually 54 cars.

Exhibit 751 shows that Globe bought a total of 289 cars in the Mid-Continent field at a flat price, and out of that number 33 cars were bought over the low of the Journal. Exhibit 750 shows that 32 cars were bought over the low of the Oilgram.

Exhibit 750 shows that Globe bought 245 cars below the low of Platt's Oilgram.

Exhibit 751 shows that it bought 226 cars below the low of the Journal.

I find there were mistakes made in the classification of the cars bought above the low. As far as a comparison with the Oilgram is concerned, 11 out of the 32 cars shown to have been bought over the low were bought on a publication basis, not at a flat price.

The f.o.b. point was Kansas on 5 cars; and then there was an error in price. There was 1 car shown to have been bought above the low of the Oilgram that was actually bought ⅛¢ under the low; that purchase was made March 13, 1935. It was bought at 4½¢. The Oilgram on March 13th has a low of 4⅝¢.

Those are all the mistakes with respect to the Oilgram, but with respect to the Journal there was the same
3015 mistake in connection with the 11 cars purchased on
a publication basis. There was the same mistake in connection with the comparison of the purchase price with the low of the publication on March 13, 1935 of this 1 car that I was just talking about; and then there were 6 cars purchased f. o. b. refinery in Kansas, that were improperly compared with the Journal Group 3 quotations.

Out of these 32 cars shown to be purchased by Globe over the Oilgram low, Exhibit 750 is correct with respect to 15.

Exhibit 751 shows 33 cars to have been purchased over the Journal low and there, again, it is correct with respect to 15.

The total cars bought by Globe at a specified price in the Mid-Continent field was 289 so that these 15 cars would represent about 5% of the total. Of course, we made no study of those bought at the low. Exhibit 750 shows that 13 cars were bought at the low of the Oilgram, and Exhibit 751 shows 30 cars to have been bought at the low of the Journal. Exhibit 750 shows that 244 out of the 289 were bought below the low.

I have made an examination of the accuracy of Exhibits 750 and 751 insofar as they relate to purchases at specified prices above the low by Phillips Company. I found inaccuracies.

3016 Exhibit 750 shows that Phillips bought at a flat price in the Mid-Continent field a total of 1313 cars. 218 of those are shown to have been bought at various prices over the low of Platt's Oilgram quotations.

Of those 218 cars there were 87 that were bought on a publication basis and not on a flat price basis at all. There were 51 that were bought on a refinery basis other than Oklahoma, so that the purchase price was not properly compared with Oklahoma refinery quotations.

Then in addition to that we found a lot of clerical errors. For instance, there is an error in summarizing the detail amounting to 7 cars. There is a duplication on the list; 4 cars were taken into account twice.

There is an error in the price comparison as to a large number of those cars. There are 31 cars in which the purchase price was erroneously compared with the low quotation of the Oilgram on the date of the order. As a matter of fact those were bought at ⅛¢ under the low instead of ⅛¢ over the low. Then there is still another car that is shown to have been bought over the low that was bought at the low.

Those errors net 29 in number, so that out of the 218 cars shown on Exhibit 750 to have been bought above the low, only 51 of those properly compared were actually bought over the low of the Oilgram.

3017 When I talk about purchases on the basis of published prices, in the case of Phillips we got our information in connection with the audit of the independent refineries. Phillips' files were not complete as to purchase orders, so when we were making our audit of the independent refiners we went a step further and audited the sales of the independent refiners to Phillips. We did not use material that was on file here in the Clerk's office. We used material that the government accountants did not have access to.

I have mentioned those instances before. After this I will volunteer it. But let me say now that with Phillips and Continental the files are incomplete as to purchase orders, and that goes for any of my testimony.

Barnsdall was incomplete in some respects. Whether it is entirely incomplete as to purchase orders I would not be able to say offhand. We did get access to purchase orders as to Continental and Phillips.

There were impounded here documents from independent refiners of their purchases, and their invoices. The impounded records include records from the majors' files, and also records from the independents' files insofar as their transactions with the majors are concerned.

I did not use the impounded records of the independents for Phillips and Continental. I went outside to get those.

3018 I think that some of those purchase orders of Phillips and Continental were in the independent files that were impounded here. I'm not sure.

I can tell the number of cars that were bought by Phillips on an f. o. b. Kansas basis. There is 1 car bought from Dickey, March 11, 1935, f. o. b. McPherson, Kansas. In fact all purchases from Dickey were f. o. b. refinery, Kansas. There is a very large number of those. That is, practically all of them that were bought on a refinery basis other than Oklahoma, as a generality. There were 21 cars bought from Dickey, and in addition to that there was another car bought from Western Refining Company which is located at Chase, Kansas. That was bought on an f. o. b. refinery basis. 1 of the cars obtained from Dickey was bought in March, 1935; 20 in March, 1935. Then there are 20 that were bought in April from Dickey in addition to the 21 I just named. Then there were 4 more in March, 1935. There were 5 cars in March, 1935. There were 45 cars in June, 1935. There were 12 in July, 1935; there were 4 more in July, 1935; 5 in September; 2 in February, 1936. There is a total of 106 cars from Dickey. Now, I only testified as to 51 having been bought on a refinery basis other than Oklahoma. Some of those cars that were bought on the publication basis were also bought from Dickey, and there were 87 of those.

3019 All 106 were bought on an f. o. b. refinery basis, and a large number of them also were bought on a publication basis.

The fact that it was bought on an f. o. b. refinery basis, f. o. b. Kansas, would appear on the face of the invoices impounded here in the Clerk's office.

If the proper comparison had been made, in relation to the quotations in the market where they were bought, instead of some other market, instead of there being 218 cars bought over the low of the Oilgram, there would be only 51. And, instead of there being 288 cars over the low of the Journal, as shown on Exhibit 751, there would also be 51.

Some of those cars would have been classified as below the low if they had been compared with the Oilgram for the Kansas refinery market. That is the market where the purchases were made.

I started to say there were other Kansas refiners from whom purchases were made. I mentioned Western Refining Company. There is Kanotex Refining Company in Kansas, from which 1 car was bought on an f. o. b. refinery basis. Then there were some purchases from North Texas refineries on a refinery basis.

I found other inaccuracies in Exhibits 750 and 751, insofar as they related to Phillips' purchases at a specified price. Exhibit 750 contains 41 cars which are erroneously classified as to the month in which they were pur-
3020 chased. That is true also with respect to Exhibit 751.

A purchase from Taxman Refining Company on February 1, 1936 was bought f. o. b. refinery. The refinery is located in the North Texas refinery district so it is improperly compared with the Oklahoma refinery market in the Oilgram, and also with the Journal Group 3 quotations.

12 cars were purchased from Taxman in 1936. They were bought on February 1, 1936. The order called for 50 cars in all, but only 12 of those cars are included on the Government's list. There was a price adjustment on that. The price was originally fixed at 5¼¢. It was adjusted in the middle of February to 5⅛¢, and all 12 cars were shipped thereafter. That was the result of an agreement between Taxman and Phillips. We found evidence of this agreement in the Phillips files. The Government showed those 12 cars to have been purchased at ⅛¢ over the low of the Oilgram. As a matter of fact, they were purchased ⅛¢ under Platt's low. The original purchase order shows 5¼¢ on February 1, 1936. It would be true that the Government must have relied on the purchase order, and wasn't aware of some other documents that we found in the Phillips file, except that some of those cars, in addition, were purchased on an f. o. b. refinery basis.

3021 I would say about 4% of the cars bought by Phillips were bought above the low. I never made any determination of how many they purchased below the low. I can tell that the Government exhibit shows that they purchased below the low. Government Exhibit 750 shows that Phillips purchased 344 cars below the low of the Oilgram. And Exhibit 751 shows that it purchased 236 below the low of the Journal.

The percentage as to those with respect to Exhibit 750 would be about 14%. With respect to Exhibit 751, it would be something over 20%. That is, for every car bought above the low, there would be about 7 cars bought below the low, as far as the Oilgram is concerned; and about 1 car over to, say, 5 cars under, as far as the Journal is concerned.

I found no purchases by Phillips above the whole market range.

There was something about the freight basis in some of these purchases which would account for the price paid being above the low. In practically every instance where a purchase was made by a major at a price over the low of either publication, it will be accounted for because of a freight saving. That is, it would be bought from such a refinery and from such a location that the major could move it to its destination at a lower net cost to itself,

including freight, than it could from some other re-
3022 finery, or from its own refinery. You will find that
in the few instances in which the majors bought over the low, invariably there is a freight saving or unusual specifications as to the material.

Some of these were bought as a switching charge purchase. I have one right here before me now, in connection with Phillips.

A switching charge purchase would be an instance where the point of origin and the point of destination would be in the same vicinity, perhaps in the same town, so that the car traveling from the refinery to the delivery point to the major would simply be switched over within the same vicinity. A switching charge runs around $6 to $10 a car.

What I mean by saying that these prices above the low were in most cases accounted for by the fact that they were for local shipments, or switching charges, or something of that sort, is that the major company may require gasoline at a certain point, and it may be willing to pay a price over the low in order to buy it at a refinery where the shipment as to distance is minimized, so as to minimize the freight cost. That does not apply only to major companies, but to any buyer of gasoline in tank car lots.

There are two factors in regard to these purchases
which could be said to account for the fact that a
3023 price above the low of the market is occasionally
paid. There would be this freight saving and there would be the unusual specifications of the material. For instance, 62 octane guaranteed would command a premium very often over the low of the published quotations. You may have 60-62, 400 endpoint, which frequently commands a premium of ⅛¢ over ordinary third grade gasoline. The ordinary third grade gasoline has an endpoint ranging from 425 to 435. 400 endpoint material is just a little better, or it may be a little better for a certain purpose; for that reason it frequently commands a higher price.

I can say this in general as to the accuracy of the Government's classification of publication basis purchases, in Exhibit 751, as having been made at, above and below the low: That none of these defendant major companies at any time throughout this period ever bought on a publication basis over the low of the publication, taking all relevant factors into account. There is just one exception to that. That was a purchase made by Globe Company in the spring of 1935 from Cushing, at a time when its refinery at Blackwell was closed down. It involved 5 cars. That is the only exception to that general statement, that the majors never bought over the low of the publication when buying on a publication basis.

Exhibit 751 shows some purchases here to have
3024 been at the low of Journal, plus $6.60 per car. Now,
that $6.60 per car has nothing to do with the price; it isn't part of the purchase price. It is simply the switching charge. In other words, the major buying those cars bought on the basis of f. o. b. refinery, and it paid to the seller $6.60 per car to reimburse him for the switching charge which he prepaid.

Here are some more bought on a publication basis, listed on Exhibit 751 as having been bought at the Journal price for third grade, plus ⅝¢.

We did find purchases made by some of the majors at the low of Journal for third grade, plus ⅝¢, but it was regular grade material. So that it was actually bought under the low of the Journal if you compared it with the proper grade of material.

Right below that you find other purchases made on publication basis at ⅜¢ above the Journal low. I know of such purchases, in fact, I mentioned one this morning that was bought by White Eagle from Champlin on a publication basis, ⅜¢ over the low of the Journal. But the Journal is quoting on a Group 3 basis, and that particular purchase, as I pointed out, was made f. o. b. Hutchinson, Kansas. So that, taking into account the freight differentials and the grades, I know of only one instance in which a major bought over the low of the pub-
lication when buying on a publication basis; and
3025 that, as I pointed out, involved 5 cars, at a time
when Globe's Oklahoma refinery was closed down.

By Mr. Horween

(Stipulation submitted by Mr. Horween is marked EXHIBIT 998 for identification and received in evidence.)

(Tabulations referred to in said stipulation are marked EXHIBITS 999, 1000, 1002 and 1003, respectively, for identification and received in evidence.)

We have verified from the books and records of the Globe Companies the tabulation which you show me, purporting to show the flat price purchases from independent refiners in the Mid-Continent and East Texas fields for the years 1935 and 1936, by each of the Globe Companies separately. We find them correct.

(Tabulation referred to received in evidence as EXHIBIT 1004.)

The 5th column of the tabulation shows the relationship of the purchase price to the Chicago Journal of Commerce. The 6th column shows the number of cars in each purchase transaction, and the total. The asterisks opposite certain purchases in the 1st column indicate that they were for local delivery. A large number of these purchases were made for local delivery, the point of origin and point of destination being the same on each. That is, if it was purchased from an independent refinery located at Blackwell, delivery was made in Blackwell, Oklahoma.

3026 This first tabulation is for The Globe Oil Refining Company of Oklahoma. The refinery of that company is located at Blackwell, Oklahoma. Cushing has two refineries, and one is at Blackwell.

The writing at the bottom of this tabulation, entitled "summary", shows the total number of cars purchased by The Globe Company of Oklahoma, omitting those purchased from Cushing for local delivery. That total is 261 cars. Out of the 261, there are 5 above the low of the Chicago Journal of Commerce, 50 at the low, and 206 below the low.

The Globe Oil & Refining Company of Oklahoma made its first purchase at a flat price from independent refiners in 1935 on February 2. The last purchase in the East Texas field was August 15, 1935, and the last one in the Mid-Continent field was May 29, 1935. Globe of Oklahoma made no more purchases from independent refiners at a flat price in 1935. It made no purchases of any kind from any independent refiners in 1936.

There was practically no manufacture whatever in the latter part of 1934 and the early part of 1935 by Globe of Oklahoma. At that point this refinery was closed down. Then the manufacture picks up here again in the spring of 1935, runs on, and there is a shut-down again in the early part of 1936. You have another shut-down in the latter part of 1936.

3027 This 2nd column represents the volume of the company's purchases of refined gasoline, and the 3rd column represents purchases of natural gasoline which was used for blending in its refinery operation. For instance, when the refinery is shut down for this period, you find no purchases there of natural gasoline to speak of.

There are no purchases here of refined gasoline in 1934. There are some over here in 1933. Then there are no outside purchases by this refinery until you come over here to the early part of 1935.

Sales figures, column 4, are almost zero about the middle of February, 1935, and then start climbing. They practically parallel the rise in the volume of buying. This would indicate that practically all sales made at that time consisted of gasoline purchased from the outside, not of this company's own manufacture.

In the middle of April sales continue to go up, and purchases from outside decline. Beginning in the middle of April, manufacturing operations were resumed; in other words, the refinery apparently has begun to produce again.

The result was that the sales from that time on consisted of the company's own production in addition to outside buying. And as the buying declines the manufacturing increases and that accounts for this total sales volume.

I might point out that there were no purchases here of gasoline on the outside after September. We have none all through 1936.

3028 The sales or shipment figures of Globe of Illinois, ignoring these minor fluctuations by months, show a more or less steady increase from 1933, running across right up to the end of 1937, in which there is a rather sharp increase.

This company purchased much larger quantities of gasoline in various years than the other two Globe Companies. The gap between the company's own manufacture and the company's shipment of gasoline, is made up by purchases of refined gasoline, and also of natural gasoline that was used for blending purposes in the refinery operation.

According to the stipulation in the record the Code authorities determined that for The Globe Oil and Refining Company of Illinois, the minimum working stocks were 45,500 barrels.

I know what the expression "minimum working stocks" means. Working stocks would be the minimum inventory that it is necessary for a refinery to have in order to carry on its normal operation.

The volume of purchases of refined gasoline starts in

February 1935. The greatest volume is reached in June, and then tapers off.

The inventory figures show a peak in 1935, in the middle of January; and at that time it was about 100,000 barrels. Then it starts to go down rather rapidly as the
consuming season comes along, and as it goes down,
3029 sales are going up. At that time they start buying
finished gasoline or refined gasoline. So that for a period of about 4 or 5 months the inventory figure was below 40,000 barrels; in other words, below the minimum working stocks as determined by the Code authority.

I have prepared a tabulation showing the production, shipments and purchases in summary form of this company. During the first 8 months of 1937, this company purchased more refined gasoline, from all sources, than it did in any whole year period preceding, back as far as 1933. In 1933, the first year shown in this chart, it made its next largest purchases. In the year 1936 it made its next largest purchases. In the year 1935 it made the next largest purchases. In the year 1934 it made its smallest purchases.

(Chart submitted by Mr. Horween is marked EXHIBIT 1008 for identification and received in evidence.)

This chart, Exhibit 1008, consolidates all 3 companies, covering everything in connection with the Oklahoma company, the Kansas company and the Illinois company.

The column marked shipments represents the consolidated volume of sales of all 3 companies for 1933.

The next column represents the amount of gasoline produced by all 3 of these refineries in their own plants, with a section superimposed on top of that column, representing casinghead gasoline, or natural gasoline that was purchased and used for blending purposes. That was put into the refinery and mixed with the company's
own gasoline which it produced.
3030 The black area, column 3, represents gasoline
purchased on the outside, the figure below representing the percentage of the volume of refined gasoline purchases to total shipments.

The 3 companies combined purchased the largest percentage of refined gasoline in proportion to their sales in 1933. Roughly, 3% of their total sales represented purchased gasoline. The next largest percentage was purchased in 1935, that is 2.57% roughly 2½%. 1935 is the year when the Globe Oil & Refining Company's plant at Blackwell, Oklahoma, was shut down for the 5 months period. The shut-down started the latter part of 1934, and ran over to some time in April, 1935. The next largest year, so far as percentage of outside purchases is concerned, was 1937. For the first 8 months of 1937, it is 2.37%. The next largest was 1936, a little over 1%. The next largest was 1934, about 1/10 of 1%.

If the inventory had remained absolutely constant, the 2nd column plus the section superimposed on it, plus the black column would exactly equal the shipment column. But that is not the case, because there are some changes in inventory as of the end of each year.

On Exhibit 1000, which is a tabulation showing combined purchases from all sources, purchases are indicated from Globe Oil of Kansas and Globe Oil of Oklahoma. Now, strictly speaking, those should be omitted from the totals because they are with affiliated companies.

In 1935 purchases were made from Sun Oil Company. It might be rated a major company.

3031 In 1936, a purchase of 111 cars was made from Wiloil Corporation, a broker in Pittsburgh, Pennsylvania. There is another purchase from the same Wiloil Corporation during the first 8 months of 1937, 110 cars.

Cross-Examination by Mr. Chaffetz.

From Exhibit 1002 it appears that in 1933, roughly 8% of the purchases made by the Globe companies were made from independent refiners whose names appear in the indictment; in 1934, none; in 1935, about 56%; in 1936, approximately 42% and in 1937 down to August 31st, I would say the Globe companies purchased about 35% of all the gasoline that they purchased from the same group of independent refiners who are named in the indictment.

In connection with the 1935 figures, by reference to Exhibit 1000 it appears that Marimac Oil Company is one of the "other refiners and brokers." They sold the output of Wabash; so there may be, and in all probability is, a lot of gasoline there coming out of Wabash, one of the independents named in the indictment. So in 1935 the percentage might be even greater than the 56% named.

Redirect Examination by Mr. Horween.

It is true that the total purchases in the year 1934 from all sources were very small, roughly 232,000 gallons.

Compared with 1935, 1936 and 1937, the purchases
3032 in 1934 are negligible. They jumped to 5,100,000 in
1935, to 2,500,000 in 1936; and 4,300,000 during the first 8 months of 1937.

None of the Globe companies made any flat price purchases whatsoever during the year 1936.

There was just 1 flat price purchase made in 1935 from independent refiners by Globe of Kansas, and that consisted of 6 cars. There were 5 flat price purchases by Globe of Illinois during the year 1935, aggregating 31 cars.

Direct Examination by Mr. Francis.

(Certain documents are marked Exhibits 1009-A and 1009-B for identification.)

Exhibit 1009-A shows a comparison of The Pure Oil Company's flat price gasoline purchases from Eason Oil Company with Eason's total sales for the years 1935 and 1936, and "B" is a comparison of Pure Oil Company's flat price and market date of shipment purchases from Eason Oil Company and Eason's sales for the years 1935 and 1936. I have compiled these two exhibits from the figures that are in evidence here.

(Documents referred to received in evidence as EXHIBITS 1009-A and 1009-B.)

Exhibits 1010-A and B are like comparisons with Omar Refining Company.

(Documents referred to received in evidence as EXHIBITS 1010-A and 1010-B.)

By Mr. Donovan.

Various refinery markets as distinguished from the
3033 Group 3 market had their own price range. I could
not fairly compare prices for purchases made in those local refinery markets with those Group 3 prices.

I know about the testimony here in regard to purchases by the defendant companies in East Texas.

I have made a study of the records of purchases by these defendants from independent refiners in East Texas. In that study I found that a large number of purchases had been made on an f. o. b. Group 3 refinery basis from East Texas Refineries. I found that there had been some purchases on an f. o. b. East Texas refinery basis. I have made a comparison between the prices paid on f. o. b. East Texas refinery purchases and the quotations carried by Platt's

Oilgram in the East Texas refinery market for the year 1935. I have prepared a chart which would illustrate what has just been said.

(Chart referred to marked Exhibit 1011 for identification.)

This chart makes a comparison of the prices that were paid by all the defendant majors on flat price purchases on an f. o. b. refinery basis out of the East Texas field, with the quotations that appeared in Platt's Oilgram for that particular refinery market. This chart covers the entire year 1935 and is based on the Oilgram.

It is based on an audit of material that I have here, the records of the major companies as to their purchases from these various independent refiners and brokers. That 3034 chart accurately discloses the date and price of every f. o. b. East Texas purchase during the year 1935, by these defendants who now are on trial. The dots are placed on the chart on the day of purchase.

This is January 1935, on the left here (indicating); runs across to the end of December, 1935, so it covers the entire calendar year 1935.

The horizontal lines represent a price line. For instance, this heavy line here (indicating), represents 4¢. We have a red line up here (indicating); that represents 5¢. Between 4¢ and 5¢ there are seven other lines, so that each space between the horizontal lines represents ⅛¢ in price.

The chart contains the price range as reflected in Platt's Oilgram for the East Texas refinery market at the beginning of the year for both third grade gasoline and regular grade gasoline, but in May, 1935 the Oilgram discontinued publishing any quotations on regular grade. As a matter of fact there are no sales plotted on this chart for regular grade during these periods. These are all third grade purchases.

At times you will see that there was a range in the published quotations of the Oilgram. For instance, in all the month of June, 1935, the Oilgram reflected a range of from 4⅝¢ to 4¾¢. That was supposed to be the going market at which independent refiners, brokers, and major 3035 companies were selling gasoline to jobbers on the spot market. At other times throughout the year you will find no ranges quoted. There is simply a line. (Indicating.) In other words, that was the going market. Then in the middle of May, 1935, you simply find a line. The lines shown here are horizontal lines, 4⅝¢. That means 4⅝¢ was the going market. The Oilgram found no range to quote in that particular period. You find the same thing true over here in September, 1935. Again, in December, 1935, there is no range. Throughout most of the rest of the year, you find a range of ⅛¢. The last, the Oklahoma chart, or Group 3, sometimes shows a range of ¼¢, but this particular chart for the f. o. b. East Texas refinery market never shows a range beyond ⅛¢.

Each dot on the chart represents a purchase transaction, that is, a purchase by a defendant major company from a refiner in the East Texas field, or a broker that was supplying material out of the East Texas field.

Under these dots, there is frequently a number. If there was more than one purchase transaction on a given date at the same price, in order to show up the total volume of purchase transactions, we had to put a number under that to indicate how many transactions there were. There is one here; for instance, in April it shows 7 purchases at the same price on the same date. Wherever there is no number appearing under a dot, that indicates only one purchase transaction on that date at that price. The dates that are on this chart are the dates of the purchases. 3036

This represents all the flat price f. o. b. East Texas refinery purchases by the defendants in 1935.

The prices paid by the defendant companies were not all the same, as shown by that chart. For instance, here is April 8. There were 9 purchase transactions on that date at 4 different prices. I have other examples. On April 12, there were 5 purchase transactions at 3 different prices.

Cross-Examination by Mr. Chaffetz.

I used the prices actually paid. So that if there were some prices not as of the purchase order, it was because the material was not good or something of that sort. I took into consideration only the price that was finally agreed on. We took the price actually paid after the invoice was rendered. If there was a later adjustment of a credit memorandum because of an outage or defective material, we didn't put that up.

Q. You took the invoice date?

A. Then we would take the invoice price, and I don't know of any such offhand. I don't recall of any such.

3037 *Direct Examination (Cont'd.) by Mr. Donovan.*

In the entire year there is only one day that we find any purchase over the low, but there happened to be 3 purchases at that same price, all made by the same defendant major, and an aggregate of 5 cars.

As I see that chart, the prices paid by the defendant companies were lagging. That is very noticeable in March, April and May. This line here indicates the range for the quotations as they appeared in Platt's Oilgram. Whereas, the purchase transactions generally run about ⅛¢ below that market.

In June, of course, the published price was constant through the month. The Oilgram showed a low of 4⅝¢ and a high of 4¾¢. Now, the highest price that the majors paid in June was 4⅝¢, which is the low of the Oilgram, but they also made purchases at 4½¢ in June and some at 4⅜¢, and 1 as well at 4⅛¢, and 1 as low as 4¢.

If that 1 at 4¢ or 4⅛¢ was off-specification material, or something of that sort, I don't know of it.

Cross-Examination by Mr. Chaffetz.

The greater bulk of all of the purchases in June were at the low. In June there were more purchases at the low of the published quotations than there were under the low. I think 8 of them were under the low.

3038 *By Mr. Donovan*

In July there are 19 purchase transactions under the low, and in August, there are 31.

(Chart previously so marked for identification is received in evidence as EXHIBIT 1011.)

Direct Examination (Cont'd) by Mr. Donovan.

Exhibits 747 through 751 purport to show certain purchases by defendant companies from independent refiners. They cover the period from March 1, 1935 to April 30, 1936. They do not report Sinclair's purchases. They explicitly state that Sinclair is excluded. I have made an audit of this amount of these defendants' purchases from independent refiners.

I am familiar with the charge in paragraph 23 of the indictment that certain of the independent refiners in the Mid-Continent field curtailed their production of gasoline.

I have made a study of the exhibits and testimony in this case relative to the amount of gasoline produced in each of the years 1934, 1935, and 1936 by the Mid-Continent independent refiners specifically named in the indictment and also produced during those years by other independent refiners operating in the Mid-Continent field not all such other independent refiners operating in the field, but a large number of them.

I made that study with a view of determining whether or not the production of gasoline by those refiners in-
3039 creased or decreased during those 3 years. I have prepared a summary showing the total amount of gasoline produced during each of the years, 1934 to 1936, inclusive, by the independent Mid-Continent refiners specifically named in the indictment. I would have to exclude Taxman Company, because we didn't have complete figures for the entire 3 year period, 1934 to 1936, and we were unable to get those figures, because Taxman Refining Company went out of business.

Excluding that company, for 1934 the total production would be 295,154,204 gallons; for 1935, 356,862,132 gallons; for 1936, 397,780,076 gallons. In 1935, the production increased as compared with 1934 by almost 21% and in 1936, the increase over 1935 was about 11½%. The increase in 1936 over 1934 would be well over 30%.

I have made a study also of a number of the Mid-Continent independent refiners, in addition to those that I have just talked about as being specifically named in the indictment, with a view of determining more exactly whether the Mid-Continent independent refiners as a whole increased or decreased their production during those 3 years. I made a study of 10 additional refineries operating in the Mid-Continent field, independents, of course. They were Anderson-Prichard Refining Company, Black Gold Refining Company, Coltex Refining Company, Cosden Petroleum Corporation, Derby Oil Company, El Dorado Refining Company, Kanotex Refining Company, Lion Oil & Refining Company, Rodessa Oil & Refining Company, Root Petroleum Corporation, Sun-Ray Oil Company and Vickers Petroleum Company.

3040 I have included their production in my study along with the production of those specifically named in the indictment. The total production of those two groups of Mid-Continent independent refiners, together, in 1934 was 659,933,992 gallons; in 1935, it was 774,350,817 gallons; in 1936, it was 868,156,624 gallons. In 1935, the production increased, as compared with the preceding year, 1934, by about 17% over 1935.

It is a fact that not only did the Mid-Continent independent refiners as a whole increase their production in each of the years I have named, but that those Mid-Continent refiners specifically named in the indictment showed an even greater ratio of increase than this entire group of Mid-Continent refiners.

I am familiar with Exhibit 947, showing Gasoline Consumption, 1930 to 1936, Total Mid-Western Area Against Total United States. That Exhibit shows an increase in the consumption of gasoline in the Mid-Western area during the 1935 over 1934 of 6.99%, that is, in round figures, 7%. 1936 shows an increase over 1935 of 10.58%, that is, roughly, 10½%.

The consumption increase for the Mid-Western area is less than the increase in production for the independent Mid-Continent refiners, taking them as a whole; and it is still less, confining it to the independent Mid-Continent refiners named in the indictment.

3041 From my study of this testimony and these charts and exhibits, I conclude that the Mid-Continent independent refiners, instead of curtailing their production of gasoline, increased it very substantially. And it would be true to say that the percentage by which they increased it was even greater than the percentage by which the consumption of gasoline in the Mid-Western area increased during the same time. It might be 3 times as much. That was in 1935 and in 1936.

3042 (Document submitted by Mr. Donovan marked EXHIBIT 1012 and received in evidence.)

By Mr. Chaffetz

Q. From all the figures you read yesterday you cannot tell the jury whether or not any of those independent refiners would have produced more gasoline if they were not participating in a buying or selling program; isn't that right?

A. Some of them may have been running at capacity. I don't know that, Mr. Chaffetz.

Q. All you know is what they actually produced?

A. That is right.

Q. It is entirely consistent with everything you have told us that those companies were in a plan, were cooperating together in some way, and that it was part of such a plan that they would limit their production to some extent; is that right?

A. I would not say that, no. I think it is quite inconsistent with that theory because in 1936 this group of Mid-Continent refiners named in the indictment increased their production over 1934 by, I think, 35% and that is a very large increase.

3043 Q. Yes, and consumption increased too during that year, didn't it?

A. Yes, but consumption increased less than 7%. Let's see—less than 7% in 1935; it was more than that in 1936, but I do not think it was more than ½ of the increase in the production of these particular Mid-Continent refiners named in the indictment.

Q. But unless you know whether or not they could have produced more you cannot tell whether they were parties to any agreement or understanding not to produce more?

A. I think it is safe to say, Mr. Chaffetz, that the theoretical capacity of those refineries was greater than the actual production in those years.

By Mr. Donovan

I have some corrections I would like to make in my own testimony. When I was on the stand some days ago I testified as to the lack of uniformity in the prices paid by the defendant majors on flat price purchases either f. o. b. Group 3 or f. o. b. Oklahoma, and at that time I submitted 4 statements which were marked Exhibits 874, 875, 876 and 877. Each one of those represented or showed the prices paid on different dates in each of the 4 months, March, April, May and June, 1935. That is, Exhibit 874 showed the 3044 prices paid by the majors on various dates in March.

Now, in connection with Exhibit 875, which covers April, there is a mistake in the record. This mistake is not in the Exhibit; it is merely in the record. It appears on page 1559. It has to do with April 22nd. I testified that on that day Globe bought at 4⅜¢. That should have been Mid-Continent. The Exhibit shows that on April 22 there were 7 purchases made at 2 different prices. That is wrong. It should be 6. I inadvertently included 2 purchased by Shell at 4⅜¢ on that date. There was only 1 purchased by Shell on that date. That covered 5 cars from Eason Oil Company, but the order was split as to the f. o. b. point. 4 cars were bought on a Group 3 basis, and 1 car on an f. o. b. refinery basis. Due to the split in the order we inadvertently included this as 2 distinct orders when it really was only 1.

On Exhibit 876, which pertains to May, 1935, there is an error. I testified that on May 29th there was a purchase made by Phillips at 4¾¢. There is an error in that date.

The purchase made by Phillips at that price was on the following day, that is, on May 30th. As a result of that error on the Exhibit the testimony is in error also.

On Exhibit 877, that is, for June, I testified that on June
7th there were 5 purchases at 3 different prices, and that
Globe made 2 of those at 4⅝¢. There again is a split order,
but it was just 1 order. Globe bought from Atlas
3045 Petroleum Company 10 cars on an f. o. b. Group 3
basis, but 3 of the cars were shipped out of North
Texas and 7 out of Oklahoma. Due to the 2 different shipping points we had split that order, and in making our tabulation we inadvertently took that up as 2 different orders, but it was just 1 order. That is all on that.

I have made an examination of service station prices for gasoline in the Mid-Western area, and a comparison between those prices and the prices in the rest of the United States. That was made from the Platt Oil Price Handbook. That is the same Handbook that the Government chart of retail prices was based on.

There is a Platt's Handbook for each calendar year. It shows the service station prices in all the cities, or in a large number of representative cities throughout the United States, for every Monday throughout the year. We took those prices for every Monday. We eliminated from those service station prices the amount of taxes that are included in them. The Handbook tells us how much federal tax and how much state tax is added to that service station price. So we took off the taxes, and we took all those cities shown in there, and added them up and got an average.

We followed that Handbook list of cities exclusively,
with just one exception. The Handbook shows only one
state-wide price for Ohio; it doesn't show any cities for
Ohio. For instance, there is no price shown for such
3046 large cities as Cleveland, Toledo, Cincinnati, Akron,
Youngstown and Columbus. Now, these cities are a
great deal larger than other cities shown in the Handbook, such as Decatur, Illinois, or Quincy, Illinois, or Fargo, North Dakota; so, with that one exception, we threw in those 6 large cities in Ohio, at the state-wide Ohio price.

We didn't have the same number of cities all the way through because the Handbook itself changes over a period of years. You may find a different number of cities reported in one year in the Handbook from another year.

We compared this average of service station prices with the average of service station prices in the Indiana territory.

But one factor accounting for the change in the number of cities was this so-called Iowa Plan, which went into effect on July 1, 1935. As a result of that there was a change in the number of cities which show the service station price.

I might say, too, that the number of cities changes so much after the fall of 1936 that it isn't practicable to go beyond that in any city.

I would say they are representative cities of the whole country. I have taken those from the Handbooks I have just described, which are in evidence as Exhibits for the years 1934, 1935 and 1936.

I have had a chart prepared showing the comparison.

3047 (Chart referred to is marked Exhibit 1013 for identification.)

First of all, the chart covers the entire calendar year of 1934, the entire calendar year 1935, and it runs in 1936 to the end of July.

This, over here (indicating), is 1934. That takes into account this big dip in the fall of 1934 (indicating). That is the end of 1934 there (indicating), just as there is a recovery from that very pronounced dip. Now, the end of 1935 would be right there (indicating). That is distinguished by this rather pronounced rise here, when the advance in crude took place.

Early in January, 1936 crude advanced 10¢ and 15¢ a barrel, and the retail prices of gasoline advanced about ½¢ a gallon.

The figures on the left hand side of the chart represent cents per gallon. At the very bottom, we start with 10¢ and we get up here to 15¢ (indicating).

Each one of these spaces here (indicating), which is 10 inches in extent, represents a difference of 1¢ a gallon in price. This is drawn to such a scale that 1 inch on this represents 1/10¢. Most of the changes in retail prices are measured by 1/10¢.

The heading of this chart is "Service Station Prices ex Taxes." Now, that means that we have eliminated all Federal and state taxes, to put this on a comparable 3048 basis. The tax differs in different states. It may be 2¢, 3¢, 4¢, or it may be up to 6¢. To get the proper average, we had to eliminate taxes to arrive at the retail service station prices, less all taxes, including sales taxes.

I might state that each one of these spaces here (indicating), between the vertical lines, represents a week; but we didn't work this out on a daily basis. It is worked out on a Monday basis, each Monday of the year, to conform with the Handbook, because the Handbook only gives prices on Mondays.

Now, at the very bottom here (indicating), there are some notations which show the number of cities that were averaged. For about the first half of 1934, taking it on the nation-wide basis, we averaged 116 cities. For the last half of 1934,—I am speaking roughly; it isn't exactly the last half—we averaged 123 cities. For all of 1935 we averaged 132 cities. And for the first two months of 1936 we averaged 137 cities. For the next portion of 1936 (indicating), it is a little more than a month, we averaged 136 cities. Then, for another short space of time (indicating), 137 cities.

Now, by that time we were running into the end of May, and there were so many changes throughout the country, due to the spread of this so-called Iowa Plan, that we had to make a lot of changes in the number of cities that we were averaging. By the time we got to the end of
3049 July (indicating), we were getting into a lot of difficulty. There were so many changes at that time, that we broke off at the end of July.

The prices in the Mid-Western area are all in the Handbook also. They are included in the nation-wide study, but they are in the so-called Standard of Indiana territory.

Those prices are shown on the chart by this green line (indicating), which starts at the beginning of 1934, at a little over 13½¢. The green line is always the bottom of the red area and it is always the top of the brown area.

There were 35 cities through most of 1934, that we averaged in the Mid-Western area. Then, through 1935 and December, 1934, there were 28 cities. Then, for the first 7 months of 1936 we averaged 24 cities. The drop from 28 cities to 24 cities is accounted for, again, by the Iowa Plan. There are 4 cities in Iowa which we had to drop out in the 7 months of 1936, because the Platt's Handbook doesn't show any prices for those 4 cities in Iowa, beginning January 1, 1936. There are 4 cities in the Handbook within Iowa.

Now, to trace the green line across the chart: That represents the average service station prices of these various cities in the Mid-Western area, ex taxes, as I have said before. It starts over here (indicating), January 1, 1934, at something over 13½¢. It runs across on a level
3050 line for about 7 weeks (indicating), all of January and a part of February. And then it jumps up, in February, 1934, to a point that is around, I would say roughly.

14 7/10¢. I might be wrong by 1/10¢, but it would appear from this chart that it is about 14 7/10¢. Then it remains level for 3 weeks at that point. Then it begins to go off (indicating).

It comes down, and within 5 weeks it has dropped down to 14¢. Then it continues to drop on down, and reaches a point of about 13½¢ by the end of April; so that, at that point (indicating), it is lower than it was at the beginning of the year.

And it drops even lower here, early in May (indicating), and then it varies from week to week, there are changes, and it runs over here to September (indicating).

Now, in September, 1934 it takes a precipitant drop. There is a vertical drop of 1¢ a gallon. Then it remains more or less at that level for about 3 weeks, and then it drops almost another 1¢ (indicating). Now, at that point, we are in October, 1934.

Then it drops in various stages, in a relatively short time, about another 1¢; and the bottom point of that very pronounced movement (indicating), I would say, is around 10 7/10¢ a gallon. And it reaches that point about the middle of November, 1934.

3051 Then it remains fairly close to that level for a period of about 3 weeks, and then it starts a rather irregular climb (indicating), and then it recovers a great part of that drop; and at the end of 1934 it is about 11 8/10¢. So by the end of 1934 in a period of about 6 weeks, it has recovered about 1¢ a gallon.

It continues that recovery in January, 1935. The maximum recovery in January, 1935, I would say, is 9/10¢.

And then it drops off again (indicating), about 3/10¢, and holds that level fairly constantly until March; then there is further recovery.

There is recovery in April and May, and it gets up to about 13 6/10¢ by May, 1935; and it holds that level on into June. In June, it reaches a maximum point of 13 8/10¢. I am talking straight through here now on the Standard of Indiana territory, on Red Crown, regular grade. And, while I am talking about Red Crown, it is the prices posted by the market leader, Standard of Indiana. I am not talking now, though, about the normal price of Standard. This is the actual service station price of Standard.

Then, in July and in June, too, it starts in June, it begins to go off. Then it has a rather irregular line, running across to the end of 1935.

And then in January, 1936, due to the advance in the price of crude, we have this advance here (indicating), of about ½¢ in the service station price, and it gets up to about 13 9/10¢ in January, 1936.

3052 There is further recovery over here (indicating), and it gets over to a rather irregular but fairly general level in 1936 of about 14 2/10¢; and that is the level at July, 1936, at the end of our study.

The other line, that is, the black line shows the rest of the United States.

That starts on January 1, 1934, at 14½¢, which is about ½¢ a gallon higher than in the Mid-Western area. That falls rather rapidly, and at one point there, around the end of January (indicating), it dips just a trifle under the Mid-Western level. But it recovers within a week, and rises again over the Mid-Western level.

But in February, 1934, it continues a decline which started in January, or about the end of January; and it declines as the Mid-Western price goes up (indicating). So that, for a period starting in February and continuing into May, 1934, the average Mid-Western service station price level is higher than the rest of the United States. If the prices had remained where they were at that time, the prices in the Standard of Indiana territory would have been higher.

Now, then, the price level in the rest of the United States starts to recover from its low point about the end of March. It starts an irregular recovery that continues into June. That recovery from the low point is about 1¢ a gallon, and it gets up to this level here, (indicating), which is about 14 2/10¢.

Then there is an irregular line, which holds stead-
3053 ily for about 2 months, and then it begins to slide off,
(indicating); but it is going off along with the level of the Mid-Western area, but continuing at a level higher than the Mid-Western level; that is, the lines are more or less similar, but the Mid-Western level is lower than the rest of the United States.

The prices in the Mid-Western area were lower, and the extent to which they were lower is indicated by that red area. And as long as you see the red area here, running across the latter part of 1934, and it continues all through that part of 1934, including the period of the recovery, that indicates the price level in the rest of the United States was higher than it was in the Mid-Western area, and it also indicates the extent to which it was higher. For instance, in the very bottom of that drop, which was in November, 1934, the Mid-Western level is, I would say, about ⅜¢ lower than it was in the rest of the United States. The average for the rest of the United States never went down that low. That means that the prices here were considerably more depressed than in the rest of the United States. The rest of the United States never got down below a point of about 11½¢. And, as I said before, in the Mid-Western area it got down to 10 7/10¢.

During the period of the recovery, from that pronounced drop in the latter part of 1934, the line indicating the aver-
age for the rest of the United States continues to
3054 lead the Mid-Western area, and that is indicated by
this red space here.

I wouldn't say that the recovery was more pronounced in the rest of the United States than in the Mid-Western area, because it never dropped as low as the Mid-Western area, so that as a consequence the recovery would not be quite as pronounced. I would say that the recovery in the Mid-Western area was more pronounced from a sub-normal level. I would say from a very low point.

In the other parts of the United States the recovery was ahead of the Mid-Western area, in point of time. It started a few weeks earlier. There was a lag in the Mid-Western area, in period of time, so that we always have through that period of recovery, a higher price level in the rest of the United States than we have in the Mid-Western area. That continues on here into the spring of 1935; and at all times through that period, even when it reaches the high point here, or what is close to the high point, in May, 1935, the rest of the United States is about 3/10¢ higher than in the Mid-Western area.

During the last 2 weeks of June and the first week of July the price level in the rest of the United States drops perhaps 1/10¢ under the level of the Mid-Western area. That continues, although at an irregular line, rather uniformly at 1/10¢.

Then they get together and they coincide for just
3055 1 week. That is the second week in July, 1935.

And then we come to a red area again, which indicates that the price level in the rest of the United States is higher than in the Mid-Western area. That is this red area here (indicating) in the latter part of July and August, running into September.

We find there is just 1 week there, just 1 point, when they come together again. That is in September, 1935. But they immediately diverge, and that is indicated by this red area over here (indicating) which runs through the remainder of 1935 and into 1936, when the rise in price occurs. And that spread through that period ranges from we will say 2/10¢ to ½¢. This would be about ½¢. The outside territory was higher, ranging from 2/10¢ to ½¢ over the Mid-Western areas.

When the price rise occurs, in January, 1936, we still have a higher level in the rest of the United States than we have in the Mid-Western area. That is indicated by this red area over here (indicating). And that is about 3/10¢, upon the average, running through the remainder of January and February, into March.

Then in March we find that the price level for the rest of the United States again drops below the level of the Mid-Western area, for a period of 5 weeks. The extent to which it drops below is very, very small; that is, at the very
most, it might be a little over 1/10¢ and it probably
3056 does not average in that 5 weeks period as much as
1/10¢. It is merely nominal.

Then in April the level of the rest of the United States again rises over the Mid-Western area, and is indicated in this red space here (indicating). It continues, we find, for about 5 weeks, when again, for 2 weeks, the price level in the rest of the United States again drops below the Mid-Western area about 1/10¢. That 2 weeks period is in the latter part of May.

Then there is again a rise in the rest of the United States, which carries the price level over the Mid-Western price level at various amounts ranging from 1/10¢ to 2/10¢, during the rest of the period until the end of July, 1936, where we break off.

In the year 1934 there were 14 Mondays in which the price level in the Mid-Western area was higher than in the rest of the United States, and for all other Mondays in the year it was lower. That is for 1934.

For 1935 there were only 3 Mondays in which the price level in the Mid-Western area was higher than the rest of the United States; and there is 1 Monday when they are on a par, when they happen to coincide. With the exception of those 4, the price level in the Mid-Western area is lower than it is in the rest of the United States.

For 1936 there are 7 Mondays in which the price level in the Mid-Western area is higher than the rest of the
United States; and in the remainder on down
3057 to July 31, 1936, the price level in the rest of the
United States is higher. In 1936 for those 7 weeks,

that difference might average about 1/10¢. In some weeks it is nominal, as is indicated here, and in the week in which the difference was the most pronounced it was about 1½¢. I would say for the 7 weeks it would not average more than 1/10¢.

(Chart, previously so marked for identification, is received in evidence as EXHIBIT 1013.)

Cross-Examination by Mr. Chaffetz.

Q. Don't you know that in this area, located as it is, closer to the source of supply of raw material, under conditions of free and fair competition, you would expect lower prices here for gasoline than you would in the country as a whole?

A. No, I don't think that the proximity to the source of supply, in point of distance, is the sole factor. Transportation cost may be of more importance. In fact, I think it is the most important factor. You may transport crude oil, perhaps by pipe line or by boat, a great distance, much more cheaply than you can, for instance, by tank car. In fact, I know of very few instances in which crude oil is transported by tank car. That is a rather unusual movement. In other words railroad freight is much higher than if moved by boat or by pipe line. 3058

Q. You have to take into consideration pipe lines and tank car movement and tankers?

A. I think you have to take into account many factors.

Q. Considering all of those factors, isn't it true that over a long period of years the price of gasoline in the Standard of Indiana territory was normally lower than the price in the country as a whole?

A. That I couldn't answer. You are getting out of my sphere there also, I might say.

Redirect Examination by Mr. Donovan.

It is true that from this chart it appears that over a period in 1934 the price in the Mid-Western area was higher than the rest of the United States. I think we find a greater variation, a greater spread in the lines in the price level at the time when the price level in the Mid-Western area was

higher than it was in the rest of the United States. That is here (indicating), in March and April, 1934, we have a spread there that is as much as 1¢ a gallon or perhaps more. Now, there are very few times here where you have a red area where the spread is as much as 1/10¢, ex-
3059 cept these few weeks here (indicating), where there happened to be a lag in a pronounced movement. It is a lag in time, I mean.

Direct Examination by Mr. Donovan (Continued).

At your request I have had prepared under my supervision a tabulation showing the variation of average actual service station prices from average normal service station prices in the Mid-Western area.

We started that tabulation July 20, 1934, and carried it over to September 10, 1936.

In determining the actual normal averages in service station prices in the Mid-Western area we used the 28 cities which are shown in the Oil Price Handbook. Those are the same cities that the Government used in its Exhibits 673 and 674. The 4 Iowa cities were excluded there after July 1, 1935, when the so-called Iowa Plan went into effect, and I think that at that time Standard of Indiana ceased posting service station prices in those 4 cities. So that after July 1, 1935, our average is based on 24 Mid-Western cities, instead of 28. We made the tabulation only up to September 10, 1936, because by that time the so-called Iowa Plan had spread to such an extent that it was extremely difficult to make any study beyond that point. That is, Standard of Indiana had discontinued posting service station prices practically throughout its territory.

The prices in the Oil Price Handbook represent actual prices. The average of the actual prices which we have prepared is an average of the daily prices. The
3060 Handbook publishes prices for Monday of each week, but it contains some narrative after the tables which sets forth all the general changes and the local changes that took place throughout the territory, and it gives the date on which those changes took place; so that from that narrative it is possible to use the tables as a basis to work out actual prices every day throughout the entire period. You can tell exactly the prices posted every day.

We added the actual service station prices for all these cities for each day, and divided by the number of cities we were taking into account; and in that way developed an average.

The Handbook did not publish the normal price. You can arrive at that through the actual price, and taking into account the general changes noted in the Handbook, and from that you can develop the normal price. The local changes wouldn't be reflected in the normal price.

As a rule you couldn't determine the normal price for each city when you start out merely with the price shown in the Handbook as of July, 1934. You would have to work from the actual price, taking into account general changes, and as you ran down through the general changes you would find reference in the Handbook to a general change on a certain date, which amounted to so much and which brought the actual price to correspond with the normal price, or to a certain stated relationship to the normal price so that from that you could
3061 develop your normal price. And so, by taking into account all the general changes that took place after July 20, 1934, you could work back and develop your normal price for each city throughout the entire period. After we did that, we went to the Standard of Indiana's office to check the accuracy of our work, and found that that worked out.

We figured out the normal price for each of these days throughout these cities. After we determined the daily average normal price and the daily average actual price, we determined the difference, that is what was the gap, to what extent was the actual price subnormal or below the normal price.

I have a chart prepared which represents in graphic form those variations I have figured out.

(Document referred to marked Exhibit 1014 for identification.)

As to the period of time, this chart starts July 20, 1934, and runs across into September, 1936. The period here indicated, that is, after this rise here in this area (indicating), is the remainder of 1934. That is, this black line is from July 20, 1934 to the end of 1934. The end of 1934 is indicated by that heavier black vertical line.

This black line here (indicating), would be 1935. The remainder of this is 1936, into September.

Each one of these vertical lines represents a spread of 5 days, except for the last one of each month which takes up the remainder of the month. For instance,
3062 if there are 31 days in the month that last area there between the two vertical lines would be 6 days instead of 5 days.

These figures on the margin on the extreme left and right of the chart represent 1/10¢. It starts at the top with 1/10¢. First we start with a heavy horizontal line which is marked "normal." Then we have spaces here between the horizontal lines each representing 1/10¢. It runs down to the bottom which is 2½¢.

That is drawn to scale. Each one of these spaces between the horizontal lines is an inch, and that represents 1/10¢ difference in price.

Again we are dealing with prices ex-taxes. We had to do that to put the thing on a comparable basis, because these prices in the most of the 28 representative cities in the Mid-Western area, which includes 10 different states, may have a difference in the state gasoline tax. So we had to eliminate taxes to put the thing on an equal basis, because we are dealing here with averages of the 28 cities.

This normal line (indicating) is not price. That does not indicate a price level. The heavy black horizontal line is not a price level. As I stated a little while ago, we determined the average normal price of these 28 cities throughout this entire period. Then we also determined the average actual price of the 28 cities, and having those two prices for each day, the average for each day, the average normal and the average actual for each day, we were able to determine the gap,
3063 that is, the disparity, how much the actual was under normal. So this line here (indicating) is simply a level line so that we have something with which to compare the disparity, the difference between the actual and the normal.

The actual represents what the public pays, and the red area (indicating) indicates the difference, the variation between the actual price and the normal price. The red area shows the fraction of a cent per gallon which the actual price was under the normal price. It does not represent the price paid, in figures. It represents the difference, or the variation, and the variation is always below. That is, the actual price throughout this entire period was below the normal price, with the exception of this short period in April, May and June, 1935. At that time they happened to be in agreement. With the exception of one or two shorter periods there they are in agreement in April, May and June, 1935.

I will take our starting point July 20, 1934. We determined what was the normal average price at that point, and then we determined what was the average actual price at that point, and the spread. The difference between the actual and the normal for those 28 cities on July 20, 1934, was exactly 1¢, and that is indicated here by the extent of the red area. That is below normal.

The actual price was 1¢ below normal. Now, that 3064 runs fairly steadily, with the exception of one brief period there, for the remainder of July and for about twenty some days in August.

I do not mean the price was the same, I mean the difference. There could be a difference and a variation of the normal price, but the spread between the normal price and the actual price remains constant. There is a constant relationship there, and that spread is 1¢ throughout that period. Irrespective of what the normal price is, the actual price is 1¢ below the normal price.

Now, there are some changes for short periods in July and in August, and also in September; but in September there is a pronounced reduction in that gap as is indicated by this white area here (indicating), and a much shorter red area above the red line. That took place in the middle of September. You find there a narrowing of the gap or spread, from 9/10¢ to 2/10¢. That means that the actual price was closer to the normal price by 7/10¢. Or, stating it in a different way, the actual price was below the normal price by just 2/10¢. That held for only about 3 days, and then the gap widened again. It widened to 3/10¢, and that was for about 2 days; and then again to 4/10¢, and that held for about 4 days, and then to 5/10¢; then it closed again for a short time.

But again early in October, 1934, we find the gap widened out tremendously. It starts out early in 1934, and we see a tremendous drop, and we go down into November, and by the middle of November the gap be- 3065 tween that normal price and the actual price is 2½¢. That is, the actual price was 2½¢ below the normal price by the middle of November, 1934.

That spread continues for about 7 or 8 days, and then starts a gradual closing up of that gap. That began to close about November 22, 1934 and throughout the remainder of 1934, and by the end of 1934 the actual price was 1-2/10¢ below the normal, so that whatever the normal price is the actual price is still 1-2/10¢ below.

At the beginning of 1935 it was the same as at the end of 1934, that is, 1-2/10¢; and then early in January, 1935, that gap continues to close up, that is, the spread is narrowed between the actual price and the normal price. By the end of January, the actual price is up fairly close to the normal price, that is, within 1/10¢.

It does not hold constantly at that variation, but it is from 1/10¢ to 2/10¢ from then on until we get to about April 8th.

At that time for the first time since July 20, 1934, the actual price coincides with the normal price. That is the first time that the actual price has reached normality.

Through the remainder of April, 1935, with the exception of about 4 days early in May, the actual price continues to coincide with normal until we get into the middle of June, and again there is a spread of 1/10¢ (indicating). That closes up again, and the actual price gets back to
3066 normal, until June 22, 1935, when there is again a 1/10¢ spread. And then, just for a day in July, the actual price is again in agreement with normal (indicating). But, then, immediately after that, in July, 1935, the actual price drops below normal, and continues from then until the end of the period below normal, at varying amounts ranging from 1/10¢ on down to 7/10¢. 7/10¢ is the extreme spread from then on.

The sub-normality never got to a point as low as it was in July, 1934. The most extreme spread from that time on is 7/10¢, whereas in July, 1934, it was 1¢.

(Chart previously so marked for identification is received in evidence as EXHIBIT 1014.)

Cross-Examination by Mr. Chaffetz.

In my studies, I found that there are some cities that are almost continually subnormal. In some cities the situation is more acute than in others.

I think I could answer, in general terms, whether the subnormal price has come to be regarded as the normal price in certain cities; whether the price normally prevailing in those cities is 1¢ below the theoretical, or some amount below the theoretical normal price in those cities. As I said before, there is a variation as between cities, that is, the competitive situation may be more acute in some cities than in others; there may be more price cutting in some cities than in others, or in some areas around the city. But I think that the normal price in these various
3067 cities takes a general competitive situation into account.

The normal price I talk about is not a theoretical price at all. The normal price is posted. The actual price and the normal price are one and the same, unless there is some unusual local competitive situation. That is the fact. I gave you the price.

When I talk about a normal price, I am not talking about a posted price posted by Standard of Indiana as its idea of what the price ought to be. The normal price is the price Standard of Indiana will post at its bulk stations, to be the price at which the gasoline shall be sold, barring an unusual competitive local situation.

It also posts the actual price. It posts the normal price and it posts the actual price. At times those prices are the same and at times they differ.

When Standard of Indiana says the normal price for Chicago is 12¢ but the actual price is 11¢, it is the actual price at which gasoline is sold. The 12¢ price is not a theoretical price. Sometimes gasoline is sold at 12¢, but not when the actual posted price differs. Assuming that on this day the normal posted price is 12¢, and there is an actual price of 11¢ that is posted on the same day by Standard Oil Company of Indiana, then the price paid is the actual price.

I don't agree that the posted price is a theoretical price. I wouldn't say either that it is the price that Standard of Indiana would like to have prevail on that day.

(Tabulation was produced and marked Exhibit 1015 for identification.)

Exhibit 1015 for identification was prepared under my direction. The figures shown thereon are taken from the Sinclair purchase orders, from the impounded records of Sinclair, that are here in Madison. The figures shown on there are correct.

This Exhibit covers the entire calendar year 1935, and the first 4 months of 1936; that is, from January 1, 1935 to April 30, 1936.

I have divided the figures showing the quantities of gasoline purchased as between January and February, 1935, before there is any charge that there was any buying program here, and the purchases that were made during the 14 succeeding months.

I know that all of the Sinclair purchase orders and purchase data that was subpoenaed by the Government and impounded, covering the period ending April 30, 1936, have been introduced in evidence, and the period covered here includes the period covered by those impounded documents, with the exception of December, 1934 and a portion of November, 1934. We did not, in this tabulation, include the purchase data for that portion of November, 1934, and for December, 1934, because we were so pressed for time that we confined our examination to the years 1935 and 1936. We didn't make any audit back of January 1, 1935.

3069 The total quantity of gasoline purchased in the Mid-Continent field by Sinclair Refining Company for January and February, 1935, before there is supposed to have been any buying program, in gallons, was 7,167,407. That is an average of 3,583,703 gallons per month. The total purchases during the 14 months covered by the impounded figures, during the supposed operation of the buying program, namely, from March 1, 1935 to April 30, 1936, were 50,065,388 gallons. The average purchases per month during that period were 3,578,956 gallons.

The average gallonage purchased for the first 2 months of 1935, before the buying program was supposed to be in operation, was 3,583,703 gallons. The average for the first 2 months of 1936, was 3,204,954 gallons.

On this exhibit I have divided these purchases up as among different classes of suppliers in the Mid-Continent field for the 14 months period from March 1, 1935, and I have shown the total gallonage purchased from each of the several classes of suppliers.

We divided the suppliers into 3 types. First, the independent refiners named in paragraph 22 of the indictment. The percentage of the total purchases made from them was less than 31%.

The next class is "Other independent refiners." They would be independent refiners in the Mid-Continent field, other than the 14 that are specifically named in paragraph 22 of the indictment. The percentage of the total purchases made from them was over 53%.

3070 During that period Sinclair Refining Company bought gasoline from major companies as well as from independent refiners. The percentage of its total purchases made from other major companies was over 16%.

The purchases made from all independent refiners, both named and not named, was about 84%; as compared with about 16% purchased through major companies.

On this Exhibit I have also listed the names of the companies, both independents and majors, from which Sinclair bought gasoline in the Mid-Continent field in the 14 months from March 1, 1935 to April 30, 1936. There were 14 independent refiners named in the indictment in the Mid-

Continent field, and Sinclair purchased from all of those except 4. In addition to that, it purchased from 25 other independent refiners in the Mid-Continent field, which were not named in the indictment, and from some majors also. The total number of independent refiners in the Mid-Continent field from which Sinclair bought gasoline during those months was 35.

I would include North Texas as being in the Mid-Continent field. The refiners shown on this Exhibit as being located in Texas are in North Texas and not East Texas. There were 4 major companies from whom Sinclair purchased gasoline during this 14 months period; Continental Oil, Gulf, Louisiana Oil and Phillips Petroleum.

A considerable part of the Government's statistical 3071 evidence in respect to purchases has been stated in terms of cars. I have reduced this Exhibit 1015, which shows purchases in gallons, to a car basis, by dividing the gallonage by 8,000, which is the customary way of reducing gallons to tank cars.

For the first 2 months of 1935 there was a total of 895 cars purchased, which would be an average of 447 cars for those 2 months. The purchases in the first 2 months of 1936 would be 801 cars, which would be an average of 400 cars. So that the average for the first 2 months of 1935, which is 447 cars, would compare with the average for the first 2 months of 1936, of 400 cars.

The total purchases for that 14 months period succeeding March 1st would be 6,259 cars, which is a monthly average of 447 cars, which is exactly the same as the average for the first 2 months of 1935.

I have split up these purchases during the 14 months period in terms of cars as between the several classes of suppliers concerning whom I testified. The purchases from independent refiners named in the indictment would be the equivalent of 1,918 cars, and from other independent refiners in the Mid-Continent field, 3,329 cars. Making a total from all independent refiners of 5,247 cars. In addition to that there was purchased from major companies 1,012 cars, making an over-all total for that 14 months period of 6,259 cars.

(Document, previously so marked for identification, is received in evidence as EXHIBIT 1015).

3072 *Cross-Examination by Mr. Chaffetz.*

As to the purchases of gasoline referred to in Exhibit 1015, the purchase price would certainly have some relationship to the spot market.

Group 3 is not merely the Oklahoma spot market.

I am talking about refiners markets. You were talking about Mid-Continent, which will include a lot of different refinery markets. And Group 3—you can have a market in Chicago that would be a Group 3 market. If you bought in Chicago or in Louisiana, on the basis of Group 3, you would be buying on the basis of Group 3, but that is not the Oklahoma market. Group 3 is a freight basing point which includes a certain number of shipping points within a large area in Oklahoma, and extends over slightly into the northern part of Texas.

From those shipping points, to points north, the freight rate is the same, no matter which point of origin you use. Not only can you ship gasoline from those points on this freight rate, but sometimes a man in Chicago will buy gasoline in Kansas, and will buy it on a basis of f.o.b. Group 3.

Exhibit 1015 shows gasoline purchases that were made within the Mid-Continent fields. It includes all purchases within the Mid-Continent field. And I can say they were not all bought on the basis of Group 3.

3073 *Direct Examination by Mr. Donovan.*

I am familiar with the testimony of Carl Beroth of Acme Petroleum Company, in respect to his business relations during 1935 and 1936, with certain of the East Texas and Mid-Continent independent refiners.

I have made audits of the sales to jobbers, consumers and brokers, made between November 1, 1934 and July 30, 1936, by certain of the independent refiners referred to by Mr. Beroth in his testimony. Specifically, I have made an audit of such sales by East Texas Refining Company, McMurray Refining Company, Grogan Oil Company, Bell Oil and Gas Company, Olney Oil and Refining Company, Cushing Refining and Gasoline Company, Danciger Oil and Refining Company, Inc., and Omar Refining Company for that period. We made the audits right down in the offices of those various refiners, but the records upon which they were based are now here in Madison. Some of them are in the custody of the Clerk, and some are in my possession. We have them available for use by the Government.

companies from the East Texas and Mid-Continent independent refiners during 1935 and 1936. Most of the records upon which those audits were made are here in the custody of this Court.

According to my audit, East Texas Refining Company did not sell any gasoline to Mr. Beroth's company between November 1, 1934 and the end of July, 1936. East Texas Refining Company sold a considerable quantity of gasoline
to other brokers during this time. It sold 11,097,761
3074 gallons to brokers in the calendar year 1935. But
covering the entire period of our audit, that is, for the 21 months from November 1, 1934 to July 31, 1936, it sold 13,257,890 gallons to brokers.

27 different brokers bought gasoline from East Texas Refining Company in 1935. East Texas Refining Company sold 2,869,995 gallons to the defendants in 1935. It sold nearly 4 times as much to brokers as it did to the present defendants.

During 1935 McMurray Refining Company sold to the defendants now on trial 746,332 gallons. During that time it sold 4 cars, 32,011 gallons of gasoline, to Mr. Beroth's company. McMurray Refining Company sold to all brokers in 1935, 1,736,548 gallons, which would be about 215 cars. That is the year's sales. It dealt with 17 brokers besides Mr. Beroth's company.

Cascade Refining Company sold 440,413 gallons of gasoline to major companies during 1935; about 55 tank cars. From what I know of the size of shipments made by the average independent refiner, that was not a large amount of gasoline. I wouldn't be able to say what their total shipment to all buyers were that year, but I know they have a refinery capacity of about 2,000 barrels, so 55 cars wouldn't be a large amount.

I am familiar with Mr. Beroth's testimony as to his relations with Grogan Oil Company in 1935 and 1936. On his direct examination he said that 4 or 5 times, both in 1935
and 1936, Grogan advised him that they had sold bulk
3075 products to the major companies, and he said that he
was in their refinery in Shreveport, and saw Cities Service cars, and Grogan told him that the gasoline was going out to them, and therefore he had none to sell Beroth.

That Grogan Company has a number of subsidiaries. It sells the output of several refiners; Hurricane, Trio and Rodessa. In 1935 and 1936 they were selling the output of those three refiners.

The business that those three refiners did was through the Grogan office.

The Grogan Company and its subsidiaries sold to Cities Service during 1935, 282,559 gallons of gasoline, about 35 cars. For all the defendants that would be 9,903,826 gallons. They sold 12,241,320 gallons to brokers in 1935. So it would appear that the bulk of Grogan's production in 1935 was not going to major companies.

Of that 12,000,000 and over that Grogan sold to brokers in 1935, Beroth's company, Acme Petroleum, bought 738,869 gallons. In 1935 Grogan's office was dealing with 50 different brokers.

During 1935 Trinity Refining Company did not sell any gasoline to the defendants, none at all.

Ocean Petroleum Company sold 30 cars of gasoline to defendants throughout 1935. That company has a capacity of 3,000 barrels daily.

I am talking about the present defendants when I
3076 say "defendants." That excludes Gulf and Texas and Louisiana Oil. I included all the original defendants with the exception of the 6 that are no longer in the case. I excluded Tide Water, too.

I am familiar with Mr. Beroth's testimony as to his efforts to purchase gasoline after March 1, 1935, from Bell Oil & Gas Company.

Bell sold approximately 30% of its gasoline by truck, according to a stipulation in this case. Their truck sales were about 30% of their total sales. Eliminating those truck sales, and comparing the remainder with the gasoline bought by the defendants, the defendants purchased about 12% of Bell's total sales during the year.

According to my audits, Olney Oil & Refining Company sold 4,443,900 gallons to the defendants during 1935. And during the same year they sold 4,487,477 gallons to brokers. So they sold more to brokers during that year than they sold to the defendants. Of the gasoline that they sold to brokers they sold 121,869 gallons to Mr. Beroth's company. Olney dealt with 13 brokers that year, including Acme Petroleum Corporation. So, although they sold 121,000 gallons to Acme, they sold a lot more gasoline to other brokers during the year. Acme got a very small part of Olney's total sales to brokers.

Cushing Refining & Gasoline Company sold 3,741,534 gallons to the defendant companies during 1935. It sold 6,098,060 gallons to brokers during that period; nearly
3077 twice as much to brokers in 1935 as to defendant companies.

Out of the 6,000,000 and some odd gallons that Cushing sold to brokers in 1935, it sold 236,003 gallons to Acme

Petroleum Corporation. Cushing did business with approximately 23 brokers in 1935, including Acme.

I think Mr. Beroth said in his testimony that he did not contact Danciger Oil and Refiners, Inc.; he just passed them up. Danciger sold brokers over 4,000,000 gallons of gasoline in 1935.

In Beroth's testimony with respect to Omar Refinery, he said he did not try to buy from Omar during 1935 and 1936; that Omar had certain contracts which took the major part of their gasoline, so that Beroth thought it useless to solicit them. Omar sold 3,381,545 gallons of gasoline to brokers during 1935.

I want to make some corrections in the record. At the opening of the session this morning I had discussed Exhibits 874, 875, 876, and 877, and I neglected to mention that those exhibits cover purchases made by major companies from both independent refiners and brokers. I do not believe this was clear during my testimony and from the Exhibits.

I testified yesterday that Government Exhibits 747 to 751, both inclusive, purporting to show the amount of purchases by the defendant companies other than Sinclair went as far only as April 30, 1936. I have made a study of
3078 the amount of major company purchases from then
to the end of 1936. The average monthly purchases for the last 8 months of 1936 ran around 2,000 cars a month. Our independent audit for that period from March, 1935 to April, 1936, indicates that the major purchases averaged around 1,700 cars a month. Now, that is somewhat more than what the Government audit shows. That difference may be attributed to the fact that we are taking all purchases of gasoline irrespective of grade. The Government audit purports to show the volume of purchases limited to regular grade and third grade gasoline. We are taking all gasoline.

In the last 8 months of 1936 the volume of purchases ran around 300 cars a month more than it did in the 14 months preceding. After April 30, 1936 these defendants were purchasing more gasoline from independent refiners and brokers than they had been before.

I have taken the Government audit and determined the average purchase per month by adding to their figures Sinclair's purchases as we determined them. I have taken it in two different ways. I have taken their figures and added Sinclair's figures, and then I have taken our own figures, including Sinclair.

I have taken the Government figures, added Sinclair, and found that the purchases in the last 8 months of 1936 were about 27% greater than for the 14 months preceding.

Taking my own determination of the volume of the buying by the majors in that 14 months period, I find that 3079 the increase was about 17% in the latter part of 1936.

Taking the Government's audit, eliminating the purchases made by certain majors which are no longer defendants, and then adding to that the purchases by Sinclair, I have arrived at a monthly average of a little less than 1,600 cars during the period March, 1935 to April 30, 1936. My own audit, taking all the gasoline into account, not limiting it merely to third grade and regular grade, shows about 1,700 cars a month. That would mean that in the 8 months after April 30, 1936 the defendant purchases from independent refiners averaged from 300 to 400 cars more.

The course of prices for gasoline during May, June, July, August and September, 1936 was generally downward. The published quotations show a drop for both grades of gasoline of about ½¢ a gallon. When I say both grades, I mean regular grade and third grade.

For that 5 months period alone, the average monthly purchases of gasoline by these defendants from independent refiners was still higher. It ran around 2,300 to 2,400 cars a month. This 5 months period in 1936 shows an increase over the similar period in 1935 of about 650 cars a month. That is based on my own figures. But my figures are higher than the Government's as to volume; so that, basing it on the Government figures, the difference would be even greater. And during that time in 1936 the market was going down.

3080 I have made a comparison between the average purchases during this 5 months period when the price was going down and the average purchases during March, April and May, 1935 when the market was going up. In March, April and May, 1935 when the market was going up, the majors were buying from 800 to 900 cars a month less than during the middle of 1936, when prices were going down. The buying in 1936, when the market was going down, in volume was about 53% higher than it was in the spring of 1935, when the prices were going up.

Tank car prices of both grades of gasoline, that is, regular and third grade, advanced ¼¢ in the last 3 months of 1936. The major volume of buying from independent refiners was much less in the last 3 months of 1936 than in the preceding 5 months, when the market went down ½¢. It averaged about 1400 cars a month, whereas the average for the 5 months before that, when the price was going down, was around 2350 cars.

There was a decline in the monthly rate of buying by the majors in the last 3 months of 1936 of more than 900 cars a month, which is equivalent to about a 38% decrease in volume of buying. In spite of the decrease in the amount of purchases, the market went up.

I am familiar with the testimony given by Mr. Arthur Dyer with respect to the total quantities of gasoline sold during 1935 by those East Texas refiners specifically named in the indictment, and also by all of the East Texas 3081 refiners, including those actually named in the indictment. Mr. Dyer testified that the total gasoline sold in 1935 by the East Texas refiners named in the indictment was 285,592,188 gallons, and that the total gasoline sold in that year by all the East Texas refiners was 378,920,346 gallons.

I am familiar with the allegations of Paragraph 21 of the indictment that the quantities of gasoline purchased by the defendants from the East Texas independent refiners, members of the East Texas Refiners' Association, amounted to more than 50% of all the gasoline produced by those refiners.

From my audit I can tell you how much gasoline was purchased by the present defendants in 1935: first, from the East Texas independent refiners specifically named in the indictment; and, second, from all East Texas independent refiners. The present defendant major companies bought 40,195,754 gallons from the East Texas independent refiners named in the indictment. From all East Texas refiners they bought a total of 45,598,453 gallons.

I have prepared charts showing the comparison between those amounts of gasoline sold by the East Texas independent refiners in 1935 and the amounts which I have mentioned which were purchased by the defendant major oil companies. Exhibit 1018 for identification shows the total gasoline shipments by those East Texas independent refiners named in the indictment: that is, about 22 3082 independent refiners; and, of course, we are dealing with the year 1935. That shows that the total shipments of those independent refiners amounted to 285,592,199 gallons. That figure is shown up here at the top (indicating).

This chart is drawn in such a manner that this total distance from the top to the bottom indicates a volume of 285,000,000 gallons.

proportion of those total sales by all that group of independent refiners was taken by the major companies. That amounts to 40,195,754 gallons; and in per cent, that is 14.07. In other words, out of the total sales by those East Texas independent refiners named in the indictment the present defendant majors took 14%.

Exhibit 1017 for identification deals with the same period of time, that is, 1935. It also deals with East Texas independent refiners, but it covers all East Texas independent refiners, and it shows that their total sales for the year 1935 amounted to 378,920,346 gallons. Of those total sales, the present defendant majors took 45,598,453 gallons. That is just a trifle over 12%.

This chart is drawn to scale. The distance from the bottom to the top represents the total sales volume of 378,000,000 (indicating); and the part that the majors took,
that is, the 45,000,000, which is 12%, is this red portion
3083 here (indicating) at the bottom. That shows graph-
a ically the proportion of the total sales that the present
defendant majors took.

By the Court

I have never made a computation as to how much of that blue is represented by the sales made to the Gulf, Texaco and Tide Water. It can be made, but I have never made it. These were made up recently; they were not made a long time ago while those companies were still defendants.

Cross-Examination by Mr. Chaffetz.

I left out Cities Service Export from the red because it is no longer a present defendant company. I do not know whether or not Cities Service Export Company participated in the buying movement charged in the indictment during 1935. I don't know whether Tide Water or Louisiana Oil & Refining Company did. I am limiting this to the present defendants.

This chart, Exhibit 1017, covers all of the production of the independent refiners in East Texas. It covers all the production of the independent refiners to whom it refers; it covers both their sales in interstate commerce and their local trucking sales. I understand that some of the independent refiners in East Texas do a very large local trucking business. I wouldn't say I know it.

3084 *Direct Examination by Mr. Donovan (Continued).*

(Charts referred to received in evidence as EXHIBITS 1017 and 1018.)

I have made myself familiar with the testimony and exhibits in this case relative to the total gasoline sales made during 1935 and 1936 by a number of Mid-Continent refiners. I will read the list of the Mid-Continent refiners I refer to in this connection: Anderson-Prichard Refining Company, Coltex Refining Company, Bell Oil & Gas Refining Company, Black Gold Refining Company, Champlin Refining Company, Cosden Petroleum Company, Cushing Refining & Gasoline Company, Danciger Oil & Refineries, Inc., Deep Rock Oil Corporation, Derby Oil Company, Dickey Oil Company, Eason Oil Company, El Dorado Refining Company, Johnson Oil & Refining Company, Kanotex Refining Company, Lion Oil Refining Company, Olney Oil & Refining Company, Omar Refining Company, Panhandle Refining Company, Rock Island Refining Company, Rodessa Oil & Refining Company, Root Petroleum Company, Shamrock Oil & Gas Company, Sun Company, Sun-Ray Oil Company, Vickers Petroleum Company, Waggoner Refining Company, and Wilcox Oil & Gas Company.

In addition to those refiners whom I have just mentioned, I have figures showing gasoline sales by the Taxman Company for the entire year of 1935, and 1936 down to July 31st. The Taxman Company was at that time an independent refiner operating in the Mid-Continent field. It is shut down now. We made an audit of Taxman Refining Company from November 1, 1934 down to July 31,
3085 1936. We have attempted to secure further figures for the remainder of 1936, but were unable to do so because the refinery is out of business. I believe it is being scrapped at the present time.

I have looked at the way the indictment defines the Mid-Continent field as including Oklahoma, North and West Texas, and southern and eastern Kansas, southern Arkansas, and northern Louisiana. All these refineries are located in the Mid-Continent field as defined by this indictment, and all of them are independent refiners as defined in the indictment, all those I read off with the exception of Deep Rock. The testimony in this case is that Deep Rock is to be classified as semi-major.

From the standpoint of sales volume in 1935 and 1936 Deep Rock, compared with the independent refiners operating in the Mid-Continent field, was about the same size, although with smaller refinery capacity, as Champlin, Lion, Coltex, Cosden, Kanotex, and Root Petroleum.

I believe that during the period covered by the indictment the defendant companies bought gasoline at one time or another from all but two of the independents that I have named. I am not sure about Derby. I don't think they did from Eldorado or Sun.

I would consider Sun in the eastern part of the United States as a major company, but here in the west, they have
a small refinery at Yale, Oklahoma. It has a crude
3086 capacity of about 5,000 barrels. It isn't engaged in
marketing, and it sold its entire output on the spot
market, and practically all of it in the Standard of Indiana territory. I think it is to be classified, in so far as its Yale, Oklahoma, refinery is concerned, as an independent.

The Globe Company of Illinois made some purchases, I think, from Sun; I don't recall whether those purchases were made out of the Yale, Oklahoma refinery. They may have been; I am not sure about that.

This list of 29 refiners does not include all the small refiners that were operating in the Mid-Continent field in 1935 and 1936. There is a much larger list than that. This is just a partial list of the Mid-Continent independent refiners. These refiners which I have named include all the Mid-Continent independent refiners which are specifically named in the indictment.

Fourteen Mid-Continent independent refiners, which are included in this list, are specifically named in the indictment. The total gasoline sold in 1935 by these 29 independent refiners was 903,296,529 gallons. In 1936, it was 1,004,006,200 gallons.

The 14 named in the indictment would be a representative group of the whole number from the standpoint of crude capacity, the operating rate; from the geographical location and the market outlets that they would normally have.

The Mid-Continent refiners specifically named in the
3087 indictment in 1935 sold 377,988,736 gallons of gaso-
line; in 1936, 416,923,200 gallons.

I have seen the allegations in paragraph 23 of the indictment that the defendants purchased from the Mid-Continent independent refiners in the alleged buying program nearly 50% of the gasoline sold by said Mid-Continent independent refiners.

From my audit I can tell you how much gasoline was purchased by the defendant major companies in 1935 and in 1936 from those 29 Mid-Continent small refiners. In

1935, those purchases amounted to 93,394,727 gallons; in 1936, 109,378,261 gallons.

If I were to limit the amounts of gasoline purchased by the defendant companies to those Mid-Continent independent refiners named as alleged co-conspirators in the indictment, the amounts would be: for 1935, 64,440,712 gallons, and for 1936, 80,240,958 gallons.

I have prepared charts showing these comparisons.

(Charts referred to received in evidence as EXHIBITS 1019, 1020, 1021 and 1022, respectively.)

Exhibit 1023 for identification shows the 6 chart Exhibits all drawn to the same scale.

(Chart referred to received in evidence as EXHIBIT 1023.)

Exhibit 1019 relates to the 14 Mid-Continent independent refiners named in the indictment and shows that 17% of their total sales in 1935 was taken by the defendant
3088 major companies. The red area here indicates what proportion of the total the majors took. That would mean that those 14 independent refiners sold to other customers practically 83% of their total sales.

Exhibit 1022, covering 1935, relates to all 29 Mid-Continent independent refiners, including the 14 that are shown on Exhibit 1019. The chart shows that of their total sales the defendant major companies took a little over 10%. The red area at the bottom of the chart indicates the relative portion of the total that the defendant majors took. So those 29 independent refiners sold to other customers almost 90% of their total output.

Exhibit 1020 covers the 1936 sales of those Mid-Continent independent refiners named in the indictment, and shows that 19% of their total sales was taken by the defendant major companies. So those 14 Mid-Continent independent refiners named in the indictment sold to other customers about 81% of their output in 1936.

Exhibit 1021 covers the 1936 total sales of all 29 Mid-Continent independent refiners and shows that less than 11% of those sales were taken by the defendant major companies. So those 29 Mid-Continent independent refiners sold elsewhere to other customers over 89% of their output for 1936.

I have no chart for 1936 in East Texas because I don't believe that Mr. Dyer testified as to any figures of gasoline shipped out of the East Texas field in 1936, so that we had no basic figures to work on. We only had them for 1935.

3089 *Cross-Examination by Mr. Chaffetz.*

Exhibit 1021 covers all the sales, whether or not they were sales in the Indiana territory, that were made by that particular group of independent refiners. It includes truck sales as well as tank car sales. I know that most of those Mid-Continent refiners I referred to do a substantial business in the Indiana territory. I don't know that all of them do.

I know the extent to which particular companies located in Arkansas and northern Louisiana do business in the Indiana territory. I wouldn't say that I know what all of them do. It might be that some of them don't do a very large part of their business in Indiana territory. I wouldn't say that their market is largely to the southeast of where they are located. Their logical market would be where they have a freight differential, and they would have a freight differential in Louisiana, Arkansas and northern Missouri. But they could well be doing business throughout the Standard of Indiana territory.

Direct Examination by Mr. Donovan (Resumed).

Q. I just want to call your attention to page 22 of the indictment, paragraph 23, and direct your attention to the allegation that the "said quantities 3090 of gasoline purchased from said independent refiners in said buying program have amounted to nearly 50% of all the gasoline sold by said independent refiners."

It was upon that allegation that you made your calculation~~;~~ is that correct?

A. Yes, insofar as the total sales by those independent refiners were concerned.

Mr. Chaffetz: Q. Those that were named in the indictment?

A. Well, no; all independent refiners. I took all their sales just as the indictment reads.

Mr. Donovan: Q. On page 9, allegation 6, I direct your attention to the allegation that: "Refineries are also located in the aforementioned crude producing states"—that being Louisiana and Arkansas as named in the early part of paragraph 6. Is that correct?

A. That is correct.

Q. (Continuing reading) "and substantial quantities of gasoline so manufactured in those states are transported in interstate commerce, principally by tank car, into each of the states in the aforesaid Mid-Western area."

It was upon that you based your calculations in the Mid-Continent field?

A. Yes.

3091 Mr. Chaffetz: Q. That allegation does not say that all the independent refiners in the states of Louisiana and Arkansas sell any substantial part of their gasoline in the Indiana territory, does it?

A. No, it does not single out any one refinery.

By Mr. Donovan

I have now made a computation indicating how much of the blue portion of those charts indicates sales to dismissed defendant companies.

During 1935 the East Texas independent refiners sold to those defendant major companies who have been dismissed from the case: Cities Service Export Oil Company 7,782,025 gallons; Louisiana Oil and Refining Company 11,158,406 gallons; Tide Water Oil Company 6,539,123 gallons; Gulf Refining Company 17,824,000; Texas Company 4,986,011 gallons. That is a total to those 5 major companies which were originally defendants in this case, and are no longer defendants, of 48,289,565 gallons.

With Gulf and Texas out the total would be reduced. That would leave 3 majors, that is, Cities Service Export Oil, Louisiana Oil and Tide Water Oil. The total for those 3 would be 25,479,554 gallons.

Exhibit 1017 shows that the majors that are still defendants in the case took 12% of the total sales of all East Texas independent refiners. If we include the purchases
made by these 5 major companies which were origi-
3092 nally defendants in the case, and are no longer de-
fendants in the case, that percentage would be increased from a little over 12% to less than 25%. The indictment alleges that these companies bought 50% of all the gasoline produced by the East Texas refiners.

Confined to the defendant majors exclusive of Gulf and Texas the percentage would be increased by less than 7%. In other words, it would still be under 19% of the total. That is, with Texas and Gulf alone out and all other original defendants in.

Exhibit 1022 shows that the major companies still defendants in the case took from the Mid-Continent independent refiners about 93,000,000 gallons out of a total of over 900,000,000 gallons. That is, they took about 10%.

This Exhibit 1022 is limited to the majors that are still defendants. But if we add to that the purchases by the 6 majors that were originally defendants, and no longer defendants, that would make the total gallonage by the original defendant major companies 103,732,164. Now, that would be an increase of just a little over 1%. That would be about 11½% of the total, instead of 50% as is alleged in the indictment.

Exhibit 1019 is the chart as to the Mid-Continent refineries specifically named in the indictment. That shows that the present defendant major companies bought about 64,400,000 gallons out of a total of about 378,000,000 gallons, and that was about 17%. The major companies that were originally defendants and are now out of the case bought only 403,348 gallons, and it is just about 1/10 of 1%, 3093 so that the inclusion of those major companies on this chart would not affect the red area perceptibly. In fact, it would make practically no difference in that percentage, to include all the original defendants. So that computation, instead of 50% as alleged in the indictment, would be slightly over 17%.

As to the figures with respect to Tide Water, I refer to Government Exhibits, their audit, Exhibits 747 to 751. That shows the quantities in tank cars purchased by Tide Water in the East Texas field. It was a very small number of cars. I do not recall the exact number, but it was very small.

According to Government Exhibit 750, 15 cars were bought by Tide Water in the Mid-Continent field; 15 cars in the entire 14 month period.

The company that did buy in the Mid-Continent was Tide Water of Oklahoma. I don't know whether it was indicted or not.

At your request I have made an investigation to determine whether or not the defendant major oil companies purchased from independent refiners at high, arbitrary and uniform prices during 1935 and 1936, as charged in paragraphs 21 and 25 of the indictment.

We made an audit to see what prices were paid for third grade and regular gasoline by the defendant com- 3094 panies in their purchases from independent refiners and brokers in the Mid-Continent and East Texas fields during 1935 and 1936.

In addition to that we made an audit of sales, I think it was by 27 Mid-Continent and East Texas refiners to jobbers and consumers and brokers covering the period of 21 months, from November 1, 1934 on down to July 31, 1936.

We wanted to see what the majors really did pay when they bought gasoline from these independent refiners, to see whether they paid a high price, whether they paid a uniform price, and whether there was anything arbitrary about the price. Then we wanted to see what the independent refiners sold the jobbers and consumers for, because that was what the publications based their quotations on, the spot sales by independent refiners, and, of course, brokers and major companies as well. But it is the sales by refiners and brokers, and when I say "refiners", that is majors and independent refiners; it is those sales to the jobbers and consumers that are reflected in the trade publication quotations. We went and examined to see what they really sold to this type of customer at, and compared those sales prices with the quotations.

I have not completed those audits, but I have got through the entire year of 1935 and some portions of 1936. My audit for the price of third grade and regular gasoline paid by the defendant companies for purchases from
3095 independent refiners was based on invoices, purchase
orders, and possibly confirmations of the purchase orders. The independent refiner might secure a sales confirmation upon receipt of the order. We would examine that. There are certain of those records now impounded in this court.

My audit of the prices paid by jobbers and consumers in their purchases from independent refiners was based on the records of the independent refiners themselves. We went into the offices of independent refiners and examined their records to see just what they were selling to jobbers and consumers for. I have here our records upon which we based that audit in that respect. They are here and available to the Government.

I have prepared charts showing the prices paid in the spot market for third grade and regular gasoline during 1935 by the defendant companies, and also the prices paid in the spot market by jobbers and consumers for third grade and regular gasoline during the same period, if you limit spot sales to flat price sales, and further limit them to Group 3 and Oklahoma refinery f. o. b. points.

These charts show all flat price purchases made by the defendant major companies from independent refiners, and those purchases are not merely confined to the Mid-Continent field. They include purchases made in the East Texas field if they were made on an f. o. b. Group 3 basis. And of course they include purchases made in the Mid-Continent

field only if they were made on an f. o. b. Group 3
3096 basis, or f. o. b. refinery basis at the Oklahoma
refinery.

The purchases on these charts were limited to purchases f. o. b. Group 3 and f. o. b. Oklahoma refinery, because these charts have superimposed on them the daily price quotations appearing in the Chicago Journal of Commerce and Platt's Oilgram for the Oklahoma refinery market throughout the year 1935, and we have included in these charts only such spot sales as could properly compare with those trade publication prices.

These major purchases in East Texas were not disclosed on the chart I talked about yesterday. That chart yesterday, insofar as the East Texas field is concerned, was limited to sales made at a flat price f. o. b. refinery out of East Texas. Now, I have made another chart that does include purchases made in the East Texas field but upon an f. o. b. Group 3 basis, so there is no duplication in those purchases. They are entirely different, that is, the shipments have different f. o. b. points. Those two charts together will show all the East Texas purchases. They are two charts on one piece of paper, they are really a duplicate chart.

(Chart referred to is marked Exhibit 1024 for identification.)

The upper chart is the upper half, that is, this part up
here, the "defendant major oil companies". That
3097 represents and contains the flat price purchases by
defendant major oil companies. Now, first, it is limited to regular grade and third grade gasoline, so that, if there were any purchases made by major companies of gasoline other than regular grade or third grade, they would not be reflected on this chart. The reason for that is that there are graphs here showing the quotations of the trade publications for only two grades of gasoline, regular grade and third grade. Those are the two grades mentioned in the indictment. So, we put on this chart only those two grades of gasoline, which are comparable to the quotations, the price range. So we eliminated anything that was not third grade gasoline or was not regular grade gasoline.

Now, there is nothing on the chart that wasn't bought on a flat price. That would exclude any purchases made on a publication basis. By this I mean any purchase at a price to be determined not at the time the purchase is made, but at the time the shipment is made, and then based on a published quotation. It does include purchases made at a flat price from independent refiners and brokers.

There is nothing on that chart that wasn't bought either f. o. b. Group 3 or f. o. b. refinery out of an Oklahoma refinery.

F. o. b. Group 3 would mean this, that if a refinery was located, say, in North Texas, the refiner would have to bear the freight cost as far as a point equivalent to Group 3.

That is practically the same for the East Texas re-
3098 finery, because we have had testimony that there is a
freight differential of about ⅛¢. If it was a refinery located in East Texas, selling gasoline for northern shipment, that East Texas refinery would have to bear the freight cost to equalize with Group 3. Group 3 is Oklahoma. And the freight from Oklahoma north is the equivalent of ⅛¢ less than it is from East Texas north, so that the refinery in East Texas, if it was selling at identically the same price as the refinery in Oklahoma, would be receiving about ⅛¢ less, net, for his gasoline than the Oklahoma refinery. In other words, the Oklahoma refiner has a freight differential advantage over the East Texas refiner of about ⅛¢ on a northern shipment.

F. o. b. refinery means that there is no factor of freight entering into the transaction at all. The buyer agrees to purchase that gasoline at so much and to stand the freight from the refinery to the ultimate destination. The shipper has nothing to do with freight at all. He gets a flat price at so much. That is what he gets for his gasoline.

So, with these eliminations I have described, the top part of the chart shows the flat price purchases of third grade and regular grade gasoline by defendant companies in 1935 from independent refiners and brokers in the Mid-Continent and the East Texas field on an f. o. b. Group 3 or f. o. b. Oklahoma refinery basis.

3099 The lower chart shows purchases by jobbers and consumers from independent refiners, and is based on an audit of sales from independent refiners and brokers.

We audited Bell Oil & Gas Company, whose refineries are located in North Texas and the Panhandle; Champlin Refining Company, whose refinery is located in Oklahoma; Cushing Refining & Gasoline Company, which has two refineries in Oklahoma; Danciger Oil & Refineries, Inc., which has a refinery in the Panhandle of Texas and in the East Texas field, and, in addition to that, does a certain amount of brokerage business. That independent is referred to in the indictment as Danciger Oil & Refining Company. I believe its name was changed several times, but they are one and the same. That is, the one that is named in the indictment is the one we audited. Dickey Oil & Refining Company has its refinery located in Kansas; Eason Oil Company in Oklahoma; Olney Oil & Refining Company in North Texas and the Panhandle; Omar Refining Company in Oklahoma; Panhandle Refining Company in North Texas and the Panhandle; Rock Island Refining Company in Oklahoma; Shamrock Oil & Gas Company in the Panhandle; Taxman Refining Company in North Texas; Waggoner Refining Company in North Texas; and Wilcox Oil & Gas Company in Oklahoma.

Now, all those 14 independent refiners are named in paragraph 2 of the indictment. They are named as alleged co-conspirators. And they are scattered all through
3100 North Texas, the Panhandle, Oklahoma, and Kansas.

We audited sales of other companies that are not named in the indictment. We audited Vickers Petroleum Company, located in Kansas, and Rodessa Refining Company, located in Louisiana. They are Mid-Continent refiners not named in the indictment.

We audited Tansel Petroleum Company, which is a broker, but that audit was very abbreviated because we went into the period of 1935 when the market was advancing.

Then, of course, we audited a certain number of East Texas refiners. Our audit of the East Texas refiners was limited quite considerably. We tried to cover all the 22 named in the indictment as alleged co-conspirators, but many of these were not operating to any substantial extent during the period covered by the indictment, due to the fact that they did not have Federal Tenders. Some of them have gone out of business since, or they have gone into consolidations, or for one reason or another, we were unable to secure access to their records.

The East Texas refiners whose books we did audit are East Texas Refining Company, Grogan Oil Company, McMurray Refining Company, Solvex Refining Company, Tyler-Texas Refining Company, Texas Oil Products Company, and Wabash Refining Company. In addition to that we audited the records of Marimac Oil Company, which is a broker selling the entire output of Wabash Refining
3101 Company. We audited Hurricane Petroleum Company and Trio Refining Company, which are tied in with Grogan Oil Company.

I wouldn't say that is an all-inclusive list of the Mid-Continent and East Texas refining companies which were operating in the Mid-Continent and East Texas fields during 1935 and 1936, but it is all-inclusive as to the ones we were able to get access to or which had records which could be audited at this late date. It covers practically all of those operating on Federal tenders in East Texas during that period.

Our audit included sales to jobbers and consumers by those independent refiners; and in addition to that we included Deep Rock Oil Corporation and two majors, where we had a record of their spot sales to jobbers and consumers.

Those majors were Mid-Continent Petroleum Company and Continental Oil Company. I didn't make the audits for those companies. They were testified to by the accountants of those companies, here on the stand. I testified as to the audit made by me of Deep Rock.

We did not include in our audit sales to jobbers or consumers by any other major or semi-major companies. Most of the majors that do any selling on the spot market to jobbers and consumers deliver out of cities other than those down in the Southwest; that is, out of such cities as Kansas City, St. Louis and Chicago. Their sales are not really on
a Group 3 basis. They require a lot of adjustments to
3102 work them back to a Group 3 basis.

The volume of sales made by Continental or Mid-Continent is just about on a par with those independent refiners, or perhaps might be a little less. Their spot sales would be similar to what these independent refiners did.

The first thing we did in making our audit was to secure and check all invoices. The invoices are invariably numbered consecutively. We first checked the numbers to make certain we had all invoices, in other words, all sales. Then we went through those invoices and eliminated the records of the transactions that we were not interested in. For instance, we were not interested in truck sales. So we eliminated any invoice that pertained to a truck sale. We were trying to limit our audit to tank car sales. We eliminated invoices covering sales of material other than gasoline. Now, a lot of the sales by independent refiners relate to kerosene, to naphtha, distillate, gas oil, fuel oil, and coke. We eliminated all of that sort of thing. My testimony as to the amounts of gasoline sold by the East Texas and Mid-Continent refiners as compared with the amount of gasoline bought from those refiners by certain of the present defendant companies, referred to sales to all other types of customers (including brokers) other than the defendant majors.

I testified that some of the sales on the chart, Exhibit

1024, were spot sales to jobbers and consumers, made
3103 by Continental Oil Company and Mid-Continent Oil
Corporation. I understood your question at that time to be that you wanted to know what the volume of spot sales by those majors might be. They might have been a great deal more than what is shown on this chart. As a matter of fact, the spot sales by, for instance, Continental Oil on this chart, is limited to about 15. Mid-Continent is small, too. Compared to the spot sales of independent refiners shown on this chart, the spot sales by these two companies were very small.

We came to Madison early in February, 1937 to start our audit of sales by these independent refiners to jobbers and consumers, which is the lower part of the chart. The reason we came to Madison was that at that time many of the records of the independent refiners were impounded here. We examined those records here, and then we found that the records that were here were incomplete, to make a detailed examination. We made an audit, and this is what we have.

We found, for instance, that there were some independent refiners as to which there were no records here at all in Madison such as, for instance, Wilcox Oil & Gas Company and Shamrock Oil & Gas Company. So we then went to the offices of these independent refiners that were named in the indictment and to the extent that we could secure access to the records, that would be all-inclusive as to the Mid-Continent field, we audited the records of sales to jobbers, brokers and consumers.

3104 We did omit an audit of jobbers where we found that they were under a formal contract, because we were not interested in contract sales; we were interested in the spot sales. Our audit covered a period from November 1, 1934, down to July 31, 1936, that is, a period of about 21 months.

We completed our field work in September, 1937, and since that time we have been engaged in tabulating the results of that field work, and building charts. The lower part of that chart is based upon that auditing work.

I wouldn't say that that chart shows purchases made by jobbers and consumers from brokers in the spot market. We have, of course, two independent refiners that conducted a certain amount of brokerage business, that is, Bell and Danciger; but the number of brokerage transactions in that chart is very, very limited.

The chart includes all transactions which we audited, and which were made between jobbers and consumers and the independent refiners which I have mentioned, all such transactions which were made at a flat price and f. o. b. Group 3, or f. o. b. refinery out of Oklahoma.

We eliminated some transactions. We didn't include any spot sales to brokers, and there would be a large number of those, because neither trade publication purports to reflect spot sales to brokers. The Chicago Journal of Commerce purports to reflect spot sales to jobbers and consumers, Platt's Oilgram purports to reflect spot sales
3105 to jobbers. So we had to eliminate certain types of customers.

And, even as to consumers, we eliminated certain types because the Journal, although it purports to report sales to consumers, means by that industrial consumers. It does not purport to cover sales to states or municipalities or other political subdivisions.

I am speaking now of the classes of customers that we eliminated. Then, of course, there are sales made to certain public utilities. A public utility might be called a consumer, and an industrial consumer; but very frequently sales were made to railroads on a competitive bid basis. A refiner, we will say, might be asked to make a bid, and might submit its bid today, but might not actually get that order for 2 weeks. The date of the order, then, would be 2 weeks hence, but that would not be representative of the market. It would have no bearing on the market, and would not be indicative of what the market was at the date the order was entered into, because the bid was made 2 weeks before that, based on current market conditions at the time the bid was put in. There were not a great many such transactions in comparison with these spot sales to jobbers. In any case, we eliminated them.

In 1935, the publications reported prices only on regular grade and third grade material. Of course, they also reported on special grades of material, such as 375 and 360 endpoint; but they did not report on what the refiners
3106 term intermediate bracket or intermediate grade; that would be gasoline falling within an octane range of 63 to 67. The trade publications did begin to report an intermediate bracket in April, 1936, but there were no published prices of that type of material in 1935. And, of course, the indictment mentions only regular grade and third grade. So we eliminated from consideration any intermediate bracket material, which would be 63 to 67 octane.

We eliminated, of course, all 375 and 360 endpoint gasoline, natural gasoline, and what you might call off-specification material, or unusual specification material. For instance, I previously pointed out that Danciger's East Columbia plant turned out a special type of gasoline that was of unusually high octane. Some of that was bought by Shell Company for aviation purposes. We eliminated that. We eliminated some of that unusual specification material that was sold by Deep Rock. For instance, Champlin made what they called 450 endpoint. That would be eliminated.

There were certain types of transactions that we eliminated. Any transaction made on a publication basis was eliminated. We confined ourselves to flat price transactions. Any time where the price was not fixed at the time the order was entered into, that would be eliminated.

Then, in addition to that, we would have sales made on written contracts, and the contract would specify how the
price was to be determined; that is, it was to be based
3107 on a publication, or maybe on the average of 2 publications.

Then some of these jobbers were under an informal agreement. Perhaps the agreement was evidenced by a letter, or it might be even oral.

We would not include any sale that was not made on an f. o. b. Group 3 basis or f. o. b. refinery out of Oklahoma.

I have stated that that chart, Exhibit 1024, showing purchases by major companies, does not show any purchases made by major companies where the price agreed on was the price to be published in the Chicago Journal of Commerce or some one of the trade publications on date of shipment. They are limited to flat price transactions. That is to say, that where the price agreed on was expressed as the low of the Journal, date of shipment, or ⅛¢ below the low of the Journal, date of shipment, or the average of the Journal, date of shipment; that is not on the chart. But I have audited the number of purchases made by major companies from independent refiners, where the parties agreed to pay for the gasoline on that basis, and I could furnish you with that information.

On January 10, 1935, the price of third grade had a range from 3¾¢ to 4¢. If a major company called up an independent refiner on that day and ordered 10 cars of gasoline to be shipped on January 21st, and agreed to pay the independent refiner the low of the Journal, date of shipment,
the price the major company would have paid the
3108 independent refiner for this gasoline on January 21st
would have been 3½¢. He would pay ¼¢ less than the low of the published quotations at the time the order was placed.

So when a buyer buys gasoline at the low of the Journal, date of shipment, the price which will be paid for that gasoline may be even lower than what the low of the Journal was at the time the gasoline was ordered.

If on March 1, 1935, a major company called up an independent refiner and ordered 10 cars of third grade gasoline to be shipped on March 8th, and agreed to pay the independent refiner the low of the Journal on date of shipment, the price the independent refiner would receive for its gasoline on March 8th would be 3⅝¢. That would be higher than the price quoted for third grade on March 1st, at the time this gasoline was ordered. On March 1st, the low of the Journal was 3¼¢, so it would be ⅜¢ higher.

It is true that when parties buy gasoline and agree to pay the low of the Journal, date of shipment, the price they actually pay may turn out to be higher or lower than the price for gasoline as quoted at the time the order was placed. There is no determination at the time the order is entered into. The seller does not know, then, how much he is going to get for it on the date of shipment, nor does the buyer know how much he is going to pay for it.

Mr. Chaffetz: Q. But both the buyer and seller know that that sale or that transaction is not going to influence the published market prices, no matter whether it is lower or higher than it was on the day of the order. 3109

A. It should not, no.

Mr. Donovan: Q. So a transaction of this kind does not set any price, or any fixed price for the gasoline, does it?

A. No, it should have no bearing whatever on the fixing of the market.

Q. In view of this question, let me direct your attention to paragraph 18 of the indictment, and specifically to the language of the first sentence of that paragraph, wherein it is stated the defendants have artificially raised and fixed said spot market tank car price of gasoline and have maintained said prices at artificially high and non-competitive levels agreed upon among them and have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold in the Mid-Western area.

Now, that is what that indictment charges in part here. You have read that?

A. Yes, I have.

Q. Let's get back to our example of March 1 on your chart, and take our case where a major company agrees to buy 10 cars of gasoline, delivery on March 8, low of the Chicago Journal of Commerce 3110 on date of shipment. What was the price of third grade gasoline, on March 1, when this agreement was made?

A. You are talking about third grade, Colonel?

Q. Yes.

A. That would be 3¼¢.

Q. On that day how much did the buyer and seller agree to pay for this gasoline?

A. You are talking about a publication purchase?

Q. Yes.

A. There would be no agreement whatever as to price.

Q. Did they ever agree on any set price for that gasoline?

A. No.

Q. What did they agree to do?

A. They agreed that the price should be determined by a publication when shipment was eventually made.

Q. So that they did not set the price at the time they ordered the gasoline, they would pay for that gasoline; is that right?

A. No.

Q. Let me go back to that question of Mr. Lewin's; he said that if gasoline is sold at the low of the Chicago Journal of Commerce, date of shipment, it has effectually taken away that gasoline from 3111 any possibility of being sold at lower than the Chicago Journal of Commerce.

Now, let me ask you this: Has it or has it not also effectually taken away that gasoline from any possibility of being sold at higher than the Chicago Journal of Commerce?

A. It has, providing the sale has no effect on the operating rate of the refinery.

Q. Let's look at the black dots on that chart, showing sales made to jobbers at flat prices which were higher than the Chicago Journal of Commerce. If the companies making those sales had agreed to sell to those jobbers on the basis of the low of the Chicago Journal of Commerce, date of shipment, would it not have effectually taken away that gasoline from any possibility of having been sold at higher than the Chicago Journal of Commerce?

A. Yes, indeed.

During 1935 and 1936 jobbers bought gasoline from independent refiners on the basis of the low of the Journal, date of shipment. They made a lot of publication purchases. It wouldn't necessarily be limited to the Journal and would not necessarily be limited to the low of either publication. But they bought on a publication basis. That was a very frequent occurrence. In my chart showing purchases by jobbers, I have excluded such purchases as
3112 I have just described in the same way as I excluded
such purchases from my major companies chart. Every transaction on there is a flat price, whether it is on the lower part of the chart or the upper part.

The upper chart covers the entire calendar year 1935. The space between each of these vertical lines represents a day. This (indicating) would be the whole month of January running across from left to right.

The horizontal lines represent fractions of a cent in price. The lowest line here on the upper part of the chart is 3¢. It runs up in fractions of ⅛¢ on up to the top of the chart, and that is 6½¢. This heavy horizontal line, running across here, is a 4¢ level. This heavy line above is the 5¢ level.

Each one of these dots represents a purchase transaction, but there may be more than one purchase transaction reflected by one dot. If there is more than one, it is noted; there is a number underneath indicating just how many it is.

The dots are plotted on the chart on the day that the purchase transaction was entered into; not the date of shipment, but the date that the purchase was made. They are also plotted on the chart at the price that was fixed at the time the transaction was entered into. In other words, take for instance, one right here on March 20th. There a major company bought third grade gasoline on March 20th, at
3½¢. That dot is on the 3½¢ level, and the dot is also
3113 in the space indicating March 20th.

The dots are of different colors. The top range up there contains dots that are green. That indicates regular grade. The dots on the lower range here are black. They are third grade. So this (indicating) indicates the purchase transactions of third grade gasoline and this (indicating) the purchase transactions of regular grade gasoline, by defendant major companies.

The whole upper part of the chart is limited to purchases by defendant major companies.

The graph running along here indicates the quotations appearing in the two trade publications. The red area indicates the quotations appearing daily in Platt's Oilgram. The hatched area indicates the quotations appearing in the Chicago Journal of Commerce.

Now, as I stated before, the Journal makes only one quotation that is Group 3. That would include material coming out of any refinery district whatever, as long as the f. o. b. point was Group 3. Platt's Oilgram has a large number of quotations. They have them for each important refinery district.

We are plotting here on these charts only the quotations in the Oilgram for the Oklahoma refinery district, that being comparable with Group 3. And the chart indicates that it is comparable, because you will notice that the prices agree generally throughout the year.

3114 The upper chart shows exactly what the major companies paid for regular grade and third grade gasoline on flat price transactions throughout 1935, in their purchases from independent refiners and brokers. And it compares the price they paid with what the two trade publications reported was the market.

It includes purchases made by the defendant major companies from East Texas refiners.

That is not limited to purchases made from any particular refining district. The only limitation as to that is whether the material coming out of the East Texas refinery district was purchased on an f. o. b. Group 3 basis. If it was, those purchases are reflected on that chart.

I am familiar with the charge in paragraph 24 of the indictment that the trade papers, instead of quoting prices paid by jobbers and consumers as they claimed to do, published prices which were being paid by the defendant major companies to independent refiners. This chart clearly shows that the major companies bought at prices under the quotations as appearing in the trade publications; so that if that charge were true these quotations that were in the trade publications would have, of necessity, to be at a lower level. You will notice that running from March, 1935 straight on through, these black dots appear at levels lower than the trade publications reported. If these publications had been using the defendant companies' prices, as shown
3115 on that chart, as charged in the indictment, they
couldn't have published the price that they did publish. They would have had to publish lower prices. So that the prices then used by the publications must have

been prices other than the defendant companies' prices in order for them to have published the prices which they did.

In that connection, I might point out that you will find very few purchases by the majors, running along here from the last half of 1935, of regular grade. If the publications were basing their quotations on the major companies' purchases you wouldn't have any market to speak of at all in the last half of 1935 on regular grade. So you could not report a market for regular grade for the last half of 1935, except on isolated days, as far as the major companies' purchases were concerned. And there are some days in 1935 in which you will find no purchases of third grade by the major companies.

Mr. Chaffetz: Q. May I ask a question. Don't you know that the journals continued to publish prices whether or not we have transactions on any days; whether they find any transactions?

A. I understand that they include quotations as well as actual sales.

Q. And they continue to publish a price for weeks even though they don't discover any transactions?

A. They would have to have quotations, and if 3116 they don't have quotations or sales, I think the publications indicate that those prices may be nominal, in that event.

Q. You don't know what their practice is in that regard?

A. I have seen the publications, and have frequently seen the notation that they are nominal.

The lower chart is so thickly plotted that I would have to check carefully to see whether there would be any day on which a jobber didn't buy. I don't recall any day when there was no transaction. That does not represent all jobber and consumer purchases. This doesn't purport to be all-inclusive of spot sales to jobbers and consumers. It represents only those which we were able to audit.

Mr. Chaffetz: Q. There are a number of days, which, in the case of regular gasoline, there are no transactions indicated on that chart?

A. Yes, there are a few days.

Q. Quite a number, as you look at that chart?

A. I wouldn't say quite a number, relatively.

Mr. Donovan: Q. That is true about the major chart, and that indicates all transactions made by major companies, and that is all it refers to; is that correct?

A. That is correct. And that includes, of course, purchases by the majors from brokers as well as 3117 independent refiners, whereas this, the lower chart, does not include spot sales to jobbers by brokers, and there was a very large number of those.

By Mr. Donovan

I have prepared a schedule summarizing the amounts purchased by the defendant companies from independent refiners and brokers at prices at the low, above the low, and under the low of Platt's Oilgram. That schedule covers the period from January 1, 1935 on down to April 30, 1936. I started at January because I wanted to cover the entire calendar year of 1935, which this chart covers. I have summarized an intermediate period of 3 months, from March 1, 1935 to May 31, 1935, which is the period of the rise in 1935.

I have still another intermediate period from March 1, 1935 to April 30, 1936, which is the period covered by the Government audit. That is as shown in Exhibits 747 to 751, inclusive.

(Schedules submitted and received in evidence as EXHIBITS 1025 and 1026, respectively.)

Exhibit 1026, which is the summary of f. o. b. Group 3 and f. o. b. Oklahoma refinery flat price purchases compared with Platt's Oilgram for the Oklahoma refinery market, gives the amount in percentages bought above the high, at the high, within the range, at the low, and below the low.

3118 The percentage of cars bought above the market high, March 1, 1935 to April 30, 1936, was less than 1%. This percentage is of cars of regular and third grade gasoline bought by defendant majors of independent refiners and brokers.

That was just about the same percentage as during the time the market was rising in 1935.

For the period from March 1 to April 30, 1936 the percentage of cars bought above the low was about 7½%. But for the shorter period, while prices were rising, the percentage was less than 5%.

Q. So that while the market was going up, fewer cars were bought above the low than during the remainder of the period?

A. No, I won't confine myself to a comparison for the remainder of the period. I was taking that for the period, March 1, 1935 to April 30, 1936, which includes the period of the rise.

There was a substantial proportion bought below the low during the period, March 1, 1935 through April 30, 1936. In number of purchase transactions over 37% were bought under the low, and in cars there was almost 28%. There was a considerably greater number bought under the low while the market was rising in 1935 than for the entire 14 month period, including the period of the rise. So while the market was going up, a greater portion of the cars
3119 was bought at a price lower than the market than
over the period as a whole. As far as cars were concerned, there was double the number of cars bought under the low during the period of the rise.

The chart, Exhibit 1025, is a similar schedule based on the Chicago Journal of Commerce quotations. What I have been just telling about there being more purchases below the low during the time of the market rise is true in regard to this schedule. For the 14 month period, about 28½% of the purchase transactions were made under the low, and that covered about 22% of the cars. In the period of the rise, the number of purchase transactions made under the low was over 35% of the total, and they included over 37% of the cars purchased in that period.

In regard to the charge in paragraphs 21 and 23 of the indictment, that the companies made purchases at uniform prices, this chart shows that there was no uniformity. It shows a great deal of variation in price. There are days in 1935 when the majors bought the same grade of material at 3 different prices on the same day. You see dots scattered all over the chart there (indicating). For instance, here is a day in the latter part of March. 3 different prices were paid on that day. Here is another day, a week later than that, which shows 3 different prices paid on the same day.

I have made a computation of the percentage of days where different purchases of third grade were uni-
3120 form and where they were not. In making that com-
putation I took the number of days in 1935 in which there was more than one purchase transaction, and then as to those days I determined on how many of them there were purchases made at different prices. And I found that on 67% of those days on which there was more than one purchase made, the purchases were made at different prices. That is for third grade.

With regular grades, there are not nearly as many purchases, as indicated by the top portion of the upper half. There are not nearly as many days in which there were more than one purchase transaction. But as to those days, we found that on 41% of them there was more than one price paid.

If we were to combine those two computations, regular and third grade, we would find that on 61% of the days the prices were not uniform.

The lower half of this chart, Exhibit 1024, represents prices paid by jobbers and consumers in purchases made from independent refiners on the same basis as the purchases made by the defendant companies which I have been describing.

I have made a comparison between the prices paid by the defendant companies and prices paid by jobbers and consumers as shown on these charts.

There were 235 jobber and consumer purchase transactions below the low. There were 352 purchases of
3121 third grade made by the defendant companies below the low during this same time.

The number of purchases made by jobbers above the high is about 8%, and that compares with the number of purchase transactions by the defendants above the high of a little over 1%.

The jobbers' purchases at the high are about 10%, as against 1½% of the defendant majors' purchases at the high.

The jobber purchases within the range, that is lower than the top high of the two publications and above the bottom low of the two publications, the jobber purchases within the range would be about 7% as against 4% for the defendant majors.

The jobber purchases at the low are about 59% as against 52% for the defendant majors.

And the jobber purchases below the low are less than 16% as compared with 41% for the defendant majors.

The information I have given with respect to the defendant major companies represents all purchases during 1935 by major companies on a flat price basis, f. o. b. Group 3 or f. o. b. Oklahoma refinery, from independent refiners and brokers. But it does not necessarily represent all such purchases at or above the high made by jobbers and consumers during that time. That would be limited to the independent refiners which we audited.

The jobber purchases of regular grade made
3122 above the high amounted to about 9% of the total purchases of that type as against none for the defendant majors. That is, the defendant majors made no purchases of regular grade above the high.

The jobber purchases at the high, and I am speaking again of the composite high of the trade publications, is about 30% as against about 2½% by the defendant major companies.

The jobber purchases within the range, that is, below the high of the two publications and above the low of the two publications, were about 29% as against 7½% for the defendant major companies.

The jobber purchases at the low were about 25% as compared with 75% for the defendant major companies..

The jobber purchases below the low were about 7% as compared with over 15% for the defendant major companies.

Directing attention to a more specific comparison on some of the prices paid by major companies for third grade in the spot market with prices paid by jobbers and consumers in that market at the same time, on March 1st there is a purchase by a major company of third grade at 3¼¢. That is indicated by this dot right here (indicating) within the vertical lines of March 1st, and on the horizontal line here is 3¼¢. This is third grade gasoline. On that same date the bottom part of the chart shows that jobbers paid as high as 3½¢. And there were 2 purchases by jobbers at 3⅜¢. 3123 There is another purchase (indicating) by a jobber at 3¼¢. And there is a purchase by a consumer at 3⅛¢.

I don't believe that I pointed out that the purchases by consumers are indicated on this lower half of the chart by blue dots. I talked of green dots and black dots, but the blue dots are purchases by consumers. The black dots represent purchases by jobbers. In order to reduce the number of colors we are using here, we have a solid blue dot for regular grade purchases by consumers. And to indicate third grade we have a little white area within the blue dot, indicating a third grade purchase by a consumer.

I was just talking about this consumer purchase on March 1st. That is on this line here (indicating) the horizontal line, 3⅛¢. And you notice a little white space in that blue dot. That indicates a consumer purchase of third grade gasoline.

Prior to March 1st, for a period of about a month when the publications' quotations were on a more or less constant level, jobbers had been paying as high as 3¾¢. In fact, there are some here early in February as high as 4¢. And they range on down to as low as 3⅛¢. There is one here as low as 3¢. So when major companies paid 3¼¢ for third grade gasoline on March 1st they paid no more than the prices which jobbers had been paying for third-grade gasoline for a month before.

On March 5th, an independent refiner sold to a
3124 major at 3⅜¢. That is indicated by this dot here (indicating on chart). On that day jobbers paid 4 different prices to these particular independent refiners that we audited. The highest price paid was 3⅝¢. There were other purchases from jobbers at 3½¢; there were 6 purchases by jobbers at 3⅜¢; and there were 3 purchases by jobbers at 3¼¢.

A comparison of that price of 3⅜¢ that major companies paid for gasoline on March 5th with the prices at which independent refiners had been selling gasoline to jobbers and consumers prior to March 5th, shows that the independent refiners had been selling higher than that level for about a month.

On March 9th, there was a purchase by a defendant at 3¾¢. That is the highest price paid by any major company up to that time for third grade. On that day again we find 4 different prices paid by jobbers to those independent refiners. 1 sale was made as high as 4¼¢, on that same day, March 9th.

Before March 9th independent refiners had been selling to jobbers at that same price of 3¾¢. On March 7th there were sales to jobbers at 3¾¢. That is, for 2 days the independents had been selling at the price to jobbers at which they subsequently sold 2 days later to majors.

On March 13th, when the defendant companies bought at 3⅞¢, there was a sale to a jobber at 3⅞¢.

3125 Prior to March 13th jobbers had been paying independent refiners that same price. On March 12th and March 11th there were 3 sales to jobbers at that price.

On March 21st an independent refiner sold to a major company at a price of 4⅛¢. There were sales made to jobbers on that day at that price.

And independent refiners had sold to a jobber at that same price before that day. 3 days before, on March 18th, there was a sale to a jobber at that same price, 4⅛¢.

I think there were just 2 days in the entire calendar year 1935 when a major company paid a price for third grade gasoline to an independent refiner, when it was not also true that jobbers had already been paying either the same or a higher price. One of them was March 26th, when a major company paid 4⅜¢, and the other day was April 12th, when a major company paid 4⅝¢.

Now, of course, I would not be able to answer whether the major companies on any day throughout 1935 bought at higher prices than jobbers bought from independent refiners if you are taking into account all independent refiners and all sales to jobbers. I can only answer the question as to these particular independent refiners that I audited; and there are 2 days where the majors did pay higher prices than those particular independent refiners sold to jobbers.

Limiting my answer in that way, with the exception of
those two, it is correct to say that whatever the prices
3126 were which the major companies paid, the prices
which independent refiners were getting from jobbers
and consumers in the spot market had already gone up. The prices paid by jobbers advanced first.

As to those 2 days where the prices some major companies paid were in advance of the prices jobbers or consumers were paying, neither of the trade papers published those prices which the major companies paid on either of those days. Those prices are higher than what the publications reflected. In the instance of March 26th, it was 4 days before the Chicago Journal of Commerce reflected a price as high as what that major company had paid, and it was 11 days before Platt's Oilgram did.

Before the trade papers reflected a price equivalent to that price the major companies had paid, there were purchases by jobbers at that increased price. There was a purchase by a jobber 2 days before the Journal reflected that level. And in the case of the Oilgram of course there were jobber sales for quite a time before it reflected a price level that high.

Although on 2 days in 1935 my chart would indicate that major companies paid a price higher than the published market, and higher than what jobbers were paying in the spot market, the trade papers did not reflect that higher price that was paid by major companies. They only reflected that higher price after there had been some
3127 jobber buying at that higher price.

Q. Is what you have just been saying about third grade true also about the regular grade?

A. There are considerably fewer transactions in the regular grade, and they are scattered over a wider range.

Government Exhibit 120-A, a letter written by one of the defendants in this case who was connected with Skelly Oil Company, has been called to my attention. On the basis of the government's own audit, no prices paid by the Skelly Company in March, April and May, 1935, were above the market. I refer to Government Exhibits 747 to 751, inclusive. Skelly did not buy a single car at a price above the market as shown in either trade paper. During March, April and May, 1935, Skelly did make purchases at or below the low of the market, but no cars were bought above the market by Skelly during that period.

The Government audit shows that during the whole period between March 1, 1935 and April 30, 1936, Skelly out of its total purchases of 643 cars bought no more than 30 cars above the low of the Oilgram, and only 32 above the low of the Journal.

I have examined the prices mentioned in Exhibits 105 through to 118, as having been paid by Skelly, to see whether those prices were ordinarily above the market. I think Exhibit 118 refers to a purchase made on 3128 March 8, 1935 of regular grade gasoline. That related to a purchase of 6 cars at a price of 4⅝¢. The price paid on that day was the low of the Oilgram.

Skelly made 8 purchases of regular grade, and 4 purchases of third grade between March 1 and May 1, 1935. Of course I am limiting my answer to flat price purchases, and on an f. o. b. Group 3 basis, or Oklahoma refinery basis.

There were 6 purchases above the market, all for local shipment; but there were no purchases above the market during this 3 months period when the price was rising; or, if you limit it to the period, March 1, 1935 to May 7, 1935, there were none.

All Skelly purchases of third grade were below the low of both publications. The purchases of regular grade were at the low of both publications, or at the low of one publication and above the low of the other, with the exception of just 1 purchase for 2 cars, which was on April 18th. That was a purchase of 2 cars that was ⅛¢ above the low of both trade publications.

There were no purchases of regular grade above the market by the defendant companies. There are, however, 10 purchases of third grade above the market. After March 1st and for the remainder of the year 1935, there are 6 purchases by defendant companies at a price above the market. There might be some within the range, or at the high of the market, but that is all there are above 3129 the market. The vast majority of them were at the low or lower. And I have already testified that in 1935, when this Skelly Company letter was written, there was not a single purchase of regular gasoline by that company on an f. o. b. Group 3 basis at a price above the market.

Out of these hundreds of purchases of third grade gasoline during that period, there were only 6 purchases above the market, and all of these were for local shipment. I would like to correct that answer that I made a little while ago, about the 6 above the market. That might have been taken to mean Skelly. Those were not Skelly purchases; I mean, these 6 major purchases above the market. The Skelly Company did not buy any above the market during the entire year 1935.

I have looked into the question of whether jobbers and consumers made more purchases of gasoline in March, April and May, 1935, when prices were rising, than they did during January and February of that year. I can give the figures for each month.

In January, 1935 there were 137 sales of regular and third grade gasoline to jobbers and consumers by these particular independent refiners which we audited. In February, 151; in March, 171; in April, 214; and in May, 204. These figures indicate that the sales to jobbers increased considerably during this period of the rise, as compared with January and February. So, during 3130 the time the market was going up, the number of spot market purchases by jobbers and consumers was substantially greater than in the preceding months. There was an increase of about 75% over January and February.

I made an audit of the sales to brokers by all of the independent refiners I have previously mentioned. I made an examination to determine the quantities of gasoline purchased by brokers from these independent refiners in each of the months between November 1, 1934 and the end of July, 1936. That is a period of 21 months.

To determine who was the broker, we inquired of the sales department of each one of the independent refiners. We checked the information we received from them to the Petroleum Register. We cross-checked every one of our audits. We examined into the destination of the shipments, because they also would give you an indication whether the customer was a jobber or a broker. By that I mean that on a sale to a jobber you will usually find the shipment is destined or is routed to the jobber's address. But in a shipment to a broker, it may go anywhere, because it is routed to the broker's customer. There might be some exceptions to that, where the broker would make a purchase on speculation, not having a

buyer for the car at the time he makes the purchase, and he finds a buyer after the car starts rolling. In that event, the car would be re-routed while it was rolling,
so that the destination of the shipment as shown on
3131 the invoice would not necessarily be the ultimate des-
tination. However, that is an unusual circumstance. I haven't compiled a list of so-called brokers.

The total gasoline sold by these independent refiners to brokers during this period of 21 months is 119,097,944 gallons.

The 3 months period of March, April and May 1935 was the most active period in sales by these independent refiners to brokers, as compared with the amount of gasoline bought by brokers during the rest of this 21 month period.

April, 1935, for instance, shows the largest amount of sales of any month in the 21 months; March, 1935, is second; May is fourth, ranking just below July, 1935, which is third in point of volume, and the difference there is just about 4 or 5 cars.

In March, the sales to brokers aggregated 8,280,983 gallons; in April, 8,565,645 gallons; in May, 7,364,404 gallons.

During this period of 3 months, the brokers bought more gasoline from these independent refiners than at any other time during that entire period of 21 months.

These independent refiners from whom brokers were buying these large quantities of gasoline included all of the Mid-Continent independent refiners named in the indictment.

I am acquainted with the testimony in this case of
Mr. Steiger, of the Oilgram, with respect to whether
3132 or not the trade papers reflected broker prices. It
was that they reflect the spot purchases by jobbers, irrespective of who the seller is. That is, the seller can be a refiner or it can be a broker. But they do not reflect the prices in sales to brokers, but just in sales to jobbers.

We made an investigation to ascertain at what prices brokers were selling to jobbers during this 3 months period when brokers were as active as I have just described. As I said before, we audited Tansel Petroleum Corporation, which was a broker, during the 3 months period when prices were rising in the spring of 1935. In connection with our audit of Danciger and Bell, which conduct a brokerage business as well as a refinery business, we noted their sales as brokers. And when we were tabulating this volume, we made test checks of the prices they were getting, and we found that in more than two-thirds of the cases they were selling at the low or higher.

I have made an analysis to determine the proportion of gasoline purchased by the defendant companies from certain of these independent refiners, as compared with the total sales made by such independent refiners. The lowest percentage of the total sales made by any one of those Mid-Continent independent refiners named as alleged co-conspirators in the indictment which was made to the defendant major companies, was less than 4%, about 3.72%. Rock Island Refining Company sold only 3.7%
3133 of its gasoline to the defendant major companies.
That company sold a relatively large percentage of its gasoline to jobbers.

The highest percentage of the total gasoline sold by any of these Mid-Continent independent refiners alleged as co-conspirators in the indictment was sold to the defendant companies by Taxman Refining Company. It sold almost 47% of its total output to the defendant majors. During 1935 Taxman Company had very few jobber customers.

Champlin Refining Company sold about 4½% to the defendant majors; Danciger sold less than 5%; Bell Oil & Gas sold about 9½%, that is, less than 10%; Cushing sold about 11% to the defendant majors. These companies sold the greater part of their production to jobbers during that period.

Shamrock sold about 44% to the defendant majors; and Olney Oil & Refining Company sold about 41%. We have made an inquiry or survey or investigation as to the amount of jobber business which those companies did during 1935. We made an audit of these two independent refiners. As I said before, we made an audit of every one of the refiners named in the indictment as operating in the Mid-Continent field, and named as co-conspirators. And we found that neither of those refiners had many jobbers; in fact, they had very few, and practically all of them were local concerns.

3134 These companies that I have just talked of, Danciger, Rock Island, Champlin, Cushing and Bell, as selling extensively to jobbers in 1935, sold to a great extent on the spot market to jobbers during that period. Those independent Mid-Continent refiners who sold the most gasoline in the spot market to jobbers in 1935 were the refiners from which the defendant majors, relatively speaking, bought the least gasoline. I can tell that in terms of percentage.

The 5 independent refiners that I named, which sell very extensively to jobbers and very extensively in the spot market, sold less than 7% to these defendant majors.

Also, the Mid-Continent independent refiners from which the defendant major companies purchased, relatively speaking, the largest quantity of gasoline, were those companies which, from our audits, had the least jobbing outlets for their gasoline. They were those 3 refineries, and they had practically no jobbing outlets.

Cross-Examination by Mr. Chaffetz.

We did not make any determination of the percentage of the total spot market business of these independent refiners that was done with major companies during the period in question. I do not know what the figure would be. We intended to undertake that, but we found that was a gigantic task, and we wanted to finish these other studies all through 1936, if we could.

3135 Q. The only figures you had were percentages of their total business, including contract business, including retail business, including business with their own bulk plants, including local trucking business—including all the business that the independent refiner does?

A. Total sales of every type and description, yes.

Q. Now, you gave us some testimony about the way in which you prepared that large audit. And I think you said you had the materials available for examination by the Government agents. How long do you think it would take for Government accountants to check your audit, if they started today?

A. That would depend to a great extent on how much preliminary work you already have completed. You have made an audit. With that work I would have to know first how extensive and in what shape that is set up, before I would know how much longer it would take to check our audit.

Q. What would you think would be a minimum time, making all the assumptions in favor of getting through at the shortest possible time?

A. That I couldn't estimate, Mr. Chaffetz, unless I saw your working papers.

Q. It would take a long time, wouldn't it?

3136 A. No, not necessarily. You might have it set up so that you could audit them in very short order.

Q. A lot of that material which the Government hasn't had access to at all?

A. I don't know what you have had access to. You have been on the job for a couple of years.

Q. Now, will you tell me, looking at Exhibit 1025, what percentage of purchases by major companies—by defendant major companies that you name were from independent refiners?

A. First of all, Mr. Chaffetz, so that I can follow you, my copy does not have the exhibit number. Are you referring to the Oilgram or Journal of Commerce?

Q. I want to know what percentage of all the purchases made from March 1, 1935 to April 30, 1936, what percentage of the total were made at or above the low of the Journal quotations?

A. You want that in purchase transactions or cars?

Q. In tank cars.

A. That would be about 78%. At or above; is that the question?

Q. Yes, that is right. Now, you referred to the fact that during the price rise, I am not referring to that exhibit any more, during the period of the price rise, March, April and May, the activities of the brokers were more concentrated than during any other period during the year 1935; is that right? You said the brokers were more active. 3137

A. They were much more active. I don't know what you mean by concentrated.

Q. More transactions.

A. Yes.

Q. Do you know why?

A. I have a very good idea.

Q. Was it because the price was going up?

A. They anticipated a price rise.

Q. They anticipated a price rise, that is right. When they understand that the price is going up they can buy even at the market and hope to resell at higher than the market the following day, and make a profit; isn't that right?

A. You are assuming, Mr. Chaffetz, that brokers operate by being speculative, that is they buy before they have a customer. Mr. Beroth testified here that he never did that, he always had a customer.

Q. Does that answer my question?

A. I think it does, yes.

Mr. Chaffetz: Will the reporter read the question.

(The question was then read by the reporter.)

3138 A. Your question about whether they do or not is a different question.

Q. You don't know?

A. I know that Mr. Beroth said he didn't.

Q. All right. You referred to the Skelly letter, Exhibit 120-A, and Colonel Donovan read you one sentence from that letter as follows: "Now, by including Rohrer's requirements of Aromax on our arrangement with Sunray, we could have about ten cars a month to buy from those people. This is about what we would have ordinarily to take from them on the buying program at a price which would ordinarily be above the market."

That is the sentence Colonel Donovan read?

A. Yes.

Q. You answered him in a series of questions that they didn't buy any; was that correct?

A. That is right.

Q. Listen to the following sentence:

> "If we were to take that much from them each month, independent of the buying program, there wouldn't be anything to take from them on the program, so what would be sweeter than discharging that buying obligation by arranging to take about ten cars a month from Ada, Wewoka, and McAlester at a price under the market? I have gone ahead on the assumption that that would be the thing to do, 3139 and I have arranged with the Sunray people to buy that much, on an open agreement, each month, at 1/8¢ under the low in the Journal for the middle octane grade on date of shipment, shipment to be made in their cars."

I ask you whether that letter doesn't say if we bought it on the program we would pay a higher price; but if we were not to buy it on the program, then we would not be obliged to pay the higher price; we would get it at 1/8¢ below the Journal of Commerce, and didn't that letter say that is exactly what he was told to do; and isn't that why none of those purchases were made at the high price that Colonel Donovan asked you about?

A. No, I wouldn't agree with that.
Mr. Chaffetz: I will let the jury decide.

Redirect Examination by Mr. Cunningham.

If I rely on my recollection, I think that the sale of gasoline by Kanotex in one of the years was a purchase by Phillips of 1 car. I don't remember when that was. I haven't the date.

It is my recollection that that was the only sale by Kanotex to any major company that I found. The way that came up, I criticized the treatment of that by the Government audit, because it was bought f. o. b. refinery, and
3140 the refinery is located in Kansas; and they had compared the purchase price with f. o. b. Group 3 or f. o. b. Oklahoma refinery. That was all that my testimony had to do with the car from Kanotex. I know that the refinery in Kansas has a differential on freight rates to the East, over the Oklahoma freight rate. I think it is a ¼¢.

Mr. Chaffetz. Q. As a matter of fact, Kanotex is not named in the indictment as one of the companies that sold in the buying program?
A. No, it is not.
Mr. Donovan: Q. Referring to the Skelly letter for a minute. As I understood your testimony, you said that none was bought before the letter was written, as well as after; isn't that right?
A. Yes.
Mr. Chaffetz: Q. And the letter doesn't say the contrary, does it?
A. No.

Direct Examination (Resumed) by Mr. Foster.

I have made a compilation of the number of tank car purchases of gasoline by Phillips Petroleum Company from independent refiners in the Mid-Continent field during the months of January and February, 1935.

Those figures were compiled from the impounded records. And as to Phillips, to get the purchase orders we went
3141 into the independent refiners who sold to Phillips. Some of those records were also impounded here. And I think, in a few instances, we had to go into the offices of those independent refiners to get the purchase orders.

The total number of cars purchased in January, 1935 was 91. The total for February, 1935 was 172 cars. The average for those two months would be 131 cars.

The total purchases of Phillips in January, 1936 were 92 cars, and in February, 1936 were 98 cars. The average for those 2 months would be 95 cars.

The average number of cars purchased by Phillips during the period March 1, 1935 through April, 1936, was 114 cars.

Phillips purchased from 33 different independent refiners during the period March 1, 1935 through April, 1936.

The average of Phillips' purchases in the months of January and February, 1935 exceeded the number purchased in January and February, 1936. The purchases in the first two months of 1935 averaged about 35 cars a month over the same two months of 1936. The average purchases in those two months exceeded the average number of cars purchased during the entire period, March 1, 1935 through April, 1936.

Cross-Examination by Mr. Chaffetz.

I was comparing purchases made by Phillips after March 1, 1935 with purchases made in January and February preceding.

3142 The letter of January 12, 1935, Mr. Buckley to Mr. Brandli, Exhibit 11, is incorrect as to purchases made by Phillips. Phillips didn't purchase the quantity stated in the letter. It did make some purchases. I wouldn't know whether those purchases were uplift purchases or not.

Redirect Examination by Mr. Francis.

It is my recollection that The Pure Oil Company made no purchases from independent refiners, in the Mid-Continent area, until March 21, 1935, January, February, and March, 3 months after this letter, Exhibit 11, was written.

By Mr. Donovan

I made an examination of the letters in which there was reference to the Skelly purchases on a buying program, and which specifically characterized these purchases as being made on the buying program. My examination showed that on these buying program purchases the Skelly Company did not pay a price above the market.

By Mr. Wood

I mentioned the percentage of total sales by Taxman which were made to major companies as being about 40% in 1935.

Q. In 1935. Can you tell from the papers that you have before you whether in 1935 Taxman sold any gasoline at all to Sinclair Refining Company?

A. I think I could tell that from the papers that

3143 Mr. Seitz has back there in the court room.

Mr. Chaffetz: Mr. Wood, if you know the fact, and there is no dispute—

The Court: What is the fact?

Mr. Wood: Our record shows that they did not.

Mr. Chaffetz: ~~Well~~, subject to check, it may be understood that ~~they~~ did not.

The Court: Let the record so show.

Mr. Cunningham: And may the record also show that that sale from Kanotex was in June, 1935—?

Mr. Chaffetz: If you say that is so, it may so show.

The Court: Let the record show that.

By Mr. Donovan

I have the percentage of purchases at and below the low. About 86% of the cars purchased in the 14 months period from March 1, 1935 to April 30, 1936, by the defendant majors, was bought at or below the low quotations of the Chicago Journal of Commerce. That is a larger percentage than was bought at and above.

The same comparison with the low of Platt's Oilgram for the Oklahoma Refinery market is over 92%, as compared with the percentage at and above.

(Witness excused.)

(Document marked Exhibit 1030 for identification.)

Mr. Donovan: Your Honor, I have here Exhibit

3144 1030, being a certified copy, by Mr. Ickes, of a report of the Chairman of the P. A. B. Board, made to Mr. Ickes on March 23, 1935.

Mr. Chaffetz: About the Blazer report?

Mr. Donovan: That deals with the report of the Blazer Committee, to which your Honor has already sustained an objection, the Blazer Committee report; but it shows what action was taken by the P. A. B. Board on this.

I would like to offer this report of Mr. Fahy, and I want to state it accurately, if I may, your Honor—addressed to the Administrator, dated of that day; and in the event, after your Honor examines it, you would feel that you would want to sustain any objection to it as a whole, I would like to offer separately the last two paragraphs on page 5, and also page 6.

This portion deals with the activities of the P. A. B. in connection with those matters now being considered here; and this portion of the report, I believe, your Honor, is clearly within the subject matter which your Honor has already admitted, and permitted certain evidence to come in.

The Court: I will take it under consideration and we will pass on it later.

Mr. Donovan: And then I have only this report
3145 to read, that your Honor permitted me to introduce.

The Court: Read that into the record now.

(Col. Donovan read the part of the Annual Report of the Secretary of the Interior, for fiscal year ending June 30, 1935, which was admitted into evidence as EXHIBIT 917-A, to the jury.)

Mr. Donovan: Your Honor, may I take exception generally and separately as to each part of the report that we were not permitted to read?

The Court: Yes. Exception allowed.

Mr. Donovan: Here we have some Exhibits which the record does not show were admitted, but I think there will be no question about them. Suppose we take that up with Mr. Hale, and have it checked after lunch?

Mr. Donovan: The stipulation, Exhibit 991.

The Court: All those stipulations are in, aren't they?

Mr. Donovan: Yes, we thought they were, your Honor—

The Court: Well, that is received. Go ahead.

(Stipulation and charts previously so marked for identification are received in evidence as EXHIBITS 991, 1013, 1019, 1020, 1021, 1022 and 1024, respectively.)

Mr. Dorr: Previously we offered certain Exhibits with reference to the Pennsylvania situation, or we re-offered them. Those Exhibits were handed to
3146 the stenographer, but they are not noted in the record as to what Exhibits they were.

They were Exhibits 916 for identification, 925 for identification, 915 for identification, 972 for identification, 973 for identification, and 971 for identification.

The Court: Now, as to those Exhibits, the objection of the Government was sustained. Exception allowed.

Mr. Dorr: In connection with the Final Report of the Marketing Division of the P. A. B., Exhibit 914 for identification, I don't know that the record shows exactly what part of this we offered.

I would like to have the record show it. In the first place the Imprimature and the general statement that it is a report of the United States Department of the Interior, Harold L. Ickes, Secretary, Petroleum Administrative Board, George W. Holland, Chairman, and that it is prepared under the supervision of John W. Frey, and issued June, 1936, by the Department of the Interior.

I would like to have in the text the pages 120 to 122, that have to do with stabilization, and if that be not received, the particular paragraph on page 124 which I think your Honor's attention was particularly called to, beginning with the words, (Reading)
3147 "As the various problems—" that I think your Honor has got fully in mind; if you haven't, I will show it to you (handing document to the Court). That is the particular paragraph.

Now, as to that, on the ground of the offer, in looking over the record, these particular grounds I don't know were specified. I think perhaps they were covered in the argument, and I would like to call them to your Honor's attention so the record will show.

Mr. Chaffetz: May counsel just read them into the record?

Mr. Dorr: Yes. In the absence of the jury?

Then, there were certain Exhibits offered with reference to buying programs, and there was one Exhibit I have that doesn't seem to have—and that is the Exhibit covering the so-called California agency agreement. I don't think that was marked for identification.

The Clerk: 1029.

(Document referred to is marked Exhibit 1029 for identification.)

Mr. Dorr: In connection with the offer of Exhibit 710 for identification, which was the Code, there were two paragraphs which I should like to call to your Honor's attention. Do you want me to note those in the record?

The Court: Yes.

Mr. Dorr: Well, I should like to ask the Court
3148 to take judicial notice of the National Recovery Act. It has been mentioned again and again in the testimony, and it seems to me that certain portions we should be free to call to the attention of the jury, and without having that in evidence, it is unfortunate—for instance, the July 20th letter—

Mr. Chaffetz: National Recovery Act?

Mr. Dorr: Yes.

Mr. Chaffetz: No objection to judicial notice of any statute in the United States.

Mr. Dorr: The Code was at that time.

Mr. Chaffetz: You mean to tell me you want the Court to take judicial notice of the Act and you meant to include the Code?

Mr. Dorr: We do feel that the Code should be admitted in evidence, and the Court should take judicial notice of it, because there, again, there has been frequent reference made to that Code and to the testimony—

That is one reason why it should be in, because there have been these references, and after all, the provisions of the Code is the best evidence rather than what some one said about it.

And we want the Court to take judicial notice of the Code. We have already asked the Court to admit the Code or take judicial notice of it, and without it,
3149 it would be extremely difficult in arguing the case to the jury not to be able to refer to the proper provisions of the Code.

Then, shall I read these other matters to the stenographer in the absence of the jury?

The Court: Just excuse me a moment. I have examined this Exhibit 1030, and the objection of the Government to that Exhibit is sustained. Exception allowed.

(In absence of jury:)

Mr. Dorr: Exhibit 1029 was included—the California agency agreement—was intended to be included among the offers of the buying program which were considered by the Court in the argument beginning at page 1055.

The additional grounds for defendants desiring to call it to the Court's attention in connection with Exhibit 914 for identification are:

First: That these portions of the report which has been offered in evidence constitute an admission by the Government through the Department of the Interior that the buying activities in the spring of 1935, which are the subject matter of this indictment, were being caried on de facto under a stabilization sub-committee, set up in the course of the activities of the General Stabilization Committee, initiated 3150 by the letter of the Secretary of the Interior, July 20, 1934.

Two: such portions of the report constitute an admission by the Government, through the Department of the Interior, which corroborates the testimony of Mr. Arnott that no request or direction that this committee be dissolved, or its activities discontinued, was given by the Secretary of the Interior or the Petroleum Administrative Board.

Three: that these portions of the report so offered in evidence constitute an admission by the Government, through the Department of the Interior, bearing on the administrative construction of the letter of July 20, 1934, of the Secretary of the Interior, has been offered in evidence by the Government.

Four: that these sections of the report offered in evidence constitute an admission by the Government, through the Department of the Interior, bearing on the state of mind of the defendants engaging in stabilization activities in connection with buying distress gasoline and their good faith in undertaking these activities through a committee in the course of stabilization, initiated as a result of a letter of July 20, 1934.

Mr. Chaffetz: Objection.

The Court: Objection sustained; exception allowed.

3151 (Document marked Exhibit 1031 for identification.)

Mr. Chaffetz: If the Court please; I have here a document that was sent by one of the defendants in this case, A. G. Maguire, to certain other persons, dated July 24, 1934, and it relates to the letter of Secretary Ickes to Mr. Arnott of July 20, 1934, with the forwarding letter with which M. G. Peeters, Vice President of Wadhams Oil Company, sent that letter to the foreman of the grand jury at the latter's request.

I understand there is no question as to the authenticity of these documents.

(Document referred to is received in evidence as EXHIBIT 1031.)

Mr. Chaffetz: This letter is on the letterhead of the Planning and Coordination Committee for the Petroleum Industry, Regional District No. 3, Room 514—910 South Michigan Avenue, Chicago, Illinois.

May it be understood that Region 3 comprised the Standard of Indiana territory? Is that a fact?

Mr. Donovan: It does not include Kansas.

Mr. Donovan: It included Ohio.

Mr. Kirkland: And Kentucky.

3152 Mr. Francis: Region 3, you better state what that is so it will appear in the record. Region 3 refers to what?

Mr. Chaffetz: My understanding is Region 3 refers to the entire Standard of Indiana territory except Kansas, and also includes Kentucky and Ohio.

(Mr. Chaffetz read Exhibit 1031 to the jury.)

3153 CHARLES E. ARNOTT, one of the defendants herein, called as a witness for the defendants, testified as follows:

Direct Examination by Mr. Donovan.

My address is 26 Broadway, New York City. I was born in Chicago, Illinois. I went to ordinary grammar school and high school in New York, finishing in 1895. Then I got a job with Standard Oil Company of New Jersey, at 26 Broadway, New York City, as a clerk. I stayed with that company until 1905. During that time I was working in the sales department of the lubricating oil division. Eventually, I went to Newark, New Jersey, where I was in charge of the salesmen of the lubricating sales department. I was eventually called back to New York, and was in charge of the sales of lubricants in the New York, Pennsylvania and New Jersey division. In 1905 I had a chance to go with Vacuum Oil Company, a subsidiary of Standard Oil Company of New Jersey. Its business had specialized in the manufacture and sale of lubricants.

Vacuum Oil Company was one of the very old companies. It began about 1865; started in the manufacture and sale of harness products; branched into the making and sale of lubricants. In those days, and up to the time that I went into the oil business, lubricants were made almost entirely of animal, vegetable, and fish oils. 3154 Vacuum Oil Company was one of the first to go into the production and sale of lubricants made from petroleum. It specialized and thereafter built up a large business in petroleum lubricants.

When I started in the oil business the primary product was kerosene, used for lighting, heating and cooking. There was a general demand for it for those purposes pretty well over the world. Gasoline, which was then largely known as naphtha, was considered a by-product and more or less of a nuisance. It had very little demand except for cleaning and some commercial purposes. Other by-products were lubricants for machinery, and some specialties, so-called, in the form of wax that went into candles, axle greases, residuals that were used for asphalt and for pavement, and things of that general character.

When I was engaged in the sales end of lubricants of Standard Oil Company of New Jersey, Vacuum Oil Company was the outstanding manufacturer of lubricants for machinery, and Standard Oil Company of New Jersey was a buyer and distributor of the products. When I got a chance to go to work for Vacuum Oil Company its lubricants and specialties were in wide use in domestic fields and in most of the foreign countries.

I worked in the marketing or merchandising division. I handled business in most of the foreign countries 3155 from the New York office. I traveled extensively for a great many years all through Europe, Africa, South America and the Near East. I gradually worked my way up in the marketing end of this company. I became a director of the company in 1910, as I recall it.

In 1911 there was a change in the status of Vacuum Oil Company. Vacuum Oil Company then was cut off from Standard Oil Company of New Jersey and began its work on its own. This change brought me in closer contact with the Mid-Continent area. Vacuum Oil Company had sold its products and distributed them in that area through Standard Oil Company of Indiana. At that time the Indiana company ceased to be interested in the handling and sale of Vacuum products, and discontinued them. That necessitated Vacuum Oil Company, in order to maintain its position; organizing and going on its own into this territory. At that time the introduction of the automobile had revolutionized the petroleum business.

I continued with Vacuum Oil Company right up to 1931.

During that period there was a distinct change in the way in which the petroleum business in the United States was conducted which affected Vacuum Oil Company and my own activities. In 1911 there was a very great growth
3156 in the operations of integrated companies. They
were interested in the production and transportation of crude, and in the marketing of a complete line of petroleum products. Gasoline had become the outstanding product. There was of course a large and now a fast-growing market for lubricants. The kerosene, fuel oil and specialty business continued and this new development brought a demand for all manner of products.

There was a marked change in the way in which these products reached the consumer. Up to 1911 the prevailing way of distributing products was through the garage, the small dealer and the curb-side pump operator. By 1925 and 1926 that had materially changed. While there was still some garage and jobber business, the service station had become the desirable outlet, and the integrated companies made every effort to secure distribution through these stations by the appointment of jobbers, so that they could sell not only their own brands of gasoline, but also their own brands of lubricating oils.

This change seriously affected Vacuum Oil Company. It had depended on distribution through the garage and the small dealer. One very noticeable change was that service stations, particularly independent stations, were more interested in the sale of known brands of
3157 gasoline, and in consequence tended to handle the
lubricants of the manufacturers of those brands of gasoline. The refiners themselves went into direct distribution through their own stations, and of course controlled the brands of gasoline and motor oil that they sold. Vacuum Oil Company, therefore, was faced with losing its distribution, and had to consider how to get retail outlets for its products. The situation was serious.

We decided that there had to be consideration given to finding some method of distribution that would protect the business we had established at great cost. We considered a number of independent refiners and marketers who had distribution, and eventually they joined their business with ours and became stockholders in our company, their own managements continuing in charge. Those concerns were Lubrite Refining Company, St. Louis; Wadhams Oil Company of Milwaukee; White Star Refining Company of Detroit, and some smaller ones. I participated in negotiations that brought them into our organization. As a result, Vacuum Oil Company gained distribution in the Mid-Continent area, and was enabled to carry on its business in a more effective way.

I became a vice-president and eventually president of the company.

These developments I have referred to were in the 3158 Mid-Continent field. Vacuum Oil Company, which operated in all parts of the United States, had still the problem of the protection of its business in other sections of the country, and it eventually merged with Standard Oil Company of New York, which had large distribution of established brands of gasoline with outlets for lubricants in many markets of the United States, notably in the East, in Texas and on the Pacific coast, as well as through the White Eagle Division, which had headquarters in Kansas City and covered many cities in the Mid-West. After that merger the business was conducted under the name of Socony-Vaçuum Oil Company. I became an officer of that corporation; and in 1932 I became president.

In 1933 I was familiar with the passage of the National Industrial Recovery Act. I was familiar with the preparation of the Code for the petroleum industry, under that Act. In May, probably 30 days before the eventual passing of the N. I. R. A., the administration mentioned the preparation of what eventually became the N. R. A. Code as important to meet the emergency. The administration pointed out that industries were in a serious and critical condition. It urged upon industry that it regulate itself and enter into fair practice rules and operations in 3159 partnership with the government. It pointed out that a great deal of disturbance had been brought about by the so-called chiseler, who had engaged in destructive practices, treated labor in an unfortunate manner and had contributed a great deal to the distress. The petroleum industry was urged to consider the employment of labor, the shortening of hours, the raising of wages, and to do what it could to bring about fair practice operations by means of a code. It accepted, and prepared a code for submission to the administration.

My first personal participation in the preparation of the Code, as I recall it, was sometime in June, 1933. I was appointed chairman of a committee by the board of directors of the American Petroleum Institute to work with all elements of the industry throughout the country in the preparation of a marketing division of the Code.

As chairman, I called a meeting in New York City that was quite representative, I felt, of the elements of marketing in the industry, and prepared and suggested rules for consideration of the Institute, to be submitted to the Government. I took up the matter with various associations of marketers in the industry.

Immediately thereafter, with the feeling that this Code for marketing should have a more general consideration by other elements in the industry, I called a meeting in Chicago. 3160 That meeting was attended by some 58 or 60 individual dealer and jobber organizations that came from the different states in the country, and I submitted the rules of the Code for their approval.

The next step in the formulation of the Code was the call of a general industry meeting in Washington, to consider the Code not only in regard to marketing but also in respect to production and refining. From that time until the approval of the Code, I was very active in the matter.

The Code was approved by the President August 19, to become effective, as I recall it, September 2, 1933. After the Code was approved, I was appointed as a member of the Planning and Coordination Committee.

Exhibit 967 for identification is the letter of appointment that I received.

> (Letter referred to received in evidence as EXHIBIT 967 and read to the jury by Mr. Donovan.)

I was very active in the performance of my duties under that appointment through the life of the Code until May 27, 1935. In 1933 I was appointed chairman of the Planning and Coordination Marketing Committee which had to do with bringing about proper functioning under the Code that had been approved. The Code organization was very extensive. As chairman of the marketing committee 3161 I had frequent occasion to deal with it.

The organization operated through districts, and in each district there was a chairman that represented the district planning and coordination marketing committee. The members of that committee in turn would be chairmen of state, local, or temporary committees, scattered throughout the entire country. The members of the regional, and in turn, the members of the state and local committees were as representative as they could be of the different elements of marketing in the territory. I had occasion to have very frequent contact with those sub-committees in connection with the work.

At the beginning of the Code there was without exaggeration a tremendous amount of work. The Code was sorely needed, but there were many questions of interpretation, misunderstandings and complaints as to conditions. Much had to be done to bring about an understanding of the Code rules and their effective application in the industry to establish fair marketing practices and give relief from the many disturbances that the industry had been suffering from. This involved a great deal of work in Washington, particularly in the early stages. It also involved considerable traveling through other sections of the country and working with the committee in the field. Those activities continued until the end of the Code, May 27, 1935.

3162 I received Exhibit 891 for identification, a letter dated July 20, 1934, addressed to me and signed by Mr. Ickes, Administrator of the Petroleum Industry. After I received that letter, I took on other activities. These activities involved the organizing of a general stabilization committee in Washington, with a complete field organization, with headquarters in the same divisions in all of the states; in many cases in local towns, and in some cases in respect to individual difficulties. I appointed the members of the general stabilization committee in Washington, and appointed chairmen of the committees in the respective regions. The regional chairmen appointed state and other committees. It was all under the advice, however, that these committees be even more embracive, if possible, of the different elements in the marketing end of the industry, that being a very essential part of those committees. These activities I have spoken of in connection with this letter of July 20 continued until the end of the Code, May 27, 1935.

In the beginning of this period my activities under the Planning and Coordination Committee and the marketing committee and under the letter of July 20th took almost all of my time, and eventually all of it. I arranged, in view of those activities, having in mind how pressing and important they were, that my duties as president of Socony-
3163 Vacuum Oil Company be taken over by the executive committee of Socony-Vacuum Oil Company. I was not a member of that committee. I resigned my position as president and became a vice-president and director of the company.

The Planning and Coordination Marketing Committee had its offices in its own quarters in Washington, and that was where I was located. I also occupied my office at 26 Broadway, and carried on my own responsibilities there when I was in New York. That was true in connection with my work under the letter of July 20, 1934.

After the discontinuance of the Code and stabilization, I devoted myself to the preparation with the industry of a new marketing code to be submitted to the Federal Trade Commission. I was and am a member of a committee on that matter. The committee is composed of three members: Mr. Schuh, who is president of the National Retailers Organization, which has a membership among retailers of the country; and Mr. Paul Hadlick, who is head of the National Oil Association, I believe it is called, which is a national association for jobbers; and myself as chairman.

I heard Dr. Frey's testimony. There were numerous local committees, such as Dr. Frey referred to, active in many areas all over the country. The activities of
3164 the various committees reached practically every important place in every part of the country east of the Rocky Mountains. I agree with Dr. Frey's statement that there were problems which related to general areas, and in dealing with those there were stabilization meetings in particular areas and regions. General meetings such as I have described were held in the Mid-Western area, that is, the states included in the so-called Standard of Indiana territory.

On January 4, 1935, I attended a meeting which Mr. McDowell has described as a stabilization meeting in Chicago. I called and presided at the meeting. In opening the meeting I called attention to the group of very important prior meetings over a period of some 4 or 5 days, in early December, dealing with the restoration of retail markets.

During those four or five days over 1100 or 1200 people came in from the mid-western states, representative of the different kinds of marketers, to deal with this matter.

I spoke of it. I pointed out that a great deal had been accomplished at that meeting, but that there were already indications that the gains that we thought we had brought about were not holding, and that I felt that unless we did realize that we had to devote ourselves to carrying
3165 on this effort in respect to the stabilization and bringing back to normal of the retail markets, we would soon be back to where we started.

By many different kinds of marketers I mean there were the refiners, large and small, and representatives of dealers, jobbers, what we called the trackside operators, and the open price-cutters. In fact, the various types of marketers that are so vitally interested in retail markets.

I told them what had been accomplished. I called attention to the fact that while a great deal had been done at that December meeting where we made some improvement in some 800 or 900 circuit points, and while that was undoubtedly a fine step, yet there were still other points that nothing had been done with, and it still had to be remembered that there was much to be done, and that the situation did call for their very careful consideration and action. I spoke of the price wars that had been so prevalent throughout the territory in the Mid-West. At that time, as everybody knew, they were evident in most every place, and they were something of great concern and were growing even more evident most everywhere.

The subject of price wars, and how they operated, is very important. It involves a great deal. I would 3166 like to picture to you as simply as I can some very important phases of price wars.

First, let us take any one of the important major companies and deal with their distribution. Those companies find it very necessary, in order to have what they consider proper representation, where the product will be on sale, where the customers want it, to have circles or we will say circuits, if you like, tank wagon circuits. Those circuits may have one, two, three, or more towns. They are fairly limited. Those circuits are very sensitive to the competition in that circuit.

If at any time there is anything to disturb a market in one of those circuits and there is some change or reduction in price at the retail point of sale or the service station, everyone operating in that particular circuit meets that change, that reduction.

Now, the important thing about that is that the circuits of one company may not be the particular circuit of another company, so that the circuits overlap, and so the minute there is any change in a given circuit other circuits are very quickly affected.

And so starting with one, you have immediately to deal with 5 or 6 or 10, or more points.

It is not an uncommon thing by this method that what happens at one point may spread rapidly, very frequently more rapidly than it can be dealt with, to an entire 3167 state.

I know many places, and I have in mind now a town like Atlanta, Georgia, where by the operation of one man in one town, the entire state was kept in a state of subnormalcy for nearly a year just for this reason.

Very outstanding in that picture and frequently the cause of these price wars, is the operator who undersells openly.

He is not a secret rebater or a secret-price-cutter. He is known in the industry as "known price-cutter." He is the trackside operator. He is the cut-price operator. And that is very important in these Mid-Western states, because operators find it to their advantage, with good up-to-date stations, and grades of gasoline frequently better than those they are competing with, to enter into markets as known and obvious price-cutters. Their prices may be 2¢, 3¢, 4¢ and maybe 5¢ under the normal market.

In any one of these circuits if any such price cutter makes a move because he wants more gallonage, that move is immediately met. During the period we are speaking of, that was a very outstanding form of competition, a very obvious one, and one with which the whole industry was concerned.

I say "immediately"; not always immediately because I can remember that there are occasions when
3168 such price-cutters would make a substantial price cut
of 3¢ or 4¢ and that the industry would hold to a normal price or to the then prevailing normal price, and not make the change. The result was a vast falling away of gallonage from the normal station of the refiner into stations of these price-cutters. Now, that, I may say, is a serious thing, and one that everybody in every one of these circuits had to contend with. It couldn't go on indefinitely, because by that method any station that was competitive with such a price-cutter would soon lose his position. So, sooner or later he might be compelled to meet that difference in price, and frequently when that price was met, the so-called price-cutter, to maintain his position, and accomplish what he was trying to do, would make a further cut. So you were where you were in the beginning, except at a lower level.

Now, I would like to speak of surplus gasoline, which is very important in connection with these price wars.

For illustration, say we in this room are price-cutters and we go out and see several hundred cars of gasoline on the track-side. And we say, "Here is gasoline that has no market; it is gasoline that we might buy. Shall we buy, or shall we not buy? If there is any inducement to buy, let's see if we can buy."

3169 We would see if we could buy it at a bargain. We
might buy it direct from the refiner or through a broker; in any event, we would be interested in buying it, because it would be distress gasoline available at a good price.

Sometimes the gentleman in the other end of the room, who might be the larger refinery, might also see that gasoline; he might be interested as a buyer of gasoline, and whoever bought it, it would be bargain gasoline.

While that is going on, what is happening to this retailer?

The retailer has a margin between what is the normal price and what he pays, and he has to operate and make his profit within that margin. If he becomes involved in a price war, and has to meet his competitor in any one of these circles, he has to give away part of that margin. And when he gives it away, and again gives it away, depending on how the price war goes, he comes down to the point that that margin is reduced and reduced and reduced. And, sooner or later, he comes to the point—that was so frequent with us—he came to the point that he couldn't go on; the margin wasn't there.

And then what did he do? He turned to his supplier. He turned to the refinery, or the jobber who sold him
3170 his gasoline. That jobber may be the large refiner's jobber, or it may be the jobber of the small refiner. And he pointed out that, "I must have assistance because, see what this price war has led me to." And then in turn, the jobber, who would have to help him or lose his distribution or his retailer—he had his margin, and as he helped his distributor or his retailer, he had to give away part of his margin. And it would not be very long before he would have reached the point where he didn't have sufficient to carry on. And so he, the jobber, turns to his source of supply. Or he has a refinery he is distributing for, and so he goes to this refiner.

Does the refiner then say that he is not interested in his jobber, or his distributor? No, he takes care of that jobber; and refiners do take care of their jobbers, because they depend on them. And so that refiner eventually finds himself an important cog in this price war—a price war started by the retailer, and involving all, the retailer, the jobber, the trackside operator, the price-cutter, the co-op, all involved in that retail price war, which comes back to the jobber; and the jobber then goes for protection or help to the refiner; and the refiner then has to take care of it. And by that means he gets a realization—a realization of what? Whatever the price war has brought back to
3171 him as a tank car price.

And so we have a circle that starts again when that very refiner, who has sold that distress product, in turn has to go out and sell again, with no known market or known customers; and gasoline appears again in the retail market, with more or less the same effect.

This process involves the marketers and refiners so that each and every one of them become price-cutters and involved in a price war, that starts at that retail station in any one of these circles, and which, I have explained, can spread so rapidly in all directions.

These were the problems I was very actively dealing with in the winter of 1934 and 1935.

There was more than one subject discussed in the course of the meeting of January 4th. My uniform practice in conducting those meetings was not to prepare agendas of the subjects that I wanted to talk about but to find out what the industry wanted to talk about. The subjects that were the most serious in the minds of the industry at any point were the things that they presented and which we offered to the meeting, as they cared to discuss it. These matters were generally sent in to Mr. Majewski. He lived in Chicago, where we held most of our meetings. He would list them as they came in. When we had our meetings, we would then call out the subjects and let those that were present deal with the subject that they desired to deal with.

3172 I remember the procedure that was followed on the occasion of this meeting of January 4th. The matter which resulted in the appointment of the Tank Car Stabilization Committee was taken up in the latter part of the morning session of the first day. Mr. Majewski, who was a member of the Planning and Coordination Marketing Committee and of the Stabilization Committee and who represented the independent refiner and the jobber in these Committees, arose and said that he had something that, to him, was of the greatest importance.

He stated that he had listened to what had been done in regard to the restoration of retail markets, and was most pleased and gratified that progress was being made; because he realized how important it was. But he had not heard anything in regard to the question of the independent refiner, and that concerned the realization of gasoline by that refiner.

He stated that this question had been a matter of consideration by the Petroleum Administrative Board and the Planning and Coordination Committee ever since the Code had started. That he knew and was aware of what had been done on various occasions to bring help to the independent refiner, but that very little had been accomplished.

To the contrary, the independent refiner had reached
3173 the time when his situation was more serious than it had ever been; and, much as he regretted it, that something would have to be done, and if it could not be done, it would be necessary in protection of their interests to withdraw from the observance of the Code, to have no further part in stabilization, and to go out and in their own way endeavor to protect themselves. That he hoped that something could be said at the meeting that would give him some relief in the concern that he had for the independent refiner; and he hoped that they would realize that this was nothing more than really a cry of distress that he felt just had to be dealt with.

He said that, with the stabilization or the fixing of the price of crude oil, the independent refiners had been faced with a serious problem. That they had endeavored to change the price of crude oil to get some relief, but the Administration had been most insistent and had definitely shown that their policy was to maintain that price; and that in consequence, there was no alternative for them but to see the realization of gasoline far below that parity, which affected them with regard to all their operations; and it would not be very long before some of the refiners would have to close their plants. In fact, some of them, he reported, had already closed.

3174 After Mr. Majewski talked there was a great deal of discussion from the floor with regard to the subject matter of his remarks. I recall some of it. There was a response from a great many people on the floor. It was a general discussion. I don't know all who rose, but the substance of what was said was that all refiners were in a serious predicament, and that what Mr. Majewski said was a matter of very deep concern, and was no doubt of more concern to the independent refiner than it was to the larger refiner, because it meant his very life; and if something wasn't done, no doubt they would, as Mr. Majewski had stated, be in a very serious condition.

Some of the gentlemen pointed out that one of the contributing factors to the distress was the sale of high-octane by some of these refiners, who were offering it in competition with much lower octanes, that they felt that there was a justification for what had been said, and that something ought to be done.

There was another independent refiner who participated in the discussion. That was Mr. O'Shaughnessy, head of the Globe Companies. He was a member of the Planning

and Coordination Committee and was active in stabiliza-
tion as representative of the independent Mid-Conti-
3175 nent refiner. He is a defendant in this case, on trial now.

Mr. O'Shaughnessy stated with emphasis that he concurred in what Mr. Majewski had said. That he had been definitely of the opinion that crude oil should come down. That he had taken that position with the Administration; in fact, at one time he had reduced the price of crude oil with some other refiners, but had restored the price because he felt that it would be better, and the Administration wanted to keep the price of crude oil at one dollar; but that he had reached the point, notwithstanding all that, where he would have to concur with Mr. Majewski, and maybe they would have to reduce the price of crude oil anyway; something would have to be done, and it might have to be that.

I didn't take any part in the discussion. At its conclusion I made some remarks. I stated that I felt very sympathetic with what had been said; that it was no doubt true that we had, with the Petroleum Administrative Board, struggled with the plight of the independent refiner. That the independent refiner paying $1 for crude and with the additional wages, and reductions in hours, and with his allocations and other things, that had come to him, unquestionably was in a very serious situation; and I quite agreed that if something could be done, it ought to be. I asked
for recommendations from the floor as to what, if
3176 anything, could be recommended.

I said something as to the effect on the retail market if the tank car market were not stabilized. I stated that what we had done in December in respect to the restoration of retail prices would unquestionably not be of any account; that, unless something was done to deal with the tank car market we would continue to have trouble, and I felt that that was a very important item.

I was here throughout the testimony of Dr. Frey, and I heard him testify that the Secretary considered that it was an undesirable state of affairs for the price of gasoline at the refinery not to be in parity with crude, and it was particularly hard on independent refiners.

At the time of this meeting on January 4th, I knew that the stated attitude of the Secretary of the Interior, Mr. Ickes, was as Dr. Frey described it. I had, only a short time before that, in Dallas, at the meeting of the American Petroleum Institute, which he addressed, and where I talked with him, heard him in an open meeting state that; and I also knew it from other things that he had said and done during the entire activity of the Code in Washington.

It was in November, 1934 that I heard him at Dallas. I
talked with him after the meeting, but he addressed
3177 the American Petroleum Institute, and dealt with this
question. The copy of the Oil and Gas Journal, dated
November 15, 1934, contains on page 40 a report of the speech that I heard him deliver on that occasion. The occasion for the delivery of that speech was the annual meeting of the Petroleum Institute, and Secretary Ickes was there to address the convention of all the members. It was a very large meeting.

(Marked portion of press release referred to is received in evidence as EXHIBIT 968, and read to the jury by Mr. Donovan.)

That is the substance of a part of what I heard on that occasion at Dallas, the speech made by Mr. Ickes on November 14, 1934.

At the meeting of January 4th, I asked for recommendations as to how the matter that had been discussed should be dealt with. There was a recommendation that as the subject was a very important one, a committee embracive of the different viewpoints and the different territories be appointed to study the matter, and to make a recommendation to me as to what, if anything, might be done. I am not sure who made that recommendation, but I think it was Mr. Majewski.

I took it under advisement, and later in the day appointed
the committee. The members I appointed and the rea-
3178 sons I made these particular appointments were as
follows:

Mr. McDowell, the chairman, was the active head of the marketing of Mid-Continent Petroleum Company, located in Tulsa. He had been very cooperative in all industry matters. I felt that he had a very considerable and intelligent grasp of the industry's problems. He was active throughout the Mid-Western states. He was located in the heart of the Mid-Continent independent refinery district; and was known in a very favorable way by large refiners and small refiners. He had been very active in Code matters all through the Mid-Continent district, and had been in Washington on many occasions on Code matters.

Mr. H. T. Ashton, of Lubrite Refining Company, was formerly an independent refiner. He also had a very expert knowledge, I felt, of conditions; also had a very good acquaintance with the independent refiners, and was known by the large refiners; had a comprehensive knowledge of all marketing conditions; and in addition, was an active officer of the Western Petroleum Refiners' Association, which was an association largely composed of independent refiners.

Mr. Van Eeghen of Shell Petroleum Company, St. Louis, through the large distribution and important position of
the Shell interests all through this Mid-Continent,
3179 both as a refiner and a marketer, I felt had a very
comprehensive knowledge of the entire field.

Mr. Hughes of Phillips Petroleum Company, Bartlesville, was representing the knowledge of production, Phillips Petroleum Company being very active independent producers, and also had a very close relationship and understanding with jobbers and dealers with whom they did a very large business, and also at that time they were very active in retail marketing.

Mr. Karstedt of Continental Oil Company at Ponca City was representing a very large, if not the leading activity in the northwest, and had a knowledge, I felt, of the states in that part of the mid-west which was important.

Mr. O'Shaughnessy was head of an independent refinery, and had a knowledge of the difficulties that the independent refiner was laboring under, and also was one of those who had made the request that something be done, and I felt his contribution would be very valuable.

Mr. Bullock of Standard Oil Company of Indiana represented the leader, which I felt was important in that they had very large distribution in every part of the territory, in every state, and his very expert and very long understanding of this field, dating back a great many years,
was a necessary and important element.

3180 Patrick Miskell of Empire Oil Refining Company
at Tulsa was for quite a long time a well-known and
a very practical refiner and active marketer in all the 10 states. He had not only had acquaintance with the independent refiners, but also with the independent marketers in the Mid-West, and also had a knowledge of the southeast and southwest which these ten states border on.

Now, you will notice that the experience of these men is pretty general, I felt, and that they were located at quite far points in this mid-western territory.

When I asked Mr. McDowell and these other gentlemen to serve on this committee, I stated that they had heard the problem as it had been presented by Mr. Majewski and Mr. O'Shaughnessy, that they knew that this was an important matter that had been before the industry for some time; that I would recommend that the committee take the matter under advisement, consider it from all angles, and then if and when they had anything to recommend to me, to let me know. I also stated that this matter was of a great deal of interest, it was quite important to the people back in Washington, the Petroleum Administrative Board, and that I wanted to inform them as to what we were doing, and developments, when and if they finally reported to me.

After the meeting of January 4th in Chicago, I went to Washington. When I returned to Washington I at-
3181 tended a meeting of the Planning and Coordination
Committee, on or about January 8th or 9th. I remember conversations I had at that time with Mr. Franklin and others at that meeting, some of which related to the meeting which we had held in Chicago.

At the meeting of the Planning and Coordination Committee, I told them that this question of the plight of the independent refiner had been with us for a long time; that we had endeavored to deal with it, as they knew, without much success; that the matter had become urgent. I then explained to members of the Planning and Coordination Committee what Messrs. Majewski and O'Shaughnessy had said, and that I had appointed this committee, and I was hopeful that the committee might make some constructive suggestions, and furthermore, that I would hope to keep them informed.

I referred to the matter of the tank car price and its relation to crude in regard to the ever-present problem that had been before the Committee, and had been so frequently, from the very first, discussed with the Petroleum Administrative Board, namely, the bringing about for gasoline a parity with crude oil. When I say "parity" I mean a price for gasoline that would be relative to the price of $1 for crude oil.

At or about the same time I saw some members of
3182 the Petroleum Administrative Board, Messrs. Mar-
shall and Meyers.

During the period prior to January 8th or 9th, I had had occasion, as chairman of the marketing committee, or as a member of the Planning and Coordination Committee, or under the letter of July 20th, to be very frequently in contact with members of the Petroleum Administrative Board.

With the beginning of the Code I was in Washington continuously for a great many weeks. While there our contact with the Petroleum Administrative Board was daily; it was at that period not only daily but at night. It was very common for us to be in consultation with them for hours and hours at a time, day after day. It was extremely close. In the matters in which I was in touch with the Oil Administration, my contacts were, with few exceptions, with the members of the Board rather than with the Secretary of the Interior.

After the appointment of the Planning and Coordination Committee, by the President, we began our operations in the Interior Department Building. I mention that because that was only for a short time. We were very near the office of the Secretary. He appeared sometime in early September. I remember it well. He was in his shirt sleeves; and informed us that as a cabinet minister his duties were very considerable; that he was unable to carry on himself personally all that would be necessary for him
3183 to do in connection with the administration of the
Code; that he had chosen members for the Petroleum Administrative Board who were to act for him, who were to have responsibility and authority, and that all questions that we had were to be taken up with them, and it should be considered as if they were taken up with him direct; that he wished to assure us, not only was this his wish, but that he would be in constant touch, through his Board, with our activities, and if, on occasion, it was so required, he would have opportunity to contact with us, but that we were to look to the Petroleum Administrative Board in relation to the carrying on of our functions, and that they had the authority to do so.

Our contacts with the members of the Petroleum Administrative Board were necessarily informal.

Our contacts with these gentlemen in regard to interpretation of Code rules occupied a very considerable amount of time, day in and day out. It would have been practically an impossibility for our Committee, having in mind all the activities through the country, to be going to Mr. Ickes for attention or consideration.

This Petroleum Administrative Board was devoting its entire time to our industry.

Mr. Meyers and Mr. Marshall were connected with the
Department of the Interior under Mr. Ickes, in some
3184 other capacity, before he appointed them to the Petro-
leum Administrative Board.

When I saw them in Washington, on or about January

9, 1935, I explained to them what had been a matter of grave concern to the Petroleum Administrative Board, and needless to say, to the industry, the matter of these retail price wars, and what we had done in the December meetings to deal with them.

I told them I was encouraged about what we had accomplished up to that time by the cooperation of the different elements in the industry and how the industry in the various states had given their time and attention to it.

I also told them of the meeting of January 4th, how this question of the independent refiner had come to the front and what I had done in appointing the committee.

I also discussed with Messrs. Meyers and Marshall what was then a matter of grave concern to us, and that was the very recent Panama decision of the Supreme Court, which had brought about in Texas a discontinuance of the Tender Board; and I was anxious to know what, if anything, was being done, because this was worrying all of us, and it would be very, very essential, we felt, that something be
done to deal with it. The Panama decision was on
3185 January 7th. When I talked with them, that informa-
tion had come down just a few days before.

Mr. Meyers and Mr. Marshall informed me as to what the administration was going to do about the Panama decision. They stated that they could quite appreciate our situation; that the Secretary and the members of the Board were doing all that they could in the preparation of a bill that they were hopeful of submitting to Congress that would reestablish the Tender Board in Texas.

Mr Meyers and Mr. Marshall expressed great interest in the statement I had made to them about what I had been doing in the Mid-West and hoped that we would be successful in maintaining the gains we had made in the retail market, and also expressed interest in regard to the formation of the committee, in connection with the tank car market situation in the Mid-Continent.

I don't recall that I saw Mr. McDowell again during the month of January, 1935, after my talk with Mr. Meyers and Mr. Marshall. I may have; but frankly don't recall it. I don't recall specifically any telephone conversation, such as you suggest was Mr. McDowell's recollection in testifying, that I had with him during that month, as to his committee becoming active and in which I had emphasized the importance of that work to him, although I wouldn't say he wasn't right; but I don't remember it.

During this period in January I was devoting my-
3186 self to activities other than the tank car stabilization
committee. The work that I was doing under the let-

ter of July 20th took me into various sections of the country. I remember I was at Pinehurst, North Carolina during the first half of February, 1935. I recall a telephone conversation with Mr. McDowell while I was there. I would say that conversation took place February 5th or 6th.

I have heard Mr. McDowell's testimony and I remember he said that he had a conversation with me also on February 11. I would say that he was probably right about that.

I next saw Mr. McDowell in connection with this Committee on February 25th or 26th, in Chicago. By that time, the Committee may have been called the Tank Car Stabilization Committee. I didn't give it that name. I met with Mr. McDowell and Mr. Ashton, who was the vice-chairman of that Committee; told them that while they had in their telephone conversations told me something about what they were doing, what they were planning, I felt that I would like to have a full and complete statement of what they had to recommend. They gave me a statement of what was under way at that time.

They told me that the Committee had felt that this was a very serious situation, that the refiners of the country unquestionably were in distress, due to the price of
3187 crude oil and the realization of gasoline. Realization of gasoline is the price they were getting for gasoline on sales at their refineries. There was no doubt that the independent refiner did need assistance. They had endeavored to consider the matter from every angle. They had discussed the matter of recommending a reduction in the price of crude oil. In this respect, they knew the attitude of the administration had been opposed to it.

Furthermore, it was a question as to whether it would be supporting the crude oil situation in the producing states, the proration laws, and so forth. That after all their considerations, they had come to what they felt was a wise and reasonable recommendation.

Mr. McDowell said that consideration had been given to the effect of distress gasoline and that the question of distress gasoline was an outstanding factor in the situation, and that it had to be dealt with. He mentioned a quantity which they felt was comparatively small, having in mind total production of gasoline, which was in the hands of these independent refiners. It was gasoline they had no home or market for. It was distress gasoline. And unless there could be some way of helping these refiners to find buyers for that, it would be very difficult to do anything in the way of stabilizing the situation.

He mentioned the fact that there were known regular 3188 buyers in the Mid-Continent region who were buying currently, and that if these buyers had knowledge of the situation, knew what gasoline was being offered, it would undoubtedly prove of interest and might assist the situation.

The recommendation Mr. McDowell made to me in substance was this: That their committee would make current surveys of the Mid-Continent situation, that known sellers of gasoline would be put in contact with prospective buyers of gasoline, that buyer and seller would in their own way carry on their own negotiations as to price, quantity, specifications, shipping.

That the Committee would recommend to the buyers that they pay a fair, market going price. Second, that this proposed plan involve no pool, no contractual commitments. It would be entirely voluntary except as to the terms that the seller and buyer would arrive at individually; that there would be no percentage buying as to the quantity of gasoline that would be sold or bought, depending on the size of the buyer.

That, third, they would not advise that this program be put into effect until the hot oil situation in Texas had come under control, so that the refiners in Texas were shipping their products to the normal market for their products.

3189 They then emphasized particularly how this plan was different from the pools or contractual programs that had been tried in 1934. They pointed out that in those programs on the one side, that companies were required to buy gasoline regardless of whether they needed it or not, that in this proposed plan the buyer only bought such quantity of gasoline as he had actual need for. That in those programs there were definite contractual commitments; in this program it was voluntary. That in those 1934 programs the prices for which the gasoline was to be sold and bought were not only fixed, but they were fixed above the market. In regard to this plan the matter of price would be the fair market going price and be a matter of negotiation between the seller and buyer; that in those programs there had been a definite relationship between the quantity of gasoline that was sold and bought, depending on the size of the buyer; that in this program there was no such relationship. The seller sold what he had and the buyer bought what he chose.

Further, that in those programs, in the case of some of the refiners, their entire output of gasoline was sold; while in this program there was no such provision. It was only a matter of such gasoline as the refiner cared to sell.

3190 Those 1934 programs were approved by the Oil Administrator.

After stating this recommendation, they recommended to me that this plan be put into effect if and when the East Texas hot oil situation was brought under control so that the East Texas gasoline would be going into its normal market, and not slopping over into the Mid-Continent. At this time there was under consideration by the Government the Connally Bill, which had about that time been approved, as I recall it, on February 22, and the outlook, as a result of that, was very encouraging.

In respect to their recommendation, I told them that I felt that their plan was wise and reasonable; that I felt that they had considered the matter from every point of view; I felt that with the passage of the Connally Act and the prospect of a Tender Board, which had not been appointed at that particular moment, it was very possible; and that all in all I felt that the program was one that could be recommended. I felt, however, I wasn't ready to approve it and see the Committee put it into effect; that I felt that something else should be done first. And at that time I told them of a meeting that I had called sometime before to meet with the independent refiners in the Mid-Continent region at Kansas City on March 1st. I had

3191 notified the independent refiners at that time of such a meeting.

Exhibit 137 for identification is a telegram that I sent to one of the independent refiners. I sent similar telegrams to other independent refiners to meet on March 1st.

(Telegram referred to is received in evidence as EXHIBIT 137, and read to the jury by Mr. Donovan.)

When in that telegram I spoke of "many important matters that should be immediately decided", I had in mind that in our stabilization efforts I would like to contact with them and find out whether their representation in the work that we were trying to do was agreeable to them. I also had in mind this matter of allocations which was something that was very important to them and to us and to the administration.

I sent a letter, Exhibit 969 for identification, before that meeting to Charles Fahy of the Petroleum Administrative Board.

I attended the meeting in Kansas City on March 1st.

Mr. McDowell was unable to be there. Mr. Ashton attended it.

I opened the meeting. I told the group that I was very glad to meet them, there were many there that I had never met, that I came there in behalf of stabilization, not as a
stabilizer of any one part of the industry, but as
3192 stabilizer for all parts of the industry, and that meant
that I came as stabilizer to help the independent refiner in the Mid-Continent.

I told them that I appreciated that they had had a very difficult and serious development under the Code. I knew that it was so that some of them were on the brink of bankruptcy; I knew that some of them had closed their plants; I knew that others were on the verge of closing their plants; I knew that the matter of hot gasoline that had been coming over from East Texas and destroying markets in the Mid-Continent had seriously affected them; I knew that the Code had proven difficult for them. It had resulted in the pegging of the price of crude at $1 by the administration; it had brought the confinements of allocations; it had resulted in increased labor costs, lower hours, minimum wages; it had brought other troubles. I was there to find out whether I could help them; that I knew that they needed help, and I hoped that this meeting, thaf something could be accomplished that would relieve them from the distress they were in.

In the course of that meeting something was said about the plan which Mr. McDowell's Committee had recommended to me. I told them that the question of their serious difficulty had been presented at a meeting in Chicago, on January 4th, by Messrs. O'Shaughnessy and
Majewski; that they had made a very strong plea for
3193 something to be done to assist them, and that every-
body had felt that that statement was a correct one in regard to their plight; that I had appointed a committee, which no doubt they knew of because it had received considerable publicity, and that that committee had recently made a recommendation as a result of their study; that I was going to ask a member of the committee, Mr. Ashton, its vice-chairman, because Mr. McDowell, its chairman could not be present, to directly inform them as to what this recommendation was.

I asked them then if they would consider it and let us know what they thought of it, that it was in their behalf, and I hoped something constructive would come out of this recommendation.

Mr. Ashton stated to the group what I have already testified to in regard to the McDowell-Ashton report to me in Chicago on February 26th.

After his statement there was some discussion. As a result of that discussion, the group decided that we were trying to do something for them and wanted to co-operate in the consideration of their difficulties in every way they could. They stated they would like to know more of what Mr. Ashton had reported in regard to his committee's recommendation. As a matter of fact they wanted to see
3194 if they could not have more information than they
had been able to get merely by his presenting it. As a result Mr. Ashton telephoned Mr. McDowell and then informed the group that there would be a meeting in the near future in St. Louis, and that the Committee which would meet there would be very glad to talk to a representative committee of their group that cared to attend, and at that time they would have an opportunity to find out more, as they desired, of the proposal.

I cannot be sure, but I think Mr. McDowell at that time was in Tulsa. As I recall it, the date of the meeting was fixed, March 5. The independents appointed a committee.

Exhibit 305 for identification is a letter that I sent to Mr. Marcell, dated March 12, 1935.

(Letter referred to is received in evidence as EXHIBIT 305, and read to the jury by Mr. Donovan.)

By "bad practices", in that letter, I meant that which the industry under the Code and under stabilization was trying to eliminate; that we would come under the laws of our Code; that we would take and use the proper, fair practices that the Code provided.

In regard to leaders, I referred to the major companies. In an industry such as ours, whether under a Code or under stabilization, the major operators, having in mind
3195 their position, their size, their importance, their great
potential strength in all things relating to a market, would necessarily have to abide by the Code, be cooperative in stabilization in behalf of an industry and lead the way. If you didn't have the leaders, or the large distributors of an industry supporting a Code or stabilization, it would be totally impractical to deal with independent or small refiners or marketers.

Mr. Marcell is the general manager in charge of White Eagle Division of Socony-Vacuum Oil Company of Kansas, who operate, as I have explained, in a number of states adjoining.

Mr. Irwin is in charge largely of the refinery activities. That is R. R. Irwin.

After the meeting of March 1st, I recall hearing of the St. Louis meeting of the Tank Car Stabilization Committee which was held on March 5th at St. Louis. I heard that from Mr. Ashton by telephone. He told me that the committee of independent refiners whom they had chosen themselves, had been to St. Louis; that they had had an interesting meeting, and that they felt that some good had been accomplished.

Later in the day I had a further conversation with him. I told him that we had all been of the feeling that the proposals recommended by his committee, with the idea
3196 of being helpful to the independent refiners, should
become effective as soon as possible. That, when those recommendations were made, we hadn't been able to approve them because of the East Texas hot oil situation. That I felt by that time, March 6th, that every indication was for an improvement; that East Texas gasoline, while still a factor, was apparently being better controlled; the Tender Board was operating with a degree of efficiency, and that I felt there should be no further delay, and that it would be all right for the Committee to make their recommendation effective.

I don't recall that I did anything after that time in connection with the activities of the Tank Car Stabilization Committee. I did not attend any of their meetings. I received information from Mr. McDowell or Mr. Ashton, or from both, as to what the Committee was doing. The nature of that information was an occasional memorandum that had to do with the surveys that they were making, and giving some idea of the prospective buyers of the gasoline that this survey showed was for sale. I don't recall receiving any memoranda that purchases had actually been made by the various companies. I don't recall that I ever got in touch with any prospective buyers in the Mid-Continent field and discussed their buying with them. Neither the Committee nor any member of the Committee asked my aid in that matter. If they had asked me, I
3197 would gladly have given it.

I have heard Mr. McDowell's testimony as to a meeting in Chicago on June 6 and 7, 1935, after the Schechter decision knocked out the N. I. R. A. I would say that my recollection is in accord with his testimony on that. The Schechter decision left us without any Code or stabilization, other than voluntary stabilization. This was a very important matter to the industry. I called that meeting, which I think was on June 7th, for the purpose of discussing the possibility of a code for the industry for marketing being submitted to the Federal Trade Commission.

Before going to Chicago I had attended the meeting of the Board of Directors of the American Petroleum Institute on June 3rd. At that time, action had been taken by the Board of Directors as to the formation of a Code of Fair Trade Practices, to be submitted to the Federal Trade Commission and as to the setting up of a committee to deal with that problem. The Executive Committee and the Board of Directors of the American Petroleum Institute appointed me as the chairman of a committee to prepare a proposed marketing code to submit to the Federal Trade Commission. It passed a resolution requesting and approving the various committees of the Planning and Coordination Marketing Committee contributing what
3198 they could to the preparation of such a code. Furthermore they understood that the Secretary, and the Planning and Coordination Committee, hoped that there yet would be legislation that would enable us to carry on in some form, maybe not the same as under the N. R. A., but in some form, a Code of Fair Practice.

I remember that the matter of a code was taken up with the Federal Trade Commission in the month of June. I did not personally take it up. That was a part of the situation which I reviewed with the group in Chicago on June 6th and 7th.

I recall that Mr. McDowell testified here that after the meeting of the Tank Car Stabilization Committee on June 6th and 7th, held after the June meeting, at which he spoke, he informed me that the Tank Car Stabilization Committee was going to continue its activities on a voluntary basis. I recall his testimony that I said to him that I thought it was a fine thing to do. I did think it was a fine thing to do.

After that time, I did not receive any information that I recall as to the activities of that Committee. There may be an occasional memorandum, but I don't recall any. I never was called upon after that time to have any contact with buyers.

Mr. McDowell and Mr. Ashton had told me that the amount of distress gasoline that was expected, as
3199 shown by their survey, in the Mid-Continent each month was between 600 and 700 cars.

The committee of independent refiners appointed to meet with Mr. McDowell's Committee at St. Louis on March 5, were Messrs. Boggs, Cocanower and Simmons. I did hear that Mr. Winget, another independent refiner, appeared there on his own.

I know Neil Buckley. I met him in February, 1935 at Pinehurst, North Carolina.

Dr. Lederer of the P. & C. Committee telephoned me on February 9 or 10, 1935 and said that he wished to introduce a Mr. Buckley, that I didn't know Mr. Buckley, but that he had something very important and very interesting that he wanted Mr. Buckley to lay before me. He remarked upon the fact that I had shown interest and activity in behalf of the refiners in connection with stabilization work and he felt this was a matter that I should know about; and Mr. Buckley and he were anxious that I give an interview to Mr. Buckley.

I knew Dr. Lederer. He was chairman of the Planning and Coordination Committee for labor in Washington in connection with code activities. He was also allocator of the East Texas field.

Mr. Collett at that time was the chairman of the Planning and Coordination Committee in Washington. Dr. Lederer stated that he had also talked with Mr. Col-
3200 lett, regarding Mr. Buckley, and that he wished to add that Mr. Collett likewise felt that the matter was of importance and joined Dr. Lederer in asking that I give an interview.

In reply to Dr. Lederer I said that I was in need of rest; and had been in Pinehurst only a short time and would prefer his delaying the matter until I returned. Dr. Lederer said he felt the matter was urgent and was serious enough to justify me, if I would, in receiving Mr. Buckley. My only conversation with Mr. Buckley was that Dr. Lederer then introduced me over the 'phone to him and he asked when it would be convenient for me to see him, and I fixed the date of February 11th.

On February 11th, at Pinehurst, Mr. Buckley stated that he had been talking with East Texas refiners who had recently formed the East Texas Refiners Association; that he was rather discouraged in his accomplishment up to that time, and that he found that the industry that he had contacted had very little confidence in the sincerity of those refiners, and it was a question in his mind whether he was going to have very much success in his efforts.

He stated that he had taken up this work and had endeavored to make contacts with various important people among the major companies, but he had not been very
3201 successful, and that it had been suggested by Dr. Lederer, who he knew, apparently, very well, that he

come to me for advice, in fact, if I would, for assistance; that he appreciated that I would probably have some prejudice and some feeling of lack of confidence in these people, but he was there to tell me what he had done, that he had looked into the situation; he had deliberately analyzed it with as much care as he could, and he really felt that these refiners were sincere, that they had everything to gain by being cooperative with the industry and with the Petroleum Administrative Board in adopting good practices, obeying allocations, and all of those things that they had been so free and disregardful of.

I had never heard of the independent refiners' association in Texas. I told Mr. Buckley that what he said was of extreme interest. Needless to say, the industry had found the East Texas refiners one of the most demoralizing and the greatest disturbance that we had to contend with. I asked him a great many questions as to why he felt that they were sincere. I questioned him about why he felt that they were going to discontinue the purchase and use of hot oil. I questioned him as to why he felt they were going to abide by allocations. I called his attention to the fact that we had, on various occasions, endeavored to
3202 bring them into support and observation of the Code,
and all of those things had been disregarded by them, and I wanted him to tell me why he felt as he did. Whereupon, in his own characteristic way, he endeavored to do what he could. When he had finished, I still felt that there were a great many questions. I told him there would be many questions that the industry would want to know about.

Mr. Buckley told me that through the offices of this newly formed East Texas Refiners' Association, they wanted Mr. Buckley to find ways of contacting the large buyers so that they would find a market for their distress product. I told Mr. Buckley what the East Texas refiners would have to do, in obeying the orders of the Code Authority in regard to allocations. I told Mr. Buckley that there was one fundamental thing that he would have to consider, and that undoubtedly he would be called upon to explain to anybody that he talked to, and that was to overcome the prejudices and the marked doubt as to whether these refiners were really coming in under the Code authority and would carry on proper trade practices under the Code; would submit to allocations and keep themselves within those allocations, running legitimate crude, and purchasing only legitimate gasoline.

Mr. Buckley arrived in the morning, shortly after
3203 breakfast, and he left in the afternoon about 3 o'clock.

At that time I knew that the hot oil situation in Texa was one of the most demoralizing things we had had in th industry. Hot gasoline from East Texas had gone into th Mid-Continent fields; had found its way into the southeas ern field; had gone into the eastern markets, and being produced, as it was, from illegitimate, or hot crude, at les than $1 a barrel, it made possible the sale of gasoline a substantially lower prices than the price at which those wh were running legitimate crude at $1 a barrel could sel their gasoline; and was precipitating price wars and general demoralization in all of these markets.

I told Mr. Buckley before he left, that I was stabilizer for the industry, and I assumed that my responsibility was to deal with every phase of the industry, even including East Texas; that while there were a great many doubts that would have to be settled, I would interest myself in what he had said to me, and if I could be of any service, I most assuredly would; that I would like an opportunity to think the matter over further, and when I returned to either Washington or New York I would further communicate with him.

I saw Mr. Buckley again, as I recall it, on February 25
or 26, in Chicago. I had told him that there would be
3204 a meeting on Texas stabilization matters, and there
would be a fair number of people there, and he could
come if he wished and in his own way tell the same story to those people that he had told to me. I had called the meeting in Chicago because in those extraordinarily busy days Chicago was recognized as a central point for those coming from the far west, from the east, and from Texas. Those were days when it was very difficult to get men from New York to Texas, and the meeting had to do with the chief executives of marketing of the companies that were located in Texas, in the far west, or in New York.

My original idea was that Mr. Buckley would talk to the group the early part of the first day's meeting. In my letter to Fahy, Exhibit 969, I referred to the meetings I was holding in Chicago on February 25 and 26. Mr. Buckley came there on the 25th. He was not at the meeting except when I invited him in.

I decided before calling the meeting that the matters in relation to Texas were considerable in importance and in size; that there was a likelihood that they might take a good part of the two days. In consequence of that, I informed Mr. Buckley I was going to hold the meeting with the Texas people and that I would let him know later when he could come in and address the group. I took up

the Texas marketing matters at the opening of the
3205 meeting. Toward the latter part of the meeting I
asked Mr. Buckley to come in after I had told the
group what he was to come in for.

Mr. Buckley addressed the meeting. He said what he had said to me in Pinehurst. He added to that that I had raised a great many questions, and that he was hopeful that if the gentlemen present had the same questions, he could satisfy them as to the sincerity of the East Texas Refiners' Association and its members. Very few questions were asked.

I am not sure that I can remember all who were present at that meeting. It wasn't a very large meeting. There were present: Gulf Refining Company, Mr. Hartman; Magnolia Oil Company of Texas, Mr. Legge, who not only was representative of Socony-Vacuum but was the Planning and Coordination Committee Chairman for marketing for Texas; Mr. Dyer, who was his assistant in the Code work, and I believe eventually became his successor; Mr. Wright, of The Texas Company, from the western division of that company; later on in the day, Mr. Leach, of The Texas Company, who came from Texas; Mr. Carlisle, of Gulf Refining Company of Texas; Mr. Carnes, from New York, of Sinclair Oil Refining Company.

Mr. McDowell was not in the meeting. Mr. McDowell re-
ported to me his presence in Chicago, and was await-
3206 ing a conference with me on another matter. I might
add that for a very short time, probably less than
half an hour, Mr. Majewski and Mr. Ashton came in; but, as neither of those gentlemen were interested in Texas, they left. They were not there when Buckley talked.

After Mr. Buckley finished his statement there were very few questions during his presence. There was very little discussion after he left. There was almost unanimity in the expressions that they had no confidence in the East Texas refiners. All of these men, as you can see, were operators in marketing in Texas. They had lived a long and strenuous life, and had been the competitors of the bad practices of the East Texas refiners; and without hesitation they said on this occasion that they had no confidence that they were going to be any better in the future than they had been in the past, and so far as they were concerned, they didn't think they had much to say about it. After Mr. Buckley left, we proceeded with the meeting.

I saw Mr. Buckley again in Chicago later on that day. Mr. Buckley felt that his contact with this group hadn't been very encouraging. However, he stated that he had been accompanied to Chicago by Mr. May and Mr. Grogan, two members of the Association, and two independent refiners in East Texas; that these gentlemen were very 3207 anxious to talk with me, only for the purpose of meeting me and adding to what Mr. Buckley himself had said as to the seriousness of their situation, and their desire to cooperate with the industry. I informed him that the meeting was in progress and I didn't know whether I would be able to meet him that day, but would let him know later on.

I saw Mr. May and Mr. Grogan the following day and had a short conversation with them about the East Texas matter. It was more or less a reiteration of what Mr. Buckley had said. They obviously were worried, and hoped that they would find in me some assistance. They said that they knew how the industry felt toward them, but that they would be willing to do what they could to show that they were going to do all the things that they should do; that they were stopping their interest in hot oil, they would try to be legitimate marketers, and they sincerely trusted that I would do anything I could to assist Mr. Buckley in what he was trying to do for them.

Later on I had another conversation with Mr. Buckley in Chicago. Something was said to him about future conferences and something further I expected him to do. The meeting when I saw him was February 26th, at which time I told him that I might get in contact with him later; and later, before March 6th, I did get in contact with 3208 him.

I sent a telegram in which I asked those to whom I sent it to meet at the Waldorf in New York, on March 6, to hear the outcome of my meeting with the East Texas refiners, and to consider further action on surplus gasoline. I believe I remember to whom I sent those telegrams, approximately. There was Sun Oil Company, American Oil Company, Socony-Vacuum Oil Company, Standard Oil Company of New Jersey, Sinclair Refining Company, Gulf Refining Company, Tide Water Oil Company, Pan-American Oil Company, Continental Oil Company, Pure Oil Company, Richfield Oil Company, Cities Service, Atlantic Refining Company and Shell Company

I sent a telegram similar to Exhibit 488 to these various companies or individuals of those companies that I have just referred to.

The Texas Company was on the list, but not the Standard of Indiana. I am not positive about that list, but I am willing to say that that was a list that presumably covered this type of refiner.

I have attended a great many meetings, and it is not always easy to be accurate, but, not in the same rotation. I remember Mr. Eckert of Sun Company. He is not a defendant in this case. Mr. Hartmann of Gulf Company, a defendant in this case, but not on trial. Mr. Gould of Shell Oil Refining Company; it is a defendant
3209 but Mr. Gould is not. We must make a distinction; there are different Shell Companies, and this gentleman was a representative of that company which operates on the Eastern Seaboard, whatever its correct name is, that I can't give you at the moment; but nothing to do with the same company that at that time operated in the Mid-Continent. It was not the parent company of the Mid-Continent Company. There are two or three companies. It takes better than a lawyer to keep them apart. I can't.

Mr. Stone of Atlantic Refining Company—neither Mr. Stone nor Atlantic Refining Company is a defendant in this case. Mr. Fritz Ewing of Socony-Vacuum. He is not a defendant in this case. I am not sure about this, but I think Mr. Collins of Tide Water. He is not, as I understand it, a defendant in this case. Mr. Frueauff of Cities Service—and again, I am not certain, but I think he was. I can't remember about The Pure Oil Company, who was there, because they had various representatives at various times, and I can't remember who. I think there was someone but I won't be sure.

Mr. Carnes of Sinclair Oil Refining Company. Mr. Burns, I believe, of Richfield Oil Company. Mr. Burns is not a defendant in this case nor is Richfield Oil Company. I probably sent a telegram to Mr. Stone as representing Atlantic Refining Company. They are not
3210 defendants in this case. Frueauff and Carnes are.

I mentioned Standard Oil Company of New Jersey, but I do not remember anybody of the Jersey Company being there. Standard Oil of New Jersey is not a defendant in this case. Mr. Blaustein of American Oil Company, I think, was there. I think it is Jacob Blaustein. They are not defendants in this case. I think Mr. Hatmaker of Pan-American Oil Company was there. They are not defendants in this case.

Those are, as I remember it, the men that I invited; and as nearly as I can recall, I have mentioned those that were there, but there is an uncertainty in my mind about some of them. I invited Mr. Dodge from Texas and there is confusion in my mind, but I think Mr. Dodge was there for a very brief time, probably an hour or less. As I recall, he had been very ill for one thing, and while I am not clear on it, I think he was there for a very short time and left.

All of these companies that I have named were companies that were particularly active on the Eastern Seaboard, and they were not companies that I invited there for any consideration in connection with the Mid-Continent. There were a great many major companies operating in the Mid-Continent that I did not invite to that meeting. Standard Oil Company of Indiana, Mid-Continent Petroleum Company, Shell Company that oper-
3211 ates out here, Phillips Petroleum Company, Skelly
Oil Company, Continental Oil Company, Barnsdall, Globe, Deep Rock, the local divisional operations of Socony-Vacuum, Standard of Ohio, Ohio Oil Company, Marathon Oil Company, Empire Oil—I might think of a few others. The companies that I have just recited were majors with two exceptions, Deep Rock and Globe.

The first names listed were people to whom I sent telegrams or representatives of companies to which I had sent telegrams. I said the companies like The Pure, I wouldn't be sure who it was sent to. So far as I can remember most of those individuals that I have named were present in the meeting, but I am not sure about it.

The purpose of that meeting was to bring in these gentlemen, and have them directly hear what Mr. Buckley had to say. I didn't invite all the other major companies because I had in the eastern activities of companies brought in the men who had been particularly interested in what Mr. Buckley had to say in regard to East Texas gasoline. The normal market, in explanation of that, for East Texas gasoline is Texas, the eastern seaboard and the Gulf. These gentlemen were all interested, as buyers and as users of gasoline, in that Texas gasoline. Mid-Continent refiners have no interest in that product, normally. The only place that there had ever been for
3212 East Texas or Texas gasoline in the Mid-Continent
was the result of illegitimate or hot gasoline that during these demoralized situations had abnormally come into this territory. In other words, to talk to the normal people that would be interested about the East Texas refiners' sales activities and their surplus gasoline, because those were the refiners in the market where that gasoline normally belonged, and those were the refiners that were in the East and they were there that day.

I don't remember the name of the man in Continental invited to attend. As a matter of fact, I am a little hazy about Continental, and there again, they didn't come to very many meetings. I don't know to whom it had been sent. Like the case of Pure Oil, with Continental I think I would address it to the company because they were not as clearly in my mind because it was not usually represented in meetings of that kind.

Mr. O. D. Robinson, president of Republic Oil Company, an independent refiner, had taken up that gulf situation with me. Neither Mr. Robinson nor Republic Oil Company is a defendant in this case.

I know Mr. Mike Benedum. He was connected with Republic Oil Company in the sense that he is the principal stockholder, if not the entire one. He was a
3213 member of the Planning and Coordination Committee. He was not one of the industry representatives. He was one of the three representatives appointed by the President to represent the interests of the Government. The other two were Mr. James Moffett and Mr. Richberg. All the members of the Planning and Coordination Committee were appointed by the President, but these three represented the interests of the Government.

When Mr. O. D. Robinson talked with me before this meeting, he stated that he had come to me in his own behalf and in behalf of the independent refiners in Texas and on the Gulf who were in distress; that due to the price wars, subnormal levels, and below cost selling of gasoline, they had reached the point where they couldn't afford to continue even selling their gasoline; that they did feel that they would have to go on and store this gasoline with the hope that something might improve the situation; that already they had stored some 8 to 12 cargoes among them. That they had met on several occasions in order to find out if there was anything they could do, and at one of the very recent meetings it had been recommended that he act as spokesman and contact with me, and also by the recommendation of Mr. Benedum, he had come to tell me what their situation was in the hope that I could give him some advice and help.

3214 Storage on the Gulf is different than elsewhere. The difference is that these independent refiners on the Gulf coast are a little more substantial than most of the independent refiners in the Mid-Continent; they are larger and their resources are larger. They are more established in the retail marketing. They cover a larger territory, in that they ship cargoes to the bulk terminals on the Eastern coast, and they are more firmly entrenched in the industry's marketing activities. However, there is a limit to what even they can do, but they are somewhat more substantial and have larger facilities than the small independent refiner in the Mid-Continent. It is obvious that it is necessary that they have storage in order to provide their trade which is very largely in cargoes to the Eastern seaboard. They accumulate gasoline as they currently make it, and endeavor to ship it to the eastern seaboard bulk terminals, and then when they reach the point where that is overcrowded, they are in very serious difficulty. They have to store the gasoline as it comes until they get a full cargo. I think one of those cargoes holds 375 to 400 cars. A car has 200 barrels approximately, which gives you the number of barrels that a cargo will have.

I had a talk with O. D. Robinson as to the activ-
3215 ities of the Gulf coast in connection with the Code. I
reviewed with Mr. Robinson the fact that the Gulf coast independent refiners had not been over-cooperative in observing the Code. They had not, in their sales practices, been very constructive. I recognized that they had surplus gasoline, and that it was necessary for them to dispose of it, but that they simply had little regard for the manner in which they dumped that gasoline up and down the Eastern seaboard; and brokers had been very active in selling this gasoline below cost at distress prices. In other words, they had contributed to the demoralization in the markets their product was offered in.

I took up with Mr. Robinson in a general way the question of refinery allocation. I didn't especially go into that, except to inquire from him what they were doing. From what he said, they hadn't been very cooperative. He explained this was by necessity.

The only further communication I had with Mr. Robinson between the time he came to see me in January and this meeting on March 6th in New York was to invite him to the meeting and state that if he desired to do so, it would be an opportunity for him to tell the group what he had said to me. I also invited Mr. Buckley for the
same purpose to attend the same meeting. Both
3216 Mr. Buckley and Mr. Robinson were at the meeting
on March 6th.

I regarded the meeting as of extreme importance, as referred to in the telegram, Exhibit 482. I regarded anything that had to do with the East Texas refiner, who had been one of the most demoralizing influences in the markets of this country, who had ignored state and federal laws, and who had disregarded the allocations and violated the Code, through below cost selling, and all that, as of outstanding importance, particularly when a representative of that group was making the offer of sincerity and cooperation as explained by Mr. Buckley. I assumed this industry ought to hear that and deal with it.

At the meeting of March 6th I briefly addressed the group, telling them that I knew what the East Texas refiners had done and how non-cooperative they had been with the Administrative Board, the Planning and Coordination Committee, and in respect to stabilization; that I knew that there were strong prejudices as to their sincerity and even their honesty; however, that I had received a visit from a Mr. Buckley, who was not known to very many of them, as he was not known to me until I met him; and that I assumed it was my duty to have Mr. Buckley address them, so that they could see what
3217 could be done to bring about an improvement in the situation. I felt it ought to be considered.

I made the same address to them in regard to the Gulf group, telling them that O. D. Robinson had come to me as a representative of that group; that I had not known Mr. Robinson before that occasion, and likewise that that was an important group that influenced many markets that they were interested in, and that likewise I thought he ought to be heard.

I told them that the purpose of both of these men was to try to find buyers for the gasoline of their group. We then invited Mr. Buckley and Mr. Robinson to come into the meeting. Mr. Buckley said more or less the same thing as he had said in Pinehurst and Chicago. Mr. Robinson more or less repeated what he had said to me about the distress of his group, and what to him was very important, the accumulation of gasoline in storage that I have mentioned.

After that had been done, there were a number of questions that these men would naturally ask who had, based on past experience, little confidence as to the real sincerity of the East Texas refiners. After these questions had been asked, I suggested that both of these gentlemen withdraw, that we might want them to return, which they did.

In answer to one of the questions that the group
3218 asked, O. D. Robinson mentioned these eight or ten cargoes that had been accumulated in storage. He further stated that they would undoubtedly have for the next 4 months surplus gasoline of 2 or 3 cargoes per month.

They were without prospective buyers, and if forced to sell these 20 or 22 cargoes, they would have to sell materially below their cost, and that was something that they just could not face.

In answer to some inquiry Mr. Buckley was unable to give any definite information and said that he did not know how much surplus East Texas refiners would have. He mentioned a few figures, but they were not given much attention because he admitted that he did not know.

Then Mr. O. D. Robinson and Mr. Buckley withdrew from the meeting. After they left there was general discussion in the meeting as to what Mr. Buckley had said. It was always a question in the minds of those gentlemen as to whether this very important change had really come to this East Texas group. There were those who felt that the matter ought to be looked into further. There were those who felt that there was a great deal of justification to seeing what could be done to assist them; and there were those that definitely said they had no confidence in this presen-
tation of Mr. Buckley, and as far as they were con-
3219 cerned, would have nothing to do with it. So the
opinion ran altogether from the complete negative to that of those who felt that it ought to be dealt with constructively.

There were a great many questions of quantities raised in the course of the discussion. There was the serious question as to what was the quantity that these refiners were going to be authorized to produce under allocation at their refineries. It was the natural inquiry from those at the meeting, to want to know what was involved. In response to the inquiries in regard to it, O. D. Robinson was clear as to the quantities of gasoline that had been accumulated. He also said what they expected to produce as surplus. But he didn't seem to be very clear or give a clear statement as to whether that so-called surplus was going to be within the allocations. And Mr. Buckley seemed to have very little information as regards to quantities; and when it came to what they were going to produce within the allocations, he, again, wasn't very certain, because he didn't know what the allocators were going to give this group, and so there wasn't very much in the way of reliable information for the group to consider.

As a result of that discussion, I called attention to the fact that in about another week there was going to be a
general allocators' meeting in Washington in which
3220 all the field or district allocators, including the allo-
cator from East Texas, would be present.

The allocators' meeting, which was part of the Planning and Coordination Committee's organization, was to deal with the national allocation sent by the Government. It is divided by regions for the purpose of balancing the demand of gasoline in each and all of those regions with the production allowable of those regions. When these district allocators come to this meeting, they come with information as to what each refiner in their particular district claims is going to be his individual demand. And so the allocator from East Texas, to illustrate, would go to this particular meeting in March and have before him the quantity of gasoline that each of these refiners in that district said that he would like to have the privilege of manufacturing. It was to that meeting that there was reference in the discussion following the talk by Mr. Buckley and Mr. Robinson.

The group felt that they could not get anything very reliable at that time from these gentlemen, because there was not only the question of the quantity of legitimate gasoline that the allocators would authorize them to manufacture; but the question also as to what was going to be the attitude
of the allocators in connection with the hot oil that
3221 these refiners had been running. Were they going to
give them allocations that would legitimize or approve in quantity what they had been running in hot oil? Or was it going to be something less than that? So there were many questions that had to be settled; and the allocators, whose responsibility it was to do that, were the people that this group felt they would want to talk with.

So a committee was formed to go to Washington with me to meet the allocators; if they would see us, to lay this matter before them, and also have present at that meeting Mr. Buckley and Mr. O. D. Robinson, to tell the allocators just what they had told us.

I appointed that committee. The members of the committee were Mr. Fritz Ewing of Socony-Vacuum, the chairman, Mr. Gould of the Shell Company, Mr. Hartmann of Gulf Refining Company, Mr. Eckert of Sun Company, and Mr. Carnes of Sinclair Oil Refining Company. Mr. Carnes and Mr. Hartmann are defendants here. Mr. Ewing, Mr. Eckert and Mr. Gould are not defendants.

We went to Washington after the Waldorf meeting of March 6, which I have just described. The district allocators' meeting was on March 13th. I was in Washington on the day before that, the 12th. On that day I had a talk with Mr. Fahy, Chairman of the Petroleum Admin-

istrative Board. I told him of the East Texas situa-
3222 tion as it had been developed and as I have just described it. Mention was made of the fact that the committee and I were meeting with the district allocators on the following day.

The committee and I attended the district allocators' meeting of March 13th. All the committee was there but one member, Mr. Eckert. Mr. Buckley and Mr. Robinson also attended.

I think Exhibit 69 for identification is a copy of the minutes of what occurred at that meeting.

(Transcript of minutes referred to is received in evidence as EXHIBIT 69.)

I have read that transcript. The words are hardly recognizable in all instances, so far as my comments are concerned. I am not so definite that I can recite what everybody said at the meeting, but in the main I think it is accurate.

(Portions of Exhibit 69 were read to the jury by Mr. Donovan.)

After that meeting of the district allocators, I called a meeting for New York for March 15th.

(Documents previously marked for identification are received in evidence as EXHIBITS 331 and 332, respectively.)

Exhibit 331 is a telegram that I sent to Mr. Dodge of Texas Company. I also sent Exhibit 332. That simply changed the time of the meeting.

3223 (Exhibits 331 and 332 were read to the jury by Mr. Donovan.)

As I recall it, I sent similar telegrams to other gentlemen who had been invited to the meeting of March 6th in New York. With few exceptions, I would say that the same group, substantially, attended the meeting on March 15th as attended the meeting on March 6th.

The surplus gasoline referred to in the telegram, Exhibit 331, is the gasoline that we had been talking about with Messrs. Buckley and Robinson, which they had spoken of to the group when they had met with them in Chicago, in New York, on March 6th, and at the allocators' meeting. By the statement in that telegram that this question must be finalized, I meant that here were spokesmen for these two groups who had come to us, one in the previous January, a month and a half before, and the other in early February, a month before; and who at that time had stated their serious condition, and had asked for whatever assistance the industry could give them and that I felt we had reached the time when something ought to be said to them as to whether anybody was interested because it was a serious matter, and they had to have some idea of what to look forward to.

I recall some such memorandum as that Mr. Buckley mentioned as submitted to the meeting by Mr. Carnes.

After the allocators' meeting, I went to my office
3224 in Washington. Shortly thereafter, the different
members of the New York Committee that had gone to Washington with me drifted in, sat around, and some one or all roughly put down some figures as to the information that had come out of the allocators' meeting. Mention was made of the companies who were regular buyers of East Texas and Gulf Coast gasoline, and their names were put down merely to see, as they said, what it would look like if all buyers of gasoline were to consider this surplus gasoline represented by the figures that had come out of the allocators' meeting.

One of the members of the committee, Mr. Gould of Shell Oil Company, definitely said that he would not have anything to do with it because of his lack of faith in these refiners in Texas. None of them said they would. There was no comment of that sort, wasn't even any discussion about it.

I don't think all of the committee that was present at the allocators' meeting were at the meeting on March 15th. Those who were there told the general meeting what had occurred at the session of the district allocators at Washington. Then there was a general discussion of it. Someone, I don't remember who, but I do recall that when Mr. Buckley was on the stand he said he believed it was Mr.
Carnes, it may well have been, although personally
3225 I don't remember that, looked at this memorandum
that had come out of this figuring in Washington, and stated this would be the picture of the quantity of surplus gasoline, and this was what it would look like if all the known buyers of gasoline were all to take a part of it. Nobody at that meeting made any reference to being individually interested in buying this gasoline.

After the meeting I had a conversation with Mr. Buckley. I was leaving the meeting room, and Mr. Buckley came up and thanked me for my consideration and courtesy, stated he felt quite discouraged that he had nothing to encourage him, that he felt that the attitude of those that he had talked to was not a friendly one, even after he had made

his best endeavor to win interest and regard to these East Texas refiners, that he felt that his mission hadn't been very successful, and that he was returning to East Texas with very little. I told him I could appreciate the way he felt, that I could understand why there had not been any friendly response to what he had said. On the other hand, that I knew these men were all cooperative men. There were some stabilizers in the group who understood conditions. And I told him that I wouldn't advise him to be discouraged, that I thought it would be wise for him to keep up his courage because I thought he was trying
3226 to do the right thing, and that probably these men would give it further consideration, and something might come out of it.

I next saw Mr. Buckley when I was in Washington on March 20th to attend stabilization meetings of the Planning and Coordination Committee. I saw Mr. Buckley at that time for a very few minutes and had a short talk with him. He told me that he was still moving around to see if he could accomplish anything, but he was on his way to Texas, and asked me how I felt about it. I told him that I thought there was some promise. I told him that companies like Sinclair Company were large purchasers of gasoline in Texas, and I knew Mr. Carnes was a very cooperative, constructive gentleman, and that probably he might get some orders from Sinclair Oil Company. I didn't know, but I thought that he would. I felt personally justified in thinking that if Mr. Carnes thought they were all he represented, there was no reason why he wouldn't favorably consider him.

I remember telling him that Gulf Refining Company were likewise very substantial buyers of East Texas gasoline, and I didn't see any reason why Gulf might not be interested in gasoline, if they felt that the reliability of these refiners had been established. I heard somewhere, I
3227 can't tell where, that Cities Service was about to put in some orders, and with those things in mind, I felt that probably with the sincerity of the East Texas Refiners Association, and it was very sincere, and I felt that with the able way that Mr. Buckley was trying to represent their interests, there would be an interest in those refiners in the East Texas Association.

In Washington on March 20 I had a very short talk with Mr. Hartmann of Gulf about the possibility of buying. It was very general. It was along the line that Gulf Refining Company were large buyers and that they had heard of what Mr. Buckley was trying to do. Certainly if the East Texas refiners had come in in a cooperative way and were complying with the Code and stabilization, we felt they had eliminated the use of hot or illegitimate crude, it would be well worth the consideration of Gulf Refining Company. Mr. Hartman said it was worth thinking about, assisting these East Texas refiners if they were going to be cooperative. They had been great disturbers, and this was an important thing; if they were to discontinue their methods, he would be interested in supporting what they were trying to do.

I accidentally met Mr. Buckley as I was going from one room to another. I don't know why he was
3228 there, I think he was talking to somebody else or hoped to talk to somebody else.

I don't recall having any further contact with Mr. Buckley before Excelsior Springs in early April, 1935. He mentioned that he had been carrying on this work to get buyers for this Association and that there had been some development, but he didn't see very much. He said something about leaving the work at that time. He said that he had been giving a great deal of his time to this matter of the East Texas Refiners' Association, that, in fact, he had been compelled to neglect his duty with his own company, Cities Service Export Oil Company. And that he felt he had reached the time that he would have to give up this work and devote his time to his own job.

I did feel it was important that Mr. Buckley remain in this work because he had demonstrated himself as a very serious-minded, sincere and conscientious gentleman. I had observed that he had really tried to do the job he had agreed to do when he took up the cause of the East Texas Refiners. It probably was one of the meanest jobs that a man could have been called upon to do, having in mind the attitude of the entire industry towards those independent refineries, and I felt that he had gained the respect of all elements in the industry
3229 including the major companies that he had had contact with. And it was evident that the independent refiner, himself, highly regarded Mr. Buckley; and that was a very important and unusual thing. And that he had been a distinct value in the work that he was doing to bring that sort of understanding and stabilization into the East Texas situation.

As I recall it, I was in Excelsior Springs in April, 1935, for a meeting of one of the large trade associations. I think it was the Western Petroleum Refiners'

Association. Mr. Buckley came up from East Texas. We met in the corridor casually.

I think the reference in Exhibit 18 to our conversation might well be the conversation I had with Mr. Buckley at Excelsior Springs. I never recall any suggestion by him of the name of his successor. I know of no reason why he should take it up with me who his successor should be, excepting Mr. Buckley did talk with me and ask my advice at times. He wrote me a letter in the middle of April saying he would have to give up the work.

Mr. Buckley had mentioned, at Excelsior Springs and on other occasions, the subject referred to in paragraphs two and three of Exhibit 18.

I have no recollection of what companies Mr. Buckley had in mind in the letter, Exhibit 18. I did make
3230 efforts of the nature referred to in that letter. I
have no recollection of the date or time or with whom, but I remember the principle which was involved in here which he talked to me about. It was the principle that these refiners needed markets for their gasoline as it was produced and the fact that buyers of this gasoline, regardless of who or how large they were, seemingly gave little thought as to how or when they placed their orders; and the thought was that if these buyers who would and did eventually buy the gasoline any way would have regard for a little more orderly, systematic buying, it would very much contribute to the assistance of these refiners.

Mr. McDowell was at the January 5 meeting, and then he came back to report to me. Those were the only two meetings at which I saw him.

Exhibit 369 is the telegram that I sent to Mr. Carnes. When I sent that telegram I was on my way to Atlanta, Georgia in connection with demoralizing price wars that were raging through the southeast. Mr. Carnes was a member of our Stabilization Committee and I expected him to go down there. The statement in that telegram refers to the conversation I had with Mr. Buckley at Excelsior Springs. By the statement "Necessary you, he and I go over program together", I meant that it
was not at all out of the way for Mr. Buckley, and
3231 I had in mind that if he was going to retire it would
be desirable that he tell us what he had in mind about the East Texas Refiners' Association carrying on. I thought it would be of profit to all of us to sit down and hear what Mr. Buckley had to say, and to get his information.

I cannot say that I knew definitely what effect Mr. Buckley's withdrawal might have on the ability of the East Texas refiners to secure purchasers at the seaboard. I would say that I thought it might have an adverse effect. The plan that I had in mind that I referred to in my telegram was to listen to what Mr. Buckley had to say, and to find out how these refiners were going to continue. I also had in mind the reference in Mr. Buckley's letter to Mr. Brandli that it was desirable to convince buyers to do buying on a less hand-to-mouth basis. That had always been one of the things that Mr. Buckley was always urging upon us, and up to this time unsuccessfully.

In this telegram I asked Mr. Carnes to bring the records with him. Mr. Carnes had a very close contact with the companies in Texas; he had a very expert representative there, Mr. Tracey, and I felt that he would have very close and good information of what was transpiring. The industry recognized that Sinclair Oil
3232 Refining Company is very expert and very capable in up-to-date figures as to facts that extend throughout the territory.

Mr. Buckley did not come to Atlanta.

Mr. Buckley had said that he wanted to have a talk, if he had an opportunity again, and had written me, and then I had told him in response that if there was any meeting that would be called in which the group he wanted to contact with would be present, I would let him know. Mr. Buckley did see me in my office in New York on May 27th.

After Mr. Buckley had come in to see me that morning I had a talk with Mr. Coates. Mr. Coates was the president of Cities Service Export Company with whom Mr. Buckley worked. Mr. Coates was also a member of the Planning and Coordination Committee in Washington. That is the Coates that is a defendant in this case. That conversation with Mr. Coates was to express to him the appreciation in my own behalf and in behalf of the industry for what we felt was the fine, sincere and good work that Mr. Buckley had done while he was representing and speaking for the East Texas Refiners Association. At my office Mr. Buckley had resigned, or told me he had resigned the work he was doing for the East Texas Refiners Association, and this was my way of expressing myself for the industry to Mr. Coates and his com-
3233 pany which I did, and we all thought it was generous in sparing Mr. Buckley for this work. Mr. Coates

expressed his appreciation and was glad to know that Mr. Buckley had been so helpful.

I do not recall that at that time he said anything about being willing to let Mr. Buckley continue in this work.

Another event on that day was the decision of the Supreme Court in the Schechter case that made unconstitutional the N. I. R. A. under which our Code was approved and had been operating.

I saw Mr. Buckley at a meeting on May 29th. That was a meeting that I had in New York, and it was a meeting I had invited Mr. Buckley to, that I referred to formerly, at which he said he would like to be present and say a few words. A fairly large group of major company representatives were present. It was more or less the same group I have mentioned before. He made a few brief remarks at the meeting.

The discussion at that meeting was in connection with the decision that had been made by the Supreme Court, abolishing the Code; and it was a meeting in which there was general comment and talk of what had transpired, and the fact that the industry didn't have any Code for guidance or anything by which it could cooperate. I remember making a statement at that meeting, in
3234 reply to someone, I don't know who, speaking to
me and saying in substance, "Well, Arnott, you are an ex-stabilizer." My reply was this. At the time of the beginning of the Code our industry was in a terribly demoralized condition; we had worked for a Code and with a Code, and a great deal of benefit and understanding had come from it. This decision of the Supreme Court had suddenly left us without anything; no Code; no stabilization; nothing with which the industry could work cooperatively and constructively together. That I, as far as I was concerned, felt that I was going on, and I was going to observe the good practices, and all those things that the Code had brought to us; and whether we had a Code or whether we had stabilization, as far as I was concerned, in my viewpoint and in my activities I was going to be more of a stabilizer than ever.

I may have seen Mr. Buckley in New York after May 29th. I haven't at the moment a clear recollection as to that. I remember having seen him once or twice outside of New York. I saw him in Los Angeles and had a talk with him there. As I remember, it was in November, 1935 on the occasion of the yearly convention of the American Petroleum Institute.

Mr. Buckley approached me; said he was up there for a few days; that before leaving he had heard from 3235 some of the East Texas refiners that several of them were in very desperate plight for need of orders, and he asked me whether there was anybody that I thought would help out, and whether I could give him any help. I told him that I didn't know but would gladly see what I could do.

I communicated there with several of the larger buyers that I thought might be willing to render assistance. I couldn't tell you whether my company bought. I don't recall any buyers that I talked with on that occasion. I would say major companies of the same general group we have in this case.

I remember being in New Orleans in January, 1936. I was there in connection with the proposed Federal Trade Commission Code of the Independent Refiners.

I sent Exhibit 35, a telegram to Harry Frueauff, Cities Service Company, 60 Wall Street, New York City. I sent it because Mr. Buckley had on that day telephoned me from Tulsa. It was in reference to the same thing, that there was need of some orders for several of these refiners, and he wanted to know if I could help. As I recall it, he mentioned that there was a possibility of Cities Service, at that time, and one or two others, being in the market for gasoline, and I sent this telegram. I never knew whether Cities Service did actually buy.

3236 As to what I meant then by stating, "East Texas situation needs prompt handling in order to keep in line"—I testified that the East Texas refiners produced gasoline in those individuals' plants currently. Most of them had a surplus, and it was most essential that that surplus reach the market shortly after its production. If those refiners didn't have orders for that surplus, their alternative, and the thing they usually had to do, was to dump it in the market, at any price that they could get for it. When I sent that telegram it was based on what Mr. Buckley reported to me, that in the case of those few refiners they were just in that situation, that if they couldn't have in a more normal way these orders, they would have to seek a place for them at any price they could get. I sent the telegram in January, 1936 because I felt that that would be destructive to the interests of everybody, and it was the proper thing for anybody to do to help.

On December 18, 1934, I had occasion to review with Messrs. Frey and Fahy, members of the Petroleum Administrative Board the progress that had been made at a series of stabilization meetings in Chicago in the first part of December, in restoring prices in retail markets.

3237 I had had contact with this Board ever since the beginning of the Code in September, 1933. I explained to them on December 18th what we had done in regard to the restoration of retail markets in the December meetings. I covered the matter of those thousand points that we had put up to normal, those that had gone part of the way, and those that we had up to that time been unable to meet at all; and I told him that, to follow this up, we were planning another meeting in the very near future, and that eventually was the January 4th meeting.

My next conference with members of the Petroleum Administrative Board on any phase of my work was on January 8th and 9th, with Messrs. Myers and Marshall.

In January I also had a communication with Mr. Fahy. I was holding an important stabilization meeting in New York, and I had invited Mr. Fahy to attend that meeting. I am not sure what date; it might have been January 7th or 8th. Mr. Fahy communicated with me and said that something had developed, and he could not come.

I know Mr. O'Shaughnessy. I had appointed him a member of the McDowell Committee. He represented the Mid-Continent independent refiner on the P. and C. Committee.

I believe the Committee to which Mr. O'Shaughnessy
3238 referred in his telegram to Mr. Fahy, Exhibit 893,
was the committee on which I had appointed him with Mr. McDowell.

Mr. O'Shaughnessy was quite right in his statement that the lack of parity between a dollar crude and refinery prices for gasoline was threatening to break down the results we had been securing in stabilizing the retail market.

The decision referred to in Mr. O'Shaughnessy's telegram was the decision of the Supreme Court in connection with the Panama case, which brought about the discontinuance of the control by the Tender Board of illegitimate crude and products, in interstate commerce. And that resulted in uncontrolled shipment of hot gasoline into the Mid-Continent territory; and that, as has been stated, was a demoralizing destroyer of markets, and had caused a great deal of distress in the industry, especially to the Mid-Continent independent refiner.

The portion of the letter of Mr. Fahy to Mr. O'Shaughnessy, Exhibit 894, which reads this way: "I am sure you know that the tank car situation in relation to the price of crude is one about which we have no disagreement", was in accord with my understanding of the attitude of the Oil

Administration. I knew what that attitude was because the matter of parity between crude oil and the realization at the refinery for gasoline was a subject that the Plan-
3239 ning and Coordination Committee and the Petroleum Administrative Board and the Secretary himself had labored with from the first days of the Code; and it was an outstanding problem, that had repeated consideration, and had been before the industry from the first. It had been a problem that had not been successfully met up to that time.

The reference in Mr. Fahy's letter to a report of a special committee which the Secretary had appointed "to look into this kind of thing and make recommendations," was to the Blazer report. That report was made by the Blazer Committee which was appointed by the Secretary.

During the latter part of January and the forepart of February, 1935, I was at Pinehurst. After I returned from Pinehurst, I wrote a letter to Mr. Fahy.

(Letter referred to is received in evidence as EXHIBIT 969, and read to the jury by Mr. Donovan.)

The meetings in Chicago and Kansas City I referred to in that letter were the Chicago meetings of February 25th and 26th, and the meeting in Kansas City on March 1st.

Mr. Fahy at that time was chairman of the Petroleum Administrative Board. I remember what the Rhode Island matter was that is referred to in my letter to Mr. Fahy.

I wrote that letter because I wanted the Petroleum
3240 Administrative Board to know what I was doing in connection with this matter of distress gasoline that was such an important factor in the restoration of markets, which had been a matter of conversation between us and was the objective we were working for. When I say "between us", I mean the members of the Administrative Board and the Secretary and myself.

I remember that at the time I was in Chicago on February 25th, I saw Dr. Frey of the Petroleum Administrative Board. Dr. Frey was passing through Chicago. I think I was in the meeting that I have spoken of in connection with Texas State stabilization matters. He sent word to me that he was there; I saw him; told him what was transpiring at the meeting, that it was a meeting where there was some airing of difficulties between the Texas state operators and those outside; asked him whether he thought it would be wise to come in, having in mind this was for the purpose of bringing free expression on the part of these gentlemen, to which he replied that he did not think it was. I told him of the developments of Mr. Buckley, and that Mr. Buckley was going to appear there that day and tell the group what he had already told me, and also gave him some particulars of the Mid-Continent developments, both of which I have testified to here.

3241 I believe it was March 12th in Washington that I next saw any members of the Petroleum Administrative Board. Mr. Fahy and Dr. Frey were present at that meeting. I am not sure about Mr. Swanson. I have no recollection of anyone else.

In the March 12th meeting I told these gentlemen of what had transpired in regard to the retail development and in regard to the report that the McDowell committee had made to me.

Before I made that statement, when I came into the meeting, Mr. Fahy said to me that he was glad to see me; that on the return from Chicago of Dr. Frey, Dr. Frey had informed him of what I had told Dr. Frey there about the Mid-Continent and East Texas developments; that he was quite interested, wanted to help, and asked whether there was anything in this that was not in line with the letter of July 20th concerning the anti-trust laws.

I replied to that by just what I have stated. I gave him the full picture of the Mid-Continent development, the report of the McDowell committee, what Mr. Buckley had said and done, and I further gave him a general outline of the allocators' meeting. I said in substance about what I said at the allocator's meeting. Mr. Fahy expressed him-3242 self as being very interested and said he would be glad to know how things came along.

It did not occur to me to ask for any approval. What I described to Mr. Fahy I thought was an informal cooperative plan. Apparently Mr. Fahy thought so too. He did not say anything about approval. It would seem to me that if he had anything to say he would have said it.

My state of mind when I left that meeting was that I had fully told those gentlemen of the plan, and that both Mr. Fahy and Dr. Frey thought it was a good one and hoped that it would work. I never told the Petroleum Administrative Board or any member of that Board that I did not want their approval. In fact, I wanted them to know what I was doing, and to have anything they had to say to me. I did not say at the March 12th meeting that the buying activities were being carried on on my own responsibility, or anything like that.

I have heard Dr. Frey's testimony here on the stand. I remember Dr. Frey referring to his testimony to something said about the buying activities being carried on on my own responsibility. In my judgment, he is confused about that, in that the statement in regard to my own responsibility was made in connection with an entirely different matter that came up at the May 8th meeting.

My interpretation of the letter of July 20th was 3243 that I had been asked to do a job; and it was my purpose to seek, according to that letter, to bring about, through cooperative measures, the stabilization or the restoration of price levels, which had been depressed by price wars; and in doing this, to bring about a relief from the economic and physical waste referred to in that letter. I did not consider the letter of July 20th as giving me authority to violate the law.

I never made any statement in substance to Mr. Fahy or to Dr. Frey or any member of the Petroleum Administrative Board that this matter of buying activity was one with which they had no concern, and that I would proceed whether they thought it was a good thing or not.

Neither Mr. Fahy nor any other member of the Petroleum Administrative Board at this time or at any other time directed or requested me to discontinue the Tank Car Stabilization Committee or its activities. On the contrary, I felt from my talk with them as to the Tank Car Stabilization Committee's activities, that they thought the plan was a good one, and hoped that it would work.

I was in Court when Dr. Frey testified with reference to the meeting that some others and I had on May 8th with members of the Petroleum Administrative Board. I 3244 recall what happened at that meeting. At that meeting of May 8th I have no recollection and would say there was no discussion during the meeting of the buying program. It was in relation to entirely different matters. After the meeting broke up, there was a reference to it by Mr. Fahy, in conversation with me, including Dr. Frey. Mr. Fahy asked me, "How is the buying coming along?" And my reply was, "All right, so far as I know." I did not on that occasion say to Mr. Fahy, "I accept full responsibility for this buying program." I do remember such a remark in connection with other matters.

The Petroleum Administrative Board had raised three points in regard to general stabilization in a letter to me of April 22nd. The first one was that there should be no stabilization meeting without a representative of the Board being present. Second, that every activity in the industry should be heard from before any decisions were made. Third, that no general instructions be given under the authority of the letter of July 20th.

In answer to that, and in the discussion that followed, I stated that, in line with the letter of July 20th that had been sent to me, that necessarily in carrying on the stabilization work I would, and I felt the letter required, make decisions when they were necessary. Furthermore, in making 3245 those decisions, there were times when I would have to use my discretion. There was a matter of bringing different elements in and different subjects to discuss at stabilization meetings, and in bringing them together and discussing them I had to use my own discretion, and do it on my own responsibility. And in the matter of these meetings, in the matter of these decisions and using my discretion, I was taking the responsibility for them.

I recall no statement at the meeting of May 8th, by me or by any member of the Petroleum Administrative Board, that I had no authority under the letter of July 20th or under the Code for operating a buying program.

I attended a meeting with Mr. Fahy, Chairman of the Petroleum Administrative Board, on May 10, 1935. At this conference there was a reference to the buying activities in the industry in the spring of 1935, which I have described. The meeting was in Mr. Fahy's office in the Petroleum Administrative office, Department of the Interior. In that connection, they had their own official building; they were not in the Interior Building itself.

That question came up in connection with the Blazer report.

On April 8th, or the early part of April, the Petroleum Administrative Board requested the Planning and Coordination Committee to review and comment on the 3246 Blazer report and to see the Petroleum Administrative Board regarding it.

As a result of this request, I sent a telegram to the members of the marketing committee.

(Copy of telegram referred to is received in evidence as EXHIBIT 970.)

Exhibit 920 for identification is the communication that was sent by Mr. Fahy to Mr. Collett of the Planning and Coordination Committee.

Mr. Donovan: I offer that in evidence.

Mr. Chaffetz: We object to that. That was twice offered before and it was objected to and the objection sustained. It is now re-offered.

Mr. Donovan: But it was an entirely different situation, this is, in relation to the subject matter of this telegram which has been admitted in evidence.

Mr. Lewin: If it was inadmissible then it is inadmissible now.

The Court: Just a minute. The record may be different then than it is now.

The Court: Objection sustained. Exception allowed.

(Exhibit 970, previously received, was read to the jury by Mr. Donovan.)

On the marketing committee referred to in Exhibit 970 were Mr. Allan Jackson of Standard Oil of
3247 Indiana, a defendant in this case. Mr. Dodge of The Texas Oil Company. He was a defendant in this case. Mr. Russell Williams representing the trackside operators located at Indianapolis. Mr. Cowden of Kansas City, representing the co-ops. Mr. Carnes of Sinclair Oil Company, who is a defendant in this case. Mr. Bateman of Redbank, New Jersey, representing retailers, particularly from the eastern part of the country. Mr. Barney Majewski, representing the independent refiners of the Mid-Continent and the jobbers. Mr. C. L. Jones of Socony-Vacuum Oil Company, New York, who is a defendant in this case. Mr. Eckert of Philadelphia of Sun Oil Company. Mr. Harold Stone of Atlantic Refining Company, Philadelphia. Mr. W. Schuh of Milwaukee, representing the retailers of the country, being head of the national association. I believe I have named them. And Mr. Hadlick who was secretary. He was at one time and is representing jobbers. I was chairman of that committee. That marketing committee under the Code was appointed under the P. and C. Committee.

The Marketing Committee were called to make the recommendation in response to the Secretary of the P.A.B. He asked them to come back and treat with this Blazer report.

Not all of the members of that Marketing Commit-
3248 tee attended the May 10, 1935 meeting. A committee of three appointed by the Planning and Coordination Committee attended that meeting to respond to the Administrator's request. They were Mr. Collett, the Chairman of the Planning and Coordination Committee, Mr. Majewski, and myself, and we met there, with Mr. Fahy, to discuss the report. This meeting was at Mr. Fahy's office in the Petroleum Administrative Board Building, at Washington.

Exhibit 924 for identification is the Blazer report to which I have referred. At that meeting with Mr. Fahy the committee and I discussed the Blazer report with Mr. Fahy. As I recall it, it was sometime in late February or March, 1935, that this report was filed with the Petroleum Administrative Board. Exhibit 924, page 4, was discussed between our committee and Mr. Fahy at that meeting on May 10th, at the office of the Petroleum Administrative Board. The portion entitled on the top of page 4.

Mr. Donovan: I offer that in evidence.

Mr. Lewin: Objected to. That is the same portion of the Blazer report that was offered before.

The Court: Objection is made to this. It will be sustained; but let me ask the witness this question.

3249 Q. When you met the committee, what did you discuss?

A. We discussed the position of the independent refiner. We discussed the recommendation that they had made.

Mr. Donovan: Q. Who had made?

A. That the Blazer Committee had made, to the effect that it would be very helpful if major companies would buy distress gasoline from the small independent refiners. Shall I go on?

The Court: Well, what else did you discuss there?

A. When that part of the report was referred to, those of us present, Mr. Majewski and I informed him that we already had buying of gasoline in effect, in which case Mr. Fahy replied, "That is quite so and disposes of that part of the report," and we went on to other phases.

Mr. Donovan: Now, your Honor, in order to make the record clear, I re-submit that portion of the report being the first four paragraphs of page 4.

Mr. Lewin: And the Government still objects to it, thinking it is totally immaterial.

3250 The Court: The objection to that is sustained. Exception allowed.

Mr. Donovan: And it is sustained as to my further offer?

The Court: Yes. Exception allowed.

Prior to our meeting of May 10th, Exhibit 923, being a press release, dated May 7, 1935, issued by the Department of the Interior, had been released by the Department. The subject matter of that release was discussed at the meeting.

Exhibit 916 for identification is a duplicate original of a telegram dated May 14, 1935, received by me from Charles Fahy.

Exhibit 971 for identification is a certified copy of a duplicate original of a telegram dated May 17, 1935, received by me from Charles Fahy.

(EXHIBITS 915, 916, 971, 972 and 973 for identification were offered in evidence by Mr. Donovan.)

Mr. Donovan: Q. From your experience with the Petroleum Administrative Board and its members in relation to the subject matter of the exhibits for identification that I have just submitted to you, did you have the impression in your mind that the Petroleum Administrative Board desired you to continue the buying activities?

3251 Mr. Chaffetz: I object to that question as leading, having no proper relation to these exhibits—

Mr. Lewin: Irrelevant and immaterial.

Mr. Chaffetz: (Continuing) —irrelevant and immaterial.

Mr. Donovan: Your Honor, when these were offered before, this witness was not on the stand, and no such question as I now ask had been asked.

I offer it for the purpose of having evidence here to show on what basis, or what if any impression this witness derived by reason of these exchanges of communications between the Petroleum Administrative Board and himself in relation to buying activities.

Now as to that, your Honor, I think it is highly material.

I am offering it to show the state of mind of this defendant by reason of these actions and of this experience with the Petroleum Administrative Board. And, furthermore, your Honor, it bears up on the question as to whether or not there was administrative interpretation here.

Your Honor, as I have said, here is what it amounts to: He has stated that he had gathered an impression from his meetings with the Petroleum 3252 Administrative Board that they considered that this buying activity was a good thing, and should go on. Here is confirmation of that report, by concrete action on the part of the Board. I offer it for that purpose.

Mr. Chaffetz: We object to that for the reasons I have just stated.

(The following proceedings were had in the absence of the jury.)

Mr. Chaffetz: In the interest of saving time, although we think those Fahy letters are not material, we are inclined to waive any objection to them, and to later ask your Honor to instruct the jury properly as to them assuming that your Honor—we just leave it to your Honor's judgment as to what to do about it. But we do want to press our objection as to this thing in connection with the Pennsylvania documents—we do want to press our objection to those Pennsylvania documents.

The Court: I will say this: I have considered the Pennsylvania documents, and the objection of the government will be sustained as to these. (Exhibits 915, 916, 971, 972 and 973.) Exception allowed.

(The following proceedings were had in the presence of the jury.)

3253 Mr. Donovan: This is the question, your Honor, as it appears on p. 1735 of the Record:

> "From your experience with the Petroleum Administrative Board and its members in relation to the subject matter of the exhibits for identification that I have just submitted to you, did you have the impression in your mind that the Petroleum Administrative Board desired you to continue the buying activities?"

Mr. Chaffetz: That question is objected to.

The Court: Objection sustained. Exception allowed.

I received from Mr. Fahy a telegram dated May 28, 1935 and a letter dated June 3, 1935, and I wrote him a letter dated June 12, 1935.

(Certified copies of documents referred to received in evidence as EXHIBITS 975, 976 and 977, respectively, and read to the jury by Mr. Donovan.)

I have already testified that on the occasion of my talk with Dr. Frey and Mr. Fahy, I formed an impression as to the wishes of the Board or of Dr. Frey as to the buying which I described to them and its continuance.

I believed that the Petroleum Administrative Board and particularly Dr. Frey were cooperating with us in our buying activities.

3254 I would at that time have discontinued these activities had I believed that Dr. Frey or the Petroleum Administrative Board disapproved of them, or had Dr. Frey or the Petroleum Administrative Board told me to do so.

In my mind there was no doubt but that at that time that the Petroleum Administrative Board and Dr. Frey were authorized by the Secretary of the Interior to deal with the stabilization of both wholesale and retail markets throughout large areas of the United States.

I would say the tank car market is the wholesale market in the Mid-Continent area.

Q. You have spoken, Mr. Arnott, of having received a letter dated July 20, 1934, from Secretary Ickes. Will you tell the Court and the jury the circumstances under which that letter was written to you?

Mr. Chaffetz: That is objected to, your Honor.

The Court: Objection sustained. Exception allowed.

I asked for a legal opinion in connection with that letter. I asked that opinion from Mr. Louis Titus, who was chairman of the Planning and Coordination Legal Committee, and general counsel for the Planning and 3255 Coordination Committee. I thought it would be helpful in my work in stabilization.

Exhibit 891, the letter of July 20th, referred to, is the letter that I received.

Mr. Donovan: I offer that letter in evidence.

Mr. Chaffetz: That is objected to.

The Court: Objection sustained. Exception allowed.

Exhibit 892 is the opinion that I referred to, as having been prepared at my request by Mr. Titus.

Mr. Donovan: I offer that opinion in evidence.

Mr. Chaffetz: We object to it because it is irrelevant, immaterial and incompetent; and for the additional reason there is nothing in that opinion that would indicate that this witness was authorized to do the things charged in this case.

The Court: Let me take time to read it. I have read it once before—

A price war is one where the close inter-relationship between the retail and the wholesale tank car market has to be dealt with, and considered together. You cannot have a—

The Court: Let me ask you: Is a price war this: Where one retailer is underselling the other in some 3256 locality, cutting the price, and the other retailers try to meet that price? Is that what was known as a price war?

A. As I explained the other day, one meets the other. That starts the retail competition of that character.

Q. What is the price war itself? Is it the cutting of prices in one locality that necessitates others to cut the price continuously?

A. That is right, and the result of that works back—

Mr. Chaffetz: I object to that.

Mr. Lewin: We don't want the results.

The Court: What I wanted to know is your definition of a price war. Does it correspond to what I have said?

A. That is only part of it. That is what I am trying to tell you, that the close relationship—I will make this definite statement: You cannot consider a price war from a retail angle only; it cannot be done. A price war that is talked of or considered from a retail point of view involves the wholesale market; and if you consider the wholesale market, you must in turn, because of that very close interrelationship, consider the retail market; they are 3257 one. You can't deal with one without you deal with the other, no matter at which end you begin.

And everybody in the industry that knows the industry's problems knows that without question.

The Court: I have ruled out the letter, and I am going to consider this other exhibit.

I was here while Mr. McDowell was testifying. I recall his testimony as to the fact that the letter of July 20, 1934 and the opinion of Mr. Titus were read at the first stabilization meeting. And I recall his testimony that he relied upon that letter and that opinion in accepting the position on the committee to which I appointed him.

Throughout my activities I had in mind particular statements made by Mr. Ickes in relation to the work of the code. The statements in Exhibit 978 for identification, being Press Release numbered 76,204, dated September 18, 1933, issued by the Department of the Interior, purporting to be the remarks of Mr. Ickes before the Planning and Coordination Committee at a conference in the Mayflower Hotel, September 18, 1933, are the statements to which I have referred. I was present at that meeting at which

those remarks were made. I heard him make those
3258 remarks. This meeting of the P. and C. Committee
was held at the beginning of its work under the Code.
I relied upon those statements there, during my activities
under the Code. I have read this press release of September 18, 1933.

(Document referred to is received in evidence as EXHIBIT 978.)

(Document offered by Mr. Donovan is received in evidence as EXHIBIT 979.)

(Mr. Donovan then read Exhibits 978 and 979 to the jury.)

3259 *Cross-Examination by Mr. Chaffetz.*

I did not say anything in my direct examination about a letter to me from Mr. Ickes, dated April 2, 1935. I recall that letter. Maybe I have the original of that letter. I haven't it here.

I would say Exhibit 980 for identification is a true copy of a letter received by me from the Secretary of the Interior, dated April 2, 1935.

(Document received in evidence as EXHIBIT 980, and read to the jury by Mr. Chaffetz.)

I became president of Socony-Vacuum Company in 1931. I wasn't the chief executive officer of Socony-Vacuum Company; Mr. H. L. Pratt, chairman of the Board, was. He was the man recognized as in active charge of that company.

I testified on direct examination that I stepped down from the presidency sometime during 1933 and became the vice president. I continued at the same salary when I became the vice president. I don't recall definitely how long I continued under that salary, but it may have been a year and half or more. Then the salary was decreased. I don't know if my opinion would say it was substantially, I think anything in the way of a decrease in salary is probably
one way of calling it substantial. My salary at that
3260 time was $85,000 per year. As near as I can remember,
the change was made about a year and a half
later. It was changed to $60,000 a year. There has been no change in my salary since that time.

My duties as vice president are to represent the board in the general direction of the marketing in the Mid-West.

I don't know that I would call it succeeding to the position that Mr. C. L. Jones had. I do everything that an executive officer in charge of a division of a company would be called upon to do in directing the affairs of that company. I receive reports from time to time from the active men in the field, and I instruct them as to the policies of the company. I have been doing that from the first of 1937, or thereabouts.

During 1936 I was devoting my time to activities with respect to the Federal Trade Commission, and such Board activities as I had.

My duties with the company during that year were not specific.

The decrease in salary that I spoke of took place I think at the same time that all executive officers took more or less the same decrease.

I am also a stockholder in Socony-Vacuum Company. I would not consider myself a substantial stockholder
3261 in the company. Other members of my family are not to my knowledge stockholders of the company. I have been a stockholder since the time I became president.

I would describe Socony-Vacuum Company as one of the large major oil companies, engaged directly and indirectly all over the world in the production, refining, transportation and marketing of petroleum products. I wouldn't venture to say what is the annual gallonage of gasoline of Socony-Vacuum Company in the United States. Its world-wide total business is much larger, I would say, than that of Standard Oil Company of Indiana. I don't think there would be so much difference between its total United States business and that of Standard Oil Company of Indiana; they are approximately the same.

I don't recall testimony in this case that Standard of Indiana sells over a billion gallons of gasoline a year.

I again say I wouldn't want to venture a wrong opinion about the gallonage of our company. I am not avoiding your question, but I just don't recall.

I have been here throughout this trial every day. I think I have listened to all of the evidence and all the arguments of counsel, both in the presence of the jury and out of the presence of the jury.

My recollection is, we do about ten million bar-
3262 rels of business, of all products, in the Mid-West. At the moment, I can't tell how much gasoline. I would say there are 42 gallons to a barrel. If that is correct, that would be 420,000,000 gallons of products. Most of that

is gasoline, although there is an important lubricating oil business with that, and you can't overlook other products such as fuel oil and refined kerosene.

I wouldn't venture to testify to what the size is of the spot market business in the Indiana territory, in relation to other business, because I have no direct contact with it. I could not answer as to what part of all the gasoline sold in this area is sold by jobbers under contract with major oil companies. I would have no idea whether it is 20% or 70%.

I did not know that in 1935 and 1936.

C. L. Jones of our company was in charge of the operations of our company in this territory during that period. I wouldn't say that he dictated the policies of our company in this territory. He carried out the policies of our company in this territory. I would say the persons active in the field here took instructions from him.

In the sense that I think you are asking the approximate time when I first became interested in stabilization 3263 work, I would say that that began with the N. R. A. Code. I had occasion to discuss problems with some people in the industry prior to that time and I would say I had occasion to call and preside at meetings of refiners prior to the N. R. A. Code.

It may have been 1931, but I don't recall that it was.

Those meetings, when they were held in Chicago, were usually held at the Blackstone Hotel.

I wouldn't call them a series. There were meetings, several in each year, from 1932 on.

I recall being present after having called a meeting in the Blackstone Hotel in Chicago on June 7, 1934. That was more than a month prior to the receipt by me of the July 20th letter that I referred to.

Q. Yes, and do you remember what the occasion was for that meeting?

A. I was at a great many meetings, Mr. Chaffetz. I am not avoiding it at all, but I can't think of any particular subject at the moment; maybe I could if I knew more about the meeting. That was not during 1932, 1933, 1934 and so on.

I appointed a great many committees, on many subjects. There is a distinction between after the beginning of the Code, and after the end of the Code. Now, this is the 3264 period during the Code, and during that period I appointed many committees, usually at every meeting. If I appointed a committee on June 7, 1934, it was under the authority that we had in connection with Code matters. I would say that if the industry were dealing with the matter of jobbers' contracts or any other matter, they were gathered there to consider the question under the Code; and I would appoint a committee to consider situations and developments and activities, and give me the benefit of what they had to say after their examination of it. And that was before I had the letter of July 20, 1934. I thought I had the authority under the Code to consider any matters that related to the Code, on marketing.

I would like very much to tell you what events transpired at that meeting of June 7th, but, as I say, meetings were frequent, in my case daily over the period of the Code, and for me, after a matter of nearly two years, to specifically remember what transpired is beyond my ability. If you will be specific I will be glad to deal with it. I do not recall that particular meeting on June 7, 1934. I might have appointed at that meeting a committee of which Mr. McDowell and Mr. Lakin, defendants in this case, were members. I appointed committees in which they were members in other cases. I do not remember appointing such a
3265 committee at this meeting. I may well have appointed McDowell on some committee prior to the time I received the letter of July 20, 1934. I do not recall specifically, but I would be perfectly willing to say I may have. Very likely I did. I did not show him authority then or any other time, or anybody else, under which I appointed him on any such committee.

It would be very difficult, if not impossible, to tell what companies were represented at that meeting June 7, 1934, but when I had occasion to discuss anything with the operators that had to do with marketing in the Mid-Continent, there were recognized people that I usually discussed it with, and it may well have been that some of them, maybe most of them, were there, but to say exactly, I could not do it. Generally speaking I would say there were representatives of major companies who were marketing in the Mid-Western area.

In my direct examination I referred to some stabilization meetings that I said took place in December, 1934 at the Blackstone Hotel, and I said that there were representatives of jobbers and dealers and major companies and others at those meetings. The meetings lasted 4 to 5 days. Those meetings might have been held in one of two rooms in the Blackstone Hotel. They might have been in the
3266 so-called Marble Room which would accommodate a large crowd, which I think was the room; or it might

have been in the Elizabethan Room which was on another floor and accommodates not quite so many. In fact, I think we had them in both rooms.

I did not hold the meetings myself in the Marble Room. Mr. Ashton by my request was acting as chairman. I would not say I excused myself from that meeting because I wanted to hold another meeting at the same time. I would not say that was necessarily not true. I will give you the reason if you ask me. I did not, at the same time these big meetings were being held in the Marble Room, conduct meetings in a different room in the Blackstone Hotel. Outside of the first day, I was not present at other meetings in the Blackstone Hotel during the period these big meetings were being held in the Marble Room.

It so happened the first day of their large meeting that I did meet with a few people in another meeting. But remember I did not hold any meetings. I would not remember who were the few people I had meeting on that day. They would be among the group that were present at the meeting June 7th that you referred to. I think they would be representatives of major companies marketing in this area, and include many of the defendants
3267 in this case. I would say that that meeting had to do with Code matters. I am unable to go to any specific meeting and out of my recollection claim to state exactly what the subjects were. If you want to produce the subjects I will very willingly say whether I recall them or not. I cannot recall every meeting over a period of two years, and what the subjects were. Maybe you can recall it to me.

It may be that we discussed the subject of a uniform jobber contract.

In my direct testimony I referred to the speech Mr. Ickes made in Dallas in November, 1934, when he and others and myself were there.

(Document Exhibit 981 for identification was shown to the witness.)

Referring to this page from the National Petroleum News for November 21, 1934, which you show me, this reference to a statement made a day or so after the speech by Mr. Ickes that I referred to in my direct testimony did not come to my attention then, and there wasn't anything that he said that anybody knew down there at the time. It was a public statement made to the press for the purpose of publication and I later heard of it and that Mr. Ickes had said something to the effect that he had suspended a particular buying program that he referred to on the grounds, among others, that he was advised 3268 that it was illegal.

I referred in my direct examination to some so-called stabilization meetings on January 4 and 5, 1935. There were other meetings of that type. There may have been meetings between January 4, 1935 and the expiration of the Code on May 27th, held in Chicago. There may have been meetings between January 4 and 5, 1935 and January 16, 1935, within the next two or three weeks, but I couldn't say definitely. I didn't refer to any other meetings after the meetings of January 4th and 5th, on my direct examination, until a meeting in February. I could not recall any such meeting now.

Q. The meetings on January 4th and 5th were called by you?

A. That is correct.

Q. Did you preside at those meetings?

A. Yes, sir.

Q. At both of them?

A. At both of them.

Q. On both days?

A. Yes.

Q. You would be the chairman of that stabilization committee, and present at those meetings, if anybody was?

3269 A. I presume so.

Mr. Chaffetz: I ask that this document be marked. (Handing witness document.)

(Document referred to marked Exhibit 982 for identification.)

Mr. Chaffetz: Q. I ask you to look only at the second page of those two documents that are clipped together and see whether the contents of that page refreshes your recollection as to the subject matters, or any of them, taken up at the meetings on January 4 and 5, 1935, at the Blackstone Hotel in Chicago.

The Witness: Will you please read that question?

(Thereupon the pending question was read by the reporter.)

A. I was not present when this matter was taken up. You have referred to meetings on January 4th and 5th. I was not present on both days.

Q. Didn't you just say a few minutes ago you were?

A. You asked me, I understood you to say, did

I call the meetings. If I said that I was present at both, I was incorrect. I was only present at the January 4th meeting.

3270 Q. Who would be the chairman of the stabilization committee at that meeting?

A. As I recall that particular subject, it was not discussed in the meeting that I was chairman of, on the 4th. I think it was a matter of some other, who, the following day, of that group that was there on the 4th, who discussed—do you want me to mention it—the question of Michigan. And those that were particularly interested in Michigan, were those that gathered the following day. I wasn't present, and I couldn't tell you who they were, or who was that chairman. I don't know whether there was a chairman.

Q. Were there two persons, or anybody besides yourself, who could have been referred to as the chairman of the stabilization committee?

A. There were many chairmen of stabilization committees?

Q. I am asking you about the chairman of the stabilization committee.

A. The chairman of the stabilization committee may be one of fifty committees.

Q. You think there were fifty stabilization committees?

A. I think there were more than that throughout the country.

3271 Q. How many different stabilizers were there?

A. I don't know as there was one.

Q. You have no recollection at all of the discussion of these subjects at the meeting at which you attended?

A. What you presented to me refers to Michigan, and I was not at that meeting.

Referring to the meeting of February 25, 1935, the facts were, as I testified, I didn't see Dr. Frey appear at the meeting. He was in Chicago. I didn't say he wanted to attend that meeting. It is not true that he wanted to attend.

The effect of what I said to him was not necessarily that I thought it was unwise for him to appear at that meeting in view of the matters that were being discussed there.

I repeat what I said this morning; that Dr. Frey was coming from the West. I didn't know it. He appeared unexpectedly in Chicago at the Blackstone Hotel where we were holding the meeting. He sent word in that he was there. It was natural that he would. Whenever Dr. Frey, or any member of the Petroleum Board, was in easy distance, or close by, we always got together to discuss our mutual problems.

Dr. Frey sent word into that meeting that he was
3272 outside. I left the meeting and, as I testified this
morning, I told him what the meeting was, something that he had quite a comprehension of. The background of that meeting makes it easily understood why he wouldn't want to go in. I explained to him what the meeting was, and I said, "Under those circumstances, what do you think? Is it wise for you to come in?" He was perfectly welcome, and he knew it. He knew what the meeting was about, and he said, "I agree. It wouldn't be wise for me to be there if you want this free expression."

I didn't make that suggestion to him, and he didn't, seeing that I didn't want him there, acquiesce, not at all. I am positive of that.

I mentioned a meeting on March 15th in New York, at which Mr. Buckley and Mr. O. D. Robinson were present. And I testified that in the course of the discussion I invited Mr. Buckley and Mr. Robinson out of the room.

When you invite a representative of the East Texas refiners, and when you invite a representative of the independent Gulf refiners, refiners that had been very non-cooperative; refiners that due to their activities, in every way failing to cooperate with the objectives of the Administration and ourselves; and when they come to you with statements that are not understood, and which involve a great
deal of skepticism, doubt, and really antagonism; and
3273 after you hear them, I think it is very obvious that
you wouldn't want them to remain there while you discuss what they represented to you. As stabilizer, I wanted to have a free and open expression from these gentlemen, so they would give us the benefit, and give all the benefit of their consideration as to the things that these gentlemen, which were quite serious, had laid before us; and something that you would not get, if you understand meetings, by having those gentlemen remain. And so I asked them to go out while we could have a consideration of the matters that they had proposed, and also told them that later we would invite them back, which I did.

I don't call any meeting a public meeting, no. I don't know what you call a public meeting. I wouldn't call the meeting of March 15th a public meeting in the sense that I call a public meeting. I would call this, maybe, a public meeting; maybe you would not. The public is here, I did not exclude Buckley and Robinson. I excused them for a few hours, a very great difference. It was a meeting that Mr. Buckley was invited to, and not a public meeting in that sense. Representatives of only major companies were present at that meeting.

I am not prepared to say on exact testimony about the
relations of American Oil with other companies. I
3274 am not so sure that American Oil Company is af-
filiated with Standard Oil Company of Indiana. I think it is affiliated with another company that is affiliated with Standard Oil Company of Indiana. I think that other company is Pan-American. I would say that American Oil Company and Pan-American are both major oil companies, or affiliated with major oil companies. I would say that there is some association with Standard Oil Company of Indiana.

I don't think Richfield Oil Company that I mentioned in my direct examination was then affiliated with any major oil company. I am not so sure whether there has been anything brought about; there have been many, many negotiations. I don't know whether they are now so affiliated. Richfield Oil Company does business on the Pacific Coast, and they do business on the eastern seaboard, and they may do some business at the southeast, I am not sure. It is a question, but I would say they were bordering on being a major oil company.

I thought I testified very completely about just who was present at that meeting of March 15th. I testified that I really tried to remember. The Pure Oil Company was in many meetings, if you speak of this matter of the East
Texas gasoline, on which there were only a very few
3275 meetings, and taking the meeting of March 6th, as I
testified, I can't recall who were the representatives of The Pure Oil Company. There might have been one, two or three gentlemen. It might have been Mr. Morris; it might have been Mr. McElroy; it might have been Mr. Watson; and on occasion there were one or two others that did represent them. ~~I don't recall~~ Mr. Watson in any of those meetings. Mr. Watson is located in the west, and occasion for him to come east is very infrequent. I may well have addressed my telegram to The Pure Oil Company to Mr. Watson on one occasion but usually I don't think it was my practice, for the reason I explained. It wasn't for me to choose, out of four or five or six men, whom they wanted to send; so in that instance, I did them the courtesy of addressing it to the company, and let them decide it. It

made no difference to me; so long as we had them in our constructive work.

I recall that letter now, Exhibit 23, Buckley to Brandli, dated May 25, 1935. I never made any engagements of the character that that inquiry suggests. I can tell you what I think it means. That was his own request; that it was impossible for him to contact these individuals individually, that he asked if he would have the privilege of meeting them when we had our meetings, and they
3276 would all be there. I would say very much the same group that I have described that was at the March 6th and the March 15th meetings was at the May 29th meeting. I did see Mr. Buckley on May 27th, but the meeting was May 29th.

I think it would help a little bit if I would give whom I think I recall that I invited; I testified that I can't be sure of exactly who came that I invited. I can come very near it. There would be Atlantic Refining Company, Mr. Harold Stone; Sun Oil Company, Mr. Samuel Eckert; Richfield Oil Company, Mr. Burns; Cities Service Company, if that is the correct name, Mr. Frueauff; American Oil Company, Mr. Jacob Blaustein; Pan-American Oil Company, Mr. Hatmaker; Gulf Refining Company, Mr. Hartmann; Tide Water Oil Company, Mr. Collins; Sinclair Oil Company, Mr. Carnes; Standard Oil Company of New Jersey, and I am not clear or sure of this, it might have been Mr. Hasslam. I don't recall Mr. Holbein, he is not a gentleman I have a close acquaintance with. I don't recall him. There would be Socony-Vacuum Oil Company, Mr. Fritz Ewing. It would not be L. B. Davis, he is a local manager, has nothing to do with matters of that character. There would be Shell—May 29th—now, there was a change in the representation of executive market interests in the Shell
3277 Company. I don't know exactly when that took place. But if Mr. Gould was still in the capacity he was before, he would be the man; but if he wasn't, it would be whoever succeeded him or who in the interval between represented them. It was not Mr. van der Woude. Shell Eastern, I suppose that would be. There was a change whereby their company adopted a more national name and type of representation, where before they had had three, with a different sort of overhead management. When that change took place, is what I am not clear of, and that is the reason I am giving you these possibilities of who it might have been. As to the Texas, I wouldn't question that I sent them an invitation, but my mind doesn't place anybody from there, for reasons that I can give you if you

care to ask me. I doubt whether Continental was included. I have seen Mr. Batson on occasion, but it wasn't a regular thing for Mr. Batson or any Continental representative to come to the meetings in the East. I do recall him in the meetings. I was always anxious to have anybody from Continental.

I didn't leave out anybody. There may have been others.
Mr. Collins was the usual representative of Tide Water Oil.
I don't remember of Mr. Noel Robinson attending any of
those meetings. I remember seeing Mr. Robinson
3278 once. I know he was at the allocator's meeting, at
the Washington meeting, and I remember seeing Mr.
Robinson at some one meeting in New York and he came in with Mr. Collins. If you ask me why or wherefore, I couldn't tell you, but I remember it impressed me because it was so unusual. I don't know whether it was one of those meetings where we discussed the East Texas situation, because I don't remember the meeting.

I would have invited Pure, but, there again, it is obscure. I don't remember whether Mr. McElroy was there, or Mr. Morris.

I don't recall having any correspondence with Mr. Buckley during that period, 1935 and 1936; it was so small, I just couldn't think what it might have been or what the occasion might have been. If there was occasion for such correspondence, I should have it. I didn't make it a habit or otherwise during that period to keep correspondence of that character. My correspondence, in our large organization, is taken care of as other correspondence. I have not a personal file that I know of. My secretary and those in my department file as the company officials file everywhere. I don't know how it is kept. If a letter comes from Mr. Buckley, after I have read it ordinarily I think it would go into the files of the company, Socony-Vacuum, in the
usual way. I am not able to say whether my files are
3279 in the Socony-Vacuum Company. I don't regulate
the files or have anything to do with them or know
how they are kept. The company has its regular practice in that regard, and my correspondence moves as anybody else's correspondence moves. I don't know whether there is any distinction between personal correspondence and company correspondence by anybody. I will have to ask our filing department whether they take executive correspondence and segregate it for any reason or whether they have it kept in the regular way or in some other way. I can't tell you, except this: They have the correspondence, and it is properly kept, I am sure. A Christmas greeting

from Mr. Buckley would not go into the company files after I noted it and took such action as I do with such things; I would have no reason to keep it.

By the Court

If a letter from my broker asking about a certain investment for my own personal affairs, having nothing to do with Socony-Vacuum Company, had anything of any particular personal importance to me and had information of worthwhileness in it that I should have kept for unusual or for some business purpose, I would keep it, but if it is like what I usually get from brokers, I think it would go into the waste basket.

3280 If it is something of a personal nature, I do not have a personal file for that. I don't keep personal files. I don't think my secretary has a personal file for me.

May I explain? We have a huge building that is very large, and our activities are organized for efficiency, and it is not usual in a matter of this sort to keep a file on all the activities by every individual, even though he be an officer or executive, in every department. It is centralized. I don't know that is done, but it might well be that, in the centralization, the filing department would keep the ordinary correspondence and the more personal or executive correspondence apart so that an executive, if he wanted to deal with his correspondence, would have a known place, but for me to have an individual file over here in one corner of the office, I know of no such correspondence.

By Mr. Chaffetz

I would say that I did not have occasion to look back and pick out pieces of correspondence during the years 1935 and 1936 for use in connection with this case.

I wouldn't keep the correspondence, copies of telegrams, for example, from me to Frueauff, in which I asked him to come to meetings in New York. I wouldn't keep copies of these at all. I wouldn't think of it.

3281 I kept the letter of July 20th to me from the Secretary, right on my desk. It was on my desk most of the time. I would say all of the time. I wouldn't be sure, but I thought I kept it there. I would keep it, anything as valuable to me as that.

I have a good deal of correspondence. It may be in folders, and it may be on those subjects that I might have been interested in.

When I say, "on my desk," I don't mean spread out on my desk. I mean in folders on my desk.

If I wanted the correspondence exchanged between myself and Mr. Buckley in the summer of 1935, I would ask my secretary in the offices of the Socony-Vacuum Company in New York to bring it to me.

I haven't the faintest recollection of writing to Mr. Buckley in the summer of 1935, calling his attention to the fact that I had a report that one of the independent refiners in East Texas was going to increase its runs and asking him to find out the facts and report to me. If there is such correspondence, I will certainly ask my secretary to locate it.

I will ask my secretary for any correspondence I may have had with Mr. Buckley in the months of June, July or August, 1935, either communications which I sent him or he sent to me.

A great deal of correspondence was subpoenaed by 3282 the Government. I never saw the subpoena or the correspondence. If you haven't got it, I don't know where it is. The correspondence that was asked for under the subpoena of my company was handled by my company and not by me. The Government will have to inquire of them as to what they sent to you, as the Government has already done.

Obviously the company and its counsel and its representatives had access to all of my correspondence. They had it. Whatever there was was in the custody and possession of the company. I didn't have it in my personal custody. I don't know of any such thing. I suppose and think they have access to it now if it is still there. A subpoena to my company would produce it quickly, of course, if it is there. I don't see why, if the Government issued a subpoena, it didn't get it before.

I referred, in my direct testimony, to a meeting on June 6, 1935, in Chicago where I said that I discussed a proposed new Federal Trade Commission Code. Subsequently, I submitted a code to the Federal Trade Commission for approval.

Q. I ask you whether in the meeting of June 6, 1935, you discussed inserting into the code a new provision which would authorize you to deal with the subject of distress gasoline?

3283 A. I don't recall any such thing.

Q. There was no discussion at all at that meeting?

A. I wouldn't say that. You asked me whether I asked the question or anybody discussed the question of inserting me in that relation. I don't remember any such thing.

Q. Do you remember any discussion at that meeting, on the subject of whether the purchase of distress gasoline by major companies should be provided in the proposed new Code?

A. No, I do not.

Q. Was it ever considered in that meeting or any subsequent meeting? By "it" I mean seeking the approval of the Federal Trade Commission for the major companies to purchase distress gasoline in the manner in which they did it.

A. What do you mean by "considered"?

Q. Discussed.

A. I don't remember any such discussion.

Q. And if there was such a discussion, you think you would remember it?

A. I certainly would.

Q. So you are pretty sure there was no such discussion?

3284 A. I wouldn't say pretty sure; I don't remember.

Q. You also said if you don't remember, you are pretty sure it didn't take place?

A. I would say so.

Q. So you are sure now that there was no discussion in the meeting of June 6 or any subsequent meeting?

A. I don't recall any such discussion.

Q. Along that line?

A. I don't recall any such discussion.

When the Code was presented to the Federal Trade Commission for approval, there was no request in it for any provision which would authorize the major companies to purchase distress gasoline, or to purchase gasoline from independent refiners, whether distress or not, or to enter into any activity with reference to distress gasoline. There was nothing on that subject at all.

I have some recollection, not over clear, but I have some recollection about attending a meeting in Kansas City on October 14, 1935. I think it was a meeting of the independent refiners. I don't know who called it. I think Mr. Boggs was the chairman of the meeting. October would be 4 or 5 months after the Code had expired. I don't 3285 remember any discussion at that meeting as to a major company buying program. I would say no such discussion took place while I was there. I made some comments and recommendations.

I do not remember receiving any memorandum from Mr. Buckley in the summer of 1935 in which he set forth the crude connections of each of the independent refiners in East Texas and compared them with the crude connections that they had at the time the buying in East Texas started, and suggested that I draw my own conclusions. I will very gladly have a search made of my files and see whether I have such a memorandum.

I remember that portions of the minutes of the allocators' meeting in Washington on March 13 were read yesterday in which there was reference to one company down there in North Texas that has a large stock that has been embarrassing. I do not recall what company it was. It could have been Waggoner Company. I would not like to say, but it might well have been because it was a company there that might be in that position.

There was also reference in those minutes to the way in which the idea of the East Texas Refiners' Marketing Association developed, and this was said:

There did not seem to be any spokesman for them, meaning the independent refiners, or any way in which they could approach those who might help them, so they discussed their troubles with 3 or 4 of the larger com-
3286 panies in Texas, and out of the discussion came a tentative plan for a central sales agency.

I do not think I would know who the 3 or 4 of the larger companies in Texas were that are referred to. The only person that I talked to whom they had discussed that with was Dr. Lederer. He told me that some of those refiners had come to him. I had not remembered Buckley saying that at the allocators' meeting. I wouldn't remember.

At the moment I do not remember a telephone call from Buckley to me in Chicago on April 21, 1936. The statement that April 21, 1936 was at a time after the subpoenas had been issued by the Government for witnesses to appear before the grand jury that was investigating this matter, does not refresh my recollection as to any telephone conversation I may have had with Mr. Buckley.

I may have had such a conversation with Mr. Buckley, but I do not recall it. I do not recall having any discussion with Mr. Buckley after the grand jury had been called to investigate this matter.

The statement that the record in this case shows he telephoned me at Chicago on April 21, 1936, and he charged that call to the East Texas Refiners' Marketing Association does not refresh my recollection as to the sub-
3287 ject of such call.

I remember the meeting of the independent refiners in Kansas City on Monday, November 25, 1935, at which I was present. That was not a meeting called by me. I could not say whether it was called by Mr. Boggs. I think Mr. Boggs presided at the meeting. I would say it was he.

I did not discuss subjects pertaining to the buying program in the Mid-Continent at that meeting. I do not recall who invited me to that meeting. I was not present throughout the meeting. There was no discussion of the buying program while I was there. As far as I am concerned, I have no reason to suppose that any discussion of the buying program took place at that meeting.

While I was there, I was talking to them about whether or not they wanted a code, and that was discussed. We had been working on one that I had presented to them, and I wanted to know their views, how we could get an industry response before we presented it to the Commission.

Q. A buying program was going on at that time, wasn't it, in 1935?

A. I would not say a buying program was going on then.

3288 Q. In the Mid-Continent?

A. No.

Q. Had it ceased?

A. I don't know as there was a buying program in the sense you refer to that had ever gone on.

Q. I did not say in any sense. I just said a buying program; your counsel has referred to a buying program.

A. I had no reason to know that any buying program was going on at that time.

Q. Or at any time?

A. There was the program that we have been talking about before the Code went out.

Q. And you think it did not continue after the Code went out?

A. I have reason to suppose that some buying was done, but I would not say under any program.

Q. Didn't you testify on direct examination that at the meeting of June 6th that you said it was a good thing and that you were going to continue with it?

A. I said at the meeting of June 6th, I said if these gentlemen cared to go on and voluntarily buy and receive information as to where gasoline was located, it was a good thing for the industry to know it.

3289 Q. Now, I want you to tell me the difference between the program that existed before the Code went out, and what went on after the Code went out.

A. The difference, if there was any difference, would be—

Q. In the way in which they operated?

A. That during the Code and under stabilization a recommendation had been made, there had been discussion—

Q. No, I am not asking that. Now, you know what I want.

A. I am trying to give you what you want.

Mr. Thomas: He had asked for it. Now, let him make his explanation.

The Court: Just a minute. I don't want any discussion. Just make your objection if you have any. Ask your question.

Mr. Chaffetz: The witness referred to a program that was going on during the Code, and then what was going on after the Code. Now, I want to know the way in which they functioned, not the way they started, not the recommendation. I want to know the functioning of the thing, how it differed after the Code.

A. How it differed?

Q. Yes.

3290 A. The only difference I can say is that there was no stabilization in respect to anything that I had to do with or that the P. A. B. or the government had to do with. It was entirely a matter as to what anybody wanted to do in a voluntary way, and entirely on their own, while before they were not entirely on their own, having had the supposed approval.

Q. Is that a difference in the way the thing functioned?

A. I think there is a difference in the fact that you work to get something that has approval under a program, and after a certain point somebody agrees to go along voluntarily—

Q. Now, just a minute.

A. I think that is different.

Q. You think the only difference then, they thought they had approval before the Code, and they did not think they had approval after the Code; otherwise it was exactly the same; is that right?

A. Before the Code they had what I felt was a recommendation and a suggestion they put it into effect, Mr. Chaffetz, and after the Code they had no approval, they had nothing from me whatsoever, and anybody who bought gasoline, he did it on his own.

Q. Otherwise the functioning of the thing was 3291 identical after the Code as it was before?

A. I don't know as I know very much what the committee did after the Code. I did not keep in touch to find out; it was not a matter that I was concerned with.

Q. You were sitting here during the testimony, and you heard McDowell testify that it continued to function exactly in the same way after the Code expired as before, didn't he?

A. Did he say exactly the same way?

Q. Didn't he?

A. I don't think he put it that way.

Q. You know that on November 25, 1935, the day you attended that meeting in Kansas City, the major companies were buying distress gasoline from independent refiners in the Mid-Continent field, much the same way they had been buying for many months prior thereto, didn't you?

A. I would not say that, no. I will answer that in another way if you want me to.

Q. Tell me some more about approval—

A. I don't know what they were doing after that meeting. That some of these gentlemen needed gasoline and were buying gasoline I have no doubt, but the same thing implies a great many things.

Q. You knew the winter was coming on, and the independent refiners knew that the winter was coming on, in November, 1935, and one of the things 3292 that concerned them was whether the buying program was going to continue functioning as effectively during the summer; isn't that true?

A. Meaning it affects who? You say it affects "them". Whom do you mean?

Q. I did not say it affects them. I said "as effectual".

A. Whom are you referring to?

The Court: Read the question.

(The question was read by the reporter as follows:)

"You knew the winter was coming on, and the independent refiners knew that the winter was coming on, in November, 1935, and one of the things that concerned them was whether the buying program was going to continue functioning as effectively during the summer; isn't that true?"

A. Exactly. Who do you mean, "concerns them"?

Mr. Chaffetz: Q. Whom do you think I might mean?

A. I am asking you.

Q. Whom do you suppose I meant?

A. You might mean the majors or you might mean the sellers.

Q. I mean both.

A. You mean both?

Q. Yes.

A. I had no reason to think it, a major, was concerned about buying continuing. I would say a 3293 refiner at any time would be concerned about selling his gasoline, summer or winter, if it was distress gasoline.

Q. And if there was a buying program going on, and that buying program was maintaining the price, and had been for months, they would be concerned whether that buying program was going to go on and maintain the price; isn't that true?

A. I would not put it that way. I would say if a man had a demand for gasoline, and he was selling his gasoline at or near the going market price, he would have every reason to be concerned if he had not the price for that gasoline.

Q. And if he thought that gasoline was being bought under a program, then he would be interested in knowing whether that program was going to continue?

A. I cannot say that he was interested in it.

Q. Do you have any doubt?

A. About what he thought?

Q. Yes.

A. I think anybody would be concerned about losing orders for consumption of gasoline which was a product he had no business for.

Q. And he would be concerned about whether the price was going to be maintained?

A. Why, I could not say he would be concerned about it.

3294 Q. Do you know that Mr. Boggs had concerned himself with allocations of products during that period?

A. No, I had no reason to suppose that.

Q. What did you think Mr. Boggs was doing?

A. I have no reason to suppose what he was doing. I had no contacts with him.

Q. Weren't you the one that suggested at the meeting in March they elect a leader who would work together with the major companies?

A. I did not say that.

Q. Did you say something to that effect?

A. I did.

Q. And in your letter—

A. Did you want to ask me what I said?

Q. I will tell you what you said in your letter to Mr. Marcell of March 12, 1935—this is with reference to the meeting of March 3rd:

> "Each company present agreed to join in our efforts and also to support the Executive Committee of their own choosing who will sit in our major group meetings representing independent refiners. In this way, we will have one
> 3295 group and I think will be able to move forward even more definitely and constructively than we have in the past where this group was depending on Messrs. O'Shaughnessy and Majewski to keep them informed and to represent them."

That is when Mr. Boggs became chairman of that Executive Committee as you described, of the independent refiners; isn't that right?

A. That is correct.

Q. And didn't you know that he continued in that capacity after the Code, and was in that capacity when he was acting as chairman of the meetings?

A. You haven't asked me just what I said in that letter—

Q. I am asking you another question now.

A. No, I haven't any such idea. I had no contacts with Mr. Boggs after the Code; as a matter of fact, very few during—

Q. You had a contact with him at this meeting in November?

A. I did, certainly.

Q. That is a contact, isn't it?

A. That is.

3296 Q. Didn't you just say you had no contacts with him after the Code?

A. I said very few.

Q. You said very few, did you?

A. I did, and obviously he was at the meeting you have just referred to.

By the Gulf coast I referred in my testimony to the coast of Texas and Louisiana. That is where the independent refiners are located who were referred to in the allocators' meeting, companies like Chalmette, Corpus Christi, Republic, Crown Central, etc.

It was considered at that meeting whether the refiners who operate on the East coast would take the distress gasoline of the independent refiners located on the Gulf coast.

I do not know what companies bought that distress gasoline.

I know Mr. O. D. Robinson. I am acquainted with Mr. Corner. I did not have any discussions with Mr. Robinson and Mr. Corner about anything which I would call a Gulf coast buying program in the spring of 1935.

I had some discussions with Mr. O. D. Robinson and Mr. Corner about major company buying of distress gasoline from Gulf coast independent refiners in the
3297 spring of 1935. I know that there were orders for gasoline being placed, for cargo shipments from this group. By whom or in what quantity, or when, I didn't know. It was being done as a result of the efforts of Mr. O. D. Robinson who was speaking for them.

Naturally it was, generally speaking, the refiners who did business on the East Coast who bought that gasoline. I couldn't answer the question whether Tide Water Company, Atlantic Refining Company, American Oil Company, Socony-Vacuum Company and Gulf Companies were all buyers. I know that Socony-Vacuum, who were buyers of cargo gasoline, bought some. I couldn't tell you from whom they bought. They may have bought from Eastern States Petroleum Company. I know they had bought some before that. I certainly know that if there was any buying on the coast, Socony-Vacuum was one of the companies that did that. I don't know what other companies.

I didn't know Tide Water Company was actively interested in the purchase of distress gasoline on the Gulf coast. As a matter of fact, I think Tide Water Oil Company were not buyers. I don't recall that they were ever interested in cargo buying. If they were, I don't recall it.

3298 The Gulf Company is a very large buyer of gasoline. They may have, but I couldn't remember that they had bought distress gasoline on the Gulf coast.

Mr. O. D. Robinson didn't have any program for buying distress gasoline in the spring of 1935. He was representing the independent refiners, trying to get major companies to buy the gasoline of independent refiners down there, but that doesn't constitute a program. I certainly do not call that a program.

I wouldn't call what was going on in the Mid-Continent a program, either.

I do not know of meetings, during this time, that were being held on the East coast by representatives of major companies and the Gulf coast independent refiners, with respect to stabilizing the tank car price, and the barge rates for gasoline along the East coast.

I know who L. B. Davis of my company is. I have a very slight acquaintance with him. He is no longer with the company. I believe he was with the company in the spring of 1935. He was a manager of a division. He was interested in the price of gasoline on the East Coast, insofar as his immediate branch of the territory was concerned. I wouldn't know whether he was meeting with other representatives of major companies, trying to
3299 consolidate the effects of the buying of gasoline on the Gulf coast by actually fixing and stabilizing the price of gasoline on the East coast.

Mr. Davis at that time was manager of a branch office. As manager of that branch office, his responsibility was to another officer, and that other officer was responsible to the man in charge of the East; and I had nothing to do or was not interested in what was going on in the East, in local markets.

I was interested in stabilization in every respect. If there was a stabilization of markets on the East coast, that would have been of interest to me, if it was a matter that properly should have been brought to my attention. There were many activities of that kind all over the country. It wasn't a matter for me to know about all of them. They were local.

I never heard of any meetings called by Mr. O. D. Robinson of companies interested in the price on the East coast, during the period from January, 1935, all through the summer of 1935, with reference to the price of gasoline on the East coast. I am sure of that.

Q. Now, coming back to the situation in the Mid-Continent—directing your attention to the early part of January, when the so-called Tank Car Stabilization Committee was appointed, I think you
3300 testified that it was decided not to commence the purchase of distress gasoline until after the Connally Act had been passed; is that right?

A. That is true, and—

Q. Now—

A. (Continuing.) —I also testified to something else in that respect.

Q. That is all I asked you about, was with reference to this, and I think we will get along much faster if you just answer my questions.

That distress gasoline that was in the Mid-Continent field, that was in the hands of the Mid-Continent refiners, was legal gasoline, wasn't it?

A. I would say it was.

Q. There was no reason why any company wouldn't want to buy it if they needed it, is that right?

A. I should think of no reason.

Q. Yes. And if major companies needed gasoline, or thought they were going to need it; and if that distress gasoline was there in January and February, 1935, and its existence was called to their attention, we will assume, they would have bought it; isn't that right?

A. Why should I assume that?

Q. Can you think of any reason why, if they needed the gasoline, it was good gasoline, it was
3301 there, and it was called to their attention, can you think of any reason why they wouldn't have bought it?

A. I can answer that, if you will allow me.

Q. I wish you would answer my question. Can you think of any reason why they wouldn't have bought that gasoline?

A. If they knew about it?

Q. If they knew about it.

A. No, I don't see any reason.

Q. No. And if it was the desire of the major companies, beginning in January of 1935, to assist the independent refiners; and if they could have used the gasoline, whether they needed it or not; they could have assisted those independent refiners by buying such distress gasoline as existed in January and February of 1935 in the Mid-Continent field. That is clear, isn't it?

A. They could have, yes.

Q. Yes. No question about it, is there?

Mr. Lewin: It would help the independent refiners.

Mr. Chaffetz: Is that right?

A. If they had all that they eventually knew, they could have.

Q. And that would have helped the independent refiners, wouldn't it? 3302

A. It would have been of some assistance.

Q. Yes, and if they bought that distress gasoline from them in January and February at a fair market price, that would have helped the independent refiners, wouldn't it?

A. Yes, if they could have.

Q. Yes. But the way you wanted to help the independent refiners was by raising the published tank car price for gasoline in the Mid-Continent; isn't that right?

A. No.

Q. You deny that explicitly?

A. As you say it, explicitly.

Mr. Lewin: Give him the Marcell letter.

Mr. Chaffetz: Q. I ask you again, wasn't the purpose, your purpose and the purpose of the Tank Car Stabilization Committee, to get the tank car price of gasoline up?

A. Not as you state it, no, sir.

Q. In your letter, Exhibit 305, to Mr. Marcell, of March 12th:

> "I spent all day yesterday with the Allocating Committee in Washington so as to acquaint them with full details and have a check on the figures of the allocation of these particular refiners so that the program we are working on would not 3303 in some way show later that these refiners were not standing by their promises. The outlook is good and if we can hold it together, as I think we can, there ought to be a real improvement in the tank car refinery price."

That is what you reported to Mr. Marcell?

A. That is what I stated.

Q. As your objective, isn't that right?

A. That is what I stated to Mr. Marcell.

Q. Yes, and that was true, wasn't it?

A. What I state in that letter?

Q. Yes.

A. Quite so.

Q. Yes. What you were interested in, then, was getting the tank car price up?

A. Not for the purpose of getting the tank car price up, no.

Q. For what purpose?

A. Do you want me to explain that?

Mr. Lewin: Answer the question.

Mr. Chaffetz: Go ahead.

A. The purpose I had was that an independent refiner—you have asked me this question, and I hope you will let me tell it to you—

Mr. Chaffetz: Don't take all day.

3304 Mr. Thomas: I object to the remark of counsel.

The Witness: Do you want the answer?

The Court: Go ahead and answer, without any—

A. To bring the independent refiner into a position where he had an allocation of a quantity of gasoline that he could make, and when he made that gasoline and had no market for it, that was distress or homeless; that, first, he would have a normal demand for that product; that that demand wouldn't be artificially created by dumping it on the market; and the most essential thing was that he, in his location, he, with the quality of his product, he, with the quantity that he had, would be recognized by buyers who were interested in all of those. And if you could not find people who normally and properly, in connection with their allocations, could buy that product, a matter of price was of no consequence. The independent refiner had no place in the industry, and this was an endeavor, Mr. Chaffetz, to give him that place, where he would fit in with his product in the demand for his gasoline, and it would be a normal, proper, recognized demand.

Mr. Chaffetz: Q. And what did the Connally Act have to do with that, then?

A. What did it have to do with that?

3305 Q. Yes, so far as the Mid-Continent was concerned?

A. Why, because, before the Connally Act, the dumping of distress, illegitimate gasoline created a demoralization for the legitimate product of the man who made that product.

Q. Yes, but the Mid-Continent refiner, whose gasoline was not hot, whose gasoline was legal gasoline, he was working under allocations, as you say, and he had some surplus gasoline, as you say. Now, couldn't you have helped him by buying that distress gasoline from him, irrespective of whether the Connally Act was ever passed?

A. You mean with hot gasoline all over the Mid-Continent, you mean with gasoline selling here at two, three, four and five cents below—

Q. What has that got to do with buying the surplus gasoline of the Mid-Continent refiner? It wasn't illegal—

A. Why, for the reason that the Mid-Continent gasoline was gasoline that they had no reason to buy, with that competition of that sort, they would buy from—they were all buyers of gasoline. They paid for the gasoline, however, what price? Distress. The gasoline was bargain gasoline.

3306 Q. Why didn't they pay a fair price for it? This was legal gasoline.

A. Because the supply and demand, and the conditions under which gasoline was selling, it couldn't be a fair price. It was a most unnatural, unfair price.

Q. They could have bought it at the going market price, at any rate, couldn't they?

A. Do you mean to say that with hot gasoline prostrating markets, where the levels were subnormal to three and four cents, that a buyer of gasoline could go to the independent in the Mid-Continent and pay him premiums above the market of two and three cents?

Q. I said he could go and pay him the going market price, whatever it was, couldn't he?

A. I think he did buy that gasoline, where he found it through the broker, at distress prices. He had no reason to pay more than those distress prices. He couldn't pay more.

Q. Now, just a moment, Mr. Arnott. You told me in answer to my question before that you weren't interested in raising the price; what you were interested in, as you said, was to give the independent refiner a normal outlet for his surplus gasoline; isn't that right?

A. That is true, yes.

3307 Q. Regardless of how much hot oil there is on the market, if the independent refiner has a surplus of gasoline and that is legal gasoline—I am talking about the independent refiners in the Mid-Continent—he could get a normal market for that gasoline by major companies buying it, whether or not the Connally Act was ever passed; isn't that true?

A. That is true. You are asking me, however, you want to know what was in my mind, or why he didn't do it—

The Court: You have answered the question.

Mr. Chaffetz: Very well.

Q. The reason you wanted to wait until the Connally Act was passed, was that you knew you couldn't get that tank market price up, you couldn't get the published tank car price up so long as there was hot oil that was competing with the legitimate gasoline that was being sold. Now, isn't that true?

A. Mr. Chaffetz, don't misunderstand me, I am trying to exactly answer your question. You asked me why—

Q. No—

A. If you will bear with me—

Mr. Lewin: Have the question read.

Mr. Chaffetz: I want the Reporter to read that question.

The Court: Just a minute. Read that question, and see if you can answer it.

(Question read by Reporter, as follows:

"The reason you wanted to wait until the Connally Act was passed was that you knew you couldn't get that tank market price up, you couldn't get the published tank car price up so long as there was hot oil that was competing with the legitimate gasoline that was being sold. Now, isn't that true?")

A. That is one reason.

Mr. Chaffetz: Q. Yes. Now, when the Connally Act was passed that did take care of hot oil, didn't it?

A. To a large degree.

Q. To a very substantial degree?

A. To a very substantial degree.

Q. And then before you got to operating the buying program in the Mid-Continent you still had to take care of any surplus or distress gasoline that existed in East Texas, because that would come up and compete with Mid-Continent gasoline; isn't that right?

A. That is right.

Q. And that was done through the activities of Mr. Buckley and the East Texas Refiners' Association, isn't that right?

3309 A. That had something to do with it. It wasn't the entire thing.

Q. The effect of that was to keep gasoline from —at cut prices from coming up into the Mid-Continent and competing with Mid-Continent gasoline, isn't that it?

A. There was a factor that you have to consider.

Q. What was that?

A. There were price wars that were still raging, and in the demoralization of that market, the North and West and other refiners were unable to carry on in Texas and their gasoline was coming up, and that wasn't normal for them.

Q. The Connally Act didn't affect Texas?

A. Yes.

Q. In the demoralization of that market?

A. Yes.

Q. And it did force other refiners to move out?

A. The West and North—

Q. I am including the West and the North—I am going to deal with them as the Mid-Continent, as they were considered by the Tank Car Stabilization Committee—isn't that right?

A. They were in that group.

3310 Q. They were considered as Mid-Continent refiners in the Tank Car Stabilization Committee?

A. The other production wasn't sold in the Mid-Continent. It was largely sold in Texas.

Q. You said in the allocators' meeting: "When I say Mid-Continent that means, as we look at it, North Texas, West Texas, Oklahoma, Arkansas, Kansas, and so forth"?

A. That is quite correct.

Q. Now, the Connally Act kept hot oil from depressing the price in the Mid-Continent area, and in the East Texas buying by major companies there was the East Texas Refiners Association preventing cut-price gasoline from coming out of East Texas and into the Mid-Continent area, isn't that right?

A. That is true.

Q. And then you were able to deal with the prices in the Mid-Continent area through the operation of the Mid-Continent buying program without fear that your activities in the Mid-Continent field would be interfered with, either by hot oil or by East Texas gasoline, isn't that right?

A. I don't like the way you put it, "without fear", I was able to do—the industry was dealing with this situation, and the industry was able—

Q. That was true of the industry as a whole?

3311 A. That was true of the control of hot oil and allocations had a very large part in it.

Q. And then when the purchase of gasoline commenced in the Mid-Continent area on the spot market, you still had to have the full cooperation of the independent refiners who were selling on the Mid-Continent spot market, isn't that right?

A. That was very important.

Q. Because even if the major companies undertook to buy 600 or 700 or 800 cars of gasoline in the Mid-Continent as so-called distress gasoline, if the refiners in the Mid-Continent produced more gasoline on account of the fact that they were selling some of their gasoline to the major companies, your plan wouldn't have worked?

A. Better repeat that question. It is a little involved for me.

Q. Perhaps it was involved. What I am saying is this: The mere purchase of distress gasoline, no matter what quantity, by major companies in the Mid-Continent wouldn't have had the effect of bringing the price up, the spot market price up, if a substantial number of the independent refiners in the Mid-Continent field increased their production after they sold some of their gasoline to the major companies?

3312 A. Of course. Why not?

Q. So you had to have, as you, yourself, pointed out very forcibly at the allocators' meeting, you had to have the cooperation of the independent refiners as a group to restrict the output of surplus gasoline to the amount that the major companies were buying?

A. No. That doesn't state it.

Q. Isn't that true?

A. That doesn't state it.

Q. Isn't it true?

A. Not as you put it.

Q. Is it true in substance?

A. Not as you put it.

Q. Didn't you just say—

If the independent refiners in the Mid-Continent area, finding a new outlet for a portion of their gasoline to the major companies to the extent of 600 or 700 or 800 cars a month, said, "Well, now, we'll produce a little more gasoline than we have been producing, and we will see if we can't sell that in the open market, so we will have in addition to what we had before, our regular customers, we will have our regular customers, and we will sell so much through the committee, the stabilization committee, to the major companies, and then if we can produce a little more, we may be able to force it on the 3313 market, and our total sales will increase;" if they did that, the plan wouldn't have worked?

A. I must answer that, Mr. Chaffetz: It wasn't the plan. That would be a matter of allocation. That is not my plan or their plan. If you are saying to me, "They wouldn't have obeyed the allocation," of course, you are right. The allocation—what they produced, what they were prevented from producing, nothing.

Q. Now, if they could come to you and sell more gasoline, they could raise their allocations?

A. Yes.

Q. That wasn't your concern?

A. No, excepting I wanted to know what those allocations were.

Q. And the reason you wanted to know what those allocations were was because you wanted to be sure that they weren't going to sell some of their gasoline to you, and then increase their production and have the same amount of gasoline available for the market as was available before the major companies were going to buy?

A. What every man in the industry—

Q. I don't care "what every man in the industry"—I want to know what you think of it?

A. But you can't separate me from the rest of the industry.

3314 Q. I can, if the Court permits me.

A. That is true.

Q. Let me read you some of your own language, reading from page 5 of the allocators' meeting, Exhibit 69:

> "And there we come to the principle that we are here to talk to you about, because if there is going to be any movement to consider what is established month in and month out, to be definitely reckoned with, homeless or surplus gasoline and anybody is to give consideration to taking that regularly, and a buyer or an individual could buy that product from a refiner or an individual seller, then it can't be expected that if it is brought about in an organized way, in a month or two months we are going to be informed that it is unfortunate but there is some more accumulation in somebody's tanks, and therefore this matter of what has accumulated in the tanks of any group of refiners, if dealt with, if removed, if taken out of the picture, immediately becomes question that it must not be duplicated and again accumulated, because then we would have a sub-structure or an understructure that would be undermining everything constructive that we are trying to do."

3315

Do you remember that speech of yours?

A. That is, what I referred to—

Q. By counseling dealing with surplus gasoline, you were dealing with the subject of a buying program?

A. I was dealing with the quantity of gasoline those people would have to sell.

Q. And you wanted to be sure they didn't have any more to sell after you had bought the amount of distress gasoline you wanted to buy?

A. Yes, that is absolutely so.

Q. So we have this situation: You had to be sure when you started this buying program that when sales were made through the committee, or, purchases were made through the committee by the major companies of so-called surplus gasoline, that the independent refiners throughout the Mid-Continent would not thereupon increase their production and try to force that increased production on the market, isn't that right?

3316 A. You would have to obey the allocations.

Q. And to get increased allocations?

A. That was quite all right, if they had the demand and could justify it. That was for the allocators, not for me.

Q. Yes. Now, another factor besides this question of restricting the amount of surplus to a known, definite amount, as you described it: If the independent refiners in the Mid-Continent sought, we will assume, to increase their sales during the time that the buying program is functioning, by cutting the price—suppose they want to take customers away from each other or from the major companies and they said, "The price today is 1¢ higher than it was a few weeks ago. A few weeks ago we were selling gasoline at 4¢, and the price today is 4½¢. We will shade the price to 4¼¢ and get more business;" if the refiners in the Mid-Continent area in any substantial number or to any substantial extent engaged in that kind of practice, it would have defeated the purpose of the buying program, wouldn't it?

A. I don't think I can quite catch the significance of that. Better read it.

The Court: Read it.

A. Rather vague.

3317 (Question read by the reporter.)

A. I don't understand the question.

Mr. Chaffetz: Q. Suppose during the time the surplus gasoline was being purchased by the major companies through the stabilization committee the independent refiners in the Mid-Continent, selling on the spot market, in order to increase their business, shaded the published spot market price to any substantial extent, the spot market price would not have gone up, would it?

A. No.

Q. And that would have defeated the purchase program, wouldn't it?

A. I can't answer that yes or no. I can't answer yes or no.

Q. You wrote to Mr. Marcell, on March 12th; "The outlook is good and if we can hold it together, as I think we can, there ought to be a real improvement in the tank car refinery price." May I suggest to you that one way in which you had to hold the situation together was to make sure that the independent refiners didn't shave the price so as to prevent the refinery price from going up?

A. The comment in that letter has no reference to this matter of gasoline buying.

3318 Q. It has none?

A. None. That very statement, if you want to ask me what it is—

Q. Let's see. "There has been considerable development in regard to 'homeless' surplus gasoline coming from the three main independent refinery centers, East Texas, Gulf, and Mid-Continent. I have been devoting a great deal of time to this, especially to the Texas end of it, and definite progress has been made which is already reflecting itself in the attitude of these groups which are cooperating in an outstanding way."

You meant the Mid-Continent, East Texas, and Gulf?

A. That is right.

Q. You say, "Which are cooperating in an outstanding way?"

A. That is right.

Q. "I spent all day yesterday with the Allocating Committee in Washington"—

A. That is right.

Q. (continued) "So as to acquaint them with full details." So that was not buying programs?

A. No.

Q. Why did you spend that day with the Allocating Committee?

3319 A. Well, to find out what the allocators legitimately gave these refiners as the proper quantity of gasoline that they would have to offer.

Q. Didn't you testify that you came to that allocators meeting to explain to them their purchase plan?

A. I did not.

Q. Didn't you go to that allocators meeting to tell them what you were doing in respect to major company buying of distress gasoline?

A. I did not.

Q. And you didn't so testify in your direct examination?

A. I did not.

Q. You came to them, why?

A. Do you want me to tell you?

Q. Yes.

A. I explained to you; give me time to tell this, because I don't think you understand it. I came to them from the result of Mr. Buckley, from the result of Mr. Robinson, who came to me, and to the industry, and told us of their difficulties, and said, "This surplus gasoline, we have no place for it." If you will allow me to tell—

Mr. Chaffetz: I will ask your Honor to instruct—

3320 The Witness: This has to do with the allocators meeting.

Mr. Chaffetz: He is starting off again in a way with his whole story.

The Witness: I am not. If you will allow me I want to explain—

The Court: Q. You appeared before the allocators meeting?

A. Yes, your Honor.

Q. For what purpose?

A. To tell them, and ask them, as I explained in my testimony, as the result of the talks we had had with these people. "What is the gasoline you are talking about? Are you talking about legitimate gasoline or are you talking about illegitimate gasoline? What is it that you are talking about?" That involves us in what allocations the Government were giving them. So we go to Washington and the purpose to say to Washington, to say, "We want you allocators to hear what these groups are saying to us. They come to us. We don't know what they are trying to say in regard to quantities. Now, allocators, your job is to tell each of these refiners what they can produce. What is it you are giving them the right to produce?"

3321 And that is the reason we went to the allocators,—to tell them we had been approached by these people, and "Mr. Allocator, what is the legitimate quantity of gasoline these people will have the privilege to manufacture?" That is the reason we went, and not about any buying programs.

Q. Let's see what you told Mr. Marcell about it; "I spent all day yesterday with the Allocating Committee in Washington"—

The Court: Who is Mr. Marcell?

A. He is the executive in charge of the White Eagle Division in Kansas City for Socony-Vacuum. This was a letter that I wrote to him in response to his letter to me.

Mr. Chaffetz: Q. You said to him this: "I spent all day yesterday with the Allocating Committee in

Washington so as to acquaint them with the full details and have a check on the figures on the allocation of these particular refiners."

A. That is right.

Q. (continued) "So that the program we are working on would not in some way show later that these refiners were not standing by their promises."

A. That is right. Do you want me to explain that further.

Q. No, that explains it sufficiently to me.

3322 A. That is exactly what I said.

Q. In the very next sentence: "The outlook is good and if we can hold it together, as I think we can, there ought to be a real improvement in the tank car refinery price."

Do you mean to tell me, when you referred to the improvement in the tank car refining price you were not referring to the major company's buying of distress gasoline?

A. Do you want me to tell you what I meant?

Q. I want you to answer my question.

A. No.

Q. All right. I will let the jury decide that.

A. I am very willing to tell you what I meant.

Q. I will let the letter speak for itself.

A. You are misinterpreting the letter.

Q. Now, I want to get back to the subject I was dealing with a minute ago. I again say to you that at the time that Mid-Continent buying program commenced to function, if the independent refiners did not cooperate, but instead tried to increase their business by shading the published spot-market price, that price would have gone up, would it?

A. They would ruin their own markets.

Q. Yes, and that would have prevented the 3323 effective functioning of the buying program?

A. People might still have bought this surplus gasoline at the reduced price.

Q. Do you think that the major companies would have continued to buy that gasoline if the price did not go up?

A. Why not?

Q. You think they would?

A. Why not?

Q. I am asking you, you are not asking me.

A. If I am a buyer of gasoline, I will buy at one price, or if I can buy at another price, there is no reason why I should not.

Q. You think that those major companies would have continued to have bought that gasoline, in the same quantity, taking all of this distress gasoline, of 600 or 700 cars a month, even if the price did not go up?

A. I have no reason to think otherwise.

Q. And buy just as regular?

A. That I don't know.

Q. You have no reason to think otherwise?

A. I don't know.

Q. You have no reason to think otherwise?

A. No.

3324 Q. We discussed the situation in January and February. We found that the major companies were not interested in commencing their program in January and February, although presumably the amount of distress gasoline was the same as in March; the same amount was available, so the testimony shows, and if they were each buying only what each of them wanted to buy and needed, they would have bought it in January and February as well as March. I thought we had agreed on that.

A. We have agreed on that as to your assumption of what the majors would have done, but you haven't asked me what I did. You have talked about what the majors would have done. I am not able to tell you why the majors did this or that. You haven't asked me why I didn't do something about it earlier. Is there anything more you want to say—

Q. I want to go back again to the situation in January and February. I want to distinguish it. I want to compare it with the situation in March. We understand each other to the effect that the amount of distress gasoline that was available in January and February was about the same as was available in March. You say major companies always bought

3325 gasoline, but in January and February no program was organized to buy all distress gasoline that was available; isn't that right?

A. That is true.

Q. In March a program was organized and did function, and all the distress gasoline was purchased, isn't that right? I am talking about the Mid-Continent field.

A. To be exact, I am not sure that all of it was. I don't know.

Q. Don't you assume that most of it was?

A. I assume that all of it was. I think some of it was sold in the market.

Q. Practically all of it was bought?

A. Practically all, if you want to be accurate.

Q. I again want to ask you this question; in your opinion, and you were close to the situation would the major companies have bought practically all of the distress gasoline in the Mid-Continent area in March, in a program, if they didn't believe that as the result of their purchases the tank car price—the published spot market price wouldn't go up?

A. That would only be one factor, and by no means the whole.

Q. I would like an answer to that question.

3326 A. As you ask it, no.

Q. No, you don't think so?

A. I don't think that alone would do it.

Q. You think if the price didn't respond in March, the price didn't respond in April, the price didn't respond in May, the major companies would have continued in that program nevertheless?

A. I have no reason to say that they would not.

Q. You think that they might have?

A. They might have.

Q. Now, you think that they would have continued through the rest of the year, buying distress gasoline, in whatever way they did?

A. I have no reason to suppose what they would do the rest of the year. That is a long time in our business.

Q. But you have no reason to think that they would not.

A. Well, you are asking me to assume a lot for a lot of people. I think that is a difficult question for me to say yes or no to. You asked me what the major companies in the Mid-West are going to do for a year. I will say, no. I am in no position to answer that kind of a question.

Q. You said you could answer it for January, February, March, April, and May, for 5 months; you can answer it for 5 months, but not for a year.

3327 A. That is a very peculiar way of putting it.

Q. Now I want to assume for a moment that the purpose of the buying program was to get the—as you said in your letter to Marcell, to get real improvement in the tank car refinery price.

Mr. Donovan: I object to the form of that question, your Honor. There is no such thing as that said in the letter. I object to that assumption.

The Court: Take the letter. Get the correct language.

Mr. Chaffetz: Q. You said, in your letter to Marcell here, "The outlook is good and if we can hold it together, as I think we can, there ought to be a real improvement in the tank car refinery price."

A. I asked you to ask me what I meant by that.

Q. I don't care what you meant by it. I will let the letter speak for itself. I want to assume now that what you meant by it is what I thought by it, and what I am going to ask the jury to think what you meant by it.

Mr. Donovan: I object to the question, your Honor. I object to the question. This man is appearing here as a witness. He is a witness who is testifying as to facts. He should be asked simply as to facts, and not assumptions, and particularly assumptions that do not exist.

Mr. Chaffetz: Counsel wants to assume we can—

The Court: Let's have no discussion. State your question and I will rule on it. Did you finish the question?

Mr. Chaffetz: I will ask a new question.

3328 Frankly, I don't just recall the companies that participated in the Mid-Continent buying program. I remember Jacobi named them when he was on the stand. I didn't follow up and ascertain who bought the gasoline, so I am not sure I can list those who participated with any intelligence. I can list those that I think might have been buyers, but to actually say I know they were, I can't say that I can. I knew some of the companies who were buying in the Mid-Continent buying program.

(Copy of indictment handed to witness.)

The ones that I knew were buying in the Mid-Continent buying program were: I think Standard Oil Company of Indiana was one. I knew Socony-Vacuum Oil Company did. Cities Service and Continental Oil Company, I wouldn't know. Gulf Company, I would say I don't think they did in the Mid-Continent. The Pure Oil Company, yes, I think they did. Sinclair Refining Company, I knew they bought some. Texas Company and Tide Water, I wouldn't know. I think Mid-Continent did. I know Phillips Petroleum Company did. Skelly Oil Company and Barnsdall, I wouldn't know. Now, you have The Globe Oil & Refining Company here. I think I remember that they did do some buying; and I think Deep Rock Oil Company did some buying. I have named only those that 3329 I know of my own knowledge bought, or that I knew about at the time as having participated.

I didn't talk with any individuals connected with any companies concerning the subject of the Mid-Continent buying program during this period in 1935 and 1936. I don't remember talking with any of them. I don't remember having any occasion to go to them about their buying gasoline. If I ever did talk with any, it must have been a here and there, very informal mention of it, but I never had any definite approach to any of them on that matter, and I am very sincere in that statement.

Mr. McDowell is a representative of Mid-Continent. He was on that committee. If you mean in that respect, I can say this, I did talk with some of the committee.

In respect to the Socony-Vacuum people, I did talk with them. Among the Socony-Vacuum people, I talked with Mr. Ashton. I may have talked with Mr. Jones. I don't doubt that I did. He was the man responsible for executing the policies of our company, with reference to the buying program. I wouldn't exactly say he was the man in my company with whom I talked about our participation in the buying program, because that matter was in his hands entirely, but I no doubt talked with him. I don't remember any occasion of talking to Mr. Brown. I 3330 may have, but I don't remember any occasion. I talked to Mr. Marcell, Mr. Irwin, Mr. Bryan Reid, and Mr. Maguire. I would say each of these gentlemen whom I have named was fully familiar with the subject and knew that it was the policy of our company to participate. They were the heads of their individual divisions and were responsible for the participation of their own division in the buying program. They were buyers.

I don't remember particularly discussing it with Mr. Ewing. His interest was entirely in the East, and I don't think I would have any occasion to discuss it with him. I may have, I wouldn't deny it, but I don't recall it.

I don't remember discussing it with anybody in the Indiana Company. I don't think I did. I did not talk with Mr. Bullock about it. My contacts with Mr. Bullock are very infrequent. I didn't attend any of these meetings;

I never had occasion to talk with people. That was done by the Tank Car Stabilization Committee. I didn't get into that fully.

Now, Cities Service, I don't remember talking to anybody about that. Not Mr. Frueauff. I would have no occasion. Mr. Frueauff's interests, in my estimation, were entirely eastern. In discussing with him the East Texas situation, I don't think I discussed with him the 3331 Mid-Continent situation. I don't remember at that meeting of having occasion to discuss the activities of this Committee.

In Continental Oil Company, I may have discussed that with Mr. Kennedy and Mr. Cramer. I have a distinct recollection of, some place or other, discussing it, because they were gentlemen I didn't see very frequently; they are out in that Rocky Mountain region. And I remember something about it—I am not clear, but I would say that I did talk to both of them. I rather got the impression that they weren't very sympathetic with it. That is the reason I remembered it, because there was something I think they raised with me, that they knew of it, and didn't seem to be very enthusiastic about it. I would say that that meeting was right in this period, maybe March or April or May; that would be a guess, but it might be along in there.

Gulf, I don't remember, because they are not very active out here, as you know; Michigan, mostly, and Indiana; and I don't think they would be interested.

As to Pure Oil Company, I may have talked with Mr. Morris about that. I remember them as being substantial buyers, and I think probably I talked to Mr. Morris. I never mentioned it to Mr. Dawes. I don't 3332 talk very often with Mr. Dawes about company operations. He and I were members of the P. and C. Committee. He was in Washington during that time. I saw him very frequently down there. I don't think I discussed with him at that time the subject of the buying program. Really, our activities down there were night and day, and we discussed many things—This was one of the things we discussed. This is very important to Government counsel; as to us, it was not very important. As to the buying program, I don't remember speaking to Mr. Dawes at all. I don't talk with Mr. Dawes in regard to operation matters but very, very seldom, because his company is, as I observe it, managed by gentlemen who are in those various relations, in charge.

I may have discussed it with Mr. Watson, probably I did. I can't remember when, but, having in mind his relations to that business, I wouldn't say that I didn't. I think it is fair to assume that I did.

Now, in regard to Mr. McElroy—you see, I have stated that I sent an invitation to The Pure; and I can't remember whether or not they were at the meetings. Now, if they were at the meeting in New York, Mr. McElroy was there; then, of course, I did; but I can't be sure.
3333 I can't remember that I talked with McElroy at any
time other than during the meetings—there again, I don't see Mr. McElroy very often.

Now, Sinclair Refining Company, I did talk with Mr. Carnes.

Wherever there was a meeting on this subject, with reference to buying, either in East Texas or the Mid-Continent, where major companies were represented and I was there, I would say that almost invariably Mr. Carnes was there. Mr. Carnes was very active in stabilization, and represented very large interests all over the country.

The subjects I discussed with Mr. Carnes were of independent refiners, allocations, surplus gasoline, finding buyers for them, and hoping to see them get a fair realization for their gasoline, all within that scope. I may well have said I hoped the tank car prices would improve. I think if I talked with Mr. Carnes about these buying programs, one of the important things I talked with him about was the level of tank car prices in connection with parity to crude. I didn't go into questions of what the levels of spot markets were. When I use the term "net back to the refinery," I mean the price at which the gasoline is at that refinery. When I started this work with reference to
3334 buying gasoline, what I said was that a matter of
great concern to all of us is the matter of net back at the refinery. I meant by that the price for gasoline that they got at the refinery, "all of us," independents and otherwise. I wouldn't say otherwise.

I had no occasion to talk with Texas Company.

I don't remember talking with Tide Water. I rarely see Mr. Shea. I had a talk with Mr. Shea once, in regard to the deplorable refinery situation in Texas, but not on this matter. I did not talk with Mr. Noel Robinson. He was present at the allocators' meeting; he was an allocator. He participated in the discussion with me of that subject at that meeting on March 13. I think that was the only occasion when I met him. I do recall one other occasion where he came into a meeting and was there for a little while.

Mid-Continent, yes, I talked with Mr. McDowell and only Mr. McDowell. I never talked with Mr. Jacob France. I very seldom see him. I never met Mr. Fitzgerald until I came out here. He is assistant to Mr. McDowell, I believe.

Phillips Petroleum Company, I talked with Mr. Phillips. I couldn't say when. I would say 1935. No, about 1936, I don't know. I talked with him very infrequently. I
3335 don't want to offer more than you want, but I can
always explain the why of these things.

The conversation with Mr. Frank Phillips was that he is a very large buyer of gasoline, has a very wide distribution; and I pointed out the fact that here was this distress gasoline. We knew they bought from one or two people, and we called his attention to the fact that this gasoline, his distribution of gasoline was very general, and he had a very general business all through this territory; and it would be a very fine thing if he would take that gasoline into consideration.

I don't think I know Mr. Gardner. I may, but I don't think I do. I may have mentioned it to Mr. Hughes, but my recollection is that at that time Mr. Hughes was not in the relation he is now. There was another gentleman, Mr. Trower, I think I did talk to him about the subject, although Mr. Trower had a very serious accident and nearly died, and we saw very little of him after that period. That was about the time when Mr. Hughes took his place; but there was an interval there when there didn't seem to be anybody but Mr. Phillips to talk with. It was at one of the meetings we had, when Mr. Trower was hit by a train. I can't remember which meeting it was, but one of those Chicago meetings. And it was during the interval after that, that Mr. Phillips was about the only man I could
3336 find to talk to. That would be in 1935.

I think I appointed Mr. Hughes on the Tank Car Stabilization Committee. I did not have any talk with him about the subject at that time.

I didn't discuss it with any member of the Committee, except Mr. McDowell, Mr. Ashton, and Mr. O'Shaughnessy.

Mr. O'Shaughnessy did not say that his company would participate, because the Globe Company has been, to me, an independent; and it wouldn't occur to me to talk to an independent about buying an independent's gasoline. Although I heard later that he was a buyer and had bought some gasoline, for some reason; I couldn't tell you why; it seemed at the time rather unusual to me. It was distress gasoline, bought in the Mid-Continent buying program.

Skelly, I don't remember talking with them. I know Mr. Skelly. I don't recall talking to him about it. I didn't see Mr. Skelly very often.

Barnsdall, I have no recollection there. I know Mr. Reeser. He was a member of the P. and C. Committee. He was in Washington at times, in the spring of 1935. I don't think I talked with him during that period about the Mid-Continent buying program. I have no recollection of it.

3337 Deep Rock. There again, as in the case of Globe, I was surprised that they were buyers. I heard, I think Mr. Majewski told me, that they were buyers in the way Globe were buyers of distress gasoline from independent refiners, in the Mid-Continent buying program. Apparently they needed gasoline for some reason or other, and I heard they had bought some from some refiner—I don't know whom.

I would say I paid more attention to the East Texas situation, personally. I would say that Mr. Buckley contacted me after the Code expired. I continued my interest in that subject.

(Copy of indictment handed to the witness.)

The following were buyers of East Texas gasoline:

Cities Service Company, I believe, bought. Gulf Refining Company bought East Texas gasoline. The Pure, I wouldn't know. Shell, no. Sinclair bought gasoline. I couldn't tell you what Texas Company did. I think Tide Water Company did. That is all I can remember at the moment.

I think those are the companies that these gentlemen that I have spoken of had talked to, and that were asked to buy this surplus gasoline. Some of them did buy
3338 it. Those I named are the ones that I learned in one way or another, had bought.

I would say no as to Continental. I don't know whether they bought any.

As to Cities Service, I didn't discuss the subject of the purchase of surplus gasoline in East Texas with anybody in that company. I learned that incidentally. I discussed the subject of buying surplus gasoline in East Texas with Mr. Frueauff. He was at the meeting. I did not discuss it with him on other occasions, only when he was at the meetings. I never saw him outside the meetings, about it. There were several meetings. And I remember thanking Mr. Coates for Mr. Buckley's services. He is with Cities Service Company. I don't know anybody else in Cities Service that I could think of discussing it with.

Mr. Frueauff at the time of those meetings was apparently not at all in sympathy with buying in East Texas. I don't remember his saying that his company would go along if the other companies did. He didn't say that to me, or in my presence.

Gulf would be Mr. Hartmann. The times I contacted
Mr. Hartmann on the subject of the buying of sur-
3339 plus gasoline in East Texas were: He was at the
meetings of March 6th and March 13th. He was at
the meeting of February 25th at Chicago, but there was no discussion there that I had with him. Mr. Buckley made a speech there. I personally had no conversation with him. I had no private discussion with anybody at that meeting.

Mr. Hartmann was at the meeting of March 13th. He was one of the committee I appointed to go down to Washington. And the following meeting, on the 15th, Hartmann was there; and then from there on, I may have seen him here or there, because he was, as you know, chairman of the Code Committee in the East. On occasion I must have seen him but I have no recollection of that. And I recall having a personal conference or discussion with him on March 20th. I remember a very short conversation there. I don't remember whether he was at the May 29th meeting. He was a very good attendant at the meetings, because he was very active in stabilization and in the Code work. As I say, he was chairman of the Eastern Division of Marketing.

The Shell was Mr. Gould—and I don't remember anybody else even though there was a change.

I remember that there was somebody from the Pure
there, but I can't remember who; and I don't think
3340 they were there at all the meetings. But, whoever
was there, I would have had a talk with. Now, I can't
say whether it was Mr. Watson or Mr. Morris or Mr. McElroy, or anybody else. I wouldn't say that I remember seeing those three gentlemen at various meetings.

All I remember, at one meeting, at least, there was somebody from The Pure. It would seem to me that it might have been Mr. Morris—but I dislike to definitely say—because he is in the East, and I think that would be more natural; but I don't like to say, because I am not sure.

I never had a talk with Mr. van der Woude with reference to the buying program. I remember I had a talk with Mr. van der Woude, it may have been late in March or early April, in regard to another matter, but he raised with me the matter of crude oil that the East Texas refiners were applying for, and he did not think that it was a fair thing, and that of course would lead into gasoline; and in that way there was an indirect conversation. But he was directly opposed to any contact with East Texas on anything, crude, gasoline or anything. He said the East Texas refiners were not to be trusted. Mr. van der Woude is the executive, he was not then, head of the over-all Shell Company.

3341 I never discussed the matter with Mr. Alexander Fraser, nor Mr. Lakin. I very seldom contacted Mr. Fraser. There was Mr. van Eeghen who was in charge of that, and he was on the committee. I discussed it with him, but there again there was a change later on, and I do not recall just when. But I never talked with Mr. Lakin that I remember.

Of the Sinclair, Mr. Carnes, a number of times, both during the Code and after. He would be naturally interested in buying gasoline in that way. I would say he would be the chief supporter, or a very interested supporter, in buying gasoline from them. I would say he was. His company is a large buyer of gasoline in Texas, and he was sympathetic with this East Texas Refiners' Association, and would be a buyer direct from those refiners or through this association, one of the largest, I would say.

I think I have completed the list.

Exhibit 311 for identification is the letter that Marcell wrote to me, in response to which I wrote the letter which is Exhibit 305. I would say it was a true copy of the letter I received from Mr. Marcell.

(Document received in evidence as EXHIBIT 311, and read to jury by Mr. Chaffetz.)

3342 Mr. Marcell was the chief executive of the White Eagle Division of Socony-Vacuum Oil Company. And he is located at Kansas City. When he referred to "stabilization program" in Exhibit 311 he was referring to these meetings that I had had in December, and to the effect of the conferences at those meetings in stabilizing retail prices and eliminating price wars.

I was not in contact with Mr. Ashton very often between March 1, 1935 and the rest of that year. It is difficult to be exact. I would not suppose it would have been as often as once a month. It might have been, but I would not think it was. I was occasionally in contact with Mr. Ashton during the first few months of 1936. It might have been as often as once a month.

I don't remember any special report by Mr. Ashton on these occasions as to the progress of the Mid-Continent buying program, but usually there was mention of it when I met with Mr. Ashton. I did not know what buying was actually going on by major companies, and I do not recall his specifically telling me. We talked of the plan. But I don't remember any special reference to who was 3343 actually buying or my having occasion to talk with him about the extent of any one company's buying. I do not recall any such conversation as that some companies were buying more and other companies were buying less, or that the other companies were not doing their part. At this time I do not recall his ever discussing with me any conversation that he might have had with any one individual of any of the companies who were participating in the major company buying program in the Mid-Continent. There would not necessarily have been any such conversations.

Mr. Irwin was not at the March 1, 1935 meeting in Kansas City that is referred to in my correspondence with Mr. Marcell; that is, actually at the meeting. He was in the hotel prior to the meeting. I don't remember him at the meeting. He was not there while I was addressing the group.

Q. Well, who was there?

A. The independent refiners.

Q. Can you name them, or any of them?

A. I can name—there were probably 25 or 30 of them. I could not be specific; but they would be a comprehensive group called the No. 2 or independent refiners of the Mid-Continent. That was the endeavor, to have them come in, and we intended to try to get most of them in.

3344 Q. And you think that practically all of them were there?

A. Well, 25 or 30 is a very comprehensive list, that is, as you said, Mid-Continent, meaning West Texas, North Texas and Oklahoma and Kansas and Arkansas, and so forth.

Q. And Northern Louisiana?

A. Yes, and Northern Louisiana.

Q. Do you remember representatives of Root Refining Company there?

A. Well, I can only answer that if the list was supposed to be a comprehensive one likely he was there, but I don't remember specifically.

Q. You don't know specifically?

A. I would point out, Mr. Chaffetz, at that time I knew very few of them. They were strangers to me as I was to them.

Q. Well, you regarded those present as pretty comprehensively covering the independent refiners located in North Texas, West Texas, Oklahoma, Kansas, Northern Louisiana, Arkansas?

A. That was my intention.

Q. And that was your understanding of the group that was there?

A. Right.

Q. Were there any of those there who indicated any dissent from the plans that you discussed at 3345 the meeting?

A. I did not discuss a plan at the meeting.

Q. Well, I don't want to quarrel with you about terms. From the subject matter of your discussion?

A. There were—

Q. Was there any independent refiner who said he would not have anything to do with it?

A. Root?

Q. No, I said was there anyone there who said that?

A. No, there was not that sort of statement. At the meeting there were many expressions from the floor of the character that attributed their distress of course to this matter, or to that matter, or to many of the things that the industry was having trouble with at that time. It was a meeting of general expression of trouble in their minds that they were meeting in the daily carrying out of their business.

Q. But my point is whether there was anybody who arose at that meeting and said, "I am going to play my own game; I am not going to play along with the group?"

A. I don't remember any expression of that kind on the part of anybody.

3346 Q. And you are pretty sure there wasn't any?

A. Not in that sense, no.

At the moment I can't recall any meeting at which Mr. C. L. Jones was present; not any meeting pertaining to the purchase of distress gasoline from independent refiners either in the Mid-Continent or East Texas or on the Gulf. I do not think he was present at any. He was not specifically invited to either of the New York meetings that were held in March. He was not at the February 25th and 26th meeting in Chicago and I don't think he was at the January meeting in Chicago.

I remember I testified that I saw Buckley in Excelsior Springs on April 4th or thereabouts. The meeting with Mr. McDowell, it does not register with me at all in any particular way that I saw Mr. McDowell at that meeting. If Mr. McDowell testified he met me there he might be quite correct.

When I had that talk with Mr. Cramer and Mr. Kennedy of Continental on the subject of major companies buying gasoline from independent refiners, I did not have in mind that they were the executives of that company who would have authority to act for the company in that connection.

I knew who they were. I am not sure that at that time I knew Mr. Kennedy was in charge of sales, because Mr. Karstedt, whom you have heard of, had been the 3347 company's representative, and I think at that time Mr. Karstedt may have been in his position but not active due to illness. I am not sure that at that time I knew that Mr. Kennedy was taking his place. I may have, but I do not recall that I did. As I understood it, Mr. Karstedt was the one who could speak with authority for his company, and I think would have been the man to contact if I wanted the cooperation of his company in any such plan.

I don't know as I ever questioned whether Mr. Karstedt did have the authority to bind his company, to speak for his company, but I would say that probably was in my mind. That is the way I dealt with him. I eventually learned that subsequently Mr. Kennedy did take Mr. Karstedt's place. Only on this one rather vague occasion did I ever have any contact directly with Mr. Kennedy. I met him somewhere, I cannot recall where, and just had a few moments conversation. I recall what the conversation was only in a general way, that this recommendation of the committee about gasoline seemed a very constructive thing. As I testified the other day, he did not show very much interest. Just referred to it casually, and said yes, he had heard of it.

Mr. Chaffetz: Q. Now, there was a discussion in your testimony of the Sun Oil Company, and it 3348 was brought out that the Sun Company was not a defendant here. To your knowledge did the Sun Company participate in either the Mid-Continent buying program or in the East Texas program?

A. I must say that I cannot refer to the East Texas matter as a program.

Q. Well, it has been referred to by your counsel as a selling program, and we refer to it as a buying program. So I just used the term "program".

A. I only want to keep it separate in my own mind. I do not recall what the Sun Oil Company did in either case.

Q. To your knowledge they did not participate in either situation, as far as you know?

A. As far as I know, no.

I know very little about what Atlantic did do. To my knowledge I don't know that Atlantic Refining Company participated in either the Mid-Continent buying program or the East Texas program. To my knowledge, I could not say whether Standard Oil Company of New Jersey participated in the Mid-Continent buying program or the East Texas buying program. I could not tell you what Pan-American or Richfield might have done or did do. I know very little about what National Refining Company did.

3349 I think I remember a letter sent to me by Mr. Marcell, dated March 27, 1935. I think Exhibit 306 for identification is a true copy of that letter.

The letter was written by L. L. Marcell, who was the general manager of the White Eagle Division of the Socony-Vacuum Company.

(Letter referred to received in evidence as EXHIBIT 306, and read to the jury by Mr. Chaffetz.)

Mobilgas is the regular grade for our company.

Mr. Marcell reported to me on March 27th that, at the prevailing price of gasoline on that day, his company was breaking even. That is what he says—"near even."

The price here on March 27th was an average of 4¾¢ and 5¢, which Mr. Marcell made out to be 4⅞¢; and that is the price that the jobber paid. If you added ½¢ to 4⅞¢, you would have 5⅜¢.

When you get over to the first part of May, you have published prices of 5¼¢ to 5½¢, which would give you an average of 5⅜¢.

Mr. Marcell told me that, at the price level, which later prevailed on May 5, 1935, his company would be making quite a substantial profit. I certainly doubted this.

3350 After May 5th, the price of gasoline continued to go up, and reached a level of 5⅝¢ to 5¾¢, which was ⅜¢ higher than the level at which he said his company would be making quite a substantial profit.

That "set margin of five and a half cents" to which he referred would be the margin that was recognized as the margin that the jobber has to operate on in the sale of gasoline. That was the margin that prevailed in the Indiana territory, or at least in his territory, at that time.

He said that the marketing margin of 5½¢, which is the margin that the jobber gets, would just about permit his marketing department to break even, provided he got the full 5½¢. As I recall it, that 5½¢ margin continued in force throughout this territory through 1935 and 1936.

Charles L. Jones was a vice-president of the company, and a member of the board. I was the same. H. T. Ashton, A. G. Maguire and Bryan Reid were in charge of Mid-Western divisions at that time, under Mr. Jones. Mr. Marcell, that we now are talking of, was one of those.

Men like Maguire and Reid and Ashton would take orders from Mr. Jones. I was not interested in the company's operations at that time.

I referred to a letter to me from Mr. Ickes, dated July 20, 1934, that has been marked for identification as Exhibit 891.

3351 Mr. Chaffetz: If the Court please, there has been so much discussion about this letter that we are inclined to waive objection and offer it, so that it will be in the record.

The Court: It may be received.

Mr. Chaffetz: With permission, I will do that. I will read it to the jury, so that they will have it in mind.

The Court: All right, it may be received.

(Letter previously so marked for identification is received in evidence as EXHIBIT 891.)

Q. I call your attention to the fact that this letter states that the price wars referred to "has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition"; and then this, "and has in turn depressed the wholesale market for such products," and ask you whether that doesn't indicate to you that the theory of the writer of this letter was that retail price wars affected the tank car market and not vice versa—so far as this letter is concerned, and not what you may think apart from the letter? Do you understand my question?

A. Quite well. It was not so intended, and I know it wasn't intended.

3352 Q. I am just asking you what the letter says.

A. I don't consider the letter says it.

The Court: All right. Read that again.

Mr. Chaffetz: Q. And has—that is, the price wars—"and has in turn depressed the wholesale market for such products." He says the retail price wars have depressed the wholesale tank car market. Isn't that what this letter says?

A. It does say that.

Q. Yes, and authorizes you—and there is nothing in this letter which says that the tank car prices depressed the retail price.

A. I don't agree with you.

Q. Will you give me the sentence in that letter which says that the tank car price depresses the retail price (handing Exhibit 891 to the witness)?

A. It says that in dealing with the retail price you must consider those, and the depression of the retail price—

Mr. Lewin: Is he reading?

A. (Continuing.) —you must deal with those things that are making the retail price—

Mr. Chaffetz: I didn't ask you what it is intended to say. You agree with me that what you said isn't literally contained in the letter; you
3353 weren't reading from the letter when you stated what the Reporter just read?

A. No, not those actual words, no.

Q. No. Now, I ask you to read from the letter.

A. (Reading.) "To hold public hearings, with a view of ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas."

Q. Now, when he says "—to stabilize the price level to conform to that normally prevailing in contiguous areas"—

A. Let us see that again.

Q. (Passing paper to the witness.) —he means normally prevailing in the areas contiguous to where the retail price wars were raging; isn't that right?

A. Not overlooking the "ascertaining the elements of conflict that are present."

Q. And what were the elements of conflict in the local retail situation?

A. The elements of conflict that were present were the wholesale tank car market, and in this other part, he points out—I will find it here—with

relation to its effect on the wholesale market, and
3354 he says here this: "This has resulted in causing—" this very thing—in connection with retail prices and the things that are in conflict and causing—

Q. Are you reading from the letter?

A. I read it to you a minute ago. Shall I read it again?

Q. I am not asking you for your interpretation of the letter.

A. I am not. I am reading it: "This has resulted in causing petroleum products to be sold below cost—"

Q. "—in some areas"?

A. "—in some areas."

Q. He means the retail areas?

A. That is correct, which were very prevalent all through the country.

Q. That is right.

A. "—in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products—"

Q. That is right. What he says is that retail price wars have depressed the wholesale market?

A. That is right. And therefore in dealing with them, to deal with those "elements of conflict that are present." And the elements of conflict that
3355 were present was the tank car subnormal price, below cost.

Q. As I understand it, when you received that letter, you went to a lawyer to find out what the letter meant, is that right?

A. I didn't go to a lawyer to find out what the letter meant.

Q. Why did you go to a lawyer?

A. Because I wanted the advice of that lawyer as to what the letter said, and the benefit, as we generally did, in our planning and coordination activities, of any comments he had to make, and, as I testified, it will be helpful to me to have that in my efforts in cooperative stabilization.

Q. If you had any doubt as to what the letter meant, you could have gone back to Mr. Ickes and have had an amplification?

A. I didn't have any doubt.

Q. You didn't?

A. No, none whatsoever.

Q. As I understand, you kept this letter of July 20th on your desk all the time, is that right, in New York?

A. I kept it among my valuable papers.

Q. You told us you kept it on your desk all of the time?

3356 A. Yes.

Q. You said you also kept the letter of April 2, 1935, on your desk, after you received it? That is Exhibit 980.

A. I am not so sure I said that about the letter of April 2nd.

Q. That was my understanding. Did you keep the letter of April 2nd on your desk?

A. I wouldn't be sure about that; I may have.

Q. You would regard the letter of April 2nd as more authoritative than any letter you got from a lawyer as to what your duties or authority was—were under the letter of July 20th?

A. I don't consider the letter of April 2nd in any such way.

Q. Will you answer the question, please?

A. No, I do not.

Q. You do not consider the letter from the Secretary of the Interior as authoritative with respect to the meaning of the letter of July 20th, as you do an opinion from a lawyer?

A. I don't consider the letter of April 2nd has anything to do with that letter.

Q. You don't consider the letter of April 2nd has anything to do with the July 20th letter?

3357 A. The letter of April 2nd was on an entirely different subject.

Q. Let me read this letter of April 2nd, and find out what it was (reading):

> "I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area."

He is talking about moratorium in Chicago, is that right?

A. That is right.

Q. And then he says, "although no evidence—"

The Court: What is a moratorium? Tell us what the moratorium is.

Mr. Chaffetz: Q. Will you tell us what the moratorium was?

A. The moratoria he was referring to were moratoria in and around the city of Chicago, where, for reasons of constructiveness, major sellers and their jobbers would have a limited period, say, 30 or 60 days, not to solicit or take on additional business 3358 from dealers. There were certain constructive activities that all the sellers or suppliers of gasoline to dealers wanted to have an opportunity to reach those dealers and talk with those dealers and bring those dealers to a cooperative, constructive effort in connection with stabilization and the Code, and they felt unless they had a limited time to do it, and they could get around, there would be a lot of conflict and misunderstanding. And so the idea was that he says for a limited period the activities of these sellers and their jobbers would be not to take these dealers one from the other, and that is the thing that there was some complaint about, because some of the dealers felt they would like to get in on it—that question was designed to prevent, namely, unfair competition.

Q. Nevertheless, Mr. Ickes thought that constructive work was illegal unless you received special approval?

A. I asked the question.

Q. Let us—.

The Court: Read that letter of April 2nd.

3359 Mr. Chaffetz: (Reading:)

> "I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area."
>
> Then he says: "Although no evidence has been presented which would definitely establish the basis for the agreement entered into, it is possible that the companies involved are purporting to act under the authorization of my letter of July 20, 1934, authorizing you to designate committees with authority to confer, to negotiate and to hold due public hearings in order to remedy unfair price situations."

So, he states it is possible that you may think you are acting under the authority of his letter of July 20th?

A. He calls attention to that very fact.

Q. Yes. And then he says: (Reading)

> "Several parties have complained to the Petroleum Administrative Board that the moratorium oppresses them. I am not attempting, however, in this letter to pass on the wisdom
> 3360 of the moratorium. The matter that at present concerns me is the necessity of complying with the requirements of the basic law. In authorizing the formulation of a stabilization program, I necessarily conditioned the authority granted, by providing that the requirements of Clause 2 of Subsection (a) of Section 3 of the National Industrial Recovery Act should be observed. I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Section 4 and 5 of the National Industrial Recovery Act."

The last statement I read is a general statement of the law as Mr. Ickes read it?

A. Quite right.

Q. Then, he refers to agreements between suppliers of gasoline which might have been in conflict with the anti-trust laws, and he says they would require specific approval?

A. No doubt about it.

3361 Q. No doubt about it. And then he says:

> "I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary."

That is in the case of a situation of a "temporary character" where "the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary."

> "However,—"

And he is not talking about moratoriums now. He is talking about the general application of the law to your activities, generally?

A. Quite right.

Q. (Reading:) "However, when the understand-

ings arrived at a bases of solution of price wars affecting the industry over a considerable area—"
That is the first qualification he suggests, where anything is done which will affect the industry over a considerable area—

> "—are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies—"

3362 That is where you don't have a formal agreement, but where one company takes action in reliance on the fact that another company is taking similar action, is that right?

A. That is right.

Q. (Reading) "—it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal."
And then he says, "If any such agreements have been made I should like a report as to them."
He is not asking only for a report as to the moratorium—

A. No.

Q. —he wants any agreements?

A. Yes.

Q. That falls within the scope of that letter?

A. Quite right.

Q. (Reading:) "If they require approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act."

And he says there that he is inclined to think that your moratorium, which he says in his own letter 3363 applied only to Chicago and which you say was to last only for a temporary period of time, he expresses an opinion that that limited activity would require specific approval, in order for it to be legal, isn't that what he says?

A. I don't think so.

Q. Here is what he says; "If they require approval to be effective—"

A. If they do.

Q. "—as my information leads me to believe is the case with respect to the moratorium—"

So he thinks that is true of the moratorium, that it needs approval, isn't that right?

A. No.

Q. He says, "—as my information leads me to believe is the case with respect to the moratorium—"

A. Did he get other information that changed his mind?

Q. Upon the basis of what he wrote in this letter—

A. Upon the basis of what he wrote in that letter as stated.

3364 Q. (Reading:) "—I should be glad to give consideration to them under the provisions of the Act."

A. Exactly.

Q. (Reading:) "I appreciate greatly your cooperation—" and so forth.

Mr. Donovan: Will you read the last paragraph?

Mr. Chaffetz: Surely.

Q. (Reading:) "I appreciate greatly your cooperation with the Administration in taking on the difficult work of directing a program of stabilization and I know that you will understand that this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility.

"Sincerely yours, Harold L. Ickes, Administrator."

A. That is perfectly clear.

Mr. Chaffetz: That is all, your Honor.

A. There is one other thing, your Honor, one other matter I have neglected to tell you. In addition to local and surrounding Cook County mora-

3365 toria, there was another temporary one in regard to some form of contract. It was called a "5 year agency contract"—rather complicated to tell you but that also is a part, also a part of the moratoria. There were more than one, in other words, and while the first one was in Chicago, the other was an important larger district, as a matter of fact, all through the Mid-Continent.

Mr. Donovan. Now, your Honor, in view of what has transpired this morning, I would like to have your Honor's ruling on the offer of the opinion which is referred to again by Mr. Arnott as brought out by the questioning of Mr. Chaffetz.

The Court: There was an objection made to that, and that objection is sustained.

Mr. Donovan: Your Honor said that you were going to consider that.

The Court: I have considered that—you (addressing Mr. Chaffetz) objected to that?

Mr. Chaffetz: We objected—this Titus letter?

Mr. Donovan: Yes.

Mr. Chaffetz: We object to that.

Mr. Donovan: Your Honor, there has been this 3366 morning another discussion and argument with the witness by counsel as to what was meant by that letter.

The Court: Well, I am not going to hear discussion on that. The objection to that letter, Exhibit 892, of the lawyer is sustained. Exception allowed.

Redirect Examination by Mr. Donovan.

Q. You recall the circumstances under which that letter of July 20th was written?

A. I do.

Q. Will you state them?

A. A short time prior to the writing of that letter members of the Petroleum Administrative Board called upon the Planning and Coordination Marketing Committee and stated that, after conference with Secretary Ickes, they wished to discuss with them and with me what had become of a most serious situation. They pointed out that the price wars, which were raging throughout the country, and particularly in the Mid-West, had reached a point where something had to be done.

The Court: When was that?

A. This was, to be exact, around the 9th of July, 3367 a short time after the writing of this letter.

Mr. Chaffetz: A short time before the writing of the letter?

Mr. Donovan: Q. Before the writing of the letter?

A. Before the writing of the letter, about July 9th.

Mr. Chaffetz: 1934?

A. 1934. They stated that the conditions, as they were going, were getting out of hand. That is, compulsory observation of the Code was something that the Petroleum Administrative Board and the enforcement agents could not cope with; that they felt it was so prevalent now, that it was physically impossible for the Administrator to deal with these problems all over the country. On the other hand, the industry, itself, and its organization, were present in each state, town, and corner, and that they had come to the conclusion that the only practical and proper way—in fact, the only way at this time they saw a way out, was to try to bring about a voluntary, cooperative effort, and they asked me personally whether I would take on that responsibility. That it was something that if we could do it in an organized way, that they had failed in compulsion, 3368 and they thought if we could get the industry to rally to a voluntary, cooperative effort, that they might have an opportunity to bring some sort of order in what was going on. Shall I go on with the conversation?

Q. Yes, will you please?

A. In the conversation that took place on that initial approach to me and to the Marketing Committee of the Planning and Coordination Committee there was a distinct consideration of the elements that were causing these raging price wars. At the time the entire Mid-West was more than an average—all through the West—of over 2¢ below normal. I will just point out that means how low some of the sub-normal prices must have been to have such a sub-normal.

Q. Sub-normal price in which market?

A. In the retail market. It was pointed out in the discussion of how to deal with the price wars that the element that was outstandingly important was the wholesale market and the matter of sub-normal tank car markets and distress gasoline, and hot oil, as we have covered here.

3369 I remember distinctly, in discussing the possibility of getting voluntary cooperation effort on the part of the retailers to restore them to normal, the discussion of what would likely have to be done in order to deal with it from the point of view of the thing that mostly caused it—distress gasoline, and very sub-normal tank car markets—

Q. And did you discuss that at that time?

A. Most thoroughly. As a matter of fact, the policy, or the outstanding basic idea that they were so closely related—inter-related that you could not deal with the retail price without dealing with the wholesale price; and again you could not deal with the wholesale price without dealing with the retail price.

So the matter of the most of the discussion—and I can't but emphasize, I pointed out it would be impossible to intelligently deal with the restoration of retail markets without going right to this basic fundamental trouble.

So it was stated, "You were quite right. We can't sit here and tell you, if you are willing to take on the responsibility and going out and dealing with these price wars and restore prices to normal—we
3370 can't tell you how to do it and in what manner to do it. We will authorize you to go deal with these refiners and deal with the elements that conflict that cause them."

And it was distinctly and knowingly in my mind, and I will say here and now, I would not have embarked on undertaking any such endeavor unless that had been distinctly understood and recognized as one of the outstanding problems we had to deal with in dealing with the restoration of retail prices.

Q. Mr. Arnott, Mr. Chaffetz has talked with you at some length about the letter of April 2nd. Did you consider that the letter of April 2nd related to buying activities?

A. No, I did not. I explained the buying activities in my meetings on March 12th, and there is no mention in that letter of those buying activities.

Q. To what did you consider the letter of April 2nd referred?

A. The letter of April 2nd had to do with the question of complaints that had come in from some of the dealers, and some of the dealers in the Chicago—in the more general territory, about the mora-
3371 toria, which I had fully explained to them eventually, and which they were quite satisfied with.

In my cross-examination I stated with reference to companies which I thought bought gasoline in East Texas this: "That the Cities Service Company, I believe, bought." What I meant to say was that the company which I thought bought was the Cities Service Export Oil Company, which was a subsidiary of the Cities Service Company.

Q. On your cross-examination, I think it was pages 1743 to 1744, you were asked as to whether you had consulted some magazine report in which the Administrator was reported to have said something as to the legality of a particular program in November, 1934, and you answered that you had heard something said to that effect; is that your complete recollection?

A. No, it is not.

Q. What else do you recall, if anything?

A. I recall a statement made by the Secretary in regard to a buying program that had been instanced by the members of the Petroleum Administrative Board and the Assistant to the Secretary which had to do with the buying of all the gasoline of independent refiners in East Texas; and that this program 3372 involved not only the buying of all that gasoline but also probably involved the buying of hot gasoline. Quite a dispute arose between members of the Petroleum Administrative Board who were in Texas and the members of the Department of Justice who were down there as to the legality of any such buying that had to do with all the gasoline of these refiners, and also the legality of buying hot gasoline, and the Secretary made the statement that he would not approve any such buying program.

During 1935 and 1936, I read Platt's Oilgram more or less consistently.

Q. I show you a copy of the Oilgram dated March 29, 1935, and direct your attention to a statement purported to Mr. Ickes and ask you to read it. (Document handed to the witness for examination.)

Now I just ask you if you ever heard of such a statement being made by Mr. Ickes?

A. I did.

Mr. Donovan: I offer that in evidence.

Mr. Chaffetz: I object to it. I would like the Court to read it.

3373 The Clerk: Number 983.

Mr. Donovan: I asked him if he had ever heard of such a statement.

(Conference at the bench between the Court, Mr. Donovan and Mr. Chaffetz out of the hearing of the jury, after which the Court examines the Exhibit.)

The Court: Objection sustained. Exception allowed.

After this letter of April 2nd I had a meeting with Mr. Fahy and Mr. Majewski and Mr. Collett on May 10th. It was on May 10th that I discussed the buying with Mr. Fahy and at that time he raised no objection to what I was doing.

Recross Examination by Mr. Chaffetz.

Q. At the time that letter of July 20, 1934, was addressed to you, the subject of distress gasoline was being handled by the P. A. B., in an entirely separate and distinct way; isn't that right?

A. That is correct.

Redirect Examination by Mr. Donovan.

That way in which it was being handled under the programs of the Oil Administrator, as I have already testified to, was taking place in the year 1934. And those programs at that time were such as I have already described here in testimony.

3374 Mr. Chaffetz: Q. And they were not operated by you?

A. Not operated by me.

Q. Somebody else was authorized to deal with those?

A. That is true.

Q. And the first connection you had with any buying program was the one we have been discussing in this case, beginning in the spring of 1935?

A. That is correct.

Mr. Donovan: Q. And which you described on March 12th to the P. A. B., and in which you say they cooperated with you?

A. That is correct.

3375 **JAMES D. COLLETT, a witness for the defendants, testified as follows:**

Direct Examination by Mr. Donovan.

I am president of O'Keefe and Collett Corporation, independent producers. I also operate independently as an individual. By "independent producer", I mean that in our operations we are not affiliated with any major corporation. I have never held any executive position with any major oil companies.

We have been operating in crude oil production since 1917. O'Keefe and Collett Corporation succeeded a corporation that had operated under the name of O'Keefe and Collett. The nature of the business is the purchase of leases which we think are favorable for the production of oil, the drilling of wells, producing of the property, and the selling of our production.

I am a member and a director of the American Petroleum Institute and of the Independent Petroleum Association of America. I have been a member of the Mid-Continent Oil and Gas Association ever since it was organized about 20 years ago. At present and for 4 years I have been president of General Mid-Continent Oil and Gas Association. The functions of those Associations are along the line of the usual trade associations, such as keeping the industry acquainted with the situation in the business, accumulation of statistical data, and general educational work. 3376

During 1935 I had another connection with the oil industry. Under the Code, and from the time the Code personnel was organized, I was general chairman of Region 4, consisting of the states of Texas, Oklahoma, Kansas and New Mexico. The Code structure we had at that time was similar to the general organization, being practically a miniature of the Planning and Coordination Committee in Washington, with its sub-committees. We had regional committees covering that region for production, marketing, refining and labor, and at the last, committees under them; and then branching out into local committees, covering all those various phases of the business.

I was appointed a member of the Planning and Coordination Committee in April, 1934. From June, 1934 until September I served as acting chairman of the P. and C. Committee in the absence of the regular chairman. In December, 1934, I was elected chairman of the committee and served as chairman until the end of the Code.

During the time that I was chairman of the P. and C. Committee I was informed and knew that major companies were buying from the independent refiners in the Mid-Continent field. I would consider the refiners in Kansas, Oklahoma, North Texas, North Louisiana and Arkansas as being in the Mid-Continent field.

3377 I was informed that Mr. Arnott had some connection with those activities. This was, I think, early in 1935. I cannot say as to the exact date that he spoke of it. I knew of it in March, if not earlier. He did not inform me of the nature of his activities in detail. I understood they were in connection with stabilization work. At that time Mr. Arnott was a member of the P. and C. Committee, and was also chairman of that Committee's marketing committee.

In March, 1935 Mr. Arnott discussed with me the subject of stabilization of the wholesale gasoline market. It was about the time of the allocators' meeting.

I understood that he discussed the matter at the district allocators' meeting. I did not know of my own knowledge because I was only in the meeting when it opened. On that particular day, the Planning and Coordination Committee was in session. I was chairman of that committee and I left the allocators' meeting to preside at the P. and C. Committee meeting. I opened the allocators' meeting, introduced Mr. Arnott to the members, and then went back to the other meeting.

In late January, 1935 I was advised of the formation of the East Texas Marketing Association. The first such advice I remember was from Dr. Lederer, who had been and was the refinery allocator in East Texas. I had some discussion with Dr. Lederer and with Mr. Coates of the Cities Service with respect to the plan of the East Texas refiners and Mr. Buckley. I did not talk with Mr. Buckley about it.

3378 I was at one time asked to help get Mr. Buckley in touch with Mr. Arnott. Dr. Lederer asked me to find where Mr. Arnott was. I located Mr. Arnott's address at Pinehurst, and told Dr. Lederer where he was. And then, so far as I knew, he got them together. I had nothing to do with it further than that.

I was in Court when Mr. Arnott described a meeting between certain members of the Petroleum Administrative Board and certain members of the Stabilization Committee, which occurred at Mr. Fahy's office in Washington on May 8, 1935. I attended that meeting. I was asked to attend it as Chairman of the P. and C. Committee, as a part of the activities of the committee. Arnott and other members of the Stabilization Committee were going there for the conference, and he asked me to go along. I have stated here that I heard Arnott's testimony as to what occurred at that meeting. My recollection accords with his, as he testified here on the stand.

I attended a conference with Mr. Arnott, Mr. Majewski and Mr. Fahy, Chairman of the Petroleum Administrative Board, on May 10, 1935. Arnott's buying activities were discussed at this meeting which was called for the following reason. The Secretary of the Interior had appointed a committee to make an investigation and report on the effects of the Code on small industries. That report had been made to the Secretary, and a copy had been sent
3379 to our Committee with the request that we consider it.

Then Mr. Fahy asked for a conference with the members of the P. and C. Committee as to the report. The Committee appointed Mr. Arnott, Mr. Majewski and myself as the members of a committee to confer with Mr. Fahy on the report.

The meeting had something to do with the discussion of buying. That came up in the discussion of the phase of the report which dealt with refining.

> The Court: Just a minute. Just confine your discussion to buying, without making any reference at all to the Blazer report; just state what was said.

The discussion was about the improvement in the situation regarding the gasoline held by the independent refiners; that there had been some buying under way that had improved the situation, and had to a certain extent diminished the complaints from the independent refiners.

There was a discussion there of other factors that might have contributed to the stabilization of the tank car market at that time. That discussion was in reference to the refinery allocations and the improvement in that respect.

There had been a successful effort, as has been testified by other witnesses, to reduce the refinery allocations, to get the total of the inventories along in the spring of
3380 the year down to what the Bureau of Mines and our statisticians had considered the proper balance with demand. That was mentioned in the discussion as another element that improved the situation. The refinery allocations first went into effect along in June, 1934, I believe.

From my knowledge of the circumstances at this time, I would say that it was not true that this buying in the spring of 1935 was conducted secretly, without the knowledge of the Petroleum Administrative Board. It was conducted openly and the Petroleum Administrative Board knew about it. I knew that the Petroleum Administrative Board did know about it because I had been present with members of the Board on more than one occasion when it was mentioned.

As Chairman of the Planning and Coordination Committee, I was usually, so far as general P. and C. Committee activities, the contact man between the industry and the Petroleum Administrative Board.

The activities under the Code naturally all concentrated in the P. and C. Committee, if they called for any action by the Committee at large. They came from sub-committees of our P. and C. Committee; perhaps the Labor Committee, the Refinery Committee, Marketing, or Production. Whatever recommendations these committees made were brought up for consideration by the P. and C. Committee as a body.

That was the main Code body representing the entire
3381 industry throughout the United States. All of the subcommittees throughout the country, in the various branches of the industry, were sub-committees operating under the P. and C. Committee, and had been selected by them.

Our job there was to consider all of the different problems that came up in the industry, and make recommendations to the Administrator as to interpretations of the Code as it then existed. Another one of the jobs was the consideration of amendments to the Code.

In the beginning, the Code as originally written was not quite extensive enough to cover all of the different activities that it really undertook to cover. The P. and C. Committee made recommendations to the Administrator in reference to such amendments to the Code as might be necessary, such as the Refinery Amendment. That originated with the Committee; it was put into shape and recommended to the Administrator, and the Administrator approved it.

Then, when we thought an order might be necessary to improve the functioning of the Code or to carry out its provisions, we would suggest the issuance of such and such an order by the Administrator.

As to changes brought about in the industry during the first few months of 1935, by reason of this particular activity of the Planning and Coordination Committee, I think probably one of the prime factors in it was the refinery allocations. We had a system of allocations of the
3382 total gasoline supply for the United States, based upon what the Bureau of Mines estimated to be the

normal demand for the succeeding month. Those figures were given to us, and, under the Refinery Amendment, the Allocating Committee allocated to the refinery districts of the country the amount of gasoline which they thought properly belonged to those particular districts.

There were representatives from each one of the 11 districts when that allocator's meeting was held. That allocation had been operating about a year on June 1, 1935.

All the way through there were committees operating on any infringements of the rules or any violations of the Code wherever they might occur. They were sent in to the Committee, and the Committee referred them to the various sub-committees which worked on those.

The oil industry was working under the Code. It regulated their hours, output and scale of wages. One of the first things we did was to make up scales of maximum hours and minimum wages, which were referred to the Administrator. There were public hearings called by the Labor Policy Board, which was one of the boards that the Secretary of the Interior had established for that purpose; and then those were finally adopted. One of our main jobs was to, as far as we could, secure compliance with those labor requirements.

It was the same way with reference to all the 3383 amendments. As to marketing practices, the Code constituted a sort of a Ten Commandments of good practices in the industry. We undertook to see that they were complied with.

To start with, the first statement that Secretary Ickes ever made to the P. and C. Committee was that it was for stabilization of the industry. That is what we were trying to do, to stabilize the entire industry, production, marketing, refining, labor and everything connected with it.

These refinery allocations were effective to an extent even when oil continued to come out of East Texas in interstate commerce. But they were not entirely satisfactory because with the hot oil and excess gasoline that was coming out of East Texas, they had hardly been able to maintain a reasonable level of prices as compared to the volume of oil and gasoline that was coming out. And they were totally ineffective in getting a proper price, on account of the excess oil and gasoline that was coming out of East Texas. That surplus that was being put upon the market disturbed the whole situation. When the Connally Act went into effect and the Tender Board went into action in East Texas, the hot oil was cut off, and then things came back to a normal situation.

Cross-Examination by Mr. Lewin.

I testified that at this conference on May 10th
3384 there was a discussion of the improvement in the
situation of the independent refiner at that time, as a
result of this major buying.

Q. And did you mean by that that there was a discussion as to the improvement in the tank car price?

A. That entered into it, yes, sir.

Q. Well, wasn't that the principal factor in the improvement?

A. Primarily, it meant getting rid of the surplus gasoline they had—

Q. Yes.

A. (Continuing) —as well as the price they were getting for it.

Q. Well, to get rid of the surplus gasoline was designed to increase the price, wasn't it?

A. That was one of the factors that I never divorced from the situation.

Q. That was the principal and most important factor, wasn't it?

A. No, I wouldn't say it was the principal and most important factor, but it was a factor.

Q. And you gentlemen discussed that the price had increased and improved because of this major buying, is that what we understand?

A. What I just stated was that in my opinion
the main factor that had improved the situation
3385 had been the refinery allocations, and the Connally
Act, and the other things.

Q. I didn't ask you that, Mr. Collett. I asked you whether you gentlemen on May 10th discussed this improvement in the tank car price, and thought that part of that improvement, at least, was due to this major company buying?

A. I would say that was my impression of it, yes.

Q. That was your impression of the discussion right there?

A. I say that was my idea of it, the impression I got, insofar as I was concerned, and I don't know that we expressed it in just that many words. It was a factor.

Q. In other words, you were of the opinion that this major company buying had aided the other forces in increasing that tank car price?

A. I would say yes.

Redirect Examination by Mr. Donovan.

Q. Did Mr. Fahy tell Mr. Arnott to stop the buying?

A. No, he did not.

The Court: Q. What buying program was then in effect?

3386 A. The buying was going on in the Mid-Continent area.

Q. By whom?

A. Some major company purchasing of gasoline down there.

Recross Examination by Mr. Lewin.

It was not stated who the major companies were that were doing the buying, no mention made there of that. It was not stated there how much they were buying. I did not know how much any of them were buying. I never went into those figures about their needs for the gasoline that they were buying.

There was no discussion as to how much more improvement in price was going to be brought about by this buying, nor was there any discussion there about meetings of a so-called Tank Car Stabilization Committee.

I didn't hear any discussion there that those meetings would be held each month, all through 1935 and 1936, with or without a Code. Mr. Walter Paul Jacobi's name was not mentioned, so far as I know, nor the activities of Mr. McDowell, Mr. Tuttle, or Mr. Ashton.

Q. Or the activities of all those four gentlemen together, in meetings as often as once a week throughout this period?

A. No mention was made of that so far as I know.

3387 Q. Was there a mention of Mr. Buckley's cooperation with Mr. Arnott in getting buyers in the East Texas program?

A. No sir. There was no discussion there that these major company employees were making price recommendations to each of the others, as to the price that they ought to pay for this so-called distress gasoline if they bought it.

Redirect Examination by Mr. Donovan.

Mr. Fahy did not ask for any information other than was given him on that occasion.

The Court: Q. Just tell us what information was given to you about the buying program on that occasion, about this buying.

The comment on it was very brief, in fact the whole session was very brief. The mention was simply made of the fact that the buying that was being done by the major companies in the Mid-Continent field, in connection with the other factors that I have mentioned, was putting that situation in a very satisfactory condition. I don't know who made that statement. It was sort of general agreement with all of us that there was no necessity for any further action.

Q. Do you know who made the statement, and to whom it was made?

3388 A. My impression is that that statement in general, that is, a summary of it, about as I have stated, was made by Mr. Arnott to Mr. Fahy.

3389 DAVID G. GRAY, a witness for the defendants, testified as follows:

Direct Examination by Mr. Kirkland.

(Document submitted by Mr. Kirkland received in evidence as EXHIBIT 984.)

I live in Wichita Falls, Texas. I am an independent oil producer and drilling contractor. I have been in the oil business in Texas since 1915.

I was the manager of Waggoner Refining Company, located in Electra, Texas. I went to work for the Waggoner Company in October, 1931, and I continued to work for them as manager until the latter part of November, 1935. I managed all phases of the business pertaining to oil. I would call Waggoner Refining Company an independent refiner.

Before that from 1925 I had been with Dale Refining Company in the oil business. They are independent refiners located in Electra, Texas.

I know Ira Smith who lived in Tulsa, and who is connected with the Standard Oil Company of Indiana.

Distress gasoline is gasoline in the hands of a refiner who does not have a market for it and cannot hold it by reason of lack of finances or lack of storage capacity.

A spot sale is a sale closed at a flat price for shipment within a period of 10 days or 2 weeks.

Waggoner Company's refining plant at Electra,
3390 Texas, as it existed in 1935 when I was there had a
crude capacity of about 4,000 to 4,500 barrels. It had modern cracking equipment and substantial storage facilities. It is located on the Waggoner ranch from which it gets all the oil that it uses in its operations.

The corporate name of the refining company was Waggoner Refining Company, Incorporated. In 1934 and 1935 it had a storage capacity of between 900,000 and 1,000,000 barrels. 900,000 barrels of large storage, and I assume about 100,000 barrels of small storage. Some of the storage was in small pipe line stations in the field, and there was large storage at 2 refineries that Waggoner had purchased and had torn down, leaving the storage facilities standing. It was substantially more storage than the ordinary independent refiner in North Texas had. Some of it was crude oil storage, some fuel oil storage, some gasoline storage.

The Waggoners were primarily interested in the cattle business. The Waggoner ranch consists of 567,000 acres in parts of 5 counties. It is about 70 miles long at its greatest length, and 30 to 35 miles wide at its greatest width. However, it is that wide most of the distance. I would say that about 50,000 to 60,000 acres have been rather thoroughly explored for oil, and that out of that between 20,000 and 25,000 acres have proved productive
and are still producing. The remainder of the ranch
3391 has hardly been scratched. It is what I would call
potential oil land, especially now. It has always been considered so. I believe it is the largest individual holding of potential oil lands in the country.

They were producing in 1934 and 1935 around 15,000 barrels of crude oil a day. Some of that was being taken out by people who had the rights to the drilling there; there were a number of pipe line companies in the field besides our own pipe lines.

As to the arrangement that Waggoner had with those other companies, Waggoner owned a minimum of ⅛ royalty under all wells, and in a great many instances as high as ⅜ royalty. We operated about 100 wells of our own which, in addition to royalty oil, was usually a little bit in excess of what we needed for our own refinery.

They did not have to pay the money for the crude at the time they got it. It was just a bookkeeping transaction.

It was not necessary in 1934 and 1935 for Waggoner Refining Company to dump any oil because of lack of storage capacity, or for financial reasons. Waggoner had no distress gasoline in 1934 or 1935. The refining company never had to borrow a dime to run the refinery.

Commencing in December, 1931 or January, 1932 we started in cleaning tanks that had theretofore been used for heavy oil to make them available to store light gasoline, and started storing at that time. The Waggoner
3392 Company had 150,000 barrels of gasoline in storage in 1935. In gallons I think we had between 7 and 8 million gallons. I have not reduced that to barrels. We started to store that in the latter part of 1931 or the first part of 1932, and continued to do it until our stocks reached what you call a normal level in the fall of 1935. Looking at Exhibit 882, I would say our storage capacity reached its height about March 1.

My recollection is that we had between 7 and 8 million gallons in storage at that time. I would say the amount that we normally kept in storage was 2 to 2½ millions. In 1935, according to this statement here, we reached our storage about 4 million gallons. So we were approaching the normal level the latter part of 1935.

In April and May, there were sales of 4,000,000 odd and sales of 3,800,000 odd; that seems to be where the reduction took place. A while ago I was referring to the total net reduction during the period of 1935. Most of the sales in April and May were made to both brokers and majors. A large percentage of sales was to brokers, I believe.

75%, possibly 80% of that 7,500,000 gallons that we had in storage was third grade. The other 20% was working stocks of other grades of gasoline. We stored that gas during those years because of unsatisfactory prices. We were holding it for our price. Our company was able to do that financially.

3393 Q. Did you ever discuss the amount that you had in storage with the Standard of Indiana or any of its officials?

A. I think I discussed the storage of gasoline with nearly everybody in the business. It was a matter of common knowledge.

I discussed our allocation with the Government on several occasions in 1934. I talked with Dr. Lederer, the state allocator. Because of what were regarded as excessive stocks, the allocation committee made us an allocation under which we couldn't live. We couldn't operate on the basis of the allocation made us. It was so small our unit cost would have reached an unusual figure. So I called on Dr. Lederer for relief, and he told me the reason for my low allocation, that it was due to my excessive stocks, and that those stocks ought to be reduced before they could give me the relief sought. I told him that I was perfectly willing to lock the gasoline up; in the words I used to him, I was willing to freeze it. I meant by that, to lock it up and keep it off the market, not sell it. I was able to hold it. And by reason of that statement, they raised my allocation.

In 1934, neither the Waggoner Company nor I considered that stored gasoline distress gasoline. We had money to carry it. The knowledge of the fact that it was there had disturbed the industry and we had repeatedly insisted that it wasn't distress and we had committed ourselves to
3394 an orderly liquidation when prices were satisfactory,
and we adhered to that policy. We didn't consider that distress gasoline. It was not necessary for financial reasons or because of storage capacity that the Waggoner Company dispose of that stored gasoline that I have been telling you about in the year 1935 or in the year 1936.

According to my recollection, in 1932 and 1933, with the exception of 15 cars which we sold to Standard in October, 1933, there were no purchases by Standard from the Waggoner Company. I know why that was. We were not offering third grade, our straight-run gasoline to anyone. We sold it to a few regular customers, small jobbers, scattered about that bought other products from us, and with a few exceptions when we had a few price flurries of short duration we preferred to store all that grade gasoline.

The other grade gasoline manufactured was cracked gasoline, which doesn't lend itself to long storage periods, and a grade of gasoline not marketed by Standard of Indiana or any other major company at that time. It did not meet their specifications. But there was a demand for that grade gasoline at the price. It wasn't the drug on the market that low-grade gasoline was.

As to what relation existed between Standard of Indiana and the Waggoner people in 1934 and 1935, Stanolind Company is a subsidiary of Standard of Indiana and had a pipe line gathering system on the Waggoner ranch,
3395 a network of pipe lines gathering oils from the various
wells and various leases. We also had a similar pipe line gathering system. At times crude oil would be-

come a burden to us. That is, we had more oil on our lines than we wanted to buy and store. Sometimes the same thing was true of the Stanolind Company. In one instance in 1934 I leased to them our entire gathering system in a part of the field and leased them a pumping station, and they took over those connections for a period of time. The reason for this was that a new pool had been brought in, and we found we had more crude oil than we cared to put in storage. On two or three occasions I sold them oil in lots of 50,000 to 100,000 barrels.

I think some of those transactions took place in 1934. I know all of them took place during that period, but I don't know just which year. We felt if we had to market crude oil we had a place to market it, since Standard of Indiana would buy. And if we had to have crude oil, we felt we could take over some of their connections. Those switches were made on several occasions. I would say there was a reciprocal relationship existing between the two companies. They also operated one or two leases on the ranch. By "operating leases," I mean they, through another subsidiary, the Dixie Oil Company, had some production wells.

Some of the sales of crude we made to Standard of Indiana were made at my request, not solicited by Standard or Stanolind.

3396 The 69-70 octane gasoline that we sold to Standard is tetra-ethyl lead. It required an Ethyl license to sell that gasoline.

Before getting an Ethyl license, we did not sell any 69-70 gasoline. The 69-70 met the specifications of Standard of Indiana; we sent them samples, and they approved. I forget the exact month we got our Ethyl license; it was along in February or March, 1934.

An Ethyl license is a license granted by Ethyl Corporation, permitting a refiner to use their product, tetra-ethyl lead, in the blending of gasoline to raise its anti-knock value and presumably to increase its power.

After the license is issued, it is necessary to build a blending plant. They sold us the equipment and shipped it to us out of their New Jersey plant. That required additional storage, trackage facilities, etc.

After you get the plant installed and want to start selling gasoline blended with lead, Ethyl Corporation requires you to ship them samples of the gasoline you manufacture that you propose to blend, and they examine that and approve or disapprove. If they disapprove, you have to change your methods of manufacture and make gasoline to

meet their approval. Then you are ready to start selling it, except you can only sell to licensees of Ethyl Corporation. So your sales outlet of that grade gasoline is limited to refiners to whom they issue a license and to jobbers
3397 to whom they issue a license.

I had a talk with Mr. Smith of Tulsa of Standard of Indiana concerning 69-70 octane before we got our Ethyl license. It was necessary for me to show the Ethyl Corporation that I had a market or probably a market for Ethyl gasoline before I could get any license. I talked to Standard of Indiana and several other companies and ascertained the fact that I might expect to sell them that grade of gasoline.

Very few Texas independent refiners had such a license; none in the East Texas field, for instance. There was one other besides ourselves in North Texas territory. That was Panhandle.

I did not receive permission from Standard to tell the Ethyl people that they would purchase 69-70 gasoline from us, not in so many words. I had been selling Mr. Smith of Standard of Indiana a little gasoline all along, third grade, the only kind I made that he could use, and kept asking him, of course, to get more business. That is, when I wanted it. This was 1934. He explained to me that the decline in the volume of that grade of gasoline sold made it impossible for him to buy very much from me, but if I had an Ethyl license, they could do more business with me. That conversation with Mr. Smith started back in 1933. It was with reference to what business I might expect in the future. I gave the name of Standard of Indiana to the Ethyl people as a customer for our 69-70.

3398 We had very limited controlled outlets of our own at that time. I had the same number of retail service stations in 1933 as in 1934 and 1935. Very few. We probably marketed 100,000 gallons a month through our own stations, about 10 carloads.

It required an expenditure of about $35,000 to equip the Waggoner Company so that they could turn out 69-70 octane. They made that expenditure.

Following my talk in 1933 or 1934 with Smith, I talked with him again before this expenditure of $35,000 was made. I talked to him on numerous occasions concerning it, but I do not remember any certain conversation. Before we made this expenditure and before we got our Ethyl license, I counted on what Smith of Standard had told me, that they would buy 69-70 octane from me.

The 45 cars of 69-70 octane that the Waggoner Company sold to the Standard of Indiana in the month of November, 1934, was the gasoline that I say we required the Ethyl license for. The 25 cars of 69-70 octane that the Standard of Indiana bought from Waggoner Company in January, before the indictment alleges that the conspiracy started, was also gasoline that required this Ethyl license I was telling you about.

As I stated, we received the license sometime during the first part of March. That is my recollection. I returned home the latter part of March, and then submitted the proposition to my superiors for their approval. It 3399 didn't take very long to do that, a week or 10 days, I think. They approved the proposition and I sent for the Ethyl Corporation representative in Tulsa and he came to Electra, and we selected the type of equipment we wanted to install; in fact, we installed two plants, a barrel blending plant and a carload blending plant. Then we placed our order for that equipment and got it in about 60 days. It was shipped by boat to Galveston or Houston and by rail to Electra. After receipt of the equipment we built the plant. We were in shape to start shipment of that grade of gasoline sometime in September or October. Standard made tests of their own before they accepted our 69-70. We shipped that gasoline which they tested, 5 gallon samples, to Whiting, Indiana.

We sold to Standard of Indiana 69-70 octane at various times, shipped it rather steadily all during the year 1935. As to one order sold at a flat price of 4⅜¢, group 3, by flat price I mean that all that is shipped under that order is at the same price. It was not at the low of the Journal, it is a price agreed upon at the time of sale, regardless of Journal or anything else. Mr. Smith would be representing Standard of Indiana on this purchase.

As to how I sold it to him: I would call Mr. Smith up, or he would call me, and we would discuss general market conditions. I told him I wanted to sell some gasoline. He would ask what price I had. I would tell him. He 3400 usually said, "I will take it up with Chicago and let you know." Maybe it would be a matter of 2 or 3 days later he would call back and we would conclude the transaction, maybe at the price I quoted, sometimes less than the price I quoted. The gas sold Standard of Indiana in the year 1935, while I was there, was shipped to their bulk stations in the Mid-West, primarily Iowa, I believe.

I don't know why Standard of Indiana purchased this 69-70 gas from Waggoner in 1935. I believe the relationship between the two companies had something to do with it. In my mind the talk I had with Mr. Smith, previous to getting the Ethyl license, had something to do with it.

None of this gas we had in storage in 1935 that we had been storing for 2 or 3 years was 69-70 octane. A small amount might have been 69-70 base material. That is, working stocks are included in that total figure, and perhaps 10,000 or 12,000 barrels of that figure was material blended in to the 69-70. That is what I mean by "base material." We lead that material just prior to shipment. We don't keep leaded gas in storage. None of the 69-70 was sold to brokers.

According to my recollection, there were two small purchases of 15 cars each in 1935 by Standard of Indiana from the Waggoner Company of third grade; the rest was of 69-70.

"Third grade" is the low grade. It is lower than
3401 the regular. In making Ethyl gasoline you do not use
third grade gasoline but one having a lower end boiling point. That is what is sometimes referred to as endpoint. It is the point at which all of the gasoline has evaporated in a distillation. The third grade is 25 or 30 degrees, sometimes 40 degrees higher than your 69-70 grade.

In 1935, I heard a number of the major companies in and around Tulsa, or in the Mid-Continent, were buying some gasoline from independent refiners. I first heard reference made to our being charged with being the dancing partner of Standard of Indiana in 1935.

I did not have any talk or any arrangement with anybody representing Standard of Indiana that they would take any certain amount of gas from us during any certain period in 1935. I did not talk with them, nor did anybody representing Waggoner Company, so far as I know, talk with any official of Standard of Indiana regarding their taking such a thing as our distress gasoline. I hadn't any distress gasoline to sell anyone.

I did not attend the meeting at Kansas City on March 1, 1935, which it has been stated independent refiners attended. I never attended in 1935 any meeting of independent refiners, or of major companies, where the question of the sale of distress gasoline by the independent refiners to the majors was discussed. I did not know that any of
those sales made by Waggoner to Standard of Indi-
3402 ana were being made under any agreement by Stand-
ard with other companies to purchase gas from us.

If there had been any agreement made, or any understanding on the part of Waggoner, no one in the organization would have taken any part in any such meeting except me.

I got an invitation or telegram from Mr. Arnott to go to the meeting at Kansas City. I don't recall the reason I didn't go. Something must have come up to prevent it. It is the first one of Arnott's meetings that I failed to attend. I had been interested in Code work. I knew Arnott well.

Waggoner Refining Company did not curtail production. It increased production in 1935, before the expiration of the Code, I believe. It increased our production in line with what I thought the consumptive demand would be.

It is not true that we sold to Standard of Indiana, during 1935, at uniform, high, arbitrary and non-competitive prices, as agreed upon between the Standard and us.

I knew about the price rise when it occurred from March to June, 1935. I did not talk to any official of Standard of Indiana about it.

I do not recall any exact period for delivery in those flat price sales set out in the stipulation, Exhibit 984. I do recall that some times they were made for shipment during the balance of the month. Some times, if a sale was
3403 made during the latter part of one month, say February, the sale would be made for shipment over the month of March. The shipment periods were various. I regarded them as spot sales.

They were sold at a flat price, a price agreed upon at the date of purchase, with delivery at some time in the future, extending, it is my recollection, as far as 30 days. If I had known that the prices of the spot market were going up each week, I don't think I would have sold on that basis. My sales to Standard were at a flat price.

To my knowledge, Waggoner Company did not enter into any conspiracy with Standard or any other major in 1935 to violate the anti-trust acts.

I sold to parties who were generally regarded as price cutters in 1935. I sold a quantity of gasoline through a Tulsa broker that was shipped to Coryell & Sons. Coryell is located throughout the Middle West, in Nebraska, Illinois, and I think Iowa. I don't know the exact location of all of his points of distribution. It was not Ethyl gasoline we sold to Coryell. I don't think the broker that sold them has an Ethyl license. I know I didn't sell him any.

I have never met Mr. Beroth. I know who he is. I know his company, Acme Petroleum Company. I regarded him as a broker.

Waggoner Company was not in on a so-called major buying program in 1935.

3404 I don't know exactly in what amounts Acme Company, Mr. Beroth's company, bought gas from Waggoner in 1934 and 1933. I didn't handle one car sales, but I have since looked up the figures and I have found that they did buy 5 or 6 cars a month, usually 1 car at a time.

I didn't refuse to sell Mr. Beroth. It is possible that a member of the organization may have refused to sell him. I was in charge of this Waggoner Company. I can explain the relationship between Acme and Waggoner, which is the basis of my assumption that the sales manager may have refused to sell him a car of gasoline. They paid their bills. The experience theretofore with the company had been very unsatisfactory with reference to breach of contracts; that is, my experience while with Dale and with Waggoner.

When I first went with Waggoner they were doing considerable business with Acme, which I discontinued. In the management of the company I handled most of the sales involving large quantities, perhaps of 10 cars or up. I had a sales manager there, who handled our one-car sales. When I went with the company, I sort of put a ban on Acme because of the unsatisfactory experiences I had had theretofore.

Some of those unsatisfactory experiences were: selling a product, say 10 cars of material, for shipment over a balance of a month, or maybe two months, at an agreed price, or on an agreed price basis; and the market going
3405 against the purchaser, and their not furnishing shipping instructions on the material, causing us to seek another market for it. Ordinarily, you have relief under those conditions, but the amount involved was not sufficient to go through the trouble of seeking relief in court. Our outage claims were always excessive. Outage claims are claims made by the consignees that the car does not contain the number of gallons shown on the invoice. The amount usually runs from $5 to $20. The car is being unloaded in Nebraska somewhere; it is not worth your time to investigate. It costs us more to straighten it up than to let them have it. I had that experience when I was with Dale Refining Company, a company that went out of business in 1932. I had that experience with this company, the latter part of my time there.

I think I testified that the average sale to Beroth over 1934 was about 4 or 5 cars a month. We sold them about 40 cars in 1933, all without my knowledge. I didn't think we had made them any sales.

I sent out a letter of which Exhibit 4 for identification is a copy. It went to a general mailing list, which included a number that we didn't do business with, practically every broker in the business, and most of the jobbers.

The company made an exclusive arrangement with some other broker for Ohio and Illinois in May, 1934. That arrangement remained in effect until the latter part
3406 of 1935, August or September. This exclusive arrangement for those two states was made with American Petroleum Company. It prevented me from selling to jobbers or brokers for shipment into those two states, Illinois and Ohio. Therefore, during that time, I couldn't ship gas to Mr. Beroth or his Acme Company in the State of Illinois.

The letter, Exhibit 4, is dated May 8, 1934 and is a letter addressed to brokers and marketers throughout the country:

> "Gentlemen:
>
> "We have completed arrangements whereby the American Petroleum Company, Chicago and Cleveland, will handle the exclusive sale of Waggoner products in the States of Illinois and Ohio.
>
> "This arrangement goes into effect immediately, and we will not be able to accept shipping instructions or diversions from you to points in either of the states mentioned.
>
> "We want to assure you that we appreciate the business with which you have favored us, and trust that we may continue to serve you in other states.
>
> "Yours truly,
> (Signed) "Waggoner Refining Company, Inc.,
> "By D. G. Gray,
> *Manager.*"

3407 I sent a letter containing the language I have just read to our brokers and marketers, including the Acme Petroleum Company.

Cross-Examination by Mr. Chaffetz.

Exhibit 985 for identification is a true copy of a telegram that I sent to Mr. Bourque on July 10, 1935.

(Copy of telegram referred to is received in evidence as EXHIBIT 985, and read to the jury by Mr. Chaffetz.)

When in that telegram I say, "July sales to group," I mean to the group of people mentioned there, the group that I mention there.

Q. What kind of a group were they, Barnsdall, Indiana, Pure and Continental?

A. Members of the group who bought gasoline from there, as indicated in that telegram.

Q. Yes. They were members of the major company buying group who were buying gasoline from the independent refiners in the Mid-Continent area during that time; isn't that right?

A. I don't know.

I think that A. V. Bourque is a defendant in this case. He is the secretary of the Western Petroleum Refiners' Association.

Exhibit 986 for identification appears to be a true copy of a letter I received from Dale W. Moore, dated
3408 October 2, 1935.

Mr. Chaffetz: I offer Exhibit 986 in evidence.

Mr. Donovan: I object, your Honor, on the ground that the writer of the letter is not alleged to be a coconspirator under the indictment, it is not in furtherance of the alleged conspiracy, and it is hearsay. I wish your Honor would look at that letter.

Mr. Chaffetz: Your Honor please, Mr. Jacobi, as I recall, testified that gasoline purchased in the Mid-Continent buying program was purchased from Dale Moore, the writer of that letter.

The Court: Objection overruled. Exception allowed.

(Letter referred to is received in evidence as EXHIBIT 986, and read to the jury by Mr. Chaffetz.)

The reference in that letter to Mr. Dave Gray is a reference to me. When he says "I have been talking to the group the past day or two," I don't know just who he meant. I referred to the group in my telegram. I will explain just exactly what I meant, if you wish me to.

Q. No, I asked if you didn't mean the buying group, the major companies who were buying?

A. I don't know just what you mean when you refer to "major company buying group." I sold to
3409 major companies that I do not believe are defendants in this suit.

Q. That may very well be true, but when you referred to "the group" in this telegram, you were referring to the major oil companies who are defendants here, who were the ones buying in the so-called Mid-Continent buying program; isn't that right?

A. I will define the group to which I referred in my own language, if you will let me.

I called Mr. Bourque and told him that I wanted to move some gasoline. We had stored gasoline for two years; prices had reached a level at which we wanted to liquidate, but we didn't want to throw it on the market. I wanted to sell as much as I could in an orderly manner, for the best price I could get. For 10 years I had called on that Association when I wanted assistance with reference to sales or other matters.

Mr. Bourque, as in numerous other instances in 1934 and 1935, said, "Well, Dave, I will see what I can do for you and call you back." He would call me back and say, "I suggest that you get in touch with this company or that company," maybe name two, maybe name a half a dozen. I would call those people, and accomplish a sale. It was Mr. Bourque's habit to check with me the next day, or maybe 2 or 3 days later, "How much gasoline did they buy from you?" And I would report to him how much they bought.

3410 And this telegram is the result of just such a conversation. The figures quoted there are concerning the amount of gasoline sold to the numerous companies mentioned.

Q. Well, you knew that during this time, in 1935, Mr. Bourque was instrumental in carrying on the activities of a major company buying program?

A. I did not know that.

Q. You didn't know that?

A. No.

Q. Did you think that Mr. Bourque was carrying on that activity only for your company?

A. I think that Mr. Bourque was carrying on that activity for my company, in view of the fact that we were members of his Association, paid our dues regularly, and it was one of the services that he had been rendering, or that Association had been rendering ever since its inception.

I had heard that a number of larger companies were buying gasoline in the Mid-Continent field in 1935. I did not know which companies they were. I did not know that Mr. Bourque was active in that Mid-Continent buying program and I doubt very seriously that he was at all.

This letter meant something to me when I got it
3411 from Dale W. Moore.

Q. Did you understand it?

A. Did I understand the motive behind the letter?

Q. No, I did not ask you about the motive behind the letter. Did you understand what the letter said?

A. I do not think we can understand the letter without understanding the motive.

Q. Then you do not understand that letter?

A. Yes, I do.

Q. You understand the letter?

A. Yes.

Q. He says, first, "I have been talking to the group the past day or two regarding some help on motor gasoline at 4⅝¢, group 3." Who do you understand he referred to when he said "I have been talking to the group?"

A. A group of purchasers of gasoline in Oklahoma.

Q. Which group?

A. I don't know just whom he referred to. Just what particular companies, I could not say. I have known Mr. Moore for 10 or 12 years. He called me "dear Dave," which would indicate he knew me personally.

Q. And he must have known of the purchases
3412 that were made—

A. I don't know what he knew.

Q. He used the same term when talking to you that you used in talking to Mr. Bourque. You used the term "group" when talking to Mr. Bourque.

A. Yes. I don't know that we meant the same thing.

Q. He says this: "Yesterday they wanted to know if this was Waggoner material and I said, yes." That is, he said a group wanted to know if this was Waggoner material. Is that right?

A. I think that is what he said.

Q. "They informed me they understood you did not need any further help in addition to what they were already giving you." What does that mean?

A. I don't know just what he means by that.

Q. You haven't any idea?

A. No.

Q. You did not at the time you received this letter?

A. No.

Q. "Incidentally," he goes on, "I advised them this was material which I had coming from you under certain agreement and I was having some difficulty in moving all surplus to my jobbing trade unless I cut the price."

3413 Then he said "They," referring then to the group, "They would prefer that I endeavor to move this material without calling on them for help."

He meant the group wanted him to move the material without calling on them for help, and he says,

> "but advised that possibly within the next week when new allocations are arranged with regard to buying they might then be of some assistance."

Now, I ask you whether he did not mean by that, that within the next week the committee of the buying group when they made new allocations of purchases to the companies who were buying in the Mid-Continent field, would consider some of Dale W. Moore's gasoline that he was trying to get them to help him dispose of. Isn't that what that meant?

A. I don't know just what he meant. I would like to explain the purpose of the letter, the reason for the letter if you will let me.

Q. Tell me first how you know it. Did you have any conversation with him after you got this letter?

A. Certainly I did.

Q. With respect to the subject matter of the letter?

3414 A. With respect to the subject matter of gasoline.

Q. With respect to the subject matter of this letter, I asked you?

A. That letter concerns the sale of gasoline.

Q. Did you ask him what he meant by any terms in this letter?

A. I don't believe I asked him that question.

Q. You don't remember ever asking him, after receiving this letter, what he meant by anything in this letter?

A. No, I understood the letter very well.

Q. You understood the points of the letter very well?

A. Yes.

Redirect Examination by Mr. Kirkland.

Moore was the broker I spoke about on my direct examination when I said I sold considerable gas through him.

Q. I want to call your attention particularly to the third paragraph of this letter from Moore:

> "Incidentally, I advised them this was material which I had coming from you under certain agreement and I was having some difficulty in moving all surplus to my jobbing trade unless I cut the price." 3415

Is there any reason he should have had any difficulty in moving the gas he was getting from you?

A. No. He didn't even have to take it.

In the spring of 1935, as I stated awhile ago, we were attempting to liquidate these stocks in as orderly a manner as possible. To sell 100 cars of gasoline a refiner may call 4 or 5 brokers and offer them 100 cars of gasoline. That 100 cars immediately becomes 1,000 cars of gasoline.

To avoid that situation I made a trip to Tulsa and told Dale Moore of my plan to liquidate as much of my stocks in spring and summer as I could, but I did not want to do anything that would break my own market, and that I wanted all his business. Whatever else may be said of the man, he could market a lot of gasoline. In exchange for all of his business I put our material at his disposal.

In other words, a salesman could go out and sell a car of gasoline at an agreed upon price and not have to wire back to Moore's office in Tulsa and Tulsa wire me to buy the car. We had it bought without obligation to purchase, and it made it much more economical for him to sell on that basis.

We discussed the volume which he might move, and 3416 he agreed that he could move about 100 cars a month, and I told him he would go ahead on that basis. If he was short of 100 cars I would call him up—"Dale, how about some shipping instructions?" and he would say "Well, I will have some for you tomorrow," and "I am having some problem selling gasoline right now," but we put no pressure on him whatever to move it. In his enthusiasm to make a commission he took gasoline that he knew I would deliver, and referred to it as his gasoline, and when it became his gasoline and he had no market for it, it became distress gasoline; but actually he was under no obligation to take it, no written agreement or verbal agreement of any kind whereby he had to buy the gasoline. Neither the Waggoner Company nor I ever insisted that he was under any legal obligation to take that gas. There were no written documents about it.

Q. In this letter he says, "they would prefer that I endeavor to move this material without calling on them."

It was not necessary for him to call on them or anybody else to move it, was it?

A. No, sir.

I did not answer this letter. I did not think it deserved an answer. I talked with him on the telephone about the subject matter, however, as I testified awhile ago.

3417 Q. He says in the second paragraph: "They"—referring to the group I suppose, to the group referred to in the first paragraph—"they informed me they understood you did not need any further help in addition to what they were already giving you." Were you getting any help from any group such as he refers to in the second paragraph of this letter (showing exhibit to witness)?

A. I sold gasoline to practically every major company in the business, doing business in the Mid-Continent field at one time or another.

Q. That was your business, selling gasoline?

A. Yes, sir.

Q. And do you know what he was referring to when he says the group had been talking to you?

A. I don't know what constitutes that group. I don't know what meaning he applies to the word.

Recross Examination by Mr. Chaffetz.

Q. You knew that there was a group of some sort because you used that term yourself when you sent your telegram to Mr. Bourque. Isn't that right?

A. I knew that a number of major companies located in the Mid-Continent field were buying gasoline from refiners in Texas.

3418 Q. And they were sometimes referred to as the "buying group;" isn't that right?

A. That may have been.

Q. And that was the group you referred to in your telegram to Mr. Bourque?

A. I was referring to the group of people mentioned in the telegram.

Q. And those people you regarded as members of the buying group?

A. No, I did not. I regarded them as a group of companies that had been buying gasoline from me.

Q. Did they buy from you as a group?

A. No.

Q. They bought from you separately?

A. Yes.

Q. Then why did you say, "balance of month July sales to group Barnsdall 10 cars Standard of Indiana 15 Pure 12 Continental 5?"

Why did you use the word "group" at all? Couldn't you just as well have said "in July I sold 10 cars to Barnsdall," so many cars to Pure, and so many to Standard?

A. I may have used the word "group" for the sake of brevity. I could have said "sales to major companies." The word "group" is one word. I don't know just why I used the word "group".

3419 Q. Why did you tell them what you sold to major companies?

A. Bourque asked me.

Q. Now, with respect to Dale W. Moore, isn't this the fact; having an arrangement with you whereby he was going to dispose of your gasoline if he could, he turned around and tried to sell it to the Mid-Continent buying program, to the major companies participating in that program? Now, isn't that the effect of that letter?

A. He tried to sell it to major companies that had been buying gasoline from me at infrequent intervals, that is, some of them were infrequent.

Mr. Kirkland: Q. Did you object to it?

A. I certainly did.

Redirect Examination by Mr. Horween.

I have testified I know A. V. Bourque, a defendant in this case. I have known him personally since about 1927. He has held the position of secretary of the Western Petroleum Refiners' Association to my knowledge since 1928.

I was director of the Western Petroleum Refiners' Association for 3 or 4 years. I don't know how old this Association is. It was in existence when I went in the
3420 refining business in 1925, and had been in existence
for some time. The members are primarily independent refiners in the Mid-Continent field—Texas, Louisiana, Arkansas, Oklahoma, Kansas. Although a few of the larger

companies belonged, most of the members were small when they originally joined and grew big.

The work of the Association has to do with statistical data. It posted technical meetings, and brought to the refiner engineers, and so forth, loaned to them by the larger companies, that gave us some information in technical matters. It appeared before the state authorities with reference to state inspection laws; assembled and distributed information concerning the use of various oil products, assisted us with reference to freight rates where all of the Association might derive some benefits. The Association had a Washington office, maintaining an attorney there who kept us advised of all things transpiring there with reference to traffic that might affect us. Tax matters, also. And frequently assisting us in the sale of products, particularly back in the twenties with reference to export sales.

I have had frequent personal contact with Mr. Bourque over the period during which I have known him. That is, while I was with Dale Refining Company up to 1932, and from 1932 until the last part of 1935, while I was with Waggoner. At all the annual meetings and numerous
3421 local meetings and frequent visits to Tulsa I always called at his office, and on visits down in our country he would call at my office. And we used to have quite a few meetings in North Texas. That was before the days of the Code. I had occasion to call on Mr. Bourque to help me find a buyer for gasoline and other products which I might want to sell. I turned to Mr. Bourque because we contributed to the support of the Association, and it was one of the services his Association rendered.

In a typical conversation with him in 1934 or 1935, I would call him up and say, "Bourque, I would like to move 20 cars of kerosene," or "40 cars of gasoline," or what not. "You know where I can move it?" Sometimes he would know. "Why don't you call so and so?" Sometimes he would say, "I don't know, Dave. I will see what I can do for you." And he would call me back that day or maybe the next and suggest that I communicate with this or that individual with reference to a sale. He never promised me that anybody would buy anything from me. He never sold any of our products for me or for the company I was working for. He never bought anything from us. He never purported to act as agent on behalf of anyone else in buying from us, either in gasoline or any other product.

I discussed price with Mr. Bourque. I don't guess I ever talked with him that I didn't discuss price. The price

discussion with Bourque in 1935 would be that he
3422 would give me his idea of the market, and I would
give him mine, and we would argue about it awhile. We would discuss everything that might be going on in the oil business that we knew anything about.

He never suggested or urged or recommended to me any particular place to which I should sell gasoline or other products, or any amount of gasoline or other products I should manufacture. I am sure about that.

Waggoner Refining Company wasn't a member of the Western Petroleum Refiners' Association until I joined. It joined immediately after I went with them.

1928, 1929 and part of 1930 were pretty good years for the small independent refiner.

Several things happened in 1930. We were engaged primarily then in marketing export gasoline, and the export market got pretty bad due to dumping abroad, by Russia and Rumania primarily. The East Texas oil field was brought in in the fall of 1930, but we didn't really feel the effect of it until 1931. In 1931 the Oklahoma City field, I believe, came in about that time, too. And we, of course, couldn't compete with hot oil, low price oil, or no price oil, and things were pretty bad. That was when the troubles of the independent refiner really began.

At the advent of the Petroleum Code in the fall of 1933,
all materials advanced in price. Shortly after the
3423 enactment of the Code, the price of crude oil was stab-
ilized at $1.00 a barrel. The prices of refined products were not stabilized. We still had to compete with products made from the type of oil I mentioned a while ago, produced in East Texas and some in Oklahoma City.

When conditions are bad and prices are low, some small refineries do shut down temporarily and some reduce their throughput. By "throughput," I mean the amount of oil that they put through their plants. But most refineries are one-unit plants, and have a maximum and a minimum at which they can operate. For instance, if you have a plant capable of turning out 2,000 barrels of gasoline a day through one unit, you might be able to produce 1,200 to 1,500 barrels a day economically, through that unit, but you couldn't go below that.

A number of refiners have a pipe line gathering system through which they transport oil which they buy from the producer in the field. If they shut down their plant, they can't buy that fellow's oil, and he seeks another outlet for his oil. When they get ready to go back in busi-

ness again, they have a whole system of pipe lines lying in the ground which they have to dig up and put some place else, providing they can find somebody else that will sell them the oil. It is quite frequently difficult to per-
3424 suade somebody to sell you oil if they know you are a company that is liable to run this month and shut down next month. Therefore, you are forced to stand the punishment in the hope of better days.

Frequently they have fuel oil contracts with the railroads, for 3 months, 6 months or 12 months, and the period which it was shut down makes it impossible for them to resume under those contracts, and they would probably have difficulty in getting new contracts when they start up again.

It is like any other business when you break down all your connections, both with reference to selling products and the purchase of raw materials.

I think I mentioned about all of the specific activities which the Western Petroleum Refiners' Association engages in. I would say it was sort of a clearing house for information for refiners which they were not in a position to get themselves.

I was a director of that Association from about 1931 or 1932 until I left Waggoner in November, 1935. Mr. Bourque was the secretary. I believe we paid him $10,000 or $12,000 a year. My recollection regarding that is in 1932 or 1933, along in there. However, that is not very clear in my memory.

He was secretary and did all the work of the organization. I can't answer as to how many members there were, but practically all of the independent refiners belonged.

3425 At the time of the Petroleum Code, Mr. Howard Bennette was the president and managing director of the Association. During the Code the Association discontinued the statistical department. As a matter of fact, I didn't pay much attention to the Association or to my own business during the life of the Code. I didn't have time as I was traveling around the country most of the time on Code matters. I know Howard Bennette was in the Code as a member of the P. and C. Committee; he was made national coordinator. I know the action of the Association was discontinued or at least slowed up during the Code period.

After the Code, they again started gathering statistics, taking up where they left off before the advent of the Code.

Q. You have already said that on several occasions you called Mr. Bourque, rather frequently, and asked him if he knew someone who might be interested in buying some gasoline which you might want to sell and he would call you back and suggest someone for you to call.

Do you know whether or not Mr. Bourque was paid any commission or special compensation for this kind of service, outside of his salary as the Secretary of the Association?

A. No. The Association would not have permitted that.

3426 Q. I am asking you if you knew whether or not he was paid—

A. No.

Q. You never paid him anything?

A. No, sir.

Q. Do you know of anyone else who did?

A. No, sir.

Recross Examination by Mr. Chaffetz.

I did not attend a meeting of the Western Petroleum Refiners' Association, of independent refiners, on October 18, 1935. I did not attend any such a meeting in October, 1935. I do not remember attending a meeting of independent refiners on November 25, 1935 at Kansas City. I can answer a lot of your questions by saying I didn't attend a meeting anywhere concerning anything in 1935. No representative of our company attended any such a meeting.

Redirect Examination by Mr. Kirkland.

I attended one directors meeting of the Western Petroleum Refiners' Association. At the meeting of the American Petroleum Institute, in Dallas, we held a meeting there with reference to road oil, and I attended that meeting, in November, 1934. Road oil was the only subject discussed at that meeting. We met to appropriate money for advertising purposes. 3427

Recross Examination by Mr. Chaffetz.

Q. I show you Exhibit 810, which purports to list total cars purchased by certain companies, from certain independent refiners, in the month of April,

1935. You notice it shows that Waggoner Refining Company sold 30 cars to Barnsdall, 85 cars to Standard of Indiana, and 50 cars to Mid-Continent, making a total of 165 cars sold by Waggoner to the companies named. Do you recall those sales?

A. I have no independent recollection, but I have no reason to doubt it.

I wouldn't know whether a sale by Dale W. Moore to Mid-Continent, 25 cars, and Phillips, 5 cars, was for resale of Waggoner gasoline. I do not think it was; I have no idea.

If I sold 85 to Standard, it was 69-70 octane.

(Stipulations as to the testimony of J. W. Steele, James D. Miller, M. A. Chambers and M. P. Appleby were received in evidence as EXHIBITS 989, 990, 991 and 992, respectively, and parts of them read to the jury by Col. Donovan.)

Mr. Donovan: Now, for the purpose of showing knowledge of the nature and purpose of the program, I offer in evidence, first a letter dated April 30, 3428 1935, signed by Paul G. Blazer, and addressed to Charles Fahy; next, duplicate original of a letter dated May 7, 1935, sent by the Chairman of the Petroleum Administrative Board to Paul G. Blazer. I ask to have them both marked for identification, and I offer them in evidence.

(Document referred to as "Letter signed by Paul G. Blazer," is marked Exhibit 993 for identification; and document referred to as "letter sent by the Chairman of the Petroleum Administrative Board to Paul G. Blazer," is marked Exhibit 994 for identification.)

Mr. Chaffetz: If the Court please, we object to the introduction of either of these documents on the grounds that they are not communications by or with any of the defendants in the case; but between a man named Blazer, who is not a defendant here.

Mr. Donovan: Following the testimony of Mr. Arnott, your Honor, this is introduced for the purpose of showing knowledge on the part of the Petroleum Administrative Board of the buying activities in 1935.

The Court: Objection sustained. There is considerable evidence in the record now as to the knowledge of Mr. Fahy and others on that Board of these activities. Exception allowed.

(Letter from Mr. Ickes to Mr. Lientz, dated March 30, 1935, is received in evidence as EXHIBIT 995, and read to the jury by Mr. Donovan.)

3429 (Mr. Donovan renewed his offer of Exhibits 917, 829, 830, 831, 832, 845, 846, 847, 710. The Government renewed its objections, and argument and ruling were deferred.)

(In absence of jury):

Mr. Irvine: Stipulation: It is stipulated that Mr. Titus was proffered by the defense as a witness upon the subject matters set forth in the offer of proof following herein; that the testimony contained in the offer of proof was objected to by the Government; whereupon the defense made the following proffer of proof as though made in question and answer form, objection being made to each question on the point of incompetency, immateriality and irrelevancy, and each of such objections being sustained; the reasons why such testimony is admissible together with the offer are as follows:

The testimony sought to be adduced by the witness, Louis Titus, is competent, material and relevant in this case since it shows what was said to Mr. Arnott as Chairman of the Marketing Committee of the Planning and Coordination Committee by the Chairman of the Legal Committee of the Planning and Coordination Committee with respect to what Mr. Arnott was authorized and directed to do by the Petroleum Administrator, Mr. Ickes, under the letter of July 20, 1934.

3430 The testimony will also bring out facts showing that certain other persons who are defendants in this case knew of the views of the Petroleum Administrative Board as to the scope of the activities authorized and directed by the letter of July 20, 1934, from Mr. Ickes to Mr. Arnott.

The testimony is also material for the purpose of showing that Mr. Fahy, then Chairman of the Petroleum Administrative Board, never stated to Mr. Titus that the letter of July 20 was limited to activities in local areas and never raised any question with Mr. Titus as to the legality of the action which Mr. Arnott was taking, and, furthermore, that Mr. Fahy was pleased with the activity of the stabilization committee in causing the removal of distress gasoline from the market. From this testimony, the jury would be entitled to draw the inferences and conclusions that persons who saw or heard the legal opinions rendered by Mr. Titus to Mr. Arnott had no purpose or intent to violate the anti-trust laws, but thought that they had the right to take such steps that were necessary to eliminate price wars, stabilize prices and to remove the various causes of price wars.

The jury could also draw the inference and conclusion that the Chairman of the Petroleum Admin- 3431 istrative Board considered that no approval by Mr. Ickes was required to any agreement or arrangement entered into by the oil industry in connection with the stabilization work, which agreements or arrangements were for the purpose of eliminating price wars or removing the causes of such price wars.

Offer of Proof.

I am Louis Titus. My address is Corpus Christi, Texas. I have been a lawyer for 40 years. I practiced law in San Francisco for 20 years. In 1916 I opened an office in Washington where I practiced until about 1935. My practice has been almost entirely civil. I worked with the Independent Petroleum Association of America, in connection with the formation of the Petroleum Code, both in Chicago and Washington.

I was selected as general legal counsel for the Planning and Coordination Committee soon after it was appointed in late August, 1933. During a large part of the Code period, I was Chairman of the Legal Committee, a subcommittee of the Planning and Coordination Committee. As general counsel and as Chairman of the Legal Committee, my work consisted mostly in writing legal opinions in connection with the work of the Planning and Co- 3432 ordination Committee and its various sub-committees. I wrote hundreds of opinions, sometimes 6 or 7 a day. Most of these opinions were for the Marketing Committee because that committee was probably the most active of the P. & C. sub-committees, and also because the legal problems involving Article V of the Code, the marketing section, were most numerous. I was called upon a number of occasions to assist both the lawyers for the P. A. B. and the Department of Justice in trying some cases. I did considerable work in arguing and writing legal briefs relative to the appeal of court cases involving the Petroleum Code. As general counsel and Chairman of the Legal Committee, I never wrote any opinions for any individual members of the Planning and Coordination Committee or any of its subcommittees. All of my work was for these committees as such.

Two or three days after the letter of July 20, 1934, from Mr. Ickes to Mr. Arnott, I saw it in my office in Washington. I discussed it separately with Messrs. Arnott, Majewski, Jackson, and Dodge and other persons. About July 24, I was called upon as Chairman of the Legal Committee to consider officially the letter of July 20, 1934. Mr. Hadlick, Secretary of the Marketing Committee, of which Mr. Arnott was chairman, came into my office. He said 3433 that Mr. Arnott, as Chairman of the Marketing Committee, would like to have a written opinion from me as to the meaning and scope of the letter of July 20, 1934, and to the effect of the anti-trust laws on the activities authorized by that letter. I then went to see Mr. Arnott who told me substantially the same thing. I agreed that as Chairman of the Legal Committee I would consider these matters and write an opinion for Mr. Arnott. I also talked with Mr. Majewski for about 15 minutes and we discussed the letter of July 20, 1934, and the provisions of the N. I. R. A. pertaining to anti-trust laws. I also talked to Mr. Dodge for a short time.

Before writing the opinion, I went over to the Petroleum Administrative Board and saw Mr. Charles Fahy, the Vice-Chairman of the Board. Mr. Fahy was, in fact, the real acting chairman of the board. My previous contacts with Mr. Fahy led me to believe that he had administrative authority to act for Mr. Ickes relative to carrying out the Code except as to matters of extreme importance and as to signing orders and agreements.

I told Mr. Fahy that Mr. Arnott had asked me

to write an opinion as to the effect of the anti-
3434 trust laws on the possible activities under the letter of July 20, 1934. I discussed with Mr. Fahy the letter of July 20 in a general way. I told him that I was not satisfied with the letter and thought that it should be revised to provide that Mr. Ickes should either approve or disapprove each agreement or arrangement which persons in the industry entered into in settling price wars or in eliminating the various causes of those wars. Mr. Fahy did not concur in this suggestion of mine. Mr. Fahy strenuously objected to this and stated that he would not be running to the administrator every few days to get orders signed approving or disapproving these agreements or arrangements. He said that it was not practical to work the matter out in that way. He said that the government had assisted the oil men materially and it was only fair that oil men should appreciate this and cooperate with the government in its efforts to stabilize this industry. He said the letter of July 20, 1934, was a direction to Mr. Arnott to do the job of eliminating price wars and getting prices back to normal so that the Recovery Program could be accomplished. He also said, "You don't need the orders of approval which
3435 you are requesting. This letter is a complete protection to you. It is all you can possibly need." He said, "What are you afraid of? You apparently are afraid of your own shadow. You can't possibly think that the government will actually prosecute you for something the govenment is demanding that you do." I said then that it did not seem to me it would be very much trouble to get an order for each separate arrangement or each separate meeting, but he flatly refused and again reiterated, "This letter now, which the Administrator has signed, is all you need." This ended the conversation.

I discussed with other members of the P. & C. Committee by conversation with Mr. Fahy. I did this either the same day or a day later. I talked with Mr. Arnott, Mr. Majewski, and other members of the Marketing Committee of the Planning and Coordination Committee relative to my conversation with Mr. Fahy.

I told Mr. Arnott substantially of my conver-

sation with Mr. Fahy. I remember telling Mr. Arnott that I had told Mr. Fahy that I thought that the letter of July 20 should be revised, and that a provision should be inserted to the effect
3436 that any arrangement or agreement which the members of the industry made under the letter of July 20 to stop price wars, stabilize prices, or to eliminate the causes of price wars, should be specifically set forth in writing and approved or disapproved by the Petroleum Administrator. I told Mr. Arnott that Mr. Fahy strenuously objected to this, and said that he said he would not go to the Administrator every few days to get orders of approval or disapproval signed. I told Mr. Arnott that Mr. Fahy told me that it was not practical to work out the matter in this way. I said that Mr. Fahy was quite irritated at my suggestion. I told him that Mr. Fahy said that the letter of July 20 directed Mr. Arnott to take whatever steps were necessary to stop price wars, to stabilize markets, and to eliminate the causes of price wars. I said that Mr. Fahy believes the industry should agree together, cooperate with the government and appreciate the efforts which the government was making to stabilize their industry. I remember also telling Mr. Arnott that Mr. Fahy had told me this letter of July 20, 1934, was complete protection and was all
3437 that we possibly needed and that he did not see the necessity of having the approval of Mr. Ickes to the activities that were undertaken to carry out the stabilization work. I remember also telling Mr. Arnott that Mr. Fahy said: "What are you afraid of? You apparently are afraid of your own shadow. You can't possibly think the government will actually prosecute or criticize you in the oil industry for doing something that the government is demanding that you do." I told Mr. Arnott also that Mr. Fahy had flatly refused to accede to my suggestion and had reiterated that this letter of July 20 was all that we needed.

On July 31, 1934, I submitted to Mr. Arnott my legal opinion as to the effect of the anti-trust laws on the activities which Mr. Arnott might undertake under the letter of July 20, 1934.

This opinion was mimeographed and copies of it were given to many persons in the oil industry in various parts of the country. The opinion reads as follows:

(Exhibit 892 for identification read.)

The last two paragraphs of the opinion expressed 3438 briefly the substance of part of the statements that Mr. Fahy had made to me and which I had made to Mr. Arnott.

Mr. Fahy received a copy of this opinion as I recall seeing it on his desk at one time.

I am not absolutely certain that I sent Mr. Fahy a copy of this opinion. It was my custom to send Mr. Fahy copies of the more important opinions and briefs which I wrote. We would discuss them together and Mr. Fahy would quite freely tell me whether he agreed or disagreed with my brief or legal opinion. After July 31, 1934, Mr. Fahy never questioned any statement I made in the opinion of July 31, 1934. Mr. Fahy never told me that the letter of July 20, 1934, limited the stabilization activities to particular local areas. Nor did Mr. Fahy ever tell me that Mr. Arnott was not keeping the Petroleum Administrative Board sufficiently informed of his stabilization activities. Mr. Fahy never raised any question with me during the spring of 1935 or at any other time with respect to any action which Mr. Arnott had undertaken under the letter of July 20, 1934.

I do not know that in the spring of 1935 Mr. Fahy told me that he congratulated the members of the Stabilization Committee for their activities 3439 in getting distress gasoline in the hands of independent refiners removed from the market.

It was always my opinion as counsel for the P. and C. Committee that the letter of July 20, 1934, constituted a direction and an authorization for Mr. Arnott to take all the steps necessary to eliminate price wars and to remove the cause of such price wars, provided the means used did not violate Section 3(a)(2) of Title I of the NIRA. Under the letter Mr. Arnott was to bring about compliance with Rules 4 and 6 of Article V of the Code. This was to be done by informal cooperative action. Since distress gasoline causes price wars and prevents the bringing about of normal price levels, I believed that Mr. Arnott was empowered under the letter to appoint the Tank Car Stabilization Committee to investigate, to ascertain the conflicts existing with respect to what could be done about distress gasoline, and to undertake by informal, voluntary cooperative action to remove distress gasoline from the hands of independent refiners through purchases by major companies.

I believe this is a correct meaning of the letter of
3440 July 20, 1934. As a result of Mr. Fahy's statements to me at the conference I had about July 25, 1934, which I have recited above, I believe that what I have stated was the view of the Petroleum Administration. I regarded this conversation as an administrative interpretation by Mr. Ickes' authorized agent of the purpose of the letter of July 20, 1934, and the scope of the work which it authorized and directed to be done.

Mr. Lewin: We object to it. There are a number of grounds of objections.

I think the opinion of Mr. Titus is totally irrelevant, and I think your Honor has so held, and properly so. I think that being so any statement by Mr. Titus of the facts and circumstances leading up to the issuance of that letter of July 20, 1934, or its interpretation, would be irrelevant. I think the letter speaks for itself. I think it is clear. I think it is unambiguous, and I think its construction is for the Court.

The only thing we don't insist upon is the presence of Mr. Titus.

The Court: The Court agrees with you. Objection sustained. Exception allowed.

3441 Mr. Donovan: Mr. Lewin, I think through some oversight this was not admitted, if you have no objection (showing document to Mr. Lewin).

Your Honor, may I include this in the offer?

The Court: Yes.

Mr. Donovan: This is exhibit number 844, an order dated November 2, 1934, signed by Harold L. Ickes, together with document thereto as follows:

"Form of contract."

Mr. Dorr: Now, also, there is pending before your Honor, on which you have made no ruling yet, the Final Report of the Marketing Division, which makes or contains the reference to the Tank Car Committee as one of the most important of the committees appointed under the letter of July 20th; which we think also is clearly admissible, perhaps on different grounds, as showing that it was a committee of which the Government had knowledge, and which they knew was operating as a committee under the letter of July 20th.

The Court: As to the report, Exhibit 914 you need say no more on that. The objection to that will be sustained. The objection to the report of the Board is sustained. I want to give some consideration to the report of Secretary Ickes, Exhibit 917. Exception allowed.

3442 The Court: While it is on my mind: The other day a portion of the annual report of the Secretary of the Interior for the fiscal year ending May 30, 1935, Exhibit 917, was offered, certain portions of it.

The Court will admit a certain portion, but not all that was offered, and I will admit it in this way:

Counsel for the defense may read, starting in the middle of the first paragraph on page 37 and ending on the marked portion on page 38, into the record. Exception allowed.

Mr. Donovan: I will wait until I finish with this witness.

The Court: We will take these documents, and take the offer of proof last. Now, there is Exhibit 844. Have you a copy of that, Mr. Lewin?

Mr. Lewin: I am not sure that I have any copies. Do you want me to look at it?

The Court: Yes (handing document to Mr. Lewin).

Mr. Lewin: This deals with 1934 buying programs, and you have once ruled those out of evidence, because they have nothing to do with this case.

The Court: The objection is sustained to that.
3443 Exception allowed.

Mr. Dorr: Exhibit No. 829 is the order which was issued by the Secretary providing for—under the Code of Fair Competition, providing for the naming of minimum prices below which crude oil should not be sold and refined gasoline should not be sold. It fixed them on the basis—it fixed the crude oil price at that time at $1.11, and it fixed—I offer that EXHIBIT and EXHIBIT 830.

So that we have here in these documents and in that—a construction by the Administrator of what is a natural relationship, which he confirmed in his annual report, which we have offered in evidence, a natural relationship between crude and refined. It

is simply giving the history of the thing, the part of the history of the whole situation, which everyone had in mind—the Secretary had in mind when he wrote the report, and everyone else had in mind, because they lived with the problem during the whole time, and we say it is part of the circumstances of the time which must be taken into consideration in determining whether what was done was the reasonable effort to end an abuse which is artificially depressing the price, and whether—and that for that reason it was under the circumstances of the industry, the circumstances of the time, a reasonable action for
3444 these people to take—not a reasonable price—we are not concerned with that, but a reasonable effort to preserve and make posssible a fair, competitive price.

The Court: The objection of the Government that they are irrelevant and immaterial is sustained. Exception allowed.

Mr. Lewin: The objection to Exhibit 831, which Mr. Dorr touched on also, is that it deals with the 1934 buying pool.

The Court: The objection to that is sustained. Exception allowed.

All right. What is the next one? Exhibit 832?

Mr. Lewin: Exhibit 832 is the next one.

That is the letter to Secretary Ickes from Mr. Franklin, I think.

Mr. Dorr: This also relates to the National Agency Agreement, and is the letter originally submitting it for the approval of the Secretary, which was subsequently given by one of the orders which your Honor has just excluded.

The Court: I see.

Mr. Dorr: And that, I suppose, your Honor, follows the same ruling?

The Court: The same ruling.

3445 Mr. Dorr: And may we have an exception on all the grounds stated in argument, at this time?

The Court: The same ruling, and you may have an exception.

Mr. Lewin: Exhibit No. 845, your Honor, is the order by the Secretary, approving a formal contract for the purchase of gasoline in one of the 1934 buying pools.

The Court: The same objection to that?

Mr. Lewin: Same objection.

The Court: The same ruling.

Mr. Dorr: And the same reasons and exceptions?

The Court: Yes.

Mr. Lewin: Exhibit 846, your Honor, is an order dated September 8, 1934, signed by the Secretary together with documents attached thereto, Exhibit A and Exhibit B. The order also deals with a 1934 buying pool, the one run by Mr. France's Program Committee.

The Court: The same objection, the same ruling, and you may have an exception.

Mr. Dorr: That, I think, is one of those which I referred to in my previous offer, your Honor.

The Court: Yes.

Mr. Lewin: Exhibit 847, your Honor, is an order, dated August 13, 1934, of the Secretary of the Interior, together with a document attached thereto, 3446 known as a form of agreement; and it, again, is an order and a form of agreement relating to a 1934 buying pool, and is objected to on the same ground.

Mr. Dorr: There is one other ground, your Honor, which perhaps I should state for the admissibility of certain of these exhibits, particularly the ones which have just been excluded.

There has some contention been made here that the Refinery Amendment provided an exclusive method of dealing with buying; that, after that Refinery Amendment, why, then, the only thing that could have been done was a buying arrangement which was approved under that Amendment.

As appears from these exhibits, certain of these buying arrangements were authorized and were approved, but not under that Refinery Amendment; which, I think, is merely confirmation of what is apparent on the face of the Code itself, that that was merely a piece of mechanism which might be used, but which of course did not provide that some other methods of buying might not be carried on. And the Secretary clearly recognized that by approving other arrangements under another section, under the general provision of the N. I. R. A., and under another section of the Code.

3447 The Court: The objection of the Government to Exhibit 847 will be sustained; and you may have an exception.

Now, 711 is the Code, isn't it?

Mr. Donovan: Yes, your Honor.

The Court: And the same objection is made to that, I suppose?

Mr. Lewin: The same objection, yes, your Honor.

The Court: The objection to that is sustained. Exception allowed.

Mr. Dorr: I told your Honor I was going to come back on this Pennsylvania situation, and I think the situation there too has changed. I was going to come back anyway, but I think the situation now is this: The government has now offered the letter of July 20.

One of the things which is most important in construing any document is administrative interpretation.

They have contended that that letter, looking to certain expressions in it, is confined to dealing with local price wars in the retail markets.

> (Mr. Dorr offers EXHIBIT 915, letter Swanson to Brundred, May 18, 1935; EXHIBIT 916, telegram Fahy to Arnott, May 14, 1935; and EXHIBIT 973, letter Swanson to Davis, in evidence.)

3448 Mr. Lewin: I object to the admission of these exhibits.

The Court: I don't care for any further argument on that. Your objection is sustained. Exception allowed.

Mr. Francis: I wanted to offer, your Honor, or make a tender of proof of some testimony given by Harold L. Ickes in hearings before a subcommittee of the Committee on Finance of the United States Senate, 75th Congress, First Session, on Senate Bill 790, on February 12, 15, 16 and 17, 1937.

Now, this is an official document which sets forth the following proceedings which I desire to offer in evidence, and get a ruling from your Honor as to whether or not you think it is admissible.

The Court: What is the date of that?

Mr. Francis: February 15, 1937, just last year. Senator Connally asked these questions:

> "Senator Connally: What did you call them buying pools, or something of that kind?
>
> "Secretary Ickes: Yes, there was a buying pool; I think it fair to call it that.

"Senator Connally: With a view to relieving the pressure and helping the little fellows get rid of their gasoline that was distressed?

"Secretary Ickes: That is right.

3449 "Senator Connally: And yet holding it, and conserving it for future use?

"Secretary Ickes: That is right.

"Senator Connally: Mr. Holland is in possession, is he, of the details in regard to those buying pools and things of that kind?

"Secretary Ickes: Mr. Holland or Mr. Swanson has all of that, because he was with the Oil Administration at the time.

"Senator Connally: Would it bother you if we would hear Mr. Swanson, injecting him right at this point?

"Secretary Ickes: I should be very glad to have you do that.

"Senator Connally: What was the operation under those buying pools, Mr. Swanson?

"Mr. Swanson: Mr. Chairman there were several so-called buying pool efforts, that began in December of 1933 and continued from then on during the entire period of the Petroleum Code.

"Senator Connally: What was the purpose of the Department in participating or in authorizing or in aiding those buying pools?

"Mr. Swanson: It was an effort on the Department and the industrial committees to bring
3450 about the normal relationship between gasoline prices and crude oil prices, in order to permit the independent, non-integrated refiner to be able to operate without loss.

"Senator Connally: What do you figure is the proper relationship between the price of crude and gasoline?

"Mr. Swanson: It varies with different price levels, but at a crude oil price of $1.00, the normal price relationship between crude oil and gasoline is as 18½ is to 1. In other words, the crude oil price per barrel should be 18½ times the refinery price per gallon of regular gasoline."

I want to offer that, your Honor, which was in the hearings before the Senate Committee; and then the following statement before the same Committee of a question and an answer, which reads as follows:

> "Senator Connally: If oil is $1.00 per barrel, you figure that 1/18.5 of that would be what?
>
> "Mr. Swanson: That would be the normal wholesale gasoline price.
>
> "Senator Connally: That would be a little less than 5¢ a gallon?
>
> "Mr. Swanson: No. It would be a little bit 3451 above 5¢. It would be 5.5¢.
>
> "Senator Connally: Now, Mr. Secretary, I understand your testimony, in the concluding portion of it, to not encourage or favor the price wars that you speak of in the gasoline industry, whether or not that is wholesome for the industry or the consumer either?
>
> "Secretary Ickes: I do not think it is wholesome."

That is before the Senate Committee. And then before the House Committee, this excerpt from a statement from Harold L. Ickes which I am reading from page 4 of the hearings before the Sub-committee of the Committee on Interstate and Foreign Commerce of the House of Representatives, 75th Congress, First Session, on Senate 790 and H. R. 5366, April 27, 1937:

This is a statement, an excerpt from a statement of Harold L. Ickes:

> "Since I talked with you before, the demand for petroleum products has increased to such an extent that crude oil production has advanced approximately 900,000 barrels, to a level of more than 3,400,000 barrels daily. All-time production records are being broken one after 3452 another. Posted crude oil prices have advanced more than 20¢ a barrel. During most of the period in which the Connally Act has been in operation, the smaller and non-integrated refiners have been able to operate at a profit. Retail gasoline price wars have been infrequent and of limited extent, and yet there has been no material increase in the retail price of gasoline."

Those statements, your Honor, I think are admissible in this case because the Government contends that, due to an alleged combination and conspiracy and agreement, these prices advanced to high, artificial and non-competitive levels, both the tank car market and the retail price market.

The Court: The objection of the Government to that offer is sustained. Exception allowed.

(Parts of EXHIBIT 997 offered and received in evidence were read to the jury and parts summarized by Mr. Webster.)

Mr. Donovan: Your Honor, the defense rests.

Thereupon, the plaintiff, the United States, to maintain further the issues on its part, called to testify the following witnesses and introduced the following testimony in rebuttal:

3453 W. J. MILLER, recalled as a witness for the Government, on rebuttal testified as follows:

Direct Examination by Mr. Chaffetz.

I have made a study of Exhibit 868, the chart of Danciger sales, which was offered here through the defense witness, J. D. Miller. I have made a particular study of transactions shown on that chart which are supposed to have been sales of third grade gasoline above the low of the published publications.

Those were supposed to have been sales to jobbers and consumers by the Danciger Company at prices above the low of the Chicago Journal of Commerce and Platt's Oilgram. I did not have time to check all these, so I made a test check and confined the check to the months of July, August, October and November, 1935. I just picked those months at random.

At my request the defense accountants furnished me with a list of those sales, represented by the dots in those months, which were made above the low. There are 38 black dots up there (indicating) representing 47 sales above the low of 47 cars during the months July, August October and November. There is one blue dot in there that represents a sale to a consumer. All the rest are supposed to represent sales to jobbers of third grade 3454 gasoline at a price over the low of the published quotations. Those were in fact sales to jobbers and consumers.

In most instances I found that that gasoline was not third grade. It was a gasoline described as 62-65 octane gasoline, which Danciger Company sells at a premium above third grade gasoline. The records of the Danciger Company show that they had two grades of gasoline, one known as third grade and another grade that was a better grade. The better grade was usually sold at ¼¢, in some instances ⅛¢, above the low quotation for Chicago Journal of Commerce third grade.

I don't think it is proper to compare the prices of those sales described as 62-65 octane with third grade prices in the published journals. That was an error in my opinion.

Of these 47 transactions there were 40 that represent that type of gasoline; and the other 7 represent gasoline described as third grade gasoline.

In those cases where the gasoline was actually third grade gasoline, I found that there was a rebate of ¼¢ made to the jobber in whose territory that gasoline was sold. So the net proceeds to the Danciger Company was 4¾¢ instead of 5¢, the same as the low quoted in the Chicago Journal of Commerce.

There were 2 or 3 instances when the gasoline was
sold in a compartment car or a 6,000 gallon car. It
3455 was the practice of the Danciger Company to charge
a premium on third grade when it was sold in small quantities like that.

So all the sales at figures above the low come into three categories: first, sales of third grade gasoline; second, sales where a rebate was made, so that the Danciger Company really got a price that was comparable to the low of the Journal; and, third, sales made in a special small type of car, a compartment car. The Danciger Company sold at ⅛¢ premium above the low when they sold it that way. I don't think we found any transactions that should be classified as above the low, unless one makes an exception to those in compartment cars. Those were the only ones that I would say could be properly classified, but it was explained by the Danciger policies to make that extra charge.

At the request of Government counsel I have made a study of purchases of gasoline from independent refiners by the Globe Companies. I have compared the prices at which such gasoline was purchased from the independent refiners with the prices at which the Globe Companies resold the same gasoline to jobbers. I found that practically all this gasoline which was purchased from independent
refiners was either sent to storage or sold at a loss.
3456 Beginning in March, 1935, the purchases were from
Omar Refining Company. I have them listed here, showing the price they paid and the price they received when they sold it. On March 6th there was a purchase: total price, $344, that was paid, and sold for $335, a loss of $8.76. It was the same gasoline, sold in the same car. The invoice dates were, I think, usually one day later than the purchase invoice, but the gasoline was, of course, never received by the Globe Company. It was sent directly from the independent refiner from which it was purchased to the jobber to which it was sold.

The Globe Companies are defendants in this case. They are refiners. I have invoices indicating that they purchased gasoline during 1935 from independent refiners. I also have invoices showing they sold the same gasoline to jobbers. I can compare the invoices of the Globe Companies on the purchases with the invoices showing the sales of the same gasoline. The sales and purchase invoices are right there. When I compare all the documents I have, I can show the Globe Companies bought gasoline from a particular refiner on a particular day. And I can trace that gasoline, and show that gasoline was shipped from that independent refiner to a particular jobber, a customer of the Globe Company. I can find out how much the Globe Company paid for the gasoline, 3457 and how much they received for the gasoline, and that is what I have done. I have the actual numbers of the tank cars, the numbers listed on the invoices, and where it was shipped from.

On the same date, March 6, 1935, they bought another car, paying $344.97. They sold that for $350.05. There was a profit of $5.08.

Another purchase on the same day was bought at $345.57, and sold for the same price at the same date. There was no profit to cover overhead. The actual dollars and cents they paid was equal to the actual dollars and cents they received.

Also there were 22 cars purchased on various dates from March 6th through March 16, which were sold at a loss. Of those 22 cars, 17 were at a loss of about $10.20 a car; 3 at a loss of about 61¢ a car; and 2 at a loss of about $13.60 a car. 2 cars purchased during that time were sold at a profit of about $10.20 a car; 2 at a profit of about $20.30 a car; and 1 at a profit of $50.47. One car purchased was sent to storage.

The same situation continued in April. They bought from Omar in April, and sold most of them at a loss.

They bought from Omar in May and sold practically all of them at a loss. There were 15 purchases from Vickers in May. All of those purchases were sold at a loss. That is the difference between the sales invoice and the purchase orders.

3458 In June they purchased several cars from Simms Oil Company and sold those at a loss. This was all the three Globe companies. I have got all these together.

There were 8 cars purchased from Simms Oil Company in June, and 7 of them were sold at a loss and 1 sold at the same price. There was 1 in June, purchased from Omar, sold at a loss.

In July they purchased 5 cars from H. H. Cross Company. 2 of them sold at a loss, 1 at a profit, 1 went to storage, and 1 was sold at the same price which they paid.

In August they purchased from East Texas Refining Company 15 cars, 11 of which were sold at a loss and the remainder at the same price which they paid.

In September they purchased 5 cars from Dale W. Moore Company, selling 2 at a profit, 2 at the same price, and 1 at a loss.

In November there were 10 cars purchased from Premier Oil Refining Company of Texas, and they were all sold at a loss. Nearly all the remaining cars were sent to storage. In April, 1936 there were 3 cars purchased from Olney, sold at a loss of approximately $26 a car, and the remainder of the cars were sent to storage.

I have studied every purchase that was made by the Globe companies from independent refiners during 3459 1935 and down to April 30, 1936. I haven't summarized these by numbers, but I believe that at least 75% of them were sold at a loss. A large part of the remaining 25% went to storage. I couldn't trace the resale of it at all.

The Globe plant at Blackwell, Oklahoma, was closed for the first 4 months in 1935, until some time in May. They were also closed in February and March, 1936. The McPherson plant, however, I think, was open all of that time and operating. The Lemont plant was operating during that period. All the Globe refineries were operating during a part of May and during all of the remainder of 1935, and in January, 1936, and also in April, 1936.

The Court: Q. Do you know what average profit was made by major companies selling gasoline, during that period, on each car?

A. No; as a general thing—they consume the gasoline themselves, and didn't resell it in the same form that it was purchased.

Q. Do you know what the average profit was on cars that were sold during that time?

A. No, I wouldn't be able to state that. This was the only company that sold practically all of their gasoline as they bought it.

Mr. Chaffetz: Q. This was the only company 3460 where you could trace the sales against the purchases; is that what you mean?

A. There were some other companies where they did that on a few invoices, but a very small number. This is the only one I made any particular study of.

Q. This is the only company where you could make a general survey?

A. Yes.

The Court: Q. From all of your study and investigation you made in this matter, do you know how much of a profit they usually made on a sale—

A. No, I haven't any idea.

Q. A carload sale?

A. I haven't the slightest idea.

I have made a study of the invoices and purchase orders of Sinclair Refining Company which are in the files of the Clerk of this Court. Those are their invoices and purchase orders relating to purchases by Sinclair from independent refiners in the Mid-Continent field and in East Texas.

I didn't find any evidence of any purchase by Sinclair Refining Company in East Texas in either January or February, 1935. Their first purchases in East Texas were in March, 1935.

In the Mid-Continent—I am referring to the
3461 Chicago Journal of Commerce—approximately 95%
of the total purchases were at the low or above the low; and in the East Texas field approximately 74% were purchased at the low of Platt's quotations for East Texas, and none above the low.

I have made a study of data obtained from the records of the Federal Tender Board in East Texas. This tabulation I have pertains to all refined gasoline that was shipped out of the East Texas field between March 1, 1935 and March 3, 1936.

All refined gasoline that was shipped was shipped under Federal Tender. These were taken from the Federal Tender Board's records, which in turn were compiled from the railroad shipping records. I have the data in Madison from which I made my computation.

According to my computations, those shipments were from 34 independent refiners located in the East Texas area, and they were classified as to certain major companies, and then all others. That covers the period, March 1, 1935 to March 3, 1936. The total cars recorded were 24,052 cars, included in this group.

(Tabulation referred to marked Exhibit 1032 for identification.)

(The witness then recited the total figures and the percentage figures, appearing at the end of Exhibit 1032, with respect to each major company named on said exhibit.)

3462 Mr. Chaffetz: I want to offer that in evidence.

Mr. Donovan: Now, I object to any total there, your Honor, as to including Texas, Gulf and Louisiana Oil, not present defendants.

Mr. Chaffetz: If your Honor please, the defendants offered a lot of exhibits excluding Gulf, Louisiana Oil, Tide Water and others, although we think the evidence shows those companies were included; and I think we are entitled to present our case in our own way, in the same way that they were entitled to present their defense in their own way.

The Court: Objection overruled. Exception allowed.

Mr. Donovan: Your Honor, I would like to point out that there is a directed verdict as to Texas, Gulf and Louisiana Oil; and therefore this evidence is inadmissible with respect to those companies, as against these defendants.

The Court: I have already ruled on it. Objection overruled. Exception allowed.

(Tabulation previously so marked for identification is received in evidence as EXHIBIT 1032.)

I have also made a computation of purchases of third grade gasoline in tank cars by Sinclair Refining Company from independent refiners in the East Texas field during the period, March 1, 1935 to April 30, 1936. 3463

(Tabulation produced by counsel is marked Exhibit 1033 for identification.)

This exhibit was taken from all the Sinclair invoices and purchase orders which are in the files of the Clerk of this Court. This exhibit is based on all those documents. This exhibit shows, as to the total purchases from March 1, 1935 down to April 30, 1936, 4263 cars.

(Tabulation referred to is received in evidence as EXHIBIT 1033.)

Cross-Examination by Mr. Donovan.

I said I made a test examination of certain records with regard to the Danciger Company. In most instances the sales records were accompanied by an octane test. In one case the octane test showed 62 plus, in another case 63, and in the remaining cases it was 62, if it was shown at all.

I examined E. Hansen Oil Company, date of shipment August 8, 1935. The octane test showed 62 as the actual octane.

I examined Simonson Cash Supply Company, August 8, 1935, and the actual octane rating there showed 62.

I examined Nels Simonson, St. Paul, Minnesota,
3464 August 10, 1935, and the actual octane test shown
there was 62.

I examined Cline Oil Company, and the actual octane test showed 62.

I examined another one of Cline Oil Company on August 28, 1935. The actual test there was 62.

As to Central Oil & Grease Company, Rock Island, Illinois, the test there was 62.

Val Simonson on August 30th was 62.

Johnston Oil Company, of Johnston, North Dakota, on August 30th was 62.

I examined Midland Products Company, Fargo, October 8. That shipment was from Gilliland Refining Company, and I don't believe they had an octane laboratory report on that.

I examined The American Petroleum Company on October 18th. That actual octane test was 62.

Cline Oil Company was 62.

Diamond Products Company on October 22d was 62.

Neil Simonson on October 23d was 62.

Able Oil Company on November 4th was 62.

There were 2 that were more than 62. One was Co-op Gas & Oil Company on October 31st; that was 62 plus. Ireland's Lumber Yard on November 11; that rated 63.

The rest of them were either rated 62, or I didn't have
3465 the report. The majority of them were rated, how-
ever, as 62. And the rest had no octane rating excepting one which was 63 and the other 62 plus. The rest were 62, or they didn't have an octane rating accompanying them.

I am not familiar with whether paragraph 14 in this indictment defines third grade gasoline as gasoline having an octane rating of less than 65. I was under the impression that it was 62 and below. I don't think they could be possibly classified as third grade gasoline, when the company was selling third grade gasoline on the very same day at a price ¼¢ below these sales. It is correct that 62 octane third grade gasoline is quoted in the Chicago Journal of Commerce.

The Danciger Company sells a third grade gasoline. They obtain their price from the Chicago Journal of Commerce. They quote the third grade quotation from the Chicago Journal of Commerce for third grade gasoline. They also sell what they call a 62-65 "Road Runner" gasoline, which they contend to be a better gasoline, and they charge ¼¢ more for it.

There are indications here that on the same day the same man bought 2 cars of gasoline, one third grade and the other 62-65. He pays ¼¢ more for the 62-65 than for what they call third grade.

The majority of these items had an actual octane test of 62, and 62 and below is third grade. This 62-65
3466 is middle grade, at least so Danciger calls it. Danciger sells two grades. They sell what they call a third grade, which I presume is 62 octane and below. I don't know what the definition of it is. 62-65 is their middle grade, and they sell another grade.

Q. Now, I show you the Tulsa edition of Platt's Oilgram, and direct your attention to the bottom of the page, there (indicating) under "United States." What is that?

A. (Reading:) "Oklahoma Refinery Market, Tulsa"?

Q. Now, will you just read that aloud?

A. (Reading:) "62 octane—U. S. Motor gasoline, 62 octane and below, third grade, 4¾¢ to 4⅞¢."

Q. Yes. Now, I understood you to testify that the actual octane rating of these various items to which I called your attention, in all but two cases, was 62 octane; is that correct?

A. That is correct.

I do not know what the actual octane rating was in those cases of third grade sold at a lower price. I don't believe they furnish a laboratory report on those. I don't recall seeing them. I don't know, for example, whether or not it was 57. The invoice on the one rated at 63, that I
3467 mentioned (witness examined memoranda) was described at 60-62, 400 endpoint, 62 plus octane, under 80 initial, "Road Runner."

I think the files will reflect that the rebate I spoke of was given because the sale was made in someone else's territory. It was made direct from the refinery, and in most instances the sale was to the Independent Service

Station at Groton, South Dakota. That was in the territory of the House of Gurney, so the House of Gurney got this ¼¢ on each car. I presume it would be a contract with the House of Gurney. I don't think they would—it must have been a contract. The purchaser didn't get the rebate. It was the House of Gurney. I imagine it got the rebate because it was sold in his territory; it was his sale; he was entitled to ¼¢, I presume, on every gallon of gasoline sold in his territory. So far as the purchaser was concerned, he paid the price. It was then correctly reported on the chart, so far as the purchaser is concerned.

Referring to Globe, I have the invoice here, Invoice number L 3818, Union Oil Company, Kansas City, Missouri, shipped to Farmers Cooperative, 3-18-35. "Your order number: Contract," is what it refers to. It says "Contract." I did not look into the question of whether these resale losses were caused by provisions of marginal contracts with jobbers. I just listed the sales invoice
3468 and the purchase invoice side by side. I don't know whether or not these resale losses were caused by provisions of marginal contracts with jobbers. I don't know what the reason was for them. I don't recall what the jobber contracts were for Globe at this time. I don't recall a provision in the contracts that Globe had with jobbers or cooperatives, where it had to deliver gasoline at a price lower than the trade paper quotations. I know if Globe didn't have the gasoline, they would have to buy it, and if they had such contracts, I would presume they would have to fulfill those contracts. I can't say as to the provisions of the contracts at this time. I didn't study them in connection with this.

Redirect Examination by Mr. Chaffetz.

Coming back to the Danciger situation, if one buys third grade gasoline, which is known as 62 or below gasoline, the seller can ship any octane rating below 62. He can ship 55, he can ship 57, or he can ship 50, I would think. It is "62 and below". I guess he could ship anything below. If what the man promised to send was something up to 62, if he sent anything up to 62, I would think it would come within what he promised to send. But if he agrees to sell something from 62 to 65, I would think he has got to send a minimum of 62. It would seem to me the specifica-
3469 tions would be a whole lot more strict with 62-65 than with 62 and below, and from my examination of the Danciger records, I know that is the way they carry on their

business practically 100%. I know from the records that this gasoline that we are talking about was sold as 62-65 gasoline. It was sold as middle grade gasoline, and the price that was made between the buyer and the seller was made on the basis of the fact that they were selling middle bracket, and not third grade gasoline. He could have bought third grade gasoline on the same day at ¼¢ below the price he paid for that. But 62 octane has been defined as third grade gasoline.

Those other transactions that were, according to this chart, Exhibit 868, made above the low, were peculiar transactions, and the price that Danciger received for its gasoline was exactly the low of the published prices, and not above them.

Recross Examination by Mr. Donovan.

I have the tabulation, Exhibit 1032, with me. Cities Service Company is the way the record reflected it. Possibly that is an abbreviation for Cities Service Export.

Gulf is 2,450, or 10.2%; Texas is 900 cars, 3.7%; Louisiana Oil is 1015 cars, 4.2%; Cities Service is 320 cars, 1.3%. That is a total of 4,685 or 19.85%. The other percentage with Texas and Gulf included was about 44%. It was 3470 originally 43.3%. With the 19% deducted it is 23.8%.

In my computation on the chart, Exhibit 1032, I included independent refiners that are not named as alleged co-conspirators in this indictment. I do not think all those are named. I took all the refiners I had, and I did not check them against the indictment. These are the refiners that were operating.

I included in this list all independent refiners that were shipping refined gasoline during this period that were located in the East Texas field. I did not check to find out whether or not those I did include were named in the indictment. I recognized some of the names, but I did not make any check. I did not distinguish between those that are included in the indictment and those that are not. If I took only those named in the indictment, and included only those, and subtracted from those my percentage would be lower. There is no question about that. How much lower I cannot say.

Q. Now, in making your audit of the major purchases did you classify 62 octane guaranteed material as third grade?

A. As I recall, all those invoices to major com-

panies, and all those invoices too for that matter that I considered third grade, described the gasoline as 60-62 400 endpoint, or in some cases they have de-
3471 scribed it as U. S. Motor.

Q. I am talking now about purchases in the Mid-Continent field. Did you classify 62 octane guaranteed material as third grade?

A. I don't remember that I had any that was classified in that manner.

Q. You don't remember that?

A. That it was 62 or below. I classified them as third grade gasoline.

Q. Now, I am asking you how you would classify 62 octane guaranteed?

A. I don't remember that I had any of those.

Redirect Examination by Mr. Chaffetz.

I do not recall that there was a single instance of that.

Cross-Examination by Mr. Wood.

I testified that my study of the Sinclair purchase orders developed that 95% of those purchases in the Mid-Continent field were at or above the low of the Journal of Commerce. That is for the period of 14 months from March 1, 1935 to April 30, 1936. That includes all purchases, whether made on the spot market, under contract, on the basis of publication prices, so much below publication prices, or what not.
3472 I think I referred to the Chicago Journal of Commerce, Group 3, as the journal publication with which I made that comparison. I believe the figures were practically the same in Platt's Oilgram for group 3, for Oklahoma.

That would mean that on the basis of my study 5% of the purchases were made below the low. I think that would be so. About 90% were made at the low. I think 5% above the low and 5% below the low would be approximately correct figures.

That includes all the purchases made within the Mid-Continent field by Sinclair in Louisiana, Arkansas, Oklahoma and Texas,—I think just those three states. There may have been some in Kansas. I found a considerable quantity of gasoline during that period bought from Root Refining Company at Eldorado, Arkansas. The purchase orders show that gasoline was bought at a flat price. In most instances they were the same as the Chicago Journal of Commerce for Group 3. There were some instances where it was higher.

Every car that was bought at Root Refining Company was bought f. o. b. Eldorado at a group 3 price quoted in the Journal. I think that every car went to some point in Louisiana or Arkansas, and I imagine that the freight from Eldorado would be less than if it had been bought
f. o. b. group 3. But I have not made any such calcu-
3473 lation. I cannot say that every car that was bought
from Root Refining Company instead of being bought
at the low was bought below the low.

If the purchaser saved the freight the net result would be the same as if he bought it on the Chicago Journal of Commerce.

Q. So if you look at the matter of the freight rate, every car bought from Root Refining Company was purchased below the low on the market with which it was compared?

A. I do not agree with you, because some were purchased at a figure in excess of the low of the Chicago Journal of Commerce on the day the purchase was made.

Q. But you just told me they were purchased on Chicago Journal of Commerce group 3.

A. I thought you meant on that basis.

Some of Sinclair's purchases from Root Refining Company were purchased in excess of the Chicago Journal of Commerce on the day the purchase was made. A great majority were purchased at the same quotation as published in the Chicago Journal of Commerce.

Whenever the purchases f. o. b. Eldorado were on the basis of the publication price of group 3, the net cost to the purchaser was less than if he bought it in group 3; if there
is a saving on freight rate it would be less. The total
3474 cost to Sinclair Refining Company for delivering that
gasoline to the purchaser was what it paid to the
refiner, plus the freight, plus a lot of other incidents, I presume, at least those two items. If there is a saving in freight, the net result was a lower price. I did not take any freight rates into consideration.

The Journal of Commerce and Platt's Oilgram publish the prices in the Arkansas market, or Platt's does. I did not make a comparison as to whether the prices paid by Sinclair to Root Refining Company were in every instance less than the journal prices in the Arkansas market. I know from my knowledge of the relationship of these markets that that market is higher.

If I had compared the purchases against a quotation that was higher than the one used, they would have been lower than the quotation. If I had compared the prices paid on the purchases at Eldorado, Arkansas, with the Arkansas market as reported in Platt's, I think I possibly would have found all those purchases were below the low, or a good percentage of them anyhow.

I think possibly a couple of hundred of the cars going to make up this 5% above the low were purchased from Root. At least half of the cars that go to make up the 5% that I say were purchased above the low were purchased from Root. I have 249 cars above the low. 167 of
3475 those were purchased from Root. If I exclude those, the number of cars purchased above the low would be approximately less than 2½% of the total.

I do not have the figure here as to how many of Root's cars were at the low. I just have those that were above the low. I do not have the figure as to how many cars altogether were at the low. I took that total figure that you had in your exhibit, all I had, 5200, or some such figure. I made no separate computation. I just have those which I found above the low.

I imagine it is reasonable to say that about one-third of all the purchases by Sinclair in the Mid-Continent field were from Root. If I take those freight savings into account practically all of those on that basis would be below the low of the Journal as against purchases there f. o. b. group 3, as far as net cost to the purchaser is concerned. If I threw those into the column below the low I would greatly increase the number below the low.

In East Texas 74% were at the low and none above. That means that 26% of Sinclair's purchases in East Texas during that period were below the low. I haven't the data before me from which I could tell you what that relationship of prices was during the period of the price rise, namely, March, April and May, 1935. I took it as a whole. It would take a little time to work it out. I don't
3476 have the information to be able to say whether it is a fact that substantially all of Sinclair's purchases in East Texas during the period of the price rise, namely, March, April and May, 1935, were below the low.

Redirect Examination by Mr. Chaffetz.

Q. I think Colonel Donovan asked you whether, in respect to your East Texas Tender Board figures, if you had taken only the independent refiners named in the indictment, the percentage of purchases by majors would be the smaller; I understood you to say "yes". Did you mean to give that answer?

A. I mean to say that the number of cars would be smaller. The percentage may have been smaller, or may have been the same, or may have been greater.

Q. You don't know?

A. I don't know what it was.

Recross Examination by Mr. Donovan.

On those shipments from East Texas, I took into account, in making my computations in Exhibit 1032, all of the shipments, the interstate shipments and also the intrastate shipments. It was based upon the Federal Tender 3477 Board records which were compiled from the railroad records. It includes all cars.

Redirect Examination by Mr. Chaffetz.

It includes all cars shipped by any one of these independent refiners. They may have been shipped to a point within Texas, or may possibly have been shipped to a point within the East Texas field, for that matter. It would include all shipments except truck shipments. These were tank car shipments, of course. I included in that all shipments within the state as well as without.

3478 **VIRGIL B. EDWARDS**, a witness for the Government, on rebuttal testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Minneapolis, Minnesota. I am connected with Danciger Refining Company and have been since 1933. I am in charge of sales out of the Minneapolis office. That office covers Minnesota, a part of North and South Dakota, and part of Wisconsin.

I heard the testimony that Mr. W. J. Miller gave a few minutes ago. I am familiar with the quality of gasoline that the Danciger Company sells. I sell third grade gasoline. I was selling during 1935 and 1936.

During 1935 and 1936 I sold a grade of gasoline that I designated as 62-65 octane gasoline. We usually sold our third grade gasoline based on the low of the Chicago Journal of Commerce.

Q. Do you mean you sold it to anybody on the basis of the low of the Chicago Journal of Commerce, date of shipment, or did you sell it at a flat price which would correspond to the low of the Chicago Journal of Commerce?

A. Most generally it was a sale at a flat price which would correspond with the Journal.

3479 That was the third grade classification in the Chicago Journal of Commerce, unless it was future shipment, and in that case it would be the quotation on the date of shipment.

During 1935 and 1936, gasoline of 62-65 octane was sold at ⅛¢ or ¼¢ above the low of U. S. Motor shown in the Journal of Commerce. This gasoline that we sell as 62-65 sometimes tested exactly 62. When we sell it, we sell it as 62-65. The customer doesn't know whether he is going to get 62, 63, 64 or 65. We feel we have discharged our obligation to him if we give him at least 62, but we never give him less than 62. Not based on those orders.

When we sold third grade gasoline we wouldn't specify any octane rating, as a general rule. The octane rating of third grade gasoline might run 55, 57, or up to 60, but we generally sell it as straight run gasoline, and not as anti-knock gasoline. When we sell third grade gasoline we don't guarantee any specification in respect to octane. We might infer that it might have a pretty good octane. That is from a sales standpoint. We might tell the customer it was 57 octane, but we wouldn't guarantee that.

I imagine I have on the same day sold to the same customer a certain quantity of third grade and a certain quantity of 62-65 gasoline. I don't have the records in front 3480 of me. If I did the 62-65 and 60-62, 400 end-point would be at a different price. When I say 60-62, 400 endpoint, by that I mean 62 gravity, 400 endpoint. I consider that third grade.

When our company sells in compartment cars rather than ordinary tank cars, or on any special specifications, it generally asks us to get ⅛¢ better price. The credit standing of our customer might have some bearing on whether or not he buys at the same price as other customers or whether he pays a higher price. Sometimes, if the man's credit is risky and we have to take a credit risk, it might be possible that we might charge him a little bit more than we would another customer. I don't recall any specific case where we did, but that would be possible.

Cross-Examination by Mr. Donovan.

The credit standing wouldn't change the type of gasoline or the quality of the gasoline.

Q. Now, if your gasoline which you sold had an actual octane rating, as shown by tests, of 62, and the Chicago Journal of Commerce and Platt's Oilgram called 62 and below third grade, then that gasoline would be third grade according to those two papers, wouldn't it?

A. It all—yes, it would be. It would all depend
3481 on who is buying it or who is selling it, as to how they wanted to classify it.

Q. On what the actual test was?

A. Yes, it would be 62 octane, and it could be called 62-65, or as only "62 and below." It could be called third grade, according to the Journal.

3482 THOMAS R. VAUGHN, a witness for the Government, on rebuttal testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Chicago. I am in the wholesale marketing business. I buy and sell gasoline in tank car lots. I was in that business in 1935 and 1936 in Chicago.

I don't think I could classify the types of refineries from which I purchase my gasoline. I have bought from major oil companies at times, but I buy mostly from independent refiners. That was true in 1935 and 1936.

I sell my gasoline to anybody who will buy it. Most of my business is with independent jobbers, but with some sales to other refiners, to other marketers, and sometimes to industries that buy in tank car lots.

Q. Now, do you recall any transaction between you and the Globe Oil & Refining Company in the Fall of 1935?

A. Well, I have sold Globe some gasoline on one or two occasions, maybe two or three occasions. I have bought gasoline from them on a few occasions.

Without something to guide me, I can't pin it down to the fall of 1935, because I don't recall exact dates.

3483 Q. Do you remember whether in the month of September, 1935, you sold some gasoline to the Globe Oil & Refining Company?

A. I am not in a position to say in September of 1935. I don't remember the dates, and have nothing with me to refresh my memory on that.

(Documents produced by counsel are marked, respectively, Exhibits 1034 and 1035 for identification.)

Exhibit 1035 for identification is a sales acknowledgment from me to the Globe Oil Company, acknowledging a purchase of 20 cars of U. S. Motor Gasoline on September 18, 1935.

Exhibit 1034 for identification is Globe's purchase order on the same date, and for the same number of cars.

These documents refresh my recollection as to the transaction that you have inquired about. That transaction was a sale that I made to them at a time when they were wanting to buy some gasoline, and I happened to be able to get some and sold it to them. That is not all there was to the transaction. Mr. Brown Meece contacted me. Mr. Meece is an employee of Globe in their Chicago office. I don't know his title. I think he is the sales manager in the Chicago Division.

3484 He contacted me, and told me that they were wanting to buy some gasoline, and asked me what I could supply. I told him that I could sell him some gasoline. He wanted to know how much, and I told him that I had quite a quantity of gasoline that I had bought, to be taken over a period. I don't think that I told him definitely, maybe I did—I happen to know that I had, a few days prior to that, bought 50 cars of gasoline that was to be shipped as instructed over the balance of the month. It is possible that I mentioned the 50 cars.

Anyway, he wanted to buy all that I had. I refused because I had regular commitments coming in from customers, and I figured that if I should sell all that I had there, I would find myself out of gasoline. Some of it had been sold as I had bought it, to be shipped as instructed over the rest of the month, at a flat price, based on my cost price plus a satisfactory profit.

Eventually we agreed on 20 cars, and he asked me to come up to his office, which I did. During the time that I

was there, he again tried to get me to sell him all that I
had, and told me that he wasn't going to buy part of my
gasoline and leave some of it in my hands to go out
3485 and ruin the market with. But I was firm in not selling
more than the 20 cars that I offered to sell.

He asked his secretary to get some one, I can't tell you the name, but he said, "With the Shell Company." I don't know whether in the St. Louis office or in the Chicago office. But there was some little time in getting the connection, and I presume that it was some one in the St. Louis office. I don't know whether it was a long distance call. He told his secretary to get this party in the Shell office. I heard him say "The Shell office." I don't recall the name, but I think it was something like Loudi, or Lowery. Those names suggest themselves to me, but I can't be positive.

They had a telephone conversation, in which Meece told him that I had quite a little motor gasoline, and that I had agreed to let him have 20 cars. Apparently, from only one end of the telephone conversation, they insisted that he buy all that I had. So he told him that I wouldn't sell but 20 cars. And so, during the conversation, he said, "I think that we should buy these 20 cars, because Fanshier has promised us that if we will clean up what is in the hands of the brokers, they will raise the Journal quotation back up."

Q. Who was Fanshier, did you know?

3486 A. Fanshier is editor of the Petroleum column
in the Chicago Journal of Commerce.

Mr. Lewin: And quotes the prices.

Mr. Chaffetz: Q. And to your knowledge, is he the one who is responsible for the prices published by the Chicago Journal of Commerce? Is that right?

A. Yes, it is my understanding that this is his responsibility.

Mr. Francis: Move to strike out all of that testimony, your Honor, as being entirely hearsay and opinion evidence as to any of these defendants on trial—especially as to all defendants outside of the particular one involved.

The Court: Overruled. Exception allowed.

Mr. Chaffetz: Q. It is the tank car quotations that I have in mind, when I asked you whether he is responsible for the prices published in the Chicago Journal of Commerce. Is that your understanding?

A. Well, the tank car prices are the only ones that I am familiar with, and that is what I understood.

Q. The spot market?

A. Yes, that is what I was testifying about.

3487 Q. The spot market tank car prices?

A. Yes.

That, I think, concludes that conversation. I don't remember how soon it stopped, but that is all that I recall of it.

The purchase was made, and shipments were to be made at the rate of 2 cars per day, excluding Sundays. Instead of shipping the merchandise that I had bought long over the month, I found out where I could buy 20 cars on that particular day, and with the same instructions that I had received. I bought 20 cars, then, in addition to what I owned, and applied the instructions against this new purchase of 20 cars bought from Central States Oil Company, I believe is the name,—it is the Imperial Refining Company—to be shipped out of Wickett, Texas. I placed the instructions.

They didn't ship absolutely 2 cars a day, as they were instructed to. They would ship 1 car, and then possibly they would ship 3 cars the next day. It averaged out at about that rate.

This purchase was made on September 18th, 1935, and on the 26th I got the invoices for the first shipments that were made. Up to this time, I don't think that anybody knew where the gasoline was coming from. But when they received the invoices, naturally they did.

3488 The Globe Company found out for the first time on September 26th, when they got the invoice, where the gasoline was coming from. 11 cars had been shipped up to that time, and they cancelled the balance of the instructions for the reason, as they put it in their excuse for cancelling, that they were not shipping as per schedule. They refused to take the balance of the 20 cars, although originally they had tried to buy from me all I had.

The Chicago Journal of Commerce quotation did go up September 19th. This transaction with Brown Meece of the Globe Company was on September 18th. The low of the Chicago Journal of Commerce was 4⅝¢ on the 18th. Then it went up to 4¾¢ on September 19th. I took that from my files of the original prices of the Chicago Journal.

Mr. Chaffetz: I offer Exhibits 1034 and 1035 in evidence.

The Court: They may be received.

Mr. Francis: Over our objection, your Honor?

The Court: Is there any objection?

Mr. Francis: The objection we have heretofore made, that this is immaterial, irrelevant, incompetent, not proper rebuttal testimony, and it is hear-
3489 say as to all the defendants except the particular one involved.

The Court: Objection overruled. Exception allowed.

(Documents referred to are received in evidence as EXHIBITS 1034 and 1035, respectively.)

Cross-Examination by Mr. Thomas.

I operate under my own name, "T. R. Vaughn Oils." I have no connection whatsoever with any major oil company that is on trial here in this case. I am absolutely operating independently.

I can't answer whether there was any change in the high of the quotation of the Journal of Commerce on September 18, 1935, because, candidly, I don't know when I have ever looked at anything other than the low quotation in the Journal. I don't know whether there was any change in the high on the 19th, the day following this transaction.

When I sold this gasoline nothing was said about what refinery it was to be shipped from. I might have notified them after I had made the purchase, but I made a new purchase to cover this 20 cars. I don't think I notified them when I made the new purchase as to what refinery this gasoline was to be shipped from. It would be irregular. When it was shipped, the invoice showed where it was
3490 shipped from. The bill of lading would show that it was shipped from Imperial Refining Company, located at Wickett, Texas.

(The witness reads into the record the first three sentences of the "Conditions" set forth in Exhibit 1034.)

I am sure that Exhibit 1036 is a copy of a letter that I received. I think Exhibit 1038 is a copy of a letter that I received.

(Documents referred to received in evidence as EXHIBITS 1036, 1038 and 1040 respectively, and Exhibits 1036 and 1038 are read to the jury by Mr. Thomas.)

I am not sure that the party called for the telephone conversation which I say I heard was named "Lowry," or "Howry."

Q. Are you sure that it was the Shell Company, somebody connected with the Shell Company, that was called, or the Bell Company?

A. I can only say that he told his secretary to get Mr. Somebody and I can't tell you whether it was "Lowry" or "Lowdy," or some name like that, but I am not positive—

Q. Finish it.

A. He said, "Get Mr. So and So with the Shell Company."

Q. Are you sure it was "Shell" or "Bell"?

A. I am sure it was Shell.

Q. That is your present recollection?

3491 A. Yes.

I heard that conversation that I have related here this afternoon two years ago last September. Naturally, a thing as unusual as part of it, I would remember it. I did not make y note of it in writing.

I first told Government counsel about that conversation when they came and questioned me about it. One of the investigators that came into my office asked for information in certain files and had information that I didn't know about on some other transaction that had gone through my office. I think that must have been about 18 months ago. That is my recollection. After that time, I had no conference with Government counsel with reference to this matter I have testified to today until I got a wire a week ago that my presence was desired, and I was called up here. Then I was asked about this and repeated it. This investigator that talked to me purported to represent the Government. Before Globe cancelled I had shipped 11 cars, from September 18th to the 26th.

Redirect Examination by Mr. Chaffetz.

The price went up on the 19th, but I don't think it had gone up again by the time the cancellation was sent to 3492 me. It went up on the 19th and stayed up, and was up all during that time down to the cancellation.

Recross Examination by Mr. Thomas.

Q. And nevertheless they cancelled?

A. Yes.

Cross-Examination by Mr. Francis.

It was quite some months after I heard the conversation in September, 1935, that some Government investigator came to see me. I can't give you even an approximate date. My best recollection is that it has been about 18 months ago since they came to my office. I had told somebody about this conversation, not Paul Hadlick, but John Cox. After I had told John Cox about it, the next thing I knew some Government investigator came and asked me about this conversation. I told him about it.

They didn't ask me to come down here until about a week ago. I was in Chicago in October and November, 1937, this last year, and was there when this case came to trial. I have the telegram if you want the exact date when they asked me to come. It was the last week or 10 days, the first part of January. They didn't ask me to come last September or October at all as a witness.

3493 *Redirect Examination by Mr. Chaffetz.*

The first time I ever spoke to you was when I came to Madison in reply to your telegram last week. I think it was Tuesday of last week.

Q. Did I show you any documents or make any effort to refresh your recollection as to that transaction?

A. No.

Q. Did I make any suggestion to you with reference to that transaction?

A. Questioned me.

Q. I only questioned you?

A. Yes, that is all.

Q. And anything you have told here today is what you told me of your own volition?

A. That is right.

3494 **ADOLPH HENRY SUS**, a witness for the Government, on rebuttal testified as follows:

Direct Examination by Mr. Chaffetz.

I live in Chicago. I am an employee of Sinclair Refining Company, and have been since July, 1920. I am manager of the central district. I have held that position for most of my employment with the company, except for minor changes of territory.

I recall a meeting on or about February 11, 1935, at which Mr. McDowell of Mid-Continent Petroleum Corporation, and others, were present.

Q. Did you make a report to your company of what transpired at that meeting?

A. I made a memorandum which characterized my impression of the import of the meeting, yes, sir.

There was a general stabilization meeting on that day at which there were probably 40 or 50 people present. Then there was also a smaller meeting at which there were some dozen or more people present. At the smaller meeting the following men were present: Mr. Ashton of Socony-Vacuum; Mr. Bullock of Standard of Indiana; Mr. Hughes of Phillips; Mr. Miskell of Cities Service; Mr. Sus of Sinclair, that is myself, Mr. van Eeghen of Shell; Mr.
3495 Karstedt representing Continental; Mr. McElroy representing Pure; I am hazy about whether or not Mr. Reeser, representing Barnsdall, was there; Mr. O'Shaughnessy of Globe; Mr. Atkins of Skelly; and Mr. Dippel of my company. He is manager of the western district of the company.

I recognize Exhibit 376 as a memorandum which I made which characterized the small meeting to which I referred.

Mr. Chaffetz: I offer Exhibit 376 in evidence.

Mr. Wood: May I inquire whether this Exhibit is being offered as evidence of what took place at the meeting?

Mr. Chaffetz: It is being offered as a statement by an agent of one of the co-conspirators as to something that transpired in the course of and in pursuance of the alleged conspiracy.

Mr. Wood: It is objected to as evidence of what took place at the meeting, objected to as not admissible on that ground since it does not yet appear that the witness has no recollection of what happened at the meeting independently of the memorandum, or that his recollection needs refreshing. If
3496 it is offered for any other purpose it is objected to as not being rebuttal.

Mr. Chaffetz: If your Honor please; it is an admission made in the course of the conspiracy, made by an agent of one of the co-conspirators, and like many other documents offered by the Government it is in rebuttal because it deals with a subject gone into by the defense in the defense of the case. Mr. McDowell testified to that meeting.

The Court: Objection overruled. Exception allowed.

Mr. Francis: It is certainly hearsay as to all the other defendants. It appears this antedates the alleged conspiracy, and has no connection with it, and it is clear it is not in pursuance to any conspiracy.

Mr. Lewin: We state in February, in the indictment.

The Court: Objection overruled.

Mr. Francis: Exception.

(Document referred to received in evidence as EXHIBIT 376 and read to the jury by Mr. Chaffetz.)

Cross-Examination by Mr. Wood.

I am here under subpoena issued by the Govern-
3497 ment. The subpoena asked me to appear first on October 11, 1937. Then from time to time I was advised that the date of my appearance might be postponed until some subsequent date. Then finally I was advised, not that I was excused from the subpoena, but that I needn't come until I was requested to come; I received a telegram to that effect.

This report that has been offered in evidence here is not a verbatim report of what took place at the meeting.

The committee that I was referring to in that letter was the Tank Car Stabilization Committee. Mr. McDowell was chairman of the Committee, Mr. Ashton was vice-chairman, Mr. O'Shaughnessy, Mr. van Eeghen, Mr. Kardstedt, Mr. Miskell, Mr. Hughes—I believe that constituted the Committee. I was not a member of that Committee. Some of the other gentlemen that I have testified were present upon that occasion also were not members of the Committee. I was invited by the Committee, or some member of it, to be present at this meeting that they were holding.

Referring to the second paragraph of the memorandum, Exhibit 376, the Committee did not in fact render a report in any formal sense at that meeting about anything. There was merely a discussion, that is, the Committee discussed the things it had in mind, and in connection with that
3498 it told of certain circumstances and certain plans:
Those are the things I have referred to as the report. There was no report in writing about anything, but a discussion of what the Committee had in mind, or statement of it, and a discussion which followed.

Mr. McDowell presided at the meeting. Mr. McDowell simply made a preliminary statement of the purpose for which the Committee had been appointed, namely, to afford relief to certain refiners, small independent refiners in the Mid-Continent field whose distress had been called to the attention of a general stabilization meeting on January 4th and 5th by Mr. Majewski and Mr. O'Shaughnessy who represented those independent refiners. Those gentlemen pictured the distress—

> Q. Now, without going further into that, passing what Mr. McDowell said in a preliminary way, the first or second paragraphs of your memorandum, after referring to the fact that Mr. McDowell presided, and so forth, refers to a report to the effect that "a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of
> 3499 Indiana territory. It was stated that this East Texas gasoline would move to the Gulf and then go to either the East coast or for export."
>
> Do you remember what was stated on that occasion in respect to East Texas gasoline, and by whom it was stated?
>
> A. Yes, sir, I do.

Mr. Ashton described the deliberations of the Committee; and with respect to that particular paragraph he stated that one of the disturbing influences in the Mid-Continent field aside from its own distress gasoline problem was this matter of gasoline from Texas coming over into the Mid-Continent field. Mr. Ashton said these things I am relating. I am reporting what Mr. Ashton stated at this meeting, and this is explanatory of that paragraph to which Mr. Wood refers.

Mr. Ashton stated that in Texas a lot of hot crude oil was being produced, and as a result of that production of hot crude oil there was naturally a lot of hot gasoline being produced, apparently much more gasoline than the Texas normal markets could absorb, with the result that that gasoline was running over into the Mid-Continent field and having a demoralizing effect and adding to the distress and the demoralization within the Mid-Continent field.

Mr. Ashton stated that now there was some hope, in fact, considerable hope, of being able to plan con-
3500 structively toward stabilization in the Mid-Continent
field by reason of the Connally Bill, which was in the process of making and was about to be passed and made effective. He said the Connally Bill would curtail the production of this hot crude oil, and with it this production of

hot gasoline which was the demoralizing and disturbing influence in the Mid-Continent field. Therefore, with the cessation of this hot crude oil and hot gasoline, the Texas normal markets would take care of the Texas production as it had done heretofore and the Mid-Continent field could be considered and dealt with from a local standpoint. That was Mr. Ashton's explanation of this second paragraph. That was what Mr. Ashton stated, on the basis of which I made this report.

There was considerable discussion as to a steering committee and the functions it would perform. One of the recommendations of this Tank Car Stabilization Committee was that there should be appointed a steering comtee. The function of this steering committee was to keep itself currently informed as to who had distress gasoline to sell, and who, on the other hand, wanted to buy gasoline, in order that there might be an agency which would bring the buyer and the seller together.

3501 This steering committee was also to keep itself informed as to the price at which gasoline was currently moving. They were to use such persuasion and such influence as lay at their command and to see to it that these major buying refiners did not take advantage of these smaller selling refiners, and, by reason of the economic distress of these smaller refiners, bid down the price to below the current levels at which gasoline was selling, because to do so would have defeated the very purpose of the meeting, which was to stabilize. This steering committee was to see to it that these major refiners played fair with these smaller refiners who were in economic distress, and didn't chisel under the going market on the price at which they bought this gasoline. The only reference that was made at the meeting to the price to be paid was that they wanted these refiners who bought gasoline from these refiners who had distress gasoline to pay the going market price and not chisel.

Nothing was said as to whether or not the purchase should be made by or through the Committee. The Committee was not to function in any buying capacity. The buying committee was simply to put the buyer and the seller together, and from that point on the buyer would make his own deal with the seller, because there were such matters as specifications, and freight rates, and quantities and so forth that would be involved.

3502 The Committee urged that these major companies, who were large buyers of gasoline, in fact—that they buy all that they could advantageously do so, from this little group of refiners who had this distress gasoline. By "advantageously do so", I mean to the extent that they could do so without penalty to themselves; to the extent that it would be advantageous for them to buy; to buy there as favorably as they could any place else. I mean to the extent it would advantageously move. That is what I say in my memorandum, "to the extent it would advantageously move". That was the proposal of the Committee. I say in my memorandum, "whose surplus of distress gasoline it could advantageously move", and by that I mean that this buying was predicated upon the ability of the refiners to use that gasoline.

No recommendation or suggestion was made that this steering committee should fix the price at which gasoline should be purchased by these companies. No recommendation or suggestion was made that the committee should recommend the price to be paid from time to time.

Redirect Examination by Mr. Chaffetz.

What I said in my memorandum was that "a steering committee would guide and control, periodically, the prices to be paid for this surplus gasoline by the major company to the small refinery". May I suggest, though, that
3503 to guide and control means to lead, and to influence, which was exactly the purpose for which this steering committee was to function; to see that these buying refiners did not pay the smaller refiners less than the going market price. But they were not to submit the figures.

Q. What I read you from the memorandum was true?

A. That was stated in the memorandum.

Q. On the subject of what the major company could advantageously move, you meant, of course, gasoline which they could use. You didn't intend that anybody would buy gasoline that they would have to dump overboard, did you?

A. No, sir.

Q. But you didn't mean to say that they buy only that gasoline which they would have bought otherwise, or would have bought anyway, did you?

A. Yes, yes sir, I did.

I meant to say that they were going to buy only gasoline which they normally would have needed and they would have bought regardless of any program.

Q. Then I ask you, why did you say this:

"It was estimated that this absorption of these

3504

> 600 cars per month by 14 of the major refiners would only be equivalent to curtailing their own crude runs 2%".

Why would they have to curtail their own runs? Why would they have to cut down their own production in order to buy this gasoline, if they were going to buy only what they were going to need anyway?

A. It was never suggested or never intended that these refiners would curtail their own runs. It was simply stated that these 600 tank cars per month of gasoline in the Mid-Continent was a relatively small amount of gasoline, by comparison with the amount that was currently manufactured and sold and consumed in the field, in the Mid-Continent field. And, to emphasize the feasibility of this plan and the small amount that it represented, it was stated that that only represented 2% of the amount of the refining capacity in the Mid-Continent field.

Q. Yes. Now, if they were saving that—if they were trying to compare it with their own output, they would have said that the amount involved corresponds to about 2% of the total output or the total capacity; but what you said was:

3505

> "It was estimated that the absorption of these 600 cars—the absorption of these 600 cars per month by 14 of the major refiners would only be equivalent to curtailing their own crude runs 2%."

I ask you why you used the term "curtailing their own crude runs," if you were comparing it with their production or their output or their capacity?

A. It was a comparison to indicate that it only represented 2% of their crude runs, and therefore should very easily be an amount which could be adjusted by a switching of their buying from present sources to these proposed sources.

Q. Yes. You had already, earlier in the report, two paragraphs before that, referred to the fact that it would be a small volume, because you said:

> "And in that way, by dividing up these 15 companies and these estimated 600 cars per month of distress gasoline, no great burden would fall upon anyone."

You had covered that in that paragraph, hadn't you? Then you went on to tell how the steering committee would function; and in the succeeding para- 3506 graph you talk about the estimate, in the language I have already read to you.

A. But you don't mention in there, Mr. Chaffetz, that part of that first paragraph you mentioned that stated that the Committee was only recommending that these companies take such gasoline as they could advantageously use.

Q. Well, I thought what they concluded was a willingness on the part of each one of them, each one of the majors, to select one of the independent refiners, as shown on the attached statement, and assume responsibility for their surplus. Isn't that what they concluded?

A. To the extent that they could advantageously do so, yes, sir.

Q. But that isn't what you said in here (indicating)?

A. I did say it, though, Mr. Chaffetz, in the middle of that first paragraph to which you referred—

Mr. Chaffetz: That is all.

A. (Continuing) —and it isn't quite proper to select a part of a sentence and separate it from the context of the rest of the report.

3507 Q. If they were only going to buy what they needed, that wouldn't have been any burden, no matter how much it was, would it?

A. No.

Q. No. So, if your discussion was that they would each buy only what they were going to need, you wouldn't have talked about a burden at all?

A. It would have been a burden to dislocate their present buying routine and direct it into other channels.

Q. It would have been a burden if they were going to have to do something that they weren't normally doing?

A. That is right.

Cross-Examination by Mr. Kirkland.

Mr. Bullock did not stay to the end of the meeting, he was there but a short time.

By Mr. Francis

I was not invited to come up to this meeting by the Committee. I don't recall who invited me to attend, but sometime during the course of that day I was told, asked, or told that there was to be a meeting, and I was asked by someone to attend that meeting.

I recall Mr. McElroy as being there. I don't know whether he was there as just an invited member to 3508 hear a discussion of the then present plan. I really don't know. I don't know the circumstances under which he was there.

Q. Are you in a position to state whether or not Mr. McElroy so far as he was concerned, that day made any commitment for The Pure Oil Company, or himself?

A. I didn't understand, Mr. Francis, that anybody made any commitment—

Q. That is what I was getting at.

A. (Continuing) —except to cooperate.

Mr. McElroy did not make any commitment for The Pure Oil Company as to what he would do with reference to that plan.

Redirect Examination by Mr. Chaffetz.

You are right in assuming that my district covers Ohio, Indiana, Illinois, Michigan and Wisconsin. I am the manager of that district.

Mr. Lewin: May it please the Court; I would like to have marked for identification a stipulation between counsel for the government and counsel for the defendants.

(Document referred to marked Exhibit 1043 for identification.)

3509 Mr. Lewin: This stipulation authenticates certain documents from the files of Shell Petroleum Corporation, being Exhibits for identification 190, 191, 192, 209, 230, 231, and 248, and those documents that I have just alluded to from the files of Shell Petroleum Corporation I now offer in evidence.

And I offer with them the Stipulation marked Exhibit 1043 for identification. The documents contain facts in rebuttal of certain evidence adduced here by the defendants during their case.

Mr. Thomas: If the Court please; the defendants object to the reception of the documents now offered, and to each of them separately, for the reason that they are inadmissible in evidence as to all of the defendants now on trial in the case, individual and corporate, in any event other than the Shell Corporation and the writer of the documents, and there is no evidence that such writing, whether it be a letter or other document, was so made by a person having knowledge of the facts purporting to be set forth in said writing and the facts therein purported to be stated are not corroborated by the testimony on oath of any person 3510 or any other competent evidence; that the writing itself is not proof of the fact or facts which it purports to record unless testified to by the writer thereof or some other competent witness, and its admission deprives the defendants of their constitutional rights to be confronted by the witnesses against them, together with the right of cross-examination; that such writing is inadmissible in evidence against the individual officers of Shell Company now under indictment and on trial in this action because not shown to have been made by an agent of such defendants, or any of them, or of any person with authority to act for them, and the evidence fails to show that such writing was made with the knowledge or consent or under the direction and supervision of any of said individual defendants, and for this same reason said writing is inadmissible in evidence against any individual or corporate defendant named in the indictment;

Because there is no evidence that this writing now so offered in evidence, was made in aid of or in furtherance of the conspiracy alleged in the indictment, or of any overt act in pursuance of such alleged conspiracy;

And because the same is incompetent and hearsay as to all of the defendants, individual and 3511 corporate, and particularly all defendants other than Shell Company and such of its officers as are now on trial, and cannot be received for the purpose of showing consent or agreement on the part of any individual or corporate defendant to the alleged conspiracy, and particularly those other than Shell Corporation, and proper rebuttal because of the fact that they had Jacobs, the writer of this letter, here on the stand testify here, and it is improper rebuttal at this time.

The Court: The objection is overruled. Exception allowed.

(Documents previously so marked for identification are received in evidence, respectively, as EXHIBITS 190, 191, 192, 209, 230, 231, 248 and 1043.)

Mr. Lewin: The Government offers the following documents in evidence, Exhibits 24, 27, 52, 135, 136, 320, 321, 329, 316, 317, 318, 319, 362, 265, 293, 93, 97, 121, 128, 460, 461, 462, 467, 471, 477, and the following stipulations, Exhibits 1044, 1045, 1046 and 1047.

Mr. Thomas: May I have the same objection to those Exhibits, except the stipulations, that I made with reference to the Shell documents that were previously offered?

The Court: You may have the same objection.

3512 Mr. Webster: As to Exhibits 316, 317, 318 and 319, in addition to the objection already made, I should like to make the further objection that these letters were written by a man named Audrain, as to whom the Court has granted a motion for a directed verdict; and also on the further ground that the record shows that these letters were written by Audrain as an employee of the Tide Water Oil Company of Oklahoma, against which there never has been any indictment, and which, of course, is no longer in existence.

The Court: All objections are overruled. They may be received. Exception allowed.

(Documents and stipulations previously so marked for identification are received in evidence as EXHIBITS 24, 27, 52, 135, 136, 320, 321, 329, 316, 317, 318, 319, 362, 265, 293, 93, 97, 121, 128, 460, 461, 462, 467, 471, 477, and 1044, 1045, 1046 and 1047, respectively.)

(Mr. Lewin read the "Tank Car Markets" section of Exhibit 190 and the "Gasoline" section of Exhibits 248 and Exhibits 121, 128, 93 and 97 to the jury.)

3513 BROWN L. MEECE, a witness for the defendants, on sur-rebuttal testified as follows:

Direct Examination by Mr. Horween.

I live in Chicago, Illinois. I am assistant sales-manager of The Globe Oil & Refining Company. I am in charge of sales in the Chicago office, subject to Mr. Woodruff, the general manager.

I have read the testimony given here yesterday by Mr. Vaughn concerning a purchase by The Globe Oil & Refining Company of 20 cars of gasoline from Mr. Vaughn's concern on September 18, 1935.

Our Blackwell plant was shut down, and we were buying gasoline. We had instructions from one of our contract customers for a shipment which we could not make. I learned from local brokers in Chicago that Mr. Vaughn had some gasoline. His office was on the 12th floor in the same building with us; our office is on the 21st floor. I dropped down to his office about 11 o'clock in the morning and asked him if he had some gasoline to sell. He replied that he had no gasoline except that which he needed for his regular trade and which he had already sold. But he said he thought he had an option on 20 cars, which he said he could sell for 4½¢, f. o. b. Group 3. I told him we needed the gasoline, and if it met U. S. Motor Specifications, we would buy it.

3514 I have looked up the record, and it shows that 4½¢ was ⅛¢ below the Journal, and ¼¢ below the low of Platt's Oilgram, Chicago market, at that time.

I returned to my office with the understanding that Mr. Vaughn would call me as soon as he could determine from the refiner whether or not his option still held good. I told him, in his office, that I would buy that gasoline. The status of the deal when I left Mr. Vaughn's office that morning was that he thought he could buy that gasoline, and if he could, he would submit it to me, and I would buy it, providing it met U. S. Motor specifications. I did not say anything to him about wanting to buy more gasoline from him than 20 cars.

I heard from him next sometime during the late afternoon, toward the close of the business day. He called me and told me that he had finally gotten in touch with the refiner, and could get the 20 cars, but he could not get them for immediate shipment as we had discussed. He said the only way he could get them was to ship at the rate of 2 cars per day.

I had 13 shipping instructions right there that we wanted to place. I have them in my hand here. I told him I would place instructions with him the following morning for 13 cars, which must be shipped at the rate of 2 cars per day, as promised. This was late in the
afternoon, and my recollection is that my secretary
3515 took then down to his office. I was in my office and
Mr. Vaughn was in his office.

When I made the deal with Mr. Vaughn, before writing up my purchase order, I insisted that he tell me who the gasoline was coming from, and he showed me the purchase order that the gasoline was shipped from Imperial refinery, from Wickett, Texas. So it would be absolutely false to say that I didn't know who it was coming from when the gasoline came in. My purchase order shows it.

(Witness then read part of purchase order, Exhibit 1034, wherein it states where the gasoline was coming from.)

Mr. Vaughn was not in my office at all on September 18th. I did not call Shell Petroleum Corporation in St. Louis on September 19th.

All long distance bills are approved in the office, and retained in our files at Wichita, Kansas. I called Mr. Everitt, the secretary of our company, at Wichita last night, and asked him whether or not we had called anyone in St. Louis on September 18th, or any day adjacent to that date. He called me on long distance, and stated that the record shows we had not called, and that he would file a wire to our attorney verifying that, and air mail the original bill to us.

I now have the original bill here, and the records prove
that we did not have any long distance calls to
3516 St. Louis on either that day or the day before or
after.

(Telegram referred to is received in evidence as EXHIBIT 1048 and read to the jury by Mr. Horween.)

(Documents consisting of telephone bills of Globe Oil and Refining Company and a letter from that company received in evidence as EXHIBIT 1054.)

Mr. Fanshier never on any occasion at any place told me what his price quotations would be for the day. I never told anybody over the telephone or otherwise that Mr. Fanshier had stated that his price quotations would be thus and so on the next day or at any time. I did not state over the telephone in the presence of Mr. Vaughn to somebody that Mr. Fanshier had stated that if I did certain things that would increase his price quotations in the Chicago Journal of Commerce the next day. That is absolutely false.

After I sent Mr. Vaughn the purchase order on the evening of the 18th, I don't think I talked with him either in person or by telephone again until September 26, 1935, which was the day I wrote the letter cancelling certain of these cars on the purchase order. In that letter, I didn't cancel the entire order. I called Mr. Vaughn's attention to the fact that in the shipments they had given us car numbers and dates which we found to be incorrect.

Our customers were out of gasoline, and we had to
3517 get gasoline to them, and consequently, we had to
cancel, I think, 5 shipping instructions, which we placed with our Wichita office for immediate shipment from our own refinery at McPherson. We found out that the car numbers, which Mr. Vaughn said had been shipped, had not been shipped from our traffic department. They had to make our diversions, so they gave our diversion instructions to the railroads, in accordance with railroad regulations, and then as the car was located our traffic department exchanged the bill of lading and gave the railroad new instructions, and traced the cars back to the originating carrier, and learned from it that the car had never been shipped.

The cars which Mr. Vaughn had reported to me as having been shipped on September 23rd, 24th, and 25th were not shipped until the 26th. I found that after my search, and that was the day we cancelled the instructions.

I called Mr. Vaughn about that and confirmed it by letter. I told him we were cancelling those instructions, and were shipping them from another source and would delete that amount of gasoline from our original purchase. Our customers were asking for shipment; they were out of gasoline in some cases.

Some of the customers to whom we were routing this
gasoline had to make immediate shipment. Because
3518 of our inability to deliver, we had to supply the gaso-
line from another source. Our customers were de-

manding that we pay them for loss incurred because they were out of gasoline.

Exhibit 1049 for identification is a teletype record of a teletype conversation between our Chicago office and our Wichita office, in which we placed instructions to cover those cars which we were forced to cancel with Mr. Vaughn because of non-shipment.

Exhibit 1051 for identification is from W. H. Barber Company, who act as our sales agent in this territory, through whom we shipped to Illinois Farm Supply Company. It is addressed to the Globe Oil & Refining Company, attention of Mr. Alexander.

Exhibit 1050 for identification is a letter from W. H. Barber Company, addressed to Globe Oil & Refining Company, dated October 4th.

(Documents, referred to are received in evidence as EXHIBITS 1049, 1050 and 1051.)

The Shelby-Effingham Service Company, mentioned in the letter of September 26th, as one of the companies to receive a car which would be cancelled if shipment were not made promptly, is the same company to whom one car of gasoline purchased from Mr. Vaughn was to be shipped.

(Mr. Horween read Exhibit 1050 to the jury.)

3519 *Cross-Examination by Mr. Chaffetz.*

I read Mr. Vaughn's testimony. I remember that he testified that he was in my office on September 18th, and the documents confirmed the fact that the transaction was on that day. He quoted me as saying that Fanshier said that if the gasoline in the hands of the brokers in Chicago was cleaned up, the Journal would raise its quotation. This transaction was concluded on the 18th, and on September 19th I believe the low of the Journal did go up ⅛¢.

There was nothing whatever unusual in this transaction as far as I was concerned. We needed the gasoline, bought it, and gave instructions.

We have a few of the same kind of transaction during the year when we buy. I won't say hundreds, but there were some going on from time to time.

This was September, 1935. How do I recall it so distinctly? I referred to our records. We had so much trouble on this purchase, and we were forced to cancel, something we rarely do. It stuck in my mind more clearly

than most others will. This transaction was called to my mind during the past two years when I made up the records sent up to the Court in answer to the subpoena. In doing that I went over our purchase files and read over this
3520 again. I made up the records on all transactions, including the purchase from Vaughn. In going over the record it all came back. So that I familiarized myself with it at that time, and again yesterday when I was called and told of that testimony.

My letter of cancellation was quite clear, and was made so, because we felt that Mr. Vaughn was in between the refiner, but we had to get shipment.

Q. At the time you sent these records up here didn't you specifically recall the circumstance that he was not in his office but he was in your office on that day?

A. I don't think so.

I don't know how many times I had occasion to think back to that circumstance. I doubt whether I thought about it since the time it happened up until today, but I am now positive that he was not in my office on that day at all, but I was in his office.

I also read in Mr. Vaughn's testimony where he said he didn't know whether the phone call was to Shell at St. Louis or whether it was to the Shell office in Chicago. He didn't state that it was a long distance call. He said he wouldn't say, because he couldn't tell. If it had been a phone call to Chicago, I don't think it would show on our telephone bills.

3521 The principal Shell office is in St. Louis. They have a Chicago office which is principally a retail sales office. I knew Mr. Sinclair, Mr. Satterley, and Mr. Caldwell in the Chicago office of the Shell Company in 1935. Mr. Sinclair was general manager in 1935; Mr. Satterley was in charge of fuel oil sales; and Mr. Caldwell was tank car salesman. Mr. Sinclair is the only one I can recall as being there at that particular time. I knew him quite well. I am in contact with the Shell office in Chicago from time to time, and was during 1935.

Q. Now, I ask you whether it didn't happen from time to time, during 1935, not only on this occasion, but on other occasions, that your company, and other companies, in Chicago, acted together to buy up gasoline in the hands of brokers which you thought might otherwise disturb the market?

A. Not that I know of.

I purchased for my own company, and that is the extent of my knowledge. I handled whatever purchases were made by our company when we needed gasoline. Some purchases I bought from brokers in Chicago. I don't know how much I purchased. I know the records show that, during the entire year of 1935, I bought gasoline just as I had done in 1933 and 1934, and since in 1937.

3522 Q. Did you ever, during the year 1935, discuss with the representative of any other company—any other major oil company, the purchase of gasoline from any broker in the City of Chicago?

A. Possibly.

Q. What representative of what major company?

A. I don't know, sir. I talk to people in ordinary market conversation.

Q. Why would you have to discuss with a representative of any other major company the purchase of gasoline from brokers in Chicago?

A. At times we bought of major companies and sold to major companies.

Q. I asked you, why would you, at any time during 1935, have occasion to discuss with the representative of any other major company the purchase of gasoline from brokers, in the City of Chicago?

A. I don't remember having discussed with them the purchase of gasoline from brokers.

Q. Are you positive you had no such discussion?

A. No, sir, I am not positive.

Q. You think you might have?

A. Possibly.

Mr. Chaffetz: That is all.

Thereupon, the plaintiff rested its case in rebuttal, and the defendants to maintain further the issues on their part called the following witnesses to testify and introduced the following testimony:

3523 **JOSEPH F. REIDY**, a witness for the defendants, on sur-rebuttal, testified as follows:

Direct Examination by Mr. Horween.

I live in Oak Park, Illinois. I am employed by The Globe Oil & Refining Company of Illinois as assistant to its general manager. My duties are to supervise the shipments of some gasoline purchases, the sales of fuel oil, gasoline, and other petroleum products. When a shipment goes out of our plant on a contract sale, the work of actually computing the price in accordance with the terms of the contract is done under my supervision.

The refinery of our company has not been able to supply, from its own manufacture, all of its sales requirements. That condition has obtained as far back as 1932 and 1933, and in 1935, 1936, and 1937.

I heard the testimony yesterday of the Government's witness, Mr. W. J. Miller, concerning purchases by the various Globe companies from Omar, Simms, East Texas, Dale Moore, Premier, Olney, and Vickers.

I am very familiar with all purchases made for shipment to customers of the Illinois company. I checked through the records regarding shipments made to customers of the Oklahoma Company, and the Kansas Company, and am now familiar with them. I have checked the contracts which have been produced here by the Globe Com-
3524 panies in response to the Government subpoena and are now impounded with the Court.

In the Illinois Company, 95% plus of our shipments are made on contract. The remaining portion is sold into the Detroit area, and into Ohio, and scattered spot shipments. None of the gasoline so purchased moved to any of those spot transactions.

Mr. W. J. Miller was correct in his statement as to the figures that many of these tank cars of gasoline purchased by the Globe Companies were sold to customers of the Globe Companies at a lower price than they were purchased for. The Globe Companies have had occurrences of that kind in the past from 1931 on up to 1937.

The Globe Oil & Refining Companies operate independent refineries. We have no crude oil production nor pipe lines of our own. We have no retail stations nor bulk plants of our own. In other words, our entire operation consists strictly of manufacturing. To keep a plant of our type running as close to full capacity as we possibly can during the winter months, it is necessary for us during the winter season to go out and over-contract ourselves, with the result we are usually over-sold in the summertime. In the summertime it is natural for us to go out in the spot market and buy this material.

Demand naturally is lower in the wintertime than
3525 it is in the summertime. We try, as best we can, to keep the refinery running at as high a rate of production as possible in the wintertime. In order to do that, we try to get as much contract business as possible. These

contracts are estimated requirement contracts. We have no definite figure. The customer agrees, in that contract, to take all his requirements of the particular product from us. So that, even though the demand falls off in the wintertime, if we have more contract customers who must take their entire requirements from us, naturally we will have a greater volume of business in the wintertime than we otherwise would have. And in the summertime, when their demand is greater, quite often we are unable to meet that increased demand of these contract customers by our own manufacture. That is the reason we have to buy gasoline.

When we buy gasoline, we buy it on the open, spot market. When we sell it, we sell it on contract. The majority of our contracts contain a marginal protection clause, a clause which provides that the cost to the jobber shall be a certain definite figure below either the retail service station price or the dealer tank wagon price, as the case may be. Every one of these cars of gasoline, which Mr. W. J. Miller talked about yesterday, that were purchased by the Globe Companies on the open, spot market, were sold on contracts such as I have described.

3526 I have made a check of the records of the company as to purchases and resales of gasoline in prior years. I have those records with me.

I have the records in the case of the Johnson Oil Refining Company in September, 1933. They are available for the Government's inspection. From September 15, 1933 to September 18, 1933, we purchased a total of 9 cars of gasoline from Johnson. We paid 4¾¢ a gallon f. o. b. Group 3, Oklahoma. They were all resold on contract. The minimum price we got for them was 3 7/10¢ and the maximum price was 4¼¢ leaving a loss of from $50 to $100 per carload, about ½¢ to ⅞¢ a gallon. A loss of ½¢ a gallon on an 8000 gallon car would be $40. So that particular loss was greater than the loss Mr. W. J. Miller mentioned yesterday of $20, and 5 or 6 times as great in some instances.

I never see the records of our company, so I couldn't answer as to what profit we made on a car of gasoline when business was normal and things went along without any unforeseen difficulties. From a refining standpoint, I couldn't tell you. I could tell you what the average profit of a broker is on a car. The broker gets from ⅛¢ to ¼¢ a gallon. That amounts to $12.50, or from $10 to $20 a car on an 8000 gallon car. That is his commission. I have never seen those figures on Globe.

3527 On September 14 and 15, 1933, we bought a total of 15 cars from Security Petroleum Company. We paid 4⅞¢ per gallon, f. o. b. Group 3. It was bought on the open spot market. We sold it on contract and we got from 3⅞¢ to 3¾¢ a gallon. We took a loss of 1¢ to 1⅛¢ a gallon on that resale of these 15 cars purchased in 1933. A cent a gallon on an 8000 gallon car is $80 a carload.

As to J. D. Street Company in 1933 here is a bad one. We made a purchase on June 5, 6, 7 and 10, 1933. I haven't counted these, but I would say there are approximately 50 cars here. We paid a flat price of 2 5/16¢ per gallon f. o. b. Group 3. Every car was resold on a contract. The price we got for that gasoline on resale was from 7/10¢ per gallon up to approximately 1 1/10¢. On that deal we lost from $180 to $200 a carload.

Q. And that was because you had to deliver that gasoline on an existing contract, which had a marginal guaranty provision, is that right?

A. We had to fulfill our coutract obligations.

In other words, those being requirement contracts, we must deliver to fulfill and live up to our contract, or we would be subject to suit if we don't, whether we have to go out on the open market and buy it or not. When 3528 we buy on the spot market, we buy at the best price we can get.

Mr. Horween: I think, your Honor, in order to save time, I will simply offer in evidence these additional examples of the same kind of transactions.

The Court: All right, they may be received.

Mr. Horween: Q. These are invoices and purchase and sales records taken from your company records, are they?

A. Our company records, yes.

Q. And identified as such by you?

A. That is correct.

The Court: Q. Have you any record there showing that Globe ever sold at a profit?

A. I am afraid not during that period, Judge. Of course, we have at other times.

Mr. Horween: We will be glad to produce that also, if your Honor so desires.

By Mr. Horween

When I say we purchase gasoline, the peak summer months are not the only time we purchase it; we have occasion to purchase gasoline in all seasons of the year.

Q. In the wintertime, you purchase, perhaps, for the purpose of building up your storage stocks?

A. For the spring or because of a forced shut down of our refinery.

3529 *Cross-Examination by Mr. Chaffetz.*

During the summertime we are sometimes short of gasoline to meet our contract requirements. In the wintertime we build up storage in order to be prepared to meet our contract requirements the following summer, as far as we can.

I would say the summer lasts from March 15th to November 1st, as far as we are concerned. I will be glad to explain that to you. We operate four water terminals. We transport our gasoline to the terminals by boat. The navigation season of the Lakes closes November 1st, and doesn't open until about March 15th, or possibly April 1st. It is necessary for us to fill up those tanks just as soon as navigation opens, and to fill them up again or keep them filled just at the close of navigation so we will have sufficient supply to carry us through the winter.

We have been, on occasions, short of gasoline in April. I don't recall the situation of our company unless you could show me the records. April is the beginning of the consuming season. At that time our storage should be at its peak. We have got that storage built up for the following consuming season, which covers principally the
months of May, June, July and August. This last
3530 April we were not short of gasoline. I can't tell
about April, 1936, without looking at the records. In other years, we have always been short of gasoline in April. In April, 1936, we didn't have the storage capacity at our refinery to provide our customers for the summer. We had some storage.

I can't answer definitely without having records, but it is my impression that we were very short of gasoline both in November and December, 1935. I don't recall that in the fall of 1935 we closed down one of our plants because all our storage was full. We didn't close our plant down. I don't recall that we closed one of our refineries.

(Witness excused.)

Mr. Dorr: Your Honor, may I give the stenographer this for the record?

The Court: Yes, you may.

(The following typewritten statement was presented by Mr. Dorr, to be inserted in the record:)

"In view of the offer of Exhibit 1031 in evidence by the prosecution on rebuttal, and on the grounds on which they were heretofore offered, we re-offer in evidence the following Exhibits:

"1. EXHIBIT 1030 for identification, being a certified copy of a report to Mr. Ickes by Mr. Fahy, Chairman of the Petroleum Administrative Board, dated March 23, 1935. 3531

"2. EXHIBITS 915, 916, 925, 971, 972 and 973 for identification, being telegrams and correspondence relative to the request made by the Chairman of the Petroleum Administrative Board to Mr. Arnott to take up the stabilization of refinery prices in Pennsylvania, and a statement to Senator Davis that Mr. Arnott's Stabilization Committee is the proper body to take up such matters.

"3. EXHIBIT 914 for identification, being certain portions of the report issued by the Department of the Interior of the activities of the Marketing Division of the Petroleum Administrative Board, the same being issued in 1936.

"These Exhibits are re-offered at this time on the following grounds:

"1. The Government has introduced the letter of Secretary Ickes of July 20, 1934. On rebuttal it has offered in evidence Exhibit 1031, a letter written by Mr. Maguire in the summer of 1934. This has been offered as bearing on the construction of the letter of July 20, 1934. This is an additional ground which makes competent evidence showing the administrative construction of the letter of July 20th,
3532 particularly evidence showing that construction after January 1, 1935, the period covered by the indictment. Exhibit 1030, a report by Mr. Fahy to Mr. Ickes, states specifically that the Oil Administration and the Petroleum Administrative Board is encouraging the stabilization activities at the time being directed to aid the independent refiner. This statement is made in comment upon a report by the Blazer Committee that buying by the majors would be the

most helpful thing in the present situation for the independent refiners and after the buying activities of the Stabilization Committee in aid of the independent refiner by taking up his distress gasoline had been put before the Petroleum Administrative Board on March 12th. Further, this statement is in direct corroboration of Mr. Arnott's testimony that he was encouraged to proceed with those activities by the Petroleum Administrative Board on that occasion.

"2. The so-called Pennsylvania Exhibits 915, 916, 925, 971, 972 and 973 are directly in corroboration of Mr. Arnott's testimony as to his interpretation of the letter of July 20, 1934, and are administrative construction by the Deputy Administrator of the Oil Administration that the letter of July 20 included within 3533 its scope the problem of refinery prices which were out of parity with crude and of surplus or distress products.

"3. The statements in the report of the Department of the Interior in its Marketing Report of June, 1936, are admissions by the Government of an administrative construction of the letter of July 20, 1934, showing a far broader construction than that which is now claimed by the Government for that letter and in corroboration of Mr. Arnott's testimony as to his understanding of that letter and as to what had been said about it by the Petroleum Administration at the time he was asked to undertake this work. The administrative construction of the letter of July 20th is important as bearing on how these transactions came about, the credibility of witnesses, the issue of the encouragement of these activities by the Government which is a proper element to be considered in determining whether these activities were a reasonable and lawful effort to remove abuses in the industry or whether they were an unlawful restraint of trade.

"The exclusion of these Exhibits or any of them would be particularly prejudicial to the defendants in view of the claims made before 3534 this jury by the prosecutors and the ruling of the Court at the time Mr. McDowell was on the stand and the letter of July 20th offered by the defendants and excluded."

The Court: I have considered those Mr. Dorr and the Court is not inclined to change its rulings.

Mr. Dorr: And we may have an exception on the grounds stated?

The Court: Yes, you may.

(The following occurred in absence of jury):

Mr. Dorr: It appears that in response to a request of the defense that the Court takes judicial notice of the provisions of the Code of Fair Competition of the Petroleum Industry, that the Court indicated it would for its own purpose take judicial notice of such provisions, but would not take judicial notice of those provisions for the purpose of having the same put before the jury. To which we note an exception.

Mr. Francis: Your Honor, subject to any objections that the government might have, could the record reflect that the mandate in the Schechter case issued in the Supreme Court on June 22, 1935, subject to their general check as to that date? Of
3535 course the decision does not become final until the mandate issues.

The Court: The record may show also the date of the mandate.

Mr. Chaffetz: It is stipulated the record may show that Exhibit 193 was offered and received, and is in evidence.

Mr. Donovan: I object to Exhibit 193 on the same ground as previously made with respect to similar documents as appears at R. pp. 1874-75.

The Court: Overruled. Exception allowed.

(Document referred to is received in evidence as EXHIBIT 193.)

(Stipulation referred to is received in evidence as EXHIBIT 1053.)

3536 Thereupon, on January 14, 1938, the defendants rested and the plaintiff rested also.

(The following proceedings occurred in the absence of the jury.)

The Court: I assume that all of the defendants will make a motion for directed verdict, and you may file those in writing. With that assumption, and that being made a part of the record now, the Court is going to grant the motion of James Nagle, that a verdict be directed for James Nagle. And the others, I will take under consideration. I won't hear any argument. File a motion.

Mr. German: I understand your Honor, that we may file our written motions Monday morning.

The Court: Yes, you may.

On the same date, January 14, 1938, the Honorable Patrick T. Stone caused to be filed with the Clerk of the above Court a Judgment providing that the Indictment in this cause be dismissed as to the defendant James Nagle and that the Clerk of the said Court had filed and entered a verdict of "not guilty" in this cause as to the defendant James Nagle.

(Said Judgment is printed at page 2476 of the Record.)

CLERK'S COPY.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals For the Seventh Circuit

---

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

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Defendants-Appellants.

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Appeal from the District Court of the United States for the Western District of Wisconsin.

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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G 29	Letter, September 14, 1935, Neil Buckley to H. E. Brandli.........	611 907	2629
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D 958	(for identification) Chart of gasoline tank wagon prices compared with cost of living and wholesale prices of all commodities in United States, 1918-1936	1520	3669
D 959	(for identification) Chart comparing United States gasoline tank wagon prices with wholesale dairy products prices, 1918-1936	1520	3673
D 960	Tabulation—Derby Oil Company gasoline production and sales, 1934-1936	1537	3676
D 961	Stipulation of testimony of C. G. Stokes concerning Olney Oil and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3678
D 962	Stipulation of testimony of J. P. Dyer concerning Bell Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3680
D 963	Stipulation of testimony of William E. Conway concerning Shamrock Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3682
D 964	Stipulation of testimony of James D. Miller concerning Champlin Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3684

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 965	Stipulation of testimony of G. E. Dahlen concerning Danciger Oil and Refineries, Inc. gasoline production and sales, 1934-1936, with tabulation of figures attached.....	1536	3686
D 966	Stipulation of testimony of J. H. Sheehan concerning Lion Oil Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached........	1536	3688
D 967	Letter, Franklin D. Roosevelt to C. E. Arnott	1687	3690
D 968	Extract from press release issued Nov. 14, 1934, by Department of the Interior, of speech by Harold L. Ickes before American Petroleum Institute, Nov. 14, 1934...........	1696	3690
D 969	Letter, Feb. 20, 1935, C. E. Arnott to Charles Fahy	1729	3692
D 970	Telegram, May 1, 1935, C. E. Arnott to H. W. Dodge	1732	3693
D 971	(for identification) Telegram, May 17, 1935, Charles Fahy to C. E. Arnott	1735	3693
D 972	(for identification) Letter May 7, 1935, E. B. Swanson to S. M. Vockel	1735	1349 3694
D 973	(for identification) Letter, May 17, 1935, E. B. Swanson to James J. Davis	1353 1735 1841	1353 3695
D 974	Certified copies of orders appointing members of Petroleum Administrative Board and stating the qualifications, status, duties and powers of each member	1341	3696

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 975	Telegram, May 28, 1935, Charles Fahy to C. E. Arnott	1736	3716
D 976	Letter, June 3, 1935, Charles Fahy to C. E. Arnott	1736	3716
D 977	Letter, June 12, 1935, C. E. Arnott to Charles Fahy	1736	3717
D 978	Press release, Sept. 18, 1933, by Department of the Interior, setting forth speech of Harold L. Ickes before Planning and Coordination Committee	1739	3718
D 979	Letter, July 25, 1935, Harold L. Ickes to C. E. Arnott	1739	3721
G 980	Letter, April 2, 1935, Harold L. Ickes to C. E. Arnott	1739	3722
D 984	Stipulation of tank car purchases by Standard Oil Company (Indiana) from independent refiners in East Texas and Mid-Continent fields, 1931-1936	1808	3723
G 985	Telegram, July 10, 1935, Waggoner Refining Company, Inc. to A. V. Bourque	1818	3734
G 986	Letter, Oct. 2, 1935, Dale W. Moore Oil Company to Waggoner Refining Company, Inc., attention Dave Gray	1819	3734
D 988	Certificate by Harold L. Ickes of appointment of Charles Fahy as chairman of Petroleum Administrative Board, together with document describing his qualifications and duties	1341	3735

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 989	Stipulation of testimony of J. W. Steele relative to East Texas refineries operating on Federal tenders between March 1, 1935 and Dec. 31, 1936, as shown on Exhibit A attached thereto	1830	3737
D 99[illegible]	Stipulation of testimony of James D. Miller concerning Dickey Oil and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1830	3740
D 991	Stipulation of testimony of M. A. Chambers concerning Panhandle Producing and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1679 1830	3742
D 992	Stipulation of testimony of M. P. Appleby concerning Wilcox Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1830	3744
D 993	(for identification) Letter, April 30, 1935, Paul G. Blazer to Charles Fahy	1830	3746
D 994	(for identification) Letter, May 7, 1935, Chairman of Petroleum Administrative Board to Paul G. Blazer	1830	3748
D 995	Letter, March 30, 1935, Harold L. Ickes to B. P. Lientz	1831	3749
D 996	Telegram, Jan. 6, 1938, Harold L. Ickes to R. A. Irvine	1342	3750

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 997	Stipulation of testimony of Harold F. Parsons concerning attached data pertaining to Tide Water Oil Company of New Jersey gasoline production and sales, 1932-1936, and other information	1599 1844	3751
D 998	Stipulation of testimony of R. E. Everitt as to minimum stocks and market facilities of Globe Oil & Refining Companies	1609	3756
D 999	Tabulation of gasoline production, purchases, shipments, and inventories, Globe Oil & Refining Company (Oklahoma) and (Illinois), Jan. 1, 1933 to Aug. 31, 1937	1609	3757
D 1000	Tabulation of tank cars of gasoline purchased by Globe Oil & Refining Company (Oklahoma), Jan. 1, 1930 to Aug. 31, 1937, and by Globe Oil & Refining Company (Illinois), Jan. 1, 1933 to Aug. 31, 1937	1609	3762
D 1002	Summary of purchases by three Globe Companies, Jan. 1933 to Aug. 1937, from independent refiners and from other refiners and brokers	1609	3767
D 1003	Tabulation of crude oil runs to stills by Globe Oil & Refining Company plants, Jan. 1, 1931 to Aug. 31, 1937	1609	3768
D 1004	Tabulation of flat price purchases from independent refiners, Group 3, 1935-1936, by Globe Oil & Refining Company (Oklahoma) and (Illinois)	1610	3770

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1008	Chart of gasoline shipments, manufacture, and casinghead and refined gasoline purchases by Globe Oil & Refining Companies, 1933-1937	1612	3775
D 1009	Tabulations showing comparison of Pure Oil Company's gasoline purchases from Eason Oil Company with Eason Oil Company sales, 1935-1936	1614	3777
D 1010	Tabulation showing comparison of Pure Oil Company's gasoline purchases from Omar Refining Company with Omar Refining Company sales, 1935-1936	1614	3779
D 1011	Chart of purchases by defendant Companies from East Texas refiners, compared with Oilgram East Texas quotations for 1935	1617	3783
D 1012	Stipulation of testimony of Roy W. Dalby concerning gasoline shipped from Texas to Acme Petroleum Company in 1934, with Exhibit A attached	1619	3785
D 1013	Chart showing gasoline service station prices in Mid-Western area compared with the rest of the United States	1628 1679	3791
D 1014	Chart showing daily variations from average normal posted service station price in 28 representative Mid-Western cities, 1934-1936	1633	3795

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1015	Tabulation—Sinclair Refining Company purchases in Mid-Continent field, Jan. 1, 1935 to April 30, 1936.	1636	3797
D 1016	Tabulation—operating refinery capacity of defendant companies compared with total United States operating capacity, as of Jan. 1, 1935 and Jan. 1, 1936	1535	3798
D 1023 (1017–1022)	Chart showing volume of East Texas and Mid-Continent gasoline sales and purchases by all East Texas independent refiners, 29 Mid-Continent independent and semi-major refiners, East Texas independent refiners named in the indictment, and Mid-Continent independent refiners named in the indictment, in 1935 and 1936........	1644 1646 1679	3803
D 1024	Chart of flat price purchases of regular and third grade gasoline, Group 3, Oklahoma refiners, by defendant major oil companies and by jobbers and consumers, compared with 1935 journal quotations	1679	3807
D 1025	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of regular and third grade gasoline, compared with Chicago Journal of Commerce quotations, Jan. 1, 1935 to April 30, 1936......	1663	3809

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1026	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of third grade and regular gasoline, compared with Platt's Oilgram quotations for Oklahoma refinery market, Jan. 1, 1935 to April 30, 1936	1663	3810
D 1027	Tabulation—operating refinery capacity, Tide Water Associated Oil Company, Gulf Refining Company, The Texas Company and Deep Rock Oil Company, as of Jan. 1, 1935 to Jan. 1, 1936	1536	3811
D 1028	Stipulation concerning gasoline sales by defendant companies in Mid-Western area, 1935 and first seven months of 1936	1536	3812
D 1029	(for identification) Certified copy, Order, June 23, 1934, by Harold L. Ickes, approving Pacific Coast Agency Agreement and Refiners' Agreement and supplemental agreements thereto	1680	3817
D 1030	(for identification) Certified copy, memorandum, March 22, 1935, Charles Fahy to Administrator of Petroleum Code	1678	3869
G 1031	Letter, Sept. 8, 1936, M. G. Peeters to Clayton W. Haswell, together with enclosure of letter, July 24, 1934, A. G. Maguire to Chairmen of State Petroleum Committees	1683	3874

Exhibit No.		Rec'd in evidence at page	Reproduced at page
G 1032	Tabulation—tank car shipments of refined gasoline from 34 independent refiners in East Texas, March 1, 1935 to March 3, 1936..........	1850	3878
G 1033	Tabulation—purchases of third grade gasoline by Sinclair Refining Company from independent refiners in East Texas, March 1, 1933 to April 30, 1936	1850	3882
G 1034	Purchase order, Sept. 18, 1935, from Globe Oil & Refining Company (Illinois) to T. R. Vaughn	1864	3883
G 1035	Sales acknowledgment, Sept. 18, 1935, from T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois).	1864	3885
D 1036	Letter, Sept. 26, 1935, Globe Oil & Refining Company to T. R. Vaughn Oils	1864	3886
D 1038	Letter, Sept. 20, 1935, J. M. Alexander to T. R. Vaughn Oils.......	1864	3888
D 1040	Identical with Gov. Ex. 1035, except handwritten notations (sales acknowledgment, Sept. 18, 1935, T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois)) (Reference to)	1864	3890
G 1043	Stipulation concerning exhibits of Shell Petroleum Corporation.....	1876	3890
G 1044	Stipulation concerning Exhibits 24, 27 and 52	1876	3891
G 1045	Stipulation concerning documents of Clyde M. Boggs	1876	3891
G 1046	Stipulation concerning Exhibits 320,		

Vol. I, pp. 1-[illegible]; Vol. II, pp. [illegible]-[illegible]; Vol. III, pp. [illegible]-1890; Vol. IV, pp. 1891-[illegible]; Vol. V, pp. [illegible]-[illegible]; Vol. VI, pp. [illegible]-[illegible]; Vol. VII, pp. [illegible]-3904.

Exhibit No.		Rec'd in evidence at page	Reproduced at page
	321 and 329	1876	3891
G 1047	Stipulation concerning Exhibits 316-319	1876	3892
D 1048	Telegram, Jan. 14, 1938, R. E. Everitt to Ralph Horween	1878	3892
D 1049	Teletype, Globe Oil & Refining Company, Wichita, Kansas, to Globe Oil & Refining Company, Chicago, Illinois	1880	3892
D 1050	Letter, Oct. 4, 1935, W. H. Barber Company to Globe Oil & Refining Company, with enclosure of letter, Oct. 3, 1935, Illinois Farm Supply Company to W. H. Barber Company	1880	3893
D 1051	Letter, Oct. 7, 1935, W. H. Barber Company to Globe Oil & Refining Company	1880	3895
D 1052	Statement re purchase orders and invoices of Globe Oil & Refining Company (Oklahoma) and (Illinois), concerning sales at a loss in 1931 and 1933		3895
G 1053	Stipulation of testimony of H. Russell Richards concerning sales of gasoline by Continental Oil Company, with Exhibit A attached	1889	3896
D 1054	Statement re letter, Oct. 8, 1935, Globe Oil & Refining Company (Illinois) to Globe Oil & Refining Company (Oklahoma), and telephone statements from Aug. 21, 2935, through Sept. 25, 1935, attached	1878	3902

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Thereafter, on January 17, 1938, at a hearing of the 3537 above cause, the attorneys for the defendants filed with the Clerk of the Court a Motion to Strike, as at the close of all the evidence on behalf of each of the defendants named at the end of said Motion. Thereafter the said Motion to Strike was denied by the Court, and exception allowed.

To avoid printing those portions of the Motion to Strike which related to exhibits, the admission of which is not assigned on these appeals as error, certain portions of said original Motion to Strike relating to such exhibits have been omitted. The said Motion to Strike is as follows:

3538 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION TO STRIKE.

Now Comes, William J. Donovan and Herbert H. Thomas, Attorneys for certain of the individual and corporate defendants, as shown by the record herein at the close of all the testimony introduced by and on behalf of the Government and the defendants, this motion being made for each said defendant separately with the same force and effect as if repeated in the record as to each such defendant so represented, and moves the Court to strike out the Exhibits hereinafter listed, together with the testimony relative to each such Exhibit which is in the record, said Exhibits being listed by number, and the portions of said record herein referred to being listed by page reference of said record, and to the introduction of which in evidence objections by defendants' counsel were duly made for the reasons set forth in such objections and likewise for the reasons and on the grounds hereinafter set forth, the said motion being directed to each said Exhibit separately and likewise separately as to the testimony offered and received relating to each said Exhibit listed herein, that is to say:

3539 I.

Exhibit 489, from F. L. Koopman to Budget and Operating Committee of the Phillips Petroleum Company, R. p. 557;

Exhibit 509, from F. L. Koopman to Budget and Operating Committee of the Phillips Petroleum Company, R. p. 557;

Exhibit 516, from F. L. Koopman to A. M. Hughes, R. p. 557.

For the reasons and on the grounds:

(1) There is no substantial competent evidence in the record herein that the writer of said Exhibits at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, and each of said Exhibits was admitted only upon condition that such proof be adduced.

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibits during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible as the declaration of a co-conspirator:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

(c) Because it contains merely narratives of past events and statements of the opinions of the writer;

3540 (d) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of rumor, opinions of others and market reports;

(e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

(g) Because it is not a writing or record made in the regular course of business, and

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation

other than the writer of the Exhibit, or the corpora-
3541 tion, if any, for which he wrote said Exhibit as its duly
authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because it is prejudicial to each and every defendant herein except the said writer and his said principal, if any.

II.

Exhibit No. 94, from J. F. Nagle to W. T. Atkins, R. p. 506.

Exhibit No. 100, from J. F. Nagle to L. H. Poland, R. p. 506.

Exhibit No. 101, from J. F. Nagle to W. T. Atkins, R. p. 506.

Exhibit No. 103, from J. F. Nagle to A. V. Bourque, R. p. 506.

Exhibit No. 120, from J. F. Nagle to W. T. Atkins, R. p. 506.

Exhibit No. 122, from J. F. Nagle to L. H. Poland, R. p. 506.

Exhibit No. 124, from J. F. Nagle to L. H. Poland, R. p. 506.

Exhibit No. 126, from J. F. Nagle to L. H. Poland, R. p. 506.

For the reasons and on the grounds:

(1) There is no substantial competent evidence in the record herein that the writer of said Exhibits at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, and each of said Exhibits was admitted only upon condition that such proof be adduced.

3542 (2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibits during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible as the declaration of a co-conspirator:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

(c) Because it contains merely narratives of past events and statements of the opinions of the writer;

(d) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of rumor, opinions of others and market reports;

(e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

3543 (g) Because it is not a writing or record made in the regular course of business, and

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because it is prejudicial to each and every defendant herein except the said writer and his said principal, if any.

Exhibit 97, from J. F. Nagle to W. T. Atkins, R. p. 1876.

Exhibit 121, from J. F. Nagle to A. H. Prendergrass, R. p. 1876.

For the reason and on the grounds:

3544 (1) That the writers of said Exhibits, due to the granting of their respective motions for directed verdicts by the Court in the above entitled action, are not defendants and are not co-conspirators in said action, and cannot be said to have participated or engaged in the conspiracy, if any, alleged in the indictment and said Exhibits therefore are incompetent and inadmissible.

III.

Exhibit 488, from D. K. Chamberlin to C. W. Snider, R. p. 620.

Exhibit 327, from D. K. Chamberlin to R. N. Cline, R. p. 650.

For the reasons and on the grounds:

(1) There is no substantial competent evidence in the record herein that the writer of said Exhibits at any time during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, and each of said Exhibits was admitted only upon condition that such proof be adduced.

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibits during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible as the declaration of a co-conspirator:

3545 (a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

(c) Because it contains merely narratives of past events and statements of the opinions of the writer;

(d) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of rumor, opinions of others and market reports;

(e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

(g) Because it is not a writing or record made in the regular course of business, and

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

3546 (i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because it is prejudicial to each and every defendant herein except the said writer and his said principal, if any.

IV.

Exhibit 251, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 252, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 253, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 254, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 256, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 257, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 258, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 259, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 260, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 262, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 265, from J. W. Warner to J. D. Collins, R. p. 1876.
Exhibit 267, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 268, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 269, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 270, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 271, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 272, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 273, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 274, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 275, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 276, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 277, from J. W. Warner to J. D. Collins, R. p. 622.
3547 Exhibit 278, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 279, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 280, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 281, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 284, from J. W. Warner to J. D. Collins, R. p. 622.

Exhibit 285, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 286, from J. W. Warner to J. D. Collins, R. p. 622.
Exhibit 287, from J. W. Warner to J. D. Collins, R. p. 786.
Exhibit 292, from J. W. Warner to J. D. Collins, R. p. 786.
Exhibit 293, from J. W. Warner to J. D. Collins, R. p. 1876.
Exhibit 294, from J. W. Warner to J. D. Collins, R. p. 786.
Exhibit 295, from J. W. Warner to J. D. Collins, R. p. 786.
Exhibit 296, from J. W. Warner to J. D. Collins, R. p. 786.

For the reasons and on the grounds:

(1) There is no substantial competent evidence in the record herein that the writer of said Exhibits at any time during the period beginning in the month of February, 1935 and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, and each of said Exhibits was admitted only upon condition that such proof be adduced.

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibits during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible as the declaration of a co-conspirator:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

3548 (c) Because it contains merely narratives of past events and statements of the opinions of the writer;

(d) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of rumor, opinions of others and market reports;

(e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

(g) Because it is not a writing or record made in the regular course of business, and

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of 3549 any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because it is prejudicial to each and every defendant herein except the said writer and his said principal, if any.

(3) The evidence in the record herein affirmatively establishes that each said Exhibit was written by the said Warner as an employee of Tidewater Oil Company an Oklahoma corporation which was not made a defendant to the indictment, to the said Collins, an employee of Tidewater Oil Company, a New Jersey corporation, as to which, together with Tidewater Associated Oil Company, a Delaware corporation, the indictment has been dismissed against their objection, and said Exhibits therefore further are inadmissible:

(a) Because said Warner is charged in paragraph 4 of the indictment only with having actively engaged in the management, direction and control of the affairs and policies of the said Tidewater Associated Oil Company, and because the only alleged participation by the said 3550 Warner in the alleged conspiracy, is because, as alleged in paragraph 19, the said Tidewater Associated Oil Company and the said Tidewater Oil Company (New Jersey), acted through or under his direction in engaging and participating in the two alleged buying programs which are referred to in said paragraph 19 as (a) the East Texas buying program, and (b) the Mid-Continent buying program. Under the allegations of the indictment, which now has been dismissed as to said Tidewater Associated Oil Company and said Tidewater Oil Company (New

Jersey) said Warner now is not charged with being a party to the conspiracy, if any, alleged in the indictment.

(b) Because said Exhibit in itself is incompetent as mere hearsay;

(c) Because it was not established that the writer of said Exhibit could not have been called as a witness to testify under oath, subject to cross-examination, as to the matters and things referred to or stated in said Exhibit.

(d) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer of said Exhibit was not called as a witness and did not testify under oath, subject to cross-examination, that, al-
3551 though after reading it he cannot recall the circum-
stances and facts so as to state them independently from his memory, the said Exhibit was written by him presently after the transaction or transactions to which it relates and that he then had a clear and distinct recollection of everything there stated or preferred to, and that he knows that it was correct when prepared.

(e) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States.

V.

Exhibit 454, from H. D. Frueauff to H. E. Brandli, R. p. 608.

Exhibit 460, from H. D. Frueauff to C. E. Arnott, R. p. 1876.

Exhibit 462, from H. D. Frueauff to C. E. Arnott, R. p. 1876.

Exhibit 477, from H. D. Frueauff to H. E. Brandli, R. p. 1876.

Exhibit 478, from H. D. Frueauff to F. R. Coates, R. p. 608.

For the reasons and on the grounds that:

(1) There is no substantial competent evidence in the record herein that the writer of said Exhibits at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment participated or engaged in the conspiracy, if any,

alleged in the indictment, and each of said Exhibits was admitted only upon condition that such proof be adduced.

3552 (2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibits during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible as the declaration of a co-conspirator:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

(c) Because it contains merely narratives of past events and statements of the opinions of the writer;

(d) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of rumor, opinions of others and market reports;

(e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

3553 (g) Because it is not a writing or record made in the regular course of business, and

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because it is prejudicial to each and every defendant herein except the said writer and his said principal, if any.

VI.

Exhibit 183, from P. E. Lakin to A. Fraser, R. p. 829.
Exhibit 191, from P. E. Lakin to A. Fraser, R. p. 1876.
Exhibit 198, from P. E. Lakin to A. Fraser, R. p. 832.
Exhibit 203, from P. E. Lakin to A. Fraser, R. p. 832.
Exhibit 204, from P. E. Lakin to A. Fraser, R. p. 832.
Exhibit 210, from P. E. Lakin to A. Fraser, R. p. 832.
Exhibit 218, from P. E. Lakin to A. Fraser, R. p. 832.

3554 For the reasons and on the grounds:

(1) That it appears by competent affirmative evidence that said letters were written by one H. Jacobs, not made a defendant to this indictment and not therein alleged to have been a co-conspirator and that there is no substantial, competent evidence in the record herein which establishes or tends to establish that said Jacobs, during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment participated or engaged in the conspiracy, if any, alleged in the indictment, and each of said Exhibits therefore is incompetent and inadmissible for the more specific reasons and grounds stated below:

(2) (a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not made in furtherance of any object of the conspiracy;

(c) Because it contains merely narratives of past events and statements of the opinions of said Jacobs;

(d) Because it appears from affirmative evidence that the statements made by said Jacobs in the said Exhibits are mere hearsay and the repetition of rumors, opinions of others, market reports, and information gathered from the trade publications;

3555 (e) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the said Jacobs did not have and could not have had personal knowledge;

(f) Because it is not verified by any suppletory oath;

(g) Because it is not a writing or record made in the regular course of business;

(h) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer of said Exhibit did not testify that although after reading it he could not recall the circumstances and facts so as to state them independently from his memory, the said Exhibit was written by him presently after the transaction or transactions to which it relates and that he then had a clear and distinct recollection of everything therein stated or referred to, and that he knows that it was correct when prepared;

(i) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors, and opinions set forth or referred to therein deprive the defendants of their rights under
3556 the Sixth Amendment to the Constitution of the United States;

(j) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because prejudicial to each and every defendant herein except the said writer and his said principal, if any.

VII.

Exhibit 487 from C. W. Snider to D. K. Chamberlin, R. p. 621.

For the reasons and on the grounds that:

(1) The said writer of the Exhibit is not a defendant under said indictment and is not therein alleged to have been a co-conspirator and to have participated or engaged in the conspiracy, if any, alleged in the indictment and said Exhibits therefore are incompetent and inadmissible:
3557 (a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not established that the writer of said Exhibit could not have been called as a witness to testify under oath, subject to cross-examination, as to the matters and things referred to or stated in said Exhibit;

(c) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer of said Exhibit was not called as a witness and did not testify under oath, subject to cross-examination, that, although after reading it he cannot recall the circumstances and facts so as to state them independently from his memory, the said Exhibit was written by him presently after the transaction or transactions to which it relates and that he then had a clear and distinct recollection of everything therein stated or referred to, and that he knows that it was correct when prepared.

(d) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein, deprive the defendants of their rights under
3558 the Sixth Amendment to the Constitution of the United States;

(e) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because prejudicial to each and every defendant herein except the said writer and his said principal, if any.

VIII.

Exhibit 426 from W. A. Tracey to D. A. Brown, R. p. 788.

For the reasons and on the grounds:

(1) The writer of said Exhibit is not a defendant to this indictment and is not therein alleged to have participated in the alleged conspiracy and there is no substantial competent evidence in the record herein that the writer of said Exhibit engaged in the conspiracy, if any, alleged in the indictment and statements of the said writer are not binding on the defendant, J. W. Carnes or any other
3559 defendant in this indictment, and each of said Exhibits is inadmissible for the reasons stated in (2) below:

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that the writer of said Exhibit, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible:

(a) Because it is not made in furtherance of the objects of the conspiracy;

(b) Because it contains merely narratives of past events and statements of the opinions of the writer;

(c) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of opinions of others and market reports;

(d) Because it is apparent from the face of the Exhibit that statements therein are of facts which the said writer did not have and could not have had personal knowledge;

3560 (e) Because it is not verified by any suppletory oath;

(f) Because it is not a record made in the regular course of business;

(g) Because said Exhibit in itself is incompetent as mere hearsay;

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors, and opinions set forth therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because prejudicial to each and every defendant herein except the said writer and his said principal, if any.

3561

IX.

Exhibit No. 95, from W. T. Atkins to Emby Kaye, R. p. 506.

Exhibit No. 96, from W. T. Atkins to J. F. Nagle, R. p. 506.

Exhibit No. 99, from L. H. Poland to J. F. Nagle, R. p. 506.

Exhibit No. 123, from Clara Gartman to L. H. Poland, R. p. 506.

Exhibit No. 125, from L. H. Poland to E. F. Underwood, R. p. 506.

Exhibit No. 127, from W. T. Atkins to L. H. Poland, R. p. 506.

For the reasons and on the grounds that:

(1) Said writers of said Exhibits are not defendants to this indictment and are not therein alleged to have participated in the alleged conspiracy and there is no substantial competent evidence in the record herein that said writers or any of them engaged in the conspiracy, if any, alleged in the indictment and statements of said writers are not binding on any defendant to this indictment, and each of said Exhibits is therefore inadmissible:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not established that the writer of said Exhibit could not have been called as a witness to testify under oath, subject to cross-examination, as to the matters and things referred to or stated in said Exhibit;

(c) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer of said Exhibit was not called as a witness and did not testify under oath, subject to cross-examination, that, although after reading it he cannot recall the circumstances and
3562 facts so as to state them independently from his memory, the said Exhibit was written by him presently after the transaction or transactions to which it relates and that he then had a clear and distinct recollection of everything therein stated or referred to, and that he knows that it was correct when prepared;

(d) Because the admission and use of said Exhibit as evidence, establishing or tending to establish as facts the matters, things, rumors, and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that said writers, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible against any defendant as the declaration of a co-conspirator;

(a) Because it was not made in furtherance of the objects of the conspiracy.

(b) Because it contains merely narratives of past events and statements of the opinions of said writers.

3563 (c) Because it is apparent from the face of the Exhibit that the statements therein are mere hearsay and the repetition of opinions of others and market reports.

(d) Because it is apparent from the face of the Exhibit that the statements therein are of facts of which the writer did not have and could not have had personal knowledge.

(e) Because it is not verified by any suppletory oath.

(f) Because it is not a record made in the regular course of business.

(g) Because said Exhibit in itself is incompetent as hearsay.

(h) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, and opinions set forth therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States.

(i) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the
3564 corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because prejudicial to each and every defendant herein except the said writer and his said principal, if any.

Exhibit No. 93, From W. T. Atkins to J. Nagle, R. p. 1876.

Exhibit No. 128, From W. T. Atkins to J. Nagle, R. p. 1876.

For the reasons and on the grounds that:

(1) The said writer of the Exhibit is not a defendant under said indictment and is not therein alleged to have been a co-conspirator and to have participated or engaged in the conspiracy, if any, alleged in the indictment and said Exhibits therefore are incompetent and inadmissible:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not established that the writer of said Exhibit could not have been called as a witness to testify under oath, subject to cross-examination, as to the matters and things referred to or stated in said Exhibit;

(c) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer
3565 of said Exhibit was not called as a witness and did not testify under oath, subject to cross-examination, that, although after reading it he cannot recall the circumstances and facts so as to state them independently from his memory, the said Exhibit was written by him presently after the transaction or transactions to which it relates and that he then had a clear and distinct recollection of everything therein stated or referred to, and that he knows that it was correct when prepared;

(d) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors and opinions set forth or referred to therein, deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States;

(e) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which he wrote said Exhibit as its duly authorized agent acting within the scope of his authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper, because prejudicial to each and every defendant herein except the said writer and his said principal, if any.

X.

Exhibit No. 104, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 105, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 106, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 107, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 108, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 109, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 110, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 111, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 112, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 113, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 114, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 115, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 116, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 117, From Clara Gartman to A. V. Bourque, R. p. 506.

Exhibit No. 118, From Clara Gartman to A. V. Bourque, R. p. 506.

For the reasons and on the grounds that:

(1) Said Clara Gartman is not a defendant to this indictment and is not therein alleged to have participated in the alleged conspiracy and there is no substantial competent evidence in the record herein that said Clara Gartman engaged in the conspiracy, if any, alleged in the indictment and statements of said Clara Gartman are not binding on the defendant Skelly Oil Company, or the defendant A. V. Bourque or any other defendant in this in-

dictment, and each of said Exhibits therefore is inadmissible:

(a) Because said Exhibit in itself is incompetent as mere hearsay;

(b) Because it was not established that the writer of said Exhibit could not have been called as a witness to testify under oath, subject to cross-examination, as to the matters and things referred to or stated in said Exhibit;

3567 (c) Because said Exhibit in itself is not competent evidence of the facts therein stated in that the writer of said Exhibit was not called as a witness and did not testify under oath, subject to cross-examination, that, although after reading it she cannot recall the circumstances and facts so as to state them independently from her memory, the said Exhibit was written by her presently after the transaction or transactions to which it relates and that she then had a clear and distinct recollection of everything therein stated or referred to, and that she knows that it was correct when prepared;

(d) Because the admission and use of said Exhibit as evidence establishing or tending to establish as facts the matters, things, rumors, and opinions set forth or referred to therein deprive the defendants of their rights under the Sixth Amendment to the Constitution of the United States.

(2) Even if there is substantial competent evidence in the record herein which establishes or tends to establish that said Clara Gartman, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, participated or engaged in the conspiracy, if any, alleged in the indictment, each of said Exhibits, nevertheless, is inadmissible against any other defendant as the declaration of a co-conspirator:

3568 (a) Because it was not made in furtherance of the objects of the conspiracy.

(b) Because it contains merely narratives of past events.

(c) Because it is not verified by any suppletory oath.

(d) Because it is not a record made in the regular course of business.

(e) Because the admission and use of said Exhibits as evidence establishing or tending to establish as facts the matters and things, set forth therein deprive the defendants of their rights under the Sixth Amendment of the Constitution of the United States.

(f) Because the use of said Exhibit or of statements and references contained therein as evidence establishing or tending to establish the participation in the conspiracy, if any, alleged in the indictment, of any person or corporation other than the writer of the Exhibit, or the corporation, if any, for which she wrote said Exhibit as its duly authorized agent acting within the scope of her authority, would be improper, and the admission of said Exhibit in evidence, even under instructions properly limiting its application and use, is improper because prejudicial to each and every defendant herein except the said writer and her said principal, if any.

3569 In the event the foregoing motion to strike is denied in whole or in part, each said defendant making the above motion to strike, in the alternative, individually moves the Court to instruct the jury that the constitutional right of the defendants to be confronted by the witnesses against them prohibits the use of any Exhibit heretofore admitted in evidence for any purpose beyond that for which it was admitted by the Court or to which it may be restricted by the Court's instructions; that no statement or reference in any such Exhibit can be used or considered to be evidence establishing, or tending to establish, the participation in the conspiracy, if any should be found, of any person or corporation other than the person who wrote said Exhibit and the corporation, if any, for which the writer wrote the Exhibit as its agent making a report concerning his own actions in behalf of the corporation or concerning the corporation's property under his supervision; that Exhibits, such as letters, telegrams, etc., written by persons not alleged in the indictment or shown in the evidence to have had any connection with the alleged conspiracy may be considered only as evidence that the recipients were informed of the alleged facts stated in them, but, in the absence of a finding that a defendant adopted statements in one of these Exhibits as his own, they may not be considered as evidence that the alleged facts they recite actually occurred; that dec-
3570 larations appearing in any Exhibit, as letters, telegrams, etc., which were made by individuals named as defendants or alleged in the indictment to have been coconspirators with the defendants, may not be considered as evidence of the alleged facts which they recite, as against any other defendant, unless they have been adopted by another defendant or the declarant has been found beyond a reasonable doubt to have been a co-conspirator with some of the defendants and to have made the declarations dur-

ing, and in furtherance of the objects of, the alleged conspiracy; and that any statement occurring in any Exhibit, as letters, telegrams, etc., which, by expressions appearing on its face, or by the testimony of the writer of the Exhibit, shows that any such statement was not made from the personal knowledge of the writer but was merely a repetition of the statements, gossip and opinion of others, may not be considered as evidence of the alleged facts recited in any such statement.

Therefore, the defendants respectfully move that the above listed Exhibits and testimony should be stricken from the record.

Respectfully submitted by

William J. Donovan and Herbert H. Thomas
on behalf of the following defendants:

Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock, Skelly Oil Company, W. G. Skelly, Barnsdall Refining Corporation, E. B. Reeser, The Globe Oil & Refining Company (Oklahoma), The Globe Oil & Refining Company (Illinois), The Globe Oil & 3571 Refining Company (Kansas), I. A. O'Shaughnessy, Arthur V. Bourque, Clyde M. Boggs, Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell, Thomas Fitzgerald, Phillips Petroleum Company, Frank Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, Socony-Vacuum Oil Company, Inc., Charles E. Arnott, Charles L. Jones, H. T. Ashton, Bryan S. Reid, Continental Oil Company, Dan Moran, Harry J. Kennedy, L. T. Cramer, The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Dewey K. Chamberlain, Shell Petroleum Company, Alexander Fraser, P. E. Lakin, Sinclair Refining Company, J. W. Carnes, Wadhams Oil Company, A. G. Maguire, Cities Service Company, Harry D. Frueauff, H. E. Brandli, Empire Oil & Refining Company and O. J. Tuttle.

3572 On the same date, January 17, 1938, at a hearing of the above cause before the said Court, the following occurred:

Mr. Thomas: Now, if the Court please, I have a motion on behalf of the defendants I ask leave to file, and I assume your Honor will follow your practice and hear arguments on it after the verdict.

The Court: Yes.

(Motion handed to the Clerk.)

Mr. Denton: I desire to file motions for directed verdict on behalf of the defendant Mid-Continent Petroleum Corporation, and also on behalf of each of the individual defendants, Jacob France, Robert W. McDowell, and James W. Fitzgerald.

The Court: You may file them.

Mr. Denton: Do I understand your Honor has made an order reserving the ruling on these motions until some later day?

The Court: On all motions for directed verdict the Court will reserve a ruling on those motions until some later day, and will not hear any argument.

(Motions handed to Clerk.)

3573 Mr. Wood: I would like the record to show the filing of motions to dismiss and for a directed verdict in behalf of the defendant J. W. Carnes.

Also similar motions on behalf of the defendant Sinclair Refining Company.

(Motions handed to the Clerk.)

Mr. Francis: Your Honor, could the record reflect that like motions have been filed for all of the several defendants as appears from the records in the Clerk's office, without stating in the record the name of each one of them?

The Court: Yes, let the records show motions for directed verdicts have been filed on behalf of all defendants, and the ruling thereon reserved by the Court until some later date.

Are there any other motions to be heard at this time?

Mr. Donovan: Note an exception on behalf of all the defendants for failure to rule on motions for directed verdicts at this time.

On January 17, 1938, the defendants hereinafter named, by their attorneys, each filed with the Clerk of the above Court, his or its Motion for a Directed Verdict at the 3574 close of all of the evidence. The defendants-appellants who filed Motions for Directed Verdicts and the pages of the Record at which the said Motions are printed are listed below:

Socony-Vacuum Oil Company, Inc. (Printed R. p. 1914).

Charles E. Arnott (Printed R. p. 1922).

H. T. Ashton (Printed R. p. 1923).

Wadhams Oil Company (Printed R. p. 1924).

Empire Oil and Refining Company (Printed R. p. 1932).

Continental Oil Company (Printed R. p. 1940).

The Pure Oil Company (Printed R. p. 1952).

R. H. McElroy, Jr. (Printed R. p. 1959).

Shell Petroleum Corporation (Printed R. p. 1963).

P. E. Lakin (Printed R. p. 1971).

Sinclair Refining Company (Printed R. p. 1981).

Mid-Continent Petroleum Corporation (Printed R. p. 1991).

Robert W. McDowell (Printed R. p. 2003).

Phillips Petroleum Company (Printed R. p. 2014).

Skelly Oil Company (Printed R. p. 2021).

The Globe Oil and Refining Company (Oklahoma) (Printed R. p. 2031).

The Globe Oil and Refining Company (Illinois) (Printed R. p. 2031).

**The following defendants who are not appellants in these appeals also filed Motions for Directed Verdict at the close of all the evidence: Standard Oil Company (Indiana),
3575 Edward G. Seubert, Allan Jackson, Edward J. Bullock, Charles L. Jones, Bryan S. Reid, A. G. Maguire, Cities Service Company, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, Dan Moran, Harry J. Kennedy, L. T. Cramer, Henry M. Dawes, C. B. Watson, Dewey K. Chamberlain, Alexander Fraser, J. W. Carnes, Jacob France, Thomas Fitzgerald, Frank R. Phillips, Fred L. Koopman, A. M. Hughes, H. A. Gardner, W. G. Skelly, Barnsdall Refining Corporation, E. B. Reeser, The Globe Oil and Refining Company (Kansas), I. A. O'Shaughnessy, Edward L. Shea, Noel Robinson, J. W. Warner, Clyde M. Boggs, and Arthur V. Bourque.**

3576 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 11365) * *

MOTION OF DEFENDANT SOCONY-VACUUM OIL COMPANY, INC. FOR A DIRECTED VERDICT.

(Filed January 17, 1938)

Comes now the defendant, Socony-Vacuum Oil Company, Inc., at the close of all the evidence adduced herein, and moves the Court to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

3577 (3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

3578 (7) There is no competent substantial proof to support the following allegations contained in paragraph No. 11 of the indictment, wherein it is alleged that the "said defendant major oil companies have uniformly adopted and have embodied in their respective standard forms of jobber contracts employed throughout the Mid-Western area virtually identical provisions governing terms and conditions of sale."

The evidence shows that the forms of jobber contracts in use by the various defendant major oil companies were not uniform and contain various provisions in regard to the price, some of them providing for the low price, published in Platt's Oilgram or in the Chicago Journal of Commerce, some of them providing for the average of the high and low prices, some of them providing for a guaranteed margin of 5½¢ per gallon, and some of them providing for what is described in the evidence as a "split margin."

(8) There is no competent substantial proof to support the following allegations contained in paragraph No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jurors unknown "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised 3579 and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them."

The competent substantial evidence produced totally fails to prove that this defendant combined and conspired with others for the purpose of artificially raising and fixing tank car prices, and totally fails to prove that this defendant with others artificially raised and fixed the spot market tank car prices, and totally fails to prove that this defendant with others maintained said prices at artificially high and non-competitive levels, and totally fails to prove that this defendant with others maintained said prices at levels agreed upon among them.

(9) There is no competent substantial proof to support the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants "engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying programs and (b) the Mid-Continent buying program," which allegation is further explained by the answer to paragraph No. 13 of the bill of particulars filed by the government to the corporation and individual demand therefor, in which answer it is alleged as follows:

> "The Government claims that each of the defendants—including Gulf—engaged and participated
> 3580 with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that this defendant participated in the alleged East Texas buying program or in the alleged Mid-Continent buying program.

The evidence shows that in East Texas the independent refiners organized the East Texas Refiners Marketing Association and engaged in a general effort to sell gasoline through that association, but there is no evidence of any concerted buying or of any buying program by other defendants from said independent refiners or from the said East Texas Refiners Marketing Association. The evidence further shows that there was no general conspiracy which included a buying program in East Texas, and that the formation of said East Texas Refiners Marketing Association and the sale of gasoline through said association had no relation to any alleged buying program in the Mid-Continent field.

(10) There is no competent substantial proof to support the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices."

3581 The evidence shows that there was no such concerted buying either in the East Texas or Mid-Continent fields, but that purchases were made by some of the defendants to meet their own needs and that prices were agreed upon with the seller in regard to each sale and that said prices were not uniform, and that said prices were not high as compared with prevailing market prices at the time of such purchases.

(11) There is no substantial competent evidence in the record herein in support of the following allegation contained in paragraph No. 21 of the indictment, wherein it is alleged that "said independent refiners have, at the instance of defendant Arnott, and the aforesaid Buckley, curtailed their production of gasoline."

The evidence shows that such curtailment of production of gasoline as occurred in the East Texas field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the petroleum industry. There is no substantial competent evidence that either the defendant Arnott or the witness Buckley caused the independent refiners in East Texas to curtail their production. The evidence discloses that it was a part of the purposes of the independent refiners in the formation of the East Texas Refiners Marketing Association that all the members of that
3582 association should comply with all provisions of the law, both State and Federal, and should not manufacture gasoline from illegally produced crude oil and should not produce gasoline in excess of the allocations of the Federal District Allocator.

(12) There is no substantial competent evidence in the record herein in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi."

The competent substantial evidence wholly fails to show that any quantity of gasoline was ever allotted for purchase to this defendant or to any of the defendants by the defendants McDowell, Tuttle and Bourque and by the witness Jacobi.

(13) There is no substantial competent evidence herein in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "Said purchases have been in excess of the

amounts which the aforementioned defendant major oil companies would have purchased apart from their 3583 participation in said buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies."

The competent substantial evidence shows that the defendant major oil companies have only made purchases in order to supply their needs and have not made purchases in excess of the amounts which they would have purchased apart from their participation in the alleged buying program. There is no substantial competent evidence to the effect that this defendant ever made purchases of gasoline in excess of its needs or in excess of such amounts as it would have purchased apart from the alleged buying program in the Mid-Continent area. The competent substantial evidence further shows that such purchases as were made by various defendants were not made at uniform prices and were not made at high prices, and were not made at arbitrary and non-competitive prices. The competent substantial evidence further shows that the said purchases were not made at prices agreed upon by the defendant major oil companies. The competent substantial evidence wholly fails to show any agreement whatsoever by this defendant with others or among the defendants as to the prices paid or to be paid for such purchases.

(14) There is no substantial competent evidence herein to support the following allegation contained in paragraph 3584 No. 23 of the indictment, wherein it is alleged as follows: "In furtherance of said unlawful purposes, said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline."

The competent substantial evidence shows that such curtailment of the production of gasoline as occurred in the Mid-Continent field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no competent substantial evidence that independent refiners curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(15) There is no substantial competent evidence to

support the following allegations contained in paragraph No. 24 of the indictment, wherein it is alleged that defendants Chicago Journal of Commerce and Keith Fashier and defendants Platt's Oilgram, National Petroleum News and Warren C. Platt "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western
3585 Division of Wisconsin"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants "while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots * * * knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the East Texas buying program and Mid-Continent buying program"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants engaged and participated in a combination and conspiracy with the other defendants as set forth in said indictment, as said allegations are explained in the answer to the corporate demand for a bill of particulars, No. 60 (See R. p. 71, Par. 27), which reads as follows:

> "Paragraph 24 of the indictment sets forth the participation of the market journals in the general combination and conspiracy charged in the indictment, and the Government claims that the allegation of this paragraph that the acts of the journals were done intentionally 'In the combination and conspiracy set forth in this indictment' amounts to saying that they were done in combination with all of the other defendants and conspirators (including Gulf, Bourque and Boggs)".

The evidence wholly fails to show that said defendants ever entered into any agreement with the other defendants in regard to the quotation of prices and wholly fails to show that said defendants quoted prices paid by major oil companies to independent refiners as prices paid by jobbers.

3586 The participation of the market journals was a necessary and essential element of the conspiracy which the indictment attempts to allege, and the failure to prove such participation of the market journals is a fatal variance and amounts to a failure of proof of the conspiracy or combination alleged.

(16) The substantial competent evidence fails to show that this defendant did any act whatsoever with any wrongful purpose or criminal intent. All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(17) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(18) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph No. 18 of the indictment,

3587 (19) All competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph No. 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph No. 22.

(20) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which this defendant was or became obligated regularly to purchase any specific amount or any definite

share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners, or from any of them.

3588 (21) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

(22) In addition to the fatal variance alleged in paragraph No. 15 hereof there is a fatal variance between the allegations of the indictment and the substantial competent evidence produced herein in this, to-wit, that whereas the indictment, as explained by the answer to paragraph No. 13 of the bill of particulars filed by the Government in response to the corporate demand (See R. p. 66, Par. 10), alleges that there was one general conspiracy which included two concerted buying programs, one in East Texas and the other in the Mid-Continent, the evidence shows that there was no buying program in East Texas, and that if any buying program existed it referred to the Mid-Continent only.

(23) There is a fatal variance between the allegations of the indictment and the evidence produced herein in this, to-wit, by reasserting the variances set forth in paragraph No. 22 hereof and adding thereto the following: the indictment in paragraph No. 23 charges that the independent refiners have at the instance of defendants Arnott, McDowell, Tuttle, Boggs, and Bourque curtailed their production of gasoline, whereas the competent substantial evidence shows that the only curtailment in the manufacture of gasoline by the independent refiners
3589 was that required of them by the Federal Allocator under the Petroleum Code.

(24) There is a fatal variance between the allegations of the indictment and the evidence produced herein in this, to-wit, by reasserting the variances set forth in paragraph No. 23 hereof and adding thereto the following: the indictment charges that the gasoline purchased by the defendant major oil companies was allotted to each such defendant by defendants McDowell, Tuttle, Bourque, and the witness W. P. Jacobi, whereas the competent substantial evidence shows that no gasoline was allotted to any of said major oil company defendants, but was purchased by each such defendant only when required by it in its normal business operations.

(25) There is a fatal variance between the allegations of the indictment and the evidence produced therein in this, to-wit, by reasserting the variances set forth in paragraph No. 24 hereof and adding thereto the following: the indictment in paragraph No. 23 charges that the purchases of gasoline made by the major oil company defendants were "made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies;" whereas the competent substantial evidence shows that the purchases of said defendant major oil companies were made at various
3590 and non-uniform prices; were made in most cases
at prices at or below the low of the published market for like grade of gasoline; were not made at any arbitrary price, but were made at prices agreed upon between the seller and the buyer and in many instances differed as to prices on purchases made on the same day, and were made in sharp competition and in most cases at or below the published market prices therefor.

Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to it.

Dated at Madison, Wisconsin, this 14th day of January, A. D. 1938.

Louis Mead Treadwell,
Attorney for defendant Socony-Vacuum Oil Company, Inc.

3591 In the District Court of the United States.

• • (Caption—11365) • •

MOTION OF DEFENDANT CHARLES E. ARNOTT FOR A DIRECTED VERDICT.

(Filed January 17, 1938.)

Comes now the defendant, Charles E. Arnott, at the close of all the evidence adduced herein, and moves the Court to direct the jury to find a verdict of "Not Guilty" as to him, and in support thereof specifies the following reasons and grounds:

The defendant, Charles E. Arnott, reasserts and adopts each and every reason and ground assigned in the motion to direct a verdict heretofore filed herein on behalf of the defendant Socony-Vacuum Oil Company, Inc.

Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to him.

Louis Mead Treadwell,
Attorney for defendant Charles E. Arnott.

Goldthwaite H. Dorr,
Of Counsel.

Dated at Madison, Wisconsin,
this 14th day of January, 1938.

3592 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION OF DEFENDANT H. T. ASHTON FOR A DIRECTED VERDICT.

(Filed January 17, 1938.)

Comes now the defendant, H. T. Ashton, at the close of all the evidence adduced herein, and moves the Court to direct the jury to find a verdict of "Not Guilty" as to him, and in support thereof specifies the following reasons and grounds:

The defendant, H. T. Ashton, reasserts and adopts each and every reason and ground assigned in the motion to direct a verdict heretofore filed herein on behalf of the defendant Socony-Vacuum Oil Company, Inc.

Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to him.

Louis Mead Treadwell,
Attorney for defendant H. T. Ashton.

Dated at Madison, Wisconsin,
this 14th day of January, 1938.

3593 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION OF DEFENDANT WADHAMS OIL COMPANY FOR A DIRECTED VERDICT.

(Filed January 17, 1938.)

Comes Now the defendant, Wadhams Oil Company, at the close of all the evidence adduced herein, and moves the Court to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of 3594 the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within
3595 the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) There is no competent substantial proof to support the following allegations contained in paragraph No. 11 of the indictment, wherein it is alleged that the "said defendant major oil companies have uniformly adopted and have embodied in their respective standard forms of jobber contracts employed throughout the Mid-Western area virtually identical provisions governing terms and conditions of sale."

The evidence shows that the forms of jobber contracts in use by the various defendant major oil companies were not uniform and contain various provisions in regard to the price, some of them providing for the low price published in Platt's Oilgram or in the Chicago Journal of Commerce, some of them providing for the average of the high and low prices, some of them providing for a guaranteed margin of 5½¢ per gallon, and some of them providing for what is described in the evidence as a "split margin".

(8) There is no competent substantial proof to support the following allegations contained in paragraph
3596 No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jury unknown "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them".

The competent substantial evidence produced totally fails to prove that this defendant combined and conspired with others for the purpose of artificially raising and fixing tank car prices, and totally fails to prove that this defendant with others artificially raised and fixed the spot market tank car prices, and totally fails to prove that this defendant with others maintained said prices at artificially high and non-competitive levels, and totally fails to prove that this defendant with others maintained said prices at levels agreed upon among them.

(9) There is no competent substantial proof to support the following allegations contained in paragraph No. 19 of the indictment, wherein it [illegible] alleged that the defendants "engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying
3597 program", which allegation is further explained by the answer to paragraph No. 13 of the bill of particulars filed by the Government (See R. p. 66, Par. 10) to the corporation and individual demand therefor, in which answer it is alleged as follows:

> "The Government claims that each of the defendants—including Gulf—engaged and participated with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that this defendant participated in the alleged East Texas buying program or in the alleged Mid-Continent buying program.

The evidence shows that in East Texas the independent refiners organized the East Texas Refiners Marketing Association and engaged in a general effort to sell gasoline through that association, but there is no evidence of any concerted buying or of any buying program by other defendants from said independent refiners or from the said East Texas Refiners Marketing Association. The evidence further shows that there was no general conspiracy which included a buying program in East Texas, and that the formation of said East Texas Refiners Marketing Association and the sale of gasoline through said association had no relation to any alleged buying program in the Mid-Continent field.

3598 (10) There is no competent substantial proof to support the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices."

The evidence shows that there was no such concerted buying either in the East Texas or Mid-Continent fields, but that purchases were made by some of the defendants to meet their own needs and that prices were agreed upon with the seller in regard to each sale and that said prices were not uniform, and that said prices were not high as compared with prevailing market prices at the time of such purchases.

(11) There is no substantial competent evidence in the record herein in support of the following allegation contained in paragraph No. 21 of the indictment, wherein it is alleged that "said independent refiners have, at the instance of defendant Arnott, and the aforesaid Buckley, curtailed their production of gasoline."

The evidence shows that such curtailment of production of gasoline as occurred in the East Texas field was due to refinery allocations made by the District Allocator
3599 acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no substantial competent evidence that either the defendant Arnott or the witness Buckley caused the independent refiners in East Texas to curtail their production. The evidence discloses that it was a part of the purposes of the independent refiners in the formation of the East Texas Refiners Marketing Association that all the members of that association should comply with all provisions of the law, both State and Federal, and should not manufacture gasoline from illegally produced crude oil and should not produce gasoline in excess of the allocations of the Federal District Allocator.

(12) There is no substantial competent evidence in the record herein in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi."

The competent substantial evidence wholly fails to show that any quantity of gasoline was ever allotted for
3600 purchase to this defendant or to any of the defendants by the defendants McDowell, Tuttle and Bourque and by the witness Jacobi.

(13) There is no substantial competent evidence herein in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "Said purchases have been in excess of the amounts

which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies."

The competent substantial evidence shows that the defendant major oil companies have only made purchases in order to supply their needs and have not made purchases in excess of the amounts which they would have purchased apart from their participation in the alleged buying program. There is no substantial competent evidence to the effect that this defendant ever made purchases of gasoline in excess of its needs or in excess of such amounts as it would have purchased apart from the alleged buying program in the Mid-Continent area. The competent substantial evidence further shows that such purchases as were made by various defendants were not made at uni-
3601 form prices and were not made at high prices, and
were not made at arbitrary and non-competitive prices. The competent substantial evidence further shows that the said purchases were not made at prices agreed upon by the defendant major oil companies. The competent substantial evidence wholly fails to show any agreement whatsoever by this defendant with others or among the defendants as to the prices paid or to be paid for such purchases.

(14) There is no substantial competent evidence herein to support the following allegation contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "In furtherance of said unlawful purposes, said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline."

The competent substantial evidence shows that such curtailment of the production of gasoline as occurred in the Mid-Continent field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no competent substantial evidence that independent refiners curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

3602 (15) There is no substantial competent evidence to support the following allegations contained in paragraph No. 24 of the indictment, wherein it is alleged that

defendants Chicago Journal of Commerce and Keith Fanshier and defendants Platt's Oilgram, National Petroleum News and Warren C. Platt "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western Division of Wisconsin"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants "while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots * * * knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the East Texas buying program and Mid-Continent buying program"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants engaged and participated in a combination and conspiracy with the other defendants as set forth in said indictment, as said allegations are explained in the
3603 answer to the corporate demand for a bill of particulars, No. 60 (See R. p. 71, Par. 27), which reads as follows:

> "Paragraph 24 of the indictment sets forth the participation of the market journals in the general combination and conspiracy charged in the indictment, and the Government claims that the allegation of this paragraph that the acts of the journals were done intentionally 'in the combination and conspiracy set forth in this indictment' amounts to saying that they were done in combination with all of the other defendants and conspirators (including Gulf, Bourque and Boggs)."

The evidence wholly fails to show that said defendants ever entered into any agreement with the other defendants in regard to the quotation of prices and wholly fails to show that said defendants quoted prices paid by major oil companies to independent refiners as prices paid by jobbers.

The participation of the market journals was a necessary and essential element of the conspiracy which the indictment attempts to allege, and the failure to prove such participation of the market journals is a fatal variance and amounts to a failure of proof of the conspiracy or combination alleged.

(16) The substantial competent evidence fails to show that this defendant did any act whatsoever with any wrongful purpose or criminal intent. All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as
3604 it is consistent with its guilt of the offense, if any, charged in the indictment.

(17) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(18) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph No. 18 of the indictment.

(19) All competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph No. 22 of the indictment had or would have on hand for sale, and by disseminating
3605 such information among the defendant major oil companies named in said Paragraph No. 22.

(20) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners, or from any of them.

(21) There is no substantial competent evidence in the record herein that any defendant major oil company per-

formed or did any act within the Western District of Wisconsin pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

(22) In addition to the fatal variance alleged in paragraph No. 15 hereof there is a fatal variance between the allegations of the indictment and the substantial competent evidence produced herein in this, to-wit, that whereas the indictment, as explained by the answer to paragraph No. 13 of the bill of particulars filed by the Government 3606 (See R. p. 66, Par. 10) in response to the corporate demand, alleges that there was one general conspiracy which included two concerted buying programs, one in East Texas and the other in the Mid-Continent, the evidence shows that there was no buying program in East Texas, and that if any buying program existed it referred to the Mid-Continent only.

(23) There is a fatal variance between the allegations of the indictment and the evidence produced herein in this, to-wit, by reasserting the variances set forth in paragraph No. 22 hereof and adding thereto the following: the indictment in paragraph No. 23 charges that the independent refiners have at the instance of defendants Arnott, McDowell, Tuttle, Boggs, and Bourque curtailed their production of gasoline, whereas the competent substantial evidence shows that the only curtailment in the manufacture of gasoline by the independent refiners was that required of them by the Federal Allocator under the Petroleum Code.

(24) There is a fatal variance between the allegations of the indictment and the evidence produced herein in this, to-wit, by reasserting the variances set forth in paragraph No. 23 hereof and adding thereto the following: the indictment charges that the gasoline purchased by the defendant major oil companies was allotted to each such defendant by defendants McDowell, Tuttle, Bourque, and the 3607 witness W. P. Jacobi, whereas the competent substantial evidence shows that no gasoline was allotted to any of said major oil company defendants, but was purchased by each such defendant only when required by it in its normal business operations.

(25) There is a fatal variance between the allegations of the indictment and the evidence produced herein in this, to-wit, by reasserting the variances set forth in paragraph No. 24 hereof and adding thereto the following: the indictment in paragraph No. 23 charges that the purchases of gasoline made by the major oil company defendants were "made at uniform, high, arbitrary, and non-competitive

prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies," whereas the competent substantial evidence shows that the purchases of said defendant major oil companies were made at various and non-uniform prices; were made in most cases at prices at or below the low of the published market for like grade of gasoline; were not made at any arbitrary price, but were made at prices agreed upon between the seller and the buyer and in many instances differed as to prices on purchases made on the same day, and were made in sharp competition and in most cases at or below the published market prices therefor.

3608 Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to it.

Dated at Madison, Wisconsin, this 14th day of January, A. D., 1938.

Louis Mead Treadwell,
Attorney for defendant Wadhams Oil Company.

Joseph H. Marshutz,
Of Counsel.

3609 In the District Court of the United States.

* * (Caption—11365) * *

MOTION OF EMPIRE OIL AND REFINING COMPANY TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed 1/17/38.)

Comes now the defendant Empire Oil and Refining Company, (a Delaware corporation, the name of which has been changed to Cities Service Oil Company since the date of the indictment), at the close of all the evidence adduced herein, and moves the Court to dismiss the indictment and the proceedings thereunder, and to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to, in furtherance of, or to effect the object of the

alleged combination and conspiracy within the Western District of Wisconsin.

3610 (2) The said indictment discloses on its face that trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-
3611 Trust Act. (15 U. S. C. A. § 1.)

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act (15 U. S. C. A. § 1).

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) There is no competent evidence in the record herein to warrant the jury in finding this defendant guilty of the offense charged in the indictment.

(8) All the substantial competent evidence in the record herein is as consistent with the innocence of this defendant as with its guilt of the offense, if any, charged in the indictment.

(9) There is no substantial competent evidence in the record herein of facts which exclude every other hypothe-

sis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(10) There is no substantial competent evidence in the record herein that this defendant combined or conspired together with the other defendants named in the indictment, or with any of them, or with other persons referred to in the indictment, or with any of them, as charged in
3612 Paragraph 18 of the indictment or elsewhere in the indictment.

(11) There is no substantial competent evidence in the record herein that this defendant combined and conspired together with any defendant or other person or corporation for the purpose of artificially raising or fixing the tank car prices of gasoline in the spot markets mentioned in the indictment, or that this defendant, in combination or conspiracy with any other defendant or person or corporation referred to in the indictment or otherwise raised or fixed or maintained said spot market tank car prices of gasoline at artificially high or non-competitive levels or at levels agreed upon among them, or intentionally increased or fixed the tank car prices of gasoline, or arbitrarily exacted money from jobbers, or intentionally raised the general level of retail prices.

(12) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination or conspiracy in restraint of trade or commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

(13) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or at any time during said
3613 period, this defendant engaged and participated in two concerted gasoline buying programs referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the Mid-Continent Buying Program, as alleged in said paragraph.

(14) There is no substantial competent evidence in the record herein that this defendant purchased gasoline at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from the independent refiners referred to in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary or non-competitive prices, or from time to time at progressively increased prices, pur-

suant to any agreement between this defendant and the other defendant major oil companies named in said Paragraph 22, or any of them.

(15) All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable 3614 information as to the amounts of such gasoline which the independent refiners referred to in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

(16) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners referred to in Paragraph 22 of the indictment, or whereby or as the result of which this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(17) There is no substantial competent evidence in the record herein that any defendant or any other person performed or did any act within the Western District of 3615 Wisconsin pursuant to, or in furtherance of, or to effect the object of the combination and conspiracy, if any, alleged in the indictment herein.

(18) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, in that the indictment alleges in a single count that

the defendants engaged in one general conspiracy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, even on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act, only tends to prove that the defendants named in paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in paragraphs 22 and 23 of the indictment engaged in another and entirely
separate, distinct and different buying program in the
3616 Mid-Continent field.

(19) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows:

The indictment alleges in paragraph 18 in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the tank car prices of gasoline in the spot markets described in the indictment, and thereby to intentionally increase and fix the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the Mid-Western area, and, by reason of the prevailing form of jobber contracts described in the indictment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the Mid-Western area, and in turn to intentionally raise the general level of retail prices prevailing in said Mid-Western areas.

The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy,

First, the two buying programs which are referred to in paragraph nineteen of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market
3617 journals, the Chicago Journal of Commerce, Platt's
Oilgram and the National Petroleum News, which are alleged in paragraph 24 of the indictment to have been the

chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, as at all other times, published in their price quotations only the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United
3618 States moved to dismiss the indictment against said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposition of said defendants, was granted by this court.

The result of such complete failure of proof is that the defendant market journals, an alleged "necessary element" in the alleged scheme of the defendants; the alleged "connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective" of the alleged conspiracy, that is, as alleged, "unjust enrichment for the major oil companies;" the alleged "outstanding means, the absolutely necessary means toward getting the conspiracy through" and the alleged "chief agencies and instrumentalities" through which the alleged wrongfully and artificially raised and fixed prices for gasoline allegedly affected the prices paid by jobbers, retail dealers and consumers ~~for gasoline in~~ the Mid-Western area, and especially within the Western District of Wisconsin, have been proved by the evidence and have been found by order of this court not to have participated in or to have aided and abetted the other and now the only remaining defendants in carrying out the conspiracy, if any, alleged in the indictment, and that the conspiracy, if any, charged in the indictment has not been and cannot be proved.

(20) The evidence in this case does not permit the jury to find beyond a reasonable doubt that the defendants 3619 or that any of them have violated Section 1 of the Sherman Act by participating and engaging in any buying program or programs as alleged in the indictment, for the following additional reasons:

The evidence introduced on behalf of the defendants establishes that the defendant Arnott was appointed Chief Stabilizer of the Petroleum Industry by a letter dated July 20, 1934 from the Secretary of the Interior, Harold L. Ickes, as Administrator of the Code of Fair Competition for the Petroleum Industry, and carried on stabilization activities under the authority or the supposed authority of that letter until the termination of all code activities on May 27, 1935.

When the defendant Arnott on January 4, 1935, appointed the Tank Car Stabilization Committee and instructed that Committee to take steps to relieve the condition of the independent refiners, he reasonably believed that he was authorized so to do by said letter of July 20, 1934, and that in so doing he had the approval of the Petroleum Administrator and was acting to carry out his plans and policies. The defendant Arnott so told the defendants who were members of said Tank Car Stabilization Committee and said defendants reasonably believed and acted on those statements, and not otherwise, in carrying on the activities of that committee.

In all his connections with the buying of surplus 3620 gasoline in the Mid-Continent and in the East Texas fields, the defendant Arnott believed that he was acting under the authority of the letter of July 20, 1934, that he had the approval of the Petroleum Administrator and of his assistants and that he was acting in conformity with and for the purpose of effectuating the plans and policies of the Petroleum Administration. The defendant Arnott so advised the individual defendants who had any connection with such buying activities and each of said defendants reasonably believed said statements and for that reason, and not otherwise, participated in the so-called East Texas and Mid-Continent programs to the extent, if any, that each is shown by the evidence to have participated.

The Petroleum Administrator, through the Petroleum Administrative Board and through members of that Board, and otherwise, was advised of the activities of the defendant Arnott and of the so-called East Texas and Mid-Continent programs and at least tacitly approved and encour-

aged the carrying on of these so-called programs as a part of stabilization and as a means of assisting in the accomplishment of the ends and the objectives of the Petroleum Administration, and no criticism of those activities, nor request for their termination, was ever made by the Petroleum Administrator either directly or through the Petroleum Administrative Board or through the Planning
3621 and Coordination Committee of the Petroleum Industry.

The Government of the United States consists of many departments and bureaus and agencies. The Department of Justice and the Department of the Interior are equal and coordinate branches of the Government of the United States. Neither the court nor the jury, therefore, may find that what the defendants did under the authorization and at the request and with the knowledge and approval of the Government of the United States as represented during the period of the National Industrial Recovery Act and of the Petroleum Code by the Secretary of the Interior, Harold L. Ickes, as the Petroleum Administrator exercising the powers delegated to the President of the United States by said Act, whether such authorization was expressed or shown directly or through the Petroleum Administrative Board as the Administrative Agency of the Petroleum Code, constituted a violation of Section 1 of the Sherman Act.

Dated January 17, 1938.

THEO. W. BRAZEAU,
E. L. WINGERT,
Attorneys for Empire Oil and Refining Company (now named Cities Service Oil Company).

3622 In the District Court of the United States.

* * (Caption 11365) * *

MOTION TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT

(Filed January 14, 1938)

Come now the defendants, Continental Oil Company, a corporate defendant herein, Dan Moran, Harry J. Kennedy and L. T. Cramer, individually and separately, and not appearing otherwise, and at the close of all of the evidence adduced by the Government and at the close of all of the evidence adduced by the defendants in this case, move the court to dismiss the indictment and the proceedings thereunder, and direct the jury to find and return a verdict of "Not Guilty" as to the defendants Continental Oil Company, a corporate defendant, and as to Dan Moran, Harry J. Kennedy and L. T. Cramer, individual defendants, and each of said named defendants separately, and for grounds of said motion states:

I.

That all of the substantial evidence in the case wholly fails to establish that the said defendants, Continental Oil Company, Dan Moran, Harry J. Kennedy and L. T. Cramer entered into any unlawful combination and 3623 conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, or any amendments thereof, as charged in Paragraph 18 of the indictment.

II.

That there is no substantial evidence in the case that the said defendants, Continental Oil Company, Dan Moran, Harry J. Kennedy and L. T. Cramer committed an overt act in pursuance of the conspiracy charged in the indictment.

III.

That all of the evidence in the case wholly fails to establish the allegations of the indictment and fails to establish any fact alleged in said indictment upon which a verdict other than a verdict of "Not Guilty" can be sustained by the evidence in the case and the law of the case.

IV.

The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants or any of them performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

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V.

The said indictment discloses on its face that the trial of these defendants thereunder in the Western District of Wisconsin violates the rights of these defendants under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

VI.

The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable these defendants to prepare and make their defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against them based on the same matters or things, or on any of them, on which the indictment is based.

VII.

The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate
3625 trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

VIII.

The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

IX.

The said indictment fails to allege the facts showing any violation by the defendants of any law of the United States.

X.

All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of these defendants as it is consistent with their guilt of the offense, if any, charged in the indictment.

XI.

There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of these defendants of the offense, if any, charged in the indictment.

XII.

There is no substantial competent evidence in the record herein that these defendants combined and conspired together with the other defendants named in the indictment, or with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in Paragraph 18 of the indictment.

XIII.

There is no substantial competent evidence in the record herein that these defendants engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

XIV.

There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period the defendants engaged and participated in two concerted gasoline buying programs referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the Mid-Continent Buying Program, as alleged in said Paragraph.

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XV.

There is no substantial competent evidence in the record herein that, beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period the defendant Continental Oil Company purchased gasoline from the independent refiners named in Paragraph 20 of the indictment, or from any of them, under the supervision and direction of the defendants Arnott and Carnes, and of one Neil Buckley, as alleged in Paragraph 21 of the indictment. That all the substantial evidence adduced in the case establishes that Continental Oil Company, acting by and through its officers, agents and representatives, and the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer did not enter into any combination, agreement, arrangement or understanding that said Continental Oil Company would purchase gasoline from independent refiners named in Paragraph 20 of the indictment, or from any of them, under the supervision and direction of the defendants Arnott and Carnes, and of one Neil Buckley, as alleged in Paragraph 21 of the indictment.

XVI.

There is no substantial competent evidence in the record herein that one Neil Buckley, acting in a liaison capacity between the East Texas Refiners Marketing Association, which is referred to in Paragraph 20 of the indictment, and the defendant major oil companies, instigated and directed any purchase of gasoline made by the de-
3628 fendants, Continental Oil Company, Dan Moran,
Harry J. Kennedy and L. T. Cramer during the period beginning in the month of February 1935, and con-

tinuing to the date of the presentation of the indictment, from any independent refiner named in said Paragraph 20.

XVII.

There is no substantial competent evidence in the record herein that Continental Oil Company or the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer, from time to time, or at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, arranged with the other defendant major oil companies or any of their officers, agents or representatives named in Paragraph 20 of the indictment, or with any of them, to purchase any part or any amount of the gasoline sold by the independent refiners named in said Paragraph 20, whether sold through the East Texas Refiners Marketing Association or otherwise.

XVIII.

There is no substantial competent evidence in the record herein that Continental Oil Company or the defendants, Dan Moran, Harry J. Kennedy and L. T. Cramer at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, purchased any gasoline from any independent refiner named in Paragraph 20 of the
3629 indictment, whether sold through the East Texas
Refiners Marketing Association, or otherwise, in accordance with or pursuant to any arrangements between the defendant Continental Oil Company and the other defendant major oil companies, their officers, agents or representatives, named in said Paragraph 20, or any of them.

XIX.

There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, Continental Oil Company or the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer engaged or participated in any combination, arrangement, agreement, understanding, concert of action or program for or relative to the purchase by the defendant major oil companies named in Paragraph 20 of the indictment of large quantities of gasoline from independent refiners in the East Texas field, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

XX.

There is no substantial competent evidence in the record herein that Continental Oil Company or the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer purchased any gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment as 3630 the result of or in accordance with any arrangement, agreement or understanding between the defendant Continental Oil Company and the other defendant major oil companies named in said Paragraph 20, or any of them.

XXI.

There is no substantial competent evidence in the record herein that Continental Oil Company or the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer purchased any gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 20 of this indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between the defendant Continental Oil Company and the other defendant major oil companies named in said Paragraph 20, or any of them.

XXII.

There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the insistence of the defendant Arnott or of one Neil Buckley.

3631 XXIII.

The competent evidence in the record herein affirmatively establishes that at no time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment was there an East Texas Buying Program, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

XXIV.

All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program relative to spot transactions in gasoline in the East Texas field during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment consisted of the organization of the East Texas Refiners Marketing Association by certain of the independent refiners named in Paragraph 20 of the indictment, and of the operation and use of that Association by said independent refiners to sell the gasoline which they produced and for which they did not have regular established outlets or channels of distribution through service stations or jobbers.

XXV.

All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program in effect at any time during the period beginning in the month of February 1935 and continu-
3632 ing to the date of the presentation of this indictment
for or relative to the sale and purchase of gasoline in the East Texas field was a selling program organized, maintained, and operated solely by the independent refiners named in Paragraph 20 of the indictment on their own initiative and in their own interests.

XXVI.

All the competent evidence in the record herein tends to establish that the defendants Continental Oil Company, Dan Moran, Harry J. Kennedy and L. T. Cramer did not participate in any East Texas program for or relative to the sale and purchase of East Texas gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, except insofar as the defendant Continental Oil Company acting individually and not in pursuance of or in accordance with any combination, conspiracy, arrangement, agreement, program or concert of action, purchased gasoline in the regular course of its business on spot transactions from independent refiners named in Paragraph 20 of the indictment, or from some of them.

XXVII.

All the competent evidence in the record herein tends to establish that every purchase of gasoline made by the defendant Continental Oil Company, by or through any of its officers, agents or representatives, during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment, was made by the defendant Continental Oil Company in the free exercise of its own independent discretion as to the party with whom it would deal, as to the amount which it would purchase and as to the price that it would pay. 3633

XXVIII.

There is no substantial competent evidence in the record herein that the defendant, Continental Oil Company or the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer purchased gasoline during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between defendant, Continental Oil Company, and the other defendant major oil companies named in said Paragraph 22, or any of them.

XXIX.

There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time

during the period beginning in the month of February
3634 1935, and continuing to the date of the presentation
of this indictment, curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

XXX.

All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant, Continental Oil Company or the defendants, Dan Moran, Harry J. Kennedy and L. T. Cramer participated or engaged during the period beginning in the month of February 1935 and continuing to the date of the presentation of the indictment was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

XXXI.

There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935 and continuing to the date of the presentation of this indictment, or that any time during said period, Continental Oil Company or the defendants Dan
Moran, Harry J. Kennedy and L. T. Cramer engaged
3635 or participated in any combination, arrangement,
agreement, understanding, concert of action, or program whereby, or as the result of which, the defendant Continental Oil Company was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or whereby, or as the result of which, the defendant Continental Oil Company was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

XXXII.

There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

XXXIII.

There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, in that the indictment alleges in a single count that the defendants engaged in one general conspir-
3636 acy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act, only tends to prove that the defendants named in Paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in Paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

XXXIV.

There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows:

The indictment alleges in Paragraph 18 in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the tank car prices of gasoline in the spot markets described in the indictment, and
3637 thereby to intentionally increase and fix the tank car prices of gasoline contracted to be sold, and sold, in

interstate commerce in the Mid-Western area, and, by reason of the prevailing form of jobber contracts described in the indictment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the Mid-Western area, and in turn to intentionally raise the general level of retail prices prevailing in said Mid-Western area.

The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy—

First, the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market journals, the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News, which are alleged in Paragraph 24 of the indictment to have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as
such price quotations the alleged wrongfully and ar-
3638 tificially raised and fixed prices for gasoline paid by
the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, as at all other times, only published in their price quotations the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United States moved to dismiss the indictment against said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposition of said defendants, was granted by this court.

XXXV.

That the evidence in the case establishes that if the defendant, Continental Oil Company and the defendants Dan Moran, Harry J. Kennedy and L. T. Cramer participated or engaged in the plan or program to purchase distressed gasoline from independent refineries either in the East Texas or Mid-Continent areas as alleged in the indictment the said defendants and each of them had reason to and did believe that the purchase of gasoline from said 3639 independent refineries was pursuant to and in conformity with the provisions of the National Industrial Recovery Act and the Code of Fair Competition of the Petroleum Industry, and that said purchases, if any, were made with the knowledge, approval and acquiescence of the Secretary of the Interior, Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry, and with the knowledge, approval and acquiescence of the Petroleum Administrative Board and the members thereof, which Board and the members were appointed by the said Petroleum Administrator for the purpose of carrying out the provisions of the National Industrial Recovery Act and the Code of Fair Competition of the Petroleum Industry, and especially for the purpose of stabilizing said industry and the markets of petroleum products. That said Petroleum Administrator and said Petroleum Administrative Board and the members thereof were fully advised by the petroleum industry and the defendants in this case that the major oil companies, defendants herein, commencing in the month of March 1935 and thereafter, and including the month of December 1936 were purchasing so-called distress gasoline from independent refineries in the East Texas and Mid-Continent areas and that said Petroleum Administrator and said Petroleum Administrative Board and the members thereof, with such knowledge, approved, acquiesced in and encouraged the defendant major companies to participate in and carry on the purchase of so-called distress gasoline from independent refineries as a means of stabilizing the petroleum in-3640 dustry and stabilizing the markets of petroleum products of said industry. That by reason of the acts and conduct of said Petroleum Administrator and the members of said Petroleum Board and those acting under and by their authority these defendants were led to believe and did believe that the buying of so-called distress gasoline from independent refineries in said East Texas and Mid-Continent areas was under the approval and sanction of the officers of the government of the United States and that by reason thereof these defendants are entitled to a directed verdict of Not Guilty in this case.

Wherefore, the defendants, Continental Oil Company, the corporate defendant, Dan Moran, Harry J. Kennedy and L. T. Cramer, individually and separately, and not otherwise, respectfully pray the Court that the motion of said defendants as to each of them separately for a directed verdict of "Not Guilty" be sustained.

Continental Oil Co.
Dan Moran
Harry J. Kennedy
L. T. Cramer
By William H. Zwick
Their Individual Counsel.

3641 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION OF THE PURE OIL COMPANY FOR DIRECTED VERDICT.

(Filed 1/14/38)

Comes Now the defendant, The Pure Oil Company, a corporation, at the close of all of the evidence introduced herein, and requests that the court give to the jury the following instructions:

"The Court instructs the Jury to find the defendant, The Pure Oil Company, not guilty".

Without limiting, in any way, the general effect of this motion for a directed verdict, the said defendant specifies as particular reasons, among others, why such instruction should be given, the following, to-wit:

(1) All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

3642 (2) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(3) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United

States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the "Sherman Anti-Trust Act", as charged in Paragraph 18 of the indictment.

(4) There is no substantial competent evidence in the record herein that this defendant beginning in February, 1935, entered into an agreement to artificially raise and fix the tank car price of gasoline in the spot markets in the East Texas and Mid-Continent fields and in Chicago, Illinois, and thereby increased and fixed the tank car price of gasoline sold in the Mid-Western area, nor is there any evidence that this defendant either agreed to or did artificially raise and fix said spot market tank car price of gasoline and maintain such price at artificially high and non-competitive levels and at levels agreed upon between this defendant and others.

(5) There is no substantial competent evidence in the record that during the period beginning with the month of February, 1935 and continuing to the date of the
3643 presentation of the indictment that this defendant engaged and participated in two gasoline buying programs referred to in the indictment as (1) the East Texas buying program, and (2) the Mid-Continent buying program, for the purchase from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high and at times progressively increased prices.

(6) There is no substantial competent evidence in the record that this defendant ever adopted, participated in or agreed to use a plan or scheme for purchasing gasoline from independent refiners at artificially high and above the current or going market price as a means for effectuating an alleged conspiracy to raise and fix the price of gasoline.

(7) There is no substantial competent evidence in the record herein that this defendant purchased any gasoline during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from any independent refiner named in paragraph 20 of the indictment as the result of or in accordance with any agreement, arrangement or understanding between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(8) There is no substantial competent evidence in the record herein that this defendant purchased any gaso-
3644 line during the period beginning in the month of February, 1935, and continuing to the date of the pres-

entation of this indictment, from the independent refiners named in Paragraph 20 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(9) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the insistence of the defendant Arnott or of one Neil Buckley.

(10) The competent evidence in the record herein affirmatively establishes that at no time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, was there an East Texas buying program, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

(11) All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program relative to spot transactions
3645 in gasoline in the East Texas field during the period
beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, consisted of the organization of the East Texas Refiners Marketing Association by certain of the independent refiners named in Paragraph 20 of the indictment, and of the operation and use of that association by said independent refiners to sell the gasoline which they produced and for which they did not have regular established outlets or channels of distribution through service stations or jobbers.

(12) All the competent evidence in the record herein tends to establish that this defendant did not participate in any East Texas program for or relative to the sale and purchase of East Texas gasoline during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, and not in pursuance of or in accordance with any combination, conspiracy, arrangement, agreement, program or concert of action, purchased gasoline in the regular course of its business on spot transactions from independent refiners named in Paragraph 20 of the indictment, or from some of them.

(13) All the competent evidence in the record herein

tends to establish that every purchase of gasoline 3646 made by this defendant during the period beginning in the month of February, 1935, and continuing to the date of presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment, was made by this defendant in the free exercise of its own independent discretion as to the party with whom it would deal, as to the amount which it would purchase, and as to the price that it would pay.

(14) There is no substantial competent evidence in the record herein that this defendant purchased gasoline during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 22, or any of them.

(15) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 22 of the indictment, or any of them, at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

3647 (16) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of the indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or whereby, or as the result of which, this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(17) There is no substantial competent evidence in the record herein that any defendant major oil company, or other defendant herein, performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(18) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the government in support thereof, in that the indictment alleges in a 3648 single count that the defendants engaged in one general conspiracy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act (which is denied) only tends to prove (at most) that the defendants named in Paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in Paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

(19) There is no competent evidence that the trade journals named in Paragraph 24 of the indictment have been the chief agencies by means of which any artificial prices have been exacted from jobbers and consumers of gasoline in the Mid-Western area.

(20) There is a fatal variance between the allega- 3649 tions in the indictment and the evidence in the record herein in that the indictment alleges that the market journals intentionally engaged and participated in the alleged conspiracy; that they directly and materially aided defendants in effectuating the alleged conspiracy and that they were the chief agencies and instrumentalities through which they wrongfully and artificially raised and fixed prices for gasoline paid by the defendant under the alleged buying programs, affected the prices

paid for gasoline through jobbers by retail dealers and by consumers in the Mid-Western area. Further, that said market journals while representing the price quotations published by them to be prices prevailing in spot gasoline sales to jobbers in tank car lots, and while knowing and intending such prices to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline supplied under the jobber contracts described in the indictment, in fact knowingly published and circulated as such price quotations the artificially raised and fixed prices for gasoline paid by this and other defendant major oil companies in the East Texas and Mid-Continent buying programs and there is no evidence to support any of said allegations in the indictment relating to the said market journals.

(21) The United States of America has failed to prove by any competent or sufficient evidence that this defendant, The Pure Oil Company, has done any act or thing constituting, in whole or in part, any violation of Section 1 of the Act of Congress of July 2, 1890, known
3650 as the "Sherman Anti-Trust Act."

(22) The evidence in this case does not establish beyond a reasonable doubt that the defendants or that any of them can be held to have violated Section 1 of the Sherman Act by participating and engaging in any buying program or programs as alleged in the indictment for the following reasons:

The evidence introduced on behalf of the defendants establishes or tends to establish that the defendant Arnott was appointed Chief Stabilizer of the Petroleum Industry by a letter dated July 20, 1934 from the Secretary of the Interior, Harold L. Ickes, as Administrator of the Code of Fair Competition for the petroleum industry. The defendant Arnott carried on stabilization activities under the authority or the supposed authority of that letter until the termination of all code activities on May 27, 1935.

When the defendant Arnott on January 4, 1935, appointed the Tank Car Stabilization Committee and instructed that Committee to take steps to relieve the condition of the independent refiners, he reasonably believed that he was authorized so to do by said letter of July 20, 1934, and he reasonably believed that in so doing he had the approval of the Petroleum Administrator and was acting to carry out his plans and policies. The
3651 defendant Arnott so told the defendants who were members of said Tank Car Stabilization Committee

and said defendants reasonably believed and acted on those statements, and not otherwise, in carrying on the activities of that Committee.

In all his connections with the buying of surplus gasoline in the Mid-Continent and in the East Texas fields the defendant Arnott believed that he was acting under the authority of the letter of July 20, 1934, and that he had the approval of the Petroleum Administrator and of his assistants and that he was acting in conformity with and for the purpose of effectuating the plans and policies of the Petroleum Administration. The defendant Arnott so advised each individual defendant who had any connection with such buying activities and each of said defendants reasonably believed said statements and for that reason, and not otherwise, participated in the so-called East Texas and Mid-Continent buying programs to the extent each is shown by the evidence in this case to have participated.

The Petroleum Administrator, through the Petroleum Administrative Board and through members of that Board, and otherwise, was advised of the activities of the defendant Arnott and of the so-called East Texas and
3652 Mid-Continent buying programs and at least tacitly approved and encouraged the defendants in carrying on these so-called buying programs as a part of stabilization and as a means of assisting in the accomplishment of the ends and the objectives of the Petroleum Administration. If the Petroleum Administrator either directly or through the Petroleum Administrative Board or through the Planning and Coordination Committee of the Petroleum Industry had requested that said buying activities be terminated, the same would have been terminated. No such request, however, ever was made nor was any criticism of those activities ever offered.

The Government of the United States consists of many departments and bureaus and agencies. The Department of Justice and the Department of the Interior are equal and coordinate branches of the Government of the United States. Neither this court nor this jury, therefore, may find that what these defendants did under the authorization and at the request and with the knowledge and approval of the Government of the United States as represented during the period of the National Industrial Recovery Act and of the Petroleum Code by the Secretary of the Interior, Harold L. Ickes, as the Petroleum Administrator exercising the powers delegated to the President
3653 dent of the United States by said Act, whether such

authorization was expressed or shown directly or through the Petroleum Administrative Board as the Administrative Agency of the Petroleum Code, constituted a violation of Section 1 of the Sherman Act.

Dated this 14th day of Jan., A. D., 1938.

Carl N. Hill,
Chas. I. Francis,
Attorneys for The Pure Oil Company.

3654 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

MOTION OF R. H. McELROY, JR., FOR DIRECTED VERDICT.

(Filed January 14, 1938.)

Now Comes R. H. McElroy, Jr., defendant in the above entitled cause, by his attorney, at the close of all the evidence, and moves the Court to give to the jury the following instruction:

"The Court instructs the jury to find the defendant R. H. McElroy, Jr. not guilty".

Without limiting, in any way, the general effect of this request for a directed verdict, the said defendant specifies as particular reasons, among others, why such instruction should be given, the following, to-wit:

(1) All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with his guilt of the offense, if any, charged in the indictment.

3655 (2) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(3) There is no substantial evidence in the record herein that this defendant combined and conspired together with the other defendants named in the indictment, or with any of them, and with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in Paragraph 18 of the indictment.

(4) There is no substantial competent evidence in the record herein that the defendant engaged in an unlawful

combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the "Sherman Anti-Trust Act", as charged in Paragraph 18 of the indictment.

(5) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of the indictment, or that at any time during said period, the defendant The Pure Oil Company, acting through or under the direction of this defendant, engaged and participated in two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment, as (a) the East Texas buying program, and (b) the Mid-Continent buying program, as alleged in said paragraph.

3656 (6) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(7) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence in that the indictment alleges in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in paragraph 19 of the indictment as (a) the East Texas buying program and (b) the Mid-Continent buying program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act, only tends to prove that the defendants named in paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

3657 (8) The United States of America has failed to prove by competent evidence that this defendant as an officer, director or agent of The Pure Oil Company, or otherwise, authorized, ordered or did any of the acts constituting in whole or in part any violation of Section 1 of the Act of Congress of July 2, 1890, known as the "Sherman Anti-Trust Act."

(9) There is no substantial competent evidence that this defendant knew of the alleged conspiracy and its unlawful purposes and that he knowingly participated therein, either authorizing, ordering or doing any of the acts constituting, in whole or in part, the unlawful conspiracy.

(10) The evidence in this case does not establish beyond a reasonable doubt that the defendants or that any of them can be held to have violated Section 1 of the Sherman Act by participating and engaging in any buying program or programs as alleged in the indictment for the following reasons:

> The evidence introduced on behalf of the defendants establishes or tends to establish that the defendant Arnott was appointed Chief Stabilizer of the Petroleum Industry by a letter dated July 20, 1934 from the Secretary of the Interior, Harold L. Ickes, as Administrator of the Code of Fair Competition for the petroleum industry. The defendant Arnott carried on stabilization activities under the 3658 authority or the supposed authority of that letter until the termination of all code activities on May 27, 1935.
>
> When the defendant Arnott on January 4, 1935, appointed the Tank Car Stabilization Committee and instructed that Committee to take steps to relieve the condition of the independent refiners, he reasonably believed that he was authorized so to do by said letter of July 20, 1934, and he reasonably believed that in so doing he had the approval of the Petroleum Administrator and was acting to carry out his plans and policies. The defendant Arnott so told the defendants who were members of said Tank Car Stabilization Committee and said defendants reasonably believed and acted on those statements, and not otherwise, in carrying on the activities of that Committee.
>
> In all his connections with the buying of surplus gasoline in the Mid-Continent and in the East Texas fields the defendant Arnott believed that he was acting under the authority of the letter of July 20, 1934,

and that he had the approval of the Petroleum Administrator and of his assistants and that he was
3659 acting in conformity with and for the purpose of effectuating the plans and policies of the Petroleum Administration. The defendant Arnott so advised each individual defendant who had any connection with such buying activities and each of said defendants reasonably believed said statements and for that reason, and not otherwise, participated in the so-called East Texas and Mid-Continent buying programs to the extent each is shown by the evidence in this case to have participated.

The Petroleum Administrator, through the Petroleum Administrative Board and through members of that Board, and otherwise, was advised of the activities of the defendant Arnott and of the so-called East Texas and Mid-Continent buying programs and at least tacitly approved and encouraged the defendants in carrying on these so-called buying programs as a part of the stabilization and as a means of assisting in the accomplishment of the ends and the objectives of the Petroleum Administration. If the Petroleum Administrator either directly or through the Petroleum Administrative Board or
3660 through the Planning and Coordination Committee of the Petroleum Industry had requested that said buying activities be terminated, the same would have been terminated. No such request, however, ever was made nor was any criticism of those activities ever offered.

The government of the United States consists of many departments and bureaus and agencies. The Department of Justice and the Department of the Interior are equal and coordinate branches of the government of the United States. Neither this court nor this jury, therefore, may find that what these defendants did under the authorization and at the request and with the knowledge and approval of the government of the United States as represented during the period of the National Industrial Recovery Act and of the Petroleum Code by the Secretary of the Interior, Harold L. Ickes, as the Petroleum Administrator exercising the powers delegated to the President of the United States by said Act, whether such authorization was expressed or shown directly or through the Petroleum Administrative Board as

3661 the Administrative Agency of the Petroleum Code, constituted a violation of Section 1 of the Sherman Act.

Dated this 14th day of Jan., A. D. 1938.

Carl N. Hill,
Chas. I. Francis,
Attorneys for Defendant.

3662 In the District Court of the United States

* * (Caption 11365) * *

MOTION OF DEFENDANT SHELL PETROLEUM CORPORATION FOR A DIRECTED VERDICT

(Filed January 15, 1938)

Comes now the defendant, Shell Petroleum Corporation, at the close of all the evidence adduced herein, and moves the Court to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the
3663 United States to a trial by an impartial jury of the State and district wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the

means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act (15 U. S. C. A. § 1).

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the
meaning of Section 1 of the Act of Congress of July
3664 2, 1890, known as the Sherman Anti-Trust Act (15
U. S. C. A. § 1).

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) There is a total failure of proof in support of the following allegations contained in paragraph No. 11 of the indictment, wherein it is alleged that the "said defendant major oil companies have uniformly adopted and have embodied in their respective standard forms of jobber contracts employed throughout the Mid-Western area virtually identical provisions governing terms and conditions of sale."

The evidence shows that the forms of jobber contracts in use by the various defendant major oil companies were not uniform and contain various provisions in regard to the price, some of them providing for the low price published in Platt's Oilgram or in the Chicago Journal of Commerce, some of them providing for the average of the high and low prices, some of them providing for a guaranteed margin of 5½¢ per gallon, and some of them providing for what is described in the evidence as a "split margin."

(8) There is a total failure of proof in support of the following allegations contained in paragraph No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jurors unknown "have
combined and conspired together for the purpose of
3665 artificially raising and fixing the tank car prices of
gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-

competitive levels, and at levels agreed upon among them."

The evidence produced totally fails to prove that this defendant combined and conspired with others for the purpose of artificially raising and fixing tank car prices, and totally fails to prove that this defendant with others artificially raised and fixed the spot market tank car prices, and totally fails to prove that this defendant with others maintained said prices at artificially high and non-competitive levels, and totally fails to prove that this defendant with others maintained said prices at levels agreed upon among them.

(9) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of the indictment; wherein it is alleged that the defendants "engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying program," which allegation is further explained by the answer to paragraph No. 1 of the bill of particulars filed by the Shell Petroleum Corporation (See R. p. 66, Par. 10), in which answer it is alleged as follows:

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> "The Government claims that each of the defendants—including Gulf—engaged and participated with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that this defendant participated in the alleged East Texas buying program or in the alleged Mid-Continent buying program.

The evidence shows that in East Texas the independent refiners organized the East Texas Refiners Marketing Association and engaged in a general effort to sell gasoline through that association, but there is no evidence of any concerted buying or of any buying program by other defendants from the said independent refiners or from the said East Texas Refiners Marketing Association. The evidence further shows that there was no general conspiracy which included a buying program in East Texas, and that the formation of said East Texas Refiners Marketing Association and the sale of gasoline through said association had no relation to any alleged buying program in the Mid-Continent field.

(10) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of

the indictment, wherein it is alleged that the defendants
engaged in two concerted buying programs "for the pur-
chase by each of them from independent refiners in spot
transactions of large quantities of gasoline in the
3667 East Texas and Mid-Continent fields at uniform,
high, and at times progressively increased prices."

The evidence shows that there was no such concerted buying either in the East Texas or Mid-Continent fields, but that purchases were made by some of the defendants to meet their own needs and that prices were agreed upon with the seller in regard to each sale and that said prices were not uniform and that said prices were not high as compared with prevailing market prices at the time of such purchases.

(11) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high and at times progressively increased prices."

The evidence shows that all purchases made by Shell Petroleum Corporation which were made at a flat price (i.e. a price not determined by published quotations on the date of shipment) were made at prices at or below the low of the published quotations for gasoline of like grade and quality.

3668 (12) There is a total failure of proof in support
of the following allegation contained in paragraph
No. 21 of the indictment, wherein it is alleged that "said
independent refiners have, at the instance of defendant
Arnott, and the aforesaid Buckley, curtailed their produc-
tion of gasoline."

The evidence shows that such curtailment of production of gasoline as occurred in the East Texas field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no evidence that either the defendant Arnott or the witness Buckley caused the independent refiners in East Texas to curtail their production. The evidence discloses that it was a part of the purposes of the independent refiners in the formation of the East Texas Refiners Marketing Association that all the members of that association should comply with all provisions of the law, both State and Federal, and should not manufacture gasoline from illegally produced crude oil and should not produce gasoline in excess of the allocations of the Federal District Allocator.

(13) There is a total failure of proof in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows:
3669 "Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi."

The evidence wholly fails to show that any quantity of gasoline was ever allotted for purchase to this defendant or to any of the defendants by the defendants McDowell, Tuttle and Bourque and by the witness Jacobi.

(14) There is a total failure of proof in support of the following allegation contained in paragraph No. 23 of the indictment wherein it is alleged as follows: "Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies."

The evidence shows that the defendant major oil companies have only made purchases in order to supply their needs and have not made purchases in excess of the amounts which they would have purchased apart from their participation in the alleged buying program. There is no evidence to the effect that this defendant ever made purchases of gasoline in excess of its needs or in excess
3670 of such amounts as it would have purchased apart from the alleged buying program in the Mid-Continent area. The evidence further shows that such purchases as were made by various defendants were not made at uniform prices and were not made at high prices, and were not made at arbitrary and non-competitive prices. The evidence further shows that the said purchases were not made at prices agreed upon by the defendant major oil companies. The evidence wholly fails to show any agreement whatsoever by this defendant with others or among the defendants as to the prices paid or to be paid for such purchases. The evidence shows that all purchases made by Shell Petroleum Corporation which were made at a flat price (i.e. a price not determined by pub-

lished quotations on the date of shipment) were made at prices at or below the low of the published quotations for gasoline of like grade and quality.

(15) There is a total failure of proof in support of the following allegation contained in paragraph 23 of the indictment, wherein it is alleged as follows: "In furtherance of said unlawful purposes, said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline."

The evidence shows that such curtailment of the production of gasoline as occurred in the Mid-Continent field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair
3671 Competition for the Petroleum Industry. There is
no evidence that independent refiners curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(16) There is a total failure of proof in support of the following allegations contained in paragraph No. 24 of the indictment, wherein it is alleged that defendants Chicago Journal of Commerce and Keith Fanshier and defendants Platt's Oilgram, National Petroleum News and Warren C. Platt "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western Division of Wisconsin;" and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants "while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots * * * knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program;" and there is no evidence in support of the allegation contained in said para-
3672 graph No. 24 that said defendants engaged and par-
ticipated in a combination and conspiracy with the other defendants as set forth in said indictment, as said allegations are explained in the answer to the individual

demand for a bill of particulars, No. 58 (See R. p. 71, Par. 27), which reads as follows:

> "Paragraph 24 of the indictment sets forth the participation of the market journals in the general combination and conspiracy charged in the indictment, and the Government claims that the allegation of this paragraph that the acts of the journals were done intentionally 'in the combination and conspiracy set forth in this indictment' amounts to saying that they were done in combination with all of the other defendants and conspirators (including Gulf, Bourque and Boggs)".

The evidence wholly fails to show that said defendants ever entered into any agreement with the other defendants in regard to the quotation of prices and wholly fails to show that said defendants quoted prices paid by major oil companies to independent refiners as prices paid by jobbers.

The participation of the market journals was a necessary and essential element of the conspiracy which the indictment attempts to allege, and the failure to prove such participation of the market journals is a fatal variance and amounts to a failure of proof of the conspiracy or combination alleged.

(17) The evidence fails to show that this defendant did any act whatsoever with any wrongful purpose or criminal intent. All the substantial competent evidence 3673 in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(18) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(19) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

(20) All competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defend-

ant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment
3674 had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

(21) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or, whereby, or as the result of which, this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(22) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

3675 (23) There is a fatal variance between the allegations of the indictment and the evidence produced by the Government in this, to-wit, that whereas the indictment, as explained by the answer to paragraph No. 1 of the bill of particulars filed by the Shell Petroleum Corporation, alleges that there was one general conspiracy which included two concerted buying programs, one in East Texas and the other in the Mid-Continent, the evidence shows that there was no buying program in East Texas, and that if any buying program existed it referred to the Mid-Continent only.

(24) The evidence herein shows that if the defendant Shell Petroleum Corporation, or any of the other defendants herein, participated or engaged in any buying of gaso-

line, as charged in the indictment, that defendants acted with the knowledge and approval of the Secretary of the Interior, Harold L. Ickes, as Petroleum Administrator exercising the powers delegated under and by virtue of the National Industrial Recovery Act, and with the knowledge and approval of the Petroleum Administrative Board and the individual members thereof, who were duly authorized agents of said Petroleum Administrator. The evidence further shows that if the defendant Shell Petroleum Corporation, or any of the defendants herein, participated or engaged in any buying of gasoline, as charged in the indictment, that defendants acted with the understanding and belief that they had the approval of said Petroleum
3676 Administrator and his duly authorized agents and that their participation in such buying was in aid of and in furtherance of the aims, plans and policies of said Petroleum Administrator. Neither this Court nor this jury, therefore, may find that what this defendant and any of the other defendants did under the authorization or with the knowledge and approval of said Petroleum Administrator constituted a violation of Section 1 of the Sherman Act.

Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to it.

Thompson, Mitchell, Thompson & Young,
Samuel A. Mitchell,
Truman Post Young,
Attorneys for defendant Shell Petroleum Corporation.

3677 In the District Court of the United States.

* * (Caption—11365) * *

MOTION OF DEFENDANT P. E. LAKIN FOR A DIRECTED VERDICT.

(Filed 1/15/38.)

Comes now the defendant, P. E. Lakin, at the close of all the evidence adduced herein and moves the Court to direct the jury to find a verdict of "Not Guilty" as to him, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy

within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the
3678 United States to a trial by an impartial jury of the State and district wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make his defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against him based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act (15 U. S. C. A. § 1).

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of
3679 July 2, 1890, known as the Sherman Anti-Trust Act (15 U. S. C. A. § 1).

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) There is a total failure of proof in support of the following allegations contained in paragraph No. 11 of the indictment, wherein it is alleged that the "said defendant major oil companies have uniformly adopted and have embodied in their respective standard forms of jobber

contracts employed throughout the Mid-Western area virtually identical provisions governing terms and conditions of sale."

The evidence shows that the forms of jobber contracts in use by the various defendant major oil companies were not uniform and contain various provisions in regard to the price, some of them providing for the low price published in Platt's Oilgram or in the Chicago Journal of Commerce, some of them providing for the average of the high and low prices, some of them providing for a guaranteed margin of 5½¢ per gallon, and some of them providing for what is described in the evidence as a "split margin".

(8) There is a total failure of proof in support of the following allegations contained in paragraph No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jurors unknown "have combined and conspired together for the purpose of
3680 artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them."

The evidence produced totally fails to prove that the defendant Shell Petroleum Corporation, of which this defendant is Vice-President, combined and conspired with others for the purpose of artificially raising and fixing tank car prices and totally fails to prove that said defendant, Shell Petroleum Corporation, with others artificially raised and fixed the spot market tank car prices, and totally fails to prove that said defendant, Shell Petroleum Corporation, with others maintained said prices at artificially high and non-competitive levels, and totally fails to prove that said defendant, Shell Petroleum Corporation, with others maintained said prices at levels agreed upon among them.

(9) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants "engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying
3681 program", which allegation is further explained by the answer to paragraph No. 1 of the bill of particu-

lars filed by the Shell Petroleum Corporation, in which answer it is alleged as follows:

> "The Government claims that each of the defendants—including Gulf—engaged and participated with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that the defendant, Shell Petroleum Corporation, participated in the alleged East Texas buying program or in the alleged Mid-Continent buying program.

The evidence shows that in East Texas the independent refiners organized the East Texas Refiners Marketing Association and engaged in a general effort to sell gasoline through that association, but there is no evidence of any concerted buying or of any buying program by other defendants from the said independent refiners or from the said East Texas Refiners Marketing Association. The evidence further shows that there was no general conspiracy which included a buying program in East Texas, and that the formation of said East Texas Refiners Marketing Association and the sale of gasoline through said association had no relation to any alleged buying program in the Mid-Continent field.

3682 (10) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot transactions, of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices."

The evidence shows that there was no such concerted buying either in the East Texas or Mid-Continent fields, but that purchases were made by some of the defendants to meet their own needs and that prices were agreed upon with the seller in regard to each sale and that said prices were not uniform, and that said prices were not high as compared with prevailing market prices at the time of such purchases.

(11) There is a total failure of proof in support of the following allegations contained in paragraph No. 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot

transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high and at times progressively increased prices".

The evidence shows that all purchases made by Shell Petroleum Corporation which were made at a flat
3683 price (i. e. shipment) were made at prices at or below the low of the published quotations for gasoline of like grade and quality.

(12) There is a total failure of proof in support of the following allegation contained in paragraph No. 21 of the indictment, wherein it is alleged that "said independent refiners have, at the instance of defendant Arnott, and the aforesaid Buckley, curtailed their production of gasoline".

The evidence shows that such curtailment of production of gasoline as occurred in the East Texas field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no evidence that either the defendant Arnott or the witness Buckley caused the independent refiners in East Texas to curtail their production. The evidence discloses that it was a part of the purposes of the independent refiners in the formation of the East Texas Refiners Marketing Association that all the members of that association should comply with all provisions of the law, both State and Federal, and should not manufacture gasoline from illegally produced crude oil and should not produce gasoline in excess of the allocations of the Federal District Allocator.

3684 (13) There is a total failure of proof in support of the following allegations contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi".

The evidence wholly fails to show that any quantity of gasoline was ever allotted for purchase to the defendant, Shell Petroleum Corporation, of which this defendant is Vice-President, or to any of the defendants by the defendants McDowell, Tuttle and Bourque and by the witness Jacobi.

(14) There is a total failure of proof in support of the following allegation contained in paragraph No. 23

of the indictment, wherein it is alleged as follows, "Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program, and they have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies."

3685 The evidence shows that the defendant major oil companies have only made purchases in order to supply their needs and have not made purchases in excess of the amounts which they would have purchased apart from their participation in the alleged buying program. There is no evidence to the effect that the defendant, Shell Petroleum Corporation, ever made purchases of gasoline in excess of its needs or in excess of such amounts as it would have purchased apart from the alleged buying program in the Mid-Continent area. The evidence further shows that such purchases as were made by various defendants were not made at uniform prices and were not made at high prices, and were not made at arbitrary and non-competitive prices. The evidence further shows that the said purchases were not made at prices agreed upon by the defendant major oil companies. The evidence wholly fails to show any agreement whatsoever by this defendant or said Shell Petroleum Corporation with others or among the defendants as to the prices paid or to be paid for such purchases.

The evidence shows that all purchases made by Shell Petroleum Corporation which were made at a flat price (i. e., a price not determined by published quotations on the date of shipment) were made at prices at or below the low of the published quotations for gasoline of like grade and quality.

3686 (15) There is a total failure of proof in support of the following allegation contained in paragraph No. 23 of the indictment, wherein it is alleged as follows: "In furtherance of said unlawful purposes, said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline".

The evidence shows that such curtailment of the production of gasoline as occurred in the Mid-Continent field was due to refinery allocations made by the District Allocator acting under the Planning and Coordination

Committee under the provisions of the Code of Fair Competition for the Petroleum Industry. There is no evidence that independent refiners curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(16) There is a total failure of proof in support of the following allegations contained in paragraph No. 24 of the indictment, wherein it is alleged that defendants Chicago Journal of Commerce and Keith Fanshier and defendants Platt's Oilgram, National Petroleum News and Warren C. Platt "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for
3687 gasoline in the Mid-Western area, including the Western Division of Wisconsin"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants "while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots * * * knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program"; and there is no evidence in support of the allegation contained in said paragraph No. 24 that said defendants engaged and participated in a combination and conspiracy with the other defendants as set forth in said indictment, as said allegations are explained in the answer to the individual demand for a bill of particulars, No. 58 (See R. p. 71, Par. 27), which reads as follows:

> "Paragraph 24 of the indictment sets forth the participation of the market journals in the general combination and conspiracy charged in the indictment, and the Government claims that the allegation of this paragraph that the acts of the journals were done intentionally 'in the combination and conspiracy set forth in this indictment' amounts to saying that they were done in combination with all of the other defendants and conspirators (including Gulf, Bourque and Boggs)."

The evidence wholly fails to show that said defendants ever entered into any agreement with the other defendants in regard to the quotation of prices and wholly 3688 fails to show that said defendants quoted prices paid by major oil companies to independent refiners as prices paid by jobbers.

The participation of the market journals was a necessary and essential element of the conspiracy which the indictment attempts to allege, and the failure to prove such participation of the market journals is a fatal variance and amounts to a failure of proof of the conspiracy or combination alleged.

(17) The evidence fails to show that this defendant did any act whatsoever with any wrongful purpose of criminal intent. All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with his guilt of the offense, if any, charged in the indictment.

(18) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(19) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section 1 of the Act 3689 of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

(20) All competent evidence in the record herein tends to establish that the only plan arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major companies named in said Paragraph 22.

(21) There is no substantial competent evidence in the record herein that during the period beginning in the month

of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant or the defendant Shell Petroleum Corporation, of which this defendant is Vice-President, engaged or participated in any combination, arrangement, agreement, understanding, concert of action,
program whereby, or as the result of which, said de-
3690 fendant Shell Petroleum Corporation was or be-
came obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or whereby, or as the result of which, said defendant Shell Petroleum Corporation was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(22) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

(23) There is a fatal variance between the allegations of the indictment and the evidence produced by the Government in this, to-wit, that whereas the indictment, as explained by the answer to paragraph No. 1 of the bill of particulars filed by the Shell Petroleum Corporation (See R. p. 66, Par. 10), alleges that there was one general conspiracy which included two concerted buying programs, one in East Texas and the other in the Mid-Continent, the evi-
dence shows that there was no buying program in East
3691 Texas, and that if any buying program existed it re-
ferred to the Mid-Continent only.

(24) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, said defendant Shell Petroleum Corporation, acting through or under the direction of this defendant, engaged and participated in two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the

Mid-Continent Buying Program, as alleged in said paragraph.

(25) There is no evidence that this defendant actively participated in a buying program during the period of time covered by the indictment or that this defendant participated in the purchase of any gasoline in pursuance of such program, if any there was, and there is no evidence that this defendant knew what purchases were being made during said period or participated in or authorized such purchases, and there is no evidence that this defendant knew of any improper motive or purpose, if any there was in regard to purchases made by said Shell Petroleum Corporation.

(26) There is no evidence that this defendant ever received or saw during the period covered by the indictment any of the numerous letters, telegrams, price 3692 reviews and other documents taken from the files of the Shell Petroleum Corporation and offered in evidence, and there is no evidence that this defendant ever took any action or gave any instructions or wrote any answers or acknowledgment of the receipt of any of such documents.

(27) There is no evidence that this defendant ever attended any meetings or held any conference or took any action whatsoever in support of any alleged buying program during the period covered by the indictment.

(28) This defendant cannot be held guilty of crime merely because of the fact that he was Vice-President of Shell Petroleum Corporation, even if the said Shell Petroleum Corporation should be convicted of criminal conduct, because there is no evidence in this record that this defendant, with guilty knowledge, either participated or authorized any conduct by the Shell Petroleum Corporation or any of its subordinate officers or agents contributing to the commission of any such offense.

(29) The evidence herein shows that if this or any of the other defendants herein, participated or engaged in any buying of gasoline as charged in the indictment, that defendants acted with the knowledge and approval of the Secretary of the Interior, Harold L. Ickes, as Petroleum Administrator exercising the powers delegated under and by virtue of the National Industrial Recovery Act, 3693 and with the knowledge and approval of the Petroleum Administrative Board and the individual mem-

bers thereof, who were duly authorized agents of said Petroleum Administrator. The evidence further shows that if the defendant Shell Petroleum Corporation, or any of the defendants herein, participated or engaged in any buying of gasoline, as charged in the indictment, that defendants acted with the understanding and belief that they had the approval of said Petroleum Administrator and his duly authorized agents and that their participation in such buying was in aid of and in furtherance of the aims, plans and policies of said Petroleum Administrator. Neither this Court nor this jury, therefore, may find that what this defendant and any of the other defendants did under the authorization or with the knowledge and approval of said Petroleum Administrator constituted a violation of Section 1 of the Sherman Act.

Wherefore, this defendant respectfully moves the Court to direct the jury to return a verdict of "Not Guilty" as to him.

Thompson, Mitchell, Thompson & Young,
Samuel A. Mitchell,
Truman Post Young,
Attorneys for Defendant P. E. Lakin.

3694 In the District Court of the United States.

* * (Caption—11365) * *

MOTION TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed 1/17/38.)

Comes now the defendant, Sinclair Refining Company, at the close of all the evidence adduced herein, and moves the Court to dismiss the indictment and the proceedings thereunder, and to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western Dis-

trict of Wisconsin violates the right of this defend-
3695 ant under the Sixth Amendment to the Constitution
of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to discribe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1.)

(5) The said indictment shows on its face that the
conspiracy therein alleged did not and could not re-
3996 strain interstate trade and commerce in gasoline
within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1.)

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(8) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(9) There is no substantial competent evidence in the record herein that this defendant combined and conspired together with the other defendants named in the

indictment, or with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in Paragraph 18 of the indictment.

(10) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States
3697 of the United States in violation of Section 1 of the
Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

(11) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged and participated in two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the Mid-Continent Buying Program, as alleged in said paragraph, or in either of said buying programs.

(12) There is no substantial competent evidence in the record herein that beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant purchased gasoline from the independent refiners named in Paragraph 20 of the indictment, or from any of them, under the supervision and direction of the defendant Arnott and of one Neil Buckley, as alleged in Paragraph 21 of the indictment.

(13) There is no substantial competent evidence in the record herein that one Neil Buckley, acting in a liaison capacity between the East Texas Refiners Marketing Association, which is referred to in Paragraph
3698 20 of the indictment, and the defendant major oil
companies, instigated and directed any purchase of gasoline made by this defendant during the period beginning in the month of February, 1935, and continuing to the date of the presentation of the indictment, from any independent refiner named in said Paragraph 20.

(14) There is no substantial competent evidence in the record herein that this defendant from time to time, or at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation

of this indictment, arranged with the other defendant major oil companies named in Paragraph 20 of the indictment, or with any of them, to purchase any part or any amount of the gasoline sold by the independent refiners named in said Paragraph 20, whether sold through the East Texas Refiners Marketing Association, or otherwise.

(15) There is no substantial competent evidence in the record herein that this defendant at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, purchased any gasoline from any independent refiner named in Paragraph 20 of the indictment, whether sold through the East Texas Refiners Marketing Association, or otherwise, in accordance with or pursuant to any
3699 arrangement between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(16) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action or program for or relative to the purchase by the defendant major oil companies named in Paragraph 20 of the indictment of large quantities of gasoline from independent refiners in the East Texas field, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

(17) There is no substantial competent evidence in the record herein that this defendant purchased any gasoline during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment as the result of or in accordance with any arrangement, agreement or understanding between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(18) There is no substantial competent evidence in the record herein that this defendant purchased any gasoline during the period beginning in the month of February,
3700 ary, 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 20 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other

defendant major oil companies named in said Paragraph 20, or any of them.

(19) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the insistence of the defendant Arnott or of one Neil Buckley.

(20) The competent evidence in the record herein affirmatively establishes that at no time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, was there an East Texas buying program, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

(21) All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program relative to spot transactions in gasoline in the East Texas field during the period beginning in the month of February, 1935, and continuing to
3701 the date of the presentation of this indictment, consisted of the organization of the East Texas Refiners Marketing Association by certain of the independent refiners named in Paragraph 20 of the indictment, and of the operation and use of that association by said independent refiners to sell the gasoline which they produced and for which they did not have regular established outlets or channels of distribution through service stations or jobbers.

(22) All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program in effect at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, for or relative to the sale and purchase of gasoline in the East Texas field, was a selling program organized, maintained, and operated solely by the independent refiners named in Paragraph 20 of the indictment on their own initiative and in their own interests.

(23) All the competent evidence in the record herein tends to establish that this defendant did not participate in any East Texas program for or relative to the sale and purchase of East Texas gasoline during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, except in

so far as this defendant, acting individually and not
3702 in pursuance of or in accordance with any combination, conspiracy, arrangement, agreement, program or concert of action, purchased gasoline in the regular course of its business on spot transactions from independent refiners named in Paragraph 20 of the indictment, or from some of them.

(24) All the competent evidence in the record herein tends to establish that every purchase of gasoline made by this defendant during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment, was made by this defendant in the free exercise of its own independent discretion as to the party with whom it would deal, as to the amount which it would purchase, and as to the price that it would pay.

(25) Even if it be assumed that there has been a prima facie showing of the existence of a Mid-Continent buying program as described in Paragraphs 22 and 23 of the indictment, there is no substantial competent evidence that this defendant was an original party to said Mid-Continent program or that it thereafter became a party thereto either by express agreement or by performing [illegible] in furtherance of said buying program with knowledge of its existence and with the intent to further its purpose.

(26) There is no substantial competent evidence in the record herein that this defendant purchased gasoline
3703 during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 22, or any of them.

(27) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(28) All competent evidence in the record herein tends

to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February, 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-
3704 called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

(29) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or, whereby or as the result of which, this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

3705 (30) There is no substantial competent evidence that if this defendant conspired to raise and fix and did raise, fix and maintain the spot market prices of gasoline, it thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold or arbitrarily exacted large sums of money from jobbers in the Mid-Western area or intentionally raised the general level of retail prices in the Mid-Western area, as alleged in Paragraph 18 of the indictment.

(31) All the competent evidence in the record herein establishes that the standard forms of jobber contracts employed by the defendant Sinclair Refining Company in the Standard of Indiana territory did not embody provisions substantially in the form set forth in Paragraph 11 of the indictment, and, more particularly, that the standard forms

of jobber contracts employed by said defendant did not provide that the price of gasoline to the jobber should be determined by quotations published in Platt's Oilgram and the Chicago Journal of Commerce, or in either of them.

(32) The variance between the matters alleged in Paragraph 11 of the indictment and the facts proved with respect to the provisions of the standard forms of jobber contracts employed by Sinclair Refining Company is material and prejudicial, since it is such as to preclude
3706 this defendant from pleading an acquittal or a conviction herein in bar to any other proceedings against it based on the same matters or things, or on any of them, which have been established by the evidence herein.

(33) The variance between the matters alleged in Paragraph 11 of the indictment and the facts proved with respect to the provisions of the standard forms of jobber contracts employed by Sinclair Refining Company is material and prejudicial, since it discloses that trial of this defendant in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the State and district wherein the crime, if any, proved by the evidence was committed.

(34) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(35) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination or conspiracy, if any, to which this defendant was a party, or in which this defendant participated.

3707 (36) There is a variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows:

The indictment alleges in Paragraph 18 in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the tank car prices of gasoline in the spot markets described in the indictment, and thereby to intentionally increase and fix the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the Mid-Western area, and, by reason of the prevailing form of jobber contracts described in the indictment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the Mid-Western area, and in turn to intentionally raise the general level of retail prices prevailing in said Mid-Western area.

The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy,

First, the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market journals, the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News, which are alleged
3708 in Paragraph 24 of the indictment to have been the
chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, as at all other times, only published in their price quotations the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United States moved to dismiss the indictment against said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposi-
3709 tion of said defendants, was granted by this Court.

The result of such complete failure of proof is that the defendant market journals, an alleged "necessary element" in the alleged scheme of the defendants; the alleged "connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective" of the alleged conspiracy, that is, as alleged, "unjust enrichment for the major oil companies;" the alleged "out standing means, the absolutely necessary means toward getting the conspiracy through" and the alleged "chief agencies and instrumentalities" through which the alleged wrongfully and artificially raised and fixed prices for gasoline allegedly affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, and especially within the Western District of Wisconsin, have been proved by the evidence and have been found by order of this Court not to have participated in or to have aided and abetted the other and now the only remaining defendants in carrying out the conspiracy, if any, alleged in the indictment, and that the conspiracy, if any, charged in the indictment has not been and cannot be proved.

The variance thus established is material and prejudicial, since it is such as to preclude this defendant from pleading an acquittal or a conviction herein in bar to any
3710 other proceedings against it based on the same matters or things, or on any of them, which have been established by the evidence herein.

(37) All the substantial competent evidence herein establishes that any buying programs in which this defendant participated were authorized by the letter of July 20, 1934, from Administrator Ickes to the defendant Arnott and that this defendant's participation therein was continued after May 27, 1935, if at all, by reason of the inducement and instigation of officials of the United States.

(38) All the substantial competent evidence herein establishes that this defendant reasonably believed that any buying programs in which this defendant participated were authorized by the letter of July 20, 1934, from Administrator Ickes to the defendant Arnott and that this defendant's participation therein was continued after May 27, 1935, if at all, by reason of the inducement and instigation of officials of the United States.

(39) All the substantial competent evidence herein establishes that any buying programs in which this defendant participated were duly authorized by proper officials of the United States, and that this defendant's participation therein was continued after May 27, 1935, if at all, by reason of the inducement and instigation of officials of the United States.

3711 (40) All the substantial competent evidence herein establishes that this defendant reasonably believed that any buying programs in which this defendant participated were duly authorized by proper officials of the United States and that this defendant's participation therein was continued after May 27, 1935, if at all [illegible] reason of the inducement and instigation of officials of [illegible] United States.

(41) All the substantial competent evidence herein establishes that this defendant's participation in any buying programs and its continued support of any such programs after May 27, 1935, were induced and instigated by officials of the United States.

G. T. Stanford,
Roy T. Osborn,
Frederick H. Wood,
Attorneys for defendant Sinclair Refining Company.

3712 In the District Court of the United States.

• • (Caption 11365) • •

MOTION ON BEHALF OF DEFENDANT, MID-CONTINENT PETROLEUM CORPORATION, TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed 1/17/38.)

Comes now the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, at the close of all the evidence adduced herein, and moves the Court to dismiss the indictment and the proceedings thereunder, and to direct the jury to return a verdict of "Not Guilty" as to it, on the following grounds and for the following reasons, to-wit:

1. Said indictment fails to allege that the defendants, or any two or more of them, entered into the alleged combination and conspiracy within the Western District of Wisconsin or within the State of Wisconsin; and fails to allege that the defendants, or any of them, performed or did any act pursuant to or in furtherance of the alleged combination and conspiracy within the Western Dis-
3713 trict of Wisconsin or within the State of Wisconsin.

2. Said indictment alleges facts which affirmatively show that the trial of this defendant on the charge contained in said indictment within the Western District of Wisconsin violates the rights of this defendant under the Sixth Amendment to the Constitution of the United States, which guarantees to this defendant the right to a speedy

and public trial by an impartial jury of the state and district wherein the alleged crime shall have been committed.

3. Said indictment alleges facts which affirmatively show that this Honorable Court does not have any venue or jurisdiction over said defendants, or any of them, or any venue or jurisdiction to try said defendants, or any of them, for the alleged combination and conspiracy, by reason of Section 3, Article III of the Constitution of the United States, which provides that the trial of all crimes shall be held in the State wherein the alleged crime shall have been committed.

4. There is no substantial competent evidence herein which shows, or tends to show, that the alleged combination and conspiracy was entered into within the Western District of Wisconsin or within the State of Wisconsin; or that said defendants, or any of them, performed or did any act pursuant to or in furtherance of the alleged combination and conspiracy within the Western District of
3714 Wisconsin or within the State of Wisconsin.

5. Said indictment does not inform this defendant, or any of said defendants herein, of the nature and cause of the accusation against it, or any of them, with sufficient definiteness and certainty to enable it, or any of them, to prepare and to make a defense thereto, or to plead an acquittal or a conviction thereunder in bar of a subsequent prosecution for the same offense attempted to be charged therein, as required by the Sixth Amendment to the Constitution of the United States.

6. Said indictment fails to allege facts constituting any violation by this defendant, or by any of the defendants herein, of any law of the United States.

7. Said indictment shows on its face that said combination and conspiracy attempted to be charged therein did not and could not restrain interstate trade or commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., (1).)

8. Said indictment fails to describe and to particularize the alleged combination and conspiracy and the manner and means by which the same is alleged to have been effectuated with sufficient definiteness and certainty to charge any offense against the United States and to enable this Court, from an inspection of said indictment, to ascer-
3715 tain whether said manner and means alleged in Paragraphs 19 to 24, inclusive, would cause a restraint

of interstate trade or commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., (1).)

9. That all the substantial competent evidence herein and all the reasonable inferences arising therefrom are wholly insufficient to prove, and do not tend to prove, that this defendant entered into or engaged in the unlawful combination and conspiracy attempted to be charged in the indictment to restrain interstate trade or commerce in gasoline in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., (1).)

10. All the substantial competent evidence herein is as consistent with the innocence of this defendant as it is consistent with its guilt of the offense charged in the indictment.

11. There is no substantial competent evidence herein which excludes every other reasonable hypothesis but that of the guilt of this defendant of the offense charged in the indictment.

12. There is no substantial competent evidence herein that this defendant combined and conspired together with the other defendants named in the indictment, or with
3716 any of them, or with any other person, as charged in the indictment.

13. There is no substantial competent evidence herein that this defendant engaged in an unlawful combination and conspiracy as charged in the indictment, or that said defendant authorized, ordered or performed any act or acts alleged to have been the manner and means of effectuating said combination and conspiracy.

14. There is no substantial competent evidence herein that this defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, or any other defendant, knowingly and unlawfully engaged and participated in the two concerted buying programs, or either of them, referred to and described in Paragraphs 19 to 24, inclusive, of the indictment, for the purpose of effectuating the said combination and conspiracy as charged; or, if said Mid-Continent Petroleum Corporation, a Kentucky corporation, or any other person or defendant, did knowingly and unlawfully engage and participate in said two concerted buying programs, or either of them, for the purpose of effectuating said combination and conspir-

acy, as charged, there is no substantial competent evidence herein to show, or which tends to show, that any of the acts performed or any of the purchases made by anyone so
engaging and participating in the said two concerted
3717 buying programs, or either of them, were performed
or made through or under the direction of this defendant.

15. There is no substantial competent evidence herein showing, or tending to show, that any purchase of gasoline was made by the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or by its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, from any independent refiner in the East Texas Field or in the Mid-Continent Field, during the period named and as charged in the indictment, or that whatever purchase or purchases of gasoline were made by anyone from independent refiners in the East Texas field or in the Mid-Continent field, as charged in the indictment, that this defendant authorized or directed said purchases, or any of them.

16. There is no substantial competent evidence herein showing, or tending to show, that the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, or any other defendant, made "large and increased purchases of gasoline from many of the independent refiners located in the Mid-Continent fields," as charged in the indictment; or, if any such purchases were made by the Mid-Continent Petroleum Corporation, a Kentucky corporation, or by any
3718 other person or defendant, there is no substantial
competent evidence herein showing or tending to show, that such purchases, or any of them, were made through or under the direction or authority of this defendant.

17. There is no substantial competent evidence herein showing, or tending to show, that any purchase or purchases of gasoline made by said defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or by its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, or by any other defendant herein, from any of said independent refiners located in the Mid-Continent field, during the period named and as charged in the indictment, were "made at the instigation and under the supervision and direction of defendants Arnott, Ashton, McDowell, Tuttle and Bourque, and one Walter Paul

Jacobi, an employee of defendant Wadhams," or either of them; or, if any such large and increased purchases of gasoline were made by the Mid-Continent Petroleum Corporation, a Kentucky corporation, or by any other person or defendant, there is no substantial competent evidence herein showing, or tending to show, that such purchases, or any of them, were made through or under the direction or authority of this defendant.

18. There is no substantial competent evidence herein showing or tending to show, that the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or its subsidiary, Mid-Continent Petroleum Cor-
3719 poration, a Kentucky corporation, or any other de-
fendant herein, has taken a part of the large quantities of gasoline purchased from the independent refiners located in the Mid-Continent field, during the period named and as charged in the indictment, "as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi;" or, if the Mid-Continent Petroleum Corporation, a Kentucky corporation, or any other person or defendant herein, has taken a part of the large quantities of gasoline purchased from said independent refiners as from time to time was so allotted, there is no substantial competent evidence herein showing, or tending to show, that the same was taken from time to time and was so allotted through or under the direction or authority of this defendant.

19. There is no substantial competent evidence herein showing, or tending to show, that any purchase or purchases of gasoline made by the defendant major oil companies, or any of them, named in Paragraph 22 of the indictment, or any subsidiary thereof, from independent refiners located in the Mid-Continent fields "have been in excess of the amounts which the aforesaid defendant major oil companies would have purchased apart from their participation in the "alleged Mid-Continent Buying Program; or that such purchases of gasoline, or any of them, "have been at uniform, high, arbitrary and non-
3720 competitive prices, and from time to time at progres-
sively increased prices, as agreed upon by said defendant major oil companies," or any of them; or, if such purchases of gasoline, or any of them, were made in any such excess amounts, or at any such uniform, high, arbitrary and non-competitive prices, as alleged in the indictment, there is no substantial competent evidence herein showing, or tending to show, that such purchases, or

any of them, were made through or under the direction or authority of this defendant.

20. There is no substantial competent evidence herein showing, or tending to show, that the independent refiners, or any of them, named in Paragraph 22 of the indictment, "have, at the instance of defendant Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline," during the period named and as charged in the indictment; or, if the production of gasoline by said independent refiners, or any of them, was curtailed as alleged, there is no substantial competent evidence herein showing, or tending to show, that such curtailment was caused or done through or under the direction of this defendant.

21. There is no substantial competent evidence herein showing, or tending to show, that the defendants, Chicago Journal of Commerce and Keith Fanshier, its petroleum editor, and the defendant Platt's Oilgram, National Petroleum News and Warren C. Platt, their president, or
any of them, well knowing all the facts alleged in
3721 the indictment, have intentionally and wrongfully
engaged and participated in the combination and conspiracy set forth in said indictment, and have directly and materially aided the other defendants in effectuating the same; or that said named defendants have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices of gasoline paid by the major oil companies have affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, including the Western District of Wisconsin; or that, while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending said prices to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area, described in paragraph 11 of the indictment, said named defendant trade journals have throughout said period in the Mid-Western area, including the Western District of Wisconsin, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies, as aforesaid, in the said East Texas Buying Program and Mid-Continent Buying Program; or, if any

of said acts were intentionally and knowingly done
3722 or performed by said defendant trade journals, or
any of them, as charged, there is no substantial competent evidence herein showing, or tending to show that any of said acts were done or performed through or under the direction or authority of this defendant.

22. There is a material and fatal variance between the allegations of the indictment and all the evidence introduced herein in support thereof, which materially and prejudicially affects the substantial rights of the defendants, and each of them, in this, to-wit:

The Conspiracy

(1) The indictment, in paragraph 18, alleges in a single count that the defendants (a) "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets;" (b) that "as intended by them, defendants have artificially raised and fixed said spot market tank car prices at artificially high and non-competitive levels and at levels agreed upon among them;" and as a result thereof said defendants (c) "have maintained said prices at artificially high and non-competitive levels and at levels agreed upon among them," and (d) "have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold, and sold,
3723 in interstate commerce in the Mid-Western area,"
and (e) "have arbitrarily, by reason of the prevailing form of jobber contracts above described in Paragraph 11, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area," and (f) "in turn have intentionally raised the general level of retail prices prevailing in the said Mid-Western area."

But not only does all the substantial competent evidence herein, and all the reasonable and proper inferences to be drawn therefrom, wholly fail to prove that said defendants, or any two or more of them, combined and conspired together to artificially raise and fix such spot market tank car prices of gasoline, or that said defendants did artificially raise and fix said prices, or did maintain said prices at artificially high and non-competitive levels, or at levels agreed upon among the defendants, or that the results of said alleged conspiracy was to increase and fix such prices in interstate commerce, or to exact large sums of money from jobbers, or to raise the general level of

retail prices in the Mid-Western area; but all said evidence does affirmatively show that what the Government has alleged to be an unlawful combination and conspiracy of the defendants was nothing more than a plan formulated, adopted and carried out by the Tank Car Stabilization Committee under the Code of Fair Competition
3724 for the Petroleum Industry and the Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, to bring about an orderly marketing of distress gasoline produced by independent refiners in the East Texas and in the Mid-Continent fields, at a fair market price, by putting a prospective buyer in touch with an independent refiner and leaving the buyer and seller independent and free to make their own deal as to amounts, specifications, prices and all other terms of sale.

Manner and Means of Effectuating the Conspiracy

(2) The indictment, in paragraph 19 thereof, further alleges that the alleged unlawful combination and conspiracy has been effectuated in the following manner and by the following means, in that the defendants, acting through or under the direction of their respective officers and agents and through defendants Bourque and Boggs, "have knowingly and unlawfully engaged and participated in two concerted gasoline buying programs, hereinafter referred to as" the East Texas Buying Program and the Mid-Continent Buying Program, for the purchase of large quantities of gasoline from independent refiners in spot transactions "in the East Texas and Mid-Continent fields, at uniform, high and at times progressively increased prices." But there is no proof to support these allegations.

East Texas Buying Program

The indictment, in paragraph 20, further alleges
3725 that in the alleged East Texas buying program certain named defendants made purchases of gasoline from independent refiners in the East Texas field who were members of an association known as the East Texas Refiners Marketing Association, and which latter was formed in February, 1935, with the knowledge and approval of some of the defendants.

The indictment, in paragraph 21, further alleges that purchases of gasoline in the East Texas field were made "at the instigation and under the supervision and direction of defendants Arnott and Carnes, with one Neil Buckley, employee of Cities Service Export, acting in a liaison capacity between said Association and the defendant major oil companies;" that such purchases were made "in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program;" that such purchases were "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies;" and that "said independent refiners have, at the instance of defendant Arnott and the aforesaid Buckley, curtailed their production of gasoline."

But all the substantial competent evidence, and the proper inferences to be drawn therefrom, wholly fail to prove the above material allegations in the indict-
3726 ment characterizing the alleged "East Texas Buying Program;" but, on the contrary, said evidence does affirmatively show: That said alleged East Texas Buying Program was not in fact a buying program or pool on the part of the defendants, or any of them, but was in truth and in fact a mere selling program organized and carried out by the independent refiners in the East Texas field, under the name of the East Texas Refiners Marketing Association, for the purpose of selling their distress gasoline at a fair market price, and that in all such sales by said independent refiners the defendant major oil company purchaser bought only the gasoline it needed at the time, and of such quality and at such prices as was agreed upon in free and open negotiation between the buyer and seller; that such purchases in the East Texas field were not in quantities in excess of the amounts the purchasers needed or otherwise would have bought; that such purchases were not "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by the defendant major oil companies;" that there was no curtailing of the production of gasoline by said independent refiners other than that required by the allocations by the Government under the Code of Fair Competition for the Petroleum Industry.

Mid-Continent Buying Program.

The indictment, in paragraph 22, further alleges that purchases of gasoline in the Mid-Continent field were
3727 "made at the instigation and under the supervision

and direction of defendants Arnott, Ashton, McDowell, Tuttle and Bourque, and one Walter Paul Jacobi, an employee of defendant Wadhams"; that each of certain defendant companies named "have taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi"; that "said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program"; that such purchases were "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies"; and that said independent refiners "have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline."

But all the substantial competent evidence herein, and the proper inferences to be drawn therefrom, wholly fail to prove the above material allegations of the indictment characterizing the alleged "Mid-Continent Buying Program"; but, on the contrary, said evidence does affirmatively show that said alleged Mid-Continent Buying Program was not in fact a buying program or pool adopted and carried out by the defendants, as alleged in the indictment, but was merely a plan formulated, recommended and adopted by the Tank Car Stabilization Committee
3728 appointed by C. E. Arnott, Chairman of the Marketing Committee of the Planning and Coordination Committee, and by virtue of his authority contained in the letter of July 20, 1934, from Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator; that said plan of said Tank Car Stabilization Committee was merely a cooperative effort on the part of the Petroleum Administrator and the petroleum industry to bring about an orderly marketing of distress gasoline produced by independent refiners in the Mid-Continent field, at a fair price, by putting an independent refiner having distress gasoline for sale in touch with a prospective purchaser thereof, and leaving the buyer and seller independent and free to make their own deal as to amounts, specifications and all other terms of sale; that under said plan all that a defendant major company did was to buy from an independent refiner the distress gasoline which it needed at the time, in such quantities and of such quality and at such prices as was agreed upon in a free and open negotiation between the buyer and the seller; that purchases of gaso-

line from said independent refiners in the Mid-Continent field, during the period named in the indictment, were not made under the supervision and direction of defendants Arnott, Ashton, McDowell, Tuttle and Bourque, and the aforesaid Walter Paul Jacobi, or either of them; that in making purchases of gasoline from said independent refiners each purchaser acted freely, voluntarily and
3729 independently of all other defendants and persons, and each such purchase was only in the amount which the purchaser needed in its due and regular course of business, and each such purchase was made at or below the fair going market price agreed upon at the time by said purchaser and said seller; and that said independent refiners did not curtail their production of gasoline at the instance of the defendants, Ashton, McDowell, Tuttle, Boggs and Bourque, or any of them.

Participation of Trade Journals.

(3) The indictment, in paragraph 24, further alleges that the defendant market journals, Chicago Journal of Commerce, Platt's Oilgram and National Petroleum News, "intentionally and wrongfully engaged and participated in the combination and conspiracy" set forth in the indictment; that said defendants "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area", in that said market journals, "while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the pre-
3730 vailing forms of jobber contracts in the Mid-Western area", have "knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program".

But, contrary to the allegations in the indictment, all the substantial competent evidence herein, and the reasonable inferences to be drawn therefrom, wholly fail to support any such allegations; but said evidence affirmatively establishes: That said market journals, during the period named in the indictment, did not have any connection with the alleged conspiracy or in the alleged buying programs in the East Texas and Mid-Continent fields; that said market journals were not the chief agencies and instrumentalities by which the alleged conspiracy was carried out; that said defendant trade publications did not represent the prices paid by defendant major oil companies in said alleged buying programs to be gasoline prices prevailing in spot sales to jobbers in tank car lots; and that said defendant trade publications have not knowingly published and circulated the alleged wrongfully and artificially raised and fixed prices; all with the result that the United States has moved to dismiss the indictment against said defendant market journals and against Warren C. Platt, and which said motion was granted by this Court against the opposition 3731 of said defendants.

Conclusion.

The result of the foregoing is that there is a material and fatal variance between the material allegations of the indictment and the evidence herein which prejudicially affects the rights of this defendant, and requires its motion for a directed verdict herein to be sustained.

23. That if the evidence herein shows, which the defendants deny, that the defendants, or any two or more of them, combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline, as charged in the indictment, and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted gasoline buying programs, to-wit, the East Texas buying program and the Mid-Continent buying program, as defined in the indictment, then all the substantial competent evidence herein affirmatively shows that said defendants, and each of them, were instigated and induced to engage and participate in said combination and conspiracy and in said alleged buying programs by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2(b) of the National Industrial Recovery Act, and other officers and agents of the Government, and by virtue of the provisions of the Code of Fair Competition for the Pe-
3732 troleum Industry duly signed by the President of the
United States on August 19, 1933, and the administrative machinery provided for and set up to effectuate said Code, to accomplish and effectuate the policy set forth in the National Industrial Recovery Act.

Wherefore, this defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, respectfully prays the Court to dismiss the indictment and the proceedings thereunder and to direct the jury to return a verdict of "not guilty" as to it.

J. C. Denton,
Attorney for Defendant, Mid-Continent Petroleum Corporation.

3733 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION ON BEHALF OF DEFENDANT, ROBERT W. McDOWELL, TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed January 17, 1938.)

Comes now the defendant, Robert W. McDowell, at the close of all the evidence adduced herein, and moves the court to dismiss the indictment and the proceedings thereunder, and to direct the jury to return a verdict of "Not Guilty" as to him, on the following grounds and for the following reasons, to-wit:

1. Said indictment fails to allege that the defendants, or any two or more of them, entered into the alleged combination and conspiracy within the Western District of Wisconsin or within the State of Wisconsin; and fails to allege that the defendants, or any of them, performed or did any act pursuant to or in furtherance of the alleged combination and conspiracy within the Western District of Wisconsin or within the State of Wisconsin.

3734 2. Said indictment alleges facts which affirmatively show that the trial of this defendant on the charge contained in said indictment within the Western District of Wisconsin violates the rights of this defendant under the Sixth Amendment to the Constitution of the United States, which guarantees to this defendant the right to a speedy and public trial by an impartial jury of the state and district wherein the alleged crime shall have been committed.

3. Said indictment alleges facts which affirmatively show that this Honorable Court does not have any venue or jurisdiction over said defendants, or any of them, or any venue or jurisdiction to try said defendants, or any

of them, for the alleged combination and conspiracy, by reason of Section 3, Article III of the Constitution of the United States, which provides that the trial of all crimes shall be held in the State wherein the alleged crime shall have been committed.

4. There is no substantial competent evidence herein which shows, or tends to show, that the alleged combination and conspiracy was entered into within the Western District of Wisconsin or within the State of Wisconsin; or that said defendants, or any of them, performed or did any act pursuant to or in furtherance of the alleged combination and conspiracy within the Western District of Wisconsin or within the State of Wisconsin.

3735 5. Said indictment does not inform this defendant, or any of said defendants herein, of the nature and cause of the accusation against him, or any of them, with sufficient definiteness and certainty to enable him, or any of them, to prepare and to make a defense thereto, or to plead an acquittal or a conviction thereunder in bar of a subsequent prosecution for the same offense attempted to be charged therein, as required by the Sixth Amendment to the Constitution of the United States.

6. Said indictment fails to allege facts constituting any violation by this defendant, or any of the defendants herein, of any law of the United States.

7. Said indictment shows on its face that said combination and conspiracy attempted to be charged therein did not and could not restrain interstate trade or commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., § 1).

8. Said indictment fails to describe and to particularize the alleged combination and conspiracy and the manner and means by which the same is alleged to have been effectuated with sufficient definiteness and certainty to charge any offense against the United States and to enable this Court from an inspection of said indictment, to ascertain whether said manner and means alleged in paragraphs 19 to 24, inclusive, would cause a restraint of interstate
3736 trade or commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1).

9. That all the substantial competent evidence herein and all the reasonable inferences arising therefrom are wholly insufficient to prove, and do not tend to prove, that

this defendant entered into or engaged in the unlawful combination and conspiracy attempted to be charged in the indictment to restrain interstate trade or commerce in gasoline in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1).

10. All the substantial competent evidence herein is as consistent with the innocence of this defendant as it is consistent with his guilt of the offense charged in the indictment.

11. There is no substantial competent evidence herein which excludes every other reasonable hypothesis but that of the guilt of this defendant of the offense charged in the indictment.

12. There is no substantial competent evidence herein that this defendant combined and conspired together with the other defendants named in the indictment, or with any of them, or with any other person, as charged in the indictment.

3737 13. There is no substantial competent evidence herein that this defendant engaged in an unlawful combination and conspiracy as charged in the indictment, or that said defendant authorized, ordered or performed any act or acts alleged to have been the manner and means of effectuating said combination and conspiracy.

14. There is no substantial competent evidence herein that any defendant knowingly and unlawfully engaged and participated in the two alleged concerted buying programs, or either of them, for the purpose and in the manner described in paragraphs 19 to 24, inclusive, of the indictment, or that any purchase, if any, made by the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, through defendant, Robert W. McDowell, as Vice President, was made by either of said corporations in the manner described or for the purpose of ~~effectuating said~~ alleged combination and conspiracy, as charged in said indictment.

15. There is no substantial competent evidence herein showing, or tending to show, that any purchase of gasoline, if any, of the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or of its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, from any independent refiner in the East Texas field or in

the Mid-Continent field, made through the defendant,
3738 Robert W. McDowell as Vice President of said corporations, or either of them, was made for the purposes and in the manner charged in the indictment.

16. There is no substantial competent evidence herein showing, or tending to show, that the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, or either of them, by or through the defendant, Robert W. McDowell, made "large and increased purchases from any of the independent refiners located in the Mid-Continent fields," as charged in the indictment.

17. There is no substantial competent evidence herein showing, or tending to show, that any purchase of gasoline, if any, of the defendant, Mid-Continent Petroleum Corporation, a Delaware corporation, or of its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, from any independent refiner in the Mid-Continent field, made by or through the defendant, Robert W. McDowell, as Vice President of said corporations, or either of them, was made "at the instigation and under the supervision and direction of defendants Arnott, Ashton, McDowell, Tuttle and Bourque, and one Walter Paul Jacobi, an employee of defendant Wadhams", or either of them, as charged in the indictment.

18. There is no substantial competent evidence herein showing, or tending to show, that the defendant, Mid-Continent Petroleum Corporation, a Delaware corpora-
3739 tion, or its subsidiary, Mid-Continent Petroleum Corporation, a Kentucky corporation, or any other defendant herein, has taken a part of the large quantities of gasoline purchased from the independent refiners located in the Mid-Continent field, during the period named as charged in the indictment, "as from time to time allotted to it by defendants, McDowell and Tuttle and Bourque, and the aforesaid Jacobi", as charged in the indictment.

19. There is no substantial competent evidence herein showing or tending to show, that any purchase or purchases of gasoline made by the defendant major oil companies, or any of them, named in Paragraph 22 of the indictment, or any subsidiary thereof, from independent refiners located in the Mid-Continent fields "have been in excess of the amounts which the aforesaid defendant major oil companies would have purchased apart from their participa-

tion in" the alleged Mid-Continent buying program; or that such purchases of gasoline, or any of them, "have been made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies," or any of them, as charged in the indictment.

20. There is no substantial competent evidence herein showing, or tending to show, that the independent refiners, or any of them, named in Paragraph 22 of the indictment, "have, at the instance of defendants Arnott, McDow-
3740 ell, Tuttle, Boggs and Bourque, curtailed their pro-
duction of gasoline," during the period named and as charged in the indictment.

21. There is no substantial competent evidence herein showing, or tending to show, that the defendants, Chicago Journal of Commerce and Keith Fanshier, its petroleum editor, and defendant Platt's Oilgram, National Petroleum News, and Warren C. Platt, their president, or any of them, well knowing all the facts alleged in the indictment, have intentionally and wrongfully engaged and participated in the combination and conspiracy set forth in the indictment, and have directly and materially aided the other defendants in effectuating the same; or that said named defendants have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies have affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area, including the Western District of Wisconsin; or that, while representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending said prices to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area, described in paragraph 11 of the in-
dictment, said named defendant trade journals have,
3741 throughout said period in the Mid-Western area, in-
cluding the Western District of Wisconsin, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies, as aforesaid, in the said East Texas buying program and Mid-Continent buying program, or, if any of said acts were intentionally and knowingly done or performed by said named trade journals, or any of them, as charged, there

is no substantial competent evidence herein showing, or tending to show, that any of said acts were done or performed through or under the direction or authority of this defendant, Robert W. McDowell, or that said defendant had any knowledge thereof at the time.

22. There is a material and a fatal variance between the allegations of the indictment and all the evidence introduced herein in support thereof, which materially and prejudicially affects the substantial rights of the defendants, and each of them, in this, to-wit:

The Conspiracy.

(1) The indictment, in paragraph 18, alleges in a single count that the defendants (a) "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets"; (b) that "as intended by them, de-
3742 fendants have artificially raised and fixed said spot
market tank car prices at artificially high and noncompetitive levels and at levels agreed upon among them"; and as a result thereof said defendants (c) "have maintained said prices at artificially high and non-competitive levels and at levels agreed upon among them," and (d) "have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the Mid-Western area," and (e) "have arbitrarily, by reason of the prevailing form of jobber contracts above described in Paragraph 11, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area," and (f) "in turn have intentionally raised the general level of retail prices prevailing in the said Mid-Western area."

But not only does all the substantial competent evidence herein, and all the reasonable and proper inferences to be drawn therefrom, wholly fail to prove that said defendants, or any two or more of them, combined and conspired together to artificially raise and fix such spot market tank car prices of gasoline, or that said defendants did artificially raise and fix said prices, or did maintain said prices at artificially high and non-competitive levels or at levels agreed upon among the defendants, or that the result of said alleged conspiracy was to increase and fix such prices
in interstate commerce, or to exact large sums of
3743 money from jobbers, or to raise the general level of
retail prices in the Mid-Western area; but all said

evidence does affirmatively show that what the Government has alleged to be an unlawful combination and conspiracy of the defendants was nothing more than a plan formulated, adopted and carried out by the Tank Car Stabilization Committee under the Code of Fair Competition for the Petroleum Industry and the Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, to bring about an orderly marketing of distress gasoline produced by independent refiners in the East Texas and in the Mid-Continent fields, at a fair market price, by putting a prospective buyer in touch with an independent refiner and leaving the buyer and seller independent and free to make their own deal as to amounts, specifications, prices and all other terms of sale.

Manner and Means of Effectuating the Conspiracy.

(2) The indictment, in paragraph 19 thereof, further alleges that the alleged unlawful combination and conspiracy has been effectuated in the following manner and by the following means, in that the defendants, acting through or under their respective officers and agents and through defendants Bourque and Boggs, "have knowingly and unlawfully engaged and participated in two concerted gasoline buying programs, hereinafter referred to as" the East Texas buying program and the Mid-Continent buying program, for the purchase of large
quantities of gasoline from independent refiners in
3744 spot transactions "in the East Texas and Mid-Con-
tinent fields, at uniform, high and at times progressively increased prices". But there is no proof to support these allegations.

East Texas Buying Program.

The indictment, in paragraph 20, further alleges that in the alleged East Texas buying program certain named defendants made purchases of gasoline from independent refiners in the East Texas field who were members of an association known as the East Texas Refiners Marketing Association, and which latter was formed in February, 1935, with the knowledge and approval of some of the defendants.

The indictment, in paragraph 21, further alleges that purchases of gasoline in the East Texas field were made "at the instigation and under the supervision and direction of defendants Arnott and Carnes, with one Neil Buckley, employee of Cities Service Export, acting in a liaison capacity between said Association and the defendant major oil companies"; that such purchases were made "in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program"; that such purchases were "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies"; and that "said independent refiners have, at the instance of defendant Arnott and the aforesaid Buckley, curtailed their production of gasoline". 3745

But all the substantial competent evidence, and all the proper inferences to be drawn therefrom, wholly fail to prove the above material allegations in the indictment characterizing the alleged "East Texas Buying Program"; but, on the contrary, said evidence does affirmatively show: That said alleged East Texas buying program was not in fact a buying program or pool on the part of the defendants, or any of them, but was in truth and in fact a mere selling program organized and carried out by the independent refiners in the East Texas field, under the name of the East Texas Refiners Marketing Association, for the purpose of selling their distress gasoline at a fair market price, and that in all such sales by said independent refiners the defendant major oil company purchaser bought only the gasoline it needed at the time, and of such quality and at such prices as was agreed upon in free and open negotiation between the buyer and seller; that such purchases in the East Texas field were not in quantities in excess of the amounts the purchaser needed or otherwise would have bought; that such purchases were not "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by the defendant major oil companies"; and that there was no curtailing of the production of gasoline by said independent refiners other than that required by the allocations by the Government under the Code of Fair Competition for the Petroleum Industry.

3746 Mid-Continent Buying Program.

The indictment, in paragraph 22, further alleges that purchases of gasoline in the Mid-Continent field were "made at the instigation and under the supervision and direction of defendants Arnott, Ashton, McDowell, Tuttle and Bourque, and one Walter Paul Jacobi, an employee of defendant Wadhams"; that each of certain defendant companies named "have taken a part of the large quantities of gasoline purchased, as aforesaid, as from time to time allotted to it by defendants McDowell and Tuttle and Bourque, and the aforesaid Jacobi"; that "said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program"; that such purchases were "made at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies"; and that said independent refiners "have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline".

But all the substantial competent evidence herein, and the proper inferences to be drawn therefrom, wholly fail to prove the above material allegations of the indictment characterizing the alleged "Mid-Continent Buying Program"; but, on the contrary, said evidence does affirmatively show that said alleged Mid-Continent Buying
3747 Program was not in fact a buying program or pool
adopted and carried out by the defendants, as alleged in the indictment, but was merely a plan formulated, recommended and adopted by the Tank Car Stabilization Committee appointed by C. E. Arnott, Chairman of the Marketing Committee of the Planning and Coordination Committee, and by virtue of his authority contained in the letter of July 20, 1934, from Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator; that said plan of said Tank Car Stabilization Committee was merely a cooperative effort on the part of the Petroleum Administrator and the petroleum industry to bring about an orderly marketing of distress gasoline produced by independent refiners in the Mid-Continent field, at a fair price, by putting an independent refiner having distress gasoline for sale in touch with a prospective purchaser thereof, and leaving the buyer and seller independent and free to make their own deal as

to amounts, specifications and all other terms of sale; that under said plan all that a defendant major oil company did was to buy from an independent refiner the distress gasoline which it needed at the time, in such quantities and of such quality and at such prices as was agreed upon in a free and open negotiation between the buyer and the seller; that purchases of gasoline from said independent refiners in the Mid-Continent field, during the period named in the indictment, were not made under the supervision and direction of defendants
3748 Arnott, Ashton, McDowell, Tuttle and Bourque, and
the aforesaid Walter Paul Jacobi, or either of them; that in making purchases of gasoline from said independent refiners each purchaser acted freely, voluntarily and independently of all other defendants and persons, and each such purchase was only in the amount which the purchaser needed in its due and regular course of business, and each such purchase was made at or below the fair going market price agreed upon at the time by said purchaser and said seller; and that said independent refiners did not curtail their production of gasoline at the instance of the defendants Ashton, McDowell, Tuttle, Boggs and Bourque, or any of them.

Participation of Trade Journals.

(3) The indictment, in paragraph 24, further alleges that the defendant market journals, Chicago Journal of Commerce, Platt's Oilgram and National Petroleum News, "intentionally and wrongfully engaged and participated in the combination and conspiracy" set forth in the indictment; that said defendants "have been the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers and consumers for gasoline in the Mid-Western area", in that said market journals, "while representing the price quotations published by them, as aforesaid, to be gasoline prices
3749 prevailing in spot sales to jobbers in tank car lots,
and while knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area", have "knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gas-

oline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program".

But, contrary to the allegations in the indictment, all the substantial competent evidence herein, and the reasonable inferences to be drawn therefrom, wholly fail to support any such allegations; but said evidence affirmatively establishes: That said market journals, during the period named in the indictment, did not have any connection with the alleged conspiracy or the alleged buying programs in the East Texas and Mid-Continent fields; that said market journals were not the chief agencies and instrumentalities by which the alleged conspiracy was carried out: that said defendant trade publications did not represent the prices paid by defendant major oil companies in said alleged buying programs to be gasoline prices prevailing in spot sales to jobbers in tank car lots; and that said defendant trade publications have not knowingly published and circulated the alleged wrongfully and artificially raised and fixed prices: all with the result that the United States has moved to dismiss
3750 the indictment against said defendant market journals and against Warren C. Platt, and which said motion was granted by this Court against the opposition of said defendants.

Conclusion.

The result of the foregoing is that there is a material and fatal variance between the material allegations of the indictment and the evidence herein which prejudicially affects the rights of this defendant, and requires its motion for a directed verdict herein to be sustained.

23. That if the evidence herein shows, which the defendants deny, that the defendants, or any two or more of them, combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline, as charged in the indictment, and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted gasoline buying programs, to-wit, the East Texas buying program and the Mid-Continent buying program, as defined in the indictment, then all the substantial competent evidence herein affirmatively shows that said defendants, and each of them, were instigated and induced to engage and participate in said combination and conspiracy and in said

alleged buying programs by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2 (b) of the National Industrial Recov-
3751 ery Act, and other officers and agents of the Government, and by virtue of the provisions of the Code of Fair Competition for the Petroleum Industry duly signed by the President of the United States on August 19, 1933, and the administrative machinery provided for and set up to effectuate said Code, to accomplish and effectuate the policy set forth in the National Industrial Recovery Act.

Wherefore, this defendant, Robert W. McDowell, respectfully prays the court to dismiss the indictment and the proceedings thereunder and to direct the jury to return a verdict of "not guilty" as to him.

J. C. Denton,
Attorney for Defendant, Robert W. McDowell.

3752 In the District Court of the United States.

• • (Caption—11365) • •

MOTION TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed 1/17/38.)

Comes now the defendant, Phillips Petroleum Company, at the close of all the evidence adduced herein by and on behalf of the Government and by and on behalf of the defendants, and moves the Court to dismiss the indictment and the proceedings thereunder, and to direct the jury to find a verdict of "Not Guilty" as to it, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant
3753 under the Sixth Amendment to the Constitution of

the United States to a trial by an impartial jury of the State and district wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act (15 U. S. C. A. Sec. 1).

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not
3754 restrain interstate trade and commerce in gasoline
within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. Sec. 1.)

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(8) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(9) There is no substantial competent evidence in the record herein that this defendant combined and conspired together with the other defendants named in the indictment, or with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in paragraph 18 of the indictment.

(10) There is no substantial competent evidence in the record herein that this defendant engaged in an 3755 unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

(11) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged and participated in two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the Mid-Continent Buying Program, as alleged in said paragraph.

(12) There is no substantial competent evidence in the record herein that this defendant purchased gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 22, or any of them.

3756 (13) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(14) All competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February, 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable

information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

3757 (15) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or, whereby, or as the result of which, this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(16) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(17) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government 3758 in support thereof, in that the indictment alleges in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act, only tends to prove that the defendants named in Paragraphs 20 and 21 of the indictment engaged

in a buying program in the East Texas field and that the defendants named in Paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

(18) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows: The indictment alleges in Paragraph
18 in a single count that the defendants engaged in
3759 one general conspiracy to artificially raise and fix the
tank car prices of gasoline in the spot markets described in the indictment, and thereby to intentionally increase and fix the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the mid-western area, and, by reason of the prevailing form of jobber contracts described in the indictment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the mid-western area, and in turn to intentionally raise the general level of retail prices prevailing in said mid-western area.

The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy,

First, the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market journals, the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News, which are alleged in Paragraph 24 of the indictment to have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gaso-
line paid by the major oil companies affected the
3760 prices paid by jobbers, retail dealers and consumers
for gasoline in the mid-western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, as to all other times, only published in their price quotations the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United States moved to dismiss the indictment against said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposition of said defendants, was granted by this court.

3761 The result of such complete failure of proof is that the defendant market journals, an alleged "necessary element" in the alleged scheme of the defendants; the alleged "connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective" of the alleged conspiracy, that is, as alleged, "unjust enrichment for the major oil companies;" the alleged "outstanding means, the absolutely necessary means toward getting the conspiracy through" and the alleged "chief agencies and instrumentalities" through which the alleged wrongfully and artificially raised and fixed prices for gasoline allegedly affected the prices paid by jobbers, retail dealers and consumers for gasoline in the mid-western area, and especially within the Western District of Wisconsin, have been proved by the evidence and have been found by order of this court not to have participated in or to have aided and abetted the other and now the only remaining defendants in carrying out the conspiracy, if any, alleged in the indictment, and that the conspiracy, if any, charged in the indictment has not been and cannot be proved.

(19) The evidence in this case does not establish beyond a reasonable doubt that the defendants or that any of them can be held to have violated Section 1 of the Sherman Act by participating and engaging in any buying 3762 program or programs as alleged in the indictment for the following reasons:

The evidence introduced on behalf of the defendants establishes or tends to establish that the defendant Arnott was appointed Chief Stabilizer of the Petroleum Industry by a letter dated July 20, 1934, from the Secretary of the Interior, Harold L. Ickes, as Administrator of the Code of Fair Competition for the Petroleum Industry. The defendant Arnott carried on stabilization activities under the authority or the supposed authority of that letter until the termination of all code activities on May 27, 1935.

When the defendant Arnott on January 4, 1935, appointed the Tank Car Stabilization Committee and instructed that Committee to take steps to relieve the condition of the independent refiners, he reasonably believed that he was authorized so to do by said letter of July 20, 1934, and he reasonably believed that in so doing he had the approval of the Petroleum Administrator and was acting to carry out his plans and policies. The defendant Arnott so told the defendants who were members of said Tank Car Stabilization Committee and said defendants reasonably believed and acted on those statements, and not otherwise, in carrying on the activities of that committee.

In all his connections with the buying of surplus gasoline in the Mid-Continent and in the East Texas fields, 3763 the defendant Arnott believed that he was acting under the authority of the letter of July 20, 1934, that he had the approval of the Petroleum Administrator and of his assistants and that he was acting in conformity with and for the purpose of effectuating the plans and policies of the Petroleum Administration. The defendant Arnott so advised each individual defendant who had any connection with such buying activities and each of said defendants reasonably believed said statements and for that reason, and not otherwise, participated in the so-called East Texas and Mid-Continent buying programs to the extent each is shown by the evidence in this case to have participated.

The Petroleum Administrator, through the Petroleum Administrative Board and through members of that Board, and otherwise, was advised of the activities of the defendant Arnott and of the so-called East Texas and Mid-Continent buying programs and at least tacitly approved and encouraged the defendants in carrying on these so-called buying programs as a part of stabilization and as a means of assisting in the accomplishment of the ends and the objectives of the Petroleum Administration. If the Petroleum Administrator either directly or through the Petroleum Administrative Board or through the Planning and Coordination Committee of the Petroleum Industry had requested that said buying activities be terminated, 3764 the same would have been terminated. No such request, however, ever was made nor was any criticism of those activities ever offered.

The Government of the United States consists of many departments and bureaus and agencies. The Department of Justice and the Department of the Interior are equal and coordinate branches of the Government of the United

States. Neither this court nor this jury, therefore, may find that what these defendants did under the authorization and at the request and with the knowledge and approval of the Government of the United States as represented during the period of the National Industrial Recovery Act and of the Petroleum Code by the Secretary of the Interior, Harold L. Ickes, as the Petroleum Administrator exercising the powers delegated to the President of the United States by said Act, whether such authorization was expressed or shown directly or through the Petroleum Administrative Board as the Administrative Agency of the Petroleum Code, constituted a violation of Section 1 of the Sherman Act.

Rayburn L. Foster,
Walter L. Barnes,
Attorneys for Defendant
Phillips Petroleum Company.

3765 In the District Court of the United States.

• • (Caption 11365) • •

MOTION OF SKELLY OIL COMPANY TO DISMISS THE INDICTMENT AND FOR A DIRECTED VERDICT.

(Filed November 15, 1937.)

Comes now the defendant, Skelly Oil Company, at the close of all the evidence adduced herein by and on behalf of both the Government and the defendants, and moves the Court to dismiss the indictment and the proceedings thereunder and to direct the jury to find a verdict of "not guilty" as to said defendant company, and in support thereof specifies the following reasons and grounds:

(1) The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

(2) The said indictment discloses on its face that the trial of this defendant thereunder in the Western District of Wisconsin violates the right of this defendant under the Sixth Amendment to the Constitution of the United
3766 States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

(3) The said indictment fails to describe and to particularize the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable this defendant to prepare and to make its defense thereto and to plead an acquittal or a conviction thereunder in bar to any other proceedings against it based on the same matters or things, or on any of them, on which the indictment is based.

(4) The said indictment fails to describe and to particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court, from an inspection of the said indictment, to ascertain whether, if carried into effect, the alleged means would cause a restraint of interstate trade and commerce within the prohibitions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(5) The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890,
3767 known as the Sherman Anti-Trust Act. (15 U. S. C. A. § 1.)

(6) The said indictment fails to allege facts showing any violation by the defendant of any law of the United States.

(7) All the substantial competent evidence in the record herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(8) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(9) There is no substantial competent evidence in the record herein that this defendant combined and conspired together with the other defendants named in the indictment, or with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in Paragraph 18 of the indictment.

(10) There is no substantial competent evidence in the record herein that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and com-

merce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

3768 (11) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, in that the indictment alleges in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant major oil companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields, whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation of the Sherman Anti-Trust Act, only tends to prove that the defendants named in Paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

(12) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged and participated in
3769 two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program, and (b) the Mid-Continent Buying Program, as alleged in said indictment.

(13) There is no substantial competent evidence in the record herein that beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant purchased gasoline from the independent refiners named in Paragraph 20 of the indictment, or from any of them, under the supervision and direction of the defendants Arnott and Carnes, and of one Neil Buckley, as alleged in Paragraph 21 of the indictment.

(14) There is no substantial competent evidence in the

record herein that one Neil Buckley, acting in a liaison capacity between the East Texas Refiners Marketing Association, which is referred to in Paragraph 20 of the indictment, and the defendant major oil companies, instigated and directed any purchase of gasoline made by this defendant during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, from any independent refiner named in said Paragraph 20.

(15) There is no substantial competent evidence in the record herein that this defendant from time to time, or at any time during the period beginning in the month of 3770 February 1935, and continuing to the date of the presentation of this indictment, arranged with the other defendant major oil companies named in Paragraph 20 of the indictment, or with any of them, to purchase any part or any amount of the gasoline sold by the independent refiners named in said Paragraph 20, whether sold through the East Texas Refiners Marketing Association, or otherwise.

(16) There is no substantial competent evidence in the record herein that this defendant at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, purchased any gasoline from any independent refiner named in Paragraph 20 of the indictment, whether sold through the East Texas Refiners Marketing Association, or otherwise, in accordance with or pursuant to any arrangement between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(17) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action or program for or relative to the purchase by the defendant major oil companies named in Paragraph 20 of the indictment of large quantities of gasoline from 3771 independent refiners in the East Texas field, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

(18) There is no substantial competent evidence in the record herein that this defendant purchased any gasoline during the period beginning in the month of February 1935,

and continuing to the date of the presentation of this indictment, from any independent refiner named in Paragraph 20 of the indictment as the result of or in accordance with any arrangement, agreement or understanding between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(19) There is no substantial competent evidence in the record herein that this defendant purchased any gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 20 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 20, or any of them.

(20) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any 3772 time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the insistence of the defendant Arnott or of one Neil Buckley.

(21) The competent evidence in the record herein affirmatively establishes that at no time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, was there an East Texas buying program, as alleged in Paragraphs 19 to 21, inclusive, of the indictment.

(22) All the competent evidence in the record herein tends to establish that the only plan, arrangement, concert of action, or program relative to spot transactions in gasoline in the East Texas field during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, consisted of the organization of the East Texas Refiners Marketing Association by certain of the independent refiners named in Paragraph 20 of the indictment, and of the operation and use of that association by said independent refiners to sell the gasoline which they produced and for which they did not have regular established outlets or channels of distribution through service stations or jobbers.

(23) All the competent evidence in the record herein

tends to establish that the only plan, arrangement, 3773 concert of action, or program in effect at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, for or relative to the sale and purchase of gasoline in the East Texas field, was a selling program organized, maintained, and operated solely by the independent refiners named in Paragraph 20 of the indictment on their own initiative and in their own interests.

(24) All the competent evidence in the record herein tends to establish that this defendant did not participate in any East Texas program for or relative to the sale and purchase of East Texas gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, except insofar as this defendant, acting individually and not in pursuance of or in accordance with any combination, conspiracy, arrangement, agreement, program or concert of action, purchased gasoline in the regular course of its business on spot transactions from independent refiners named in Paragraph 20 of the indictment, or from some of them.

(25) All the competent evidence in the record herein tends to establish that every purchase of gasoline made by this defendant during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from any independent re-3774 finer named in Paragraph 20 of the indictment, was made by this defendant in the free exercise of its own independent discretion as to the party with whom it would deal, as to the amount which it would purchase, and as to the price that it would pay.

(26) There is no substantial competent evidence in the record herein that this defendant purchased gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between this defendant and the other defendant major oil companies named in said Paragraph 22, or any of them.

(27) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 20 of the indictment, or any of them, at any time during the period beginning in the month of February 1935,

and continuing to the date of the presentation of this indictment curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(28) All competent evidence in the record herein tends to establish that the only plan, arrangement, concert of 3775 action, or program for or relative to the sale and purchase of gasoline in the Mid-Continent field in which this defendant participated or engaged during the period beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, was a plan, arrangement, or program to reduce the amount of so-called distress gasoline on the market by securing reliable information as to the amounts of such gasoline which the independent refiners named in Paragraph 22 of the indictment had or would have on hand for sale, and by disseminating such information among the defendant major oil companies named in said Paragraph 22.

(29) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action, or program whereby, or as the result of which, this defendant was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or, whereby, or as the result of which, this defendant was or became obligated to pay any specific price or any 3776 price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(30) There is no substantial competent evidence in the record herein that any defendant major oil company performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(31) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows:

The indictment alleges in Paragraph 18 in a single count that the defendants engaged in one general conspiracy to artificially raise and fix the tank car prices of gasoline in the spot markets described in the indictment, and thereby to intentionally increase and fix the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the mid-western area, and, by reason of the prevailing form of jobber contracts described in the indictment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the mid-western area, and in turn to intentionally raise the general level of retail prices prevailing in said mid-western area.

3777 The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy,

First, the two buying programs which are referred to in paragraph nineteen of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market journals, the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News, which are alleged in paragraph 24 of the indictment to have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies affected the prices for gasoline paid by jobbers, retail dealers and consumers for gasoline in the mid-western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, as at all other times, only published in their price quotations the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United States moved to dismiss the indictment against 3778 said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposition of said defendants, was granted by this Court.

The result of such complete failure of proof is that an alleged "necessary element" in the alleged scheme of the defendants; the alleged "connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective" of the alleged conspiracy, that is, as alleged, "unjust enrichment for the major oil companies;" the alleged "outstanding means, the absolutely necessary means toward getting the conspiracy through" and the alleged "chief agencies and instrumentalities" through which the alleged wrongful and artificially raised and fixed prices for gasoline allegedly affected the prices paid by jobbers, retail dealers and consumers for gasoline in the mid-western area, and especially within the Western
3779 District of Wisconsin, have been proved and by order of this court have been found not to have participated in or to have aided and abetted the other and now the only remaining defendants in carrying out the conspiracy, if any, alleged in the indictment, and that the conspiracy, if any, charged in the indictment has not been and cannot be proved.

(32) It is satisfactorily shown by the evidence that the buying of gasoline which was conducted by the defendant major companies was at least orally sanctioned by the Government, by and through the President and/or agents duly appointed by him under the so-called Recovery Act of 1933, or, in any event, that the defendants honestly believed it was so sanctioned and desired by the President, so that there cannot be and is not present in this case any criminal intent whether or not the theory of counsel for the Government that the plan was a price fixing one is sufficiently supported by evidence otherwise to make an issue of fact thereon one for the jury, or whether or not upon any other theory the evidence is sufficient otherwise to raise an issue of fact for the jury.

(33) It satisfactorily appears from the evidence that the defendant major companies who participated in the purchase of gasoline from independent refiners and those officers and agents of said companies who acted on behalf of said companies in so doing, were engaged in an
3780 effort in good faith to carry out the purposes and policies of the Government with respect to the petroleum industry as defined and set forth in the Petroleum Code and particularly to stabilize the wholesale markets for gas-

oline in the Mid-Western area and to attain a proper parity between the tank car price of gasoline sold on the spot market and the established price of crude oil, so that without regard to the particular terms or details of the plan whereby the defendant major companies purchased gasoline from independent refiners, their activities in that connection could in no event constitute a violation of the criminal provisions of the Sherman Act; or, in any event, it cannot be said that their acts and conduct, even when viewed favorably to the prosecution, constituted any such violation; and with respect to what the defendant major companies may have done, as shown by the evidence, subsequent to May 27, 1935, after the expiration of the Petroleum Code, it satisfactorily appears from the evidence that it was the desire of the President, or, in any event, that it was in good faith believed by the active agents of said companies that it was the desire of the President, that stabilization movements which had been conducted by members of the petroleum industry prior to said date should be carried on with a view to maintaining positions of stability which had been previously attained; or, in view of the Administrative desires in that respect, it cannot 3781 be said that the acts and conduct of the defendant major companies following said date relating to purchases of gasoline from independent refiners, do constitute a violation of the Sherman Act, as alleged in the indictment. The evidence tends so strongly to show that the defendants who consciously participated in any such buying, either before or after May 27, 1935, did so in an honest belief that they were doing things which the President of the United States and others connected with the Executive Department of the Government desired be done, that it cannot be said that the evidence shows any violation of the Sherman Act.

William J. Donovan,
W. P. Z. German,
Alvin F. Molony,
Cliff V. Peery,
Attorneys for defendant,
Skelly Oil Company.

November 15, 1937.

3782 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION FOR A DIRECTED VERDICT.

(Filed January 17, 1938)

Now come the defendants, The Globe Oil & Refining Company (Oklahoma), The Globe Oil & Refining Company (Kansas), The Globe Oil & Refining Company (Illinois), corporations, at the close of all the evidence, and move the Court to give the jury the following instructions:

> "The Court instructs the jury to find the defendants,
>
> The Globe Oil & Refining Company (Oklahoma),
> The Globe Oil & Refining Company (Kansas),
> The Globe Oil & Refining Company (Illinois), not guilty."

Without limiting in any way the general effect of this motion, these defendants specify as particular reasons, among others, why such motion should be granted the following:

(1) All the substantial competent evidence adduced is just as consistent with a reasonable hypothesis of in-
3783 nocence as with any hypothesis of guilt with respect to the offense, if any, charged in the indictment.

(2) No substantial competent evidence has been adduced which excludes every reasonable hypothesis except that of the guilt of these defendants with respect to the offense charged, if any, in the indictment.

(3) There is no substantial competent evidence in the record herein that these defendants combined and conspired together with the other defendants named in the indictment, or with any of them, and with certain other persons referred to in the indictment, or with any of them, as charged in Paragraph 18 of the indictment.

(4) There is no substantial competent evidence in the record herein that these defendants engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in Paragraph 18 of the indictment.

(5) There is no substantial competent evidence in the

record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, these defendants engaged and participtaed in two concerted gasoline buying programs, referred to in Paragraph 19 of the indictment as (a) the East Texas
3784 Buying Program, and (b) the Mid-Continent Buying
Program, as alleged in said paragraph.

(6) There is no substantial competent evidence in the record herein that these defendants purchased gasoline during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, from the independent refiners named in Paragraph 22 of the indictment, or from any of them, at uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon between these defendants and the other defendant major oil companies named in said Paragraph 22, or any of them.

(7) There is no substantial competent evidence in the record herein that the independent refiners named in Paragraph 22 of the indictment, or any of them, at any time during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, as alleged in Paragraph 23 of the indictment herein.

(8) There is no substantial competent evidence in the record herein that during the period beginning in the month of February 1935, and continuing to the date of the presentation of this indictment, or that at any time during said period, these defendants engaged or participated in any combination, arrangement, agreement, understanding,
3785 concert of action, or program whereby, or as the re-
sult of which, these defendants were or became obligated to or did regularly purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment, or, whereby, or as the result of which, these defendants were or became obligated to or did pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners, or from any of them.

(9) There is no substantial competent evidence in the record herein that any defendant performed or did any act within the Western District of Wisconsin pursuant to the combination and conspiracy, if any, alleged in the indictment herein.

(10) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, in that the indictment alleges in a single count that the defendants engaged in one general conspiracy artificially to raise and fix the prices of gasoline, and that they used as the means for accomplishing the purposes of that single conspiracy the two buying programs which are referred to in Paragraph 19 of the indictment as (a) the
3786 East Texas Buying Program and (b) the Mid-Continent Buying Program, some of the defendant companies allegedly purchasing gasoline in the East Texas field, some of them allegedly purchasing gasoline in the Mid-Continent field, and only three of them allegedly purchasing in both fields; whereas the competent evidence in the record herein, on the assumption that it tends to prove any violation or violations of the Sherman Anti-Trust Act (which is denied), only tends to prove (at most) that the defendants named in Paragraphs 20 and 21 of the indictment engaged in a buying program in the East Texas field and that the defendants named in Paragraphs 22 and 23 of the indictment engaged in another and entirely separate, distinct and different buying program in the Mid-Continent field.

(11) There is a fatal, material and prejudicial variance between the allegations of the indictment and the evidence adduced by and on behalf of the Government in support thereof, as follows:

The indictment alleges in paragraph 18 in a single count that the defendants engaged in one general conspiracy artificially to raise and fix the tank car prices of gasoline in the spot markets described in the indictment, and thereby intentionally to increase and fix the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce in the Mid-western area, and, by reason of the prevailing form of jobber contracts described in the indict-
3787 ment, to exact large sums of money from thousands of jobbers with whom they had such contracts in the Mid-western area, and in turn intentionally to raise the general level of retail prices prevailing in said Mid-western area.

The indictment further alleges that the defendants used as the means for accomplishing the purposes of that alleged conspiracy,

First, the two buying programs which are referred to in paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, and

Second, the participation of the defendant market journals, the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News, which are alleged in paragraph 24 of the indictment to have been the chief agencies and instrumentalities through which the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies affected the prices paid by jobbers, retail dealers and consumers for gasoline in the mid-western area, in that said market journals, while representing the price quotations published by them to be gasoline prices prevailing in spot sales to jobbers in tank car lots, knowingly published and circulated as such price quotations the alleged wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies in said alleged East Texas Buying Program and Mid-Continent Buying Program.

3788 On the contrary, however, the evidence in the record herein entirely fails to support said allegations with reference to the alleged participation in said alleged conspiracy of said market journals, but instead affirmatively establishes that said market journals, during the period beginning in the month of February, 1935 and continuing to the date of the presentation of this indictment, as at all other times, only published in their price quotations the gasoline prices prevailing in spot sales to jobbers in tank car lots, as represented by them, with the result that the United States moved to dismiss the indictment against said defendant market journals and against the defendant Warren C. Platt, which said motion, against the opposition of said defendants, was granted by this court.

The result of such complete failure of proof is that the alleged "necessary element" in the alleged scheme of the defendants; the alleged "connecting link between the immediate objective, the raising of the spot market price, and the ultimate objective" of the alleged conspiracy, that is, as alleged, "unjust enrichment for the major oil companies"; the alleged "outstanding means, the absolutely necessary means toward getting the conspiracy through" and the alleged "chief agencies and instrumentalities" through which the alleged wrongfully and artificially raised and fixed prices for gasoline allegedly affected the price paid by jobbers, retail dealers and consumers for gasoline 3789 in the Mid-western area, and especially within the Western District of Wisconsin have not been shown; that by order of this court said market journals and Warren C. Platt have been found not to have participated in or to have aided and abetted the other and now the only remaining defendants in carrying out the conspiracy, if any, alleged in the indictment; and that the conspiracy, if any, charged in the indictment has not been and cannot be proved.

(12) The evidence in this case does not establish beyond a reasonable doubt that the defendants or that any of them can be held to have violated Section 1 of the Sherman Act by participating and engaging in any buying program or programs as alleged in the indictment for the following reasons:

> The evidence introduced on behalf of the defendants establishes or tends to establish that the defendant Arnott was appointed Chief Stabilizer of the Petroleum Industry by a letter dated July 20, 1934 from the Secretary of the Interior, Harold L. Ickes, as Administrator of the Code of Fair Competition for the petroleum industry. The defendant Arnott carried on stabilization activities under the authority or the supposed authority of that letter until the termination of all code activities on May 27, 1935.
>
> 3790 When the defendant Arnott on January 4, 1935, appointed the Tank Car Stabilization Committee and instructed that Committee to take steps to relieve the condition of the independent refiners, he reasonably believed that he was authorized so to do by said letter of July 20, 1934, and he reasonably believed that in so doing he had the approval of the Petroleum Administrator and was acting to carry out his plans and policies. The defendant Arnott so told the defendants who were members of said Tank Car Stabilization Committee and said defendants reasonably believed and acted on those statements, and not otherwise, in carrying on the activities of that Committee.
>
> In all his connections with the buying of surplus gasoline in the Mid-Continent and in the East Texas fields the defendant Arnott believed that he was acting under the authority of the letter of July 20, 1934, and that he had the approval of the Petroleum Administrator and of his assistants and that he was

acting in conformity with and for the purpose of effectuating the plans and policies of the Petroleum Administration. The defendant Arnott so advised each individual defendant who had any connection 3791 with such buying activities and each of said defendants reasonably believed said statements and for that reason, and not otherwise, participated in the so-called East Texas and Mid-Continent buying programs to the extent each is shown by the evidence in this case to have participated.

The Petroleum Administrator, through the Petroleum Administrative Board and through members of that Board, and otherwise, was advised of the activities of the defendant Arnott and of the so-called East Texas and Mid-Continent buying programs and at least tacitly approved and encouraged the defendants in carrying on these so-called buying programs as a part of stabilization and as a means of assisting in the accomplishment of the ends and the objectives of the Petroleum Administration. If the Petroleum Administrator either directly or through the Petroleum Administrative Board or through the Planning and Coordination Committee of the Petroleum Industry had requested that said buying activities be terminated, the same would have been terminated. No such request, however, ever was made nor was any criticism of those activities ever offered.

3792 The government of the United States consists of many departments and bureaus and agencies. The Department of Justice and the Department of the Interior are equal and coordinate branches of the government of the United States. Neither this court nor this jury, therefore, may find that what these defendants did under the authorization and at the request and with the knowledge and approval of the government of the United States as represented during the period of the National Industrial Recovery Act and of the Petroleum Code by the Secretary of the Interior, Harold L. Ickes, as the Petroleum Administrator exercising the powers delegated to the President of the United States by said Act, whether such authorization was expressed or shown directly or through the Petroleum Administrative Board as the Administrative Agency of the Petroleum Code, constituted a violation of Section 1 of the Sherman Act.

(13) The United States of America has failed to adduce any competent sufficient evidence that these defendants have done any act or thing constituting in whole or in part any violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

3793 Dated this 17th day of January, 1938.

Ralph Horween,
Attorney for:
The Globe Oil & Refining Company (Oklahoma)
The Globe Oil & Refining Company (Kansas)
The Globe Oil & Refining Company (Illinois)

3794 On January 17 and 18, 1938, Mr. John Henry Lewin, Special Assistant to the Attorney General, made the first closing argument to the jury on behalf of the plaintiff, the United States. Counsel for the defendants-appellants have inserted in this Bill of Exceptions those portions of said closing address set forth in the defendants-appellants' Assignments of Errors numbers 37, 39 and 40, and requested counsel for the plaintiff-appellee to specify those other portions of such address which they believe modify or explain such statements in said Assignments. In response, counsel for the plaintiff-appellee thereupon requested that the entire closing addresses to the jury by Mr. Lewin and Mr. Chaffetz be inserted in this Bill of Exceptions. Such closing addresses are hereinafter set forth.

The closing address of Mr. Lewin is as follows:

3795 (Whereupon the jury returned to the jury box, and the following proceedings were had in the presence and hearing of the jury:)

The Court: Proceed with the argument.

OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT.

Mr. Lewin: May it please the Court; gentlemen of the jury.

As we have drawn near the end of this long trial I think we have all been impressed, I know government counsel have been impressed with and have appreciated the seriousness and the interest and the attention that you gentlemen have given to this long trial, and I hope you have been similarly impressed with the importance—because it is important—the seriousness, because it is serious; the sincerity, because we have been sincere; and the fairness, because we have been fair to both sides, to the defendants and to the United States and its people, of the Government's case.

You have listened so patiently as pieces of evidence came in, and I am sure that you have understood the significance of that evidence and seen its proper place in this really simple case. So you may ask, then why should you be asked to hear long-winded arguments among counsel?

3796 I suppose the excuse for it is that we who have toiled with the case, fed up with it, will possibly be able, looking over our notes, to remember more details, and can be of help to you, because that is the only purpose in the argument, to help you in recalling to you some of the salient points that have been made, because it would be impossible to suppose that you gentlemen, with all your interest and attention, could possibly remember the tons of evidence, evidence after evidence, oral, documentary, item by item, brick by brick, from the government's side and from the defendants' side on cross-examination, from the documents offered here by the defendants themselves, hundreds of them that have been referred to—it would be inconceivable if you gentlemen could remember all those facts.

And so it may fill a place if I take time, and I will have to take time, and I am sure you are going to continue to be just as patient with me as I take time in a halting sort of way to call attention to the different pieces of evidence that build up the defendants' case, and I assure you expose completely the lack of any legal defense whatever in this case for the defendants.

Many of you gentlemen are older than I am, and you probably know better than I do the American system and tradition of which we are all proud.

One of the fundamental principles of our country
3797 that has made it what it is, is our determination to have a free chance in business for everybody, for the small man, for the jobber and for the dealer, as well as for the large man, the eighty thousand dollar a year man, the oil baron; and you gentlemen will remember and know that this tradition has set its face sternly for years against any monopoly in this country or any combinations of great organized power.

3798 We have realized that a single corporation can be a very potent competitor.

Just stack a little jobber in a town like Madison against the Standard Oil Company of Indiana, and you will know what real competition is, and why this country has set its face firmly against pitting that small man, not only against a great corporation like that, but against corporations like that in combination.

And so our philosophy has said, and we have enacted it into law, that the only kind of monopolies we will tolerate in this country; the only kind of combinations we will tolerate in this country—and they are very few—are where those combinations and monopolies are regulated by law; where the Government has some part in them, to supervise them, to watch them, to limit them, and to see that they are exercised and enjoyed not only by one group of owners, but by the public and all the other classes that participate in them. And I allude to monopolies like the railroads. It is only such monopolies and combinations of that character that this country has tolerated.

But I say that you can be proud of that system all you please, and it will be nothing but an idle hope, so long as you haven't law enforcing officers who are disagreeable enough, who are zealous and courageous enough to
prosecute the violations of the law without fear or
3799 favor, not only against the small man but against the
big man as well; not only against the weak man, but
against the powerful; not only against the uneducated man, but against the man that has had all the advantages in the world; not only against the man whose personality disgusts us, but against men with suave, appealing, attractive, dominating personalities. And it will be an idle hope until you have juries equally courageous, equally fair-minded and equally just, with an equal love of the law of our country and of its traditions—without fear or favor, to return a verdict of guilty where the facts and the evidence warrant it under the law.

We hear a lot, of course, you gentlemen have, about the need for law—the old saying, "there orter be a law." You can have all the law you please, but if the law enforcing officers are taken into camp, soft-soaped, misled, too weak to prosecute, too lazy to investigate the facts—then you can have all the law you please, and you have no results except a distaste and a disregard for the law.

So bear that in mind, if you have been tempted to think the Government attorneys in some cases a little over-
zealous. If you have thought that I have been a little
3800 hot-headed, or a little disagreeable at times, I hope
you will bear in mind that we have had a real job
to perform. It is our duty to be fair; it is our duty to be

fair to the defendants, it is important to them. But don't forget that it is just as much our duty to be fair to the United States, to its citizens, to society, to the jobbers and to the consumers and to the dealers who have been affected by a blasting, withering, powerful combination of the most powerful corporations, and their sleek, suave officers who, because of their advantages, because fortune has smiled on them, ought to know better. And the Government counsel is proud to say—and I think you gentlemen would have no respect for us if we hadn't been zealous in fighting this case against enormous odds. And the odds have been enormous. And we have worked hard.

A hundred lawyers employed—the very cream of the American Bar, the very best legal talent that these people can obtain—every one of them working night and day with suggestions as to how the red herring can be drawn across the clear cut issue of this case.

I remember, after a long, hard day in Washington in the Department of Justice, I have sometimes gone up the street to a gymnasium. And there is an old negro
3801 rubber in there, who rubs you down after you exercise. And I got very fond of him; he is quite a philosopher, a great talker, as you know he would be, and I am going to tell you this story of what he had said, because I thought it was very interesting. It illustrates the popular attitude towards law enforcement.

In some way "justice" was mentioned. The old fellow was patting away there on me, and he says: "Justice. That word mek me laugh. Justice! They ain't no justice—don' gi' me no justice. I don't want no justice. They ain't no justice in this country fo' the small man. Big man do something, violate the law—little man violate the law—big man get off every time—that's justice."

He didn't know I was from the Department. He says: "Why, they got a building down there, big, stone building down in Washington, called 'Department of Justice'—mek me laugh. They got up there, carved in stone, they got a figure in stone, with scales, weighing out justice. Pretty fine justice, that is. Don't give me no justice."

And then I interrupted him, and told him that I was from the Department of Justice, and took a little issue with him. And I told him, and he agreed with me,
3802 that the law is just as strong as the people that enforce it—and no stronger. And the system is just as strong as the people that work in that system, and no stronger. And I said to him that, "I hope, as long as I am connected with the Department, that your criticism of the

Department of Justice isn't a good one; that there shall be no fear or favor with regard to the particular Department of Justice I know about."

So, in this case, don't let's justify for one moment that kind of popular attitude towards law enforcement—taking it for granted that these more powerful people are above the law and can't be reached and can't be brought to book.

And I am going to read you a quotation for a moment, delivered from a speech of Chief Justice Ryan of this state—one of Wisconsin's greatest jurists, and one of the greatest judges this country ever had; a veritable genius, I am told. And this isn't law, but this is a part of his address, given away back in 1873—I suppose, before any of you gentlemen were born. And I want you to note the prophecies that are in these words. 1873—about twenty years, seventeen years before the Sherman Act was passed. And he said this, right over here in this law
3803 school of Wisconsin, at a graduation day:

> "There is looming up a new and dark power. I cannot dwell upon the signs and shocking omens of its advent. The accumulation of individual wealth seems to be greater than it ever has been since the downfall of the Roman Empire. The enterprises of the country are aggregating vast corporate combinations of unexampled capital, coldly marching, not for economic conquests only, but for political power. For the first time, really, in our body politic, money is taking the field as an organized power. The question will arise"—

and here is the prophecy:

> "—The question will arise, and arise in your day, though perhaps not fully in mine, which shall rule, wealth or man? Which shall lead, money or intellect? Who shall fill public stations, educated and patriotic free men, or the futile serfs of corporate capital?"

Now, that wasn't an inflaming address. That illustrates the American tradition, and its fear—its fear of corporate power in combination.

And so I say, gentlemen, that that philosophy and that system and that policy was enacted into law in
3804 1890, the Sherman Anti-Trust Act, which is the Act under which this case is brought. And it is in simple language. And it has been on our statute books and a part of the basic law of the United States ever since. It has withstood all attacks, thoroughly constitutional. So

long as the monopoly is not regulated, there shall be no combination of dominant forces restraining trade and commerce. And these are the words:

> "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade among the several states or with foreign nations, is hereby declared to be illegal."

And it continues that every person who shall join such combination or participate in it shall be deemed guilty of a misdemeanor.

Now, gentlemen, I may as well say, so that there will be no mistake about it—you gentlemen will take your law in this case, to apply to the evidence, where I take mine: Right from his Honor, Judge Stone, on that bench. And at the close of the arguments, I understand, he will instruct you as to the legal principles of law under the Sherman Act that are to be applied in this case. And I am sure you gentlemen are not going to put any weight on anything that I say that may seem inconsistent with that. I hope it won't be inconsistent with that—
3805 I don't think it will be. But the law comes, not from
me, but from his Honor; and you gentlemen are the sole judges of the weight of that evidence which his Honor has found legally sufficient to be submitted to you against the defendants that are still in this case—sixteen corporations and thirty-six individuals.

And on the question of punishment, provided you return a verdict of guilty, you need not be concerned. That will not be a matter for you, or a matter for me. There, again, the law imposes that responsibility on his Honor, the Judge, alone. And he can consider all the facts and circumstances that surround any particular defendant. And his shoulders are broad enough to accept the responsibility, and his talents, and his good heart are enough to meet that responsibility and to execute it. So you don't have to be disturbed in the slightest degree. If you find, as I think you must find on this evidence, that these defendants have violated this Sherman Act beyond a reasonable doubt, and that every one of their so-called defenses that have taken all of this time, are red herrings, shams, without legal foundation—because I say that it is the law, and I think his Honor will instruct you, first, that it isn't necessary for you to find any formal contract. Conspiracies and combinations
3806 are rarely made like that. What the statute means,
as I think his Honor will tell you, is a combination; that is, concerted action.

And if you find that these corporations and individuals had the power—and, gentlemen, the evidence is overwhelming that they had the power—to affect directly those prices; if they had the power, the dominant position in the industry so that they could do it; and if you further find that they combined—and that means by joining in some sort of concerted action, and I tell you that this record is packed with it—for the purpose of affecting those prices; then I think his Honor will instruct you that they are guilty, that you can find a verdict of guilty, notwithstanding a great many other considerations that have been interjected into this case.

If you find the power, and if you find the combination to exercise that power on the price level, then it makes no difference whether they actually carried out their full purpose or not.

Of course, in order for this Court to have jurisdiction here in Wisconsin, there must be what the law terms overt acts; that is, there must be something done by some of the conspirators—not all, but some of the conspirators in this
District, that furthered or carried out to some extent
3807 their illegal purpose. And I say that the evidence is
overwhelming on that.

You gentlemen heard those jobbers testify how the gasoline that they had to buy under their contracts was sold to them on this very rigged price, right here in this District. And in the words of the indictment, "the defendants exacted large sums of money," on these rigged prices, from the jobbers and consumers of gasoline right in this District, right here and now, in Madison. We gave you a Madison
jobber, Al Breuch.

3808 And the question whether the defendants needed
their gasoline that they bought,—that is an absurd
claim. Nobody contends that these big corporations could not use that little drop in the bucket. And nobody contends that some of them, at some time, didn't need some of that gasoline they bought.

But it makes no difference, under the law, if they had the power to affect these prices, and if they combined to affect these prices, it makes no difference what their needs were.

Anyone, whether you are big or little, if we act independently, can buy what gasoline we please, as much as we need. We can buy gasoline we don't need, if we want to, from anybody we please. What the law says is that you can't do it in combination with others where the combination exercises a dominant power over the control of trade and commerce. I will have something to say later about the question of need, on the evidence. But I want to say now, if you find—and I think you must find, the power, the combination, and the purposes, the question of need is out of the case It will make no difference if somebody thought it was reasonable. It will make no difference that somebody thought it was beneficial to any particular class.

You are going to hear a lot of that. It is a defense
3809 and if this case was not so serious it would make me
laugh about this altruism,—this charity,—this change
of heart, toward the independent refiner.

I say, it makes no difference, under the law, whether it was beneficial, or they thought it was beneficial or not to any class. It was highly beneficial to themselves,—more beneficial to themselves than to any other class; temporarily beneficial, I suppose, so long as they chose to keep it up, to those independent refiners, or so long as the law didn't interfere; temporarily beneficial to those independent refiners. But if it was broken up, or if they chose to abandon the independent refiners, as they could do, any time they pleased, it would leave them in worse condition than they were when they started,—relying on artificial market, an attractive market, and that could vanish overnight,—all of their eggs in one basket, in regard to their surplus gasoline.

Instead of seeking additional markets in the natural way, among the jobbers and the dealers and the consumers and
the independent men.

3810 It makes no difference, if you find that combina-
tion and that power, and that exercise of the power,
purpose to fix prices, that at some time or other, under different circumstances, and in a different way, the Government of the United States tried to reach an increase in price. And yet they would try to tell you, and I will have more to say about that, that our objectives were the same as the Administration's were. It is an unworthy attempted defense, as I shall show you in the documents clearly exposed, because the Government of the United States—our Government, our representative Government, in which we all have a voice, can in other circumstances, and at other times, and by different means, not under the philosophy that the end justifies any means, fair or foul, but in an orderly way, could give its attention to increasing any prices.

Are they to be permitted to say if the Government can entertain such objectives, then we can, together, privately, for or own aggrandizement and benefit. Oh no! If that is so, since the Government can tax, then Arnott can tax. Why not? If the Government can declare war then these oil barons can declare war in Asia when some of their boats are sunk.

3811 I say, it makes no difference what the objectives of the Government were if these people privately had the power, if they combined for the purpose of exercising that power on prices, it makes no difference at all. And it makes no difference whether the prices before the conspiracy were reasonable or unreasonable. Whether they were low,—and low is a relative term,—or whether they were high, or whether they were got through with their rigging, or whether that price line was high or low. It makes no difference. Under the law they can't affect that price one iota. That is supposed to be a free price; a competitive price; a fluctuating price. Small jobbers bargain around to keep themselves self-respecting citizens; to try to get a little share of the economic good of this country; can enjoy, not an iron clamp fastened on with all the cruelty in the world, month after month.

For the Standard Oil Company, the Socony-Vacuum Oil Company, and the Shell, and the Sinclair, and the Tide Water, and the Phillips, and the Skelly, and the Barnsdall, and the Mid-Continent, and all the rest of them, acting not alone but together.

And gentlemen, it makes no difference if you find that power, and if you find that combination and

3812 purpose to exercise it, that there was any knowledge, or if you will, that there was any acquiescence or good will toward their scheme on the part of minor Government employee officials; there was one way, and one way only, that the Sherman Anti-Trust Act could be suspended, and that was to submit it to Government regulation,—to get Government approval, in the way in which the law required. And the refinery amendment is before you in evidence. I will discuss that at some detail later.

The approval of the President, or his duly authorized agent, the Secretary of the Interior, and they, and they only, had reposed in them authority to make law of that character, not Frey, or Fahy, or any of the rest of these pygmies. That is all we are in this gigantic Government. And the Congress of the United States delegates legislative power,—power to suspend law and statutes. It does not delegate them to the minor men in the departments. If it does, gentlemen, then we are ruled, not by government of law, but by a government of men,—not only of men, but of mice.

I don't care what their salaries were or how their activities were explained in their salary sheets. I say that P. A. B.—Petroleum Administrative Board—had this power, and this power only. And I will read 3813 you later from the order appointing them,—to advise with the Secretary of the Interior and to exercise such administrative function as he might delegate to them from time to time. And that means they can run the office, and boss the help, the clerks and the stenographers and the statisticians, and perform all the other detail spade work that younger and subordinate men must perform for cabinet officers.

And I think that the evidence shows that they had very scanty knowledge. They certainly didn't tell those men in Washington—Arnott tells you that he went there to tell them about it. You gentlemen will know pretty well that he didn't tell them what they denied here.

So I say, it makes no difference about the knowledge or acquiescence, if there is any, or subordinate government officials.

If they had the power and combined to exercise it for the purpose of affecting the price, then there isn't any official, except the President and the Secretary of the Interior, under the law, acting on the full facts, acting formally,—because he would be making law, that could approve or suspend the Anti-Trust Act; even from the period from March 1st to May 27th,—even for that 3814 period alone. And there was no one that had the power to suspend the Anti-Trust law after the Code went out, in the early part of this conspiracy; and yet, you gentlemen will remember that they didn't stop; they carried it on even more effectively.

Gentlemen, it will make no difference if you find those facts, that it was done along with, or grew out of, if you please, some innocent and beneficial activities that they were authorized to do. It makes it all the more culpable, if a man is trusted and given certain authority, and that authority is limited, as I shall show you it is clearly limited,—it makes him all the more culpable if he is faithless to his trust and betrays it and goes to the outside.

3815 No man is completely black. No man, I suppose, is completely white. And violations of the law are hardly ever either black or white. They are usually grey.

And so I say you will put the proper weight on these letters of congratulation and things that Mr. Arnott received from the P.A.B. and from the Secretary of the Interior at the close of the Code for his legitimate services.

He had worked hard. He had worked in his own interests and in the interests of his company. But he had worked hard with regard to some public meetings and with regard to retail prices, as he was authorized to do. It was proper that he should be congratulated for that service.

But that gave no white-wash, gentlemen, to this buying pool, unauthorized, with its blasting blight fastened down on every town and hamlet in these ten states and more.

Gentlemen, it will make no difference if you find the power and combination and purpose to affect those prices that they acted under any name, that they called themselves "the tank car stabilization committee" and that Arnott called himself "chief stabilizer of the
3816 United States" when there is no such office.

You know that a rose by any other name would smell as sweet or as bad. There is nothing in a name.

And so I say that all those defenses, those and others are going to be urged with all the plausibility in the world, far more plausible and far more persuasive than I can ever hope to be, by far more talented men, by far more experienced men.

And I say their half-baked attempt at defenses without any foundation at all, and I think we are going to be exposed through feeble argument, not only on the law, because they are immaterial, but on the facts themselves.

They didn't need this gasoline in any sense in which they would have to buy it. The activity wasn't reasonable. The prices were raised and fixed arbitrarily. There wasn't any Government approval during any time, not even during the first few months. They weren't authorized stabilization activities that were within the scope of his authority, but as counsel for the defense said in his opening address, this work grew out of it, inevitably grew out of that letter of July 20 that I will have something to say about.

Well, if it grew out of it, they are the ones that
3817 made it grow out of it, and if it grew out of it, it
wasn't in there in the first place, and it was an extension, a violation that leaked over the limitations that it imposed on him, and they took advantage of a situation to take the law into their own hands.

And so I say, gentlemen, and I say this in all sincerity, that this case is just that simple, just that simple, in spite of all these weeks and days of exposing the facts—and it has been an awful lot of work as you gentlemen know, to first find those facts, and to get them together, and to understand them, and desperately hard work to expose them here.

And despite all these documents that have been put in the evidence, all these different theories that have been advanced, the case is just that simple, just as plain as day.

There can't be any doubt about the power, and I am not going to dwell very long on it. Just think of the power of the Standard of Indiana alone, the great octopus sprawling over that territory with its powerful tentacles in every town and hamlet—

Mr. Kirkland: On behalf of the Standard of Indiana I move to strike out that reference out of the record.

3818 The Court: It may be stricken. I think we had better confine ourselves to the facts.

Mr. Lewin: It sells a billion gallons of gasoline a year, gentlemen. That is in the record, a billion gallons of gasoline a year. I can't conceive a billion gallons of anything, or a billion anything. I can't conceive a million. But its yearly sales are multiplied by a thousand times a million.

It furnishes sore competition when it acts alone, but add to it Soconoy-Vacuum, the combination of the Standard of New York and Socony Company, selling millions of gallons in this territory, one of the largest corporations of the world. Add to it the Shell Petroleum Corporation, Sinclair, Tide Water, Cities Service, Continental, Phillips, Pure, Skelly, Mid-Continent, Barnsdall, three Globe Companies, and Wadhams.

And if they are not enough, then, gentlemen, add to that power in combination all the principal independent refiners that manufactured gasoline in the Mid-Continent field and East Texas and sell on the spot market—those named in the indictment and more that were disclosed by the evidence—and if that is not enough on the question of power, you can add those big major companies that 3819 do business in this territory who are no longer defendants—or, who never were defendants in this case.

And I say that because of the power that those companies could exercise against this combination wasn't exercised—there is not a scintilla of evidence in this case that Gulf or Texas, no longer before you gentlemen, did anything whatever to break down the effects of this conspiracy.

And the only other major companies—and I think I am right—that are left out of this indictment that do business in this territory are the Sun Company, which does some business over here in the eastern part of that district (indicating on chart), and the National Company which is a semi-major.

And when I tell you gentlemen that the defendants still in this case sold over seventy-three percent of all the gasoline consumed in this territory in 1935 and over seventy-two percent of all the gasoline consumed in this territory in 1936, and if you add in Tide Water, which is out of the case, because it dissolved, and there is no company there to prosecute—after it had participated and enjoyed the conspiracy and the fruits of it—and if you add Deep Rock, you have seventy-six percent of all the gasoline sold
3820 in 1935 and seventy-five percent of all sold in 1936; and then add to that, if you please, the gallonage of the independent refiners that were in this conspiracy just as much as—and you will find that you have got almost a complete monopoly.

And then what do the defendants do? They have the nerve to try through experts, so-called expert testimony, against these great facts, to have theoretical testimony, academic testimony, that in this man's opinion these companies in combination didn't have the power to affect that tank car price.

And who was this so-called expert—a fine expert he was—Mr. Swensrud, a high official of another Standard Oil Company, the Standard Oil Company of Ohio, that sells its gasoline on similar contracts, as its sister company, and bases them on the spot market—Swensrud, a director of the Fleetwing Corporation, that sold gasoline in this territory to jobbers in 1935 and 1936, at the rigged tank car prices, under a contract, and enjoyed the fruits of this conspiracy—and that man is put on the stand to theorize for you about the need, about—not about the need—about the power or lack of power of these companies to affect that price.

3821 And I don't believe you gentlemen are going to give much weight to that.

What is their theory? Just let us stop a moment to inquire about it. His theory was that outside of this territory (indicating on chart), around this territory, there is other refining capacity.

He alludes to this gulf coast (indicating on chart), and he says here along Kentucky, Pennsylvania, Ohio, and over here in Wyoming and Montana, and he says if the prices are raised artificially here (indicating) it will attract the gasoline from this refining capacity out there (indicating) gentlemen.

The answers to that are just withering. In the first place, let the facts speak. The prices were raised, and were raised nice and high, as Mr. Marcell's letter testifies, so that when they were only raised there (indicating) at the end of March, I think it was, he was ready for a nice—quite a considerable profit if it went higher, and it went higher than he supposed, and it gave him his considerable profit.

So let the facts speak against the theory. They were raised to high, artificial, arbitrary levels. Did this gasoline come in then? It didn't come in in June. It didn't come in in July or August or September, October, Novem-
3822 ber, December—into 1936, and it didn't come in. Not enough of it came in to break it down. That price held, and that even rose in January to even higher levels.

I prefer those facts, the best test of power is what they did with it, what were the results of their activities. And I can suggest some results to you on this record why that gasoline didn't come in. In the first place, there were enormous markets out here (indicating). The jobbers, their dealers, and consumers and automobilists over all this territory that look to this capacity out here (indicating) to be supplied.

Are these people (indicating) going to leave this good market (indicating), taking their capacity and their supply, normally, and run against an adverse freight rate to get into this territory (indicating) to break down the other major companies' schemes?

They wouldn't do that normally. And there was another reason, a particular reason, that is right in this record why they wouldn't do it at this time.

In the allocators' meetings—thank Heaven for the documents in this case, because they really do shed a light on what happened—in the allocators' meeting in March, Mr. Arnott spoke as follows—and he was introducing to
3823 those allocators Mr. Buckley from East Texas and Mr. O. D. Robinson from the Gulf coast, down here (indicating), the largest refining section in the world—and these gentlemen were introduced to that allocators' meeting to tell them about surplus gasoline and the need for its being bought up, not only in East Texas, which was Buckley's territory, but in O. D. Robinson's territory, the Gulf coast, where there were fourteen cargoes of surplus gasoline that hadn't a market at the prices these people wanted it—bear that in mind when you come to consider this need: Fourteen cargoes of gasoline that they called surplus banked up there at the Gulf (indicating), that could have been availed on by any major company that had had any need. It was a shorter shipment—it was a shorter shipment from the Gulf coast loaded on cargoes around here

(indicating) than it was here from East Texas and bringing it around (indicating). It was more available.

Yet O. D. Robinson was introduced there to describe another pool, may it please the jury, another pool, not only the two that are alleged in this indictment, but a third, a Gulf coast pool, whereby the major companies selling on the East Texas coast, over here, (indicating) to protect their price there and raise their price there, are going
3824 to divvy up this surplus here just as they did in the Mid-Continent and in East Texas.

So that Arnott takes the law in his own hands and brags to them that there is a national picture, a national picture of the entire United States, east of the Rockies—talk about delusions of grandeur—and they were at work on it—they were at work on it. They were on work not only in the Mid-Continent field and in East Texas, as our case discloses, but as our record shows, they were at work on the surplus here (indicating), raising and protecting these prices through the entire United States, east of the Rockies.

And then what becomes of Mr. Swensrud's theory that all this refining capacity would leave this attractive, artificial market that was being built up, over here (indicating) by this Gulf pool, and sworn in here to defeat these other pools engineered and run by the same gang.

Said Mr. Arnott at this meeting: "So we have East Texas here that can tell you what refineries there feel as to their attitude and their willingness in that respect. And we also have the gulf refiners who likewise will tell you for themselves what their attitude and feeling is in that respect."

3825 Not only East Texas, but the Gulf coast. He continues: "So, gentlemen, I am presenting to you a national picture—that is, east of the Rockies—whereby this whole stabilization effort of markets, the holding up of normal sales market structure, the question of the realization of refineries—"

What does "the realization of refineries" mean? It means tank car price, nothing else.

And don't forget that when you go to weigh their protestations that they weren't so interested in price, their purpose wasn't to affect price, they had some other charitable purpose to help the independent refineries, or to buy their own needs, or what not.

And he continued: "—the working together of those two great groups in order that we may balance this whole picture and in order that we may interest a great many buyers in this so-called surplus or homeless gasoline, can be done along organized lines—''

Not haphazard buying, one company as a purchaser from another company as a seller, but ''on organized lines''. And bear that in mind when you come to a consideration of whether or not there was concerted action.

> ''—and in a way that the refiners from these
> 3826 three groups themselves have laid before us beforehand.''

And then he alludes to another group, the McDowell group, working in the Mid-Continent.

And so he has three, and under him, as chief stabilizer, he is covering the entire United States east of the Rockies, working in a price-fixing case in an organized way to affect the ''realization of his refineries.''

3827 And bear in mind, gentlemen, that in the entire United States these defendants had on January the 1st, '35, over thirty-five per cent of total straight run distillation capacity; on January 1st, '36, over thirty-four per cent of total straight run distillation capacity; on January the 1st, '35, over forty per cent of total cracking capacity; on January the 1st, '36, over forty-one per cent of the total cracking capacity in the entire United States—these defendants before you gentlemen alone. And let them answer that question, as to whether or not they had the power. And don't let them answer it with the chicanery, which is what Swensrud's testimony was.

And on this question of power, let me allude to some of the other documents. And I am going to have to read a lot of them, I suppose, and I am only going to pick out those paragraphs ,that hit this case. You have all heard the full letters written, or read. This is from an official of the Shell Company to its President, in April of '35:

> ''No change has been observed in the Gulf position during the preceding week.''

He wasn't talking about the Gulf Company; he was talking about the Gulf refining district, right down there on the Gulf (indicating).

3828 ''although the Group 3 price''—

that is, the Oklahoma price,

> ''increased 3/16¢ on April 16. Such surplus as exists in the Gulf appears to be largely in the hands of Warren and Halon-Buchanan, whose recent activities in this market have been bearish. Their efforts to control the price at reduced levels by small sales have been, in the greater part, ineffective and the market continues to strengthen.

"Prices remained unchanged over the preceding week, although the present market is very strong. We can learn of no additional sales made under the buying program and it appears that small refiners have no desire to sell at current prices, feeling that by holding they will be able to secure better prices in the near future. Contact with Platt's representative."—

and here is the price man, that is quoting the rigged price in the Platt's Oilgram—

"—Contact with Platt's representative"—

here is Shell, contacting Platt's representative—

"—in Tulsa reveals that small sales in the Gulf at current prices are militating against a rise in this market and that while this representative feels that 3829 a disparity exists in comparison with Group 3 prices, they do not feel prepared to advance in the Gulf as long as sales are being made. Since we have been able to secure no information concerning such sales, he was advised accordingly and stated that he would investigate further.

In discussing with New York the disparity in Group 3 and Gulf gasoline prices, we were informed of conversations Messrs. van Eck and van der Woude have had with the majors"—

in New York, in April of '35,

"—to the effect that further increases in the Gulf market should be sponsored by a rise in the crude prices."

Not only the gasoline, but the crude oil.

"—It is difficult to reconcile this feeling with Shell's position, as it would appear that with the excess of crude purchases over our own production it would be more desirable to keep the gasoline price structure at the peak of the market, allowing crude prices to follow."

Now, that memorandum deals with the Gulf Coast pool.

3830 The Court: We will take a recess at this time.

(Thereupon, at 11:20 o'clock a. m., a recess was taken.)

3831 (Following the recess, the Court resumed its session at 11:35 o'clock A. M., and the following proceedings were had:)

Mr. Lewin: You remember at recess I was pointing out to you, gentlemen, the major companies under the leadership of Mr. Arnott had a pool in the Gulf Coast, and I was reading your documents that established that beyond peradventure of a doubt, and I was alluding to it because I wanted you gentlemen to bear it in mind if you are tempted to give any weight at all to that wild theory put up here against the facts in this case, that these major companies of the size I have indicated and the extent I have indicated did not have the power when they acted in combination, not only with themselves but with the independent refiners.

And here is another document, and I give you this excerpt from another report, this time from the defendant Lakin, a vice-president of the Shell Petroleum Corporation to the president of the company, the defendant Fraser.

These matters were so important, gentlemen, to these companies that you find periodic reports made by the vice-presidents to the presidents of the company.

This again is in April of 1935:

> "Gulf domestic cargo prices are out of line with the East Texas market. An effort is being made to boost this price. The sale of a cargo at five and one-quarter cents made last week was responsible for
> 3832 holding the market at that level. We are endeavoring to ascertain the name of the seller and buyer. We were given to understand that the seller later realized his price did not reflect the true market value."

And Neil Buckley, the liaison man as Mr. Arnott called him before the allocators' meeting, between the East Texas refiners and the major companies supporting that pool, writes to Brandli, his superior officer, a high official in the Cities Service Export Oil Company on May 15, 1935, a confidential letter, so confidential that it did not expect to testify in this case; and here it is; and first he tells him about East Texas, and congratulates himself and the major company pool on the results that have been achieved in East Texas, took credit then for the price rise, and then as you will see even steps out of East Texas and gives him a little report on the Gulf Coast pool.

> "For your confidential information, it is reported that approximately four hundred thousand barrels of gasoline have been purchased in East Texas by major refinery purchases during the period in which the East Texas Refiners Marketing Association has been in operation. The accumulation of this quantity of material which otherwise would have been distress gasoline"—

3833 Oh, that name "distress gasoline" amuses me too.

They have all testified that distress gasoline was just as good gasoline as any other kind of gasoline, just as legal, made out of the same crude and made in the same way, just as advantageous, just as desirable for the independent jobber to buy. But it was gasoline that was more than they could sell at the price they wanted to maintain. That is all it was.

Of course when you have a large supply you can expect the price to be low; just simple economics.

When I use the word "distress" in this case I apply to the victims of this conspiracy.

There wasn't anything distressed about this gasoline. If it had been permitted to flow in the ordinary competitive channels it would have taken its place gallon for gallon, gallon by gallon, with the other gasoline, just as good for use in your car, but added to the supply of the other gasoline would have made the price cheaper, would have made it fluctuate, would have made it competitive, which is what gasoline ought to be.

To continue with Buckley's note, his confidential note. He says that

> "This accumulation which otherwise would have been distress gasoline is in a considerable measure responsible for the difference between the price of
> 3834 three and one-eighth cents early in February and the low price of four and one-half cents f. o. b. refinery which today prevails."

May 17th; I ask you gentlemen—(stepping before a chart) it is a little hard to show these charts when I want to, but just think of that price rise for a minute. Let us take his own words;

> "is in a considerable measure"—

and you know Buckley, if he was anything he was plenty smart and he was very certain in this enterprise; he wasn't kidding himself and he wasn't kidding his employers. He was writing a confidential letter, and he says that

> "this accumulation" by the majors in East Texas "is in a considerable measure responsible for the difference between the price of three and one-eighth early in February and the low price of four and one-half cents f. o. b. refinery which today prevails."

Here in May; there is May (indicating on chart). So when you come to consider any protestations of theirs that they were not interested in the price rise, that they were helping independent refiners and a few other misnomers like that, just bear in mind here is one of the leading co-

conspirators, the liaison man, the chief agency through
which that East Texas pool worked, claiming to his
3835 own boss in a confidential letter, credit. Consider
that when you are told that the price rise was due solely to the Connally Act and solely to allocations of the refinery runs under the code, and solely to the increased jobber demand.

Now he comes to this remark about the Gulf Coast pool:

> "We have been advised unofficially that approximately five hundred and fifty thousand barrels of gasoline have been purchased in cargo lots from independent refiners on the Gulf Coast during the period from late March to the middle of May. These figures have not been given to us in exact detail, but we believe they are substantially correct."

So that the Gulf Coast pool was working simultaneously, just as efficiently as the East Texas and the Mid-Continent pool in the same period of time; because the testimony is that there were fourteen cargoes of surplus accumulation there, and fourteen cargoes is around a million gallons of gasoline—or barrels of gasoline; and here you have five hundred and fifty thousand barrels bought or purchased from the independent refiners on the Gulf Coast, according to Buckley, in May of 1935.

So much then for the question of power. Can anybody
doubt—and it is one of the major considerations—
3836 did they have the power? And I say with all sin-
cerety and earnestness that the answer cannot be but one thing on this record. Of course they had the power, that is testified to by the fact that they exercised it and told the results, and they congratulated themselves on those very same results.

And then how about the other fact which I said if you found, or answered the entire case,—and I say to you, gentlemen, that the combination is confessed.

You saw how difficult it was—it is a long time ago, and I don't know whether you remember it well or not, but I remember it.

> "The toad beneath the harrow knows
> Exactly where each tooth point goes."

And you gentlemen will remember how difficult it was to prove the simple facts out of the mouth of Buckley and Jacobi and Evans and Bradshaw and Steiger, because they were examined on chief by the government and because they were co-conspirators themselves—and Cline.

Oh, it was really toil to get a simple story, resisted at every point, memories that were excellent as to what they wanted to testify to, and memories that were hopelessly gone as regarded the true facts, and memories that stubbornly refused to be refreshed we refreshed again and again until you gentlemen must have been sick of it.

Then what happened after all that time and all
3837 that testimony that had to be dragged from them?

3838 Notwithstanding all of this documentary proof, then may it please the jury, Arnott and McDowell go on the stand and confess those very same facts, and put it in their own language, and it has to be exposed by cross-examination.

Talk about helping independent refiners? Then, on cross-examination, they reveal they are helping them by raising the price. It helped them thousands and millions of dollars more. And they tell you freely about the combination. They tell you about the meetings. They tell you who was there. Tell you what was discussed; what their plan was; what their scheme was; about their dancing partners; how much there was to take when they get started, so that it would benefit them most; wait until the Connally Act, because before the Connally Act they could not affect the price; how they are to divide up all the surplus; and if any other surplus crops up during the month they are to have a mechanical sub-committee that is to have a meeting and assign that to some other major company buyer so that it will all be taken,—not a gallon left, if they can help it, to be free competitive gasoline. That was surplus, and they called it distress. Combination! Not only once, oh, that was enough, and in a great many conspiracy cases that is enough; one meeting;
3839 one exchange of information; one putting of the heads together; one indication of what we will do and the other tacitly following; that would be enough.

But here, brazenly, meeting after meeting; not combination once, but combination in extenso; month after month, through Code and out of Code; through the summer of 1935, into the fall of 1935, into the winter of 1936; still meeting, month after month; committees at work; committees of major company refiners. Authorized to hold due public meetings on retail questions; and calling meetings of major companies in the Waldorf Hotel in New York City, in Washington, and in the Blackstone Hotel in Chicago.

Was that a due public hearing where all parties affected could be heard that were concerned? That meeting where it was suggested that Frey—you saw him—subordinate

official of the Department of the Interior,—"better not come in" because the discussion might not be so frank. Was that a public hearing? Were these meetings in the Waldorf Hotel in New York,—those major companies—
where Arnott had an exercise of his power of inclu-
3840 sion and exclusion, told even Buckley and Robinson
to withdraw while they considered the questions behind closed doors; were they public meetings? No, gentlemen.

To the same extent as power is established, combination, over and over again, is established, not only in meetings, but in conversations—telephone conversations, letters, documents, reports, month after month, carrying on this constructive work, as they would like to have you believe. Constructive for whom, may I ask? Temporarily constructive to the independent refiners. Constructive to the extent of millions for the majors. Unconstructive and devastating for the victims, for whom they had no regard in their arrogant cruelty. It is very easy, gentlemen, I suppose, to get into that frame of mind, to be cruel before you know it. Why they didn't know it, I can't imagine.

They dealt with jobbers. They even tell you that they looked after their jobbers. They represent their jobbers. And, gentlemen, they don't call—they can't call a single jobber in this case, to testify for them. They can make slurs at the jobbers, as they did in the opening state-
ment. I will come to that and read it to you. Oh,
3841 yes, with the wave of the hand they can condemn
them as hot oilers, unworthy of protection. And who did they mean that slur for? I am going to read it. Did they mean it for Bill O'Brien of Superior, or Al Brench, of Madison, and Wingrove, and Teige, and Crowley, and those other honest men that took that stand; representing fairly and accurately a group of people four thousand strong? And every one of them was asked whether he was a hot oiler,—whether he dealt in hot oil—and you heard him answer.

So, I say to you gentlemen, that there is not a shadow of a doubt on this record, and you will be amazed, as I was amazed,—and I have just lived with this case—when I went over the record again to prepare these remarks, at the letter on letter, report on report, not only in March or April, or May, but right through the period; not by only one company or only one official, but by dozens of them, all substantiating this combination fully and completely.

And I ask you, gentlemen, in all fairness, which are you, as a reasonable man, going to believe, these telltale documents, written contemporaneously—written with no idea that they would take the witness stand, im-
3842 possible of alteration; agreed and stipulated here to be authentic; written from one official in a big company to his superior officer to guide that superior officer in the policies of his company; not kidding,—men often kid themselves, but not about things like this; not concealing from his right hand what his left hand was doing: but open, frank statements of a financial profit, scheme and plan carried out and successful. Documents that can't be influenced, that can't be made to tell their story over and over again to lawyers, except in one way and one way only; documents that are not reluctant, that need not have their memories refreshed,—right there in black and white.

3843 And which, gentlemen, I say in all fairness, are you as reasonable men going to believe and put weight on—the testimony of those documents, or the oral, self-serving, after-the-fact, theoretical, cock-and-bull stories that it would tax the credulity of a child to believe, that you men have been inflicted with by witness after witness on that stand?

Gentlemen, I haven't any doubt of it. Your mental processes are going to carry you to the same conviction that anybody else would be carried to. You might suspect one document; you might suspect ten; you might suspect one company, or one official. But if you throw these documents out, you have got to suspect hundreds, hundreds of authentic documents.

Oh, gentlemen, you can give the greatest weight in the world to those documents; and this case can be argued fully and completely without a comment from me—and maybe you gentlemen would be glad of it. It might be a little tiresome, but if I just read document after document, the entire story would before you lie revealed in all its extent and power and cruelty and hideousness and result. Not documents written against them, but documents written by them—documents in which they took pride—documents written in the course of business—docu-
3844 ments that have turned out to be against self-interest. That is how strong the evidence is in this case; it is overwhelming.

And I ask you, what kind of story you would have had exposed to you—when you have seen the demeanor of these witnesses on the stand? You gentlemen are accustomed to business and to dealing with men, far more than I am. And what kind of story would have been foisted on you in this desperate attempt to get themselves off, to evade the consequences of what they did in order to put millions of dollars in their pockets—and I am speaking with sincerity when I say millions of dollars—if it hadn't been for those selfsame documents, and for the power that your country has and my country has to subpoena those documents and bring them here to tell their story?

And I say to you gentlemen that, just as there is no doubt about the power—this isn't just my opinion; this is the record that is talking—and just as there is no doubt about the combinations, there is no doubt at all about the purpose. And, remember, I started out by saying that if you find the power, if you find the combination and if you find the purpose to affect the prices one iota, that is a violation of the Sherman Act. Because Congress, our representative body, has determined that there is a greater public interest, a greater benefit for our country and
3845 its citizens in the long run if the Sherman Act is enforced and if free competition prevails, than there is in permitting private capital in combination to determine for itself, willy-nilly, who shall be benefited and who shall not be benefited, and when and where and how.

The real benefit to look for is to keep this commerce clean and untrammeled and uninterfered with. And if it is to be interfered with, let it be interfered with by the state, so there will be some responsibility, some officials that can be brought to account—not tortured where they will by the private avarice and temporary expediency of private men, that are not responsible to anybody except themselves, and to courts and juries when they are exposed.

And, just as there is no doubt about the power or about the combination, so there is no doubt about the purpose to affect prices. And, oh, how they have struggled to avoid that conclusion.

They have told you about helping the independent refiners. They have told you about buying their needs—that they had always bought. They told you about doing something constructive—about assisting stabilization, a word that they can torture into anything they please. But, oh, how reluctant they have been to tell you about
3846 their real objective, which was price.

Gentlemen, a great deal, I feel sure, is going to be made by the good lawyers that follow me for the defense, of the fact that all of these major purchases weren't at the high prices published by those journals. And I tell you that that makes no difference, either.

When people are in combination to fix prices, it doesn't make a particle of difference who led the price up, which one charged the higher price.

And so, here, when you have got the major companies in combination with the independent refiners, it doesn't make a particle of difference—it just makes it all the more distasteful—to see that the independent refiners, those co-conspirators are the ones that charged the higher prices, in the main—charged them, to whom? To the jobbers and the dealers and the brokers that were buying from them. So that the major companies bought at the low the majority of their purchases in these pools, bought them at the low of the journal, or chiseled below that and bought them an eighth or a quarter of a cent under the low. And the explanation is perfectly plain.

If you are an independent refiner and in this conspiracy,
and you have got Standard and Socony and Shell
and Sinclair and Tide Water and the rest of them
3847 insuring you, underwriting you, guaranteeing you,
standing there ready to take all your surplus at a good
price, at progressively increased prices—you are not going to be likely to sell the rest of your gasoline to the jobbers and the brokers and the consumers at lower prices. The major company business is far more attractive, while it lasts. They are sure of their money. They are sure that the major companies are going to be long-suffering, as these documents show they were, as to quality. And these documents show that major after major took gasoline that it didn't want. The Skelly documents show it, and The Pure Oil documents show it, as I shall read you. And they knew that it was good, regular business, with a responsible purchaser; and they are going to get this progressively higher price, at the low or a little bit below the low of those journals. Then, are they going to sell the rest of their gasoline to the independent jobbers and brokers at a lower figure? They may for a while, but the majority of it is going to move at that higher figure.

And so I tell you, gentlemen, that the major company purchases of all or practically all of the surplus gasoline, that otherwise would have moved at lower prices, was the predominant, direct force that held those prices up there on that cruel level month after month.

3848 And it makes not one iota of difference—it is a mere attempt at confusion—to bring in here day after day a smart accountant who, aided by fifteen others, working night and day, put little dots and dashes along these charts, hung up flag after flag here—and now, just weighing the two sides in this case, I think it is a good illustration for you:

For you to weigh that "Know-all," the Miller who testified for the defense, and who knew everything and was willing to testify to it whether asked or not, with all his confused dots and dashes and charts and flags—weigh him against that little G-man, another Miller, who took the stand for the Government, and frankly, and without painting it at all, told you just what the facts were as he found them, and didn't attempt to be an expert on the entire case. And remember that in the last few days of this trial, how he had been able, by making spot checks of some of their charts, to expose them for what they were—and I am alluding now to those Danciger figures, where you had dots and dashes, supposedly sales to jobbers and consumers by Danciger above the low, in those four months, of third grade gasoline—that were really sales of a better grade, a grade which habitually and normally was sold by

3849 Danciger at a higher price because of a guaranteed higher octane.

And I say, gentlemen, that if in a little spot check that can be made of that exhibit, and can reveal that every one of his dots and dashes was erroneous in those months, then you can put what weight you please to the rest of those charts.

And I don't care what the charts show—it is overwhelmingly established here that what they show was, month after month, an artificial, rigged price, obtaining throughout this entire area. And there is evidence in the case, documentary evidence that the independent refiners were jumping this price up just as fast as they could jump it.

The Court: We will recess now until two o'clock.

(Thereupon, at 12:15 o'clock p. m., a recess was taken until two o'clock p. m., of the same day, Monday, January 17, 1938.)

3850 Mr. Lewin: Gentlemen, I certainly have no disposition to take up any more valuable time than is necessary, but bear in mind that we have been over this story four months, have thousands of pages of record; that the government's case closed before Thanksgiving Day, and that since that time you gentlemen have been hearing mostly the evidence of the defendants. I think that is probably justification for taking some time to allude to these details.

When we recessed, having discussed the power and having discussed the combination, I was addressing myself with you to the purpose which is so clearly revealed in all this evidence of price, to affect the price level, and when I say affect the price level, and when I have said affect the price level, I do not mean any incidental effect to the price level. I mean a direct level; I mean directly raising, an intention to directly raise and maintain that price 3851 level, that tank car price level.

In the opening statement of the defense delivered to you months ago it was stated that the buying activities of the defendants may have contributed to this restoration of gasoline prices at the refinery.

Well, gentlemen, the evidence shows it is stronger than that. It isn't any "may" or any "might". It is "did." Did! Because they had the power to and because they had the purpose to.

And counsel for the defendants in his opening statement asked the question—I am paraphrasing—"how much it affected that price is hard to say."

It is the position of the government, gentlemen, on this record, that it affected it materially, directly and materially. And when I say that I do not mean of course that this was the only force in the field affecting prices.

The Connally Act that you gentlemen have heard so much about, that was passed on Washington's birthday, 1935, and became effective March 1st, 1935, by the establishment of a tender board in East Texas, was effective in shutting off hot oil, illegal oil, illegal gasoline made from illegal oil coming out of East Texas, and keeping it out of the channels of interstate commerce, and to the ex-3852 tent that it reduced that supply of hot oil of course it had its effect, a legal effect, a proper effect on price; and I would not be blind enough to say that there were not other forces.

We were coming out of a depression; there was greater seasonal demand, although the documents are full of evidence that all through the spring of 1935 there was poor jobber demand because of bad weather conditions. Jacobi's letters written from week to week give time and again that same information, that the jobbers were not buying.

But nevertheless of course there was an increase in seasonal demand, and there was a better feeling, there was an improvement. It was not an emergency time like 1933 when the banks closed. It was a time of brighter outlook, and I would not stand here and say for one minute, gentlemen, that the refinery allocations that were put into effect in 1934 as the result of the refinery amendment to the code—legally put into effect proper agencies under governmental regulation and revision, which cut down some of the supply of gasoline at the refineries—I would not say that those allocations of refineries did not have its effect also on the raise in the tank car price.

But, gentlemen, those effects on the raise in prices were no normal, legal effects. They still left competition, they still left a chance for independent refiners and consumers to shop around to get gasoline. 3853

This so-called distress gasoline was not hot oil, it was not illegal, it was not manufactured beyond the legal allocations under the code of the independent refiners. It was proper gasoline, it was proper gasoline to be sold and not to be cornered; and I say to you, gentlemen, and I think you will agree, that those forces I have alluded to, the better general conditions, increased demand, cutting down of the supply by taking out the illegal supply, holding down refinery runs, although they always exceeded the estimates—I think you will agree that that was not what caused the shift of that price graph.

It had its bullish tendency, and its proper bullish tenddency, but that is not what clamped that price on the people of the Standard of Indiana territory without deviation except for the slightest gain in the fall of 1935, all through the summer months of 1935 and the fall and into the winter, when there was an increase right in the dead of winter, when demand is at its very lowest.

It takes a far more flexible agency at work, gentlemen, than that, not only to boost the price to where they wanted it, but to hold it there, like it was clamped with iron; so that the jobbers tell you from the witness stand that they did not even have to look in the Journals; they knew beforehand what the Journals carried day after day, 3854 the prices that they were paying under their contracts fixed for them.

The Connally Act cutting off hot oil, the legal allocations of the refineries under the code during those first few months increased a summer demand, and better general conditions, are not the causes of that price graph which these defendants themselves point to as the cause.

It would have to be a very strange coincidence, gentlemen, if increased consumer demand could be so regulated that it would not only shoot that price up there where it went step by step, to June, and let it there and held it there—it would have to be a very fine adjustment of consumer demand to do that; and when the record tells you that for years before the price had fluctuated up and down because competitive forces were operating.

No, the reason it could be held there was because it was manipulated, and manipulated by these defendants with their pools, and those pools were flexible enough and well planned enough and well supervised and guarded by them enough, that they could buy just so much and just at the right price.

You heard in the evidence about judicious placement of orders. Well, gentlemen, that means placing their orders where they would do the most good, and if an inde-
3855 pendent refiner happened to have some of this surplus gasoline which the brokers might have bought, Jacobi and McDowell were on the alert with Bourque; Cline and Buckley were on the alert in East Texas, to find out how much it was and to see that it was taken at around the market price.

Now, I have read to you gentlemen that letter of Buckley's, that confidential letter in which he claims credit for the buying pools for this raise in prices, for the difference, as he says, between three and one-eighth in February and the low price of four and one-half f. o. b. refinery which prevailed May 17th, 1935.

Here is a communication from the vice president of Shell to the president of Shell, March 13, 1935:

> "The activities of the Federal and State Tender Boards in East Texas, coupled with the 'buying movement' "—

He did not talk about a selling movement or anything of that kind in East Texas. He talked about a buying movement "organized by major interests".

He would have you believe organized by the independent refiners innocently, on the side. (Continuing reading)

> "which is not getting under way, is responsible for the improvement in Group 3 and East Texas prices; several hundred cars of distress gasoline which were over-hanging the Kansas-Oklahoma market have
> 3856 been disposed of through the buying movement and

> to jobbers who filled their storage in anticipation of rising prices. With improved seasonal demand in view and a continuation of the buying movement, it is anticipated that prices will strengthen by approximately one-half cent over the next thirty to forty-five days."

Warner, vice president of Tide Water, writes to Collins, president of Tide Water April 6th, 1935, referring to the prices jobbers have had to pay under their contracts, and says:

> "Published quotations advanced again this week on all grades of motor gasoline. Prices have advanced on an average one-eighth of a cent to one-fourth of a cent for the last six or seven weeks. Many observers are of the opinion that a gradual increase has a better chance to build a more firm and lasting structure than a rapid advance would have. This gradual advance in prices and increase in seasonal consumption has given hope of a satfactory market for the next few months."
>
> "Major companies have continued quite active buyers on the spot market this week, seeking to eliminate any possible chance of distress gasoline being offered. The improvement in the market
> 3857 the last few weeks is considered directly due to the cooperative efforts of major companies participating in the movement."

3858 You gentlemen heard all these before, but I wonder if they struck you as they strike me now.

Warner, vice president of Tide Water, to Collins again, writing April 20:

> "The present general advance of prices has been unlike several other market advances, as no artificial stimulants have been employed. Prices have been boosted by actual purchases through the support of major company cooperation in eliminating surplus gasoline stocks at various small refineries. For this reason, most observers feel the market will continue firm for the next few months if major companies will continue to give active support in absorbing a small percentage of the gasoline production on the open market. Published quotations were again advanced one-eighth of a cent this week on all grades of Motor Gasoline."

The same gentleman writing to Collins, September 14, 1935, long after the Code, way down here in the fall of 1935:

> "While the market tone is described as somewhat softer due to various influencing factors, nevertheless, refiners, through their combined efforts—"

"Combined"? What does that mean? Combination.

> "—combined efforts, have prevented any downward trend in the published gasoline quotation list."

3859 Same gentleman to Collins October 5, 1935, a month later:

> "The most outstanding feature in support of the present market is inter-refinery buying. Major companies have continued active purchasers in East Texas and reports from that district show that only small lots of gasoline have been available for shipment the past few days. Most refiners by Wednesday were reported sold up for the remainder of the week."

Same gentleman to the same gentleman, Warner to Collins, October 12, 1935:

> "This inter-refinery buying is considered by reliable observers to be one of the chief supporting factors of published prices."

Not only is the tank car market going up and being supported up there by the tank car market published by those journals—why? Because these major companies almost to a man have signed up their jobbers on a uniform contract whereby the jobber pays for every gallon of gasoline he gets under his contract the average of those published prices. And he can't shop around and get a better contract, as those jobbers, one by one, on that stand swore to.

Hog-tied! Tied to the uniform contract from
3860 which there is no escape to those journal prices.

Could they leave the major companies and go into the independent field? And if they had to buy distress gasoline, they find this little bit that is there bid up by the major companies in combination.

Here is another company, Shell: Lakin to Fraser, vice-president to president, December 14, 1935—we are in the winter now, months after the Code:

> "While the demand for gasoline is slow—"

Of course, it is, in the dead of winter—

> "—the market is fairly firm, primarily as a result of strong inter-refinery buying—"

And I am going later, I hope, to tell you about that new impetus that these conspirators gave to their plan as the winter approached, redoubled their efforts to hold that line against the jobbers and the consumers with all the zeal of the Dutch Boys holding the dike.

Warner to Collins of Tide Water, December 14, 1935:

> "Large quantities of gasoline have been moving out of East Texas for export or coastwise movement this week. Whenever support from Gulf Coast buyers is lacking—"

The Gulf Coast buyers are the majors in the East Texas market—

3861 "—in the East Texas market, as it was about two weeks ago, gasoline from that district moves northward in competition to the natural marketing territory of Oklahoma, North Texas, and Kansas refiners. This invariably disturbs supply and demand to the extent that prices are generally lowered. These periodical disturbances, however, have been less frequent the last six or eight months."

This was written in December. You know where the "last six or eight months" would take him? Right back to the beginning of this scene.

> "—because of the regularity with which major company buyers have absorbed all the material in the East Texas area. Information from East Texas today is especially—"
>
> "Jobber spot demand for gasoline has been dull throughout the week. Inter-refinery purchases apparently have furnished the necessary outlet for the current quantity offered in excess of jobber requirements."

So we find to our horror, not only were they operating the Mid-Continent pool and the East Texas pool, not only bidding up the prices, but diverting the supply.

Gulf Coast buyers! Big major companies passing 3862 by the Gulf Coast and buying from the independent refiners in East Texas and taking it to the Gulf Coast to divert it from this territory where it would compete with their gasoline in the Standard of Indiana territory.

Warner to Collins, January 4, 1936. And we are in a new year.

> "The tank car gasoline market entered the new year this week in the same steadiness that has been exhibited during the final months of 1935. Refiners are quite pleased over the gradual improvement dur-

> ing this period and many observers are apparently optimistic over the prospects for this year."

I bet they were!

> "The more conservative are hopeful of seeing continued improvement, but are more cautious in making predictions. They contend the gasoline market would quickly revert to weakness in case major refiners should see fit to discontinue their buying program in East Texas."

Talk about power! If the major companies should see fit! They hold the happiness and the well-being and the chance for success of their competitors, the little men, right in their own vest pockets, and could do what they pleased.

March 28, 1936, which is Exhibit 295:

> "Inter-refinery buying of gasoline for the last several months has been a most important factor in
> 3863 bringing the market around to a firm position for the opening of spring gasoline demand."

September 20, 1935, Jacobi to Maguire—Maguire the president or vice president—I think he is president of Wadhams Company:

> "Gasoline purchases by some of the larger refiners have strengthened the tank car gasoline market."

Jacobi claiming credit for it.

Jacobi again to Maguire, April 26, 1935:

> "Tank car prices for gasoline and kerosene are up one-eighth cents since last week. Another three-tenths of a cent advance in Standard Oil of Indiana service station prices is expected next week."

Of course, it is "expected", because the retail price, gentlemen, by the uncontradicted evidence in this case, the price to the consumer, the price that the consumer pays, even if he buys out of the very service station owned and operated by the major companies themselves, whether normal or subnormal, is hung right on that tank car market, right on that spot market published in those quotations, and varies with it. If that price goes up, the retail price goes up. They don't move up quite so fast.

> 3864 "It is pointed out that refiners are getting about $100 per tank car for gasoline than they were obtaining sixty days ago."

Is that self-congratulation on his own effort?

> "Dust storms and poor weather generally in the central west, has been holding jobber buying down to a minimum."

Jacobi, who knows the facts and is reporting the facts, doesn't attribute this rise to jobber demand. He tells you that "dust storms and poor weather generally in the central west, has been holding jobber buying down to a minimum" and nevertheless is being taken by the pool.

Jacobi writes again, March 22, 1935:

> "63/70 gasoline has advanced to four and three-quarter cents group 3 and I expect further price advances on both grades next week."

We have come to a pretty pass when this employee of Wadhams and Socony interest, can predict like Isaiah.

Jacobi to Maguire, March 15, 1935:

> "The writer has been busy this week on tank car stabilization work, and thus far results are gratifying. Our committee decided on a price of three and three-quarters cents for third grade—"
>
> Decided on!
>
> 3865 "—and four and three-quarters cents for Q—"
>
> That is regular—
>
> "—for next week. Purchasing companies, including our own units, are paying these prices today. Since this stabilization work started, an advance in price of about three-eighths cents per gallon on both grades has resulted."
>
> "Jobber demand has decreased somewhat the past week, and some good weather would now be very welcome, from the viewpoint of our work here."

Jobber demand is going down. Major demand, artificially created for this purpose, is going up—his committee decided on it. Who was his committee? McDowell, Mid-Continent Petroleum Corporation vice-president; Tuttle, one of the managers of the Empire Company, one of the Cities Services' own subsidiaries; Jacobi of Wadhams and Socony-Vacuum interests; those three men, acting with Ashton as their mentor, decided these facts. And what was Mr. McDowell's pitiful explanation of that written letter?

Of that meeting of March 14th, he said he called the meeting because he heard from Jacobi that he had found some additional gasoline. Those three men discussed who would be the logical buyers, which one of the major com-
3866 panies, not only of their three major companies, but of this whole group of major companies.

And he was made to testify that they also discussed market prices and felt the market was stronger.

And Mr. McDowell says he couldn't obtain for third grade gasoline—couldn't obtain third grade gasoline at three and five-eighths, and thought he would have to pay three and three-quarters.

Now, isn't that ridiculous? Here is surplus gasoline crying, as they say, for a home, bound to be sold under the market. "Surplus"; what does it mean? "Over and above."

McDowell found he couldn't get it for three and five-eighths; he had to pay three and three-quarters; which jibes exactly with Jacobi's letter.

Then he swears there (indicating), there was no discussion as to what each would pay. He simply announced what he would pay, three and three-quarters.

Gentlemen, which will you take?

As I said before we adjourned for lunch, it doesn't make a bit of difference who pays the higher prices, the jobbers or the consumers, it goes back to the conspiracy and all these major companies that profit by it.

This major company pool is self-confessed to be
3867 the predominating factor in directly affecting those
prices as charged in this indictment. And, of course, those independent refiners helped the matter along, too. They were in the deal.

The defendants themselves, introduced some exhibits, 1025 and 1026, showing that during March—from March 1, 1935, to April 30, 1936, the defendant companies purchased 6,920 cars of regular and third grade in the Mid-Continent field, 75.2 percent of which was purchased at or above the low of the Chicago Journal of Commerce, and 72.4 percent was purchased at or above the low of Platt's Oilgram.

Not only were they taking away surplus that otherwise would be sold lower, but by making the majority of it, they were buying it at less than that market.

Mr. Donovan speaking for them in his opening statement, told us that, too. I quote: "Defendants paid at or above the low of the market price, as reflected in the publications."

On March 8, 1935, an official of Shell named Ruether writes to the vice president, Lakin, a defendant here:

> "I have been in touch with Mr. Winget of Cush-
> 3868 ing Refining and Gasoline Company, who tells me he
> feels that prices should move faster—"

There is Mr. Winget of the independent refiners—it may well be that those independent refiners lead the prices.

> "—that prices discussed should be reached by the 11th, and is quoting today, three and five-eighths and four and five-eighths on low and middle octane respectively."

3869 But, gentlemen, when this scheme was hatched, you
remember that they called in a committee of these independent refiners to see if they would cooperate with them. And they had at that March 5th meeting, in Kansas

City, this same Mr. Winget, of the Cushing Company; and they had Mr. Simmons of the Rock Island Company; and they had some others there,—independent refiners.

And did they call one of those key men to this stand to show that they were benefiting the independent refiners,—doing it for their benefit? They called Dave Gray, of the Waggoner Company to testify here that the Waggoner Company didn't have any distress gasoline at all. You remember him, don't you? You remember the letters he was confronted with, over his own signature, and the letters that were written to him, which showed he was selling it to the group of major companies and in contact with Bourque in regard to it?

And they called a couple from East Texas,—called Marion Travis. Why didn't they call Winget and Roy Jones and Henry May, and these key independent refiners, instead of putting on the stand subordinate office clerks, who, when they were taken on cross-examination knew nothing?

3870 I know why they didn't call them. Because just as Dave Gray was subjected to cross-examination, shown up for what he was, with his own document, just so those same gentlemen would have been cross-examined and been made to state how much they made. How poor they were when this conspiracy really got full tilt and the price went up to that level. And they would have been asked something about the temporary—because that is all it was,—temporary benefit that they were receiving. Because, as one of these letters says, when the major companies, so long as they don't cease to buy,—or words to that effect,—these results are going to continue.

But I have just touched on the documents, gentlemen. I wish I could take the time to talk on the testimony. Jacobi testified on that stand that at St. Louis they discussed the price. I am quoting now.

> "They certainly discussed price and expressed the opinion that they hoped the price would advance."

And he was asked,

> "What was the necessity of buying or finding markets for the distress gasoline?"

He answered,

> "It was evident that they couldn't find it themselves".

3871 "Question: Why were the major companies at that meeting interested in assisting these refiners in finding a market; was that discussed?

"Answer: Yes, sir, it must have been discussed,

"Question: All right, what was the discussion as to that.

"Answer: The major companies were interested, naturally, in trying not only to help the small refiners but help themselves.

"Question: How would they help themselves?

"Answer: By the removal of the distress gasoline.

"Question: Through the raising of the price?

"Answer: Naturally, the price would respond.

"Question: And that would be the way in which they would help themselves, is that right?

"Answer: Yes, sir.

"Question: It is gasoline that they would have to shunt around to get a purchaser for?

"Answer: Yes.

"Question: When they sold it they would sell it on the spot market?

"Answer: Yes.

"Question: And if your plan didn't take it up, they would sell it at lower prices than you, each of 3872 you, wanted to maintain by the plan. Is that right?

"Answer: They would have to sell it at any price they could get for it.

"Question: And those prices, you were afraid, would be lower than the prices you wanted to maintain by the plan?

"Answer: Lower than the market, yes, sir.

"Question: Lower than the price you wanted to maintain as the price?

"Answer: Well, I can only answer that 'Yes'.

"Question: If it were permitted to be sold at this lower price, it would be in turn make a lower market, wouldn't it?

"Answer: Yes.

"Question: And therefore the purpose of your plan was to prevent that and make a higher market; isn't that right?

"Answer: Yes, we hoped a higher market would result."

And concerning the price recommendations in the program, and you remember that he made the price recommendations, six or seven, or eight or nine, he didn't know which,—as many as that, price recommendations, between June and March, when the price was going up. And he said he felt that the trade journals would hear of 3873 these prices. And the gist of the whole thing was that I felt that prices would go lower if that situation existed.

> "Question: And did they mention the possible effect on these trade journals of higher prices, if you paid them?
>
> "Answer: I believe so, yes."

In regard to the March 14th meeting, and I told you what McDowell said about it, he said this: "We all felt that if the trade journals found that the preponderance of sales by small refiners to major companies were a preponderance that those prices that the trade journals discovered would be very important to them, as indicating a trend, at least. Because, I understand now"—

Now he understands,—

> "That all the trade journals do is report jobber prices. We felt that in paying a fair price for this gasoline."

—and you all heard Jacobi. He testified with a great deal of pride, a slick, shrewd light in his eyes, what a hard buyer he was down there. And then, you remember, his Honor took him up on that. I can remember it as though it were yesterday and disclosed that after this buying movement were started, which raised this tank car price, Jacobi 3784 gets religion. Instead of being the hard buyer that he prided himself as being, now he is a benefactor,—a charitable benefactor to the independent refiners.

> "We felt that in paying a fair price for this gasoline that the small refiners would move this gasoline at a fair price, that would affect—they would be able to ask a higher price with their regular trade."

These dots and dashes that were on that chart that Mr. Miller put in evidence; their regular trade—dots and dashes at the higher price.

These men felt if they paid the low of the journal, or around that, that these independent refiners would be able to charge a higher price to their regular trade.

That is what they did.

> "And would obtain a higher price, and the trade journals, in contacting those small refiners, from whom I understand they obtain most of their information, would hear of those higher prices, as sold to jobbers, and so report them."

What could be clearer as to purpose than that?

3875 His one eye on the trade journals, and he testified, as that price went up, step by step, as the result of his price recommendations, he and his colleagues in combination were watching the trade journals to see that those prices went up, step by step, to ~~the same degree~~.

> "Question: When your committee had this meeting in March, you knew at that time that if the prices of gasoline in that field were raised that they would be reflected in the quotations in the Journal?
>
> "Answer: Yes, sir, we felt they would for the reasons that I mentioned.
>
> "Question: Now, will you answer my question as to the discussion between you and Mr. McDowell and Mr. Tuttle?
>
> "Answer: We felt that the prices paid by the major companies would certainly have an effect upon the trade journals, as they were reported to the trade journals in many cases."

And so, gentlemen, I am not talking about a purpose to indirectly affect, or incidentally affect, or casually affect these prices. I am talking about a full-fledged, straight-arm purpose, directed to affect these prices, and reap
3876 the benefit, as I will show you, the benefit they would reap.

Price recommendations. Those three men, Tuttle and Jacobi and McDowell divided the major companies among them. Jacobi took a group; McDowell took a group; Tuttle took a group. And those three men met there at his office, once a week, and sometimes oftener, in Tulsa; in constant contact; and they discussed the market, because McDowell said that they didn't get together without discussing the market. And by market he meant the price.

And then, gentlemen, six or seven recommendations of price; and he was asked on cross-examination if it might be eight or nine. He said it might be eight, might be nine, he wasn't sure, during that period. And I want you to count with me on that graph, what I term the stairs by which they climb to satisfy their avarice and their greed. These were the stairs that they waltzed the dancing partners up to this high dance plateau here where they could all have a good time. That is the way they talked. Here is the ladder of roses, and here is the garden of love, right in front of them.

Count the steps; one, two, three, four, five, six, seven. If he made seven recommendations, there are his seven stairs; seven increases that he was watching for.

3877 And then you will recall that he made no further recommendations after here (indicating). He made one here in the first week in June, after the Code had expired. And then they were high enough. Buckley expressed some concern about raising the prices too high. In one of his letters you will recall, he was afraid, or expressed a fear if they raised the price too high it might cause the independent refiners to make too much; so the major companies would have to take not only that surplus, six or seven hundred cars a month, but more. So they had gotten where they wanted. Right here. (Indicating) And there was no further price recommendations. They simply held the line,—maintained the price, until they got here, in January. And then there was a crude oil advance.

I want to say something about that, because that crude oil advance was caused by this very thing. They had it in their minds all the time, as early as April. Buckley is writing about a possible crude advance. He said the agitation that was existing back here in February for a crude cut, that is, a cut in the price of crude, that propaganda was changing; didn't hear any more of that now that they had gotten the tank car price of gasoline up where they wanted it. Down here on the floor. You hear the
3878 same thing from Jacobi, only he thinks that the crude advance won't come until spring.

But it went beyond their fondest hopes. The majors were in the saddle to such an extent, had such a firm grip on the situation, so they could afford to have a price rise. When? A most unheard of thing,—a price rise in the price of crude oil in the dead of winter, when the demand for gasoline products is at its very lowest.

And then you get the vicious circle. Up goes the price rise for crude oil, in January. And they raise the gasoline price on top of that, one-half a cent, by a price recommendation from this committee; right here in the dead of winter. So that they built another plateau,—another dance floor for the dancing partners, a little higher up. A balcony now. And they are ready to do what they will with any petroleum products. They are ready now for another crude advance whenever they choose to bring one about.

And yet the defense would have you believe that the causations are not the other way, that the price of crude caused the rise in the price of gasoline.

3879 The evidence is perfectly clear that these conspirators hoped for and intended and expected that when they got that price of gasoline up there (indicating), good and high, that they could jack that price of crude up and hold it there—and I have got documents that support that very statement.

Oh, gentlemen, don't be misled, I beg you, because all the details, material and immaterial, all the details of a long indictment haven't been fully and completely established in the very words in which the indictment is written. You gentlemen can distinguish, and I know you will distinguish between material allegations and immaterial allegations. And you know that many of those minor allegations were inserted in that indictment in good faith, to explain the charges and the substance of the indictment. And you gentlemen know that when his Honor submits this case to you, it means that there is sufficient evidence upon which you can, if you want, and are convinced beyond a reasonable doubt, to find that the substantial allegations of this indictment—the power, the combination, the intent to raise prices, and the raising of prices, are established.

And yet I feel perfectly sure, just as though I am hearing it now, that these gentlemen that follow me will try to make a lot of considerations, such as these:
3880 There is an allegation in that indictment that these major companies purchased fifty per cent of the production of the independent refiners in those two fields. And that is a mistake, because they produce a great deal more than they sell on the spot market. They have contracts, and they have regular trade, and there wasn't that high a percentage of their total production that was purchased by the major companies—and I say it doesn't make an iota of difference.

I think the proof shows—I think the opening statement says, and I suppose the proof shows, that from fifteen to nineteen per cent was purchased by the major companies, of the total production of these independent refiners in the Mid-Continent; and about twenty-five per cent, twenty-four or twenty-five per cent of the total production of the East Texas refiners.

The thing that is important, gentlemen, is that these major companies intended to and did buy up all of it, all of the surplus, all of the so-called distress, all of that which could influence the price, whether it was fifty per cent or twenty-five percent or fifteen per cent. And enough was purchased, 600 cars a month in each of the fields, six or seven hundred cars a month in each of the fields—a drop in the bucket—to hold that price line.

3881 And McDowell testified, as I alluded to a moment ago, that it was the function of that sub-committee to watch, to see when any distress gasoline made its appearance, and call a meeting quickly and find a buyer for it. So that the intent was to cover the entire distress gasoline.

Buckley to Brandli, March 7th, 1936:

> "Today, the market trend in East Texas is upward. Twelve refiners will ship federally tendered gasoline in tank cars during the coming week. Two of these plants have shut down, and will be shipping from inventory.
>
> "Stocks of straight run gasoline available for shipment as of Saturday night total slightly more than 60,000 barrels, of which Burford holds approximately 30,000 barrels."

He has a full and complete statement of how much there is.

> "Total unsold manufacture for the coming week is estimated as 55,000 barrels, for which orders are at present in sight for approximately 40,000 barrels."

Lakin to Fraser, May 9, 1935:

> "Legal gasoline prices are firm at the levels shown above"—

3882 and he spoke about the East Texas situation—

> "—and such surplus material as accumulates"—
>
> "such",

that means all of it—

> "—is promptly lifted by major interests for shipment to the East Coast."

Warner to Collins, June 22nd, 1935:

> "The major companies have continued taking the greater portion of the East Texas gasoline output, and have also been active in relieving the small refiners in other districts of any surplus gasoline that might through necessity be forced on the open market as distress material."

Lakin to Fraser, October 2nd, '35:

> "The small amount of surplus material available in Mid-Continent and Texas areas is promptly removed by inter-refinery buying."

Warner to Collins, October the 12th, 1935:

> "These additional orders, plus the regular weekly purchases from the East Texas group"—

and bear that in mind, when you come to consider whether or not they had a real scheme here—

3883 "regular weekly purchases from the East Texas group, will entirely absorb all the material available through the end of the coming week."

Lakin to Fraser, of Shell:

> "A little surplus has developed in the Mid-Con-

tinent and East Texas markets, but this will be removed during the succeeding week through interrefinery buying."

Mr. Thomas: What date is that?

Mr. Lewin: November 20, '35.

Lakin to Fraser, December the 6th, '35, away down there:

> "The price reduction in low octane East Texas material which occurred last week was reflected in the Group 3 market"—

that is, the Tulsa market—

> "—which experienced a similar decline during the week under review."

That is this little dip, down in here (indicating on chart).

> "—The possibility of any further reduction is extremely remote, as latest figures indicate that Mid-Continent refiners are cutting their runs" —

3884 curtailing production,

> "—to conform to seasonal decline in consumption"

Approaching the winter, you see—demand falling off; you can expect lower prices—but the independent refiners are curtailing their runs. And he continues:

> "—and, further, a heavy buying movement in East Texas is getting 'under way'."

A heavy one—they have already had a heavy one, and here is a heavier one, down in the fall of '35, after the Code has been dead and gone for months—

> "—which will no doubt relieve that area of any distress material."

Warner to Collins, January 4th, '36, in the next year:

> "Reports on the East Texas situation today show that refinery district to be in fair shape, as interrefinery buying has continued to absorb most of the gasoline production of that area."

Warner to Collins, January the 25th, 1935—in the worst part of the winter; when everybody is worried about overproduction and over-stocks, and bad demand and terrible weather:

3885 "The steady demand created by major companies' active purchasing has kept this field"—

that is, East Texas—

> "from being a disturbing factor in the Mid-Continent gasoline market."

Lakin to Fraser, March the 21st, 1936—away down at the end of that chart (indicating):

> "A material improvement has occurred in East

> Texas. Surplus stocks in that field have been taken off the market by inter-refinery purchases."

Lakin to Fraser, August 9th, 1935:

> "The gasoline market continues strong, with shipments held at current high levels. Surplus gasoline in Mid-Continent area is, so far as we can learn, confined to a single refinery, Waggoner of Electra, Texas, but this surplus is being readily absorbed."

Taking it all. And Waggoner of Electra, Texas, is Dave Gray's company—Standard of Indiana's dancing partner, the company from whom Standard of Indiana, with sales of a billion gallons of gasoline a year, was taking a paltry 75 cars a month—under, I suppose, some claim of need.

3886 December 13, 1935, Jacobi to Maguire:

> "The East Texas field is well supplied with orders for interstate movement. Third grade gasoline is priced once again at four and three-quarters, Group 3, trade papers,"—

That is, the Chicago Journal of Commerce and Platt's Oilgram—

> "—having posted this price in the past few days."

And so on. I am not going to stop to read the rest of them—document after document, that show they took it all.

And if they took it all, what difference does it make that the grand jury in the indictment alleges that they took fifty per cent and it turns out to be twenty-five per cent in one field, and less in the other, of their total production?

And there are other red herrings that have been saved for you gentlemen, I am sure, shortly to be urged here.

I am sure much will be made of the fact that the Government voluntarily dismissed, at the close of its case certain of the defendant companies—some of them who had participated in the conspiracy and had enjoyed its fruits, but had dissolved, so that there was no company there to try,

3887 except its officers, who made them do it.

Much will be made of the fact that his Honor dismissed The Gulf Company and The Texas Company at the close of the Government's case, back there before Thanksgiving.

But I think his Honor will instruct you that it isn't necessary for the Government to prove that every one that was indicted is guilty. It is a heavy burden that rests on the Government, as you gentlemen know. And it is not necessary to prove that every one named in the indictment was guilty; nor is it necessary for us to prove, or to indict and prove that everybody connected with the conspiracy was guilty.

There may well have been other conspirators—there were some to the grand jurors unknown. And when the Court dismissed those companies, he didn't have the benefit of Mr. Arnott's testimony—and you will remember it, how he stressed the participation of Mr. Hartmann, the Vice-President of The Gulf Company, and showed him to be a more active participator than almost any other of his colleagues. And I say, whether those companies were innocent or guilty—and they are out of this case—they did nothing, so far as this record shows, not one thing to break down the effect of this conspiracy that was carried on
3888 by these other majors, not one thing. They bought surplus gasoline in East Texas, and they bought it at the low of the market, and they bought it through the East Texas Refiners' Association.

And, oh, what a peculiar association that was, gentlemen, that East Texas Refiners' Association, that they would have you believe was a pure creature of those independent refiners, trying to find purchasers for their gasoline.

And in the opening statement, the claim was actually made—in the opening statement of counsel for the defense:

> "With regard to East Texas, no understanding was entered into of any kind or of any nature."

Now, gentlemen, stack that statement against the testimony in this case—against Arnott's testimony, if you will—against his letters and his communications; his letters with Marcell, that he had been busying himself he had been before the Allocators' meeting, working with Buckley, planning with Carnes and Buckley, holding meetings of major companies over and over again in New York and Chicago, to deal with East Texas; helping Buckley all the way down through the year, long after the Code, or after any
3889 time that he could ever claim to be Stabilizer of anything; working with Buckley down in the fall of '35; sending a telegram to Frueauff of Cities Service in January of '36, that the East Texas situation needs some looking after.

Just stack all that overwhelming evidence against that statement in the opening statement of counsel, made to you gentlemen, that as to East Texas—

> "With regard to East Texas, no understanding was entered into of any kind or of any nature."

And consider this other statement in the opening statement about East Texas, if you will—right out of the opening statement of counsel:

> "The Association's activities—"

that is, the East Texas Refiners' Association—

> "—were all directed to an effort to find those who

> were willing to buy gasoline, whether major purchasing companies, independent purchasing companies, brokers or jobbers."

Now gentlemen, I ask you. You heard Buckley, and you heard Cline. And the testimony is that their efforts to get any other buyers but major company buyers were negligible. Cline couldn't even tell us whether they sold as much as fifty cars throughout the entire period to brokers
3890 and jobbers and independent refiners. It was a major company, and a major company almost unanimously association. And that evidence overwhelms that kind of statement, that this association was formed to get buyers among the jobbers and the independent refiners. There just isn't anything to it.

And there is another curious thing about the East Texas Refiners' Association. It sold only at the low of the journals. Now, isn't that a curious association? And it only sold surplus gasoline, gasoline that the people couldn't sell otherwise. And it sold it to a regular list of major companies who were buying, brought in there by Buckley, who travels all over the Eastern half of the United States time and again as the liaison man—in Mr. Arnott's own words, the liaison man, the link between them and the supporters of the East Texas pool.

Oh, I say, don't be misled by the fact that The Gulf and The Texas were dismissed out at the close of the Government's case. And don't be misled by the fact that the Tide Water Company had gone out of business after it had enjoyed the fruits of the conspiracy; and that the Cities Service Export Oil Company, as corporations are able to do, merged with somebody else or dissolved or what not, or went through some other corporate shenanigan, so that they are no longer here to pay the
3891 penalty for what they did.

And here is another thing that is going to be stressed—and I hope you gentlemen will treat it, too, with just the same kind of contempt:

Much is going to be made of the fact that the Government didn't adduce, in its opinion, sufficient evidence to hold those trade journals, and voluntarily dismissed them at the close of the Government's case.

They are not here any more. But that doesn't militate one degree against the fact, as alleged in the indictment, that those trade journals were the chief instrumentality—they may have been innocent; at least, we couldn't prove their guilt—but they published that spot market, that rigged, artificial market, day after day. And if they hadn't published it, then the jobbers wouldn't have had to pay those prices under those contracts.

Those journal men knew that the jobbers were signed up on those contracts that fixed the price as the average of what they published on the spot market. And they knew the enormous responsibility that rested on their shoulders by reason of that fact. And they knew, because
they were in contact with these conspirators—
3892 Steiger testified he was in contact with Jacobi, he
was in contact with Buckley, he was in contact with
Fitzgerald, he was in contact with Bradshaw, getting information as to prices from those people—they knew that the inter-refinery buying was going on.

And Jacobi and these other people that went on the stand substantiated that there was a close tie-up of information between those two, and these documents substantiate it. I am going to read you some of the emphasis that is placed upon the price—not only the price, but the price that is carried in the journals. And Fanshier of the Chicago Journal of Commerce was in touch with them, McDowell told you that.

So, I say to you, don't be misled by any claim that any important link in the Government's chain of proof is gone.

The Government alleged and it has proved that these major companies operated on a set stage. They had uniform contracts with these jobbers. They fixed their retail prices on the basis of these tank car markets. The tank car market controlled and affected and measured the price at which all this gasoline, practically, was sold in this area, billions of gallons. So that the little spot market, a mere drop in the bucket compared to these billions of
gallons sold under contract, and by the major com-
3893 panies through their own service stations, controlled
the price at which this great amount was sold, measured it—so that the tail wagged the dog.

Not only the spot market, but the published price on that spot market—Steiger determinations, and Fanshier's determinations—and you saw Steiger, working every day, all day on the telephone, calling here, there and everywhere; and taking the sellers' prices, without adequate check; taking the best foot foremost that the sellers would give him, of course, who were interested in a bullish market; and checking, may it please this jury, with only one jobber, the little Purity Oil Company down near Tulsa. Do you suppose he was getting any low prices?

And I say it is just too clear for argument that not only were those spot markets rigg[illegible], but the published prices were rigged. The publications, whether innocent or not, carried those quotations day after day; and they were automatically translated into the prices those jobbers had to pay under those contracts that were based on them; and thereby large sums of money were exacted from the jobbers and the independent dealers throughout the Standard of Indiana territory, and retail prices as well were maintained, so that the consumers suffered as well.

3894 Jacobi was asked:

"Right on that point, what kind of steps did your committee or representatives of the companies buying gasoline take to convey that message to the representatives of the journals?"

"Answer: Well, the journals called me every few days; that is, the Oilgram does, in Tulsa; and I tell them what I am paying for oil products; and I told them, I am sure, in this case, what I paid for gasoline."

And then Steiger supports him—oh, there is a lot to it. I can't take your time. Steiger said:

"We got information along that line from Mr. Jacobi of the Wadhams Company.

"Question: That is, Walter Paul Jacobi?

"Answer: Yes, sir.

"Question: Did he tell you about the purchases in the Mid-Continent field?

"Answer: He told us of the volume of purchases, and sometimes gave us the price at which it was purchased."

Why does he want to know the price, if it is not going to influence him? If he is publishing only prices to jobbers, why does he want to know the price that the pool is paying?

3895 "Question: How about Mr. Neil Buckley?"

This is asked of Steiger:

"Answer: He would tell us, give us information as to both his company buying and also quite often he would indicate to us that there had been interrefinery major company buying down there, and some times gave us the volume.

"Question: And then the price paid?

"Answer: Some times he did give us the prices, yes, sir."

And so on, and so on.

The same way with Bradshaw. The same thing is true of Steiger's contacts with Evans of the Barnsdall Company; with Bradshaw, I have mentioned; with Fitzgerald of Mid-Continent; with Bacon of Shell; with Cottingham of Continental; with Chamberlin, with Tracey and with Bourque—and Fanshier, in touch with McDowell and Bourque and Jacobi, all supported by the testimony in this record.

Gentlemen, let me read you some startling testimony of the history of the set stage in which this conspiracy was able to operate—and this is testimony that comes, not from a Government witness, but one of the principal witnesses called by the defense. You will recall it when
3896 I start to read it, I think. This is the testimony of John Shatford, and he is standing before the map, and he is pointing out to you what happened to the independent refiners in the old days:

> "The refineries along the Atlantic Seaboard, began to grow very rapidly. And they used this saving in transportation, not to put in their pockets in the form of profits, but to expand their markets. That is, because they were able to refine cheaply as a result of cheaper transportation costs, therefore they were able to compete with gasoline moving up here (indicating) in tank cars; they were able to compete farther west.
>
> "And so this Atlantic Seaboard market began to cross the Appalachian Mountains, and it encroached in western Pennsylvania, West Virginia and Ohio; drove the smaller refiner practically out of northern Ohio. So that all of this market, as a result of that single factor, practically all of that market through here (indicating in Ohio, and so forth) was lost to the independent refiner.
>
> "Now, he was shipping his product from his field refineries in Kansas and Oklahoma and in Texas, up into this market in tank cars.
>
> "Well, what was the result? As the demand
> 3897 through the automobile increased and these markets became more concentrated, these refineries at the market (indicating) were built larger and larger, and more and more of what we call back hauling took place.
>
> "That is, instead of having a market that was just a narrow circle around Chicago, which we will say, for example, this market began to expand; and as it expanded, of course, it drove these refiners back, drove them back up on themselves in a sense, drove them back against their own refineries.
>
> "Then there came, a little bit later, the Kentucky

fields; and in the Kentucky fields, the Kentucky refineries were located there, and they began to ship up into Ohio and a little bit into western Indiana, and certainly into Kentucky, and some into West Virginia (indicating); and so that market was finally lost to the Mid-Continent refiner, who could no longer ship up into that territory advantageously.

"And then came oil in Michigan, and these Michigan refineries (indicating) took Michigan away from them.

"And so this thing had gone on from year to year, so that this Mid-Continent refiner down here
3898 (indicating),"

that is, down in the Mid-Continent field,

"—who used to command the Mid-Western market, and almost the Eastern markets, had finally been driven back into a small area in Iowa, Missouri, southern Illinois, Kansas, Nebraska, North and South Dakota (indicating)—although even some of that territory isn't as advantageous as it was a few years ago—and for this reason:

"As if all of these things weren't enough, we have had a new development in the industry, and that is the gasoline pipe line. All of these pipe lines we have talked about were crude oil pipe lines, carrying raw material up where they could refine it cheaper at the market. But now we have had a bunch of companies get together down in the southwest and build pipe lines clear up into Illinois, Indiana, Missouri, clear up into Minnesota, that carry finished gasoline clear to the market—

"Now, my point in all of this has been to describe the gradual shrinkage that has taken place in the market of the small refiner; which fundamentally, more than any of this other business, has caused his situation to become a very difficult one
3899 from the standpoint of getting rid of his product.

"Well, during the period that I described in which the major company had not caught up with the demand for gasoline that grew from the extended use of automobiles, he had to buy gasoline. And so he bought from the small refiners, who were located in the southwestern states.

"But a change took place in that situation as a result of the development, or the technical advancement, we will say, of the refining industry.

> "The major companies began to increase their refining facilities, so they soon reached a point at which they could manufacture themselves all of the gasoline that they needed for their own customers. And then, in addition to that, they had enough gasoline so that they had some to spare. And the consequence was that they were compelled by competitive circumstances to cease buying from the small refiner.
>
> "And, to make a bad matter worse,"

Gentlemen, I ask you, doesn't this sound like the conquest of the American Indian?

> "—To make a bad matter worse, they not only ceased to buy from him, but, because they had more product than they could conveniently dispose of, they 3900 began to compete with the small refiner for the small refiner's own customers. In effect, it might be said that that competition was the result primarily of the development of the facilities of an industry. I think, as a generality, that is true.
>
> "The consequence was that the small refiner not only wasn't able to sell the major companies that he used to, but he wasn't able in all cases to hold his own customers."

Now, gentlemen, that is the background picture of the years just preceding the Code, testified to here by Shatford, a witness for the defense. That is the kind of treatment, year after year, that was accorded to the independent refiners by these major companies. And I say it sounds like the conquest of the American Indian: Use them when they wanted them, use them when they needed them; take their markets away from them when they could, and finally gobble up their own customers. And I say it will come with very bad grace from people with that history to talk now, in this late day, when it suits them to pad their pockets with more money as a result of that price rise—to talk now of helping these same independent refiners that they so cruelly drove back upon themselves, as this witness
3901 says. Your Honor, might we have a short recess?

The Court: We will take a recess at this time.

(Thereupon, at 3:25 o'clock p. m., a recess was taken.)

3902 (Following the recess the Court resumed its session at 3:45 o'clock P. M., and the following proceedings were had:)

Mr. Lewin: In the defendants' opening, as I said, some unwarranted remarks, in my opinion, were levelled at the jobbers, and I am going to give those remarks so that there is no danger of any misunderstanding. This is what Colonel Donovan told you at the start:

> "The government, in its opening, would have you believe that the defendants wanted to drive the jobbers out of the business. That is not the issue in this case and it just isn't true.
>
> "There are disagreements in the industry as in every industry between individuals. In this industry, however, there were certain jobbers trafficking in hot oil gasoline. By hot oil gasoline, as I will tell you more fully, is meant gasoline produced from oil run in violation of state conservation laws. They profited in the demoralization of the industry, like the bootlegger or the smuggler, they avoided the payment of state and federal taxes.
>
> "This kind of jobber by this sort of practice was able to buy this illicit product at a price much less than the law-abiding jobber could do it, of course. This kind of jobber fought the efforts of state and 3903 federal governments to stop the traffic in hot oil. They wanted to keep their bootleg business. Many of this kind of jobber are members of an association which has openly and brazenly lobbied against this present national administration's successful effort to conserve the oil resources of the nation by stopping this illegal traffic."
>
> "Gentlemen," this is what he says to you: "gentlemen, we"—that is, the defense—"will show that the murmurings and grumblings came from those jobbers, among others; that only a small minority who have been able to use the law department, who have been able to punish these defendants by the Department of the Interior."

And I say, gentlemen, this is shocking slur. He could not have meant that slur for anybody except the poor victims of this conspiracy. And he says these hot-oilers, these smugglers and bootleggers are the ones that made the complaint in this case, and they have been able to use—he uses the word "use"—the Department of Justice.

I have yet to see any force that can use the Department of Justice. And I say that not one iota, not one scintilla of that ugly slur, intended to inflame you gentlemen against the people that have been wronged here, not one word of it has been substantiated.

3904 You saw the jobbers. We put them on there, jobber after jobber, and only stopped because we thought we were wearing everybody out with the same sad story. And you saw the fine, upstanding type of American citizen that they were. They were not hot-oilers and smugglers and bootleggers that were using the Department of Justice to persecute anybody. The Department of Justice is not embarked in any such scheme as that.

So it is a double slur, not only on the victims, but a slur on the honest, fearless Department of Justice that is doing its conscientious duty in a disagreeable case.

Oh, the cruelty, the cruelty that lurks behind this combination is just unheard of.

I tell you, I just read to you from Shatford's own testimony, a defense witness, the cruelty that can be exerted against the independent refiner, and was for years, beating them back, and taking their maintenance from them, and all the rest of it, even when there was no evidence of combination.

And then I read you the slur against the jobbers, because they won't stand any longer for the treatment they have been receiving, four thousand jobbers, responsible citizens living in these small towns, the back bone of the nation, supporting the local churches and the local enterprises, making our local communities what they are—
3905 people of that caliber, fastened at both ends, the contract on which they buy, with the tank car market rigged against them.

And as illustrative of that cruelty let me read you a letter from Jacobi, written to his superior, the president of the Wadhams Company, March 29, 1935, shortly—and laughing with fiendish glee—Exhibit 684:

> "A price of four and one-eighth group 3 for this grade is expected next week."
>
> "As long as the bulk of the East Texas gasoline continues its movement south,"

that is, to the Gulf—

> "it is expected prices for tank car gasoline will continue to strengthen gradually in this area.
>
> "Demand from jobbers continues at a slow rate for several reasons. Jobbers north and west have had very unfavorable weather recently."

And, as I say, that continued all down there through the spring of 1935 while this was going on.

> "Further, I do not believe they feel that present market prices will hold."

And here comes the laugh:

> "It is quite possible they may be fooled this year in this respect."

3906 And of course they were fooled, and disagreeably fooled; and here is this man that is doing this to profit for his own company, aud he told you that on cross-examination when I took him over. He had in mind what the majors could make out of this increase. And remember too McDowell testified on that stand that he already realized how much the major companies, how much his company and the other companies sold, and how this would benefit them, but he said "we did not discuss it, did not talk about it".

No, that was not the kind of thing they wanted to talk about. They would much rather talk pious protestations of charity like help the independent refiner.

No, the temptation was too great for them, gentlemen. Here was this little spot market. Five percent, or around five percent of all that is sold in this great big area (indicating on chart Exhibit 674) in the Standard of Indiana territory, this little five percent being sold on the spot market, not by major companies—they did not sell any substantial amounts on the spot market, but the independent refiners, and the price at which they sold in supposedly competitive, arm's length, free, open transactions—the price that is written into all these contracts, these uniform contracts that are spread all over this territory.

So that the major companies here see clearly that
3907 if they can rig that spot market and raise it they will
in turn automatically raise the price at which they sell eighty or ninety percent in this territory. And there was a great temptation. They had to pay something to do it; they had to bid the market up; they had to pay more for that gasoline on the spot market than they otherwise would have had to pay. They could have bought it according to Jacobi at lower prices. That would not work the scheme. No; they had to pay more for it than it was worth.

Did they hesitate long to pay more for five percent, if they could do it legally and properly—would anybody hesitate for very long to pay advancing prices for five percent when at the same time he could sell by reason of that action ninety-five percent at this same high price?

It was just like a pump handle. And they did not hesitate. On an average increase, the price went up from the time the conspiracy started about a cent and a half, roughly, went up here (indicating on chart), and then it kept on a fairly uniform plateau—roughly two percent increase in the tank car price.

Now, if you want to get any idea, just a general idea—it is only rough—of just how much these major companies

in the combination would profit and put in their own pocket by a two cents increase in the retail price, just do a
3908 little arithmetic that I had some of these witnesses do for you.

Could I have that retail price chart for just a moment? (A chart was placed on the easel.)

If they got the total two cents, and you can see that too on the tank car price by reason of the fluctuations in the retail price—they may not have gotten the full two cent increase. They must have gotten a very substantial portion of it, making all the allowances you want in their favor. But let's take two cents as a rough figure and multiply their gallonage by two cents, and see what it was worth to them to go into the spot market and, as they say, share their burdens.

If you multiply Standard of Indiana, a billion gallons a year by two cents, if they had the full two cents over a year, what would you get? Twenty millions? Twenty million dollars. Not a bad stake to be shooting for.

McDowell of the Mid-Continent Petroleum Company is the only one who testified on this, and he was asked about what his company might make on a two-cent raise over a year, and I think it was eight millions—maybe only two—I don't know; but it was a big lot of money, millions of dollars.

And there is a sort of representative rough figure from the biggest company in the scheme, and one of the
3909 smallest. And the other companies shared proportionately with regard to their gallonage.

Oh, this was not a trifling thing. These were great stakes, great stakes that they were working for.

Now, you may say, and properly so, after you hear my argument a little while longer—and I want to be perfectly fair—I said there were other forces at work raising prices, and I think there were.

I spoke about the Connally Act, I spoke about the allocations, increased consumer demand and better conditions, so that you cannot ascribe the whole two cent raise to this scheme.

I think, and they think, as their documents show over and over again, they think you can ascribe most of it to this scheme. But I don't care how much you take of it, I don't care how you figure it, any way you figure it, if this scheme contributed only a cent rise, if that is all it contributed, a cent rise for a year—a cent means ten million dollars to the Standard of Indiana, and proportionately the same amounts to the rest of these conspirators.

I asked for this chart because I wanted to call your attention to it. I hope you won't forget it.

This chart represents first the tank car market as
taken from the Oil Price Hand Book. This is for
3910 the regular gasoline, this line (indicating). This
one below is for the third grade. It shows this rise,
not in the beautiful steps I alluded to on the defendants' chart. It shows the rise in steps from March until June on both grades. Then it shows the total, and then it shows the prices here (indicating), and then the price level all the way down.

It shows a slight break in here (indicating) in May, when the grand jury that first investigated this case was called to Madison.

And up here (indicating) paralleling it roughly is a chart of the retail prices, and the spread between those two lines is roughly about five and one-half cents. That is the jobber's spread. He pays this (indicating) and he sells at this (indicating).

And that retail price as you see goes up as the tank car price goes. It lags a little bit because Standard of Indiana, which is the one that sets the price in the normal service station throughout this territory, waits until this tank car price has risen, to see whether it will hold, and it waits a certain number of days, seven days I think, before it jacks up the retail price to correspond, and during that period while it is waiting, gentlemen, the spread
the jobber gets is not five and one-half cents; it is
3911 even less, because his tank car price has gone up,
and he is still waiting for the retail price at which
he sells.

So on a rising market like that, in view of that lag in the fixing of the retail price, he gets less, substantially less than five and one-half cents, and he does not get any guaranty of help on a sub-normal market except where they give possibly some local protection on a particular contract and there is a split margin protection only. He is guaranteed a five and a half cent spread here (indicating on the chart), and if that narrows they don't give him the full extent to which it narrows, but only half of it. So that throughout this period this jobber got along on less than five and a half cents.

And Mr. Marcell's letter to Mr. Arnott—Marcell, the manager of the great big White Eagle division of the Socony-Vacuum Company—he wrote Mr. Arnott and said the marketing end would not make any money at five and one-half cents. That was all they were getting, and this jobber is getting less.

But, gentlemen, this is one of the considerations that I ought to mention with regard to power. These companies, almost all of them I think with the exception of Globe, are integrated refineries.

Now, what does that mean? It means they have
3912 crude, pipe lines, transportation facilities, refineries,
transportation facilities again, marketing right straight from the ground to the consumer. And if they have the right, or if they can get away with combining together, there is nothing to prevent them from switching that combine into any one of these fields of the business.

If they want to they can beat the price of crude to any companies against the independent crude producer, and make him pay the piper.

If they want to they can put in transportation in the pipelines in combination, if they are permitted to.

You see what they can do if they combine with regard to the retail sales, the tank car market. And if they want to combine and can get away from it, they can switch their power against the jobbers so that the jobbers, the dealers, the consumers, the independent refiners and the crude producers, and the people engaged in transportation, with all be at their mercy, wherever they care to switch that power.

And this retail price (indicating on chart) is hung partly on this (indicating), so that even though gasoline does not pass through the hands of jobbers—lots of it is sold by the major companies direct through their own stations—
the retail price is determined by the market leader in
3913 this area at five and a half cents, and if the tank car
price goes up the retail price goes up as well to the same extent.

Then somebody suggested, Well, how about the subnormal prices? And the subnormal prices, gentlemen, are those prices that prevail where there is a cut price war going on in a particular locality. And, gentlemen, these cut prices, subnormal prices, vary and change with these tank car prices just as well, because they are hitched onto these retail car prices which change with this (indicating on chart). So as the tank car price goes up the level of the retail, both normal and subnormal, go up as well.

And all these people knew that. And the price to the dealer, not only the jobber, but the little man that is under the jobber, the dealer, his price in those days was about three and a half cents below, to work on. His price was hung in here (indicating), three and a half cents to him and two cents to the jobber; and the price to the dealer, gentlemen, is hitched onto the tank car price, and the tank car price is made in these spot car markets, and that controls the price, not only which the jobber pays under these contracts, but the retail price, the price the consumer pays and the price the dealer pays, whether he is in a normal market or whether he is in a cut-price market.

3914 So you can see pretty well that when they raised that tank car price above what it would be if they hadn't operated in combination that they stood to get a net of that much increase or about (indicating). So you can take any figure you want on an average increase of 1.7 cents.

It wasn't up on this tableland (indicating) for these first few months. It was just coming up. So you can multiply for the whole here from this price where they finally got it—you have got to take into consideration while it was going up, they weren't getting the full two-cent advance or cent and a half advance there (indicating).

So if you make a computation, you get a sort of average increase of one and seven-tenths cents for the entire period from March 15 to June 16.

And if that is due, as they claim it to be due in these documents, to this combination, and if you multiply that by the gallonage of gasoline sold during that time, it was in the billions, and the defendants in this case realized together around seventy millions of dollars upon that computation from March 15 to June 16. Not a bad profit!

Oh, gentlemen, I have emphasized so many things 3915 that appear to me to be shocking in this case, but I have got to reserve some emphasis for you on the most shocking defense in this whole case, and that is this so-called half-baked attempt to put the blame upon the Government of the United States.

And I think it will be answered by a simple instruction from the Court that there was no Government approval within the meaning of the law that had suspended the Sherman Act during the entire time, even while the Code was in existence, and certainly not after the Code went out; through that entire time, the Sherman Act was unsuspended, and there was only one way to suspend it, as I have said, by submitting this plan—and it could have been submitted—they may say it wasn't concrete enough, wasn't formal enough, to submit it for approval—oh, yes, it could have been submitted and approval could have been asked, and any consideration could have been given by the highest authorities in Washington—not any casual talk, any curb-stone chatter, but a full consideration could have been given by those who were responsible for the enforcement of the Sherman Act, and by the higher officials of the Department of the Interior.

And, as I said earlier in this address, the way it was pointed out to them, a perfectly plain way, and
3916 that was the refinery amendment. It said that the P. and C. Committee could authorize arrangements—arrangements? Get that word. I looked it up, the word, and it means "a plan taken in advance." That is what "arrangements" means in Funk and Wagnall's dictionary.

The P. and C. Committee could have organized a plan, a plan taken in advance for removal of distress gasoline from independent refiners with the approval of the President. Certainly, if that is written into the law, it doesn't mean that you could have arrangements—plans taken in advance—in this case not sponsored by the P. and C. Committee, but by Arnott and his colleagues without the approval of the President or any governmental regulation or sanction.

And, gentlemen, it is in evidence here that in 1934 there were pools, arrangements for the purchase of distress gasoline from independent refiners that had the approval of the Government. There were four of them. And they didn't work. They were terminated because the legality, even, when approved, was doubtful. And they were terminated in the fall of 1934. And these people knew it, and knew it well. And they hadn't been operated by Mr. Arnott on the authority of any stabilization letter.
3917 They had been operated by separate agencies with full knowledge, regulation and approval, of the Secretary of the Interior, who was delegated to approve these, too, by the President himself.

And Mr. Arnott, who had already been holding meetings of major company refiners—it wasn't a new thing for him—gets a letter from the Secretary of the Interior—and I might as well discuss it because I know they are going to discuss it, and they think a lot of weight is to be placed upon it, and I think and I think you will think that the letter is just as plain and unambiguous as anything can be.

The Secretary tells him in June, 1934, that:

"It has been brought to my attention that the

> market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states."

Now, they are little retail price wars in separate localities and states, having to do with retail price.

> "This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon."

3918 And the Secretary says these retail price wars are causing these other difficulties; not these difficulties of surplus causing the retail price wars, but they are just the other way.

> "Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the code and in the working of employes for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers—"

He is not talking of the tank car market; he is talking about the retail market.

> "—small independent marketers, who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve.
>
> "Under Article VII, Section 3, of the Code, it is the duty of the Planning and Coordination Committee—"

3919 That is the industry committee—

> "—to cooperate with the Administration as a planning and fair practice agency for the industry."

As a planning committee to make plans and suggest them to the Administrator.

That is the preamble. He says there are retail price wars that have caused a lot of hardship if unrestrained, and they will cause these other ills if they go on, and it is the duty of the Planning and Coordination Committee to plan with him.

And then he says:

> "I am, therefore,—"

This is what he says to Arnott:

> "I am, therefore, requesting you as Chairman of the Marketing Committee of the Planning and Coordination Committee—"

That is this industry committee. They had had various divisions, marketing division and refinery division and so on. And Mr. Arnott was on the marketing division and had to do with the retail situation.

> "—to take action which we deem necessary—"

Not what Mr. Arnott deems necessary, but which "we deem necessary"—that is the Government—

> "—to restore markets—"

3920 Speaking of the retail markets.

> "—to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent—"

Shows that he wasn't talking about the Mid-Continent field or the East Texas field or the tank car market of the general level of prices—

> "The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation."

The Petroleum Administrative Board was this government agency in this department that had the duty and only the duty of advising with him and to exercise administrative functions—no power to approve anything.

> "Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas—"

3921 That means areas next to them—

> "—where marketing conditions are similar.
>
> "Any activities of your committee must, of course, be consistent with the requirements of clause 2 of subsection a of Section III of the Act—"

And that was a limitation even on the President. These activities couldn't oppress small enterprise. And he warned him in this letter.

> "—and if in any section it should appear that

> this section is not being complied with, the matter should be referred to the Petroleum Administrative Board.
>
> "I trust I can count on your cooperation.
>
> "Sincerely yours."

There is a simple, plain letter. It just authorizes Mr. Arnott to appoint committees in localities where local retail price wars were raging, and to look into the elements of conflict that are present, to hold due public hearings, and then as a warning, he put the limitations on that letter.

Not a word in there to authorize him to go beyond that, and he doesn't propose to go beyond it not through the entire year of 1934 after he got that letter. Buying pools and things of that character—the tank car market—were being run under a separate agency with the approval 3922 of the Secretary of the Interior and not by Mr. Arnott. He knew it and everybody knew that that letter didn't authorize him to run any buying pools or stabilize any general level of prices.

He says, "to stabilize the price level—" that is the retail price levels—"to conform to that normally prevailing in contiguous areas—" So that, if we are talking of Squeendunk and there is a price war, he can schedule a public hearing so that the price will be on a parity with Podunk, a sister town.

It is too clear for argument that that letter didn't authorize him to go in and take the law in his own hands and run any such enormous plan as this without the approval of anybody.

And after that letter is received, it is perfectly plain on its face—Mr. Maguire, one of the defendants in this case, one of the Code chairmen under Mr. Arnott, sends it out to the state chairmen of the petroleum committees of the Code, and he points out in that letter, which is in evidence, July 24, 1934, written four days after that letter was received, and he points out its limitations.

He says this:

> "Great care must be exercised by these committees to comply strictly with the Administrator's instruc- 3923 tions and limitations as set forth in this letter. A report in quadruplicate should be sent to this office covering all of the facts developed by the committee comprising all reasonable data ascertainable and indicating the recommendations—"

That is all, "recommendations."

> "—or disposition predicated on the work undertaken."

And then he points to the limitations that are in the letter, that is, it applies to that section of the Code, that is referred to in the letter, so that there can be no doubt about its meaning to anybody.

3924 As I say, as the testimony shows, all through the rest of 1934, buying pools were never thought of as coming within the meaning of anything like that. They deal with retail situations, run separately and distinctly, under a definite authority, and terminated definitely and completely by the Secretary of the Interior.

And then what happens? In the opening statement,—and this is what I think is so shocking,—are at least ten statements made in the opening statement of the defense, making the claim of Government approval, of instigation, of request, of guidance, inspiration, inducement and encouragement by the Government. In that opening statement he talks about the President's ambition of partnership between Government and industry. Well, the President didn't have in mind, I am sure, any such partnership as this, where the laws are violated without let or hindrance. There was no partnership between Government and industry to run this pool in 1935, and all through 1935 and 1936, or any part of 1935.

And what makes this defense, or attempted defense so shocking, is that the Government, the President and the Administration, had toiled almost unceasingly with these people to help them in their problems through the 3925 depression. It helped them with their crude problems,—crude oil; helped them with the refinery allocations; had helped them with orderly buying pools, that were approved,—supervised. Help them with scientific research and information; working night and day with them. That was the Government's contribution to the partnership between industry and Government.

These people were not satisfied with that, gentlemen. They were so greedy, so lustful for power and money return, so impatient of orderly processes,—and I will read you some impatient, petulant language of Arnott himself about the Government; so impatient with the orderly processes; so impatient with the good that would come from the Connally Act; over the refinery allocations or the increased consumer demand. He was not satisfied with that, or with all the Government had done for them, but turned upon the Government and bit the hand that fed it.

And the fact that Arnott was trusted with that letter,—that retail stabilization letter, makes these activities all the more culpable. The fact that he was trusted makes this not only a violation of the Sherman Law but a betrayal of his trust.

3926 Oh, gentlemen, Arnott, who is being paid eighty or sixty thousand dollars a year, when he did very little work for his own company except rig the prices; not working in his own office, in his own company, but all over the country; working on price rigging. His demon was a lust for power. His whole arrogant demeanor on that witness stand; his top-lofty bearing discloses how lustful he is for power. Chief Stabilizer he is going to be.

Now, I say, gentlemen, that when he arrogates to himself powers of sovereignty, over and above the state or above the country, that he has taken without any shadow of authority; when he has gone beyond the trust that is imposed in him and takes on himself unwarranted powers of sovereignty and statecraft, and makes great decisions,—momentous decisions, such as these, on his own hook, I say that there is one quotation in literature that applies to him, and they are the words of Shakespeare that Hamlet used for his usurping uncle, who in turn arrogated to himself powers of sovereignty, and sold the diadem of the crown for his own self, for his own private power and self.

3927 And Hamlet called him, as Arnott might be called, "The Cut-Purse"—the pickpocket—the cut-purse of an empire; one who, from the shelf, the precious diadem stole, and put it in his pocket.

And then you will remember the telegram in the early part of 1935, from O'Shaughnessy, one of the defendants,—the President of the big Globe Companies, three in number, to Mr. Fahy of the Petroleum Administrative Board in Washington. He claims to be speaking for the independent refiners, and he wants something done. And Mr. Fahy, a conscientious government official, replies: February 11th, 1935;

> "I am sure you know that tank car stabilization in relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block."

Officials of the Government hesitate, because they wanted to be within the law. They considered the means, as well as the end. Not like this gang, for whom the end justifies any means whatever, Sherman Act or no Sherman Act. No, this public official says, "How to bring about a correction is the stumbling block." That is the thing to be considered. And then he says, "I may say, however, I see nothing in the recent Supreme Court decision"—that was 3928 the one invalidating 9-C, that had to do with hot oil,— a power that was delegated to the President which the Supreme Court said even he could not exercise, "which in any way endeavors to reach the solution." Endeavors to reach the solution. He adds that he is hoping for a report from a committee, and a recommendation, and he says he will consider Mr. O'Shaughnessy's suggestions; glad to have them; like to have any other suggestions that he might make.

And yet that innocent letter—that restrained letter—that clear disclosure of his own public responsibility, is paraphrased by counsel for the defense, in his opening statement here, in this way. I am quoting:

> "The Chairman of the P. A. B."

—that is Mr. Fahy—

> "as we shall show, not only expressed no surprise but said he saw nothing to prevent it being done."

Now, if you can torture any such claim as that out of that letter then you are a good torturer.

Fahy writes and says that he sees nothing in the decision of the Supreme Court that is going to prevent them all from working for a solution. He said the means is the important thing; that is the stumbling block, and he has 3929 got to give consideration to that and do it right; and receive recommendations and weigh them carefully.

And that is one of the things that they rely on as showing Government approval of this scheme, which disregards all means for the sake of achieving its own end.

In that same opening statement counsel alluded to Mr. Arnott as a fiddler. He said, "Somebody said 'what is this fiddler doing down here?'" It soon became apparent what he was doing. He was fiddling, not with a fiddle, but with the tank car price. And so, that is the origin of this pool.

And Arnott appears in the middle of March, before the Allocators' meeting and this is the impatience that he shows of going through orderly channels, of submitting his plan to the Government, so it can be scrutinized and weighed and its wisdom determined, and be approved if it is legal and sound. Just listen to this language. These are the words of Arnott.

Oh, thank heaven again for these documents. While we are on the subject of documents, did this ever occur to you? I think it must have,—that the only documents we have are documents from the various companies. 3930 Here were these tank car stabilization committees meeting time after time. McDowell's committee meeting month after month, through the Code period, and all through 1935 until 1936. Didn't stop until February of 1936. No minutes. No records. No orderly record of it kept at all. Great momentous decisions being made as to amounts, and to price, and to diverting gasoline, and all the rest of it. Just oral.

But here were minutes of the Allocators' meeting which Mr. Arnott addressed March 13th, 1935, page six of Exhibit 69.

He had gone before the Allocators' meeting because he was disturbed by the amount of surplus gasoline which the majors might have to take to run these pools. He was afraid that they might get their allocations increased,—these independent refiners, and then there would be more distress gasoline than the major companies would divide up and would be willing to divide up and take. A greater burden, as Mr. Sus puts it in his memorandum. And so he goes to the Allocators' meeting to discuss it with them, and that is his concern. And he tells them this:

3931 "I am telling you all this because I think the more you know of the whole plan the better we will get into this matter of allocations to these refineries and the more you will know what is back of it. I am perfectly conscious that we have made other efforts at times to have this question dealt with."

He is referring to the 1934 pools that were approved by the Government.

"It has always been done in group form. That has involved agreements, group agreements. Those of us who have had anything to do whatsoever with the whole national picture, who have come to Washington and have had any experience with the P. A. B. * * *" that is the Petroleum Administrative Board, "and eventually the Department of Justice, know just how long that road is, and for some good reason or for some unknown reason or for no reason at all those agreements seem to have disappeared; those outstanding attempts—and they were really sincere and worthy attempts—have disappeared in a sort of cloud of mystery, and I don't think I, for one, or anybody else can tell you just where they have gone—they are out of our minds, they are completed, they are finished, and we are not interested."

3932 Now, here is a man that is perfectly conscious of the only legal way in which this kind of thing can be done—and he alludes to those former attempts. And here is a man that is so impatient that he points to the long road

—he says how long the road is, to go in an orderly and legal way with the Government, the Department of the Interior, and with the Department of Justice, because that road is long—and thank Heaven it is long, and the Government doesn't go off half-cocked and approve any kind of scheme that anybody wants to bring in there—because that road is long, he is willing to take the short-cut, and take the law into his own hands. That is exactly what that means. And that shows how arrogant and how above the law he was.

And then, gentlemen—it is astonishing to say it, but it is true—in that opening statement of counsel for the defense, this claim was made. I will read it to you:

> "No hint of any wrong-doing came from any officer of the Government; no warning that any governmental agency deemed these defendants' conduct illegal."

Now, there wasn't any burden on anybody to warn them. People are supposed to know the law, and to act within the law. But I ask you, how can that statement of
3933 counsel be made with any sincerity, in the face of this letter that I am going to read to you? And it is written by the Secretary of the Interior himself, to Arnott himself, as early as April the 2nd, 1935—just about a month, a short month after this pool, or these two pools had gotten under way; and just about two weeks after Mr. Arnott had come in to tell the P. A. B. something about it. Now, here it is. I am going to read it slowly and carefully, and I want you to judge whether or not this gentleman didn't have full warning and hint of wrong-doing, in language too plain to be mistaken, when he received this letter of April the 2nd from the Secretary of the Interior. And then I am going to ask you how you can justify any such statement, that I just read you, being made.

And here is the letter:

> "April 2, 1935.
>
> "Mr. C. E. Arnott,
> "My dear Mr. Arnott:
>
> "I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts, which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area."

3934 Now, that is the specific thing that he is addressing the letter to—a moratorium by agreement among the major companies. And what is the moratorium? Well, we are told by Mr. Arnott himself that it is an arrangement whereby, for a certain period of time, a month, or two months, or three months, or whatever it is, all the parties who are party to it will agree not to take each other's dealers; so that, during the period, the poor dealer is tied hand and foot, body and soul, to one supplying company.

Now, that is the kind of thing that the Secretary heard was going on. And so his letter is addressed specifically to that complaint.

And he continues with the letter:

> "Although no evidence has been presented which would definitely establish the basis for the agreement entered into"—

Just think of that—no evidence had been sent in by Mr. Arnott with regard to this moratorium—

> "—it is possible that the companies involved are purporting to act under the authorization of my letter of July 20, 1934, authorizing you to designate committees, with authority to confer, to negotiate and to hold due public hearings in order to remedy
> 3935 unfair price situations."

That is that retail letter. He continues:

> "Several parties have complained to the Petroleum Administrative Board that the moratorium oppresses them."

I think it might.

> "I am not attempting, however, in this letter to pass on the wisdom of the moratorium."

That means whether it is wise or whether it is proper, if legal. He doesn't know enough about the facts; it hasn't been reported to him; he can't pass on that.

> "The matter that at present concerns me is the necessity of complying with the requirements of the basic law."

Because the Secretary of the Interior knew that the law is supreme. He is concerned with it as a public official. He knows his powers don't rise higher than the law; and he knows all the more that any powers that he may have delegated in that letter couldn't rise above the law, or any activities that they might be undertaking can't violate the basic law.

And he continues:

> "In authorizing the formulation of the stabilization program, I necessarily conditioned the authority
> 3936 granted by providing that the requirements of Clause 2 of subsection A of Section III of the National Industrial Recovery Act should be observed.
>
> "I know you will appreciate that agreements"—

Now, this isn't only confined to a moratorium; this is any agreements—and they don't have to be formal ones—understandings—

> "—that agreements between supplying companies, which might be in conflict with the anti-trust laws of the United States, require specific approval after due consideration, if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery act."

That is, the National Industrial Recovery Act provided that people that acted in reliance on and under agreements that were approved under the N. I. R. A. would be protected against the Sherman Anti-Trust Act. And this conscientious high official, writing to Arnott a month after these pools started, is calling his attention to that very specific thing, and telling him that agreements between supplying companies which might be in conflict with the anti-trust laws have got to be specifically approved after due consideration. And that means all agreements, agreements on moratoria, or on tank car prices, or on anything you please.

3937 And then he continues; he doesn't even just give him that warning; he goes even further, and he drives the point home:

> "I understand that the temporary character of some of the situations and the need for immediate action have made formalized"—

That means a written-up, formal agreement—

> "—formalized agreements impracticable, and in a number of instances, they may be unnecessary."

He doesn't even commit himself on that.

> "However—"

Here, he is just writing it so plain that anybody could understand it, and certainly a brilliant, smart, aggressive man like Mr. Arnott and his associates—

> "—when the understandings arrived at as a basis of solution of price wars, affecting the industry over a considerable area, or intended to operate over a definite period of time"—

You remember Jacobi's testimony that they started this thing off for a month, and then they were going to continue it from month to month; and they did have these monthly meetings to kick it along and keep it continuing over a definite, long period of time—

> "—or involve substantial changes in the policy of

3938 the various supplying companies"—

And remember the testimony in this case that these major companies did under these pools what they wouldn't have done otherwise; they bought gasoline that they wouldn't have otherwise bought; they bought it judiciously; they placed their orders where they would do the most good at the moment; they took it whether they had immediate need for it or not—

> "—made only in consideration"—

That is, in reliance upon—

> "—of similar action on the part of other companies—"

And what have you here? One company didn't go out here to buy up this surplus, to help the independent refiners and to rig the price. No. They got in a meeting, and they divided this up; and one man took Champlin as his dancing partner, and another took Eason, and another took Bell Oil & Gas, and another Wilcox, and another Taxman, and so on—each company participating because the others were going to help him share the burden. It would have been useless, foolish for one of these major companies to have attempted to go it alone, because he would have had to compete with the other major companies that wouldn't come in with him. And they could have broken
down his efforts. That is what competition is. So,
3939 it was necessary for them to have the whole gang, or
almost the whole gang, so that they could divide this
surplus up.

And so you have in this very pool an understanding—let's look at these words again—

> "—an understanding affecting the industry over a considerable area"—

And you can't doubt that, can you? Over ten states of the middle west—

> "—intended to operate over a definite period of time—"

And you can't doubt that—

> "—or that involve substantial changes in the policy of the various supplying companies"—

And you can't doubt that —

> "—or made only in consideration of similar action on the part of the other companies,"—

And you can't doubt that. All four elements are present here. Then, what does he say?

> "—it is necessary that the procedure required by the Recovery Act be followed, in order that the arrangement be legal."

He uses the very word of the refinery amendment, "arrangements for the purchase of distress gasoline"—remember it? "Arrangements,—a plan taken in advance."

> "—in order for the arrangement to be legal. If any
> 3940 such arrangements have been made, I should like a report as to them."

He doesn't say, "I have already got a report as to them." He didn't have. He says,

> "I want a report, if you have got any such arrangements in the retail picture or in the tank car picture or in the crude picture, or anywhere else. If you have got the kind of arrangement that I have described there, I want a report on it."
>
> "If they require approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act."

Give consideration to it, see whether it is wise, see whether it is legal, see whether it has the right limitations in it, before he will approve it.

And then he closes with complimentary language about appreciating

> "—your cooperation with the Administration in carrying on the difficult work of directing the program of stabilization,"—

that was the retail price stabilization—

> "—and I know that you will understand that this action is necessary in order to comply"—

3941 this action that he is having, or this action that he is suggesting to him—.

> "—this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility.
>
> "Sincerely yours,
> "Harold L. Ickes,
> "Administrator."

Well, if that isn't a warning—if that isn't a note—or a hint of wrongdoing—if that isn't clear A, B, C's pointed out to this gentleman in the very early stages of his activity—then I don't know how in the world you could make him understand anything.

No, no reports forthcoming. He goes full steam ahead. He has got his crowd organized, and they are going full tilt, and congratulating themselves in letter after letter about the results they are getting. He is not concerned with the basic law of the United States. He knows how long that road is, he says. He is going to take this in his own hands, as Chief Stabilizer of the United States. And so he keeps on running his program through April, and into May.

And then he is called in for a conference on May 8th.

And Frey testified.

3942 You remember John Frey. You saw his demeanor on that witness stand. You don't think he was lying in favor of the Government. And when you think of him, just think of him, if you will, as opposed to Arnott on any negotiation about anything. Just contrast those two men: The cold, aggressive, brilliant, superior, dominating, ambitious figure of Arnott, as against the incompetent Frey. And you can put reliance on this part of Frey's testimony: He wasn't going to testify in favor of the Government on that issue. And what does he say about the May 8th meeting?

He testified:

> "There was some discussion with respect to the buying program, and in substance Mr. Arnott was told by Fahy"—

that is, the Chairman of the Board—

> "—that he had no authority under the Code or under the letter of July 20th to operate any programs."

He testified that the question of approval of buying programs

> "—arose in a substantial"—

I have "substantial", maybe it is "incidental"—

> "—way on May 8th, toward the end of the meeting. A few questions were asked as to whether the buying was continuing, and whether Arnott was taking the letter of July 20th as authority for his work. Arnott
> 3943 said that he was not relying on the letter of July 20th for approval; that the buying was still on an informal basis."

There you are. There are two clear-cut warnings, hints of wrongdoing, which I hurl in the teeth of that opening statement. There is the letter of April the 2nd from the Secretary himself; that is too plain for words. And here is Frey's testimony about May 8th, where Fahy told him, told Arnott what? That he had no authority under the Code, and so forth.

And then comes this other amazing statement from the opening statement—gentlemen, it is just full of the most outrageous, challenging claims that couldn't be substantiated, and never were substantiated. He says this in the opening statement: That after the Schechter decision—

and, gentlemen, it came here in May (indicating on chart), right shortly after this started, right up in here, before they had come to this complete rise, in the early months of the conspiracy—this gentleman tells you in his opening statement, and I am quoting:

> "After the Schechter decision the defendants followed that—"

and he is speaking about this buying—

> "—at the instance of the officials of the Oil Administration."

3944 Now, there is just not any proof of that whatever. On the contrary—on the contrary, there is a telegram sent by Fahy of the Petroleum Administration Board to Mr. Arnott on May the 28th, 1935, which is a day after the Schechter decision, which says:

> "In view of Supreme Court decision holding codes invalid authority of Administrator of Petroleum Code to you and those with you in stabilization matters is suspended and until further word all such activities must be purely on voluntary basis without any sanction from the Administrator."

Gentlemen, that is addressed not only to his illegal, but to his legal activities. Everything that he might be doing under color or claim of authority is terminated and suspended, even those retail stabilization matters that he was authorized to do.

In the face of that, in the face of that suspension of any authority whatever with regard to retail matters or any other matters, how can the claim be made, as was made in this opening statement, and left unsubstantiated by a scintilla of proof—how can the claim be made that after the Schechter decision the defendants followed that at the instance of the officials of the Oil Administration?

Oh, gentlemen, let me just allude for a moment—
3945 and I will be very brief—with regard to the meeting on March 12th, where Arnott claims to have come in and reported to these minor officials of the Department of the Interior; and let's see what transpired there, out of the testimony of Dr. Frey:

> "Fahy asked Arnott with regard to this pool that he was telling him about. He didn't tell him it was a pool. He told him it was voluntary purchases"—

one major company just voluntarily buying from other companies on an individual basis; no pool, or concerted effort.

But Frey, or rather Fahy asked Arnott whether their purchases would be in violation of the anti-trust laws. How about that for a warning? How about that for a hint? March the 12th.

> "Mr. Arnott stated that he did not ask our blessing."

Frey can't remember whether they were his exact words, but that was the substance of what he said—and you can just hear it, his supercilious remark: "Oh, no, he was running it himself, on his own responsibility."

He says:

> "Mr. Arnott"—

and I am quoting again from the testimony—

3946 "—said anything that was being done by him was being done on his own responsibility."

And Frey says that remark was made on March the 12th, and it related to this buying.

And Frey says—and I am quoting:

> "Mr. Arnott did not ask our authority for the buying program, and he was doing it on his own responsibility. That is a characterization, and not an exact statement"—

but it was the witness' best recollection of what Arnott said. And who will you believe with regard to what was said at both those meetings, March 12th and May 8th, with regard to the buying programs—Arnott or Frey?

Gentlemen, you remember the nice, attractive, old gentleman named Collett, who took that stand. He was Chairman of the P. and C. Committee during this time. And I remember, I took him on cross examination. He said he was present on May 8th, and he was present later, when Mr. Arnott and Mr. Fahy were talking. And I asked him on cross examination, to find out just what was told the P. and C. Committee, and just what was told the P. A. B., the Petroleum Administrative Board, about these activities. And his testimony shows what the P. and C. Committee were told.

3947 They weren't told about Jacobi's meetings several times a week; that Jacobi, Tuttle and McDowell were a committee; that they made eight or nine price recommendations; the names of the companies that were buying; how much they were buying; how many of them were buying; how high the prices were going to be raised. He didn't tell them about the meetings of the Tank Car Stabilization Committee, to be held once a month; that they continued on, with or without a code; or Buckley's cooperation with Arnott in finding buyers for the East Texas program. No, no, no, he said, that wasn't told. Well, it was a very small shell of a thing that was told. And why wasn't it told?

Because Arnott didn't deem it necessary to tell anybody. He didn't want any approval; he didn't want any praise. He was doing it on his own responsibility; he wasn't doing it under that letter; he was doing it on his own. And, the less the Government knew about it, the better, because he said at the Allocator's meeting, in the Allocators' minutes:

> "We have had some dealings with the P. A. B. and the Department of Justice, and we know how long that road is."

And they weren't told that these companies were
3948 buying all of the distress gasoline, as these letters
show; that there was a concerted program; that they had their eye on and were placing their emphasis on the trade journals; and that they were obligated, had definite allocations and shares of this distress gasoline that they were to buy, as these documents clearly show—and I can read them to you. They weren't told that they were making regular purchases, regular and continuous purchases so that the tank car market would be sustained; that they were placing them judiciously, diverting the East Texas gasoline from this area. They weren't told the extent to which they themselves were benefiting by that increase in the price; the extent to which they were hurting the jobbers, who were signed up on these contracts; the extent to which they were sponsoring and urging curtailment of runs, so that there wouldn't be too much for them to absorb. Those things weren't told, even to these minor officials, much less submitted for approval to the only authorities that could approve, the Secretary of the Interior or the President of the United States.

Oh, gentlemen, the defense are going to lay a great deal of store—and how they can, I don't know, in view of that
record—on an excerpt from a report, an annual re-
3949 port, a printed Government paper from the Secretary
of the Interior. And they are going to try to have you misconstrue and misunderstand what the Secretary was saying in that report.

And I have got that excerpt here, and I am going to read it with you, because we don't want to have any difficulty about its meaning. In view of all this history that I have just given you—and you must be weary of it—of what stabilization, legal stabilization was, retail price stabilization, public meetings with regard to Squeedunk and Podunk —and with all that evidence as to what it was not, that it was not rigging tank car prices with buying pools—then you can understand, I am sure, the full meaning of this statement upon which they rely so heavily.

And here it is—it is taken from pages 37 and 38 of the report:

> "The operations of the Tender Board"—

that is, the Connally Act, holding down the hot oil—

> "— of the production provisions of the Code and Refinery Amendment, and of the Stabilization Committee of the Planning and Coordination Committee, with the cooperation of the Petroleum Administrative Board"—

and in so far as those activities were legal, it had that cooperation. So far as it was dealing with public matters under the strict authority of that letter, it had full cooperation from the Government— 3950

> "—brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935. The work of the Stabilization Committee contributed very largely to"—

What? To boosting that price by pools? No, no. Being specific now, as to what he means:

> "The work of the Stabilization Committee contributed very largely to the elimination of excessive marketing abuses, which tended to keep the retail markets in an unsettled and unstable condition. One of the difficult marketing problems of the year revolved around the question of price differentials"—

again, he is talking about the retail prices—

> "—as between the different types of marketers."

Like the trackside marketer and the other marketer.

> "—The Stabilization Committee, authorized by the Administrator in July, 1934, was successful in resolving many localized conflicts, and in compromising issues which had brought on drastic price wars."

Now, that is all that means. The Secretary is ascribing this improvement to the Tender Board, to the allocations, and to the stabilization—the legal and properly understood retail stabilization activities— 3951 and not to what these gentlemen would have you suppose were legal stabilization activities, because they weren't, the rigging of this tank car market by buying pools. That is not alluded to directly or indirectly in that statement.

And that, I think, concludes that part of my argument that has to do with any claim—and I say it is a shocking claim—that the Government inspired or induced or approved those things that they condemn them for now. And the claim was made, even, gentlemen, that the Government made them dance—speaking of the dancing partners in that opening statement, who claimed that the Government made them dance. Well, I submit to you the record on Government approval in answer to that.

The Court: I think we will suspend now until 9:30 tomorrow morning.

(Thereupon, at 5:15 o'clock p. m., an adjournment was taken to Tuesday, January 18, 1938, at the hour of 9:30 o'clock a. m.)

3952 Mr. Lewin: May it please the Court, and gentlemen of the jury.

You gentlemen may remember when Mr. Arnott was on the stand he told you about a gentleman down in East Texas, a buyer down in East Texas that Mr. Carnes had. Mr. Carnes is vice-president of the Sinclair Company, and this man Mr. Arnott spoke about was Mr. Tracey. Mr. Tracey was the active buyer down in that field for the Sinclair Company.

Mr. Arnott went out of his way to tell you and to tell us that Mr. Tracey was the man that knew all about these things, he was exceptionally well informed. And that is a fitting introduction, I think, to what Mr. Tracey says about this situation March 15th, 1935.

3953 Now, here is the man that Mr. Arnott says is the expert on what is happening in the field, and Mr. Tracey writes to Mr. Brown of the Root Refining Company, an independent refiner:

"Just after I talked with you I had a talk with Mr. Dinkins"—

Mr. Dinkins is another official of the Sinclair Company—

"and he is of the same opinion that I am, that it seems unsound to pay more than U. S. motor price for material made up of U. S. motor gasoline and kerosene, but in the interest of higher prices we are trying to get the tractor distillate price in the rice belt raised a penny. In event we do over the next two weeks we will discuss better future and better payment for this grade of fuel at that time."

He says it is better to pay U. S. motor price for stuff that is made up of U. S. motor diluted with kerosene, but since he is trying to get the prices up he is going to discuss doing that very foolish thing. And then he continues:

"Don't forget that it has taken some intense active work on the part of all of us to get the U. S. motor and H. C."—

that is Sinclair's regular—

3954 "price in tank cars where it is today."

This is the significant sentence on what caused this; this is from the expert:

> "Jobber demand did not do it. You know exactly what I mean.
>
> "Yours very truly,
>
> "William A. Tracey."

I went over yesterday at some length, and I think I exposed, not with argument but by pointing to the evidence, a number of these so-called defenses, and now I come to one that I think is the most—I mentioned the most shocking one yesterday; now I come to the one that I think is the most ludicrous of all, and it is this pious claim that they were in the scheme which netted them millions for charitable purposes, to help the independent refiner. That is the way they like to phrase it over and over again.

What a change of heart, if that is true, from the history of rough treatment that they gave the independent refiner through the years as revealed by that Shatford testimony.

There are a number of other answers to that claim, and I think the most significant one is this:

You remember that in January and February of 1935, before they got this pool started, they were talking about it, this tank car stabilization committee, so-called, was
3955 having its meetings. They considered that the prices were low, and they considered that the independent refiner needed assistance. He had a lot of surplus gasoline; Mr. Bourque was there, and he had an estimate of it in January, of how much it was and where it was, and Ashton's and McDowell's committee met and discussed it, and there it was, perfectly legal to buy, not made of hot oil, and those people claimed they were going to buy only what they needed. They were only to select companies that they bought with before, with whom they had a course of dealing before; and they testified on the stand that it would have helped the independent refiner just as much, if they wanted to help the independent refiner, if that was really what was in their hearts, if they had purchased that gasoline from him in January and February instead of waiting until March.

It was just as good gasoline. They claimed to need it; they knew where it was, it appeared on the chart, and it would have helped the independent refiner just as much, except that it would not have raised the price.

And it is true that there were some uplift buyers—that is what Buckley called them, uplift buyers. You remember he tried to tell you what that meant—men who were buying personally for their own needs, and he said it was some

kind of a code expression that was known only to
3956 himself and Mr. Brandli, and when he used this
mumbo-jumbo called "uplift buyer", that did not mean what it meant to any other person, but it meant people buying for their own needs, and he almost got away with that fraud.

But under cross-examination and questions from his Honor, it appeared that "uplift buyer" meant exactly what it says, buying above the market, and there were some of those uplift buyers that he mentions in those early letters, and they were going it alone. There are some letters that show you what their claims were. They were not having very much effect. But these people in McDowell's committee, they held off. Here was the gasoline, here was their claimed need, just as legal gasoline; they knew where it was, did not have to have any additional committee work to find it.

It would have helped the independent refiner just as much in January and February—and I think this test of sincerity tests the whole thing—but they held off awaiting word from the chief the method of working out, awaiting word from Arnott, when they spring this trap. Waiting for the Connally Act. Why waiting for the Connally Act? Waiting for the Connally Act because until the Connally Act was passed their scheme, although it would help the independent refiner just as much, would not have helped
themselves, it would not have raised the price, be-
3957 cause they needed the Connally Act to keep off
that flood of hot oil.

If they had started a buying program before the Connally Act they would have been mopping up the ocean.

So they had to wait until the Connally Act, not to help the independent refiner, oh, no! but to help themselves. And as soon as the Connally Act was passed then they could superimpose on that a perfectly legal restriction on output, this artificial scheme for increasing the legal demand, and that was what they were waiting for, and here is the proof of it (indicating chart).

There is their own chart, right there, chart 869, put in evidence not by the government but by the defendants themselves along with the rest of these charts.

You see the dots. I told you about the dots; they represent individual purchases. They do not represent there the tank cars.

You see how the trend of those purchases in the Mid-Continent field continues after the buying pool starts, harmonizes with this trend in the tank car price, most of them running along here in the low which is the general market.

But here is the important dot, right there (indicating on the chart) in January, and it shows that in the month of January notwithstanding the fact that McDowell 3958 and his company well knew the independent refiners needed this aid, he made no purchases, and in February he did not make any purchases at all, and he did not start his heavy purchasing until he got his buying program going after the Connally Act. Why? Because he knew those purchases then would help rig those stairs, and that is the only reason.

When that same question was put to Mr. Arnott he had to come to the same conclusion.

But, gentlemen, I think that claim is unmasked for what it is.

There is a statement right in this open statement that reveals it. Mr. Donovan told you in speaking of the major companies that he represents:

> "There intelligent self-interest told them it was good business to do that",

And there the cat came out of the bag. It was good business for these high-powered businessmen, and they knew it, for their intelligent self-interest. That is not charity or helping the independent refiner.

Arnott testified that one of the reasons they wanted to wait for the beginning of that program until the Connally Act was passed was that he knew he could not get the tank car market price up and could not get the published tank car price up.

3959 So this claim of helping the independent refiner is just another way of saying they wanted to increase the price. And wherever in these documents they use that self-serving term of helping the independent refiner, because they must have felt then, even then, gentlemen, they must have been conscious of the selfishness and cruelty of this scheme; so that sometimes when they write about it and they talk about helping the independent refiner, and whenever they state in here in these letters and documents, the rest of the companies say exactly what that means—it means help with regard to price.

And I ask you, gentlemen, if the independent refiner is the one that they are taking under their wing to help for any particular reason the independent refiner, then why are they buying surplus gasoline from the brokers, and they were doing that, these witnesses testified to it and the documents disclosed it, whenever the brokers had gasoline that would be sold below the price these people wanted to maintain they were buying it up, buying it up in the Mid-Continent field through brokers like Dale W. Moore, buying it up in Chicago from brokers like Vaughn; and buying it up from brokers was not helping the independent refiner.

Gentlemen, there is another thing that unmasks this claim.

I read you yesterday the sardonic cruel sneering
3960 laugh that Jacobi inserted in one of those letters about the poor jobber will be fooled this time.

Well, there is the same kind of evidence in here as to their attitude towards the brokers. Let me read it to you.

Lakin, the high responsible vice-president of the Shell Company to his president Fraser, April 10, 1935, Exhibit 185:

> "No appreciable surplus gasoline exists in the Mid-Continent or North Texas; small quantities of low octane (estimated not to exceed 25 cars) are in the hands of Tulsa brokers who are offering it at one-eighth of a cent below published low quotations in an effort to disrupt the buying groups program. The group's practice of buying directly from refiners, thus depriving brokers of their commission, is one of the factors responsible for brokers refusal to support the buying program."

3961 So, may it please you gentlemen, they not only had a laugh up their sleeve at the jobbers, but they were rigging their buying program so that they would leave the brokers out in the cold on their commissions; and they only bought from them when they had to, as a letter from Jones, a vice-president of the Socony-Vacuum, shows to you. He says, "Our policy is to buy direct from the independent refiners." They bought from these brokers when the brokers had gasoline that otherwise would bring about lower prices, which was the be-all and the end-all of these people's objective.

And I don't believe people that are capable of that kind of attitude toward their fellow-men—their attitude toward the jobbers, and the dealers; their attitude toward the brokers—I suspect very much that that change of heart is mighty temporary that comes about on the first of March, when the Connally Act is passed and they have got a chance to make millions of dollars if they rig this price.

And here is a communication from an official of the Shell Company, January the 4th, 1935, that bears out this same argument. Here is January the 4th, 1935, two months before they launch the program, they are working on it. And he says in this telegram:

3962 "Your TA 35 Rock Island offer of gasoline prefer wait until general program arranged do buying as do not believe individual purchasers will assist quotations."

This man wasn't talking piety then, was he? It would have assisted the independent refiner—but he preferred to wait until they could all get together; not because it was necessary for them all to get together to help the independent refiner and take his distress. They preferred to wait, as they didn't believe individual purchases would assist—not the independent refiner—but the quotations that they are going to enjoy.

An official of Shell to another official of Shell, March the 6th, '36:

> "We believe that the Bell Company"—

that is an independent refiner—

> "—is anticipating a rather extended period of buying by the majors of gasoline at inflated East Texas prices and expects to sell the maximum output of three plants for the months to come."

Now, here comes the right note as to their attitude toward that. Continuing:

> "Should the major purchasing companies elect—"

in their own power, gentlemen—

3963 "—elect to withdraw their support, the picture might be changed."

So he has got a laugh up his sleeve for the independent refiner, that they claim they are trying to help, who relies on this program and makes his plans accordingly, because—and they have that laugh up their sleeve because they know that so long as the Government doesn't interfere with them, they can elect as and when they please.

So much for that, gentlemen. There is lots more. I am being perfectly sincere when I tell you that I am just skimming, just leaving out document after document that supports this Government's case just as fully as the ones I have read, because I don't want to inflict you gentlemen with any more than I think is necessary to recall to your minds a fair sample of, I almost might say, the tons of evidence in this case on every one of these points.

Now, I touched once before on the question of the defense of need, and I am not going to dwell very long on it.

I told you gentlemen what I believed the law to be, that if you find the power in this great group of corporations,

acting together; and if you find a combination, and if you find a purpose in that combination to affect
3964 prices—and I say, gentlemen, you can't find anything else on this record—then it makes no difference about their needs or their un-needs.

As I said before, under the law a man can buy his own needs, or can buy stuff he doesn't need if he acts individually. That is the right of free-born American citizens. But his needs or his surplus beyond his needs makes no difference whatever when he comes to acting in concert, having a dominant position in the industry and in interstate commerce, to affect the prices.

But, even if it were a defense on the law, which it isn't, the facts overwhelmingly establish that it is unsound as a matter of fact. And when I say this, I don't make any claim that they couldn't use this gasoline, or that at some time or other during this entire long period they didn't need some of these purchases.

One illustration would occur to you right away. There might be cases in which a company might make a freight saving. Instead of shipping from their own large refineries, they might have a customer out here in the country some place, near a small independent refiner; and they might be able to buy that gasoline and ship it to him at a lower freight cost. That would be pretty plausible as a basis for needing some of this gaso-
3965 line. It wouldn't cover very much of it, but it might be a basis—freight savings might be a basis for some of it.

But, gentlemen, the astonishing thing is, as these documents reveal and I will show you, these companies didn't get any credit in the pool for those purchases. When they bought to save freight, the buying program committee didn't give them any credit for those purchases against their share or allocation of the burden. They said, "Oh, no. You bought that because you wanted it, because you needed it, because you could save something. You have got to buy more; you have got to buy stuff you don't need and don't want; you have got to help share the burden if you are going to get a benefit."

Now, I will just run over the points that have been made a little bit. Remember what I told you yesterday about the fourteen cargoes of surplus gasoline banked up at the Gulf Coast. You remember Mr. Swensrud's testimony about freight rates and water rates; how you can ship around by water, up the Mississippi and through the Great Lakes and down the St. Lawrence. So there was nothing

to prevent this gasoline, if it was needed, coming in here. There was nothing to prevent the big major companies on the East Coast, who were buying in East Texas,
3966 transporting this gasoline to the East Coast, there was nothing to prevent them from buying it on the Gulf. And those fourteen cargoes, I believe, amount to something like six hundred or eight hundred cars a month for a period of six months—just about what they were buying in the East Texas field. They could have been supplied for six months out of the accumulation of gasoline at the Gulf. And just bear that in mind when that claim of need is made.

And bear this in mind too, if you will: Mr. Barkdull, an official of the Standard of Indiana, on that stand, told us that on March 1st, 1935, his company was short 42,000,000 gallons of gasoline of a 45 days supply, which is what they like to keep on hand. And, gentlemen, Standard of Indiana's participation in this scheme was to buy around seventy cars a month from the Waggoner Company. And it is a drop in the bucket, it is a drop in the bucket; so much a drop in the bucket that these officials just frankly admitted on that stand that that purchase of seventy-five cars by the Standard of Indiana couldn't have any relation whatever to satisfying any needs of the company. And he said, Barkdull himself said that there was no estimate prepared in his company that would include that seventy-five car purchase—they weren't banking on it, or that
3967 the purchase fitted into any plan of the company for increasing the storage that they thought they were short. And he testified that the inventory at the end of May, '35, of his company alone was in excess of a half a million gallons—no, no—was in excess of 160,000,000 gallons—160,000,000 gallons. And that sixty cars, only sixty cars were purchased from Waggoner in that month, and that amounted to less than a half a million gallons. You can just tuck those seventy-five or sixty cars a month into a corner, into a trivial corner of the storage tanks of the Standard of Indiana.

And Shatford, too, an expert, on that stand testified that seventy-five cars a month for the Standard of Indiana could signify nothing, could signify nothing as to the needs of that company.

And then bear in mind, on the question of need, that Buckley was at work, exerting every effort all through those months, not only through the months of the Code, but on down through the summer—on the telephone, long distance calls month after month to Hartmann, to Arnott,

to Carnes, to Robinson—long distance calls charged to the East Texas Refiners Association. You remember when I turned on him there once when he was on the stand, and asked him why or under what authority he was work-
3968 ing down there in the summer of '35? And he gave you this weak answer: He was doing it on his own—doing it on his own, entirely on his own, he said.

Here is this liaison man, referred to by Arnott in the Allocators' minutes, a Cities Service man, being paid by Cities Service Company the entire time; being lent, that is the phrase they used, lent or loaned by the Cities Service Company to this scheme, and paid on down through the summer of '35 and into '36, and devoting most of his time to this scheme, helping the independent refiners, if you like. And he has the nerve to tell you that he was working down there on his own, on his own responsibility, through the summer of '35—still drawing his pay from his company; still having his expenses paid by this Association; still hard at work getting buyers, major company buyers in this pool. And if he had to work hard, gentlemen, to get the major companies to come in there and buy perfectly good East Texas gasoline—nothing wrong with it at all—just weigh that, if you will, against this claim of need. When people need things the way these people would like you to believe they needed these six or seven hundred cars a month, they don't have to have people parking on
3969 their doorsteps, calling them by long distance and all the rest of it, urging them and urging them and urging them to take what they need.

And bear in mind on this subject of need, too, gentlemen, the testimony of Evans—you remember that little Evans of Barnsdall. Through this period when he was buying, when McDowell would call and tell him where to buy each month, the Barnsdall refineries were operating at only sixty per cent of their capacity. If they needed gasoline, it wouldn't have cost them very much, gentlemen, to have stepped up their capacity to cover the trivial amount that was assigned to Barnsdall to buy. Running at only sixty per cent of their capacity—and that is expensive, gentlemen, to run at sixty per cent of your capacity, because it means you have got all that investment there that you are not using—and buying on the side, in order to support the price. And when you consider that, I don't think you will think much of that claim of need here.

And so it goes. And the most outrageous example of it is down in the winter of '35 and '36. And I suppose they will still claim they needed this gasoline they were buy-

ing, when a heavier buying movement got under way
3970 in the fall of '35; when the consumption was the low-
est, storage mounting, storage stocks a problem to
the industry; one of the worst winters we have ever had;
this entire North frozen over, automobiles not running—
buying, buying, buying to hold that line—a heavier move-
ment. And Jacobi testified that some of the companies
were having difficulty in taking the gasoline in January or
February of 1936. Does that look like need?

3971 Buckley, April 18th, 1935, wrote this letter to an
independent refiner. Exhibit 40. This independent
refiner had sold Buckley in the pool, at a low price, when
the pool started, and then the pool raised its price, and this
little independent refiner thought it was hard lines that he
had to ship at that low price, to start the pool, so he wants
to cancel out.

Buckley, who was interested in helping only the independent refiners, writes him this letter that exposes whether or not the Cities Service Company needs to buy this gasoline from him for the market.

This is what he wrote to Robertson, of La Pren. La Pren is one of the little independent refiners in East Texas:

> "For nearly three months have spent practically all my time working in the interests of a group of East Texas refiners, of which you are one."

That is soft soap, isn't it?

> "Through my persuasion". Persuasion—, does that sound like need?
>
> "Through my persuasion Cities Service Export
> Oil Company was induced to buy from East Texas
> refiners during the latter part of February and
> 3972 March more than 600 cars of gasoline, very little of
> which, at the time of purchase, we had reason to
> believe we would need. The results of such purchasing is plainly apparent."

Results plainly apparent. Of course it is. That price rise. "Every car of that material except the orders we have standing with you has been shipped."

I will ask you to weigh that,—and I put that to Buckley, and you remember he told you he was lying to Robertson, and I leave it to you when he was lying, whether he was lying to Robertson, or lying to you.

June 29th, 1935, Chamberlin, of Pure, a buyer for The Pure Oil Company, to Cline, the manager of the East Texas Association: (Exhibit 327) Indicating clearly that these people had shares and allocations in this pool of gasoline, that they were taking from these independent refiners, that they didn't want. Some of it was off-specification stuff. Didn't want it. Had to reform it in their plants, in order to use it. Here is the letter. Does that sound like need? Here is the letter.

> "In addition to this, both Chief and Grogan—"

3973 two independent refiners in the East Texas field—

> "and an occasional car from Wabash does not meet the specifications of our purchase order. I am not so sure, Bob, but what assessment of some penalty for failure to follow our instructions as to specifications and shipping dates, would be more effective than continuing registration of our complaints. However, before taking this action, would appreciate an expression from you. We don't want to do anything to upset the apple cart or work an undue hardship on you but we are getting 'damned' tired of the negligence and indifference exhibited by these refiners."

One official of Skelly, to another, October 17th, 1935. (Exhibit 124)

> "As you probably know, we don't have much choice as to whose material we are to take, when we purchase outside third grade gasoline in connection with the Buying Program Committee's operations."

They don't have much choice. They are not free as to where they shall buy. They are bound. They are not legally bound, of course, because nobody can enforce an understanding in violation of the Sherman Law. But they feel they are bound. They have no choice.

3974

> "On such purchases, we have refineries assigned to us, and, as you might expect, such refineries are small outfits who just make motor gasoline, and don't make any effort at all to make their product suitable for use in pressure gas appliances. Even if we did have some choice, it wouldn't do us much good because, as far as making an extra fine product suitable for this special use is concerned, they just wouldn't be interested, for they aren't that kind of refiners."

And then he goes on about some more. I don't think it necessary to read it.

Well, what do you think of that? They haven't much choice. They have got to take this stuff even though they don't want it; even though they can't use it in the pressure gas appliances; taking it because it was assigned to them by the Program Committee.

And from the same person to the same person, the same company, November 20th, 1935: (Exhibit 100)

> "Of course, there isn't anything we can do about that now, but, just to show you how we try to keep on top of these things, I am sending you, attached, an exchange of wires between ourselves and the Waggoner people—"

3975 That is Dave Gray's Company.

> "last August 19th, relating to a distillation report received from them covering gasoline shipped to ourselves at Davenport, Iowa, on the 15th. If, in spite of our keeping a close tab on specifications of shipments, whenever we can, as in this case, these outside refiners ship off-specification material, about the only thing we can do is refuse to take any of their stuff when the Buying Program Committee tells us they have to move some, or to turn the refiner down completely when and if he has the nerve to call us up and solicit some business after such an instance."

Another Skelly document, Exhibit 121, September 11th, 1935:

> "However, there was no excuse for their reporting car numbers on the 6th and 7th, and not actually making shipments until a day or two later, so that, unless they can give a satisfactory explanation, we shall just have to check them out, as far as further purchases are concerned. This purchase, incidentally, was one of those that we made at the request of the Buying Program Committee, the shipper being one of those East Texas outfits that are not always to be relied on a hundred per cent."

3976 Buying at the request of this Committee. Buying because these people are assigned to them, not because they wanted to do business with them or because they liked their material.

From the same files of the same company, December 21st, 1935: (Exhibit 126)

> "It should be borne in mind, of course, that such purchases, being made because of freight savings effected, * * *"

and he was suggesting that they buy this surplus gasoline from the Russell Refining Company, where they might save a little freight, Russell Refinery being located at Russell, Kansas, a little nearer to where they wanted it.

Here is something that you might argue was a needed purchase. Save freight.

> "It should be borne in mind, of course, that such

> purchases, being made because of freight savings effected, are not credited to us by the Buying Program Committee handling inter-refinery purchases."

That means the Buying Program. The overlord gives them no credit against their share of their allocation of the burden if they make freight savings on the purchase.

3977 And then you remember that correspondence, where a suggestion was made in the Socony-Vacuum Company unit, there was correspondence between Jacobi and Roemer, in New York, about an exchange arrangement with the Empire Company, whereby they might make some freight savings, and the suggestion was that they shift their purchases to this exchange with the Empire Company and make these savings, and then the one suggests to the other; oh, well, if we do that, what is going to become of our support to the Buying Program and the independent refiners? And so they decide to let well enough alone and continue to buy gasoline that is costing them more money, where they can't make a freight saving and can't make the exchange from the independent refiner, rather than making this saving by the exchange.

Roemer writes to Jacobi, September 16th, 1935: (Exhibit 88)

> "As you say, serious consideration must be given to the importance of purchasing gasoline in Group 3 * * *."

That is around Oklahoma. Freight group three.

> "if it is necessary to stabilize prices and, therefore, it is very questionable if a great deal of exchanging can be done with Empire's Group 3 plants versus Beaumont."

3978 Does that look like they were buying for their needs? It looks like they were buying to stabilize prices.

Here is another Skelly document. On January 9th, 1936, Vice President Atkins, of the Skelly Company wrote to Emby Kaye. (This is Exhibit 95.)

> "On the present program, we are obligated—"

We are obligated. Is there anything told the P. and C. Committee or the Petroleum Administrative Board, or the Government, in these casual talks, in March and May, about these people being obligated? No, indeed. They contented themselves in saying they were simply buying individually; without concert. Simply what they needed? No. All Arnott's group was doing was pointing out where it was, and yet this record is packed jam full of evidence, not from one company, but from a number of companies, showing that those companies considered that they were bound,—obligated in an agreement.

> "On the present program, we are obligated for about 50 or 60 cars a month of outside material, largely third grade which is rather burdensome at this season of the year when our sales of third grade are the lowest."

3979 Here is January of 1936; right in the winter time; he is obligated to buy on the Program, this third grade, which, for this season of the year, is burdensome. Does that sound like need, gentlemen?

And this same man writes again, on the same day, January 9th: (Exhibit 96)

> "I wish to acknowledge your letter on obligations in the buying program of 10 cars 70 Octane and 55 cars of U. S. Motor. I trust that you will be able to use some of this U. S. Motor in Oklahoma, even at points where you are buying or exchanging gasoline. It may be that we will have to eliminate some exchanges * * *"

Not going to eliminate buying in the program, but eliminate some of their advantageous exchanges.

> "inasmuch as our sales of third grade gasoline at this season of the year are so low that we cannot move anything like this volume of this product to our own stations."

Here is another company, the Phillips Company. Here is the defendant F. L. Koopman; February 8th, 1935. Here is one of the uplift buyers, I spoke about, going it alone. February of 1935. And he writes to the Budget and Operating Committee of his own company. This is what he says.

This is before the pool started operating. Bear this
3980 in mind.

> "In order to hold the market at its present level, it will be necessary to purchase approximately 150 cars, which material will have to be shipped to our Houston terminal to apply on future cargo business. At this time, it is doubtful, considering fractionating and storage loss, whether we can make a profit in reselling.
>
> "Our estimated sales for the month of February is 1,200,000 gallons less than our purchases, therefore on taking this into consideration, we have very little interest in maintaining the present price structure. A decrease of one-quarter cent in price, balancing sales against purchases, saves the Phillips Petroleum Company approximately $3,000.00.

> "Due to the fact that no. 26 and U. S. Motor are the same price, and that our purchases exceed our sales, and further we stand a chance of losing money should we buy additional gasoline to support the market, we recommend that we let the market take its own course and not purchase gasoline at this time.
>
> "May we have your approval."

3981 And yet you find the Phillips Company up to its neck and its ears, supporting this market when the program gets going.

So much for need. I could overwhelm you. Quotation after quotation from similar lines. The fact of the matter is, gentlemen, that the question can be so obscured—these great big companies that make not only gasoline but all the petroleum products, fuel oil, kerosene, and all that sort of thing, have the most fluctuating output. Sometimes they put out a large amount of gasoline, and then a month later they will put out a small amount of gasoline. Fluctuating capacity.

And that is so flexible as to meet the demands for the various kinds of products, and their capacities at which they run for gasoline may vary with thousands of barrels. So it is nothing to them if they want to take on a few more extra cars, step down their runs, make a little bit of some other product, make room for it in some way, store what they are making, and send what they are buying direct to the consumers, nothing to them at all.

The defense may try to make a point that they bought very little. The amount they bought 600 or 700 cars in one field and six or seven hundred cars in another
3982 was a small amount.

That is what the Government insists that it was a small amount, a trifling amount. It was just enough to affect that price.

So that it wasn't a purchase for need or anything of that kind.

And now on the question of obligation and shares: I am going to run pretty fast through these and let them speak for themselves.

First, Mr. Noel Robinson, speaking at the allocators' meeting—he is vice-president of Tide Water—says this:

> "—so that we would know what the volume of this gasoline would be, and that is the procedure that I think we ought to discuss. It seems to me he has rather clearly outlined the basis for that procedure, which would be to accept as part of the demand the

> volume of gasoline both which the companies estimate themselves they will have an outlet for, plus the volume the buyers will agree definitely to take over this period of months. That would become their fixed demand. Their excess would have been agreed upon by the buyers; that would constitute demand; they would then have as a fluctuating demand their own estimates of their own outlets, and it would seem
> 3983 to me that we could hew to that line pretty closely and certainly require them, in case they did not meet their own estimated outlet demands, to curtail correspondingly their production,—"

Now, that is Robinson's idea of the plan in the middle of March, 1935.

These companies are to agree definitely and, gentlemen, they were talking about East Texas then. East Texas is where the opening statement tells you that they didn't have any understanding of any nature whatever, and I told you it was my idea of the law and the Sherman Act that it isn't necessary to have any agreement at all.

And then here they had called the number of shares and obligations, the amount they were going to agree definitely to buy stated as late as March. They cannot say this was in the beginning of things; this was some idea that was abandoned. Oh, no. The buying pool started March 1st, and this gentleman is talking about it March 15th.

Frueauff, vice-president of Cities Service Company, to Brandli, March 21, 1935, Exhibit 454:

3984 "We would like in here—"

That is our big Cities Service Company—

> "—just as soon after the first of the month as possible, a statement of gasoline purchased and the name of the company, separated as regards East Texas and Group 3.
>
> "No information regarding exchanges is necessary—"

He is not interested in that, exchanges—

> "—but in order for us to determine the over-all company's—"

That is the big Cities Service Company we have all heard so much about—

> "—the over-all company's participation in a general buying movement—"

Mid-Continent and East Texas as well—

> "—we need to know very early in each month just what we have done, it having considerable bearing

> on what we might have to do in the then present month."

What he might have to do! Doesn't talk about need—that is obligation.

F. L. Koch of Phillips to the high officials, Hughes, Gardner, and Frank Phillips, himself, March 23, 1935, Exhibit 509:

3985 "The sales department is agreeable to the purchase of 'Q' gasoline during the summer months only—"

Q gasoline is regular gasoline made so by a little bit of tetraethyl lead.

> "—during the summer months only, for sale under the '66' trade mark—"

Phillips 66 trade mark—.

> "—for shipment into territory which will not affect our pipe line savings, even though there may be a difference in the specifications, for we feel that further advances can be made in the tank car market and resultant increases in the service station price, thereby making our company additional money.
>
> "The purchase of tank car 'Q' gasoline will affect the market while the purchase from the Barnsdall—"

That is a sister major—

> "—will have no effect whatever as they are making this material especially for us. With only 250,000 barrels of gasoline to be purchased we feel that same can easily be made between now and September.
>
> "A further thought in connection with the purchase of gasoline is that we are committed to a program of supporting the tank car market—"

That sounds like obligation, doesn't it? Committed to it.

> "—and it is very much to our interest to establish

3986 a high middle octane price due to the fact that the majority of our sales are based on this bracket in the trade publications."

What clearer statement can you have of purpose and intent and obligation than that? Obligated to the program, and it is important to them to get middle octane price up,

> "due to the fact that the majority of our sales—"

are going to the jobbers, and

> "based on this bracket in the trade publications."

Well, it reads like the indictment.

Chamberlain of Pure on May 14, 1935, writes to Snider, an official of Pure Oil Company at Chicago, Exhibit 488:

> "Some of the major refiners continue to withhold their support which is unfair to those who are supporting this movement for the benefit of all. We have never taken our allocation—"

Our allocations! Don't confuse this with the allocations in the refinery allotments. There are so many of these terms that are used in the oil business that are used differently. This "allocation" is the allocation that was allotted to them in the buying pool.

> "We have never taken our allocation of five cars per day any week since the buying program started but this is the result of inability on the part of the
> 3987 suppliers to furnish material meeting our requirements.
>
> "I told Mr. Buckley—"

Here is Chamberlain of Pure tells Buckley of Cities Service—

> "—that while we wanted to support the program insofar as posible, we hoped that he would keep us advised if and when others were not doing their part."

"Their part," gentlemen! Is that individual companies buying individually their needs without any concerted action, or have they got allocation, obligation, and parts and shares?

> "He informed me that he would be in possession of a complete resumé of allocations and purchases early this week and we would be given a copy. My understanding is that Shell has never supported the program and possibly some others have failed to do their share."

Share! Watching each other to see if each one takes his part of the burden!

And Snider writes back to Chamberlain, May 16, 1935, Exhibit 487:

> "We trust you will keep in close touch with Mr. Buckley and should it develop that the major companies generally are not adhering to the buying program you will advise us. However, as a matter
> 3988 of fact, and for your own information, we have been extremely short of gasoline recently, and have really needed—"

He needs it sometimes, when he needs it, he emphasizes it—

> "—really needed all of the material which we have

> bought, and undoubtedly will continue to need it although it might be if a large portion of the companies now purchasing gasoline decide not to purchase it we would also want to discontinue our purchasing."

He doesn't need it so badly but he is going to continue to purchase if the others go back on their obligations and fail to purchase their share, and he wants to watch.

Of course, there is little honor among thieves, gentlemen. They are going to watch each other.

Koopman to Hughes, Phillips, May 31, 1935, Exhibit 516:

> "Most of the gasoline offered by the above named brokers originates in East Texas. * * * He advises that all refiners had agreed to buy their share of this surplus gasoline. As an example he stated The Globe, in Chicago, would take up to forty cars of any material that was in transit and showed up in that area."

That is, McDowell of Mid-Continent advised the Phillips Company that their share—don't pass by that ref-
3989 erence to Globe. It is quite interesting in connection with the testimony of Mr. Vaughn about Globe.

> The Globe Companies, he said, "in Chicago, would take up forty cars of any material that was in transit and showed up in that area."

That is up in Chicago. And this is in May of 1935. And here is Globe prepared to do its share up in Chicago. It shows up in the hands of brokers and is going to hurt the market up there, and they are going to be prepared to take up to forty cars. Stack that up against the testimony and the attempt to impeach the testimony of Mr. Vaughn, who was in Globe's office in September and heard Globe talk—Meece of Globe talk to Shell in connection with an effort that Globe was making to follow out this very promise to take up this extra gasoline in the brokers' hands of Vaughn in September.

And, gentlemen, if we had the time, you can substantiate with these documents everything—just put them together just like a picture puzzle. There it is (indicating). Weigh that against the testimony of Meece.

Buckley to Brandli, December 2, 1935, Exhibit 42:

> "Sinclair Monday purchased approximate two hundred cars East Texas aviation—"

3990 That is aviation gasoline, a very high octane.

> "—for movement Gulf—"

That is the Gulf of Mexico.

> "—for movement Gulf over December. Reported

> four and three-eighths refinery. This is in addition to regular weekly commitments at going market prices."

Atkins of Skelly to Kaye of Skelly Company, January 9, 1936, Exhibit 95:

> "On the present program, we are obligated for about fifty or sixty cars a month of outside material, largely third crude which is rather burdensome—"

Tuttle to Nagle of Skelly—Tuttle the one on the mechanical committee with McDowell and Jacobi, and afterward an official for Skelly Company—March 18, 1935—there are a number of exchanges like that, Exhibits 102 to 117, inclusive. He says in there to the Skelly Company,

> "Don't forget to report to the Western Petroleum Refiners Association—"

That is where Bourque had his headquarters, the man who consults with these committees and shows them the amount of surplus—

> "—Don't forget to report to the Western Petro-
> 3991 leum Refiners Association—"

Does that sound like obligation? That looks like they were keeping an eye on each other to see that each one did his share.

And Skelly Company writes to the Western Petroleum Refiners Association and says, March 19, 1935, Exhibit 118:

> "Confirming our telephone conversation yesterday, you were instructed that, under the inter-refinery buying program now in effect, Skelly Oil Company should be credited—"

Credited!

> "—with buying six cars of U. S. Motor gasoline, 63/70 octane, on March 8th, at four and five-eighths cents per gallon, Group 3, from Sunray Oil Company."

Skelly Company to Bourque reporting on some purchases in the Mid-Continent field by that company.

Well, there are a number of exchanges, here, 112 to 117, and this appears:

> "These purchases are to be credited to Skelly Oil Company under the general inter-refinery buying agreement which is now in effect."

One official of Skelly to another official of Skelly in May, 1935:

> "I realize under the buying program, we can't
> 3992 always do what we want to do."

Why can't they do what they want to do? Because they have agreed to do something else.

Another official of Skelly to another official of Skelly, December 20, 1935. This is Exhibit 125.

> "I realize we are probably committed to buy from certain people—"

Again in another communication here, Exhibit 127:

> "—we are committed—"

Skelly.

Another Skelly document, January 9, 1936—think of it, way down in 1936.

> "I was under the impression that we had gasoline lined up on our purchase obligations."

And then he says—he wanted to make some change in it—

> "—if that is all right with the committee."

And another one, January 9, 1936, Exhibit 96. He talks about—

> "I wish to acknowledge your letter on obligations in the buying program—"

And so it goes. Obligations, obligations!

Ruether to Lakin, March 20, 1935, Exhibit 179:

> "Jacobi tells me The Pure Oil Company are not purchasing any gasoline from their partner Taxman
> 3993 Refining Company, in the Panhandle District. Taxman has about thirty cars of third grade octane which he is trying to move and may cut his price below three and seven-eighths cents if he does not get prompt relief.
>
> "Jacobi suggests we purchase some of this gasoline in view of our not having to take any of Cushing's production; he is also pressing McElroy—"

That is of Pure—

> "—to do his share of purchasing."

Jacobi of Socony is pressing The Pure Oil Company to do their share.

And here is Shell Company talking about it (indicating).

And here is another communication in the Shell files about the same situation, March 20, 1935, Exhibit 183:

> "Jobbers have been filling their storage in anticipation of rising prices and this, coupled with the activities of the 'buying group', has resulted in the removal of virtually all surplus gasoline from Oklahoma, Kansas, and to a lesser extent, North Texas; in the Panhandle, about thirty-five cars of surplus gasoline in the hands of the Taxman Refining Company has not been cleared, owing to Pure,

3994 who were assigned this purchase from Danciger, not carrying out their part of the program."

3995 Jacobi to Romer on that subject of the turning down of an advantageous exchange with Empire, so that they could continue to buy in the pool:

> "Of course, the gasoline purchased from Omar, etc., has helped the market structure here decidedly in the last sixty days, and has enabled Socony to do its part in the inter-refinery buying."

So, gentlemen, I have come down to only three more short topics.

June 17, 1935, Buckley wrote Brandli—June 17, 1935, let's locate it. It is down here (indicating on chart). I am pointing now to the Schechter decision eliminating the Code, and here is June the 17th, 1935. Bear in mind, all of this and all of '36 come after the Code is completely out. You don't have to be even disturbed with this half-baked argument about the Code.

And he writes, June 17th, 1935:

> "It is our understanding there has been some concern in the East with the elimination of the Code, as to whether tank car prices in the interior would maintain present levels. Through the ability of the industry"—
>
> of the industry—

3996

> "—to stabilize itself?"—
>
> to attempt to stabilize itself—
>
> "—in the so termed Mid-Continent area, there was considerable gasoline purchased by the major companies during the first week in June,"—

full steam ahead—

> "—causing many observers to feel that the amount of distress gasoline which would overhang the market could not be easily absorbed."

It is going to be even more difficult.

> "—During the second week in June, practically no gasoline was available to the larger refiner purchasers, and a few who could not wait for supplies entered the East Texas market for material."

And, gentlemen, consider that in this period after the Code that McDowell and Jacobi and Ashton and Lakin and Bullock and the rest of them were holding their meetings, month after month. The so-called Tank Car Stabilization Committee didn't lose any dignity at all, in its own estimation; it went steadily on through, right into '36, into February of '36, meeting after meeting.

I think it is a good way to remember this case, to think

of the calendar. Think of the telephone calls from
3997 Buckley, the liaison man in East Texas, month after month through '35; working just as hard, calling Arnott, reporting to Arnott, seeing Arnott, meeting with Arnott—meetings, meetings, meetings of great big refining companies—holding the line, the same purpose, the same intent, the same result.

Mr. Arnott tells you with regard to some of those meetings after the Code that he was discussing another code, a proposed Federal Trade Commission Code. Well, he wasn't going to be any more frank with the Federal Trade Commission Code than he was with the N. R. A. Although he was going full steam ahead in the Mid-Continent field and in East Texas contemporaneously with the formation of this new suggested Federal Trade Commission Code, he wasn't inserting one word, not one word in this new proposed code that would legalize or expose or call attention to this pool, which is in full and complete and steady operation.

And as I have read these documents, gentlemen, I called attention to their dates, and you will remember they are of the same tenor and of the same force and of the same number on after the Code as before the Code.

June 1st, 1935, after the Code, Warner to Collins of Tide Water, referring to the effect of the Schechter decision, Exhibit 258:

3998
> "When the information circulated that some of the small refiners were becoming uneasy and increasing their spot offerings,"—

what happened then?

> "—the major companies promptly put forth more effort toward clearing the open market of any excess gasoline that might cause a general break in the established price structure."

In June, more effort.

Warner to Collins, June the 8th, '35:

> "The reaction of the Mid-Continent Gasoline market as a result of the invalidated Oil Code has been very encouraging to date."

Even the legitimate allocations and all the rest are out; nevertheless, the market is holding its own. Can they ascribe any great virtue to the allocations under the Code? They ceased May the 27th, 1935. And yet the line held, right where they had pinned it and pegged it.

> "—Present indications point to a continuation of a steady market in the near future. Close cooperation"—

here, in June—close cooperation—not even any excuse whatever for meetings as to anything, even as to retail stabilization now—

> "—Close cooperation on the part of both large and
3999 small refiners has kept the spot market well in hand."

Skipping down a little bit:

> "—These views apparently are based on the assumption that refiners in general who have benefited by the cooperative plan will continue—will continue in the buying program"—

not a new scheme, not voluntarily—

> "—will continue in the buying program and voluntarily adhere"—

to what?

> "—to allocated refinery operations. The movement of spot gasoline has been somewhat below the normal seasonal demand this week, due to weather conditions,"—

away down here in June, bad weather conditions—

> "—but the companies participating in the buying program have kept a watchful eye for any gasoline that might resemble distress material, and to date no noticeable weak spots have developed."

October—October, 1935, months after the Code—Buckley to Brandli, Exhibit 32:

> "Mr. Arnott has wired requesting attendance at a meeting in New York on Wednesday, that report may be made to individuals who are interested in the status of the East Texas refinery situation."

4000 He is in the same capacity, both of them are: Arnott giving orders to Buckley, requiring Buckley to come post haste, post haste to New York to another meeting of refiners in the fall of '35, to make a report. Does that sound like adherence?

And I called your attention yesterday, as late as January the 29th, 1936, Arnott wiring to Frueauff of Cities Service—Socony-Vacuum's vice-president to the Cities Service vice-president:

> "East Texas situation needs prompt handling in order to keep in line need your help very much what we need is your order for fifty cars—what we need is your order for fifty cars. Will you give me your help Answer Roosevelt Hotel, New Orleans."

There is where the need is; the need is to protect the price. That is the only need.

As late as January of '36.

March the 21st, '36, a Shell document, Lakin to Fraser:

> "A much firmer undertone has developed in the Group 3 market with the return of normal temperatures. Refiners in this area generally are adhering
> 4001 to publication quotations. A material improvement has occurred in East Texas. Surplus stocks in that field have been taken off of the market by inter-refinery purchases."

March of '36, gentlemen.

August the 27th, '35, a couple of months after the Code went out of existence—one official of Skelly to another, Exhibit 122:

> "We are purchasing today from Rock Island ten cars of Power-max and ten cars of octane Aro-max, these purchases being made in connection with the inter-refinery buying program which is still in effect."

Don't have any of these smart gentlemen that follow me tell you in the face of that evidence that this thing didn't continue in exactly the same status as it was before the Code, after the Code.

And I think I exposed, gentlemen—if I didn't, it was my own weakness; it wasn't the weakness of the evidence—I think I exposed yesterday any claim for any inducement or instigation on the part of the Government, even while the Code was in effect. And here you have got it without even any color of a Code.

June 7th, '35, Jacobi to Maguire, Exhibit 73—after the Code:

> 4002 "Tank car prices on gasoline have advanced an eighth of a cent this week"—

that was his last recommendation—you remember, that was the last golden stair; the last recommendation before he made that final one in January of '36—

> "on all grades. If present tank car prices hold, and I believe they will, it is expected that the Standard of Indiana will advance service station prices another three-tenths or four-tenths of a cent within the next week."

That illustrates what I told you yesterday about that lag in the advancing of the retail prices. They have got the tank car prices up that final jump, that final step; now he expects there will be a little lag—and in the meantime the jobber is going to suffer because he is only going to get a split margin protection, not a full margin protection of five and a half cents—and then he expects the retail market to be put up by the market leader, the Standard of Indiana.

I told you yesterday how Buckley and Jacobi and these others were anticipating a crude oil advance. Away up there in the early summer of '35, we hear it from Buckley, that if they succeed in holding this tank car market up, that then they can pull and hoist themselves by their own boot straps, and raise the crude oil price; and then they 4003 will have an excuse for going further with the tank car price. Here is Jacobi, in the fall of '35:

> "I can hardly believe—I cannot believe that the Standard Oil Company of Indiana will advance tank wagon or service station prices in the winter time"—

they did do it, though—

> "—and without such an advance, higher raw material costs or higher tank car prices could hardly be justified."

He is reasoning in the right way. He says they have got to have an advance in the retail prices before they can justify the tank car price, or a rise in the crude, or raw material costs; and even he doesn't think the Standard of Indiana, in the middle of the winter, will raise its prices. And he says this—this is his prophecy, and the facts were more favorable than he thought:

> "In April or May"—

that is, of '36; he is writing now in the fall of '35—

> "—Standard Oil Company of Indiana and others will no doubt feel more like supporting a crude oil price advance and raising the retail price. Tank car prices could then advance, and higher retail prices could be properly supported."

4004 Mr. Crawford: If the Court please, I wonder—the Government is very much concerned about saving the strength and energy of Mr. Lewin. I wonder if we might have a few minutes recess?

The Court: I thought perhaps he might finish before the recess.

Mr. Crawford: I am afraid not.

Mr. Lewin: It will only take me about ten minutes to finish.

The Court: Do you want to finish now, or after recess?

Mr. Lewin: Anything you prefer.

Mr. Crawford: Let's have a recess.

The Court: We will take a recess.

(Thereupon, at eleven o'clock A. M., a recess was taken.)

4005 (Following the recess the Court resumed its session at 11:15 o'clock A. M., and the following proceedings were had:)

Mr. Lewin: I am glad to tell you, gentlemen, that I won't punish you very much longer listening to this hoarse voice of mine and I will give way to people who have more melodious voices at any rate.

I have got two documents that I want to read. One is a memorandum from the Shell files, from Mr. Ruether, February 6, 1935, in which he discusses that meeting of the so-called tank car stabilization committee. Bear in mind, gentlemen, what he does say in this, and what he does not say. This is a memorandum from one official to another, written for the purpose of that person giving them information on which they can rely, telling them the whole story. That is the only reason for a memorandum, gentlemen, so they won't forget just exactly what transpired. That is why they write it down. (Reading Exhibit 177-A):

"The committee on gasoline purchases met in Mr. Bullock's office with the following attending:

"Mr. Bullock," a high official of the Standard Oil Company of Indiana—

"Messrs. Bullock, Jackson"—

Standard of Indiana—

"Bourque"—

4006 Western Petroleum Refiners Association—

"Miskell"—

Cities Service—

"Tuttle"—

Cities Service Export Company—

"O'Shaughnessy"—

Globe Company—

"Ashton"—

Lubrite, Socony-Vacuum—

"McDowell"—

Mid-Continent—

"Karstedt"—

Continental—

"van Eeghen, Ruether"—

of Shell—

"The effect of lower tank car markets for gasoline on the retail price structure, was discussed, particularly low octane, since this grade controlled, Mr. Jackson stated, the Indiana's policy in fixing the retail price.

"The committee (except Karstedt) unanimously agreed that a continuous"—

All these words have the strongest kind of meaning.

> "a continuous purchasing program is necessary to take off the market surplus material from North
> 4007 Texas, Panhandle, Kansas and Oklahoma, Bourque stated there is approximately 650 cars surplus, this month, in the areas mentioned.
>
> "It was agreed that the most efficient method to handle the situation would be for an individual major purchaser to arrange with individual small refiners to keep their surplus off the open markets—in this manner the purchases would be effectively placed"—

Effectively placed!

> "and the buyer would be given the opportunity"—

The buyer with the major company!

> "would be given the opportunity of using his purchasing power to influence the operating program of the small refiners to stay within his allocations, etc. This program was considered practical and much support to the previous haphazard purchasing."
>
> "The question of allocation"—

Not allocation of refinery runs, but allocation of individual refiners—.

> "The question of allocation of the individual refiners to major purchasers"—

The dancing program—

> "was left to a committee of three, Messrs. Bullock,
> 4008 McDowell and Bourque, who will present the plan to the prospective buyers in Chicago on next Monday evening (after the general meeting) together with an estimate from Bourque of the surplus involved for the next ninety days of each of the refiners usually having distress material.
>
> "It was generally assumed that all companies would come in to the picture since a stable retail market requires a higher tank car market."

Now, gentlemen, just consider that if you will. You take that exhibit with you to the jury room, and there you have got a memorandum on which you can rely as to what they were planning on and what they were not planning on, and you can search it for statements of needs and non-concerted action, and helping the independent refiners, and all the rest of it if you want.

But that is not all. A memorandum contemporaneously written for the purpose of perpetuating the facts, written by a high official of a major central division of the Sin-

clair Company, one Sus—and he has not been off the stand so long that we have forgotten him—and written to perpetuate the facts and all the facts that transpired in a meeting of this so-called tank car stabilization committee a week later, after the one I have just read you, the meetin in the evening of February 11th in Chicago. Stack
4009 this memorandum, gentlemen, up against McDowell's testimony as to the February 11th meeting, in which he makes two points; one, that there was no discussion of curtailment of the buying companies' refinery runs. That he swears to, page 1189 of the record.

And he makes another point; that nothing was said as to the quantity.

> "Many of the men there were presented with how much they were going to have to buy."

Stack that up against this memorandum written at the time for company purposes by Sus, a high, responsible official of the Sinclair Company who came to that meeting, was invited in there along with Dinkins—Dippel, I mean—to get the Sinclair participation as well as these others. And here is the memorandum gentlemen; it won't hurt—you have heard it recently, but it won't hurt to hear it again, because it sums up the entire system.

And stack this matter coldly and clearly and business-like—coldly and clearly written, and business-like as it is—against that voluntary lecture that that man Sus had the nerve to try to give you gentlemen of a distorted picture of what they were about. Here is the cold memorandum.

4010

> "A committee at a previous stabilization meeting had been appointed of which Mr. Bob McDowell was chairman to consider ways and means of establishing and maintaining an active and strong tank car market on gasoline.
>
> "This committee rendered a report to the effect that a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of Indiana territory."

What becomes now, gentlemen, of this claim that there was only a selling program of some small independent refiner in East Texas? Diverting the gasoline that normally would come in from East Texas and be available to the jobbers, diverted it, taking it off the market?

> "It was stated that this East Texas gasoline would move to the Gulf and then go to either the East Coast or for export.

> "A survey by the committee then indicated that the surplus gasoline, which would affect the Standard of Indiana territory only, amounted to 600 cars per month involving fifteen refining companies."

And those fifteen are about those fifteen that are specifically named in this indictment, that had this so-called surplus gasoline.

4011 "A report is attached which lists the refineries in the Mid-Continent field who will have surplus gasoline. This report shows their capacity, their crude runs, their allocations, etc."

Knows all about it; a thorough job. They know just what the burden is going to be.

> "The program of the committee involves fourteen major companies."

He is only talking about one pool now, not about both pools. There will be more than fourteen of both pools. He is talking about the Mid-Continent.

> "—each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take whatever surplus gasoline this small refining unit will have from time to time."

Dancing partner obligation—allocation!

> "In other words, a major company would select from among the fifteen small refineries some company whose surplus or distress gasoline it could advantageously move."

Could advantageously move! That is, all it needed, what it could advantageously move!

"and in that way by dividing up these fifteen companies and these estimated 600 cars per month of
4012 distress gasoline no great burden would fall upon any one."

Dividing up the burden; not pointing out where they can satisfy their needs, but they recognize it will be some burden even when divided up, but he says it will be no great burden if divided up between the fourteen major companies.

> "A steering committee"—

That is, the Jacobi, McDowell, Tuttle, Ashton committee—

> "would guide and control,"—

Guide and control!

> "Periodically, the prices to be paid for this surplus gasoline by the major company to the small refinery. There was considerable discussion to the

effect that this new program had more chance of success than any previous program"—

Even the ones which the Government approved—

"because of the way the steering committee would function and the fact they would be buying on an ascending market."

Keeping the market up—

"thereby keeping the market both active and strong, rather than buying on a descending market as previous buying movements had been and which previous movements had failed of any substantial success."

4013 Isn't that an amazing document?

"It was estimated that the absorption of these 600 cars per month by fourteen major refiners would only be equivalent to curtailing their own crude runs two percent."

They are going to make room for it. Curtail their own runs two percent, by those who buy the gasoline, sharing the burden, and they are able to put in their pockets millions by rigging that tank car price and enjoying those jobber contracts based on it.

What did Sus say about that, confronted with his own writing? Oh, he was just giving a measure which would just about be equivalent to two percent of their refinery runs, he says. What does he talk about curtailment? If he just wanted to give an estimate of how much it would be, he would say it amounts to two per cent of the output, instead of saying that it was intended to point out that the absorption of this gasoline by major companies would not seriously affect the majors' own runs. That is what he adds there. You stack that against his oral testimony on that stand under oath!

"Each purchase of a car, from time to time, by these majors of this distress gasoline, would be recorded in the Journal of Commerce as an individual sale."

4014 Here the Journal of Commerce claims to be reporting only sales to jobbers, and here it did not, or does not make any difference in this case. Here is the purpose: I told you at the start that if they had the purpose to affect these prices, it makes no difference what happens after that, and these people believe the Journal of Commerce is going to directly take the prices they pay, and put them in the Journal quotations as the basis for the open spot market.

"Each purchase of a car, from time to time, by these majors of this distress gasoline, would be recorded in the Journal of Commerce as an individual sale, and the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market."

4015 "And the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market."

Exactly what happened.

"The meeting in question was attended by all of the major companies, including such companies as Globe, Skelly, Mid-Continent, etc., all of whom indicated a willingness to select one of the companies shown on the attached statement and assume responsibility for their surplus.

"The writer had no knowledge and did not participate in this discussion. Mr. Dippel, however, . . ."

That is the other Sinclair manager of the Southwestern District.

"because of his knowledge of some of the purchasing we were doing in the west, tentatively stated that we might consider taking the output, of, say, the Wilcox plant. Mr. Dippel indicated he would report this matter to Mr. Carnes . . ."

Mr. Jack Carnes, the Vice-President of the Sinclair Company, one of the defendants here.

"and handle to a conclusion as to our participation in this movement."

4016 Would they have you believe that this man was ignorant? He went there for one purpose, and one purpose only, and that was to find out the facts. He was no child. Just as keen and smart and crafty as he could be, as he exposed himself on that stand,—just as evasive. You remember how he just ran riot, so that his counsel had to stop him. He wanted so much to tell you this cock-eyed theory they had. Smart and shrewd and grasping and treacherous. That is what he wrote for his own company. That is what he wrote for himself. That was the complete story.

And there isn't one word in there of need. On the contrary, there is everything in there about burden. There is no word of their helping independent refiners; on the contrary, it is help themselves. Not one word about concerted effort; on the other hand, complete concerted effort. Not one word of lack of agreement; on the other

hand, the testimony of agreement. Not one word of a lack of intent and purpose to affect price; but direct, cold, clear words that price was to be the be-all and the end-all. Not one word in there that they were not going to use the trade journal as a chief instrumentality, which this indictment charges, whereby they could exact large
4017 sums of money from the jobbers and consumers and
put it in their own pockets. On the contrary, the clear, cold statement that they discussed the fact that these sales would be recorded, sale by sale, in the Journal of Commerce, as a basis for a rise in the tank car market quotations.

So, gentlemen, I leave you with all of those documents and all that evidence, and in particular I leave you with the summary of the Government's case, given us here by Sus, produced here in response to a subpoena,—unaltered, authentic,—he admits he wrote it,—and let you gentlemen be the judges, and I am perfectly clear and easy in my own mind, in regard to trusting you sensible men to the clear-cut decision of this very simple case,—proved out of the mouths of the defendants themselves, and their agents.

And I ask you, gentlemen, if you want to encourage them to go on in their arrogant, high-handed, cruel, powerful way, and if you want to encourage other industries made up of the same type of men,—eager, grasping men, to take the law in their own hands and rig the price against the smaller man, then, I think the way to do it is to acquit them and let them go out and laugh up their sleeves that they did it and got away with it.

4018 But if, on the other hand, if you have respect for the law—and I know you have—and have pride in our American tradition and the sense of justice—that is a wonderful word, "justice", for all classes, and if you understand this evidence, and I know you do,—I have looked right in your eyes and I have seen you watch piece by piece this evidence, then gentlemen, you are going to bring in a verdict of guilty against these sixteen companies and these thirty-six individuals that rigged this market for their own aggrandizement and financial return. And I confidently leave it with you, feeling that you will not let your Government and the United States and its citizens and society down.

Mr. Brazeau: Your Honor, shall we begin now?

The Court: Yes.

4019 Thereafter, on January 18, 1938, Mr. Theodore W. Brazeau made the first closing argument to the jury, on behalf of the defendants. In view of the defendants-appellants Assignment of Errors numbers 37, 39 and 40, relating to remarks made in the closing arguments to the jury by Mr. Lewin and Mr. Crawford, counsel for the plaintiff-appellee have requested that the entire closing arguments to the jury by Mr. Brazeau, Mr. Thomas and Mr. Donovan be inserted in this Bill of Exceptions. Such closing arguments are hereinafter set forth. The closing argument to the jury by Mr. Brazeau is as follows:

4020 CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANTS.

ARGUMENT BY MR. BRAZEAU.

Mr. Brazeau: May it please the Court, and gentlemen of the jury.

For some reason or other I was not invited to your Christmas party and this is the first time I have had an opportunity of wishing you a Happy New Year, which I do.

Gentlemen of the jury; there are sixteen companies and thirty-six individual defendants still on trial in this case. The individual defendants are so numerous that even after this long trial, I cannot, and I am quite sure you cannot, identify all of them. These individual defendants, except one, have come from distant states. They have been brought here to Wisconsin for trial on a serious criminal charge; and they have been held here in this court through all the long weeks of this trial under criminal process of this court, awaiting their fate at your hands. They are strangers in a strange land. While your absence away from home has undoubtedly been distressing, so much more so has theirs.

The character and reputation of these defendants are presumed to be good; and in spite of the statement
4021 of counsel here made time and time again, there is no evidence or no intimation to the contrary. It was stated by counsel that these men have been favored by fortune in arriving at the positions which they occupy. But, Gentlemen of the Jury, insofar as the evidence discloses, these men have come from humble places of the industry to positions of responsibility and honor. And

now, these gentlemen attack that honor and it is put in question.

You have been selected from your ordinary walks of life to sit in judgment on these, your fellow men; not in judgment on one alone, charged with crime, but upon sixteen corporations and thirty-six individuals, each bearing separate and distinct relation to the circumstances involved in the Government's charge.

You are called upon to pass upon an issue to which the counsel for the Government, in his opening statement, says few lawyers, even, could give a perfect analysis. You are the final judges as to whether that evidence so difficult to analyze, shows these defendants, or any of them, guilty, beyond a reasonable doubt. Few men have been called upon to render more difficult service or to assume a greater responsibility. You have been accepted by the defendants as fair and impartial judges 4022
of their conduct, and you, under a solemn oath, have submitted to the performance of that duty.

I think, gentlemen, in the long weeks we have been together, I have learned to know you. I think I understand the character of the men I am addressing. These are the kind of Wisconsin juries that I have dealt with for years. I know that you have endeavored to understand all of his testimony as it has been produced; and I know that you have a determination to ultimately do what you deem to be just and right.

I know that you regard your oath as something more than a mere formality, and that you will, as you have sworn to do, view the evidence in this case fairly and impartially,—and that is all that the defendants in this case ask of you,—gentlemen of the jury.

Now, reference is made by counsel, in the opening statement to this—in their opening statement of their case to this jury, some months ago,—referring to these gentlemen, these defendants, as millionaires and billionaires. It was the key to what the Government intended to harp upon throughout the whole of this trial, and that is the largeness of these companies and the wealth of these defendants.

4023 It was stated by the counsel in his opening argument to the jury, he referred to Mr. Arnott, as an eighty thousand dollar man. The figure was incorrect but the motive was clear. It was to prejudice you gentlemen against him and against these defendants' case.

These companies were referred to constantly in the argument of counsel as powerful corporations. It was said here that they were represented by a hundred lawyers, the cream of the American Bar. I would be proud of the reference if I didn't question the motive. It was to create in your minds a prejudice against these defendants. There are a number of lawyers here,—not one hundred,—but there are a number of lawyers here. But, gentlemen of the jury, these lawyers have represented these companies for years. They know their corporate set-up. They know their relationships. They know their clients' intimate affairs. And they are here as observers in this trial, to suggest to counsel, from time to time, matters connected with their corporations which they otherwise would not know.

We could not do anything else. We could not conduct this trial in any other way with the attack that is made. But that is referred to for the purpose of poisoning your minds against these defendants.

4024 A quotation was given from Judge Ryan here of money-organized power coming into being, and referring to these defendants as falling within that class.

These defendants were referred to as oil barons. And I am using quotations from the opening statement to this jury, in the opening argument of counsel. The Standard Oil of Indiana was referred to as "that great octopus" and the court ordered that stricken from the record. "Largest corporations in the world." "Arrogant cruelty by large corporations." "Cruelty behind the combination." "Greedy and lust for power in these people." Arnott a "cut-purse and a pickpocket."

Just think of it, gentlemen of the jury. The great Government of the United States here, represented by men presumed to be fair and impartial even as prosecutors in this case and referring to a gentleman of Mr. Arnott's standing as a "pickpocket and a cut-throat". And for what purpose? For the purpose of poisoning your minds and prejudicing you.

Mr. Chaffetz: Did you say "cut-throat"?

Mr. Brazeau: Cut-purse. Quoting from Hamlet, I think it was.

By the way, Hamlet was crazy, according to all the authorities.

4025 And then the climax of all. Mr. Lewin gives his experience in Washington, D. C., as a tired public official, going to a bathroom, after his service during the day, and being rubbed down by a colored gentleman; and this colored gentleman being a great philosopher; and this colored gentleman says to Mr. Lewin that a poor man can get no justice; that he doesn't believe in justice; that a rich man always gets out and the powerful always escape.

Now, Mr. Lewin didn't tell you that story, emphasizing the fact that he takes a bath after his work in the Department of Justice, but he told you that story to try to ream into you that little bit of poison from this colored rubber, so that you would look on this evidence in a different light. Very cunningly done, but its purpose very obvious.

Now, all of this reference to power, and all of this reference to wealth that is made here is not to be answered by a colored rubber in some bathroom, but it is answered by this court himself. And I will take my philosophy, and I will take my rule of justice from this Court, His Honor, and not from a colored rubber in some bathroom in Washington. The Court said to you, when they referred to the wealth of these defendants at the open-
4026 ing of this trial. He said these words:

> "But at this time I want to clear up in the minds of the jury this fact; that no evidence will be received as to the financial condition of any individual defendants or persons—"

I am quoting from his Honor now.

> "All persons, rich or poor, have the same standing in a court of justice; and you will disregard any remarks that have been made in reference to the financial condition of any of the defendants,—individual defendants. I think it is proper that I should make this remark at this time."

Now, gentlemen of the jury, that is a statement of our American idea of justice; very well said. And it is the statement that the Court wants you to understand and follow in your deliberations in this case. That is the Wisconsin doctrine of justice. I don't know what kind of appeal they would make in Washington, D. C., or in some other city. I don't know what response that would get from a jury, but I do know the response it would get from a jury here in Wisconsin. My experience has been enough to teach me that juries in Wisconsin want to do what is right, and they want to treat defendants with equal justice; that the
4027 same rule applies to the rich as applies to the poor;
one law for all. That is the American system of justice.

And the reason they want to poison your minds, and the way they attempted it here, gentlemen of the jury, is to draw your attention away from some other things in this case that they cannot meet in other ways. They want to poison your minds and prejudice you, so that in spite of anything that is done here, that you will have a feeling of hatred and prejudice against these defendants, and you will feel like going into your jury room,—their idea is, and in spite of everything, that you will find a verdict of guilty against these defendants.

4028 Now, at the outset of this case, gentlemen of the jury, the Government sat with an indictment in its hands. And it kept that indictment in its hands for quite a little while; and they thumbed it, and referred to it, and read from it. But the indictment began to disappear in the background, and you haven't heard much of it lately. And in the opening statement of counsel to this jury, he never once referred to that indictment—not once, except in a most casual way.

Now, in some modern countries, like Russia, men are punished and condemned wholesale in lots of thirty-six and sometimes more, because the prosecution so wills. And if the punishment can't be obtained upon one ground, it will be obtained upon another.

But, here in the United States of America, and in Wisconsin, we cling to the old-fashioned doctrine that in order to convict a man of a crime, you must inform him of the charge specifically that you have against him. You must not only inform him of the charge that you have against him, but you must prove the material allegations of that charge, and every material allegation of that charge, beyond a reasonable doubt. Innocence follows a defendant in this country, and in this state, from the time he is charged with crime until you end your deliberations in your

4029 jury room. And every presumption of innocence is to be indulged in his favor.

It is not my purpose to tell you what the law is, but I think I am safe in saying that the Court will say that if the evidence can be reconciled reasonably with innocence, it should be done. And if it is equally as consistent with innocence as with guilt, then these defendants should be acquitted. That is the American system, and the Wisconsin system of government.

And, in accordance with that requirement, the Government here has filed an indictment against these defendants. It is an extensive document, but it has a number of very distinct and very clear allegations—

Mr. Chaffetz: That document you hold in your hand is not the indictment; you don't want the jury to believe that is it, do you?

Mr. Brazeau: Not all of it, but I have got the indictment in it.

Mr. Chaffetz: Oh—I just didn't want the jury to misunderstand that that was the size of the document.

Mr. Brazeau: No, I am not going to deceive this jury—I am not going to use the same tactics that have been used here; I have no such intention. But the indictment is contained in this instrument, and occupies that much of
4030 this (indicating); and it has very distinct charges against these defendants.

And one of the charges, gentlemen of the jury, that is made in this indictment, is that these defendants combined to fix prices. And all through this trial you heard from this table over here (indicating), time and time again, "this is a price-fixing conspiracy."

Here, really, is the indictment (producing copy of indictment—

Mr. Chaffetz: A good deal smaller than the other document.

Mr. Brazeau: Oh, yes. But it is just as distinct, just as distinct as to its allegations.

We heard that this was a price-fixing conspiracy. And objections were made, time and time again, to evidence in this case, basing the objection on the ground that this was a price-fixing conspiracy.

Now, you have heard the opening statement of counsel to the jury—to this jury, their opening summation here—and there was not one single word or one single reference to any testimony about price-fixing, not one.

And I will take up other allegations of this indictment, particularly with reference to the part of this that is assigned to me, and I will show that not one of the
4031 material allegations in that indictment are proved.

Now, it isn't a mere circumstance, it isn't a mere accident that after this six hours of discussion to you by this counsel, that he has never opened that indictment to this jury, or recited to you the allegations of that indictment.

He has talked about the red herring—he took the red herring off the hook again, and said we were attempting to draw the red herring across the trail. Why, gentlemen of the jury, if there was any red herring drawn, it has been done in this opening statement to this jury; and you will find out before we get through the analysis of this evidence, if that is not true.

The Court: I think, Mr. Brazeau, this might be a good time to recess.

Mr. Brazeau: I think it would, too. The red herring is gone now.

The Court: Two o'clock.

(Thereupon, at twelve o'clock noon, a recess was taken until two o'clock p. m., of the same day, Tuesday, January 18, 1938.)

4032 Mr. Brazeau: May it please the Court—gentlemen of the jury:

I think when we adjourned for noon I had just hung the red herring back on the hook again, and that disposes of that part of my argument.

I think I ought not to go any further, gentlemen of the jury, without calling your attention to the general attitude that the Prosecution in this case has taken, notwithstanding that this is a criminal case and that these gentlemen are charged with a serious crime that might involve disgrace and a blot upon their characters for the remainder of their lives; yet the Government started out this prosecution, and has continued throughout, with the as-
4033 sumption that what the Government says they did is
to be final and a fact, taken as a fact to begin with; and that we weren't to be allowed to explain it unless we fought for the chance to explain it. And we have had to fight every inch of the way for a chance to explain what we did do.

In the opening statement to the jury, one of the counsel stated this to you:

> "Don't be disturbed because you are not understanding this case as it goes along. Not all the lawyers in the case, and I think very few of them, are able to make a perfect analysis from the evidence at hand as to what the set-up was. But you will, I am sure, keep in mind the major points—"

in the whole case, in so far as the whole case is concerned, and the defendants? No—

> "—in so far as the Government is concerned in this prosecution; and that is the fact that these men went outside the law, placed themselves above and beyond it, and took over the power to do the things that that law says they should not do; and it is for that that this prosecution by the Government is carried out."

At that time, there was not a syllable of testimony
4034 in this case; there was nothing but the indictment,
before we started. This statement to you doesn't state that the Government will attempt to prove this or that, or attempt to prove something else; but you are to

start out and accept the Government's statement that this is a fact, without a syllable of evidence to support it, before there is any evidence to support it.

And then, as the case went along, day after day, we heard the objection made in court: "Well, that piece of evidence is no defense to a buying pool." And one of the counsel had the audacity to say—and I used those words as I arose from my seat over there and objected—to say that, "We have shown what they did. Now, the only thing they can show is, did they do it or didn't they do it?" And that is the attitude right up to this minute.

Now, we have contended throughout this trial that we had a right to show what we did do; that we were not obliged to accept what the Government says we did, and we were not obliged to accept what the Government said our purpose was; but that we had a right to show what we did do in this matter. And I think we have shown it.

Now, as I said, this matter is covered by an indictment. That indictment shows what the Government charges. It shows what the Government must prove. And in order to understand this whole case and the whole relation of
4035 these defendants to what they did, you must understand the condition of the country and the circumstances surrounding these gentlemen when they did act.

This country was in a serious condition. We were in a panic. Industries had shut down; labor was unemployed; wages were unpaid. The Government was interested in a stabilization move, not only for the oil business, but for all industry throughout the country. And there was a fight on. And the Government was fighting in alliance with industry, and that was the whole theory of the N. R. A. and the other acts that the Government took during that time. Now, you have got to understand that in order to understand the situation in this case.

Not only was the oil industry involved in that partnership with the Government, but every industry was involved. The Government, with the A. A. A., was attempting to put the farmer upon a decent, paying basis. They were attempting, through the N. R. A., to put industry on a decent, paying basis. They were attempting to get wages raised, through labor acts. They were attempting to put this country in a condition where the purchasing power should return.

Now, it isn't a benefit to the country to have any in-
4036 dustry in distress. It isn't a benefit to the country as a whole to have any industry, the oil industry, or

any other industry, or farming, operated at a loss. And the whole theory of this Governmental move was to put these industries back on their feet. And the industries that had the special favor of the Government at the time were the small industries of the country. And the Government had in mind that matters should be so arranged, that the laws should be so enacted that those small industries would be protected, and they would come under the cover of the larger industries.

Now, they enacted, as I say, the N. R. A.; and the oil industry itself was so important to the country, it touched our lives so intimately that the Government, as Colonel Donovan said in his opening argument to the jury, and I think he explained that beautifully, if you remember it—they arranged a special N. R. A., you might call it, or Petroleum Code for the oil industry, and it was governed by a special body. And that body had in mind the rehabilitation, not only of the major companies, the raising of wages, the shortening of hours, but the rehabilitation also of these minor or small industries within the oil business. Now, I wish you would keep that in mind when you are considering what these people did in connection with this matter.

4037 It was not an act of selfish, gluttonous, over-reaching men, as the Government would have you believe, at all. And if you are to take the view that the Government attempts to enforce here, or to impress upon you, then you are to assume the very opposite that the criminal law requires you to assume, and that is that men act innocently where it is consistent with innocence, and not criminally. The Government would have you go out of your way to find that all the motives of these defendants, all the acts of these defendants were selfish and criminal, even though there is an innocent explanation.

Now, in this indictment the Government alleges two buying programs. It alleges that these companies combined to fix a price for gasoline, and that in order to carry out their combination and illegal conspiracy, they carried on two buying programs. Now, the defendants are charged with a violation of the Sherman Act.

We have never disputed in this case—and go back to Colonel Donovan's opening statement to this jury—we have never disputed in this case that we carried on a concerted action to buy gasoline—never.

Now, every concerted action isn't a violation of the Sherman Act, by a long odd. There has got to be a concerted

action that is unreasonable in its nature. A con-
4038 certed action to rehabilitate an industry, to remove
evils from that industry, to correct abuses in that industry, to put the industry back on its feet as a paying industry, to see that it can pay wages, that it can shorten hours, that it can improve the industry, isn't a violation of the Sherman Act. And there is no use of the Government coming here and claiming, just because we bought gasoline, that we were violating the Sherman Act, and that we are criminals. You have got to go back and analyze what we did, and see whether it was reasonable, and whether it was just for us to do what we did.

Now, letter after letter was read to you, in tiresome detail, in which it said that this company was buying in East Texas, and this company was buying in the Mid-Continent, buying gasoline—as though it was something new that the Government had dug up and discovered, and something terrible; and it was read with a voice emphasizing that they were buying gasoline down there. This letter here—why, great Heavens, gentlemen of the jury, if you will recall, Colonel Donovan stated to you in his opening argument to the jury just exactly what they were doing, and that they were buying gasoline, and that they were buying gasoline in a concerted effort to improve a situation. And
to stand here and read letter after letter, as though
4039 that in itself was criminal, because some fellow took
so much gasoline and another took so much gasoline, and that they thought the price would improve, and that they thought the situation would be cleaned up—why, that was just exactly what we were attempting to do, gentlemen of the jury.

Now, we were attempting to do that—there were two situations. There was the Mid-Continent buying program. And it was a buying program, there isn't any question about that. There is no dispute about that in this case. There is no use in shouting that, and assertion after assertion about it, as though that constituted a crime. And then there was buying in East Texas. There were those two situations.

Now, we have divided this argument into parts. What I say to you will be concerning East Texas. Mr. Thomas will treat the Mid-Continent program; and Colonel Donovan will treat the general situation. And we will review that according to the evidence that there is in this case.

Now, to begin with, gentlemen of the jury, with reference to East Texas: Can there be any doubt in the minds of anybody, even the Government attorneys, that there was a situation in East Texas that needed the attention of the industry?

You will remember the situation in East Texas. It
4040 is a field about fifty miles long, and about three miles
wide. And it came into production in about 1930, the biggest oil field in America, a startling addition to the oil industry. And there were in 1936, in that field, 23,000 oil wells—and earlier than that, up into the twenty thousands of oil wells in that field. They tried to limit the amount of oil that could be taken. That field, as I remember the testimony—and I am almost afraid to use the figures, they are so large and so startling—it seems to me the testimony is here that that field was capable of producing three hundred million barrels of oil a day. Am I right in that?

Mr. Thomas: Yes.

Mr. Brazeau: They say I am. Those are figures beyond comprehension.

Now, it was explained to you in some detail how those oil fields work. One person owns a piece of land or a lease here; another owns a lease there; another there, all within the same field. One person sinks a well, another sinks a well on his land, and they both begin to take oil as fast as they can take the oil from the ground. It is wasteful; it is a violation of all we know about conservation; and
it was something that the states and the Government
4041 didn't desire. And there were passed laws to forbid
it.

There were laws known as proration, in which they set up boards and told the different people how much oil they could take from their lands or leases. That proration didn't work; it couldn't be enforced.

In 1934, there were millions and millions of gallons of oil, called hot oil, produced by people taking more than the Government allowed, or the state allowed, from their property at the expense of their neighbors; avoiding the payment of taxes on it, avoiding the laws of conservation, and creating a disaster in the industry. Millions of gallons of that hot oil poured up into the Mid-Western territory. And what was the effect of that?

The effect of it was to come in at times at a rate from a cent to two cents below legitimate oil, legitimate gasoline, and to demoralize the markets by creating what was known as price wars.

Now, those prices wars were not desirable, because somebody had to pay the bill. One person would begin, because he got a bunch of this hot oil—he would begin to sell it at a terrific discount. His neighbor had to do likewise, and so it spread from place to place, and you heard the de-

scription, sometimes spreading like wild fire into other
4042 states. It was not only a loss to the retailers in that business; it was a loss to the jobbers, it was a loss to everybody. And the Government desired that that be corrected. And it took measures to correct it.

4043 Now, the government had what was known as 9-C in the Petroleum Code to control the shipment of this hot oil in interstate commerce, to keep it from moving into places where it could do harm, and attempt if possible to curb the production of this illegal product.

That did not work. It continued even after that 9-C was in, and the attempt to regulate it, and in 1935 it still continued.

And then on January 7, 1935, the Supreme Court of the United States declared that law unconstitutional and void; and there was no curb, and there again this flood of gasoline, as told you here by Mr. Dyer, another growing flood of this hot oil in that district.

Now, that was a situation that had to be corrected. That gasoline could sell from a cent to two cents, sometimes three cents, less than legitimate gasoline, so that the producer of legitimate gasoline found his markets gone and his profits gone and his business ruined by a condition that existed there.

Now, what was done? Mr. Fischer, who represented a group of East Texas refiners, told those East Texas refiners after the introduction of the Connally Act into Congress, which was enacted February 22nd, as I remember it, to go in force on March 1st—and that act forbade absolutely the shipment of oil in interstate commerce, and was so
4044 drawn that its constitutionality could not be questioned—Mr. Fischer advised his plants, many of whom were hot oil merchants, dealing in hot oil, that they had to observe that law in the future, and observe the law of Texas which he thought was valid, regulating this hot oil production.

Now, the government claims that we were instrumental in organizing the East Texas Marketers Association for the purpose of selfishly serving ourselves, our own industry.

Well, the only trouble with that allegation in the indictment, and the only trouble with that assertion, is that there is not any evidence to support it at all. Now, the evidence is overwhelming that that was not true, and they cannot fasten anything like that on these defendants.

These people got together, these Texas marketers, and they organized an association, and you were told just how they organized it, and for what purpose. Mr. Buckley was on the witness stand, and he told of his relations with it. They called Mr. Cline on the witness stand, the secretary of the association, and he told about its organization.

They called Mr. Bradshaw, and he told about the organization.

They called Mr. Steiger, and he told about the organiza-
tion. And the story is all one; and the answer to it
4045 by the government is that Mr. Buckley is a liar.

They cross-questioned him and cross-questioned him; they had him before the grand jury, and they had him here in your presence, and because he would not tell the things they wanted him to tell, why, then he is a perjurer and a liar.

And so they went through the witnesses, every witness that testified to those facts, and the same classification was made of those witnesses.

And they would have you believe, gentlemen of the jury, because they could not prove the opposite out of the mouths of these witnesses, then you are to assume that what they say is true anyway without any evidence.

Now, after those East Texas marketers got together under Mr. Fischer, their attorney, the question was how they could get their markets back. They had been hot oilers. It was a risk to deal, buy gasoline made from hot oil; it could be confiscated. It was not safe for these major companies to go into East Texas and buy gasoline with that threat before them, and they had been buying gasoline in times past, and they always needed gasoline; there isn't any question about that. But it was risky to go into that territory and buy that gasoline. As Buckley put it, and another witness, I think, they were scared to death of East Texas.

4046 Now, this association met, and the question was,
how could they get these majors back in there to buy, how could they get them to trust them again as legitimate makers of gasoline and legitimate sellers of gasoline? They had been selling locally, everybody in East Texas. They had to get back markets with the majors. The natural outlet of their gasoline was in the Gulf and in East Texas itself. The freight rate was against them going north. That was not the place which gasoline ought to go under any circumstances.

So the question arose how to get the majors back to purchase in East Texas?

The natural way was to get somebody in whom the majors had confidence to present their case to the majors, and to attempt to get the purchasers back into that field, and the most natural person in the world to turn to was Buckley, Neil Buckley.

Neil Buckley had been a buyer down in that region. He knew all of those East Texas refiners. He was a person of attractive personality, as you saw on the witness stand; a friendly sort of fellow, a likeable fellow, a trustworthy fellow—not the scoundrel that the government paints him to you, not at all. There was not an element of that in Buckley's make-up.

4047 Buckley was acquainted with the majors, and he had been a buyer for the Cities Service Export Company, and he was the natural person for them to turn to there; and so they rang up Buckley and told him what they were doing, that they were organizing, that they intended to observe the laws of their country, they intended to deal in legal gasoline, they intended to favor the reenactment of the Connally bill and the act in the legislature that would help them, and that they were going to lead decent lives as sellers of gasoline, and would he be willing to help them?

He told them he would have to take it up with his people. That was his field of operation; he could do it, he could help them on the side and carry on his business. Well, they told him to take it up.

He telephoned Mr. Brandli, his superior in New York. Now, remember this; that the Cities Service Export Company was an export company. It sold gasoline on the seaboard, coastwise gasoline, and abroad. The world was its markets. It did not have any markets up here in the mid-western territory; it never sold a gallon of gasoline in the mid-western territory; it never derived a single penny of profit out of anything that ever happened in connection with this.

4048 And counsel said that after they reaped their illegal profits out of this, that they dissolved. Nothing could be farther from the truth. They reaped no illegal profit; they could not.

Mr. Buckley also wrote his story in that letter which is in evidence. They would have you think that we went back as far as January 30, 1935, before anybody ever heard of anybody questioning what we did, and that we had to get up a letter. It would have to be the most violent distortion of evidence I ever heard of.

He wrote this letter to his superiors, and does this sound as though the majors were in a combination down there, in a conspiracy? (Reading exhibit 14)

"Mr. H. E. Brandli,
New York Office:

"Several of the larger East Texas refiners commonly identified here as being the Fisher group, who are nominating themselves for classification in the 'survival of the fittest' are endeavoring to reopen the subject of a central sales agency for East Texas. You will recall that Mr. Bennett had an idea along this line last spring."

Mr. Bennette, a government representative.

"A meeting was held in Judge Starns quarters on the evening of January 29 to develop the subject, obtain the ideas of potential members in such an association, and if possible make preliminary plans 4049 for a corporation. Potential members are Arrow, Oil Refineries, The Wrather Interests, Southport Petroleum, Panama Refining, Union Refining, Danciger, East Texas Refining, Texas Oil Products, Gilliland, Long Star, McMurray, and two or three others. All of these people are not, however, represented by Judge Fisher.

"Jules Constantine of the Solarine Refining Company has been pushing himself rather strongly for the management of such an organization. His principal rival is Louis Green of Ft. Worth. Neither of them can secure cooperation from any large part of the proposed membership.

"It is the idea of this group, if an organization can be perfected, to endeavor to offer their products through the P. and C. committee to major oil companies. It is hoped that under such a method cooperation could be extended for the curtailment of runs during periods of slow demand and for elimination of dumping into the domestic market with resultant price slashing.

"While such an organization might accomplish much good,"

Now, listen to this:

"we doubt very much the ability of the sponsors in securing sufficient cooperation to warrant the suc- 4050 cessful functioning, for the present at least, of such a proposal. Entirely too much suspicion of the motives of neighbors exists today in East Texas. Furthermore, several refiners have advised us that under no conditions would they turn their output over to such an organization for disposal.

"As further details on this question may be available, we will advise you.

"Yours truly,
"Neil Buckley."

4051 Before that letter was sent out, he attached this postscript:

"Learned today that some of the members of the proposed organization discussed among themselves the possibility of obtaining cooperation from some of the major companies and furnishing an experienced man to operate the proposed agency for a period of six months or more. Their idea was to borrow the services of such an individual. We were asked whether we would consent to consider such a task were it offered to us, and replied that any overture along this line would have to be made to the officials of the company. You will recall that Mr. Bennett had such an idea last May or June."

Now, Mr. Brandli, the superior of Mr. Buckley, telegraphed back the following: —just observe this and see how absolutely out of joint this is with the theory that the Government attempts to impress on you:

"Arnott away on vacation."

Who is Arnott? Arnott was the Government representative engaged in the business of stabilization. I don't care whether there was a formal title of "Chief Stabilizer" or not. What figure does that cut in a criminal case like this when you are charging men with a crime? He was
4052 engaged in stabilization, and he took that title.

"Arnott away on vacation. Coates discussed matter with Jim Collett—"

Coates was a member of the P. and C. Committee, a superior of Brandli.

"—discussed matter with Jim Collett and Dr. Lederer—"

Who is Jim Collett? Chairman of the P. and C. Committee and a Government representative, and he is the one they discussed it with immediately. And who is Dr. Lederer? Why he was a member of the P. and C. Committee, in charge of labor and allocations, and a Government representative.

"—both Washington and both agree excellent idea. They believe majors will cooperate. Believe you will appreciate undertaking no small job and will require

> endless amount of work to keep all these Texas refiners in line."

Now, the Government would have you believe that the meaning of those words, "keep all these Texas refiners in line," meant in line with some conspiracy. But it is plain enough from the situation existing there in East Texas, isn't it, how they had slopped over with their hot oil, and people didn't trust them, and they were trying to come in line and work on legal gasoline only. Isn't it plain what that meant? Can you give an evil interpretation to that when it is as plain as day, when there is an innocent inter-
4053 pretation of that sentence?

> "You have the confidence of all here and believe you can put it over, so go to it. Best wishes for your success."

Now, Mr. Buckley took that—let me briefly call your attention to the evidence as to the character of that East Texas association, that the Government would make you believe entered into a conspiracy with these majors to do some evil thing.

And, remember, gentlemen of the jury, in spite of the fact that Mr. Lewin, in his argument to you, said, that these independent refiners entered into the conspiracy and were a part of the conspiracy, the only thing is that they didn't—weren't as big as the other—that they were part of the conspiracy, and remember this, that the Government never indicted one single member of that East Texas association, not one single company, or not one single individual did they indict.

And they didn't indict any company in the Mid-Continent field, not one of those individual companies, in spite of their allegation that they were a part of this conspiracy, and they didn't indict any single individual except one in the whole thing.

But they picked out these major companies, some
4054 of their employees, and some of their officers, and
they indicted them. They didn't dare indict these individual companies, and they didn't want to indict those independent companies, because they couldn't come before you then and make an argument that these things were being done by powerful groups, as they had designated them here.

I want to tell you, gentlemen of the jury, this thing was shrewdly planned, the whole thing. We will then find out a little later what was back of this.

Now, what was that association down there. Mr. Fischer, the attorney who conceived the idea of organizing the association, referred to it on the witness stand here as a selling organization, a central organization to which each refiner could turn over his surplus and which would dispose of it like any of the coal companies of which the Supreme Court approved.

Mr. Travis, one of the organizers, and chairman of the committee to work out the plan, said the association was organized to act as a central agency, through which the members' surpluses of gasoline was to be sold. It was to offer impartially all gasoline the members had for sale with the idea of obtaining the best price obtainable.

Mr. Cline, the secretary of the association, was also on
the witness stand and testified that it was his duty to
4055 try and find a market for the surplus gasoline of the
members. He described the operation of the association, which was solely for affecting sales.

Mr. Buckley was on the witness stand, as I have already referred to, and described the character of the organization.

Mr. Bradshaw, who dealt with the association, described the operation by saying that its members would call Cline and tell him of the gasoline they had to sell, and he would contact buyers and try to make a deal with them.

Mr. Steiger of the Journal described the operation of it, and he said it differed from a buying pool; that they called it a selling pool; that it wasn't like the buying pool that the Government itself had conducted the year before.

Now, in face of all that testimony, what does the Government say? How do they answer it? How do they characterize this as something else than what this testimony shows? Why, every one of these are liars and perjurers, and connected in some way, in an evil way,—even though there were no indictments, named them co-conspirators—and, by the way, they have overworked that figure, so that they can brand everybody. When they
can't do it in any other way, they brand them as a
4056 co-conspirator, to the grand jury unknown, and they
so designated Jacobi at one time in this testimony.

Well, now, here you have the evidence—

Mr. Thomas: Bradshaw.

Mr. Brazeau: Yes, Bradshaw, although Bradshaw had been before the grand jury, he was a conspirator unknown and not indicted in this case.

Now, there is this East Texas Association. Now, there isn't any evidence to the contrary, and there isn't anything but insinuation, but there isn't anything but assertion by counsel to the contrary, not a single bit of it. Are you going to condemn a man, are you going to find a man criminally liable upon the assertion of counsel made in a loud voice, and an insinuation of guilt without anything to sustain it? I don't think you want to convict anybody on that kind of evidence, nor would you want to be convicted yourselves of a serious crime on that kind of evidence; of course, you wouldn't. And you will give these men the same show that you will want to give anybody or that you would want yourselves.

Now, let us go a little further with this situation here. I want to tell you how this was described as operating, and Mr. Cline was the organizer—the secretary of
4057 that association. Now, they attempt to claim here and they allege in their indictment, that Cline was appointed at the instigation of Buckley. Buckley said he was glad to have Cline appointed. Buckley was an ex-service man. Cline was an ex-service man, a wounded soldier. And he said he was glad to have Cline get the job. That is all there is to it. The association chose Cline. The majors had nothing to do with the choice of Cline one way or the other, and there isn't any evidence that they assisted.

Now, Cline was the man who operated this association, and he was on the witness stand and you have got the testimony. And this thing can't be thrown out of the window, and it can't be disputed.

He says,

> "The first thing every Monday morning I would contact all of the members of our Association, and I would find out two things from them; first, how much gasoline they would make during the week over and above their regular commitments which they would desire the Association to attempt to help them move."

Second, what they wanted for their product.

> "And I would say, for example, that Monday whether or not they wanted four and five-eighths, but some might hold out for more, and another
> 4058 might intimate that if he couldn't get that, he might sell for less. And when the buyers called, I would try to sell them at four and five-eighths, and if we could get together, I would take the orders on that basis, and distribute them to the members. If a buyer would say that he would buy it at four and a half but not more, I would tell him I could not handle the order, that would suggest that he call

> the refiners who I had talked with, that they might be willing to sell for less—"

Turn them over to deal with each other, and they negotiated their own price.

> "That order I would not consider handling through the association, but I charged a commission on those sales made at four and five-eighths, which I considered to be a fair spot market price for that day.
>
> "Frequently majors told me the price they would pay. Frequently they would say they did need material and they would ask what they could buy it for. They would often call me on Mondays, but the most of them bought gasoline the first part of the week for their week's requirements, and they would ascertain from me what they could buy gasoline for, and a few hours later or the next morning, they would call me and have an order at a specified price. I exchanged market information with the majors 4059 the same as any other sales manager. I don't remember giving them the amount of gasoline produced in the field. For example, if Bradshaw called me and wanted to know what the conditions were in the field, I would tell him the condition of the various refiners, whether they were sold up or had a certain amount to sell, what they considered the market was, and any other information I had.
>
> "I never said we had so much to dispose of, and would they take a certain number of cars. Sometimes I told them how much gasoline each refiner had and the grade. When Bradshaw called on Monday, he would either tell me what he was going to pay or would ask me what he could buy it for.
>
> "If he says, 'we will pay so much. That we consider a fair market price—' and I would try to get the material for him, and if he asked what it was going to cost, I would give him the prices that our members had given to me."

Now, Buckley described the association in just exactly the same way, its operation, and there is no testimony to the contrary.

Now, where is there any price-fixing conspiracy there? Remember when they formed this association, these Texas refiners were going broke. That is the undisputed 4060 testimony in this case. They were going broke. They were losing. You couldn't sell gasoline at less than five and four-tenths for the third grade gasoline and not go broke, according to the Government's own figures, and the price they fixed on crude. They couldn't pay a dollar for crude and have somebody else buying it for twenty-five cents, when it was hot crude and live. And this was an association organized so that these people could live.

Now, Buckley started out after he accepted this—he accepted it and he started out to help these people out and get in touch with the majors and get them to buy, not at high, arbitrary and artificial prices, as the indictment alleges—there isn't any evidence that he attempted any such thing at all, not a bit. He went out and started out—I won't take time to follow Buckley's ramifications—but he began going to the majors to attempt to get them to buy that gasoline at a fair price, at a fair market price.

Now, it would never do for those people to come down there. It wouldn't help these East Texas refiners out a bit, not one single bit. If they came down there, they began chiseling and buying down there at the lowest figure they could get that gasoline for. These were little
4061 refiners; they couldn't afford to store their gasoline. They didn't have storage capacity, and they didn't have the money to carry it. They had to keep on running, and they had to pay for their crude. If they quit running or stopped paying for their crude, or quit taking it, they lost their crude customers, and they lost their gasoline customers, as well.

4062 So they were in a bad predicament. That also, gentlemen of the jury, is the undisputed testimony in this case. And that is the position these small refiners found themselves in. Going broke; obliged to keep on and buy gasoline at a figure at which they couldn't make a living and exist. Now, these people came in to buy that gasoline.

What would the people in this country say; what would the government say, under the Petroleum Code, if these refiners appealed to the major companies to help them out,—these major companies that had the market for gasoline, that had the money to buy it; that had the storage facilities,—what would the people of this country say and what would the government say, under the Petroleum Code and what would these gentlemen (indicating government counsel) be saying to you, if these major companies didn't go in and use these resources to help these little fellows out? What would they tell you about it then? What kind of brutes would they be then? What would be the cruelty of that situation?

And they had the power to absolutely crush those people, if they so desired. There is no question about that.

Mr. Lewin has described their tremendous power.
4063 And don't you think, and don't you know, that they could have let those little fellows go and sink in the industry and gobbled up everything they had, if they were that kind of men? And it wouldn't have lasted long either. Not a bit of it. But they didn't. But they went out.

And he sought advice of these people and he appealed to them. He told them their situation. He told them they were going broke. He told them that they had resolved to run on legal crude and to obey the laws of their country and that it would be safe for them to go back and buy gasoline.

He saw in Pittsburgh, one of the first persons, Dr. Lederer; and Dr. Lederer introduced him, over the telephone, to Mr. Arnott, who was at Pinehurst. Buckley had never even met Mr. Arnott up to that time. And there is no evidence to the contrary.

And again, the government would have you insinuate that in the organization of this association and in the conduct of this association at the outset, that Mr. Arnott, the arch conspirator, was the one that directed it. But he never knew Mr. Arnott; had never met him. And Lederer introduced him and his cause to Mr. Arnott, over the telephone. And later he saw Mr. Arnott, and he went to
4064 Mr. Arnott because he was Chief Stabilizer, and because this was right along the line of his work, to rehabilitate these small industries within the petroleum industry.

And he went down and saw Mr. Arnott at Pinehurst, and Mr. Arnott listened to his story. He heard what he had to say. He heard his representation but gave him no answer. He would look into it further. Mr. Arnott did look into it, and he did resolve to help him in the work that he was doing. And he enlisted in that help, and he invited Buckley to meetings that the majors held—that these committees held—of the Code, and one of them at New York, and one of them at Chicago, in which he allowed Mr. Buckley to present his case to the majors.

They were suspicious. They didn't enter into it readily. It was a task that these majors had to take on themselves,—not something that they grabbed at, in an effort to make an evil situation but a task that faced them to help these small refiners.

And finally Buckley enlisted a number of them and got

them back in there, and their confidence to go back in and buy gasoline. Mr. Arnott assisted him throughout, in this whole thing, helping him get buyers. They enlisted Mr. Jack Carnes in the work, and he helped in
4065 getting buyers. And they argued this matter with the majors. They got some of them to go back in there and buy gasoline. The allegation in the indictment is that ten majors entered that field to buy. There are only four of them left in this indictment. One of them is Cities Service Company that never bought a gallon of gasoline or produced a gallon of crude oil. And it is announced, time and time again, to this jury, about this Cities Service Company,—this big company, you heard about, buying down there. Cities Service Company never bought a gallon of gasoline down there.

So, in spite of the fact that they are left in this indictment, they are dropped out of the picture, and there are only three left. One is the Continental Company; and they only bought four cars in the whole four months. Cities Service Export Company, which is not now a defendant in this case, and Buckley's own company, had bought gasoline there in January, according to the undisputed evidence, and they bought gasoline there in February and March. And they never bought another carload of gasoline out of that territory in all the rest of the period of this indictment.

4066 So, what have you got that allegation down to? It is whittled down simply to nothing, a zero point, in this indictment.

And the cars that Buckley bought, in February and March, out of I think thirty-five purchases that he made, thirty-four of them were below the market price and the other was at the low,—and it was at the low because it was a special grade of gasoline.

Now, just look at that situation. Cities Service Export Oil Company didn't have an iota of interest in increasing the price of gasoline in that market or in the mid-western area, including Wisconsin,—not an iota of interest in it. That was Buckley's superior.

Now, it doesn't change the situation to designate it something—to name it something. You can't call a thing something and make it that something.

I think of a story that my charming friend, Mr. Francis, tells on himself. You know, this Texas gentleman that explained endpoint one day to us. He said when he entered the law school in Texas, the professor said, "Charlie, stand up. I want to ask you some questions." He said,

"Charlie, how many legs has a pig?" He thought there was some catch in it, and he hesitated a little while and finally he said, "Four". The professor said,
4067 "That is right; correct." He said, "Now, if you call a tail a leg, how many legs has a pig?" Charlie answered promptly, because there was no catch left, "Five". The professor said, "Charlie, you will never make a lawyer in your life. Because you call a tail a leg doesn't make it a leg. The pig still has four legs, no matter what you call the tail."

And that is just exactly the situation here. It doesn't make any difference what you call these things. It is, what it is. And these letters that were read, one after another, designating this thing one thing, when it is another, and the evidence shows that it is another, doesn't make it something else.

Now, I have told you what the effect of the East Texas Buying Program was on the industry. Right here I want to, while I think of it, mention one thing. Mr. Lewin, in his opening argument to you, mentioned it as much as a dozen times,—this buying pool in East Texas, and this buying pool in the Mid-Continent.

Why, there is no buying pool even as claimed by the government. There is no allegation of a buying pool in the indictment. There never was a buying pool and there is no evidence of a buying pool. There isn't anything resembling a buying pool in either the East Texas or
4068 Mid-Continent field.

There was a buying pool conducted by the government in 1934, in which ten million dollars was to be put in a pool. You remember Mr. Steiger's statement. And these companies had all to put this money in the pool and then buy gasoline.

There is no buying pool alleged in this indictment, and there is no buying pool here. And it was said time and time again, in objection to testimony, as it came up in the course of this trial, by one of these gentlemen, well, what has that got to do with the buying pool?

Now, there isn't a buying pool and there never was a buying pool, and there wasn't a buying program. There was a selling program carried on by these people.

And Buckley enlisted a great many majors to come in there and help these people out in that East Texas situation. And they bought from those people, through the solicitation of Buckley and the solicitation of Arnott, and the solicitation of Mr. Carnes, and perhaps others. And a good many of those that bought in this program, a good

many of those that bought there, felt that it was an obligation to buy,—a moral obligation to buy. And I think it was too. And they felt that they should take
4069 their share, enough to dispose of the surplus gasoline that these people had, that they would have to dump on the market at any price that they could get for it. And I think it was an honorable and a big thing. I think it was a wonderful thing for these gentlemen to do what they did down there.

I know that Mr. Lewin sneered at it. He said, "This altruism makes me laugh." The distress gasoline makes him laugh. Well, it was not a laughing matter to those people that had that distress gasoline on their hands and wanted to dispose of it. It was no laughing matter for farmers that had produce on their hands,—distress produce, and wanted to dispose of it. It was no laughing matter for any industry having products on their hands and manufacturing products, that they could not dispose of, without dumping on the market. You can laugh at it all you want to, but it becomes a grand thing, and that is what the government tried to do with the farmers, was to take this distress material in some way, or limit the production, so that there wouldn't be any distress material. We were doing that all through the depression; and to sneer and laugh at the efforts of these gentlemen, I think is in poor grace for the government of the United States that was doing the same kind of stuff they were doing for ex-
4070 actly the same purpose.

Now, is it possible,—do you think that these men are not capable of having a disinterested thought? Do you think that these people are so sordid and so low and so mean that the sole thought in their minds was to enrich themselves by what they did? Why, of course you don't. If you did, you would have to simply turn the presumption of innocence upside down and have a presumption of guilt, just because these men, as they say, are big men, or these companies are big companies.

4071 Now, I want to tell you, from what you have seen on the witness stand, that you know these men are capable of big things; that they are men that are capable of unselfish thought; they are men that are capable of doing things for society; and that they have got a social consciousness that is just as sincere and just as good as any other class of people in the world.

Now, I am not going to tire you gentlemen out. I want to read to you paragraph 18 of the indictment.

(Producing copy of indictment)

I have got a little smaller book, this time, so I won't be charged with any crookedness. There are 25 pages, 25 printed pages of this indictment. May 18th:

> "Purchases of gasoline through said Association from the respective members thereof have been made at the instigation and under the supervision and direction of defendants Arnott and Carnes, with one Neil Buckley, employee of Cities Service, acting in a liaison capacity between said Association and the defendant major oil companies, and also instigating and directing said purchases. Said Buckley acted in such capacity under the instructions of defendant Cities Service Company"—

not a syllable of testimony of that, gentlemen of the jury—

4072 "—and defendants Brandli"—

not one single line of testimony in this case that Brandli ever gave one single direction of that kind, have they produced, or can they produce—

"—Coates and Frueauff"—

not one single bit of testimony in this case that Coates ever wrote a line to Buckley or to the East Texas Association, or that he sent a telegram, or that he attended a meeting, or did anything at all—

"—and Frueauff—"

not one single bit of testimony here that one single one of those gentlemen did one single thing that they allege in that indictment, not one.

There is testimony here that Mr. Frueauff asked for their purchases in East Texas, and the Mid-Continent field, to see what he ought to do or what he would have to do in the purchasing—assuming that he had some responsibility as to that. But no communication between Frueauff and the East Texas Marketers' Association, or with anybody connected with it.

Now, what are you going to do with allegations of that kind? Are you going to assume that they are true? Are you going to assume that these gentlemen are rascals, and that there must exist somehow, somewhere, something that the Government never got? Can you convict men on
4073 that kind of testimony? Why, if you can, then there is no need of making a defense or attempting to make a defense in a criminal case, if you are a large company. If bigness is a crime in itself, then all that is necessary is to show that fact, and conviction follows as a matter of course; and every man then is a criminal, in proportion to the size of his business. Is that the law of America? Is

that the law anywhere? Haven't you got to prove what you claim that they did? And hasn't there got to be evidence to sustain it?

Now, on the contrary, instead of there being agreements to buy at a certain price, to buy through this Association, as alleged here, at high, artificial and progressively increased prices—that is what they have said—instead of there being evidence to that effect, there is evidence just exactly to the contrary.

The purchases down there were not made at high, arbitrary prices. They were not made at uniform prices. They were made at prices below the market, and they were not uniform. The same price was not paid by the same company, some times on the same day. Different prices were paid by different companies in their negotiation with the East Texas refiners, with this Association or with the individual members themselves, without going through 4074 the Association. That is the undisputed testimony in this case.

They put up a chart here, with a straight line, at the very outset of this case; and they claimed that that line was the high, arbitrary and artificial price that these people were paying for gasoline. And they left this chart, without an explanation. They didn't prove that we did actually do it. They just said that we did it. And they said so in the indictment.

And then they threw the burden on us—I thought quite shrewdly; I thought it was a very clever piece of work. They threw the burden on us to show that it wasn't so. And they complain that they rested on Thanksgiving Day, and we took all of this time. We had to take all of this time. We didn't stop with the fact that they had failed to prove their case. We weren't going to rest there, and take any risk in the matter; but we went on, and we had to go into all of those purchases down in East Texas and in the Mid-Continent, purchase after purchase, from person after person and independent refiner after independent refiner; and the figures absolutely and completely refuted what the Government charged in the indictment, and what they claimed.

Oh, I know counsel sneered at the Government's, 4075 or at the defendants' accountant, Mr. Miller. But you saw him on the witness stand. They didn't impeach him by any testimony of any nature or description, and they couldn't impeach his figures; and they stand undisputed.

The only attempt the Government made to prove the allegation in their indictment with reference to those purchases at high and arbitrary prices was to put another accountant, a G-man by the name of Miller, also, on the witness stand. Do you remember his first appearance on the witness stand? The journals were still in the case, and Colonel Lawton, among others, cross examined him. And it showed that his charts were falsely labeled, that they didn't show what he claimed they showed, that he didn't put the figures in the right freight districts; and they were such a complete failure that they withdrew two of the exhibits, on his first appearance. Then he appeared once again, with the same fiasco and the same false representations; and his figures were riddled, and they never corrected them, and they never could, and they never could show that what they claimed in that indictment was true, because Miller, our accountant, absolutely disproved what they claimed.

Now, after all this long testimony, after all these
4076 days, and days and days of testimony, refuting this
and that that the Government claimed, and that they left without any proof—then what did the Government do? They took about two days to answer all of that testimony. And they took a little memorandum, written by one fellow, of what his impression was at a meeting, that they had had in their possession since October; and they had subpoenaed him in October; and the last thing they presented was that memorandum. And they called on the witness stand a gentleman by the name of Vaughn, a broker, who attempted to discredit these defendants by a statement of what took place in the Globe office. And the testimony turned out that it was untrue. He wasn't in the Globe office, no such telephone message was ever given, and they didn't prove that it was ever given, and they can't prove it; and that testimony was false. And that was their rebuttal to all of this testimony that we offered, and all of this proof that we offered that was unassailable. And they saved that little memorandum until the very last thing. They thought that was a powerful thing, and they sprung it here on you the very last thing, as they sprung it in the testimony.

4077 Now, are you going to convict men on that kind of
stuff? The Government doesn't want you to convict these men, or shouldn't want you to, unless they are guilty. They owe something to these defendants, as well as to the Government. And they will think no more of you as jury men, if you conclude that these men are innocent and you so find, than they would if you went out and swallowed their

assumptions and their assertions and their blackmail of these defendants.

Now, as to the volume of the purchases, the same thing follows as to that, that they divided this up among them, and each one took some of it. That they did purchase, we don't deny; we never have denied it. They assert it here as though it was something we denied; and then to set up this straw man and knock it down with great gusto, is just simply misleading this jury.

> "In 1935 the present defendant major companies"—

I am taking this from the evidence. I am paraphrasing it, so as not to tire you, but I have the references here to the pages of the testimony:

> "In 1935, present defendant major companies bought 40,195,000 gallons of gasoline from East Texas independent refiners named in the indictment, and 45,598,000 gallons from all East Texas refiners. In the same year, the total shipments of East Texas
>
> 4078 refiners named in the indictment were 285,000,000 gallons of gasoline. Of this volume, sales to the defendant majors constituted 14 per cent of what they sold."

And the indictment alleges—and we want to talk about the indictment; that is where the charge is—the indictment alleges we bought fifty per cent.

> "Shipments of all East Texas independent refiners in 1935"—

that is, taking all of them—

> "—were 378,000,000 gallons, of which sales to the present defendant majors constituted twelve per cent. In the same year, sales to Cities Service Export, Louisiana Oil, Tide Water Oil, Gulf and Texas, amounted to 48,299,000 gallons. Adding these sales to the major purchases increases the percentage from twelve per cent to something under twenty-five per cent."

The Court: We will take a recess at this time.

(Thereupon at 3:20 o'clock p. m., a recess was taken.)

4079 (Following the recess, the Court resumed its session at 3:40 o'clock P. M., and the following proceedings were had:)

Mr. Brazeau: May it please the Court, and gentlemen of the jury.

There is one little item in connection with the East Texas

Marketing Association that I did not mention, that indicates that that association was an association of those independent refiners themselves. The expense of that association was paid by assessment on the members. There is not any evidence in this case—there could not any be produced; the evidence is all the other way—that association paid its own expenses by assessment of two dollars and a half a car on gasoline when it was sold at the going market price, and later two dollars a car.

Now, there is another thing I want to mention in this connection, and that is, I stated to you that the Cities Service Export Oil Company had nothing to gain by loaning Mr. Buckley to that company.

Now, I know that the government will claim that they were part of the Cities Service organization, and that that company had something to gain from it. But Mr. Coates, the superior of Mr. Brandli, was a member of the P. and C. Committee, he was a government representative, and there wasn't anything that could be gained either by Cities Service in this way or through any other kind of
4080 connection that it had in this East Texas matter.

The Empire Oil Refining Company did not operate in East Texas; it operated in the Mid-Continent field.

Now, these are facts I wish to call to your attention if the government should charge or state that there was a sefish motive in the Cities Service Export Oil Company.

Now, the allegation of the indictment with reference to East Texas, as well as to the other, is that:

> "Beginning in the month of February, 1935, and continuously to the date of the presentation of this indictment, defendant and certain persons hereinafter referred to, and other persons to the grand jurors unknown, well knowing all the foregoing facts, have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed among them and have thereby intentionally increased" the prices, and so forth.

Now, what does the evidence show? The evidence shows that out of those ten companies that were in East
4081 Texas as I have analyzed it for you and shown, there are only two companies left, Pure and Sinclair.

Did they conspire together? Did these companies buy at a high and artificial level of prices? Why, we have the analysis of that given by Mr. Miller, our accountant, taken from the invoices and records that are impounded here in the Court, and they show why and how they did buy in that East Texas market.

These dots (indicating on chart) show the purchases, and underneath is the number of purchases by these companies.

These gray lines show the range of prices, the top of the line showing the high, and the bottom the low of the market price, the market published price.

Now, if you were rigging the market and buying at a high and artificial price, an arbitrary price agreed among you, why you would buy up here (indicating). You would buy at the top of the market, or you would buy above the low of that market. You could not lead the market here (indicating), and you could not rig the market at a high and artificial price here (indicating) by buying below the market.

And that is what this map indicates. As that price increased the purchases here (indicating) remained below the market price, and the purchases here (indi-
4082 cating) are an eighth below the low of the market price. Purchases here (indicating) are an eighth below that price (indicating) as that price went up. They were following the market, and following far below it instead of leading the market up. This row of purchases here (indicating) is all below the low, and there is one there (indicating) that is at the low. These purchases here (indicating) are below the low.

Is that the way people go ahead with a conspiracy to pay a high, artificial and progressively increased price? Isn't that absurd, isn't that unreasonable?

Wouldn't you have to presume something, wouldn't you have to find something that the evidence absolutely contradicts? Of course you would. That allegation is absolutely void.

And here (indicating), that they bought at uniform prices, take this date here (indicating). Did they buy at uniform prices? There were four purchases made at that date, and every one of those purchases was at a different price. And the same thing on other days on this chart that you can readily see.

Now, if there was a combination and conspiracy of people to fix uniform, high and arbitrary prices, would you

find four prices here on the same day by companies going in there that they claim are members of this con-
4083 spiracy? Why, the very statement is absurd and refutes absolutely the government's charge in that indictment. And they have not shown any evidence to sustain that allegation here in this case. Not one bit of evidence have they shown to sustain that allegation.

Now, they claim we were buying there when we did not need to. Why, the evidence of these two companies, Sinclair and Pure, shows they needed millions and millions of gallons of gasoline, even running their refineries at full capacity. Pure Oil could only furnish seventy per cent of the gasoline they needed. And they not only bought millions of gallons in East Texas, but they bought millions of gallons from majors, that is, to supply the demand.

And the same is true of Sinclair. You saw that big chart that Mr. Wood, the attorney, put up here as to Sinclair, its manufacture of gasoline, and its demand for gasoline, and you saw the millions of gallons that they had to go out in the market and buy in order to supply their purchasers.

Now, are you going to ignore that testimony? It is easy to convict people of crime if you do just one thing; just throw all the defense testimony out of the window, and just take as testimony the assertions of the prosecutors; treat all witnesses for the defendants as liars and
4084 perjurers, and all witnesses for you as angels with sprouting wings, and you can convict anybody in the world of any crime you want to charge, with that kind of a prosecution.

Now, the consumers' demand at the time these people were purchasing had increased tremendously. Taken from the testimony, for the year 1935 it exceeded the government estimate, the consumers' demand did, by twenty million barrels, and demand in the middle west was about in proportion after subtracting increased export.

During the depression the consumptive demand for crude oil had dropped from two million five hundred thousand barrels to two million barrels, but in 1935 it got above three million barrels, and in 1936 and 1937 increased to three million five hundred thousand barrels. Now, that is the proof from the testimony in this case.

Now, remember this, gentlemen of the jury, also, and this testimony is undisputed, it is the undisputed testimony in the case; that the government itself, our government, the government of these men, allocated to the majors allocations that would compel them to buy gasoline and for the purpose compelling them to buy gasoline from the independents.

Now, isn't that the undisputed testimony in this case?

And then after compelling them to buy this gaso-
4085 line, and arranging their allocations so they had to buy this gasoline, then come in and prosecute them because they have bought it and claim a conspiracy in buying it.

This is the testimony on that, and it is undisputed:

The allocators did not foresee—I am taking this from Mr. Shatford's testimony; he was national co-ordinator; he is the one that had charge of these matters, and the government did not see fit to dispute this in any way, and they could not dispute it, is the reason they did not.

The allocators did not foresee the increased demand. For March they estimated nine hundred thousand barrels too low, and induced refineries to curtail their production of gasoline by nine hundred and sixty five thousand barrels voluntarily, so there were one million eight hundred sixty five thousand barrels that the majors were caught short with under the emergency.

The allocations of April proved to be eight hundred thousand barrels too low.

By the end of May the major companies were short about three million barrels of gasoline, or fifteen thousand tank cars.

In that situation they had to find three million barrels of gasoline somewhere. That is about equal—the testimony of Mr. Shatford shows—that is about equal to the amount purchased during the first several months of
4086 the buying program.

With reference to inventory control, I want to call attention to this testimony:

On January 2, 1935, Administrator Ickes wrote the chairman of the P. and C. committee on the subject of inventories, stating among other things that he did not feel that any appeals for manufacture of gasoline in excess of the federal determination should be approved.

Why didn't Mr. Ickes want any increase in the allocations of those majors? Because he was looking after the interests of these small refiners, and wanted these majors to purchase from these small refiners.

Continuing, that the figure of 65,000,000 barrels established as an objective for March 31, 1935, by the industry was reasonable and should not be exceeded, that there should not be an unbalanced accumulation of inventories in any part of the country or in individual plants, that in making allocations, the required production should be separated into that necessary to balance current consumer demand and that necessary for additions to inventories.

It is undisputed in this case also, gentlemen of the jury, that the government desired to stabilize the price of gasoline.

Mr. Ickes appointed a committee known as the 4087 Blazer committee to make a study of these independents or small industries, and that Blazer committee reported in favor of stabilization, and for stabilization of the price of gasoline.

Now, with all this backing and all this help from the government, and all this urging from the government, are you going to brand these men as just selfish individuals? These men knew at the time that this country was in distress. These men knew at the time that it was up to the industries, and the large industries and the large people in this country to pull this country out of that tailspin they entered.

Counsel quoted Colonel Donovan in his opening statement as saying that intelligent, self-interest demanded that they do what they did and he labels that as a confession of selfishness.

Is it? No, it was an inducement for those people to do what they did, and to help the small industries out. In helping the small industries they did help themselves; of course they did. They put the industry upon a stable basis, but that purpose was not the sole purpose of those individuals. They did not go into it for that purpose.

They were brought into this position by the govern-4088 ment itself and by the situation of the industry.

Now, I want to say something about that Blazer report, taken from the testimony in this case.

In the early part of April the P. A. B. requested the P. and C. committee to review and comment on the Blazer report and to see the P. A. B. regarding it. The P. A. B. was the government organization in connection with the petroleum industry.

On May 1st Arnott sent telegrams to the members of the Marketing Committee of the P. and C. Committee, stating that the Administrator had requested the committee to give him its judgment on the Blazer report, and calling a meeting for May 9th.

That is the Administrator, the government Administrator.

A committee of three appointed by the P. and C. Committee, consisting of Collett, Majewski and Arnott, met with Mr. Fahy in his office on May 10, 1935, to respond to the Administrator's request. Fahy was the chairman of the government agency dealing with the petroleum industry, the P. A. B.

And, by the way, I might mention here that counsel for
the government in mentioning Mr. Fahy and Mr. Frey
called them "mice". He wanted to belittle them so
4089 in their connection—he knew they could not answer
this; he knew it was so powerful a reminder that
these defendants were not in a conspiracy, that he had to
foul his own nest and attempt to discredit his own government officials, and he says Fahy and Frey were "mice".

They discussed the recommendations made by the Blazer
committee that it would be very helpful if the major companies would buy distress gasoline from small independent refiners.

4090 Arnott informed Fahy, the chairman of the Government's agency, that he already had been buying gasoline—had been buying, and this is in effect what Fahy replied, that is quite so and disposes of that part of the report. And they went on to other phases.

Now, if that isn't true, why isn't Fahy here? If they want to dispute that fact testified to positively, and not disputed in any other evidence, why didn't they bring Fahy here to dispute it instead of abusing him here as a Government official? He is still a Government employee, as attorney for the Labor Board, and I have no doubt, a man of honor and integrity.

Now, you come to these golden stairs—before that, I want to discuss with you and call your attention to the opening statement of counsel. I want to be helpful to you, gentlemen of the jury, if I can, in pointing out the testimony in this case, the actual testimony, not something assumed, not a mere assertion, but actual testimony, and what I have already told you is actual testimony in the record in this case.

Now, in the opening statement of counsel to the jury,
he said that these gentlemen were in secrecy, that what
they did, they did in the dark, and it wasn't until they put
the Government Secret Service men on their trail, they discovered what they were doing. And they uncovered
4091 all this mischief and all this mysteriousness.

Now, what does the evidence reveal? What has it revealed? Is that so? If they didn't operate in the dark and didn't act in secret, then the converse is true that they had nothing to hide. Did they? If everything was out in the open, if they spread everything before the Government, if they kept in their files all these letters that the Government has emphasized here and handed them over to the Government on subpoena, if they kept all that stuff, doesn't it indicate that these gentlemen didn't regard themselves as doing anything evil? That they were not engaged in some criminal enterprise?

Just look at the testimony. Let us review it just a minute. In the first place, as I have already pointed out, the first thing that Buckley did was to take up with Arnott, the Government's key stabilizer and representative of the Government itself. On a number of occasions, Arnott made disclosures of his activities to the P. A. B. He was in extreme close contact with the P. A. B., often daily. He reported to Frey. He reported to Frey. On December 18, 1934, Arnott met with Fahy and Frey, and explained to them what had been done in regard to the restoration of the retail market, and together they planned another meeting in the near future, which meeting was the January
4092 4th meeting, at which the tank car stabilization committee was appointed.

Now, there is only one way you can dispose of that kind of evidence, and that is to say that everything Mr. Arnott said was a lie, but that doesn't prove the contrary, even if you took that sordid view of his testimony.

On January 9, 1935, Arnott met with Meyer and Marshall of the P. A. B., and explained the retail price war and what had been done at the December meeting to deal with them, and what had been accomplished and the cooperation of the ifferent elements of the industry, and also told them of he meeting of January 4th, how the question of the inependent refiner had come up to the front, and what he ad done by appointing this tank car stabilization comittee. And he also discussed with Meyer and Marshall e Panama decision, and that it would be very essential at something should be done to deal with the situation ereby created.

On February 20, 1935, Arnott wrote Fahy a letter rerring to some developments in connection with the market d also in connection with the East Texas refiners.

Arnott testified that he wrote the letter because he wanted the P. A. B. to know what he was doing in
93 connection with the matter of distress gasoline, that it was such an important factor in the restoration of

markets and which would be a matter covered by the members of the P. A. B. and the Secretary himself and was the objective they were working for.

Now, I won't take the time and I won't go through all of the testimony with regard to this furtiveness, but it appears here without dispute, it appears here by witness after witness and by all the testimony that there wasn't one single thing kept from the ears of the Government in this case in connection with what was going on. And you will hear, and others will treat of that subject—you will hear—and that testimony is undisputed—that the Secretary of the Interior, Ickes himself, knew the work, the work that these men were doing in stabilizing the market.

Now, an essential part of this conspiracy is alleged in this indictment, and I am following this indictment now, not talking outside the indictment. The Government has got to stand or fall on that indictment. They have got to prove the allegations of that indictment and prove them beyond a reasonable doubt.

They have also that allegation, when you come to those
journals, they had here, they had taken all testimony
4094 before the grand jury, and then indicted those jour-
nals and dropped them in and held them for trial and
kept them until the end of the Government's case.

And they worked manfully day after day, these gentlemen, who are gentlemen of talent, and had behind them many assistants and all the force of the United States Government that is applied to these things—they worked manfully day after day to attempt to pin on these journals something in connection with this, to prove an allegation of their indictment, and what is that allegation?

"Said defendants have been the chief agencies—"

That is, those journals—

> "—and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area, including the Western District of Wisconsin."

"The chief agencies and instrumentalities"!

And why were they? Because the jobber contracts were based on these journals, on the prices quoted in these jour-
nals, and so to make a conspiracy they alleged that
4095 a conspiracy was entered into with these journals to
publish a false price, and as they allege in the indict-
ment, they published the price these majors paid as the
jobber price.

The evidence fell down completely, and at the end of the Government's case, they had to voluntarily dismiss these journals from the indictment and take from their indictment and conspiracy the essential link that they claimed raised the price to the jobbers.

With reference to the journals that are dismissed, look at the opening statement to you gentlemen by counsel for the Government:

> "If you want to make a conspiracy complete, the only way is to manipulate that open spot market, but to make our conspiracy perfect, we would get the journals into the conspiracy and get them to publish the regulated, artificial, arbitrary prices that we want to establish as the prices for gasoline in this area."

Were they publishing the price these people paid? No.

> "They paid increasing prices, that is, these defendants, higher prices than they would have had to pay if they were buying gasoline to meet their ordi-
> 4096 nary needs, and they got the journals to publish that as the going market price that they had paid—"

Now, the evidence was—the evidence is in this case and was at the time of the close of the Government's case and still is that the journals never published any such price at all.

And then counsel ends up this statement:

> "Now, see how simple that was!"

And, indeed, it would be simple. But instead of that simple conspiracy, as simple as he claims it was, at the end of the Government's case, they hadn't proved one single thing on it to connect up the indictment in this case, the essential element of this indictment, and they dismissed those journals voluntarily themselves from this case.

"Oh, but," counsel says now—well, I want to read further:

> "Every effort was made—"

Well, I guess I won't.

But counsel says now that while of course they were an essential element in the conspiracy, that they were innocently publishing prices, and in that way affected the market, but he hadn't got anywhere then, because the evidence shows that they didn't innocently publish the
4097 price that these people (indicating on chart) were
paying. Here is what they were publishing (indicating), and here is what they were paying (indicating). They didn't publish it at all, and there is no evidence that they did, not a bit of evidence that they did.

So, the only trouble with that assertion, and the attempt to crawl out of the dropping of this connecting link is that there is no evidence to sustain it, and there was no allegation of the indictment that that was what was done at all.

Now, what I want to discuss with you is what was originally termed by counsel for the Government as the golden stairs here (indicating on chart) and later was designated by the Government's attorney, who opened this case, as a ladder of roses, the ladder of roses leading to the garden of love.

Now, I think that is a very sweet description of this and very poetic. They have alleged with reference to this chart —this is the course of their logic that they expect you gentlemen to accept—(indicating)—they allege that that is a high and artificial high. If it was down here, it would be a "high and artificial price." If it was down here (indicating), it would be a "high and artificial price."

We were buying gasoline, and whatever price there
4098 was there (indicating), why, our buying was responsible for it. Now, you will—you are skipping a whole lot of proof to make any such claim. You are going a long ways to try to convict these defendants of fixing that price on any such claim as that.

Colonel Donovan said in his opening argument to the jury that what these men were doing in East Texas and the Mid-Continent might have lifted the price up there, might have lifted the price up there, but what forces were at work there?

The Government counsel didn't dare be raw enough in his opening statement to claim that that price was the price that resulted from this buying. All he did dare claim was that it was an element that might have done something, and that is it. That is all the connection it could have.

There was working at this time here (indicating), March 1st, the Connally Act was enacted. The Connally Act shut off—instead of there being seventy-nine or eighty refiners in East Texas running on hot gasoline, there were fourteen or fifteen refiners left in East Texas. The Connally Act shut off the flood of hot oil into the mid-western area—and hot gasoline into the mid-western area, and shut off the manufacture of an immense amount of gasoline.

4099 That was an important element, according to anybody with any fairness and decency.

Federal allocation gasoline came in, as I pointed out to you, and cut down the amount of gasoline that these majors were allowed to keep. The allocations were strengthened January 13, 1935, and fixed so the majors would have to buy. There was a voluntary reduction by the majors of the amount. There was a tremendously increased consumptive demand for gasoline, as I have pointed out, beginning at this time, just at the time of this rise (indicating on chart).

There was a general business recovery, and everything strengthened. There was an inflation of currency in the country, and prices went up at that time in every possible line.

There was an interstate compact of the different states that affected it.

There was the increase of foreign demand.

There was a limitation of import.

The prices of other petroleum products went up, and there was increased prices for labor, and there was a shortening of the hours of labor.

Now, all these elements were present at this time.

Now, they put on the stand witnesses who said
4100 they never saw a more uniform price for gasoline,
but they didn't put on the witness stand to prove they never in the history of the industry—that never in the industry were conditions the same as they were at the time this chart was made.

And how can you say and attribute that to this cause when the same elements that entered into it were seven or eight elements that had a tendency to increase the prices here and the prices here (indicating), and they weren't present before?

Now, when that became a stabilized market there (indicating), it was just exactly what the Administration wanted. It was just exactly the desired result, the stabilization of markets, not only in gasoline, but in everything else, and they were all treated for it. And that is just what they desired.

And according to these gentlemen the major companies had power to do anything with that price that they saw fit. The price remained there month after month, and month after month. Why was that if that power was there, and they desired to exercise it? Why, you have just got to exactly, if you want to convict these defendants, to convict
them on them. You have got to have a desire in mind
4101 to punish them, maybe, because they are big, or maybe
because they are rich, or something else, or else you couldn't ever get a possible conviction on that kind of testimony.

Now, we had on the witness stand one of the greatest experts in the United States, perhaps the greatest expert in the United States, in statistics dealing with the petroleum industry. He was a statistical—he had charge of the statistical department of the American Petroleum Institute. He had been employed by the Government. He was learned in this very kind of work.

I am referring to Fred Van Covern, and as yet the Government hasn't placed him in the undesirable class, and I don't think they dare to do it. With all the list they have, they have never blackened him, they have never placed him in the same list.

This is his testimony, and it is the testimony of a man that knows the industry, and whose word is to be taken in matters of this kind.

He says:

> "It is my opinion that the strength in this situation was inherently strong enough to have pushed the price of gasoline up to an approximate parity with crude. However, I had general knowledge of buying by major companies of so-called distress gasoline from independent refiners. I did not know
> 4102 the extent or nature of such buying. However, in that it removed so-called distress gasoline, which was overhanging and depressing this market, it did have an effect on price. But the situation was so strong here (indicating on chart) with respect to gasoline demand, following these large increases, being considerably above the demand anticipated by the Bureau of Mines, and continuous decline in the gasoline stocks to below seasonal requirements. The day supply, and the strong indication here (indicating) of crude oil, even though it being much above that recommended by the Bureau of Mines, necessitated further withdrawals from storage in order to meet the demand for refined products, and it is my opinion that whatever buying was done here had only a temporary and incidental effect and that that it did not in any way tend to increase the price of gasoline to a level higher than the natural working of the law of supply and demand would have forced it."

4103 Now, remember also, gentlemen of the jury, that the price of crude was pegged at one dollar, and the government representatives fixed the parity between crude and gasoline at eighteen and a half to one. That made the price of gasoline five and four-tenths cents.

This price that is pictured was never above the parity that the government recommended and the government desired to have.

Are you going to convict these men criminally because it did or accomplished that, even if you could lay to them the whole thing? Are you going to punish them criminally for what the government itself desired and worked for?

I want to take up briefly this question of jobbers. Counsel would have you believe that we were the enemies of jobbers; that we are condemning wholesale all jobbers. The quotation he gave from Col. Donovan shows that this is not true. The evidence shows here, and he brought out that evidence, and it is undisputed, that the jobbers are absolutely necessary to these majors for the distribution of their gasoline. And the evidence has brought out here, and it is undisputed, that the majors have been fair with the jobbers and have assisted their jobbers in every way possible.

4104 But there are certain men, a certain few jobbers, or brokers, as you might call them, in the industry, that didn't want a plan like this to succeed. They didn't want that price to be stabilized. They didn't want those small refiners to be in such shape that they could get a fair and decent price for their product.

Now, they put a number of jobbers on the witness stand here. They have chosen those jobbers very judiciously, sometimes from the very town that some of you jurors have come from. They have taken them from the counties you have come from. And they have attempted to give the impression that those jobbers were against these defendants. Nothing could be further from the truth. We haven't any quarrel with what those jobbers testified to, and they just testified to what they were asked to testify to by the government. And we haven't a single quarrel with those jobbers whatsoever.

But there is one thing very plain from what they did testify to, and that is that there is not poverty existing among them, as the government would lead you to believe. They are not poor, distressed people as would appear from the testimony.

Mr. Beroth appeared on the witness stand, and he is one of the jobbers that Col. Donovan referred to. Mr.
4105 Beroth is a jobber who doesn't want, or didn't want, this situation to be cleared up, in our judgment. And Mr. Beroth handled about twenty-four million gallons of gasoline a year. He handled two hundred and fifty cars a month. And the total investment of that man in his business was one hundred and ten thousand dollars.

Mr. Wingrove handled eight hundred thousand gallons in 1935 and one million gallons in 1936, and his total investment was only sixty thousand dollars.

The gentleman from Beloit who was on the witness stand, with a small company and a small investment, would have you believe that he didn't make anything. He had a corporation and he was paying himself eight thousand dollars a year, and a secretary two thousand dollars a year; and his investment was a hundred and twenty thousand dollars; and they drew ten thousand dollars in salaries out of that business.

I could go through the whole list and show you likewise.

Now, Beroth was what you might call a broker. He was a broker. Beroth was one of the directors of the National Oil Marketers Association. Beroth testified on the witness stand that he had difficulty, and could not get gasoline down in this Texas territory. He testified, you remember, 4106 to almost everything that would make the government's case, and he testified that he went down there and they told him that they could not sell him gasoline because they had sold it all to the majors, and they were cutting him off.

And Col. Donovan, in his opening statement, said that there were certain people that made complaint to the government, that were dealing in hot oil. And Mr. Lewin pronounced that as a monstrous assertion. That was Beroth. It appears, from the testimony, that Mr. Beroth said, after stating that he could not get gasoline down there; that they were selling it all to the majors, that he did something about it. What was it he did? Why, the National Oil Marketers Association lodged a complaint with the Department of Justice, through their secretary, Mr. Hadlick. That is Beroth's testimony.

So now, gentlemen of the jury, you know where the complaint came from and what started this prosecution. The government brought it out.

Now, Mr. Hadlick, who made the complaint for this Association, is not here. He was not called by the government. He didn't appear on the witness stand. We wish he had. There were some questions we would like to ask him. But he didn't appear. But Mr. Beroth testifies that he is 4107 the one that lodged the complaint down there. And they claim it was outrageous for us to say that any of these gentlemen that lodged this complaint were dealing in hot oil.

Now, it appears from Mr. Beroth's testimony, as I said, that he claimed that he could not get oil; he could not get gas; that they were selling it all to the majors. But the testimony shows that he could not get oil from some people because he was not reliable and they didn't trust him. You saw him on the witness stand,—glib and smart and sharp. He went out of his way to testify to everything that would make a government's case in this case.

Now, what is his record? We asked him, when he was on the witness stand, about his purchases from certain companies. He remembered some, but when it came down to East Texas he couldn't remember a thing about it. He didn't know a thing about it,—not a thing.

Now, let's look at this. Mr. Lewin says the defense has not produced one single bit of testimony to substantiate the charge that those men, the ones that were complaining, the ones that lodged the complaint with the government were dealing in hot oil.

4108 Mr. Beroth was asked on cross-examination whether it was not a fact that he had bought gasoline from certain refiners operating in East Texas in 1934. He couldn't even remember the names of some of those East Texas refiners that he was asked about, much less remember whether he had bought gasoline from them in 1934. And remember, Mr. Beroth only had ten employees and he conducted his business almost solely himself.

Now, there was an answer to those questions,—even though Mr. Beroth, for some reason, could not give the answer himself. The answer appeared on the records of the Comptroller's office in the State of Texas. Those records, or excerpts from part of those records, were put into evidence as Exhibit 1012, in this case. They show that Mr. Beroth did buy gasoline from those East Texas refiners, from time to time, during 1934. Even though he couldn't remember, and those records showed just what refiners he bought that gasoline from.

Commencing with March, 1935, the Federal Tender Board was established. The Federal Tender Board issued these certificates showing what was legal gasoline and what was not legal gasoline. Only the refiners who had legal gasoline, and not hot gasoline, for shipment, were given tenders by the Federal Tender Board.

4109 The names of those refiners who were permitted during 1935 to ship their gasoline because it was legal gasoline is in evidence here as Exhibit 989. Now, the names of thirteen companies—which Mr. Beroth could not remember—but from which he did buy in 1934,—do not appear at any time on the records of the Federal Tender

Board in 1935, after the Federal Government clamped down on hot oil. None of those companies from whom Mr. Beroth bought in 1934 were among the companies shipping gasoline in 1935 when the only gasoline those companies could ship had to be legal gasoline.

Now, of course, that is asking you to draw conclusions to the facts, and perhaps the government would feel that it would be unfair to draw conclusions about a man such as Mr. Beroth. But there is other testimony in the record which leaves less room for doubt as to why it was those particular thirteen companies ceased shipping oil in 1935, and I have here a list of those thirteen companies,—when the only oil that could be shipped was legal oil. That was the testimony of Mr. Fischer. During 1934 he was the attorney for five of those companies, and he testified that those companies which disappeared in 1935 were shipping hot oil in 1934. And he testified that others on that list 4110 of companies which Mr. Beroth had difficulty in remembering, were among his clients and were shipping hot oil in 1934.

If Beroth was not trafficking in hot oil why couldn't he remember the names of those hot oil refineries, when he was on the stand here, and he was a man of remarkable memory; I never saw the like of it. It was remarkable the details that that man could remember, without a single thing before him. And he was selling the gasoline which he bought, to jobbers in this territory.

And who was Beroth? Just as the defense stated in their opening, he was a member of that very association, which he testified, on account of his difficulties in Texas, lodged the complaint with the Department of Justice.

Mr. Fischer also testified that during these years when those refiners were running hot oil, hot oil was being manufactured in East Texas at times in excess of two hundred thousand barrels a day, and that gasoline made from that hot oil was selling as low as a cent and a half a gallon. Just think of it, gentlemen of the jury. And there is the man that wanted to keep those refiners in that situation, and wanted to suck blood out of those refiners for what they could do with that gasoline in this territory in price 4111 wars and other cut-rates.

Did Mr. Lewin have any of those facts in mind yesterday, when, at the top of his voice, he shouted that not one word of what the defense had said in its opening had been substantiated about those people buying hot oil? That, I will leave for you gentlemen of the jury to decide, and when you do consider that point, consider also some of Mr. Beroth's other testimony, consider how he named refiner after refiner that he could not buy gasoline from in 1935, because, they told him, they were selling so much gasoline to the major companies. And remember, the defense took one after another of those companies and showed you that what Mr. Beroth said was not true, and the testimony was false. But the truth was that each of those companies was selling more, and sometimes three to four times more, gasoline to brokers than they were to the defendants. But they weren't selling it to Beroth. And they told why. And that ties in with what Mr. Gray told you about Mr. Beroth's ways of doing business. What Mr. Gray told you may explain what the real reason was for Mr. Beroth's difficulties, and for his soreness against these companies that were helping those little East Texas refiners out of their situation and saving them from fellows like Beroth.

4112 In going back once more to this hot oil question, the defense stated they would show you that hot oil was being bought at ruinous prices.

Mr. Lewin would have you believe that the defense here is attacking the character and reputation of these jobbers. Far from it, gentlemen of the jury. There was no one in the world that would like to be rescued from fellows like Beroth and his kind more than these jobbers would like to be rescued.

4113 I have already pointed this out to you, but it is important, gentlemen of the jury, in view of the course taken by the Prosecution in this case.

Beroth claimed that the jobbers couldn't get—and he classified the jobbers in with himself—that they couldn't get gasoline down in that region. These charts refute that absolutely, and the figures I gave you. In 1935, the defendant major companies bought 40,000,000 gallons down there—no,—oh, yes, this is the one. I called your attention to the amount that they were selling to others; now, I want to call your attention to this testimony.

The East Texas Refining Company sold in 1935, 11,097,000 gallons to twenty-seven different brokers;—1935. None to Beroth. And 2,869,000 gallons to the major defendants. 11,000,000 gallons to brokers, and 2,869,000 to defendants; and Beroth says that brokers couldn't get gasoline in East Texas. That is, it sold nearly four times as much to brokers as to the defendants.

McMurray Refining Company in 1935 sold 1,736,000 gallons to seventeen brokers; to major companies, not a large amount, compared to its refining capacity of 2000 barrels.

Grogan Oil Company in 1935 sold 12,241,000 gallons 4114 to fifty brokers—12,241,000 gallons to fifty different brokers in 1935, 738,000 to Beroth himself, and 9,000,000 gallons to the defendants. They sold 12,000,000 gallons to brokers, they sold 738,000 gallons to Beroth himself, and only 9,000,000 gallons, or a little over, to these defendant companies.

And this is the Beroth of the National Oil Marketers' Association, the secretary of which lodged a complaint in Washington with the Department of Justice, because he couldn't get gasoline down in this country. Was that the reason they lodged the complaint? No. They were living off the necessities of these little refiners, and they were buying gasoline down there at a ruinous price, that these people couldn't make a living from and couldn't pay wages to their employees from. And that is the reason that the complaint was filed with the Government. That is the reason that Beroth lined up everybody that he could under the banner of this association, and attempted to head off these majors from helping out these little refiners. He was a dealer in hot gasoline, contrary to what he said. He could buy, and brokers were buying down in that region, contrary to what he said. And he himself bought thousands of gallons down in there, from these people.

Now, gentlemen of the jury, there is one more thing, and then I am through.

4115 I want to call the jury's attention to the allegations with reference to the East Texas situation, and I want to ask you, gentlemen of the jury, in all fairness, if the Government hasn't absolutely and completely failed to substantiate one single allegation of the indictment with reference to that East Texas situation. And upon that indictment, as I have said, they must rest. They can't rest upon general principles; they can't rest upon a lot of gossipy letters. They have got to rest upon the facts, and upon the facts as they were, not on what somebody says about them, or what somebody thought about them, or what his opinion was about them, but upon the facts and the allegations in that indictment.

One:

> "That the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car price of gasoline."

There is not one syllable—and I use the word "syllable", and I use it advisedly—in the record in this case, that there was any combination of major companies in the East Texas situation, to buy at an artificially high price, or an agreed price; and this chart refutes that, and the other charts that we introduced refute that completely.

Two:

> "That the defendants have artificially raised and fixed said spot market tank car prices."

There isn't a syllable of testimony in this case that 4116 they fixed the tank car market price, not one syllable of testimony, gentlemen of the jury, in this case, of any such fixing.

The Government may attempt to draw conclusions from things that they did, but they must establish a case by evidence, not by insinuations. Before you can attach a crime upon these gentlemen, thirty-six gentlemen, or any of them, you have got to prove that crime. There isn't any evidence of that at all. There isn't any evidence of fixing prices. The majors, when they bought in East Texas, according to the undisputed testimony, were put in touch with the persons who had gasoline for sale, and they bought it at a price that those persons arranged with that purchaser. And those prices differed.

Three:

> "Defendants have maintained said prices at artificially high and non-competitive levels."

There is no evidence in the case that there was a high, non-competitive level, and no evidence that these defendants maintained that, with reference to the East Texas situation. And these charts all show that, and the evidence.

There is no evidence that the levels were agreed on. Where is there testimony in this case that the levels were agreed upon between these defendants? Where can they produce any such evidence in this case? And it is 4117 necessary to produce it in order to prove the allegations of their indictment. Why, of course, they haven't produced it. There were no levels fixed in the East Texas marketing situation by anybody, at any time, or any place.

> "—Have thereby intentionally increased and fixed the tank car prices of gasoline, contracted to be sold and sold in the Mid-Western area."

There isn't a bit of evidence to sustain any such charge in the indictment, or to charge these defendants with having done that with reference to the East Texas buying program. There is no evidence of fixing prices. Buckley says that he never fixed a price; he never told anybody what price to pay; he left that to them, and they arranged that between themselves. He just brought them together, he got majors to find the surplus gasoline in East Texas, furnished it to them, and they bought it at a price they could arrange between themselves.

> "Defendants have participated in the East Texas buying program for the purchase of gasoline at uniformly high and at times progressively increased prices."

These charts refute that absolutely, and they
4118 haven't been able to impeach those charts. The best that Mr. Lewin could do in an attempt to impeach those charts was to refer to them sneeringly as "these little dots," as though they didn't mean anything. Why, those little dots are taken from the documents in the possession of the Government. They are taken from the documents that have been impounded here, and taken from us, and are here in this Court; and they represent the labor of going over these invoices and telling you just exactly what the truth is with reference to that situation. And to refer to them and attempt to refute them as just little dots, as meaning nothing, is to ignore the important and material testimony in this case.

> "The East Texas Refiners' Marketing Association was formed with the knowledge and approval of some of the defendants."

I have already shown that that is absolutely false, according to the record in this case.

> "Purchases of gasoline through the Association have been made at the instigation and under the advice and direction of defendants Arnott and Carnes."

There isn't any such testimony at all. There is testimony that Mr. Arnott helped Mr. Buckley; that he did it as a conscientious individual, that was charged with a certain duty by his Government; but that is as far as it goes.
4119 And there isn't any evidence at all that Jack Carnes engaged in any enterprise, or fixed prices or did anything else, or supervised the matter at all.

> "—With Neil Buckley instigating and directing such purchases."

The best that Neil Buckley did was to get purchasers, as I have shown.

> "—That Buckley acted under the instructions of defendants Cities Service Company, Brandli, Coates and Frueauff."

Not one bit of testimony in this case. They can't produce a letter, a telegram, a syllable of testimony in this case to connect any one of them that they have named there with any purchase down there, or any supervision of the purchases in that field.

> "Each of the defendant oil companies named in connection with the East Texas program has taken part of the gasoline purchased through the Association, as from time to time arranged between them."

There isn't any evidence that they ever arranged to take the amount of gasoline that anybody allotted to them, or required them to purchase, or that they agreed to purchase—not one bit of testimony in this case.

> "Said quantities of gasoline purchased through
> 4120 the Association have amounted to more than fifty per cent of all the gasoline produced by the member refiners."

Is that so? Look at those charts. The bottom is the amount purchased by the majors; the top, the blue, is the amount purchased by others. And it is fourteen per cent—10.34 per cent on one chart. And there isn't any evidence that it ran above twenty-five per cent if you include everything that you could possibly include, that doesn't even belong in there.

> "The said purchases have been in excess of the amounts which the aforementioned major oil companies would have purchased, apart from their participation in said program."

Why, there were just two buying down there in this monstrous conspiracy. Continental bought fifty cars in the whole fourteen months; and Pure and Sinclair, that bought down there, needed every gallon of gasoline that they purchased. And they have produced charts here and records, based upon the impounded documents here, and other evidence, to show that was so. Mr. Francis produced those large charts, one after the other, having worked them out to show that that was the fact. And Mr. Wood showed the same with reference to the Sinclair Company. So, for the only two that are in there, it is untrue as to
4121 them.

> "The purchases were made at uniform, high, arbitrary and non-competitive prices."

I have already shown there is no evidence on that.

> "That they were made at progressively increased prices."

Which isn't sustained by the evidence.

> "That they were made in an unlawful conspiracy, in furtherance of said unlawful purposes, and said independent refiners"—

oh, yes—

> "In furtherance of said unlawful conspiracy said

independent refiners have, at the instance of defendant Arnott and the aforesaid Buckley curtailed their production of gasoline."

As I said, they never indicted him; they never brought him here. There isn't any evidence of any such curtailment. There are some of those letters that did say something about they would curtail, or something of the kind, if somebody else would curtail; but there isn't a bit of evidence that they ever did it, or that anybody ever asked them to do it.

Now, are we trying this case, gentlemen of the jury, on this indictment and on the evidence produced here in
4122 Court? Are these gentlemen, thirty-six honorable citizens of this country—as I have said, their reputation presumed to be good, and not any evidence or any intimation to the contrary—are these thirty-six honorable gentlemen to be subjected to prosecution and conviction at your hands upon anything that the Government has produced here? Are they to be prosecuted and convicted outside of the indictment that the Government has filed here? Are they to be convicted upon insinuations? Are they to be convicted upon assertions of counsel, unsupported by evidence? Are they to be convicted because, perchance, they might be large companies, or employees of large companies? Is there any such ground for conviction? No.

The Government must rest upon this indictment, and they must prove the material allegations of that indictment as alleged. The Government, the Prosecution has no right to substitute any other indictment for it, and it has no right to amend or modify that indictment so that it shows some different kind of a scheme or something different from what they allege. The Government has no right to allege a link in a conspiracy in this indictment, like these journals, and then drop the journals from the indictment and claim that anyway there was a link
4123 that connected up and made the price high and artificial in those journals.

No, gentlemen of the jury, these men are entitled to a fair and impartial trial, just as the humblest citizen of this country would be entitled to a trial. And a conviction must be based upon the same kind of evidence. And, as his Honor has told you, the wealth of these defendants, whether they were wealthy or not wealthy, is not material evidence in this case at all, and should be disregarded by this jury. They are entitled, every one is entitled to the same kind of trial and the same kind of proof, to entitle the Government to a conviction.

Now, gentlemen of the jury, this trial has been long, it has been tedious and arduous for all of us. The evidence is voluminous, and I have been only able to touch upon a few of the things that I would like to argue to you, gentlemen of the jury. But I want to say this, and I know you gentlemen feel it: That you will not want to convict these defendants unless the evidence shows that these defendants are guilty beyond a reasonable doubt. That is what the law asks; that is what you must find.

4124 And you won't find that lightly. The fact that your verdict may bring pain and disgrace to these defendants and their families isn't a reason for not convicting them if you find them guilty beyond a reasonable doubt,—don't think that I ever make any such claim as that. But it is reason, gentlemen of the jury, that you should weigh this testimony with the greatest of care. It is reason that you should be sure that you have made no mistake here, because whatever mistake you make here, you can never undo.

Now, gentlemen of the jury, in the words of that book that guides us, I say, "Let justice abide with you."

The Court: It is five o'clock now. We will recess until ten o'clock tomorrow morning.

(Thereupon, at five o'clock p. m., an adjournment was taken to Wednesday, January 19, 1938, at the hour of ten o'clock a. m.)

4125 Thereafter, on January 19, 1938, Mr. Herbert H. Thomas made the second closing argument to the jury on behalf of the defendants. Such closing argument is as follows:

4126 ARGUMENT.

By Mr. Thomas.

Mr. Thomas: May it please the Court, and gentlemen of the jury.

About the only thing that a lawyer representing either party to this lawsuit can do at this stage is to sum up the evidence and point out to the jury such evidence as may appeal to and as may be pertinent to the issues that you will have to decide.

Now, the first thing that I want to say to you is this; I want you to know what the defense claims in this case.

We say this: That what we did was lawful; that what we did was not contrary to the Sherman Law in 1935 4127 or in 1937. We say to you that what we did was lawful, and that the government of the United States through the Secretary of the Interior viewed what we did as lawful.

The Code was a condition that we had to meet with, the same as every business man had to meet with it in this country during the period of the N. I. R. A. So let there be no misunderstanding about that. What we did was at all times lawful, and was not a violation of the Sherman law.

Now, the charge that is made against these defendants in this indictment—and you will pardon me if I read the charge to you again, because it is the thing that frames the issues which you on your oaths as jurors must decide.

Paragraph 18 of the indictment, prepared by these gentlemen who are now asking you to convict these defendants, reads as follows:

> "Beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment, defendants and certain persons hereinafter referred to, and other persons to the grand jurors unknown, well knowing all the foregoing facts, have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants 4128 have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them and have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area * * * and have arbitrarily, by reason of the provisions of the prevailing form of jobber contracts above described in paragraph 11, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area (including the Western District of Wisconsin), and in turn have intentionally raised"—

Mark this—

> "and in turn have intentionally raised the general level of retail prices prevailing in said Mid-West-

ern area (including the Western District of Wisconsin)."

Now, let's see just what they have proved. The government's position is this: That these men got together and agreed to fix prices, not pursuant to some government program, but in their private individual capacities as representatives of the corporations you are trying. That is their claim. They utterly ignore all con-
4129 nection with any governmental program that was then in effect and being managed by the Interior Department.

They charge, among other things, that this conspiracy was carried on by means of what they claim was a buying program in the Mid-Continent field, and another in the East Texas field. It has been allotted to me to discuss with you these circumstances and facts relating to the Mid-Continent field.

Now, the defense on the other hand claim that their purpose was not to fix either the wholesale or the retail price, but on the contrary their purpose was to correct abuses resulting from unfair trade practices, among others, the dumping of gasoline at any price obtainable therefor, depending upon the necessities and circumstances of the particular refiner.

The defendants further contend that this unfavorable trade practice of dumping gasoline resulted in the waste of oil reserves which the government of this country was trying to conserve; that by reason of the dumping of this gasoline on the market distributors were forced to sell for less than cost in order to unload heavy supplies at any price at which a buyer could be found.

When I say "distributors" I mean your bulk station operators, people with storage, some of these jobbers in here with as high as a hundred thousand gallons
4130 of storage. You can see how that would affect a man with a hundred thousand gallons of storage. A price war develops, and he has got to take the loss. And it is not a cent; sometimes it runs as high as six cents.

Because of the fact it ruins the independent wholesaler and retailer who does not possess sufficient financial strength to withstand heavy losses due to the depressed value of his stock on hand, because it is injurious and its effects are injurious on labor, producing longer hours and reducing wages, which are the necessary results in order to recoup losses resulting from price cutting.

And more important than all, and bearing on the power that counsel discussed here to you the first of the week, if something were not done and competition was left free to follow its own course, what chance would the small refiner have with the larger?

Now, it was that which the government sought to obviate.

Now, it is our contention in this case that what these defendants did they had a legal right to do, irrespective of the Code, and that it did not constitute a violation of the Sherman law, although the correction of the practice of dumping distress gasoline in the spot market may tend to stabilize business or produce fairer price levels, and that the Sherman law did not require the defendants to 4131 abstain from those efforts to correct such abuses, and this is so because the action of the defendants carried with it no monopolistic menace, and cannot be condemned as an undue restraint of trade if you find that by such efforts a change in condition was brought about which favored rather than impaired conditions in the industry.

Because of the fact that the buying that was done by defendants major companies was not a violation of the Sherman law, no written permit from the Secretary of the Interior was necessary.

Now, I want to discuss with you first the question of the pegging of the price of crude oil, because that is a practice which runs through the whole warp and woof of this effort by the United States government through the Department of the Interior to stabilize the gasoline and oil industry.

Now, I want you to go back with me and view this situation as it existed at the time this Code went into effect in 1933. Those were the days, you remember, of the Blue Eagle; those were the days when we who were in business signed postcards making contracts with the President of the United States to regulate our hours of labor and regulate our pay, pay to our help, in accordance with the N. I. R. A. You signed one of those cards, every one of you that was in business signed one of them.

4132 So there was a moral obligation, yea, more than a moral obligation resting upon these defendant oil companies to comply with the requirements of the Secretary of the Interior with reference to the pegging of the price of crude oil.

Now, you remember a lot of testimony here with reference to stripper wells. Now, let's see how that fits into the picture.

The stripper wells produce somewhere from two to five barrels a day. They are pumped a few hours. The government wants to conserve the oil that is in the ground. If they stop pumping it seeps away through the sand and can never be recovered. So in order to enable these stripper wells to operate the government of the United States in the conservation of a resource that could not be replaced sought to place the price of crude at $1.10 a barrel in the month of August, 1933.

Now, then, that was a part of the whole scheme of the Code, to put the price of crude up there at $1.10.

In the same Code was written the provision that the parity between crude and gasoline should be as one to eighteen; that is, if you have dollar crude then gasoline should be sold at a price so that you could realize that ratio. They figured it out for us in this trial as five and four tenths cents a gallon.

4133 Now, that was written right in the code, and this pegging of the price of crude to which these defendants agreed was a part of the whole program of the Secretary of the Interior.

Now, I ask you, what was the Standard of Indiana Company to gain by that measure? The Standard of Indiana, according to the evidence here—contrary to the statement of Mr. Crawford in his opening statement—purchases from 35 to 40 per cent of the crude that it uses to make gasoline.

Mr. McInerny: 65 to 75.

Mr. Thomas: 65. Correct me if I get these wrong. They tell me it is 65.

Now, what object would Standard have going into a program of that kind and boosting the price for 65 per cent of the crude that it purchased, from about 60 cents in the early part of September up to a dollar? What object would Standard have in increasing the price of its crude forty cents a barrel? If I remember those figures right—and you gentlemen will understand that if I get them wrong it is not done on purpose, but there is a great deal of evidence in this case, and if I misquote the evidence it is done unintentionally.

4134 But my recollection of the testimony is that the Tide Water Company purchased over fifty per cent of its crude. My information is that the Gulf companies purchased one hundred per cent of their crude. And so, when you average them all up, they will average out somewheres around fifty per cent or better of the crude that they were buying—and here we find them coming in and agreeing with the Government not to post the price at $1.10, but at one dollar.

Now, what was the consideration for that sacrifice? That was done under a Code, that specified this one to eighteen and a half ratio. I call your attention to that, gentlemen, in connection with this other feature of the argument that you listened to here, where my clients were referred to as cut purses, thieves and so forth, and so on—lusting for money, lusting for power. And yet you find them doing that. And there isn't any dispute about it. They did it in order to enable the Government to carry out its program of conservation, in order to keep the stripper wells in operation; and in 1936, on January 9th, the price of crude was finally raised by agreement to $1.10, and it costs these people ten cents a barrel more than it had theretofore.

4135 Oh, gentlemen of the jury, if you are looking for agreements on which to indict these men and these companies, there you have got it. It is confessed. And, like the rise in the price of gasoline that occurred in 1935, it was fostered by the United States Government.

Now, the next question that I want to take up with you is something that affects the local situation, right here in the Western District of Wisconsin, and throughout the ten states in this Mid-West territory, and that is this question of price wars. And if I seem to dwell at length on some of these things, I want you to remember that I deem them important, and I believe that you do, too.

Now, we have this undisputed testimony and evidence: On January the 31st, 1935, cut prices prevailed in areas served by 370 of Standard's bulk stations; and every bulk station averaged about five circuit points or towns, and all of the towns within the circuit affected by a cut in the tank wagon price as well as the rural territory. Since there are five or six towns in each circuit, you would have to multiply 370 by either five or six. On January 31st, 1935, the Standard had price cuts at 497 stations, which means 497 towns where the service station price was cut; and a city like Chicago counts only as one, even though there are hundreds of service stations in the city. In some

4136 of these cities, two or three hundred filling stations were affected. Moreover, if there were four or five towns or circuit points affected by a price cut, these four or five towns would be counted only as one in making up that total of 497.

Now, the Secretary of the Interior recognized just what these price wars meant. He recognized what it meant to the jobber who had bought his gasoline and had it in storage. And if somebody gets gasoline, either hot oil when that was in vogue, or distress gasoline, and cuts the price, and the man with fifty or a hundred thousand gallons in storage has got to meet it, and he has got to take a loss, because he has got to follow the price cutter down. And that is why it affects every community where a price war rages. That is where it affects our local people that are engaged in the business, and where it affects our jobbers—and I will come to that later.

Now, we find that the Secretary of the Interior, through the P. A. B. Board, who were the official arms of the Administration of the Code, appointed Mr. Arnott to see if he couldn't stabilize these prices; and not only that, but we find members of the P. A. B. Board working right
4137 along with him, side by side. We find in December, 1934, meetings called down here at Chicago, at the Blackstone Hotel, where there were ten or eleven hundred men called in from all branches of the industry, the refiner, the jobber, the marketer, the broker, the man who operated filling stations—every branch of the industry; and they call them in there, and they hold conferences that last for over a week, to see what if anything can be done about these price wars, because everyone of them, high and low in the industry, was affected by the price wars.

Now, then, I want to come briefly to the question of the iniquitous treatment of the jobber. Counsel says: "Well, the defense didn't call a jobber." We didn't. And the reason we didn't was because the showing made by the jobbers whom the Government called was such that it should convince any jury that, instead of attempting to extract money from jobbers, instead of attempting to put them out of business, the whole effort has been to keep them in business and to deal with them fairly.

Now, in view of all the time that was spent on that matter, I hope you will bear with me while I give you just a little of the testimony that the Government put in:
4138 I want to call your attention first to the testimony of Walter Wingrove, of Sheboygan. Now, he has a storage capacity of 175,000 gallons. Now, just think how he would be hit with a price war—if the price went off one, two, three, four, five, and sometimes six cents a gallon, what a loss he would have to take. But Mr. Wingrove had a contract with Barnsdall, and he had a contract for a flat five and a half cent margin under the official posted service

station price of Standard of Indiana. You are in business—you have been in business. You tell me some business where a man is guaranteed a five and a half cent flat margin, win, lose or draw. Do you know of any other business? Do you know of any other commodity, unless it is something that is covered by a patented process?

This man had a flat five and a half cent margin under the official posted price. His contract contained a pay-back clause, providing that if the seller had to reduce its price and give a full five and a half cent margin, and subsequently the buyer got a margin in excess of five and a half cents, there would be a split of not to exceed three-eighths of a cent a gallon, to the extent that the seller had had to reduce its price to the buyer in order to give the full margin. Now, then, between eight thousand and ten thousand dollars 4139 was due Barnsdall under this contract upon its expiration in June, 1936. And under the terms of the contract, Wingrove was not obligated to pay a cent of it. That is in the record, page 233. And he didn't pay it; because it was in his contract to the effect that he didn't have to. I don't know where we could get any more favorable contract than that to show to this jury.

Now, he let loose of that contract—why? And he took a contract with the Texas Company—and why did he take the contract with the Texas Company? When Wingrove signed the Texas contract, the Texas Company turned over several service stations and several dealer service accounts to him, and between June, 1935, and June, 1936, the gallonage of these stations was approximately 200,000 gallons. And Wingrove sold this gasoline to them and expanded his business about twenty-five per cent. Is that cruel and inhuman treatment, the way the counsel said here yesterday?

Now, then, the idea that they wanted to crowd the jobber out of business was disproved by this witness' testimony. Barnsdall wanted to keep his business, but he went to Texas. Sinclair tried to get his business. Anderson-Prichard tried to get his business. And Mid-Continent Petroleum 4140 Company tried to get his business, so as to keep this jobber in operation.

Now, there is one more here that I want to burden you with. It was referred to by counsel yesterday, and that is the reason I am referring to it. That is Mr. Breuch, who is located here in the city of Madison. Now, let's see how unfairly he was treated.

He told us that about fifty per cent of his business is dealer accounts, and the other fifty per cent he sells to consumers direct. On the other fifty per cent, sold through his own service stations and direct to the consumers, he would get the full five and a half cent margin. He further told us that when a price war occurs, a jobber who is on contract is given protection from his refiner. He may get full protection, or only part protection, depending upon his contract. Breuch has a protection clause in his contract with Barnsdall Refining Corporation, which guarantees him a five and a half cent margin; that is, the supplier will lower the basic price in order for the jobber to have a five and a half cent margin between the price he pays for the gasoline and the price at which it is sold to the retail trade.

Now, at the time that Mr. Breuch entered into his contract with Barnsdall Refining Company—and this is 4141 his testimony, or an abstract of his testimony, he had several bank loans. And he wanted to buy out the interest of a partner. So Barnsdall put up the money for that. Cruel and inhuman treatment? No wonder the gentlemen are shocked at the supplier loaning the money to pay the bank, loaning him the money to buy out his partner.

Now, in his contract there is a pay-back clause that, at any time the margin is not five and a half cents, the refiner bills Breuch as of five and a half cents, and the difference between the full five and a half cents and what the market really is is charged to him on his pay-back account. The refiner really gives this amount to him, but charges it back at the end. If the contract is allowed to run the full term, then whatever is put on the pay-back account, Breuch does not have to pay. Is that unfair?

In 1935 and 1936, Mr. Breuch tells us that he sold 3,250,000 gallons of gasoline, and on about fifty per cent of that he got the full five and a half cents. Out of the other fifty per cent, a large volume of that was sold to consumers.

But I shall not take your time to go through these jobber contracts, one by one, in view of the limitation upon my time.

4142 Now, then with crude oil pegged at a dollar a barrel, the average independent had to get 5.4 cents for gasoline in order to break even. The whole area was swamped with hot oil, the Mid-Continent area as well as others, during the period discussed by my associate, Mr. Brazeau.

There was a Federal Tender Board established in the fall of 1934 under Section 9-C, and as a result of the establishing of that Tender Board, the price rose while that Tender Board was in operation. But, as stated yesterday, the Tender Board went out with the invalidation of Section 9-C by the Supreme Court in the Panama case, on the 7th of January, 1935.

Now, then, when gasoline was selling, as it was, around three and a half cents, or three and a quarter cents, or three and three-eighths cents, along about the first of March, 1935—just bear this in mind—the parity which was established by the Code, through the Bureau of Mines and the experts in Washington, would have required that the refiner get 5.4 cents instead of three and a half. So that every gallon that he manufactured and put on the market represented a loss.

But, you say, well, why didn't he quit? He can't quit. He has got contracts for his crude. He has got his re-
4143 lations with his jobbers and others, who are his outlets for his product. And the minute that he closes down, he loses his crude supply and becomes subject to an action for damages for breach of his contract, and he loses his outlets. So, there he is, driven by the forces of necessity to keep on making gasoline for less than his out of pocket cost.

Now, I want to briefly take that up with you. Let's just see where we get off. I don't know—is there a piece of paper around here somewhere? Let's figure this out.

(Counsel makes calculation before the jury.)

Now, let's take the price of third grade—we will put it good and plenty, at seventeen and a half cents. That is the retail. Now, then, the tax on it is five cents. The freight is .0238. Now, then, the jobber, 5.5. Now, just figure those up, and you have got a total of 12.88 cents per gallon.

Now, take your 17.5, take the 12.88 out of it, and you have left 4.62 cents—for what? Now, what does that represent? Mind you, that is less than the tax; it is less than the jobber gets. That represents what? The cost of drilling the well, taking the oil from the ground, piping it to the refinery, refining it in the refinery, and loading it on cars for shipment.

Now, the Government thought that was a rather
4144 inequitable distribution, to allow for all of that only 4.62 cents. And that was one of the things that the Government set about to correct.

Our position in this case is this: That we followed what the Secretary of the Interior designated as his policy to procure a larger return for the independent refiner. The Government's position is that, instead of getting 4.62, that the refiner ought to get less, and the jobber ought to get more. Now, if you think that is an equitable distribution, I very much mistake my judgment of you gentlemen.

Now, let's see about the inception of this conspiracy.

You know, ordinarily—before I leave that, I would like to read to you some testimony of Mr. Arnott's, with reference to the effect that these price wars have upon the industry, upon the jobbers, the retailers, and every one connected with the industry. He states this, and no one perhaps knows better the effect, after having spent the time that he did spend in the investigation:

> "The retailer has a margin between what is the normal price and what he pays, and he has to operate and make a profit within that margin. If he becomes involved in a price war and, to meet his competitor in any one of these circles, has
> 4145 to give away part of that margin—and when he gives it away, and again gives it away, depending on how the price war goes, he comes down to the point that that margin is reduced and reduced and reduced; and sooner or later he comes to the point that was so frequent with us, he came to the point that he couldn't go on. The margin wasn't there.
>
> "And then what did he do? He turned to his supplier; he turned to his refinery, who sold him his gasoline; or he turned to his jobber. That jobber may be the large refiner's jobber; or it may be the jobber of a small refiner. And he pointed out that, 'I must have assistance, because, see what this price war has led me to.'
>
> "And then in turn, the jobber, who would have to help him or lose his connections, lose his distribution or his retailer—he had his margin, and as he helped his distributor or his retailer, he had to give away part of that margin. And it would not be very long before he would have reached the point where he didn't have sufficient to carry on.
>
> "And so he, the jobber, turns to his source of supply, or he has a jobber he is distributing for,
> 4146 whose refinery he is distributing for; and so he goes to his refiner. Does the refiner then say that he is not interested in his jobber or his distributor? No, he takes care of that jobber. The refiners do take care of their jobbers, because they depend on that jobber. And so that refiner eventually finds himself an important cog in this price war—a price war started by the retailer, involving all, the retailer, the jobber, the track side operator, the price cutter, the co-op, all involved in the retail war, which comes back to the jobber. And the jobber then goes for protection or help to the re-

finer, and the refiner has to take care of him. And by that means he gets a realization,—a realization of what? Whatever the price war has brought back to him as a tank car price.

"And so we have a circle that starts again with that very refiner, who has sold this distress gasoline, in turn has to go out and sell it again, with no known market or no known customers, and the gasoline appears again in the retail market and more or less for the same price."

4147 Now, then, let's see what part our Government was taking in this thing. I told you, didn't I, that they worked right along with them? They did. Not only that, but as I read this testimony, you know it.

Dr. Frey, a Government witness, with whom we couldn't talk unless one of these gentlemen were present, told you on the witness stand, and I will read his testimony, that the P. A. B. induced one of these companies to raise the price of gasoline in this territory in 1934 and 1935. That is how far the Government was interested in this, and how far they were engaged in helping operate this business.

4148 Now, these are questions by the Court to Dr. Frey:

"The Court: Well, what did you understand to be the price war that was raging in July, 1934, and continued, and reached its peak in October, and practically ended in December? Now, do you know anything about that price war?

"A. Yes, sir.

"Q. What was it?

"A. Do you mean what was happening during the period? That price war was very extensive all through the Middle West, and I was in that; in the position that I occupied, I was trying right along to see what could be done to get the prices normalized.

"Q. The prices at the service stations?

"A. At the service stations, and between jobbers, and between track-side operators. Every one that was engaged in marketing in any way seemed to be in that embroilment; and it was part of my job to see if I couldn't iron out that difficulty.

"Q. What did you do during that time?

"A. I worked very closely with Mr. Arnott as the Chief Stabilizer of the Stabilization Committee, to iron out these difficulties between various con-

4149 tending forces. We held meetings in quite a number of places in the Middle West, trying to get the companies to determine what was wrong and what could be done to get prices back to normal.

"Mr. Chaffetz: Q. That is, retail prices?

"A. All prices.

"Mr. Donovan: Q. Now, when you say all prices, what do you mean?

"A. I mean the general price structure.

"Q. And what are the prices that go into the general price structure?

"A. I mean retail prices, jobber prices, tank wagon prices, tank car, right back to the refinery.

"The Court: Q. What was done to eliminate the price war between July, 1934, and January 1, 1935?

"A. Well, many, many meetings were held to get—to overcome the causes that were partly responsible—

"Q. What were those abuses? Well, let's just start out; you first felt the effects of this price war among the service stations, did you, one was underselling the other?

"A. Yes.

"Q. Now, what did you do to eliminate that?

"A. We went into that—at first, we went in and tried to hold local meetings.

4150 "Mr. Donovan: Q. When you say 'we', whom do you mean?

"A. The Petroleum Administrative Board, acting with Mr. Arnott's Stabilization Committee. Now, this is the period late in '34?

"The Court: Yes.

"A. And we very soon found that it was impractical to try to solve the problem just locally, where we would get a group of dealers or jobbers to agree that they would eliminate underselling, under-price posting, chiseling of one variety or another. And gradually our activities expanded.

"The Court: Q. Did you have any success at all dealing locally with the service station owners?

"A. It was very unsatisfactory.

"Q. What was the next step?

"A. The next step was to take a larger area. For instance, the first large area that we dealt with was, as I recall, Michigan, in which we tried to handle the entire state. Our efforts in Michigan

were not entirely successful either. Then we tried to handle a very much larger area, such as the Standard of Indiana territory, but it was a gradual movement outward from a very local situation to a state, to several states, to a large territory. In
4151 some of those meetings we discussed conditions all the way from the Rocky Mountains to the Ohio line.

"Q. You discussed conditions, but what did you do to cure that trouble?

"A—"

Here is conspiracy for you, according to their view of it.

"—We got companies to enter into agreements with each other to—in some instances we even got a company to volunteer for a period to raise the general price level to see whether it would stick as an example."

That is what the Department of the Interior was doing. "We did it."

"Mr. Donovan: Q. When was that, Doctor?

"A. Well, we tried that experiment in a small way as early as the beginning of 1934. I tried that personally all through the summer of 1934, and then in connection with the stabilization committees through the fall and winter of 1934 and into 1935.

"Q. Do I understand—

"The Court: What was the result of that?

"A. That work was more successful.

4152 "Q. What did you do after that?

"A. Coincident with that this buying started, and we had also—

"Q. What do you mean by the buying started?

"A. Buying by the major companies of distress gasoline from independent refiners."

Now, that is the testimony of a member of the P. A. B. Board. And let no one fool you that this gentleman was here for the purpose of offering us some slight assistance, some free assistance. This man told the truth, and you have no reason to doubt it.

Why, here is a man that was educated out here a mile from where you are sitting in the University of Wisconsin. He taught there for years and was finally taken into public service in Washington. And what motive would that man have to come on the witness stand, when he isn't permitted to talk with us except in the presence of Government counsel, and lie to you?

And yet he is held up here with scorn by counsel for the Government.

Now, there is another thing I want to call your attention to. We have heard a lot of talk here about the fact that the major companies pretended to do what they did as a matter of charity to the small independent refiners.
4153 That is just some more bunk. What was done with reference to the independent refiners was a part and parcel of the whole Code scheme. It was just as much a part of it as it was the pegging of the price of crude. The whole purpose of the Secretary of the Interior and the Administration was to save the small refiner. Incidentally, of course, every refiner benefited by it, but it was high time that somebody benefited by it where they were buying crude at a dollar, and were selling gasoline at two cents under the price that was fixed in the Code.

And again, I say, suppose that these companies that I am defending and these individuals had hung back at that time and had said, "No, we will have none of it. Let the small refiner go into bankruptcy." Suppose we had taken that attitude? Then what would the Government have said? We certainly would have been subject to indictment.

Now, throughout this case, we have had the attitude taken that all these meetings that these gentlemen attended that they attended as the representative of their corporation, but every one of these meetings that they are talking about, every one of them they are talking about in the evidence were meetings of some committee or of some organization under the stabilization plan and operating within the authority of the Secretary of the Interior.

Have you heard any evidence here, gentlemen, that
4154 any of these men got together at some private place and agreed on something? No, you have not!

Now, there is one thing about the trial of a lawsuit that you gentlemen, if you have sat on juries heretofore, have observed. Any witness can go on the witness stand and tell a story of some sort or other. But you, all of you, have had experience in your various walks of life and you measure the testimony of any witness by this experience. You measure it not only by your experience but by its reasonableness. And so in this case, I ask you to apply your experience. I ask you to apply to the testimony a yardstick of reasonableness before you answer this question that is to be imposed on you for determination as to whether these men conspired to violate the Sherman law.

You can search your recollection, and there isn't a one of you that can recall one case where a man contemplated the commission of a crime, the violation of the laws of his country where he has caused it to be published in the newspapers or has gone to the representatives of the Government and told them flatly what he was going to do, or has taken the trouble to invite the representatives of the Government to the very meetings that he is conducting.

Oh, no! A crime isn't committed that way!

4155 So that, here is one important thing that you must determine before you convict my clients is, was there a purpose to violate the Sherman law?

Now, it is quite true, and I agree with Brother Crawford that when men are framing a conspiracy, they do it in secret. I am going to quote for you the statement of Mr. Crawford that he made in his opening address to the jury four months ago and let us see how it squares with the facts. He said:

> "Let me say now that you must not expect that we are going to come before you with any written contracts entered into by these big corporations and these 40 or 50 individuals in which it will appear that they contracted in writing with one another to go into this criminal scheme to fix prices in violation of the law. When people are going out to form a conspiracy to enter into an agreement to do something which is contrary to the law, and for which the law may punish them, they don't do it in the presence of witnesses, and they don't do it by any written contract. They do it in the dark and they do it secretly, and they do it by a series of operations—series of contracts covering a long period of time, and that is precisely what they did here. So you
> 4156 must not expect us to have any contracts here to show that they engaged in writing to enter into any violation of law for which they are brought here for trial. But there will be unfolded before you gradually by the witnesses who knew the facts and by many documents taken from the files of the corporations themselves a picture of how the master minds in the conspiracy sowed the seed into the minds of those who finally came in with them of the scheme and the plan under which they would raise the price of this five per cent of spot market gasoline and in that way would be able to fix the price of gasoline all over this territory and do what they pleased with their oil."

Mr. Crawford: What page is that?

Mr. Thomas: Record pages 80 and 81.

He further stated:

> "Now, one or two of them alone couldn't have done this, of course, if there were competition between them. And they well knew that. And the picture will be painted to you by evidence here, of how they got together; how they held secret meetings, in Chicago, Washington, Kansas City, St. Louis, Tulsa, some of the other places down in the oil fields, from time to time.
>
> 4157 "And, as I said at the beginning, these were not meetings at which the public were invited—indeed, no. They were meetings from which the public was excluded. And there the scheme was hatched, and there the men were selected for the purpose of going out and taking their part in putting it into effect."

Now, let us see how—

Mr. Crawford: Thank you for reading it like that. I didn't know it was so good.

Mr. Thomas: Well, I tell you, you probably didn't know it was so erroneous, until I called your attention to it.

Now, let us see what the Government did. They prepared this case, and they said they tried to convict—God knows they did everything within their power, but let us see what they did.

This committee was appointed out there at Chicago on January 4, 1935, at a stabilization committee meeting, but where does the conspiracy start, according to the Government's theory. According to the Government's presentation, it was hatched at a meeting in St. Louis, on March 5, 1935. You remember the situation, although it was a long time ago, how we tried and tried again to have them tell us what kind of meeting it was, and we couldn't get
4158 a word in edgewise, and the result of it was that after they got through with their testimony with reference to this March 5, 1935, meeting at St. Louis, you didn't know whether it was a meeting of the common council of oil representatives or the Ku Klux Klan.

Near the close of the testimony—in the closing minute—the closing hour, they come in here with what? The Sus document and Mr. Sus is a witness at about five o'clock on the last day of this trial, and they had that document for eighteen months, and they knew of Sus for eighteen months. That is fairness for you!

4159 I say the alleged conspiracy,—what they call conspiracy, originated on January 4th, at Chicago; and that was the time that the McDowell Committee was appointed.

Let me call your attention to the testimony. There were forty or fifty oil men gathered there. They weren't specially invited or hand-picked. Out of the forty or fifty who gathered there, the government has indicted thirteen of them. And what has become of the balance?

At that meeting that was held when this committee was named, when the names of these alleged conspirators were published and broadcast to the world, the P. A. B. Board had been notified to have a man present. Do you believe that conspiracies originate that way? To call in a member of the P. A. B. Board, or one of their representatives?

I am not going to burden you with a recital of the details of that meeting. The fact is that Arnott opened the meeting, as you remember; told them that Washington was deluged with complaints from independent refiners; some of those independent refiners, Majewski, and some of the others, claimed that they were going broke with gasoline at the price at which it was sold, and with crude pegged at a dollar, and that they were going to break the
4160 price of crude.

It was after the discussion that the McDowell Committee was appointed and they were asked to make a study of conditions and report later.

They had another meeting at Chicago, on February 5th. I am not going to go into the details of that, but I want to call your attention briefly to this significant thing that occurred there. We are supposed to have a conspiracy; that men are combining together for the purpose of raising and fixing and maintaining the retail and wholesale price of gasoline. When the suggestion was first made to this meeting, that the majors buy the distress gasoline, both Karstedt, of Continental, and Bullock, of Standard, stated it would have no value, and referred to the 1934 program, which they claim did no good, and they would have nothing more to do with buying programs where there were any allotments or commitments, especially as to prices. They had been booked down there in 1934, putting the price up at a certain figure, in buying gasoline in East Texas. That is the ten million dollar pool that the witness Steiger was talking about. And their position was that the only thing to do was to cut the price of crude.

4161 Now, there you have a peculiar situation, where men are gathering together to conspire to violate the laws of the country. Here are two representatives come in there and say they won't have anything to do with it. That is a very significant circumstance.

Finally the plan which they had in mind, and which they reported to Arnott, was worked out. And the testimony shows this, and it is summed up in these words. There were to be no pools. There was to be no central buying agency; and there was not. Every one was to buy in line with his needs and requirements. They were to make their own deals with the selling refiner, and that is what they did. There were no allocations or commitments or percentage quotas, as in the previous plan that had been sponsored by the government, and the purchasing company should consider buying at a fair going market price in their individual transactions, rather than take advantage of the distress seller.

Then we come to the meeting of February 11th in Chicago. This meeting occurred following a general stabilization committee meeting, and the McDowell Committee met with men from other major companies having no representation on the committee, but who were regular buyers of gasoline. This was the meeting that Sus attended.
4162 This is the meeting that was attended by the witness who was called in here at the eleventh hour to put in evidence a memorandum that he said he made.

Now, Mr. Ashton outlined the plan the same as I have given it; and I want briefly, at this time, to call your attention to some significant things that occurred at that meeting outside of the mere discussion of this plan. Here is some testimony in this case that is absolutely undisputed. Mr. McDowell testified:

> "Question: Was anything said at this meeting about publicity?
>
> "Answer: Yes, sir.
>
> "Question: What was said?
>
> "Answer: Well, several people made the statement that there had been quite a lot in the trade journals about the activities of this committee since the time of its appointment; calling attention to the fact that there had always been, and they thought it would be a good idea to give the trade papers any information they sought on it.
>
> "Question: Did you afterwards see any articles in the trade papers about this buying plan?
>
> 4163 "Answer: Yes, sir, a good many of them."

That testimony is undisputed. It is corroborated by what Steiger told you on the stand, one of the government's witnesses. His papers carried what he called leads,—stories about the meetings of these committees.

Is that consistent with criminal purpose, I ask you gentlemen, to give out information to the newspapers, and not only did they suggest giving it out, but it was published in the trade journals? Is that consistent with criminal intention? You never heard of such a thing before in connection with the charge of crime.

Now, with reference to the Sus memorandum, of which counsel spoke yesterday, may I call your attention briefly to his testimony. He testified as follows:

> "Question: Now, is this report that has been offered in evidence here a verbatim report of what took place at the meeting?
>
> "Answer: No, sir."

He further testified:

> "Question: Now, in this report or memorandum of yours you also referred to a steering committee and to its functions, in a short paragraph in your memorandum. Was there a considerable amount of discussion as to a steering committee and the functions it would perform? 4164
>
> "Answer: Yes, sir.
>
> "Question: Will you tell us what that was and what was said about it?
>
> "Answer: One of the recommendations of this tank car stabilization committee was that there should be appointed a steering committee. The function of this steering committee was to keep itself currently informed as to who had gasoline to sell,—who had distress gasoline, and who, on the other hand, wanted to buy gasoline, in order that there might be an agency which would bring the buyer and the seller together.
>
> "This steering committee was also to keep itself informed as to the price at which gasoline was currently moving. And they were to see to it and to use such persuasion and such influence as lay at their command, to see to it that these major buying refiners did not take advantage of these smaller selling refiners, and by reason of the economic distress of these smaller refiners, bid down the price to below the current levels at which gasoline was selling, because to do so would have defeated the very purpose of the meeting, which was to stabilize. 4165
>
> "And this steering committee was to see to it that these major refiners played fair with these smaller

refiners who were in economic distress, and didn't chisel under the going market, on the price at which they bought this gasoline.

"Question: Now, what, if anything, was said as to the price that should be paid, if anything was said?

"Answer: The only reference that was made at the meeting to the price to be paid was that they wanted these refiners who bought gasoline from these refiners who had the distress gasoline, was to pay the going market price and not chisel.

"Question: And getting back to the committee; was anything said as to whether or not the purchase should be made by or through the committee; what if anything was said about that?

"Answer: No, sir, the committee was not to function in any buying capacity. The buying committee was simply to put the buyer and the seller together, and from that point on the buyer would make his own deal with the seller; because there were such matters as specifications, and freight rates, and quantities and so forth, that would be involved." 4166

Now, that doesn't differ very much from what you heard from the other witnesses that have testified as to what took place on that same occasion.

The one thing that strikes me peculiar about this whole matter; I told you that they knew about Mr. Sus; that they knew about this note that he had made, for a period of eighteen months. Now, they had the trade journals in here, and they allege with equal degree of solemnity that the trade journals were guilty of conspiring as they do any of the defendants I am appearing for. Here is this reference in the Sus memorandum with reference to the trade journals, and yet, the government knowing of Sus and knowing of this document, voluntarily came into this Court and dismissed the trade journals out of this case.

And they withhold it, as I say, until the eleventh hour, before it is offered in proof in this case. What is the reason for it? The reason for it is this; they know that it does not state the facts as the facts occurred. They knew it, and that is the reason why they withheld it, and they put it in with the rest of this bankrupt testimony they have here in the last few hours of this trial, and which I will discuss later. 4167

It is interesting, in connection with this meeting, this feature of it. I told you, did I not, of the reluctance of Bullock of the Standard Oil Company to have anything to do with any buying programs where there were any commitments or allotments or agreements on price. Here is some testimony. Mr. McDowell relates what occurred in that respect:

"Question: Did any one disagree with that suggestion?

"Answer: Yes, that suggestion with reference to the plan, provoked quite an argument. I remember particularly that Mr. Karstedt and Mr. Bullock stated that they didn't think major company buying would do any good, would have any value.

"Question: What reason did they advance for that statement?

"Answer: Well, they had a good many, as I remember it.

"First, they said that, with hot gasoline moving out of East Texas as it was, that any buying in the Mid-Continent would be just like mopping up the 4168 ocean. They said, furthermore, that they wouldn't have anything to do with any more buying programs; they had had some experience with some in 1934; they didn't think they had done any good, and they just didn't want to have any part in anything that was like the 1934 buying programs.

"Question: Did they say why the 1934 programs hadn't done any good?

"Answer: Well, yes. Hot oil had continued to be uncontrolled during several of those 1934 programs; but they also made a very definite point on this, that they didn't want to have anything to do with anything where there were any allotments or commitments, or where anybody could tell them how much they would have to pay for gasoline—which were principles of some of the buying programs in 1934. And they had expressed the opinion that they thought those were some of the reasons that those plans had failed, because people were being asked to do things that they didn't want to do.

"Mr. Karstedt and Mr. Bullock said that in their opinion the only thing to do was to have a crude cut.

4169 "Question: Did you have anything to say on this proposal?

"Answer: A cut in the price of crude. They didn't think anything could be done.

"Mr. Donovan: Question: Did you have anything to say?

"Answer: Yes. I took the position that I didn't agree with the pessimistic attitude of Mr. Karstedt and Mr. Bullock; that, although the situation was fairly bad right at that time, that I thought we should be encouraged by the attempts on the part of the Administration to get the Connally Bill passed, which we knew had as one of its purposes the establishment of the Tender Board, which would, we hoped, put a stop to the trafficking of hot oil and hot gasoline out of the East Texas; and that, I called their attention to the fact that we were a committee, appointed by Mr. Arnott, representing a section of our industry, and that I thought we should attempt to do something."

Now, moreover, if this was a conspiracy, if they were framing up some crime, do you think this would have happened? Do you think that Bullock, for instance, would have got up and left the meeting? This question was
4170 asked:

"Question: Did Mr. Bullock stay to the end of the meeting?

"Answer: No, Mr. Bullock was there but a very short time."

Now then, the Standard Oil Company seems to be the target at which these gentlemen are shooting. Let's see just what happened with reference to inducing the Standard to purchase gasoline.

"Question: What did Mr. Bullock say when McDowell telephoned him with reference to purchasing?

"Answer: Mr. Bullock thanked me for the information and he didn't tell me anything definitely as to what they would do."

When asked on redirect examination, by Mr. Kirkland, as to how he kept in contact with Standard Oil Company, he stated, at pages 1226-27 of the record:

"Principally through telephone conversations with Mr. Bullock. I would say that that was during the early part of the year.

"Question: During the early part of 1935?

"Answer: Along in the summer and fall. Of course I was away quite a lot, and then, frankly, I got so little satisfaction out of Mr. Bullock in some
4171 of my conversations that I wanted to save the telephone expense.

"Question: You dropped him?

"Answer: So I just quit telephoning him."

The Court: Take a recess at this time.

(Whereupon, at 11:15 A. M., a short recess was taken.)

4172 (Following the recess the Court resumed its session at 11:30 o'clock A. M., and the following proceedings were had:)

Mr. Thomas: I now wish to deal with the March 5th, 1935, meeting. This is the meeting at which the government says the agreement was made. This is the agreement at which their proof was aimed until, as I said before, the last minutes of the trial when they bring in this Sus memorandum, which they know does not correctly state what took place there, and which they have known all the time.

Now, just what did occur at the March 5th meeting? The first meeting was held at Ashton's office in St. Louis in the morning. At that time there were present four independent refiners, Boggs, Simmons, Cocanower, who were members of an independent refiners' committee, and Winget who was present as an observer.

Now, that sounds rather unusual, that if men are going to form a conspiracy they have somebody present as an observer. That is not the usual way in which conspiracies are run.

Jacobi arrived late at this meeting; attended the meeting at the office of Mr. Ashton.

Mr. Ashton explained the plan as I have explained it to you here this morning.

Simmons claimed that the price of gasoline was so low that he could not continue to operate very much 4173 longer; and you remember the status of the independent refiners as depicted by the testimony; bankruptcy, closing, unable to continue their operations all through the Mid-Continent and the East Texas field.

At this meeting Mr. Ashton emphasized, and Mr. Jacobi does not disagree one whit from what McDowell says happened—there is no disagreement between them—he emphasized the fact that the independents were to make their own deal and it was up to them to get the best price they could from the companies which might offer to purchase.

Now, that is the undisputed testimony here as between Jacobi and McDowell, as to what occurred at that meeting.

Does that sound like price-fixing? To make the best deal they possibly could.

Mr. Bourque, one of the defendants, was present at that meeting. And let me say this—

Mr. Mitchell: Was not present.

Mr. Thomas: Was not present? Well, Mr. Bourque at least had furnished to somebody a list of the various independent refiners that had distress gasoline for sale.

Now, understand what Bourque's position was. Bourque was the secretary of the Western Petroleum Refiners Association, employed on a salary. The business of that association is to collect statistical data, and so forth. It 4174 does not sell a pint of gasoline. He was asked to furnish this information, which he did.

Now, bear in mind as far as this man is concerned they could have ten conspiracies, and it would not add one cent to his pocket.

Now, with reference to the sub-committee, that was to act as a clearing house for the purpose of finding out where this distress gasoline was located, and to communicate it to the buyers. At that time the warning was given again, that they were not to chisel down on the price, that they were to pay a fair price, not take advanage of an independent refiner when a bank had called his loan, and buy his gasoline for two cents or two-and-a-half cents a gallon, but to pay somewhere near the market price for it. And that is just exactly what was done.

Now, there were four independents at this meeting, and out of the four there has only one of them been indicted here. Out of all these companies that are listed in this indictment as co-conspirators, not one of them has been indicted, and the only independent refiner that is here subject to the indictment is Boggs, and as far as I can observe from this testimony the only thing he has been guilty of is that he insisted something be done for the independent refiners, which was reported by Arnott at the meeting on January 4th.

There were no amounts fixed that any major should 4175 take; and that is borne out by the facts. You remember the figures as to the number of cars that were taken by these majors. I recall particularly, for instance, that of Gulf, ten cars, seventy-five cars, thirty cars, and so forth; and so you go through the list and you find that variation in the amounts that they take. They take it in accordance with the needs of those concerns as it develops from time to time. There is no regular amount they take of ten cars per month, or twenty-five cars per month, or fifty cars per month, but they take it in that irregular way.

Now, when this meeting was held on the 5th of March counsel would lead you to believe that all the distress gasoline was spoken for by those present. That was not true. There was something like sixty per cent of the distress gasoline for the month of March that these majors agreed to take at that time.

But the strangest thing of all to me is this: If you are framing a conspiracy on March 5th, 1935, why on earth wouldn't you have the conspirators there? You would think if they were framing a conspiracy of that kind, anybody that would have as much interest as the Standard of Indiana, for instance, would at least have some representative at the meeting. No.

4176 You would think that a company like Pure would have some representative there to see that they got fair treatment in this conspiracy that counsel talk about.

But what was the fact? The fact, and the undisputed fact in this record is that Sinclair, Barnsdall, Pure and Skelly had no representative whatsoever at the meeting, and the arrangement was made with some of those that were present to contact those companies to see if they would buy any of this distress gasoline.

Now, there is another thing that strikes me about a conspiracy where you have a master mind like Mr. Arnott operating. The only meeting that Arnott attended in connection with this whole program was when he called that meeting out there at Chicago on the 4th day of January, and when he attended the allocators' meeting in Washington, within the very shadow of the Department of Justice.

Now, it is a strange man's mind who organizes a conspiracy and goes away and leaves it. Is that usual? Is that what you would expect? No.

At this meeting, according to the undisputed testimony—Jacobi does not deny it; McDowell says it is so—this so-called sub-committee was given no authority to recommend any price, and both Jacobi and McDowell agree that the price was to be left to barter as between the purchaser and the seller.

4177 But the government will tell you that Jacobi wrote letters to his employer or to the Wadhams Oil Company, and in those letters he recommended prices, and one of those letters is pointed out to you as indicating the presence of a conspiracy, and that is the letter Exhibit 682, dated March 15th, 1935, from Jacobi to the Wadhams Oil Company.

"Wadhams Oil Company,
Milwaukee, Wisconsin.

Attention: Mr. A. G. Maguire, Chairman
Subject: Weekly letter.

"Dear Mr. Maguire:

"*Crude oil.* Crude oil and gasoline markets indicate a firmer trend.

"The industry seems to have taken heart in the renewed activities of the Federal Tender Board in East Texas, and most of the credit for this better state of mind must be given to the Tender Board.

"*Gasoline.* The writer has been busy this week on tank car stabilization work, and thus far results are gratifying. Our committee decided on a price of three and three-fourths cents for third grade, and four and three-fourths cents for 'Q', for next week. Purchasing companies, including our own units, are paying these prices today. Since this stabilization work started, an advance in price of about three-eighths of a cent per gallon on both grades has resulted.

4178 "Jobber demand has decreased somewhat the past week, and some good weather would now be very welcome, from the viewpoint of our work here.

"Natural gasoline, 26/70 grade shown no price improvement as yet, but I believe it will shortly.

"Yours very truly,
"W. P. Jacobi."

This is Jacobi's letter, a letter to the Wadhams Oil Company. Is there any reason, any legal reason why he should not advise his employer with reference to any opinion he might have on prices?

The question is whether or not the members of this committee communicated to the major companies a price that they had agreed upon and which the major companies paid for this third grade gasoline. There are the two elements; first, the communication of a recommended price, and second, the fact that the purchase was made at the recommended price.

Now, what are the facts? I don't know what those fractional figures mean to you; they do not mean much to me; I have to stop and analyze them all the time in order to figure them out.

But on March 14th, the day that letter was written, the Oilgram quoted third grade at three and seven-eighths
4179 low to four cents high, and the Chicago Journal of Commerce at three and three-fourths to four cents.

Now, at this meeting on the 14th both Jacobi and McDowell agree that Jacobi reported that some of the independents had told him that some one major or more had been buying too cheap, or in other words, as he expressed it, chiseling them.

Now, McDowell never recommended a price to anybody. Tuttle never recommended a price to anybody. The record is absolutely devoid of proof of any recommendation by either one of them. McDowell was on the stand, and so testified, and apparently the government was willing to accept his testimony as the truth about it.

Counsel tells you that McDowell confessed the truth, and that Arnott confessed the truth.

They told just what occurred, and they told what had been published in the newspapers, what was known in the Department in Washington. There was no reason why they should conceal it. No recommended price of any kind from McDowell, no recommended price of any kind from Tuttle.

Now, on that subject let me quote the government's witness Jacobi, the man who had appeared five times before a grand jury, had been quizzed by these gentlemen up, down and crosswise, and here is his testimony with regard to it. I am reading from the record, page 410:

4180 "Q. Did you tell them that that was a recommendation from you three?

"A. No, sir. I told them that that was my idea of the fair market price for the following week.

"Q. Did you tell them that was the committee's idea?

"A. I don't remember doing so.

"Q. Well, why didn't you?

"A. Maybe I did, but I don't remember doing it."

Now, gentlemen, you know I would hate to have to come before a jury and be put on trial for violating the laws of my country because of what somebody said or what somebody wrote about me. I would ask a jury to convict me or acquit me, depending on what I did. It is my acts that I want tried, and not what Jacobi wrote about me, not what somebody said about me, but what I did about it.

Now, let me call your attention to this: In June, 1935, gentlemen of the jury, the government of the United States by reason of the force of a subpoena obtained the information that is depicted on this chart with reference to Jacobi's purchases for the Socony-Vacuum. (Referring to chart). They had it for eighteen months, and when this chart was first exposed to view it was some surprise to the gentlemen, and there were no grins around the table at that time.

Now, I want to show you what Jacobi did later. I
4181 don't care what he wrote. You are punishing the
Socony-Vacuum, if you punish it at all, for what it
did; and here you are.

4182 This chart depicts the price trend of third grade gasoline, and these red dots indicate the purchases.

Now, look at them. Does that indicate a recommended price when they are buying below the market, buying at the low of the market, and so on through the year—here, over to 1936 (indicating). That is what they did. That is what my company did. And they want to convict my company because of something that Jacobi wrote, and that is what we did (indicating).

Now, how on earth can you fix prices by buying as was bought here (indicating) by the Socony-Vacuum Company? It just can't be did.

Talk about conspiracy, fixing prices! Why, you can take a couple of high-school boys, and they could do a better job of fixing prices than is depicted on that chart. And, mind you, this chart isn't made from the oral testimony of this man or the other man. That is taken from records of the company, the records relating to purchases of gasoline. It is record testimony that this Government had in its hands since June, 1936, and had in its hands when they put this witness on the stand, and you have had the testimony of recommended prices over the low of the market where they are buying all the way through at below the market.

I say, gentlemen, if we are to be punished, punish
4183 us for what we did, but don't punish us for what somebody wrote.

Now, I want to call your attention to another thing: They say that what was written by Jacobi and the rest of these fellows was responsible for the rise in the price of gasoline. Here is something that the Government won't contradict. Jacobi's first purchase of third grade was made on March 8th, and the price of third grade, according to Platt's Oilgram, had advanced since the 1st of March from three and a quarter, low, and three and a half high, on March 1st, to three and five-eighths and three and seven-eighths on March 8th. In other words, the low had advanced three-eighths in those three days and the high quotations three-eighths of a cent.

Of course, the reason for it is perfectly apparent. The Tender Board had been set up under the Connally Act on the 1st of March. Now, McDowell, acting for his company, made his first purchase on March 14th. The Pure Oil Company was laggard in getting in on this soft purchases which is embraced in the conspiracy. We find The Pure Oil Company not making any purchases until May 1, 1935. Now, if there is any action here resulting from a conspiracy, did they find that situation?

But let me call your attention to this significant bit of

testimony. Government counsel in opening this case
4184 to this jury, told you that the purpose of these defendants in this case was to corner the excess gasoline so as to control the tank market price. You remember that, don't you? He spent a lot of time on that. They wanted to get a corner on it, so they could control it.

Now, what is the undisputed testimony? McDowell testified to this, and you remember how they dropped his cross examination, and never cross examined him hardly at all.

And here is what occurred. I am reading now from the record, pages 1193-94:

> "I remember specifically that Mr. Winget asked if this plan went into operation if it would mean that the independent refiner could not sell brokers any more, and I answered him on that and told him that I did not know where he got that idea, but certainly the plan did not have any such idea; that the plan simply involved an effort to put buying companies in contact with these independent refiners in the event they had distress gasoline to sell, and that if they could sell their output through brokers that it was just fine."

Does that sound like cornering the market?

4185 "If you can sell your output through brokers, that is just fine."

Let me illustrate how wide some of these statements are made by Government counsel. Now, that is in the record. That is the only testimony on that subject in the record; undisputed. And the facts bear out what McDowell said.

You have seen these charts here, and you have seen the number of sales depicted on the charts with reference to sales to jobbers and consumers. What is the reason for it?

Suppose you were an independent refiner? Suppose you were in business—in that business, and you wanted to continue in that business, what would you do? Why, you would do what they are all trying to do. You would want to get a number of jobbers scattered around through the territory. You would want to scatter your own connections with brokers so that you could establish a business of your own, a permanent business, not dependent upon the sporadic purchases of major companies, major companies purchasing five cars one month and then going two months not purchasing any. And that is what they were doing.

And that is why in this testimony you find these in-
4186 dependent refiners, some sold one per cent to the
majors, some two per cent, and some didn't sell any.
And that is the reason for it.

The Court: I think we will suspend at this time until two o'clock.

(Thereupon, at 12 o'clock noon, a recess was taken to 2:00 o'clock p. m., of the same day, Wednesday, January 19, 1938.)

4187 Mr. Thomas: Gentlemen of the jury:

I was talking to you this morning about the argument that was made to you by the defense—by the Government's counsel, to the effect that the majors, in this buying that was done in the Mid-Continent and East Texas, were planning to corner the supply of gasoline and keep it away from the brokers and jobbers. Since the adjournment, I have been advised that the evidence shows that the brokers were able to buy during the period more than eleven million nine hundred thousand gallons of gas from November, '34, to July, 1936. And when they did buy,
they bought most of it during this March, April and
4188 May period, 1935—which evidence is far from being
corroborative of the testimony of Mr. Beroth.

I now wish to talk to you a few minutes about another provision in this indictment, which counsel seems to have forgotten—at least, no reference was made in the opening statement to this particular phase of the question.

You will recall that the charge in the indictment is that a conspiracy was formed, among other things:

> "—and in turn, have intentionally raised the general level of retail prices prevailing in said Mid-Western area."

And, as the testimony came in in this case, I know that you, all of you thought that the Standard of Indiana connived with the other defendants for the purpose of fixing the retail price which we pay when we drive our cars up to the filling station to have them filled with gas. It was the natural impression that you would have from the opening statements of Government counsel, because we were told by Mr. Crawford in that opening statement that that was the purpose of the conspiracy, to control both retail and tank car prices.

4189 Now, I want to call your attention to the testimony
that relates to that subject.

Mr. Marshall, who was one of the witnesses called by the defense in this case, testified as follows:—with reference to the change that was made on the 11th of September, 1934, when, at that time, the Standard adopted the trade publications as a part of the base for the determination of the price:

"Question: And was the change something suddenly made, or had it been under deliberation by your company for some time?

"Answer: As a matter of fact, the sales department had been promoting the idea, or an idea of that kind, for several years. I think we first started with it in 1925."

1925, ten years before the alleged conspiracy was formed.

"Question: And had there been, during the interval from 1925 to 1934, suggestions made to the executives about the change?

"Answer: Yes.

"Question: At the time the change was made, in September, 1934, were the executives or officials or employees of any other major oil company consulted by the Standard before making it?

4190 "Answer: Oh, no. We considered that a very confidential matter."

Barkdull, executive vice-president and treasurer of the Standard Oil Company, testified in response to the question by his Honor, as follows:

"The Court: Was the price charged to the consumer at the filling station arrived at by any conference or consultation with the oil companies doing business in that particular territory?

"Answer: No, sir, not to my knowledge.

"Question: In other words, you fix your own price, and don't care what the other fellow does?

"Answer: Oh, certainly, we care what he does. We hope that in posting that price, he will follow it; but if he don't follow and increase his price, if this happens to be an increase, why, we have to change our ideas of the situation if we want to hold our volume of business, and we may back down."

Now, there you have two witnesses that testified to the fact that no officer, agent or employee of any other corporation had anything to do whatsoever with the de-
4191 termination of the price base for the retail sale of
gasoline in the Standard of Indiana territory. They haven't offered a scintilla of proof to offset it. It stands there as an admitted fact.

Now, when this new or changed base for fixing or determining the retail price was put into effect, it was put into effect on the 11th day of December, 1934, long before any conspiracy is charged against any of these defendants. And when it was put into effect, the retail price of gasoline in the territory was reduced 1.6 cents.

Marshall testified as follows:

> "As far as the retail price is concerned, the effect of our change in method of computing the retail price, effective September 11th, 1934, was an average reduction of 1.6 cents per gallon throughout the entire territory. That wasn't 1.6 cents everywhere; it would be considerably more than that in some places, and less than that in some places; but, by and large, over the territory, the average reduction was 1.6 cents."

4192 That was September 11th, 1934, when the base was changed by which the retail price was posted by the Standard Company.

Now, then, there was a further reduction of three-tenths of a cent on October 20th. That was followed by an advance of three-tenths of a cent on November 13th, and on February 2nd, 1935, there was a further reduction of three-tenths of a cent. There was a net reduction of one and nine-tenths cents per gallon in the retail price for the six months prior to March 1st, 1935. There were four three-tenths of a cent advances in the spring of 1935, from March until June; and on June 1st, 1935, the retail posted price was still two-tenths of a cent lower than it was on September 11th, 1934.

In February—mark this, gentlemen—in February, 1935, the Standard had to raise the retail price of third grade to conform to the minimum price fixed by the order of the Wisconsin Department of Markets. Barkdull testified as follows on that:

> "Question: The Court asked you, Mr. Barkdull, if you knew in certain instances why the price was raised in the Indiana territory. Isn't it a fact that in 1935 the Standard of Indiana had to raise its price because of the price fixing order of the Wisconsin Department of Markets?

4193 "Answer: Yes, sir, that is true."

The price had to be raised—and it is an undisputed fact in the case—in order to conform to the minimum order, the minimum price order made by our own Department of Markets, regulating the retail sale of gasoline in this state.

I call your attention also to this Exhibit 186 of the

Shell correspondence, where we find the following under date of April 17, 1935:

> "In conformity with an amendment to the Wisconsin minimum price fixing order, we increased the 1000 gallon consumer discount on Silver Shell from one-half cent to one and one-half cents."

In conformity with the minimum price fixing order of our own Department of Markets. Now, how does that square with the claim that the public were being gouged on the retail price of gasoline?

Now, in this connection, there seems to be some confusion in the Government ranks. Mr. Crawford said, when he opened this case to you, in telling you what they were going to prove, he said this:

> 4194 "The litigation, the indictment and the charge as you know now, involves the question of a violation by the defendants of the Sherman Anti-Trust Laws, in that it is claimed and we will have evidence here to sustain the claim, that these defendants engaged in a conspiracy to fix and regulate prices of gasoline, both wholesale and retail, during the period from at least March 1935 and continuing on down to the time when the indictment was returned here by the grand jury."

Now, that was his statement.

After this trial had proceeded for two months, we find them absolutely retreating from that position. I am quoting now from the record:

> "Mr. Kirkland: There wasn't any evidence that it was the policy of the Standard of Indiana to raise its price arbitrarily, or to reduce it arbitrarily.
>
> "Mr. Chaffetz: I didn't use the word 'arbitrarily'.
>
> "Mr. Kirkland: That is the only inference you can draw from your statement. The Standard of Indiana had a certain policy, which counsel could have shown if they had wished to. All they did was bring out from jobbers the statement that Standard raised 4195 its price today, or some other day. They didn't go into the formula, or why the price was raised; and it is also a fact that there isn't a scintilla of evidence, or, rather, any charge in this indictment that it was a part of the conspiracy, or that Standard conspired with anybody in raising the price, or in arriving at the formula by which they fixed or by which they arrived at their price.
>
> "Mr. Chaffetz: If that is what is worrying coun-

> sel, I will agree there is no evidence that the fixing of the price by Standard of Indiana was pursuant to any conspiracy."

I quote it again:'

> "If that is what is worrying counsel, I will agree that there is no evidence that the fixing of the price by Standard of Indiana was pursuant to any conspiracy."

Now, then, in view of that testimony and the statement of counsel, just what weight are you going to give to the statement of some salesman or buyer down in Oklahoma or Texas, to the effect that Standard was going to raise the price three tenths of a cent or a half a cent, or whatever it may be? Standard, as this testimony shows, and as
4196 the concession of Government counsel is, posted a
price which it alone determined; and these defendants that are here with Standard on trial had nothing whatever to do with it.

Now, gentlemen of the jury, there is another matter that I want to call your attention to and discuss very briefly, as a very important consideration in this case. And that is this: If you would repeal the Sherman Law and permit the defendants that are now on trial here to make any agreement that they saw fit, it is an utter impossibility—I say, an utter impossibility for them to have fixed the tank car price or the retail price in Wisconsin or in this Mid-Western area. I repeat it: It was an utter impossibility, and the proof in this case so shows.

To illustrate:

Suppose that you and I made an agreement that, for our own benefit, we would reverse the tides and thus interfere with or control shipping along the Atlantic Seaboard—an utter impossibility. Have you any idea that you and I could be brought into a Federal court and prosecuted for a conspiracy for doing that?

And that is just what this evidence shows. And I say it shows it, notwithstanding the bitter attack that was made on Mr. Swensrud by Government counsel.

4197 Now, Mr. Swensrud, who was he? He is a graduate
of the University of Minnesota. He completed his education in Harvard University. He was selected by the Secretary of the Interior on the Blazer Committee, to study the conditions of the independent refiner and make a report to the Secretary. Because we chose him, is the man to be subjected to criticism? Is he to be placed down here in Bloomington, in the Liars' Club? Just because they couldn't cross-examine him, just because what he was tell-

ing was the fact, is no reason why the man should be brought in here and by Government counsel castigated before this jury.

Can I have that chart now?

While they are putting up that chart, I want to call your attention to one thing. You know, a lawyer is cross-examining a witness, and when the witness has given very damaging testimony to that lawyer's side of the case, and he starts out to cross-examine him and then deliberately quits after a little huddle here, which you saw, between counsel, after they had asked him just a few questions—now, what is wrong? Simply this: What the man was telling and what he was demonstrating was an actual fact. And that is why they ceased that cross-examination the way that they did.

4198 (Large chart, Exhibit 935, is exhibited before the jury:)

I want to call your attention briefly to this chart, and I want to call your attention briefly to Swensrud's testimony.

You have been told by Government counsel that this is all theory, haven't you? Isn't that what he said? Do you think those freight rates (indicating) are theories; are those theory? Is it a theory when he tells you how much gasoline is shipped across from Louisville into Indiana (indicating), is that theory? Is it theory when he shows a freight rate much less than it is from down here in the Mid-Continent, from Louisville over here into Indiana (indicating)? Was it theory when he told you about The Pure Oil Company constructing their pipe line, leading from the refinery in Cleveland up through Toledo and into Detroit (indicating), so that they could transport gasoline more cheaply than they could by rail, and thus invade the Indiana territory? Was he telling you theory when he told you about the Standard of Ohio, under the operation of the Fleet Wing Corporation, coming into Indiana and selling in the Indiana territory? Or all of these refineries up here in Cody, Laurel Springs and Caspar, coming in and 4199 selling through the western portion of North and South Dakota (indicating)? Were those theories? Those were facts. And when you dub them theories, it is just simply an excuse to get away from the very thing that absolutely is inevitable in this case.

And finally, as the last thing in Swensrud's testimony—and just remember this—he was asked whether or not the rate, the price—the retail price, or the tank car price of gasoline advanced more rapidly in this Mid-Western section during the three months in question here, than it did outside the area; and counsel were going to let him go without answering the question, and you remember what he said. He said, "You asked me a question. I will answer it if you wish." And then he told you that the price, according to the statistics that are kept by the Government and the A. P. I., had advanced faster outside the area during that period than it had within it.

(Chart, Exhibit 935, is removed.)

Now, gentlemen, if as a matter of fact the retail price was kept at a high and artificial level, there would have been more gasoline pouring into this territory than
4200 there was. The fact of the matter is that the price was so low that it was not an inviting price, and for that reason you had the very limited quantities coming into Indiana, coming into Michigan, and coming into the Dakotas. The price was not high and unreasonable, as is shown by what I have read to you here with reference to the orders of our own Department of Markets in this State, where they had to raise the price in order to conform to the order.

Now, then, there is one thing about this—this strikes me as being rather peculiar. Here we have in the City of Washington experts of all kinds, on all kinds of subjects. You have your Bureau of Mines, you have your Petroleum Department, under the Secretary of State—

Mr. Orr: Secretary of the Interior.

Mr. Thomas: Under the Secretary of the Interior—and where have you seen one man put on this witness stand to dispute what Swensrud said? Have you seen one witness, whether he be a Government official or employee, or whether he be a private citizen, who has been put on that witness stand to dispute in one iota the testimony of Swensrud?

4201 Why didn't they call in somebody to dispute this testimony that it was impossible to control these prices if they wanted to make that argument, instead of standing up here before the jury and criticizing this man because he is using a theory, and the theory consists of facts and statistics that are taken from government publications and other equally reliable sources?

Now, I want to call your attention, very briefly, to another chart that was used here. This chart shows,—the green line showing the price that prevailed in the Mid-Continent area. The black line shows the price that prevailed in those cities, some twenty-five or forty of them, that were selected for the purpose of making the comparison, and that were outside of the area.

This, as far as I am pointing (indicating) is the year 1934, represented by months. Here (indicating) we find, in 1934, the green line is below the black line.

You will note on January 1st, 1934, the green line representing the price prevailing in the Mid-Continent area is lower than that prevailing outside in the cities selected for the comparison; and then it advances; then gradually recedes until finally we get to September, 1934. The price recedes. I told you a few minutes ago that, on September 11th, the posted price dropped one point and six 4202 tenths. At the same time the price in the area outside dropped and kept on dropping, until it reached that point (indicating).

Then the retail price goes steadily down, both inside and outside of the territory, until it reaches this point (indicating) about October or November of 1935.

And then notice: the price outside of the territory starts to rise, at about that date. The price inside the territory continues to go down, until it gets down to about,—you can figure that as well as I can—perhaps ten and three-quarters cents, something like that. That is in November of 1934.

Now, I want to call to your attention particularly, you will notice it reached its low point in November 1934. Then it proceeds with a price rise, with some variations up and down. It keeps on going up, and the general trend is up, up, until you get into May of 1935,—June, 1935. So your price rise, gentlemen, instead of starting on the first day of March, really started here (indicating), back in November.

Now then, note this: throughout this period, and commencing at about this date (indicating) the retail price in the territory, with some trivial exceptions, was lower than the retail price in the cities outside of the area. I 4203 bring that to your attention because it is a very important matter and it deals with this question of retail prices, which they charge us in the indictment with having conspired to increase.

Now, I want to take up with you again another phase of this secrecy business. This P. A. B. Board was rather an informal sort of organization; it kept no minutes. Each one of the members was given a specific field of activity and required to report to the chairman, and the chairman reported to the Secretary of the Interior, Fahy and Frey, Fahy being a Deputy Administrator, mind you, possessed with powers which will be discussed by my associate, Col.

Donovan. Whatever their powers may be, we quote the language of his Honor, Judge Stone, when this matter was before him and the question arose with reference to our right to rely on what the P. A. B. Board's members told us.

Mr. Chaffetz: Was that something said in the presence of the jury?

Mr. Thomas: I presume so, I don't know.

Mr. Chaffetz: That is important.

Mr. Thomas: Anyway, if I may be privileged to take the Court's language as my own, anyhow—

Mr. Chaffetz: No. Just a minute. Counsel purports to quote the Court. I think he is quoting some language used outside of the presence of the jury. We are not sure you would have used it if the jury were present, in argument. 4204

Mr. Thomas: We will submit that now. I will make it my own language.

Mr. Chaffetz: Oh, yes, after telling the jury—go ahead, after telling the jury—

The Court: I think you ought to refrain from discussing anything that was said outside of the presence of the jury.

Mr. Thomas: I don't know whether it was said in the presence of the jury, your Honor.

Mr. Chaffetz: I think you should know.

Mr. Thomas: Well, anyway, here we have Dr. Frey, and Fahy, who is a lawyer and Chairman of the Commission, and the Deputy Commissioner in charge. They are sent out here to deal with these oil men. These oil men come in here and tell them this or that, or they are told this or they are told that, and now, after three years have come and gone they are brought in here on an indictment and asked to respond to a criminal charge of conspiracy.

I say that this point is important: if these men 4205 were engaged in a conspiracy to violate the laws of United States, have you any idea that a man of the competency of Mr. Arnott would be in there on the 12th day of March telling Mr. Fahy, Dr. Frey, and Mr. Swanson, of the P. A. B. Board that he had established this tank car stabilization committee that was operating out here in the Mid-Continent field? Is that what criminals do,—go right to the P. A. B. Board and tell three of them that he had appointed this tank car stabilization committee and tell them too what he intended to have them do? Not only that, but again, on the 8th day of May, if my remembrance of the date is correct, they had another conversation, when this question of moratorium was up.

And on that date the P. A. B. Board was again notified—I don't say notified—they were told, just what they were doing out there in the Mid-Continent field.

Now, counsel will urge, well, they didn't tell them this and they didn't tell them that; they left out this particular or they left out the other. You heard this testimony. They told them enough so that they knew—so that they knew, what was being done. Why, Dr. Frey testified that he knew about the tank car committee activities a month before March 12th, 1935.

4206 But counsel say Mr. Arnott didn't get approval. And the testimony of Dr. Frey was that Arnott didn't ask for their blessing. Of course, Arnott didn't. He tells you on the witness stand it never occurred to him, and it never occurred to the members of the P. A. B. Board that he ought to have one. All that was necessary was to have stepped into the Secretary's office and gotten a written order. Now that is the situation.

While Arnott didn't ask for their blessing, you will note that none of them ever told him or intimated to him that he should stop.

Arnott testified as follows:

> "Question: Would you at that time have discontinued these activities had you believed that Dr. Frey or the Petroleum Administrative Board disapproved of them?
>
> "Mr. Chaffetz: That is the same question exactly.
>
> "The Court: Well, he may answer that.
>
> "Answer: I would have.
>
> "Mr. Donovan: Question: Would you at that time have discontinued those activities had Dr. Frey or the Petroleum Administrative Board told you to do so?
>
> 4207 "Mr. Lewin: Now, we object to that on the same ground.
>
> "The Court: He may answer that.
>
> "Mr. Arnott: I would have so discontinued."

Frey said they didn't tell him to stop. Arnott said they didn't tell him to stop. If there is any question about this, gentlemen, where is Fahy, the chairman of this board and the deputy administrator? Have you seen him on the stand? He is an attorney for some labor board,—some governmental body down there in Washington. Why didn't they call him in here and have him dispute Arnott? Why didn't they call him in here if Dr. Frey isn't telling you the truth? Oh, they offer no evidence in contradiction of it. The man goes on and he does this work, working with Dr. Frey, telling him what he is doing, and then after he has done it, they indict him.

Now, counsel would have you believe that the reason was because these government officials, like Dr. Frey, and the rest of them were what he calls minutiae, or nit-wits, or tiddle-de-winks.

Mr. Brazeau: Mice.

Mr. Thomas: Mice. I don't believe that this jury thinks that Dr. Frey, a man who was educated here in the University of Wisconsin,—a professor here—is
4208 quite entitled to that classification. In fact, these men were selected for those positions. They were appointed there by the President of the United States. They were paid out of the United States Treasury. They were the ones that these oil men had to deal with. They were the ones from whom they took their orders and suggestions. They knew what these men were doing. They worked with them. And now, as I say, they are indicted.

Now, you have got to agree to one of two things: either these men, such as Dr. Frey and Fahy, and others, acted in good faith, or they didn't think that there was anything in this program that was violative of the law; or else you have to take the other position that they winked at it. I wouldn't say or make any such charge against these government officials.

I think they thought, the same as we thought, and the same as we think today, that this buying that was done by these major companies was legal and lawful and not contrary to the Sherman law, and that is why they worked with us, and that is why they approved of it.

4209 I can't believe that these men would hide behind any such excuse as I heard here from Government counsel on one occasion. When he was arguing, he said: "I am a Government official. Somebody comes into my office and tells me what he is doing. But he says, 'Now, I am just telling you. I am not asking for any sanction. I don't want any.' I do nothing about it; I am clear. I didn't give any approval. I didn't say he could do it. I tell him that if he is doing it, he is doing it on his own responsibility."

I don't know. Maybe that is the situation in official Washington, but it isn't the situation with our officials here in the state of Wisconsin.

If I go to the prosecutor's office, and I tell him that I am doing this, that, or the other thing, do you think he has got any right to wrap the cloak of his official righteousness about him and say, "I am clear; I am clear." Oh, no! Fair play demands that he should tell you—should tell me, rather, "Here, Thomas, you are violating the law. I want to tell you that you are going wrong." That is what any official would tell you, if he believed you were violating the law.

Now, here is another one. Mr. Lewin spent considerable time on the letter of April 2nd, that was sent to Mr. Arnott dealing with moratoria, and he told you that
4210 Mr. Arnott was warned.

Now, I am going to call your attention to Exhibit 923, which is a certified copy of a press release dated May 7, 1935—you remember this letter that Mr. Lewin called your attention to was dated April 2nd. Now, this is May 7th, more than a month later. Here is the press release that was put out by the Secretary of the Interior, himself, or through his Department. Here is what he says:

"United States Department of the Interior
"Petroleum Administrative Board
"Memorandum for the Press
"For Release, Tuesday, May 7, 1935.

"When the Petroleum Code Survey Committee on Small Enterprise submitted its report to Petroleum Administrator Harold L. Ickes, it included among its recommendations the statement that if wholesale gasoline prices—"

Wholesale gasoline prices!

"—did not advance to an approximate parity with crude prices within about thirty days, an immediate reduction should be made in the price of crude oil to a parity with refined products.

"Approximately thirty days after the submission of the Committee's report, the Petroleum Adminis-
4211 trative Board requested an informal opinion from the Committee, asking its views as to whether gasoline prices had advanced to an approximate parity with crude prices, so as to obviate any present necessity for the reduction in crude oil prices as recommended in the refining conclusions and recommendations contained in the report.

"Mr. Paul Blazer, Chairman of the Committee, replied that he was glad to advise that the informal opinion of his Committee was that there now is no need for a reduction in crude oil prices, but emphasized that the Committee, in reaching its informal conclusion, anticipated that small additional

> advances will be made in both tank car and retail prices of gasoline. The majority of the Committee, he stated, is of the opinion that at least another quarter cent advance in tank car prices is essential—"

Another quarter of a cent advance in tank car prices is essential! That was May 7, 1935.

> "—and that if such an advance should not occur within the near future, a decline of approximately five cents per barrel should be made in crude oil prices.
>
> "The Committee also is of the opinion, Mr. Blazer stated, that the final answer to the question as to the maintenance of a parity between gasoline and crude oil prices, after it has been reached, will be determined by the effectiveness of efforts to balance crude oil supply and demand. 4212
>
> "Mr. Blazer also expresses the Committee's belief that fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify dollar crude oil."

Now, that is the language of the press release from the Department of the Interior.

I want to call your attention to another document, Exhibit No. 975. I can read it better here than I can out there. Just a letter from Mr. Fahy, president of the Petroleum Administrative Board, for the Administrator. It is written a day after the Schechter decision. It is addressed to C. E. Arnott, 26 Broadway, New York City:

> "In view of the Supreme Court decision holding codes invalid authority of Administrator of Petroleum Code to you and those with you in stabilization matters—"

Could there be any clearer definition of it?

> "—is suspended, and until further word all such activities must be on purely voluntary basis without any sanction from Administrator."

Had they had a sanction before? Is that what he means? Had they already sanctioned it? Had they 4213 sanctioned it?

They worked with these men, and now the position of the Government is a good deal like the fellows who volunteered to help out in putting out the fire. They worked under the eyes of the fire chief, and under the eyes of his deputies, and after they got the fire put out, the city attorney said, "Well, boys, now, it is just too bad, I have got to arrest you because you worked on this fire without a permit from the fire chief."

It is about as similar a situation, and that is the position that they are driven to.

I call your attention to another letter. Now, is this a letter of a man in the position of Fahy to a man who has violated the law of his country? It is dated June 3, 1935:

"Mr. C. E. Arnott
"26 Broadway,
"New York City.
"My dear Mr. Arnott:

"I wish to acknowledge your recent letters concerning stabilization work in the South. As I have already advised you, our participation in stabilization work terminated with the Supreme Court decision. In consequence there are no further comments that I can make at this time.

4214 "I want to take this opportunity, however, to express my cordial appreciation of the work that you have done in promoting the purposes of the National Industrial Recovery Act. Every evidence indicates that the general situation is better than it has been for some years. It is my hope that the results which have been achieved will be maintained.

"Yours sincerely, Charles Fahy, Chairman."

And there are some other things I want to call your attention to with reference to whether or not this alleged conspiracy has any of the earmarks that go with a conspiracy to violate the law.

Mr. Crawford truthfully said when men conspire to violate the law, they do it in the dark, and they do it secretly.

Now, as to the purpose of these men to violate the Sherman law, do you suppose that the McDowell committee would have been appointed during the meeting of January 4th and their names would have been recorded with the P. and C. Committee where they would be open to investigation by the Government at any time? If the purpose was criminal, would Arnott have appeared before the allocation meeting in Washington, in March, 1935, with visitors present, mind you, according to the 4215 record, and tell those present what he had done in the Mid-Continent and likewise in East Texas, and had insisted on Buckley speaking to the group?

There they were, meeting in the City of Washington!

Visitors present! And Arnott, the arch-conspirator, the master-mind, talking to that group and telling them what he had been doing up here in the Mid-Continent, telling them what he was doing in East Texas, and having Buckley there to address them!

You know, when I listened to that testimony, I was reminded of a story concerning head-on collision on a railroad. They had a track walker, who had seen the collision between a passenger train and a freight train. They were having an inquest after the accident, and they asked this track walker what he saw, and he said he saw a passenger train coming and a freight train coming. They said, "Did you flag down the freight train?" "No," he said, "I didn't." "Well, why didn't you? What were you doing?" He said, "I was just thinking that it was a hell of a way to run a railroad."

I was just thinking that about the conspiracy. Why not give Mr. Arnott credit for having ordinary intelligence? And here he goes down there to an allocation meeting with all these people present, all these visitors, and he
goes in there and he tells them all about it, and
4216 yet the Government says that that man had a crim-
inal purpose and those associating with him had a criminal purpose. It just don't make sense!

So, as I have commented, if there was a criminal purpose, would he have gone to the P. A. B. board and discussed this matter with them? If this was a criminal purpose, have you any idea that McDowell would have been paid his expenses out of this P. and C. fund, that Jacobi would have been paid his expenses out of the P. and C. fund so as to leave on the records there where the Department of Justice or anybody else could get hold of it, the fact that these men who had been connected with this were paid? The very fact that they were paid in that way shows the good intentions and the good faith of these men in what they did and the belief that they had that what they were doing, was in accordance with the law.

Now, another thing: Counsel stood here before you and read these letters by the hour. I don't know what impression they created on your mind, but as you read them over, these things strike you as funny.

Here is a group of men engaged in a conspiracy to violate the Sherman law, as they claim. Here is every—practically everybody all the way around through the field in the various departments, such as the selling depart-

ments, the buying departments, and fellows who had
4217 never had any connection with these matters or
never had anything to do with them, they are writing them letters. Have you any idea that if these men were engaged in a criminal conspiracy, that they would have imparted all that information to all those underlings that are working down in the various departments of the business?

Is that the way it is done, so as to leave those records in the files of the corporation to have them all ready to bring into court at the subpoena of the United States Government to furnish the evidence to convict themselves?

Is that reasonable? Apply the test of reasonableness to it. Do you think that men do that? It simply goes to emphasize the fact that these men believed that what they were doing was within the law, that they were doing it at the behest of the Government.

As I told you this morning, these men are not to be found guilty because of what somebody wrote, if somebody wrote a letter that never came to their attention at all until it was produced here in this trial. These men are not to be convicted on that, but for what they did; that is, to produce letters by some subordinate and say that that is the act of somebody else when somebody else didn't do the act.

Now, then, about those letters, it struck me as
4218 rather inconsistent. We are charged with a conspiracy in raising and maintaining a high price in the tank car market for gasoline. Well, now, then, after all, if on every car they bought, there was going to be a rise in the price, why have all this cry among these buyers and so forth about their quota or their allotment or whatever it was?

I would naturally think and so would you, wouldn't you, if the price was going up, nobody would complain about having to take it—take all they could get. At least, it would look to me as rather a good business proposition.

I have already mentioned the fact that these meetings were published in the press, notice given to the world, and yet they say that is consistent with conspiracy. You saw one thing here with Mr. Arnott on the stand. Do you remember that Friday morning? He was on the stand from the time Court convened until the morning recess, and Mr. Chaffetz stood up there at the desk and he was pounding on the desk and shrieking it on. It is a very difficult position to put a witness in, but

there wasn't an objection from the defense, if you noticed, and in spite of the desk pounding, in spite of the shrieking at Mr. Arnott. Did he admit criminality? No!
4219 Because there was no criminality to admit!

Now, with reference to some of these witnesses on cross-examination, you have heard the long, involved questions that were put to them. I will give you a sample of one of them taken from the record. I think it was asked of—anyway, here is the question:

> "So that if that—"

Another assumption—

> "So that if that was the policy of the Standard of Indiana, and if the Standard of Indiana did fix the retail prices as price leader, then if the spot market prices remained uniform during that period, you would expect the retail prices generally to remain uniform similarly, wouldn't you?"

Mr. Donovan suggests that there are three "ifs" in that question.

Now, that was a type of cross-examination. Is it just? Why, that is on this same theory. You know, if you will assume that Mr. Brazeau's aunt was a male, instead of a female, naturally she would be his uncle. Isn't that so (addressing Mr. Brazeau)?

Mr. Brazeau: A correct assumption.

4220 Mr. Thomas: Now, if you put those assumptions in, put them in those questions, just what kind of an answer will you get? And so you find it throughout these examinations.

Now, I want to call your attention briefly to this, another statement of Mr. Crawford's:

> "Gentlemen of the jury, from the beginning when it was found advisable and necessary in the interest of the common people and the protection of the people that something be done about it, as the evidence will show, when the Bureau of Investigation started out they faced a long, long, weary, crooked road to get at some of the facts."

Now, it was a long, long, weary, crooked road. If they had read the newspapers they could have found out about it if they wanted to know. If the department of investigation wanted to know about it they might have heard it from the P. and C. files, and the P. A. B. files. There would have been a good start for you. A long, long, crooked trail, blazoned openly in the public press; anybody could read it who was so inclined. If these men wanted to—I just make a suggestion to them that the next time, if there is a next time—

(Mr. Crawford spoke to Mr. Thomas out of the hearing of the reporter.)

4221 Mr. Thomas: Well, just because you were so wild in those statements you made to the jury.

Mr. Crawford: All right.

Mr. Thomas: Now, I want to call attention to this effort that was made in the last few hours of this trial, and the testimony that was put in.

You remember Mr. Miller, the government witness and accountant being on the stand. Some of his mistakes were shown to the jury, a great number of them in fact, and when those mistakes were shown to them did he make any attempt to correct them? Not in the least. And when they were finally brought before the jury and explained, there was no attempt on his part to deny it in any way.

One thing that I thought was a little unfair in the last minutes of the trial, to try to leave the impression with the jury that the Globe Companies were buying gasoline at one price and then selling it at a lesser price up here in the Mid-Continent territory; and as the figures were read off it sounded as though they were buying this distress gasoline for say ten dollars or twenty dollars a car less than it was sold for—or more than it was sold for.

Now, what is the fact? When we got to the facts in regard to it the difference was what went to the jobber in order to make up his commission on his guaranteed margin.

Now, I want to take up the testimony of Vaughn, 4222 one of the witnesses called about five o'clock the night this case closed. Now, in this connection, gentlemen of the jury, the government knew of this testimony eighteen months ago. Now, I call your attention to his testimony.

He said he had no connection with any major company. Now, presumably Mr. Meece knew that, yet nevertheless he came in here to testify, and he had not been on the stand over two minutes until Mr. Chaffetz asked him about a transaction on the eighteenth of September, 1935. The first thing the witness said, "Well, have you got any records, or have you got some papers of some kind?"

Mr. Chaffetz says to him, "Now, here; now, you tell me what you told me in my office last night," or words in substance like that; and then he proceeded to tell him, and he told us the story, how he had sold gasoline to Meece.

He said at first Meece wanted to buy fifty cars, the amount he had on hand, but he would not sell the fifty cars because of other commitments. Then he said he sold twenty cars to Meece. He told him he had to call up the refiner from whom he bought those twenty cars of gasoline, and that he went to Meece's office, and that Meece called in his stenographer and told the stenographer, or secretary, to get St. Louis, the Shell Company, on the long distance; that shortly after the telephone rang and this conversation occurred between Vaughn and
4223 whoever was on the other end of the line.

Mr. Brazeau: Meece.

Mr. Thomas: Or between Meece and whoever was on the other end of the line.

Now, the conversation was in substance this: There had been some arrangement made by Meece with Keith Fanshier for the purpose of having this sale reported as a jobber sale. That was the substance of it.

Now, right at the outset that does not seem very reasonable, does it? If Meece was a party to a conspiracy, here is a man comes in, known to have no connection with any major company, sitting across the table from him, and Meece unburdens himself the way this witness testified to. Is that the way those things usually happen?

If they had this testimony from Vaughn as against Keith Fanshier, one of the defendants in this case who is not on trial at this time, or against the Chicago Journal of Commerce, why wasn't it brought out in the open before five o'clock on the last afternoon of the trial? Why was it they did not bring that out, instead of coming in here and voluntarily dismissing as against the Chicago Journal of Commerce?

Now, I want to call your attention to this testimony, record page 1863.

4224 "But on the 26th of the month—this purchase was made on the 18th, and on the 26th of the month I got the first, the invoices for the first shipments that were made. And up to this time, I don't think that anybody knew where the gasoline was coming from. But when they received the invoices, naturally they did—

"Mr. Chaffetz: Q. You mean the Globe Company found out for the first time on September

26th, when they got the invoice, where the gasoline was coming from?

"A. Yes, they did. Then they cancelled—eleven cars had been shipped up to that time, and they cancelled the balance of the instructions for the reason, as they put it in their excuse for cancelling, that they were not shipping as per schedule."

"Q. Where was it to be shipped from, what refinery?

"A. Nothing said about what refinery. I might have notified them after I had made the purchase, but I made a new purchase to cover this twenty cars."

Now, gentlemen of the jury, I want to show you the purchase order, and I ask you if it is true that they did not know where this gasoline was coming from. 4225 (Showing exhibit to jurors.) Imperial Refining Company, Wickett, Texas, U. S. Motor Gasoline, September 18, 1935 (showing exhibit to other jurors).

September 18, 1935, Imperial Refining Company, Wickett, Texas, U. S. Motor Gasoline (showing exhibit to other jurors).

I show you the date, September 18, 1935, Imperial Refining Company, Wickett, Texas, U. S. Motor Gasoline; there is the date and the name of the company (showing exhibit to other jurors).

Now, gentlemen, I won't take the time to read these letters, but you remember the reason that was given, the cause of the cancellation was not that which the witness gave, but it was because of the fact that they had given him phony car numbers and that the shipments had not come through to the customers to whom they were ordered shipped.

Now, then, did any such conversation take place on the 18th of September as this witness testified?

You will remember that due to the lateness of the hour we were unable to present to you and to the Court at that time the telephone bills relating to this supposed telephone conversation with St. Louis. We did present to you and to the Court a telegram which we received from the office of the Globe Company, wherein it was stated:

"Examination Chicago office telephone bill for 4226 September nineteen thirty-five discloses there were no long distance telephone calls to St. Louis, Missouri, on September seventeen, eighteen or nineteen, nineteen thirty-five. Sending original telephone

> bill for September nineteen thirty-five air mail tonight. Should arrive Madison two fifty-five Friday. R. E. Everitt."

Since that time we have received—and I think it was the last exhibit that was put in this case—we have here the letter paying the bill for September, and we have here the telephone bills that were issued by the telephone company, and you gentlemen can take them to your jury room, look at September 17, 18 and 19, and you will find absolutely no notation of any long distance telephone calls to St. Louis.

Now, finally when this telegram came in Mr. Chaffetz made this statement:

> "Well, perhaps it was a reverse call, so it would not appear on the telephone bill."

If it was a reverse call why didn't he ask the man that testified with regard to it? According to the witness's testimony, he called his secretary and told her to get St. Louis. Now, why didn't he testify that he told his secretary to get St. Louis and reverse the call?

And then finally he makes the suggestion that probably he was not talking to St. Louis at all, but to some-4227 body in Chicago.

> Mr. Chaffetz: Mr. Thomas, you probably have forgotten the testimony. The witness testified the first time the thing was suggested to him said he did not know whether it was St. Louis or Chicago. It was not suggested at all. It was his own testimony.
>
> Mr. Thomas: Sure. I do not profess to remember every item of testimony.
>
> Mr. Chaffetz: No.
>
> Mr. Thomas: I do not think there is any lawyer can remember it all. I am telling you what I think the testimony is.
>
> Mr. Chaffetz: I do not think you are doing it deliberately, but I thought you would like to know what the testimony was.

Mr. Thomas: Then the suggestion was made that the name Loudi—the witness said it sounded like Loudi or Lowery, probably it was somebody in the Chicago office, and then we got the name of the fellows in the Chicago office from Meece, and they didn't sound any more like Loudi or Lowery than McCarthy sounds like Levinsky. So much for that.

Now, then, gentlemen of the jury, I have burdened you for a long time with what I have had to say. There are one or two other things I want to say to you.

4228 I believe you are going to decide this case on the evidence. I do not think you care whether Arnott had six, ten or eleven hundred jobbers and retailers, and so forth, in conference in the Marble Room in the Blackstone Hotel, or whether it was in some town hall. That hasn't got anything to do with the evidence against my client. I do not think you are going to convict Mr. Arnott because he has been a successful man, and because he is able to earn a salary. I do not see what that has got to do with whether he violated the Sherman law. Do you?

I do not see in what way we are interested as to whether these men are oil barons or whether they are not. It would be an interesting thing to you if you knew where these men came from, if you knew how they have worked up in their positions, from humble positions to positions of importance. You heard Mr. Arnott's testimony here that he had a high school education and went into business.

I do not think you are going to be persuaded to a verdict of guilty against these men or against these corporations because of any Ethiopian philosophy that counsel received in some bathhouse. I do not think you are going to find a verdict of guilty because these corporations are large.

We knew before you took your oath that you would decide this case fairly on the evidence and instructions of

4229 the Court.

I do not think you are interested in these prejudicial assertions that we have got a hundred lawyers here. Why all there is to this lawyer business is the gag that is always used in the trial of a case.

I am paid by the defendants to come here and represent them, and so are the other lawyers; and the government counsel are paid by the United States government to come here and represent the government.

Is there any difference between us? We are both paid by those whom we represent.

4230 I don't think that you are going to be prejudiced with these statements, such as were made here, that Dr. Frey was excluded from the meeting of the Texas refiners in Chicago. The fact was that they had a lot of these hot oilers in there, and they were talking; and Dr. Frey agreed with Mr. Arnott, after knowing the facts, that probably they could get further without him in there than they could with him there.

I don't think any inference can be drawn, such as Mr. Lewin has drawn here to the prejudice of these defendants, with reference to his golden stairs. Now, in that respect, let me call your attention to this:

The price of gasoline, according to the Oilgram, decreased from three and seven-eighths cents low, four cents high, on January 2nd, 1935, to three and a quarter low, three and a half high, on February 2nd, 1935; and remained at that price until after the Federal Tender Board commenced operations on March 1st, 1935.

Now, Mr. Lewin in cross-examining Mr. McDowell, pointed out that an increase of one cent in 1935 and 1936 would mean a difference of $4,000,000 to the Mid-Continent Company. And so you keep multiplying that by companies, until you finally get some large, aggregate amount.

Now, just remember this: With gasoline two cents 4231 below parity, as it was at that time, instead of a profit of $4,000,000 to the Mid-Continent Company if there was that increase in the price of one cent, that simply meant that the Mid-Continent Company was losing $4,000,000 less money over the year. When you added the one cent to it, to the prevailing price, you hadn't got it up anywheres near parity then. Instead of a profit, it was simply the fact that the loss was decreased.

And so, if you will examine the records here, and the charts, you will find that in March, 1933, when Mr. Lewin claims this march up the golden stairs started, they were manufacturing gasoline and selling it on the market at approximately two cents below the parity that was established by the United States Government. So that, if they increased the price, or if they increased the price one cent, or if they increased it two cents, they weren't up to parity then. It simply meant that they were cutting down their losses. And I ask you, where crude had been stabilized at one dollar, and later on at $1.10 as a part of this program, was it anything more than the program contemplated that crude and gasoline was to be placed on a parity? It is rather a fanciful figure, these golden stairs. But Mr. Lewin has an entirely wrong conception. I can readily see 4232 how that might come about. He knew nothing about adversity, such as you knew. He was a Government employee. And I can readily see how Mr. Lewin, in the circumstances in which he was placed, with a Government salary check coming to him regularly each month, without having to put up with the things that you and I and every one of us had to meet—I can readily see how he might mistake the stairs from the cellar of bankruptcy and depression for the golden stairs that he has been talking about.

And we find now that these golden stairs have developed into a ladder of roses, was it—and a plateau of love—which probably might be excusable under the existing circumstances.

Now, then, gentlemen of the jury, when he is talking about that matter, he assumes that any rise in price in the tank car market is due solely and entirely to buying by the major companies—with the knowledge and the sanction, apparently, of the Federal Government through the Department of the Interior. The effect of the Connally Act is discounted. The effect of allocations is discounted, whereby the Government sought to bring about the very condition that was brought about, the stabilization of the price that occurred after June. All these elements
4233 that contributed to that price rise are left out of consideration.

And there is a peculiar thing in this case. I don't know whether you noticed it or not, but when two of the Government counsel made their opening statement to this jury, four months ago, did you hear any mention of the Connally Act?

The Connally Act was passed for the express purpose of making it possible to stabilize the market. And when you come to deliberate on this question, as to the guilt or innocence of these defendants, you must determine whether or not the effect of the Connally Act was to stabilize these prices in the wholesale market. You must determine the effect of the allocations which were in force by the states. You must determine the effect of the unprecedented demand. You must determine the effect of the allocations, whereby the majors were forced to buy gasoline, that being the policy of the allocators. All of those things must be determined. And, after you have weighed all this evidence, you must then answer the question whether or not those things accounted for this rise in price, which had started, as I pointed out to you, before any buying took place; there having been a rise, of
4234 about a half a cent between the first and the 8th of March, when the first purchase was made.

Now, finally, I want to say this to you: I will be followed by my associate, Colonel Donovan. I have tried to show you what some of the facts, the pertinent facts here, are. He will be followed by Government counsel. We will have no opportunity to reply. And it is for you to determine as to the correctness of the contentions that may be made at that time. There is no chance for us to make any further arguments after Government counsel has closed the case.

And, in closing my address to you gentlemen, I want to read you the letter from Harold L. Ickes, signed "Administrator," dated July 25, 1935, addressed to C. E. Arnott:

> "My dear Mr. Arnott:
>
> "The Planning and Coordination Committee, which was appointed and served under the Code of Fair Competition for the Petroleum Industry, engaged with me for nearly two years in the most earnest effort of both industrial and Governmental action perhaps ever undertaken. For the purpose of furthering national recovery, we entered upon 4235 this work at a time of great stress within the petroleum industry and generally throughout all industries.
>
> "Through the invalidation of the Code, your activities with the Committee now have been brought to a close; and my own as Administrator have become limited under the amended National Industrial Recovery Act, to research and review, with such advisory assistance as may be useful to state authorities, to the industry, and to the Government.
>
> "In the organizations formed to assist in administering the Code were numerous and important committees and employees, who contributed to the real progress made during the Code period in the diminution of unfair competitive practices, the balancing of crude oil supply with demand, the increase in employment and wages, the orderly operation of petroleum refineries, and the systematic development of new fields.
>
> "I desire to express the appreciation of the Government for your long and often arduous service on the Committee, and, through you, to the many individuals who worked with you. I do this with 4236 the conviction, which I believe most of the Committee share, that the work was well worth while, and went a long way in the accomplishment of the purposes of the Code and the National Industrial Recovery Act.
>
> "Sincerely yours,
> "Harold L. Ickes,
> "*Administrator.*"

Now, if Mr. Arnott and those associated with him in this Code work were nothing more nor less than criminals, who had violated the Sherman Law, would the Secretary of the Interior be writing this letter to them, to Mr. Arnott, as late as July 25, 1935?

The Court: We will take a recess at this time.

(Thereupon, at 3:30 o'clock p.m., a recess was taken.)

4237 Thereafter, on January 19 and 20, 1938, Mr. William J. Donovan made the final closing argument to the jury on behalf of the defendants. Such closing argument is as follows:

4238 ARGUMENT.

By Mr. Donovan.

Mr. Donovan: May it please the Court,—gentlemen of the jury:

I have been here before you now for something over three months. Unlike the gentlemen at this table (referring to government counsel) I have no badge of authority; and unlike Mr. Thomas and Mr. Brazeau, I am utterly unknown to you. I am in reality a stranger here and I am what Mr. Thomas has called "a hired lawyer," to come and present this case of these clients whom I represent. You have got to look at me that way and recognize that I am trying to plead a cause; and I expect you to judge me that way.

I recognize that you gentlemen are men with a sense of duty. If you were not, in the face of the warning of the Court that you would be here for many weeks, you would never have consented to serve. You have been here a long time. You have been patient and you have been attentive.

Mr. Brazeau said some very encouraging words about the fairness and the sense of justice of the jurors
4239 of Wisconsin; so I have less hesitancy in appearing before you than I would have otherwise. As I speak to you, however, I must say what I feel, in the courtesy and patience and consideration of Judge Stone toward me.

In the course of these many weeks, gentlemen, I know that I may have appeared to you at times unduly emphatic and unduly aggressive in trying to carry out what I thought was my duty to these men that I represent. And I can understand very readily that my conduct may have excited in you some opposition and some resentment. I would not blame you if it did; although I do say that if you have that feeling, consciously or unconsciously, that you hold it against me alone and not against these defendants whose case I am trying to present to you.

Gentlemen, in every case,—in every criminal case particularly, there is not only a legal side but there is a moral side, and the legal and the moral sides are not always together.

You here are the judges of the facts. You are here, in the final determination of this case, to say who is telling the truth; to say what the ultimate fact is. And no one can come into that room and upset your conscience or your judgment. That is a very important thing. It
4240 puts upon you a very heavy obligation. And it is very encouraging to us in the defense to understand that you are men of conscience; that no matter what the ultimate decision, that you are going to see that these men get a square deal.

And that is the way I am going to talk to you. I am going to address myself, not only to your reason, but to your sense of justice. I am, if I can possibly do so, going to reduce this case to its simplest terms.

Mr. Thomas and Mr. Brazeau have so ably and so completely treated, analyzed and summarized the facts to you that that part of the case with which they have dealt I don't intend to touch upon. But before taking up the more limited part, which now rests with me, I am going to address certain questions to you that I think you will ask yourselves when you go to the jury room. And I think you will ask yourselves, first, this:

In what these men did, was it the moral thing; was it the right thing? Was it the moral thing and was it the right thing for them toward these people that were in this industry; toward the government to which they owed a duty; was it the right thing for them to endeavor to remove the evils and abuses that existed in that industry, so that industry could be restored to health?

4241 When you ask yourselves that question it seems to me you want to ask yourselves the next question: What was the sensible thing to do in this situation? What was the sensible thing from the standpoint of these men, in their position in the industry, as trustees to the stockholders of the companies that they represented,—the sensible thing to do for preserving that industry.

Then, having asked yourself those questions, it seems to me you will want to consider whether what they did was violative of the law. Was it the legal thing to do that they did do?

And in reaching an answer to that question it helps you tremendously in considering what was the moral and what was the sensible thing to do. Because, as I said to you a good many months ago, gentlemen, it is not our position that we were claiming more for ourselves than we really were.

In every one of us, no matter how good or how bad, there is a mixture of motives, and I don't think it is a bad motive that people, besides trying to do a decent thing, were actuated by intelligent self-interest; and I use that expression, I don't know where I got it, whether it was from Mr. Ickes or someone else. But I still use it, because it was never intended by the law to place a
4242 penalty upon the use of intelligence in the conduct of business affairs.

Now, gentlemen, keeping those questions in mind, what are the facts in this case?

We have an indictment to meet. There is a charge by which you must measure our conduct, and by which you must determine whether or not we are guilty or not guilty. And in considering that charge you have to consider too, what is called the presumption of innocence.

That is really a wonderful conception of human beings to have,—presumption of innocence. The law puts its arm around a man accused and says, "This man is innocent until his guilt is established beyond a reasonable doubt." It is pretty hard to define; but I have often thought that the simplest way to define it is much like we used to learn in catechism or Sunday School, about the idea of the guardian angel. That idea is continued under the law, with the protective arm of the law resting upon the shoulder of the accused, even when you go to your deliberations in the jury room. And I know you will keep that in mind; and that is why I am not worried about any of this prejudicial talk, and I am not disturbed in the slightest about these subtle appeals to any feeling of position or of class. Let's keep those principles in mind while I
4243 talk to you.

What is the fundamental charge of this indictment? I have got to make you understand this. It has not been stressed much with you. The prosecution has avoided it. These gentlemen who are counsel for the government here, as pointed out by Mr. Brazeau, have not stressed the allegations of the indictment in their summary to you.

In these closing minutes, before you get a much needed rest this evening, I want to call attention to these specific allegations in the indictment, which as I say, is the fundamental charge which runs throughout that entire indictment, all else of which is simply there to fortify, and buttress, and bulwark it. That charge is this: that these defendants, together with the independent refiners named in the indictment, agreed to fix and maintain the tank car spot market. That applies to East Texas, that applies to Mid-Continent, that applies throughout the indictment. That is the charge, gentlemen, that you have got to consider, and that is the charge that we have had to meet. We have been led off on side issues.

Now, before we can understand that charge, there are two things we have got to get in our heads. I have had to work to get them into my head. And what
4244 are those two things?

The first thing is, what is price-fixing; and the second thing is, what is the spot market?

Well, perhaps you can say what price-fixing is not. And in that respect there is one thing you can be sure of. A transaction that merely influences or affects the price is not price-fixing. When you come to a question of price-fixing there are two things that must take place. First, there must be an agreement upon a specific price; and second, there must be an agreement to stick to that price.

So, in dealing with the question of price-fixing, in this spot market, there must have been an agreement as to the specific price which would be maintained and stuck to.

Now let us see then, what is the spot market? You have heard a great deal of talk of the spot market. I thought, when I first heard of the spot market that it must be some building, where a group of traders met, one with another, and carried on their transactions together. And when I heard that was not so, I thought the spot market must be some square, in some place down in the oil fields, where you find a lot of tank cars, and you would find places where people would
4245 transact their business with one another. Now, you and I have learned through this trial that is not so; that there is no building; there is no square; there is no exchange, like the Corn Exchange, or Produce Exchange. That it is nothing but this,—that it is the territory or area where refiners sell at wholesale, in tank car lots, for prompt shipment.

Territory or area, where refiners sell at wholesale, in tank car lots, for prompt shipment.

Now, we have learned too that anyone can go and buy in that spot market. You and I can go in there and buy a tank car, but, the important thing is, who are the sellers in that market.

We learn from paragraph 13 of the indictment, virtually the only sellers in the tank car market are the independent refiners. See if I am not right about that. Let me read it. On page thirteen, paragraph thirteen.

> "Defendant major oil companies do not sell any substantial part of their gasoline to jobbers or brokers in tank car quantities in spot transactions. Virtually all gasoline sold in tank car quantities in spot transactions in the aforesaid Mid-Western area is sold by independent refiners."

4246 So, then, the spot market is the place where independent refiners sell at wholesale, in tank car lots, for prompt shipment. Now, that is what we have got to deal with.

Now, who are the purchasers generally in that market? Well, we have learned now from these charts that from ten to seventeen per cent only is bought by these defendant companies in the spot market. So, then, somewhere between eighty-four or eighty-five and ninety per cent, depending upon where it may be, is sold in the spot market to others than these defendants. Now, that is important to remember.

So then, any charge of price fixing in the spot market comes to this: That it is the price fixed at which independent refiners will sell to customers, such as jobbers and brokers, in the tank car market—not the ten or twelve or seventeen per cent that these defendants might buy, but the price fixed between these defendants and the independents, at which the independents will sell to the other customers, to the jobbers and the brokers. Now, that is the charge, gentlemen.

Now, I ask you, where there is any support for that charge throughout this entire record? That is to say, that the price at which independents sold to the jobbers and brokers was a price dictated by these defend-
4247 ants. Let's look at the record. No witness has testified to that. No exhibit refers to it. No rumor or suspicion in all of these letters even suggests it.

Now, counsel for the Government recognize that fact. On Monday, Mr. Lewin made a very long and comprehensive argument. And I think that it is fair to say that his argument comes in corroboration of the assertion I now make, because, throughout that argument, he no longer said, as has been so frequently said during these months of trial, that this was a price-fixing arrangement. His statement the other day was that what we did affected the price. And then he said to you gentlemen, "And if that affects the price one iota, it is a violation of the law."

I say this to you, gentlemen: That is not only an incorrect statement of the law, but it just isn't good sense, because if every transaction was a violation of the law, then you and I and all of us would be violating the law every day, because every transaction affects price, and every sale affects price.

Now, gentlemen, at this point it might be well for us to keep in mind that it is the obligation of these gentlemen representing the Government to prove their case—not for us to show our innocence. It is the obligation
of these men to establish to the satisfaction of your
4248 minds beyond a reasonable doubt that we are guilty
of the charge that they set forth in this indictment.
And there is a complete failure of proof in that respect. And, more than that, gentlemen, more than that, we have demonstrated that that spot market is a free and open market; that we did not interfere in any respect with the negotiations or transactions between these independents and their customers, the jobbers and the brokers. Now, let's see if I am not right about that.

I wonder if we could just look at Exhibit 1024?

(Exhibit 1024 is displayed before the jury:)

Now, gentlemen, that chart, 1024, as you have heard here, represents a great deal of effort, a great deal of labor, a great deal of care, and a great deal of intelligence. It takes thousands of transactions, and puts it on a piece of paper so you can see what it means. It is unfortunate that, before these gentlemen at the other table found this indictment and brought this case here, that they didn't do the same thing. If they had, gentlemen, the case wouldn't be here, because that discloses the truth.

And you see from that chart, gentlemen, that the prices charged to jobbers and consumers on very, very many
days, and substantially on all days, differed from
4249 the price charged to defendant major oil companies.

So that, upon its face, gentlemen, it is clearly disclosed, clearly disclosed that the prices fixed or dictated by the independent oil companies to these jobbers and consumers was not participated in by the major oil companies.

Now, added to that whole question is the charge that the prices were uniform, they were high, and they were arbitrary.

Well, "high and arbitrary", we have got to consider that as against some standard of comparison. "High and arbitrary", compared to what?

High and arbitrary, compared to neighboring cities, or neighboring states? That is one way of measuring it. Well, we have had some testimony on that, and Mr. Thomas has just taken the chart and shown you by careful tracing that during this period the prices within this Indiana territory were lower than the prices in neighboring states.

Now, you heard the testimony of Mr. Swensrud. Mr. Lewin referred to that testimony as testimony of chicanery. Well, I, myself, thought him a pretty decent fellow. I thought he was a bright fellow, and I certainly thought he was an honest fellow, who wanted to tell the whole
truth. And he testified, under the questioning of
4250 Mr. Chaffetz, that at this period, at this period,
the prices within this territory were lower than the
prices outside this territory.

Gentlemen, if you are going to get a conspiracy to raise prices, certainly you have got to do somewhat better than that, because the prices here in point of fact were not higher than in the neighboring territory.

Does it mean that the prices were higher than people, other people buying within that area paid?

Well, let's look at that Exhibit 1024. Look at the lower line. Either take your third grade or take your regular, I don't care which. Look at the prices paid by defendant major oil companies. Look at the prices paid by jobbers and consumers. Do you notice how many more purchases were below the line under the defendant major oil companies than were below the line of the jobbers and consumers? Do you notice how many more purchases were above the high of the jobbers and consumers than were above the high of the defendant major oil companies? Why, gentlemen, it is a complete exposure of the case of the Government.

Now, they have said something here about the market leader, and the power of monopoly. Don't let's be
scared by that word "monopoly". Let's find out
4251 what it means. Any one of you could be called a
monopolist in these conditions: If you had the
power, and exercised that power, to exclude others from

commerce; or if a company or a group of companies had the power, which it exercised—which it exercised; not alone the power, but which it exercised—to exclude others from commerce.

Now, we may not be economists, you and I, but we can't have helped but learn something during the course of this trial. There is one peculiar characteristic about any company or group of companies, if it has—assuming that their power was consolidated, and they were in some arrangement together—they might have the power to break the market, but they haven't got the power to raise the market.

Now, you will see that exemplified in the story of Swensrud, when I asked him that, assuming that the allegations of this indictment were right—that they were right, and they were true; and I wanted him to assume for the purpose of my questions that those allegations were true—if that group of companies constituted, as appeared in the indictment, then, eighty-five per cent, or as appears now, somewhere between seventy and seventy-five per cent, or seventy-six per cent—assuming that they wanted to lift the price in this territory, could they do so? And he said, "No."

4252 And I said to him, "Why not?"

"Well," he said, "it is just like you put a dike across the river. Unless you put it substantially all the way across, you can't stop the flow. And where, as here, if you have twenty-five to thirty per cent that is not in any combination, you haven't got the power to lift that price."

But it doesn't work the other way, gentlemen. He said that even ten or fifteen per cent can break a price, can break a price. And, of course, that is the thing that was happening during this period, at the time of which these gentlemen who are here before you undertook to aid their Government in curing the evils and correcting the abuses that existed in the oil industry.

These companies, as big as some of them are, could never have destroyed the independents by lifting the price, because the independents would have gotten under the umbrella. But if they had been content to let the price go down and not make any effort to remove these burdens upon commerce, then it could very well have been, it could very well have been that many more of these independents would have died.

And this is a thing that you have got to keep in mind, gentlemen: That it was in cooperation with the Government that these various companies here, among them 4253 being the defendants before you, stepped in to correct conditions. And what they did was not to do the thing that would amount to a monopoly, but what they did was to keep open the channels of trade, and keep open the forces of competition.

Now, it is a curious thing, gentlemen, that we here, the defendants, should be on the side of competition, in view of the way this indictment is drawn, and these gentlemen here (indicating Government counsel), should be on the side of monopoly. Because, if what they contend for had been done and had continued, then you would find, through the sheer inability to live at a time when big as well as strong were being destroyed, you would have found those little fellows going to the wall. And that is why, that is why the Government intervened to prevent that very act.

Now, gentlemen, also, complaint has been made here that one purpose of this was to destroy the jobber. Well, both Mr. Brazeau and Mr. Thomas have treated of that subject, and I think you will remember some of my questions during the course of the trial, the answers to which completely showed how vital it was to these gentlemen in the industry, representing these companies, to have the jobbers continue in business. Because company 4254 after company here, by their own men, showed that unless the jobbers did continue in business, that they wouldn't be able to exist in competition.

Now, that suggests something to me. I think it must be very clear to you now that this industry is a very hotly competitive industry. And that is shown by several instances.

Mr. Shatford referred to—Mr. Lewin, rather, referred to Mr. Shatford's testimony relative to what happened through all of this territory over some twenty or twenty-five years, in the development of competitive conditions. And he showed the hot competition existing among several of these companies, and the gradual elimination of many of these independents. But, also it appeared from his testimony, as well as from others, that some of the larger competitive companies that you find here today were companies that were small independents in that day.

I think you will remember Mr. Marshall's testimony, of Standard of Indiana, and I think it shows how absurd is some of this talk of the market leader. In answer to questions by Mr. Kirkland, he said: "Well, the market leader may lead a market down, but he hasn't much of a chance of leading a market up."

And then he told the story of the Standard of 4255 Indiana: How, in 1905 it controlled what? Eighty or ninety per cent of the business in this territory. And now, as a result of competitive conditions and the new companies that have come in here, and the many companies that are waiting on the edge as Swensrud told you, like his own company, to get into this territory—how, now, Standard of Indiana's business is only something over twenty per cent of the total business done within this territory.

So there is an awful lot of flapdoodle, gentlemen, about this talk about monopoly and competition, and when you get down to the essential facts, they are much more simple—just as there is about this talk about the jobbers.

Now, I only want to treat on one phase of that, and you can look at it and see it very quickly, and I am not going to spend much time on it.

The complaint was made here that what these defendants were doing was harmful to the jobbers.

You will remember that there has already been explanation to you that when the price is at a normal level, there is a five and a half cent margin to these jobbers; but that during these price wars, these local price wars in a narrow territory like the City of Madison, no protection is given to them. Of course, some times it is done, but you 4256 can take that as a start. And if a price war exists, and you begin to deduct from that margin, the jobber loses.

Now, just look at that chart. It is right here before you, Exhibit 1014. That red represents—I am not going into the detail of it, because all you need to do is to get this picture: That red represents a price war, and the effect of a price war. And just look at the effect of that through 1934, and look what it was in January, 1935—one and three-tenths cents below normal. So, all the jobber was getting was seven-tenths of a cent out of his two cents. And see how, then, from the mere psychology of starting this movement in January, conditions began to improve, and how, as this Stabilization Committee began to operate, the position of the jobber steadily improved as the price war was eliminated, so that during most of April, practically all of May and in June, he was getting his whole five and a half cent margin. So this thing, instead of hurting the jobber, gentlemen, was of great benefit to him.

4257 Now, gentlemen, let me say to you how this case strikes me. Here is a charge, and I am not going to keep you much longer this evening, and I hope to finish up very early tomorrow morning, because I think you have been patient, considerate, and long-suffering, and I am not going to be able to help you much if I am talking to you when you are tired, but I just want to leave this thought with you when you go tonight:

The Government has made a certain fundamental charge which I say they cannot establish and have not established. One of the vital elements of that charge was that with respect to the journals. That constituted the heart, the very heart of their charge. And that was based on the fact that the journals falsely and fraudulently represented in their publication, that the prices that they published were the jobber prices, when, in truth and in fact, the indictment says, that they were publishing the prices of these defendants, which were higher.

Now, that, was the charge. And they said that the journals constituted the chief instrumentalities, the chief instrumentalities; it was the whole pin that hung this charge together, this conspiracy together. And that was their charge.

Well, gentlemen, the journals are out, and where is their case? "Oh, but," they say, "now, we still have it,
4258 because they were the innocent tools which you used."
Used to do what? "Used to publish your prices as the prices of the jobbers and consumers."

Let us look and see how absurd that is. Gentlemen, if they had published our prices—just look at them (indicating on chart), look at those black marks below the line (indicating)! If they had published our prices as the prices of the jobbers and consumers, the prices that they published, the quotations that they had in their papers would have been lower instead of higher. The chart shows that!

Now, the truth of it is, gentlemen, that the papers were truly reporting the actual prices of jobbers and consumers as is seen from that chart.

Now, that, to my mind, utterly ruins the position taken by the Government here, and what we really have been dealing with, gentlemen, what we really have been dealing with, and it hasn't been fully realized, is not the charges, not the charges which the Government makes in the indictment, but the story that we came in and told you frankly as to what we were doing.

And we put on the stand Mr. Arnott, the head of the stabilization committee, and we put on the stand Mr. Mc-

Dowell, head of the tank car committee; and they 4259 told that story, and all this time they have been battering at our story, which does not represent any attempt at conspiracy to fix prices, but deals with what?

Deals with an honest attempt, no matter how they may laugh at it—and I don't think that people that are experienced in business, whether it is agriculture or industry of any kind, will laugh at anything that is distressed, because you know the effect that that has upon price.

All that this was, gentlemen, was an attempt to go in and remove an obstruction to free and open competition, to remove that that was depressing prices and tearing this country down into a subnormal level.

Now, we say and only say this that what we did in respect to dealing with distress gasoline, what we did in that respect was an honest, and a right, and a proper, and a decent thing to do. There was no violation of the law in that. Any law that would make such a thing a crime ought to be wiped off the statute books if any such law existed, because it is against common sense, and it is against common decency.

And so we say here that if there had never been a code, that if there had never been a N. R. A., what we did would have the sanction of the law, because it was reason- 4260 able and it was proper. Now, nevertheless, these gentlemen of the Government, say if we wanted to do this, we ought to have come in and gotten some permission from the N. R. A. We didn't need to come in and get permission from the N. R. A. for something that was within the law. If we were trying to do a thing and they came to us to find out what we were doing, which I think you had a right to expect, that might have been one thing; if we were trying to go to the N. R. A. and get immunity for doing what we did, that is another thing. But I have said before this Court to you that we weren't claiming immunity. What we did was right and proper thing to do, and we didn't need that immunity.

I am not going to argue as to whether if what we were doing was not a proper thing, that we would be obliged to make out of the machinery set up down there or that they could grant us immunity, even if we did apply—if we were doing a little illegal thing. I only say this, gentlemen, that our position is that we didn't need to ask for any further ticket-of-leave or sanction, because what we did then we would have a right to do today, even though there were no law.

But, I have said all along, gentlemen, that just like you can't talk of the way you live, without thinking of the land around your house, or the nature of the country where 4261 you were born, so you can't consider those things of what was done without considering the conditions under which it was done.

And that is why I was prepared, and I will be prepared to talk with you tomorrow very briefly as to just what happened in these conditions surrounding what we did and trying to do in conjunction and in cooperation with the officers of the Government.

And I am going to try to do it this way: Not to make an argument, but to try to have you put yourselves in the position of these men and then show you what happened, and I will try to do that very briefly, show you what happened in each period and let you consider for yourselves what you would have done in the same conditions and under the same circumstances.

The Court: We will suspend now until tomorrow morning at ten o'clock.

(Thereupon, at 4:40 o'clock p. m., an adjournment was taken until Thursday, January 20, 1938, at the hour of ten o'clock a. m.)

4262 Mr. Donovan: May it please the Court.

At the close yesterday I told you that today I wanted to talk to you about certain things that influenced the minds and the actions and the conduct of these defendants. I told you I would not take long in doing it, and I won't; and I told you very frankly what I wanted to do; I wanted you, if you would, to imagine yourselves in the place of those men at that time; and I asked you that, gentlemen, because I thought I had a right to ask it, because when we undertake to judge of the conduct of anyone else we must try, in fairness to that person, to put ourselves in his position at the time he did the act that we are undertaking to judge.

Now, it is not going to be very long before you gentlemen will be sitting down and deliberating on this case, and I think if you ask yourselves the question I ask you to ask yourselves, What would you have done in a similar situation, it may help you to a determination of this case.

Now, the first thing I want to refer to is the speech of Mr. Ickes on September 18, 1933, and very briefly I want to recall to your minds what the situation was at the time he made the speech.

You remember at that time we were in the midst of a

depression; the new administration had just come in;
4263 efforts were being made to deal with the depression; the N.R.A. and the A.A.A. had been passed; codes and been set up for all industry; they were administered by General Johnson, but it was felt that the oil industry was in so serious condition as it appears from the testimony of Mr. Franklin who was upon the witness stand as an independent producer and refiner, and who was the first chairman of the Planning and Coordination Committee, that a special code was set up for that industry under Mr. Ickes.

Now, the Planning and Coordination Committee had been appointed by the President, and besides men who represented on that committee every branch of the industry there were three who particularly represented the government.

Now, that was the situation, and it is not asking too much for you to assume that you are members of that Planning and Coordination Committee on this morning, and Mr. Ickes comes in to you and talks to you. Now, here is what he says:

> "Gentlemen of the Oil Industry:
>
> "I am pleased to welcome you to Washington in connection with the important work of stabilizing the oil business of this country to which work we expect you to contribute largely.
>
> "Certainly it is a gigantic task which confronts us and one that will call for strong nerves, clear
> 4264 heads and sound hearts. Your best business judgment, highest technical skill, utter unselfishness and ardent patriotism will be needed in support of President Roosevelt's program. With proper comprehension and cooperation his plan must succeed.
>
> "A short time ago conditions in your industry were very bad, but since the passage of the National Industrial Recovery Act notable improvement has been shown. I find that advances in retail gasoline prices of 30 percent, in wholesale gasoline prices of 100 percent, and in crude oil prices up to 250 percent have already taken place, although our control of production was only inaugurated ten days ago. Your problem is to hold and consolidate this improvement so far as it is justified while paving the way for further improvement.
>
> "I ask you to remember that our primary purpose is to put men back to work and to raise wages, thus enlarging the purchasing power of the industry.

This beneficial result will then extend to other industries and again be reflected back to your own. I trust you will direct your earliest and most earnest attention to this labor and wage question, and to keep my staff advised of the progress made.

"Many units in the oil industry adopted the labor
4265 and wage provisions of the N.R.A. under the President's re-employment agreement even before the Oil Code was signed, and reports on the improvement in employment and wages should be available by now. I will be most interested in having them brought to my attention at the earliest possible date.

"I have established in the Interior Department the Petroleum Administrative Board, the personnel of which was recently announced in the press. This is now organized to handle all matters promptly. The routine will be for all communications from the industry or from the public to clear through the Board's secretary, Mr. Meyers, by whom each question, technical, legal or administrative, will be referred immediately to the proper person for action.

"Many of these matters should go to your committee first for investigation and recommendation and I hope you will organize yourselves to receive and handle them. The Petroleum Administrative Board will acknowledge each inquiry, request or complaint by letter or telegram the day of its receipt, if possible, and issue final determinations at the earliest possible date. This procedure seems highly important if we are to secure the cooperation and support of the public and I am sure your
4266 committee will aid us to carry out this procedure.

"For all matters to be taken up by the committee with the Board I have selected as the point of contact our special technical adviser, Mr. Thomas, who is already known to most of you. This should also facilitate our work, save time and avoid duplication of effort. On this latter point I regret that the pressure of details has prevented one member of the Board from sitting constantly with the committee but so far we have been unable to arrange that. In the meantime, I suggest that the committee keep the Board advised in a general way of the proposals which the committee has under consideration, even while the recommendations are being formulated, in order that our approval can be expedited.

"I have a further and important suggestion to

> make, one that I transmitted to the committee through the Board a week ago. It is that in naming the personnel of your sub-committees regional and local, representation be given to all the various groups and factions within the industry so that the problems and views of all may be considered simultaneously in formulating your recommendations. During the process of adopting the Code we became aware how many factions and schools of thought exist, and how widely variant are their ideas on
> 4267 the industry's problems and their proper solution. None should be denied a right to be heard and one of the best ways to assure that is to make your committees comprehensively representative. Thus we may reduce the flood of telegrams reaching us to the effect that this and that action is being taken without consideration of the welfare of the particular groups."

And then he concludes:

> "Gentlemen, we have a solemn duty to perform. Our task is to stabilize the oil industry upon a profitable basis. That is the keen desire of the Administration and we will work with you constantly to that end. But we must remember that the income of the oil industry is the outgo of the consuming public, and so design our program by progressive stages, that too great a burden is not placed too suddenly upon the purchasing power of the public just at this time. In the end our program cannot succeed unless we have the support of the public."

Now, gentlemen, after you as members of the Planning and Coordination Committee heard that speech Mr. Ickes issued a press release, and that press release contained the speech that I have just read, but it contains more.
4268 It contained on the margin, as you will see from the exhibit which I will place upon this table, it contained on the margin the tank car price of gasoline for gasoline of 60-64 octane as being five and three-eighths, and it was with reference to this that the Secretary asked you to hold that advance while paving the way for further improvements.

Now, the record does not disclose whether or not third grade gasoline was higher than the level line reached in June, 1935. I wish the record did disclose that, but it does not. But there is enough in the record for you to draw the inference as to where the Secretary wanted the price to go.

Now, all through this case there is evidence that middle octane was only a small fraction of a cent higher than third grade gasoline, and yet on that day, September 13, 1933, the price of middle octane was five-eighths of a cent higher than third grade gasoline ever reached during 1935.

The Secretary asked you on that occasion to pave the way for further improvement.

4269 Now, out of that letter, there are three things, therefore, that you would have in mind: First, that the Secretary approved the increase in the wholesale price of gasoline, and asked you to hold that advance while paving the way for further improvement. Second, that he advised you that he had established as his agents to represent him the Petroleum Administrative Board. And, third, that you had a solemn duty to perform. And what was that duty? That duty was to stabilize the industry on a profitable basis, and that the administration would work with you constantly to that end.

Now, gentlemen, that speech was in the minds of these gentlemen who are defendants here, just as it would have been in your mind had you been members of that industry at that time. And let us put that there (indicating), so that we can keep it before us.

Now, then, I want to take you along to November, 1934. What was the situation then?

There isn't enough in the record here to show what transpired during that period. There is enough, however, to show that there was tremendous activity in attempting to carry out the objectives of the Code. You knew, as members of the industry, that at that time, on November 14th, 1935,—this is Exhibit 968, which is the speech at Dal-
4270 las, a portion of which the Court gave me permission to read to you during the trial—you knew that at that time the price of third grade gasoline was four and one-eighth cents, on that very day. And you know from the testimony that this price was so low that the refiners were being driven from the market. And you know also that the price of four and one-eighth cents was one cent higher than that on March 1st, 1935, just before this buying started.

Now, you know also that, through the efforts and the insistence of the Secretary of the Interior, the price of crude oil was raised from twenty-five cents to one dollar, and held there at his direct instance and insistence. And you know from the testimony of Mr. Franklin that that was done because it was feared that if the price of crude oil would fall, as it would fall unless the price of gasoline was raised, that that would endanger the stripper wells and the 250,000 people of the southwest who were dependent upon the maintenance of those stripper wells.

Now, knowing all those things, gentlemen, you were at Dallas, Texas, and you saw the Secretary get up on the platform, and among other things you heard him say this:

4271 "If each of you will look back over the past year and, without prejudice or passion, compare present conditions with those of the summer of 1933, you will all find definite improvement in the industry as a whole.

"I know it might be difficult for some of you to reach such a conclusion. The refiner who has had to buy his crude oil supply at posted prices and sell his products at the levels which have prevailed might be reluctant to admit that there has been any improvement. His lot has been the hardest of all. Most of these refiners have been extremely patient while waiting for the sun to shine. They may feel that they have been forgotten, but I can assure them that this is not so. Much that has been done during the past several months has had as its particular objective the strengthening of the position of the non-integrated or the partially-integrated refiner. The allocation of gasoline production quotas under the Code and the program for the purchase of distress gasoline both had this as a common purpose. Each of those did its share of good, but the full measure of their accomplishment was not possible because of the 'hot' gasoline from East Texas which kept moving
4272 into interstate commerce, and because of the price wars which raged in the territory East of the Rockies in the bitter struggle for gallonage.

"I realize that East Texas has been an exceedingly popular dumping ground for complaints. It is the land of alibis. It undoubtedly has been blamed for many of the ills of the industry which have had their roots in other soil, but I feel very strongly that East Texas must carry a heavy share of blame for the conditions which weakened the wholesale gasoline market. How could it be otherwise when one of the principal new services of the industry has daily published the fact that gasoline, allegedly manufactured from 'hot' crude, could be purchased at a price materially less than that made from legally produced crude?

"I came to Dallas with the clear intention of putting all of my cards on the table and here go some more of them."

Now, you heard that speech, and you went back to your homes and to your business and to the activities under the Code. And here is that exhibit, No. 968, which I place here (indicating).

4273 Now, in the meantime, a letter had been written, and that was the letter of July, 1934. You will remember, I spoke about that letter to you in the opening, and I said that in one sense it was the central fact of this lawsuit, because if that letter had never been written there would have been no stabilization committee, there would have been no tank car committee, and we would not be here together in this court room today.

Now, before I read this letter, and when I read it, it may save you another reading in your jury room, and I want to do it in that way—you have got to keep in mind the circumstances under which the letter was written. Now, what were those circumstances? They were testified to from the witness stand.

And it appears from that testimony that, at the time that this letter was written, the whole Code and its administration was in danger. Price wars were raging. It was recognized then that something had to be done. The Petroleum Administrative Board called Mr. Arnott, who was Chairman of the Marketing Committee as well as being a member of the Planning and Coordination Committee. They went over all these conditions and all these circumstances with him, and they recognized that not only hot oil

4274 but distress gasoline was an important factor in causing these price wars that were rampant through the territory. And they discussed also, as he said to you from the stand, that they recognized that in order to deal with that situation, it being so inter-related, it was essential not only to deal with the retail question but with the wholesale question, which included the tank car market.

Now, with those things in mind, that you would have as members of the industry, here was the letter that was written to Mr. Arnott, and afterwards sent out to the Stabilization Committee at its first meeting, and read and explained to them. Now, that was Exhibit 891. It has been read to you before by counsel for the Government, read to you twice, so I will not inflict all of it upon you, but I will refer to those paragraphs which I think you must have in mind when you come to a consideration of this case.

Now, the letter is dated July 20th, 1934. It is addressed to Mr. C. E. Arnott, Chairman, Marketing Committee, Planning and Coordination Committee, Investment Building, Washington, D. C. It says:

"My dear Mr. Arnott:

"It has been brought to my attention that the market for gasoline and other petroleum products
4275 has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

"Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the Code, and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve."

4276 Now I come to the request to him, and I am eliminating some other things:

"I am therefore requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees in each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar."

Now, gentlemen, that letter you saw. That letter, you heard read. That letter, we will put there (indicating).

And upon that letter we will put the opinion which
4277 has not been admitted in evidence here, but which
has been testified to, was written by the legal adviser of the Planning and Coordination Committee at the request of Mr. Arnott, and sent with the letter that I have just read to the meeting of the Stabilization Committee.

Now, gentlemen, what happened after that—as Mr. Brazeau suggests, McDowell testified that in doing what he did, that he relied upon that letter and upon that opinion.

Now, what was done after that, gentlemen?

Work was started under the letter. You have heard that described. I will not detail it. It started in local communities; it extended to states, it extended to regions. And under that work, then, a meeting was called on January 4th, a meeting of the Stabilization Committee.

The independent had complained, Mr. Arnott in opening the meeting, said that complaint had been made—that gains had been made in fighting these price wars, but in order to hold the gains it was necessary to do something more. It was necessary to deal with the fundamental problem. The representatives of the independents there
then arose, Mr. Majewski and Mr. O'Shaughnessy,
4278 and said that unless something were done for the in-
dependents they would be driven to the wall.

A tank car stabilization committee was appointed; that committee was appointed to investigate and inquire into the situation, and see if some plan could not be proposed. Mr. McDowell, over his objection, but because it was felt that he was the one to do it, was made chairman of that committee. That was January 4th.

You will remember that on January 8th or 9th, Mr. Arnott went to Washington, and he talked with the Planning and Coordination Committee; that he told them what had transpired at the January 4th meeting; that he talked with Mr. Marshall and with Mr. Meyers, members of the Petroleum Administrative Board. He told them what they were doing, and what had been said at that meeting; and from them he derived encouragement.

There were meetings held by the Tank Car Stabilization Committee: A meeting held on February 5th, at which time a plan was discussed; a meeting held on February 11th, at which time the question of publicity came up, and it was suggested by Mr. McDowell, and noted by Mr. Sus in his memorandum, that the journals be fully advised of the activities of the Tank Car Committee—not that it

should have any reference to the jobber line of prices,
4279 but that the activities of the committee should be made known and made public. And that is what was done. And you heard from the testimony of Mr. Steiger that two or three times a week, in his publication, the activities of this committee were published.

Now, then, at the meeting of February 5th, a telegram was read which Mr. O'Shaughnessy had sent to Mr. Fahy, telling him of the appointment of the committee, that something had to be done, and what was the Petroleum Administrative Board going to do about it? I don't need to read you that letter, but if you were present at that meeting, you heard that telegram read, and you heard that written reply. And what was the reply? That is Exhibit 894, in the record:

> "I received your telegram of January 28 and was glad to hear from you again. I am sure you know that the tank car situation in relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block. I may say, however, that I see nothing in the recent Supreme Court decision which in any way affects endeavors to reach the solution. We are hoping soon for a report from the Special Committee which the Secretary appointed to look
> 4280 into this kind of thing and make recommendations."

That was the Blazer report that you have heard about.

> "I really believe we are going to have some definite suggestions from them which will carry weight. In the meantime, we are considering your suggestions and would like to have any further suggestions you can give us."

Now, this letter and this reply, you, as members of the industry, would want to know about, and you would know about, because you were present at that meeting.

Now, then, gentlemen, we come to the letter of March the 30th from Mr. Ickes to Mr. Lientz. But, before that happened, before that happened, this had happened: Mr. Arnott had seen Mr. Buckley, and all that transpired there you already have in your minds from the very comprehensive and very able presentation of the East Texas situation by Mr. Brazeau. I will not dwell upon that. You also know from the very full and clear exposition of the Mid-Continent situation by Mr. Thomas, what had happened in relation to the plan proposed at the February

5th, at the February 11th, and finally put into form
4281 at the March 5th meeting at St. Louis, in which they were told to go ahead, following that, by Mr. Arnott.

Now, Mr. Arnott went to Washington, and he saw the members of the Petroleum Administrative Board. He saw the Chairman of that Board, who was the Deputy Administrator, Mr. Fahy. And he saw Dr. Frey, who had charge of the marketing, and whose duty it was to sit with this Stabilization Committee on these questions that so troubled the tank car market and the price, the retail market in this Mid-Continent field as well as in other fields throughout the country.

And Mr. Arnott was asked by Mr. Fahy whether, in what he was doing, that he had considered the anti-trust laws. And Mr. Arnott said, "Well, listen to my story, and see what you think." And then he told them the story, and he said the story that he told them was in substance the same story that he told the following day at the meeting of the Allocators' minutes—the District Allocators in Washington. Now, that is contained in the minutes of those Allocators, which I read to you, and which I will not read now; but which you knew about, and which you had in mind; and we will put that right there, as constituting some of the elements in this situation that your men as members of the industry knew at that time (indicating).

4282 Now, following that, Mr. Arnott saw Mr. Fahy again on May 8th, and he saw Mr. Fahy again on May 10th. And neither at the March 12th meeting or at the May 8th meeting or the May 10th meeting—whatever transpired; I don't care whether that is contradiction or disagreement or whatsoever, whatever transpired, no one said to him, "Don't do this thing." No one said to him, "Stop this thing."

And so Mr. Arnott said that he went away from the March 12th meeting with two things in mind: First, that to the best of his ability he had fully explained this plan; and, second, that he had the impression in his mind that those men thought it was a good thing, and hoped he would continue.

And so, on May 8th, there was casual reference to the buying program, according to the testimony of Mr. Arnott. Mr. Fahy asked him how he was getting along. On May 10th, they were there with Mr. Collett and Mr. Majewski and the other members of the Committee from the Planning and Coordination Committee, to sit with the Petro-

leum Administrative Board, to do what? To consider the report of the Blazer Committee. And that report of the Blazer Committee had some reference to the buying
4283 programs, and Mr. Fahy said, when it came to that: "Well, we know what we are doing in regard to that, and there is no use paying any more attention to that portion of the report."

4284 Now, it is true that before that time there had been a letter written of April 2nd. Mr. Lewin read that letter to you, and he read it to you very carefully, and I am not going to repeat it; and that letter was from the Administrator to Mr. Arnott. Mr. Lewin claimed that that was a solemn warning to Mr. Arnott that what he was doing was illegal and improper. You heard the letter read, and I just ask you if you agree with Mr. Lewin about that.

That letter, as you remember, specifically dealt, not with the buying program but with a moratorium on dealer accounts in Chicago. It had nothing to do and had no reference to anything about buying.

The Petroleum Administrative Board had been advised by Mr. Arnott, as we already know, that the buying program had been going on. This was just a month before, on March 12th. They also knew that there was a moratorium. They asked for information about the moratorium but they didn't ask one single thing about the buying program.

Now, when he got that letter of April 2nd, I just ask you this. Would you take that as a warning, or would you take their silence on buying, in this letter, and their failure to write any letter on buying,—I ask you, just as reasonable men whether you wouldn't take that as ac-
4285 quiescence in the buying that was going on.

I put there this letter of April 2nd.

And before you answer that to yourselves I ask you to keep in mind this letter, which I will now read, which is Exhibit 995, a letter of March 30th, from the Administrator of the Oil Code to Mr. Lientz. Let's read this letter and see what the Administrator had in mind, and what his attitude was toward the activities of this stabilization committee.

Dated March 30th, 1935. "In response to your letter of March 22 I am enclosing a copy of the report of the Petroleum Code Survey Committee on Small Enterprise, which I believe will be of interest to you."

Now, we know that that committee was the so-called Blazer Committee; and we know from the testimony in regard to the meeting on May 10th with Mr. Fahy and Mr. Arnott that that related,—a portion of that report, related to buying, to a buying program. This reference is to that report, which the Secretary encloses. The Secretary says:

"Although you state that it is difficult for you to be specific and analyze the situation in a letter because of the likely repetition of information, it occurs to me that after you have read the report of the Committee on Small Enterprise you may have
4286 other instances of small enterprise abuse which you may care to relate.

"You referred to a meeting about a year ago at which Mr. Howard Bennette discussed the poor marketing practices of the oil industry before a group of oil executives. I have inquired as to whether we had a representative at such a meeting and have been informed that the Petroleum Administrative Board has no information on that meeting. Since Mr. Bennette has died any record of the meeting probably passed with his memory. I am, however, of the opinion that Mr. Bennette was thoroughly alive to the poor marketing practices of the industry, and quite likely any statement which he made would bear out a very substantial amount of the comment made by the Committee on Small Enterprise.

"Concerning the independent refiners, other than those in California, it appears from the report of the Committee on Small Enterprise that the outstanding difficulty is due to the disparity between posted crude oil prices and refinery realizations. This situation has been deplorable for many months, but it is my understanding that at present the activity of the Stabilization Committee is having a distinct effect in the improvement of refinery prices, and that were it not for old contracts, many of which
4287 are badly shaded with respect to the posted price, the independent refiner is approaching a normal market structure.

"In California the refiners' prices of gasoline have not been particularly subnormal at any time since the Agreement became effective. There, however, has been complaint of the lack of differentials, and that problem is receiving consideration.

"As I stated in my letter of March 6, I appreciate your interest in the petroleum problem and I should like to have your personal comments when you visit Washington if it is possible for me to free myself from other demands. Should I be unable to see you, please call on Mr. Charles Fahy, Chairman of the Petroleum Administrative Board, who will gladly discuss the problems of the industry with you, and who will report to me anything with which I am not already conversant."

That letter we put in here, because that would have a very strong bearing in your mind as to what the attitude and what the knowledge would be; and that letter was signed, as I should have said by Harold L. Ickes, Administrator and was dated March 30th, 1935.

Now, gentlemen, after that, in May, after all of these things I talked to you about, came the Schechter decision. And then came on that day, on June 3rd, 1935, a letter from Fahy to Arnott. The Code was out. What did Mr. Fahy say? 4288

Here I also want to refer you to the press release on May 7th, in relation to the report of the Blazer Committee and their recommendation that unless the price should go up a quarter of a cent that the price of crude should be reduced.

Now, you know, from your knowledge in the industry that the price did not go above a quarter of a cent as long as the price of crude remained at a dollar. That, you have in your mind. Now, as I say, we come to the passing of the Code, and here is the letter of Mr. Fahy to Mr. Arnott. Exhibit is 976. He says:

"My dear Mr. Arnott: I wish to acknowledge your recent letters concerning stabilization work in the south.

"As I have already advised you, our participation in stabilization work terminated with the Supreme Court decision. In consequence, there are no further comments that I can make at this time. I want to take this opportunity, however, to express my cordial appreciation of the work that you have done in promoting the purposes of the National Industrial Recovery Act. Every evidence indicates 4289 that, the general situation is better than it has been for some years. It is my hope that the results which have been achieved will be maintained."

That is the letter that he received.

4290 Now, just preceding that there had been articles in the paper, to which reference was made in the course of this trial, which were brought to the attention of members of the industry. Those articles, gentlemen, I think we should refer to here, and I will do it very briefly.

Exhibit 900, which was an article in the Tulsa Daily World, dated May 29th, 1935. And it is important for you, as members of the industry, to know about these articles to determine what effect they had upon your mind at that time and what influence they exerted upon you in your conduct during that period. Now, it was a plea of Mr. Fahy to the industry as a whole, to voluntarily subscribe to the provisions of the Oil Code, for the time being at least.

> "He said that the industry has registered large gains during the operation of the Code and 'as much of the gain as possible should be maintained by voluntary action until there is new legislation'."

And Exhibit 899. An article in the Tulsa Daily World, May 28th, 1935. A statement of Mr. Richberg, who had been General Counsel for the N. R. A., and who for a time following General Johnson had been head of the N. R. A. And here was his statement:

4291 "We face now the question of maintaining the gains which have been made in the last two years and retaining the values which have been created under the National Recovery Administration."

And Exhibit 901, Tulsa Tribune for May 31st, 1935. This was supposedly an interview with the President of the United States, and it quoted from that interview.

> "The President turned to the question of voluntary Code adherence. He expressed hope that all industry would live up to them, but pointed out that there was danger of the chisler driving the rest to the point where they would have to cut wages and lengthen hours to survive."

Now, those excerpts from the papers we put upon this pile, as indicating the influences at work upon the purposes and upon the intention of these men who were members of the industry.

And now, gentlemen, I put there also a letter of the Secretary of the Interior to Mr. Arnott, thanking him and commending him, which was Exhibit 979, for the work that he had done. I don't need to read that again; but we will put that there also.

4292 Now, finally, let me call your attention to Exhibit 917, which was the Annual Report of Mr. Ickes, addressed to the President of the United States, in November, 1935. In that report the Secretary states that the stabilization committee cooperated with the Petroleum Administrative Board in bringing about the desired parity prices in the spring of 1935. Those are his quoted words.

Mr. Lewin, in his argument to you contended that when the Secretary spoke of the Stabilization Committee he did not have in mind the so-called buying program that was carried on at that time. Would you have agreed with Mr. Lewin when you read that report back in November, 1935?

Now, in this report the Secretary is speaking of those things which caused the wholesale tank car market to go up. In so doing he must have referred to the activities of the Tank Car Committee which directly affected the market, and that was the Tank Car Stabilization Committee.

4293 But you don't need to speculate as to what it meant. You can refer to that document in evidence, which clearly shows the Secretary's understanding of the scope of the Stabilization Committee, beginning in February 1, 1935, and running to the end of the code. I can tell you why he knew that. That was Exhibit 974 and that is the exhibit which I produced here, you remember, with the personal certification of the Secretary. We find the authority of the various members of the Petroleum Administrative Board. And I refer particularly to the authority conferred on Doctor Frey. And here is what was said in that authorization:

> "As a personal representative of the Administrator to negotiate and sit with committees of those engaged in the stabilization of wholesale and retail markets throughout large areas of the United States."

Can you have any doubt in your mind that Doctor Frey was authorized to sit on committees and deal with these wholesale and retail problems? Can you have any doubt that that is what the Secretary referred to in his authorization?

4294 Let me remind you of something. You remember just before you were excused in order to permit us here to have a debate in your absence the document to which I have referred was offered in evidence, and Mr. Lewin made a statement just before you were excused, and this statement was made, although this document had been personally certified by Ickes.

And here is what Mr. Lewin said:

> "It is a write-up of a lot of detail of various functions that a man does come in contact with, and is a salary write-up. It is to justify a certain classification of salary and it isn't approved by any Sec-

> retary of the Interior; it never gets to any such official as that."

In the recess we called up the Department of the Interior, and we asked them to deny or affirm that statement, and we have got this telegram back to one of my associates, Mr. Irvine, and we offered it in evidence and it was received. It was Exhibit 996. And here is what Mr. Ickes, himself, who signed the telegram said:

> "Allocations of positions to salary grade based 4295 on job sheets certified copies of which were forwarded to you yesterday, describing the duties of John W. Frey, Edward B. Swanson, Norman L. Meyers, and J. Howard Marshall as members of the Petroleum Administrative Board, effective as of February 1, 1935, was approved by me January 28, 1935."

Now, from this telegram it appears specifically that Dr. Frey was authorized to sit with a committee to stabilize the wholesale or tank car market. It is also true that that became effective on the first day of February, 1935, the very day when this indictment alleges that this supposed conspiracy went into effect, and on that day of February 1st the salary of Dr. Frey was raised from $6,000 to $8,000 a year.

Now, wouldn't you ask yourselves this question: What has the authority of Dr. Frey got to do with the annual report of the Secretary of the Interior?

Well, in answering that, remembering all that I have said, let me quote what the secretary says in his annual report:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the Stabilization Committee and Planning and Coordination Committee, with the 4296 cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935."

Could you misunderstand that statement as a member of the oil industry? Isn't it a plain statement? Isn't it a statement that the activities of the Stabilization Committee, insofar as they affected the tank car prices, were carried on with the cooperation of the Secretary's agency, the Petroleum Administrative Board?

Gentlemen, ask yourselves this: Would you be satisfied in your own minds that the Secretary and his agencies cooperated and encouraged the work of the Stabilization Committee in wholesale markets?

Now, gentlemen, let me put there that telegram of authorization; let me put there also the personal certification by Mr. Ickes of the authority of these men who were on the Petroleum Administrative Board; and let me put there also that portion of this annual report by the Secretary of the Interior to the president of the United States in November, 1935, of which you had knowledge, at the very time that these men were still carrying on the activities of their work, which I have said
4297 to you they had a right to do, whether there was a
code or not, and ask yourselves: Would not that, if you were members of the oil industry, would not that give you encouragement, would not that fortify your position and your belief, would not that give strength to your purpose and to your intent that you are right in believing that what you were doing was a proper and a decent thing to do?

And, now, gentlemen, let me say this, that that testimony here (indicating) is the testimony of Mr. Ickes. It is just as if he stood on that stand and swore to what he said here (indicating) because certainly what he says to the chief of his cabinet, to the president of the United States, is just as true and just as honest and just as sincere as if he were here under oath.

Isn't it a significant thing, gentlemen, that he should send to us without subpoena a telegram such as I have read to you here? And isn't it significant that he should under his personal written signature send to us the authorization of these men, whose authority has been questioned here by the prosecution?

Now, gentlemen, let me recall to you a little bit
4298 more about the position of the Secretary of the In-
terior. We have heard a great deal about this price level. And we have learned an awful lot in the last few months about it. You remember when we came here first and the case of the prosecution was coming in that that level was marked there (indicating) without explanation and you—and from it you were to draw suspicions and inferences that there was something wrong, that there was something evil, that there was something impure, that there was something rotten.

But we have learned a lot of things since then. That is the line the Secretary of the Interior calls the desired parity, the desired line.

Now, Mr. Lewin doesn't agree with me, and I think Mr. Lewin is sincere about it, and I am not going to question anything about it, and I am not going to try to make fun of his description or anything else. I am going to deal with it as a sincere statement.

Now, he says, Mr. Lewin says that this line here (indicating) is the line of virtue, and this line here (indicating). is the line of evil.

Now, let us see about that. What does this line rep-
4299 resent? It represents from the unquestioned testimony of this case as an unhealthy line, as a subnormal line, a line that is destructive of the social and political body of the nation, a line that represents bankruptcy, destructive competition, unemployment, and all the evils that follow from it.

Now, this line (indicating) that he calls the evil line is what the Secretary of the Interior called the desired parity.

What is the desired parity? Why does he call it the desired parity? It is because that line is a line of health, because that line is not built by artificial means. That line was built how? That is no thin, rose line. That is a line strongly fortified. By what? By stanchions of legislation, such as Congress enacted in the Connally Act to keep out illegitimate oil, by treaties among the states by which they agreed to control by proration the outlet of their oil, by the administrative pools of keeping down allocations so that major companies during the period of the code, so that major companies would be forced to buy in order to firm the market, by, gentlemen, by the maintenance in the administrative body under the Secretary of the Interior of men who saw to the enforcement of the Connally Act, men who kept their hands on the valves in the state to see that the law of supply and demand would
4300 be maintained.

I say it was a line of health. It was a line upon which men could walk as self-respecting men with proper standards of living under a system that we believe should continue to be the American system.

Now, gentlemen, we have talked an awful lot about economics. We have talked an awful lot about price levels, but we have got to talk something also about the human element in this case.

Gentlemen, you are dealing here not only with corporations, which, after all, are only dead things, and are alive only as they are lived by the men who run them. But you are dealing with human beings. You are dealing with men who move and breathe like yourselves. They have their families and they have people who are interested in their welfare and who are sitting today here to see what you will do with them.

Now, gentlemen, you saw two of those men upon the stand. You saw Mr. Arnott, and you heard the description of him by counsel for the government. I don't believe you agree with that description. He was a young fellow who started out as an office boy and under the merit sys-
4301 tem we used to believe in in this country as being a
desirable system, he was able to work himself up to a position of responsibility and of honor.

He was upon that stand, and you saw, as I believe, a man of conviction and of character and of integrity. Whatever these gentlemen (indicating counsel for the government) may say about him, evidently the President of the United States thought he was a good man to have on this committee, and evidently when Mr. Ickes saw his whole code was in danger thought Mr. Arnott was a good man to pick to assume this great responsibility of trying to get these various factions that the Secretary speaks of to cooperate together to aid him, Mr. Ickes, in bringing about this desired parity.

Gentlemen, you saw Mr. McDowell on that stand. Are these—well, these gentlemen here at this table (indicating government counsel) must have thought he was telling the truth the way they dropped him on cross-examination. Didn't he impress you as telling the truth. Didn't he strike you as an attractive, honest fellow? He said he was a lieutenant in the War and he looked like a good lieutenant. He looked like a fellow who would take care of his
4302 men. And those are the kind of men that are here.
But you are entitled, before you go to your jury room to see what manner of men there are here that you are going to pass on.

Well, gentlemen, you remember when these men were first called together they were told that you had a solemn duty to perform. Now, today when you get in that jury box you know you don't shut out all your knowledge and all your experience. You take it with you, and you need it there. You need it right here now.

And, gentlemen, we see a new depression and we see a new call issued to the businessmen of this nation to come and sit with the heads of their government. Now, a little over three years ago the roll was called for these men.

Now, in this court of justice, because they answered that roll call, I am going to call now their names and ask them to stand so you can see them.

I wish you gentlemen (addressing the defendants) as I call your names would stand and remain until I ask you to sit down, and when I call them—I think they are 4303 all here. They are all here except four, Mr. Seubert, Mr. Moran, Mr. France, and Mr. Phillips. And I think, Your Honor, I am right in saying they have been excused for illness or because—

The Court: Mr. Phillips and Mr. Seubert are ill and have been excused by the court. Mr. Moran and Mr. France were excused by the court for business reasons.

Mr. Donovan: With those exceptions, Your Honor, and gentlemen of the jury, I will call these names:

Mr. Allan Jackson. Mr. Edward J. Bullock. Mr. Charles L. Jones. Mr. Charles E. Arnott. Mr. H. T. Ashton. Mr. A. G. Maguire. Mr. Bryan S. Reid. Mr. Harry D. Frueauff. Mr. H. E. Brandli. Mr. O. J. Tuttle. Mr. Harry J. Kennedy. Mr. L. T. Cramer. Mr. Henry M. Dawes. Mr. C. B. Watson. Mr. R. H. McElroy. Mr. Alexander Fraser. Mr. P. E. Lakin. Mr. J. W. Carnes. Mr. Edward L. Shea. Mr. Noel Robinson. Mr. J. W. Warner. Mr. Robert W. McDowell. Mr. Fred L. Koopman. Mr. A. M. Hughes. Mr. W. G. Skelly. Mr. I. A. O'Shaughnessy. Mr. Arthur V. Bourque. Mr. Edward Reeser.

4304 Gentlemen, (addressing the jury) these are the men who stand accused. Look at those men and ask yourselves these questions: Are they men who would barter their reputations for any petty thing such as this? Are they men who would sell their souls for any price?

Gentlemen, all through this country today you are being looked upon as the conscience of this nation. When men are called upon in a solemn duty to respond to the need of their country.

You give that answer. You say to these men, "You go without fear and without reproach." And you say to these men and to this country by your verdict that "It is unthinkable that men should be punished for doing the very thing that their government asked them to do."

Thank you, gentlemen.

The Court: We will take a recess at this time.

(Thereupon at 11:10 o'clock A. M., a short recess was taken.)

4305 Thereafter, and on January 20, 1938, the Court made and entered an Order granting the Motions for Directed Verdict, at the close of all the evidence, of the defendants Dewey K. Chamberlain, Thomas Fitzgerald, H. A. Gardner, and Clyde M. Boggs.

(Said Order is printed at page 2477 of the Record.)

Thereafter, on January 20, 1938, Mr. Hammond E. Chaffetz, Special Assistant to the Attorney General, on behalf of the plaintiff, the United States, made his closing argument to the jury. Such closing argument is as follows:

4306 CLOSING ARGUMENTS ON BEHALF OF THE GOVERNMENT.

Argument by Mr. Chaffetz.

Mr. Chaffetz: May it please the Court, gentlemen of the jury.

I am not unaware as I commence to reply to those most brilliant arguments of the defense lawyers, that I have a terrible burden at this moment to overcome.

But, gentlemen, the day we started this prosecution, a long time ago, when Mr. Lewin and I first came to Madison to present this case to another jury, to a grand jury, we were just as conscious then as I am at this minute that our burden would be a great one. We knew then, as we know now, that we would be pitted against the best, the most brilliant, the most able lawyers that money could buy.

But that did not frighten us. Why? Because we knew that our cause was a just one. We knew that if we worked hard enough so as to learn the facts ourselves, so that we knew what it was all about, what it was really all about, then we knew that we could by the same kind of hard work get those facts—I mean the real facts, the true facts—across to this jury; and we knew if we did that that we would meet with success, that we would further the ends of justice, no matter who the lawyers were who opposed us.

And so, gentlemen, I ask you in the furtherance of your own duty to listen to me—and I will be just as brief
4307 as I possibly can—while I contrast the facts as I see them with the facts as you have heard them during the last two or three days.

When the arguments were concluded on yesterday, I began to wonder whether in fact the price had gone up at all in 1935; I thought perhaps it had gone down; but I look at these charts and see that the prices are as we said they were when we started. The price did go up in the spring of 1935, and it did stay on a flat plateau for six or eight months like it had never done before in the history of the oil business, and then the prices went up again in January.

Now, that is where we begin. And I am going to ask you gentlemen to trace with me the true facts as to the way those prices functioned, to develop with me whether there was any illegal factor that entered into those prices, and, gentlemen, to find out with me whether those defendants who stood before you this morning did not know what the law was—did not know what the law was, I say—and did not do what they did knowing that what they were doing was illegal; and I am going to prove it to you before I sit down.

But first, gentlemen, don't let yourselves be deceived. Colonel Donovan stands before you this morning and says this (referring to chart) is the price the government wants, and this (referring to chart) is the fair price.

4308 I say to you, gentlemen, the government does not want this price (referring to chart), the government does not want this price, (referring to chart). This price (referring to chart) is the price of high profits, as I am going to show you.

They talk about parity. I will show you what parity means. It means millons of dollars to the defendants, and I am going to prove it to you. But I don't care if it means millions of dollars to them if they can make it honestly. I don't care how many millions they make, and I don't care how high that price goes. And I will say to you, gentlemen, that if there were any subversive practices, any abuses in bringing the prices to that point, I don't care if the defendants eliminated those abuses—I think they should, and I should like to see them do it.

The price we contend for, gentlemen, is the fair competitive price brought about by fair and honest competition among the great corporations of this nation.

If hot oil brought that price down there (referring to chart), anything that was legally done to eliminate hot oil, we of the prosecution are all for it. If distress gasoline brought that price down there, and if the defendants in a legal way purchased distress gasoline, you would never have heard from us. And I will show you in a few minutes that they knew how to buy distress gasoline legally
4309 if that is what they were trying to do.

Mr. Lewin told you in his opening argument, and I confirm it, that any one of these corporations, or all of them, could buy just as much distress gasoline as they wanted to, they could buy more than they needed, they could remove the distress gasoline from the market, provided they did it in a lawful way, and not for the real purpose, through a combination of controlling the prices of gasoline artificially and illegally, as I am going to show you they did.

I think you must have wondered as you heard the arguments of the preceding two days, how it was possible that the defense lawyers could make such plausible arguments on the facts after the very forceful and convincing argument that Mr. Lewin had made in the opening. And I think I can tell you why that was possible.

In the first place you notice this; the defense lawyers referred to very, very few of the documents that were offered in evidence by the government. We offered hundreds of them, three or four or five hundred, I don't know how many; hundreds of them.

They say, gentlemen of the jury, pay no attention to these gossipy letters.

Does the vice-president of Shell Corporation gossip with
the president when he writes him a report as to what
4310 the company was doing and what the course of prices
is, and why?

Do they just gossip with each other?

When Jacobi writes weekly reports to his boss, the defendant Maguire, and copies of those reports are sent to the head of every division of Socony-Vacuum, was Jacobi gossiping with them, taking a little time off, or was he telling them the facts for their consumption so that they would know how to run their business on the basis of it?

I say to you, gentlemen, that if I were in your place and I wanted to know what happened in 1935, what I would like to see are the letters that these men wrote, in which they set forth what they were doing, and I take what they said at the time in their letters against what they tell me on the witness stand after they have been charged with crime.

I will illustrate what I mean by reference to that Sus memorandum, but first, gentlemen, let me tell you something about that Sus memorandum. You heard Mr. Brazeau and Mr. Thomas time and time again say that the government had that Sus memorandum for eighteen months and did not bring it out until the last day of the trial.

Gentlemen, do you know where that Sus memorandum
was during all that time, where it was kept? It was right
here in this room, in the Clerk's files, marked as an
4311 exhibit for identification by the government. And
when did we offer it to be marked for identification?
In the very first week of the trial. Did we conceal it? Do

you remember the day when Mr. Hale took that stand? We had some three or four hundred documents marked at one time, and among them was exhibit 376, the Sus memorandum. We conceal it? Gentlemen, whose document was it? Was it ours? It came from the files of the Sinclair Refining Company, one of the defendants.

And you remember this: We were perfectly willing to start our case on March 5th so far as the Mid-Continent buying program was concerned, and that was because it was on March 5th that action first took place. It was at that meeting on March 5th where they divided up the independent refiners and assigned each other dancing partners. We were willing to start then, but the defense said no, the government won't let in all the facts; we want to show what really took place, and to show what really took place you have got to start not March 5th, they said, you have got to start in January and February.

They put McDowell on the stand to tell you what took place on February 11th. And you remember that cock-and-bull story he told you about the independent refiners, and how they stood around at that time and these major oil company representatives talked about the needs of the independent refiners. They had the Sus memorandum.
4312 The Sus memorandum was a written document, written at the time, written on February 11th, the day the meeting took place, and it told what took place at that meeting. If they wanted you to know what took place at that meeting the Sus memorandum was in those files over there (referring to Clerk's files).

Did they mention it, did they ask McDowell about it, did they tell you of the Sus memorandum, a contemporaneous writing of what took place at that meeting? And if they did not, why didn't they?

Mr. Thomas had the audacity to say this: The government knew all the time that what was said in there was not so. Didn't I ask Mr. Sus on the stand, "Is everything in there the truth, and didn't that transpire at that meeting?" And he said "Yes".

And who was Mr. Sus? He was a high official of the Sinclair Company. They could have called him throughout the eight weeks in which they put on their case.

Gentlemen, do they want you to know the facts, or do they want you to believe the stories that they have been trying to tell, changing them, changing them from time to time, until the story they now tell you in their final argument differs very materially, as I am going to show you, from the story they told when this case first opened.

I want to disabuse your minds of something else be-
4313 fore I commence my argument, and that relates to the position of Mr. Ickes, Mr. Frey and Mr. Fahy in this case.

4314 I have no quarrel with one single word that Mr. Ickes uttered. And I am going to show you what he said, and let you decide whether what he said is inconsistent in one iota with the position that we take here.

I have no quarrel with anything that Mr. Fahy said or did; his record, as I am going to show you, is clear. He warned Mr. Arnott, I say, on three occasions, about the anti-trust laws. And not as Colonel Donovan said this morning—I think what he said is this: He said, "Mr. Fahy asked Mr. Arnott about the anti-trust laws, and Mr. Arnott said, 'well, here they are. What do you think?' ".

No, oh, no. That isn't what Dr. Frey's testimony was. What Fahy said was, "Well, now, what about the anti-trust laws?" And Arnott said, "I am doing this on my own responsibility. You forget about the anti-trust laws."

Dr. Frey—I was out of patience with Dr. Frey when he was on the stand, because I didn't think he was fair with me. I didn't think that he was telling all the facts, as he should have told them as a fellow Government official. But when he left the stand, gentlemen, he had told all the facts.

And I am not disputing the facts that he stated. The
4315 defense is. After they put Frey on the stand and he told the whole story, they put Arnott on the stand to say that Frey wasn't telling the truth.

While I am on that, let me tell you what Frey did say. You heard Colonel Donovan this morning. You heard him read to you that letter of July 20th, 1934, and he said to you in all solemnity, "Gentlemen, this letter, which I place over here (indicating), this letter is the thing McDowell relied on; it is the thing Arnott relied on." You remember that. "If not for this letter, this case would never have started."

What did Dr. Frey say about that? Remember, I asked Dr. Frey this question:

> "And do you recall at the March 12th meeting that it was definitely stated to Mr. Arnott in your presence that the letter of July 20th gave him no authority, that he had no authority under the Code, and anything that was being done by him in respect to buying programs was being done by him on his own responsibility?
>
> "Answer: The 'anything that was being done by

him on his own responsibility' was made on March 12th."

So we have that. Arnott said, "He is doing this on his own responsibility; he is not relying on the Government." 4316

But we have more. At record page 1307.

"Question: Now, you told us at that meeting there was some discussion with respect to buying programs, is that right?

"Answer: Yes.

"Question: And I ask you whether at that meeting, with respect to buying programs, it wasn't stated to Mr. Arnott in your presence—stated to Mr. Arnott in your presence—that he had no authority under the Code or under the letter of July 20th to operate any buying programs?

"Answer: I don't know whether that statement was made exactly that way, but that subject matter of that type was incident to the conference.

"Question: And that was the substance of what was said to him?

"Answer: Yes.

"Question: In your presence?

"Answer: Yes."

The Court asked this question, "by whom?" The Court wanted to know who said it.

"Answer: Mr. Fahy."

Now, gentlemen, that takes that letter of July 20th 4317 out of this case. You will remember how that letter of July 20th got into this case. We objected to it, and the Court sustained our objection; the Court ruled that that letter had nothing to do with this case, because on its face, all it authorized Mr. Arnott to do was to deal with the subject of retail price wars—which he did do, and which he did successfully. And he was congratulated by the Government for doing it. And we never quarreled with him about it. We never made any complaint. We stand with Secretary Ickes on that, and we say with Secretary Ickes, "On that which you were authorized to do, you did a good job. It was perfectly lawful; you were authorized to do it; and there is no complaint." But that was all that letter authorized him to do.

But so much had been said about that letter, that we thought the jury might get the wrong impression from the Government keeping it from you. And so we, as you will recall, offered that letter so that you could see for yourselves just what that letter said. And you have that letter,

to take with you to your jury room; and you see what that letter says. And when you have read that letter, and then compared it with the testimony of Dr. Frey which I just gave you—and I say I believe Dr. Frey; I am not quarreling with him; they are quarreling with him; they are
4318 the ones who say he is not telling the truth, and Arnott takes the stand to say that that never happened—compare it, as I say, with the testimony of Dr. Frey, that it was definitely stated to Mr. Arnott in the presence of Dr. Frey that he had no authority under that letter with respect to buying programs; that he wasn't working under the Code when he was running these buying programs; that he was doing that on his own responsibility.

Now, how does that make me, as a Government official, feel? Here is a man that comes to the Government, comes to a Government officer, comes to a group of Government officers, and says to them: "I am doing this on my own responsibility. You don't have to worry about it. I am not acting under your authority; it is no concern of yours." But then, when he is charged with doing that very thing, what does he do but come in and try to put the blame on the Government, "Why didn't you tell me to stop?"

Now, if Arnott and his associates were not men of education and training and business training; if they were men without advantages, then you might very well say, "Well, they didn't know what the law was. They thought they were doing what was right. Since they thought they were doing what was right, it doesn't make any difference
4319 what the law was. We will acquit them."

But no, gentlemen, these men are too smart for that. They know what the law was; they knew what their rights were. They have been operating under the anti-trust laws, they and their predecessors, since the Sherman Act was passed in 1890. And there is one thing that every school child knows—when you leave school, you know that the thing the Sherman Act prohibits is combinations of large corporations, acting together to regulate the price. That is one thing you never were able to do under the law, and you can't do it today. And they knew it.

And they knew more than that, gentlemen. They knew, as Mr. Arnott testified, that in the fall of 1934, while all this hot oil was flowing in here, the Government had experimented with some buying programs; and Secretary Ickes, on November 11th, 1934, had suspended them. He said, "No more." And why? Because they were illegal. And I asked Mr. Arnott on the stand whether he didn't know that; whether he hadn't heard that Mr. Ickes said

that even a program run by the Government, Mr. Ickes had no authority to do it under the Code. And Mr. Ickes himself said that he didn't have that authority, and pub-
4320 licly declared that his own activity was illegal.

That, gentlemen, explains why on the March 12th conference Mr. Arnott didn't come to the P. A. B. and ask for approval. How was he going to get approval if the Secretary of the Interior himself had publicly announced, three months before, that you can't do it lawfully?

And I am going to read to you in a few minutes from the Allocators' minutes, in writing, the very words of Mr. Arnott himself. I am not going to do it now; I am going to do it later. I am going to read you his own language, to show you that he knew exactly what the law permitted, and what it didn't. And he said it there publicly—not publicly—he said it to the group that were there. Other defendants were there, Carnes, Noel Robinson, Buckley was there, and a group of others. He told them in his own words what he thought could be done under the law—and we will compare what he said could be done with what they did do, and see whether he didn't know all the time that what they did do was a violation of law. And that, gentlemen, will explain why they didn't want the Sus memorandum in here; because the Sus memorandum shows what they did do, what they set out to do, and it shows that what they set out to do was exactly what Mr. Arnott at the Allocators' meeting knew they couldn't do lawfully.

4321 I want to say another word about the documents, and then I am going to take up the indictment and proceed with my argument.

Mr. Thomas made this argument to you. He said, "Gentlemen, don't pay any attention to those documents. People who are engaged in a conspiracy,"—he said, "don't write documents, and don't leave them around where the Government can get them." And he asked you to infer from the fact that they had written these things, that they must have thought it was lawful.

Now, gentlemen, that argument damns his own clients. Because you will find, as you go over these documents, that those documents were written by only some of the companies, and not others. You will look in vain for a document from the files of the Standard Oil Company of Indiana—although the evidence shows conclusively that the Standard of Indiana was in this thing with all the rest of them. Do you think it possible that, for a year and a half, these buying programs were going on, as admitted by the defense now, and no official of the Standard of Indiana had any occasion to even write a pencil memorandum to anybody else in that company about them?

Where are such memoranda, if they were written?
4322 They didn't keep them. And why?

Think of the Mid-Continent Company—McDowell's company. We know that he was the most active individual in those buying programs during all that time. You will search the record in vain for any of the documents from that company's files. I think there were one or two rather inocuous documents. As Mr. Thomas says, that shows they must have known what they were doing was illegal, because they didn't keep any record of it—that is his argument.

Take the Continental Company. I can't remember—I think there may have been one or two isolated documents from the Continental Company file. And I am not sure whether they were found in the Continental Company's files; I think they were found in somebody else's files. Why didn't that company keep any memoranda of what they were doing? Mr. Thomas would have you believe—and I agree with him—they probably thought this thing was of questionable legality, and they had better not leave any documents around.

And, gentlemen, how did we get those documents? Did the defendants bring them in and give them to us? Not on your life. They came here pursuant to a subpoena,
issued out of this Court, directed to each of those
4323 corporations, which said, "You bring us the docu-
ments described in this subpoena, or else." That is how we got them. We got them by order of the Court.

And when we had them here, they were all here in this court room. Mr. Thomas says, "Why, we have nothing to hide. All of our documents are here before you." He didn't bother to be consistent about his argument—he made whichever argument sounded best at the time. "You have got all our documents here," he said, "we have nothing to hide."

Gentlemen, you can remember how difficult it was for us to get those documents into evidence. Every time we got up with a batch of those documents and those files in our hands—objection, objection, objection; hearsay, gossip, every kind of objection that these lawyers could imagine. If they had nothing to hide, if they wanted you to see those documents, would they have objected so strenuously every time we tried to offer them in evidence?

And I say to you, gentlemen, if you want to know the real story of what took place, I say to you, start with the

Sus memorandum; read that, and then take up the first four hundred exhibits in this case, offered by the Government, and read them one by one and you will get a
4324 picture of what Colonel Donovan calls "enlightened self-interest."

What is enlightened self interest? It means enlightened selfishness; it means do things for yourself in an intelligent—I think he said an "intelligent self-interest"—in an intelligent way.

Now, gentlemen, it is perfectly all right under the law for each of these corporations, acting alone, to act in its own intelligent self-interest. But when a group of companies, controlling seventy-five per cent of all the gasoline sold in this territory, combine together for the intelligent self-interest of the whole group, that is what the Sherman law says you can't do.

Now, there was another type of argument that was made over and over again—and it sounded awfully good as it was made, and I want to expose it.

You remember, Mr. Thomas said to you, "Now, the Government charges the fixing of retail prices. They said that we agreed together to fix the retail prices and, he said, "there is not one bit of evidence in this case to show that there was any agreement on retail prices—not one bit of evidence." And he emphasized it.

Of course, he was right, in the way he put it. He even read my own statement in the course of the trial,
4325 made in the presence of the jury and the defense lawyers, where I said frankly, "If that is what you are worrying about, if you think we are charging you with sitting around a table and agreeing on a uniform retail price, don't worry, because that isn't what we are charging" And he read that to you with a great amount of emphasis, and he said, "That proves conclusively that the Government hasn't proved any agreement to fix retail prices."

We never charged such an agreement. And the easiest way, gentlemen, to make an effective argument, either before a court or a jury, is to set up a make-believe case, set up a case which the Government didn't charge, and say, "The Government didn't prove it." Of course we didn't prove it, because we didn't charge it.

And Colonel Donovan yesterday in all seriousness said to you: "Gentlemen, the Government charges here an agreement to fix prices." He said, "We have got to look at the indictment to see what it charges, and that is what it charges." And, he says, "When the Government

charges an agreement to fix prices, they have got to show
that these people sat around a table and agreed on parti-
cular prices, that they set specific prices and abided by
those prices." That is what he said. And he said,
4326 "There is no evidence in this case of any such agree-
ment."

No, there is no evidence in this case of such agreement, because that isn't the agreement we charge. You would be awfully surprised to find evidence of a different kind of agreement from the one we were claiming.

And, in addition to that, he said this to you in commenting on the argument by my colleague about affecting price —an anti-trust lawyer, one of the leading members of the anti-trust bar, talking to a jury whom he says he is trying to help to understand the facts—and he says this to you: "Gentlemen," he said, "why affecting the price—every transaction affects price. That can't be the law."

Well, now, Mr. Lewin didn't talk about every transac-
tion affecting price; that wasn't the kind of effect upon
price that he was talking about. He was talking about a
combination of big companies, controlling a substantial
part of the business, acting together to affect prices—and
that is illegal.

4327 So I say, gentlemen, that was the kind of argu-
ment I am exposing to you now. You can under-
stand with me why those arguments may have seemed to
you so plausible as they were being made. The argument
made by Mr. Thomas sounded very good, when he made it.
He said this. He said, at the March the 5th meeting not
even all the conspirators were there. Now, he says, if
this was a conspiracy, at least all the conspirators would
be there. You wouldn't think only half of them would be
there; they would be all there. That sounds convincing,
doesn't it?

Now, gentlemen, I hate to labor the Sus memorandum, but you look at the Sus memorandum, and what do you find? You find that at the meeting on February 11th, which just preceded the March 5th meeting, they were all there. Sus says so in so many words. He said all the major companies were all represented. Under Mr. Thomas's theory if they were in a conspiracy they would all be there. And they were all there, exactly as he says they would be if they were in a conspiracy.

And why weren't they there on March 5th? I will tell you why. Because on February 11th they had already indicated what they were going to do. You remember Sus said each one of them there agreed to take the surplus

—to take the responsibility, he said, of taking the 4328 surplus of each one of the independent refiners who were on that list. There is where the conspiracy was hatched.

And then, when you come to the March 5th meeting they didn't all have to be there. Those who were there picked out the dancing partners that they wanted, and Jacobi himself testified that the remaining ones of them undertook to call those who weren't there and tell them which independent refiners they were supposed to take. And they had already agreed a month before that they would do so.

Now, gentlemen, I realize you have been here a long time, but I have got a number of points I have got to make, and I will ask you to be patient. I will be just as fast and brief as I possibly can.

The Court: Would you rather continue for twenty minutes?

Mr. Chaffetz: I would just as soon, and adjourn to an earlier hour.

The Court: I think you had better go on for another twenty minutes.

Mr. Chaffetz: (Continuing) Before I finish; I am going to refer to the indictment and I will tell you what it is we did charge; and then, gentlemen, I am going to 4329 take up those documents I referred to and I am going to show you exactly what was done. I am going to show you exactly what was done was just as what we charge in the indictment. I am not going to deal with any phoney charges or any trumped-up charges.

I will deal with the charge that I told you about when I faced you for the first time in opening this case. I am going to show you that the evidence amply and completely sustains that charge. I am not going to stop there. I am going to go on. I am going to deal with profits and with costs. I am going to tell you something about costs and about profits, from this record. And I am going to deal with this question of parity and expose that once and for all. I am going to discuss with you the subject of jobbers.

I was amazed as these gentlemen stood before you two days ago, each of them in succession, repeating to you. "gentlemen, what we did was for the benefit of the jobber. It was good for him. He liked it."

Do you believe for a moment that if this thing was good for the jobber that they couldn't at least find two jobbers out of the four thousand who do business in this territory who would come and sit before you for five minutes and say to you, gentlemen, we like this thing. This was a good thing for us. They didn't even 4330 bring two; they didn't even bring one.

Now, apply your common sense, gentlemen. These jobbers do business with them. They know them all. They are in contact with them every day. There are thousands of them, and it stands to reason, is it good sense that if this thing was for the good of the jobber, if the jobber benefited by it, that they couldn't find any jobbers to come here and tell you so? Why, there are a number of jobbers right here in Madison. They could just have invited them in, they know. We brought a whole succession of jobbers,—jobbers doing business with them. They knew them; knew them for years. Did they ask any one of those jobbers whom we brought whether they didn't like this thing; whether this thing wasn't a good thing for them. They didn't dare.

We tried to go into the question of how this thing would affect the profits of the jobbers, and we were prevented from it by objection. I am going to deal more fully with the question of jobbers later in my argument.

I am going to deal with Mr. Beroth, and I am going to show you how outrageously,—outrageously,—a corporation lawyer can stand before a court and jury and slander 4331 an innocent and honest citizen because he comes here as a witness for the Government. And I am referring to the argument that Mr. Brazeau made; that labored, difficult argument that he made to try to prove that Mr. Beroth was a hot oil man. He didn't prove it. I am not so angry at him for not proving it, but to think of his going out of his way to label Mr. Beroth,—you saw him on the stand,—as a criminal, as a dealer in illegal oil. Not by any evidence. You know, gentlemen, that Mr. Beroth—I didn't intend to deal with this until later. I am going to do it now.

Mr. Beroth was the first witness called by the government, four months ago. If they could have proved, with all the money and resources they had, and all the help they had, if they could have proved that Mr. Beroth was a hot oil man, don't you suppose that before this trial was over they would have had that proof here? And that is what they tried during this whole trial to prove,—that at least one of our jobbers was a hot oiler,—and they couldn't do it.

Talk about fairness; talk about trying to prejudice and poison the minds of the jury. Look at that!

I am going to tell you something else. When Mr. Beroth left this stand the defense reserved the right to cross-examine him further, and he was sent home to study his 4332 records and get any additional information that counsel wanted that he didn't then have, and Mr. Beroth held himself in readiness throughout the entire remainder of the government's case. And I said here, before I closed our case, I said to the Court, "Mr. Beroth is waiting and ready to come back for further cross-examination if the defense want him." They didn't want him, because they couldn't have proved a thing with him on the stand.

They waited until the evidence was all closed, until they were in the middle of their final argument, and then they spring this dastardly attack about Mr. Beroth being a hot oiler,—and you can't believe it.

Mr. Vaughn, another liar out there. A witness for the government. A liar. Their witnesses were honest, wholesome, truthful, fair-minded citizens. Mr. Vaughn—gentlemen, I wouldn't have put a witness on the stand, and you will believe me, unless I really felt that his story was truthful in its entirety. I will tell you how I knew that Mr. Vaughn's story was true.

When he told this story, and it is a fantastic story, about being in Mr. Meece's office, and Mr. Meece told him that Fanshier of the Chicago Journal of Commerce said if all this gasoline in the hands of brokers was bought up, 4333 it would raise the price in the Journal,—that does sound like a very important story, if true. What would you do if you were in my place? You would go to look at the Chicago Journal of Commerce to see whether the price did go up. If it did go up, that would tend to indicate that the story was probably true, wouldn't it?

Well, that is what I did. And when Mr. Vaughn was on the stand. When he showed—had this document before him which showed that the transaction was on the 18th of September, printed documents at that time, there can't be any question about the date,—and then I looked up at the graph showing the trend of the Chicago Journal of Commerce prices. And there you are (indicating). On September 18th the price was three and five-eighths. And the next day, after this gasoline was bought up, the price went up to four and three-quarters. Does that sound like Mr. Vaughn was telling the truth?

And then Mr. Meece was called here the next day. He hurried up here overnight to prove that Mr. Vaughn was a liar and he had telephone bills to show you that there was no long distance call to St. Louis. I reminded Mr. Thomas yesterday that when he asked Mr. Vaughn the question the

first time, he said he didn't know whether there was
4334 a long distance call. All he heard was that the stenographer was told to call the Shell Company, and he didn't know whether it was the Shell Company office in Chicago or St. Louis.

Why go to all of the trouble of getting telephone bills, and what not to prove it was not a long distance call? If that was one isolated transaction it might not be so important. It is significant. You remember my cross-examination of Mr. Meece. I said, "Didn't you on a lot of occasions during 1935 discuss with the Shell Company and other major companies the purchase of gasoline from brokers?" He said, "I don't remember." He remembered this transaction to the detail; the minute; whose office it was in; what was said. But he could not remember whether throughout the year 1935 he didn't have a whole lot of those transactions with other major companies.

Well, we have since refreshed his recollection for him, because Mr. Lewin read to you in his argument, the document, and I say it is this document that contained the facts, taken from the office of the Shell Oil Company, which says this. McDowell, in a meeting asked certain companies to take up any surplus gasoline moving from brokers. He said there was some. This was May, 1935, May, three
4335 or four months before that transaction of September.

What does that document say? The Globe Company agreed to participate and to take up to forty cars of any such gasoline that showed up in Chicago. And that is in writing.

Was Mr. Meece telling you the truth or was Mr. Vaughn?

Here are some other things I am going to talk about before I finish. I am going to talk about this question of secrecy. I am going to refer again to what was said in our opening statement to you. And I am going to show you what I mean when I say secrecy, not what the defense means.

If you are in a partnership with the government and if you have got nothing to conceal, gentlemen, if what you are doing is open and above board, you, when you report it to the government, you tell them all the facts. That is what you do if you act above board and knew what you were doing was lawful, and you were doing it for your country. You would tell them everything, wouldn't you?

I am going to trace with you, gentlemen, exactly what was told the government and compare it with what was done. I am going to show to you gentlemen that what was ac-

tually done, the things that they didn't want to know
4336 were done, were done in the closest kind of secrecy. I am going to point out to you gentlemen, this; that the only real evidence we have of what took place at any of those meetings was the Sus memorandum and the allocators' minutes. They are the only two documents we have which were written contemporaneously, which purport to report what actually took place there. And if we didn't have the Sus memorandum, neither you nor I would know today what actually took place at that meeting.

They said we must have believed Mr. McDowell, because we didn't cross-examine him. No, gentlemen, we had that Sus memorandum before us. And we had two alternatives. We could have used that Sus memorandum to cross-examine Mr. McDowell and say, "How come Mr. Sus says this, and you say something else?" Why waste time? We thought when our turn would come, we would offer that Sus memorandum and you would decide for yourselves which was the truthful one, what Sus reported to his company, in writing, or what McDowell said. That Sus memorandum shows secrecy better than anything else that I could show you, for two reasons, first, because, as I say, it is the only document that is in writing, of what took place there; and the only people who were there were these twelve or fifteen major oil companies. No public meetings. No government representatives. Just the companies we allege to have
4337 participated in this conspiracy.

It shows secrecy for another reason. It shows facts which these gentlemen have tried to deny during this whole trial and tried to conceal from you. And before I am through I will propose this question to you. If they tried to conceal those facts from you, and didn't want you to know about them, do you suppose that they told the government about them? Very obviously, no.

I am going to go beyond the question of secrecy and will take up again the relation between these people and the government officials and show exactly what was—. I am going to conclude by proving to you, I am sure, beyond any doubt, that what these people did, they knew all the time was illegal. And particularly, when the Code expired, when the Code expired, then they knew. Then they knew that even the legitimate authority that they had, they didn't have any more. If the Court will permit, I will deal with that right now.

We come down to the expiration of the Code. They did have a lot of legitimate activities. There was a P. and C. Committee with a lot of powers, regulating wages, regulating hours, stabilizing retail prices, regulating hot oil. Any number of things. What does Mr. Franklin and Mr. Shatford tell you the P. and C. Committee did? They 4338 stopped to function. Why? Because they no longer had authority. They were actually acting under the Code. They had power, legitimate, clear-cut authority. What they did was exactly what the government wanted them to do. But they didn't think that they had any authority to continue, and they stopped.

What was Mr. Ickes' position after the Code went out? This letter that Mr. Ickes wrote to Mr. Arnott, after the Code, thanking him for his service,—and I say to you, gentlemen, that Mr. Ickes is a gentleman; and this letter is a letter of a gentleman. He had worked with these people during the code. They had done a lot of legitimate and good work, and he thanked them for it, which any upright public official would do. I will call your attention to the fact that this letter was written before the Department of Justice has exposed the facts; before the Department of Justice had found out what these people really were doing. And there isn't one scintilla of evidence in this entire record which would indicate that the Secretary of the Interior had any real idea at all of what they were doing. If he did, if he knew that the Department of Justice was charging these people with a violation of the law, he wouldn't have written any letter to Mr. Arnott, telling him this 4339 violation of the law was a good one. He wasn't talking about that here at all. What he was talking about here was the legitimate stabilization activity. And in this letter of July 20th he said he should do, and could do the kind of thing that Mr. Frey said. That was made clear to Mr. Arnott what he was authorized to do. I say, not the kind of thing, buying programs, which Mr. Frey said. That was made clear to Mr. Arnott he had no right to do. If it was made clear to Mr. Arnott at the meeting in May that he was not working under the Code and that anything he was doing with respect to buying of distress gasoline was not a Code activity, then you can't take a letter from Mr. Ickes, talking about Code activities, and say that that approved what Mr. Arnott was doing.

But this is what I want to call your attention to at this time. This is significant, gentlemen. He says this. "Through the invalidation of the Code" that is, the Code was no longer legal, "your activities as a Committee"—and he is talking about the Stabilization Committee—he said,

> "your activities as a Committee now have been brought to a close."

Does that sound like Mr. Ickes is telling him to keep on functioning? "Your activities"—he is talking about even lawful activities,—even the fixing of retail prices in these little localities. He said even that is brought to a
4340 close because the Code is over.

And then he says this. This is significant. "And my own"—meaning my own authority,—"and my own as Administrator"—Mr. Ickes' own authority—"have become limited under the amended National Industrial Recovery Act, to research and review, with such advisory assistance as may be useful to state authorities, to the industry, and to the government."

Here is Mr. Ickes, telling Mr. Arnott, after the Code went out, that he, Mr. Ickes, no longer had any authority. The only authority Mr. Ickes had left when the Code was out was for research and review, with such advisory assistance as he could give.

Now, gentlemen, if the invalidation of the Code left Mr. Ickes without any authority, how can these people come before you and say, "We thought the government wanted us to carry on."?

The Court: We will take a recess now until two o'clock.

(Whereupon, at 12:20 o'clock P. M. a recess was taken until 2:00 o'clock P. M. of the same day.)

4341 Mr. Chaffetz: May it please the Court, and gentlemen of the jury.

I think you will appreciate that I am really making every effort to move along as fast as I can. I have got a lot of ground to cover. Mr. Crawford wants to add a few remarks when I have finished. I will be as quick as I can.

Before lunch I said something about Mr. Beroth, one of the government's witnesses. You know they called him a liar for a certain statement he made on the stand. He said there were times in 1935 when the majors bought up all the gasoline in East Texas, and he could not buy any.

Now, let's answer that by statements made by these people themselves. Here is Mr. Warner writing to Mr.
4342 Collins of Tide Water, and this is what he said:

> "These periodical disturbances, however, have been less over the last six or eight months because of the regularity in the East Texas area."

And Jacobi on October 18, 1935, says this, in writing to Maguire:

> "Many buyers who have depended on East Texas

> as the source of supply for their gasoline requirements have had to seek supplies in other areas in the last ten days."

Does that sound like Mr. Beroth was a liar, when he tells you under oath that there were times in 1935 that he could not get gasoline down there? That was what Jacobi was telling his own boss in 1935.

Now, at recess I was stating that if these people were really in good faith, if they thought they were doing something under the code, wouldn't they have stopped? Wouldn't they have stopped when the code stopped? I point out to you that the P. and C. Committee itself stopped to function, even though its activities were of unquestioned legality. They were doing real code work, dealing with wages and hours. Why couldn't they continue if they had authority to continue?

Mr. Ickes writing to Mr. Arnott after the code said:

4343 "I assume your committee was stopped."

Did he say to stop because under the new N.R.A. he didn't have any authority?

I want to read you what the defense witness, Mr. Franklin, said when he was asked on the stand by the Court whether he stopped when the code ended, and here is what Mr. Franklin said. You remember he was chairman of the P. and C. Committee, or at least one of the members of it; I don't remember whether he was chairman at that time, This is Wirt Franklin, and here is a question from the Court:

> "You said they held office until the expiration of the code. When did the code expire?"

And he answered, on the decision of the Supreme Court, May 27, 1935.

> "Q. That is what you had in mind?
>
> "A. Yes. The committee continued to function for a few days after that, but more to wind up its affairs than anything else."

And then this answer:

> "We realized that decision meant that we no longer had authority."

Now, the P. and C. Committee, of which Mr. Arnott was a member, realized they no longer had authority, Mr. Ickes no longer had authority.

4344 And then in addition to that, gentlemen, the Congress of the United States had something to say on the subject.

They read you newspaper articles where the President says he does not want people to go back carrying on unfair practices or bad practices; nobody wanted them to engage in bad practices, and this is not a question whether they could engage in bad practices. This is a question whether they could combine and control the price of gasoline when they did not have any authority; and here is what the Congress of the United States said. After the Schechter decision which held the N.I.R.A. unconstitutional Congress passed a new law June 8, 1935, which has not been referred to here, and it came to my mind because Mr. Ickes referred to it in his letter to Mr. Arnott in which he says:

> "Under the new N.R.A. my authority now has been limited to do nothing but advise and continue the service."

And what did that new law provide? It provided for certain exemptions. It said if you did anything, had any agreement or any code that was approved under the N.R.A., that anything you did under that code or under that agreement, if it was approved, was exempted under the anti-trust laws, and you could not be prosecuted under the anti-trust laws.

4345 Now, Congress in June, 1935, took that power away from the President and from Mr. Ickes, and said hereafter the only kind of agreement you can have under a code which will be exempted from the anti-trust laws are those putting into effect the requirements of section 7-A, including minimum wages, minimum hours, prohibition of child labor; and prohibiting unfair competitive practices.

In other words, you could have a code which dealt with wages and hours, or you could have a code which prohibited illegal practices, a practice that was a violation of law, like unfair advertising, and other kinds of practices which are illegal under the anti-trust laws.

Why did Congress pass this law? Because it wanted to reverse the policy of the N.R.A., and it said, "We are no longer going to have any broad exemptions from the anti-trust laws." Now, the only exemptions you can get from the anti-trust laws are the ones I have referred to.

Now, do you suppose those gentlemen did not read that statute? Do you suppose they only read the newspapers, and did not know those laws? Mr. Ickes specifically referred to this when he wrote to Mr. Arnott on July 25th and called his attention to the fact that his own authority was cut down under that law.

They put the case before you on the question of good faith. They say, Don't look at it whether we were technically violating the law or not, but look at our good 4346 faith. They say, "What would you do under the circumstances?" And I say to you, what would you gentlemen do?

If you were doing it to maintain the price, and the code went out of existence, the P. and C. Committee stopped operating because it did not have any authority, Ickes did not have authority, and then Congress says you can't do it again, we won't permit it, and then you go on just the same doing it.

And there is another circumstance, gentlemen. They said it was a good thing and they thought they ought to keep on doing it. Mr. Arnott testified when he was doing that he was trying to soften as far as he could the activities of the code. He said they were engaged in trying to prepare another code. They thought if they had a code they could do not only what is in the code, but anything else they thought was desirable.

They could not have the N. R. A. code any more. That was out. They went to the Federal Trade Commission to get a code. But, gentlemen, did they tell the Federal Trade Commission they were going to continue to combine, to control, to regulate that price? Did they ask in that new code for permission to authorize the purchase of one gallon of distress gasoline? Did they mention the subject of distress gasoline in the new code? No, Mr. Arnott admitted that himself on the stand.

4347 Here they are dealing with another body of the government. They said, "The government wanted us to continue to do this thing." If they thought that, wouldn't they have gone to the Federal Trade Commission and said, "We want a provision in there which authorizes us to purchase distress gasoline."

Now, I know why they did not ask the Federal Trade Commission for that authority. They knew they could not get it, just as they knew they could not have gotten approval under the N.R.A. in the first place for the kind of thing that they did, for the very same reason they never asked the N.R.A. for an order of approval of what they were doing. And they never asked for it on that point. And that is what I ask you gentlemen; if they had only stopped when the N.R.A. went out, then they could say "We thought we had authority under the code. Whether or not we had, we were in good faith, and we really thought the government wanted us to do it."

But the fact they continued under the code, when every indication was they did not have authority—if they looked to Congress, if they looked to Mr. Ickes, or at the Federal Trade Commission, they would have found that now the N.R.A. is out of the picture, the anti-trust laws must be enforced—the anti-trust laws which it is my duty to enforce must be enforced.

4348 Despite all these indications that they had no right to do this thing, they continued to do it.

4349 And, gentlemen, you realize that the Code only covered about three months of this conspiracy. They would never have been here in this Court today if they had stopped when the Code was out. But they continued on, month after month after month, long after the Code went out, away down into 1936, and they didn't stop until the grand jury of the United States in this District began to investigate. Now, I ask you whether that shows good faith?

And then what did they do? They were more effective after the Code than they had ever been before. Just look at the way that price line stood (indicating on chart). And there was no Code, no allocations—it is just as level as can be. Do you think these men are just simple-minded enough to think that the Government wanted them to do that? That the Government wanted the oil companies, without any Government supervision at all, not responsible to any Government officer at all, to go on regulating the price of gasoline month after month? I don't think you will believe that for a minute.

Now, I want to come back to where I had intended to start this morning. I told you how the defense lawyers
had characterized the indictment and said what we
4350 charged, and they told you what they wanted you to
think we charged. I am going to tell you what we charge, just as I told it to you when we started this case.

What we charge is this: We point out to you that the major companies as a group have from eighty-five to seventy-five per cent of all of the gasoline sold in these ten Mid-Western states; practically all of it, they sell. We pointed out to you that a large part of that gasoline is sold under contract to jobbers; the exact percentage isn't important, whether it is thirty per cent or forty per cent; but a great lot of it, billions of gallons is sold to the jobbers under contract. And those contracts provide that the basic price the jobber is to pay shall be determined by the spot market, as reflected in the trade journals. The jobber, when he wants to know what price he has to pay for his gasoline, looks at those spot markets, and he pays the average of the averages of the prices published as those spot market prices.

So that, if the spot market price, that determines the price that the jobber has to pay—we pointed this out, too, in the indictment, that the retail price also is pegged on to the spot market price. Because, as the evidence shows here, the market leader, the Standard of Indiana, 4351 which first posts the new price, which others normally follow, has a policy whereby the retail price is based at five and a half cents, roughly, above the spot market price. So that that spot market price in Oklahoma fixes the price of all the gasoline sold at retail here, the retail prices, and also the price of all gasoline sold at wholesale to jobbers.

And we point out in the indictment that if the defendants wanted to raise the retail price and wanted to raise the price to jobbers, all they had to do was to raise the spot market price.

Now, I am going to show you, gentlemen, that what I say to you is true, and again I am going to read from a document to illustrate what I have in mind; that is, how, when the spot market goes up, the retail price goes up and the price to the jobber goes up.

This is a document, Exhibit 489, from the defendant F. L. Koopman to the Budget and Operating Committee of the Phillips Petroleum Company, dated March 22nd, 1935:

> "Gentlemen:
>
> "Assuming that it will only be necessary to purchase approximately 225,000 barrels of motor fuel 4352 after April 1st in order to cover our shortage, of which 50,000 barrels will be coming from the Barnsdall under contract, we recommend the cancellation of the contract to take effect on May 1st, purchasing the other 175,000 barrels, as Unique and '66' gasoline,"

that is their regular gasoline,—

> "—to support the tank car market.
>
> "In this connection much has been done to advance the market, and with east coast refiners having a program to purchase surplus East Texas gasoline over the next four months, we feel that still further advances can be made in the tank car market and a resultant increase in the service station price."

That means the retail service station price. So that this man knows, as all oil men know, that if they can raise up the spot market price, the retail price will follow it upward. That is what the indictment alleges.

We didn't say they sat around a table and agreed that the retail price of gasoline should be twenty cents today. We didn't say that the Standard of Indiana, when it posts a retail price, first consults with the other companies
4353 to find out what retail price should be posted. That wasn't the claim. The Standard of Indiana, acting alone, is perfectly free to post any price it pleases, and we don't complain about it, and we don't care how large or how small the Standard of Indiana Company is. It isn't their price that we are attacking in this case. It is when they act together with other people, with other companies, some almost as large and some smaller than themselves, to raise the tank car price in the way we have alleged, for the purpose of raising the price to the jobbers and for the purpose of raising the price that the retailers pay in this area—that is the thing the indictment charges them with doing.

And I am going to show you, if I can, just how that works. But, before I do that, I am tempted to compare this recommendation of Mr. Koopman's to the Budget and Operating Committee, where he says, "let's buy on the spot market, because we have already helped the price up, and we can help it some more"—with one that he wrote on February 8th, 1935, with reference to natural gasoline, which isn't dirctly concerned in this case, but it shows really what intelligent self-interest means. He says this—he has been talking about natural gasoline throughout the
4354 rest of the memorandum:

> "Our estimated sales for the month of February have been 1,200,000 gallons less than our purchases. Therefore, on taking this into consideration, we have very little interest in maintaining the present price structure. A decrease of one-quarter of a cent in price, balancing sales against purchases, saves the Phillips Petroleum Company approximately $3,000,000. Due to the fact that No. 26 and U. S. Motor are the same price today, our purchases exceed our sales, and further, we stand a chance of losing money should we buy additional gasoline to support the market, we recommend that we let the market take its own course, and not purchase any gasoline at this time."

Mr. Barnes: Mr. Chaffetz, that is $3000.00, isn't it, instead of three million?

Mr. Chaffetz: $3000.00, I beg your pardon—"Save Phillips Petroleum Company approximately $3000.00." I am sorry.

Now, what does that illustrate, gentlemen? It means this: We point out in our indictment that these defendants sell the great bulk of their gasoline in this area at
4355 retail and to jobbers, based on the spot market price;
and we allege that, just by buying a little gasoline on the spot market, just a little bit, they can raise up in that way the price of the gasoline that they sell up here—because it only takes a little bit of gasoline—the spot market is very small, anyway. It only takes a little purchase of gasoline in the spot market to make that spot market price go up; and automatically the wholesale price goes up, and the retail price goes up. And that is what I think Colonel Donovan means when he says that for their intelligent self-interest in the case they should help to raise that price.

But the Phillips Company, when it was buying natural gasoline, found out that the situation was reversed. They were buying more than they were selling. They were buying it from the same independent refiners—the same ones, gentlemen. Were they concerned with whether they paid a fair price to the independent refiner then? No, they said, "Since we have to buy more than we sell, let's let that market go. If it goes down lower, we can buy it cheaper. We don't care about the natural gasoline market; we have to buy more than we sell in that market. Let the in-
4356 dependent refiners worry."

And the market, gentlemen—what I am talking about is February; I am talking about the time when the market was down here (indicating on chart), and he says that the price of natural was about the same as the price of U. S. Motor. So the prices on natural were down, too. Defense counsel points to us and say, "This is the price the Government wanted." This (indicating) is the price that the Phillips Company wanted for natural gasoline, and they wanted to let it go down even lower, because they had to buy more than they were selling. But, on regular gasoline, or motor gasoline, the kind that they were selling more of than they were buying, on that, they wanted the price to go up, because every eighth of a cent that that spot price went up meant an eighth of a cent times millions and millions and millions of gallons that those companies were selling up here. I think that indicates very well what intelligent self-interest means.

Now, how did this thing work? The defense points to that chart up there, and they tell you that the prices that the jobbers were paying to the independent refiners were free transactions between themselves, the defendants didn't fix that price. Now, let's see if it works that way.

4357 Let's leave oil aside for a minute. Let's take the stock market, which some of us know something about—I, personally, know very little, but I think I can ilustrate my point.

Suppose a group of bankers who are interested in raising the price of, we will say, Allis-Chalmers stock on the stock market, and let's assume they are a lot of big bankers, corresponding to the size of the big oil companies you have here. They combine together to rig that price—and that is a term that is used in the stock market, I understand, to rig that price.

Do they have to buy up all the Allis-Chalmers stock that is in existence? No. They have to buy more of it than is being sold, in order to make the price go up. They can do it in several ways. They can buy it up higher than the current market, and that will make the price go up fast. But suppose they didn't buy it higher than the market; suppose that they bought just at the market price, but bought a lot of it, enough to make the price go up. That price would go up, whether they paid above the market or whether they paid at the market. It isn't the price that you buy it at that would make that stock go up; it is the fact that they 4358 buy it, and prevent that stock from being sold to other people at lower prices.

Now, suppose this thing is working, and these bankers were buying this stock for some reason of their own, they want that stock to go up. Perhaps they think the President would like to have the price of Allis-Chalmers stock a little higher than it was. So they buy that stock.

You and I—suppose we had some money and we wanted to buy some of that stock. We went to our broker to buy it. We would have an arm's length deal, and we would buy it at the market. But, gentlemen, would that market be a normal market? No. It was a market that was rigged by the buying that the bankers did. You and I might know it, or we might not know it. But, even though we say we buy it at the market, what the market that we bought it at was, it was a market that was brought about by these bankers, and these bankers had control of that market. They could have suddenly stopped buying, and the market would stop rising. They could have decided to dump all of their stock back on the market, and the price would go down. And the prices that you and I would pay would depend upon their artificial activity.

4359 Gentlemen, that is what we mean when we say in the indictment that the price was artificial and arbitrary. It was artificial, because you didn't have arm's length dealings between individuals, but you had a group, a powerful group on one side that was manipulating the market by concerted endeavor, buying together. And they were determining, their activities determined what you and I would have to pay if we went independently to buy gasoline.

Now, let me carry the illustration a step further. Suppose that these bankers paid a price above the market when they bought that gasoline; and suppose they got the trade journals to publish that higher price than they paid, and they did it for a purpose. The purpose being to get that higher price established as the going market price. In that event, the trade journals would be parties to their conspiracy, because the trade journals would be publishing their higher price for an illegitimate purpose, for the purpose of this group. And so the trade journals would be parties to that conspiracy; and you and I, when we were buying on the basis of the trade journals, or on the prices published in the trade journals, we would be buying at the artificial prices that the trade journals,
4360 acting in concert with those companies, with those bankers, brought about.

Now, I want to be perfectly frank with you gentlemen, and tell you now what we thought happened here, and that is what we alleged in the indictment, with respect to the oil industry.

We alleged in the indictment that the major companies, in their buying here, bought at above the market, or higher than the market; that they took the gasoline off the market at those prices, and got the trade journals to publish the prices that they were paying, so that the jobbers would have to pay those prices.

When we came into this trial, how did the facts develop? We put the trade journal men on the stand, and they denied under oath that they published the prices paid by the major companies at all. They told you that they didn't pay any attention to the prices paid by the majors, that they published only the prices paid by the jobbers to the independent refiners. We had

no way to circumvent that proof, whether we believed it or not. And what did we do? We stood up frankly in your presence before the Court, and we said, "If your Honor please, we haven't made out a case against
4361 the journals, and we voluntarily request that they be dismissed."

Now, the defense would like you to believe that, because the trade journals are out of the case, that there is no case, because we allege in the indictment that the trade journals are a material, are an essential instrumentality in carrying this thing out.

Now, how did the proof develop? And that is the thing we are concerned with here, how the proof actually developed; and it was this: The major companies were buying at the market. The prices that they paid made the market go up, because, if they hadn't bought that gasoline at the market, that gasoline would have been sold in independent transactions between jobbers and refiners. Any one purchase on the market affects the market, as Colonel Donovan said. But when you have the combined action of all these defendants, working together, buying up all the gasoline that might otherwise be sold under the market, buying that up, that, I say, and as the evidence I am going to read to you will show, is what actually made this price go up, as the proof here now shows. And those prices were published in the trade journals.

The trade journals, as the evidence has developed, may not have cooperated with the major companies, but
4362 they remained the essential instrumentality, because if they didn't publish those prices, then the jobber contract prices wouldn't have been based on the prices that were published; and the Standard of Indiana couldn't have fixed its retail prices on the basis of those published prices. So they are the material, essential instrumentality in the case. They are the prices, the prices published in those journals, which the defendants were trying to raise. And the fact that the trade journals have proved that they weren't guilty is no indication at all, gentlemen, that the defendants themselves don't remain guilty exactly in the way that the Government originally charged. Their purpose was to get those prices up; their purpose was to get the trade publications to publish the rigged prices that they brought about. And you can see by looking at the indictment that the trade journals stand in a separate and different position (exhibiting copy of indictment to the jury).

You read through the whole indictment, through page 22, and you find nothing about the trade journals being implicated, except that they are named with all the defendants at the beginning. And it is only when you get to paragraph 24, which stands entirely separate,
4363 at the end of the indictment, that you find there is a separate and additional allegation, in addition to what we have already alleged the defendants did, then we say the trade journals also did something. And we say they came in and published the major company prices. Suppose you left this paragraph out of the indictment; the indictment still stands, and still charges a full and complete case against the remaining defendants.

And, gentlemen, keep this in mind: If it didn't, then the Court would have dismissed this case a long time ago. Because, if there was no case against the defendants without the journals, that would have been a question of law, and the Court would have decided it. The fact that we are still before you, without the journals, is all you have to know to know that the indictment charges a case without the journals, against the defendants.

And were we negligent—were we negligent in thinking that the journals were implicated? Let me read you a couple of things.

You remember the meeting that Sus reported. All the major companies were there that were participating in the major company buying program. And here is what he says, as to what they discussed at the meeting—
4364 the major companies, oil men, people who had been dealing with those journals for years. If anybody knew about the journals, they ought to know about them. And here is what they say:

> "Each purchase of a car, from time to time, by these majors of this distress gasoline, would be recorded in the Journal of Commerce as an individual sale, and the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market."

So there is no question in the world, gentlemen, that they thought at the time they started this conspiracy that the trade journals were going to publish their prices.

I say, whether or not that is true—and you gentlemen don't have to decide whether that is true or not, because the trade journals are out of the case. Whether or not that is true, the purpose of the defendants was to get the prices up, the spot market prices which were reflected

in the journals; and it doesn't make any difference to you now whether the journals published the prices paid
4365 by the jobbers to the independent refiners, or whether they published the prices paid by the major companies. Whatever gasoline was bought on that spot market during that time was bought at a price that was rigged by reason of the activities of these defendants, whose purpose in buying that gasoline was to make that market go up. And that is what I am going to prove to you, beyond any question of a doubt, this very moment.

As showing their purpose—this is January 4th, 1935, a Shell document, from Ruether to the Crude Oil Department:

> "Your telegram with respect to Rock Island offer gasoline prefer wait until general program arranged do buying as do not believe individual purchase will assist quotations."

The thing they wanted was a program that would assist quotations. They wanted to do some buying as a group, so that their buying would affect the price at which the independent refiners sold to the jobbers, so that that price would be reflected in the journals and then the prices that the jobbers paid would go up, and the prices that the retailers paid would go up.

I mention this to you in passing. That is one
4366 of the interesting things that transpired in this case. Jacobi, who was running this buying program as a member of that sub-committee all during this time, he was before the grand jury, and I think five times—I think he was there only three times, but that isn't important.

4367 Here is what Jacobi said, testified here, as to what transpired at the March 15 meeting. Mr. Lewin asked him, he wanted to know whether there was discussion, whether it was intended that the price in the trade journals should be brought up by their activities.

> (Reading) "Answer: We discussed the trade journal's prices. We discussed the price of gasoline that these major companies were paying. We felt that if the trade journals reported a—that if the small refiners reported a preponderance of sales to major companies that the trade journals would certainly take that as a trend. That must be true, because I understand the trade journals don't report major companies' sales."

He learned it right here in this court room. He didn't know it at the time before the Grand Jury. And this all through the time that he is operating what we called this conspiracy he didn't know it. At least, he said he didn't know it.

> (Reading) "Mr. Lewin: Q. Mr. Jacobi, you are telling us now, adding gratuitously what you now understand. I asked you about discussions
> 4368 you had in March, and only that. Didn't you understand in March that if the major companies in this program paid higher prices, the trade journals would carry those higher prices if the transactions were in the preponderance?
>
> "The Court: That question is clear. Answer that.
>
> "A. If I said, that I certainly—well, I remember saying that or approximately that, Mr. Lewin, but if I said it in those words it certainly indicates that I didn't understand the methods of the trade journals.
>
> "Mr. Lewin: Q. I said was that the substance of your discussion, you and Tuttle and McDowell together in March, 1935?"
>
> • • • • •
>
> "The Court: Let me ask a question: How long have you been taking those two journals?"

The court is out of patience with him because although in the oil business he didn't seem to know at least what the trade journals did.

> (Reading) "A. Probably 10 years.
>
> "Q. And I suppose you had some knowledge of how they gathered their information that made up those quotations?
>
> 4369 "A. Some, but I testified—"
>
> He means before the Grand Jury.
>
> "—that I didn't know how they gathered the information, and governmental attorneys asked me, and I gave them the best information I could on it.
>
> "Q. When your committee had this meeting in March, you knew at that time that if the prices of gasoline in that field were raised, that they would be reflected in the quotations in the Journal?
>
> "A. Yes, sir, we felt they would for the reasons that I mentioned."

That is all that I think is necessary for this case. It doesn't make any difference whether they intended that the major company prices should be published, because in the upper graph up there—those in the upper graph up there, or whether the independent refiners' prices should be published. The important thing is what the indictment alleges as far as these defendants are concerned, is that they intended to raise the entire market so that the Journal would carry the rigged and raised price brought about by their concerted activities.

And now I want to discuss with you this, whether in fact, whether in fact this information of his didn't 4370 have the effect of making that price go up. You remember the testimony of Mr. Van Covern, who was called by the defendants, and he just expressed the opinion that he didn't think that the buying program had much effect upon price. Yes, there was a lot of testimony in this case about other factors that they said affected the price.

Before I get to that I am going to read a little of the documents again to show what the defendants at the time thought they were doing, what they said they were doing and how they thought that they were the ones in the buying programs that were making that price go up. Before we do that, I want to deal very briefly with these other factors that they referred to, and I am glad to get to the question of hot oil.

I was amazed! I was amazed when Mr. Brazeau, in his statement, talked about hot oil, and told you about hundreds and billions of gallons of hot oil that were flooding out of East Texas in 1934. And then he said in January and February, 1935, there was a lot more hot oil. And then he posed before you and he said, "Gentlemen, that was a situation that had to be dealt with."

Mr. Brazeau: I read from the record the exact situation.

4371 Mr. Chaffetz: "That was a situation that had to be dealt with," he said.

Now, gentlemen, you will recall that every witness on that stand for the defendants admitted that they didn't deal with anything, so far as buying programs are concerned, until after the Connally Act was passed and there was no hot oil.

Hot oil was out of the picture. And still Mr. Brazeau stood before you in that very appealing way that he has and talked to you about "hot oil". You see it makes it look as though when you are dealing with hot oil you are dealing with something that should really be dealt with and you stand before the jury and say, "Gentlemen, this is something that had to be dealt with."

They weren't dealing with hot oil. They weren't dealing with hot oil. Hot oil was out of the picture, because they knew at the time that hot oil would impede and prevent them from raising the price; so hot oil would keep the price down.

The hot oil, gentlemen, surely, was a thing that ought to be dealt with, a thing that the government struggled with for years, and it was dealt with by the government
4372 lawfully under a statute passed by Congress, the Connally Act, not by the defendants.

And then they talk about the flood of hot oil in January and February, 1935! The flood of hot oil! And they produced a witness on the stand here, Mr. Dyer to tell you how much hot oil there was in January and February. And what was his testimony? It astounded me. He said 116 cars that the railroad commission was able to locate in January and 287 in February of gasoline that moved in this territory. How much was there altogether, not only that moved into this territory, but moved anywhere out of East Texas? All they could find was 218—or, 118 in January and 317 or 318 in February.

Compare that, gentlemen, with the amount of gasoline these people bought in East Texas alone. They were buying 600 or 700 cars a month of gasoline.

You have heard witness after witness upon the stand painting this terrible picture of hot oil, ruining prices, coming in here with millions and millions of gallons!

118 in January and 317 total in February! Hot oil has not got anything to do with this. The only reason
4373 they talked about these millions and millions of gallons of hot oil was to impress you gentlemen in some way—I don't know what impression—with the amount of hot oil there was. And when it comes down to it there isn't anywhere near the amount that they would have you believe there was.

Take the question of increasing consumer demands. They say this: They say, as you come in here (indicating), as you come into the consuming season, that made the price go up, not the buying pool, but increased consumer demand. I refer to Jacobi's testimony on that. He was down here in the field, and it was his job to keep his company informed. And what does he say? Exhibit 683. This was March 25, 1935. I don't want to read the whole letter. I want to read only the part in which he uses these words—I know it is in this letter, but I can't find it.

4374 I will read Exhibit 684. Here is what he says. This is to refresh your recollection, because you have heard it many times. This is March 29th, 1935.

> "Demand from jobbers continues at a slow rate for several reasons."

Don't forget, gentlemen, that it is the jobbers who buy normally on that market. And here are purchasers who are supposed normally to determine that market. That makes the price go up. If the weather is bad they don't buy, and the price would go down. Here is what he says:

> "Demand from jobbers continues at a slow rate for several reasons. Jobbers North and West have had very unfavorable weather recently. Further, I do not believe that present market prices will hold. It is quite possible they may be fooled this year in this respect."

For two reasons, the jobbers were not buying, and it was their purchases that would make the price go up. One was bad weather. There was no increased consumer demand during this particular season. Other years there was an increase in consumer demand in the spring, but this spring, on these markets, there wasn't any. The jobbers were not buying, the weather was bad, and it continued bad
4375 until June.

They weren't buying for another reason. They suspected that there was a rigged market; that it was an arbitrary market, and they didn't think the price would hold. They were afraid it was being rigged, and whoever was rigging it would let go, and they would be left with a lot of gasoline on hand, and be stuck with it at lower prices. So he says, "I do not believe that present market prices will hold. It is quite possible they may be fooled this year in this respect."

He knew the prices were going to hold because he knew the buying programs were going to work and they were going to make the price go up.

I have here a series of letters, I won't stop to read them all, but there are other letters in which he discusses exactly the same thing. So this question of increased consumer demand making the price go up in the spring is out of the picture.

What else do they have to suggest? I think they had allocations and inventory control, before you. You remember Mr. Shatford was on the stand for a long time, and he testified at the greatest length, about allocations and how, under the Code, each refiner was told how much he could produce, and he told you gentlemen that because there was a regulation of production that would make the price
4376 go up; would make the price stay up.

Have in mind that allocations and inventory control that he talked about started in April of 1934 and was all over when the Code expired, at this point (indicating).

Now, if allocations were making this price go up, if allocations were making the price stay at this level, you would think when allocations were all over, the price would go down, if that was one of the causes that was keeping it up; and there were no allocations after the Schechter decision. It was all out. If that was such a big factor in making prices go up, you would think when the allocation was over the price would go down.

What happened? I know why the price didn't go down. It didn't go down because after the Schechter decision the major companies' pools worked all the harder and made the price go up instead. They raised the price one-eighth of a cent after the Code expired.

This is Exhibit 191, written by Mr. Lakin, an officer of the Shell Company, to the President, Mr. Fraser. He talks about tank car markets. This is dated June 14th, 1935:

> "The vigorous manner in which major marketers entered the gasoline tank car market after the Tank Car Stabilization Price Committee ceased to function, buying all surplus gasoline offered, led to further advances of ⅛¢ in the Group 3 gasoline price." 4377

They will tell you that allocations made that price go up. What made the price go up? Further increased purchases by the major companies buying surplus gasoline; so that when the Code was over, and there were no allocations and you would normally expect the price to go down, the major company buying pools not only prevented the price from going down, but they raised it another eighth of a cent.

This report here of a high official of the Shell Company to the President of that Company.

Oh, yes, I want to say something about retail price wars. There has been a lot said in this case about retail price wars and how terrible they are. I told you this morning that retail price wars were being dealt with by the Stabilization Committee under specific authority from the Secretary, under that letter of July 20th, 1934. They raged, not only in 1935, but in 1934. And those exhibits both show how low the price went in 1934,—retail prices were under that situation, which didn't exist at all after this conspiracy started. The retail price wars were practically cleaned
4378 up in December of 1934. So Mr. McDowell testified.
So Mr. Shatford testified. So Dr. Frey testified.

And then we have again this document, which tells what the real situation was with respect to price wars at the time this buying program started. I want to read you a letter from Mr. Marcell, General Manager of the White Eagle Division of Socony-Vacuum, to Mr. Arnott.

I will read Exhibit 311 first. I want you to note particularly what he said about retail price wars, to see whether this buying program had anything to do with retail price wars. He first has some social comments, which I won't bother to read.

> "On returning to my office, I find that you had a meeting here in Kansas City of the Mid-Continent refiners' group on March 1st; and I am sorry indeed that I happened to be away. Mr. Irwin reported that you had a very interesting meeting, and I believe the accomplishment was also quite good.
>
> "Mr. Arnott, I had a conference with our Marketing people yesterday about retail prices throughout our territory, and they reported that they are holding remarkably well, so this stabilization program has stood the test of the weak tank car price, and I
> 4379 believe we are over the worst of the winter season condition."

In mid-winter, when conditions were bad, the retail prices have stayed up. There were no price wars through his whole territory, and he thought they were now safe because the bad conditions were over and they are coming into a better consuming season.

And then, on March 27th, 1935, Mr. Marcell again wrote to Mr. Arnott. Another meeting with his marketing people.

> "They complained a great deal about competitors selling Power Distillate and Kerosene at cut prices. Both of these products are sold in large quantities for tractor use. They seemed to think that nearly all of these lower prices were made by distributors suppplied by the Class B. refiners. They stated that the Stabilization Committees in the different states were working on the problem but as I understood it, they were not succeeding very well in stopping it to any great extent."
>
> "Last week we had all of our district sales managers throughout our territory in a meeting here at Kansas City. I had quite a conference with them
> 4380 about prices, and they had practically no complaint about gasoline prices."

Gentlemen, this was March 27th, 1935.

> "except in the territory where there was trouble with the elevators. I do not remember when we had a meeting like this, where there was so little complaint about competitive prices on gasoline; so it

shows that the market is quite well stabilized on this product."

The retail situation, gentlemen, just as the hot oil situation was taken care of and the crude oil situation was taken care of before these defendants started operating their buying program. They didn't operate this buying program to take care of hot oil. They didn't operate it to take care of retail price wars. Those things had been done successfully and under lawful authority. What was it that did make the price wars? I will skip over a few of these exhibits.

Buckley to Brandli. "Accumulation of this quantity of material, which otherwise would have been distress gasoline, is in considerable measure responsible for the difference between the price of three and one-eighth cents early in February and the low price of four and one-half cents f. o. b. refinery, which today prevails."

4381 In other words, Buckley says to his boss, Brandli, that the buying program is in considerable measure responsible for that price going up from three and an eighth to four and a half.

Van Eeghen, of Shell, to Fraser. "With improved seasonal demand in view today." They are hoping that the seasonal demand will improve, and a continuance of the buying movement and it is anticipated that prices will strengthen by approximately one-half cent over the next thirty to forty-five days. Both increased consumer demand and continuation of the buying movement to boost the price will go up half a cent.

Warner to Collins. The improvement in the market in the last few days is considered directly due to the cooperative efforts of major companies participating in the movement.

These gentlemen were not kidding themselves. These gentlemen were watching at the time the factors that made that price go up, and they are attributing it, in large part, to the activities of the buying program.

I could go on and read you countless of these. I don't think it is necessary. You have heard them so many times in this case. You heard these documents read

4382 as they were offered here.

The people who were closest to the situation at the time, they believed that their activities in these buying programs were what was making that price go up. And are you going to sit by and let a man like Van Covern, an expert, come on the stand and say that he didn't think they had anything to do with it,—they were temporary and incidental?

Another factor. They just didn't buy this gasoline, each of them acting independently, or as a group, at any price, that they could buy, as they would have you believe. Jacobi testified about his price recommendation, and I want to take a minute to deal with this,—there has been so much said about it. You remember that letter in which Jacobi said we agreed on a price of four and three-quarters cents for next week? He sent that to his boss. And Mr. Thomas reads that letter to you. He is worried about it. A serious charge against his people. Jacobi said, "We agreed." He was talking about the tank car committee. They agreed on a price of four and three-quarters cents the next week. What he meant was that was one of his recommendations. All the other companies participating with them should pay that, for gasoline, under the buying program. Mr. Thomas waved that
4383 letter before you and said, "Now Jacobi is entitled to tell us, in effect, what his opinion was about the price. He was reporting that they agreed together that this was the price that the purchasing companies were paying."

4384 And let us see how that works, and I have another document here that I want to refer to on that. (Examining exhibits.)

I am sorry, gentlemen. I can't find it—never mind. Here is the way that price recommendation worked—

(Exhibit produced by Mr. Lewin and handed to Mr. Chaffetz.)

That is it, thank you.

This committee met each week, some times more often, during this period. They decided, you remember, they had a survey supplied by Mr. Bourque, of all the surplus gasoline there was available, all of it throughout that whole territory; and they divided it up among themselves. And they then called the companies that weren't present, and told them which company's surplus they were to buy. You remember that. And they discussed the price. And then Jacobi would call the companies whom he reported to regularly, and would tell them what the recommended price was.

Now, gentlemen, not only did the major companies know what that recommended price was, but the independent refiners knew it too. They were in on this plan. You remember, at the March 5th meeting, Mr. Winget was

present, Mr. Simmons was present, Mr. Boggs was
4385 present, and Mr. Cocanower was present—all independent refiners. They were working together on this thing. And they were told what these price recommendations were, and they knew, the moment that price recommendation was made, on Thursday of any week, that during the following week any gasoline that they couldn't sell at that price, the major companies would take off their hands.

Now, suppose you were an independent refiner, and you were in that position, selling gasoline on the open market; and you knew that any of your gasoline that you couldn't sell at four and three-quarters cents, these major companies would take from you—what price would you fix on the open market in your sales to jobbers? Would you sell to them for less than that? No. What you would do is, you would sell for more than that if you could, knowing always that if you didn't get away with it, if you couldn't get that price, the major companies would take it.

I want to read this document, Exhibit 176:

> "I have been in touch—"

this is written by Mr. Lakin of Shell, a high official of the Shell Company:

> "I have been in touch with Mr. Winget of Cushing Refining and Gasoline Company—"

4386 Mr. Winget is the man who was at that meeting on March 5th. This is dated March 8th:

> "—who tells me he feels that prices should move faster—that prices discussed should be reached by the 11th, and is quoting today, three and five-eighths and four and five-eighths cents on low and middle octane respectively."

Now, what does that mean? That means this: That at that meeting, they sat down there and they decided what price they were going to reach in the immediate future, what price they were aiming for. And they had a particular price in mind. We don't know what it is—we have never been told. Mr. Winget was never called to tell us what actually took place there. We do know that a price was discussed, that should be reached in the immediate future.

And then what happened? Mr. Winget thought that the prices ought to move up even faster than they discussed at the meeting. Suppose they said the price should be four and five-eighths on March 20th. He thought that was waiting too long; he thought they ought to move up faster, and so he is quoting, he is quoting a higher price today.

And that, gentlemen, is the cue to why prices
4387 by independent refiners to jobbers were some times higher on the same day that the recommendations were made by the major companies. The major companies agreed on a recommended price. The independent refiners knew what that price was. They might try to get an even higher price—they always knew they could get that price, because if they didn't get that price, the major companies would take it. So, what difference does it make where the dots are on that chart with respect to jobbers and consumers? The prices that the independent refiners who were in this conspiracy were charging to jobbers and consumers, they were determining by reference to what the major companies would pay them on these buying programs. So you always come back, when you want to find out what made that price, any price paid by any jobber on that market, you always come back to the major company prices, the prices paid by the major companies in the buying program.

I think I have said enough to convince you how this thing worked, and how the major companies worked together to make that price go up. I will mention one or two other factors.

As the price goes up, other people in the industry can see the price is going up, and they may suspect, or they may know what makes the price go up; and they may
4388 be invited into the market to buy gasoline, because they see the price is going up—as anybody would see who is interested in speculation, when you see a speculative market. And so the price may well have gone up on some days quicker than the major companies had hoped, because they were raising the price. Brokers—you remember, brokers have to make about an eighth or a quarter of a cent profit in order to sell gasoline; but if they can buy on a rising market, and buy today at three and an eighth, and sell next week at three and a half, they will come in and buy gasoline which they wouldn't otherwise buy, to keep for speculation so they can resell it at a higher price. And so a rising market feeds on itself.

Jobbers—there are letters here that indicate that the jobbers came in while this price was going up, and they bought additional gasoline, some times, perhaps, paying above the market. So that it may very well be that many of those jobbers who paid higher than the market during this time were paying it because they saw that the market was going up. Perhaps they knew that the major companies were running a buying program, and they knew if they buy it now, even at above the market, they would be able to sell it at still higher prices if the market continues to go up.

4389 And what does the evidence show on that? The evidence was read to you yesterday, that there was a large volume of gasoline bought by brokers in this area during 1935, you were told. And, as you look at those exhibits, to find out when those brokers bought that gasoline, you will find they bought the greater part of it, nearly all of it during this period (indicating). That exhibit was offered to show that brokers were able to get gasoline at any time; but when they bought it was right in here (indicating), because they could afford to pay the market, or they could afford to pay above the market, if necessary, to get it, because they saw the market going up and they were willing to take a chance, to speculate.

The thing for you gentlemen to keep in mind is that through that period from the first of March up until the first of June, Jacobi made six or seven or eight or nine price recommendations, and that is roughly the way the market went. For each time he made a price recommendation, that price went up. And it doesn't make any difference what other factors contributed to make that price go up—because brokers came in and bought, or jobbers came in and bought, or because independent re-
4390 finers, anticipating a rise in price, went out ahead and sold at higher prices than the recommended prices, before the recommendation took effect.

He made those recommendations only during the period when the price was going up. He stopped making his recommendations when they reached the last stage—there were no recommendations at all during all of this period (indicating). That is a strange coincidence. And then, when did he make his only other recommendation? The only other time the price went up, and that was when there was a crude rise in January. The price went up a half a cent, and what was his recommendation? A half a cent.

I think, gentlemen, there is the complete answer, there is the complete story told to you for the first time, of exactly how this thing worked, and what were the real factors that entered into it. And you can only conclude that what made that price go up or controlled that price throughout that period was the concerted activity of these companies.

I want to refer to one other thing. You remember, when Mr. Shatford was on the stand, I was talking about

the price in through here (indicating). He had said to you gentlemen on his direct examination that crude was level, retail prices were stable, and that would make any price stable. You remember, I said to him: "Suppose
4391 you were an independent refiner, and you had gasoline to sell. The market price was four and three-quarters cents, and you could sell it to a broker at one-eighth below that, for four and five-eighths cents; and you had a major company buying program in back of you, that would take all of your surplus gasoline, anything you couldn't sell somewhere else, for four and three-quarters cents, they would take it from you at four and three-quarters." I said to him, "What would you sell your gasoline for?" And he said, "Well, obviously, four and three-quarters cents."

So that all during this period, gentlemen, not only these defendants named in the indictment—but you have the testimony here of Jacobi, of McDowell, and all those documents to show that any independent refiner throughout the entire area who had any gasoline to sell, and which he couldn't sell at four and three-quarters cents, they came and took it from him. And not only did they take it from the independent refiners, whom they say they were trying to help, but even the brokers. If a broker had fifty cars of gasoline that he couldn't sell at the market price, they bought it from him. And why did they do it? To keep that market at that level of four and three-quarters cents.

And that, gentlemen, is why we say to you that this is not a normal, competitive market. We say
4392 to you that that was a rigged market, an artificial market; and that the price was rigged, artificial and arbitrary. It is the price that they were keeping there by their concerted combination of buying up any gasoline that was available below that price. They did it through that whole year, and I say again, in 1936, after the crude rise, they put it at a higher level, until the grand jury began to investigate this case.

And that brings me to the next consideration. It brings me to the question of what the Government likes. I said to you this morning this, gentlemen: That if there was free and fair competition, if these big companies were acting in competition with each other, I don't care whether the price is at that level (indicating), whether it is up here (indicating), or whether it is down here (indicating). The only thing that it is my duty to do as a law enforcement officer is to see that the law is complied with, and that whatever price is made is made in the course of fair competition among these large companies. They have got to compete fairly; they can't act in combination.

I think this: I don't think the price would have stayed here (indicating), if they didn't engage in this com-
4393 bination. I think the price might have gone up some. But what would have happened if there was competition instead of monopoly? The price might have gone up during the high consuming season, and then when you get bad weather, when the consuming season is over with, the price would have gone down a little. You would have the normal fluctuations that you would find in any business where the volume of business depends upon changes in weather conditions and other changes in conditions.

It might be that in the peak of the summer demand, they might be making a high profit, a large profit because of the great demand. You can always raise your price if there is a demand for it. I don't care how much profit they made, if they made millions, if they made it legally, as long as they acted independently. And I wouldn't care if the price went up like this (indicating), and then came down, and maybe during the winter season they would lose a little money, when the price went down. And that is what you would expect to find. But, gentlemen, when you find a straight plateau like this, through good season and bad season, regardless of whether there was any demand for gasoline, any normal demand for gasoline or not—
4394 gentlemen, then you know there is a monopolistic control of that price, and not what the defense refers to as the operation of free and fair competition. It just couldn't happen. And it never did happen in the history of the oil business.

While we talk about this price up here, which I say is the arbitrary and rigged price, and which they say is the reasonable price, let's see just what that price means to these companies. You remember this: When one of the defense witnesses was on the stand, I think it was Swensrud, Colonel Donovan asked him just what it costs an independent refiner to manufacture gasoline. And I objected—

Mr. Lewin: Franklin.

Mr. Chaffetz: It was Mr. Franklin, I am told.

I objected. I said this: "If we are going into any costs, we ought to have the costs of all companies." The independent refiner sells about ten or fifteen per cent of all the gasoline that is sold up here; the major companies sell eighty-five per cent. And if I am a consumer, buying gasoline, I don't want to pay what it costs the little fellow, the inefficient man to produce the gasoline. I want to pay the price that it costs to produce the great bulk of all the gasoline that is sold up here.

4395 And the Court agreed with me. The Court said, "Yes, you are right. If we are going to go into costs, we ought to have them all."

And Colonel Donovan, and I think the record will bear me out on this—Colonel Donovan said: "If the Court please, we are proceeding in our own way. We will prove the independent refiner's costs now, and we will prove the major company's costs later."

And did he ever do it? Did he ever do it? Not on your life. You won't find a suggestion in this record of what it costs the defendants to manufacture gasoline—except one, not offered by the defense, but offered by the Government, and I am going to refer to that.

First, let me tell you this: What Franklin said was this: He said it costs an independent refiner five and a half cents to manufacture a gallon of gasoline.

There is in the record a statement by Mr. Buckley, a letter written to his boss, in which he says:

> "The line between profit and loss on running dollar East Texas crude through a skimming plant is at present between four and a half and four and five-eighths cents per gallon."

Now, gentlemen, if you know what a skimming plant is, it is the smallest, the most inefficient type of plant.

4396 The man who runs his crude through a skimming plant has to waste valuable parts of the crude oil, which he never uses at all, because he doesn't have the efficient kind of plant to use it. And he can buy all his crude at a dollar and sell it at a profit, if he can get more than four and a half cents at this time, the time when Buckley wrote this letter—and that was April 20th, 1935.

But, gentlemen, do you want to pay for gasoline at the rate of what it costs that skimming plant operator, down in East Texas, to produce his gasoline, when the major companies, with their efficient plants, producing great varieties of products, hundreds of products—they use up crude oil now, you know, the way the meat packers use up the pig, everything but the squeal. They use it all up, and they get some return from every one of those by-products, and they make as much gasoline as possibly can be made from crude oil. And I say that is the way that the great bulk of the gasoline sold up here is made. I say we don't know what it costs them to manufacture that gasoline, except this: You remember this letter I had from Mr. Marcell to Mr. Arnott, and this is very, very significant, gentlemen—this is significant for many reasons.

Do you believe for a minute that Mr. Ickes was 4397 told what was in this letter, as to what it really costs to manufacture gasoline? Do you suppose they ever said to Mr. Ickes, "We don't need a price in parity. We know there is something about parity in the Code, but we can make quite a substantial profit, we can make quite a substantial profit if we never reach parity, even if we are a quarter of a cent or half a cent below parity"—did they ever tell him that? I say, not on your life.

This is what Mr. Marcell wrote to Mr. Arnott—this is March 27th, 1935:

> "It is almost too good to believe, the way tank car gasoline prices have been acting lately."

Almost too good to believe.

> "Our third grade price to jobbers is now four and an eighth cents, which is up almost a cent from the low point a few weeks ago. Mobilgas grade is strong at four and seven-eighths cents. The present prices are just about cost of manufacture by our plants"—

Let's see when that was. That was March 27th, 1935; that was away back here, at this point (indicating on chart). They were recovering their costs right there.

4398 > "So, if these prices can be strengthened a half a cent per gallon additional, it will mean quite a substantial profit for us."

Quite a profit for us if the price will go up a half a cent. Add a half a cent to four and seven-eighths, and what do you get? You get five and three-eighths cents. All right, when did the price reach five and three-eighths cents? This is regular gasoline—five and three-eighths cents, right here (indicating), here we are, about April 13th, at this level, gentlemen—

Mr. Lewin: The high.

Mr. Chaffetz: That is right. It is the low, which is at this point—no, it is the average, really. You remember, I asked Mr. Arnott whether it isn't the average that the jobbers pay for regular gasoline; they pay the average of the high and the low. So you really have to take the point where five and three-eighths is the average price, that would be right in here, about April 15th (indicating), five and three-eighths is the average price of regular gasoline. So, right in here (indicating), they were making quite a substantial profit on their gasoline. He was tickled to death with it—a half a cent for every gallon of gasoline his company was selling.

4399 Do you realize what a half a cent a gallon is to a major company refiner, when you consider the millions and millions of gallons of gasoline they are selling? Consider that a broker gets an eighth of a cent for his gross margin; he has to pay all his expenses out of that, and makes his living only on the difference between what he pays, between his cost and that eighth of a cent. The jobber gets two cents gross margin for doing everything he does; maintaining his bulk plant, paying his help, running his trucks, paying his insurance and his taxes and his losses, credit losses, all that sort of thing. And here, this company was making a half a cent clear profit on every gallon that was sold at this time (indicating), in April. And he says himself, he says, "It will mean quite a substantial profit for us."

And then what happened? Did the price stop there? No, it went away up here (indicating), gentlemen. And if he was making quite a substantial profit here (indicating), how many more millions of dollars, how many more millions of dollars was his company making when they got the price up to here (indicating), where they stopped after the Code went out, and kept it there throughout all that year?

Did they tell the Government that? Did they tell 4400 the Government that "we were making quite a substantial profit long before the price ever reached that point?"

And then there is another significant fact in this letter. I want to say this to you, gentlemen, in all fairness. This is a letter written by one company. It is a big company, it is the White Eagle Division of the Socony-Vacuum Company. They haven't offered any evidence as to costs of other companies; we don't know what they are. There is no reason from this record to believe that this company is in any different position from any of the other major companies. If they thought they were, when I asked Arnott that question, they would have asked him on redirect examination. They would have said to him, "Is there any reason why your company is in a better position than any other company?" They never asked that question. So, all we can assume is that there is no reason to believe that any one of these other major companies wasn't in exactly this same position.

But this is the significant fact, the additional significant fact that I want to refer to:

"The set margin of five and a half cents will not 4401 let our marketing department make any profit."

He is referring there to the five and a half cents that I referred to, between the tank car price and the retail price. You remember, I told you the retail price is usually five and a half cents above the tank car price. That five and a half cents, gentlemen, is all the jobber gets, out of which he keeps two cents, and turns three and a half cents over to the retail dealer. With that whole spread of five and a half cents, his marketing department can't make any profit.

> "But, if we can collect this full five and a half cent margin, I believe the department will just about break even. Therefore, if we can collect a profit on refinery sales, it will be a satisfactory showing."

And he made a very satisfactory showing; he collected a very handsome profit on his refinery sales, much more than he ever hoped for. All he hoped for was a half a cent increase, and it increased nearly a cent.

But the jobber, meanwhile, gentlemen, what was
4402 happening to the jobber? He had a maximum of five
and a half cents to operate on. And this company, this company, with all its efficiency, competing with the jobber on that same five and a half cent margin in the marketing department, could just about break even if they got the whole five and a half cents. And what did the jobbers come in here and testify? They told you that when this price was going up, they weren't even getting the full five and a half cents; they were getting less than that, because of the way the provisions of their contracts operated.

I want to contract that situation of the true facts with the long-winded argument that Mr. Thomas held before you yesterday, when he said to you, "Gentlemen, do you realize that these contracts guaranteed the jobber a full five and a half cents?" he said, "Would you ever find another industry where the jobber was guaranteed a margin?" And he would have you to believe that the whole five and a half cents was some gross profit to the jobber. What they were guaranteed—and it was a maximum that they ever got—was the least, the least that they could possibly live on. And they couldn't get any more than that. Usually, when you think of a guarantee, you think that
4403 during some times that is the minimum of what they
get, and that at other times, they could get more; so that during bad times they were guaranteed at least not any losses, and at other times they could make a profit. But that is all they could get, good times or bad; that was the most they could get. And that was just enough to break even on.

And, when this buying program was operative and making those prices go up, they didn't even get that. And that is why those gentlemen came here before you; that is why those gentlemen came here before you, to tell you that they didn't like the treatment the major companies were giving them. And that is why the defendants couldn't put on a single jobber to tell you a contrary story.

4404 Mr. Brazeau had the nerve to tell you, gentlemen, that we were trying to prejudice your minds; we were trying to poison you against them by bringing jobbers from Wisconsin to put them on the stand.

Well, if that is prejudice, I wish we had more of it. The reason we brought Wisconsin jobbers was because they were a type of men whom you know. You could judge them best. You could judge their sincerity. Mr. Bill O'Brien of Superior. Mr. Teige, from I think down here at Stoughton. They took that stand and told you that they were dissatisfied with the treatment the major oil companies were giving them. Will you believe them? Will you believe that they were crying out to you for help, or will you believe Mr. Thomas when he stands up before you and says, "Gentlemen, we didn't put jobbers on because jobbers are friends of ours. We are helping them. We work together. We look out for their interests and they have no complaint."

The Court: We will take a recess.

(Whereupon, at 3:25 o'clock P. M. a short recess was taken.)

4405 (Following the recess the Court resumed its session at 4:00 o'clock P. M., and the following proceedings were had:)

Mr. Chaffetz: May it please the Court, and gentlemen of the jury.

Counsel for the Phillips Petroleum Company called my attention to what I see was an error in the statement I made to you, and I am glad to correct it. You remember I said they bought natural gasoline from these same independent refiners. I did not mean to say, and I should not have said, the same ones mentioned in the indictment that sold regular gasoline; but I meant the same type. If I misled you on that I do want to correct it.

I want to conclude my argument about parity by leaving this thought with you; and it is the government's position in this case:

If they had gotten authority under the code to run buying programs to raise the price to parity, and they had acted in their authority, then we would not be concerned with whether they were making too much money, or not enough, or what they were making. That would have been the responsibility of the government officer who gave them the authority to do it.

What we say is, not having obtained the authority, acting without any authority, and taking the law into their own hands, they do not have the right to come before you and say "We raised the price only up to parity", which
4406 is referred to in the code. If they wanted to contend
that the price to which they raised the level was reasonable—and that is not material in this case as the Judge is going to charge you; you do not have to find out how much they raised the price as long as you find out there was a conspiracy to raise it and they did raise it. That is all you are concerned with. But if they want to go outside the law and what is proper in this case, and make an appeal to you on the ground that at any rate if we did technically violate the law we only raised the price to a reasonable level—I say to you they cannot make claims about parity.

I say the way to do that is to come in and prove to you what it costs them to make gasoline, and say "We did not make any profit during this year", or "Our product was reasonable." That is the only way, if they wanted to do it, in which they could make any claim as to the reasonableness of the price.

They made no attempt to do it. They said they were going to do it, and they made no effort to show what their profits were, and I don't think they would want you to know in this case.

Now, there is only one other feature I want to deal with
before I am going to say to you that we have proved
4407 our case beyond any question of doubt, and that is the
question of power.

I would think, and I would think any reasonable man would think, that all you knew was the Standard of Indiana, and the Socony-Vacuum, and the Shell Company, and the Pure, and the Mid-Continent, and the Tide Water, and the Sinclair, Continental, Globe, Deep Rock—all those make oil companies, having together more than seventy five per cent of all the gasoline sold, have combined together—I would assume that any man on the street using his ordinary judgment would say that those companies, all of them acting together, for one purpose, had the power to raise the price, and I did not suppose that anybody would have disputed it. We never dreamed that the defense would try to dispute it in this case. More than seventy five per cent of all the business, acting together to try to get the price up, and they say they could not do it, they could not raise the price!

Not only that, gentlemen; the evidence is that in addition to those they had working with them all of the independent refiners who were the only competition they had outside themselves to speak of, and they were all working together with this group.

And that is important because, gentlemen, as you probably gather from this case, the only real competition
4408 that the major companies have is from the independents. The independent is the man who usually walks along his own path; he is hard to control, and that is what the big companies did not like. Ordinarily they are the ones that make the competition. The major companies can follow the leader, as they do; they can hold meetings as they do; they are a small group, and they can stabilize prices ordinarily if they have a mind to, and they do.

But it is the independent who supplies the competition. And so what did Mr. Arnott want to do before he was assured that they would have the power to raise the price?

He had to call a meeting on the 1st of March before this thing started, at Kansas City I think it was, and at that meeting he had the independent refiners represented from Oklahoma, Kansas, Louisiana, Arkansas, North Texas and West Texas, the entire Mid-Continent area. And he talked to them at that meeting and told them what he was going to do, and without one dissenting voice they all said, "We will go along"; and you remember the letter that he wrote to Mr. Marcell. I think I had it here; I won't take the time to read it.

He wrote to Marcell and he said, "Yes, we had the meeting, and it was a very good meeting; we are promised unanimous support, support of all of them there; we
4409 know they will all work together."

And he says,

> "If they will keep their promises"—

something to that effect—

> "if they will all keep their promises then I think we can be assured of a real improvement in the tank car refining price."

Here it is; he is writing to Marcell. He says:

"Mr. Irwin"—who was at the meeting—"prob-

> ably gave you full particulars. Each company present agreed to join in our efforts"—

All of them—

> "and also to support the Executive Committee of their own choosing"—

Do you remember who that executive committee was, headed by Boggs?

> "who will sit in our major group meetings representing independent refiners. In this way we will have one group"—

They would have all of them sit together in one group—

> "and I think will be able to move forward even more definitely and constructively than we have in the past where this group was depending on Messrs. O'Shaughnessy and Majewski to keep them informed and represent them."

And so I say to you that practically not only all of the principal major companies doing business in this area, 4410 nearly all of them—there is Sun which does a little business on the Eastern end of the area in Michigan, and National which is a smaller company—all of them working together, and they have the cooperation not only of the fifteen refiners named in the indictment, but also of a large number of refiners who did not have any surplus gasoline, like the Kanotex Refining Company of which Mr. Boggs is the head; but they were cooperating.

Now, how do you cooperate in this scheme, which was not just a scheme to purchase distress gasoline? They cooperated by not producing more than they could sell at the going market price, and by keeping that price; and that, gentlemen, is what Mr. Arnott meant when he said they all agreed to cooperate. And that, gentlemen, is the clue, as I said this morning, when I said we are not talking about the right of any particular company to purchase distress gasoline. Any company that wants to can buy as much distress gasoline as they want to buy.

If they want to they can appoint a committee. Mr. Bourque's organization could do it, so that any independent refiner who has some excess gasoline that he cannot find a market for, can say to the association, "We have got some gasoline we would like to move", and anybody can buy that gasoline that wants to.

But that is not what we have here. That is not what 4411 they told the government they were going to do. All they told the government they were going to do was to have this committee locate where the distress gasoline was, and then each company would decide for itself, each major company stating, "We are buying any way, and we might as well buy this."

Well, they could have bought this distress gasoline, and it would have been no violation of law. But that is not what they want. They do not want to try to find a way of putting the independent refiner in touch with the major. They want more than that.

4412 If they had more than that, if they were to make that price—because, gentlemen, when the price was at this level (indicating) and when those independent refiners didn't cooperate with any substantial amount of gasoline being sold by them at below that price, not dumping on the market, this price would have stayed that way.

They had to have the full cooperation of the independent refiner, and they had it and Mr. Marcell said they got all the independent refiners' cooperation and each one of them agreed they would cooperate.

Cooperate in what? The independent refiners didn't have to cooperate in selling distressed gasoline. They were trying to get rid of it. They didn't need their cooperation. They were supposed to be getting help and supposed to help them.

Their cooperation was in working together with the major companies and raising the price and keeping the price to where the major companies thought the price should be.

I think that is the answer to the testimony of Mr. Swensrud, who is the only witness the defendants offered, a theoretical witness, as Mr. Lewin called him. Talk about 4413 capacity outside of the area! Which would come in and upset the price when it got to a high arbitrary and artificial level. This other gasoline would flow in here and cut the price down.

I don't know whether you remember Mr. Swensrud, but he is the man who was trying to tell us in answer to my question that when we buy gasoline we don't buy Shell or Phillips or Red Crown; we would buy gasoline where they have the best rest rooms. That may be the way he buys his gasoline, but I don't think any of us buy gasoline that way.

I mention that merely to have you remember him. You remember how long I questioned him. And the court took him on that. The court didn't believe that testimony and the court took him on that question and tried to get him to tell me the true facts.

But that witness came to the stand and expressed the opinion, and all you have in this record on that question is his opinion, that these defendants didn't have the power.

I say that it stands to reason that the mere fact of their size and the fact that they were working together and
4414 that they had the cooperation of the independent refiners in this area to keep this price up—I say, there can't be any question but they had the power.

Gentlemen, under Mr. Swensrud's theory when the White Eagle Division was giving the price up here (indicating) where they were making more than quite a substantial profit—you remember they were making more than quite a substantial profit here (indicating)—they were making more than that here under his theory, that company would go out and cut prices in order to increase their business. Did they do it. If they had done that that price wouldn't have stayed that way. But, no, they didn't do that. They were cooperating with the plan, and the plan called for maintaining that price and keeping those profits for themselves.

They talk about people outside the area, and Mr. Swensrud made much of that, people not in their territory at all, but coming in—he tried to tell us that his company could come into Madison and establish its reputation over night. If the price was high and arbitrary.

You remember when I asked Mr. Arnott, whether the Root Company was represented at that meeting, and he said he didn't know the company by name, but if they
4415 were in that territory, which they were, he was sure they were represented at that meeting.

There is another answer to Mr. Swensrud that was supplied by Mr. Arnott and that it wasn't a question of raising the price in the Standard of Indiana territory. He told us that what they were doing they were doing to the whole United States east of the Rockies.

So he said, "So, gentlemen, I am presenting to you a national picture."

And he described another pool down on the Gulf of Mexico, taking gasoline from New Orleans and the coast of the Gulf of Mexico which normally comes around and moves east, and they were buying that up and rigging the price in the east in the same way they were doing it here.

So any company that is getting the rigged price in the East in the form of another scheme, do you suppose that some other company is going to come out here and compete in the Indiana territory and try to break down the scheme here? Not a chance!

The answer to the whole question of power is the
4416 fact they did it.

If you were trying to decide whether they were doing it in the future, you might have to speculate. But if you look at that graph and all the facts I called to your attention, is there any question in your mind that they did it? If they did it, they must have had the power to do it.

And so, gentlemen, we have concluded what we think are the material facts for your consideration.

The law says, and I am sure that His Honor is going to instruct you accordingly, that where a group of companies control a substantial part of the business or where they have the power to raise the price and where they combine together for that purpose, it is illegal. If a company acts alone it isn't a violation of the law, but if they act together, they combine together, and if they have the power, and they raise that price, that is a violation of the Sherman Act.

Gentlemen, I have shown you that they have the power. I have shown you how they combined together, not only these defendants among themselves, but with the help of the little fellows, the independents. And I have shown you how they have raised that price and how they did it under the code, after the code, irrespective of any code.

4417 That is all we started out to prove when we came before you, and that is all we said we were going to prove, and we have proven it beyond a shadow of a doubt.

The defense tries to raise some other issues and issues which are not really legal issues. If you violate the law, you are not entitled to come in and say, "Well, we didn't know what the law was. We were acting in good faith. We thought the law was otherwise."

No, gentlemen, every man is presumed to know the law, and if he violates the law—as the court is going to instruct you—and it is your sworn duty—that is the oath you took when you were selected as jurors in this case—your oath was that you would apply the law as laid down to you by His Honor. And if we prove to you the facts which constitute a violation of the law, and if the court instructs you that those facts do constitute a violation of the law, then it is your sworn duty to bring in a verdict of guilty.

But, I say, they have tried to raise other issues. They have tried to persuade you, irrespective of the law, to find them not guilty on the question of good faith.

4418 And they say, "What we did, we did openly and we thought honestly and we thought legally."

I want to deal with that subject. It wasn't a legal question at all, but since they have raised it, I want to discuss it with you. And perhaps we were the ones that raised the issue because in our opening statement to you we said to you that what they did they did secretly and it took the Department of Justice months and months to find out what the facts were, and we thought we had them for the first time when we commenced to present them to you, and I say what I say to you in our opening statement is just as true now as it was then.

Consider, gentlemen, not one bit of evidence that anything that was done after the code was reported to anyone! Now, if you were in the Department of Justice and Mr. Beroth came to you to complain about a combination on the part of these companies, and you looked at the graph and you saw that level of prices (indicating) after the code—if you saw it during the code, the first thing you would think was perhaps the code had something to do with it. And you look at the provisions of the code to find out whether anything under the code authorized it, but, gentlemen, when we investigated the case, this is what we were looking
4419 at (indicating), and there was no code. It couldn't have been the code that did it.

And it wasn't until the grand jury investigated the facts in this case that it was discovered that without any authority, without any color of authority, without any possible claim of authority, these people were carrying on these activities all through the year 1935 and into the year 1936. Not only that, but when you go beyond and trace its origin to see how it started, what do you find?

You find in the records of the Interior Department or in the minds of any of the Interior department personnel knowledge of what these people were doing? I tell you what you will find. It is this that I refer to, gentlemen, when I say to you that these gentlemen when they started this thing knew what the law was, and they knew what they were authorized to do; they knew what they could safely tell the government what they were doing as being lawful and as things that Mr. Arnott told the allocators committee on March 15, and you remember he said that was exactly what he told Fahy.

And here is what he said, Exhibit 69:

> "Therefore, the question in all this is: If this is all put to work there are going to be no agreements,—"

Now, you see he knew there musn't be agreements.

> "—there are going to be no contracts with regard to prices or other conditions—"

4420 That is what he told him.

> "—There is going to be no group buying. It is going to be a matter in the stabilization work of individual companies looking at what there is in the way of surplus gasoline, and a company will have an opportunity to buy from a refinery that has some of that surplus gasoline, whatever it might choose to buy. It is designed that if they should decide to buy they would do it not spasmodically, but regularly, and so as to bring about, after having heard the condition and the proposals of these refineries, an established, well organized, current, dependable product made and bought."

Why did Mr. Arnott tell the allocators that this was his plan? Because he knew that if there was any other plan—he knew if there was an agreement to work together with commitments, with quotas, with allocations, or shares, where each one was committed or obligated to take its share, he knew that the only way that he could work a program like that was to submit it for approval. Under the refinery amendment of the code, under this amendment (indicating).

Section 6 of Article IV of the Code:

> "In order that the provisions of this article may not operate in such manner as to discriminate against small refining enterprises and in order to assist in
> 4421 orderly liquidation of excessive gasoline inventories, the Planning and Coordination Committee may, with the approval of the President authorize suitable arrangements for the purchase of gasoline from non-integrated and/or semi-integrated refiners and the resale of same through orderly channels."

So, I say he was familiar with this. That was in the code. He knew if he was going to have a program that he had to get authority. Everybody knew it. I tell you why. Because the government had approved a program in the fall of 1934 and Mr. Ickes had suspended it because he thought that it was a program, even though it was approved by him, which was being operated in an illegal manner, and he suspended it.

That, gentlemen, is the history of what was really in Mr. Arnott's mind at the time that he started this program. Colonel Donovan, with great appeal, I thought, said to you this morning, he wanted you to place yourselves in the position those men were in at the time and tried to get you to think what you would do if you were in their positions. I submit the same question to you: What would you

do? If Secretary Ickes on November 14, 1934, had said, "no more buying programs. The present program that is going on is suspended. It is illegal." I think he would—
the record shows this—I will take that statement back.
4422 I said he said that there would be no more buying
programs and the record shows he said, "The present buying program is illegal and it is suspended."

And Mr. Arnott, you remember,—I asked him that—I said, "Didn't you know Mr. Ickes said that to the public press, Mr. Ickes said that that particular program was illegal?"

He said, "Yes, I knew," and, of course, he did. Everybody in the oil industry must have known about it. And so Mr. Arnott thought he could get approval for that kind of a program, the kind he wanted. He said he goes through the form of saying, as he did, at the allocators meeting that "We are not going to have a pool or program. We are not going to have quotas. We are not going to have allocations. But it is going to be a matter for each company individually to try to state what it wants, what it needs and how much it wants to buy, and there will be a committee available, so that any major company who needs gasoline, who wants it, can find out where it is."

If that is all they did, there would have been no violation of the law.

I want to contrast that with what they told themselves what they were doing. Don't forget, gentlemen, that the
conference with the government was on March 12 and
4423 the meeting of the allocators was on March 13 where
he shows he knows, and he has testified to it that these gentlemen who were there, of telling them what the law is. He knew what the law is.

But when these companies get together in this meeting of February 11 reported by Mr. Sus—gentlemen, thanks to the subpoena power of the court, we have got the document here—if not, we would have to depend on Mr. McDowell's testimony as to what took place at that meeting.

I say, thank heavens, we have a copy of it, and I am going to read it again, because it does show what was really in the minds of these people, what they were really trying to do.

He says: "A committee at a previous Stabilization Meeting had been appointed of which Mr. Bob McDowell was Chairman to consider ways and means of establishing and maintaining an active and strong tank car market on gasoline.

"This committee rendered a report to the effect

> that a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of Indiana territory."

That is what was stated in the argument of Mr. Brazeau that there was a program. He again referred to
4424 the small East Texas Association and said they were just selling gasoline to major companies.

There is a lot of testimony in the record where he referred to Arnott and Carnes—you remember what Arnott said in the telegram to these people. He said, "This plan must be finalized tomorrow."

This jury isn't going to believe this man didn't know of the plan of the East Texas Refiners. The scheme was to keep the East Texas gasoline off this market so as to enable this program in this market to work.

> (Reading) "A survey by the committee then indicated that the surplus gasoline, which would affect the Standard of Indiana territory only, amounted to 600 cars per month involving fifteen refining companies.
>
> "A report is attached which lists the refineries in the Mid-Continent Field who will have surplus gasoline. This report shows their capacity, their crude runs, their allocation, etc."

He meant at that time the allocation of production under the Code.

> "The program of the committee involves fourteen major companies, each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take * * *."

4425 Obligated to take, mind you! You remember Mr. Arnott's statement before the allocators' meeting? "No obligation. It would be a matter for each company to buy what it wanted."

> (Reading) "—each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take whatever surplus gasoline this small refining unit will have from time to time. In other words, a major company would select from among the fifteen small refineries some company whose surplus or distress gasoline it could advantageously move, and in that way by dividing up these fifteen companies and these estimated 600 cars per month of distress gasoline no great burden would fall upon any one."

Did Arnott speak of the fact at the allocators meeting, speak about the burden falling on any one? Did he say that "We are going to take so much and it won't burden us; we are going to be obligated to take a certain amount?"

> (Reading) "A steering committee would guide and control, periodically, the prices to be paid for this surplus gasoline by the major company to the small refinery."

And there you have them, the Jacobi price recommendations periodically, yes. Every time that price went up (indicating on chart)—

4426 "There was considerable discussion to the effect that this new program had more chance of success than any previous program because of the way the steering committee would function and the fact they would be buying on an ascending market, * * *."

They knew the market was going to go up!

> "—thereby keeping the market both active and strong, rather than buying on a descending market as previous buying movements had been and which previous movements had failed of any substantial success.
>
> "It was estimated that the absorption of these 600 cars per month by fourteen major refiners would only be equivalent to curtailing their own crude runs 2%. In other words, it was intended to point out that the absorption of this gasoline by the major would not seriously affect that major's own runs."

And that is the thing we have alleged in the indictment. That is the thing we point out, gentlemen, again and again, how little they had to buy, what a small investment they had to make in order to get that price up and to affect the price on all the gasoline they sold! Two per cent they had to buy, two per cent of the output in order to affect the price of the other ninety-eight per cent they were selling.

4427 "Each purchase of a car, from time to time, by these majors of this distress gasoline, would be recorded in the Journal of Commerce as an individual sale, and the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market."

The question was very important.

> "The meeting in question was attended by all major companies, including such companies as Globe, Skelly, Mid-Continent,—"

And all of them were there and you remember Mr.

Thomas saying that if there were a conspiracy they would all be in there.

> "* * * all of whom * * *"

Listen to this!

> "* * * all of whom indicated a willingness to select one of the companies shown on the attached statement and assume responsibility for their surplus."

There is your graph (indicating). Mr. Arnott said to the allocators three weeks later, "And assume responsibility for it."

> (Reading) "The writer had no knowledge and did not participate in this discussion. Mr. Dippel, however,—" who was his associate—you remember Mr. Sus and Mr. Dippel—"* * * because of his knowledge of some of the purchasing—"

4428 Both Sus and Dippel, you remember, representing Sinclair were at the meeting.

> "Mr. Dippel, however, because of his knowledge of some of the purchasing we were doing in the West, tentatively stated that we might consider taking the output of, say, the Wilcox plant. Mr. Dippel indicated he would report this matter to Mr. Carnes and handle to a conclusion as to our participation in this movement."

Mr. Dippel, had to get authority from the defendant, Mr. Carnes, before his company would agree to participate.

And, gentlemen, the evidence supplementing this shows they did even more. They had an advanced price recommendation. They divided up dancing partners at the March 5th meeting. But in addition to that, this steering committee working day in and day out, continually through this period not only took care of these independent refiners but watched every gallon of gasoline that might appear in that Mid-Continent area, and if they thought it might be sold at the low gas price that they were pegging, that they were maintaining, they would buy it. They not only bought distressed gasoline from the independent refiners who had gasoline they wanted to sell, but if they found it in the hands of a broker, if they found it anywhere, if it was interfering with that price which they were maintaining they bought it.

4429 Now, gentlemen, does that sound like an informal plan where major companies needed gasoline? "We knew they were going to need gasoline. We told them where they could buy in order to meet their needs." Jacobi, McDowell and Arnott. Does this sound like a plan, where any company who needed gasoline could find it and buy, or is it an air-tight agreement, just as cold and firm and fast as if it was written in longhand and sealed as an agreement? Every company said that they would buy it, and they did it, as the evidence shows, throughout this whole period.

And was that Sus memorandum ever shown to any government official? Did the Government ever know about it, until we got it, as I say, under subpoena from this Court, when we were before the Grand Jury?

And now, gentlemen, in the light of that, I want to discuss with you again the letter of April 2nd. You remember I said to you this morning, and I meant every word of it, that I have no quarrel with any word that Mr. Ickes ever uttered and that is in this record. I think none of it has anything to do with this. You take these documents to your jury room with you and read them, one by one, and you will find what Mr. Ickes was talking about was the ac-
tivities of the Stabilization Committee, about retail
4430 prices, which we knew about, and which he author-
ized, and he said they did good work. No indication in this record that Ickes knew about it. Certainly no indication that he ever approved this. This is what rigged the price. I say it rigged the price to a high, arbitrary and artificial level, and it was done by agreement. It was done without any authority under the Code.

Keep in mind the testimony of Dr. Frey. I ask you to bear in mind Dr. Frey's testimony, it was stated to Mr. Arnott, in the presence of all of them, at the May 8th meeting, that whatever he was doing, he was not doing under the letter of July 20th; he was not doing it under the Code; he was doing it on his own responsibility.

Mr. Fahy said to him, "Are you sure about the anti-trust laws?" And he said, "I looked into that." At the May 8th meeting again Mr. Fahy raised the question of the anti-trust laws. Mr. Arnott said, "I am doing it on my own responsibility." And all Mr. Fahy had any reason to believe was that they were doing the kind of thing that they talked about, as I referred to, in the Allocators' meeting; that each of them knew they were buying distress gasoline and the government knew that they were buying distress gasoline and the newspaper report showed to them
that the major companies were buying gasoline; and
4431 that was nothing new.

Witness after witness testified the majors always bought gasoline, and they bought it from independent refiners; and there is nothing wrong about that. They can buy all they want, so long as they don't do it pursuant to an agreement, and pursuant to an agreement to raise the price, where they take control of the price, and there is no government agency that can inquire to find out whether the price they charge is a fair price to the consumer.

Now, this letter of April 2nd, as I have said, refers to the moratorium in the City of Chicago. I told you before what a moratorium is. The moratorium was an agreement by these companies that they would not take over a customer,—a dealer customer, from another company. If you were an independent retail dealer in Chicago, during the period of this moratorium, if you had a contract with Shell, and you wanted to do business with the Standard of Indiana, the Standard of Indiana agreed, under this moratorium, not to do business with you. You had to stay with Shell.

And here is what the Secretary said about it. I don't want to read the letter again. He said, "If you have such
an agreement, I think it is illegal."
4432 If you are purporting to act under the authority
of my letter, you have to get authority. You have got to have specific approval, after we have had a chance to give consideration to all facts.

I say to you that if the Secretary thought that this moratorium for a temporary period of time in Chicago, might be illegal, what would the Secretary have thought if Mr. Arnott had come to him with the Sus memorandum, stating that they had an agreement here which covered the entire Mid-Continent and entire Standard of Indiana territory and this air-tight agreement, and we are going to buy every gallon of distress gasoline that appears there and we are going to raise that price, and we are going to keep that price at that plateau?

I know what Mr. Ickes would have said. He would have said, "Gentlemen," he would not have jumped up, but he would have said, "Well, I don't know whether this is good or bad. I would like you to submit your plan to me. We will hold hearings, and we will decide whether it will be approved." Perhaps he would have said, "I will submit it to the Attorney General."

They should have submitted the agreement to Mr. Ickes but they never did. They never told Mr. Ickes, so far as
this record shows, anything about any agreement
4433 among them to do this thing. But here is what Mr.
Ickes said without knowing anything about any agreement. He said to them, this. "I understand that the temporary character"—he is not talking about moratorium,

he is talking generally—"I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary."

That is an attempt to raise the price in a local area. That is not this kind of thing.

> "However, when the understandings arrived at a basis of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time," * * *

and that is what we have here—

> "affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies".

That is not where you have a definite agreement but where you have an agreement that we will do something if the others do it. You remember the testimony in this record about each doing their share. That is the kind
4434 of thing Mr. Ickes is referring to.

> "it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal. If any such agreements have been made I should like a report as to them. If they require—".

Did Mr. Arnott report that he had such an agreement here?

> "approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act."

Let me read that last paragraph.

"I appreciate greatly * * *" and this shows the high-minded, fair attitude of Mr. Ickes throughout this thing. He is not quarreling with Mr. Arnott. He thinks that Mr. Arnott has done something that he didn't have authority to do. Does he spank him? Does he write him a nasty letter? No; he writes him a decent, high-toned letter like this. He said, while telling him that he thinks he is doing something illegal, he said, "I appreciate greatly your cooperation with the Administration in taking on the difficult work of directing a program of stabilization and I know that you will understand that this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility." 4435

Mr. Ickes said, in order that I may discharge my duties as a public officer I must ask you to report to me any such agreements that you have, so that we may consider them under the provisions of the Act and decide whether they are lawful.

Did Mr. Arnott ever come in and say this is distress gasoline we are buying? I should have told you, I want to tell you now, we are doing this pursuant to an agreement. Not one word of it.

The May 8th meeting followed this. There was a discussion about it. Mr. Fahy raised the question of the antitrust laws. What did Mr. Arnott say? "You don't have to worry about that, I am doing that on my own responsibility."

That is all, I think, I have to say on the question of the part that the government played in this and the attempt of these defendants, after doing all of these things, doing them secretly, as I have shown you, to attempt to come before this jury and place the responsibility on the government, is an outrage and unfair, say, to those in the government who did cooperate with them, and did all the the things you have heard testified that were done by the government to help this industry during that time.

4436 Gentlemen, there is only one other thing I want to mention to you, and I am through. A detail I omitted to mention when I was passing. Mr. Brazeau told you that the Government proved that there were only two companies left who were participating in the East Texas buying program, that the others had been dismissed by the Government.

> Mr. Brazeau: I don't think you are stating that accurately. I said there were four left, and then I eliminated two of them because the Cities Service never bought anything, and the other one only bought fifty cars in the whole length of that program. That left two substantially.

Mr. Chaffetz: But the point I want to make is this,—I don't mind being corrected—there were some companies that were dismissed, at the conclusion of the government's case. You heard me when I stated to the Court the reasons why we were voluntarily dismissing those companies; not because they didn't participate; not because they were not as guilty as anybody else, but because they had been dissolved and didn't exist at the time that this case was brought.

The Tide Water Associated Oil Company was
4437 named in the indictment. Also the Tide Water Oil
Company. The Tide Water Associated Oil Company is the parent company of the Tide Water Oil Company,—was at that time. By the time we came to trial the Tide Water Oil Company had been dissolved or merged with the parent company. We couldn't show that the parent company had done this. The evidence showed it was the Tide Water Oil Company that did this. There was no Tide Water Oil Company left at the time we went to trial.

The law is peculiar in many ways. The law is that if a company merges it avoids the penalty of the law. If all the companies here had merged and passed out of existence we wouldn't have had any corporation to charge with the crime. Of course the individuals remained responsible; and so, although the Tide Water Oil Company is dissolved you do have the individual officers of that company who participated in this thing, whom the evidence shows participated, three of them, Edward L. Shea, Noel Robinson, and Warner. The evidence shows that they specifically participated in the thing on behalf of their company. The company was dismissed because it does not exist any more.

I mentioned Mr. Robinson. His counsel asked me to say
this to you, and I am glad to do it. I referred to
4438 his being present at the allocators' meetings. He
asked me to point out that he was at the allocators' meetings as an allocator. He was one of the allocators. From my standpoint, it doesn't make any difference why he was there. He was there. He heard what was going on. He knew the facts and he participated. I am glad to make that statement to you at the request of counsel.

Now, take the Cities Service Export Company. It also was merged with another.

Mr. Webster: Mr. Warner was connected with the company, worked with the company that was never indicted.

Mr. Chaffetz: I will tell you what the evidence was on that. Mr. Warner was connected with the Tide Water Oil Company of Oklahoma. That company was not indicted, but the evidence in this case shows that he made the purchases in East Texas with which he is charged here on behalf of the company that was dissolved, acting under the specific direction of Mr. Shea and Mr. Robinson, who were the chief executive officers of that company, and he is charged in this indictment with participating in the interests of that company that was dissolved.

So far as the Cities Service Export Company is concerned, you remember that was the company that went
4439 into the East Texas at the beginning of this program,
and bought up all the surplus gasoline that was available there.

And, gentlemen, I call this to your attention. You heard all of this talk of how low the prices were at that time and how these people wanted to pay the independent refiners a fair price. When this company went in and cleaned up the situation so the program could start to work, it didn't even pay the low price that was prevailing at that time, it paid a lower price. And that is the explanation for all those dots below the low, that the Cities Service Export Company purchased when the program began. They were so good-hearted to these independent refiners when they were buying gasoline from them, and they found the price too low, they bought it at a lower price.

Cities Service Export Company was merged with another Cities Service Company, and under the law we can't hold them here. They were none the less co-conspirators during the entire period they were in existence.

Buckley was their employee and Buckley was acting on the specific authority and direction of the defendant Brandli, as the evidence shows.

4440 Louisiana Oil Refining Company. Another company that was dissolved. There was no such company at the time we went to trial, the evidence shows; so at the end of our case we dismissed as to them. In fact the evidence itself showed that they were implicated and they were just as much parties to this thing as the others were. They just can't be held guilty now, because they don't exist.

Also the Gulf Companies. You remember they were not dismissed by the government. We thought we had made out a case against them. The Court differed with us. The Court didn't think that as to the Gulf there was enough evidence to hold them at the time we closed our case. You remember the Judge dismissed as to the Gulf.

But now, gentlemen, Mr. Arnott has been on the stand. You heard what I asked him about Mr. Hartmann and his participation in this thing, and it turns out now, the evidence that the Judge didn't have at his disposal when he considered whether there was enough evidence against all of these companies to go to the jury, and when he thought there was not enough as to Gulf, now it turns out that Gulf was really one of the most active participants in the East Texas buying program.

4441 I mention this to you because, in considering this question of power, Mr. Brazeau told you that there were only two companies buying down there. I say you have to consider all the companies that actually participated, irrespective of whether they themselves are before you on the question of their guilt or innocence.

And the same is true of the Deep Rock Company. That company was dismissed for technical reasons, which did not concern whether or not the Deep Rock Company was a party to this conspiracy. And you heard Mr. Arnott again state on the stand that Mr. Majewski, an officer of that company, and who is a defendant but not on trial, told him that the Deep Rock Company was participating in the Mid-Continent buying program.

I say you have got to consider, if there is any question about it, all the companies that actually did participate, that you find from the evidence did participate, whether or not defendants here—consider them in conjunction with the defendants and with all the independent refiners that I referred to, and decide whether all those companies, all together, had the power to raise this price.

I thank you.

4442 Thereafter, on January 21, 1938, the Court made and entered an Order granting the Motion for a Directed Verdict at the close of all the evidence of the defendant Fred L. Koopman.

(Said Order is printed at page 2478 of the Record.)

Mr. Thomas: One moment, your Honor. (Mr. Thomas spoke to the Court out of the hearing of the reporter.)

Thereafter, on January 21, 1938, Mr. W. P. Crawford, Special Assistant to the Attorney General, on behalf of the plaintiff, the United States, made the final closing argument to the jury. Such argument is as follows:

4443

ARGUMENT.

By Mr. Crawford.

Mr. Crawford: May it please the Court, and gentlemen of the jury.

I suppose that there is a saturation point in almost everything, and if there is in a lawsuit we certainly have reached or passed the point at this time.

It is difficult to talk to the jury in this atmosphere. For a long time it has been charged to a very high degree, it seems to me unnecessarily so, with a tension which has affected us all; and I am sure it has affected you as much or more than it has any of us.

We of course must remember that the audience consists largely in defendants and officers and important officials of these corporations and their friends. Perhaps you have noticed that as we have gone along. We have heard a chuckle now and then, and an "Ah," and an "Oh" and an "Oh" every now and then, and that I think is what is the matter with me in trying to talk to you in the presence of this audience. But I wish you would forget all about that.

I am not going to talk to you long; you would not want me to. For very good reasons, unimportant to you, I could not.

I am not going to wish you a "Happy New Year." Probably it would be more appropriate to wish you a
4444 Happy Birthday which you all have once a year.

But I do want to congratulate you, gentlemen of the jury, on having survived as well as you have the terrific ordeal to which you have been subjected here.

And I want to congratulate the Marshal, Jack Comeford, who has so well and so carefully looked after you in the circumstances in which you have been placed, by the good judgment and decisions of the Court about which no lawyer has had anything to do; and Jack Comeford's able and popular assistant, Charlie Steele, whom probably you have seen a lot of. You have gone through this so far, and you have finished apparently in good health and apparently in good spirits although you do not show very much in your faces, which has been the subject of discussion and wonder among a lot of the lawyers.

I am sure you would not think well of me if I should now undertake to carry you through a series of figures, computations, charts, maps, and so forth. All that you are ever going to know about that, except what you might work out in your own jury room, you know now, and you are not going to get very much of it from me.

The most I am going to try to do is here and there touch upon a few of the high spots of the case.

4445 We have all been unusually favored here in the personnel and the personality of the Judge who has presided here in this very difficult case, a most difficult situation for any Judge to be placed in.

I do not take much to this idea of having something good to say about a fellow and waiting until he is dead to say it—"Say It With Flowers".

I want to compliment the Judge publicly personally for the way in which he has handled the trial of this case. He is imbued with just one idea, and that is to administer the law, and consideration only for the justice of the case. He altogether, as it seems to me, has so conducted himself in the trial of this case as to be entitled to the declaration that he very signally typifies the ideal Judge.

I am just going to chat with you,—I am not going to make any argument—if you will let me do it; and take it easy.

Now, we do not think, I do not think, none of us think on the part of the government that all these defendants are gangsters, cut-throats, or anything of that kind. We do not think that. They are just about the average run-of-mine people placed in the positions in which they have been placed and occupied for some time.

4446 I was very glad that Colonel Donovan in the highly dramatic way in which he did it introduced us to all of them yesterday. Some of them I did not know at all, most of them I did not know at all, had never seen except as they were around the courtroom here. When they stood up and answered to the roll call, as they probably did back in 1935 when they began to form this conspiracy to violate the law, and I kind of glanced them over, I did not quite agree with my friend John who said to you before that that they were very good looking, very handsome men and very well dressed. I do not think any of them buy their clothes from Sears-Roebuck. Neither do I. So I think they are just the average ordinary class of people.

Two of them we saw closely and had some close contact with upon the witness stand here, Bob McDowell and Mr. Arnott.

A few more of them I have met; and, gentlemen of the jury, those people when you get to know them, know even a little about them, why, they are a very nice kind of people; you like them. They have charm and personality; they are smart, careful, and they are generous.

I know Mr. Brandli very well. I want him to stand up and take a bow. (Mr. Brandli stood up).

I really think he is the only one of the defendants that I met and chatted with a good deal and got to know
4447 very well, and and got to like him of course.

Now, we do not think these defendants' lawyers are a bad lot either.

4448 You know, the profession of the law is a little different than most any other of the professions. We get up here and battle with each other, and you would think, looking on, that there must be bitter hatred in our hearts, and a willingness to do each other harm. There isn't anything of that kind about it at all. Each fellow is here, trying to do the very best that he can for the cause that he represents.

And I got to meet quite a few of the lawyers on the defense—not all of them; I don't know all of them yet; I only know a few of them. You see, we were out in that hall for a long, long time, and you didn't know anything about it, because you were upstairs, or some place like that. And we smoked a lot of cigarettes; we naturally chat and talk with people, and get to know them pretty well. And during the hot spell in November, I think it was, at a good many of the drinking fountains downtown, I got to know some of the lawyers pretty well. I like them all. Charley Francis, Fred Wood—I don't see Fred here this morning—

Mr. Thomas: Yes, he is here.

Mr. Crawford: And Charley Gateley, sitting immediately next to Colonel Donovan, with the face of a cherub—
and, of course, McInerney, who looks like
4449 Mayor Kelly of Chicago, and I understand when the
Mayor is busy, that Mac does a lot of his work. So
I got to know some of these men pretty well. I got to know Colonel Donovan, not very well. He didn't seem to be where I met the others—I think he would have liked to have been there.

Well, let's see if there are any more. You don't mind if I take a little time, do you? (Looking around the court room). Well, now, there is Mr. Stanford over there (indicating). He is really a very wonderful person, a very wonderful lawyer, a nice fellow—you would like to know him.

Something has been said about how good looking a lot of these people are. The Colonel, of course, is in a class all by himself, so far as that is concerned. I think he takes the best picture for the newspapers of anybody that I ever knew, and the last one seems to be better than the others. But alongside of Stanford, why, I will take Stanford every time. Would you stand up, Mr. Stanford?

(Mr. Stanford rose).

He is one of the very capable and very high-salaried lawyers for Sinclair.

4450 Now, that is about the kind of an atmosphere that
there is. Well, I just haven't got enough bouquets to go around this morning. There are a lot more that I would like to pay a little attention to.

And I want to tell you something about our little crowd here. A good deal has been said about them. John Lewin, Hammond Chaffetz; Watson Snyder, the golden-haired gentleman sitting over here (indicating), who knows more about the oil business and more about the business of these big oil companies than they do themselves. He is just a storehouse of knowledge and information of the oil business. And he has been in that kind of work for a long, long time; and the Anti-Trust Division of the Department of Justice, I don't think, could get along without him very well. And then young Grant Kelleher, this boy here (indicating); twenty-six years old, just a marvel, that is all, he is just a marvel, that man. If there is any law in any of the books and you would like to get it, all you have got to do is to tell Grant about it, and he comes back with the law. And that boy is going places, I think. Then we have Nelson Scharfman here (indicating), who is in a class all by himself in the kind of work that he does.

4451 Then, of course, we haven't had the services of John Boyle and Harold Hanson as much as we would like to, and as much as they would like to have given them to us; but you know the Western District of Wisconsin is a big district, and there is a lot of business here, and business must go on just the same; so they have had a lot of work to do of their own.

And I will tell you something about a couple of other fellows too. You see that good-looking baldheaded man in the light suit back there (indicating)—Glen Paulson. He is with the Federal Bureau of Investigation; he works under J. Edgar Hoover in the Accounting Division. He is an associate of Bill Miller, this young man who has been upon the stand, you remember, and who was so frank and so honest that he just won the hearts of all of us, I think.

And that is about what we have had to work with here, besides myself. Some times I felt that I was a load to carry, rather than a help.

The work and the strain, as you probably know, of preparing this case to present to you, and of presenting it to you after it was prepared, has been something tremendous. These boys and myself have come in here morning after morning, eyes heavy for want of sleep, 4452 brains fagged almost; working through the long hours of the nights; and being without the comfort and the consolation which the defendants' lawyers received from the people personally present, for whom they were working.

When you are working for the Government of the United

States, or when you are working for the State of Wisconsin, they are a long, long way away from you. There isn't anybody to come along and pat you on the back and say, "You did a good job there. Boy, you did well." We haven't had any of that. We have just had to go along. And I think that no private person, no private corporation has ever received for the money it paid what the Government of the United States has received here for the money that it has paid, in the staff who has presented this case to you. And I mustn't forget the four girls that are here, tapping away on these typewriters at all hours of the day and night, something nearly every day. You never heard about them, but they were helping us, too.

It is very difficult for me, it has been, to sit silently by and hear some of the remarks that were leveled at my colleagues here, especially Mr. Lewin and Mr. Chaffetz,
4453 who have been so close to me for all these months,
knowing them as I do, and knowing the job that they were trying to perform well. The strong, stalwart, learned, agreeable personality of John Lewin has throughout this case been one of the most gratifying things that I have known. Hammond Chaffetz, you have seen him here. You have never seen his like before, and you will never see it again. When those black eyes sparkle with fire, it seems something—and they sparkle most of the time.

Now, if anybody doubts, if anybody has the least shadow of a doubt about the fact that these men believe to the bottom of their hearts in the justice of the cause that they espouse here, I can disabuse their minds of that doubt at any time. They have been aggressive, and they have been forceful; their movements here have been intelligent, well-timed; and, as I said, they have come into this court room morning after morning, worn and tired almost to the breaking point. And it seemed to me that, I some times got the feeling, coming as they did then before you to present this evidence and this case, they were something like the Crusaders of old, saying, "God wills it, God wills it."

I worked with them as well as I could, coming into the case so late as I did, and then working under a
4454 terrible handicap, a personal one with which you are
not concerned at all.

That brings me to chat with you a little bit about what was so carelessly said, I think, by Mr. Brazeau, that we did things to poison the mind of the jury. Now let us stop and analyze that for just a minute.

You don't think any of these boys—I call them boys—would have any such a thought as that in their minds, do

you? Because they are fully conscious of the position that they occupy here, that their duty is not only to prosecute this case with the vigor and the courage and the fearlessness and the honesty which it demands so as to bring the guilty to justice and release the innocent, but it has been also the consideration of the defendants as well. Now, you don't think there is any of these men that would deliberately put anything into the case hurtful, with the thought in mind that this would poison the minds of the jury or prejudice them against these defendants. And I hope you don't think that I would do that. I have been trying lawsuits too long for that—before juries for so many years that it seems ages. And you don't
4455 think now, do you, having arrived where I am, that
I would so far forget what the profession of the law requires, which I love, as to deliberately try to prejudice you against any of these defendants? I think that remark of Mr. Brazeau's was rather a careless one.

But in the trial of a lawsuit, you find that there are many remarks of that kind made by people on all sides of the case. You say things that, the minute you say them, you are sorry you did; and you have left unsaid things that you are sorry that you didn't say. It is always bound to be so. It is a quick, snappy-triggered business when you are trying to get testimony, especially out of witnesses who are hostile and opposed, and all of whose interests are against you. We have that, of course, to contend with.

Well, I think I don't need to say anything more to you, and maybe I didn't need to say what I did, but you will absolve us from any intentional purpose to prejudice your minds against anybody here.

4456 Where something wants to be denounced and condemned and criticized and torn to pieces as it was done here, we have done as well as we could. We have done it like lawyers and like gentlemen, and for that we have no apology and nobody has asked us to make one.

It has been a rather difficult and trying trial for me because it has been unusual in so many of its respects, because of the entire lack of opportunity to relax. There weren't any jokes. There wasn't much laughter. That is entirely contrary to my style. We did start out very well, trying to be free about that, but in the very early stages of the case some one of the defense lawyers called attention to the fact that they thought there was a little too much levity on the part of counsel for the government, and so there wasn't very much more of that.

Well, now, that really doesn't mean that the government counsel aren't serious, just because once in a while they see something funny and give expression to it. Remember Bill Dougherty, who was here, and got away from us, I am sorry to say? Well, he and I used to try lawsuits against each other when he was government counsel. We battled each other day after day. He would
4457 have me down one day and about to gouge my eyes out, and the next day I would get him down, and so we ran along, but whenever there was anything funny about the case, anything humorous, Bill grabbed it and ate it up, and so did I. We came through all that turmoil and strife being very good friends, as good as we were before.

And so I don't think it is necessary that you change yourselves constitutionally or emotionally to take part in the trial of a case, either as jurors or as lawyers.

Well, I hope, gentlemen of the jury, that when you came in here and took your place in this jury box to do your duty under the law that you didn't leave your emotions and your human feelings checked at the door as you came in; that you are just the same fellows now as you were in the beginning.

That reminds me—I am not going to try to tell a story, because there aren't any new ones. These radio fellows have just got them all, except the kind that you just don't tell, and you don't get them on the radio. So there is no use. I haven't any new story. I did the other day. I got some from Mr. McInerney. But I have forgotten
4458 them now. I have been so busy. He is a grand storyteller, that fellow, and a great lawyer.

Well, I want to talk a little more about one of these defendants. I got to know him a little and like him very much. I heard him on the witness stand. He spun a yarn that would do credit to the man who wrote Twenty Thousand Leagues Under the Sea. But he was a nice follow,—and that is Bob McDowell. Of the whole crowd I think he is the best looking and the most handsome of the whole crowd of these defendants. Will you stand up, Bob? (Whereupon the defendant, McDowell, arose to his feet.)

Well, I am not going to clown around here all morning. Don't think I am going to do that. I intend to deliver a few socks here and there, and when I sock them, boy, they stay socked. There won't be many of them.

But before I get to doing that I would like to say something more to you about taking things so seriously. Sometimes we do,—just over-do it. You can't do good work when you do that. We found that out in the preparation of the trial of the case. Get yourself worked up to such a pitch you don't do the work well. And it is perfectly human for men to give way now and then to a little laughter.

4459 I was thinking last night when I came home to prepare some notes to talk to you from, at two o'clock this morning, a whole flock of them,—I looked over a few of them, but I tore the whole business up and threw them in the waste-basket. There isn't any starting or stopping place in this kind of lawsuit.

You remember McGuffey's Third Reader, or aren't any of you old enough for that? We used to have it and we used to read it in the old schools, thirty or forty of us in one room, you know; and the water pail, and a great big dipper in the corner. You remember. And the big broom to sweep out once in a while, and the big box stove that held chunks of wood that long (indicating) and the children would be sent out by the teacher to bring in an armful of wood, once in a while. Those were great days. They are no more. And in McGuffey's Third Reader I learned this very touching little thing about Abraham Lincoln. The old library was almost full of literature of the life and anecdotes of Abraham Lincoln. I think
4460 you have learned a little about him, too. During the War—he was a great story-teller, by the way. I think you have all heard that. One of the greatest of his time. During the War it seemed that the issue was extremely doubtful whether this country should be a country of slave owners or not. Men were being slaughtered. One day he was asked to see an old lady and her daughter. He was very much crowded for time, he didn't have a lot of time, but did see her. He was told the story about the son of the old lady and the brother of the little girl who was to appear before a firing squad for having gone to sleep at his post. Some of you may remember that. The President listened to the story; had some confirmation of it, and wrote a pardon and handed it to that mother to take the officer in charge. Very soon after that a cabinet meeting was held. And as you remember, too, probably, from history, the members of President Lincoln's cabinet were not all sympathetic with him. There was very strong opposition there.

The President came into the cabinet meeting and he
4461 started in by telling some very funny jokes. Pretty soon his attention was called by one of his cabinet members to the fact—what he thought was a fact, that,

"Mr. President, this is no time to be humorous." And the composure and the stolidity, and the heart of that great man was almost broken, and he cried out, "My God, gentlemen, my God, if I couldn't laugh once in a while I could not survive another day."

So you will find that pretty much to be so as you go along through life. I said I am going to talk to you in general terms.

You have heard a good deal here about the injustice,—I think that was the word that was used,—of the government of the United States, or those who represent it here, in bringing these defendants to trial. I would like to talk about that term, "What they were doing" after while,—what they were doing being what the government wanted them to do, especially the Department of the Interior.

Now, just between yourselves, do you honestly think that these boys here (indicating counsel at government table) fired with the enthusiasm of crusaders, as I say, and 4462 having given to this case every ounce of mental and physical strength they have, and I myself have contributed, also, would be trying to convict these men unless that was the wish and the desire of the highest officials in the government of the United States?

Mr. Brazeau: May it please the Court; I want to take an exception to the remarks of counsel on that as highly prejudicial and improper.

Mr. Crawford: I don't think it is, if the Court please. That was referred to many times in the trial of this case.

Mr. Brazeau: He is referring to the wishes of the highest officers of the United States. The highest officers who are available to them to come here and testify. I want an exception to those remarks.

The Court: I don't see that there is anything objectionable—there is nothing objectionable in those remarks.

Mr. Brazeau: I would like an exception.

Mr. Crawford: I don't expect to get away here without being called a few times. I am going to try to do what I am going to do here without any justification for being called. 4463

Now, just what do you think about it? Do you think these are three or four or five of these young fellows, as they have been calling them, just starting out on their own, running hog-wild? These are important men. I presume you all know they are engaged in a very important business, a business, the operation of which is almost a necessity in this country today. You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done? And if he wanted it done it was because he believed, as did the other men in Washington, that there was a violation of law here, so outstanding and so withering and far-reaching in its effect that something ought to be done to stop it; and by that to tell the people of this country that you can't do these things and get away with it.

Mr. Brazeau: May it please the Court, we can't sit here and let those kind of remarks to be made to the jury, and have this prosecution backed up by 4464 what counsel is representing to be the opinion of somebody in a higher place, without a syllable of evidence to support it.

Mr. Crawford: I am satisfied you should make an objection, but I am not satisfied to have you break in on the argument.

Mr. Brazeau: I am giving my reasons for objecting, and I ask the court to instruct the jury to disregard those remarks of counsel.

The Court: What remarks?

Mr. Brazeau: The remarks that the prosecution is backed up by the opinion of someone that it should be brought, somebody outside of the—

The Court: I suppose we have a right to assume that they are here under the instructions of the Attorney General of the United States.

Mr. Dorr: Not of the Secretary of the Interior; that is not proper.

The Court: Just a minute. These men are here as government employees, sent here undoubtedly by the Attorney General.

Mr. Crawford: In addition to that, if the Court please—

Mr. Thomas: My objection is this: that counsel is making a statement to the jury that is not sup- 4465 ported by the testimony, to the affect that the Secretary of the Interior, as he spoke, is sanctioning this proceeding. Now, that is not in this case. For that reason I object to it, and I ask the court to instruct the jury to disregard it.

Mr. Crawford: Nobody claims that anybody testified, in so many words, to that, but it is a proper inference to be drawn and a proper argument to be made, where it is claimed here by all the defendants' counsel who spoke that what was done here that is now charged to be a violation of law, was done with the consent and approval of the Secretary of the Interior. And I am saying now to the jury that it wasn't so done, the very situation that we are in was a proper one for consideration.

Mr. Thomas: I take further exception to the statement that counsel just made.

The Court: Objection overruled.

Mr. Thomas: I would like an exception, Your Honor.

The Court: You may have an exception.

Mr. Crawford: One of the very things that Mr. Thomas has been doing here from the start to the finish, except the delivery of his oration, from this pulpit, has been to
4466 stride up here once in a while and ask the Court to instruct the jury to disregard the remarks made by my associates and myself.

Now, let's go on from there. The conspiracy to fix prices of a commodity is condemned by the Sherman Anti-Trust Law. Those who engaged in the conspiracy are declared by the law itself to be guilty of a misdemeanor. At some time or another somebody in Washington found a situation, either by complaints of individuals, or groups of individuals, which it seemed to the Department of Justice, which was charged with the obligation of enforcing the law, required some investigation of a part of this group of defendants, individual and corporate, as to what they were doing with reference to the price of gasoline.

The conspiracy began, as you have been told here over and over again, as early as March of 1935. Some of defendants' counsel have placed the circumstances earlier. Some time during the trial of this case it was said by somebody for the defense that the government acquiesced, consented, in other words, to the carrying out of the program,
4467 we say is declared illegal by the law.

Now, the government didn't wait very long. You know it is 1938 now. They didn't wait very long. Silent acquiescence and consent can't be spelled out of that period of waiting. Because we find that in May of 1936, down here in the city of Madison, there was brought before a Grand Jury a large number of witnesses and tons of documents, for the purpose of giving the Grand Jury an opportunity to determine whether an indictment should be returned and these men brought to trial. That was not a very long period of time to wait.

I told you the very first time I stood before you here, that the road from the time that the complaint was made and the Department of Justice began its investigation, down to the time of this trial, was a long really crooked trail, and that had to be followed by the Department of Justice which is headed by J. Edgar Hoover; and you can get some idea from what you have seen and heard here, of the length of time that would be necessary to find out, and the way it was necessary to find out for a legal prosecution, just exactly, or nearly exactly what it was
4468 that these men were trying to do.

So when you get to March, 1935, until May, 1936, when this Grand Jury sat here, and allow something for the time necessary by the Federal Bureau of Investigation, under the guidance of the Department of Justice, you really would be amazed at how rapidly the government moved.

But, so far as acquiescence and consent on the part of the government is concerned, to these men doing what they did, there is absolutely nothing in this case.

Colonel Donovan, when he first appeared before you, shortly after Mr. Chaffetz and myself did, stood there and read from a manuscript, many, many, many pages; and he told you that he did that because he wanted to be accurate. At the close of the case, in the last argument upon the part of the defense he came before you here, somewhere around where I am, and he talked to you about this case, without a single note. He evidently had changed his plan from the one he had in the beginning, of wanting to be accurate to one where he was not so much concerned about it;
4469 and his argument showed that to be true, because his inaccuracies in what he said to you with respect to the evidence in this case and with respect to the facts in the case, and many of the facts outside of the case, were so many and so glaring and so obvious, that Mr. Chaffetz felt obliged to take some time out from the program of argument he had prepared in which to answer him.

I told you in the beginning, in a rambling kind of way, we were all under terrific pressure at that time, I believe—it seemed to me a rambling kind of a way—what this case was about, and what the Government intended to prove. Really, honestly, I was afraid to read it afterwards, I thought it would be so bad, and I had missed the mark so many times. And as they say on the street, boy, was I glad to hear Mr. Thomas read that the other day. It was just full of music. It actually sounded like a prophesy, because we seem to have followed it sentence after sentence, and line after line, and word after word.

I think not very much criticism can be leveled at the statement of Mr. Chaffetz, because he is so careful and he 4470 doesn't ramble, and he doesn't take many chances.

Whenever that boy's attention was called by any of the defendants' lawyers to some inaccuracy about what he said, you heard him stand up frankly and freely and say, "I think you are right" and that is the kind of a lawyer he is.

Well, if I am going to do anything more but just go along like this,—I don't know whether you like it or not.

Another funny thing about these juries, you just are kind of ham-strung. You can't do anything about it. You just got to sit there and take it. That is pretty difficult. Just like we do, over here, when the lawyers on the other side are pounding away and pounding away, you want to get up and do something or run away. You have to sit there and take it. So, with them, they have to sit there and take this.

You probably haven't been reading the newspapers. I heard you weren't. I am not going to try to bring you down to date. But a lot of things have happened since. I 4471 don't know whether you last knew of it when the newspaper was taken away from you,—for instance, Ireland is now a free and independent Republic, and all of those centuries and centuries of prosecution by the English Government brings them to that end.

I hope that they have saved at home for you some of the files of these newspaper reports of this case. They will be interesting for you to read. You will learn there a lot that you learned here and some that you didn't.

I want to say what I forgot to say at the beginning,—I had so many bouquets to throw around,—I had some for the press. There is a crowd of fellows sitting over there (indicating the press section) really very grand boys, all of them. I met a few of them down at the drinking fountain during the hot spell, and they are regular fellows; and they have done a marvelous job here in reporting this case.

Colonel Donovan said it was a case in which the whole nation is interested. I agree with him on that. And I don't want to make your task any more difficult than 4472 it is going to be anyhow. Henry Lewin and Hammond Chaffetz said to you anyhow this is a simple case. It wouldn't be any more difficult for you to solve than if the Government had charged somebody with assault and battery.

Its far, far-reaching effects upon this country, the formation and the prosecution of its policy and the enforcement of the law, is going to be one of the very important things that is going to grow out of your verdict here.

4473 The law—of course, I might say, as I started to say when I spoke about the newspapers, that governments, empires, dynasties have been shattered and broken to the ground—and this country of ours, gentlemen of the jury, is now being shaken to its very foundations by the kind of thing that is alike to what is represented in this lawsuit. Whether we survive or perish is going to depend very largely upon whether or not, in the language, I think, of one of the greatest statesmen that ever lived, "Malefactors of great wealth"—

Mr. Thomas: Now, if the Court please—

Mr. Crawford: (Continuing) —people with great power—

Mr. Thomas: I except to the statement of counsel, for the reason that it is improper and prejudicial. I ask the Court to rebuke the counsel, and I ask the Court to instruct the jury to disregard it. This case is not to be decided upon the principles of malefactors of great wealth—

Mr. Crawford: I don't ask it to be. The Court, I think, cautioned the jury right at the beginning of the trial of this case against being influenced by such statements.

4474 The Court: Yes, and I shall later in my instructions.

Mr. Thomas: And may I have an exception?

The Court: Yes, you may have. I will cover that matter in my instructions.

Mr. Crawford: When combinations or corporations having the financial and the money power that these corporations have here, go out and take the law into their own hands and operate their business regardless of the desire of the Government, and without any consideration for the under-dog or the poor man, then we can do one thing or another. We are going to stop it, as our forefathers stopped it before us and left this country with us as it is now, or we are going down into ruin as did the Roman Empire—

Mr. Thomas: I object to the statement just made by counsel,—

Mr. Crawford: I don't know why you should object to that.

Mr. Thomas: (Continuing) —for the reason that it is prejudicial; it is not legitimate argument, and I ask the Court to rebuke counsel and instruct the jury to disregard it.

The Court: Objection overruled. Proceed with
4475 your argument.

Mr. Thomas: I wish an exception.

The Court: You may have an exception.

Mr. Crawford: Now, that is one reason why, as Colonel Donovan well said, that the eyes of the people of this nation are upon you today. And the eyes of the people in Washington who are administering the affairs of this Government are on you today, too.

I don't say that to make your task more difficult than it is. Your duty is just the same as though the case were perfectly simple, and as though there were only two or three people involved. If the defendants violated this law, if they did, you will say so, and that they are guilty; that is all you have got to do. If they didn't, it is for you to say that they are not, and that is all you have got to do about that.

But if you should say they are not guilty—I am going to be perfectly frank with you, just like I would if I was talking to you out on a street corner. If you are going to say they are not guilty on this evidence, which is so overwhelming and overpowering that it doesn't even leave the trace or the shadow of a doubt—if you are going to
say they are not guilty on this evidence, then you take
4476 the responsibility I won't; you get an alibi; I won't.

I am very frank and very bold in talking to you like that, am I not? I am that way, because I think that is the right way to look at it. Do you want to say that the vast sum of money that has been spent by the Government here—and not in payment of lawyers, either—running into hundreds of thousands of dollars, in trying to get before you the facts in this case, should be thrown to the winds and these men should go clear, and the world and the nation should be told that these combinations of capital can go out and take the law into their own hands, and they can rig any market they please? If you do—why, all right. I will get along. If you can afford to pay thirty cents or forty cents or fifty cents a gallon for gasoline, why, I will get a little once in a while, too.

Now, let's not fool ourselves about what this case is about. The viciousness, gentlemen of the jury, the viciousness and the horror and the potential possibilities of destruction in what these defendants did is that of taking over the power, the power and the right and the might to

rig and fix a market of gasoline. Now, that is the thing
that the law condemns. That is the thing that the Govern-
ment is prosecuting them for here. That is the thing
4477 that we have spent all these weary months—it seems
like to me, days, weeks, and months, these men and
myself, in trying to get evidence before you about.

I, as you see, just kind of amble along in talking to you here—I have no notes to go by, even—I had some last night. And I don't want to forget one very good friend of mine, that I never saw before this trial began, but that I probably will see again—I hope so. That is the lawyer for the Standard Oil Company of Indiana, Weymouth Kirkland. I got to know him very well—oh, no, that is all right, Kirk. He is really a grand—in the words of the man on the street, he is a grand guy. And you would think the same, if you knew the rest of these fellows as well as I know some of them, they are just grand fellows.

But, gentlemen of the jury, those are the kind of fellows I expected to see here. I didn't expect to see the Standard Oil Company of Indiana or Socony-Vacuum or Cities Service or the Shell Corporation coming in here, going to be represented by any under-rated lawyers. I expect to see the tops here—and I have seen them.

And I didn't expect that the officials of these corpora-
tions were going to look like truck drivers in here, or
4478 that they were going to act like it. I expected them
to be just the kind of men that they are: Able, smart,
intelligent, affable, likeable—all the qualities, really, that
you and I admire in men, and that it is necessary for them
to have to do the kind of work that they are doing.

Now, let's see if I have forgotten somebody else—I don't want to do that. That doesn't mean that I am through—I want to have them all here.

Now, let us go back and look at the situation as it existed in 1935, just before the formation of this conspiracy. Unless the Government is misinformed, unless its investigation has failed to go deep enough, before 1935 we had a fairly open, competitive, regular, hand to hand market for gasoline.

Now, these fellows, what they really did was to see an opportunity to go out and make a killing, and clean up. We had all gone through 1929, '28, and lost plenty of money. But they are not the only fellows that lost money in '28 and '29. You and I did, so did everybody else. And we didn't think that because of that we had a license to go out and take it away from somebody else to make up our loss, did we? We just took it on the chin.

But these fellows saw an opportunity in 1935 to go
4479 out and make a killing, and clean up. And that market was in the condition it was in, so that on the push of a button by the master mind Arnott, that the market would begin to move up and up and up. And that is what he did.

You heard the story, and heard it talked about, and you listened to it and know it well, I am sure. How, down there along in early 1935, Bob McDowell and Walter Paul Jacobi and O. J. Tuttle and a few others got together—I am coming now, I am passing by the meeting in St. Louis and the meeting in Kansas City. They had all been held, and these men were pretty generally agreed on what was going to be done. And these three men had imposed upon them the obligation of doing their part in running that market up. And so they got together. And they went so far as to decide on the prices that were to be paid for the gasoline by the jobbers in this Indiana territory, including the City of Madison, which affected the price to be paid by the dealer, and affected the price that you and I had to pay.

Now, right there, I contend—and without covering all
of the evidence—right there, I contend there was a
4480 taking of the law right into their own hands. And
that activity was directed by Mr. Arnott, who had occupied a position under the favor, under the favor of the Secretary of the Interior, imposing confidence in him; that was directed by him, who was on the Administration Board of the P. and C. Committee, I think.

But you will remember—and this is really important—now, I am only touching upon the high spots in this case, and I am sure that is all you want me to do, but I am not going to touch them all. You will remember that the program, the plan, the scheme, the conspiracy was well worked out, when Mr. Arnott said,

> "Wait a minute, wait a minute, wait a minute, now. The Connally Act, you know, which shut out hot oil, has been killed by the Supreme Court; but there is another bill in Congress which I think is going to be passed, that will shut out this hot oil. And there won't be but very little for us to buy. And I will let you know when to go."

And so the Connally Bill was passed, and became a law on the 22nd of February, 1935. And this conspiracy and its progress began at that time. And somebody, some of them began the ascent of these golden stairs we have talked

so much about. The market went up one-eighth of
4481 a cent at a time, and finally got to the point in June,
1935, where it was as high as they thought they dared to go, that is all. It was just so high that they were afraid that somebody in the Department of Justice might be asked to look into it—which they were. And they held it there, rigid and firm, for the balance of that year and on into 1936, and then sent it up a little more.

Now, what do you think of that? Is that a combination, is that a conspiracy, is that a violation of the anti-trust law?

Listen to what his Honor, the Court, is going to tell you the law is in a case of this kind. That is going to be important. He is going to tell you what the law is, and he is going to tell you the law as it is, too, because he looks neither to the right nor the left; he looks straight ahead. I don't know what he is going to charge you, but I have an idea,—whatever became of that little volume I brought in here this morning? (Examining files.)

All right. He is going to tell you first, I think, or early in his charge, what the anti-trust law is. He may read it to you from the statute. And he is going to tell you, contrary to what counsel on the other side, counsel for the defendant implied, at least, that it is not necessary
4482 in order that people may be found guilty of entering
into an illegal combination to violate the anti-trust laws, that they be found sitting together, nor that they make a contract in writing, nor even is it necessary that they may all know each other. If they all have a common purpose and understanding and work together in carrying out the understanding, that is sufficient—together with some other provisions.

Now, you heard from the evidence, and you heard from counsel and from my able colleagues here, what that situation was as a matter of fact, in the Mid-Continent field and in East Texas in 1935. I think they made it fairly clear to you that it was necessary only for these defendants to manipulate, just manipulate a very small part of the gasoline that was manufactured and sold in the Standard of Indiana territory. And there wasn't very much, which was reported by the journals, which governed the price that the jobber paid in this territory; and the jobber's price accordingly governed the price which the dealer paid, and which you and I paid.

The conditions were ripe; the opportunity was there; it didn't cost them a lot of money, if any, to go out and
4483 pick up this little bit of surplus, excess, distress gasoline, as they call it, and take it out of the hands of

the independent refiner, who was liable to throw it on the market and reduce the price. It didn't take very much. The opportunity was there, and the temptation, gentlemen of the jury, was too great for these combinations or corporations and their individuals to resist—and they didn't try to resist it.

Now, you have been told a whole lot about the Government, particularly the Secretary of the Interior, favoring—Colonel Donovan said, and a couple of his associates said, "The doing of the things that they were doing." But, every time he used that expression, I wanted to know, "By doing the things that we did, do you mean engaging in this conspiracy? Do you mean that, that they favored that? And if you didn't, what did you mean? And if you meant something else, why didn't you tell us what you did mean?

4484 Doing the things that they did, whatever they were, unless they were in violation of law, would never have called down upon their heads the Department of Justice and the Secretary of the Interior and his staff in trying to enforce the law.

Now, what was it that they did do?

Mr. Brazeau: Now, may it please the Court, counsel has again referred to the fact as a fact that they brought down on their heads the prosecution by the Department of Justice and the Secretary of the Interior. We ask the Court—

Mr. Crawford: Well, I will take back what I said about the Secretary of the Interior.

Mr. Brazeau: Well, I think the Court ought to caution the jury.

The Court: The jury may disregard that. This prosecution was commenced at the instigation of the Attorney General of the United States.

Mr. Crawford: I am glad of a chance to talk about you, Mr. Brazeau. I want to say something about you.

Mr. Brazeau: That's all right.

Mr. Crawford: He has been to the front pretty well of late. I know him pretty well, and I know all about him; oh, I know a lot about him. He knows something about Wisconsin jurors. Well, I know a little about 4485 Wisconsin jurors too. Sometimes they beat me to death, and sometimes I win. I win most of the time up there where I live because I am most always on the side of the under dog.

He loses most of the time where he is because he is on the other side. So we both get our different notions about Wisconsin jurors.

Gentlemen of the jury, I have been knocking around this territory here for a long time, in Minnesota and Illinois and Michigan and Iowa and North and South Dakota—almost the entire Standard of Indiana territory; I cover about as much ground as the Standard of Indiana Oil Company does, only I don't get as much for what I do as they get.

And I have found that the jurors average about the same wherever you go. Of course in the State Courts, you know, we have the women jurors now. It makes quite a lot of difference to us old-timers; it is kind of hard to take, but we get along. They average up just about like you do. It is surprising to know when you come to something that involves the emotions, when you think they are going to go hog wild, why, they don't. They are level headed about it, and my hat is off to them.

4486 I said it was kind of hard to talk here. You remember the time, or do you? When they had the old courthouse, the old frame courthouse, and a great big stove in the back, in the middle of it. I hope all of you haven't forgotten that since we have got ritzy and built these modern courthouses.

The inspiration that makes a lawyer out of a blacksmith—as I listened to them, I used to think as I sat there and heard those lawyers battling, sometimes calling each other names, and the Judge rapping the gavel, and the jury sitting there, and the lawyers hitting the cuspidor about once out of two times—I thought that was a grand life, that is the life for me.

And so I say to you, jurors are pretty much the same the world over. They are all human. Most all are actuated by the same motives that I am. You laugh at the same things I laugh at, most of you, and you cry at about the same things I do; so we are all very much alike. It is a good thing we are alike. We would not be different.

I am not going to make any more remarks at all about that.

I don't know whether you got your religion out of a catechism or out of a Sunday School; it don't make any difference to me. That don't affect people sitting as

4487 jurors.

Telling you, as Colonel Donovan did, "Well, if I make mistakes here don't charge it up to my poor clients, charge it to me."

That is one of the oldest rackets of the game. I heard about it the first year when I started practicing law. I picked it up, and I used to see it all the time, and I figured what it amounted to and just how it works. We are not going to charge the mistakes up to the men on trial, but charge them up to me. You can't do anything to me, can you? That is just the logic of it—just a lot of bunk, just a part of the racket. I am protected, I am safe; I didn't do anything wrong.

I wonder if I can grab fifty or a hundred of those documents, and keep going a little while.

I wonder if the Court could give us a recess?

The Court: We will take a recess.

(Whereupon at 11:00 o'clock A.M., a recess was taken.)

4488 Gentlemen of the jury, I am going to take but a very few minutes to conclude.

I was quite concerned yesterday about Col. Donovan's argument in which he placed all of you in the shoes of all of the defendants in your reviewing of this case. I don't think that is quite fair. The people of this country are entitled to a place in that array, also. Jobbers, four thousand of them, are entitled to some consideration from you. The danger, the danger, the great danger of allowing this sort of thing to go on should receive a lot of consideration from you.

I wouldn't take the time if I did have the time to talk to you about how much money is to be made out of this. A little simple arithmetic like Hammond told you about and John told you about. You can figure it out for yourselves.

I don't know—I think it was in the beginning when I first appeared before you that I said that I didn't want you to get the idea that you have to understand fully all of the intricate and complicated, difficult statistics that were going to be set before you. I told you, too, that I didn't think many of the lawyers in the case understood them well. I was confirmed in that idea by Mr.
4489 Brazeau yesterday. He didn't seem to understand, really, what many of these figures are about. Now, if he didn't, a smart lawyer as he is, with all these weeks and months, don't be bothered about it yourselves at all.

You see that row of charts there? (Indicating) They haven't referred to them since they have been put up. If you are going to be hot and bothered about that sort of thing, we aren't going to be able to do anything. Don't do it. It just doesn't mean a thing.

These people have an idea that if they wanted to show that there was one hundred gallons of gasoline some place and that there was fifty of them that were bought by the major companies, they had to put it on a chart up there so you could see that fifty gallons taken away from one hundred left fifty. So they come out with what I called yesterday when I struggled here from a sick bed a lot of flashes. But don't be concerned about that sort of thing. You will find, yourselves, that there are so many of those figures and computations and charts here that it is impossible for the defendants to make for you a showing about them—to make any use of them before the trial was closed.

Just keep your mind on the highlights of just what this lawsuit is all about. These fellows are
4490 charged with having gone out and violated the law
and rigged this market, and if the proof here doesn't establish that, then there is no such thing as establishing anything by a jury.

Don't you be too concerned, either, about this dictum—I shouldn't call it that—about the law that you must find beyond a reasonable doubt. Of course, you must find beyond a reasonable doubt the guilt of these defendants before you find them guilty. But that doesn't mean that you have to find that beyond any fanciful, possible doubt. It is "reasonable" doubt, a doubt before which, if it were inquired of you, you could give a good, substantial reason. Don't let that bother you very much either.

4491 So you found, I think, you saw, as I told you you
would see, and as I see now, that it is just not humanly possible for any one of you, or any one of us who have had this training of years and years, to understand fully and completely the meaning of a lot of this evidence that has gone in here by way of statistics and charts. I do not want to charge that they did what they did carelessly or intentionally. It is just one of the things that lawyers do in a case of this kind when attempting to prove their side. Keep your minds on the high spots.

This responsibility that is talked about of jurors in the case—after all, you are simply the judges of the facts, to pass upon the facts. Your minds do not need to be concerned at all about what the punishment for this offense is. That is a matter for his Honor, the Judge. It is not a matter that you have to deal with at all.

I think you have seen here, too, indications and expressions from him of a great heart and a great conscience, and the great mind that he has, not to coldly and cruelly apply the law to the destruction of every one who might come within its condemnation, but to apply it tempered with justice.

4492 I was puzzled about the rather sudden appeal that was made by Colonel Donovan here to your sympathies. Well now, gentlemen of the jury, I do not think this is that kind of a case. In fact, it looked to me for a little while as if he was going to pull the old gag. You know there isn't anything new in a business like this at all, even through a trial like this, even with all these great lawyers; and they are great.

I thought he was going to pull the old racket we used to pull years and years ago when a fellow was being tried for an offense—getting his partner when he came down from the woods those terrible nights, getting him drunk and taking his money away from him—I thought he was going to pull that old gag that they used to pull in those cases—"Daddy, dear daddy, come home with me now." That was the big cry before the jury.

He did not go that far. Almost.

Don't forget, gentlemen of the jury, that this is a cold, calculating, intelligent procedure for you to determine upon the facts developed in Court, and no place else, whether or not these defendants are guilty of what they are charged with.

But I want to talk about my friend Brazeau. I forgot that. I don't want to let him get away without saying something about him.

4493 He came here in the early stages of the case, and part of the time I could not find him, and the last few days he has been in the front row.

Well, you know these fellows haven't overlooked anything, not anything. And we haven't overlooked very much.

But down there at Wisconsin Rapids where Ted lives you know, there are lots of politics. And you remember that Ted was the boy they always used to send out to bring in the farmers' votes. If the election was close they always fell back on Ted, and he usually went out among the farmers, got on the soapbox or sugar barrel, and made those wonderful, appealing talks, and he usually came home with the bacon.

And so they looked you over, and they thought, Well, it's a pretty good place for Ted to get some votes again from the farmers, and so he did.

He made a very good job, a rather appealing one. He got to doing so much of it, you know, that really his voice has become such that it is almost like baby talk.

I am not criticising, I am not making fun of him at all; but it is a very soft, mellow, appealing kind of a voice, such as a fellow would get, you know, from going around the country and asking a farmer and his wife to vote
for somebody; and he might see Susie, the baby
4494 around there, and he would pick up Susie and give
her a nice kiss.

So Ted was a pretty good man to put up here for you. He did a little clowning around here I thought; he clowned around here a little bit in the beginning, and he was going to talk to you about the indictment, and he reached over and pulled out a book about as big as the Bible. He thought that was the indictment, and somebody told him no, that was not the indictment. He didn't even read it.

Now, you know how many ideas there are. If there is any doubt in the mind of anybody as to what that indictment charges, I don't understand it.

He said there was not any evidence of price fixing. He said we did not claim—he said John Lewin did not claim it was a price fixing case.

Well, if John Lewin did not claim that, he did not claim anything. I think he made it as plain as English language can make it that that is just what this is.

I think Ted has gone a little ritzy on getting into the company of all these millions, you know, and he did not quite understand John when he said this is a case of rigging the market. Ted apparently thought he ought to say "Adjusting it", "adjusting it", or "stabilizing", or something like that. And so he said John did not say
it was a price-fixing case, but it was a rigging of the
4495 market. Ted did not seem to know what he was
talking about.

It would be surprising in New York, if I ever get there, to see him coming out of a ritzy hotel, with a high hat on, a white scarf, and tie and tails, and all that sort of thing. He has just got a little ritzy, but he will come out all right in the end. They all do.

Now, I am not going to try to continue this kind of argument, or talk to you very much longer.

My friend Lewin reminded me during the recess that after all what this jury is concerned about and what they ought to be reminded of is the fact that the people of this country, the people of this whole nation are entitled to just exactly what you are going to give them, and that is notwithstanding all the efforts that have been made here, and the tremendous energy that has been expended in trying to shut out testimony here, that you are going to give us a square deal, and that is the American philosophy.

And if you give us a square deal here—I hope this is not offensive to you at all, talking about giving us a square deal—I know you will do it—if you give us a square deal here there is just one thing for you to do, just as pointed out, to give to these defendants—and I trust that you won't spend very much time in trying to analyze how deep is the guilt of one individual as 4496 compared with the other, because they are all just alike—everybody,—if you are going to consider that, he is in this conspiracy up to his neck.

You have seen how careful his Honor was to cull out and take away from your consideration certain men against whom his Honor felt there was not sufficient evidence to go to you, and some of the counsel who argued this case to you talked about that with reference to the trade journals, the fact that they had been released by the government on their own motion—made some kind of an argument to you that you ought to release them all.

Well, I think it was a very improper presentation of that feature of the situation to you, and since it was, it may be perfectly proper for me to call your attention to the other angle of it.

If his Honor kept these people in whom he has kept in, and took the other people out, he took them out because in his judgment there is ample and sufficient legal testimony here upon which you could find them guilty.

Mr. Brazeau: May it please the Court, I—

Mr. Crawford: I am just about to make—

Mr. Brazeau: I want to, before you get through, except to that statement or any inference from that statement that the Court in not dismissing the 4497 remainder of the defendants left any impression that there was any guilt.

Mr. Chaffetz: I think the statement made was a statement of law, your Honor, and there cannot possibly be any doubt about it.

Mr. Crawford: I am very certain they made that kind of an argument.

Mr. Brazeau: No.

The Court: I will make it plain to the jury that some of the defendants have been dismissed because the Court in its opinion was inclined to think there was not sufficient evidence to sustain a finding of guilty if it had been submitted to the jury. Now, that is the reason why some of the defendants have been dismissed.

Mr. Crawford: That is correct.

The Court: Go ahead.

Mr. Brazeau: Your Honor, from the fact of not dismissing the others there is no inference of guilt before the jury—

Mr. Lewin: Mr. Crawford did not say so.

The Court: No, he did not. That is a correct statement of the law that Mr. Brazeau has given, and the jury may so consider it.

Mr. Crawford: Now, gentlemen of the jury, in speaking this morning about certain men here, I forgot 4498 one fellow to talk to you about. It was that fellow sitting over there (indicating). He is what they call a G-Man. That is M. B. Rhodes. He has been working on evidence for years and years and years; and again I say he is a great guy, takes care of his own business, does not look into anybody else's, and he has been with us and has contributed in a large measure to what we have been able to do in arranging these documents.

I was surprised to find in the first place how all that anyone of these defendants' lawyers had to do was to make some suggestion or hint about some paper or document, and it was immediately placed in his hands. It was a great piece of work. But I was comforted to find that we were able to do very nearly the same thing.

I want to refer in a moment to something that made an impression on me.

4499 You know, we lawyers have to depend—most of us are kind of tough guys. We have our own way of talking about witnesses. And one thing that we very often say and talk about is the three classes of liars. There is the plain liar, the damn liar, and the expert witness. And of all of them, the expert witness is the worst.

There were a few of them here. There was Swensrud, the representative of the Standard of Ohio; there was Van Covern, and I think there was another one.

But I just didn't think much of Swensrud's whole testimony, especially after I found out that he was giving testimony that they could ship gasoline in 1935 and in 1936 up the Mississippi River to St. Paul. I happen to be around the Mississippi River quite a little, and know quite a lot about it. In 1935 and 1936, you couldn't get a rowboat up the Mississippi River, north of Winona—because the Government was putting in these dams for the

purpose of creating the nine-foot channel that you have read so much about. They had concrete clear across the river, spaced in so many ways, that, as I say, you just couldn't get a rowboat up there. When Swensrud talked about gasoline going up that river, where I knew,
4500 because I lived there and was around there, that it couldn't be done, I just thought—

Mr. Thomas: I object to the remark of counsel, stating what he knew to the jury. It isn't his province to testify here. And I ask that the counsel be rebuked, and that the Court instruct the jury to disregard it.

Mr. Crawford: Oh, well—

Mr. Lewin: That was in the evidence.

Mr. Crawford: Anyhow, I will withdraw the statement.

The Court: All right.

Mr. Thomas: What was the ruling?

The Court: The jury may disregard it. I didn't hear it. I was thinking about something else.

Mr. Chaffetz: He was talking about the Mississippi River.

Mr. Crawford: Now, if you will let me alone a few minutes, I will be through. If you don't, like "Old Man River", I will just keep rolling along. I don't want to do that.

Now, I was referring to these witnesses who knew so much. There was Van Covern, Swensrud, and a fellow named J. D. Miller. He was the fellow who never looked at anybody, so you could catch his eye. They knew
4501 so much, in the way they were telling it to you, that it is impossible, just impossible to believe that they could know as much as they said they did about it. They just covered too much territory. I think all history, sacred and profane, gives us but one single example of a person who knew everything—and he was not only a man, but he was God. And He gave up His life in a shameful death, upon the cross, between two thieves.

Now, I have one other reference, a rather personal one. I guess you think—well, I called for a lot of these documents awhile ago, but I changed my mind about it. Maybe it is because I don't know which ones I wanted them to pick out—most of them that are important have been read to you.

From my association with these gentlemen from Washington—oh, by the way, now. You know, when we started in the trial of this case, the way the defendants' lawyers

referred to us. They referred to this, our side of the case, as "the prosecutors"—do you remember? They called us the prosecutors; they called our side of the case the prosecutors, as if it were we individually, and not the Government, who was on that side of the case. Pretty soon they found that didn't go over quite so good, so
they began referring to us as "counsel for the
4502 prosecution." They would never dignify us by the
title to which we had a proper claim. And finally, I think they found that didn't go over so good with you either, so they finally came down to where they should have started, and they correctly referred to us as "Government counsel."

As I said to you, they haven't overlooked anything, little or big, by which they might reach some responsive emotion in your minds, that would get them the results that they are striving for here. And the battle that they have made here, of course, has been a magnificent one. And my hat is off to Colonel Donovan for the fight that he put up here, against tremendous, insurmountable odds, shooting testimony in this case which could have about the same effect as shooting paper balls at the Rock of Gibraltar.

I want to refer again, if I may, if you will just pardon me, to rather a personal matter—to these men who worked with me, who have done most of the work, through all this long trial and troublous time. And there has arisen in my heart and in my mind a regard and an affection for them that, as I am stumbling down the western
slope of life toward the setting sun, I hope to get
4503 a morsel of comfort and consolation out of the
hope and belief that I have engendered in their hearts and in their minds a similar feeling.

Now, I thank you gentlemen for your kind attention. It has been very gratifying, very helpful to me to notice the attention you have given me. I shall not undertake to throw any more bouquets towards the bench. I have taken a lot of liberties here with his Honor, Judge Stone, in busting in once in a while, as you noticed; but he knows me so well that he thought it was all right.

I don't think it ought to take you very long to decide this case. I don't think it is necessary for you to give out the impression that you have labored hard and long at it. I think you ought to go out to your jury room and you ought to make up your minds—after listening to what you are going to get from his Honor, the Judge; he is going to tell you the law. And after listening to that, I think it ought to be easy for you to make up your minds, and that you ought to be able to do it quickly.

I thank you again.

4504 Thereafter, on January 21, 1938, the Court made and entered an Order granting the Motion for Directed Verdict at the close of all the evidence of the defendant L. T. Cramer.

(Said Order is printed at page 2477 of the Record.)

DEFENDANTS' REQUESTED INSTRUCTIONS.

4505 The defendants, by their attorneys, prior to the charge to the jury by Honorable Patrick T. Stone, Judge of the above Court, and prior to the conclusion of the arguments of counsel to the jury, presented to the Court and requested the Court to give to the jury a number of Requested Instructions. Only those Requested Instructions which form the basis of the Assignment of Errors are inserted in this Bill of Exceptions.

Defendants' Requested Instruction No. 88.

> There is much uncontradicted evidence in the case concerning the condition of the oil industry and its various branches before and after February 1, 1935, at which date the indictment charges that the alleged combination, conspiracy and agreement was entered into by defendants, as to the history of the buying activities of defendants in the Mid-Continent and East Texas fields, as to the evils or abuses believed to exist in the oil industry, hindering the conservation of the limited crude oil supplies in the United States and standing in the way of the stabilization of gasoline markets. There is also evidence in the case as to the reasons of defendants for engaging in a so-called buying program or programs to remedy, as they claim, these abuses, if they did so engage, and as to the effect upon market prices of such buying, taken in conjunction with many other factors affecting supply and demand and tending to increase price but not within the control of defendants.
>
> If you find and believe from the evidence as a whole, after taking into consideration the foregoing evidence, or if you have a reasonable doubt
> 4506 as to whether it is not the fact, that the only

combination or agreement entered into by the defendants, or some of them, or with others, was that referred to by some of the witnesses as a "buying program", under which the parties participating therein agreed that they would distribute a portion of their purchases of gasoline among certain independent refiners, who produced somewhat less than 50% of the gasoline produced by independent refiners in said fields, for the purpose of affording to such independent refiners a market outlet at going market prices for the orderly distribution of their distress or surplus gasoline, amounting to less than 25% of the total gasoline production of said independent refiners, and which otherwise would have been sold at forced sale or sacrifice prices, and under which combination, agreement or "buying program" no party thereto agreed to buy any particular amount of gasoline at any particular price, but did agree that as to such purchases as said party might make said party would pay for the gasoline thus purchased at or about the "going market price", I instruct you that such combination or agreement or "buying program" would not be an unreasonable combination or agreement or conspiracy such as is forbidden by the Sherman Act, and in such an event it would be your duty to acquit the defendants and return a verdict of "not guilty" as to all the defendants.

Defendants' Requested Instruction No. 92.

It is not the purpose of the Sherman Anti-trust Act to make impossible the normal and fair conduct of interstate commerce through the adoption of reasonable measures to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis. The evidence in this case is such as to justify you in finding and concluding that injurious and destructive practices existed in the oil industry in connection with the marketing of tank car gasoline.

If, from the evidence as a whole you conclude that a reasonable theory or explanation of the conduct of defendants is that they adopted and carried 4507 out a buying program or programs consisting of reasonable measures to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis, you must find the defendants not guilty even though you should conclude that an incidental result of defendants' activities was to contribute to the rise of the tank car and retail prices for gasoline, shown by the evidence.

In this connection you are instructed that you may find that the dumping of surplus gasoline by independent refiners at distress or sacrifice prices under the circumstances disclosed by the evidence in this case was an injurious and destructive competitive practice, in that, you may find from the evidence that:

(1) It hindered federal and state efforts to conserve the limited supplies of crude oil in the United States;

(2) It hindered and stood in the way of the reasonable stabilization of the oil industry;

(3) It tended to eliminate the independent refiners as a competitive element in the industry;

(4) It hindered the attainment of the objectives of the National Industrial Recovery Act, including relief of unemployment and maintenance of wages at fair levels.

Defendants' Requested Instruction No. 89.

Proof beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into an agreement among themselves, or with others, is an essential fact which must be proved by the prosecution, failing which you must acquit all of the defendants. If, however, you find and conclude beyond a reasonable doubt and to a moral certainty that such an agreement was made, you must then determine whether the restraint of interstate commerce contemplated there-
4508 by was reasonable or unreasonable, that is, whether or not it was calculated, by reason of its intent, purpose and effect, to injuriously and unduly affect the public interest in the freedom of competition in interstate commerce which it is the purpose of the Sherman Anti-Trust Act to preserve.

The legality of a combination or agreement or of a buying program or programs among business competitors cannot be determined by so simple a test as whether they restrain competition. Every agreement concerning trade, every regulation of trade, restrains. To combine, to restrain, is of their very essence. The true test of legality in this case is whether the combination, agreement, or buying program, if any existed, was such as merely regulated and perhaps thereby promoted competition, or whether it was such as might suppress or even destroy competition.

To determine this question, you must consider the facts peculiar to the oil industry: its condition before and after the alleged combination was entered into, or the alleged agreement made, the nature of the agreement or combination, and its effect, actual or probable. The history of the agreement or combination, the evils or abuses believed to exist, the reasons for adopting the particular remedy and the purposes or ends sought to be attained are all relevant in your consideration. A close and careful scrutiny of these particular conditions and purposes is necessary. Realities must dominate your judgment. The mere fact that the parties to an agreement or combination eliminate competition between themselves is not enough to condemn it. The question of the application of the Sherman Act is one of intent and effect, and is not to be determined by arbitrary assumptions.

You should, therefore, consider in this case the economic and geologic conditions peculiar to the oil industry in all its various branches, and their relation to the condition of business in general in the United States during the period with which the indictment is concerned, and for a reasonable period prior thereto; the nature and character of the oil business in all its various branches, the state and
4509 federal laws relating thereto and the manner in which they were administered, the customary means and methods of carrying on the business, the nature and character of the relationships between the various interests engaged in the various parts of the business, such as the producers of crude oil, refiners of crude oil, jobbers of gasoline and retail sellers of gasoline, the nature of the defendants' combination or agreement, or buying program or programs, if there were any, the reasons which led to its or their adoption, and the probable consequences of carrying it or them out in relation to market prices,

the policy of the United States at the time the alleged conspiracy is charged to have been entered into, as embodied in the National Industrial Recovery Act, the objectives of said Act and the Petroleum Code adopted thereunder, the activities with respect to the oil industry of state, governmental and Petroleum Code authorities, the prohibition in said Code against selling below cost, the evidence that at the time the alleged conspiracy is charged to have been entered into, the price of crude oil was being maintained at $1 a barrel at the insistence of the Secretary of the Interior who was also Administrator of the Petroleum Code, the inability to maintain dollar crude unless said tank car prices of gasoline were in proper parity with the price of crude, the evidence that at the time the alleged conspiracy is charged to have been entered into, the tank car prices of gasoline in the spot markets in the Mid-Continent and East Texas fields were far below such parity, the evidence that the prices reached in the spring and summer of 1935 were prices in parity with dollar crude, the evidence that the Government desired that parity, and the evidence concerning the relation between the price of crude oil and conservation, of the necessity of maintaining an adequate price of crude oil in this connection, of the condition of the independent refiners, of the effect upon stabilization of dumping distress gasoline on the market, and of other matters affecting the public interest in interstate commerce in the products of crude oil.

The evidence is such that you may conclude therefrom that abuses and destructive practices in con-
4510 nection with the marketing of gasoline existed, to the elimination of which the defendants claim that any agreement or combination made or entered into by them was aimed. You may also conclude therefrom that the independent refiners in the East Texas and Mid-Continent fields were in distress. You may also conclude from the evidence that serious retail price wars throughout the Mid-Western area were common both before and after February 1, 1935, and that distress gasoline is a contributing cause to retail price wars, and that the industry in respect of the production of crude oil and of gasoline therefrom had suffered from overproduction. There is

evidence from which you may conclude that the industry was afflicted with injurious practices within itself which demanded correction, and that if such evil conditions could not be entirely cured they at least might be alleviated.

There is nothing in the Sherman Anti-Trust Act to prevent defendants from entering into an agreement or combination or buying program or programs having as its or their intent, purpose and effect an honest effort to remove abuses, to make competition fairer, and thus promote the essential interests of commerce. The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated the wells of commerce go dry.

It is proper for you to consider whether the actual purpose and intent of defendants in this case was to engage in a fair and open endeavor to aid the oil industry in a measurable recovery from its plight. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. Nor does the fact that the correction of abuses may tend to stabilize or to produce fairer price levels require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade. It is thus entirely legal to affect a change in market conditions where the change would be in mitigation of recognized evils, and would not impair but rather foster fair competitive opportunities.

4511 Consequently, even though you should find and believe beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into a combination or agreement among themselves or with others, you must acquit all of the defendants and return a verdict of "Not Guilty" as to each of them unless, after taking into account all the evidence in the case and considering it in the light of the principles I have called to your attention, you also find and believe beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the restraint imposed was unreasonable, and unless you further find beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the combination and agreement entered into has been proved to be in all essential and material respects the one alleged in the indictment, concerning which I have previously instructed you.

4512 *Defendants' Requested Instruction No. 90.*

The defendants claim that the evidence shows that their activities in purchasing gasoline were directed to the providing of a market outlet for the orderly distribution at going market prices of surplus gasoline manufactured by independent refiners which would make unnecessary its dumping on the market at distress or sacrifice prices. They further claim that the evidence shows that if such dumping of surplus gasoline, had it been allowed to continue, would have injuriously affected the public interest and competitive conditions in interstate commerce, in that (1) it would have hindered Federal and State efforts to conserve the limited supplies of crude oil in the United States; (2) it would have hindered the reasonable stabilization of the oil industry; (3) it would have tended to eliminate the independent refiners as a competitive element in the industry; and (4) it would have hindered the attainment of the objectives of the National Industrial Recovery Act, including the relieving of unemployment and maintaining wages at fair levels.

You must therefore determine from the evidence (First); whether or not the true objectives of defendants were those aforesaid; and (Second); whether or not the activities of the defendants were reasonably calculated to attain said objectives. If you should so find, or if you are not satisfied beyond a reasonable doubt that these were not the objectives of defendants, then you should acquit said defendants by returning a verdict of not guilty, as in such event defendants' activities would not be illegal, as such would not be the unreasonable combination and conspiracy alleged in the indictment. In determining whether such were the objectives of the defendants, and whether or not the activities of the defendants were reasonably calculated to attain said objectives, you should give due consideration to the evidence relating to the following claims of the defendants:

([illegible]) That for some time prior to the period of the indictment there had been overproduction of crude oil in the United States.

4513 (2) That the Government of the United States and the oil producing states including the States of Texas and Oklahoma, were engaged in an effort to control in the public interest this overproduction of crude oil.

(3) That the principal means being employed to control said overproduction of crude oil was the enforcement of production quotas beyond which it was made illegal to produce.

(4) That at the time the alleged conspiracy is alleged to have been entered into the Federal Government regarded it as essential in the public interest both from the standpoint of conservation of crude oil and reasonable stabilization of the oil industry, that the price of crude oil should not be less than $1 a barrel.

(5) That the price of crude oil could not remain at approximately $1 a barrel unless the tank car price of gasoline was at a parity, or in a normal and proper relation thereto.

(6) That the tank car price of gasoline at the time the alleged conspiracy is alleged to have been entered into was far below parity with the price of crude oil.

(7) That the level of tank car prices reached in the spring of 1935 and existing in the summer of 1935 was at parity with dollar crude, and recognized by the Government to be in parity, and to be the parity desired by it.

(8) That any combination or agreement entered into or made by defendants, or any buying program engaged in by them, with respect to the purchasing of distress gasoline from independent refiners, did not contemplate any increase in the tank car price of gasoline, whether as its primary or incidental purpose, to a level above parity with the price of crude oil.

(9) That the tank car price of gasoline did not, at any time during the period of the alleged conspiracy, rise to a figure above parity with the price

4514 of crude oil.

(10) That the production of surplus gasoline by independent refiners for which they had no regular trade outlets was unavoidable if their operations were to be conducted on an economic and competitive basis.

(11) That by reason of lack of storage facilities and operating capital independent refiners by and large had to dispose promptly of surplus gasoline at practically any price it would bring.

(12) That at the time the defendants are alleged to have engaged in their buying programs the oil industry was operating under emergency conditions and that the Federal Government, through the Petroleum Code, was endeavoring to stabilize the industry on a profitable basis in order to increase purchasing power, to relieve unemployment and to bring about and maintain the payment of fair wages in the industry.

(13) That at the time the defendants are alleged to have embarked upon their buying programs, to-wit, March 1, 1935, the tank car price of gasoline was far below parity with crude oil.

(14) That Secretary of the Interior Harold L. Ickes, Oil Administrator under the Petroleum Code, desired and urged the achievement of parity between the tank car price of gasoline and the price of crude oil and was gratified when late in the spring of 1935 such parity was attained.

(15) That under the Petroleum Code the gasoline production of refineries throughout the United States was restricted by allocations which would necessarily result in decreasing the supply of gasoline and increasing the price thereof.

(16) That on July 20, 1934, Harold L. Ickes, Oil Administrator under the Petroleum Code, authorized the defendant Arnott to take action to settle retail price wars and to eliminate destructive price-cutting in connection therewith.

4515 (17) That elimination or control of retail price wars and of destructive price-cutting was impossible with the tank car price of gasoline below parity with crude oil and below cost of recovery levels.

(18) That because of the availability of competing sources of supply it would have been impossible to fix the tank car price of gasoline at high, arbitrary and non-competitive levels.

(19) That, for the first time, in the summer of 1935 the objective of the Government of obtaining a proper balance in the supply and demand was attained in the oil industry.

(20) That in June, 1935, the industry attained the best statistical position it had had for years and that the summer of 1935 was the highest consuming season that the industry had had for many years.

If from all the evidence in the case you conclude that any buying programs engaged in by defendants were reasonable and not unreasonable restraints of commerce, or if you cannot conclude beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the activities of defendants did not constitute a reasonable restraint of interstate commerce, then you will find the defendants not guilty.

4516 *Defendants' Requested Instruction No. 40.*

You cannot find the defendants guilty unless the prosecution proves each and all of the material and essential allegations of the indictment beyond a reasonable doubt and to a moral certainty. The first material and essential allegation of the indictment which the prosecution must so prove is that the defendants and other persons combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the spot markets in the East Texas and Mid-Continent fields, and in an alleged spot market at Chicago, Illinois. It is absolutely essential that the prosecution prove beyond a reasonable doubt and to a moral certainty the foregoing charge in the indictment. Otherwise, you must acquit all of the defendants and you must return a verdict of not guilty as to each of them.

I further charge you that proof, beyond a reasonable doubt and to a moral certainty, of an agreement, the purpose of which was to remove the depressing influences of the dumping of distress gasoline upon said tank car prices of gasoline and to permit said prices to advance, unimpeded by said depressing influences, to whatever level they might naturally reach, through the play of economic forces, by purchasing, distress or surplus gasoline from independent refiners at going market prices, is entirely insufficient to prove said charge in the indictment. Consequently, even though you should find and believe from the evidence beyond a reasonable doubt and to a moral certainty that the defendants or some of them combined and conspired together or with others for such limited purpose you must acquit all of the defendants and return a verdict of not guilty as to each of them.

4517 *Defendants' Requested Instruction No. 122.*

The Government of the United States is administered by many different officials, departments, bureaus and agencies. The Department of Justice, which is the law department of the United States Government, is prosecuting this case, and therefore, represents and is referred to as "the Government" or "the United States" herein. In administering the National Industrial Recovery Act and the Petroleum Code, and in governmental activities carried on for the conservation of the limited oil resources of the United States, however, the governmental agencies consisted, among others, of the President of the United States, Harold L. Ickes, Secretary of the Interior and Oil Administrator, the Petroleum Administrative Board, and the National Recovery Administration.

The court instructs the jury that the indictment herein alleges that the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline, and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted gasoline buying programs, to wit, the East Texas Buying Program and the Mid-Continent Buying Program, as defined in the indictment. As one of their defenses, the defendants, and each of them, claim: That, if they did engage in such concerted buying programs, or either of them, they were instigated and induced to engage and participate in said alleged buying programs by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2(b) of the National Industrial Recovery Act, and by virtue of certain provisions of the Code of Fair Competition for the Petroleum

Industry duly signed by the President on August 19, 1933, and amendments thereto; and that they would not have engaged or participated in said buying programs, or either of them, if it had not been for the instigation and inducement of said Honorable Harold L. Ickes, Secretary of the Interior and Petroleum Administrator, and the provisions of said Code of Fair Competition for the Petroleum Industry and amendments thereto. In this connection, I instruct
4518 you that if you find from the evidence herein that the defendants were instigated and induced by said Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, and by the provisions of said Code of Fair Competition for the Petroleum Industry and the amendments thereto, to engage and participate in said buying programs, and that they would not have engaged or participated in said buying programs but for such instigation and inducement, then you should return a verdict of "Not Guilty" as to all the defendants in this case.

4519 *Defendants' Requested Instruction No. 121.*

The Government of the United States is administered by many different officials, departments, bureaus and agencies. The Department of Justice, which is the law department of the United States Government, is prosecuting this case and, therefore, represents and is referred to as "the Government" or "the United States" herein. In administering the National Industrial Recovery Act and the Petroleum Code, and in governmental activities carried on for the conservation of the limited oil resources of the United States, however, the governmental agencies consisted, among others, of the President of the United States, Harold L. Ickes, Secretary of the Interior and Oil Administrator, the Petroleum Administrative Board, and the National Recovery Administration.

The court instructs the jury that the indictment herein alleges that the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline; and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted buying programs, to wit, the East Texas Buying Program and the Mid-Continent Buying Program, as defined in the indictment. As one of their defenses, the defendants, and each of them claim: That, if they did engage in such concerted buying programs or either of them, they were instigated and induced to engage and participate in said alleged buying programs by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2(b) of the National Industrial Recovery Act; and that they would not have engaged or participated in said alleged buying programs, or either of them, if it had not been for the instigation and inducement of said Honorable Harold L. Ickes, Secretary of the Interior and Petroleum Administrator. In this connection, I instruct you that if you find from the evidence herein that the defendants were instigated and induced by the Honorable Harold L. Ickes, Secretary of the Interior and Petroleum Administrator, to engage and participate in said buying programs, and that they would not have engaged or participated in said buying programs but for such instigation and inducement, then you should return a verdict of "not guilty" as to all the defendants in this case. 4520

Defendants' Requested Instruction No. 131.

If you find that the defendants, or some of them, had reason to believe and in fact did believe that Administrator Ickes or the Petroleum Administrative Board, or both, felt that the buying activities of the defendants were constructive and proper efforts to aid the independent refiner and to stabilize the tank car and retail markets, and if you find that the defendants would not have engaged in these activities if they had not believed that they met with the approval of the Administrator or the Petroleum Administrative Board, and if you further find that the defendants were induced to continue their activities after the expiration of the Petroleum Code by statements made by responsible Government officials urging them to hold on to the advantages that had been gained under the Code, then you will take such facts into consideration in determining whether or not such defendants contemplated a reasonable or unreasonable restraint of interstate commerce.

Defendants' Requested Instruction No. 140.

Even if you should find and believe beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into an agreement to purchase gasoline from independent refiners in the Mid-Continent and East Texas fields or either of them, and made purchases thereunder, you shall, nevertheless acquit the defendants and return a verdict of "Not Guilty" if you find and believe that they were induced to enter into said agreement, or to carry it out by reason of any action the Secretary of the Interior may have taken, or by the acts of the Petroleum Administrative Board, or any of its members, or if you have a reasonable doubt as to whether said defendants were not so induced. In determin-
4521 ing this question you shall take into account the fact that at the time said agreement is alleged to have been entered into the oil industry was operating under the Petroleum Code adopted under the National Industrial Recovery Act, that the Secretary of the Interior was the Administrator of said Code, that the Petroleum Administrative Board were government officials or employees acting in an advisory capacity to the Secretary of the Interior and themselves possessed with considerable discretionary authority, the machinery set up under the Code, the manner in which such machinery operated, the nature of the contacts between members of the industry and the Administrator, and the Petroleum Administrative Board and its members, respectively, the objectives of the National Industrial Recovery Act and of the Petroleum Code, the objectives of the Oil Administrator as communicated to members of the industry, the extent to which Government representatives knew of or acquiesced in said agreement or plan. If upon all the evidence you find and believe that the defendants were induced to enter into said plan or to carry the same out thereafter by acts of the Secretary of the Interior, said Board or its members, and would have refrained from carrying out the same except for such inducement, or if you have a reasonable doubt in respect of the existence or non-existence of such inducement, you must acquit the defendants and return a verdict of "Not Guilty."

Defendants' Requested Instruction No. 130.

If you find from the evidence that the defendants, or some of them, had reason to believe and in good faith did believe that the defendant Arnott was authorized by the letter of July 20, 1934, written to him by Harold L. Ickes in his official capacity as Administrator for the petroleum industry, to deal with the tank car market in a voluntary, cooperative manner in order to stabilize the retail market and to prevent price wars, and if you find that the defendants, or some of them, were induced to continue their activities after the expiration of the Petroleum Code by statements made by responsible Government officials urging them to hold on to the advantages that had been gained under the Code, you will take such 4522 facts into consideration in determining whether or not such defendants contemplated a reasonable or unreasonable restraint of interstate commerce.

Defendants' Requested Instruction No. 110.

If you find that the Administrator or the Petroleum Administrative Board, or both, were kept advised of the buying activities of the defendants, and if you further find that the Administrator or the Petroleum Administrative Board, or both, were of the opinion that such buying activities were constructive and proper efforts in order to relieve the depression or to aid the independent refiners, or to stabilize the tank car and retail markets and relieve conditions causing price wars, sales below cost and unemployment, then you are instructed that such opinion of the Administrator or the Petroleum Administrative Board, or both, is entitled to great weight and respect in considering the question now presented as to whether or not such buying activities were an unreasonable restraint of trade.

Defendants' Requested Instruction No. 160.

You are instructed that there is no charge in this indictment that these defendants, or any of them, entered into any agreement, combination or understanding with any independent refiner as to the price to be charged by such independent refiner for gasoline in tank car lots in sales to jobbers or consumers.

You are, therefore, instructed to disregard any claims by counsel for the prosecution in their closing arguments that such an agreement, combination or understanding existed.

Defendants' Requested Instruction No. 161.

You are instructed that there is not sufficient evidence in this record from which you could 4523 properly find that these defendants, or any of them, entered into any agreement, combination or understanding with any independent refiner as to the price to be charged by such independent refiner for gasoline in tank car lots in sales to jobbers or consumers. You are, therefore, further instructed to disregard any claims by counsel for the prosecution in their closing arguments that such an agreement, combination or understanding existed.

Defendants' Requested Instruction No. 151.

There has been reference made by counsel for the prosecution in argument to the rise in the price of crude in January, 1936, and a claim that this rise was caused by the conduct of the defendants. There is no such allegation in the indictment, there is no evidence as to the causes of such price rise, and there is no sufficient evidence to support such charge now made by the prosecution, and you are instructed to disregard the statements made on this point by counsel for the prosecution.

Defendants' Requested Instruction No. 116.

A letter of Mr. Ickes to Mr. Arnott under date of April 2, 1935, has been received in evidence. In that letter the following language is used:

> "* * * I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery Act.
>
> "I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they

> 4524 may be unnecessary. However, when the understandings arrived at as bases of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal."

You must not misunderstand or misapply this language. There was no legal obligation on the part of these defendants to submit any of their activities to the Secretary of the Interior for his approval. If those activities were otherwise lawful under the Anti-Trust Laws, they would not be illegal, because they were not submitted to the Secretary of the Interior for his approval and did not receive his approval. If this letter of April 2nd, Exhibit 980, was intended to state that activities or an agreement among the defendants otherwise lawful under the Anti-Trust Laws would be legal only if submitted to and approved by the Secretary, then this letter of Mr. Ickes does not state the law and you should disregard any such statement in this letter and comment of counsel, if any, to that effect. Whether the activities of the defendants as shown by the evidence were legal or illegal is for you to determine under the instructions I give you. If you find them to be otherwise legal under those instructions, it doesn't make any difference whether they were or were not submitted to the Secretary and whether they did or did not have his approval.

Thereupon, on January 21, 1938, the Honorable Patrick T. Stone, Judge of the above Court, read his instructions to the jury and charged the jury in this cause as follows:

INSTRUCTIONS TO THE JURY.

4525 The Court: Gentlemen of the Jury:

This case, which has engrossed our attention for nearly four months, is drawing to a close. Counsel for the respective parties have completed the presentation of the testimony and the evidence, and they have concluded their arguments. The case is now ready for your determination.

It is my duty to instruct you upon the law applicable to the case in any view you may take of the evidence. It is your duty to consider and weigh the evidence, consisting of the spoken words and the records and the documents and other exhibits received in evidence, and, in the light of the instructions I am about to give you, to determine the guilt or innocence of each defendant.

The defendants have entered, all of the defendants have entered pleas of Not Guilty to the indictment. Those pleas put the Government to the proof of all the essential facts necessary to determine their guilt.

This is an important case, and invites your most earnest
and conscientious consideration. Both the United
4526 States and the defendants are vitally interested in
a just verdict.

No more serious or important duty could be undertaken by a citizen than that which rests upon you today. To courageously, honestly and fearlessly determine the facts upon which guilt or innocence depends is a responsibility and a duty which should invoke your worthiest effort. I expect you to squarely meet your responsibility and to earnestly and fearlessly determine the issues. I will be satisfied with nothing short of such efforts on your part.

Jury duty is always a very responsible and a grave duty, which calls for the exercise of the most conscientious and painstaking examination of the facts by the jury, in order that no injustice may be done to any of the defendants, who are deeply concerned, or to the cause of good government, which is of equal importance. You should approach the consideration of this case with your oaths as jurors steadfastly in mind, to try this case according to the evidence; and you should let no motive other than a conscientious purpose to do justice have any bearing with you in reaching your verdict.

You are by law made the responsible judges of the credi-
bility and effect of the evidence, and your verdict
4527 should reflect the truth as you find the same to be
from the evidence given here in court, considered in
the light of the Court's instructions. If you have learned elsewhere anything about this case, it is your duty to lay aside all such outside knowledge and base your verdict only on the evidence presented on this trial.

The burden of proof in this case is upon the Government. The defendants entered on this trial presumed by the law to be innocent of any crime. They are not required to prove their innocence. They are presumed to be innocent until proven guilty, and that presumption remains with them throughout this trial and in your jury room, and until you have cast your last ballot. It is your duty to attempt to reconcile the evidence with this presumption. Before you may find any defendant guilty of any offense charged in the indictment, you must be convinced beyond all reasonable doubt that he is guilty.

If the material facts may be fairly reconciled with innocence, a reasonable doubt does then exist. In short, if the evidence and the proper inferences be found by you to be as consistent with innocence as with guilt, the defendants are entitled to acquittal.

4528 But a reasonable doubt which forbids conviction must be real and not imaginary. It must be an honest and substantial misgiving for which a good reason may be given based upon the nature of the evidence or lack of evidence in the case. Guilt is proved beyond a reasonable doubt when all the evidence in the case, impartially and reasonably considered, is sufficient to impress the judgment of ordinary reasonable and prudent jurors with a conviction upon which they would act without hesitation in the most important affairs of life.

4529 It is your duty to scrutinize the evidence with the utmost care and caution; and to bring to that duty the reason and prudence which you would exercise in the most important affairs of life; in fact, all the judgment, caution, and discrimination that you possess, and then, unless you can say from that standpoint that you are satisfied of the guilt of a defendant beyond a reasonable doubt, you should acquit such defendant, whether it be an individual or a corporation, for, when a juror has a reasonable doubt of the guilt of a defendant in a criminal case, he cannot, without great violence to his conscience and sense of right, agree upon a verdict of conviction.

In considering the testimony, you should, as to each witness, consider his age, appearance, and manner of testifying, his interest in the result of the trial, if any appears, any temptation to testify falsely appearing in the evidence, his intelligence and opportunity to know the facts, or the lack thereof, and the probability or improbability of the testimony given, and all other like circumstances appearing by the evidence, and from all these you should determine upon the weight and credit you will give to the testimony of each witness.

4530 Some of the defendants have testified in their own behalf. Each is a competent witness; and you should not discredit him merely because he is charged with crime. Each defendant, however, is deeply interested in the result of the trial; and you are entitled to take that into consideration, and consider the temptation which arises under such circumstances to testify to a state of facts favorable to himself. Other witnesses on this trial may, by reason of their relations to the persons concerned, be deemed to be interested in the result. You should take into consideration all such interest of every witness, so far as it appears by the evidence. The same tests that you apply to determine the credibility of the defendants, you should apply to every other witness.

Other defendants have not testified in this case, and you are instructed that the failure of a defendant to testify does not justify the jury in drawing an inference hostile to him. Under the criminal law, a defendant has the right to testify or not. If he testifies, he becomes liable to all the tests that all other witnesses are liable to be subjected to. If he does not testify, the jury has no right, in determining the question of guilt or innocence, to draw any inference hostile to the defendant because of his failure to testify.

4531 In case you become satisfied from the evidence that any witness has on this trial wilfully testified falsely as to any material fact, you are at liberty, in your discretion, to disregard all the testimony of such witness, unless it is supported by other credible evidence in the case.

These defendants are charged with a violation of what is known as the Sherman Act, a statute enacted by Congress.

The section of the Sherman Act under which the indictment in this case has been returned is as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor."

At the outset of the trial you heard the charge contained in the indictment described. In substance, the indictment charges that, beginning on or about the first of March, 1935, and continuing to the date of the return of the indictment in December, 1936, the defendants and
4532 others referred to in the indictment have combined and conspired together for the purpose of raising and fixing the price of gasoline sold to jobbers and consumers in the ten states which you have heard described as the Mid-Western area, or the Standard of Indiana territory. The indictment alleges that the prices to job-

bers and also to consumers in these ten Mid-Western states are determined by the prices paid for gasoline in certain spot markets. In the case of jobbers, it is alleged that many of their contracts with the defendant major oil companies expressly provide that the basic prices which they are required to pay for the gasoline shall be determined by the spot market prices as published in Platt's Oilgram and the Chicago Journal of Commerce. In the case of consumers, the indictment alleges that the retail prices of gasoline are directly influenced by the spot market prices and that when the spot market prices move up, the retail prices also move up. The indictment alleges that in order to raise the price of gasoline to jobbers and consumers, the defendants combined together, and also combined with a large number of so-called independent refiners, to raise the spot market prices. The indictment alleges that the spot market prices consist of prices charged in day-to-day sales by small independent refiners located in the
4533 Mid-Continent fields and in East Texas. It is alleged that the major companies sell mostly on contracts and do not sell gasoline to any extent on the spot markets, and that these sales on the spot markets consist almost entirely of sales made by independent refiners.

The indictment further alleges that the amount of gasoline sold on the spot markets is very small compared to all the gasoline sold in the ten Mid-Western states. The allegation of the indictment is that it constitutes only 5% of all the gasoline sold in those states, and, therefore, the indictment alleges that in order to raise the price of the large amount of gasoline sold mostly by the defendants to jobbers and consumers in this area, it was necessary only to raise the price of the relatively small amount of gasoline sold by the independent refiners on the spot markets. And then the indictment alleges that the defendants, beginning on or about the first of March, 1935, as I have stated, organized two buying programs, one in the Mid-Continent fields, the other in East Texas, for the purpose of buying up gasoline from the independent refiners in the spot markets in order to raise the spot market prices, and thereby to raise the prices of gasoline sold by the defendants to jobbers under contract and to consumers in the ten Middle Western states.

4534 This, as I have said, is what the indictment alleges and what the Government has undertaken to prove. There are further allegations in the indictment, but I have referred to the material and essential ones which the Government must prove beyond a reasonable doubt before you may find any of the defendants guilty.

In brief, the indictment charges that the defendants unlawfully combined and conspired together for the purpose of artificially raising and fixing the spot market tank car price of gasoline in the East Texas field, the Mid-Continent fields, and in an alleged spot market at Chicago, Illinois, and maintaining said prices at artificially high and non-competitive levels and at levels agreed upon among themselves, for the ultimate purpose of intentionally increasing and fixing thereby the wholesale or tank car prices of gasoline contracted to be sold, which was sold in the ten states of the so-called Mid-Western area, including the Western District of Wisconsin, and, in turn, of intentionally raising the general levels of retail prices prevailing in said Mid-Western area, including the Western District of Wisconsin.

You will be permitted to take the indictment with you to the jury room, but I want you to understand that the indictment is no proof whatsoever of the guilt of
4535 these defendants. The indictment in this case is of
itself a mere formal accusation, and you are not to be influenced by the mere fact that an indictment was returned against these defendants. The indictment creates no presumption whatever against these defendants, nor is it to be considered by you as evidence proving any fact concerning the offenses charged.

The indictment charges that the trade journals, to which I have referred, cooperated in the conspiracy alleged, but, in the opinion of the court, the evidence presented by the Government failed to prove that the trade journals did so cooperate in a manner which would render them guilty of participating in an illegal conspiracy, and therefore the journals were dismissed at the close of the presentation of the Government's evidence. Certain other defendants have also been dismissed from this case. The allegations in the indictment that the defendants who have been dismissed combined and conspired with the other defendants herein must be ignored by you as if such allegations had never been contained in the indictment.

I shall now indicate to you what the Sherman Act means. There is nothing in that Act which prevents an individual, if he acts alone and not in combination or concert with
others, from buying or selling goods at any price that
4536 he chooses. This applies equally to a corporation.

The Sherman law places no restriction of any kind upon any individual or corporation as to the manner in which it may conduct its business, so long as it acts alone, and not in combination with others.

Also, the law does not prevent individuals or corporations from acting together, provided their joint action is for a lawful purpose. Persons engaged in commerce may join together to improve trade conditions so long as they do it in a manner that is not prohibited by law. And so it is necessary to consider just what cooperative or concerted activity is rendered illegal by the Sherman Act.

A conspiracy means a combination for an illegal purpose, and, therefore, you will first consider whether the defendants have acted together, and if you so find, then you will consider whether their concerted or joint activity was for an illegal purpose within the meaning of the Sherman Act.

You will understand that a group of persons acting together may at the same time be engaged in lawful as well as in unlawful activities, but the fact that some of the activities may be lawful and may be authorized by law does not protect them, if at the same time they also engage
4537 in unlawful activities.

To be more specific, if you should find that the defendants, or some of them, were engaged together in lawful Code activities during the first few months of the time covered by the alleged conspiracy, this would not necessarily indicate that other activities carried on by them at the same time, in those same months, may not be illegal. In other words, persons in a combination may engage in a number of lawful activities, but if a single one of their concerted activities is an unlawful restraint of trade, then the fact that at the same time they were also engaged in a number of lawful activities will not save them from the provisions of the Sherman Act. And so it is not necessary in this case for the Government to establish that all of the activities of the defendants, or of the various committees referred to in the testimony were all illegal. A committee may be constituted for a lawful purpose, but if its members go beyond what the law permits and undertake to engage in activities which violate the law, they would be guilty regardless of the purposes for which the committee met together at the start.

Now, how are you to decide whether the activities of a combination, assuming that you find that a combination or common understanding existed, were legal or illegal? You
should consider the testimony, including the declara-
4538 tions made by the defendants who were in the com-
bination or by their agents, whether made orally or in written documents, and from the testimony, and from

these documents, and from all the evidence in this case, you may find that the defendants, or some of them, had a common understanding or cooperated together to carry out an illegal purpose, in which event I instruct you the combination would be an illegal combination under the law.

You must remember that the real nature of a combination or conspiracy cannot be judged by viewing its parts separately, but only by looking at it as a whole, as an entirety. You should consider all the evidence in the case bearing on the question, and from that you will determine whether these defendants combined to restrain trade as charged in the indictment.

You will bear in mind that men who combine for illegal purposes will normally not tell openly everything about their purposes. Thus it is often impossible to prove the existence of an illegal agreement by what is known as direct evidence. Very often, particularly in conspiracy cases, there cannot be direct proof of the making or existence of an illegal understanding. The acts of the parties over a
period of time, their course of conduct and declara-
4539 tions, either written or oral, and all the surrounding
circumstances may then be considered by you for the purpose of determining whether or not an illegal understanding was entered into.

There are two kinds of evidence—direct and circumstantial evidence. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard, or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. In determining whether any defendant or defendants, individual or corporate, now on trial, agreed or consented to or participated in any conspiracy as charged in the indictment, you will consider all of the evidence bearing on that question. In determining the weight to be given to circumstantial evidence bearing on this issue, you will bear in mind that to warrant a conviction on circumstantial evidence, each fact necessary to prove the guilt of a defendant must be proved beyond a reasonable doubt, and all of the facts so proved must be consistent with each other and with the main fact sought to be
proved, and the circumstances, taken all together,
4540 must be of a conclusive nature and producing in effect
a reasonable and moral certainty that the defendant whose guilt or innocence is under consideration became a party to the alleged conspiracy. The mere union of a lim-

ited number of independent circumstances, each of an imperfect and inconclusive character, will not justify a conviction. They must be such as to create and justify full belief according to the standard rules of certainty. It is not sufficient that they coincide with and render probable the guilt of the accused. The facts so proved must be incompatible with innocence and incapable of explanation upon any other reasonable theory than that of guilt.

In your deliberations, you are not at liberty to indulge in or give any weight to conjecture or suspicion. Conjecture or suspicion cannot establish any fact. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed.

Nor is it every fact or circumstance that the law admits as possessing the force of evidence and from which an ingenious or imaginative mind might infer, by some mental process or other, the existence of the main fact in issue, that can justify such inference. In attempting to prove the fact by circumstantial evidence, there are certain legal 4541 rules to be observed that reason and experience have found essential to the discovery of truth and the protection of innocence. The circumstances themselves must be established by a direct proof, and cannot be left to rest upon conjecture or suspicion, and the inference which may be based upon the facts and circumstances proved, must be a clear and strong logical inference. When a criminal charge is sought to be sustained by circumstantial evidence, the proof must meet two requirements. First, all the facts and circumstances proved must be consistent with the commission of the offense charged in the indictment. If you find any fact proved which in your judgment is inconsistent with the existence of the offense charged, you will find the defendants not guilty. Second, you must be satisfied beyond a reasonable doubt and to a moral certainty that the facts and circumstances proved can have no reasonable interpretation but that of the commission of the offense charged, excluding every reasonable theory but that of guilt, and are inconsistent with innocence.

Whenever a circumstance, relied upon as evidence of criminal guilt, is susceptible of two reasonable inferences, one of which is in favor of innocence, such circumstance is robbed of all probative value, even though from the 4542 other inference guilt may be fairly deduced; and with respect to any such circumstance, you must accept that inference which is in favor of innocence.

Now, what must you find before you may conclude that the Sherman Act has been violated? It is illegal and a violation of the Sherman law for a group of individuals or corporations, or both, to act together to raise the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity.

If you find that the defendants, and those acting in concert with them, controlled the greater part of the gasoline sold in the ten Middle Western States, and had the power to raise the price of that gasoline, and that the defendants and these other persons acting with them have knowingly engaged in a combination to raise or fix the price to be charged for gasoline to jobbers or consumers in the Mid-Western area as charged in the indictment, then you will understand that these defendants have violated the Sherman Act and are guilty as charged in the indictment.

You will understand also that if you find such a combination and conspiracy as I have just stated, then such combination and conspiracy is illegal, regardless of whether the prices fixed or brought about by the combination were high prices or not, or were reasonable or unreason-
4543 able. If you find that a combination existed and that such combination had the power to raise the price, the amount by which prices may have been affected by the combination is not important under the law.

You will also understand that if you find an illegal combination to have existed among all or some of the defendants, having for its purpose the raising of prices, it does not matter that there may have been also other factors which contributed to the raising of the prices, as, for example, the existence of the Connally Act, allocations or voluntary curtailment under the Code, or increased consumer demand, improvement in the economic conditions generally, and the like.

As circumstantial evidence of an unlawful agreement, among other circumstances, the Government points to the rise in the tank car prices of gasoline between March and June of 1935, and the uniform level tank car price from June 1935 throughout the year. The defendants have offered testimony of other existing elements and factors having an influence upon the spot market tank car price of gasoline and claim that the rise in the tank car price of gasoline between March and June, 1935, was caused by:

4544 (1) Adoption of the Connally Act of February 22, 1935, and the setting up of the Federal Tender Board in the East Texas field thereunder on or about March 1, 1935;

(2) Refinery allocations under the Code of Fair Competition for the Petroleum Industry and in addition thereto, the voluntary curtailment by defendants and others of their gasoline production in the month of March 1935, at the insistence and request of the National Coordinator for the Petroleum Industry, under the Code, which request for curtailment was sanctioned by the Petroleum Administrator;

(3) An increased consumptive demand in gasoline between March and June of 1935 in excess of 3,000,000 barrels over the consumptive demand forecast by the Petroleum Administrative Board;

(4) Control of Inventory withdrawal by the Oil Administrator;

(5) A buying program on the part of defendants which obligated no defendant to purchase any particular quantity of gasoline at any particular price; but pursuant to which the defendant companies distributed a portion of their necessary gasoline purchases among independent refiners in order to give 4545 such refiners an orderly market outlet for their distress gasoline at no more than the going market price;

(6) The improvement in economic conditions generally;

(7) A constant cost for crude oil which was $1 per barrel in the field plus transportation cost to the refinery;

And that the stable condition prevailing in the gasoline tank car market between June of 1935 and January of 1936 was caused by:

(1) A stable crude price of $1 per barrel brought about by more efficient State regulation of production of crude oil to conform to the consumptive demand for gasoline, aided by the machinery provided in the Interstate Oil Compact adopted in February of 1935 and becoming effective in August of 1935;

(2) A stable retail market;

(3) A buying program on the part of defendants which obligated no defendant to purchase any particular quantity of gasoline at any particular price; but pursuant to which the defendant companies distributed a portion of their necessary gasoline purchases among independent refiners in order to give such refiners an orderly market outlet for their dis-
4546 tress gasoline at no more than the going market price;

Now, unless you find from the testimony and believe beyond a reasonable doubt that the said price increased, and its continuance at the level shown by the evidence was caused by an unlawful agreement or combination of the defendants, as alleged in the indictment, and as heretofore defined and explained to you, and not caused by the factors aforesaid, then it is your duty to acquit the defendants and to return verdicts of "not guilty".

Furthermore, if you find that the defendants combined and conspired to raise the sale prices of their gasoline, any good intentions which they might have had in what they did will not make their understanding or combination legal, or excuse them from the consequences of their acts, and it does not matter how helpful or beneficial such illegal activities may have been to the defendants or to the independent refiners or to any other class of persons. By way of illustration: If you should find such combination and conspiracy as I have described, then if you should also find that such combination and conspiracy was beneficial to the independent refiners, that will not make the combination and conspiracy a lawful one.

4547 An understanding on the part of the members of a combination controlling a substantial part of an industry to raise the price which the members are to charge for their commodity is, in and of itself, an undue and unreasonable restraint of trade and commerce, provided only that the members of the combination are engaged in interstate trade and commerce.

Price fixing in interstate commerce by a combination or group of refiners controlling the substantial part of an industry is an undue and unreasonable restraint under the Sherman Act without regard to the question of how high or how low the prices fixed may be. It is not a question as to what extent prices were affected, nor is it a question of how reasonable or unreasonable the prices may have been. What the law condemns is the power on the part of such a group controlling a substantial part of an industry to raise the price if it chooses to do so, and for that reason it condemns and brands as illegal all attempts at price fixing by a group such as I have described. The law condemns the exercise by any combination of the power to raise prices, and so, as I have stated, if you find a combination and that the members of the combination had the power to raise the price, and acted together for that purpose, then I charge you that the combination is illegal, and your verdict should be guilty as to each defendant whom you find to have

4548 knowingly participated therein.

In deciding whether such a combination as I have described existed, you must consider all the facts and circumstances and all of the elements of the case as a whole. If you are satisfied from all of the evidence that any of the defendants acted together for the purpose of raising the price and that they had the power to raise the price, and did in fact affect the level of prices for gasoline in the ten Middle Western states, including the Western District of Wisconsin, as charged in the indictment, then you may return a verdict of guilty against such defendants.

In order to find that an illegal conspiracy existed, it is not necessary for you to find that there was a written or formal agreement among the defendants, or that any participant in the combination was bound to the other to perform any portion thereof. It is sufficient to establish an illegal conspiracy if it be shown that persons acted together in order to carry out a common illegal purpose. In order for you to find that there was an illegal conspiracy, it is not necessary that you find that the trade journals knowingly cooperated; and it is not necessary for you to find that the amounts to be purchased were agreed upon or that there was any agreement or understanding as to
4549 amounts to be purchased by the several defendants.
Nor does it matter that the amounts purchased by them may have been small, provided that the amounts purchased were sufficient to enable the defendants to carry out the illegal purpose charged.

And if you find that the independent refiners cooperated with the defendant major oil companies to raise the price, it does not matter which group led the prices upward. In other words, it does not matter whether the independent refiners or the defendant companies raised the price first, provided that they were all acting together in pursuance of the common purpose of raising prices.

The Congress of the United States has determined that the public interest is best protected by the maintenance of competition. The benefits to be gained by unrestrained trade between the states were deemed by Congress to be greater than any benefits that would result from the arbitrary control by the refiners over price.

I have stated to you that the burden is upon the Government to prove, beyond a reasonable doubt, a combination and conspiracy as alleged in the indictment. You will understand also that once the combination or con-
4550 spiracy is shown, thereafter the acts of any one of the conspirators is binding upon all the rest who participated therein. In other words, the existence of an un-

lawful combination must first be shown by the Government. Evidence has been adduced in behalf of the Government to the effect that the defendants acted together. Now this in itself would not make any illegal combination as I have stated, and would not be what is known in the law as a conspiracy. You are to examine the acts of the defendants, their declarations, all the circumstances, and all of the evidence, in determining whether there was the purpose charged in the indictment of unlawfully raising and fixing the price of gasoline to be sold in the ten Mid-Western states. If you find that that purpose existed, then the combination would be illegal. The declarations contained in the correspondence between the various defendants or between defendants and their respective companies, as shown in the exhibits received in evidence, may be considered in determining the purposes and effects of the concerted activity, and are to be considered by you in determining whether the concerted activity was a combination and conspiracy to restrain trade and commerce in gasoline as charged in the indictment.

4551 If you come to the conclusion from the evidence in this case that these defendants possessed the power to raise the price of gasoline to be sold in the ten Middle Western states, and that there was the purpose to exert that power, then the combination became, from the time that this purpose appeared, an illegal one, and a conspiracy in restraint of trade, and the defendants participating therein are guilty of the offense charged in the indictment.

If from all the evidence before you, you find not only that there was concerted action, that is, action together, of the defendants, but that it sought to accomplish the illegal purpose of raising the price of gasoline to any extent, then it would follow that the acts and declarations of any one or more of the conspirators in furtherance of the conspiracy are binding upon all the others, and this would be true even though any one or more of the co-conspirators were not informed and did not know of the acts of the other co-conspirators. While a particular defendant must be shown to be a member of the conspiracy by acts and declarations independent of declarations of the other conspirators, just as soon as he becomes a member of the conspiracy he becomes bound by all the acts and declarations of the other members furthering the conspiracy, whether he is aware of them or not.

4552 To illustrate, you will find certain telegrams and letters passing between a witness and a defendant. It may be true that a number of the other defendants did not know about these letters and telegrams, but, if you find that the alleged combination and conspiracy existed and that such letters and telegrams were intended to advance and carry out the illegal agreement or combination, then those letters and declarations are binding upon all who are shown to have joined the combination, even upon those who did not know such letters and telegrams were written or in existence.

It results from what I have said that, if you find from all the evidence in the case that any defendants joined in an illegal combination or conspiracy, then the acts and declarations of all the other conspirators in furtherance of the conspiracy are binding on each of them.

If you find an illegal understanding such as I have described existed, it is not necessary for you to consider the extent to which the illegal understanding was carried out, but before you may find any of the defendants guilty, it is necessary that you find, not merely that an illegal understanding was entered into, but also that some overt
4553 acts were done in the Western District of Wisconsin
by some of the defendants or their agents to carry out in part or to further the carrying out of the understanding. The Government has presented evidence that prices of gasoline in the ten Mid-Western states, including the Western District of Wisconsin, were affected by the defendants in the manner charged in the indictment and that some of the defendants sold gasoline to jobbers and consumers in this District during the period covered by the indictment at those prices. If, from the evidence, you are satisfied that this is true, you will understand that such sales by any of the members of the combination are overt acts such as I have referred to, and it is immaterial whether at the time the acts were committed, or at any other time, any of the individual defendants lived here or held meetings here, or were present in this District.

It is not necessary in the formation of the conspiracy that all of the parties thereto shall actually meet together at one and the same time and place, or all discuss its purpose or the means of carrying its objectives into effect, or draw up any written or formal agreement upon the methods to be pursued in accomplishing such design. A con-
4554 spiracy may be, and frequently is, formed and carried
out without the express declaration of its purpose by any of those concerned, which in itself would tend to show the existence of a concerted purpose; and yet when their declarations are considered in connection with the acts of the parties, or when the acts themselves are considered

independently of any such declarations, the existence of such a conspiracy and its object may be made clearly to appear. It is sufficient that the circumstances shown satisfy you to the extent I have indicated, that the parties thereto were acting together toward a common end, and that that end was the raising of prices charged as the object of the alleged conspiracy.

It is not necessary that it shall appear that all of the defendants combined together at the start or that each was an original member of the conspiracy. If it is shown that a conspiracy was entered into between two or more of the defendants, and that at any later time during its existence new or additional parties, aware of its existence, united with them for the purpose of aiding in the accomplishment of the scheme, they are from that moment fellow-conspirators and equally responsible for all the consequences which flow from such participation. For example, it appears
4555 in evidence that the Barnsdall Refining Corporation,
defendant in this case, was not organized until three or four months after the alleged conspiracy is claimed to have commenced to operate. Nevertheless, if you shall find that an illegal conspiracy existed, and if you shall find that the Barnsdall Refining Corporation later knowingly participated in such conspiracy subsequent to the date of its organization, then that defendant will be responsible in the same manner as each of the other defendants whom you may find to have participated at any time.

A man who knowingly joins a conspiracy after its formation, and thereafter does some act that contributes to the carrying out of the conspiracy, is also a conspirator, but he cannot be held liable unless prior to the time he joins the conspiracy or does some act that furthers its purpose, he knows that what is going on is a criminal conspiracy and knows its general scope and intent. So as to the defendants here involved, and each of them, the burden of proof is on the Government to show beyond a reasonable doubt that these men, or any of them, joined a conspiracy to violate the law as charged in the indictment, and that they joined such conspiracy knowing of its
4556 criminal purpose at the time of entering into same,
and that they then did certain acts in furtherance of it. Unless you are satisfied beyond a reasonable doubt from the evidence that was the situation in this case, you must acquit the defendants.

It is not necessary that each member shall know the exact part which every other member took in the conspiracy. It is enough that the defendant be shown to have had knowledge that the parties whom he was assisting were engaged in a common and unlawful design. Such knowledge may be inferred from his conduct and the attendant circumstances, and if the acts proved are of a nature to satisfy the jury that he was aware of the fact that the parties with whom he was acting were engaged in the unlawful activities charged, that is sufficient. Where two or more persons actuated by the common purpose of accomplishing an unlawful act purposely work together in furtherance of the unlawful scheme, every one of such persons becomes a principal in the conspiracy, although the part some of them may take therein is a small or subordinate one or is to be done separately or at a distance from the others.

While the mere declaration of one conspirator cannot alone prove that another is a party thereto, yet any
declaration or statement made by one of the con-
4557 spirators during the existence therof, in furtherance
of the unlawful combination, when it is established, is not only evidence against the one making such a declaration, but is evidence against all the other participants, who are as responsible for such declarations or statements as if made by themselves. But you will understand that, before any such statements or declarations can be considered as evidence against any of the defendants other than the one making them, the facts and circumstances must be such as to satisfy you that an unlawful conspiracy had been formed and then existed, and that the defendants against whom such declarations were sought to be used were parties thereto at the time.

You will understand from what I have stated that mere passive knowledge of the existence of a combination or conspiracy, should you find that one did exist, or mere passive knowledge of the illegal acts of others in connection therewith, is not in itself sufficient to make the one having such knowledge a member of the unlawful association. The evidence must satisfy you, not only that he had knowledge of the existence of the conspiracy and its unlawful nature, but that with such knowledge he knowingly
participated to some extent with the members of the
4558 combination for the purpose aiding in the common
design. It is sufficient, however, that you find that a defendant, having knowledge, and being in a position to confer authority, authorized or ordered the doing of the illegal thing by or on behalf of his company. For example, the president or chief executive officer of a company may be found guilty of participating in an unlawful

conspiracy if the jury should believe from the evidence that he had knowledge of and authorized or ordered his company's participation, and did nothing more. But you must be satisfied from all the evidence, beyond a reasonable doubt, that he did have such knowledge and did, expressly or impliedly, authorize the doing of the illegal act, before you may convict him.

If you do not find that he did have such authority, or that he did not have such knowledge and did not authorize his company to enter into and participate in the conspiracy, then you may acquit him—you must acquit him.

Until such knowledge and participation are shown, a defendant is not bound by the declaration or statement of any other member; but, when shown, he then becomes bound by all acts and declarations of those associated
4559 with him done or made in furtherance of the common
design. This knowledge and participation of a defendant are, like the question of intent and the existence of the conspiracy itself, to be gathered from the circumstances. The law, as in proving a criminal combination, permits the proof of circumstances and facts, that is, the relations of the parties, what was done by them and the manner in which it was done; and it is by assembling and considering all these things as a whole that we draw those deductions and inferences which enable us to say what the real relations, knowledge and purpose of a defendant was. But as a result of the evidence there must appear the common knowledge, the common intent, the common purpose and ultimate design moving in the minds of all engaged in the unlawful combination, and the acts done by any defendant, before it or he can be found guilty, must be with knowledge and in furtherance of such common purpose.

And when the conspiracy as charged is shown to exist, if the evidence shows that the activities of the combination were widely extended, embracing and involving acts or movements being carried on in different places and jurisdictions at one and the same time or during the same period, but all intended and having for their object the
single ultimate purpose charged, it will make no dif-
4560 ference as to the guilt of a defendant, that he should
not know what particular acts were being done elsewhere or by whom, to carry out the common design. Under the law, as I have before indicated, by entering into the conspiracy and lending his aid to carry it out, he adopts and becomes responsible for all that is done elsewhere by any and all others concerned in the same unlaw-

ful combination, no matter how widely those acts may be separated from the scene of his own activities.

Bearing these considerations in mind, you will be enabled, should you find that a combination or conspiracy existed, to determine whether it had for its purpose the intent to violate the Sherman Act as I have defined it to you. This is so because it is the law that the intent or purpose with which a thing is done is to be determined from the nature of the acts committed and the facts and circumstances surrounding the party charged at the time he did them, and drawing therefrom such inferences and deductions as men of reason and judgment, familiar with the practical things of life, would ordinarily draw or gather from such facts and circumstances.

If you should find that the defendants and the independent refiners acting in combination with them had the power to raise prices, and that their combination was
4561 an illegal one, it does not matter whether or not any of the defendants had any need, immediate or otherwise, for the gasoline which you may find they purchased. Persons are not permitted under the law to combine together to purchase commodities, even if they need the commodities, where such concerted action would have the effect and the purpose of raising prices.

If you should find that the defendants acting together, and those independent refiners found acting in concert with them, did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, or that they did not combine for that purpose, and if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally, then you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to and did merely eliminate abuses which tended to produce destructive competition and restore competition to a fairer basis and produce fairer price levels. In such event, you may conclude that the purchase of such gasoline in the manner shown by the evidence was reasonable and beneficial and not injurious to the public interest and that, therefore, the restraint of trade was not undue, and not illegal, and you may acquit the defendants.

4562 If you find that the defendants did not have the power to raise the level of the spot market prices in the spot markets referred to in the indictment, and you also conclude that the buying programs engaged in by the defendants were reasonable and not unreasonable restraint of commerce, and that the activities of the defendants did not constitute an unreasonable restraint of interstate commerce, then you will find the defendants not guilty.

However, if you should find that through the purchase of so-called distress gasoline, defendants and the independent refiners and others acting in cooperation with them had the power, and combined for the purpose of directly affecting and raising the level of spot market prices, then, as I have previously stated, the restraint of trade was as a matter of law undue and unreasonable and, therefore, illegal.

Much has been said in this case about the NRA Code for the Petroleum Industry, and it has been suggested that one of the purposes of the Code was to raise the price of gasoline. Whether or not such was an objective of the Code, the defendants would not be justified in combining with others to raise the price of gasoline, assuming that they had the power to do so, unless their activities in this regard were specifically authorized by the Code or approved by the President of the United States or the Secretary of the Interior under the National Industrial
4563 Recovery Act. I instruct you as a matter of law
that there is no evidence in this case of Government approval which would exempt the activities complained of from the prohibitions of the Sherman Act.

Furthermore, as you know, the Code and NRA passed out of existence after May 27, 1935, and thereafter even the Government officers had no power to approve a combination, such as I have described; the Sherman Act was restored to full force and effect, and was again the law of the land. The fact that certain activities otherwise violative of the Sherman Act might have been done legally under the Code while it was in existence if those activities were duly approved, does not give the defendants the right or the privilege to do those same things without obtaining the necessary Government approval, which as I have said is lacking here.

Even if you should find that some Government officers knew of or acquiesced in such combination and conspiracy, such knowledge or acquiescence would not excuse the violation of the Sherman Act, if you find that the law was violated.

Again, if you find that the defendants combined in a manner and for the purpose described, you should give no weight to the fact that some of these illegal activities may have been considered or arrived at in Code meetings,

or that the defendant Arnott was called "Chief
4564 Stabilizer" under the Code, or that a committee of
the defendants was entitled "Tank Car Stabilization Committee", or that any of these matters were brought to the attention of the P. and C. Committee, or that any of the active participants in the combination were paid for their efforts by the P. and C. Committee, or that any of the active participants in the combination were paid for their efforts by the P. and C. Committee. You may consider such matters only in connection with the issue of reasonableness and only, as I have stated to you, if you should first find that the defendants engaged in the combination and the independent refiners and others cooperating with them, together did not have the power to control the prices.

If you so find, then you may consider what I have just discussed—just covered.

Every person is presumed to intend the natural and probable results of his acts knowingly done, and an unlawful act implies an unlawful intent. If a defendant knowingly did acts which the law renders illegal, then he is guilty, irrespective of whether he believed he was violating the law.

Your practical experience and daily observation of men will aid you in determining this question of intent. The intent with which an act is done is sometimes more clearly and conclusively shown by the act itself than by any word or explanation of the actor. Thus, if you found a stranger taking books out of your home without your permis-
4565 sion, and he explained to you that he did not intend
to steal them, but was merely borrowing them to read, you would undoubtedly infer his intent from his act rather than his words.

In this case, you have the evidence of the defendants' acts, and their explanation of them. If you find that they, or any of them, knowingly did the acts described in the indictment, which the law renders illegal, you must determine with what intent he or they did them, from the acts themselves, from their natural and legitimate consequences, from the defendants' explanations and from all other evidence before you.

In this case the burden of proof is on the Government to establish beyond a reasonable doubt all the elements of the crime charged in the indictment, and if the evidence does not so convince you, then you must find the defendants not guilty.

The Government must prove beyond a reasonable doubt that these men, or at least two of them, entered into a combination with a design and purpose of committing the offense charged in the indictment. You will understand, of course, that one man alone cannot form or create a conspiracy.

You cannot find the defendants guilty unless the prosecution proves each and all of the material and essential allegations of the indictment beyond a reasonable
4566 doubt and to a moral certainty. The indictment
charges, among other things, that the defendants have intentionally increased and fixed the tank car prices of gasoline contracted to be sold and which was sold in interstate commerce in the Mid-Western area, including the Western District of Wisconsin, and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area, including the Western District of Wisconsin. Even if you should find and believe beyond a reasonable doubt and to a moral certainty that the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the spot markets in the East Texas or Mid-Continent fields, or in an alleged spot market at Chicago, Illinois, you must acquit all of the defendants and return a verdict of "Not Guilty" unless you also find and believe beyond a reasonable doubt that they have also intentionally raised and fixed the tank car price of gasoline contracted to be sold and which was sold in interstate commerce in the Mid-Western area, including the Western District of Wisconsin, and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area, including the Western District of Wisconsin. I further instruct you that in order to sustain the foregoing charge in the indictment, it is not enough for the prosecution to show an increase in the tank car prices
4567 of gasoline within said area, but you must also find
and believe beyond a reasonable doubt and to a moral certainty that the defendants combined and conspired together or with others for the purpose of increasing and fixing the same as well as for the purpose of raising and fixing the tank car prices in said spot markets, or one or more of them.

In this case many individuals are named as defendants together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it related to his conscious participation in the alleged unlawful acts charged in this indictment. It is your duty to determine the guilt or innocence of each corporation separately, and likewise the guilt or innocence of each individual separately.

You will understand, gentlemen, that you may convict or acquit any or all of the defendants as the facts may warrant. It is not incumbent on the Government, notwithstanding the offense is so charged, to necessarily show that all the defendants alleged to have been concerned in the combination and conspiracy charged were in fact participants in it in order to convict any of them. Because all the defendants on trial are included in one indictment and tried together does not require that you convict all in order to convict any, or that if you acquit any you
4568 must acquit all. If you find that there was such a combination and conspiracy as charged, and that any of the defendants on trial were parties to it, you may convict them although acquitting the others.

Of course you cannot find any defendant, either a corporation or an individual, guilty unless, in accordance with what I have already told you, you are convinced beyond a reasonable doubt that the unlawful conspiracy charged in the indictment has been proved.

Even if you are convinced beyond a reasonable doubt and to a moral certainty that the conspiracy alleged in the indictment in fact existed and that any particular defendant corporation was a party thereto, the fact alone creates no inference that any individual defendant who was an officer or employee of such defendant corporation also was a party thereto, because officers and agents of a corporation are not liable for the acts of such corporation merely because they are officers and agents of such corporation. Nor would such officers or agents become criminally liable merely because they knew of the alleged conspiracy or in their official capacities ought to have known thereof; but in order to convict any officer or agent of a defendant corporation, you must be satisfied beyond a reasonable doubt that he knew of the conspiracy and its unlawful purposes, and that he knowingly participated therein, either by authorizing, ordering, or doing some act or acts con-
4569 stituting, in whole or in part, the unlawful conspiracy.

It is your duty to consider the evidence in this case entirely divorced from any preconceived or any fixed idea you may have as related to corporations. The issue you are to consider is limited solely and alone to the charge against these defendants as made in the indictment, and you are to be governed solely by the evidence submitted in this case, under the charge as I have given it to you. Hatred, passion, prejudice or sympathy have no place in your deliberations, and you must banish these from your hearts and minds.

The purpose of the statute under which these defendants were indicted is to protect the public interest by the maintenance of unrestricted competition in business, and to promote unrestrained trade between the states.

No jury should convict a corporation of a violation of the Sherman Act solely because of its size or the extent of its business. It is your duty to give these corporations the same impartial consideration in weighing the evidence in this case and in arriving at a verdict which you would give to any individual or to any small corporation whose guilt or innocence might be left to your determination.

You are not concerned with the financial condition of any of these defendants. Whether a man be rich or
4570 poor, he is entitled to the same consideration in this
Court, and at the hands of this jury, and you must keep that in mind in your consideration of the evidence in this case.

Even if some of the defendant oil companies endeavored to keep track of the purchases of gasoline, as to amount and price, being made by their competitors, in the East Texas or Mid-Continent fields, and even if they governed the amount and price of their own purchases thereby, this would not be illegal provided they acted independently of each other and not in concert.

It would have been entirely legal for any defendant oil company, acting alone, to buy any amount of gasoline it saw fit, in the East Texas and Mid-Continent fields.

If you conclude from a consideration of all the evidence with respect to the purchases made by defendant oil companies that what the defendants did was merely to exchange information among each other with respect to the amount of surplus or distress gasoline expected to be in the hands of independent refiners, which they individually hoped and expected to be able to buy, you will acquit the defendants, no matter what else has been proved.

Each of the defendant oil companies, if it acted alone and not in agreement with other, had the legal right to pay any price it chose for tank car spot gasoline in the East Texas and Mid-Continent fields, whether it was above, at, or below the market, and whether or not its purpose or motive was to aid independent refiners.

4571 The fact that some or all of defendant companies bought gasoline in the East Texas and/or Mid-Continent fields in 1935 and/or 1936, whether in large or small quantities, and whether or not they had bought there before, does not, in and of itself; prove any agreement or understanding between them to buy, either legal or illegal.

The fact that in March, April, May and June, 1935, the spot tank car price of gasoline in the East Texas and Mid-Continent fields rose and thereafter remained stable until January, 1936, when it again rose, does not, standing alone, prove any agreement or understanding between defendants, either legal or illegal.

It was entirely proper for the independent refiners in East Texas to sell their gasoline through the East Texas Refiners Marketing Association as a common selling agency. No inference unfavorable to any of the defendants could be drawn from the mere fact that some of them purchased gasoline through the East Texas Refiners Marketing Association, provided they acted independently of each other, but if they acted together, in concert, for the purpose of raising the price as alleged in the indictment, then their activities would be illegal.

In this case there is evidence referring to the Standard Oil Company of Indiana as the "Market" or "Price" leader in the Midwestern area. The area itself is referred to as the Standard of Indiana territory. There is evi-
4572 dence that some of the defendants in making contracts with their jobbers, based their guarantee margin upon the posted price of the Standard Oil Company of Indiana. In some instances their retail price, followed the posted price of the Standard Oil Company of Indiana.

The Standard Oil Company of Indiana became known as the "Market" or "Price" leader because of the fact that it does a larger per cent of the business in the territory than any other single company and because it does business in all parts of the territory. The territory became known as the Standard of Indiana territory because it was the first of the defendant oil companies to do business in this territory. The evidence discloses that fact.

As a matter of law, the mere size of a corporation, however, large and impressive, or the existence of power which it did not exert, would not show any violation of law, and standing alone is not evidence of a conspiracy.

As I have stated, the defendants are presumed to be innocent until proven guilty, and it is your duty to attempt to reconcile the evidence with this presumption. It is your duty to seek for, and if possible, to find a reasonable explanation for the conduct of the defendants in purchasing gasoline from independent refiners, which is consistent with their innocence of the crime charged.

While it is the duty of the court to declare the law, and that of the jury to be governed by it in their consideration of the evidence, it is, on the other hand, as I have
4573 stated before, the exclusive province and right of the jury to pass upon the facts in the case and to pass upon the credibility of the witnesses. With those functions the Court has nothing to do, other than to endeavor to see that only proper evidence is permited to go on before the jury for their consideration, and it is neither the right nor the disposition of the Court to interfere with that duty of of the jury. If, therefore, during the progress of this trial, you have gathered any impressions from anything which the Court may have asked of a witness or may have stated in its rulings or in the course of discussions with counsel, as to the views or judgment of the Court on the question of the guilt or innocence of the defendants or any one or more of them, or as to the weight of any evidence or the credibility of any witness, you will disregard such impression and base your finding upon your own independent judgment as to what the evidence discloses.

Your verdict should not be guided or directed by any action that the Court has taken during the trial with respect to the admission or exclusion of evidence, nor by the denial or granting of any motion made by any counsel during the course of the trial. What the Court did in any such instance, it had to do as a matter of law, and it was as exclusively within the province and the jurisdiction of the Court as the findings of fact upon the evidence in this case are exclusively within the province and jurisdiction of the jury.

4574 Evidence stricken out during the course of the trial should not be considered by you as having any bearing in the case, and is not to be taken into consideration in reaching your verdict. Furthermore, evidence which was admitted as against one or more defendants and not against others should be considered only with respect to the particular defendant or defendants as to whom it was admitted. This instruction should be carefully borne in mind when you consider such items of evidence or testimony as came into the case which were admitted as applicable to only one or more of the defendants.

Where all the substantial evidence is as consistent with innocence as with guilt, it is your duty to return a verdict of acquittal, because facts consistent with innocence are never evidence of guilt; or as otherwise stated, there is no substantial evidence to prove the charges where all the substantial evidence is as consistent with innocence as with guilt.

Suspicion, no matter how well founded, and no matter how strong the ground therefor, never amounts to or takes the place of proof. You cannot find any of the defendants guilty upon suspicion.

4575 Testimony given by some of the witnesses in this case when they appeared before the Grand Jury, was read to them when they appeared as witnesses in this trial. That was done for the purpose of refreshing their memory, and for no other purpose. You will understand that it was not used for the purpose of impeaching the testimony of the witness. The testimony of no witness who has testified here was inconsistent with any of the testimony he gave before the Grand Jury which was read to him in this case.

The responsibility is now upon this jury to pass upon the guilt of these defendants of the offense charged in the indictment. You should do your duty in accordance with your oath and with your best judgment, without prejudice or fear or favor, and with a full and fair consideration of all the evidence in the light of the rules of law which I have laid down for your guidance.

Do not let your anxiety to return to your homes and to your families deter you from giving this case the time that its serious consideration demands and so richly deserves.

Two separate forms of verdict have been prepared for each defendant, one to be used if you find the defendant guilty, and the other to be used if you find him not guilty.

4576 You must be unanimous in your finding. You cannot make any finding without coming to a common conclusion in respect thereto.

Before you begin your deliberations, it will be necessary for you to elect a foreman of the jury, who will sign the verdicts that you will agree upon.

4577 Thereupon, in the presence of the jury and before they retired to deliberate upon their verdict, the following occurred:

The Court: The two alternate jurors,—I have been advised by the Marshal that the first twelve jurors called are in excellent condition of health, so the two alternate jurors, Clifford Huber and Earl

Hibbard, are discharged from jury service in this case. You will not discuss this case or what occurred in the jury room with any person, until the other jurors have returned their verdict or have been discharged by the Court.

The Court: Have counsel any exceptions?

Mr. Crawford: We have none.

Mr. Wood: If your Honor please, we have a few additional requests.

The Court: I may say this. All requests for instructions which have not been included in the charge just given, are denied. Those requests are all filed with the Clerk.

Mr. Wood: Will it be necessary for us to state our reasons for requests that have been denied?

The Court: No, it will not be necessary.

4578 Mr. Wood: They will be regarded each as having been renewed, the reason therefor given, and denied?

The Court: That is right.

Mr. Wood: So we understand that—

The Court: Yes; let the record show that all requests for instructions that have not been included in this charge are denied.

Mr. Wood: And in order that it may be clear, that is to be the state of the record in respect to each separate request?

The Court: Yes.

Mr. Wood: And each separate exception?

The Court: The Clerk has all requests on file.

Mr. Wood: If the Court please, in addition to the matters that were covered by the written requests given to your Honor, there are one or two exceptions,—a few exceptions, perhaps a few additional requests we would like to make. I wonder if it would be agreeable to your Honor if we did that after recess when we have had an opportunity to consult with each other?

The Court: I think it ought to be done now. I want to dispose of it now, and get this case to the jury. If you have any exceptions, make them now.

4579 The Court: I may say to the jury that I am sending to the jury room a copy of the indictment and also a list of the names of the defendants and the positions they occupied with the companies, which I will be glad to have counsel look over before it goes to the jury.

Mr. Wood: If your Honor please, it is almost impossible for me to speak above a whisper. I hope perhaps I may make these exceptions here.

The Court: Understand, Mr. Wood, that all the requested instructions that are not included in the instructions I have given here are denied.

Mr. Wood: Yes, sir.

The Court: So it won't be necessary to include any of those.

Mr. Wood: Those that we have filed in connection with your Honor's charge,—of the affirmative end of the charge, we wish to specifically except to your Honor's failure to charge substantially as in
4580 the series of requested instructions, beginning with 35 and ending with 42 on the ground that it is a proper submission of what is required to be proven under the indictment, and certainly it is a proper statement of what is required to be proven under the indictment as it has been interpreted by the Government throughout the trial.

The Court: All I can say is that requests for instructions I have not included in the instructions given, are denied.

Mr. Wood: We desire also specifically to except to so much of your Honor's charge as stated that any agreement between persons having for its purpose the raising of prices as distinguished from the fixing of prices was itself unreasonable under the Sherman Act irrespective of other circumstances; and by reason of that exception, and in connection with that exception, we desire to renew our requests previously made, numbered 87,—particularly num-
4581 ber 87, which we specifically ask to be given, in light of the exception just made to the charge as given, 88, 89, the finding of circumstances to be taken into account, and the tests as laid down by the Supreme Court. I suppose the request is denied?

The Court: It is denied insofar as it is not covered by the instructions given.

Mr. Wood: Well, we desire, in that connection, to point out to your Honor that the elements set forth in that do not seem to us to have been covered by the instructions given in any particular.

The Court: I think 87 has been covered.

Mr. Wood: In view of a statement by the Court we further except to the failure of the Court to inform the jury that not all agreements in restraint of trade are unlawful, but only those that are un-

reasonable and that impose undue and unreasonable restraint thereon; and in the failure of the
4582 Court to define to the jury what constitutes lawful and unlawful restraint, and to state to the jury what circumstances they should take into account in determining whether or not a given restraint is reasonable or unreasonable. And it is in that connection and for that purpose, that we have requested the giving of these instructions to which I have called your Honor's attention, to wit, 87, 88, 89 and 90, and others which have been specifically denied.

The Court: May I say, the requests for instruction is denied except insofar as it is covered by the instructions given.

Mr. Wood: And my requests now made, that the Court instruct the jury as I requested, is also denied?

The Court: Yes, denied except insofar as covered by the instructions given.

Mr. Wood: Your Honor charged the jury that these companies had a lawful right to purchase gasoline in any quantities and at any price so long as they acted independently of each other, and it became unlawful only when they acted in concert or in combination. We ask your Honor, in addition, to charge the jury that simultaneous or contemporaneous action is not in itself evidence of combination or concert.

Mr. Chaffetz: We have no objection to that charge, but I don't think the words simultaneous or contemporaneous ought to be used because the
4583 jury may not understand them. I should say mere action at the same time does not prove concert or combination. I think it is covered by the charge.

The Court: Will the reporter read the statement made by Mr. Wood.

(Thereupon the reporter read the following:)

> "Your Honor charged the jury that these companies had a lawful right to purchase gasoline in any quantities and at any price so long as they acted independently of each other, and it became unlawful only when they acted in concert or in combination. We ask your Honor, in addition, to charge the jury that simultaneous or contemporaneous action is not in itself evidence of combination or concert."

The Court: I instruct you, gentlemen, as the court reporter has read, that the companies had a perfect right to buy gasoline at any time, and any place, so long as they did not act in combination and act concertedly.

Now, counsel has asked me to instruct you that simultaneous or contemporaneous action is not in itself evidence of combination or concert, and that is true. The fact that they were buying at the same time is no evidence that they were in combination or concert.

Mr. Wood: Your Honor gave an illustration, a homely one, as to circumstances under which an agreement might be inferred. Although your Honor has not got this request, we ask that the
4584 Court give that as another homely illustration of circumstances under which an agreement may not be inferred, used by Judge Learned Hand, in instructing a jury in similar cases,—in anti-trust cases.

(Thereupon the Court gave the following further and additional instruction to the jury:)

The Court: I think this instruction was given, but I will read it to you:

As the first essential step in the prosecution's case, the defendants must be proved beyond a reasonable doubt and to a moral certainty to have made an actual agreement with respect to some illegal buying program or programs. This means more than that they merely pursued a similar course of conduct. If I say to you, yesterday was a fair day, and you say yesterday was a fair day, our minds are in accord, but we have not made a contract that yesterday was a fair day. In order to constitute a contract—this is quite important for you to remember—there must be some undertaking on the part of the people who contract; some promise that they will conform their conduct to some standard, some prescribed rule, some course in the future which is defined by the terms of the contract. There must be some promise on the part of the parties by
4585 which they say that they will in the future do certain acts; that they will do something which is defined by the understanding between them.

Mr. Wood: Your Honor charged that if the defendants, in company with the independent refiners, possessed the power to raise the prices as charged in the indictment, and exercise that power, the jury might return a verdict of guilty. We ask that that instruction be limited by the insertion of the words "by the means charged in the indictment, not by some other means"; and that the jury be instructed that the mere fact that they might together, through the exercise of some other means, have that power, is not sufficient. The jury must not only find that they had the power, but they had the power to exercise it to the precise means charged, and not through some other means,—namely through the operation of these buying programs.

The Court: I think I have told the jury it is necessary for the Government to prove, beyond a reasonable doubt, all the essential facts charged in the indictment. That is covered. The request is denied.

Mr. Wood: We except to your Honor's ruling, because we do not think that that has been made plain by the charge,—the request I have just made. 4586

We also except to your Honor's failure to charge that even though the defendants alone or in company with others entered into a combination to raise or fix the spot tank car price of gasoline in the Mid-Continent and East Texas field, even though they had the power so to do, and did so, even though they likewise intentionally raised the price of gasoline in the Mid-Western area, that the jury must nevertheless acquit unless the jury finds, beyond a reasonable doubt, that these defendants had the power to control prices in the Mid-Western area, and to maintain them at high, arbitrary and non-competitive levels.

The Court: You may have that exception.

Mr. Wood: We have requested a number of instructions in our separate requests, based upon inducement, instigation, knowledge and acquiescence, variously phrased, none of which I understand are covered by your Honor's charge because your Honor's conception of the legal effect is different from ours. May we understand that each one of those requests is renewed and denied, and exceptions taken?

The Court: Yes, except insofar as covered by the charge.

4587 Mr. Francis: I have two exceptions I want to point out. The first one is, as I understood the Court in its charge, to instruct the jury that if they found that any of these defendants entered into a combination or agreement or conspiracy, the purpose of which was to raise, to any extent, the prices in the markets mentioned in the indictment, that then, and in that event, declarations by any one of the alleged conspirators, either oral or documentary, would be admissible against all of them. Your Honor, I object to that statement of the law, because I do not think that under the law those declarations would be admissible, oral or documentary, would be admissible against anyone, until it was shown by the evidence that he had engaged in a conspiracy or combination or agreement to fix and maintain prices at high, arbitrary and non-competitive levels, as mentioned in the indictment, in the spot tank car markets in East Texas, Mid-Continent and Chicago.

In other words, my exception is to the effect that none of these declarations, oral or documentary, are admissible until it has been shown by competent evidence that a person became a part of the conspiracy
4588 charged in the indictment, and the conspiracy charged in the indictment is not a mere conspiracy to raise prices but is one to fix high, arbitrary and non-competitive prices in certain designated areas.

The Court: You may have the exception.

Mr. Francis: I want an exception to the Court's charge, wherein your Honor states that the mere raising of tank car prices would be sufficient, and in that connection point out to your Honor that it is not sufficient, within the terms of this indictment to prove combination, conspiracy or agreement to raise prices, but the Government is required to show, beyond a reasonable doubt, that the defendants entered into a combination, conspiracy or agreement to fix high, arbitrary and non-competitive prices, as charged in the indictment; and the Court should instruct the jury to return a verdict of not guilty, unless they find from the evidence, beyond a reasonable doubt, that the defendants conspired to fix and maintain prices as set forth in the indictment, and these matters and things are brought to the attention of the Court in charges 35, 36, 37, 38, 39 and 40, and also in charge 43, each of which is separately requested on this particular point.

4589 The Court: And I again state that all requests for instructions, except insofar as they have been covered by instructions given, are denied, and you are allowed an exception.

Mr. Wood: There is one I would like to call your

Honor's attention to, which has been rejected. It seems to me, in the light of the argument of Government counsel, in closing, in respect to Mr. Ickes, we are entitled to have it given. That is number 129.

The Court: I will say this to you. Mr. Ickes was subject to a subpoena of this Court, and I presume could be called by either party.

Mr. Wood: That is a witness under control of a party.

The Court: I say, any party may have subpoenaed Mr. Ickes. Your request for that instruction has heretofore been denied.

Mr. Wood: May it be noted that each exception taken is noted on behalf of each and every defendant.

The Court: Yes.

Mr. Wood: Each one separately?

The Court: Each defendant has his exception to the instructions given.

Mr. Wood: And each exception that has been noted here is noted on behalf of each and every individual defendant?

4590 The Court: Yes, that has been true throughout the trial.

Mr. Wood: Your Honor has distinguished in this case, in his charge, between direct and circumstantial evidence, has defined each, and has laid down the circumstantial evidence rule.

I think, in view of that instruction, we are entitled to an instruction somewhat similar to our request number 26; namely, to the effect that there is no direct evidence in this case on the part of the Government of the existence of the conspiracy alleged, although there is direct evidence to the contrary by the defendants.

Mr. Chaffetz: I call counsel's attention to the Sus memorandum, if he never heard of that before.

Mr. Wood: That reminds me—it isn't evidence of anything—

The Court: Your request is denied.

Mr. Wood: With respect to the Sus memorandum to which counsel has referred, we ask that the jury be instructed that it may not be considered by them as any evidence of the existence of any conspiracy.

The Court: The request is denied.

Mr. Wood: And we respectfully submit and ask

that the jury be instructed that it is not admissible
4591 for any purpose except against the defendant Sinclair Refining Company only.

The Court: The motion is denied.

Mr. Wood: I understand we have exceptions to all these rulings?

The Court: Oh, yes, you have your exceptions. All requests that have been denied, you have an exception to.

Mr. Dorr: I except to the charge as a whole, as failing to give such specific and sufficient explanations of the allegations of the indictment and the law applicable thereto as to give to the jury in a case of the complexity of this one, a sufficient or proper guide to their weighing of evidence as to the particular allegations.

And we also except on the ground that the—to the charge as a whole, as failing to put before the jury the defendants' claims as to the issues raised by the allegations.

I except specifically to the denial by the Court of Instruction 85, which was requested, which asked that the jury be instructed to disregard certain allegations of the indictment as not proved, to wit: the allegation that the prices published in the trade
4592 papers were falsely represented to be the prices of purchases made by the defendants; and the allegation of the indictment that the refinery runs of the independent refiners were curtailed by the activities of certain of the defendants, there being no evidence to support any of those allegations,—no sufficient evidence.

I also except to the Court's charge that a combination to raise a price where there is power to control such price is in itself unlawful and unreasonable, even though that power to affect prices as shown by the evidence, is merely power to remove an obstacle to a healthy, competitive price, and to remove a destructive practice in the industry in and by the methods shown by the evidence, if any; is merely the power to remove that obstacle and permit the price to rise to a fair competitive level—not a fair competitive level,—but a natural, healthy, competitive level.

The Court: You may have your exception.

The Court: Gentlemen of the jury:

You will have access to—we are going to leave the charts and the maps in this room. We will lock the doors, and remove everything from this courtroom except the exhibits that have been received in evidence. You will have access to this courtroom.

4593 I want you to know that we have not been unmindful of the real sacrifices you men have made. You have been away from your homes and your families, while the rest of us have been permitted to be with ours; and it has been much the concern of the attorneys on both sides. And I want you to know that the attorneys on both sides have worked hard toward expediting the ending of this trial.

Is there anything further?

(No response.)

The Clerk will swear the officers that will be with the jury. Will the officers step forward?

I will say this: Mr. Chaffetz was talking to me just now about the exhibits.

I want counsel for both sides to examine the exhibits that are here, and we want nothing left in this courtroom except the exhibits that have been received in evidence. So, while the jury is at lunch, why, that may be done.

The Clerk, or somebody with the counsel, will arrange the Exhibits in their numerical order, from
4594 number 1 up—and that refers to the documents you have in your possession, of course; if you don't have them, you can't do it—so they will be easily available to the jury.

Now, will counsel examine the list of the defendants that I am going to send to the jury? Will you examine those (handing document to counsel)?

The said charges of the Honorable Patrick T. Stone as set forth above comprise all of the instructions given to the jury hearing this cause.

Thereupon, the jury at 1:45 o'clock P. M., January 21, 1938, retired from the court room to deliberate upon their verdict.

4595 Thereafter, on January 21, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order Denying the Motions for Directed Verdict, said Order reading as follows:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * * *

ORDER DENYING MOTIONS FOR DIRECTED VERDICT.

Defendants, Standard Oil Company (Indiana), Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Cities Service Company, Empire Oil and Refining Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Corporation, Skelly Oil Company, Barnsdall Refining Corporation, The Globe Oil and Refining Company (Oklahoma), The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Kansas), Edward G. Seubert, Allan Jackson, Edward J. Bullock, Charles L. Jones, Charles E. Arnott, H. T. Ashton, Bryan S. Reid, A. 4596 G. Maguire, Harry D. Frueauff, O. J. Tuttle, Dan Moran, Harry J. Kennedy, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Alexander Fraser, P. E. Lakin, J. W. Carnes, Jacob France, Robert W. McDowell, Frank Phillips, A. M. Hughes, W. G. Skelly, E. B. Reeser, I. A. O'Shaughnessy, H. E. Brandli, Edward L. Shea, Noel Robinson, J. W. Warner and Arthur V. Bourque, having moved the Court to direct the jury to return a verdict of acquittal as to each of them, and the Court having considered said Motions, and being fully advised in the premises,

It Is Ordered, that said Motions for Directed Verdict be and the same are hereby denied.

To all of which the defendants may have an exception.

Dated at Madison, Wisconsin, this 21st day of January, 1938.

Patrick T. Stone,
United States District Judge
Western District of Wisconsin.

4597 Thereafter, at 10:25 o'clock A. M., on January 22, 1938, the jury were brought into the court room and rendered their verdict. The foreman of the jury handed to the Clerk of the Court, who delivered them to the Court, the separate verdicts of the jury as to each defendant. Thereupon, the following proceedings occurred:

The Court: You will listen to the reading of the verdicts, gentlemen:

> "We, the jury, for our verdicts in the above-entitled action, find the defendants Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock; Socony-Vacuum Oil Company, Inc., Charles L. Jones, Charles E. Arnott, H. T. Ashton, Bryan S. Reid; Wadhams Oil Company, A. G. Maguire; Cities Service Company; Empire Oil and Refining Company, Harry D. Frucauff, O. J. Tuttle; Continental Oil Company, Dan Moran, Harry J. Kennedy; The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr.; Shell Petroleum Corporation, Alexander Fraser, P. E. Lakin; Sinclair Refining Company, J. W. Carnes; Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell; Phillips Petroleum Corporation, Frank Phillips, A. M. Hughes; Skelly Oil Company, W. G. Skelly; 4598 Barnsdall Refining Corporation, E. B. Reeser; The Globe Oil and Refining Company (Oklahoma), I. A. O'Shaughnessy; The Globe Oil and Refining Company (Illinois); The Globe Oil and Refining Company (Kansas); H. E. Brandli, Edward L. Shea, Noel Robinson, J. W. Warner, Arthur V. Bourque, guilty as charged in the indictment."

On the same day, January 22, 1938, at the hearing of the above cause before the said Court, the following procedure occurred:

The Court: The record shows now that you have made your motions in arrest of judgment; that the bonds be continued in force; and that you are moving for a new trial, and that you will file those motions in writing.

Mr. Thomas: Within the three-day period.

The Court: Yes. And it is the order of the Court now that a hearing on those motions will be had at some time in the future, to be fixed by the Court. Is that clear?

Mr. Thomas: That is right.

Mr. Brazeau: We will want to examine the verdicts, your Honor.

4599 The Court: Yes, you may examine them.

Mr. Thomas: If the Court please, my attention is called further to the fact that when the motion is made, the reasons should be stated. As I understand your ruling, within the three-day period, we are to file our motions stating the reasons?

The Court: Yes.

Mr. Thomas: We are not required to state them at this time?

The Court: No, you are not; that is my understanding.

Mr. Thomas: Now, we may—will we have permission within the three-day period to file a further motion to set aside the verdict because it is contrary to the evidence?

The Court: Yes, you may.

Mr. Thomas: Or such other motions as we may see fit?

The Court: Yes, you may include in your motions to set aside the verdict and for a new trial anything you think you ought to include.

Mr. Thomas: All right, thank you.

4600 Mr. Kirkland: Is your Honor going to set a date for hearing on the motions for directed verdict?

The Court: I am not going to do it now—well, counsel the other day requested that—I have passed on that, or I have filed that. But the same questions can be brought before the Court on your present motions.

Mr. Thomas: This term doesn't expire until December, does it, Judge?

The Court: No, that is right.

Thereafter, and on January 22, 1938, the Clerk of the Court filed the separate verdicts of the jury finding each of the above-named defendants guilty.

> (Said verdicts as to the defendants-appellants are printed at pages 2478-2484 of the Record.)

Thereafter, and on January 25, 1938, certain defendants named therein, by their respective attorneys, jointly and severally filed with the Clerk of the above Court a Motion to Arrest the Judgment in this cause.

> (Said Motion for Arrest of Judgment is printed at pages 2485-2488 of the Record.)

4601 On the same date, January 25, 1938, the defendants Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock, Socony-Vacuum Oil Company, Inc., Charles L. Jones, Charles E. Arnott, H. T. Ashton, Bryan S. Reid, Wadhams Oil Company, A. G. Maguire, Cities Service Company, Empire Oil and Refining Company, Harry D. Frueauff, O. J. Tuttle, Continental Oil Company, Dan Moran, Harry J. Kennedy, The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Shell Petroleum Corporation, Alexander Fraser, P. E. Lakin, Sinclair Refining Company, J. W. Carnes, Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell, Phillips Petroleum Corporation, Frank Phillips, A. M. Hughes, Skelly Oil Company, W. G. Skelly, Barnsdall Refining Corporation, E. B. Reeser, The Globe Oil and Refining Company (Oklahoma), I. A. O'Shaughnessy, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Kansas), H. E. Brandli, Edward L. Shea, Noel Robinson, J. W. Warner and Arthur V. Bourque, by their attorneys, each filed separate Motions for a New Trial. Each of said Motions is identical, except as to the name of the defendant and the names of the attorneys signing it. To avoid repetition, only the Motion for New Trial of the defendant Socony-Vacuum Oil Company, Inc., is here set forth. It provides as follows:

4602 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MOTION FOR NEW TRIAL.

Now Comes the defendant, Socony-Vacuum Oil Company, Inc. by its attorneys named below and moves the Court for a new trial in the above entitled cause for the reason that the verdict herein is not sustained by evidence received upon the trial; and because of prejudicial error committed on the trial of said cause, as hereinafter more specifically set forth, whereby this defendant was deprived of its constitutional right to a fair and impartial trial before a jury; among such errors there being the following:

I

Because of error of the Court in submitting the case to the jury upon issues not set forth in the indictment, which issues constituted fundamental variances from the charges contained in said indictment, with the result that the verdict is not based upon the charges specified 4603 in the indictment herein, as appears by the charge of the Court to the jury on file with the Clerk and the record in the case.

II

Because of error of the Court in refusing to instruct the jury as requested by defendant, as more fully appears from the requested instructions, submitted to the Court prior to the charge given to the jury, and now on file with the Clerk, and as more fully appears from the minutes of the Court as set forth in the daily transcript of the proceedings on the trial.

III

Because of error of the Court in instructing the jury to the prejudice of the defendant, as shown by the minutes of the Court and the record of the proceedings, to which instructions exceptions were duly taken by and on behalf of defendant.

IV

Because of error of the Court in refusing to give instructions orally requested at the close of the charge and refusal to modify instructions given in the charge, as requested by defendant's counsel following the giving of the charge, and as set forth in the minutes of the Court and the record of the proceedings.

4604

V

Because of error of the Court in not admitting in evidence testimony of certain witnesses and certain exhibits, as more fully appears from various offers of proof and from the transcript of the evidence, including, but without limitation by reason of specification:

Offers of proof as to the testimony of the witness, Wirt Franklin, appearing at pages 938-45, 957-60, 960-62, 963-76, 976-80, 980-83, 992-95 of the record;

Offers of proof as to the testimony of the witness John E. Shatford, appearing at pages 1016-17, 1017-22, 1037-41, 1048-56, 1056-57, 1061-62 of the record;

Offer of proof as to the testimony of the witness F. W. Fisher, appearing at pages 1122-24 of the record;

Offer of proof as to the testimony of the witness Marion Travis, appearing at pages 1125-27 of the record;

Offers of proof as to the testimony of the witness James A. Moffett, appearing at pages 1150-52, 1153-54, 1154-55, 1156-57 of the record;

Offer of proof as to the testimony of Stewart M. Vockel, appearing at pages 1344-53 of the record;

Offer of proof as to the testimony of W. J. Brundred, appearing at pages 1354-62 of the record;

Offer of proof as to the testimony of Sidney A. Swensrud, appearing at pages 1428-34 of the record;

Offer of proof as to the testimony of the witness Fred Van Covern, appearing at pages 1491-1503, 1518-20, 1521-33 of the record;

4605 Offer of proof as to the testimony of Louis Titus, appearing at pages 1831-37 of the record;

Testimony of C. E. Arnott excluded, page 1736 of the record;

Testimony of James D. Collett excluded, page 1803 of the record;

Exhibits offered and marked for identification as exhibits numbered 709-711 inclusive; 829-832 inclusive; 834, 844-849, inclusive; 851, 892, 907, 914-916 inclusive; 918-922 inclusive; 925, 943, 944, 955-959, inclusive; 971-973 inclusive; 983, 993, 994, 1030.

The exclusion of the above testimony and exhibits and the exclusion of other testimony and exhibits not specifically listed but of which this defendant complains was duly excepted to on behalf of the said defendant as more fully appears from the transcript of the record.

VI

Because of error of the Court in admitting evidence, both oral and documentary, over the objection of counsel for defendant, to which exception was duly taken, as shown by the minutes of the Court and the transcript of the proceedings.

VII

Because of the refusal of the Court to limit the application of evidence offered by the Government as requested by defendant's counsel to which objection was made
4606 and exception taken, as is more particularly set forth in the minutes of the Court and the transcript of the proceedings.

VIII

Because of error of the Court in denial of defendant's motion to strike certain Exhibits and certain testimony to which refusal exception was duly taken, as more particularly shown in the minutes of the Court and the transcript of the proceedings.

IX

Because of error of the Court in permitting Government counsel to use an alleged and unauthenticated transcript of Grand Jury testimony of certain witnesses for the purpose of impeachment, over the objection of defendant's counsel, and to which exception was duly taken as more particularly appears by the minutes of the Court and the transcript of the testimony and because of the refusal of the Court at the request of defendant's counsel to require the alleged Grand Jury testimony so used to be identified and to be made available to defendant's counsel, as more particularly appears by the minutes of the Court and the transcript of the testimony and proceedings.

X

Because of error of the Court in permitting Government counsel on the examination of certain witnesses to
4607 use an alleged and unauthenticated transcript of the testimony of such witnesses before the Grand Jury for the stated purpose of refreshing recollection, as appears from the minutes of the Court and the transcript of testimony and because of the refusal of the Court at the request of defendant's counsel to require the asserted Grand Jury testimony so used to be identified and to be made available to defendant's counsel, as more particularly appears by the minutes of the Court and the transcript of the testimony and proceedings.

XI

Because of error resulting from the conduct of counsel for the Government, to which objection was duly made and exception taken by counsel for the defendant in

(a) Questioning of witnesses;

(b) Making highly prejudicial remarks in the presence of the jury concerning witnesses and their testimony, which remarks were outside the record;

(c) Making prejudicial remarks in the course of their arguments to the jury;

(d) Making remarks in the presence of the jury in the course of the trial not supported by the evidence or the record, which were prejudicial to the defendant;

all as appears by the minutes of the Court and the transcript of the proceedings in this case, with the result
4608 that the jury was prejudiced and inflamed against the
defendant and said defendant was prevented from obtaining a fair and impartial trial.

XII

Because there was no evidence that the alleged combination and conspiracy was entered into within the Western District of Wisconsin, or that any act pursuant to or in furtherance of such alleged combination and conspiracy was done in said District.

XIII

Because of error of the Court in refusing to direct a verdict of "Not Guilty" at the close of all the evidence.

XIV

Because of error of the Court in overruling the defendant's motion to quash the indictment.

XV

Because of error of the Court in overruling the defendant's demurrer to the indictment.

XVI

Because the verdict of the jury is contrary to law.

4609

XVII

Because the verdict of the jury is contrary to the evidence.

XVIII

Because there was not sufficient competent evidence to sustain the verdict as to the defendant.

Wherefore, the defendant above named prays that the Court set aside the verdict of the jury and grant said defendant a new trial.

Louis Mead Treadwell,
Goldthwaite H. Dorr,
William J. Donovan,
Herbert H. Thomas,
Attorneys for defendant above named,
1 West Main Street,
Madison, Wisconsin.

Dated: January 25, 1938.

4611a On the same date, January 25, 1938, the attorneys for the defendants filed with the Clerk of the above Court a separate Motion to Set Aside the Verdict and to Dismiss the Indictment on behalf of each of the following defendants: Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock, Socony-Vacuum Oil Company, Inc., Charles L. Jones, Charles E. Arnott, H. T. Ashton, Bryan S. Reid, Wadhams Oil Company, A. G. Maguire, Cities Service Company, Empire Oil and Refining Company, Harry D. Frueauff, O. J. Tuttle, Continental Oil Company, Dan Moran, Harry J. Kennedy, The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr., Sinclair Refining Company, J. W. Carnes, Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell, Phillips Petroleum Corporation, Frank Phillips, A. M. Hughes, Skelly Oil Company, W. G. Skelly, Barnsdall Refining Corporation, E. B. Reeser, The Globe Oil and Refining Company (Oklahoma), I. A. O'Shaughnessy, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Kansas), H. E. Brandli, Edward L. Shea, Noel Robinson, J. W. Warner and Arthur V. Bourque.

In each of said Motions the defendant moved the Court to set aside the verdict heretofore returned against such defendant and to dismiss the indictment herein, for
4611b the following reasons and grounds: (1) that the verdict of the jury is contrary to law; (2) that the verdict of the jury is contrary to the evidence; (3) that there was no sufficient competent evidence to support the verdict as to the defendant; (4) that the Court erred in not granting the prayer of the defendant for a peremptory instruction to the jury to render a verdict of "not guilty" at the close of the Government's case; (5) that the Court erred in not granting the prayer of the defendant for a peremptory instruction to the jury to render a verdict of "not guilty" at the close of the whole case; and (6) for the reasons stated in the various paragraphs of the Motion to Dismiss the Indictment and for a Directed Verdict of Not Guilty filed at the close of all of the evidence, and the defendant respectfully moved that the Court set aside the verdict returned against him and dismiss the indictment herein.

On the same day, January 25, 1938, the defendant Shell Petroleum Corporation, by its attorneys, filed with the Clerk of the above Court, its Motion to Set Aside the Verdict and Dismiss the Indictment. This motion provides as follows:

4612 IN THE DISTRICT COURT OF THE UNITED STATES.

• • • (Caption—11365) • • •

MOTION TO SET ASIDE THE VERDICT AND TO DISMISS THE INDICTMENT AS TO THE DEFENDANT SHELL PETROLEUM CORPORATION.

Comes now the defendant Shell Petroleum Corporation and moves the Court to set aside the verdict of the jury and to dismiss the indictment as to it, and in support thereof specifies the following reasons and grounds:

(1) The evidence fails to show that this defendant did any act whatsoever with any wrongful purpose or criminal intent. All the substantial, competent evidence herein is as consistent with the presumption of the innocence of this defendant as it is consistent with its guilt of the offense, if any, charged in the indictment.

(2) There is no substantial, competent evidence in the record herein of facts which exclude every other hypothesis

but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(3) There is no substantial evidence in the record that
this defendant engaged in an unlawful combination
4613 and conspiracy in restraint of trade and commerce
in gasoline among the several states in violation of
Section I of the Act of Congress of July 2, 1890, known as
the Sherman Anti-Trust Act, as charged in the indictment.

(4) There is a total failure of proof in support of the following allegations contained in paragraph No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jurors unknown "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and, as intended by them, defendants have artificially raised and fixed said spot market tank car prices at artificially high and non-competitive levels and at levels agreed upon among them".

The evidence produced totally fails to prove that this defendant combined and conspired with others for the purpose of artificially raising and fixing tank car prices and totally fails to prove that this defendant, with others, artificially raised and fixed the spot market tank car prices, and totally fails to prove that this defendant, with others, maintained said prices at artificially high and noncompetitive levels and totally fails to prove that this defendant, with others, maintained said prices at levels agreed upon among them.

(5) There is a total failure of proof in support of the
following allegations contained in paragraph No. 19 of
the indictment, wherein it is alleged that the defend-
4614 ants "engaged and participated in two concerted
gasoline buying programs hereinafter referred to as
(a) the East Texas Buying Program and (b) the Mid-Continent Buying Program", which allegation is further explained by the answer (See R. p. 66, Par. 10) to paragraph No. 1 of the Bill of Particulars filed by this defendant, in which answer it is alleged as follows:

> "The government claims that each of the defendants—including Gulf—engaged and participated with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that this defendant participated in the alleged East Texas Buying Program or in the alleged Mid-Continent Buying Program.

The evidence affirmatively shows that this defendant never bought gasoline in East Texas through the East Texas Refiners Marketing Association and only bought gasoline in the Mid-Continent at prices at or below the low quotations in the journals. The indictment does not charge that this defendant participated in the East Texas Buying Program.

(6) There is a total failure of proof in support of the following allegations contained in paragraph 19 of the indictment, wherein it is alleged that the defendants engaged in two concerted buying programs "for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high and at times progressively increased prices".

4615 The evidence shows that all purchases made by this defendant which were made at a flat price (i. e., a price not determined by published quotations on the date of shipment) were made at prices at or below the low of the published quotations.

(7) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935 and continuing to the date of the presentation of this indictment, or that at any time during said period this defendant, Shell Petroleum Corporation, engaged and participated in two concerted gasoline buying programs referred to in paragraph 19 of the indictment as (a) the East Texas Buying Program (b) the Mid-Continent Buying Program as alleged in said paragraph.

(8) There is a total failure of proof in support of the following allegations contained in paragraph 21 of the indictment, wherein it is alleged that, "said independent refiners have, at the instance of defendant Arnott and the aforesaid Buckley, curtailed their production of gasoline".

(9) There is a total failure of proof in support of the following allegations contained in paragraph 23 of the indictment, wherein it is alleged that "each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased as aforesaid as from time to time allotted to it by defendants McDowell, Tuttle, Bourque and the aforesaid Jacobi".

4616 The evidence wholly fails to show that any quantity of gasoline was ever allotted to this defendant by the defendants McDowell, Tuttle and Bourque and by the witness Jacobi.

(10) There is a total failure of proof in support of the following allegation contained in paragraph 23 of the indictment, wherein it is alleged as follows: "Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program and they have been made at uniform, high, arbitrary and non-competitive prices and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies."

(11) There is a total failure of proof in support of the following allegations contained in paragraph 23 of the indictment, wherein it is alleged as follows: "In furtherance of said unlawful purposes said independent refiners have, at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline". There is no evidence that independent refiners curtailed their production of gasoline at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(12) There is no substantial, competent evidence in the record herein that during the period beginning in the month of February, 1935 and continuing to the date of the presentation of this indictment, or that at any time during said period this defendant engaged or participated in any combination, arrangement, agreement, understanding, concert of action or program, whereby or as a result of which this defendant was or became obligated
4617 regularly to purchase any specific amount or any
definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in paragraph 22 of the indictment, or whereby or as the result of which this defendant was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners or from any of them.

(13) There is no substantial, competent evidence in the record herein that this defendant did any act within the Western District of Wisconsin pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

Wherefore, this defendant respectfully moves the Court to set aside the verdict of guilty found by the jury as to this defendant and to dismiss the indictment as to it.

Thompson, Mitchell, Thompson & Young,
Atty's for Defendant Shell Pet. Corp.

4618 On the same day, January 25, 1938, the defendants Alexander Fraser, and P. E. Lakin, by their attorneys, each filed a Motion to Set Aside the Verdict and Dismiss the Indictment herein. The Motion of the defendant P. E. Lakin is as follows:

In the District Court of the United States.

* * (Caption—11365) * *

MOTION TO SET ASIDE THE VERDICT AND TO DISMISS THE INDICTMENT AS TO THE DEFENDANT P. E. LAKIN.

Comes now the defendant P. E. Lakin and moves the Court to set aside the verdict of the jury and to dismiss the indictment as to him, and in support thereof specifies the following reasons and grounds:

(1) The evidence does not show that this defendant ever authorized, ordered or did any of the acts or things charged in the indictment.

(2) This defendant cannot be held guilty of crime merely because of the fact that he was vice-president of defendant Shell Petroleum Corporation, even though the said Shell Petroleum Corporation be convicted of criminal conduct, because there is no evidence in this record
4619 that this defendant either participated in, authorized or ordered any action or conduct by the Shell Petroleum Corporation or any of its officers or agents contributing to the commission of any such offense.

(3) There is no evidence that this defendant ever wrote any of the documents received in evidence which were sent under his name, while the evidence does show that such documents were written by other persons. Even if this defendant read or signed any of such documents or received any of the documents received in evidence which were addressed to him, such documents do not contain any matters tending to prove knowledge or authorization on the part of this defendant of participation by Shell Petroleum Corporation in the conspiracy charged in the indictment.

(4) The evidence fails to show that this defendant did any act whatsoever with any wrongful purpose or criminal intent. All the substantial, competent evidence herein is as consistent with the presumption of the innocence of this defendant as it is consistent with his guilt of the offense, if any, charged in the indictment.

(5) There is no substantial competent evidence in the record herein of facts which exclude every other hypothesis but that of the guilt of this defendant of the offense, if any, charged in the indictment.

(6) There is no substantial evidence in the record that this defendant engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several states in violation of Section I
4620 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, as charged in the indictment.

(7) There is a total failure of proof in support of the following allegations contained in paragraph No. 18 of the indictment, wherein it is alleged that the defendants and other persons to the grand jurors unknown "have combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets, and as intended by them defendants have artificially raised and fixed said spot market tank car prices at artificially high and non-competitive levels and at levels agreed upon among them."

The evidence produced totally fails to prove that this defendant combined and conspired with others for the purpose of artificially raising and fixing tank car prices and totally fails to prove that this defendant, either acting individually or through Shell Petroleum Corporation, of which he is vice-president, with others, artificially raised and fixed the spot market tank car prices, and totally fails to prove that this defendant, acting individually or through Shell Petroleum Corporation, with others, maintained said prices at artificially high and non-competitive levels and totally fails to prove that this defendant, acting individually or through Shell Petroleum Corporation, with others, maintained said prices at levels agreed upon among them.

(8) There is a total failure of proof in support of the following allegations contained in Paragraph No. 19 of the indictment wherein it is alleged that the defend-
4621 ants "engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas Buying Program and (b) the Mid-

Continent Buying Program", which allegation is further explained by the answer (See R. p. 66, Par. 10) to Paragraph No. 1 of the Bill of Particulars filed by the Shell Petroleum Corporation and this defendant in which answer it is alleged as follows:

> "The Government claims that each of the defendants—including Gulf—engaged and participated with the other defendants in a general conspiracy in which two concerted buying programs were used simultaneously and concurrently for carrying it out and for common purposes."

There is no evidence that this defendant, acting individually or through Shell Petroleum Corporation, participated in the alleged East Texas Buying Program or in the alleged Mid-Continent Buying Program.

The evidence affirmatively shows that this defendant and Shell Petroleum Corporation never bought gasoline in East Texas through the East Texas Refiners Marketing Association, and only bought gasoline in the Mid-Continent at prices at or below the low quotations in the journals. The indictment does not charge that this defendant or the defendant Shell Petroleum Corporation participated in the East Texas Buying Program.

(9) There is a total failure of proof in support of the following allegations contained in Paragraph 19 of the indictment wherein it is alleged that the defendants engaged in two concerted buying programs, "for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high and
4622 at times progressively increased prices."

The evidence shows that all purchases made by Shell Petroleum Corporation which were made at a flat price (i. e., a price not determined by published quotations on the date of shipment) were made at prices at or below the low of the published quotations.

(10) There is no substantial competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment or that at any time during said period this defendant, or the defendant Shell Petroleum Corporation, acting through or under the direction of this defendant, engaged and participated in two concerted gasoline buying programs referred to in Paragraph 19 of the indictment as (a) the East Texas Buying Program and (b) the Mid-Continent Buying Program, as alleged in said paragraph.

(11) There is a total failure of proof in support of the following allegations contained in Paragraph 21 of the indictment wherein it is alleged that, "said independent refiners have at the instance of defendant Arnott and the aforesaid Buckley, curtailed their production of gasoline."

(12) There is a total failure of proof in support of the following allegations contained in Paragraph 23 of the indictment wherein it is alleged that: "Each of the defendant major oil companies named in the preceding paragraph has taken a part of the large quantities of gasoline purchased as aforesaid as from time to time allotted to it by defendants McDowell, Tuttle, Bourque and the aforesaid Jacobi."

The evidence wholly fails to show that any quantity of gasoline was ever allotted to the defendant, Shell 4623 Petroleum Corporation, by the defendants McDowell, Tuttle and Bourque and by the witness, Jacobi.

(13) There is a total failure of proof in support of the following allegation contained in Paragraph 23 of the indictment wherein it is alleged as follows: "Said purchases have been in excess of the amounts which the aforementioned defendant major oil companies would have purchased apart from their participation in said buying program and they have been made at uniform, high, arbitrary and non-competitive prices and from time to time, at progressively increased prices, as agreed upon by said defendant major oil companies."

(14) There is a total failure of proof in support of the following allegations contained in Paragraph 23 of the indictment wherein it is alleged as follows: "In furtherance of said unlawful purposes said independent refiners have at the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque curtailed their production of gasoline." There is no evidence that independent refiners curtailed their production of gasoline in the instance of defendants Arnott, McDowell, Tuttle, Boggs and Bourque.

(15) There is no substantial, competent evidence in the record herein that during the period beginning in the month of February, 1935, and continuing to the date of the presentation of this indictment or that at any time during said period this defendant or the defendant, Shell Petroleum Corporation, of which this defendant is vice-president, engaged or participated in any combination, arrangement, agreement, understanding, concert of action or pro-

gram whereby or as a result of which said defendant, 4624 Shell Petroleum Corporation, was or became obligated regularly to purchase any specific amount or any definite share, percentage or allotment of the surplus gasoline available or that would become available for purchase from the independent refiners named in Paragraph 22 of the indictment or whereby or as the result of which said defendant, Shell Petroleum Corporation, was or became obligated to pay any specific price or any price designated or fixed by any person or persons other than its own officers for such surplus gasoline as it might purchase from said independent refiners or from any of them.

(16) There is no substantial competent evidence in the record herein that this defendant did any act within the Western District of Wisconsin, pursuant to the alleged combination and conspiracy, if any, as alleged in the indictment herein.

Wherefore, this defendant respectfully moves the Court to set aside the verdict of guilty found by the jury as to this defendant and to dismiss the indictment as to him.

Thompson, Mitchell, Thompson & Young,
Samuel A. Mitchell,
Truman Post Young,
Attorneys for Defendant P. E. Lakin.

4625 Thereafter, and on June 2, 1938, at a hearing of the above cause before the Honorable Patrick T. Stone, Judge of the said Court, Mr. John Henry Lewin, attorney for the plaintiff, the United States, made a Motion that the Indictment against the defendant Edward Karstedt be dismissed. Such Motion was granted by the Court.

On the same day, Mr. Lewin stated that he was reliably informed that the defendant Frank R. Coates was too ill to stand trial, or to warrant the Government in bringing him to trial. Therefore, he moved that such Indictment against said defendant be dismissed. Such Motion was granted by the Court.

Thereafter, and on July 19, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order providing (1) that the verdicts be set aside and the Indictment dismissed as to the defendants Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas); and (2) that the verdicts as to the defendants Edward J. Bullock, A. G. Maguire, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, Harry J. Kennedy, C. B. Watson, J. W. Carnes, Edward L. Shea, Noel Robinson, J. W. Warner, E. B. Reeser, I. A. O'Shaughnessy, A. M. Hughes, Alexander Fraser, 4626 Cities Service Company, Barnsdall Refining Corporation, and Standard Oil Company (Indiana), be set aside, and the said defendants be granted a new trial, and (3) that the jury's verdict as to the defendants Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma), be sustained, and that the Motions of said defendants for an Order Setting Aside the Verdicts and for a New Trial be and are hereby denied, and allowed an exception to each defendant.

(Said Order on Motions after Verdict is printed at pages 2488-2500 of the Record.)

On the same date, July 19, 1938, the Honorable Patrick T. Stone, Judge of the above Court, in open court, the individual defendants being present in person and the corporate defendants being present by their attorneys, pronounced sentence upon each verdict of the jury, 4627 with respect to the defendants hereinafter named, and made and filed with the Clerk of the above Court a Judgment providing (1) that the corporate defendants Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma), each pay a fine of Five Thousand ($5,000) Dollars and costs; and (2) that the individual defendants, Charles E. Arnott, P. E. Lakin, H. T. Ashton, R. W. McDowell, and R. H. McElroy, Jr., each pay a fine of One Thousand ($1,000) Dollars.

(Said Judgment is printed at pages 2501-02 of the Record.)

Thereupon, on the same date, July 19, 1938, the Honorable Patrick T. Stone, Judge of the above Court, allowed an exception to said sentences, Judgment and Order as to each of the defendants named in the Judgment above mentioned.

(Memorandum of Exceptions to Judgments of Conviction is printed at page 2502 of the Record.)

Thereafter, on July 20, 1938, the defendants, 4628 Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil & Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), the Globe Oil and Refining Company (Oklahoma), Charles E. Arnott, P. E. Lakin, H. T. Ashton, R. W. McDowell, and R. H. McElroy, Jr., by their attorneys, severally filed with the Clerk of the above Court a Notice of Appeals, in duplicate, and served a copy of the said Notice of Appeals upon the attorneys for the plaintiff, the United States.

(Said Notice of Appeals is printed at pages 2503-12 of the Record.)

On the same date, July 20, 1938, the defendants, Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil & Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Oklahoma), Charles E. Arnott, 4629 P. E. Lakin, H. T. Ashton, R. W. McDowell, and R. H. McElroy, Jr., severally filed with the Clerk of the above Court a Cost and Supersedeas Bond Pending Appeal.

(Said Cost and Supersedeas Bond is printed at pages 2575-78 of the Record.)

On the same date, July 20, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order granting the defendants-appellants one hundred twenty (120) days from the date said Notice of Appeals was filed within which to settle and file the Bill of Exceptions and Assignment of Errors in connection with the appeals of this cause to the United States Circuit Court of Appeals for the Seventh Circuit, and made other instructions relative to the said appeals.

(Said Order is printed at pages 2514-15 of the Record.)

Thereafter, and on October 29, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order clarifying the Order of July 20, 1938, by providing that Sundays and holidays are excluded in computing the 120-day period mentioned in said Order of July 20, 1938. Said Order provides as follows:

4630 In the District Court of the United States.

* * (Caption—11365) * *

ORDER CLARIFYING ORDER OF JULY 20, 1938.

It having been brought to the attention of the Court that in the Order dated July 20, 1938 in the above case, it is not specifically stated that in computing time all Sundays and legal holidays occurring within the period of 120 days mentioned in paragraph 1 of said Order and within the period of 90 days mentioned in paragraph 2 of said Order, are to be excluded, and the Court being of the opinion that it is advisable to remove any doubt as to the meaning of such paragraphs in said Order,

It Is Ordered:

That the Order of this Court dated July 20, 1938, entered in the above case is hereby clarified by inserting after the word "days" in the second line of paragraph 1 and in the fourth line of paragraph 2 of said Order the following: "exclusive of Sundays and legal holidays (whether under Federal law or under the law of this State) occurring within such period."

Patrick T. Stone,
District Judge.

Dated: October 29, 1938.

4631 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

PETITION TO RESCIND AND EXPUNGE ORDER PURPORTING TO SET ASIDE THE VERDICTS RETURNED AGAINST CERTAIN DEFENDANTS AND PURPORTING TO ENTER JUDGMENT FOR SAID DEFENDANTS, NOTWITHSTANDING THE VERDICTS FOR SAID DEFENDANTS.

(Filed Aug. 1, 1938)

Comes now the United States and petitions this Court to rescind and expunge from the record the order and judgments heretofore entered in the above entitled cause purporting to set aside the verdicts returned against defendants Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque and Globe Oil and Refining Company (Kansas), and to enter judgment for said defendants, notwithstanding the verdicts, on the following grounds:

4632 1. On December 22, 1936, the Grand Jury for the December 1936 term of this Court returned an indictment against certain major oil companies and their officers and employees and others, including the defendants hereinabove named, charging them with conspiring and combining together during the period from February 1935 to the date of the indictment for the purpose and with the effect of raising, fixing, and maintaining the tank car prices and retail prices of gasoline sold in ten mid-western states, including the Western District of Wisconsin, by the operation of two so-called buying programs in the Mid-Continent and East Texas oil fields of the United States, all in violation of the Sherman Antitrust Law;

2. In January and February 1937 all of the defendants later brought to trial filed demurrers to the indictment on the ground that said indictment was insufficient in the law to charge the defendants with the commission of an offense against the United States within the Western District of Wisconsin; and that on March 31, 1937, after hearing, this Court entered an order overruling the demurrers and sustaining the sufficiency of the indictment;

3. On October 4, 1937, trial was commenced on said indictment before a jury lawfully impanelled and sitting

in this Court and evidence was introduced on behalf of the Government which substantially established the facts 4633 alleged in the indictment, the violations of law charged therein, and the participation of each of the defendants hereinabove named in the conspiracy charged in the indictment.

4. On November 15, 1937, each of the defendants on trial, including the defendants hereinabove named, at the close of the Government's case filed motions for directed verdict based on the ground, among others, that the evidence was insufficient to establish the commission by the defendants of the offense charged in the indictment; that this Court heard full and lengthy arguments on those motions in behalf of each defendant consuming a period of approximately ten days; that at the conclusion of argument this Court, in open court, directed a verdict of acquittal for certain of the defendants named in the indictment and denied the motions for a directed verdict of the other defendants, including the defendants hereinabove named, on the ground that the evidence against them was legally sufficient to justify submitting the cases against them to the jury.

5. Between the period from November 20, 1937, to January 13, 1938, evidence was introduced on behalf of the defendants, much of which tended further to prove the case as charged in the indictment and further to implicate in the conspiracy charged therein certain of the defendants on trial; at the close of defendants' case evidence was introduced on behalf of the Government on rebuttal; 4634 all of said evidence offered and received in the case was reported and transcribed by the official court reporter of this court, said transcription being incorporated herein as if hereinafter set forth in full;

6. On January 17, 1938, the defendants renewed their motions for a directed verdict upon the same grounds previously urged; this Court purported to reserve ruling on said motions until after the verdict of the jury had been rendered;

7. On January 21, 1938, this Court submitted to the jury for verdict the cases against all the defendants then on trial, including the defendants hereinabove named; on January 22, 1938, said jury returned a verdict of guilty against all of said defendants convicting them of the offense as charged in the indictment;

8. On January 25, 1938, all of the convicted defendants filed motions for a new trial, for judgment notwithstanding

verdict, and in arrest of judgment; said motions for a new trial and motions for judgment notwithstanding verdict were based on the ground, among others, that the evidence was insufficient to sustain the verdict against the defendants;

9. On July 19, 1938, this Court entered an order entitled "Order on Motions After Verdict" purporting, among other things, to set aside the verdicts as to the defendants hereinabove named and to enter judgment for them 4635 notwithstanding the verdicts against them on the alleged ground that there was no substantial evidence clearly tending to sustain the verdicts;

10. Your petitioner alleges that said order of this Court, and the said purported judgments entered pursuant thereto, are null and void and without legal effect for the reason that this Court had no power in law or jurisdiction to enter said judgments, notwithstanding verdict; that, although this Court purported to reserve until after verdicts decision on the defendants' motions for directed verdicts, no power in law or jurisdiction existed in this Court to make such a reservation, and such purported reservation was null and void and without legal effect; that after the verdict the power and duty of this Court was limited to passing sentences upon the defendants named or, in the exercise of proper discretion, to grant them new trials;

11. Your petitioner further alleges that said order, and the said purported judgments entered pursuant thereto, are null and void for the reason that this Court in entering the same, although purporting to pass on the legal sufficiency of the evidence to sustain the verdicts against the defendants, usurped the function of the jury in that the Court acted as a trier of fact to weigh and evaluate the evidence against the defendants and arbitrarily refused to consider and ignored the voluminous evidence in the record hereinabove incorporated herein, which tended to establish 4636 beyond a reasonable doubt that the defendants hereinabove named were guilty as charged in the indictment;

12. By reason of the fact that said order and purported judgment are null and void and without legal effect, your petitioner avers that the verdicts of the jury against the defendants hereinabove named are still in full force and effect.

Wherefore, it is respectfully prayed that this Honorable Court rescind and expunge the said order, and judgments entered pursuant thereto, purporting to set aside the verdicts for defendants Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L Jones, A. V. Bourque, and Globe Oil and Refining Company (Kansas), and to enter judgment for said defendants notwithstanding the verdicts, and that the Court pass sentences upon said defendants or exercise the judicial discretion lodged in the Court to grant them new trials.

John Henry Lewin,
W. P. Crawford,
W. B. Watson Snyder,
Grant W. Kelleher,
Special Assistants to the Attorney General.

4637 On August 4, 1938, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order amending the said Order of January 21, 1938, by providing that the Motions for Directed Verdict at the close of all the evidence were denied subject to the reservation of the Court to pass upon all questions of law incident thereto after the return of the verdict of the jury as of the time the Motions were made. Said Order provides as follows:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—11365) * *

ORDER.

It having appeared to the Court that an order was presented to the Court on January 21, 1938, denying the motions for directed verdicts made on behalf of all the defendants in this cause, and whereas it was the intention of the Court, as the record shows, to reserve its ruling on the questions of law incident to said motions for directed verdicts, to be passed upon after the verdict of the jury, as of the time the motions were made, and the Court being
4638 of the opinion at all times that it had reserved rulings on said motions for directed verdicts made on behalf of said defendants,

And the Court being now of the opinion that the record should be amended so as to truly reflect the intention of the Court to pass upon said questions of law after the verdict of the jury, as of the time the motions were made,

Now, Therefore, It Is Ordered, that the order of January 21, 1938, referred to herein, be amended so as to read as follows:

> "It Is Ordered that said motions for directed verdict be and the same are hereby denied, subject to the reservation of the Court to pass upon all questions of law incident thereto after the return of the verdict of the jury, as of the time the motions were made.
>
> "To all of which the defendants may have an exception."
>
> "To all of which the Government has objected, and to which it may have an exception."

Dated at Madison, Wisconsin, August 4, 1938.

Enter:

Patrick T. Stone,
United States District Judge
Western District of Wisconsin.

On September 21, 1938, at a hearing of the above cause, the Honorable Patrick T. Stone, Judge of the above Court, made and entered an Order correcting his said Order of July 19, 1938. The correction Order of September 21, 1938, reads as follows:

4639 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—11365) • •

ORDER.

This cause having been further considered by the Court upon the petition of the United States of America to rescind and expunge the order of this Court of July 19, 1938, setting aside the verdicts and dismissing the indictment as to the defendants Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas), the Court is of the opinion that said order is not sufficiently clear and certain, and

Whereas the Court intended to and did reserve rulings on the motions to dismiss the indictment and for a directed verdict made on behalf of the above named defendants at the close of the case, as the transcript clearly shows, and

as the order of August 4, 1938, amending the order
4640 of January 21, 1938, denying said motions, now shows, and

Whereas the Court desires to make it perfectly clear and certain as to the procedure it followed and the judgment it intended to enter, does hereby and

It Is Therefore Ordered, Adjudged and Decreed by the Court that the judgment heretofore rendered by it on July 19, 1938, setting aside the verdict and dismissing the indictment as to the defendants Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas), be and the same is hereby set aside and held for naught.

It Is Further Ordered, Adjudged and Decreed That the verdicts of the jury holding the following defendants, Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas), guilty, be and the same are hereby set aside and held for naught, and that the motions to dismiss the indictment and for a directed verdict filed on January 17, 1938, made severally at the close of the case on behalf of the defendants, Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson,
4641 Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas), be and the same are hereby sustained, and the defendants, Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas), are hereby dismissed from this cause.

Dated this 21st day of September, 1938.

Patrick T. Stone,
United States District Judge.

4642 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

ORDER ON PETITION TO RESCIND AND EXPUNGE PORTION OF ORDER OF JULY 19, 1938.

Filed September 22, 1938.

At the close of the testimony, motions were made on behalf of each of the defendants for a directed verdict. While the Court was of the opinion that in some cases the motions were well taken, the testimony was so voluminous, the exhibits so extensive in number, that it seemed impelling that no ruling on the motion be made until there was opportunity for a thorough study of the evidence, and a careful and deliberate consideration of the law, with the aid of arguments and briefs. The jury had been sequestered from October, 1937 to January, 1938, which included the Thanksgiving, Christmas and New Year's Holidays, and to hold it for a further time sufficient to permit the Court to rule properly, seemed a further hardship which I could not inflict upon the jury, and one which should be avoided if possible. Under these circumstances, and with full knowledge and acquiescence of counsel for all parties, the Court denied the various motions for directed verdict under an explicit reservation of its ruling on the questions of law incident thereto, with the right to pass on the questions of law after verdict, as of the time made, and as the record, upon careful study, might require. Not only was no objection made to this procedure, except by one of the
4643 counsel for some of the defendants, but there was no suggestion from anyone that the Court might lack the power to reserve its ruling on these questions of law, or that the practice was in any way out of the ordinary. If any serious question in this respect had been raised, it is obvious that the jury might have been asked to retire until the Court had disposed of the motions. Its convenience would have to yield to the requirement that the Court perform its plain, judicial duty, and not put itself into a position where it would have to take the verdict with but two alternatives, viz. to sentence innocent defendants, or put them to a new trial. American justice recognizes the principle that the protection of the innocent is equally as important as conviction of the guilty.

The Court was in no doubt whatever about the power to reserve its ruling on these questions of law, and to pass thereon after the verdict with the same force and effect as before verdict. Had the practice here followed been as novel and so devoid of judicial power as the Government now claims, it would seem that the Court was entitled to some suggestion to that effect at the time the rulings were reserved. Neither was the question raised on the oral argument on the motions after verdict nor on the briefs filed by Government counsel on the motions after verdict.

Certainly the power as exercised in this case is no broader or different in principle than the admitted power to dismiss before taking a verdict. A question of law does not become a question of fact by an unwarranted submission of the case to a jury. However, in the face of an express reservation of the questions of law involved, such a result is impossible.

4644 The constitutional right of a defendant to a trial by jury requires that all questions of law be decided by the Court and questions of fact by a jury. It is just as important that the defendant be given the benefit of the one as of the other, and if he be denied one or the other, his constitutional right to that extent has been denied.

In the careful and full review of the record and study of the briefs filed on the motions before and after verdict, the Court was definitely of the opinion that as to most of the defendants dismissed by the order of July 19th last, there was no substantial evidence indicating participation in the conspiracy; and that as to others the evidence adduced was clearly as consistent with innocence as with guilt, which raises a question of law for the Court, not one of fact for the jury, and in such circumstances it becomes the duty of the Court to grant the motions for a directed verdict. To do otherwise is clearly error. The following cases hold that where the evidence is as consistent with innocence as with guilt, it is the duty of the Court to direct a verdict for the defendant: *Ramona* v. *U. S.*, 9 F. (2d), 522 (C. C. A. 2d); *Van Gorder* v. *U. S.*, 21 F. (2d) 933 (C. C. A. 8th); *Salinger* v. *U. S.*, 23 F. (2d) 48, (C. C. A. 8th); *Leslie* v. *U. S.*, 43 F. (2d) 288, (C. C. A. 10th); *Tinsley* v. *U. S.*, 43 F. (2d) 890, (C. C. A. 8th); *Parnell* v. *U. S.*, 64 F. (2d) 324, (C. C. A. 10th); *Nicola* v. *U. S.*, 72 F. (2d) 780, (C. C. A. 3d); *Paul* v. *U. S.*, 79 F. (2d) 561, (C. C. A. 3d); *Nosowitz* v. *U. S.*, 282 F. 575, (C. C. A. 2d).

In the following cases the appellate court, having decided that the motions of the defendant for a directed verdict on the ground of the insufficiency of the evidence or for other

legal reasons should have been granted, reversed and re-
manded without direction for a new trial: *Smith* v.
4645 *U. S.*, 151 U. S. 50; *Schafer* v. *U. S.*, 251 U. S. 466;
Gebardi v. *U. S.*, 287 U. S. 112; *Grau* v. *U. S.*, 287 U. S. 124; *Nathanson* v. *U. S.*, 290 U. S. 41; *Nosowitz* v. *U. S.*, 282 F. 575 (C. C. A. 2d); *O'Brien* v. *U. S.*, 51 F. (2d) 674, (C. C. A. 7th); *Hogan* v. *U. S.*, 54 F. (2d) 924, (C. C. A. 5th); *U. S.* v. *Otto*, 54 F. (2d) 277, (C. C. A. 2d); *Nozzaro* v. *U. S.*, 56 F. (2d) 1026 (C. C. A. 10th); *Dolff* v. *U. S.*, 61 F. (2d) 881, (C. C. A. 7th); *Cherry* v. *U. S.*, 78 F. (2d) 334, (C. C. A. 7th); *Paul* v. *U. S.*, 79 F. (2d) 561 (C. C. A. 3d); *Sonzinsky* v. *U. S.*, 86 F. (2d) 486, (C. C. A. 7th); *Kassin* v. *U. S.*, 87 F. (2d) 183, (C. C. A. 5th); *U. S.* v. *Kind*, 87 F. (2d) 315, (C. C. A. 2d); *U. S.* v. *Buchalter*, 88 F. (2d) 625, (C. C. A. 2d) (Sherman Anti-trust violation); *U. S.* v. *Kaplan*, 89 F. (2d) 869, (C. C. A. 2d); *Copeland* v. *U. S.*, 90 F. (2d) 78, (C. C. A. 5th); *LaPadura* v. *U. S.*, 91 F. (2d) 639, (C. C. A. 3d); *Reiner* v. *U. S.*, 92 F. (2d) 823, (C. C. A. 9th); *Forte* v. *U. S.*, 94 F. (2d) 236, (C. C. A. Dist. Columbia); *Czarnecki* v. *U. S.*, 95 F. (2d) 32, (C. C. A. 3d); *Kauz* v. *U. S.*, 95 F. (2d) 473, (C. C. A. 5th); *Rader* v. *U. S.*, 95 F. (2d) 506, (C. C. A. 3d); *Merrill* v. *U. S.*, 95 F. (2d) 669, (C. C. A. 9th).

In each of the following cases, the appellate courts, having decided that defendant's motion for a directed verdict for insufficiency of the evidence should have been granted, reversed with direction to dismiss the defendant; *France* v. *U. S.*, 164 U. S. 676; *Romano* v. *U. S.*, 9 F. (2d) 522, (C. C. A. 2d); *Klee* v. *U. S.*, 53 F. (2d) 58, (C. C. A. 9th); *U. S.* v. *Bonanzi*, 94 F. (2d) 570, (C. C. A. 2d).

The Court is thoroughly satisfied that the procedure here adopted and now complained of by the Government is not only sound in principle, but is fully supported by an abundance of authorities.

In *Collenger* v. *U. S.*, 50 F. (2d) 345, the Court held that under the ruling in *Slocum* v. *New York Life Insurance Co.*, 228 U. S. 364, 33 S. Ct. 523, it could not in a criminal case
(where no reservation of ruling had been made by the
4646 trial court), remand with instructions to dismiss, but
was confined to ordering a new trial. A careful study of the Collenger case does not indicate that it is authority against what was done in the particular circumstances of the case at bar; rather, the contrary seems clear.

The Slocum case was a civil action. In the majority opinion a careful review of the rules of the common law was undertaken in order to ascertain what was the trial by jury guaranteed and preserved by the Seventh Amendment to the Constitution. The Court came to the conclusion that at the time of the adoption of the Seventh Amendment, the common law did not recognize the power to grant a motion for judgment non obstante veredicto (in a case where the trial court had not reserved a ruling), and that therefore the statute of the state of Pennsylvania which authorized that practice was in conflict with the amendment. There was in that case a dissent by four justices, and an opinion by Mr. Justice Hughes, in which it was pointed out that the well recognized practice at common law of demurring to the evidence accomplished the same result, and that in many cases cited against the proposition there were really questions of fact to be decided by the jury, which function the trial court had no right to usurp. He said:

> "The Seventh Amendment provides that 'No fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.' But wherein has any matter of fact tried by a jury been re-examined? Concededly, there was no fact to be tried by a jury; the case as made was barren of any such fact; and there being none, there has been no re-examination of it. The trial court, in wrongly deciding it, did not convert it into a question of fact; it was not altered by the verdict, but remained the same in its nature—a question for the determination of the court."

And again:

> "But it would seem to be an entire misapprehension to say that trial by jury, in its constitutional
> 4647 aspect, requires the submission to the jury of evidence which presents no question for their decision, and that, although there be no facts for the jury to pass upon, still the judgment which follows as matter of law can be arrived at only through a verdict * * * the idea that the jury upon a trial where there is no evidence to sustain a finding by the jury can be reached only through a verdict, could not have been entertained at the time the Constitution was adopted.
>
> "To repeat and conclude: All that has been done in the present case could, in substance, have been done at common law, albeit by a more cumbrous method. There has been no invasion of the province of the jury. That conclusively appears from the fact that this court holds that there was no basis for a finding by the jury in favor of the plaintiff. We have here a simplification of the procedure adopted in the public interest to the end that unnecessary

litigation may be avoided. The party obtains the judgment which in law he should have according to the record. I submit without deference, that in condemning this practice, long followed in the courts below, this court is departing from, instead of applying the principles of the common law, and is extending rather than enforcing the Constitutional provision."

In *Baltimore & Carolina Line, Inc.* v. *Redman,* 295 U. S. 654, the court upon a full re-examination of the question reached the conclusion that at common law, at the time of the adoption of the Seventh Amendment, there was a well recognized practice authorizing the trial court to reserve a ruling on motions for "binding instructions" (directed verdicts) based on the insufficiency of the evidence and other questions of law, pending verdict, and thereafter to give judgment as the state of the record required. The opinion in the Redman case, taken in connection with the dissenting opinion in the Slocum case, and the many authorities referred to in this opinion, all seem to approve the procedure here followed. In fact the procedure here employed, under a reservation, is inferentially approved both by the Slocum and the Collenger cases.

4648 In *Baltimore and Carolina Line, Inc.* v. *Redman, supra,* the Court said, referring to the Slocum case:

> "A very different situation is disclosed in the present case. The trial court expressly reserved its ruling on the defendant's motions to dismiss and for a directed verdict, both of which were based on the asserted insufficiency of the evidence to support a verdict for the plaintiff. Whether the evidence was sufficient or otherwise was a question of law to be resolved by the court. The verdict for the plaintiff was taken pending the court's ruling on the motions and subject to those rulings. No objection was made to the reservation or this mode of proceeding, and they must be regarded as having the tacit consent of the parties. After the verdict was given, the court considered the motions pursuant to the reservation, held the evidence sufficient and denied the motions.
>
> "The Court of Appeals held that the evidence was insufficient to support the verdict for the plaintiff, that the defendant's motion for a directed verdict was accordingly well taken, and therefore that the judgment for the plaintiff should be reversed.
>
> "Thus far we think its decision was right. The remaining question relates to the direction which

> properly should be included in the judgment of reversal.
>
> "At common law there was a well established practice of reserving questions of law arising during trials by jury and of taking verdicts subject to the ultimate ruling on the questions reserved; and under this practice the reservation carried with it authority to make such ultimate disposition of the case as might be made essential by the ruling under the reservation, such as non-suiting the plaintiff where he had obtained a verdict, entering a verdict or judgment for one party where the jury had given a verdict to the other, or making other essential adjustments. * * *
>
> "The court of appeals regarded the decision in *Slocum* v. *New York Life Insurance Co.* as requiring that the direction be for a new trial. We already have pointed out the differences between that case and this. But it is true that some parts of the opinion in that case give color to the interpretation put on it by the court of appeals. In this they go beyond the case then under consideration and are not controlling. Not only so, but they must be regarded as qualified by what is said in this opinion.
>
> "It results that the judgment of the court of appeals should be modified by substituting a direction for a judgment of dismissal on the merits in place of the direction for a new trial, and, as so modified, should be affirmed."

4649 It is urged by the Government that the power of reservation in the Redman case was pursuant to a state statute applicable under the conformity statute. So was there a state statute in the Slocum case, which the Supreme Court held violated the Seventh Amendment. The statute was followed because it merely provided a method of procedure in conformity with the rules of the common law at the time of the adoption of the Amendment. That this is true is illustrated by the following language in the opinion in the Redman case:

> "Some of the states have statutes embodying the chief features of the common law practice which we have described. The State of New York, in which the trial was had, has such a statute; and the trial court, in reserving its decision on the motions which presented the question of the sufficiency of the evidence, and in taking the verdict of the jury subject to its opinion on that question conformed to that

> statute and the practice under it as approved by the court of appeals of that state."

The practice prescribed by statute conformed to the practice at common law at the time of the adoption of the Seventh Amendment.

But it is said that the Redman case (where the court did reserve the right to later rule on the motions) is a civil case, and has no application to practice in the Federal Courts in criminal cases. The proponents of this proposition insist at the same time that the Slocum case, (where the court made no reservation to rule on the motions) also a civil case, is controlling in this, a criminal case. It is difficult to perceive how one could logically control to the exclusion of the other. The identical question was before the court in each case, and that was the constitutional right of trial by jury. Certainly in the absence of an express ruling to that effect, the court is of the opinion that the Redman case controls in criminal cases where the situation comes within the doctrine of that case. The Supreme Court expressly modified the holding in the Slocum case, when it said:

4650 "Not only so, but they must be regarded as qualified by what is said in this opinion."

It follows that the Slocum case, held binding in the Collenger case, has been modified so that the practice of reserving rulings on questions of law pending a verdict has been given express approval by the United States Supreme Court.

Since in the case at bar a ruling on the motions for a directed verdict was reserved, not only without objection by the Government but with the acquiescence of all parties, it falls squarely within the doctrine of the Slocum case, as modified by the Redman case. There is therefore no doubt in the mind of the Court that the practice adopted in the case at bar has the full support of the Collenger case properly applied.

It is further urged that since the Conformity Act does not apply in criminal cases and there is no common law practice in criminal cases authorizing judgments non-obstante veredicto, such practice in civil cases does not avail. But the proponents of this doctrine rely largely on the Collenger case in which the Circuit Court of Appeals of this Circuit squarely held that the Slocum case, a civil case, was binding.

Nor would it seem that a state statute or practice is material in determining the power of a Federal Court in this respect. The state statute in the Slocum case was held of no effect, because it authorized a practice not sanctioned at common law; while the same statute was approved in the Redman case because it did follow the common law. If, however, a state statute or practice were essential, the Court has here followed a course definitely approved according to the practice in the Courts of the State of Wisconsin; *State* v. *Neen,* 171 Wis. 36, 176 N. W. 70.

4651 It is asserted that the rules of the Federal Courts as promulgated in 1934 do not recognize a right to give judgment non obstante veredicto in a criminal case. The Court has failed to ascertain that they prohibit reservation of questions of law pending a verdict; and in the light of the cases cited, and many others, it would seem that if the United States Supreme Court, in promulgating new rules, intended to denounce the practice followed by it in the France and other cases cited above, it would have done so expressly.

By the order of July 19, 1938, which order was amended on September 21, 1938 for the purpose as therein indicated, this Court granted the motions for a directed verdict of those defendants it dismissed, in pursuance to and with the power expressly reserved as of the time made, and with the same force and effect as if done before verdict.

It Is Therefore Ordered and Adjudged that the application of the Government to expunge that part of the order of July 19, 1938, referred to in its petition, be and the same is hereby denied.

Dated September 22, 1938.

Patrick T. Stone,
United States District Judge.

4652 Thereafter, on December 7, 1938, the following stipulation was made:

In the District Court of the United States.

* * (Caption—11365) * *

STIPULATION AS TO CONTENTS OF THE BILL OF EXCEPTIONS.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto in regard to the foregoing bill of exceptions:

1. That it contains a narration of the testimony of all the witnesses in this cause, and that it contains

all of the proceedings which occurred in this cause to the extent that they are necessary for the purposes of this appeal.

2. That the inclusion of excerpts from the original record, setting forth verbatim the testimony on the proceedings which occurred in the trial, is necessary because the narration of said testimony and the
4653 description of said proceedings would not otherwise properly present the full meaning of such portions of the record.

3. That all of the exhibits are contained in the bill of exceptions except those which are immaterial or merely repetitious, and that wherever any exhibits have been condensed they contain all of the material data shown on such exhibits, and that such condensation was made solely for the purpose of eliminating the immaterial or repetitious matter.

4. That the bill of exceptions was prepared by counsel for the defendants-appellants and that counsel for the plaintiff-appellee have gone over it and made such revisions as appeared necessary and have no objection to it in its present form.

5. That said bill of exceptions may be approved, settled and ordered to be filed and made a part of the record herein by the Honorable Patrick T. Stone, Judge of said Court, who presided at trial of said cause.

W. P. Crawford,
Attorney for Plaintiff.

William J. Donovan,
Attorney for Defendants.

Dated: December 7, 1938.

4654 Forasmuch as the matters above set forth do not fully appear of record, the defendants tender this their Bill of Exceptions, and pray that the same be settled, signed, approved and sealed by the Judge of this Court within the time allowed by this Court.

Dated: December 9th, 1938.

William J. Donovan,
W. J. Donovan,
Herbert H. Thomas,
H. H. Thomas,
Attorneys for the Defendants.

4655 CERTIFICATE OF JUDGE.

On this 9th day of December, 1938, pursuant to due notice of application for settlement and certification of the foregoing and annexed Bill of Exceptions in the above entitled cause, the defendants who are appealing from the judgments against them, by their attorneys, and the plaintiff, by its attorneys, appeared before the undersigned Patrick T. Stone, Judge of said Court, who presided at the trial of said cause. The attorneys for the said defendants, within the time allowed by the Order, dated July 20, 1938, of this Court, as clarified by its Order, dated October 29, 1938, and within the term of this Court as extended by paragraph 6 of said Order of July 20, 1938, duly presented to the undersigned the said Bill of Exceptions, numbered consecutively from page 164 to page 4654, both inclusive, contained in five volumes together with four volumes of exhibits numbered A, B, C and D as a part of said Bill.

I hereby certify that:

1. The foregoing Bill of Exceptions contains a proper, complete, fair and correct narration of all of the testimony given, and all the complete and correct stipulations, motions, orders, objections, rulings, instructions to the jury given, instructions refused, offers of proof, exceptions 4656 taken and allowed and other proceedings had during the trial and in said cause, which are necessary for the purpose of this appeal to present clearly and fully the questions of law involved in the rulings to which exceptions were reserved in the course of the proceedings.

2. All of the evidence given and proceedings had, as above mentioned, are set forth in condensed and narrative form, save as a proper presentation of the full meaning of such evidence and proceedings has required that they be set forth verbatim or otherwise.

3. All of the exhibits received or offered during the trial which are pertinent or in anywise relating to the questions raised by assignments of errors are contained in the said Bill of Exceptions, except those which are immaterial to the questions involved in these appeals or are merely repititious, and wherever any exhibits have been condensed they contain all of the material data shown on the original exhibits, and such condensations only eliminate immaterial or repititious matter.

4. The statements in said Bill of Exceptions with re-

spect to the Bill of Particulars and the Motions to Strike, and with respect to certain omitted motions and pleadings being identical or substantially identical with certain motions and pleadings set forth are true and correct statements.

5. The foregoing Bill of Exceptions was not settled at the time the original record on these appeals was transmitted and filed with the Clerk of the United States Circuit Court of Appeals on August 19, 1938. 4657

I hereby settle, allow and approve the annexed and foregoing Bill of Exceptions, together with the exhibits contained therein, and order that said Bill with said exhibits and with this certificate attached thereto be made a part of the record herein, and forwarded forthwith by the Clerk of this Court, with a proper certificate attached to each volume, to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof the foregoing Bill of Exceptions is hereby sealed and signed this 9th day of December, 1938, at La Crosse, Wisconsin.

Patrick T. Stone,
Judge, United States District Court for the Western District of Wisconsin.

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF ORDERS DISMISSING INDICTMENT AS TO TIDE WATER ASSOCIATED OIL COMPANY, DEEP ROCK OIL CORPORATION, LOUISIANA OIL REFINING CORPORATION, CITIES SERVICE EXPORT OIL CORPORATION, THE JOURNAL OF COMMERCE PUBLISHING COMPANY, W. C. PLATT COMPANY, WARREN C. PLATT, AND THE NATIONAL PETROLEUM PUBLISHING COMPANY.

On November 11, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room, in the City of Madison in said District, the following proceedings occurred:

Counsel for the Government made a motion that the indictment be dismissed against the defendant Tide Water Associated Oil Company, on the ground that the evidence shows that the activities charged by the Government were carried on by the Tide Water Oil Company, as to whom the indictment was previously dismissed because of the dissolution of that company; and that the evidence does not show that the Tide Water Associated Oil Company had been connected up with the activities charged in the indictment. Counsel for Tide Water Associated Oil Company objected to the motion on the ground that a criminal case could not be dismissed without the consent of the defendant, and said counsel urged that Government counsel be directed to proceed with the prosecution against Tide Water Associated Oil Company, or, in the alternative, that the jury be instructed to return a verdict of not guilty in favor of Tide Water Associated Oil Company at the close of the 69 Government's case. After consideration of said motion, the Court, on November 11, 1937, ordered that, there being no competent and substantial evidence in the record which would support a finding of guilty against Tide Water Associated Oil Company, the said motion to dismiss the indictment against Tide Water Associated Oil Company is granted, to which order the Court allowed an exception to the defendant Tide Water Associated Oil Company.

Counsel for the Government made a motion that the indictment be dismissed as to the defendant Deep Rock Oil Corporation, on the ground that the facts as shown to the Government indicate that the assets and affairs of that corporation were in the hands of certain trustees appointed by the Court during the period covered by the indictment and that the corporation could not be held legally liable on the charges in the indictment, and after consideration thereof, the Court, on November 11, 1937, made an order dismissing the indictment as to the defendant Deep Rock Oil Corporation.

Counsel for the Government made a motion that the indictment be dismissed as to the defendant Louisiana Oil Refining Corporation, on the ground that the facts in the possession of the Government indicate that the company's affairs were wound up after the period covered by the indictment, that the corporation is no longer in existence, and that the corporation cannot be held legally liable for the charges in the indictment, and after consideration thereof, the Court, on November 11, 1937, made an order dismissing the indictment as to the defendant Louisiana Oil Refining Corporation.

Counsel for the Government made a motion that the indictment be dismissed as to the defendant Cities Service Export Oil Company, on the ground that the facts indicate
that the company was merged with certain other com-
70 panies in June, 1936, prior to the date of the return of
the indictment, and that that corporation cannot be held legally liable for the charges in the indictment, and after consideration thereof, the Court, on November 11, 1937, made an order dismissing the indictment as to Cities Service Export Oil Company.

Counsel for the Government made a motion that the indictment be dismissed as to the defendants The Journal of Commerce Publishing Company, W. C. Platt Company, The National Petroleum Publishing Company, and Warren C. Platt, on the ground that the Government has been unable to produce sufficient evidence to connect up these defendants with the conspiracy charged in the indictment. Counsel for said defendants objected to the motion on the ground that a criminal case could not be dismissed without consent of the defendant and said defendant's counsel urged that Government counsel be directed to proceed with the prosecution against said defendants, or, in the alternative, that the jury be instructed to return a verdict of not guilty in favor of the defendants at the close of the Government's case. After consideration of said motion, the Court, on November 11, 1937, made an order dismissing the indictment as to the defendants The Journal of Commerce Publishing Company, W. C. Platt Company, The National Petroleum Publishing Company, and Warren C. Platt, stating as reasons for said order that there was no competent and substantial evidence in the record which would support a finding of guilty against said defendants, to which order the Court allowed exceptions to said defendants.

Entered Nov. 12, 1937. 71 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

ORDER OF DISMISSAL.

Filed November 12, 1937, H. C. Hale, Clerk.

This cause having come on for trial the 4th day of October, 1937, a jury having been duly selected, impanelled and sworn and evidence having been introduced herein by the United States through witnesses subpoenaed by it and duly sworn by this Court and the United States through its attorneys having stated in open court this 11th day of November, 1937, just before the conclusion of its case that from the evidence adduced no cause of violation of law as charged in the indictment herein has been proven against the defendants Warren C. Platt, W. C. Platt Company (also referred to in the indictment as Platt's Oilgram) and The National Petroleum Publishing Company (also referred to in the indictment as National Petroleum News) and the United States through its attorneys having this day moved the Court for an order dismissing said cause as to the said Warren C. Platt, W. C. Platt Company and The National Petroleum Publishing Company and each of them and said defendants by their attorneys having objected to the granting of said motion and having moved the Court either to issue an order directing the United States to proceed with the prosecution of these defendants under the indictment herein to the conclusion of its case or in the alternative to instruct the jury to return verdicts of not guilty in 72 favor of each of the defendants Warren C. Platt, W. C. Platt Company and The National Petroleum Publishing Company, the Court upon consideration thereof hereby overrules the said motion of said defendants and hereby grants the said motion of the United States and hereby dismisses the indictment herein as to each of said defendants and herewith discharges the said defendants and each of them who may go hence without delay.

The defendants and each of them in view of their objections may have their exceptions hereto.

Patrick T. Stone,
Judge of the District Court of the United States for the Western District of Wisconsin.

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73 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

Entered Nov. 22, 1937.

JUDGMENT.

Filed November 22, 1937, H. C. Hale, Clerk.

On this the 22nd day of November, A. D. 1937, came on for consideration the several motions filed by Defendants Gulf Oil Corporation, Gulf Refining Company, The Texas Company, W. S. S. Rodgers, H. W. Dodge, R. D. Cottingham and P. C. Scullin; and the Court, after hearing said motions and the argument of counsel for said defendants and counsel for the Government, is of the opinion that each of said motions should be granted.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said motions and each of them are hereby granted and, upon instruction of the Court, the Clerk of this court has filed and entered a verdict of "Not Guilty" in this cause on behalf of each of the defendants above named.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendants and each of them are hereby released, acquitted and discharged.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendants W. S. S. Rodgers, H. W. Dodge, R. D. Cottingham and P. C. Scullin, and the sureties of each of them who joined with them respectively on their several appearance bonds in this cause, be and they are hereby discharged from all obligation and liability under and in pursuance of said bonds.

Patrick T. Stone,
United States District Judge.

Entered Dec. 7, 1937.

74 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

JUDGMENT.

Filed December 7, 1937, H. C. Hale, Clerk.

On this the 7th day of December, A. D. 1937, came on for consideration the motion filed by John A. Welch; and the Court, after hearing said motion and the argument of counsel for said defendant and counsel for the Government, is of the opinion that said motion should be granted.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said motion is hereby granted and, upon instruction of the Court, the Clerk of this court has filed and entered a verdict of "Not Guilty" in this cause on behalf of the defendant John A. Welch.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendant John A. Welch is hereby released, acquitted and discharged.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendant John A. Welch and the sureties who joined with him on his appearance bond in this cause, be and hereby are discharged from all obligations and liability under and in pursuance of said bond.

Patrick T. Stone,
United States District Judge.

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75 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

JUDGMENT.

Filed December 7, 1937, H. C. Hale, Clerk.

On this the 7th day of December, A. D. 1937, came on for consideration the motion filed by R. R. Irwin; and the Court, after hearing said motion and the argument of counsel for said defendant and counsel for the Government, is of the opinion that said motion should be granted.

It Is Therefore Ordered, Adjudged and Decreed, by the Court that said motion is hereby granted and, upon instruction of the Court, the Clerk of this court has filed and entered a verdict of "Not Guilty" in this cause on behalf of the defendant R. R. Irwin.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendant R. R. Irwin is hereby released, acquitted and discharged.

It Is Further Ordered, Adjudged and Decreed by the Court that said defendant R. R. Irwin and the sureties who joined with him on his appearance bond in this cause, be and hereby are discharged from all obligations and liability under and in pursuance of said bond.

Patrick T. Stone,
United States District Judge.

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76 In the District Court of the United States.

* * (Caption—11365) * *

MEMORANDUM OF ORDER GRANTING DIRECTED VERDICT FOR IRA A. SMITH.

On December 7, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District, the Court, after consideration of the motion for directed verdict at the close of the Government's case by the defendant Ira A. Smith, which had been filed with the Clerk of said Court on November 15, 1937, made an order granting the motion for directed verdict by the defendant Ira A. Smith.

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77 In the District Court of the United States.

* * (Caption—11365) * *

MEMORANDUM OF ORDER GRANTING DIRECTED VERDICT FOR R. O. AUDRAIN.

On December 9, 1937, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District. the Court, after considering the motion for directed verdict at the close of the Government's case by the defendant R. O. Audrain, which had been filed with the Clerk of said Court on November 15, 1937, made an order granting the motion for directed verdict by the defendant R. O. Audrain.

Entered Dec. 14, 1937. 78 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

Filed December 14, 1937, H. C. Hale, Clerk.

The Government having proceeded to trial on the indictment against the defendant Tide Water Associated Oil Company a Delaware Corporation, now, on motion of counsel for the Government, at the conclusion of the Government's case against all the defendants herein, including said Tide Water Associated Oil Company, to dismiss the indictment as to said company on the ground that it appears that said company was not, and is not, connected with the offense alleged in the indictment, counsel for said company objecting to dismissal and demanding that the Government be directed to proceed to a verdict in respect of said company; and due consideration having been had, it is

Ordered, Adjudged, and Decreed that the indictment herein be, and it hereby is, dismissed as to said defendant Tide Water Associated Oil Company over the objection of counsel for said company.

Patrick T. Stone,
District Judge.

Entered Jan. 14, 1938. 79 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

JUDGMENT AS TO JAMES NAGLE.

Filed January 14, 1938, H. C. Hale, Clerk.

Now on this the 14th day of January, A. D. 1938, at the close of the evidence adduced on behalf of both the Government and the defendants,

It is Considered, Ordered and Adjudged by the Court that the indictment insofar as it relates to the defendant James Nagle should be and same is hereby dismissed, and, upon instruction of the Court, the Clerk of this Court has filed and entered a verdict of "Not Guilty" in this cause on behalf of the said defendant, and he, the said James Nagle, is released, acquitted and discharged to go hence without day, and said Nagle and the surety or sureties on his bond filed herein are discharged from all liability under said bond.

Patrick T. Stone,
Judge.

80 IN THE DISTRICT COURT OF THE UNITED STATES.

Entered Jan. 20, 1938.

• • (Caption—11365) • •

ORDER.

Filed January 20, 1938, H. C. Hale, Clerk.

The defendants, Dewey K. Chamberlain, Thomas Fitzgerald, H. A. Gardner and Clyde M. Boggs, having moved the Court for directed verdicts of acquittal, and the Court being fully advised in the premises,

It Is Ordered, that the motions of said defendants be and they are hereby granted, and said defendants are hereby discharged and their bonds cancelled.

Dated at Madison, Wisconsin, this 20th day of January, 1938.

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

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81 IN THE DISTRICT COURT OF THE UNITED STATES.

Entered Jan. 21, 1938.

• • (Caption—11365) • •

ORDER.

Filed January 21, 1938, H. C. Hale, Clerk.

The defendant, L. T. Cramer, having moved the Court for a directed verdict of acquittal, and the Court being fully advised in the premises,

It Is Ordered, that the motion of said defendant be and it is hereby granted, and said defendant is discharged and the bond cancelled.

Dated at Madison, Wisconsin, this 21st day of January, 1938.

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Entered Jan. 21, 1938. 82 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

ORDER.

Filed January 21, 1938, H. C. Hale, Clerk.

The motion of the defendant, Fred L. Koopman, for a directed verdict of acquittal, having been duly filed herein, and the Court having considered said motion and being fully advised in the premises,

It Is Ordered that the motion of said defendant be and it is hereby granted, and said defendant is discharged and his bond cancelled.

Dated at Madison, Wisconsin, this 21st day of January, 1938.

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Filed Jan. 22, 1938. 83 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Socony-Vacuum Oil Company, Inc., guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

84 In the District Court of the United States.

• • (Caption—11365) • •

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Continental Oil Company, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

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85 In the District Court of the United States.

• • (Caption—11365) • •

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Charles E. Arnott, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

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86 In the District Court of the United States.

• • (Caption—11365) • •

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, H. T. Ashton, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

87 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Wadhams Oil Company (subsidiary of Socony-Vacuum Oil Company), guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

88 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Empire Oil and Refining Company (subsidiary of Cities Service Company), guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

89 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, The Pure Oil Company, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

90 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, R. H. McElroy, Jr., guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

91 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Shell Petroleum Corporation, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

92 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, P. E. Lakin, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

93 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Sinclair Refining Company, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

94 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Mid-Continent Petroleum Corporation, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

95 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Robert W. McDowell, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

96 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Phillips Petroleum Corporation, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

97 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, Skelly Oil Company, guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

98 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, The Globe Oil and Refining Company (Oklahoma), guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

99 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

VERDICT.

Filed January 22, 1938, H. C. Hale, Clerk.

We, the jury, for our verdict in the above entitled action, find the defendant, The Globe Oil and Refining Company (Illinois), guilty as charged in the indictment.

Dated at Madison, Wisconsin, this 22 day of January, A. D. 1938.

Hiram Nelson,
Foreman.

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100 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

MEMORANDUM OF VERDICTS OF JURY.

On January 22, 1938, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Court Room in the City of Madison in said District, the jury which heard the above entitled case agreed upon its verdict and returned the following verdict:

"We, the jury, for our verdicts in the above-entitled action, find the defendants Standard Oil Company (Indiana), Edward G. Seubert, Allan Jackson, Edward J. Bullock; Socony-Vacuum Oil Company, Inc., Charles L. Jones, Charles E. Arnott, H. T. Ashton, Bryan S. Reid; Wadhams Oil Company, A. G. Maguire; Cities Service Company; Empire Oil and Refining Company, Harry D. Frueauff, O. J. Tuttle; Continental Oil Company, Dan Moran, Harry J. Kennedy; The Pure Oil Company, Henry M. Dawes, C. B. Watson, R. H. McElroy, Jr.; Shell Petroleum Corporation, Alexander Fraser, P. E. Lakin; Sinclair Refining Company, J. W. Carnes; Mid-Continent Petroleum Corporation, Jacob France, Robert W. McDowell; Phillips Petroleum Corporation, Frank Phillips, A. M. Hughes; 101 Skelly Oil Company, W. G. Skelly; Barnsdall Refining Corporation, E. B. Reeser; The Globe Oil and Refining

Company (Oklahoma), I. A. O'Shaughnessy; The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Kansas); H. E. Brandli, Edward L. Shea, Noel Robinson, J. W. Warner, Arthur V. Bourque, guilty as charged in the indictment."

102 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

Filed Jan. 2 1938.

MOTION FOR ARREST OF JUDGMENT.

Filed January 25, 1938, H. C. Hale, Clerk.

Come now the hereinafter named defendants by their respective attorneys and jointly and severally move that no judgment or sentence of this Court be imposed or entered against them, or any of them, and that each of them be discharged from further prosecution under the indictment, and as grounds for this motion to arrest the judgment say that:

1. The indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin or that the defendants, or any of them, or any other person performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

2. The said indictment discloses on its face that the trial of the defendants thereunder in the Western District of Wisconsin has violated the right of the defendants under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the state and district wherein the crime, if any, alleged in the indictment, was committed.

3. The record, taking into consideration the indictment
and the order of the Court dismissing the former de-
103 fendants, W. C. Platt, the National Petroleum News,
Platt's Oilgram and the Chicago Journal of Commerce,
fails to disclose that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants or any of them, or any other person, performed or did any act pursuant to the alleged combination or conspiracy within the Western District of Wisconsin.

4. The record, taking into consideration the indictment

and the order of the Court dismissing the former defendants, W. C. Platt, the National Petroleum News, Platt's Oilgram, and the Chicago Journal of Commerce, discloses on its face that the Trial of the defendants in the Western District of Wisconsin has violated their right under the Sixth Amendment to the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

5. The said indictment fails to describe and particularize the alleged combination and conspiracy and the means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States and as to enable this Court from an inspection of the said indictment to ascertain whether, if carried into effect, the alleged means could cause a restraint of interstate commerce within the provisions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., Section 1.)

6. The record, taking into consideration the indictment and the order of the Court dismissing the defendants, W. C. Platt, the National Petroleum News, Platt's Oilgram
104 and the Chicago Journal of Commerce fails to describe and particularize the alleged combination and conspiracy and to set forth means agreed upon to accomplish the purposes thereof with sufficient definiteness and certainty and so specifically as to charge any offense against the United States within the provisions of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., Section 1.)

7. The said indictment shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., Section 1.)

8. The record, taking into consideration the indictment and the order of the Court dismissing the defendants, W. C. Platt, the National Petroleum News, Platt's Oilgram and the Chicago Journal of Commerce, shows on its face that the conspiracy therein alleged did not and could not restrain interstate trade and commerce in gasoline within the meaning of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. (15 U. S. C. A., Section 1.)

9. The said indictment fails to allege facts showing any violation by these defendants or by any of them of any law of the United States.

10. The said indictment is fatally duplicitous.

11. The said indictment is insufficient and defective for other reasons apparent upon its face.

105 Wherefore, the hereunder named defendants and each of them ask that this motion be granted and that judgment on the verdict be arrested.

William J. Donovan,
Herbert H. Thomas,
H. H. Thomas,
1 West Main Street,
Dane County,
Madison, Wisconsin.
Attorneys appearing for the defendants hereinbelow named.

Standard Oil Company (Indiana)
Socony-Vacuum Oil Company, Inc.
Cities Service Company
Continental Oil Company
The Pure Oil Company
Shell Petroleum Corporation
Sinclair Refining Company
Mid-Continent Petroleum Corporation
Phillips Petroleum Company
Skelly Oil Company
Barnsdall Refining Corporation
The Globe Oil & Refining Company (Oklahoma)
The Globe Oil & Refining Company (Illinois)
The Globe Oil & Refining Company (Kansas)
Empire Oil and Refining Company
Wadhams Oil Company
Edward G. Seubert
Allan Jackson
Edward J. Bullock
Charles L. Jones
Charles E. Arnott
H. T. Ashton
106 A. G. Maguire
Bryan S. Reid
Harry D. Frueauff
H. E. Brandli
O. J. Tuttle
Dan Moran

Harry J. Kennedy
Henry M. Dawes
C. B. Watson
R. H. McElroy, Jr.
Alexander Fraser
P. E. Lakin
J. W. Carnes
Edward L. Shea
Noel Robinson
J. W. Warner
Jacob France
Robert W. McDowell
Frank Phillips
A. M. Hughes
W. G. Skelly
E. B. Reeser
I. A. O'Shaughnessy

Filed July 19, 1938.

107 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

ORDER ON MOTIONS AFTER VERDICT.

Filed July 19, 1938, H. C. Hale, Clerk.

Realizing the importance to the Government and the defendants of a correct decision of the questions raised on the motions after verdict, and being conscious of the responsibility necessarily cast upon the Court, I have made a careful and thoughtful re-study of the evidence as it applies to each defendant, separately and jointly. I have considered in detail the contentions of all the defendants as advanced in the motions after verdict, and have studied the many able briefs submitted on behalf of the Government and the defendants. This record runs to more than 12,000 pages, in addition to over 1,000 exhibits.

The convincing force of much of the testimony relates in widely varying degrees to different defendants. It shows that the defendants were in varying situations in relation to the acts complained of by the Government.

The trial lasted nearly four months, during all of which time the jury was kept sequestered and in the custody of the marshal. At the close of the trial there were pre-
108 sented motions in behalf of each defendant, requiring, for intelligent disposal, a complete knowledge of

this monumental record as it applied to each defendant. I felt then, that to have kept the jurors sequestered while each of these motions received full and careful consideration, would have been unjust and unfair to them.

The charge against the defendants lay in a field of economic controversy. Violations of the anti-trust laws are different from crimes which are mala in se. The Department of Justice has, in each case where it believes a violation has occurred, the choice of a civil or criminal proceeding. It recognizes that the rule of reason, long considered essential in administering the Sherman Anti-trust Act, makes sharply defined standards impossible.

In view of these circumstances, I concluded to let the case go to the jury as to all defendants, and after verdict to exercise, if necessary, the discretion of the Court to prevent any miscarriage of justice.

The indictment charged a conspiracy involving many persons, not all indicted. The acts proved were often known to but a few of the defendants. Many of the acts were innocent enough on their face, so that a defendant knowing only what appeared on the surface, might easily have drawn no inference of violation of law from the mere knowledge of the facts shown. The whole activity of a large part of a great industry in a large section of the country was involved. Legal purchases of gasoline in the ordinary course of dealing and running into millions of dollars were being made, along with the purchases in a much smaller volume that the Government has charged the defendants with having illegally made in the furtherance
of the conspiracy. Letters, telegrams, telephone
109 conversations and intra-company memoranda were
shown having strong probative force as to some defendants, yet the contents thereof are wholly unknown to others. Large corporations with national distribution of gasoline were committed to a course or policy by agents or officials in charge of one department, where it is not at all clear that the responsible executive in charge of the entire company ever had any knowledge that a small portion of purchases here complained of had been made as a result of this conspiracy. Circumstantial evidence was adduced which applied with great force as to some defendants, yet had no probative force as to others.

As to a defendant shown by direct and positive evidence to have been a party to the conspiracy, or where as to a defendant the circumstantial evidence, properly applied, meets the required degree of proof, it is of course proper to view the record as a composite whole. To apply that rule in cases where there was otherwise no proof or, at most, very slight proof, would be a complete reversal of the American idea of justice. All of the evidence must also be viewed in the light of special circumstances claimed to apply in individual cases.

That the jury was in a position to make the complete and critical study of the proof as it applied to each defendant separately is at least doubtful. It has taken the court a considerable time to do it with the aid of the record and briefs. The jury, acting in an effort to do justice, did get the larger view of the case, and is to be commended for its handling of a most difficult problem.

While I am satisfied that as to some of the defendants, as hereinafter pointed out, the verdict must stand, I am
110 equally satisfied that as to the defendants, Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque and The Globe Oil and Refining Company (Kansas), there is no substantial evidence in the record fairly tending to sustain the verdicts of the jury, and as to these defendants the verdicts will be set aside and the indictment dismissed.

It Is So Ordered And Adjudged.

I am also satisfied that in the light of the proof as a whole, but applied individually in the light of special circumstances shown as to them, which it would be fruitless to review here but which appear in the various motions and briefs, there is good reason to believe that certain defendants have not had an adequate separate consideration of their defense, in view of the fact that as to some of them direct evidence of participation was lacking or slight, and the circumstantial evidence viewed as a whole may well have obscured other facts and other circumstances shown, in some cases, to be highly suggestive of innocence, and in all cases entitled to be considered and weighed. Once the jury arrived at the conclusion that a conspiracy to fix prices had been in operation, defendants as to whom only circumstantial evidence had been offered were naturally at a serious disadvantage in being charged and tried along with large corporations and other individuals definitely shown to have engaged in the conspiracy. Men who were employed by large corporations may well have had harmful inferences drawn from the fact that their employers, the corporations, participated in the conspiracy.

For these reasons and for many particular reasons set out in the motions and briefs, the verdicts will be set aside and a new trial granted to these defendants, and it is,
111 therefore,

Ordered And Adjudged that the verdicts as to defendants, Edward J. Bullock, A. G. Maguire, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, Harry J. Kennedy, C. B. Watson, J. W. Carnes, Edward L. Shea, Noel Robinson, J. W. Warner, E. B. Reeser, I. A. O'Shaughnessy, A. M. Hughes, Alexander Fraser, Cities Service Company, Barnsdall Refining Corporation, and Standard Oil Company (Indiana), be set aside, and said defendants are hereby granted a new trial.

Coming now to the remaining defendants tried and not heretofore disposed of, the indictment charges in general substance that the defendant major oil companies, acting through the defendant officers and others not indicted, formulated and carried into effect an unlawful conspiracy to fix prices of gasoline during a period from about March 1, 1935 to about August 1, 1936. The indictment sets out precisely the means by which the conspiracy was carried into effect, namely, two substantially simultaneous buying programs or pools, one in the so-called Mid-Continent field, and the other in the so-called East Texas field. The charge is that in each instance, for the purpose of artificially raising and fixing the price of gasoline at artificially high and non-competitive levels in the so-called spot tank car market and in the wholesale and retail market in the Standard of Indiana territory, the major oil companies conspired to and did, by concerted action and allotment, buy gasoline in large quantities from time to time, in the Mid-Continent area in that spot market and in the East Texas field through the East Texas Refiners' Association in that spot market, which gasoline was not required to meet the needs of
112 the respective major companies at the time, and that this was done for the sole purpose of bringing about an arbitrary and controlled rise in prices of gasoline.

The indictment further charges as a means of the execution thereof that the defendants conspired and designed through such buying to cause the higher and arbitrary and above-market prices at which they were buying to be reported to and printed in the market quotations of the Chicago Journal of Commerce, and in Platt's Oilgram, as though they were bona fide sales of gasoline by independent refiners in these two fields to their independent jobbers and consumer trade, concealing from the rest of the industry and the public the fact that such sales were being made of distress gasoline to major companies who were buying solely for the purpose of bringing about a rise in price. The indictment charges that the conspiracy was carried out by concerted action of the defendants, and that as a result, during the period involved, the defendants did bring about an arbitrary high and artificial price in the said spot market, and that these prices were in fact published as spot market prices, and that as a result the defendant major oil companies received, as they had planned in formulating the conspiracy, arbitrary and unfair prices and profits from the sale of their own products which constituted a very high percentage of the total distribution to jobbers and consumers in the so-called Standard of Indiana territory. It further charges that the conspiracy as thus formulated and executed enabled these major companies, through the concerted purchase of a very small percentage of the total available gasoline for distribution in the Standard of Indiana territory, to raise the price to controlled levels and thereby unreasonably and unlawfully to profit on the sale of their own products.

113 The defendants contend that at and immediately prior to the commencement of the concerted program in the Mid-Continent field, the industry was suffering from serious abuses and bad trade practices which it was not only lawful for the defendants to correct by concerted action, but that such correction was imperative if conditions of free and healthy competition in the industry were to be preserved at all; that the spot tank car price from November 1934 and through February of 1935, and immediately prior to the commencement of the buying program in the Mid-Continent field, was ruinously low; that had not prompt and immediate steps been taken to alleviate this condition, the independent refiners would have been bankrupt very shortly, and the industry deprived of any independent competition in that field; that even the majors were sustaining tremendous losses as a result of the ruinous price. That another cause of the disastrous situation of the industry at the time was the production of unlawful crude and of gasoline unlawfully manufactured therefrom, called in the industry "hot oil", and that this had been a heavily contributing factor in bringing about, over a long period of time, an over supply of crude and thus of gasoline. That the independent refiners were almost without exception poorly capitalized, had not the means with which to supply or acquire storage facilities which would enable them to

hold their manufactured product more than a very brief period of time, and that they were thus not in a position to hold their product awaiting seasonable demand or better markets, but on the contrary were under the necessity of making a substantially immediate disposition of all of their products, over and above their current market sales to regular customers, at whatever price they could obtain, and this was usually well below the market price. That the independent refiners could not cut down their supply of crude, being obligated to take the entire output of their
114 various sources of crude or lose those sources entirely.

That buyers among independent jobbers, distributors and the major companies were taking full advantage of this situation, and that this excess gasoline over and above what the independents could sell to their regular trade, and which was called in the trade "distress gasoline", heavily overhung the market, depressed it well below the cost of production, and constituted a serious unfair trade practice and condition which the defendants were fully justified in seeking to remove by concerted action. That concerted action in that behalf was not only lawful, but in the public interest, and calculated to restore and preserve a healthy competition among independent refiners with the major companies, and to bring about for the industry only a fair, reasonable and normal profit upon its manufacturing processes; and that it was entirely legitimate for the major companies to seek the incidental benefit to themselves therefrom resulting. That this situation as to distress gasoline had been the subject and object of Government investigation and efforts for its removal over a considerable period of time prior to the commencement of the buying program in the Mid-Continent field; that their objective in this program was to bring about only such a rise in the spot tank car price as would bring the price of gasoline onto a parity basis with its raw material, crude, and thus enable the industry to recover the cost of manufacture and a normal, healthy profit; that the Government itself had fixed a fair parity ratio between gasoline and crude at 18½ to 1, and that the price of crude was "pegged" by the Government at $1 per barrel, and that the price of gasoline in the spot tank car market in the period in question never at any time exceeded the parity basis. That the attainment of a parity basis between gasoline and crude had been and was a
115 Governmental objective over some considerable period
of time prior to the inception of the buying program in the Mid-Continent field. That the concerted action in

the Mid-Continent field was taken under the authority of the code for the petroleum industry set up under the National Industrial Recovery Act, and that when the latter had ceased to be in effect, the program was continued with the knowledge of responsible officers of the Government in authority in connection with the petroleum industry. That while there undoubtedly was a buying program in the Mid-Continent field, this did not go at any time beyond a purely voluntary program under which no major company made any commitment to buy at all, no commitment to buy any particular quantity, and no commitment to pay any particular price. That the program consisted of assembling accurate and dependable information as to the location of and amounts of distress gasoline in the hands of independent refiners from time to time, and imparting this knowledge to the major companies who were commited to the general program of removing this gasoline at fair but not higher than market prices. That at all times each of the major companies bought in the light of this information, considering a price which had been recommended but was not at all binding, and that each company, in making purchases, dealt directly with the independent refiner, and made its own bargain and price, and was free at any time to buy or not to buy, as it saw fit, and that there was never any commitment or promise involved in the program. That the arrangement by which each major company operating in the Mid-Continent field is claimed to have assumed responsibility for absorbing or buying the surplus or
116 distress gasoline of one or more independent refiners,
called in the program "dancing partner", was one for convenience only, and was a reasonable and fair method of providing for the orderly marketing of distress gasoline. That had not this been done, the buying would have been haphazard, with some independent refiners not disposing of their surplus and others having greater demands than they could meet. That in the Mid-Continent field another evil practice which they sought to remove was that certain independent refiners were better known than others, and could dispose of their product more readily, with the result that they were running more than their fair share of gasoline, while certain other independents, less known, had difficulty in disposing of a fair amount of gasoline, and that the bringing together of a major with its "dancing partner" or partners, was calculated to even up and equalize that situation, and was one which was calculated for the good of the industry, but was not for the benefit of the

major companies in particular. That the published prices of sales in the trade journals were actual sales of independent refiners to their independent jobber or consumer customers arrived at in a free and competitive market, and that on no occasion was the sale of gasoline to a major company published as the spot tank car market price. That the major companies did not, in fact, buy gasoline in excess of their legitimate needs and requirements. That taking into consideration their current demand, impending seasonal demands, expected improvement in general economic conditions, and the impending enforcement of the Connally Act, their buying was no more than reasonable, prudent buying for such needs and reasonable inventories. That there was never any buying program or concerted arrangement of any kind in the East Texas field so far as the
117 major oil companies were concerned. That the independent refiners themselves organized a central selling agency to market their distress gasoline. That the independent refiners in East Texas had brought about much of their difficulty and distress by reason of their purchase of unlawfully produced crude, and the manufacturing of the same into unlawful gasoline, or, in other words, they were dealing in "hot oil", and further that this group of refiners had not been found dependable by the industry in respect to the quality or uniformity of their product; that the association was formed by these independent refiners for the purpose of bringing about a condition in which these refiners could make it known to the industry that they had desisted from these bad practices and had become a dependable group with whom majors could safely deal, and that it was an effort to overcome resistance on the part of the majors against buying from this group of refiners which caused the association to be formed. That the entire East Texas program consisted of an effort by the East Texas Association to induce major companies to buy distress gasoline of the members of the association through the association, and that the majors never entered into any concert or agreement of any kind or undertaking with reference thereto, and that the sales of gasoline made through the association consist of two groups:

(a) Purchases by majors who had always bought in East Texas but who had no part in any concerted action or program;

(b) Purchases by majors who may or may not have been purchasing in East Texas regularly, but independent purchases made as a result of the direct solicitation by the East Texas Marketing Association;

and that in each case every sale was an independent, isolated transaction involving no concert or agreement with major companies. That such buying as was done by major companies in East Texas was in the light of actual re-
118 quirements, and that the evidence as to amounts of
purchases by various companies and time of purchase discloses that there could have been no allocation or arrangement between the majors. That through the period only a few purchases of a very small percentage of the total were made at above the low price of the spot tank car market; that a much higher percentage was purchased at the low of that market; and that a majority of the purchases in amount was at from ¼ to ½ cent under the low of the spot tank car market; that these activities were not calculated or intended to and did not bring about an unreasonable price; that the circumstance that the price leveled off from June 1935 through December 1935 was a natural and frequently recurring condition in the industry under healthy, normal competitive conditions; that the price rise of one-half cent in January 1936 resulted naturally from a corresponding rise in the price of crude at that time, and was not the result of concerted action on the part of the defendants. That the program in the Mid-Continent field was conducted openly, publicly and with full knowledge of all the trade, independent and major companies alike, and with the knowledge of responsible Government officials. That at no time was the open and free competition in the spot tank car market destroyed or impaired; that the spot market was at all times a free, open, and fully competitive market; that if the buying program had a psychological effect upon the independent refiners tending to make them more firm in their demands for price, such effect was not sufficient to make them unreasonable for the reason that the program never went more than from week to week, and that there was never any commitment or assurance that it would last beyond the current week. That in spite of the fact that the major companies distribute something in excess of 75% of the gasoline in the Standard of Indiana territory, there never has been a time and
119 there was not a time during the continuance of this
program when the major companies were in fact able to control the market, and that even if a group of major companies raise the price, unless the independents follow, the efforts of the majors are fruitless, and they are compelled to restore the former price, and that as a matter of fact they did not among them have the power to control the

market. That upon the record there was no substantial evidence to go to the jury as to whether or not the efforts of the defendants were effectual in controlling the price of gasoline as charged in the indictment, or to what extent, if any, the rise in the market price resulted from such activities, as distinguished from other factors then operating, such as enforcement of restrictions on shipments of illegally produced crude under the Connally Act, the natural economic recovery, and the seasonal recovery; and that these latter factors were largely, if not entirely, responsible for the rise in price which took place; that there was no evidence in the record that the portion of the rise in price which could be attributed to the activities of the defendants was unreasonable or unreasonably attained. That the price achieved in the buying movement conceded to have existed in the Mid-Continent field, and the result achieved in East Texas, whether with or without concert, was only a price which was on a parity with the price of crude. That the price was entirely reasonable, and that it is, under the doctrine of the Appalachian Coals, Inc. case 288 U. S. 344, no violation of the Sherman Anti-trust law for individuals or corporations engaged in an industry to get together on a reasonable program calculated to eliminate certain abuses that have grown up in that industry, and that they have not in this case exceeded the limits of what was held in that case to be lawful.

120 The foregoing are most of the contentions of the defendants, some of which are supported by the evidence.

The theory upon which the Government tried this case is grounded upon the Trenton Potteries case, 273 U. S. 392. The Government admits that while there were abuses involved in the nature of bad practices, nevertheless the motivating purpose of the defendants was not the alleviation of this condition, but the arbitrary raising and fixing of prices. It contends that the price attained and the progressive rises in price between March and June, 1935, were in effect "rigged" or controlled prices brought about by the defendant major companies for their own benefit and profit. It concedes that unlawful or "hot" oil had been a factor in bringing about unfair prices, but contends that the passage of the Connally Act and the enforcement of its provisions would naturally have brought about a normal and healthy price level without the intervention of the defendants, and that the defendants knew that circumstance, but nevertheless went ahead bringing about progressive rises in price which they were able to predict to a fraction of a

cent each time, showing that the market was actually a controlled market. That the arrangement by which prices were suggested and the various major companies were assigned one or more independent refiners called "dancing partners" amounted to even more than a conspiracy among major buyers and, in fact, included independent sellers, and this for the very purpose of making certain that the market would be under control. That while the buying program in the Mid-Continent field originated at a time when the Petroleum Code was still in effect, that it nevertheless went beyond the authority given by Governmental officers for the alleviation of the conditions of distress gasoline, and
121 then when the code ceased to be in effect, the defendants continued the program, well knowing that it then had no color of legality. That while there is testimony tending to show that the action was voluntary, and that while no commitments were made and nobody was obligated to buy or to pay any particular price, the course of conduct of the defendants in the buying indicates the contrary, and that they did in fact absorb this surplus gasoline pursuant to a concerted arrangement. That the fact that the allocation between the defendants bore no relation to their production or distribution or to the apparent equities of the situation, was another part of the scheme to camouflage the operation and make it appear to be one without concert, but that the references to East Texas movement in the testimony and documentary evidence are adequate and competent to show that it was in fact an action concerted between the defendants. That the leveling off of prices from June 1935 to December 1935 is evidence of the circumstance that the defendants had the market price under control, and that the price rise of one-half cent in January 1936 was purely arbitrary, against seasonal demand, at a time when public buying was at a low ebb, inventories entirely adequate, and that the advance in the price of crude was manipulated and controlled by the defendants. That while the purchases of the defendants were for the most part at the low or slightly under the low of the market, the fact is that the independent refiners could rely upon this buying program for their distress gasoline, which put them in a position to demand higher prices with confidence, and that while the major buying appeared to follow rather than lead the market, in the fact it was the stimulating and activating cause of the repeated rises in market price between March 1935 and June 1935, and of the further rise in January of 1936.

122 The Government contends that there is ample proof in the record that the buying programs were the activating and efficient cause of the price rises, that the market was under the control of the defendants, that the repeated rises did, in fact, result from the activities of the defendants in the two buying programs, as charged in the indictment.

The evidence was, in general, in conflict. It does appear without dispute that a concerted buying movement took place in the Mid-Continent field. Its character was in dispute. If the program was aimed at price fixing as such, it is sufficient that it was artificial and controlled. I am satisfied that there was ample evidence to take the case to the jury on these issues as well as on the issue of whether or not there was a concerted program in East Texas, and as to its character. While that program took an outward form and appearance of a seller's program, there were facts and circumstances substantiating the claim of the Government that it was in fact a program devised and maintained by the defendants, which the jury had a right to believe.

There were proofs sufficient to sustain the verdict as to the allegations in the indictment that the defendants were able to and did effectually tie the jobber's price in the Standard of Indiana territory, which includes the Western District of Wisconsin, to the tank car price in the spot market, and so to the artificial price the jury found the defendants brought about.

It is claimed by the defendants that they did not have the power to control the price as charged, and that inasmuch as some of the large companies did not or have not been shown to have participated in the movement, the
123 power of the defendants in that respect was inadequate for the purpose. This does not follow, for the reason that large buyers both in East Texas and in the Mid-Continent fields, while acting separately, were nevertheless buying for their requirements in these fields, as they had always done and as defendants had every reason to believe they would continue to do. The defendants were thus able to consider that these buyings would necessarily reduce the available gasoline which they proposed to take off the market just as effectively as though these other companies had joined in the program. The amount of distress gasoline would be exactly the same in any event, and the proof shows that the surplus was in fact a very small part of the total, so much so that most of the defendants have shown that its acquisition in addition to other buying did

not materially increase their inventories. I am satisfied that there was ample evidence to sustain the contention of the Government that the defendants did have the power to control the market, and that they did so, as charged.

There was, in my view, evidence to go to the jury and to sustain its verdict as to every essential charge in the indictment as to the defendants, Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company (Now Cities Service Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma). The jury's verdicts as to these defendants will be sustained, and

It Is Ordered And Adjudged that the motions of 124 said defendants for an order setting aside the verdicts and for a new trial be and they are hereby denied, to all of which the said defendants may each have an exception.

Madison, Wisconsin, July 19, 1938.

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Entered July 20, 1938. 125 In the District Court of the United States.

* * (Caption—11365) * *

CORRECTION ORDER.

Filed July 20, 1938, H. C. Hale, Clerk.

It Is Ordered that the name "Phillips Petroleum Corporation" be changed to "Phillips Petroleum Company" and that after the name "Empire Oil and Refining Company" be inserted "(Now Cities Service Oil Company)" wherever such names are stated in the Order on Motions After Verdict and in the Judgment both filed in the above entitled cause on July 19, 1938.

Enter:

Patrick T. Stone,
District Judge.

Dated July 20, 1938.

126 IN THE DISTRICT COURT OF THE UNITED STATES.

Entered July 19, 1938.

* * (Caption—11365) * *

JUDGMENT.

In One Count for Violation of U. S. C. Title 15, Sec. 1 (26 Stat. 209).

Filed July 19, 1938, H. C. Hale, Clerk.

On this 19th day of July, 1938, came the United States Attorney and the Special Assistants to the Attorney General, and the defendants both corporate and individual appearing in proper person and by their respective attorneys, and

The defendants both corporate and individual having been convicted on verdict of guilty of the offense charged in the indictment in the above entitled cause, to-wit: of a combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section 1 of the Act of Congress of July 2nd, 1890, known as the Sherman Anti-Trust Act, and

The individual defendants being now asked whether each or any of them have anything to say before judgment is pronounced against him and no sufficient cause being shown or appearing to the Court,

It Is By The Court Ordered And Adjudged severally as to the following defendants:

127 That the corporate defendants hereinafter named each pay a fine of Five Thousand ($5,000.00) Dollars, and costs:

Socony-Vacuum Oil Company, Inc.
Wadhams Oil Company
Empire Oil and Refining Company
(Now Cities Service Oil Company)
Continental Oil Company
The Pure Oil Company
Shell Petroleum Corporation
Sinclair Refining Company
Mid-Continent Petroleum Corporation
Phillips Petroleum Company
Skelly Oil Company
The Globe Oil and Refining Company (Illinois)
and
The Globe Oil and Refining Company (Oklahoma)

And, that the individual defendants hereinafter named each pay a fine of One Thousand ($1,000) Dollars:

Charles E. Arnott
P. E. Lakin
H. T. Ashton
Robert W. McDowell
R. H. McElroy, Jr.

It Is Further Ordered By The Court that execution be and the same is hereby stayed for five days.

Enter:

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Allowed July 19, 1938. 128 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

MEMORANDUM OF EXCEPTIONS TO JUDGMENTS OF CONVICTION.

On July 19, 1938, being one of the days of the regular term of the above Court, at a hearing of the above-entitled cause before the Honorable Patrick T. Stone, Judge of said Court, in the United States Courtroom in the City of Madison in said District, the Court pronounced sentence and judgment by ordering that the following corporate defendants each pay a fine of $5,000 and costs: Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Illinois), The Globe Oil & Refining Company (Oklahoma), and that the following individual defendants pay a fine of $1,000: Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, and R. H. McElroy, Jr., and the Court thereupon allowed an exception to said sentence, judgment, and order as to each of the defendants herein named.

Filed July 20, 1938.

129 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

NOTICE OF APPEALS.

Filed July 20, 1938, H. C. Hale, Clerk.

Name and address of Appellants:

Socony-Vacuum Oil Company, Inc., New York, N. Y.
Charles E. Arnott, New York, N. Y.
H. T. Ashton, St. Louis, Missouri.
Wadhams Oil Company, Milwaukee, Wisconsin.
Empire Oil and Refining Company (Now Cities Service Oil Company) Bartlesville, Oklahoma.
Continental Oil Company, Ponca City, Oklahoma.
The Pure Oil Company, Chicago, Illinois.
R. H. McElroy, Jr., Chicago, Illinois.
Shell Petroleum Corporation, St. Louis, Missouri.
P. E. Lakin, St. Louis, Missouri.
Sinclair Refining Company, New York, N. Y.
Mid-Continent Petroleum Corporation, Tulsa, Oklahoma.
Robert W. McDowell, Tulsa, Oklahoma.
Phillips Petroleum Company, Bartlesville, Oklahoma.
Skelly Oil Company, Tulsa, Oklahoma.
The Globe Oil and Refining Company (Oklahoma), Blackwell, Oklahoma.
The Globe Oil and Refining Company (Illinois), Lemont, Illinois.

130 Name and address of appellants' attorneys:

Attorneys for all appellants:

William J. Donovan
2 Wall Street
New York, N. Y.

Herbert H. Thomas
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Madison, Wisconsin.

Ralstone R. Irvine
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Washington, D. C.

Attorney for appellants Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Charles E. Arnott and H. T. Ashton:

Louis Mead Treadwell
26 Broadway,
New York, N. Y.

Attorney for appellant Charles E. Arnott:

Goldthwaite H. Dorr
61 Broadway,
New York, N. Y.

Attorney for appellant Wadhams Oil Company:

Joseph H. Marshutz
1115 Wells Building
Milwaukee, Wisconsin

Attorneys for appellant Empire Oil and Refining Company (Now Cities Service Oil Company):

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60 Wall Street
New York, N. Y.

C. A. Frueauff
60 Wall Street
New York, N. Y.

T. W. Brazeau
Wisconsin Rapids, Wisconsin.

E. L. Wingert
One West Main Street
Madison, Wisconsin

Attorneys for appellant Continental Oil Company:

Dan Moody
Greenwood, Moody & Robertson
Austin, Texas

W. H. Zwick
c/o Continental Oil Company
Ponca City, Oklahoma

131 J. J. Cosgrove
c/o Continental Oil Company
Ponca City, Oklahoma

Attorneys for appellants The Pure Oil Company and R. H. McElroy:

Charles I. Francis
Vinson, Elkins, Weems & Francis
Niels Esperson Building
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Carl Hill
Insurance Building
Madison, Wisconsin

Attorneys for appellants Shell Petroleum Corporation and P. E. Lakin:

Samuel A. Mitchell
705 Olive Street
St. Louis, Missouri

Truman Post Young
705 Olive Street
St. Louis, Missouri

Attorneys for appellant Sinclair Refining Company:

G. T. Stanford and
Roy T. Osborn
630 Fifth Avenue
New York, N. Y.

Frederick Wood
15 Broad Street
New York, N. Y.

Attorney for appellants Mid-Continent Petroleum Corporation and Robert W. McDowell:

J. C. Denton
Cosdon Building
Tulsa, Oklahoma

Attorneys for appellant Phillips Petroleum Company:

Don Emery
c/o Phillips Petroleum Company
Bartlesville, Oklahoma.

R. H. Hudson
c/o Phillips Petroleum Company
Bartlesville, Oklahoma

R. L. Foster
c/o Phillips Petroleum Company
Bartlesville, Oklahoma

Attorneys for appellant Skelly Oil Company:

W. P. Z. German
Skelly Building
Tulsa, Oklahoma

132 A. F. Molony
Skelly Building
Tulsa, Oklahoma

Cliff V. Peery
605 W. 47th Street
Kansas City, Missouri

Attorney for appellants The Globe Oil and Refining Company (Oklahoma) and The Globe Oil and Refining Company (Illinois):

Ralph Horween
105 South LaSalle Street
Chicago, Illinois

Offense:

Combination and conspiracy in restraint of trade and commerce in gasoline among the several States of the United States in violation of Section 1 of the Act of July 2, 1890, known as the Sherman Anti-Trust Act.

Date of Judgments:

July 19, 1938.

Brief description of judgments or sentences:

Socony-Vacuum Oil Company, Inc., $5,000 fine and costs.
Charles E. Arnott, $1,000 fine.
H. T. Ashton, $1,000 fine.
Wadhams Oil Company, $5,000 fine and costs.
Empire Oil and Refining Company (Now Cities Service Oil Company), $5,000 fine and costs.
Continental Oil Company, $5,000 fine and costs.
The Pure Oil Company, $5,000 fine and costs.
R. H. McElroy, Jr., $1,000 fine.
Shell Petroleum Corporation, $5,000 fine and costs.
133 P. E. Lakin, $1,000 fine.
Sinclair Refining Company, $5,000 fine and costs.
Mid-Continent Petroleum Corporation, $5,000 fine and costs.
Robert W. McDowell, $1,000 fine.
Phillips Petroleum Company, $5,000 fine and costs.
Skelly Oil Company, $5,000 fine and costs.
The Globe Oil and Refining Company (Oklahoma), $5,000 fine and costs.
The Globe Oil and Refining Company (Illinois), $5,000 fine and costs.

We, the above named appellants, hereby severally appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgments above-mentioned on the grounds set forth below.

Socony-Vacuum Oil Company, Inc.,
By C. E. Arnott,
Appellant.

Charles E. Arnott,
Charles E. Arnott, *Appellant.*

H. T. Ashton,
H. T. Ashton, *Appellant.*

Wadhams Oil Company,
By A. G. Maguire,
Appellant.

Empire Oil and Refining Company,
(Now Cities Service Oil Company),
By Chas. A. Frueauff,
Appellant.

Continental Oil Company,
By William H. Zwick,
Appellant.

The Pure Oil Company,
By Chas. I. Francis,
Appellant.

134 R. H. McElroy, Jr.,
R. H. McElroy, Jr., *Appellant.*

Shell Petroleum Corporation,
By Alexander Fraser,
Appellant.

P. E. Lakin,
P. E. Lakin, *Appellant.*

Sinclair Refining Company,
By J. W. Carnes,
Appellant.

Mid-Continent Petroleum Corporation,
By J. C. Denton, Vice-Pres.,
Appellant.

Robert W. McDowell,
Robert W. McDowell, *Appellant.*

Phillips Petroleum Company,
By R. L. Foster,
Appellant.

Skelly Oil Company,
By Alvin F. Molony,
Appellant.

The Globe Oil and Refining Company,
(Oklahoma),
By Ralph Horween,
Appellant.

The Globe Oil and Refining Company,
(Illinois),
By Ralph Horween,
Appellant.

135 Grounds of Appeal:

1. The Sixth Amendment to the Constitution of the United States guarantees to a defendant in a criminal case a trial by an impartial jury in the state and district wherein the crime, if any, alleged in the indictment was committed. This indictment charges a combination and conspiracy in violation of Section 1 of the Sherman Act. There is no allegation that the combination and conspiracy was entered into within the Western District of Wisconsin. The indictment does not show the commission of any overt act within that District. The Court, therefore, erred in overruling the several demurrers to the indictment, the several motions to quash the indictment, and the several motions in arrest of judgment, all filed by appellants and which raised the question whether venue was properly laid within the Western District of Wisconsin.

2. The Court erred in charging the jury, in substance, that sales of gasoline by defendants to jobbers and consumers in the Western District of Wisconsin, during the period covered by the indictment and at prices affected by the defendants in the manner charged in the indictment, would constitute overt acts done in that District, by such defendants, or their agents, to carry out in part or to further the carrying out of the alleged conspiracy.

3. The Court erred in permitting Government counsel on numerous occasions in examining certain important witnesses to use unauthenticated alleged transcripts of the witnesses' grand jury testimony and notes made therefrom by Government counsel to impeach the testimony or refresh the recollection of those witnesses, without showing that such transcripts were read over or examined by the witnesses at the time such testimony was reduced to writ-
136 ing, and which said testimony was not given contem-
poraneously with the facts or occurrences as to which the witnesses were asked to testify before said grand jury, but at a date remote from the date of such facts and occurrences and from the date of trial; in refusing to permit the witnesses or counsel for the appellants at any time to inspect the said grand jury testimony; in reading from said grand jury transcript and permitting counsel for the Government to read from said grand jury transcript in the presence of the jury; and in repeatedly exhibiting and permitting Government counsel repeatedly to exhibit said transcript to the jury.

4. The appellants were deprived of a fair trial because of conduct of counsel for the Government.

(a) In improper questioning of witnesses;

(b) In making improper remarks in the presence of the jury concerning witnesses and their testimony;

(c) In making, during the course of the trial and in the presence of the jury, improper remarks which were not supported by the evidence in the record;

(d) In making improper, inflammatory, abusive and unsupported statements and appeals to prejudice in the course of argument to the jury; and

(e) In stating to the jury that certain matters as to which there was no evidence in the record were true within the personal knowledge of counsel for the Government.

(f) In raising certain issues in the closing arguments to the jury, which issues were not raised by the indictment, but which in fact were materially and prejudicially contrary to the allegations in the indictment.

5. The appellants were deprived of a fair trial because this case was tried and submitted to the jury under a fundamental misinterpretation and misapplication of the provisions of Section 1 of the Act of July 2nd, 1890, known as the Sherman Anti-Trust Act, in that in ruling on evidence throughout the trial and in charging the jury the Court held, in substance, that the activities of a group having the power to affect or control the price of gasoline were not to be judged by the "rule of reason" under the Sherman Act.

137 6. The Court erred in submitting to the jury for its consideration in connection with the guilt or innocence of the appellants issues not raised by the indictment, but, on the contrary, materially and prejudicially at variance with the charges of such indictment, thereby preventing the appellants from receiving a fair trial.

7. The Court ruled that acts of the Secretary of the Interior and of his subordinate officials, operating under the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry, and brought to the attention of the appellants were immaterial in determining whether or not the appellants had entered into the conspiracy alleged in the indictment, and the Court erred in the exclusion of evidence showing these acts and the reliance of the appellants thereon.

8. The Court erred in instructing the jury, in substance, that there was no evidence shown of governmental approval or acquiescence of the conduct of the appellants.

9. The Court erred in refusing to allow the defendants to show the economic history of the events which led up to the conduct of the defendants shown in the evidence, and in refusing to allow the defendants to show the course of prices of gasoline during years previous to 1935 and the efforts of the administrative officers of the Government to raise prices during those years and the failure of those efforts.

10. The Court erred in refusing to instruct the jury that there was no unreasonable restraint of trade involved in the efforts on the part of the defendants to comply with the announced purposes and the known activities of the administrative officers of the United States.

11. The Court erred in failing to instruct the jury
138 properly and fully, in substance, that it was necessary to find from all the evidence in the case that the defendants entered into some agreement, express or implied, which constituted the alleged conspiracy and which, if carried out, would have been capable of accomplishing their alleged illegal purpose.

12. The Court erred in giving certain charges and in refusing to give certain other charges, which charges and refusals to charge had the effect of permitting or compelling the jury to disregard the question of whether the restraint of interstate trade and commerce, if any, imposed by the acts of the appellants was reasonable or unreasonable.

13. The Court erred in charging the jury, in substance, that the allegations in the indictment relative to fixing prices through the medium of false reports of prices sent to and inserted in the trade journals were immaterial and nonessential allegations, the failure to prove which the jury might disregard.

14. The Court erred in charging the jury, in substance, that the allegations in the indictment to the effect that the defendants purchased gasoline from the independent refiners at uniform, high, arbitrary and non-competitive prices and from time to time at progressively increased prices, as agreed upon by the defendant major oil companies, were immaterial and unessential allegations, the failure to prove which the jury might disregard.

15. The Court erred in charging the jury, in substance, that under Section 1 of the Sherman Act any combination or conspiracy having the purpose and intent to raise prices to any extent and by any means whatsoever is illegal.

16. The Court erred in charging the jury, in substance, that under Section 1 of the Sherman Act any con-
139 certed action to raise prices to any extent and by any means whatsoever by persons having a power to raise prices is illegal.

17. The Court erred in charging the jury, in substance that if a conspiracy was proved, they could consider the statements of the co-conspirators against all of the defendants, regardless of whether or not such defendants had been proved to be participants in the conspiracy.

18. The Court erred in improperly restricting the scope of counsel's opening statement to the jury on behalf of appellant.

19. The Court erred in admitting incompetent and prejudicial evidence, both oral and documentary, over the objection of counsel for appellants.

20. The Court erred in permitting the Government unlawfully to impound appellants' documents and papers and in permitting the Government to use documents unlawfully taken from the appellants and impounded.

21. The Court erred in denying several motions for a directed verdict at the close of the Government's case by those appellants who rested their cases at such time.

22. The Court erred in denying appellants' several motions to strike exhibits and testimony, originally admitted over objections, or in the alternative to limit their use, which motions were submitted at the close of the Government's case.

23. The Court erred in denying appellants' several motions to strike exhibits and testimony, originally admitted over objections, or in the alternative to limit their use, which motions were submitted at the close of all the evidence in the case.

140 24. The Court erred in denying appellants' several motions for a directed verdict which were submitted at the close of all the evidence in the case.

25. The Court erred in denying appellants' several motions for a new trial.

26. The Court erred in denying appellants' several motions that the verdict be set aside and the indictment dismissed.

27. The Court erred (a) in not admitting certain material relevant and competent exhibits and testimony offered by the appellants; (b) in refusing to give to the jury each of the appellants' requested instructions limiting the admission, the consideration and the use of evi-

dence offered by the Government; (c) in refusing to give to the jury each of appellants' requested instructions which were not incorporated in the charge of the Court to the jury; and (d) in charging the jury erroneously in other respects and in committing other prejudicial errors not specifically mentioned in the foregoing grounds of appeal.

28. All of the grounds of appeal above-mentioned will be amplified and made more specific, and other errors particularly relied upon will be added as grounds for the appeal in the assignments of errors which will be duly filed.

William J. Donovan,
William J. Donovan,
2 Wall Street,
New York, N. Y.

Herbert H. Thomas,
Herbert H. Thomas,
122 West Washington Avenue,
Madison Wisconsin,

Ralstone R. Irvine,
Ralstone R. Irvine,
1010 Shoreham Building,
Washington, D. C.
Attorneys for all appellants.

141 In the District Court of the United States.

* * (Caption—11365) * *

ACKNOWLEDGMENT OF SERVICE OF NOTICE OF APPEALS.

Filed July 20, 1938, H. C. Hale, Clerk.

Service of counsel for the appellants of a copy of the notice of appeals on behalf of the appellants named therein in the above-entitled cause, is accepted this 20th day of July, 1938.

John J. Boyle,
United States Attorney

W. B. Watson Snyder,
Special Assistant to the Attorney General,
Attorneys for the United States, Appellee.

142 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

Filed July 20, 1938.

NOTIFICATION OF FILING OF NOTICE OF APPEAL.

Filed July 20, 1938, H. C. Hale, Clerk.

To: Honorable Patrick T. Stone, District Judge.

Pursuant to Rule VII of the Rules of Practice and Procedure, after verdict of guilty in criminal cases brought in the District Court of the United States, you are hereby notified that at 9 A. M. this 20th day of July, 1938, there was filed with me a notice of appeals, in duplicate, filed severally by the appellants named therein, in the above entitled cause; showing acknowledgment of service of a copy of the foregoing notice of appeals by John J. Boyle, United States Attorney, and by John H. Lewin, Special Assistant to the Attorney General. A copy of said notice of appeals is attached hereto.

H. C. Hale,
Clerk of District Court.

143 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—11365) • •

NOTIFICATION OF JUDGE TO COUNSEL TO APPEAR BEFORE HIM FOR DIRECTIONS RE PREPARATION OF APPEAL BOND.

Filed July 20, 1938, H. C. Hale, Clerk.

To: United States Attorney, and Special Assistants to the Attorney General, Attorneys for the Plaintiff, and to the Attorneys for the Defendants.

Having been notified by the Clerk of this Court that a Notice of Appeals, in duplicate, by the appellants named therein has been filed in the above entitled case, I hereby direct you to appear before me in the United States District Court for the Western District of Wisconsin, at Madison, Wisconsin, at 9:00 o'clock A. M. July 20th, 1938, for the purpose of receiving such directions as may be appropriate with respect to the preparation of the record on appeal in the above entitled cause, including directions for the purpose of making promptly available, all necessary transcripts of testimony and proceedings, and for such other purposes as may be appropriate.

Dated this 20th day of July, 1938.

Patrick T. Stone,
United States District Judge,
Western District of Wisconsin.

Entered July 20, 1938. 144 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

ORDER.

Filed July 20, 1938, H. C. Hale, Clerk.

Having been duly notified by the clerk of this court that a notice of appeals, in duplicate, in the above entitled case has been filed with him by the appellants named therein, and a copy of such notice of appeals having been served on the United States Attorney, and having directed counsel for the appellants and the United States Attorney and the Special Assistant to the Attorney General to appear before me at the District Court of the United States for the Western District of Wisconsin, at Madison, Wisconsin, this 20th day of July, 1938;

It Is Ordered as follows:

1. That the appellants are granted one hundred twenty (120) days from the date said notice of appeals was filed within which to settle and file the bill of exceptions in connection with the appeal of the above entitled case to the United States Circuit Court of Appeals for the Seventh Circuit.

2. That counsel for the appellants and counsel for the appellee are to confer with each other for the purpose of agreeing upon the bill of exceptions, and in
145 the event such agreement cannot be reached within ninety (90) days, they are to appear before me at Madison, Wisconsin, with the proposed bill of exceptions and any proposed amendments thereto for the purpose of receiving further directions.

3. That the appellants may file severally a single assignment of errors, and such assignment of errors need not be filed until the filing of the bill of exceptions.

4. That the several appeals be presented to the United

States Circuit Court of Appeals for the Seventh Circuit upon one transcript of the record.

5. That the appellants shall not be required to file a praecipe of transcript with the clerk of this court and to serve a copy thereof on the United States Attorney until thirty (30) days after the date of filing the notice of appeals, and the United States Attorney shall file his praecipe with the clerk within ten (10) days thereafter.

6. That the term of court for the above entitled case is extended until the date of filing the bill of exceptions, and the assignment of errors, with the clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

7. That the appellants shall file a joint appeal bond in the amount of $25,000.00 with the clerk of this court within ten (10) days.

Enter:
Patrick T. Stone,
District Judge.

Dated July 20th, 1938.

6236 In the District Court of the United States

* * (Caption—11365) * *

DEFENDANTS-APPELLANTS ASSIGNMENTS OF ERRORS.

(Stamp) Document Number 847 U. S. District Court West. Dist. of Wisconsin Filed Dec 9 1938 M. Herbert C. Hale, Clerk Case Number 11365 CM.

Now come the Appellants, Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), The Globe Oil and Refining Company (Oklahoma), Charles E. Arnott, P. E. Lakin, H. T. Ashton, R. W. McDowell, and R. H. McElroy, Jr., and severally file the following Assignments of Errors upon which each of them will rely on this appeal.

6237 Assignment No. 1.

The Court erred in denying the motion for a directed verdict made by appellant H. T. Ashton at the close of all the evidence. (R. pp. 1923; 2488; 2432; 2449-50; 2456).

Assignment No. 2.

The Court erred in denying the motion for a directed verdict made by appellant Charles E. Arnott at the close of all the evidence. (R. pp. 1922; 2488; 2432; 2449-50; 2456).

Assignment No. 3.

The Court erred in denying the motion for a directed verdict made by appellant Empire Oil and Refining Company at the close of all the evidence. (R. pp. 1932; 2488; 2432; 2449-50; 2456).

Assignment No. 4.

The Court erred in denying the motion for a directed verdict made by appellant P. E. Lakin at the close of all the evidence. (R. pp. 1971; 2488; 2432; 2449-50; 2456).

Assignment No. 5.

The Court erred in denying the motion for a directed verdict made by appellant Robert W. McDowell at the close of all the evidence. (R. pp. 2003; 2488; 2432; 2449-50; 2456).

Assignment No. 6.

The Court erred in denying the motion for a directed verdict made by appellant Mid-Continent Petroleum Corporation at the close of all the evidence. (R. pp. 1991; 2488; 2432; 2449-50; 2456).

Assignment No. 7.

The Court erred in denying the motion for a directed verdict made by appellant Phillips Petroleum Company at the close of all the evidence. (R. pp. 2014; 2488; 2432; 2449-50; 2456).

Assignment No. 8.

The Court erred in denying the motion for a directed verdict made by appellant Skelly Oil Company at the close of all the evidence. (R. pp. 2021; 2488; 2432; 2449-50; 2456).

Assignment No. 9.

The Court erred in denying the motion for a directed verdict made by appellant Sinclair Refining Company at the close of all the evidence. (R. pp. 1981; 2488; 2432; 2449-50; 2456).

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Assignment No. 10.

The Court erred in denying the motion for a directed verdict made by appellant Shell Petroleum Corporation at the close of all the evidence. (R. pp. 1963; 2488; 2432; 2449-50; 2456).

Assignment No. 11.

The Court erred in denying the motion for a directed verdict made by appellant Socony-Vacuum Oil Company, Inc. at the close of all the evidence. (R. pp. 1914; 2488; 2432; 2449-50; 2456).

Assignment No. 12.

The Court erred in denying the motions for directed verdicts made by appellants The Globe Oil and Refining Company (Oklahoma) and The Globe Oil and Refining Company (Illinois) at the close of all the evidence. (R. pp. 2031; 2488; 2432; 2449-50; 2456).

Assignment No. 13.

The Court erred in denying the motion for a directed verdict made by appellant Wadhams Oil Company at the close of all the evidence. (R. pp. 1924; 2488; 2432; 2449-50; 2456).

6240

Assignment No. 14.

The Court erred in denying the motion for a directed verdict made by appellant Continental Oil Company at the close of all the evidence. (R. pp. 1940; 2488; 2432; 2449-50; 2456).

Assignment No. 15.

The Court erred in denying the motion for a directed verdict made by appellant R. H. McElroy, Jr., at the close of all the evidence. (R. pp. 1959; 2488; 2432; 2449-50; 2456).

Assignment No. 16.

The Court erred in denying the motion for a directed verdict made by appellant The Pure Oil Company at the close of all the evidence. (R. pp. 1952; 2488; 2432; 2449-50; 2456).

6241

Assignment No. 17.

The Court erred in overruling (R. pp. 23; 50) the Special Appearance and Plea of Appellant Mid-Continent Petroleum Corporation to the Court's Jurisdiction and Venue.

The grounds of said Plea were as follows:

That this Court is without jurisdiction or venue to hear and determine the above entitled cause for the reason that the indictment herein fails to show that the alleged crime charged or attempted to be charged therein was committed in the Western District of Wisconsin, or in the State of Wisconsin; but, on the contrary, said indictment affirmatively shows that, if said alleged offense were committed, the same was committed not in, but outside, the Western District of Wisconsin and the State of Wisconsin. That by reason thereof said defendant, Mid-Continent Petroleum Corporation, is and was not indictable and cannot legally or constitutionally be tried in the Western District of Wisconsin, or in the State of Wisconsin, for the alleged crime charged or attempted to be charged in said indictment. And that said indictment, the summons issued for this defendant on December 23, 1936, and the service of said summons made upon this defendant in the State of Oklahoma on December 29, 1936, pursuant to said indictment are and were null and void, and should be quashed, vacated, set aside and held for naught, for the reason that this Court does not have, by virtue of said indictment, and of said summons and service thereof, any jurisdiction or venue over either the person of said defendant or of the alleged crime charged or attempted to be charged in said indictment. (R. pp. 21-22).

6242

Assignment No. 18.

The Court erred in overruling (R. pp. 24; 51) the Special Appearance and Plea of appellant Robert W. McDowell to Court's Jurisdiction and Venue. The grounds of said Plea were as follows:

That this Court is without jurisdiction or venue to hear and determine the above entitled cause for the reason that the indictment herein fails to show that the alleged crime charged or attempted to be charged therein was committed in the Western District of Wisconsin, or in the State of Wisconsin; but, on the contrary, said indictment affirmatively shows that, if said alleged offense were committed, the same was committed not in, but outside, the Western District of Wisconsin and the State of Wisconsin. That by reason thereof said defendant, Robert W. McDowell, is and was not indictable and cannot legally or constitutionally be tried in the Western District of Wisconsin, or in the State of Wisconsin, for the alleged crime charged or attempted to be charged in said indictment. And that said indictment, the summons issued for this defendant on December 23, 1936, and the service of said summons made upon this defendant in the State of Oklahoma on December 29, 1936, pursuant to said indictment are and were null and void, and should be quashed, vacated, set aside and held for naught, for the reason that this Court does not have, by virtue of said indictment, and of said summons and service thereof, any jurisdiction or venue over either the person of said defendant or of the alleged crime charged or attempted to be charged in said indictment. (R. pp. 22-23).

6243 Assignment No. 19.

The Court erred in overruling (R. pp. 37-39, 53) the several demurrers to the indictment filed by the appellants. Among other grounds recited in said demurrers (R. pp. 25-37) to the indictment are the following:

1—The said indictment fails to allege that the defendants entered into the alleged combination and conspiracy within the Western District of Wisconsin, or that the defendants, or any of them, performed or did any act pursuant to the alleged combination and conspiracy within the Western District of Wisconsin.

2—The said indictment discloses on its face that a trial of the defendants thereunder in the Western District of Wisconsin would violate the right of the defendants under the Sixth Amendment of the Constitution of the United States to a trial by an impartial jury of the State and District wherein the crime, if any, alleged in the indictment was committed.

6244 Assignment No. 20.

The Court erred in denying the appellants' several motions in arrest of judgment.

Assignment No. 21.

The Court erred and abused its discretion, in view of the following circumstances, in denying (R. pp. 2488-2500) the several motions of appellants for a new trial. (R. pp. 2435-2440):

1. The instructions of the Court required the jury, in

determining guilt, to find that those participating in the conspiracy had the power to affect or raise or control the market price of gasoline.

2. The Court, by its Order of July 19, 1938, (R. pp. 2488-2500), set aside the verdicts and granted new trials to Standard Oil Company (Indiana), Barnsdall Refining Corporation, Cities Service Company, Edward J. Bullock, A. G. Maguire, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, Harry J. Kennedy, C. B. Watson, J. W. Carnes, Edward L. Shea, Noel Robinson, J. W. Warner, E. B. Reeser, I. A. O'Shaughnessy, A. M. Hughes, Alexander Fraser;
6245 and also set aside the verdict and ordered the discharge of the Globe Oil and Refining Company (Kansas), Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, and A. V. Bourque.

3. The jury found that all the defendants whose cases were submitted to it were guilty. The verdict was equivalent to a finding that all of the defendants had the power to affect or raise or control the market price of gasoline. The verdict, however, did not establish that the jury considered and found that the appealing defendants without the participation of the other defendants who were either dismissed from the case after verdict or were granted new trials, had the power to raise or affect or control prices. This is particularly true in view of the fact that the Government's evidence was to the effect that the Standard Oil Company (Indiana) was the market leader and there was strong affirmative evidence that without the participation of all such defendants so dismissed or granted new trials these appellants did not have such power.

6246

Assignment No. 22.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offers of proof and exhibit, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The adoption by the oil producing states through their governors, executive officers, and legislatures, and by the United States through its President, executive officers, and Congress, of a public policy of conserving the nation's petroleum resources, and of securing, by concerted effort by members of the industry and divers other means, levels of prices for crude oil and its products which would aid and permit such conservation and the stabilization of all
6247 branches of the industry.

Such rulings of the Court resulted in the exclusion of the following exhibit and offers of proof:

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness J. A. Moffett, a representative of the Government on the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to his conference with President Roosevelt on March 8, 1933, as a representative of the American Petroleum Institute, concerning the situation in the petroleum industry and the fixing of minimum prices. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1149-1152.

The offer (said offer being made as a whole, and separately as to each part or element thereof) of appellants to show by the witness Wirt Franklin, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to the conference of the Governors of the oil producing states in March 1933, the action taken thereat, and the approval of the proposed program by Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 962-976.

Appellants' Exhibit 710, being a copy of the Code of Fair Competition for the Petroleum Industry as of August 19, 1933. (R. pp. 473-475; 908-909; 1012; 1831.)

6248 Assignment No. 23.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants and in sustaining objections to appellants' offers of proof, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) That the United States, through its President and executive officers were instrumental by securing the concerted action of members of the industry and by other means, in raising the price of crude oil to one dollar a barrel, and that thereafter they sought to maintain it at that level by such concerted action and means throughout the life of the National Industrial Recovery Act.

6249 Such rulings of the Court resulted in the exclusion of the following offers of proof:

The offer (said offer being made as a whole, and separately as to each part or element thereof) of appellants to show by the witness Wirt Franklin, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the objectives of the Petroleum Administration and said Harold L. Ickes, with reference to crude oil prices, and action taken pursuant thereto. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 956-960.

The offer (said offer being made as a whole, and separately as to each part or element thereof) of appellants to show by the witness Wirt Franklin, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts as to a threatened cut in the price of crude oil in October, 1934, and the action and the reasons therefor taken with respect thereto by Harold L. Ickes, the Petroleum Administrator and Secretary of the Interior. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 937-945.

6250 Assignment No. 24.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants and in sustaining objections to appellants' offers of proof and exhibits, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) That, in order to relieve the distress of the independent refiners which had resulted from the maintenance of a price of one dollar a barrel for crude oil, the United States, through its executive officers, sought, by securing concerted action among members of the industry and by other means, to raise the price of gasoline to a parity with the price of crude oil.

6251 Such rulings of the Court resulted in the exclusion of the following exhibits and offers of proof:

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness J. A. Moffett, a representative of the Government on the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to his conference with President Roosevelt on September 26, 1933, as a representative of the American Petroleum Institute and the Planning and Coordination Committee, concerning the situation in the petroleum industry and the fixing of minimum prices. The questions, offer of proof, objection, ruling and exception thereto are set out on (R. pp. 1152-1154).

The offer of appellants to prove by the witness J. A. Moffett, a Government representative on the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to a conference in October 1933 between President Roosevelt, Petroleum Administrator Ickes, and representatives of the Petroleum Administrative Board and the Planning and Coordination Committee, concerning the fixing of minimum prices for petroleum products. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1155-1157.

Exhibit 829, being an authenticated order signed by Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, dated October 16, 1933, declaring it to be an act of unfair competition in violation of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry for any producer, wholesaler, jobber, refiner, distributor, retailer, or others, to sell or otherwise dispose of or to buy or otherwise acquire any petroleum or the products thereof at a price less than the price set forth in a schedule of prices attached to said order (R. pp. 954-956; 1831; 1838-1839); Exhibit 830, being an authenticated order signed by Harold L. Ickes, dated January 31, 1934, revoking the said orders dated
6252 October 16, 1933 (R. pp. 955-956; 1831; 1838-1839);

Exhibit 831, being an authenticated order signed by Harold L. Ickes, dated January 19, 1934, giving modified approval to the National Petroleum Agency Agreement (R. pp. 955-956; 1831; 1839); and Exhibit 832, being an authenticated copy of a letter of transmittal dated December 18, 1933, from Wirt Franklin, Chairman of the Planning and Coordination Committee, to Harold I Ickes, enclosing copies of the National Petroleum Agreement and the National Marketing Agreement (R. pp. 955-956; 1881; 1839).

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness John E. Shatford, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to the objectives of and reasons for the April, 1934, amendment to the Refinery Code, which was adopted by the Petroleum Administrative Board and approved by Harold L. Ickes, Petroleum Administrator and Secretary of the Interior. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1037-1041.

Appellants' Exhibit 848, which is an authenticated copy of a Department of the Interior Press Release dated April 6, 1934 (R. p. 1056).

The offer of appellants to show by the witness John E. Shatford, a member of the Planning and Coordination

Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to the Government approved buying programs in 1934. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1044-1045; 1047-1056.

Exhibit 844, being an authenticated copy of an order signed by Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, dated November 2, 1934, approving a contract form for the purchase of distress gasoline
6253 (R. p. 1838); Exhibit 845, being an authenticated copy of an order signed by Harold L. Ickes, dated June 23, 1934, approving a contract form for the purchase of distress gasoline (R. pp. 1831; 1839-1840); and Exhibit 847, being an authenticated copy of an order signed by Harold L. Ickes, dated August 13, 1934, approving a contract form for the purchase of distress gasoline (R. pp. 1831; 1840).

Exhibit 846, which is an authenticated copy of an order signed by Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, dated September 8, 1934, approving the creation and establishment of the Program Committee with the duty of securing markets for the sale of excess stocks of gasoline in the hands of non-integrated and semi-integrated refiners (R. pp. 1831; 1840).

Exhibit 834, which is an original letter dated December 11, 1934, from Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, to R. G. Cocanower, general manager of Olney Oil & Refining Co., an alleged co-conspirator, relative to the "hot oil" situation in East Texas, the suspension of a buying program due to a change in conditions, and the consideration of a modified buying plan, refinery allocations, the difficult position of the independent refiner, and the duty of the industry to solve its own problems (R. pp. 990-991; 1062).

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness John E. Shatford, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to a conference between I. A. O'Shaughnessy, defendant, president of defendant Globe Oil and Refining Companies, the Petroleum Administrative Board, and the witness in August, 1934, concerning a plan for the withholding of

gasoline from the market until it could be sold on a cost recovery basis. The questions, offer of proof, objec-
6254 tion, ruling and exception thereto are set out on R. pp. 1056-1057.

The following portion from Appellants' Exhibit 917, which is an official print of the Annual Report of the Secretary of the Interior for the fiscal year ended June 30, 1935 (R. pp. 1838; 1679):

"During the summer and fall of 1934 wholesale prices for petroleum products were below parity with the current prices for crude petroleum, which presented a particularly serious problem to the non-integrated refiner. Several plans were projected by the industry to solve the difficulty, which was aggravated considerably by the excessive amount of hot oil and interstate movements of hot gasoline in interstate commerce. The Planning and Coordination Committee proposed a form of contract designed to remove distress stocks in East Texas from the market. The form of contract was approved on June 23, 1934, and during the months of July and August gasoline in East Texas was purchased under this form of contract, to which the Administrator was a party and which provided that the sellers would not process 'hot oil.' This program proved insufficient, and a new form of contract for the purchase of current output was approved. But the production of gasoline from 'hot oil' continued, stocks of gasoline mounted, wholesale prices for gasoline remained below parity with crude oil prices, and in the early fall of 1934 the industry approached a serious collapse of the wholesale market. The Planning and Coordination Committee appointed a Program Committee, which proposed a broad plan for the purchase of surplus gasoline with the purpose of also preventing illegal production of crude oil and providing a method of orderly marketing. The excessive amount of overproduction in Texas made the initiation of this program futile, and it was never put into operation."

6255 Appellants' Exhibit 1029, which is an authenticated copy of an order signed by Harold L. Ickes, Administrator for the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, dated June 23, 1934, approving the Pacific Coast Petroleum Agency Agreement, whereby certain members of the industry entered into an agreement to aid in the stabilization of the industry by purchasing, holding and liquidating distress gasoline. (R. pp. 1680; 1681-1682).

6256 Assignment No. 25.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants and in sustaining objections to appellants' offer of proof, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The distressed condition of the independent refiners because of the lack of parity between the price of crude oil and the price of gasoline, as a result of the success of the efforts made at the instance of the Government to maintain the price of crude oil and of the failure of the various efforts made at the instance of the Government to 6257 raise the price of gasoline to a parity with the price of crude; and the fact that the continuance of this condition would tend to make it impossible to maintain the price of crude oil at a level that the Government felt necessary for reasons of conservation.

Such rulings of the Court resulted in the exclusion of the following offer of proof:

The offer of appellants to show by the witness, S. A. Swensrud, a member of the Petroleum Code Survey Committee on Small Enterprise, appointed to such committee by Harold L. Ickes, Secretary of the Interior, the facts relative to the condition of the independent refiner in 1934 and the first two months of 1935. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1427-1434.

6258 Assignment No. 26.

The Court erred in sustaining the objections of the Government while the defendant Robert W. McDowell and the witness John W. Frey were on the stand, and during the direct examination of the defendant Charles E. Arnott, to the admission in evidence of Exhibit 891 which was offered by the defendants at those times in connection with the direct testimony of the said witnesses. (R. pp. 1173-1174; 1177-1178; 1291; 1737). This exhibit reads as follows:

"Administrator of the Petroleum Industry
Washington
Interior Department Building

"July 20, 1934

"Mr. C. E. Arnott, Chairman,
Marketing Committee,
Planning and Coordination Committee,
Investment Building,
Washington, D. C.

My dear Mr. Arnott:

"It has been brought to my attention that the market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

"Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the Code, and in the working of employees for a period beyond the maxi-
6259 mum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve.

"Under Article VII, Section 3 of the Code it is the duty of the Planning and Coordination Committee to cooperate with the Administration as a planning and fair practice agency for the industry. I am, therefore, requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your Committee must, of course, be consistent with the requirements of Clause 2 of Subsection (a) of Section III of the Act, and if in any situation it should appear that this Section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

"I trust that I can count on your cooperation.

"Sincerely yours,
(Sgd.) Harold L. Ickes,
Administrator of the Petroleum Industry."

6260 Assignment No. 27.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offer of proof and exhibit, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The interpretation of a letter, Exhibit 891, dated July 20, 1934, from Harold L. Ickes, Administrator for

the Code of Fair Competition for the Petroleum Industry, to the appellant C. E. Arnott.

6261 Such rulings of the Court resulted in the exclusion of the following exhibit and offer of proof:

The offer of appellants to show by the witness, Louis Titus, who was not a defendant, the facts relative to a legal opinion written by him as general counsel for the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, interpreting and construing a letter from Harold L. Ickes, Petroleum Administrator and Secretary of the Interior, to Charles E. Arnott, a defendant, vice-president of defendant Socony-Vacuum Oil Company, Inc., dated July 20, 1934. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1831-1837.

Appellants' Exhibit 892, which is an original memorandum opinion dated July 31, 1934, from Louis Titus, counsel for the Planning and Coordination Committee for the Code of Fair Competition of the Petroleum Industry, addressed to Charles E. Arnott, a defendant, construing and interpreting a letter dated July 20, 1934 (Exhibit 891) from Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, to Charles E. Arnott, as Chairman of the Marketing Committee of the Planning and Coordination Committee. Said opinion stated that the letter was full and complete authority for the taking of necessary steps to restore markets in any locality to their normal condition and was, for all practical purposes, a complete protection to him and his committees to engage in all reasonable activities to restore prices to normal levels. (R. pp. 1173-1174; 1177; 1177-1178; 1737; 1795-1796).

6262 Assignment No. 28.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offer of proof, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the ob-

jectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The fact that the executive officers of the United States charged with the administration of the oil industry under the National Industrial Recovery Act believed that the activities for which the appellants had been indicted were in furtherance of the objectives of the National Industrial Recovery Act, the Code of Fair Competition for the Petroleum Industry, and the letter of July 20, 1934, Exhibit 891; and the fact that
6263 Harold L. Ickes, Administrator, through the Petroleum Administrative Board of the Department of the Interior, cooperated with and encouraged the defendants in carrying out such activities.

Such rulings of the Court resulted in the exclusion of the following offer of proof:

The offer of appellants to show by the witness John E. Shatford, a member of the Planning and Coordination Committee under the Code of Fair Competition for the Petroleum Industry, alternate National Coordinator from April 24, 1934, to March 25, 1935, and from March 25, 1935 until the close of the Code, National Coördinator, the facts relative to his contacts with the Petroleum Administrative Board, and through its chairman, with Harold L. Ickes, Petroleum Administrator and Secretary of the Interior concerning the voluntary refinery curtailment plan of March, 1935. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1014-1021.

6264 Assignment No. 29.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' exhibits, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The interpretation of a letter, Exhibit 891, dated July 20, 1934, from Harold L. Ickes, Administrator, for the Code of Fair Competition for the Petroleum Industry, to the appellant C. E. Arnott.

(6) The familiarity of the executive officers of the
United States charged with the administration of
6265 the oil industry under the National Industrial Re-
covery Act with the activities for which the appellants had been indicted; their belief that such activities were in furtherance of the objectives of the National Industrial Recovery Act, the Code of Fair Competition for the Petroleum Industry, and the letter of July 20, 1934, Exhibit 891; and the fact that Harold L. Ickes, Administrator, through the Petroleum Administrative Board of the Department of the Interior, cooperated with and encouraged the defendants in carrying out such activities.

Such rulings of the Court resulted in the exclusion of the following exhibits of appellants:

Exhibit 924, which is an authenticated copy of a press release of the Petroleum Administrative Board, United States Department of the Interior, dated March 28, 1935, concerning and embodying the report of the Petroleum Code Survey Committee on Small Enterprises, appointed by Harold L. Ickes, Administrator for the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior. This report contains an analysis of production, refining and marketing complaints, and concludes that the small, non-integrated refiner is in an intolerable position, due to the lack of parity between the prices for crude oil and refined products. It recommends preferably an increase in the price of refined products to a parity with the posted price of crude petroleum or alternatively a reduction in the price of crude petroleum to a parity with the then posted price of gasoline. It also recommends that the Petroleum Administrator support a program then being considered for the concerted informal buying of distress gasoline by major companies. (R. p. 1324-1325).

Exhibit 1030, which is an authenticated copy of a memorandum dated March 22, 1935, from Charles Fahy, 6266 Chairman of the Petroleum Administrative Board, Department of the Interior, to Harold L. Ickes, ~~Administrator for~~ the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, analyzing the report of the Petroleum Code Survey Committee on Small Enterprises. This memorandum pointed out that the Committee in its analysis of the refinery situation emphasized that immediate relief was necessary if non-integrated refiners were not to be eliminated. The memorandum suggested that such relief could only come through an immediate and sustained increase in tank car and retail gasoline prices to a parity with the then posted prices of crude petroleum, or a reduction in the posted price of crude petroleum to a parity with the price of gasoline, and it urged that some of the recommendations of the Committee should be adopted, e.g., "We have encouraged stabilization efforts designed at this time to aid the independent refiner, * * *" (R. pp. 1681; 1886-1889).

Exhibit 993, being an authenticated copy of a letter dated April 30, 1935, from Paul G. Blazer, Chairman of the Petroleum Code Survey Committee on Small Enterprises, appointed by said Harold L. Ickes, to said Charles Fahy, stating, among other things, that the Committee is "going on record that there is no need for a reduction in crude oil prices at this time" in the belief "that small additional advances will be made in both tank car and retail prices of gasoline", stating also that "It appears to be the opinion of a majority of the Committee that at least another quarter cent advance in tank car prices is essential, and that if such an advance should not occur within the near future, a decline of approximately 5¢ per barrel should be made in crude oil prices", and concluding with the statement that:

"Our Committee has been very much pleased with the success of the program to stabilize tank car markets. We believe it has been handled in a manner calculated to benefit the non-integrated refiners and without disadvantage to marketers. Of course, the real question is whether, after parity of gasoline and crude oil price has been obtained, they can be maintained without excessive continued buying by the major companies. It is the opinion of our committee that the final answer to that question will be determined by the effectiveness of efforts to balance crude oil supply and demand. I believe I can speak for our entire committee when I say that we believe fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil." (R. pp. 1830-1831.)

6267 Exhibit 994, being an authenticated copy of a letter dated May 7, 1935, from Charles Fahy to Paul G. Blazer, enclosing a copy of a press statement regarding the relationship between crude oil prices and the price of petroleum products. (R. pp. 1830-1831.)

Exhibit 919, being authenticated copies of letters from said Harold L. Ickes to H. B. Fell, Mason Houghland, R. E. Allen, Sidney Swensrud, members, and Paul G. Blazer, Chairman, of the Petroleum Code Survey Committee on Small Enterprises, acknowledging receipt of the report of the Committee embodying an independent survey of the effects of the Petroleum Code on Small Enterprises in the industry, and expressing the Administrator's appreciation of the service rendered and asking that the Committee consider itself still in existence. (R. pp. 1321; 1324.)

Exhibit 921, being an authenticated copy of a telegram dated April 23, 1935, from Charles Fahy to Paul G. Blazer, requesting the informal views of the Committee regarding gasoline prices. (R. pp. 1321-1322; 1324.)

Exhibit 922, being an authenticated copy of a telegram dated April 23, 1935, from Paul G. Blazer to Charles Fahy, stating that there was no need for a reduction in crude oil prices since tank car gasoline prices were now considered almost up to parity with sufficient additional advances anticipated in both tank car and retail prices. (R. pp. 1322; 1324.)

6268 Assignment No. 30.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offers of proof and exhibits, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objec-

tives and results of such concerted action were in the public interest..

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

(5) The interpretation of a letter, Exhibit 891, dated July 20, 1934, from Harold L. Ickes, Administrator for the Code of Fair Competition for the Petroleum Industry, to the appellant C. E. Arnott.

(6) The familiarity of the executive officers of the United States charged with the administration of the oil industry under the National Industrial Recovery Act with the activities for which the appellants had been indicted;
their belief that such activities were in furtherance
6269 of the objectives of the National Industrial Recovery
Act, the Code of Fair Competition for the Petroleum Industry, and the letter of July 20, 1934, Exhibit 891; and the fact that Harold L. Ickes, Administrator, through the Petroleum Administrative Board of the Department of the Interior, cooperated with and encouraged the defendants in carrying out such activities.

Such rulings of the Court resulted in the exclusion of the following exhibits and offers of proof:

The offer of appellants to show certain facts relative to the situation of Pennsylvania refiners and action taken by the Petroleum Administrative Board with respect thereto, as follows:

(1) By the witness S. M. Vockel, president of Waverly Oil Works Company of Pittsburgh, Pennsylvania, the facts relative to conferences between the witness and the Petroleum Administrative Board in April and May, 1935, concerning the situation of the Pennsylvania refiner and proposed action with respect thereto by the Stabilization Committee, headed by Charles E. Arnott, a defendant, vice-president of defendant Socony-Vacuum Oil Company, Inc. The question, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1342-1353.

(2) By the witness W. J. Brundred, vice-president of Central Pennsylvania Oil Producers' Association, the facts relative to the contacts of the witness with the Petroleum Administrative Board in 1934 and 1935 concerning the situation of the Pennsylvania refiner, and the action and proposed action of the Board with respect thereto. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1354-1367.

6270 (3) By the witness, John W. Frey, Associate Director of the Petroleum Conservation Division, Department of the Interior, and a member of the Petroleum Administrative Board in charge of the Marketing Division, the facts relative to conferences between the Board and Pennsylvania refiners in May, 1935, and the reasons why the Petroleum Administrative Board wanted Mr. Arnott to assist the Pennsylvania refiners. The question, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1285-1290.

Appellants' Exhibits as follows:

Exhibit 915, being an authenticated copy of a letter dated May 18, 1935, from E. B. Swanson, a member of the Petroleum Administrative Board, Department of the Interior, to W. J. Brundred, vice-president of Central Pennsylvania Oil Producers' Association, Oil City, Pennsylvania, stating that as a result of a conference between Messrs. Fahy, chairman, and Frey and Swanson, members of the Petroleum Administrative Board, the Stabilization Committee of the Planning & Coordination Committee, under the chairmanship of Charles E. Arnott, a defendant, might be of definite assistance in connection with lubricants as they had been in connection with gasoline, and that Mr. Fahy telegraphed Mr. Arnott, who replied that he would take up the matter and thought some good could be accomplished for refiners and others in the Pennsylvania territory. (R. pp. 1330; 1841; 1679-1680; 1886-1889).

Exhibit 916, being authenticated copies of two telegrams, one from Charles Fahy, chairman of the Petroleum Administrative Board, to Charles E. Arnott, a defendant dated May 14, 1935, asking Mr. Arnott to arrange for the Stabilization Committee to consider and undertake both immediate adjustment and long-range correction of disparity between Pennsylvania grade crude and refined prices, which made impossible continued operation of small Pennsylvania refiners who had not benefited equally with others under the stabilization program, and the other a telegram from Charles E. Arnott to Charles Fahy dated May 17, 1935, replying to Mr. Fahy's telegram and stating that he would go into the situation next week to accomplish something constructive for Pennsylvania refiners and others. (R. pp. 1330; 1735-1736; 1841; 1679-1680; 1886-1889).

Exhibit 925, being an authenticated copy of a letter dated May 9, 1935, from said W. J. Brundred to said Charles Fahy, stating among other things that top-heavy inventories of refined products, together with overproduction of crude and excessive refining, had caused demoralization of lubricant markets and prices and was the prime cause of the difficulties of small refiners in Pennsylvania (R. pp. 1354-1355; 1679-1680; 1886-1889).

6271 Exhibit 971, being an authenticated copy of a telegram dated May 17, 1935, from said Charles Fahy to said Charles E. Arnott, thanking him for his telegram of May 14, 1935 (Exhibit 925), relative to the Pennsylvania situation (R. pp. 1679-1680; 1734-1736; 1886-1889).

Exhibit 972, being an authenticated copy of a letter dated May 7, 1935, from said E. B. Swanson to S. M. Vockel, president of Waverly Oil Works Company, Pittsburgh, Pennsylvania, neither being defendants, stating that every effort has been and is being made under the Petroleum Code to make profitable the operation of petroleum refiners and that considerable progress in that direction has been made during the past several weeks and that under the present relationship between prices of crude and refined petroleum products most refiners can operate satisfactorily. (R. pp. 1679-1680; 1735-1736; 1886-1889).

Exhibit 973, being an authenticated copy of a letter dated May 17, 1935, from said E. B. Swanson to Senator James J. Davis of the United States Senate, telling him of the agreement to place the problem of the small Pennsylvania refiners before the Stabilization Committee of the Planning and Coordination Committee and quoting the telegram from Mr. Fahy to Mr. Arnott and the reply by Mr. Arnott as set forth in Exhibit 916. (R. pp. 1841; 1679-1680; 1886-1889).

6272 Assignment No. 31.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' Exhibit 914, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Govern-

ment of the lawfulness of such efforts under the conditions then existing.

(5) The interpretation of a letter, Exhibit 891, dated July 20, 1934, from Harold L. Ickes, Administrator for the Code of Fair Competition for the Petroleum Industry to the appellant C. E. Arnott.

(6) The familiarity of the executive officers of the United States charged with the administration of the oil industry under the National Industrial Recovery Act with the activities for which the appellants had been in-
6273 dicted; their belief that such activities were in furtherance of the objectives of the National Industrial Recovery Act, the Code of Fair Competition for the Petroleum Industry, and the letter of July 20, 1934, Exhibit 891; and the fact that Harold L. Ickes, Administrator, through the Petroleum Administrative Board of the Department of the Interior, cooperated with and encouraged the defendants in carrying out such activities.

Said Exhibit 914 was an official print of the Final Report of the Marketing Division of the Petroleum Administrative Board, Department of the Interior, issued in June, 1936, and containing a review of the stabilization activities undertaken pursuant to the letter dated July 20, 1934 (Exhibit 891) from Harold L. Ickes, Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior, to Charles E. Arnott, a defendant, then Chairman of the Marketing Committee of the Planning and Coordination Committee. Said report contains, among others, the following statement:

"As the various problems were offered for discussion at the general stabilization committee meetings, sub-committees were appointed to make recommendations among these subcommittees. One of the most important was the tank-car committee, which attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank-car market was essential to a stabilized retail structure." (R. pp. 1837-1838; 1680; 1886-1889.)

6274 Assignment No. 32.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offers of proof and exhibits, which dealt with the following matters:

(1) The reasonableness, under the then existing condi-

tions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) That the activities for which the appellants had been indicted did not raise the wholesale and retail prices of gasoline to, or maintain them at, high, arbitrary and artificial levels.

Such rulings of the court resulted in the exclusion of the following exhibits and offers of proof:

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness F. W. Fischer, the facts relative to the crude oil situation in East Texas in 1933 and 1934 leading up to the establishment of the first Federal Tender Board and its effect on over-production and on gasoline prices in October and November, 1934. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1121-1124.

6275 Appellants' Exhibit 849, which is a composite chart showing the spot market prices for third grade gasoline for the months of October, November and December, 1934, as reflected in Platt's Oilgram and the Chicago Journal of Commerce. (R. pp. 1062-1063).

The offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by the witness John E. Shatford, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, the facts relative to the increase in the tank car price of gasoline in October and November, 1934. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1059-1062.

The offer of appellants to show by the witness, Fred Van Covern, the facts relative to the level of gasoline prices from October, 1934 through December, 1934 and their relationship to price levels throughout 1935 and 1936. The questions, offer of proof, objections, ruling and exceptions are set out on R. pp. 1488-1503.

The following portion from appellants' Exhibit 917, which is an official print of the Annual Report of the Secretary of the Interior for the fiscal year ended June 30, 1935. (R. pp. 1290-1291; 1679; 1831; 1838):

"The Code of Fair Competition for the Petroleum Industry was in effect during the entire fiscal year except the last 33 days thereof. Under the code, in conjunction with the success achieved beginning in October 1934 by the Federal Tender Board in sharply restricting move-

ments in interstate commerce of illegal crude and gasoline, and particularly under the successful operations of the production and refinery provisions of the code, the petroleum industry as a whole achieved a balance between the production of crude oil and the manufac-
6276 ture of gasoline on the one hand and the requirements of the Nation for crude oil and gasoline on the other. This was the purpose of the production and refining provisions of the code. The theory of these provisions of the code, particularly the production provisions, and the amendments to the refinery provisions of April 24, 1934, was the balancing of supply with demand in the interest of conservation and of stability within the industry. As a necessary concomitant were the provisions of the code designed to regulate the development of new fields through the approval of plans designed to permit greatest ultimate recovery and economical and scientific development.''

The following portion from appellants' Exhibit 917, which is an official print of the Annual Report of the Secretary of the Interior for the fiscal year ended June 30, 1935 (R. pp. 1290-1291; 1831-1838; 1679):

''The Federal Tender Board functioned effectively until January 7, 1935, when the Supreme Court overruled the Circuit Court of Appeals in the Panama and Amazon cases and declared Section 9(c) invalid on the grounds of improper delegation of legislative power. The Board ceased functioning, and the litigation pending against it was dismissed. Movements of hot oil increased immediately. Additional State legislation authorizing the State to acquire certificates of clearance for petroleum products as well as for crude petroleum moving in intrastate and interstate commerce, had been passed. However, State authority law alone still failed adequately to meet the situation and commerce in hot oil steadily increased.

On February 22, 1935, the Connally law was passed by
6277 the Congress, eliminating the defects found by the Court in section 9(c) by specifically prohibiting interstate or foreign commerce in hot oil. Federal Tender Board No. 1 was established under this law on March 1, 1935, and shortly thereafter Federal petroleum agency No. 1 was set up under the same law to perform the administrative and investigative functions in connection with the applications for approved tenders filed with Federal Tender Board No. 1. The Federal tender system has functioned effectively since that time and has prevented any substantial movement in interstate commerce of hot

oil or gasoline out of East Texas. This activity not only tended to check over-production of crude petroleum but assisted in stabilizing the interstate refinery markets at a time when the intrastate Texas markets were thoroughly demoralized. Several attempts to enjoin the activities of the Board have been attempted without success."

6278 Assignment No. 33.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offers of proof and exhibits, which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) That the activities for which the appellants had been indicted did not raise the wholesale and retail prices of gasoline to, or maintain them at, high, arbitrary and artificial levels.

Such rulings of the court resulted in the exclusion of the following exhibits and offers of proof:

Appellants' Exhibit 955, which is a chart showing crude oil and retail gasoline prices from 1918 to 1936. (R. p. 1518).

The offer of appellants to show by the witness, Fred Van Covern, the results of a study of the relationship between crude oil and gasoline prices from 1918-1936 inclusive. The questions, offer of proof, objection, ruling and exception are set out on R. pp. 1517-1520.

6279 Appellants' Exhibit 958, which is a chart comparing gasoline tank wagon prices with the cost of living and the wholesale prices of all commodities in the United States for the period from 1918 through 1936. (R. pp. 1520-1533).

6280 Assignment No. 34.

The Court erred in sustaining the objections of Government counsel to questions asked by counsel for the appellants of witnesses called by the appellants, and in sustaining objections to appellants' offer of proof which dealt with the following matters:

(1) The reasonableness, under the then existing conditions in the Nation and in the industry, of such con-

certed action as was shown by the evidence to have been taken by the appellants.

(2) That the activities for which the appellants had been indicted did not raise the wholesale and retail prices of gasoline to, or maintain them at, high, arbitrary and artificial levels.

Such rulings of the court resulted in the exclusion of the following offer of proof.

The offer by appellants of certain testimony given by Harold L. Ickes, Petroleum Administrator and Secretary of the Interior before a Sub-Committee on Finance of the United States Senate, on February 15, 1937, and a statement made by Mr. Ickes before the Sub-Committee of the Committee on Interstate and Foreign Commerce of the House of Representatives, on April 27, 1937, during hearings on the Connally Act, relative to the proper
6281 ratio between gasoline and crude oil prices and to
the fact that the retail price of gasoline had not materially increased. The offer of proof, objection, ruling and exception thereto are set out on R. pp. 1841-1844.

6282 Assignment No. 35.

The Court erred in sustaining the objections of Government counsel to questions asked of the witness, Wirt Franklin, a member of the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, and to the several offers (said offers be made as a whole and separately as to each part or element thereof) of appellants to show by the said witness certain facts relative to the petroleum industry as follows:

1. The demoralized conditions in the petroleum industry prior to the date of the Petroleum Code, the reasons therefor and the failure of attempts to remedy such conditions. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 960-962.

2. The facts relative to a request by the Petroleum Administrative Board in October, 1933, that major oil companies coordinate and purchase crude oil in storage in East Texas at posted prices to be held for future orderly liquidation. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 992-995.

6283 Assignment No. 36.

The Court erred in sustaining the objections of Government counsel to questions asked by appellants of the witness, J. A. Moffett, a Government representative on the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry, and to the offer (said offer being made as a whole and separately as to each part thereof) of appellants to show by said witness the following:

(1) Facts bearing on the reasonableness, under the then existing conditions in the Nation and in the industry, of such concerted action as was shown by the evidence to have been taken by the appellants.

(2) The recognition by the Government that the objectives and results of such concerted action were in the public interest.

(3) The encouragement of such concerted action by the Government.

(4) The administrative construction by the Government of the lawfulness of such efforts under the conditions then existing.

Such rulings of the court resulted in the exclusion of the following offer of proof:

6284 The offer of appellants to show by the witness, Moffett, facts regarding his request to Charles E. Arnott, a defendant, vice-president of defendant Socony-Vacuum Oil Company, Inc., in the fall of 1933, that the latter take steps to restore the gasoline price structure to its normal level. The questions, offer of proof, objection, ruling and exception thereto are set out on R. pp. 1154-1155.

6285 Assignment No. 37.

The Court erred in depriving the defendants of a fair and impartial trial by permitting the Special Assistant to the Attorney General, W. P. Crawford, to make a closing statement to the jury which when considered as a whole constituted such an unwarranted and prejudicial appeal to prejudice and passion as to definitely lead the jury to wholly disregard the record evidence. (R. pp. 2351-2380.)

6286 **Assignment No. 38.**

The Court erred in permitting Government counsel to make the following prejudicial remarks in his opening statement to the jury, and in failing to take necessary corrective action:

Mr. Crawford: * * *

Now, of course, again speaking generally, we find in this conspiracy, as you might expect, some of the biggest men—speaking now of big in the way of controlling vast volumes of financial influence—some of the biggest men in this country in the oil business, involved in this conspiracy. (R. p. 87).

* * * * *

Not only, gentlemen of the jury, is this prosecution actuated by the Government because of the injury done to the public, but because of the fact that it is a terrible thing that a group of influential, wealthy millionaires or billionaires should take over the power, take over the control, the power to make prices, and to want to make them. That is the terrible thing, and the thing which the law denounced and was intended to prevent. I would like to have you carry that with you throughout this trial, because it is, after all, the very thing that the Sherman Anti-Trust Act was intended to prevent. (R. pp. 90-91).

6287 **Assignment No. 39.**

The Court erred in permitting Government counsel to make the following prejudicial remarks in his closing argument to the jury, and in failing to take necessary corrective action:

Mr. Lewin: * * *

A hundred lawyers employed—the very cream of the American Bar, the very best legal talent that these people can obtain—every one of them working night and day with suggestions as to how the red herring can be drawn across the clear cut issue of this case. (R. p. 2040).

* * * * *

So, in this case, don't let's justify for one moment that kind of popular attitude towards law enforcement—taking it for granted that these more powerful people are above the law and can't be reached and can't be brought to book.

And I am going to read you a quotation for a moment, delivered from a speech of Chief Justice Ryan of this State—one of Wisconsin's greatest jurists, and one of the great-

est judges this country ever had; a veritable genius, I am
told. And this isn't law, but this is a part of his address,
given away back in 1873—I suppose, before any of
6288 you gentlemen were born. And I want you to note
the prophesies that are in these words. 1873—about
twenty years, seventeen years before the Sherman Act was
passed. And he said this, right over here in this law school
of Wisconsin, at a graduation day:

"There is looming up a new and dark power. I cannot dwell upon the signs and shocking omens of its advent. The accumulation of individual wealth seems to be greater than it ever has been since the downfall of the Roman Empire. The enterprises of the country are aggregating vast corporate combinations of unexampled capital, coldly marching, not for economic conquests only, but for political power. For the first time, really, in our body politic, money is taking the field as an organized power. The question will arise—"

and here is the prophesy:

"The question will arise, and arise in your day, though perhaps not fully in mine, which shall rule, wealth or man? Which shall lead, money or intellect? Who shall fill public stations, educated and patriotic free men, or the futile serfs of corporate capital?"

Now, that wasn't an inflaming address. That illustrates the American tradition, and its fear—its fear of corporate power in combination. (R. pp. 2041).

* * * * *

* * * If the Government can declare war then these oil barons can declare war in Asia when some of their boats are sunk. (R. pp. 2044-2045).

* * * * *

6289 And I ask you, gentlemen, if you want to encourage
them to go on in their arrogant, high-handed, cruel,
powerful way, and if you want to encourage other industries made up of the same type of men—eager, grasping men, to take the law in their own hands and rig the price against the smaller man, then, I think the way to do it is to acquit them and let them go out and laugh up their sleeves that they did it and got away with it.

But if, on the other hand, if you have respect for the law—and I know you have—and have pride in our American tradition and the sense of justice—that is a wonderful word, "justice", for all classes, and if you understand this evidence, and I know you do—I have looked right in your eyes and I have seen you watch piece by piece this evidence, then gentlemen, you are going to bring in a verdict of guilty against these sixteen companies and these thirty-six individuals that rigged this market for their own aggrandizement and financial return. And I confidently leave it with you, feeling that you will not let your Government and the United States and its citizens and society down. (R. p. 2145).

6290 Assignment No. 40.

The Court erred in permitting Government counsel to make the following prejudicial remarks in his closing argument to the jury, and in failing to take necessary corrective action:

Mr. Crawford: * * *

Now, if anybody doubts, if anybody has the least shadow of a doubt about the fact that these men believe to the bottom of their hearts in the justice of the cause that they espouse here, I can disabuse their minds of that doubt at any time. They have been aggressive, and they have been forceful; their movements here have been intelligent, well-times; and, as I said, they have come into this court room morning after morning, worn and tired almost to the breaking point. And it seemed to me that, I sometimes got the feeling, coming as they did then before you to present this evidence and this case, they were something like the Crusaders of old, saying, "God wills it, God wills it." (R. p. 2356).

* * * * *

You have heard a good deal here about the injustice,—I think that was the word that was used,—of the Government of the United States, or those who represent it here, in bringing these defendants to trial. I would like to talk about that term, "What they were doing" after a while,—what they were doing being what the government wanted them to do, especially the Department of the Interior.

Now, just between yourselves, do you honestly think that these boys here, (indicating counsel at government table) fired with the enthusiasm of crusaders, as I say, and having given to this case every ounce of mental and physical strength they have, and I myself have contributed,
6291 also, would be trying to convict these men unless that was the wish and the desire of the highest officials in the Government of the United States?

Mr. Brazeau: May it please the Court: I want to take an exception to the remarks of counsel on that as highly prejudicial and improper.

Mr. Crawford: I don't think it is, if the Court please. That was referred to many times in the trial of this case.

Mr. Brazeau: He is referring to the wishes of the highest officers of the United States. The highest officers who are available to them to come here and testify. I want an exception to those remarks.

The Court: I don't see that there is anything objectionable—there is nothing objectionable in those remarks.

Mr. Brazeau: I would like an exception.

Mr. Crawford: I don't expect to get away here without being called a few times. I am going to try to do what I am going to do here without any justification for being called.

Now, just what do you think about it? Do you think these are three or four or five of these young fellows, as they have been calling them, just starting out on their own, running hog-wild? These are important men. I presume you all know they are engaged in a very important business, a business, the operation of which is almost a necessity in this country today. You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done? And if he wanted it done it was because he believed, as did the other men in Washington, that there was a violation of law here, so outstanding and so withering and far-reaching in its effect that something
6292 ought to be done to stop it; and by that to tell the people of this country that you can't do these things and get away with it.

Mr. Brazeau: May it please the court, we can't sit here and let those kind of remarks to be made to the jury, and have this prosecution backed up by what counsel is representing to be the opinion of somebody in a higher place, without a syllable of evidence to support it.

Mr. Crawford: I am satisfied that you should make an objection, but I am not satisfied to have you break in on the argument.

Mr. Brazeau: I am giving my reasons for objecting, and I ask the Court to instruct the jury to disregard those remarks of counsel.

The Court: What remarks?

Mr. Brazeau: The remarks that the prosecution is backed up by the opinion of someone that it should be brought, somebody outside of the—

The Court: I suppose we have a right to assume that they are here under the instructions of the Attorney General of the United States.

Mr. Dorr: Not of the Secretary of the Interior; that is not proper.

The Court: Just a minute. These men are here as government employees, sent here undoubtedly by the Attorney General.

Mr. Crawford: In addition to that, if the court please—

Mr. Thomas: My objection is this: that counsel is making a statement to the jury that is not supported by the testimony, to the effect that the Secretary of the Interior, as he spoke, is sanctioning this proceeding. Now that is not in this case. For that reason I object to it, and ask the court to instruct the jury to disregard it.

6293 Mr. Crawford: Nobody claims that anybody testified, in so many words, to that, but it is a proper inference to be drawn and a proper argument to be made, where it is claimed here by all the defendants' counsel who spoke that what was done here that is now charged to be a violation of law, was done with the consent and approval of the Secretary of the Interior. And I am saying now to the jury that it wasn't so done, and the very situation that we are in was a proper one for consideration.

Mr. Thomas: I take further exception to the statement that counsel just made.

The Court: Objection overruled.

Mr. Thomas: I would like an exception, your Honor.

The Court: You may have an exception. (R. pp. 2360-2362).

• • • • •

Mr. Crawford: The law—of course, I might say, as I started to say when I spoke about the newspapers, that governments, empires, dynasties have been shattered and broken to the ground—and this country of ours, gentlemen of the jury, is now being shaken to its very foundations by the kind of thing that is alike to what is represented in this lawsuit. Whether we survive or perish is going to depend very largely upon whether or not, in the language, I think, of one of the greatest statesmen that ever lived, "Malefactors of great wealth"—

Mr. Thomas: Now, if the court please—

Mr. Crawford: (Continuing) —people with great power—

Mr. Thomas: I except to the statement of counsel, for the reason that it is improper and prejudicial. I ask the

court to rebuke the counsel, and I ask the court to instruct the jury to disregard it. This case is not to
6294 be decided upon the principles of malefactors of great wealth—

Mr. Crawford: I don't ask it to be. The court, I think, cautioned the jury right at the beginning of the trial of this case against being influenced by such statements.

The Court: Yes, and I shall later in my instructions.

Mr. Thomas: And may I have an exception?

The Court: Yes, you may have. I will cover that matter in my instructions.

Mr. Crawford: When combinations or corporations having the financial and the money power that these corporations have here, go out and take the law into their own hands and operate their business regardless of the desire of the Government, and without any consideration for the under-dog or the poor man, then we can do one thing or another. We are going to stop it, as our forefathers stopped it before us and left this country with us as it is now, or we are going down into ruin as did the Roman Empire—

Mr. Thomas: I object to the statement just made by counsel,—

Mr. Crawford: I don't know why you should object to that.

Mr. Thomas: (Continuing) —for the reason that it is prejudicial; it is not legitimate argument, and I ask the court to rebuke counsel and instruct the jury to disregard it.

The Court: Objection overruled. Proceed with your argument.

Mr. Thomas: I wish an exception.

The Court: You may have an exception. (R. pp. 2365-2366).

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6295 But if you should say they are not guilty—I am going to be perfectly frank with you, just like I would if I was talking to you out on a street corner. If you are going to say they are not guilty on this evidence, which is so overwhelming and overpowering that it doesn't even leave the trace or the shadow of a doubt—if you are going to say they are not guilty on this evidence, then you take the responsibility; I won't; you get an alibi; I won't.

I am very frank and very bold in talking to you like that, am I not? I am that way, because I think that is the right way to look at it. Do you want to say that the vast sum of money that has been spent by the government here—and not in payment of lawyers, either—running into hundreds of thousands of dollars, in trying to get before you the facts in this case, should be thrown to the winds and these men should go clear, and the world and the nation should be told that these combinations of capital can go out and take the law into their own hands, and they can rig any market they please? If you do—why, all right. I will get along. If you can afford to pay thirty cents or forty cents or fifty cents a gallon for gasoline, why, I will get a little once in a while, too. (R. p. 2366).

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My friend Lewin reminded me during the recess that after all what this jury is concerned about and what they ought to be reminded of is the fact that the people of this country, the people of this whole nation are entitled to just exactly what you are going to give them, and that is notwithstanding all the efforts that have been made here, and the tremendous energy that has been expended in trying to shut out testimony here, that you are going to give us a square deal, and that is the American philosophy.

And if you give us a square deal here—I hope this is not offensive to you at all, talking about giving us a square deal—I know you will do it—if you give us a square 6296 deal here there is just one thing for you to do, just as pointed out, to give to these defendants—and I trust that you won't spend very much time in trying to analyze how deep is the guilt of one individual as compared with the other, because they are all just alike—everybody—if you are going to consider that, he is in this conspiracy up to his neck. (R. pp. 2375-2376).

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I want to refer in a moment to something that made an impression on me.

You know, we lawyers have to depend—most of us are kind of tough guys. We have our own way of talking about witnesses. And one thing that we very often say and talk about is the three classes of liars. There is a plain liar, the damn liar, and the expert witness. And of all of them, the expert witness is the worst.

There are a few of them here. There was Swensrud, the representative of the Standard Oil of Ohio; there was Van Covern, and I think there was another one.

But I just didn't think much of Swensrud's whole testimony, especially after I found out that he was giving testimony that they could ship gasoline in 1935 and in

1936 up the Mississippi River to St. Paul. I happen to be around the Mississippi River quite a little, and know quite a lot about it. In 1935 and 1936, you couldn't get a rowboat up the Mississippi River, north of Winona—because the government was putting in these dams for the purpose of creating the nine-foot channel that you have read so much about. They had concrete clear across the river, spaced in so many ways, that, as I say, you just couldn't get a rowboat up there. When Swensrud talked about gasoline going up that river, where I knew, because I lived there and was around there, that it couldn't be done, I just thought—

6297 Mr. Thomas: I object to the remark of counsel, stating what he knew to the jury. It isn't his province to testify here. And I ask that counsel be rebuked, and that the court instruct the jury to disregard it.

Mr. Crawford: Oh, well—

Mr. Lewin: That was in the evidence.

Mr. Crawford: Anyhow, I will withdraw the statement.

The Court: All right.

Mr. Thomas: What was the ruling?

The Court: The jury may disregard it. I didn't hear it. I was thinking about something else. (R. pp. 2377-2378).

6298 Assignment No. 41.

The Court erred in repeatedly using alleged transcripts of the testimony of witnesses before the Grand Jury and in permitting Government counsel to repeatedly use said alleged transcripts and notes which were asserted by Government counsel to have been made therefrom, in refreshing the recollection or impeaching the testimony of certain important witnesses. Such use was objected to by appellants upon the following grounds, among others:

(1) The alleged transcripts of the testimony before the Grand Jury and the notes of Government counsel which were alleged to have been made therefrom were not properly authenticated;

(2) The testimony was not given contemporaneously with the facts or occurrences as to which the witnesses were asked to testify before the Grand Jury, but instead, at a date remote from the date of said facts and occurrences and from the date of trial;

(3) Counsel for appellants were denied the right at any time to inspect said alleged transcripts or notes, or to use them in cross-examination;

(4) The Court and Government counsel repeatedly, in the presence of the jury, read from the alleged transcripts of the Grand Jury testimony, and otherwise treated 6299 such testimony as affirmative evidence;

(5) Counsel for the Government were permitted to make statements relative to the Grand Jury testimony and to otherwise use said alleged transcript of such testimony in a manner calculated to prejudice the jury against the testimony of certain witnesses, particularly those witnesses who were employees of defendant companies.

Said alleged transcripts and notes were used and appellants' objections thereto were made in the course of the Government's examination of the following witnesses:

(a) Walter P. Jacobi (R. pp. 359-360; 372-380; 387-388; 393-394; 402-408; 421-427; 437; 438-439; 440-451; 453-454; 455-456; 463; 466-468; 500).

(b) Julius C. Evans (R. pp. 508-510; 517-522; 528; 530-536; 544-545; 546-548).

(c) Neil Buckley (R. pp. 578; 590-591; 597; 606).

(d) Robert N. Cline (R. pp. 628-630; 633-635; 637; 647-649; 650-653; 657-658; 658-660).

(e) John M. Bradshaw (R. pp. 672-673; 678-684).

(f) John Steiger (R. pp. 737-741; 750; 754-769; 770-780; 782-784).

6300 (g) J. P. Mosher (R. pp. 794-797; 803-804; 807-808).

(h) William Lanzer (R. pp. 263-266).

(i) Ralph E. Everitt (R. pp. 726-728).

6301 Assignment No. 42.

The Court erred in giving the following instruction to which an exception was taken. (R. pp. 2424; 2427; 2430).

If you should find that the defendants acting together, and those independent refiners found acting in concert with them did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, or that they did not combine for that purpose, and if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally, then you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to and did merely eliminate abuses which tended to produce destructive competition and restore competition to a fairer basis and produce fairer price levels. In such event, you may conclude that the purchase of such gasoline in the manner shown by the evidence was reasonable and beneficial and not injurious to the public interest and that, therefore, the restraint of trade was not undue, and not illegal, and you may acquit the defendants.

If you find that the defendants did not have the power to raise the level of the spot market prices in the spot markets referred to in the indictment, and you also conclude that the buying programs engaged in by the defendants were reasonable and not unreasonable restraint of commerce, and that the activities of the defendants did not constitute an unreasonable restraint of interstate commerce, then you will find the defendants not guilty. (R. pp. 2414-2415).

6302 Assignment No. 43.

The Court erred in instructing the jury, to which instructions exceptions were duly taken, (R. pp. 2424; 2426-2427; 2427; 2428-2429; 2430), to the effect that it is a violation of the Sherman Law for a group of individuals or corporations controlling a substantial part of the interstate commerce involved, to take any concerted action, a foreseeable effect of which will be any rise in price levels, and that if the jury should find such a combination among the defendants, or some of them, it should return a verdict of guilty as to all the defendants so found by the jury to have participated. Such instructions read as follows:

* * * It is illegal and a violation of the Sherman law for a group of individuals or corporations, or both, to act together to raise the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity. (R. pp: 2404-2405).

* * * * *

If you come to the conclusion from the evidence in this case that these defendants possessed the power to raise the price of gasoline to be sold in the ten Middle Western states, and that there was the purpose to exert that power, then the combination became, from the time that this purpose appeared, an illegal one, and a conspiracy in restraint of trade, and the defendants participating therein are guilty of the offense charged in the indictment. (R. p. 2409).

* * * * *

6303 * * * It is sufficient that the circumstances shown satisfy you to the extent I have indicated, that the parties thereto were acting together toward a common end, and that that end was the raising of prices charged as the object of the alleged conspiracy. (R. p. 2411).

* * * * *

However, if you should find that through the purchase of so-called distress gasoline, defendants and the independent refiners and others acting in cooperation with them had the power, and combined for the purpose of directly affecting and raising the level of spot market prices, then, as I have previously stated, the restraint of trade was as a matter of law undue and unreasonable and, therefore, illegal. (R. p. 2415).

6304 Assignment No. 44.

The Court erred in giving the following instruction to which an exception was taken. (R. pp. 2427-2428).

If from all the evidence before you, you find not only that there was concerted action, that is, action together, of the defendants, but that it sought to accomplish the illegal purpose of raising the price of gasoline to any extent, then it would follow that the acts and declarations of any one or more of the conspirators in furtherance of the conspiracy are binding upon all the others, * * * (R. p. 2409).

6305 Assignment No. 45.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2424-2425).

(88). There is much uncontradicted evidence in the case concerning the condition of the oil industry and its various branches before and after February 1, 1935, at which date the indictment charges that the alleged combination, conspiracy and agreement was entered into by defendants, as to the history of the buying activities of defendants in the Mid-Continent and East Texas fields, as to the evils or abuses believed to exist in the oil industry, hindering the conservation of the limited crude oil supplies in the United States and standing in the way of the stabilization of gasoline markets. There is also evidence in the case as to the reasons of defendants for engaging in a so-called buying program or programs to remedy, as they claim, these abuses, if they did so engage, and as to the effect upon market prices of such buying, taken in conjunction with many other factors affecting supply and demand and tending to increase price but not within the control of defendants.

If you find and believe from the evidence as a whole, after taking into consideration the foregoing evidence, or if you have a reasonable doubt as to whether it is not the fact, that the only combination or agreement entered into by the defendants, or some of them, or with others, was that referred to by some of the witnesses as a "buying program", under which the parties participating therein agreed that they would distribute a portion of their purchases of gasoline among certain independent refiners, who produced somewhat less than 50% of the gasoline produced by independent refiners in said fields, for the purpose of affording to such independent refiners a market outlet at going market
6306 prices for the orderly distribution of their distress
or surplus gasoline, amounting to less than 25% of the total gasoline production of said independent refiners, and which otherwise would have been sold at forced sale or sacrifice prices, and under which combination, agreement or "buying program" no party thereto agreed to buy any particular amount of gasoline at any particular price, but did agree that as to such purchases as said party might make said party would make for the gasoline thus purchased at or about the "going market price", I instruct you that such combination or agreement or "buying program" would not be an unreasonable combination or agreement or conspiracy such as is forbidden by the Sherman Act, and in such an event it would be your duty to acquit the defendants and return a verdict of "not guilty" as to all the defendants. (R. pp. 2380-2381).

6307

Assignment No. 46.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2430).

(92) It is not the purpose of the Sherman Anti-trust Act to make impossible the normal and fair conduct of interstate commerce through the adoption of reasonable measures to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis. The evidence in this case is

such as to justify you in finding and concluding that injurious and destructive practices existed in the oil industry in connection with the marketing of tank car gasoline.

If, from the evidence as a whole you conclude that a reasonable theory or explanation of the conduct of defendants is that they adopted and carried out a buying program or programs consisting of reasonable measures to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis, you must find the defendants not guilty even though you should conclude that an incidental result of defendants' activities was to contribute to the rise of the tank car and retail prices for gasoline, shown by the evidence.

In this connection you are instructed that you may find that the dumping of surplus gasoline by independent refiners at distress or sacrifice prices under the circumstances disclosed by the evidence in this case was an injurious and destructive competitive practice, in that, you may find from the evidence that:

(1) It hindered federal and state efforts to conserve the limited supplies of crude oil in the United States;

6308 (2) It hindered and stood in the way of the reasonable stabilization of the oil industry;

(3) It tended to eliminate the independent refiners as a competitive element in the industry;

(4) It hindered the attainment of the objectives of the National Industrial Recovery Act, including relief of unemployment and maintenance of wages at fair levels. (R. pp. 2381-2382).

6309 Assignment No. 47.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken (R. pp. 2423; 2424; 2428).

(89) Proof beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into an agreement among themselves, or with others, is an essential fact which must be proved by the prosecution, failing which you must acquit all of the defendants. If, however, you find and conclude beyond a reasonable doubt and to a moral certainty that such an agreement was made, you must then determine whether

the restraint of interstate commerce contemplated thereby was reasonable or unreasonable, that is, whether or not it was calculated, by reason of its intent, purpose and effect, to injuriously and unduly affect the public interest in the freedom of competition in interstate commerce which it is the purpose of the Sherman Anti-Trust Act to preserve.

The legality of a combination or agreement or of a buying program or programs among business competitors cannot be determined by so simple a test as whether they restrain competition. Every agreement concerning trade, every regulation of trade, restrains. To combine, to restrain, is of their very essence. The true test of legality in this case is whether the combination, agreement, or buying program, if any existed, was such as merely regulated and perhaps thereby promoted competition, or whether it was such as might suppress or even destroy competition.

To determine this question, you must consider the facts peculiar to the oil industry: its condition before and after the alleged combination was entered into, or the alleged agreement made, the nature of the agreement or combination, and its effect, actual or probable. The history of the agreement or combination, the evils or abuses believed to exist, the reasons for adopting the particular remedy and the purposes or ends sought to be attained are all relevant in your consideration. A
close and careful scrutiny of these particular con-
6310 ditions and purposes is necessary. Realities must
dominate your judgment. The mere fact that the parties to an agreement or combination eliminate competition between themselves is not enough to condemn it. The question of the application of the Sherman Act is one of intent and effect, and is not to be determined by arbitrary assumptions.

You should, therefore, consider in this case the economic and geologic conditions peculiar to the oil industry in all its various branches, and their relation to the condition of business in general in the United States during the period with which the indictment is concerned, and for a reasonable period prior thereto; the nature and character of the oil business in all its various branches, the state and federal laws relating thereto and the manner in which they were administered, the customary means and methods of carrying on the business, the nature and character of the relationships between

the various interests engaged in the various parts of the business, such as the producers of crude oil, refiners of crude oil, jobbers of gasoline and retail sellers of gasoline, the nature of the defendants' combination or agreement, or buying program or programs, if there were any, the reasons which led to its or their adoption, and the probable consequences of carrying it or them out in relation to market prices, the policy of the United States at the time the alleged conspiracy is charged to have been entered into, as embodied in the National Industrial Recovery Act, the objectives of said Act and the Petroleum Code adopted thereunder, the activities with respect to the oil industry of state, governmental and Petroleum Code authorities, the prohibition in said Code against selling below cost, the evidence that at the time the alleged conspiracy is charged to have been entered into, the price of crude oil was being maintained at $1 a barrel at the insistence of the Secretary of the Interior who was also Administrator of the Petroleum Code, the inability to maintain dollar crude unless said tank car prices of gasoline were in proper parity with the price of crude, the evidence that at the time the alleged conspiracy is charged to have been entered into, the tank car prices of gasoline in the spot markets in the Mid-Continent and East Texas fields were far below such parity, the evidence that the prices reached in the spring and summer of 1935 were prices in parity with dollar crude, the evidence that the Government desired
6311 that parity, and the evidence concerning the relation between the price of crude oil and conservation, of the necessity of maintaining an adequate price of crude oil in this connection, of the condition of the independent refiners, of the effect upon stabilization of dumping distress gasoline on the market, and of other matters affecting the public interest in interstate commerce in the products of crude oil.

The evidence is such that you may conclude therefrom that abuses and destructive practices in connection with the marketing of gasoline existed, to the elimination of which the defendants claim that any agreement or combination made or entered into by them was aimed. You may also conclude therefrom that the independent refiners in the East Texas and Mid-Continent fields were in distress. You may also conclude from the evidence that serious retail price wars throughout the Mid-Western area were common both before and after February

1, 1935, and that distress gasoline is a contributing cause to retail price wars, and that the industry in respect of the production of crude oil and of gasoline therefrom had suffered from overproduction. There is evidence from which you may conclude that the industry was afflicted with injurious practices within itself which demanded correction, and that if such evil conditions could not be entirely cured they at least might be alleviated. There is nothing in the Sherman Anti-Trust Act to prevent defendants from entering into an agreement or combination or buying program or programs having as its or their intent, purpose and effect an honest effort to remove abuses, to make competition fairer, and thus promote the essential interests of commerce. The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated the wells of commerce go dry.

It is proper for you to consider whether the actual purpose and intent of defendants in this case was to engage in a fair and open endeavor to aid the oil industry in a measurable recovery from its plight. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effec-
6312 tive than legal processes. Nor does the fact that
the correction of abuses may tend to stabilize or to produce fairer price levels require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade. It is thus entirely legal to affect a change in market conditions where the change would be in mitigation of recognized evils, and would not impair but rather foster fair competitive opportunities.

Consequently, even though you should find and believe beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into a combination or agreement among themselves or with others, you must acquit all of the defendants and return a verdict of "Not Guilty" as to each of them unless, after taking into account all the evidence in the case and considering it in the light of the principles I have called to your attention, you also find and believe beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the restraint imposed was unreasonable, and unless you further find beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the combination and agreement entered into has been proved to be in all essential and material respects the one alleged in the indictment, concerning which I have previously instructed you. (R. pp. 2382-2386).

6313 Assignment No. 48.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2424-2425).

(90) The defendants claim that the evidence shows that their activities in purchasing gasoline were directed to the providing of a market outlet for the orderly distribution at going market prices of surplus gasoline manufactured by independent refiners which would make unnecessary its dumping on the market at distress or sacrifice prices. They further claim that the evidence shows that if such dumping of surplus gasoline, had it been allowed to continue, would have injuriously affected the public interest and competitive conditions in interstate commerce, in that (1) it would have hindered Federal and State efforts to conserve the limited supplies of crude oil in the United States; (2) it would have hindered the reasonable stabilization of the oil industry; (3) it would have tended to eliminate the independent refiners as a competitive element in the industry; and (4) it would have hindered the attainment of the objectives of the National Industrial Recovery Act, including the relieving of unemployment and maintaining wages at fair levels.

You must therefore determine from the evidence (First); whether or not the true objectives of defendants were those aforesaid; and (Second); whether or not the activities of the defendants were reasonably calculated to attain said objectives. If you should so find, or if you are not satisfied beyond a reasonable doubt that these were not the objectives of defendants, then you should acquit said defendants by returning a verdict of not guilty, as in such event defendants' activities would not be illegal, as such would not be the unreasonable combination and conspiracy alleged in the indictment. In determining whether such were the objectives of the defendants, and whether or not the activities of the defendants were reasonably calculated to attain said objectives, you should give due consideration to the evidence relating to the following claims of the defendants:

(1) That for some time prior to the period of the indictment there had been overproduction of crude oil in the United States.

6314 (2) That the Government of the United States and the oil producing states including the States of Texas and Oklahoma, were engaged in an effort to control in the public interest this overproduction of crude oil.

(3) That the principal means being employed to control said overproduction of crude oil was the enforcement of production quotas beyond which it was made illegal to produce.

(4) That at the time the alleged conspiracy is alleged to have been entered into the Federal Government regarded it as essential in the public interest both from the standpoint of conservation of crude oil and reasonable stabilization of the oil industry, that the price of crude oil should not be less than $1 a barrel.

(5) That the price of crude oil could not remain at approximately $1 a barrel unless the tank car price of gasoline was at a parity, or in a normal and proper relation thereto.

(6) That the tank car price of gasoline at the time the alleged conspiracy is alleged to have been entered into was far below parity with the price of crude oil.

(7) That the level of tank car prices reached in the spring of 1935 and existing in the summer of 1935 was at parity with dollar crude, and recognized by the Government to be in parity, and to be the parity desired by it.

(8) That any combination or agreement entered into or made by defendants, or any buying program engaged in by them, with respect to the purchasing of distress gasoline from independent refiners, did not contemplate any increase in the tank car price of gasoline, whether as its primary or incidental purpose, to a level above parity with the price of crude oil.

(9) That the tank car price of gasoline did not, at any time during the period of the alleged conspiracy, rise to a figure above parity with the price of crude oil.

(10) That the production of surplus gasoline by independent refiners for which they had no regular trade outlets was unavoidable if their operations were to be conducted on an economic and competitive basis.

6315 (11) That by reason of lack of storage facilities and operating capital independent refiners by and large had to dispose promptly of surplus gasoline at practically any price it would bring.

(12) That at the time the defendants are alleged to have engaged in their buying programs the oil industry was operating under emergency conditions and that the Federal Government, through the Petroleum Code, was endeavoring to stabilize the industry on a profitable basis in order to increase purchasing power, to relieve unemployment and to bring about and maintain the payment of fair wages in the industry.

(13) That at the time the defendants are alleged to have embarked upon their buying programs, to-wit, March 1, 1935, the tank car price of gasoline was far below parity with crude oil.

(14) That Secretary of the Interior Harold L. Ickes, Oil Administrator under the Petroleum Code, desired and urged the achievement of parity between the tank car price of gasoline and the price of crude oil and was gratified when late in the spring of 1935 such parity was attained.

(15) That under the Petroleum Code the gasoline production of refineries throughout the United States was restricted by allocations which would necessarily result in decreasing the supply of gasoline and increasing the price thereof.

(16) That on July 20, 1934, Harold L. Ickes, Oil Administrator under the Petroleum Code, authorized the defendant Arnott to take action to settle retail price wars and to eliminate destructive price-cutting in connection therewith.

(17) That elimination or control of retail price wars and of destructive price-cutting was impossible with the tank car price of gasoline below parity with crude oil and below cost of recovery levels.

(18) That because of the availability of competing sources of supply it would have been impossible to fix the tank car price of gasoline at high, arbitrary and non-competitive levels.

(19) That, for the first time, in the summer of 1935 the objective of the Government of obtaining a proper balance in the supply and demand was attained in the oil industry.

6316 (20) That in June, 1935 the industry attained the best statistical position it had had for years and that the summer of 1935 was the highest consuming season that the industry had had for many years.

If from all the evidence in the case you conclude that any buying programs engaged in by defendants were reasonable and not unreasonable restraints of commerce, or if you cannot conclude beyond a reasonable doubt and to a moral certainty and have an abiding conviction that the activities of defendants did not constitute a reasonable restraint of interstate commerce, then you will find the defendants not guilty. (R. pp. 2386-2389).

6317 Assignment No. 49.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2428).

(40) You cannot find the defendants guilty unless the prosecution proves each and all of the material and essential allegations of the indictment beyond a reasonable doubt and to a moral certainty. The first material and essential allegation of the indictment which the prosecution must so prove is that the defendants and other persons combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the spot markets in the East Texas and Mid-Continent fields, and in an alleged spot market at Chicago, Illinois. It is absolutely essential that the prosecution prove beyond a reasonable doubt and to a moral certainty the foregoing charge in the indictment. Otherwise, you must acquit all of the defendants and you must return a verdict of not guilty as to each of them.

I further charge you that proof, beyond a reasonable doubt and to a moral certainty, of an agreement, the purpose of which was to remove the depressing influences of the dumping of distress gasoline upon said tank car prices of gasoline and to permit said prices to advance, unimpeded by said depressing influences, to whatever level they might naturally reach, through the play of economic forces, by purchasing distress or surplus gasoline from independent refiners at going market prices, is entirely insufficient to prove said charge in the indictment. Consequently, even though you should find and believe from the evidence beyond a reasonable doubt and to a moral certainty that the defendants or some of them combined and conspired together or with others for such limited purpose you must acquit all of the defendants and return a verdict of not guilty as to each of them. (R. pp. 2389-2390).

6318 Assignment No. 50.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2427).

(122). The Government of the United States is administered by many different officials, departments, bureaus and agencies. The Department of Justice, which is the law department of the United States Government, is prosecuting this case, and therefore, represents and is referred to as "the Government" or "the United States" herein. In administering the National Industrial Recovery Act and the Petroleum Code, and in governmental activities carried on for the conservation of the limited oil resources of the United States, however, the governmental agencies consisted, among others, of the President of the United States, Harold L. Ickes, Secretary of the Interior and Oil Administrator, the Petroleum Administrative Board, and the National Recovery Administration.

The court instructs the jury that the indictment herein allleges that the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline, and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted gasoline buying programs, to-wit, the East Texas Buying Program and the Mid-Continent Buying Program, as defined in the indictment. As one of their defenses, the defendants, and each of them, claim: That, if they did engage in such concerted buying programs or either of them, they were instigated and induced to engage and participate in said alleged buying programs by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2(b) of the National Industrial Recovery Act, and by virtue of certain provisions of the Code of Fair Competition for the Petroleum Industry duly signed by the President on August 19, 1933, and amendments thereto; and that they would not have engaged or participated in said buying programs, or either of them, if it had not been for the instigation and inducement of said Honorable Harold L. Ickes, Secretary of the Interior and Petroleum Administrator, and the provisions of said Code of Fair Competition for the Petroleum Industry and amendments thereto. In this connection, I instruct you that if you find from the evidence herein
6319 that the defendants were instigated and induced by
said Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, and by the provisions of said Code of Fair Competition for the Petroleum Industry and the amendments thereto, to engage and participate in said buying programs, and that they would not

have engaged or participated in said buying programs but for such instigation and inducement, then you should return a verdict of "Not Guilty" as to all the defendants in this case. (R. pp. 2390-2391).

6320 Assignment No. 51.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2427).

(121) The Government of the United States is administered by many different officials, departments, bureaus and agencies. The Department of Justice, which is the law department of the United States Government, is prosecuting this case and, therefore, represents and is referred to as "the Government" or "the United States" herein. In administering the National Industrial Recovery Act and the Petroleum Code, and in governmental activities carried on for the conservation of the limited oil resources of the United States, however, the governmental agencies consisted, among others, of the President of the United States, Harold L. Ickes, Secretary of the Interior and Oil Administrator, the Petroleum Administrative Board, and the National Recovery Administration.

The court instructs the jury that the indictment herein alleges that the defendants combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline; and that said alleged combination and conspiracy was effectuated or carried out by means of two concerted buying programs, to-wit, the East Texas Buying Program and the Mid-Continent Buying Program, as defined in the indictment. As one of their defenses, the defendants, and each of them claim: That, if they did engage in such concerted buying programs or either of them, they were instigated and induced to engage and participate in said alleged buying program by Honorable Harold L. Ickes, Secretary of the Interior and the Petroleum Administrator, duly appointed by the President of the United States under Section 2(b) of the National Industrial Recovery Act; and that they would not have engaged or participated in said alleged buying programs, or either of them, if it had not been for the instigation and inducement of said Honorable Harold L. Ickes, Secretary of the Interior and Petroleum Administrator.

In this connection, I instruct you that if you find from
6321 the evidence herein that the defendants were instigated and induced by the Honorable Harold L. Ickes,

Secretary of the Interior and Petroleum Administrator, to engage and participate in said buying programs, and that they would not have engaged or participated in said buying programs but for such instigation and inducement, then you should return a verdict of "not guilty" as to all the defendants in this case. (R. pp. 2391-2392).

6322 Assignment No. 52.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2427).

(131). If you find that the defendants, or some of them, had reason to believe and in fact did believe that Administrator Ickes or the Petroleum Administrative Board, or both, felt that the buying activities of the defendants were constructive and proper efforts to aid the independent refiner and to stabilize the tank car and retail markets, and if you find that the defendants would not have engaged in these activities if they had not believed that they met with the approval of the Administrator or the Petroleum Administrative Board, and if you further find that the defendants were induced to continue their activities after the expiration of the Petroleum Code by statements made by responsible Government officials urging them to hold on to the advantages that had been gained under the Code, then you will take such facts into consideration in determining whether or not such defendants contemplated a reasonable or unreasonable restraint of interstate commerce. (R. p. 2392).

6323 Assignment No. 53.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2427).

(140). Even if you should find and believe beyond a reasonable doubt and to a moral certainty that the defendants, or some of them, entered into an agreement to purchase gasoline from independent refiners in the Mid-Continent and East Texas fields or either of them, and made purchases thereunder, you shall, nevertheless acquit the defendants and return a verdict of "Not Guilty" if you find and believe that they were induced to enter into said agreement, or to carry it out by reason of any action the Secretary of the Interior may have taken, or by the acts of the Petroleum Administrative Board, or any of its members, or if you have a reasonable doubt as to whether said defendants were not so induced. In determining this question you shall take into account the fact that at the time said agreement is alleged to have been entered into the oil industry was operating under the Petroleum Code adopted under the National Industrial Recovery Act, that the Secretary of the Interior was the Administrator of said Code, that the Petroleum Administrative Board were government officials or employees acting in an advisory capacity to the Secretary of the Interior and themselves possessed with considerable discretionary authority, the machinery set up under the Code, the manner in which such machinery operated, the nature of the contacts between members of the industry and the Administrator, and the Petroleum Administrative Board and its members, respectively, the objectives of the National Industrial Recovery Act and of the Petroleum Code, the objectives of the Oil Administrator as communicated to members of the industry, the extent to which Government representatives knew of or acquiesced in said agreement of plan. If upon all the evidence you find and believe that the defendants were induced to enter into said plan or to carry the same out thereafter by acts of the Secretary of the Interior, said Board or its members, and would have refrained from carrying out the same except for such inducement, or if you have a reasonable doubt in respect of the existence or nonexistence of such inducement, you must acquit the defendants and return a verdict of "Not Guilty". (R. p. 2393).

6324 Assignment No. 54.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2427).

(130). If you find from the evidence that the defendants, or some of them, had reason to believe and in good faith did believe that the defendant Arnott was authorized by the letter of July 20, 1934, written to him by Harold L. Ickes in his official capacity as Administrator for the petroleum industry, to deal with the tank car market in a voluntary, cooperative manner in order to stabilize the retail market and to prevent price wars, and if you find that the defendants, or some of them, were induced to continue their activities after the expiration of the Petroleum Code by statements made by responsible Government officials urging them to hold on to the advantages that had been gained under the Code, you will take such facts into consideration in determining whether or not such defendants contemplated a reasonable or unreasonable restraint of interstate commerce. (R. p. 2394).

6325 Assignment No. 55.

The Court erred in refusing to give the following requested instructions, to which refusal an exception was taken. (R. pp. 2426-2427):

Mr. Wood: Your Honor charged that if the defendants, in company with the independent refiners, possessed the power to raise the prices as charged in the indictment, and exercised that power, the jury might return a verdict of guilty. We ask that that instruction be limited by the insertion of the words "By the means charged in the indictment, not by some other means"; and that the jury be instructed that the mere fact that they might together, through the exercise of some other means, have that power, is not sufficient. The jury must not only find that they had the power, but they had the power to exercise it to the precise means charged, and not through some other means,—namely, through the operation of these buying programs.

The Court: I think I have told the jury it is necessary for the Government to prove, beyond a reasonable doubt, all the essential facts charged in the indictment. That is covered. The request is denied.

Mr. Wood: We except to your Honor's ruling, because we do not think that that has been made plain by the charge,—the request I have just made. (R. pp. 2426-2427).

6326 Assignment No. 56.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2424-2525; 2427).

(110) If you find that the Administrator or the Petroleum Administrative Board, or both, were kept advised of the buying activities of the defendant, and if you further find that the Administrator or the Petroleum Administrative Board, or both, were of the opinion that such buying activities were constructive and proper efforts in order to relieve the depression or to aid the independent refiners, or to stabilize the tank car and retail markets and relieve conditions causing price wars, sales below cost and unemployment, then you are instructed that such opinion of the

Administrator or the Petroleum Administrative Board, or both, is entitled to great weight and respect in considering the question now presented as to whether or not such buying activities were an unreasonable restraint of trade. (R. p. 2394).

6327 Assignment No. 57.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2429; 2430).

(160). You are instructed that there is no charge in this indictment that these defendants, or any of them, entered into any agreement, combination or understanding with any independent refiner as to the price to be charged by such independent refiner for gasoline in tank car lots in sales to jobbers or consumers.

You are, therefore, instructed to disregard any claims by counsel for the prosecution in their closing arguments that such an agreement, combination or understanding existed. (R. pp. 2394-2395).

6328 Assignment No. 58.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2429-2430).

(161). You are instructed that there is not sufficient evidence in this record from which you could properly find that these defendants, or any of them, entered into an agreement, combination or understanding with any independent refiner as to the price to be charged by such independent refiner for gasoline in tank car lots in sales to jobbers or consumers.

You are, therefore, further instructed to disregard any claims by counsel for the prosecution in their closing arguments that such an agreement, combination or understanding existed. (R. p. 2395).

6329 Assignment No. 59.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2426-2427; 2430).

(151). There has been reference made by counsel for the prosecution in argument to the rise in the price of crude in January, 1936, and a claim that this rise was caused by the conduct of the defendants. There is no such allegation in the indictment, there is no evidence as to the causes of such price rise, and there is no sufficient evidence to support such charge now made by the prosecution, and you are instructed to disregard the statements made on this point by counsel for the prosecution. (R. p. 2395).

6330 Assignment No. 60.

The Court erred in refusing to give the following requested instruction, to which refusal an exception was taken. (R. pp. 2423; 2424; 2430).

(116). A letter of Mr. Ickes to Mr. Arnott under date of April 2, 1935, has been received in evidence. In that letter the following language is used:

"* * * I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery Act.

"I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary. However, when the understandings arrived at as bases of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal."

You must not misunderstand or misapply this language. There was no legal obligation on the part of these defendants to submit any of their activities to the Secretary of the Interior for his approval. If those activities were otherwise lawful under the Anti-Trust Laws, they would not be illegal, because they were not submitted to the Secretary of the Interior for his approval and did not receive his approval. If this letter of April 2nd, Exhibit 980, was intended to state that activities or an agreement among the defendants otherwise lawful under the Anti-Trust
6331 Laws would be legal only if submitted to and approved
by the Secretary, then this letter of Mr. Ickes does not state the law and you should disregard any such state-

ment in this letter and comment of counsel, if any, to that effect. Whether the activities of the defendants as shown by the evidence were legal or illegal is for you to determine under the instructions I give you. If you find them to be otherwise legal under those instructions, it doesn't make any difference whether they were or were not submitted to the Secretary and whether they did or did not have his approval. (R. pp. 2395-2396).

6332 Assignment No. 61.

The Court erred in failing and refusing, although duly requested to do so, to give in its charge such specific and sufficient explanations of the allegations of the indictment and the law applicable thereto as to give to the jury a sufficient and proper guide as to the weighing of evidence as to the particular allegations, to which an exception was duly taken. (R. p. 2430).

6333 Assignment No. 62.

The Court erred in overruling appellants' objections (R. pp. 556-557; 903-908) to the admission of Exhibits 489, 509 and 516, consisting of intra-company correspondence from Fred L. Koopman to the Budget and Operating Committee of Phillips Petroleum Company and to A. M. Hughes.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1891-1892), and were denied in each instance. (R. pp. 912-913; 1891).

6334 Assignment No. 63.

The Court erred in overruling appellants' objections to the admission of the following testimony:

A. Exhibits 94, 100, 101, 120, 122, 124, 126 (R. pp. 504-506; 903-908) consisting of intra-company correspondence written by James F. Nagle.

B. Exhibit 103 (R. pp. 504-506; 903-908) consisting of a letter from James F. Nagle to Arthur V. Bourque with reference to Skelly Oil Company's gasoline purchases.

C. Exhibits 97 and 121 (R. p. 1876) consisting of intra-company letters from James F. Nagle to W. T. Atkins and A. H. Pendergrass.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1893-1894), and were denied in each instance. (R. pp. 912-913; 1891).

6335 Assignment No. 64.

The Court erred in overruling appellants' objections to the admission of Exhibits 327 and 488, consisting of letters from Dewey K. Chamberlain to Robert N. Cline and C. W. Snider (R. pp. 650; 620; 903-908).

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1895), and were denied in each instance (R. pp. 912-913; 1891).

6336 Assignment No. 65.

The Court erred in overruling appellants' objections to the admission of Exhibits 251, 252, 253, 254, 256, 257, 258, 259, 260, 262, 265, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 284, 285, 286, 287, 292, 293, 294, 295, 296, consisting of intra-company weekly market reports of prices and conditions in the industry, written by J. W. Warner to J. D. Collins (R. pp. 621-622; 786; 903-908; 1876).

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909) and made and renewed at the close of all the evidence (R. pp. 1891; 1896-1897), and were denied in each instance. (R. pp. 912-913; 1891).

6337 Assignment No. 66.

The Court erred in overruling appellants' objections to the introduction of Exhibits 454, 477, 478, 460, 462 (R. pp. 608; 903-908; 1876), which consisted of letters and telegrams from Harry D. Frueauff to H. E. Brandli, Frank R. Coates, and Charles E. Arnott.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1899), and were denied in each instance. (R. pp. 912-913; 1891).

6338 Assignment No. 67.

The Court erred in overruling appellants' objections to the admission of the following testimony:

A. Exhibits 183, 191, 204, 210, 218 (R. pp. 829; 831-832; 903-908; 1874-1876), consisting of weekly price review letters purporting to have been written by P. E. Lakin to Alexander Fraser.

B. Exhibits 198, 203 (R. pp. 831-832; 903-908), consisting of weekly price review letters purporting to have been written by P. E. Lakin to Alexander Fraser.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1901), and were denied in each instance. (R. pp. 912-913; 1891).

6339 Assignment No. 68.

The Court erred in overruling appellants' objections to the admission of Exhibit 487 (R. pp. 621; 903-908) which consisted of an intra-company letter from C. W. Snider to Dewey K. Chamberlain.

Motions to strike this exhibit were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1902), and were denied in each instance. (R. pp. 912-913; 1891).

6340 Assignment No. 69.

The Court erred in overruling appellants' objections to the admission of Exhibit 426 (R. pp. 787-789; 903-908), which consisted of a letter from W. A. Tracey to D. A. Brown.

Motions to strike this exhibit were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1903), and were denied in each instance (R. pp. 912-913; 1891).

6341 Assignment No. 70.

The Court erred in overruling appellants' objections to the admission in evidence of certain testimony of Carl O. Beroth concerning certain statements by independent refiners of their inability to supply the witness with gasoline because of sales to major companies and relative to a major company buying program. (R. pp. 197-205).

6342

Assignment No. 71.

The Court erred in overruling appellants' objections to the admission of the following testimony:

A. Exhibits 93, 95, 96, 127, 128 (R. pp. 504-506; 903-908; 1876) consisting of intra-company correspondence written by W. T. Atkins of the Skelly Oil Company.

B. Exhibits 99, 125 (R. pp. 504-506; 903-908), consisting of intra-company correspondence written by L. H. Poland.

C. Exhibit 123 (R. pp. 504-506; 903-908) consisting of intra-company correspondence written by Clara Gartman.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1905; 1907), and were denied in each instance (R. pp. 912-913; 1891).

6343

Assignment No. 72.

The Court erred in overruling appellants' objections to the admission of Exhibits 104 through 118 inclusive (R. pp. 504-506; 903-908) which consisted of letters written by Clara Gartman of the Skelly Oil Company to A. V. Bourque.

Motions to strike these exhibits were made at the close of the Government's direct case (R. p. 909), and made and renewed at the close of all the evidence (R. pp. 1891; 1908), and were denied in each instance (R. pp. 912-913; 1891).

6344

Assignment No. 73.

The Court erred in overruling appellants' objections to the admission in evidence of certain irrelevant, immaterial and highly prejudicial testimony of various jobber witnesses called by the Government concerning the alleged inadequacy of jobber contract margins and alleged business losses resulting from such inadequacy of margins and concerning conversations with representatives of certain of the defendants regarding the same subject. (R. pp. 234; 241-242; 279-280; 292-294; 296-298; 306-310; 319-320; 322-324; 331-332; 335-336).

6345 Assignment No. 74.

The Court erred in repeatedly overruling objections of defense counsel to the testimony of certain witnesses for the Government with reference to a comparison of the trends of gasoline prices during the period covered by the alleged conspiracy with the trend of such prices in previous years, and in refusing to permit defense counsel, on cross-examination of such witnesses, to show what the conditions in the periods contrasted were.

The objections made to the testimony of such witnesses for the Government were on the grounds that the witnesses were not qualified, no proper foundation had been laid, conditions in the periods contrasted were not shown, and no standard of comparison was established.

These rulings and objections thereto occurred in the examination of Government witnesses as follows: Carl O. Beroth (R. pp. 192-195); Elmer H. Pedley (R. p. 238); William Lanzer (R. pp. 247-248); and A. C. Breuch (Direct, R. pp. 280-282; Cross, R. pp. 283-285).

6346 Wherefore, each appellant prays that the judgment of the District Court for the Western District of Wisconsin entered herein on July 19, 1938 may be reversed and held for naught.

William J. Donovan,
Counsel for Appellants.

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146 IN THE DISTRICT COURT OF THE UNITED STATES. **Filed July 20, 1938.**

* * (Caption—11365) * *

COST AND SUPERSEDEAS BOND PENDING APPEAL.

Filed July 20, 1938, H. C. Hale, Clerk.

Know All Men by These Presents that Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma), principals, and United States Fidelity and Guaranty Company, Baltimore, Maryland, surety, severally acknowledged themselves to owe to the United States of America the sum of twenty-five thousand ($25,000) dollars, lawful money of the United States of America, to be levied on our, and each of our goods, chattels, lands, and tenements upon the conditions following:

Whereas, on the 19th day of July, 1938, in the District Court of the United States for the Western District of Wisconsin, in a cause pending in said district court between the United States of America and Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil
147 Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma), defendants therein, a judgment and sentence was rendered against each of said defendants last above named, and the said defendants against whom said judgment and sentence was rendered having filed an appeal in said District Court and in the United States Circuit Court of Appeals for the Seventh Circuit to reverse the judgment and sentence imposed against the defendants so appealing; and

Now, the conditions of this recognizance are such that if the said Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois) and The Globe Oil and Refining Company (Oklahoma), and each of them, shall appear either in person or by attorney, in the United States Circuit Court of Appeals for the Seventh Circuit when said cause is reached for argument, or when required by law or by rule of the said United States Circuit Court of Appeals, and from day to day thereafter in said United States Circuit Court of Appeals until said cause is finally disposed of, and shall abide by and obey all orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of

148 the United States for the Western District of Wisconsin may direct, if the judgment and sentence appealed from shall be affirmed; and in such event shall pay on demand all costs that may be adjudged or awarded against said defendants so appealing, and shall appear before the District Court of the United States for the Western District of Wisconsin on such day or days as shall be set for a retrial of said case, providing the judgment of the District Court of the United States for the Western District of Wisconsin is reversed by the said United States Circuit Court of Appeals; and shall not depart the jurisdiction of the District Court of the United States for the Western District of Wisconsin without leave, then this recognizance to be void, otherwise to remain in full force, virtue, and effect.

And we, the undersigned principals and surety, do hereby stipulate, agree, and consent that in case the aforesaid recognizance shall be forfeited judgment may be entered for the sum provided herein and that execution issue thereon according to law.

C. E. Arnott
Charles E. Arnott
P. E. Lakin
P. E. Lakin
H. T. Ashton
H. T. Ashton
Robert W. McDowell
Robert W. McDowell
R. H. McElroy, Jr.
R. H. McElroy

Socony-Vacuum Oil Company, Inc.
By Louis Mead Treadwell
Duly authorized Agent.

Wadhams Oil Company
By J. H. Marshutz
Duly Authorized Agent.

Shell Petroleum Corporation
By Alexander Fraser
Duly Authorized Agent.

149 Empire Oil and Refining Company
(Now Cities Service Oil Company)
By E. L. Wingert
Duly Authorized Agent.

Continental Oil Company
By William H. Zwick
Duly Authorized Agent.

The Pure Oil Company
By Chas. I. Francis
Duly Authorized Agent.

Sinclair Refining Company
By J. W. Carnes
Duly Authorized Agent.

Mid-Continental Petroleum Corporation
By J. C. Denton, *Vice-Pres.*
Duly Authorized Agent.

Phillips Petroleum Company
By R. L. Foster
Duly Authorized Agent.

Skelly Oil Company
By Alvin F. Molony
Duly Authorized Agent.

The Globe Oil and Refining Company (Illinois)
By Ralph Horween
Duly Authorized Agent.

The Globe Oil and Refining Company (Oklahoma)
By Ralph Horween
Duly Authorized Agent.
Principals.

150 United States Fidelity and Guaranty Company, Baltimore, Maryland
By Norma W. Howarth
(Seal) *Attorney in Fact.*
Surety.

Acknowledged before me this 20th day of July, 1938.

H. C. Hale
(Seal) *Clerk of the United States District Court for the Western District of Wisconsin.*

The above bond is approved by the Court this 20th day of July, 1938.

Patrick T. Stone,
District Judge.

151 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

Filed Aug. 19, 1938.

PRAECIPE FOR TRANSCRIPT OF RECORD.

Filed August 19, 1938, H. C. Hale, Clerk.

To the Clerk of the above-entitled Court:

Will you please prepare, duly certify and send to the United States Circuit Court of Appeals for the Seventh Circuit, a transcript of the record in the above-entitled case for use in the appeals of the defendants to the said Circuit Court of Appeals from the judgments or sentences entered in the above-entitled case, by including in said transcript the following items from the files and records of the above-entitled case in the District Court, deemed necessary for a full and complete consideration of said appeals:

1. The indictment and the endorsement thereon. Filed December 22, 1936.
2. Summons for defendant, Mid-Continent Petroleum Corporation, issued December 23, 1936, with the return of United States Marshal. Filed December 31, 1936.
3. Warrant for defendant Robert W. McDowell issued December 23, 1936, with return of United States Marshal. Filed December 29, 1936.
4. Special appearance and plea of defendant Mid-Continent Petroleum Corporation to the Court's jurisdiction and venue. Filed January 15, 1937.

152 5. Joint and several special appearance and plea of defendants Jacob France, Robert W. McDowell and Thomas Fitzgerald to the Court's jurisdiction and venue. Filed March 1, 1937.

6. Order, or if none, then memorandum of oral order of Court on February 1, 1937, overruling plea of defendant, Mid-Continent Petroleum Corporation to the Court's jurisdiction and venue, and exception allowed thereto.
7. Order, or if none, then memorandum of oral order of Court on March 3, 1937, overruling plea of defendants Jacob France, Robert W. McDowell and Thomas Fitzgerald to the Court's jurisdiction and venue, and the exception allowed thereto.
8. Memorandum of oral suggestion by William J. Donovan, counsel for defendants, and approval of Court thereto on March 3, 1937, that arraignments and entry of pleas of defendants be subject to Court's determination on demurrers and motions presented March 3, 1937.

9. Demurrer by the defendants Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil & Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Illinois), The Globe Oil & Refining Company (Oklahoma), and certain other corporate defendants. Filed January 27, 1937.

10. Demurrer of defendant Standard Oil Company (Indiana). Filed January 30, 1937.

11. Motion, or if none, then memorandum of oral motion made March 3, 1937, that the defendants Charles
153 E. Arnott, H. T. Ashton, P. E. Lakin, Robert W. McDowell, R. H. McElroy, Jr., and certain other individual defendants, be made parties to the demurrer filed by Standard Oil Company (Indiana) on January 30, 1937, and order, or if none, then a memorandum of the oral order of Court on March 3, 1937, granting such a motion.

12. Separate demurrer of defendant Mid-Continent Petroleum Corporation to quash, vacate and set aside the indictment. Filed February 11, 1937.

13. Order overruling demurrer to the indictment and other pleas in the nature of demurrers as to the defendants Socony-Vacuum Oil Company, Inc., Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Oklahoma), The Globe Oil & Refining Company (Illinois), Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Charles E. Arnott, H. T. Ashton, P. E. Lakin, Robert W. McDowell, R. H. McElroy, Jr., and certain other defendants. Filed March 31, 1937.

14. Memorandum of arraignments and pleas of each corporate defendant made on February 1, 1937, or any other date, and, if no arraignment or plea as to a particular corporate defendant, then memorandum showing waiver of arraignment and plea.

15. Memorandum of arraignments and pleas of each individual defendant made March 3, 1937, April 15, 1937, April 20, 1937, and April 21, 1937.

16. Order quashing summons and dismissing indictment as to defendant Tide Water Oil Company. Filed June 3, 1937.

154 17. Written statement (not filed, H. C. Hale, Clerk) filed September 23, 1937, by Government counsel, ap-

proved by Court, of the following defendants who were not brought to trial and whose trials were postponed: John A. Brown, Frank R. Coates, D. W. Harris, J. F. Drake, William V. Hartmann, H. C. Meyer, O. H. Carlisle, Bernard L. Majewski, and Keith Fanshier, (not filed, H. C. Hale, Clerk) but if no such statement is on file, then memorandum of oral statement of Government counsel made in open court October 4, 1937, of the names of defendants not brought to trial and whose trials were postponed.

18. Memorandum of oral statement by Government counsel made October 4, 1937, that defendant Edward Karstedt was not brought to trial and his trial has been postponed.

19. Motion to quash the indictment. Filed October 4, 1937.

20. Order filed August 19, 1938, amending nunc pro tunc motion to quash indictment filed October 4, 1937.

21. Order, or if none, then memorandum of oral order of Court on October 4, 1937, overruling motion to quash indictment, and the exception allowed thereto.

22. Motions, or if none, then memorandum of oral motions made by the Government counsel on November 11, 1937, to dismiss indictment as to defendants Tide Water Associated Oil Company, Deep Rock Oil Corporation, Louisiana Oil Refining Corporation, Cities Service Export Oil Company, The Journal of Commerce Publishing Company, W. C. Platt Company, Warren C. Platt, The National Petroleum Publishing Company, and the Orders of the Court, or if none, then a memorandum of the oral
155 orders of the Court granting such motions, and the exceptions thereto.

23. Order of dismissal of indictment as to defendants Warren C. Platt, W. C. Platt Company, The National Petroleum Publishing Company. Filed November 12, 1937.

24. Judgment filed November 22, 1937, granting motions and entering verdicts of not guilty as to the defendants Gulf Oil Corporation, Gulf Refining Company, The Texas Company, W. S. S. Rodgers, H. W. Dodge, R. D. Cottingham and P. C. Scullin.

25. Judgment granting motion for directed verdict and entering verdict of not guilty as to the defendant John A. Welch. Filed December 7, 1937.

26. Judgment granting motion for directed verdict and entering verdict of not guilty as to defendant R. R. Irwin. Filed December 7, 1937.

27. Order, or if none, then memorandum of oral order of Court, on December 7, 1937, granting motion for directed

verdict and entering verdict of not guilty as to defendant Ira A. Smith.

28. Order, or if none, then memorandum of oral order of Court, on December 9, 1937, granting motion for directed verdict and dismissing indictment as to defendant R. O. Audrain.

29. Order dismissing indictment as to defendant Tide Water Associated Oil Company. Filed December 14, 1937.

30. Order granting motion for directed verdict at the close of all the evidence and entering verdict of not guilty as to defendant James Nagle. Filed January 14, 1938.

156 31. Order granting motions for directed verdicts of acquittal as to defendants Dewey K. Chamberlain, Thomas Fitzgerald, H. A. Gardner and Clyde M. Boggs. Filed January 20, 1938.

32. Order granting motion for directed verdict of acquittal as to defendant L. T. Cramer. Filed January 21, 1938.

33. Order granting motion for directed verdict of acquittal as to defendant Fred L. Koopman. Filed January 21, 1938.

34. Verdict of guilty as charged in the indictment as to defendant Socony-Vacuum Oil Company, Inc. Filed January 22, 1938.

35. Verdict of guilty as charged in the indictment as to defendant Continental Oil Company. Filed January 22, 1938.

36. Verdict of guilty as charged in the indictment as to defendant Charles E. Arnott. Filed January 22, 1938.

37. Verdict of guilty as charged in the indictment as to defendant H. T. Ashton. Filed January 22, 1938.

38. Verdict of guilty as charged in the indictment as to defendant Wadhams Oil Company. Filed January 22, 1938.

39. Verdict of guilty as charged in the indictment as to defendant Empire Oil & Refining Company. Filed January 22, 1938.

40. Verdict of guilty as charged in the indictment as to defendant The Pure Oil Company. Filed January 22, 1938.

41. Verdict of guilty as charged in the indictment as to defendant R. H. McElroy, Jr. Filed January 22, 1938.

157 42. Verdict of guilty as charged in the indictment as to defendant Shell Petroleum Corporation. Filed January 22, 1938.

43. Verdict of guilty as charged in the indictment as to defendant P. E. Lakin. Filed January 22, 1938.

44. Verdict of guilty as charged in the indictment as to defendant Sinclair Refining Company. Filed January 22, 1938.

45. Verdict of guilty as charged in the indictment as to defendant Mid-Continent Petroleum Corporation. Filed January 22, 1938.

46. Verdict of guilty as charged in the indictment as to defendant Robert W. McDowell. Filed January 22, 1938.

47. Verdict of guilty as charged in the indictment as to defendant Phillips Petroleum Corporation. Filed January 22, 1938.

48. Verdict of guilty as charged in the indictment as to defendant Skelly Oil Company. Filed January 22, 1938.

49. Verdict of guilty as charged in the indictment as to defendant The Globe Oil & Refining Company (Oklahoma). Filed January 22, 1938.

50. Verdict of guilty as charged in the indictment as to defendant The Globe Oil & Refining Company (Illinois). Filed January 22, 1938.

51. Memorandum of the verdict of the jury rendered in open court on January 22, 1938, showing verdicts of guilty as charged in the indictment as to the defendants other than those mentioned in items 34 to 50, inclusive, shown above.

158 52. Motion for arrest of judgment. Filed January 25, 1938.

53. Order on motions after verdict, being motions to set aside verdict and dismiss indictment, motion for arrest of judgment, and motions for new trial. Filed July 19, 1938.

54. Correction order changing errors in order on motions after verdict. Filed July 20, 1938.

55. Judgment or sentence entered severally as to each defendant. Filed July 19, 1938.

56. Notice of appeals filed severally by the following defendants-appellants: Socony-Vacuum Oil Company, Inc., Charles E. Arnott, H. T. Ashton, Wadhams Oil Company, Continental Oil Company, Empire Oil & Refining Company (now Cities Service Company), The Pure Oil Company, R. H. McElroy, Jr., Shell Petroleum Corporation, P. E. Lakin, Sinclair Refining Company, Mid-Continent Petroleum Company, Robert W. McDowell, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Oklahoma) and The Globe Oil & Refining Company (Illinois). Filed July 20, 1938.

57. Acknowledgment of service of notice of appeals. Filed July 20, 1938.

58. Notification of filing of notice of appeals by Clerk to Trial Judge. Filed July 20, 1938.

59. Notification of Judge to counsel to appear before him for directions re preparation of appeal record. Filed July 20, 1938.

159 60. Order enlarging time for filing bill of exceptions and praecipe for transcript, and providing for preparation of appeal record. Filed July 20, 1938.

61. Cost and supersedeas bond pending appeal by the defendants-appellants. Filed July 20, 1938.

62. Assignments of errors.

63. Bill of exceptions.

64. This praecipe for transcript of record.

Said transcript of record to be prepared as required by law and the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, and such record, except the bill of exceptions and the assignments of errors unless then on file, to be filed in the office of the Clerk of said Circuit Court of Appeals at Chicago, Illinois, within sixty (60) days after the notice of appeals was filed in the District Court, pursuant to the order of the Circuit Court of Appeals, dated July 21, 1938.

Respectfully,
William J. Donovan,
Herbert H. Thomas,
Attorneys for each Defendant-Appellant.

160 Service of a copy of the foregoing praecipe is acknowledged this 17th day of August, 1938.

John J. Boyle,
United States Attorney.
Grant W. Kelleher,
Special Assistant to the Attorney General.
Attorneys for the Plaintiff-Appellee.

161 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

JUDGE'S CERTIFICATE.

I, Patrick T. Stone, Judge of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the foregoing pages, numbered 1 to 46, 2470-2586 inclusive, contain a full, true, correct and complete copy of the documents (except the assignments of errors and the bill of exceptions) designated in the Praecipe for Transcript of Record on Appeal, in the case entitled "United States of America *vs.* Standard Oil Company (Indiana), et al., Defendants," numbered 11,365 on the dockets of the said Court, as the same appear on the original records now remaining of record in the said Court.

I further certify that where documents designated in said Praecipe are not contained in the files of the Court in said case, such documents were not filed, and the various memoranda, requested in lieu of such documents by the Praecipe and contained on the said foregoing pages, set forth the full, true, correct and complete substance of the matters referred to in said memoranda as they occurred in Court at the times and places stated and as appears from the transcript of record and the proceedings shown on the minutes of the Court in said case, and that all of the exceptions mentioned on said foregoing pages were duly allowed by me and entered upon the records and minutes of the Court.

Patrick T. Stone,
Judge, District Court of the United States for the Western District of Wisconsin.

162 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

CLERK'S CERTIFICATE.

I, Herbert C. Hale, clerk of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the foregoing pages, numbered 1 to 46, 2470-2586, inclusive, contain a full, true, correct and complete copy of all of the documents (except the assignments of errors and bill of exceptions), designated in the Praecipe for Transcript of Record on Appeal, filed in the case entitled "United States of America *vs.* Standard Oil Company (Indiana), et al., Defendants," numbered 11,365 on the dockets of the said Court, as the same appear, after comparison by me, on the original records now remaining of record in the files under my control and custody in my office.

I further certify that, where documents designated in said Praecipe are not contained in the files of the Court in said case, the various memoranda, requested in lieu thereof by said Praecipe and contained in the said foregoing pages, set forth the full, true, correct and complete substance of the occurrences therein referred to as appears from the transcript of record and the proceedings shown on the minutes of the Court in the said case now on file in my office.

I further certify that the assignments of errors and bill
of exceptions, designated in the Praecipe for Tran-
163 script of Record on Appeal, are omitted because they
have not yet been filed in my office and need not be filed
until 120 days after the date the notice of appeals in this cause was filed in my office on July 20, 1938, in accordance with the order of this Court, entered July 20, 1938, and the order of the United States Circuit Court of Appeals for the Seventh Circuit, dated July 21, 1938.

In Witness Whereof, I have hereunto subscribed my name and caused to be hereto affixed the seal of the District Court of the United States for the Western District of Wisconsin, this 15th day of September, in the year of Our Lord 1938 and the one hundred sixty-second year of the Independence of the United States.

H. C. Hale,
Clerk of the District Court of the United States for the Western District of Wisconsin.

(Seal)

6234b In the District Court of the United States.

* * (Caption—11365) * *

CLERK'S CERTIFICATE.

I, Herbert C. Hale, Clerk of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the foregoing and annexed nine volumes as follows:

Volume I, consisting of pages 164 to 999, inclusive.
Volume II, consisting of pages 1,000 to 1,999, inclusive.
Volume III, consisting of pages 2,000 to 2,999, inclusive.
Volume IV, consisting of pages 3,000 to 3,999, inclusive.
Volume V, consisting of pages 4,000 to 4,654, inclusive, and the Certificate of Judge.
Volume VI, consisting of Volume of Exhibits A.
Volume VII, consisting of Volume of Exhibits B.
6234c Volume VIII, consisting of Volume of Exhibits C.
Volume IX, consisting of Volume of Exhibits D.

(This same certificate being attached at the end of each of said volumes), constitute the true, full, correct and complete Bill of Exceptions together with the said Exhibits as a part thereof, which was duly approved and signed by the Honorable Patrick T. Stone, Judge of said Court, and filed with me in my official capacity on December 9, 1938 at the United States Courthouse of the above Court at La Crosse, Wisconsin, and ordered to be made a part of the record in the above-entitled cause.

I further certify that the foregoing Bill of Exceptions was not settled at the time the original record on these appeals was transmitted and filed with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit on August 19, 1938, and that, pursuant to Item 63 (Bill of Exceptions) designated in the Praecipe of the Transcript of Record filed in this Court on August 19, 1938, the foregoing Bill of Exceptions, consisting of said nine volumes is transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit as a part of the transcript of record in the above-entitled cause, and

I further certify that transmitted herewith is the original defendants-appellants' Assignments of Errors
6235 which was duly filed with me in my official capacity
at the United States Courthouse of the above Court at La Crosse, Wisconsin, on December 9, 1938 within the

time allowed by the Order of this Court dated July 20, 1938 and pursuant to Paragraph 3 of said Order, and that, pursuant to Item 62 (Assignments of Errors) designated in the Praecipe for Transcript of Record filed in this Court on August 19, 1938, the foregoing defendants-appellants' Assignments of Errors is transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

In Witness Whereof I have hereunto subscribed my name and caused to be herewith affixed the seal of the District Court of the United States for the Western District of Wisconsin, this 15th day of December, 1938.

H. C. Hale

(Seal) *Clerk of the District Court of the United States for the Western District of Wisconsin.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

Thursday, July 21, 1938.

Entered July 21, 1938.

Court met pursuant to adjournment:

Before:

Hon. Evan A. Evans, Circuit Judge.

The United States of America, *Plaintiff-Appellee*, *vs.* Socony-Vacuum Oil Co., Inc., *et al.*, *Defendants-Appellants.*	No. 6721. October Term, 1937.

ORDER.

There having been filed with the clerk of this court the notice of appeals filed severally by the appellants in the above entitled cause from the judgments of conviction entered in the District Court of the United States for the Western District of Wisconsin, and application having been made by counsel for the following order:

It Is Ordered as follows:

1. That appellants are granted one hundred twenty (120) days from the date the notice of appeals, in duplicate was filed in the above entitled case with the clerk of the District Court of the United States for the Western District of Wisconsin within which to file the bill of exceptions with the said clerk.

2. That appellants may file severally a single assignment of errors, which need not be filed with the said clerk until the filing of the bill of exceptions.

3. That appellants shall not be required to file the praecipe of transcript with the said clerk of the District Court and to serve a copy thereof on the United States Attorney until thirty (30) days after the date the notice of appeals was filed with the said clerk, and that the appellees shall have ten (10) days thereafter within which to file a praecipe of transcript of the matters they desire with said clerk.

4. That counsel for the appellants shall cause the record of the appeal, except the bill of exceptions, to be filed

with the clerk of this court within sixty (60) days after the notice of appeals was filed with the clerk of the District Court, the appellants in all other respects to comply with Rule 36 of the rules of this court.

Dated July 21, 1938.

Enter

Evan A. Evans
Circuit Judge.

Entered
Aug. 13,
1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

Saturday, August 13, 1938.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

The United States of America,
Plaintiff-Appellee,
vs.
Socony-Vacuum Oil Co., Inc., *et al.*,
Defendants-Appellants.

No. 6721
October Term, 1937

ORDER CONSOLIDATING APPEALS.

On reading the motion to consolidate, which is consented to by counsel for the plaintiff-appellee, filed by each of the defendants-appellants in the above cause, namely: Socony-Vacuum Oil Company, Inc., Charles E. Arnott, H. T. Ashton, Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), Continental Oil Company, The Pure Oil Company, R. H. McElroy, Jr., Shell Petroleum Corporation, P. E. Lakin, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Robert W. McDowell, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Oklahoma) and The Globe Oil and Refining Company (Illinois); through their attorneys, and it appearing that the appeals herein are of like nature and involve substantially the same questions, and to avoid unnecessary cost and delay, and that it is reasonable to do, it is

Ordered, that the appeal taken by each defendant-appellant in the above-entitled cause shall bear the following title and number: "United States of America, Plaintiff-Appellee *vs.* Socony-Vacuum Oil Company, Inc., et al., Defendants-Appellants, No. 6721, October Term, 1937."

Further Ordered that the separate appeal of each defendant-appellant be and the same hereby is consolidated for the purpose of argument and hearing and for other proceedings in this Court, except that a separate judgment and mandate as to each defendant-appellant may be rendered and entered by this Court upon determination of the appeals.

Further Ordered that the separate appeal of each defendant-appellant be and the same hereby is consolidated for the purpose of preparing and filing a single praecipe for transcript of record, a single assignments of errors, a single bill of exceptions and transcript of record, and single appellate procedural papers of other kinds in this Court on behalf of all the defendants-appellants to serve for all intents and purposes and treated as separately filed by each defendant-appellant.

Further Ordered that the single praecipe, assignments of errors, bill of exceptions, transcript of record and the other documents mentioned in the praecipe or required by law shall constitute the record on appeal to be certified and sent by the Clerk of the District Court of the United States for the Western District of Wisconsin to this Court and shall serve as the record on the appeal of each defendant-appellant.

Entered
Nov. 2,
1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Wednesday, November 2, 1938.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

The United States of America,
Plaintiff-Appellee.
vs.
Socony-Vacuum Oil Company, Inc.,
et al.,
Defendants-Appellants,

No. 6721.

ORDER CLARIFYING ORDER OF JULY 21, 1938.

It having been brought to the attention of the Court that in the Order of July 21, 1938, in the above case, it is not specifically stated that in computing time all Sundays and legal holidays occurring within the period of 120 days mentioned in paragraph 1 of said Order are to be excluded, and the Court being of the opinion that it is advisable to remove any doubt as to the meaning of such paragraph in said Order,

It Is Ordered:

That the Order of this Court dated July 21, 1938, entered in the above case is hereby clarified by inserting after the word "days" in the second line of paragraph 1 of said Order the following: "exclusive of Sundays and legal holidays (whether under Federal law or under the law of the State of Wisconsin) occurring within such period."

Endorsed: Filed Nov. 2, 1938, Frederick G. Campbell, Clerk.

Entered Nov. 7, 1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

November 7, 1938.

Before:

Hon. Evan A. Evans, Circuit Judge.

The United States of America, *Plaintiff-Appellee,* 6721 *vs.* Socony-Vacuum Oil Company, Inc., *et al.,* *Defendants-Appellants.*	Appeal from the District Court of the United States for the Western District of Wisconsin.

It having been represented to the Court that in this cause some of the errors to be assigned are as to the admission or rejection of evidence which is very lengthy,

It is therefore ordered that counsel for appellants may make reference to the page numbers where said evidence appears in the transcript of the record in lieu of quoting the substance of said evidence in the assignment of errors.

Entered Dec. 1, 1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Thursday, December 1, 1938.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

United States of America, *Plaintiff-Appellee,* 6721 *vs.* Socony-Vacuum Oil Co., Inc., *et al.,* *Defendants-Appellants.*	Appeal from the District Court of the United States for the Western District of Wisconsin.

It having been represented to this Court that in this cause certain of the errors to be assigned raise substantially identical questions of law relating to the admission or rejection of evidence; and

It having been further represented to the Court that the case involves a large record and that numerous complicated questions of law will be presented in the briefs of counsel, it is therefore

Ordered that counsel for Appellants may include in one Assignment of Error the alleged error in the admission or exclusion of all documents, offers of proof, and the testimony of witnesses to which substantially similar objections or exceptions were noted by appellants.

It is further Ordered that counsel for appellants may include in one Assignment of Error the alleged error of the Court in using and permitting Government counsel to use the Grand Jury Minutes in the examination of numerous witnesses to which use substantially similar objections or exceptions were noted by appellants.

It is further Ordered that the Briefs to be filed on behalf of Appellants or Appellee may exceed seventy-five (75) pages.

Endorsed: Filed Dec. 1, 1938, Frederick G. Campbell, Clerk.

Filed Dec. 21, 1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
6721 *vs.*
Socony-Vacuum Oil Co., Inc., *et al.,*
Defendants-Appellants.

Appeal from the District Court of the United States for the Western District of Wisconsin.

STIPULATION FOR PRINTING.

It is hereby stipulated and agreed by and between the attorneys for the respective parties in the above-entitled cause that in printing the transcript of record all references to the record contained therein shall be changed to refer to the final printed pages to which said references relate.

W. P. Crawford,
Attorney for Plaintiff.
William J. Donovan,
Attorney for the Defendants.

Endorsed: Filed Dec. 21, 1938, Frederick G. Campbell, Clerk.

CLERK'S COPY.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
Defendants-Appellants.

Counsel for all Defendants-Appellants:

MR. WILLIAM J. DONOVAN,
MR. HERBERT H. THOMAS,
MR. RALSTONE R. IRVINE,
MR. CARBERY O'SHEA.

Counsel for Certain Defendants-Appellants:

MR. LOUIS MEAD TREADWELL,
Socony-Vacuum Oil Company, Inc.,
Wadhams Oil Company,
Charles E. Arnott, and
H. T. Ashton.

MR. GOLDTHWAITE H. DORR,
Charles E. Arnott.

MR. JOSEPH H. MARSHUTZ,
Wadhams Oil Company.

MR. CHARLES A. FRUEAUFF,
MR. CHARLES E. GATELY,
MR. THEODORE W. BRAZEAU,
MR. EMMERT L. WINGERT,
Empire Oil & Refining Company (now Cities Service Oil Company).
MR. DAN MOODY,
MR. W. H. ZWICK,
MR. JAMES J. COSGROVE,
Continental Oil Company.

Counsel for Certain Defendants-Appellants:

MR. CHARLES I. FRANCIS,
The Pure Oil Company and R. H. McElroy, Jr.
MR. SAMUEL A. MITCHELL,
MR. TRUMAN POST YOUNG,
Shell Petroleum Corporation and P. E. Lakin.
MR. G. T. STANFORD,
MR. ROY T. OSBORN,
MR. FREDERICK H. WOOD,
MR. THOMAS T. COOKE,
Sinclair Refining Company.
MR. J. C. DENTON,
Mid-Continent Petroleum Corporation and Robert W. McDowell.
MR. DON EMERY,
MR. R. H. HUDSON,
MR. RAYBURN L. FOSTER,
MR. WALTER L. BARNES,
Phillips Petroleum Company.
MR. W. P. Z. GERMAN,
MR. A. F. MOLONY,
MR. CLIFF V. PEERY,
Skelly Oil Company.
MR. RALPH HORWEEN,
MR. SAMUEL TOPLIFF,
The Globe Oil & Refining Company (Illinois) (Oklahoma).

Counsel for Plaintiff-Appellee:

MR. THURMAN ARNOLD,
MR. JOHN HENRY LEWIN,
MR. W. P. CRAWFORD,
MR. GRANT KELLEHER,
MR. W. B. WATSON SNYDER,
MR. JOHN J. BOYLE.

Appeal from the District Court of the United States for the Western District of Wisconsin.

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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G 240	Letter, Dec. 19, 1935, R. W. McDowell to P. E. Lakin	835 907	2835
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G 683	Weekly Letter, March 22, 1935, W. P. Jacobi to A. G. Maguire	469 907	3112
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4660 EXHIBITS.*

4661 GOVERNMENT EXHIBIT NO. 1.

4662 One West Main Street
Madison, Wisconsin
October 3, 1937.

William P. Crawford, Esq.,
John Henry Lewin, Esq.,
Hammond E. Chaffetz, Esq.,
W. B. Watson Snyder, Esq.,
Special Assistants to the Attorney General,
Madison, Wis.

Re: U. S. *vs.* Standard Oil Company (Indiana), et al.
Indictment No. 11,365.

Dear Sirs:

We have been advised by the companies which we represent, namely, Standard Oil Company (Indiana), Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Cities Service Company, Cities Service Export Oil Company, Empire Oil and Refining Company, Louisiana Oil Refining Corporation, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, The Texas Company, Tide Water Associated Oil Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, Barnsdall Refining Corporation, The Globe Oil and Refining Company of Oklahoma, The Globe Oil & Refining Company of Illinois, The Globe Oil & Refining Company of Kansas and Deep Rock Oil Corporation, that proof need not be made of certain facts, and that they will stand admitted.

I.

We have been authorized to state with respect to the period covered by the indictment that the name of the corporation, the state of incorporation, and principal place of business are correctly alleged as to each corporation in paragraph 1, with the following exceptions:

4663 Sinclair Refining Company has its principal place of business at Portland, Maine, and has its principal business office in New York, N. Y.

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* In general, documents marked for identification only are not printed unless error is assigned to their exclusion.

The Texas Company has its principal place of business at Wilmington, Delaware, and has an office and place of business in New York, New York.

Tide Water Associated Oil Company has its principal places of business in New York, New York, and San Francisco, California.

Phillips Petroleum Company has its principal place of business at Wilmington, Delaware, with its principal operating office at Bartlesville, Oklahoma.

Barnsdall Refining Corporation has its principal place of business at Wilmington, Delaware, and has an office for the transaction of business at Tulsa, Oklahoma.*

We have further been authorized to state that the name of subsidiary companies, the parent company, the state of incorporation of such subsidiary and principal place of business of such subsidiary are correctly stated in paragraph 1 with the following exceptions:

Louisiana Oil Refining Corporation was dissolved and its corporate franchises terminated by order of the Law and Equity Court of the City of Richmond, Virginia, dated January 9, 1937. While this company was in existence its parent company was not Cities Service Company, as alleged in the indictment. During that period a majority of the voting stock of Louisiana Oil Refining Corporation was owned by Arkansas Natural Gas Corporation, and a majority of the common stock of Arkansas Natural Gas Corporation was owned by Cities Service Company, but Cities Service Company did not own a majority of the preferred stock of Arkansas Natural Gas Corporation, which during the period covered by the indictment was entitled to and did elect a majority of the Board of Directors of Arkansas Natural Gas Corporation. On May 28, 1935, Louisiana Oil Refining Corporation filed a petition in reorganization proceedings under Section 77B of the National Bankruptcy Act in the United States District Court for the Western District of Louisiana and from that time until December 22, 1936, the date this indictment was filed, Louisiana Oil Refining Corporation was under the control of the said United States District Court.

4664 The true state of facts as to Cities Service Export Oil Company is as follows: On June 11, 1936, Cities Service Export Oil Company, its subsidiary, and some other companies and Crew Levick Company, a Pennsylvania corporation, entered into a Joint Plan and Agreement of Merger, whereby the said Crew Levick Company merged Cities Service Export Oil Company and the other companies, and Crew Levick Company became the surviving corporation. Concurrently with and as part of the merger the said surviving corporation, Crew Levick Company, assumed the name of "Cities Service Oil Company," a Pennsylvania corporation.

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* All statements made with reference to Barnsdall Refining Corporation must be qualified by the fact that this corporation was not incorporated until April 20, 1935 and did not commence business until June 1, 1935.

II.

We have further been authorized to state that the name of each individual defendant, his address, his official title or position, and the company with which he was associated during the indictment period, are correctly stated in Paragraph 4 as to those companies and individuals represented by us with the following exceptions, as to which the facts are herewith stated:

Charles L. Jones was a vice-president of Socony-Vacuum Oil Company, Inc.

R. R. Irwin was assistant manager of the White Eagle Division of Socony-Vacuum.

Bryan S. Reid was manager of the Chicago Division of Socony-Vacuum.

R. H. McElroy, Jr. of The Pure Oil Company was sales manager, wholesale marketing.

Dewey K. Chamberlain of The Pure Oil Company was purchasing and sales agent, Refinery Division, Tulsa, Oklahoma.

F. E. Lakin was sales manager of Shell Petroleum Corporation until March 1, 1936, when he became vice-president in charge of marketing.

R. D. Cottingham was assistant to the vice-president of The Texas Company.

P. C. Scullin of Houston, Texas, was vice-president and general manager of Indian Refining Company, affiliate of The Texas Company.

Edward L. Shea of Locust Valley, New York, was executive vice-president of Tide Water after December 14, 1936; having been a vice-president prior to that time.

4665 Noel Robinson was vice-president of Tide Water Associated Oil Company after December 17, 1936, having been vice-president and a director of Tide Water Oil Company, a New Jersey corporation, prior to that, until the dissolution of that company on September 4, 1936.

J. W. Warner was assistant vice-president in charge of sales for the Mid-Continent Region of the Tide Water Division of Tide Water Associated Oil Company after December 17, 1936, having been a vice-president and director of Tide Water Oil Company, an Oklahoma corporation, until its dissolution on November 12, 1936.

R. O. Audrain was an employee concerned with tank car purchases and sales of gasoline in the Mid-Continent Region of the Tide Water Division of Tide Water Associated Oil Company after November 30, 1936, having been an employee in the same capacity of Tide Water Oil Company, an Oklahoma corporation, until its dissolution on November 12, 1936.

Fred L. Koopman was an order clerk of Phillips Petroleum Company.

James Nagle was division manager of wholesale sales in Oklahoma of the Skelly Oil Company.

III.

In addition, the letter from Assistant Attorney General Jackson requested that we stipulate as to whether the companies which we represent were authorized to do business in Wisconsin, whether they did business in Wisconsin, including the Western District thereof during the indictment period, whether they are engaged in the manufacture, purchase, transportation and sale of petroleum products, and whether they did business with jobbers in the Western District of Wisconsin during the indictment period.

We are authorized to state that the facts are as follows:

Each of the defendant companies named below was authorized to do business in the State of Wisconsin, with the qualifications noted:

Barnsdall Refining Company (since June 1, 1935).
Standard Oil Company (Indiana).
Wadhams Oil Company.
Socony-Vacuum Oil Company, Inc.
4666 Continental Oil Company.
The Pure Oil Company.
Shell Petroleum Corporation.
Sinclair Refining Company.
The Texas Company.
Phillips Petroleum Company.
Skelly Oil Company.

Deep Rock Oil Corporation.

Tide Water Associated Oil Company, a Delaware corporation, has only done business in Wisconsin since December 1, 1936, having qualified on November 28, 1936.

IV.

Each of the defendant companies named below during the period covered by the indictment has done business in Wisconsin, including the Western District thereof, with the qualifications noted:

Standard Oil Company (Indiana).
Continental Oil Company.
The Pure Oil Company.
Shell Petroleum Corporation.
Sinclair Refining Company.
The Texas Company.
Phillips Petroleum Company.
Skelly Oil Company.
Wadhams Oil Company.

Tide Water Associated Oil Company, a Delaware corporation, has only done business in Wisconsin since December 1, 1936, having qualified on November 28, 1936.

Barnsdall Refining Corporation has done business in Wisconsin since June 1, 1935.

4667 Mid-Continent Petroleum Corporation, a Delaware corporation, did no business except making interstate shipments to jobbers, until January 2, 1937, when it was authorized to do business in the State of Wisconsin in accordance with the laws thereof.

The Globe Oil & Refining Company, an Illinois corporation, had employees soliciting business in Wisconsin, but all business done in Wisconsin was entirely interstate.

V.

Each of the defendant companies named below is engaged principally in the petroleum business, that is to say, in the manufacture, purchase, transportation and sale of petroleum products, with the qualifications noted:

Standard Oil Company (Indiana).
Socony-Vacuum Oil Company, Inc.
Wadhams Oil Company.
Continental Oil Company.
The Pure Oil Company.
Shell Petroleum Corporation.

Sinclair Refining Company.
The Texas Company.
Tide Water Associated Oil Company.
Mid-Continent Petroleum Corporation.
Phillips Petroleum Company.
Skelly Oil Company.
Deep Rock Oil Corporation.
Empire Oil and Refining Company.
Louisiana Oil Refining Corporation.

Cities Service Export Oil Company purchased and sold petroleum products while in existence, but did not engage in the manufacture and transportation of petroleum products.

4668 Barnsdall Refining Corporation manufactures and markets petroleum products but does not produce or transport crude oil.

The Globe Oil & Refining Company of Oklahoma, The Globe Oil & Refining Company of Illinois and The Globe Oil and Refining Company of Kansas manufacture, purchase and sell petroleum products.

VI.

Each of the companies named below, during the indictment period, sold to jobbers who did business in the Western District of Wisconsin, with the qualifications noted:

Continental Oil Company.
The Pure Oil Company.
Shell Petroleum Corporation.
Sinclair Refining Company.
The Texas Company.
Phillips Petroleum Company.
Skelly Oil Company.
Wadhams Oil Company.

Tide Water Associated Oil Company, a Delaware corporation, has only done business in Wisconsin since December 1, 1936.

Mid-Continent Petroleum Corporation, a Delaware corporation, only made interstate shipments, and was not authorized to do business in Wisconsin until January 2, 1937.

Empire Oil and Refining Company made interstate shipments to jobbers in the Western District of Wisconsin, and was not authorized to do business in Wisconsin during the period covered by the indictment.

Barnsdall Refining Corporation sold to jobbers who did business in the Western District of Wisconsin from June 1, 1935.

4669 VII.

We are also authorized to state that the following may stand as admitted:

The Journal of Commerce Publishing Company is a corporation organized and authorized to do business under the laws of the State of Delaware and has its principal place of business in Chicago, Illinois.

W. C. Platt Company is organized under the laws of the State of Ohio and has its principal place of business in Cleveland.

The National Petroleum Publishing Company is organized under the laws of the State of Ohio and has its principal place of business in Cleveland.

Warren C. Platt of Cleveland, Ohio, is President of W. C. Platt Company and President of The National Petroleum Publishing Company.

Very truly yours,
William J. Donovan.
Herbert H. Thomas.

4670 DEFENSE EXHIBIT NO. 4 FOR IDENTIFICATION.

(Letter from Waggoner Refining Company, Inc., by D. G. Gray, Manager, dated May 8, 1934, to brokers and marketers, printed at R. p. 1818.)

4670½ DEFENSE EXHIBIT NO. 6.

(Certified by the Department of the Interior to be copy of an order dated October 18, 1934, signed by Harold L. Ickes, together with 4 forms of tenders attached thereto.)

NOTE: Of the Forms 1, 2, 3 and 4 attached, only Form 1 is printed, as being typical.

4671
ORDER.

Pursuant to the authority of the Act of Congress known as the National Industrial Recovery Act (40 Stat. 195), and Executive Orders Numbers 6199 (July 11, 1933) and 6204 (July 14, 1933), It Is Hereby Ordered That:

I.

All terms used in this Order, which are defined in regulations now existing and issued pursuant to the authority recited in the opening paragraph of this Order, shall be interpreted in the light of such definitions unless otherwise defined herein.

II.

No person shall ship or cause to be shipped from the East Texas Field in interstate or foreign commerce any crude petroleum or any product of crude petroleum unless and until such person has obtained, in conformity with the subsequent provisions of this Order, a permit covering such shipment.

No transporting agency shall receive for transportation or transport from the East Texas Field in interstate or foreign commerce any crude petroleum or any product whatsoever of crude petroleum unless and until such transporting agency has been furnished, in conformity with the subsequent provisions of this Order a permit issued to the shipper covering such shipment.

No person shall divert or reship or cause to be diverted or reshipped in interstate or foreign commerce any crude petroleum produced in the East Texas Field or any product whatsoever of crude petroleum which was processed or refined in said East Texas Field the shipment of
4672 which crude petroleum or product shall not have been
covered by a permit, unless and until such person has obtained a permit so to divert or reship.

No transporting agency shall receive for transportation in interstate of foreign commerce any shipment of crude petroleum or any product whatsoever of crude petroleum diverted or reshipped in interstate or foreign commerce where such crude petroleum was produced in the East Texas Field or such product was processed or refined in the East Texas Field, the shipment of which crude petroleum or product shall not have been covered by a permit, without having been furnished a permit so to divert or reship issued to cover such diversion or reshipment.

Permits herein referred to shall be for convenience designated as approved tenders.

III.

There is hereby created a Board to be known as the "Federal Tender Board," hereinafter designated as the "Board," which shall consist of one or more persons, not exceeding three, who shall be appointed from time to time by the Secretary of the Interior, and who shall serve at his pleasure. It shall be the duty of the Board to hold public hearings, hear testimony and receive evidence, investigate and supervise the investigation of tenders as required under this Order and approve or reject said tenders. Said public hearings shall be held at reasonable times at Kilgore, Texas, or at such other place or places as the Board from time to time may designate. Whenever said Board consists of more than one person, the Board may designate one or more of its members to act for the Board and in the absence of such designation the Board shall act by a majority vote.

Said Board is charged with the duty of hearing and investigating all applications for tenders prescribed by this Order and of approving or rejecting same and no such 4673 tender shall be approved until application for approval has been presented on tender form approved by the Secretary of the Interior and satisfactory evidence presented in support of such application showing the applicant's right to receive approval of said tender.

No person shall have the right to receive approval of any such tender until he has presented to the Board proof establishing to the satisfaction of the Board the fact that the crude petroleum covered by the tender has not been, or, in case of a forecast tender as herein provided for, will not be, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by the laws of the State of Texas or the regulations or orders prescribed thereunder by the Railroad Commission of Texas; and in case such tender covers the products of crude petroleum, then such proof must show that the products were derived wholly from crude petroleum which was not produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by the laws of the State of Texas or the regulations or orders prescribed thereunder by the Railroad Commission of Texas.

As a condition to approval of a tender the Board shall have the right to require the production of books and records and such evidence bearing upon the matters necessary for it to inquire into, in order intelligently to pass upon such application. The Board may hear the testimony of witnesses and have affirmation or oaths administered by any officer authorized by the laws of the United States or the laws of the State of Texas, to administer same, and to require that the testimony of such witnesses be given under affirmation or oath. Any person shall have the right to appear at said hearings and offer any pertinent evidence in support of or in opposition to the application for approval of the tender.

4674

IV.

The Board is authorized to make rules governing the procedure to be followed in its hearings, and one of said rules shall provide for notice of not less than twenty-four hours before the hearing of all applications for approval of tenders which are to be considered; said notice shall be given by posting a brief description of application for approval of tender on a bulletin board at or conveniently near the place of such hearing.

V.

There the application for approval of tender states the ultimate destination for the movement of the commodity covered by the tender is unknown, then such application shall come within the authority of the Board and the commodity shall not be moved unless the tender is approved.

VI.

Where application is made for approval of a tender covering crude petroleum commingled with crude petroleum which was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by the laws of the State of Texas or the orders or regulations of the Railroad Commission of Texas, such tender shall not be approved, nor shall a tender covering products of such commingled crude petroleum be approved:

and where application is made for approval of a tender covering a petroleum product commingled with a petroleum product processed from crude petroleum produced or withdrawn from storage, or commingled with crude petroleum produced or withdrawn from storage, in excess of the amount permitted to be produced or withdrawn from storage by the laws of the State of Texas, or the orders or regulations of the Railroad Commission of Texas, such tender shall not be approved.

4675

VII.

The first transporting agency handling a shipment in interstate or foreign commerce which agency is required under these regulations to receive an approved tender before accepting the shipment is hereby designated as the initial carrier. The initial carrier shall stamp on the shipping papers the following: "This shipment is covered by tender No. .... issued by the Federal Tender Board on the .... day of .... 193....." (The number and date shall be filled in to identify tender). The initial carrier shall not receive any more of the commodity in the shipment than is covered by the tender and shall not receive any different commodity than described in the tender. Each connecting carrier may rely on the stamp showing the description of the tender and will not be required to procure an additional tender before accepting or in handling the shipment, but shall not receive any more of the commodity in the shipment than is covered by the shipping papers and shall not receive any different commodity than described in the shipping paper.

VIII.

The transporting agency handling a shipment under a tender shall endorse on the back of such tender, using the copies designated "Tender Original" and "Tender Return" for this purpose, the amount of deliveries and the date of such deliveries made to such transporting agency and state the classification of the commodity delivered according to I. C. C. classification, using the form of endorsement as shown on the back of the forms approved by this Order, and shall deliver in person or mail said "tender return" to the Federal Tender Board at Kilgore, Texas,

said delivery, or deposit in the United States mails, to be not later than five days after the date of the last delivery made in fulfilling said tender, Said endorsement shall 4676 be signed and sworn to by a duly authorized agent of the transporting agency. This return is for the purpose of enabling the Tender Board to check actual deliveries and the unused portion of any tender.

IX.

Every transporting agency transporting petroleum or petroleum products produced or refined or processed in the East Texas Field from said Field to a destination within the State of Texas shall stamp on the shipping papers a notation that the petroleum was produced or the petroleum product was refined or processed within the East Texas Field and that said petroleum or products may not be shipped or transported in interstate commerce unless a Federal tender shall first be approved. This notation shall appear on the shipping papers covering every subsequent shipment of said petroleum or petroleum products within Texas.

X.

In making application for approved tenders provided for herein forms numbered as follows shall be used:

Form No. 1 to cover the transportation in interstate or foreign commerce of crude petroleum from the storage tanks on the lease of origin in the East Texas Field.

Form No. 2 to cover the transportation in interstate or foreign commerce of crude petroleum forecast to be produced from any lease in the East Texas field during the calendar month in which said application for approved tenders is presented. Shipments of crude petroleum made under Form No. 2 need not be covered by Form No. 1. Any crude petroleum covered by approved tender but not produced prior to seven a. m. of the first day of the calendar month succeeding that in which application for approval of such tender was made and not transported prior to 4677 seven a. m. of the fifth day of the said succeeding calendar month, shall not be shipped unless covered by approved tender Form No. 1.

Form No. 3 to cover the transportation of crude petroleum produced from any lease in the East Texas Field which is moved from any storage or facility in the East Texas Field other than the original lease where said crude petroleum was produced.

Form No. 4 to cover the transportation in such commerce in or from the East Texas Field of any product whatsoever of crude petroleum refiner or processed in the East Texas Field.

The above mentioned four Forms including the reverse sides thereof, copies of which are annexed hereto, marked Exhibits 1, 2, 3 and 4 respectively, are hereby adopted and applications for approved tenders in the respective situations to which said forms are applicable and returns by the transporting agencies shall be made on said forms in accordance with the provisions of this Order and the instructions appearing on said forms, said instructions and forms are made a part of this Order as though fully set forth herein.

XI.

The term "East Texas Field" as used herein is defined to embrace the counties of Gregg, Upshur, Smith, Rusk and that part of Cherokee County covered by the Miguel Delos Santos Coy, A. S. Pratt and Wesley Dikes surveys, in the State of Texas.

XII.

The use of Forms O. E. S. 1 and 2 approved by me on July 20, 1934, and the use of Form O. E. S. 6 (Amended), approved by me on September 5, 1934, is hereby suspended insofar as shipments made from the East Texas Field subsequent to the effective date of this order are concerned. Any prior regulation in conflict herewith is suspended to the extent of such conflict insofar as transactions occurring subsequent to the effective date of this Order are concerned, 4678 it not being intended to relieve any person from the pains and penalties or prosecution for violation prior to the effective date hereof of any regulation or portion thereof hereby suspended.

XIII.

If any section, portion, clause, or part of this Order be held invalid, the same shall not effect any other section, portion, clause or part hereof.

XIV.

This Order shall be effective at the expiration of the fifth day after the signing hereof.

Approved and promulgated this 18th day of October, 1934.

Harold L. Ickes,
Secretary of the Interior.

4679 Tender for Crude Petroleum Form No. 1.

United States
Department of the Interior
Federal Tender Board

Instructions: This application for approved tender is to be used where crude petroleum in storage on lease of origin in the East Texas Field is to be delivered to any pipe line company, railroad company, truck line company, truck owner or other transporting agency for transportation in interstate or foreign commerce and such crude petroleum is not covered by a forecast approved tender Form No. 2. This form of application is to be made out in quadruplicate by the producer or operator of the lease or leases from which said crude petroleum was produced, or his or its duly authorized agent and the shipper or his or its duly authorized agent. The original, so marked, and printed on white paper, when approved and signed by the Federal Tender Board, becomes an approved tender and it with the "Tender Return" copy must be filed with the transporting agency before said Agency may receive for transportation or transport the crude petroleum covered by this application for approved tender; after the original has been approved and signed by said Board, the duplicate, so marked and printed on yellow paper, shall be retained by said Board; the triplicate, so marked and printed on pink paper, shall be retained by the shipper; and the quadruplicate, which is marked "Tender Return" and printed on green paper, shall be delivered with the original to the transporting agency for his use in making the endorsement and return required. The original, so endorsed, is to be retained by the transporting agency as a permanent record.

(The form set forth below must be completely filled out, and instructions followed, otherwise tender will be rejected).

Part One: To be filled out by Producer or Operator of Lease:

To.......................
....

Pipe Line Company, Railroad Company, Truck Line Company, Truck Owner, or other transporting agency.
(Cross out all not applying.)

Principal Place of Business of Transporting Agency:....
....

Local Post Office Address of Transporting Agency:......
....

....	....	....
Producer or Operator of Lease	Principal Business Address of Producer or Operator	Local P. O. Add. of Producer or Operator

.... Hereby Tenders .... Barrels of crude

Field Office Address of Producer or Operator

Petroleum to be delivered to:

....	....	....
Name of Consignee	Principal Place of Business of Consignee	Local P. O. Address of Consignee

4680 at ....

(Destination to which the crude petroleum is to be shipped and facility into which to be delivered if known. If unknown, so state.)

Of ....; which address is ....
mentioned crude Petroleum is now in storage in Tanks Numbers ....; located on ....
act or lease.

Said Crude Petroleum was produced from the lease and on the dates set forth below, to-wit:

Farm or Lease	Survey	Acres	No. Wells on Lease	Lease Allowable	Dates Oil Produced	No. Bbls. to be Delivered
....	....	....	....	....	....	....
....	....	....	....	....	....	....

Total Bbls...............

No portion of the above mentioned Crude Petroleum was produced in excess of the allowable fixed for the above wells by the Railroad Commission of Texas.

During the month in which said Crude Petroleum was produced, state whether crude petroleum was produced from said wells in excess of the allowable therefor fixed by the Railroad Commission of Texas, and if so state the amount in barrels:................None

or

..................Barrels.

Signature .... Producer
or Operator

By & ....
(His or its only authorized agent)

Instructions: Signature to this application for approved tender and affidavit shown in form below must be made only by the producer or operator of the lease or leases from which said crude petroleum was produced, or by his or its duly authorized agent, such authorization being in writing and acknowledged before a Notary Public. The original or duplicate original of such authorization must be on file with the Federal Tender Board prior to the hearing on the application for approval tender.

Affidavit.

State of Texas }
County of .... }

I, ..., the person whose signature appears above, after first being duly sworn, on my oath state that I affixed the foregoing signature and that I am the person authorized to make this application for approved tender; that I have personal knowledge of all the facts stated in this application and said facts so stated herein, are within my knowledge true and correct.

Signature....................
.... 193....

4681 Subscribed And Sworn To Before Me, the undersigned authority, by ...., this the .... day of .... A. D. 193....

....
Notary Public in and for ....
County, Texas.

Part Two: To be filled out by Shipper, if shipper is not the Producer or Operator of Lease.

....	....	....
Name of Consignee	Principal Place of Business of Consignee	P. O. Address of Consignee

At ....

(Destination to which the crude petroleum is to be shipped and facility into which to be delivered, if known, and, if unknown, so state.)

For Account of .... whose address is ....

Signature ....

By ....

(His or its duly authorized agent.)

Instructions: Signature to this Part Two of Application and affidavit shown in form below must be made only by the Shipper, or his or its duly authorized agent, such authorization being in writing and acknowledged before a Notary Public; the original or duplicate original of such authorization must be on file with the Federal Tender Board prior to the hearing on this application.

Affidavit.

State of Texas }
County of .... }

I, ..., the person whose signature appears above, after first being duly sworn, on my oath state that I affixed the foregoing signature and that I am the person authorized to make this application for approved tender; that I have personal knowledge of all the facts stated in this application and said facts so stated are within my knowledge true and correct.

Signature ....

................, 193.....

Subscribed And Sworn To Before Me, the undersigned authority.
by ...., this the .... day of ...., 193....

....

Notary Public in and for ....
County, Texas.
Serial Number ....
Date: ....
Approved or Rejected: ....
Federal Tender Board
By ....

4682 DEFENSE EXHIBIT NO. 7.

(Certified by the Department of the Interior to be copy of document on file in that Department.)

ORDER

Pursuant to the Order of October 18, 1934, authorized by the Act of Congress known as the National Industrial Recovery Act (48 Stat. 195), and Executive Orders Numbers 6199 (July 11, 1933) and 6204 (July 14, 1933), It Is Hereby Ordered That:

Norman L. Meyers shall be appointed Chairman of the Federal Tender Board provided for in the said Order of October 18, 1934, and that Ralph Horween and J. Howard Marshall shall serve as members of the said Board and that M. S. McCorquodale shall serve as legal adviser to said Board; the aforesaid Chairman, members of said Board, and legal adviser to continue in office until an order establishing a permanent Board shall be issued.

Approved and promulgated this 22nd day of October, 1934.

T. A. Walters,
Acting Secretary of the Interior.

4683 GOVERNMENT EXHIBIT NO. 11.

Letterhead of Cities Service Export Oil Company, Tulsa.

January 12, 1935.

Mr. H. E. Brandli,
New York Office.

In St. Louis, during the coming week, will meet the Committee of Mid Continent and Indiana territory Refiners appointed by Mr. Arnott to keep in touch with the tank car gasoline situation. In this group are Messrs. McDowell of Mid Continent, Van Eeghen of Shell, Ashton of Lubrite, Tuttle substituting for Mr. Miskell of Empire, Bullock of Indiana, and Karstedt of Continental. Mr. McDowell is Chairman.

A survey made during the past week showed that to strengthen the tank car market over the balance of January approximately 400 cars of third and middle grade gasolene should be accumulated from North and Central Texas, and the Panhandle, Oklahoma, and Kansas. No effort was made to accurately survey the East Texas situation, nor will that field be brought into any active participation in a purchase movement until after the report on the injunction hearings involving refiners in that area.

Phillips purchased on Friday a reported total of 145 cars of gasoline in North Texas, Oklahoma and Kansas. Sinclair purchased 35 cars in North Texas and the Panhandle. Additional purchases will be made Monday by Phillips, and it is anticipated that at that time Barnsdall, Pure, Mid-Continent, Empire, Wadhams and Lubrite of the Socony interests, and Skelly will purchase additional gasolene, Continental, Shell, and Indiana express a desire to wait a few days before making purchase commitments.

It is the intention of the group to remove, if possible, all 65 plus or "Q" grade gasolene which might become distress material during the balance of the month. Some third grade gasolene will likewise be purchased, but it is hoped that strengthening the middle grade may result in bringing it up, without heavy purchasing, the third grade market.

Neil Buckley.

4684 GOVERNMENT EXHIBIT NO. 12.

Telegram from Neil Buckley to H. E. Brandli dated January 16, 1935, printed in full at R. p. 561.

4685 GOVERNMENT EXHIBIT NO. 13.

Letterhead of Cities Service Export Oil Company, Tulsa.

January 26, 1935.

Mr. H. E. Brandli,
New York Office

The purchases of East Texas gasolene which John Bradshaw made for the East Texas Refining Company total between 195,000 and 200,000 barrels. The principal accumulations were 75,000 barrels of 400 endpoint straight run, and 45,000 barrels of cracked gasolene under 400 endpoint, octane approximately 63, from McMurray; 60,000 barrels of 400 endpoint straight run from Primose Petroleum; 9,500 barrels of 400 endpoint straight run from Oil Refineries. Scattering cars from Linzie, Culver, Lone Star, and other smaller plants. Price paid for this gasolene was 3⅛¢ per gallon, f. o. b. Refinery. All the material is moving under Federal Court injunction to Texas City, Texas.

Over 400 cars had been moved, including the forwarding of Saturday morning.

In addition to this purchasing in East Texas, between 110 and 125 cars of Motor were sold to Marketers for movement into the Southeast and to Indiana territory. The price on this material ranged from 3⅛¢ Refinery to 3⅛¢ Group Three. The principal sellers were Culver, Linzie, and Archer Refining Companies, all of whom held Federal Court injunctions prohibiting the Railroad Commission interfering with their business.

The next largest stock of gasolene in the field was held by Southport representing the gasolene which we purchased. The only other stocks of greater than 10,000 barrels are those of Gilliland, Arrow, Utah, and Ocean. These inventories ranged from 9,000 to 18,000 barrels, and these refiners are handling their material for prices ranging from 3¼¢ to 3½¢ Refinery.

McMurray is at present endeavoring to secure an injunction which will allow him to move gasolene to be manufactured from a crude oil inventory reported to be between 300,000 and 350,000 barrels. The statement is credited to him that if he secured such a tender he would have an additional 100,000 barrels of gasolene available for the market within the next two or three weeks. Other large crude stocks which may be cleared if McMurray is successful are listed hereunder. The figures, taken from data and estimates prepared by East Texas Field Scouts, cannot be authenticated.

4686	Beacon	36,000 barrels
	East Texas Refg.	81,000 barrels
	Gilliland	110,000 barrels
	Lake	43,000 barrels
	McMurray (Arp)	140,000 barrels
	" (Tyler)	165,000 barrels
	Ozozo	124,000 barrels
	Panama	125,000 barrels
	Union	170,000 barrels
	Utah	42,000 barrels.

The knowledge that Bradshaw has accumulated a large percentage of the East Texas gasolene stocks which were overhanging the market may prove stimulating to the domestic tank car market price. However, at a time when demand is at a very low ebb, the dumping of a hundred or more cars of gasolene at 3⅛¢ to 3¼¢ Group Three will undoubtedly make difficult the operation of the uplift buyers for the next two or three weeks. A large quantity of the gasolene involved has been moved to St. Louis, Kansas City, and other terminals on shippers order to be doled out by brokers as they may find buyers. Further reaction of the market will await the success or failure of the present East Texas to clear products made from frozen crude stocks. Pending that decision, the domestic tank car market for third grade gasolene must be regarded as at a 3¼¢ to 3⅜¢ level.

The decline in the motor price has not yet had any effect on Natural Gasolene price. Shippers frankly admit lack of any new business, but claim no difficulty in holding present levels well into February. After the middle of the month further fluctuations in price will depend upon the extent of cargo buying as heavy demand for domestic shipment will begin to taper off.

Continental's decision to sell a cargo of kerosene through Dale Moore to Bradshaw and Eastern States surprised everyone here. They had refused to admit the accumulations of stocks and any interest in making sales to other refiners who needed supplies. The price of this cargo is variously reported as from 3⅜¢ Ponca City to 4⅞¢ at the boat. We are inclined to the belief that the latter price is more nearly correct as the material is moving to the Continental terminal at Texas City, which will give the shipper the benefit of a higher net back, and the purchaser a lower cost than would have been the case if the cargo has moved through Norsworthy or any other terminal, on a ⅛¢ per gallon charge. While definite information cannot be obtained from Continental, it is believed that they have an additional 35,000 to 50,000 barrels of kerosene in
4687 stock, but they have shown no inclination or willingness to make a sale. Possibly they might be interested in a firm offer.

Very truly,
Neil Buckley.

4688 GOVERNMENT EXHIBIT NO. 14.

Letterhead of Cities Service Export Oil Company, Tulsa.

January 30, 1935.

Mr. H. E. Brandli,
New York Office

Several of the larger East Texas Refiners, commonly identified here as being the Fisher Group, who are nominating themselves for classification in the 'survival of the fittest' are endeavoring to reopen the subject of a Central Sales Agency for East Texas. You will recall that Mr. Bennett had an idea along this line last spring.

A meeting was held in Judge Starns quarters on the evening of January 29 to develop the subject, obtain the ideas of potential members in such an association, and if possible make preliminary plans for a corporation. Potential members are Arrow, Oil Refineries, The Wrather Interests, Southport Petroleum, Panama Refining, Union Refining, Danciger, East Texas Refining, Texas Oil Products, Gilliland, Long Star, McMurray, and two or three others. All of these people are not, however, represented by Judge Fisher.

Jules Constantine of the Solarine Refining Company has been pushing himself rather strongly for the Management of such an organization. His principal rival is Louis Green of Ft. Worth. Neither of them can secure cooperation from any large part of the proposed membership.

It is the idea of this group, if an organization can be perfected, to endeavor to offer their products through the P&C Committee to Major Oil Companies. It is hoped that under such a method cooperation could be extended for the curtailment of runs during periods of slow demand and for elimination of dumping into the domestic market with resultant price slashing.

While such an organization might accomplish much good, we doubt very much the ability of the sponsors in securing sufficient cooperation to warrant the successful functioning, for the present at least, of such a proposal. Entirely too much suspicion of the motivies of neighbors exists today in East Texas. Furthermore, several refiners have advised us that under no conditions would they turn their output over to such an organization for disposal.

4689 As further details on this question may be available, will advise you.

Very truly,
Neil Buckley.

P. S.

Learned today that some of the members of the proposed organization discussed among themselves the possibility of obtaining cooperation from some of the Major Companies and furnishing an experienced man to operate the proposed agency for a period of six months or more. Their idea was to borrow the services of such an individual. We were asked whether we would consent to consider such a task were it offered to us, and replied that any overture along this line would have to be made to the Officials of the company. You will recall that Mr. Bennett had such an idea last May or June.

NB

4690 GOVERNMENT EXHIBIT NO. 15.

Letterhead of Cities Service Export Oil Company, Tulsa.

February 2, 1935.

Mr. H. E. Brandli,
New York Office

Under present plans will be in East Texas on Monday. The group of the larger Refiners who are proposing a Central Marketing Agency expect to have a meeting either Monday evening or Tuesday.

Will communicate with you by telegraph sometime during Monday, advising you a telegraphic address for Tuesday morning.

Because of the uncertainty of the outcome of the legal entanglement which now surrounds the East Texas plants, it is not possible at this time to pass along any comment on the proposed venture. Will let you have complete information just as early in the week as any news is available.

Very truly,
Neil Buckley.

4691 GOVERNMENT EXHIBIT NO. 16.

Letterhead of Cities Service Export Oil Company, Tulsa.

Mr. H. E. Brandli, February 2, 1935.
New York Office

Regardless of the claimed sincerity of a group of 15 to 20 of the generally regarded more responsible Refiners in the East Texas field in attempting to form an organization which will work toward stabilization of the refined oil markets, Saturday morning's outlook was not encouraging for early success or even encouragement. It is true that with the sale of practically all injunction gasolene in the field and the moving of a major portion of this inventory, the East Texas gasolene market is today stronger than that of any other area in the Mid Continent field. But continued legal snarls involving the release of other products, principally claimed topped crude and acknowledged crude oil, makes an estimate of probabilities impossible.

Although there is no known record of the Tyreco Refining Company having filed an inventory for 110,000 barrels of claimed fuel oil on hand December 10, Federal Judge Bryant on February 1 accepted the evidence of Tyreco in granting them an injunction to move this product without a State tender. The same Judge took under advisement, pending the presentation of further evidence, the application of the Linzie Refining Company for the movement of more than 200,000 barrels of claimed topped crude. In so far as known, no inventory record for this oil—as of December 10—was filed with the Railroad Commission. Furthermore Captain Stanley testified that in his opinion the material was crude oil.

There appears to be a growing racket on the part of lawyers to build up evidence that various quantities of crude held by producers in the field was above ground on December 10. The quantity of crude which might be claimed legal under such a plea is, of course, unknown and unquestionably beyond estimate. If the Refiners who are known to have crude oil on hand that was in inventory on December 10 succeed in obtaining clearance for such oil, they will be joined by producers demanding similar clearance. Thus, regardless of the attitude of Federal Judge Bryant in apparently leaning backwards in his effort to prevent the release of such oil, the weakness of the State's position in not having acceptable inventory records presents a discouraging if not deplorable outlook.

4692 Some indication of the trend toward the releasing of all stored products in the field may be apparent the early part of the coming week. If it is ruled and the ruling is sustained by higher Courts that only refinery inventories, whether they be crude oil or light oil products, can be shipped, then there seems warranted the hope that within a comparatively short time the East Texas Refinery situation can be put in order, and through marketing cooperation a firmer market established. On the other hand, if all crude oil stocks in the field are released no real improvement can be anticipated for a period of from 60 to 90 days.

East Texas gasolene today claims a low of 3¼¢ either Group or Refinery on motor. Only stray cars of monoplane are available at 3¼¢ Refinery, practically all shippers demanding, and apparently obtaining, 3⅜¢. Kerosene is tightly held in the field at 3½¢. Distillate has softened off to a price of 2⅞¢ to 3¢. Tendered fuel oil holds from 50¢ to 55¢, while injunction fuel is being moved at around a 40¢ level.

In the balance of the Mid Continent field the picture is somewhat different. Two or three Refiners, Champlin is mentioned as one of them, have been offering motor gasolene at 3⅛¢ for resale and 3¼¢ to the trade. Kerosene shows evidence of softening, with small lots for resale being purchased at 3⅜¢. Several of the larger Refiners have released furnace oil stocks, a factor which has caused price of distillate and zero gas oil to weaken in East Texas. Fuel oil position of Mid Continent shippers has improved with the acceptance by the Railroads of contracts for providing for a base price of 65¢, or 5¢ higher than obtained in recent years. A minimum of 50¢, a maximum of 85¢ will prevail to cover fluctuations in the price of crude oil.

The Natural Gasoline market has held firmly, and there are indications that the present levels will be maintained until the 10th or the 15th, of the month. The market position after that date will be regulated by many factors, two of them important to the market. The first, the demand for cargo shipment—there are no known inquiries at present. The second, and of equal importance, the inclination on the part of Phillips Petroleum Company to discontinue the sale of pipe line supplies to associates in the Great Lakes Pipe Line. A continuance and growth of such policy
would place several large refiners in the in the open
4693 market. Last, and a lesser factor, for the time being
at least, is the decision to be made by many companies on the marketing of a more voluable motor gasolene. This trend, if the leadership of a few companies is followed next fall by the majority, will provide a stronger Natural Gasoline market beginning in late summer.

Very truly,
Neil Buckley.

4694 GOVERNMENT EXHIBIT NO. 17.

Henry L. Doherty & Company
Received Telegram

New York, N. Y.
March 14, 1935

H. D. Frueauff

The question of surplus gasoline which has been under consideration must be finalized tomorrow urge you be present meeting at Waldorf Hotel Friday March fifteenth ten o'clock Basildon Room telegraph reply.

C. E. Arnott

(Handwritten Initials):
"H. D. F." "P."

4695 GOVERNMENT EXHIBIT NO. 18.

Letterhead of Cities Service Export Oil Company, Tulsa.

April 8, 1935.

Mr. H. E. Brandli
New York Office

The subject matter of your personal letter of April 5 had previously been discussed with Mr. Arnott in Excelsior Springs. Advised him that the work, which had been purely voluntary, had taken practically all of my time for the past 60 days, and while the company was not selfish in the matter, having plain evidence of the vast amount of good which had been accomplished, important duties had necessarily been neglected.

A week ago advised the East Texas Refiners of the hope that the entire question of marketing could be adjusted at an early date and their problem be taken over by themselves. They in turn requested that the effort continue until the method of purchasing had been placed upon a more orderly basis.

Efforts will be made during the present week and next week by Mr. Arnott to convince at least two and possibly three buyers of East Texas gasoline, who have up to this time been operating on a hand to mouth basis, of the urgency of establishing a method of buying which will eliminate the present day-to-day concern over the appearance of new orders. It was suggested that a meeting be held with Mr. Arnott and others who would be in Atlanta on Wednesday. However, the results to be obtained from a conference at that point were doubtful, and it is possible that a meeting will be arranged at New York during the week of April 15.

Had hoped to be able to relinquish the work entirely not later than the middle of April. However, it now appears that it will be difficult to divorce myself entirely from the contact before the end of April. Unfortunately was placed in the position of having to promise Mr. Arnott that no severance would be made until he had an opportunity of further discussing the subject. However, if such an arrangement is not in sight shortly after the middle of the month, will write him of my necessary retirement and suggest the name now in mind as my successor in the work.

Neil Buckley

4696 GOVERNMENT EXHIBIT NO. 19.

Letterhead of Cities Service Export Oil Company, Tulsa.

April 20, 1935

Mr. H. E. Brandli
New York Office

On April 17 practically every hot oil plant in East Texas shut down. There has been considerable rejoicing over this fact throughout the Mid Continent field, but those closely in touch with the situation are somewhat skeptical as to the duration of the present improved conditions.

One hot oil refiner, who had continued operations and violation of Court orders, was sentenced to jail for contempt. Such action frightened many operators into closing down immediately. Others were approached by Railroad Commission deputies and received orders to shut down. The Commission had obtained injunctions against not only the operators but against the refining properties and receivership threats would accompany the serving of the injunctions. There was also the added caution "Our Governor is in Washington fighting Federal legislation. It is about time the Oil Industry of Texas showed some spirit of cooperation with the Governor in his effort." It is this latter statement that causes many on lookers to raise both eyebrows.

The truck bill, which was passed by the Texas lower house, struck a snag in the Senate. It was found that the bill, as written, was not only confiscatory but penalized only the driver of the vehicle. The bill has been rewritten, is back in committee, and provides for severe penalties for the refiner, truck owner, driver, and buying agent who handles oil loaded in a truck without a State manifesto issued against tendered gasoline.

If the truck bill as rewritten can be passed as an emergency measure by both houses in Austin and signed by the Governor prior to the reopening of the hot oil plants which are shutdown, Texas retail markets will show further improvement.

The dock price for truck loading advanced on February 18 to a low of 4¢ per gallon. On the 19th Magnolia advanced the retail price of third grade 1¢ throughout the
Dallas-Ft. Worth metropolitan area. The dock price
4697 was immediately advanced to a low of 4½¢. There
is no question but what the retail price would be advanced an additional ½¢ provided the dock price was

raised to 4¾¢. But inasmuch as it is extremely doubtful whether the tank car price will move above 4¼¢ East Texas refinery during the coming week, a spread of ½¢ between tank car and truck price is regarded as too wide under present conditions.

Furthermore the line between profit and loss on running dollar East Texas crude through a skimming plant is at present between 4½¢-4⅝¢ per gallon. Therefore a return which will show any considerable amount of profit to a refiner will increase crude runs to an extent where the handling of surplus gasoline will be difficult. It is questionable, therefore, whether a dock price of 4¾¢ to 5¢ will prevail in East Texas much before April 27 to 29th, at which time the tank car market will, if demand continues, probably move up to 4⅜¢ to 4½¢ f. o. b. Refinery.

Neil Buckley.

4698 GOVERNMENT EXHIBIT NO. 20.

Letterhead of Cities Service Export Oil Company, Tulsa.

April 27, 1935

Mr. H. E. Brandli
New York Office.

The tank car market in East Texas closes the week in the healthiest condition in the history of refining in that area. With the exception of Burford, whose status—as related to the other plants in the field—has not been definitely decided upon, every Independent in the field operating on tendered oil has orders ahead for his gasoline manufacture into the early part of the coming week. Inasmuch as orders are usually placed on Monday for shipment during that week, the plant coverage will undoubtedly be extended for another week or ten days beyond April 29.

The price on either motor or 400 endpoint gasoline is firm at 4⅜¢ refinery for either resale to marketers or sale to refiners. During the past 48 hours Oklahoma and Northern brokers have been unsuccessful in obtaining more than one to three car lots at 4½¢ Group.

Kerosene is scarce at the refinery at 3¼¢. The majority are asking and obtaining for Southeastern movement 3⅜¢. Prices ranging from 2⅝¢ to 3¢ f. o. b. refinery prevail on distillate, the high price covering all under 600 endpoint prime white. UGI gas oil is low at 2⅜¢ with the manufacture available for shipment limited at the present time to approximately 2000 barrels daily. Railroads are now paying 60¢ for heavy fuel and refiners are obtaining from 62½¢ to 65¢ for sales made direct to the trade.

On the basis of these figures all of the modern cracking and semi-cracking plants are making a few cents per barrel, above crude cost. An additional ⅛¢ gallon advance in gasoline will give them a definite margin of profit. The few skimming plants which operate are not yet making money, but will cross the line from red to black when low octane gasoline reaches a level of 4⅝¢ refinery.

The fact that East Texas gasoline can no longer move to the Gulf Coast at a price competitive with the cargo market has assisted the Gulf Coast refiners in clearing up their situation. Cargo purchases of the past week have removed the gasoline that might have become
4699 distress. You are undoubtedly acquainted with the
fact that Eastern States sold a cargo and that Crown and the American Petroleum—Suburban Corporation—sold part cargoes. Chalmette sold a cargo for Canadian shipment. Burford loaded the Phoenix, presumably for Hart, a week ago, which relieved the position of that combination.

It would seem certain that an additional ½¢ advance in the New York tank car market will, unless California breaks loose, bring an advance in Gulf Coast cargo quotations for coastwise movement.

Whether this more or less ideal market situation will continue is a question, but reports coming to us from the East indicate that those companies who have benefited by the strengthening of the markets are well satisfied with their purchasing ventures and will continue their interest in the problem. The next week or two, with further advances in tank car markets, should show definitely what the attitude will be over the coming months. There may be a slackening of interest, but if break-even refinery prices can be maintained through May, believe the crude reduction propaganda of 60 days ago will have reversed itself to the point where agitation for a crude advance will be pronounced.

Neil Buckley

4700 GOVERNMENT EXHIBIT NO. 21.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
May 17, 1935

Mr. H. E. Brandli,
New York Office.

Advised Mr. C. E. Arnott on the occasion of his visit here on May 16 of the necessity of discontinuing the work which has been carried on with the East Texas Refiners. Relief was requested not later than the end of May.

He stated he would advise, if possible during the coming week, whether he wished a final report to be made in person in New York prior to actual relinquishment of the present assignment.

Neil Buckley

4701 GOVERNMENT EXHIBIT NO. 22.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
May 17, 1935

Personal

Mr. H. E. Brandli,
New York Office.

For your confidential information, it is reported that approximately 400,000 barrels of gasoline has been purchased in East Texas by Major refiner purchasers during the period in which the East Texas Refiners Marketing Association has been in operation. The accumulation of this quantity of material, which otherwise would have been distress gasoline, is in a considerable measure responsible for the difference between the price of 3⅛¢ early in February and the low price of 4½¢ f. o. b. refinery which today prevails.

We have been advised unofficially that approximately 550,000 barrels of gasoline has been purchased in cargo lots from independent refiners on the Gulf Coast during the period from late March to the middle of May. These figures have not been given to us in exact detail, but we believe they are substantially correct.

Neil Buckley

4702 GOVERNMENT EXHIBIT NO. 23.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
May 25, 1935

Mr. H. E. Brandli,
New York Office

Having completed the purchase of all the Natural Gasoline that could move on or prior to May 30 in line with your telegram of this date, and obtaining advice from Mr. Welch that the consideration of the Natural Gasoline contract would not be taken up before the end of the coming week or the first week of June, and because of inability to communicate with Mr. Arnott requesting a postponement of the engagements he had made for me with the Executives of major companies and for the meeting which he had called, felt it was desirable to go through with the plans which had been made. Will, therefore, be in New York on Monday morning, and will communicate with you as early in the day as possible.

All Natural Gasoline shippers have been requested to rush movement of material on order for us, making completion of shipments on May 29 if at all possible. We are keeping close check of movements of these orders, and believe that all manufacturers will comply with their promises to us.

Neil Buckley

4703 GOVERNMENT EXHIBIT NO. 24.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
June 17, 1935

Mr. H. E. Brandli,
New York Office.

It is our understanding there has been some concern in the East, with the elimination of the code, as to whether tank car prices in the Interior would maintain present levels thru the inability of the Industry to attempt to stabilize itself.

In the so termed Mid-Continent area there was considerable gasoline purchased by larger companies during the first week of June, causing many observers to feel that the amount of the distress gasoline which would overhang the market could not be easily absorbed. During the second week of June practically no gasoline was available to the larger refiner purchasers, and a few who could not wait for supplies entered the East market for material.

There was likewise concern over the East Texas situation. It was felt that with the removal of Code restrictions there would be an immediate increase in refinery production and that the orderly absorptions of market surplus was at an end. Maintenance of markets did furnish worry for the operators in the field for a few days. However, the 14 or 15 shippers who were moving State and Federal Tendered Gasoline, closed the week ending June 15 with very little gasoline on hand and sufficient orders are in sight, for a week to week continuation of purchasing on a basis which seems to forecast at least fairly stabilized markets for that area.

Tank car shipments of Federal Tendered Gasoline from East Texas increased less than 1000 barrels per day from late February and early March to the end of May, a figure which is less than a normal seasonal manufacturing increase. When it is considered that gasoline prices in early March were at a level of approximately 3¼¢ per gallon as against the level of 4⅝¢ on today's market, the fear of those who anticipated greatly increased refinery runs through higher prices seems to have been stilled. The difficulty which the Independent Refiners in East Texas experience in obtaining crude supplies has proven an effective curb on refinery runs. Independents are today offering prices delivered refinery which amount to premiums to obtain crude, but are not successful in obtaining sufficient oil to make the handling of the products manufactured therefrom a burden too difficult to handle.

Neil Buckley

4704 GOVERNMENT EXHIBIT NO. 25.

Telegram

Tulsa, Oklahoma
July 8, 1935

H. E. Brandli
70 Pine St., N. Y. C.

Both refinery and natural markets appear much steadier integrated company purchasing in Eatex for present week will be higher than for past several weeks prices remaining firm kerosene burning oil markets continue very soft limited quantities Eatex material available two seven eighths possibly three quarters.

Neil Buckley.

4705 GOVERNMENT EXHIBIT NO. 26.

Telegram

Tulsa, Oklahoma
July 10, 1935

H. E. Brandli
70 Pine St., N. Y. C.

Gasoline quotations unchanged any under market material that appears quickly absorbed by inter refiner buying bought two additional douba three cents Notex please advise your wishes concerning Eatex kerosene purchasing.

Neil Buckley

4706 GOVERNMENT EXHIBIT NO. 27.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
July 24, 1935

Mr. H. E. Brandli
New York Office

In various parts of the marketing territory there are outbreaks of retail price chiseling and price cutting. In practically every instance the cause is traced to the revival of Commercial Discounts, although the widening of the Dealer's margins was a seriously contributing factor. Further analysis shows that in the majority of cases price cutting is started by Dealers and Dealer's Agents of Major Oil Companies.

As a result of the present disturbed condition, the heads of the Retail Marketing Divisions of the integrated companies are already starting to "yell" that the tank car price will have to be lowered to give them a chance for an even break. Thus they would have a recurrence of the same cycle in which they operated until late last year—retail price cutting, tank car price cutting, and this year it would be crude price cutting.

At the present moment there is no evidence that tank car prices will be allowed to decline to a point where they will threaten the normal retail market structure during August, and unless there is a marked change of sentiment there will be no material price drop during September. There is today every reason to believe that if the Major Companies who control the supply of crude and refined products wish to maintain firm tank car markets they can, if they are willing to properly protect themselves, control the retail price structure. There today seems a very good chance for the Major Companies to throw the retail marketing situation entirely into the hands of the individual jobber, and by rigidly controlling either the tank car price or the tank wagon market, or both, would eliminate many present ills.

That the tank car market will not decline to any great extent during August or early September may seem a broad statement. There is, however, considerable evidence in the field that the crude production cut-back, at present being made effective, is a factor more encouraging than appears on the surface. The August reductions of approximately 25,000 barrels daily in Oklahoma and a drop to
4707 1,001,000 barrels daily in Texas, with Kansas yet to
be heard from, should build further encouragement. Executives of two of the largest Major Companies in the East have advised us within the past few days of their belief that the cooperation of Oklahoma and Texas alone in the curbing of overproduction of crude was the most encouraging indication that the Industry had experienced in a long period of time. They, personally, had definitely decided to continue their individual stabilization efforts.

From another source today learned that one of the largest Major Companies, previously entirely aloof from the stabilization project, were very seriously considering a complete reversal of their policy, due to the change in the crude oil production picture. The entrance of that Company into individual stabilization work would mean that every major company in the Industry, with the exception of one Semi-Major organization, was doing its part in contributing to the maintenance of orderly markets. It is true that the company in question has not, as yet, decided upon its course, but surface indications are encouraging.

The 100% sore spot in the entire Industry today is the State Tendered and confiscated oil question in East Texas. Various investigations into the status of overproduced oil, which is finding its way into the State Market, continue under way at Austin and various other parts of the State. Whether such sessions will uncover enough evidence to "place the monkey on someone's shoulders" remains to be seen. Personally we are skeptical of the results. However, the present situation is so rotten that an open scandal could break and present cut-throat marketing of third grade gasoline change overnight. But even as bad as this situation is, its confinement to Texas alone removed its menace from the National picture for such period as the Federal Tender Board operates in Texas.

Neil Buckley

4708 GOVERNMENT EXHIBIT NO. 29.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
September 14, 1935

Mr. H. E. Brandli,
New York Office.

At the present moment the condition of the refined products market in East Texas is in a healthier state than has been evidenced in the past several months. Not only is there a considerable curtailment in the movement of Federally Tendered tank car materials, but there has been a marked slowing down in the movement of trucked gasoline, and a reasonably favorable price increase for State Tendered gasoline.

Crude supplies for the Refiner operating on Federally Tendered material are more tightly held today than has been the case for many weeks. During the past several days two or three Refiners who had sold gasoline in anticipation of receiving Tenders were compelled to buy from other Refiners to make shipment on their commitments. Several Brokers who felt that the decline in spot movement after Labor Day would bring lower prices, found themselves short, and we know of two instances where Marketers took ⅛¢ loss on their sales. There is not today any gasoline, either motor or 400 endpoint, available in East Texas at less than 4½¢ refinery, and very few shippers will accept less than 4⅝¢ for 400 endpoint gasoline.

In the truck market, the activity of the State in shutting down plants found to be operating on forged tenders for either crude or fuel oil, has reduced the supplies to a point where many of the hot oil plants have been shut down. On Thursday only 20 Refiners were operating in the entire field, less than half of them selling to trucks. The lowest price, f.o.b. refinery, for truck gasoline is 3½¢ per gallon, most of the Refiners obtaining 3¾¢ and several refusing to sell for less than 4¢.

At the moment there is the possibility that the Refiners in the field selling entirely to truck purchasers may form a marketing organization and reach some form of selling agreement with a recently formed Independent Truck Owners Association. This latter group claim to include in membership approximately 90% of the gasoline truck fleet which operates from the field, and propose a form of control which would eliminate the outlaw trucker from obtaining supplies from Refiners who wish to cooperate and maintain a reasonably decent price level.

4709 It is felt that the Refiners Marketing Agency cooperating with the Truck Association would make operation so difficult for the Refiner and truckers who did not hold membership in either organization that consistent operations would be practically impossible.

At the present moment there is no evidence of any kind in the field that conditions are such as to cause the anticipation of a early crude price cut. Everyone seems hopeful of an early settlement of the California situation, and no-one takes very seriously, for the moment, the so called menace of the Rodessa field. It is granted that some effort will be made on the part of small Refiners to move refining equipment into the field from East Texas, particularly so if flush production is obtained in the Texas side of the pool. However, the matter of the crude is such that it will be practically impossible for any small operator to refine or market skimmed gasoline at a profit.

Neil Buckley

4710 GOVERNMENT EXHIBIT NO. 30.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
September 28, 1935

Mr. H. E. Brandli
New York Office

Market observers who have been in close touch with the trend of refinery gasoline buying, both by jobbers and by refiners who have been purchasing in the market for the past several months, today expressed belief that tank car prices can, granted the California crude price upset does not spread Eastward, hold the prices at close to present levels for an indefinite period of time.

There was undisguised concern earlier in September that with any sharp downward turn in demand there would not be sufficient buying power to maintain motor gasoline prices at much above a 4¢ level. However, a factor which was overlooked was, to a great extend, the means of enabling the price structure to quickly recover from the upset of two weeks ago. This was the fact that non-integrated refiners were operating with the lowest working stocks in history. Plants which would normally carry an inventory of 10,000 to 15,000 barrels of gasoline, reduced stocks to 1000 and 2000 barrel levels. With two or three exceptions, refiners in East Texas never carry stocks in tanks. The first flurry of weakness, which resulted from the California crude price cut, caused further reductions in working stocks by refiners who wished to avoid being caught with high price stocks in the event of a Mid-Continent price cut.

Just as long as larger independent refiners and integrated company purchasers continue to absorb gasoline in the open market, refinery stocks at small plants will be kept at low levels, and sharp price breaks undoubtedly prevented.

Discouraging from the viewpoint of those interested in stabilization is the failure of refiners generally to reduce crude thru-put. Many have voluntarily reduced their runs, but too large a number of operators continue at levels which would cause quick market reactions in the event inter refiner buying should be suddenly curtailed. Inasmuch as no organized effort can be exerted to create a reduction in refinery runs, the work of individuals is made more difficult than usual. Some progress has been made, however, and it must be said that a better spirit of cooperation exists among a greater number of refiners than has been noted in recent years.

4711 The Natural Gasoline market is today in excellent shape. Phillips and Sinclair purchased heavily during the week, and have absorbed all stocks which might overhang the market for the next several days. Aside from the grumbling on the part of two or three brokers who are handling small plant outputs, and to some extent by Hanlon-Buchanan, who apparently do not want to store material at present prices, there has been no outward sign of price weakness for the past several days. However, all of these elements are today apparently well fortified with instructions as none of them have offers to make for immediate or prompt shipment. Hanlon will undoubtedly be glad to sell gasoline, but so far have refused to accept orders at less than published prices.

Kerosene holds fair strength at 3¼¢ Oklahoma, and is quoted at 3⅛¢ East Texas. Comparatively small amount of material is being manufactured in the latter area at the present time, and shipments are, therefore, light. During the week ending September 22, only 49 cars were shipped from the field, 27 moving inter-state, 3 intra-state, and 19 coastwise. On the 24th 4 cars moved inter-state, 1 intra-state, and on the 25th only 1 car was moved, and that intra-state.

Distillate shipments from East Texas are considerably heavier, the total for the week ending the 22nd being 94 cars, of which 92 cars moved inter-state and 2 cars intra-state. There have been no export coastwise shipments for more than 10 days, the domestic price level of 2¾¢ to 2⅞¢ making Gulf movement unattractive.

Neil Buckley

4712 GOVERNMENT EXHIBIT NO. 31.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
October 12, 1935

Mr. H. E. Brandli,
New York Office

Purchase in East Texas during the past few days of approximately 200 cars of gasoline by Sinclair, price 4⅝¢ refinery, cleaned up all surplus straight-run gasoline in that field for a period extending to October 21 or 22nd. Sinclair would undoubtedly have purchased additional material had they been able to secure supplies, but refiners, to protect their jobbing accounts, would not make additional commitments.

With the almost complete removal of East Texas gasoline as a market threat—and regardless of the fact that such material has not been overhanging the market for several weeks, the old East Texas "bugaboo" has continued to be used as a club by brokers—the balance of the Mid-Continent field showed sharp price strength at the week-end. Brokers like Bradshaw, Primrose, and others usually in a position to put their fingers on any cheap material that was available, are quoting East Texas supplies $4\frac{7}{8}$¢ group, subject confirmation. Oklahoma refiners, certain that East Texas was out of the picture, strengthened their prices to $4\frac{3}{4}$¢, and thru gradual reduction of refinery runs hope to be able to maintain that figure thru the month of October.

Crude oil supplies are tightening up very materially in Kansas. Skelly, building a new line North and West from Eldorado, are having a very difficult time securing any connections. Their present predicament is made doubly serious by the loss of 4800 barrels of Stanolind oil, which the latter company disconnected from Skelly's pipe line during the last few days. Shell, who have always maintained a heavy crude storage at Arkansas City, report less than 20 days supply with no relief in sight until after the first of the year. With flush production definitely a thing of the past in Oklahoma City and Seminole, the independent refiners find it difficult to easily secure supplies from
4713 wells within easy transport distance. There is a surplus
of oil in the Fitts pool. However, the pipe line costs from that point to the plants needing oil are, under present tariffs, too high for the independent's pocketbook.

From today's outlook, the general crude structure is in better shape than for many years, and if there is not some setback either in East Texas or as a result of a fight between Texas and Louisiana over the rate of Rodessa production, there seems to be little hazard to affirm crude oil market during the winter.

Neil Buckley

(Handwritten Notations):

"Sinsheimer note and return. B"

"Get your export price where it should be."

"See Second page. S"

4714 GOVERNMENT EXHIBIT NO. 32.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Tulsa, Oklahoma
October 19, 1935

Mr. H. E. Brandli
New York Office

If you contemplate the need of additional Natural or other products which it will be necessary to purchase during the coming week, will appreciate your so advising on Monday.

Mr. Arnott has wired requesting attendance at a meeting in New York on Wednesday that a report may be made to individuals who are interested in the status of the East Texas refinery situation. Inasmuch as it will be necessary, to comply with this request, to leave here on Monday night, would like to have everything cleared up during the day that can be anticipated as requiring attention during the coming week.

Neil Buckley

4715 GOVERNMENT EXHIBIT NO. 35.

Telegram

New Orleans, La.
January 29, 1936

Harry Frueauff: Cities Service Company
60 Wall St., N. Y. C.

East Texas situation needs prompt handling in order to keep in line need your help very much what we need is your orders for fifty cars will you give me your help answer Roosevelt Hotel New Orleans.

C. E. Arnott

(Handwritten Initials):
"H.D.F."

4716 GOVERNMENT EXHIBIT NO. 36.

Telegram

New York, N. Y.
February 1, 1935

Neil Buckley
National Bank of Tulsa Bldg.

Arnot away vacation Coates discussed matter with Jim Collett and Doctor Lederer both Washington and both agree excellent idea they believe majors will cooperate Stop Believe you appreciate undertaking no small job and will require endless amount work to keep all these Texas refiners in line you have the confidence of all here and believe you can put it over so go to it best wishes for your success.

H. E. Brandli

(Handwritten Notations):
"S. O. Memphis" "Eatex personal"

4717 GOVERNMENT EXHIBIT NO. 39

Letterhead of La Pren Refining Company,
Kilgore, Texas.

April 16, 1935

Mr. Neil Buckley
City Service Export Oil Co.
Tulsa, Oklahoma.

Dear Sir:

In checking over my records I find that I still owe you a few cars on your order TXB 3646. This is the order that you stopped shipment on, on account of low recovery, in as much as it was very embarrassing for us to get rid of these cars that we had loaded, I think it is only fair that we cancel the balance of this order at 3⅜¢ per gallon. I also find that I owe you seven cars on your order TXB 3656, which is at 3⅝¢. I will start shipment on these as soon as possible and clean them up.

I think this is a fair way to handle this misunderstanding, let your company stand half and I will stand half.

Very truly yours,
La Pren Refining Company
A. S. Robertson

4718 **GOVERNMENT EXHIBIT NO. 40.**

1811 Nat'l. Bank of Tulsa Building

Tulsa, Oklahoma
April 18, 1935

Mr. A. S. Robertson
LaPren Refining Company
Kilgore, Texas.

Dear Mr. Robertson:

According to records furnished by our New York office, we purchased from you on February 28, order TXB 3646, fifteen tank cars of 400 endpoint gasoline at 3⅜¢ per gallon. Eleven cars were shipped, leaving a balance due us of four cars.

On March 18 we purchased from you four cars of 400 endpoint gasoline at 3⅝¢ per gallon, order TXB 3654, which were shipped on the same date.

On March 21 we purchased from you seven cars of 400 endpoint gasoline at 3⅝¢, order TXB 3656, none of which has been shipped.

During the last week of March we discussed this subject with you personally at Gladewater and again in your office, and you advised us that you would complete these orders promptly. We discussed the subject further on April 8 over the telephone, and you promised to give us prompt reply, but we did not hear from you. We telephoned you again on April 15, and you promised an immediate start and completion of the orders TXB 3646 and TXB 3656. We now have your letter of April 16 in which you propose to cancel out the balance of four cars due on TXB 3646 for the reason that, because you found it difficult to meet specifications, shipment was delayed.

For nearly three months have spent practically all my time working in the interests of a group of East Texas refiners, of which you are one. Through my persuasion Cities Service Export Oil Company was induced to buy from East Texas refiners during the latter part of February and March more than 600 cars of gasoline, very little of which, at the time of purchase, we had reason to believe we would need. The results of such purchasing is
4719 plainly apparent. Every car of that material except the orders we have standing with you has been shipped.

Under such conditions the request in your letter of April

16 provides a most embarrassing chagrin. Coming from one in whom implicit confidence had been placed proves doubly disappointing. We cannot agree under any conditions to the suggestion that you make, and ask that you complete both orders promptly by shipping the balance of four cars due on TXB 3646 and the seven cars due on TXB 3656.

Very truly,
Neil Buckley

4720 GOVERNMENT EXHIBIT NO. 42

Telegram

Tulsa, Oklahoma
December 2, 1935

H. E. Brandli
70 Pine St., N. Y. C.

Sinclair Monday purchased approximate two hundred cars Eatex aviation for movement Gulf over December reported four three eighths refinery this in addition to regular weekly commitments at going market prices indications may be interested additional two hundred cars aviation provided can obtain at three eighths or one half domestic market materially improved thru removal distress supplies with resale gasoline again quoted four five eighths refinery naturals continue very tight with only small lot supplies any grade available

Neil Buckley

4721 GOVERNMENT EXHIBIT NO. 47

Telegram

Tulsa, Oklahoma
January 6, 1936

H. E. Brandli
70 Pine St., N. Y. C.

Douba Oklahoma three three eighths Notex three one quarter both areas will be eighth lower Tuesday unless early support develops Stop Would you be interested quantity Eatex aviation January on same basis Sinclair transaction for December please reply promptly as believe Sinclair again surveying possibilities.

Neil Buckley

4722 GOVERNMENT EXHIBIT NO. 52

Tulsa, Oklahoma
March 7, 1936

Mr. H. E. Brandli
New York Office

Today the market trend in East Texas is upward. Twelve refiners will ship federally tendered gasoline in tank cars during the coming week. Two of these plants have shut down and will be shipping from inventory.

Stocks of straight run gasoline available for shipment as of Saturday night total slightly more than 60,000 barrels, of which Burford holds approximately 30,000 barrels. Total unsold manufacture for the coming week is estimated as 55,000 barrels, for which orders are at present in sight for approximately 40,000 barrels.

The East Texas Refining Company, at present shut down, has transferred approximately a cargo of gasoline from its storage in East Texas to its tankage at Texas City. McMurray Refining Company at Arp is shut down and will probably sell its crude in storage and to be obtained from its connections for the month of March to Empire for transport to the Gulf.

In addition to the refiners today running in East Texas, there are five other plants accumulating federally tendered oil who will start up operations when they can secure a break-even or profitable market for their gasoline. But, with the continued tightening crude supplies in the field, manufacturing of refined products eligible for interstate or coastwise shipment will continue at a low ebb except for the anticipated increase in manufacture by the East Texas Refining Company when its pipe line from Rodessa to Longview is completed in late April or May.

Neil Buckley

4723 GOVERNMENT EXHIBIT NO. 54.

N2018
May 6, 1935

Mr. E. P. Engelke
New York Office

Please refer to our letter N1983 of April 9, in which it was stated that certain items were chargeable to East Texas account and that notation thereon would be given to you at a later date.

We have segregated the items for which we should be given credit and they are listed hereunder. The check marks as mentioned by you as being noted on the Telephone Company's statement were reference notations only and did not refer to the charge-back items.

March 4	Cline—Tyler	$ 6.30
March 4	May—Tyler	4.40
March 25	Cline—Tyler	2.75
March 25	Hartman—New York	5.75
March 25	Robinson—New York	6.00
March 26	Robinson—New York	15.00
March 30	McDowell—Jefferson City	3.85
		$44.05
	Tax	1.40
		$45.45

It will be agreeable to charge my account for the amount shown above, $45.45, and collection will be made from the East Texas group.

Neil Buckley

(Handwritten Notations):
"Paid 5-10
Ck #1 RNC"

4724 GOVERNMENT EXHIBIT NO. 55.

N2021
May 7, 1935

Mr. E. P. Engelke
New York Office

On the attached telephone bill am invoicing the East Texas Group for $182.25 plus tax of $4.35, total $186.60 to cover calls listed on the attached sheet.

Will be in East Texas Wednesday and Thursday and will endeavor to arrange collection of the March and April bills. It would probably seem more advisable to have these checks made out to me personally and indorsed to the company. In the meantime you may, if you wish for the purpose of your records, charge the amount to my account.

Neil Buckley

(Handwritten Notations):
"Pd. 6-12-35
Ck. #17 RNC"

4725 GOVERNMENT EXHIBIT NO. 56.

Items Originally Charged to Tulsa Office Phone and to be Recharged to East Texas Account

April	1	Tyler	$ 4.95	Cline
	2	Tyler	3.85	Cline
	2	New York	19.50	Robinson
	2	New York	14.50	Arnott
	2	New York	9.25	Carnes
	3	New York	12.75	Robinson
	8	Ft. Worth	4.60	Tracey
	8	New York	18.00	Corner
	10	Atlanta	9.50	Arnott
	11	New York	16.25	Corner
	12	Tyler	6.30	Cline
	12	New York	16.50	Robinson
	18	Ft. Worth	.70	Lederer
	18	New York	5.75	Carnes
	22	Ft. Worth	3.60	Tracey
	22	Dallas	2.05	Rew
	22	New York	7.50	Carnes
	22	Dallas	1.55	Rew
	26	Tyler	5.90	Cline
	29	Ft. Worth	4.10	Tracey
	29	New York	9.25	Carnes
	30	Tyler	5.90	Cline
			$182.25	
		Tax	4.35	
		Total	$186.60	

4726 GOVERNMENT EXHIBIT NO. 57.

Tulsa, Oklahoma
June 12, 1935

Dear Bob:

Hereunder list of telephone calls made from LD 773, Tulsa, during the month of May, 1935, in the interest of East Texas Refiners Marketing Association.

April	25	Robinson	Petersburg	$10.75
May	7	Cline	Tyler	5.50
May	14	Tracey	Ft. Worth	6.30
May	15	Bradshaw	Dallas	2.55
May	20	Tracey	Ft. Worth	5.50
May	22	Carnes	New York	7.50
May	23	Bradshaw	Dallas	4.05
May	23	Arnott	New York	16.25
May	24	Tracey	Ft. Worth	5.10
May	25	Cline	Tyler	3.30
				$66.80
			Tax	2.00
				$68.80

The above items will be paid and charged to my account. Will you, therefore, send check to cover at your convenience?

Very truly,
Neil Buckley

cc: Mr. E. P. Engelke
New York Office

(Handwritten Notations):
"Pd. 7-17 Ck. #36
RNC"

4727 GOVERNMENT EXHIBIT NO. 58.

Tulsa, Oklahoma
July 9, 1935

Dear Bob:

Hereunder list of telephone calls made from LD 773, Tulsa, during the month of June, 1935, in the interest of East Texas Refiners Marketing Association:

June 3	Cline	Tyler	$ 7.90
June 3	McElroy	Chicago	4.00
June 8	LD 6	Tyler	3.25
June 11	Bradshaw	Dallas	5.05
June 11	LD 6	Tyler	2.45
June 11	Tracey	Ft. Worth	4.60
June 11	Hartman	Pittsburg	7.50
June 12	Cline	Tyler	3.85
June 12	May	Overton	3.90
June 12	Carnes	New York	7.50
June 14	Lederer	Washington	18.00
June 17	Carnes	New York	9.25
June 18	LD 6	Tyler	5.65
June 19	LD 6	Tyler	6.05
June 20	Cline	Tyler	7.90
June 21	Carnes	New York	5.75
June 22	LD 6	Tyler	3.25
June 27	May	Overton	6.75
June 27	LD 6	Tyler	2.45
June 28	May	Overton	4.45
June 30	Arnott	Short Hill	14.00
June 30	LD 6	Tyler	3.75
			$137.25
		Tax	4.40
			$141.65

The above items will be paid and charged to my account. Will you, therefore, send check to cover at your convenience?

Very truly,
Neil Buckley

(Handwritten Notations):
"Pd. 7-17 Ck. #36
RNC"

4728 GOVERNMENT EXHIBIT NO. 59.

August 14, 1935

R. N. Cline

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of July, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
7/1/35	Cline	Tyler	$ 7.25
7/1/35	Carnes	New York	11.00
7/5/35	Cline	Tyler	6.05
7/6/35	Cline	Tyler	7.65
7/6/35	Cline	Tyler	1.25
7/8/35	Tracey	Ft. Worth	6.70
7/9/35	Cline	Tyler	6.85
7/11/35	Cline	Tyler	3.65
7/12/35	Bradshaw	Dallas	5.75
7/12/35	Cline	Tyler	3.65
7/12/35	Corner	Pittsburg	10.50
7/16/35	Cline	Tyler	5.65
7/16/35	Lederer	Toledo	14.50
7/19/35	Botner	Ft. Worth	1.60
7/19/35	Bradshaw	Dallas	3.05
7/19/35	Cline	Tyler	5.25
7/19/35	Kostelka	Shreveport	6.05
7/23/35	Tracey	Ft. Worth	3.10
7/23/35	Cline	Tyler	2.85
7/23/35	Hartman	Pittsburg	6.00
7/23/35	Robinson	Pittsburg	13.50
7/26/35	Kostelka	Shreveport	2.30
7/27/35	Bishop	Dallas	3.55
7/29/35	Cline	Tyler	7.25
7/29/35	Robinson	Pittsburg	14.50
7/30/35	Bradshaw	Dallas	1.55
7/30/35	Bradshaw	Dallas	3.55
7/31/35	Cline	Tyler	2.85
7/31/35	Cline	Tyler	6.45
7/31/35	May	Overton	3.35
7/31/35	Robinson	New York	25.50
			$202.70
		Tax	6.05
			$208.75

Neil Buckley

(Handwritten Notations):
"Pd. 8-24 Ck. #41
RNC"

4729

GOVERNMENT EXHIBIT NO. 60.

September 10, 1935.

R. N. Cline:

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of August, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
8/2	Cline	Tyler	$ 6.85
8/2	Bradshaw	Dallas	2.55
8/2	Tracey	Ft. Worth	5.90
8/3	Carnes	Ft. Worth	1.60
8/3	Cline	Tyler	4.45
8/3	Cline	Tyler	4.05
8/13	Cline	Tyler	3.65
8/14	Cline	Tyler	2.85
8/14	Bradshaw	Dallas	3.05
8/16	Bradshaw	Dallas	2.55
8/21	Bradshaw	Dallas	4.55
8/21	Meyers	Pittsburg	6.00
8/26	Grogan	Shreveport	6.50
8/27	Robinson	Pittsburg	9.00
8/28	Cline	Tyler	8.05
8/29	Bradshaw	Dallas	1.55
			$73.15
		Tax	3.10
			$76.25

N. B.

(Handwritten Notations):

"Pd. 9-16 Ck. #504
RNC"

4730 GOVERNMENT EXHIBIT NO. 61.

October 11, 1935

R. N. Cline

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of September, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
9/3	Meyers	Pittsburgh	$ .55
9/10	Lederer	Ft. Worth	4.10
9/11	Bradshaw	Dallas	2.55
9/11	Cline	Tyler	.75
9/14	Cline	Tyler	5.25
9/18	Constantine	Overton	3.35
9/18	Bradshaw	Dallas	4.55
9/18	Cline	Tyler	3.25
9/18	Cline	Tyler	2.45
9/19	Bradshaw	Dallas	2.05
9/19	Cline	Tyler	2.05
9/20	Arnott	Atlantic City	5.25
9/20	Hartman	Pittsburg	7.50
9/20	Cline	Tyler	2.45
9/21	Cline	Tyler	4.85
9/25	Bradshaw	Dallas	6.45
9/26	Cline	Tyler	4.05
9/27	Carnes	New York	5.75
9/30	Bradshaw	Dallas	4.55
			$71.75
		Tax	3.30
			$75.05

N. B.

(Handwritten Notations):
"Pd. 10-30 Ck. #533
RNC"

4731 GOVERNMENT EXHIBIT NO. 62.

November 7, 1935

R. N. Cline:

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of October, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
10/1	Cline	Tyler	$ 4.05
10/1	Starns	Gladewater	5.90
10/1	Kostelka	Shreveport	5.05
10/4	Tracey	Ft. Worth	4.60
10/5	Bradshaw	Dallas	4.55
10/5	Bradshaw	Dallas	2.55
10/5	Kostelka	Shreveport	6.05
10/8	Bradshaw	Dallas	3.55
10/8	Robinson	Pittsburg	7.50
10/9	Cline	Tyler	10.45
10/10	Cline	Tyler	3.65
10/11	Cline	Tyler	2.85
10/12	Bradshaw	Dallas	4.05
10/14	Cline	Tyler	4.85
10/15	Bradshaw	Dallas	1.15
10/17	Cline	Tyler	2.05
10/21	Tracey	Ft. Worth	4.10
10/21	Cline	Tyler	7.65
			$84.60
		Plus Tax	3.50
			$88.10

NB

(Handwritten Notations):
"Pd. 11-19 Ck. #542
RNC"

4732 GOVERNMENT EXHIBIT NO. 63.

December 10, 1935.

R. N. Cline:

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of November, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
11/2	Cline	Tyler	$ 8.85
11/6	Carnes	Chicago	3.00
11/6	Ashton	St. Louis	2.05
11/6	LD 417	Dallas	3.25
11/6	Cline	Tyler	4.85
11/7	Cline	Tyler	4.05
11/7	Cline	Tyler	4.45
11/7	Cline	Tyler	2.85
11/8	Robinson	Pittsburg	6.00
11/8	Arnott	Chicago	.40
11/8	Cline	Tyler	5.25
11/23	Cline	Tyler	6.45
11/23	Bradshaw	Dallas	5.75
11/25	Tracey	Ft. Worth	6.70
11/25	Cline	Tyler	6.85
11/23	Arnott	KC Mo.	2.30
11/26	Cline	Tyler	3.65
11/27	Ashton	St. Louis	2.70
11/27	Cline	Tyler	2.45
11/29	Tracey	Ft. Worth	5.10
11/29	Cline	Tyler	3.25
11/29	Cline	Tyler	4.45
11/29	Carnes	New York	5.75
			$100.40
		Tax	4.40
			$104.80 NB

(Handwritten Notations):

"Pd. 12-12 Ck. #550

4733 GOVERNMENT EXHIBIT NO. 64.

Tulsa, Oklahoma
January 10, 1936

Mr. R. N. Cline:

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of December, 1935. Would appreciate having your check to cover at your earliest convenience.

Date	Name	Town	Amt.
11/26	Cline	Tyler	$ 4.85
12/3	Cline	Tyler	2.05
12/4	Tracey	Ft. Worth	3.10
12/5	Arnott	Chicago	5.00
12/5	LD 417	Dallas	1.15
12/5	Bradshaw	Dallas	1.55
12/5	Cline	Tyler	3.65
12/6	Cline	Tyler	5.65
12/6	Cline	Tyler	3.65
12/6	Morgan	Ponca City	2.45
12/9	Cline	Tyler	3.25
12/10	Cline	Tyler	5.25
12/12	Scott	Chicago	4.00
12/13	Cline	Tyler	3.25
12/14	Cline	Tyler	5.25
12/16	Cline	Tyler	2.85
12/17	Bradshaw	Dallas	3.55
12/18	Hartman	New York	5.75
12/18	Cline	Tyler	3.65
12/18	Cline	Tyler	3.25
12/18	Bradshaw	Dallas	1.55
12/18	Bradshaw	Dallas	3.05
12/18	Cline	Tyler	4.45
12/20	Henry May, sr.	Overton	1.70
12/21	Cline	Tyler	3.65
12/23	Cline	Tyler	2.45
12/24	Henry May, sr.	Overton	2.80
12/24	Cline	Tyler	2.45
12/24	E. R. Lederer	Ft. Worth	3.60
12/24	Cline	Tyler	2.85
12/27	Cline	Tyler	2.45
12/26	Cline	Tyler	2.45
12/27	Cline	Tyler	2.85
12/30	Cline	Tyler	2.05
12/31	Cline	Tyler	3.65
12/31	Cline	Tyler	1.65
			$116.80
		Tax	6.95
			$123.75

(Handwritten Notations):
"Pd. 1-28 Ck. #561" NB

4734 GOVERNMENT EXHIBIT NO. 65.

Tulsa, Oklahoma
February 10, 1936

Mr. R. N. Cline,
Tyler, Texas

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of January, 1936. Would appreciate having your check to cover at your earliest convenience:

Date	Name	Town	Amount	
				Gov. Tax
Jan				
7	Mr. Hartman	Pittsburgh, Penn	$ 7.50 —	20
7	Mr. Robinson	"	10.50 —	20
7	Mr. Bradshaw	Dallas	5.05 —	20
7	Mr. Tracey	Ft. Worth, Tx.	2.60 —	20
7	LD 6	Tyler, Tx.	5.25 —	20
9	Mr. Bradshaw	Dallas	3.05 —	20
9	LD 6	Tyler, Tx.	4.05 —	20
11	Mr. Tracey	Ft. Worth, Tx.	3.10 —	20
11	LD 417	Dallas	2.20 —	20
11	LD 6	Tyler, Tx.	5.65 —	20
11	LD 6	Tyler, Tx.	3.65 —	20
13	Mr. Carnes	Chicago, Ill.	2.35 —	20
13	LD 417	Dallas	1.50 —	15
13	LD 6	Tyler, Tx.	1.65 —	15
14	LD 6	Tyler, Tx.	4.45 —	20
15	LD 6	"	2.05 —	20
17	Mr. Tracey	Oklahoma City	.80 —	10
17	"	"	.80 —	10
17	LD 6	Tyler, Tx.	1.25 —	15
21	LD 6	Tyler, Tx.	4.45 —	20
22	Mr. Tracey	Ft. Worth, Tx.	5.10 —	20
23	LD 6	Tyler, Tx.	6.85 —	20
24	Mr. Tracey	Ft. Worth, Tx.	4.10 —	20
24	LD 6	Tyler, Tx.	2.05 —	20
25	LD 417	Dallas	2.20 —	20
28	Carnes	New York N Y	9.25 —	20
27	Mr. Tracey	Ft. Worth, Tx.	5.90 —	20
28	LD 6	Tyler, Tx.	3.65 —	20
29	Mr. Hartman	Philadelphia, Penn.	7.00 —	20
29	Mr. Arnott	New Orleans, La.	9.00 —	20
29	LD 6	Tyler, Tx.	2.05 —	20
30	Henry May, sr.	Overton, Tx.	2.80 —	20
31	"	"	3.35 —	20
				6.25
			$135.20	
			6.25 (Tax)	
			$141.45	

(Handwritten Notations):
"Pd. 2-29 Ck. #571
LD 6—Cline
LD 417—Bradshaw"

4735 GOVERNMENT EXHIBIT NO. 66.

Tulsa, Oklahoma
March 9, 1936

Mr. R. N. Cline,
Tyler, Texas.

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of February, 1936. Would appreciate having your check to cover at your earliest convenience:

Date	Name	Town	Amount	
Feb 7	LD 6	Tyler Tx	6 45	Gov. Tax 20
7	LD 6	"	1 65	15
8	Henry May	Overton	2 80	20
10	LD 417	Dallas	1 15	15
10	Legge	"	5 40	20
10	LD 6	Tyler	2 05	20
12	4-7544	Ft Worth	2 00	20
12	4-7544	"	2 80	20
12	Bradshaw	Dallas	4 05	20
12	Bradshaw	"	7 50	20
12	LD 6	Tyler	3 25	20
12	Carnes	New York	5 75	20
13	Carnes	"	5 75	20
12	LD 6	Tyler	3 25	20
13	LD 6	"	3 65	20
13	Legge	Dallas	3 05	20
13	4-7544	Ft Worth	2 40	20
14	LD 6	Tyler	2 45	20
14	Schullin-Tex Co	Houston	6 00	20
14	Legge	Dallas	2 55	20
14	Legge	"	1 55	15
17	Henry May	Gladewater	1 65	15
17	LD 6	Tyler	5 65	20
17	LD 6	"	1 65	15
17	Carnes	New York	5 75	20
18	LD 6	Tyler	2 05	20
19	LD 6	"	5 25	20
20	Tracey	Ft Worth	4 60	20
20	Henry May	Overton	3 30	20
21	LD 6	Tyler	2 85	20
21	LD 417	Dallas	1 15	15
22	LD 6	Tyler	1 65	15
24	LD 6	"	2 05	20
25	LD 6	"	4 85	20
25	Bourque	Chicago	6 00	20
28	LD 6	Tyler	3 25	20
			127 20	6 85
			$127.20	
			6.85	
		Total	$134.05	NB

(Handwritten Notations):
"Pd. 3-25 Ck. #578"
LD 6—Cline
LD 417—Bradshaw
LD 4-7544—Tracey

4736 GOVERNMENT EXHIBIT NO. 67.

Tulsa, Oklahoma
April 10, 1936

Mr. R. N. Cline,
Tyler, Texas.

Listed hereunder are telephone calls made for the account of the East Texas Marketing Association during the month of March, 1936. Would appreciate having your check to cover at your earliest convenience:

Date	Town	Name	Amount	Tax
March				
2	Tyler	LD 6	$1.65	15
3	"	"	4.85	20
4	"	"	4.05	20
4	"	"	5.25	20
5	Overton	152 H B May	5.00	20
5	Tyler	LD 6	4.85	20
5	Dallas	LD 417 Bradshaw	5.75	20
6	Tyler	LD 6	4.05	20
6	Dallas	LD 417	3.55	20
9	Tyler	LD 6	3.65	20
12	"	"	5.65	20
13	New Orleans	LD 61 Tracey	5.00	20
14	Tyler	LD 6	3.25	20
16	Pittsburgh	Hartman	9.00	20
16	Tyler	LD 6	4.05	20
16	"	"	1.65	15
16	Ft. Worth	LD 301 Tracey	2.60	20
17	New York	Carnes	5.75	20
17	Tyler	LD 6	2.05	20
17	Dallas	LD 417	1.15	15
19	Tyler	LD 6	4.45	20
20	Dallas	LD 417 Bradshaw	5.40	20
25	Tyler	LD 6	2.45	20
25	"	"	4.85	20
26	Dallas	LD 422	3.25	20
26	Tyler	LD 6	3.65	20
30	Ft. Worth	Tracey	2.10	20
			108.95	5.25
				$114.20

cc—Mr. E. P. Engelke
New York Office

(Handwritten Notations): NB

"Pd. 4-21 Ck. #586
L.D. 6—Cline
L.D. 417—Bradshaw
L.D. 422—Bradshaw

4737 GOVERNMENT EXHIBIT NO. 68.

Tulsa, Oklahoma
May 18, 1936

Mr. R. N. Cline,
Tyler, Texas.

Below are listed calls to be charged to the account of East Texas Marketing Association. Will appreciate having your check to cover these calls as soon as possible.

April	Place Called	Person Called	Amount	Tax
2	Dallas	LD 422	$2.20	20
2	Shreveport	LD 37	1.80	15
4	Tyler	LD 6	3.25	20
6	Dallas	LD 422	1.85	15
9	Dallas	LD 422	2.90	20
10	Overton	H. May, sr.	2.80	20
10	Tyler	LD 6	1.00	15
11	Tyler	LD 6	1.25	15
20	Dallas	LD 422	1.15	15
21	Chicago	Arnott	3.00	20
22	Tyler	LD 6	2.45	20
22	Dallas	LD 422	1.50	15
23	Tyler	LD 6	1.25	15
27	Overton	H. May, sr.	2.10	C 20
28	Tyler	LD 6	2.45	20
28	Dallas	LD 422	2.90	20
30	Tyler	LD 6	2.45	20
			$36.30	$3.05
			Total	$39.35

(Handwritten Notations): NB

"Pd. 5-28 Ck. #591
L.D. 422—Bradshaw
L.D. 37—Grogan Oil
L.D. 6—Cline

4738 DEFENSE EXHIBIT NO. 69.

4738a Transcript of District Allocators' Meeting

Planning and Coordination Committee Under the Code for the Petroleum Industry

Wednesday, March 13, 1935

The District Allocators' meeting held March 13, 1935, in Room 1025 Investment Building, Washington, D. C., convened at 10:20 a. m., Mr. J. D. Collett presiding.

Present:
Mr. Collett
Mr. Arnott
Mr. Gould
Mr. Hartman
Mr. Ewing
Mr. Fred Van Covern, Secretary Statistical Sub Committee
Mr. L. F. Craig, Secretary
Mr. F. B. Dow
*(Mr. Buckley
*(Mr. O. D. Robinson

*Representing refiners in East Texas and the Gulf Coast.

District	Representative	Alternate	Visitors
1	Noel Robinson	(C. J. Everett (W. F. Burt	G. H. VanSenden
2	Chester Smith	D. W. Grant	
3	G. F. Greene		
4	John Day		
5A	Roy B. Jones		
5B	R. B. High	P. C. Scullin	H. J. Struth
5C			
6A	H. H. Hewetson	Glenn Poorman	
6B	D. R. McKeithan		
7	H. C. Bretschneider		
8	L. F. Bayer	G. H. Hill	A. C. McLaughlin M. E. Tracy L. R. Holmes

4739 Chairman Collett: Gentlemen, the meeting will please come to order.

On account of the most unfortunate passing of Mr. Bennette, in the emergency of the P. and C Committee has asked me as Chairman of that Committee to act temporarily as

National Coordinator until such time as an election can be had to succeed Mr. Bennette, and such action has been approved by the Administrator.

In the matter of the detail of handling the meeting here today I am going to ask Mr. Fred Van Covern to preside; he is familiar with the detail of it, he has handled it before, he is well acquainted with all of you and with the conditions existing in the various regions, and it will facilitate matters very greatly if he will do that. In the meantime we have the P and C Committee in session, so I am going to have to retire to the P and C Committee room in a very few moments.

Before you get into your deliberations and break up your schedule here today, Mr. Arnott and associates that have been working with him on a program of stabilization and also a program which he will explain to you in detail and which I will not attempt to go into, are here. I think that will be of particular interest to all of you from the refining standpoint. Mr. Arnott has devoted a great deal of time and perseverance and I may say I think a tremendous amount of patience in addition to all the ability and hard work he has put in on this program. He feels that he is getting good results. From the discussions I have had with him I am quite satisfied that is true, and I am going to leave it to him to tell you the detail of it.

I think the advantage of having Mr. Arnott talk to you beforehand is that some of the things that he will have to discuss here probably will have some relation to and some little effect upon your later deliberations. Mr. Arnott, will you take charge and tell these gentlemen what you have to say, and I will retire to the P and C Committee meeting. Mr. Van Covern, will you take the chair? Thank you, gentlemen.

Mr. Fred Van Covern took the chair.

Chairman Van Covern: Mr. Arnott.

Mr. Arnott: I am not going to take very much of 4740 your time, and only as it relates to and comes in contact with allocations. However, as what we have got to do is going to come to your attention eventually and in this instance immediately, I think we should have a little background of the whole picture, because it is going to have an influence in a great many regions in the country.

In our stabilization work we have had to deal with all the issues, all the activities, of the industry that have prevented normal marketing. We have also had to consider what is not only the proper normal basis of rates or prices that the industry is to secure for its product, but the matter of net-back to the refinery, as you all know, is a pretty vital thing and at the moment is what we are concentrating on. But looking at the thing as a whole we come to this matter of so-called homeless or surplus gasoline. It comes from a great many sources; it reaches the competitor or a type of competition that is known as cut price competition from the major companies themselves; it comes from East Texas; it comes from the Gulf refineries, and it comes from that large group of Mid-Continent refineries that we know.

When I say Mid-Continent that means, as we look at it, North Texas, West Texas, Oklahoma, Arkansas, Kansas, and so forth. We do have Pennsylvania and we do have Kentucky and we do have Michigan and states of that character but at the moment let's not refer to them.

It has come to us from three or four of these main sources (we have been in an organized way dealing with them) that the matter of this homeless gasoline ought to have a legitimate and proper place in the picture. The present method of offering that gasoline through brokers or where and how it can be introduced into the market has not resulted in stabilization; it has resulted in purchases by various people in various ways, and that gasoline keeps coming back to the entire industry and it has been destructive. The result of that has been that the net-back to the refiner, including that refiner of homeless gasoline, has caused him to find himself in his realizations in a most embarrassed and a most serious condition. From the refinery point of view today it is a very serious issue with all refiners, whether they be major or independent or large or small, and something, of course, must be done.

We all know that you can't talk very much about the realization of the refiner until you get the level of
4741 effort on the part of the marketer on a normal basis,
because you can only get at your refinery what the market will pay, and if forms of competition continue and due to over pressure of competitive gasoline that is homeless, that has no regular place and doesn't quite fit into the picture, you have the chaos that we have gone through year after year after year, it is to be hoped that something in the way of stabilization in regard to it can be brought about.

Again, without taking you through the detail, the source of supply of East Texas has finalized itself into a refinery marketing association, and that association is dealing with a spokesman, and that spokesman has been sitting and explaining this situation and the attitude of these refiners and has finally come to a point where he states that in addition to its regular business it has a supply of homeless or surplus gasoline that totals so much per month; therefore, we lay that on the table as a definite, concrete quantity of gasoline that these refineries claim will be offered to the market, and therefore looking at East Texas we know definitely what to expect month in and month out, at least until further notice.

As to what those particular refineries may have in their tanks in the way of accumulation at the moment, we will come to the figures in a few minutes and will give you this in detail, but I am trying to set the basic thought—they say they have nothing.

Keep in mind that East Texas has been a menace to not only the Eastern Seaboard, but its gasoline also has found its way up into the Mid-Continent and has been competitive with the so-called Mid-Continent suppliers' or refiners' gasoline. Under this we are considering it comes out of the Mid-Continent and finds its way entirely into the East.

Now we have the Gulf refiners; those are Texas and Louisiana. They have largely, if not completely, been putting their product into the eastern market, and it has been a source of sore competition, the kind of competition that has to have an outlet and if it can't get it at one price gets it at another. It has been instrumental time and time again in being a great irritation and has broken down the structures there.

They in turn and coincidently have gotten together and they have appointed a spokesman, and that spokesman, representing the six or seven or whatever they may
4742 be, has likewise laid before us what they say will be
their definite, established surplus per month. They in their turn have an accumulation; that accumulation is in their tanks; it is equivalent to so much gasoline. And there we come to the principle that we are here to talk to you about, because if there is going to be any movement to consider what is established month in and month out, to be definitely reckoned with, homeless or surplus gasoline and anybody is to give consideration to taking that regularly, and a buyer or an individual could buy that product from a refiner or an individual seller, then it can't be expected that if it is brought about in an organized way, in a month or two months we are going to be informed that it is unfortunate but there is some more accumulation in somebody's tanks, and therefore this matter of what has accumulated in the tanks of any group of refiners, if dealt with, if removed, if taken out of the picture, immediately becomes a question that it must not be duplicated and again accumulated, because then we would have a sub-structure

or an under-structure that would be undermining everything constructive that we are trying to do.

Therefore, keep in mind that in East Texas in the group of refiners you have a current, definite, known quantity of gasoline that will be coming out.

In regard to the Gulf you will have the same, but there is a temporary work to be done, if it is done, to remove what is an accumulation, and after that that is not to be replaced. So with regard to the Gulf you then have a current production, also month in and month out, of surplus gasoline which is to be considered.

In regard to the Mid-Continent, you have another definite quantity, and that quantity comes as a matter of consideration for the Mid-Continent majors and other types of buyers that might be interested in it. They apparently have no accumulation.

Therefore, the question in all this is: If this is all put to work there are going to be no agreements, there are going to be no contracts with regard to prices or other conditions, there is going to be no group buying, it is going to be a matter in the stabilization work of individual companies looking at what there is in the way of surplus gasoline, and a company will have an opportunity to buy from a refinery that has some of that surplus gasoline, whatever it might choose to buy. It is designed that if they
4743 should decide to buy they would do it not spasmodically, but regularly, and so as to bring about, after having heard the condition and the proposals of these refineries, an established, well organized, current, dependable product made and bought.

As to the prices, the prices will express themselves as the competition or as the situation or the law of supply and demand will dictate. It is not expected and it is not hoped, it will not be encouraged, that there will be any quick and sudden turns.

I am telling you all this because I think the more you know of the whole plan the better we will get into this matter of allocations to these refineries and the more you will know what is back of it. I am perfectly conscious that we have made other efforts at times to have this question dealt with. It has always been done in group form. That has involved agreements, group agreements. Those of us who have had anything to do whatsoever with the whole national picture, who have come to Washington and have had any experience with the PAB and eventually the Department of Justice, know just how long that road is, and for some good reason or for some unknown reason or for no reason at all those agreements seem to have disappeared; those outstanding attempts—and they were really sincere and worthy attempts—have disappeared in a sort of cloud of mystery, and I don't think I, for one, or anybody else can tell you just where they have gone—they are out of our minds, they are completed, they are finished, and we are not interested.

This is a very flexible and we think intelligent question. The definite statement has been laid down and at this point I want to explain that we have here with us, first, Mr. Buckley, who is representing and is the liaison officer between the East Texas corporation that I have spoken of and those who have been considering this matter; second, we have Mr. O. D. Robinson of the Republic, and as you know they are interested through the Crown Central operations, and he has been asked to act as spokesman for the Gulf Coast. We have no representative of the Mid-Continent here; that is being taken care of at the moment by the Mid-Continent Group and there is no question of allocation that has come up, but I want to touch on it in a minute.

One thing has been stated definitely. If a known
4744 quantity and a steady quantity of homeless or surplus gasoline is to come forward and it is known definitely what it is, it has got to be recognized and absolutely determined that it is going to be that and not something different, and if in a month or two it transpires that it is materially different, then it can be plainly seen there can be no organized consideration or anything done whatsoever.

Anybody who interests himself in this matter is doing so from the point of view of stabilization of markets. There is no reason why any large refiner, why any large marketer, would go in and the refineries, which have plenty of crude and plenty of facilities, would shut down or otherwise not put through to the refineries, having an influence, incidentally, on the cost item, which is so material in these days of our high competition, and would turn around and, as many of these companies might do and probably would want to do in their efforts to assist in the markets, their own and others jointly, buy gasoline in the Mid-Continent, and the same company buy from East Texas and maybe the same company for the Eastern Seaboard buy from the Gulf Coast and in passing yet might be buying some gasoline from Pennsylvania and other sources, or Michigan, maybe Kentucky. So when the definite, absolute principle is established of a group saying, "That is my surplus", it has got to be known and understood and maintained as that surplus until such time as there is some good reason why it ought to be different.

We don't ask these groups to do anything other than state what their surplus is and what there is involved so that in the consideration that has been given it is as true and as correct and as dependable as can be.

Many questions come up. It isn't our purpose to ask you to deal with those questions today, but they will come up. The questions probably will have to be dealt with very, very carefully. The idea in acquainting you with this is that if what we are saying today should not prove itself as allocations are requested by regions and those regions find that the refiners, for instance, in the Mid-Continent group (I don't know when I say "Mid-Continent" if it registers in your mind as it does in ours, but having it in mind I again say West Texas, North Texas, Arkansas, Kansas, Oklahoma, and that section through there), come for individual allocations and those allocations that are requested by those refiners are not in line with what we
4745 are saying here, then it is to be kept in mind that this
very thing we are talking of is not working along the lines that the refiners themselves (and that is my key thought and the point I want to emphasize), that the refiners themselves have stated would be exactly and definitely the case before anybody interesting themselves can deal with it from a marketing point of view or a purchasing point of view in this homeless and surplus supply.

So we have East Texas here that can tell you what the refiners there feel as to their attitude and their willingness in that respect, and we also have the Gulf refiners who likewise will tell you for themselves what their attitude and feeling is in that respect.

That doesn't mean that if a refinery today is shut down, the minute things begin to look better they immediately want to come into the picture. That may transpire. If it does transpire it will be something that will have to be considered, because immediately instead of dealing with what will be presented to you as before us, it means something very materially more. Then the question is: What is the interest of the buyer? Then the question is: What has got to be done along this same thought and line to keep the market stabilized?

We may have a refinery today that is running 30 per cent that immediately says, "Well, there is going to be something doing. I would like to go up to 60 per cent." I have been having these questions asked me when I have been meeting with these refineries, both West and South, and the attitude of the very groups themselves (these two gentlemen can speak for themselves) and the Mid-Continent is that that is not anticipated and is not expected.

I think as we stand today you can expect those groups to do a great deal within themselves, if not everything within themselves, in order to keep this thing stabilized, and by the time it comes to the Allocators, whether local or this board here, it ought to be pretty well worked out along the lines we are talking about, by then. Your being familiar with it and knowing about it, in case that shouldn't happen there would be a place where it would be discovered it could be dealt with.

So, gentlemen, I am presenting to you a national picture —that is East of the Rockies—whereby this whole stabilization effort of markets, the holding up of normal
4746 sales market structures, the question of the realization of refineries, the working together of those two great groups in order that we may balance this whole picture and in order that we may interest a great many buyers in this so-called surplus or homeless gasoline, can be done along organized lines and in a way that the refiners from these three groups themselves have laid before us beforehand. What they are here for today can be verified in their statements to you.

Anything contrary to that will just mean that there can be no purchasing, there will be no use in any purchasing, and therefore we will retrograde into the position of having unknown and uncontrolled gasoline in the markets, which will mean destruction to the markets, and it certainly will mean what is so vital and so urgent in everybody's mind today, the destruction of the realization of the net-back to the refiner. The refiners are in—I almost said desperate straits. I have been sitting with them, and they certainly are a sad lot, and yet it must be pointed out that they are in that condition somewhat because of the method by which they have been, I won't say compelled, to take their product and force it into the market in a non-constructive way. They may say that they can only get for their product what the buyer will pay and if the buyer won't recognize it as having its proper place they have no alternative but to be highly competitive.

Well, you have both sides of the question, which we needn't take the time to determine here.

I would suggest, then, Mr. Chairman, that you might then ask Mr. Carnes, who has prepared some material, to speak to the point, because he has these figures. I may want to add something to what I have said.

Mr. Carnes: Gentlemen, the figures that I have here represent the present inventory of the four principal smaller refineries on the Gulf Coast—the Republic, Crown Central, the American, and the Chalmette at New Orleans.

The inventory of the Republic as of March 1 is 180,000 barrels.

The inventory of the Crown Central is 204,000.

The inventory of the American is 146,000.

Chalmette, 140,000.

4747 Total, 760,000.

The estimated production for March, April, May, June and July of those four companies is placed at 1,880,000 barrels. Their own demand is estimated at 1,330,000 barrels, leaving surplus, or homeless, as it is generally called, a total of 550,000 barrels, in addition to which they have 670,000 barrels of gasoline in their inventory as of March 1, making a grand total of 1,220,000 barrels.

Chairman Van Covern: May I ask a question, Mr. Carnes? Does that 670,000 that was actually in storage on March 1 represent surplus, or is that combined working stocks plus marketable stocks?

Mr. Carnes: I think Mr. Robinson can better answer that, but I understood that that was gasoline that was available for shipment. Is that right?

Mr. O. D. Robinson: Yes, it is total inventory as of that date.

Chairman Van Covern: Is it all available for shipment?

Mr. O. D. Robinson: Yes.

Mr. High: Is that excluding working stocks?

Mr. O. D. Robinson: No.

Mr. High: It wouldn't appear that it would be.

Mr. O. D. Robinson: No, it includes working stocks.

Chairman Van Covern: Then it is not all shippable at the moment, not all available for the market.

Mr. O. D. Robinson: All but the tank bottoms.

Chairman Van Covern: Does it include your refinery working stocks and your tank bottoms?

Mr. O. D. Robinson: Yes.

Chairman Van Covern: Then you can't ship your working stocks and ordinarily you can't ship your tank bottoms.
How much of it is readily available for shipment? I
4748 don't want to complicate this, but it seems you
wouldn't be able to ship all of your gasoline.

Mr. Carnes: I quite agree with you, Fred, but my understanding was that this was shippable stocks. Now if it includes working stock, then some fair estimate will have to be arrived at in the absence of authentic figures of approximately what each plant would have.

Chairman Van Covern: That could possibly be arrived at through Mr. Robinson and his group working in conjunction with the Allocators in the Gulf Coast, using the figures arrived at recently by the Inventory Committee as to working stocks by companies.

Mr. Carnes: Yes.

Mr. Hewetson: You say that is the March 1 inventory?

Mr. Carnes: Yes.

Mr. Hewetson: In the case of Chalmette our records don't indicate that. Chalmette's own figures indicate 92,000 barrels instead of 40.

Mr. O. D. Robinson: Was that actual inventory or was that estimated inventory given prior to the date?

Mr. Hewetson: Actual inventory March 1.

Chairman Van Covern: I presume that before any definite figures are worked out by your committee, the spokesmen of the various groups will contact the Allocators in the area and check the figures.

Mr. Carnes: Well, I imagine so. I would say this, that if each refinery has 50,000 to 60,000 barrels, which I would consider a fair estimate of working stocks, we would have, roughly, 220,000, 240,000 barrels to be deducted from this total of 670,000.

Chairman Van Covern: It would at least appear that all of the 670,000 is not readily shippable.

Mr. O. D. Robinson: The figures that you have, Mr. Carnes, and that I was asked to give are complete inventories as of March 1, and it was done rather hurriedly
4749 and I got them over the telephone.

Mr. High: If you would like to read back those figures, will you? I didn't check them.

Mr. Carnes: All right, here they are. Republic, 180,000.

Mr. High: No, that doesn't check. 126,207.

Mr. Carnes: All right, I'll put yours down.

Crown Central, 204,000.

Mr. High: 153,000.

Mr. Carnes: American, 146,000.

Mr. High: That is approximately correct, 148,400.

Mr. Carnes: Chalmette, 140,000.

Mr. Poorman: 92,718.

Chairman Van Covern: And even those figures include your working stocks.

Mr. High: Even those include the working stocks.

Mr. Carnes: That makes a reduction of, roughly, 151,000 barrels there already.

Mr. High: The total working stocks allowed to the three companies in 5B are 385,500, which includes, I will say, roughly, about three cargoes for three companies, or about 150,000 of that that is not considered available.

Mr. Carnes: That is what I figured, 50,000 barrels at the plants is about the usual amount.

Mr. Noel Robinson: What is the volume of your unavailable?

Mr. Poorman: 30,200 unavailable for Chalmette.

Mr. Noel Robinson: That would make a total for that group of about 180,000 unavailable.

Chairman Van Covern: That is 180,000 of these 4750 figures just read that is unavailable, approximately.

Taking the Allocators' figures of stocks as of March 1, we find that there has been reported approximately 520,000 barrels as actually in storage held by the four companies as of that date. The Allocators indicate that the four companies require as working stocks 180,000 barrels, so that would indicate approximately 300—

Mr. Hewetson (Interrupting): Not working stock in our case—unavailable.

Chairman Van Covern: Unavailable stocks, 180,000 that indicates about 340,000 available for shipping.

Mr. Noel Robinson: On the first of March.

Chairman Van Covern: On the first of March.

Mr. Noel Robinson: If we can get a figure for the production in March we might get some indication of how much additional we will have by the end or the middle of this month.

Mr. High: I can give you the similar stocks on April 1.

Mr. Burt: Mr. Carnes has the March production.

Mr. Carnes: The March production of the Republic is 110,000 barrels; April, 110,000.

Mr. Noel Robinson: Give us March only for all the companies.

Mr. Carnes: All right. 110,000 for the Republic, 133,000 for the Crown Central, 65,000 for the American, and the Chalmette 60,000. They made a note here that the allocation for March was 30,200, but they gave the production figures for March of 60,000.

Mr. Noel Robinson: That makes a total of 368,000. Do you have any indication of what those companies figured they would move to other buyers during the month of March?

Mr. Carnes: Their own demand in the Republic for March is 80,000 barrels; for the Crown Central, 165,000.

4751 Mr. Noel Robinson: That is more than they will produce.

Mr. High: And incidentally, these are not checking at all with the district figures.

Mr. Carnes: That is quite all right, that is what we are here for, to turn the sunlight on it. Let's find out. American Oil, their own demand, 20,000 barrels; Chalmette, 20,000 barrels.

Mr. Gould: Chalmette is allowed 30,000 barrels, they are going to produce 60,000, and their demand is 20,000. Is that correct?

Chairman Van Covern: So it appears on March 31 there will be available for shipment 340,000 plus 83,000.

Mr. Noel Robinson: That is correct.

Chairman Van Covern: 423,000 on March 31.

Mr. Van Senden: How has the demand been established?

Mr. Noel Robinson: In weighing this matter here I think the only thing we can go on is to take their actual indicated production in the month of March and then deduct from that the figures they are showing that they are going to move by themselves in their latest estimate to arrive at what their surplus is.

Mr. Van Senden: But there is the question of what kind of demand it is, whether it is based on a historical background or what they wish to move.

Mr. Noel Robinson: If they want to deduct this volume of their own outlets to indicate their surplus, I think that is the figure we want to use. We assume they must have it or they would have given a lower figure, because they are trying to show how much they would like this committee to move.

Chairman Van Covern: That is on their own regular demand.

Mr. Noel Robinson: We don't have to have that supported, because I presume they indicate that on the

4752 low side in order to show how much surplus they are going to have.

Mr. Gould: Wouldn't it be on the high side to show they should be allocated much more?

Mr. Noel Robinson: This is not a figure they have submitted for allocating purposes; it is a figure they have submitted to indicate their excess, that they want moved. We are talking about this figure of 83,000 excess gasoline for which they will have no outlet for their production in the month of March. Is that correct, Van?

Chairman Van Covern: That is correct. It appears, then, that there will be available for shipment at the end of March 423,000 instead of 670,000.

Mr. High: Mr. Van Covern, may I ask why we limit this study to these particular companies here since there are five other small companies who will likely be in a very similar position?

Chairman Van Covern: Mr. Carnes probably is in a better position to answer that.

Mr. Carnes: The only reason I can tell you is that the figures for these other smaller companies were not available. Mr. Robinson collected the information about the four principal companies.

Mr. Arnott: Who are those other companies?

Mr. High: Corpus Christi, with a demand of 5,000; Houston Oil, 6,400; Phoenix, 15,000; Refurio, 46,043; and the Stone with a zero demand but stocks of 36,799 barrels on hand March 1.

Mr. Hewetson: That is that refinery that started up, wasn't it?

Mr. High: Stone have been running right along in Texas City.

Mr. Arnott: We had the Houston, we had the Phoenix down—all four of those.

Mr. Hewetson: Is the Eastern States going in?

4753 Mr. Carnes: I had a telegram this morning from the Eastern States saying that they have one cargo that they would like to move. I have information this morning from another source that Burford is in with a couple of cargoes.

Mr. Hewetson: That is they are going to join the association.

Mr. Carnes: They haven't said so.

Mr. Arnott: Are all those refineries?

Mr. High: Those are terminals.

Mr. Arnott: That is another thing. Where do they get their product?

Mr. Carnes: I imagine Burford's, Mr. Arnott, comes from the East Texas Refining Company, in which I think he is still interested, plus his purchasing for terminal purposes.

Mr. Hartman: According to what I have heard the Corpus Christi has a cargo for sale.

Mr. High: That must be a theoretical cargo because it is not shown in stocks.

Mr. O. D. Robinson: They have been offering that for a month.

I should like to point out one thing on this question of so-called demand. It is a question that has bothered us every time these so-called allocations come up. The independent group are in a different shape from the major companies in that they sell theirs spot. It is a little difficult in the early part of the month to tell exactly what that will be, and it is more difficult now when in our effort to play along with this stabilization program. For instance, take our own company: we have three terminals on the Eastern Seaboard, New York Harbor, Baltimore, and Virginia, most of which we sell spot; we would have no trouble most of the time moving all that stuff to the terminals if we had no regard for the markets. We have been trying to play ball with this stabilization program, and sometimes our estimated demand given the early part of the month goes down.

4754 I will give you a concrete illustration. In our New York terminal in December we put through very close to 2,000,000 gallons; in January we did 700,000; February we did 100,000, because we were trying to hold our price to a cost basis. The demand is there, there is a big market there, and we could easily push it out, but we want to play ball on this general program, and that is one reason this so-called demand is hard to estimate accurately.

Mr. Hewetson: Might I make this statement in connection with that, that there are two things that I see which influence what you have had to say. The first thing is we have allowed these refiners to get a cargo of gasoline from stocks so they can sell it, as far as having something to sell. Another thing is this: that though the demand may have been as you suggest, each one of these refiners has several more cargoes to sell right today, so that it would seem they have been given sufficient demand. Gasoline is in the tanks waiting to move.

Mr. Noel Robinson: Mr. Chairman, I think we are confusing the issue and the question being put up here today by bringing up this question of past history in the demand of the Gulf Coast plants. Mr. Arnott has pointed out what the situation is today. I think that is the one we ought to face, and as I understand it the reason he has brought this matter before the group that is handling allocations is in order to develop some protective procedure for the future so that we would know what the volume of this gasoline would be, and that is the procedure that I think we ought to discuss. It seems to me he has rather clearly outlined the basis for that procedure, which would be to accept as part of the demand the volume of gasoline both which the companies estimate themselves they will have an outlet for, plus the volume the buyers will agree definitely to take over this period of months. That would become their fixed demand. Their excess would have been agreed upon by the buyers; that would constitute demand; they would then have as a fluctuating demand their own estimates of their own outlets, and it would seem to me that we could hew to that line pretty closely and certainly require them, in case they did not meet their own estimated outlet demands, to curtail correspondingly their production, but to accept since it will be all worked out on a reasonable basis, the volume of the buying excess as part of the demand which they will operate over this period.

Mr. Arnott: I think that is clearly stated, and
4755 to carry that thought along, if you haven't anything, Jack, that changes what I say, the figures that we developed when we met, what we were able to develop from the figures that had been submitted from both these groups are here and if there is any question in your mind as to their validity or any question as to their accuracy or dependability you might talk to that. What we have had submitted to us is that there will be homeless gasoline regularly coming forward every month from the East Texas refinery group (we will ask Mr. Buckley in a minute to tell us whether there is anything likely to come beyond that at present of tendered gasoline or what that might mean in the future of anything that is not covered by those he speaks for), but we have had presented to us three cargoes per month as a definite amount, no more—well, there might be some little more or some little less, there might be a little flexibility, but in round figures ~~and de~~pendably there would be those three cargoes.

Mr. Robinson gave us the figures that totaled regularly coming forward two cargoes. As I said before, in the case of East Texas there is no accumulation and there wouldn't be any. That is important—there wouldn't be any. In regard to the Gulf Coast, they now have the equivalent of nine cargoes (they will speak for themselves), and if that were lifted out of the picture it wouldn't be replaced, that is out. Therefore, all that would have to be considered for the East Coast would be an amount per month systematically for the next few months, we will say, not binding them up, the buyers probably are not binding themselves much further, of a total of five cargoes. It is a noticeable thing and it raises a question, because it rather spoils our confidence; every time we deal with this thing, whether stocks on hand, whether demand, or what-not, these figures never seem to check.

Whether you do it here today or how you do it (it might be a good idea to do it while these gentlemen are here) I think we ought to have some final set of figures so when these gentlemen go back they can have them verified and finally made dependably certain. We had different figures and they had different figures, and now you are getting some more figures. I don't doubt that there is good reason for that, but putting that aside, is there anything to show that these figures we have now of those five cargoes, three and two, in those two groups, are not accurate? Have you anything different, Jack, any subsequent figures?

4756 Mr. Carnes: I have this change, Mr. Arnott, that instead of 670,000 barrels as shippable gasoline on hand, they actually have 340,000 barrels.

Chairman Van Covern: They had on March 1.

Mr. Carnes: That is what I am talking about, March 1.

Mr. Arnott: Where do you get that?

Mr. Carnes: Those are the figures that High has, showing the actual inventory that they have on hand, which is different from what we had. Here is the way it works out. There are 675,000 barrels which these people gave Robinson. That has been changed now to the ostensibly correct figures here of 520,000 or 519,000. Then we must take off the working stocks, which brings it down to 340,000 barrels on hand.

Mr. Arnott: Is that something that you checked with Mr. Robinson, that working stock?

Mr. O. D. Robinson: There should be some deduction for working stock. I gave the total inventories. I would like to make sure now about these actual inventories as of March 1. We are always asked near the middle of the month, for instance the middle of February, to estimate our stocks as of March 1. That is very often changed due to the fact that a boat may not come in and our actual inventory isn't the same. Once before I got into that difficulty before the Review Board, and I found that the figures that were given as our inventory for the succeeding month were estimated, not actual, and I would like to check that.

Mr. High: These figures that I am giving you now are estimates. There is a separate set of figures out on the fifth. Struth, our Secretary, isn't here this morning.

Mr. O. D. Robinson: I know the figures I have given for our inventory as of March 1 are accurate, but I do know that we estimated a different figure.

Mr. Noel Robinson: Your figures were gotten directly from the companies in question?

Mr. O. D. Robinson: That is right.

4757 Mr. Noel Robinson: They gave you what the total stocks were?

Mr. O. D. Robinson: Yes.

Mr. Noel Robinson: What does that total?

Mr. Carnes: 670,000 barrels. I will give it to you by companies if you wish. They gave them to Mr. Robinson because he was in telephone touch with them, and the only thought I have is when they give these figures to the Allocating Committee they may narrow those figures down so that there will be a little more crude. That is the way they run these things in, so as to get a little more crude.

Mr. High: I can give you actual figures when our Secretary shows up here. We will have figures actual as of March 5, and supposed to represent actual figures of the 1st.

Mr. Hewetson: Our figures for Chalmette of course are actual.

Mr. Noel Robinson: That leaves 490,000 barrels of shippable stock if we use your total figures and deduct from them the 180,000 barrels that are indicated on these sheets as working stocks.

Mr. Jones: You have a difference there in Chalmette. Didn't you say your actual figure is 93,000?

Mr. Hewetson: Our figure is not an estimated figure. 92,000.

Mr. Jones: There is 50,000 barrels cargo.

Mr. Noel Robinson: I don't care where the material is. I think we want to know what the actual figures are that are overhanging the market. That is the point we want to get at today.

Chairman Van Covern: I think it might be well for Mr. Robinson to get late figures by telegraph and then meet with the Allocators concerned and after a subtraction of unavailable stocks indicate a definite shipping surplus or shippable surplus.

Mr. High: I would recommend we do that, because the working stocks I have given are only rough and I will have those in complete detail. 4758

Chairman Van Covern: A very definite figure of shippable stocks can be worked out through Mr. Robinson and the Allocators concerned meeting together.

Mr. Carnes: We can dispose of this one thing by getting the actual figures so we will know the stock on hand that is shippable. We have already estimated what their demand is. The only new figures that we have are Eastern States and Burford.

Mr. Arnott: I was just talking to Mr. Buckley about that, and having in mind that if we take the East Texas Group's gasoline to the extent of some three cargoes, does that mean that that takes all the gasoline they had, or is there some other source of supply? We have the terminal stock on the Gulf. The question is, where does it come from. Is it in that three cargoes or is it outside? Let's ask Mr. Buckley to speak to that point.

Mr. Buckley: Mr. Burford's refinery is not included in the list of surplus as we have outlined it for East Texas. He has some marketing arrangement with Mr. Hart. Hart markets principally through the East Coast, apparently through his own facilities. He may have a surplus cargo available once in a while and that would have to be taken into consideration in the Gulf Coast picture. Also taken into consideration from East Texas will have to be the charging stock that will be shipped to the American plant at Norsworthy and rerun on a processing basis for people like the Suburban Oil and the Eastern States. Except for that the East Texas surplus I believe will be entirely removed in these three cargoes.

Mr. Arnott: That would mean, then, that the Eastern States in so far as it buys gasoline for its own use, if it has any surplus—

Mr. Buckley: Will have to accumulate it either through refinery processing at Norsworthy or buy on a competitive basis in the field or from someone else on the Gulf Coast.

Mr. Arnott: In so far as Mr. Burford is concerned he gets it from Hart. Hart sells his own.

Mr. Buckley: Burford supplies Hart.

4759 Mr. Arnott: I say Burford supplies Hart.

Chairman Van Covern: But there will be an occasional cargo above the five.

Mr. Buckley: There will be an occasional cargo depending upon what Hart's marketing picture is on the East Coast. I am not acquainted with it.

Chairman Van Covern: Above the five.

Mr. Buckley: Above the five. There may or may not be.

Mr. High: Any production, though, from a processing agreement would be taken care of in the Gulf Coast production allocations.

Mr. Buckley: Rather than East Texas.

Mr. High: Yes.

Mr. Arnott: The other question is this. You mention those four refiners. They check rather closely with what Mr. Robinson gave us. Will you speak to that, Mr. Robinson? What have you to say about those smaller refineries?

Mr. O. D. Robinson: As I explained in New York, we tried to get the details from the smaller refiners but we don't have them on hand yet. I feel for the sake of getting this thing started, this production is rather small and there is some question about their allocation. For instance, take the Corpus Christi Refining Company: they feel they should be allowed to produce between 20,000 barrels and 30,000 barrels a month, whereas their allocation has been around five. It isn't for me to say what is to be done with that picture, and I didn't crowd it any too far, because I wanted to get somebody else's slant on it. The other refiners that are mentioned I believe market all of their stuff locally in Texas, that is the Phoenix and Houston Oil, so they wouldn't be a factor in this.

Mr. High: Stone might, the old Stone-Republic, which has now been separated into two parts for allocation purposes apparently. They might come into that.

Mr. Buckley: That plant is not operating any more, 4760 is it?

Mr. High: No, but it is apparently ready to operate on a moment's notice and would operate with an assured outlet.

Mr. Buckley: The Corpus Christi plant is operating entirely on an octane concentrate.

Mr. High: I can give you all that data.

Mr. Arnott: Are there any other questions of Mr. Robinson on that? That ought to be clear to these other companies.

Mr. O. D. Robinson: I might add to what Mr. Buckley said that I understand the figures that I gave for the American plant include the Suburban, and that is the only other crude being run in that plant at the present time.

Chairman Van Covern: Could you get a check of your March 1 stocks from the various companies that you represent, by wire or by telephone?

Mr. O. D. Robinson: Yes.

Chairman Van Covern: And when will the Secretary of your Group be available, Mr. High?

Mr. High: He should be here now.

Chairman Van Covern: You are prepared to go into a discussion of it as related to the Louisiana Gulf Coast, Mr. Hewetson?

Mr. Hewetson: Yes.

Chairman Van Covern: Just as soon as Mr. Robinson can get the information and you can get the figures from your Secretary, I think the three ought to get together and work our figures as to the exact surplus on March 1 and then give us the best estimate that you can of the surplus as it will exist March 31 if these amounts as given are moved during the month.

Mr. Arnott: Is it your idea that right here and now they withdraw and do that?

4761 Chairman Van Covern: I think it is a subject that ought to be handled now, but the Secretary of the Texas Gulf Coast is not available, and Mr. Robinson will take a few moments to get his information.

Mr. High: He is on his way over.

Mr. O. D. Robinson: While we are all together I should like to hear an expression, though, as to how to handle this Chalmette situation. I am only presenting the views of these different refiners. As I understand it, over a long period their average gasoline production has been upwards of 75,000 to 100,000 barrels, I mean practically speaking back over a year or two. Then their refinery was shut down, they lost some of their markets, and when they started up again they were given a small allocation, around 30,000 barrels. They say that it isn't profitable to operate the plant on that basis and they are asking for 60,000. That is the only one in my group that disputes the allocation. If they were given a higher allocation it would have to be done by assuming that part of their output would go to the major companies under this selling plan.

Chairman Van Covern: Mr. Hewetson, you are the Allocator down there, would you care to discuss that?

Mr. Hewetson: Yes. At these meetings we have up here the allocations have been figured on demand and the allocations to the districts are very carefully scrutinized by all of the Allocators here. If we expect a shipment and ask for a certain production and it does not materialize, then our district doesn't get very much of the total in the country, as much as it would if our record was good. After we parcel out, at this Allocators' meeting, the gasoline to these different districts on that basis of demand, then when we get back to the district we have no alternative but to see the boys that have the good record and those who do not. We just can't, on the basis of the allocations that are made here, go back and say, "Well, here you are, you can have 100,000 barrels of gasoline. We haven't seen a shipment in the past, but here it is anyway."

Mr. O. D. Robinson: Isn't this a matter of whether

Chalmette shall include in their demand a portion of this gasoline to be shipped?

Mr. Hewetson: I think that what you are talking about is the position from today on rather than in the 4762 past.

Mr. O. D. Robinson: That is correct.

Mr. Hewetson: If it is recognized that Chalmette has a regular business, we will say, of 30,000 barrels and the industry feels that Chalmette should have 60,000 barrels in view of some arrangement through this association, that is a different outlook, because then they will move it, and then they will have a demand which we can substantiate in this meeting.

Mr. Gould: Then we are not talking about distressed gasoline any more.

Mr. Hewetson: That is a contribution.

Mr. Arnott: Are we clear, Mr. Robinson, that the Chalmette position is that here are these companies entering into selling their product and estimating what it is going to be, and they feel as it is at present it isn't enough and for one reason or another they would like to see it increased so when the final decision is made as to what it is going to be they are going to have in that picture more than they had in the past, in other words they want a better position?

Mr. O. D. Robinson: More than they had in the last few months, but their record of their refinery over a long period has been very much higher.

Mr. Noel Robinson: The actual fact, Mr. Arnott, is that all of the Gulf Coast refineries that are included in your picture have been operating on the basis that they have counted as part of their demand an outlet on the Eastern Seaboard which has gone to next to nothing, with the result that you would have this accumulation of cargoes on the Gulf Coast today which is all part of the originally filed demand on which they got their allocations.

Mr. Arnott: Well, it seems to me that is dealing with a principle that is a very potent and dangerous one. I am now thinking out loud. If as the result of this, to go back to what I said before, a refiner for reason can go back in his history and point to this and say, "At one time I had so much business," whether it was spot sales or regular business or what-not, "and due to the depression and all the conditions of the market I have today less," 4763 whether that less is because he has closed down his refinery to less or whether he has accumulated in his tanks, the fact is he hasn't done his business, and if you take the position that he isn't to open up his refinery more, once he disposes of the accumulation in the tanks what he then has is what he is going to have regularly, you are dealing with a very, very large principle. I would like to ask some of the committee on the other side, not Mr. Robinson or Mr. Buckley, whether it wasn't contemplated in this picture that we take A as his surplus. Am I not right in that? I mean by that a surplus, that he produces today so much gasoline and sells it, and after he has sold it he has got something that hasn't got an established business, but a spot business that he didn't do yesterday or the day before or the day before, but some day he might. I wonder if we are not pretty close to the mark on that.

Mr. Noel Robinson: I think we can clear up that point by going back and showing you that over the past two years that group of plants has had a regular operation and that that regular operation of production, regardless of the ups and downs and the losses of markets, has been quite even, and when you check that against their regular production over the last two years, this regular monthly production, you will find that the amounts they are filing as their normal volume of production from which they are deducting a fixed outlet and leaving you the excess that they are indicating, that Mr. Robinson has indicated, have really consisted of what they have done and the level they have actually operated at over the period of the last two years. Those plants are a group of small plants which are not in position drastically to curtail; they literally have to shut down entirely, because a sharp cut in their production allowables throws them into an absolutely uneconomic production and cost, with the result that they have had to operate, while they have been operating at all, on a pretty steady volume of production.

You go back and check them by years and by months, and you will find that this very group of plants that you have just named has run almost consistently and averaged out remarkable close to the picture that Mr. Robinson has just given as to what their expectations or what the basis of their volume of production ought to be for this coming year.

Mr. Arnott: That is very clear. Just break it down and come to the Chalmette.

4764 Mr. Noel Robinson: The Chalmette operated in 1933, at an average rate of 82,000 barrels production a month. In 1934 they were shut down for a period, that is they were very sharply curtailed and partly shut down, with the result that they produced only an average of 54,000 barrels a month. However, after the period of their shut down in '34, which was from May on, (they were shut down in April) they averaged at the rate of 65,000 barrels a month. Their schedule running through 1935, I presume would be about the same rate.

Mr. Hewetson: Doesn't that include the purchases of a distressed cargo under the program committee?

Mr. Noel Robinson: This is their production. Their outlet was artificially created during part of that time, that is correct, Henry.

Mr. Hewetson: They purchased a large quantity of gasoline, casing-head, for example. A lot of that is not in refinery production.

Mr. Noel Robinson: That is correct, they did have some purchases.

Mr. Arnott: Then you think this request of Chalmette's is all right?

Mr. Noel Robinson: I think that all of those have got to be matched against what is a reasonable program. That is all you are talking about. You are literally talking about establishing a demand, an accepted demand, or an accepted volume of business for those plants. I think that is the basis we ought to recognize.

Mr. Carnes: That is my position exactly.

Mr. High: Yes, you should appreciate that they have always had sufficient stocks to meet any reasonable demand, including cargo shipments, and had that demand been apparent they would have received allocations to allow them to increase their runs, so it is merely a matter of establishing a demand for them, which doesn't exist at the present time.

Mr. Gould: Which is no longer a question of surplus gasoline.

Mr. Noel Robinson: The whole question is surplus,
4765 gasoline, because if they dwindle down to the volume of business that they had left as an actual demand for their own outlets, we can see it is just a fraction of their business today. That is why you are coming into the picture.

Mr. Gould: You are thinking of surplus capacity. It is not a question of surplus capacity; we have got surplus capacity. If somebody would buy from me I could produce it. Am I to be guaranteed the trade of last year and the year before last?

Chairman Van Covern: May I suggest that the District Allocators of 6A and 5B meet with Mr. Robinson in the adjoining room and try to straighten out the figures.

Mr. Arnott: It is going to be a matter of reason, apparently, with the Chalmette.

Mr. Noel Robinson: Every one of the plants is on the same basis.

Mr. Carnes: I don't think there is much question here, Mr. Arnott. I think the larger view we must keep constantly in mind, that if these people are going to be interested with the balance of the industry in stabilization, then the larger companies who have the greater stake must recognize more or less their production and sales program for the past two years. Obviously Robinson is right in his statement that he made to me and made to all of us in New York, that these four refiners for a period of years had always felt that there was some cargo buying on the Eastern Coast and they had set up their refinery operations on that basis. At the end of November the buying ceased. These people have accumulated four or five or six cargoes of gasoline, anticipating that what they call the normal buying on the Eastern Coast that had more or less regularly been followed would again be followed this year, and personally I have no quarrel with that view.

The only thing that I think we ought to keep in mind is this: that we ought to be reasonable, we ought to play the game of give and take, and for the purpose of 20,000 or 30,000 barrels difference between the Chalmette's situation today and what they asked for, if what they asked for, 60,000 barrels, is a fair basis (and it is according to Mr. Robinson's figures because they have been working on the basis of 65,000 to 82,000 barrels a month), then I don't 4766 think we ought to linger long on that point, and if we can get these figures fairly accurately as of March 1 and then set up exactly what their surplus is, as Robinson has given it to us, we will know pretty well what these four principal refiners there have in the offing. The balance of the stuff coming from Stone and Corpus Christi and Phoenix and what-not is something that I think we will have to deal with as we meet it.

From time to time I think there will be an occasional cargo appearing on the Gulf Coast as the result of the operations of those smaller refiners. One time it may be Houston, three or four months later it may be a cargo accumulated at Corpus Christi. I don't think that is sufficiently important to disturb our calculations. I think what we ought to confine ourselves to here to day is the situation with reference to these four regularly operating plants, and then deal with the smaller ones from time to time as the conditions warrant.

Mr. Hewetson: Mind you, I as an Allocator have no issue with the Chalmette. If they have 60,000 barrels demand, all right.

Mr. Arnott: Your point is clear to me.

Mr. Carnes: I understand that. We have no quarrel with you.

Mr. Arnott: As an Allocator, what you did was quite right. We are talking about a different matter.

Mr. Hewetson: Mr. Arnott, do you feel it is essential for all of these surplus gasoline manufacturers, so to speak, to be in this association?

Mr. Arnott: In East Texas?

Mr. Hewetson: And on the Gulf Coast.

Mr. Arnott: There is no association on the Gulf Coast. Make the distinction. In East Texas we have nothing to do with that. We are dealing with the facts. I think that ought to be done. I think Mr. Buckley ought to tell you what that association is, because the matter of East Texas gasoline and surplus gasoline and production is one of our difficulties. I think he ought to tell you the history. It is
a very brief one. But we are taking it as it comes to
4767 us, I think he also ought to tell us as to what part of
the production that reasonably covers. There may be more. It isn't before us today. We have got the substantial, better part, practically all the surplus gasoline that is going to come, pretty nearly, from the group in this association. Whether it is or whether we like it or don't, that is an association that is working under its own spokesman and own representation and is an entity today. We have nothing to do with who joins it or who likes it or doesn't like it, they are there. There was talk even of pipe lines and accumulating on their part gasoline on the Gulf and coming up here and being competitive with the Gulf Group. All those things have got to be considered. What we are doing is, let's say, for Group A and Group B. The other group have only gotten together and asked a spokesman to speak for them, they have no association. That is quite different.

The point is that as an economic industry matter you have got the pint pot and you can't get any more into the pint pot than the pint pot will hold. In that picture gasoline comes in. We are approaching it from this angle: Where is the gasoline? Who has it? If we decide it is an exact quantity, are we dealing with the facts? If so, we can go forward. That is all we are trying to establish. Once we do that we don't want, by some other route, an allocation or a change to be made on the part of an organization or an individual or even a representation from a region for something different, because it will come afoul of what we are doing and undermine it.

Every buying plan we ever had has gone on the rocks because of that. That is the reason we are coming right to you with the facts about what it is all about, so the minute you see the signal of something that doesn't verify what we are working along, that is the time we stop and say, "What's doing?"

I think you ought to tell them about this association so they will know all we know.

Mr. Buckley: I think everyone here is acquainted with the various stabilization moves that were made last year involving East Texas. At that time there were eighty refineries operating in the field. It was impossible to estimate the amount of gasoline that the plants made each month, but on the record and off the record it averaged as high as one million and a quarter barrels many months in the early part of the year and during the summer.

4768 In the various stabilization moves that were made was a small group of refiners that endeavored to cooperate with those who had charge of the stabilization work. I think the maximum of refineries in the field at any one time that signed up for stabilization was about fifty-five. In the last stabilization effort there were about thirty, but in those thirty and in the fifty-five there was a smaller group who worked with the coordinators to try to bring the others in line. That group has now dwindled to some place from fifteen to eighteen refiners in the field, all of whom have a considerable investment, the larger part of whom have considerable production of their own, and nine or ten of whom already have cracking plants. They are a group who will probably stay in the East Texas picture as long as there is surplus oil available in the field.

They sympathized, as I said, with the stabilization moves of last year, knowing that they couldn't continue to operate on present returns, and were anxious to agree again to some stabilization effort if it could be started. There didn't seem to be any spokesman for them or any way in which they could approach those who might help them, so they discussed their troubles with three or four of the larger companies in Texas, and out of the discussion came the tentative plan for a central sales agency or allocating agency which every refiner, regardless of his size, in East Texas could if he would allocate his surplus gasoline to for disposal by this marketing agency, at least for allocation by that agency to potential buyers.

The refiners involved have been shipping their gasoline for the past several months into any territory in which they could find a market, very largely into the Indiana territory, up into Ohio, over into Kentucky and the Southeast, and when there was no market there they dumped it into terminals on the Gulf Coast where it became surplus cargoes to undermine the Gulf Coast and in turn the East Coast structure.

Some six weeks ago a group of twelve refiners in the field formed an organization called the independent Refiners' Marketing Corporation. Each one was going to contribute $5,000 for the formation of this organization, and they planned on taking over a small terminal on the Gulf Coast in which during the summer months they could ship as surplus heavy oils. The organization that was originally formed was rather unwieldy. In the first place, some small refiner operating only a few hundred barrels a day couldn't afford to contribute $5,000 and he felt he was
4769 out. Therefore, to take everyone into consideration it was decided to allow a small group of a half dozen or more to go ahead with their terminal plans and form a central organization in which the membership fee would be any place from $500 to $1,000, and they renamed that the East Texas Marketers' Corporation, which is today functioning.

This group of refiners, all of whom were allocated gasoline, have accepted allocations from the Allocator for that district for the past several months, and shipped during February a total of 371,000 barrels of gasoline. Included in that shipment, however, was 97,000 barrels from the East Texas Refining Company, which went to the Texas City terminal of the East Texas, and the East Texas Refining Company, by the way, is not a part of this group because of its contract arrangement with Mr. Hart.

Mr. Gould: Isn't it included in the allocation?

Mr. Buckley: It is included in the allocation, but it is not included in my figures. The balance left for the other refiners was something under 300,000 barrels of tendered gasoline shipped during the month of March, and their shipments very closely tallied with the allocations made them by the Allocator for that district.

The same group of refiners for the first week in March shipped 59,600 barrels of gasoline. They estimate that they will have 243,500 barrels of gasoline available for the balance of the month. That makes a total of 303,000 barrels. If Mr. Burford's allocation or the East Texas allocation for the month of March, 66,000 barrels, were added to that figure we would have 369,000, or very close to the figures which this group represent will be available as gasoline during the month of March.

These same refiners, or all the refiners of East Texas, rather, were given an allocation during the month of February of approximately 450,000 barrels.

To the whole district for the month of March there was assigned 619,000 barrels, of which 449,400 barrels was definitely allocated. That in turn included Mr. Burford with his 66,000 barrels.

Mr. Gould: What about the balance?

Mr. Buckley: It was not allocated. There were
4770 169,000 barrels in March assigned to the district but not allocated.

Mr. Dow: Is that because some of the refiners didn't furnish the figures?

Mr. Buckley: Some of them didn't furnish the figures. Some openly confess they didn't anticipate having any tender oil and wouldn't be in position to ship tendered gasoline. Others disposed of their crude and decided they wouldn't operate for the month of March. Some of them I doubt will operate for some period of time because of contracts they have made.

Mr. Gould: The total allocation of gasoline which was produced was what?

Mr. Buckley: A total allocation for February of approximately 450,000 barrels—I don't know the exact figure—and of that quantity 371,000 barrels was actually shipped. For March, 449,400 barrels was allocated. The closest estimate that we can get today of what will be shipped is 369,000 barrels, of which 66,000 will be shipped by Mr. Burford, leaving approximately 303,000 barrels to be shipped by others in the field.

They estimate that their known outlet for cracked gasoline which they will manufacture for various other types of gasoline that they will manufacture will be some place in the neighborhood of 60,000 barrels a month, leaving them a surplus of approximately 240,000 barrels, which can move into Group 3 or can move to the Gulf Coast, to outside terminals, or can move into the Southeast territory, but if it does move there it will not move in an orderly manner.

Mr. Jones: It has been moving in all three districts.

Mr. Buckley: It has been moving any place they could find a market at any price they could get.

Mr. Gould: That surplus is an allocation which they will technically have. I thought you said in February there had only been a certain amount allocated; although the whole district had been allocated 600,000, only 450,000 had been definitely allocated to individual plants.

Mr. Buckley: That is for the month of March.

4771 Mr. Arnott: How about those that are not in the association, Mr. Buckley? What is that gasoline? Where will that go? How about plants that are not in the association that may begin to do something they have not done before?

Mr. Buckley: The marketing organization as set up employed a man as assistant secretary. He is the only paid man connected with the group. He contacts not only the members of this association, but every other refinery in the field that is operating on either state or federal tenders, and he feels that he knows at all times just where the gasoline is, and I believe every refiner in the field has consented to allocate his surplus to this organization for marketing.

There is one point that might be brought out, a point of interest to you. A lawyer who has represented a large number of refiners in the field, F. W. Fisher, who successfully attached the last 9 (c), was employed by this group as an attorney, and the strength or weakness of the group, in my opinion, depends upon the continued leadership of that man Fisher. He is also the attorney for three refiners who are not today shipping on federal tenders but who may again operate, and through his contact with them he can in turn bring them into line and I believe hold the group in line better than any other one man.

Mr. Dow: Is Fisher favorable to this program?

Mr. Buckley: Very much so. Fisher himself, to recite a little bit of history, owns production of his own in East Texas. Contrary to general belief, he has never over-produced his own wells. Fisher came down to Washington and appeared before the Supreme Court. He is smart enough, in my opinion, to know that the refiners that are in this particular group are the ultimate survivors in it, and if they are going to be the ultimate survivors they are also going to be his meal ticket. Therefore, he will work as hard as he can to hold them together and get them to cooperate. Mr. Jones knows the man and can tell you whether he thinks that line of reasoning is correct.

Mr. Jones: I think it is good. Fisher is a very smart man. He knows where the future for him lies.

Mr. Buckley: That is why I make the statement that I

believe the strength or weakness of holding these
4772 people together lies wholly with him.

Mr. Jones: Absolutely, and I think they will follow anything he tells them.

Mr. Gould: As far as I can gather (I would like some sort of general information), in February, or rather in March, the idea is that they have got to have a 250,000 barrel surplus of gasoline against their allocation. As far as I can ascertain, the amount of crude they have available is about 600,000 barrels, which will produce somewhere around 280,000 barrels of gasoline. I can't see how the 250,000 barrel surplus can come out of 600,000 barrels of crude. One could only draw the inference that if they have this surplus, alleged surplus, or rather if they are going to have this alleged surplus, either it can come from an over allocation and an over allocation can only come out of some illegitimate crude, shall we say, or—

Mr. Buckley: The point is, Mr. Gould, that in addition to the approximately 600,000 barrels of crude which you anticipated would make that amount of gasoline which you mention, there will also be approximately 10,000 barrels a day of cracked gasoline produced. I think there will be about 4600 barrels a day of cracked gasoline.

Mr. Gould: I don't see where that is coming from.

Chairman Van Covern: Are you gentlemen ready to report?

Mr. O. D. Robinson: I think the only actual difference in our figures is working stock. The totals of actual are very nearly the same.

Mr. High: Of the four companies discussed, Republic, Crown Central, American, and Chalmette, the stocks as of March 1, according to information received on the eighth, are 737,783 barrels, less unavailable, 174,200 net stocks 562,531. In addition to that we have the Corpus Christi, Houston Oil, Phoenix, Refurio, Stone Oil, with total stocks of March 1, 69,680 barrels, less 23,700 barrels unavailable, leaving an available of 55,479.

Grand total in the district, 807,463, less unavailable 197,900, available of 618,010. Additions not guaranteed.

Chairman Van Covern: Would this committee
4773 develop a March 31 position, just as this has been developed?

Mr. Noel Robinson: Mr. Chairman, I would think that you would take their production for those plants minus their own outlets (Mr. Carnes read both of those figures) and then deduct 83,000. I think we ought to check that over again.

Chairman Van Covern: I think we should. Would you gentlemen check out those figures and find their surplus production at the end of March?

Mr. Hewetson: With their allocation or the amounts that have been suggested?

Mr. Noel Robinson: If they establish their outlets they establish their allocation. That's the trouble. If we accept the outlet, the buying outlet, they will be able to establish their allocation.

Chairman Van Covern: March is already set. It is a mere checking of the figures to ascertain the surplus.

Mr. Noel Robinson: I don't doubt for a moment but that their production will be over their outlet.

Mr. Hewetson: That is what I am saying.

Mr. Noel Robinson: What their own estimates of their production are as against their allocation for the month.

Mr. High: In calculating the stock position for March 31 we have taken the production as indicated by the separate companies under the purchase plan and by the allocation. The totals of the four companies involved under the plan which show a production of 368,000 under allocation show 338,200, the difference representing the run over allocation indicated by Chalmette.

Also, the demand under the plan is indicated at 215,000 as against a presumably verified demand to the allocating agencies of 305,000.

Mr. Noel Robinson: Can we take that as a demand through their own outlets?

Mr. O. D. Robinson: The discrepancy there between the two—

4774 Mr. Noel Robinson (Interposing): I mean this 215. Do you think that is a firm demand, that that is what they will have through their own outlets, not counting any of this cargo movement?

Mr. O. D. Robinson: I asked them for their own demand and that is the figure they gave me. I don't think they are figuring any cargoes in it.

Mr. High: Against 305,000 as given to the allocating agencies, or a difference of 90,000 barrels.

Mr. O. D. Robinson: I think the demand given to the Allocator did include the cargoes.

Mr. Noel Robinson: That figure checks pretty closely. Beforehand we took their production estimates and deducted from that their indicated consumption through their own outlets, and we came out with 83,000 barrels. This difference is actually the excess that they had figured on in their indication to Mr. Carnes.

Mr. High: I can give you the details of that.

Mr. Noel Robinson: I don't believe we need those details.

Mr. High: All right. I was just going to say the main portion comes under American.

Stocks, then, on the basis of production and shipments under the plan at the end of March would be 715,531 available gasoline, by allocation 595,731.

Mr. Noel Robinson: This 715,000 is on the basis of the verified demand.

Mr. High: That is on the 215; 595,731 is on the basis of the allocations and shipments as given to the allocating agencies.

Mr. Noel Robinson: In addition to that we have that small group of plants. How much did you figure that was?

Chairman Van Covern: This includes all the companies?

Mr. High: No, that is just the four companies 4775 involved.

Mr. Noel Robinson: It doesn't include those small Corpus Christi plants.

Mr. High: Let me read that for the purpose of the record. The Corpus Christi, Houston Oil, Phoenix, Refurio and Stone Oil would have a total demand under allocation of 31,045, and their combined stocks at the end of March would be 65,822 barrels, making the total under the plan 715,531, and including the five small companies mentioned, 661,553.

Mr. Noel Robinson: Available.

Mr. High: Available gasoline. I further mention, however, that these figures do not check exactly.

Mr. Gould: 716,000 and 65,000 should be added together.

Mr. High: No, it should be added to the 595,731. 715,000 for the grand total, including the four plants, which do not come under the proposed plan. Therefore, the total is the same as you would have in the first case, but under allocation the 65,822 should be added to the 595,731.

Mr. Noel Robinson: Why shouldn't the 65,000 be added to this figure too?

Mr. High: We have no details.

Mr. Noel Robinson: Then I think we have got to add it if we are going to produce it and these people, are going to produce 715,000 regardless of their allocation. That makes 780,000.

Mr. High: 781,353.

I might say that these figures are only rough and have to be checked.

Mr. Arnott: I suggest to the members of the committee that they and these two gentlemen meet in my room at the end of the hall after lunch, say 2:15, but before we leave it is my understanding that that represents memoranda of figures that are correct as we see them and are on file here and will be used by us in further developing the question with these gentlemen, and unless you
4776 hear from us to the contrary will be the basis on which we will carry on any plans or program or decisions that we reach which will be along the line we are considering that I mentioned this morning. If there should be at any time any deviations, I think it would be well if you would arrange to call our attention to them, call my attention to them. Does that definitely and clearly put the matter before all of us?

Mr. Jones: Mr. Arnott, in your statement you said there was no surplus in Mid-Continent. There is one company down there in North Texas that has a large stock that has been embarrassing, as you know.

Mr. Arnott: I didn't mean to say that. I was quite familiar with that.

Mr. Jones: That one company has 130,000 barrels above working stocks, but has agreed to spread it out over the summer in reasonable quantities each month.

Mr. Arnott: Outside of that there wouldn't be very much?

Mr. Jones: Outside of that I know of none.

Mr. Buckley: Another thing that ought to be covered in your stocks now is the condition of Mr. Burford. I don't know whether those terminal stocks of his come under Gulf Coast figures or not.

Chairman Van Covern: The East Texas Refining Company, Mr. Burford's company, reports its Gulf Coast terminal stocks to 58, doesn't it, Mr. High?

Mr. High: I don't know.

Chairman Van Covern: In your overall stock picture, but not when you calculate your refinery production.

Mr. High: That's right.

Mr. Gould: The original figures we had was a grand total of 618,000 barrels available the first of March. That was the original figure which you verified. Now you verify 780,000 at the end of March. That is a difference of 160,000 barrels. Is that right?

Mr. High: That is right.

4777 Mr. Gould: Does that 781,000 include working stocks?

Mr. High: No.

Mr. Noel Robinson: That is the net available for shipment.

Chairman Van Covern: Are there any other questions on the part of anyone?

Mr. Noel Robinson: I suggest that we adjourn and meet for our regular allocations right after luncheon.

Chairman Van Covern: Then the Allocators will meet in this same room at two o'clock.

The meeting recessed at 12:45 p. m.

4778 NOTE: [The remainder of the transcript, covering the afternoon and evening sessions and consisting of some 50 typewritten pages, is devoted to the usual business of the District Allocators, and is not printed. The committee from New York did not attend these sessions.]

4779 GOVERNMENT EXHIBIT NO. 71.

February 8, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly letter

Dear Mr. Maguire:

Crude Oil—Considerable activity in leasing in Oklahoma and Kansas continues. The Texas Company are becoming more aggressive in an effort to build up their crude oil reserves. It is said the Texas Company will spend considerable money this year in their production department.

Hot oil in East Texas is now estimated at 35,000-40,000 barrels per day. The number of refineries operating there now number 30, compared to 20 in early January.

Tank car shipments out of East Texas increased 450 cars last week. This refers to all products shipped by T/C.

Gasoline—Due to rumors of new activity by major companies in connection with pool purchases, the market has firmed up slightly in East Texas. Third grade motor is now 3⅜¢ fob Refinery in that area. 3¼¢ is the going price in Oklahoma, with a few cars still available at 3⅛¢ group 3.

It is thought that if several hundred cars are purchased in Oklahoma, Kansas and North Texas this should clean the market of all distress gasoline in these areas.

East Texas gasoline is in good demand, and practically all of it is moving to the Gulf. It is hoped this will continue.

If pool buying resumes next week I expect journal and Oilgram prices to advance at least ¼¢.

A group of East Texas refiners are sponsoring a central sales agency for the orderly disposal of their gasoline. It is felt this will eliminate chiselling by marketers on the tank car price.

4780 Natural gasolines are slightly weaker, but there is no particular surplus. I expect naturals to hold for the present at current price levels.

Burner oils are still weak, and I think we have seen top prices for them for the season.

Yours very truly,
W. P. Jacobi

Copy for
Mr. H. M. Sullivan—
from Tulsa office

(Handwritten Notations):
"H. S. Pyke" "Noted HMS"

(Handwritten Initials):
"LTM" "P"

4781 GOVERNMENT EXHIBIT NO. 72.

February 15, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—More activity in drilling and leasing is apparent as the weather improves. Southwestern Oklahoma and certain Kansas areas are particularly interesting to the majors and semi-majors at the present time.

Even with 30,000 to 40,000 barrels of hot oil still being run in East Texas, as well as increased throughput due to new plants opening, that area appears in pretty good shape. In fact, there is but little gasoline available there for northern shipment.

Gasoline—U. S. Motor legal gasoline in East Texas is

3⅜¢ to 3½¢ f.o.b. refinery and practically all of it is moving to the Gulf or is being sold Intra-state.

U. S. Motor in Oklahoma and Northern Texas is still available at 3¼¢ group, but refiners are not pushing sales, expecting some activity shortly on the rumored buying pool.

If this pool starts operating, I expect prices for tank car gasoline to advance at least ¼¢ immediately. However, it will take some news of this character to keep prices at present levels due to the poor demand.

Natural Gasoline—Natural Gasolines are weaker, 26/70 now being available at 3¢, with the price trend downward.

Burner Oils—Burner oil prices are expected to sag further next week.

Yours very truly,
W. P. Jacobi

Copy for
Mr. H. H. Sullivan—
from Tulsa office

(Handwritten Notations):
"Pyke" "LTM"

4782 GOVERNMENT EXHIBIT NO. 73.

June 7, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

The crude situation continues in good shape, with very little surplus crude available to small plants, that might be considering resuming operations.

Tank car prices on gasoline have advanced ⅛¢ the past week, on all grades. If present tank car prices hold and I believe they will, it is expected that the Standard of Indiana will advance Service Station prices another 3/10 or 4/10's of a cent within the next week.

When this Service Station advance materializes I look for no further advances in either the wholesale or the retail price, unless an advance in the crude price is made. This, I do not believe, could occur for at least 60 to 90 days.

Distillate and Zero Gas Oils are easier, and will continue to weaken in price, until an attractive storage price level is reached. It would appear that this year, we will have to wait until July and August to store.

Natural gasoline prices are holding, but should strengthen slowly over the summer months. I look for a very firm natural market this fall, and our refinery and Milwaukee bulk plants should prepare for this by storing all the natural they can this summer.

Yours very truly,
W. P. Jacobi

Copy for
Mr. H. M. Sullivan—
from Tulsa office

(Handwritten Notation):
"J. S. Pyke"

(Handwritten Initials):
"P" "CBM"

4783 GOVERNMENT EXHIBIT NO. 75.

September 20, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

The crude situation is unchanged from last week. We have heard a lot of reports about improvement in the California situation, but I can see but little evidence of actual improvement there, at this writing. What the oil industry needs now is actual evidence that the California fields have reduced their production, and I think this news will have to come shortly.

Gasoline—Purchases by some of the larger refiners have strengthened the tank car gasoline market. Smaller refiners are still "jittery" due to California, and insist on keeping their storage tanks dry.

The oil products in real demand are zero cold test burner oils.

Yours very truly,
W. P. Jacobi

Copy for H. M. Sullivan—
from Tulsa office

(Handwritten Notations):
"Pyke" "Purch. Dept."

4784 GOVERNMENT EXHIBIT NO. 76.

December 21, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Michigan crude prices were advanced 10¢ per barrel in the past week.

A rumor was circulated here the past few days to the effect that "a good sized company" effective January 1, 1936 would pay a 15¢ premium over the posted price in East Texas.

The Texas allowable for January has been held within proper bounds.

These developments, have caused increasing conversation in Tulsa relative to an advance in the Mid-Continent crude oil posted price.

I do not believe a price increase on crude will occur here at least until Spring. I cannot believe the S. O. of Indiana will advance T/W and S. S. prices in the winter time, and without such an advance, higher raw material costs, or higher T/C prices could hardly be justified.

Gasoline—In the T/C market conditions here this December compared to previous years, show such a marked improvement that the Industry should be quite gratified.

Smaller refiners are moving their current manufacture gasoline without delay. These smaller plants have practically no gasoline in storage, as they expected prices to drop when consumption fell off in November, and sold their surpluses. They are therefore, entering 1935 without any gasoline that has to be moved.

There is no particular reason therefore, for T/C gasoline prices to decline in January, February and March, as long as these small plants are able to move their current production, to present outlets. In April or May, S. O. of Indiana and others, will no doubt feel more like supporting a crude oil price advance, and raising the retail price. Tank car prices could then advance and higher retail prices could be properly supported.

4785 Burner oils are in demand, and most refiners are sold out for several weeks.

26/70 Natural is slightly weaker, the new price being 4¢. One or two manufacturers reduced their price ¼¢, to move their stocks before January 1. I would judge that we have seen the high for natural gasoline prices, this season.

Yours very truly,
W. P. Jacobi

Copy for H. M. Sullivan—
from Tulsa Office

(Handwritten Notations):
"Noted H. M. S." "Pyke"

(Handwritten Initials):
"LTM"

4786 GOVERNMENT EXHIBIT NO. 80.

Letterhead of Dale W. Moore Oil Co., Tulsa.

August 10, 1935

Socony-Vacuum Oil Co., Inc.,
26 Broadway
New York, N. Y.

Attention: Mr. Chas. E. Arnott, President.

Dear Mr. Arnott:

There are some matters I wish to call to your personal attention with regard to a cargo of gasoline I have been trying to sell to your Company during the past sixty days. I have in storage in the Continental Oil Company Terminal at Texas City about 77,000 barrels of 65 octane gasoline which I first took up through your Tulsa representative Mr. Paul Jacobi. He forwarded complete specifications as tested by Chas. Martin & Company during the month of June at which time you were not interested in buying. On July 1st, while Mr. Jacobi was on his vacation, I wired Mr. John Romer and referred to specifications mailed him by Mr. Jacobi and offered to sell this cargo at 5½¢ f.o.b. to which he replied on July 2nd, that he could not handle cargo at the moment.

In the latter part of July, this same cargo was offered to you through the Refiners Export Corporation of Houston, Texas, at 5⅜¢ and they failed to secure your order. Yesterday I was advised by Mr. F. W. Burford, President of the East Texas Refining Company, that your Company had purchased during the last two or three days a cargo of 60/64 octane gasoline in the Gulf and paid 5½¢ whereas I had offered you 65 octane gasoline at 5⅜¢. This sale was reported in Platt's Oilgram of August 8th at 5⅝¢ but a correction run in Platt's Oilgram on August 9th showed sale price was in error and corrected same to 5½¢. I understand further this gasoline was purchased from Eastern States Petroleum Company, Houston, Texas.

Now it is not my desire to attempt to upset any market and I am sure you can confirm this statement by communicating with either Mr. Jacobi or Mr. R. W. McDowell of the MidContinent Petroleum Corporation or others in this territory where I do tank car marketing business. I have worked very closely with all in the MidContinent field toward stabilizing prices and have likewise attempted to do the same thing on the Gulf. I have not attempted to go out and cut the market to move this gasoline I have stored on the Gulf, otherwise I would have sold same long ago.
4787 This gasoline has been offered to every major company operating on the Atlantic Seaboard and if my price of 5⅜¢ is too high, then I think someone should challenge Platt's Oilgram in publishing a 5½¢ market. I might state further that during the past two or three weeks the Wood-Moore Corporation, of which I am Vice President, sold a cargo of 67 octane gasoline which we had in storage at Corpus Christi to the Hartol Products Company at a price under the market and that we never made any report of this transaction to Platt's Oilgram or anyone else.

I am coming to you with my troubles because I know you have done more to stabilize prices than any other individual in the Oil Industry and certainly there is some outlet for this one cargo of gasoline I have in storage. To my knowledge, there is not any other distressed gasoline on the Gulf as all of the small plants are sold up over August. There is nothing legally wrong with my gasoline and I can furnish a photostatic copy of the permit issued by the Texas Railroad Commission when this gasoline was shipped by Steamer from Houston to Texas City in December, 1934. This gasoline was manufactured by the American Petroleum Company refinery at Norsworthy, Texas. I am attaching herewith tests made on August 5th by Chas. Martin & Company. If you are interested in purchasing this gasoline, I suggest you get in touch with Mr. Jack Riddell at New York whom I wired yesterday concerning same. He has a photostatic copy of the permit from the Railroad Commission.

If I am unable to dispose of this gasoline in a cargo lot, then I will be forced to sell same in tank cars in the Houston area or ship it to some Terminal on the Atlantic Seaboard and send a man back East to peddle it out in tank cars and barges and I certainly do not wish to follow this method of disposing of same.

If I do not get a buyer pretty soon, it is beginning to look as though I will have to go to Washington and get our friend "Harold Ickes" to sell it for me.

I will certainly appreciate any cooperation you might extend and awaiting your reply, I am

Yours very truly,
Dale W. Moore Oil Co.,
By Dale W. Moore

4788 GOVERNMENT EXHIBIT NO. 83.

August 16, 1935

Mr. D. W. Moore,
c/o Dale W. Moore Oil Co.,
Tulsa, Oklahoma

Dear Mr. Moore:

As Mr. Arnott is in Europe, your letter of the 10th instant to him has been referred to me for reply.

We are not interested in the purchase of the cargo of gasoline you refer to, altho we thank you for bringing it to our attention.

Very truly yours,

CLJ.P

Copy for Mr. Paul Jacobi

4789 GOVERNMENT EXHIBIT NO. 84.

August 16, 1935

Mr. Paul Jacobi,
c/o Wadhams Oil Company,
Tulsa, Oklahoma

Dear Mr. Jacobi:

For your personal information note attached from the Dale W. Moore Oil Company and copy of our reply.

As I understand the situation these people accumulated a cargo of gasoline at Texas City when the price was substantially less than today's market, and have been holding it for the purpose of making an extra profit thru higher prices. Furthermore, I heard that the original intention, when they leased the storage, was for the purpose of exporting the gasoline. Of course you know we are not interested in purchasing gasoline from other than refineries direct.

I also understand they have offered the cargo to several

possible buyers here in the East and none of them seem to want it.

There is no objection to your talking with our Magnolia friends about this in view of the Dale W. Moore Oil Company's reference to possibly selling it in that vicinity.

Very truly yours,

CLJ.P
Enclosures

4790 GOVERNMENT EXHIBIT NO. 86.

August 27, 1935.

Dear Paul:

I arrived in New York at noon last Saturday and was agreeably surprised to find the temperature about 60 degrees. It was quite a relief after our experience at Tulsa but you no doubt become accustomed to it and, further, as you say, dress accordingly.

Referring to our several conversations with reference to running some of the exchanges through your office, wish to say that I discussed this with Walter Ware at St. Louis last Friday and while at the present moment I am no further to a solution than I was at Tulsa, I am bearing it in mind.

Give some consideration to the following:

When you buy gasoline from Group 3 for Wadhams, Chicago Division and Lubrite, other than your purchases from White Eagle, is there not a possibility that we may exchange a cargo of gasoline Magnolia at Beaumont versus Empire at Ponca City? This would in effect permit all of our units to be selling gasoline of our own manufacture and no doubt supply them with gasoline cheaper than you could purchase it from various suppliers and at the same time give our Magnolia unit a manufacturing profit. This could even apply to any purchases that White Eagle may make when their production does not balance their sales.

I realize that this will eliminate your purchasing from smaller refineries in Oklahoma who may need relief, consequently leaving distress gasoline on the market and thus creating a bad situation locally. However, it is a thought that you might keep in mind for the occasion may arise for such an exchange as suggested.

Again I want to say to you and Peg that I very much appreciate the kindness and hospitality which you always extend to me while I am in Tulsa. Trust that the very near

future will see you in New York when I will be able to reciprocate.

With my very kindest regards to you both, I am,

Yours very sincerely,

Mr. W. P. Jacobi,
440 Philcade Building,
Tulsa, Okla.

4791 GOVERNMENT EXHIBIT NO. 87.

Letterhead of Wadhams Oil Company, Tulsa, Oklahoma.

September 3, 1935

Dear Jack:

Yours of August 27, received and I was very very glad to hear from you.

About Empire-Ponca City-Magnolia, possibly a trade like this can be worked out, assuming of course that Empire can use the additional gasoline from Mag and that they can furnish a similar quantity from Okmulgee.

Of course the gasoline purchased from Omar, etc., has helped the market structure here decidedly in the past sixty days and has enabled Socony to do its part in the inter-refinery buying. I suppose this must be given consideration also in view of the importance of the Group 3 tank car prices to our plants.

I am of course not saying anything to Mr. Tuttle about this deal until I hear from you further. However, if agreeable I would like to feel him out as to the possibility of his shipping gasoline North from Okmulgee, Empire taking gasoline from Magnolia in exchange.

If you want me to go ahead with them, will you advise me how much of a discount below the low prices of the Chicago Journal of Commerce on 63/70 and 62 & below octane you feel we should get from Empire f.o.b. Okmulgee.

Also, what Empire's price would be on the gasoline they take from Magnolia at Beaumont and the grade they will have to take.

It is always a great pleasure for us to have you with us in Tulsa and I assure you you are not forgotten when old 7:50 pulls out.

Sincerely yours,
Paul

Mr. J. H. Romer
Socony-Vacuum Oil Company, Inc.
26 Broadway
New York City, N. Y.

4792 GOVERNMENT EXHIBIT NO. 88.

September 16, 1935.

Mr. W. P. Jacobi,
Wadhams Oil Company,
440 Philcade Building,
Tulsa, Oklahoma.

Dear Mr. Jacobi:

As I have been away from the office, this is the first opportunity I have had to answer your letter of September 3rd.

As you say, serious consideration must be given to the importance of purchasing gasoline in Group 3 if it is necessary to stabilize prices and, therefore, it is very questionable if a great deal of exchanging can be done with Empire's Group 3 plants versus Beaumont.

White Eagle, as you know, has already advised you and our different units that they would like to have shipping orders after November 1st. and, therefore, I think it would be a bad time to approach Mr. Tuttle because actually we would have nothing that could be offered in the way of a trade. It would also be well for us to discuss the matter before carrying it further.

I do not know on just what basis we could trade Okmulgee versus Beaumont. This would also need careful consideration.

There is no question but that Empire can use additional gasoline at Beaumont as they are constant buyers. We just turned another cargo down last week because none of our units could handle it.

Would suggest that you digest the matter further until the next time I see you.

Very truly yours,
J. H. Romer

4793 GOVERNMENT EXHIBIT NO. 93.

Letterhead of Skelly Oil Company
Kansas City, Mo.

December 27, 1935

Mr. J. F. Nagle
Skelly Oil Company
Tulsa, Oklahoma

Dear Mr. Nagle;

I have yours of the 24th on the subject of the Russell Refining Company.

I had hoped that this refinery's runs might be reduced in line with the Program Committee. In view of the location of this refinery, any portion of these 45 cars a month may cause some concern in that territory, especially for the reason that it has an advantage on trucking rates, as well as rail rates, into western Kansas, Colorado, and Nebraska.

While we are not anxious to be the guardian of any additional refineries, I would much prefer to take some of this gasoline rather than the gasoline in Oklahoma or Texas, as there is at least ½¢ or more a gallon to our advantage in freight rates.

The point is that this gasoline is right in the heart of our territory, where we have station investments, and unless there is some legitimate home for this product, it may cause embarrassment in the market.

You might discuss this again with Bourque, and get his ideas as to how best to handle this matter.

Very truly yours,
W. T. Atkins

4794 GOVERNMENT EXHIBIT NO. 94.

December 24, 1935.

Mr. W. T. Atkins,
Kansas City.

Following receipt of your letter of the 23d this morning, in regard to Russell Refining Company, I called Mr. Bourque, of the Association, who told me that these people were running on some of their own crude, and that of a few associates, for which crude there is, or would be, no other market at this time.

According to Bourque, they are running around eight or nine hundred barrels of crude a day, getting around 37% gasoline recovery, which means that their output of gasoline is around 300 barrels a day, or forty five cars a month. When they first started up two or three months ago, they applied for membership in the Association, but were told that they would have to "prove" themselves first, that is, that they would have to show a willingness to play ball in the matter of their operations, both refining and marketing. He hasn't heard from them but once since then, and that was when their sales manager, a chap by the name of Whittaker, he thinks, called him a few weeks ago, to tell him that he had two cars of gasoline that he wanted somebody to take. At that time he also told Bourque that, of his forty five cars of gasoline a month, he had a market for thirty, which would leave him with "only" fifteen cars surplus. Not bad, said Bourque, except that it was a surplus of 33⅓%, which was plenty bad, looking at it in that light, and he told him so.

At any rate, Bourque has promised them that he will give them some consideration in the picture for January, but that he doesn't know yet, and probably won't until the last couple of days of this month, what he can do for them. And he has told me that, when he has developed the situation a little further, he will get in touch with either you or me to let us know what it is.

Incidentally, I might mention that my conversation with Bourque afforded me the opportunity to get the thought over to him that I mentioned to you when you were down here last week, i. e., that he, the committee, and the other buying refiners ought to remember that, on every car of gasoline that we take from Oklahoma and Texas refiners, we lose our share of the pipe line transportation profit, which, considering that most of the destinations are distant ones, amounts to around 3/16¢ per gallon. He doesn't know what you and I know—and, of course, I didn't tell him—that that loss is largely, if not entirely, made up by reason of the fact that all of this outside gasoline from these Texas and Oklahoma refiners is shipped in our cars.

J. F. Nagle

4795 GOVERNMENT EXHIBIT NO. 95.

January 9, 1936

Mr. Emby Kaye
Tulsa, Oklahoma

Dear Mr. Kaye:

Up to the present time there has been no change in the status of our gasoline purchasing during the last few months which is only for the account of absorption of excess stocks in our immediate territory. We are buying none for our own requirements on account of freight rates or prices with the exception of probably a few points into Oklahoma.

On the present program, we are obligated for about 50 or 60 cars a month of outside material, largely third grade which is rather burdensome at this season of the year when our sales of third grade are the lowest.

Yours very truly,
W. T. Atkins

cc: Emby Kaye,
El Dorado, Kansas

4796 GOVERNMENT EXHIBIT NO. 96.

Letterhead of Skelly Oil Company
Kansas City, Mo.

January 9, 1936

Mr. J. F. Nagle
Tulsa, Oklahoma

Dear Mr. Nagle:

I wish to acknowledge your letter on obligations in the buying program of 10 cars 70 Octane and 55 cars of U. S. Motor. I trust that you will be able to use some of this U. S. Motor in Oklahoma, even at points where you are buying or exchanging gasoline. It may be that we will have to eliminate some exchanges inasmuch as our sales of third grade gasoline at this season of the year are so low that we cannot move anything like this volume of this product to our own stations.

In some instances we may have to start with a small amount of freight differentials, temporarily at least until the consumption of third grade gasoline shows a higher rate of consumption as that is about the only way we can relieve the situation since our third grade gasoline sales only amount to 9% of our retail business.

Yours very truly,

W. T. Atkins

4797 GOVERNMENT EXHIBIT NO. 97.

January 22, 1936

Danciger Oil & Refineries, Inc.,
Tulsa, Oklahoma.

Mr. W. T. Atkins,
Kansas City.

Dear Mr. Atkins:

You will recall that I wrote you, on January 8th, in regard to the specifications of the third grade gasoline which Danciger is furnishing us on our Buying Program purchases, as shown on their distillation report covering one car which was shipped to our jobber at Pampa. The distillation report, which showed very good specifications, was sent to you with the letter.

In my letter I stated, also, that I was having these people send a sample of their product to Mr. Todd for his analysis. This morning I received Mr. Todd's report, a carbon copy of which is attached. With the possible exception of color which is twenty-eight, I would say that this is unusually good third grade gasoline, the octane number and the end point, in particular, being worthy of notice.

Did you arrange with Mr. Poland to have a check sample taken by one of our bulk station agents, to whom we are shipping this material, to be sent to Mr. Todd for his analysis? If you haven't then I can save you the trouble by having our Pampa jobber send in a sample from the next car we ship him, which will probably be sometime this week.

Yours very truly,

J. F. Nagle

cc Mr. Poland

4798

GOVERNMENT EXHIBIT NO. 98.

Letterhead of Skelly Oil Company
Kansas City, Mo.

January 21, 1936

Miss Clara Gartman
Tulsa, Oklahoma

Mr. Underwood has asked me to confirm to you the understanding reached in his conversation with Mr. Nagle, Mr. Tuttle, and yourself, covering the purchase of a total of ten cars of Powermax gasoline from the Russell Refining Company, Russell, Kansas, over January, 1936.

As you know, we have already issued one purchase order covering two cars and we are now sending you requisitions covering eight more cars making a total of ten cars for the month. The attached shipping instruction, #24586, for order Skelly Oil Company notify Lake Elmo Oil Company, Lake Elmo, Minnesota, dated January 18, applies against the eight cars requested today.

These ten cars will no doubt be credited against our January quota for outside gasoline for the month of January.

A. H. Pendergrass

cc: J. F. Nagle, Tulsa, Oklahoma

4799

GOVERNMENT EXHIBIT NO. 99.

Letterhead of Skelly Oil Company
Kansas City, Mo.

November 5, 1935

Mr. J. F. Nagle
Tulsa, Oklahoma

I am enclosing a report received from Mr. Todd on a sample of third grade gasoline sent in from our Hamburg, Iowa tank station. This sample was taken directly from our bulk storage tank. This material was shipped to Hamburg on September 24 from the Waggoner Refining Company, Electra, Texas. The car number was UTLX 43812. It was unloaded on September 28 and at that time there was only 130 gallons in the storage tank so that what we have in the storage tank at the present time could not have been contaminated with anything else.

You can see from Mr. Todd's report that what we got in this instance was "lousy". It is going to be necessary that we ship another car of our own material into Hamburg to spike up this material, which will give us 7 or 8 months supply of third grade gasoline or maybe more. I realize that under this buying program, we can't always do what we want to but just thought I would pass this on to you for whatever it might be worth.

L. H. Poland

cc: W. T. Atkins

4800 GOVERNMENT EXHIBIT NO. 100.

Tulsa, Oklahoma
November 20, 1935

Mr. L. H. Poland,
Kansas City.

I sure hated to get the news you gave me in your November 5th letter, regarding the quality of the Powermax Gasoline shipped by Waggoner Refining Company to our station at Hamburg, Iowa, last September 24th.

Of course, there isn't anything we can do about that now, but, just to show you how we try to keep on top of these things, I am sending you, attached, an exchange of wires between ourselves and the Waggoner people last August 19th, relating to a distillation report received from them covering gasoline shipped to ourselves at Davenport, Iowa, on the 15th. If, in spite of our keeping a close tab on specifications of shipments, whenever we can, as in this case, these outside refiners ship off specification material, about the only thing we can do is refuse to take any of their stuff when the Buying Program Committee tells us they have to move some, or to turn the refiner down completely when and if he has the nerve to call us up and solicit some business after such an instance.

J. F. Nagle

4801 GOVERNMENT EXHIBIT NO. 101.

Tulsa, Oklahoma
January 8, 1936

Mr. W. T. Atkins,
Kansas City.

Dear Mr. Atkins:

I was under the impression that I had given you the line-up on our purchase obligations for January, under the

Buying Program as they were given to me by Mr. Tuttle, of Empire, about two weeks ago. Evidently I overlooked giving it to you, personally. At any rate, they are as follows:

Rock Island	10	cars	70 octane "Q"
Wilcox	10	"	U. S. Motor
Danciger	10	"	U. S. Motor
Cusco	25	"	U. S. Motor
Miscellaneous	10	"	U. S. Motor

The twenty-five from Cusco are approximate; if Cusco's position requires our taking a few more than that number, or not requiring us to take that number, that is all right with the Committee, if it is all right with us. The miscellaneous ten cars are intended to take care of a portion of such gasoline as might come up unexpectedly from time to time during the month; and, included in the "total Miscellaneous" for the entire group are fifteen cars from Russell.

According to Mr. Bourque, whom I talked to today, the Russell people won't have more than fifteen cars, if they have anything at all, this month, and I told him that we could use their material to lots better advantage than Oklahoma or Texas material. Bourque will let me know when if any of this Russell gasoline comes up, and, of course, I will pass it along to you immediately.

Yours very truly,

J. F. Nagle

4802 GOVERNMENT EXHIBIT NO. 102.

Letterhead of Empire Oil & Refining Company,
Tulsa, Oklahoma.

March 18, 1935

Mr. Jim Nagel
Skelly Oil Co.
City

Dear Mr. Nagel:

Don't forget to report to the Western Petroleum Refiners Association all purchases of gasolene, with quantity and price each week.

Yours very truly,
Empire Oil & Refining Company
O. J. Tuttle
Sales Manager

4803 GOVERNMENT EXHIBIT NO. 103.

October 22, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Bldg.,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of October 11th, we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
October 16th	Triangle Producing & Refining Co.,	1 car U. S. Motor	4¾¢ Group Three
October 17th	" " " " "	2 cars " "	4⅝¢ " "
October 21st	" " " " "	2 " " "	4⅝¢ " "

Yours very truly,

JFN:el

NOTE:—*It is stipulated* in Exhibits 714 and 742 that this letter was written by J. F. Nagle and received by A. V. Bourque.

GOVERNMENT EXHIBIT NO. 104.

October 11, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of September 20th, we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
October 7th	Taxman Refining Co.	38 cars U. S. Motor	4¾¢ Group 3
October 7th	Wilcox Oil & Gas Co.	12 " " "	4¾¢ " "
October 10th	Cusco Oil & Refining Co.	20 " " "	Ave. Journal, Chase, Kansas

CG:el

Very truly yours,

NOTE:—*It was stipulated* in Exhibits 714 and 742 that the group of Exhibits numbered 104-118, inclusive, were written by Clara Gartman, tank car purchasing agent for Skelly Oil Company during 1935 and 1936, and received by A. V. Bourque.

4805 GOVERNMENT EXHIBIT NO. 105.

September 20, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of September 11th, we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
September 12th	Taxman Refining Co.	10 cars U. S. Motor	4¾¢ Group 3
" 16th	Wilcox Oil & Gas Co.	5 " " "	4¾¢ " "
" 16th	Waggoner Refining Co.	5 " " "	4⅝¢ " "
" 17th	Cusco Oil & Refining Co.	10 " " "	Ave. Journal Chase, Kansas
" 20th	Waggoner Refining Co.	10 " " "	4¾¢ Group 3
" 20th	Taxman Refining Co.	10 " " "	4¾¢ " "

Yours very truly,

CG:el

GOVERNMENT EXHIBIT NO. 106.

September 11, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of September 5th, we have purchased gasoline in our Tulsa office as follows:

Date	Purchased from	Quantity & Grade	Price
Sept. 5th	Taxman Refining Co.	10 cars U. S. Motor	4¾¢ Group 3

We find that we have omitted to furnish you with the information covering our purchases in Kansas since July. They cover third grade gasoline and are as follows:

Date	Purchased from	Quantity & Grade	Price
July 3rd	Cusco Oil & Refining Co.	3 cars U. S. Motor	Ave. Journal f. o. b. Chase
" 7th	" " " " "	3 " " "	" " " "
" 25th	" " " " "	4 " " "	" " " "
" 30th	" " " " "	5 " " "	" " " "
August 12th	" " " " "	5 " " "	" " " "
" 15th	" " " " "	5 " " "	" " " "
" 22nd	" " " " "	10 " " "	" " " "
September 5th	" " " " "	10 " " "	" " " "

Yours very truly,

CG:el

4807 GOVERNMENT EXHIBIT NO. 107.

September 5, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of July 27th, we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
July 27th	Taxman Refining Co.	10 cars U. S. Motor	4¾¢ Group 3
" 31st	Tyreco Refining Co. No. 2	10 " " "	4⅝¢ East Texas
August 2nd	Taxman Refining Co.	10 " " "	4¾¢ Group 3
" 6th	" " "	15 " " "	4¾¢ " "
" 12th	" " "	10 " " "	4¾¢ " "
" 12th	Waggoner Refining Co.	10 " " "	4¾¢ " "
" 16th	Marimac Oil Co.	10 " " "	4⅝¢ " "
" 22nd	Taxman Refining Co.	5 " " "	4¾¢ " "
" 22nd	Panhandle Refining Co.	10 " " "	4½¢ " "
" 28th	Rock Island Refining Co.	10 " " "	4¾¢ " "
" 28th	" " " "	10 " 70 Octane	5⅝¢ " "
" 28th	Taxman Refining Co.	5 " U. S. Motor	4¾¢ " "
" 30th	Grogan Oil Co.	10 " " "	4⅝¢ " "

Yours very truly,

CG:el

(Handwritten Notation)
"file WPRA"

4808 GOVERNMENT EXHIBIT NO. 108.

June 21, 1935

Mr. A. V. Bourque;
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since our last report to you, we have purchased third grade gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
June 13th	Dale W. Moore	5 cars, U. S. Motor	4⅝¢ Group 3
" 14th	Taxman Refining Co.	5 " " "	4¾¢ " 3
" 19th	Simms Oil Co.	9 " " "	4⅝¢ " "
" 19th	Taxman Refining Co.	15 " " "	4¾¢ " "
" 20th	Tyreco No. 2 Refinery	5 " " "	4⅜¢ East Texas

Yours very truly,

CG:el

July 27, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since my letter to you of June 21st, we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
June 20th	Wilcox Oil & Gas Co.	4 cars U. S. Motor	4⅝¢ Group 3
" 24th	" " " " "	5 " " "	4⅝¢ " "
" 28th	Taxman Refining Co.	5 " " "	4⅝¢ " "
July 2nd	" " "	10 " " "	4⅝¢ " "
" 3rd	Texas Oil Products	10 " " "	4½¢ " "
" 5th	Taxman Refining Co.	2 " " "	4⅝¢ " "
" 8th	Wilcox Oil & Gas Co.	5 " " "	4⅝¢ " "
" 10th	Taxman Refining Co.	5 " " "	4⅝¢ " "
" 10th	Gilliland Refining Co.	10 " " "	4⅜¢ East Texas
" 12th	Taxman Refining Co.	5 " " "	4⅝¢ Group 3
" 15th	" " "	10 " " "	4⅝¢ " "
" 18th	Wirt Franklin Oil Corp.	10 " 70 octane	5⅝¢ " "
" 22nd	Taxman Refining Co.	15 " U. S. Motor	4⅝¢ " "
" 23rd	" " "	10 " " "	4⅝¢ " "
" 25th	Waggoner Refining Co.	16 " 70 octane	5⅝¢ " "
" 26th	Wirt Franklin Oil Corp.	10 " " "	5⅝¢ " "
" 26th	Taxman Refining Co.	10 " U. S. Motor	4⅝¢ " "

Yours very truly,

CG:F

June 13, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Since our last report to you, we have purchased third grade gasoline as follows:

Date		Purchased from	Quantity & Grade				Price		
June	6th	Hercules Oil Co.	5	cars,	U. S.	Motor	4 1/16¢	Group	3
"	6th	Taxman Refining Co.	10	"	"	"	4 3/16¢	"	"
"	10th	Taxman Refining Co.	6	"	"	"	4 3/16¢	"	"
"	11th	Wilcox O. & G. Co.	5	"	"	"	4 3/16¢	"	"
"	11th	Simms Oil Co.	10	"	"	"	4 3/16¢	"	"
"	12th	Wilcox O. & G, Co.	5	"	"	"	4 3/16¢	"	"

Yours very truly,

CG:el

4811 GOVERNMENT EXHIBIT NO. 111.

June 5, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

Confirming telephone conversation with your office today, you were advised that we have purchased gasoline as follows:

Date	Purchased from	Quantity & Grade	Price
May 23rd	Taxman Refining Co.	5 cars, U. S. Motor	4⅝¢ Group 3
" 24th	Sunray Oil Co.	1 car, 70 octane	5½¢ " "
" 24th	Omar Refining Co.	1 " " "	5½¢ " "
" 24th	Wilcox O. & G. Co.	1 " " "	5½¢ " "
" 28th	Simms Oil Co.	5 cars, U. S. Motor	4⅝¢ " "
" 28th	Wilcox O. & G. Co.	5 " " "	4⅝¢ " "
" 29th	Taxman Refining Co.	10 " " "	4⅝¢ " "
June 4th	Taxman Refining Co.	5 " " "	4¾¢ " "

Yours very truly,

CG:P

4812 GOVERNMENT EXHIBIT NO. 112.

May 17, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

On May 6th we purchased 10 cars of U. S. Motor Gasoline, below 62 octane, from Taxman Refining Company, Wichita Falls, at 4⅜¢ per gallon, f. o. b. Group Three. On May 10th we purchased an additional 10 cars on the same basis from Taxman.

On May 15th we purchased 10 cars of U. S. Motor Gasoline, below 62 octane, from Simms Oil Company at 4⅝¢ per gallon, f. o. b. Group Three.

On May 16th we purchased 15 cars of 70 octane gasoline from Waggoner Refining Company at 5⅜¢ per gallon, f. o. b. Group Three.

These purchases are to be credited to Skelly Oil Company on the inter-refinery buying agreement.

Yours very truly,

CG:P

4813 GOVERNMENT EXHIBIT NO. 113.

May 6, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

On April 30th we purchased 10 cars of U. S. Motor Gasoline, below 62 octane, from Taxman Refining Company, Wichita Falls, at 4⅜¢ per gallon, f. o. b. Group Three. On May 2nd we purchased an additional 5 cars on the same basis from Taxman.

These purchases are to be credited to Skelly Oil Company on the inter-refinery buying agreement, which is now in effect.

Yours very truly,
Skelly Oil Company.

CG:P

4814 GOVERNMENT EXHIBIT NO. 114.

April 23, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

On April 15th we purchased 2 cars of 68-70 octane gasoline from Sunray Oil Company at 5⅛¢ per gallon, f. o. b. Allen, Oklahoma, and on April 18th we purchased 2 additional cars of the same material from the same shipper at 5¼¢ per gallon, f. o. b. Allen, Oklahoma.

On April 22nd we purchased 15 cars of U. S. Motor Gasoline, below 62 octane, from Taxman Refining Company, Wichita Falls, Texas, at 4⅜¢ per gallon, f. o. b. Group Three.

These purchases are to be credited to Skelly Oil Company under the inter-refinery buying agreement which is now in effect.

Yours very truly,

CG:P

4815 GOVERNMENT EXHIBIT NO. 115.

April 9, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

On April 5th we purchased 5 cars of 68-70 octane gasoline from Sunray Oil Company for immediate shipment at 4⅞¢ per gallon, f. o. b. Allen, Oklahoma. Today we purchased 1 car of the same material from the same refiner at 5¢ f. o. b. Allen.

These purchases are to be credited to Skelly Oil Company under the general inter-refinery buying agreement which is now in effect.

Yours very truly,
Skelly Oil Company.

CG:P

4816 GOVERNMENT EXHIBIT NO. 116.

April 2, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

We purchased yesterday 1 car and today 5 cars of 68-70 octane gasoline from Sunray Oil Company for immediate shipment at 4⅞¢ per gallon, f. o. b. Allen, Oklahoma.

We purchased an additional 5 cars of 68-70 octane gasoline from Wilcox Oil & Gas Company for immediate shipment at 4⅞¢ Group Three.

These purchases are to be credited to Skelly Oil Company under the general inter-refinery buying agreement which is now in effect.

Yours very truly,
Skelly Oil Company.

CG:P

4817 GOVERNMENT EXHIBIT NO. 117.

March 29, 1935.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Okla.

Dear Mr. Bourque:

We have purchased today one car of 68-70 octane gasoline from Sunray Oil Company for rush shipment from their refinery at Allen, Oklahoma. The price of this purchase was 4⅞¢ per gallon, f. o. b. Allen.

This purchase is to be credited to Skelly Oil Company under the General Inter-refinery Buying Agreement which is now in effect.

Yours very truly,
Skelly Oil Company.

CG:P

4818 GOVERNMENT EXHIBIT NO. 118.

March 19, 1935.

Western Petroleum Refiners Association,
Cosden Building,
Tulsa, Oklahoma.

Attention: Mr. A. V. Bourque.

Gentlemen:

Confirming our telephone conversation yesterday, you were instructed that, under the Inter-Refinery Buying Program now in effect, Skelly Oil Company should be credited with buying 6 cars of U. S. Motor Gasoline, 63-70 octane, on March 8th, at 4⅝¢ per gallon Group Three, from Sunray Oil Company.

We have contacted Sunray Oil Company twice since that time, the last time being this morning, and were advised that orders were coming in from their regular trade to the extent that they did not need any additional orders from us at this time.

On March 8th, and again yesterday, we contacted Rock Island Refining Company, Duncan, Oklahoma, and were informed both times that orders from their regular contracted customers would not permit them to accept any additional business.

Yours very truly,
Skelly Oil Company.

CG:P

4819 GOVERNMENT EXHIBIT NO. 120.

May 7, 1935.

Harold Rohrer,
McAlester, Okla.

Mr. W. T. Atkins,
Kansas City.

Dear Mr. Atkins:

Our contract with Harold Rohrer at McAlester specifies that the f. o. b. point is to be Tulsa, from which the freight rate is 15¢ per cwt. McAlester is one of the places in Oklahoma on which freight savings effected by our exchange with The Texas Company are the greatest, and, therefore, is one of the places, shipments to which have brought about the one-sided result in freight savings as between ourselves and The Texas Company on that exchange. If we are to attempt to bring about a realignment of our shipping arrangements down here in Oklahoma, in order to keep our freight savings on the Texas exchange more nearly in line with theirs, McAlester is one of the places to which we should ship from some other point. I believe I have worked out a plan where we can kill about four birds with one stone by shipping to McAlester from Sunray at Allen.

First, we are, as you know, buying 70 octane gasoline from Sunray on this inter-refinery buying program. Since we don't make much, if anything, on that gasoline when we ship it up north, but probably lose on it, inasmuch as we deprive ourselves of the pipe line transportation profit as well as the freight differential El Dorado under Group Three, we have been shipping it mostly to our tank stations at Ada and Wewoka, Oklahoma, thereby saving freight as compared with shipping from Tulsa on the Texas exchange, besides which we save close to one eighth cent per gallon on tank car expense by getting the Sunray people to make these shipments in blank tank line cars. Now, by including Rohrer's requirements of Aromax on our arrangement with Sunray, we would have about ten cars a month to buy from those people. This is about what we would ordinarily have to take from them on the buying program at a price which would ordinarily be above the market. If we were to take that much from them each month, independent of the buying program, there wouldn't by anything to take from them on the program, so what would be sweeter than discharging that buying obligation by arranging to take about ten cars a month for Ada, Wewoka, and McAlester at a price under the market? I have gone ahead on the assumption that that would be the thing to do, and I have arranged with the Sunray people to buy that much, on an open agreement,
each month at one eighth cent under the low in the
4820 Journal for the middle octane grade on date of shipment, shipment to be made in their cars. This, then saves us at least one eighth cent per gallon on what we would probably have to take from them on the buying program, and, by moving the stuff to Oklahoma destinations, permits us to ship our own stuff out of the pipe line to the destinations that some of this Sunray material has been going to in the past.

Rohrer will take about three cars a month, so, by shipping to him from Sunray at Allen, instead of from Texas at Tulsa, the one-sidedness of our freight savings on that exchange will be reduced by about $250.00 per month on the

Rohrer business alone, without our losing anything on the switch. By letting Rohrer get the benefit of the lower rate from Allen to McAlester, it should enable him to catch up somewhat on his account with us, which will be good news to Joe Powell, although Rohrer's account isn't in bad shape by any means. It will be understood, of course, by Rohrer, that, in making this voluntary concession to him, we are not committing ourselves to ship from Sunray, or on the Allen rate, any longer than we see fit. This concession to him can readily be made without its costing us a penny, and it will be helping him to be a better and more satisfied customer, not that he isn't a good customer now, and a satisfied one, but, rather, this will make him more so.

Summing it all up, therefore, here is what we will be accomplishing: (1) We will be discharging our buying obligation to the Sunray people on the buying program and getting a quarter of a cent or so better price that we would have to pay on that program arrangement; (2) we will be helping to bring about the equalization of freight savings on The Texas Company Exchange Agreement that we've got to keep in mind; (3) we will be saving the tank car expense on shipments to Rohrer at McAlester, which amount to around $6.00 per trip, by supplying Rohrer out of Allen in Sunray's blank tank line cars; and (4) we will be giving Rohrer a break without our being anything out of pocket ourselves, this break thus enabling him to bring his account with us to a more nearly current basis, or, at least, in line with the amount of credit Joe Powell thinks he is entitled to.

We are moving a car of Aromax from Allen to Rohrer tomorrow. If all of the foregoing looks all right to you, will you kindly tell Dow Williams that the f. o. b. basis on the order (Order #3494) is Allen, Oklahoma, and that, until further notice, we can consider the f. o. b. basis on which we shall ship Rohrer is "f. o. b. point of origin, freight rate not to exceed Tulsa rate?"

Yours very truly,

NOTE: *It is stipulated* in Exhibit 714 that this was written by J. F. Nagle and received by W. T. Atkins.

4821 GOVERNMENT EXHIBIT NO. 121.

Tulsa, Oklahoma
September 11, 1935.

Mr. A. H. Pendergrass,
Kansas City.

Following receipt of the information from you by telephone this afternoon that the dates on several of the bills of lading from Hurricane Refining Company (Grogan Oil Company) did not check with the shipping dates we had given you on these cars. I immediately got in touch with Grogan's local office, to get an explanation for their having given us those phoney shipping dates.

They pleaded that this was the first information they had that the cars were not actually shipped on the dates they gave us, and, as you might expect, they apologized profusely for it. They assured us, of course, that they would find out the reason for this delay, as well as the reason for the refinery's having given such erroneous information.

In your consideration of this delay, it should be borne in mind that it wasn't really four to five days—that is, from September 3rd, the date of your shipping instructions, to September 7th and 8th, the actual shipping dates; at least two days of the delay was undoubtedly due to shipments being made in our cars, not theirs. You know how that is: We get the orders from you in the afternoon; we give them to the shipper; their switch, spotting empties for next day's loading, had already been lined up and made, so that our cars couldn't be spotted until the next day, which meant loading that night and shipping the following day, or, the second day after receipt of your order. Had our order not been booked for shipment in our cars, these people undoubtedly would have been in position to get these cars going on the 4th, or certainly, not later than the 5th.

However, there was no excuse for their reporting car numbers on the 6th and 7th, and not actually making shipments until a day or two later, so that, unless they can give a satisfactory explanation, we shall just have to check them out, as far as further purchases are concerned. This purchase, incidentally, was one of those that we made at the request of the Buying Program Committee, the shipper being one of those East Texas outfits that are not always to be relied on a hundred per cent.

J. F. Nagle

cc Mr. L. H. Poland

4822 GOVERNMENT EXHIBIT NO. 122.

Tulsa, Oklahoma
August 27, 1935.

Mr. L. H. Poland,
Kansas City, Mo.

We are purchasing today from Rock Island Refining Company, Duncan, Oklahoma, 10 cars of Powermax (Purchase Order No. 187914) and 10 cars of 70 octane Aromax (Purchase Order No. 187915), these purchases being made in connection with the inter-refinery buying program which is still in effect, the Rock Island outfit being one of the babies placed in our lap last spring when this thing was inaugurated.

The specifications on these two products will run as follows:

	Aromax (leaded)	Powermax
Gravity	61-63	60-61
I. B. P.	95-100	98-102
10% point	145-150	155-160
End point	398-402	400-405
Octane number	70	52-54

Sulphur content on both products less than .1 of 1%; gum content on both products 10 mmg., or less; color on the U. S. Motor 28 to 30 plus, and, on Aromax, dyed our orange.

This material has been bought on these specifications. I suggest, in order to forestall any possible complaint from any of our agents to whom it might be shipped, that you instruct two of them to send samples (one of them to send a sample of Powermax, and the other to send a sample of Aromax) to the refinery for complete analysis. Only in that way will we know whether this outfit is shipping the kind of material we have purchased. We have no reason to doubt that they will ship anything but first class material, but I don't want to have some agent belly-aching about the quality of the material he received (simply because it was shipped from some other place besides our own refinery or the pipe line terminal) after he has unloaded the car, and without giving us or the shipper a chance to see whether the complaint is justified, or whether the agent is just exercising his constitutional right to gripe.

I have in mind particularly your letter of August 7th regarding the trouble your agents at Mason City, Lebanon,

and Boone, had in unloading gasoline shipped from Sunray at Allen. To me, it seems strange indeed that
4823 these agents should have had to spend several nights pumping these cars and going to so much trouble before they got the cars unloaded when, for the past several months, this same material has been shipped to two of our bulk stations and two of our jobbers way down south in Oklahoma without a single complaint as to difficulty in unloading. It is true that the 10% point on this gasoline was about 10 to 12 degrees lower than our own specifications, but the material that was shipped to the above destinations was the same as that shipped to Ada, Wewoka, Durant, and McAlester, Oklahoma.

J. F. Nagle

cc Mr. W. T. Atkins
Mr. Emby Kaye

4824 GOVERNMENT EXHIBIT NO. 123.

Tulsa, Oklahoma,
November 15, 1935.

Mr. L. H. Poland,
Kansas City.

Just to let you know that once in a while we do get a break, I am attaching hereto distillation tests covering the first four cars of Powermax shipped by Premier Oil Refining Company, Longview, Texas, applying on our Purchase Order No. 192255.

You will notice that these distillation tests show the gravity to be 61.7 to 63.5, end point under 400, octane 60 plus, and 10% point 136 to 138. I know that you will be glad to have this information and to know that this material should make a very good grade of Powermax for us, especially for this time of the year.

These shipments apply against a ten car purchase from these people and are all being shipped from East Texas. The purpose of the purchase was to support the current spot market.

Clara Gartman

4825 GOVERNMENT EXHIBIT NO. 124.

October 17, 1935.

Mr. L. H. Poland,
Kansas City.

Reference your letter of the 11th, file 85:12.

While I certainly can appreciate that we are in a tight spot in the matter of keeping on the approved list of United Laboratories, when so much of our Powermax Gasoline is being supplied from outside refineries, I hardly know what to do about it.

As you probably know, we don't have much choice as to whose material we are to take, when we purchase outside third grade gasoline in connection with the Buying Program Committee's operations. On such purchases, we have refineries "assigned" to us, and, as you might expect, such refineries are small outfits who just make motor gasoline, and don't make any effort at all to make their product suitable for use in pressure gas appliances. Even if we did have some choice, it wouldn't do us much good because, as far as making an extra fine product suitable for this special use is concerned, they just wouldn't be interested, for they aren't that kind of refiners. Now, that goes for most of our Oklahoma refiners, and, with that being true, what can you expect from outfits in the Panhandle and North Texas, to say nothing of East Texas with all its fly-by-night outfits? You probably know that, out of about twelve to fifteen first class or good refiners here in Oklahoma, only six are on the approved list of United for Oklahoma, such concerns as Barnsdall, Phillips, Sinclair, and Tidal being among the missing. Their products might pass muster with United, but they aren't on the list that I have.

Does United prescribe any particular set of specifications, by which we might be guided in buying our outside third grade gasoline? If they do, then, of course, we can scout the market and find out who, among the small refiners whose surplus is moved through the committee's activities, makes a product meeting such specifications, and then tell the committee that we will take our monthly "allocation" from them instead of from Wilcox, or Taxman, or Panhandle, or some of the other jacklegs whose stuff won't pass muster.

J. F. Nagle

4826 GOVERNMENT EXHIBIT NO. 125.

December 20, 1935

Mr. E. F. Underwood
Office

With further reference to purchasing third grade gasoline from the Russell Refining Company, Russell, Kansas, as you know Jim Smith and I took it upon ourselves to buy a car of this material about a week ago for our Goodland tank station on which we saved approximately $45.00 over Chase and approximately $66.00 over El Dorado in freight alone.

Besides that we bought this material at the low of the Journal of Commerce on date of shipment, which I consider a very good price for shipment from a Kansas refinery. I realize we are probably committed to buy from certain people such as Ben Taxman at Chase and other refineries in Texas or Oklahoma in connection with the buying program but we have seven points along the Union Pacific in Western Kansas and Goodland on the Rock Island where we can save from $21.00 to $63.00 a car on shipments from Russell as compared with Chase and from $48.00 to $98.00 a car as compared with El Dorado.

I do not know much about this buying program business but it would seem to me that we should supply these points from Russell and save this money. The material that they are making is as good or better than anything we ever got from Ben Taxman or East Texas.

L. H. Poland

cc: W. T. Atkins, Office
cc: J. F. Nagle, Tulsa, Okla.

Note to Mr. Atkins and Mr. Nagle: Is there any reason we can't take some of this material?

L. H. P.

4827 GOVERNMENT EXHIBIT NO. 126.

Tulsa, Oklahoma,
December 21, 1935.

Mr. L. H. Poland,
Kansas City.

Reference your December 20th letter to Mr. Underwood, your file 85:12, carbon copy of which you sent to me:

There isn't any reason that I know of for your not purchasing third grade gasoline from Russell Refining Company, at Russell, Kansas, and, with the savings mentioned in your letter, I would say that there is every good reason for purchasing from them, quality and service being satisfactory.

It should be borne in mind, of course, that such purchases, being made because of freight savings effected, are not credited to us by the Buying Program Committee handling inter-refinery purchases. But we can waive that credit, all right, when the actual cash-in-pocket savings are as much as they are in this case.

J. F. Nagle

cc: Mr. Atkins
Mr. Underwood

4828 GOVERNMENT EXHIBIT NO. 127.

December 23, 1935

Mr. L. H. Poland,
Office

I have a copy of your letter addressed to Mr. Underwood and also the note in regard to purchasing of gasoline from the Russell Refineries.

I do not know that we will want to purchase this gasoline even if there is a saving in freight since we are committed to take a certain volume at Chase, Kansas, each month and I would want to check further on the Russell situation, especially as to their allotment before giving any consideration to purchasing part of their output.

W. T. Atkins

cc: E. F. Underwood, Office.
J. F. Nagle, Tulsa, Oklahoma

4829 GOVERNMENT EXHIBIT NO. 128.

Letterhead of Skelly Oil Company, Kansas City, Mo.

December 23, 1935

Mr. J. F. Nagle
Tulsa, Oklahoma

Dear Mr. Nagle:

I would suggest that you check with the committee at Tulsa and determine the allocations from the Russell Refining Company; also, who has been delegated to take this surplus.

I note from Poland's letter they have some gaseline to sell and it occurred to me that they might want to run some excess crude.

Yours very truly,
W. T. Atkins

4830 GOVERNMENT EXHIBIT NO. 135.

Telegram

Arkansas City, Kans.
December 7, 1935

J. J. Taxman
Taxman Refg. Co.
Wichita Falls, Texas.

This to remind you of meeting Kansas City Tuesday December tenth please be there.

C. M. Boggs.

4831 GOVERNMENT EXHIBIT NO. 136.

Telegram

Arkansas City, Kans.
November 23, 1935

J. J. Taxman
Taxman Refining Co.
Wichita Falls, Texas.

Meeting called for Kansas City Monday twenty fifth is of utmost importance insist you attend.

C. M. Boggs

4832 DEFENSE EXHIBIT NO. 137.

Telegram

Chicago, Illinois
February 23, 1935

J. J. Taxman
Taxman Refining Co. Inc.
Wichita Falls, Texas.

At the present moment the stabilization work in the Mid-Continent region is of outstanding importance and requires immediate consideration of a number of important items

Stop I have requested the prominent and active independent Mid-Continent non integrated refiners to meet with me Kansas City Muehlbach Hotel nine thirty Friday morning March first it is very important that you be present to assist and in considering and determining many important matters that should be immediately decided upon Stop Kindly acknowledge Blackstone Hotel Chicago.

C. E. Arnott.

4833 GOVERNMENT EXHIBIT NO. 148.

October 8, 1935

Mr. Dan Danciger,
Danciger Oil and Refineries, Inc.,
Tulsa, Oklahoma.

Dear Sir:

I am writing you, urging your attendance in person at the meeting in Kansas City, on October fourteenth.

We are at the beginning of the slackening of demand, and at this meeting there are many things of vital importance to discuss that absolutely require advice and action by the Executives themselves, and upon which they alone should act.

Mr. Arnott will be with us, and no doubt will have much to tell us. I cannot urge you too strongly to attend, with your Sales Manager.

Very truly,
C. M. Boggs.

(Handwritten Notation):

"Mr. Brammer?"

4834 GOVERNMENT EXHIBIT NO. 168.

Shell Petroleum Corporation

Copy of Telegram Sent

St. Louis
January 4, 1935

Crude Oil Dept Tulsa

Your TA-35 Rock Island offer gasoline prefer wait until general program arranged do buying as do not believe individual purchase will assist quotations.

Crude Oil Department
A. P. Ruether

4835 GOVERNMENT EXHIBIT NO. 169.

Crude Oil Department January 11, 1935.

Messrs. Fraser
Bascom
van Eeghen
Lakin

The following reports a check of the gasoline supply hanging over the market in Oklahoma, North Texas and the Panhandle, all of which material is offered at the low of the Chicago Journal of Commerce:

63-70 Octane or Q

Danciger	**January**	**shipment**	**35**	**cars**	**65**	**Octane**	
Rock Island	**Immediate**	"	**20**	"	**68**	"	
Panhandle	"	"	**30**	"	**Q**		
Taxman	"	"	**25**	"	**65**	"	**(offcolor)**
Waggoner	**January**	"	**50**	"	**65**	"	**or Q**
Sunray	**Immediate**	"	**35**	"	**68**	"	

The Q is quoted ⅛¢ over low Journal quotations. Total cars 195.

Third Grade

Rock Island	**Immediate**	**shipment**	**20**	**cars**
Panhandle	"	"	**30**	"
Taxman	"	"	**50**	"
Olney	**January**	"	**35**	"
Waggoner	"	"	**50**	"
Sun Company	"	"	**20**	"
Cushing	"	"	**25**	"
Champlin	"	"	**20**	"

Total cars — 250

The foregoing is offered at flat 3¾¢ or low Journal, date of shipment.

Bourque advises that a Meeting held in Chicago last week (Mr. Arnott) considered getting into operation a buying program but so far as we can learn, no definite plan has been arranged.

East Texas is clear of surplus material at the moment, and the situation there has been bolstered by an announcement from Greene that he has a purchase order for 300 cars of gasoline which he will begin buying on January 4836 14th (understand this is being bought for Humble and Texas).

The general opinion is that buyers (jobbers-brokers) are keeping away from the market as long as possible, in view of the Supreme Court decision, and are looking for a complete breakdown in East Texas. If control is continued, it is expected they will have to come into the market, which will do much to relieve the position in North Texas, Panhandle and Oklahoma.

Bourque is endeavoring to develop a program and advises that Phillips and Vacuum are short of gasoline. He asked for our participation in doing some buying, to which we have not made a committment until we know more about the plan discussed in Chicago. (Mr. van Eeghen advises that a committee has been appointed which will go into this early next week).

It is suggested that the published prices would be helped to a considerable extent, if all major companies would post a price each day for 63 plus Octane gasoline for spot delivery, informing the publications of their quotations for this grade.

If it is considered that East Texas will continue under control, a buying program is suggested—say not to exceed 20 cars per day, scattered among all the small refiners, offering material on the open market, in Oklahoma, North Texas and the Panhandle, which would do much to improve the situation. If ten purchasers could agree to a program, each should be assigned to a seller having surplus material. In that manner a much closer check could be kept of the actual situation. If the surplus is too large for one buyer to handle, some special arrangement could be made for the other buyers to participate—haphazard buying will not help, it must be orderly and continuous, preferably on a daily basis, rather than large purchases today and no purchases until another surplus appears to place a sag on the market.

APR.L

4837 GOVERNMENT EXHIBIT NO. 170.

Crude Oil Department January 15, 1935.

Gasoline Market
(Tank Car)

Messrs. Fraser
Bascom
van Eeghen
Lakin

Bourque has made a check of the Chicago market and reports it is clear of any distress material. The brokers who were recently selling short, are trying to cover.

A buying movement has started. Stanolind are purchasing middle bracket and paying 4⅝ cents, quantity unknown.

Phillips have taken 150 cars of 3rd grade for delivery over January and will buy additional gasoline during the month.

Empire—MidContinent and Globe, will do some buying, beginning today. Barnsdall and Continental, will probably join tomorrow.

Following is check of Oklahoma Refineries:

Champlin has 50 cars of 3rd grade (not pressing).

Cushing Refining Company, no gasoline to offer.

Rock Island Refining Company, 50 cars of 65 octane, shipment over January. They will add Q if required by the buyer.

Major Refining Company, Oklahoma City, clear.

Sinclair has purchased 10 cars 3rd grade.

Sun Oil Company, 25 cars, 400 End Point (not Pressing).

Sunray Refining Company, none to offer.

Wilcox, 20 cars 3rd grade, 25 cars Q.

Panhandle District.

Panhandle Refining Company sold up for January.

4838 Sinclair purchased 20 cars.

Phillips, 100 cars.

Shamrock Refining Company, none to offer.

Sinclair bought 15 cars.

Danciger Refining Company, 35 cars 65 octane.

Kansas District.

Vickers clear, sold 25 cars to Phillips.

Dickey, clear, sold 15 cars to Phillips.

North Texas.

Olney, 35 cars 3rd grade, January shipment.

Waggoner, 50 cars 3rd grade and 25 cars 65 octane.

Taxman, Tulsa broker, has 50 cars 3rd grade and 25 cars 65 octane which is reported to be East Texas offcolor and hot.

The East Texas field has on hand, approximately 150 cars of legal gasoline, 3rd grade, current quotations 3½ to 3⅝ cents ex East Texas.

Truck deliveries, hot gasoline 2¼ to 2½ cents.

We have talked to James (Platt's Tulsa) and informed him of the general situation. We have also asked Bourque to endeavor to have the buyers pay a premium over published prices for middle octane grade in order to get the publications to move up on their quotations.

We are not ready to recommend our joining in on the buying until we have an opportunity to see what effect Phillips; Stanolind's and the other contemplated purchases, have on the market.

APR. ML

4839 GOVERNMENT EXHIBIT NO. 171.

Original of Telegram Received.

Kilgore, Texas
March 18, 1935

A. P. Ruether
St. Louis, Mo.

KC-219 J. C. Karnes General Manager Sinclair Sales New York advised a party in East Texas today that a gasoline purchase program would be worked out today and not later than tomorrow whereby major companies would buy gasoline from refiners in East Texas Stop Reported will take 250,000 barrels monthly Stop This report confirmed by S. B. May and Jules Constantin.

McNair

Attn: Mr. Ruether
Copy: Mr. Bascom

NOTE: *It is stipulated* in Exhibit 728 that McNair is a field scout for Shell in Texas.

4840 GOVERNMENT EXHIBIT NO. 173.

Shell Petroleum Corporation,
St. Louis.

Copy of Telegram Received

Tulsa, Oklahoma
February 2, 1935

P. E. Lakin
Shell Petroleum Company
St. Louis, Mo.

Meeting tankcar market committee definitely called Tuesday ten o'clock Bullock's office Chicago.

R. W. McDowell

Attn: Mr. Lakin

Copy: Mr. Fraser
Mr. Anderson
Mr. Galloway
Mr. Van Eeghan X
Mr. Wagner
Mr. Jacobs

(Handwritten Notation):

"Mr. Ruether—Will be in N. Y.—
understand Mr. Van Eeghan has
spoken to you about attending.
P. E. L."

4841 GOVERNMENT EXHIBIT NO. 174.

Original of Telegram Received

Kilgore, Texas
February 13, 1935

A. P. Ruether
St. Louis, Mo.

KB-119. Robertson of Lapren Refinery advised this morning that Cities Service is buying all available gasoline of companies in Independent Refiners Marketing Corporation also that he was in on deal trying to buy 250 cars of tender gasoline and only able to get 65.

G. L. Shoemaker

Attn: Mr. Ruether
Copy: Mr. Bascom

NOTE: *It is stipulated* in Exhibit 728 that G. L. Shoemaker is a field scout for Shell in Texas.

4842 GOVERNMENT EXHIBIT NO. 175.

Original of Telegram Received.

Tyler, Texas
March 6, 1935

A. P. Ruether
St. Louis, Mo.

KC-77 Texas Company is entering the gasoline market in East Texas plan to purchase from Arrow Top and East Texas plants amount they will take is unknown Stop Understand H. B. May in Houston dealing with Texas Co. today.

McNair

4843 GOVERNMENT EXHIBIT NO. 176.

A. P. Ruether March 8, 1935.

Messrs: P. E. Lakin Gasoline
R. P. Bascom Tank Cars

I have been in touch with Mr. Winget of Cushing Refining and Gasoline Company who tells me he feels that prices should move faster—that prices discussed should be reached by the 11th, and is quoting today, 3⅝ and 4⅝¢ on low and middle octane respectively.

Phillips are selling natural gasoline to Cushing and have bought low octane from Winget on the 7th @ 3½¢, which clears his position for the moment. It looks like they are buying ahead at current prices to protect their position.

I feel all purchasers will have to carefully check the grade of gasoline bought since natural is very cheap— 2 1/16¢ average quoted and a great deal might be blended off with low grade naphtha.

This natural gasoline can also be stabilized to good motor fuel specifications and low prices for 26/70 will be serious competition for stable motor fuel prices. I suggest the committee do not overlook the effect the natural gasoline situation might have on the program, it may be necessary to do some buying of this product.

APR.1

4844 GOVERNMENT EXHIBIT NO. 177.

Letterhead of Shell Petroleum Corporation.

From A. P. Ruether Date Feb. 6, 1935.

No. In Re:

To: Messrs. Fraser
Bascom
van Eeghen
Lakin

The committee on gasoline purchases met in Mr. Bullock's office with the following attending:

Messrs. Bullock
Jackson
Bourque
Miskell
Tuttle
O'Shaughnessy
Woodruff
Ashton
McDowell, Chairman
Karstedt
van Eeghen
Ruether

The effect of lower tank car markets for gasoline on the retail price structure, was discussed—particularly, low octane, since this grade controlled, Mr. Jackson stated, the Indiana's policy in fixing the retail price.

The committee (except Karstedt) unanimously agreed that a continuous purchasing program is necessary to take off the market surplus material from North Texas, Panhandle, Kansas and Oklahoma. Bourque stated there is approximately 650 cars surplus, this month, in the areas mentioned.

It was agreed that the most efficient method to handle the situation, would be for individual major purchasers to arrange with individual small refiners to keep their surplus off the open markets—in this manner the purchases would be effectively placed and the buyer would be given the opportunity of using his purchasing power to influence the operating program of the small refiners to stay
4845 within his allocation etc. This program was considered practical and much superior to the previous haphazard purchasing.

It was considered that East Texas (if hot oil continues) would have to be taken care of by the East Coast refiners as well as Pennsylvania where there is a surplus of around 150 cars a month, some of which moves west as far as the Chicago market.

The question of allocation of the individual refiners to major purchasers, was left to a committee of three,—Messrs. Bullock, McDowell and Bourque, who will present the plan to the prospective buyers in Chicago on next Monday evening (after the general meeting) together with an estimate from Bourque of the surplus involved for the next ninety days of each of the refiners usually having distress material.

It was generally assumed that all companies would come into the picture since a stable retail market requires a higher tank car market.

APR:l

4846 GOVERNMENT EXHIBIT NO. 178.

Crude Oil Department March 15, 1935.

Mr. P. E. Lakin:

Cushing Refining and Gasoline Company advise us that they are in good shape on gasoline and have no surplus material to offer at this time.

Mr. Winget tells us he has sold five additional cars, Low Octane, to Phillips ⅛ over Journal Low quotations, date of shipment. This makes a total of 25 cars bought by Phillips during the past ten days.

Winget advises his price is 4¾¢ low for Middle Octane.

The general position in Oklahoma and Kansas, also North Texas, is in good shape as regards surplus gasoline. The Panhandle has about 50 cars, asking for shipping orders, most of this is in the hands of Taxman.

APR:L
cc-Mr. R. P. Bascom

4847 GOVERNMENT EXHIBIT NO. 179.

March 20, 1935.

Messrs. ~~P. E. Lakin~~ X
R. P. Bascom

Jacobi tells me the Pure Oil Company are not purchasing any gasoline from their partner Taxman Refining Company, in the Panhandle District. Taxman has about 30 cars of third grade octane which he is trying to move and may cut his price below 3⅞¢ if he does not get prompt relief.

Jacobi suggests we purchase some of this gasoline in view of our not having to take any Cushing's production; he is also pressing McElroy to do his share of purchasing.

A. P. Ruether

(Handwritten Notations):

"APR will you please discuss. P. E. L."
"Spoke to Mr. Lakin 3/22/35."

4848 GOVERNMENT EXHIBIT NO. 180.

Original of Telegram Received.

Tulsa, Oklahoma
March 20, 1935

A. P. Reuther
St. Louis Office

TC-393. Bourque informs us Arrow is offering considerable East Texas cracked material averaging 63 Octane for approximately 4¼ cents and threatening to ship into this territory unless relieved Stop Understand making three cars per day and material backing up Stop Bourque has also reported to McDowell Stop Bourque afraid might reach Chicago pool and believes should be taken before this happens Stop If interested kindly advise.

Crude Oil Dept.
E. A. Bacon

Attn: Mr. Ruether
Copy: Mr. Bascom

NOTE: *It is stipulated* in Exhibit 728 that E. A. Bacon is manager of the Crude Oil Department in the Tulsa area of Shell.

4849

GOVERNMENT EXHIBIT NO. 181.

List of Refiners from whom "Buying Group" are purchasing:

Rock Island Refining Co.
Cushing Refining & Gasoline Co.
Champlin Refining Co.
Omar Refining Co.
Wilcox Oil & Gas Co.
Dickey Oil & Gas Co.
Taxman Refining Co.
Sunray Oil Co.
Johnson Oil & Refining Co.
Panhandle Refining Co.
Shamrock Oil Co.
Olney Oil & Gas Co.
Waggoner Oil & Gas Co.
Cosden Oil Co.
Danciger Oil Co.

HJ:TH
4/4/35.

(Handwritten Notation):

"A.P. Ruether Crude Oil Dept."

4850 GOVERNMENT EXHIBIT NO. 182.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

March 13, 1935

From: Mr. L. Van Eeghen In Re: Review Tank Car
To: Mr. A. Fraser Prices Week Ending March 9th

During the week under review, gasoline prices in Group 3 and East Texas strengthened and fractional advances were made in middle and low grades. Gulf Coast and Western Pennsylvania markets remained unchanged. Prices at the end of the week were:

Group 3:	Low	High	Av'ge	Av'ge net change during week	Av'ge 1934
Below 62 Octane	3⅝	3¾	3 11/16	5/16	3 11/16
63-70 Octane	4½	4¾	4⅝	1/16	4½
Above 70 Octane	—	—	4⅞	—	—
East Texas:					
Below 62 Octane	3⅛	3¼	3 3/16	¼	3⅜
63-70 Octane	4½	4⅝	4 9/16	½	4⅝
Gulf Coast: Domestic Shipment					
Below 62 Octane	4¾	5⅛	4 15/16	—	4⅞
63-70 Octane	5	5¼	5⅛	—	5 1/16
Western Pennsylvania					
U. S. Motor (58-62°)	4⅜	4½	4 7/16	—	4 13/16
Minimum 60 octane	5½	5⅝	5 9/16	—	6 7/16
Minimum 65 octane	5⅞	6	5 15/16	—	6⅜

The activities of the Federal and State Tender Boards in East Texas, coupled with the "buying movement" organized by major interests, which is now getting under way, is responsible for the improvement in Group 3 and East Texas prices; several hundred cars of distress gasoline which were over-hanging the Kansas-Oklahoma market have been disposed of through the buying movement and to jobbers who filled their storage in anticipation of rising prices. With improved seasonal demand in view and a continuation of the buying movement, it is anticipated that prices will strengthen by approximately one-half cent over the next thirty to forty-five days.

4851 A small amount of distress gasoline in the hands of Chicago brokers is being handled by local connections. East Texas gasoline (hot) is available to truckers at 2½¢, moving into local cut-rate channels; despite this fact, retail prices in Texas having strengthened during the past week.

Some concern is felt at the weakness in Natural gasoline prices, which declined 3/16¢ during the week to an average of 2¢ per gallon; an impression prevails that the "buying movement" should make some effort to bolster Natural Gasoline prices because of the danger of abnormal percentages of cheap Natural being used for blending with low grade gasoline, thus having a tendency to weaken the latter. In addition, if an abnormally wide differential exists between natural and middle octane gasoline, natural gasoline producers will no doubt stabilize their product, and sell it at lower than prevailing prices for middle octane grade.

Kerosene

Kerosene is strong in Group 3, at an average of 3⅝¢, which is only 1/16¢ under third grade gasoline. In sympathy with the decline on the Gulf Coast, kerosene in East Texas dropped ⅛¢ to an average of 3 4/16¢. It is reported that refiners are storing kerosene in anticipation of higher prices over the tractor and incubator season, which opens in the middle west during the next thirty days.

Gulf Coast kerosene market declined ¼¢ to 4⅝¢ average, due to seasonal decline in consumption of Range Oil for domestic heating in the East, under which name kerosene is largely marketed in that area.

Fuel Oils

Seasonal decline in consumption is also responsible for a drop of 1/16¢ in all grades of Domestic Heating Oils (Nos. 1-2-3) in Group 3, as well as a loss of ¼¢ on No. 1 and 3/16¢ on No. 2 Fuels in the Gulf.

Michigan Prices

Detroit	Kerosene	advanced ¼¢ to an	average	of 5⅞¢	f.o.b.
Detroit	No. 1 Fuel	dropped ¼¢ to an	average	of 5¼¢	fob
Detroit	No. 2 "	unchanged	"	" 5⅛¢	"
Detroit	No. 3 "	declined ¼¢ to an	"	" 4¾¢	"

4852 The low prices prevailing for these products in relation to Group 3 and Western Pennsylvania prices definitely displace the latter from the Michigan market; as a result, Michigan tankwagon prices for these commodities are sub-normal (on a Group 3 determination of normal). Some consideration should be given to a local buying movement in an attempt to raise Michigan tank car and tank wagon prices more in line with surrounding territory.

HJ:CC

4853 GOVERNMENT EXHIBIT NO. 183.

Letterhead of Shell Petroleum Corporation, St. Louis Mo.

Date March 20, 1935

From: Mr. P. E. Lakin
No:
To: Mr. A. Fraser

In Re: Review ~~Tank Car~~ Prices Week Ending March 16, 1935

Gasoline

Group 3 gasoline prices continued to improve during the week and advances of ¼¢ and 3/16¢ were made in low and middle octane grades, respectively. East Texas prices are unchanged with the market strong, although a limited amount of gasoline stored in tank cars on railway sidings (partly illegal production) is being forced on the market at lower than prevailing levels, due to the enforcement by the railroads of demurrage charges; some of this gasoline has been sold on a basis of 3½¢ Group 3. Gulf Coast prices remain unchanged; 26/70 Natural gasoline prices in Group 3 advanced 1/16¢. In Western Pennsylvania, low and middle grade prices advanced ⅜¢ and ⅛¢, respectively. Prices at the close of the week were:

Group 3:	Low	High	Av'ge	Av'ge net change during week	Av'ge 1934
Below 62 octane	3⅞¢	4¢	3 15/16¢	¼¢	3 9/16¢
63-70 octane	4⅝¢	5¢	4 13/16¢	3/16¢	4⅝¢
above 70 octane	5¢	5¢	5¢	—	—
East Texas					
Below 62 octane	3¾¢	3⅞¢	3 13/16¢	—	3 5/16¢
63-70 octane	4½¢	4⅝¢	4 9/16¢	—	4⅝¢
Gulf Coast (Domestic)					
60-64 Octane	4¾¢	5⅛¢	4 15/16¢	—	4⅞¢
65 and above	5¢	5¼¢	5⅛¢	—	5 1/16¢
Western Pennsylvania					
U. S. Motor 58-62°	4⅞¢	5¢	4 15/16¢	⅜¢	4 11/16¢
Min. 60 octane	5¾¢	5⅞¢	5 13/16¢	⅛¢	6 7/16¢
Min. 65 octane	6¢	6⅛¢	6 1/16¢	—	6⅝¢

4854 . Jobbers have been filling their storage in anticipation of rising prices and this, coupled with the activities of the "buying group", has resulted in the removal of virtually all surplus gasoline from Oklahoma, Kansas, and to a lesser extent, North Texas; in the Panhandle, about 35 cars of surplus gasoline in the hands of the Taxman

Refining Company has not been cleared, owing to Pure, who were assigned this purchase from Danciger, not carrying out their part of the program. Some small volume of gasoline in the hands of Chicago brokers shipped out of East Texas (before the operations of the Federal Tender Board) has now been disposed of. The effect of the Federal Tender Board on East Texas activities can be gauged from the following gasoline shipments made from that field into interstate channels:

Week ending March 3	43 cars daily—Prior to F.T.B.
Week ending March 10	29 cars daily—After F.T.B.

In sympathy with Group 3 advances, the Standard of Ohio increased the Ohio delivered spot price ⅛¢ on the 11th, inst., to 6.75¢, for below 65 octane, and to 7¢ for above 65 octane. (A further advance of ¼¢ in both grades was made on the 18th, inst.) Western Pennsylvania prices were influenced upward ⅜¢ and ⅛¢ by the action of the Ohio Company.

The curtailment of tank car shipments from East Texas into inter-state channels has thrown additional gasoline on to the local market via tank trucks; as a result, cut-rate stations in certain parts of Texas are under-selling majors' prices by 5¢ to 6¢. Except at San Antonio, where majors' service station prices were reduced 3¢ on the 13th inst., branded marketers are not attempting to meet cut-rate prices; this situation is particularly acute in the vicinity of Fort Worth and Dallas.

Kerosene

Kerosene prices remained firm in Group 3 at 3⅝¢ average and East Texas at 3 5/16¢, refiners storing for better prices in anticipation of tractor demand in the middle west. With the end of the heating season in view, Gulf Coast kerosene, which normally moves into East Coast channels for heating purposes, declined ½¢ per gallon to an average of 4⅛¢.

Fuel Oils

Fuel oils in Group 3 are slow, but a cold snap in the middle west during the week was responsible for holding prices firmly at former levels, which are:

No. 1	3 3/16	F.O.B.	Tulsa
" 2	2 15/16	"	"
" 3	2 13/16	"	"

4855 On the Gulf Coast, Nos. 1 and 2 burning oils, declined ⅜¢ and 1/16¢, respectively, to an average of

4⅛¢ and 3⅛¢. These prices are unusually low, despite the decline normally anticipated at the end of the heating season. Prices for these commodities during last summer were somewhat higher than the levels indicated above, and we are making an attempt to ascertain factors responsible for the prevailing low prices.

Michigan Prices

Michigan prices, f.o.b. Detroit, remain unchanged at the following levels:

Kerosene	5.66	average
No. 1 Fuel Oil	5.25	average
No. 2 " "	5.125	average
No. 3 " "	4.75	average

The above prices are too low to enable Group 3 products to compete successfully in the Michigan market.

P. E. Lakin

cc-Messrs. Bascom
Swigart
Ebbert
Taylor
Ruether

(Handwritten Notation):

"to Andersen HHJ"

4856 GOVERNMENT EXHIBIT NO. 184.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: Mr. P. E. Lakin
Date April 3, 1935

No.

To: Mr. A. Fraser

In Re: Price Review
Week ending
March 30th

Tankcar Markets

During the week under review, tankcar gasoline prices maintained their firm position and advances were made in East Texas, Group 3, and Western Pennsylvania. It is interesting to note that no tankcar price reductions occurred during the week in any commodity covered by this report. Gasoline prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 62 octane	4⅛	4¼	4 3/16	⅛	3⅝
63-70 octane	4⅞	5	4 15/16	1/16	4⅝
East Texas					
Below 62 octane	4⅛	4⅛	4⅛	1/16	3½
63-70 octane	4½	4⅝	4 9/16	—	4⅛
Gulf Coast—Domestic					
60-64 octane	5⅛	5¼	5 3/16	3/16	4⅞
65 and over octane	5¼	5¼	5¼	⅛	5 1/16
Western Pennsylvania					
U. S. Motor 58-62°	5	5⅛	5 1/16	⅛	5⅛
Minimum 60 octane	6	6⅛	6 1/16	—	6 7/16
Minimum 65 octane	6¼	6⅜	6 5/16	—	6⅝

Gasoline in the Mid-Continent is tight; the tankcar buying group have so far been very successful in removing from the market practically all surplus material in Oklahoma, Kansas, and North Texas, except for a small quantity in the hands of brokers who are making offers below published quotations in what is believed to be a deliberate effort to destroy the effectiveness of major companies' buying movement. The success of the present movement towards increasing tankcar prices is dependent in a large measure upon the attitude of non-integrated refiners, whom the "buying group" are supporting. It remains to be
4857 seen whether such refiners in the face of higher prices will hold their crude runs to allowables, or whether

they will be tempted to exceed such allowables thus throwing the plans of the buying group "out-of-gear."

East Texas market is fairly strong, but here too, a limited volume of gasoline in the hands of brokers is moving into Indiana territory which may later be offered at below published quotations with the object of precipitating a reduction in the tankcar market. Active buying support is being furnished by major interests who are moving their purchases to the Gulf for shipment to the East Coast; gasoline from legal crude is rather scarce. A noticeable increase has recently occurred in shipments from the field into interstate commerce; apparently the Federal Tender Board have some doubt as to their authority insofar as stocks on hand prior to the Board's appointment is concerned, and the concensus of opinion is that they are tacitly permitting the liquidation of such stocks.

Illegal gasoline moving into intra-state channels via truck constitutes a serious menace to the local price situation; it is reported that refiners processing illegal crude are posting gasoline prices to truckers as low as 1½¢ per gallon. Apparently, however, major interests prefer to temporarily lose their business to such competition rather than disrupt the retail price structure as no violent service station price reductions have recently occurred in Texas markets.

A disturbing factor developed in competing for tankcar consumer business, is that major competitors, particularly when they have pipeline or water terminal advantages, are quoting below the low of published quotations. This seems to be working at "Cross-purpose" with their efforts to increase tankcar prices via the "buying group." An impression prevails that prices at which consumers are sold does not influence publication prices; we are endeavoring to correct the situation.

If the present program carries through an average Group 3 price for middle grade of 5¼¢ can be confidently anticipated by May 1st.

During the week we made the following gasoline purchases:

10 cars 63-70 octane—400 e.p. from Cushing Refining and Gasoline Company—price 4¾¢ f. o. b. Cushing, delivered to pipe line.

20 cars 64-66 under 400 e.p. 71 Octane from Danciger Oil and Refining Company,—price 4⅞¢ f. o. b. East Columbia Texas (5.568¢ Houston) shipped to Houston Refinery.

4858 Kerosene

Kerosene market in Group 3 is fairly strong; prices advanced 1/16¢ to an average of 3-9/16¢. Some small volume moved at below average prices owing to refiners who had built up stocks in anticipation of higher prices being compelled to dispose of limited amounts to permit of current operations. The tractor season in the Middle West has been somewhat delayed by wet weather; it is reasonable to anticipate kerosene advancing to an average of 3¾ by the end of April.

Gulf Coast kerosene advanced 1/16¢ to an average of 4⅛¢, recovering the loss of a like amount sustained last week. With the heating season over, Gulf kerosene prices will probably weaken, unless stimulated by export demand.

Fuel Oils

Group 3 fuel oil market was slow, although prices remained unchanged; with the heating season at an end, some declines in fuel oil prices must be anticipated. A temporary shortage of U. G. I. Gas Oil resulted in an upward spurt of 3/16¢ in the average price. On the Gulf, No. 1 heating oil advanced 1/16¢ recovering the loss sustained last week, when refiners anxious to move surplus stocks reduced their prices. At the close of the week average prices were:

Group 3—	No. 1 Fuel Oil	3 3/16¢	f. o. b. Tulsa—	unchanged
	No. 2 " "	2 15/16¢	" "	"
	No. 3 " "	2 13/16¢	" "	"
	U. G. I. Gas Oil	2¼¢	" "	up 3/16¢
Gulf	No. 1 Fuel Oil	4⅛¢		up 1/16¢
	No. 2 " "	3 3/16¢		unchanged

Michigan fuel oil prices are below the level of Group 3 delivered prices, and this consequently militates against the restoration of normal tankwagon prices in Detroit and vicinity for Kerosene and Burning Oils. Current Michigan tankcar prices f. o. b. Detroit and Group 3 delivered prices by comparison are shown below:

Michigan:	Kerosene	5¾¢	Group 3:	7.39¢
	No. 1 Fuel	5⅝¢		6.50¢
	No. 2 "	5⅛¢		6.375¢
	No. 3 "	4⅞¢		6.250¢
	U.G.I. Gas Oil	4⅛¢		5.875¢

Retail Markets

The following major price changes occurred over the past ten days:

4859 March 21st: Standard of Ohio advanced prices all grades gasoline—½¢ per gallon.

March 22nd: Standard of Indiana advanced all grades gasoline—0.3¢ per gallon.

March 25th: Preparatory to adjusting dealer margins in Michigan to 3½¢ (April 1st) Standard restored all markets in the State to normal—average advance 0.7¢ per gallon covering approximately 2,000,000 gallons a month.

March 26th: Some thirty points in Southern Illinois which had been sub-normal for several months were restored to normal; average advance of 1.2¢ covering approximately 210,000 gallons monthly.

The present retail price situation by major marketers' territories is as follows:

Standard of Indiana: Markets generally in good shape; only major points where reduced prices prevail are Peoria, where prices all grades are 2¢ below normal, and Indianapolis where third brand only is 0.2¢ sub-normal. The balance of sub-normal points are confined to small towns and tributary points.

Standard of Ohio: Price structure only fair; Cincinnati, Dayton, Lima, Springfield, Piqua are all one cent below normal. Approximately 15% of our gallonage in the State is subnormal 1¢.

Standard of Kentucky: Mississippi points generally in bad shape with prices ranging to 6¢ below normal. Alabama and Georgia fairly good. Florida state wide prices generally ½¢ below normal owing to dispute between Sun and Standard Companies.

Standard of Louisiana: In good shape generally. Memphis being the only major point sub-normal (2.1¢).

A rough calculation indicates that the total gallonage in the Distributing Department presently selling at subnormal prices approximates, including Florida, 2,500,000 gallons monthly at any average of 1¾¢ below normal prices.

P. E. Lakin.

HJ:CC

4860 GOVERNMENT EXHIBIT NO. 185.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: Mr. P. E. Lakin Date: April 10, 1935

No. In Re: Price Review
Week Ending
April 6th

To: Mr. A. Fraser

Tankcar Markets

Except for slight declines in Michigan and Western Pennsylvania, kerosene and fuel oil prices, tankcar markets were firm, price advances being made in Natural Gasoline, Automotive Gasolines and Gas Oil. For the first time since February 1934, group 3 regular grade gasoline reached 5¢. Gasoline prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 62 octane	4¼	4⅜	4 5/16	1/16	3½
63-70 octane	5	5⅛	5 1/16	1/16	4 5/16
26-70 Natural	2¼	2¼	2¼	⅛	1½
East Texas					
Below 62 octane	4⅛	4¼	4 3/16	1/16	3⅝
63-70	4¾	4⅞	4 13/16	¼	4⅛
Gulf Coast—Domestic					
60-64 octane	5⅛	5¼	5 3/16	—	4¾
65 and above	5¼	5½	5⅜	⅛	4 15/16
Western Pennsylvania					
U. S. Motor 58-62°	5	5⅛	5 1/16	—	5¼
Minimum 60 octane	6¼	6⅜	6 5/16	¼	6 7/16
Minimum 65 octane	6½	6⅝	6 9/16	¼	6⅞

No appreciable surplus gasoline exists in the Mid-Continent or North Texas; small quantities of low octane (estimated not to exceed 25 cars) are in the hands of Tulsa brokers who are offering it at ⅛¢ below published low quotations in an effort to disrupt the "buying groups" program. The Group's practice of buying directly from refiners, thus depriving brokers of their commission, is one of the factors responsible for brokers refusal to support the buying program.

4861 26-70 Natural Gasoline has advanced ¼¢ during the past three weeks in the face of a normal seasonal decline in demand for this product; despite this price advance little material is actually available.

Sinclair, Texas and Phillips are reported as heavy purchasers, and it is presumed they are increasing the use of stabilized Natural Gasoline in their finished motor fuels. It is further reported that these purchasers are bending every effort to keep Natural Gasoline at prevailing low levels until their requirements are filled, by selling against any price advance which manifests itself.

East Texas is in fair shape; major interests continue to buy intensively for shipment to the East Coast. Some small volume of gasoline is being sold for delivery to well known price-cutters in Indiana territory at prices believed to be below current published quotations, although no actual evidence for this belief is available. The opinion is that refiners selling these price-cutters are doing so only in sufficient quantities to keep such channels open to them in the event the buying movement is discontinued.

Interstate shipments are on an even keel averaging approximately 43 cars per day; the volume of illegal gasoline moving into intra-state channels via truck has increased tremendously, and is estimated to average 10,000 barrels per day. Prices on this material are as low as 1½¢ per gallon. An orderly liquidation of stocks on hand prior to the appointment of the Federal Tender Board is taking place.

During the week we purchased ten cars of U. S. Motor gasoline from Cushing Refining Co. at 4⅛¢ f. o. b. Cushing; this material was delivered to the pipeline.

Unfavorable motoring weather during the week retarded gasoline consumption and jobber demand was not up to seasonal expectations.

Kerosene

Kerosene in group 3 and the Gulf remained unchanged at 3-9/16¢ and 4⅛¢ respectively, while Western Pennsylvania declined ⅛¢ to an average of 4-13/16¢. The demand for kerosene in the Middle West has been retarded owing to wet weather which has delayed the opening of the Spring Plowing season. As a result some few sales have been made at under published prices by refiners who were compelled to move their surplus to permit of current operations. Nevertheless, the tone of the market is firm.

4862 Fuel Oils

Although the heating season is almost at an end, prices of fuel oils remained unchanged at the following levels:

Group 3:	No. 1—3 3/16¢	f. o. b.	Tulsa	Gulf:	No. 1—4⅛¢
	No. 2—2 15/16¢	"	"		No. 2—3 3/16¢
	No. 3—2 13/16¢	"	"		

Gas Oil advanced 3/16¢ during the week to an average of 27/16¢ f. o. b. Tulsa, this despite a like advance last week. Reports indicate that the relatively high price of gasoline is causing refiners to hold Gas Oil for cracking purposes. In view of present gasoline prices, with the prospect of still higher levels, it is anticipated that Gas and Fuel Oils may be held for cracking purposes, and thus aid in the maintenance of existing price levels for these commodities.

Michigan kerosene and No. 3 Fuel declined ½¢ and ¼¢ respectively; present prices f. o. b. Detroit are:

Kerosene	5¼¢	average
No. 1 Fuel	5¼¢	"
No. 2 "	5⅛¢	"
No. 3 "	4⅝¢	"
Gas Oil	4½¢	"

These prices are far too low to enable Group 3 products to successfully compete; no improvement in the situation is foreseen, and, on the contrary further declines are anticipated for these reasons:

The bulk of Michigan refiners products are absorbed locally for heating purposes; they have no cracking facilities to speak of, nor do they have any appreciable storage, and with the end of the heating season they will be forced to lower prices for intermediate products to permit of current operations. The recent opening of a new field may make additional crude available to small refiners, unless it falls into strong hands; fortunately the volume of available material is not believed sufficient to disturb markets outside the State.

Developments—Retail Markets

A. Standard of Indiana territory

On April 1, Standard introduced a fourth grade gasoline in Chicago for sale by tank-wagon to commercial consumers only. A flat tank-wagon price of 8¢ excluding taxes, was established; no contracts were entered into. Inasmuch as
the tank-wagon price of "Super Shell" is 10.6¢ less
4863 1.5¢ to 1000 gallon buyers, or a net price of 9.1¢, it is
obvious that we will convert our entire "Super Shell", and "Silver Shell" consumer business to fourth grade. The tank-wagon price is only 0.62¢ above the low of the laid down tankcar price for 63-70 octane and it is consequently anticipated cut-price jobbers who have been selling at these levels, relying upon large volume for profit will soon make "approaches" for higher price levels. We

estimate being able to secure approximately 250,000 gallons per month additional business through the introduction of fourth grade gasoline.

Effective April 1, the Standard of Indiana reduced dealer margins in Michigan to 3½-3½-2½ on normal markets with minimums of 3-3-2 in sub-normal markets, conforming to the balance of their territory. This change was met by all major marketers.

B. Standard of Kentucky territory

Effective April 2, Standard of Kentucky advanced prices of all grades gasoline 1¢ in Alabama, Georgia, Kentucky and ½¢ in Mississippi; no changes were made in Florida as a consequence of their long standing dispute with the Sun Company. This results in prices in that State being approximately 1½¢ below normal.

Simultaneously with their price advance referred to above, they restored normal prices at all points, but unfortunately these prices were not maintained at several locations. (details below)

C. Standard of Ohio

Retroactive to March 21, jobbers' margins were increased from 5½¢, with benefit of spot, to 6¢. This decision was made because the bulk of competitive jobbers operating under contracts signed last July and August were receiving such margins, and jobbers working under at 5½¢ contract felt they were being discriminated against.

On April 1, the Ohio Company revised their formula for determining the Ohio spot market by adding 3¢ instead of 2½¢ to the Oklahoma low for 63-70 octane gasoline; however, they simultaneously revised their formula for determining normal station price by reducing the spread between spot and station prices from 5½¢ to 5¢. These changes are not advantageous to refiners, inasmuch as they increase jobber margins without allowing for a compensating increase in the station price.

The volume of business done by majors at the Ohio spot price is negligible; and the only reason for increasing 4864 this price was because it was felt that brokers use such price in determining their price to unethical marketers.

Retail Prices

Indiana territory

Some slight improvement noted, particularly with respect to differentials at which unbranded marketers are selling below majors. The high tankcar market is held responsible for this improvement. Peoria all grades 2¢ below normal and Indianapolis third grade only 0.2¢ sub-normal are the only major points with sub-normal markets.

Ohio

Effective the 5th inst. Standard of Ohio restored normal prices at Cincinnati, Dayton, Springfield, Piqua and other minor points. Total gallonage involved approximates 570,000 per month at an average increase of 1¢ per gallon.

Kentucky territory

Atlanta and Rome Georgia sub-normal 2¢ regular and Ethyl, 3.5¢ third grade. Except for a few minor points, balance of Kentucky territory in good shape to date.

Louisiana territory

All prices were restored to normal on the 8th inst. simultaneous with an average advance of 1½¢ in the price of all grades.

A rough calculation indicates that the volume of business at sub-normal prices approximates 2,000,000 gallons monthly at 1½¢ below normal.

P. E. Lakin

HJ:CC

cc—L. van Eeghen
R. P. Bascom
H. H. Anderson
T. E. Swigart
J. F. M. Taylor
A. P. Ruether

4865 GOVERNMENT EXHIBIT NO. 186.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: Mr. P. E. Lakin
Date: April 17, 1935.
No.
In Re: Price Review
Week Ending
April 13th
To: Mr. A. Fraser

Tankcar Markets

During the week under review, no tankcar price reductions occurred in any of the commodities covered by this report. Fractional gasoline advances were made in Group 3, East Texas, and Western Pennsylvania; prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 octane	4¼	4½	4⅜	1/16	4.0
63-70 octane	5	5¼	5⅛	1/16	4½
26-70 Natural	2½	2⅝	2 9/16	⅛	2 1/16
East Texas					
Below 63 octane	4¼	4¼	4¼	1/16	3⅞
63-70 octane	4¾	4⅞	4 13/16	—	4 5/16
Gulf Coast (Domestic)					
60-64 octane	5⅛	5¼	5 3/16	—	4 13/16
65 and above	5¼	5½	5⅜	—	5
Western Pennsylvania					
U. S. Motor	5⅛	5¼	5 3/16	⅛	5 5/16
Minimum 60 octane	6¼	6⅜	6 5/16	—	6 5/16
Minimum 65 octane	6½	6⅝	6 9/16	—	6⅞

No surplus gasoline is presently available in the Mid-Continent area, and refiners' stocks are at a low level. The "buying group" have not made any purchases in the last few days and it is anticipated that few purchases will be necessary over the next ten days in order to maintain present market levels. There seems to be some reluctance to further advance the tankcar market until later in the month; this feeling results from the fact that under the present price structure in Indiana territory, jobbers are not receiving a 5½¢ margin and any increase in the tankcar market further reduces their margin unless it is sufficiently large to warrant an advance of retail markets.

4866 A disturbing factor in an otherwise good picture, is a report that Waggoner Refining at Electra, Texas, are liquidating stocks (estimated at 150,000 barrels) accumulated over several months, through brokers at prices equal to or slightly below publication lows. Inasmuch as the accumulation of these stocks was due to low prices, it is felt that while their liquidation may temporarily retard further tankcar advances, they will not be offered at prices which will lead to radical tankcar price reductions.

East Texas is in good shape; any surplus gasoline from legal crude is purchased as rapidly as it accumulates. Only twenty out of eighty refineries in the field are presently in operation; apparently refiners running hot oil are finding some difficulty in securing sufficient crude for their requirements. Illegal gasoline moving into local channels via truck averages 7,000 barrels daily at a price approximating 2½¢ f. o. b. refinery.

Natural gasoline continued to improve in sympathy with automotive gasoline; major interests are still in the market as buyers.

We did not make any gasoline purchases during the period covered by this report.

Kerosene:

Kerosene prices remained unchanged at the following levels:

Group 3: 3-9/16 Gulf: 4⅛ Pennsylvania 4-13/16

Although demand in the Middle West has not come up to expectations, prices are firm. Refiners feel that such stocks as they have on hand will be quickly moved once Spring plowing starts in earnest.

Fuel Oils:

There were no changes in Fuel Oil or Gas Oil prices; the market is firm, primarily as a result of the inclement weather prevailing over a large portion of our territory.

Michigan fuel oil prices remain unchanged; it is reported that with the opening of a new pool in Montcalm County, the development of local refinery facilities is imminent.

Developments--Retail Markets

Effective the 8th, service station prices in Standard of Louisiana territory were adjusted on the basis of 6¢ over laid-down tankcar prices, instead of 5¢ as heretofore.

4867 In conformity with an amendment to the Wisconsin minimum Price-fixing Order, we increased the 1000 gallon consumer discount on Silver Shell from ½¢ to 1½¢.

Retail Prices:

Indiana territory; Effective 12th, Standard of Indiana and Nebraska advanced all grades gasoline 0.3¢. On the 8th, Peoria prices on regular and premium brands were advanced 2¢, thus restoring to normal, third grade was increased 1½¢ to ½¢ below normal.

The Sun Company's refusal to meet Standard's 0.3¢ advance in detroit on the 12th inst. led to a reduction by a like amount on the 13th inst.

(Handwritten notation):

"Sun have now agreed
to go along. P. E. L."

Ohio territory: Effective 14th inst. Standard of Ohio advanced price of all grades gasoline 0.25¢.

Kentucky territory: Atlanta and Rome, Georgia, subnormal 2¢ on regular and premium, 3½¢ on third grade.

Louisiana territory: All points normal as of 8th inst.

A rough calculation indicates approximately 2,600,000 gallons monthly average is selling at prices averaging 1.2¢ below normal.

P. E. Lakin

HJ:CC

(Handwritten Notation):

"M. McGaw"
cc—L. van Eeghen
R. P. Bascom
H. H. Anderson
T. E. Swigart
J. F. M. Taylor
A. P. Reuther

4868 GOVERNMENT EXHIBIT NO. 187.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: Mr. P. E. Lakin Date April 24, 1935

No. In Re: Price Review Week Ending April 20th

To: Mr. A. Fraser

Tank Car Markets

Gasoline price advances were registered in all markets, ranging from ⅛¢ in Group 3 and East Texas to ¼¢ in Western Pennsylvania. Natural Gasoline increased 3/16¢. Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 octane	4⅜	4⅝	4½	⅛	4⅛
63-70 octane	5⅛	5⅜	5¼	⅛	4⅝
26-70 Natural	2⅝	2⅝	2⅝	3/16	2½
East Texas					
Below 63 octane	4⅝	4⅝	4⅝	⅛	4.0
63-70 octane	4⅞	5	4 15/16	⅛	4½
Gulf Coast (Domestic)					
60-64 octane	5⅛	5¼	5 3/16	—	5.0
63-70 octane	5¼	5½	5⅜	—	5 3/16
Western Pennsylvania					
U. S. Motor	5¼	5⅜	5 5/16	⅛	5 5/16
Min. 60 octane	6½	6⅝	6 9/16	¼	6 5/16
Min. 65 octane	6¾	6⅞	6 13/16	¼	6⅝

No surplus gasoline is presently available in the Mid-Continent area. Some twenty cars of distress material in the hands of Eason Refining Company of Enid, which developed during the week, were taken off the market by Globe, Skelly and ourselves.

The "buying group" are offering 4⅜¢ for "below 63-Octane" and 5¼¢ for 63-70 Octane, and report no low octane material is being offered at that price, while little 63-70 has been submitted. The Waggoner Refining Company (referred to in the last week's report) are cooperating with the "buying group"
4869 in an orderly liquidation of their stocks and no trouble is anticipated from this source. However,

the Taxman Refining Company of Wichita Falls, Texas are re-opening their refinery (allowable 30,000 barrels monthly), and it is anticipated that some portion of this output will have to be currently purchased to ensure market stability.

While refiners' stocks are not large, they are apparently holding on to such stocks as they can accumulate in anticipation of higher tank car prices. However, the opinion of marketers seems to be that it would be wise to make no further price advances over the next ten to twenty days so as to consolidate the present position.

In East Texas no appreciable surplus of legal gasoline exists. Eastern interests currently purchase such material as is offered at slightly below published quotations. The volume of illegal gasoline moving into intrastate channels has somewhat diminished, but still averages 6,000 barrels daily at an average refinery price of 4¢. However, some five additional refineries (making a total of 25) re-opened during the week and it is expected that the volume of illegal gasoline production will soon reach 8,000 barrels daily, with a consequent break in the dock price. This will not affect the interstate markets.

Western Pennsylvania prices are too low in relation to the Ohio spot, and Eastern Seaboard markets. An increase of approximately ½¢ per gallon in these prices is anticipated to adjust with market prices in adjacent territories.

Natural gasoline, despite an advance of 3/16¢ in the price, is scarce. Major interests are buying such material as is offered, and in addition, the relatively high price of automotive gasoline tends to increase the volume of Natural stabilized and sold for middle octane gasoline.

During the week, we purchased five cars of U. S. Motor (53 Octane) from Eason Refining Company at a price of 4⅜¢ f. o. b. Enid, Oklahoma. This material was shipped to Arkansas City: delivered cost—5.157¢ per gallon.

Gulf domestic cargo prices are out of line with East Texas markets. An effort is being made to boost this price. The sale of a cargo at 5¼¢ made late last week was responsible for holding the market at that level; we are endeavoring to ascertain the name of the Seller and Buyer. We were given to understand that the Seller later realized his price did not reflect the true market value.

4870 Kerosene

Kerosene prices remained unchanged in Group 3, the Gulf and Western Pennsylvania, but advances of ¼¢ and 1/16¢ were made in Michigan and East Texas, respectively. Current average prices are:

Group 3: 3 9/16 Gulf: 4⅛ Michigan: 5¾ Pennsylvania: 4 13/16.

With the improvement in weather, kerosene shipments from Group 3 are showing a marked increase and an advance in the tank car price is anticipated in the immediate future.

Fuel Oils

There were no changes in Fuel and Gas Oil prices. Normally, at the end of the heating season, prices for these products commence to ease. That they have not done so this year, is due to the fact that refiners are holding such stocks for cracking purposes in view of the relatively high price for gasoline.

Retail Prices

(a) Standard of Indiana territory: To allow for an increase in freight rates, tank wagon and service station prices of gasoline, kerosene and fuel oils were advanced 1/10¢ at certain points only. The volume involved is not yet definitely determined.

On the 19th, Standard and Sun Companies restored the 0.3¢ reduction made in Detroit on the 13th, inst. Subnormal prices in this territory are confined to a few rural points in Iowa, Missouri and Illinois. In Kansas and Nebraska third grade gasoline prices are subnormal by from one to three cents over a fairly wide area.

(b) Standard of Ohio territory: On the 20th, S. O. C. of Ohio restored to normal those few remaining points where subnormal prices prevailed. For the first time since February, 1934 we do not have a single subnormal price area in Ohio.

(c) Standard of Kentucky territory: Atlanta, Ga., Augusta, Ga., and Rome, Ga., are still subnormal 2¢ on regular and premium grades and 4¢ and 3½¢ on third grades.

(d) Standard of Louisiana territory: All points in Louisiana territory are normal with the exception of Memphis, where third grade only was reduced ½¢ on the 18th, inst.

4871 The following is a rough estimate of present subnormal prices in Distributing territory:

Indiana territory	—733,000	all grades at avge. of	1.1¢
Kentucky territory	—450,000	all grades at avge. of	1.1¢
Magnolia (Texas)	—450,000	all grades at avge. of	1.1¢
Magnolia (Okla.)	— 78,000	all grades at avge. of	1.0¢
Nebraska territory	— 20,000	third grade only avge.	3.3¢
Louisiana territory	— 6,000	third grade only avge.	0.5¢
Total	1,737,000	at average of	1.1¢

P. E. Lakin

HJ:TH

(Handwritten Notation):

"M. McGaw"

4872 GOVERNMENT EXHIBIT NO. 188.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: Mr. P. E. Lakin
Date: May 9, 1935

No:
In Re: Price Review
Week Ending
May 4th, 1935

To: Mr. A. Fraser

Tank Car Markets

Gasoline continued to maintain its firm position despite inclement weather which has retarded shipments. Advances of 1/16¢ were made in the averages of low and middle grades in Group 3 and East Texas, and ¼¢ in the Western Pennsylvania prices. Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
62 and below	4½	4¾	4⅝	1/16	4 1/16
63-70 octane	5¼	5½	5⅜	1/16	4 13/16
26-70 Natural	3⅛	3⅛	3⅛	⅛	2 1/16
East Texas					
62 and below	4½	4⅝	4 9/16	1/16	3⅞
63-70 octane	4⅞	5	4 15/16	—	4½
Gulf Coast (Domestic)					
60-64 octane	5⅛	5¼	5 3/16	—	5 1/16
63-70 octane	5¼	5½	5⅜	—	5 3/16
Western Pennsylvania					
U. S. Motor	5¼	5⅜	5 5/16	—	5 7/16
Min. 60 octane	6¾	6⅞	6 13/16	¼	6 15/16
Min. 65 octane	7	7⅛	7 1/16	¼	6⅞

The unseasonable weather was responsible for throwing on the market an abnormal number of cars of distress gasoline, but these were quickly taken up by the "buying group". The only "bad" spot is Vickers at Potwin, Kansas, who have some thirty cars of low grade material which they are anxious to move. While there is no cause for any particular alarm, marketers are somewhat uneasy for fear that a prolongation of present weather conditions may result in more gasoline being thrown on the market than can be liquidated by the "buying group" in an orderly fashion.

4873 Prices shown under "Gulf Coast Domestic" market do not reflect the actual current prices for single cars: our experience is that major marketers' prices for individual cars exceed those published in Platt's by from ¼¢ to ½¢ and we have advanced our quotations to conform. We are endeavoring to correct with Platt's.

The East Texas situation has shown a slight improvement; apparently refiners processing illegal crude are encountering some difficulty in obtaining supplies. Legal gasoline prices are firm at the levels shown above, and such surplus material as accumulates is promptly lifted by major interests for shipment to the East Coast.

Refinery dock prices to truckers for illegal gasoline ranges from 3¢ to 3½¢.

Kerosene:

Despite the fact that wet weather has retarded Spring plowing, the imminent demand for kerosene for tractor fuel and incubator purposes has resulted in a marked increase in kerosene shipments. Refiners generally are refusing to sell at published lows, and average price increases of 5/16¢ and 3/16¢ were made in the Group 3 and East Texas prices during the week. Average prices at the end of the week were:

Group 3: 3-15/16¢ up 5/16.
Pennsylvania: 4-13/16¢ (unchanged).
Gulf: (Domestic) 4⅛¢ (unchanged).
East Texas: 3-11/16¢ up 3/16¢.
Michigan: 5.5¢ unchanged.

Fuel Oils:

With the end of the heating season in view, coupled with the heavy demand for kerosene, refiners' stocks of fuel oil were at a low level. The unexpected cold spell in the Northern Middle States resulted in a temporary shortage of Domestic Fuel Oils and price advances of ⅛¢ were registered in Grades Nos. 1 and 2. Other grades remained unchanged with the market in a healthy condition.

Retail Prices—General

Effective May 2nd, the Gulf, followed by Standard of Louisiana, advanced wagon and station prices of all grades gasoline in Louisiana, Arkansas and Tennessee one-half cent (½¢) per gallon. This change did not apply to New Orleans and Baton Rouge for "political reasons."

Effective May 2nd, Standard of Indiana advanced station and wagon prices of all grades gasoline 0.3¢
4874 throughout their territory to conform to a like increase in the tank car market.

Standard of Indiana: No major points are sub-normal. Super Shell is subnormal at isolated rural points in Iowa and Missouri; Silver Shell subnormal over fairly wide areas in Kansas, owing to activities of Grain Elevators. Estimate of subnormal gallonage: 72 points total of 755,000 gallons, at average of 1.1¢ subnormal. Last week: 747,000 gallons.

Standard of Kentucky: Atlanta, Rome and Augusta continue to be subnormal 2¢ on Super Shell and 3½¢ and 4¢ on Silver Shell. Estimate of subnormal gallonage: 480,000 gallons at average of 1.1¢. Last week: 446,000 gallons.

Standard of Ohio: No subnormal points.

Standard of Louisiana: Excluding New Orleans, which did not participate in last ½¢ price advance, subnormal gallonage: 21,000 gallons—average of 1¢; Last week: 21,000 gallons.

Combined subnormal gallonage equals approximately 1,900,000 gallons—versus 1,760,000 gallons last week.

P. E. Lakin.

HJ:TH

(Handwritten Notations):

"What is the trouble in Atlanta?
What can be done about it?"

(Handwritten Initials):

"A. F." "P. E. L."

4875 GOVERNMENT EXHIBIT NO. 189.

Mr. P. E. Lakin May 17, 1935.

Price Review
Week Ending
May 11th, 1935.

Mr. Fraser

In spite of the fact that weather conditions are retarding shipments the gasoline market remains in good shape. A rumor that the Federal Tax may be eliminated next month has made Jobbers wary of filling their storage. The "buying group" continues to move distress material as quickly as it appears on the market; as a matter of interest, we show below purchases made by "buying group members" during the first ten days of April and May, from which it will be noted that despite the inclement weather during the present month, the "group's" purchases exceeded last month by only 4.6%.

	April		May	
Anderson-Pritchard	0	cars	20	cars
Barnsdall	10	"	20	
Continental	18	"	10	
Empire	11	"	7	
Globe	25	"	10	
MidContinent	9	"	20	
Phillips	41	"	33	
Pure	6	"	10	
Shell	10	"	10	
Sinclair	25	"	25	
Skelly	19	"	25	
Standard/Indiana	75	"	50	
Socony/Vacuum	34	"	56	
Total	283	cars	296	cars

There is every indication that gasoline prices may advance fractionally over the next month or so, although, in our opinion, no substantial increase in the tank car market can be anticipated over the balance of the year, unless unforeseen circumstances arise.

Gasoline tank car prices at the close of the week were:

4876

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 octane	**4⅝¢**	**4¾¢**	**4 11/16¢**	**1/16¢**	**4¼¢**
63-70 octane	**5¼¢**	**5½¢**	**5⅜¢**	—	**4¾¢**
26-70 Natural	**3⅛¢**	**3⅛¢**	**3⅛¢**	—	**2⅛¢**
East Texas					
Below 63 octane	**4½¢**	**4⅝¢**	**4 9/16¢**	—	**3 15/16¢**
63-70 octane	**No longer quoted.***				**4 7/16¢**
Gulf Coast (Domestic)					
60-64 octane	**5⅛¢**	**5¼¢**	**5 3/16¢**	—	**5 1/16¢**
65 and above	**5¼¢**	**5½¢**	**5⅜¢**	—	**5 3/16¢**
Western Pennsylvania					
U. S. Motor	**5⅜¢**	**5½¢**	**5 7/16¢**	**⅛¢**	**5¾¢**
Min. 60 octane	**6¾¢**	**6⅞¢**	**6 13/16¢**	—	**6⅜¢**
Min. 65 octane	**7.0¢**	**7⅛¢**	**7 1/16¢**	—	**6⅞¢**

*** Note: 63-70 Gasoline is no longer quoted in East Texas. The proportionately small volume of this grade procured in East Texas is marketed by refiners through established broker connections at prices believed to be in line with current Group 3 quotations.**

The present situation in East Texas is the best the field has seen since its inception; the enactment of legislation giving the State the right to confiscate illegal crude oil and its products has had a marked effect on the production and movement of hot oil and gasoline. Only a very few refiners are presently operating on questionable crude and their operations are of a sporadic nature. On the 9th, inst., for the first time in the history of the field, not a single truckload of untendered gasoline was moved. Stocks of legal gasoline in the field are at an all-time low level.

The failure of Gulf Coast gasoline markets to advance in sympathy with Group 3 prices constitutes a possible menace to the present price structure in other territories. Gasoline from the Gulf and the Eastern Seaboard can now be laid down at some points in our Northern territories at prices slightly below Group 3 material.

Kerosene:

In spite of an average advance of 5/16¢ last week in the Group 3 market, kerosene again increased ⅛¢ with further advances in prospect. The scarcity of material in the Mid-Continent, led to increased shipments from East
4877 Texas into Indiana territory and was responsible for
a 5/16¢ advance in the East Texas price bringing it

into line with Group 3 prices. Pennsylvania kerosene prices are too low in relation to Group 3 and Eastern Seaboard prices; this is responsible for the low spot kerosene price (6¢) maintained by the S. O. C. of Ohio. We are endeavoring to correct. Current average kerosene tank car prices are:

Group 3: 4 1/16¢. East Texas: 4.0¢. Pennsylvania: 4 13/16¢. Gulf Coast: 4⅛¢.

Owing to bad weather which has prevailed over the agricultural belt, thus delaying the normal plowing season, kerosene prices are expected to hold firm until at least the first week in June.

Fuel Oils:

Heavy fuel oils remained firm and an increase of ¼¢ was made in the price of No. 1. This condition is unusual so late in the heating season; factors responsible are: with the increase in demand for tractor fuel and kerosene, refiners cut their production of fuel, to increase their yields of the former products, thus reducing stocks of the latter and, consequently, when an unexpected cold wave hit the Northern Middle States, refiners found themselves short of stocks to meet the sudden unforeseen demand.

The tendency of refiners to hold fuels for cracking purposes has a stabilizing effect on the fuel oil market.

Retail Prices:

Effective the 10th, Standard of Indiana restored normal tank wagon prices for kerosene and No. 1 Fuel Oil (which includes Tractor Fuel) throughout their entire territory, excepting only the States of Kansas and Michigan. The activities of Grain Elevator operators in the former State, and local tank car prices in Michigan was responsible for their failure to restore normal prices in these two areas.

On the 7th, Standard reduced their Service Station price of third brand only in Detroit one-half cent (½¢) to meet competitive conditions, particularly Sunny Service, who were selling their regular grade at 1½¢ below "Red Crown."

Details of existing subnormal gasoline prices are given below:

4878 Standard of Indiana territory:

76 points subnormal approximately 1.1¢ Estimated monthly gallonage—677,281. Preceding week: 72 points —754,953 gallons. Aside from Detroit where Third Brand is subnormal ½¢, no major points affected.

Standard of Kentucky territory:

38 points subnormal approximately 1.1¢. Estimated monthly gallonage—573,173. Preceding week: 28 points —480,378 gallons. Atlanta, Augusta, Rome, Georgia are still subnormal 2¢ on regular and premium grades and 3½¢ and 4¢ on third grade. In addition, Birmingham, Alabama third grade price was cut 1¢ during the week.

Standard of Ohio territory: No subnormal points.

Standard of Louisiana territory:

11 points subnormal approximately 1¢ per gallon. Estimated monthly gallonage—21,392. No change from last week.

Magnolia territory:

12 points subnormal approximately 1.1¢ per gallon. Estimated monthly gallonage—628,045 gallons. Unchanged from last week. Major points having subnormal prices are Houston (1¢ all grades), Tulsa (1¢ third grade only), San Antonio (1¢ regular and premium—3¢ on third grade).

Estimated total subnormal monthly gallonage:
1,919,746 gallons at average of 1.1¢.

Preceding week:
1,904,623 gallons at average of 1.1¢.

P. E. Lakin.

HJ:TH

cc—Messrs. Bascom
van Eeghen
Anderson
Swigart
Taylor
Ruether
Galloway

(Handwritten Notation):
"Mr. Ruether"

4879 GOVERNMENT EXHIBIT NO. 190.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: Mr. P. E. Lakin — Date: June 7, 1935

No. — In Re: Price Review Week Ending June 1, 1935

To: Mr. A. Fraser

Tank Car Markets:

The dominating factor in the current gasoline tank car market is weather: motoring conditions have been far below normal, which has, consequently, retarded gasoline consumption. Despite this fact, coupled with the suspension of the Tank Car Price Stabilization Committee's activities as a result of invalidation of the N. R. A., the gasoline market has held firm, price advances of ⅛¢ being made in Group 3, East Texas, and Western Pennsylvania. Prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 octane	4¾¢	4⅞¢	4 13/16¢	⅛¢	4 7/16¢
63-70 octane	5½¢	5⅝¢	5 9/16¢	—	5.0¢
26-70 Natural	3¢	3¢	3¢	—	2 7/16¢
East Texas					
Below 63 octane	4⅝¢	4¾¢	4 11/16¢	1/16¢	4⅛¢
63-70 octane		Not quoted			4 9/16¢
Gulf Coast (Domestic)					
60-64 octane.	5⅜¢	5⅜¢	5⅜¢	—	5 1/16¢
65 and above	5½¢	5½¢	5½¢	—	5 3/16¢
Western Pennsylvania					
U. S. Motor	5¾¢	5⅞¢	5 13/16¢	¼¢	5 13/16¢
Min. 60 octane	6⅞¢	7¢	6 15/16¢	⅛¢	6 9/16¢
Min. 65 octane	7⅛¢	7¼¢	7 3/16¢	⅛¢	6 15/16¢

With the cessation of the Tank Car Stabilization Committee's activities, brokers attempted to renew their former connections with refiners under the pretext that, as the buying movement was now illegal, refiners would not be able to dispose of their surpluses through such channels. Major Companies countered this move with increased purchases from refiners direct: a relatively 4880 small volume of gasoline found its way into brokers' hands, some 30 cars of which are presently on railroad siding in East St. Louis awaiting Buyers. Major interests are arranging to take this material off the market.

Simms Oil Company, who recently disposed of their marketing facilities and are now dismantling their Dallas refinery, originally had some 300 cars of gasoline in storage which they are anxious to dispose of. No apprehension is felt as to the effect of these stocks on market prices, inasmuch as certain major interests have committed themselves to relieve Simms of this gasoline within a limited period.

Conditions in East Texas are satisfactory; major interests continue to buy all surplus gasoline produced from legal crude at market prices. Dock prices for legal gasoline range from 4¢ to 4½¢ with questionable material about ½¢ lower; untendered truck shipments from the field now average only 500 barrels daily.

There is some tendency on the part of Jobbers to refrain from filling their storage in anticipation of the Federal Gasoline Tax being eliminated at the end of the month.

During the week, we made the following gasoline purchases:

Simms Petroleum, Dallas, Texas—10 cars Third Grade at 4½¢ f.o.b. Tulsa—shipped to Houston Refinery.

Bell Oil & Gas, Grandfield, Okla.—5 cars Middle Grade at 5½¢ f.o.b. Tulsa—shipped to Houston Refinery.

Cushing Sales—5 cars Middle Grade at 5½¢ f.o.b. Cushing —delivered to Pipeline.

Kerosene:

The increase in Group 3 prices resulted in heavy kerosene shipments from East Texas into the area normally supplied by Group 3 refiners. This was due to the disparity between Group 3 and Gulf Coast prices in conjunction with freights from East Texas to these two areas. (Freight from East Texas to Group 3 is about 0.2¢ against approximately 1¢ to the Gulf.) As a result, Group 3 prices are soft, and some sales have been made at below published prices. Furthermore, the season is too far advanced to permit much further Spring plowing in the north, and it is felt that such areas as are still unworked will not be cultivated until Fall. In all probability, kerosene prices will fall from ¼¢ to ½¢ by the end of June. Current
4881 average prices are:

Group 3:	4 1/16¢	(unchanged)
East Texas:	3 13/16¢	(down 3/16¢)
Pennsylvania:	4 13/16¢	(unchanged)
Gulf Coast:	4 1/8¢	(unchanged)

In view of the competition of Michigan refiners who are quoting about 5.7¢ f.o.b. Refinery, we are offering Michigan jobbers kerosene on the basis of Group 3 average plus 1½¢ f.o.b. East Chicago. Our delivered prices are approximately ½¢ higher, but we feel we may be able to secure such a premium.

Fuel Oils:

Fuel Oil prices remained unchanged in all markets. Demand was steady due primarily to the comparatively cool weather prevailing over a large portion of the Middle West, as well as the tendency of refiners to conserve stocks for cracking purposes.

Retail Prices and Developments:

Standard of Indiana territory: Effective May 28, Standard advanced tank wagon prices of all grades fuel oils 0.3¢ throughout their territory (except Michigan—owing to local refiner's competition).

Gasoline prices are subnormal at 82 points, an average of 1.1¢ per gallon, covering 615,000 gallons: unchanged from last week.

Standard of Ohio territory: Effective May 29, Standard advanced all grades gasoline ½¢ per gallon throughout their territory; simultaneously, they revised their formula for determining their normal Station price by adding 5½¢ (heretofore 5¢) to their delivered spot tank car price, which latter is based upon low of 63-70 Octane gasoline, plus 3¢. Schedule of dealer and jobber margins was also revised in accordance with the following schedule:

When difference between Spot tank car and Service Station price is:	**6¢**	**5½¢**	**5¢**	**4½¢**	**4¢**	**3½¢**
Dealer's margin will be:	**3¾¢**	**3½¢**	**3¼¢**	**3¢**	**2¾¢**	**2½¢**
Jobber's margin (net) will be:	**2½¢**	**2¼¢**	**2¢**	**1¾¢**	**1½¢**	**1½¢**

On May 29, Sun Company reduced the Station price at Columbus 2¢ per gallon. They made a further reduction
of a like amount on June 1. In explanation, we advise
4882 that some 30% of the local potential gallonage was
being done by cut-rate operators who were selling at
2¢ or more below majors' third brand. Gallonage involved averages 275,000 monthly at 4¢ below normal.

Standard of Kentucky territory: No general changes in price structure: sub-normal prices at 33 points involving about 730,000 gallons monthly at 1.1¢ below normal. Unchanged from last week: major points sub-normal are Atlanta, Rome, Macon, Georgia.

Standard of Louisiana territory: Kerosene tank wagon prices were advanced ½¢ on June 1. In the State of Tennessee, all majors withdrew sale of third grade gasoline, on the theory that cut-rate operators would post a price for their single grade at 1½¢ below major's normal price for their "House Brand."

Sub-normal prices at only eleven rural points: estimated monthly gallonage involved 21,000 at average of 1¢ below normal. Unchanged from last week.

Magnolia territory:

Oklahoma—7 points sub-normal: average 1.1¢ 80,000 gal. monthly

Texas —5 points sub-normal: average 1.1¢ 550,000 gal. monthly

Unchanged from last week.

Houston, Beaumont, San Antonio and Kilgore are 1¢ sub-normal on Regular and Ethyl, and 2¢ sub-normal on Silver Shell at Kilgore and San Antonio.

Total sub-normal gallonage all territories equals 2,300,000 per month, at average of 1.5¢: last week, 2,000,000 gallons at average of 1.1¢. Increase is due to sub-normal prices at Columbus, Ohio.

P. E. Lakin

NOTE: *It is stipulated* in Exhibit 1043 that this was written by Harry Jacobs, signed by him with P. E. Lakin's name and sent to Alexander Fraser.

4883 GOVERNMENT EXHIBIT NO. 191.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: Mr. P. E. Lakin
Date: June 14, 1935
No:
In Re: Price Review Week Ending June 8, 1935
To: Mr. A. Fraser

Tank Car Markets:

The vigorous manner in which major marketers entered the gasoline tank car market after the Tank Car Stabilization Price Committee ceased to function, buying all surplus gasoline offered, led to further advances of ⅛¢ in the Group 3 gasoline price. In sympathy with this advance Pennsylvania prices increased ¼¢ on low octane and ⅛¢ on middle grades. For the first time since June, 1932 the low middle octane gasoline exceeds 5½¢: an average equal to this figure was attained in September, 1933, but held for only a ten-day period. Gasoline prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 octane	4¾¢	4⅞¢	4 13/16¢	--	4⅜¢
63-70 octane	5⅝¢	5¾¢	5 11/16¢	+⅛¢	5.0¢
26-70 Natural	3.0¢	3.0¢	3.0¢	—	2⅝¢
East Texas					
Below 63 octane	4⅝¢	4¾¢	4 11/16¢	—	3 15/16¢
63-70 octane		Not quoted			4½¢
Gulf Coast (Domestic)					
60-64 octane	5⅜¢	5⅜¢	5⅜¢	—	5 3/16¢
65 and above	5½¢	5½¢	5½¢	—	5 7/16¢
Western Pennsylvania					
U. S. Motor	6.0¢	6⅛¢	6 1/16¢	+¼¢	5 13/16¢
Min. 60 octane	7.0¢	7⅛¢	7 1/16¢	+⅛¢	6 9/16¢
Min. 65 octane	7¼¢	7⅜¢	7 5/16¢	+⅛¢	6 15/16¢

Continued inclement weather is having an adverse effect on consumption which is reflected in lower refinery shipments. With the N.R.A. out of the picture, and the Tank Car Price Stabilization Committee ceasing to function, the future of the gasoline market is largely in the hands 4884 of Independent Refiners; if such refiners hold their runs down to levels in line with a figure recommended by a responsible "fact-finding", body, the future out-look is bright. Current indications are, that Independent Refiners with few exceptions, will, in view of their experience during N.R.A., conform to a policy of holding crude runs down to market demand.

There is no change in East Texas. Major interests continue to move surplus gasoline from that field to the Gulf for shipment to the East Coast. The volume of illegal gasoline moving via truck into intra-state channels averages about 300 barrels a day.

During the week, we made the following gasoline purchases:

Cushing Sales—5 cars Middle Octane at 5⅝¢ f.o.b. Cushing —delivered to Pipeline at Cushing.

Arrow Refining Co. (through Globe Oil)—10 cars 370 e.p. 65 octane gasoline at 5¢ f.o.b. Group 3. This gasoline was stranded at East St. Louis: moved to Wood River.

Hercules Petroleum—5 cars low octane at 4½¢ f.o.b. East Texas (plus $2.50 per car): shipped to Houston.

Kerosene:

The kerosene market is weak: continued rains have prevented normal Spring cultivation and as a result, kerosene movements have been slow. While Group 3 published prices are unchanged, numerous sales at below such prices have been made and it is only a question of days before trade publications will have to take cognizance of these low sales, and lower their prices accordingly. The failure of Gulf Coast kerosene prices to advance in sympathy with Group 3, led to East Texas refiners moving their production into normal Group 3 territory which was a further factor contributing to the weakness in the Group 3 market. With Mid-Continent refiners shading their prices, East Texas did likewise and as a result, prices in the latter area declined 1/16¢. Average published prices at the close of the week were:

Group 3: 4 1/16¢ (unchanged) East Texas: 3¾¢ (down 1/16¢)

Gulf: 4⅛¢ (unchanged) Pennsylvania: 4 13/16¢ (unchanged)

Fuel Oils:

Warmer weather, coupled with a decline in demand for tractor fuels, was responsible for grades Nos. 1 and 2
4885 falling off 3/16¢ and 1/16¢, respectively. All other grades remained unchanged with prices firm.

Retail Prices:

Standard of Indiana territory: Generally speaking, retail prices are holding fairly firm; the only major reduction during the week was Peoria, Illinois, where third grade was cut 1.6¢ per gallon. A total of 83 points averaging 615,000 gallons monthly, are subnormal approximately 1.1¢ per gallon. Last week: 82 points, same estimated gallonage, at 1.1¢ subnormal.

Standard of Kentucky territory: Retail prices are only fair; subnormal prices prevail at scattered points throughout the territory. Major areas affected are: Atlanta (1¢ on Regular and 4¢ on Third); Augusta (2¢ on Regular and 3½¢ on third). A total of 34 points, involving about 710,000 gallons monthly are subnormal, an average of 1½¢ per gallon, compared with 33 points and 730,000 gallons last week.

Standard of Ohio territory: Columbus, which continues subnormal 4¢ on all grades, is the only point in the State which is so affected.

Standard of Louisiana territory: New Orleans prices were reduced 1½¢ on the 8th (and a further 2¢ on the 10th of June) as a result of Independents, who obtain their supplies principally from Chalmette, posting prices lower than those maintained by Spur, whose normal policy is to sell their single grade at majors' third brand price. This is now the only point in Louisiana territory where subnormal prices prevail; gallonage involved amounts to approximately 335,000 per month.

Magnolia territory: No changes during the week:

Oklahoma: 7 points subnormal—average of 1.1¢—80,000 gallons monthly.

Texas: 5 points subnormal—average of 1.1¢—550,000 gallons monthly.

Total subnormal gallonage Distributing territory approximates 2,600,000, at average of 1.7¢. Last week: 2,300,000 gallons at 1.5¢. Increase is due primarily to New Orleans.

HJ:TH P. E. Lakin

(Handwritten Notation):

"M. McGaw"

NOTE: *It is stipulated* in Exhibit 1043 that this was written by Harry Jacobs, signed by P. E. Lakin and sent to Alexander Fraser.

4886 GOVERNMENT EXHIBIT NO. 192.

**Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.**

From: Mr. P. E. Lakin **Date June 21, 1935**

No.: **In Re: Price Review
Week Ending
June 15, 1935**

To: Mr. A. Fraser

Tank Car Markets:

Gasoline prices were unchanged, and held steady at current levels, despite the fact that refinery shipments were not up to expectations: continued rain retarded consumption. Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	4 1/16¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 11/16¢
26-70 Natural	3¢	3¢	3¢	—	1 15/16¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—	3 7/16¢
63-70 Octane	Not quoted				4⅝¢
Gulf Coast (Domestic)					
60-64 Octane	5⅝¢	5⅝¢	5⅝¢	—	4 15/16¢
65 and above	5½¢	5½¢	5½¢	—	5⅛¢
Western Pennsylvania					
U. S. Motor	6¢	6⅛¢	6 1/16¢	—	5⅞¢
Min. 60 Octane	7¢	7⅛¢	7 1/16¢	—	6 9/16¢
Min. 65 Octane	7¼¢	7⅜¢	7 5/16¢	—	6 15/16¢

No surplus gasoline exists in the Mid-Continent area; inter-refinery buying is at a low level, which tends to indicate that Independent refiners are holding their crude runs within the limits of consumptive demand.

Gasoline shipments from East Texas into Indiana territory have shown some increase, but the volume involved is not alarming; in other respects, conditions in East Texas remain unchanged, with some 3 to 7 refineries, who operate sporadically, processing illegal crude. It is estimated that the production of questionable gasoline amounts to 10,000 barrels a day; included in this figure is gasoline produced from crude oil in storage prior to the enactment of the Connally Bill.

4887 **Kerosene:**

Continued rains have made field work impossible, and as a result, kerosene, tractor fuel, and distillate consumption has been retarded, with a consequent weakening in price. Lower prices can be anticipated during the next two weeks. Furthermore, the falling off in demand for kerosene and light Fuel Oils on the East Coast, has softened the East Texas price for these commodities (which normally find their way to the Gulf for coastwise movement) and as a result, East Texas refiners are moving an increasing volume of their production into Indiana territory.

Average kerosene prices at the close of the week were:

Group 3: 4.0 (down 1/16¢) East Texas: 3 11/16¢ (down 1/16¢)

Gulf: 4⅛¢ (unchanged) Pennsylvania: 4 13/16¢ (unchanged)

The large acreage in the Middle Western States which remains unplowed as a result of wet weather, will probably lead to unusual plowing activity in the late summer or early fall; as this period will coincide with the time when jobbers normally fill their fuel oil storage, a strong kerosene and distillage market is anticipated towards the middle of September.

Fuel Oils:

While published quotations for fuel oils remain unchanged, a definite weakness in the lighter grades used for tractor fuel purposes is observed. This tendency has been accelerated by the increasing amount of distillate shipped from East Texas into Northern channels, which is in competition with Group 3 material. No. 1 Fuel Oil in East Texas dropped ⅛¢ to an average of 3 1/16¢: at this figure, with a freight differential of 0.3¢ over Group 3, East Texas material can be laid down in certain areas at approximately 0.25¢ below Mid-Continent distillate on the basis of today's prices. Consequently, some further reduction in Group 3 Distillate prices can be anticipated.

Heavy fuel oils are steady with prices unchanged, and demand fair.

Retail Prices:

May was the first month this year, when our Service Station gasoline prices exceeded 1934, the actual weighted average price of all grades combined being:

1934	1935
13.06¢	13.44¢

4888 It is anticipated that the improvement over 1934 prices will continue at an increasing rate over the balance of this year, primarily owing to the vicious price wars which were effective during the last half of 1934.

The following major retail price changes occurred during the week:

On the 14th, Standard of Indiana advanced all grades of gasoline 0.3¢ per gallon, except in the State of Michigan, and a few Counties in Western Kansas.

At Columbus, Ohio, which is already 4¢ subnormal, Standard, on the 12th, reduced a further 1¢. This condition was brought about by the Golco Company, local price cutters, who persisted in selling at 1½¢ below major's third brand.

On the 10th, Gulf and Standard reduced prices of all grades of gasoline at New Orleans 2¢ per gallon: this followed a 1½¢ reduction made on the 8th. The condition was brought about by a "war" between Spur and local price cutters, the latter insisting upon selling at more than 1½¢ below majors' House Brand. (Normal prices restored on the 20th.)

The status of subnormal prices by major territories is as outlined below:

Standard of Indiana territory: Unchanged from last week; 80 points involving 610,000 gallons monthly subnormal, an average of 1.1¢. This figure does not include Michigan.

Standard of Kentucky territory: Unchanged from last week; 34 points covering 710,000 gallons subnormal, an average of 1.5¢. Major points affected: Atlanta, Augusta, and Macon, where prices are 1¢ and 2¢ subnormal.

Standard of Louisiana territory: New Orleans is the only point affected. Monthly volume—335,000 gallons at 3½¢ below normal.

Standard of Ohio territory: Columbus only point subnormal. 275,000 gallons at 5¢ below normal.

Magnolia territory: Unchanged from last week. 12 points involving 628,000 gallons at 1.1¢ below normal.

Total distributing Department subnormal business approximates 2,600,000 gallons monthly (unchanged from last week) at about 2.0¢ subnormal. (1.7¢ last week.)

P. E. Lakin

HJ:TH

(Handwritten notations):

"M. McGaw." "Mr. Lott"

NOTE: *It is stipulated* in Exhibit 1043 that this was written by Harry Jacobs, signed by him with P. E. Lakin's name and sent to Alexander Fraser.

4889 GOVERNMENT EXHIBIT NO. 193.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin
No.
To: Mr. A. Fraser

Date: August 9, 1935
In Re: Price Review
Week Ending
August 3, 1935

Tank Car Markets:

The gasoline market continues strong with shipments held at current high levels. Surplus gasoline in the Mid-Continent area is, so far as we can learn, confined to a single refinery (Waggoner of Electra, Texas), but this surplus is being readily absorbed. Western Pennsylvania prices declined a further ⅛¢, based upon the fact that some 65-octane material was available on the East Coast at 6¢, which was being laid down at Syracuse, Rochester, and Buffalo, for less than Pennsylvania prices. No further decline in these prices is anticipated during the balance of the season. Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 65 Octane	4¾¢	4⅞¢	4 13/16¢	—	4⅛¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 13/16¢
26-70 Natural	3¼¢	3¼¢	3¼¢	+⅛¢	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—	3 15/16¢
63-70 Octane	Not quoted				4 5/16¢
Gulf Coast (Domestic)					
60-64 Octane	5⅝¢	5⅝¢	5⅝¢	—	5⅛¢
65 and above	5½¢	5½¢	5½¢	—	5⅝¢
Western Pennsylvania					
U. S. Motor	5¾¢	6¢	5⅞¢	—	5⅞¢
Min. 60 Octane	6⅝¢	6¾¢	6 11/16¢	⅛¢	6 9/16¢
Min. 65 Octane	6⅞¢	7¢	6 15/16¢	⅛¢	6 15/16¢

The East Texas situation has shown some improvement. Hot oil production has decreased slightly and is now estimated at 40,000 barrels daily. Gasoline derived from
4890 this material is moving into local channels at prices
ranging from 3¼¢ to 3¾¢ f. o. b. refinery. All legal gasoline has been readily moved at market prices, and the legal gasoline market is in fairly sound shape.

The Natural gasoline market has strengthened, with every indication of further price advances during the next few months. It is reported that one of the effects of the Texas Conservation Law has been to reduce Natural Gasoline production in the Panhandle from 1,000,000 gallons daily to around 750,000 gallons per day.

Kerosene:

The kerosene market has firmed up consequent upon inquiries for this material, in anticipation of increased demand for "threshing" operations: such surplus material as was on the market has now been disposed of. While no actual price advance was registered in Group 3, no material was available at less than published prices, and this led to ⅛¢ advance in East Texas. Average prices at the close of the week were:

Group 3: 3 5/16¢ (unchanged) East Texas: 3 3/16¢ (up ⅛¢)
Gulf: 3 15/16¢ (unchanged) Pennsylvania: 4 11/16¢ (unchanged)

Wheat threshing operations are now in progress in the South, and as these operations move into the Northern wheat belt, an appreciable increase in demand will occur; as this will just precede the period when jobbers fill their burning oil storage, an advance in prices is anticipated.

Fuel Oils:

Light Fuel Oils participated in the strength shown by kerosene. However, a small volume of distress material in the hands of Gulf Coast brokers forced Gulf price for No. 2 Fuel down 1/16¢; this is regarded as a temporary condition.

Heavy Fuel Oils are holding their own with refiners storing in anticipation of Fall demand.

Retail Prices:

There were no reductions of any consequence during the week: Brunswick, Ga. and Brewton, Ala. were restored to normal, and Terre Haute, Ind. prices advanced 1½¢ to ½¢ below normal. The detail by territories is as follows:

Standard of Indiana: Leading points subnormal—Detroit, Minneapolis, St. Paul, Peoria—all 2¢ below normal.

This week: 94 points involving 3,333,000 gal. at 1.7¢ below normal

Last week: 94 points involving 3,360,000 gal. at 1.7¢ below normal

4891 Standard of Kentucky: Third grade only subnormal at Atlanta, Augusta, Macon—3¢; Louisville—1¢.

This week: 36 points covering 360,000 gal. at 2¢ below normal

Last week: 34 points covering 433,000 gal. at 2¢ below normal

Standard of Louisiana: New Orleans third grade 1½¢ below normal. This is the only subnormal price in this territory. Unchanged from last week.

Standard of Ohio: No subnormal points. Unchanged.

Magnolia territory: Houston 1¢ below normal all grades.

This week: 5 points, involving 450,000 gallons, at 1¢ below normal. Unchanged from last week.

Total Distributing Department:

	Points	Monthly Gallonage	Amount
This week	139	4,240,000	1.6
Last week	135	4,340,000	1.6

P. E. Lakin
per: Jacobs

HJ:TH

(Handwritten notation):

"Mr. Lott"

NOTE: *It is stipulated* in Exhibit 1043 that this was written by Harry Jacobs, signed by him with P. E. Lakin's name and sent to Alexander Fraser.

4892 GOVERNMENT EXHIBIT NO. 194.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin Date August 23, 1935
No. In Re: Price Review
Week Ending
To: Mr. A. Fraser August 17, 1935

Tank Car Markets:

The gasoline tank car market continues to maintain its firm position, excepting only in Michigan and Pennsylvania. The entry of Gulf gasoline into Detroit forced the Standard to reduce the Michigan consumer tank car market by one-half cent a gallon on the 13th; while no declines were registered in Pennsylvania prices, that market is soft and some sales are reported at below published prices. Two factors are responsible for this condition: firstly, the policy adopted at numerous points in Ohio of maintaining identical station prices for regular and third grades, which automatically shuts off sales of Pennsylvania gasoline formerly sold in that State as third grade; and, secondly, the increasing use of tetra-ethyl lead by Pennsylvania refiners, which enables them to increase the volume of their gasoline production. These factors led to the accumulation of a local surplus.

Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 60 Octane	4¾¢	4⅞¢	4 13/16¢	—	4⅛¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4⅞¢
26-70 Natural	3½¢	3½¢	3½¢	—	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—	3 15/16¢
63-70 Octane	Not quoted				4 11/16¢
Gulf Coast (Domestic)					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	5⅛¢
65 and above	5½¢	5½¢	5½¢	—	5⅝¢
Western Pennsylvania					
U. S. Motor	5⅝¢	5¾¢	5 11/16¢	—	5⅞¢
Min. 60 Octane	6⅝¢	6¾¢	6 11/16¢	—	6 9/16¢
Min. 65 Octane	6⅞¢	7.0¢	6 15/16¢	—	6 15/16¢

4893 The Group 3 market is strong with no distress material available: inter-refinery buying promptly relieves the market of any accumulation of gasoline.

Natural gasoline is firm, with Buyers offering to take any material available at current prices: increasing seasonal demand will undoubtedly force prices to higher levels.

During the week we purchased 15 cars of U. S. Motor 60-62 Gasoline from various East Texas refiners at a price of 4⅝¢ f.o.b. Group 3. This material was delivered to the Houston refinery.

(Handwritten Notation):

"Is this part of any 'plan'? M.G."

Kerosene

The kerosene market is firm with supplies barely balancing demand in the Group 3 area: brokers in the Gulf forced prices down 1/16¢, but an early recovery is anticipated. Average prices are:

Group 3: 3½¢ (Up 1/16¢) Gulf: 3-15/16¢ (Down 1/16¢)

East Texas: 3¼¢ (Unchanged) Pennsylvania: 4-9/16¢ (Unchanged)

Present prices should improve over the balance of the year.

Fuel Oils

Light fuel oils participated in the strength shown by kerosene, advances of 1/16¢ being made in Nos. 1 and 2 in Group 3 and East Texas.

Heavy Fuel Oils continued firm with demand showing some improvement.

Retail Prices

The retail price situation is as described below:

Standard of Indiana territory: On the 13th, inst., all companies in Minneapolis and St. Paul, with the exception of Standard and Sinclair, advanced prices 2¢, thus restoring to normal. Standard refused to advance until the 16th, when they came up only 1¢, and consequently, all other marketers reduced their prices 1¢ to the Standard's level. Details of subnormal prices in the area are:

This week: 97 points, involving 3,333,000 gallons monthly, at 1.4¢ below normal.

4894 Last week: 97 points, involving 3,333,000 gallons monthly, at 1.7¢ below normal.

Standard of Kentucky territory: On the 14th, Standard restored normal prices on regular and premium grades throughout Mississippi, leaving subnormal third grade prices unchanged. No other changes of consequence occurred during the week. Present comparative subnormal points are as follows:

This week: 39 points, covering 399,000 gallons monthly, at 1.6¢ subnormal.

Last week: 38 points, covering 543,000 gallons monthly, at 1.8¢ subnormal.

Standard of Louisiana territory: Unchanged from last week. 7 points, involving 80,000 gallons Silver Shell monthly,—1½¢ below normal.

Standard of Ohio territory: Unchanged from last week: no subnormal points.

Magnolia territory: Unchanged from last week.
5 points, covering 450,000 gallons monthly,—subnormal 1¢.

Total Distributing Department

This week: 149 points, covering 4,284,000 gallons—average of 1.4¢ a gallon.

Last week: 148 points, covering 4,428,000 gallons—average of 1.67¢ a gallon.

HJ:TH P. E. Lakin

(Handwritten Notation):

"M. McGaw p. 2"

4895 GOVERNMENT EXHIBIT NO. 197.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin
Date September 25, 1935

No:
In Re: Price Review
Week Ending
September 21, 1935

To: Mr. A. Fraser

Tank Car Markets

Aided by inter-refiner buying, which removed all available surplus, the tank car gasoline market has recovered from the uneasiness reflected during the latter part of last week. On the 17th Group 3 price on below 63 octane material was reduced 1/16¢ but this was recovered on September 19. Other markets remain unchanged.

Tank car prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	3 3/16¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 13/16¢
26-70 Natural	4⅛¢	4⅛¢	4⅛¢	—	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4⅝¢	4⅝¢	—	3 9/16¢
63-70 Octane		Not quoted			4 9/16¢
Gulf Coast—Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	5¼¢
65 and Above	5½¢	5½¢	5½¢	—	5½¢
Western Pennsylvania					
U. S. Motor	5¼¢	5⅜¢	5 5/16¢	—	5 9/16¢
Min. 60 Octane	6½¢	6⅝¢	6 9/16¢	—	6 3/16¢
Min. 65 Octane	6¾¢	6⅞¢	6 13/16¢	—	6 9/16¢

Recent reduction in the tank wagon price in Detroit Area has resulted in a reduction of ¾¢ per gallon in the tank car consumer prices in the Detroit Metropolitan Area on September 17. This reduction equalizes the consumer tank car price with the net tank wagon price.

During the week we purchased 20 cars of Third Grade Gasoline from the Texas and Pacific Oil Company, Ft. Worth, Texas, at the low of the Platt's Oilgram, North Texas quotation on date of shipment.

4896 Kerosene

There were no changes in kerosene prices during the week. Demand is steady and in line with current offerings.

Fuel Oils

With the exception of No. 5, which registered a reduction of 1¼¢ per barrel on September 19, fuel oil price remained firm, with limited offerings of heating oils. No. 3 fuel oil advanced 1/16¢ on September 17.

Retail Prices

There were no general price changes during the week under review. Tank wagon and service station prices remain unchanged, except New Orleans, Louisiana, where third grade was reduced 1¢ on the 17th.

Standard of Indiana Territory:

Unchanged from last week. Details are as follows:

This week: 128 points— 9,638,000 gallons—subnormal 1.6¢
Last week: 128 points—*9,638,000 gallons—subnormal 1.6¢
*correction 10,000 gallons.

Standard of Kentucky Territory:

Unchanged from last week.
41 points—435,000 gallons—subnormal 1.6¢.

Standard of Louisiana Territory

On September 17 Standard reduced third grade gasoline 1¢ per gallon in New Orleans, thus establishing a 5¢ differential between regular and third grade. Details are as follows:

This week: 7 points—80,000 gallons—subnormal 3.2¢
Last week: 7 points—80,000 gallons—subnormal 2.2¢

Standard of Ohio Territory

Unchanged. No subnormal prices.

Magnolia Territory

Unchanged from last week.
6 points—450,000 gallons—subnormal 1¢.

4897 Total Distributing Territory

This week: 183 points—10,624,000 gallons—subnormal 1.6¢
Last week: 183 points—10,614,000 gallons—subnormal 1.5¢

Retail Marketing Developments

On September 16 the Standard of Kentucky adopted the policy of allowing railroads and road contractors a discount of 2¢ per gallon on regular, 1½¢ on third grade, from posted tank wagon price at time of delivery, immaterial of quantity. When monthly purchases are 25,000 gallons or more an additional discount of 1¢ will be paid.

JHW:M P. E. Lakin

(Handwritten Notation):
"McGaw"

4898 GOVERNMENT EXHIBIT NO. 198.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin	Date October 2, 1935
No.	In Re: Price Review Week Ending September 28, 1935
To: Mr. A. Fraser	

Tank Car Markets

With the exception of Western Pennsylvania, where a reduction of ⅛¢ occurred on U. S. Motor on September 23, Tank Car markets remain firm. The small amounts of surplus material available in Mid-Continent and Texas areas is promptly removed by inter-refiner buying. Contract movements are steady, spot buying inactive.

The reduction in Western Pennsylvania market was precipitated by offering of surplus material at prices below the current postings.

It is encouraging to note that continued low prices of California crude oil have not as yet affected Mid-Continent and Gulf gasoline prices.

Tank car prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	3¾¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 13/16¢
26-70 Natural	4⅛¢	4⅛¢	4⅛¢	—	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4⅝¢	4⅝¢	—	3½¢
63-70 Octane	Not quoted				4 9/16¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	5⅛¢
65 and above	5½¢	5½¢	5½¢	—	5½¢
Western Pennsylvania					
U. S. Motor	5⅛¢	5¼¢	5 3/16¢	—⅛¢	5½¢
Min. 60 Octane	6½¢	6⅝¢	6 9/16¢	—	6⅛¢
Min. 65 Octane	6¾¢	6⅞¢	6 13/16¢	—	6½¢

4899 During the week we made the following gasoline purchases:

10 cars Third Grade, from Taxman Refining Co., Wichita Falls, Texas, at 4.585¢ f.o.b. Wichita Falls.

15 cars Third Grade, from Cushing Refining Co., at the low C. J. quotation for below 63 Octane f.o.b. Cushing.

Kerosene

On the 23rd, East Texas price advanced 1/16¢ recovering a reduction of similar amount made on August 27th. Demand is steady and in line with current offerings. Prices at September 28th were as follows:

Group 3: 3-7/16¢ (unchanged) East Texas: 3¼¢ (Up 1/16¢).

Gulf: 4.0¢ (Unchanged) W. Pennsylvania: 4-11/16¢ (Unchanged).

Fuel Oils

Light Fuel Oil prices in Mid-Continent areas are firm with demand keeping pace with production. The Group 3 price of No. 3 Domestic Zero advanced 1/16¢ on the 27th. However, due to inactivity, the Gulf Domestic price on No. 2 Fuel Oil declined 1/16¢ and East Texas price on Gas Oil declined ⅛¢.

Heavy Fuel Oil prices continue "soft." On the 27th the Group 3 price of No. 5 Industrial 15 and above declined 1¼¢ per barrel, while East Texas price on No. 4 registered a decline of 2½¢ per barrel under the preceding week.

Michigan fuel oils are reported available in some quantity for Chicago and nearby shipment with delivered prices as low as ½¢ under Mid-Continent quotations.

Retail Prices

There were no general price changes during the week. A few local adjustments occurred, details of which are outlined below:

Standard of Indiana territory

On the 24th Standard reduced Regular 1.5¢, Third Grade 1.6¢ in Fort Wayne, Indiana. On the 23rd Standard reduced Regular 1.3¢ in City of Kalamazoo, Michigan, bringing price to 2.3¢ below normal. Summary of subnormal statement follows:

4900 This week: 131 points—9,826,000 gallons—subnormal 1.6¢.

Last week: 128 points—9,638,000 gallons—subnormal 1.6¢.

Standard of Kentucky Territory

On the 23rd Standard advanced prices of Regular and Ethyl 1½¢ per gallon at Tampa, Florida to the statewide structure. Summary of subnormal prices follows:

This week: 41 points—332,000 gallons—subnormal 1.6¢.

Last week: 41 points—435,000 gallons—subnormal 1.6¢.

Standard of Louisiana Territory

On the 27th Standard advanced Third Grade gasoline 2¢ per gallon in New Orleans, Louisiana, reducing the differential between Regular and Third to 3¢. Summary of subnormal prices follows:

This week: 7 points—80,000 gallons—subnormal 1.4¢.
Last week: 7 points—80,000 gallons—subnormal 3.2¢.

Standard of Ohio territory

Unchanged. No subnormal prices.

Magnolia Territory

September 28th, Mid-Continent reduced Third Grade gasoline 1¢ per gallon at Tulsa, Oklahoma. September 19th, at Cleveland, Texas Regular and Ethyl advanced 1¢ per gallon to normal, Third Grade remains at 1¢ below normal. Summary of subnormal prices follows:

This week: 7 points—456,000 gallons—subnormal 1¢.

Last week: 6 points—450,000 gallons—subnormal 1¢.

Total Distributing Territory

This week: 186 points—10,714,000 gallons—subnormal 1.6¢.

Last week: 182 points—10,624,000 gallons—subnormal 1.6¢.

JHW:LP P. E. Lakin

(Handwritten Notation):

"M. McGaw"

4901 GOVERNMENT EXHIBIT NO. 199.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin
No.
To: Mr. A. Fraser

Date: October 9, 1935
In Re: Price Review
Week Ending
October 5, 1935

Tank Car Markets

Tank car gasoline prices remain unchanged, with the exception of consumer tank car prices in Michigan, which are discussed in a later section. At present there is a small surplus of gasoline in the Oklahoma market which will probably be removed in the immediate future through inter-refiner purchases.

East Texas material is moving at steady levels with surplus currently removed through inter-refiner purchases.

Tank car prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	3 9/16¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 11/16¢
26-70 Natural	4⅛¢	4⅛¢	4⅛¢	—	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4⅝¢	4⅝¢	—	3⅛¢
63-70 Octane		Not quoted			4 5/16¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	5⅛¢
65 and above	5½¢	5½¢	5½¢	—	5⅝¢
Western Pennsylvania					
U. S. Motor	5⅛¢	5¼¢	5 3/16¢	—	5 7/16¢
Min. 60 Octane	6½¢	6⅝¢	6 9/16¢	—	6⅛¢
Min. 65 Octane	6¾¢	6⅞¢	6 13/16¢	—	6 7/16¢

On the 7th Standard reduced the tank car consumer prices in the lower peninsula of Michigan to the following level f.o.b. Tulsa:

69-70 Octane	3.75¢	62-64 Octane	3.25¢
66-68 Octane	3.50¢	60 and below	3.00¢

4902 (Handwritten
Notation):
"Unquestionably will be
worse during
winter months."

This represents a reduction of ¼¢ in the Detroit Metropolitan Area and 1¢ in the balance of the lower peninsula. This reduction was made to meet the competition of Chicago brokers and Hi-Speed who have been quoting below the current structure. It is apparent that the material offered by brokers is Michigan gasoline.

In connection with the importation of Gulf gasoline into Detroit which involved the use of barges of Gotham Terminals, Inc., for marine storage facilities, we are now advised that the State Fire Marshall has secured compliance with regulations which prohibits the unloading of barges without adequate marine terminal facilities. There is an unconfirmed report that the operators are planning the erection of necessary marine terminal facilities in the near future.

Kerosene

Kerosene prices are firm with demand steady. The East Texas price advanced ⅛¢ on the 3rd.

Fuel Oils

Light Fuel Oil prices in Mid-Continent Area are firm with demand good.

The Group 3 price of 32/36 Industrial gas oil was reduced 1/16¢ on the 4th. The East Texas price of 32/36 Gasoil advanced 1/16¢ on September 30th.

Heavy Fuel Oil prices continue "soft", with considerable volume moving at below the posted price. Demand is small, due principally to reduced buying by railroads.

Retail Prices

Only a few local adjustments occurred during the week under review.

In Metropolitan Areas there is noted a tendency to return to the practice of giving premiums. Under canopy cutting, which is traceable to guaranteed margins, continues to present a difficult problem.

Details of local adjustments and subnormal prices are outlined below:

Standard of Indiana Territory:

On September 30th station price Regular in Kalamazoo Circuit reduced 1.6¢ to equalize price with city of Kalamazoo.

4903 On September 20th in the State of Michigan, normal prices advanced 3/10¢, thus bringing normal prices in Michigan in line with balance of territory. On June 14th Michigan normal prices were not affected by general territorial price advance of 3/10¢.

Summary of subnormal prices follows:

This week 132 points—9,828,000 gallons—1.7¢ subnormal.

Last week 131 points—9,826,000 gallons—1.6¢ subnormal.

Standard of Kentucky:

A few local adjustments occurred during the week. Summary of subnormal prices follows:

This week 41 points—287,000 gallons—1.4¢ subnormal.

Last week 41 points—332,000 gallons—1.6¢ subnormal.

Standard of Louisiana:

On October 3rd Standard established a normal differential of 1¢ between station price of Regular and Third Grade. Formerly differential was from 1¢ to 2¢ depending upon local conditions. As the price of Third Grade at Memphis and New Orleans was not changed, price of Third Grade at Memphis is now 1¢ subnormal and at New Orleans 2¢ subnormal.

Summary of subnormal prices follows:

This week 7 points—88,000 gallons—1.9¢ subnormal.

Last week 7 points—80,000 gallons—1.4¢ subnormal.

Standard of Ohio territory:

Unchanged—No subnormal prices.

Magnolia Territory:

On the 4th at Houston, Regular and Ethyl advanced 1¢ to normal. Summary of subnormal prices follows:

This week 7 points—260,000 gallons—1¢ subnormal.

Last week 7 points—456,000 gallons—1¢ subnormal.

Total Distributing Department:

This week—188 points—10,484,000 gallons—1.7¢ subnormal.

Last week—186 points—10,714,000 gallons—1.6¢ subnormal.

4904 Detail Marketing Developments

On October 3rd, Standard of Louisiana adopted the following policy relating to the sale of Third Grade gasoline to dealers:

Normal differential between station prices of Regular and Third Grade established at 1¢ (formerly 1¢ to 2¢, depending on local conditions).

Dealer Margin, including Rental:

On Normal Station price	3¼¢	(Formerly 3¢)
On Subnormal Station price dealer absorbs one-half of reduction with minimum of	1¾¢	(Formerly 2½¢ in Louisiana and Tennessee, 1½¢ in Arkansas).

JHW:LP

P. E. Lakin

(Handwritten Notation):

"M. McGaw"

4905 GOVERNMENT EXHIBIT NO. 200.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin **Date:** October 16, 1935

No. **In Re:** Price Review
Week Ending
October 12, 1935

To: Mr. A. Fraser

Tank Car Markets

Tank car gasoline prices remain unchanged. The small surplus reported last week has since been absorbed through inter-refiner purchases. Prices at end of week are considered firm.

Tank car prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane.	4¾¢	4⅞¢	4 13/16¢	—	3 3/16¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4½¢
26-70 Natural	4⅛¢	4⅛¢	4⅛¢	—	3.0¢
East Texas					
Below 63 Octane	4⅝¢	4⅝¢	4⅝¢	—	2 11/16¢
63-70 Octane		Not quoted			3¾¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	5¢
65 and above	5½¢	5½¢	5½¢	—	5¼¢
Western Pennsylvania					
U. S. Motor	5⅛¢	5¼¢	5 3/16¢	—	5⅝¢
Min. 60 Octane	6½¢	6⅝¢	6 9/16¢	—	6⅛¢
Min. 65 Octane	6¾¢	6⅞¢	6 13/16¢	—	6 7/16¢

During the week we purchased ten cars Third Grade gasoline from Cushing Refining Company at 4¾¢ f. o. b. Cushing.

Kerosene

Group 3 price advanced 1/16¢ on the 7th recovering a similar decline made on August 28. Demand is steady.

Fuel Oils

Fuel Oil prices remain unchanged. Demand for 4906 Light Fuel Oils has decreased slightly due to moderate weather experienced in major portion of our territory.

Retail Prices

Guaranteed Dealer Margins in the Indiana territory continue to threaten retail prices. Commission agency operation, especially in Indiana, Kansas, Missouri and Iowa, is also a factor causing uneasiness in the retail market. Aside from the foregoing, the new marketing policy in Iowa is working satisfactorily.

A few local adjustments were made during the week, the principal points being outlined in the analysis given below. It is well to note that a large portion of our gallonage is still going at subnormal prices, viz. Detroit 3.5¢ subnormal, Chicago 1.5¢ subnormal, Kansas City 2¢ subnormal, Milwaukee 2¢ subnormal.

Details of individual territories are as given below:

Standard of Indiana Territory:

On the 7th at Terre Haute, Indiana, Regular and Premium advanced ½¢ per gallon to normal. Third Grade remains 1¢ below normal.

On the 12th at Battle Creek, Michigan, Regular was reduced 4/10¢, Third Grade 8/10¢.

On the 10th at Ft. Wayne, Indiana, Regular advanced 1½¢ to normal, Third Grade advanced 1.1¢ per gallon. Third Grade remains at ½¢ below normal.

Summary of subnormal prices follows:

This week: 131 points 9,536,000 gallons 1.7¢ subnormal.
Last week: 132 points 9,828,000 gallons 1.7¢ subnormal.

Standard of Kentucky Territory:

The use of Third Grade as a fighting brand has resulted in large differentials at a number of points. This, however, is being watched very closely to protect house brand.

On the 5th at Greenwood, Mississippi, Regular and Ethyl reduced 1¢, Third Grade 4¢. On the 8th at Clarksdale, Mississippi, Regular and Ethyl cut 1¢. Summary of subnormal prices follows:

This week: 41 points 341,000 gallons 1.4¢ subnormal.
Last week: 41 points 287,000 gallons 1.4¢ subnormal.

4907 Standard of Louisiana Territory:

Summary of subnormal prices follows:

This week: 8 points 88,000 gallons 1.9¢ subnormal.
Last week: 7 points 88,000 gallons 1.9¢ subnormal.

Standard of Ohio Territory:

Unchanged—No subnormal prices.

Magnolia Territory:

Unchanged from last week.

7 points 260,000 gallons 1¢ subnormal.

Total Distributing Department

This week: 188 points 10,246,000 gallons 1.7¢ subnormal.

Last week: 188 points 10,484,000 gallons 1.7¢ subnormal.

Retail Marketing Developments

The Standard of Kentucky and Standard of Ohio have recently announced new marketing policies which are in line with previous discussions. The principal feature of the policies is the "sharing" of local reduction by the jobber, dealer and commission agents.

The State of Wisconsin adopted a Chain Store Tax Bill on October 4. This bill carries special rates on Service Stations ranging from $3.00 on the first unit to $50.00 for those in excess of forty. Due to the very broad definition of the term "motor fuel distributing company" outlined in the bill, it is impossible at this time to advise what changes in operations can be made to avoid this tax. The problem is now being considered by our Legal Department.

JHW:M P. E. Lakin

(Handwritten Notation):

"M. McGaw"

4908

GOVERNMENT EXHIBIT NO. 201.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From:	P. E. Lakin	Date:	October 23, 1935
No.		In Re:	Price Review Week Ending October 19, 1935
To:	Mr. A. Fraser		

Tank Car Markets

Tank car gasoline prices remain unchanged. At present there is a very small surplus available in the Oklahoma market, which will be removed during the succeeding week through inter-refiner buying.

The East Texas market is firm with no surplus available. We failed to record in our previous report a 1/16¢ advance on "below 63 octane" which occurred on October 11.

The firm tone in the tank car market is influenced by the sustained demand and adjusted refinery throughput. Group 2 refiners are watching allocations very closely.

The Group 3 price of 26-70 Natural Gasoline was reduced 1/16¢ on the 16th. Prices are weak and further decreases may be expected.

Tank car prices at end of week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	3 1/16¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4⅜¢
26-70 Natural	4¢	4⅛¢	4 1/16¢	—1/16¢	2 5/16¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—1/16¢	2 11/16¢
63-70 Octane	Not quoted				3 11/16¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	4⅞¢
65 and above	5½¢	5½¢	5½¢	—	5⅛¢
Western Pennsylvania					
U. S. Motor	5⅛¢	5¼¢	5 3/16¢	—	5¼¢
Min. 60 Octane	6½¢	6⅝¢	6 9/16¢	—	6⅛¢
Min. 65 Octane	6¾¢	6⅞¢	6 13/16¢	—	6 7/16¢

4909 Kerosene

Kerosene prices remain unchanged.

Fuel Oil Prices

Light fuel oil prices are firm. Although the prices for Heavy Fuels remain unchanged, demand is still "lagging" due principally to reduced buying on the part of railroads.

Retail Prices

Retail prices are still unsteady due to the presence of the guaranteed margin in the Indiana territory and the activities of tire company stores. The national discounts granted the tire companies are having an unfavorable reaction on retail prices, especially in larger centers, notably Minneapolis, St. Louis, Ft. Wayne and Paducah, Kentucky. The Firestone stores are the worst offenders.

Except for the reduction in tank wagon price of Regular, Third Brand and Truck and Bus gasoline in Chicago Metropolitan Area, and reduction in Dealer Price at Des Moines, Iowa, there were only a few local reductions during the week.

Another item of interest is the tendency to increase the octane rating of Third Grade gasoline in the Southeast. A recent test of Kyso Green taken at Louisville disclosed an octane of 64.0. This condition will be watched closely to determine the effect on the sale of Regular.

We have also noted a tendency on the part of Group 2 refiners to increase the octane rating on Third Grade being shipped into the Indiana Territory to 62 with occasional shipments ranging up to 65.

Details of local price reductions and comparison of sub-normal prices are given below:

Standard of Indiana Territory

On the 17th tank wagon price Regular in Chicago Metropolitan Area reduced 1½¢ thus establishing 2¢ differential between wagon and station price; on the 19th tank wagon price Third reduced ½¢, equalizing the wagon prices of Regular and Third, and Truck and Bus gasoline was reduced 6/10¢.

On the 19th at Des Moines, Iowa, the dealer price on Third grade was reduced 1¢ per gallon. This reduction due to low prices posted by Independents and trackage stations.

4910 A few additional local adjustments in station prices occurred during the week. Summary of subnormal prices follows:

This week: 134 points 9,555,000 gallons 1.7¢ subnormal.
Last week: 131 points 9,536,000 gallons 1.7¢ subnormal.

Standard of Kentucky Territory

No important changes. Summary of subnormal prices follows:

This week: 42 points 341,000 gallons 1.4¢ subnormal.
Last week: 41 points 341,000 gallons 1.4¢ subnormal.

Standard of Louisiana Territory

No important changes. Summary of subnormal prices follows:

This week: 7 points 88,000 gallons 1.9¢ subnormal.
Last week: 8 points 88,000 gallons 1.9¢ subnormal.

Standard of Ohio Territory.

Unchanges—No subnormal points.

Magnolia Territory

No important changes. Summary of subnormal prices follows:

This week: 6 points 260,000 gallons 1¢ subnormal.
Last week: 7 points 260,000 gallons 1¢ subnormal.

Total Distributing Department

This week: 190 points 10,265,000 gallons 1.7¢ subnormal.
Last week: 188 points 10,246,000 gallons 1.7¢ subnormal.

Retail Marketing Developments

A revised marketing policy for the Louisiana Territory will be announced in the immediate future. In general the plan will follow the principals set out in the policies covering the Kentucky Territory.

P. E. Lakin

JHW:M

(Handwritten Notation):
"M. McGaw"

4911 GOVERNMENT EXHIBIT NO. 202.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From P. E. Lakin Date October 30, 1935

No. In Re: Price Review
Week Ending
October 26, 1935

To: Mr. A. Fraser

With the exception of Western Pennsylvania, tank car gasoline prices remain unchanged. On the 24th the Western Pennsylvania price on 60 and 65 octane material advanced ⅛¢ recovering a similar reduction made on August 20.

Tank car prices are strong with refinery throughput in line with demand.

The adjustment of California Crude Oil prices on the 26th removes a factor which had caused some uneasiness in Mid-Continent markets since the latter part of August.

The small surplus referred to in our previous report has been removed by inter-refiner purchases.

The Group 3 price of 26-70 natural gasoline was reduced ¼¢ below prices of the preceding week. There were reductions of 1/16¢ on each of the following dates: October 21, 22, 23, 25. Prices are weak due primarily to overproduction in the Panhandle District.

Tank car prices at end of week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	3.0¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4⅝¢
26-70 Natural	3¾¢	3⅞¢	3 13/16¢	—¼¢	2 5/16¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—	2¾¢
63-70 Octane		Not quoted			3¾¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	4⅞¢
65 and above	5½¢	5½¢	5½¢	—	5⅛¢
Western Pennsylvania					
U. S. Motor	5⅛¢	5¼¢	5 3/16¢	—	5⅛¢
Min. 60 Octane	6⅝¢	6¾¢	6 11/16¢	+⅛¢	6⅛¢
Min. 65 Octane	6⅞¢	7¢	6 15/16¢	+⅛¢	6 7/16¢

4912 During the week we purchased ten cars Third Grade from Bell Oil & Gas Company, Grandfield, Oklahoma, at 4¾¢ f.o.b. Grandfield or Tulsa, whichever is lower.

Kerosene

Kerosene prices remain unchanged.

Fuel Oil

Fuel Oil prices remain unchanged. Demand for light fuels is affected by the mild weather. Heavy fuels are inactive.

Retail Prices

Retail price situation is unchanged from last week.

A large portion of our gallonage in Standard of Indiana territory is still going at subnormal prices. However, due to the changed attitude of certain suppliers of major jobbers in the Chicago area, there exists a possibility of restoring normal or near normal prices in the aforementioned area. This is important as Chicago acts as a nerve center in the Midwest.

In the State of Ohio, and particularly Cleveland, retail prices are a bit shaky due to the action of major's jobbers, principally Atlantic Refining Company.

During the week only a few local adjustments were made. Comparison of subnormal prices follows.

Standard of Indiana Territory:

No important changes. Summary of subnormal prices follows:

This week 135 points 9,556,000 gallons 1.7¢ subnormal.
Last week 134 points 9,555,000 gallons 1.7¢ subnormal.

Standard of Kentucky Territory:

No important changes. Summary of subnormal prices follows:

This week 44 points 341,000 gallons 1.4¢ subnormal.
Last week 42 points 341,000 gallons 1.4¢ subnormal.

4913 Standard of Louisiana Territory:

Unchanged from last week.

7 points 88,000 gallons 1.9¢ subnormal.

Standard of Ohio Territory:

Unchanged—No subnormal points.

Magnolia Territory:

Unchanged from last week.

6 points 260,000 gallons 1¢ subnormal.

Total Distributing Department

This week 193 points 10,266,000 gallons 1.7¢ subnormal.

Last week 190 points 10,265,000 gallons 1.7¢ subnormal.

General

The practice of permitting jobbers to truck their gasoline requirements out of refiners in Kansas and Oklahoma is increasing and will require attention in the near future. The transportation saving is frequently passed on to the dealers and peddlers.

P. E. Lakin

JHW:M

4914 GOVERNMENT EXHIBIT NO. 203.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From P. E. Lakin Date November 20, 1935

No. In Re: Price Review
Week Ending
To: Mr. A. Fraser November 16, 1935

Tank Car Markets

Tank car gasoline prices are firm. A little surplus has developed in the Mid-Continent and East Texas markets but this will be removed during the succeeding week through inter-refiner buying. Oklahoma and Kansas are in good shape with little activity by brokers. The situation is encouraging in view of declining consumption.

Group 3 price of 26-70 Natural gasoline recovered an additional ⅛¢ during the week.

Tank car prices at end of week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾¢	4⅞¢	4 13/16¢	—	4⅛¢
63-70 Octane	5⅝¢	5¾¢	5 11/16¢	—	4 13/16¢
26-70 Natural	4¢	4¢	4¢	+⅛¢	3 1/16¢
East Texas					
Below 63 Octane	4⅝¢	4¾¢	4 11/16¢	—	4⅛¢
63-70 Octane	Not quoted				4 9/16¢
Gulf Coast Domestic					
60-64 Octane	5⅜¢	5½¢	5 7/16¢	—	4⅞¢
65 and above	5½¢	5⅝¢	5 9/16¢	—	5⅛¢
Western Pennsylvania					
U. S. Motor	5¼¢	5⅜¢	5 5/16¢	—	5 1/16¢
Min. 60 Octane	6¾¢	6⅞¢	6 13/16¢	—	6⅛¢
Min. 65 Octane	7¢	7⅛¢	7 1/16¢	—	6 7/16¢

Kerosene

Kerosene prices unchanged.

Fuel Oils

Light fuel oil prices firm. On the 11th the Western Pennsylvania price of 36/40 advanced ⅛¢ per gallon.

4915 Heavy fuels inactive. On the 14th East Texas price of 20/24 fuel oil reduced 1¼¢ per barrel.

Retail Prices

Except for Grand Rapids, Michigan, and a few local adjustments detailed below, retail prices in Indiana territory remain approximately unchanged from last week. Minneapolis market is weak but holding.

In view of the difficulties encountered in the Chicago market stabilization efforts are now focused on the Kansas City prices and there is a reasonable possibility of effecting some increase in the near future.

Details of local price adjustments and comparison of subnormal prices is outlined below:

Standard of Indiana Territory:

November 6, Jacksonville, Illinois station price Regular reduced 2¢; November 12, Galesburg, Illinois station price Regular reduced 1¢; St. Cloud, Minnesota Third Grade reduced 2¢. On the 14th dealer prices Regular and Third Grade restored to normal.

Comparison of subnormal prices follows:

This week 136 points 9,644,000 gallons 1.7¢ subnormal
Last week 136 points 9,558,000 gallons 1.7¢ subnormal

Standard of Kentucky Territory:

Unchanged from last week.
41 points 220,000 gallons 1.5¢ subnormal

Standard of Louisiana Territory:

Unchanged from last week.
7 points 88,000 gallons 1.9¢ subnormal

Standard of Ohio Territory:

Unchanged—No subnormal prices.

Magnolia Territory:

Unchanged from last week.
6 points 260,000 gallons 1¢ subnormal

4916 Total Distributing Department:

This week 191 points 10,232,000 gallons 1.7¢ subnormal
Last week 191 points 10,146,000 gallons 1.7¢ subnormal

General

While not strictly a part of this report, we believe it advisable to record here an announcement by Standard of Kentucky that gasoline prices in the State of Florida will be increased ½¢ on the 18th.

JHW:M P. E. Lakin

(Handwritten Notation):
"M. McGaw"

4917 GOVERNMENT EXHIBIT NO. 204.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin Date: December 6, 1935

No.: In Re: Price Review
Week Ending
To: Mr. A. Fraser November 30, 1935

Tank Car Markets

The price reduction in low octane East Texas material which occurred last week was reflected in the Group 3 market which experienced a similar decline during the week under review. The possibility of any further reduction is extremely remote, as latest figures indicate that Mid-Continent refiners are cutting their runs to conform to seasonal decline in consumption, and further, a heavy buying movement in East Texas is getting "under way" which will no doubt relieve that area of any distress material. Prices at the end of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4⅝	4⅞	4¾	—1/16	4⅛
63-70 Octane	5⅝	5¾	5 11/16	—	4 13/16
26-70 Natural	4⅛	4⅛	4⅛	+1/16	3 5/16
East Texas					
Below 63 Octane	4⅝	4⅝	4⅝	—	4⅛
63-70 Octane		Not quoted			4⅝
Gulf Coast (Domestic)					
60-64 Octane	5⅛	5½	5 5/16	—	4¾
65 and above	5½	5⅝	5 9/16	—	5.0
Western Pennsylvania					
U. S. Motor	5¼	5⅜	5 5/16	—	5 1/16
Min. 60 Octane	6¾	6⅞	6 13/16	—	6⅛
Min. 65 Octane	7.0	7⅛	7 1/16	—	6 7/16

Kerosene

Brisk demand by Gulf brokers resulted in East Texas prices advancing 1/16¢ partially recovering the loss sustained last week. Demand in the Mid-Continent held fairly constant and prices were strong at current levels, which are:

Group 3:	3½¢ (unchanged)	East Texas:	3⅛¢ (up 1/16¢)
Gulf:	4.0 "	Pennsylvania:	4 13/16¢ (unchanged)

4918 Fuel Oils

There was a brisk demand for Light Fuel Oils as a result of which Nos. 2 and 3 advanced 1/16¢: Heavy fuel oils remained unchanged with demand steady.

Retail Markets

The only general price change during the week under review was ½¢ advance on the 25th in the States of Louisiana, Arkansas, Georgia, Alabama and Mississippi.

Standard of Indiana Territory:

On the 26th prices were advanced 2¢ at Kansas City, Missouri, thus restoring to normal levels. Details of subnormal prices in this area are:

This week: 136 points—1.7¢ below normal—8,960,000 gallons monthly.

Last week: 138 points—1.7¢ below normal—9,689,000 gallons monthly.

Standard of Kentucky Territory:

Unchanged from last week.

37 points 1.5¢ subnormal covering 235,000 gallons monthly.

Standard of Louisiana Territory:

Unchanged from last week.

7 points 1.9¢ below normal involving 88,000 gallons monthly.

Standard of Ohio Territory:

Unchanged—no subnormal points.

Magnolia Territory:

On the 27th Silver Shell prices in Houston were advanced 1¢, thus restoring to normal levels. Details of this area are:

This week: 5 points 1.1¢ below normal 102,000 gallons monthly.

Last week: 6 points 1.0¢ below normal 260,000 gallons monthly.

Total Distributing Territory:

This week: 186 points 1.7¢ below normal 9,405,000 gallons monthly.

Last week: 189 points 1.7¢ below normal 10,294,000 gallons monthly.

P. E. Lakin

HJ:M

4919 GOVERNMENT EXHIBIT NO. 209.

Letterhead of Shell Petroleum Corporation,
St. Louis, Mo.

From: P. E. Lakin
Date: March 28, 1936

No.:
In Re: Price Review
Week Ending
March 21, 1936

To: Mr. A. Fraser

Tank Car Markets

Gasoline

The gasoline market indicates a much firmer tone, particularly in East Texas: in this area, surplus stocks from legal crude are negligible, and refiners are having some difficulty in meeting orders for third grade material, the price of which advanced ⅛¢.

A much more optimistic feeling prevails in the Mid-Continent area: Shreveport—El Dorado refiners are encountering some difficulty in moving their production, owing to a temporary decline in purchases by Major Companies in this area: Prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1935 Average
Below 63 Octane	5.0	5¼	5⅛	—	3 15/16
63-70 Octane	6.0	6¼	6⅛	—	4⅞
26-70 Natural	3.0	3.0	3.0	—	2⅛
East Texas					
Below 63 Octane	5.0	5.0	5.0	+⅛	3 15/16
63-70 Octane		Not quoted			4 9/16
Gulf Coast (Domestic)					
60-64 Octane	6.0	6.0	6.0	—	4 15/16
65 and above	6⅛	6¼	6 3/16	—	5⅛
Western Pennsylvania					
U. S. Motor	5⅝	5¾	5 11/16	—	4 15/16
Min. 60 Octane	7.0	7⅛	7 1/16	—	5 15/16
Min. 65 Octane	7¼	7⅜	7 5/16	—	6 3/16

Kerosene

The upward trend of kerosene continues: stocks are being heavily drawn upon, and much East Texas material which formerly moved to the Gulf is now being shipped 4920 into group 3 territory. The sale of some 25,000 barrels of East Texas kerosene for line washing purposes relieved that market of its entire surplus stocks. Average prices at the close of the week were:

Group 3:	4¼¢	(up 1/16¢)	East Texas:	4.0¢	(up 3/16¢)
Gulf:	3⅞¢	(unchanged)	Pennsylvania:	5 5/16¢	(unchanged)

Fuel Oils

While the demand for light Fuels experienced a severe decline, prices held firm, owing to the heavy demand for kerosene and tractor distillates.

Heavy Fuel Oil demand continues at a high level, and it is not anticipated that any price losses will occur in all grades of fuel until the end of next month.

Retail Markets

There were no general price changes during the week: details of individual areas are as described below:

Standard of Indiana Territory:

Kerosene and No. 1 Fuel Oil prices were restored to normal generally throughout the territory on the 16th, except Kansas and Michigan.

This week: 144 points—sub-normal 1.7¢—8,610,000 gallons.

Last week: 144 points—sub-normal 1.7¢—8,656,000 gallons.

Standard of Kentucky Territory

Unchanged from last week:

43 points—sub-normal 1.5¢—229,000 gallons

Standard of Louisiana Territory

Unchanged from last week:

9 points—sub-normal 1.5¢—88,000 gallons

Standard of Ohio Territory

Prices in Butler County were cut 2¢ per gallon on the 14th and restored to normal on the 21st.

This week: 7 points—sub-normal 1.1¢—339,000 gallons.

4921 Magnolia Territory

On the 19th, all grades of gasoline were reduced 1¢ per gallon at Houston and San Antonio, Texas, owing to low prices posted by marketers of East Texas gasoline.

This week: 9 points—subnormal 1.4¢—543,000 gallons.

Last week: 9 points—subnormal 1.0¢—304,000 gallons.

Total Marketing Department

This week:

	No. of Points	Gallonage	Av. Amount Sub-Normal	Estimated Revenue Reduction
Distributing:	214	9,831,000	1.7¢	$162,965.58
***Tank Car**	163	2,925,000	1.0¢	29,792.45
	377	12,756,000	1.5¢	$192,758.03
Last week:				
Distributing:	213	9,637,000	1.7¢	$159,166.76
***Tank Car**	161	2,865,000	1.0¢	28,582.45
	374	12,502,000	1.5¢	187,749.21

* Applies only where refinery net-back affected.

Gallonage and estimated revenue reduction on a monthly basis.

P. E. Lakin

HJ-ab

(Handwritten Notation):

"M. McGaw"

NOTE: *It is stipulated* in Exhibit 1043 that this was written by Harry Jacobs, signed by P. E. Lakin and sent to Alexander Fraser.

4922 GOVERNMENT EXHIBIT NO. 210.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin Date March 21, 1936

No. In Re: Price Review
Week Ending
To: Mr. A. Fraser March 14, 1936

Tank Car Markets

Gasoline

A much firmer undertone has developed in the Group 3 market with the return of normal temperature: refiners in this area generally are adhering to publication quotation. Where material is offered at lower prices, it is generally off specification: this is particularly true of gasoline offered out of East Texas, where products from cracking operations are generally sold untreated.

A material improvement has occurred in East Texas: surplus stocks in that field have been taken off the market by inter-refinery purchases, although some anxiety is felt for the future, in view of the movement of Rodessa crude into this area. Gasoline prices remained unchanged at the following levels:

Group 3	Low	High	Average	Net Change Average	1935 Average
Below 63 Octane	5.0	5¼	5⅛	—	3⅞
63-70 Octane	6.0	6¼	6⅛	—	4 13/16
26-70 Natural	3.0	3.0	3.0	—	2 1/16
East Texas					
Below 63 Octane	4⅞	4⅞	4⅞	—	3 13/16
63-70 Octane		Not Quoted			4 9/16
Gulf Coast (Domestic)					
60-64 Octane	6.0	6.0	6.0	—	4 15/16
65 and above	6⅛	6¼	6 3/16	—	5⅛
Western Pennsylvania					
U. S. Motor	5⅝	5¾	5 11/16	—	4¾
Min. 60 Octane	7.0	7⅛	7 1/16	—	5¾
Min. 65 Octane	7¼	7⅜	7 5/16	—	6 1/16

4923 Kerosene

The kerosene situation remains unchanged in that refiners are buying all available supplies, and making shipments only under contract, or to their regular trade. Peak demand for this product should be reached one month hence, and in anticipation of this demand, stocks are being tightly held. Further price advances occurred in Group 3, East Texas and Michigan. Average prices are:

Group 3: 4-3/16¢ (Up 1/16¢)
Gulf: 3⅞¢ (Unchanged)
East Texas: 3-13/16¢ (Up 1/16¢)
Pennsylvania: 5-5/16¢ (Unchanged)

Fuel Oils

Fuel Oils continued to maintain former price levels, although there was a distinct lessening in demand for domestic grades: Industrial Fuel demand is holding fairly well. No price weakening is anticipated over the next thirty days.

Retail Markets

There were no general price changes during the week: Major changes in individual marketing areas are as described below:

Standard of Indiana Territory

Prices in the City of Milwaukee advanced 1¢ on the 10th: County prices advanced 1½¢. Present prices are still one cent below normal in the City and ½¢ in the County.

This week: 144 Points—sub-normal 1.7¢—8,656,000 gallons
Last week: 144 Points—sub-normal 1.7¢—8,656,000 gallons

Standard of Kentucky Territory

Changes at only a few minor points.

This week: 43 Points—sub-normal 1.5¢—229,000 gallons
Last week: 43 Points—sub-normal 1.6¢—210,000 gallons

Standard of Louisiana Territory

New Orleans prices were advanced ½¢ on the 10th, establishing new normals for regular and premium grades: third grade was increased one cent on the 12th, but is still 1.5¢ below normal.

This week: 9 points—sub-normal 1.5¢—88,000 gallons
Last week: 9 points—sub-normal 1.9¢—88,000 gallons

4924 Standard of Ohio Territory

Unchanged from last week.

7 Points—sub-normal 1.1¢—339,000 gallons

Magnolia Territory

Unchanged from last week.

9 Points—sub-normal 1¢—304,000 gallons

Total Marketing Department

This week:

	No. of Points	Gallonage	Av. Amount Sub-Normal	Estimated Revenue Reduction
Distributing:	213	9,637,000	1.7¢	$159,166.76
*Tank Car	161	2,865,000	1.0¢	28,582.45
Total	374	12,502,000	1.5¢	$187,749.21
Last week:				
Distributing	212	9,619,000	1.7¢	$159,472.71
*Tank Car	153	2,682,000	1.0¢	27,168.60
	365	12,301,000	1.5¢	$186,621.31

* Applies only where refinery net-back affected.

Gallonage and estimated revenue reduction on a monthly basis.

P. E. Lakin.

HJ:UH

4925 GOVERNMENT EXHIBIT NO. 212.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin
No.
To: Mr. A. Fraser

Date: February 14, 1936
In Re: Price Review
Week Ending
February 8, 1936

Tank Car Markets

Gasoline

For the third successive week, weather conditions throughout the Middle West, and a major portion of the South, were such as to severely retard gasoline consumption.

Stocks are backing up in the Mid-Continent and East Texas, and price shading to move gasoline is becoming more prevalent; a re-assuring feature is the reported reduction in refinery runs by Mid-Continent operators, as well as the fact that a number of refiners are taking advantage of the drastic decline in consumption to shut down for repairs. Publication prices were unchanged at the following levels:

Group 3	Low	High	Average	Net Change Average	1935 Average
Below 63 Octane	5¼	5⅜	5 5/16	—	3⅜
63-70 Octane	6⅛	6¼	6 3/16	—	4 9/16
26-70 Natural	4.0	4.0	4.0	—	3 5/16
East Texas					
Below 63 Octane	5⅛	5⅛	5⅛	—	3⅝
63-70 Octane		Not quoted			4 1/16
Gulf Coast (Domestic)					
60-64 Octane	6.0	6.0	6.0	—	4 15/16
65 and Above	6⅛	6¼	6 3/16	—	5 1/16
Western Pennsylvania					
U. S. Motor	5¾	5⅞	5 13/16	—	4 7/16
Min. 60 Octane	7¼	7⅜	7 5/16	—	5 11/16
Min. 65 Octane	7½	7⅝	7 9/16	—	6 1/16

Kerosene

The strength in Light Fuel Oils developed a firm basis for kerosene at existing price levels; demand, however, was only fair. A number of refiners are switching their kerosene production to No. 1 Fuel Oil in view of the 4926 extraordinary demand for the latter product. Western Pennsylvania prices advanced ⅛¢, thus bringing prices in that area more in line with Ohio spot prices.

Average prices at the close of the week were:

Group 3: 3⅝¢ (Unchanged)
Gulf: 3-13/16 (Unchanged)
Pennsylvania: 5-5/16 (Up ⅛¢)
East Texas: 3½¢ (Unchanged)

Fuel Oils

The prolonged cold wave is causing refiners some difficulty in meeting current requirements for Domestic Fuel Oils: the continued demand led to an increase of 1/16¢ in Nos. 1, 2, and 3 with buyers offering a premium over present prices for immediate delivery. Nos. 4 and 5 Fuels also advanced 3¾¢ and 1¼¢ per barrel, respectively.

A feature of interest in Chicago was the action of the Gas Company in cutting off, or curtailing, the supply of Industrial Gas users, to provide for the increased domestic demand.

Retail Prices

There were no general price changes during the week: local changes of consequence are referred to below:

Standard of Indiana Territory

"Dealer price" at Cedar Rapids, Iowa was advanced 2½¢ on the 5th to normal.

This week: 147 points—1.7¢ sub-normal—9,072,000 gallons
Last week: 148 points—1.7¢ sub-normal—9,143,000 gallons

Standard of Kentucky Territory

This week: 42 points—sub-normal 1.7¢—233,000 gallons
Last week: 41 points—sub-normal 1.7¢—228,000 gallons

Standard of Louisiana Territory

Unchanged from last week.

7 points—1.9¢ sub-normal—88,000 gallons

Standard of Ohio Territory

On the 4th, Service Station prices in Columbus were reduced 1¢ per gallon. This reduction was brought about by the aggressiveness of cut price operators who were posting prices of from 3¢ to 4¢ below majors and obtaining around 28% of the potential. A further 1¢ reduction is anticipated at this point.

This week: 10 points—1.4¢ sub-normal—356,000 gallons

Last week: 11 points—2.9¢ sub-normal—119,000 gallons

4927 Magnolia Territory

All sub-normal prices in Oklahoma were restored to normal on the 3rd. Third grade prices at Houston were cut 1¢ on the 8th to meet unbranded marketers.

This week: 6 points—1.0¢ sub-normal—297,000 gallons

Last week: 7 points—1.1¢ sub-normal—165,000 gallons

Total Distributing Department

This week: 213 points—Sub-normal: Average of 1.7¢ per gallon, involving about 10,066,000 gallons monthly

Estimated monthly revenue reduction—$168,297.52

Last week: 215 points—Sub-normal: Average of 1.7¢ per gallon, involving about 9,764,000 gallons monthly

Estimated monthly revenue reduction—$166,754.97

P. E. Lakin

HJ:LP

(Handwritten Notation):

"M. McGaw"

4928 GOVERNMENT EXHIBIT NO. 214.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin Date February 1, 1936

No. In Re: Price Review
Week Ending
To: Mr. A. Fraser January 25, 1936

Tank Car Markets

The inclement weather prevailing throughout the Middle West has seriously retarded gasoline consumption. While most refiners are refusing to deviate from published prices, a few offers have been made at prices below current levels.

Some uneasiness is felt in connection with the East Texas situation: major marketers' off-take in this field have not come up to expectations, and as a result stocks are backing up. Some East Texas material found its way into the hands of Chicago brokers who resold it at prices from ⅛¢ to ¼¢ below the low for third grade.

In sympathy with advances made on the East Coast, Pennsylvania refiners increased their prices ¼¢. Increases were also registered at the Gulf, in which area gasoline has been tight for some time. Present Gulf Domestic prices merely reflect the changes made in East Texas since the crude advance. Tank car prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1935 Average
Below 63 Octane	5¼	5⅜	5 5/16	—	3 13/16
63-70 Octane	6⅛	6¼	6 3/16	—	4 11/16
26-70 Natural	4.0	4.0	4.0	+¼	3½
East Texas					
Below 63 Octane	5⅛	5⅛	5⅛	—	3 7/16
63-70 Octane		Not Quoted			4⅛
Gulf Coast (Domestic)					
60-64 Octane	6.0	6.0	6.0	+3/16	5.0
65 and over	6⅛	6¼	6 3/16	+¼	5 3/16
Western Pennsylvania					
U. S. Motor	5¾	5⅞	5 13/16	+¼	4 5/16
Min. 60 Octane	7¼	7⅜	7 5/16	+¼	5 11/16
Min. 65 Octane	7½	7⅝	7 9/16	+¼	6 1/16

4929 Kerosene

Kerosene movement was slow, but the price was strong owing to the heavy demand for No. 1 Fuel which bolstered the kerosene price: Gulf Coast prices declined 1/16¢ owing to heavy stocks which the holders were anxious to deplete before the end of the current heating season. Average prices were:

Group 3: 3⅝¢ (Unchanged)
East Texas: 3½¢ (Unchanged)
Pennsylvania: 4-15/16¢ (Unchanged)
Gulf: 3-15/16¢ (Down 1/16)

Fuel Oils

Light Fuel Oils were in strong demand with prices exceedingly firm. Several sellers who were apparently short of stock were asking prices in excess of those published.

Interest was revived in Heavy Fuels which, during the past few months, have barely held their own: Inquiries from Railroads and Industrial concerns for large quantities of this material forced prices up an average of 2½¢ per barrel with further increases anticipated.

Retail Markets

The only change of a general nature was that made by the Standard of Ohio, who, on the 23rd, increased the kerosene tank wagon and station price one-half cent. This follows a similar advance made by that Company on the 16th. Details of individual territories are as described below:

Standard of Indiana Territory

No major changes.

This week: 148 Points—1.7¢ sub-normal—9,188,000 gallons
Last week: 148 Points—1.7¢ sub-normal—9,160,000 gallons

Standard of Kentucky Territory

Tampa, St. Petersburg and Jacksonville, Florida station prices advanced ½¢ on the 21st.

This week: 38 Points—1.5¢ sub-normal—250,000 gallons
Last week: 41 Points—1.5¢ sub-normal—588,000 gallons

Standard of Louisiana Territory

Unchanged from last week.

7 Points—1.9¢ sub-normal—88,000 gallons

4930 Standard of Ohio Territory

Columbus prices advanced 1¢ to normal on the 21st. A number of price adjustments occurred at minor points.

This week: 11 Points—2.9¢ sub-normal—119,000 gallons

Last week: 10 Points—1.4¢ sub-normal—447,000 gallons

Magnolia Territory

Third grade price reduced 1¢ on the 21st at San Antonio.

This week: 7 Points—1.1¢ sub-normal—165,000 gallons

Last week: 6 Points—1.1¢ sub-normal—111,000 gallons

Total Distributing Department

This week: 212 Points—Sub-normal: An average of 1.7¢ per gallon, involving about 9,830,000 gallons monthly

Estimated monthly revenue reduction $167,387.24

Last week: 213 Points—Sub-normal: An average of 1.7¢ per gallon, involving about 10,414,000 gallons monthly.

Estimated monthly revenue reduction $174,170.51

HJ:LP

(Stamped):

"P. E. Lakin"

4931 GOVERNMENT EXHIBIT NO. 215.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin — Date January 24, 1936

No. — In Re: Price Review Week Ending January 18, 1936

To: Mr. A. Fraser

Tank Car Markets

The gasoline tank car market reacted sharply to last week's crude advance, price increases of ½¢ being registered in the Mid-Continent and East Texas with ¼¢ increases in Western Pennsylvania, Shreveport, Louisiana, El Dorado, Arkansas, and the Gulf Domestic Market.

Natural Gasoline also advanced 5/16¢, partly in sympathy with the increase in automotive gasoline; another factor tending towards firming the price of this product was heavy purchases being made for shipment to the Gulf.

Shipments of gasoline were heavy in the early part of the week, mainly on orders from jobbers in anticipation of the price advance: movement slumped heavily towards the close of the week owing to poor consumption. Little East Texas gasoline is moving into the Middle West, the bulk of that field's production being shipped to the Coast under orders from Eastern buyers.

Prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1935 Average
Below 63 Octane	5¼	5⅜	5 5/16	+½¢	3⅞¢
63-70 Octane	6⅛	6¼	6 3/16	+½¢	4 11/16¢
26-70 Natural	3¾	3¾	3¾	+5/16¢	3½¢
East Texas					
Below 63 Octane	5⅛	5⅛	5⅛	+½¢	3⅝¢
63-70 Octane		Not quoted			4⅛¢
Gulf Coast (Domestic)					
60-64 Octane	5¾	5⅞	5 13/16	+¼¢	5 3/16¢
65 and Above	5⅞	6.0	5 15/16	+¼¢	5⅝¢
Western Pennsylvania					
U. S. Motor	5½	5⅝	5 9/16	+¼	4 3/16
Min. 60 Octane	7.0	7⅛	7 1/16	+¼	5 11/16
Min. 65 Octane	7¼	7⅜	7 5/16	+¼	6 1/16

4932 Kerosene

Kerosene prices reflected the increase in crude, an advance of ⅛¢ being made in all major markets; demand was slow and the price increase was purely on the strength of the raw material advance.

Average prices are:

East Texas: 3⅜¢ (up ⅛¢) Western Pennsylvania: 4 13/16¢ (up ⅛¢)

Group 3: 3⅝¢ (up ⅛¢) Gulf (Domestic): 4.0 (Unchanged)

The Standard of Ohio advanced its delivered spot tank car kerosene price one cent on the 16th to a level of 7.0¢ per gallon.

Fuel Oils

A return of normal winter temperatures took the pressure off of Light Fuel Oils. Movement was comparatively slow, although no price changes occurred in the Middle West. East Coast demand was reflected in a 1/16¢ advance in East Texas and ¼¢ in the Gulf.

It is reported that refiners are withholding No. 3 Fuel from the market, for cracking purposes, in view of the recent gasoline price advance.

Retail Markets

The following general price changes occurred in our marketing area:

January 14th Magnolia advanced all grades of gasoline one cent throughout Texas. On the same date Continental increased Colorado prices by a like amount.

January 15th Standard of Ohio advanced all gasoline prices one-half cent throughout its territory; on the 16th kerosene tank wagon prices were increased by a like amount.

January 17th Standard of Indiana and Nebraska advanced all gasoline prices one-half cent throughout their areas. Magnolia advanced Oklahoma gasoline prices one cent.

January 17th Gulf led a ½¢ gasoline advance throughout Standard of Louisiana territory, which the latter Company met on the 18th.

4933 The above general advances, plus the ½¢ advance made by the Standard of Kentucky throughout Alabama, Mississippi, and Kentucky on the 21st, means that the tank car price advance has now been reflected in retail prices throughout our entire marketing territory, excepting only Georgia and Florida.

Local changes of consequence and sub-normal status of individual marketing areas are as described below:

Standard of Indiana Territory

"Silver-Shell" reduced 1.4¢ at East St. Louis on the 17th.

This week: 148 Points—1.7¢ sub-normal—9,160,000 gallons
Last week: 146 Points—1.7¢ sub-normal—9,141,000 gallons

Standard of Kentucky Territory

On the 16th Service Station prices of "Super-Shell" and Ethyl were cut 1½¢ at Tampa, Jacksonville and St. Petersburg, Florida. Dealers' prices were unchanged, thus reducing their margin from 4¢ to 2½¢.

This week: 41 Points—1.5¢ sub-normal—588,000 gallons
Last week: 39 Points—1.5¢ sub-normal—265,000 gallons

Standard of Louisiana Territory

Unchanged from last week:

7 Points—1.9¢ sub-normal—88,000 gallons

Standard of Ohio Territory

A one cent advance took place on the 16th at Akron, restoring normal prices at this point: a number of minor reductions occurred at smaller points.

This week: 10 Points—1.4¢ sub-normal—447,000 gallons
Last week: 9 Points—1.2¢ sub-normal—620,000 gallons

Magnolia Territory

Unchanged from last week:

6 points—1.1¢ sub-normal—111,000 gallons

Total Distributing Department

This week: 213 Points—Sub-normal: An average of 1.7¢ per gallon, involving about 10,414,000 gallons monthly.

4934 Estimated revenue reduction: $174,170.51 per month.

Last week: 208 Points—Sub-normal: An average of 1.7¢ per gallon, involving approximately 10,247,000 gallons monthly.

Estimated revenue reduction: $170,215.00 monthly.

HJ:LP P. E. Lakin

(Handwritten Notation):

"M. McGaw"

4935 GOVERNMENT EXHIBIT NO. 217.

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin
Date December 19, 1935

No:
In Re: Price Review
Week Ending
December 14, 1935

To: Mr. A. Fraser

Tank Car Markets

Low octane gasoline recovered the loss in price sustained during the last week of November. Although gasoline movement was slow, prices were steady primarily as a result of inter-refinery buying. East Texas, which is usually a good source of supply for brokers, is not at present shipping much material into the area normally supplied from Group 3. High octane material continues tight at the Gulf with the prospect of higher prices. At the close of the week prices were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4¾	4⅞	4 13/16	+1/16	3 13/16
63-70 Octane	5⅝	5¾	5 11/16	—	4 11/16
26-70 Natural	4¼	4¼	4¼	—	3 11/16
East Texas					
Below 63 Octane	4⅝	4⅝	4⅝	—	3 11/16
63-70 Octane		Not Quoted			4 5/16
Gulf Coast (Domestic)					
60-64 Octane	5½	5½	5½	—	4⅝
65 and above	5⅝	5⅝	5⅝	—	4⅞
Western Pennsylvania					
U. S. Motor	5¼	5⅜	5 5/16	—	4 15/16
Min. 60 Octane	6¾	6⅞	6 13/16	—	6 1/16
Min. 65 Octane	7.0.	7⅛	7 1/16	—	6⅜

During the week we purchased twenty-five cars of low octane gasoline from Cushing Gasoline Company and twenty cars from Bell Oil and Gas Company at a price of 4¾¢ F.O.B. Tulsa, Oklahoma.

Kerosene

Demand for kerosene was slow, but supplies of this material were at a low level, and consequently prices 4936 held steady. It is felt that any further increase in No. 1 Fuel Oil price will automatically force kerosene upward, as the price differential between the two products is now so narrow as to just off-set the treating cost of kerosene versus marketing as distillate.

Fuel Oils

Light Fuel Oils are in strong demand, with supplies tight. Nos. 2 and 3 advanced 1/16¢. While published prices failed to indicate an advance for No. 1, it is reported that some buyers paid a premium of 1/16¢ for prompt shipment of this commodity.

Heavy Fuels were slow with prices unchanged.

Retail Markets

There were no price changes of major importance. Details of individual areas are as shown below:

Standard of Indiana Territory
This week: 138 points—1.7¢ subnormal—8,968,000 gallons
Last week: 136 points—1.7¢ subnormal—8,968,000 gallons

Standard of Kentucky Territory
This week: 39 Points—1.5¢ subnormal—209,000 gallons
Last week: 38 Points—1.5¢ subnormal—237,000 gallons

Standard of Louisiana Territory
Unchanged from last week.
7 Points—1.9¢ subnormal—88,000 gallons

Standard of Ohio Territory
Unchanged from last week.
2 Points—1.9¢ subnormal—16,000 gallons

Magnolia Territory
Unchanged from last week.
6 Points—1.1¢ subnormal—111,000 gallons

4937 Total Distributing Territory
This week: 193 Points—1.7¢ subnormal—9,414,000 gallons
Last week: 191 Points—1.7¢ subnormal—9,441,000 gallons

HJ:LP P. E. Lakin

(Handwritten Notation):
"M. McGaw"

(Handwritten Initial):
"R"

Letterhead of Shell Petroleum Corporation, St. Louis, Mo.

From: P. E. Lakin	Date December 14, 1935
No.	In Re: Price Review Week Ending December 7, 1935
To: Mr. A. Fraser	

Tank Car Markets

While the demand for gasoline is slow, the market is fairly firm, primarily as a result of strong inter-refinery buying. No price changes occurred in Group 3 or Texas, but a distinct tightness in the Gulf resulted in substantial price advances in both the export and domestic market. The situation in East Texas is particularly good in that most refiners have already sold their output for the balance of this month. Natural gasoline is strong, with buyers taking all material offered. Prices at the close of the week were:

Group 3	Low	High	Average	Net Change Average	1934 Average
Below 63 Octane	4⅝	4⅞	4¾	—	4⅛
63-70 Octane	5⅝	5¾	5 11/16	—	4 13/16
26-70 Natural	4⅛	4¼	4 3/16	+1/16	3 9/16
East Texas					
Below 63 Octane	4⅝	4⅝	4⅝	—	4 1/16
65 and Above		Not Quoted			4 9/16
Gulf Coast (Domestic)					
60-64 Octane	5⅛	5⅛	5⅛	+1/16	4¾
65 and Above	5⅝	5⅝	5⅝	+1/16	5.0
Western Pennsylvania					
U. S. Motor	5¼	5⅜	5 5/16	—	5 1/16
Min. 60 Octane	6¾	6⅞	6 13/16	—	6⅛
Min. 65 Octane	7.0	7⅛	7 1/16	—	6 7/16

Kerosene

Demand slow, but prices unchanged. There appears to be less kerosene coming on the market, presumably because refiners are increasing their output of distillate. Average prices are unchanged from last week.

4939 Fuel Oils

A heavy jobber demand for light fuel oils caused a virtual scarcity of these products, and resulted in an advance of 1/16¢ in Nos. 1 and 2. With colder weather in prospect, further advances in domestic heating oils should occur. Heavy fuels are steady with demand approximating currently available supplies.

Retail Markets

There were no general price changes during the week.

The Standard of Indiana introduced "Solite with Ethyl" replacing "Red Crown Ethyl"; octane rating of the new product is around 77 with an I.B.P. of 93° and an E.P. of 362.° This product approximates in quality "Super Shell Ethyl."

Details of sub-normal prices by marketing areas follows:

Standard of Indiana Territory

"Silver-Shell" wagon price in Chicago was reduced 1¢ on the 5th. Sub-normal prices at:

This week: 136 Points—1.7¢ below normal—8,968,000 gallons monthly.

Last week: 136 Points—1.7¢ below normal—8,960,000 gallons monthly.

Standard of Kentucky Territory

A number of adjustments, covering mainly "Silver Shell" occurred at minor points:

This week: 38 Points—1.5¢ below normal—237,000 gallons monthly.

Last week: 37 Points—1.5¢ below normal—235,000 gallons monthly.

Standard of Louisiana Territory

Unchanged from last week.

7 Points—1.9¢ below normal involving 88,000 gallons monthly.

Standard of Ohio Territory

For the first time in five months a sub-normal price situation developed in this area.

2 Points—1.9¢ below normal—16,000 gallons monthly.

4940 Magnolia Territory

Silver Shell reduced 1¢ at Tonkawa, Oklahoma on the fifth.

This week: 6 Points—1.1¢ below normal—covering 111,000 gallons monthly.

Last week: 5 Points—1.1¢ below normal—covering 102,000 gallons monthly.

Total Distributing Territory

This week: 191 Points—1.7¢ below normal—9,440,000 gallons monthly.

Last week: 186 Points—1.7¢ below normal—9,405,000 gallons monthly.

P. E. Lakin

HJ:LP

(Handwritten Notation):

"M.McGaw"

4941 GOVERNMENT EXHIBIT NO. 220.

Letterhead of Shell Petroleum Corporation

From Crude Oil Department Date January 2, 1935.

No. In Re: Gasoline

To. Messrs. Fraser
Bascom
Lakin

We have checked the open market supply of middle octane gasoline and find supplies from the following sources—the reason for quotations on this grade not moving upward:

Panhandle Ref. Company 25-30 cars offered 4½¢.
Sunray Ref. Company 30-35 cars offered 4⅜¢.
Taxman Ref. Company 25 cars asks for an offer (material offcolor).

Waggoner Refining Company have about 600 cars of gasoline in storage, 40% middle octane, none of this material is distress, but Waggoner would sell at current quotations.

Bourque is working on a buying program for middle octane grade and feels the purchase of 100 cars would help the quotations move upward. He inquires if we will participate and to what extent.

The Chicago market is in good shape, the brokers have very little gasoline purchased for January shipment.

A. P. Ruether

(Handwritten Notations):

"Mr. Ruether pl. discuss A. S."
"Spoke to Mr. Fraser 1/3/35 PM. R."
"I think we should participate up to 10 cars. P. E. L."

(Handwritten Initials):

"A. P. R."

4942 GOVERNMENT EXHIBIT NO. 221.

Original of Telegram Received

Kilgore, Texas
August 26, 1935

A. P. Ruether
St. Louis, Mo.

KH-146 Sinclair took 50 cars gasoline August 23rd from marketing association making them a total of 80 cars for last week and making a total for majors of 185 for the week.

G. L. Shoemaker

4943 GOVERNMENT EXHIBIT NO. 222.

Original of Telegram Received

Kilgore, Texas
August 23, 1935

Crude Oil Department
St. Louis, Mo.

KH 135 Kline advised today Association had received instructions on only 135 cars gasoline this week from major companies and that was short instructions on 32 cars from last weeks orders Stop Truck price on state tender gasoline reduced to 3½ cents in Kilgore today and expected to be 3¼ tomorrow Stop Interstate gasoline is going at 4½ cents Stop Sinclair Prairie sold Empire 100,000 East Texas Texas crude to be delivered before Sept 22nd.

East Texas Divn
H. L. Stegall

Attn: Mr. Ruether

NOTE: *It is stipulated* in Exhibit 728 that this was written by H. L. Stegall, field scout for Shell in Texas and received by A. P. Ruether.

4944 GOVERNMENT EXHIBIT NO. 230.

Letterhead of Western Petroleum Refiners Association,
Tulsa, Oklahoma

May 24, 1935.

Mr. P. E. Lakin
Shell Petroleum Corporation
Drawer D-8
St. Louis, Missouri

Dear Mr. Lakin:

We are making up our reports covering purchases by the buying group once a week, and I shall be glad to send you a copy when compiled, this as per your request of May 17th.

I am enclosing copies of the March and April monthly reports and the May report through May 18th.

Yours very truly,
A. V. Bourque
C

Encl-3 (Exhibits 231 A B and C)

(Handwritten Notations):

"Mr. Lakin—To note. Please return H. J."
"Noted Apr 6/5/35"
"Mr. Jacobs."

(Handwritten Initials):

"P. E. L."
Please return to P. E. Lakin's files.

NOTE: *It is stipulated* in Exhibit 1043 that this was received by P. E. Lakin in response to Exhibit 232.

4945 GOVERNMENT EXHIBIT NO. 231-A.

Total Cars Purchased During March, 1935

From	By	No. Cars	Total
Boudreau & Niece	Mid-Continent	1	1
Champlin Refining Co	Phillips	15	
	Wadhams	41	56
Cosden Oil Company	Phillips	10	10
Cushing Refining & Gaso Co.	Globe	11	
	Phillips	31	
	Shell	10	52
Dale W. Moore	Mid-Continent	15	
	Phillips	6	21
Danciger Refineries, Inc.	Globe	2	
	Phillips	5	
	Shell	25	32
Olney Oil & Refining Co	Empire	30	30
Omar Refining Co	Globe	90	
	Sinclair	45	135
Panhandle Refining Co	Globe	25	
	Phillips	2	
	Pure	11	
	Sinclair	15	53
Rock Island Refining Co	Barnsdall	3	3
Shamrock Oil & Gas Co	Continental	20	20
Sunray Oil Company	Skelly	7	7
Tansel Petroleum Co	Mid-Continent	4	4
Taxman Refining Co	Phillips	5	5
Waggoner Refining Co	Barnsdall	35	
	Standard (Indiana)	75	110
	Total March		539 Cars

GOVERNMENT EXHIBIT NO. 231-B.

Total Cars Purchased During April, 1935

From	By	No. Cars	Total
Champlin Refining Co	Phillips	39	
	Wadhams	50	89
Cushing Refining & Gaso Co	Globe	5	
	Shell	20	
	Wadhams	7	32
Dale W. Moore	Mid-Continent	25	
	Phillips	5	30
Danciger Refineries, Inc.	Phillips	3	
	Wadhams	4	7
Dickey Refining Co	Globe	10	10
Eason Oil Company	Globe	25	
	Phillips	5	
	Shell	5	
	Wadhams	4	39
Octane Refining Co	Sinclair	15	15
Olney Oil & Refining Co	Empire	30	30
Omar Refining Co	Globe	75	
	Sinclair	50	
	Wadhams	1	126
Panhandle Refining Co	Empire	1	
	Pure	14	
	Sinclair	25	40
Rock Island Refining Co	Phillips	12	12
Shamrock Oil & Gas Co	Continental	38	38
Star Refining Company	Continental	6	6
Sunray Oil Company	Skelly	16	16
Taxman Refining Co	Continental	5	
	Empire	5	
	Phillips	20	
	Skelly	25	55
Waggoner Refining Co	Barnsdall	30	
	Standard (Indiana)	85	
	Mid-Continent	50	165
Wilcox Oil & Gas Co	Skelly	5	5
	Total April		715 Cars

4947 GOVERNMENT EXHIBIT NO. 231-C.

Purchases Through May 1935.

From	By	No. Cars	Total
Champlin Ref Co	Phillips	8	8
Cushing Ref Co	Anderson-Prichard	10	
	Shell	20	
	Wadhams	13	43
Dale W. Moore	Mid-Continent	6	6
Danciger	Wadhams	36	36
Eason Oil Co	Anderson-Prichard	10	
	Phillips	13	23
Lubbock Oil Co	Continental	5	5
Olney Oil & Ref Co	Empire	13	13
Omar Ref Co	Wadhams	9	9
Panhandle Ref Co	Sinclair	25	25
Rock Island Ref Co	Phillips	29	29
Simms Oil Co	Continental	5	
	Empire	10	
	Mid-Continent	10	
	Phillips	5	
	Skelly	10	
	Wadhams	1	41
Taxman Ref Co	Continental	4	
	Mid-Continent	10	
	Phillips	28	
	Skelly	35	77
Vickers Pet Co	Barnsdall	5	
	Globe	10	
	Mid-Continent	10	
	Pure	10	35
Waggoner Ref Co	Barnsdall	15	
	Mid-Continent	10	
	Skelly	15	
	Standard	50	90
			440 Cars

NOTE: *It is stipulated* in Exhibit 1043 that this document was received by P. E. Lakin as an enclosure with document bearing Exhibit No. 230.

4948 GOVERNMENT EXHIBIT NO. 232.

May 17, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners' Association,
607 Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Bourque:

I am wondering whether you can arrange to send us as quickly as possible after the end of each month a statement showing the number of cars of gasoline purchased during that month by the "buying group". If you do not care to show purchases by individual group members, the one figure showing the total purchases will be sufficient for our purpose.

If it is possible, we should like you to show the name of the Sellers as well as the buyers.

Very truly yours,
Shell Petroleum Corporation
P. E. Lakin
General Sales Manager

HJ:TH

(Handwritten Notations):

"Mailed 5/20" "Call 6/10."
Please return to P. E. Lakin's files.

NOTE: *It is stipulated* in Exhibit 1043 that in response to this letter written by P. E. Lakin he received Exhibits 230 and 231.

4949 GOVERNMENT EXHIBIT NO. 233.

Shell Petroleum Corporation
St. Louis

Copy of Telegram Received

Kilgore, Texas
December 3, 1935

Crude Oil Department
St. Louis, Mo.

KM-18. Following is major company purchases third grade gasoline for week ending December 1st Sinclair

40 cars Gulf 40, Pure 35, Texas 10 Continental 10, LA O & R Co 20, total 155 cars Stop following plants will supply these orders, Chief 10 cars, East Texas 20, Gilliland number two 20 cars, Hurricane 20, Trio 15, Texas Oil Prods 20, Premier 25, McMurrey (Arp) 25 cars, total 155 Stop It is doubtful Gilliland will be able to secure Federal Tenders leaving only seven refineries to supply these orders Stop Sinclair made their purchase of 100 cars for export movement and would not give out prices paid but did just about clean up all on hand Stop Understand most was high octane Stop A general truck price of 9¼ cents went into effect at seven o'clock today Stop Believe markets are in good condition as far as East Texas is concerned and hot oil flow is now at one of the lowest points in history of field based on movements of refined products.

H. L. Stegall

Stamped: "Please return to
P. E. Lakin's files."

(Handwritten Notations):

"Mr. Lakin." "Mr. Van Eeghan: This should
help bring back recent price
reduction on 3rd grade published prices.
A. P. R."

Attn: Mr. Ruether

4950 GOVERNMENT EXHIBIT NO. 234.

Shell Petroleum Corporation
St. Louis

Copy of Telegram Received

Kilgore, Texas
December 9, 1935

Crude Oil Dept.
St. Louis, Mo.

KM-47 following is list of purchases East Texas gasoline by majors during week ending 7 AM Dec 8th Sinclair 40 cars Gulf 50 Pure 15 Texas 35 Continental 5 Louisiana O&R Co. 10 total 155 cars Stop Allocations of the foregoing orders placed as follows Cascade 5 cars East Texas 25 Gilliland number two 20 Hurricane 15 Trio

15 Premier 25 Solvex 25 Tyre Co. number two 10 total 155 cars.

H. L. Stegall

Atten: Mr. Ruether
Copy: Mr.Bascom
Mr. Van Eeghan
Mr. Lakin.

Stamped: "Please return to P. E. Lakin's files."

(Handwritten Notation):
"Mr. Jacobs 11th floor."

4951 GOVERNMENT EXHIBIT NO. 235.

Manufacturing Department April 9, 1935

Review of Gulf Coast Bulk Market Week Ending April 6, 1935

Mr. A. Fraser:

Natural Gasoline

	Low	High	Average	Net Change Average	1934 Aver.
Group 3	2⅛	2¼	2 3/16	1/16	2 9/16
Plus Frt. to Gulf	1 7/16	1 7/16	1 7/16		1 7/16
Calculated Gulf Price	3 9/16	3 11/16	3 10/16		4.0

One cargo of 20 pound stabilized has recently been sold for June delivery for 4⅜¢ Gulf. It is reported that this purchase was made by Tidewater from Hanlon-Buchanan, although we have been unable to verify this. Brokers of natural gasoline have indicated a reluctance to sell on the present market and are holding off for prices approximately equal to U. S. Motor and have indicated that they are prepared to hold this product in storage until fall in anticipation of better prices.

Gasoline

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
U. S. Motor	4⅝	4¾	4 11/16	—	4 9/16
60/64 400 E. P.	4¾	4⅞	4 13/16	—	4 11/16
64/66 375 E. P.	5	5⅛	5 1/16	—	4⅞
(b) Domestic					
U. S. Motor below 59 Octane	5	5⅛	5 1/16	—	4⅞
U. S. M. 60/64 Oct.	5⅛	5¼	5 3/16	—	5⅛
U. S. M. 65+ Octane	5¼	5½	5⅜	—	5⅜

Although no change in price schedules was reported during the past week the market has strengthened materially and an optimistic feeling seems to prevail generally. During the past week the Standard of New Jersey increased their retail price schedules three fourths of a cent a gallon, and if the present control in East Texas is maintained and the buying program is not abandoned, further increases may be expected in that territory, although Standard of New Jersey holds the opinion that gasoline prices, particularly on the Eastern Seaboard, are now in line with crude prices and that no further increase is to be expected until dictated by a rise in crude prices.

4952 Cities Service have purchased one cargo in the Gulf this week, although we cannot report the name of the seller or the price. An additional cargo of gasoline has also been purchased by Cities Service for delivery from East Texas in tank cars at a reported price of 4⅛¢. Gulf has purchased 30 cars, Pure 42 cars, and Sinclair 21 cars, at the same price in the field, which is equivalent to 4.925% delivered in the Gulf. The above purchases of the last few days may be compared with the purchase of 75 cars during the first part of the week by Cities Service in East Texas for coastwise movement at 4.675¢ delivered Gulf (3.875¢ East Texas plus freight .8¢) which indicates clearly the improvement in this market during the past week.

The smaller refiners on the Gulf Coast are holding for 5¼¢ as compared to the present market of 5¢, expecting major companies to take this material off of their hands.

Kerosine

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
44 W. W.	4¼	4½	4⅜	—	4⅜
41/43 W. W.	4	4¼	4⅛	—	4¼
(b) Domestic					
41/43 W. W.	4	4¼	4⅛	—	4⅜

The prices for this commodity remained unchanged during the week and the market is very quiet, there being few inquiries and no sales of any magnitude.

Gas Oil

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
26-30 Translucent	2⅞	3	3 15/16	—	3 7/16
30+ Translucent	3	3⅛	3 1/16	—	3⅝
(b) Domestic					
#1 Heating Oil	4	4¼	4⅛	—	4⅝
#2 Heating Oil	3⅛	3¼	3 3/16	—	3 11/16
(c) Bunkers					
Diesel			1.70		1.78

The prices were unchanged during the week and there continues to be a surplus of gas oil on the East Coast as the result of the unexpected mild weather during the past few weeks. Patterson is in the market for gas oil, having inquired of Shell Eastern, but the price offered was
4953 equivalent to 3¢ in the Gulf, on which basis Shell Eastern were not interested. The large stocks on the Eastern Seaboard are felt to be the dominating factor in the present slow market in the Gulf. However, an investigation will be made of the statistical stock position to determine whether or not the present stocks on the East Coast are sufficiently in excess of the stocks held in 1934 to warrant the price being one-half cent lower at this time as compared with a year ago.

It is reported that Berry has a cargo enroute from the Gulf and no storage available and unless they can make arrangements for storage they will undoubtedly have to dispose of this cargo at a sacrifice. Republic and Crown Central are also reported as having full stocks and have endeavored to secure temporary storage from Shell Eastern to take care of their present surplus.

Grade "C" Fuel Oil

	Low	High	Average	Net Change Average	1934 Aver.
Grade "C"	80	85	82½	—	.90
Bunkers			100	—	1.10

Standard of Louisiana sold to Rio Bravo (Southern Pacific) approximately 100,000 barrels of Grade "C" fuel oil at 89¢ New Orleans, which is about 85½¢ at the refinery. This fuel is to be delivered during the months of April and May in barge lots.

A meeting was held on April 4th in New York for the purpose of discussing present bunker prices. This meeting was attended by representatives of the major companies and the Petroleum Administrative Board, including the Department of Commerce and Bureau of Mines, in which it was pointed out by the Government representatives that fuel oil prices had increased abnormally over the past three years and that this increase had added materially to the operating cost of vessels and that the oil companies should accept lower fuel oil prices as a contribution to a national emergency and assistance to the American Merchant Marine. The oil companies represented could not support the plea for lower prices under present circumstances and the meeting adjourned without any definite accomplishments or conclusions, with the understanding that if advisable the discussions will be reopened at a later date. You will no doubt receive the full details covering this meeting from Mr. Minner.

Tankers

Although last week it appeared that the strike of the International Seamen's Union on the Pacific Coast would
4954 spread to other localities, the situation at this time is
noted to be much easier and it looks as though the differences between the seamen and the operators will be reconciled very shortly. Thus far the strike has, of course, affected only those vessels operating entirely on the Pacific Coast.

The market for clean and dirty tank vessels has weakened still further and both may be chartered from the Gulf to points North of Hatteras at 16¢. The Nelson was chartered last week by Shell Union for a movement from Curacao to New York at 10¢.

C. E. Davis

cc. Messrs. Bascom
Calloway
van Eeghen
Taylor
Jacobs
Ruether X
McCaw
High

4955 GOVERNMENT EXHIBIT NO. 237.

Shell Petroleum Corporation
St. Louis

Copy of Telegram Received

Kilgore, Texas.
February 15, 1936

Crude Oil Dept.
St. Louis, Mo.

KB-82 the following companies have purchased gasoline delivery week ending February 16 and will pay 5⅛ cents gallon Texas 35 cars Pure 35 Gulf 50 Sinclair 40 Tidewater 5 Louisiana Oil 5 total 170 Stop The following companies bought in addition to foregoing at 4¾ cents Gulf 60 Sinclair 25 Pure 10 total 95 cars Stop Bradshaw at Dallas placed the order by Sinclair five each with following refineries Cascade Hurricane McMurrey Solvex and Trinity Stop The Association reports that not over 50 cars have been purchased by independent jobbers during this week Stop A survey this week of excess stocks held by plants operating on Federal Tenders shows 180,000 barrels gasoline on hand in addition to regular working stocks of 70,000 barrels making 250,000 barrels held by fourteen plants Stop There are 15 other plants in field not operating on Federal Tenders holding an estimated stock in excess of 75,000 barrels making grand total in field of around 325,000 barrels Stop In order to bring stocks to normal working conditions 450 cars should be moved at once Stop On February 12th the Association reported situation looked very favorable but has adverse opinion today Stop Refiners would wel-
4956 come wholesale buying by major companies even at bargain prices in order to get situation cleared up Stop apparently we have been misinformed as to the extent of curtailment of runs to stills and if excess stocks are moved by majors it is inevitable that relief will be only temporary.

H. L. Stegall

Attn: Mr. Ruether
Copy: Mr. Bascom
Mr. Salmon
Mr. Jacobs
Mr. Lakin X

(Handwritten Notations):

"Mr. Lakin." "PEL" "Mr. Ruether please discuss soonest. P. E. L."

4957 GOVERNMENT EXHIBIT NO. 238.

Shell Petroleum Corporation
St. Louis

Copy of Telegram Received

Kilgore, Texas
February 25, 1936

A. P. Ruether
St. Louis, Mo.

KB-151. A check made Feby 22nd on refineries operating on Federal Tenders showed 355 cars of distress gasoline over and above regular working stock Stop Major purchases for the week ending 7 AM Feb 23rd totaled 230 cars 175 of which were purchased at 5 cts and 55 cars at 4⅝¢ to 4¾¢ Stop 120 cars have been ordered for shipment this week and it is understood prices will be subject to Platts quotation Stop Total cars of distress gasoline does not include stock on hand at East Texas Refining Company at Longview Stop Southport Refg Co is selling gasoline to trucks at 3¼ to 3½¢ dock.

Shoemaker

Stamped: "Please return to
P. E. Lakin's files."

(Handwritten Notations):
"Tank Car Stab. Purchases."
"Mr. Lakin"

4958 GOVERNMENT EXHIBIT NO. 239.

Shell Petroleum Corporation
St. Louis

Copy of Telegram Received

Tyler, Texas
February 27, 1936

Crude Oil Dept.
St. Louis, Mo.

KB-164. Following companies placed orders for gasoline this weeks delivery St Clair 30 Gulf 50 Pure 30 Texas 35 Tidewater 5 Louisiana Oil 6 Continental Two total 158 Stop All placed by Marketing Assn. price 4⅞ cents St Clair and Gulf purchased 30 each thru Bradshaw at Dallas quoted price 4⅝ cents refinery Green at Ft Worth purchased for this weeks delivery a total of 50 cars placed as follows Texas

Oil Products 15 cars Trinity 10 Cascade 10 Danciger 15 Stop This makes total purchases 268 cars by majors Stop Humble purchased 50 cars last week instead of 25 Stop we have report Magnolia will buy this week but failed find any trace of such activity Stop It is estimated that there are around seven hundred cars excess gasoline in the field above normal working stock.

H. L. Stegall

Attn: Mr. Ruether

(Handwritten Notations):

"Mr. Lakin." "P. E. L."

Stamped: "Please return to P. E. Lakin's files."

4958½ GOVERNMENT EXHIBIT NO. 240.

Letterhead of Mid-Continent Petroleum Corporation, Tulsa, Okla.

Mr. P. E. Lakin, December 19, 1935.
Shell Petroleum Company,
St. Louis, Mo.

Dear Mr. Lakin:—

I believe it is going to be highly important to our Committee to meet before the close of the month for the purpose of looking over Mr. Bourque's figures in connection with the refining situation. Hence, I am calling a meeting to be held in the offices of the Western Petroleum Refiners Association at ten o'clock in the morning of December 30. It is appreciated that the week between Christmas and New Year's is a busy one. However, there are some peculiar situations that make us feel that we should not delay until after the first of the year. Please advise promptly if you can be in attendance.

Yours very truly,
R. W. McDowell

Please return to P. E. Lakin's file.

(Handwritten Notations):

"Mr. Ruether—to note as per conversation.
McDowell informed you will be there. P. E. L."
"Noted. A. P. R. 12/24"

(Handwritten Initials):

"APR"

4959

GOVERNMENT EXHIBIT NO. 243.

Letterhead of Shell Petroleum Corporation
Omaha, Nebraska.

From Northwestern District
Tank Car Sales Dept.
No.

Date February 3, 1936

In Re: Third Grade Gasoline

To: Mr. W. L. Schafer

You will recall that for the past two months we have been shipping some third grade gasoline from the Bell Oil & Gas Company to our Shell Distributors and that while we have had complaints, we have nevertheless insisted that it was necessary to dispose of the material which we had purchased for various reasons.

We are attaching letter from the Bell Oil & Gas Company to one of our customers and similar letters are being circulated to all jobbers in our territory. This letter is in the nature of a quotation and is actually 1¢ per gallon beneath the prices we are charging our jobbers for what is apparently guaranteed to be approximately the same grade of material. We have been charging our jobbers 1/16¢ per gallon more for Bell's third grade material than they offer to sell direct to our customers their high octane material.

Obviously this is an impossible situation and does in fact tend to weaken our position with our jobbers in that if Bell's material shipped to them was in any degree satisfactory it would encourage them to buy direct from Bell at a much less price than they could buy Silver Shell from us. Such a trend is, in the writer's opinion, in direct opposition to our sales efforts.

We realize it is sometimes necessary for us to ship outside material but the writer sincerely hopes that if this becomes necessary again we take the material of some refiner whose sales policies and efforts are not so directly conflicting with our own. You will note from the attached that Bell is now opening a sales office in Des Moines and with such prices we no doubt will have to watch purchases of our distributors on third grade material.

JEF:HG

NOTE: *It is stipulated* in Exhibit 728 that this was written by J. E. Fritts, tank car sales manager for Shell at Kansas City and received by W. L. Schafer, assistant to the tank car sales manager for Shell.

4960 GOVERNMENT EXHIBIT NO. 244.

Letterhead of Bell Oil & Gas Company, Tulsa, Oklahoma.

January 29th, 1936.

Mr. H. A. Bingle,
Updike Lumber & Coal Co.,
Omaha, Nebraska.

Dear Mr. Bingle:

We have recently opened offices in Des Moines, and I hope you will favor us with an occasional inquiry. Our two refineries, at Grandfield and Gladewater, are turning out some exceptionally nice material, and I believe you will find our prices in line.

I would appreciate hearing from you the next time you are in the market.

Cordially yours,
Bell Oil & Gas Company
Harry Jenkins
Manager Northwest Division

P.S. Our price today on guaranteed 65/70 octane (actually 67) antiknock gasoline is 5⅛¢.

(Handwritten Notations):

"Jim Fritts Here is a good Price. H. A. B."
"CJC on 1/29—6⅛ to 6¼"
"We charging 5 5/16 Tulsa for Bells Low octane gasoline and above prices being circulated to the trade. Not so good."

NOTE: *It is stipulated* in Exhibit 728 that this letter was sent by J. E. Fritts to W. L. Schafer as an enclosure with Exhibit 243.

4961 GOVERNMENT EXHIBIT NO. 246.

October 3, 1935

Shipping and Supplies

Market Stabilization
Gasoline Purchases

Crude Oil Department—

In connection with recent gasoline purchases made in the interest of market stabilization, there has been a general lack of understanding between the buyer and seller as to the application of the freight differential on shipments to Houston. Almost invariably we are forced to ship to Houston, because insufficient time is allowed to work these purchases off in the normal course of business. If the seller is willing to allow a differential on northern shipments, bringing this material into the group three category, then he should be willing to allow it on shipments to Houston, when he is not in a position to allow the buyer sufficient time to arrange for shipment into the northern territory, since the buyer actually loses money in order to move the material quickly. It is suggested that in the future when making such purchases, we secure the seller's consent to deducting the differential on shipments which we find necessary to make to Houston.

J. H. Salmon

SBK:FB

cc—Sales Distributing Dept.—Mr. H. Jacobs

Stamped "Copy".

Please return to P. E. Lakin's files.

NOTE: *It is stipulated* in Exhibit 728 that this was written by S. B. Kieselhorst, a clerk in the shipping and supplies department under the management of J. H. Salmon, of Shell and a copy was received by Harry Jacobs, assistant to vice president in charge of marketing of Shell.

4962 GOVERNMENT EXHIBIT NO. 247.

July 26, 1935

Shipping & Supplies Dept.
Mr. A. P. Ruether

In connection with the gasoline purchases negotiated by you for the purpose of stabilizing the market, the information that we receive as to the quality of the products is usually insufficient to enable us to determine whether we can ship the material to our bulk depots or jobbers, or if it will be necessary to have it shipped to one of our refineries. In some cases it has been necessary to delay issuing shipping instructions until we could arrange to have a sample analyzed at a refinery before reaching a decision on the movement.

In practically all cases, we understand that the sellers of such merchandise are anxious to obtain immediate shipping instructions and it would expedite matters if at the time you negotiate such purchases, you would obtain or request the suppliers to wire the following properties:

Initial
End Point
80% Res.
Octane
Glass Dish Gum
Sulphur
Vapor Pressure
Gravity

It is also desirable if you would arrange for a one gallon sample of the product to be shipped to the Wood River refinery for analysis as we can obtain the properties over the phone from Wood River usually on the same day that the sample arrives.

Your cooperation in this respect will be greatly appreciated.

A. W. Frey

cc—Mr. H. Jacobs

Please return to P. E. Lakin's files.

(Handwritten Initials):

"HJ"

NOTE: *It is stipulated* in Exhibit 728 that this document was written by A. W. Frey, assistant manager of the shipping and supplies department and received by A. P. Ruether, manager of the crude oil department.

4963 GOVERNMENT EXHIBIT NO. 248.

Manufacturing Department April 23, 1935.

Review of Gulf Coast Bulk Market Week Ending April 20, 1935

Mr. A. Fraser:

Natural Gasoline

	Low	High	Average	Net Change Average	1934 Aver.
Group 3	—	—	2¾	3/16	2⅛
Plus Frt. to Gulf	—	—	1 7/16		1 7/16
Calculated Gulf Price	—	—	4 3/16		3 5/16

No change has been observed in the Gulf position during the preceding week, although the Group 3 price increased

3/16¢ on April 16. Such surplus as exists in the Gulf appears to be largely in the hands of Warren and Hanlon-Buchanan, whose recent activities in this market have been bearish. Their efforts to control the price at reduced levels by small sales have been, for the greater part, ineffective and the market continues to strengthen.

Gasoline

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
U. S. Motor	4⅝	4¾	4 11/16	—	4⅝
60/64 400 E. P.	4¾	4⅞	4 13/16	—	4½
64-66 375 E. P.	5	5⅛	5 1/16	—	4⅞
(b) Domestic					
U. S. Motor below 59 Octane	5	5⅛	5 1/16	—	5 1/16
U. S. M. 60/64 Oct.	5⅛	5¼	5 3/16	—	5 3/16
U. S. M. 65+ Octane	5¼	5½	5⅜	—	5 7/16

Prices remained unchanged over the preceding week, although the present market is very strong. We can learn of no additional sales made under the buying program and it appears that small refiners have no desire to sell at current prices, feeling that by holding they will be able to secure better prices in the near future. Contact with Platt's representative in Tulsa reveals that small sales in the Gulf at current prices are militating against a rise in this market and that while this representative feels that a disparity exists in comparison with Group 3 prices, they do not feel prepared to advance in the Gulf as long as sales are being
made. Since we have been able to secure no informa-
4964 tion concerning such sales, he was advised accordingly
and stated that he would investigate further. We received an offer of 75,000 barrels of 66 plus octane from Refiners Export Corporation for lifting at Texas City at a price of 5½¢, which is ¼¢ above the "current low". We believe that this cargo is made available by the failure to consummate arrangements for the sale of this cargo on the Pacific Coast to be transported by the S.S. "Brandywine". This offer was passed to Platt's representative.

In discussing with New York the disparity in Group 3 Gulf gasoline prices, we were informed of conversations Messrs. van Eck and van der Woude have had with the majors to the effect that further increases in the Gulf market should be sponsored by a rise in crude prices. It is difficult to reconcile this feeling with Shell's position as it would appear that with the excess of crude purchases over own production it would be more desirable to keep the gasoline price structure at the peak of the market, allowing crude prices to follow.

It appears that the strength of the present market is sponsored by the feeling that gasoline will be in very great demand during the summer months and that if present measures of regulation are continued in effect, prices should be greatly improved.

Kerosine

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
44 W. W.	4¼	4½	4⅜	—	4 7/16
41/43 W. W.	4	4¼	4⅛	—	4 3/16
(b) Domestic					
41/43 W. W.	4	4¼	4⅛	—	4½

The kerosine market has been extremely quiet with no changes in the price structure.

Gas Oil

	Low	High	Average	Net Change Average	1934 Aver.
(a) Export					
26/30 Translucent	2⅞	3	2 15/16	—	3 7/16
30+ Translucent			3⅛	—	3⅝
(b) Domestic					
No. 1 Heating Oil	4	4¼	4⅛	—	4 7/16
No. 2 Heating Oil	3⅛	3¼	3 3/16	—	3 13/16
(c) Bunkers—Diesel			1.70	—	1.80

4965 No change was observed in the gas oil market during the past week; prices were likewise stationary throughout the week. In last week's report we mentioned that Jersey had offered gas oil to friends at 3⅛¢ but that friends were not prepared to pay more than 3¢ per gallon and consequently rejected the offer. I have since learned that friends have closed with Jersey through London brokers for one cargo each during May and June at 3⅛¢. From which it is indicated that friends have been unable to find gas oil below that price. Cities Service offered one cargo for May lifting at 3⅛¢, on which the Group countered at 3¢, and so far as we have been able to learn have not as yet agreed with Cities Service on the price for this cargo. We have endeavored to ascertain through New York what disposition was made of the Eastern States offer for a May cargo at 3¢, which contained a proviso that a second cargo be purchased for July delivery at 3¼¢, but have been unsuccessful. In response to query from friends as to the probable trend of the gas oil market Mr. Airey advised them that it is the opinion in New York that prices will not be any lower than at present, although some spot cargoes may be available during the summer months as low as 3¢ a gallon. Friends have been offered through a London broker one cargo each July and August of California gas oil meeting No. 2 specifications at 2¾¢, on which friends have countered at a price of 2½¢.

Having a surplus of straight run heavy gas oil at Norco it was agreed in view of the preliminary interest displayed by New York brokers to offer one cargo for May lifting at ⅛¢ above the average for No. 2 Furnace Oil, f. o. b. Norco. The offer was placed with New York brokers on the above quotation firm for twenty-four hours but, as expected, the time limit expired without any response other than an indication of interest. In view of interest displayed in this particular oil, which is suitable for cracking stock and gas making purposes, it was felt that we should sit tight for a few days and allow the brokers to develop the market further.

Contracts are being drawn in New York for the next burning oil season on a price based on 3¼¢ Gulf, which is ⅛¢ above the current low quotation.

Grade "C" Fuel Oil

	Low	High	Average	Net Change Average	1934 Aver.
Grade "C"			.85	2.5	1.07½
Bunker			1.00	—	1.15

Although the price increased 2½¢ per barrel during the past week there has been little activity in this market. We
have not heard of offerings of any magnitude and it
4966 appears that market prices are fairly representative
of current sales. The Government is calling for bids on their requirements for the last half of 1935 amounting to approximately 500,000 barrels in Shell Eastern territory and 117,000 barrels in our territory. We have developed our supply position with a view of enabling Shell Eastern to bid on approximately one-half of the business in their area. Although it is indicated on the basis of anticipated requirements that we would have a deficit of a little over

100,000 at the close of the year if Shell Eastern were to get this business, we have advised them that it is satisfactory to proceed with the understanding that our position can be protected by the acquisition of additional supplies from friends or the outside if this becomes necessary.

Tankers

We are informed that the S.S. "Brandywine" is still anchored off Galveston, having thus far been unsuccessful in securing business.

The "Olympic" was chartered by Shell Union at our suggestion to carry one cargo Grade "C" Fuel Oil from Houston to Fall River at a rate of 16¢ a barrel. Although recent fixtures for both clean and dirty vessels for movement from Gulf ports to points North of Hatteras have been made at 16¢, the tanker market is definitely weaker and it is felt that lower rates can be secured, as indicated by the above mentioned charter of the "Olympic" for one voyage to Fall River, which is equivalent to approximately 14¢ for the usual Gulf-New York movement.

The S.S. "Watertown" lifted gas oil in three parts from American Petroleum, Norsworthy—Sinclair and Stone Oil, Texas City, for consignment to the New York affiliate of the Suburban Fuel Oil Company. This vessel will complete a time charter for the Suburban Fuel Oil Company after the next lifting.

The "Storsten" was fixed at 11/— for a voyage from Constanza to Montreal, ready April 4. The cargo consisted of gasoline and is understood to be for transhipment to Detroit. Although it has been reported that this cargo is on the water, we have been unable to verify this.

C. E. Davis

cc Messrs. Bascom
Galloway
van Eeghen
Salmon
Jacobs
Minner
Ruether X
McGaw

(Handwritten Notation):
"Mr. A. P. Ruether"

4967 GOVERNMENT EXHIBIT NO. 250.

Shell Petroleum Corporation

From Crude Oil Department Date March 6, 1936

No. In Re:

To: Mr. P. E. Lakin.

For your information we quote the following from the East Texas Scout Report of March 4th:

"We have learned that Bell Oil & Gas Company is dealing with Gilliland Refining Company for control of its gathering system and is negotiating with Gilliland for a contract to handle the output of its two refineries. The Bell Company already owns one-half of Gilliland's gathering system and tankage on it.

The Gilliland System is connected to approximately 4,900 barrels daily, and Solvex (Bell) is connected to approximately 4,450 barrels daily. If the two systems can be consolidated, Bell plans to try to increase its runs to 15,000 barrels daily.

About March 1st, the Solvex announced to all its employees that no more "Hot Oil" would be run. If this policy is adhered to, Bell must develop other concessions in order to hold its present connection. Perhaps the company plans to adopt the Frontenac's policy of lending money to producers. It is a known fact that some producers will not stay on Solvex's system unless some extra revenue is derived, and, instead of building the combined total of 9,350 barrels daily to 15,000, it might suffer a loss of a few thousand barrels daily.

We believe that the Bell Company is anticipating a rather extended period of buying by the majors of gasoline at inflated East Texas prices and expects to sell the maximum output of the three plants for months to come. Without a trunk line charge on its crude and a gathering charge on any extra oil sold in the field or coastwise, the prospects for a profitable year seem good. Should the major purchasing companies elect to withdraw their support, the picture might be changed.

The recent purchase by the late Geo. L. Culver of the Union Refining Company and the Roy I. Davis Pipe Line Company's system, which is connected to 48 wells, was not included in the sale of the Solvex pipe line system. The producing wells of Culver, et al, were not purchased by

Bell Oil & Gas Company, some of which are connected to the Roy I. Davis pipe line system.

Certain parties connected with the Bell Company are contemplating the purchase of the Union Refining 4968 Company's refinery and Davis Pipe Line Company's system and propose to operate the refinery on oil received from this system."

The following is a list of major company purchases of East Texas gasoline shipped the week ending 7:00 A. M. February 28th, 1936:

Company Purchasing	Number Cars	Price Paid
Sinclair	30	4⅞¢
Sinclair	25	4⅝¢
Gulf	50	4⅞¢
Gulf	50	4⅝¢
Pure	35	4⅞¢
Texas	35	4⅞¢
Texas	15	4⅝¢
Tide Water	5	4⅞¢
Humble	50	4⅞¢
Continental	5	4⅞¢
Total	300	

A. P. Ruether

"Please return to P. E. Lakin's files."

(Handwritten Notations):

"Miss H—For next tank car meeting—
I will give you date. P. E. L."
"3/10" "T/C Purchases."

4969 DEFENSE EXHIBIT NO. 251.

NOTE: *It is stipulated* in Exhibit 718 that the group of exhibits marked 251-254, 256-260, 262, 265, 267-281, 284-287, 291-296 incl. being market letters following hereafter were written by J. W. Warner and received by J. D. Collins.

4970 GOVERNMENT EXHIBIT NO. 251.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 14

To: Mr. J. D. Collins **From: J. W. Warner**

Date: April 6, 1935.

The Mid-Continent gasoline market reflects optimism at the close of this week. Improvement in gasoline prices at refineries as well as retail outlets is expected to continue. All reports are favorable from various refining districts. Refiners seemingly are not at all fearful of the price structure breaking down unless prices are boosted too fast.

Published quotations advanced again this week on all grades of Motor gasoline. Prices have advanced on an average of 1/8¢ to 1/4¢ for the last six or seven weeks. Many observers are of the opinion that a gradual increase has a better chance to build a more firm and lasting price structure than a rapid advance would have. This gradual advance in prices and increase in seasonal consumption has given hope of a satisfactory market for the next few months.

Refiners in the East Texas District are not offering Motor gasoline for northern shipment at this time. Practically all legal tendered gasoline is being shipped to Gulf Coast points, as the freight rates are .00165 higher from East Texas than from Oklahoma to the northern states, and East Texas refiners are not willing to absorb this differential to meet Group 3 quotations at the present time.

Major companies have continued quite active buyers on the spot market this week, seeking to eliminate any possible chance of distress gasoline being offered. The improvement in the market the last few weeks is considered directly due to the cooperative efforts of major companies participating in the movement.

Jobbers have shown more interest in the spot market the last few days. However, demand for tank car gasoline has been somewhat disappointing to some sellers. The current pick-up in gasoline consumption is slow, not showing an increase compared to what many have expected for this season of the year.

Kerosene has been in good demand this week, especially the better grades. Heavier grades of burning oils are not quite so active. Tractor Distillate, however, is in good demand.

Published quotations on the general list of refinery products for today are as follows:

4971

U. S. Motor,	Below 62 Octane	4¼¢ to 4⅜¢
"	63-70 Octane	5¢
"	71 Octane and above	5¼¢
60/62-400,	Below 62 Octane	4¼¢ to 4⅜¢
"	63-70 Octane	5¢ to 5⅛¢
60/62-400	71 Octane and above	5¼¢
68/70-360		4⅜¢ to 4½¢
42-44 Kerosene		3⅝¢ to 3⅞¢
41-43 Kerosene		3½¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		2⅞¢ to 3¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		2⅛¢ to 2¼¢

Marketers and brokers report the resale price from 4⅛¢ to 4¼¢ on the Low Octane Motor Gasoline, and that refiners are advancing their resale quotations along with each advance in published prices.

Below is a comparison of our stocks on hand as of March 1st and April 1st.

	March 1st	April 1st
Tydol Ethyl	146,000	43,000
Hi-Test Tydol	3,446,000	3,793,000
Bronze Leaded	288,000	499,000
60/62-437	517,000	308,000
68/70-360	136,000	82,000
	4,533,000	4,725,000
Kerosene	265,000	94,000
Distillate	2,327,000	1,762,000
Tractor Fuel	60,000	212,000
Stoddard Solvent	4,000	4,000
Fuel Oil	1,305,000	1,313,000

Total finished gasoline stocks April 1st are approximately 200,000 gallons more than they were March 1st. Ethyl gasoline stocks have dwindled 100,000 gallons, as it is not necessary to currently replenish this stock, due to its slow movement. We still have on hand over 1,500,000 gallons of Distillate, and it is likely a portion of this material will be rerun by the refinery, as the Operating Section reports it is more profitable than selling same on the spot market at present prices.

We are showing below a comparison of our estimated schedule with shipments for the month of March.

4972

	Schedule	Shipments	Percent
Tydol Ethyl	104,000	76,000	73.1
Hi-Test Tydol	4,810,000	5,300,000	110.0
Tidex	962,000	678,000	70.5
Magnolia Ethyl	26,000	16,000	61.5
Magnolia Regular	1,378,000	1,029,000	74.7
Unbranded	832,000	854,000	102.6
	8,112,000	7,953,000	98.
Kerosene	858,000	784,000	91.4
38-40 Distillate	754,000	748,000	99.2
Tractor Fuel	286,000	384,000	134.3
Fuel Oil	3,484,000	4,300,000	123.4

Total gasoline shipments for the month show 98% of schedule. Tydol gasoline is well over schedule, while the other two branded grades are short of schedule by 30%. Total branded gasoline shipments for the month equal 6,054,000 gallons, of which 87.5% is Tydol, 11.2% Tidex, and 1.3% Ethyl. Unbranded shipments equal 102% of schedule, which includes Bronze, Tydol Aero, and Motor Gasoline.

J. W. Warner

JFB/JK

4973 GOVERNMENT EXHIBIT NO. 252.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 15

To: Mr. J. D. Collins From: J. W. Warner
Date: April 13, 1935

The refined gasoline market in general has made another advance this week toward the stabilization of market prices. Refiners and other market observers are optimistically inclined and express the belief that prices will continue to improve over the next few months.

The important factor of this week was an advance in tank wagon and service station prices of .003 throughout the Standard of Indiana territory effective the 12th on all grades of gasoline. The advance has been anticipated generally for the last several days and is the second advance of this extent posted in the last three weeks, which bears out Standard's new policy of advancing retail prices gradually along with improved tank car prices. With this advance of .003 the margin between retail prices and refinery quotations is still held close to the regular 5½¢ margin necessary for the jobber to operate and take care of dealer discounts. This should have a tendency to keep markets stabilized.

Tank car gasoline prices have held firm in all refinery districts, which has been made possible through the aid of inter-refinery buying. Major companies have continued to be active purchasers. However, in Oklahoma the small refiners that have their regular outlets, jobbers they normally supply, are not depending on major company purchases to a large extent. East Texas gasoline is being absorbed mainly through local and Gulf Coast movement.

Published quotations have not advanced on tank car gasoline this week, although refinery resale prices have advanced approximately ⅛¢. Spot market trading on gasoline is reported by some marketers as more lively, while others report not much activity. However, the general belief is that jobbers are not willing to buy ahead of their current requirements.

Kerosene demand is good, with prices holding firm. Burning distillates are in active demand this week, with only a few suppliers quoting on the open market. Industrial oils are steady.

Published quotations on the general list of refinery products for today are as follows:

4974

U. S. Motor,	Below 62 Octane	4¼¢ to 4½¢
U. S. Motor,	63-70 Octane	5¢ to 5¼¢
U. S. Motor,	71 Octane and above	5¼¢
60/62-400,	Below 62 Octane	4⅜¢ to 4½¢
60/62-400,	63-70 Octane	5⅛¢ to 5¼¢
60/62-400,	71 Octane and above	5¼¢
68/70-360		4½¢ to 4¾¢
42-44 Kerosene		3¾¢ to 3⅞¢
41-43 Kerosene		3½¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		2⅞¢ to 3¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		2½¢ to 2⅝¢

Marketers and brokers report the resale price of Low Octane Motor Gasoline at 3¼¢ f. o. b. Group 3. East Texas refinery quotations are 3⅛¢, f. o. b. East Texas. Natural gasoline prices have advanced ⅜¢ this week.

Below is a comparison of our stocks on hand as of April 1st and 12th.

	April 1st	April 12th
Tydol Ethyl	43,000	32,000
Hi-Test Tydol	3,793,000	3,514,000
Bronze Leaded	499,000	721,000
60/62-437	308,000	416,000
68/70-360	82,000	—
	4,725,000	4,683,000
Kerosene	94,000	268,000
Distillate	1,762,000	1,581,000
Tractor Fuel	212,000	103,000
Stoddard Solvent	4,000	24,000
Fuel Oil	1,313,000	1,633,000

Total finished gasoline stocks April 12th are practically unchanged from total stocks shown for the first of the month. Tydol stock is down approximately 300,000 gallons, while Bronze Leaded stock has been replenished by 200,000 gallons. We have entirely disposed of our stock of 68/70-360 gasoline, as this grade will not be in demand for the next few months.

We are showing below a comparison of our estimated schedule with shipments for the period of April 1st to 11th inclusive.

4975	Schedule	Shipments	Percent
Tydol Ethyl	40,000	44,000	110.0
Hi-Test Tydol	2,120,000	2,152,000	101.5
Tidex	460,000	328,000	71.3
Magnolia Ethyl	10,000	——	
Magnolia Regular	460,000	474,000	103.0
Unbranded	330,000	304,000	92.
	3,420,000	3,302,000	96.5
Kerosene	350,000	308,000	88.
38-40 Distillate	190,000	204,000	107.4
Tractor Fuel	120,000	144,000	120.
Fuel Oil	1,440,000	1,400,000	97.2

Our total percentage of gasoline shipments to schedule equals 96.5%. All grades of gasoline compare favorably with the exception of Tidex. In making a comparison of Tydol shipments with this same period last year we find our shipments for 1935 exceed 1934 by twelve cars. Tidex shipments, however, for this year, are short approximately the same number of cars which proves to us that Tidex users are being converted to Tydol, since there is only a 1¢ differential.

JFB/JK J. W. Warner

4976 GOVERNMENT EXHIBIT NO. 253.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 16

To: Mr. J. D. Collins From: J. W. Warner
Date: April 20, 1935

The gasoline market for this week has been steady, with pronounced advancing tendencies apparent. Refiners have continued to be optimistic and are still holding out for higher prices. Some observers feel the present danger of the market is over-enthusiasm for higher prices, and fear a reaction if quotations are advanced too rapidly before the season of heavy gasoline consumption begins.

The present general advance of prices has been unlike several other market advances, as no artificial stimulants have been employed. Prices have been boosted by actual purchases through the support of major company cooperation in eliminating surplus gasoline stocks at various small refineries. For this reason, most observers feel the market will continue firm for the next few months if major companies will continue to give active support in absorbing a small percentage of the gasoline production on the open market. Published quotations were again advanced ⅛¢ this week on all grades of Motor Gasoline.

Marketers experienced considerable activity from jobbers the first part of the week, due to an advance in freight rates of 1¢ per cwt. that became effective April 18th. Refiners in all districts reported a brisk wave of shipping instructions on gasoline and other products ahead of the freight advance. Only small quantities of gasoline were shipped without being consigned to final destinations, and are not likely to cause any price disturbance.

The Standard Oil Company of Indiana announced that service station prices would be adjusted upward .001 per gallon on the same date, at all points where the new freight rate was effective.

Refiners quoting on the spot market have continued throughout the week to hold their prices on gasoline close to published quotations. Gasoline offered on the open market has been limited to odd car lots in Oklahoma. Improved conditions in East Texas the last few days have been noticeable, as less illegally produced gasoline is being offered. Reports from East Texas show the Railroad Commission has intra-state shipping under better control at this time.

Spot market trading today is not so active as the first
part of the week, as many jobbers stocked up prior
4977 to the freight advance. Major companies have con-
tinued to order out spot gasoline in support of the
buying program.

Kerosene demand has been quite active during the week, with only limited quantities available to spot purchasers. Burning oils have also been in active demand, due to cool weather and the small quantity offered by refiners.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4⅜¢ to 4⅝¢
U. S. Motor,	63-70 Octane	5⅛¢ to 5⅜¢
U. S. Motor,	71 Octane and above	5⅜¢
60/62-400,	Below 62 Octane	4⅜¢ to 4⅝¢
60/62-400,	63-70 Octane	5⅛¢ to 5⅜¢
60/62-400,	71 Octane and above	5⅜¢
68/70-360		4⅝¢ to 4⅞¢
42-44 Kerosene		3¾¢ to 3⅞¢
41-43 Kerosene		3½¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		2⅞¢ to 3¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		2¾¢

Reports from marketers and brokers today show general quoted prices on the Low Octane Motor Gasoline the same as at the close of last week, or 4¼¢ f. o. b. Group 3. Natural Gasoline prices advanced ¼¢ during the week.

Below is a comparison of our stocks on hand as of April 1st and 19th.

	April 1st	April 19th
Tydol Ethyl	43,000	151,000
Hi-Test Tydol	3,793,000	3,111,000
Bronze Leaded	499,000	716,000
60/62-437	308,000	524,000
68/70-360	82,000	—
	4,725,000	4,502,000
Kerosene	94,000	333,000
Distillate	1,762,000	1,377,000
Tractor Fuel	212,000	95,000
Stoddard Solvent	4,000	24,000
Fuel Oil	1,313,000	1,590,000

Our total finished gasoline stocks are slightly lower than last week and approximately 200,000 gallons below 4978 stocks for April 1st. Hi-Test Tydol stock was reduced 400,000 gallons, while Tydol Ethyl and U. S. Motor stocks were replenished from unfinished gasoline stock. The Operating Department is building up the Kerosene gallonage at this time, due to the improved demand for this product.

We are showing below a comparison of our estimated schedule with our shipments for the period of April 1st to 18th, inclusive.

	Schedule	Shipments	Percent
Tydol Ethyl	64,000	64,000	100.
Hi-Test Tydol	3,392,000	3,800,000	112.
Tidex	736,000	684,000	92.9
Magnolia Ethyl	16,000	16,000	100.
Magnolia Regular	736,000	816,000	110.9
Unbranded	528,000	536,000	101.5
	5,472,000	5,916,000	108.1
Kerosene	560,000	552,000	98.6
38-40 Distillate	304,000	452,000	148.7
Tractor Fuel	192,000	280,000	145.8
Fuel Oil	2,304,000	2,100,000	91.1

Our total percentage of gasoline shipments to schedule equals 108%. This is an increase of 12% over last week's comparison. Most all product shipments reflect an increase in percentage. Tydol and Tidex especially show improvement, which is due partly to jobbers ordering heavily, prior to the freight advance. Total branded gasoline shipments so far this month equal 4,548,000 gallons, of which 83.6% is Tydol, 15% Tidex, and 1.4% Tydol Ethyl. This comparison shows a small gain in percentage for Tidex, as our comparison of branded products for March shows 11%.

J. W. Warner

JFB/JK

4979 GOVERNMENT EXHIBIT NO. 254.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 17

To: Mr. J. D. Collins From: J. W. Warner
Date: April 27, 1935

The gasoline market in the Mid-Continent territory is firm. Published quotations were again advanced during the week in keeping with the gradual tightening of refinery quotations.

With the approach of the heavy consuming season refiners are becoming more optimistic that prices will continue on the up grade. Observers especially feel if the present support is maintained and good judgment is shown in keeping a balanced market as is reflected today, the market should continue firm throughout the summer months.

The major company buying movement coupled with the allocation of refinery crude runs, is considered largely responsible for the improvement in the refinery gasoline market the last several weeks. Major companies have been quite active the past few days in supporting the refinery market by absorbing odd car lots of gasoline. Most of the buying has taken place in Texas.

Tank wagon and service station markets also show improvement as reports indicate soft spots in the retail markets are rapidly disappearing. Retail market demand is expected to increase materially in several middle western states where the Government has appropriated large sums of money for farm erosion work. This should help to strengthen tank car gasoline and Kerosene prices.

Refiners quoting on the spot market have advanced their resale quotations on Low Octane Motor Gasoline ⅛¢ this week. Observers today expressed the feeling that tank car prices should advance again within the next few days. East Texas refiners are moving the larger portion of their gasoline to Gulf Coast points and are realizing slightly higher prices than Group 3 refiners are today for northern shipment.

The spot market has been comparatively dull for several weeks, due to open market trading being below the expectancy for this season of the year. However, marketers report a slight increase in jobber activity the last few days.

As a result of the Spring farming season there has been a decided pick-up in Kerosene demand. However, no change in published prices has been made. All grades of burning oils have held firm and brokers report a supply of the better grades is extremely difficult to locate.

4980 Published quotations were advanced ⅛¢ on all grades of Motor Gasoline this week. Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4½¢ to 4⅝¢
U. S. Motor,	63-70 Octane	5¼¢ to 5⅜¢
U. S. Motor,	71 Octane and above	5½¢
60/62-400,	Below 62 Octane	4½¢ to 4⅝¢
60/62-400,	63-70 Octane	5¼¢ to 5⅜¢
60/62-400,	71 Octane and above	5½¢
68/70-360		4⅝¢ to 4⅞¢
42-44 Kerosene		3¾¢ to 3⅞¢
41-43 Kerosene		3½¢ to 3¾¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		2⅞¢ to 3¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		2¾¢

Market information today shows refiners are quoting resale material at 4⅜¢ to 4½¢ on the Low Octane Motor grade in Oklahoma. East Texas quotations are 4⅜¢, f. o. b. East Texas.

Below is a comparison of our stocks on hand as of April 1st and 26th.

	April 1st	April 26th
Tydol Ethyl	43,000	96,000
Hi-Test Tydol	3,793,000	3,260,000
Bronze Leaded	499,000	565,000
60/62-437	308,000	668,000
68/70-360	82,000	—
	4,725,000	4,589,000
Kerosene	94,000	344,000
Distillate	1,762,000	1,210,000
Tractor Fuel	212,000	102,000
Stoddard Solvent	4,000	24,000
Fuel Oil	1,313,000	1,749,000

Our total finished gasoline stocks are practically unchanged from last week, and are approximately 200,000 gallons below stocks for April 1st. However, the various grades are slightly changed from our last report.

4981 **We are showing below a comparison of our estimated schedule with shipments for the period of April 1st to 25th, inclusive.**

	Schedule	Shipments	Percent
Tydol Ethl	88,000	92,000	104.5
Hi-Test Tydol	4,664,000	4,864,000	104.3
Tidex	1,012,000	908,000	89.7
Magnolia Ethyl	22,000	24,000	109.1
Magnolia Regular	1,012,000	1,089,000	107.6
Unbranded	726,000	704,000	97.
	7,524,000	7,681,000	102.1
Kerosene	770,000	716,000	93.
38-40 Distillate	418,000	556,000	133.
Tractor Fuel	264,000	392,000	148.4
Fuel Oil	3,168,000	2,670,000	84.3

The total percentage of gasoline shipments to schedule equals 102%. This is a decrease of 6% under last week's comparison which was due to our heavy shipping schedule prior to the freight advance of 1¢ per cwt. on the 18th.

J. W. Warner

JFB/JK

4982 GOVERNMENT EXHIBIT NO. 256.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 19

To: New York—Mr. J. D. Collins From: J. W. Warner

Date: May 11, 1935

The gasoline market has continued its strong position. There was nothing this week to denote a change of sentiment in the underlying strength of the tank car gasoline market which has been characterized for the last two months.

The tank wagon and service station price advance last week in the Standard of Indiana territory gave added hope to refiners and jobbers alike for continuation of improvement in the gasoline market. Published quotations were advanced on the low octane Motor grade this week.

Refiners have been persistent in their efforts to advance prices on gasoline. Refiners offering gasoline on the open market have not offered large quantities that would tend to cause the market to slump. Instead the surplus stocks have been absorbed by major companies.

In checking with marketers today we find they are unable to buy gasoline in large quantities from any one district. Refiners are not willing to quote lower than 1/8¢ below published prices for their resale material. In the East Texas district they are especially holding to high prices, as they are in most cases today quoting 4½¢ f. o. b. East Texas. This would make the cost to northern marketers above the low of published prices. Consequently brokers are placing the major portion of their purchases in North Texas and Oklahoma for northern shipment.

Inter-refinery buying continued quite active on gasoline this week in East Texas. Refiners in that district reported early in the week they were sold up until the following week. The major portion of gasoline shipments are moving to gulf coast points.

Demand for spot gasoline has shown slight improvement according to some observers, however, weather conditions are still reported unfavorable in some territories

for gasoline consumption. Contract gasoline shipments
have been moving comparatively slow this week. The
kerosene market has continued on the upgrade this week.
Prices have been advanced another ⅛¢. Suppliers of
kerosene are reported scarce with only limited quantities
available at the higher prices. Several refiners have been
purchasing kerosene to supply their contract cus-
4983 tomers. Standard of Indiana effective May 10th re-
stored normal tank wagon kerosene prices through-
out Indiana, Illinois, Wisconsin, Minnesota, Iowa, Mis-
souri, North and South Dakota. They also announced to-
day they would advance kerosene tank wagon prices
3/10¢ Tuesday of the coming week.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4⅝¢ to 4¾¢
U. S. Motor, 63-70 Octane	5¼¢ to 5½¢
U. S. Motor, 71 Octane and above	5½¢ to —
60/62-400, Below 62 Octane	4⅝¢ to 4¾¢
60/62-400, 63-70 Octane	5¼¢ to 5½¢
60/62-400, 71 Octane and above	5½¢ to —
68/70-360	4¾¢ to 5¢
42-44 Kerosene	4¼¢ to 4⅜¢
41-43 Kerosene	4¢ to 4⅛¢
38-40 P. W. Distillate	3½¢ to 3⅝¢
38-40 L. S. Distillate	3⅜¢ to 3½¢
32-36 Zero Gas Oil	3¢ to 3⅛¢
28-30 Zero Fuel Oil	2¾¢ to 2⅞¢
Natural Gasoline	3⅛¢ to —

Resale prices quoted today on the low octane Motor gasoline are 4½¢ to 4⅝¢ f. o. b. Group Three. Natural Gasoline prices are up ⅛¢ this week.

Below is a comparison of our stocks on hand as of May 1st and May 10th.

	May 1st	May 10th
Tydol Ethyl	86,000	75,000
Hi-Test Tydol	2,814,000	2,693,000
Bronze Leaded	451,000	588,000
6/62-437	684,000	707,000
	4,035,000	4,063,000
Kerosene	280,000	220,000
Distillate	1,166,000	1,000,000
Tractor Fuel	124,000	102,000
Stoddard Solvent	24,000	24,000
Fuel Oil	1,596,000	1,607,000

Our total finished gasoline stocks are practically unchanged today from May 1st.

4984 We are showing below a comparison of our estimated schedule with shipments for the period of May 1st to May 9th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	32,000	12,000	37.5
Hi-Test Tydol	1,848,000	1,620,000	87.7
Tidex	432,000	288,000	66.7
Magnolia Ethyl	8,000	—	—
Magnolia Regular	448,000	324,000	72.3
Unbranded	280,000	268,000	95.7
	3,048,000	2,512,000	82.4
Kerosene	248,000	268,000	108.3
38-40 Distillate	64,000	188,000	293.7
Tractor Fuel	112,000	184,000	164.3
Fuel Oil	—	1,250,000	—

Gasoline shipments so far this month have been comparatively slow, as you will notice our total percentage to schedule equals only 82.4%. However, we hope to make a better showing as soon as more favorable weather conditions exist for gasoline consumption. Our burning oil distillate percentage of shipments are far above schedule.

J. W. Warner

JFB:HC

4985 GOVERNMENT EXHIBIT NO. 257.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 20

To: Mr. J. D. Collins From: J. W. Warner

Date: May 18, 1935

All market indicators still point to a firm and steady Mid-Continent gasoline market with additional price advances materializing on some grades of tank car gasoline during the week. The advancing tendency of the market has not been confined to gasoline only but has also included practically the entire refinery list, with Kerosene prices firmly established at last week's advanced level and Distillate quotations showing an additional 1/8¢ increase.

Refiners and marketers in general appear to be in accord in their view of the present market being established on a firm foundation, or at least considerably more so than at any time in the past many months. These thoughts are expressed in view of the prevailing conditions of the crude production end of the industry, the control movement of so-called "hot oil", and the products manufactured from same, and also the present basis of refinery operations, as all of these factors hold important places in the making of the market.

In addition to the above mentioned favorable market factors, observers also point out we are now entering the heavier gasoline consuming season, which should materially help to further strengthen the tank car price structure. Any further increase in tank car prices should also bring about another advance in service station prices if the present established 5½¢ jobber margin is to be maintained, as this spread between tank car and service station now is practically on the 5½¢ line.

Inter-refinery buying has continued to absorb the small independent refiners' surplus stock that otherwise might become burdensome to the market, with the result that no distress gasoline has been reported as being offered on the open market. Although spot demand for gasoline has been somewhat below the normal seasonal demand, due to unfavorable weather conditions in various territories, there has been no indication of any refiners showing a tendency to shade their prices in an effort to increase buying.

The small number of East Texas refiners that are operating on legal tender crude are reported as having a steady outlet for their output from major companies. The reported price being paid for Low Octane Motor is 4½¢ f. o. b. plant, which is .00165 per gallon better net back to the refiner than trying to move it to northern buyers
4986 and equalize the Group 3 freight. North Texas and Oklahoma refiners have been receiving the limited quantity of tank car brokerage business that is being placed with the major companies also picking up some of the surplus gasoline in these districts.

Kerosene continues to hold the spotlight of the refinery list with prices exceptionally firm and open market supplies comparatively scarce. Several major refiners have been in the market to buy not as a market supporter but through necessity, due to a lack of material to supply their contract accounts. The prolonged damp spring weather has kept Distillate in good demand for heating purposes and in addition there has been a good call for the better grades as Tractor Fuel. Consequently, quotations have moved to a higher level.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4⅝¢ to 4¾¢
U. S. Motor,	63-70 Octane	5⅜¢ to 5½¢
U. S. Motor,	71 Octane and above	5⅝¢
60/62-400,	Below 62 Octane	4⅝¢ to 4¾¢
60/62-400,	63-70 Octane	5⅜¢ to 5½¢
60/62-400,	71 Octane and above	5⅝¢
68/70-360		4⅞¢ to 5¢
42-44 Kerosene		4¼¢ to 4⅜¢
41-43 Kerosene		4¢ to 4⅛¢
38-40 P. W. Distillate		3⅝¢ to 3¾¢
38-40 L. S. Distillate		3½¢ to 3⅝¢
32-36 Zero Gas Oil		3⅛¢ to 3¼¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		3¢ to 3⅛¢

Brokers report refiners are holding gasoline quotations to a firm level and do not appear in need of broker business. They say occasional cars of Low Octane Motor can be purchased at 4½¢ but in some cases the refiners are asking 4⅝¢ for resale material.

Below is a comparison of our stocks on hand as of May 1st and 17th.

		May 1st	May 17th
	Tydol Ethyl	86,000	67,000
	Hi-Test Tydol	2,814,000	3,114,000
	Bronze Leaded	451,000	390,000
	60/62-437	684,000	690,000
		4,035,000	4,261,000
4987	Kerosene	280,000	230,000
	Distillate	1,166,000	958,000
	Tractor Fuel	124,000	84,000
	Stoddard Solvent	24,000	24,000
	Fuel Oil	1,596,000	1,500,000

Total gasoline stocks show but slight change since the first of the month, with each grade of gasoline showing only our usual normal working stock. Kerosene stocks remain low, due to the steady movement on this product. The Distillate stock has been gradually reduced as shipments have continued comparatively good for this season of the year.

We are showing below a comparison of our shipments with our estimated schedule for the period of May 1st to 16th, inclusive.

	Schedule	Shipments	Percent
Tydol Ethyl	56,000	28,000	50.
Hi-Test Tydol	3,234,000	3,052,000	94.4
Tidex	756,000	548,000	72.5
Magnolia Ethyl	14,000	......	......
Magnolia Regular	784,000	630,000	80.4
Unbranded	490,000	456,000	93.1
	5,334,000	4,714,000	88.4
Kerosene	434,000	448,000	103.2
38-40 Distillate	112,000	288,000	257.1
Tractor Fuel	196,000	312,000	159.2
Fuel Oil	......	2,250,000	—

Although contract gasoline shipments have continued slightly below normal for another week, our percentage as compared to schedule has increased over last week and now shows 88%. Shipments should no doubt continue to show an increase as weather conditions become more favorable.

Total branded gasoline shipments to date this month equal 3,628,000 gallons, with Tidex showing a higher percentage of total or now 15%, with Ethyl 1% and Hi-Test Tydol 84%. Kerosene and Distillate shipments both show above our schedule, due to the steady demand from our contract customers on these products.

J. W. Warner

ROA/JK

4988 GOVERNMENT EXHIBIT NO. 258.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 22

To: Mr. J. D. Collins From: J. W. Warner
Date: June 1, 1935

The decision of the Supreme Court this week invalidating the NRA disturbed the Mid-Continent gasoline market to some degree for a brief period. Traders paused in their activities and uncertainty was apparent among market observers in general with some of them expressing fear of another demoralized market. However, much to the surprise of many, as the week closed published quotations show ⅛¢ advance on the low octane grade of Motor gasoline.

Immediately after the Court decision announcement there were indications of uneasiness among some of the small independent refiners with some of them showing a tendency to immediately increase their quantity of open market material, apparently in an effort to dispose of accumulated gasoline stock. However, there was no general move toward lower quotations, although a few sales were made in East Texas to brokers at slightly below the going price, but for a brief period only. The brokers apparently held this material temporarily or endeavored to obtain some extra profit by maintaining a selling price the same as published quotations, consequently did not depress the market as is evidenced by the advance in trade journal prices today.

When the information circulated that some of the small refiners were becoming uneasy and increasing their spot offerings, the major companies promptly put forth more effort toward clearing the open market of any excess gasoline that might cause a general break in the established price structure. Their purchases of East Texas gasoline for shipment to the gulf were made on the basis of 4⅝¢ f.o.b. refinery and their orders for northern shipment were placed on the established quotation of 4⅝¢, Group Three, for the low octane grade of Motor.

This increased action on the part of majors apparently increased the activities of the brokers, as it is reported that some of them entered the market and placed sizeable orders at 4½¢, f.o.b. Group Three freight, which was evidence they would have to sell at the established price range in order to realize any profit. In view of the market strength that has been maintained up to the present and with the hope of a seasonal increase in demand, market observers continue optimistic in their views. However, they are not over optimistic, realizing quite well that any break in production control and any move toward increases refinery operations could change the picture drastically in short order.

4989 The temporary doubtful position of the gasoline market had no bad effect on prices of other refinery products, as kerosene has continued in good demand and prices steady. Tractor Fuel and the better grades of Distillate that can be used for tractors are receiving a good call with prices firm.

Published quotations today on the general list of refinery products are as follows:

U. S. Motor,	below 62 Octane	4¾¢	to	4⅞¢
U. S. Motor,	63-70 Octane	5½¢	to	5⅝¢
U. S. Motor,	71 Octane and above	5⅝¢	to	.....
60/62-400,	below 62 Octane	4¾¢	to	4⅞¢
60/62-400,	63-70 Octane	5½¢	to	5⅝¢
60/62-400,	71 Octane and above	5⅝¢	to	
68/70-360		4⅞¢	to	5¢
42-44 Kerosene		4¼¢	to	4⅜¢
41-43 Kerosene		4¢	to	4⅛¢
38-40 P. W. Distillate		3⅝¢	to	3¾¢
38-40 L. S. Distillate		3½¢	to	3⅝¢
32-36 Zero Gas Oil		3⅛¢	to	3¼¢
28-30 Zero Fuel Oil		2¾¢	to	2⅞¢
Natural Gasoline		3¢	to	.....

Brokers report their buying prices today are somewhat irregular. They say it is possible they can still obtain the low octane grade of Motor at 4½¢, but are not sure how much is available at this price, as some of their suppliers have advanced to 4⅝¢ since the advance in published quotations effective today.

Below is a comparison of our finished gasoline stocks on hand as of May 1st and May 31st:

	May 1st	May 31st
Tydol Ethyl	86,000	24,000
Hi-Test Tydol	2,814,000	2,746,000
Bronze Leaded	451,000	300,000
60-62-437	684,000	742,000
	4,035,000	3,812,000
Kerosene	280,000	146,000
Distillate	1,166,000	717,000
Tractor Fuel	124,000	103,000
Stoddard Solvent	24,000	36,000
Fuel Oil	1,596,000	1,636,000

4990 Total finished gasoline stocks reflect but little change during the month of May with only a normal fluctuation in the stock of the various grades as shipments move and storage tanks are replenished. Our Kerosene stock is still considerably below normal due to our steady demand for this product. Distillate stock has been reduced as we have discontinued making this product for the present and shipments are all made from the storage we have on hand.

We are showing below a comparison of our shipments with our estimated schedule for the month of May:

	Schedule	Shipments	Percent
Tydol Ethyl	104,000	56,000	53.8
Hi-Test Tydol	6,006,000	5,900,000	98.2
Tidex	1,404,000	1,032,000	73.5
Magnolia Ethyl	26,000	8,000	30.8
Magnolia Regular	1,352,000	1,305,000	96.5
Unbranded	858,000	856,000	99.7
	9,750,000	9,157,000	93.9
Kerosene	806,000	798,000	99.0
38-40 Distillate	208,000	392,000	188.4
Tractor Fuel	364,000	492,000	135.2
Fuel Oil	......	3,830,000	....

We finished the month with total gasoline shipments equalling approximately 94% of our estimated schedule.

Hi-Test Tydol shipments for the month were practically the same as our estimate for the month, however, Ethyl and Tidex were below our estimate. Total branded shipments for the month equalled 6,988,000 gallons, consisting of 1% Ethyl, 15% Tidex and 84% Tydol.

J. W. Warner

ROA:HC

4991 GOVERNMENT EXHIBIT NO. 259.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 23

To: Mr. J. D. Collins From: J. W. Warner
Date: June 8, 1935

The reaction of the Mid-Continent Gasoline market as a result of the invalidated Oil Code has been very encouraging to date, and present indications point to a continuation of a steady market for the near future. Close cooperation on the part of both large and small refiners has kept the spot market well in hand, and as a result, published quotations were advanced ⅛¢ this week on the Regular 63/70 Octane grade of motor gasoline.

While it is true the elimination of the Oil Code caused some uneasiness in the refining group and a few observers are possibly still skeptical about the future, however, this week's market showing has brought about increased confidence, as the recent advance in prices has caused most observers to believe the present firmness can be maintained. These views apparently are based on the assumption that refiners in general who have benefitted by the cooperative plan will continue in the buying program and voluntarily adhere to allocated refinery operation.

The movement of spot gasoline has been somewhat below the normal seasonal demand this week due to weather conditions, but the companies participating in the buying program have kept a watchful eye for any gasoline that might resemble distress material, and to date no unnoticeable weak spots have developed. Major companies are still actively purchasing East Texas gasoline for Gulf coast movement, and also placed orders in other refining districts for shipments north to their jobbing accounts and direct marketing operations.

With the tank car price structure gradually moving upward, many predictions are now expressed that another advance in service station price will be posted within the near future, as today's margin between delivered tank car cost and retail price is less than the established 5½¢ figure.

The Kerosene market has reflected some weakness during the past few days as compared with its recent strong position, but not to the extent of lowering published quotations. Unfavorable weather has also slowed up the demand for Tractor Fuel to some degree, but no general decrease in the quotation range is expected at this season of the year.

4992 Published quotations today on the general list of refinery products are as follows:

U. S. Motor	below 62 Octane	4¾¢	to	4⅞¢
" "	63-70 Octane	5⅝¢	to	5¾¢
" "	71 Octane and above	5¾¢	to	
60/62-400	below 62 Octane	4¾¢	to	4⅞¢
60/62-400	63-70 Octane	5⅝¢	to	5¾¢
60/62-400	71 Octane and above	5¾¢	to	
68/70-360		5¢	to	5⅛¢
42-44 Kerosene		4¼¢	to	4⅜¢
41-43 Kerosene		4¢	to	4⅛¢
38-40 P. W. Distillate		3⅜¢	to	3⅝¢
38-40 L. S. Distillate		3¼¢	to	3½¢
32-36 Zero Gas Oil		3¢	to	3¼¢
28-30 Zero Fuel Oil		2¾¢	to	2⅞¢
Natural Gasoline		3¢	to	

Brokers report their buying orders have been exceptionally light during the past week, but say they find practically no weak spots in the market. They are purchasing occasional odd cars of low octane motor gasoline today at 4½¢ f. o. b. Group 3, but say 4⅝¢ is considered the general resale quotation.

Below is a comparison of our finished gasoline stocks on hand as of June 1st. and June 7th:

	June 1st.	June 7th.
Tydol Ethyl	13,000	
Hitest Tydol	2,688,000	2,435,000
Bronze Leaded	245,000	161,000
60-62-437	736,000	570,000
Total	3,682,000	3,166,000
Kerosene	157,000	162,000
Distillate	742,000	734,000
Tractor Fuel	95,000	129,000
Stoddard Solvent	36,000	36,000
Fuel Oil	1,849,000	1,789,000

Our total finished gasoline stocks show a slight reduction since the first of the month, with most of the decrease reflected in Tydol, as shipments to date have been slightly ahead of our estimated schedule.

4993 We are showing below a comparison of our shipments with our estimated schedule for the period of June 1st. to June 6th inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	25,000	8,000	32.0
Hitest Tydol	1,200,000	1,372,000	114.3
Tidex	320,000	244,000	76.3
Magnolia Ethyl	5,000		
Magnolia Regular	255,000	310,000	121.6
Unbranded	180,000	148,000	82.2
Total	1,985,000	2,082,000	104.9
Kerosene	140,000	196,000	140.0
38-40 Distillate	40,000	8,000	20.0
Tractor Fuel	70,000	24,000	34.2
Fuel Oil		660,000	

Total gasoline shipments show approximately 105% of our schedule to date, with Tydol shipments well above our estimate. However, Tidex and Ethyl are considerably below our schedule. We are purchasing Tidex from outside refiners for shipment to our contract jobbers other than the W. H. Barber Company, which purchases have amounted to approximately 40,000 gallons to date this month. These purchases are being placed in North Texas at present to cooperate with the present purchasing program.

J. W. Warner

BOA—g

4994

GOVERNMENT EXHIBIT NO. 260.

Inter-Office Correspondence

Tide Water Oil Company

Tidal Pipe Line Company

Subject: Weekly Market Letter No. 25

To: Mr. J. D. Collins **From: J. W. Warner**

Date: June 22, 1935

There have been no new developments of an important nature in the Mid-Continent gasoline market this week. Although open market trading has continued somewhat below normal, tank car gasoline prices have remained steady. However, the slower demand for Kerosene and burning oils has caused a further decline in published quotations on these products.

The tank car gasoline price structure still appears to be firmly established, in spite of the handicap of slow spot buying on the part of the jobbing trade. Adverse weather conditions have continued to be one of the principal obstacles in market activities, as jobbers in many territories have experienced a noticeable decline in sales due to flooded roads and retarded farming operations. Jobbers have also been hesitant about placing orders except for their immediate requirements, in view of the slight chance the Federal tax might be discontinued at the end of the month.

Market observers in general agree that the cooperation on the part of refiners, large and small, has been an outstanding factor in maintaining the price structure. Reports indicate that the majority of refiners are still adhering to the allocated refinery operations in an effort to keep gasoline production in balance with demand. The major companies have continued taking the greater portion of the East Texas gasoline output and have also been active in relieving the small refiners in other districts of any surplus gasoline that might through necessity be forced on the open market as distress material.

The Kerosene and burning oil market has reflected considerable weakness, due to the unbalanced supply and demand. Slow movement on Texas Kerosene caused refiners in that district to lower their quotations, which resulted in a general decline in Group 3 prices. The decline in burning oil prices was not unexpected, as refiners naturally expect a slow movement until the jobbing trade starts buying material to place in storage for winter use.

Published quotations on the general list of refinery products for today are as follows:

	U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
	" 63-70 Octane	5⅝¢ to 5¾¢
	" 71 Octane and above	5¾¢
4995	60/62-400, Below 62 Octane	4¾¢ to 4⅞¢
	" 63-70 Octane	5⅝¢ to 5¾¢
	" 71 Octane and above	5¾¢
	68/70-360	5¢ to 5⅛¢
	42-44 Kerosene	4¢ to 4⅛¢
	41-43 Kerosene	3¾¢ to 3⅞¢
	38-40 P. W. Distillate	3¼¢ to 3½¢
	38-40 L. S. Distillate	3⅛¢ to 3⅜¢
	32-36 Zero Gas Oil	2⅞¢ to 3⅛¢
	28-30 Zero Fuel Oil	2¾¢ to 2⅞¢
	Natural Gasoline	3¢

With the participants of the buying program keeping a watchful eye for distress gasoline, brokers report their low buying price today is 4⅝¢ for Low Octane Motor, with no refiners showing a tendency to lower their quotation.

We are showing below a comparison of our stocks on hand as of June 1st and 21st.

	June 1st	June 21st
Tydol Ethyl	13,000	100,000
Hi-Test Tydol	2,688,000	1,543,000
Bronze Leaded	245,000	207,000
60/62-437	736,000	641,000
	3,682,000	2,491,000
Kerosene	157,000	247,000
Distillate	742,000	650,000
Tractor Fuel	95,000	94,000
Stoddard Solvent	36,000	36,000
Fuel Oil	1,849,000	1,836,000

Total finished gasoline stocks show a decrease of approximately 1,200,000 gallons since June 1st, which reflects principally on Hi-Test Tydol, as other grades show but little change.

Below is a comparison of our estimated schedule and shipments for the period of June 1st to June 20th, inclusive.

		Schedule	Shipments	Percent
	Tydol Ethyl	85,000	68,000	80.0
	Hi-Test Tydol	4,080,000	4,350,000	106.6
	Tidex	1,088,000	688,000	63.2
	Magnolia Ethyl	17,000	10,000	58.8
4996	Magnolia Regular	867,000	999,000	115.2
	Unbranded	612,000	578,000	94.4
		6,749,000	6,693,000	99.2
	Kerosene	476,000	540,000	113.3
	38-40 Distillate	136,000	104,000	76.5
	Tractor Fuel	238,000	88,000	27.0
	Fuel Oil		2,060,000	

Contract gasoline shipments have continued comparatively steady to date, considering weather conditions and the slow spot market. Although Tidex shipments are considerably below our estimated schedule the above will show that Tydol has been above our estimate to date this month. We purchased approximately 100,000 gallons of the above Tidex in order to help relieve the market of distress gasoline. We are also continuing to purchase East Texas gasoline for shipment to the Gulf and have purchased a total of 125 cars to date this month.

J. W. Warner.

ROA/JK

4997 GOVERNMENT EXHIBIT NO. 262.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 29

To: Mr. J. D. Collins
From: J. W. Warner
Date: July 20, 1935

Another week has passed with the Mid-Continent gasoline market showing practically no change insofar as tank car prices are concerned, although some increase in demand has been noted. Improved weather has resulted in gasoline consumption showing some increase and traders in general report more activity in the market. However, it has not been sufficient to warrant any general advance in tank car quotations.

The East Texas situation, which is generally conceded to be the "hot spot" of the market, is reported as being fairly steady insofar as interstate tank car shipments are concerned. Major companies are still taking a goodly portion of the East Texas output to the Gulf Coast and to their marketing outlets. Information shows that the majority of the East Texas refiners who sell in tank car lots are members of the East Texas Marketing Association and are participating in the major company buying program. Therefore, they do not have any large quantities of gasoline to dispose of for northern shipment on the open market.

While it is generally known that considerable gasoline is being manufactured in East Texas from untended crude, the sale of this class of material is still confined to within the state. With all this gasoline to be absorbed locally in Texas, naturally their market has been demoralized. Service Station prices in some few of the principal marketing centers in the Indiana territory continue subnormal. However, there are no indications at present of a general break in the retail price structure, due to the steady tank car market, as the present jobber margin is practically at the established figure of 5½¢ between delivered cost and retail price.

Rumors have continued to circulate of a possible crude cut, in view of the over-supply. However, opinions of market observers seem to be divided along this line. Aside from any effect a change in crude prices would have on the tank car gasoline market, refiners in general appear optimistic that present prices can be maintained. These thoughts are expressed with the view that a gradual increase in gasoline consumption will absorb such additional quantities as might be produced in case refiners show any tendency toward increasing their crude runs to stills.

4998 The burning oil market reflects slight improvement this week, although no change in published quotations has been recorded. Much of the Kerosene that has been depressing prices has been disposed of and today quotations are reported to be on a much firmer basis. Buyers have been in the market this week for heating oils to store for winter use, and have picked up practically all the materials from refiners who were attempting to keep their production moving, which has relieved the market of practically all spot material. The majority of refiners who have storage facilities do not appear interested in selling their burning oil at this season of the year when prices are naturally at a lower level than during the winter months.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
"	63-70 Octane	5⅝¢ to 5¾¢
"	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
"	63-70 Octane	5⅝¢ to 5¾¢
"	71 Octane and above	5¾¢
68/70-360		5¢ to 5⅛¢
42-44 Kerosene		3⅜¢ to 3⅝¢
41-43 Kerosene		3¼¢ to 3⅜¢
38-40 P. W. Distillate		3¢ to 3⅛¢
38-40 L. S. Distillate		2⅞¢ to 3¢
32-36 Zero Gas Oil		2¾¢ to 2⅞¢
28-30 Zero Fuel Oil		2½¢ to 2⅝¢
Natural Gasoline		3⅛¢

No change has been recorded in the general resale quotation range to brokers, as the majority of refiners are still asking 4⅝¢ for their Low Octane Motor, with a few of them who have regular broker customers accepting 4½¢ on this grade from brokers who buy from them regularly. Below is a comparison of stocks on hand as of July 1st and 19th.

		July 1st	July 19th
	Tydol Ethyl	76,000	37,000
	Hi-Test Tydol	1,639,000	1,144,000
	Bronze Leaded	302,000	406,000
	60/62-437	715,000	138,000
		2,732,000	1,725,000
	Kerosene	377,000	347,000
	Distillate	608,000	548,000
4999	Tractor Fuel	31,000	70,000
	Stoddard Solvent	30,000	27,000
	Fuel Oil	1,978,000	1,498,000

Total gasoline stocks show some decline as compared to July 1st. However, this comparison represents only finished gasoline in tanks from which we make current shipments. Naturally these stocks fluctuate from time to time as unfinished stock is brought up to specification and placed in storage. Other refinery stocks show but little change since the first of the month.

We are showing below a comparison of our estimated schedule with our shipments for the period of July 1st to July 18th, inclusive.

	Schedule	Shipments	Percent
Tydol Ethyl	75,000	38,000	50.7
Hi-Test Tydol	3,975,000	4,264,000	107.3
Tidex	720,000	899,000	124.9
Magnolia Ethyl	15,000		
Magnolia Regular	870,000	1,022,000	117.5
Unbranded	570,000	539,000	94.6
	6,225,000	6,762,000	108.6
Kerosene	465,000	544,000	117.0
38-40 Distillate	120,000	60,000	50.0
Tractor Fuel	150,000	368,000	245.3
Fuel Oil	2,910,000	2,935,000	100.9

With the market holding steady and the seasonal increase in demand, our contract gasoline shipments continue in excess of our estimate, with total shipments showing 108% of our schedule. Branded gasoline shipments to date equal 5,201,000 gallons, of which 1% is Ethyl, 82% Tydol, and Tidex now shows 17% of total, which is some increase over past months. We are still purchasing odd lots of Tidex in cases where some small refiner has a few surplus cars they cannot dispose of without lowering present quotations.

J. W. Warner.

ROA/JK

5000 GOVERNMENT EXHIBIT NO. 265.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 33

To: Mr. J. D. Collins From: J. W. Warner
Date: Aug. 17, 1935

Mid-Continent refiners continue cheerful about present conditions of the gasoline market as they pass through the peak consuming season with tank car prices still firmly pegged at a level that has been maintained for many weeks. With the first half of August now past history and the present outlook still bright, refiners appear hopeful of experiencing a most satisfactory month from the standpoint of both volume and realization.

Market information gathered from the various refining centers indicates there is no forecast of anything of a demoralizing nature in the path of the present market trend. The demand for gasoline continues extremely good and predictions are being made that consumption figures for August will surpass the July total, which was a banner gasoline month, and it is predicted that final July figures might establish a high record for domestic consumption.

As the market situation stands today there seems to be no fear of a break in the tank car price structure, especially during the remainder of the season of peak demand. The majority of observers also seem to be of the opinion that based on the recent past action of refiners, they will not lose sight of the fact that close cooperation in controlling refinery output made the present market. Therefore, it is generally believed refiners will carry out the same program when consumption starts to decline and that supply and demand will be kept well in balance.

East Texas market conditions continue encouraging as compared to the past when there was always a fear it might be a market bomb. While it is generally conceded that some illegally produced crude still exists, and is being processed into gasoline, nevertheless, there are no reports of it moving on interstate shipments, but instead it must be absorbed within the state which naturally keeps the state market somewhat disturbed.

With seasonal consumption reflecting an increased refinery demand, Kerosene prices are showing a gradual tendency to strengthen, as refiners' stocks are reported at a fairly low level. Distillate and Zero grades of Gas Oil are also being held to a firm quotation in view of anticipated higher prices later in the year as the consuming season on these products begins.

Published quotations on the general list of refinery products for today are as follows:

5001	U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
	"	63-70 Octane	5⅝¢ to 5¾¢
	"	71 Octane and above	5¾¢
	60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
	"	63-70 Octane	5⅝¢ to 5¾¢
	"	71 Octane and above	5¾¢
	68/70-360		5¢ to 5⅛¢
	42-44 Kerosene		3½¢ to 3¾¢
	41-43 Kerosene		3⅜¢ to 3⅝¢
	38-40 P. W. Distillate		3⅛¢ to 3¼¢
	38-40 L. S. Distillate		3¢ to 3⅛¢
	32-36 Zero Gas Oil		2⅞¢ to 3¢
	28-30 Zero Fuel Oil		2½¢ to 2⅝¢
	Natural Gasoline		3½¢

Brokers report business is fairly good and prices steady. Their resale prices on Low Octane Motor remain at 4⅝¢ as practically all refiners seem to be receiving a steady movement on their output and are showing no tendency to lower their price.

Below is a comparison of our stocks on hand as of August 1st and 16th.

	August 1st	August 16th
Tydol Ethyl	172,000	124,000
Hi-Test Tydol	1,034,000	851,000
Bronze Leaded	113,000	358,000
60/62-437	301,000	104,000
	1,620,000	1,437,000
Kerosene	423,000	405,000
Distillate	528,000	734,000
Tractor Fuel	75,000	145,000
Stoddard Solvent	27,000	27,000
Fuel Oil	1,693,000	1,820,000

Due to the steady movement on gasoline, total finished gasoline stock is being kept at a low level, and shows a slight decrease since August 1st.

We are showing below a comparison of our shipments with our estimated schedule for the period of August 1st to 15th, inclusive.

5002	Schedule	Shipments	Percent
Tydol Ethyl	39,000	56,000	143.8
Hi-Test Tydol	3,367,000	3,420,000	101.6
Tidex	676,000	744,000	110.
Magnolia Ethyl	13,000		
Magnolia Regular	728,000	1,053,000	144.6
Magnolia Third Grade	221,000	198,000	89.6
Unbranded	247,000	184,000	74.5
	5,291,000	5,655,000	106.9
Kerosene	390,000	372,000	95.4
Distillate	143,000	240,000	167.8
Tractor Fuel	156,000	216,000	138.5
Fuel Oil	2,106,000	2,420,000	114.9

Total shipments for the first half of the month show well above our estimated schedule and our schedule was set at a figure comparable to our actual July shipments. Branded gasoline shipments to date equal 4,220,000 gallons, consisting of 1% Ethyl, 81% Tydol, and 18% Tidex. The other list of refinery products also shows shipments are well in line with our estimates.

J. W. Warner.

ROA/JK

5003

GOVERNMENT EXHIBIT NO. 267.

Inter-Office Correspondence

Tide Water Oil Company

Tidal Pipe Line Company

Subject: Weekly Market Letter No. 35

To: Mr. J. D. Collins From: J. W. Warner

Date: Aug. 31, 1935

The gasoline market in the Mid-Continent territory has remained practically unchanged throughout the week as far as actual conditions are concerned, with the exception of a slight disturbance in the low price range of gasoline. A few brokers have been offering Low Octane Gasoline, reported to be off specification material, the last few days, at ⅛¢ to ¼¢ below the general quoted price for Low Octane material. The price disturbance however, has not become general enough to reflect in published quotations.

The California crude price cut this week is causing considerable comment as to the effect it will have on the Mid-Continent market. Observers in general do not expect any immediate repercussion. However, on the other hand, if the situation on the West Coast is not ironed out in a short length of time, gasoline from that region will likely disturb the Gulf Coast market and in turn cause gasoline prices to decline in this territory. Major companies have continued this week their buying program in East Texas and other districts where it has been necessary to relieve stocks at small refineries. Large quantities were purchased in East Texas for Gulf Coast and intrastate movement, while odd car lots absorbed in Oklahoma have been consigned to northern points.

Movement of gasoline in the open market has been disappointing to some suppliers, as a heavy pre-holiday demand was expected from jobbers this week. Contract jobbers have been placing orders only moderately as no sharp pick-up in shipments has been reported in view of the anticipated heavy consumption during Labor Day.

Demand for Kerosene has slackened some. Other grades of burning oils are in slightly better demand the last few days, due to relatively low temperatures in some of the northern states.

Published quotations on the general list of refinery products for today are as follows:

	U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
	U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
	U. S. Motor,	71 Octane and above	5¾¢
5004	60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
	60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
	60/62-400,	71 Octane and above	5¾¢
	68/70-360		5¢ to 5⅛¢
	42-44 Kerosene		3⅝¢ to 3¾¢
	41-43 Kerosene		3⅜¢ to 3½¢
	38-40 P. W. Distillate		3⅛¢ to 3¼¢
	38-40 L. S. Distillate		3¢ to 3⅛¢
	32-36 Zero Gas Oil		2⅞¢ to 3⅛¢
	28-30 Zero Fuel Oil		2½¢ to 2¾¢
	Natural Gasoline		4⅛¢

Marketers and brokers report their buying price at 4½¢ to 4⅝¢ on the Low Octane Motor Gasoline. Natural gasoline prices have been advanced ⅜¢ this week, due to the increased demand from Group 3 refiners.

We are showing below a comparison of our gasoline stocks on hand as of August 1st and 30th.

	August 1st	August 30th
Tydol Ethyl	172,000	85,000
Hi-Test Tydol	1,034,000	724,000
Bronze Leaded	113,000	304,000
60/62-437	301,000	406,000
	1,620,000	1,519,000
Kerosene	423,000	550,000
Distillate	528,000	888,000
Tractor Fuel	75,000	224,000
Stoddard Solvent	27,000	27,000
Fuel Oil	1,693,000	1,682,000

Although our total finished gasoline stocks today are practically unchanged from August 1st as you will notice from the above comparison, Hi-Test Tydol stock is approximately 300,000 gallons lower, with Bronze Leaded and Motor Gasoline stocks slightly higher.

Below is a comparison of our estimated schedule with our shipments for the period of August 1st to 29th, inclusive.

5005

	Schedule	Shipments	Percent
Tydol Ethyl	75,000	76,000	101.
Tydol	6,475,000	6,758,000	104.
Tidex	1,300,000	1,336,000	103.
Magnolia Ethyl	25,000	20,000	80.
Magnolia Regular	1,400,000	1,933,000	138.
Magnolia Third Grade	425,000	389,000	91.5
Unbranded	475,000	520,000	109.
	10,175,000	11,032,000	108.
Kerosene	750,000	724,000	96.5
Distillate	275,000	398,000	145.
Tractor Fuel	300,000	392,000	131.
Fuel Oil	4,050,000	4,880,000	120.5

The percentage of total gasoline shipments is 108% to date this month. All grades of gasoline have exceeded our estimated schedule, with the exception of Magnolia Petroleum grades. Kerosene shipments equal 96.5% of schedule, while other bruning oil shipments are above our estimate.

J. W. Warner

JFB/JK

5006

GOVERNMENT EXHIBIT NO. 268.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 37

To: Mr. J. D. Collins From: J. W. Warner
Date: Sept. 14, 1935

Mid-Continent refiners have experienced another week with no new developments in the way of any change in the general range of tank car gasoline prices. While the market tone is described as somewhat softer due to various influencing factors, nevertheless, refiners, through their combined efforts, have prevented any downward trend in the published gasoline quotation list.

Open market trading has slowed up to some degree, which was not entirely unexpected, as refiners naturally anticipated some let-up in buying after the peak Labor Day period. The less interested attitude of spot buyers as usual resulted in occasional lots of gasoline being offered at below the going prices. This naturally left some of the small refiners without a ready outlet, but the quantity involved was not large and with the major companies still active as purchasers, the surplus was sufficiently absorbed to prevent any break in the market for the present.

Group 3 refiners as a whole apparently are still optimistic about the immediate future market, but it is generally conceded that various existing conditions might develop into disturbing market factors. Some of the fear of the California situation has passed over in the belief that it will be straightened up in the near future or at least before it affects conditions in the Mid-Continent area.

The subject of reduced refinery operations in the Mid-Continent in line with the seasonal reduction in gasoline consumption, is also a matter of discussion. However, confidence is being expressed that the majority of refiners will cooperate in voluntarily reducing their gasoline output to maintain a balanced market. This week's reduction in Chicago service station prices has also caused some comment, but many observers seem to be of the opinion the cut price will be confined to that area only and will not spread generally to other marketing territories.

Surplus Kerosene in Texas districts has resulted in a slightly weaker market. Those refiners, in an effort to obtain northern business, have shaded the general quotation range. However, the volume of cheaper material has not affected published prices to date. The light grades of heating oil continue steady in price, as refiners are holding firm on their quotations in view of the approach of cooler weather and an increased demand.

5007 Published quotations on general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅛¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5⅛¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3½¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		3¢ to 3⅛¢
28-30 Zero Fuel Oil		2½¢ to 2¾¢
Natural Gasoline		4⅛¢

Some weakness has been apparent in the resale gasoline market this week as occasional sales of Low Octane Motor have been made to brokers at 4⅜¢. However, 4½¢ to 4⅝¢ is still considered the general resale price.

We are showing below a comparison of our gasoline stocks on hand as of September 1st and September 13th.

	September 1st	September 13th
Tydol Ethyl	56,000	42,000
Hi-Test Tydol	843,000	736,000
Bronze Leaded	219,000	378,000
60/62-437	454,000	463,000
	1,572,000	1,619,000
Kerosene	476,000	448,000
Distillate	960,000	920,000
Tractor Fuel	38,000	31,000
Stoddard Solvent	27,000	27,000
Fuel Oil	1,979,000	1,850,000

Total gasoline stocks reflect practically no change so far during September as shipments continue well in line with current production.

Below is a comparison of our shipments with our estimated schedule for the period of September 1st to 12th, inclusive.

5008	Schedule	Shipments	Percent
Tydol Ethyl	36,000	56,000	155.6
Hi-Test Tydol	2,439,000	2,640,000	108.2
Tidex	414,000	560,000	135.3
Magnolia Ethyl	9,000	3,000	33.3
Magnolia Regular	603,000	750,000	124.4
Magnolia Third Grade	144,000	140,000	97.2
Unbranded	225,000	80,000	35.6
	3,870,000	4,229,000	109.3
Kerosene	270,000	410,000	151.9
Distillate	297,000	302,000	101.7
Tractor Fuel	108,000	200,000	185.2
Fuel Oil	—	1,950,000	

The movement on contract gasoline has been at a very satisfactory pace so far this month, as total shipments have exceeded our estimated schedule to date. Final invoice figures on August gasoline shipments show a banner month, as total gasoline shipped exceeded our July figure.

J. W. Warner

ROA/JK

5009

GOVERNMENT EXHIBIT NO. 269.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 38

To: Mr. J. D. Collins From: J. W. Warner
Date: September 21, 1935.

The tank car gasoline market was weakened early in this week in the central region by a surplus of gasoline offerings on the open market, causing a decline of ⅛ cent on the low octane motor grade in published quotations. Prices, however, were restored later in the week, due to quick inter-refinery buying support.

The dull spot market demand for gasoline for the past several days caused some refiners who depend on the open market for a source of outlet to lower their prices in order to move their current gasoline production. A large portion of the excess gasoline which disturbed prices was a very low octane material, which was slow in moving compared to other third grade gasoline, so to procure quick movement price cutting was employed.

Reports indicate that several refiners who have been curtailing crude runs are now short of gasoline, due to the fact that their contract shipments are continuing heavy. They have entered the open market the last three days and have absorbed virtually all distress material, which has eliminated the distress refinery quotations.

Observers in general view the gasoline market today in all districts in the middle west as comparatively firm and see no reason for a drastic reduction in price over the next few months. Refiners are apparently cooperating in reducing gasoline production in line with the normal decline in demand. East Texas gasoline at present is not considered a disturbing factor on the open market due to the fact that almost all gasoline shipped to inter-state points from that district is being consigned to major companies for their contract outlets or for their own company stations.

Retail gasoline disturbances in the Chicago area reported in our letter of last week still exist. However, since tank car gasoline prices are now showing an improvement, marketers are hopeful of a more settled service station market in the near future.

Kerosene has shown improvement in demand this week, although prices are unchanged. Other grades of burning oils, including 38-40 distillate and the better grades of zero gas oils are in good demand for this season of the year.

5010 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢	to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢	to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢	
60/62-400,	Below 62 Octane	4¾¢	to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢	to 5¾¢
60/62-400,	71 Octane and above	5¾¢	
68/70-360		5¢	to 5⅛¢
42-44 Kerosene		3⅝¢	to 3¾¢
41-43 Kerosene		3⅜¢	to 3½¢
38-40 P. W. Distillate		3⅛¢	to 3¼¢
38-40 L. S. Distillate		3¢	to 3⅛¢
32-36 Zero Gas Oil		3¢	to 3⅛¢
28-30 Zero Fuel Oil		2⅝¢	to 2¾¢
Natural Gasoline		4⅛¢	

Marketers and brokers report their buying price on low octane motor gasoline today at 4⅝¢ with odd cars available at 4½¢. Natural gasoline prices are unchanged.

We are showing below a comparison of our gasoline stocks on hand as of September 1st and September 20th:

	September 1st	September 20th
Tydol Ethyl	56,000	64,000
Hi-Test Tydol	843,000	530,000
Bronze Leaded	219,000	102,000
60/62-437	454,000	463,000
	1,572,000	1,159,000
Kerosene	476,000	368,000
Distillate	960,000	976,000
Tractor Fuel	38,000	48,000
Stoddard Solvent	27,000	27,000
Fuel Oil	1,979,000	1,857,000

The above figures reflect a decline in total finished gasoline stocks of approximately 400,000 gallons.

Below is a comparison of our shipments with the estimated schedule for the period of September 1st to 18th, inclusive.

5011	Schedule	Shipments	Percent
Tydol Ethyl	56,000	68,000	121.4
Hi-Test Tydol	3,794,000	3,924,000	103.4
Tidex	644,000	816,000	126.7
Magnolia Ethyl	14,000	3,000	21.4
Magnolia Regular	938,000	1,130,000	120.5
Magnolia Third Grade	224,000	184,000	82.1
Unbranded	350,000	208,000	59.4
	6,020,000	6,333,000	105.2
Kerosene	420,000	588,000	140.
Distillate	462,000	482,000	104.3
Tractor Fuel	168,000	252,000	150.
Fuel Oil	—	2,700,000	

The total movement of gasoline is 105 per cent of our estimated schedule. All three grades of our branded gasoline are well over schedule. However, gallonage so far this month is below the same period for last month by 400,000 gallons. Branded gasoline shipments to date equal 4,808,000 gallons, consisting of 1% Ethyl, 82% Tydol and 17% Tidex.

J. W. Warner

JFB/OS

5012

GOVERNMENT EXHIBIT NO. 270.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 39.

To: Mr. J. D. Collins From: J. W. Warner
Date: September 28, 1935.

The refined gasoline market structure over this week has been held comparatively well, considering the natural decline in gasoline consumption marketers are now experiencing, although, in spite of the apparent firmness, students of the market are reluctant to predict very optimistically at this time.

Some refiners have had difficulty in locating a market the last few days for odd carlots of the low octane motor gasoline. However, they have not offered to cut prices to obtain instructions. Toward the latter part of the week inter-refinery purchasers have been able to absorb the larger portion of the semi-distress material. The most urgent need for gasoline orders this week has been for material originating in North Texas and some districts in Oklahoma.

Market observers are stressing the necessity of further reductions in refinery crude runs if the prevailing stable market is expected to continue. It is felt the percentage of decrease in consumption in low octane gasoline over the next few months will handicap inter-refinery buying to a degree that it will be a difficult problem to absorb surplus open market material unless production is reduced. Some refiners not having contract outlets for their gasoline have voluntarily promised to cut back runs in line with others who have already made reductions.

Recent report show that major companies are still active buyers in the East Texas district. They are taking practically all gasoline offered in that area which can be shipped inter-state for coastwise movement or for their stations where freight rates are not excessive.

Retail markets in some sections of the Central Region are shaky. Local price reductions have shown up at a few new points this week. However, no general cut is anticipated. Keen competition in the allowance of excessive discounts is blamed for local retail disturbances.

Tank car lot brokers have reported only a fair demand for gasoline this week. Contract shipments have continued to move comparatively well.

5013 Kerosene demand and price have continued unchanged for the last few weeks. Demand for other burning oils has been fair. Marketers, however, expect to see an increase, both in price and demand, within the near future.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5⅛¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3½¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		3¢ to 3⅛¢
28-30 Zero Fuel Oil		2⅝¢ to 2¾¢
Natural Gasoline		4⅛¢

Marketers and brokers report their buying price on the low octane motor today at 4½¢ to 4⅝¢. Natural gasoline prices are unchanged.

We are showing below a comparison of our gasoline stocks on hand as of September 1st and September 27th:

	September 1st	September 27th
Tydol Ethyl	56,000	60,000
Hi-Test Tydol	843,000	620,000
Bronze Leaded	219,000	80,000
60/62-437	454,000	390,000
	1,572,000	1,150,000
Kerosene	476,000	380,000
Distillate	960,000	1,010,000
Tractor Fuel	38,000	36,000
Stoddard Solvent	27,000	27,000
Fuel Oil	1,979,000	1,895,000

Total finished gasoline stocks are practically unchanged from figures shown for September 20th.

Below is a comparison of our shipments with the estimated schedule for the period of September 1st to September 26th, inclusive:

5014	Schedule	Shipments	Percent
Tydol Ethyl	88,000	100,000	113.6
Hi-Test Tydol	5,962,000	5,926,000	99.4
Tidex	1,012,000	1,150,000	113.6
Magnolia Ethyl	22,000	9,000	40.9
Magnolia Regular	1,474,000	1,791,000	121.5
Magnolia Third Grade	352,000	364,000	103.4
Unbranded	550,000	408,000	74.2
	9,460,000	9,748,000	103.0
Kerosene	660,000	808,000	122.4
Distillate	726,000	556,000	76.6
Tractor Fuel	264,000	348,000	131.8
Fuel Oil	—	3,890,000	—

The total movement of gasoline is 103% of schedule, which is 2.2% less than figures shown on our last report. Burning oil shipments have shown an increase over last week.

J. W. Warner

JFB/OS

5015 GOVERNMENT EXHIBIT NO. 271.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 40.

To: Mr. J. D. Collins   From: J. W. Warner
Date: October 5, 1935

Tank car gasoline market prices in the central region have continued unchanged this week. Many refiners are optimistic over the future outlook, while others are slow to wager their opinion, due to the unsettled West Coast situation. Observers in general, however, feel that the Mid-Continent area is entering the last quarter of the year in excellent condition, in comparison to other recent years.

The majority of refiners in all districts are reported to be operating along conservative lines in an attempt to balance production with market demand. Gasoline consumption has been held up very well the last few weeks, which has also greatly assisted in promoting a firm market.

The most outstanding feature in support of the percent market is inter-refinery buying. Major companies have continued active purchasers in East Texas and reports from that district show that only small lots of gasoline have been available for shipment the past few days. Most refiners by Wednesday were reported sold up for the remainder of the week. In Oklahoma Group 3 market the low octane grade gasoline has been readily available in small lots, but not at distress prices.

Movement of gasoline on the open market has been dull this week. Marketers seemingly are not interested in buying material on a speculative basis at this time, as they are apparently placing orders only for current sales. Contract gasoline orders are reported on the decline by most refiners, although shipments are considered to be moving well for this season.

Service station prices in several localities are still subnormal. The majority of disturbances are in the Chicago area, and this condition appears to be fairly well confined to this district and other key points in Illinois.

Reports regarding kerosene tank car sales are conflicting, as some brokers state orders are hard to obtain at reduced prices, while other marketers say they are experiencing a good business at unchanged prices. Meanwhile, distillate and other burning oils are in fair demand.

5016 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢
60/62-400, Below 62 Octane	4¾¢ to 4⅞¢
60/62-400, 63-70 Octane	5⅝¢ to 5¾¢
60/62-400, 71 Octane and above	5¾¢
68/70-360	5¢ to 5⅛¢
42-44 Kerosene	3⅝¢ to 3¾¢
41-43 Kerosene	3⅜¢ to 3½¢
38-40 P. W. Distillate	3⅛¢ to 3¼¢
38-40 L. S. Distillate	3¢ to 3⅛¢
32-36 Zero Gas Oil	3¢ to 3⅛¢
28-30 Zero Fuel Oil	2⅝¢ to 2⅞¢
Natural Gasoline	4⅛¢

Marketers and brokers report their buying price for the low octane motor grade today at 4½¢ to 4⅝¢. Natural gasoline prices are unchanged.

We are showing below a comparison of our gasoline stocks on hand as of September 1st and October 1st:

	September 1st	October 1st
Tydol Ethyl	56,000	152,000
Hi-Test Tydol	843,000	933,000
Bronze Leaded	219,000	205,000
60/62-437	454,000	692,000
Total	1,572,000	1,982,000
Kerosene	476,000	424,000
Distillate	960,000	1,203,000
Tractor Fuel	38,000	74,000
Stoddard Solvent	27,000	24,000
Fuel Oil	1,979,00	1,893,000

Total finished gasoline stocks for the first of this month are approximately 400,000 gallons over September 1st figures.

Below is a comparison of our shipments with the estimated schedule for the month of September:

5017

	Schedule	Shipments	Percent
Tydol Ethyl	96,000	92,000	95.8
Hi-Test Tydol	6,504,000	6,387,000	98.2
Tidex	1,104,000	1,160,000	105.0
Magnolia Ethyl	24,000	14,000	58.3
Magnolia Regular	1,608,000	1,899,000	118.1
Magnolia Third Grade	384,000	414,000	107.8
Unbranded	600,000	466,000	77.7
	10,320,000	10,432,000	101.1
Kerosene	720,000	848,000	117.8
Distillate	288,000	599,000	208.0
Tractor Fuel	792,000	372,000	47.0
Fuel Oil	—	3,735,000	—

Our total percentage of gasoline shipments for the month of September equals 101%. Ethyl and Tydol shipments are slightly below schedule, while Tidex shipments have exceeded the schedule by 5%. The total branded gasoline shipments equal 7,639,000 gallons, of which 1.2% is Ethyl, 83.6% is Tydol and 15.2% is Tidex.

J. W. Warner.

JFB/OS

5018 GOVERNMENT EXHIBIT NO. 272.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 41.

To: Mr. J. D. Collins From: J. W. Warner
Date: October 12, 1935.

Refiners have been exhibiting the last few days a more optimistic spirit with regard to gasoline markets in general. Many feel that there is a good chance for established tank car prices to continue for the remainder of the year.

Reports from East Texas show improvement in that district this week. Virtually all legal tender material available for shipment had been taken off the open market by the end of the week. In addition to the regular amount of gasoline shipped from East Texas there were 150 to 200 cars of gasoline purchased for shipment this week and next, presumably for movement to the Gulf Coast. These additional orders, plus the regular weekly purchases from the East Texas group, will entirely absorb all the material available through the end of the coming week.

All refiners are apparently guarding against any possibility of demoralizing the tank car market by offering surplus gasoline. Many manufacturers have cut back on their crude runs to a point which has necessitated their purchasing material on the outside at various times in order to insure prompt shipment of contract orders. This inter-refinery buying is considered by reliable observers to be one of the chief supporting factors of published prices.

Open market trading on the part of jobbers has been comparatively slack the last few days. However, the market has not been greatly hampered by this condition, as refiners have not been forcing sales. The larger portion of the material shipped recently from refineries in East Texas has been moving to southern points. While a few excess cars of low octane motor gasoline disturbed the Oklahoma market temporarily the first part of the week, they were absorbed before any serious consequences resulted.

No new developments are reported in the tank wagon and service station gasoline markets in the Standard of Indiana territory. Although there are several points still subnormal, the local price cuts do not seem to be spreading.

The kerosene market is apparently unchanged from last week. There has been no large demand for any of the burning oils so far this season.

5019 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5⅛¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		3¢ to 3⅛¢
28-30 Zero Fuel Oil		2⅝¢ to 2⅞¢
Natural Gasoline		4⅛¢

Marketers and brokers report their buying price for the low octane motor grade today at 4½¢ to 4⅝¢. Natural gasoline prices are unchanged.

We are showing below a comparison of our gasoline stocks on hand as of October 1st and October 11th:

	October 1st	October 11th
Tydol Ethyl	152,000	112,000
Hi-Test Tydol	933,000	721,000
Bronze Leaded	205,000	288,000
60/62-437	692,000	536,000
Total	1,982,000	1,657,000
Kerosene	424,000	122,000
Distillate	1,203,000	1,025,000
Tractor Fuel	74,000	11,000
Stoddard Solvent	24,000	24,000
Fuel Oil	1,893,000	2,897,000

Total finished gasoline stocks at present are approximately 300,000 gallons below October 1st figures.

Below is a comparison of our shipments with the estimated schedule for the period October 1st to October 10th, inclusive:

5020	Schedule	Shipments	Percent
Tydol Ethyl	36,000	52,000	144.4
Hi-Test Tydol	2,007,000	2,264,000	112.8
Tidex	315,000	368,000	116.8
Magnolia Ethyl	9,000	8,000	88.9
Magnolia Regular	495,000	585,000	118.2
Magnolia Third Grade	126,000	60,000	47.6
Unbranded	189,000	88,000	46.6
	3,177,000	3,425,000	107.8
Kerosene	270,000	264,000	97.8
Distillate	315,000	248,000	78.7
Tractor Fuel	36,000	120,000	333.3
Fuel Oil	—	910,000	—

Gasoline shipments are moving at a satisfactory rate so far this month, as total shipments have exceeded the schedule by 7%.

J. W. Warner.

JFB/OS

5021 GOVERNMENT EXHIBIT NO. 273.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 42

To: Mr. J. D. Collins From: J. W. Warner

Date: October 19, 1935.

The gasoline market this week has reflected a gratifying aspect. Considerable improvement has been noticeable and many observers describe today's Mid-Continent market as appearing stronger than it has for some time, despite the seasonal decline in consumption.

Suppliers of gasoline throughout the refining districts realize the necessity of keeping gasoline production at conservative levels. Some of the large plants have cut back to such an extent that it has been necessary for them to purchase from small refiners having no other outlet for their material except on the open market. This inter-refinery buying is considered to be the factor which has so well regulated the balancing of supply and demand for the last few months in the central region.

At the close of last week all available supplies of gasoline in East Texas had been purchased for delivery within a period of one week, presumably for shipment to the Gulf Coast. The quantity was reported to have been several hundred cars. Refiners in the East Texas district, therefore, have been virtually out of the spot market this week. Several marketers and brokers who normally purchase their requirements in this territory were forced to seek other sources of supply.

Oklahoma and North Texas refiners are reporting additional business this week, due to the tight market in East Texas. This increase in demand has permitted many suppliers to advance their prices ⅛¢ per gallon on low octane motor gasoline, which market had previously remained practically unchanged for some time, due to the curtailment of crude runs by Oklahoma refiners. Manufacturers as a whole do not appear over-anxious to advance prices, believing that if the established price can be maintained for the remainder of the year the job will be well done.

Service station prices in several localities are still subnormal. This condition prevails principally in the Chicago area, where much of the cheap tank car gasoline is shipped at various times. However, due to the present firm tank car prices, many feel that service station prices should show improvement in the near future.

Kerosene demand this week has been fair. Orders for other grades of burning and heating oils have been light, due to the generally mild weather.

5022 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢
60/62-400, Below 62 Octane	4¾¢ to 4⅞¢
60/62-400, 63-70 Octane	5⅝¢ to 5¾¢
60/62-400, 71 Octane and above	5¾¢
68/70-360	5¢ to 5⅛¢
42-44 Kerosene	3⅝¢ to 3¾¢
41-43 Kerosene	3⅜¢ to 3⅝¢
38-40 P. W. Distillate	3⅛¢ to 3¼¢
38-40 L. S. Distillate	3¢ to 3⅛¢
32-36 Zero Gas Oil	3¢ to 3⅛¢
28-30 Zero Fuel Oil	2⅝¢ to 2⅞¢
Natural Gasoline	4¢ to 4⅛¢

Marketers and brokers report their buying price for the low octane motor grade today at 4⅝¢ to 4¾¢. Natural gasoline prices have declined ⅛¢.

We are showing below a comparison of our gasoline stocks on hand as of October 1st and October 18th.

	October 1st	October 18th
Tydol-Ethyl	152,000	96,000
Hi-Test Tydol	933,000	845,000
Bronze Leaded	205,000	372,000
60/62-437	692,000	692,000
Tydol-Aero	—	23,000
	1,982,000	2,028,000
Kerosene	424,000	257,000
Distillate	1,203,000	931,000
Tractor Fuel	74,000	20,000
Stoddard Solvent	24,000	24,000
Gas Oil	—	34,000
Fuel Oil	1,893,000	3,333,000

There is practically no change in the total finished gasoline stocks now, as compared to October 1st.

Below is a comparison of our shipments with the estimated schedule for the period October 1st to October 17th, inclusive:

5023

	Schedule	Shipments	Percent
Tydol	60,000	64,000	106.7
Hi-Test Tydol	3,345,000	3,948,000	118.0
Tidex	525,000	556,000	105.9
Magnolia Ethyl	15,000	8,000	53.3
Magnolia Regular	825,000	990,000	120.0
Magnolia Third Grade	210,000	140,000	66.7
Unbranded	315,000	260,000	82.5
	5,295,000	5,966,000	112.7
Kerosene	450,000	444,000	98.7
Distillate	525,000	364,000	69.3
Tractor Fuel	60,000	180,000	300.0
Gas Oil	—	8,000	—
Fuel Oil	—	1,770,000	—

Total percentage of gasoline shipments to schedule so far this month is 112.7%. All branded gasolines are well over schedule. The total of branded shipments is 4,568,000 gallons, of which 1.4% is Ethyl, 86.4% is Tydol and 12.2% is Tidex.

J. W. Warner

JFB/OS

5024 GOVERNMENT EXHIBIT NO. 274.

Inter-Office Correspondence

Tide Water Oil Company

Tidal Pipe Line Company

Subject: Weekly Market Letter No. 43

To: Mr. J. D. Collins From: J. W. Warner

Date: October 26, 1935.

Mid-Continent refiners continue in a cheerful mood as the tank car gasoline market picture still casts a bright reflection. With the passing of the week the available supply of open market gasoline has been such that resale prices to brokers have shown an advancing tendency, but not to the extent of causing any increase in the general range of published tank car quotations. The firmness in the market has been brought about principally by the naturally stabilizing factor of a balanced position in supply and demand. Although open market trading has been comparatively quiet, contract gasoline movement has been holding up especially well, considering the season of the year. Reports from all refining districts indicate refiners' stocks are comparatively low, which places them in a favorable position to remain firm on their quotations.

Present conditions of the market and the apparent scarcity of open market gasoline indicates that refiners are following a policy of keeping crude runs down to a level where no burdensome gasoline stocks will accumulate. Among other encouraging factors is the East Texas situation, as gasoline stocks in that district are reported unusually low as compared to their normal position.

Information from East Texas indicates that inquiries for export gasoline have circulated and it is known that some of the major companies have increased their purchases on gasoline moving to the Gulf Coast, of which some has possibly moved on export orders. The net result is that East Texas has been moving practically no gasoline north, as brokers say they have been unable to find material in that district, and consequently have been placing their orders in North Texas and Oklahoma.

Due to the strengthening position of the market some observers have felt the general tank car quotation range on gasoline would advance. However, others predict the price will not move upward for the reason that it might encourage an increase in refinery operations, which would break down the present balanced position of the market structure. Furthermore, it is pointed out that an advance in tank car prices is not justified, based on present service station prices in most of the marketing territory, as the jobber's margin now between delivered cost and service station price is slightly below the normal established figure.

5025 The kerosene market has not been unusually active, although prices are holding comparatively firm, except for occasional sales that have been made on material not having the most desirable specifications. The market for heating oils has been quiet; however, prices remain at a firm level, as refiners anticipate a decided increase in demand as winter weather approaches, and therefore feel there is much possibility that present quotations can be held, or possibly advanced.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢
60/62-400, Below 62 Octane	4¾¢ to 4⅞¢
60/62-400, 63-70 Octane	5⅝¢ to 5¾¢
60/62-400, 71 Octane and above	5¾¢
68/70-360	5¢ to 5¼¢
42-44 Kerosene	3⅝¢ to 3¾¢
41-43 Kerosene	3⅜¢ to 3⅝¢
38-40 P. W. Distillate	3⅛¢ to 3¼¢
38-40 L. S. Distillate	3¢ to 3⅛¢
32-36 Zero Gas Oil	3¢ to 3⅛¢
28-30 Zero Fuel Oil	2⅝¢ to 2⅞¢
Natural Gasoline	3¾¢ to 4¢

Brokers report they find the resale market today is especially firm, with a majority of refiners quoting 4⅝¢ on low octane U. S. Motor gasoline and in some cases 4¾¢ is being asked for this grade of material.

Below is a comparison of our finished stocks on hand as of October 1st and October 25th:

	October 1st	October 25th
Tydol-Ethyl	152,000	72,000
Hi-Test Tydol	933,000	1,249,000
Bronze Leaded	205,000	608,000
60/62-437	692,000	489,000
Tydol-Aero	—	30,000
	1,982,000	2,448,000
Kerosene	424,000	170,000
Distillate	1,203,000	1,063,000
Tractor Fuel	74,000	55,000
Stoddard Solvent	24,000	24,000
Gas Oil	—	10,000
Fuel Oil	1,893,000	3,472,000

5026 Total finished gasoline stocks have increased to some extent, while kerosene, distillate and tractor fuel stocks have decreased. Our stocks of heavy fuel oil have also increased since October 1st.

We are showing below a comparison of our shipments with the estimated schedule for the period October 1st to October 24th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	88,000	92,000	104.5
Hi-Test Tydol	4,906,000	5,564,000	113.4
Tidex	770,000	748,000	97.1
Magnolia Ethyl	22,000	8,000	36.4
Magnolia Regular	1,210,000	1,394,000	115.2
Magnolia Third Grade	308,000	200,000	64.9
Unbranded	462,000	464,000	100.4
	7,766,000	8,470,000	109.1
Kerosene	660,000	628,000	95.2
Distillate	770,000	452,000	58.7
Tractor Fuel	88,000	232,000	263.6
Gas Oil	—	48,000	—
Fuel Oil	—	2,780,000	—

With a continued good movement of gasoline our total shipments show 109% of the estimated schedule, with each grade of branded gasoline well above our estimate. Shipments of branded gasoline to date this month are only slightly below the same period for September, and a further comparison shows that branded gasoline shipments, as well as total gasoline shipments, are considerably above shipments for the same period in October, 1934.

J. W. Warner

ROA/OS

5027 GOVERNMENT EXHIBIT NO. 275.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 44.

To: Mr. J. D. Collins From: J. W. Warner
Date: November 2, 1935

Ruling tank car gasoline prices that have existed in the Mid-Continent for the past five months are still supported by a comparatively well balanced market.

Refiners' conservative schedules of operation are considered of great importance for today's market. Although domestic demand for gasoline in the Middle West has held up exceptionally well during the month of October and the rate of consumption compares very favorably with the same period of other recent years, it must not be forgotten that the tendency of consumption is downward. Observers are therefore advocating the lowering of gasoline production.

Movement of gasoline at the present time is still largely on contract orders, as brokers report the spot market dull. Export demand is fairly brisk and is having a bouyant effect on the trend of gasoline prices.

Inter-refinery buying is still a major factor in the East Texas market, most of the material being purchased for Gulf Coast movement, leaving only small quantities available to northern buyers. Consequently, brokers are now purchasing a large portion of their requirements for northern shipment in North Texas and Oklahoma fields.

The advance in price of California crude oil this week has relieved to a considerable degree the uncertainty which has existed in the Mid-Continent due to the possibility of low priced gasoline moving in from that district.

The retail gasoline market is still disturbed in several localities in the Standard of Indiana territory. This situation does not seem to be growing worse; neither has there been a noticeable change for the better.

Kerosene has been firming up to some extent. However, there has been no change in published prices. Other grades of burning and heating oils are showing improvement, due to colder weather.

Published prices on the general list of refinery products for today are as follows:

5028 U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3⅛¢
32-36 Zero Gas Oil		3¢ to 3⅛¢
28-30 Zero Fuel Oil		2⅝¢ to 2⅞¢
Natural Gasoline		3¾¢ to 3⅞¢

Marketers and brokers report their buying price today at 4⅝¢ to 4¾¢ on low octane motor grade gasoline. The price of natural gasoline is unchanged this week.

Below is a comparison of our finished stocks on hand as of October 1st and November 1st:

	October 1st	November 1st
Tydol-Ethyl	152,000	80,000
Hi-Test Tydol	933,000	1,150,000
Bronze Leaded	205,000	585,000
60/62-437	692,000	470,000
Tydol-Aero	—	42,000
	1,982,000	2,327,000
Kerosene	424,000	162,000
Distillate	1,203,000	1,078,000
Tractor Fuel	74,000	42,000
Stoddard Solvent	24,000	24,000
Gas Oil	—	10,000
Fuel Oil	1,893,000	3,453,000

Total finished gasoline stocks have increased somewhat, while kerosene, distillate and tractor fuel stocks have decreased. Our stocks of heavy fuel oil have also increased since October 1st.

We are showing below a comparison of our shipments with the estimated schedule for the month of October:

5029

	Schedule	Shipments	Percent
Tydol-Ethyl	104,000	108,000	103.8
Hi-Test Tydol	5,798,000	6,886,000	118.8
Tidex	910,000	812,000	89.2
Magnolia Ethyl	26,000	12,000	46.2
Magnolia Regular	1,430,000	1,800,000	125.9
Magnolia Third Grade	364,000	288,000	79.1
Unbranded	546,000	596,000	109.2
	9,178,000	10,502,000	114.4
Kerosene	780,000	754,000	96.7
Distillate	900,000	540,000	60.0
Tractor Fuel	104,000	272,000	261.5
Gas Oil	—	80,000	—
Fuel Oil	—	3,250,000	—

The total percentage of gasoline shipments equals 114% of our estimated schedule. The total branded gasoline shipments equal 7,806,000 gallons, of which 1% is Ethyl, 88% is Tydol and 11% is Tidex. Tydol percentage appears to be on an increase, while Tidex shipments are slowing up.

J. W. Warner.

JFB/OS

5030 GOVERNMENT EXHIBIT NO. 276.

Inter-Office Correspondence

Tide Water Oil Company

Tidal Pipe Line Company

Subject: Weekly Market Letter No. 45.

To: Mr. J. D. Collins **From: J. W. Warner**

Date: November 9, 1935

The gasoline market early this week lost considerable ground as inter-refinery buying in the East Texas district failed to develop as was anticipated. As a result a surplus quantity of material accumulated, causing temporary anxiety among marketers as to the future trend of prices.

The spot market immediately experienced a more plentiful supply of gasoline than had been available in several weeks. This condition was reflected particularly in the Chicago area, where brokers were actively soliciting gasoline orders for the East Texas group of refineries. Suppliers reduced their prices fractionally in order to attract new business, but to date these slightly lower resale prices have had no effect on published quotations. Thursday a revival of inter-refinery purchasing relieved this situation, and today the East Texas district is again in very good shape. News indicates, too, that prospects for the coming week are favorable, as reports show several large buying orders have already been placed in East Texas.

It is definitely felt that unless inter-refinery purchasing is continued there will result a drastic reduction in spot gasoline quotations, and, in turn, a decline in published prices. On the other hand, with a reasonable amount of buying support marketers express confidence that established prices will continue throughout the winter months.

Definite and reliable information shows refiners in the East Texas field have lowered their crude runs to stills to a marked degree. This is believed to be good proof that this group of manufacturers see the necessity of a balanced market.

Trading on the open gasoline market by jobbers has been exceedingly dull this week. Contract gasoline shipments are also tapering off as we approach the end of the year.

The burning oil market is showing considerable activity, with the exception of kerosene. Prices are apparently firm.

5031 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢	to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢	to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢	
60/62-400, Below 62 Octane	4¾¢	to 4⅞¢
60/62-400, 63-70 Octane	5⅝¢	to 5¾¢
60/62-400, 71 Octane and above	5¾¢	
68/70-360	5¢	to 5¼¢
42-44 Kerosene	3⅝¢	to 3¾¢
41-43 Kerosene	3⅜¢	to 3⅝¢
38-40 P. W. Distillate	3⅛¢	to 3¼¢
38-40 L. S. Distillate	3¢	to 3⅛¢
32-36 Zero Gas Oil	3¢	to 3⅛¢
28-30 Zero Fuel Oil	2⅝¢	to 2⅞¢
Natural Gasoline	3⅞¢	

Marketers and brokers report their buying price today on the low octane motor grade gasoline at 4⅝¢, with occasional cars at 4½¢, f. o. b. Group 3. Natural gasoline prices are showing some improvement.

Below is a comparison of our finished stocks on hand as of November 1st and November 8th:

	November 1st	November 8th
Tydol Ethyl	80,000	184,000
Hi-Test Tydol	1,150,000	1,182,000
Bronze Leaded	585,000	150,000
60/62-437	470,000	499,000
Tydol Aero	42,000	8,000
Total	2,327,000	2,023,000
Kerosene	162,000	123,000
Distillate	1,078,000	873,000
Tractor Fuel	42,000	40,000
Stoddard Solvent	24,000	24,000
Gas Oil	10,000	251,000
Fuel Oil	3,453,000	3,622,000

Total finished gasoline stocks have decreased approximately 300,000 gallons since the first of the month. This is due to bronze leaded grade decreasing below November 1st figures.

5032 We are showing below a comparison of our shipments with estimated schedule for the period November 1st to November 7th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	24,000	20,000	83.3
Hi-Test Tydol	1,272,000	1,316,000	103.5
Tidex	132,000	192,000	145.4
Magnolia Ethyl	6,000	—	—
Magnolia Regular	342,000	360,000	105.3
Magnolia Third Grade	66,000	52,000	78.8
Unbranded	138,000	172,000	124.6
	1,980,000	2,112,000	106.6
Kerosene	144,000	120,000	83.3
Distillate	144,000	200,000	138.9
Tractor Fuel	18,000	16,000	88.9
Gas Oil	96,000	96,000	100.0
Fuel Oil	—	840,000	—

Total gasoline shipments show approximately 106% of our estimate, with all grades above schedule except Ethyl gasoline and Magnolia Third Grade. Kerosene shipments have been slowing up this week. However the other burning oils are moving more briskly.

J. W. Warner.

JFB/OS

5033 GOVERNMENT EXHIBIT NO. 277.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 46.

To: Mr. J. D. Collins From: J. W. Warner

Date: November 18, 1935

Refiners and marketers alike have reported less activity in the tank car gasoline market during the past week. The falling off of gasoline sales is the usual expectancy for this season of the year and is accepted as a natural problem to be worked out through the adjustment of refinery crude runs.

Manufacturers in general have realized in the last few months the importance of unselfish practices for the good of the industry. Refiners, large and small, have continued to contribute this week toward the firmness of the present market by endeavoring to hold their gasoline production in line with seasonal market demands.

Many of the larger plants have cut their own production short in order that they may assist the small refiners to dispose of their gasoline. Most of the small producers depend entirely on the spot market as an outlet for their gasoline output, and inter-refinery buying is conceded to be the outstanding feature of support in the prevailing market.

The East Texas group of refiners are reported to be in good shape, as gasoline orders placed early in the week absorbed most of their available material. Oklahoma and North Texas refiners, however, have been offering material a little more freely the last few days, due to the dull open market demand.

Subnormal service station prices in Illinois and certain other northern states continue in effect. The efforts which are being made to correct this condition have been successful to the extent that they have kept the subnormal area fairly well localized.

Kerosene sales are reported to be slow. Movement of other burning oils has also been somewhat disappointing to marketers, as jobbers apparently are not willing to build up their stocks beyond current demand.

Published quotations on the general list of refinery products for today are as follows:

5034

U. S. Motor,	Below 62 Octane	4¾¢	to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢	to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢	
60/62-400,	Below 62 Octane	4¾¢	to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢	to 5¾¢
60/62-400,	71 Octane and above	5¾¢	
68/70-360		5¢	to 5¼¢
42-44 Kerosene		3⅝¢	to 3¾¢
41-43 Kerosene		3⅜¢	to 3⅝¢
38-40 P. W. Distillate		3⅛¢	to 3⅜¢
38-40 L. S. Distillate		3¢	to 3⅛¢
32-36 Zero Gas Oil		3¢	to 3⅛¢
28-30 Zero Fuel Oil		2⅝¢	to 2⅞¢
Natural Gasoline		4¢	

Marketers and brokers report their buying price today on the low octane motor grade gasoline at 4½¢ to 4⅝¢, f. o. b. Group 3. Natural gasoline prices have advanced ⅛¢ during the past week.

Below is a comparison of our finished stocks on hand as of November 1st and November 15th:

	November 1st	November 15th
Tydol Ethyl	80,000	167,000
Hi-Test Tydol	1,150,000	1,086,000
Bronze Leaded	585,000	51,000
60/62-437	470,000	513,000
Tydol Aero	42,000	34,000
Total	2,327,000	1,851,000
Kerosene	162,000	52,000
Distillate	1,078,000	781,000
Tractor Fuel	42,000	—
Stoddard Solvent	24,000	20,000
Gas Oil	10,000	224,000
Fuel Oil	3,453,000	3,852,000

Total finished gasoline stocks show a considerable reduction today compared to November 1st, which is reflected in bronze leaded gasoline. Our kerosene stock has also been reduced approximately 100,000 gallons since the first of the month.

5035 We are showing below a comparison of shipments with our estimated schedule for the period November 1st to November 14th, inclusive:

	Schedule	Shipments	Percent
Tydol-Ethyl	48,000	24,000	50.0
Hi-Test Tydol	2,544,000	2,600,000	102.2
Tidex	264,000	324,000	122.7
Magnolia Ethyl	12,000	8,000	66.7
Magnolia Regular	684,000	810,000	118.4
Magnolia Third Grade	132,000	164,000	124.2
Unbranded	276,000	288,000	104.3
	3,960,000	4,218,000	106.5
Kerosene	288,000	264,000	91.6
Distillate	288,000	424,000	147.2
Tractor Fuel	36,000	24,000	66.6
Gas Oil	192,000	168,000	87.5
Fuel Oil	——	1,560,000	—

Total gasoline shipments equal 106% so far this month. Although we feel shipments will possibly be on a decline the remainder of the month, we anticipate shipments to compare very favorably with our estimate.

J. W. Warner.

JFB/OS

5036 GOVERNMENT EXHIBIT NO. 278.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 47

To: Mr. J. D. Collins From: J. W. Warner

Date: November 23, 1935.

The refinery gasoline market showed signs of further weakness in the Mid-Continent region this week.

East Texas group of refiners were said to have a considerable amount of available gasoline at the end of the week, as inter-refinery buying failed to develop in the East Texas district sufficiently to absorb the quantity this group of refiners had to offer. The exact amount of surplus gasoline can not be readily confirmed; however it is estimated at 100 cars.

Due to a very dull spot market throughout the Midwest territory gasoline was allowed to accumulate in other refining districts. North Texas refiners reduced their prices slightly in order to obtain additional orders. Reports were also heard this week of odd car lots of low octane motor gasoline sold in Oklahoma at lower prices.

Observers are stressing the importance of a further reduction of refinery crude runs, as production is generally conceded to be too high in comparison with the present market demand.

Gasoline published prices are still unchanged at the end of this week, in spite of the lower resale tank car quotations. However, marketers feel published quotations can not possibly be maintained at the present levels unless quick action is taken to clear the open market of distress material.

The kerosene market continued dull during this week. However, other burning oils showed much improvement. All grades of zero oils were in good demand and marketers reported material scarce at established prices.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢

5037

60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢

42-44 Kerosene	3⅝¢ to 3¾¢
41-43 Kerosene	3⅜¢ to 3⅝¢
38-40 P. W. Distillate	3⅛¢ to 3⅜¢
38-40 L. S. Distillate	3¢ to 3¼¢
32-36 Zero Gas Oil	3¢ to 3⅛¢
28-30 Zero Fuel Oil	2⅝¢ to 2⅞¢
Natural Gasoline	4¢

Below is a comparison of our finished stocks on hand as of November 1st and November 22nd:

	November 1st	November 22nd
Tydol Ethyl	80,000	138,000
Hi-Test Tydol	1,150,000	1,824,000
Bronze Leaded	585,000	315,000
60/62-437	470,000	474,000
Tydol Aero	42,000	31,000
	2,327,000	1,851,000
Kerosene	162,000	52,000
Distillate	1,078,000	690,000
Stoddard Solvent	24,000	20,000
Gas Oil	10,000	116,000
Fuel Oil	3,453,000	3,928,000

Total finished gasoline stocks today are the same as were shown for last week, but approximately 500,000 gallons less than they were on November 1st.

We are showing below a comparison of shipments with our estimated schedule for the period November 1st to November 21st, inclusive:

	Schedule	Shipments	Percent
Tydol-Ethyl	72,000	44,000	61.1
Hi-Test Tydol	3,816,000	4,012,000	105.1
Tidex	396,000	376,000	94.9
Magnolia Ethyl	18,000	8,000	44.4
Magnolia Regular	1,026,000	1,215,000	118.4
Magnolia Third Grade	198,000	212,000	107.0
Unbranded	414,000	308,000	74.3
	5,940,000	6,175,000	103.9

5038	Schedule	Shipments	Percent
Kerosene	432,000	544,000	125.9
Distillate	432,000	576,000	133.3
Tractor Fuel	54,000	48,000	88.8
Gas Oil	288,000	308,000	106.9
Fuel Oil	——	2,380,000	—

Total gasoline shipments equal 103.9% of our schedule so far this month. Our heating oil shipments are also above our estimate, due to colder weather.

J. W. Warner.

JFB/OS

5039

GOVERNMENT EXHIBIT NO. 279.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 48

To: Mr. J. D. Collins **From: J. W. Warner**

Date: November 30, 1935

The gasoline market in the Mid-Continent region has reflected further weakness in the last few days. Published tank car quotations on the low octane motor grade declined ⅛¢ on Tuesday. The reason which is attributed for this break is that East Texas refiners are no longer able to move their entire gasoline output to Gulf Coast points and have turned to the north Mid-Western market for an outlet. Realizing that they must compete with Oklahoma and North Texas suppliers, they are forced to lower their prices as a means of securing orders.

All things being equal, most gasoline jobbers will purchase East Texas gasoline in preference to material from other refining districts, knowing from experience it is superior to the majority of third grade gasoline, the anti-knock quality being approximately ten to fifteen points higher than straight run motor gasoline from other districts. This being true, and refiners in Oklahoma and North Texas not being willing to lose the small amount of gasoline business available on the spot market, they have also lowered quotations.

Several marketers of Oklahoma and North Texas gasoline are in urgent need of orders, as shown by the fact that they have lowered their prices in an attempt to obtain quick shipping instructions, but with little success. Observers feel that some very definite action must be taken to clear from the open market all surplus gasoline. Unless this is done a general breakdown in prices is probable, in spite of efforts of many manufacturers to keep production in line with the seasonal decline in market demand.

Inter-refinery trading, which has been the outstanding feature of support for the last several months, is still going on, but the quantity of gasoline now being removed from the open market through this channel is less than during past weeks. With renewed interest along this line marketers who are in close contact with the situation and who have made a careful study of conditions believe market stability and confidence can easily be restored.

Tank wagon and service station prices in the Indiana territory are still disturbing. Not much hope is being expressed for correcting this situation, as long as refinery quotations remain unsettled.

5040 The burning oil market is showing gradual improvement, as marketers report it is becoming more difficult to buy the zero grades at present quoted prices. However, jobber demand is practically unchanged, as no severe cold weather has yet been experienced.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	4⅝¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4⅝¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3⅛¢ to 3¼¢
38-40 L. S. Distillate		3¢ to 3¼¢
32-36 Zero Gas Oil		3¢ to 3¼¢
28-30 Zero Fuel Oil		2⅝¢ to 2⅞¢.
Natural Gasoline		4⅛¢

Brokers report their buying price today at 4⅜¢ to 4½¢ on the low octane motor grade gasoline, with possibly the greater portion moving at 4⅜¢. Natural gasoline prices have been advanced ⅛¢ this week.

Below is a comparison of our finished stocks on hand as of November 1st and November 29th:

	November 1st	November 29th
Tydol Ethyl	80,000	115,000
Hi-Test Tydol	1,150,000	2,586,000
Bronze Leaded	585,000	205,000
60/62-437	470,000	705,000
Tydol Aero	42,000	21,000
Total	2,327,000	3,632,000
Kerosene	162,000	170,000
Distillate	1,078,000	628,000
Stoddard Solvent	24,000	14,000
Gas Oil	10,000	131,000
Fuel Oil	3,453,000	4,053,000

5041 Total finished gasoline stocks today are approximately 1,300,000 gallons above our figures shown for November 1st.

We are showing below a comparison of shipments with our estimated schedule for the period November 1st to November 27th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	92,000	68,000	73.9
Hi-Test Tydol	4,876,000	5,164,000	105.9
Tidex	506,000	468,000	92.5
Magnolia Ethyl	23,000	16,000	69.6
Magnolia Regular	1,311,000	1,689,000	128.8
Magnolia Third Grade	253,000	228,000	90.1
Unbranded	529,000	432,000	81.7
Total	7,590,000	8,065,000	106.3
Kerosene	552,000	704,000	127.5
Distillate	552,000	708,000	128.3
Tractor Fuel	69,000	48,000	69.6
Gas Oil	368,000	388,000	105.4
Fuel Oil	—	3,080,000	—

Total percentage of gasoline shipments to schedule equal 106% so far this month. However, shipments in comparison to last month's shipments are considerably less. November Tydol shipments in cars, including compartment cars, are 160 less than October shipments. Ethyl gasoline shipments have decreased by 5 cars and Tidex shipments by 54 cars.

J. W. Warner.

JFB/OS

5042 GOVERNMENT EXHIBIT NO. 280.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 49

To: Mr. J. D. Collins From: J. W. Warner
Date: December 7, 1935

The Mid-Continent refinery gasoline market has shown considerable improvement during the past few days. At the close of last week only small hope was advanced for the possibility of stabilizing gasoline prices. Refiners in all districts were pressing distributors for orders in an attempt to dispose of their surplus gasoline stocks, fearing a general breakdown in the price structure. However, due to the rallying of inter-company buyers, confidence has been restored to a large degree.

Strength in the gasoline market is undoubtedly due to more aggressive purchasing of East Texas gasoline by several large refinery buyers. Orders for several hundred cars were reported placed for delivery over this week, which, together with the quantity regularly absorbed each week, virtually cleaned up all distress offerings in that district, most of the material being consigned to Gulf Coast points. Northern buyers, however, were being offered odd carlots of low octane U. S. Motor gasoline from East Texas, as Gulf Coast buyers considered the end point on this grade of gasoline too high to meet their requirements. The major portion of the material going south for export or coastwise shipment has an end point of less than 400. Observers concede that the East Texas market holds the key to the general gasoline situation in the Mid-Continent region, as the favorable reaction there has in turn greatly strengthened sentiment in the Group 3 District.

Jobber spot demand for gasoline is considered dull by open market traders today. Contract shipments are reported to be moving comparatively well for this season of the year.

Although kerosene demand is rather erratic, other zero burning oils are in good demand. Marketers report supplies of the better grades are difficult to locate at established published prices. Refiners are apparently storing their production as much as possible to apply against contract orders.

Published quotations on the general list of refinery products for today are as follows:

5043 U. S. Motor,	Below 62 Octane	4⅝¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4⅝¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3¼¢ to 3⅜¢
38-40 L. S. Distillate		3¢ to 3¼¢
32-36 Zero Gas Oil		3¢ to 3¼¢
28-30 Zero Fuel Oil		2¾¢ to 2⅞¢
Natural Gasoline		4⅛¢ to 4¼¢

Brokers and other marketers report their resale buying price on the low octane motor grade gasoline at 4⅜¢ to 4⅝¢. Natural gasoline prices are unchanged.

Below is a comparison of our finished stocks on hand as of November 1st and December 1st:

	November 1st	December 1st
Tydol Ethyl	80,000	89,000
Hi-Test Tydol	1,150,000	2,509,000
Bronze Leaded	585,000	115,000
60/62-437	470,000	695,000
Tydol Aero	42,000	21,000
Total	2,327,000	3,429,000
Kerosene	162,000	164,000
Distillate	1,078,000	553,000
Stoddard Solvent	24,000	14,000
Gas Oil	10,000	118,000
Fuel Oil	3,453,000	4,160,000

Total finished gasoline stocks have increased approximately 1,000,000 gallons since November 1st. Our stock of 38-40 Distillate is 500,000 gallons less today than it was on the first of last month, which is perhaps running too low for this season of the year.

We are showing below a comparison of shipments with our estimated schedule for the month of November:

	Schedule	Shipments	Percent
Tydol Ethyl	100,000	92,000	92.0
Hi-Test Tydol	5,300,000	5,621,000	106.1
Tidex	550,000	507,000	92.1
5044 Magnolia Ethyl	25,000	16,000	64.0
Magnolia Regular	1,425,000	1,842,000	129.3
Magnolia Third Grade	275,000	241,000	87.6
Unbranded	575,000	520,000	90.4
Total	8,250,000	8,839,000	107.1
Kerosene	600,000	788,000	131.3
Distillate	600,000	800,000	133.3
Tractor Fuel	75,000	48,000	64.0
Gas Oil	400,000	444,000	111.0
Fuel Oil	—	3,380,000	

Total percentage of gasoline shipments equals 107% of our estimate for the month. Shipments of all grades have held up comparatively well. Burning oils are also above our schedule for the month.

J. W. Warner

JFB/OS

5045 GOVERNMENT EXHIBIT NO. 281.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 50.

To: Mr. J. D. Collins **From: J. W. Warner**
Date: December 14, 1935

Tank car gasoline quotations have reflected improvement in the Mid-Continent market this week. Published quotations were restored on the low octane grades to 4¾¢,—the price carried by publications on this grade from early summer until about the first of December. The recovery of prices is recognized by marketers to be due to the renewed buying interest in the East Texas refinery district.

Large quantities of gasoline have been moving out of East Texas for export or coastwise movement this week. Whenever support from Gulf Coast buyers is lacking in the East Texas market, as it was about two weeks ago, gasoline from that district moves northward in competition to the natural marketing territory of Oklahoma, North Texas and Kansas refiners. This invariably disturbs supply and demand to the extent that prices are generally lowered. These periodical disturbances, however, have been less frequent the last six or eight months, because of the regularity with which major company buyers have absorbed all the material in the East Texas area. Information from East Texas today is especially favorable. Buyers report they are encountering difficulty in locating gasoline for prompt shipment, as orders placed early in the week apparently cleaned up all available material. Next week, however, may be a different story.

Marketers in general are advocating a further reduction in gasoline production. A recent survey by some observers of refinery operations for December in East Texas and other Mid-Continent districts indicates refinery crude runs are being reduced ten to twelve per cent under November. However, the percentage of decrease is reported estimated rather than actual calculations, but it is sufficient to reflect that refiners are doing everything possible to prevent surplus gasoline from being a burden on the open market.

The hot oil situation in East Texas is reported to be showing great improvement. Confiscated oil is gradually disappearing, and this is having a favorable effect on intrastate gasoline prices. Refiners are quoting 9½¢ at truck docks this week. This price includes the tax of 5¢, leaving the refiner a net realization of 4½¢, or only ⅛¢ less than Federal tendered gasoline moving to Gulf ports.

5046 Jobber spot demand for gasoline has been dull throughout the week. Inter-refinery purchases apparently have furnished the necessary outlet for the current quantity offered in excess of jobber requirements. Contract shipments are on a seasonal decline.

The kerosene market demand is unchanged from last week. Orders for other grades of zero burning oils are showing an increase. The price on the 38-40 distillate has advanced ⅛¢ this week.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor, Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor, 63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor, 71 Octane and above	5¾¢
60/62-400, Below 62 Octane	4¾¢ to 4⅞¢
60/62-400, 63-70 Octane	5⅝¢ to 5¾¢
60/62-400, 71 Octane and above	5¾¢
68/70-360	5¢ to 5¼¢
42-44 Kerosene	3⅝¢ to 3¾¢
41-43 Kerosene	3⅜¢ to 3⅝¢
38-40 P. W. Distillate	3¼¢ to 3⅜¢
38-40 L. S. Distillate	3⅛¢ to 3¼¢
32-36 Zero Gas Oil	3⅛¢ to 3¼¢
28-30 Zero Fuel Oil	2¾¢ to 2⅞¢
Natural Gasoline	4¼¢

Resale prices on the low octane motor grade gasoline are showing some improvement. However, brokers report they are still able to purchase material at 4⅜¢ f. o. b. Group 3 from a few suppliers. Natural gasoline prices have advanced ⅛¢ this week.

Below is a comparison of our finished stocks on hand as of December 1st and December 13th:

	December 1st	December 13th
Tydol Ethyl	89,000	81,000
Hi-Test Tydol	2,509,000	2,916,000
Bronze Leaded	115,000	216,000
60/62-437	695,000	800,000
Tydol-Aero	21,000	12,000
Total	3,429,000	4,025,000
Kerosene	164,000	179,000
Distillate	553,000	309,000
Stoddard Solvent	14,000	14,000
Gas Oil	118,000	155,000
Fuel Oil	4,160,000	3,526,000

5047 Total finished gasoline stocks show an increase of approximately 600,000 gallons over December 1st figures. Our distillate stock is now showing a decline each week, due to a heavy jobber demand.

We are showing below a comparison of our shipments for the period of December 1st to December 12th, inclusive, with the estimated schedule for that portion of the month:

	Schedule	Shipments	Percent
Tydol Ethyl	30,000	49,000	163.3
Hi-Test Tydol	1,970,000	2,004,000	101.7
Tidex	200,000	124,000	62.0
Magnolia Ethyl	10,000	—	—
Magnolia Regular	684,000	758,000	110.8
Magnolia Third Grade	80,000	95,000	118.7
Unbranded	220,000	293,000	133.1
Total	3,194,000	3,323,000	104.0
Kerosene	260,000	239,000	91.9
Distillate	460,000	474,000	103.0
Tractor Fuel	—	—	—
Gas Oil	310,000	192,000	61.9
Fuel Oil	—	1,695,000	—

Total percentage of gasoline shipments this month in comparison with the schedule is 104%. The total branded gasoline shipments equal 2,177,000 gallons to date, of which 2% is Ethyl, 92% is Tydol and 6% is Tidex.

J. W. Warner.

JFB/OS

(Handwritten Initials):
"JDC"

5048 GOVERNMENT EXHIBIT NO. 284.

Inter-Office Correspondence

Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 1

To: Mr. J. D. Collins **From: J. W. Warner**
Date: January 4, 1936

The tank car gasoline market entered the new year this week in the same steadiness that has been exhibited during the final months of 1935. Refiners are quite pleased over the gradual improvement during this period and many observers are apparently optimistic over the prospects for this year. The more conservative are hopeful of seeing continued improvement, but are more cautious in making predictions. They contend the gasoline market would quickly revert to weakness in case major refiners should see fit to discontinue their buying program in East Texas. In spite of the varying opinions, however, marketers in general agree the outlook is much brighter at this time than it was a year ago.

During the current week the spot gasoline market has been rather inactive. Some marketers report they have experienced fair business, while the majority say trading has been very dull. Inclement weather conditions existing in a large section of the Middle West is the main reason for the slow demand. On the other hand, contract suppliers report their shipments are moving a little more freely, as their distributors are now building up end-of-year depleted gasoline stocks. Jobbers are now expected to place their orders currently for their gasoline requirements as long as quotations are held stable and refiners continue to market their gasoline in an orderly manner.

Reports on the East Texas situation today show that refining district to be in fair shape, as inter-refinery buying has continued to absorb most of the gasoline production in that area. In other refining districts gasoline is available to buyers in required quantities. However, brokers report suppliers are not attempting to push sales by offering surplus material at reduced prices.

The tank wagon and service station market in the Standard of Indiana territory ended the year in fairly good shape, compared to 1934. However, there are several points still subnormal that marketers are hopeful of straightening out before many weeks. All refiners and marketers alike are now endeavoring to iron out existing difficulties in the retail market in that area before the heavy consuming season starts.

5049 The kerosene market has been reflecting improvement the last few days, due to the strong demand for all grades of zero burning and heating oils. Prime white distillate has been scarce on the open market during the past ten days and several marketers are supplying a low grade kerosene in place of this grade of distillate.

Published quotations on the general list of refinery products today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3⅜¢ to 3½¢
38-40 L. S. Distillate		3¼¢ to 3⅜¢
32-36 Zero Gas Oil		3¼¢ to 3⅜¢
28-30 Zero Fuel Oil		2⅞¢ to 3¢
Natural Gasoline		3½¢ to 3⅝¢

Gasoline resale quotations to brokers are reported to be held comparatively close to the above published prices, ranging from 4⅜¢ to 4⅝¢ f. o. b. Group 3. Natural gasoline prices have again declined this week.

Below is a comparison of our finished stocks on hand as of December 1st and January 1st:

	December 1st	January 1st
Tydol Ethyl	89,000	40,000
Hi-Test Tydol	2,509,000	1,880,000
Bronze Leaded	115,000	566,000
60/62-437	695,000	819,000
Tydol Aero	21,000	14,000
Total	3,429,000	3,319,000
Kerosene	164,000	53,000
Distillate	553,000	182,000
Stoddard Solvent	14,000	14,000
Gas Oil	118,000	37,000
Fuel Oil	4,160,000	2,913,000

Total finished gasoline stocks on January 1st are practically the same as were shown for December 1st. Tydol
Hi-Test grade is now approximately 600,000 gallons
5050 short, while our Bronze Leaded grade is above December 1st inventory by 450,000 gallons. Heating Oil stocks, you will notice from the above figures, are quite low.

We are showing below a comparison of our shipments for the month of December with the estimated schedule for that period:

	Schedule	Shipments	Percent
Tydol Ethyl	75,000	109,000	145.3
Hi-Test Tydol	5,125,000	5,233,000	102.1
Tidex	500,000	332,000	66.4
Magnolia Ethyl	25,000	6,000	24.0
Magnolia Regular	1,450,000	1,659,000	114.4
Magnolia Third Grade	250,000	187,000	74.8
Unbranded	575,000	438,000	76.2
Total	8,000,000	7,964,000	99.6
Kerosene	648,000	599,000	92.4
Distillate	1,162,000	1,144,000	98.5
Gas Oil	768,000	568,000	74.0
Fuel Oil	—	3,320,000	—

Total gasoline shipments for the month of December equal 99.6% of our estimate. The total branded shipments equal 5,674,000 gallons for the month, of which 1.9% is Ethyl, 92.2% is Tydol and 5.9% is Tidex.

J. W. Warner

JFB/OS

5051 GOVERNMENT EXHIBIT NO. 285.

Inter-Office Correspondence

Tide Water Oil Company

Tidal Pipe Line Company

Subject: Weekly Market Letter No. 2

To: Mr. J. D. Collins From: J. W. Warner

Date: January 11, 1936.

The prospective outlook broadened this week toward improvement of the gasoline market in the Mid-Continent territory, due to an advance in crude oil prices. However, to date publications have not reflected an increase in market quotations.

The announced crude advance of 15 cents per barrel, effective January 9th, in the East Texas and Conroe fields, and the ten cent advance in two Gulf Coast fields by the Sun Company, were quickly met by other major crude buyers. In addition to this, Stanolind Crude Oil Purchasing Company advanced Oklahoma and Kansas crude prices ten cents, effective the same date. Viewing these higher crude prices from a gasoline marketing standpoint observers feel published gasoline quotations should advance to some extent. Reaction to the change in crude prices is already felt, as is shown by the fact that many open market sellers have withdrawn quotations pending the possibility of an upward swing in gasoline prices. Those who have not withdrawn their gasoline offerings are asking ⅛¢ more for their material.

The extent of the upward adjustment in tank car gasoline prices depends largely on what action is taken on tank wagon and service station postings in the Standard of Indiana territory. If retail prices are advanced in the near future, refinery prices will react and increase to a greater degree. However, there are several points still subnormal which may prevent any general advance at this time. Various retail organizations and refiners have been showing considerable activity in an attempt to iron out difficulties resulting from divergent marketing policies, but to date little improvement is noticeable.

Reports relative to the East Texas tank car market are still encouraging, as inter-refinery buying has continued to absorb most of the gasoline production in that area.

Weekly prices on this material are expected to be advanced within the next few days.

Movement of gasoline this week on the spot market to jobbers has been slow. Only a slight pick-up has been noticeable as a result of the crude advance, as marketers report few additional inquiries today. Contract shipments are moving as well as can be expected at this season of the year.

5052 The kerosene market has shown some improvement over the last several days, due to the steady strong demand for zero distillate. Some marketers are still experiencing difficulty in securing enough distillate to meet their requirements and are buying a low grade kerosene to apply on these orders.

Published quotations on the general list of refinery products today are as follows:

U. S. Motor,	Below 62 Octane	4¾¢ to 4⅞¢
U. S. Motor,	63-70 Octane	5⅝¢ to 5¾¢
U. S. Motor,	71 Octane and above	5¾¢
60/62-400,	Below 62 Octane	4¾¢ to 4⅞¢
60/62-400,	63-70 Octane	5⅝¢ to 5¾¢
60/62-400,	71 Octane and above	5¾¢
68/70-360		5¢ to 5¼¢
42-44 Kerosene		3⅝¢ to 3¾¢
41-43 Kerosene		3⅜¢ to 3⅝¢
38-40 P. W. Distillate		3⅜¢ to 3½¢
38-40 L. S. Distillate		3¼¢ to 3⅜¢
32-36 Zero Gas Oil		3¼¢ to 3⅜¢
28-30 Zero Fuel Oil		3¢ to 3⅛¢
Natural Gasoline		3⅜¢ to 3½¢

Resale gasoline quotations range from 4½¢ to 4⅝¢ f. o. b. Group 3. Natural gasoline prices have declined ⅛¢ this week.

Below is a comparison of our finished stocks on hand as of January 1st and January 10th:

	January 1st	January 10th
Tydol Ethyl	40,000	196,000
Hi-Test Tydol	1,880,000	1,531,000
Bronze Leaded	566,000	276,000
60/62-437	819,000	979,000
Tydol Aero	14,000	40,000
Total	3,319,000	3,022,000
Kerosene	53,000	81,000
Distillate	182,000	154,000
Stoddard Solvent	14,000	12,000
Gas Oil	37,000	141,000
Fuel Oil	2,913,000	3,325,000

Total finished gasoline stocks today are approximately 300,000 lower than they were on January first. Most of the difference is reflected in the Hi-Test Tydol grade. Burning and heating oil stocks are still low, which is causing shipments to be currently delayed.

5053 We are showing below a comparison of our shipments with the schedule for the period January 1st to January 9th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	28,000	17,000	60.7
Hi-Test Tydol	1,386,000	1,568,000	113.1
Tidex	91,000	152,000	167.0
Magnolia Ethyl	7,000	13,000	185.7
Magnolia Regular	600,000	598,000	99.7
Magnolia Third Grade	100,000	94,000	94.0
Unbranded	140,000	143,000	102.1
Total	2,352,000	2,585,000	109.9
Kerosene	182,000	185,000	101.6
Distillate	266,000	372,000	139.8
Gas Oil	133,000	72,000	54.1
Fuel Oil	—	320,000	—

The total percentage of gasoline shipments to schedule is well over our estimate for this period. The reason for the high percentage is believed due to jobbers allowing their storage to run low for end-of-year inventories and placing orders since the first of the year to build up their required operating stocks.

JFB/OS **J. W. Warner.**

Inter-Office Correspondence

Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 3

To: Mr. J. D. Collins **From: J. W. Warner**
Date: January 18, 1936

The Mid-Continent gasoline market picture completely changed this week from the steady level maintained in tank car prices in this territory since June. Also, a general adjustment has been made in the retail price structure, which has remained undisturbed since the same date.

The gasoline market gathered strength immediately after the crude advance that became effective January 9th. At the opening of business this week stronger prices were reflected in published quotations by ⅛¢, and by Thursday published gasoline prices had been hiked ½¢ above last week. The gasoline market today has gained sufficiently in price to offset the added cost of crude oil, according to reports on refinery operations. Some observers had felt this was unlikely, due to this being the dull season of consumer demand.

Inter-refinery buying this week in the various manufacturing areas has been a great help in absorbing gasoline offered, which has prevented any surplus gasoline from hindering the upward price trend of the tank car market.

Tank wagon and service station gasoline price advances throughout the several major marketing territories have been a most important contributing factor in stabilizing refinery prices this week. Magnolia Petroleum Company was the first to announce the advance of one cent in Texas. Oklahoma prices are also up one cent, while the Standard of Indiana, effective January 17th, boosted their postings on all grades of gasoline ½ cent, along with the Standard of Ohio.

This higher retail price in the Indiana territory gives jobbers the same net realization they were making last week, as the cost of their gasoline requirements has also advanced ½ cent. There are still several subnormal points which have caused considerable disturbance for several months. Marketers hope, however, to see this condition corrected before many weeks.

The jobbers spot market demand for gasoline has remained comparatively dull, as jobbers purchasing material on the open market are apparently not interested in building up their stocks beyond their current requirements. Some refiners report contract gasoline shipments have been moving well, while others report only a fair volume of business.

The kerosene market has shown some improvement in demand the last few days. Prices have been advanced slightly by some refiners. Other grades of zero burning oils are being offered more freely at this time, which is causing prices to be shaded by a few marketers.

5055 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 octane	5¼¢ to 5⅜¢
U. S. Motor,	63-70 octane	6⅛¢ to 6¼¢
U. S. Motor,	71 octane and above	6¼¢
60/62-400,	Below 62 octane	5¼¢ to 5⅜¢
60/62-400,	63-70 Octane	6⅛¢ to 6¼¢
60/62-400,	71 Octane and above	6¼¢
68/70-360		5⅜¢ to 5⅝¢
42-44 Kerosene		3⅝¢ to 3⅞¢
41-43 Kerosene—		3½¢ to 3¾¢
38-40 P. W. Distillate		3⅜¢ to 3½¢
38-40 L. S. Distillate		3¼¢ to 3⅜¢
32-36 Zero Gas Oil		3¼¢ to 3⅜¢
28-30 Zero Fuel Oil		3¢ to 3⅛¢
Natural Gasoline		3¾¢

Marketers and brokers report their resale buying price today at 4⅞¢ to 5⅛¢ f.o.b. Group 3. Natural gasoline prices are up ¼¢.

Below is a comparison of our finished stocks on hand as of January 1st and January 17th:

	January 1st	January 17th
Tydol Ethyl	40,000	187,000
Hi-Test Tydol	1,880,000	2,260,000
Bronze Leaded	566,000	225,000
60/62-437	819,000	896,000
Tydol Aero	14,000	30,000
Total	3,319,000	3,598,000
Kerosene	53,000	139,000
Distillate	182,000	172,000
Stoddard Solvent	14,000	—
Gas Oil	37,000	139,000
Fuel Oil	2,913,000	3,377,000

Total finished gasoline stocks today are approximately 300,000 gallons over stocks for January 1st. Hi-Test Tydol grade has increased, while the Bronze Leaded grade is off to some extent.

5056 We are showing below a comparison of our shipments with the schedule for the period January 1st to January 16th, inclusive.

	Schedule	Shipments	Percent
Tydol Ethyl	52,000	19,000	36.5
Hi-Test Tydol	2,522,000	2,846,000	112.8
Tidex	169,000	238,000	140.8
Magnolia Ethyl	13,000	13,000	100.0
Magnolia Regular	754,000	1,029,000	136.5
Magnolia Third Grade	130,000	150,000	115.4
Unbranded	260,000	353,000	135.8
Total	3,900,000	4,648,000	119.2
Kerosene	338,000	423,000	125.1
Distillate	494,000	683,000	138.3
Gas Oil	247,000	119,000	48.2
Fuel Oil	—	831,000	—

The total percentage of gasoline shipments to schedule is well over our estimate for this period, Shipments of all products have been moving well due to the advancing market. Branded gasoline shipments equal 3,103,000 gallons so far this month, of which 0.6% is Ethyl, 91.7% is Tydol and 7.7% is Tidex.

JFB/OS J. W. Warner.

5057 GOVERNMENT EXHIBIT NO. 287.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 4

To: Mr. J. D. Collins From: J. W. Warner
Date: January 25, 1936

The gasoline market in the central region became steady early this week, after the general upward revision in prices last week. Normal routine business has been restored and marketers are now accepting the higher gasoline prices as being firmly established.

Refiners have withheld from offering large quantities of gasoline this week on the open market. They are not attempting to push jobbers for orders or to increase business by offering lower prices to brokers. It is recognized that distributors are not interested in placing large orders at the present time, due to unfavorable weather for gasoline consumption. Travel has been practically paralyzed in several northern states by blizzards the last few days. A report was heard today that one refiner in Louisiana was in urgent need of selling approximately 70 cars of gasoline. We find, however, that this material has not yet disturbed spot quotations, as the refiner in question is hopeful of securing orders from major companies.

Neither are refiners, as a rule, making any attempt to increase gasoline production because of higher gasoline prices, but instead are trying to curb surplus material that might cause the newly established prices to weaken. Reports from East Texas indicate refiners in that area are hard pressed for sufficient crude oil to supply their needs and are now offering premiums for additional crude connections, as they were before the price advance. We find, however, by talking with a very well informed observer of that field, that this is propaganda to a large degree. He further states, however, refiners are paying a small gathering charge, rather than haul the crude, but beyond this there is nothing to the rumor. In fact, he reports that gasoline production in East Texas for December was the lowest during the year.

Inter-refinery gasoline buying is being continued in East Texas. The steady demand created by major companies' active purchasing has kept this field from being a disturbing factor in the Mid-Continent gasoline market. Refiners purchasing in East Texas this week are paying 5⅛¢ f.o.b. refinery for the low octane grade.

The Mid-West kerosene market is reported to be in comparatively good shape. Demand is not strong, but on the other hand there are only a few suppliers now offering material on the open market. The other zero grades of burning oils have had a good play this week, due to record breaking low temperatures.

5058 Improvement in the natural gasoline market has been quite noticeable this week, due to court injunctions being dissolved in the Texas Panhandle. This will automatically cause producers to restrict their production in line with conservation laws.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 octane	5¼¢ to 5⅜¢
U. S. Motor,	63-70 octane	6⅛¢ to 6¼¢
U. S. Motor,	71 octane and above	6¼¢
60/62-400,	Below 62 octane	5¼¢ to 5⅜¢
60/62-400,	63-70 Octane	6⅛¢ to 6¼¢
60/62-400,	71 Octane and above	6¼¢
68/70-360		5⅜¢ to 5⅝¢
42-44 Kerosene		3¾¢ to 3⅞¢
41-43 Kerosene		3½¢ to 3¾¢
38-40 P. W. Distillate		3⅜¢ to 3½¢
38-40 L. S. Distillate		3¼¢ to 3⅜¢
32-36 Zero Gas Oil		3¼¢ to 3⅜¢
28-30 Zero Fuel Oil		3¢ to 3¼¢
Natural Gasoline		4¢

Marketers and brokers report their resale buying price today at 5¢ to 5⅛¢ f.o.b. Group 3. Natural gasoline prices have been advanced ¼¢.

Below is a comparison of our finished stocks on hand as of January 1st and January 24th:

	January 1st	January 24th
Tydol Ethyl	40,000	158,000
Hi-Test Tydol	1,880,000	2,192,000
Bronze Leaded	566,000	411,000
60/62-437	819,000	789,000
Tydol Aero	14,000	42,000
Total	3,319,000	3,592,000
Kerosene	53,000	121,000
Distillate	182,000	172,000
Stoddard Solvent	14,000	—
Gas Oil	37,000	84,000
Fuel Oil	2,913,000	3,233,000

Total finished gasoline stocks today are approximately the same as were reported for last week, and 300,000 gallons higher than January 1st figures.

5059 We are showing below a comparison of our shipments with the schedule for the period January 1st to January 23rd, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	76,000	35,000	46.1
Hi-Test Tydol	3,686,000	4,155,000	112.7
Tidex	247,000	336,000	136.0
Magnolia Ethyl	19,000	24,000	126.3
Magnolia Regular	1,092,000	1,426,000	130.6
Magnolia Third Grade	190,000	214,000	112.6
Unbranded	380,000	364,000	95.8
Total	5,690,000	6,554,000	115.2
Kerosene	494,000	562,000	113.8
Distillate	722,000	944,000	130.7
Gas Oil	361,000	424,000	117.4
Fuel Oil	—	1,926,000	—

The total percentage of gasoline shipments to schedule is four points lower than last week. However, the percentage is still well over our estimate. Kerosene, Distillate and Gas Oil shipments have been moving extremely well.

J. W. Warner.

JFB/OS

5060 GOVERNMENT EXHIBIT NO. 291.

(Pencilled notation):

Please
return
to J. D. C.
"E. L. S."

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 8.

To: Mr. J. D. Collins From: J. W. Warner

Date February 22, 1936

Severe weather conditions have continued to be the influencing factor on the gasoline market throughout the Mid-Continent territory. Open market trading has been practically nil during the week, and while the majority of refiners have followed the policy of not making any attempt to move spot gasoline in view of the light demand, nevertheless small lots have been available at slightly reduced prices, and as a result published quotations declined today ⅛¢ on both low octane and middle bracket motor gasoline.

In view of the exceptionally slow demand this drop in published quotations was not entirely unexpected, for the reason that only a few odd cars offered on the open market at below the going price could influence published quotations, due to the limited number of open market transactions being made each day. The January advance in published quotations, which was made immediately following the crude advance, has been held exceptionally well in consideration of the low gasoline consuming season.

Refiners in general do not appear uneasy in view of today's drop in quotations, as they do not feel this is an indication that gasoline prices will continue downward. While it is generally believed that the slow gasoline movement has caused the majority of refiners, both large and small, to accumulate surplus gasoline stocks, it is believed that in the majority of cases refiners will refrain from making any great effort to push this surplus material on an open market that will not absorb it without a further reduction in price.

The slow movement on open market gasoline might in some cases become a serious problem with the small refiners from the standpoint of their storage situation, but it is believed that such a situation might exist only with the group of small refiners. With the major group of refiners still following their policy of buying some of their requirements of gasoline from the small independent group, it is the opinion that no serious storage problem will arise, especially to the extent that any large quantity of gasoline will be dumped on the open market, which would result in depressing the price structure.

Contrary to the slow movement of gasoline, refiners have continued to experience a brisk demand for all grades of heating oils, especially the zero material, and as a result published quotations have advances ⅛¢ per gallon on distillate and zero gas oil during the week.

5061 The kerosene market has also continued exceptionally firm, and while the movement has not been anything unusual for this season, all indications point to a continued firm market in view of the low stocks of kerosene, which is possible due to the increased refinery cuts on heating oils during the past several weeks of cold weather.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	5¢	to 5⅜¢
U. S. Motor,	63-70 Octane	6¢	to 6¼¢
U. S. Motor,	71 Octane and above	6¼¢	
60/62-400,	Below 62 Octane	5¢	to 5⅜¢
60/62-400,	63-70 Octane	6¢	to 6¼¢
60/62-400,	71 Octane and above	6¼¢	
68/70-360		5⅜¢	to 5⅝¢
42-44 Kerosene		3⅞¢	to 4¢
41-43 Kerosene		3⅝¢	to 3⅞¢
38-40 P. W. Distillate		3⅝¢	to 3¾¢
38-40 L. S. Distillate		3½¢	to 3⅝¢
32-36 Zero Gas Oil		3½¢	to 3⅝¢
28-30 Zero Fuel Oil		3⅛¢	to 3¼¢
Natural Gasoline		3½¢	

Due to the slow demand for spot gasoline during the past week brokers have found a wide range in the resale price. They report odd carlots of low octane motor have been offered as low as 4⅝¢, but state the general asking price is 4¾¢ to 4⅞¢. No lower resale conditions have been reported this morning since the decline in published quotations effective today.

Below is a comparison of finished stocks on hand as of February 1st and 21st:

	February 1st	February 21st
Tydol Ethyl	128,000	227,000
Hi-Test Tydol	3,248,000	3,877,000
Bronze Leaded	323,000	497,000
60/62-437	805,000	1,176,000
Tydol Aero	25,000	45,000
Total	4,529,000	5,822,000
Kerosene	115,000	165,000
Distillate	268,000	181,000
Gas Oil	126,000	45,000
Fuel Oil	3,101,000	3,586,000

Due to the slow movement on gasoline during the extremely bad weather conditions in most of our territory, our gasoline stocks have naturally increased. Kerosene stocks show little change, as we have continued to receive a fairly normal movement of this product, and the above figures will show that we have practically no storage supply on distillate and gas oil, since we have been shipping these products as fast as they were manufactured.

5062 We are showing below a comparison of our shipments to our estimated schedule for the period February 1st to 20th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	51,000	49,000	96.1
Hi-Test Tydol	3,689,000	2,688,000	72.9
Tidex	255,000	162,000	63.5
Magnolia Ethyl	17,000	21,000	123.5
Magnolia Regular	1,003,000	842,000	83.9
Magnolia Third Grade	170,000	105,000	61.8
Unbranded	391,000	187,000	47.8
Total	5,576,000	4,054,000	72.7
Kerosene	561,000	509,000	90.7
Distillate	544,000	1,058,000	194.5
Gas Oil	408,000	620,000	152.0
Fuel Oil	—	2,357,000	—

The above figures indicate that our gasoline movement has been considerably below normal this month, due to weather conditions, but reports during the last few days indicate the weather is moderating in some of our marketing territory. Therefore we might see a movement during the last week of the month which will show an improvement in shipments of this material.

Our shipments on distillate and zero gas oil clearly indicate the big demand we have experienced for heating oils during this month, as you will note we are far ahead of our estimated schedule. However, we still have been unable to ship these grades of material as fast as the orders were received.

J. W. Warner.

ROA/OS

5063 GOVERNMENT EXHIBIT NO. 292.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 9.

To: Mr. J. D. Collins From: J. W. Warner
Date: February 29, 1936

The Mid-Continent gasoline market has been favored with improved weather conditions this week but nevertheless the tank car price structure has reflected further weakness due to the extremely slow demand for spot material. As a result of the light demand open market traders have not found a ready outlet for their gasoline and published quotations have declined another ⅛¢ on middle bracket motor, however, low octane motor has withstood the pressure to date and published quotations have remained the same as last week.

This week's reduction in the middle bracket grade of motor gasoline has brought the average quotation down to approximately 6¢, which is the contract price basis for majority of jobbers handling a house brand gasoline, and as a result the jobber now has a full 5½¢ gross margin of profit between delivered tank car cost and service station price. While this reduction in published quotations was not encouraging to the refiner, it was no doubt pleasing to the jobber and was viewed from their standpoint as justified for the reason this is the first time in many months that published prices have been down to a level where they had their 5½¢ basic margin as governed by the generally established service station price throughout the Standard of Indiana territory.

In spite of the lower tank car price structure that was established this week refiners do not seem unduly alarmed that there will be any great break in the market. During the latter part of the week there have been indications that the major refiners were actively purchasing new quantities of gasoline from the smaller independent plants, which will reduce the quantity of gasoline that would ordinarily be offered on the present slow open market.

Due to the slow demand for gasoline that has prevailed the past several weeks it is generally known that both the major and small refiner has surplus gasoline on hand, but only a comparatively small percentage of them seem to be making any great effort to get their material moving, therefore, not any one refining district is considered as being the direct cause for this week's reduction in quotations.

Kerosene has been the most active product in the refinery list during the week, as supplies have been scarce, and
5064 there has been a noticeable increase in inquiries from
jobbers as well as from some of the refiners who were short on stock, and as a result quotations on this product have advanced during the week. The market on distillate and zero gas oil has continued to hold comparatively firm, however, there has been a noticeable decrease in shipments due to weather conditions:

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	5¢	to	5¼¢
U. S. Motor,	63-70 Octane	5⅞¢	to	6¼¢
U. S. Motor,	71 Octane and above	6¼¢		
60/62-400,	Below 62 Octane	5¢	to	5¼¢
60/62-400,	63-70 Octane	5⅞¢	to	6¼¢
60/62-400,	71 Octane and above	6¼¢		
68/70-360		5⅜¢	to	5½¢
42-44 Kerosene		3⅞¢	to	4⅛¢
41-43 Kerosene		3¾¢	to	4¢
38-40 P. W. Distillate		3⅝¢	to	3¾¢
38-40 L. S. Distillate		3½¢	to	3⅝¢
32-36 Zero Gas Oil		3⅜¢	to	3⅝¢
28-30 Zero Fuel Oil		3⅛¢	to	3⅜¢
Natural Gasoline		3¢		

Brokers report the resale gasoline market shows practically no change from last week despite the reduction in middle bracket motor prices. Resale quotations on the low octane motor still range from 4¾¢ to 4⅞¢ per gallon except in a few cases where it is possible for them to pick up a few odd cars of distress material from a small refiner who is willing to shade his price to some extent in order to move a few cars.

Below is a comparison of our finished stocks on hand as of February 1st and February 28th:

	February 1st	February 28th
Tydol Ethyl	128,000	224,000
Hi-Test Tydol	3,248,000	4,916,000
Bronze Leaded	323,000	254,000
60/62-437	805,000	1,085,000
Tydol Aero	25,000	28,000
Total	4,529,000	6,507,000
Kerosene	115,000	81,000
Distillate	268,000	219,000
Gas Oil	126,000	22,000
Fuel Oil	3,101,000	3,571,000

5065 Total finished gasoline stocks continue to show an increase and today are approximately 2,000,000 gallons higher than at the beginning of the month, however, we naturally expect an increase in stocks as we enter the heavier gasoline consuming season. Kerosene stock has decreased, as the movement on this product has been exceptionally good for this season of the year. Distillate and zero gas oil stocks have been lowered and will be kept at a low level during the balance of the heating oil season.

We are showing below a comparison of our shipments to our estimated schedule for the period February 1st to 29th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	69,000	66,000	95.7
Hi-Test Tydol	4,991,000	3,606,000	72.3
Tidex	345,000	257,000	74.5
Magnolia Ethyl	23,000	28,000	121.7
Magnolia Regular	1,357,000	1,100,000	81.1
Magnolia Third Grade	230,000	105,000	45.7
Unbranded	529,000	299,000	56.5
Total	7,544,000	5,461,000	72.4
Kerosene	759,000	764,000	100.7
Distillate	736,000	1,415,000	192.3
Gas Oil	552,000	788,000	142.8
Fuel Oil	—	3,217,000	—

Contract gasoline shipments have shown some improvement this week, but the above figures still show that we have moved only 72% of our estimated quantity on total gasoline with Tydol gasoline shipments showing the same percentage of schedule. Due to the steady demand for kerosene our shipments have been up to our estimated schedule, while distillate and gas oil shipments have been far in excess of the quantity we anticipated for the month.

J. W. Warner

ROA:HC

5066 GOVERNMENT EXHIBIT NO. 293.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 10.

To: Mr. J. D. Collins From: J. W. Warner
Date: March 7, 1936

The tank car gasoline market in the Mid-Continent area has shown signs of improvement this week. Published quotations Wednesday regained ⅛¢ of the decline experienced since February 22nd on the second bracket motor gasoline. The low octane grade, however, is still unchanged.

Fair weather and better road conditions throughout large sections of the Middle West are helping to clear the open market of surplus gasoline. Northern buyers who have kept much of their operating capital in heating oil stocks the last six weeks are now beginning to build up their gasoline storage which was allowed to dwindle during this period. All refiners with whom we have talked today report considerable improvement in contract gasoline orders the last day or so.

Refiners seem to be quite optimistic over the present outlook for the month of March. Although it is conceded there is a real need for gasoline orders, manufacturers are not willing to sacrifice prices to move their material. It appears to be the understood policy of share what business there is at established prices, as there is little active soliciting on the part of refiners at this time. Many of the plants that are overloaded with gasoline stocks have cut down on operations to half capacity or are operating periodically until demand freely absorbs the present production.

Several of the major companies which have been currently purchasing odd carlots of surplus gasoline on the open market are reported to have increased their buying to some extent in Oklahoma and North Texas this week. Inter-refinery purchases are believed to be absorbing the greater portion of the surplus gasoline offered on today's market in these districts. The East Texas market is still considered in comparatively good shape. Major companies have continued to take a large share of the 60/62-400 end point gasoline for shipment to southern points.

Kerosene has been the most active product on the market this week. Published quotations were advanced ¼¢ per gallon. Demand from jobbers has been good, and marketers report they find it difficult to find a source of supply, even at the higher prices. Refiners that are able to make prompt shipment are largely limiting sales to contract customers, because of their low stocks.

Demand for distillate and zero gas oil has slackened to considerable degree.

5067 Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	5¢	to 5¼¢
U. S. Motor,	63-70 Octane	6¢	to 6¼¢
U. S. Motor,	71 Octane and above	6¼¢	
60/62-400,	below 62 Octane	5¢	to 5¼¢
60/62-400,	63-70 Octane	6¢	to 6¼¢
60/62-400,	71 Octane and above	6¼¢	
68/70-360		5¼¢	to 5½¢
42-44 Kerosene		4⅛¢	to 4¼¢
41-43 Kerosene		4¢	to 4¼¢
38-40 P. W. Distillate		3⅝¢	to 3¾¢
38-40 L. S. Distillate		3½¢	to 3⅝¢
32-36 Zero Gas Oil		3⅜¢	to 3⅝¢
28-30 Zero Fuel Oil		3⅛¢	to 3⅜¢
Natural Gasoline		3¢	

Brokers report slightly higher resale prices this week. Their buying price on the low octane grade ranges from 4¾¢ to 5¢, f. o. b. Group 3. Natural gasoline prices are unchanged.

Below is a comparison of finished stocks on hand as of February 1st and March 1st:

	February 1st	March 1st
Tydol Ethyl	128,000	216,000
Hi-Test Tydol	3,248,000	4,950,000
Bronze Leaded	323,000	116,000
60/62-437	805,000	1,100,000
Tydol Aero	25,000	18,000
Total	4,529,000	6,400,000
Kerosene	115,000	75,000
Distillate	268,000	242,000
Gas Oil	126,000	35,000
Fuel Oil	3,101,000	3,580,000

Total finished gasoline stocks during February continued to increase, and on March 1st they were approximately 2,000,000 gallons above February 1st figures. Our kerosene stock is still quite low.

5068 We are showing below a comparison of shipments to schedule for the month of February:

	Schedule	Shipments	Percent
Tydol Ethyl	75,000	69,000	92.0
Hi-Test Tydol	5,425,000	3,923,000	72.3
Tidex	375,000	289,000	77.1
Magnolia Ethyl	25,000	28,000	112.0
Magnolia Regular	1,475,000	1,180,000	80.0
Magnolia Third Grade	250,000	132,000	52.8
Unbranded	575,000	355,000	61.7
Total	8,200,000	5,976,000	72.8
Kerosene	825,000	801,000	97.1
Distillate	800,000	1,447,000	181.0
Gas Oil	600,000	820,000	136.7
Fuel Oil	—	3,377,000	—

During the entire month of February we experienced a very slow movement of gasoline. Total shipments equalled only 72.8% of schedule because of the unfavorable weather conditions throughout our marketing territory. Burning and heating oil shipments, on the other hand, were far above our estimate.

J. W. Warner.

JFB:OS

5069 GOVERNMENT EXHIBIT NO. 294.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 11.

To: Mr. J. D. Collins From: J. W. Warner
Date: March 14, 1936

There has been a widespread improvement in the Mid-Western gasoline market during the last ten days. The betterment has not been sensational, but there has been a general firming up of the tank car market in each district, along with a marked showing of increase in retail distribution. Although no changes have been made in published tank car prices this week, quotations are more firmly established today than they were a week ago.

Several of the smaller manufacturers of low octane gasoline are gradually being relieved of some of their surplus material by increased jobber buying and inter-refinery purchases. Fair weather has played an important part in building up market demand since March first. Although reports today from distributors are that retail consumption has been retarded to some extent the last couple of days due to snowstorms and lower temperatures in northern states, refiners indicate that car lot orders have not yet been affected and are still being received in about the same quantities as they were earlier in the week. Marketers in general do not appear uneasy about gasoline movement. They seem to believe prices will at least hold firm in spite of temporary winter weather expected between now and the heavy consuming season.

Refiners in each district are apparently optimistic over the gasoline marketing outlook for the next few months. Refinery stocks are conceded to be quite high at present, but since the large percentage of stocks in storage are held by major companies and companies having ample storage facilities, surplus material is not likely to seriously disturb the open market. In Oklahoma brokers say resale prices below 4¾¢ have disappeared. In East Texas refiners had their output sold by Thursday of this week, which is a very good indication that spot market trading is becoming more active. However, most of the gasoline in that district is still moving south to major company accounts.

Subnormal tank wagon and service station prices at a few points in the Standard of Indiana territory were advanced this week. The most important was a one cent advance at Milwaukee, which is still one cent subnormal. Marketers are attempting to bring other points into line as quickly as possible.

5070 The kerosene tank car demand continues heavy. Stocks at refineries are very low for this season, as several plants are reported to be running past due on their shipments. Distillate and zero gas oils are in fair demand, but considerably less than they were a few weeks ago. Prices, however, are unchanged from the high levels established for this year.

Published quotations on the general list of refinery products for today are as follows:

U. S. Motor,	Below 62 Octane	5¢	to 5¼¢
U. S. Motor,	63-70 Octane	6¢	to 6¼¢
U. S. Motor,	71 Octane and above	6¼¢	
60/62-400,	Below 62 Octane	5¢	to 5¼¢
60/62-400,	63-70 Octane	6¢	to 6¼¢
60/62-400,	71 Octane and above	6¼¢	
68/70-360		5¼¢	to 5½¢
42-44 Kerosene		4¼¢	to 4⅜¢
41-43 Kerosene		4⅛¢	to 4¼¢
38-40 P. W. Distillate		3⅝¢	to 3¾¢
38-40 L. S. Distillate		3½¢	to 3⅝¢
32-36 Zero Gas Oil		3⅜¢	to 3⅝¢
28-30 Zero Fuel Oil		3⅛¢	to 3⅜¢
Natural Gasoline		3¢	to 3⅛¢

Marketers and brokers report their buying price today on low octane motor gasoline is from 4¾¢ to 5¢. Natural gasoline prices are unchanged for this week.

Below is a comparison of stocks on hand March 1st and March 13th:

	March 1st	March 13th
Tydol Ethyl	216,000	302,000
Hi-Test Tydol	4,950,000	4,419,000
Bronze Leaded	116,000	64,000
60/62-437	1,100,000	757,000
Tydol Aero	18,000	44,000
Total	6,400,000	5,586,000
Kerosene	75,000	83,000
Distillate	242,000	262,000
Gas Oil	35,000	16,000
Fuel Oil	3,580,000	3,124,000

5071 Total finished gasoline stocks today are approximately 800,000 below March 1st figures. Stocks have not been replenished from unfinished gasolines to the extent of shipments. Our kerosene stock is below what it should be for this season. The Operating Department is apparently doing everything possible to build up kerosene stocks to meet spring demand from our contract customers.

We are showing below a comparison of our shipments to schedule for the period March 1st to March 12th, inclusive:

	Schedule	Shipments	Percent
Tydol Ethyl	40,000	37,000	92.5
Hi-Test Tydol	2,230,000	1,995,000	89.5
Tidex	310,000	266,000	85.8
Magnolia Ethyl	10,000	8,000	80.0
Magnolia Regular	530,000	560,000	105.7
Magnolia Third Grade	100,000	53,000	53.0
Unbranded	220,000	89,000	40.5
Total	3,440,000	3,008,000	87.4
Kerosene	350,000	451,000	128.9
Distillate	190,000	123,000	64.7
Gas Oil	120,000	152,000	126.7
Fuel Oil	1,400,000	—	—

Gasoline shipments have shown favorable improvement so far this month. Our estimate for March was increased over February schedule and the total percentage for March to date is approximately 15% higher than February was at this time of the month. Demand for kerosene from our distributors has been good, as you will notice shipments exceed schedule by 29%.

J. W. Warner.

JFB:OS

(Handwritten Notation):

"Advised JDC"

5072 GOVERNMENT EXHIBIT NO. 295.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 13

To: Mr. J. D. Collins From: J. W. Warner
Date: March 28, 1936

The Mid-Continent gasoline market has continued to show a reasonable amount of improvement this week. Refiners since March 1st have been experiencing a gradual firming up of marketing conditions. Although there has been no upward revision in published quotations up to this time, refiners have firmly held to established quotations and today are inclined toward the quoting of higher prices.

There are several apparent reasons for the tightening of the gasoline market. Gasoline orders are on a daily increase from distributors, due to better weather. The low point of gasoline consumption has been passed for the year and manufacturers are optimistic over the near relief of burdensome gasoline stocks.

The stocks of gasoline in storage in various districts are reported to be at the peak. However, there seems to be no threat in this respect to market quotations. It is generally felt since refiners have experienced no difficulty in stabilizing prices during the low season of consumption, markets should make a considerable showing in improvement from now on through the summer months. Inter refinery buying of gasoline for the last several months has been a most important factor in bringing the market around to a firm position for the opening of spring gasoline demand.

Several major companies have continued to purchase a portion of their third grade gasoline requirements. In the East Texas District refiners were virtually out of the spot market by Thursday as most plant operators had sufficient shipping instructions to carry them over until the coming week. North Texas and Oklahoma refiners are holding firm on their resale quotations and are within a close margin of published prices, giving brokers only about 1/8¢ on their sales.

A survey of the Tank Wagon and Service Station markets shows that several key points which have been subnormal for months have been advanced to normal or partially corrected within the last few weeks. Recent information shows there is still reason to look for further restorations of normal prices around the Chicago area.

The Kerosene market has reflected continued gains this week. Demand from jobbers has increased to where little material is now available at the low of published quotations. Published prices have been advanced ⅛¢ on all grades. Tractor Fuel is also in good demand, many distributors are supplying the regular 38-40 Distillate for tractor use.

5073 Published quotations on the general list of refinery products for today are as folows:

U. S. Motor,	Below 62 Octane	5¢	to	5¼¢
U. S. Motor,	63-70 Octane	6¢	to	6¼¢
U. S. Motor,	71 Octane and above	6¼¢	to	......
60/62-400,	Below 62 Octane	5¢	to	5¼¢
60/62-400,	63-70 Octane	6¢	to	6¼¢
60/62-400,	71 Octane and above	6¼¢	to	......
68/70-360		5¼¢	to	5½¢
42-44 Kerosene		4⅜¢	to	4½¢
41-43 Kerosene		4¼¢	to	4⅜¢
38-40 P. W. Distillate		3⅝¢	to	3¾¢
38-40 L. S. Distillate		3½¢	to	3⅝¢
32-36 Zero Gas Oil		3⅜¢	to	3⅝¢
28-30 Zero Fuel Oil		3⅛¢	to	3⅜¢
Natural Gasoline		3¢		

Resale gasoline prices on the Low Octane Motor grade are reported by brokers to be 4⅞¢ to 5¢ with only occasional cars at 4¾¢ f.o.b. Group 3. Natural Gasoline prices are unchanged.

Below is a comparison of stocks on hand as of March 1st and March 27th.

	March 1st	March 27th
Tydol Ethyl	216,000	261,000
Hi-Test Tydol	4,950,000	3,194,000
Bronze Leaded	116,000	244,000
60/62-437	1,100,000	288,000
Tydol Aero	18,000	—
	6,400,000	3,987,000
Kerosene	75,000	138,000
Distillate	242,000	319,000
Gas Oil	35,000	—
Tractor Fuel	—	139,000
Fuel Oil	3,580,000	2,710,000

Total finished gasoline stocks today are below figures shown for March 1st. Our Kerosene stock position is still quite low.

We are showing below a comparison of shipments with out estimated schedule for the period of March 1st to March 26th, inclusive.

5074	Schedule	Shipments	Percent
Tydol Ethyl	88,000	67,000	76.1
Hi-Test Tydol	4,906,000	4,403,000	89.7
Tidex	682,000	655,000	96.1
Magnolia Ethyl	22,000	19,000	86.3
Magnolia Regular	1,186,000	1,295,000	109.1
Magnolia Third Grade	220,000	172,000	78.1
Unbranded	484,000	359,000	74.2
Total	7,588,000	6,970,000	91.9
Kerosene	770,000	881,000	114.4
Distillate	418,000	292,000	69.8
Gas Oil	264,000	196,000	74.2
Tractor Fuel	330,000	373,000	113.0
Fuel Oil	—	3,050,000	—

The total percentage of gasoline shipments to schedule as you will notice equals 91.9% where as last week the percentage was 87.5%. We feel with the gradual gain in the movement of gasoline over the last ten days, we should be close to our estimate by the end of March.

J. W. Warner

JFB/JK

5075

GOVERNMENT EXHIBIT NO. 296.

Inter-Office Correspondence
Tide Water Oil Company
Tidal Pipe Line Company

Subject: Weekly Market Letter No. 14

To: N. Y.—Mr. J. D. Collins From: J. W. Warner
Date: April 4, 1936

The gasoline market in the Mid-Continent territory reveals no actual change in price, but has been less active during the week due to unfavorable weather conditions in many parts of the marketing territory. With the return of winter weather in numerous sections of the country the trend toward increased consumption was halted, which retarded trading activities to a noticeable degree, but published quotations have succeeded in holding to their same level.

Market observers have viewed the slow market as only temporary as well as nothing unusual, therefore express no fear of any general break in tank car gasoline prices. In view of the good showing made in maintaining a firm market during the recent long period of light demand, refiners do not anticipate any unfavorable reaction to the market at present, but instead feel it will soon resume a firm position as consumption again starts to increase.

While much comment can be heard on the subject of heavy gasoline stocks, it is the general belief the bulk of same is in the hands of major companies who are in a position to carry same. The small refiners are not considered as in a burdened position on stock since major company purchases continue to be placed in practically all districts where gasoline stocks are excessive. East Texas refiners are reported as practically out of the Northern Market and Oklahoma and North Texas refiners have not indicated any distress.

With kerosene stocks still below normal for the season of the year, quotations continue to show a tendency to strengthen. Tractor fuels have also been in active demand as jobbers prepare for the farming season to open. The recent cold period brought heating oil back into the limelight and buyers have been actively seeking supplies to tide them over with the result quotations have been exceptionally firm.

Published quotations on the general list of refinery products for today are as follows:

	U. S. Motor, below 62 Octane	5¢	to 5¼¢
	U. S. Motor, 63-70 Octane	6¢	to 6¼¢
	U. S. Motor, 71 Octane and above	6¼¢	to —
5076	60/62-400, below 62 Octane	5¢	to 5¼¢
	60/62-400, 63-70 Octane	6¢	to 6¼¢
	60/62-400, 71 Octane and above	6¼¢	to —
	68/70-360	5¼¢	to 5½¢
	42/44 Kerosene	4⅜¢	to 4⅝¢
	41/43 Kerosene	4¼¢	to 4½¢
	38/40 P. W. Distillate	3⅝¢	to 3⅞¢
	38/40 L. S. Distillate	3½¢	to 3¾¢
	32/36 Zero Gas Oil	3⅜¢	to 3⅝¢
	28/30 Zero Fuel Oil	3⅛¢	to 3⅜¢
	Natural Gasoline	3¢	

Resale gasoline prices remain practically unchanged from last week. Brokers report 4⅞¢ is the general quotation being asked by refiners on low octane motor gasoline for resale.

Below is a comparison of our stocks on hand as of March 1st and April 1st:

	March 1st	April 1st
Tydol Ethyl	216,000	234,000
Hi-Test Tydol	4,950,000	3,254,000
Bronze Leaded	116,000	198,000
60/62-437	1,100,000	298,000
Tydol Aero	18,000	24,000
Total	6,400,000	4,008,000
Kerosene	75,000	166,000
Distillate	242,000	242,000
Gas Oil	35,000	—
Tractor Fuel	—	136,000
Fuel Oil	3,580,000	2,696,000

Total finished gasoline stocks at the beginning of this month are considerably less than they were on March 1st. We have been able to lower heavy fuel oil stocks approximately 800,000 during the month.

We are showing below a comparison of shipments with our estimated schedule for the month of March, 1936:

5077	Schedule	Shipments	Percent
Tydol Ethyl	104,000	77,000	74.0
Hi-Test Tydol	5,798,000	5,529,000	95.4
Tidex	806,000	816,000	101.2
Magnolia Ethyl	26,000	35,000	134.3
Magnolia Regular	1,378,000	1,509,000	109.5
Magnolia Third Grade	260,000	180,000	69.2
Unbranded	572,000	409,000	71.5
Total	8,944,000	8,555,000	95.7
Kerosene	910,000	1,026,000	112.7
Distillate	494,000	398,000	80.6
Gas Oil	312,000	196,000	62.8
Tractor Fuel	390,000	503,000	129.0
Fuel Oil	—	3,559,000	

Gasoline shipments the last few days of March were on a gradual increase thereby increasing the total percentage of shipments to schedule to 95.7% at the end of March, while the first twelve days of the month the percentage was only 87.4%. The total branded gasoline shipments for March equalled 6,422,000 gallons of which 1% was Ethyl, 86% Tydol and 13% Tidex.

J. W. Warner

ROA:HC

5081 DEFENSE EXHIBIT NO. 305.

New York, N. Y.
March 12, 1935.

Mr. L. L. Marcell,
St. Louis, Missouri.

Dear Mr. Marcell:

I am very glad to have your note of the 12th. I heard that Mrs. Marcell and you had made a trip to Mexico City and I quite envied you as it is I know a delightful place and quite worth visiting. I sincerely trust you had a nice holiday and also some rest.

Our meeting in Kansas City was quite interesting and in some respects unique. It was necessary to clear the way and have some definite understanding with many of the individual companies as to what they were going to do, i. e., whether they were going to work constructively and cooperatively and support the efforts that were being made to eliminate bad practices and follow the leadership of the major companies. Mr. Irwin probably gave you full particulars. Each company present agreed to join in our efforts and also to support the Executive Committee of their own choosing who will sit in our major group meetings representing independent refiners. In this way we will have one group and I think will be able to move forward even more definitely and constructively than we have in the past where this group was depending on Messrs. O'Shaughnessy and Majewski to keep them informed and to represent them.

There has been considerable development in regard to "homeless" or surplus gasoline coming from the three main independent refinery centers, i. e., East Texas, Gulf, and Mid-continent. I have been devoting a great deal of time to this, especially to the Texas end of it, and definite progress has been made which is already reflecting itself in the attitude of these groups which are cooperating in an outstanding way.

I spent all day yesterday with the Allocating Committee in Washington so as to acquaint them with full details and have a check on the figures on the allocation of these particular refiners so that the program we are working on would not in some way show later that these refiners were not standing by their promises. The outlook is good and if we can hold it together, as I think we can, there ought to be a real improvement in the tank car refinery price.

Yours very truly,
C. E. Arnott

5082 GOVERNMENT EXHIBIT NO. 306.

Mr. C. E. Arnott March 27, 1935
Socony-Vacuum Oil Company, Inc.
26 Broadway
New York, N. Y.

Dear Mr. Arnott:

Last week we had all of our district sales managers throughout our territory in a meeting here at Kansas City. I had quite a conference with them about prices, and they had practically no complaint about gasoline prices, except in the territory where there was trouble with the elevators. I do not remember when we had a meeting like this, where there was so little complaint about competitive prices on gasoline; so it shows that the market is quite well stabilized on this product.

They complained a great deal about competitors selling Power Distillate and Kerosene at cut prices. Both of these products are sold in large quantities for tractor use. They seemed to think that nearly all of these lower prices were made by distributors supplied by the Class B refiners. They stated that the Stabilization Committees in the different states were working on the problem but as I understood it, they were not succeeding very well in stopping it to any great extent.

Our people reported very substantial sales in tractors, especially in North and South Dakota, stating that the tractor companies have had no such volume of sales for several years as they are having this year. Some place in North Dakota, a tractor agency sold fifty tractors in one day—and they say they are collecting cash for them. I think this will mean increased consumption in our territory.

It is almost too good to believe, the way tank car gasoline prices have been acting lately. Our 3rd grade price to jobbers is now 4⅛¢, which is up almost a cent from low point a few weeks ago. Mobilgas grade is strong at 4⅞¢. The present prices are just about cost of manufacture by our plants; so if these prices can be strengthened a half-cent per gallon additional, it will mean quite a substantial profit for us. The set margin of 5½¢ will not let our Marketing Department make any profit; but if we can collect this full 5½¢ margin, I believe the department will just about break even; therefore, if we can collect a profit on refinery sales, it will be a satisfactory showing.

LLM:k Yours very truly,

NOTE: *It is stipulated* in Exhibit 727 that this was written by L. L. Marcell manager of the White Eagle Division of Socony-Vacuum Oil Company Inc. and received by C. E. Arnott.

5083 GOVERNMENT EXHIBIT NO. 311.

March 12, 1935

Mr. C. E. Arnott
Socony-Vacuum Oil Company, Inc.
26 Broadway
New York, N. Y.

Dear Mr. Arnott:

Mrs. Marcell and I just returned from a two-weeks' vacation trip to the City of Mexico; and if you and Mrs. Arnott have not already taken this trip, I suggest that you do so, as I think you will find Mexico as interesting a foreign country as you have ever been in. You can very conveniently go by boat from New York, which is much better than the long train ride we have.

On returning to my office, I find that you had a meeting here in Kansas City of the Mid-Continent refiners' group on March 1st; and I am sorry indeed that I happened to be away. Mr. Irwin reported that you had a very interesting meeting, and I believe the accomplishment was also quite good.

Mr. Arnott, I had a conference with our Marketing people yesterday about retail prices throughout our territory, and they reported that they are holding remarkably well, so this stabilization program has stood the test of the weak tank car price, and I believe we are over the worst of the winter season condition. The buying program seems to be stimulating the gasoline tank car price, and the outlook is more hopeful than it was two weeks ago when I left for Mexico City.

Yours very truly,

LLM:k

NOTE: *It is stipulated* in Exhibit 727 that this was written by L. L. Marcell manager of the White Eagle Division of Socony-Vacuum Oil Company Inc. and received by C. E. Arnott.

5084 GOVERNMENT EXHIBIT NO. 316.

Letterhead of Tide Water Oil Company
Tulsa, Oklahoma

August 22, 1935.

Mr. R. N. Cline,
301 So. Beckham St.,
Tyler, Texas.

Dear Sir:

Our inspector at Houston reports that on August 19th he unloaded NATX 3764 which was shipped by Texas Oil Products Co. and that the quality was not satisfactory and should have rightfully been rejected. The corrosion test on same was slightly off, the color was only plus 26, and the five hour sunlight color stability test showed only plus 17.

Will you please again caution all refiners shipping gasoline for our account that they should be very careful about their color specification. After these many warnings we might find it necessary to reject their shipments if they are not up to specification as to color.

Very truly yours,
Tide Water Oil Company
R. O. Audrain
Sales Department

(Handwritten Notation):
"O. K."

5085 GOVERNMENT EXHIBIT NO. 317.

Letterhead of Tide Water Oil Company
Tulsa, Oklahoma

Mr. R. N. Cline, August 12, 1935.
301 South Beckham St.,
Tyler, Texas.

Dear Sir:

This will refer to our telephone conversation of today regarding a car of gasoline, SHPX 11195 received from Texas Oil Products Company, which did not meet our color specification. You advised the shipper would make a price adjustment if we would accept the car.

In line with the adjusted price of 1/8¢ per gallon as agreed upon, when the invoice covering this shipment is received we will reduce the price 1/8¢ per gallon and remit for same on the basis of the revised price.

Very truly yours,
Tide Water Oil Company
R. O. Audrain
Sales Department

5086 GOVERNMENT EXHIBIT NO. 318.

Letterhead of Tide Water Oil Company
Tulsa, Oklahoma

Mr. R. N. Cline, August 12, 1935.
301 So. Beckham St.,
Tyler, Texas.

Dear Sir:

This will refer to our telephone conversation of today regarding a car of gasoline, PTX 3470, received from the Century Refining Co., Overton, Texas, which did not meet our color specification. You advised the shipper would make a price adjustment if we would accept the car.

In line with the adjusted price of 1/8¢ per gallon as agreed upon, when the invoice covering this shipment is received we will reduce the price 1/8¢ per gallon and remit for same on the basis of the revised price.

Very truly yours,
Tide Water Oil Company
R. O. Audrain
Sales Department

5087 GOVERNMENT EXHIBIT NO. 319.

Letterhead of Tide Water Oil Company
Tulsa, Oklahoma

August 8, 1935.

Mr. R. N. Cline,
301 South Beckham St.,
Tyler, Texas.

Dear Sir:

This will confirm my conversation with you today when I advised that we have rejected another car of gasoline shipped by the Premier Refining Company in NATX 1961 on account of the color stability being only plus 15.

This will make four cars rejected out of our recent five car purchase from Premier, and we wish to have that number of cars cancelled off of the purchase, as we do not desire to have them replace the shipments due to the present color of their gasoline.

Please advise us promptly the name of the refiner that you will place our order with to replace these four cars and we will forward them a purchase order to cover same.

Very truly yours,
Tide Water Oil Company
R. O. Audrain
Sales Department

5088 GOVERNMENT EXHIBIT NO. 320.

Telegram

Tulsa, Oklahoma
July 31, 1935

R. D. Klein
301 South Beckham St.
Tyler, Texas

Wabash shipped two cars twenty seventh and eighth having vapor pressure ten point eight and ten point five respectively Stop Wired them were debiting their account one quarter cent per gallon and not to ship any material in excess of eight point five pounds vapor pressure Stop This is entirely out of line and we cannot handle any more material of this kind at any price

Pure Oil Co. Chamberlin

5089

GOVERNMENT EXHIBIT NO. 321.

Telegram

Tulsa, Oklahoma
August 6, 1935

R. D. Klein
301 South Beckham St
Tyler, Texas

Quote wire to Wabash Quote AGCX ten ninety three received ten point six vapor pressure CADX nine thousand received ten point eight both shipped first Stop Debiting your account one quarter cent per gallon Stop Placed instructions for ten cars shipment this week however please do not ship material until you can meet our purchase requirements acknowledging unquote.

Pure Oil Company Chamberlin

5090

GOVERNMENT EXHIBIT NO. 327.

Letterhead of The Pure Oil Company
Tulsa, Oklahoma

June 29, 1935

Mr. R. D. Klein,
301 S. Beckham St.,
Tyler, Texas

Dear Mr. Klein:

I appreciate the troubles which confront you, but the manner in which Grogan and Chief are handling our shipments continue "a pain in the neck."

For example, on the 27th of this month Grogan shipped eleven cars and Chief five, totalling sixteen cars, whereas our handling capacity at Smiths Bluff is five cars per day. This morning, I wired Kostelka, collect, that any demurrage or handling expense resulting from shipment at their convenience and not on dates specified, must be absorbed by them.

In addition to this, both Chief and Grogan and an occasional car from Wabash does not meet the specifications of our purchase order. I am not so sure, Bob, but what assessment of some penalty for failure to follow our instructions as to specifications and shipping dates, would be more effective than continuing registration of our complaints. However, before taking this action, would appreciate an expression from you. We don't want to do anything to upset the apple cart or work an undue hardship on you but we are getting "damned" tired of the negligence and indifference exhibited by these refiners.

Yours very truly,
D. K. Chamberlin

5091 GOVERNMENT EXHIBIT NO. 329.

December 16, 1935

Grogan Oil Company,
Shreveport, La.

Gentlemen: Att.: Mr. W. F. Kostelka

Acknowledge receipt of copy of your letter to Mr. Cline, under date of December 11th, regarding deduction of ¼¢ per gallon on five cars received with high vapor pressure.

At the time I discussed this matter with you, it was my opinion that we could blow the cars and reduce the vapor pressure to the maximum, cheaper than ¼¢ per gallon. At that time, you advised me to handle in the cheapest possible manner. The plant superintendent definitely refused to blow cars, stating if we could not secure a satisfactory adjustment to turn them down as he would rather not handle the material at ½¢ per gallon concession, out that he would handle these cars with the distinct understanding that any cars higher than 10½ pounds vapor pressure, received in the future be rejected for supplier's disposition. His opinion and that of our superintendent at Muskogee was to reduce to the prescribed vapor pressure would entail a loss between 7% and 10%. Gasoline purchased cost us .05615 delivered Smiths Bluff. Taking the minimum estimate of 7% would cost in the neighborhood of .4% per gallon to reduce to required vapor pressure.

I have been in "hot water" all summer due to the fact that your plant shipped material which does not meet specifications covered by our purchase orders and as a result continual embarrassment and friction is encountered when soothing the various departments. Frankly, I feel that the Manufacturing Department has been very lenient in their demands for adjustment on material failing to meet specifications as our losses have been greater than that covered by the adjustments and we would much rather reject the material than accept on the basis of previous adjustments.

The vapor pressure of the five cars in question was so much higher than our limitations that there was no excuse for your plant shipping for our account unless they utterly disregarded our specifications or rank carelessness—and I do not believe that you in all fairness expect us to absorb the expense of your refinery's mistakes.

Yours very truly,
D. K. Chamberlin

cc: Mr. R. D. Cline
Tyler, Texas

5092 DEFENSE EXHIBIT NO. 331

(Telegram from C. E. Arnott to H. W. Dodge, The Texas Company, March 14, 1935.)

(Identical with Government Exhibit 17.)

5093 DEFENSE EXHIBIT NO. 332.

Telegram

New York, N. Y.
March 14, 1935

H. W. Dodge
The Texas Co.

Retel Friday meeting will be two oclock instead of ten oclock.

C. E. Arnott

5094 GOVERNMENT EXHIBIT NO. 334.

Telegram

Milwaukee
October 11, 1935.

Mr. J. H. Romer
Socony Vacuum Oil Company Inc.
26 Broadway
New York, N. Y.

After full discussion with Tulsa regarding necessary stabilization purchases and with refinery running ahead of time promising to get into full production earlier than anticipated and with our decreased sales of metro and gasoline generally during winter months it will be necessary to notify Magnolia and Empire by October fifteenth of cancellation of exchange basis to be effective December fifteenth Stop Trust you can arrange exchange elswhere.

A. G. Maguire

CC W. P. Jacobi and Bryan S. Reid.

5095 GOVERNMENT EXHIBIT NO. 335.

February 13, 1936.

Mr. Geo. A. Booth,
Socony-Vacuum Oil Company, Inc.,
59 East Van Buren Street,
Chicago, Illinois.

Dear Mr. Booth:—

Your letter of the 11th to Mr. Schuder has been handed to the writer.

What we really had in mind was that we might occasionally need a few cars for certain trade who last summer and fall objected and refused nondescript material from East Texas and demanded Empire's. We thought rather than go out and purchase a car or two occasionally at the open market, we could work it through the exchange.

We quite agree with Mr. Reid that the understanding of our Company policy is to place all Metro purchases through Mr. Jacobi, and we have been doing so for many months. In fact, we have seventy-five cars of Metro now, overstock, that we must take in and which we have no use for at the present time.

Yours very truly,

Vice President.

McN/FS

cc Mr. Bryan S. Reid

(Handwritten Notation):

"F. E. S. Note & file
with exchange letters"

NOTE: *It is stipulated* in Exhibit 727 that this was written by Louis McNally vice president of Wadhams Oil Company and received by George A. Booth.

5096 GOVERNMENT EXHIBIT NO. 336.

Letterhead of Socony-Vacuum Oil Company
Chicago, Ill.

February 11th, 1936

Mr. F. E. Scuder
Wadhams Oil Company
907 So. First Street
Milwaukee, Wisconsin

Dear Mr. Scuder:

When you were recently in Chicago, in connection with the Magnolia Empire Exchange, you spoke to me about the possibility of your needing from four to five cars of Metro per month and inquired as to whether we would be agreeable to furnishing this from the Empire Magnolia Exchange.

I have discussed this with Mr. Reid and he advised me that it was his understanding that the company policy in this connection was that such orders should be placed through Mr. Jacobi at Tulsa and taken from the excess in the Mid-Continent Field.

Very truly yours,
G. A. Booth

(Handwritten Notations):

"Mr. McNally"
"Copy to B.S.R."
"Just a few cars for certain
trade who object to 'nondescript'
EaTex and demanded Empire. We
have 75 cars Metro overstock."

5097 **GOVERNMENT EXHIBIT NO. 337.**

Fort Worth, Texas
February 27, 1936

Gilliland Refining Company
Overton, Texas

Attention Mr. H. B. May File: RW.

Gentlemen:

We have received your letter of the 25th and we wish to advise that the purchases you have made from us have not gone unnoticed. As a matter of fact, we endeavored to purchase most of our East Texas Gasoline from your company while you were operating at Gladewater on Federal tenders. We are not in a position to purchase gasoline unless it does carry both a Federal and State tender and for some time you were not manufacturing this product at Gladewater.

If you are now handling Federal material at Gladewater, we would be more than glad to place our orders with you. As you know, we have received gasoline from many East Texas refineries but we believe that the relationship we have enjoyed with your refinery, both from the standpoint of reciprocal business and satisfactory products, has more than surpassed any of the others.

5098 You understand, of course, that under the present set-up, it is necessary that we contact Mr. Cline in Tyler before purchases are made, but he always gives us the privilege of purchasing from the company we had rather do business with you. If you will inform us whether or not you now have a Federal tender material at Gladewater, we will be more than pleased to place requisitions with your company. We had understood all along that you had Federal material at Overton but all of our stations with one or two exceptions, enjoy a freight savings out of Gladewater as compared to Overton.

We will be purchasing some gasoline within the next few days and will give you a ring before we commit ourselves to any other refinery.

We again wish to thank you for the business you have given us and just want you to know that we are ready to place instructions with your refinery if you can meet all of our requirements.

Yours very truly,
P. W. Riggins
Division Manager.
By R. W.

NOTE: *It is stipulated* in Exhibit 745 that this was written by Ray Williamson in the office of P. W. Riggins an employee of Continental Oil Company and sent to H. B. May.

5099 GOVERNMENT EXHIBIT NO. 338.

Letterhead of Gilliland Refining Company
Overton, Texas

February 28, 1936

Mr. Ray Williamson,
Continental Oil Company,
Fort Worth, Texas.

Dear Mr. Williamson:

File: RW 2-27-36

We surely appreciate the quick action and the kind remarks with regard to our products. We hope we shall be able to live up to our reputation.

It is certainly all right to have the orders come thru Mr. Cline or with his advice.

Thanking you again, I am

Cordially yours,
H. B. May

5100 GOVERNMENT EXHIBIT NO. 339.

Letterhead of Mid-Continent Petroleum Corporation, Tulsa, Okla.

April 17, 1935

Mr. C. S. Smith, Vice President,
National Refining Company,
Cleveland, Ohio.

Dear Charlie:—

I received in today's mail a letter from Harry Kuegler with reference to the possibility of buying some Q gasoline from us, and I have advised him that we would be unable to sell you anything due to decreased allocations, etc., which are forcing us to purchase currently, but that I believe I can help him find a satisfactory source.

What I really have in mind is this—If you people are going to buy I should like to make some suggestions as to where you buy, so that it may be used to help the market. In fact, I have been thinking about writing you for the past week, soliciting your support to the extent of some regular buying of either Q or third grade, or both. You are conversant with the stabilization efforts that some of us are making along these lines and it just seems to me that the National Refining Company should be willing to contribute a little because you are benefitting by the general improvement that has resulted from our efforts to date. At your convenience I would like to have your reaction to this.

With best personal regards I am

Sincerely yours,
Bob
Vice President

(Handwritten Notation):

"HWK—See me. C.S.S."

5101 GOVERNMENT EXHIBIT NO. 345.

Telegram

April 1, 1935

W A T
FW

Telegraph exact number cars you have purchased East Texas for our own stations and shipment to Houston Assume situation East Texas for this week will require our purchasing additional fifty to seventy-five cars for movement to Houston Telegraph your views

J W C

NOTE: *It is stipulated* in Exhibit 731 that this was written by J. W. Carnes, addressed to W. A. Tracey, bulk sales manager, Sinclair Refining Company, Fort Worth, Texas and received at his office.

5102 GOVERNMENT EXHIBIT NO. 346.

Telegram

New York
March 30, 1935

W. A. T. Ft. Worth
J. V. D. Kansas City

Retel O. K. purchase total seventy five cars April from Panhandle and Omar sending fifty cars to Western District buying from week to week.

J. W. C.

McD

(Handwritten Notations):

"Gaso Purch Texas"
"RLA" "JWC"

NOTE: *It is stipulated* in Exhibit 731 that this was written by D. A. McDougald, a clerk in the office of J. W. Carnes and received at the Sinclair Refining Company offices of W. A. Tracey in Fort Worth, Texas and J. V. Dippel in Kansas City, Mo.

5103 **GOVERNMENT EXHIBIT NO. 347.**

Teletype

Fort Worth
March 29, 1935

JWC
NY

Price for first week April from North Texas and Oklahoma will be four cents for USM and 4⅞ cents HC shall we prepare for fifty cars from Omar and twenty five from Panhandle throughout April on basis 19 instructions weekly Southwestern District can take 25 HC from Panhandle can Western District take fifty

WAT

(Handwritten Notation):

identical with message in Exhibit
346, to "W. A. Tracey CC J. V. Dippell,"
signed "J. W. Carnes."

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5104 **GOVERNMENT EXHIBIT NO. 350.**

Teletype

Fort Worth
March 16, 1935

JWC
NY

Retel have now purchased 30 cars from Omar and 10 from Panhandle with instructions up to 22nd making total 40 cars and have 35 more to buy over last week March Stop Omar needs approximately 15 more instructions between 15th and 22nd shall we buy for Western District Joint JVD JWC

WAT

(Handwritten Notation):

"Yes. J.V.D."

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Co., New York, N. Y.

5105 GOVERNMENT EXHIBIT NO. 351.

Telegram

March 16, 1935

W A Tracey
Fort Worth Texas

We expect to purchase a total of 50 cars from Omar and 25 cars from Panhandle over a period of 30 days assume from your telegram yesterday we have purchased either a total of 40 or 45 cars so far is there anything new on the East Texas situation

J W C

NOTE: *It is stipulated* in Exhibit 731 that this was written by J. W. Carnes and was received in the office of W. A. Tracey, Sinclair Refining Co., Fort Worth, Texas.

5106 GOVERNMENT EXHIBIT NO. 352.

Telegram

March 18, 1935

WAT
FW

Copy J V D—KC

Retel Satisfactory make purchase from Omar as outlined

JWC

(Handwritten Initials):

"R.L.A."

NOTE: *It is stipulated* in Exhibit 731 that this was written by J. W. Carnes and was received in the office of W. A. Tracey, Sinclair Refining Company, Fort Worth, Texas.

5107 GOVERNMENT EXHIBIT NO. 353.

Teletype

Fort Worth
March 22, 1935

JWC
NY

Cline could only get forty cars 400 end point 3⅞ on Federal Tender believe other buyers must pay four cents for remaining 245 cars to be shipped next week if Gilliland, South Port, Lone Star, Utah and Tireco Refineries can get Federal Tender unless you authorize do not think it necessary purchase remaining 10 cars I am positive no East Texas gasoline now moving north through brokers Stop On Monday will give instructions to Omar twenty cars HC for Western District and 10 more for Panhandle Southwestern District making 90 cars in March increasing your original 75 car authority by 15 account additional help needed by Omar your authority March 18th

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5108 GOVERNMENT EXHIBIT NO. 356.

Teletype

Fort Worth
March 26, 1935

JWC
HHF
NY

Believe will have further advance of ⅛ cent in U S M market next 48 hours situation tight in East Texas and the group kerosene not responding and weak at 3⅜ joint JWC HHF JVD

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the offices of J. W. Carnes and H. H. Fuller, Sinclair Refining Company, New York, N. Y.

5109 GOVERNMENT EXHIBIT NO. 358.

Teletype

Fort Worth
May 7, 1935

JWC
NY

Cline reports immediate relief needed 25 to 40 cars East Texas account few more refineries running price 4⅜ cents mostly loaded in sellers cars

WTD Tracey

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5110 GOVERNMENT EXHIBIT NO. 359.

Teletype

Fort Worth
June 13, 1935

JWC
NY Rush Rush

Buckley advises total need East Tex present week was cars 277 of which cars 173 placed leaving need additional cars 104 Pittsburg placed orders cars eighteen Dodge orders cars ten can you stir either of them up for immediate action

WAT

(Handwritten Notation):

"Dodge" "Hartmann"

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5111 GOVERNMENT EXHIBIT NO. 360.

Teletype

Fort Worth
February 13, 1936

JWC
NY

East Texas had four hundred five cars surplus Monday including our twenty five bought today surplus now one forty five cars Stop Buckley says Ray Parker in Houston trying to buy the surplus at four and one quarter which believe impossible Stop Parker probably got this idea from Benny Brown Stop Twenty five to fifty more at four and three quarters this week would relieve situation until Monday and approximately same amount would be looked for next week

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5112 GOVERNMENT EXHIBIT NO. 362.

Teletype

Fort Worth
April 2, 1935

JWC
NY

Reference purchases East Texas Buckley advises you agreeable purchasing sellers equipment twenty five cars advise if satisfactory to authorize shipment fifteen cars due on orders for Houston in sellers cars also if desire purchase additional this basis for Houston. Sus advises will require 8 cars latter part this week and 25 cars next week please advise

WAT

(Handwritten Initials):
"R. L. A."

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5113 GOVERNMENT EXHIBIT NO. 365.

Teletype

Fort Worth
April 4, 1935

JWC
NY Spl Rush

Price still firm 4 cents East Texas in checking with Cline this morning find no other companies have come in with orders Pure still taking their five cars daily but no definite commitment Humble Tidal Phillips havent placed any orders Sus advises will have to send cars from Chicago territory therefore asks we make his purchase basis requirements three cars a day beginning when cars can be available and arranging accordingly will apply against the fifty car purchase in buyers cars for Houston in event all arent moved prior to time central district cars available

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5114 GOVERNMENT EXHIBIT NO. 369.

Telegram

Birmingham, Ala.
April 7, 1935

Jack Carnes
New York

Have today reviewed situation with Buckley necessary you he and I go over program together and do some planning advise you bring your records with you and be prepared to go into matter at Atlanta Thursday following our Wednesday meeting there telegraph Biltmore Hotel Atlanta

C. E. Arnott

5115 GOVERNMENT EXHIBIT NO. 370.

Telegram

April 8, 1935

J W Carnes
care Koontz
Charlotte N. C.

Arnott wires necessary you he Buckley go over program together do some planning suggests you bring your records with you be prepared go into matter Atlanta Thursday stop Have statement from Tracey giving resume March 22 to date Sending tonights mail Shall I send balance file

K C W

NOTE: *It is stipulated* in Exhibit 731 that this was written by Miss K. C. Wells, Secretary to J. W. Carnes, and received by J. W. Carnes.

5116 GOVERNMENT EXHIBIT NO. 376.

Exhibit "C"

A committee at a previous Stabilization Meeting had been appointed of which Mr. Bob McDowell was Chairman to consider ways and means of establishing and maintaining an active and strong tank car market on gasoline.

This committee rendered a report to the effect that a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of Indiana territory. It was stated that this East Texas gasoline would move to the Gulf and then go to either the East Coast or for export.

A survey by the committee then indicated that the surplus gasoline, which would affect the Standard of Indiana territory only, amounted to 600 cars per month involving fifteen refining companies.

A report is attached which lists the refineries in the Mid-Continent Field who will have surplus gasoline. This report shows their capacity, their crude runs, their allocation, etc.

The program of the committee involves fourteen major companies, each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take whatever surplus gasoline this small refining unit will have from time to time. In other words, a major company would select from among the fifteen small refineries some company whose surplus or distress gasoline it could advantageously move, and in that way by dividing up these fifteen companies and these estimated 600 cars per month of distress gasoline no great burden would fall upon anyone.

A steering committee would guide and control, periodically the prices to be paid for this surplus gasoline by the major company to the small refinery. There was considerable discussion to the effect that this new program had more chance of success than any previous program because of the way the steering committee would function and the fact they would be buying on an ascending market, thereby keeping the market both active and strong, rather than buying on a descending market as previous buying movements had been and which previous movements had failed of any substantial success.

5117 It was estimated that the absorption of these 600 cars per month by fourteen major refiners would only be equivalent to curtailing their own crude runs 2%. In other words, it was intended to point out that the absorption of this gasoline by a major would not seriously affect that major's own runs.

Each purchase of a car, from time to time, by these majors of this distress gasoline, would be recorded in the Journal of Commerce as an individual sale, and the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market.

The meeting in question was attended by all of the major companies, including such companies as Globe, Skelly, Mid-Continent, etc., all of whom indicated a willingness to select one of the companies shown on the attached statement and assume responsibility for their surplus.

The writer had no knowledge and did not participate in this discussion. Mr. Dippel, however, because of his knowledge of some of the purchasing we were doing in the West, tentatively stated that we might consider taking the output of, say, the Wilcox plant. Mr. Dippel indicated he would report this matter to Mr. Carnes and handle to a conclusion as to our participation in this movement.

5118 GOVERNMENT EXHIBIT NO. 415.

Telegram

Fort Worth
February 10, 1936

JWC
New York

Trinity thirty Ocean twenty five Tyreco five Cascade thirty five Gilliland sixty five Hurricane sixty Texas Oil Products ten Premier sixty McMurray seventy five Solvex forty total four hundred five Stop Ocean Tyreco Cascade Texas Oil Products and Solvex shut down Stop This is total gasoline available for shipment this week usual buying orders two hundred cars leaving two hundred five surplus Stop Gulf bought fifty at five and one eighths Pure thirty five Texas thirty five Tidewater five Stop Please wire authority twenty five cars at five and one eighths for Houston have placed twenty three cars through Central Western Southwestern Districts Stop Will need fifty additional at four and three quarters later in week advise

W T D

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5119 GOVERNMENT EXHIBIT NO. 416.

Telegram

Fort Worth
February 17, 1936

J W Carnes
New York

Confirming conversation purchased twenty five cars in East Texas at five cents Stop This in addition ten cars local five for Chicago fifty for Gulf thirty five for Texas thirty five Pure and five Tidal five Louisiana Oil takes all current weekly manufactured if you authorize twenty five about Thursday price will be four and five eighths

W T D

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5120 GOVERNMENT EXHIBIT NO. 417.

Telegram

Fort Worth
February 19, 1936

J W Carnes
New York

Gulf paying four and five eighths for surplus gasoline dont know of any four and one quarter with possible exception Premier high vapor pressure which was offered to us at four and one half in cargo lots Stop Dont believe can purchase below four and five eighths for immediate shipment Stop Believe situation now in fair shape purchases were Sinclair Chicago five Southwestern District ten purchased Saturday and twenty additional today for balance February twenty five for Houston Stop Gulf bought ninety Texaco thirty five Pure thirty five Tidal five Stop Expected you would purchase twenty five for Houston at four and five eighths which would clean up this weeks surplus

W T D

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5121 GOVERNMENT EXHIBIT NO. 421.

Telegram

Fort Worth
March 4, 1936

J. W. Carnes
New York

In addition thirty cars four and seven eighths Monday purchased today twenty five cars four and five eighths for Houston Stop was agreeably surprised to learn a number of East Texas Refiners refused take four and five eighths claiming now in good position Stop paid five and one eighths for US Motor and HC for March believe this will be reflected in Trade Publications as market appears slightly better

WTD

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5122 GOVERNMENT EXHIBIT NO. 422.

Telegram

Fort Worth
March 15, 1935

J. W. Carnes
New York

Raymond Russell operator Phoenix Refinery Houston has 200,000 to 300,000 gallons legal gasoline on hand Houston which he wishes sell majors to avoid dumping on Houston market and disrupting price Stop Gulf and Texas apparently willing go along purchase one third with us if you agreeable I recommend we do this basis 4½¢ Houston Telegraph if you agreeable provided Gulf and Texas take one third each with us

W. T. Dinkins

5123 **GOVERNMENT EXHIBIT NO. 424.**

Telegram

New York, N. Y.
May 22, 1935

W. T. Tracey: Sinclair Refining Co.
Sinclair Bldg FTW

Satisfactory to purchase twenty five additional cars East Texas gasoline for Houston.

J W Carnes

(Handwritten Notation):

"Tide	25	"Cline	25
Pure	45	says need	37
Gulf	12	help in	60
Sinclair	60	Sellers cars	45
	142"		167"

NOTE: *It is stipulated* in Exhibit 731 that this was written by J. W. Carnes, and was received in the office of W. A. Tracey, Sinclair Refining Company, Fort Worth, Texas.

5124 GOVERNMENT EXHIBIT NO. 426.

March 15, 1935.

Mr. D. A. Brown,
Root Refining Co. (Personal and Confidential)
El Dorado, Arkansas.

Dear Duncan:—

Just after I talked with you, I had a talk with Mr. Dinkins, and he is of the same opinion that I am: that it seems unsound to pay more than U. S. Motor price for material made up of U. S. Motor Gasoline and Kerosine, but in the Interest of higher prices, we are trying to get the tractor distillate price in the rice belt raised a penny. In the event that we do, over the next two weeks, we will discuss future and better payments for this grade of fuel at that time.

Do not forget that it has taken some intense, active work on the part of all of us to get the U. S. Motor and H-C prices in tank cars where it is today. Jobber demand did not do it. You know, exactly, what I mean.

Yours very truly,
W. A. Tracey

FMB:REB

(Handwritten Notations):
"Mr. Dinkins"
"WAT"

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey or F. M. Boettner and mailed addressed as indicated.

5125 GOVERNMENT EXHIBIT NO. 430.

Telegram

Fort Worth
January 25, 1936

J. W. Carnes
New York

For week ending twenty fifth Gulf eighty Sinclair ten to Western and Central Southwestern District eight and twenty five to Houston on the twentieth and twenty five additional to Houston twenty fifth Pure thirty five Texas thirty five Continental six total two hundred twenty four Stop For week twenty seventh believe Gulf sixty Texas thirty five Pure thirty five Continental six Sinclair Western and Central ten Southwestern eight appreciate your authority fifty for Houston starting twenty seventh this will total two hundred four cars Stop On twenty eighth or twenty ninth it would be possible to purchase fifty to seventy five cars additional at four and seven eighths possibly four and three quarters for Houston jobber demand from North every week Stop believe from Premier Hurricane Gilliland and possibly Colvex could buy from two hundred to two hundred fifty cars regular three seventy five export at four and seven eighths for shipment by February twenty ninth in buyers or sellers cars at your option

WAT

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5126 GOVERNMENT EXHIBIT NO. 432.

Telegram

J. W. Carnes
New York

June 5, 1935

Purchased 15 cars from Burford 5 LaPren 5 Gilliland for Houston at 4⅝ Stop Texas Company bought 25 cars since Thursday Stop Cline needs 50 more cars balance week

W T Dinkins

W.A.T.:R.E.B.

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5127 GOVERNMENT EXHIBIT NO. 442.

Telegram

Fort Worth, Texas
July 16, 1935.

J. W. Carnes
New York

Learn from Tulsa in addition our ninety following orders

Pure	35
Tidal	40
Gulf	30
texas	10

Nothing Continental or Cities before late in week Stop Hundred additional badly needed For your information and handling.

W A T

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Traccy or F. M. Boettner or A. H. Blocker and was received in the office of J. W. Carnes, General Sales Manager, Sinclair Refining Company, New York, N. Y.

5128 GOVERNMENT EXHIBIT NO. 450.

Telegram

Fort Worth
January 5, 1936

JVD
K C MO

JWC authorized purchase & asked you supply shipping instructions 50 carloads QUE from Panhandle Wichita Falls 20 QUE Eason at Enid 10 U S Motor from Olney at Olney Tex all buyers cars Stop H C 5⅝ refinery & U S Motor 4¾ mail orders & shipping instructions direct. Acknowledge

W A T

(Handwritten Notations):

"Gasoline Purchases" "Notify A.V.B."
"Notified Bourque."

NOTE: *It is stipulated* in Exhibit 731 that this was written by W. A. Tracey and received at the office of J. V. Dipple, District Manager, Sinclair Refining Company, Kansas City, Mo.

5129 GOVERNMENT EXHIBIT NO. 454.

Letterhead of Henry L. Doherty & Company
New York, N. Y.

Mr. H. E. Brandli, March 21, 1935.
Cities Service Export Oil Company,
70 Pine Street,
New York.

Dear Sir:

We would like in here just as soon after the first of the month as possible, a statement of gasoline purchased and the name of the company, separated as regards East Texas and Group 3.

No information regarding exchanges is necessary, but in order for us to determine the over-all company's participation in a general buying movement we need to know very early in each month just what we have done, it having considerable bearing on what we might have to do in the then present month.

If any delay is necessary in order to get details, a fairly general figure estimated would suffice.

Yours very truly,
Harry D. Frueauff
Marketing and Refining Division

5130 GOVERNMENT EXHIBIT NO. 456.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

Mr. Harry D. Frueauff, March 22, 1935
Sixty Wall Tower,
New York, N. Y.

Dear Sir:

We acknowledge receipt of your letter of March 21st reference gasoline purchased in the East Texas field and Group Three.

This date will be forwarded on the first of each month as requested.

Your very truly,
H. E. Brandli

MKG

(Handwritten Initials):
"HDF" "P"

5131 GOVERNMENT EXHIBIT NO. 457.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

April 1, 1935.

Mr. Harry F. Frueauff,
c/o Henry L. Doherty & Co.
60 Wall Street,
New York, N. Y.

Dear Sir:

In accordance with request in your letter of March 21, we are listing below purchases from East Texas refiners during March:

Date of Order	Seller	Shipping Period	Gallons
March 15	Texover Refining Co.	Immediately	80,000
March 18	La Pren Refining Co.	"	32,000
March 20	Arrow Refining & Producing Co.	"	330,000
March 20	Marine Export Corp.	"	40,000
March 20	Hertzog Petroleum Co.	"	80,000
March 20	Southport Petroleum Co.	"	200,000
March 21	LaPren Refining Co.	"	56,000
March 21	Texas Oil Products Co,	"	120,000
March 25	Arrow Refining & Producing Co.	"	64,000
March 30	Texover Refining Co.	"	40,000
March 30	Texas Oil Products Co.	"	56,000
March 30	Gilliland Refining Co.	"	160,000
March 30	Chief Refining Co.	"	24,000
	Total		1,282,000

We believe that the above figures are complete. However, if we find that additional purchases were made on March 30, we will so advise you.

We did not purchase any Gasoline from the Group 3 District.

Very truly yours,
E. P. Engelke

RML:TM

(Handwritten Initials):
"HDF"

(Handwritten Notation):
"Miss M—Hold for Empire and Loreco"

5132 GOVERNMENT EXHIBIT NO. 458.

Letterhead of Cities Service Export Oil Company,
New York, N. Y.

April 3, 1935.

Mr. Harry D. Frueauff,
60 Wall Tower,
New York, N. Y.

Dear Sir:

The following purchases of Gasoline out of East Texas were made in addition to those advised you in our letter of April first.

Date of Order	Seller	Shipping Period	Gallons
March 30	Southport Petroleum Co.	Immediately	400,000
March 30	Gilliland Refining Co.	"	360,000
March 30	Texover Refining Co.	"	40,000
	Total		800,000

The above list completes our purchases for the month of March.

Very truly yours,
F. P. Engelke

RML:TM

(Handwritten Initials):
"HDF"

5133 GOVERNMENT EXHIBIT NO. 460.

Henry L. Doherty & Company

Telegram

June 13, 1935

Mr. C. E. Arnott
Socony-Vacuum Oil Company
26 Broadway
New York New York

Shall be glad to meet you Wednesday June nineteenth at the Waldorf

Harry D. Frueauff

5134 GOVERNMENT EXHIBIT NO. 461.

Henry L. Doherty & Company

Copy of Telegram Received

New York
August 1, 1935

H. D. Frueauff

Would very much like you to join me Wednesday August seventh East Foyer Waldorf Astoria ten oclock I have a number of very important matters to discuss with you this may probably be the last opportunity we shall have to discuss matters for weeks to come therefore sincerely hope you will make every effort to join me please telegraph acknowledgment.

C. E. Arnott

(Handwritten Notations):

"H. D. F." "Advise will be present." "P"

5135 GOVERNMENT EXHIBIT NO. 462.

Henry L. Doherty & Company

Telegram

August 1, 1935

C. E. Arnott
26 Broadway
New York

Retel will be present Wednesday seventh Waldorf ten AM

Harry D. Frueauff

(Handwritten Initial):

"P"

5136 GOVERNMENT EXHIBITS NO. 467, 469, 471.

Explanation:

Three letters from J. A. Welch on letterhead of Louisiana Oil Refining Corporation, Shreveport, Louisiana, to Harry D. Frueauff, Cities Service Co., dated Feb. 12, Mar. 4 and Apr. 3, 1936, respectively, stating: "We are attaching report covering gasoline purchases for the month of ...." January, February and March, 1936, respectively.

5137 GOVERNMENT EXHIBIT NO. 473.

Letterhead of Louisiana Oil Refining Corporation,
Shreveport, Louisiana

May 21, 1935.

Mr. H. D. Frueauff,
Henry L. Doherty & Co.,
Sixty Wall Street,
New York, N. Y.

Dear Sir:

As requested, we are attaching statement of our showing of gasoline purchases for the month of April, 1935.
The attached for your information.

Yours Very truly,
J. A. Welch

(Handwritten Initials):
"HDF" "P"

GOVERNMENT EXHIBIT NO. 474.

GASOLINE PURCHASES—APRIL, 1935.

Purchased From	Gallons U.S.M.	Total Gallons	Gallons Q Gaso.	Total Gals.	Grand Total
East Texas Area					
E. Texas Ref. Co., Longview, Texas	256,000		1,112,000		1,368,000
Gilliland Ref. Co., Gladewater, Texas	184,000				184,000
Oil Refineries, Inc., Overton, Texas	96,000				96,000
Southport Pet. Co., Kilgore, Texas	16,000				16,000
		552,000		1,112,000	1,664,000
El Dorado, Ark. District					
Root Refining Co., El Dorado, Ark.			232,000		232,000
Lion Oil Ref. Co., El Dorado, Ark.	8,000				8,000
		8,000		232,000	240,000
Houston, Tex. District					
American Pet. Co., Houston, Tex.	128,000				128,000
		128,000			128,000
New Orleans, La. District					
Totals		688,000		1,344,000	2,032,000

WSW-es

5139 GOVERNMENT EXHIBIT NO. 475.

**Letterhead of Louisiana Oil Refining Corporation,
Shreveport, Louisiana**

April 6, 1935.

Mr. H. D. Frueauff
Henry ~~L.~~ Doherty & Company
New York, N. Y.

Dear Sir:

We are attaching hereto, a statement of gasoline purchases made by the Louisiana Oil Companies during the month of March. This statement is being furnished as requested in your letter of March 21st.

The gallonage indicated, has been estimated as accurately as possible and furnished to you on this basis as it will be several days before actual figures will be available.

If additional information is desired on this subject, please advise.

Yours very truly,
J. A. Welch

(Handwritten Notation):

"Miss M. Get me total"

(Handwritten Initials):

"H.D.F."

GOVERNMENT EXHIBIT NO. 476.

GASOLINE PURCHASES—MARCH, 1935

EAST TEXAS AREA

Purchased From		Refinery	Gallons U.S.M.	Total Gals.	Gallons "Q" Gaso.	Total Gals.	Grand Total
East Texas Refining Co.,	Dallas, Texas	Longview, Texas	200,000		1,120,000		
Gilliland Refining Co.,	Gladewater, "	Gladewater, "	64,000				
Oil Refineries, Inc.,	Overton, "	Overton, "	152,000				
				416,000		1,120,000	
	El Dorado District						
Root Refining Co.,	El Dorado, Ark.	El Dorado, Ark.			600,000	600,000	
Lion Oil Refining Co.,	El Dorado, Ark.	El Dorado, Ark.	8,000	8,000			
	Houston District						
American Petroleum Co.,	Houston, Texas	Houston Terminal	120,000	120,000			
Totals				544,000		1,720,000	2,264,000

ES 4-3-35

Handwritten Initials):
"J.A.W."

5141 GOVERNMENT EXHIBIT NO. 477.

Letterhead of Cities Service Company,
New York, N. Y.

F

May 13, 1936.

Mr. H. E. Brandli,
Cities Service Export Oil Co.,
70 Pine Street,
New York City.

Dear Sir:

In a study of the April showings of the companies we find we are more and more approaching the period of last year when stabilization seemed to be more helpful in our earnings and, therefore, the big improvement that we noticed during the winter months is getting smaller and smaller.

It suggests to me if there is any possible thing we can do in the way of maintenance of price, in the way of taking on increased business that has a spread, of concentrating on products whose spread is larger than some others and in watching in every possible way our operating expenses; that we should concentrate on this matter day and night, have our organization do the same and see if we cannot maintain the improvement during the next few months we have been so pleased in having during the past few months.

Some of the conditions that seem to hang over the market might suggest that prices may be lower. Of course they can easily get lower if we neglect watchfulness on this. They can be maintained or improved if our efforts individually and collectively can be concentrated on getting a fair price for our products, maintaining a good wholesale price, as well as by salesmen getting the business irrespective of some other competitive situations.

Won't you please get your key men together, outline the above, possibly better in your own terms than they are now outlined, but with the idea of a concentration on an effort beginning immediately to improve our picture.

Yours very truly,
Harry D. Frueauff
Marketing & Refining Division

5142 GOVERNMENT EXHIBIT NO. 478.

April 11, 1935

Memo to Mr. F. R. Coates,
In Re:..

In connection with the present buying movement, our companies purchased in the month of March 3,202,000 gallons of gasoline in East Texas; 416,000 in Eldorado and 120,000 in Houston; also an additional 998,000 from the refiners of North and West Texas.

2,082,000 gallons of this was purchased for export, the balance saving us freight rates in our distribution, so while enabling us to cooperate with the buying movements, both of East Texas and of Group Three, we have not, except to our own advantage, affected our own operations.

Harry D. Frueauff.

(Handwritten Initial):
"P"

5143 GOVERNMENT EXHIBIT NO. 481.

Henry L. Doherty & Company

Copy of Telegram Received

New York
March 14, 1935

H. D. Frueauff

Retel Friday meeting will be two oclock instead of ten oclock.

C. E. Arnott

(Handwritten Initials):
"H. D. F."

5144 GOVERNMENT EXHIBIT NO. 482.

Telegram

Kansas City, Mo.
March 1, 1935

Pure Oil Co.
Pure Bldg Chgo

Am calling meeting Waldorf Hotel Wednesday March sixth of small group major companies to hear outcome my meeting with East Texas refiners and to consider future action surplus gasoline this and other groups that is awaiting our decision telegraph me my office 26 Broadway if you or your representative will attend matter of extreme importance and anxious you be with me.

C. E. Arnott

NOTE: *It is stipulated* in Exhibit 717 that this was received by C. B. Watson.

5145 GOVERNMENT EXHIBIT NO. 483.

The Pure Oil Company

Telegram

New York
March 15, 1935

C. B. Watson
Chgo.

Arnott holding meeting two oclock this afternoon in connection with purchase of surplus gasoline and has asked us to attend. Mac did not outline discussion that took place at last meeting but assume you are familiar with it and would like to know if you have any instructions to pass on in connection with meeting or any commitments you have authorized for purchase of surplus gasoline Stop Arnott seems extremely optimistic with results to date.

Morris.

NOTE: *It is stipulated* in Exhibit 717 that this was written by George Morris general manager of retail marketing division of Pure Oil Company.

5146

GOVERNMENT EXHIBIT NO. 485.

Telegram

March 28, 1935

Mr. C. E. Arnott
Socony Vacuum Corporation
26 Broadway
New York City

Due to fact that Board of Review meets in Washington morning of eighth I will probably be unable to personally attend meeting at Excelsior Springs Stop However will have representative present Stop Best regards.

C. B. Watson

5147

GOVERNMENT EXHIBIT NO. 487.

Mr. D. K. Chamberlin Tulsa, Oklahoma	Wholesale Marketing Executive Chicago, Ill.,

May 16, 1935

Dear Dewey:

This will acknowledge receipt of your letter of May 14th, giving us information as to the status of the buying program in East Texas.

We trust you will keep in close touch with Mr. Buckley and should it develop that the major companies generally are not adhering to the buying program you will advise us. However, as a matter of fact, and for your own information, we have been extremely short of gasoline recently, and have really needed all of the material which we have bought, and undoubtedly will continue to need it although it might be if a large portion of the companies now purchasing gasoline decide not to purchase it we would also want to discontinue our purchasing.

Therefore, believe you should keep us fully advised.

Yours very truly,
Chas. W. Snider

NOTE: *It is stipulated* in Exhibit 717 that this was written by Charles W. Snider assistant general manager of Wholesale marketing division of Pure Oil Company and received by D. K. Chamberlain.

5148 GOVERNMENT EXHIBIT NO. 488.

Inter-Company Communication

To	From
Refer to Mr. C. W. Snider	**Company or Division Wholesale Marketing**
Place Chicago, Ill.	**Place Tulsa, Oklahoma**
Subject....................	**Date May 14, 1935**

Dear Mr. Snider:

Last week was not so satisfactory in East Texas. Texas Company bought elsewhere inasmuch as no 400 end point material could be secured with vapor pressure under 9 pounds. As a result, one refinery was forced to shut down.

Another case of trouble arose when buyer's equipment failed to roll into the refinery to allow even movement, both buyer and seller becoming arbitrary in their demands, with the result that considerable arbitration was necessary before shipments were resumed.

Some of the major refiners continue to withhold their support which is unfair to those who are supporting this movement for the benefit of all. We have never taken our allocation of five cars per day any week since the buying program started but this is the result of inability on the part of the suppliers to furnish material meeting our requirements.

I told Mr. Buckley that while we wanted to support the program insofar as possible, we hoped that he would keep us advised if and when others were not doing their part. He informed me that he would be in possession of a complete resume of allocations and purchases early this week and we would be given a copy. My understanding is that Shell has never supported the program and possibly some others have failed to do their share.

Prices were advanced this week in both regions to 4½¢ and 4⅝¢-5⅜¢, in view of some of the refiners squawking because our buying price was considerably lower than the publications.

Yours very truly,
D. K. Chamberlin (Signed)

5149 GOVERNMENT EXHIBIT NO. 489.

March 22, 1935

To the Budget and Operating Committee

Gentlemen:

Assuming that it will only be necessary to purchase approximately 225,000 barrels of motor fuel after April 1st in order to cover our shortage, of which 50,000 barrels will be coming from the Barnsdall under contract, we recommend the cancellation of the contract to take effect on May 1st, purchasing the other 175,000 barrels, as Unique and "66" gasoline, to support the tank car market.

In this connection much has been done to advance the market, and with east coast refiners having a program to purchase surplus East Texas gasoline over the next four months, we feel that still further advances can be made in the tank car market and a resultant increase in the service station price.

May we have your approval.

Respectfully submitted,

FLK-CHA

cc: Executive Committee
H. A. Trower
A. M. Hughes
P. R. Phillips
H. A. Gardner

NOTE: *It is stipulated* in Exhibit 715 that this was written by F. L. Koopman and received by at least A. M. Hughes and H. A. Gardner.

5150 GOVERNMENT EXHIBIT NO. 490.

March 22, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Motor Gasoline for March 22nd:

One car from Dale W. Moore Oil Co. @ .03875 per gallon.
One car from Champlin Refining Co. @ .03875 per gallon.

Yours very truly,

GBH

NOTE: *It is stipulated* in Exhibits 715 and 742 that documents appearing as Exhibits 490 to 508 incl. were written by either Grace B. Henderson (GBH-Exs 490-494, 504-506) or J. P. Schaff (JPS-Exs. 495-503, 507-508) clerks in the tank car department of Phillips Petroleum Company and received by A. V. Bourque.

5151 GOVERNMENT EXHIBIT NO. 491.

March 23, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma

Dear Sir:

The following represents our purchases of Motor Gasoline for March 23rd:

One car from Champlin Refining Company @ .04 per gallon.

Yours very truly,

GBH

5152 GOVERNMENT EXHIBIT NO. 492.

March 25, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma

Dear Sir:

The following represents our purchases of Motor Gasoline for March 25th:

One car from Champlin Refining Company @ .04 per gallon.

Yours very truly,

GBH

5153 GOVERNMENT EXHIBIT NO. 493.

March 26, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Motor Gasoline for March 26th:

Ten cars from Cushing Refining & Gasoline Company @ .04 Per gallon.

Yours very truly,

GBH

5154 GOVERNMENT EXHIBIT NO. 494.

April 1, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Associati[illegible]
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Motor Gasoline for March 27th to March 30th inclusive:

Date	No. Cars	Price	From	Destination
March 27	1	.04	Cushing Refining & Gaso. Co.	North
March 27	1	.04375	" " " "	Oklahoma—Local
March 27	7	.04125	Dickey Refining Company	Kansas—Local
March 28	2	.04125	" " "	Kansas—Local
March 28	1	.04	Champlin Refining Company	Oklahoma—Local
March 28	1	.04	Danciger Refineries, Inc.	North
March 28	1	.04125	Wirt Franklin Petroleum Co.	Oklahoma—Local
March 29	5	.04125	Dickey Refining Company	Kansas Local
March 29	1	.04	Champlin Refining Company	Oklahoma—Local
March 29	2	.04	Bell Oil & Gas Company	Oklahoma—Local
March 29	5	.04	Cushing Refining & Gasoline Co.	North
March 30	1	.04	Champlin Refining Company	North
March 30	2	.04	Champlin Refining Company	Oklahoma—Local
March 30	1	.0375	Panhandle Refining Company	New Mexico

Yours very truly,

GBH

5155 GOVERNMENT EXHIBIT NO. 495.

April 8, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Motor Gasoline for April 1st to April 6th inclusive:

Date		No. Cars	Price	From	Destination
April	1	1	.04125	Champlin Refining Co.	Oklahoma—Local
April	2	1	.04125	" " "	" "
April	2	5	.04125	" " "	North
April	2	5	.04	Dale W. Moore Oil Co.	North
April	3	2	.04125	Champlin Refining Co.	North
April	3	1	.04125	Bell Oil & Gas Company	Oklahoma—Local
April	3	10	.04125	Taxman Refining Co.	North
April	4	1	.04125	Champlin Refining Co.	Oklahoma—Local
April	4	3	.04875	" " "	North
April	5	2	.04875	" " "	North
April	5	2	.04125	" " "	North
April	5	1	.04125	" " "	Kansas—Local
April	5	1	.04125	Bell Oil & Gas Company	Oklahoma—Local
April	6	2	.04875	Champlin Refining Co.	North
April	6	2	.04125	" " "	North
		39			

Yours very truly,

JPS:H

5156 GOVERNMENT EXHIBIT NO. 496.

April 13, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for April 8th to April 13th inclusive:

Date	No. Cars	Grade	Price	From	Destination
April 8	1	60 Oct.	.04125	Champlin Refining Co.	North
April 8	1	70 Oct.	.04875	" " "	"
April 9	5	70 Oct.	.04875	" " "	Oklahoma—Local
April 9	2	70 Oct.	.04875	" " "	North
April 9	2	60 Oct.	.04125	" " "	North
April 9	1	60 Oct.	.04125	Panhandle Refining Co.	New Mexico
April 10	1	60 Oct.	.04125	Champlin Refining Co.	North
April 10	1	60 Oct.	.04125	" " "	Kansas—Local
April 10	1	70 Oct.	.04875	" " "	North
April 10	1	70 Oct.	.04875	" " "	Oklahoma—Loca
April 10	1	60 Oct.	.0425	Wirt Franklin Pet. Co.	Oklahoma—Local
April 11	2	60 Oct.	.0425	Danciger Refineries, Inc.	North
April 11	1	60 Oct.	.0425	Champlin Refining Co.	Oklahoma—Local
April 11	4	70 Oct.	.05	" " "	Oklahoma—Local
April 11	2	70 Oct.	.05	" " "	North
April 11	2	60 Oct.	.0425	" " "	North
April 12	1	70 Oct.	.05	" " "	Oklahoma—Local
April 12	1	60 Oct.	.04625	Cushing Refining & Gaso. Co.	Oklahoma—Local
April 13	1	60 Oct.	.0425	Champlin Refining Co.	Oklahoma—Local
April 13	4	60 Oct.	.04375	Dickey Refining Co.	Kansas—Local
April 13	2	70 Oct.	.05	Champlin Refining Co.	North
	37				

Yours very truly,

JPS:H

5157 GOVERNMENT EXHIBIT NO. 497.

April 20, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for April 15th to April 20th inclusive:

Date	No. Cars	Grade	Price	From	Destination
April 15	2	60 Oct.	.0425	Panhandle Refining Co.	New Mexico
April 16	6	60 Oct.	.04375	Dickey Refining Co.	Kansas—Local
April 16	2	60 Oct.	.0425	Bell Oil & Gas Co.	Okla.—Local
April 16	1	70 Oct.	.05	Champlin Refining Co.	North
April 16	1	70 Oct.	.05	Rock Island Refining Co.	Okla.—Local
April 17	2	70 Oct.	.05	Champlin Refining Co.	North
April 17	2	60 Oct.	.0425	" " "	North
April 17	3	60 Oct.	.04375	Dickey Refining Co.	Kansas—Local
April 18	2	70 Oct.	.05125	Champlin Refining Co.	Okla.—Local
April 18	1	70 Oct.	.05125	" " "	North
April 18	1	60 Oct.	.04375	Danciger Refineries, Inc.	North
April 18	1	70 Oct.	.05125	Rock Island Refining Co.	Okla.—Local
April 19	1	70 Oct.	.05125	Champlin Refining Co.	Okla.—Local
April 19	1	60 Oct.	.04375	" " "	Okla.—Local
April 19	2	70 Oct.	.0525	Rock Island Refining Co.	North
April 19	1	60 Oct.	.045	Dickey Refining Co.	Kansas—Local
April 20	4	60 Oct.	.04375	" " "	Kansas—Local
April 20	1	60 Oct.	.04375	Eason Oil Company	North
April 20	5	70 Oct.	.0525	Rock Island Refining Co.	North
April 20	1	70 Oct.	.05125	" " " "	Okla.—Local
April 20	2	70 Oct.	.05125	Champlin Refining Co.	Okla.—Local
	42				

JPS:H

Yours very truly,

GOVERNMENT EXHIBIT NO. 498.

April 29, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for April 22nd to April 27th inclusive:

Date	No. Cars	Grade	Price	From	Destination
April 22	4	70 Oct.	.0525	Rock Island Refg. Co.	North
April 22	3	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 22	2	60 Oct.	.04375	Eason Oil Co.	North
April 22	1	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 23	2	70 Oct.	.0525	Rock Island Refg. Co.	Okla.—Local
April 23	1	60 Oct.	.04375	Champlin Refining Co.	North
April 23	4	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 23	2	60 Oct.	.04375	Eason Oil Company	North
April 24	10	60 Oct.	.04375	Taxman Refining Co.	North
April 24	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 24	2	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
April 25	2	60 Oct.	.04375	Eason Oil Co.	Okla.—Local
April 25	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 25	1	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
April 25	3	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 25	1	70 Oct.	.0525	Rock Island Refining Co.	Okla.—Local
April 25	1	70 Oct.	.0525	Rock Island Refining Co.	North
April 26	2	70 Oct.	.0525	Rock Island Refining Co.	Okla.—Local
April 26	2	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 26	1	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
April 26	2	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 26	4	60 Oct.	.04375	Eason Oil Company	Okla.—Local
April 27	1	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 27	3	60 Oct.	.04375	Eason Oil Company	Okla.—Local
	56				

Yours very truly,

JPS:H

5159 GOVERNMENT EXHIBIT NO. 499.

May 6, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for April 29th to May 4th inclusive:

Date	No. Cars	Grade	Price	From	Destination
April 29	2	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 29	10	60 Oct.	.04375	Taxman Refining Co.	North
April 29	2	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
April 30	2	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
April 30	2	70 Oct.	.0525	Rock Island Refining Co.	North
April 30	1	70 Oct.	.0525	" " " "	Okla.—Local
April 30	2	60 Oct.	.045	Champlin Refining Co.	Okla.—Local
April 30	1	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
April 30	2	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 1	1	70 Oct.	.0525	Rock Island Refining Co.	Okla.—Local
May 1	2	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 2	2	70 Oct.	.0525	Rock Island Refining Co.	North
May 2	2	70 Oct.	.0525	Champlin Refining Co.	Okla.—Local
May 2	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 2	1	60 Oct.	.045	Eason Oil Co.	North
May 2	1	60 Oct.	.045	Champlin Refining Co.	North
May 3	1	70 Oct.	.0525	" " "	Okla.—Local
May 3	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 3	10	60 Oct.	.04375	Taxman Refining Co.	North
May 3	1	60 Oct.	.045	Champlin Refining Co.	Okla.—Local
May 4	1	70 Oct.	.0525	Rock Island Refining Co.	North
May 4	1	70 Oct.	.0525	" " " "	Okla.—Local
May 4	1	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
May 4	1	60 Oct.	.045	Rock Island Refining Co.	Okla.—Local

JPS:H

Yours very truly,

5160 GOVERNMENT EXHIBIT NO. 500.

May 13, 1935

Mr. A. W. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for May 6th to May 11th inclusive:

Date	No. Cars	Grade	Price	From	Destination
May 6	2	70 Oct.	.0525	Rock Island Refg. Co.	North
May [illegible]	2	60 Oct.	.045	Eason Oil Co.	North
May 6	1	60 Oct.	.045	* * *	Okla.—Local
May 6	1	60 Oct.	.045	Champlin Refg. Co.	North
May 6	1	60 Oct.	.045	Bell Oil & Gas Co.	Okla.—Local
May 7	3	70 Oct.	.0525	Rock Island Refg. Co.	Okla.—Local
May 7	3	70 Oct.	.0525	Champlin Refg. Co.	North
May 7	4	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 7	1	60 Oct.	.045	Champlin Refg. Co.	North
May 8	1	70 Oct.	.0525	Rock Island Refg. Co.	North
May 8	3	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
May 8	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 8	1	60 Oct.	.045	Eason Oil Co.	North
May 9	5	70 Oct.	.0525	Rock Island Refg. Co.	North
May 9	1	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
May 9	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 9	2	60 Oct.	.045	Eason Oil Co.	North
May 10	1	60 Oct.	.04625	Dickey Refining Co.	Kansas—Local
May 10	2	70 Oct.	.0525	Rock Island Refg. Co.	Okla.—Local
May 10	2	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
	38				

JPS:H

Yours very truly,

5161 GOVERNMENT EXHIBIT NO. 501.

May 18, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for May 13th to May 18th inclusive:

Date	No. Cars	Grade	Price	From	Destination
May 13	3	70 Oct.	.0525	Rock Island Refg. Co.	North
May 13	1	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
May 13	2	60 Oct.	.0475	Dickey Refining Co.	Kansas—Local
May 13	3	60 Oct.	.045	Eason Oil Company	North
May 13	1	60 Oct.	.045	Champlin Refg. Co.	Okla.—Local
May 14	5	70 Oct.	.0525	Rock Island Refg. Co.	North
May 14	2	70 Oct.	.0525	" " " "	Okla.—Local
May 14	6	60 Oct.	.0475	Dickey Refining Co.	Kansas—Local
May 14	2	60 Oct.	.045	Champlin Refg. Co.	Okla.—Local
May 14	1	60 Oct.	.045	" " "	North
May 14	1	60 Oct.	.045	Rock Island Refg. Co.	Okla.—Local
May 15	1	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
May 15	3	60 Oct.	.0475	Dickey Refining Co.	Kansas—Local
May 13	2	60 Oct.	.04375	Taxman Refg. Co.	North
May 14	2	60 Oct.	.045	Taxman Refg. Co.	North
May 15	4	60 Oct.	.04625	" " "	North
May 15	2	60 Oct.	.04625	Bell Oil & Gas Co.	Okla.—Local
May 15	1	60 Oct.	04625	Rock Island Refg. Co.	Okla.—Local
May 16	3	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local
May 16	2	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 16	1	60 Oct.	.04625	Eason Oil Company	Okla.—Local
May 15	2	60 Oct.	.04625	Simms Oil Company	North
May 17	3	70 Oct.	.0525	Rock Island Refg. Co.	North
May 17	2	70 Oct.	.0525	Champlin Refg. Co.	Okla.—Local

5162 **GOVERNMENT EXHIBIT No. 501 (Continued)**

Date	No. Cars	Grade	Price	From	Destination
May 17	1	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 17	4	60 Oct.	.04625	Eason Oil Company	North
May 17	2	60 Oct.	.04625	Simms Oil Company	North
May 18	1	70 Oct.	.0525	Rock Island Refg. Co.	Oklahoma—Local
May 18	5	70 Oct.	.0525	" " " "	North
May 18	2	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 18	2	60 Oct.	.04625	Eason Oil Company	Oklahoma—Local
May 18	1	60 Oct.	.04625	Simms Oil Company	North
May 18	1	70 Oct.	.0525	Champlin Refg. Co.	North
	74				

JPS:H

Yours very truly,

(Handwritten Notations):

	70	60
Rock Island	19	2
Champlin	8	4
Dickey		16
Eason		10
Taxman		8
Bell		2
Simms		5
		47
		27
		74

5163 GOVERNMENT EXHIBIT NO. 502.

May 27, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for May 13th to May 18th inclusive:

Date	No. Cars	Grade	Price	From	Destination
May 20	1	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 20	5	60 Oct.	.04625	Taxman Refg. Co.	North
May 21	3	60 Oct.	.04625	Eason Oil Co.	North
May 21	2	60 Oct.	.04625	Bell Oil & Gas Co.	Oklahoma—Local
May 21	1	60 Oct.	.04625	Simms Oil Co.	North
May 21	4	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 22	1	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 22	1	60 Oct.	.04625	Taxman Refg. Co.	North
May 22	1	60 Oct.	.04625	Eason Oil Co.	Oklahoma—Local
May 22	2	60 Oct.	.04625	Simms Oil Co.	North
May 22	1	70 Oct.	.0525	Champlin Refg. Co.	Oklahoma—Local
May 23	2	70 Oct.	.0525	Champlin Refg. Co.	Oklahoma—Local
May 23	1	70 Oct.	.0525	Rock Island Refg. Co.	Oklahoma—Local
May 23	1	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 23	1	60 Oct.	.04625	Eason Oil Co.	Kansas—Local
May 23	1	60 Oct.	.04625	Simms Oil Co.	North
May 23	1	60 Oct.	.0475	Monarch Refg. Co.	Oklahoma—Local
May 24	1	70 Oct.	.0525	Champlin Refg. Co.	Oklahoma—Local
May 24	1	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 24	1	60 Oct.	.04625	Taxman Refg. Co.	North
May 24	3	60 Oct.	.04625	Eason Oil Co.	North
May 24	2	60 Oct.	.04625	Eason Oil Co.	Oklahoma—Local
5164					
May 24	3	60 Oct.	.04625	Simms Oil Co.	North
May 25	3	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 25	1	60 Oct.	.04625	Taxman Refg. Co.	North
May 25	2	60 Oct.	.04625	Eason Oil Co.	North
May 25	1	60 Oct.	.04625	Bell Oil & Gas Co.	Oklahoma—Local
	47				

JPS:H

Yours very truly,

5165 GOVERNMENT EXHIBIT NO. 503.

June 5, 1935

Mr. A V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for May 27th to June 1st inclusive:

Date	No. Cars	Grade	Price	From	Destination
May 27	1	70 Oct.	.0525	Champlin Refg. Co.	Oklahoma—Local
May 27	1	70 Oct.	.0525	Rock Island Refg. Co.	Oklahoma—Local
May 27	2	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 27	1	60 Oct.	.04625	Taxman Refg. Co.	North
May 27	1	60 Oct.	.04625	Eason Oil Co.	North
May 27	1	60 Oct.	.04625	Eason Oil Co.	Oklahoma—Local
May 27	3	60 Oct.	.04625	Simms Oil Co.	North
May 27	1	60 Oct.	.05	Cushing Refg. & Gaso. Co.	Switch Move
May 27	1	60 Oct.	.0475	Kanotex Refg. Co.	Kansas—Local
May 28	1	70 Oct.	.055	Omar Refg. Co.	North
May 28	1	60 Oct.	.04625	Eason Oil Company	North
May 29	1	70 Oct.	.055	Champlin Refg. Co.	Oklahoma—Local
May 29	2	70 Oct.	.055	Eason Oil Company	North
May 29	1	70 Oct.	.055	Omar Refining Co.	North
May 29	6	60 Oct.	.04625	Dickey Refg. Co.	Kansas—Local
May 29	2	60 Oct.	.04625	Taxman Refg. Co.	North
May 29	3	60 Oct.	.04625	Eason Oil Co.	Oklahoma—Local
May 29	1	60 Oct.	.04625	Bell Oil & Gas Co.	Oklahoma—Local
May 29	1	60 Oct.	.04625	Kanotex Refining Co.	Oklahoma—Local
May 29	1	60 Oct.	.0475	Monarch Refining Co.	Oklahoma City Switch
May 31	3	70 Oct.	.055	Eason Oil Co.	Oklahoma—Local
May 31	2	60 Oct.	.0475	Dickey Refg. Co.	Kansas—Local
May 31	2	60 Oct.	.04625	Eason Oil Co.	North
May 31	5	60 Oct.	.04625	Tansel Petroleum Co.	North
May 31	5	60 Oct.	.04625	Primrose Petroleum Co.	North
June 1	3	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 1	2	60 Oct.	.0475	Taxman Refg. Co.	North
June 1	5	70 Oct.	.05625	Omar Refining Co.	North
	59				

5166

JPS:H

Yours very truly,

5167 GOVERNMENT EXHIBIT NO. 504.

June 10, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for June 3rd to June 8th inclusive:

Date	No. Cars	Grade	Price	From	Destination
June 3	1	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 4	2	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 4	2	60 Oct.	.0475	Taxman Refining Co.	North
June 4	2	60 Oct.	.0475	Eason Oil Co.	North
June 5	1	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 5	2	60 Oct.	.0475	Taxman Refining Co.	North
June 5	1	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 5	1	60 Oct.	.0475	Rock Island Refining Co.	Oklahoma—Local
June 6	1	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 6	2	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 6	2	60 Oct.	.0475	Taxman Refining Co.	North
June 7	2	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 7	4	60 Oct.	.0475	Taxman Refining Co.	North
June 7	1	60 Oct.	.0475	Taxman Refining Co.	Oklahoma
June 8	2	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 8	2	60 Oct.	.04875	Dickey Refining Co.	Kansas—Local
June 8	1	60 Oct.	.0475	Taxman Refining Co.	North
	29				

GBH

Yours very truly,

5168 GOVERNMENT EXHIBIT NO. 505.

June 15, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for June 10th to June 15th inclusive:

Date	No. Cars	Grade	Price	From	Destination
June 10	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 10	3	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 10	1	60 Oct.	.0475	Eason Oil Co.	Colorado
June 10	5	60 Oct.	.04625	Simms Oil Co.	North
June 11	2	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 11	1	60 Oct.	.0475	Taxman Refg. Co.	Oklahoma
June 12	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 12	5	60 Oct.	.04625	Simms Oil Co.	North
June 13	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 13	3	60 Oct.	.0475	L. O. Carter & Co., Inc.	Oklahoma—Local
June 14	1	60 Oct.	.0475	L. O. Carter & Co., Inc.	Oklahoma—Local
June 14	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 14	1	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 14	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 15	1	60 Oct.	.0475	Taxman Refg. Co.	North
	28				

Yours very truly,

GBH

5169 GOVERNMENT EXHIBIT NO. 506.

June 22, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for June 17th to June 22nd inclusive:

Date	No. Cars	Grade	Price	From	Destination
June 17	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 17	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 17	1	60 Oct.	.0475	Eason Oil Co.	Switch Move
June 18	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 19	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 19	1	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 19	2	60 Oct.	.0475	Taxman Refg. Co.	North
June 20	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 20	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 21	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 21	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 22	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 22	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
	14				

Yours very truly,

GBH

5170 GOVERNMENT EXHIBIT NO. 507.

June 29, 1935

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Sir:

The following represents our purchases of Gasoline for June 24th to June 29th inclusive:

Date	No. Cars	Grade	Price	From	Destination
June 24	1	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 24	1	60 Oct.	.0475	Taxman Refg. Co.	North
June 24	2	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 25	3	60 Oct.	.04875	Dickey Refg. Co.	Kansas—Local
June 25	2	60 Oct.	.0475	Taxman Refg. Co.	North
June 26	2	60 Oct.	.0475	Taxman Refg. Co.	North
June 26	1	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 27	2	60 Oct.	.04625	H. F. Wilcox Oil & Gas	North
June 27	1	60 Oct.	.0475	Eason Oil Co.	Oklahoma—Local
June 28	1	60 Oct.	.04625	H. F. Wilcox Oil & Gas	North
June 29	2	60 Oct.	.0475	Eason Oil Company	Oklahoma—Local
June 29	2	60 Oct.	.0475	Taxman Refg. Co.	Oklahoma—Local
	20				

Yours very truly,

JPS:H

5171 GOVERNMENT EXHIBIT NO. 508.

Sept. 5, 1935

Mr. A. B. Bourque,
Western Petroleum Refining Assn.,
Tulsa, Oklahoma

Dear Sir:

I am listing below the number of cars of motor gasoline purchased during the month of August:

Tansel Petroleum Co.	5 cars
Taxman Refining Co.	13 cars
East Texas Refining Co.	5 cars
L. O. Carter Co.	5 cars
Premier Refining Co.	10 cars
Texas Pacific Coal & Oil Co.	4 cars

We also purchased five (5) cars of "Q" gasoline from the Rock Island Refining Company.

Yours very truly,

JPS:CHA

5172 GOVERNMENT EXHIBIT NO. 509.

March 23, 1935

To the Budget and Operating Committee
Gentlemen:

Referring to report of sub-committee on gasoline purchases dated March 20, 1935 reference is made to the purchasing of "Q" gasoline for sale under the "66" trade mark in tank car quantities, and also the fact that perhaps the material purchased would not meet our volatility requirements.

The Sales Department is agreeable to the purchase of "Q" gasoline during the summer months only, for sale under the "66" trade mark for shipment into territory which will not affect our pipe line savings, even though there may be a difference in the specifications, for we feel that further advances can be made in the tank car market and resultant increases in the service station price, thereby making our company additional money.

The purchase of tank car "Q" gasoline will effect the market while the purchase from the Barnsdall will have no effect whatever as they are making this material especially for us. With only 250,000 barrels of gasoline to be purchased we feel that same can easily be made between now and September.

A further thought in connection with the purchase of gasoline is that we are committed to a program of supporting the tank car market, and it is very much to our interest to establish a high middle octane price due to the fact that the majority of our sales are based on this bracket in the trade publications.

We recommend the cancellation of the Barnsdall contract to take effect on May 1st and the tank car purchase of "66" gasoline made immediately on the market.

May we have your approval.

Respectfully submitted,

FLK-CHA
cc: Executive Committee
H. A. Trower
A. M. Hughes
P. R. Phillips
H. A Gardner

NOTE: *It is stipulated* in Exhibit 715 that this was written by F. L. Koopman and received by at least A. M. Hughes and H. A. Gardner.

5173

GOVERNMENT EXHIBIT NO. 510.

Bartlesville, Oklahoma
February 8, 1935

To the Budget and Operating Committee

Gentlemen:

Within the last week the natural gasoline market has decreased one-quarter cent in price. Todays quotation in Texas, for 26#, being three cents and in Oklahoma three and one-quarter.

A check of the market was made yesterday and revealed the fact that in Texas, about the only gasoline available was in the hands of the Warren Petroleum Co. They have been offering rather freely, the past two days, 25 cars, and have 25 cars additional to offer the early part of next week, then over the balance of the month, approximately 75 more cars. Warren has a cargo moving out the latter part of this month, and advise they have sufficient gasoline to cover the commitment.

Hanlon-Buchanan advise they are in very good shape and will only have odd cars to offer over February. This company has a large quantity of gasoline moving export or coastwise the latter part of February.

The only other company who has been offering gasoline on the spot market is the Lone Star Gasoline Company, and they advise that they do not have any to sell over the next ten days and will have only ten cars, over their present commitments, to move over the balance of February.

In order to hold the market at its present level, it will be necessary to purchase approximately 150 cars, which material will have to be shipped to our Houston terminal to apply on future cargo business. At this time, it is doubtful, considering fractionating and storage loss, whether we can make a profit in reselling.

Our estimated sales for the month of February is 1,200,000 gallons less than our purchases, therefore on taking this into consideration, we have very little interest in maintaining the present price structure. A decrease of one-quarter cent in price, balancing sales against purchases, saves the Phillips Petroleum Company approximately $3,000.00.

Due to the fact that 26# and U. S. motor are the same price, and that our purchases exceed our sales, and further we stand a chance of losing money should we buy additional gasoline to support the market, we recommend that we let the market take its own course and not purchase gasoline at this time.

May we have your approval.

Respectfully submitted,

FLK-CHA
cc: Executive Committee
H. A. Trower
A. M. Hughes
P. R. Phillips
H. A. Gardner

NOTE: *It is stipulated* in Exhibit 715 that this was written by F. L. Koopman and received by at least A. M. Hughes and H. A. Gardner.

5174 GOVERNMENT EXHIBIT NO. 516.

Memorandum
Mr. A. M. Hughes,
Building

Bartlesville, Okla.
May 31, 1935

Dear Sir:

In conversation late Wednesday with Mr. McDowell he stated that the following companies were desirous of selling, for prompt shipment, quantities of gasoline shown opposite the refiners name:

Consumers Oil Co.	20 cars
Wilcox Oil & Gas Co.	15 cars
Dale Moore (broker)	20 cars
Eason Oil Co.	15 cars
Tanscl Petroleum Co. (broker)	50 cars
Primrose Oil Co. (broker)	50 cars
Bradshaw (broker)	50 cars
Bell Oil & Gas (broker)	50 cars

The following have "Q" gasoline:

Wilcox Oil & Gas Co.	15 cars
Omar Petroleum Co.	25 cars

Most of the gasoline offered by the above named brokers originates in East Texas. Mr. McDowell stated that after the decision of the NIRA that these brokers had gone in and exerted considerable pressure on the refiners. The East Coast refiners have been letting some gasoline accumulate in East Texas.

He advises that all refiners had agreed to buy their share of this surplus gasoline. As an example he stated the Globe, in Chicago, would take up to forty cars of any material that was in transit and showed up in that area. Our share, he advised, of this surplus gasoline is fifteen cars.

F. L. Koopman

5175 GOVERNMENT EXHIBIT NO. 604.

October 8, 1935.

Mr. T. W. Eason,
Eason Oil Company,
Enid, Oklahoma.

Dear Sir:

I am writing you, urging your attendance in person at the meeting in Kansas City, on October fourteenth.

We are at the beginning of the slackening of demand, and at this meeting there are many things of vital importance to discuss that absolutely require advice and action by the Executives themselves, and upon which they alone should act.

Mr. Arnott will be with us, and no doubt will have much to tell us. I cannot urge you too strongly to attend, with your Sales Manager.

Very truly,
C. M. Boggs

5176 GOVERNMENT EXHIBIT NO. 605.

Telegram

Dallas, Texas
June 28, 1935

O. H. Carlisle
Gulf Refg. Co.
Gulf Bldg.

Cline very anxious move some additional gasoline he advises things getting little shaky and he is afraid market will break if he doesn't get some business Stop Sinclair and Pure only two that have made purchases this week and they have bought seventy five cars this for your information

Hercules Oil Co.
J. M. Bradshaw.

(Handwritten Notation):
"O. H. Carlisle."

(Handwritten Initials):
"JPG"

5177 GOVERNMENT EXHIBITS NOS. 615-616; 618-619; 621; 623-628, 630-640.

NOTE: Are the contracts of the government jobber witnesses for the purchase of gasoline from defendant companies. Exhibits 615, 618, 624 and 625 are set out in full as typical, and the price provisions only of the remaining contracts are printed.

5178 GOVERNMENT EXHIBIT NO. 615.

Be Square to
Your Motor

B

Barnsdall

Trade Mark Contract

Barnsdall Refineries Inc.
With
Wingrove Oil Company
Sheboygan, Wisconsin

Dated June 3rd, 1931

The World's First Refiner

5179 Barnsdall Trade Mark Contract

For Petroleum Products

This Agreement, made between Wingrove Oil Company of Sheboygan, Wisconsin, hereinafter referred to as the Buyer, and the Barnsdall Refineries, Inc., a Delaware Corporation, with general offices at Tulsa, Oklahoma, hereinafter referred to as the Seller:

Witnesseth: That the Buyer agrees to buy and receive and the Seller agrees to sell and deliver on the terms hereinafter set forth, the following petroleum products, to wit:

No. 1 Quantity

All gasoline and lubricating oils and greases which Buyer may require in his business, estimated as follows:

Be Square Gasoline

Minimum.........	Minimum.........100
Tank cars per month	Tank cars per year
Maximum.........	Maximum.........125

Super-Gas Ethyl Gasoline

Minimum.........	Minimum..........18
Tank cars per month	Tank cars per year
Maximum.........	Maximum..........22

Be Square Lubricating Oils & Velvet

Gallons per year
Minimum....25,000 Maximum......30,000

Mona-Motor Lubricating Oils

Gallons per year
Minimum......... Maximum...........

Be Square Greases

Pounds per year
Minimum....25,000 Maximum......30,000

Be Square Gasoline

No. 2 Quality

This product shall be of similar quality to the regular "Be Square Gasoline" distributed by the Seller throughout its marketing territory and shall conform substantially to the current specifications of 58-60 U. S. Motor Gasoline, except as same may be improved upon by the Seller.

5180 Super-Gas Ethyl Gasoline

This product shall at all times conform to the current standards required by the Ethyl Gasoline Corporation, except as same may be improved upon by the Seller.

Be Square Lubricating Oils

Same to conform to Seller's current grades and specifications.

Mo[illegible]a-Motor Lubricating Oils

Same to conform to Seller's current grades and specifications.

Be Square Greases

Same to conform to Seller's current grades and specifications.

No. 3 Ethyl Gasoline License

The obligations of the parties hereto relative to Super-Gas Ethyl Gasoline under this contract shall be contingent upon each of said parties obtaining and maintaining in full force and effect license agreements from the Ethyl Gasoline Corporation, and full compliance by each of said parties with all health requirements of said license agreements and under rules and regulations laid down by said Ethyl Gasoline Corporation. Default of either party to do so shall terminate this contract insofar as it relates to Super-Gas Ethyl Gasoline, but such partial termination shall in no way effect the provisions of this contract relative to other products to be furnished hereunder.

No. 4 Shipments

Shipments shall be consigned to the Buyer at the following destinations:

Sheboygan, Wisconsin

Buyer shall give Seller at least Three Days notice before shipments are required; all shipments shall be routed in accordance with Seller's instructions. Seller agrees, however, to respect Buyer's routing as to delivery line. Seller shall not be liable for delays or for non-deliveries caused by fires, floods, strikes or other causes beyond its control and delivery to the carrier shall constitute delivery to the Buyer.

No. 5 Price Be Square Gasoline

The Buyer shall pay to the Seller for "Be Square Gasoline" in tank car lots, F. O. B.

Group Three, Okla., the "Spot Market" Price for 58-60 U. S. Motor Gasoline on date same is ordered shipped by the Buyer, arrived at in the following manner:

5181 By taking the high and low prices published in the Chicago Journal of Commerce, F. O. B. Group Three, adding the two prices together and dividing the sum by two (2).

No. 6 Price Super-Gas Ethyl Gasoline

The Buyer shall pay to the Seller for all Super-Gas Ethyl Gasoline in tank car lots, f. o. b.

Group Three, Okla., the "Spot Market" price for 58-60 U. S. Motor Gasoline, as provided in Paragraph No. 5 hereof, on date same is ordered shipped by Buyer, plus a premium of Two and One-Half (2½c) Cents per gallon.

No. 7 Guaranteed Margin

When the "Spot Market" prices, arrived at as provided for in Paragraphs Nos. 5 and 6 hereof, plus freight cost per gallon from Group Three, Okla. to destination, allows the Buyer a delivered cost of less than Five-and-a-half (5½) Cents per gallon under the officially posted Service Sta. price of the Standard Oil Company of Indiana or .... Company for Red Crown Gasoline and/or Red Crown Ethyl Gasoline or ...., as the case may be, the billing price hereunder shall be reduced by the Seller in an amount sufficient to allow the Buyer a margin of Five-and-a-half (5½) Cents per gallon, it being expressly agreed between the parties hereto that the officially posted Service Station price per gallon at point of destination of shipment shall have and always maintain its normal relationship to the generally officially posted Service Station price throughout the state or states in which Buyer operates.

If at any time during the term hereof Seller is required to reduce its price on Be Square Gasoline and Super-Gas Ethyl Gasoline to comply with the foregoing provision for marginal protection, a true record thereof shall be kept by the parties hereto showing the total amount so allowed to Buyer, and said amount so allowed shall be subject to refund to Seller in the following manner:

If at any subsequent time during the term hereof, price conditions are such that Buyer has a margin in excess of Five-and-a-half (5½) Cents per gallon between delivered cost computed as hereinabove provided and the existing service station price as hereinabove defined (less tax), then Seller shall increase its price per gallon on all gasolines thereafter sold to Buyer hereunder in an amount equal to one-half of such excess; provided such increase shall at no
time exceed three-eighth (⅜c) cent per gallon. Such
5182 increased price shall remain effective while such ex-
cess between delivered cost and service station price exists, and/or until the Seller has been refunded the total sum theretofore allowed Buyer as marginal protection.

It is understood and agreed that Seller is not obligated to afford marginal protection to Buyer on local competitive conditions unless such conditions are general throughout the state or states in which Buyer operates. However, Seller recognizes the desirability of maintaining a continuing market for its products and recognizes the importance of cooperating with Buyer in meeting local competition from representative distributors.

It is therefore mutually agreed that if at any time during the term hereof the business of Buyer is adversely affected by a local competitive condition, Seller may conduct an investigation to determine the responsibility of Buyer for such local condition and whether Buyer has exercised due diligence to correct the same. If, from such investigation, Seller is satisfied with the efforts of Buyer, Seller may, at its option, grant to Buyer such marginal local protection in such amounts and for such period of time as may be then mutually agreed upon between the parties hereto.

No. 8 Price of Lubricating Oils and Greases

The prices, terms and conditions under which all lubricating oils and greases are to be furnished to Buyer hereunder shall be in accordance with the terms and conditions set forth in a separate contract executed by the parties hereto simultaneously herewith.

No. 9 Terms of Payment

Ten Days from Date of Invoice Less 1% Gasoline and Kerosene, Thirty Days from Date of Invoice Lubricating Oil or Ten Days from Date of Invoice Less 2%.

The Seller shall have the right at any time to alter the above terms or suspend credit whenever, in its opinion, the financial condition of the Buyer warrants it, and in the event Buyer fails to meet credit requirements of the Seller, Seller may suspend shipments or cancel this contract.

No. 10 Taxes

If any tax or other charge is imposed by the Federal Government after execution of this contract and before its complete fulfillment on any of the products sold hereunder, the amount of the tax shall be added to the amount herein provided for, in the event such tax is chargeable against the Buyer.

No. 11 Advertising

It is understood that this is a Barnsdall Trade-Mark Contract and the Seller hereby grants to the Buyer the privilege of using its trade-marks and advertising material, displays, etc. as provided for under Seller's current advertising plan and the Buyer agrees that all products 5183 furnished hereunder will be marketed under Seller's Trade-Mark Brands. Seller agrees to expend for advertising purposes in Buyer's distributing territory from time to time and in accordance with its current advertising plan, an amount not to exceed one-fourth cent per gallon on the total Gasoline delivered to the Buyer under this contract. Advertising of Be Square and Mona-Motor Oils and Be Square Greases shall be in accordance with the current advertising plan or policy of the Seller. Buyer agrees to display in prominent locations in and about his place or places of business all advertising material furnished by Seller. All advertising material furnished to the Buyer under this contract shall at all times remain the property of the Seller and upon termination of this contract all usable advertising material shall be returned to the Seller.

No. 12 Ethics

Buyer agrees to market and distribute all products furnished by the Seller hereunder in a diligent and ethical manner, and to refrain from any practices or policies of merchandising such products considered by those engaged in the marketing and distributing of petroleum products as unfair and unethical; to adopt, as near as may be, the policies and standards of the Seller in marketing and distributing such products, and shall make no material changes in such policies without first conferring with the Seller with reference thereto.

No. 13 Contract Effective

This contract contains the entire agreement between the parties hereto, there being no oral promises, agreements, or warranties affecting same; and contract shall not be valid or effective until approved by a Vice-President or the Treasurer of the Seller.

No. 14 Option to Purchase

If at any time during the term of this contract the Buyer desires to sell and dispose of its business and assets, and said Buyer finds a purchaser ready, able and willing to purchase the same at a bona fide offer, such fact, and the consideration to be paid and the name and post office address of the party offering to make such purchase shall be communicated to the Seller in writing. Thereupon the Seller shall have an option for a period of thirty (30) days after receipt of such written notice to purchase said business and assets at the price offered by such third party. If said option to purchase said business and assets is not exercised within thirty (30) days after receipt of said notice, then the Buyer shall have the right to sell and dispose of its business and assets to said third party at the price so offered, subject, however, to the terms of this contract.

5184 No. 15 Special Conditions

1. It is expressly understood and agreed between the parties hereto that all or any part of the lubricating oils and greases to be furnished to the Buyer under the terms of this contract may be furnished by, and shipped from distributing plants of the O'Neil Oil Company of Milwaukee, Wisconsin, a subsidiary Company of the Seller. In the event Seller desires to furnish said commodities in said manner, it shall notify Buyer thereof in writing and thereupon all orders for such commodities shall be directed by Buyer to said subsidiary Company at Milwaukee, Wisconsin, and remittances therefor shall be made on invoice of said subsidiary Company direct to said point.

2. It is understood that the Buyer under the terms of this contract, is granted the privilege of distributing in addition to the products specified herein, one (1) nationally advertised brand of Pennsylvania Motor Oil; however the Buyer agrees to give preference at all times in his sales efforts to the merchandising of Be Square and Velvet Motor

Oils, in order to obtain the largest distribution possible in his marketing territory.

3. This contract also covers the Buyer's requirements of 64-66 maximum 375 end point gasoline. Price to be the average of the low and high prices quoted in the Chicago Journal of Commerce.

No. 16 Term of Contract

This Contract shall remain in full force and effect for a period of Five Years ~~months,~~ beginning June 3rd, 1931 and thereafter from month to month until terminated by either party upon thirty (30) days notice in writing to the other; and shall inure to the benefit of, and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

Executed in quadruplicate at Sheboygan, Wisconsin, this 3rd day of June, 1931.

Wingrove Oil Co.
Buyer.
By: Walter H. Wingrove
Title *President.*

Barnsdall Refineries, Incorporated
By: W. W. Rice
Title *Division Manager.*

Approved by: H. M. Edinger
Vice-President or Treasurer.

5185 GOVERNMENT EXHIBIT NO. 616.

Contract between The Texas Company and Wingrove Oil Company, dated June 10th, 1936, for the period June 20th, 1936 to June 19th, 1937:

"(3) Prices. (a) For Texaco Fire-Chief Gasoline in tank car lots F.O.B. Group Three, the average spot market price determined by averaging the high and low spot market prices quoted in the Chicago Journal of Commerce, F.O.B. Group Three on date of shipment for gasoline of the grade corresponding to the Fire-Chief Gasoline shipped under this agreement; provided, however, (1) that if said average spot market price plus freight to point of distribution allows the purchaser a margin (determined on the basis of Seller's normal price structure without regard to local price deflations) of less than five and one-half cents below Seller's normal service station price, exclusive of tax, for Fire-Chief Gasoline at point of distribution then the Purchaser and Seller shall share equally the difference between the actual margin and five and one-half cents and the price shall be adjusted accordingly; (2) if the Seller increases or decreases Seller's regular posted discount to dealers substantially throughout the State of Wisconsin, then there shall be substituted in the preceding part of paragraph for the words "five and one-half cents" wherever they appear an amount of cents equal to five and one-half cents plus or minus, respectively, the amount of said increase or decrease; and (3) in no event shall the price to Purchaser hereunder be less than three and one-half cents per gallon, F. O. B. Group Three.

(b) For Texaco Ethyl Gasoline in tank car lots, the price shall be two (2) cents per gallon more than the price for Fire-Chief Gasoline on date of shipment.

(c) For Indian Gas in tank car lots, the average of the high and low spot market prices quoted in the Chicago Journal of Commerce, F.O.B. Group Three on date of shipment for gasoline of grade corresponding to the Indian Gas shipped under this agreement; provided, however, that (1) at no time shall the price for Indian Gas be higher than one-quarter (¼) cent under the price for Texaco Fire-Chief Gasoline determined in accordance with the provisions of sub-division (a) of this section, on the date of shipment hereunder of the Indian Gas; and (2) in no event shall the price for Indian Gas shipped to purchaser hereunder be less than three cents per gallon, F.O.B. Group Three."

5186 GOVERNMENT EXHIBIT NO. 617.

Letter from The Texas Company to Wingrove Oil Company dated 12/18/36, modifying contract Exhibit 616 as follows:

"Effective November 1st, 1936, we are voluntarily modifying Paragraph (3) Prices. (a) of your Agreement dated June 10th, 1936, to read as follows:

'* * * provided, however, (1) that if said average spot market price, plus freight to point of distribution, allows the Purchaser a margin (determined on the basis of Seller's normal price structure without regard to local price deflations) of less than three and one-half (3½) cents below Seller's posted normal tankwagon price, exclusive of tax, for Fire-Chief Gasoline at point(s) of distribution, then the Seller shall allow Purchaser the difference between the actual margin and three and one-half (3½) cents, and the price shall be adjusted accordingly; (2) if the Seller increases or decreases the difference between Seller's posted normal tankwagon price and Seller's posted dealer price substantially throughout the State of Wisconsin, then there shall be substituted in the preceding part of paragraph for the words "three and one-half (3½) cents" wherever they appear, an amount of cents equal to three and one-half (3½) cents, plus or minus, respectively, the amount of said increase or decrease; and (3) in no event shall the price to Purchaser hereunder be less than three and one-half (3½) cents per gallon, f.o.b. Group 3.'

This is a voluntary concession on the part of The Texas Company and is subject to withdrawal by us at any time without notice.

In all other respects said agreement is hereby confirmed."

5187

GOVERNMENT EXHIBIT NO. 618.

Mid-Continent Petroleum Corporation
Sales Contract

This Agreement, Made between D. B. Pedley & Son of Kenosha, Wis., hereinafter referred to as the Buyer, and the Mid-Continent Petroleum Corporation, a Delaware Corporation, with General Offices at Tulsa, Oklahoma, hereinafter referred to as the Seller:

Witnesseth, That the Buyer agrees to buy, and the Seller agrees to sell and deliver, on the terms hereinafter set forth, the following described property, to-wit:

Motor Fuel and Gasoline

No. 1 Total Quantity

A minimum of 704,000 gallons and a maximum of 896,000 gallons of motor fuel and gasoline.

No. 2 Period of Delivery

To be delivered from March 16, 1935, to March 15, 1936 only in monthly installments and only ratably or proportionately during each month as follows, to-wit:

No. 3 Monthly Allotments

	Gallons			Gallons	
	Minimum	Maximum		Minimum	Maximum
January	48,000	64,000	July	80,000	96,000
February	56,000	72,000	August	64,000	80,000
March	56,000	72,000	September	56,000	72,000
April	56,000	72,000	October	56,000	72,000
May	56,000	72,000	November	56,000	72,000
June	64,000	80,000	December	56,000	72,000

No. 4 Grades to be furnished

Said motor fuel and gasoline shall be Seller's regular grade of D-X Motor Fuel and/or NevrNox Ethyl Gasoline and/or Power Gasoline and/or any other grade or grades of motor fuel and gasoline which the Seller is in position to furnish.

5188 No. 5 Price

(A) D-X Motor Fuel. The Buyer shall pay for Seller's regular grade of D-X Motor Fuel the "Spot Market Price" f.o.b. Group 3, Oklahoma, as defined in Clause 6, of 58/60 437 U. S. Motor Gasoline, 63-70 octane number, or said "Spot Market Price" of the grade furnished, as determined by octane specifications, when such price, plus the cost per gallon of freight transportation from Tulsa, Oklahoma, to point of destination, plus a margin of 5½ cents per gallon, does not exceed the normal officially posted service station price, exclusive of tax, at destination, on date of shipment, of the Standard Oil Company of Indiana Company on their Red Crown Gasoline or other similar grade of gasoline as the quality of said gasoline is now maintained or may hereafter be improved. If, however, such Spot Market Price, plus the said cost per gallon of freight transportation, plus the aforesaid margin, exceeds such service station price, then the invoice price of said D-X Motor Fuel shall be reduced by an amount equal to one-half of such excess. The aforesaid margin is based on Seller's present Resellers discount of 3½ cents to Undivided Dealers and Resellers; in the event Seller increases or decreases said Resellers discount to Undivided Dealers and/or Resellers generaly throughout its marketing territory, then the aforesaid margin will be increased or decreased an equal or like amount. It is hereby expressly agreed by the Buyer and Seller that the "normal officially posted service station price" per gallon at point of destination of shipment herein mentioned shall always have and maintain its normal relation to the general officially posted service station price throughout the marketing territory of the party posting such price. The normal officially posted service station price (exclusive of Federal and State motor fuel taxes) at destination on date of this contract is as follows:

Normal S. S. Price (exclusive of Federal and State motor fuel taxes)	Destination	Freight Rate, Group 3 to Destination
13.2	Kenosha, Wis.	

(B) NevrNox Ethyl Gasoline. The price of NevrNox Ethyl Gasoline supplied under this contract shall be Two Cent (2c) per gallon more than the contract price hereunder for D-X Motor Fuel, on date of shipment.

5189 (C) Power Gasoline. The price of Power Gasoline supplied under this contract shall be the "Spot

Market Price" f.o.b. Group 3, Oklahoma, as defined in Clause 6, of 58/60 437 U. S. Motor Gasoline, 62 and below octane number, on date of shipment; or ¼c under the price of D-X Motor Fuel, whichever price is lower.

(D) Other Grades of Motor Fuel and Gasoline. The price of other grades of motor fuel and gasoline supplied under this contract shall be the "Spot Market Price" of the grade furnished, f.o.b. Group 3, Oklahoma, as defined in Clause 6, on date of shipment.

(E) During the life of this contract, the contract price per gallon as determined herein, of D-X Motor Fuel to be supplied hereunder shall not be less than:

3.0c when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 50c and below per bbl.

3.5c when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 51c to 75c per bbl.

4.0c when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 76c to $1.00 per bbl.

4.5c when the average officially posted price of 36 gravity Oklahoma crude oil at the well is $1.01 and above.

No. 6 Spot Market Price

The "spot market price" per gallon f.o.b. Group 3, Oklahoma, shall be the average of the minimum and of the maximum prices, of the average of the prices, of gasoline and motor fuel, as published in the Chicago Journal of Commerce, Chicago, Illinois and Platt's Oilgram, Tulsa edition (Oklahoma markets) on the date on which shipment is made. In the event that no prices are published on date shipment is made, then prices published on last date prior to shipment shall apply. If during the life of this contract either of said publications shall be discontinued and/or publication of prices of gasoline therein is discontinued, then the "spot market price" shall be determined from the prices contained in the remaining publication, in the manner above stated; and in the further event that no price of the grade of motor fuel and/or gasoline furnished be published by either of the aforesaid publications, then the "spot market price" shall be the current "spot" price of Seller.

5190 No. 7 Terms of Payment

1% ten days, thirty days net. The Seller shall have the right at any time to alter or suspend credit whenever in its opinion the financial condition of the Buyer warrants it, and in the event Buyer fails to meet the credit requirements of Seller, Seller may cancel this contract.

No. 8 General Conditions

The general conditions, clauses 9 to 23 inclusive, printed on the reverse side hereof are parts of this contract.

Executed at Tulsa, Oklahoma, this 12 day of June, 1935.

D. B. Pedley & Son
Buyer
By Elmer H. Pedley
Mid-Continent Petroleum Corporation
By R. W. McDowell
Vice-President.

....
Salesman or Agent.

Walter J. Herr
Division Sales Manager

Examined by B. Henderson

5191 General Conditions

No. 9 Lubricating Oils

In consideration of the premises, the Buyer also agrees to purchase from the Seller during the period of this contract all of Buyers requirements of lubricating oils which the Seller is in position to furnish.

No. 10 Shipments

The Buyer shall furnish to the Seller shipping instructions for the motor fuel and gasoline covered by this contract at least six days prior to the date when shipments are ordered to be forwarded. It is agreed that the Seller shall not be liable for delays or for non-deliveries caused by fires, floods or strikes, or other causes beyond its control, and that delivery to carrier shall constitute delivery to Buyer. The Buyer agrees to unload the cars of Seller at the destination to which they were originally consigned and not to divert said cars without the written consent of the Seller. It is understood and agreed that shipments may be made in either 8,000 or 10,000 gallon capacity cars at the option of the Seller and that shipments may be made from any point of origin at the option of the Seller, but that Seller shall be required to protect and Buyer shall pay the legally applicable rail freight rate in effect from

Group 3 Oklahoma to point of destination. It is further agreed that the Seller will route shipments so that delivery will be made to the Buyer by any railroad designated by the Buyer which can make such delivery, but that no rail route shall be used from any point of shipment which is not consistent with the policy of the Seller or which would produce total freight charges in excess of the legally applicable rail freight rate from Group 3 to point of destination.

No. 11 Contract Divisible

This contract shall be construed as a divisible one as to each and every installment period of one month, and a failure to deliver or to take and accept at least Sixty (60%) of the quantity of motor fuel and/or gasoline called for in any such installment period shall constitute a material breach of this contract.

No. 12 Resale

The Buyer agrees that the gasoline or motor fuel delivered under this contract will not be resold in tank car or tank wagon lots to other distributors, dealers or wholesalers of petroleum products without specific written approval of the Seller's Division Manager.

5192 No. 13 Taxes

All taxes, fees or other charges, of whatsoever nature or kind, now or hereafter imposed by Local, State or Federal Government, upon any of the motor fuel and/or gasoline sold hereunder, or upon the production, shipment, storage, sale and/or inspection thereof, shall be borne by the Buyer.

No. 14 Ethyl

The Buyer agrees that in handling, distributing and selling Ethyl gasoline or any motor fuel and/or gasolene treated with tetra ethyl lead, or any anti-knock compound, it will, in so far as same apply to health measures, do so in accordance with the rules and regulations now in existence or which may hereafter be issued from time to time by the Ethyl Gasoline Corporation, the Office of the Surgeon General of the United States Public Health Service, the Department of Health of the State, the municipality wherein such handling, distribution and selling takes place and/or any other governmental agency having jurisdiction in the premises, and that it will have its employees properly instructed with respect to said rules and regulations, and the Seller hereby reserves the right to and will cancel this contract, in the event the Buyer fails to comply with the aforesaid rules and regulations, or any of them, in so far as the same apply to health measures. And the Buyer hereby agrees to impose similar obligations to those contained in the preceding sentence for any and all subsequent sales of the aforesaid Ethyl gasoline or any motor fuel and/or gasoline treated with tetra ethyl lead, or any anti-knock compound, for resale, including the reserved right of cancellation and agreement to cancel for failure to comply. It is agreed that the Seller assumes no responsibility for or by reason of the issuance, promulgation or following of any of the aforesaid rules and regulations, and the Buyer agrees to hold Seller harmless for any injury or injuries or claim based on any injury or alleged injury that may happen to any employee or employees of the Buyer or anyone else in connection with Buyer's handling, distribution and/or selling, of the aforesaid Ethyl gasoline or any motor fuel and/or gasoline treated with tetra ethyl lead, or any anti-knock compound, except in case of proven negligence on the part of Seller. Buyer agrees that in selling, offering for sale and/or advertising Ethyl gasoline sold hereunder, it will apply to said gasoline the name of NevrNox Ethyl, with the registered trademark design and name of the aforesaid Ethyl Gasoline Corporation connected therewith in a form satisfactory to said Ethyl Gasoline Corporation, and will obligate purchasers for re-sale to conform to this requirement.

5193 No. 15 Option

In consideration of the premises, it is further agreed that in the event the Buyer at any time during the period of this contract desires to sell all or any part of the Buyer's business and/or properties, the Seller shall have and is hereby given an option to purchase the same at the best price offered by any bona fide purchaser. And in the event Seller fails to exercise its said option within thirty (30) days after being notified, in writing, by the Buyer of its desire to sell and of the best price offered, Buyer shall be relieved of all further responsibility in this connection.

No. 16 Excuses for Non-Performance

If either Buyer or Seller is prevented from performing this contract by reason of fires, floods, strikes, embargoes, acts of God or other causes beyond its control, said party shall be excused from such performance during the existence of such cause.

No. 17 Re-sale Prices

The Seller hereby reserves the right, as provided for in Rule 26, Article V, of the Code of Fair Competition for the Petroleum Industry, to hereafter fix and determine the prices for which the products hereby contracted to be sold shall be re-sold by the Buyer.

No. 18 Cancellation

Seller may cancel this contract and refuse to make further shipments, after five (5) days written notice for a breach by Buyer of any of the terms and provisions hereof. All of the covenants and conditions of this contract are subject to the provisions of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry, effective September 2, 1933, and any modifications thereof, amendments thereto, orders, regulations or interpretations issued in connection therewith. In case any requirement of any Local, State or of the Federal Government, or any agent thereof, materially affects the carrying out of the provisions of this contract by either Buyer or Seller, either of said parties may cancel this contract.

No. 19 Waiver of Rights

The failure of Seller to insist, in any one instance or more, upon the performance of any of the covenants or conditions of this contract, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such covenants, conditions, rights or privileges but the same shall continue and remain in full force and effect.

5194 No. 20 Notice of Cancellation

Notice of cancellation by the Buyer or Seller shall be in writing, transmitted by registered mail to the other interested party at his last known address, which cancellation shall take effect on the day of the deposit of the registered letter in the Post Office; and upon mailing of such notice, all liability hereunder shall cease except as to prior delivery.

No. 21 Alterations

This contract contains the entire agreement between the parties hereto; there are no oral promises, agreements or warranties affecting it; and no prior or subsequent agreement adding to, altering or waiving any of the provisions shall be valid unless in writing and similarly executed.

No. 22 Contract Effective

This contract shall not be valid and/or effective until executed by the President or a Vice-President of the Seller.

No. 23 Special Conditions

5195 GOVERNMENT EXHIBIT NO. 619.

Contract between Phillips Petroleum Company and Marathon County Oil Company, dated April 6, 1934, for the period from April 6, 1934 to April 5, 1935:

"5. Price: Buyer shall pay to Seller, subject to the conditions hereinafter stated, the spot market price (as defined in Paragraph Six) f. o. b. Group III, Oklahoma, for Phillips "66" Gasoline shipped hereunder; provided that in the event such spot market price plus freight to destination, plus five cents (5¢) per gallon, exceeds the normal official service station price (exclusive of tax) of the Standard Oil Company of Indiana, ..., on its Standard Red Crown Gasoline as such quality is maintained on the date when this contract is executed, the Buyer shall pay Seller the spot market price less an amount equal to one-half (½) of the excess; provided, further, however, that if at any time during the life of this contract the price per gallon as determined herein is less than the average posted market price of the standard purchasing companies of two gallons of 36 gravity Oklahoma crude oil at the wells, then Seller shall have the right, at its option, to cancel and terminate this contract by giving Buyer ten (10) days notice of its intention to exercise said option. In the event the dealers gasoline contract quantity discount of the Standard Oil Company of Indiana on its Standard Red Crown gasoline, for quantities sold each month in excess of 500 gallons, is more or less than two and one-half cents (2½¢) per gallon at time of any shipment, the margin of five cents (5¢), as mentioned above, will increase or decrease in the same amount.

The price of Phillips "66" Ethyl Gasoline supplied under this contract shall be two cents (2¢) per gallon more than the contract market price for Phillips "66" Gasoline on date of shipment.

The price of Unique Gasoline supplied under this contract shall be one-quarter cent (¼¢) per gallon less than the contract market price for Phillips "66" Gasoline on date of shipment, but in no event to exceed the average of the high and low prices as shown in the publications mentioned in Paragraph Six, for U. S. Motor Gasoline, of the same octane rating as Phillips Unique Gasoline.

This contract is based upon the normal official service station price (exclusive of tax) at destination listed below, which on this date is as follows:

Location Wausau, Wis., Normal S. S. Price (exclusive of Tax) 15.3 Freight Rate from Group 3 46¢.

5196 "6. Spot Market Price: The spot market price per gallon, f. o. b., Group III, Oklahoma, shall be ascertained by taking the prices for U. S. Motor Gasoline, of the same octane rating as Phillips "66" Gasoline, as published in the Chicago Journal of Commerce, Chicago, Illinois, and Platt's Oilgram, Tulsa Edition, (Oklahoma Markets), using the prices printed in said publications issued on the date, or the last issue prior to that, on which shipment is made; adding the prices of said gasoline carried in said publications, using minimum and maximum prices where shown, and dividing the total sum of such prices so added by the number of prices so added, the result so obtained to be the spot market price; provided that in case either of the said publications should be discontinued, and/or prices of gasoline therein discontinued, during the life of this contract, then and in that event, the spot market price shall be determined from the prices carried in the remaining publication, and in the manner herein stated."

5197 GOVERNMENT EXHIBIT NO. 620.

Letter from Phillips Petroleum Company to Marathon County Oil Company, dated November 26, 1934:

"In the gasoline sales contract which you hold with this company, it is provided in paragraph 5, in part, as follows:

'The six cent margin referred to above is based upon the present established undivided dealer combined discount and rental of four cents ($0.04) per gallon in Buyer's territory. Should such combined discount and rental be changed during the life of this contract, Seller shall have the right to adjust the above margin by increasing or decreasing the same; provided that no reduction shall be made below Seller's general current jobbers margins in Buyer's territory.

"You are advised that effective December 1, 1934, the undivided dealer combined discount and rental in your territory has been reduced to three and one-half cents per gallon. Accordingly, effective December 1, 1934 and until further notice, the protection of six cents per gallon referred to in paragraph 5 of your contract will be reduced to five and one-half cents per gallon subject to all the terms of the contract."

5198 GOVERNMENT EXHIBIT NO. 621.

Contract between Phillips Petroleum Company and Marathon County Oil Company, dated June 5th, 1935 for the period from June 5th, 1935 to June 4th, 1936:

"5. Price: Buyer shall pay to Seller, subject to the conditions hereinafter stated, the spot market price (as defined in Paragraph Six) f. o. b., Group III, Oklahoma, for Phillips "66" Gasoline shipped hereunder; provided that in the event such spot market price plus freight to destination, plus five-one half per gallon (sometimes referred to herein as "margin") exceeds the normal official service station price (exclusive of Tax) of the Standard Oil Company of Indiana on its Red Crown gasoline as such quality is maintained on the date when this contract is executed, then Buyer shall pay Seller the spot market price less an amount equal to one-half the excess; provided, further, however, that the price for Phillips "66" Gasoline shipped hereunder shall not be less than the following schedule based upon the current average posted market price of 36 gravity Oklahoma crude oil at the well, to wit:

Posted Price of 36 gravity crude oil:	Price of Gasoline:
$0.50 and below per barrel	$0.03 per gallon
0.51 to $0.75 per barrel	0.035 per gallon
0.76 to 1.00 per barrel	0.04 per gallon
1.01 to 1.25 per barrel	0.045 per gallon

with increase of $0.005 per gallon of gasoline for each increase of $0.25 per barrel in price of crude oil above $1.25.

The five and one-half cent (5½) margin referred to above is based upon the present established undivided dealer combined discount and rental of three one-half cents gallon in Buyer's territory. Should such combined discount and rental be changed during the life of this agreement, Seller shall have the right to adjust the above margin by increasing or decreasing the same; provided that no reduction shall be made below Seller's general current jobber margins in Buyer's territory.

5199 The price of Phillips "66" Ethyl Gasoline supplied under this contract shall be two cents ($0.02) per gallon more than the contract market price for Phillips "66" Gasoline on date of shipment.

The price of Unique Gasoline supplied under this contract shall be one-quarter cent ($0.0025) per gallon less than the contract market price for Phillips "66" Gasoline on date of shipment, but in no event to exceed the average of the high and low prices as shown in the publications mentioned in Paragraph Six, for U. S. Motor Gasoline, of the same octane rating as Phillips Unique Gasoline.

This contract is based upon the normal official service station price (exclusive of tax) at destination listed below, which on this date is as follows:

Location Wausau, Wis., Normal S. S. Price (exclusive of tax) 13.9 Freight Rate from Group 3, .03102.

6. Spot Market Price: The spot market price per gallon, f. o. b., Group III, Oklahoma, shall be ascertained by taking the prices for U. S. Motor Gasoline, of the same octane rating as Phillips "66" Gasoline, as published in the Chicago Journal of Commerce, Chicago, Illinois, and Platt's Oilgram, Tulsa Edition, (Oklahoma Markets), using the prices printed in said publications issued on the date, or the last issue prior to that on which shipment is made; adding the prices of said gasoline carried in said publications, using minimum and maximum prices where shown, and dividing the total sum of such prices so added by the number of prices so added, the result so obtained to be the spot market price; provided, that in case either of the said publications should be discontinued, and/or prices of gasoline therein discontinued, during the life of this contract, then and in that event, the spot market price shall be determined from the prices carried in the remaining publication, and in the manner herein stated; provided, further that should both of the above publications be discontinued or should the quotation of prices for gasoline therein be discontinued, or should the prices of gasoline be quoted upon a basis other than octane rating, or if for any other reason the method provided herein for determining the spot market price of gasoline shall fail, then the prices for said product shall be determined in accordance with the fair market price of comparable grades of gasoline in the same locality.

5200 GOVERNMENT EXHIBIT NO. 623.

Contract between Pennsylvania Oil Company and Barnsdall Refineries, Inc., dated January 26th, 1933 for the period of five years beginning February 1, 1933, together with an agreement between these parties and others dated January 30, 1933:

"No. 5 Price Be Square Gasoline

Buyer shall pay to Seller for 'Be Square Gasoline' in tank car lots, F. O. B. Group 3, the 'Average Market' price for 58-60 U. S. Motor Gasoline (57-64 Octane) on the shipping date specified by Buyer, computed in the following manner: Average of high and low of grade as published above in Chicago Journal of Commerce.

When the 'Average Market' price, arrived at as provided in the foregoing paragraph, plus freight cost per gallon from Group 3 to destination, allows Buyer a delivered cost of less than five Cents per gallon under the officially posted service station price of the Standard Oil Company of Indiana for Red Crown Gasoline, the billing price hereunder shall be reduced by Seller in an amount sufficient to allow Buyer a margin of five Cents per gallon, it being expressly agreed between the parties that the officially posted Red Crown price per gallon at the point of destination shall always maintain its normal relationship to the generally officially posted Red Crown price throughout the state or states in which Buyer operates.

If at any time during the term hereof Seller is required to reduce its price on Be Square Gasoline to comply with the foregoing provision for marginal protection, a true record thereof shall be kept by the parties hereto showing the total amount of the reductions so allowed to Buyer and said amount so allowed shall be subject to refund to Seller in the following manner:

If at any subsequent time during the term hereof price conditions are such that Buyer has a margin in excess of 5¼ Cents per gallon between delivered cost computed as hereinabove provided and the existing Red Crown price as above defined (less tax), then Seller shall increase its price per gallon on all gasolines thereafter sold to Buyer in amount equal to one-half of such excess; provided such increase shall at no time exceed three-eighth cent (⅜c) per gallon. This increased price shall remain effective while the excess between the delivered cost and service station

price exists until Seller has been refunded the total sum
theretofore allowed Buyer during the time the Seller
5201 was required to reduce its price. Buyer agrees to
pay said total sum allowed which has not been thus
refunded immediately upon the termination of this contract for any cause by either party before the date of expiration provided herein.

It is understood and agreed that the Seller is not obligated to afford marginal protection to Buyer on local competitive conditions unless such conditions are general throughout the State or states in which Buyer operates. However, Seller recognizes the desirability of maintaining a continuing market for its product and recognizes the importance of cooperating with Buyer in meeting local competition from representative distributors.

It is therefore mutually agreed that if at any time during the term hereof the business of Buyer is adversely affected by a local competitive condition, Seller may conduct an investigation to determine the responsibility of Buyer for such local condition and whether Buyer has exercised due diligence to correct the same. If, from such investigation, Seller is satisfied with the efforts of Buyer, Seller may, at its option grant to Buyer such marginal local protection in such amounts and for such period of time as may be then mutually agreed upon between the parties hereto.

No. 6 Price Super-Gas Ethyl

The price of the Super-Gas Ethyl Gasoline supplied under this contract shall be two and one-half cents (2½c) per gallon more than the price for Be Square Gasoline on the shipping date specified by buyer.

No. 7 Price Third Grade Gasoline

The price shall be the low spot market price of the Chicago Journal of Commerce for below 57 Octane Gasoline, f. o. b. Group Three; however, at no time shall the billing price exceed one-fourth cent (¼c) per gallon under the billing price of Be Square Gasoline on the same date.

If there is no issue of the Chicago Journal of Commerce and/or Platt's Oilgram on date of shipment, as provided in paragraphs 5, 6, and 7, quotations in the last preceding day's issue shall govern. In the event either of the publications above mentioned is discontinued or either discontinues carrying quotations on gasoline, quotations from the remaining publication shall be used in the manner herein provided.

No. 8 Notice of Price Change

Buyer further agrees to inform Seller at Tulsa, Oklahoma, by 'collect' telegraphic message the amount and effective date of any change at any point within its marketing territory in the general posted tank wagon and
5202 service station market on Red Crown Gasoline and
on the Third Grade Gasoline sold by Standard Oil Co. of Indiana, immediately following said change.

No. 17 Q. D. A.

It is mutually understood and agreed that the marginal protection as outlined in Paragraph No. 5 is based on the present published Q. D. A. (quantity discount agreements with resale retail dealers or service stations) of the Standard Oil Co. of Indiana which at the present time is two and one-half cents (2½c.) per gallon on Red Crown Gasoline and three cents (3c.) per gallon on Red Crown Ethyl Gasoline, and should the Standard Oil Co. of Indiana increase or decrease the Q. D. A. as outlined above at any time during the period of this contract, then in that event, the basis of marginal protection as provided in Paragraph No. 5 will be increased or decreased to the full extent of said change by the Standard Oil Co. of Indiana in the Q. D. A."

5203 GOVERNMENT EXHIBIT NO. 624.

Socony-Vacuum Oil Company, Incorporated
White Eagle Division
Sales Franchise

This Agreement, Made this 24 day of May, 1935 between Harry Fee of Waterloo, Ia., as Buyer, and Socony-Vacuum Oil Company, Incorporated, as Seller:

Witnesseth:

No. 1 Quantity

Seller agrees to sell and deliver and Buyer agrees to purchase from Seller, Buyer's entire requirements of gasoline, kerosene and distillate to be shipped in tank cars, and of lubricating oils, greases and other petroleum products to be shipped in packages of sizes currently in use by Seller, for resale from bulk stations located at:

Waterloo, Iowa.

....

....

Buyer estimates annual requirements to be:

225,000 Gal. Gasoline	50,000 Gal. Kerosene
.... Gal. Distillate	6,000 Gal. Lubricating Oil

No. 2 Period

This agreement shall continue in effect for a period of one year from May 24 1935 and from year to year thereafter; provided, however, that either party may cancel the agreement at the expiration of any yearly period by giving the other party written notice of its intention to cancel same at least thirty (30) days prior to said expiration date.

No. 3 Contract Price

(A) Mobilgas. The price of Mobilgas supplied under this contract shall be the tank car market price defined in Clause No. 4, except that: In the event such tank car market price fails to allow the Buyer a margin under the normal service station price at Buyer's station equal to the Seller's established undivided reseller's discount applicable in Buyer's marketing area, plus two cents (2c), then the Seller shall reduce the billing price of Mobilgas 50% of such deficiency; provided, however, that Seller shall not be obligated under this Clause to reduce his billing price f. o. b. Group 3 to less than 3½c, per gallon.

5204 Normal service station price is understood to be the statewide price of Buyer's principal competitors, freight differentials between various points considered. Buyer's margin is then the difference between such normal service station price and the tank car market price, plus Group 3 freight (Tulsa, Oklahoma) to Buyer's station with no deductions of any kind.

	Service Station Price (Taxes not included) Mobilgas	
Town	Present Price	Normal Price
Waterloo	13^{2}	13^{2}

(B) Mobilgas Ethyl. The tank car price of Mobilgas Ethyl supplied under this contract shall be two cents, (2¢) per gallon more than the contract price hereunder for Mobilgas on date of shipment.

(C) Metro Gasoline. The tank car price of Metro Gasoline supplied under this contract shall be the tank car market price defined in clause No. 4, except that a minimum differential of one-fourth cent (¼¢) per gallon under the price of Mobilgas as defined in (A) is guaranteed.

(D) Other Grades of Gasoline. The price of other grades of gasoline supplied under this contract shall be the tank car market price for Mobilgas on date of shipment plus or minus, as the case may be, the Seller's established market differential on the date of shipment between Mobilgas and such other grade or grades.

(E) White Eagle Kerosene. The tank car price of White Eagle Kerosene supplied under this contract shall be the tank car market price defined in Clause No. 4.

(F) White Eagle Distillate. The tank car price of White Eagle Distillate supplied under this contract shall be the tank car market price defined in Clause No. 4.

(G) Other Refined Oils. The tank car price of other refined oils supplied under this contract shall be the current spot market price of the Seller.

5205 No. 4 Market Price

The Tank Car Market price (per gallon) f. o. b. Oklahoma Group 3 (Tulsa, Oklahoma), shall be the average of the minimum and maximum price f. o. b. Oklahoma Group 3, as shown in both Platt's Oilgram Tulsa edition (Oklahoma refinery market) and the Chicago Journal of Commerce, for the date on which shipment is made, for Motor Gasoline of the same grade and octane rating and/or kerosene of the same grade and/or distillate of the same grade. In the event that no prices are published for date shipment is made, then prices published for last date prior to shipment shall apply. If during the life of this contract either of said publications shall be discontinued, and/or publication of prices of gasoline and/or kerosene and/or distillate therein is discontinued, then the Tank Car market price shall be determined from the prices contained in the remaining publication, in the manner above stated; and in the further event that no price of the grade of gasoline and/or kerosene and/or distillate furnished be published by either of the aforesaid publications, then the "tank car market price" shall be the current "spot" price of Seller. In the absence of specific prices on "prime white" distillate, the price shall be one-eighth cent (1/8¢) higher than on straw distillate.

No. 5 Freight Equalization

When prevailing freight rate from Seller's refinery to Buyer's station is lower than from Group 3 (Tulsa, Oklahoma) to said station, such difference shall be equalized in Seller's billing price, making Buyer's net cost the Group 3 contract price provided herein plus freight rate from Group 3 (Tulsa, Oklahoma) as published and in effect on date of shipment.

No. 6 Terms of Payment

Terms shall be Arrival Draft less one per cent in the absence of special credit arrangements approved by Seller. Continuance of special credit arrangement shall be at option of Seller.

No. 7 Advertising and Trade Brands

Buyer agrees at all times to maintain the integrity of Seller's brands, trade names and trademarks and to use every precaution to prevent mixing, adulteration, contamination or substitution. The Socony-Vacuum or White

Eagle names, emblems and advertising shall be used to identify and advertise only products furnished by Seller. All advertising material furnished by Seller shall be used exclusively at outlets supplied by Buyer and is not to be transferred to the custody of any one else without the written consent of Seller. Buyer agrees to immediately discontinue the display of Socony-Vacuum or White Eagle advertising materials and use or display of the Socony-Vacuum or White Eagle names or emblems in any manner or form upon the termination of this con-
5206 tract, and in the absence of a new agreement specifically authorizing its continued use. Seller reserves the right to change the trade name of, or to adopt a new trade name for any of its products at any time.

No. 8 Successors

This contract shall run in favor of, and be binding upon the heirs, administrators, successors and assigns of the parties hereto. This contract may not be assigned by the Buyer without the written consent of the Seller.

No. 9 Taxes

Any tax or other charge imposed by Governmental authority upon any of the goods herein described or the production, sale, or shipment thereof, shall be in addition to the price stipulated herein.

No. 10 Marketing Practices

Seller may cancel this contract and refuse to make further shipment in the event Buyer does not conduct his business in a manner considered by those engaged in the petroleum marketing industry as fair and ethical; or if Buyer fails or refuses to observe resale prices fixed and determined by the Seller for the products hereby contracted as provided for in Rule 26, Article 5 of the Code of Fair Competition for the Petroleum Industry.

No. 11 Territory Franchise

Buyer agrees that no products by him hereunder shall be sold beyond the limits of the territory outlined on the map attached hereto and made a part hereof, which is the Buyer's normal marketing territory, without the written consent of the Seller.

No. 12 Distribution

The Buyer agrees that the products delivered under this contract will not be resold in tank car lots without specific, written approval of the Seller; nor will any products shipped to Buyer under this contract be diverted or stopped in transit by Buyer without consent of Seller.

No. 13 Ethyl License

Seller's obligation to sell and Buyer's obligation to buy Mobilgas or Mobilgas Ethyl under the terms hereof shall at all times be conditioned upon the concurrent possession of requisite license from Ethyl Gasoline Corporation by both parties, and the termination of either the Seller's license or the Buyer's license for any reason shall operate from and after the date of such termination to discharge both parties hereto from any further obligation to buy or sell Mobilgas or Mobilgas Ethyl gasoline hereunder.

5207 No. 14 Delay

Fire, flood, strikes, differences with workmen, accidents, to plant or machinery, failure of or unusual conditions surrounding the usual source of supplies or material, or other causes beyond the control of either party shall be sufficient excuse for any delay or failure upon the part of either party to perform this contract, provided however, that such party shall notify the other with reasonable promptness as to the existence of such causes.

No. 15 Contract Effective

This contract contains the entire agreement between the parties hereto except as to prices and terms of sale for lubricating oils and greases which are covered in a separate Memorandum of Agreement. There are no oral promises, agreements or warranties affecting it and contract shall not be valid and/or effective until approved by a sales executive of Seller.

Harry Fee
Buyer.

Executed This 24th day of May 1935

Socony-Vacuum Oil Company, Inc.
White Eagle Division
By F. M. Elliott
Salesman.

Approved
By R. D. Mering
E. G. D.
C. J.

5208 GOVERNMENT EXHIBIT NO. 625.

Socony-Vacuum Oil Company, Incorporated
White Eagle Division
Sales Franchise

This Agreement, Made this 19th day of November, 1935, between Harry Fee of Waterloo, Iowa, as Buyer, and Socony-Vacuum Oil Company, Incorporated, as Seller:

Witnesseth:

No. 1 Quantity

Seller agrees to sell and deliver and Buyer agrees to purchase from Seller, Buyer's entire requirements of gasoline, kerosene and distillate to be shipped in tank cars, and of lubricating oils, greases and other petroleum products to be shipped in packages of sizes currently in use by Seller, for resale from bulk stations located at:

....

....

....

Buyer estimates annual requirements to be:

225,000 Gal. Gasoline

.... Gal. Distillate

50,000 Gal. Kerosene

6,000 Gal. Lubricating Oil

No. 2 Period

This agreement shall continue in effect for a period of one year from Nov. 19th, 1935, and from year to year thereafter; provided, however, that either party may cancel the agreement at the expiration of any yearly period by giving the other party written notice of its intention to cancel same at least thirty (30) days prior to said expiration date.

No. 3 Contract Price

(A) Mobilgas—The price of Mobilgas supplied under this contract shall be the tank car price defined in Clause 4 except in the event such tank car market price fails to allow the Buyer a margin of 3½¢ under the Seller's posted normal tank wagon price at Buyer's station, then the Seller shall reduce the billing price of Mobilgas 50% of

such deficiency. It is understood and agreed that in the
event that the Seller increases or decreases the present
differential of 1½¢ between the Seller's posted normal
tank wagon price and the Seller's posted normal price to
dealers generally throughout the state of Iowa, then the
3½¢ base margin mentioned above shall be increased or
decreased in like amount. Seller shall in no case, how-
5209 ever, be obligated under this clause to reduce his bill-
ing price f. o. b. Group 3 to less than 3½¢ per gal-
lon. Buyer's margin referred to above is the difference
between Seller's normal tank wagon price and the tank
car market price, plus Group 3 Freight (Tulsa, Oklahoma)
to Buyer's station with no deductions of any kind.

	Tank Wagon Price (Taxes not included) Mobilgas	
Town	Present Price	Normal Price
Waterloo, Iowa	13 5 S S 11 5 T W	13 5 SS 11 5 TW

(B) Mobilgas Ethyl. The tank car price of Mobilgas Ethyl supplied under this contract shall be two cents, (2¢) per gallon more than the contract price hereunder for Mobilgas on date of shipment.

(C) Metro Gasoline. The tank car price of Metro Gasoline supplied under this contract shall be the tank car market price defined in clause No. 4, except that a minimum differential of one-fourth cent (¼¢) per gallon under the price of Mobilgas as defined in (A) is guaranteed.

(D) Other Grades of Gasoline. The price of other grades of gasoline supplied under this contract shall be the tank car market price for Mobilgas on date of shipment plus or minus, as the case may be, the Seller's established market differential on the date of shipment between Mobilgas and such other grade or grades.

(E) White Eagle Kerosene. The tank car price of White Eagle Kerosene supplied under this contract shall be the tank car market price defined in Clause No. 4.

(F) White Eagle Distillate. The tank car price of White Eagle Distillate supplied under this contract shall be the tank car market price defined in Clause No. 4.

(G) Other Refined Oils. The tank car price of other refined oils supplied under this contract shall be the current spot market price of the Seller.

5210 **No. 4 Market Price**

The Tank Car Market price (per gallon) f.o.b. Oklahoma Group 3 (Tulsa, Oklahoma), shall be the average of the minimum and maximum price f.o.b. Oklahoma Group 3, as shown in both Platt's Oilgram Tulsa edition (Oklahoma refinery market) and the Chicago Journal of Commerce, for the date on which shipment is made, for Motor Gasoline of the same grade and octane rating and/or kerosene of the same grade and/or distillate of the same grade. In the event that no prices are published for date shipment is made, then prices published for last date prior to shipment shall apply. If during the life of this contract either of said publications shall be discontinued, and/or publication of prices of gasoline and/or kerosene and/or distillate therein is discontinued, then the Tank Car Market price shall be determined from the prices contained in the remaining publication, in the manner above stated; and in the further event that no price of the grade of gasoline and/or kerosene and/or distillate furnished be published by either of the aforesaid publications, then the "tank car market price" shall be the current "spot" price of Seller. In the absence of specific prices on "prime white" distillate, the price shall be one-eighth cent (⅛¢) higher than on straw distillate.

No. 5 Freight Equalization

When prevailing freight rate from Seller's refinery to Buyer's station is lower than from Group 3 (Tulsa, Oklahoma) to said station, such difference shall be equalized in Seller's billing price, making Buyer's net cost the Group 3 contract price provided herein plus freight rate from Group 3 (Tulsa, Oklahoma) as published and in effect on date of shipment.

No. 6 Terms of Payment

Terms shall be Arrival Draft less one per cent in the absence of special credit arrangements approved by Seller. Continuance of special credit arrangement shall be at option of Seller.

No. 7 Advertising and Trade Brands

Buyer agrees at all times to maintain the integrity of Seller's brands, trade names and trademarks and to use every precaution to prevent mixing, adulteration, contamination or substitution. The Socony-Vacuum or White

Eagle names, emblems and advertising shall be used to
identify and advertise only products furnished by Seller.
All advertising material furnished by Seller shall be used
exclusively at outlets supplied by Buyer and is not to be
transferred to the custody of any one else without the writ-
ten consent of Seller. Buyer agrees to immediately dis-
continue the display of Socony-Vacuum or White Eagle ad-
vertising materials and use or display of the Socony-
Vacuum or White Eagle names or emblems in any
5211 manner or form upon the termination of this contract,
and in the absence of a new agreement specifically
authorizing its continued use. Seller reserves the right to
change the trade name of, or to adopt a new trade name
for any of its products at any time.

No. 8 Successors

This contract shall run in favor of, and be binding upon the heirs, administrators, successors and assigns of the parties hereto. This contract may not be assigned by the Buyer without the written consent of the Seller.

No. 9 Taxes

Any tax or other charge imposed by Governmental authority upon any of the goods herein described or the production, sale, or shipment thereof, shall be in addition to the price stipulated herein.

No. 10 Marketing Practices

Seller may cancel this contract and refuse to make further shipment in the event Buyer does not conduct his business in a manner considered by those engaged in the petroleum marketing industry as fair and ethical.

No. 11 Territory Franchise

Buyer agrees that no products purchased by him hereunder shall be sold beyond the limits of the territory outlined on the map attached hereto and made a part hereof, which is the Buyer's normal marketing territory, without the written consent of the Seller.

No. 12 Distribution

The Buyer agrees that the products delivered under this contract will not be resold in tank car lots without specific, written approval of the Seller; nor will any products shipped to Buyer under this contract be diverted or stopped in transit by Buyer without consent of Seller.

No. 13 Ethyl License

Seller's obligation to sell and Buyer's obligation to buy Mobilgas or Mobilgas Ethyl under the terms hereof shall at all times be conditioned upon the concurrent possession of requisite license from Ethyl Gasoline Corp. by both parties, and the termination of either the Seller's license or the Buyer's license for any reason shall operate from and after the date of such termination to discharge both parties hereto from any further obligation to buy or sell Mobilgas or Mobilgas Ethyl gasoline hereunder.

No. 14 Delay

Fire, flood, strikes, differences with workmen, accidents to plant or machinery, failure of or unusual conditions surrounding the usual source of supplies or material, or other causes beyond the control of either party shall be sufficient excuse for any delay or failure upon the part of either party to perform this contract, provided however, that such party shall notify the other with reasonable promptness as to the existence of such causes.

5212 No. 15 Contract Effective

This contract contains the entire agreement between the parties hereto except as to prices and terms of sale for lubricating oils and greases which are covered in a separate Memorandum of Agreement. There are no oral promises, agreements or warranties affecting it and contract shall not be valid and/or effective until approved by a sales executive of Seller.

Executed This 19th day of November 1935.

Socony-Vacuum Oil Company, Inc.
White Eagle Division
By A. J. Fish
F. M. Elliott
Salesman.

Approved
By R. D. Mering

Harry Fee
Buyer.

H. K. B.
C. J.

5213 GOVERNMENT EXHIBIT NO. 626.

Contract between Socony-Vacuum Oil Company, Inc., (a New York corporation doing business in Illinois) and George C. Peterson Co., dated December 1, 1934, for the period from December 1, 1934 through November 30, 1935:

"Gasoline Prices: The price of Mobilgas and Metro Gasoline supplied under this contract shall be the average spot market price determined by averaging the high and low spot market prices of both the Chicago Journal of Commerce and Platt's Oilgram Tulsa market prices, on date of shipment for U. S. Motor Gasolines of the same octane rating as Mobilgas and Metro Gasoline f.o.b. Group 3. Shipments made on Sundays or holidays shall be billed at the price determined by the average spot market price effective on the first publication day thereafter. However, the price of Metro Gasoline shall not exceed ¼¢ per gallon under the price of Mobilgas.

Except That:—1. If the average spot market price plus freight to destination allows the Buyer a margin of less than 6¢ per gallon below the Service Station price as published by the Standard Oil Company of Indiana for Red Crown Gasoline, then the Buyer and the Seller shall share equally the deficit below a margin and the price shall be revised accordingly. Margins shall be determined on the basis of a normal Illinois price structure and shall not take account of local price deflations.

2—If the Quantity Discount paid to all controlled and/or uncontrolled dealers by the Seller on Mobilgas be increased or decreased from the present rate of 3¢ per gallon, the margin of 5¢ per gallon to Buyer shall be revised by the amount of such increase or decrease.

3—If the average spot market price f.o.b. Group 3 be less than the price of two gallons of 36-gravity crude oil at the well as published by the major oil companies purchasing crude oil in Oklahoma, then the Seller may refuse to supply Mobilgas at a price f.o.b. Group 3 in less than
5214 the price of two gallons of 36-gravity crude oil at the
well, and if the Buyer refuses to accept Seller's price then Buyer may cancel this contract by giving Seller ten (10) days' written notice and returning to seller all signs, pump globes and other equipment belonging to Seller and/or bearing the trademark or insignia of any of the brands of petroleum products suplied by Seller.

The Price of Mobilgas Ethyl supplied under this contract shall be 2¢ per gallon more than the average spot market price for Mobilgas on date of shipment.

The above prices are exclusive of tax.

5215 GOVERNMENT EXHIBIT NO. 627.

Contract between Socony-Vacuum Oil Company, Inc., (a New York corporation doing business in Illinois) and George C. Peterson Co., dated December 30, 1935, for the period from December 30, 1935 to and including December 31, 1936:

(Same as Exhibit 626 except for the following:)

"Except That:—1. If the average spot market price plus freight to destination allows the Buyer a margin of less than 6¢ per gallon below the Service Station price as published by the Standard Oil Company of Indiana for Red Crown Gasoline, then the Buyer and the Seller shall share equally the deficit below a 6¢ margin and the price shall be revised accordingly. Margins shall be determined on the basis of a normal Illinois price structure and shall not take account of local price deflations.

2—If the Quantity Discount paid to all controlled and/or uncontrolled dealers by the Seller on Mobilgas be increased or decreased from the present rate of 4¢ per gallon, the margin of 6¢ per gallon to Buyer shall be revised by the amount of such increase or decrease."

5216 GOVERNMENT EXHIBIT NO. 628.

Contract between H. E. Miller Oil Company and Barnsdall Oil Company, dated August 1, 1934, for a period of three years:

"No. 5 Prices Gasoline

Buyer shall pay to Seller for gasolines in tank car lots f. o. b. Group 3 Oklahoma, the Spot Market price for each grade shipped on the shipping date specified by Buyer, computed in the following manner:

On Be Square Gasoline: Average of Chicago Journal of Commerce.

On Super-Gas Ethyl Gasoline: The price of Be Square gasoline as computed herein, plus two cents (2¢) per gallon.

On Barnsdall Motor Fuel: Average of Chicago Journal of Commerce.

(However, Seller will bill Buyer for the price of 60-64 octane gasoline, computed as stated above on each carload of Be Square gasoline, as long as the two tank car distributors having the largest volume in the state or states in which Buyer operates continue to bill a like quality of gasoline to their customers in the state or states on the same basis.) When the spot market price computed as provided above, plus freight cost per gallon from Route 3 Oklahoma to destination on each carload, plus six cents (6¢) per gallon for Be Square gasoline and Super-G's Ethyl gasoline, and four and one-half cents (4½¢) per gallon for Barnsdall Motor Fuel, exceeds the officially posted service station price of The majority of the major marketing companies for like grades of gasoline at point of destination (less tax), the billing price for each carload of gasoline shipped under this contract shall be reduced by Seller in an amount equal to one-half of the excess.

However, when the Spot Market price, computed as provided above, plus freight cost per gallon from Group 3 Oklahoma to destination on each carload, plus an amount equal to Seller's Q. D. A. for like grade or grades in Buyer's territory, exceeds the officially posted service station price of said Company (less tax) for like grade or grades of gasoline at the point of destination, the billing price hereunder of each carload shall be reduced by Seller in an amount equal to such excess. This last named billing price reduction shall be set up in a separate account, to be

refunded by Buyer to Seller in the following manner:
5217 If at any subsequent time during the term hereof price conditions are such that at any place or places of destination Buyer has a margin in excess of six cents (6¢) per gallon on Be Square gasoline and Super-Gas Ethyl gasoline, or a margin in excess of four and one-half cents (4½¢) per gallon on Barnsdall Motor Fuel, between delivered cost computed as hereinabove provided and the existing service station price of the above-named company (less tax), then Seller shall increase its price per gallon on shipments to such place or places on any or all grades of gasolines thereafter sold to Buyer in an amount equal to one-half of such excess. This increased price shall remain effective while the excess between the delivered cost and service station price exists until Seller has been refunded the total sum theretofore allowed Buyer at any place of destination and on any grade of gasoline during the time Seller was required to reduce its price. Buyer agrees to pay said total sum allowed which has not been refunded immediately upon termination of this contract for any cause by either party before the date of expiration provided herein.

It is understood and agreed that regardless of the above provisions, Buyer will not be entitled in any event to purchase gasolines from Seller at a price f. o. b. Group 3 Oklahoma less than five cents (5¢) per gallon for Super-Gas Ethyl gasoline, three cents (3¢) per gallon for Be Square gasoline, and two and one-half cents (2½¢) per gallon for Barnsdall Motor Fuel, notwithstanding the marginal protection and price basis provided above.

If there is no issue of the publication above designated on the date of shipment, quotations in the last preceding day's issue will govern, unless said publication should cease business.

Buyer agrees to inform Seller at its Tulsa, Oklahoma, office by collect telegraphic message the amount and effective date of any change at any point within its marketing territory in the general posted service station price on like grades of gasoline by the said The majority of the major marketing companies, and it is agreed that until said telegram is received by Seller, Buyer will not be entitled to any additional marginal protection it might get because of said change.

5218 No. 6 Q. D. A.

It is mutually understood and agreed that the marginal protection as outlined in Paragraph 5 is based on

Seller's present Q. D. A. (quantity discount agreement with resale retail dealers or service stations) which at the present time is Four (4) cents per gallon on Be-Square Gasoline (Regular) gasoline, and four (4) cents per gallon on Super-Gas Ethyl Gasoline, and Three (3) cents per gallon on Barnsdall Motor Fuel (Third Grade) gasoline, and should Seller, increase or decrease the Q. D. A. as outlined above at any time during the period of this contract, then in that event the basis of marginal protection as provided in Paragraph No. 5 will be increased or decreased to the full extent of said change by Seller in its Q. D. A.

Seller agrees to keep its Q. D. A. in Buyer's trade territory competitive with the established Q. D. A. of the majority of major marketing companies in Buyer's trade territory."

5219 GOVERNMENT EXHIBIT NO. 629.

Letter dated July 25, 1935, from Barnsdall Refining Corporation, G. F. Racette, Vice President to H. E. Miller Oil Company, and an assignment executed July 30, 1935, by H. E. Miller Oil Company:

Letter

"The refining and marketing activities of Barnsdall have been taken over and are now being conducted by Barnsdall Refining Corporation. We are enclosing a consent to the assignment by Barnsdall Oil Company to Barnsdall Refining Corporation of our Trade Mark Contract with you. Will you be kind enough to sign the same, retaining one copy for your files and returning one to us."

Assignment

"To Barnsdall Oil Company, and
Barnsdall Refining Corporation:

We hereby consent to the assignment by Barnsdall Oil Company to Barnsdall Refining Corporation, of all the right, title and interest of said Barnsdall Oil Company in and to the Barnsdall Trade Mark contract made and entered into on the 1st day of August, 1934, by and between Barnsdall Oil Company of Tulsa, State of Okla., and H. E. Miller Oil Company, of Festus, State of Mo., together with all of the right, title and interest of said Barnsdall Oil Company in and to the contract between the same parties for the purchase and sale of oils and greases, dated the 31st day of July, 1934, and attached to and forming a part of the aforesaid Barnsdall Trade Mark contract of August 1st, 1934, and hereby accept the said Barnsdall Refining Corporation as the party to said contracts in lieu of Barndall Oil Company.

This consent is with the understanding that Barnsdall Refining Corporation assumes all of the obligations of said contracts incumbent upon Barnsdall Oil Company."

5220 GOVERNMENT EXHIBIT NO. 630.

Contract between Tide Water Oil Company and Pike County Oil Company, Inc., dated November 15, 1934, for the period of one year from that date:

"6. Prices:

Gasoline

Tide Water's prices to Distributor shall be as follows (all gasoline priced f. o. b. Group 3, Drumright, Oklahoma):

A. On Tydol Gasoline, Distributor shall pay Tide Water per gallon the average of the high and low quotations as published in the Chicago Journal of Commerce and Platt's Oilgram (Oklahoma Section), on date of shipment of each car, for U. S. Motor Gasoline of the same octane rating as Tydol Gasoline shipped, subject to the following provisos:

(1) If there is no issue of the Chicago Journal of Commerce and/or Platt's Oilgram on date of shipment, quotations in the last preceding day's issue shall govern. In the event either of the publications above mentioned is discontinued or either discontinues carrying quotations on gasoline, quotations from the remaining publication shall be used in the manner herein provided.

(2) If, on the date of any shipment, the price per gallon determined as above, plus freight to destination, is less than 6¢ below the then current, normal, state-wide, service station price per gallon of the Standard Oil Company of Indiana on Red Crown gasoline for the State of Missouri, which last mentioned price on this date at Bowling Green, Missouri, State of Missouri, is 16.4¢ per gallon, Distributor and Tide Water will bear equally the amount by which the difference between the two prices mentioned is less than 6¢, and the billing on any such shipment shall be adjusted accordingly. The 'normal, state-wide, service station price' of the Standard Oil Company, referred to, is understood to mean that service station price of said Company which is effective over the State of Missouri and which only varies at local points in said State to the extent of the difference in freight rates from the Standard Oil Company's refineries to the various local points. Only advances and declines in the normal, state-wide, service station price, as herein defined, shall be considered in making adjustment in the billings as above provided.

5221 (3) The provisions of the above paragraph, under which the parties bear in equal portions the marginal differential specified, is based upon the present policy of the Standard Oil Company of Indiana to allow re-sellers discounts of 4¢ to undivided dealers and re-sellers; and in the event the Standard Oil Company of Indiana increases or decreases such re-sellers discount to undivided dealers and/or re-sellers generally throughout its marketing territory, then the 6¢ marginal basis above specified shall be increased or decreased in an equal amount.

(4) Notwithstanding anything to the contrary in the foregoing 'Price' provisions, it is agreed that Tide Water's minimum price per gallon on each shipment of Tydol Gasoline shall be in accordance with the following schedule, based upon Stanolind Crude Oil Purchasing Company's posted market price at the well for 36° gravity Oklahoma crude oil on date of shipment, namely:

Posted Crude Oil Price.	Minimum Gasoline Price
Below 50¢	3¢
From 51¢ to 75¢, inclusive	3½¢
From 76¢ to $1.00, inclusive	4¢
From $1.01 to $1.25, inclusive	4½¢
Above $1.25	5¢

B. Tidex Gasoline: Tide Water's price f. o. b. Group 3, on each shipment shall be the average of the high and low quotations as published in the Chicago Journal of Commerce and Platt's Oilgram (Oklahoma Section) on date of shipment of each car, for U. S. Motor Specification Gasoline of 59 octane or less with this proviso: Tide Water's price on Tidex Gasoline to Distributor f. o. b. Group 3 will at no time be greater than one-quarter cent (¼¢ per gallon below the price charged Distributor on Tydol Gasoline f. o. b. Group 3."

5222 GOVERNMENT EXHIBIT NO. 631.

Contract between Socony-Vacuum Oil Company, Inc., Lubrite Division, and Wabash Oil Corporation, dated April 13, 1935, for a period of one year from June 15, 1935, with rider:

Contract

"6—Contract Price—(A) The price of Mobilgas supplied under this contract shall be the average spot market price determined by averaging the high and low spot market prices of both the Chicago Journal of Commerce and Platt's Oilgram—Tulsa Market—on the date of shipment for U. S. Motor gasoline of the same octane rating as Mobilgas, f. o. b. Group 3. When the freight rate from point of shipment to Distributor's bulk plant is lower than from Group 3 to said bulk plant, such difference shall be equalized in Lubrite's billing price, making Distributor's net cost the Group 3 contract price hereinbefore mentioned plus freight rate from Group 3 as published and in effect on the date of shipment; except that:

If the average spot market price plus freight to destination allows the Distributor a margin of less than five and one-half cents (5½¢) per gallon below the posted normal service station price than the Distributor and Lubrite shall share equally the deficit below five and one-half cents (5½¢) per gallon and the price shall be revised accordingly. Margins shall be determined on the basis of a statewide price structure and shall not take account of local price deflations. The five and one-half cent (5½¢) margin mentioned above is based on a three and one-half cent (3½¢) undivided dealer allowance and will increase or decrease in accordance with any increase or decrease in said dealer allowance.

If the average spot market price f. o. b. Group 3 be less than the price of two gallons of 36 gravity crude oil at the well as published by the major oil companies purchasing crude oil in Oklahoma, then Lubrite may refuse to supply Mobilgas at a price f. o. b. Group 3 less than the price of two gallons of 36 gravity crude oil at the well, and if the Distributor refuses to accept Lubrite's price then Distributor may cancel this contract by giving Lubrite ten days' written notice and returning to Lubrite all signs, pump globes and other equipment belonging to Lubrite and/or bearing the trade-mark or insignia of any of the brands of petroleum products supplied by Lubrite.

5223 (B) The price of Mobilgas Ethyl supplied under the contract shall be two cents (2¢) per gallon higher than the price for Mobilgas on date of shipment.

(C) The price of Metro supplied under this contract shall be the average spot market price determined by averaging the high and low spot market price of the Chicago Journal of Commerce and Platt's Oilgram—Tulsa Market—on date of shipment for U. S. Motor gasoline of the same octane rating as Metro, f. o. b. Group 3. When the freight rate from point of shipment to Distributor's bulk plant is lower than from Group 3 to said bulk plant, such difference shall be equalized in Lubrite's billing price, making Distributor's net cost the Group 3 contract price hereinbefore mentioned plus freight rate from Group 3 as published and in effect on the date of shipment. However, the price of Metro shall never be higher than one-quarter cent (¼¢) per gallon below the price for Mobilgas on the date of shipment."

Rider Dated August 11, 1936

"By mutual agreement, the second paragraph under item 6, in said agreement, is hereby cancelled.

Effective this date, the paragraph is superseded and replaced by the following:

'If the average spot market price plus freight to destination allows the Distributor a margin of less than two cents (2¢) per gallon below the normal posted price to Dealers, than the Distributor and Lubrite shall share equally the deficit below two cents (2¢) per gallon and the price shall be revised accordingly. Margins shall be determined on the basis of a state-wide price structure and shall not take account of local price deflations'."

5224 GOVERNMENT EXHIBIT NO. 632.

Contract between Empire Oil & Refining Co. and Midway Oil Company, dated February 14, 1935, for the period of one year from March 16, 1935 to March 15, 1936:

"Price

The gasolene on this contract shall be invoiced on the spot price prevailing f. o. b. Oklahoma Group Three, and shall be on the basis of one-quarter (¼¢) cent below the average of the Chicago Journal of Commerce on date of shipment, for the grade of gasolene furnished.

Discontinuing Shipments: It is further agreed, during the life of this contract, that the seller or refiner has the option of discontinuing shipments at any time the price of any grade of gasolene specified in this contract declines to a price, f. o. b. Group Three, less than the price per gallon shown versus the price of 36 gravity crude as posted by the Stanolind Crude Oil Purchasing Company.

When 36 gravity crude is 50¢ and below, gasolene price —3¢ min.

When 36 gravity crude is 51¢ and above up to and including 75¢, gasolene price 3½¢ min.

When 36 gravity crude is 76¢ and above up to and including $1.00, gasolene price 4¢ min.

When 36 gravity crude is $1.01 and above up to and including $1.25, gasolene price 4½¢ min.

Optional Quality-Competitive Grade: The buyer also may, on any given shipments, specify an alternate quality of gasoline known as a competitive grade and is 58-60 U. S. Motor below 62 octane. Any shipment of the competitive grade of gasolene shall be priced on the average price of 58-60 U. S. Motor gasolene, under 62 octane, as quoted in the Chicago Journal of Commerce, Oklahoma Group Three on date of shipment, less ¼¢. It is also agreed that the maximum invoice price of the competitive grade of gasolene shall never be higher than ¼¢ under the price of Koolmotor gasolene, on date of shipment as provided in this contract.

Ethyl Gasolene: It is further agreed that the buyer reserves the option to order Ethyl gasolene when franchise agreement is properly approved by the Ethyl Corporation and said Cities Service Ethyl gasolene will be furnished on the basis of this contract on Koolmotor gasolene plus 2¢ per gallon.

Explanation of Pricing: Inasmuch as the published average price on gasolene has divided 58-60 U. S. Motor into groups, according to octane rating, the pricing under
5225 this contract shall be as follows: The price basis to be used in connection with this contract will be ¼¢ under the average spot market quotation as shown in the Chicago Journal of Commerce on date of shipment, f. o. b. Oklahoma Group Three, such spot price to be the equivalent of the octane rating of the gasoline furnished.

5226 GOVERNMENT EXHIBIT NO. 633.

Contract between Empire Oil & Refining Co. and Midway Oil Company, Inc., dated March 11, 1936, for a period of one year from March 16, 1936 to March 15, 1937:

"Price

The gasoline on this contract shall be invoiced on the spot price prevailing f. o. b. Oklahoma Group Three, and shall be on the basis of one-quarter (¼¢) cent below the low of the Chicago Journal of Commerce on date of shipment, for the grade of gasoline furnished.

Discontinuing Shipments: (Same as corresponding paragraph in Exhibit 632.)

Optional Quality-Competitive Grade. The buyer also may, on any given shipments, specify an alternate quality of gasolene known as a competitive grade and is 58-60 U. S. Motor below 62 octane. Any shipment of the competitive grade of gasolene shall be priced on the low price of 58-60 U. S. Motor gasolene, under 62 octane, as quoted in the Chicago Journal of Commerce, Oklahoma Group Three on date of shipment, less one-quarter (¼¢) cent. It is also agreed that the maximum invoice price of the competitive grade of gasoline shall never be higher than ¼¢ under the price of Koolmotor gasolene, on date of shipment as provided in this contract.

Ethyl Gasolene: (Same as corresponding paragraph in Exhibit 632)

Explanation of Pricing: Inasmuch as the published prices on gasolene have divided 58-60 U. S. Motor into groups, according to octane rating, the pricing under this contract shall be as follows: The price basis to be used in connection with this contract will be ¼¢ under the low spot market quotation as shown in the Chicago Journal of Commerce on date of shipment, f. o. b. Oklahoma Group Three, such spot price to be the equivalent of the octane rating of the gasolene furnished."

5227 GOVERNMENT EXHIBIT NO. 634.

Contract between Continental Oil Company and General Oil Products Co. Inc., for a period of one year commencing on August 15, 1934:

"3. Price: A. The Buyer shall pay Conoco, subject to the conditions hereinafter stated, the spot tank car price f. o. b. Group 3, Oklahoma, for each shipment of Conoco Gasoline purchased hereunder at the time of shipment thereof.

B. Provided, that in the event such spot tank car price plus freight to destination, plus six (6¢) cents per gallon exceeds Standard Oil Co. (Ind.) normal service station price (exclusive of tax), then the price Buyer shall pay Conoco shall be reduced by an amount equal to one-half of the excess.

D. Provided, further, however, that if at any time during the life of this contract the price per gallon as determined above is less than the value of three gallons of 36 gravity Oklahoma Crude Oil at the Well, at the posted price of Conoco, then Conoco may, at its option, cancel and terminate this contract upon giving Buyer ten (10) days notice in writing of such termination and cancellation.

This contract is based upon the normal service station prices of Standard Oil Co. (Ind.) at destinations listed below, which are as follows:

Location	Date	Normal Service Station Prices (exclusive of tax)
DeSoto, Missouri,	8-15-34	14.3

Spot Tank Car Price: The spot tank car price per gallon f. o. b. Group 3 Oklahoma, shall be ascertained by taking the prices for U. S. Motor Gasoline or 41-43 Kerosene as the case may be, of the grade nearest comparable to that furnished hereunder, as published in the Chicago Journal of Commerce, Chicago, Ill., and Platt's Oilgram, Tulsa Edition, (Oklahoma Markets) using last issue previous to date of shipment and adding together such prices carried in such publications (using minimum and maximum prices where shown) and dividing the sum of such prices by the number of prices so added together, the quotient so obtained to be the spot tank car price.

5228 The price Buyer shall pay Conoco for Conoco Ethyl Gasoline f. o. b. Ponca City, Oklahoma shall be the price for Conoco Gasoline as determined by procedure outlined herein plus 2¢ per gallon.

4. Normal Tank Wagon or Service Station Price: It is hereby agreed by Buyer and Conoco that the normal tank wagon or service station price respectively if referred to herein is the price which would normally be in effect if not influenced by local, special, or cut price conditions, and such normal tank wagon or service station price per gallon of the Standard Oil Co. (Ind.) at point of any destination of shipments herein mentioned shall always have and maintain its normal relation to the general normal prices of said company throughout the State in which destination is located, and that the price of goods covered by this contract shall in no case be affected by any special or cut price applying to point of destination and not generally throughout said State, unless otherwise expressly provided above. The tank wagon or service station price provided above does not contemplate any deduction because of quantity discounts, dealer discounts, or any other discounts, or special allowances of any character whatsoever."

5229 GOVERNMENT EXHIBIT NO. 635.

Contract between Continental Oil Co. and General Oil Products, Inc., dated August 22, 1935, for a period of one year commencing on August 15, 1935:

"3. Price: A. The Buyer shall pay Conoco, subject to the conditions hereinafter stated, the spot tank car price f.o.b. Group 3 Oklahoma, for each shipment of Conoco Bronze Gasoline purchased hereunder at the time of shipment thereof.

B. Provided, that in the event such spot tank car price plus freight to destination, plus five and one-half (5½¢) cents per gallon exceeds Standard Oil Co. (Ind.) normal service station price (exclusive of tax), then the price Buyer shall pay Conoco shall be reduced by an amount equal to one-half of the excess.

C. Provided further, however, that if at any time during the life of this contract the price per gallon as determined above is less than the value of three gallons of 36 gravity

Oklahoma Crude Oil at the Well, at the posted price of Conoco, then Conoco may, at its option, cancel and terminate this contract upon giving Buyer ten (10) days' notice in writing of such termination and cancellation.

This contract is based upon the normal service station prices of Standard Oil Co. (Ind.) at destinations listed below, which on August 22, 1935 are as follows:

Location	Normal Service Station Prices (exclusive of tax)
DeSoto, Missouri	13.8¢

D. In the event the price offered generally by Standard Oil Co. (Ind.) to dealers purchasing 100% of their gasoline requirements from it on Conoco Bronze Gasoline or a grade of gasoline comparable thereto, at the time of any shipment hereunder, shall be more or less than 3½¢ a gallon below the service station price, then the marginal basis of 5½¢ contained in paragraph B herein will increase or decrease accordingly.

E. The price Buyer shall pay Conoco for Demand Gasoline, f.o.b. Group 3 Oklahoma, will be the spot tank car price as determined herein; provided, however, that at no time will such price be higher than the price for Conoco Bronze Gasoline as determined herein at the same time and place less one fourth (¼¢) cent a gallon.

5230 Spot Tank Car Price: (Same as corresponding Par. of Ex. 634.)

Ethyl Gasoline Price: (Same as corresponding Par. of Ex. 634.)

4. Normal Tank Wagon or Service Station Price: (Same as corresponding Par. of Ex. 634.)

5231 GOVERNMENT EXHIBIT NO. 636.

Contract between Continental Oil Company and General Oil Products, Inc., dated August 25, 1936, for a period of one year commencing on that date, with Rider:

"[Paragraphs 3-A, B, C, D and E are the same as the corresponding paragraphs of Exhibit 635, except that the normal service station price of Standard Oil Co. (Ind.) on August 25, 1936, was 14.3, and the following paragraph was added:]"

"In the event the Standard Oil Company of Indiana discontinues the practice of posting normal service station prices throughout the state in which destination is located, then, and in that event, paragraph 3-B of this contract will become inoperative, and prices to be charged on shipments thereafter will then be determined by the remaining provisions of this agreement.

Spot Tank Car Price: (Same as corresponding Par. of Exhibit 634.)

Ethyl Gasoline Price: (Same as corresponding Par. of Exhibit 634.)

4. Normal Tank Wagon or Service Station Price: (Same as corresponding Par. of Exhibit 634.)

Rider dated September 16, 1936.

It is agreed that the following clause is hereby substituted for clause B, paragraph 3, of Sales Contract, dated Aug. 25, 1936, between the Continental Oil Company and you.

B. Provided that in the event the spot tank car price, plus rail freight from Ponca City to destination, plus two (2¢) cents a gallon, exceeds Standard Oil Company of Indiana's posted normal price to dealers at said destination (exclusive of federal, state, and/or municipal motor fuel taxes and other posted taxes), the price buyer shall pay Conoco shall be reduced by an amount equal to one-half of the excess."

5232 GOVERNMENT EXHIBIT NO. 637.

Contract between Goodall-Crowley Oil Company and Mid-Continent Petroleum Corporation, dated February 21, 1933, for the period February 15, 1933 to February 15, 1937:

"No. 5 Price

(A) Diamond Gasoline. The Buyer shall pay to the Seller for said Diamond gasoline the 'Spot Market Price' f.o.b. Group 3, Oklahoma, as defined in Clause No. 6, when such price, plus the cost per gallon of freight transportation from Tulsa, Oklahoma, to point of destination, plus 5½¢ per gallon, does not exceed the normal officially posted service station price exclusive of tax at destination on date of shipment of the Standard Oil Company of Indiana on their Red Crown Gasoline or other standard intermediate grade of gasoline as the quality of said gasoline is now maintained or may hereafter be improved. If, however, such Spot Market Price, plus the said cost per gallon of freight transportation, plus 5½¢ exceeds such service station price, then the invoice price of said gasoline shall be reduced by an amount equal to such excess. It is hereby expressly agreed by the Buyer and Seller that the 'normal officially posted service station price' per gallon at point of destination of shipment herein mentioned shall always have and maintain its normal relation to the general officially posted service station price throughout the marketing territory of the party posting such price. The normal officially posted service station price (exclusive of tax) at destination on date is as follows:

Normal S. S. Price (exclusive of tax) 11.4 Destination Beloit-Wisconsin Freight Rate Group 3 to Destination ....

(B) NevrNox Ethyl Gasoline. The price of NevrNox Ethyl gasoline supplied under this contract shall be two and one-half cents (2½c) per gallon more than the contract price hereunder for Diamond gasoline on date of shipment.

(C) Power Gasoline. The price of Power gasoline applied under this contract shall be the average of the minimum and of the maximum prices, or the average of the price of 58/60 437 U. S. Motor gasoline, below 57 octane, or of the grade furnished, as published in the Chicago Journal of Commerce, Chicago, Illinois, on the date on which shipment is made; or, ¼c under the price of Diamond gasoline, whichever price is lower.

5233 (D) Other Grades of Gasoline. The price of other grades of gasoline supplied under this contract shall be the contract price hereunder for Diamond gasoline on date of shipment, plus or minus, as the case may be, the Seller's established Spot Market differential on the date of shipment between Diamond gasoline and such other grade or grades of gasoline.

(E) If at any time or times during the life of this contract the contract price per gallon as determined herein of any grade or grades of gasoline to be supplied hereunder is less than the posted price of the Stanolind Crude Oil Purchasing Company of two gallons of 36 gravity Oklahoma crude oil at the well, the Seller shall have the right at its option to suspend this contract during such time or times, or any part or parts thereof, as to any or all grades of gasoline covered by said contract by giving Buyer five days notice, in writing, of its intention to exercise said option.

No. 6 Spot Market Price

The 'spot market price' per gallon f.o.b. Group 3, Oklahoma, shall be the average of the minimum and of the maximum prices, or the average of the prices of 58/60 437 U. S. Motor gasoline, 57-64 octane number or of the grade furnished, as published in the Chicago Journal of Commerce, Chicago, Illinois, on date on which shipment is made. In the event that no prices are published on date shipment is made, then prices published on last date prior to shipment shall apply. If during the life of this contract either of said publications shall be discontinued, and/or publication of prices of gasoline therein is discontinued, then the 'spot market price' shall be determined from the prices contained in the remaining publication, in the manner above stated; and in the further event that no price of the grade of gasoline furnished be published by either of the aforesaid publications, then the 'spot market price' shall be the current 'spot' price of Seller.

Distributors Advertising Agreement

2. That in consideration of the Buyer having entered into such contractual relations to purchase from the Seller 100% of his supplies mentioned, necessary for the handling of his said business, which the Seller is in position to supply and the faithful performance of the terms and agreements set out in such contract and/or any other contracts which may, at any time during the life of this contract, exist between the parties hereto, it is understood and

agreed that the Seller will set up or establish for an advertising reserve, a sum not exceeding in any case an amount equal to ¼¢ per gallon, computed on the total number of gallons of NevrNox Ethyl and Diamond gaso-
5234 line purchased from the Seller, and a sum not exceeding in any case an amount equal to 3¢ per gallon computed on the total number of gallons of Diamond Motor and Tractor Oils purchased from the Seller, which sums shall be expended at the discretion of and by Seller for the purpose of defraying expenses incurred in carrying out the program outlined in Paragraph No. 3. It is further understood and agreed that the advertising credits referred to above include any and all advertising on the gasoline and motor oil contracts and will represent the entire advertising allowance to the Buyer from the Seller on any and all said contracts which may be in effect or executed during the life of this contract.

3. That the Buyer agrees, in consideration of said allowance, to paint in the standard colors of the Seller the properties used in the conduct of the business of the Buyer, such as service stations, tank wagons or trucks, pumps, and all other physical properties which are usually painted (it being specifically understood that all labor charges in connection with the above shall be taken care of by the Buyer, and that paint, unless otherwise agreed upon, shall be sold by the Seller to the Buyer at cost), and Buyer shall use and display the advertising signs, globes, bulletin boards, newspaper display ads and other standard advertising matter of the Seller, which advertising material shall advertise the petroleum products being handled and sold by the Buyer as material manufactured and supplied by the Seller and shall also advertise through appropriate name plates and/or signs or otherwise, that the Buyer is a local distributor of such products.

4. It is further understood and agreed that such advertising and painting shall be done as directed by the Seller in accordance with its standard methods. Seller specifically reserves the right to determine the form of advertising to be used as well as the amount of advertising as applied to the property and business of the Buyer, it being specifically understood and agreed that all removable advertising materials, such as signs, globes, etc., shall, at all times, be and remain the absolute property of the Seller and be returned to Seller upon demand therefor. All advertising material and expense shall be charged by the Seller against the advertising credit herein established at a fair and reasonable rate."

5235 GOVERNMENT EXHIBIT NO. 638.

Contract between Empire Oil & Refining Co., and W. J. O'Brien, dated July 11, 1935, for the period August 9, 1935 to August 8, 1936:

Price

"The gasolene on this contract shall be invoiced on the spot price prevailing, f.o.b. Oklahoma Group Three, except that at any time the spot price is such that the buyer does not have a 5½¢ spread below the normal posted service station market price of the Standard Oil Company of Indiana at Superior, Wisconsin and Duluth, Minnesota, then the difference between the spot price and the 5½¢ spread will be divided fifty-fifty between buyer and seller. The service station price at Superior, Wisconsin, July 11, 1935 is $.193, and Duluth, Minnesota $.183. Example: If on a service station market price of $.193, we deduct $.04 State tax, $.01 Federal tax, $.03168 freight, and $.055 margin, it would give a netback of $.05632. If the spot market price is $.06, this would make a difference of $.00368 which would be divided equally between buyer and seller which would make the price to the buyer $.05816, or in this case a spread of $.05316."

Discontinuing Shipments: (Same as corresponding Paragraph, Exhibit 632.)

Change in Discount: It is agreed between buyer and seller that the margin in this contract, based on a 50-50 split, is to advance or decline in proportion to any advance or decline in the present generally recognized dealer discount schedule in the Standard of Indiana territory, which is now $.035 on Ethyl, $.035 on Koolmotor gasolene, and $.025 on Motor gasolene.

Supplemented Price Agreement: It is further agreed that the price basis outlined under 'Price Agreement' on the reverse side of this contract, that such prices are based on the Standard Oil Company of Indiana normal posted service station price on Red Crown gasoline, or the grade of gasoline marketed by the Standard Oil Company of Indiana, secondary to the Standard Oil Company of Indiana Ethyl grade in Superior, Wisconsin and Duluth, Minnesota. It is understood that this price is to advance or decline equal to any general advance or decline of the Standard Oil Company normal posted service station mar-

ket on Red Crown gasolene, or the grade of gasolene
5236 marketed by the Standard of Indiana, secondary to
the Standard Oil Company Ethyl grade in any six states in their territory, including the state to which this material is to be consigned, and is not to be affected by any purely local declines, but is to advance the full amount of any local advance. It is further understood that the prices indicated in this contract are based on the freight rates in effect July 11, 1935. The net prices on the spread will advance equal to the full amount of any decline in freight rates and will be reduced equal to the full amount of any advance in the freight rates.

Optional Quality-Competitive Grade: The buyer also may, on any given shipments, specify an alternate quality of gasolene known as a competitive grade and is 58-60 U. S. Motor below 62 octane. Any shipment of the competitive grade of gasolene shall be priced on the average price of 58-60 U. S. Motor under 62 octane, as specified in the Publications outlined in this contract under the clause 'Explanation of Pricing.' It is also agreed that the maximum invoice price of the competitive grade of gasolene shall never be higher than ¼¢ under the contract price of Koolmotor gasolene, on date of shipment as provided in this contract.

Ethyl Gasolene: (Same as corresponding Paragraph Exhibit 632).

Explanation of Pricing: Inasmuch as the published average prices on gasolene have divided 58-60 U. S. Motor into groups, according to octane rating, the pricing under this contract will be as follows: The price basis to be used in connection with this contract will be the average of averages of the spot market prices as shown in Chicago Journal of Commerce and Platt's Oilgram, date of shipment, f. o. b. Oklahoma Group Three, such spot prices to be the equivalent of the octane rating of the gasolene furnished."

5237 GOVERNMENT EXHIBIT NO. 639.

Contract between Wisconsin Petroleum Co. Inc. and Mid-Continent Petroleum Corp., dated May 3rd, 1933 for the period from April 3rd, 1933 to April 3rd, 1936:

"No. 5 Price

(A) Diamond Gasoline. The Buyer shall pay to the Seller for said Diamond gasoline the 'Spot Market Price' f. o. b. Group 3, Oklahoma, as defined in Clause No. 6, when such price, plus the cost per gallon of freight transportation from Tulsa, Oklahoma, to point of destination, plus 5¢ per gallon, does not exceed the normal officially posted service station price exclusive of tax at destination on date of shipment of the Standard Oil Company of Indiana on their Red Crown Gasoline or other standard intermediate grade of gasoline as the quality of said gasoline is now maintained or may hereafter be improved. If, however, such Spot Market Price, plus the said cost per gallon of freight transportation, plus 5¢, exceeds such service station price, then the invoice price of said gasoline shall be reduced by an amount equal excess. The above marginal protection of 5¢ per gallon is based on the Standard Oil Company of Indiana's present Q.D.A. of 2½¢ on Red Crown Gasoline. In the event the Standard Oil Company of Indiana increases or decreases the above mentioned 2½¢ Q.D.A., generally, throughout its territory, then the 5¢ marginal protection will be increased or decreased an equal or like amount. It is hereby expressly agreed by the Buyer and Seller that the 'normal officially posted service station price' per gallon at point of destination of shipment herein mentioned shall always have and maintain its normal relation to the general officially posted service station price throughout the marketing territory of the party posting such price. The normal officially posted service station price (exclusive of tax) at destination on date is as folows:

Normal S. S. Price (exclusive of tax) 11.5 Destination Stoughton, Wis. Freight Rate Group 3 to destination .02838.

(B) NevrNox Ethyl Gasoline. The price of NevrNox Ethyl gasoline supplied under this contract shall be two and one-half cents (2½¢) per gallon more than the contract price hereunder for Diamond gasoline on date of shipment.

5238 (C) Power Gasoline. The price of Power gasoline applied under this contract shall be the average of the minimum and of the maximum prices, or the average of the price of 58/60 437 U. S. Motor gasoline, below 57 octane, or of the grade furnished, as published in the Chicago Journal of Commerce, Chicago, Illinois, on the date on which shipment is made; or, ¼¢ under the price of Diamond Gasoline, whichever price is lower.

(D) Other Grades of Gasoline. (Same as Par. D.—Exhibit 637).

(E) (Same as Par. E.—Exhibit 637).

No. 6 Spot Market Price

The 'spot market price' per gallon f. o. b. Group 3, Oklahoma, shall be the average of the minimum and of the maximum prices, or the average of the prices of 58/60 437 U. S. Motor gasoline, 57-64 octane number, or of the grade furnished, as published in the Chicago Journal of Commerce, Chicago, Illinois, the date on which shipment is made. In the event that no prices are published on date shipment is made, then prices published on last date prior to shipment shall apply. If during the life of this contract either of said publications shall be discontinued, and/or publication of prices of gasoline therein is discontinued, then the 'spot market price' shall be the current 'spot' price of Seller.

5239 GOVERNMENT EXHIBIT NO. 640.

Contract between Wisconsin Petroleum Co. Inc. and Mid-Continent Petroleum Corp., dated April 11th, 1936 for the period from April 3rd, 1936 to April 2nd, 1937:

"Price

(A) D-X Motor Fuel. The Buyer shall pay for Seller's regular grade of D-X Motor Fuel the 'Spot Market Price' f. o. b. Group 3, Oklahoma, as defined in Clause 6. of 58/60 437 U. S. Motor Gasoline, 63-70 octane number, or said 'Spot Market Price' of the grade furnished, as determined by octane specifications, when such price, plus the cost per gallon of freight transportation from Tulsa, Oklahoma, to point of destination, plus a margin of 5½¢ cents per gallon, does not exceed the normal officially posted service station price, exclusive of tax, at destination, on date of shipment, of the Standard Oil (Of Indiana) Company on their Red Crown Gasoline or other similar grade of gasoline as the quality of said gasoline is now maintained or may hereafter be improved. If, however, such Spot Market Price, plus the said cost per gallon of freight transportation, plus the aforesaid margin, exceeds such service station price, then the invoice price of said D-X Motol Fuel shall be reduced by an amount equal to such excess. The aforesaid margin is based on Seller's present Resellers discount of 3½ cents to Undivided Dealers and Resellers; in the event Seller increases or decreases said Resellers discount to Undivided Dealers and/or Resellers generally throughout its marketing territory, then the aforesaid margin will be increased or decreased an equal or like amount. It is hereby expressly agreed by the Buyer and Seller that the 'normal' officially posted service station price' per gallon at point of destination of shipment herein mentioned shall always have and maintain its normal relation to the general officially posted service station price, throughout the marketing territory of the party posting such price. The normal officially posted service station price (exclusive of Federal and State Motor fuel taxes) at destination on date of this contract is as follows:

Normal S.S. Price (exclusive of Federal and State motor fuel taxes)	Destination	Freight Rate, Group 3 to Destination
.144	Stoughton, Wis.	

5240 (B) NevrNox Ethyl Gasoline. The price of NevrNox Ethyl Gasoline supplied under this contract shall be Two Cents (2¢) per gallon more than the contract price hereunder for D-X Motor Fuel, on date of shipment.

(C) Power Gasoline. The price of Power Gasoline supplied under this contract shall be the 'Spot Market Price' f. o. b. Group 3, Oklahoma, as defined in Clause 6, of 58/60 437 U. S. Motor Gasoline, 62 and below octane number, on date of shipment; or ¼¢ under the price of D-X Motor Fuel, whichever price is lower.

(D) Other Grades of Motor Fuel and Gasoline. The price of other grades of motor fuel and gasoline supplied under this contract shall be the 'Spot Market Price' of the grade furnished, f. o. b. Group 3, Oklahoma, as defined in Clause 6, on date of shipment.

(E) During the life of this contract, the contract price per gallon as determined herein, of D-X Motor Fuel to be supplied hereunder shall not be less than:

3.0¢ when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 50¢ and below per bbl.

3.5¢ when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 51¢ to 75¢ per bbl.

4.0¢ when the average officially posted price of 36 gravity Oklahoma crude oil at the well is 76¢ to $1.00 per bbl.

4.5¢ when the average officially posted price of 36 gravity Oklahoma crude oil at the well is $1.01 and above.

No. 6 Spot Market Price

(Same as Par. No. 6 in Exhibit 618)"

5241 GOVERNMENT EXHIBITS NOS. 641-655; 658-659.

(These Exhibits consist of over 65 jobbers contract forms together with riders and explanatory data received in evidence through W. J. Miller in support of his testimony at R. p. 337. In view of this testimony and of contracts previously set out, these forms and data have not been printed.)

5242 GOVERNMENT EXHIBIT NO. 663.

Tabulation Not printed because all figures appear in Exhibit 665.

GOVERNMENT EXHIBIT NO. 664.

Chart—Not reproduced because shown on Exhibit 674 as "Monday Low Quotations For Third Grade Gasoline—Oil Price Handbook—Oklahoma Market".

5243 GOVERNMENT EXHIBIT NO. 665.

Monday Low Quotations Third Grade Gasoline
March 4, 1935 to December 21, 1936
Oil Price Handbook
Oklahoma Market

March 4, 1935	3.375¢	January 27, 1936	5.250¢
March 11, 1935	3.750	February 3, 1936	5.250
March 18, 1935	3.875	February 10, 1936	5.250
March 25, 1935	4.000	February 17, 1936	5.125
April 1, 1935	4.125	February 24, 1936	5.125
April 8, 1935	4.250	March 2, 1936	5.000
April 15, 1935	4.375	March 9, 1936	5.000
April 22, 1935	4.500	March 16, 1936	5.000
April 29, 1935	4.500	March 23, 1936	5.000
May 6, 1935	4.625	March 30, 1936	5.000
May 13, 1935	4.625	April 6, 1936	5.000
May 20, 1935	4.750	April 13, 1936	5.000
May 27, 1935	4.750	April 20, 1936	5.000
June 3, 1935	4.750	April 27, 1936	5.000
June 10, 1935	4.750	May 4, 1936	5.000
June 17, 1935	4.750	May 11, 1936	4.875
June 24, 1935	4.750	May 18, 1936	4.875
July 1, 1935	4.750	May 25, 1936	4.750
July 8, 1935	4.750	June 1, 1936	4.750
July 15, 1935	4.750	June 8, 1936	4.750
July 22, 1935	4.750	June 15, 1936	4.750
July 29, 1935	4.750	June 22, 1936	4.750
August 5, 1935	4.750	June 29, 1936	4.750
August 12, 1935	4.750	July 6, 1936	4.875
August 19, 1935	4.750	July 13, 1936	4.875
August 26, 1935	4.750	July 20, 1936	4.875
September 3, 1935	4.750	July 27, 1936	4.875
September 9, 1935	4.750	August 3, 1936	4.875
September 16, 1935	4.750	August 10, 1936	4.875
September 23, 1935	4.750	August 17, 1936	4.875
September 30, 1935	4.750	August 24, 1936	4.750
October 7, 1935	4.750	August 31, 1936	4.750
October 14, 1935	4.750	September 8, 1936	4.625
October 21, 1935	4.750	September 14, 1936	4.500
October 28, 1935	4.750	September 21, 1936	4.500
November 4, 1935	4.750	September 28, 1936	4.500
November 11, 1935	4.750	October 5, 1936	4.500
November 18, 1935	4.750	October 12, 1936	4.625
November 25, 1935	4.750	October 19, 1936	4.625
December 2, 1935	4.625	October 26, 1936	4.625
December 9, 1935	4.750	November 2, 1936	4.625
December 16, 1935	4.750	November 9, 1936	4.625

December 23, 1935	**4.750**	**November 16, 1936**	**4.750**
December 30, 1935	**4.750**	**November 23, 1936**	**4.750**
January 6, 1936	**4.750**	**November 30, 1936**	**4.750**
January 13, 1936	**5.250**	**December 7, 1936**	**4.750**
January 20, 1936	**5.250**	**December 14, 1936**	**4.750**
		December 21, 1936	**4.750**

5244 GOVERNMENT EXHIBIT NO. 666.

Chart—Not reproduced because shown on Exhibit 674 as "Monday Low Quotations For Third Grade Gasoline—Oil Price Handbook—Oklahoma Market".

5245 GOVERNMENT EXHIBIT NO. 667.

Monday Low Quotations House Brand Gasoline
March 4, 1935 to December 21, 1936
Oil Price Handbook
Oklahoma Market

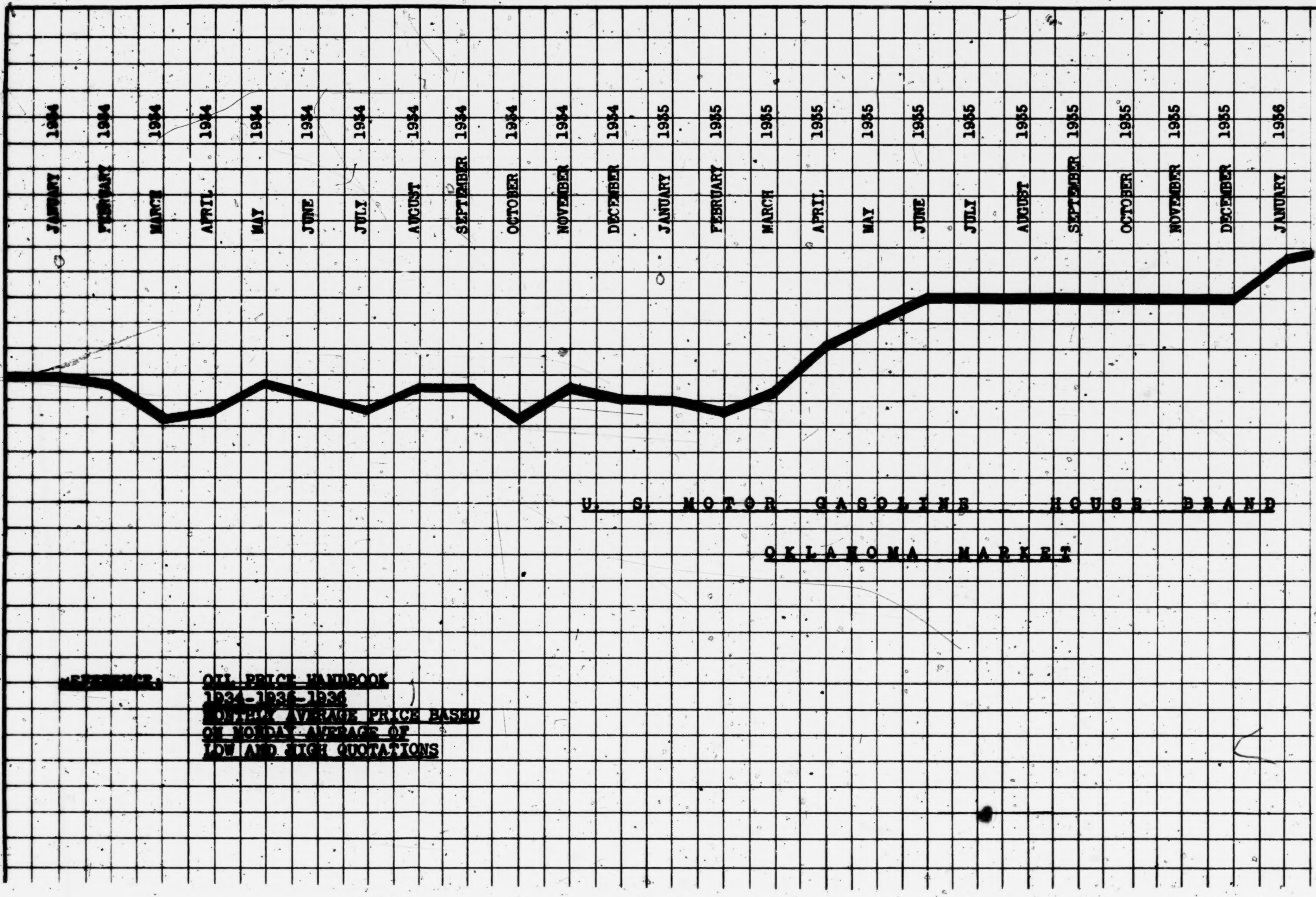
March 4, 1935	4.375¢	January 27, 1936	6.125¢
March 11, 1935	4.625	February 3, 1936	6.125
March 18, 1935	4.750	February 10, 1936	6.125
March 25, 1935	4.750	February 17, 1936	6.125
April 1, 1935	4.875	February 24, 1936	6.125
April 8, 1935	5.000	March 2, 1936	5.875
April 15, 1935	5.125	March 9, 1936	6.000
April 22, 1935	5.250	March 16, 1936	6.000
April 29, 1935	5.250	March 23, 1936	6.000
May 6, 1935	5.250	March 30, 1936	6.000
May 13, 1935	5.250	April 6, 1936	6.000
May 20, 1935	5.375	April 13, 1936	6.000
May 27, 1935	5.500	April 20, 1936	6.000
June 3, 1935	5.625	April 27, 1936	6.000
June 10, 1935	5.625	May 4, 1936	6.000
June 17, 1935	5.625	May 11, 1936	6.000
June 24, 1935	5.625	May 18, 1936	6.000
July 1, 1935	5.625	May 25, 1936	6.000
July 8, 1935	5.625	June 1, 1936	6.000
July 15, 1935	5.625	June 8, 1936	6.000
July 22, 1935	5.625	June 15, 1936	6.000
July 29, 1935	5.625	June 22, 1936	6.000
August 5, 1935	5.625	June 29, 1936	6.000
August 12, 1935	5.625	July 6, 1936	6.000
August 19, 1935	5.625	July 13, 1936	6.000
August 26, 1935	5.625	July 20, 1936	6.000
September 3, 1935	5.625	July 27, 1936	6.000
September 9, 1935	5.625	August 3, 1936	6.000
September 16, 1935	5.625	August 10, 1936	6.000
September 23, 1935	5.625	August 17, 1936	6.000
September 30, 1935	5.625	August 24, 1936	5.875
October 7, 1935	5.625	August 31, 1936	5.625
October 14, 1935	5.625	September 8, 1936	5.625
October 21, 1935	5.625	September 14, 1936	5.500
October 28, 1935	5.625	September 21, 1936	5.500
November 4, 1935	5.625	September 28, 1936	5.500
November 11, 1935	5.625	October 5, 1936	5.500
November 18, 1935	5.625	October 12, 1936	5.625
November 25, 1935	5.625	October 19, 1936	5.625
December 2, 1935	5.625	October 26, 1936	5.625
December 9, 1935	5.625	November 2, 1936	5.625
December 16, 1935	5.625	November 9, 1936	5.625

December 23, 1935	5.625
December 30, 1935	5.625
January 6, 1936	5.625
January 13, 1936	6.125
January 20, 1936	6.125
November 16, 1936	5.750
November 23, 1936	5.750
November 30, 1936	5.750
December 7, 1936	5.750
December 14, 1936	5.750
December 21, 1936	5.750

5246 GOVERNMENT EXHIBIT NO. 668.

Chart—Not reproduced because shown on Exhibit 674 as "Monday Low Quotations For House Brand Gasoline—Oil Price Handbook—Oklahoma Market".

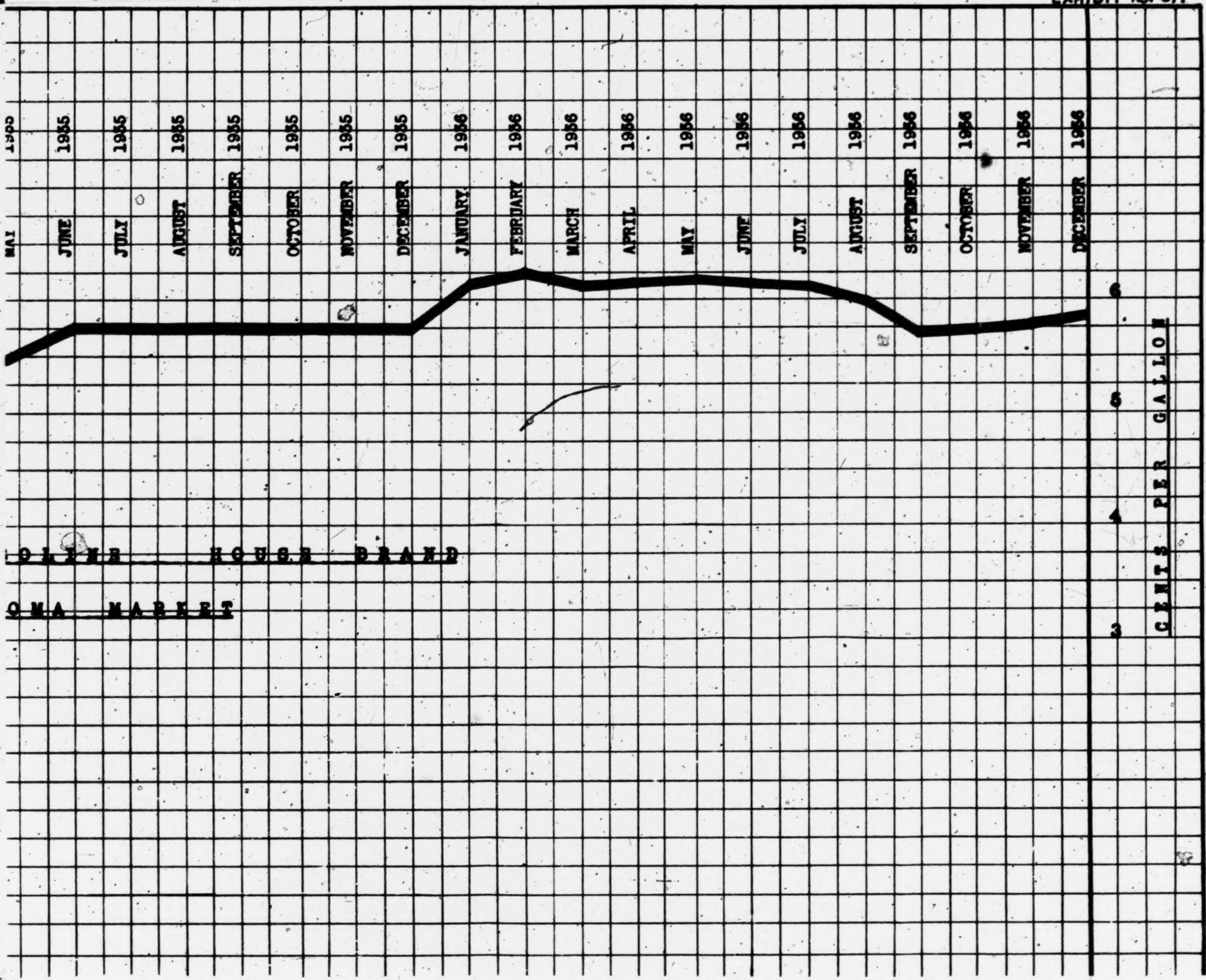
5247 GOVERNMENT EXHIBIT NO. 671.



U. S. MOTOR GASOLINE HOUSE BRAND

OKLAHOMA MARKET

REFERENCE: OIL PRICE HANDBOOK
1934-1935-1936
MONTHLY AVERAGE PRICE BASED
ON MONDAY AVERAGE OF
LOW AND HIGH QUOTATIONS


MAY 1935
JUNE 1935
JULY 1935
AUGUST 1935
SEPTEMBER 1935
OCTOBER 1935
NOVEMBER 1935
DECEMBER 1935
JANUARY 1936
FEBRUARY 1936
MARCH 1936
APRIL 1936
MAY 1936
JUNE 1936
JULY 1936
AUGUST 1936
SEPTEMBER 1936
OCTOBER 1936
NOVEMBER 1936
DECEMBER 1936
OLINE HOUSE BRAND
OMA MARKET
6
5
4
3
CENTS PER GALLON

5249 GOVERNMENT EXHIBIT NO. 672.

Monday Low Quotations for House Brand Gasoline
Oil Price Handbook Oklahoma Market
1934-1936

January 2, 1934	**4.875¢**
January 8, 1934	**4.750**
January 15, 1934	**4.750**
January 22, 1934	**4.750**
January 29, 1934	**4.875**
February 5, 1934	**4.875**
February 12, 1934	**4.875**
February 19, 1934	**4.750**
February 26, 1934	**4.500**
March 5, 1934	**4.500**
March 12, 1934	**4.500**
March 19, 1934	**4.375**
March 26, 1934	**4.125**
April 2, 1934	**4.125**
April 9, 1934	**4.250**
April 16, 1934	**4.625**
April 23, 1934	**4.750**
April 30, 1934	**4.750**
May 7, 1934	**4.625**
May 14, 1934	**4.625**
May 21, 1934	**4.875**
May 28, 1934	**4.875**
June 4, 1934	**4.875**
June 11, 1934	**4.625**
June 18, 1934	**4.500**
June 25, 1934	**4.500**
July 2, 1934	**4.500**
July 9, 1934	**4.250**
July 16, 1934	**4.625**
July 23, 1934	**4.500**
July 30, 1934	**4.750**
August 6, 1934	**4.750**
August 13, 1934	**4.750**
August 20, 1934	**4.750**
August 27, 1934	**4.625**
September 4, 1934	**4.625**
September 10, 1934	**4.625**
September 17, 1934	**4.625**
September 24, 1934	**4.625**
October 1, 1934	**4.625**
October 8, 1934	**4.875**
October 15, 1934	**4.125**
October 22, 1934	**4.125**
October 29, 1934	**4.125**
November 5, 1934	**4.625¢**
November 12, 1934	**4.750**
November 19, 1934	**4.625**
November 26, 1934	**4.625**
December 3, 1934	**4.750**
December 10, 1934	**4.500**
December 17, 1934	**4.500**
December 24, 1934	**4.500**
December 31, 1934	**4.500**
January 7, 1935	**4.500**
January 14, 1935	**4.500**
January 21, 1935	**4.625**
January 28, 1935	**4.500**
February 4, 1935	**4.500**
February 11, 1935	**4.375**
February 18, 1935	**4.375**
February 25, 1935	**4.375**
March 4, 1935	**4.375**
March 11, 1935	**4.625**
March 18, 1935	**4.750**
March 25, 1935	**4.750**
April 1, 1935	**4.875**
April 8, 1935	**5.000**
April 15, 1935	**5.125**
April 22, 1935	**5.250**
April 29, 1935	**5.250**
May 6, 1935	**5.250**
May 13, 1935	**5.250**
May 20, 1935	**5.375**
May 27, 1935	**5.500**
June 3, 1935	**5.625**
June 10, 1935	**5.625**
June 17, 1935	**5.625**
June 24, 1935	**5.625**
July 1, 1935	**5.625**
July 8, 1935	**5.625**
July 15, 1935	**5.625**
July 22, 1935	**5.625**
July 29, 1935	**5.625**
August 5, 1935	**5.625**
August 12, 1935	**5.625**
August 19, 1935	**5.625**
August 26, 1935	**5.625**
September 3, 1935	**5.625**

September 9, 1935	5.625¢	May 4, 1936	6.000¢
September 16, 1935	5.625	May 11, 1936	6.000
September 23, 1935	5.625	May 18, 1936	6.000
September 30, 1935	5.625	May 25, 1936	6.000
October 7, 1935	5.625	June 1, 1936	6.000
October 14, 1935	5.625	June 8, 1936	6.000
October 21, 1935	5.625	June 15, 1936	6.000
October 28, 1935	5.625	June 22, 1936	6.000
November 4, 1935	5.625	June 29, 1936	6.000
November 11, 1935	5.625	July 6, 1936	6.000
November 18, 1935	5.625	July 13, 1936	6.000
November 25, 1935	5.625	July 20, 1936	6.000
December 2, 1935	5.625	July 27, 1936	6.000
December 9, 1935	5.625	August 3, 1936	6.000
December 16, 1935	5.625	August 10, 1936	6.000
December 23, 1935	5.625	August 17, 1936	6.000
December 30, 1935	5.625	August 24, 1936	5.875
January 6, 1936	5.625	August 31, 1936	5.625
January 13, 1936	6.125	September 8, 1936	5.625
January 20, 1936	6.125	September 14, 1936	5.500
January 27, 1936	6.125	September 21, 1936	5.500
February 3, 1936	6.125	September 28, 1936	5.500
February 10, 1936	6.125	October 5, 1936	5.500
February 17, 1936	6.125	October 12, 1936	5.625
February 24, 1936	6.125	October 19, 1936	5.625
March 2, 1936	5.875	October 26, 1936	5.625
March 9, 1936	6.000	November 2, 1936	5.625
March 16, 1936	6.000	November 9, 1936	5.625
March 23, 1936	6.000	November 16, 1936	5.750
March 30, 1936	6.000	November 23, 1936	5.750
April 6, 1936	6.000	November 30, 1936	5.750
April 13, 1936	6.000	December 7, 1936	5.750
April 20, 1936	6.000	December 14, 1936	5.750
April 27, 1936	6.000	December 21, 1936	5.750

Note: 60-64 Octane January 1, 1934 to August 6, 1934
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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
Defendants-Appellants.

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H. T. Ashton.
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MR. CHARLES E. GATELY,
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P. E. Lakin.
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MR. ROY T. OSBORN,
MR. FREDERICK H. WOOD,
MR. THOMAS T. COOKE,
Sinclair Refining Company.
MR. J. C. DENTON,
Mid-Continent Petroleum Corporation and Robert W. McDowell.
MR. DON EMERY,
MR. R. H. HUDSON,
MR. RAYBURN L. FOSTER,
MR. WALTER L. BARNES,
Phillips Petroleum Company.
MR. W. P. Z. GERMAN,
MR. A. F. MOLONY,
MR. CLIFF V. PEERY,
Skelly Oil Company.
MR. RALPH HORWEEN,
MR. SAMUEL TOPLIFF,
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MR. W. B. WATSON SNYDER,
MR. JOHN J. BOYLE.

Appeal from the District Court of the United States for the Western District of Wisconsin.

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DESCRIPTION OF EXHIBITS.

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*G 1	Stipulation, Oct. 3, 1937, showing status of all defendants	174	2595
*D 4	(for identification) Letter, May 8, 1934, D. W. Gray, Waggoner Refining Company, to brokers and marketers (Referred to)	221	1818 2601
D 6	Order, Oct. 18, 1934, of Harold L. Ickes, establishing Federal Tender Board, with Tender Form No. 1 attached	225	2602
D 7	Order, Oct. 22, 1934, by T. A. Walters, Acting Secretary of the Interior, appointing members of Federal Tender Board	225	2612
G 11	Letter, Jan. 12, 1935, Neil Buckley to H. E. Brandli	560 907	2612
G 12	Telegram, Jan. 16, 1935, Neil Buckley to H. E. Brandli	561 907	561
G 13	Letter, Jan. 26, 1935, Neil Buckley to H. E. Brandli	563 907	2613
G 14	Letter, Jan. 30, 1935, Neil Buckley to to H. E. Brandli	567 907	2615
G 15	Letter, Feb. 2, 1935, Neil Buckley to H. E. Brandli	569 907	2617
G 16	Letter, Feb. 2, 1935, Neil Buckley to H. E. Brandli	570 907	2617
G 17	Telegram, March 14, 1935, C. E. Arnott to H. D. Frueauff	582 907	2619
G 18	Letter, April 8, 1935, Neil Buckley to H. E. Brandli	602 907	2620

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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G 20	Letter, April 27, 1935, Neil Buckley to H. E. Brandli	605 907	2622
G 21	Letter, May 17, 1935, Neil Buckley to H. E. Brandli	609 907	2624
G 22	Letter, May 17, 1935, Neil Buckley to H. E. Brandli	609 907	2624
G 23	Letter, May 25, 1935, Neil Buckley to H. E. Brandli	610 907	2625
G 24	Letter, June 17, 1935, Neil Buckley to H. E. Brandli	1876	2625
G 25	Telegram, July 8, 1935, Neil Buckley to H. E. Brandli	610 907	2627
G 26	Telegram, July 10, 1935, Neil Buckley to H. E. Brandli	610 907	2627
G 27	Letter, July 24, 1935, Neil Buckley to H. E. Brandli	1876	2627
G 29	Letter, September 14, 1935, Neil Buckley to H. E. Brandli	611 907	2629
G 30	Letter, September 28, 1935, Neil Buckley to H. E. Brandli	611 907	2631
G 31	Letter, Oct. 12, 1935, Neil Buckley to H. E. Brandli	611 907	2632
G 32	Letter, Oct. 19, 1935, Neil Buckley to H. E. Brandli	611 907	2634
G 35	Telegram, Jan. 29, 1936, C. E. Arnott to Harry Frueauff	615 907	2634
G 36	Telegram, Feb. 1, 1935, H. E. Brandli to Neil Buckley	569 907	2635
G 39	Letter, April 16, 1935, LaPren Refining Company to Neil Buckley	603 907	2635
G 40	Letter, April 18, 1935, Neil Buckley to A. S. Robertson, LaPren Refining Company	603 907	2636

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G 57	Letter, June 12, 1935, Neil Buckley to R. N. Cline, listing telephone calls for May 1935	614 907	2641
G 58	Letter, July 9, 1935, Neil Buckley to R. N. Cline, listing telephone calls for June 1935	614 907	2642
G 59	Letter, Aug. 14, 1935, Neil Buckley to R. N. Cline, listing telephone calls for July 1935	614 907	2643
G 60	Letter, Sept. 10, 1935, Neil Buckley to R. N. Cline, listing telephone calls for August 1935	614 907	2644
G 61	Letter, Oct. 11, 1935, Neil Buckley to R. N. Cline, listing telephone calls for September 1935	614 907	2645
G 62	Letter, Nov. 7, 1935, Neil Buckley to R. N. Cline, listing telephone calls for October 1935	614 907	2646
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G 66	Letter, March 9, 1936, Neil Buckley to R. N. Cline, listing telephone calls for February 1936	614 907	2650
G 67	Letter, April 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for March 1936	614 907	2651
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G 99	Letter, Nov. 5, 1935, L. H. Poland to J. F. Nagle	506 907	2701
G 100	Letter, Nov. 20, 1935, J. F. Nagle to L. H. Poland	506 907	2702
G 101	Letter, Jan. 8, 1936, J. F. Nagle to W. T. Atkins	506 907	2702
G 102	Letter, March 18, 1935, O. J. Tuttle to J. F. Nagle	506 907	2703
G 103	Letter, Oct. 22, 1935, J. F. Nagle to A. V. Bourque	506 907	2704
G 104	Letter, Oct. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2705
G 105	Letter, Sept. 20, 1935, Clara Gartman to A. V. Bourque	506 907	2706

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G 123	Letter, Nov. 15, 1935, Clara Gartman to L. H. Poland	506 907	2721

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G 240	Letter, Dec. 19, 1935, R. W. McDowell to P. E. Lakin	835 907	2835
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G 252	Weekly Market Letter, April 13, 1935, J. W. Warner to J. D. Collins	622 907	2849
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G 353	Teletype, March 22, 1935, W. A. Tracey to J. W. Carnes	788 907	2973
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G 358	Teletype, May 7, 1935, W. A. Tracey to J. W. Carnes	788 907	2974
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G 417	Telegram, Feb. 19, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2980
G 421	Telegram, March 4, 1936, W. T. D. to J. W. Carnes, written by W. A. Tracey	788 907	2981
G 422	Telegram, March 15, 1935, W. T. Dinkins to J. W. Carnes	788	2981
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G 432	Telegram, June 5, 1935, W. T. Dinkins to J. W. Carnes, written by W. A. Tracey	788 907	2984
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G 475	Letter April 6, 1935, J. A. Welch to H. D. Frueauff	726	2992
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G 628	Price provisions of jobber contract, Aug. 1, 1934, between H. E. Miller Oil Company and Barnsdall Oil Company	305	3058
G 629	Letter, July 25, 1935, Barnsdall Refining Corporation to H. E. Miller Oil Company, and enclosure, being consent to assignment, July 30, 1935, by Barnsdall Oil Company to Barnsdall Refining Corporation...	306	3061
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G 637	Price provisions of jobber contract, Feb. 21, 1933, between Goodall-Crowley Oil Company and Mid-Continent Petroleum Corporation.	326	3072
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D 958	(for identification) Chart of gasoline tank wagon prices compared with cost of living and wholesale prices of all commodities in United States, 1918-1936	1520	3669
D 959	(for identification) Chart comparing United States gasoline tank wagon prices with wholesale dairy products prices, 1918-1936	1520	3673
D 960	Tabulation—Derby Oil Company gasoline production and sales, 1934-1936	1537	3676
D 961	Stipulation of testimony of C. G. Stokes concerning Olney Oil and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3678
D 962	Stipulation of testimony of J. P. Dyer concerning Bell Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3680
D 963	Stipulation of testimony of William E. Conway concerning Shamrock Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3682
D 964	Stipulation of testimony of James D. Miller concerning Champlin Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1536	3684

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 965	Stipulation of testimony of G. E. Dahlen concerning Danciger Oil and Refineries, Inc. gasoline production and sales, 1934-1936, with tabulation of figures attached.....	1536	3686
D 966	Stipulation of testimony of J. H. Sheehan concerning Lion Oil Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached........	1536	3688
D 967	Letter, Franklin D. Roosevelt to C. E. Arnott	1687	3690
D 968	Extract from press release issued Nov. 14, 1934, by Department of the Interior, of speech by Harold L. Ickes before American Petroleum Institute, Nov. 14, 1934...........	1696	3690
D 969	Letter, Feb. 20, 1935, C. E. Arnott to Charles Fahy	1729	3692
D 970	Telegram, May 1, 1935, C. E. Arnott to H. W. Dodge	1732	3693
D 971	(for identification) Telegram, May 17, 1935, Charles Fahy to C. E. Arnott	1735	3693
D 972	(for identification) Letter May 7, 1935, E. B. Swanson to S. M. Vockel	1735	1349 3694
D 973	(for identification) Letter, May 17, 1935, E. B. Swanson to James J. Davis	1353 1735 1841	1353 3695
D 974	Certified copies of orders appointing members of Petroleum Administrative Board and stating the qualifications, status, duties and powers of each member	1341	3696

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D 975	Telegram, May 28, 1935, Charles Fahy to C. E. Arnott	1736	3716
D 976	Letter, June 3, 1935, Charles Fahy to C. E. Arnott	1736	3716
D 977	Letter, June 12, 1935, C. E. Arnott to Charles Fahy	1736	3717
D 978	Press release, Sept. 18, 1933, by Department of the Interior, setting forth speech of Harold L. Ickes before Planning and Coordination Committee	1739	3718
D 979	Letter, July 25, 1935, Harold L. Ickes to C. E. Arnott	1739	3721
G 980	Letter, April 2, 1935, Harold L. Ickes to C. E. Arnott	1739	3722
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G 985	Telegram, July 10, 1935, Waggoner Refining Company, Inc. to A. V. Bourque	1818	3734
G 986	Letter, Oct. 2, 1935, Dale W. Moore Oil Company to Waggoner Refining Company, Inc., attention Dave Gray	1819	3734
D 988	Certificate by Harold L. Ickes of appointment of Charles Fahy as chairman of Petroleum Administrative Board, together with document describing his qualifications and duties	1341	3735

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D 989	Stipulation of testimony of J. W. Steele relative to East Texas refineries operating on Federal tenders between March 1, 1935 and Dec. 31, 1936, as shown on Exhibit A attached thereto	1830	3737
D 990	Stipulation of testimony of James D. Miller concerning Dickey Oil and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached........	1830	3740
D 991	Stipulation of testimony of M. A. Chambers concerning Panhandle Producing and Refining Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1679 1830	3742
D 992	Stipulation of testimony of M. P. Appleby concerning Wilcox Oil and Gas Company gasoline production and sales, 1934-1936, with tabulation of figures attached	1830	3744
D 993	(for identification) Letter, April 30, 1935, Paul G. Blazer to Charles Fahy	1830	3746
D 994	(for identification) Letter, May 7, 1935, Chairman of Petroleum Administrative Board to Paul G. Blazer	1830	3748
D 995	Letter, March 30, 1935, Harold L. Ickes to B. P. Lientz	1831	3749
D 996	Telegram, Jan. 6, 1938, Harold L. Ickes to R. A. Irvine.............	1342	3750

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Exhibit No.		Rec'd in evidence at page*	Reproduced at page
D 997	Stipulation of testimony of Harold F. Parsons concerning attached data pertaining to Tide Water Oil Company of New Jersey gasoline production and sales, 1932-1936, and other information	1599 1844	3751
D 998	Stipulation of testimony of R. E. Everitt as to minimum stocks and market facilities of Globe Oil & Refining Companies	1609	3756
D 999	Tabulation of gasoline production, purchases, shipments, and inventories, Globe Oil & Refining Company (Oklahoma) and (Illinois), Jan. 1, 1933 to Aug. 31, 1937	1609	3757
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D 1002	Summary of purchases by three Globe Companies, Jan. 1933 to Aug. 1937, from independent refiners and from other refiners and brokers	1609	3767
D 1003	Tabulation of crude oil runs to stills by Globe Oil & Refining Company plants, Jan. 1, 1931 to Aug. 31, 1937	1609	3768
D 1004	Tabulation of flat price purchases from independent refiners, Group 3, 1935-1936, by Globe Oil & Refining Company (Oklahoma) and (Illinois)	1610	3770

Exhibit No.		Rec'd in evidence at page	Reproduced at page
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D 1011	Chart of purchases by defendant Companies from East Texas refiners, compared with Oilgram East Texas quotations for 1935	1617	3783
D 1012	Stipulation of testimony of Roy W. Dalby concerning gasoline shipped from Texas to Acme Petroleum Company in 1934, with Exhibit A attached	1619	3785
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D 1014	Chart showing daily variations from average normal posted service station price in 28 representative Mid-Western cities, 1934-1936	1633	3795

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1015	Tabulation—Sinclair Refining Company purchases in Mid-Continent field, Jan. 1, 1935 to April 30, 1936.	1636	3797
D 1016	Tabulation—operating refinery capacity of defendant companies compared with total United States operating capacity, as of Jan. 1, 1935 and Jan. 1, 1936	1535	3798
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D 1024	Chart of flat price purchases of regular and third grade gasoline, Group 3, Oklahoma refiners, by defendant major oil companies and by jobbers and consumers, compared with 1935 journal quotations	1679	3807
D 1025	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of regular and third grade gasoline, compared with Chicago Journal of Commerce quotations, Jan. 1, 1935 to April 30, 1936......	1663	3809

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Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1026	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of third grade and regular gasoline, compared with Platt's Oilgram quotations for Oklahoma refinery market, Jan. 1, 1935 to April 30, 1936	1663	3810
D 1027	Tabulation—operating refinery capacity, Tide Water Associated Oil Company, Gulf Refining Company, The Texas Company and Deep Rock Oil Company, as of Jan. 1, 1935 to Jan. 1, 1936	1536	3811
D 1028	Stipulation concerning gasoline sales by defendant companies in Mid-Western area, 1935 and first seven months of 1936	1536	3812
D 1029	(for identification) Certified copy, Order, June 23, 1934, by Harold L. Ickes, approving Pacific Coast Agency Agreement and Refiners' Agreement and supplemental agreements thereto	1680	3817
D 1030	(for identification) Certified copy, memorandum, March 22, 1935, Charles Fahy to Administrator of Petroleum Code	1678	3869
G 1031	Letter, Sept. 8, 1936, M. G. Peeters to Clayton W. Haswell, together with enclosure of letter, July 24, 1934, A. G. Maguire to Chairmen of State Petroleum Committees	1683	3874

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G 1032	Tabulation—tank car shipments of refined gasoline from 34 independent refiners in East Texas, March 1, 1935 to March 3, 1936	1850	3878
G 1033	Tabulation—purchases of third grade gasoline by Sinclair Refining Company from independent refiners in East Texas, March 1, 1933 to April 30, 1936	1850	3882
G 1034	Purchase order, Sept. 18, 1935, from Globe Oil & Refining Company (Illinois) to T. R. Vaughn	1864	3883
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D 1038	Letter, Sept. 20, 1935, J. M. Alexander to T. R. Vaughn Oils.......	1864	3888
D 1040	Identical with Gov. Ex. 1035, except handwritten notations (sales acknowledgment, Sept. 18, 1935, T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois)) (Reference to)	1864	3890
G 1043	Stipulation concerning exhibits of Shell Petroleum Corporation.....	1876	3890
G 1044	Stipulation concerning Exhibits 24, 27 and 52	1876	3891
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G 1047	Stipulation concerning Exhibits 316-319	1876	3892
D 1048	Telegram, Jan. 14, 1938, R. E. Everitt to Ralph Horween	1878	3892
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D 1051	Letter, Oct. 7, 1935, W. H. Barber Company to Globe Oil & Refining Company	1880	3895
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G 1053	Stipulation of testimony of H. Russell Richards concerning sales of gasoline by Continental Oil Company, with Exhibit A attached	1889	3896
D 1054	Statement re letter, Oct. 8, 1935, Globe Oil & Refining Company (Illinois) to Globe Oil & Refining Company (Oklahoma), and telephone statements from Aug. 21, 2935, through Sept. 25, 1935, attached	1878	3902
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GOVERNMENT EXHIBIT NO. 673.

Service Station Prices less City, State, and Federal Gasoline Tax
Average for 28 Cities in Ten States
(Oil Price Handbook)
Standard Red Crown Gasoline
(Regular Grade)

December 3, 1934	10.97¢	August 19, 1935	13.48¢
December 10, 1934	11.44	August 26, 1935	13.56
December 17, 1934	11.59	September 2, 1935	13.60
December 24, 1934	11.70	September 9, 1935	13.60
December 31, 1934	11.79	September 16, 1935	13.41
January 7, 1935	11.79	September 23, 1935	13.41
January 14, 1935	12.41	September 30, 1935	13.41
January 21, 1935	12.57	October 7, 1935	13.41
January 28, 1935	12.59	October 14, 1935	13.38
February 2, 1935	12.61	October 21, 1935	13.38
February 11, 1935	12.58	October 28, 1935	13.38
February 18, 1935	12.57	November 4, 1935	13.38
February 25, 1935	12.56	November 11, 1935	13.38
March 4, 1935	12.56	November 18, 1935	13.34
March 11, 1935	12.56	November 25, 1935	13.34
March 18, 1935	12.56	December 2, 1935	13.41
March 25, 1935	12.90	December 9, 1935	13.41
April 1, 1935	12.90	December 16, 1935	13.41
April 8, 1935	12.97	December 23, 1935	13.41
April 15, 1935	13.26	December 30, 1935	13.41
April 22, 1935	13.32	January 6, 1936	13.35
April 29, 1935	13.32	January 13, 1936	13.45
May 6, 1935	13.56	January 20, 1936	13.93
May 13, 1935	13.56	January 27, 1936	13.93
May 20, 1935	13.56	February 3, 1936	13.93
May 27, 1935	13.56	February 10, 1936	13.93
June 3, 1935	13.56	February 17, 1936	13.93
June 10, 1935	13.56	February 24, 1936	14.08
June 17, 1935	13.83	March 2, 1936	14.08
June 24, 1935	13.79	March 9, 1936	14.08
July 1, 1935	13.79	March 16, 1936	14.12
July 8, 1935	13.72	March 23, 1936	14.12
July 15, 1935	13.58	March 30, 1936	14.12
July 22, 1935	13.51	April 6, 1936	14.12
July 29, 1935	13.44	April 13, 1936	14.12
August 5, 1935	13.44	April 20, 1936	14.16
August 12, 1935	13.48	April 27, 1936	14.16

5252

May 4, 1936	14.16¢	August 31, 1936	14.08¢
May 11, 1936	14.16	September 7, 1936	13.87

May 18, 1936	14.20
May 25, 1936	14.20
June 1, 1936	14.22
June 8, 1936	14.14
June 15, 1936	14.14
June 22, 1936	14.14
June 29, 1936	14.16
July 6, 1936	14.16
July 13, 1936	14.16
July 20, 1936	14.16
July 27, 1936	14.16
August 3, 1936	14.16
August 10, 1936	14.16
August 17, 1936	14.16
August 24, 1936	14.08
September 14, 1936	13.87
September 21, 1936	13.87
September 28, 1936	13.64
October 5, 1936	13.63
October 12, 1936	13.63
October 19, 1936	13.63
October 26, 1936	13.60
November 2, 1936	13.60
November 9, 1936	13.60
November 16, 1936	13.59
November 23, 1936	13.59
November 30, 1936	13.59
December 7, 1936	13.63
December 14, 1936	13.94
December 21, 1936	13.94

5253 Twenty-Eight Representative Cities in Standard Oil Company (Indiana) Territory

Chicago, Illinois
Decatur, Illinois
Joliet, Illinois
Peoria, Illinois
Quincy, Illinois
Indianapolis, Indiana
Evansville, Indiana
South Bend, Indiana
Detroit, Michigan
Grand Rapids, Michigan
Saginaw, Michigan
Green Bay, Wisconsin
La Crosse, Wisconsin
Milwaukee, Wisconsin
Minneapolis, Minnesota
Duluth, Minnesota
Mankato, Minnesota
St. Louis, Missouri
Kansas City, Missouri
St. Joseph, Missouri
Davenport, Iowa
Des Moines, Iowa
Mason City, Iowa
Sioux City, Iowa
Fargo, North Dakota
Minot, North Dakota
Huron, South Dakota
Wichita, Kansas

5254 GOVERNMENT EXHIBIT NO. 674.

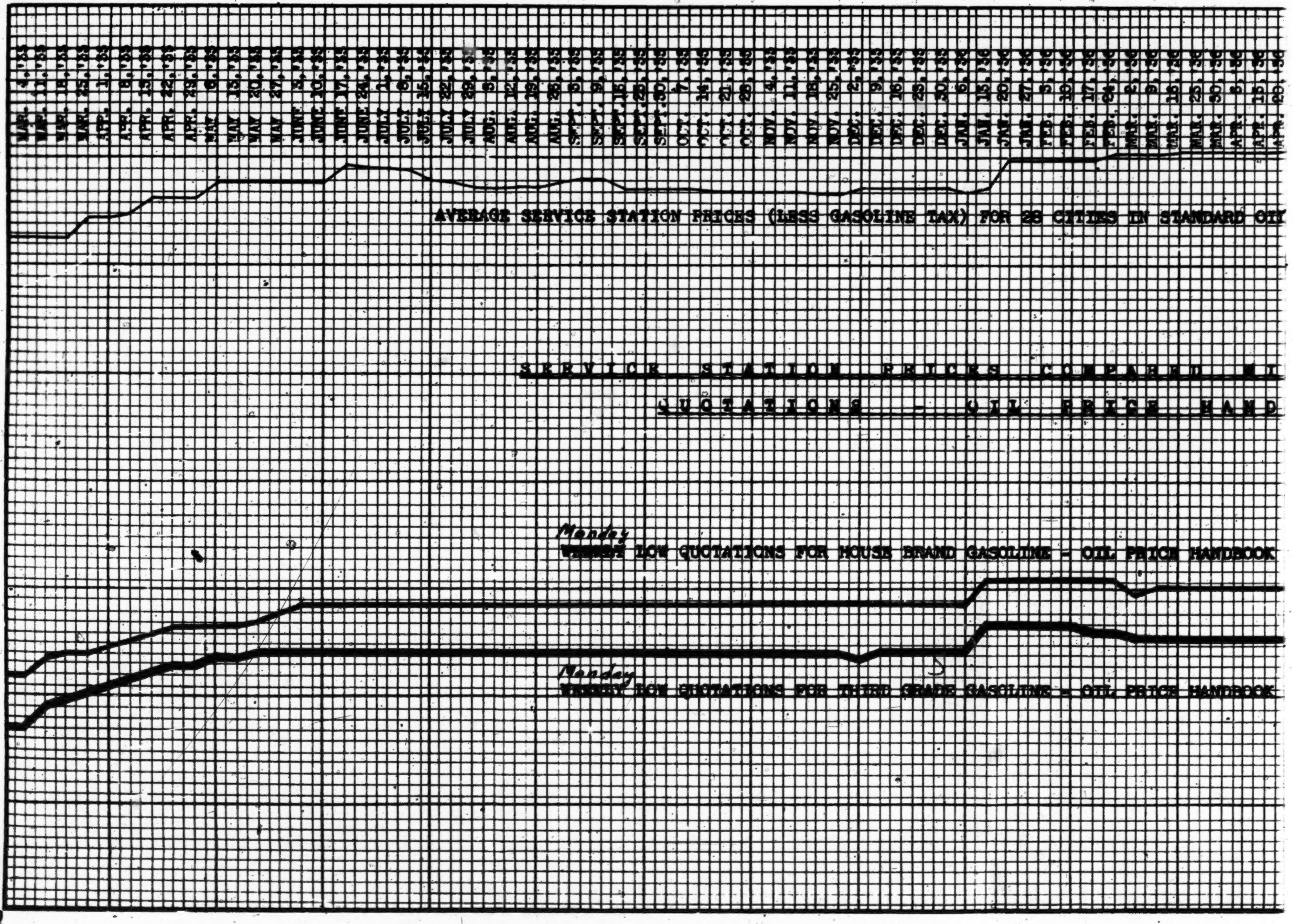
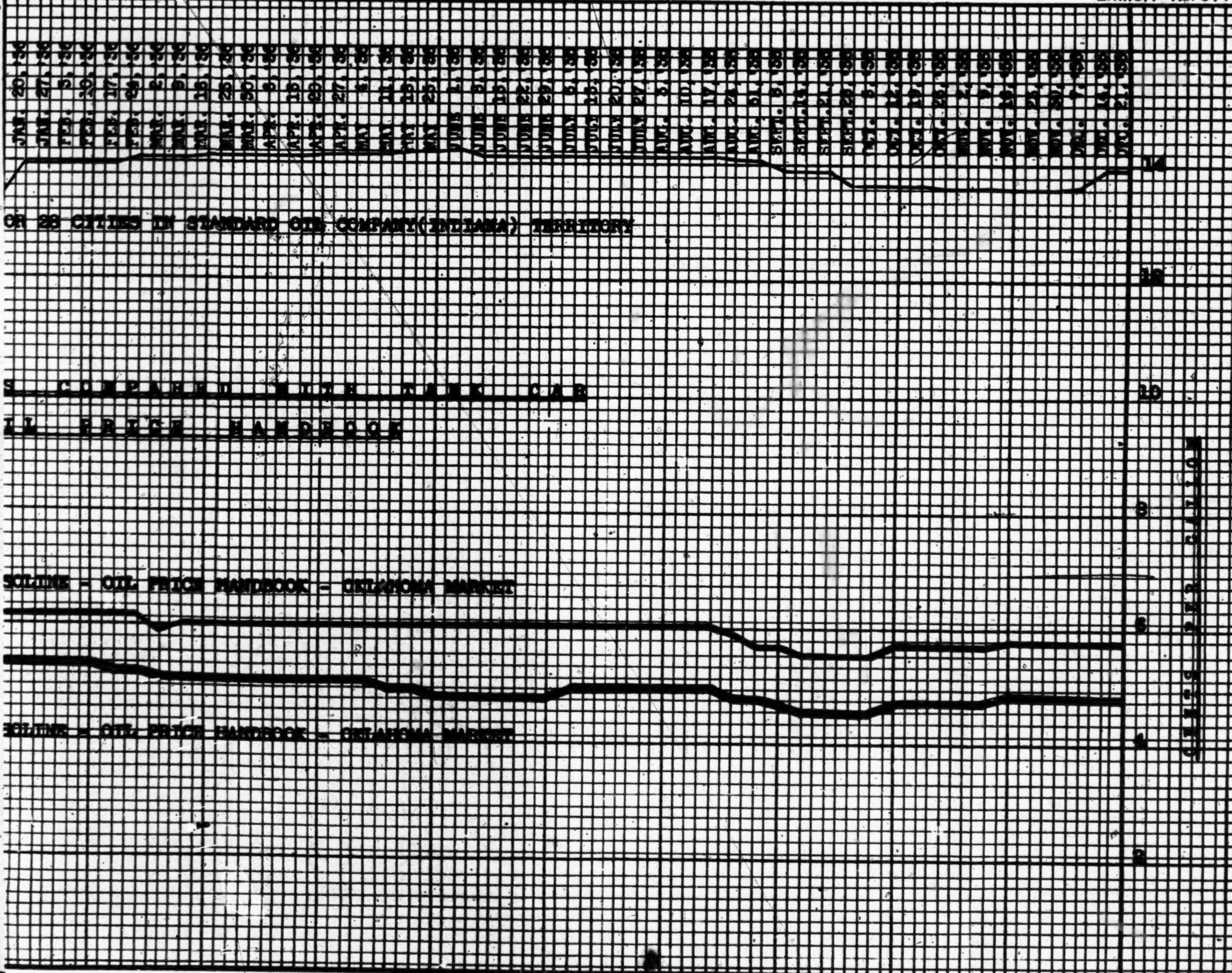
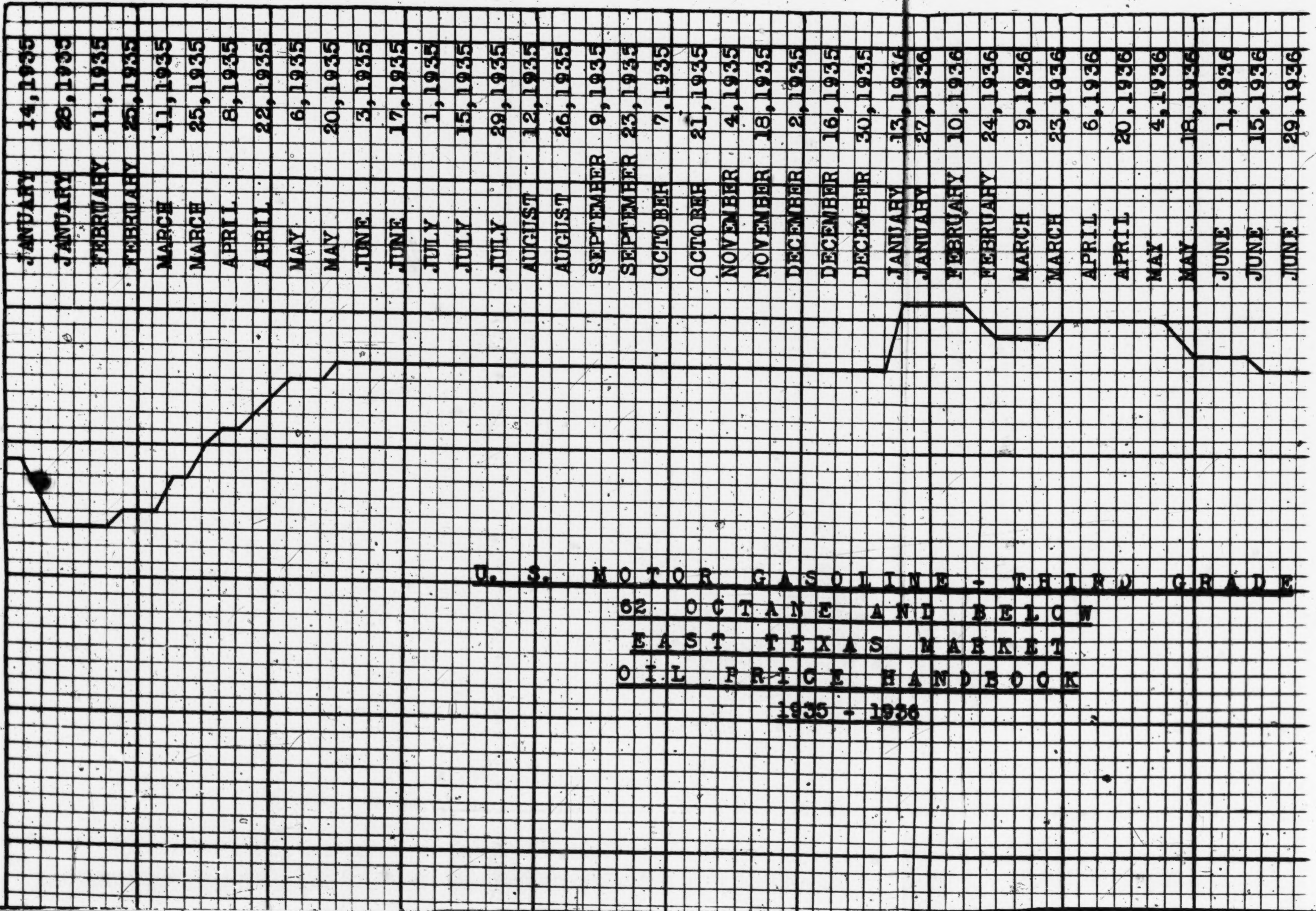

SERVICE STATION PRICES COMPARED WI
QUOTATIONS - OIL PRICE HAND
AVERAGE SERVICE STATION PRICES (LESS GASOLINE TAX) FOR 28 CITIES IN STANDARD OI
Monday
WEEKLY LOW QUOTATIONS FOR HOUSE BRAND GASOLINE - OIL PRICE HANDBOOK
Monday
WEEKLY LOW QUOTATIONS FOR THIRD GRADE GASOLINE - OIL PRICE HANDBOOK
MAR. 4, '35
MAR. 11, '35
MAR. 18, '35
MAR. 25, '35
APR. 1, '35
APR. 8, '35
APR. 15, '35
APR. 22, '35
APR. 29, '35
MAY 6, '35
MAY 13, '35
MAY 20, '35
MAY 27, '35
JUNE 3, '35
JUNE 10, '35
JUNE 17, '35
JUNE 24, '35
JULY 1, '35
JULY 8, '35
JULY 15, '35
JULY 22, '35
JULY 29, '35
AUG. 5, '35
AUG. 12, '35
AUG. 19, '35
AUG. 26, '35
SEPT. 3, '35
SEPT. 9, '35
SEPT. 16, '35
SEPT. 23, '35
SEPT. 30, '35
OCT. 7, '35
OCT. 14, '35
OCT. 21, '35
OCT. 28, '35
NOV. 4, '35
NOV. 11, '35
NOV. 18, '35
NOV. 25, '35
DEC. 2, '35
DEC. 9, '35
DEC. 16, '35
DEC. 23, '35
DEC. 30, '35
JAN. 6, '36
JAN. 13, '36
JAN. 20, '36
JAN. 27, '36
FEB. 3, '36
FEB. 10, '36
FEB. 17, '36
FEB. 24, '36
MAR. 2, '36
MAR. 9, '36
MAR. 16, '36
MAR. 23, '36
MAR. 30, '36
APR. 6, '36
APR. 13, '36
APR. 20, '36

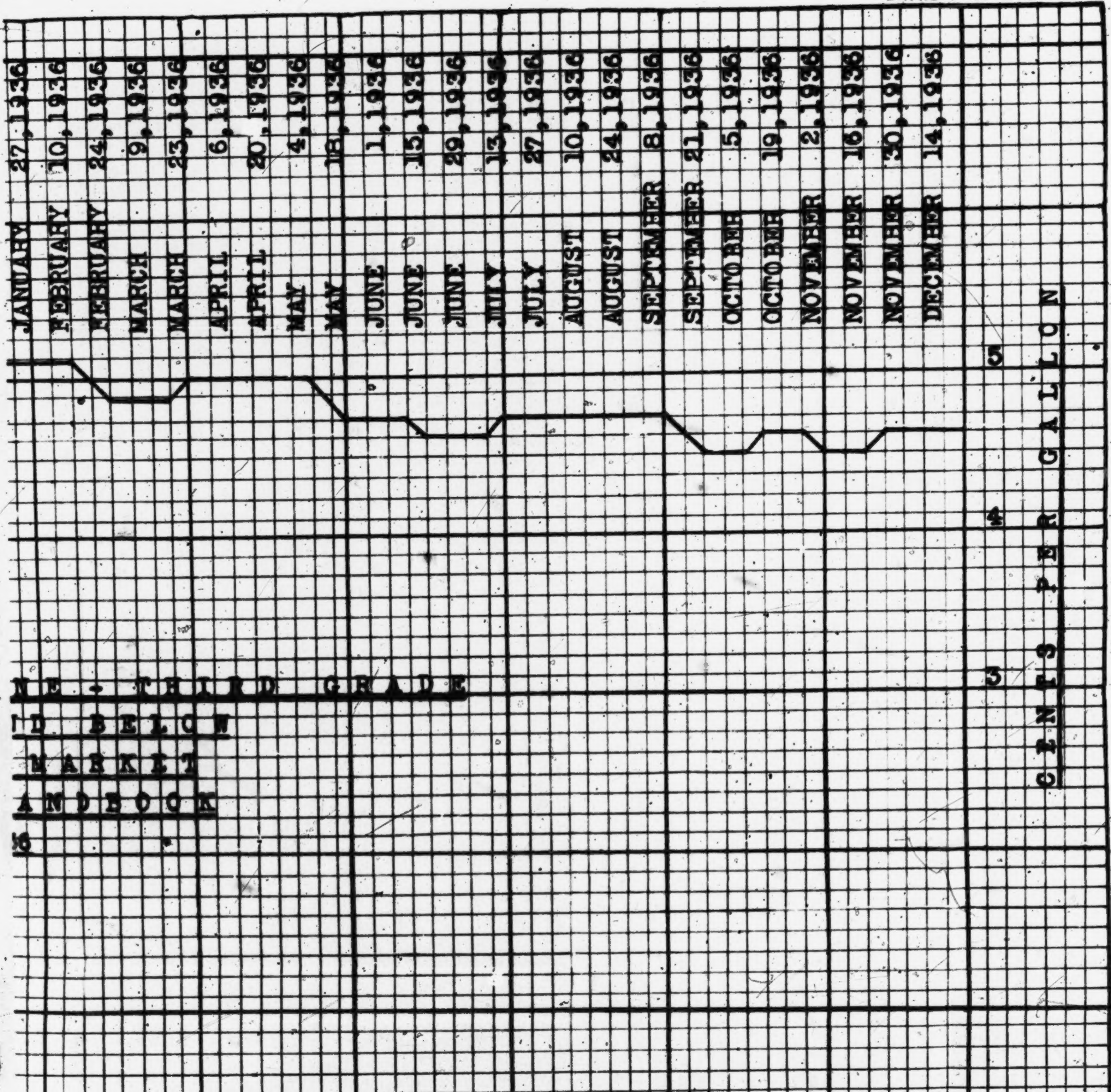
EXHIBIT NO. 674



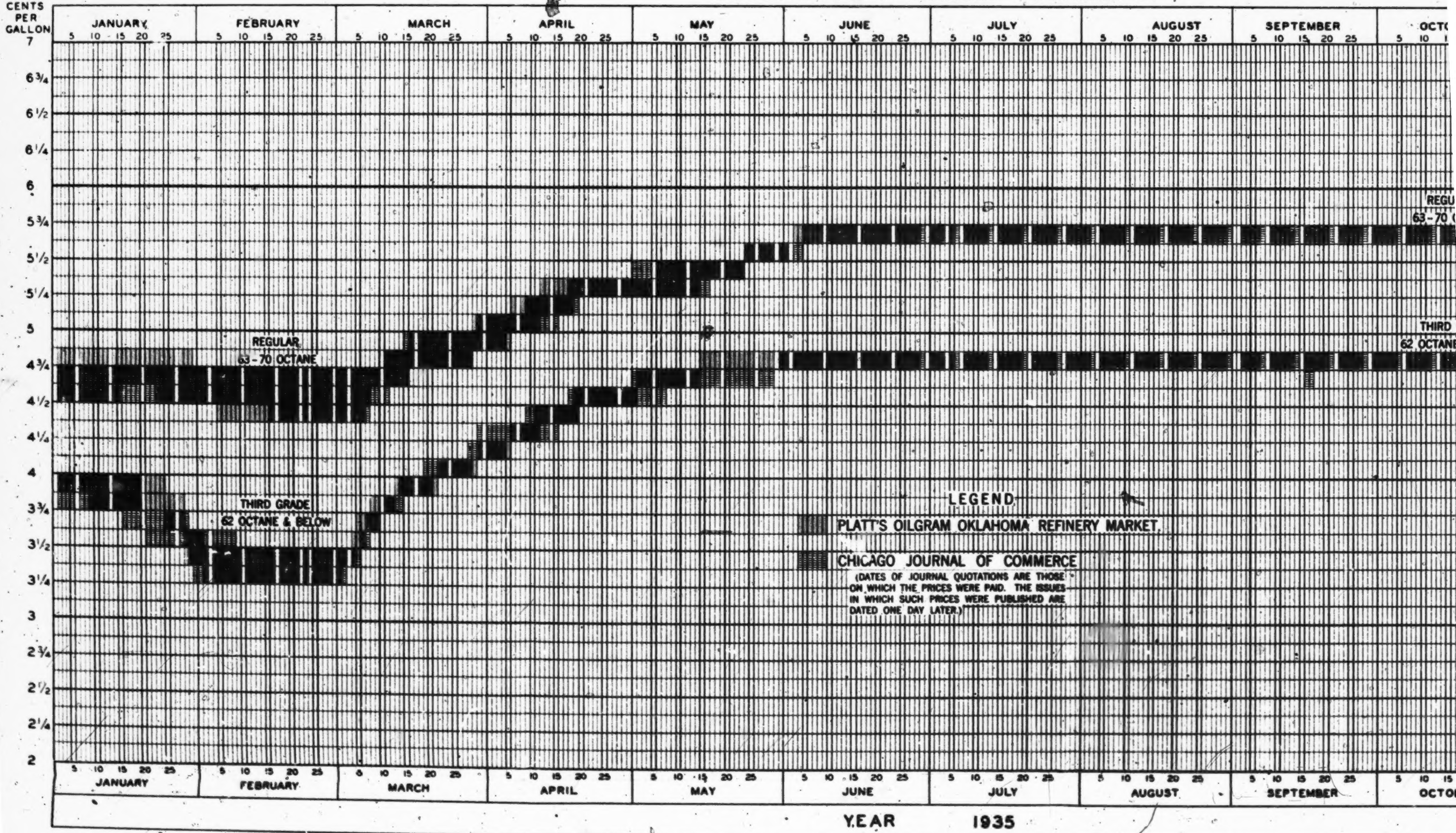


U. S. MOTOR GASOLINE - THIRD GRADE
62 OCTANE AND BELOW
EAST TEXAS MARKET
OIL PRICE HANDBOOK
1935 - 1936

EXHIBIT NO. 678



COMPOSITE OF
PRICE QUOTATIONS
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
AND
CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



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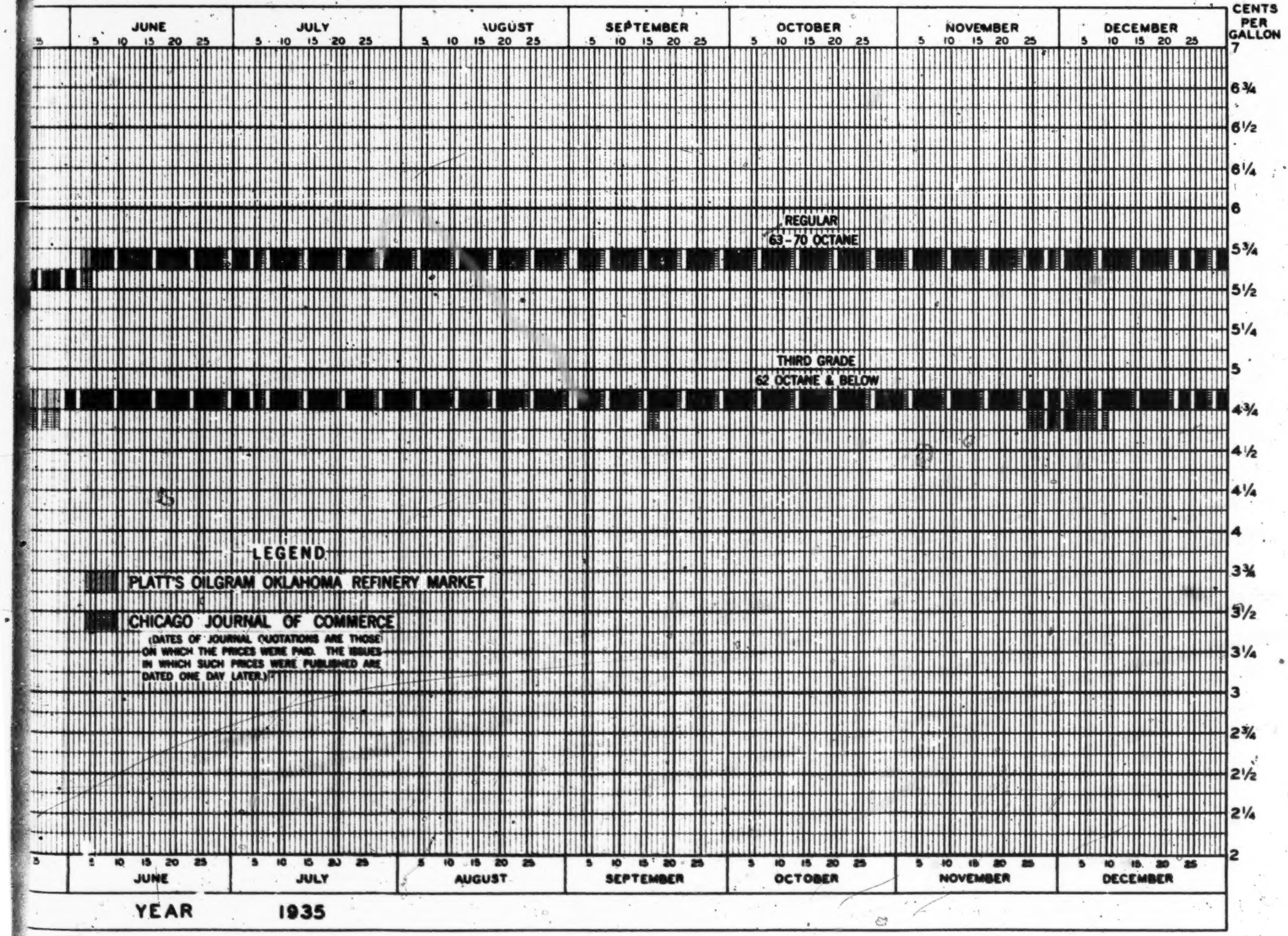

COMPOSITE OF
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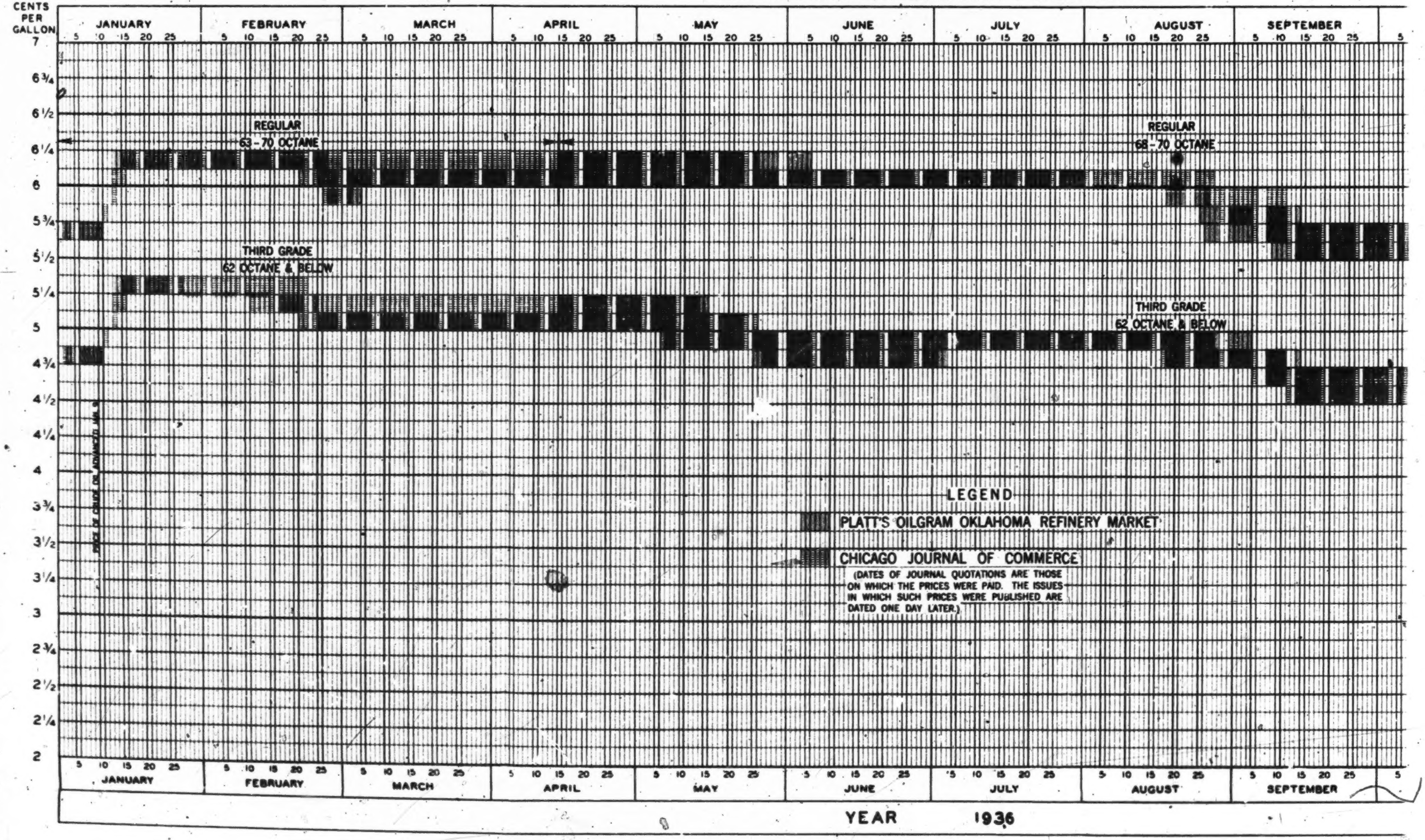
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
AND
CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



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COMPOSITE OF
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AND
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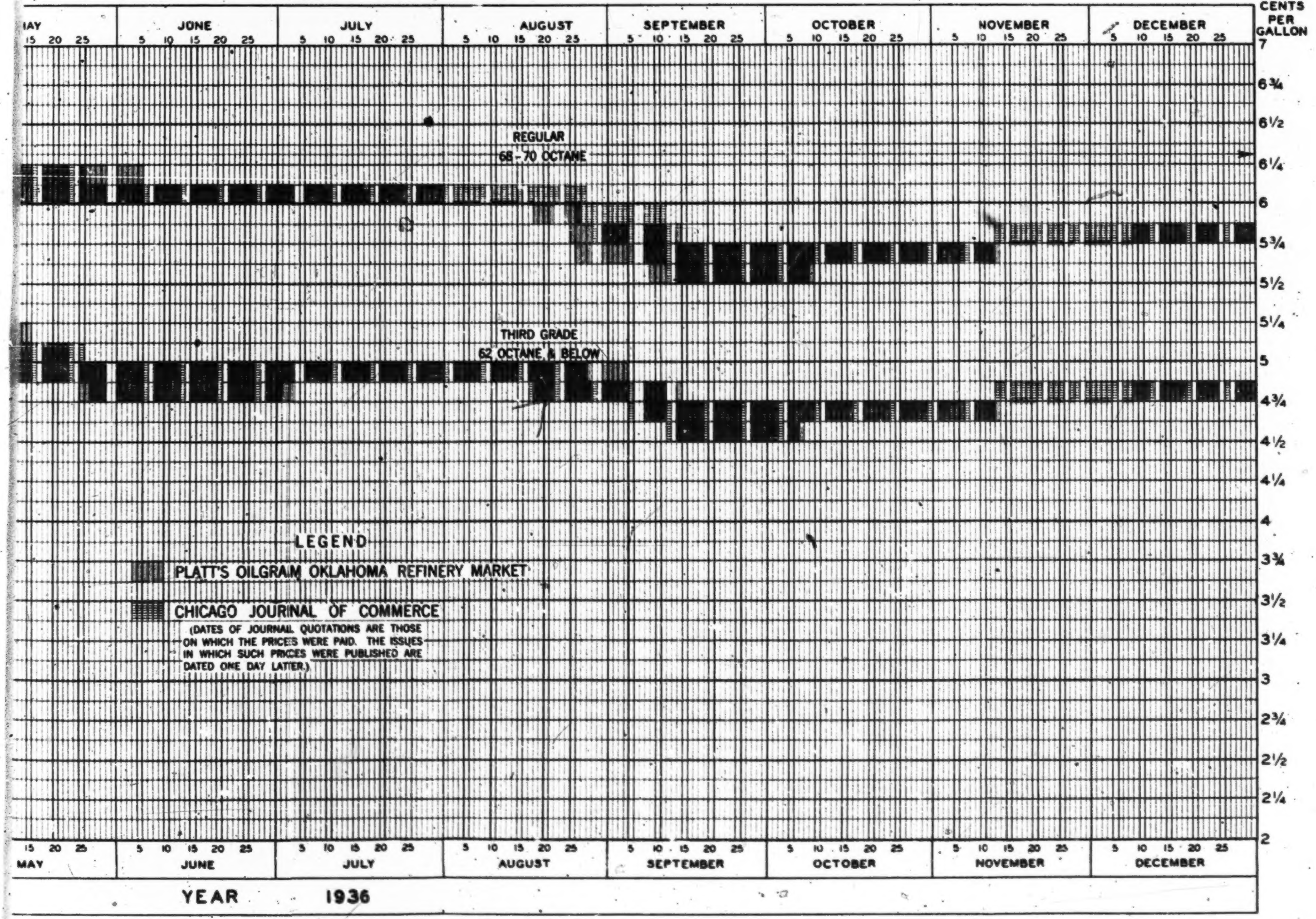

(DATES OF JOURNAL QUOTATIONS ARE THOSE ON WHICH THE PRICES WERE PAID. THE ISSUES IN WHICH SUCH PRICES WERE PUBLISHED ARE DATED ONE DAY LATER.)

5262 GOVERNMENT EXHIBIT NO. 681.

March 8, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—The crude oil situation is stronger, due mainly to improved conditions in East Texas. The Federal tender board is again on top, benefiting by a decision yesterday of Federal Judge Bryant who denied a petition for a Federal restraining order sought by Attorney Fisher. The purpose of the suit was to make the Federal tender board secondary in importance to the State tender board. Had the decision been in favor of Fisher, the Federal tender board would have been more or less a "rubber stamp" organization, and would have had to accept the decisions of the State tender board on tenders. This decision is important, and temporarily at least gives a vastly improved tone to crude oil, as well as products in East Texas.

Gasoline—The buying pool has started operations, and the various buying companies are placing orders. A subcommittee of the Tank Car Stabilization Committee has been named; Mr. McDowell of Mid-Continent Petroleum Corporation (Chairman), Mr. Tuttle of Empire, and the writer have been asked to serve in this area as a steering committee on pool matters.

Prices have already started to reflect a better mental frame of mind, and third grade gasoline has advanced sharply this week to 3½¢. A 3⅝¢ price is expected shortly. So far the price of 63/70 octane gasoline has failed to show much improvement.

Jobbers are showing more interest in building up their storage stocks, and inquiries and orders, I am told, have improved considerably.

Natural Gasoline—26/70 is expected to hold around the 2¢ level. Natural Gasoline manufacturers are switching to the stabilized grades, and these grades are in good demand.

Yours very truly,
W. P. Jacobi

copy for Mr. A. Olberg, President—from Tulsa office

Date Stamp
"Received
Mar 11 1935
Perfect Oil Corporation"

5263 GOVERNMENT EXHIBIT NO. 682.

March 15, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—Crude Oil and Gasoline markets indicate a firmer trend.

The industry seems to have taken heart in the renewed activities of the Federal Tender Board in East Texas, and most of the credit for this better state of mind must be given to the Tender Board.

Gasoline—The writer has been busy this week on tank car stabilization work, and thus far results are gratifying. Our Committee decided on a price of 3¾¢ for third grade, and 4¾¢ for "Q", for next week. Purchasing companies, including our own units, are paying these prices today. Since this stabilization work started, an advance in price of about ⅜¢ per gallon on both grades has resulted.

Jobber demand has decreased somewhat the past week, and some good weather would now be very welcome, from the viewpoint of our work here.

Natural gasoline, 26/70 grade shows no price improvement as yet, but I believe it will shortly.

Yours very truly,
W. P. Jacobi

copy for Mr. A. Olberg, President—from Tulsa office

Date Stamp
"Received
Mar 11 1935
Perfect Oil Corporation"

5264 GOVERNMENT EXHIBIT NO. 683.

Wadhams Oil Company
Milwaukee, Wisconsin

March 22, 1935

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—Early this week a very important decision was rendered in East Texas by Federal Judge Bryant who denied a restraining order against the Federal Tender

Board which was asked for by the Marimac Oil Company and the Oil Sales, Inc., clients of Attorney Fisher. It is interesting to note that the Marimac Oil Company is owned by a broker, Mr. McDonald of Tyler, Texas. Oil Sales, Inc. are also a brokerage house and two of the incorporators of this latter firm are; one, Attorney Fisher's stenographer and the other, the stenographer of the recently formed East Texas Refiner's Marketing Association.

Due to support such as this rendered by the courts to the Federal Tender Board, the trend of hot oil is definitely down. Current estimates placed the total hot oil figure in East Texas at thirty to thirty-five thousand barrels per day at present, a reduction of twenty to thirty thousand barrels in the past few weeks. Runs to local refineries in East Texas are down 23,000 barrels in recent weeks.

With these improved conditions in East Texas, the situation on crude elsewhere has strengthened gradually and a better feeling in producing circles is quite apparent.

Gasoline—3rd grade U. S. Motor is quoted at 3⅞¢ group 3 today by brokers, which is mostly material in transit, bought a week or so ago. It is expected that this will be absorbed readily. A 4¢ market on this grade of gasoline is expected tomorrow in Oklahoma.

63/70 gasoline has advanced to 4¾¢ group 3 and I expect further price advances on both grades next week.

Natural Gasoline 26/70 is holding at 2⅛¢ group 3, and a number of firms with storage at the Gulf are starting to fill. While I hardly expect say quick advance in Natural prices, I do look for an improved price situation within the next 30 to 40 days.

Conclusion—I do not like to get too optimistic, but with East Texas in good shape at present, with gasoline in Oklahoma, North Texas and Kansas being readily absorbed we have a situation here that looks better to me than anything I can remember in a long time.

In trying to figure out what could happen to upset things
I can only think of the discovery of a new pool, an
5265 unfavorable court decision in East Texas or a sudden
jump in refinery runs, and of course these circumstances are possibilities, and not even probabilities today.

Yours very truly,
W. P. Jacobi

copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Mar 25 1935
Perfect Oil Corporation"

5266 GOVERNMENT EXHIBIT NO. 684.

March 29, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—Activity in drilling continues in Kansas, Oklahoma and Texas. Thus far no pool of consequence has been uncovered, with the result that "free" crude is quite scarce. This state of affairs is important as it has the effect of holding runs in check. Particularly so in the case of small plants, who are always tempted to run more crude on a rising market at this season.

I am beginning to hear "rumors" of a small advance in crude prices. As yet these rumors are not taken very seriously by the trade.

Gasoline—We have a firm 4¢ price on U. S. Motor below 62 octane in Kansas, Oklahoma and Northern Texas for shipment into the Standard of Indiana territory. These districts are getting a premium of ⅛¢ to ¼¢ for shipment within their respective states. A price of 4⅛¢ Group 3 for this grade is expected next week.

63/70 octane is now quoted at 4⅞¢ Group 3.

As long as the bulk of the East Texas gasoline continues its movement South, it is expected prices for tank car gasoline will continue to strengthen gradually in this area.

Demand from jobbers continues at a slow rate for several reasons. Jobbers North and West have had very unfavorable weather recently. Further, I do not believe they feel that present market prices will hold. It is quite possible they may be fooled this year in this respect.

Natural Gasoline—26/70 grade is holding well at 2⅛¢ Group 3, and considerable stabilized gasoline is being shipped to Gulf storage.

Yours very truly,
W. P. Jacobi

copy for Mr. A. Olberg, President—from Tulsa office

Date Stamp
"Received
Apr 1 1935
Perfect Oil Corporation"

5267 GOVERNMENT EXHIBIT NO. 685.

April 12, 1935

Wadhams Oil Company
Milwaukee, Wisconsin

Att: Mr. A. G. Maguire, Chairman

Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—Activity in Oklahoma and Kansas continues with the Fitts and Edmond pools in the limelight. These pools appear to be controlled rather well, and thus far as pools that are likely to weaken the crude price structure have put in an appearance. On the contrary, crude in all areas is in good demand and conditions should continue to improve as the larger consuming season for gasoline approaches.

Gasoline—The higher prices for gasoline, however, both wholesale and retail, have given the industry new hope, in the Mid-Continent field.

U. S. Motor below 62 octane is firm at 4¼¢, Group 3, today.

63/70 octane is firm at 5¢ and demand for this product is really better, than on 3rd grade.

Word from East Texas indicates, that the market there is being kept fairly well cleaned, and 3rd grade gasoline in East Texas is quoted at 4⅛¢ fob East Texas. I hear a rumor of a 4¼¢ price there next week.

Standard of Indiana advanced Service Station prices 3/10¢ today and this action should peg present tank car prices.

While the price trend on tank car gasoline is still upward prices will, no doubt, advance at a rather slow rate over the next thirty days. Weather conditions in April and early May are usually disappointing.

Natural Gasoline—26/70 grade is now quoted at 2½¢ Group 3 and I expect this price to hold over the next few weeks.

Kerosene and gas oil prices have advanced moderately in the past few days.

Conclusion: The mental frame of mind of those in the oil business here has improved considerably, and if the enthusiasm of refiners and producers, particularly the former, can be curbed, the industry should find itself in a position to make some money in 1935.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg—President

Date Stamp
"Received
Apr 15 1935
Perfect Oil Corporation"

5268 GOVERNMENT EXHIBIT NO. 686.

Wadhams Oil Company,
Milwaukee, Wisconsin.

April 26, 1935

Att: Mr. A. G. Maguire, Chairman
Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—Production of crude in the United States has mounted to 2,621,000 barrels per day, and new activity in all fields accounts for this increase. No particular concern is expressed, however, due to the fact that no major pool has been uncovered.

Gasoline—The price structure continues to improve, in this area.

Tank car prices for gasoline, and kerosene are up ⅛¢ since last week. Another 3/10 of a cent advance in Standard Oil of Indiana Service Station prices is expected next week.

U. S. Motor, below 62 octane is firm at 4½¢ Group 3 today—63/70 octane is quoted at 5¼¢. The whole gasoline market structure, is regarded as being sounder, basically, than it has been for a considerable length of time. It is pointed out that refiners are getting about $100 more per tank car for gasoline, than they were obtaining sixty days ago.

Dust storms, and poor weather generally in the central west, has been holding jobber buying down to the minimum. With better weather in store, after the next few weeks, one cannot help but feel optomistic regarding gasoline prices for the summer months.

Natural Gasoline—Natural prices are holding—26/70 grade is still selling at 2¾¢. I expect another price advance of ⅛¢—¼¢ in 26/70 Grade within the next two weeks.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg.

5269 GOVERNMENT EXHIBIT NO. 687.

May 3, 1935

Wadhams Oil Company,
Milwaukee, Wisconsin.

Att: Mr. A. G. Maguire, Chairman

Subject: Weekly Letter

Dear Mr. Maguire:

Crude Oil—With gasoline prices maintaining their advances, and showing a tendency to advance further, producers of crude oil are greatly encouraged.

Gasoline—As expected, the S. O. of Indiana advanced service station prices another 3/10's of a cent yesterday.

U. S. M. below 62 octane remains firm at 4½¢ Group 3. 63/70 octane grade remains unchanged at 5¼¢.

Demand this week is better, and jobbers have been active buyers.

Natural Gasoline—The 26/70 grade advanced to 3¢, and for the present no further advance in Natural prices are expected.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
May 6 1935
Perfect Oil Corporation"

5270 GOVERNMENT EXHIBIT NO. 688

May 10, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company,
Milwaukee, Wisconsin.

Weekly Letter

Dear Mr. Maguire:

Crude Oil—A Healthy condition continues to exist for two reasons. One, no active producing fields have been discovered, even with increased field operations. The steady improvement in prices for products, is having a stabilizing influence on the dollar posted price for crude.

Gasoline—Gasoline tank car prices have been maintained the past few weeks in the face of very unfavorable weather conditions in the territory.

U. S. M. below 60/62 octane is quoted at 4⅝¢ group 3, and ⅛¢ higher price may be looked for next week.

63/70 octane is quoted at 5¼¢ group 3, and a ⅛¢ to ¼¢ advance in this grade is expected soon.

Tractor distillates, kerosene, regular distillate, zero gas oil are in good demand, and prices on the first three products are up ¼¢ in the past week.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
May 13 1935
Perfect Oil Corporation"

5271 GOVERNMENT EXHIBIT NO. 689.

May 18, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company,
Milwaukee, Wisconsin.

Weekly Letter

Dear Mr. Maguire:

Crude Oil—Producers are feeling good. Continued improvement in the crude oil situation is expected, as long as the industry maintains a balance between production and refining demand. No new pools of consequence have been uncovered, at this writing. Field operations are still active.

Gasoline—Even with most unfavorable weather in the S. O. of Indiana territory, prices for tank car gasoline are holding, in fact, the 63/70 octane price has advanced to 5⅜¢ Group 3, up ⅛¢ since last week.

U. S. Motor, below 62 octane is moving fairly well at 4⅝¢ Group 3.

In East Texas, state authorities have stopped the truck movement of hot gasoline. Several of the larger refiners from East Texas were in my office this week, and they felt conditions were never better, in that area.

If present refinery allocations are observed, and if no new pool is brought in, I look for continued strength in the whole market structure.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
May 20 1935
Perfect Oil Corporation"

GOVERNMENT EXHIBIT NO. 690.

May 24, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company,
Milwaukee, Wisconsin.

Dear Mr. Maguire:

The crude situation is unchanged from last week, but field operations are increasing, particularly in California, East Texas and Michigan, according to trade reports.

Gasoline prices even with most unfavorable weather, are holding. In fact it is expected the price for 63/70 octane in the trade papers will advance to 5½¢ in the next day or two.

62 octane and below is moving slowly.

Distillates, kerosene and tractor fuels are in excellent demand.

Natural prices are holding.

With tank car gasoline prices at the highest point in months, the only concern one hears expressed in the immediate outlook is the possibility of refiners disregarding allocations, and increasing runs. Chiseling on runs could very quickly start prices downward.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
May 27 1935
Perfect Oil Corporation"

5273 **GOVERNMENT EXHIBIT NO. 691.**

May 31, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company,
Milwaukee, Wisconsin.

Dear Mr. Maguire:

The Supreme Court decision apparently does not affect crude oil production schedules, for the various areas. It does not affect the Connally law. It does dispose of Federal gasoline allocations, and therefore, refinery runs will have to be watched by the industry. If refiners with their own crude supplies choose to take advantage of the higher prices, and run too much crude, prices both wholesale and retail will be affected very quickly.

Tank car gasoline prices started to slip, as soon as the Supreme Court decision was made public.

At this writing however, prices are firmer, and it is thought trade journals will maintain their postings of—

4⅝¢—4¾¢ on below 62 octane
5½¢ on 63/70 octane.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Jun 1 1935
Perfect Oil Corporation"

5274 GOVERNMENT EXHIBIT NO. 692.

June 22, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company,
Milwaukee, Wisconsin.

Dear Mr. Maguire:

The crude situation is in splendid shape, with the exception of Michigan and California. I understand some of the surplus crude in the Michigan area has been purchased, and the situation relieved in that area.

Even with very poor weather conditions and the 1¢ Federal tax bug-a-boo, the tank car market has shown no particular weakness.

Small quantities of gasoline from East Texas, have shown up this week for Northern movement, but this gasoline has found a home, at this writing.

I expect 26/70 Natural to advance in price next week.

Kerosene and burner oil prices continue to weaken and I expect lower prices to materialize.

Yours very truly,
W. P. Jacobi

Copy for Perfect Oil Corp., Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Jun 24 1935
Perfect Oil Corporation"

5275. GOVERNMENT EXHIBIT NO. 693.

June 28, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

The crude price continues firm, and thus far the weak spots, Pennsylvania, Michigan and California have not influenced the picture in this territory.

The tank car price of gasoline started the week, in a rather shakey condition. Purchases, at prices somewhat under the market eliminated most of the distress gasoline, which had found its way into the hands of brokers. The gasoline originated for the most part, from East Texas.

A lively gasoline demand next week is expected, to take care of the holiday requirements of jobbers. It is also thought that the Federal tax question will be settled, in the next day or two, and this should supply additional orders for refiners.

Natural as expected, firmed up slightly in price.

Burner oils are easier, and lower prices are expected.

The demand for kerosene is nil, and with stocks mounting a further drop in price of this product is anticipated. This kerosene situation will naturally depress the price of distillate and gas oil.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, president—from Tulsa office.

Date Stamp
"Received
Jul 1 1935
Perfect Oil Corporation"

5276 GOVERNMENT EXHIBIT NO. 694.

October 4, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Generally speaking, the situation in the Mid-Continent field is unchanged from last week.

California and Rodessa continue the only threats on the horizon.

Demand for tank car gasoline is slowing up to some extent, and small refiners continue their policy of keeping their storage clean. Tank car prices are holding, but price concessions are being made, when buyers can furnish shipping instructions with orders.

Reports of new orders for natural gasoline being placed by the Italians for aviation use, are heard.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Oct 7 1935
Perfect Oil Corporation"

5277 GOVERNMENT EXHIBIT NO. 695.

October 18, 1935.

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

With the exception of California, conditions in all producing areas are in excellent shape. California is still producing at the rate of 640,000 barrels per day, instead of 590,000 barrels which was the figure the emergency advisory committee recommended.

For the first time in a year or two it is impossible to obtain gasoline for interstate shipment out of the East Texas field. All legal gasoline in that area is contracted for until November 1.

Many buyers who have depended on East Texas as a source of supply for their gasoline requirements, have had to seek suppliers in other areas for the past ten days.

Natural gasoline is a little more plentiful, and the price in Texas is off somewhat, due to lack of demand. It is thought however, that colder weather will remove the surplus.

Burner oil supplies are at a low level in this area. A spell of cold weather could advance prices quickly.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Oct 21 1935
Perfect Oil Corporation"

5278 GOVERNMENT EXHIBIT NO. 696.

Tulsa, Oklahoma
November 2, 1935.

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Despite the fact that crude oil production in this country, is running 400,000 barrels per day over the same period last year, no particular concern is being expressed by the various trade journals, or other authorities.

In California the old schedule of prices for crude has been restored, despite the fact that California is producing 650,000 barrels per day.

Michigan and Rodessa gasoline is now appearing on the market, and at this time of the year this gasoline is a factor, as it is mostly 3rd grade and of course at this season, the demand for 3rd grade is decreasing.

As long as East Texas prices remain in line, it is thought present tank car prices for gasoline will hold in Chicago and in the Mid-Continent field.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Nov 4 1935
Perfect Oil Corporation"

5279 GOVERNMENT EXHIBIT NO. 697.

November 15, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Still see no reason for all the newspaper talk pointing to the possibility of a crude oil price advance.

Tank car demand for gasoline has diminished. Refiners, particularly in East Texas, are making too much gasoline for the market to absorb, and offerings are plentiful in East Texas, Oklahoma and elsewhere in the Mid-Continent.

The products in demand at present are 26/70 Natural, burner oils, and Bright stocks.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Nov 18 1935
Perfect Oil Corporation"

5280 GOVERNMENT EXHIBIT NO. 698.

November 22, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Even with the increase of 15¢ per barrel in Pennsylvania crude, there are many here that do not feel very enthusiastic.

First of all, there is more gasoline being offered than the market can absorb. Tank car prices are weaker, and if new buying doesn't develop, a reduction of ¼-½¢ in the 3rd grade and 63/70 prices will be in order.

Small refineries are apparently having no difficulty in obtaining all the crude they want, so there can be no serious thought given to a crude oil price advance here, at least until some time next Spring.

Demand for refinery gasoline has fallen off due to unfavorable weather over the Standard of Indiana territory.

Natural gasolines are in big demand. I believe the price of 26/70 could be advanced ½-¾¢ if the manufacturers wished to advance it. I understand they are endeavoring to hold it down to 4¢. Their idea in so doing is to encourage the use of natural, and to avoid a big price reaction later.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Nov 25 1935
Perfect Oil Corporation"

5281 GOVERNMENT EXHIBIT NO. 699.

Tulsa, Oklahoma
November 29, 1935

Mr. A. G. Maguire,
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Situation unchanged in general except that Continental and Carter have apparently uncovered new producing areas in Southern Oklahoma. These discoveries should greatly increase Oklahoma output of crude oil over the next few years.

As expected, rumors relative to a crude oil price advance in the Mid-Continent field have disappeared entirely.

Gasoline—The industry will be quite fortunate in my opinion, if present prices for tank car gasoline hold, over the next few months.

At the present time the tank car price structure is weak, with surplus gasoline available in East Texas.

Naturals are the only gasolines in good demand.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, Pres.—from Tulsa office.

Date Stamp
"Received
Dec 2 1935
Perfect Oil Corporation"

5282 GOVERNMENT EXHIBIT NO. 700.

December 13, 1935

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—The increase in crude oil prices in California of approximately 10¢ per barrel precipitated the usual comments here about an advance in the price of Mid-Continent crude oil. I continue to see no reason for a price advance here. There is still too much crude and refineries, large and small, seem to be getting all the oil they want.

California production is now at a five year peak.

Gasoline—The East Texas field is well supplied with orders for interstate movement. The situation, therefore, in this area is good.

Third grade gasoline is priced once again at 4¾¢ Group 3; trade papers having posted this price in the past few days. Demand, however, is not so good.

Natural Gasoline and burner oils are quite active.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Dec 16 1935
Perfect Oil Corporation"

5283 GOVERNMENT EXHIBIT NO. 701.

January 3, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Announcement that the Liberty Pipe Line Company of Houston had raised East Texas crude 25¢, created some excitement here, until it was found that this pipe line company purchased little or no East Texas oil. Conservative observers can see little chance of a crude advance until Spring. Small refiners have no difficulty in getting all the oil they want, and too much crude is still being run for this season of the year.

Gasoline—Demand for gasoline, particularly 3rd grade is almost nil.

All marketing companies in this territory report a decided trend from 3rd grade to Regular and Ethyl grades. Natural Gasoline is easier, and the 26/70 price is expected to go to 3¼¢.

Burner oils continue in good demand, but I do not expect prices for these oils to go higher.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg, President—from Tulsa office.

Date Stamp
"Received
Jan 6 1936
Perfect Oil Corporation"

5284 GOVERNMENT EXHIBIT NO. 702.

January 11, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—The advance of 15¢ in East Texas crude and 10¢ in Oklahoma crude this week was hardly expected to materialize this soon.

With the 60 to 90 days of poor motoring weather before us, the question of higher tank car and service station prices must now be met. I look for tank car and service station prices to advance about ½¢ over present levels to take care of the 10¢ advance in Mid-Continent crude. These advances should occur next week.

It will then be up to the industry to hold these advances until the Spring demand for gasoline starts.

Natural Gasoline demand has improved and it is expected that the downward trend on 26/70 has been checked.

Burner Oils continue in excellent demand. There is some talk about further fractional advances in burner oil tank car prices, both here and in Chicago.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Jan 13 1936
Perfect Oil Corporation"

5285 GOVERNMENT EXHIBIT NO. 703.

January 24, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—The Standard of California Company have initiated a new policy. Producers are being offered a 15 to 20 cent advance in price, if production is curtailed to 537,000 barrels per day. This means a reduction in output of about 140,000 barrels per day.

Field operations in all areas continue at a high level.

There is plenty of crude apparently, for the small plants here, and of course the large companies are getting all they want.

Gasoline—Demand is poor, and small refiners are beginning to cut the tank car prices. Gasoline from East Texas, and Rodessa is hurting the market, at the moment.

26/70 Natural advanced to 4¢ in the Mid-Continent as expected, but I look for no further advance, at present.

Burner oils are active due to the cold weather in the North and refiner's excess stocks are expected to be cleaned up shortly.

Yours very truly,
W. P. Jacobi

Copy for Mr.. A. Olberg Pres.—from Tulsa office.

Date Stamp
"Received
Jan 27 1936
Perfect Oil Corporation"

5286 GOVERNMENT EXHIBIT NO. 703A.

February 7, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Progress on curtailment is reported in California.

The Rodessa field in Louisiana continues to extend itself. Six new wells were completed last week. Thus far refineries running on Rodessa crude have not started to sell gasoline in the Standard of Indiana territory in quantities large enough to affect tank car quotations.

Gasoline—There is little or no demand for gasoline in tank cars.

Refiners are reducing runs and building up their gasoline stocks. There is nothing else to do.

The movement of burner oils and fuel oils is greater than any one looked for and will continue as long as the cold wave lasts, or until tanks are dry. Incidentally, many refiners in this field have cleaned out all their storage and are behind on orders.

Natural Gasolines are offered, particularly the 26/70 grade, and a lower price may be posted due to the inactive market on refinery fuels.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Feb 10 1936
Perfect Oil Corporation"

5287 GOVERNMENT EXHIBIT NO. 704.

February 15, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Encouraging news comes from California. Daily production is below 600,000 barrels per day, for the first time since September 1935.

However, new wells in Oklahoma, Kansas, Texas and Rodessa, give indications that there will be "plenty of oil" to go around in the Mid-Continent area.

Gasoline—Demand for gasoline is nil. It just can't be sold, and refiners are all running their make to storage.

Burner oils are at a premium. Sellers who have any can name their own prices. Kerosene is being bought, and shipped on No. 1, 2, and 3 orders.

The next thing will be a car shortage, as the railroads are not returning empty cars, due to the heavy snows, and resultant tie-ups.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Feb 17 1936
Perfect Oil Corporation"

5288 GOVERNMENT EXHIBIT NO. 705.

February 21, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Due to their inability to sell gasoline, some of the smaller refineries in this area are shutting down temporarily. The crude used by these plants, will have to be stored, or sold elsewhere.

Production in California is down to 584,000 barrels per day, the operators having failed thus far to reach the 537,000 barrel daily production figure, set by the major companies as the objective before a crude oil price advance, would be posted.

Rodessa continues to bring in new producers, and that field appears to be extending well into Cass County, Texas.

Gasoline—Cold weather continues to hold gasoline demand to a minimum.

Prices have eased off, particularly on natural gasoline, as refiners, as well as jobbers, find no use for naturals, when they are not moving any refinery fuels.

It is expected that U. S. M. and 63/70 grades will drop ⅛¢ to ¼¢ in price next week.

Burner oils are almost unobtainable here, and to make matters worse, the railroads are not returning empty fuel oil cars.

A little warm weather in the North would be most welcome to us down here, for two reasons; one, your requirements for burner oils would be less, and two, our gasoline demand would pick up.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Feb 24 1936
Perfect Oil Corporation"

5289 GOVERNMENT EXHIBIT NO. 706.

March 13, 1936

Mr. A. G. Maguire, Chairman
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Cuts in runs by small refiners in the Mid-Continent field have provided small surpluses of crude here and there.

The demand for East Texas oil is as keen as ever, with some smaller refiners bidding up premiums, and taking connections away from the larger pipe line companies.

Comforting news comes from the Governor's office of the State of Louisiana. The statement is made that allowable production in Rodessa will be held to 400 barrels per well during March, a reduction of 100 barrels per well.

Gasoline—Demand continues to improve slightly, and it would appear that refinery prices for this area, have seen their lows. Considerable satisfaction is expressed over this fact, due to the most unfavorable winter for gasoline consumption, that the industry has seen in years.

East Texas distress gasoline is cleaned up for the most part, and a 5¢ price f.o.b. East Texas for U. S. Motor in tank cars is expected next week.

Natural gasoline demand is somewhat improved also. No upward change in price is expected for a week or two. A one-eighth cent advance would be in line at that time.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Mar 16 1936
Perfect Oil Corporation"

5290 GOVERNMENT EXHIBIT NO. 707.

Mr. A. G. Maguire, Chairman April 24, 1936
Wadhams Oil Company
Milwaukee, Wisconsin

Dear Mr. Maguire:

Crude Oil—Purchases of extensive producing properties in the Rodessa field by two of the larger companies has removed some of the uneasiness from the minds of market observers, as to that particular area.

There is too much crude oil being produced however, and production for the country is at a new peak of 2,945,000 barrels per day.

Gasoline—While gasoline tank car prices are holding, that is about all that can be said. Demand is still very slow, and weather conditions most unfavorable.

Natural Gasoline prices are lower in Texas, and the 26/70 price in Oklahoma may decline ¼¢ in sympathy with the Texas price at 2¾¢.

What we need out here to bolster up the whole situation, is some good weather.

Yours very truly,
W. P. Jacobi

Copy for Mr. A. Olberg President—from Tulsa office.

Date Stamp
"Received
Apr 27 1936
Perfect Oil Corporation"

5291 DEFENSE EXHIBIT NO. 708.

5292 Planning and Coordination Committee
Under the Code
For the Petroleum Company

The Riggs National Bank
Washington, D. C.

15-3
—
6

June 18, 1935 Check No. 1551

Pay $$$366 Dol's25cts $ 366.25
To The
Order
Of W. P. Jacobi

Fred Van Covern
Assistant Treasurer

(Cancelled)

5293

EXHIBIT 708-A.

Endorsements

This voucher is hereby accepted in full payment of the within account and endorsement of payee shall operate as a receipt and release accordingly, unless presented at the bank on which it is drawn within thirty days from date hereof this check is voidable at the option of the maker.

(Signed) W. P. Jacobi

Stamps:

Pay to the order of any
bank, banker or trust co.
endorsements guaranteed
July 8, 1935
Federal Reserve Bank of
68-3 Richmond 68-3

126
Pay to the
Order of any
Bank or Banker Prior Endorsements
guaranteed
Jul 8, 1935

Federal Reserve Bank
of Chicago
2-30 2-30

5294

EXHIBIT 708-B.

June 18, 1935 Check No. 1551

Original Check Issued For

To

$366.25

W. P. Jacobi

Planning and Coordination Committee F-52

6/18/35	To cover Telephone exp. in connection with Code work for period ending 5/31/35.	366.25

Vouchered By
H. J. Sionssat

Approved By
Irwin Lamp

5295

EXHIBIT 708-C.

No. P & C, 1935 F-52

To W. P. Jacobi	
Sundry Credits	
Vouchers Audited	366.25
Cash Discount	
Total	

Sundry Debits

To cover Telephone exp. in connection with Code work for period ending 5/31/35.	366.25
Total	

5296 **DEFENSE EXHIBIT NO. 710**

For Identification

5297 **National Recovery Administration**

Code of Fair Competition
For The
Petroleum Industry
As Submitted to the Administrator and
Approved by President Roosevelt
On August 19, 1933

Registry No. 711—1—21

(Cut)

United States
Government Printing Office
Washington: 1933

5298 1. Executive Order
2. Letter submitting code to the President
3. President's Letter to National Recovery Administrator Johnson
4. Text of Code

5299 **Executive Order**

Code of Fair Competition for the Petroleum Industry

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of

clauses (1) and (2) of sub-section (a) of Section 3 of the said Act have been met:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Recovery Act, approved June 16, 1933, and otherwise do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

(Signed) Franklin D. Roosevelt.

Approval Recommended:
(Signed) Hugh S. Johnson,
Administrator.

The White House,
August 19, 1933.

5300

The White House,
August 19, 1933.

The Administrator,
National Recovery Administrator,
Washington, D. C.

Dear General Johnson: In submitting this proposed petroleum code to me, one substantial group within the industry has also submitted some proposed amendments agreeing, however, to abide by my decision as to their acceptance. You have advised me that there are some other provisions of the Code which require further consideration.

The Code, as agreed to by all its proponents, provides for a representative Planning and Coordinating Committee of the Industry. In view of the fact that we shall thus soon have a self-governing industry under federal supervision it has seemed advisable to me to approve the Code exactly as submitted in the usual manner and then to call for the advice of the Planning and Coordinating Committee to the end that, prior to the effective date of the Code, I may made a decision on these questions and on the provisions which you feel should be further considered.

In accordance with Article VII, Section 2, will you please request each of the various groups who have participated in hearings and in subsequent consideration of the Code, now to make the nominations for membership on the Planning and Coordinating Committee.

Very truly,
Franklin D. Roosevelt.

5301 National Recovery Administration,
Washington, D. C., August Nineteenth 1933.

The President,
The White House.

My Dear Mr. President: I have the honor to submit and recommend for your approval, the Code of Fair Competition of the Petroleum Industry. The Code has been approved by the Labor Advisory Board, the Consumers Advisory Board and the Industrial Advisory Board.

An analysis of the provisions of the Code has been made by the Administration and a complete report is being formulated for transmission to you. I find that the Code complies with the requirements of clauses 1 and 2, subsection (a) of Section 3 of the National Industrial Recovery Act.

I am, my dear Mr. President,

Very sincerely yours,
(Signed) Hugh S. Johnson,
Administrator.

Enclosure.

5303 A Code of Fair Competition for the Petroleum Industry

Preamble

To meet the emergency in the petroleum industry; to increase employment, establish fair and adequate wages, enlarge the purchasing power of persons related to this industry and improve standards of labor; to conserve the Nation's petroleum resources and to prevent physical and economic wastes which demoralize the national market to the detriment of consumers and producers and to restrain and avoid recurring abuses in the production, transportation and marketing of petroleum and its products which directly obstruct the free flow of interstate and foreign commerce by causing abnormal and disturbing temporary fluctuations in the supply of petroleum or its products that are not responsive to actual demand and prices and disrupt the normal flow of interstate commerce in petroleum and its products; and to prevent the growth of monopoly resulting from unfair competitive practices; and to protect the Nation from an unnecessarily wasteful depletion of this natural resource essential for the national defense and safety and the continued functioning of the Nation's transportation facilities that are dependent for operation on an adequate and economic supply of petroleum and its products and to accomplish and effectuate the policies set forth in the National Industrial Recovery Act, this code of fair competition governing the petroleum industry is adopted.

Article 1—General

Section 1. The provisions of this code shall become effective two weeks after approval thereof by the President.

Sec. 2. The term "American Petroleum Industry" includes the production, transportation, refining, and marketing of crude petroleum and its products; and is inclusive likewise of natural gasoline and the production of natural gas in conjunction with petroleum. The term "person" shall include natural persons, partnerships, associations, trusts, including trustees in bankruptcy and receivers and corporations. The word "President" shall mean either the President or any agent, employee, or agency empowered by the President to act in his stead.

Sec. 3. Such of the provisions of this code as are not required to be included therein by the National Recovery Act, may, with the approval of the President, be modified or eliminated as changes in circumstances and experience may indicate.

Sec. 4. This code is hereby declared subject to the right of the President from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of the National Industrial Recovery Act.

5304 Sec. 5. Agreements between competitors within the industry or the purpose of accomplishing the objectives of this code, or any of them, or for the purpose of eliminating wasteful duplication of manufacturing, transportation, and marketing facilities are hereby expressly permitted, but such agreements shall not become operative until specifically approved by the President, and suitable public notice shall have been given of such agreements. Such agreements may at any time be disapproved by the President and upon such disapproval they shall cease to be valid.

Article II

Section 1. In drilling, production, refinery and pipe-line operations, the maximum hours for clerical employees shall not exceed 40 per week and the rate of pay for each geographic division shall not be less than the minimum stated in Section 2. All other employees in these operations, except executives, supervisors, and their immediate staffs and pumpers on "stripper" wells located so as to make relief impracticable, shall work not more than 72 hours in any 14 consecutive days, but not more than 16 hours in any two days.

To establish geographic divisions for the petroleum industry, the geographic divisions as shown by the United States Department of Labor, Bureau of Labor Statistics wage reports (October 1929) have been adopted. The minimum hourly rates for the employees above specified, other than clerical, in each of these geographic divisions shall be as follows:

	Minimum rate per hour (cents)
Middle Atlantic Division:	
New York, New Jersey, Pennsylvania	52
New England:	
Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut	52
East North Central:	
Ohio, Indiana, Illinois, Michigan, Wisconsin	52
West North Central:	
Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas	48
South Atlantic:	
Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina,[1] South Carolina,[1] Georgia,[1] Florida[1]	45
East South Central:	
Kentucky, Tennessee, Alabama,[1] Mississippi[1]	45
West South Central:	
Arkansas,[1] Louisiana,[1] Oklahoma, Texas[1]	48
Mountain:	
Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Nevada, Utah	50
Pacific:	
Washington, Oregon, California	52

Sec. 2. In market operations all employees (other than those employed in filling or service stations, garages, or other institutions which sell gasoline to the public) includ-

ing clerical, but excluding executives, supervisors and their immediate staffs, and outside salesmen shall work not more than 40 hours per week. The minimum rates for such employees in each of the geographic divisions above specified shall be as follows:

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[1] For refinery and pipe-line work in States so marked, not more than ten percent, constituting common labor only, of the total number of employees in any plant or operation may be paid at not less than 80 percent of this minimum rate.

5305

	Minimum rate per hour (cents)
Middle Atlantic Division:	
New York, New Jersey, Pennsylvania	47
New England:	
Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut	47
East North Central:	
Ohio, Indiana, Michigan, Wisconsin, Illinois	47
West North Central:	
Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas	42
South Atlantic:	
Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina,[2] South Carolina,[2] Georgia,[2] Florida[2]	40
East South Central:	
Kentucky, Tennessee, Alabama,[2] Mississippi[2]	40
West South Central:	
Arkansas,[2] Louisiana,[2] Oklahoma, Texas[2]	40
Mountain:	
Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Nevada, Utah	45
Pacific:	
Washington, Oregon, California	47

Sec. 3. No filling or service station employee, nor any employee of any garage or other institution selling gasoline to the public shall work more than 48 hours per week. Nor shall any such employee receive less than $15.00 per week in any city of over 500,000 population or in the immediate trade area of such city; nor less than $14.50 per week in any city between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than $14.00 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population such employees shall

receive wage increases of not less than 20 percent: Provided, That this shall not require wages in excess of $12.00 per week: And provided further, That no employee shall receive a smaller weekly wage for the shorter work week than was his weekly wage on July 20, 1933.

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[2] For market operations in States so marked, not more than 10 percent, constituting common labor only, of the total number of employees in any plant or operation may be paid at not less than 80 percent of this minimum rate.

Sec. 4. It is the purpose of the labor provisions of this code that all employees engaged in similar work in each of the geographic divisions shall be placed on the same basis of hours and receive at least the minimum earnings provided for each class of work in the industry.

To effectuate this purpose, the differentials between the rates for skilled jobs and the minimums established in this code for common labor will not be less than those existing in the industry in each geographic area on July 1, 1929; but in no case will such differential for First grade refinery stillmen be less than 45¢ per hour or for rotary drillers less than 75¢ per hour.

Sec. 5. Every person subject to this code shall insert a provision in all contracts made by him for work within the industry, whereby the contractor agrees that his employees, or those of any subcontractor, shall receive the rates designated by this Code for each respective class of work and shall not work in excess of the schedule of hours in this Code.

Sec. 6. On and after the effective date of this Code the employer in the Petroleum Industry shall not employ any person under the age of sixteen years.

5306 Sec. 7. Employees in this industry shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion by employers of labor, or their agents, in the designation of such representatives or in self organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. No employee in this industry, and no one seeking employment therein shall be required as a condition of employment to join any company union or to refrain from joining a labor organization of his own choosing. Employers of labor in this industry shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

Sec. 8. The provisions of this Code regulating hours of labor and wages of employees, shall be deemed violated by any device or method by which employees, as recognized in the industry on July 1st, 1933, are or are attempted to be removed from such present recognized status of employees by means of drilling contracts, commission contracts, lease and agency, or any other agreement.

Article III—Production

Section 1. The President is hereby requested, after such investigation and hearing as is prescribed by, and subject to the limitations contained in, Title 1 of the National Industrial Recovery Act, to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purposes of this Code and the National Industrial Recovery Act.

Sec. 2. Withdrawals of crude oil from storage shall be subject to approval by the Planning and Coordination Committee but for the remainder of 1933 shall be limited in the aggregate to an average not in excess of 100,000 barrels daily. Additions to storage beyond the necessary limits of fluctuations in working stocks shall be made only with the approval of the Planning and Coordinating Committee.

Sec. 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

Sec. 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should such quotas allocated in conformity with the provisions of this section not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment 5307 of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this code.

Sec. 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President shall become operating schedules for the petroleum industry within said State. If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

Sec. 6. During such periods as the production of crude petroleum in any State is within the allocation to that State, as provided in Section 3, Article III, of this code, it shall be an unfair practice within that State to buy, sell, receive in exchange, or otherwise acquire Mid-Continent crude petroleum of 36°-36.9° A.P.I. gravity during any calendar month at a price per barrel (to the nearest cent) less than that which will be determined by multiplying the average Group 3 tank car price per gallon of U.S. Motor gasoline of 60-64 octane rating during the preceding calendar month as ascertained and declared by the Federal

agency designated by the President, by the constant 18.
The constant 18.5 represents the relationship, during th
period 1928-1932, between the average price per barr
of Mid-Continent crude petroleum of 36°-36.9° A.P.
gravity and the average Group 3 price per gallon of U.S
Motor gasoline of 57-65 octane rating or 58-60 U.S. Mc
tor gasoline. For crude petroleum of lower or highe
gravity and/or different quality and/or in different lo
cality, fair and equitable differentials between the price o
36°-36.9° Mid-Continent crude petroleum, determined a
above prescribed, and the prices quoted for other crud
petroleums shall be observed. Each company or individ-
ual purchasing crude petroleum shall file a certified copy
of its price schedule and subsequent price changes with
the Planning and Coordination Committee. Such con-
tracts for the purchase of crude oil as were in existence
on the effective date of this code shall not be affected by
the provisions of this section during the period of the con-
tract: Provided, That a certified copy of each such
5308 contract is filed with the Planning and Coordination
Committee within thirty (30) days of the effective
date of this code. Such contracts, however, may not be
renewed except with the approval of the Planning and
Coordination Committee.

(a) For a test period of not to exceed ninety days, the President may prescribe the base price of the gasoline described in Section 6 of this Article to which said constant shall be applied and, at the end of said period the President may revise the formula set forth in said Section 6 or add such additional formulae relative to the wholesaling and retailing of petroleum and its products in such manner as in his opinion may be necessary to effectuate the purposes of the National Industrial Recovery Act. If and whenever the President shall prescribe a base price for gasoline then it shall be an unfair trade practice to buy, sell, give or receive in exchange or otherwise dispose of or acquire such gasoline at a lower price.

Sec. 7. Wild-catting shall not be prohibited because the future maintenance of the petroleum supply depends on new discoveries and new pools, but the shipment of petroleum or the products thereof in or affecting interstate commerce which was produced in a new field or pool which is not developed in accordance with a plan approved by the President is unfair competition and in violation of this code. For the purpose of this code a new field or pool is one discovered after date of approval of this code and in which ten producing wells have been completed

Article IV—Refining

Section 1. To achieve greater accuracy in balancing production and consumption, to prevent the injurious effect upon interstate commerce of an unbalanced accumulation of gasoline inventories in any part of the country, and to facilitate equitable access of refiners to the allowable supply of crude oil, the Federal Agency designated by the President shall divide the country into eight refining districts and shall suggest a proper relationship between inventories of gasoline and sales thereof for each district.

Sec. 2. The Planning and Coordination Committee shall appoint subcommittees for each refining district. Said subcommittees shall call the attention of refiners within their respective districts to the existing and recommended ratios between gasoline inventories and sales within said districts. If any refinery claims that inequities exist in the availability of supplies of crude oil it shall make complaint to the subcommittee for the district within which it is situated. Said district subcommittee shall endeavor to adjust such controversy; if it cannot do so, it shall refer such complaint to the Adjustment Committee of the Planning and Coordination Committee. The Adjustment Committee, after proper statistical study of the ratio between claimant's inventory and sale, and upon recommendation of the Planning and Coordination Committee, shall hold public hearings, upon due notice, with a view to abitration.

Sec. 3. Should any refiner have an inadequate supply of crude oil available from current purchases, within economic transportation limits then he may withdraw or purchase from storage such oil as may be necessary to make up the deficiency. In such cases a special report shall be made by such refiner to the subcommittee, which may prohibit further withdrawals by providing the deficiency 5309 from current sources at competitive prices. In the event of such purchase from storage then it shall not be an unfair trade practice for the owner of storage oil to make such sale.

Sec. 4. The storage of gasoline in amounts greater than is required to provide for the necessary fluctuations in working stocks and to meet the variation resulting from seasonal demand as determined by the Planning and Coordination Committee, is an unfair trade practice and is prohibited.

Article V—Marketing

Rule 1.—The provisions of this Code relating to transactions of refiners, distributors, jobbers, or wholesalers with retailers and others selling or consigning petroleum products to consumers shall apply to all accounts, of any description, under which refiners, distributors, jobbers, or wholesalers sell their products or cause their products to be sold to consumers or to retailers, or to others selling petroleum products to consumers.

Rule 2.—Whenever any merchant or vendor of any and all types of merchandise offers for sale at wholesale or retail motor fuels, motor lubricants, motor gasoline, or naphtha of a petroleum nature he shall, insofar as his business pertains to these products, be bound by the regulations of this Code.

Rule 3.—All refiners, distributors, jobbers, and wholesalers shall conspicuously post at each point from which they make deliveries, and at places there readily accessible during business hours to the public, all prices for which naphtha, gasoline, motor fuel lubricating oil, grease, kerosene, and heating oils are sold.

With the exception of sales made directly by refiners, all such prices shall remain in effect for at least twenty-four (24) hours after they become effective. Refiners must post for twenty-four (24) hours the prices for all sales made the previous day. The posting shall include the following:

The prices for all classes, types, methods, and quantities of deliveries, except those under previously executed contracts, being made from the place where the price is posted, a schedule of all discounts offered and the terms thereof and a statement of all terms as to freight rates and deliveries. If different prices are offered to different classes of buyers, such prices shall be separately posted. The posted prices shall include, among others, the prices for spot sales. When prices are posted for deliveries in tank wagons or tank trucks, the posting shall describe the area to which the prices apply. All sales shall be made at the posted prices applicable thereto, and no departure shall be made from the prices, schedule, or discounts or from the terms posted applicable to any such sale.

All retailers, and others who sell consumers, shall conspicuously post at the place from which delivery is made, and at places there readily accessible during business hours to the public, one price at which each brand, grade,

or quality of naphtha, gasoline, motor fuel, lubricating oil,
grease, kerosene, and heating oil are sold. All retailers
and others who sell consumers, unless prevented therefrom
by applicable law, shall separately post in the same manner
all tax they are required to pay or collect because of the
sale of naphtha, gasoline, motor fuel, lubricating oil,
5310 grease, kerosene, or heating oil. All prices posted
shall remain in effect for at least twenty-four (24)
hours after they are posted.

All sales shall be made at the posted prices applicable to the brand, grade, or quality of the commodity sold.

Coupon books or other scrip of any nature, if used, shall be sold and redeemed at their face value without any discount.

No one shall make any deviation from his posted price by means of rebates, allowances, concessions, benefits, scrip books, or any other device whereby any buyer obtains any naphtha, gasoline, motor fuel, lubricating oil, grease, kerosene, or heating oil at a net lower cost than the applicable posted price; except that commercial consumers may secure gasoline, motor fuel, and other oils, on contract quantity basis under conditions established by the Planning and Coordination Committee.

The provision of all previously executed then existing contracts regarding price will be available for inspection upon the direct request of any competitor, unless such request shall be made for the purpose of unfairly obtaining information, in which event the decision whether such contract shall be made available shall be made by the authority, committee, or commission provided in Rule 4 of this Article, or such agency as it may designate.

On a change in the posted price, no adjustments, allowances, credits, or refunds shall be given to any buyer on deliveries already made.

Abnormal deliveries in anticipation of price advance and acceptance of orders for subsequent deliveries at prices effective before advances are prohibited.

Rule 4.—Refiners, distributors, jobbers, wholesalers, retailers, and others engaged in the sale of petroleum shall not sell any such refined petroleum products below cost of manufacturing or importation into the State where offered for sale, plus reasonable expenses in the cost of marketing as observed under prudent management, fixed taxes and inspection fees by the Federal or State Government, or any political subdivision thereof, provided, however, that any person is permitted to meet competition in violation of this rule concerning which he has made complaint to the Planning and Coordination Committee, or any authorized agency thereof, but only pending action thereon.

An authority, committee, or commission delegated by the National Recovery Administration for such purposes shall receive complaints of violation of this rule and make such investigation and/or hold such hearings as it deems necessary to determine whether the prices complained of are in violation of this rule.

Rule 5.—The schedule of credit attached hereto marked Appendix "B" is hereby adopted by the petroleum industry as a uniform basis of credit to be applicable to all deliveries made after the effective date of this Code. The granting of a longer term of credit or a larger rate of discount by any refiner, distributor, jobber, wholesaler, or retailer than that allowed by this schedule shall constitute an unfair method of competition.

Credit conditions of contracts made prior to the effective date of this Code are excepted from the provisions of this rule.

Rule 6.—Inasmuch as there are firms and corporations in the petroleum industry who severally or through firms and corporations owned or controlled, constitute and comprise a complete or integrated unit in such industry or produce and refine petroleum and market the products
5311 manufactured therefrom, the business thereof shall be
so conducted that the several branches of this industry, viz; producing of petroleum, refining, and marketing of refined products may be carried on upon a profitable basis and that no one or more of the said branches shall obtain or receive excessive or disproportionate gain or profit therefrom to the exclusion of any other branch of this industry.

Rule 7.—Refiners, distributors, jobbers, wholesalers, or retailers shall not hereafter sell, lease, loan, or otherwise furnish to consumers of petroleum products or to anyone engaged in the sale of petroleum products at retail, any pumps, tanks, air compressors, greasing equipment or guns, lubsters, or other equipment or accessories (excepting only pump globes and the usual advertising signs, for the storage, display, vending, delivering, or consumption of petroleum products, except as otherwise provided in paragraph 3 of this rule. Notwithstanding the prohibition hereinabove contained, any cooperative society, association, or corporation of the type described in Rule 29 of this Article shall be permitted to purchase for cooperative distribution to any member or members thereof, equipment of the kind hereinabove described, intended for exclusive use by such member or members.

If equipment of this kind, type, or description hereinbefore mentioned now in operation becomes damaged, destroyed, or worn out, it shall not be replaced by any refiner, distributor, jobber, or wholesaler.

The equipment of the kind, type, or description hereinbefore mentioned, furnished, loaned, or leased before June 15, 1933, by any refiner, distributor, jobber, or wholesaler to or installed with any retailer or consumer shall, at the expiration of any contractural relation, and on the request of such retailer or consumer, be sold by such refiner, distributor, jobber, or wholesaler to such retailer or consumer, or, in the absence of a sale of such retailer or consumer as herein provided, shall be sold by the refiner, distributor, jobber, or wholesaler, who has made the loan, to any other refiner, distributor, jobber, or wholesaler who is about to begin supplying petroleum products to such retailer or consumer, on the request of such other refiner, distributor, jobber, or wholesaler at the original invoice price plus actual cost of installation, less a depreciation of 15% per annum, but in no event at a price lower than that fixed in the schedule hereto attached, marked Appendix "A". In the event of a purchase as herein provided by such other refiner, distributor, jobber, or wholesaler, such equipment may be loaned, leased, or licensed to the retailer or consumer at such location by any new supplier subsequently acquiring title thereto.

This rule does not apply to the sale of equipment by the manufacturer thereof where such sale is not conditioned upon the purchase of use of petroleum products. This rule does not apply to special equipment used in connection with the sale and distribution of propane, butane, and other liquefied petroleum gases.

Rule 8.—Refiners, distributors, jobbers, wholesalers, or retailers shall not construct, repair, lease, loan or furnish driveways, buildings, canopies, air compressors, grease lifts or pits, grease equipment, grease guns, air towers, light poles, flood lights, material for driveways, buildings, or canopies, or any other equipment of any character whatsoever in connection with service stations or the storage, display, or sale or consumption of petroleum 5312 products (excepting only pump globes and the usual advertising signs and except as provided in Rule 7 of this Article) for or to anyone engaged in the sale or delivery of petroleum products to consumers or for or to consumers.

Nothing contained in Rules 7 and 8 of this Code shall prohibit refiners, distributors, jobbers, or wholesalers or retailers from installing at or furnishing or equipping with any of the devices mentioned in Rules 7 and 8 any station or place where petroleum products are sold to consumers, which station or place is owned, in fee by such refiner, distributor, jobber, or wholesaler, or held by such refiner, distributor, jobber, or wholesaler under a valid and binding lease, and at the time the lease was executed the leased premises were not improved with any building or other facility or equipment for the sale or storage of petroleum products, or held by such refiner, distributor, jobber, or wholesaler under a valid and binding lease for a period of at least five years, which lease provides for a substantial rental not determined by the volume of petroleum products sold at the premises and which does not contain any provision permitting either party thereto to cancel or terminate it or the term thereby granted before the expiration of five years from the beginning of such term.

Nothing contained in Rule 8 shall prohibit any individual from setting up a station or place for the sale and distribution of petroleum products and from furnishing his own equipment at his own expense.

Rule 9.—Refiners, distributors, jobbers, or wholesalers shall not make any repairs to any equipment of any kind owned by retailers or consumers; and shall not make any repairs to any equipment now loaned or leased to or installed with retailers or consumers which necessitates the removal from the premises of the equipment in order to effect the repairs.

Refiners, distributors, jobbers, or wholesalers may make any ordinary repairs to any equipment now loaned or leased or otherwise furnished to retailers or consumers, provided such repairs can be made without the removal of such equipment from the premises.

Rule 10.—Refiners, distributors, jobbers, or wholesalers, shall not do any painting, nor furnish any paint free, or sell any paint for or to consumers, or for or to retailers, except for pumps through which the products of the refiner, distributor, jobber, or wholesaler are sold and except for usual advertising signs. Any new supplier shall assume the obligation of painting out colors identifying previous suppliers of the retailers or of anyone selling petroleum products to consumers with some neutralizing color other than that customarily used to identify places through which the products of the refiner, Distributor, jobber, or wholesaler doing the painting are sold or dispensed. Before any refiner, distributor, jobber, or wholesaler paints over any sign or color of another refiner, distributor, jobber, or wholesaler, it shall communicate with the refiner, distributor, jobber, or wholesaler whose signs or colors are involved inquiring whether such refiner, distributor, jobber, or wholesaler has any written contract which would be violated by such proposed painting. Any refiner, distributor, jobber, or wholesaler to whom such inquiry is presented shall respond thereto within ten days from date of notice giving the information requested and if such proposed painting would violate any contract which it holds shall offer to submit the contract for inspection at its office. If such proposed painting would violate the contract so submitted, the painting shall not be done.

5313 Refiners, distributors, jobbers, or wholesalers may sell paint direct to any other refiner, distributor, jobber, or wholesaler. Nothing hereinabove contained shall prevent any cooperative society, association, or corporation of the type defined in Rule 29 of this Article, from buying paints for cooperative distribution to any member or members thereof, provided that the purchase or sale of such paints shall not be conditioned upon the purchase or sale of petroleum products.

Rule 11.—Except in such cases as constitute exceptions to the prohibitions contained in Rules 7 and 8 of this Article, refiners, distributors, jobbers, or wholesalers shall not lend, lease, or otherwise furnish any equipment of any character, whatsoever, except trade-marked pump globes and other usual advertising devices, to anyone purchasing or receiving petroleum products by tank car, tank barge, truck train, or pipe line or to anyone selling petroleum products for resale or consumption.

Rule 12.—When any pump, tank, or other device for the storage, display, consumption, handling, or sale of naphtha, gasoline, motor fuel, or lubricating oil, bears the name, trade mark, or trade name of any person, firm, association, or corporation engaged in the manufacture or sale of any such commodity, no other person, firm, association, or corporation shall deliver into or deliver for sale from such pump, tank, or other device, or any tank or other container connected therewith, any naphtha, gasoline, motor fuel, or lubricating oil, other than that manufactured, sold, or distributed by the person, firm, association, or corporation whose name, trade mark or trade name is so affixed. No person, firm, association, or corporation shall in any way knowingly be a party to the substitution of one grade or brand of naphtha, gasoline, motor fuel, or lubricating oil, for another.

Rule 13.—Refiners, distributors, jobbers, or wholesalers, shall not loan money to retailers or others engaged in the sale of petroleum products, or to consumers, for any purpose whatsoever and shall not extend any credit to any retailer or to anyone engaged in selling petroleum products to consumers except for merchandise sold for resale. Refiners, distributors, jobbers, or wholesalers shall not pay for or reimburse to any retailer or consumer, either directly or indirectly any property tax, privilege tax, license fee or tax, inspection fee or tax, chain-store tax, or any other charge, tax or impost levied or assessed by any taxing authority upon any retailer or consumer in connection with the operation of any place or facility for the sale of petroleum products, nor advance money for the same.

Rule 14.—Refiners, distributors, jobbers, or wholesalers shall not pay rentals or otherwise pay for the privilege of displaying advertising on premises where naphtha, motor fuel, lubricating oil, grease, kerosene, or heating oil are sold.

Rule 15.—No refiner, distributor, jobber, wholesaler, or retailer or other person engaged in the sale of petroleum shall knowingly induce, attempt to induce, or assist a party to break a then existing written contract for the sale of petroleum products or a then existing lease of the premises used for the sale of petroleum products between that party and another.

No refiner, distributor, jobber, wholesaler, retailer, or other person engaged in the sale of petroleum products shall sell or deliver any naphtha, gasoline, motor fuel,
5314 lubricating oil, grease, kerosene, or heating oil to anyone knowing that such sale or delivery will violate or prevent the performance of a then existing written contract between the person to whom the sale or delivery is made and another.

No contracts in violation of this code are protected under this rule. Nothing herein contained shall preclude the sale or delivery of any naphtha, gasoline, motor fuel, lubricating oil, grease, kerosene, or heating oil to any person who justifiably refuses further compliance with any existing written contract.

Rule 16.—Lotteries, prizes, wheels of fortune, or other games of chance shall not be used in connection with the sale of petroleum products.

Rule 17.—Except by permission of the Planning and Coordination Committee, refiners, distributors, jobbers, wholesalers, retailers, and others engaged in the sale of petroleum products shall not give away oil, premiums, trading stamps, free goods, or other things of value, or grant any special inducement in connection with the sale of petroleum products.

Rule 18.—Except by permission of the Planning and Coordination Committee, gasoline shall not be sold or delivered from tank wagons or trucks to motor vehicles except in emergency cases.

Rule 19.—Pending decision by the Federal Trade Commission as to whether the lease and agency, lease and license methods of marketing of petroleum products constitute an unfair trade practice:

(a) No new contract shall be written under either method,

(b) Any such contracts now in effect shall not be renewed for a period exceeding one year, and the cancellation privilege shall be on notice not exceeding thirty days,

(c) Provisions of rules 7 and 8 shall apply in all instances to existing lease and agency and lease and license contracts, and to renewals, as above defined,

(d) Insofar as lease and agency and lease and license agreements are concerned, the provisions of Rule 15 shall not apply to soliciting the sale and purchase of petroleum products, and

(e) Should the Federal Trade Commission fail to render a final decision on the validity of lease and agency and lease and license agreements within 60 days of the effective date of this code, the President or agency designated by him, may make a final decision prohibiting such marketing methods, or authorizing them without condition or upon such conditions as he or it may prescribe; or the President or agency designated by him may, in his or its discretion, temporarily prohibit the use of such marketing methods pending the decision of the Federal courts, or he or it may temporarily authorize such methods pending decision of the Commission and of the courts, either without condition or upon such conditions as he or it may prescribe.

Rule 20.—Refiners, distributors, jobbers, or wholesalers may own service or filling stations or sites for same and may fully equip such stations or sites and may lease, operate, or license such stations or grant a license to anyone to operate such stations for the distribution of petroleum products manufactured or sold by such refiner, distributor, jobber, or wholesaler, or such refiner, distributor, jobber, or wholesaler may employ anyone as agent of such refiner, distributor, jobber, or wholesaler for the sale of petroleum products thereat.

5315 Rule 21.—No one shall make any delivery of naphtha, gasoline, motor fuel, kerosene, range oil, lubricating oil, or heating oil at any refinery, terminal, or bulk plant to a reseller into any wagon, truck, tank wagon, or tank truck owned or operated by or for such reseller. The term "reseller" as herein used shall not be construed to include any agent selling such commodities on a commission basis. Deliveries may be made in exchange for similar commodities received by the person making the deliveries from the person to or for whom the delivery is made.

Nothing in this rule contained shall apply to deliveries made to bona fide jobbers either in their own vehicles, or for their account, from refineries, terminals, or bulk plants.

Rule 22.—Refiners, distributors, jobbers, wholesalers, or retailers shall not render any burner service in connection with the sale of heating oils and fuel oils unless a fair and reasonable charge is made for such service, which in no event shall be less than $10.00 per year and an additional charge made for the replacement of any parts at not less than their reasonable cost. Nor shall any refinery, distributor, jobber, wholesaler, or retailer grant a commission of any kind to any person other than a regular employee of such refiner, distributor, jobber, wholesaler, or retailer in connection with such sales unless there is a contract between such refiner, distributor, jobber, wholesaler, or retailer and a dealer, distributor, or manufacturer of oil burners providing for the payment of a commission to the latter for the sale of heating oils and fuel oils to oil burner users where such sales are evidenced by signed contracts. This rule is not to be construed to prohibit advisory service.

Refiners, distributors, jobbers, wholesalers, or retailers shall not sell to consumers of heating oils and fuel oils for delivery by tank wagon or tank truck on a contractual basis for a period exceeding twelve months.

No refiners, distributors, jobbers, wholesalers, or retailers shall knowingly sell any heating oil or fuel oil to consumers in tank car lots unless said consumers have facilities for receiving and storing tank car lots.

Rule 23.—Refiners, distributors, jobbers, wholesalers, and retailers shall permit any duly authorized employee, agent, or representative of the Planning and Coordination Committee to make any inspection or examination of books, records, contracts, plants or stocks of merchandise to determine if there has been any failure to comply with the provisions of this Code or any failure of the refiner, distributor, wholesaler, or retailer, or by any other person, firm, or corporation to pay any tax required to be paid because of the receipt, sale, or use of any naphtha, gasoline, motor fuel, lubricating oil, greases, kerosene, range oil, heating oil, or any other petroleum product.

Rule 24.—Evasion of taxes in the sale of petroleum products gives to evaders an undue and unlawful advantage over legitimate marketers and is unfair competition within the meaning of the National Industrial Recovery Act.

Rule 25.—The broadcasting or publishing, in any man-
ner, of a claim, representation, or implication which leads
to a false or incorrect conclusion in regard to the goods,
prices, or service of the advertiser, or in regard to the
goods, prices, or services of a competitor, or which lays
false claims to a policy or continuing practice of gen-
5316 erally underselling competitors, is an unfair and
uneconomic practice and is prohibited.

Rule 26.—In all sales of trade-marked or branded petroleum products for resale, refiners, distributors, jobbers, or wholesalers may, by contract, require purchasers to sell at prices therein designated for such resale; and may further require that if such products are thereafter sold by such purchaser for resale, that the original purchaser shall incorporate a similar provision in the contract with its purchaser for resale.

Any purchaser who agrees to sell any refined petroleum products at the prices designated therefor by the refiner, distributor, jobber, or wholesaler from whom purchased shall make all sales thereof at prices not less than those so designated.

Rule 27.—The unauthorized use by any person, firm, or corporation of the trade mark, trade slogan, insignia, or emblem of any trade association in the petroleum industry, or the assertion or claim, by advertisement or otherwise, by any person, firm, or corporation that he or it is a member of any such association when in fact not a member thereof, shall be an unfair trade practice.

Rule 28.—The provisions of this Code shall not prevent an association, society, or corporation organized or incorporated on the cooperative plan under any law or any State, territory or District of Columbia or of the United States as defined in Rule 29 of Article 5 of this Code from paying patronage dividends to the members or stockholders of such an organization in accordance with the provisions of the law, the articles of association, articles of incorporation, and/or by the laws of such association, society, or corporation, and the payment of such patronage dividends by such cooperative organizations shall not be construed as a violation of this Code, nor shall the payment or distribution of such dividends be construed under this Code as an unfair method of competition; it being specifically understood that such dividends shall not be paid to nonmembers or nonstockholders.

Rule 29.—All Farm Cooperative Societies Association and/or Corporations organized under the laws of any state, territory, or District of Columbia or of the United States, membership in which is restricted to persons whose chief source of livelihood is farming or other cooperatives organized and existing on July 1, 1933, and which comply with paragraph 12, section 103, of the revenue act of 1932, and which distribute their patronage dividends to such members only, shall be exempted from certain provisions of the Article 5 as hereinbefore specified; provided, however, they shall be otherwise fully subject to the provisions of Article 5.

Rule 30.—This Code shall not apply to contracts actually made prior to the date on which this Code is formally approved. Upon the effective date of this Code it shall apply to all such contracts as soon as any cancellation or termination thereof can be legally accomplished.

This Code shall apply to all contracts made after the date on which this Code is formally approved, and shall apply to all renewals or extensions made after that date of contracts made prior thereto.

The provisions of this Code shall not apply to transactions between subsidiary or affiliated companies. Companies shall be considered to be affiliated when one owns the majority of the outstanding capital stock of the other, and when the majority of the outstanding capital stock of each is held by the same individual, corporation, 5317 or association, or, in the case of cooperative associations as defined in Rule 29 of Article 5 of this Code, when the local associations collectively own the majority of the outstanding stock of the central cooperative association. The parent companies owning the majority of stock in other companies shall be responsible for the observance of such subsidiary or affiliated company of the provisions of the rules of this Code.

The provisions of this Code shall not apply in respect to sales made in the United States for export to foreign countries.

Rule 31—A violation of any of the rules of this Code shall constitute an unfair method of competition.

In the event any rule of this Code, or part of any such rule, should be disapproved or held invalid, such action shall in no way affect any other rule or part thereof.

Article VI—Transportation

The transportation subcommittee of the Planning and Coordination Committee shall investigate transportation practices and rates, and shall from time to time recommend to the President such action as may be appropriate to be taken under the National Industrial Recovery Act, or otherwise.

Article VII—Organization

Section 1. The administrative machinery for the effectuation of this Code shall consist of:

(a) The Planning and Coordination Committee, representing the petroleum industry and the National Recovery Administration.

(b) A Federal Agency to be designated by the President.

Sec. 2. The Planning and Coordination Committee shall consist of fifteen members, three of whom (without vote) shall be representatives of the National Recovery Administration and appointed by the President and twelve of whom shall be representatives of the petroleum industry, and, for purposes of immediate organization, appointed by the President from nominations made by a group or groups within the industry in such manner as may be prescribed by the President.

Sec. 3. The Planning and Coordination Committee is set up to cooperate with the Administrator as a planning and fair-practice agency for the petroleum industry. Such agency may from time to time present to the Administrator recommendations which will tend to effectuate the operation of the provisions of this Code and the policy of the National Recovery Act and is charged in particular with endeavoring to promote the fullest possible cooperation with state regulatory bodies.

Sec. 4. The Planning and Coordination Committee shall have a Chairman from its own membership and the follo ing working technical subcommittees:

(a) Statistical Committee.
(b) Production Committee.
(c) Refinery Committee.
(d) Marketing Committee.
(e) Accounting Committee.
(f) Labor Committee.
(g) Adjustment Committee.
(h) Transportation Committee.

5318 Sec. 5. The Federal Agency designated by th President shall make such estimates of petroleu requirements and such recommendations, allocations, an inventories as may be required for the effectuation of thi Code.

Sec. 6. In order to provide necessary data upon whic to base its studies for the purposes of this Code, the Federal Agency designated by the President and the Plannin and Coordination Committee are empowered to call upo the industry for the necessary statistical and other reports and any refusal to supply such reports is a violatio of this Code.

Appendix A

Schedule of Equipment Prices to be Used as a Basis of Purchase or Sale Between Oil Companies

Blind Gasoline Pumps

	Net Lower Than
All makes of Blind Pumps, including Duplex and all sizes 1 to 5 gallons capacity	$20.00

Visible Pumps

5-gallon dry or wet hose Visible, 10- or 15-gallon Dry Hose Visible. Dual Bowl Visible (all types), 5-gallon blind pumps with 5 or 10 Visible attachment, Remote Control Visible Air-lift Visible:	
All of the above	20.00
10- and 15-gallon Visible Web Hose, all makes.	40.00
10- or 15-gallon Visible Web Hose, electric power operated	50.00

Electric Meter Pumps

Electric Flow Meter Pumps, with or without air separator	45.00
Electric Displacement Meter pumps, without air separator	70.00
Electric Displacement Meter Pumps, with air separator	85.00

On any of the above pumps furnished in Twin type the price shall be double that of the single unit.

Gasoline Buggies or Wheel Tanks

Any capacity, identified by Underwriters Label...	50.00
Same as above, not identified by Underwriters	25.00

Skid Tanks with Pumps

Skid tanks used for gasoline, kerosene, or distillate, up to 550-gallon capacity, equipped with pump, any type	25.00

Combination Gasoline or Kerosene Underground Tanks With Pumps

100- to 200-gallon capacity, with 1 gal. or rotary pump	25.00

Miscellaneous Pump Equipment

Hydraulic Systems, Drop Cylinder Jobs, Remote Control Systems, and any other special type of equipment, including airport equipment and equipment used to serve marine trade, etc., shall be considered special equipment. Purchase or sale price shall be arrived at by joint appraisal on the premises.

Underground Tanks

Underground Tanks shall be bought or sold at prices
shown below, which include all installation costs,
5319 labor, materials, freight, etc., up to and including the
installation of the pump itself (value of pump not
included) on the following basis:

280-gallon tank	$ 35.00
550-gallon tank	50.00
1,000-gallon tank	75.00
2,000-gallon tank	100.00

These prices are for tanks of any specification, galvanized or black steel as now installed.

Capacities of tanks shown above are normal sizes and may vary 10% more or less. For each additional pump installed on one tank add $10.00 for installation cost.

Where the original installation of the tank and piping involved the removal and replacing of concrete, an allowance of 25¢ per square foot, with a maximum allowance of 60 square feet for each tank and 60 square feet for pipe trench, shall be added to price of the respective size tank.

Where tanks are installed under unusual conditions due to ordinances or regulatory restriction which resulted in excessive costs, the purchase or sale will be based on the actual cost of such installation less 10% per annum depreciation on equipment and material used plus actual labor cost;

Odd-size tanks not covered by the above classification shall be bought and sold at a price interpolated between those specified.

Underground tanks, and any part of the underground installation in connection therewith, may be repaired or replaced by the owner thereof. If replaced, the new tank shall be of the same capacity as original and the original removed from the premises or made unfit for use.

Automobile Lifts, Racks, and Pits

Automobile lifts of plunger type will be bought or sold at the invoice price date of seller's purchase, plus freight, less 15% per annum depreciation from date of invoice, plus a flat installation charge of $40.00, plus an allowance for concrete, if any, installed by owner of lift, up to a maximum of 400 square feet, based on 20 cents per square foot.

Portable steel automobile lifts, grease and wash racks will be bought or sold on invoice price date of seller's purchase plus freight less 25% for depreciation and obsolescence per annum from date of invoice. No allowance for installation cost.

Pits and nonportable racks will be bought or sold on a basis of joint appraisal on the premises at time of exchange.

Compressors

All air compressors will be bought or sold on a basis of invoice price date of seller's purchase, plus freight, less 25% per annum depreciation and obsolescence from date of invoice. No installation cost considered.

Kerosene Equipment

Kerosene equipment shall be bought or sold at the following prices for the respective sizes and classes.

60- to 65-gallon square kerosene tank equipped with pump	$12.00
110- to 112-gallon square kerosene tank equipped with pump	15.00
150- to 165-gallon square kerosene tank equipped with pump	25.00
200- to 220-gallon square kerosene tank equipped with pump	30.00

5320

Round Portable Kerosene Tanks

Equipped with pump.

60-to 120-gallon capacity	$6.00

Rectangular Kerosene Tanks

Equipped with pump.

60- to 65-gallon capacity	12.00

Cellar Kerosene Outfits

Equipped with stand pipe and pump.

60- to 120-gallon capacity installed	each	40.00
250- to 270-gallon capacity installed	each	70.00
50-to 120-gallon miscellaneous faucet tanks and tin pump tanks		2.00

Lubricating Oil Equipment

50-gallon round lubricating oil tank	3.00
60-gallon square lubricating oil tank	3.00
15-gallon rectangular lubricating oil tank	3.00
30-gallon rectangular lubricating oil tank	7.00
60-gallon rectangular lubricating oil tank	9.00
60-gallon 2-compartment lubricating oil tank	10.00
90-gallon 3-compartment lubricating oil tank	15.00

Any of the above lubricating-oil equipment, equipped with meter add $1.50 to the above price.

1-quart oil bottles	each	$0.10
Tray for 1-quart oil bottles		.25
1-quart barrel pumps		1.00

Miscellaneous lubricating equipment such as air systems, built-in installations, underground installations, miscellaneous portable equipment, etc., not specifically mentioned in the above lubricating-oil equipment shall be considered special and the purchase or sale price shall be arrived at by joint appraisal on the premises.

Grease Equipment

25-lb. grease bucket or kit without motor	$3.00
Same as above with motor	7.00
100-lb. grease outfit without meter	3.00
Same as above with meter	7.00

No charge for dolly in connection with the 100-lb grease outfit.

Miscellaneous grease equipment such as built-in installations, portable equipment, power guns, special portable guns, hand guns, grease gun boards, etc., not specifically mentioned in the above grease equipment shall be considered special and the purchase or sale price shall be arrived at by joint appraisal on the premises.

Where grease boards furnished by supplier carry trade mark advertising which cannot be readily effaced by any practical means, supplier shall remove from the premises.

Miscellaneous Equipment

Air and water standards, flood lights, and lamp posts or any equipment not specifically mentioned herein will be bought or sold on a basis of joint appraisal on the premises at the time of exchange.

5321 Sign posts will be considered as property of oil company and shall be removed.

All signs owned by oil company may be bought or sold by joint appraisal.

Arbitration.

In case any dispute arises over prices and values of all the respective equipment herein mentioned which do not definitely state a price, the suppliers involved shall choose an arbitrator who shall be a disinterested representative from some other oil company in the immediate vicinity, to whom the suppliers shall present their case. The decision of the arbitrator chosen shall be final.

Appendix B

Maximum Credit Terms

Credit Terms

(1) Gasoline and Kerosene Sales:

In tank-car and barge shipments....	One percent 10 days from date of shipment, net 30 days. One percent on sight draft payments.
In tank-wagon deliveries...........	Load-to-load, for net 15th proximo. No cash discount.
Service-station deliveries..........	Coupons or payments, net in thirty days.

Coupon books, in denominations of not less than ten dollars, may be sold at face value, without discount, for cash, or on credit payable net in thirty days. Coupon books issued by any company may be redeemed by any retail outlet where the trademarked products of that company are sold.

Truck-Train Deliveries from refineries and terminals or bulk plants to jobbers' bulk plants (3,500 gallons or over).	One percent 10 day from date of sh ment, net 30 days One percent o sight draft pay ments.
(2) Gas Oil and Fuel Oil Sales:	
In tank-car or barge shipments, or deliveries to ships' burners.	One percent 10 days from date of shipment, net 30 days. One percent on sight draft payments.
Truck-Train Deliveries:	
From refineries and terminals or bulk plants to jobbers' bulk plants (3,500 gallons or over).	One percent 10 days from date of shipment, net 30. One percent on sight draft payments.
In Tank-Wagon Deliveries:	
To resellers	Load-to-load or net 15th proximo.
To consumers	Net 15th proximo.
5322 (3) Lubricating-Oil and Grease Sales:	
In tank-car and drum-car shipments:	
Unbranded oils and greases	One percent 10 days from date of shipment, net 30 days or 30-60-90-day trade acceptances.
Branded oils and greases	One percent 10 days from date of shipment, net 30 days, or 30-60-90-day trade acceptance.
L.C.L. Shipments:	
All oils and greases	One percent 10 days or net 15th proximo.
Truck and tank-wagon deliveries:	
All oils and greases	One percent 10 days, net 15th proximo.
Service-Station Deliveries	Coupons or payments net in 30 days.

5323 DEFENSE EXHIBIT NO. 712.

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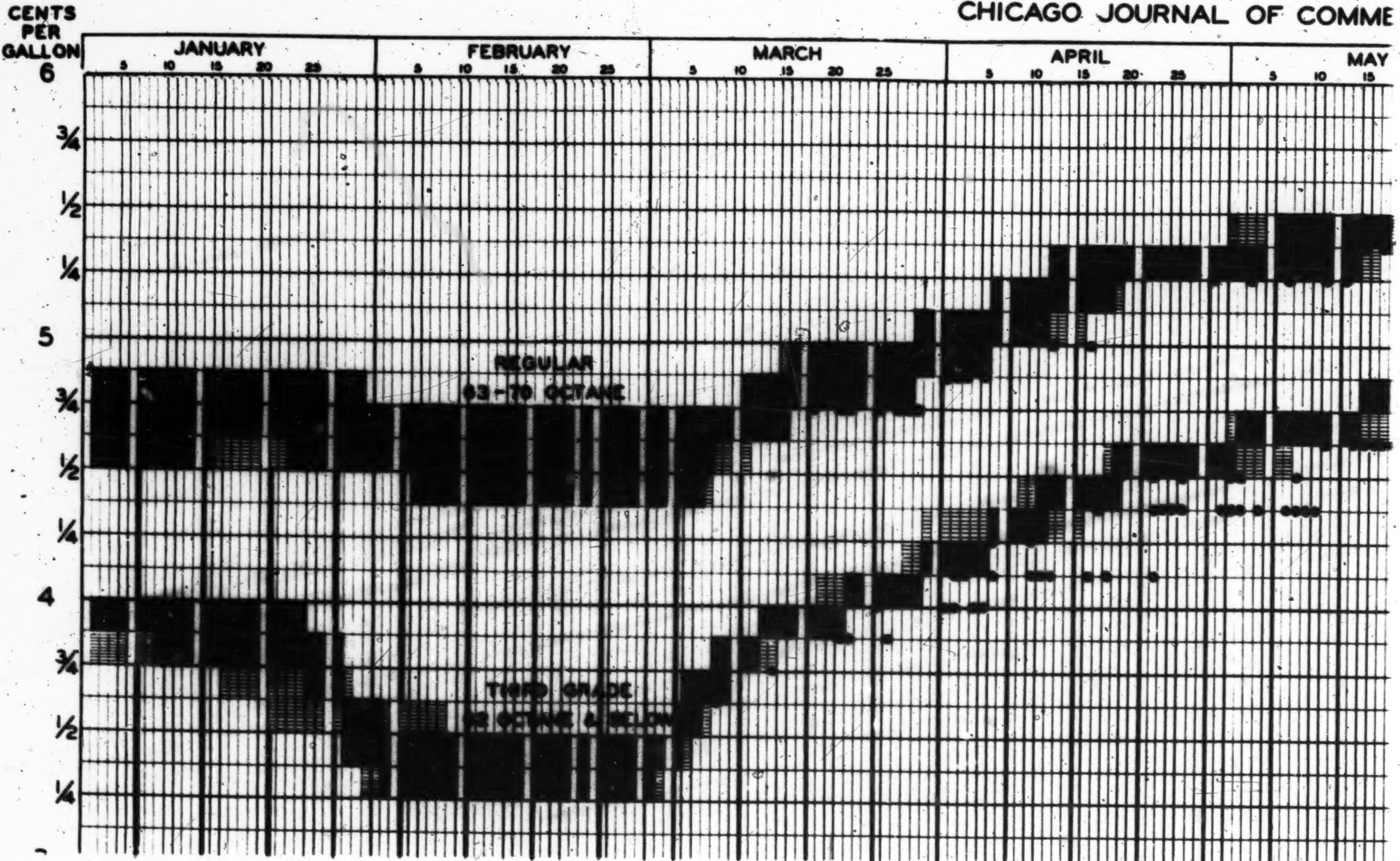

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PURCHASE PRICES PAID INDEPENDENT REFINERS ON FLAT PRICE BASIS
EXCLUDING INTERMEDIATE SPECIFICATIONS
COMPARED WITH COMPOSITE OF PRICE QUOTATIONS
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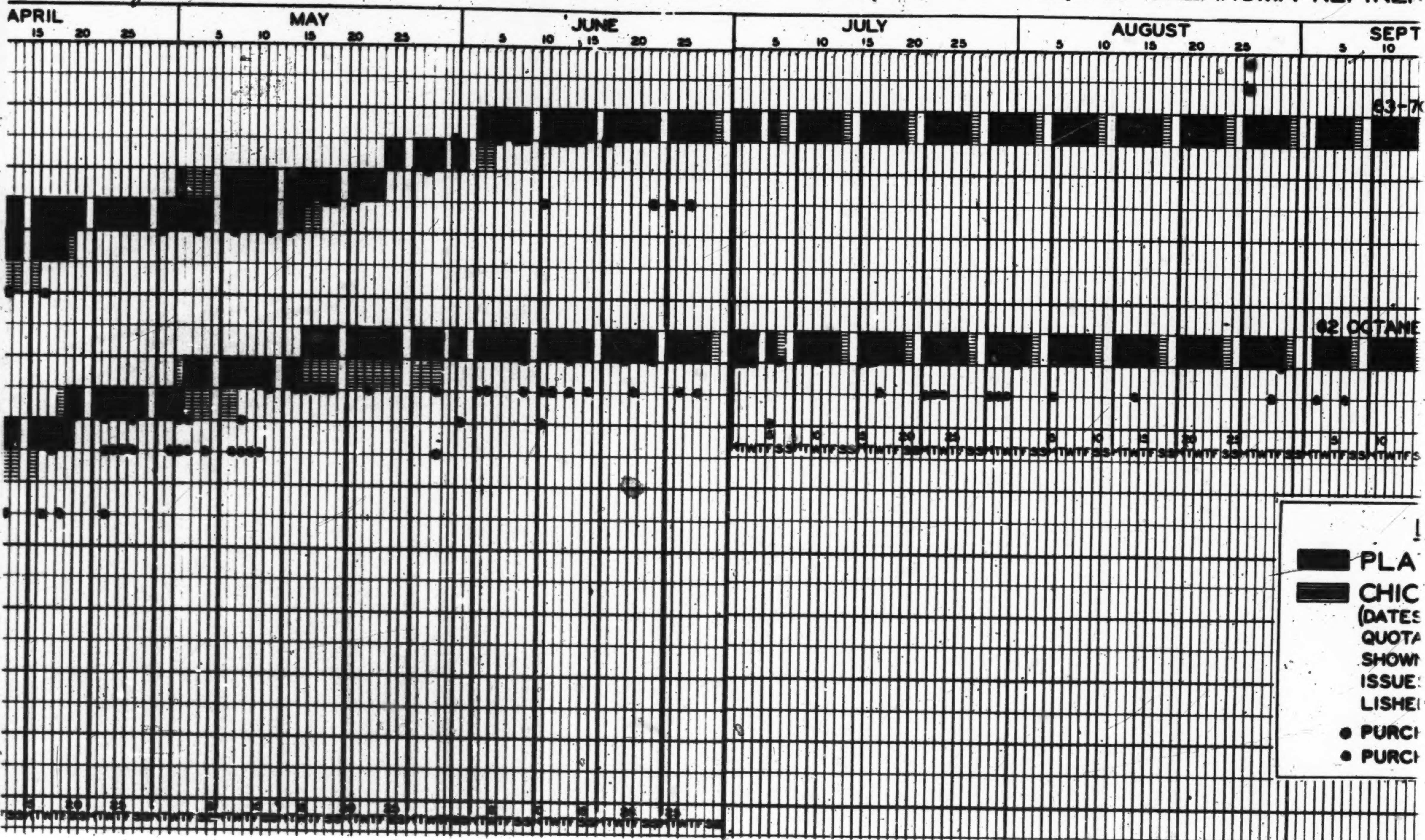

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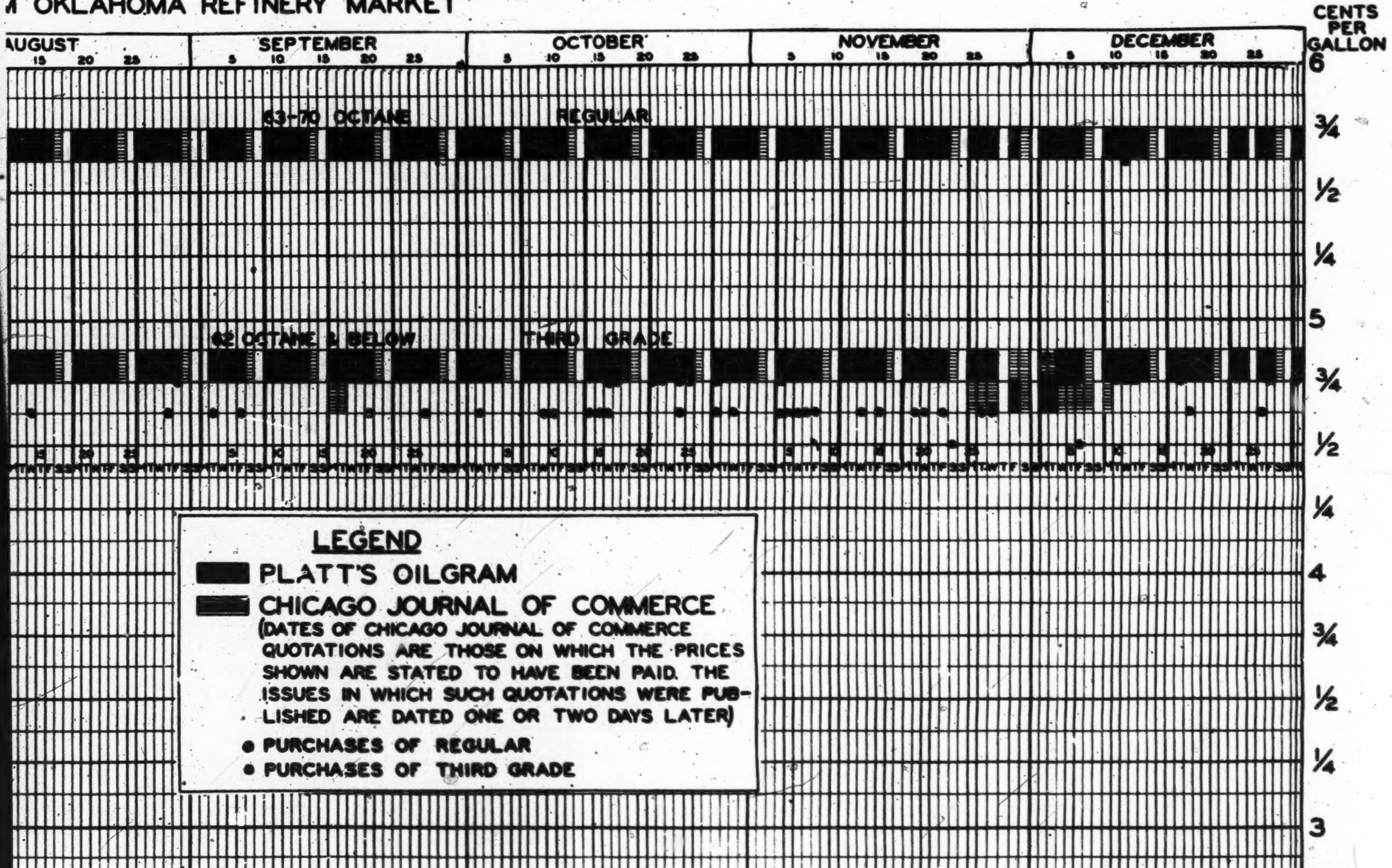
EXHIBIT NO. 712

M OKLAHOMA REFINERY MARKET



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COMPARED WITH COMPOSITE OF PRICE QUOTATIONS

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OKLAHOMA REFINERY MARKET

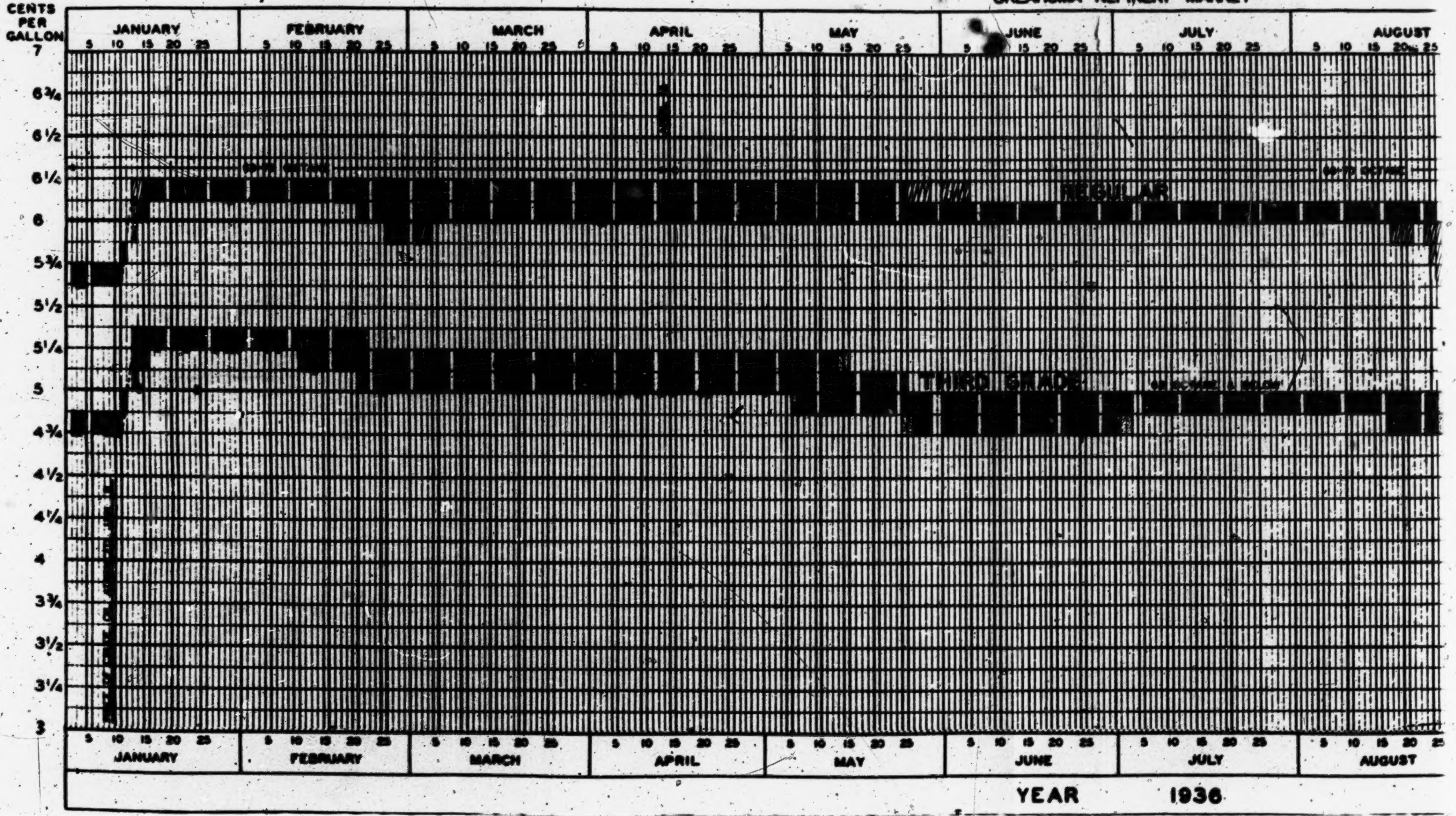
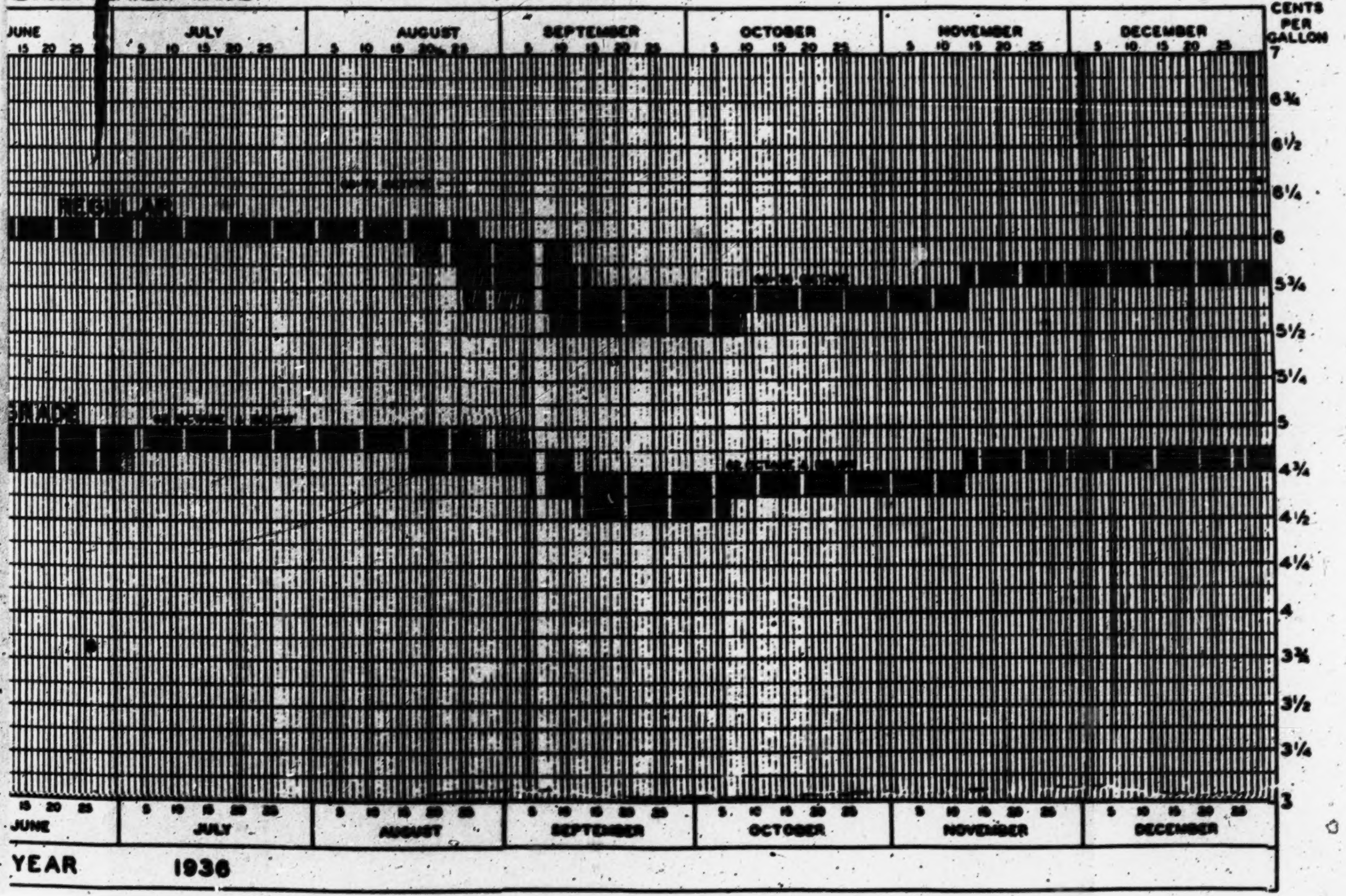


EXHIBIT NO. 713

ACUUM OIL COMPANY
UDING WADHAMS OIL COMPANY
EPENDENT REFINERS ON FLAT PRICE BASIS
INTERMEDIATE SPECIFICATIONS
OMPOSITE OF PRICE QUOTATIONS
COMMERCE F.O.B. GROUP 3 OKLAHOMA
PLATT'S OILGRAM
KLAHOMA REFINERY MARKET



5327 GOVERNMENT EXHIBIT NO. 714.

Stipulation

The initials "C. G." are those of Clara Gartman, who during 1935 and 1936 was tank car purchasing agent for Skelly Oil Company.

The initials "J. F. N." are those of James Nagle, and "J. F. Nagle" refers to James Nagle.

The initials "L. H. P." are those of L. H. Poland, manager of the retail stocks department of Skelly Oil Company.

A. H. Pendergrass is supervisor of the tank car order desk of Skelly Oil Company.

W. T. Atkins is Vice President of Skelly Oil Company in charge of the marketing division, Kansas City, Missouri.

Emby Kaye is Vice President of Skelly Oil Company in charge of manufacturing.

E. F. Underwood is manager of wholesale sales of Skelly Oil Company.

Exhibits 93-101, 121-128 were written by the one so indicated on the document and were received by the addressee; Exhibits 103 and 120 were written by James Nagle and received by the addressee; Exhibit 102 was received by J. F. Nagle; Exhibits 104-118 were written by Clara Gartman and sent to A. V. Bourque. Copies may be used in lieu of originals.

The authorship of any pencilled or other notations appearing on the above mentioned documents is specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

GOVERNMENT EXHIBIT NO. 715.

Stipulation

The initials "G. B. H." are those of Grace B. Henderson, clerk and stenographer in the tank car department of Phillips Petroleum Company.

The initials of "J. P. S." are those of J. P. Shaff a clerk in the tank car department of Phillips Petroleum Company.

Frank Phillips is President of Phillips Petroleum Company.

A. M. Hughes was sales manager of Phillips Petroleum Company at the time Exhibits 489, 509 and 510 were written.

H. A. Gardner is tank car sales manager of Phillips Petroleum Company.

F. L. Koopman is order clerk in the tank car department of Phillips Petroleum Company.

The initials "E. M. K." are those of E. M. Kelly of Phillips Petroleum Company.

Exhibits 490-494 and 504-506 were written by Grace B. Henderson, Exhibits 495-503 and 507-508 were written by J. P. Shaff, and all were sent to A. V. Bourque; Exhibit 516 was written by F. L. Koopman and received by A. M. Hughes; Exhibits 489, 509 and 510 were written by Koopman and received by at least A. M. Hughes and H. A. Gardner. Copies may be used in lieu of originals.

The authorship of any pencilled or other notations appearing on the above mentioned documents is specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5329 DEFENSE EXHIBIT NO. 716.

CITIES SERVICE EXPORT OIL COMPANY

PURCHASES FROM INDEPENDENT REFINERS

COMPARED WITH

PLATT'S OILGRAM

F. O. B. EAST TEXAS REFINERIES

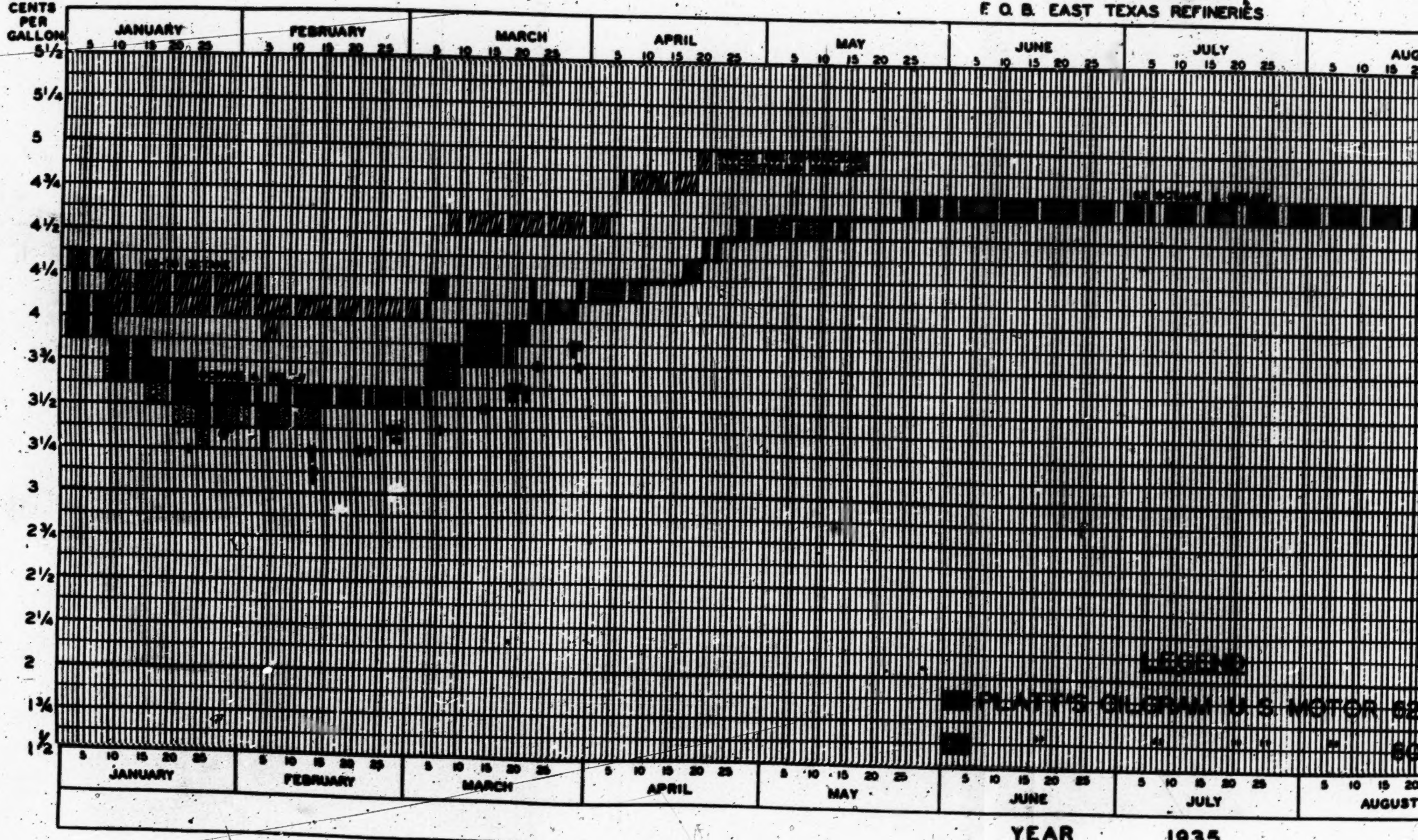


EXHIBIT NO. 716

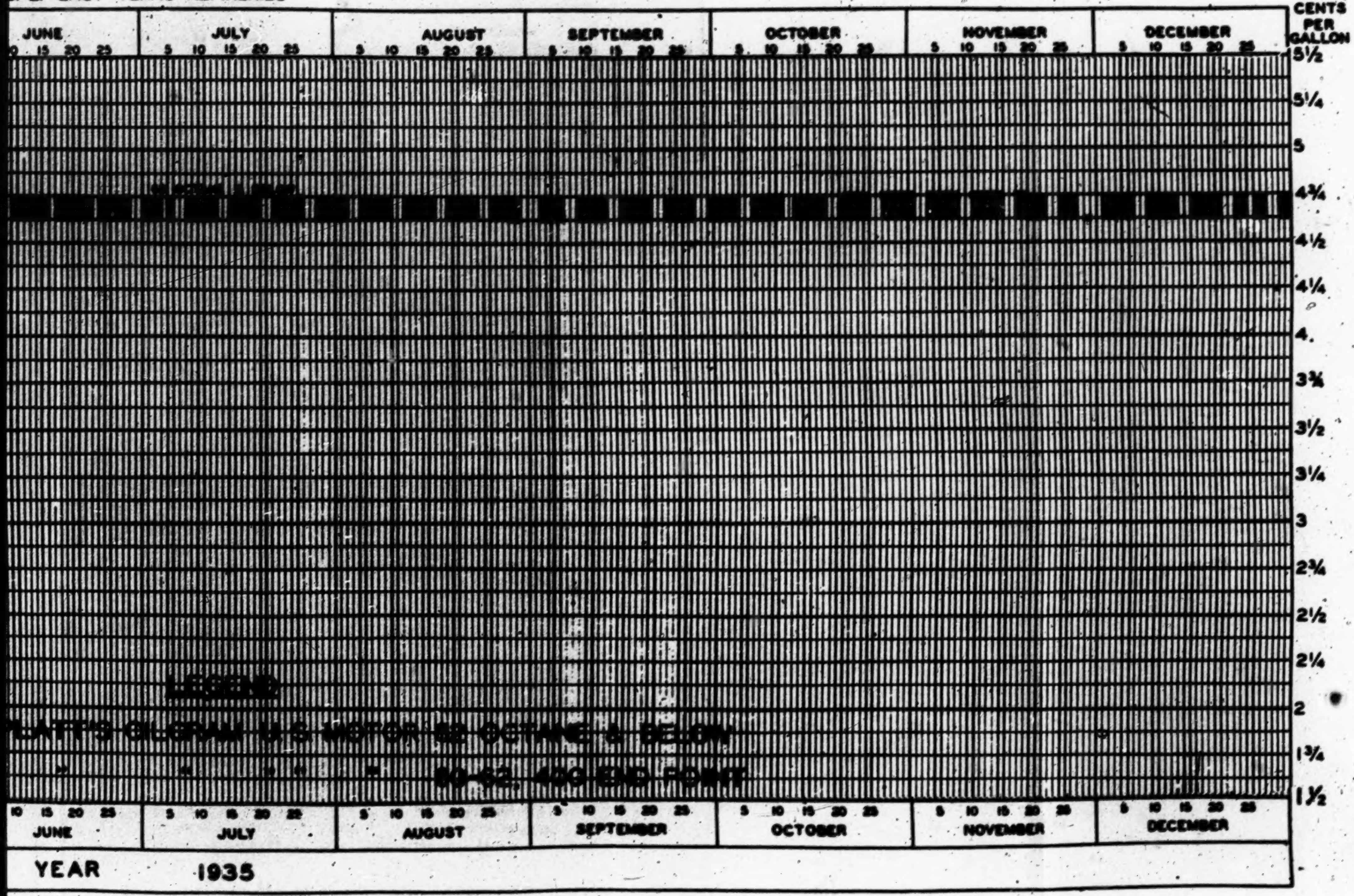
RVICE EXPORT OIL COMPANY

FROM INDEPENDENT REFINERS

COMPARED WITH

PLATT'S OILGRAM

D. B. EAST TEXAS REFINERIES



5331 GOVERNMENT EXHIBIT NO. 717.

Stipulation.

"Morris" refers to George Morris, general manager of Retail Marketing Division of the Pure Oil Co. C. W. Snider is assistant general manager Wholesale Marketing Division of the Pure Oil Co.

Exhibits 483, 487 and 488 were written by the one so indicated on the document and were received by the addressee; Exhibit 482 was received by C. B. Watson; Exhibit 485 was written by C. B. Watson and sent to C. E. Arnott. Copies may be used in lieu of originals.

The authorship of any pencilled or other notations appearing on the above mentioned documents is specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5332 GOVERNMENT EXHIBIT NO. 718.

Stipulation.

J. D. Collins was general sales manager, Automotive Division, Tide Water Oil Company, a New Jersey corporation, in 1935 and 1936; on August 24, 1936 the assets of said New Jersey corporation were transferred to Tide Water Oil Company, a Delaware corporation, but J. D. Collins continued with the latter company without any change in his duties or official designation; on November 30, 1936 said Delaware corporation merged with and into Tide Water Associated Oil Company, a Delaware corporation; and on December 17, 1936 J. D. Collins was appointed, and he is now, a vice president in charge of automotive sales for the Tide Water Division, Tide Water Associated Oil Company.

J. W. Warner was a vice president and a director of Tide Water Oil Company, an Oklahoma corporation, in 1935 and 1936, until its dissolution November 12, 1936; on August 4, 1936, the assets of said Oklahoma corporation were transferred to Tide Water Oil Company, a Delaware corporation; from August 24 to November 30, 1936 J. W. Warner was an assistant vice president of said Delaware corporation; and on December 17, 1936 he was appointed and he has since acted, as an assistant vice president in charge of sales for the Mid-Continent Region, Tide Water Division, Tide Water Associated Oil Company.

Exhibits 251-254, 256-260, 262, 265, 267-281, 284-287, 291-296 were written by J. W. Warner and received by J. D. Collins.

5333 GOVERNMENT EXHIBIT NO. 719.

This exhibit consists of several hundred East Texas Marketing Association bills for commissions issued to member refiners and covering shipments in tank cars to Cities Service Export Oil Company, Sinclair Refining Company, The Pure Oil Company, Gulf Refining Company, Tide Water Oil Company, Continental Oil Company, Louisiana Oil Refining Corporation and The Texas Company. The specimen printed below is a typical bill, and all the information contained on these bills, except the amount of the commission charged, has been consolidated in the following tabulation. Months indicate dates commission bills were issued, which were usually the months in which the shipments were made. The tabulation omits shipments shown on the bills to have been cancelled. Commission bills for July, September, October, November and December 1935, bear notations indicating cancellations of 37 cars, but not attributing them to individual purchasers.

#7-55 Date 6-24-35

M Johnston-Burnham Refineries, Inc.
Kilgore, Texas

In Account With
East Texas Marketing Association
Box 243, Tyler, Texas

6-24 Commission on 2 cars 400EP gasoline sold Gulf Refg. Co. this date—@ $2.50 per car $5.00

Pd
Jul 9 1935
R.N.C.

Government Exhibit No. 719.

Refinery Shipped From ↓	1935																								
	February			March				April					May					June				July			
	Cities Service Export			Sinclair	Gulf	Pure	Cities Service Export	Sinclair	Gulf	Pure	Tidewater Oil	Continental	Sinclair	Gulf	Pure	Texas	Tidewater Oil	Sinclair	Gulf	Pure	Tidewater Oil	Sinclair	Gulf	Pure	Tidewater Oil
Arrow				31	40	2	46	42	35		28		119	32		15	10								
Cascade																									
Century																						20			
Chief						3	3			20				5	25					38				55	
Dominant																									
East Texas																		56	44			15	58		
Gilliland				10			85	60	16			15	72	19				88	19		100	85	20		65
Grogan				15	25	2	35	36	15	44			82		44			29		61		40	5	74	10
Johnston Burnham																		5	2			4	5		
La Pren	20			5			15	4	11				15	13				10	4						
Lone Star*	10																								
Matthews																									
McMurray																						10	10		
Ocean																									
Oil Refineries				15																					
Premier																						10	10		
Solvex																									
Southport							50	40	15		13		20	33			40	52	17		25	40	5		70
Texas Oil Prod	10			20	10		22	41	45					39				26	14	15		80	20		
Texover						3	20	3	13				8	20					16	15					
Tower																									
Trinity																									
Trio				10																					
Tyreco																									
Utah	35																								
Wabash																		7	4	5		31	2		

Refinery Shipped From ↓	1935																						
	August					September				October				November				December					
	Sinclair	Gulf	Pure	Texas	Tidewater Oil	Sinclair	Gulf	Pure	Tidewater Oil	Sinclair	Gulf	Pure	Tidewater Oil	Sinclair	Gulf	Pure	Tidewater Oil	Sinclair	Gulf	Pure	Texas	Continental	Louisiana Oil
Arrow																							
Cascade						25				20	10			5				5	5				
Century	33				15	33				10				20									
Chief	24		18			8	20				5			14	5				9				
Dominant										34													
East Texas		120		30			75				85				70				55	20			65
Gilliland	120	10	13		75	10	15	53	90	69		3	65	76	35				28				
Grogan	45	5	94			49		64		96	10	85	5	46		60	8	37		60	45		
Johnston Burnham																							
La Pren																							
Lone Star*																							
Matthews						5				10													
McMurray										10	5		10	10	30		5	5	16	15	15		
Ocean	14					4								8				5					
Oil Refineries																							
Premier	100				5	77	5			100	16			60	10		10	10			55		
Solvex														5				30	15		20	20	
Southport	53				55	65			35	25	10		30	5									
Texas Oil Prod	51	16			5	47	15			65	9			65			10	35	40				
Texover																							
Tower																							
Trinity																							
Trio																							
Tyreco										10			10					15	17				
Utah																							
Wabash	25	14	5			15	5																

Refinery Shipped From ↓	1936																				
	January				February					March						April					
	Sinclair	Gulf	Pure	Texas	Sinclair	Gulf	Pure	Texas	Tidewater Oil	Sinclair	Gulf	Pure	Texas	Tidewater Oil	Continental	Sinclair	Gulf	Pure	Texas	Tidewater Oil	Continental
Arrow																					
Cascade	10	10			20	10				5	35						30				
Century																					
Chief																					
Dominant																					
East Texas	10	65				55					55						75				
Gilliland	71	40		30	27	20	45	50					30			15	10	33			
Grogan	21		90	80	14	20	35	10	20	5		35	45	20		18		58	79	25	
Johnston Burnham																					
La Pren																					
Lone Star*																					
Matthews																					
McMurray	20	30		25	5	20		25			15					15	15		20		
Ocean		15				5										45					
Oil Refineries																					
Premier	5	5			20		10			33	35					14	60				
Solvex	25	15		45		10	20	40				18	65		5	20		4	66		
Southport																					
Texas Oil Prod	15	10			30	25				35	20						20				1
Texover																					
Tower										11	10	41				32	5	35			
Trinity	30	20			15	25				35	25					50	10	28	10		
Trio																					
Tyreco	30	5			5	15	15														
Utah																					
Wabash																					

*Shipped through Herzog Petroleum Co.

5335 DEFENSE EXHIBIT NO. 726.

5336

American Petroleum Institute

1935
Department of Statistics

GASOLINE CONSUMPTION IN THE UNITED STATES
(Figures are in gallons)
1935

State	January	February	March	April	May	June	July	August	September	October	November	December	Total Year 1935
Alabama	12,393,000	11,625,000	13,621,000	13,865,000	14,443,000	14,109,000	15,406,000	15,959,000	14,971,000	16,128,000	15,293,000	14,633,000	172,446,000
Arizona	6,071,000	5,713,000	6,400,000	6,611,000	6,747,000	6,977,000	7,088,000	6,966,000	6,703,000	7,131,000	7,254,000	7,333,000	80,994,000
Arkansas	10,266,000	9,673,000	10,833,000	11,098,000	10,731,000	11,578,000	13,348,000	13,705,000	12,723,000	13,044,000	13,323,000	13,057,000	143,379,000
California	103,037,000	105,194,000	112,369,000	125,762,000	122,073,000	130,630,000	148,478,000	130,771,000	136,044,000	151,493,000	125,438,000	116,920,000	1,508,209,000
Colorado	12,484,000	10,621,000	12,809,000	13,984,000	15,220,000	17,481,000	18,447,000	19,334,000	17,096,000	16,434,000	14,451,000	14,006,000	182,367,000
Connecticut	15,908,000	14,295,000	17,935,000	21,147,000	24,363,000	25,040,000	28,145,000	29,341,000	25,735,000	24,729,000	22,077,000	21,156,000	269,871,000
Delaware	2,590,000	2,461,000	3,176,000	3,547,000	4,151,000	4,495,000	4,191,000	5,155,000	4,017,000	4,102,000	4,031,000	3,482,000	45,398,000
District of Columbia	7,645,000	7,351,000	9,089,000	9,815,000	10,241,000	10,401,000	10,893,000	10,815,000	9,858,000	10,508,000	9,979,000	9,679,000	116,274,000
Florida	27,762,000	26,975,000	29,688,000	25,568,000	24,077,000	21,792,000	22,350,000	23,059,000	20,190,000	22,126,000	25,689,000	29,420,000	298,696,000
Georgia	19,559,000	19,032,000	21,772,000	21,457,000	22,583,000	21,934,000	24,098,000	24,713,000	22,472,000	24,336,000	23,929,000	22,645,000	268,530,000
Idaho	3,269,000	3,487,000	4,310,000	5,479,000	6,468,000	6,887,000	7,618,000	8,754,000	7,910,000	7,396,000	5,859,000	5,198,000	72,635,000
Illinois	67,128,000	64,459,000	78,210,000	87,571,000	92,465,000	95,412,000	104,16[illegible]000	108,917,000	96,300,000	109,407,000	90,098,000	84,116,000	1,069,243,000
Indiana	30,485,000	26,864,000	40,669,000	39,765,000	44,403,000	44,620,000	47,577,000	48,589,000	47,394,000	44,917,000	43,544,000	38,008,000	496,835,000
Iowa	24,640,000	23,144,000	31,318,000	36,091,000	40,426,000	36,405,000	40,512,000	41,821,000	40,013,000	39,257,000	35,825,000	31,700,000	421,152,000
Kansas	26,034,000	24,677,000	32,343,000	32,354,000	31,831,000	40,317,000	48,207,000	40,566,000	40,759,000	34,637,000	27,751,000	29,231,000	408,707,000
Kentucky	14,004,000	13,024,000	14,823,000	15,790,000	17,198,000	16,869,000	18,993,000	20,163,000	18,551,000	18,548,000	17,434,000	15,928,000	201,325,000
Louisiana	13,548,000	13,046,000	14,790,000	15,209,000	15,414,000	15,386,000	16,281,000	17,260,000	16,320,000	17,877,000	17,558,000	16,813,000	189,502,000
Maine	5,977,000	5,365,000	5,796,000	7,549,000	10,973,000	11,620,000	15,079,000	16,246,000	12,497,000	12,068,000	9,795,000	8,144,000	121,109,000
Maryland	13,249,000	12,612,000	16,101,000	17,935,000	19,309,000	19,334,000	21,510,000	22,120,000	19,440,000	20,212,000	18,638,000	17,205,000	217,665,000
Massachusetts	37,369,000	32,277,000	40,597,000	48,526,000	55,080,000	57,629,000	63,348,000	63,157,000	55,942,000	57,686,000	51,985,000	47,201,000	610,797,000
Michigan	55,366,000	52,729,000	64,867,000	71,519,000	80,849,000	79,014,000	85,219,000	88,039,000	78,265,000	84,142,000	77,180,000	68,055,000	885,244,000
Minnesota	23,381,000	22,328,000	31,124,000	36,211,000	39,710,000	39,886,000	45,623,000	48,840,000	44,458,000	43,668,000	37,626,000	29,914,000	442,769,000
Mississippi	10,771,000	10,668,000	9,199,000	12,506,000	11,381,000	11,082,000	12,087,000	13,870,000	13,515,000	12,826,000	14,051,000	13,164,000	145,120,000
Missouri	34,896,000	31,915,000	38,903,000	41,820,000	42,039,000	43,429,000	48,166,000	50,742,000	47,211,000	47,437,000	43,044,000	42,233,000	511,835,000
Montana	3,939,000	4,925,000	6,215,000	7,592,000	9,733,000	9,199,000	10,662,000	12,085,000	9,264,000	9,193,000	7,218,000	6,300,000	96,326,000
Nebraska	15,533,000	16,939,000	15,301,000	18,131,000	19,172,000	19,135,000	23,006,000	23,079,000	21,847,000	21,545,000	20,269,000	17,645,000	231,602,000
Nevada	1,882,000	1,808,000	1,954,000	2,560,000	2,521,000	2,790,000	3,065,000	3,190,000	3,011,000	2,740,000	2,394,000	2,249,000	30,164,000
New Hampshire	4,034,000	3,604,000	4,270,000	4,961,000	6,323,000	6,850,000	8,695,000	9,905,000	7,365,000	6,946,000	5,718,000	5,033,000	73,904,000
New Jersey	*44,800,000	*43,500,000	*49,800,000	*55,600,000	*62,000,000	*63,400,000	70,161,000	70,839,000	60,153,000	62,688,000	58,711,000	54,120,000	695,772,000
New Mexico	3,933,000	4,589,000	4,417,000	4,777,000	5,043,000	5,461,000	5,818,000	6,636,000	5,757,000	5,503,000	5,306,000	5,100,000	62,340,000
New York	106,552,000	88,893,000	128,712,000	115,341,000	140,743,000	143,399,000	165,628,000	170,060,000	143,221,000	149,751,000	134,342,000	123,902,000	1,610,544,000
North Carolina	20,600,000	20,521,000	23,784,000	25,779,000	26,061,000	25,324,000	25,581,000	28,880,000	27,745,000	30,210,000	28,899,000	26,416,000	309,800,000
North Dakota	4,715,000	4,411,000	8,677,000	12,160,000	14,559,000	10,520,000	12,920,000	13,482,000	13,903,000	10,458,000	8,561,000	5,711,000	120,077,000
Ohio	72,664,000	63,195,000	80,942,000	87,934,000	91,382,000	90,236,000	99,137,000	98,990,000	95,672,000	97,138,000	88,561,000	78,678,000	1,044,529,000
Oklahoma	23,783,000	22,415,000	25,369,000	25,393,000	25,759,000	30,420,000	32,245,000	31,554,000	30,470,000	28,710,000	26,841,000	27,548,000	330,507,000
Oregon	10,622,000	11,302,000	13,686,000	14,225,000	16,061,000	16,544,000	19,293,000	19,499,000	18,035,000	17,610,000	15,243,000	13,902,000	186,022,000
Pennsylvania	74,946,000	71,716,000	87,887,000	96,372,000	108,991,000	118,886,000	98,623,000	115,307,000	103,479,000	108,892,000	99,460,000	93,160,000	1,177,719,000
Rhode Island	6,832,000	6,036,000	7,656,000	9,284,000	9,552,000	9,802,000	11,458,000	11,560,000	9,652,000	9,866,000	9,570,000	8,120,000	109,408,000
South Carolina	10,129,000	10,154,000	12,153,000	12,187,000	11,999,000	11,922,000	12,768,000	13,240,000	12,171,000	13,167,000	12,969,000	11,870,000	144,729,000
South Dakota	7,962,000	6,260,000	10,000,000	9,578,000	11,420,000	10,777,000	12,577,000	12,094,000	11,541,000	10,081,000	8,807,000	7,870,000	118,967,000
Tennessee	16,720,000	14,347,000	16,243,000	18,306,000	18,918,000	18,395,000	21,104,000	21,612,000	20,268,000	20,507,000	19,439,000	18,406,000	224,355,000
Texas	73,588,000	68,193,000	76,459,000	76,059,000	76,619,000	81,352,000	89,810,000	89,443,000	80,587,000	86,068,000	80,937,000	80,434,000	959,549,000
Utah	4,334,000	4,176,000	4,770,000	5,354,000	5,794,000	6,478,000	7,738,000	7,353,000	6,569,000	6,628,000	5,986,000	5,885,000	71,065,000
Vermont	2,474,000	2,270,000	2,743,000	3,475,000	4,628,000	5,079,000	6,122,000	6,908,000	5,448,000	5,258,000	4,498,000	3,701,000	52,604,000
Virginia	18,462,000	17,597,000	21,419,000	22,723,000	24,531,000	24,676,000	27,213,000	27,363,000	24,794,000	26,606,000	24,683,000	22,346,000	282,413,000
Washington	15,817,000	18,788,000	21,100,000	21,117,000	23,767,000	24,421,000	28,821,000	29,294,000	26,277,000	26,386,000	22,021,000	20,863,000	278,672,000
West Virginia	10,411,000	9,557,000	11,927,000	12,939,000	14,055,000	14,258,000	14,741,000	15,893,000	14,604,000	15,274,000	13,838,000	11,593,000	159,090,000
Wisconsin	25,456,000	23,188,000	30,420,000	35,099,000	41,252,000	39,984,000	45,667,000	47,622,000	42,468,000	40,836,000	38,531,000	31,921,000	442,444,000
Wyoming	2,489,000	2,322,000	3,053,000	3,706,000	3,657,000	4,969,000	6,179,000	6,072,000	5,200,000	4,563,000	3,703,000	3,585,000	49,498,000
Total United States	1,160,509,000	1,090,241,000	1,329,700,000	1,421,831,000	1,536,915,000	1,576,604,000	1,725,856,000	1,760,882,000	1,607,885,000	1,647,823,000	1,498,357,000	1,385,599,000	17,742,202,000

NOTE:—Figures are in gallons.

The figures shown above were compiled by the Department of Statistics of the American Petroleum Institute from data supplied to it by departments of the various state governments and reflect, as nearly as is possible to determine it, the consumption of gasoline in the United States, by states. In some cases they represent the actual gallonage upon which the tax was paid, while in others the amount imported into the state. To the best of its ability, this Department has endeavored to have included in these figures all gasoline, whether sold for taxable or tax-exempt purposes.

*Due to changes in the Motor Fuel Tax Law, it is impossible to obtain figures for the first half of 1935 that are comparable with subsequent months. Rather than publish figures which we know are not comparable, we have estimated consumption for this period on a basis which we believe to be the best available according to trend.

726 A
O-R

5337 Enclosure of 10/13/37

American Petroleum Institute

1936

Department of Statistics

GASOLINE CONSUMPTION IN THE UNITED STATES
(Figures are in gallons)
1936

State	January	February	March	April	May	June	July	August	September	October	November	December	Total Year 1936
Alabama	13,443,000	15,550,000	15,577,000	15,718,000	16,634,000	17,125,000	18,070,000	18,242,000	18,602,000	19,455,000	18,078,000	18,129,000	204,623,000
Arizona	7,288,000	7,060,000	8,240,000	7,582,000	7,545,000	8,166,000	8,195,000	7,987,000	8,075,000	8,154,000	8,262,000	9,144,000	95,648,000
Arkansas	11,584,000	8,680,000	11,456,000	12,122,000	12,284,000	12,871,000	14,430,000	14,430,000	14,368,000	14,407,000	13,764,000	13,806,000	154,222,000
California	118,906,000	121,469,000	150,919,000	135,674,000	125,692,000	142,561,000	150,223,000	141,651,000	144,346,000	142,039,000	139,967,000	140,130,000	1,653,597,000
Colorado	13,914,000	10,668,000	14,988,000	15,922,000	17,145,000	18,849,000	21,220,000	21,685,000	19,201,000	17,927,000	16,777,000	16,260,000	204,746,000
Connecticut	19,432,000	16,640,000	19,922,000	23,272,000	26,906,000	27,977,000	31,187,000	30,084,000	28,011,000	27,498,000	24,322,000	24,204,000	299,405,000
Delaware	2,833,000	2,584,000	3,487,000	4,034,000	4,681,000	4,662,000	5,218,000	5,448,000	4,733,000	4,673,000	4,070,000	4,158,000	50,581,000
District of Columbia	8,900,000	8,203,000	9,808,000	10,512,000	11,209,000	11,201,000	11,668,000	11,451,000	10,984,000	11,444,000	10,854,000	10,880,000	127,204,000
Florida	26,295,000	30,373,000	31,929,000	28,357,000	25,700,000	22,300,000	22,823,000	22,380,000	21,720,000	23,975,000	25,225,000	29,405,000	310,502,000
Georgia	20,620,000	20,039,000	23,405,000	24,555,000	26,545,000	25,289,000	27,346,000	27,681,000	26,442,000	26,663,000	26,947,000	26,851,000	302,483,000
Idaho	4,143,000	3,609,000	5,343,000	6,492,000	7,718,000	8,333,000	9,361,000	10,476,000	9,344,000	8,938,000	7,672,000	6,418,000	87,847,000
Illinois	73,800,000	67,565,000	87,708,000	97,290,000	109,346,000	108,352,000	115,469,000	112,971,000	108,238,000	111,256,000	101,591,000	96,830,000	1,191,916,000
Indiana	36,067,000	27,153,000	43,443,000	45,785,000	51,953,000	51,770,000	53,125,000	52,894,000	53,795,000	50,252,000	48,392,000	46,728,000	561,428,000
Iowa	29,194,000	18,208,000	27,754,000	45,108,000	45,988,000	44,837,000	45,567,000	43,912,000	42,301,000	43,016,000	38,874,000	35,469,000	460,208,000
Kansas	29,600,000	22,430,000	36,651,000	34,199,000	39,289,000	30,621,000	48,374,000	41,094,000	42,631,000	39,077,000	32,708,000	33,682,000	450,331,000
Kentucky	14,214,000	13,325,000	16,167,000	16,898,000	19,289,000	22,083,000	22,486,000	22,089,000	21,588,000	21,982,000	19,307,000	18,970,000	228,333,000
Louisiana	15,771,000	14,508,000	16,940,000	16,684,000	17,882,000	18,469,000	19,970,000	18,274,000	19,157,000	20,789,000	18,793,000	19,124,000	216,401,000
Maine	6,748,000	6,135,000	6,558,000	8,682,000	12,006,000	13,580,000	16,357,000	17,111,000	14,452,000	13,265,000	10,616,000	9,011,000	134,521,000
Maryland	15,037,000	13,945,000	17,188,000	19,717,000	21,842,000	22,379,000	23,980,000	24,114,000	23,253,000	23,084,000	20,439,000	20,426,000	245,232,000
Massachusetts	40,968,000	36,964,000	43,365,000	51,142,000	59,455,000	61,545,000	67,619,000	68,017,000	61,118,000	60,980,000	54,289,000	54,390,000	657,753,000
Michigan	65,930,000	54,655,000	67,427,000	75,722,000	88,846,000	91,831,000	102,022,000	97,906,000	91,689,000	89,878,000	85,006,000	84,870,000	995,781,000
Minnesota	28,757,000	18,936,000	28,540,000	36,135,000	46,671,000	48,546,000	52,681,000	50,389,000	48,432,000	45,512,000	40,954,000	35,321,000	480,874,000
Mississippi	12,730,000	8,179,000	12,934,000	13,139,000	14,494,000	14,020,000	15,617,000	15,377,000	14,928,000	17,536,000	16,539,000	15,392,000	170,885,000
Missouri	41,323,000	31,407,000	43,850,000	45,163,000	48,085,000	51,099,000	54,049,000	52,345,000	51,557,000	51,482,000	49,291,000	48,020,000	567,601,000
Montana	5,446,000	3,661,000	7,591,000	9,345,000	11,082,000	11,149,000	12,905,000	12,415,000	10,641,000	9,853,000	8,112,000	7,222,000	109,422,000
Nebraska	16,182,000	11,105,000	17,961,000	19,028,000	20,305,000	19,328,000	24,222,000	22,294,000	22,035,000	20,584,000	19,423,000	17,895,000	230,362,000
Nevada	1,935,000	1,875,000	2,485,000	2,820,000	2,702,000	3,285,000	3,679,000	3,776,000	3,494,000	3,027,000	2,779,000	2,669,000	34,226,000
New Hampshire	4,614,000	4,216,000	4,697,000	5,310,000	7,089,000	7,828,000	9,517,000	9,982,000	8,345,000	7,561,000	6,162,000	5,567,000	80,898,000
New Jersey	47,146,000	45,268,000	51,810,000	58,541,000	65,495,000	66,770,000	73,496,000	76,752,000	69,785,000	67,208,000	60,271,000	62,840,000	745,482,000
New Mexico	5,239,000	4,762,000	5,399,000	5,992,000	6,194,000	6,878,000	7,346,000	7,902,000	6,414,000	6,502,000	6,557,000	6,664,000	75,849,000
New York	110,151,000	94,412,000	111,959,000	130,508,000	158,404,000	161,683,000	185,870,000	178,466,000	162,916,000	161,141,000	140,295,000	133,030,000	1,721,830,000
North Carolina	22,618,000	20,237,000	26,018,000	27,806,000	29,414,000	29,474,000	32,327,000	32,635,000	32,575,000	33,452,000	31,409,000	30,189,000	348,154,000
North Dakota	4,466,000	2,094,000	5,513,000	12,757,000	13,641,000	11,083,000	11,348,000	11,611,000	12,090,000	10,959,000	8,797,000	7,076,000	111,373,000
Ohio	78,637,000	69,426,000	84,585,000	93,315,000	103,131,000	107,122,000	111,344,000	110,706,000	108,346,000	107,280,000	97,299,000	96,828,000	1,167,867,000
Oklahoma	26,880,000	23,484,000	28,264,000	28,962,000	30,523,000	38,608,000	35,231,000	31,088,000	31,586,000	33,088,000	30,046,000	30,082,000	365,737,000
Oregon	12,595,000	11,299,000	19,254,000	16,258,000	16,497,000	19,419,000	22,155,000	23,076,000	22,473,000	20,010,000	16,684,000	16,058,000	215,778,000
Pennsylvania	78,440,000	73,123,000	89,075,000	101,941,000	115,551,000	117,351,000	125,645,000	125,026,000	117,898,000	121,482,000	109,273,000	108,475,000	1,283,280,000
Rhode Island	7,405,000	6,527,000	8,021,000	9,119,000	10,130,000	11,253,000	11,716,000	12,120,000	11,141,000	10,663,000	9,850,000	10,417,000	118,362,000
South Carolina	11,132,000	10,832,000	12,901,000	12,946,000	13,280,000	13,512,000	14,646,000	15,227,000	14,961,000	15,224,000	14,746,000	14,569,000	163,927,000
South Dakota	6,805,000	4,041,000	9,318,000	9,729,000	10,614,000	11,984,000	11,445,000	10,680,000	10,802,000	11,046,000	8,946,000	7,881,000	113,281,000
Tennessee	17,268,000	14,873,000	20,198,000	19,649,000	20,659,000	21,972,000	23,670,000	25,680,000	27,865,000	24,427,000	25,137,000	25,813,000	266,320,000
Texas	80,035,000	74,812,000	88,554,000	85,127,000	84,855,000	100,457,000	101,346,000	99,426,000	93,256,000	95,208,000	93,573,000	96,485,000	1,096,243,000
Utah	5,680,000	3,834,000	5,730,000	5,723,000	6,883,000	7,631,000	8,642,000	8,407,000	8,047,000	7,289,000	6,696,000	6,318,000	80,940,000
Vermont	3,279,000	3,049,000	3,251,000	3,784,000	5,171,000	5,945,000	6,902,000	7,280,000	6,891,000	6,217,000	4,896,000	4,161,000	60,026,000
Virginia	24,086,000	15,949,000	21,049,000	24,595,000	27,041,000	28,170,000	30,745,000	30,889,000	29,940,000	30,521,000	26,178,000	27,293,000	316,556,000
Washington	19,373,000	18,121,000	28,975,000	24,743,000	24,796,000	28,688,000	32,446,000	32,974,000	31,680,000	28,491,000	24,767,000	24,472,000	319,473,000
West Virginia	10,636,000	9,682,000	12,320,000	14,339,000	16,228,000	17,286,000	17,271,000	18,087,000	17,870,000	17,313,000	15,496,000	14,876,000	181,384,000
Wisconsin	32,454,000	22,405,000	32,180,000	37,000,000	46,623,000	49,526,000	53,273,000	51,292,000	49,318,000	46,822,000	44,809,000	39,111,000	504,522,000
Wyoming	3,264,000	2,357,000	3,572,000	3,899,000	4,708,000	5,832,000	7,399,000	6,919,000	6,468,000	5,319,000	4,698,000	4,224,000	58,679,000
Total United States	1,293,953,000	1,129,739,000	1,444,295,000	1,582,850,000	1,706,133,000	1,789,258,000	1,931,411,000	1,890,846,000	1,815,342,000	1,796,606,000	1,649,380,000	1,622,953,000	19,622,163,000

NOTE:—Figures are in gallons.

The figures shown above were compiled by the Department of Statistics of the American Petroleum Institute from data supplied to it by departments of the various state governments and reflect, as nearly as is possible to determine it, the consumption of gasoline in the United States, by states. In some cases they represent the actual gallonage upon which the tax was paid, while in others the amount imported into the state. To the best of its ability, this Department has endeavored to have included in these figures all gasoline, whether sold for taxable or tax-exempt purposes.

Consumption of Gasoline in 1934, by States and months[1]
(Thousands of gallons)

State	January	February	March	April	May	June	July	August	September	October	November	December	Total	
													Thousands of gallons	Equivalent in thousands of barrels
Alabama	11,879	10,616	12,442	12,130	12,904	12,908	13,272	13,737	13,583	14,379	13,852	13,345	155,047	3,692
Arizona	5,768	5,589	6,064	6,027	6,275	6,401	5,882	6,110	6,064	6,456	6,270	6,313	73,219	1,743
Arkansas	11,210	9,696	10,407	10,536	12,056	11,640	12,626	12,929	12,706	12,628	12,718	11;004	140,156	3,337
California	87,538	94,112	136,314	122,688	118,848	116,126	102,628	113,863	106,319	115,164	108,657	111,920	1,334,177	31,766
Colorado	18,610	6,639	11,374	14,077	15,428	14,042	17,445	14,164	19,075	15,829	13,995	12,078	172,756	4,113
Connecticut	16,116	13,201	16,724	19,609	23,263	25,056	26,008	26,205	24,890	22,759	21,662	19,440	254,933	6,070
Delaware	2,634	2,273	2,695	3,353	3,772	3,966	4,144	4,352	3,978	3,782	3,348	3,259	41,556	989
District of Columbia	7,945	6,792	7,689	8,766	9,282	8,931	9,139	10,386	8,059	9,155	9,022	8,568	103,734	2,470
Florida	22,099	21,310	24,077	20,150	18,519	17,145	16,719	16,970	16,888	18,711	20,582	23,605	236,775	5,638
Georgia	18,310	16,687	19,321	18,649	19,621	19,837	20,731	21,626	20,169	21,978	22,163	20,406	239,498	5,702
Idaho	3,480	3,592	4,769	5,325	5,608	6,176	7,012	7,285	6,598	6,188	5,433	4,304	65,770	1,566
Illinois	71,474	64,560	72,880	80,907	92,178	92,517	96,340	99,589	92,040	99,538	92,291	71,604	1,025,918	24,427
Indiana	31,770	27,582	34,617	36,569	42,668	40,031	42,109	43,876	44,989	43,081	41,430	36,716	465,438	11,082
Iowa	26,857	25,453	30,054	37,298	35,834	35,677	34,897	36,453	37,000	36,457	34,983	32,840	403,803	9,614
Kansas	25,394	26,855	27,877	30,841	33,412	41,346	37,190	34,643	32,702	32,196	29,370	26,955	378,781	9,019
Kentucky	13,321	11,789	13,078	14,480	15,882	16,286	16,778	18,168	16,856	16,922	15,965	14,842	184,367	4,390
Louisiana	14,040	12,340	13,575	14,185	15,336	14,686	15,258	15,697	14,992	17,915	14,395	16,038	178,457	4,249
Maine	5,645	4,915	5,623	6,853	11,164	12,416	13,964	15,434	12,759	10,983	9;421	7,816	116,993	2,786
Maryland	14,305	11,623	14,126	17,069	18,797	19,208	19,529	19,840	17,980	19,803	17,422	16,577	206,279	4,911
Massachusetts	37,535	32,926	38,910	44,797	54,255	56,682	58,761	61,243	52,330	58,406	46,484	45,440	587,789	13,995
Michigan	54,887	51,948	56,865	60,819	73,260	69,787	76,235	76,232	76,101	67,078	64,220	54,539	781,971	18,618
Minnesota	27,603	24,524	31,425	34,170	38,466	38,242	42,520	43,695	40,915	43,057	38,813	28,115	431,545	10,275
Mississippi	11,181	8,821	10,054	10,783	10,144	10,975	10,885	11,499	11,217	12,323	12,576	10,805	131,263	3,125
Missouri	38,349	34,071	36,894	38,496	42,587	42,890	44,532	45,159	41,557	44,896	43,759	36,261	489,401	11,652
Montana	4,644	4,374	5,824	7,415	7,705	8,393	9,580	9,959	7,595	8,055	6,702	5,238	85,484	2,035
Nebraska	17,777	16,173	16,710	18,865	20,623	18,320	21,036	20,662	18,568	20,440	19,227	14,971	223,372	5,318
Nevada	1,396	1,485	1,799	2,047	2,185	2,355	2,507	2,506	2,372	2,255	1,947	1,853	24,707	588
New Hampshire	3,754	3,328	3,889	4,815	6,473	7,317	8,231	8,866	7,282	6,625	5,360	4,700	70,640	1,682
New Jersey	48,385	39,367	50,651	52,930	68,062	63,569	71,716	70,934	64,702	75,958	69,327	58,920	734,521	17,489
New Mexico	3,623	3,561	3,755	4,210	4,519	5,024	5,244	5,691	5,460	5,247	4,943	4,877	56,154	1,337
New York	108,639	87,616	107,742	120,718	144,473	149,082	156,467	160,083	144,938	139,832	128,930	128,499	1,577,019	37,548
North Carolina	19,955	17,719	20,349	21,469	23,798	21,673	23,765	25,879	24,216	27,709	27,329	25,935	279,796	6,662
North Dakota	4,242	4,420	8,735	10,344	9,841	8,875	9,873	10,784	9,394	10,973	9,192	6,258	102,931	2,451
Ohio	66,978	60,967	69,816	79,988	89,573	83,836	86,918	91,328	85,223	87,078	82,262	71,503	955,470	22,749
Oklahoma	23,945	21,639	22,691	23,485	24,931	29,566	27,534	26,026	27,229	26,161	24,367	22,857	300,431	7,153
Oregon	10,356	10,862	13,152	14,615	14,191	16,567	15,838	15,805	16,517	13,716	12,551	11,808	165,978	3,952
Pennsylvania	78,065	67,884	82,370	89,439	104,316	103,936	106,740	110,521	101,099	104,415	97,433	90,126	1,136,344	27,056
Rhode Island	7,896	5,845	7,399	8,220	9,565	10,489	11,662	11,191	9,686	10,322	8,493	8,096	108,864	2,592
South Carolina	10,237	9,117	10,680	11,062	10,942	10,658	11,388	11,515	10,986	11,961	11,911	11,925	132,347	3,151
South Dakota	7,677	6,846	9,425	8,667	9,108	8,640	10,896	9,680	10,223	10,327	10,103	7,922	109,514	2,607
Tennessee	17,031	15,073	[illegible]	15,990	18,265	18,109	16,899	19,334	19,398	19,558	21,250	15,016	212,037	5,049
Texas	65,584	58,631	69,368	66,878	74,451	79,098	75,574	77,454	78,918	83,846	70,727	74,505	875,034	20,834
Utah	4,307	3,947	4,509	5,233	5,383	5,818	6,623	6,638	5,994	5,858	5,344	4,486	64,140	1,527
Vermont	2,329	2,170	2,342	3,040	4,437	5,060	5,523	6,399	5,239	4,645	4,050	3,316	48,550	1,156
Virginia	19,539	15,966	18,614	20,860	22,709	23,784	22,745	24,729	22,289	24,979	22,615	20,294	259,123	6,170
Washington	17,151	17,094	24,670	25,343	19,353	22,505	25,365	24,833	23,296	22,379	19,750	19,039	260,778	6,209
West Virginia	10,114	8,208	9,804	11,448	13,376	13,741	13,456	14,495	13,893	14,400	12,974	11,700	147,609	3,515
Wisconsin	27,483	25,714	30,842	30,537	39,521	38,612	42,389	42,053	41,109	38,517	36,714	27,234	420,725	10,017
Wyoming	2,753	2,252	3,633	3,061	3,624	4,095	5,050	4,916	4,285	4,026	3,303	2,988	43,986	1,047
	1,161,810	1,038,172	1,252,737	1,329,256	1,480,933	1,492,088	1,537,593	1,581,436	1,489,678	1,528,986	1,415,635	1,286,856	16,595,180	395,123

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[1] Compiled from reports of the American Petroleum Institute which cover "quantities of gasoline sold or offered for sale, as reported by wholesalers and dealers in the various States under provisions of the gasoline tax or inspection laws."

Defense Exhibit No. 726.

UNITED STATES v. STANDARD OIL COMPANY (INDIANA) et al.

Gasoline Consumption in the Mid-Western Area and in the United States,

1934–1936

(In thousands of gallons)

											Total	
1934	Illinois	Indiana	Iowa	Kansas	Michigan	Minnesota	Missouri	North Dakota	South Dakota	Wisconsin	Mid-Western Area	United States
January	71,474	31,770	26,857	25,394	54,887	27,603	38,349	4,242	7,677	27,483	315,736	1,161,810
February	64,560	27,582	25,453	26,855	51,948	24,524	34,071	4,420	6,846	25,714	291,973	1,038,172
March	72,880	34,617	30,054	27,877	56,865	31,425	36,894	8,735	9,425	30,842	339,614	1,252,737
April	80,907	36,569	37,298	30,841	60,819	34,170	38,496	10,344	8,667	30,537	368,648	1,329,526
May	92,178	42,668	35,834	33,412	73,260	38,466	42,587	9,841	9,108	39,521	416,825	1,480,933
June	92,517	40,031	35,677	41,346	69,787	38,242	42,890	8,875	8,640	38,612	416,617	1,492,088
July	96,340	42,109	34,897	37,190	76,235	42,520	44,532	9,873	10,896	42,389	436,981	1,537,593
August	99,589	43,876	36,453	34,643	76,232	43,695	45,159	10,784	9,680	42,053	442,164	1,581,436
September	92,040	44,989	37,000	32,702	76,101	40,915	41,557	9,394	10,223	41,109	426,030	1,489,678
October	99,538	43,081	36,457	32,196	67,078	43,057	44,896	10,973	10,327	38,517	426,120	1,528,986
November	92,291	41,430	34,983	29,370	64,220	38,813	43,759	9,192	10,103	36,714	400,875	1,415,635
December	71,604	36,716	32,840	26,955	54,539	28,115	36,261	6,258	7,922	27,234	328,344	1,286,856
Total for Year	1,025,918	465,438	403,803	378,781	781,971	431,545	489,401	102,931	109,514	420,725	4,611,027	16,595,180
1935												
January	67,128	30,485	24,640	26,034	55,366	23,381	34,896	4,715	7,962	25,456	300,063	1,160,509
February	64,459	26,864	23,144	24,677	52,729	22,328	31,915	4,411	6,260	23,188	279,975	1,090,241
March	78,210	40,669	31,318	32,343	64,867	31,124	38,903	8,677	10,000	30,420	366,531	1,329,700
April	87,571	39,765	36,091	32,354	71,519	36,211	41,820	12,160	9,578	35,099	402,168	1,421,831
May	92,465	44,403	40,426	31,831	80,849	39,710	42,039	14,559	11,420	41,252	438,954	1,536,915
June	95,412	44,620	36,405	40,317	79,014	39,886	43,429	10,520	10,777	39,984	440,364	1,576,604
July	104,160	47,577	40,512	48,207	85,219	45,623	48,166	12,920	12,577	45,667	490,628	1,725,856
August	108,917	48,589	41,821	40,566	88,039	48,840	50,742	13,482	12,094	47,622	500,712	1,760,882
September	96,300	47,394	40,013	40,759	78,265	44,458	47,211	13,903	11,541	42,468	462,312	1,607,885
October	100,407	44,917	39,257	34,637	84,142	43,668	47,437	10,458	10,081	40,836	455,840	1,647,823
November	90,098	43,544	35,825	27,751	77,180	37,626	43,044	8,561	8,807	38,531	410,967	1,498,357
December	84,116	38,008	31,700	29,231	68,055	29,914	42,233	5,711	7,870	31,921	368,759	1,385,599
Total for Year	1,060,243	496,835	421,152	408,707	885,244	442,769	511,835	120,077	118,967	442,444	4,917,273	17,742,202

1936												
January	73,800	36,067	29,194	29,600	65,930	28,757	41,323	4,466	6,805	32,454	348,896	1,293,263
February	67,565	27,153	18,208	22,430	54,655	18,936	31,407	2,094	4,041	22,405	268,894	1,129,739
March	87,708	43,443	27,754	36,661	67,427	28,540	43,850	5,513	9,318	32,180	382,394	1,444,285
April	97,290	45,785	45,108	34,199	75,722	36,135	45,163	12,757	9,729	37,009	438,897	1,552,850
May	109,346	51,953	45,968	39,259	88,846	46,671	48,085	13,641	10,614	46,623	501,006	1,706,133
June	108,852	51,770	44,837	50,621	91,831	48,546	51,099	11,083	11,984	49,526	520,149	1,789,356
July	115,469	53,125	45,567	48,374	102,022	52,681	54,049	11,346	11,445	53,273	547,351	1,931,411
August	113,971	52,864	43,912	41,094	97,906	50,389	52,245	11,611	10,680	51,292	525,964	1,890,846
September	108,238	53,795	42,301	42,631	91,689	48,432	51,587	12,030	10,892	49,318	510,913	1,815,342
October	111,256	50,353	43,016	39,077	89,878	45,512	51,482	10,959	11,046	46,522	499,101	1,796,605
November	101,591	48,392	38,874	32,703	85,005	40,954	49,291	8,797	8,946	44,809	459,262	1,649,380
December	96,830	46,728	35,469	33,682	84,870	35,321	48,020	7,076	7,881	39,111	434,988	1,622,953
Total for Year	1,191,916	561,428	460,208	450,331	995,781	480,874	567,601	111,373	113,381	504,522	5,437,415	19,622,163

1934 figures derived from the Minerals Yearbook (1935) published by the Bureau of Mines.

1935 and 1936 figures derived from the figures published by the American Petroleum Institute.

U. S. v. STANDARD OIL CO. (IND.) et al

Gasoline Consumption in Arkansas, Louisiana, Oklahoma and Texas 1934–1936
(In thousands of gallons)

	Arkansas	Louisiana	Oklahoma	Texas	Total
1934					
January	11,210	14,040	23,945	65,584	114,779
February	9,696	12,340	21,639	58,631	102,306
March	10,407	13,575	22,691	69,368	116,041
April	10,536	14,185	23,485	66,878	115,084
May	12,056	15,336	24,931	74,451	126,774
June	11,640	14,686	29,566	79,098	134,990
July	12,626	15,258	27,534	75,574	130,992
August	12,929	15,697	26,026	77,454	132,106
September	12,706	14,992	27,229	78,918	133,845
October	12,628	17,915	26,161	83,846	140,550
November	12,718	14,395	24,367	70,727	122,207
December	11,004	16,038	22,857	74,505	124,404
Total	140,156	178,457	300,431	875,034	1,494,078
1935					
January	10,266	13,548	23,783	73,588	121,185
February	9,673	13,046	22,415	68,193	113,327
March	10,833	14,790	25,369	76,459	127,451
April	11,098	15,209	25,393	76,059	127,759
May	10,731	15,414	25,759	76,619	128,523
June	11,578	15,386	30.420	81,352	138,736
July	13,348	16,281	32,245	89,810	151,684
August	13,705	17,260	31,554	89,443	151,962
September	12,723	16,320	30,470	80,587	140,100
October	13,044	17,877	28,710	86,068	145,699
November	13,323	17,558	26,841	80,937	138,659
December	13,057	16,813	27,548	80,434	137,852
Total	143,379	189,502	330,507	959,549	1,622,937
1936					
January	11,584	15,771	26,880	80,035	134,270
February	8,680	14,508	23,484	74,812	121,484
March	11,456	16,940	28,264	88,554	145,214
April	12,122	16,684	28,962	85,137	142,905
May	12,284	17,882	30,523	84,855	145,544
June	12,871	18,469	36,608	100,457	168,405
July	14,430	19,970	35,231	101,346	170,977
August	14,430	18,274	31,098	99,425	163,227
September	14,388	19,187	31,556	93,356	158,487
October	14,407	20,789	33,003	98,208	166,407
November	13,764	18,793	30,046	93,573	156,176
December	13,806	19,134	30,082	96,485	159,507
Total	154,222	216,401	365,737	1,096,243	1,832,603
Totals 1934–1936	437,757	584,360	996,675	2,930,826	4,949,618

5341 GOVERNMENT EXHIBIT NO. 727.

Stipulation.

"G. A. Booth" refers to George A. Booth who was Office Manager of the Chicago Division of Socony-Vacuum Oil Company, Inc.

The initials "L.L.M." are those of L. L. Marcell, Manager of the White Eagle Division of Socony-Vacuum Oil Company, Inc.

The initials "R.R.I." are those of R. R. Irwin.

J. H. Romer is employed in the main office of Socony-Vacuum Oil Company, Inc.

F. E. Scuder has been Traffic Manager of Wadhams Oil Company from January 1, 1935, to the present time.

The initials "McN" are those of Louis McNally, Vice-President of Wadhams Oil Company.

Exhibits 305, 334 and 336 were written by the one so indicated on the document and were received by the addressee; Exhibits 17 and 461 were written by C. E. Arnott, and sent to Harry D. Frueauff; Exhibits 331 and 332 were written by C. E. Arnott and sent to H. W. Dodge; Exhibit 369 was written by C. E. Arnott and sent to J. W. Carnes; Exhibit 482 was written by C. E. Arnott and sent to The Pure Oil Company; Exhibits 306 and 311 were written by L. L. Marcell and received by C. E. Arnott; Exhibit 335 was written by Louis McNally and received by George A. Booth. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5342 GOVERNMENT EXHIBIT NO. 728.

Stipulation.

The initials "APR" are those of A. P. Reuther. A. P. Reuther is manager of the Crude Oil Department of Shell Petroleum Corporation.

The initials "HJ" are those of Harry Jacobs. Harry Jacobs is assistant to the Vice-President in charge of marketing of Shell Petroleum Corporation.

The initials "WLS" are those of W. L. Schafer. W. L. Schafer was formerly assistant to the Tank Car Sales Manager of Shell Petroleum Corporation, and still is employed by Shell Petroleum Corporation.

E. A. Bacon is manager of the Crude Oil Department in the Tulsa area of Shell Petroleum Corporation.

G. L. Shoemaker, McNair, and H. L. Stegall are field scouts for Shell Petroleum Corporation, operating in Texas.

A. W. Frey was formerly assistant manager of the Shipping and Supplies Department, and is now manager of that department.

J. H. Salmon was formerly manager of the Shipping and Supplies Department of Shell Petroleum Corporation, and is still employed by Shell Petroleum Corporation.

J. E. Fritts was formerly Tank Car Sales Manager of Shell Petroleum Corporation at Kansas City, Missouri, and is now District Tank Car Manager of Shell Petroleum Corporation at Omaha, Nebraska.

The initials "TW" are those of T. Ward. T. Ward is a clerk in the Tank Car Sales Department of Shell Petroleum Corporation at St. Louis, Missouri.

The initials "SBK" are those of S. B. Kieselhorst. S. B. Kieselhorst is a clerk in the Shipping and Supplies Department of Shell Petroleum Corporation.

J. G. Sinclair is District Manager of Shell Petroleum Corporation at Chicago, Illinois.

5343 Exhibits 171, 174, 180, 221, 238 were written by the one so indicated on the document and were received by the addressee: Exhibit 168 was written by A. P. Reuther and received by the Crude Oil Department of Shell Petroleum Corporation at Tulsa, Oklahoma. Exhibit 222 was written by H. L. Stegall and received by A. P. Reuther. Exhibit 246 was written by S. B. Kieselhorst and copy received by Harry Jacobs. Exhibit 233 was written by H. L. Stegall and received by A. P. Reuther. Exhibit 234 was written by H. L. Stegall and received by A. P. Reuther. Exhibit 237 was written by H. L. Stegall and received by A. P. Reuther. Exhibit 243 was written by J. E. Fritts and received by W. L. Schafer. Exhibit 239 was written by H. L. Stegall and received by A. P. Reuther. Exhibit 247 was written by A. W. Frey and received by A. P. Reuther. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5344 GOVERNMENT EXHIBIT NO. 729.

Stipulation.

H. E. Brandli was Vice-President and General Manager of Cities Service Export Oil Company during the period January 1, 1935 to June 11, 1936. Since June 11, 1936, Mr. Brandli has been a Vice-President of Cities Service Oil Company, a Pennsylvania corporation, in charge of the Export Division.

Neil Buckley was an oil buyer for Cities Service Export Oil Company during the period January 1, 1935 to June 11, 1936. Since June 11, 1936, Mr. Buckley has been an employee of the Cities Service Oil Company, a Pennsylvania corporation, acting as an oil buyer for its Export Division.

Harry D. Frueauff was an executive as described in the indictment in the above entitled action, except that his position as Vice-President of Cities Service Export Oil Company terminated on June 11, 1936.

E. P. Engelke was Secretary of Cities Service Export Oil Company during the period January 1, 1935 to June 11, 1936. Since that date he has been an assistant secretary of Cities Service Oil Company, a Pennsylvania corporation.

F. R. Coates was an executive as described in the indictment in the above entitled action with the exception that his position as Vice-President of Cities Service Export Oil Company terminated on June 11, 1936.

Exhibits 36, 454, 456, 457, 458, 467, 469, 471, 473, 474, 475, 476, 477 were written by the one so indicated on the document and were received by the addressee; Exhibits 17 and 461 were received by Harry D. Frueauff, and Exhibit 478 was written by Harry D. Frueauff and received in the office of F. R. Coates; Exhibit 102 was written by O. J. Tuttle; Exhibits 460 and 462 were written by Harry D. Frueauff and sent to C. E. Arnott. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserved the right to all objections against the admissibility of these documents except as stipulated.

5345 A Daily Independent Reporting Service On Oil Prices Issued Simultaneously From Tulsa-Chicago-New York-Cleveland

Oilgram

Oil News-Markets-Every Day

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Refinery prices, except where otherwise noted, represent publisher's opinion of prices at which the bulk of open market sales of products from legally produced crude for the day named were made, for spot shipment from the district designated. They represent prices made only to domestic jobbers who resell to the consuming public, except where otherwise noted. Spot shipment as defined by trade practice is:

Gulf Coast Bulk Market, for shipment in 90 days. All Other Markets, for shipment in 10 to 15 days.

Information is obtained from sources deemed reliable but publisher will not be responsible for delays to, or for the accuracy or completeness of data furnished.

Prices are in cents per gallon except wax and petrolatum in cents per pound and fuel oil in dollars per barrel. Prices are for tank car lots, f.o.b. refinery in the district designated, except where otherwise noted. Prices do not include state or federal taxes, inspection or otherwise, levied on some products.

Octane numbers are determined by C. F. R. motor method. A. S. T. M. D. 357-33 T.

Lubricating oil specifications are determined according to A. S. T. M. methods unless otherwise noted.

Tulsa Edition

At close of business Friday, May 1, 1936.

Page 1-B No. 3459.

Today's Oil Markets In A Line

Refinery—Mid-Continent kerosine more active; gasoline steady.

Summary of Group 3 Quotations for U. S. Motor Gasoline.

Octane	Oklahoma	Kansas	N. Texas	W. Texas	E. Texas	N. La.-Ark.
62 & below...	5–5.25	5–5.125	5.00	5.00	5.00	5.00
63 to 67.....	5.625–5.875	5.625–5.75	5.625–5.75	5.625–5.75	....	5.625–5.75
68 to 70.....	6–6.25	6–6.125	6–6.125	6.00	....	6.00

Prices are those quoted on basis of f.o.b. Group 3 by refiners in districts designated.

Mid-Continent Kerosine More Active; Gasoline Steady

Tulsa, May 1—Jobber interest in kerosine has picked up considerably, according to some Mid-Continent supplies Friday. Other reports, however, indicated jobbers still were hesitant in their buying. Observers attributed this hesitancy to the fact that some distributors still had fairly substantial quantities in storage. Other jobbers have kept storage at a low point though, and increased consumption has stimulated buying. Refiners' stocks of kerosine were in good position. Prices generally were unchanged.

Light oils for heating purposes were in light demand. Prices recessions were encountered for the No. 2 oil in several districts.

Contract movement of motor fuel was brisk, although open market shipments still were comparatively light. Scattered cars of off-specification gasoline were encountered from one or two districts. Quotations for full specification motor fuel continued to be made generally at prices shown below.

Oklahoma Refinery Market

Tulsa—May 1 prices f.o.b. Oklahoma refineries were:

48-54, 450 e.p. naphtha 4.875-5

U. S. Motor Gasoline

62 octane & below	5 -5.25
63 to 67 octane	5.625-5.875
68 to 70 octane (regular)	6 -6.25
60-62, 400 e.p. gasoline	5 -5.25
64-66, 375 e.p. gasoline	5.125-5.25
68-70, 350-360 e.p. gasoline	5.25 -5.375
41-43 w.w. kerosine	4.25 -4.375
42-44 w.w. kerosine	4.50 -4.625

Gas and Fuel Oils

No. 1 white	3.875-4
No. 1 straw	3.625-3.75
No. 2 straw	3.125
No. 2 dark	3 -3.125
U. G. I. gas oil	2.50 -2.625
28-30 fuel oil, zero	3 -3.125
28-30 fuel oil	$1.00 -1.10
24-26 fuel oil	$0.80 -0.85
18-22 fuel oil	$0.725-0.75
14-16 fuel oil	$0.65 -0.675

Mid-Western Tank Car Market

Chicago, May 1—Open market demand for gasoline was reported unusually light by virtually all traders in Chicago Friday. Several refinery representatives said contract takings were better than normal. They were at a loss to reconcile the slow open market.

Acceptable grades of low octane gasoline were being quoted at 4.875¢ and up Friday. Some shading of this price was reported. However, where shading of 4.875¢ was encountered, gasoline offered had an extremely low octane value, which sellers said necessitated the lower quotations.

The Mid-Western kerosine market was spotted with lower-priced offerings, which were becoming more numerous Friday. Open market movement of this product was slow, sellers agreed.

Following prices represent sales made May 1 by Chicago sellers to jobbers on a Group 3 freight basis. Shipments, however, may originate in other southwestern or midwestern refining districts.

U. S. Motor Gasoline

62 octane & below	4.875-5.125
63 to 67 octane	5.375-5.75
68 to 70 octane (regular)	5.75 -6.125
60-62, 400 e.p. gasoline	5 -5.25
64-66, 375 e.p. gasoline	5.125-5.25
68-70, 350-360 e.p. gasoline	5.25 -5.375
41-43 w.w. kerosine	4.25 -4.375
42-44 w.w. kerosine	4.375-4.50

Gas and Fuel Oils	Domestic	Industrial
No. 1 p.w.	3.875-4.125	—
No. 1 straw	3.50 -3.625	—
No. 2 dark	2.875-3.25	—
No. 2 straw	3.125-3.25	—
U. G. I. gas oil	—	2.375-2.50
No. 3	2.875-3.125	—
No. 4	$0.975-1.05	$0.875-0.90
No. 5	$0.70 -0.75	$0.625-0.675
No. 6	—	$0.55 -0.60

Kansas Refinery Market

Wichita—May 1 prices for shipment to Kansas points only were:

U. S. Motor Gasoline

62 octane & below	5.25 -5.375
63 to 67 octane	5.875-6.125
68 to 70 octane (regular)	6.25 -6.375
60-62, 400 e.p. gasoline	5.25 -5.375
41-43 w.w. kerosine	4.625
42-44 w.w. kerosine	4.75
No. 1 p.w. fuel oil	4.00
18-22 fuel oil	$0.80 -0.825
10-14 fuel oil	$0.65 -0.70

5346 **Natural Gasoline Markets**

Tulsa—Following prices represent majority of sales made May 1 to blenders on the freight basis shown below, although shipments may originate in other manufacturing districts such as East Texas, Panhandle, Southwest Texas and Kansas. All sales made after 2 p.m. (C.S.T.) are classed with the next day's business.

Grade 26-70 (f.o.b. Group 3)	2.75-2.875
Grade 26-70 (f.o.b. Breckenridge)	2.50

Texas Refinery Markets

Dallas—May 1 prices of products made from legally produced crude f.o.b. refineries in the districts shown below for unrestricted shipment unless otherwise noted were: (Refiners generally receive from 0.25 to 0.50¢ per gallon more for gasoline and kerosine in local and differential territory shipment.)

U. S. Motor Gasoline	North Texas*	West Texas	East Texas	Amarillo**
62 octane & below........	5–5.125	5–5.125	5.00	5.375
63 to 67 octane...........	5.625–5.875	5.75	....	....
68 to 70 octane (regular).	6–6.125	6.00	....	....
60-62, 400 e.p. gasoline....	5.125	....	5.00	5.625
64-66, 375 e.p. gasoline....	5.25	....	....	....
68-70, 350-360 e.p. gasoline.	5.375	....	....	....
41-43 w.w. kerosine.......	4.375–4.50	....	4–4.125***	4.625
No, 1 straw fuel oil.......	3.50–3.625	....	....	3.75–4
No. 1 white fuel oil.......	3.75–3.875	....	3.75–3.875***	....
No. 2 fuel oil.............	2.875–3	3–3.125***	2.75–2.875***	....
U. G. I. gas oil............	2.50	....	2.50–2.625	2.50
24-26 fuel oil.............	$0.70–0.725	....	$0.675–0.70	....
20-24 fuel oil.............	....	....	$0.65–0.675	....
18-22 fuel oil.............	$0.675–0.70	$0.70–0.73	....	....

Eastern Domestic Markets

New York, May 1—Several New York harbor suppliers advanced gasoline prices 0.25¢ Friday, bringing tank car price of 65 octane and above grade to 7.25¢. Most major companies already were quoting 7.25¢, but have reported only occasional sales in the open market. Several suppliers, however, made no change in their 7¢ tank car price and intimated they might not do so until the retail situation became more settled.

Kerosine was dull.

May 1 prices for tank car lots (unless otherwise noted) f.o.b. refinery or seaboard terminal and representing majority of quotations and sales to jobbers and/or consumers, were:

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* For shipment to Texas and New Mexico destinations; Group 3 prices are quoted on northern shipments.

** For shipment to western Oklahoma and Texas differential territory; Group 3 prices are quoted on northern shipments.

*** Nominal.

	Motor Gasoline 60-64 Octane	Motor Gasoline 65 Octane & Above	Water White Kerosine
New York harbor	6.75-7	7-7.25	4.625
New York harbor, barges	6.50-6.75	6.75-7	4.50
Philadelphia district	6.75	7.00	4.875-5
Baltimore district	6.75	7.00	5.25
Norfolk district	6.75	7.00	5.25
Wilmington, N. C. district	6.75	7.00	5.25
Charleston district	6.75	7.00	5.25
Savannah district	6.75	7-7.25	5.50-5.75
Jacksonville district	6.75	7-7.25	5.50-5.75
Portland district	7.25	7.50	5.50
Boston district	6.75-7	7-7.25	5.00
Boston district, barges	6.50-6.75	6.75-7	4.875
Providence district	7.00	7.25	5.00
Providence district, barges	6.75	7.00	4.875

Gulf Coast Bulk Market

New York—May 1 prices f.o.b. ship at Gulf oil terminals, representing sellers' opinions, except those prices specified to the contrary, were: (Prices cover bulk shipments of 20,000 bbls. or more, unless otherwise noted.)

Export Shipment

U. S. Motor gasoline	5.50
60-62, 400 e.p. gasoline	5.50
61-63, 390 e.p. gasoline	5.625
64-66, 375 e.p. gasoline	5.75
44 w.w. kerosine	4.25
41-43 w.w. kerosine	3.75 -3.875
41-43 p.w. kerosine	3.75 -3.875

Domestic Shipment

Motor Gasoline,	
59 octane & below	5.625-5.75
60-64 octane	6.00
65 octane & above	6.125-6.25
No. 1 fuel oil	3.75 -3.875
No. 2 fuel oil	3.50 -3.625
No. 4 fuel oil	3.125
41-43 w.w. kerosine	3.75 -3.875

Domestic and/or Export Shipment

*26-30 translucent gas oil	3.125-3.25
*30 + translucent gas oil	3.125-3.25
*30 + transparent gas oil	3.25

*Less than ½ of 1% sulfur.

Diesel oil, ships' bunkers	$1.50**
Grade C bunker oil, ships' bunkers	$0.90**
Grade C bunker oil, cargoes	$0.80

**Lighterage 5¢ per bbl. additional.

Arkansas Refinery Market

El Dorado—May 1 prices for shipment within Arkansas and into Louisiana were:

U. S. Motor Gasoline	
62 octane & below	5.75
63 to 67 octane	6.50
68 to 70 octane (regular)	6.75
41-43 w.w. kerosin	4.75
No. 2 fuel oil	3.625
28-30 fuel oil, zero	3.25
20-24 fuel oil	$0.825-0.875
16-20 fuel oil	$0.725-0.775
10-14 fuel oil	$0.60-0.65

Ohio Gasoline Market

Cleveland—May 1 Standard Oil Co. of Ohio quoted 8.75¢ for U. S. Motor Gasoline and 9¢ for above 65 octane gasoline in tank cars, delivered anywhere in Ohio. Prices are exclusive of taxes.

5347 Bill Proposes Ban On "Unfair" Imports

Washington, May 1—Congressman Doughton, North Carolina, today introduced a bill (HR 12543) to protect American industry from products produced abroad or imported under unfair methods of competition. The President is authorized following investigation by the Federal Trade Commission to deny entry of "unfairly produced" products tending to destroy or substantially injure an industry, efficiently and economically operated in the United States, or to prevent the establishment of such an industry or to restrain or monopolize trade and commerce in the U. S. Bill has been referred to the Ways and Means Committee, of which Doughton is chairman.

Louisiana Production Allowable Set at 212,725 Bbls. Daily

New Orleans, May 1—The Louisiana crude production allowable for May has been set at 212,725 bbls. daily by the Louisiana Conservation Department. The May figure represents an increase of 10,250 bbls. above the April allowable. The United States Bureau of Mines had estimated that market demand for Louisiana crude would be 170,500 bbls. daily during May.

The Rodessa field was allocated 50,750 bbls. of the total Louisiana allowable.

White Appointed to Bureau of Mines Post

Washington, May 1—Alfred G. White, of Swarthmore, Pa., has been appointed chief of the Petroleum Economics Division of the United States Bureau of Mines, it was learned today.

Alky-Gas Bill Hearing Called Off

Washington, May 1—Hearings on the Lea bill (HR 11398) to set up a fuel research commission for development and promotion of motor fuels made from "renewable sources of supply", scheduled for today, were called off. An effort will be made to hold the hearings sometime next week. Witnesses expected to appear include: Dr. Leo M. Christianson, consulting chemist of the Chemical Foundation, Inc.; Fred Brenckman, of National Grange; and G. W. Jones, of the Cleveland Tractor Co., Cleveland.

Michigan Refiners, Jobbers to Confer on Kerosine Marketing

Chicago, May 1—Conference between Michigan jobbers and refiners on marketing of kerosine refined in the state is to be held May 2 in Lansing.

First conference was held April 9, at the Michigan Petroleum Association's annual convention when jobbers criticized selling of Michigan kerosine to peddlers. Efforts to have committees representing jobbers, major refiners, and Michigan refiners discuss kerosine marketing have not been productive as yet, but meeting between two of these groups will be held tomorrow.

Mid-Continent First Quarter Net Up

Baltimore, May 1—Mid-Continent Petroleum Corp. reports for the quarter ended March 31, 1936 net income of $942,658, after all charges except provision for federal income tax. This is equal to 51¢ a share on 1,843,872 shares (par $10) of capital stock. This compares with net loss of $173,057 the first quarter of 1935.

Pennsylvania Lubricating oils

Cleveland—May 1 quotations and/or sales prices to car unloaders were:

Bright Stock—No. 8 color	
145-155 Vis. at 210, 540-550 flash,	
10 pour test	24-24.50
15 pour test	23-23.50
20 pour test	22-22.50
25 pour test	21-21.50
Cylinder Stocks	
600 s.r. filterable	12.50-13
650 s.r.	13.50-14
600 flash	14.50-15
630 flash	17.50-18
600 Warren E.	15-15.50
Viscous Neutrals—Vis. at 70	
200 (180 at 100) No. 3 color, 420-425 flash,	
0 pour test	22.50-23
10 pour test	21.50-22
15 pour test	21-21.50
25 pour test	20-20.50
180 (165 at 100) No. 3 color, 410-415 flash,	
25 pour test	19-19.50
150 (143 at 100) No. 3 color, 400-405 flash,	
0 pour test	19-19.50
10 pour test	18-18.50
15 pour test	17.50-18
25 pour test	16.50-17

North Louisiana Refinery Market

Shreveport—May 1 prices for shipment within Louisiana and into Arkansas were:

U. S. Motor Gasoline	
62 octane & below	5.75
63 to 67 octane	6.50
68 to 70 octane (regular)	6.75
41-43 w.w. kerosine	4.50-4.625
No. 2 fuel oil	3.25
U. G. I. gas oil	2.875-3
20-24 fuel oil	$1.05-1.10
16-20 fuel oil	$0.95-1.00
10-14 fuel oil	$0.70-0.75

5348 GOVERNMENT EXHIBIT NO. 731.

Stipulation

Of the persons whose names appear on the documents covered by this stipulation and are hereinafter referred to, J. W. Carnes is General Sales Manager, Sinclair Refining Company, New York, N. Y.; H. H. Fuller is Manager of Bulk Sales, Sinclair Refining Company, New York, N. Y.; A. H. Sus is District Manager, Central District, Sinclair Refining Company, Chicago, Illinois; J. V. Dippel is District Manager, Western District, Sinclair Refining Company, Kansas City, Missouri; V. R. Tomlinson is Attorney, Southwestern District, Sinclair Refining Company, Fort Worth, Texas; W. A. Tracey is Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas; D. A. McDougald is a clerk in the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y.; D. D. Ginter is order and shipping clerk Western District, Sinclair Refining Company, Kansas City, Missouri; F. J. Carter is order and shipping clerk, Central District, Sinclair Refining Company, Chicago, Illinois; F. M. Boettner is a clerk in Tracey's Office; Miss K. C. Wells is secretary to J. W. Carnes; A. H. Blocker is a stenographer in Tracey's office.

Each of the above persons held the same positions at the time the documents referred to upon which their names or initials appear were written.

W. T. Dinkins was District Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas during the years 1934, 1935 and 1936; and until about April 1, 1937.

Wherever used in the documents covered by this stipulation, JWC refers to J. W. Carnes, HHF refers to H. H. Fuller; AHS refers to A. H. Sus, JVD refers to J. V. Dippel; Tomlinson refers to V. R. Tomlinson; Tracey and WAT refer to W. A. Tracey; McD refers to D. A. McDougald; DDG refers to D. D. Ginter; FMB refers to F. M. Boettner, KCW and W refer to Miss K. C. Wells, AHB refers to A. H. Blocker; WTD refers to W. T. Dinkins; and S. R. Co. refers to Sinclair Refining Company.

Exhibit 345 was written by J. W. Carnes and was received at the office of the Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas. Exhibit 346 was written by D. A. McDougald and was received at the office of the Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas, and at the office of the District Manager, Western District, Sinclair Refining Company, Kansas City, Missouri. Exhibit 347 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 350 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair 5349 Refining Company, New York, N. Y. Exhibit 351 was written by J. W. Carnes and was received at the office of the Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas. Exhibit 352 was written by J. W. Carnes and was received at the office of the Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas. Exhibit 353 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 356 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. and at the office of the Manager of Bulk Sales, Sinclair Refining Company, New York, N. Y. Exhibit 358 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 359 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 360 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 362 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 365 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 369 was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 370 was written by Miss K. C. Wells and was received by J. W. Carnes. Exhibit 415 was written by W. A. Tracey and was received at the office of

the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 416 was written by W. A. Tracey and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 417 was written by W. A. Tracey and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 421 was written by W. A. Tracey and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 424 was written by J. W. Carnes and was received at the office of the Bulk Sales Manager, Southwestern District, Sinclair Refining Company, Fort Worth, Texas. Exhibit 426 was written by W. A. Tracey or F. M. Boettner and was mailed addressed as indicated. Exhibit 430 was written by W. A. Tracey and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 432 was written by W. A. Tracey and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit 442 was written by W. A. Tracey or F. M. Boettner or A. H. Blocker and was received at the office of the General Sales Manager, Sinclair Refining Company, New York, N. Y. Exhibit
5350 450 was written by W. A. Tracey and was received at
the office of the District Manager, Western District, Sinclair Refining Company, Kansas City, Missouri. The stipulation that a document was received at a certain office is not to be taken as a stipulation that it was seen by any particular person in that office or by the person to whom it was addressed. Copies may be used in lieu of originals.

All pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5351
DEFENSE EXHIBIT NO. 733.

5352 November 3, 1937.

Annexed hereto is a set of organization charts of Tide Water Oil Company of Oklahoma, Tide Water Oil Company of New Jersey, Tide Water Oil Company of Delaware, Associated Oil Company of California and Tide Water Associated Oil Company of Delaware.

In the 1934-1935 term of office it will be noted that all of the outside Directors of Tide Water Oil Company of New Jersey were Directors of Tide Water Associated Oil Company of Delaware, but five of the outside Directors of Associated Oil Company of California were not Directors of Tide Water Associated Oil Company of Delaware.

In the 1935-1936 term of office practically the same condition held true as above noted. In the term of office, however from the Annual Meetings in 1936 to the merging of Tide Water Oil Company of Delaware, Associated Oil Company of California and Tide Water Associated Oil Company of Delaware, Mr. Frank Haskell was an outside Director of Tide Water Oil Company of New Jersey, and subsequently of Tide Water Oil Company of Delaware, but was not a member of the Board of Directors of Tide Water Associated Oil Company of Delaware.

Throughout the whole series of the terms of office, excluding the Treasurers and Secretaries, Messrs. Humphrey, Shea and McKelvey were the only individuals to hold office both in Tide Water Oil Company of New Jersey and Tide Water Associated Oil Company of Delaware. There were three other officers in Tide Water Oil Company of New Jersey and five officers in Associated Oil Company of California who held no position in Tide Water Associated Oil Company of Delaware.

In the Directorates, Messrs. Humphrey, Shea, Salrin and McKelvey were Directors of both Tide Water Oil Company of New Jersey and Tide Water Associated Oil Company of Delaware. Noel Robinson was a Director of Tide Water Oil Company of New Jersey and subsequently Tide Water Oil Company of Delaware, but was never a Director of Tide Water Associated Oil Company of Delaware until a date subsequent to the merging of Tide Water Oil Company of Delaware, Associated Oil Company of California and Tide Water Associated Oil Company of Delaware on November 30, 1936. Actually Noel Robinson did not become an Officer and Director of Tide Water Associated Oil

Company of Delaware until December 17, 1936. There were four officers of Associated Oil Company of California that were never Directors of Tide Water Associated Oil Company of Delaware until a date subsequent to the merging of Tide Water Oil Company of Delaware, Associated Oil Company of California and Tide Water Associated Oil Company of Delaware.

5353 Tide Water Associated Oil Co. of Del.

From Reorganization 12/14/36—12/17/36
To Annual Meeting 5/6/37

Chairman, Board of Directors	None
President	William F. Humphrey
Executive Vice President	Edward L. Shea
Vice Presidents	Robert McKelvy Edward H. Salrin Ralph B. Pringle Noel Robinson Lloyd F. Bayer B. I. Graves L. D. Jurs C. R. Barton J. D. Collins L. C. Decius G. J. Hanks J. H. Jenkins R. E. Ryerson
Treasurer	Kenneth R. Hankinson
Secretary	William J. Burker
Directors a) Company Officers	William F. Humphrey Edward L. Shea Robert McKelvy Edward H. Salrin Ralph B. Pringle Noel Robinson Lloyd F. Bayer B. I. Graves L. D. Jurs

b) Outside

Adolphe Boissevain
George N. Armsby
Henry W. de Forest
Elisha Walker
H. Paul Grimm
Paul Shoup
Alden Anderson
Robert M. Sands
Frank Haskell
C. M. Cadman
J. A. Chansler
J. F. Forbes
J. A. McCarthy

10/20/37

N. R.

Defense Exhibit No. 733.

TERM OF OFFICE

	Tide Water Oil Co. of Okla. From Annual Meeting 5/6/36 To Dissolution 11/12/36	Tide Water Oil Co. of N. J. From Annual Meeting 5/6/36 to 9/3/36 Tide Water Oil Co. of Del. From Organization 7/23/36 To Merger with T. W. A. 11/30/36	Associated Oil Co. of Cal. From Annual Meeting 4/7/36 To Merger with T. W. A. 11/30/36	Tide Water Associated Oil Co. of Del. From Annual Meeting 5/7/36 to Reorganization subsequent to Merging of T. W. and of A. into T. W. A. on 11/30/36. Date of Reorganization 12/14/36 – 12/17/36
Chairman, Board of Directors	None	William F. Humphrey	None	None
President	Edward L. Shea	Edward L. Shea	William F. Humphrey	William F. Humphrey
Vice-Presidents 1st V.P.	Edward H. Salrin Ralph B. Pringle C. R. Barton John W. Warner J. R. Gahan	Robert McKelvy Edward H. Salrin Ralph B. Pringle Noel Robinson	Edward L. Shea Lloyd F. Bayer B. I. Graves J. H. Jenkins L. D. Jurs W. A. Sloan	Edward L. Shea Robert McKelvy
Treasurer	Kenneth R. Hankinson	Kenneth R. Hankinson	W. A. Sloan	Kenneth R. Hankinson
Secretary	Y. P. Broome	William J. Burker	J. P. Edwards	William J. Burker
Directors (a) Company Officers	Edward L. Shea Edward H. Salrin Ralph B. Pringle John W. Warner Y. P. Broome	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy Noel Robinson William J. Burker (Succeeded F. I. Fallon 7/22/36)	William F. Humphrey Lloyd F. Bayer B. I. Graves L. D. Jurs	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy
(b) Outside		Frank Haskell George N. Armsby Henry W. de Forest Elisha Walker H. Paul Grimm Paul Shoup	H. Paul Grimm Paul Shoup Alden Anderson Robert M. Sands F. H. Buck C. M. Cadman J. A. Chanslor J. F. Forbes J. A. McCarthy	Adolphe Boissevain George N. Armsby Henry W. de Forest Elisha Walker H. Paul Grimm Paul Shoup Alden Anderson Robert M. Sands

10/20/37

5355 Exhibit No. 733C

1935 - 1936

TERM OF OFFICE

	Tide Water Oil Co. of Okla. (Owned 100% by Tide Water of N. J.)	Tide Water Oil Co of N. J.	Associated Oil Co. of Cal.	Tide Water Associated Oil Co. of Del.
Chairman, Board of Directors	None	William F. Humphrey	None	None
President	Edward L. Shea	Edward L. Shea	William F. Humphrey	William F. Humphrey
Vice-Presidents 1st V.P.	Edward H. Salrin Ralph B. Pringle C. R. Barton J. W. Warner J. R. Gahan	Robert McKelvy Edward H. Salrin Ralph B. Pringle (Elec. 10/24/35) Noel Robinson	Edward L. Shea Lloyd F. Bayer B. I. Graves J. H. Jenkins L. D. Jurs W. A. Sloan	Edward L. Shea Robert McKelvy
Treasurer	Kenneth R. Hankinson	Kenneth R. Hankinson	W. A. Sloan	Kenneth R. Hankinson
Secretary	Y. P. Broome	William J. Burker	J. P. Edwards	William J. Burker
Directors				
(a) Company Officers	Edward L. Shea Edward H. Salrin Ralph B. Pringle J. W. Warner Y. P. Broome	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy Noel Robinson Francis I. Fallon	William F. Humphrey Lloyd F. Bayer B. I. Graves L. D. Jurs	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy
(b) Outside		George N. Armsby Henry W. de Forest Elisha Walker J. Paul Getty H. Paul Grimm Paul Shoup	H. Paul Grimm Paul Shoup Alden Anderson F. H. Buck C. M. Cadman J. A. Chanslor J. F. Forbes J. A. McCarthy	Adolphe Boissevain George N. Armsby Henry W. de Forest Elisha Walker J. Paul Getty H. Paul Grimm Paul Shoup Alden Anderson

TERM OF OFFICE

	Tide Water Oil Co. of Okla. (Owned 100% by Tide Water of N. J.)	Tide Water Oil Co. ‿ N. J.	Associated Oil Co. of Cal.	Tide Water Associated Oil Co. of Del.
Chairman, Board of Directors	None	William F. Humphrey	None	None
President	Edward L. Shea	Edward L. Shea	William F. Humphrey	William F. Humphrey
Vice-Presidents 1st V.P.	Edward H. Salrin Ralph B. Pringle C. R. Barton J. W. Warner J. R. Gahan	Robert McKelvy Edward H. Salrin Noel Robinson	Edward L. Shea Lloyd F. Bayer B. I. Graves J. H. Jenkins L. D. Jurs W. A. Sloan	Edward L. Shea Robert McKelvy Paul Shoup (Resigned 2/8/35)
Treasurer	Kenneth R. Hankinson	Kenneth R. Hankinson	W. A. Sloan	Kenneth R. Hankinson
Secretary	Y. P. Broome	William J. Burker	J. P. Edwards	William J. Burker
Directors (a) Company Officers	Edward L. Shea Edward H. Salrin Ralph B. Pringle J. W. Warner Y. P. Broome	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy Noel Robinson Francis I. Fallon	William F. Humphrey Lloyd F. Bayer B. I. Graves L. D. Jurs J. P. Edwards	William F. Humphrey Edward L. Shea Edward H. Salrin Robert McKelvy
(b) Outside		George N. Armsby Henry W. de Forest Elisha Walker J. Paul Getty H. Paul Grimm Paul Shoup	H. Paul Grimm Paul Shoup Alden Anderson F. H. Buck C. M. Cadman J. A. Chansler J. F. Forbes J. A. McCarthy	William A. Coulter (Resigned 2/8/35) Adolphe Boissevain (Succeed W. A. Coulter 2/8/35) George N. Armsby Henry W. de Forest Elisha Walker J. Paul Getty H. Paul Grimm Paul Shoup Alden Anderson

10/20/37

N. R.

5357

DEFENSE EXHIBIT NO. 735.

5358

Tide Water Oil Co. Revised 9-29-37

EAST TEXAS SPOT MARKET PURCHASES FOR RESALE TO OTHERS

Period January 1, 1931 to December 31, 1936

Refiner	Actual Purchase Date	Purchase Order		Cars		Number of Cars Purchased		Pr. Basis	Shipment Date	Gallons Shipped	
		Date	Number	Buyers	Others	Reg.	3rd Grade			Reg.	3rd Grade
Altitude Petroleum Corp.	5-24-34	5-25-34	P-60	1			1	Flat	5-25-34		7,949
	(1)	6-14-34	P-57	5			5	Flat	6-15-34		7,973
								Flat	6-15-34		8,008
								Flat	6-15-34		8,039
								Flat	6-16-34		8,075
								Flat	6-16-34		7,991
	6-15-34	6-15-34	P-90	1			1	Flat	6-17-34		8,104
	6-14-34	6-14-34	P-88	2			2	Flat	6-17-34		8,115
								Flat	6-16-34		7,969
	6-29-34	6-29-34	P-114	1			1	Flat	6-29-34		7,916
							10				80,139
Century Refining Company ...	7- 1-35	7- 2-35	P-376		6		6	Flat	7- 2-35		8,127
									7- 2-35		8,127
									7- 3-35		7,938
									7- 3-35		7,912
									7- 5-35		7,947
									7- 5-35		7,920
							6				47,971
East Texas Refining Company.	7-30-35	7-30-35	P-390		2		2	Flat	8- 6-35		7,962
								Flat	8- 6-35		7,965
	8- 9-35	8- 9-35	P-411		3		3	Flat	8-17-35		7,982
									8-17-35		7,984
									8-20-35		7,940

EAST TEXAS SPOT MARKET PURCHASES FOR RESALE TO OTHERS

Period January 1, 1931 to December 31, 1936

Refiner	Actual Purchase Date	Purchase Order Date	Purchase Order Number	Purchase Order Cars Buyers	Purchase Order Cars Others	Number of Cars Purchased Reg.	Number of Cars Purchased 3rd Grade	Pr. Basis	Shipment Date	Gallons Shipped Reg.	Gallons Shipped 3rd Grade
Grogan Oil Company	9-21-35	9-23-35	P-440		3		3	Flat	9-21-35		8,059 7,957 7,962
	(1)	12-13-35	P-480		1		1	Flat	12-16-35		8,068
							4				32,066
Kilgore Refining Company	6- 8-34	6-11-34	P-81		1		1	Flat	6-11-34		7,972
	(1)	6-13-34	P-86		1		1	Flat	6-14-34		7,953
	6-15-34	6-15-34	P-91		1		1	Flat	6-16-34		8,072
							3				23,997
Marathon Oil Co	(1)	4-11-34	P-51	1			1	1/8 under low quot. on U. S. M. under 59 Octane in Chicago Journal 4-11	4-14-34		8,148
	4-14-34	4-14-34	P-50	1			1	Flat	4-17-34		8,036
	4-16-34	4-16-34	P-52	1			1	Flat	4-25-34		8,028
	4-25-34	4-25-34	P-66	1			1	Flat	4-27-34		8,046
							4				32,258
Overton Refining Company	6- 7-34	6- 7-34	P-80	1			1	Flat	6- 9-34		8,031
	(1)	6-12-34	P-85	1			1	Flat	6-14-34		8,002

Tide Water Oil Co. Revised 9-29-37

Refiner	Actual Purchase Date	Purchase Order		Cars		Number of Cars Purchased		Pr. Basis	Shipment	Gallons Shipped	
		Date	Number	Buyers	Others	Reg.	3rd Grade		Date	Reg.	3rd Grade
Overton Refining Co. (Cont'd)	6- 8-34	6-12-34	P-84	1			1	Flat	6-14-34		8,003
	(1)	6-20-34	P-98	3			3	Flat	6-22-34		7,978
								Flat	6-23-34		7,936
								Flat	6-23-34		7,949
	6-18-34	6-18-34	P-95	2			2	Flat	6-21-34		7,876
								Flat	6-21-34		7,985
	6-19-34	6-19-34	P-96	1			1	Flat	6-22-34		7,908
	6-21-34	6-21-34	P-101	1			1	Flat	6-23-34		7,916
	(1)	6-20-34	P-100	4			4	Flat	6-26-34		7,906
								Flat	6-23-34		7,984
								Flat	6-23-34		7,908
								Flat	6-26-34		7,985
	6-27-34	6-27-34	P-109	1			1	Flat	6-28-34		7,944
	6-27-34	6-28-34	P-110	2			2	Flat	6-28-34		7,934
								Flat	6-29-34		7,974
	6-30-34	7- 2-34	P-115	2			2	Flat	6-30-34		7,899
									7- 1-34		7,983
	6-26-34	6-26-34	P-106	1			1	Flat	6-27-34		7,985
	(1)	6-28-34	P-111	2			2	Flat	6-30-34		7,894
								Flat	6-30-34		7,985
	(1)	7- 2-34	P-116	2			2	Flat	7- 4-34		8,026
								Flat	7- 4-34		7,975
	(1)	7- 6-34	P-125	3			3	Flat	7- 6-34		8,006
									7- 7-34		8,006
									7- 7-34		7,887
	(1)	7- 5-34	P-123		2		2	Flat	7- 6-34		8,017
								Flat	7- 6-34		8,014
	7- 3-34	7- 5-34	P-121	5			5	Flat	7- 4-34		8,020
									7- 5-34		7,992
									7- 5-34		7,988
									7- 5-34		7,932
									7- 6-34		8,026
	(1)	7- 3-34	P-114	1			1	Flat	7- 4-34		8,029
	7- 7-34	7- 9-34	P-128	3			3	Flat	7- 8-34		8,029
								Flat	7- 8-34		[illegible]

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	7- 9-34	7-10-34	P-130	2	3	5	Flat	7-10-34	8,008
							Flat	7-10-34	7,974
							Flat	7-10-34	8,010
							Flat	7-10-34	7,962
							Flat	7-10-34	7,999
	7-11-34	7-11-34	P-137	2		2	Flat	7-12-34	7,953
							Flat	7-12-34	8,003
	7-12-34	7-12-34	P-138	1		1	Flat	7-13-34	7,886
	7-14-34	7-14-34	P-141	2		2	Flat	7-18-34	8,024
							Flat	7-18-34	7,918
						47			374,597
Panama Refining Company....	6-22-34	6-22-34	P-103	4		4	Flat	6-26-34	8,060
							Flat	6-26-34	8,060
5362									
Panama Refining Company....							Flat	6-26-34	8,065
								6-28-34	8,076
			To Beloit Bulk Plant			4			32,261
Taylor Refining Co...........	1- 9-33	1-10-33	P-1890	4	1	5	Flat	1-12-33	8,267
								1-14-33	8,109
								1-17-33	8,134
								1-17-33	8,133
								1-13-33	8,043
	1-25-33	1-25-33	P-1913	1		1	Flat	1-25-33	8,079
	2-23-33	2-23-33	P-1951	2		2	Flat	2-26-33	8,030
								2-25-33	7,993
	3- 2-33	3- 2-33	P-1955		1	1	Flat	3- 5-33	8,202
	3-17-33	3-17-33	P-1975	2		2	Flat	3-18-33	8,049
								3-18-33	8,033
	3-18-33	3-18-33	P-1977	2		2	Flat	3-20-33	8,057
								3-19-33	8,031
	3-23-33	3-23-33	P-1980	1		1	Flat	3-24-33	8,065
	3-30-33	3-30-33	P-1990	1		1	Flat	3-31-33	8,015
	4-11-33	4-11-33	P-2003	1		1	Flat	4-12-33	8,026
	4-19-33	4-19-33	P-2011	5		5	Flat	4-20-33	8,026
								4-20-33	7,980
								4-20-33	8,035
								4-20-33	7,997
								4-20-33	8,014

Tide Water Oil Co. Revised 9-29-37

Refiner	Actual Purchase Date	Purchase Order Date	Purchase Order Number	Purchase Order Cars Buyers	Purchase Order Cars Others	Number of Cars Purchased Reg.	Number of Cars Purchased 3rd Grade	Pr. Basis	Shipment Date	Gallons Shipped Reg.	Gallons Shipped 3rd Grade
Taylor Refining Co.	(1)	4-20-33	P-2013	5			5	Flat	4-20-33		7,989
									4-23-33		8,019
									4-23-33		7,999
	(1)	4-26-33	P-2016	5					4-23-33		7,992
							5	Flat	4-23-33		8,027
									4-28-33		8,075
									4-28-33		8,085
									5- 3-33		8,080
				To Beloit Bulk Plant					5- 3-33		7,998
	(1)	5-11-33	P-2028	4					4-28-33		8,024
							4		5-13-33		8,039
									5-13-33		7,962
									5-14-33		7,951
	5-18-33	5-18-33	P-2034	1					5-14-33		7,965
	5-20-33	5-20-33	P-2038	1			1		5-20-33		7,955
	5-24-33	5-24-33	P-2040	1			1		5-21-33		7,959
							1		5-25-33		7,989
							38				305,426
Texas Oil Products Co.	(1)	12- 5-34	P-296	2			2	Low quot. on U. S. M. under 62 Octane in Chicago Journal date of shipment	12- 7-34		8,212
									12- 7-34		8,213
	(1)	1-15-35	P-306	1			1	Flat	1-15-35		8,144
							3				24,569
Union Refining Co.	7-11-34	7-11-34	P-136	25							

							7-12-34	8,037
							7-13-34	7,925
							7-24-34	7,934
							7-26-34	7,983
							7-27-34	7,996
							7-28-34	7,968
							7-29-34	7,921
							7-29-34	7,898
				To Beloit Bulk Plant			7-28-34	7,978
							8- 1-34	7,984
							8- 2-34	7,988
							8- 2-34	7,978
							8- 4-34	7,904
							8- 6-34	7,857
							8- 6-34	7,965
							8- 6-34	7,897
							8- 6-34	7,911
							8- 7-34	7,957
							8- 7-34	7,874
							8- 9-34	7,977
							8-10-34	7,995
							8-12-34	7,879
							8-14-34	7,947
							8-23-34	7,954
8-14-34	8-14-34	P-167	2		2	Flat	8-16-34	7,958
							8-16-34	7,969
(1)	8-18-34	P-171	1		1	Flat	8-23-34	7,954
8-17-34	8-17-34	P-170	1		1	Flat	8-23-34	7,960
(1)	8-24-34	P-181	1		1	Flat	8-27-34	7,864
8-27-34	8-27-34	P-182	1		1	Flat	8-30-34	7,854
(1)	8-23-34	P-179	2		2	Flat	8-27-34	7,887
							8-27-34	7,995
(1)	8-30-34	P-189	1	To Beloit Bulk Plant	1	Flat	9- 1-34	7,983
8-28-34	8-28-34	P-187	1		1	Flat	8-30-34	7,964
(1)	8-31-34	P-194	1		1	Flat	9- 1-34	7,957
9- 1-34	9- 4-34	P-195	1		1	Flat	9- 3-34	7,967
(1)	9- 4-34	P-198	1		1	Flat	9- 6-34	8,016
(1)	9- 6-34	P-201	1		1	Flat	9- 7-34	8,072
(1)	9-12-34	P-208	2		2	Flat	9-13-34	7,996
							9-13-34	7,809

Tide Water Oil Co. Revised 9-29-37

Refiner	Actual Purchase Date	Purchase Order Date	Purchase Order Number	Purchase Order Cars Buyers	Purchase Order Cars Others	Number of Cars Purchased Reg.	Number of Cars Purchased 3rd Grade	Pr. Basis	Shipment Date	Gallons Shipped Reg.	Gallons Shipped 3rd Grade
Union Refining Co.	(1)	9-10-34	P-205	1			1	Flat	9-11-34		8,006
	(1)	9-11-34	P-206	1			1	Flat	9-12-34		8,004
	(1)	9-14-34	P-212	1			1	Flat	9-15-34		7,935
	(1)	9-17-34	P-213	2			2	Flat	9-16-34		7,879
									9-16-34		7,990
	(1)	9-20-34	P-218	1			1	Flat	9-21-34		7,937
	(1)	9-19-34	P-217	1			1	Flat	9-20-34		7,951
	9-22-34	9-24-34	P-221	2			2	Flat	9-23-34		8,004
									9-23-34		7,927
	(1)	9-26-34	P-225	3			3	Flat	9-28-34		7,993
									9-28-34		7,985
									9-28-34		7,003
	(1)	9-25-34	P-224	1	1		1	Flat	9-26-34		7,821
	(1)	9-24-34	P-223	1			1	Flat	9-26-34		7,915
	9-29-34	9-29-34	P-231	2			2	Flat	9-30-34		7,996
									9-30-34		7,907
	(1)	10- 4-34	P-238	1			1	Flat	10- 5-34		8,021
	(1)	10- 3-34	P-236	1			1	Flat	10- 5-34		7,944
	(1)	10- 6-34	P-242	2			2	Flat	10- 7-34		8,003
					To Beloit Bulk Plant			Flat	10- 8-34		8,026
	10- 4-34	10- 5-34	P-240	1			1	Flat	10- 7-34		7,936
	(1)	10- 8-34	P-243	1			1	Flat	10- 9-34		8,000
	10- 9-34	10- 9-34	P-244	3			3	Flat	10-10-34		7,992
								Flat	10-10-34		8,006
								Flat	10-10-34		7,935
	10-12-34	10-12-34	P-247	2			2	Flat	10-13-34		8,024
								Flat	10-16-34		7,953
	(1)	10-18-34	P-252	1			1	Flat	10- 8-34		8,026
	(1)	10-22-34	P-255	1			1	Flat	10-23-34		7,923
	10-13-34	10-15-34	P-249	1			1	Flat	10-15-34		8,004
							71				565,131

SUMMARY

(1) The only purchase date information available is date of purchase order.
(2) Price Basis is f. o. b. Group 3.

Purchases from Members of the Association:

	Number of Cars	Gallons	Total
Century Refining Company	6	47,971	
East Texas Refining Company	5	39,852	
Grogan Oil Company	4	32,066	
Texas Oil Products Company	3	24,569	
			144,458

Purchases from Non-Members of the Association:

	Number of Cars	Gallons	Total
Altitude Petroleum Corporation	10	80,139	
Kilgore Refining Company	3	23,997	
Marathon Oil Company	4	32,258	
Overton Refining Company	47	374,597	
Panama Refining Company	4	32,261	
Taylor Refining Company	38	305,426	
Union Refining Company	71	565,131	
			1,413,809
			1,558,267

5368 DEFENSE EXHIBIT NO. 739.

THE PURE OIL COMPANY

5369 Source of Supply and Disposition of Gasoline by Months from January 1931 to June 1937 Inclusive
(Quantities in Gallons)

Year and Month	Gasoline Manufactured by Pure from Crude Oil and Natural Gasoline	Gasoline Purchased by Pure From Other Than Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Purchased by Pure From Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Acquired by Pure Through Processing Contracts with Other Refiners	Total	Gasoline Sales
1931								
Jan.	36,459,089	584,999	37,044,088	16,499	37,060,587		37,060,587	30,350,695
Feb	33,114,879	407,631	33,522,510	16,274	33,538,784		33,538,784	28,393,924
March	40,455,702	1,082,333	41,538,035		41,538,035		41,538,035	32,909,317
April	37,913,455	843,848	38,757,303		38,757,303		38,757,303	39,465,599
May	36,105,790	817,794	36,923,584	48,650	36,972,234		36,972,234	44,032,897
June	42,392,672	515,009	42,907,681	7,983	42,915,664		42,915,664	47,267,526
July	40,281,081	492,330	40,773,411		40,773,411		40,773,411	52,353,117
Aug	43,773,661	720,430	44,494,091	23,992	44,518,083		44,518,083	47,863,949
Sept	40,410,340	651,227	41,061,567	27,899	41,089,466		41,089,466	44,526,216
Oct	45,648,862	594,975	46,243,837	82,602	46,326,439		46,326,439	44,140,857
Nov	43,306,405	733,838	44,040,243	32,170	44,072,413		44,072,413	41,989,004
Dec	45,793,494	757,180	46,550,674	63,953	46,614,627		46,614,627	40,450,723
1932								
Jan.	44,123,244	685,541	44,808,785	63,717	44,872,502		44,872,502	35,945,272
Feb	40,025,595	765,851	40,791,446	28,659	40,820,105		40,820,105	32,782,405
March	40,993,751	476,753	41,470,504	30,360	41,500,864		41,500,864	37,586,008
April	41,298,213	828,876	42,127,089	23,946	42,151,035		42,151,035	42,264,642
May	43,091,655	551,368	43,643,023	14,010	43,657,033		43,657,033	42,995,918
June	42,646,624	625,111	43,271,735	31,891	43,303,626		43,303,626	54,355,288
July	40,628,554	850,729	41,479,283	15,689	41,494,972		41,494,972	36,845,811
Aug	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]

Source of Supply and Disposition of Gasoline by Months from January 1931 to June 1937 Inclusive
(Quantities in Gallons)

Year and Month.	Gasoline Manufactured by Pure from Crude Oil and Natural Gasoline	Gasoline Purchased by Pure From Other Than Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Purchased by Pure From Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Acquired by Pure Through Processing Contracts with Other Refiners	Total	Gasoline Sales
Sept.........	40,417,450	1,868,294	42,285,744	23,931	42,309,675		42,309,675	46,125,804
Oct.........	40,298,043	967,731	41,265,774	79,107	41,344,881		41,344,881	44,747,531
Nov.........	42,639,206	799,084	43,438,290	50,841	43,489,131		43,489,131	41,624,992
Dec.........	42,666,645	1,019,703	43,686,348	66,131	43,752,479		43,752,479	38,615,438
1933.								
Jan.........	40,309,460	1,341,837	41,651,297	32,862	41,684,159		41,684,159	38,142,514
Feb.........	39,004,499	1,222,438	40,226,937	20,628	40,247,565		40,247,565	32,996,715
March......	39,713,815	1,476,889	41,190,704	28,663	41,219,367		41,219,367	38,523,882
April.......	36,734,240	1,201,745	37,935,985	14,327	37,950,312		37,950,312	40,054,500
May.........	41,884,228	2,310,086	44,194,314	24,078	44,218,392		44,218,392	45,235,157
June.........	37,541,774	4,020,190	41,561,964	32,041	41,594,005		41,594,005	50,914,415
July.........	41,936,660	2,096,121	44,032,781	302,215	44,334,996		44,334,996	40,210,610
Aug.........	40,512,148	2,862,052	43,374,200	41,670	43,415,870		43,415,870	47,321,053
Sept.........	46,584,019	3,098,328	49,682,347	86,298	49,768,645		49,768,645	44,824,627
Oct.........	41,613,550	6,787,313	48,400,863	48,799	48,449,622		48,449,662	40,210,391
Nov.........	38,018,230	3,438,981	41,457,211		41,457,211		41,457,211	39,226,483
Dec.........	39,129,919	1,480,920	40,610,839	16,185	40,627,024		40,627,024	32,010,575
1934								
Jan.........	35,544,468	1,514,072	37,058,540	8,068	37,066,608		37,066,608	40,002,399
Feb.........	31,083,881	841,131	31,925,012		31,925,012		31,925,012	35,236,382
March......	34,955,975	735,915	35,691,890	32,521	35,724,411		35,724,411	37,035,450
Apr.........	38,360,769	234,856	38,595,625	32,257	38,627,882		38,627,882	40,225,032
May.........	38,492,146	674,565	39,166,711	825,445	39,992,156		39,992,156	45,705,307
June.........	34,565,193	484,529	35,049,722	40,704	35,090,426		35,090,426	43,751,063
July.........	40,966,143	938,791	41,904,934	544,145	42,449,079		42,449,079	46,202,377
Aug.........	40,029,432	1,653,266	41,682,698	669,722	42,352,420		42,352,420	47,967,129

(Quantities in Gallons)

Year and Month	Gasoline Manufactured by Pure from Crude Oil and Natural Gasoline	Gasoline Purchased by Pure From Other Than Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Purchased by Pure From Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Acquired by Pure Through Processing Contracts with Other Refiners	Total	Gasoline Sales
Sept	41,477,781	1,694,378	43 172,159	780,576	43,952,735		43,952,735	45,163,322
Oct	40,437,307	3,731,687	44,168,994	480,989	44,649,983		44,649,983	48,026,940
Nov	43,362,262	1,773,404	45,135,666	123,036	45,258,702		45,258,702	47,736,174
Dec	44,008,690	4,145,199	48,153,889	81,887	48,235,776		48,235,776	43,225,031
1935								
Jan	43,210,340	1,026,920	44,237,260	8,110	44,245,370		44,245,370	41,353,338
Feb	41,539,256	856,025	42,395,281		42,395,281	2,115,647	44,510,928	37,793,121
Mar	39,734,765	2,167,435	41,902,200	242,551	42,144,751	4,501,704	46,646,455	46,485,159
Apr	42,231,391	1,157,697	43,389,088	636,813	44,025,901	5,393,629	49,419,530	48,120,028
May	42,280,243	1,135,257	43,415,500	872,437	44,287,937	6,119,108	50,407,045	50,511,217
June	43,170,114	1,628,968	44,799,082	1,528,175	46,327,257	7,710,789	54,038,046	48,541,939
July	44,805,584	2,497,137	47,302,721	1,328,734	48,631,455	4,550,929	53,182,384	54,865,060
Aug	45,959,538	1,928,425	47,887,963	1,081,632	48,969,595	6,952,429	55,922,024	55,034,381
Sept	46,588,997	1,564,153	48,153,150	1,344,700	49,497,850	4,226,633	53,724,483	49,458,069
Oct	47,388,566	2,227,141	49,615,707	969,747	50,585,454	6,642,940	57,228,394	55,374,085
Nov	43,003,049	1,594,900	44,597,949	1,055,695	45,653,644	5,418,416	51,072,060	51,233,056
Dec	47,145,436	1,122,406	48,267,842	1,270,911	49,538,753	6,005,012	55,543,765	49,202,956
1936								
Jan	46,808,002	1,577,003	48,385,005	1,423,275	49,808,280	3,742,573	53,550,853	45,770,091
Feb	42,249,655	703,244	42,952,899	1,820,103	44,773,002	5,635,198	50,408,200	42,135,186
Mar	42,190,006	2,174,751	44,364,757	1,596,470	45,961,227	4,462,048	50,423,275	48,237,680
Apr	41,275,131	1,187,096	42,462,227	1,791,239	44,253,466	8,843,131	53,096,597	53,738,182
May	43,175,678	1,912,512	45,088,190	1,270,170	46,358,360	6,220,391	52,578,751	57,212,060
June	42,990,139	2,001,227	44,991,366	[illegible]	[illegible]	7,729,614	[illegible]	[illegible]

Defense Exhibit No. 739.

THE PURE OIL COMPANY

5372

Source of Supply and Disposition of Gasoline by Months from January 1931 to June 1937 Inclusive
(Quantities in Gallons)

Year and Month	Gasoline Manufactured by Pure from Crude Oil and Natural Gasoline	Gasoline Purchased by Pure From Other Than Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Purchased by Pure From Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Acquired by Pure Through Processing Contracts with Other Refiners	Total	Gasoline Sales
Sept	43,256,292	2,549,435	45,805,727	1,301,298	47,107,025	9,921,507	57,028,532	60,994,095
Oct	44,846,117	2,319,831	47,165,948	1,281,613	48,447,561	6,528,913	54,976,474	58,511,534
Nov	45,210,275	2,379,260	47,589,535	1,208,308	48,797,843	5,140,411	53,938,254	57,443,244
Dec	50,022,480	2,081,308	52,103,788	1,197,231	53,301,019	6,274,552	59,575,571	55,411,620
1937								
Jan	50,672,737	1,525,899	52,198,636	1,267,017	53,465,653	7,577,542	61,043,195	50,192,486
Feb	46,598,642	1,267,240	47,865,882	1,210,192	49,076,074	6,941,093	56,017,167	45,460,838
Mar	46,058,973	5,572,339	51,631,312	1,170,502	52,801,814	9,023,708	61,825,522	57,932,012
Apr	48,022,074	1,920,893	49,942,967	957,823	50,900,790	8,620,207	59,520,997	53,168,188
May	52,196,164	1,192,729	53,388,893	1,167,040	54,555,933	4,733,451	59,289,384	61,953,632
June	49,965,119	1,122,976	51,088,095	1,056,290	52,144,385	8,131,524	60,275,909	63,301,316

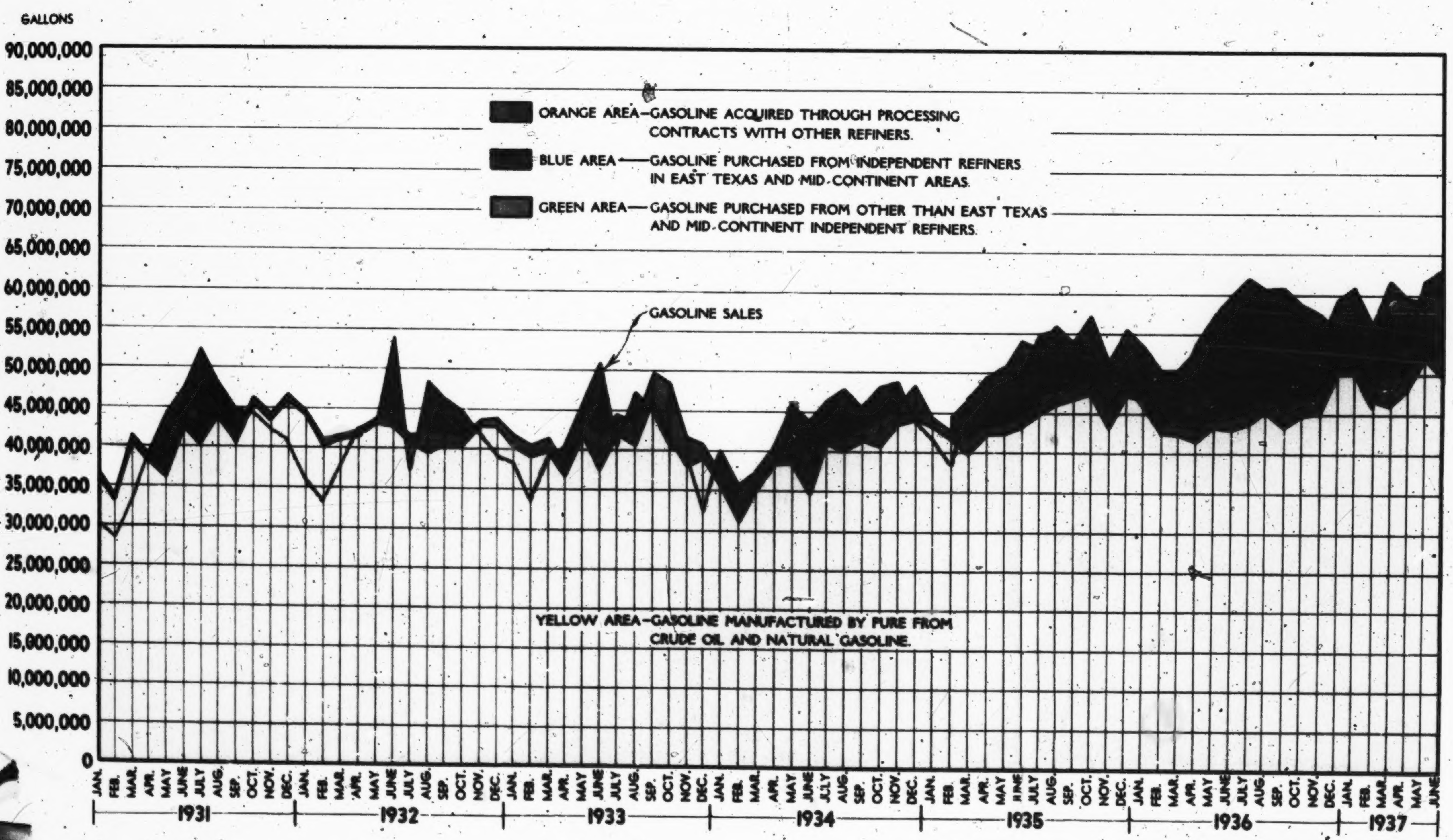

CHART No. I MAP 4-A

5374 DEFENSE EXHIBIT NO. 740.

5375 **THE PURE OIL COMPANY** 11-8-37

Source of Supply and Disposition of Gasoline by Months from January, 1931, to June, 1937, inclusive
(Quantities in Gallons)

Year and Month	Gasoline Inventory Unavailable For Immediate Sale	Total Gasoline Inventory at End of Each Month	Gasoline Sales	Gasoline Inventory Available For Immediate Sale at End of Each Month (In Terms of Days' Supply)
1931				
Jan.	17,500,211	46,972,298	30,350,695	27.37
Feb.	19,217,008	52,117,158	28,393,924	32.72
Mar.	16,948,298	60,745,876	32,909,317	29.66
Apr.	21,725,812	60,037,580	39,465,599	26.14
May	22,910,316	52,976,917	44,032,897	19.23
June	22,683,686	48,625,055	47,267,526	14.43
July	24,255,199	37,045,349	52,353,117	10.54
Aug.	20,763,381	33,699,483	47,863,949	9.04
Sept.	20,281,691	30,262,733	44,526,216	5.09
Oct.	23,015,043	32,448,315	44,140,857	6.09
Nov.	23,921,136	34,531,724	41,989,004	11.33
Dec.	19,748,043	40,695,628	40,450,723	17.22
1932				
Jan.	20,726,044	49,622,856	35,945,272	24.27
Feb.	22,187,132	57,660,558	32,782,405	31.51
Mar.	19,356,794	61,575,414	37,586,008	27.19
Apr.	23,266,685	61,461,807	42,264,642	28.18
May	22,370,776	62,122,922	42,995,918	19.89
June	26,085,103	51,071,280	54,355,288	28.61
July	17,070,664	55,720,421	36,845,811	22.21
Aug.	21,014,205	49,235,976	48,442,150	18.36
Sept.	21,010,304	45,419,847	46,125,804	15.30
Oct.	23,331,363	42,017,197	44,747,531	13.19
Nov.	26,713,758	43,881,336	41,624,992	20.09
Dec.	18,852,057	49,018,377	38,615,438	21.96
1933				
Jan.	21,992,974	52,560,022	38,142,514	25.65
Feb.	22,332,177	59,810,872	32,996,715	32.06
Mar.	19,839,799	62,506,357	38,528,882	30.28
Apr.	22,050,002	60,402,169	40,054,500	25.26
May	23,535,852	59,385,404	45,235,157	20.59
June	24,433,828	50,064,994	50,914,415	24.23
July	18,629,576	54,180,380	40,210,610	22.05
Aug.	20,527,873	50,284,197	47,321,053	19.99
Sept.	20,417,618	55,228,215	44,824,627	26.41
Oct.	20,965,698	63,467,486	40,210,391	31.83
Nov.	22,347,327	65,896,214	39,226,453	45.00
Dec.	15,627,563	74,314,663	32,010,575	39.94

THE PURE OIL COMPANY

Source of Supply and Disposition of Gasoline by Months from January, 1931, to June, 1937, inclusive
(Quantities in Gallons)

11-8-37

Year and Month	Gasoline Inventory Unavailable for Immediate Sale	Total Gasoline Inventory at End of Each Month	Gasoline Sales	Gasoline Inventory Available for Immediate Sale at End of Each Month in Terms of Days' Supply
1934				
Jan	23,065,383	71,378,872	40,002,399	38.29
Feb	23,847,983	68,067,502	35,236,382	39.92
Mar	19,073,257	66,756,463	37,035,450	32.98
Apr	22,143,880	65,159,313	40,225,032	28.07
May	23,780,471	59,446,162	45,705,307	26.37
June	20,996,135	50,785,525	43,751,063	19.71
July	21,405,561	47,032,227	46,202,377	16.94
Aug	20,808,141	41,417,518	47,967,129	13.84
Sept	20,571,893	40,206,931	45,163,372	9.79
Oct	25,041,247	36,829,974	48,026,940	6.05
Nov	27,195,298	34,352,502	47,736,174	9.51
Dec	21,102,460	39,363,247	43,225,031	12.86
1935				
Jan	22,208,928	42,255,279	41,353,338	11.80
Feb	26,328,372	48,973,086	37,793,121	16.55
Mar	24,154,620	49,134,382	46,485,159	14.27
Apr	26,246,178	50,433,884	48,120,028	12.09
May	30,741,690	50,329,712	50,511,217	16.12
June	24,249,666	55,825,819	48,541,939	15.41
July	28,559,790	54,143,143	54,865,060	17.42
Aug	23,209,098	55,030,786	55,034,381	19.55
Sept	22,808,100	59,297,200	49,458,069	16.18
Oct	30,399,054	61,151,509	55,374,085	19.32
Nov	28,131,588	60,990,513	51,233,056	21.29
Dec	27,193,110	67,331,322	49,202,956	28.33
1936				
Jan	25,504,962	75,112,084	45,770,091	31.02
Feb	29,836,096	83,992,953	42,135,186	36.56
Mar	25,796,274	85,570,693	48,237,680	31.91
Apr	28,309,806	84,929,108	53,738,182	32.00
May	25,724,496	80,295,790	57,212,069	26.33
June	27,763,722	74,416,482	59,853,399	25.75
July	22,765,764	65,077,480	62,187,603	19.51
Aug	26,948,502	61,946,739	60,594,524	16.94
Sept	27,505,296	57,981,176	60,994,095	15.37
Oct	28,978,866	54,446,116	58,511,534	10.81
Nov	33,745,906	50,941,126	57,443,244	15.14
Dec	23,875,908	55,105,077	55,411,620	14.60
1937				
Jan	31,467,198	65,955,786	50,192,486	22.95
Feb	28,696,290	76,512,115	45,460,838	25.61
Mar	28,660,968	80,405,625	57,932,012	28.00
Apr	30,778,104	86,758,434	53,168,188	27.49
May	31,815,462	84,094,186	61,953,632	25.46
June	30,374,946	81,068,779	63,301,316	23.79

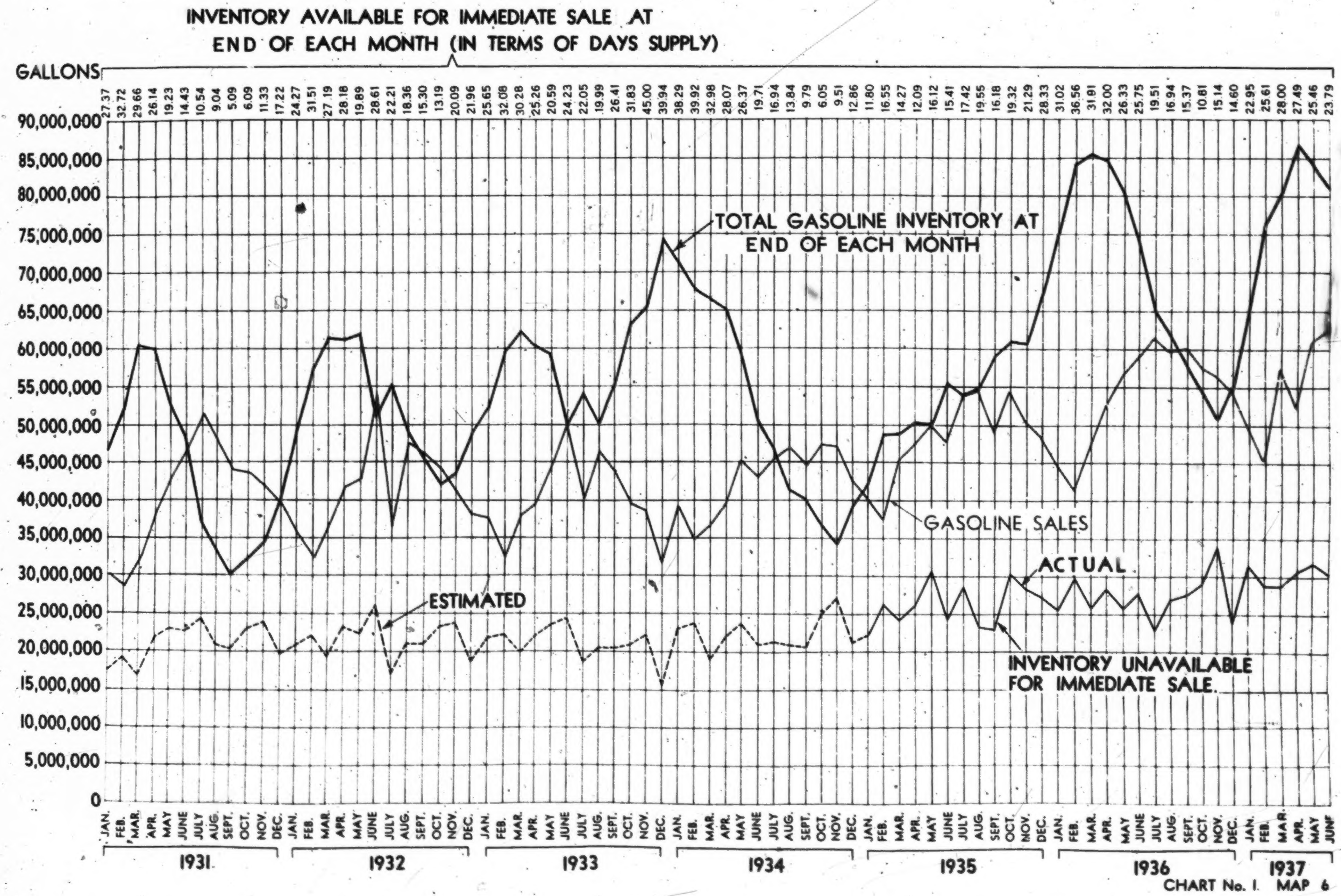

CHART No. 1. MAP 6

DEFENSE EXHIBIT NO. 741.

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
		Date of	At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1935					1935		Cents		
Chief Refining Co.	Same	3/25	25494	10			3/25	–	3.875	Gladewater	Gladewater, Texas
"	"	3/29	25498	3			3/29	Association	"	"	" "
Arrow Refining Co.	"	3/29	25497	2			3/29	"	"	Overton	Overton, Texas
Trio Refining Co.	Grogan Oil Co.	3/29	25499	2			3/29	"	"	Arp	Arp, "
Texover Refining Co.	Same	3/29	25500	3			3/29	"	"	Overton	Overton, "
Grogan Oil Co.	Trio Refining Co.	4/6	25904	22			4/6	"	4.125	Arp	Arp, "
Chief Refining Co.	Same	4/6	25905	12			4/6	–	"	Gladewater	Gladewater, Texas
"	"	4/15	25909	15			4/15	Association	4.25	"	" "
Grogan Oil Co.	Oil Refineries	4/15	25910	24			4/15	"	4.25	Arp	Overton, "
"	Trio Refining Co.	4/24	25919	2			4/22	"	4.375	"	Arp, "
"	Oil Refineries	4/25	25920	20			4/22	"	"	Overton	Overton, "
"	"	4/30	25922	1			4/30	Telegram	"	Arp	" "
"	"	5/6	25927	20			5/6	Association	"	"	" "
"	Trio Refining Co.	5/9	25928	1			5/9	Telegram	"	"	Arp, "
"	"	5/13	25933	20			5/13	–	4.5	Overton	Arp, "
"	Oil Refineries		"						"	"	Overton, "
Chief Refining Co.	Same	5/13	25934	10			5/13	–	"	Gladewater	Gladewater, "
"	"	5/22	25950	10			5/22	Association	"	"	" "
Grogan Oil Co.	Trio Refining Co.	5/27	25955	4			5/27	"	"	Overton	Arp, "
"	Oil Refineries	5/27	25956	20			5/27	"	4.625	Overton	Overton, "
"	Trio Refining Co.		"						"	"	Arp,
Chief Refining Co.	Same	5/27	25957	5			5/27	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	5/31	25960	5			5/31	–	"	Arp	Arp, "
"	Oil Refineries		"						"	Arp	Overton, "
"	"	6/4	25968	30			6/3	Association	"	"	" "
Chief Refining Co.	Same	6/8	25975	8			6/6	"	"	Gladewater	Gladewater, "
Texover Refining Co.	"	6/11	25980	5			6/8	"	"	Overton	Overton, "
Grogan Oil Co.	Oil Refineries	6/11	25977	20			6/10	"	"	Arp	Overton,
"	Trio Refining Co.		"						"	"	Arp, "
Chief Refining Co.	Same	6/11	25979	10			6/10	"	"	Gladewater	Gladewater, "
Texover Refining Co.	"	6/17	25986	5			6/17	"	"	Overton	Overton, "
Chief Refining Co.	"	6/17	25987	10			6/17	"	"	Gladewater	Gladewater, "
Wabash Refining Co.	Merrimac Oil Co.	6/19	25992	3			6/19	–	"	"	" "
"	"	6/20	25993	2			6/20	Association	"	"	" "
Grogan Oil Co.	Oil Refineries	6/24	25997	20			6/24	"	"	Arp	Overton, "
"	Trio Refining Co.		"					"	"	"	Arp, "
Chief Refining Co.	Same	6/24	26001	10			6/24	Association	"	Gladewater	Gladewater, "
Texover Refining Co.	"	6/24	26002	5			6/24	"	"	Overton	Overton, "
Chief Refining Co.	"	7/3	26017	10			7/3	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	7/3	26018	15			7/3	"	"	Arp	Arp,
"	Oil Refineries		"						"	"	Overton, "
Chief Refining Co.	Same	7/6	26021	5			7/6	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Oil Refineries	7/8	26022	20			7/8	"	"	Arp	Overton,
"	Trio Refining Co.		"						"	"	Arp, "
Chief Refining Co.	Same	7/8	26023	15			7/8	"	"	Gladewater	Gladewater,
Grogan Oil Co.	Trio Refining Co.	7/16	26028	20			7/15	"	"	Arp	Arp, "
"	Oil Refineries		"						"	"	Overton, "
Chief Refining Co.	Same	7/16	26029	15			7/15	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	7/23	26038	20			7/22	"	"	Arp	Arp,
"	Oil Refineries		"						"	Arp	Overton, "
Chief Refining Co.	Same	7/23	26039	10			7/22	"	"	Gladewater	Gladewater, "
Wabash Refining Co.	Merrimac Oil Co.	7/23	26040	5			7/22	"	"	"	" "
"	"	7/29	26046	5			7/29	"	"	"	" "
Grogan Oil Co.	Trio Refining Co.	7/31	26049	20			7/29	"	"	Arp	Arp, "
Chief Refining Co.	Same	7/29	26047	10			7/29	"	"	Gladewater	Gladewater, "

DEFENSE EXHIBIT NO. 741.

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

(Spots on Charts for These Dates)

Page 1
East Texas—1935

Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped: On Flat Price Orders		Cars Shipped: At Market Quotations Date of Shipment			Specifications			Gum	
Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1935		Cents			1935							Lbs.	Mgs.	Mgs.
3/25	–	3.875	Gladewater	Gladewater, Texas	3/25	10				59.	60/62	9	–	–
3/29	Association	"	"	" "	3/29	3				"	60.5	9	–	15
3/29	"	"	Overton	Overton, Texas	3/29	2				"	"	9	–	15
3/29	"	"	Arp	Arp, "	3/29	2				"	"	9	–	15
3/29	"	"	Overton	Overton, "	3/29	3				"	"	9	–	15
4/6	"	4.125	Arp	Arp, "	4/6	12				57.5	58/62	8	3.0	15
4/6	–	"	Gladewater	Gladewater, Texas	4/6	11				"	"	8	3.0	15
4/15	Association	4.25	"	" "	4/15	9				"	"	8	3.0	15
4/15	"	4.25	Arp	Overton, "	4/15	12				"	"	8	3.0	15
4/22	"	4.375	"	Arp, "	4/22	2				"	"	8	3.0	15
4/22	"	"	Overton	Overton, "	4/22	18				"	"	8½	3.0	15
4/30	Telegram	"	Arp	" "	4/30	1				58.5	"	8½	3.0	15
5/6	Association	"	"	" "	5/6	19				"	"	8½	3.0	15
5/9	Telegram	"	"	Arp, "	5/9	1				57.5	"	8½	3.0	15
5/13	–	4.5	Overton	Arp, "	5/13	10				"	"	8½	3.0	15
		"	"	Overton, "	5/13	10				58.5	"			
5/13	–	"	Gladewater	Gladewater, "	5/13	10				57.5	"	8½	3.0	15
5/22	Association	"	"	" "	5/22	10				"	"	8½	3.0	15
5/27	"	"	Overton	Arp, "	5/27	4				"	"	8½	3.0	15
5/27	"	4.625	Overton	Overton, "	5/27	9				58.5	"	8½	3.0	15
		"	"	Arp,	5/27	12				57.5	"			
5/27	"	"	Gladewater	Gladewater, "	5/27	5				"	"	8½	3.0	15
5/31	–	"	Arp	Arp, "	5/31	1				"	"	8½	3.0	15
		"	Arp	Overton, "	5/31	2				58.5	"			
6/3	Association	"	"	" "	6/3	22				"	"	8½	3.0	15
6/6	"	"	Gladewater	Gladewater, "	6/6	8				57.5	"	8½	3.0	15
6/8	"	"	Overton	Overton, "	6/8	5				"	"	8½	3.0	15
6/10	"	"	Arp	Overton,	6/10	7				58.5	"	8½	3.0	15
		"	"	Arp, "	6/10	12.				57.5	"			
6/10	"	"	Gladewater	Gladewater, "	6/10	10				58.5	"	8½	3.0	15
6/17	"	"	Overton	Overton, "	6/17	5				57.5	"	8½	3.0	15
6/17	"	"	Gladewater	Gladewater, "	6/17	10				"	"	8½	3.0	15
6/19	–	"	"	" "	6/19	3				"	"	8½	3.0	15
6/20	Association	"	"	" "	6/20	2				"	"	8½	3.0	15
6/24	"	"	Arp	Overton, "	6/24	14				58.5	"	8½	3.0	15
		"	"	Arp, "	6/24	6				57.5	"			
6/24	Association	"	Gladewater	Gladewater, "	6/24	10				"	"	8½	3.0	15
6/24	"	"	Overton	Overton, "	6/24	5				"	"	8½	3.0	15
7/3	"	"	Gladewater	Gladewater, "	7/3	10				"	"	8½	3.0	15
7/3	"	"	Arp	Arp,	7/3	9				"	"	8½	3.0	15
		"	"	Overton, "	7/3	5				58.5	"			
7/6	"	"	Gladewater	Gladewater, "	7/6	5				57.5	"	8½	3.0	15
7/8	"	"	Arp	Overton,	7/8	15				58.5	"	8½	3.0	15
		"	"	Arp, "	7/8	5				57.5	"			
7/8	"	"	Gladewater	Gladewater,	7/8	15				"	"	8½	3.0	15
7/15	"	"	Arp	Arp, "	7/15	12				"	"	8½	3.0	15
		"	"	Overton, "	7/15	8				58.5	"			
7/15	"	"	Gladewater	Gladewater, "	7/15	15				57.5	"	8½	3.0	15
7/22	"	"	Arp	Arp,	7/22	13				"	"	8½	3.0	15
		"	Arp	Overton, "	7/22	5				58.5	"			
7/22	"	"	Gladewater	Gladewater, "	7/22	10				57.5	"	8½	3.0	15
7/22	"	"	"	" "	7/22	4				"	"	8½	3.0	15
7/29	"	"	"	" "	7/29	2				"	"	8½	3.0	15
7/29	"	"	Arp	Arp, "	7/29	8				56.5	"	8½	3.0	15
7/29	"	"	Gladewater	Gladewater, "	7/29	8				57.5	"	8½	3.0	15

Defense Exhibit No. 741.

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1935					1935		Cents		
Grogan Oil Co.	Trio Refining Co.	8/6	26055	7			8/5	Association	4.625	Arp	Arp, Texas
"	Hurricane Petroleum Corp.	8/12	26063	10			8/12	"	"	Overton	Overton, Texas
"	"	8/12	26064	20			8/12	"	"	"	" "
Wabash Refining Co.	Merrimac Oil Co.	8/13	26065	5			8/12	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Hurricane Petroleum Corp.	8/19	26070	3			8/19	"	"	Overton	Overton, "
"	Trio Refining Co.	8/19	26071	17			8/19	"	"	Arp	Arp, "
"	"	8/21	26074	10			8/21	–	"	"	" "
"	"	8/26	26083	20			8/26	Association	"	"	" "
Gilliland Refining Co.	Same	8/27	26084	13			8/26	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	9/3	26091	16			9/2	"	"	Arp	Arp, "
Gilliland Refining Co.	Same	9/3	26092	12			9/2	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	9/9	26096	16			9/9	"	"	Arp	Arp, "
Gilliland Refining Co.	Same	9/9	26097	12			9/9	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	9/18	26102	16			9/16	"	"	Arp	Arp, "
Gilliland Refining Co.	Same	9/18	26103	12			9/16	"	"	Gladewater	Gladewater, "
"	"	9/20	26104	5			9/19	"	"	"	" "
Grogan Oil Co.	Trio Refining Co.	9/25	26111	16			9/23	"	"	Arp	Arp, "
Gilliland Refining Co.	Same	9/25	26112	12			9/23	"	"	Gladewater	Gladewater, "
Grogan Oil Co.	Trio Refining Co.	10/3	26120	25			9/30	"	"	Arp	Arp, "
"	"	10/7	26124	15			10/7	"	"	"	" "
Gilliland Refining Co.	Same	10/9	26125	10			10/7	"	"	Overton	Overton, "
Grogan Oil Co.	Trio Refining Co.	10/14	26134	15			10/14	"	"	Arp	Arp, "
"	"	10/22	26141	15			10/21	"	"	"	" "
"	"	10/28	26147	15			10/28	"	"	"	" "
"	"	11/5	26156	15			11/4	"	"	"	" "
Gilliland Refining Co.	Same	11/8	26162	15			11/8	–	"	Overton	Overton, "
Grogan Oil Co.	Trio Refining Co.	11/13	26168	15			11/11	Association	"	Arp	Arp, "
"	"	11/19	26174	15			11/18	"	"	"	" "
"	"	11/27	26178	15			11/25	"	"	"	" "
"	"	12/2	26181	15			12/2	"	"	"	" "
"	"	12/12	26194	1			12/9	"	"	"	" "
"	"	12/14	26196	14			12/9	"	"	"	" "
"	"	12/19	26200	15			12/16	"	"	"	" "
McMurray Refining Co.	Same	12/19	26199	15			12/18	"	"	"	" "
East Texas Refining Co.	Same	12/27	26205	20			12/21	Letter	"	Longview	Longview, "
Grogan Oil Co.	Trio Refining Co.	12/27	26206	15			12/23	Association	"	Arp	Arp, "
"	"	12/31	26210	14			12/30	"	"	"	" "
"	"	12/31	26211	1			12/30	Seitz Audit	"	"	" "
Totals				1,011							

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. North Texas Refinery
62 and Below Octane

Name on Order	Shipped By	Date of Order	Flat Prices No.	Flat Prices Cars	Market Quotations No.	Market Quotations Cars	Date	Authority	Price	F.O.B.	Shipped From
		1935							Cents		
Simms Oil Co.	Same	5/21			25946	1			4.625 Low Oilgram U. S. Motor, 62 and Below, No. Texas, Market, Date of Shipment, Harry's, Texas.		Harry's, Texas

Defense Exhibit No. 741.

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

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East Texas—1935

(Spots on Charts for These Dates)

Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped: On Flat Price Orders		Cars Shipped: At Market Quotations Date of Shipment			Specifications			Gum	
Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1935		Cents			1935							Lbs.	Mgs.	Mgs.
8/5	Association	4.625	Arp	Arp, Texas	8/5	3				56.5	58/62	9	3.0	15
8/12	"	"	Overton	Overton, Texas	8/12	5				"	"	9	3.0	15
8/12	"	"	"	" "	8/12	22				"	"	9	3.0	15
8/12	"	"	Gladewater	Gladewater, "	8/12	5				"	"	8½	3.0	15
8/19	"	"	Overton	Overton, "	8/19	3				"	"	9	3.0	15
8/19	"	"	Arp	Arp, "	8/19	17				"	"	9	3.0	15
8/21	–	"	"	" "	8/21	10				"	"	9	3.0	15
8/26	Association	"	"	" "	8/26	20				"	"	9	3.0	15
8/26	"	"	Gladewater	Gladewater, "	8/26	13				"	"	9	3.0	15
9/2	"	"	Arp	Arp, "	9/2	14				"	"	9	3.0	15
9/2	"	"	Gladewater	Gladewater, "	9/2	12				"	"	9	3.0	15
9/9	"	"	Arp	Arp, "	9/9	13				"	"	9	3.0	15
9/9	"	"	Gladewater	Gladewater, "	9/9	12				"	"	9	3.0	15
9/16	"	"	Arp	Arp, "	9/16	16				"	"	9	3.0	15
9/16	"	"	Gladewater	Gladewater, "	9/16	12				"	"	9	3.0	15
9/19	"	"	"	" "	9/19	5				"	"	9	3.0	15
9/23	"	"	Arp	Arp, "	9/23	16				"	"	9	3.0	15
9/23	"	"	Gladewater	Gladewater, "	9/23	11				"	"	9	3.0	15
9/30	"	"	Arp	Arp, "	9/30	24				"	"	9	3.0	15
10/7	"	"	"	" "	10/7	15				"	"	9	3.0	15
10/7	"	"	Overton	Overton, "	10/7	3				"	"	9	3.0	15
10/14	"	"	Arp	Arp, "	10/14	15				"	"	9	5.0	20
10/21	"	"	"	" "	10/21	15				"	"	9	5.0	20
10/28	"	"	"	" "	10/28	15				"	"	9	5.0	20
11/4	"	"	"	" "	11/4	15				"	"	9	5.0	20
11/8	–	"	Overton	Overton, "	11/8	15				"	"	9½	5.0	20
11/11	Association	"	Arp	Arp, "	11/11	15				"	"	9	5.0	20
11/18	"	"	"	" "	11/18	15				"	"	9	5.0	–
11/25	"	"	"	" "	11/25	15				"	"	9	5.0	20
12/2	"	"	"	" "	12/2	15				58/59.5	–	10	3.0	20
12/9	"	"	"	" "	12/9	1				57.5	58/60	–	–	–
12/9	"	"	"	" "	12/9	14				58/59.5	–	10	3.0	20
12/16	"	"	"	" "	12/16	14				"	–	10	3.0	20
12/18	"	"	"	" "	12/18	12				64	60/62	–		13/15
12/21	Letter	"	Longview	Longview, "	12/21	20				58/59.5	–	10	3.0	20
12/23	Association	"	Arp	Arp, "	12/23	15				"	–	10	3.0	20
12/30	"	"	"	" "	12/30	15				"	–	10	3.0	20
12/30	Seitz Audit	"	"	" "	12/30	1				57	58/60	–	–	–
						924								

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. North Texas Refinery
62 and Below Octane

Page 3
North Texas—1935

		Cents						1935				Lbs.	Mgs.	Mgs.
1		4.625 Low Oilgram U. S. Motor, 63 and Below, No. Texas, Market, Date of Shipment, Harry's, Texas.		Harry's Texas				5/23	1	57	60/62	9½	–	15

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1935 Purchase Orders
F.O.B. Refineries & Group 3, Oklahoma; F.O.B. Group 3, North Texas; F.O.B. Refineries and Group 3, Kansas
63-70 Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1935					1935		Cents		
H. F. Wilcox Oil & Gas Co.	Same	1/31	25464	1			1/31		4.375	Bristow	Bristow, Okla.
Panhandle Refining Co.	"	3/21	25491	10			3/21		4.75	Gr. 3 Okla.	Wichita Falls, Texas
"	"	3/29	25496	1			3/29		4.875	"	"
"	"	4/2	25901	1			4/2	Telegram	4.875	"	"
"	"	4/3	25902	1			4/3		4.875	"	"
"	"	4/4	25903	5			4/4		4.875	"	"
"	"	4/18	25915	3			4/18		5.25	"	"
"	"	4/18	25916	1			4/18		5.25	"	"
"	"	4/19	25917	2			4/19		5.25	"	"
"	"	4/22	25918	2			4/22	Telegram	5.25	"	"
"	"	5/3	25923	4			5/3		5.25	"	"
"	"	5/6	25924	1			5/6	Telegram	5.25	"	"
"	"	5/10	25930	2			5/10		5.25	"	"
"	"	5/16	25939	1			5/16	Telegram	5.375	"	"
Omar Refining Co.	"	5/24	25951	5			5/24		5.5	Garber	Garber, Okla
"	"	6/3			25962	25			5.625	"	"
Eason Oil Company	"	6/7	25974	1/2			6/7		5.625	Enid	Enid, Okla.
Omar Refining	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
"	"								5.625	"	" "
Waggoner Refining Co.	"	7/5	26020	12			7/5		5.625	Gr. 3	Electra, Texas
"	"	7/16	26030	10			7/16		5.625	"	"
Wirt Franklin Petroleum Co.	"	7/16	26031	10			7/16		5.625	Ardmore	Ardmore, Okla.
Omar Refining Co.	"	8/7	26060	25			8/7		5.625	Garber	Garber, Okla.
"	"	8/22	26076	12			8/22		5.625	"	"
"	"	9/6	26094	13			9/6		5.625	"	"
"	"	10/3	26119	35			10/3		5.625	"	"
Eason Oil Company	"	10/14	26133	2/3			10/14		5.625	Enid	Enid, Okla.
Omar Refining Co.	"	11/1	26151	35			11/1		5.625	Garber	Garber, Okla.
"	"	12/7	26186	3			12/7		5.625	Garber	Garber, Okla.
"	"	12/11	26191	32			12/11		5.625	"	"
H. F. Wilcox Oil & Gas Co.	"	12/11	26193	15			12/11		5.625	Bristow	Bristow, Okla.
Total 65/70 Octane				243-1/6		25					

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1935 Purchase Orders
F.O.B. Refineries & Group 3, Oklahoma; F.O.B. Group 3, North Texas; F.O.B.
Refineries and Group 3, Kansas
63-70 Octane

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Mid-Continent—1935

Date of Order	Purchase Orders				Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	(Spots on Charts for These Dates) Cars Shipped					Specifications				
	At Flat Prices		At Market Quotations Date of Shipment							On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1935					1935		Cents			1935							Lbs.	Mgs.	Mgs.
1/31	25464	1			1/31		4.375	Bristow	Bristow, Okla.	1/31	1				67	60/62	–	–	–
3/21	25491	10			3/21		4.75	Gr. 3 Okla.	Wichita Falls, Texas	3/21	10				70/71	60.8	12	–	15
3/29	25496	1			3/29		4.875	"	"	3/29	1				"	"	12	–	15
4/2	25901	1			4/2	Telegram	4.875	"	"	4/2	1				"	"	12	–	15
4/3	25902	1			4/3		4.875	"	"	4/3	1				"	60.5	9½	–	15
4/4	25903	5			4/4		4.875	"	"	4/14	4				"	"	9½	–	15
4/18	25915	3			4/18		5.25	"	"	4/18	3				"	"	9½	–	15
4/18	25916	1			4/18		5.25	"	"	4/18	1				"	"	9½	–	15
4/19	25917	2			4/19		5.25	"	"	4/19	2				"	"	9½	–	15
4/22	25918	2			4/22	Telegram	5.25	"	"	4/22	2				"	"	9½	–	15
5/3	25923	4			5/3		5.25	"	"	5/3	4				"	"	9½	–	15
5/6	25924	1			5/6	Telegram	5.25	"	"	5/6	1				"	"	9½	–	15
5/10	25930	2			5/10		5.25	"	"	5/10	3				"	"	9½	–	15
5/16	25939	1			5/16	Telegram	5.375	"	"	5/16	1				"	"	9½	–	15
5/24	25951	5			5/24		5.5	Garber	Garber, Okla	5/24	5				"	"	9½	–	20
6/3			25962	25			5.625	"	"			25962	6/7	1	"	"	9½	–	20
6/7	25974	1/2			6/7		5.625	Enid	Enid, Okla.	6/7	½				"	"	9½	3.0	20
							5.625	"	" "			25962	6/8	4	"	"	9½	–	20
							5.625	"	" "			"	6/10	1	"	"	9½	–	20
							5.625	"	" "			"	6/13	3	"	"	9½	–	20
							5.625	"	" "			"	6/15	3	"	"	9½	–	20
							5.625	"	" "			"	6/18	4	"	"	9½	–	20
							5.625	"	" "			"	6/19	3	"	"	9½	–	20
							5.625	"	" "			"	6/21	1	"	"	9½	–	20
							5.625	"	" "			"	6/24	1	"	"	9½	–	20
							5.625	"	" "			"	6/26	1	"	"	9½	–	20
							5.625	"	" "			"	6/27	1	"	"	9½	–	20
							5.625	"	" "			"	6/29	1	"	"	9½	–	20
							5.625					"	7/1	1	"	"	9½	–	20
7/5	26020	12			7/5		5.625	Gr. 3	Electra, Texas	7/5	12				"	"	9.5	3.0	20
7/16	26030	10			7/16		5.625	"	"	7/16	10				"	"	9.5	3.0	20
7/16	26031	10			7/16		5.625	Ardmore	Ardmore, Okla.	7/16	10				"	"	9.5	3.0	20
8/7	26060	25			8/7		5.625	Garber	Garber, Okla.	8/7	25				"	"	9.5	–	20
8/22	26076	12			8/22		5.625	"	"	8/22	12				"	"	9.5	–	20
9/6	26094	13			9/6		5.625	"	"	9/6	13				"	"	9.5	–	20
10/3	26119	35			10/3		5.625	"	"	10/3	35				"	"	12	3.0	20
10/14	26133	2/3			10/14		5.625	Enid	Enid, Okla.	10/14	2/3				–	60.5	12	3.0	20
11/1	26151	35			11/1		5.625	Garber	Garber, Okla.	11/1	35				70/71	"	12	3.0	20
12/7	26186	3			12/7		5.625	Garber	Garber, Okla.	12/7	3				"	"	12	3.0	20
12/11	26191	32			12/11		5.625	"	"	12/11	32				"	"	12	3.0	20
12/11	26193	15			12/11		5.625	Bristow	Bristow, Okla.	12/11	15				"	"	12	3.0	20
		243-1/6		25							243-1/6			25					

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1935 Purchase Orders
F.O.B. Refineries & Group 3, Oklahoma; F.O.B. Group 3, North Texas; F.O.B Refineries and Group 3, Kansas
62 and Below Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1935					1935		Cents		
Vickers Petroleum Co.	Same	5/11	25932	10			5/11		4.5	Group 3	Potwin, Kas.
Simms Oil Co.	"	5/21	25945	5			5/21		4.625	Group 3	Harry's, Texas
"	"	5/27	25953	1			5/27		4.625	"	"
"	"	5/28	25958	2			5/28		4.625	"	"
Eason Oil Company	"	5/31	25959	2/3			5/31		4.625	Enid	Enid, Okla.
Simms Oil Co.	"	6/3	25963	10			6/3		4.625	Group 3	Harry's, Texas
Eason Oil Company	"	6/7	25973	2/3			6/7		4.75	Enid	Enid, Okla.
Texas Oil Products Co.	"	6/20	25994	5			6/20	Association	4.75	Group 3	Gladewater, Tex.
"	"	6/24	26003	6			6/20	"	4.75	"	"
"	"	6/27	26006	1			6/20	"	4.75	"	"
"	"	6/28	26008	2			6/20	"	4.75	"	"
"	"	6/29	26009	1			6/20	"	4.75	"	"
Taxman Refining Co.	"	9/9	26098	5			9/9		4.75	Group 3	Wichita Falls, Tex.
Panhandle Refining Co.	"	9/20	26105	5			9/20		4.5	Group 3, Okla.	Kings Mill, Tex.
Taxman Refining Co.	"	9/24	26110	5			9/24		4.75	Group 3	Wichita Falls, Tex.
H. F. Wilcox Oil & Gas Co.	"	10/4	26121	13			10/4		4.75	Bristow	Bristow, Okla.
Kanotex Refining Co.	"	10/29	26148	1/2			10/29		4.75	Arkansas City	Arkansas City, Ka.
H. F. Wilcox Oil & Gas Co.	"	11/1	26152	13			11/1		4.75	Bristow	Bristow, Okla.
Total 62 & below Octane				85 5/6							
Total 63/70 Octane				243 1/6		25					
Grand Total				329		25					

Defense Exhibit No. 741.

THE PURE OIL COMPANY
Chronological Listing of 1935 Purchase Orders
F.O.B. Refineries & Group 3, Oklahoma; F.O.B. Group 3, North Texas; F.O.B. Refineries and Group 3, Kansas
62 and Below Octane

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Mid-Continent—1935

(Spots on Charts for These Dates)

Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice			Cars Shipped					Specifications				
	At Flat Prices		At Market Quotations Date of Shipment							On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From	Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1935					1935		Cents			1935									
5/11	25032	10			5/11		4.5	Group 3	Potwin, Kas.	5/11	10				50/52	61.9	8/9	-	-
5/21	25045	5			5/21		4.625	Group 3	Harry's, Texas	5/21	5				"	"	9½	-	15
5/27	25053	1			5/27		4.625	"	"	5/27	1				"	"	9½	-	15
5/28	25058	2			5/28		4.625	"	"	5/28	2				"	"	9½	-	15
5/31	25059	2/3			5/31		4.625	Enid	Enid, Okla.	5/31	2/3				-	58/60	-	-	-
6/3	25063	10			6/3		4.625	Group 3	Harry's, Texas	6/3	10				50/52	61.9	9½	-	15
6/7	25073	2/3			6/7		4.75	Enid	Enid, Okla.	6/7	2/3				-	58/60	-	-	-
6/20	25094	5			6/20	Association	4.75	Group 3	Gladewater, Tex.	6/20	5				57	60/62	9½	-	15
6/24	25093	6			6/20	"	4.75	"	"	6/20	6				"	"	9½	-	15
6/27	25096	1			6/20	"	4.75	"	"	6/20	1				"	"	9½	-	15
6/28	25098	2			6/20	"	4.75	"	"	6/20	2				"	"	9½	-	15
6/29	25099	1			6/20	"	4.75	"	"	6/20	1				"	"	9½	-	15
9/9	26098	5			9/9		4.75	Group 3	Wichita Falls, Tex.	9/9	5				49/54	58.8	9½	-	30
9/20	26105	5			9/20		4.5	Group 3, Okla.	Kings Mill, Tex.	9/20	5				"	"	12½	-	30
9/24	26110	5			9/24		4.75	Group 3	Wichita Falls, Tex.	9/24	5				"	"	12½	-	30
10/4	26121	13			10/4		4.75	Bristow	Bristow, Okla.	10/4	13				"	"	12½	-	30
10/29	26148	1/2			10/29		4.75	Arkansas City	Arkansas City, Ka.	10/29	½				-	-	-	-	-
11/1	26152	13			11/1		4.75	Bristow	Bristow, Okla.	11/1	13				49.54	58.8	12½	-	30
		85 5/6									85 5/6								
		243 1/6		25							243 1/6			25					
		329		25							329			25					

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

Name on Order	Shipped by	Purchase Orders: Date of Order	At Flat Prices: No.	At Flat Prices: Cars	At Market Quotations Date of Shipment: No.	At Market Quotations Date of Shipment: Cars	Date Order Placed and Authority for Date (Flat Price Orders Only): Date	Authority	Order and Invoice: Price	Order and Invoice: F. O. B.	Shipped From
		1936					1936		Cents		
Grogan Oil Co.	Trio Refining Co.	1/4	26213	1			1/4	Telegram	4.625	Arp, Texas	Arp
"	"	1/7	26220	15			1/6	Association	4.625	" "	"
Gilliland Refining Co.	Same	1/10	26223	20			1/10	–	4.625	Overton, Tex.	Overton
Grogan Oil Co.	Trio Refining Co.	1/14	26224	15			1/13	Association	5.125	Arp, Texas	Arp
Gilliland Refining Co.	Same	1/14	26225	20			1/14	–	5.125	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	1/20	26231	15			1/20	Association	5.125	Arp, Texas	Arp
"	"	1/23	26232	10			1/20	Association	5.125	" "	"
"	"	1/27	26237	20			1/27	Association	5.125	" "	"
Tyreco Refining Co.	Same	1/27	26234	1			1/27	Vendor's Confirmation	5.125	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	2/3	26242	15			2/3	Association	5.125	Arp, Texas	Arp
Tyreco Refining Co.	Same	2/5	26243	9			2/3	Association	5.125	Overton	Overton
Gilliland Refining Co.	Same	2/7	26250	15			2/3	Association	5.125	"	"
Hercules Oil Co.	Gilliland Refining Co.	2/7	26249	15			2/7	–	4.75	"	"
Grogan Oil Co.	Trio Refining Co.	2/10	26756	10			2/10	Association	5.125	Arp, Texas	Arp
Gilliland Refining Co.	Same	2/10	26755	15			2/10	Association	5.125	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	2/19	26765	5			2/10	Ass'n. & Seitz Audit	5	Arp, Texas	Arp
Premier Oil & Refining Co.	Same	2/10	26757	15			2/10	Association	5.125	Longview, Tex.	Willow Springs, Tex.
Grogan Oil Co.	Trio Refining Co.	2/12	26758	1			2/12	Telegram	5.125	Arp, Texas	Arp
Gilliland Refining Co.	Same	2/14	26762	10			2/14	–	4.75	Overton	Overton
Solvex Refineries, Inc.	Bell Oil & Gas Co.	2/19	26767	10			2/17	Association	5	Gladewater	Gladewater
Grogan Oil Co.	Trio Refining Co.	2/19	26766	5			2/17	Association	5	Arp, Texas	Arp
Solvex Refineries, Inc.	Bell Oil & Gas Co.	2/25	26772	10			2/24	Association	4.875	Gladewater	Gladewater
Tyreco Refining Co.	Same	2/25	26771	5			2/24	Association	4.875	Overton	Overton
Gilliland Refining Co.	Same	2/25	26770	15			2/24	Association	4.875	"	"
Grogan Oil Co.	Trio Refining Co.	3/4	26779	15			3/2	Association	4.875	Arp, Texas	Arp
Tower Refining Co.	Tyreco Refining Co.	3/4	26780	13			3/2	Association	4.875	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	3/9	26783	1			3/9	Ass'n. & Telegram	4.875	Arp, Texas	Arp
Tower Refining Co.	Tyreco Refining Co.	3/9	26785	10			3/9	Association	4.875	Overton	Overton
Solvex Refineries, Inc.	Bell Oil & Gas Co.	3/9	26786	8			3/9	Ass'n. & Telegram	4.875	Gladewater	Gladewater
Grogan Oil Co.	Trio Refining Co.	3/9	26784	9			3/9	Ass'n. & Telegram	4.875	Arp, Texas	Arp
"	"	3/18	26794	10			3/16	Association	5	" "	"
Tower Refining Co.	Tyreco Refining Co.	3/18	26796	8			3/16	Association	5	Overton	Overton
Solvex Refineries, Inc.	Bell Oil & Gas Co.	3/18	26795	10			3/16	Association	5	Gladewater	Gladewater
Tower Refining Co.	Same	3/25	26799	10			3/23	Association	5	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	4/2	26802	15			3/30	Association	5	Arp, Texas	Arp
Solvex Refineries, Inc.	Bell Oil & Gas Co.	4/2	26804	10			4/1	Association	5	Gladewater	Gladewater
Tower Refining Co.	Tyreco Refining Co.	4/2	26803	10			4/1	Association	5	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	4/6	26809	15			4/6	Association	5	Arp, Texas	Arp
Trinity Refining Co.	Same	4/6	26811	10			4/6	Association	5	Gladewater	Gladewater
Tower Refining Co.	Tyreco Refining Co.	4/6	26810	10			4/6	Association	5	Overton	Overton
Gilliland Refining Co.	Same	4/14	26817	18			4/13	Association	5	"	"
Tower Refining Co.	Tyreco Refining Co.	4/14	26815	5			4/13	Association	5	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	4/14	26816	5			4/13	Association	5	Arp, Texas	Arp
Trinity Refining Co.	Same	4/14	26814	10			4/13	Association	5	Gladewater	Gladewater
Grogan Oil Co.	Trio Refining Co.	4/20	26821	9			4/20	Association	5	Arp, Texas	Arp
Tower Refining Co.	Tyreco Refining Co.	4/20	26823	10			4/20	Association	5	Overton	Overton
Grogan Oil Co.	Trio Refining Co.	4/20	26822	1			4/20	Association	5	Arp, Texas	Arp
Trinity Refining Co.	Same	4/20	26824	8			4/20	Association	5	Gladewater	Gladewater
Grogan Oil Co.	Trio Refining Co.	4/27	26827	13			4/27	Association	5	Arp, Texas	Arp
Gilliland Refining Co.	Same	4/27	26826	15			4/27	Association	5	Overton	Overton
Grogan Oil Co.	Hurricane Petroleum Co.	5/4	26833	14			5/4	Telegram	5	Arp, Texas	Overton & Arp

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East Texas—1936

THE PURE OIL COMPANY
Chronological Listing of 1936 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	(Spots on Charts for These Dates) Cars Shipped					Specifications				
					On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
Date	Authority	Price	F. O. B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936		Cents			1936							Lbs.	Mgs.	Mgs.
1/4	Telegram	4.625	Arp, Texas	Arp	1/4	1				57.5	58/60	–	–	–
1/6	Association	4.625	" "	"	1/6	13				58/59.5	–	10#	3	20
1/10	–	4.625	Overton, Tex.	Overton	1/10	20				56.5	58/62	11#	–	15
1/13	Association	5.125	Arp, Texas	Arp	1/13	15				58/59.5	–	10#	3	20
1/14	–	5.125	Overton	Overton	1/14	20				56.5	58/62	11#	–	15
1/20	Association	5.125	Arp, Texas	Arp	1/20	15				58/59.5	–	10#	3	20
1/20	Association	5.125	" "	"	1/20	10				58/59.5	–	10#	3	20
1/27	Association	5.125	" "	"	1/27	20				58/59.5	–	10#	3	20
1/27	Vendor's Confirmation	5.125	Overton	Overton	1/27	1				56.5	58/62	11#	–	15
2/3	Association	5.125	Arp, Texas	Arp	2/3	15				58/59.5	–	10#	3	20
2/3	Association	5.125	Overton	Overton	2/3	9				56.5	58/62	–	–	–
2/3	Association	5.125	"	"	2/3	15				56.5	58/62	11#	–	15
2/7	–	4.75	"	"	2/7	15				56.5	58/62	11#	–	15
2/10	Association	5.125	Arp, Texas	Arp	2/10	10				58/59.5	–	10#	3	20
2/10	Association	5.125	Overton	Overton	2/10	15				56.5	58/62	11#	–	15
2/10	Ass'n. & Seitz Audit	5	Arp, Texas	Arp	2/10	5				58/59.5	–	10#	3	20
2/10	Association	5.125	Longview, Tex.	Willow Springs, Tex.	2/10	15				56.5	58/62	11#	–	15
2/12	Telegram	5.125	Arp, Texas	Arp	2/12	1				57.5	58/60	10#	3	20
2/14	–	4.75	Overton	Overton	2/14	10				56.5	58/62	11#	–	15
2/17	Association	5	Gladewater	Gladewater	2/17	10				"	"	11#	–	20
2/17	Association	5	Arp, Texas	Arp	2/17	5				58/59.5	–	10#	3	20
2/24	Association	4.875	Gladewater	Gladewater	2/24	10				57	58/62	11#	5*	20
2/24	Association	4.875	Overton	Overton	2/24	5				"	"	11#	5*	20
2/24	Association	4.875	"	"	2/24	3				"	"	11#	–	15
3/2	Association	4.875	Arp, Texas	Arp	3/2	15				"	"	11#	5*	20
3/2	Association	4.875	Overton	Overton	3/2	13				"	"	11#	5*	20
3/9	Ass'n. & Telegram	4.875	Arp, Texas	Arp	3/9	1				"	58/60	–	–	–
3/9	Association	4.875	Overton	Overton	3/9	10				"	58/62	11#	5*	20
3/9	Ass'n. & Telegram	4.875	Gladewater	Gladewater	3/9	8				"	"	11#	5*	20
3/9	Ass'n. & Telegram	4.875	Arp, Texas	Arp	3/9	9				"	"	11#	5*	20
3/16	Association	5	" "	"	3/16	10				56.5	"	10#	–	20
3/16	Association	5	Overton	Overton	3/16	8				"	"	10#	–	20
3/16	Association	5	Gladewater	Gladewater	3/16	10				"	"	10#	–	20
3/23	Association	5	Overton	Overton	3/23	10				"	"	10#	–	20
3/30	Association	5	Arp, Texas	Arp	3/30	15				"	"	10#	–	20
4/1	Association	5	Gladewater	Gladewater	4/1	4				"	"	10#	–	20
4/1	Association	5	Overton	Overton	4/1	10				"	"	10#	–	20
4/6	Association	5	Arp, Texas	Arp	4/6	15				"	"	10#	–	20
4/6	Association	5	Gladewater	Gladewater	4/6	10				"	"	10#	–	20
4/6	Association	5	Overton	Overton	4/6	10				"	"	10#	–	20
4/13	Association	5	"	"	4/13	18				"	"	10#	–	20
4/13	Association	5	Overton	Overton	4/13	5				"	"	10#	–	20
4/13	Association	5	Arp, Texas	Arp	4/13	5				"	"	10#	–	20
4/13	Association	5	Gladewater	Gladewater	4/13	10				"	"	10#	–	20
4/20	Association	5	Arp, Texas	Arp	4/20	9				"	"	10#	3	20
4/20	Association	5	Overton	Overton	4/20	10				"	"	10#	3	20
4/20	Association	5	Arp, Texas	Arp	4/20	1				57	58/60	–	–	–
4/20	Association	5	Gladewater	Gladewater	4/20	8				56.5	58/62	10#	3	20
4/27	Association	5	Arp, Texas	Arp	4/27	13				"	"	10#	3	20
4/27	Association	5	Overton	Overton	4/27	15				"	"	10#	3	20
5/4	Telegram	5	Arp, Texas	Overton & Arp	5/4	14				"	"	10#	3	20

Defense Exhibit No. 741.

THE PURE OIL COMPANY
Chronological Listing of 1936 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

Name on Order	Shipped by	Date of Order	Purchase Orders: At Flat Prices		Purchase Orders: At Market Quotations Date of Shipment		Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From
			No.	Cars	No.	Cars	Date	Authority	Price	F. O. B.	
		1936					1936		Cents		
Grogan Oil Co.	Hurricane Petroleum Corp.	9/8	26954	9			9/7	Association	4.625	Arp, Texas	Arp
Danciger Oil & Refining Co.	Same	9/8	26955	10			9/7	Association	4.625	Bodie, Texas	Bodie
Gilliland Refining Co.	General American Oil Co.	9/8	26956	5			9/7	Association	4.625	Arp, Texas	Arp
Danciger Oil & Refining Co.	Same	9/15	26960	10			9/14	Association	4.5	Bodie, Texas	Bodie
Grogan Oil Co.	Hurricane Petroleum Corp.	9/15	26959	15			9/14	Association	4.5	Arp, Texas	Arp & Overton
" " "	" " "	9/23	26971	19			9/21	Association	4.5	Arp, Texas	Arp
" " "	" " "	9/23	26969	1			9/23	Telegram	4.5	Arp, Texas	"
" " "	" " "	9/29	26980	9			9/28	"	4.5	" "	"
" " "	" " "	10/6	26990	15			10/5	Association	4.5	" "	"
" " "	" " "	10/8	26991	10			10/5	Association	4.5	" "	"
" " "	" " "	10/13	26994	11			10/12	Association	4.625	" "	"
Premier Oil Refining Co.	Same	10/13	26995	10			10/12	Association	4.625	Longview, Tex.	Willow Springs, Tex.
Grogan Oil Co.	Hurricane Petroleum Corp.	10/20	27007	15			10/19	Association	4.625	Arp, Texas	Arp
" " "	" " "	10/28	27014	15			10/26	Association	4.625	" "	"
Gilliland Refining Co.	General American Oil Co.	10/28	27015	15			10/26	Association	4.625	" "	Arp
Grogan Oil Co.	Hurricane Petroleum Corp.	11/4	27029	15			11/2	Association	4.5	Arp, Texas	"
Gilliland Refining Co.	General American Oil Co.	11/4	27030	10			11/4	–	4.5	" "	Arp & Overton
" " "	" " "	11/9	27038	10			11/7	Vendor's Confirmation	4.5	" "	Overton
Grogan Oil Co.	Hurricane Petroleum Corp.	11/9	27037	15			11/9	Association	4.5	Arp, Texas	Arp
" " "	" " "	11/16	27043	15			11/16	Association	4.5	" "	"
" " "	" " "	11/20	27050	10			11/20	–	4.5	" "	"
" " "	" " "	11/24	27356	15			11/23	Association	4.625	" "	"
" " "	" " "	11/27	27357	10			11/23	Association	4.625	" "	"
" " "	" " "	12/1	27360	1			12/1	Telegram & Ass'n.	4.625	" "	"
" " "	" " "	12/3	27365	14			12/1	Association	4.625	" "	"
" " "	" " "	12/4	27369	10			12/4	—	4.625	" "	"
" " "	" " "	12/8	27372	15			12/7	Association	4.625	" "	"
" " "	" " "	12/10	27377	5			12/7	Association	4.625	" "	"
Gilliland Refining Co.	General American Oil Co.	12/10	27378	5			12/10	–	4.625	" "	Overton
" " "	" "	12/15	27384	10			12/14	Association	4.625	Overton	"
Grogan Oil Co.	Hurricane Petroleum Corp.	12/15	27383	10			12/14	Association	4.625	Arp, Texas	Arp
" " "	" " "	12/18	27386	5			12/14	Association	4.625	" "	"
Gilliland Refining Co.	General American Oil Co.	12/21	27390	10			12/21	Association.	4.625	Overton	Overton
Grogan Oil Co.	Hurricane Petroleum Corp.	12/21	27388	1			12/21	Association	4.625	Arp, Texas	Arp
" " "	" " "	12/21	27389	14			12/21	Association	4.625	" "	"
" " "	" " "	12/29	27400	1			12/29	–	4.625	" "	"
	Total			1,332							

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THE PURE OIL COMPANY
Chronological Listing of 1936 Purchase Orders
F.O.B. East Texas Refineries
62 and Below Octane

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East Texas—1936

(Spots on Charts for These Dates)

Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice			Cars Shipped					Specifications				
					On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
Date	Authority	Price	F. O. B.	Shipped From	Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936		Cents			1936									
9/7	Association	4.625	Arp, Texas	Arp	9/7	9				56.5	58/62	10#	3	20
9/7	Association	4.625	Bodie, Texas	Bodie	9/7	10				"	"	9#	–	–
9/7	Association	4.625	Arp, Texas	Arp	9/7	5				"	"	10#	3	20
9/14	Association	4.5	Bodie, Texas	Bodie	9/14	10				"	"	9#	–	–
9/14	Association	4.5	Arp, Texas	Arp & Overton	9/14	15				"	"	10#	3	20
9/21	Association	4.5	Arp, Texas	Arp	9/21	20				"	"	10#	3	20
9/23	Telegram	4.5	Arp, Texas	"	9/23	1				"	"	–	–	–
9/28	"	4.5	" "	"	9/28	9				"	"	10#	5*	20
10/5	Association	4.5	" "	"	10/5	15				"	"	10#	5*	20
10/5	Association	4.5	" "	"	10/5	10				"	"	10#	5*	20
10/12	Association	4.625	" "	"	10/12	11				"	"	10#	5*	20
10/12	Association	4.625	Longview, Tex.	Willow Springs, Tex.	10/12	10				"	"	10#	5*	20
10/19	Association	4.625	Arp, Texas	Arp	10/19	15				"	"	10#	5*	20
10/26	Association	4.625	" "	"	10/26	15				"	"	10#	5*	20
10/26	Association	4.625	" "	Arp	10/26	15				"	"	10#	5*	20
11/2	Association	4.5	Arp, Texas	"	11/2	15				"	"	10#	5*	20
11/4	–	4.5	" "	Arp & Overton	11/4	10				"	"	10#	5*	20
11/7	Vendor's Confirmation	4.5	" "	Overton	11/7	1				"	"	10#	5*	20
11/9	Association	4.5	Arp, Texas	Arp	11/9	15				"	"	10#	5*	20
11/16	Association	4.5	" "	"	11/16	15				"	"	10#	5*	20
11/20	–	4.5	" "	"	11/20	10				"	"	10#	5*	20
11/23	Association	4.625	" "	"	11/23	15				"	"	10#	5*	20
11/23	Association	4.625	" "	"	11/23	10				"	"	10#	5*	20
12/1	Telegram & Ass'n.	4.625	" "	"	12/1	1				"	"	10#	5*	20
12/1	Association	4.625	" "	"	12/1	14				"	"	10#	3	20
12/4	—	4.625	" "	"	12/4	10				"	"	10#	3	20
12/7	Association	4.625	" "	"	12/7	15				"	"	10#	3	20
12/7	Association	4.625	" "	"	12/7	5				"	"	10#	3	20
12/10	–	4.625	" "	Overton	12/10	5				"	"	10#	3	20
12/14	Association	4.625	Overton	"	12/14	10				"	"	10#	3	20
12/14	Association	4.625	Arp, Texas	Arp	12/14	10				"	"	10#	3	20
12/14	Association	4.625	" "	"	12/14	5				"	"	10#	3	20
12/21	Association	4.625	Overton	Overton	12/21	10				"	"	10#	3	20
12/21	Association	4.625	Arp, Texas	Arp	12/21	1				"	"	10#	3	20
12/21	Association	4.625	" "	"	12/21	14				"	"	10#	3	20
12/29	–	4.625	" "	"	12/29	1				"	"	10#	3	20
						1,304								

* Gum content measured by porcelain dish.

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3 Kansas,
and F.O.B. Refineries and Group 3, Louisiana
63-70 Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1936					1936		Cents		
H. F. Wilcox Oil & Gas Co.	Same	1/6	26214	8			1/6		5.625	Bristow, Okla.	Bristow, Okla.
Omar Refining Co.	"	1/6	26216	15			1/6		5.625	Garber, Okla.	Garber, Okla.
"	"	1/14	26216	20			1/14		6.125	"	"
H. F. Wilcox Oil & Gas Co.	"	1/14	26214	7			1/14		6.125	Bristow, Okla.	Bristow, Okla.
Kanotex Refining Co.	"	1/20	26228	2/3			1/20		6.125	Arkansas City, Kan.	Ark. City, Kans.
H. F. Wilcox Oil & Gas Co.	"	2/1	26239	15			1/31	Seitz Audit	6.125	Bristow, Okla.	Bristow, Okla.
Omar Refining Co.	"	2/1	26238	40			2/1		6.125	Garber Okla.	Garber, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.	2/7	26248	25			2/7		6.125	Shreveport, La.	Shreveport, La.
H. F. Wilcox Oil & Gas Co.	Same	3/4	26775	25			3/3	Seitz Audit	6.125	Bristow, Okla.	Bristow, Okla.
Omar Refining Co.	"	3/4	26776	30			3/4		6.125	Garber, Okla.	Garber, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.	3/4			26611	30			6	As agreed on date of shipment FOB Shreveport	Shreveport, La.
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"	3/16			26623	15			6	Low Gr. 3 Mkt. 63/70 Octane per Chgo. Jo. of Com. on date of shipment F.O.B. Shreveport	"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
Omar Refining Co.	Same	4/4	26807	20			4/4		6	Garber, Okla.	Garber, Okla.
Eason Oil Co.	"	4/4	26808	20			4/4		6	Enid	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.	3/31			26637	30			6	Low Gr. 3 Mkt. 63/70 Octane per Chgo. Jo. of Com. on date of shipment FOB Shreveport	Shreveport, La.
"	"								6		"
"	"								6		"
"	"								6		"
"	"								6		"
Total 63-70 Octane				225-2/3		75					

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Mid-Continent—1936

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3 Kansas,
and F.O.B. Refineries and Group 3, Louisiana
63-70 Octane

(Spots on Charts for These Dates)

Date of Order	Purchase Orders				Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped					Specifications				
	At Flat Prices		At Market Quotations Date of Shipment							On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936					1936		Cents			1936			1936				Lbs.	Mgs.	Mgs.
1/6	26214	8			1/6		5.625	Bristow, Okla.	Bristow, Okla.	1/6	8				70/71	60.5	12	3.0	20
1/6	26216	15			1/6		5.625	Garber, Okla.	Garber, Okla.	1/6	15				"	"			
1/14	26216	20			1/14		6.125	"	"	1/14	21				"	"			
1/14	26214	7			1/14		6.125	Bristow, Okla.	Bristow, Okla.	1/14	7				"	"			
1/20	26228	2/3			1/20		6.125	Arkansas City, Kan.	Ark. City, Kans.	1/20	2/3				"	"			
2/1	26239	15			1/31	Seitz Audit	6.125	Bristow, Okla.	Bristow, Okla.	1/31	15				"	"	12	3.0	20
2/1	26238	40			2/1		6.125	Garber Okla.	Garber, Okla.	2/1	40				"	"			
2/7	26248	25			2/7		6.125	Shreveport, La.	Shreveport, La.	2/7	25				"	63.3/64.5	10	3.0	20
3/4	26775	25			3/3	Seitz Audit	6.125	Bristow, Okla.	Bristow, Okla.	3/3	25				"	60.5	12	3.0	20
3/4	26776	30			3/4		6.125	Garber, Okla.	Garber, Okla.	3/4	30				"	"			
3/4			26611	30			6	As agreed on date of shipment FOB Shreveport	Shreveport, La.			26611	3/4	4	"	63.3/64.5	9½	3.0	20
							6		"			"	3/5	1	"	"	9½	3.0	20
							6		"			"	3/7	3	"	"	9½	3.0	20
							6		"			"	3/9	2	"	"	9½	3.0	20
							6		"			"	3/10	1	"	"	9½	3.0	20
							6		"			"	3/11	2	"	"	9½	3.0	20
							6		"			"	3/12	3	"	"	9½	3.0	20
							6		"			"	3/13	2	"	"	9½	3.0	20
							6		"			"	3/16	4	"	"	9½	3.0	20
3/16			26623	15			6	Low Gr. 3 Mkt. 63/70 Octane per Chgo. Jo. of Com. on date of shipment F.O.B. Shreveport	"			26623	3/17	2	"	"	9½	3.0	20
							6		"			"	3/18	1	"	"	9½	3.0	20
							6		"			"	3/19	1	"	"	9½	3.0	20
							6		"			26611	3/19	3	"	"	9½	3.0	20
							6		"			"	3/20	3	"	"	9½	3.0	20
							6		"			26623	3/20	2	"	"	9½	3.0	20
							6		"			"	3/21	2	"	"	9½	3.0	20
							6		"			26611	3/21	2	"	"	9½	3.0	20
							6		"			26623	3/23	2	"	"	9½	3.0	20
							6		"			"	3/25	1	"	"	9½	3.0	20
							6		"			"	3/26	2	"	"	9½	3.0	20
							6		"			"	3/27	1	"	"	9½	3.0	20
							6		"			"	3/30	1	"	"	9½	3.0	20
4/4	26807	20			4/4		6	Garber, Okla.	Garber, Okla.	4/4	20								
4/4	26808	20			4/4		6	Enid	Enid, Okla.	4/4	20						12	3.0	20
3/31			26637	30			6	Low Gr. 3 Mkt. 63/70 Octane per Chgo. Jo. of Com. on date of shipment FOB Shreveport	Shreveport, La.			26637	4/7	3	"	"	8	3.0	20
							6		"			"	4/8	2	"	"	8	3.0	20
							6		"			"	4/9	2	"	"	8	3.0	20
							6		"			"	4/11	5	"	"	8	3.0	20
							6		"			"	4/14	3	"	"	8	3.0	20
		225-2/3		75							226 2/3			60					

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

Name on Order	Shipped By	Date of Order	Purchase Orders: At Flat Prices: No.	Purchase Orders: At Flat Prices: Cars	Purchase Orders: At Market Quotations Date of Shipment: No.	Purchase Orders: At Market Quotations Date of Shipment: Cars	Date Order Placed and Authority for Date (Flat Price Orders Only): Date	Date Order Placed and Authority for Date (Flat Price Orders Only): Authority	Order and Invoice: Price	Order and Invoice: F.O.B.	Shipped From
		1936					1936		Cents		
Atlas Oil Corp	Atlas Pipeline Corp.								6.	(Low Gr. 3 Mkt.	Shreveport, La.
"	"								6.	63/70 Octane	"
"	"								6.	per Chgo. Jo.	"
"	"								6.	of Com. on	"
"	"								6.	date of ship-	"
"	"								6.	ment F.O.B.	"
"	"								6.	Shreveport)	"
"	"	4/29			26685	30			6.	"	"
"	"								6.		"
Eason Oil Co.	Same	5/1			26831	20			6.	Low Chgo. Jo. of Com.	Enid, Okla.
"	"								6.	D/S FOB Enid	
Omar Refining Co.	"	5/1			26830	20			(6.	Low CJ of C 63/70	
Atlas Oil Corp.	Atlas Pipeline Corp.								(6.	D/S F.O.B. Garber)	Garber, Okla.
"	"								6.		
"	"								6.		
Omar Refining Co.	Same								6.		
"	"								6.		
Atlas Oil Corp	Atlas Pipeline Corp.								6.		
Eason Oil Corp.	Same								6.		
"	"								6.		
Omar Refining Co.	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
Omar Refining Co.	Same								6.		
Eason Oil Corp	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
Eason Oil Co.	Same								6.		
Omar Refining Co.	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
Eason Oil Co.	Same								6.		
Omar Refining Co	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
Eason Oil Co.	Same								6.		
Omar Refining Co.	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
"	"								6.		
Omar Refining Co.	Same								6.		
Eason Oil Co.	"								6.		
"	"								6.		
Omar Refining Co.	"								6.		
Eason Oil Co.	"								6.		
Omar Refining Co.	"								6.		
"	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.	5/29			26722	30			6.	Same as order 26637	Shreveport, La.
Eason Oil Co.	Same								6.		
"	"	6/1			26859	20			6.	Same as order 26831	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
Omar Refining Co.	Same	6/1			26858	20			6.	Low C J of C 63/70	
										D/S F.O.B. Garber	Garber, Okla.

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

Page 10
Mid-Continent—1936

(Spots on Charts for These Dates)

Date of Order	Purchase Orders: At Flat Prices		Purchase Orders: At Market Quotations Date of Shipment		Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped: On Flat Price Orders			Cars Shipped: At Market Quotations Date of Shipment			Specifications			Gum	
	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur.	Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936					1936		Cents			1936				1936						
							6.	Low Gr. 3 Mkt.	Shreveport, La.				26637	4/16	1	70/71		8	3.0	20
							6.	63/70 Octane	"				"	4/17	3	"		8	3.0	20
							6.	per Chgo. Jo.	"				"	4/20	1	"		8	3.0	20
							6.	of Com. on	"				"	4/21	4	"		8	3.0	20
							6.	date of shipment	"				"	4/23	1	"		8	3.0	20
							6.	F.O.B.	"				"	4/24	4	"		8	3.0	20
							6.	Shreveport	"				"	4/28	1	"		8	3.0	20
4/29			26685	30			6.	"	"				26685	5/2	1	"		8	3.0	20
							6.		"				"	5/5	4	"		8	3.0	20
5/1			26831	20			6.	Low Chgo. Jo. of Com.	Enid, Okla.				26831	5/5	1	"	60.5	9½	3.0	20
							6.	D/S FOB Enid					"	5/6	4	"	"	9½	3.0	20
5/1			26830	20			6.	Low CJ of C 63/70					26830	5/6	5	"	"	9½	3.0	20
							6.	D/S F.O.B. Garber	Garber, Okla.				26685	5/6	2	"	–	8	3.0	20
							6.						"	5/7	3	"		8	3.0	20
							6.						"	5/8	1	"		8	3.0	20
							6.						26830	5/9	3	"	60.5	9½	3.0	20
							6.						"	5/11	1	"	"	9½	3.0	20
							6.						26685	5/11	3	"	–	8	3.0	20
							6.						26831	5/12	3	"	60.5	9½	3.0	20
							6.						"	5/13	2	"	"	9½	3.0	20
							6.						26830	5/13	1	"	"	9½	3.0	20
							6.						26685	5/14	1	"	–	8	3.0	20
							6.						"	5/15	2	"		8	3.0	20
							6.						26830	5/15	3	"	60.5	9½	3.0	20
							6.						26831	5/15	2	"	"	9½	3.0	20
							6.						26685	5/16	1	"	–	8	3.0	20
							6.						"	5/18	1	"		8	3.0	20
							6.						26831	5/18	1	"	60.5	9½	3.0	20
							6.						26830	5/19	1	"	"	9½	3.0	20
							6.						26685	5/19	1	"	–	8	3.0	20
							6.						"	5/20	2	"		8	3.0	20
							6.						26831	5/20	1	"	60.5	9½	3.0	20
							6.						26830	5/21	1	"	"	9½	3.0	20
							6.						26685	5/21	1	"	–	8	3.0	20
							6.						"	5/22	2	"		8	3.0	20
							6.						26831	5/22	1	"	60.5	9½	3.0	20
							6.						26830	5/23	1	"	"	9½	3.0	20
							6.						26685	5/23	1	"	–	8	3.0	20
							6.						"	5/25	2	"		8	3.0	20
							6.						"	5/26	1	"		8	3.0	20
							6.						26830	5/27	1	"	60.5	9½	3.0	20
							6.						26831	5/27	1	"	"	9½	3.0	20
							6.						"	5/29	1	"	"	9½	3.0	20
							6.						26830	5/29	1	"	"	9½	3.0	20
							6.						26831	6/1	2	"	"	9½	3.0	20
							6.						26830	6/2	1	"	"	9½	3.0	20
							6.						"	6/3	1	"	"	9½	3.0	20
5/29			26722	30			6.	Same as order 26637	Shreveport, La.				26722	6/3	1	"	–	8	3.0	20
							6.						26831	6/4	1	"	60.5	9½	3.0	20
6/1			26859	20			6.	Same as order 26831	Enid, Okla.				26859	6/5	1	"	"	9½	3.0	20
							6.						26722	6/5	5	"	–	8	3.0	20
							6.						"	6/6	1	"		8	3.0	20
6/1			26858	20			6.	Low C J of C 63/70 D/S F.O.B. Garber	Garber, Okla.				26858	6/6	3	"	60.5	9½	3.0	20

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

(Spots on Charts for These Dates)

Name on Order	Shipped By	Purchase Orders: Date of Order	Purchase Orders: At Flat Prices: No.	Purchase Orders: At Flat Prices: Cars	Purchase Orders: At Market Quotations Date of Shipment: No.	Purchase Orders: At Market Quotations Date of Shipment: Cars	Date Order Placed and Authority for Date (Flat Price Orders Only): Date	Date Order Placed and Authority for Date (Flat Price Orders Only): Authority	Order and Invoice: Price	Order and Invoice: F.O.B.	Shipped From	Cars Shipped: On Flat Price Orders: Pur. Date	Cars Shipped: On Flat Price Orders: Cars	Cars Shipped: At Market Quotat Date of Shipme: Ord. No.	Cars Shipped: At Market Quotat Date of Shipme: Date Shippe
		1936					1936		Cents			1936			1936
Eason Oil Co.	Same								6.					26859	6/8
"	"								6.					"	6/9
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					26722	6/9
"	"								6.					"	6/10
Eason Oil Co.	Same								6.					26859	6/10
Omar Refining Co.	"								6.					26858	6/10
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					26722	6/11
Omar Refining Co.	Same								6.					26858	6/12
"	"								6.					"	6/13
Eason Oil Co.	"								6.					26859	6/13
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					26722	6/13
"	"								6.					"	6/15
Eason Oil Co.	Same								6.					26859	6/15
Omar Refining Co.	"								6.					26858	6/16
"	"								6.					"	6/17
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					26722	6/17
"	"								6.					"	6/18
Omar Refining Co.	Same								6.					26858	6/18
Eason Oil Co.	"								6.					26859	6/18
"	"								6.					"	6/20
Omar Refining Co.	"								6.					26858	6/20
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					26722	6/22
"	"								6.					"	6/23
Omar Refining Co.	Same								6.					26858	6/23
"	"								6.					"	6/24
"	"								6.					"	6/26
Eason Oil Co.	"								6.					26859	6/26
"	"								6.					"	6/30
Omar Refining Co.	"								6.					26858	6/30
"	"								6.					"	7/2
Eason Oil Co.	"								6.					26859	7/2
Atlas Oil Corp.	Atlas Pipeline Corp.	6/30			27122	25/30			6.	Low Gr. 3 Mkt. 63/70	Shreveport, La.			27122	7/2
"	"								6.	Octane per Chgo.	" "			"	7/4
"	"								6.	Jo. of Comm. on date	" "			"	7/7
"	"								6.	of Ship't FOB Shreve.	" "			"	7/8
Omar Refining Co.	Same	7/2			26884	20			6.	Low C. J. of C. 63/70				26884	7/8
"	"								6.	D/S FOB Garber	Garber, Okla.			"	7/9
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					27122	7/9
"	"								6.					"	7/10
Omar Refining Co.	Same								6.					26884	7/11
Eason Oil Co.	"	7/2			26883	20			6.	Low C. J. of C. 63/70	Enid, Okla.			26883	7/11
"	"								6.	Date of Shipment	" "			"	7/13
Omar Refining Co.	"								6.	FOB Enid, Okla.	" "			26884	7/13
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					27122	7/13
Omar Refining Co.	Same								6.					26884	7/14
Eason Oil Co.	"								6.					26883	7/14
Omar Refining Co.	"								6.					26884	7/15
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					27122	7/15
"	"								6.					"	7/16
Eason Oil Co.	Same								6.					26883	7/16
"	"								6.					"	7/17
Omar Refining Co.	"								6.					26884	7/17
Atlas Oil Corp.	Atlas Pipeline Corp.								6.					27122	7/17
Omar Refining Co.	Same								6.					26884	7/18

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

ers							(Spots on Charts for These Dates)										
At arket Quotations te of Shipment		Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped						Specifications				
							On Flat Price Orders			At Market Quotations Date of Shipment						Gum	
.	Cars	Date	Authority	Price	F.O.B.		Pur.	Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
		1936		Cents			1936				1936				Lbs.	Mgs.	Mgs.
				6.						26859	6/8	1	70/71	60.5	9½	3.0	20
				6.						"	6/9	1	"	"	"	"	"
				6.						26722	6/9	2	"	–	8	"	"
				6.						"	6/10	1	"	–	"	"	"
				6.						26859	6/10	3	"	60.5	9½	"	"
				6.						26858	6/10	2	"	"	"	"	"
				6.						26722	6/11	3	"	–	8	"	"
				6.						26858	6/12	4	"	60.5	9½	"	"
				6.						"	6/13	1	"	"	"	"	"
				6.						26859	6/13	4	"	"	"	"	"
				6.						26722	6/13	1	"	–	8	"	"
				6.						"	6/15	3	"	–	"	"	"
				6.						26859	6/15	1	"	60.5	9½	"	"
				6.						26858	6/16	1	"	"	"	"	"
				6.						"	6/17	1	"	"	"	"	"
				6.						26722	6/17	2	"	–	8	"	"
				6.						"	6/18	4	"	–	"	"	"
				6.						26858	6/18	1	"	60.5	9½	"	"
				6.						26859	6/18	1	"	"	"	"	"
				6.						"	6/20	2	"	"	"	"	"
				6.						26858	6/20	1	"	"	"	"	"
				6.						26722	6/22	1	"	–	8	"	"
				6.						"	6/23	1	"	–	"	"	"
				6.						26858	6/23	1	"	60.5	9½	"	"
				6.						"	6/24	1	"	"	"	"	"
				6.						"	6/26	1	"	"	"	"	"
				6.						26859	6/26	3	"	"	"	"	"
				6.						"	6/30	1	"	"	"	"	"
				6.						26858	6/30	1	"	"	"	"	"
				6.						"	7/2	2	"	"	"	"	"
				6.						26859	7/2	2	"	"	"	"	"
12	25/30			6.	Low Gr. 3 Mkt. 63/70	Shreveport, La.				27122	7/2	3	"	–	8	"	"
				6.	Octane per Chgo.	" "				"	7/4	1	"	–	"	"	"
				6.	Jo. of Comm. on date	" "				"	7/7	5	"	–	"	"	"
				6.	of Ship't FOB Shreve.	" "				"	7/8	1	"	–	"	"	"
84	20			6.	Low C. J. of C. 63/70					26864	7/8	2	"	60.5	9½	"	"
				6.	D/S FOB Garber	Garber, Okla.				"	7/9	2	"	"	"	"	"
				6.						27122	7/9	2	"	–	8	"	"
				6.						"	7/10	2	"	–	"	"	"
				6.						26884	7/11	1	"	60.5	9½	"	"
83	20			6.	Low C. J. of C. 63/70	Enid, Okla.				26883	7/11	4	"	"	–	–	"
				6.	Date of Shipment	" "				"	7/13	1	"	"	–	–	"
				6.	FOB Enid, Okla.	" "				26884	7/13	1	"	"	9½	3.0	20
				6.						27122	7/13	4	"	–	8	–	–
				6.						26884	7/14	2	"	60.5	9½	3.0	20
				6.						26883	7/14	3	"	"	–	–	–
				6.						26884	7/15	1	"	"	9½	3.0	20
				6.						27122	7/15	1	"	–	8	–	–
				6.						"	7/16	2	"	–	8	–	–
				6.						26883	7/16	1	"	60.5	–	–	–
				6.						"	7/17	1	"	"	–	–	–
				6.						26884	7/17	1	"	"	9½	3.0	20
				6.						27122	7/17	1	"	–	8	–	–
				6.						26884	7/18	3	"	60.5	9½	3.0	20

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

			Purchase Orders				Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1936					1936		Cents		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
Omar Refining Co.	Same								6.		
"	"								6.		
Eason Oil Co.	"								6.		
"	"								6.		
Omar Refining Co.	"								6.		
Eason Oil Co.	"								6.		
"	"	7/20			26897	1/2			6.	{Low C. J. of C. 63/70}	Enid, Okla.
Omar Refining Co.	"								6.	{D/S-F.O.B. Enid, Okla.}	
"	"								6.		
Eason Oil Co.	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.	8/1			27157	25/30			6.	Same as order #27122	
Eason Oil Co.	Same								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
Eason Oil Co.	Same								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
"	"								6.		
"	"								6.		
"	"								6.		
"	"								6.		
Eason Oil Co.	Same	8/5			26916	25			6.	{Low C.J. of C. 63/70}	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								6.	{D/S F.O.B. Enid}	
"	"								6.		
Eason Oil Co.	Same								6.		
"	"								6.		
"	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.								6.		
Eason Oil Co.	Same								6.		
"	"								6.		
"	"								6.		
Atlas Oil Corp.	Atlas Pipeline Corp.	8/28			27181	25/30			5.75	{Low Gr. 3 Mkt. 68/70	Shreveport, La.
"	"								5.75	Octane per Chgo. Jo. of	" "
"	"								5.75	Comm. D/S F.O.B.	" "
"	"								5.625	Shreveport}	" "
Omar Refining Co.	Same	9/4			26951	10			5.625	Low CJofC 63/70 D/S F.O.B.	Garber, Okla
Eason Oil Co.	"	9/5			26950	20			5.625	{Low CJofC 63/70}	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625	{D/S F.O.B. Enid}	
"	"								5.625		
"	"								5.635		
"	"								5.625		
Eason Oil Co.	Same								5.625		
Omar Refining Co.	"								5.5		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.5		
Omar Refining Co.	Same								5.5		
Eason Oil Co.	"								5.5		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.5		
"	"								5.5		
Eason Oil Co.	Same								5.5		
Omar Refining Co.	"								5.5		
"	"								5.5		
"	"								5.5		
Eason Oil Co.	"								5.5		
"	"								5.5		
"	"								5.5		

Defense Exhibit No. 741.

THE PURE OIL COMPANY
Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

Page 12
Mid-Continent—1936

(Spots on Charts for These Dates)

Date of Order	Purchase Orders: At Flat Prices		Purchase Orders: At Market Quotations Date of Shipment		Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped: On Flat Price Orders			Cars Shipped: At Market Quotations Date of Shipment			Specifications			Specifications: Gum	
	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur.	Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936					1936		Cents			1936				1936				Lbs.	Mgs.	Mgs.
							6.						27122	7/20	3	70/71	–	8	3.0	20
							6.						26884	7/20	1	"	60.5	9½	"	"
							6.						"	7/21	2	"	"	"	"	"
							6.						26883	7/22	1	"	"	9½	"	"
							6.						"	7/23	2	"	"	"	"	"
							6.						26884	7/23	1	"	"	9½	"	"
							6.						26883	7/24	2	"	"	"	"	"
7/20			26897	1/2			6.	Low C. J. of C. 63/70	Enid, Okla.				26897	7/24	½	"	"	9½	5.0	20
							6.	D/S-F.O.B. Enid, Okla.					26884	7/28	1	"	"	"	3.0	"
							6.						"	7/29	2	"	"	"	"	"
							6.						26883	7/31	1	"	"	"	"	"
8/1			27157	25/30			6.	Same as order #27122					27157	8/1	1	"	–	8	3.0	20
							6.						26883	8/3	1	"	60.5	9½	"	"
							6.						27157	8/4	3	"	–	8	"	"
							6.						26883	8/5	3	"	60.5	9½	"	"
							6.						27157	8/5	2	"	–	8	"	"
							6.						"	8/6	2	"	–	"	"	"
							6.						"	8/7	1	"	–	"	"	"
							6.						"	8/8	2	"	–	"	"	"
							6.						"	8/11	3	"	–	"	"	"
8/5.			26916	25			6.	Low C.J. of C. 63/70	Enid, Okla,				26916	8/11	5	"	60.5	9½	3.0	20
							6.	D/S F.O.B. Enid					27157	8/13	5	"	–	8	"	"
							6.						"	8/14	1	"	–	"	"	"
							6.						26916	8/14	5	"	60.5	9½	"	"
							6.						"	8/15	4	"	"	"	"	"
							6.						"	8/18	5	"	"	"	"	"
							6.						27157	8/18	5	"	–	8	"	"
							6.						26916	8/19	1	"	60.5	9½	"	"
							6.						"	8/21	4	"	"	"	"	"
							6.						"	8/24	1	"	"	"	"	"
8/28			27181	25/30			5.75	Low Gr. 3 Mkt. 68/70	Shreveport, La.				27181	9/1	1	"	–	8	3.0	20
							5.75	Octane per Chgo. Jo. of	" "				"	9/3	4	"	–	"	"	"
							5.75	Comm. D/S F.O.B.	" "				"	9/5	1	"	–	"	"	"
							5.625	Shreveport	" "				"	9/8	4	"	–	"	"	"
9/4			26951	10			5.525	Low CJofC 63/70 D/S F.O.B.	Garber, Okla				26951	9/8	2	"	60.5	12	3.0	20
9/5			26950	20			5.625	Low CJofC 63/70	Enid, Okla.				26950	9/9	1	"	"	12	3.0	20
							5.625	D/S F.O.B. Enid					27181	9/9	3	"	–	8	"	"
							5.625						"	9/10	2	"	–	"	"	"
							5.635						"	9/11	2	"	–	"	"	"
							5.625						"	9/12	3	"	–	"	"	"
							5.625						26950	9/12	3	"	60.5	12	"	"
							5.5						26951	9/14	1	"	"	"	"	"
							5.5						27181	9/15	2	"	–	8	"	"
							5.5						26951	9/16	1	"	60.5	12	"	"
							5.5						26950	9/16	3	"	"	"	"	"
							5.5						27181	9/16	2	"	–	8	"	"
							5.5						"	9/17	2	"	–	"	"	"
							5.5						26950	9/17	2	"	60.5	12	"	"
							5.5						26951	9/18	1	"	"	"	"	"
							5.5						"	9/19	3	"	"	"	"	"
							5.5						"	9/21	1	"	"	"	"	"
							5.5						26950	9/23	2	"	"	"	"	"
							5.5						"	9/24	2	"	"	"	"	"
							5.5						"	9/25	1	"	"	"	"	"

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

		Purchase Orders					Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1936					1936		Cents		
Omar Refining Co.	Same								5.5		
Kanotex Refining Co.	"	9/26	26976	2/3			9/26		5.5	Arkansas City, Kans.	Ark. City, Kans
Eason Oil Co.	"								5.5		
Atlas Oil Corp.	Atlas Pipeline Corp.	9/29			27214	25/30			5.5	Same as #27181	Shreveport, La.
Eason Oil Co.	Same								5.5		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.5		
"	"								5.5		
"	"								5.5		
"	"								5.5		
"	"								5.625		
"	"								5.625		
Omar Refining Co.	Same	10/1			26983	5			5.625	Low CJ of C 63/70	Garber, Okla.
"	"								5.625	D/S FOB Garber	
Eason Oil Co.	"	10/1			26982	10			5.625	Low CJofC D/S–Enid	Enid, Okla.
"	"								5.625		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625		
"	"								5.625		
Omar Refining Co.	Same								5.625		
"	"	10/16	27005	2/3			10/16		5.625	FOB Garber	Garber, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625		
Eason Oil Co.	Same								5.625		
Omar Refining Co.	"								5.625		
Eason Oil Co.	"	10/15			27003	10			5.625	Low CJofC D/S Enid	Enid, Okla.
"	"								5.625		
Omar Refining Co.	"	10/23			27010	1/3			5.625	Low CJofC 63/70 D/S Garber	Garber, Okla.
Eason Oil Co.	"								5.625		
Atlas Oil Corp.	Atlas Pipeline Corp.	10/27			27253	20/25			5.625	Same as #27181	Shreveport, La.
"	"								5.625		
"	"								5.625		
Eason Oil Co.	Same	10/31			27016	1-1/3			5.625	Low CJofC D/S FOB Enid	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625		
Omar Refining Co.	Same	11/5			27033	2/3			5.625	Low CJofC 63/70 D/S Garber	Garber, Okla.
Eason Oil Co.	"	11/3			27028	20			5.625	Low CJofC D/S FOB Enid	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625		
"	"								5.625		
Eason Oil Co.	Same								5.625		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.625		
"	"								5.75		
Eason Oil Co.	Same								5.75		
Omar Refining Co.	"	11/3			27027	5			5.75	Low CJ of C 63/70	Garber, Okla.
"	"								5.75	D/S FOB Garber	
"	"								5.75		
Atlas Oil Corp.	Atlas Pipeline Corp.								5.75		
Eason Oil Co.	Same								5.75		
"	"								5.75		
Omar Refining Co.	"								5.75		
Eason Oil Co.	"								5.75		
"	"								5.75		
"	"								5.75		
Atlas Oil Corp.	Atlas Pipeline Corp.	11/30			27302	20/25			5.75	Same as #27181	Shreveport, La.
"	"								5.75		
Eason Oil Co.	Same								5.75		
Omar Refining Co.	"	12/2			27363	3			5.75	Low CJofC 63/70 D/S FOB Garber	Garber, Okla.

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas
and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

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Mid-Continent—1936

(Spots on Charts for These Dates)

Date of Order	Purchase Orders				Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	Cars Shipped					Specifications				
	At Flat Prices		At Market Quotations Date of Shipment							On Flat Price Orders		At Market Quotations Date of Shipment						Gum	
	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
1936					1936		Cents			1936			1936				Lbs.	Mgs.	Mgs.
							5.5					26951	9/25	1	70/71	60.5	12	3.0	20
9/26	26976	2/3			9/26		5.5	Arkansas City, Kans.	Ark. City, Kans.	9/26	2/3				"	"	12	3.0	20
							5.5					26950	9/29	1	"	"	"	"	"
9/29			27214	25/30			5.5	Same as #27181	Shreveport, La.			27214	10/2	2	"	–	9	3.0	20
							5.5					26950	10/3	5	"	60.5	12	"	"
							5.5					27214	10/4	3	"	–	9	"	"
							5.5					"	10/7	3	"	–	"	"	"
							5.5					"	10/8	1	"	–	"	"	"
							5.5					"	10/9	4	"	–	"	"	"
							5.625					"	10/10	2	"	–	"	"	"
							5.625					"	10/12	5	"	–	"	"	"
10/1			26983	5			5.625	Low CJ of C 63/70	Garber, Okla.			26983	10/12	2	"	60.5	12	3.0	20
							5.625	D/S FOB Garber				"	10/13	1	"	"	"	"	"
10/1			26982	10			5.625	Low CJofC D/S–Enid	Enid, Okla.			26982	10/13	5	"	"	12	3.0	20
							5.625					"	10/14	3	"	"	"	"	"
							5.625					27214	10/14	1	"	–	9	"	"
							5.625					"	10/15	1	"	–	"	"	"
							5.625					26983	10/15	1	"	60.5	12	"	"
10/16	27005	2/3			10/16		5.625	FOB Garber	Garber, Okla.	10/16	2/3				"	"	12	3.0	20
							5.625					27214	10/17	5	"	–	9	"	"
							5.625					26982	10/17	2	"	60.5	12	"	"
							5.625					26983	10/19	1	"	"	"	"	"
10/15			27003	10			5.625	Low CJofC D/S Enid	Enid, Okla.			27003	10/21	5	"	"	12	3.0	20
							5.625					"	10/24	4	"	"	"	"	"
10/23			27010	1/3			5.625	Low CJofC 63/70 D/S Garber	Garber, Okla.			27010	10/27	1/3	"	"	12	–	–
							5.625					27003	10/28	1	"	"	"	3.0	20
10/27			27253	20/25			5.625	Same as #27181	Shreveport, La.			27253	11/3	2	"	–	9	3.0	20
							5.625					"	11/4	2	"	–	"	"	"
							5.625					"	11/5	2	"	–	"	"	"
10/31			27016	1-1/3			5.625	Low CJofC D/S FOB Enid	Enid, Okla.			27016	11/5	1-1/3	"	60.5	12	3.0	20
							5.625					27253	11/6	1	"	–	9	"	"
11/5			27033	2/3			5.625	Low CJofC 63/70 D/S Garber	Garber, Okla.			27033	11/9	2/3	"	60.5	12	3.0	20
11/3			27028	20			5.625	Low CJofC D/S FOB Enid	Enid, Okla.			27028	11/9	1	"	"	12	3.0	20
							5.625					27253	11/10	6	"	–	9	"	"
							5.625					"	11/12	3	"	–	"	"	"
							5.625					27028	11/12	2	"	60.5	12	"	"
							5.625					27253	11/13	2	"	–	9	"	"
							5.75					"	11/14	1	"	–	"	"	"
							5.75					27028	11/14	2	"	60.5	12	"	"
11/3			27027	5			5.75	Low CJ of C 63/70	Garber, Okla.			27027	11/14	1	"	"	12	3.0	20
							5.75	D/S FOB Garber				"	11/16	1	"	"	"	"	"
							5.75					"	11/17	1	"	"	"	"	"
							5.75					27253	11/17	5	"	–	9	"	"
							5.75					27028	11/19	2	"	60.5	12	"	"
							5.75					"	11/21	2	"	"	"	"	"
							5.75					27027	11/23	2	"	"	"	"	"
							5.75					27028	11/25	4	"	"	"	"	"
							5.75					"	11/27	2	"	"	"	"	"
							5.75					"	12/1	4	"	"	"	"	"
11/30			27302	20/25			5.75	Same as #27181	Shreveport, La.			27302	12/2	4	"	–	10	"	"
							5.75					"	12/3	2	"	–	"	"	"
							5.75					27028	12/3	1	"	60.5	12	"	"
12/2			27363	3			5.75	Low CJofC 63/70 D/S FOB Garber	Garber, Okla.			27363	12/3	1	"	"	"	"	"

Defense Exhibit No. 741.

THE PURE OIL COMPANY

Chronological Listing of 1936 Purchase Orders
F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

			Purchase Orders				Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		
			At Flat Prices		At Market Quotations Date of Shipment						
Name on Order	Shipped By	Date of Order	No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.	Shipped From
		1936					1936		Cents		
Atlas Oil Corp.	Atlas Pipeline Co.								5.75		
"	"								5.75		
Omar Refining Co.	Same								5.75		
"	"								5.75		
Atlas Oil Corp.	Atlas Pipeline Co.								5.75		
Eason Oil Co.	Same	12/4			27366	2/3			5.75	Low CJofC D/S FOB Enid	Enid, Okla.
Atlas Oil Corp.	Atlas Pipeline Co.								5.75		
"	"								5.75		
"	"								5.75		
Omar Refining Co.	Same	12/14			27381	1			5.75	Low CJofC 63/70 D/S Garber	Garber, Okla.
Eason Oil Co.	"	12/16			27385	10			5.75	Low CJofC D/S FOB Enid	Enid, Okla.
Omar Refining Co.	"	12/23			27394	3			5.75	Low CJofC 63/70 D/S Garber	Garber, Okla.
	Total 68-70 Octane			1-1/3		475-1/2					
	62 and below Octane										
Eason Oil Co.	Same	4/16	26818	2/3			4/16		5.	Enid	Enid, Okla.
American Mineral Spirits Co.	"	Not Given	27136	2/3			7/11		4.875	Gr. 3	Arkansas City, Kans
Omar Refining Co.	"	9/21	26963	2/3			9/21		4.5	Garber	Garber, Okla.
"	"	9/21	26964	1/3			9/21		4.5	"	" "
"	"	10/31	27017	2/3			10/31		4.625	"	" "
	Total 62 and below Octane			3							
	Summary										
	63-70 Octane			225-2/3		75					
	68-70 Octane			1-1/3		475-1/2					
	62 and below Octane			3							
	Grand Total			230		550-1/2					

Defense Exhibit No. 741.

THE PURE OIL COMPANY

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F.O.B. Refineries and Group 3, Oklahoma; F.O.B. Refineries and Group 3, Kansas and F.O.B. Refineries and Group 3, Louisiana
68-70 Octane

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Mid-Continent—1936

Purchase Orders At Flat Prices		Purchase Orders At Market Quotations Date of Shipment		Date Order Placed and Authority for Date (Flat Price Orders Only)		Order and Invoice		Shipped From	(Spots on Charts for These Dates) — Cars Shipped — On Flat Price Orders		Cars Shipped At Market Quotations Date of Shipment			Specifications			Gum	
No.	Cars	No.	Cars	Date	Authority	Price	F.O.B.		Pur. Date	Cars	Ord. No.	Date Shipped	Cars	OCT.	GRAV.	RVP	ASTM	CD
				1936		Cents			1936			1936				Lbs.	Mgs.	Mgs
						5.75					27302	12/4	1	70/71	–	10	3.0	20
						5.75					"	12/5	2	"	–	"	"	"
						5.75					27363	12/5	1	"	60.5	12	"	"
						5.75					"	12/7	1	"	"	12	3.0	20
						5.75					27302	12/7	4	"	–	10	"	"
		27366	2/3			5.75	Low CJofC D/S FOB Enid	Enid, Okla.			27366	12/8	2/3	"	60.5	12	"	"
						5.75					27302	12/10	2	"	–	10	3.0	20
						5.75					"	12/12	3	"	–	"	"	"
						5.75					"	12/15	5	"	–	"	"	"
		27381	1			5.75	Low CJofC 63/70 D/S Garber	Garber, Okla.			27381	12/15	1	"	60.5	12	"	"
		27385	10			5.75	Low CJofC D/S FOB Enid	Enid, Okla.			27385	12/24	3	"	"	"	"	"
		27394	3			5.75	Low CJofC 63/70 D/S Garber	Garber, Okla.			27394	12/26	1	"	"	"	"	"
	1-1/3		475-1/2							1-1/3			455-1/2					
26818	2/3			4/16		5	Enid	Enid, Okla.	4/16	2/3				57	58/60	-	-	-
27136	2/3			7/11		4.875	Gr. 3	Arkansas City, Kans.	7/11	2/3				–	–			
26963	2/3			9/21		4.5	Garber	Garber, Okla.	9/21	2/3				49/54	58.8	12-½	-	30
26964	1/3			9/21		4.5	"	" "	9/21	1/3				"	"	12-½	-	30
27017	2/3			10/31		4.625	"	" "	10/31	2/3				"	"	12-½	-	-
	3									3			–					
	225-2/3 1-1/3 3		75 475-1/2							226-2/3 1-1/3 3			60 455-1/2 –					
	230		550-1/2							231			515-1/2					

COMPOSITE OF
PRICE QUOTATIONS
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
AND
CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3

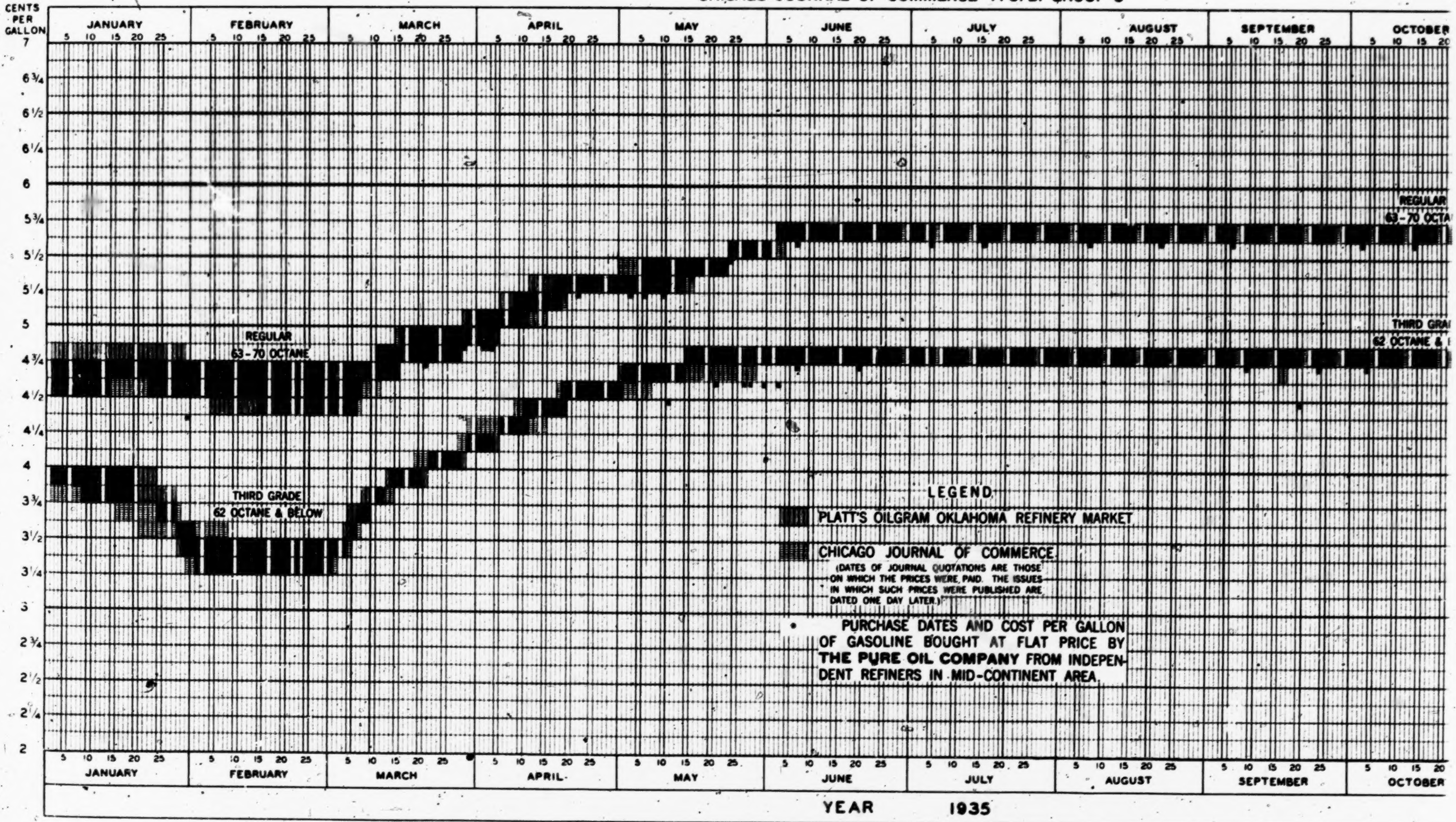

EXHIBIT NO. 741 A

COMPOSITE OF PRICE QUOTATIONS PLATT'S OILGRAM OKLAHOMA REFINERY MARKET AND CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3

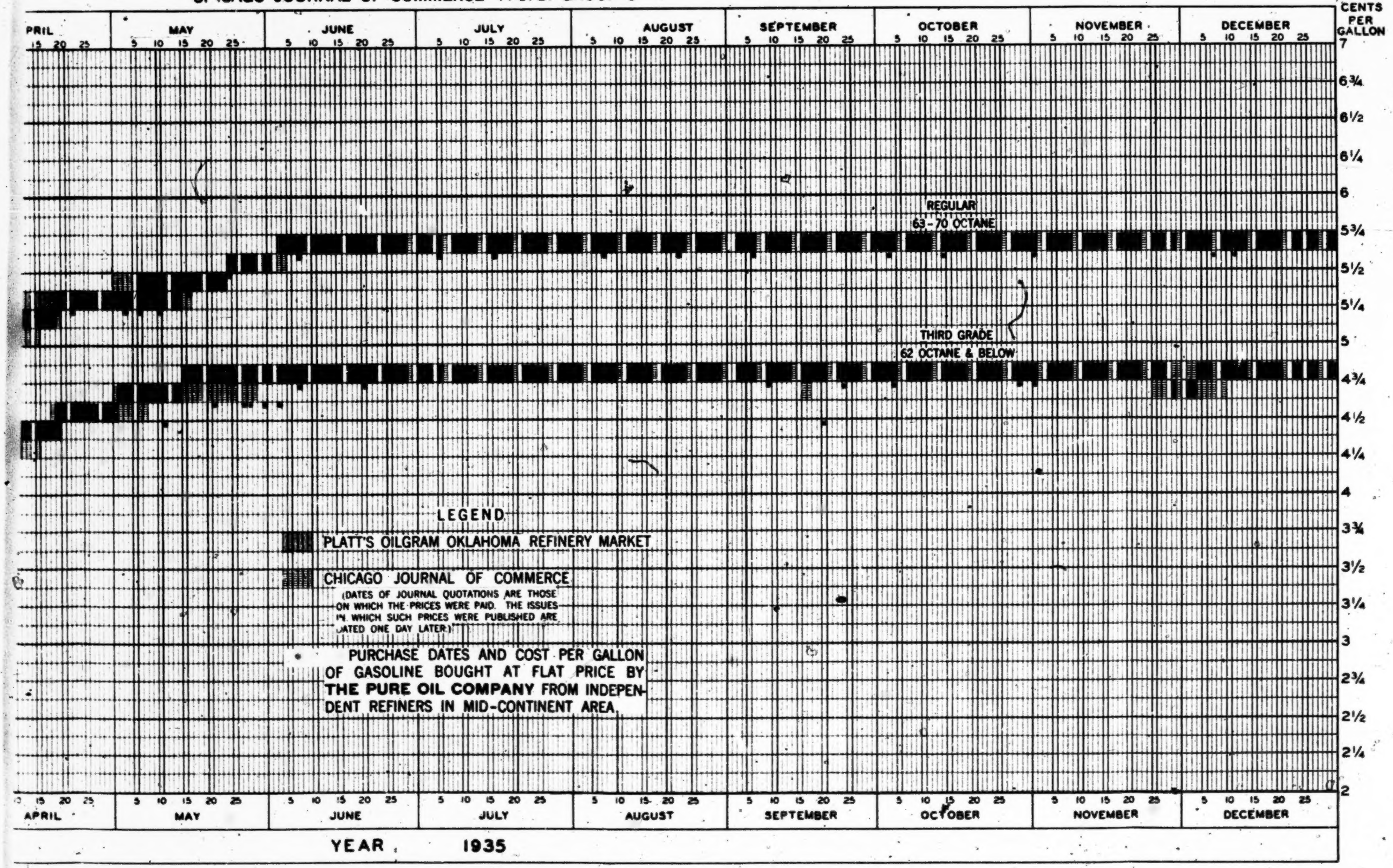

CHART No. XII D-1935

5394 GOVERNMENT EXHIBIT NO. 742.

Stipulation

Exhibits 103-118 and 490-508 were received by A. V. Bourque. Copies may be used in lieu of originals.

The authorship of any pencilled or other notations appearing on the above mentioned documents is specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5395 GOVERNMENT EXHIBIT NO. 743.

Stipulation

It is stipulated that George A. Booth, if called, would testify as follows:

That he is office manager of the Chicago Division of the Socony-Vacuum Oil Company, Inc., of which division the defendant Bryan S. Reid is manager.

That on February 11, 1936, he wrote a letter to F. E. Scuder of the Wadhams Oil Company, which letter has been received in evidence as Exhibit 336.

That prior to writing this letter he had a conversation with Bryan S. Reid, which was substantially as follows:

Booth reminded Reid of the Socony-Vacuum exchange arrangement with Empire, under which Magnolia, a subsidiary of Socony-Vacuum, furnished gasoline to Empire in Texas in exchange for which Empire furnished gasoline to the Chicago Division out of East Chicago.

Booth stated that Scuder requested that Wadhams be permitted to take four or five cars a month of Metro (3rd grade) gasoline out of the gasoline obtained from the Empire exchange.

Booth asked Reid what answer to give Scuder.

Reid pointed out to Booth that under the Empire exchange Socony-Vacuum could take either Metro or regular, and that it was to the advantage of Socony-Vacuum to take as much regular as possible, third grade being more easily obtainable than regular in the open market.

Reid said that if Wadhams took four or five cars of Metro per month on the Empire exchange, it would mean that many cars of regular gasoline that the Chicago Division would have to obtain elsewhere. Instead of having Empire gasoline, which they knew to be satisfactory, they would have to hunt around for a substitute which might not measure up to specifications.

Reid said Wadhams would have no difficulty in locating plenty of available third grade gasoline and instructed Booth to tell Scuder that he, Reid, understood the company's policy to be that orders for Metro (3rd grade) gasoline should be placed through Mr. Jacobi at Tulsa and taken from the excess in the Mid-Continent field.

5396 Said George A. Booth would further testify that the defendant Bryan S. Reid as manager of the Chicago Division of Socony-Vacuum Oil Company, Inc., has general charge of all the activities of that Division; and that during 1935 and 1936 Mr. Reid's immediate superior was defendant Charles L. Jones, a vice-president of Socony-Vacuum with offices in New York City, who had general supervision over The Chicago Division, The White Star Division, The Lubrite Division of Socony-Vacuum and the Wadhams Oil Company.

Louis Mead Treadwell

5397 GOVERNMENT EXHIBIT NO. 744.

Stipulation

E. M. Crone, if called as a witness, would testify that he is and was during the years 1935 and 1936 secretary of the defendant, The Texas Company, and he would further testify among other things, as follows:

1.

The defendant W. S. S. Rodgers, as President of the defendant The Texas Company, is the chief operating officer of The Texas Company and throughout 1935 and 1936 was actively in charge of the affairs of said company and directly controlled the execution of its policies and supervised and directed its operations. Said defendant, W. S. S. Rodgers, is the immediate superior of F. T. Manley, Vice President in Charge of Refining, and H. W. Dodge, Vice President in Charge of Domestic Sales.

2.

Defendant H. W. Dodge is Vice President in Charge of Domestic Sales and has executive authority to handle all matters pertaining to sales.

3.

Defendant R. D. Cottingham is Assistant to F. T. Manley, Vice President in Charge of Refining. Among his duties is that of handling the details of purchasing gasoline and other products to meet the requirements of the sales department. This he does under the general direction of F. T. Manley, Vice President in Charge of Refining, his immediate superior. Mr. Cottingham has been in charge of this division for many years, and throughout that period all purchases of gasoline and other finished products, made by or for The Texas Company were authorized by Manley and Cottingham and executed by that division.

4.

Defendant P. C. Scullin is Vice President and General Manager of the Indian Refining Company, an affiliate of The Texas Company. His office is at Houston, Texas. In addition to his duties with the Indian Refining Company, defendant Scullin has sometimes made purchases of gasoline, when authorized by either Manley or Cottingham, for and on behalf of The Texas Company. He purchased gasoline in this manner for The Texas Company during the years 1935 and 1936 in the East Texas field.

5398 GOVERNMENT EXHIBIT NO. 745.

Stipulation

Exhibit 337 was written by Ray Williamson in the office of P. W. Riggins, an employee of Continental Oil Co., and sent to H. B. May, and Exhibit 338 was received by Ray Williamson of Continental Oil Co. Copies may be used in lieu of originals.

The authorship of any pencilled or other notations appearing on the above mentioned documents is specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

5399 GOVERNMENT EXHIBIT NO. 746.

Stipulation

I.

Gulf Oil Corporation was incorporated on August 21, 1922 in Pennsylvania and has its principal place of business in Pittsburgh, Pennsylvania. The business of Gulf Oil Corporation was to be transacted in Allegheney County, Pennsylvania and it was a holding company and not an operating company until February 1, 1936.

II.

Gulf Refining Company was incorporated on June 24, 1930 in the State of Delaware, with its principal place of business in Wilmington, Delaware, and has an office for the transaction of business in Pittsburgh, Pennsylvania, and it is a wholly owned subsidiary of Gulf Oil Corporation. It is engaged in the production, transportation and refining of petroleum and the marketing of petroleum products in areas where it operates except in certain states including the State of Texas where it is engaged only in the transportation of petroleum. On January 6, 1936, it was given a permit to do business in the State of Texas, and has since engaged solely in the transportation of petroleum in that state.

III.

Prior to February 1, 1936, the Gulf Pipe Line Company, the Gulf Production Company and Gulf Refining Company, all three companies being Texas corporations and subsidiaries of Gulf Oil Corporation, were operating in the State of Texas. Gulf Refining Company of Texas was dissolved on January 31st, 1936 and Gulf Production Company ceased operating on January 31st, 1936, and their assets at that time were transferred to Gulf Oil Corporation which took over their operations on February 1st, 1936. The assets of Gulf Pipe Line Company were transferred to Gulf Refining Company, the Delaware corporation, which took over its operations February 1st, 1936.

IV.

Gulf Oil Corporation during the years 1935 and 1936 was not authorized to engage in, nor did it engage in the marketing of petroleum products in the States of Michigan, Wisconsin, including the western district thereof, Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri and Kansas, being the ten states mentioned in the indictment as comprising the Midwestern area. Of the
ten states mentioned in the indictment as comprising
5400 the Mid-western area, Gulf Refining Company, the
Delaware corporation, during the years 1935 and 1936 was engaged in the marketing of petroleum products only in the States of Michigan, Illinois and Indiana.

V.

Neither Gulf Oil Corporation nor Gulf Refining Company was authorized to do business in the State of Wisconsin and neither Gulf Oil Corporation nor Gulf Refining Company has ever done business in the State of Wisconsin, including the Western District thereof.

VI.

Neither Gulf Oil Corporation nor Gulf Refining Company has ever sold to jobbers who did business in the State of Wisconsin or the Western District thereof.

5401

GOVERNMENT EXHIBIT NO. 747.

5402

PURCHASES OF HOUSE BRAND AND THIRD GRADE GASOLINE BY DEFENDANT COMPANIES

(Other than Sinclair Refining Company)

From Independent Refineries During the Period March 1, 1935, to April 30, 1936.
In Tank Cars

	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sep. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	Apr. 1936	Totals
East Texas Field															
Barnsdall Refining Corporation.	1			1	9	10	10	1	2	4				1	39
Cities Service Export Oil Co....	240														240
Expire Oil and Refining Co.....				10	5	10									25
Louisiana Oil Refining Corp....	51	87	64	42	70	15	12	17	85	88	3	12	12	15	573
Continental Oil Company.......	54	58	41	29	30	52	18	27	30	27	13	13	26	20	438
Globe Oil and Refining Co. (3)..					5	10	5		10						30
Gulf Refining Co..............	235	151	141	129	222	184	207	156	202	255	289	662	372	277	3482
Mid-Continent Petroleum Corp.	13			37		10	15		10	7					92
Phillips Petr. Co..............	2		5	1	5	5									18
The Pure Oil Co..............	20	65	94	134	151	98	111	88	75	107	114	143	94	158	1452
Socony-Vacuum Oil Co., Inc....								12	20	2			1		35
Wadhams Oil Co..............			23	41	16	6	27	47	40	10	4		4		218
Shell Petr. Corp..............			5		10	9			10						34
Skelly Oil Co................				10	30	10	10		10						70
Tide Water Oil Co............				150	163	163	125	114	36			20	25	15	811
The Texas Company...........	75	40	40	65	55	70	40	40	70	140	170	155	140	140	1240
Totals....................	691	401	413	649	771	652	580	502	600	640	593	1005	674	636	8707

	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	Apr. 1936	Totals
Mid-Continent Field															
Barnsdall Refining Corp.	53	65	59	46	47	37	57	61	73	100	58	57	62	58	833
Empire Oil & Refining Co.	35	35	33	100	61	63	95	49	50	50	50	34	60	41	756
Louisiana Oil Refining Corp.	65	37	93	101	111	138	88	77	120	94	33	20	72	59	1108
Continental Oil Company	9	12	7	37	77	55	24			2		1	9		233
Deep Rock Oil Corp.					50	55				10				1	116
Globe Oil and Refining Company (3)	95	133	49		10	2		15	5	15	10	10	10	30	384
Gulf Refining Company	146	115	86	86	118	105	117	43	60	43	92	81	116	224	1432
Mid-Continent Petr. Corp.	10	92	62	63	69	59	62	47	36	64	97	5	40	61	767
Phillips Petroleum Co.	192	190	219	95	48	23	10	55	72	93	78	68	95	75	1313
The Pure Oil Company	11	15	24	31	34	40	29	49	49	51	50	80	130	36	629
Socony-Vacuum Oil Co., Inc.	28	42	46	153	198	101	60	79	10	10	22	11	30	38	828
Wadhams Oil Company	13	21	50	21	15	28	23			15	13	17	65	68	349
Shell Petroleum Corp.	10	23	15	20	10	8	49	35	55	75	88	85	107	99	679
Skelly Oil Company	15	49	73	72	166	102	62	53	21	40	51	36	57	35	832
Standard Oil Company (Indiana)	75	85	75	60	50	60	65	100	50	125	90	100	75	100	1110
Tide Water Oil Company					6			3		1		5			15
Totals	757	914	891	885	1070	876	741	666	601	788	732	610	928	925	11384
Grand Totals	1448	1315	1304	1534	1841	1528	1321	1168	1201	1428	1325	1615	1602	1551	20181

5404

GOVERNMENT EXHIBIT NO. 748.

5405

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For Third Grade Gasoline Purchased from Independent Refineries in East Texas Compared with Low Quotations Published in Platts Oilgram For the Date of Purchase During the Period March 1, 1935 to April 30, 1936

In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	Apr. 1936	Totals
1/8¢ above low				15	10			8				1	5		39
The low	99	129	135	472	614	513	513	449	513	486	269	382	411	445	5430
1/16¢ below low			1												1
1/8¢ below low	239	176	180	75	50	57	19	5	15	10	4		7		837
1/4¢ below low	313	56	37	9	10	10					35	54	111	30	665
5/16¢ below low			20												20
3/8¢ below low	15											164			179
1/2¢ below low				10											10
5/8¢ below low				3											3
11/16¢ below low												49			49
3/4¢ below low												200			200
13/16¢ below low					12										12
7/8¢ below low														10	10
1¢ below low					15										15
1 1/8¢ below															
Miscellaneous					5	2	8		2	4				1	22
Totals	666	361	373	584	716	582	540	462	530	500	308	850	534	486	7492
Number of Cars Purchased on Basis of Platts Oilgram Quotations															
Platts Oilgram low	25	40	40	65	55	70	40	40	70	140	285	155	140	140	1305
Grand Total	691	401	413	649	771	652	580	502	600	640	593	1005	674	626	8797

5406

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For Third Grade Gasoline Purchased from Independent Refineries in East Texas Compared with Low Quotations Published in Platts Oilgram
For the Date of Purchase During the Period March 1, 1935 to April 30, 1936

In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	1/8¢ above	Low	1/16¢ above	1/8¢ below	1/4¢ below	5/16¢ below	3/8¢ below	1/2¢ below	5/8¢ below	11/16¢ below	3/4¢ under and below	Miscellaneous	Totals
Barnsdall Refining Corp.	1	7		9								22	39
Cities Service Export Oil Co.				4	236								240
Empire Oil and Refining Co.		15		10									25
Louisiana Oil Refining Corp.	1	350	1	97	104	20							573
Continental Oil Company		178		217	6		14	10	3		10		438
Globe Oil and Refining Co. (3)		30											30
Gulf Refining Company		2339		331	266		155			49	227		3367
Mid-Continent Petr. Corp.		58		31	3								92
Phillips Petroleum Company		17		1									18
The Pure Oil Company	15	1337		75	15		10						1452
Socony-Vacuum Oil Co., Inc.	1	32		2									35
Wadhams Oil Company	11	184		13	10								218
Shell Petroleum Corp.		9		25									34
Skelly Oil Company	10	20		15	25								70
Tidewater Oil Company		804		7									811
The Texas Company		50											50
Totals	39	5430	1	837	665	20	179	10	3	49	237	22	7492
Percentages	.5%	72.5%		11.2%	8.9%	.3%	2.4%	.1%		.6%	3.2%	.3%	

5407

Number of Cars Purchased on Basis of Platts Oilgram Quotations	Totals
Gulf Refining Company	115
The Texas Company	1190
Totals	1305
Grand Totals	8797

GOVERNMENT EXHIBIT NO. 749.

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For Third Grade Gasoline Purchased from Independent Refineries in East Texas Compared with Low Quotations Published in Chicago Journal of Commerce for the Date of Purchase During the Period March 1, 1935 to April 30, 1936

In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	Apr. 1936	Totals
1/8¢ above low	10							1					5		16
The low	189	22	75	15	10		101	14	95	143	35	14	218	442	1373
1/8¢ below low	125	178	226	472	614	521	418	432	423	353	228	369	192	3	4554
3/16¢ below low			1												1
1/4¢ below low	279	161	51	75	50	49	13	15	10		4		8	30	745
5/16¢ below low			20												20
3/8¢ below low	49			9	10	10					40	115	111		344
1/2¢ below low	14										1	103			118
5/8¢ below low				10											10
3/4¢ below low				3											3
13/16¢ below low												49			49
15/16¢ below low												200			200
1¢ below low					12									10	22
1 1/4¢ below low					15										15
Miscellaneous					5	2	8		2	4				1	22
Totals	666	361	373	584	716	582	540	462	530	500	308	850	534	486	7492
Number of Cars Purchased on Basis of Platts Oilgram Quotations	25	40	40	65	55	70	40	40	70	140	285	155	140	140	1305
Grand Total	691	401	413	649	771	652	580	502	600	640	593	1005	674	626	8797

Government Exhibit No. 749.

Number of Cars Purchased at a Specific Price Which Was	1/8¢ above	Low	1/8¢ below	3/16¢ below	1/4¢ below	5/16¢ below	3/8¢ below	1/2¢ below	5/8¢ below	3/4¢ below and lower	Miscellaneous	Totals
Barnsdall Refining Corp.	1	2	14								22	39
Cities Service Export Oil Co.					203		37					240
Empire Oil & Refining Co.			15		10							25
Louisiana Oil Refining Corp.		70	327	1	145	20	10					573
Continental Oil Company	10	53	199		138		1	14	10	13		438
Globe Oil and Refining Co. (3)			30									30
Gulf Refining Company		728	1863		153		258	89		276		3367
Mid-Continent Petr. Corp.		3	71		15		3					92
Phillips Petroleum Company		5	13									18
The Pure Oil Company		323	1093		11		10	15				1452
Socony-Vacuum Oil Co., Inc.	1	3	31									35
Wadhams Oil Company	4	36	155		23							218
Shell Petroleum Corp.			9		25							34
Skelly Oil Company		10	20		15		25					70
Tide Water Oil Company		90	714		7							811
The Texas Company		50										60
Totals	16	1373	4554	1	745	20	344	118	10	289	22	7492
Percentage	.3%	18.3%	60.8%		9.9%	.3%	4.6%	1.6%	.1%	3.8%	.3%	
Number of Cars Purchased on Basis of Platts Oilgram Quotations												
Gulf Refining Company												115
The Texas Company												1190
Totals												1305
Grand Total												8797

5411

GOVERNMENT EXHIBIT NO. 750.

5412

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For House Brand and Third Grade Gasoline Purchased from Independent Refineries in Mid-Continent Field Compared with Low Quotations in Platt's Oil'x'am for the Date of Purchase During the Period March 1, 1935, to April 30, 1936

In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	Apr. 1936	Totals
13/16¢ above low	1														1
3/4¢ above low	1														1
5/8¢ above low	1														1
1/2¢ above low	3										33				36
3/8¢ above low		6				1			1		1				9
1/4¢ above low	20	20	26	5	5	1		1				2	55		135
3/16¢ above low	4	2	6		5	2									19
1/8¢ above low	48	109	23	38	19	3	6	2	1	11		35	235	7	537
1/16¢ above low												6			6
The low	308	308	360	501	677	614	559	466	500	521	433	341	299	520	6407
1/16¢ below low				4							1	4	2	1	12
1/8¢ below	313	348	319	161	42	32	29	24	25	21	50	22	3	2	1391
3/16¢ below low			12							5					17
1/4¢ below low	22	91	116	10	56	52	28	11	3	1	2	3	1	2	396
5/16¢ below low						3	9	2							14
3/8¢ below low	16	21		1	1		4	2	2	1	2	2	1		53
1/2¢ below low	6										7			1	14
5/8¢ below low	6		4	3									15		28
3/4¢ below low													15	100	115
Miscellaneous					2	5	4			1					12
Totals Number of Cars Purchased on Basis of Platts Oilgram Quotations	749	905	866	723	807	713	637	508	532	561	529	415	626	633	9204
Low North Texas Quotations				34	55	40	24								153
Number of Cars Purchased on Basis of Chicago Journal of Commerce Quotations	8	9	25	128	208	123	80	158	69	227	203	195	302	292	2027
Grand Total	757	914	891	885	1070	876	741	666	601	788	732	610	928	925	11384

Purchased at a Specific Price Which Was	13/16¢ above	3/4¢ above	5/8¢ above	1/2¢ above	3/8¢ above	1/4¢ above	3/16¢ above	1/8¢ above	1/16¢ above	low	1/16¢ below	1/8¢ below	3/16¢ below	1/4¢ below and under	Totals
Barnsdall Refining Corp.	1				1	59	8	46	6	509	11	98		54	793
Empire Oil & Refining Co.		1	1	13				67		581		90		3	756
Louisiana Refining Corp.								1		991		116			1108
Continental Oil Co.								9		49		11		3	72
Deep Rock Oil Corp.										10				76	86
Globe Oil & Refining Co. (3)						5	11	16		13		213		31	289
Gulf Refining Co.								70		1043		186		133	1432
Mid-ContinentPetr.Corp.					1			37		459		157	17	86	757
Phillips Petroleum Co.				5	1	4		208		751		233		111	1313
The Pure Oil Company				7	5	60		29		463		5		15	584
Socony-Vacuum Oil Co., Inc.						5		34		227		78		20	364
Wadhams Oil Co.						1		3		54		62		45	165
Shell Petroleum Corp.										306		26			332
Skelly Oil Company				11	1	1		17		491	1	70		51	643
StandardOilCo.(Indiana)										455		40			495
Tide Water Oil Co.										5		6		4	15
Totals	1	1	1	36	9	135	9	537	6	6407	12	1391	17	632	9204
Percentages				.4%	.1%	1.5%	.2%	5.8%	.1%	69.[illegible]%	.1%	15.1%	.2%	6.9%	
Number of Cars Purchased on Basis of Platts Oilgram Quotations Continental Oil Company															153
Number of Cars Purchased on Basis of Chicago Journal of Commerce Quotations															2027
Grand Total															11384

5417 GOVERNMENT EXHIBIT NO. 751.

5418

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For House Brand and Third Grade Gasoline Purchased from Independent Refineries in Mid-Continent Field Compared with Low Quotation in Chicago Journal of Commerce for the Date of Purchase During the Period March 1, 1935 to April 30, 1936,
Distributed by Months
In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	April 1936	Totals
13/16¢ above low........	1														1
3/4¢ above low........	1														1
1/2¢ above low........	4										18				22
3/8¢ above low........	1	7	1			1			1		15				26
5/16¢ above low........	3	2													5
1/4¢ above low........	21	19	29	5	5	1			1		43	9	25		158
3/16¢ above low........	1		6		5	2						1			15
1/8¢ above low........	47	113	64	64	19	3	34	3	13	62	20	31	265	7	745
1/16¢ above low........				4								7			11
The low........	349	317	580	499	677	614	536	461	499	481	380	354	297	520	6564
1/16¢ below low........			12							5	1	2	2	1	23
1/8¢ below low........	282	398	107	132	42	33	27	29	18	10	42	6	5	2	1133
1/4¢ below low........	20	28	63	15	56	51	23	11		1	5	3	2	2	280
5/16¢ below low........						3	9	2							14
3/8¢ below low........	14	21		1	1		4	2		1	2	2			48
1/2¢ below low........	5			3							3			1	12
5/8¢ below low........			4										15		19
3/4¢ below low........													15	100	115
Miscellaneous........					2	5	4			1					12
Totals........	749	905	866	723	807	713	637	508	532	561	529	415	626	633	9204

5419

Number of Cars Purchased on Basis of Chicago Journal of Commerce Quotations	Mar. 1935	Apr. 1935	May 1935	June 1935	July 1935	Aug. 1935	Sept. 1935	Oct. 1935	Nov. 1935	Dec. 1935	Jan. 1936	Feb. 1936	Mar. 1936	April 1936	Totals
High C. J. C........	5														

High C. J. C.		5													5
Low C. J. C. plus $6.60 per car												15			15
1/4¢ below C. J. C. low				47	97	104	53	50	5	40			8		404
1/8¢ below C. J. C. low		4	10	36	45	8	13	13	9	17	25		15	13	208
Low C. J. C.	8		15	45	1	11	14	95	55	170	178	180	279	279	1330
C.J.C. price for 3rd grade plus 5/8¢					5										5
3/8¢ above C.J.C. low					20										20
Average C.J.C. high and low					40										40
Totals	8	9	25	128	208	123	80	158	69	227	203	195	302	292	2027
Number of Cars Purchased on Basis of Platts Oilgram Quotations				34	55	40	24								153
Grand Totals	757	914	891	885	1070	876	741	666	601	788	732	610	928	925	11384

5420

PRICES PAID BY DEFENDANT COMPANIES
(Exclusive of Sinclair Refining Company)

For House Brand and Third Grade Gasoline Purchased from Independent Refineries in Mid-Continent Field Compared with Low Quotation in Chicago Journal of Commerce for the Date of Purchase During the Period March 1, 1935 to April 30, 1936 Distributed by Companies
In Tank Cars

Number of Cars Purchased at a Specific Price Which Was	13/16¢ above	3/4¢ above	1/2¢ above	3/8¢ above	5/16¢ above	1/4¢ above	3/16¢ above	1/8¢ above	1/16¢ above	low	1/16¢ below	1/8¢ below	1/4¢ below and under	Miscellaneous	Totals
Barnsdall Refining Corp.	1			1	5	65	4	51	11	514	5	88	36	12	793
Empire Oil & Refining Co.		1	4	9		1		87		595		57	2		756
Louisiana Oil RefiningCorp.								1		1056		51			1108
Continental Oil Company								9		49		11	3		72
Deep Rock Oil Corp.										10			76		86
Globe Oil & Refining Co. (3)						5	11	17		30		220	6		289
Gulf Refining Company								91		1070		138	133		1432
Mid-Continent Petr. Corp.				1		41		87		386	17	177	48		757

Number of Cars Purchased at a Specific Price Which Was	13/16¢ above	3/4¢ above	1/2¢ above	3/8¢ above	5/16¢ above	1/4¢ above	3/16¢ above	1/8¢ above	1/16¢ above	low	1/16¢ below	1/8¢ below	1/4¢ below and under	Miscellaneous	Totals
Phillips Petroleum Co.				9		6		261		801		164	72		1313
The Pure Oil Company			7	5		31		57		464		5	15		584
Socony-Vacuum Oil Co., Inc.						5		39		225		79	16		364
Wadhams Oil Company						1		3		89		29	43		165
Shell Petroleum Corp.										311		21			332
Skelly Oil Company			11	1		3		17		504	1	72	34		643
Standard Oil Company (Ind.)								25		455		15			495
Tide Water Oil Company										5		6	4		15
Totals	1	1	22	26	5	158	15	745	11	6564	23	1133	488	12	9204
Percentages			.2%	.3%		1.7%	.2%	8.1%	.1%	71.3%	.3%	12.4%	5.3%	.1%	

Number of Cars Purchased on Basis of Chicago Journal of Commerce Quotations	13/16¢ above	3/4¢ above	1/2¢ above	3/8¢ above	5/16¢ above	1/4¢ above	3/16¢ above	1/8¢ above	1/16¢ above	low	1/16¢ below	1/8¢ below	1/4¢ below and under	Miscellaneous	Totals
Barnsdall Refining Corp.															40
Continental Oil Company															8
Deep Rock Oil Corp.															30
Globe Oil & Refining Co.															95
Mid-Continent Petr. Corp.															10
The Pure Oil Company															45
Socony-Vacuum Oil Co., Inc.															464
Wadhams Oil Company															184
Shell Petroleum Corp.															347
Skelly Oil Company															189
Standard Oil Company (Ind.)															615
Totals															2027
Number of Cars Purchased on Basis of Platts Oilgram Quotations															153
Number of Cars Purchased on Basis of Published Quotations															2180
Grand Total															11384

5421 **GOVERNMENT EXHIBIT NO. 753.**

Stipulation

I

"C. M. Boggs" and the initials "C. M. B." referred to Clyde M. Boggs, a defendant in the above entitled action.

II

Document dated September 4, 1935, written on the letterhead of the Western Petroleum Refiners Association, (Exhibit 755) was written by Clyde M. Boggs and sent to George B. Dickey at the address indicated.

Documents dated January 1, 1938, and bearing the initials "C. M. B." (Exhibits 756 and 795) were prepared under the direction of Clyde M. Boggs and sent to a list of independent refiners, including Dickey Refining Company and the Derby Oil Company.

The following documents entitled, "Confidential—Special Gasoline Questionnaire", are questionnaires which were prepared under the direction of Clyde M. Boggs and distributed to a list of independent refiners, including Derby Oil Company, Omar Refining Company and Eason Oil Company.

Name Appearing Opposite "Name of Company" on the Questionnaire	Month Appearing Opposite "Month of" on the Questionnaire
Eason Oil Co.	Oct. 1935 (Exhibit 758)
Omar Refining Company	Oct. 1935 (Exhibit 759)
Blank (from Omar file)	Nov. 1935 (Exhibit 760)
Blank (from Omar file)	Dec. 1935 (Exhibit 757)
Eason Oil Co.	Dec. 1935 (Exhibit 762)
Omar Refining Co.	Jan. 1936 (Exhibit 761)
Eason Oil Company	Jan. 1936 (Exhibit 163)
Derby Oil Co.	Jan. 1936 (Exhibit 164)
Derby	Mar. 1936 (Exhibit 765)

5422 Document dated February 7, 1936, (Exhibit 766) was received by Clyde M. Boggs.

The following documents (Exhibits 767-781; 783-787) on which the words "Executive Chairman" appear were prepared under the supervision of Clyde M. Boggs, including the insertion in each case of the handwritten figures immediately preceding the typewritten word "barrels", and sent to the refiners from whose files the documents were taken.

Date Appearing on Document	Handwritten Name Appearing on Document, indicating File from which Document was taken.
September 26, 1935	Derby
September 26, 1935	Omar
October 25, 1935	Derby
October 25, 1935	Omar
October 25, 1935	Dickey
November 29, 1935	Dickey
November 29, 1935	Derby
November 29, 1935	Omar
December 20, 1935	Derby
December 20, 1935	Dickey
December 20, 1935	Omar
January 25, 1936	Derby
January 25, 1936	Omar
January 25, 1936	Dickey
March 4, 1936	Derby
March 4, 1936	Omar
March 4, 1936	Dickey
March 28, 1936	Dickey
March 28, 1936	Omar
March 28, 1936	Derby

5423 Document dated September 24, 1935, on which the handwritten words "Omar Refining Company" follow the typewritten words "Name of Company", (Exhibit 788) is a questionnaire prepared under the supervision of Clyde M. Boggs and sent out to the Company indicated.

Documents dated October 8, 1935 (Exhibits 148 and 604), letters addressed to Dan Danciger and T. W. Eason were prepared by Clyde M. Boggs and sent out by him to the persons to whom they were addressed.

III

Wherever any of the above mentioned documents are copies, such copies may be used in lieu of the originals and without the necessity of accounting for the originals.

IV

Any pencil or other notations, including figures in blanks left for the purpose of inserting figures on any of the above mentioned documents or on papers attached to such documents are excluded from this stipulation, except as stated to the contrary above.

V

The defendant expressly reserves the right to all objections which he may desire to present against the admissibility of the above mentioned documents, except as above stipulated.

Dated: November 10, 1937.

W. L. Cunningham
Attorney for Clyde M. Boggs

5424 GOVERNMENT EXHIBIT NO. 755.

Letterhead of Western Petroleum Refiners
Association, Tulsa, Oklahoma

September 4, 1935

Mr. Geo. B. Dickey
Dickey Refining Company
Wichita, Kansas

Dear Mr. Dickey:

The regular monthly meeting of Group II refiners will be held at the Muehlebach Hotel, Kansas City, Missouri, at 9:30 a. m. Thursday, September 12th, which meeting you are urged to attend.

Many important subjects will be discussed; therefore, it is imperative that you be represented at the meeting, not only by your sales managers, but also that you attend in person. I cannot overemphasize the importance of your own presence at this and future meetings.

Yours very truly,
C. M. Boggs
President.

5425 GOVERNMENT EXHIBITS NOS. 756 AND 795.

January 1, 1936

In the past, questionnaires have been coming in several days after the 10th of the month, therefore we are not able to get the figures tabulated until about the 20th, which is too late.

We want the figures not later than the 12th, allowing three days for compiling, then they will be available the 15th.

Your cooperation will be appreciated.

C. M. B.

(Exhibit 795 is identical with 756, set out above and has not been printed separately.)

NOTE: *It was stipulated* in Exhibit 753 that Exhibits 756 and 795 were prepared under the direction of Clyde M. Boggs and sent to a list of independent refiners including the Dickey Refining Company and the Derby Oil Company.

5426 GOVERNMENT EXHIBITS NOS. 757-765.

Name of Company ....

Confidential

Special Gasoline Questionnaire

Month of ....

(Refinery ....
1. Stocks, First of Month (Pipe Line ....
(Total Stocks ....
2. Production ....
3. *Purchases:
(A) Purchases from Other Refiners ....
(B) Purchases from Other Refiners ....
4. *Purchases on Exchange ....
Total Items 1, 2, 3 and 4 ....
5. Shipments to Regular Trade ....
6. *Shipments:
(A) Shipments to Other Refiners ....
(B) Shipments to Other Refiners ....
7. *Shipments on Exchange ....
(Refinery ....
8. Stocks, End of Month—(Pipe Line ....
(Total ....
Total Items 5, 6, 7 and 8 ....

5427 Crude Runs to Stills ....
Estimated Production in ....
Estimated Shipments in ....
Surplus to Offer in ....
Stocks Required, End of ....

All information to be computed on same basis formerly used in reporting data to Planning and Coordination Committee.

(Exhibits 761, 763 and 764 had added to this form "Please return this Questionnaire not later than the 12th of the month".)

(Specific figures appearing on Questionnaires are not printed.)

NOTE: *It was stipulated* in Exhibit 753 that the above documents were Questionnaires prepared under the direction of Clyde M. Boggs and distributed to a list of independent refiners including Derby, Omar, and Eason.

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* Attach list showing names of refiners and number of cars by grades.

5428 GOVERNMENT EXHIBIT NO. 766.

February 7, 1936

C. M. Boggs,
Kanotex Refining Company
Arkansas City, Kansas.

Dear Sir:

I am enclosing herewith questionnaire for the month of February.

Yours very truly,
The Derby Oil Company
F. W. McCurry,
Vice President In Charge of Manufacturing

5429 GOVERNMENT EXHIBIT NO. 767.

September 26, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of October should not exceed 95,000$^{\underline{00}}$ barrels.

Executive Chairman

(Handwritten Notation):

"Derby"

NOTE: *It is stipulated* in Exhibit 753 that the group of Exhibits numbered 767-781 and 783-787 were prepared under the supervision of Clyde M. Boggs, including the insertion in each case of the figures immediately preceding the word "Barrels" and sent to the refiners named on each of the exhibits.

5430 GOVERNMENT EXHIBIT NO. 768.

September 26, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of October should not exceed 50,000°° barrels.

Executive Chairman

(Handwritten Notations):

"Apparently received
from Mr. Boggs because
the envelope (plain one)
was marked 'Arkansas City'
B.A.P. 9/27/35".
"Omar"

5431 GOVERNMENT EXHIBIT NO. 769.

October 25, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of November should not exceed 95000°° barrels.

Executive Chairman

(Handwritten Notation):

"Derby"

5432 GOVERNMENT EXHIBIT NO. 770.

October 25, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of Noven ber should not exceed 48000°° barrels.

Executive Chairman

(Handwritten Notation):

"Omar"

5433 GOVERNMENT EXHIBIT NO. 771.

October 25, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of November should not exceed 28,000^{00} barrels.

Executive Chairman

(Handwritten Notation):

"Dickey"

5434 GOVERNMENT EXHIBIT NO. 772.

November 29, 1935

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of December should be as follows:

Refinery	26000^{00} barrels
Buy	1000^{00} barrels
Total Production	27000^{00} barrels

Executive Chairman

(Handwritten Notation):

"Dickey"

5435 GOVERNMENT EXHIBIT NO. 773.

November 29, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of December should be as follows:

Refinery	81000^{00} barrels
Buy	3000^{00} barrels
Total Production	84000^{00} barrels

Executive Chairman

(Handwritten Notation):

"Derby"

5436 GOVERNMENT EXHIBIT NO. 774.

November 29, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of December should not exceed 44000$^{\underline{00}}$ barrels.

Executive Chairman

(Handwritten Notation):

"BAP 12/9/35"
"Omar"

5437 GOVERNMENT EXHIBIT NO. 775.

December 20, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of January should be as follows:

Refinery	84000$^{\underline{00}}$	barrels
Buy	———	barrels
Total Production	84000$^{\underline{00}}$	barrels

Executive Chairman

(Handwritten Notation):

"Derby"

5438 GOVERNMENT EXHIBIT NO. 776.

December 20, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of January should be as follows:

Refinery	30000$^{\underline{00}}$	barrels
Buy	———	barrels
Total Production	30000$^{\underline{00}}$	barrels

Executive Chairman

(Handwritten Notation):

"Dickey"

5439 GOVERNMENT EXHIBIT NO. 777.

December 20, 1935

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of January should be as follows:

Refinery	43000^{00}	barrels
Buy	——	barrels
Total Production	43000^{00}	barrels

Executive Chairman

(Handwritten Notation):

"BAP 12/26/35"

"Omar"

5440 GOVERNMENT EXHIBIT NO. 778.

January 25, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of February should be as follows:

Total production	85000^{00}	barrels

Executive Chairman

(Handwritten Notation):

"Derby"

5441 GOVERNMENT EXHIBIT NO. 779.

January 25, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of February should be as follows:

Total production $43000^{\underline{00}}$ barrels

Executive Chairman

(Handwritten Notation):

"Omar"

5442 GOVERNMENT EXHIBIT NO. 780.

January 25, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of February should be as follows:

Total production $27000^{\underline{00}}$ barrels.

Executive Chairman

(Handwritten Notation):

"Dickey"

5443 GOVERNMENT EXHIBIT NO. 781.

March 4, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of March should be as follows:

Total production $90000^{\underline{00}}$ barrels

Executive Chairman

(Handwritten Notation):

"Derby"

5444 GOVERNMENT EXHIBIT NO. 783.

March 4, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of March should be as follows:

Total production 41000$^{\underline{00}}$ barrels

Executive Chairman

(Handwritten Notations):

"Day phoned recently and told
Lakman that stocks were increasing
at all plants and the situation
called for reduced production;
that we would receive 41,000 bbls.
for March; but if we found later
on in the month that we wanted
more, we could ask for it. B. A. P."

"Incidentally, Day asked Lakman
what we planned to make for March
and Lakman said he did not know.
B. A. P. 3/5/36"
"Omar"

5445 GOVERNMENT EXHIBIT NO. 784.

March 4, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of March should be as follows:

Total production 35000$^{\underline{00}}$ barrels

Executive Chairman

(Handwritten Notation):

"Dickey"

5446 GOVERNMENT EXHIBIT NO. 785.

March 28, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of April should be as follows:

Total production 28000^{00} barrels

Executive Chairman

(Handwritten Notation):

"Dickey"

5447 GOVERNMENT EXHIBIT NO. 786.

March 28, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of April should be as follows:

Total production 43000^{00} barrels

Executive Chairman

(Handwritten Notation):

"Omar"

5448 GOVERNMENT EXHIBIT NO. 787.

March 28, 1936

Gentlemen:

Analysis of the figures submitted by the various refiners reveals that your gasoline production for the month of April should be as follows;

Total production 85000^{00} barrels

Executive Chairman

(Handwritten Notation):

"140,000 BBL crude"
"Derby"

5449 GOVERNMENT EXHIBIT NO. 788.

Name of Company—Omar Refining Company

Date—September 24, 1935

	Stocks	Production	Shipments for Differential or Exchange	Shipments to Regular Trade	Distress Shipments to other Refiners List Amounts, Dates and Name of Refiner on Separate Sheet by Grades	Total Shipments	Distress to Offer	Stocks Required
1st......	19,093		None				None	
June 30th......	8,626	55,909		46,376	20,000	66,376		10,000
1st......	8,626							
July 31st......	10,892	55,954		47,088	6,600	53,688		10,000
1st......	10,892							
Aug. 31st......	7,605	56,762		44,649	15,400	60,049		10,000
Sept. 1st......	7,605							
Sept. 10th......	7,581	18,500		13,724	4,800	18,524		10,000

Copy of report sent to
C. M. Boggs, Kanotex Ref. Co.
Arkansas City, Kansas 9/24/3-(?)
On bottom of report sent to C. M. Boggs—shipments to other refiners were shown in detail similar to schedule on attached working sheet.

NOTE:—*June Allocation* 55,000
Contemplated Stock required end of each month to January 1st 10,000.
Minimum working stock—exclusive of tank bottoms. 15,000 (including 5,000 unfinished).

NOTE:—*It is stipulated* in Exhibit 753 that this was a questionnaire prepared under the supervision of Clyde M. Boggs and sent out to the com-

5450 GOVERNMENT EXHIBITS NOS. 789-794,* 796-804.

NOTE: *It was stipulated* in Exhibit 820 that these questionnaires were sent to all members of the Western Petroleum Refiners' Association and that some or all of these questionnaires, filled out in whole or in part, were received by said Association.

Form of Exhibit 789.

Western Petroleum Refiners Association Company No.
607 Cosden Bldg., Tulsa, Oklahoma

Statistical Information, Month of

Inventory,
Crude Runs to Stills,
Gasoline Production,
Gasoline Shipments,
Inventory,

(1) Sales to Other Refiners

(1) Purchases from Other Refiners
Inventory
Crude Runs to Stills,
Gasoline Production,
Gasoline Shipments,
Inventory,

Notes: All information to be computed on same basis formerly used in reporting data to Planning and Coordination Committee.
Individual company information to be held strictly confidential.

(1) List names of refiners and number of cars.

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* Exhibit 795 is identical with Exhibit 756, and has not been printed.

5451 **Form of Exhibits 790 and 791.**

Western Petroleum Refiners Association Company No. ....
607 Cosden Building, Tulsa, Oklahoma

Gasoline Statistical Information

Month of ______________

Inventory First of Month	**(Refinery** ______________ **(Pipe Line** ______________ **(Total** ______________

Crude Runs to Stills ______________

Gasoline Production ______________

Gasoline Shipments ______________

Inventory End of Month	**(Refinery** ______________ **(Pipe Line** ______________ **(Total** ______________

***Sales to Other Refiners** ______________

***Purchases from Other Refiners** ______________

Notes: All information to be computed on same basis formerly used in reporting data to Planning and Coordination Committee.

Individual company information to be held strictly confidential and used for statistical purposes only.

---

* List names of refiners and number of cars.

5452 Form of Exhibits 792-794; 796-801.

Western Petroleum Refiners Association
607 Cosden Building, Tulsa, Oklahoma Company No. ....

Gasoline Statistical Information

Month of ....

1. Stocks First of Month (Refinery .... (Pipe Line .... (Total Stocks ....

2. Production ....

3. **Purchases:
   (A) Purchases from Other Refiners................
   (B) Purchases from Other Refiners................

4. **Purchases on Exchange................

Total Items 1, 2, 3 and 4 ....

5. Shipments to Regular Trade................

6. **Shipments:
   (A) Shipments to Other Refiners................
   (B) Shipments to Other Refiners................

7. **Shipments on exchange................

8. Stocks, End of Month (Refinery .... (Pipe Line .... (Total Stocks ....

Total Items 5, 6, 7 and 8 ....

Crude Runs to Stills................

Estimated Production in................

Estimated Shipments in................

Notes: All information to be computed on same basis formerly used in reporting data to Planning and Coordination Committee.

Individual company information to be held strictly confidential and used for statistical purposes only.

Please return this questionnaire not later than the 12th of the month.

** Attach list showing names of refiners and numbers of cars.

5453

Form of Exhibit 802.

Western Petroleum Refiners Association Company No.........
607 Cosden Building, Tulsa, Oklahoma

Confidential

Special Fuel Oil Statistical Information

Fuel Oil (All Grades Zero):

Inventory Available for Shipment ____________

Total Production, ________________________

Inventory Available for Shipment ____________

Total Production, ________________________

Fuel Oil (15° and Above)

Inventory Available for Shipment ____________

Total Production, ________________________

Inventory Available for Shipment ____________

Total Production, ________________________

Form of Exhibits 803-804.

Western Petroleum Refiners Association Company No.........
607 Cosden Building, Tulsa, Oklahoma

Confidential Questionnaire

Month of ....

5454	Stocks (1st of Month)	Production	Shipments	Stocks (End of Month)
Kerosene				
41-43				
42-44				
Tractor Fuels				
A (WPRA) (Non-Taxable)				
Taxable Grade				
Furnace & Gas Oil				
No. 1. White				
No. 1 Straw (38-40)				
No. 2 Straw (32-36)				
No. 2 Dark (32-36)				
U. C. I.				
Fuel Oil				
28-30 Zero				
24-28				
18-22				
14-16				

All figures to be shown in barrels.

Please return this questionnaire not later than the 12th of the month.

5455 GOVERNMENT EXHIBITS NOS. 805-808.

Instructions for Filling Out Enclosed Questionnaire

Production:

Figured the same as the old P & C method:

"To the total amount of finished and unfinished gasoline on hand at the end of the month, add the total shipments of finished and unfinished gasoline, if any, shipped to other refiners for reforming or rerunning. From the total of those items deduct the amount of finished and unfinished gasoline (as defined) on hand at the beginning of the month. Deduct also any quantities of finished or unfinished gasoline purchased or received from other refiners for rerunning or reforming. The net result shall be considered the production of gasoline."

Production to include natural gasoline purchased used in all motor fuel.

Purchases

"A" To include all gasoline purchased for saving in freight and to build up inventories.

"B" To include purchases made during the month for any reason above the estimate made for item "A".

Purchases on Exchange

Purchases and shipments on exchange should balance. These purchases and shipments from other refiners are to and from territory to save in the freight differential only. If the purchases and shipments do not balance, the difference to be charged to production or shipments as the case may be.

Shipments to Regular Trade

All shipments to own outlets, on contract or spot.

Shipments

"A" All shipments to other refiners for freight saving or to build up inventories.

"B" Shipments made during the month above the estimate made for item "A", or for other reasons.

Shipments on Exchange Explained above.

Stocks

Are the inventories at the first and last of each month of all finished and unfinished gasoline and naphtha boiling under 437° F.

5456 The total of items 1, 2, 3 and 4 should balance with the total of items 5, 6, 7 and 8.

Estimated production to be amount of gasoline produced from stills, plus all purchased natural gasoline and purchases from other refiners.

All quantities to be shown in barrels.

Exhibits 806-808 are identical with 805, set out above, and have not been printed.

NOTE: *It was stipulated* in Exhibit 820 that these instructions accompanied the first questionnaire which the Western Petroleum Refiners' Association sent to its members when it resumed the gathering of statistics in August 1935.

5457 GOVERNMENT EXHIBIT NO. 809.

Identical with Government Exhibit No. 231C.

GOVERNMENT EXHIBIT NO. 810.

Identical with Government Exhibit No. 231B.

5458 GOVERNMENT EXHIBIT NO. 811.

Total Cars Purchased During May, 1935

By	No. Cars
Anderson-Prichard	20
Barnsdall	50
Continental	45
Empire	53
Globe	98
Gulf (From Simms)	1
Humble (From Simms)	4
Magnolia (From Simms)	10
Marathon (From Simms)	9
Mid-Continent	80
Phillips	133
Pure	33
Shell	45
Sinclair	60
Skelly	88
Standard of Indiana	75
Tidewater (From Simms)	10
Wadhams	115
Total May	929 Cars

5459 GOVERNMENT EXHIBIT NO. 812-A.

Total Cars Purchased During May, 1935

From	By	No. Cars	Total
Acme Petroleum Co	Globe	10	10
Bell Oil & Gas Co	Barnsdall	5	
	Shell	5	10
Bradshaw (Dallas)	Shell	5	5
Carson Petroleum Co	Globe	1	1
Champlin Refining Co	Phillips	8	8
Cooperative Consumers (Megargel, Texas)	Continental	5	
	Sinclair	5	10
Cushing Refining & Gaso Co	Anderson-Prichard	10	
	Globe	1	
	Shell	25	
	Wadhams	17	53
Danciger Refining Co	Wadhams	50	50
Dale W. Moore	Mid-Continent	6	6
Dickey Refining Co	Globe	10	10
East Texas Refining Co	Globe	5	
	Wadhams	13	18
Eason Oil Co	Anderson-Prichard	10	
	Phillips	30	
	Wadhams	4	44
Lubbock Refining Co	Continental	5	5
Olney Oil & Ref Co	Empire	33	33
Omar Refining Co	Wadhams	20	
	Barnsdall	5	
	Globe	41	
	Phillips	2	
	Pure	5	
	Skelly	1	74
Panhandle Refining Co	Pure	9	
	Sinclair	20	29
Primrose Refining Co	Phillips	5	5
Rock Island Refining Co	Phillips	29	29
Shamrock Oil & Gas Co	Continental	16	16

Page 2 May Purchases.

From	By	No. Cars	Total
Simms Oil Company	**Humble**	**4**	
	Magnolia	**10**	
	Tidewater	**10**	
	Gulf	**1**	
	Marathon	**9**	
	Barnsdall	**5**	
	Continental	**14**	
	Empire	**20**	
	Globe	**10**	
	Mid-Continent	**30**	
	Phillips	**15**	
	Pure	**9**	
	Shell	**10**	
	Sinclair	**35**	
	Skelly	**15**	
	Wadhams	**11**	**208**
Sunray Oil Company	**Skelly**	**1**	**1**
Tansel Petroleum Co	**Phillips**	**5**	**5**
Taxman Refining Co	**Continental**	**5**	
	Globe	**5**	
	Mid-Continent	**12**	
	Phillips	**39**	
	Skelly	**50**	**111**
Vaughn Petroleum Co	**Globe**	**5**	**5**
Vickers Petroleum Co	**Barnsdall**	**5**	
	Mid-Continent	**10**	
	Pure	**10**	
	Globe	**10**	**35**
Waggoner Refining Co	**Barnsdall**	**30**	
	Mid-Continent	**22**	
	Skelly	**15**	
	Standard of Indiana	**75**	**142**
Wilcox Oil & Gas Co	**Skelly**	**6**	**6**
	Total May		**929 Cars**

5461 GOVERNMENT EXHIBIT NO. 813-A.

Total Cars Gasoline Purchased During June, 1935.

Barnsdall	10
Continental	60
Empire	114
Globe	23
Mid-Continent	105
Phillips	47
Pure	35
Shell	25
Sinclair	44
Skelly	85
Socony-Vacuum	110
Standard of Indiana	60
Total	718 Cars

5462 GOVERNMENT EXHIBIT NO. 813-B.

Total Cars Gasoline Purchased During June, 1935.

From	By	No. Cars	Total
Bell Oil & Gas Co	Empire	5	5
Black Gold Refining Co	Mid-Continent	3	3
L. O. Carter Co. (Okla City material)	Mid-Continent	11	11
Century Refining Co	Socony-Vacuum	5	5
Cushing Refining & Gaso Co	Shell	15	
	Socony-Vacuum	20	35
Cooperative Consumers	Continental	2	
(Megargel, Texas)	Sinclair	5	7
Dale W. Moore	Mid-Continent	8	
	Skelly	5	13
East Texas Refining Co	Socony-Vacuum	32	32
Eason Oil Company	Socony-Vacuum	5	
	Phillips	2	7
Gilliland Refining Co.	Socony-Vacuum	8	
(East Texas)	Mid-Continent	10	18
Hercules Oil Co	Mid-Continent	8	
(East Texas material)	Skelly	5	13
Industrial Petroleum Co	Mid-Continent	11	
(East Texas material)	Socony-Vacuum	4	
	Globe	3	18
Lubbock Oil & Refining Co	Continental	3	3
McMurray Refining Co	Barnsdall	5	
(East Texas)	Empire	10	15
Olney Oil & Refining Co	Empire	80	80
Omar Refining Co	Phillips	5	
	Socony-Vacuum	18	
	Sinclair	30	
	Pure	25	78
Panhandle Refining Co.	Continental	7	
	Mid-Continent	5	
	Sinclair	9	21

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From	By	No. Cars	Total
Simms Oil Company	Continental	22	
	Socony-Vacuum	12	
	Skelly	19	
	Phillips	10	
	Empire	4	
	Mid-Continent	5	
	Pure	10	82
Southport Petroleum Co (East Texas)	Socony-Vacuum	3	3
Texas-Pacific Coal & Oil Co	Shell	10	
	Mid-Continent	10	
	Empire	10	30
Tansel Petroleum Co (East Texas material)	Mid-Continent	9	9
Taxman Refining Co	Continental	26	
	Globe	10	
	Empire	5	
	Mid-Continent	20	
	Phillips	27	
	Skelly	41	129
Trans-American Petroleum Co (East Texas material)	Globe	10	10
Tyreco Refining Co	Socony-Vacuum	3	
(East Texas)	Skelly	5	8
Waggoner Refining Co	Barnsdall	5	
	Standard of Indiana	60	
	Mid-Continent	5	70
Wilcox Oil & Gas Co	Skelly	10	
	Phillips	3	13
	Total		718 Cars

5464 GOVERNMENT EXHIBIT NO. 814-A.

Total Cars Gasoline Purchased During July, 1935.

By	From	No. Cars	Total
Barndall	Dale W. Moore	5	
	Waggoner Refining Co	10	
	Tansel Petroleum Co	5	
	Hercules Oil Co	5	25
Continental	Monarch Oil Co (Okla City)	3	
	Panhandle Refining Co	4	
	Taxman Refining Co	42	
	Waggoner Ref Co (Dale Moore)	7	
	Shamrock Oil and Gas Co	3	
	Wirt-Franklin Petro Corp	10	69
Empire	Olney Oil & Ref Co	60	60
Globe	Henry H. Cross	6	
	Black Gold Ref Co	3	
	East Texas Ref Co	10	19
Mid-Continent	Taxman Ref Co	38	
	L. O. Carter Co	11	
	Dale W. Moore	8	57
Phillips	Dale Moore	3	
	Taxman Ref Co	22	
	L. O. Carter Co	2	
	Texas-Pacific Coal & Oil	10	
	Waggoner Ref Co	5	42
Pure	Waggoner Ref Co	22	
	Wirt-Franklin Petro Corp	10	32
Shell	Bradshaw (McMurrey)	10	
	Black Gold Ref Co	2	12
Sinclair	Panhandle Ref Co	30	
	Wirt-Franklin	10	40
Skelly	Gilliland Ref. Co	10	
	Taxman Refining Co	72	
	Texas Oil Products Co	10	
	Waggoner Refining Co	16	
	Wilcox Oil & Gas Co	14	
	Wirt-Franklin Petro Corp	20	142
Socony-Vacuum	Cushing Ref & Gaso Co	35	
	Wilcox Oil & Gas Co	2	
	McMurrey Refining Co	1	
	Danciger Oil & Ref Co	13	
	Texas Oil Products Co	4	
	Johnston-Burnham (E Tex)	2	
	East Texas Ref Co	12	69
Standard of Indiana	Waggoner Refining Co	50	50
	Total July		**617 Cars**

5465 GOVERNMENT EXHIBIT NO. 814-B.

Total Cars Gasoline Purchased During July, 1935.

From	By	No. Cars	Total
Black Gold Refining Co	Shell	2	
	Globe	3	5
L. O. Carter Co	Mid-Continent	11	
	Phillips	2	13
Cushing Refining & Gaso Co	Socony-Vacuum	35	35
H. H. Cross Co	Globe	6	6
Dale W. Moore	Barnsdall	5	
	Mid-Continent	8	
	Phillips	3	16
Danciger Refining Co	Socony-Vacuum	13	13
East Texas Refining Co	Socony-Vacum	12	
	Globe	10	22
Gilliland Ref Co (E Tex)	Skelly	10	10
Hercules Oil Co (Dallas)	Barnsdall	5	5
Johnson-Burnham Co (E Tex)	Socony-Vacuum	2	2
McMurrey Refining Co (E Tex)	Shell	10	
	Socony-Vacuum	1	11
Monarch Ref Co (Okla City)	Continental	3	3
Olney Oil & Ref Co	Empire	60	60
Panhandle Ref Co	Continental	4	
	Sinclair	30	34
Shamrock Oil & Gas Co	Continental	3	3
Tansel Petroleum Co	Barnsdall	5	5
Taxman Refining Co	Mid-Continent	38	
	Continental	42	
	Skelly	72	
	Phillips	22	174
Texas Oil Products (E Tex)	Socony-Vacuum	4	
	Skelly	10	14
Texas-Pacific Coal & Oil	Phillips	10	10
Waggoner Refining Co	Pure	22	
	Standard (Indiana)	50	
	Barnsdall	10	
	Continental	7	
	Skelly	16	
	Phillips	5	110

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From	By	No. Cars	Total
Wilcox Oil & Gas Co	Socony-Vacuum	2	
	Skelly	14	16
Wirt-Franklin Petro Corp	Skelly	20	
	Continental	10	
	Sinclair	10	
	Pure	10	50
	Total July		617

5467 GOVERNMENT EXHIBIT NO. 815.

February 7, 1936.

Western Petroleum Refiners Association,
Tulsa, Oklahoma
Attention: J. C. Day

Dear Sir:

I am enclosing herewith questionnaire for the month of February.

Yours very truly,
The Derby Oil Company,
F. W. McCurry,
Vice President
In Charge of Manufacturing.

5468

GOVERNMENT EXHIBIT NO. 816.

Minimum Stocks

1936

	Fixed Unavailable	Shipable Material	Total
July 1st	5,000	25,000	30,000
August 1st	5,000	20,000	25,000
September 1st	5,000	15,000	20,000
October 1st	4,000	10,000	14,000
November 1st	3,000	5,000	8,000
December 1st	2,000	5,000	7,000

Note: Fixed Unavailable includes all material in lines, processing equipment, agitators, treating systems, tank bottoms, and minimum reserve stocks necessary for economical operation. This includes all unfinished naphthas and gasolines.

Shipable Material includes all naphthas and gasolines necessary to conduct operation in an orderly and economic manner to protect shipments for a period of five to seven days and any unexpected shut-down, also seasonal stocks if necessary to accumulate for spring and summer deliveries.

(Note: It was stipulated in Exhibit 820 that this was a questionnaire which was prepared by the Western Petroleum Refiners' Association and sent to all of its members. Some or all of those questionnaires, filled out in whole or in part, were received by the Association. Figures in blanks left for the purpose of inserting figures were excluded from the stipulation.)

(Handwritten Notation):

"Boggs"

5469 GOVERNMENT EXHIBIT NO. 817.

February 5, 1936.

J. C. Day,
Cosden Building,
Tulsa, Oklahoma.

Dear Mr. Day:

I am reporting to you an overage in our gasoline production. Instead of the 85,000 barrels which we were supposed to run, we ran 86, (marginal note: (O. K.)) 435, an over-production of 1,435 barrels. Most of this overage was caused by our gasoline stocks getting lower than we anticipated, and right at the end of the month we were forced to buy several cars of natural gasoline in order to bring our blending tank specifications down for winter use. It was not our intention to disregard the allocation and arbitrarily overrun this amount, and I am sure adjustment on this can be made which will be satisfactory to both W. P. R. A. and the Derby Oil Company.

I would like to call to your attention at this time that we are building a new unit which will replace the entire battery of crude stills in our refinery. This unit is being built by Foster-Wheeler Engineering Company and will be finished about the first of April, but in the meantime, in order to put some of our refractionating towers into this service, it is going to be necessary for us to cut our runs and possibly not be able to run our allocation. This partial shutdown will probably come during the month of March, and it may be necessary for us to make arrangements to run part of our March allocation during the month of February. If this can be worked out, I would appreciate your notifying us so we can make arrangements to increase our runs for the month of February.

Yours very truly,
The Derby Oil Company,
F. W. McCurry,
Vice-President,
in Charge of Manufacturing.

5470 GOVERNMENT EXHIBIT NO. 818.

December 26, 1935.

Mr. J. C. Day,
Western Petroleum Refiners Association,
Tulsa, Oklahoma.

Dear Mr. Day:

After our last refiners' meeting held at Kansas City, Mr. Derby informed you that we would probably produce 75,000 barrels of gasoline during the month of December. This was 6,000 barrels less than our allowable of 81,000.

On account of our shipments having decreased considerably more than we contemplated in our last questionnaire, and since it is the policy of the management of our company to regulate our production according to actual shipments and inventory, we will produce only 73,000 barrels of gasoline instead of the 81,000 barrels allocated to us.

This leaves a balance of 8,000 barrels to return to you; however, in returning this gasoline we request that you do not reallocate or give it to any other refiner for three reasons:

First, we have decreased our inventory of gasoline to date 5,000 barrels under inventory as of December first.

Second, we have purchased at the request of Mr. A. D. Borque 2,000 barrels of distressed gasoline from the Dickey Oil Company at McPherson.

Third, we have curbed our operations for the purpose of helping stabilize the business as a whole and avoid price destruction.

Since it is a little late to wish you a Merry Christmas, we sincerely wish you a Happy New Year.

Very truly yours,
The Derby Oil Company,
F. W. McCurry,
Vice-President,
in Charge of Manufacturing.

5471 GOVERNMENT EXHIBIT NO. 819.

March 30, 1936.

Mr. A. V. Bourque,
Western Petroleum Refiners Association,
Tulsa, Oklahoma

Dear Sir:

Your notice of March 28 states that our allowable gasoline production for April is 28,000 barrels.

I am afraid this is not going to be a sufficient amount, as our sales are very heavy and our storage is practically depleted. From my own estimate I should judge we would require a production of 35,000 barrels and I would like to suggest that we will operate on the basis of 28,000 barrels and when we find this is going to be an insufficient amount we will let you know and you will grant us the privilege of running sufficient gasoline to take care of our trade and demand for the month of April.

Yours very truly,
The Dickey Refining Company,
A. M. Ballard.

CC: Mr. Clyde Boggs,
Kanotex Refining Co.,
Arkansas City, Kansas

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GOVERNMENT EXHIBIT NO. 820.

Stipulation

I

The initials "J.C.D." are those of John C. Day.

"A. V. Bourque" is Arthur V. Bourque, a defendant in the above entitled action.

II

Document dated April 13, 1936, written on the letterhead of the Western Petroleum Refiners Association and addressed "To Mid-Continent Refiners", was prepared by John C. Day and sent out by the Western Petroleum Refiners Association to its members who operated in the Mid-Continent.

The following documents (Exhibits 789-794; 796-801) entitled, either "Statistical Information" or "Gasoline Statistical Information" on which are the typewritten words "Western Petroleum Refiners Association, 607 Cosden Building, Tulsa, Oklahoma", in the upper left-hand corner, are copies of questionnaires which were sent to all members of the Western Petroleum Refiners Association. Some or all of those questionnaires, filled out in whole or in part, were received by Western Petroleum Refiners Association.

Number Appearing Opposite Words "Company No."	Month Appearing Opposite Words "Month of"	
19	July	1935
26	Aug.	1935
26	Sept.	1935
26	Oct.	1935
15	Nov.	1935
26	Nov.	1935
26	Dec.	1935
13	Jan.	1936
26	Jan.	1936
5473 26	Feb.	1936
26	Mar.	1936
13	Mar.	1936
15	May	1936

Document entitled, "Special Fuel Oil Statistical Information" (Exhibit 802) is a copy of the questionnaire which was prepared by the Western Petroleum Refiners Association, and copies of such questionnaire were sent to all of its members. Some or all of those questionnaires, filled out in whole or in part, were received by Western Petroleum Refiners Association.

Documents entitled, "Confidential Questionnaire—Month of Mar. 1936" (Exhibit 803), and "Confidential Questionnaire—Month of May, 1936" (Exhibit 804) are copies of questionnaires which were prepared by the Western Petroleum Refiners Association, and copies of such questionnaires were sent to all of its members. Some or all of those questionnaires, filled out in whole or in part, were received by Western Petroleum Refiners Association.

Documents entitled "Instructions for Filling out Enclosed Questionnaire" (Exhibits 805-808) are copies of instructions accompanying the first questionnaire which the Western Petroleum Refiners Association sent to its members when it resumed the gathering of statistics in August 1935.

Documents entitled, "Total Cars Purchased during March 1935", "Total Cars Purchased during April 1935", "Total Cars Purchased during May 1935" (2 reports). "Total Cars Purchased during June 1935" (2 reports), "Total Cars Purchased during July 1935" (2 reports), (Exhibits 809-814 respectively) were prepared by Arthur V. Bourque and made available to anyone desiring them.

Document dated February 7, 1936 (Exhibit 815), is a copy of a letter apparently written by the Derby Oil Company, the original of which was received by the Western Petroleum Refiners Association.

Document entitled "Minimum Stocks—1936" (Exhibit
816) is a copy of a questionnaire which was prepared by
the Western Petroleum Refiners Association and sent
5474 to all of its members. Some or all of those ques-
tionnaires, filled out in whole or in part, were received
by Western Petroleum Refiners Association.

Document dated March 30, 1936 (Exhibit 819), is a copy of a letter addressed to A. V. Bourque, Western Petroleum Refiners Association, Tulsa, Oklahoma. The original was received by Arthur V. Bourque and at the sender's request, was returned to the sender with the statement that Arthur V. Bourque had not sent the "notice of March 28" mentioned in the document, and that he (Arthur V. Bourque) had no connection with the matters therein mentioned.

John C. Day, if called as a witness, would testify that he received the original of document dated February 5, 1936 (Exhibit 817), addressed to J. C. Day, Cosden Building, Tulsa, Oklahoma, and the original of document dated December 26, 1935 (Exhibit 818), addressed to Mr. J. C. Day, Western Petroleum Refiners Association, Tulsa, Oklahoma; and that since August 15, 1935 he has been an employe of Western Petroleum Refiners Association.

III

Any pencil or other notations, including figures in blanks left for the purpose of inserting figures on any of the above mentioned documents or on papers attached to such documents are excluded from this stipulation.

IV

The defendant expressly reserves the right to all objections which he may desire to present against the admissibility of the above mentioned documents, except as above stipulated.

Ralph Horween,
Attorney for Arthur V. Bourque.

Dated:
11 November, 1937.

5475

GOVERNMENT EXHIBIT NO. 821.

Stipulation.

It is hereby stipulated and agreed by the undersigned counsel for defendants in the above entitled cause that A. P. Reuther, General Manager, Crude Oil Department, Shell Petroleum Corporation, if called as a witness by the Government would testify as follows:

That he has no independent recollection of the persons who were present at a meeting held in the office of Edward J. Bullock, Vice-President in Charge of Purchases, Standard Oil Company (Indiana), on February 5, 1935; that he, A. P. Reuther was present at such a meeting; that he wrote the letter bearing his initials addressed to Messrs. Fraser, Bascom, van Eeghen and Lakin, dated February 6, 1935, Exhibit No. 177, and that while he does not remember the facts stated therein he believes they were correct at the time he wrote them.

Said A. P. Reuther would further testify, if questioned, that he has since learned that Allan Jackson, referred to in said Exhibit No. 177, states that he was not present at said meeting, and that this would raise some doubt in his mind on this point.

William J. Donovan.

5476

DEFENSE EXHIBIT NO. 825.

(Certified by Archivist of the United States to be copy of document on file in The National Archives.)

Executive Order

Administration of the Petroleum Industry.

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73d Congress), and in accordance with Section 2 of Article I and Section 1 (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the petroleum industry, the Secretary of the Interior to be Administrator and the Department of the Interior to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

Franklin D. Roosevelt.

The White House,
August 28, 1933.

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DEFENSE EXHIBIT NO. 826.

(Certified by the Department of the Interior to be copy of document on file in that Department.)

Order
Under Code of Fair Competition For the Petroleum Industry as Approved by the President August 19, 1933

There is hereby established a Board to be known as the Petroleum Administrative Board of the Department of the Interior, the functions of which shall be to advise with and make recommendations to the Secretary of the Interior as the Administrator of the Code of Fair Competition for the Petroleum Industry pursuant to Executive Order of August 28, 1933, which Executive Order was pursuant to the provisions of the National Industrial Recovery Act approved June 16, 1933 (Public No. 67, 73d Congress). Said Board shall also perform such administrative functions as may be detailed to it by the Secretary of the Interior, and shall consist of the following:

1. Nathan R. Margold, Chairman,
2. Charles Fahy, Vice-Chairman,
3. Norman L. Meyers, Secretary,
4. J. Howard Marshall,
5. J. Elmer Thomas, Special Technical Adviser,
6. Ed. B. Swanson,
7. John W. Frey.

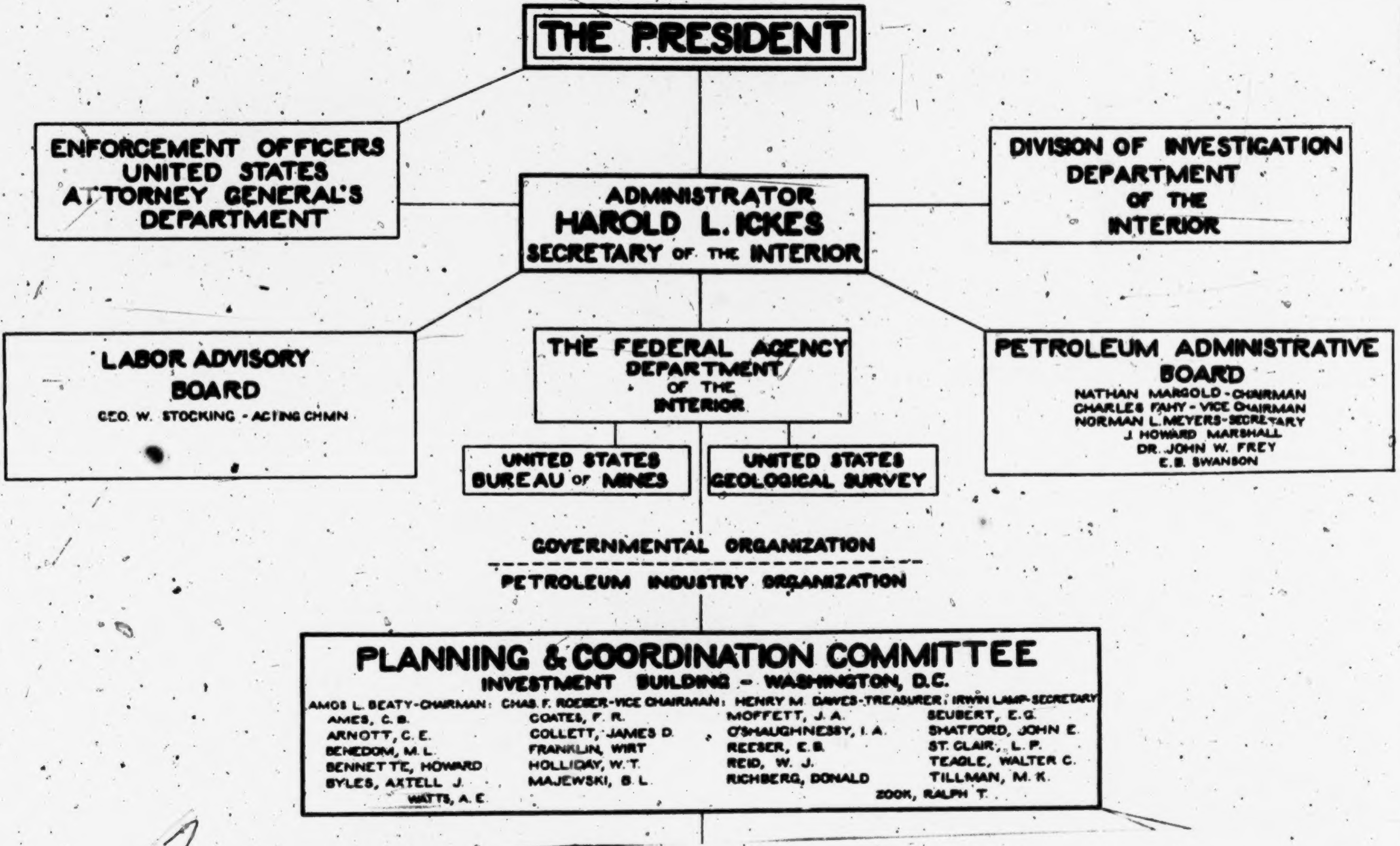
Harold L. Ickes
Secretary of the Interior.

September 11, 1933.

Defense Exhibit No. 827

CHART OF ORGANIZATION
OF
THE PETROLEUM INDUSTRY
UNDER
THE CODE OF FAIR COMPETITION

AUGUST 1934


THE PRESIDENT
ENFORCEMENT OFFICERS UNITED STATES ATTORNEY GENERAL'S DEPARTMENT
ADMINISTRATOR HAROLD L. ICKES SECRETARY OF THE INTERIOR
DIVISION OF INVESTIGATION DEPARTMENT OF THE INTERIOR
LABOR ADVISORY BOARD
GEO. W. STOCKING - ACTING CHMN
THE FEDERAL AGENCY DEPARTMENT OF THE INTERIOR
PETROLEUM ADMINISTRATIVE BOARD
NATHAN MARGOLD - CHAIRMAN
CHARLES FAHY - VICE CHAIRMAN
NORMAN L. MEYERS - SECRETARY
J. HOWARD MARSHALL
DR. JOHN W. FREY
E.B. SWANSON
UNITED STATES BUREAU OF MINES
UNITED STATES GEOLOGICAL SURVEY
GOVERNMENTAL ORGANIZATION
PETROLEUM INDUSTRY ORGANIZATION
PLANNING & COORDINATION COMMITTEE
INVESTMENT BUILDING - WASHINGTON, D.C.
AMOS L. BEATY - CHAIRMAN : CHAS. F. ROESER - VICE CHAIRMAN : HENRY M. DAWES - TREASURER : IRWIN LAMP - SECRETARY
AMES, C. B.
ARNOTT, C. E.
BENEDUM, M. L.
BENNETTE, HOWARD
BYLES, AXTELL J.
WATTS, A. E.
COATES, F. R.
COLLETT, JAMES D.
FRANKLIN, WIRT
HOLLIDAY, W. T.
MAJEWSKI, B. L.
MOFFETT, J. A.
O'SHAUGHNESSY, I. A.
REESER, E. B.
REID, W. J.
RICHBERG, DONALD
SEUBERT, E. G.
SHATFORD, JOHN E.
ST. CLAIR, L. P.
TEAGLE, WALTER C.
TILLMAN, M. K.
ZOOK, RALPH T.

PLANNING & COORDINATION COMMITTEE

INVESTMENT BUILDING - WASHINGTON, D.C.

AMOS L. BEATY-CHAIRMAN: CHAS. F. ROESER-VICE CHAIRMAN: HENRY M. DAWES-TREASURER: IRWIN LAMP-SECRETARY

AMES, C. B.	COATES, F. R.	MOFFETT, J. A.	SEUBERT, E. G.
ARNOTT, C. E.	COLLETT, JAMES D.	O'SHAUGHNESSY, I. A.	SHATFORD, JOHN E.
BENEDUM, M. L.	FRANKLIN, WIRT	REESER, E. B.	ST. CLAIR, L. P.
BENNETTE, HOWARD	HOLLIDAY, W. T.	REID, W. J.	TEAGLE, WALTER C.
BYLES, AXTELL J.	MAJEWSKI, B. L.	RICHBERG, DONALD	TILLMAN, M. K.
WATTS, A. E.		ZOOK, RALPH T.	

SUB-COMMITTEES

(A) STATISTICAL	(B) PRODUCTION	(C) REFINERY	(D) MARKETING	(E) ACCOUNTING	(F) LABOR	(G) LEGAL	(H) TRANSPORTATION	(I) FINANCE	(J) NATURAL GASOLINE	(K) FOREIGN RELATIONS	NATIONAL COORDINATOR	COMPLIANCE DIRECTOR
AXTELL J. BYLES CHAIRMAN	WIRT FRANKLIN CHAIRMAN	F. R. COATES CHAIRMAN	C. E. ARNOTT CHAIRMAN	RALPH T. ZOOK CHAIRMAN	H. H. ANDERSON CHAIRMAN	LOUIS TITUS CHAIRMAN	A. E. WATTS CHAIRMAN	H. M. DAWES CHAIRMAN	CHARLES F. ROESER CHAIRMAN	CHAIRMAN	HOWARD BENNETTE	RUSSELL B. BROWN

DISTRICT No. 1	DISTRICT No. 2	DISTRICT No. 3	DISTRICT No. 4	DISTRICT No. 5	DISTRICT No. 6
REGIONAL COMMITTEE NORTH ATLANTIC STATES H. R. GALLAGHER GENERAL CHAIRMAN NEW YORK, N.Y.	**REGIONAL COMMITTEE SOUTHEASTERN STATES** W. E. SMITH GENERAL CHAIRMAN LOUISVILLE, KENTUCKY	**REGIONAL COMMITTEE CENTRAL STATES** E. J. BULLOCK GENERAL CHAIRMAN CHICAGO, ILL.	**REGIONAL COMMITTEE SOUTHWESTERN STATES** JAMES D. COLLETT GENERAL CHAIRMAN FORT-WORTH, TEX.	**REGIONAL COMMITTEE ROCKY MOUNTAIN STATES** W. H. FERGUSON GENERAL CHAIRMAN DENVER, COLO.	**REGIONAL COMMITTEE PACIFIC STATES** L. P. ST. CLAIR GENERAL CHAIRMAN LOS ANGELES, CAL.
PRODUCTION P. H. CURRY, CHMN. PITTSBURGH, PA.	**PRODUCTION** C. R. MINOR, CHMN. SHREVEPORT, LA.	**PRODUCTION** O. D. DONNELL, CHMN. FINDLAY, OHIO	**PRODUCTION** STATE CHAIRMEN TEXAS, L. E. BARROWS, FORT WORTH KANSAS, TOM JOHNSON, WICHITA OKLAHOMA, J. F. DARBY, TULSA NEW MEXICO, C. J. DEXTER, ARTESIA	**PRODUCTION** C. B. RICHARDSON, CHMN. CASPER, WYO.	**PRODUCTION** J. A. BROWN, CHMN. LOS ANGELES, CAL.
REFINING W. S. S. RODGERS, CHMN. NEW YORK, N.Y.	**REFINING** T. H. BARTON, CHMN. EL DORADO, ARK.	**REFINING** PAUL BLAZER, CHMN. ASHLAND, KY.	**REFINING** H. C. WIESS, CHMN. HOUSTON, TEX.	**REFINING** T. A. DINES, CHMN. DENVER, COLO.	**REFINING** C. E. OLMSTEAD, CHMN. LOS ANGELES, CAL.
MARKETING W. V. HARTMANN, CHMN. PITTSBURGH, PA.	**MARKETING** WILEY L. MOORE, CHMN. ATLANTA, GA.	**MARKETING** A. G. MAGUIRE, CHMN. MILWAUKEE, WIS.	**MARKETING** PAT. M. MISKELL, CHMN. TULSA, OKLA.	**MARKETING** F. C. CRAMER, CHMN. DENVER, COLO.	**MARKETING** G. LEIGH JONES, CHMN. SAN FRANCISCO, CAL.
TRANSPORTATION J. HOWARD PEW, CHMN. PHILADELPHIA, PA.	**TRANSPORTATION** J. R. PARTEN, CHMN. SHREVEPORT, LA.	**TRANSPORTATION** SHELDON CLARK, CHMN. CHICAGO, ILL.	**TRANSPORTATION** BURT E. HULL, CHMN. HOUSTON, TEX.	**TRANSPORTATION** JOHN McFADYEN, CHMN. DENVER, COLO.	**TRANSPORTATION** L. B. JURS, CHMN. SAN FRANCISCO, CAL.
NATURAL GASOLINE H. R. GALLAGHER, CHMN. NEW YORK, N. Y.	**NATURAL GASOLINE** W. E. SMITH, CHMN. LOUISVILLE, KY.	**NATURAL GASOLINE** E. J. BULLOCK, CHMN. CHICAGO, ILL.	**NATURAL GASOLINE** JAMES D. COLLETT FORT WORTH, TEX.	**NATURAL GASOLINE** W. H. FERGUSON, CHMN. DENVER, COLO.	**NATURAL GASOLINE** L. P. ST. CLAIR, CHMN. LOS ANGELES, CAL.
LABOR F. S. FALES, CHMN. NEW YORK, N. Y.	**LABOR**	**LABOR** H. T. ASHTON, CHMN. ST. LOUIS, MO.	**LABOR**	**LABOR** H. C. BRETSCHNEIDER, CHMN. DENVER, COLO.	**LABOR** A. E. WEIL, CHMN. LOS ANGELES, CAL.
STATE COMMITTEES	STATE COMMITTEES	STATE COMMITTEES	STATE COMMITTEES	STATE COMMITTEES	STATE COMMITTEES

STATISTICAL DEPARTMENT - PLANNING & COORDINATION COMMITTEE

3321

5480

DEFENSE EXHIBIT NO. 828.

Planning and Coordination Committee
Washington, D. C.

May 24, 1934.

Mr. C. M. Boggs, Chairman,
Regional District #4,
Arkansas City, Kansas.

Dear Mr. Boggs,

Section 2 of Article 4 of the Petroleum Code of Fair Competition authorizes the Planning and Coordination Committee to designate an agency in any or all of the refining districts for the purpose of making allocations of individual production quotas to each refinery within the district.

Under this authority the committee has voted to name the following agency for that purpose and you are hereby notified of these appointments:

Mr. C. W. Boggs
Walter Miller
E. C. Marshall,
L. B. Simms
H. W. Camp

We earnestly hope that the men appointed will see fit to accept this responsibility so that we may be confident that individual quotas to refineries within your district may be allocated in an equitable manner. The work done by this agency will have a vital effect upon the success of the stabilization effort which is being made in connection with refinery operations.

Cordially,
Amos L. Beaty,
Chairman. Planning and Coordination Committee.

5481 DEFENSE EXHIBIT NO. 829.

For Identification.

(Certified by the Department of the Interior to be copy of an order dated October 16, 1933, signed by Harold L. Ickes, together with the document attached thereto as Appendix A.)

5482

Order
Under
Code of Fair Competition
For the Petroleum Industry as
Approved by the President

Whereas, evidence submitted by the Planning and Coordination Committee appointed under the Code of Fair Competition for the Petroleum Industry indicates the present existence of unfair competitive practices in the petroleum industry leading to constant and recurring price wars and price cutting and making imminent the danger of the further spread of such competitive abuses, I find and determine that these competitive abuses have created an emergency which threatens the stability of the interstate market for petroleum and the products thereof; that they have obstructed, burdened, or interfered with interstate commerce in petroleum and its products and threaten to continue to obstruct, burden, or interfere with such commerce, and that their continuance and further spread will make it impossible to fulfill the purposes of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry as expressed in the declaration of policy of said Act and the Preamble of said Code.

Now, therefore, pursuant to Title I of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Code of Fair Competition for the Petroleum Industry, approved August 19, 1933, and modified September 13, 1933, under said Act, and the President's Order of August
5483 28, 1933, issued under said act and said code, it is
hereby declared to be an act of unfair competition in violation of the said Act and Code, for any producer, wholesaler, jobber, refiner, distributor, retailer or others in any wise dealing in petroleum and the products thereof on or after December 1, 1933, to sell or otherwise dispose of, or to buy or otherwise acquire any petroleum or the products thereof at a price less than the applicable price

set forth in the schedule of prices proposed by the Planning and Coordination Committee appointed under the Code of Fair Competition for the Petroleum Industry, under date of September 25, 1933, a certified copy of which, marked Appendix A, is attached to and made a part of this order; Provided, However, that the said schedule of prices may be modified or amended after the submission of findings based upon such hearings and investigations as the Petroleum Administrative Board is hereinafter authorized and directed to conduct.

Any person, natural or artificial, having objection to the minimum prices provided for in the attached schedule may file with the Petroleum Administrative Board, and should so file at once a full and complete statement in writing, verified as to facts by affidavit, setting forth such objection and the facts upon which the objection is based. All such objection will be considered at hearings which the said Board is hereby authorized and directed to conduct, under rules and regulations to be prescribed by it, beginning October 30, 1933. No person will be heard who has not filed such written objection and statement on or before November 15, 1933. The said Board is authorized and di-
5484 rected to group cases that it may deem to be similar or present similar questions of fact, and it is hereby further authorized and empowered to collect and empowered to collect and obtain such other information and reports as it may deem necessary to carry out the provisions and purposes of the aforesaid Code of Fair Competition.

Approved and promulgated this 16th day of October, 1933.

Harold L. Ickes
Administrator of the Code of Fair Competition for the Petroleum Industry, and Secretary of the Interior.

5485 **Appendix A**

Copy

732 Shoreham Building,
Washington, D. C.,
September 25, 1933.

Honorable Harold L. Ickes,
Oil Administrator,
Washington, D. C.

Dear Sir:

In accordance with the request of Mr. Myers, I have today handed to him the suggested schedule of minimum prices as follows:

(1) Schedule covering crude oil prices throughout the fields of the United States;

(2) Schedule covering prices of refined products throughout the United States;

(3) Minimum differential on products generally;

(4) Minimum differential on refined products for the States of Washington, Oregon, Idaho, Utah, Nevada, California, Arizona, New Mexico, Alaska, and Hawaiian Islands;

(5) Specific recommendation on differential on refined products for the States in the Rocky Mountain District named.

Yours very sincerely,
(S) R. B. Brown,
Secretary, Planning and Coordination Committee.

RBB:emh

5486 "[Price schedules are included only to the extent that they relate to the territory covered by the indictment.]"

5487 (Add to Minutes for Friday, Sept. 8.)

The Planning and Coordination Committee adopted Friday afternoon, September 8, 1933, the following report submitted by Mr. Ralph Zook as a suggested basis for prices of crude oil throughout the United States:

Oklahoma, Kansas, North and North Central Texas, Central Texas (Mexia, Wortham, Corsicana Light and Panola County and Fisher and Jones Counties, Texas)

Below 25°	.87
25-25.9	.89
26-26.9	.91
27-27.9	.93
28-28.9	.95
29-29.9	.97
30-30.9	.99
31-31.9	1.01
32-32.9	1.03
33-33.9	1.05
34-34.9	1.07
35-35.9	1.09
36-36.9	1.11
37-37.9	1.13
38-38.9	1.15
39-39.9	1.17
40 and above	1.19
East Texas	$1.17

5488 Minimum Prices for Petroleum Products

On the basis of $1.11 per barrel for 36 gravity, Mid-Continent crude oil, the following minimum prices for various products will be established for various districts, as set forth below.

In respect to gasoline, differentials shall be established for various Octane grades, as follows:

60-64.9	Octane equals	X	
65-70	Octane equals	X plus	.005 per gallon
50-59.9	Octane equals	X minus	.005 per gallon
Below 50	Octane equals	X minus	.01 per gallon

(Octane ratings based on A. S. T. M., D 357-33 T rating).

Mid-Continent Area

60–64.9	**Octane Gasoline**	**6½ cents per gal.**
42–44	**Gravity W.W. Kerosene**	**4¾ cents per gal.**
41–43	**Gravity W.W. Kerosene**	**4½ cents per gal.**
38–40	**Gravity Furnace distillate Light Straw Color**	**3½ cents per gal.**
32–36	**Gravity Zero Gas Oil**	**3 cents per gal.**
14–18	**Gravity Fuel Oil**	**66 cents per gal.**
18–22	**Gravity Fuel Oil**	**71 cents per gal.**
22–26	**Gravity Fuel Oil**	**73½ cents per gal.**

The Mid-Continent area, as the term is used herein, is described as the States of Louisiana, Texas, Oklahoma, Kansas, and Arkansas, with the exceptions only of tidewater refineries located on the Gulf Coast of Louisiana and Texas.

For shipment to all destinations within the following States, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Illinois, Wisconsin, Michigan and Indiana, the above minimum prices, plus full Group 3 rate of rail freight, shall apply irrespective of point of origin.

At refineries in the St. Louis and Chicago sectors, the minimums specified above shall not apply to shipments of fuel oils of below 14 Gravity.

5489 For the purpose of establishing minimum differentials for the test period on gasoline tank car prices laid down at destination and the net price to the consumer at retail outlets, the following shall apply:

On gasoline within the octane range of below 50 to 59.9, inclusive, the total differential shall be not less than 5½ cents per gallon, of which 3 cents per gallon shall be the minimum allowance to the retail dealer;

On gasolines within the octane range of 60 to 70, inclusive, the total differential shall be not less than 6½ cents per gallon, of which 4 cents per gallon shall be the minimum allowance to the retail dealer.

These minimum differentials shall apply to all sales to consumers at retail outlets.

5490 DEFENSE EXHIBIT NO. 830.

For Identification.

(Certified by the Department of the Interior to be copy of an order dated January 31, 1934, signed by Harold L. Ickes.)

5491

Order
Under the
Code of Fair Competition
for the
Petroleum Industry
as Approved by the President
August 19, 1934.

Whereas, the Planning and Coordination Committee, appointed under the Code of Fair Competition for the Petroleum Industry has submitted to me on behalf of the industry certain agreements designed to stabilize the wholesale and retail price structure of petroleum and its products; and

Whereas, I have approved said agreements subject to certain modifications necessary to protect the interests of the independent operator within the industry, and of the consuming public, and it appearing that the operation of these agreements will serve the same purposes and achieve the same ends as those originally intended by the schedule of minimum prices for petroleum and its products recommended to me by the said Committee, and effective February 1, 1934 under my order of October 16, 1933 as amended by my orders of November 30, 1933 and December 30, 1933, respectively;

Now, Therefore, pursuant to Title I of the National Industrial Recovery Act, (Public No. 67—73d Congress) and the Code of Fair Competition for the Petroleum In-
5492 dustry, approved August 19, 1933 and modified September 13, 1933, and the President's Order of August 28, 1933, issued under said Act and said Code, my said Order of October 16, 1933, as amended by my Orders of November 30, 1933 and December 30, 1933 respectively, is hereby revoked, and the minimum price schedules attached to my said Order of October 16, 1933 as Appendix "A" shall have no force and effect.

Approved and Promulgated this 31st day of Jan'y, 1934.

Harold L. Ickes,
Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior.

5493 DEFENSE EXHIBIT NO. 831.

For Identification.

(Certified by the Department of the Interior to be copy of an order dated January 19, 1934, signed by Harold L. Ickes.)

5494

Order
Under the
Code of Fair Competition for the Petroleum Industry
And The
National Industrial Recovery Act

Whereas, certain members of the petroleum industry, after a prolonged and careful consideration of the needs of the aforesaid industry, have entered into an agreement to aid in the stabilization of the industry by purchasing, holding and liquidating distress gasoline, and have submitted this agreement to me under the Code of Fair Competition for the Petroleum Industry and under the National Industrial Recovery Act; and

Whereas, this agreement has been approved and recommended to me by the Planning and Coordination Committee under the Code of Fair Competition for the Petroleum Industry; and

Whereas, suitable public notice of the aforesaid agreement has been given pursuant to Section 5, Article I of the Code of Fair Competition for the Petroleum Industry, approved by the President August 19, 1933; and

Whereas, I have carefully and impartially considered this agreement and have found and determined that it is not designed to promote monopoly or to eliminate or oppress smaller enterprises, but will serve to effectuate the purposes of the National Industrial Recovery Act, 5495 and the Code of Fair Competition for the Petroleum Industry by eliminating wasteful and unfair competitive abuses and thereby conserving an essential natural resource;

Now, Therefore, pursuant to the authority vested in me by the provisions of the National Industrial Recovery Act, the Code of Fair Competition for the Petroleum Industry, and the President's order of August 28, 1933, I hereby order that this agreement be and it is hereby approved.

Approved and promulgated this 19th day of January, 1934.

Harold L. Ickes
Administrator of the Code of Fair Competition for the Petroleum Industry
and
Secretary of the Interior.

II.

Whereas, I have this day approved a Purchase Agreement submitted to me under Title I of the National Industrial Recovery Act and under the Code of Fair Competition for the Petroleum Industry, approved pursuant to such Act; and

Whereas, Subsection (b) of Section 10 of Title I of said Act provides that "The President may, from time to time, cancel or modify any * * * approval issued under this title";

Now, Therefore, pursuant to the authority vested in me by the President's order of August 28, 1933, Title I of the National Industrial Recovery Act (Public No. 67, 73d
5496 Congress) and, in particular, subsection (a) of Section 4, subsection (b) of Section 10 and Section 5, thereof, and the Code of Fair Competition for the Petroleum Industry and, in particular, subsection (a) of Section 4, and Sections 4 and 5 of Article I, thereof, my approval of the said Purchase Agreement is hereby modified so as to provide the following:

1. That the Administrator may at any time confer with the Planning and Coordination Committee and may redetermine in the light of existing conditions the proper objective to be attained with respect to the total gasoline stocks in the United States on July 1, 1934.

2. That the National Petroleum Agency shall, under rules and regulations established by its Board of Governors and satisfactory to the Administrator, provide for the suitable liquidation of gasoline stocks purchased and held by the said agency, to the end that all parties within the industry may have an equal opportunity to obtain gasoline at fair market prices.

3. That the Administrator or his duly authorized representatives may attend the meetings of the Board of Governors and/or the Executive Committee and shall have free access to the books and records of the agency. The Administrator shall be given due notice of any and all meetings of the Board of Governors and/or the Executive Committee.

5497 Approved and promulgated this 19th day of January, 1934.

Harold L. Ickes
Administrator of the Code of Fair Competition for the Petroleum Industry
and
Secretary of the Interior.

5498 **DEFENSE EXHIBIT NO. 832.**

For Identification

(Certified by the Department of the Interior to be copy of letter dated December 8, 1933 signed—Wirt Franklin, Chairman, and addressed to Harold L. Ickes, together with the enclosure of two agreements, each dated December 7, 1933.)

5499 Planning and Coordination Committee
Under the Code
For the Petroleum Industry
Investment Building
Washington, D. C.

December 8, 1933.

Honorable Harold L. Ickes,
Secretary of the Interior and Oil Administrator,
Department of the Interior,
Washington, D. C.

My dear Mr. Secretary:

The committee, representing varying viewpoints regarding administration of the petroleum industry, has reached an accord embodied in two separate agreements which have been signed by companies representing a very substantial interest in the oil industry, and which are herewith submitted in the hope that they will receive the approval of the President to make them valid, as provided by the National Industrial Recovery Act and in accordance with the Code of Fair Competition for the Petroleum Industry. These agreements have received the approval of the Planning and Coordination Committee; are the result of long and earnest conferences, and offer, we believe, the modus vivendi under which both the industry and the public interest will be satisfactorily served.

Thanks to the vigorous and effective exercise of the important powers vested in yourself as Petroleum Administrator, conditions have so greatly improved in recent months that we have felt it wise to limit recommendations, as covered in these two agreements, to matters on which there is substantial unanimity. While convinced that the period of emergency, so far as concerns this industry, is not past, and that many things are still necessary to be accomplished to restore the industry to normal operating conditions, we are hopeful that a 90-day trial of operations under the Code, as supplemented by these two agreements, may bring favorable results to the oil industry and assist in the general task of national recovery. The closest possible adherence to tested and accepted formulas of business conduct, and avoidance of such as might breed controversy, has been the aim of the committee representing the varying viewpoints in reaching the two agreements submitted. Concessions have been made from many directions and by widely differing groups in order to reach an agreement, and the plan embodied in the two agreements has been accepted in the interest of harmony.

5500 Through special taxes this industry has produced a volume of public revenue many times beyond that of any other business. The industry's troubles have, in fact, been largely attributable to its fertility as a field for the tax harvester. Its export trade has repeatedly turned the country's international trade balance from adverse to favorable.

A major industry thus vigorous, self-reliant and individualistic, ought, we feel, to be preserved in all the vitality and independence that have marked it from the beginning. We believe your acceptance of the plan here proposed will insure that outcome.

In conclusion, Mr. Secretary, permit all the elements, groups and viewpoints among us to unite in appreciation of your consideration, fairness and firmness. The patience you have so generously extended to us has inspired us to patience among ourselves on many occasions when there was sore need for that particular virtue.

Respectfully submitted,
Wirt Franklin
Wirt Franklin,
Chairman of the Joint Committee representing the Planning and Coordination Committee, and the Group of Major Companies Opposed to Fixing of Minimum Prices.

WF:emh
Enclosures.

5501

An Agreement

Made and entered into on the 7th day of December, 1933, among the signatory companies engaged in the petroleum industry in the United States, to which agreement others may become parties in a manner stated.

Under a Code of Fair Competition for the Petroleum Industry, approved by the President of the United States pursuant to the National Industrial Recovery Act, and under provisions of the Act itself, efforts are being made to remedy undesirable conditions existing in this industry and to bring about stabilization. The Federal Agency, the Petroleum Administrator under said Code, is issuing orders for the control of crude oil production and gasoline stocks, and the Planning and Coordination Committee under said Code has submitted for the approval of the Administrator the following definite objectives for the industry:

(a) Total crude oil stocks in the United States on July 1, 1934, shall show no increase over December 1, 1933, and the decrease, if any, shall not exceed 10,000,000 barrels.

(b) Total gasoline stocks in the United States on July 1, 1934, shall not exceed 46,000,000 barrels, exclusive of natural gasoline.

This contemplates that orders and allocations, touching crude oil production, imports, withdrawals from and additions to storage, and gasoline manufacture shall be
5502 such as to balance supply with consumer demand for
petroleum products and to prevent the accumulation of supplies of crude oil or petroleum products in excess of desirable economic working levels.

Therefore, and for mutual and valuable considerations, the parties hereto do now and hereby, among themselves and each with each and all of the others, make and enter into this agreement.

1. The parties hereto voluntarily associate themselves in a group to be known as the National Petroleum Agency. All members of this association shall participate in proportion to their interests as fixed by their respective subscriptons hereto, the amounts set opposite their respective names. Membership in the association shall be open to all units of the Petroleum Industry until January 1, 1934, and the participation of those desiring membership shall be in the same proportion to their industrial activity as that of the original signatories hereto, provided that the board of governors of the association shall be the sole judges of the

right to and the percentage of all other than original signatory membership and participation. The board of governors shall have the power to adjust the participations of the original signatories to such extent as may be proper to admit members later granted participation. Pending such adjustment, the original signatories hereto agree to pay the amounts set opposite their names for the use of the association.

5503 2. The control and management of this association shall be in a board of governors consisting of one governor nominated by each member, and such nominations may be changed by the member from time to time. The board of governors shall, at its first meeting, elect from its membership an executive committee of five (5) persons, and such executive committee shall have all the power and authority of the board of governors (when the latter is not in session), subject to such policies, rules and regulations as may from time to time be fixed by the board of governors. The board shall fix the term of office and dates and method of election of executive committeemen. The board may elect a president, and one or more vice-presidents, a secretary, a treasurer, and a manager, and such other officers and assistants as it may deem advisable. It shall have the power to define the duties and fix the compensation of all such officers.

The board of governors shall from time to time prescribe policies, rules and regulations for the government of the association and the conduct of its business. It shall fix the dates and places of meetings, prescribe the notice to be given, define quorums for the transaction of business and, subject to the provisions of this agreement, its entire method of operation, including the location of its office and branch offices.

3. Each member of the association shall be entitled to one vote, to be cast by its representative on the board 5504 of governors on all questions and matters coming before the board.

4. This association shall continue until June 15, 1935, unless previously dissolved. It may be dissolved at any time after July 1, 1934, by a majority vote of all members of the board of governors representing members of the association having in the aggregate more than fifty (50) per cent in amount of participation in the association.

5. The amounts subscribed by the signatories hereto shall be paid at such time and place as may be called by the board of governors and within ten days after receipt

of notice of the call. No member shall be liable for any amount beyond its subscription.

6. The purpose of this association is to purchase, hold and, in an orderly way, dispose of surplus gasoline which threatens the stability of the oil price structure in an effort to bring the prices of gasoline into proper relationship with the present price of crude oil and to maintain and support such relationship. For the purposes of this agreement the proper relationship between midcontinent crude of 36°-36.9 A. P. I. gravity and U. S. motor gasoline of 60-64 octane rating, f. o. b Group 3 in tank car lots, is that stated in section 6 of Article III of the aforesaid Code. The board of governors of the association may determine proper relationship in all cases not covered by the Code. And the board of governors after July 1, 1934, may determine
whether and to what extent purchases of gasoline can
5505 be made to establish, maintain and support proper
relationships of gasoline prices to crude-oil prices
higher than those now prevailing: Provided, however, that no such purchases as those last mentioned shall be made while the association has on hand, not disposed of, any substantial quantity of gasoline previously purchased for the purpose of bringing the prices of gasoline into proper relationship with the present prices of crude oil and maintaining and supporting such relationship: Provided further, that at any time after July 1, 1934, by a majority vote of the entire board of governors or the vote of nine governors representing members of the association having in the aggregate more than 50 per cent in amount of participation in the association, purchases may be suspended entirely until they are again authorized by a majority vote of the entire board of governors and the vote of nine governors representing such majority interest in amount.

7. The association shall not purchase gasoline from its members nor shall it borrow money.

8. The signatories hereto and those who shall later become members of the association bind themselves hereby:

(a) To refrain from purchasing illegally produced oil or the products thereof from producers or refiners knowing or having good reason to believe the oil was illegally produced;

(b) To join the Planning and Coordination Com-
5506 mittee in supporting the Federal Agency in discharg-
ing the duty imposed upon it by the Code of Fair Competition for the Petroleum Industry of making and enforcing crude oil allocations and controlling the supply of crude oil and gasoline and gasoline inventories;

(c) To further aid the said Planning and Coordination Committee in working toward a stabilization of markets by adequate action designed to prevent improper and injurious marketing practices;

(d) To actively assist said Planning and Coordination Committee and the National Recovery Administration in the continuing effort to preserve the right of the Petroleum Industry to self-government in accordance with the spirit of the National Industrial Recovery Act and the Petroleum Code adopted pursuant to said Act;

(e) To assist in the effectuation of plans and rulings of said Committee approved by the Petroleum Administrator, for the development of new oil pools and the allocation by the proper authorities of production from such pools;

(f) To cooperate in obtaining and allocating, under the supervision of said Committee, supplies of crude oil for refiners without adequate supplies to meet their reasonable and proper requirements; and, upon request, to assist said Committee by placing at its disposal one (1) per cent of their respective current crude production and purchases for allocation among other refiners, pursuant to Section 3 of Article IV of the Code. 5507

9. Obligations under this agreement shall apply not only to members of the association, but members shall extend and enforce these obligations so as to include subsidiary and controlled companies and other agencies through which members operate, but no member shall be liable for the obligations of other members or for the obligations of the association.

10. The provisions of this agreement shall bind the successors, assigns and legal representatives of members, and if any member shall be merged or consolidated with another member the member continuing the business shall succeed to and take over the benefits and burdens of the member so merged or consolidated.

11. Nothing in this agreement contained shall be construed to prevent any member of the association from petitioning the Planning and Coordination Committee of the Petroleum Industry to advocate the establishment of minimum prices, or from petitioning the Petroleum Administrator or the President of the United States to establish minimum prices after 90 days from the date hereof, or from doing so in the meantime if the prices of crude oil should fall below their present level or be reduced by any member of this association.

12. This agreement shall become effective when approved by the President of the United States or a
5508 Federal Agency duly authorized by him, and the
President may withdraw such approval and terminate this agreement at any time upon finding that it is contrary to the public interest.

In Witness Whereof this Agreement is signed on the day and year first above written.

Standard Oil Co. of California by K. R. Kingsbury, Pres.	$ 560,000.
The Atlantic Refining Co. W. M. Irwin, Pres.	304,000.
Amerada Petroleum Corp. A. Jacobson by W. J. Farish	75,000
Barnsdall Corp. E. B. Reeser, Prest.	74,000
Continental Oil Company James J. Cosgrove, G. Counsel	$362,000.00
Simms Petroleum Company by Amos L. Beaty	$61,000.00
Sinclair Refining Company by H. R. Gallagher	$528,000.00
Phillips Petroleum Co. By H. A. Trower	281,000
Standard Oil Company of New Jersey F. W. Abrams President by Edwin S. Hall	$1,124,000.00
The Ohio Oil Co. F. A. Bellstrue, Treas.	$344,000.00
Standard Oil Co. Ky. By W. E. Smith	87,000.00
Standard Oil Co. (Indiana) By E. G. Seubert	865,000.00
5509 Plymouth Oil Co. J. G. Farquhar, Prest. by E. B. Reeser	$ 92,000.00
Sun Oil Co. J. W. Pew, Jr. Vice-Pres.	255,000.00

Pure Oil Co. Henry M. Dawes, Pres.	274,000.00
Shell Union Oil Corporation Henry Cole Chairman Exec. Committee	660,000.00
The Texas Company H. W. Dodge	730,000.00
The Standard Oil Company by W. T. Holliday President	139,000.00
Skelly Oil Company by L. L. Stephens, per Authority C. B. Ames Telegram	109,000.00
Gulf Refining Co. by W. V. Hartmann, Vice-Prest.	636,000.00
Mid-Continent Petroleum Corp by W. C. Teagle as per telegram—W. J. Farish	92,000.00
South Penn Oil Co. By W. C. Teagle as per telegram—W. J. Farish	125,000.00
Socony-Vacuum C. E. Arnott President	876,000.00
Cities Service Oil Co. By Amos L. Beaty for F. R. Coates	297,000.00
The Vickers Petroleum Co. of Delaware By Wirt Franklin, per authority of telegram of Dec. 28, 1933.	11,050.00

5510

An Agreement

Made and entered into on the 7th day of December, 1933, among the signatory companies engaged in the petroleum industry in the United States, to which agreement others may become parties in a manner stated.

For mutual and valuable considerations and pursuant to Section 4(a) of Title I of the National Industrial Recovery Act, the parties hereto do now and hereby among themselves and each with each and all of the others make and enter into this agreement in respect to the marketing of gasoline and other motor fuels, and the same shall remain in force until June 15, 1935.

1. The parties hereto are obligated to allow and maintain such marketing margins for distributors, jobbers, and/or wholesalers as shall be determined from time to time in each of the six regions established under the Code of Fair Competition for the Petroleum Industry by agreement of 75% in number of the refiners who may be parties hereto and who sell any of their gasoline and/or other motor fuel to distributors, jobbers and/or wholesalers, located in the particular region, and when the marketing margin is so determined it shall bind all parties hereto. In no event shall the minimum gross marketing margin after such determination be less than 1½ times the gross margin allowed under this plan to Undivided Resale Accounts on gasoline and/or other motor fuels of 60 Octane and 5511 above, and not more than 1½ times the gross margin allowed under this plan to Undivided Resale Accounts on gasoline and/or other motor fuels of 59.9 Octane and below. The marketing margin or commission for bulk station (wholesale) commission agents who own bulk station (wholesale) and/or service station facilities shall be such an amount as, when expressed in cents per gallon on average monthly sales and added to the undivided dealer margin, shall not exceed the gross marketing margin determined for distributors, jobbers or wholesalers. Commissions include all fixed or flat rentals paid by refiner on retail and/or bulk plant facilities owned by commission agent.

Retail dealers shall have a gross margin on gasoline and/or other motor fuels of 60 octane and above, of 3½¢ per gallon for the class of accounts known as Divided Resale Accounts, and 4¢ per gallon for the class of accounts known as Undivided Resale Accounts. On gasoline and/or other motor fuels of 59.9 Octane and below, the retail dealer margin shall be 2½¢ per gallon for Divided Resale Accounts, and 3¢ per gallon for Undivided Resale Accounts.

The General Chairman of each of the six Regional Committees shall appoint a committee of three to be known as the Stabilization Committee. The Committee shall consist of one representative from each of two major integrated companies and one representative from a smaller integrated company, all of which companies shall have territorial and not merely local interest. The representa-
5512 tive of one major integrated company shall be designated as Chairman of the Stabilization Committee and be subject to removal from the Committee at any time on 24 hours' notice from the General Chairman of the Regional Committee. The other two members of the Committee shall be appointed for a period of three months each and not subject to removal. Upon termination of the foregoing period, these two members must be replaced by representation from similar class of companies. A majority vote is necessary to determine a particular action. Any party to this agreement, desiring to meet local competition, before meeting such competition shall place all the facts before the Stabilization Committee for determination as to the necessity for meeting such competition and in case no decision is arrived at by said Stabilization Committee within two legal business days, the party so desiring to meet competition shall have authority to do so by complying with the provisions of Article V, Rule 4 of the Code of Fair Competition for the Petroleum Industry. The members of the Stabilization Committee shall have authority to attempt to negotiate restoration of markets that have been reduced below normal.

If it shall be found that changes in the margins dealt with in this section are necessary or desirable at any time in any locality, such changes may be made by agreement of 75% in number of the refiners, parties to this agreement, who sell any of their gasoline and/or other motor fuel to distributors, jobbers, wholesalers, and/or dealers in
5513 that particular locality, subject, however, to the approval of the Planning and Coordination Committee and the Petroleum Administrator. And with such approval the method of adjustment provided for in the last preceding paragraph of this section may be changed for particular localities through the organization of local stabilization committees or otherwise as may be determined by the Plan-

ning and Coordination Committee with the approval of the Petroleum Administrator; Provided, however, that the parties hereto shall be required to observe as minima the margins fixed and provided for in paragraphs 1 and 2 of this section.

General or established supply arrangements covering gasoline and/or other motor fuels between refiners and/or substantial trade-branded companies parties to this agreement who resell in ocean vessels, barges, tank cars and/or bulk and retail stations are not limited to the margins for distributors, jobbers and/or wholesalers.

2. Standard forms of contract applying to all transactions for the sale of gasoline and/or other motor fuels shall be prepared by the Planning and Coordination Committee with the approval of the Petroleum Administrator, and the parties to this agreement shall use only such forms of contract in such transactions. Such contracts shall contain provisions controlling prices of products to ultimate consumer at retail in accordance with Article V, rule 26,
of the Code of Fair Competition for the Petroleum
5514 Industry, and extending the provisions of said rule to
gasoline and/or other motor fuels either branded or unbranded.

Existing contracts for the sale of gasoline and/or other motor fuels with cancellation clauses must be cancelled at the earliest date cancellable, and renewed, if at all, upon the standard form of contract. Where it is claimed that contracts can not be cancelled, they must be immediately submitted for inspection to an impartial standing committee of three, appointed for the purpose by the chairman for marketing in the State, and their decision shall be binding on the question of whether the contract is cancellable and when it can be cancelled.

3. Existing top price contracts for the sale of gasoline and/or other motor fuels, which have a cancellation clause, must be cancelled at the earliest date on which they can be cancelled, and if renewed, must be written on the standard form of contract without top price provisions. Where it is claimed that contracts can not be cancelled they must be immediately submitted for inspection to a committee of three, as provided for in the last preceding section, and their decision shall be binding on the question of whether the contract is cancellable and when it can be cancelled.

4. In case of the violation of any provision of this Agreement and/or of the standard form of contract and/or of the Code of Fair Competition for the Petroleum Indus-

try, as determined by a committee as provided for in
5515 Sections 2 and 3 hereof of the State wherein such violation occurs, the supplier shall be notified by the Committee to suspend deliveries of gasoline and/or other motor fuel to the offending distributor, jobber, wholesaler, or retail dealer, for such period as the Committee shall determine, and no party to this agreement shall furnish supplies to the offender during the period of suspension.

5. The Planning and Coordination Committee, with the approval of the Petroleum Administrator, may except and exclude particular areas from the operation of this agreement, or any portion thereof, if and to the extent that the provisions hereof may conflict with other agreements approved by the Planning and Coordination Committee and the Petroleum Administrator.

6. Obligations under this agreement shall apply, not only to the parties to the agreement, but the parties hereto shall extend and enforce these obligations so as to include their subsidiary and controlled companies and other agencies through which they operate. By controlled companies is meant those in which more than 50 per cent of the voting stock is owned or controlled.

7. The provisions of this agreement shall bind the successors, assigns, and legal representatives of the parties, and if any party hereto shall be merged or consolidated with another party hereto, the party continuing the business shall succeed to and take over the benefits and burdens of the party so merged or consolidated.

5516 8. This agreement shall not become effective until approved by the President of the United States or a Federal Agency duly authorized by him, and the President may withdraw such approval and terminate this agreement at any time upon finding that it is contrary to the public interest.

9. Even after this agreement has received the approval of the President or the Federal Agency it shall remain in abeyance until adopted by such percentage of the industry as may be found necessary to its practical operation, this to be determined by the Planning and Coordination Committee, with the approval of the Petroleum Administrator. In no event shall it go into effect until refiners whose runs to stills in the United States during the month of November, 1933, amounted to at least 85% of the total runs to stills in the United States during said month, shall have become parties to this agreement and such fact is announced by the Petroleum Administrator.

10. This agreement may be signed in counterparts, and all counterparts taken together shall constitute the complete agreement.

In Witness Whereof the parties sign.

Socony Vacuum Corporation
C. E. Arnott
President
Sinclair Refining Company
By H. R. Gallagher
Cities Service Oil Co.
By F. R. Coates
5517 The Texas Company
H. W. Dodge
Standard Oil Company of New Jersey
F. W. Abrams
President
by Edwin S. Hall
Standard Oil Co. Kentucky
W. E. Smith,
President
Standard Oil Co. (Indiana)
By E. G. Seubert
The Atlantic Refining Co.
W. M. Irwin,
Pres.
Barnsdall Corp.
E. B. Reeser,
Prest.
Pure Oil Co.
Henry M. Dawes,
Pres.
Sun Oil Co.
J. W. Pew, Jr.,
Vice-Pres.
Continental Oil Co.
James J. Cosgrove
Phillips Petroleum Co.
H. A. Trower
Gulf Refining Co.
W. V. Hartmann
Shell Union Oil Corp.
J. A. Knabe
H. N. Greis and Bernard L. Majewski
Receivers for Deep Rock Oil Corp.
Per B. L. Majewski
The Ohio Oil Co.
F. A. Bellstrue,
Treas.

5518

DEFENSE EXHIBIT NO. 833.

For Identification

(Certified by the Department of the Interior to be copy of document on file in that Department)

Press Release consisting of letter from the Committee of Fifteen to the Secretary of the Interior dated March 29, 1933, printed at R. pp. 970-74.

5519

DEFENSE EXHIBIT NO. 834.

For Identification

5520 Administrator for the Petroleum Industry
Washington

Dec. 11, 1934.

Mr. R. G. Concanower, General Manager
Olney Oil & Refining Company
Wichita Falls, Texas.

My dear Mr. Cocanower:

I acknowledge receipt of your letter of November 21.

I appreciate the problems confronting the refiner, and welcome the opportunity to correct your impression of the efforts which have been made to remedy this situation. The prevention of "hot oil" and its products from entering interstate commerce recently achieved through the operation of the Federal Tender Board in East Texas, did not represent any sudden activity on my part, but rather the culmination of a series of efforts to obtain that result. The previous attempts to control the East Texas situation dating from July 1933 were not successful for a variety of reasons, principally, because of the original adverse decisions in the Amazon and Panama cases.

The final decision on the buying program has not been made but the program was suspended because conditions now obtaining are materially different from what they were two months ago. A modified plan has been submitted and is under consideration by the Petroleum Administrative Board and the Department of Justice.

Concerning the November gasoline allocations, these allocations were made under the provisions of Article IV of the Petroleum Code, which, you will note, provide a definite procedure under which gasoline allocations are made to individual refineries. These individual allocations are only reviewable by me, if an appeal is taken from a particular allocation, in the manner provided by Article IV of the Code.

As I have stated, I appreciate fully the difficult position of the independent refiner, which is aggravated by depressed wholesale and retail price structures. In my
5521 address before the American Petroleum Institute at
Dallas, I took the opportunity to point out to the industry that I expected current marketing abuses to be corrected promptly. Under the present provisions of the Code, my authority to deal directly with the major marketing problems is relatively limited, and the solution of these problems must rest primarily with the industry. It is my understanding that negotiations for that purpose have been undertaken, and in a number of areas an improvement has already resulted. While a more general improvement will be dependent upon the success of these efforts, together with continued effective control in East Texas, I anticipate a gradual return to more normal wholesale and retail markets, which in turn should relieve the hardship on the independent refiner.

Sincerely yours,

Harold L. Ickes
Administrator.

5522 **DEFENSE EXHIBIT NO. 835.**

(Certified by the Department of Interior to be copies of documents on file in that Department.)

Order
Under The National Industrial Recovery Act

Whereas, an application has been duly made, pursuant to the provisions of Section 3, Sub-section (a) of the Act of June 16, 1933, (Public No. 67, 73d Congress) known as the National Industrial Recovery Act, for the amendment of the Code of Fair Competition for the Petroleum Industry, approved by the President August 19, 1933, to provide for effective control of refinery operations, and

Whereas, opportunity has been accorded to all groups affected by the proposed amendment to present their views, due public notice has been given, and adequate hearings have been held thereon by the Petroleum Administrative Board, and

Whereas, I have found and determined on the basis of all available pertinent data that the proposed amendment as modified accords with the best interests of the industry and the public, if equitably and effectively administered, will tend to preserve small enterprises, to end discrimination against them, to prevent the growth of monopolistic practices, and to promote a healthy coordination of the activities of the industry and thereby further the attainment of the purposes of the aforesaid Act and Code
5523 as stated in the respective preambles thereof;

And it appearing desirable that all groups within the industry be adequately represented on the authority charged with the administration of these sections,

Now, Therefore, pursuant to the authority vested in me by the President's Order of August 28, 1933 issued under the authority of Section 2, Sub-section (a) of the National Industrial Recovery Act, and pursuant to the provisions of Article 1, Sections 2 and 3 of the Code of Fair Competition for the Petroleum Industry, Article IV and Article VII, Section 2 of the aforesaid Code are hereby stricken therefrom, and there is hereby added to the said Code in lieu thereof, the following provisions to be known as Article IV and Article VII, Section 2:

5524 Article IV—Refining:

Section 1. To achieve greater accuracy in balancing production and consumption of gasoline and to prevent the injurious effect on interstate commerce of an unbalanced accumulation of inventories of gasoline in any part of the country or of surplus production and consequent distribution of gasoline in excess of market requirements, a federal agency designated by the President shall divide the country into refining districts and shall (after consultation with the Planning and Coordination Committee and such other sources of information as it may deem necessary) determine from time to time:

(1) The proper inventories of gasoline for the country as a whole and

(2) The production of gasoline in the country as a whole necessary to meet the demand therefor, with due regard to normal and seasonal fluctuation in refining operations.

The determinations so made shall constitute the operating schedule for the refining industry in the country as a whole, and same shall be published for at least twenty days before the effective date thereof.

Section 2. The Planning and Coordination Committee shall appoint a National Coordinator of refining operations, subject to the approval of the President, and may appoint a District Allocator for each district. District Allocators shall cooperate with the regional refinery committees
5525 and other committees or agencies designated by the
Planning and Coordination Committee in making effective the provisions of this article. The Planning and Coordination Committee shall appoint, subject to the approval of the President, a Board of Review consisting of not to exceed ten in number, for the purpose of reviewing the findings and allocations of District Allocators, the agencies established by the refinery district committees (where no allocator is appointed), and the National Coordinator.

Section 3. The National Coordinator and the District Allocators, (or the proper agency established by the refinery district committee where no allocator is appointed), in joint session, subject to the approval of the Planning and Coordination Committee, shall determine from time to time:

(1) The proper inventories of gasoline for each district and

(2) The production of gasoline in each district necessary to meet the demand therefor, with due regard to normal and seasonal fluctuation in refining operations.

The determinations so made shall constitute the operating schedule for the refining industry in each district and same shall be published for at least fifteen days before the effective date thereof.

(3) Within the limits of the operating schedule for the refining industry in each district as thus determined, 5526 an agency designated by the Planning and Coordination Committee and the District Allocator (when one is appointed) in joint session, shall establish fair and reasonable quotas for each refinery operating in the district. In the event of disagreement between a District Allocator and the agency designated above or in the event of the failure of such agency to act, the District Allocator shall establish such quotas subject to appeal as herein provided.

In making such allocations the agency and/or District Allocator (when one is appointed) shall take into consideration relevant features of operating and marketing conditions under rules and regulations prescribed by the Planning and Coordination Committee and approved by the Administrator. Every effort shall be made to avoid inequities which may exist in the availability of supplies of crude oil to refiners necessary to maintain either the proper ratio between inventories and gasoline and sales thereof and/or the production of gasoline authorized in the manner set forth above. No withdrawals of crude oil from storage by or in behalf of any refiner operating only in a single district shall be authorized under the terms of Article III, Section 2, hereof, and/or rules or regulations issued thereunder, unless the application has been referred for advice to said agency and District Allocator (when one is appointed) concerned.

Section 4. The National Coordinator of refining operations in the case of refiners operating refineries and/or 5527 who are maintaining gasoline inventories in more than one refining district shall adjust such operations and inventories in order that district allocations may be adjusted in such manner as equitably to meet the consolidated requirements of such refiners.

The National Coordinator and the District Allocators (or the agency established by the refinery district committee where no District Allocator is appointed) shall meet at such times and places as may be necessary to provide the necessary coordination between districts and uniform application in each district of the rules and regulations provided thereunder. Each District Allocator (or the agency established by the refinery district committee where no District Allocator is appointed) shall furnish to the National Coordinator a complete statement of the allocation made to each refinery in the District and shall furnish such regular reports as may be required by the National Coordinator for proper performance of his duties.

No withdrawals of crude oil from storage by or on behalf of refiners operating refineries, and/or maintaining crude oil inventories in more than one refining district, shall be authorized under the terms of Article III, Section 2 hereof, and/or rule and regulation issued thereunder, unless the application has been referred for advice to the National Coordinator.

Section 5. Any person may appeal from any recommendation, allocation or decision of the District Allo-
5528 cator, Agency designated by the Planning and Coordination Committee, agency established by the refinery district committee, or the National Coordinator to the Board of Review provided for above, and the decision of the said Board of Review shall be final, subject to the right of the Planning and Coordination Committee to review such decision upon appeal, which Committee's action, either in respect to the exercise of such right or in respect to the determination made if such right be exercised, shall be subject to the approval of the Administrator.

Section 6. In order that the provisions of this article may not operate in such manner as to discriminate against small refining enterprises and in order to assist in orderly liquidation of excessive gasoline inventories, the Planning and Coordination Committee may, with the approval of the President, authorize suitable arrangements for the purchase of gasoline from non-integrated and/or semi-integrated refiners and the resale of same through orderly channels.

Section 7. Upon a determination by the Planning and Coordination Committee that an excessive supply of gasoline or an unbalanced accumulation of inventories of gasoline exists in any district, which excessive supply and/or excessive accumulation of inventories injuriously affect interstate and foreign commerce and is such that any remedy must incidentally apply in like manner to intra-state commerce, the Planning and Coordination Committee may establish fair and reasonable quotas in commerce for gasoline to be moved from all or any of the refineries or
5529 other sources of supply in the district. Such quotas shall be in accord with such rules and regulations as are promulgated by the Planning and Coordination Committee.

While such quotas are in effect, no person shall place in commerce or receive in commerce (interstate, intrastate or foreign), by sale, exchange, consignment or otherwise, any gasoline in excess of the quota prescribed. Before establishing quotas for gasoline the Planning and Coordination Committee shall hold or cause to be held, hearings with respect to the establishment of such quotas and to such other matters as in the opinion of the committee may be proper, after such reasonable public notice as may be prescribed; Provided, however, that in any emergency as determined to exist by the committee, quotas may be established for a temporary period not to exceed one calendar month without previous notice or hearing, but in such event, the committee in the next subsequent period, shall adjust quotas so allocated upon the basis of due notice and hearing hereinabove prescribed so as to prevent any inequitable allocation. Any person natural or artificial, aggrieved by any quota, shall have a right of appeal to the Administrator.

This section is to be construed and may be enforced without reference to the other provisions of this article.

Section 8. The Planning and Coordination Committee may make such rules and regulations, authorize such committees, and require such reports as it may deem necessary to accomplish the purposes of this article. 5530

Section 9. The word "gasoline" as used herein shall be held to include such products as may be determined from time to time by the Planning and Coordination Committee.

Section 10. In case of any appeal, the appellant shall abide by all the provisions of this article and the rules and regulations issued hereunder pending the decision of such appeal, but in case the contentions of the appellant are upheld in whole or in part, an order shall be issued which shall be retroactive to the effective date of the order appealed from.

Section 11. Failure on the part of any person to observe or comply with any provisions of this article or any valid order, rule or regulation hereunder, shall constitute a violation of the code.

5531

Article VII—Organization

Section 2. The Planning and Coordination Committee shall consist of not more than twenty-six members, three of whom (without vote) shall be representatives of the National Recovery Administration and appointed by the President, and twenty-three of whom shall be representatives of the petroleum industry appointed by the President from nominations made by the industry: Provided that nothing herein contained shall affect any appointments heretofore made pursuant to Article VII, Section 2 of this Code as approved by the President August 19, 1933. Vacancies in the Committee shall be filled in the manner herein provided for the appointment of members. Any association, group or person in the industry may make nominations for consideration by the President in filling places on or vacancies in the Committee.

Approved and promulgated this 24th day of April, 1934.

Harold L. Ickes

Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior.

5532 DEFENSE EXHIBIT NO. 836.

Letterhead of
Administrator for the Petroleum Industry
Washington

January 2, 1935

Mr. J. D. Collett, Chairman,
Planning and Coordination Committee,
Investment Building,
Washington, D. C.

My dear Mr. Collett:

I have approved the decisions of December 17 on appeals 13, 14, 15, 16, 17, 19, 20, 21 and 22, relative to gasoline production during October and November, transmitted by Judge Beaty with his letter of December 17, although I do not like to pass upon such matters after the period concerned has elapsed and the action under the recommended decisions has been completed.

In those instances where the applications for the manufacture of additional gasoline have been granted, I have been advised that the amounts so granted are in addition to the determination of gasoline production made currently by the Federal Agency and that the granting of such appeals, without compensatory reductions in the operating schedules of other districts or plants, results in unauthorized production in excess of the determination made by the Federal Agency. There was a time last November when it was evident that additional gasoline should be manufactured to bring inventories to economic levels. This additional production was not included in the original determination of the Federal Agency and a supplemental determination proved necessary. The determination for January, 1935 includes, and subsequent determinations will provide, sufficient gasoline for the current demand and the necessary increases in inventories. As a consequence, such appeals as may be granted by the Planning and Coordination Committee must be made within the determination of the Federal Agency, as I do not feel that any appeals which call for the manufacture of gasoline in excess of the Federal determination should be approved.

I hope that the Planning and Coordination Committee will pay particular attention to the program of refinery operations during the first quarter of 1935, as this is the
5533 period when gasoline inventories will be increased
considerably in order to provide for consumption dur-

ing the following summer period. The industry has established an objective of 65,000,000 barrels as the economic total of gasoline inventories on March 31, 1935, and I am advised by the Federal Agency that this is a reasonable figure. I feel that particular attention should be given to this matter by the Planning and Coordination Committee in order, first, that the national total of gasoline inventories may not be excessive on March 31, 1935, and, second, that there should not be an unbalanced accumulation of inventories of gasoline in any part of the country or in individual plants.

During the time when the normal operation was to reduce gasoline inventories, I feel that the industry cooperated in a splendid manner to achieve its objective and similar effective cooperation is necessary during the present period, when gasoline stocks are being increased as a normal operation, in order that the gasoline which should, at this time of the year, be placed in storage to meet consumer demand during the summer season, may not be disposed of prematurely in such a manner as to affect injuriously the interstate commerce in gasoline. The determination made currently by the Federal Agency divides the required production into that necessary to balance consumer demand during the period and that necessary for additions to gasoline inventories. I feel that these two items should be handled separately by the Planning and Coordination Committee, the National Coordinator, and the District Allocators or allocating agencies, and that the allocations to districts and plants should be made in such manner as to distinguish the gasoline manufactured to meet current demand from that allocated to provide additions to gasoline inventories.

I would appreciate hearing from you after you have had an opportunity of discussing this with the Planning and Coordination Committee.

Sincerely yours,

Harold L. Ickes,
Administrator

Inclosures.

5534 DEFENSE EXHIBIT NO. 838.

March 1, 1935

Mr. F. E. Holsten,
Barnsdall Oil Corp.,
Petroleum Bldg.,
Tulsa, Okla.

Dear Mr. Holsten:

Will you please telegraph as soon as possible your best estimate of finished and unfinished gasoline held by your company in each district at the close of business February 28, 1935. In reporting these stocks will you please furnish us figures comparable to those which you furnished the respective Allocating Agencies, with which you deal, as estimates of what you would have on hand in each district on February 28, 1935.

The purpose of making this inquiry is to become as fully informed as possible on the actual situation which confronts the industry at the outset of March operations with respect to inventories.

The National Inventory Committee has set an objective of 65,000,000 barrels for the country and an earnest effort is to be made to avoid exceeding this level. It is in connection with our effort to bring this about that we are making this inquiry and it will be of considerable help to us if you can furnish this information promptly.

Very truly yours,
National Coordinator

JES ew

5535 DEFENSE EXHIBIT NO. 839.

5536 Comparison of Gasoline Stocks
Estimated February 28th, 1935

Summary

District	Estimate For March Allocation	Revised Estimate of Actual	Excess+ Shortage—
District No. 1.......	16,912,042	17,268,921	+ 356,879
District No. 2.......	1,751,423	1,826,726	+ 75,303
District No. 3.......	9,414,059	9,940,815	+ 526,756
District No. 4.......	5,121,225	4,977,918	— 143,307
District No. 5-A.....	1,172,289	1,156,342	— 15,947
District No. 5-B.....	7,562,922	8,018,172	+ 455,250
District No. 6-A.....	1,179,551	1,124,166	— 55,385
District No. 6-B.....	82,131	154,000	+ 71,869
District No. 7.......	993,435	969,687	— 23,748
District No. 8.......	10,566,000	10,730,496	+ 164,496
	54,755,077	56,167,243	+1,412,166

5537 DEFENSE EXHIBIT NO. 840.

Telegram

Washington, D. C.
Mar. 9

E. B. Reeser, President, Barnsdall Oil Co.,
Petroleum Bldg., Tulsa, Okla.

On January first this year industry held eleven million barrels less gasoline than January first nineteen thirty four stop API report week ending March second shows sixty five million four hundred thousand barrels finished and unfinished comparable to seventy million eight hundred eighty thousand barrels February twenty eighth nineteen thirty four thus the eleven million barrel advantage has been reduced to five million four hundred forty thousand barrels with March allocations permitting an additional inventory accumulation of two million nine hundred forty thousand barrels indicating accumulation approximately sixty eight million three hundred thousand barrels close March providing no gasoline overproduction and no disappointment in estimated March demand stop Some overproduction to be expected and disappointment in demand entirely probable and to extent either or both these experienced we will exceed sixty eight million three hundred thousand barrels stop This record indicates danger of throwing away position of advantage which industry earned during last six months nineteen thirty four stop Situation somewhat due to disappointments in demand during January and February evidenced by fact that actual February twenty eighth inventories thirty principal companies show aggregate one million four hundred fifty thousand barrels gasoline in storage in excess of estimates made at time March allocations were received stop Also performance record January indicates excess gasoline production above allowables five hundred fifty thousand barrels with smaller quantity additional overproduction estimated for February stop While your operations in all districts reveal an inventory position February twenty eighth less than your estimates when March allocations were received nevertheless in an earnest effort to salvage all possible of industry position we urge you to instruct your refining division to further curtail gasoline production in March at least to the extent of twenty five thousand barrels even though such curtailment leaves your company in March thirty first position lower than recommended by inventory committee stop If your company and others will make this sacrifice it will contribute immensely to a firm situation and avoid the need to effect a sharp adjustment of crude oil and gasoline production schedules in subsequent months which must inevitably result if we reach March thirty first in out of line position stop If you find you can do more than this 5538 it will materially aid whole situation stop The administration is cognizant of this effort we are making to attain the March thirty first inventory objective stop Will appreciate immediate response indicating extent to which you have authorized your company to respond to this voluntary adjustment.

Howard Bennette
National Coordinator.

5539

DEFENSE EXHIBIT NO. 841.

5540 SUMMARY OF VOLUNTARY REFINERY CURTAILMENT IN MARCH, 1935, BY DEFENDANT COMPANIES

Code Refinery Districts 3 and 4 (14 states—Michigan, Wisconsin, Minnesota, North and South Dakota, Iowa, Illinois, Indiana, Missouri, Kansas, Oklahoma, Nebraska, Tennessee, Kentucky and Western part of Ohio)

Gasoline Inventories, February 28, 1935

Company	District	Estimates submitted by companies early in February and used in making March allocations showing expected inventories by barrels	Revised actuals of expected inventories, by barrels, submitted by companies in response to March 1 request of National Co-ordinator	Amounts by which actuals exceeded or were under the estimates submitted early in February*	March, 1935, voluntary refinery curtailment (difference between production permitted under allocation and actual production**)
Barnsdall Refining Co.	3	59,634	65,488	+ 5,854	— 603
	4	251,912	195,602	— 56,310	
		311,546	261,090	— 50,456	— 603
Cities Service Co. (Empire Oil & Refining Co.)	3	181,419	201,000	+ 19,581	+ 40,057
	4	142,195	142,000	— 195	— 401
		323,614	343,000	+ 19,386	+ 39,656
Continental Oil Company	3	451,172	455,676	+ 4,504	— 22,774
	4	727,600	752,234	+ 24,634	
		1,178,772	1,207,910	+ 29,138	— 22,774
Mid-Continent Petroleum Corp.	3	186,429	198,074	+ 11,645	— 93,331
	4	580,455	589,675	+ 9,220	
		766,884	787,749	+ 20,865	— 93,331
Phillips Petroleum Co.	3	653,000	846,956	+193,956	— 51,979
	4	885,000	767,818	—117,182	
		1,538,000	1,614,774	+ 76,774	— 51,979

Pure Oil Company	3	275,833	274,232	— 1,601	— 8,877
	4	100,900	113,534	+ 12,634	— 1,091
		376,733	387,766	+ 11,033	— 9,968
Shell Petroleum Corp.	3	1,238,449	1,273,795	+ 35,346	— 2,896
	4	145,470	123,057	— 22,413	— 585
		1,383,919	1,396,852	+ 12,933	— 3,481
Sinclair Refining Co.	3	518,433	551,591	+ 33,158	— 14,403
	4	555,000	511,395	— 43,605	— 16
		1,073,433	1,062,986	— 10,447	— 14,419
Skelly Oil Co.	3	184,465	193,000	+ 8,535	
	4	399,740	374,000	— 25,740	— 23,720
		584,205	567,000	— 17,205	— 23,720
Socony-Vacuum Oil Co.					
Lubrite	3	64,457	64,082	— 375	— 65
Wadhams Oil	3	51,439	39,972	— 11,467	— 44,030
White Star	3	172,147	168,031	— 4,116	— 217
White Eagle	4	305,577	322,000	+ 16,423	— 24,920
		593,620	594,085	+ 465	— 69,232
Standard Oil Co. (Ind.)	3	3,267,703	3,412,025	+144,322	+ 14,283
	4	415,911	460,598	+ 44,687	— 1,113
		3,683,614	3,872,623	+189,009	+ 13,170
Gulf Refining Co.	3	717,835	779,627	+ 61,792	+ 17,801
The Texas Co.	3	846,106	817,735	— 28,371	+ 4,000
	4	291,701	304,825	+ 13,124	+ 494
		1,137,807	1,122,560	— 15,247	+ 4,494
Grand Totals		13,669,982	13,998,022	+328,040	—214,386

*Plus —Actual was over estimate
Minus—Actual was under estimate
**Plus —Production over allocation
Minus—Actual production under allocation

5542 DEFENSE EXHIBIT NO. 842.

5543 VOLUNTARY REFINERY CURTAILMENT IN MARCH, 1935

Company	District	Allocation	Production Reported to Agency	Voluntary Refinery Cu tailment (Difference between Production Pe mitted Under Alloca tion and Actual Production)
Socony-Vacuum Oil Co.	1	349,000	342,231	
	2	114,000	112,712	
	3	399,311	354,999	
	4	272,000	247,080	
	5a	225,500	224,102	
	5b	1,007,801	905,323	
	7	51,331	50,500	
	8	494,000	499,600	
Total		2,912,943	2,736,547	— 176,396
Standard Oil Co. of N J	1	1,614,000	1,392,791	
	2	72,000	71,922	
	5a	25,600	26,647	
	5b	1,159,215	1,153,315	
	6a	846,600	846,544	
Total		3,717,415	3,491,219	— 226,196
Sunco	1	731,000	730,942	
	3	96,843	96,820	
	4	24,000	23,988	
Total		851,843	851,750	— 93
Atlantic	1	1,099,000	1,095,000	
	2	170,000	157,000	
Total		1,269,000	1,252,000	— 17,000
Cities Service	1	467,000	465,829	
	2	21,000	21,059	
	3	315,635	355,692	
	4	182,676	182,245	
	6b	350,000	350,104	
Total		1,336,311	1,374,929	38,618
5544				
National	2	4,500	4,029	
	3	48,904	33,826	
	4	105,000	107,695	
Total		158,404	145,550	— 12,854
Standard Oil Co. of Ohio	2	278,000	241,394	
	3	310,633	313,470	
Total		588,633	554,864	— 33,769

Company	District	Allocation	Production Reported to Agency	*Voluntary Refinery Curtailment* (Difference between Production Permitted Under Allocation and Actual Production)
Shell	3	849,168	846,272	
	4	140,000	139,415	
	5B	615,000	591,337	
	6A	263,100	265,064	
	8	809,442	784,608	
Total		2,676,710	2,626,696	— 50,014
Standard Oil Co. of Indiana	3	1,666,321	1,680,604	
	4	376,166	375,053	
	5B	435,424	491,397	
	6A	22,100	17,807	
	6B	63,000	50,037	
	7	300,106	300,056	
Total		2,863,117	2,914,954	+ 51,837
Texas Corporation	3	529,557	533,557	
	4	225,000	225,494	
	5A	317,375	287,472	
	5B	1,648,000	1,659,315	
	7	103,975	107,138	
	8	379,508	320,663	
Total		3,203,415	3,133,639	— 69,776

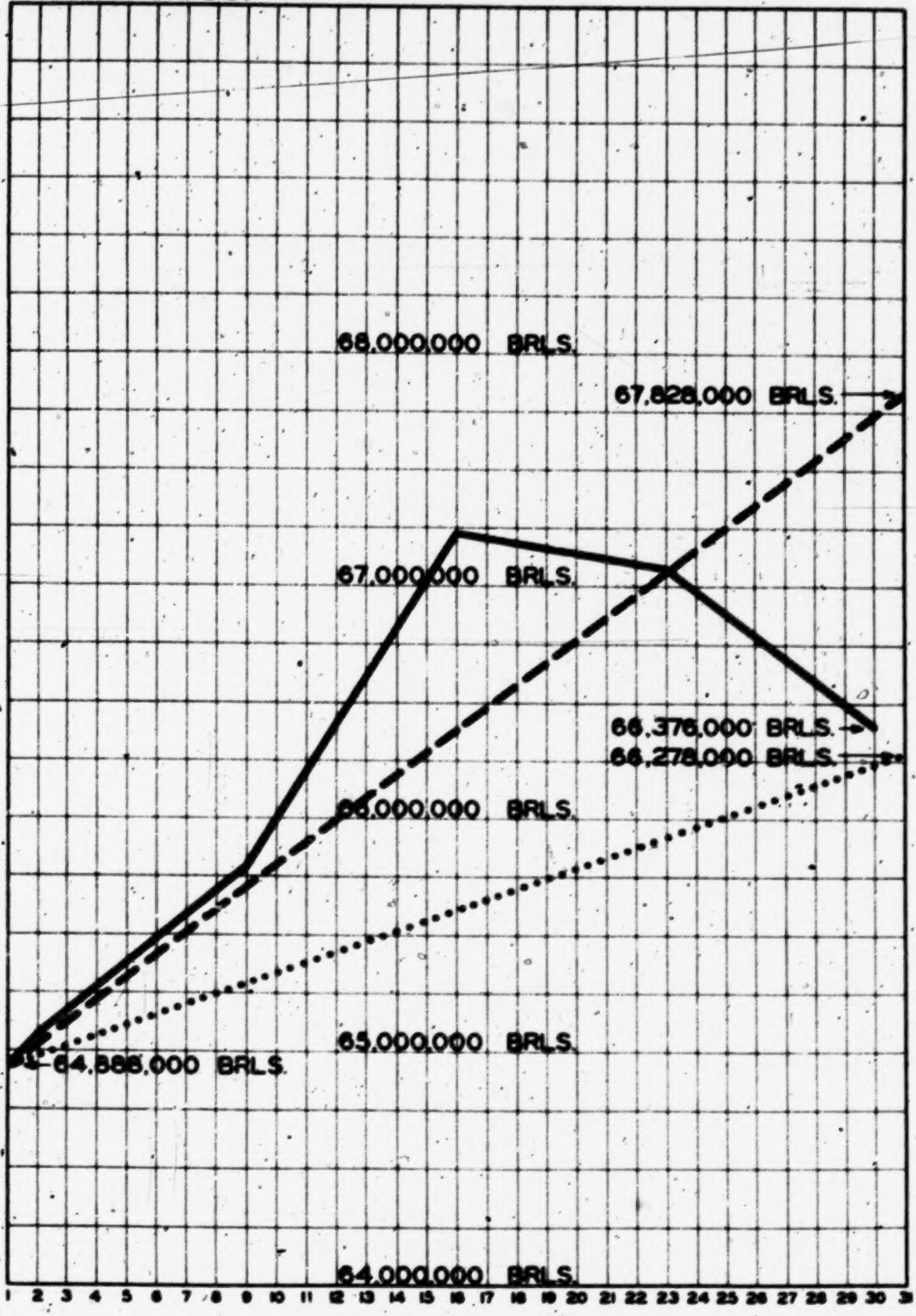
5545

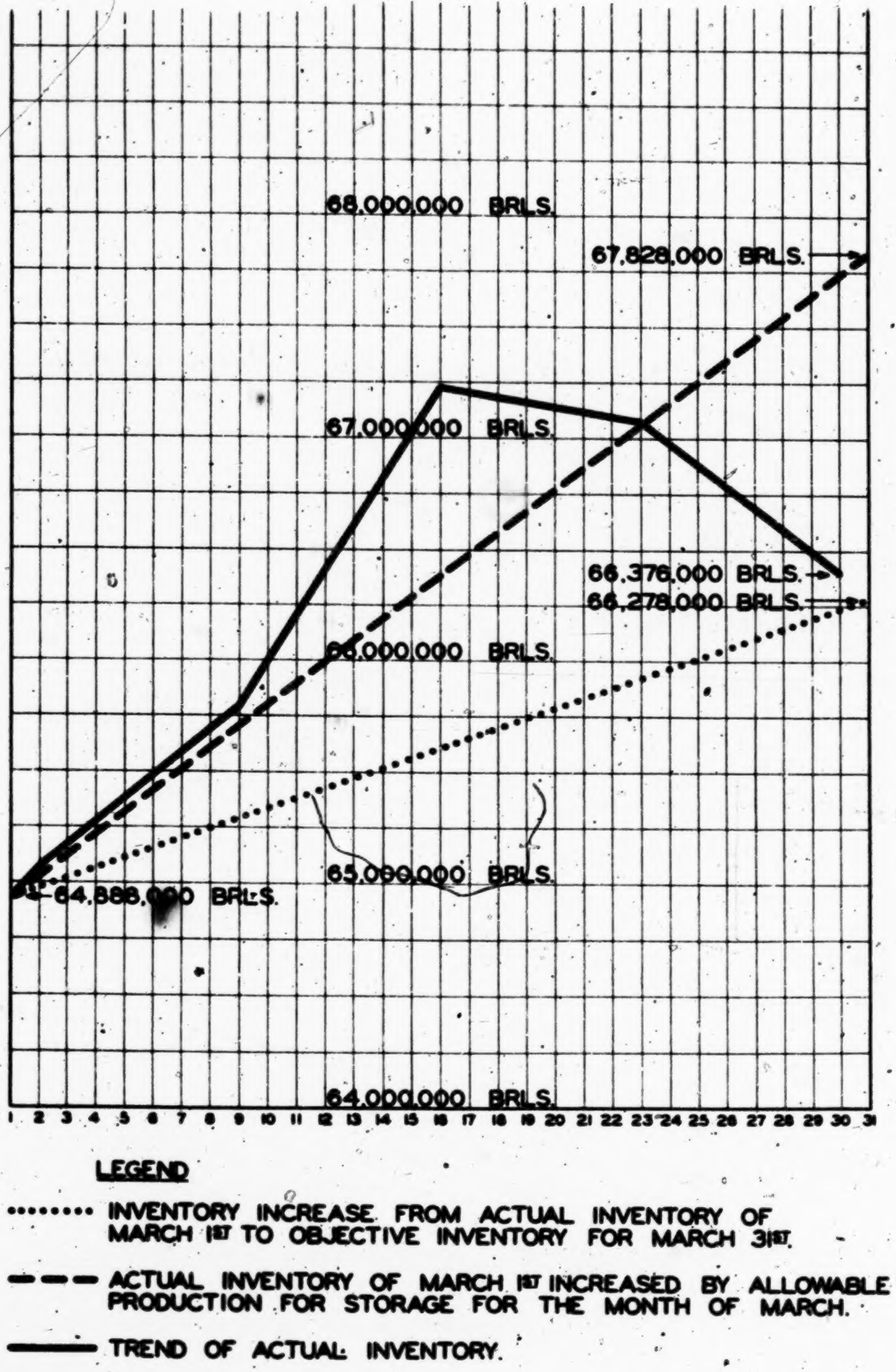
Company	District	Allocation	Production Reported to Agency	*Voluntary Refinery Curtailment* (Difference between Production Permitted Under Allocation and Actual Production)
Sinclair Refining Co	1	445,000	389,668	
	2	110,000	109,949	
	3	514,064	499,661	
	4	300,000	299,984	
	5a	102,000	91,870	
	5b	560,000	497,825	
	7	90,092	79,827	
	8	83,746	61,397	
Total		2,204,902	2,030,181	— 174,721
Continental Oil Company	1	128,000	106,656	
	2	8,500	4,200	
	4	432,000	409,226	
	5a	85,000	79,283	
	7	145,683	127,934	
Total		799,183	727,299	— 71,884
Gulf Oil & Refining Co	1	290,000	273,200	
	2	178,000	147,898	
	3	386,024	403,825	
	5a	125,000	99,485	
	5b	1,154,000	1,055,302	
Total		2,133,024	1,979,710	— 153,314

Company	District	Allocation	Production Reported to Agency	Voluntary Refinery Cu- tailment (Difference between Production Pe- mitted Under Allo- tion and Actual Production)
The Pure Oil Company......	1	200,000	193,116	
	2	186,000	178,937	
	3	153,250	144,373	
	4	128,678	127,587	
	5b	365,000	346,681	
Total..................		1,032,928	990,694	— 42,234
Tide Water..................	1	702,000	697,138	
	4	180,000	179,505	
	8	358,296	358,372	
Total..................		1,240,296	1,235,015	— 5,281
5546				
Barnsdall..................	4	220,000	219,397	
Total..................	4	220,000	219,397	— 603
Mid-Continent..............	4	494,101	400,770	
Total..................	4	494,101	400,770	— 93,331
Phillips..................	4	380,000	328,021	
	5A	444,500	580,189	
Total..................		824,500	908,210	+ 83,710
Skelly....................	4	330,000	306,280	
Total..................		330,000	306,280	— 23,720
Standard Oil Co. of Cal.....	5A	185,500	184,834	
	8	1,400,128	1,399,621	
Total..................		1,585,628	1,584,455	— 1,173
Richfield..................	8	286,079	295,398	
Total..................		286,079	295,398	+ 9,319
Union....................	8	425,000	428,421	
Total..................	8	425,000	428,421	+ 3,421
Grand Total..........		31,153,432	30,187,978	— 965,454

5547 DEFENSE EXHIBIT NO. 843.

STOCKS OF FINISHED AND UNFINISHED GASOLINE MARCH 1935.




68,000,000 BRLS.
67,828,000 BRLS.
67,000,000 BRLS.
66,376,000 BRLS.
66,278,000 BRLS.
66,000,000 BRLS.
65,000,000 BRLS.
64,888,000 BRLS.
64,000,000 BRLS.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
LEGEND
•••••••• INVENTORY INCREASE FROM ACTUAL INVENTORY OF MARCH 1ST TO OBJECTIVE INVENTORY FOR MARCH 31ST.
– – – ACTUAL INVENTORY OF MARCH 1ST INCREASED BY ALLOWABLE PRODUCTION FOR STORAGE FOR THE MONTH OF MARCH.
—— TREND OF ACTUAL INVENTORY.

5549 DEFENSE EXHIBIT NO. 844.

For Identification.

(Certified by the Department of the Interior to be copy of an order dated November 2, 1934, signed by Harold L. Ickes, together with the form of contract attached thereto.)

5550 Order

Whereas, under date of September 8, 1934 I approved certain standard forms of contract to be used in the purchase of distress gasoline to govern negotiations between certain purchasing companies and certain refiners desiring to dispose of such gasoline under the auspices of the Program Committee of the Planning and Coordination Committee, organized pursuant to the said Order; and

Whereas, the Program Committee has submitted to me the attached form to be used hereafter in substitution for the form attached to my said Order and designated Exhibit "B" thereto, and it appearing that the use of this form will be consistent with and will aid in carrying out the purposes of my aforesaid Order,

Now, Therefore, pursuant to the authority vested in me by the President's Order of August 28, 1933, authorized by the National Industrial Recovery Act and by the Petroleum Code, approved thereunder, the attached form of contract is hereby approved, to be used hereafter in such transactions, and under such conditions as were authorized by my Order of September 8, 1934, provided that nothing herein contained shall be deemed to affect the validity or consummation of any contracts entered into, prior to the effective date of this Order, upon forms previously approved by me and provided further that Section
5551 11 of said form hereby approved may not be modified without my express consent.

Approved and promulgated this 2nd day of November, 1934.

Harold L. Ickes
Harold L. Ickes
Secretary of the Interior
and
Administrator for the Petroleum Industry

5552 This agreement made this .... day of .... 1934 by and between .... (hereinafter called Vendor) and .... (hereinafter called Vendee).

Witnesseth:

Whereas, Vendor has a refinery located at .... in the State of .... of .... and is there engaged in the manufacture of gasoline and, Whereas, said Vendor desires to sell and said Vendee desires to purchase gasoline produced at said refinery,

Now Therefore, in consideration of $1.00 each to the other in hand paid, receipt whereof is hereby acknowledged, and in consideration of the promises and agreements hereinafter set forth, it is agreed as follows:

1. Vendor agrees to sell and Vendee agrees to buy a minimum of .... barrels of gasoline and a maximum of .... barrels of gasoline each month for a period of .... months, beginning on the .... day of .... 1934 and continuing until the .... day of ...., 1935; the exact amount of and grades of gasoline in each month to be purchased hereunder to be determined by mutual agreement between the Vendor and a Committee hereinafter referred to as the Agency appointed by the Planning and Coordination Committee under the Code of Fair Competition for the Petroleum Industry. It is intended that no agreement for purchase of gasoline, extending
5553 over a month, will be negotiated under this program
until after the gasoline production quota of the Vendor has been established and his acceptance thereof has been received by the Allocating Agency.

2. The purchase price of said gasoline meeting U. S. Motor Specifications and having an octane rating of 50-62, which shall be known as the "Basing grade", shall be 5¢ per gallon as long as the posted price of crude remains at $1.00 per barrel in the East Texas field. The price to be paid for said gasoline shall increase ¼¢ per gallon with each 5¢ per barrel increase in said posted price of crude and shall decrease ¼¢ per gallon with each 5¢ per barrel decrease, in the said posted price of crude. The posted price of crude shall be deemed the price posted by the majority of the major companies purchasing crude in the East Texas field. The price of gasoline meeting U. S. Motor Specifications and having an octane rating of 63 and above shall be ½¢ per gallon more than the above named prices.

Should the Vendor at any time during the continuance of this contract sell a quantity of gasoline to others at a lower price than that fixed under this contract then such lower price shall apply to an equal quantity of gasoline sold to Vendee under this contract; the purchase of such gasoline shall be paid for as follows: ....

....

....

5554 3. Either party to this contract may cancel the same at the end of any calendar month by giving to the other party, ten days prior to the end of such month, a written notice of such cancellation. It is also agreed that the Vendee may cancel this contract at any time upon two days written notice to Vendor, if any of the conditions of this contract be violated by said Vendor.

4. In consideration of the agreement to purchase said gasoline by the Vendee the Vendor agrees:

(a) That the Vendor will not produce, purchase, transport or run through his refinery, hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which said crude oil is produced under order of the Administrator or under any valid order of a state regulatory body, and that he will not buy or run through his refinery any oil produced by any producer who is producing crude oil from any property in excess of the allotment to the property from which the crude oil was produced under order of the Administrator or state regulatory body.

(b) That the Vendor will not produce more gasoline during the continuance of this contract than his current quota, as it may be established from time to time under the provisions of Article IV of the Code of Fair Competition for the Petroleum Industry.

(c) That the Vendor will report such of his 5555 operations with respect to the matters herein set forth to the Administrator or to the Planning and Coordination Committee or its agent at such times and in such manner and form as may be requested by the Administrator or the Committee.

(d) That the Vendor will not purchase from any refiner or other person gasoline or other products manufactured from oil produced in violation of any order of the Petroleum Administrator or in violation of any valid order of a state regulatory body or in violation of the Code of Fair Competition for the Petroleum Industry.

(e) That the Vendor at all times during the continuance of this contract will permit the program Committee of the Planning and Coordination Committee or its accredited representative and/or the Petroleum Administrator or his accredited representative, to examine his books, records and plant, examine his record of receipts of crude and products therefrom of refinery yields, of all gauges, of sales and shipments, to observe actual operations, and to make such other investigations as will assure the Committee and the Petroleum Administrator of compliance with the terms of this agreement.

(f) That the Vendor will make all reports required of him by the Planning and Coordination Committee or
required by any agency appointed by such committee
5556 and will also make all required reports to the
Bureau of Mines or other Governmental or state
agencies. Said Vendor shall make all such reports available to Vendee.

5. In the event Vendor cannot obtain sufficient crude oil at the current market price from which to manufacture the gasoline herein sold, then, in that event, Vendor shall be obligated to furnish only that gasoline which he is able to produce from such supply of crude as he is able to obtain.

6. In the event of a violation of the terms of this contract by either buyer or seller, upon such violation being called to the attention of the violator, the operation of this contract shall thereupon be suspended and no products shall be shipped hereunder until the question of such violation shall be determined. If there be disagreement as to such violation the same shall be submitted to a committee of arbitration to consist of three members, one name to be selected by each of the parties to this contract and one by the Program Committee.

7. In the event the Government of the United States or any of its agents make any rules, regulations or orders or take any action materially affecting this contract as to prices or otherwise, then this contract shall be immediately terminated, in which event all liability thereunder shall cease, except as to shipments made prior to such termination.

8. It is agreed by the parties hereto, that this agree-
ment is made pursuant to the provisions of the Na-
5557 tional Industrial Recovery Act and for the purpose
of effectuating the policies of such Act and for the
purpose of carrying out and effectuating the Code of Fair Competition for the Petroleum Industry and that in case of a breach of any of the terms of this contract by the Vendor that a judgment for damages will be entirely in-

adequate and of no avail and that neither of the parties hereto has any adequate remedy at law against the other and that in case of a breach of any of the provisions of this contract or a refusal to perform the same, that a Court of Equity of competent jurisdiction may grant the aggrieved party an injunction against further violation of this contract and that said Court may also enter a decree for specific performance hereof.

9. In compliance with Title I, Section 7(a) of the N. I. R. A., the following conditions are incorporated in and made a part of this agreement:

(1) Employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

5558 (3) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

10. This agreement is made in pursuance of the provisions of the National Industrial Recovery Act and its use has been authorized and approved by the President under the provisions of Paragraph 2, Section 4, of Title I of said Act and Article I, Section 5, of the Code of Fair Competition for the Petroleum Industry, it being agreed that the President may from time to time cancel or modify his Order approving this form.

11. This contract is made on the express understanding that the Vendor, in executing this contract, shall not be held to have acquiesced in the legality or correctness of any allotment, order, rule or regulation made by the Administrator, and that while complying with any allotment, order, rule or regulation, he shall not be estopped or otherwise precluded from contesting the allotment, order, rule or regulation either on the law or on the facts involved in any proceeding before any court or before any administrative body, which proceeding may be initiated either by him or by the Government, and it is especially understood that the vendor reserves and asserts all of his constitutional rights.

5559 DEFENSE EXHIBIT NO. 845.

For Identification.

(Certified by the Department of the Interior to be copy of an order dated June 23, 1934, signed by Harold L. Ickes, together with the form of contract attached thereto.)

5560 Order
Under Title I, Section 9 (c)
of the
National Industrial Recovery Act

Whereas, large and uneconomic stocks of gasoline have been accumulated by certain refiners who have commingled legally produced gasoline with gasoline made from crude oil produced in excess of allowables, which gasoline is considered illegal for the purposes of Section 9(c) of Title I of the National Industrial Recovery Act, and

Whereas, Regulation VI of the Regulations promulgated by the President on July 15, 1933 under Section 9 (c) of the National Industrial Recovery Act, which requires refiners to file an affidavit setting forth the facts with respect to the legality of the crude oil from which gasoline has been manufactured, prevents the legal shipment of the aforesaid gasoline in commerce, and

Whereas, certain refiners have been secretly and illegally shipping certain storage gasoline into commerce at prices which have been destructive to the gasoline market, and the authority of the federal government to prevent these practices has been seriously impeded by injunctions obtained in the Federal District Courts in Texas enjoining the federal government from enforcing many of the regulations
promulgated under said Section 9 (c) with the result
5561 that the Division of Investigations, Department of the
Interior, has been prevented in some instances from keeping accurate records with respect to what gasoline had been refined from crude oil produced in excess of allowables, and

Whereas, the effect of this accumulated storage of excess gasoline has been to depress markets and cause a breakdown of the gasoline price structure throughout the United States to the detriment of independent, non-integrated refiners who purchase crude oil on a market stabilized by proration and are forced to sell gasoline on a distressed market caused largely by the shipment of illegally produced gasoline into commerce at ruinous prices, and

Whereas, this condition has become a hardship upon and is tending to eliminate and oppress small enterprises and is operating to discriminate against them, and

Whereas, it is necessary to relieve the market of excess storage gasoline and to aid in obtaining full compliance with the production and refining provisions of the Code of Fair Competition for the Petroleum Industry in the future, and

Whereas, certain refiners have signified their willingness to agree to abide by the production and refinery provisions of said Code hereafter, if such excess storage gasoline may be shipped in commerce, and

Whereas, certain large purchasers of gasoline have signified their willingness to purchase said storage gasoline provided the sellers will agree hereafter to abide by
5562 said Code provisions,

Now Therefore, pursuant to the authority vested in me by the President's Orders of July 14, 1933 and August 28, 1933 authorized by Sections 2 (a) and 9 (c) of Title I of the National Industrial Recovery Act it is hereby ordered that the affidavits required for Class B shipments under Regulation VI of the Regulations promulgated July 25, 1933 under said Section 9 (c) of Title I of the National Industrial Recovery Act need not be furnished when the shipment is made pursuant to the standard form of contract for the purchase of gasoline approved this day, (a copy of which is attached hereto) which is expressly conditioned on the seller agreeing hereafter to abide by the production and refinery provisions of the Code of Fair Competition for the Petroleum Industry.

Promulgated this 23d day of June, 1934.

(sgd) Harold L. Ickes,
Administrator of the Code of Fair Competition for the Petroleum Industry and Secretary of the Interior.

5563 Memorandum of Agreement made this day of , 1934, by and among , (hereinafter called Vendor) , (hereinafter called Vendee) and Harold L. Ickes, Administrator for the Petroleum Industry under the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry, (hereinafter called Administrator)

Witnesseth:

Whereas, Vendor has a refinery located at in the State of , and

Whereas, the said Vendor has storage gasoline amounting to barrels, and desires to dispose of said storage gasoline, and

Whereas, Vendee desires to purchase said gasoline subject to certain conditions,

Now Therefore, in consideration of $1.00 each to the other in hand paid receipt whereof is hereby acknowledged, and other good and valuable considerations it is agreed as follows:

1. The Vendor agrees to sell and Vendee agrees to buy barrels of said storage gasoline subject to the following conditions, to which the Vendor hereby agrees:

(a) that the Vendor will not produce, purchase, transport, or run through his refinery, hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which said crude oil is
5564 produced under order of the Administrator or under any valid order of a State Regulatory Body, and that he will not buy or run through his refinery any oil produced by any producer who is producing crude oil from such property in excess of the allotment to the property from which the crude oil was produced under order of the Administrator or State Regulatory Body;

(b) that the Vendor will not produce more gasoline than his current allowable as it may be fixed from time to time under the provisions of the Code of Fair Competition for the Petroleum Industry;

(c) that the Vendor will report such of his operations with respect to the matters herein set forth to the Administrator or to the Planning and Coordination Committee or its agent at such times and in such manner and form as may be requested by the Administrator or the Committee.

2. It is agreed by the parties hereto that the Vendee and the Administrator have been induced to enter into this contract for the purpose of assisting the Vendor so that

hereafter he may fully comply with the provisions of the Code of Fair Competition for the Petroleum Industry and that strict observance of the conditions set forth in Section 1 hereof on the part of the Vendor is of the essence of this agreement.

3. The Vendor and Vendee agree that the Vendor will pay, and the Vendee will accept in full payment for the gasoline purchased hereunder ¢ per gallon.

4. The deliveries of said storage gasoline shall be as follows:

5565 5. Payment for the gasoline purchased hereunder shall be made 75% cash upon shipment, and 12½% 45 days after date of shipment, and 12½% 90 days after date of shipment, with interest on the unpaid balances at the rate of % per annum, said payments to be contingent upon the faithful performance of Vendor of the conditions set forth in Section 1 above.

6. If Vendee desires to purchase any of Vendor's current production of gasoline it is agreed that said purchases shall be made pursuant to a contract in writing embodying the provisions of Section 1 hereof.

7. It is agreed by the parties hereto that this agreement is made pursuant to the provisions of the National Industrial Recovery Act and the Code of Fair competition for the Petroleum Industry, and that it is subject to all of the terms and conditions thereof; that in case of breach by the Vendor of any of the conditions set forth in Section 1 hereof a judgment for damages will be of no avail, and that none of the parties hereto has an adequate remedy at law against the other; that the Administrator is interested in the full and punctual performance of this contract to make effective the Code of Fair Competition for the Petroleum Industry, and that adequate relief in case of a breach of any of the conditions set forth in Section 1 hereof may be provided only by the remedies of injunction or specific performance granted by a court of equity.

8. It is further agreed by the parties hereto that the Administrator of the Code of Fair Competition for 5566 the Petroleum Industry may at any time cancel this agreement in order fully to effectuate the purposes of the National Industrial Recovery Act and of the said Code.

In Witness Whereof the parties hereto have executed this agreement in triplicate the day and year first above written.

....(Seal)

....(Seal)

....

Administrator of the Petroleum Industry.

5567 **DEFENSE EXHIBIT NO. 846.**

For Identification.

(Certified by the Department of the Interior to be copy of an order dated September 8, 1934, signed by Harold L. Ickes, together with two forms of contracts attached thereto.)

5568

Order
Under The
Code of Fair Competition
For The
Petroleum Industry

Whereas, under dates of June 23, 1934 and August 13, 1934 respectively, I approved certain standard forms of contract to be used in the purchase of distress gasoline with a view to securing markets for the products of small non-integrated and semi-integrated refiners, and further to bring the refinery price of gasoline into closer relation to the price of crude oil in order to carry out the objectives of the National Industrial Recovery Act, and

Whereas, a large number of small non-integrated and semi-integrated refiners have entered into contracts pursuant to the standard forms approved as above, and it now appearing that if this program is to achieve the objectives desired the activities both of the purchasers and of the sellers must be correlated and supervised so that Article IV of the Code of Fair Competition for the Petroleum Industry, as amended April 24, 1934, may be made effective, monopolies and monopolistic practices avoided, and the elimination of small refining enterprises prevented, and

Whereas, the Planning and Coordination Committee has recommended to me by Resolution of August 15, 1934, that a subcommittee be appointed pursuant to Section 6 of the aforesaid Article IV, as amended, with the duty of negotiating with purchasers of gasoline to secure markets for excess stocks produced by such refiners, and for other purposes set forth in said Resolution,

Now, Therefore, pursuant to the authority vested in me by the President's Order of August 28, 1933, authorized by the aforesaid National Industrial Recovery Act, and the Petroleum Code approved thereunder, the creation and establishment of a subcommittee of the Planning and Coordination Committee to be known as the "Program Committee", is hereby approved. This Committee shall have the duty of negotiating with purchasers of gasoline 5569 with a view to securing markets for excess stocks of gasoline in the hands of non-integrated and semi-integrated refiners and for gasoline produced or to be produced by such refiners that might create excessive inventories and to prevent discrimination against, oppression of or elimination of small refining enterprises; to make efforts to provide for an orderly sale and resale of their excess products by arrangements with integrated units, and others, in the industry for the purchase of gasoline from them; and generally to take steps to effectuate the purposes of the aforesaid Section 6 of Article IV, as amended. All contracts consummated for the sale of such gasoline by such non-integrated and semi-integrated refiners must be entered into pursuant to the provisions of the standard forms of contract in the words and figures attached hereto and by reference made a part hereof, which forms are Exhibits "A" and "B" to said Resolution of August 15, 1934; the use of which contracts in carrying out this program is hereby approved by me pursuant to Section 4 of the said National Industrial Recovery Act and Article 1, Section 5 of the said Code; provided however, that a duly executed copy of each contract executed shall be filed with the Petroleum Administrative Board by the Program Committee as soon as is practicable after execution.

Provided, Further, that the use of these forms of contracts is to be considered mandatory in all transactions entered into pursuant to this order with the exception that in the form attached hereto and marked Exhibit "A" any provision other than those enumerated (a), (b), (c), (d), (e), (f) and those contained in the second, third, seventh and eighth paragraphs immediately following such enumerated provisions and in that marked Exhibit "B", any provision other than those contained in Sections 4, 6, 9 and 10 may be modified or eliminated if and in such manner as the Vendor and Vendee shall determine.

The Program Committee shall adopt such rules and regulations as may prove necessary to carry out the above program, and shall submit the same to me for approval.

The Petroleum Administrative Board is hereby expressly authorized by me to determine any complaints that may arise by reason of the operation of the above program, to afford adequate hearing to persons affected or claiming to be affected, and to recommend to me such modifications or changes as may be desirable either in the general program or in any particular policy adopted by the Program Committee.

5570 The Program Committee shall keep records setting forth the extent and number of transactions entered into for the purchase of gasoline hereunder, the names of the purchaser and seller in each instance, and the quantity and price involved, and shall furnish the Petroleum Administrative Board a list of such transactions, with the information stated, on the 30th day of each month, or oftener if requested.

The Program Committee shall permit a duly designated representative of the Petroleum Administrative Board to be present at any and all meetings and shall give due notice of such meetings to the said Board or to such duly designated representative. It shall permit the said Board or any duly designated representative thereof to inspect any and all books, records and documents.

Nothing herein contained shall be deemed to change the effect of my orders of June 23, 1934 and August 13, 1934 approving certain forms of contract for the purchase of stored and currently produced gasoline, provided, however, that all contracts hereafter written for the purchase of distress gasoline shall comply with the standard forms of contract hereinabove described.

Promulgated this 8th day of September, 1934.

(Sgd.) Harold L. Ickes,
Administrator of the Code of Fair Competition for the Petroleum Industry, and Secretary of the Interior

5571 **Purchase Agreement**

....

........................., hereinafter called Vendee, has purchased from ...., hereinafter called Vendor, the following products:

To be shipped by
To be invoiced by
Price
Cars furnished by
F. O. B.
Basis of price

Terms governing outage at destination
Freight to be paid by
Point of delivery
Delivery to begin To be completed prior to
At the rate of
Terms of payment

Shipping notices must be sent on buyer's forms as per instructions on each order.

5572 Reports of the receipt, loading and departure of buyer's cars to be mailed promptly to the ....

....

and to ....

This purchase and sale are subject to the following special conditions to which the vendor hereby agrees:

(a) That the Vendor will not produce, purchase, transport or run through his refinery hereinabove described any crude oil which is produced in excess of the allotment to the well or property from which said crude oil is produced under order of the National Petroleum Administrator or under any valid order of a State Regulatory Body, and that he will not buy or run through his refinery any oil produced by any producer who is producing crude oil from any property in excess of the allotment to the property from which the crude oil was produced under order of the National Petroleum Administrator or State Regulatory Body.

(b) That the Vendor will not produce more gasoline than his current quota as it may be fixed from time to time under the provisions of the Code of Fair Competition for the Petroleum Industry.

(c) That the Vendor will report such of his operations with respect to the matters herein set forth to the National Petroleum Administrator or to the Planning and Coordination Committee or its Agent at such times and in such manner as may be requested by the Administrator or the Committee.

5573 (d) That the Vendor will not purchase from any refiner or other person gasoline or other products manufactured from oil produced in violation of any order of the Petroleum Administrator or in violation of any valid order of a state regulatory body or in violation of the Code of Fair Competition for the Petroleum Industry.

(e) That the vendor at all times during the continuance of this contract will permit the Program Committee of the Planning and Coordination Committee, or its accredited representative, and/or the Petroleum Administrator or his accredited representative, to examine his books, records and plant, examine his records of receipts of crude and products therefrom of refinery yields of all gauges, of sales and shipments, to observe actual operations, and to make such other investigations as will assure the Committee and the Petroleum Administrator of compliance with the terms of this agreement.

(f) That the Vendor agrees that he will make all reports required of him by the Planning and Coordination Committee or required by any Agency appointed by such Committee and that he will also make all required reports to the Bureau of Mines or other Governmental or State Agencies, and will make all such reports available to Vendee.

In the event Vendor cannot obtain sufficient crude oil at the current market price from which to manufacture the gasoline herein sold, then in that event, Vendor shall
5574 be obligated to furnish only that gasoline which he is able to produce from his available supply of crude oil.

In the event of a violation of the terms of this contract by either Buyer or Seller, upon such violation being called to the attention of the violator the operation of this contract shall thereupon be suspended and no products shall be shipped hereunder until the question as to such violation shall be determined.

In the event of a disagreement as to such violation, the same shall be determined by an Arbitration Committee to consist of three members, one to be selected by each of the parties to this contract and one by the Program Committee.

This contract may be cancelled by either party without cause by giving the other party thirty days notice in writing, to that effect; notice of cancellation shall be considered as properly given if sent by registered mail duly addressed

to Vendee at ....
or the Vendor at ....,
In the event the Government of the United States or any of its Agencies make any rules, regulations or orders or take any action materially affecting this contract as to price or otherwise, then this contract shall be immediately terminated, in which event all liability thereunder shall cease except as to shipments made prior to such termination.

It is further agreed by the parties hereto that this agreement is made pursuant to the provisions of the National Industrial Recovery Act and for the purpose of 5575 effectuating the policies of such Act and also for the purpose of carrying out and effectuating the Code of Fair Competition for the Petroleum Industry, and in case of breach of any of the terms of this contract by the Vendor that a judgment for damages will be entirely inadequate and of no avail, and that neither of the parties hereto has any adequate remedy at law against the other and that in case of a breach of any of the provisions of this contract or a refusal to perform the same that a Court of Equity of competent jurisdiction may grant the aggrieved party an injunction against further violation of this contract and that such Court may also enter a decree for the specific performance hereof.

In compliance with Title I Sec. 7 (a) of the National Industrial Recovery Act the following conditions are incorporated in and made a part of this agreement; (1) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) No employee and no one seeking employment shall be required as a condition of employment to join any company 5576 union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

This agreement is made in pursuance of the provisions of the National Industrial Recovery Act and its use has been authorized and approved by the President under the provisions of paragraph 2, Section 4, of Title I of said Act and Article I, Section 5 of the Code of Fair Competition for the Petroleum Industry, it being agreed that the President may from time to time cancel or modify his order approving this form.

It is mutually agreed that should either party be unable to carry out this contract because of fires, strikes, act of Providence or reasons beyond his or its control, such party may suspend the contract, if so made necessary until the conditions so necessitating such suspension are removed and the time of this contract shall be extended an amount of time equal to such suspension.

In Witness Whereof, the parties hereto have hereunto set their signatures this ..... day of ...., 1934.

....

....

5577 This agreement made this .... day of .... 1934 by and between .... (Hereinafter called Vendor) and .... (hereinafter called Vendee).

Witnesseth:

Whereas, Vendor has a refinery located at .... in the State of .... and is there engaged in the manufacture of gasoline, and,

Whereas, said Vendor desires to sell and said Vendee desires to purchase gasoline produced at said refinery,

Now, Therefore, in consideration of $1.00 each to the other in hand paid, receipt whereof is hereby acknowledged, and in consideration of the promises and agreements hereinafter set forth, it is agreed as follows:

1. Vendor agrees to sell and Vendee agrees to buy a minimum of .... barrels of gasoline and a maximum of .... barrels of gasoline each month for a period of ...... months, beginning on the .... day of ...., 1934 and continuing until the .... day of ...., 1935; the exact amount of and grades of gasoline in each month to be purchased hereunder to be determined by mutual agreement between the Vendor and a Committee hereinafter referred to as the Agency appointed by the Planning and Coordination Committee under the Code of Fair Competition for the Petroleum Industry. The exact amount and grades of gasoline to be purchased each month shall not be determined until the gasoline production quota of the Vendor has been established and his acceptance 5578 thereof has been received by the Allocating Agency.

2. The purchase price of said gasoline meeting U. S. Motor specifications and having an octane rating of 50-62, which shall be known as the "basing grade", shall be a

minimum of ......¢ per gallon and a maximum of ......¢ per gallon; the exact purchase price of gasoline of the "basing grade" and for gasoline of other grades for deliveries in each month, or fraction thereof, shall be determined in the following manner: ....

Should the Vendor at any time during the continuance of this contract sell a quantity of gasoline to others at a lower price than that fixed under this contract then such lower price shall apply to an equal quantity of gasoline sold to Vendee under this contract; the purchase of such gasoline shall be paid for as follows: ....

3. Either party to this contract may cancel the same at any time upon giving to the other party a thirty day written notice of said cancellation. It is also agreed that the Vendee may cancel this contract at any time upon two days written notice to the Vendor if any of the conditions of this contract be violated by said Vendor:

5579 4. In consideration of the agreement to purchase said gasoline by the Vendee the Vendor agrees:

(a) That the Vendor will not produce, purchase, transport or run through his refinery, hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which said crude oil is produced under order of the Administrator or under any valid order of a state regulatory body, and that he will not buy or run through his refinery any oil purchased by any producer who is producing crude oil from any property in excess of the allotment to the property from which the crude oil was produced under order of the Administrator or state regulatory body.

(b) That the Vendor will not produce more gasoline during the continuance of this contract than his current quota, as it may be established from time to time under the provisions of Article IV of the Code of Fair Competition for the Petroleum Industry.

(c) That the Vendor will report such of his operations with respect to the matters herein set forth to the Administrator or to the Planning and Coordination Committee or its agent at such times and in such manner and form as may be rquested by the Administrator or the Committee.

(d) That the Vendor will not purchase from any refiner or other person gasoline or other products manufactured from oil produced in violation of any order of the Petroleum Administrator or in violation of any 5580 valid order of a state regulatory body or in violation of the Code of Fair Competition for the Petroleum Industry.

(e) That the Vendor at all times during the continuance of this contract will permit the Program Committee of the Planning and Coordination Committee or its accredited representative and/or the Petroleum Administrator or his accredited representative, to examine his books, records and plant, examine his record of receipts of crude and products therefrom of refinery yields, of all gauges, of sales and shipments, to observe actual operations, and to make such other investigations as will assure the Committee and the Petroleum Administrator of compliance with the terms of this agreement.

(f) That the Vendor will make all reports required of him by the Planning and Coordination Committee or required by any agency appointed by such committee and will also make all required reports to the Bureau of Mines or other Governmental or state agencies. Said Vendor shall make all such reports available to Vendee.

5. In the event Vendor cannot obtain sufficient crude oil at the current market price from which to manufacture the gasoline herein sold, then, in that event, Vendor shall be obligated to furnish only that gasoline which he is able to produce from such supply of crude oil as he is able to obtain.

6. In the event of a violation of the terms of this contract by either buyer or seller, upon such violation being called to the attention of the violator, the operation 5581 of this contract shall thereupon be suspended and no products shall be shipped hereunder until the question of such violation shall be determined. If there be disagreement as to such violation the same shall be submitted to a committee of arbitration to consist of three members, one name to be selected by each of the parties to this contract and one by the Program Committee.

7. In the event the Government of the United States or any of its agents make any rules, regulations or orders, or take any action materially affecting this contract as to prices or otherwise, then this contract shall be immediately terminated in which event all liability thereunder shall cease, except as to shipments made prior to such termination.

8. It is agreed by the parties hereto, that this agreement is made pursuant to the provisions of the National Industrial Recovery Act and for the purpose of effectu-

ating the policies of such Act and also for the purpose of carrying out and effectuating the Code of Fair Competition for the Petroleum Industry and that in case of a breach of any of the terms of this contract by the Vendor that a judgment for damages will be entirely inadequate and of no avail and that neither of the parties hereto has any adequate remedy at law against the other, and that in case of a breach of any of the provisions of this contract or a refusal to perform the same, that a Court of Equity of competent jurisdiction may grant the aggrieved party an injunction against further violation of this con-
5582 tract and that said Court may also enter a decree for specific performance hereof.

9. In compliance with Title I, Section 7(a) of the N.I.R.A. the following conditions are incorporated in and made a part of this agreement:

(1) Employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(3) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

10. This agreement is made in pursuance of the provisions of the National Industrial Recovery Act and its use has been authorized and approved by the President under the provisions of Paragraph 2, Section 4, of Title I of said Act and Article I, Section 5 of the Code of Fair Competition for the Petroleum Industry it being agreed that the President may from time to time cancel or modify his Order approving this contract.

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

....(Seal)
....(Seal)

5583 DEFENSE EXHIBIT NO. 847.

For Identification

(Certified by the Department of the Interior to be copy of an order dated August 13, 1934, signed by Harold L. Ickes, together with the contract form attached thereto.)

5584 Order

Under The National Industrial Recovery Act

Whereas, under date of June 23, 1934 the promulgation of a standard form of contract for the purchase of excess stocks of gasoline was duly authorized,

And it appearing that the majority of the refiners whose places of business are located in or about the East Texas field have become parties to said contracts, and have thereby agreed not to purchase in the future any crude petroleum, the movement of which in interstate commerce would be considered illegal under the provisions of Section 9 (c) of the National Industrial Recovery Act, and have further agreed to abide by the production and refining provisions of the Code of Fair Competition for the Petroleum Industry, and

Whereas, certain other refiners not having gasoline in storage desire to enter into contracts for the sale of currently produced gasoline, and

Whereas, certain large purchasers have signified their willingness to purchase gasoline currently produced by such refiners provided that the sellers thereof will agree to abide thereafter by the orders of the Administrator, or of duly authorized State regulatory bodies with respect to the production of crude petroleum and the 5585 refining of the products thereof and have submitted a standard form of contract to govern such purchases,

Now, Therefore, pursuant to the authority of the President's orders of July 14, 1933 and August 28, 1933, authorized by Sections 2 (b) and 9 (c) of the National Industrial Recovery Act, it is hereby ordered that such purchases may be made upon the conditions set forth in the standard form of contract for the purchase of currently produced gasoline approved this day (copy of which is attached hereto).

Provided, that duly executed copies of all such contracts entered into for the purchase of currently produced gasoline with refiners who have not heretofore become parties to the standard form of contract approved by my said order of June 23 shall be filed with the Petroleum Administrative Board within ten days after the execution of any such contract.

Promulgated this 13th day of August, 1934.

(Signed) Harold L. Ickes
Administrator of the Code of Fair Competition for the Petroleum Industry, and Secretary of the Interior.

5586 Memorandum of Agreement made this .... day of .... 1934, by and among .... (hereinafter called Vendor), and .... (hereinafter called Vendee).

Witnesseth:

That Vendee has purchased from Vendor the following products:

(Here insert special terms of contract)

This purchase and sale are subject to the following special conditions to which the Vendor hereby agrees:

(a) That the Vendor will not produce, purchase, transport, or run through his refinery, hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which said crude oil is produced under order of the Administrator or under any valid order of a State Regulatory Body, and that he will not buy or run through his refinery any oil produced by any producer who is producing crude oil from such property in excess of the allotment to the property from which the crude oil was produced under order of the Administrator or State Regulatory Body.

(b) That the Vendor will not produce more gasoline than his current allowable as it may be fixed from time to time by the Planning and Coordination Committee with the approval of the Administrator.

(c) That the Vendor will report such of his operations with respect to the matters herein set forth to the Administrator or to the Planning and Coordination Committee or its agent at such times and in such manner and form as may be requested by the Administrator or the Committee.

(d) In the event Vendor cannot obtain sufficient crude oil at the current market price from which to manufacture the gasoline herein sold, then in that event, Vendor shall be obligated to furnish only that gasoline which he is able to produce from his supply of crude oil or that which is furnished him by the Vendee or his agent at the current market price.

5587 (e) This contract may be cancelled by either party without cause by giving parties thirty days notice in writing to that effect. Notice of cancellation should be considered as properly given if sent by registered mail duly addressed to Vendee at .... In the event the federal government or any of its agents may make any rules or regulations materially affecting this contract as to price, or otherwise, then this contract shall be immediately terminated, in which event all liability thereunder shall cease except as to shipments made prior to such cancellation.

(f) It is mutually agreed that should either party be unable to carry out this contract because of fires, strikes, acts of Providence or reasons beyond his or its control, such party may suspend the contract, if so made necessary, until the conditions so necessitating such suspension are removed and the time of this contract shall be extended an amount of time equal to such suspension.

In Witness Whereof the parties hereto have executed this agreement in triplicate, the day and year first above written.

5588 DEFENSE EXHIBIT NO. 848.

For Identification.

(Certified by the Department of the Interior to be copy of Press Release dated April 6, 1934, issued by the Department of the Interior.)

5589 Department of the Interior
Memorandum for the Press

For Release in Morning Papers of
Friday, April 6, 1934.

A draft of a plan designed to stabilize petroleum refinery, operations and balance gasoline supply with demand today was made public. The plan is for the consideration of the oil industry and will be discussed at a hearing before the Petroleum Administrative Board next Wednesday, April 11, at 10 o'clock, in the Interior Department Auditorium.

Secretary of the Interior Harold L. Ickes, the Oil Administrator, explained that the plan represented a consolidation by the Petroleum Administrative Board of various proposals offered by factions in the oil industry. He emphasized that he had neither approved nor disapproved the plan.

"The collapse of the wholesale gasoline structure and consequent collapse of the crude oil market is threatened by an excessive surplus of gasoline and heavy over-production," Administrator Ickes said. "This condition must be quickly remedied."

As drafted, the plan would be a complete substitute for the refining article of the Oil Code. It proposes that gasoline production and stocks be regulated strictly to keep the supply balanced with demand, and vests the industry with control of agencies established to achieve this aim, subject to the approval of the Oil Administrator.

The plan also provides for making the proposed gasoline purchase or pooling agreement a part of the Oil Code. This agreement, submitted to Administrator Ickes several
5590 weeks ago, provides for the creation of a stabilization pool to buy and hold "distress" or surplus gasoline. The operation of the pool would be kept under the closest scrutiny of the Oil Administrator, and participants in the pool would agree to keep their own surplus gaso-

line off the market themselves. It is designed to assure to the small, independent refiner who, in most instances lacks outlets for his production, a market for his gasoline at a fair price.

To assure the effective operation of the plan, provision is made for the establishment of quotas for the shipment of gasoline into the national market from all or any refineries in a district in which there is an excessive supply, or any refinery which fails to operate in conformity with the plan.

The text of the plan follows:

Article IV—Refining

Section 1. To achieve greater accuracy in balancing production and consumption of gasoline, and to prevent the injurious effect on interstate commerce of an unbalanced accumulation of inventories of motor fuel in any part of the country or of surplus production and consequent distribution of motor fuel in excess of market requirements, a Federal Agency, designated by the President, shall divide the country into eight refining districts and shall determine from time to time:

(1) The proper relationship between inventories of motor fuel and sales thereof for each district, and

(2) The production of motor fuel in each district necessary to meet the demand therefor, with due regard to normal seasonable fluctuations in refining operations. The determinations so made shall constitute the operating schedules for the refining industry in each district.

Section 2. The Planning and Coordination Committee shall appoint for each district, subject to the approval of the President, a district allocator, from nominations made by refiners operating within the district. The Regional Committees appointed by the Planning and Coordination Committee, together with such subcommittees as may be necessary, shall cooperate with the district allocator in making effective the provisions of this Article. The
5591 Planning and Coordination Committee shall appoint
for each district, subject to the approval of the President, A Board of Review, which shall adequately be representative of the refining industry in each district, for the purpose of reviewing the findings and/or other activities of the district allocator. Within the limits of the operating schedules for the refining industry in each district, as determined by the Federal Agency pursuant to Section 1

above, the district allocator shall establish for each refinery operating in the district:

(1) The proper relationship between inventories of motor fuel and sales thereof, and/or

(2) The amount of motor fuel to be produced.

In making such allocations the district allocator shall take into consideration relevant features of operating and market conditions under rules and regulations prescribed by the Committee, with the approval of the President. The district allocator in conjunction with the Board of Review also shall make every effort to avoid inequities that may exist in the availability of supplies of crude oil to refiners necessary to maintain either the proper ratio between inventories of motor fuel and sales thereof or the production of motor fuel authorized in the manner set forth above, and shall recommend to the Committee such withdrawals from storage (including inter-company transactions) as are necessary to achieve the purposes of this Article. No withdrawals from storage by or on behalf of any refiner operating in a single district shall be authorized under the terms of Article III, Section 2 hereof and/or rules or regulations issued thereunder, unless the application has been referred to the district allocator concerned. Any person may appeal from any recommendation, allocation or decision of the district allocator to the Board of Review provided for above, and the decision of the said Board of Review shall be final, subject to the approval of the Planning and Coordination Committee and the President.

Section 3. The Planning and Coordination Committee shall appoint, subject to the approval of the President, a national coordinator of refining operations, in order that the allocations made by district allocators to refiners operating refineries and/or maintaining gasoline inventories in more than one refining district may be adjusted equitably to meet the consolidated requirements of such refiners. The national coordinator shall determine the interregional adjustments in district allocations which may be necessary to effectuate the required coordination, provided that interregional adjustments shall be made in such manner that the relationship between inventories of motor fuel and sales thereof and/or the production of motor fuel shall conform in the aggregate to the determination made by the Federal Agency under Section 1 above and in such manner that, in any refining district, an unbalanced accumulation of inventories of motor fuel and the surplus production and consequent distribution of motor fuel in excess of market requirements may be prevented.

5592 The district allocators shall meet with the national coordinator at such times and places as may prove necessary to provide the necessary coordination between districts and the uniform application in each district of the rules and regulations provided for in Section 2 and other provisions of this Article. Each district allocator shall furnish to the national coordinator a complete statement of the allocations made to each refinery in the district and shall furnish such regular reports as may be required by the national coordinator for the proper performance of his duties. No withdrawals from storage by or on behalf of refiners operating refineries and/or maintaining crude oil inventories in more than one refining district shall be authorized under the terms of Article III, Section 2 hereof and/or rules and regulations issued thereunder unless the application has been referred to the national coordinator and by him to the district allocators concerned.

Section 4. In order that the provisions of this Article may not operate in such manner as to discriminate against small refining enterprises and in order to assist in the orderly liquidation of excessive gasoline inventories, the Planning and Coordination Committee shall appoint, with the approval of the President, a committee of five to be known as the Gasoline Equalization Committee. This Committee is authorized to purchase from non-integrated and/or semi-integrated refiners within such limitations and under such rules and regulations as may be approved by the President, such quantities of gasoline as, according to such rules and regulations, constitute surplus production and/or unbalanced accumulation of inventories. The Gasoline Equalization Committee is authorized to appoint a manager, employ such assistants as may be necessary, and arrange in an equitable manner for the financing of such gasoline purchases.

Section 5. Upon a determination that an excessive supply of motor fuel or an unbalanced accumulation of inventories of motor fuel exists in any district, which excessive supply and/or excessive accumulation of inventories injuriously affects interstate and foreign commerce and is such that any remedy must incidentally apply in like manner to intrastate commerce, or upon a determination that any refiner knowingly and wilfully has failed to conduct his refining operations in accordance with the allocations made under the provisions of Section 2 above, the district allocator, with the approval of the Planning and Coordination Committee, may establish fair and equitable quotas for motor fuel to be moved from all or any of the refineries or other sources of supply in the district. Such quotas shall be in accord with such rules and regulations as are promulgated by the Planning and Coordination Committee under Section 2 above.

While such quotas are in effect no person shall place in commerce or receive in commerce by sale, exchange, consignment, or otherwise, any motor fuel in excess of the quota prescribed. Before establishing quotas for motor fuel
5593 hereunder, the Board of Review and the district allocator shall jointly hold or cause to be held hearings with respect to the establishment of such quotas and to such other matters as in the opinion of the Committee may be proper, after such reasonable public notice as may be prescribed provided, however, that in any emergency as determined to exist by the Committee quotas may be established for a temporary period not to exceed one calendar month without previous notice or hearing, but in such event, the Committee in the next subsequent period shall adjust quotas so allocated upon the basis of due notice and hearing hereinabove prescribed, so as to prevent any inequitable allocation.

To aid the enforcement of this section, the Planning and Coordination Committee, upon request therefor being made by the district allocator, may issue and furnish to refiners serially numbered certificates in proper denominations and quantities for the movement of motor fuel from refineries or other designated sources of supply. Such certificates in totals corresponding to the estimated motor fuel movements of the respective refineries, whether in commerce or to storage, for such periods as the Committee may fix, shall be delivered and charged to the respective refiners in advance of the periods of their use. After the establishment of such quotas no person shall ship or cause to be moved, and no carrier, purchaser or other person shall transport or receive, from any refinery or other designated source of supply any motor fuel, except when such certificates for the corresponding quantity are used and cancelled. When shipment is made under bill of lading or shipping receipt the certificates shall be affixed to such document. In every other case the person making shipment or delivery shall issue to the carrier, purchaser or other original recipient of the goods a true memorandum of the quantity and affix the certificates to the memorandum. Cancellation of certificates shall be made by the carrier, purchaser or other original recipient of the goods. No cancelled or once-used certificate shall be used again, and at the request of the Committee or of the district allocator at any time, true reports shall be made by refiners of the quantity represented by unused certificates on hand.

The Committee may make such rules and regulations and require such sworn reports as the Committee may deem necessary to accomplish the purposes of this section.

Failure on the part of any person to observe or comply with any provision of this section or any valid order, rule or regulation hereunder shall constitute a violation of the Code.

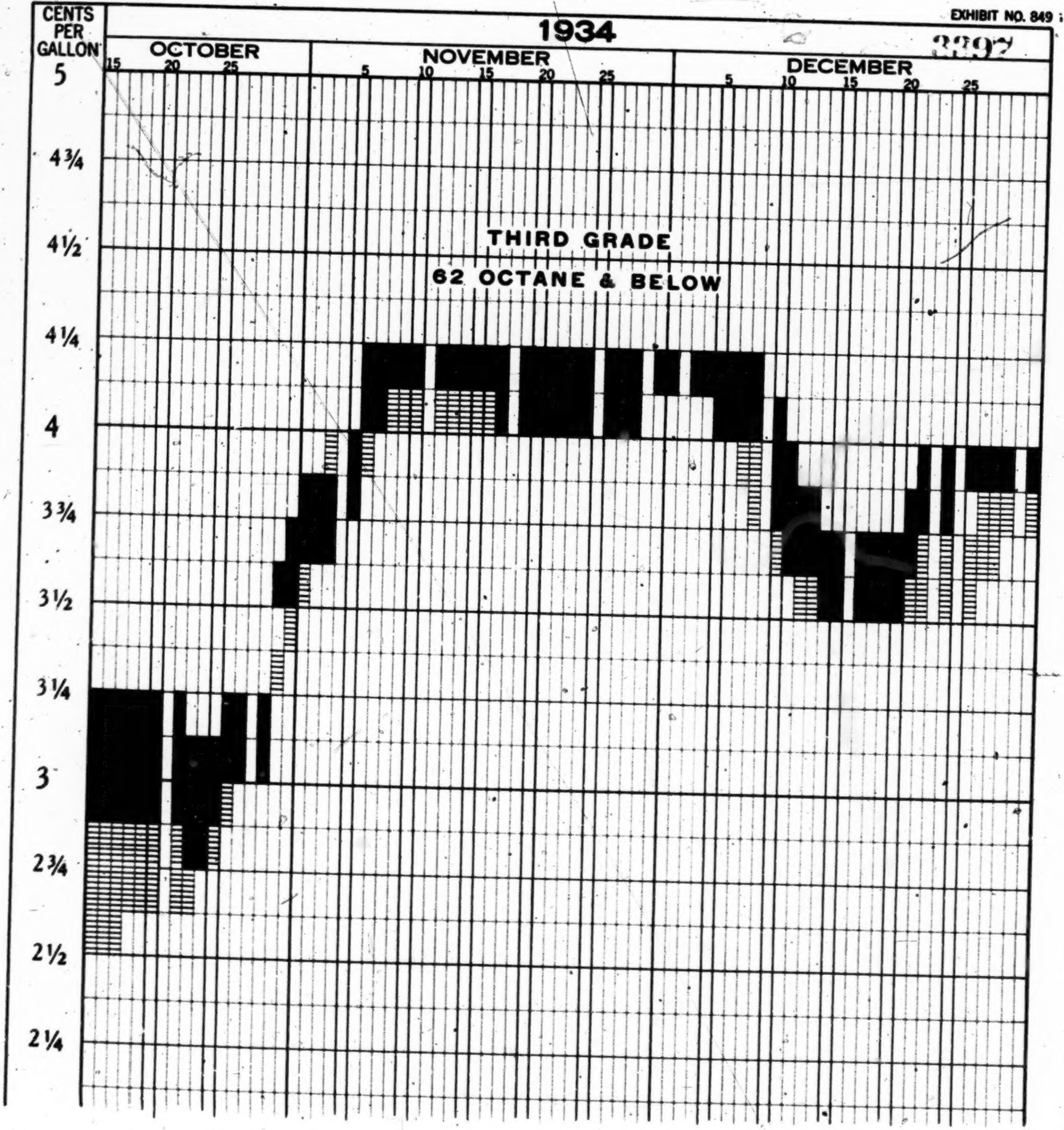
P. N. 83317

5594 DEFENSE EXHIBIT NO. 849.

For Identification

Composite Price Chart for October, November and December 1934, inserted.

EXHIBIT NO. 849



5596

DEFENSE EXHIBIT NO. 850.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated August 23, 1935, signed by Harold L. Ickes and sent to John E. Shatford.)

Letterhead of Administrator for the Petroleum Industry,
Washington, D. C.

Aug 23 1935

Mr. John E. Shatford,
414 Armstrong Building,
El Dorado, Arkansas.

My dear Mr. Shatford:

I appreciate your letter of August 12 and thank you for it. I value your letter particularly because you were one of the members of the Planning and Coordination Committee who from the time of your appointment devoted practically all of your time to the duties of the Committee and you were in a position very closely to observe and appraise the administration of the Code. It turned out that one of the most successful features of the Code was the Refinery Amendment approved in the Spring of 1934, and this Amendment and the success achieved under it were in large part due to your advocacy of its formulation.

Sincerely yours,
(Sgd.) Harold L. Ickes
Administrator.

5597
DEFENSE EXHIBIT NO. 852.

5598
The Pure Oil Company

Crude Oil Required to Supply Gasoline Sales (Quantities in 42 Gallon Barrels)

Year and Month	Net Crude Oil Produced and Refined by Pure	Crude Oil Required to Supply Gasoline Sales
1934		
Nov.	1,327,457	2,463,852
Dec.	1,999,117	2,191,580
1935		
Jan.	1,842,305	2,189,342
Feb.	1,770,790	1,840,808
Mar.	1,953,806	2,463,104
Apr.	1,914,321	2,346,206
May	2,015,450	2,688,227
June	1,946,623	2,500,815
July	2,010,375	2,879,059
Aug.	1,896,794	2,783,466
Sept.	1,843,820	2,564,504
Oct.	1,952,418	2,729,147
Nov.	1,906,678	2,642,983
Dec.	1,903,029	2,388,269
1936		
Jan.	1,771,076	2,381,913
Feb.	1,724,424	2,210,146
Mar.	1,804,974	2,798,040
Apr.	1,744,441	2,646,071
May	1,813,757	2,946,459
June	1,720,064	2,926,957
July	1,713,264	3,217,126
Aug.	1,677,811	2,944,190
Sept.	1,559,771	2,978,540
Oct.	1,701,930	2,963,477
Nov.	1,509,695	2,996,222
Dec.	1,672,630	2,727.361

5599 DEFENSE EXHIBIT NO. 853.

5600 The Pure Oil Company

10-27-37

Gasoline Obtained by Pure from Sources Other Than Its Own Refineries by Months from January 1934 to December 1936 Inclusive (Quantities in Gallons)

Year and Month	Gasoline Purchased By Pure From Other Than Independent Refiners in East Texas and Mid-Continent Areas	Gasoline Purchased By Pure From Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Acquired By Pure Through Processing Contracts With Other Refiners	Total
1934					
Jan.	1,514,072	8,068	1,522,140		1,522,140
Feb.	841,131		841,131		841,131
Mar.	735,915	32,521	768,436		768,436
Apr.	234,856	32,257	267,113		267,113
May	674,565	825,445	1,500,010		1,500,010
June	484,529	40,704	525,233		525,233
July	938,791	544,145	1,482,936		1,482,936
Aug.	1,653,266	669,722	2,322,988		2,322,988
Sept.	1,694,378	780,576	2,474,954		2,474,954
Oct.	3,731,687	480,989	4,212,676		4,212,676
Nov.	1,775,404	123,036	1,898,440		1,898,440
Dec.	4,145,199	81,887	4,227,086		4,227,086
1935					
Jan.	1,026,920	8,110	1,035,030		1,035,030
Feb.	856,025		856,025	2,115,647	2,971,672
Mar.	2,167,435	242,551	2,409,986	4,501,704	6,911,690
Apr.	1,157,697	636,813	1,794,510	5,393,629	7,188,139
May	1,135,257	872,437	2,007,694	6,119,108	8,126,802
June	1,628,968	1,528,175	3,157,143	7,710,789	10,867,932
July	2,497,137	1,328,734	3,825,871	4,550,929	8,376,800
Aug.	1,928,425	1,081,632	3,010,057	6,952,429	9,962,486
Sept.	1,564,153	1,344,700	2,908,853	4,226,633	7,135,486
Oct.	2,227,141	969,747	3,196,888	6,642,940	9,839,828
Nov.	1,594,900	1,055,695	2,650,595	5,418,416	8,069,011
Dec.	1,122,406	1,270,911	2,393,317	6,005,012	8,398,329

5601

1936

Jan.	1,577,003	1,423,275	3,000,278	3,742,573	6,742,851
Feb.	703,244	1,820,103	2,523,347	5,635,198	8,158,545
Mar.	2,174,751	1,596,470	3,771,221	4,462,048	8,233,269
Apr.	1,187,096	1,791,239	2,978,335	8,843,131	11,821,466
May	1,912,512	1,270,170	3,182,682	6,220,391	9,403,073
June	2,001,227	1,383,111	3,384,338	7,729,614	11,113,952
July	2,233,115	1,372,273	3,605,388	5,699,584	9,304,972
Aug.	2,086,303	1,274,808	3,361,111	8,852,269	12,213,380
Sept.	2,549,435	1,301,298	3,850,733	9,921,507	13,772,240
Oct.	2,319,831	1,281,613	3,601,444	6,528,913	10,130,357
Nov.	2,379,260	1,208,308	3,587,568	5,140,411	8,727,979
Dec.	2,081,308	1,197,231	3,278,539	6,274,552	9,553,091

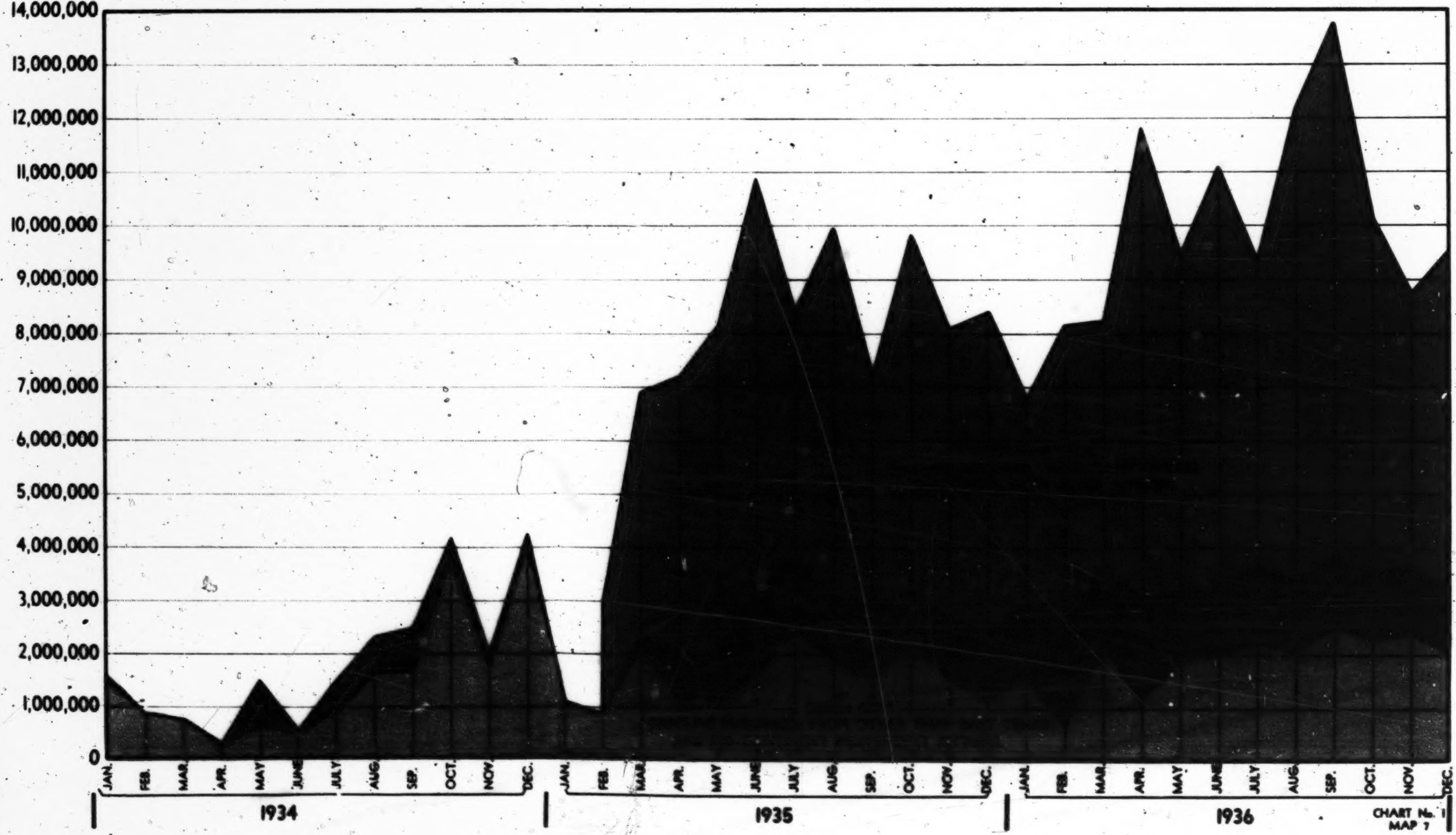


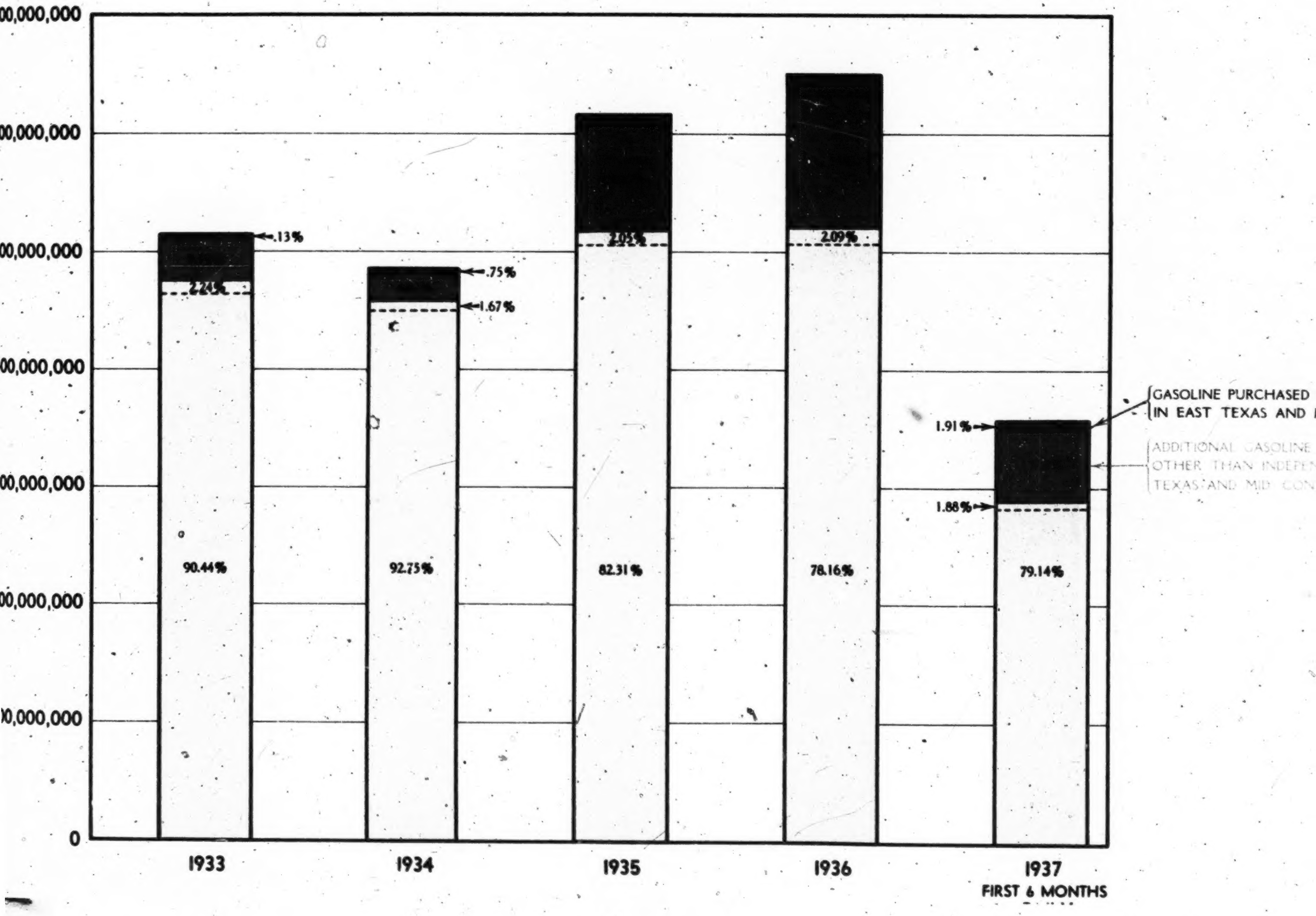
CHART No. 1
MAP 7

5603 DEFENSE EXHIBIT NO. 854.

5604 **THE PURE OIL COMPANY**

Source of Gasoline Supply
(Quantities Shown in Gallons and Percent of Total)

	Pure's Own Manufactured Gasoline From Crude Oil	Pure's Own Manufactured Gasoline From Natural Gasoline	Total	Additional Gasoline Acquired from Sources Other Than Independent Refiners in East Texas and Mid-Continent Areas	Total	Gasoline Purchased From Independent Refiners in East Texas and Mid-Continent Areas	Total
1933..........	465,759,333	11,509,539	477,268,872	37,050,570	514,319,442	647,766	514,967,208
	90.44	2.24	92.68	7.19	99.87	.13	100.00
1934..........	450,150,689	8,092,619	458,243,308	23,462,532	481,705,840	3,619,350	485,325,190
	92.75	1.67	94.42	4.83	99.25	.75	100.00
1935..........	506,983,545	12,615,286	519,598,831	86,002,148	605,600,979	10,339,505	615,940,484
	82.31	2.05	84.36	13.96	98.32	1.68	100.00
1936..........	507,931,344	13,576,103	521,507,447	111,435,636	632,943,083	16,919,899	649,862,982
	78.16	2.09	80.25	17.15	97.40	2.60	100.00
1937..........	283,283,090	6,729,730	290,012,820	61,130,490	351,143,310	6,828,864	357,972,174
(Jan. thru June)	79.14	1.88	81.02	17.07	98.09	1.91	100.00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1933
1934
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1936
1937
FIRST 6 MONTHS
GASOLINE PURCHASED
IN EAST TEXAS AND
ADDITIONAL GASOLINE
OTHER THAN INDEPEN
TEXAS AND MID CON

5606 DEFENSE EXHIBIT NO. 855.

5607 The Pure Oil Company

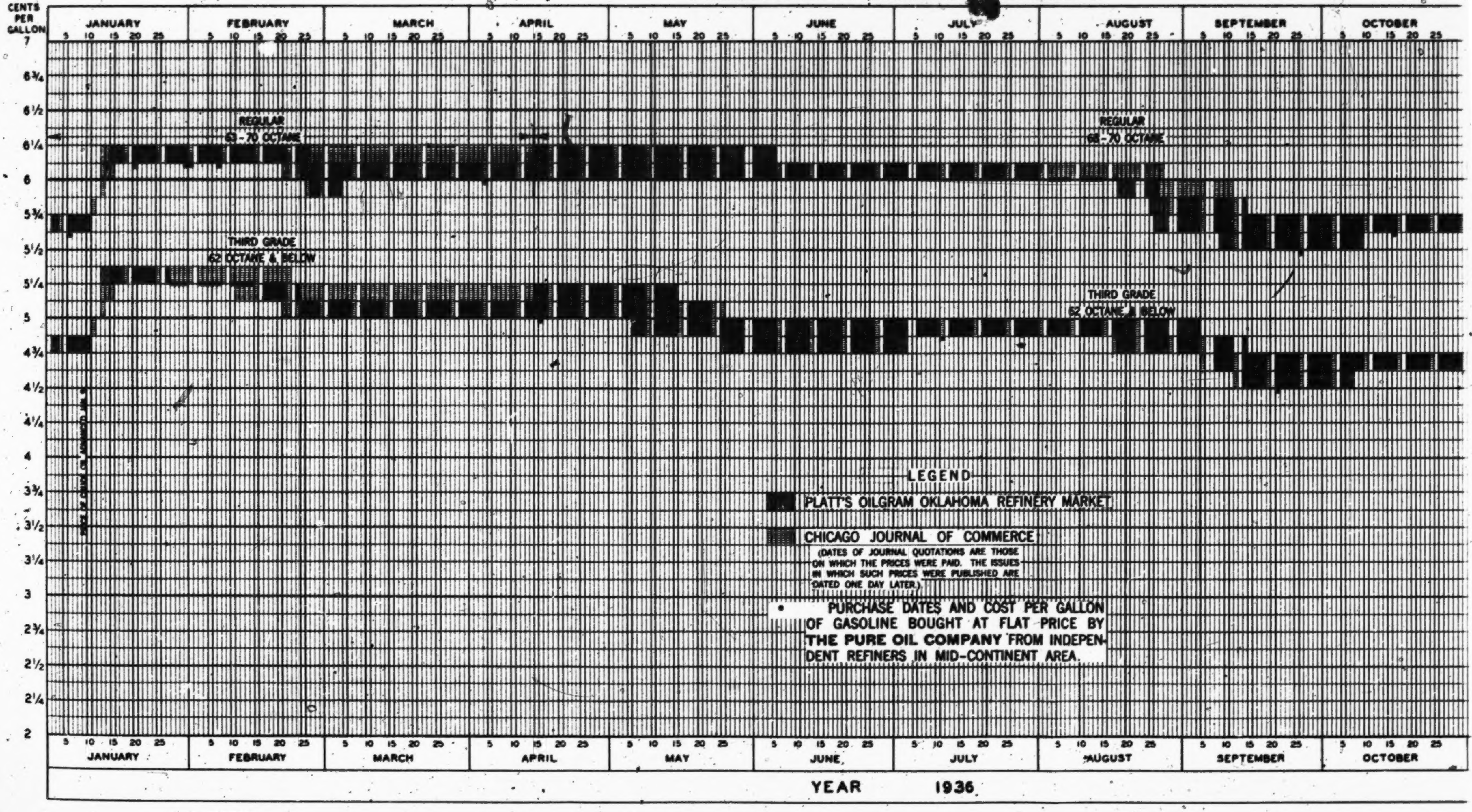
Comparison Between Pure's Total Gasoline Supply and Total Gasoline Supply for the Oil Industry in the United States

Days Supply

	Pure's Total Gasoline Supply at First of Each Month	Total Gasoline Supply for the Oil Industry in the United States at First of Each Month
1934		
November	23.14	41.80
December	24.64	46.82
1935		
January	29.51	52.80
February	30.97	54.71
March	32.56	53.89
April	30.62	50.73
May	30.95	47.18
June	31.01	43.83
July	31.54	40.82
August	30.49	38.57
September	33.12	37.38
October	32.29	36.16
November	36.24	38.03
December	38.98	42.60
1936		
January	45.83	50.44
February	50.19	54.62
March	50.96	54.06
April	47.25	51.03
May	44.89	48.20
June	40.19	44.81
July	37.26	42.09
August	33.20	39.51
September	30.50	37.86
October	30.72	37.77
November	28.43	39.92
December	28.50	43.82

5608 DEFENSE EXHIBIT NO. 856.

COMPOSITE OF PRICE QUOTATIONS PLATT'S OILGRAM OKLAHOMA REFINERY MARKET AND CHICAGO JOURNAL OF COMMERCE [illegible]O. B. GROUP 3



LEGEND

▮ PLATT'S OILGRAM OKLAHOMA REFINERY MARKET

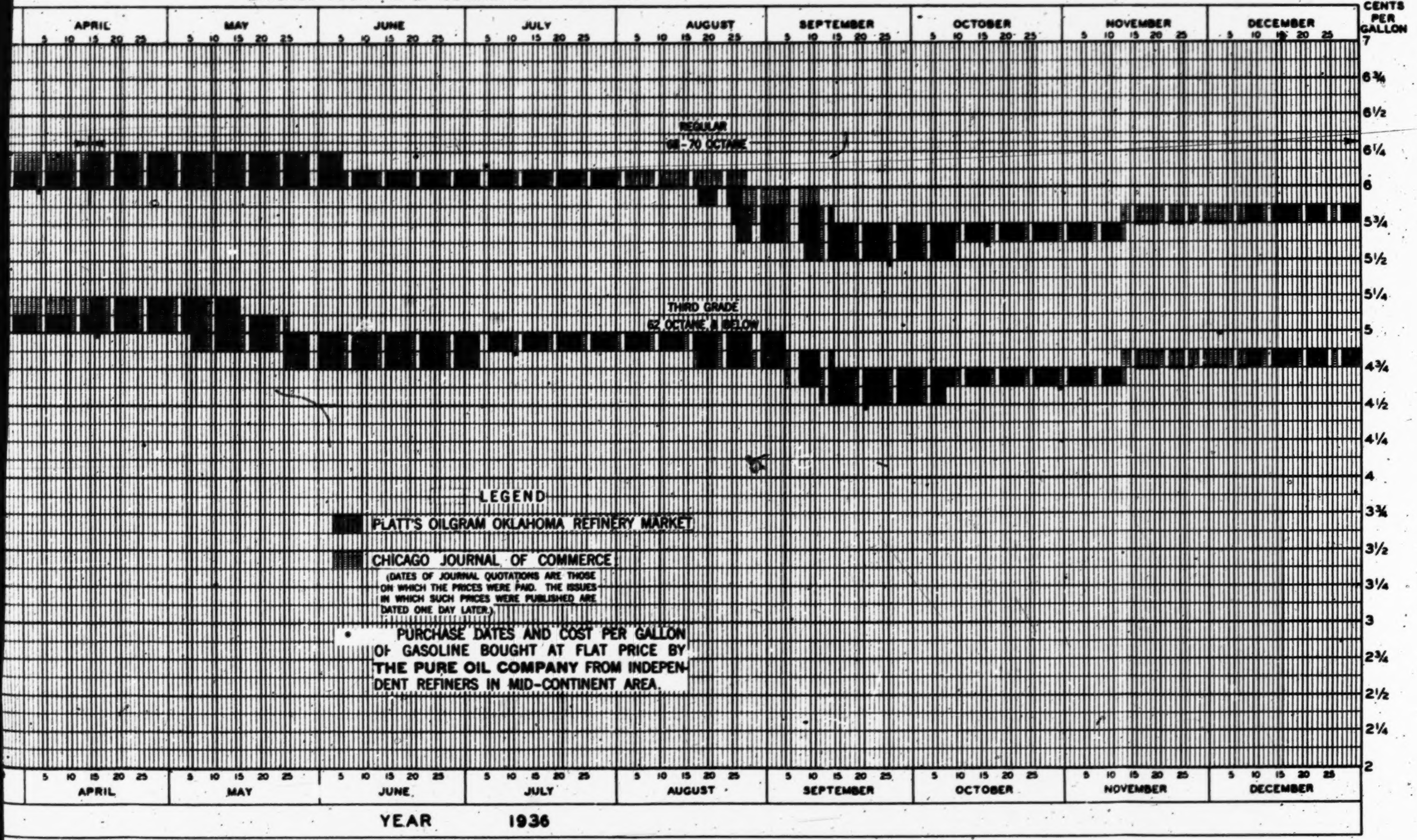
▨ CHICAGO JOURNAL OF COMMERCE

(DATES OF JOURNAL QUOTATIONS ARE THOSE ON WHICH THE PRICES WERE PAID. THE ISSUES IN WHICH SUCH PRICES WERE PUBLISHED ARE DATED ONE DAY LATER.)

● PURCHASE DATES AND COST PER GALLON OF GASOLINE BOUGHT AT FLAT PRICE BY **THE PURE OIL COMPANY** FROM INDEPENDENT REFINERS IN MID-CONTINENT AREA.

EXHIBIT NO. 856

COMPOSITE OF PRICE QUOTATIONS PLATT'S OILGRAM OKLAHOMA REFINERY MARKET AND CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



LEGEND

▇ PLATT'S OILGRAM OKLAHOMA REFINERY MARKET

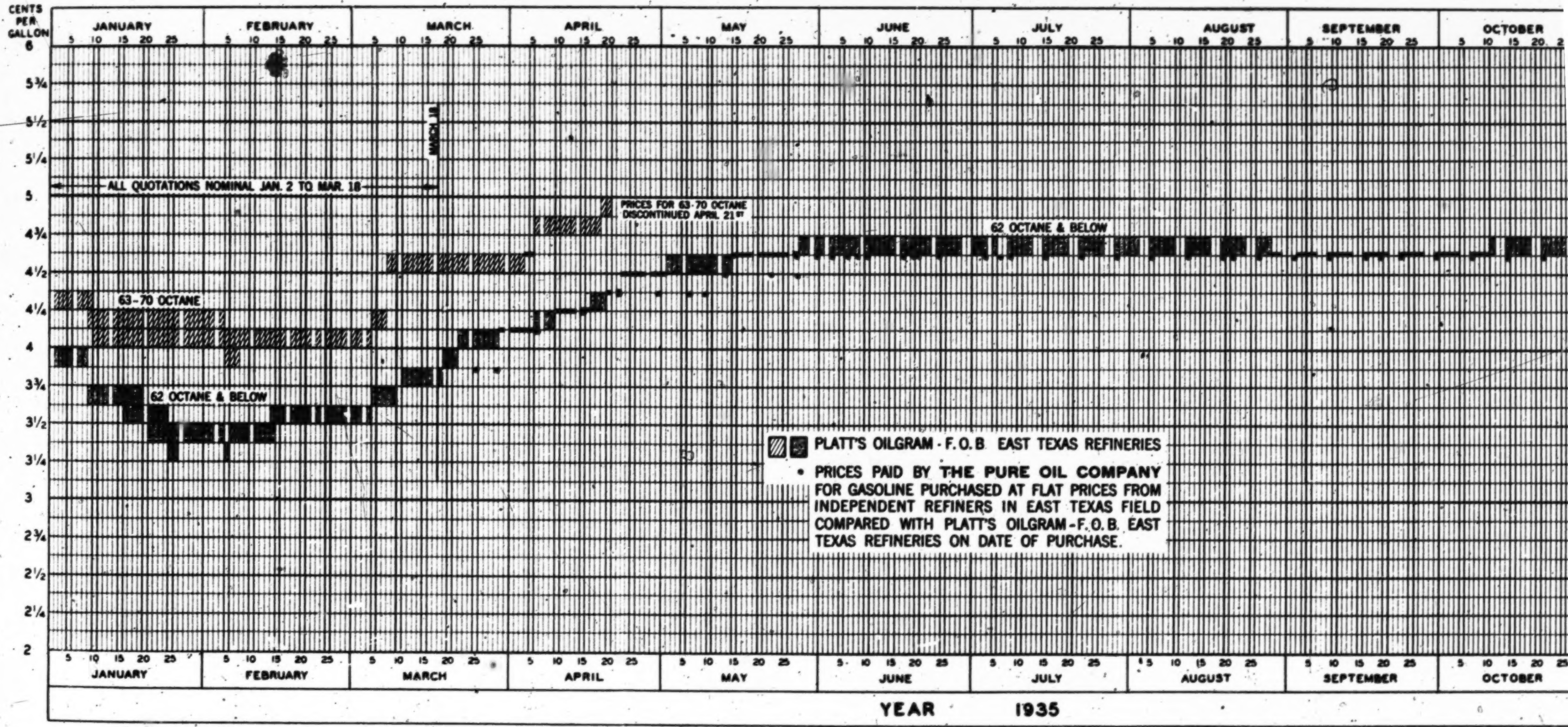
▨ CHICAGO JOURNAL OF COMMERCE

(DATES OF JOURNAL QUOTATIONS ARE THOSE ON WHICH THE PRICES WERE PAID. THE ISSUES IN WHICH SUCH PRICES WERE PUBLISHED ARE DATED ONE DAY LATER.)

● PURCHASE DATES AND COST PER GALLON OF GASOLINE BOUGHT AT FLAT PRICE BY **THE PURE OIL COMPANY** FROM INDEPENDENT REFINERS IN MID-CONTINENT AREA.

CHART No. XII D-1936

PLATT'S OILGRAM
F. O. B. EAST TEXAS REFINERIES



▨ ■ PLATT'S OILGRAM - F. O. B. EAST TEXAS REFINERIES

● PRICES PAID BY THE PURE OIL COMPANY FOR GASOLINE PURCHASED AT FLAT PRICES FROM INDEPENDENT REFINERS IN EAST TEXAS FIELD COMPARED WITH PLATT'S OILGRAM - F. O. B. EAST TEXAS REFINERIES ON DATE OF PURCHASE.

AUDITED: L.B. Meenan 10-8-37

EXHIBIT NO. 857

PLATT'S OILGRAM
F. O. B. EAST TEXAS REFINERIES

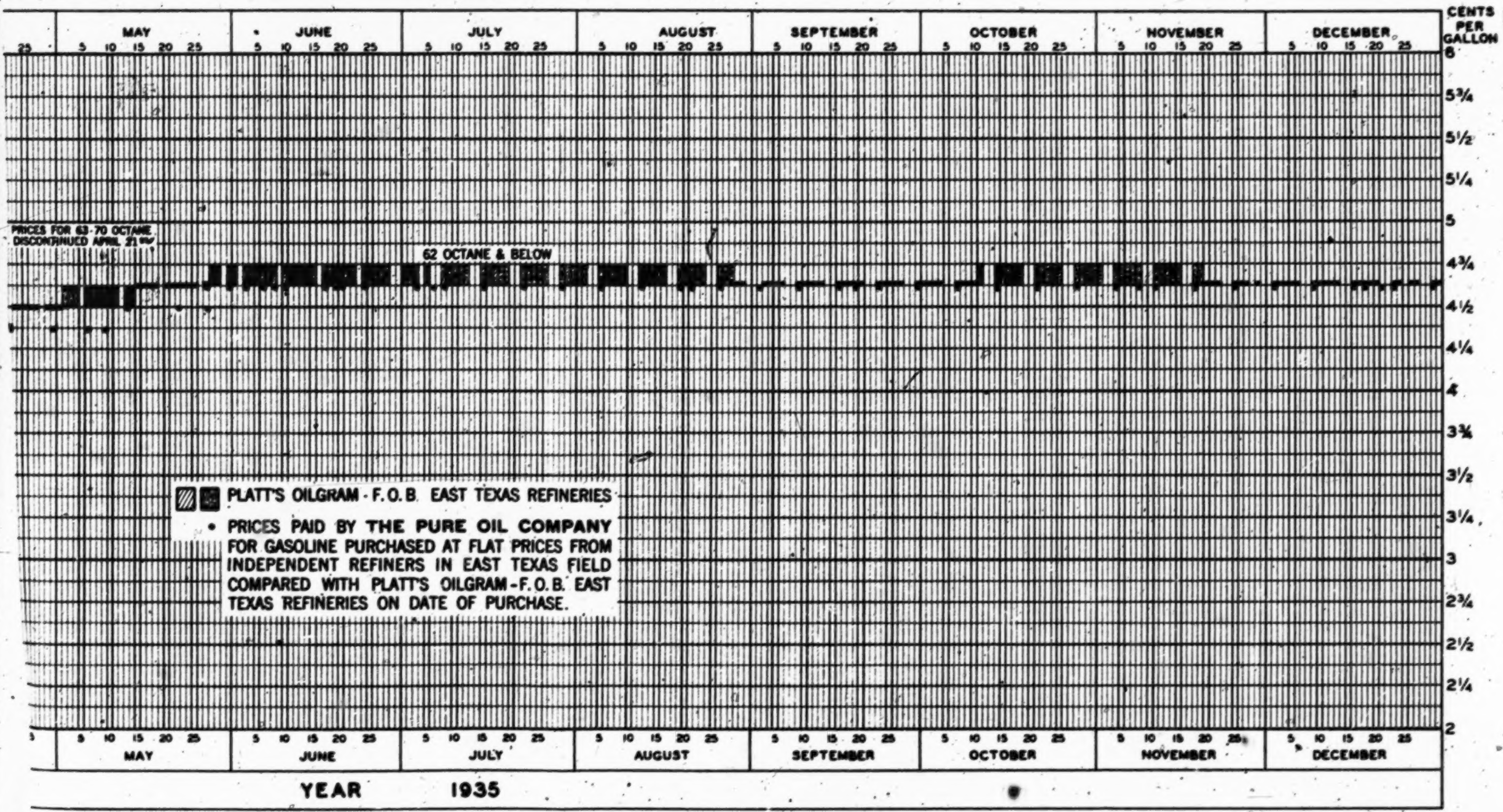
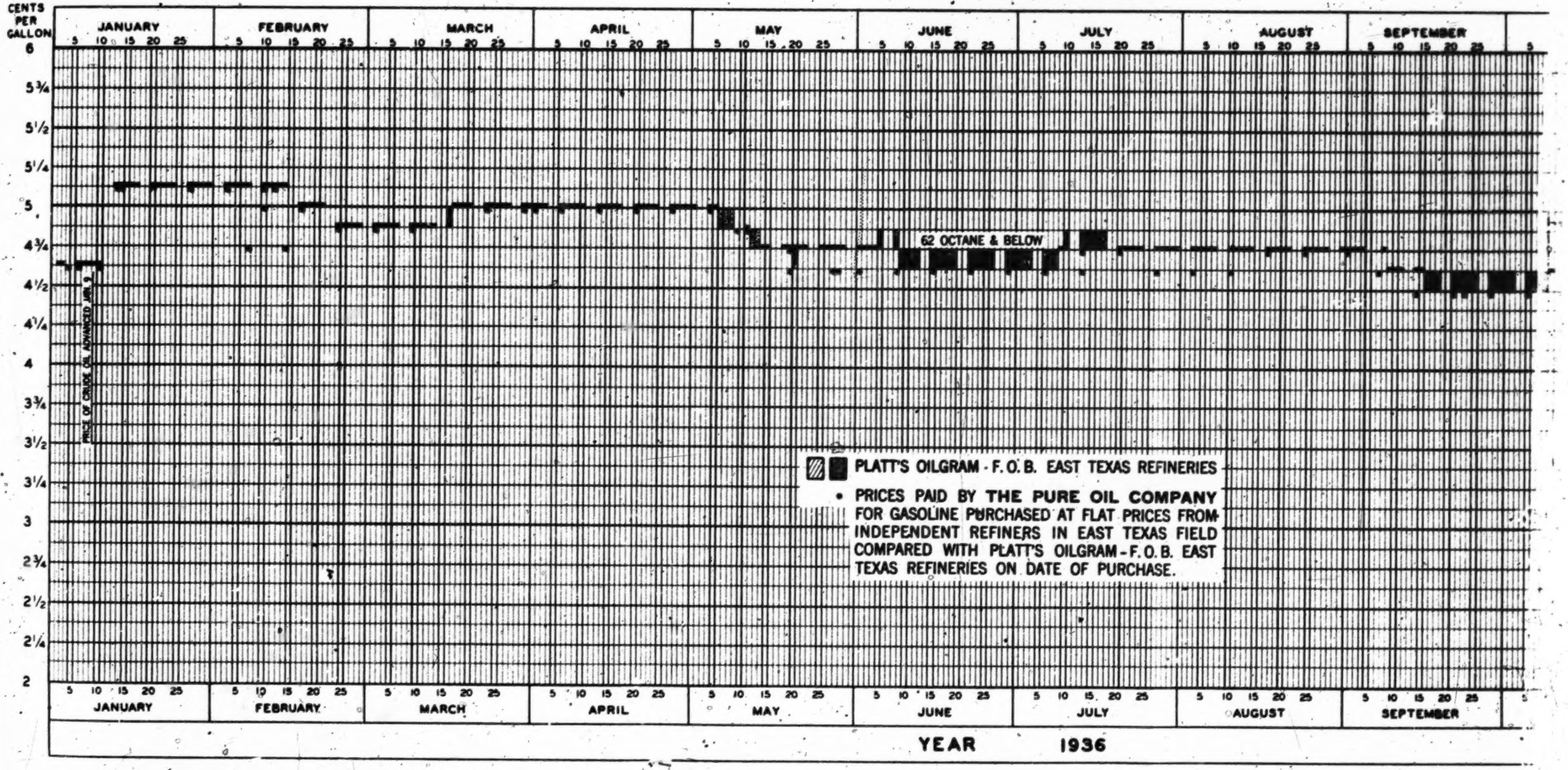


CHART No. XII B-3

PLATT'S OILGRAM
F. O. B. EAST TEXAS REFINERIES



▨ ■ PLATT'S OILGRAM - F. O. B. EAST TEXAS REFINERIES

• PRICES PAID BY **THE PURE OIL COMPANY** FOR GASOLINE PURCHASED AT FLAT PRICES FROM INDEPENDENT REFINERS IN EAST TEXAS FIELD COMPARED WITH PLATT'S OILGRAM - F. O. B. EAST TEXAS REFINERIES ON DATE OF PURCHASE.

Horton

AUDITED: LJMeenan 10-8-37

EXHIBIT NO. 858

PLATT'S OILGRAM
F. O. B. EAST TEXAS REFINERIES

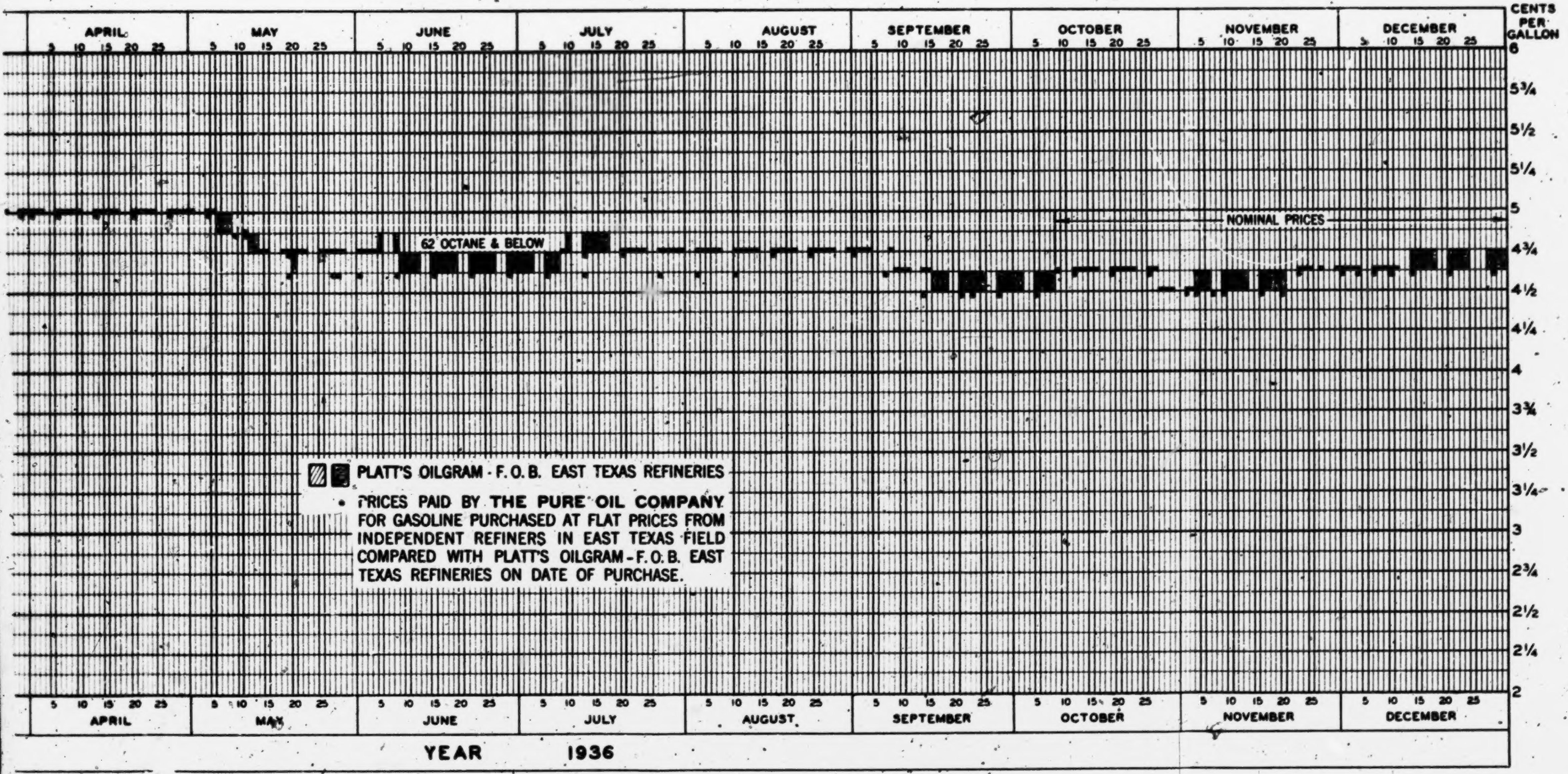
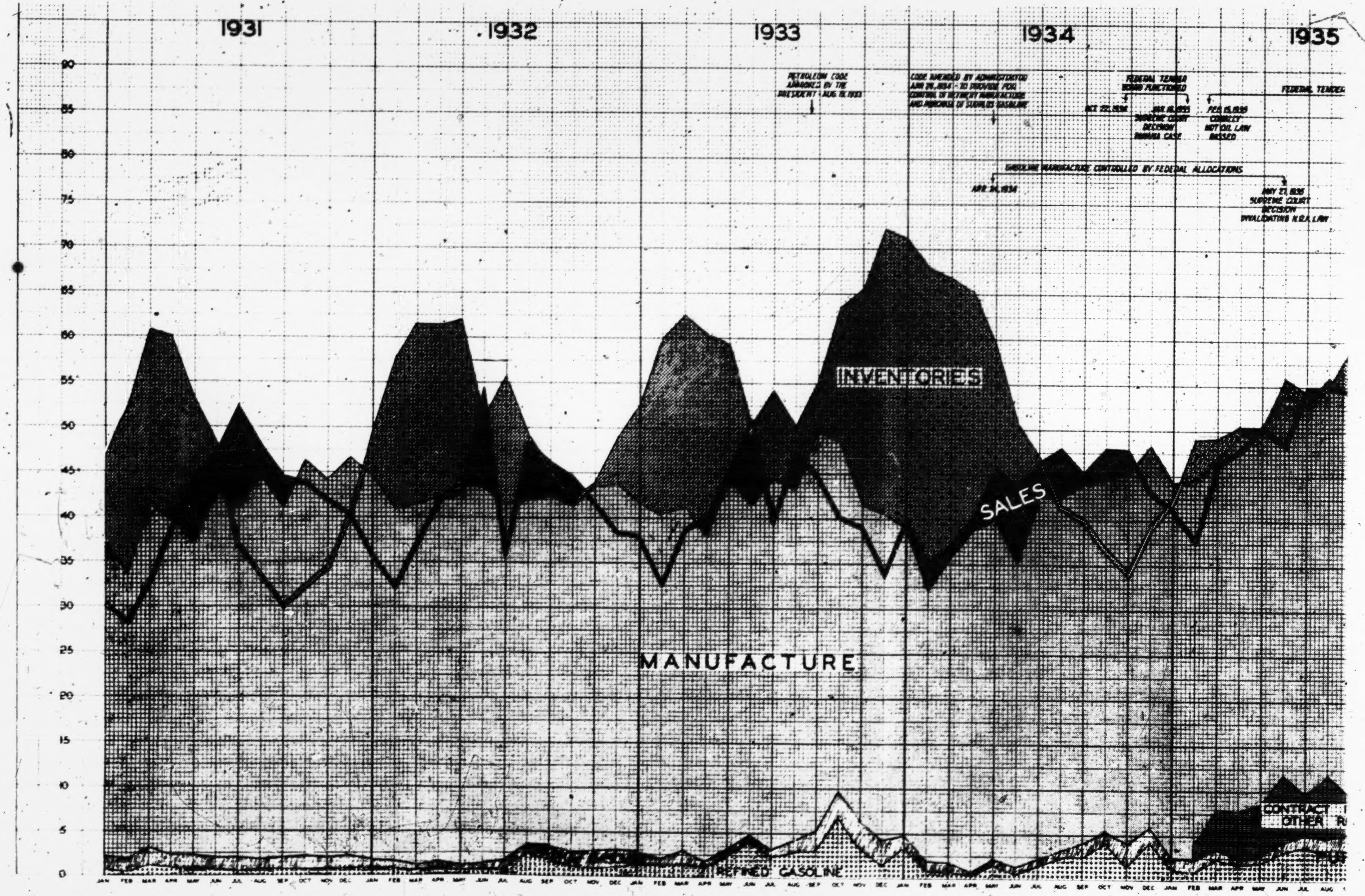


CHART No. XII B-6

10-8-37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PETROLEUM CODE APPROVED BY THE PRESIDENT · AUG. 19, 1933
CODE AMENDED BY ADMINISTRATOR APR 24, 1934 - TO PROVIDE FOR CONTROL OF REFINERY MANUFACTURE AND PURCHASE OF SURPLUS GASOLINE
FEDERAL TENDER BOARD FUNCTIONED
OCT 22, 1934
JAN 18, 1935 SUPREME COURT DECISION PANAMA CASE
FEB 15, 1935 CONNALLY HOT OIL LAW PASSED
FEDERAL TENDER
GASOLINE MANUFACTURE CONTROLLED BY FEDERAL ALLOCATIONS
APR 24, 1934
MAY 27, 1935 SUPREME COURT DECISION INVALIDATING N.R.A. LAW
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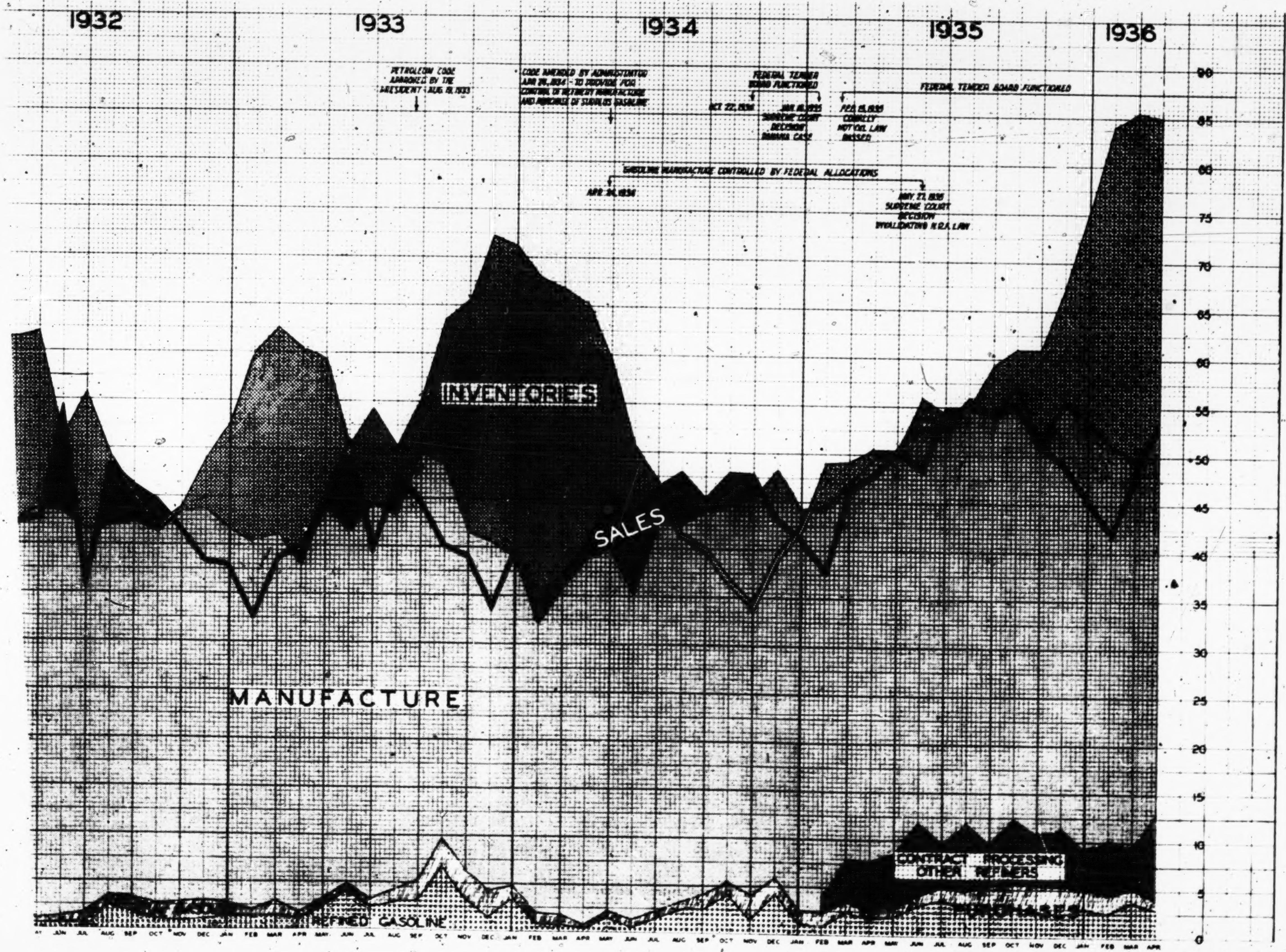
1932
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PETROLEUM CODE APPROVED BY THE PRESIDENT AUG. 19, 1933
CODE AMENDED BY ADMINISTRATOR APR. 26, 1934 - TO PROVIDE FOR CONTROL OF REFINERY MANUFACTURE AND PURCHASE OF SURPLUS GASOLINE
FEDERAL TENDER BOARD FUNCTIONED
OCT. 22, 1934
JAN. 15, 1935 SUPREME COURT DECISION PANAMA CASE
FEB. 15, 1935 CONNALLY HOT OIL LAW PASSED
FEDERAL TENDER BOARD FUNCTIONED
GASOLINE MANUFACTURE CONTROLLED BY FEDERAL ALLOCATIONS
APR. 26, 1934
MAY 27, 1935 SUPREME COURT DECISION INVALIDATING N.R.A. LAW
INVENTORIES
SALES
MANUFACTURE
CONTRACT PROCESSING OTHER REFINERS
PURCHASES
REFINED GASOLINE
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5616 DEFENSE EXHIBIT NO. 864.

5617 It is hereby stipulated that Mason Lyons, Assistant Secretary of Vickers Petroleum Company of Wichita, Kansas, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Vickers Petroleum Company by months from January 1, 1934 to December 31, 1936 inclusive, as reflected by the books and records of Vickers Petroleum Company, are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

It is further stipulated that the crude capacity of Vickers Petroleum Company from 1931-1936 inclusive was 4000 barrels a day.

618

EXHIBIT A

VICKERS PETROLEUM COMPANY

Summary of Gasoline Production and Sales (in Barrels)
By Months for Years 1934, 1935 and 1936

	Made	Purchases of Blending Stock	Total Gasoline Production	Sales of Gasoline
1934:				
January	34,423.13	5,243.52	39,666.65	44,713.65
February	38,348.48	4,625.90	42,974.38	35,850.38
March	33,072.35	6,260.55	39,332.90	44,478.90
April	37,660.83	5,978.81	43,639.64	39,426.64
May	35,678.90	4,780.38	40,459.28	41,377.28
June	38,124.95	3,914.79	42,039.74	38,525.74
July	37,556.21	5,726.26	43,282.47	44,120.47
August	35,210.31	6,837.90	42,048.21	46,995.21
September	36,963.61	6,498.48	43,462.09	43,192.09
October	34,291.66	6,249.26	40,540.92	42,559.92
November	34,561.74	5,155.00	39,716.74	32,678.74
December	26,772.74	4,682.00	31,454.74	32,101.74
Closing Adjustment	3.66	(.02)	3.64	3.64
Total, 1934	422,668.57	65,952.83	488,621.40	486,024.40
1935:				
January	34,079.55	5,276.33	39,355.88	39,167.88
February	37,095.22	5,261.80	42,357.02	46,689.02
March	35,443.63	5,836.55	41,280.18	39,756.18
April	39,033.14	6,362.14	45,395.28	38,955.28
May	40,907.84	5,684.67	46,592.51	49,768.51
June	45,965.18	6,055.60	52,020.78	52,658.78
July	62,440.02	8,236.93	70,676.95	70,271.95
August	54,714.79	7,206.19	61,920.98	61,549.98
September	45,305.52	6,516.62	51,822.14	52,152.14
October	48,335.95	4,927.43	53,263.38	54,660.38
November	35,632.47	3,771.86	39,404.33	39,896.33
December	44,101.28	4,558.00	48,659.28	42,643.28
Closing Adjustment	(39.23)	(23.72)	(62.95)	(61.95)
Total, 1935	523,015.36	69,670.40	592,685.76	588,107.76
936:				
January	38,275.95	3,133.98	41,409.93	37,246.93
February	24,400.91	2,506.31	26,907.22	29,039.22
March	37,453.31	4,985.52	42,438.83	48,289.83
April	33,686.44	10,121.84	43,808.28	50,833.28
May	46,514.31	10,924.14	57,438.45	56,773.45
June	55,818.45	12,493.90	68,312.35	69,287.35
July	68,886.78	5,768.57	74,655.35	64,506.35
August	53,596.41	5,456.23	59,052.64	59,485.64
September	51,094.97	6,847.05	57,942.02	61,179.02
October	50,982.98	5,027.28	56,010.26	53,714.16
November	40,255.19	5,101.00	45,356.19	44,888.19
December	37,254.13	4,705.60	41,959.73	45,132.73
Closing Adjustment	.39	.46	.85	.95
Total, 1936	538,220.22	77,071.88	615,292.10	620,477.10

19

SUMMARY

4	422,668.57	65,952.83	488,621.40	486,024.40
5	523,015.36	69,670.40	592,685.76	588,107.76
6	538,220.22	77,071.88	615,292.10	620,477.10
	1,483,904.15	212,695.11	1,696,599.26	1,694,609.26

5620

DEFENSE EXHIBIT NO. 865.

5621

ROOT PETROLEUM COMPANY

Shreveport, La.

Summary of Gasoline Sales for the Period
January 1, 1934 to Dec. 31, 1936

	1934		1935		1936	
	Gallons	Barrels of 42 Gallons	Gallons	Barrels of 42 Gallons	Gallons	Barrels of 42 Gallons
Jan.	3,729,870	88,806	4,533,339	107,937	3,582,533	85,298
Feb.	3,075,549	73,227	4,425,587	105,371	2,563,137	61,027
Mar.	3,686,042	87,763	4,582,890	109,116	3,976,692	94,683
Apr.	3,720,061	88,573	3,673,732	87,470	3,727,483	88,749
May	4,602,466	109,583	3,993,016	95,072	4,008,573	95,442
June	4,281,791	101,947	4,458,856	106,163	3,882,353	92,437
July	4,616,149	109,908	4,675,079	111,311	4,407,903	104,950
Aug.	4,349,638	103,563	5,234,856	124,639	5,370,316	127,865
Sept.	4,717,749	112,327	4,694,236	111,768	4,869,702	115,945
Oct.	4,698,301	111,864	4,062,374	96,723	4,473,981	106,523
Nov.	4,281,927	101,951	4,089,072	97,359	4,514,753	107,494
Dec.	4,295,827	102,281	4,162,849	99,115	5,095,632	121,325
Totals	50,055,370	1,191,793	52,585,886	1,252,044	50,473,058	1,201,738

Summary of Gasoline Produced for the Period January 1, 1934 to December 31, 1936

	1934		1935		1936	
	Gallons	Barrels of 42 Gallons	Gallons	Barrels of 42 Gallons	Gallons	Barrels of 42 Gallons
Jan.	3,746,316	89,198	4,490,094	106,907	4,457,628	106,134
Feb.	3,061,884	72,902	4,857,678	115,659	4,201,134	100,027
Mar.	3,351,642	79,801	3,569,034	84,977	4,046,658	96,349
Apr.	3,796,716	90,398	5,003,754	119,137	4,073,328	96,984
May	4,275,894	101,807	4,234,566	100,823	4,111,548	97,894
June	3,800,160	90,480	4,077,276	97,078	4,549,230	108,315
July	4,208,652	100,206	3,890,334	92,627	4,271,274	101,697
Aug.	3,902,976	92,928	4,641,420	110,510	4,200,588	100,014
Sept.	3,919,398	93,319	4,489,506	106,893	4,253,592	101,276
Oct.	4,509,372	107,366	3,666,852	87,306	4,088,406	97,343
Nov.	4,569,054	108,787	4,261,698	101,469	4,348,890	103,545
Dec.	4,294,710	102,255	4,503,912	107,236	4,819,500	114,750
Totals	47,436,774	1,129,447	51,686,124	1,230,622	51,421,776	1,224,328

5622 DEFENSE EXHIBIT NO. 866.

5623 ANDERSON-PRICHARD REFINING CORPORATION

Production and Sales of Gasoline

	1934		1935		1936	
	Sales Bbls.	Prod. Bbls.	Sales Bbls.	Prod. Bbls.	Sales Bbls.	Prod Bbls.
January	43,867	42,531	41,621	46,082	30,449	39,087
February	26,700	23,154	30,246	29,734	23,904	29,862
March	34,130	35,836	38,088	35,981	42,572	41,145
April	40,188	46,349	40,580	41,347	44,633	27,556
May	37,890	37,650	32,600	29,988	29,776	28,202
June	36,910	37,661	34,979	37,064	32,656	34,148
July	44,404	42,207	41,546	42,552	34,240	34,674
August	40,076	38,790	42,762	42,664	29,601	35,270
September	41,904	41,655	44,376	40,399	41,803	33,535
October	37,396	35,193	40,493	38,164	34,101	36,590
November	44,294	42,654	34,081	35,927	31,734	40,910
December	37,566	43,167	28,187	32,586	36,660	46,194
	465,325	466,847	449,550	452,488	412,129	427,173

5624 DEFENSE EXHIBIT NO. 867.

5625 COL-TEX REFINING COMPANY

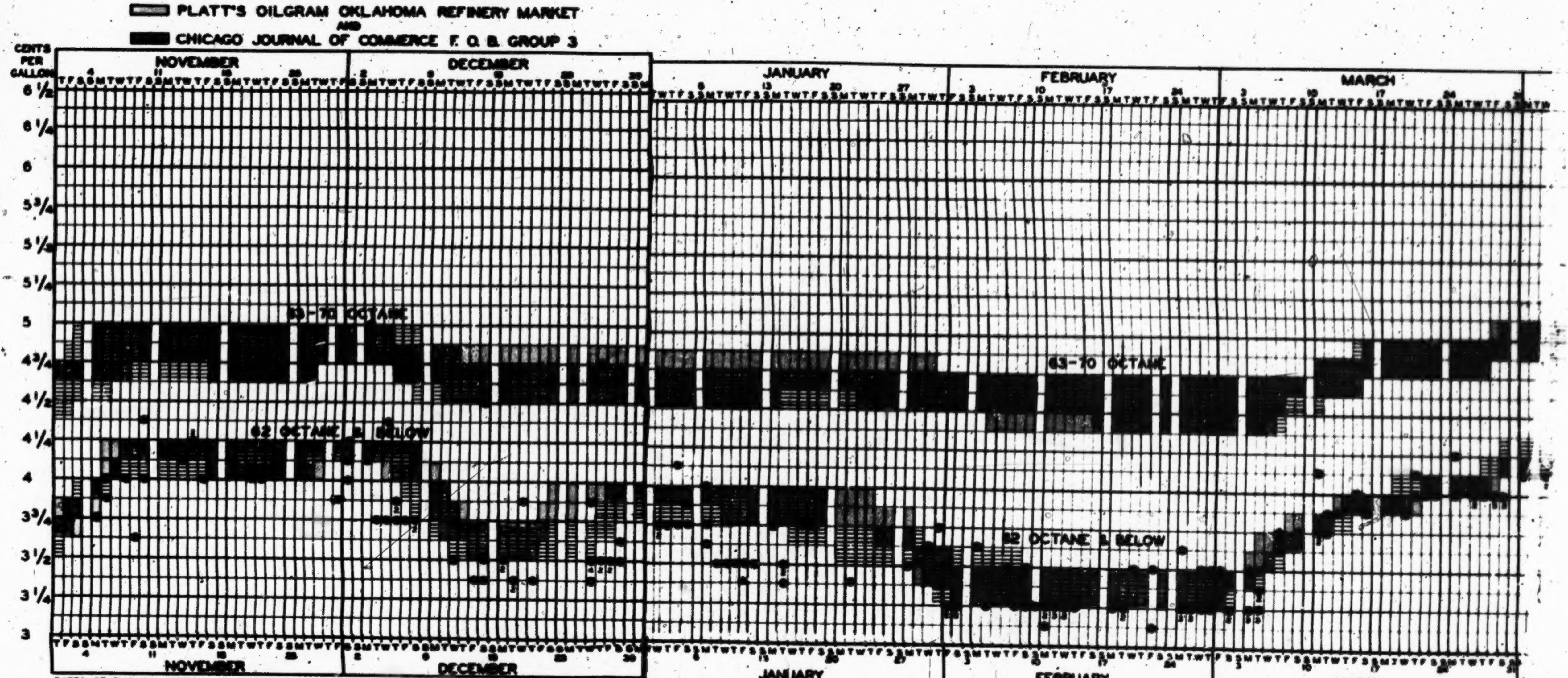
Production and Sales of Gasoline

	1934		1935		1936	
	Sales Bbls.	Prod. Bbls.	Sales Bbls.	Prod. Bbls.	Sales Bbls.	Prod. Bbls.
January	106,783	73,955	85,980	81,291	99,669	138,428
February	75,726	79,823	82,565	96,749	68,216	82,866
March	83,497	86,606	141,043	104,436	94,239	75,898
April	89,517	82,139	132,273	120,206	133,698	114,252
May	93,638	101,555	126,031	124,814	139,225	126,535
June	94,688	79,380	117,809	118,640	134,438	115,439
July	94,965	93,154	135,585	133,281	133,169	123,223
August	88,729	101,812	135,788	127,724	126,239	127,986
September	87,089	93,743	117,107	120,340	118,872	127,581
October	108,278	100,611	134,227	143,189	126,220	145,322
November	90,094	85,407	107,284	102,977	129,028	106,358
December	75,247	87,232	96,544	125,058	117,200	131,679
	1,068,251	1,065,417	1,414,236	1,398,705	1,420,213	1,415,567

5626

DEFENSE EXHIBIT NO. 868.

COMPOSITE OF 1934 PRICE QUOTATIONS

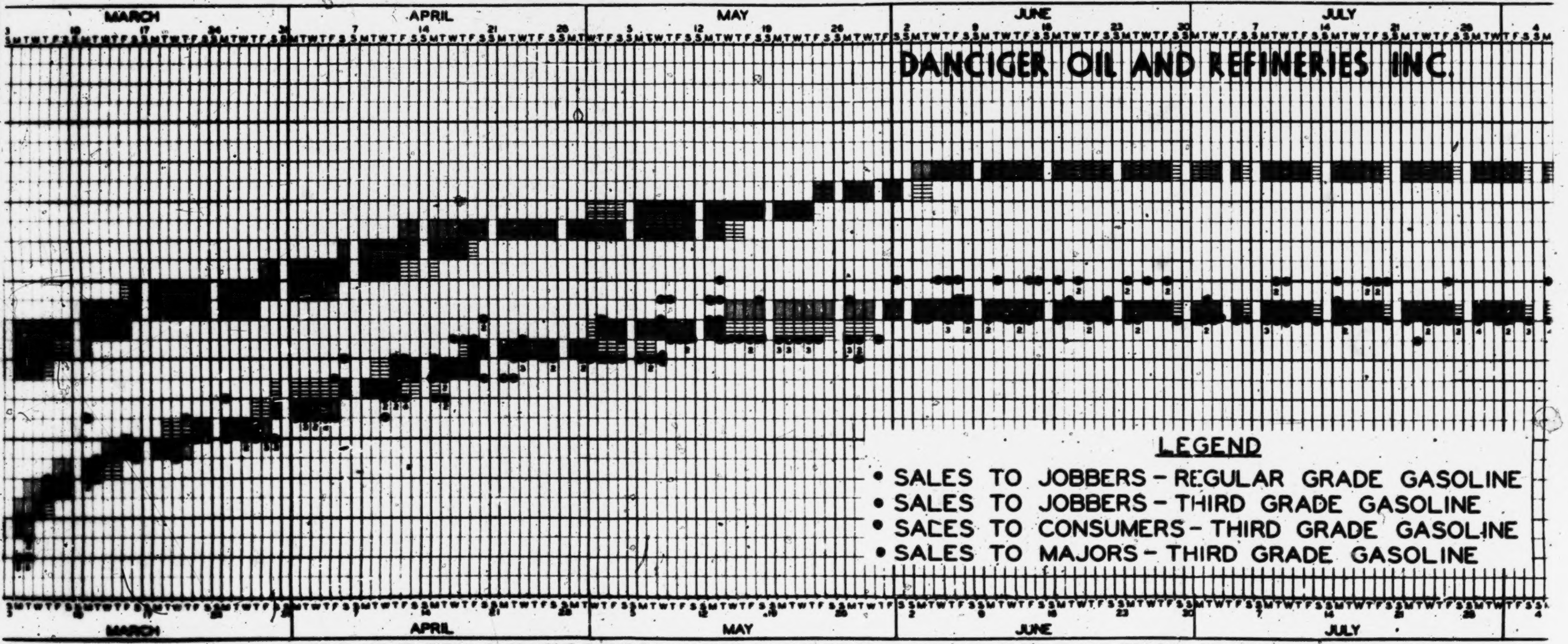


DATES OF CHICAGO JOURNAL OF COMMERCE QUOTATIONS ARE THOSE ON WHICH THE PRICES SHOWN ARE STATED TO HAVE BEEN PAID. THE ISSUES IN WHICH SUCH QUOTATIONS WERE PUBLISHED ARE DATED ONE OR TWO DAYS LATER

FLAT PRICE SALES TO JOBBERS, CONSUMERS & MAJO

COMPOSITE OF 1935 PRICE QUOTATIONS

▨ PLATT'S OILGRAM OKLAHOMA REFINERY MARKET & ▤ CHICAGO JOURNAL OF C

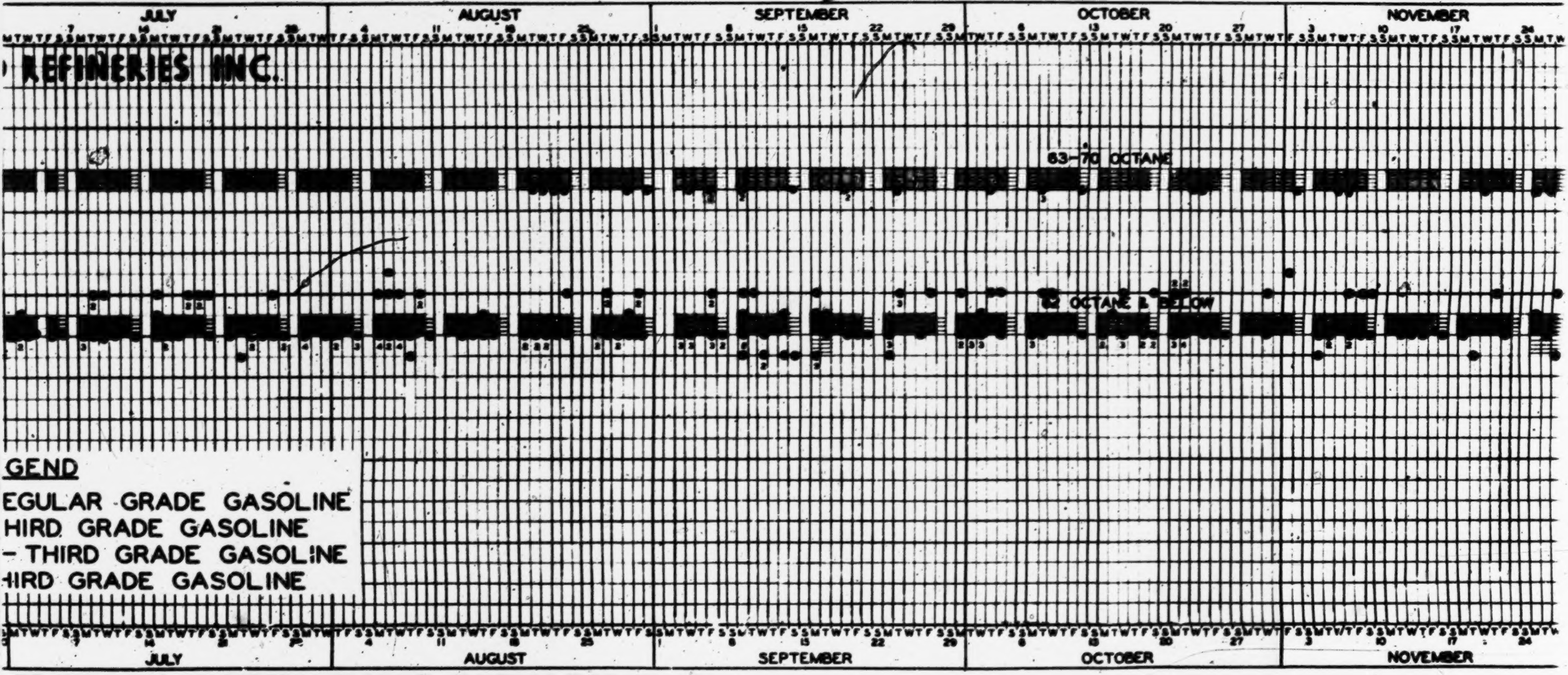


DATES OF CHICAGO JOURNAL OF COMMERCE QUOTATIONS ARE THOSE ON WHICH THE PRICES SHOWN ARE STATED TO HAVE BEEN PAID. THE ISSUES IN WHICH SUCH QUOTATIONS WERE PU

CONSUMERS & MAJOR COMPANIES

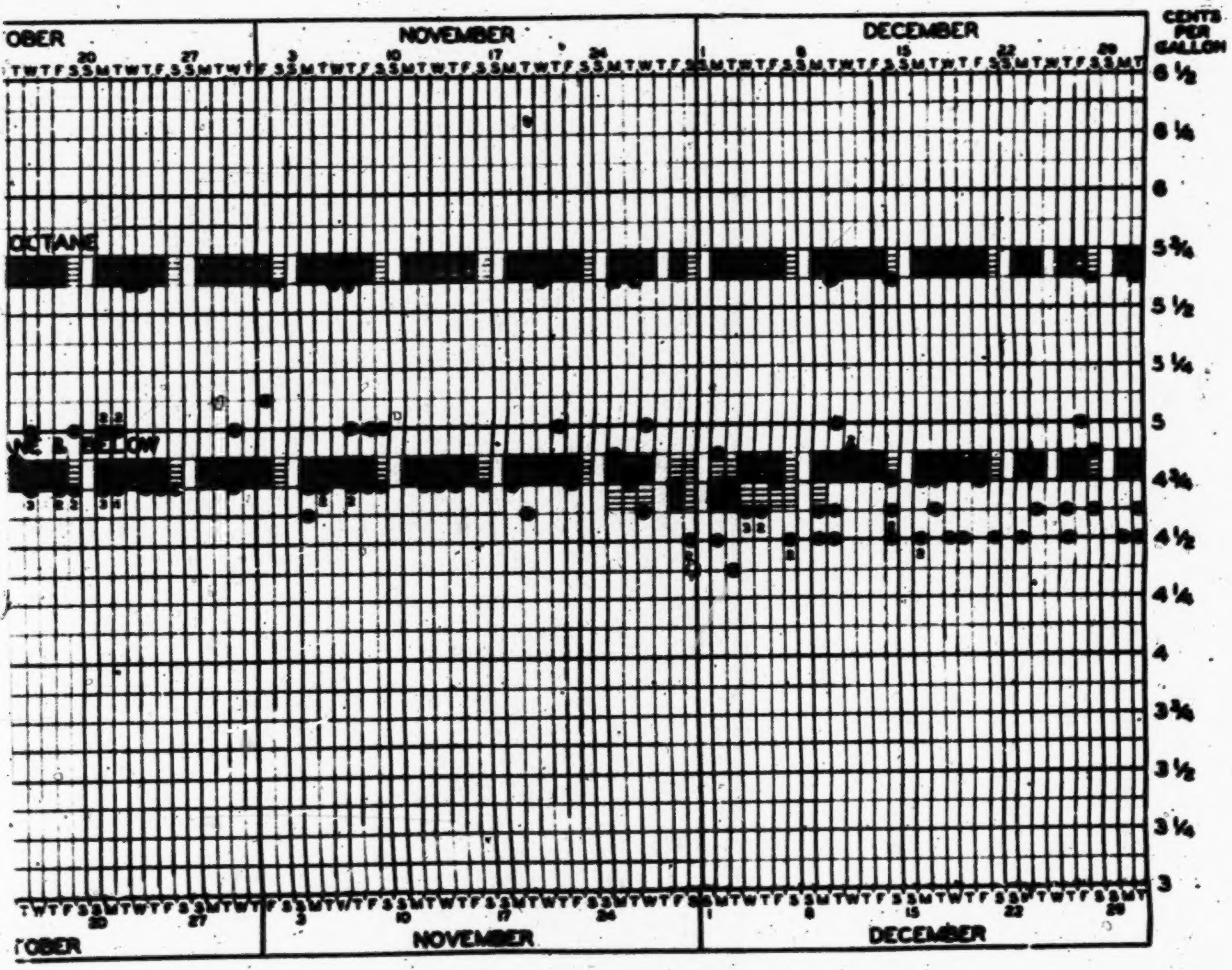
PRICE QUOTATIONS

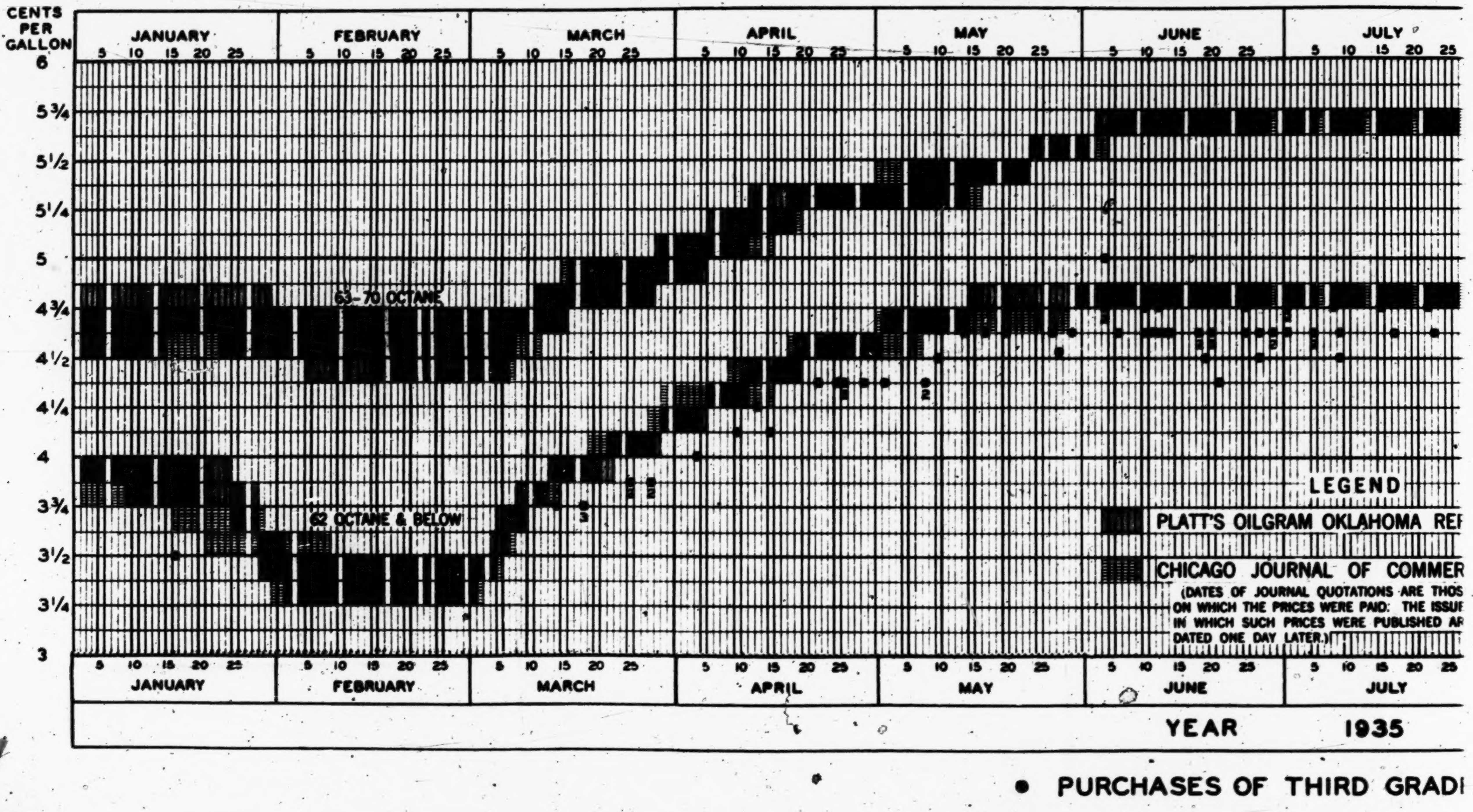
▨ CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3

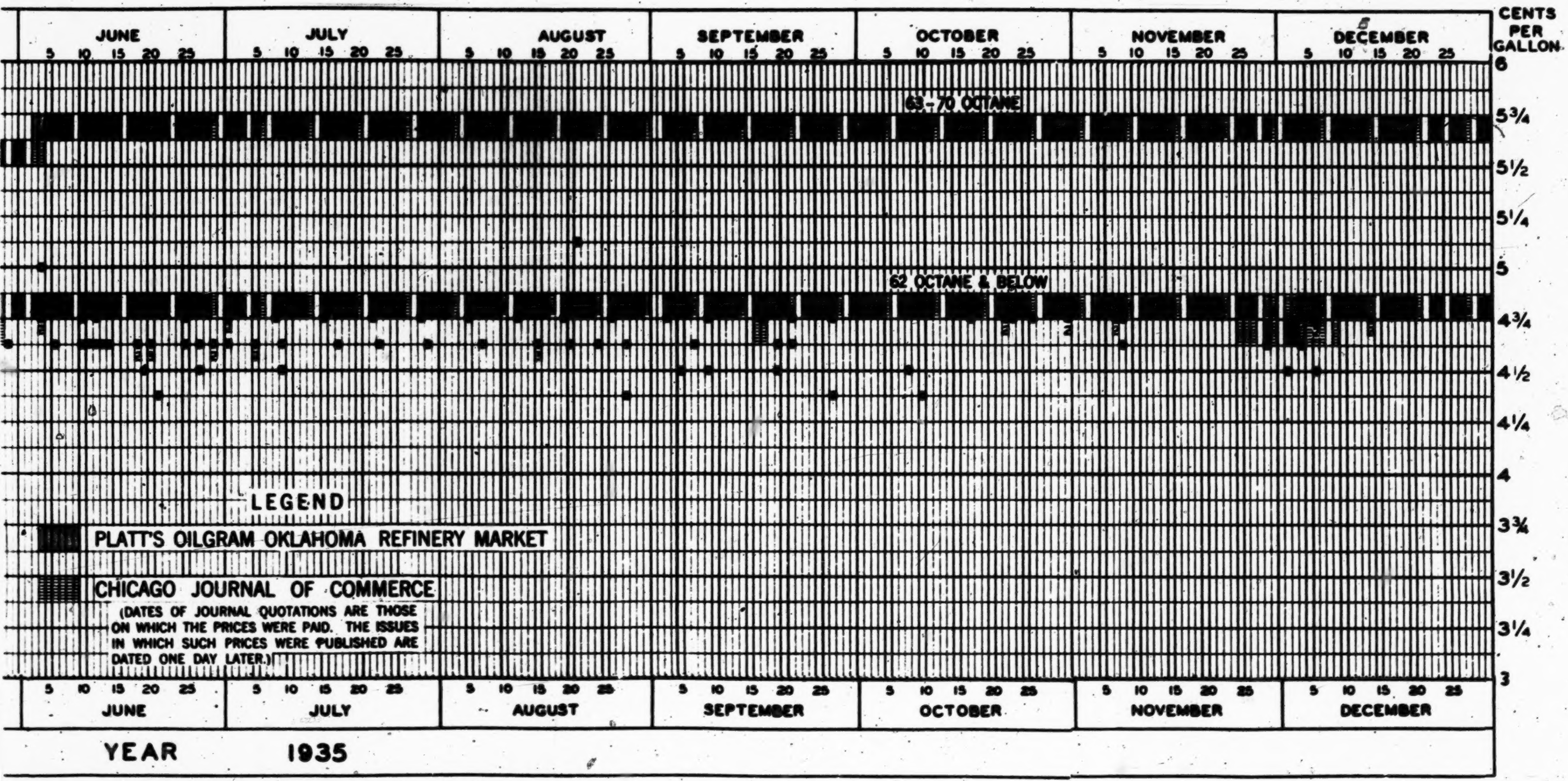


THE ISSUES IN WHICH SUCH QUOTATIONS WERE PUBLISHED ARE DATED ONE OR TWO DAYS LATER.

EXHIBIT NO. 868




CENTS PER GALLON
6
5¾
5½
5¼
5
4¾
4½
4¼
4
3¾
3½
3¼
3
JANUARY
FEBRUARY
MARCH
APRIL
MAY
JUNE
JULY
5 10 15 20 25
63-70 OCTANE
62 OCTANE & BELOW
LEGEND
PLATT'S OILGRAM OKLAHOMA REF
CHICAGO JOURNAL OF COMMER
(DATES OF JOURNAL QUOTATIONS ARE THOS ON WHICH THE PRICES WERE PAID: THE ISSUE IN WHICH SUCH PRICES WERE PUBLISHED AR DATED ONE DAY LATER.)
YEAR
1935
● PURCHASES OF THIRD GRADI



URCHASES OF THIRD GRADE GASOLINE

5630 DEFENSE EXHIBITS NOS. 870, 871, 872, 873.

Chart Exhibits on file with the clerk of the District Court, to be inserted by the clerk for transmittal.

So inserted H. C. Hale, Clerk. 12/15/38.

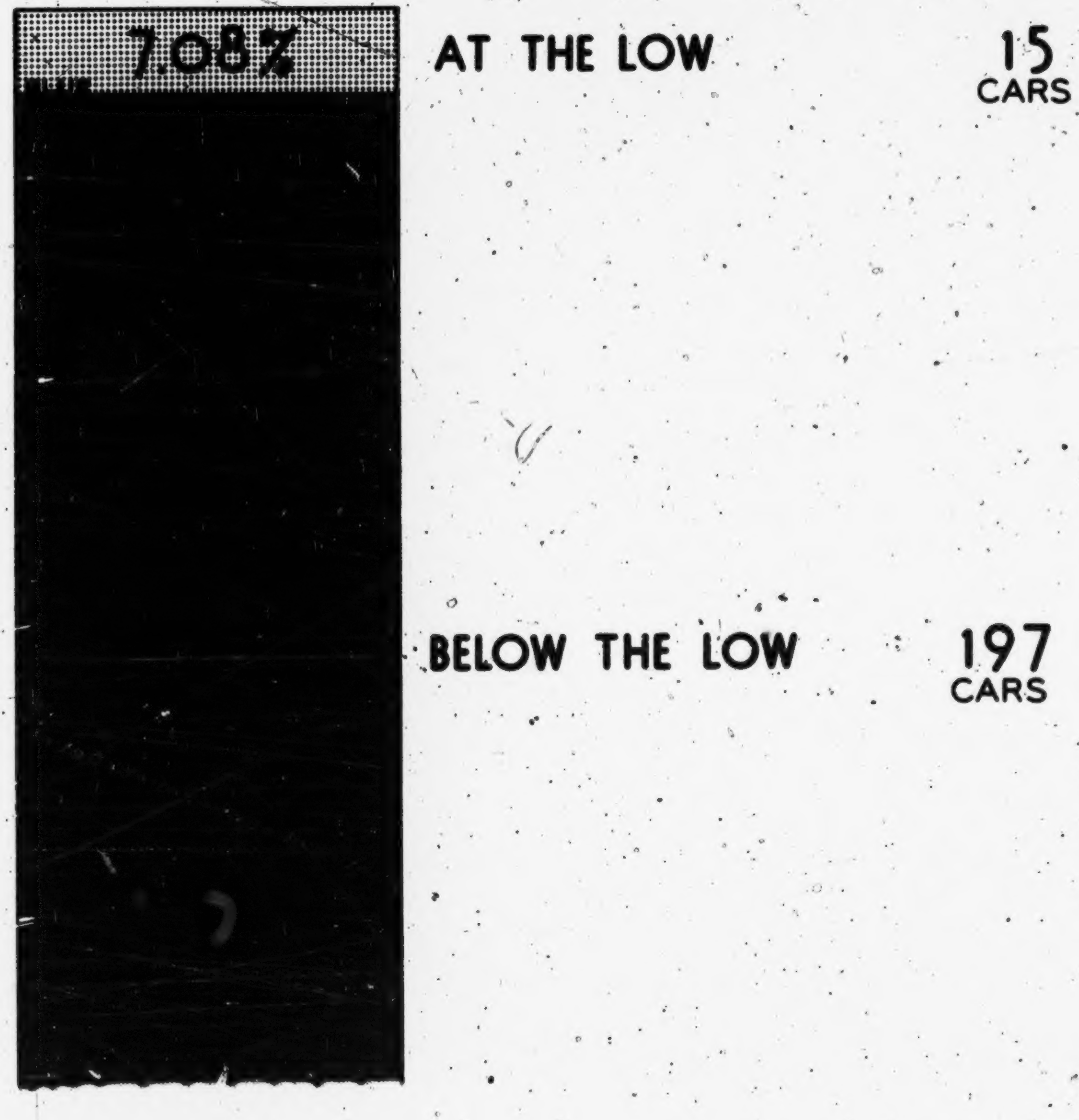
5631 DEFENSE EXHIBIT NO. 870.

MID-CONTINENT PETROLEUM CORPORATION
PRICES IN PURCHASES FROM INDEPENDENT REFINERS

(INCLUDING BROKERS)

COMPARED WITH

PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
MARCH 1 THRU MAY 31, 1935



MID-CONTINENT PETROLEUM CORPORATION

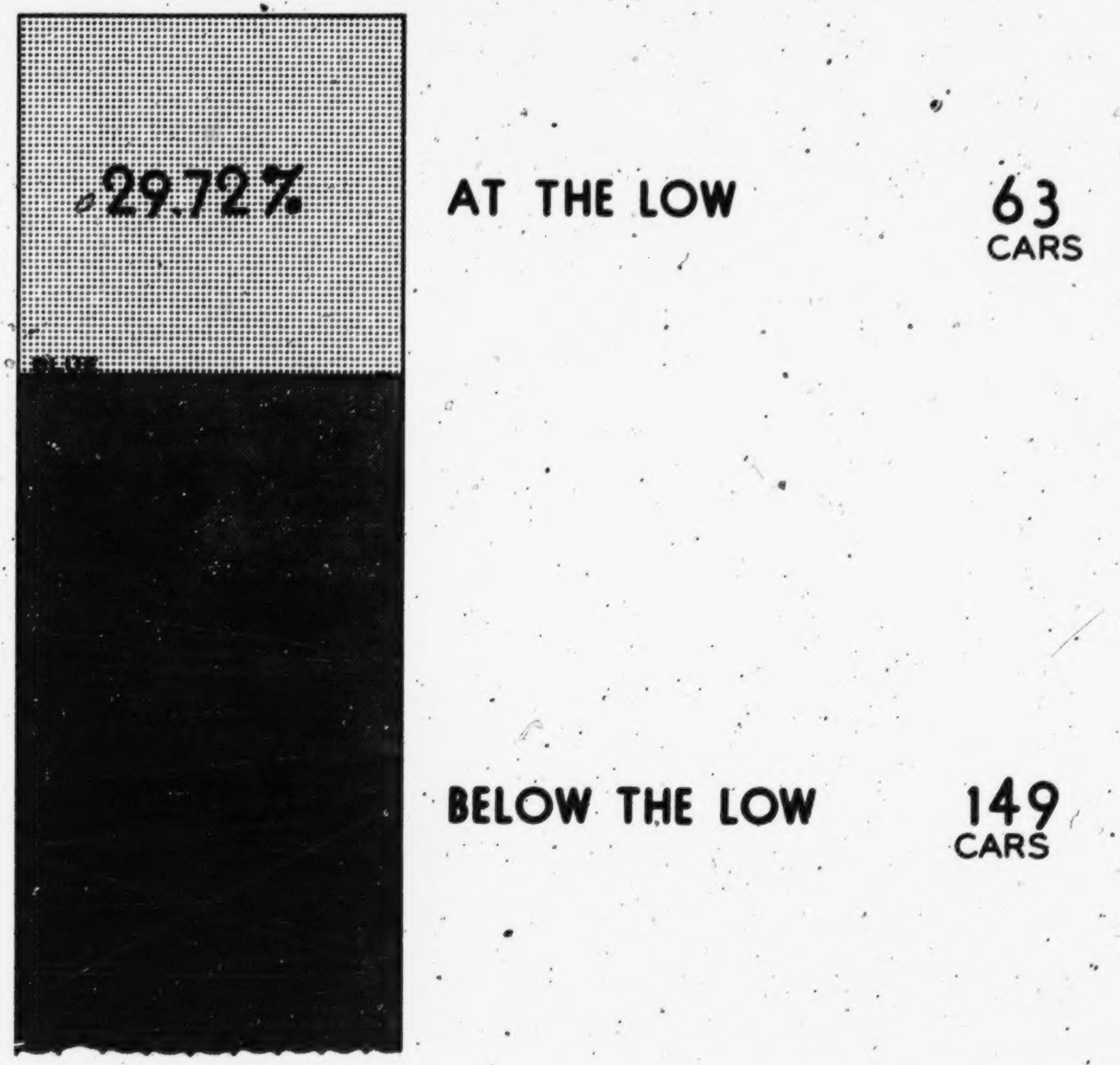
PRICES IN PURCHASES FROM INDEPENDENT REFINERS

(INCLUDING BROKERS)

COMPARED WITH

CHICAGO JOURNAL OF COMMERCE F.O.B. GROUP 3

MARCH 1 THRU MAY 31, 1935



MID-CONTINENT PETROLEUM CORPORATION

PRICES IN PURCHASES FROM INDEPENDENT REFINERS

(INCLUDING BROKERS)

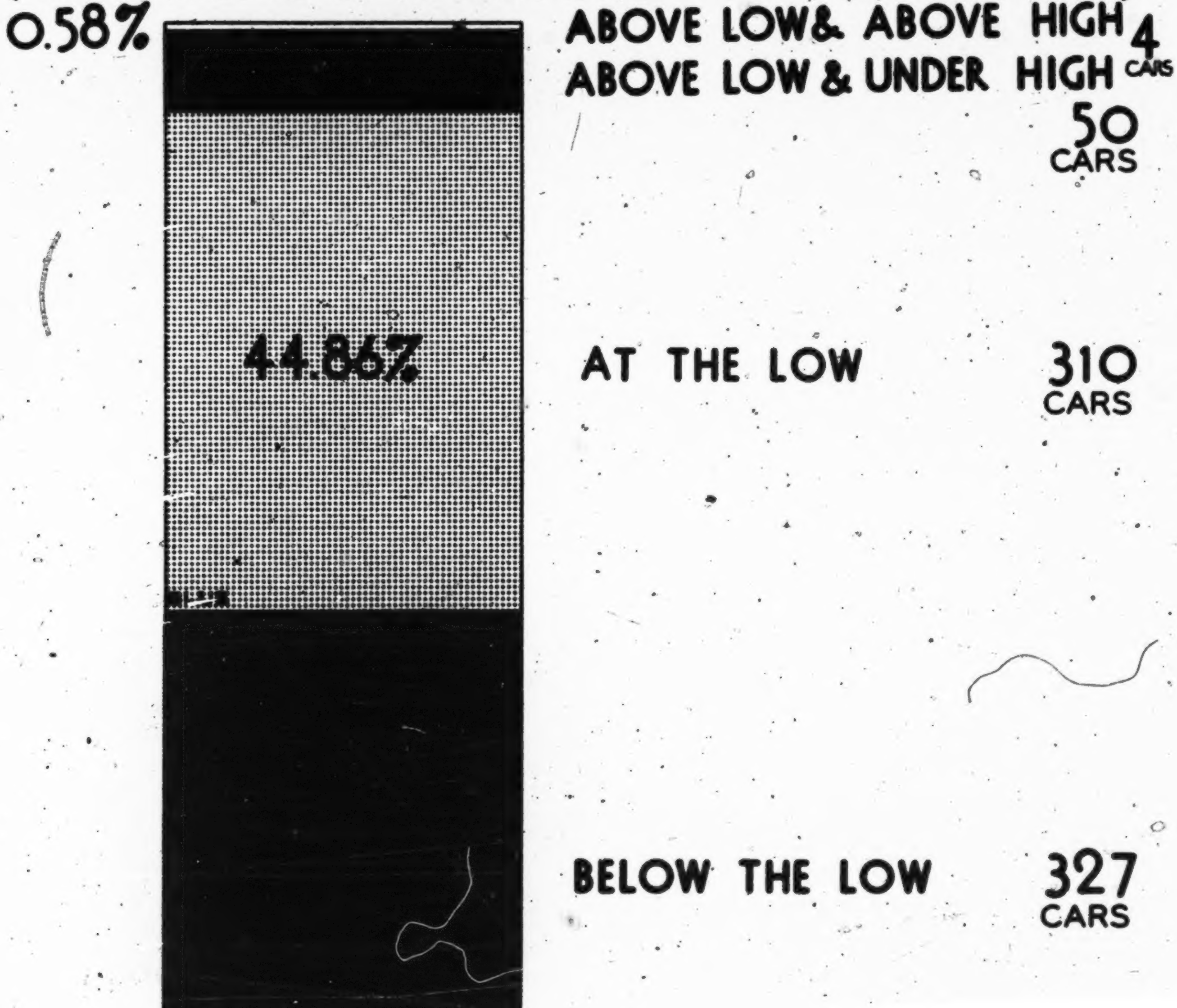
COMPARED WITH

CHICAGO JOURNAL OF COMMERCE

REFINERY MARKET F.O.B. GROUP 3

YEAR 1935

(PERCENTAGES REFER TO CARS BOUGHT ON A FLAT PRICE BASIS)



PRICES IN PURCHASES FROM INDEPENDENT REFINERS

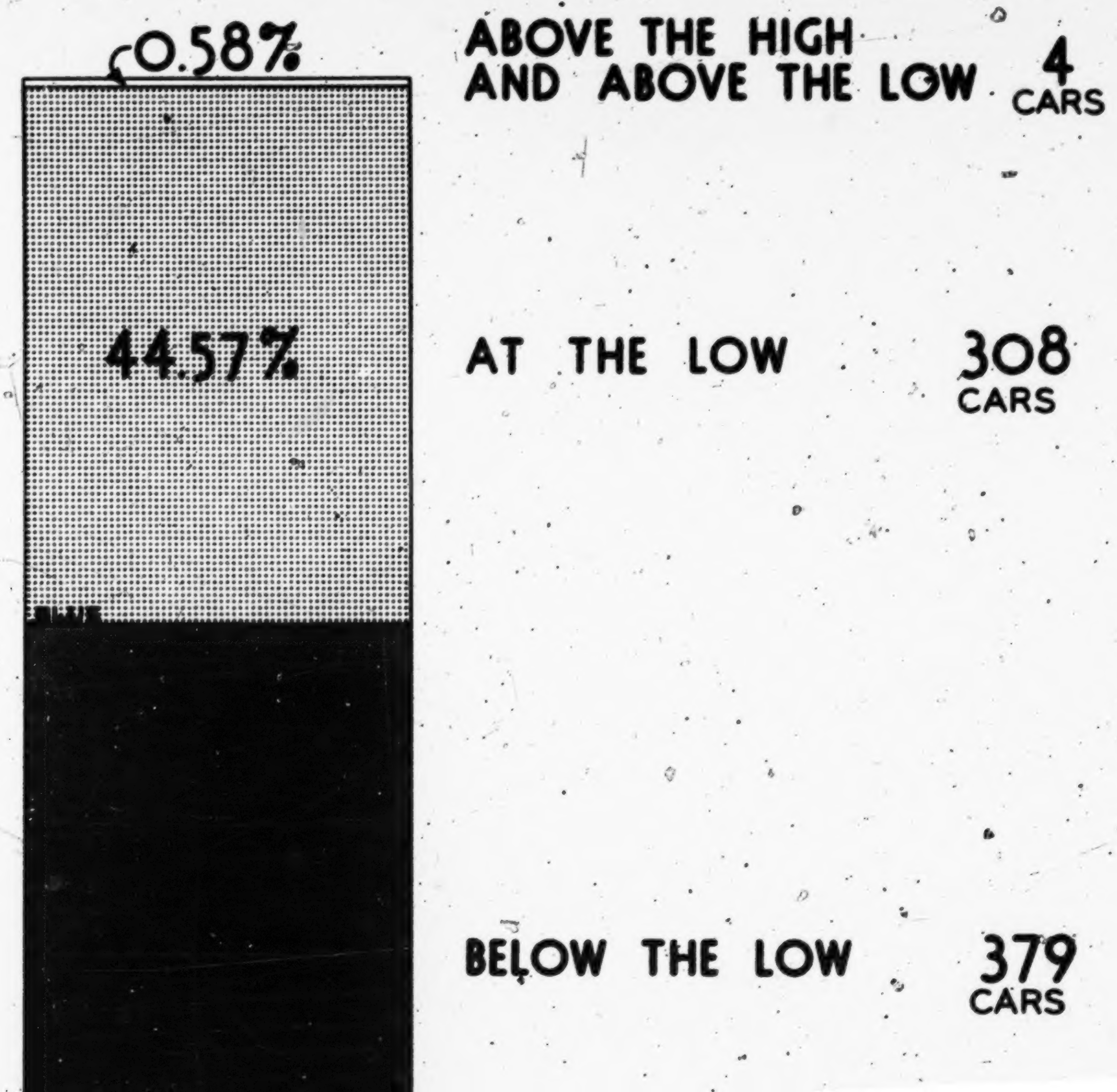
(INCLUDING BROKERS)

COMPARED WITH

PLATT'S OILGRAM OKLAHOMA REFINERY MARKET

YEAR 1935

(PERCENTAGES REFER TO CARS BOUGHT ON A FLAT PRICE BASIS)



5639

DEFENSE EXHIBIT NO. 874.

5640

UNITED STATES vs. STANDARD OIL COMPANY (IND.) et al. Flat Price Purchases by Major Oil Companies from Independent Refiners at Price Ranges as shown for Third-Grade Gasoline—Limited to Purchases on either a Group 3 or F. O. B. Oklahoma Refinery Basis (Number Indicates Transactions, not Cars).

Date 1935		Daily Totals	¢ Per Gallon 3¼	3⅜	3½	3⅝	3¾	3⅞	4	4⅛	4¼	4⅜
Mar.	1	1	1									
	2											
	3	Sunday										
	4											
	5	1		1								
	6	2			2							
	7	1			1							
	8	2				1			1			
	9	2					2					
	10	Sunday										
	11	2				1	1					
	12	2				2						
	13	3				1		2				
	14	6				1	4	1				
	15											
	16	1					1					
	17	Sunday										
	18	3					3					
	19	1						1				
	20	2			1		1					
	21	7					1	5		1		
	22	3						3				
	23	2						2				
	24	Sunday										
	25	3						2	1			
	26	4						1	2			1
	27											
	28	4					1	2		1		
	29											
	30											
	31	Sunday										
		52	1	1	4	6	14	19	4	2		1

5641 DEFENSE EXHIBIT NO. 875.

5642

UNITED STATES vs. STANDARD OIL COMPANY (IND.) et al.

Flat Price Purchases by Defendant Major Oil Companies from Independent Refiners at Price Ranges as shown for Third Grade Gasoline—Limited to Purchases on either a Group 3 or F. O. B. Oklahoma Refinery Basis. (Number Indicates Transactions and not Cars).

Date 1935		Daily Totals	Cents Per Gallon						
			3⅞	4	4⅛	4¼	4⅜	4½	4⅝
April	1	1		1					
	2	3		2	1				
	3	2			2				
	4	3		3					
	5	2		2					
	6	2			1	1			
	7	Sunday							
	8								
	9	2			2				
	10	5			2	1		2	
	11	5			5				
	12	2			1				1
	13	3			2	1			
	14	Sunday							
	15	2			1		1		
	16	3			3				
	17	2				1	1		
	18	4			1		3		
	19	2					2		
	20	3					1	1	1
	21	Sunday							
	22	7					6	1	
	23	6			1		4	1	
	24	3					1	2	
	25	8					6	2	
	26	12					6	6	
	27	3					1	2	
	28	Sunday							
	29	4					3	1	
	30	4					1	3	
		93		8	22	4	36	21	2

5643

DEFENSE EXHIBIT NO. 876.

5644

UNITED STATES vs. STANDARD OIL CO. (INDIANA), et al.

Flat Price Purchases by Defendant Major Oil Companies from Independent Refiners at Price Ranges as shown for Third Grade Gasoline—Limited to Purchases on either a Group 3 or F. O. B. Oklahoma Refinery Basis (Number Indicates Transaction not Cars).

Date 1935		Daily Total	Cents Per Gallon					
			4⅜	4½	4-9/16	4⅝	4¾	5
May	1	3	2	1				
	2	7	5	2				
	3	1		1				
	4	1	1					
	5	Sunday						
	6	4	1	3				
	7	3	1	2				
	8	6	3	3				
	9	4	2	2				
	10	3	2	1				
	11	2		1				
	12	Sunday				1		
	13	3		2		1		
	14	8		4		4		
	15	5				5		
	16	5				5		
	17	6				6		
	18	7				7		
	19	Sunday						
	20	4				4		
	21	5				5		
	22	4				4		
	23	4				4		
	24	9				8	1	
	25	5				5		
	26	Sunday						
	27	5				4		1
	28	8			1	7		
	29	16	1	3		11	1	
	30	2				2		
	31	10				8	2	
		140	18	25	1	91	4	1

5645 DEFENSE EXHIBIT NO. 877.

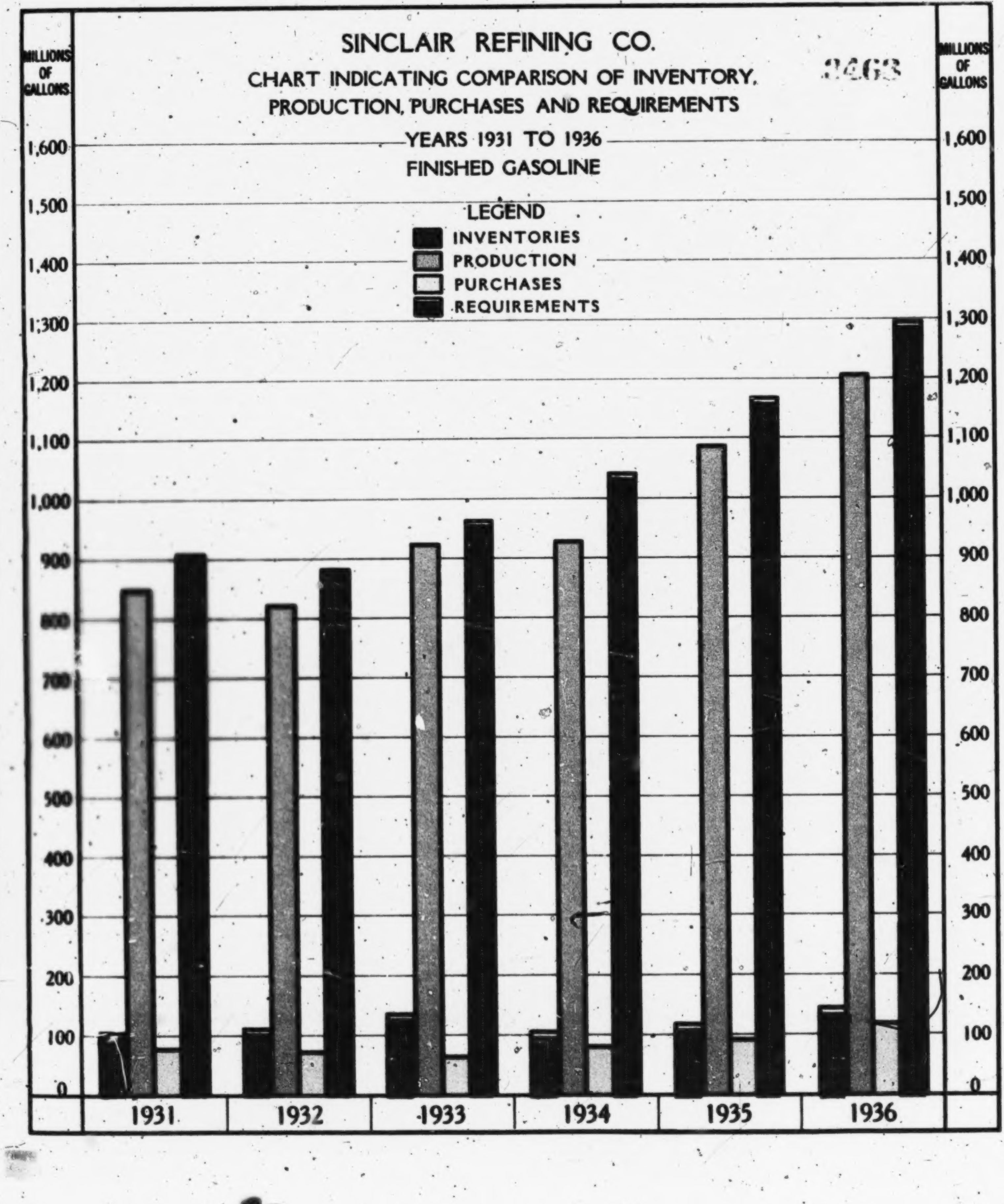
5646

UNITED STATES vs. STANDARD OIL COMPANY (IND.), et al.

Flat Price Purchases by Defendant Major Oil Companies from Independent Refiners at Price Ranges as shown for Third Grade Gasoline—Limited to Purchases on either a Group 3 or F. O. B. Oklahoma Refinery Basis (Number Indicates Transactions—not Cars).

Date 1935		Daily Totals	Cents Per Gallon 4⅜	4½	4⅝	4¾	4⅞	5
June	1	4		1		3		
	2	Sunday						
	3	4			3		1	
	4	8			1	6		1
	5	1				1		
	6	7		1	2	3	1	
	7	5			2	2	1	
	8	4			1	3		
	9	Sunday						
	10	6		1	2	3		
	11	11			7	4		
	12	7			6	1		
	13	6			3	2	1	
	14	4			1	3		
	15	2			2			
	16	Sunday						
	17	3			1	2		
	18	7			2	4	1	
	19	3		1		2		
	20	11			4	7		
	21	1	1					
	22	1				1		
	23	Sunday						
	24	3				3		
	25	4			2	2		
	26	2				2		
	27	9		2	3	4		
	28	2			2			
	29	5			2	3		
	30	Sunday						
Totals		120	1	6	46	61	5	1

5647 DEFENSE EXHIBIT NO. 878.



SINCLAIR REFINING CO.

CHART INDICATING COMPARISON OF INVENTORY, PRODUCTION, PURCHASES AND REQUIREMENTS

YEARS 1931 TO 1936

FINISHED GASOLINE

2463

5649

DEFENSE EXHIBIT NO. 879.

SINCLAIR REFINING COMPANY

Finished Gasoline Transactions
Years 1931 to 1936

	Gallons					
	1931	1932	1933	1934	1935	1936
Inventory at beginning of year	80,752,526	98,024,589	109,513,087	135,785,066	103,838,675	117,197,575
Inventory in terms of days supply*	38*	55*	43*	57*	40*	43*
Production	848,892,785	818,883,134	924,396,330	928,436,647	1,093,275,234	1,199,543,296
Percent of requirements*	93.59*	93.03*	95.80*	89.16	93.76	92.83*
Total Purchases	75,381,135	72,848,507	66,777,953	80,950,860	86,115,510	114,188,629
Percent of requirements	8.31*	8.28*	6.92*	7.77*	7.39*	8.84*
Total	1,005,026,446	989,756,230	1,100,687,379	1,145,172,575	1,283,229,419	1,430,929,500
Sales						
Domestic	814,848,624	808,814,491	817,017,376	947,006,846	1,053,775,385	1,214,261,418
Export	76,825,989	53,946,841	122,401,469	78,098,135	93,994,729	61,418,689
Total sales	891,674,613	862,761,332	949,418,845	1,025,104,981	1,147,770,114	1,275,680,107
Plant Consumption, Company Use, Over and Short, Etc.	15,327,244	17,481,811	15,483,465	16,228,919	18,261,730	16,489,002
Inventory at Close of Year	98,024,589	109,513,087	135,785,066	103,838,675	117,197,575	138,760,391
Percent of Inventory to requirements for year.*	10 81*	12.44*	14 07*	9.97*	10 01*	10.74*
Total	1,005,026,446	989,756,230	1,100,687,379	1,145,172,575	1,283,229,419	1,430,929,500

*Written in red on original exhibit.

5652

DEFENSE EXHIBIT NO. 880.

5653

JOHNSON OIL REFINING COMPANY
20 North Wacker Drive
Chicago, Illinois

Gasoline Production, Cleveland, Oklahoma Refinery

	Gallons from Crude	Casinghead	Total Gallons	Total Barrels
1934				
January				
February				
March				
April				
May				
June	1738605	740443	2479048	59025
July	2110865	716442	2827307	67317
August	1767255	947672	2714927	64641
September	2033010	616206	2649216	63076
October	2001254	785630	2786884	66354
November	2386633	391563	2778196	66147
December	2578660	371004	2949664	70230
Total	14616282	4568960	19185242	456791
1935				
January	1448389	386135	1834524	43679
February	None	284279	284279	6769
March	1973088	575509	2548597	60681
April	1171397	752097	1923494	45797
May	3024035	593536	3617571	86133
June	2970560	804770	3775330	89889
July	2952812	833933	3786745	90161
August	2877343	915284	3792627	90301
September	2823524	463777	3287301	78269
October	2853958	605906	3459864	82378
November	2177283	532080	2709363	64508
December	2873895	594407	3468302	82578
Total	27146284	7341713	34487997	821143
5654				
1936				
January	2625096	640406	3265502	77750
February	2634152	317866	2952018	70286
March	3060440	654456	3714896	88450
April	2981581	854070	3835651	91325
May	2900911	705527	3606438	85867
June	None	763417	763417	18177
July	2808344	766686	3575030	85120
August	2857006	709757	3566763	84923
September	2743962	468585	3212547	76489
October	3036103	477320	3513423	83653
November	2816637	509942	3326579	79204
December	2319527	544692	2864219	68196
Total	30783759	7412724	38196483	909440
Grand Total	72546325	19323397	91869722	2187374

DEFENSE EXHIBIT NO. 881.

JOHNSON OIL REFINING COMPANY
20 North Wacker Drive
Chicago, Illinois

Gasoline Shipments from Cleveland, Oklahoma Refinery

	Ethyl	Winged "70"	Jo-Re-Co	Non-Leaded	Total Gallons	Total Barrels
1934						
uary						
b						
r						
r						
y						
e	39026	1928557	1313210		3280793	78114
y	32796	1871927	1509664		3414387	81295
g	51613	2586348	1812230		4450191	105957
pt	52571	1526302	933069		2511942	59808
t	32403	2432091	947867		3412361	81247
v	27581	1669973	433649		2131203	50743
c	28859	1491312	355191		1875362	44651
Total	264849	13506510	7304880		21076239	501815
1935						
n	39270	1449461	308866		1797597	42800
b	9309	1215406	214485		1439200	34267
r	29028	1535081	365915		1930024	45953
r	43079	2151916	930433		3125428	74415
y	16085	1929440	866172	59319	2871016	68358
e	24607	1972138	1042630	171302	3210677	76444
y	25798	1936804	1462090	415792	3840484	91440
g	23771	2161736	1682521	420728	4288756	102113
pt	16068	1873683	1014138	215032	3118921	74260
t	33048	1786536	1035754	308132	3163470	75321
v	21652	1777377	696823	176936	2672788	63638
c	30024	1909695	716155	142549	2798423	66629
Total	311739	21699273	10335982	1909790	34256784	815638
1936						
uary	33042	1748934	509104	249762	2540842	60496
bruary	39888	1308577	294005	147752	1790222	42624
rch	29750	1700725	643474	290554	2664503	63440
ril	21101	2627896	1076588	276257	4001842	95282
y	16447	2660263	977778	239002	3893490	92705
e	32806	2798781	922372	210677	3964636	94396
y	56649	2634746	958305	211340	3861040	91929
gust	14366	2859868	970930	170596	4015760	95613
ptember	35731	2266352	782640	200308	3285031	78215
tober	55359	2447613	713496	184669	3401137	80979
vember	33688	2112056	551481	154265	2851490	67893
cember	60350	1817296	471058	177907	2526611	60157
Total	429177	26983107	8871231	2513089	38796604	923729
and Total	1005765	62188890	26512093	4422879	94129627	2241182

5658 **DEFENSE EXHIBIT NO. 882.**

5659 **Waggoner Refining Company, Vernon, Texas.**

1934	Gasoline Production	(In Gallons)	Gasoline Sales
January	1,375,314		1,937,990
February	477,380		1,311,407
March	589,357		1,022,748
April	1,603,914		1,186,039
May	2,326,423		1,874,859
June	2,341,787		2,048,900
July	2,119,924		2,374,268
August	1,340,913		1,494,058
September	1,466,336		2,701,257
October	2,153,740		1,782,393
November	1,922,447		1,553,563
December	1,611,801		919,772
Total 1934	19,329,336		20,207,254
1935			
January	1,349,624		1,114,058
February	1,256,974		766,470
March	1,806,720		1,579,961
April	1,944,835		4,074,119
May	1,918,496		3,847,418
June	1,709,375		2,151,789
July	2,039,699		2,652,559
August	2,130,588		2,620,957
September	2,499,877		1,861,079
October	2,853,126		2,583,257
November	2,266,521		2,186,978
December	2,087,528		2,070,088
Total 1935	23,863,363		27,508,733
1936			
January	2,089,088		2,216,300
February	1,849,931		1,429,768
March	2,298,442		1,820,015
April	2,118,296		2,275,868
May	2,030,207		1,803,915
June	2,429,437		2,725,035
July	2,582,295		4,095,301
August	2,388,254		3,439,500
September	2,153,450		1,970,075
October	1,972,962		1,812,871
November	954,673		936,310
December	1,567,771		946,800
Total 1936	24,434,806		25,471,758

5660

DEFENSE EXHIBIT NO. 883.

5661

FLAT PRICE SALES TO MID-CONTINENT PETROLEUM CORPORATION CONSUMERS

1935

Shipped To	Date of Order	Date Shipped	Number of Cars	(Grade) Octane Bracket	Price Agreed On	Freight Basis	Gallons Shipped	Price Paid
Alstadt & Langles, Waterloo, Ia.	Feb. 15	Feb. 16	1	Under 62	.0325	Tulsa, Okla.	8,070	.0325
Bruce Transfer, Des Moines, Ia.	Jan. 10	Jan. 10	1	63/70	.04625	"	10,152	.04625
" " "	Jan. 31	Jan. 31	1	"	.04625	"	10,229	.04625
" " "	Feb. 23	Feb. 23	1	"	.04563	"	10,239	.04563
" " "	Mar. 19	Mar. 21	1	"	.04875	"	8,156	.04875
" " "	Apr. 2	Apr. 4	1	"	.04875	"	10,254	.04875
" " "	Apr. 17	Apr. 19	1	"	.05125	"	10,217	.05125
" " "	May 4	May 8	1	"	.05375	"	8,113	.05375
" " "	May 21	May 23	1	"	.05438	"	10,171	.05438
" " "	June 13	June 15	1	"	.05625	"	10,063	.05625
" " "	June 21	June 24	1	"	.05688	"	10,093	.05688
" " "	July 9	July 11	1	"	.05688	"	10,014	.05688
" " "	Aug. 8	Aug. 10	1	"	.05688	"	9,968	.05688
" " "	Aug. 22	Aug. 24	1	"	.05688	"	10,033	.05688
" " "	Sept. 5	Sept. 5	1	"	.05688	"	9,990	.05688
" " "	Sept. 19	Sept. 21	1	"	.05688	"	10,111	.05688
" " "	Oct. 4	Oct. 7	1	"	.05688	"	10,152	.05688
" " "	Oct. 19	Oct. 19	1	"	.05688	"	10,039	.05688
" " "	Nov. 4	Nov. 4	1	"	.05688	"	10,149	.05688
" " "	Nov. 18	Nov. 20	1	"	.05688	"	10,265	.05688
" " "	Dec. 28	Dec. 31	1	"	.05688	"	10,433	.05688
" " "	Dec. 9	Dec. 11	1	"	.05688	"	10,381	.05688
Des Moines Ice & Fuel Co., Des Moines, Ia.	Sept. 14	Sept. 17	1	"	.05687	"	8,061	.05688
Gamble Robinson Fruit, Waterloo, Ia.	Jan. 4	Jan. 5	1	"	.045	"	8,313	.045
" " " "	Apr. 4	Apr. 5	1	"	.04875	"	8,139	.04875
" " " "	June 24	June 25	1	"	.05625	"	7,975	.05625
" " " "	Oct. 11	Oct. 12	1	"	.05625	"	8,002	.05625
Rath Packing Co., Waterloo, Ia.	Apr. 15	Apr. 15	1	"	.05	"	7,993	.05
" " "	May 27	May 27	1	"	.05375	"	8,019	.05375
" " "	Dec. 17	Dec. 18	1	"	.055	"	8,116	.055

Roberts Dairy, Sioux City, Ia.	Oct.	28	Oct.	28	1	63/70	.05625	Tulsa, Okla.	8,115	.05625
Waterloo Fruit & Comm., Waterloo, Ia.	Jan.	31	Jan.	31	1	"	.04375	"	8,175	.04375
White Line Transfer & Storage, Des Moines, Ia.	June	11	June	13	1	"	.05688	"	8,131	.05688
" " " " " " "	Aug.	30	Aug.	31	1	"	.05688	"	10,032	.05688
" " " " " " "	Oct.	31	Nov.	2	1	"	.05688	"	8,225	.05688

5663

Young Coal Co., Waterloo, Ia.	Jan.	18	Jan.	23	1	63/70	.04625	Tulsa, Okla.	6,094	.04625
" " " "	May	10	May	11	1	"	.0525	"	8,040	.0525
Copper Range Motor Bus, Houghton, Mich.	Jan.	10	Jan.	11	1	"	.04625	"	8,133	.04625
" " " " " "	Mar.	11	Mar.	12	1	"	.0456	"	8,129	.0456
" " " " " "	May	17	May	18	1	"	.05375	"	8,097	.05375
" " " " " "	Aug.	8	Aug.	8	1	"	.056875	"	7,838	.056875
Terre Haute Pure Milk & Ice Cream, Terre Haute, Ind.	May	4	May	4	1	"	.0525	"	10,114	.0525
American Can Co., Maywood, Ill.	Jan.	10	Jan.		1	"	.04625	"	8,282	.04625
" " " " "	July	5	July	6	1	"	.056875	"	8,067	.056875
" " " " "	Aug.	22	Aug.	23	1	"	.056875	"	8,058	.05688
" " " " "	Sept.	20	Sept.	21	1	"	.056875	"	8,092	.05688

NOTE: All shipped from Tulsa, Okla.
All consumers.

5664 1936

Bruce Transfer Co., Des Moines, Ia.	Jan.	15	Jan.	17	1	63/70	.06	Tulsa, Okla.	10,365	.06
" " " "	Feb.	5	Feb.	7	1	"	.06188	"	10,457	.061875
" " " "	Feb.	20	Feb.	22	1	"	.06188	"	10,489	.061875
" " " "	Mar.	10	Mar.	10	1	"	.06	"	9,976	.06
" " " "	Mar.	25	Mar.	25	1	"	.06125	"	10,174	.06125
" " " "	Apr.	11	Apr.	11	1	"	.06125	"	10,123	.06125
" " " "	Apr.	24	Apr.	27	1	68/70	.06125	"	10,142	.06125
" " " "	May	23	May	23	1	"	.06125	"	10,026	.06125
" " " "	May	11	May	12	1	"	.06125	"	10,003	.06125
" " " "	June	23	June	25	1	"	.060625	"	10,043	.060625
" " " "	June	8	June	9	1	"	.060625	"	9,877	.060625
" " " "	July	21	July	22	1	"	.060625	"	9,897	.060625
" " " "	July	6	July	6	1	"	.060625	"	9,988	.060625
Des Moines Water Works, Des Moines, Ia.	Apr.	14	Apr.	15	1	"	.07244	F.O.B.Destn.	9,889	.07244
White Line Trans. & Stg. " " "	Feb.	19	Feb.	21	1	63/70	.06188	Tulsa, Okla.	8,265	.06188
" " " " " " "	Apr.	2	Apr.	4	1	"	.06125	"	8,242	.06125

Shipped To	Date of Order	Date Shipped	Number of Cars	(Grade) Octane Bracket	Price Agreed On	Freight Basis	Gallons Shipped	Price Paid
Copper Range Mtr. Bus, Houghton, Mich......	Jan. 2	Jan. 3	1	"	.056875	"	8,168	.05688
" " " " " "	Apr. 28	Apr. 29	1	68/70	.06125	"	8,040	.06125
" " " " " "	July 21	July 22	1	"	.060625	"	7,933	.060625
American Can Co., Maywood, Ill............	Jan. 17	Jan. 18	1	63/70	.061875	"	8,247	.06188
" " " " "	Mar. 31	Apr. 2	1	"	.06125	"	8,244	.06125
" " " " "	June 1	June 2	1	68/70	.060625	"	8,115	.060625
" " " " "	July 27	July 28	1	"	.060625	"	8,053	.060625
Bruce Transfer Co., Des Moines, Ia............	Aug. 4	Aug. 4	1	"	.060625	"	9,924	.060625
" " " " "	Aug. 18	Aug. 19	1	"	.060625	"	9,963	.060625
" " " " "	Aug. 31	Sept. 1	1	"	.05875	"	9,871	.05875
" " " " "	Sept. 14	Sept. 14	1	"	.05688	"	9,980	.05688
" " " " "	Sept. 28	Sept. 28	1	"	.05625	"	10,051	.05625
" " " " "	Oct. 10	Oct. 10	1	"	.056875	"	10,045	.056875
" " " " "	Oct. 24	Oct. 24	1	"	.056875	"	10,120	.056875
" " " " "	Nov. 7	Nov. 7	1	"	.056875	"	10,057	.05688
" " " " "	Nov. 19	Nov. 19	1	"	.05813	"	10,184	.05813
" " " " "	Dec. 3	Dec. 3	1	"	.05813	"	10,182	.05813

5665

1936 (Continued)

Shipped To	Date of Order	Date Shipped	Number of Cars	(Grade) Octane Bracket	Price Agreed On	Freight Basis	Gallons Shipped	Price Paid
Bruce Transfer Co., Des Moines, Ia............	Dec. 18	Dec. 18	1	68/70	.05813	Tulsa, Okla.	10,197	.058125
" " " " "	Dec. 31	Dec. 31	1	"	.05813	"	10,132	.058125
Copper Range Mtr. Bus Co., Houghton, Mich.	Oct. 1	Oct. 2	1	"	.05625	"	8,081	.05625
" " " " " " "	Dec. 9	Dec. 9	1	"	.058125	"	8,117	.058125
American Can Co., Maywood, Ill............	Dec. 7	Dec. 8	1	"	.05813	"	8,286	.058125
Brashear Truck Co., St. Louis, Mo...........	May 28	May 29	1	"	.06	"	8,010	.06
Lassiter Fuel & Lubr. Co., St. Louis, Mo.......	Nov. 12	Nov. 12	1	"	.05625	"	8,100	.05625

5666 DEFENSE EXHIBIT NO. 887.

5667 Cushing Refining & Gasoline Co.

Recapitulation of Production and Sales 1934-1936
In Barrels

	Gasoline Production	Gasoline Sales
1934		
January	39,701	49,903
February	41 055	35 634
March	39 490	41 968
April	47 565	44 592
May	41 793	52 960
June	50 407	52 955
July	47 620	46 976
August	48 869	44 228
September	36 982	39 557
October	36 476	36 094
November	30 327	34 114
December	34 541	34 339
Total year 1934	494 826	513 320
1935		
January	46 109	37 845
February	53 511	48 068
March	63 515	72 784
April	72 276	75 272
May	69 649	66 868
June	66 428	69 146
July	76 356	77 187
August	71 602	70 213
September	77 006	70 547
October	72 148	82 305
November	76 492	63 997
December	58 379	64 269
Total year 1935	803 471	798 501

1936		
January	60 398	58 602
February	57 329	48 011
March	64 968	72 242
April	70 503	75 888
May	78 103	78 360
June	76 858	80 708
July	78 062	75 311
August	78 645	69 643
September	75 515	88 958
October	77 618	67 311
November	50 492	52 692
December	74 252	69 253
Total year 1936	842 743	836 979

Percent of total sales to major cos	**1934**	**15.98**
Percent of total sales to major cos	**1935**	**10.38**
Percent of total sales to major cos	**1936**	**13.26**
Percent of total sales to jobbers and brokers	**1934**	**84.02**
Percent of total sales to jobbers and brokers	**1935**	**89.62**
Percent of total sales to jobbers and brokers	**1936**	**86.24**

DEFENSE EXHIBIT NO. 888.

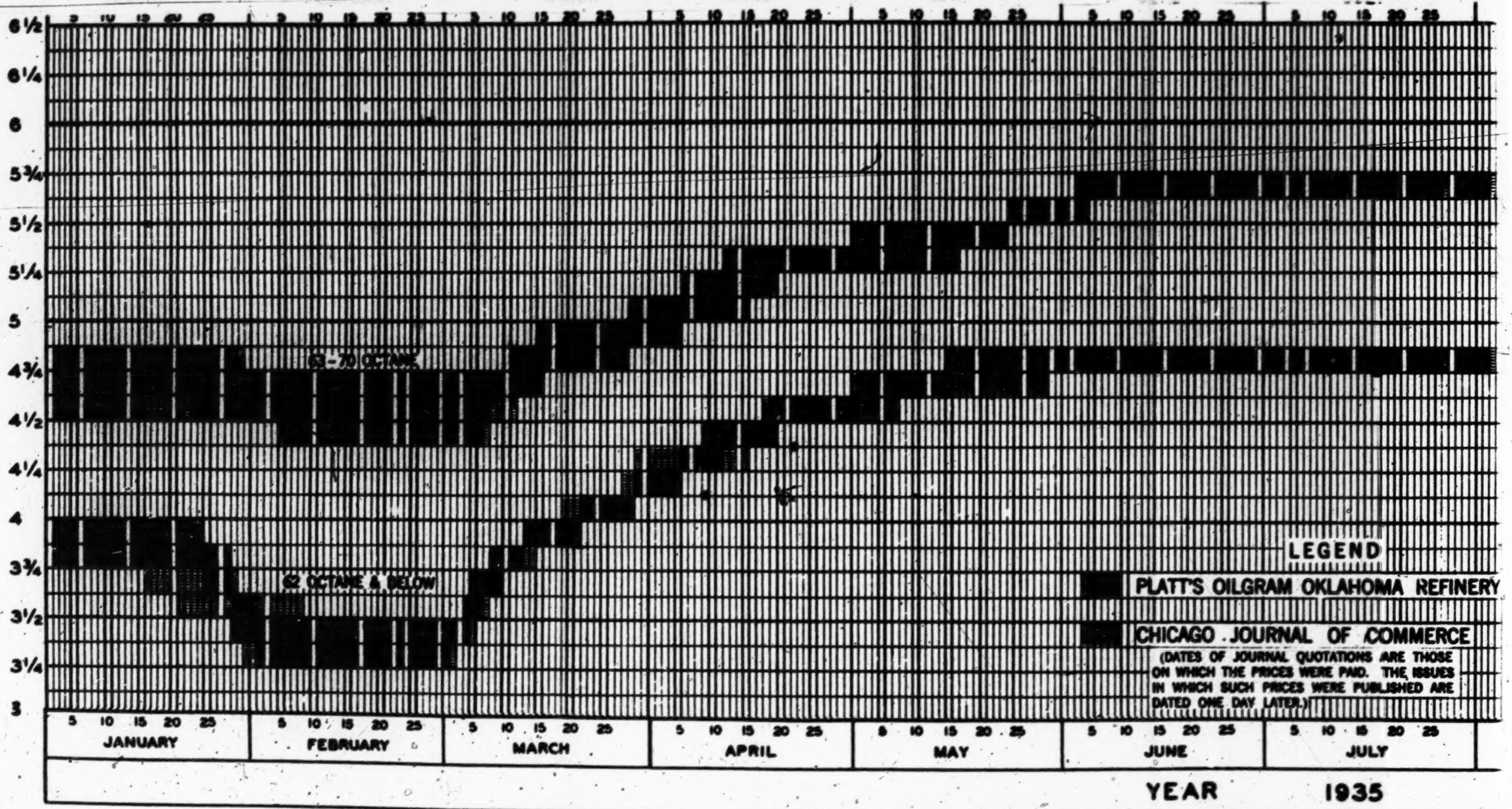
CUSHING REFINING & GASOLINE COMPANY

Gasoline Sales to Majors
(in barrels)

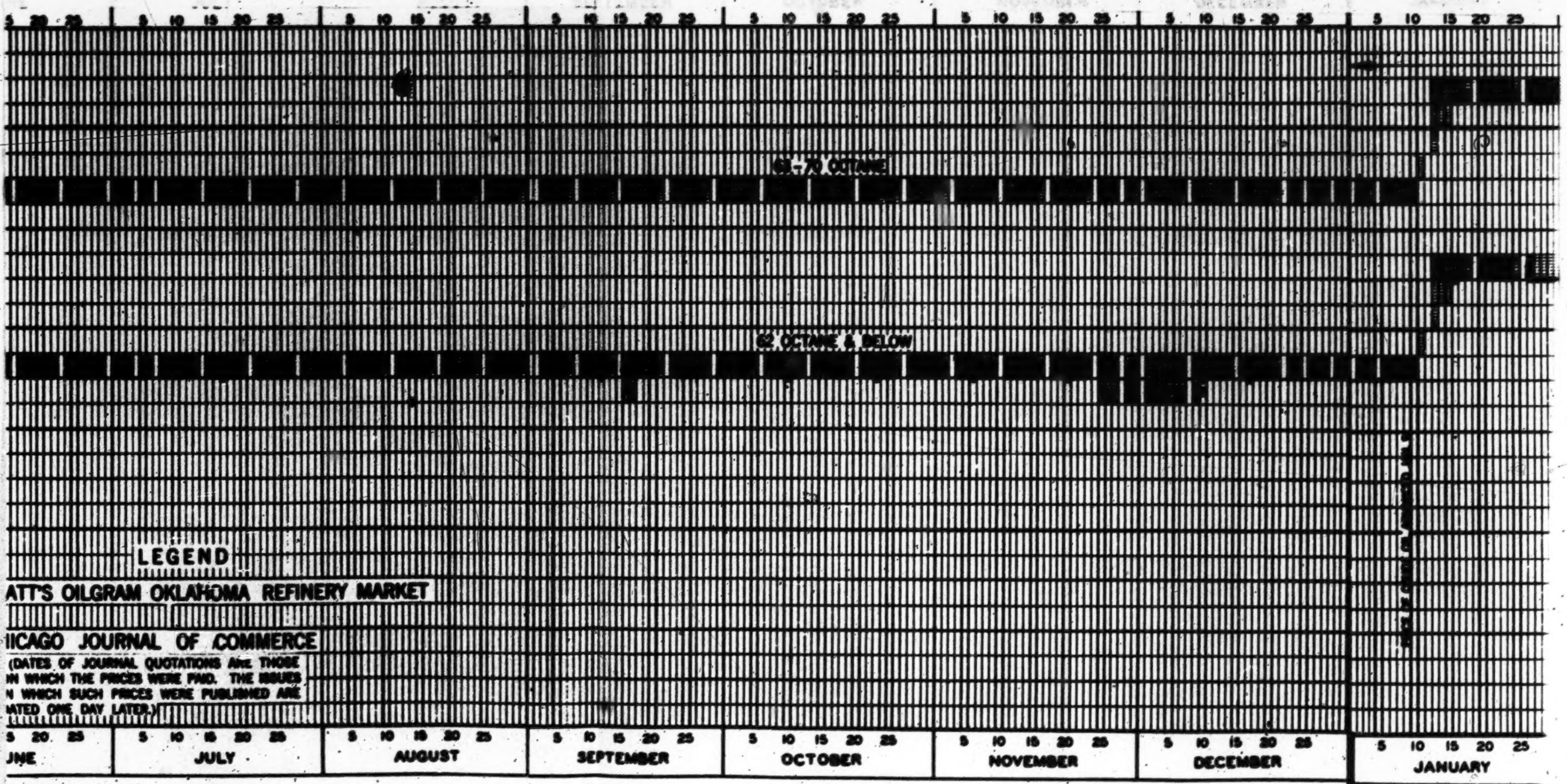
1934	Monthly Total	White Eagle & Socony-Vacuum	Sinclair Refy Co.	Shell Pipeline	Skelly Oil	Phillips Petr.	Mid-Cont. Petr.	Tide-Water	Lubrite Refg.	Wadhams Oil.
January	195				195					
February	8969				4847			4122		
March	11996	7762			3057			1177		
April	14609	1927		4807	6721				577	577
May	16066	5366			10700					
June	5699	5699								
July	8060	7566			484					
August	5162	4540			622					
September	3053	3053								
October	143				143					
November	4307				4307					
December	3795		2725		290		780			
Total	82044	35913	2725	4807	31366		780	5299	577	577
1935										
January	6316		4075		95		2146			
February	824		775		49					
March	13183		771	1737	61	10614				
April	7110	1349	386	4058	931	386				
May	9081	3281	774	4832		194				
June	7190	3642	576	2877	95					
July	7740	6835	762		143					
August	5510	4748	762							
September	4830	1149	767	2866	48					
October	5584	586	193	4805						
November	7754	1359	583	5812						
December	7791		195	7596						
Total	82013	22049	10619	34583	1422	11194	2146			

1936					
January	9023	988	195	7840	
February	8046		194	7852	
5670					
March	8942	977	193	7724	48
April	8257		582	7675	
May	8065		381	7636	48
June	7589		569	7020	
Total—6 mos.	49922	1965	2114	45747	96

5671 **DEFENSE EXHIBIT NO. 889.**

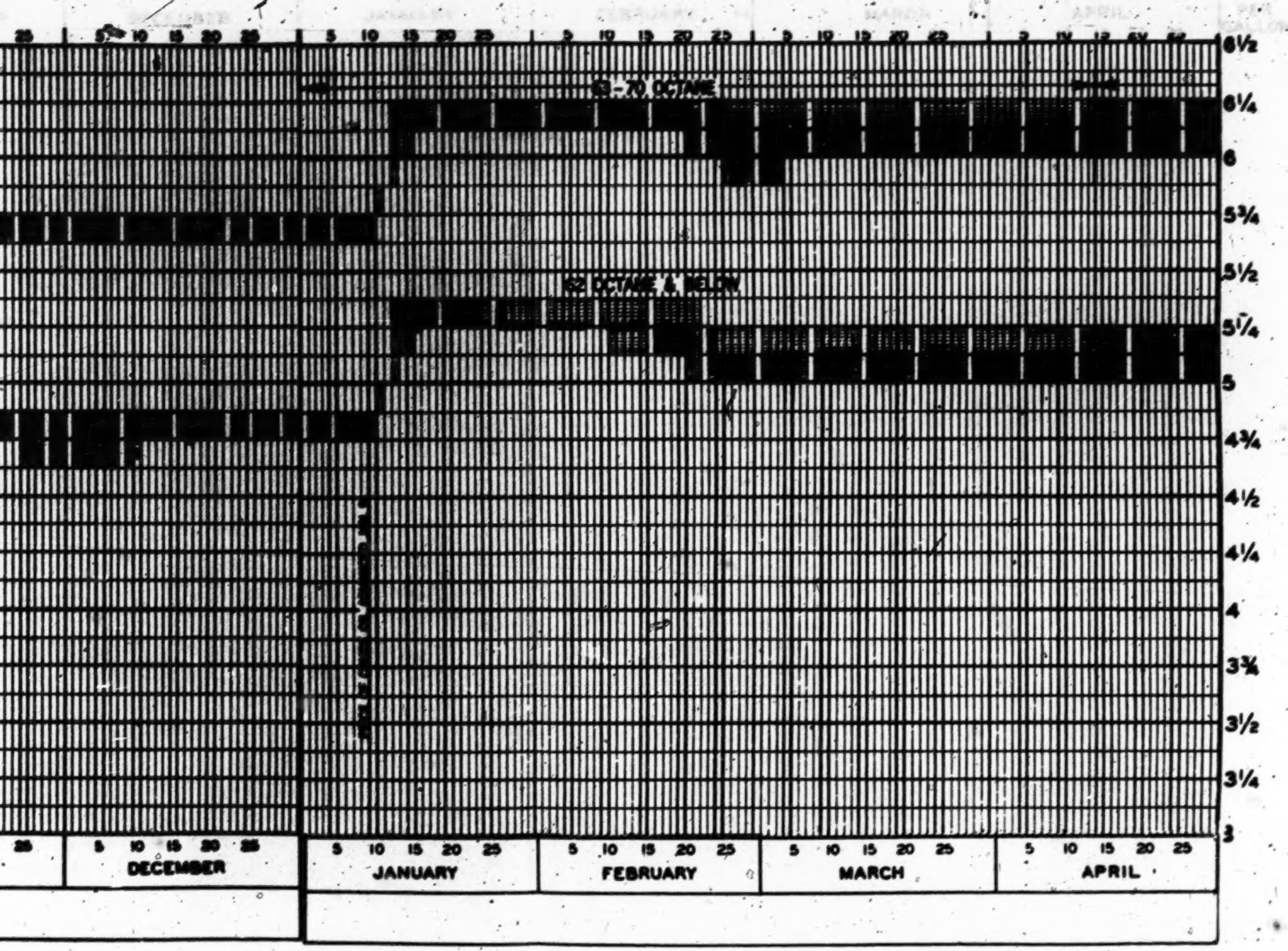


• THIRD GRADE – F. O. B. GROUP 3



EAR 1935

GRADE – F.O.B. GROUP 3


63-70 OCTANE
62 OCTANE & BELOW
6½
6¼
6
5¾
5½
5¼
5
4¾
4½
4¼
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25
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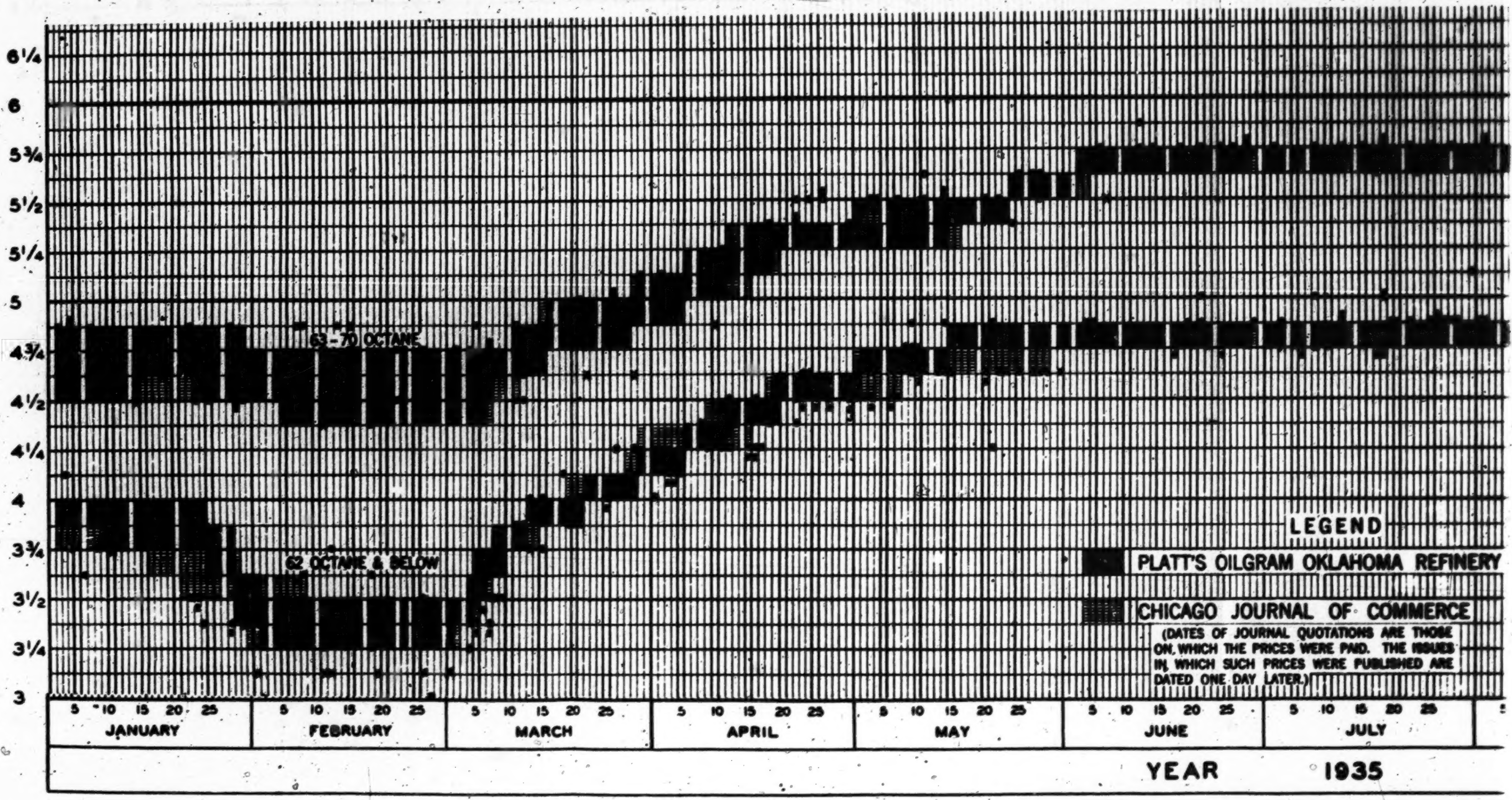
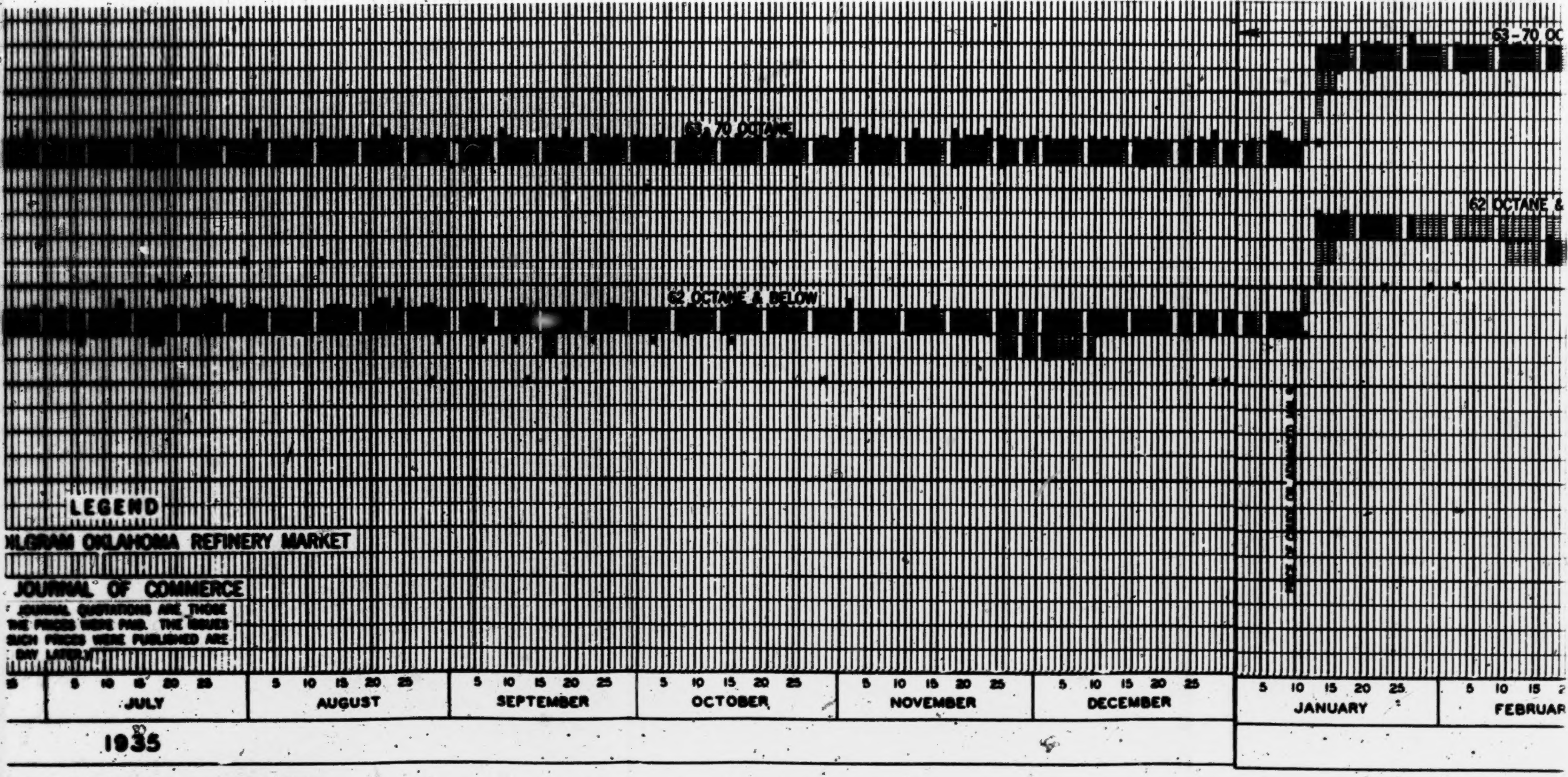
DECEMBER
JANUARY
FEBRUARY
MARCH
APRIL

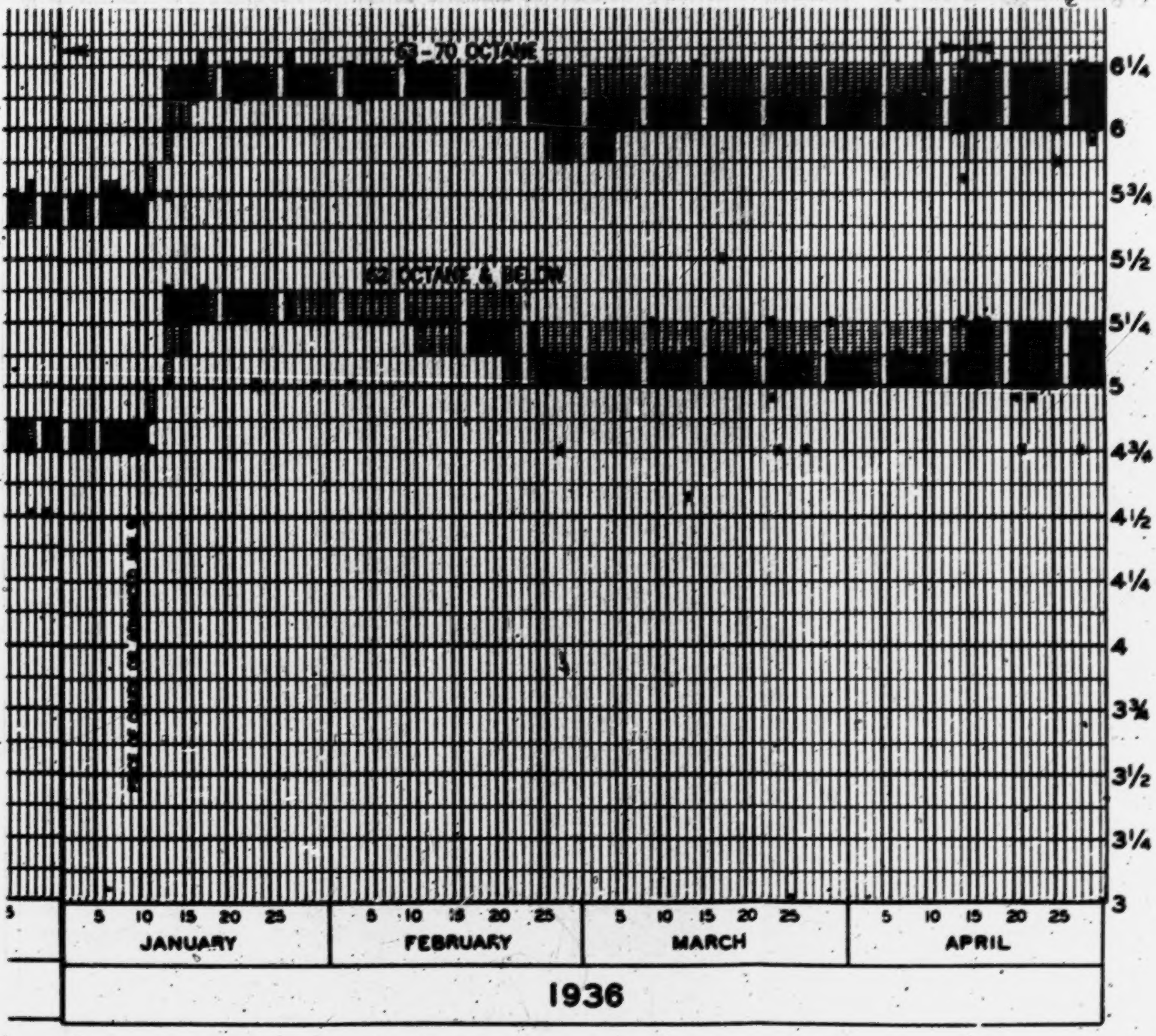


• REGULAR GRADE SALES TO JOBB
x " " " CONS
• THIRD " " " JOBB
x " " " CONS



DE SALES TO JOBBERS
" " CONSUMERS
" " JOBBERS
" " CONSUMERS

C


63-70 OCTANE
62 OCTANE & BELOW
6¼
6
5¾
5½
5¼
5
4¾
4½
4¼
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3¾
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APRIL
1936

5675 DEFENSE EXHIBIT NO. 891 For Identification

(Identical with Government Exhibit No. 891.)

5676 GOVERNMENT EXHIBIT NO. 891.

Letterhead of Administrator of the Petroleum Industry,
Washington

July 20, 1934

Mr. C. E. Arnott, Chairman,
Marketing Committee,
Planning and Coordination Committee,
Investment Building,
Washington, D. C.

My dear Mr. Arnott:

It has been brought to my attention that the market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the Code, and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve.

Under Article VII, Section 3 of the Code it is the duty of the Planning and Coordination Committee to cooperate

with the Administration as a planning and fair practice agency for the industry. I am, therefore, requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which
5677 we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your Committee must, of course, be consistent with the requirements of Clause 2 of Sub-section (a) of Section III of the Act, and if in any situation it should appear that this Section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

I trust that I can count on your cooperation.

Sincerely yours,
Harold L. Ickes
Administrator of the Petroleum Industry.

5678 **DEFENSE EXHIBIT NO. 892 For Identification.**

5679 **Planning And Coordination Committee For The**
Petroleum Industry
Washington, D. C.

July 31, 1934.

Memorandum For Mr. Arnott:

Referring to the letter written to you by the Administrator of the Petroleum Industry, dated July 20, 1934, I beg to say that said letter is full and complete authority for the taking of necessary steps to restore markets in any locality to their normal condition. I have also considered this letter in connection with the Anti-Trust laws and my opinion thereon is as follows:

Paragraph (a) of Section 4 of Title 1 of the National Industrial Recovery Act provides that the President is authorized to approve voluntary agreements between persons engaged in any industry, if in his judgment (a) such agreements will aid in effectuating the policy of the National Industrial Recovery Act; (b) are not designed to promote monopolies or to eliminate or suppress small enterprises and will not operate to discriminate against small enterprises.

Section 5 of Title 1 of the Act provides that while Title 1 is in effect and for sixty days thereafter any agreement approved by the President and any action complying with the provisions of such agreement shall be exempt from the provisions of the Anti-Trust laws of the United States.

5680 From these provisions of the state, it is evident that if the President should approve any agreement for the stabilization of prices that such approval by the President would be a complete protection against any charge that the Anti-Trust laws had been violated by such agreement.

Under Paragraph (b) of Section 2 of Title 1 of the Act the President was authorized to delegate any of his functions and powers under Title 1 to such agents as he might designate. In accordance with this Section, the President did delegate his powers, in so far as the Petroleum Industry is concerned, to Mr. Ickes. Therefore, any action of Mr. Ickes with regard to such agreements within the Petroleum Industry is in effect the act of the President. So that, if an agreement to restore prices were made in any locality and such agreement should be approved by Mr. Ickes, such approval would be a complete protection to all persons participating in the agreement from any prosecution under the Anti-Trust Laws. However, the letter which Mr. Ickes has written is not precisely an approval of any agreement. It is a direction to you, as Chairman of the Marketing

Committee, to take action to restore markets to their normal conditions in areas where such markets are depressed. You are also authorized to designate committees for each locality where price wars have developed and "in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar." You and your committees appointed by you are thus authorized to stabilize the price level "in a cooperative manner".

5681 The word "cooperative" means to operate jointly or together, so there can be no question that this is authority for making, in any locality where prices are depressed below normal, an agreement which will restore such prices to a normal level. The only condition attached to this is found in the last sentence of the last paragraph of the letter, which provides that any action of any committee appointed by you must be consistent with Clause 2 of Sub-section (a) of Section 3 of Title 1 of the National Industrial Recovery Act. The clause referred to refers particularly to codes of fair competition, and it provides that the President may approve codes when he finds (a) that they are not designed to promote monopolies; (b) that they are not designed to eliminate or oppress small enterprises; (c) that they will not operate to discriminate against small enterprises; (d) that they will tend to effectuate the policy of Title I of the Act; (2) that they shall not permit monopolies or monopolistic practices.

It is clear that no committee appointed by you would even consider an agreement which would have any of the objectionable features provided in this Section. On the contrary, the duty of the committee is to restore prices to a normal level. Restoring prices to a normal level must necessarily aid small enterprises rather than oppress them. It must necessarily have a tendency to check monopolies rather than to promote or permit monopolies.

My conclusion is that this letter from the Petroleum
Administrator is for all practical purposes a complete
5682 protection to you and your committees to engage in
all reasonable activities to restore prices to normal
levels.

I further conclude that the agent of the President having solicited the taking of action to stabilize prices, that it is unthinkable that there could ever be any persecution or criticism by the Government for doing the very thing which the President's agent had asked you to do.

Respectfully submitted,
Louis Titus

5683 DEFENSE EXHIBIT NO. 893.

(Certified by the Department of the Interior to be copy of document on file in that Department.)

Telegram

Minneapolis, Minn.
Jan. 28

Charles Fahy
Petroleum Administrator Board Wash. D. C.

In my opinion the industry has a wonderful opportunity within its grasp at this time for stability if they will only accept it stop We have really done a good job in stabilizing retail markets in Standard of Indiana territory but this condition is not going to continue unless a supreme effort is made to get the tank car price of gasoline up to a comparable basis with the crude structure stop It seems inconceivable to me that we cannot accomplish this objective if the proper efforts were made stop. Mr. Arnott as chief stabilizer appointed a committee for this purpose about three weeks ago but because of a recent court decision in East Texas we have never met to discuss the situation stop We are either supine or incompetent because every time something comes up about East Texas we crawl to cover instead of endeavoring to map out a definite plan of constructiveness stop I do not know what you can do about it because if we cannot help ourselves I am sure no one else can am wiring you merely to get it off my chest stop What I want to bring out is the necessity for action in getting tank car prices up before it is too late stop I understand that unless some action is taken to get tank car prices up shortly an organized effort will be made to get them down as low as possible so that a general breakdown will occur in service station prices this of course will mean chaos this for your information stop Regards

I. A. O'Shaughnessy

5684 DEFENSE EXHIBIT NO. 894.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated February 1, 1935, signed by Charles Fahy, and sent to I. A. O'Shaughnessy.)

Letterhead of Department of the Interior, Petroleum Administrative Board, Washington, D. C.

February 1, 1935

Mr. I. A. O'Shaughnessy
c/o Globe Oil & Refining Co.,
Minneapolis, Minnesota

My dear Mr. O'Shaughnessy:

I received your telegram of January 28 and was glad to hear from you again. I am sure you know that the tank car situation in relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block. I may say, however, that I see nothing in the recent Supreme Court decision which in any way affects endeavors to reach the solution. We are hoping soon for a report from the Special Committee which the Secretary appointed to look into this kind of thing and make recommendations. I really believe we are going to have some definite suggestions from them which will carry weight. In the meantime, we are considering your suggestions and would like to have any further suggestions you can give us.

Yours sincerely,
Charles Fahy
Chairman.

CF:CVH:BWB

5685

DEFENSE EXHIBIT NO. 895.

5686

Stipulation

It is stipulated that L. B. Simmons, President of Rock Island Refining Company of Duncan, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Rock Island Refining Company, by months, from January 1, 1934, to December 31, 1936, inclusive, as reflected by the books and records of Rock Island Refining Company, are as set forth in Exhibit "A" hereto annexed; and

It is stipulated that the crude capacity of the Rock Island Refinery for the years 1934-1936, inclusive, was 5,333 barrels daily.

5687

Exhibit A.

Rock Island Refining Company

1934	Gasoline Production	(In Gallons)	Gasoline Sales
January	2,976,549		3,479,859
February	2,229,204		2,117,692
March	2,509,431		2,848,116
April	2,890,183		3,702,482
May	3,725,707		3,909,099
June	3,311,813		3,874,858
July	3,704,507		3,990,239
August	3,014,513		3,705,883
September	2,861,133		3,285,549
October	3,437,760		3,880,324
November	2,776,762		3,322,239
December	2,939,183		2,769,260
Total 1934	36,367,745		40,885,600
1935			
January	2,493,326		2,977,855
February	2,864,724		3,746,003
March	3,289,364		4,255,583
April	2,880,905		4,111,955
May	2,700,093		3,455,596
June	3,386,860		2,973,056
July	3,328,459		3,645,403
August	3,170,097		4,164,663
September	3,243,891		3,525,406
October	3,169,325		3,826,278
November	3,122,123		3,399,770
December	3,239,933		2,858,603
Total 1935	36,889,100		42,940,171
1936			
January	2,372,211		3,178,831
February	2,575,010		2,507,852
March	2,818,597		3,501,552
April	3,079,882		3,440,346
May	3,025,586		3,335,319
June	2,948,677		3,902,956
July	3,173,797		4,034,442
August	3,292,719		4,518,258
September	3,374,525		4,000,882
October	3,314,469		3,842,946
November	2,931,892		3,317,504
December	3,085,943		3,631,642
Total 1936	35,993,308		43,212,530

5688

DEFENSE EXHIBIT NO. 896.

5689

Sunray Oil Company
Tulsa, Oklahoma

1934	Gasoline Production	(In Gallons)	Gasoline Sales
January	784,153		1,009,089
February	765,410		733,437
March	758,971		926,450
April	819,843		840,014
May	799,131		776,425
June	435,344		436,391
July	683,422		686,719
August	1,145,774		917,370
September	1,552,362		1,272,067
October	970,347		1,394,651
November	1,409,214		1,486,987
December	1,471,750		1,307,590
Total 1934	11,595,721		11,787,190
1935			
January	1,442,716		1,472,438
February	1,185,969		1,387,566
March	1,589,032		1,502,879
April	1,443,060		1,406,781
May	1,580,887		1,624,328
June	1,755,798		1,704,023
July	1,922,739		1,912,133
August	2,015,592		2,010,875
September	1,920,443		1,843,101
October	2,003,025		2,088,454
November	1,780,016		1,773,569
December	2,040,436		1,774,397
Total 1935	20,679,713		20,500,544
1936			
January	1,814,476		1,478,486
February	1,641,522		1,295,136
March	2,233,520		2,203,410
April	1,955,068		2,357,322
May	1,949,583		2,192,563
June	2,653,103		2,398,399
July	2,156,411		2,444,630
August	2,002,987		2,172,443
September	1,948,617		2,047,055
October	2,164,037		2,170,646
November	2,173,914		1,893,453
December	2,159,458		2,368,732
Total 1936	[illegible],852,696		25,022,275

5690
DEFENSE EXHIBIT NO. 898.

5691
El Dorado Refining Company
El Dorado, Kansas

1934	Gasoline Production	(In Barrels)	Gasoline Sales
January	55,231		82,268
February	66,570		57,360
March	51,696		68,509
April	70,128		71,355
May	79,192		80,395
June	78,365		92,398
July	83,429		90,363
August	78,811		80,755
September	84,627		79,492
October	80,256		85,231
November	69,302		69,061
December	62,247		57,655
Total 1934	859,854		914,842
1935			
January	72,899		55,055
February	48,801		53,361
March	59,970		69,362
April	61,625		69,955
May	89,777		68,962
June	76,310		90,221
July	99,512		100,844
August	89,284		87,325
September	81,999		84,688
October	82,533		75,649
November	78,200		62,085
December	62,122		58,528
Total 1935	903,032		876,035
1936			
January	76,557		62,846
February	51,078		42,719
March	68,150		75,429
April	78,075		83,326
May	64,787		94,070
June	99,165		104,759
July	103,450		91,267
August	81,895		85,103
September	93,150		89,672
October	74,469		83,585
November	75,952		69,760
December	71,106		66,134
Total 1936	937,834		948,670

5692

DEFENSE EXHIBIT NO. 899.

Article from Tulsa Daily World
for May 28, 1935.

Oil Industry Upset as NRA is Killed

Recovery Act Ruled Invalid, Administration Bows to High Court With Appeal to Nation

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All Measures for Compulsory Enforcement Are Abandoned

Supreme Court's Opinion Emphatic

President Given Illegal Powers, Congress Overstepped Rights

Labor is Disappointed

Strike Threat Is Immediate Reaction; Richberg Moves to Avert Strife

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Washington, May 27 (AP) The administration bowed tonight before a supreme court ruling that reduced the NRA to a scrap of paper, announcing that all measures for compulsory enforcement of codes had been abandoned, but pleading for a continued code observance.

Apparently fearful of a return to unbridled competitive conditions, following a unanimous verdict of unconstitutionality from the high court, Donald Richberg, NRA head, discussed future steps with President Roosevelt and decided upon the two actions.

5693 On two specific counts the court found the sections of the national industrial recovery act unconstitutional. It held that the congress had illegally delegated its own powers to the president in authorizing him to approve and promulgate the codes.

It ruled that congress may not reach into a community and tell a poultry dealer whose business only indirectly affects interstate commerce how much he shall pay his help and what the latter's working hours shall be.

Pleads for Codes.

In his statement, issued after the White House conference, Richberg said:

"It would be most harmful to the general welfare if unfair competitive practices, universally recognized as such, were to be revived, and if the fair standards affecting labor were to be disregarded.

"Therefore, pending the determination of this question (of what shall be done) I hope that all employers heretofore operating under approved codes and all their employes will co-operate in maintaining those standards of fair competition in commercial and labor relations which have been written into the codes with practically universal sanction, and which represent a united effort to eliminate dishonest, fraudulent trade practices and unfair competition in over-working and under-paying labor.

Bow to High Court.

"The decision," he said, "makes all codes of fair competition unenforceable as a matter of law; and in deference to that ruling all methods of compulsory enforcement of the codes will be immediately suspended."

(Comments on the general effect of the decision are not printed.)

5694

DEFENSE EXHIBIT NO. 900.

Article from Tulsa Daily World for May 29, 1935.

Scrapping of NRA Followed by Price Slashing, Threat of Nationwide Coal Strike

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Oil Legislation Is Now Uncertain as All Sides Ponder

Thomas' Measure Wavers as Result

Legal Opinion Forecasts Gloomy End for Oklahoman's Efforts

Plea to Industry

Fahy Cites All Advantages Gained Since Oil Code Was Introduced

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By Bascom N. Timmons
World's Washington Correspondent.

Washington, May 28.—Doubt that any legislation designed to extend federal control to crude petroleum could be sustained in the courts in view of the decision upon the national recovery act by the United States supreme court was expressed today as the oil industry passed its first day in nearly two years free from any federal government regulation.

Though Charles Fahy, chairman of the petroleum administrative board, in the absence of Oil Administrator Harold Ickes, insisted that the decision would not affect the pending Thomas control bill, legal opinion generally was that the decision precludes federal control 5695 of crude production. This opinion was privately held by many oil men, who did not wish to be quoted pending a further study of the opinion.

'For' and 'Against.'

Senator Tom Connally of Texas, author of the hot oil bill, but cool to efforts of Secretary Ickes to secure enactment of the Thomas measure, flatly declared:

"The decision of the supreme court in the NRA case is sweeping and all-bracing. The decision of the court is also applicable to federal regulation of oil. In my view the pending Thomas oil bill comes within the sweeping ban of the court's opinion. Under the unanimous holding it is clear that the federal government has no power under the commerce clause to regulate the production of oil, which is an intrastate operation."

Fahy, who was formerly assistant solicitor of the interior department and aided in drafting the Thomas bill, said: "I don't think that the decision can be or does apply to the Thomas bill."

Production Regulation Lifted.

Fahy issued a plea to the industry as a whole to voluntary subscribe to the provisions of the oil code for the time being, at least. He said that the industry has registered large gains during the operation of the code and "as much of the gain as possible should be maintained by voluntary action until there is new legislation."

Suspension of the NRA codes by President Roosevelt because of the decision not only removed the regular NRA labor and trade practice agreements from the oil industry, but lifted production regulations as well.

What the effect upon the crude petroleum end of the industry will be could not be determined as yet. When the code was placed into effect nearly two years ago, crude oil was selling for as low as 27 cents a barrel. It soon rose to one dollar, and has remained there during the operation of the code.

5696 State Laws.

The only legal control over production today is that of state laws of Texas, Oklahoma and Kansas. In California there exists a voluntary proration agreement and similar agreement is working in Louisiana.

The Connally act, however, prohibiting the interstate shipment from the three states which have statutory proration of crude petroleum and its products produced in excess of state orders, continuous operative since it was not included, when re-enacted, in the national recovery act.

Orders to immediately stop any enforcement of the provisions of the oil code under the charge of the planning and co-ordination committee for the petroleum industry were sent to regional committees this morning by J. D. Collett, of Fort Worth, chairman of the planning committee.

Collett informed the committee to stop all operations and activities at once, pending further word from here. He told the chairman, however, not to disband the committees and other personnel, but to keep them intact for the time being.

PAB in Halt.

Fahy said that the PAB, the petroleum labor policy board, and all other activities of the oil administration under the code will stop at once. The administration will remain intact until June 16, but will then be disbanded. The federal tender board in east Texas will continue, since it is operating under the Connally hot oil act.

Meanwhile, the drive for special legislation giving the federal government control over the production end of the oil industry was renewed. Seizing upon the opportunity, sponsors of the proposed legislation at once declared that action is imperative if the price of crude oil is to be kept up.

A meeting of oil associations which helped draft the original code, called last week by Wirt Franklin, president of the Independent Petroleum Association of America, before it had been learned that the NRA would be
5697 held unconstitutional, turned its attention from NRA
and other legislation scheduled to be discussed, and began the drive for federal control.

Most Important Move.

Approximately 50 oil men, for the most part representatives of independents and smaller companies were present when the meeting started. Absent were officials of the major companies and almost all who have opposed the Thomas bill or similar legislation.

Russell Brown, secretary of the association, who took charge in the absence of Franklin, who is ill, frankly told the group that enactment of the production control measure is now the most important move facing the oil industry.

He was joined by Representative Dempsey, Democrat, of New Mexico, who spoke briefly in support of control legislation. Dempsey declared that the price of crude will unquestionably drop unless legislation is promptly enacted. He assured those present that he would aid in every way possible to push necessary measures through congress.

"I am confident that congress has the authority to control the oil industry, and should exert it," he declared. "If we are without power to regulate the oil industry, we cannot control any industry."

5698 DEFENSE EXHIBIT NO. 901.

Article from The Tulsa Tribune for May 31, 1935.

Ruling Limits Federal Power President Says

One Clause of Constitution Is Taken Back to Horse and Buggy Days

Is a Non-Partisan Issue

People Must Decide if They Want to Relegate All Control to States

Washington, May 31.—(UP)—The NRA decision by the supreme court deprived the national government of control over national social and economic conditions and relegated the interstate commerce clause of the constitution back to the horse and buggy days, President Roosevelt said today.

Speaking steadily for an hour to 200 newspapermen, the president said the decision was the most important handed down by the court since the famous Dred Scott decision of pre-Civil war days.

Of the philosophy expressed in the court's ruling, the president expressed a belief it would outlaw the securities and exchange commission, the AAA as well as other legislation designed to keep apace with the demands of the times.

The implication of the decision, if carried to the logical conclusion, will strip the United States government of many of its powers, the president said.

5699 **People Must Decide.**

Mr. Roosevelt, in measured words, said the nation was facing a very great national and non-partisan issue, and the people must decide within the next five or 10 years if they want to relegate to the 48 states all control of state and national economic and social conditions regardless of the effect of the rulings of one state against another, or restore to the federal government the powers which are vested in national governments of every other nation—the right to legislate or administer laws that have bearing on or control over national economic problems or national social problems.

This issue, Mr. Roosevelt warned, must be decided.

(Comments on the general implications of the court's decision are not printed.)

The president turned to the question of voluntary code adherence. He expressed hope that all industry would live up to them, but pointed out that there was danger of the chisler driving the rest to the point where they would have to cut wages and lengthen hours to survive.

(Comments by Mr. Roosevelt on the general implications of the decision and on Federal control of alcohol, securities and crops are not printed.)

Further Reports Waited.

Further reports from strategic points throughout the country, together with analyses of the situation from code authorities which have been in direct contact with American business and industry through the period of uncertainty which followed Monday's decision, were desired before any plan for carrying on under the Blue Eagle could be definitely drawn.

The NRA administration board conferred for two hours Thursday with the president. Later Donald R. Richberg, chairman discussed the situation in general terms.
5700 The board, he said, had been "taking part in the thinking", being done by the administration.

Several courses could be taken to continue some form of government regulation and co-ordination of business, he said.

He believed that new legislation could be written, containing definite standards of competition and avoiding the delegation of power so vigorously criticized by the supreme court.

It appeared certain the administration was willing, for the time being at least, to relinquish any efforts to regulate intrastate industry or business.

Richberg revealed NRA has been moving in that direction for months, with the intention eventually to eliminate any control over business or industry conducted plainly within the borders of any state.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 346

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 31, 1939
CERTIORARI GRANTED OCTOBER 16, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6721

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

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Defendants-Appellants.

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Opinion and order of July 19, 1938 on motions after verdict . . . . 2488 to 2500

1. Dismissing indictment as to Dan Moran, Henry M. Dawes, Edward G. Seubert, Allan Jackson, Bryan S. Reid, Frank Phillips, W. G. Skelly, Jacob France, Charles L. Jones, A. V. Bourque, and The Globe Oil and Refining Company (Kansas) 2490
2. Granting new trials as to Edward J. Bullock, A. G. Maguire, Harry D. Frueauff, H. E. Brandli, O. J. Tuttle, Harry J. Kennedy, C. B. Watson, J. W. Carnes, Edward L. Shea, Noel Robinson, J. W. Warner, E. B. Reeser, I. A. O'Shaughnessy, A. M. Hughes, Alexander Fraser, Cities Service Company, Barnsdall Refining Corporation, and Standard Oil Company (Indiana) 2491
3. Sustaining indictment as to Charles E. Arnott, P. E. Lakin, H. T. Ashton, Robert W. McDowell, R. H. McElroy, Jr., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Illinois), and The Globe Oil and Refining Company (Oklahoma) 2500

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Order of Nov. 7, 1938, that reference may be made in assignment of errors to page numbers of evidence in lieu of quoting evidence at length........ 2593
Order of Dec. 1, 1938, that certain alleged errors may be included in one assignment of error, etc... 2594
Stipulation that references in record be changed to refer to printed page numbers.................... 2594

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DESCRIPTION OF EXHIBITS.

Exhibit No.		Rec'd in evidence at page	Reproduced at page
*G 1	Stipulation, Oct. 3, 1937, showing status of all defendants	174	2595
*D 4	(for identification) Letter, May 8, 1934, D. W. Gray, Waggoner Refining Company, to brokers and marketers (Referred to)	221	1818 2601
D 6	Order, Oct. 18, 1934, of Harold L. Ickes, establishing Federal Tender Board, with Tender Form No. 1 attached	225	2602
D 7	Order, Oct. 22, 1934, by T. A. Walters, Acting Secretary of the Interior, appointing members of Federal Tender Board	225	2612
G 11	Letter, Jan. 12, 1935, Neil Buckley to H. E. Brandli	560 907	2612
G 12	Telegram, Jan. 16, 1935, Neil Buckley to H. E. Brandli	561 907	561
G 13	Letter, Jan. 26, 1935, Neil Buckley to H. E. Brandli	563 907	2613
G 14	Letter, Jan. 30, 1935, Neil Buckley to to H. E. Brandli	567 907	2615
G 15	Letter, Feb. 2, 1935, Neil Buckley to H. E. Brandli	569 907	2617
G 16	Letter, Feb. 2, 1935, Neil Buckley to H. E. Brandli	570 907	2617
G 17	Telegram, March 14, 1935, C. E. Arnott to H. D. Frueauff	582 907	2619
G 18	Letter, April 8, 1935, Neil Buckley to H. E. Brandli	602 907	2620

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* "G" is an abbreviation for "Government's Exhibit"; "D" is an abbreviation for "Defendants' Exhibit."

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G 19	Letter, April 20, 1935, Neil Buckley to H. E. Brandli	604 907	2621
G 20	Letter, April 27, 1935, Neil Buckley to H. E. Brandli	605 907	2622
G 21	Letter, May 17, 1935, Neil Buckley to H. E. Brandli	609 907	2624
G 22	Letter, May 17, 1935, Neil Buckley to H. E. Brandli	609 907	2624
G 23	Letter, May 25, 1935, Neil Buckley to H. E. Brandli	610 907	2625
G 24	Letter, June 17, 1935, Neil Buckley to H. E. Brandli	1876	2625
G 25	Telegram, July 8, 1935, Neil Buckley to H. E. Brandli	610 907	2627
G 26	Telegram, July 10, 1935, Neil Buckley to H. E. Brandli	610 907	2627
G 27	Letter, July 24, 1935, Neil Buckley to H. E. Brandli	1876	2627
G 29	Letter, September 14, 1935, Neil Buckley to H. E. Brandli	611 907	2629
G 30	Letter, September 28, 1935, Neil Buckley to H. E. Brandli	611 907	2631
G 31	Letter, Oct. 12, 1935, Neil Buckley to H. E. Brandli	611 907	2632
G 32	Letter, Oct. 19, 1935, Neil Buckley to H. E. Brandli	611 907	2634
G 35	Telegram, Jan. 29, 1936, C. E. Arnott to Harry Frueauff	615 907	2634
G 36	Telegram, Feb. 1, 1935, H. E. Brandli to Neil Buckley	569 907	2635
G 39	Letter, April 16, 1935, LaPren Refining Company to Neil Buckley	603 907	2635
G 40	Letter, April 18, 1935, Neil Buckley to A. S. Robertson, LaPren Refining Company	603 907	2636

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G 42	Telegram, Dec. 2, 1935, Neil Buckley to H. E. Brandli................	611 907	2637
G 47	Telegram, Jan. 6, 1936, Neil Buckley to H. E. Brandli................	612 907	2637
G 52	Letter, March 7, 1936, Neil Buckley to H. E. Brandli....................	1876	2638
G 54	Letter, May 6, 1935, Neil Buckley to E. P. Engelke, listing March 1935 telephone calls	614 907	2638
G 55	Letter, May 7, 1935, Neil Buckley to E. P. Engelke, attaching Government Exhibit 56.................	614 907	2639
G 56	Long distance telephone charges, April 1935, by Neil Buckley.......	614 907	2640
G 57	Letter, June 12, 1935, Neil Buckley to R. N. Cline, listing telephone calls for May 1935...............	614 907	2641
G 58	Letter, July 9, 1935, Neil Buckley to R. N. Cline, listing telephone calls for June 1935.................	614 907	2642
G 59	Letter, Aug. 14, 1935, Neil Buckley to R. N. Cline, listing telephone calls for July 1935..................	614 907	2643
G 60	Letter, Sept. 10, 1935, Neil Buckley to R. N. Cline, listing telephone calls for August 1935................	614 907	2644
G 61	Letter, Oct. 11, 1935, Neil Buckley to R. N. Cline, listing telephone calls for September 1935.............	614 907	2645
G 62	Letter, Nov. 7, 1935, Neil Buckley to R. N. Cline, listing telephone calls for October 1935...............	614 907	2646
G 63	Letter, Dec. 10, 1935, Neil Buckley to R. N. Cline, listing telephone calls for November 1935.............	614 907	2647

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G 64	Letter, Jan. 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for December 1935	614 907	2648
G 65	Letter, Feb. 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for January 1936	614 907	2649
G 66	Letter, March 9, 1936, Neil Buckley to R. N. Cline, listing telephone calls for February 1936	614 907	2650
G 67	Letter, April 10, 1936, Neil Buckley to R. N. Cline, listing telephone calls for March 1936	614 907	2651
G 68	Letter, May 18, 1936, Neil Buckley to R. N. Cline, listing telephone calls for April 1936	614 907	2652
D 69	Transcript of District Allocators' Meeting, March 13, 1935	1720	2653
G 71	Weekly Letter, Feb. 8, 1935, W. P. Jacobi to A. G. Maguire	361	2686
G 72	Weekly Letter, Feb. 15, 1935, W. P. Jacobi to A. G. Maguire	362	2687
G 73	Weekly Letter, June 7, 1935, W. P. Jacobi to A. G. Maguire	458 907	2688
G 75	Weekly Letter, Sept. 20, 1935, W. P. Jacobi to A. G. Maguire	460 907	2689
G 76	Weekly Letter, Dec. 21, 1935, W. P. Jacobi to A. G. Maguire	461 907	2690
G 80	Letter, Aug. 10, 1935, Dale W. Moore to Charles E. Arnott	866	2691
G 83	Letter, Aug. 16, 1935, C. L. Jones to D. W. Moore	866	2693
G 84	Letter, Aug. 16, 1935, C. L. Jones to W. P. Jacobi, enclosing Government Exhibits 80 and 83	866	2693

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G 86	Letter, Aug. 27, 1935, R. H. Romer, Socony-Vacuum Oil Company, Inc., to W. P. Jacobi	471 907	2694
G 87	Letter, Sept. 3, 1935, W. P. Jacobi to J. H. Romer	471 907	2695
G 88	Letter, Sept. 16, 1935, J. H. Romer to W. P. Jacobi	471 907	2696
G 93	Letter, Dec. 27, 1935, W. T. Atkins to J. F. Nagle	1876	2697
G 94	Letter, Dec. 24, 1935, J. F. Nagle to W. T. Atkins	506 907	2697
G 95	Letter, Jan. 9, 1936, W. T. Atkins to Emby Kaye	506	2699
G 96	Letter, Jan. 9, 1936, W. T. Atkins to J. F. Nagle	506 907	2699
G 97	Letter, Jan. 22, 1936, J. F. Nagle to W. T. Atkins	1876	2700
G 98	Letter, Jan. 21, 1936, A. G. Pendergrass to Clara Gartman	506 907	2701
G 99	Letter, Nov. 5, 1935, L. H. Poland to J. F. Nagle	506 907	2701
G 100	Letter, Nov. 20, 1935, J. F. Nagle to L. H. Poland	506 907	2702
G 101	Letter, Jan. 8, 1936, J. F. Nagle to W. T. Atkins	506 907	2702
G 102	Letter, March 18, 1935, O. J. Tuttle to J. F. Nagle	506 907	2703
G 103	Letter, Oct. 22, 1935, J. F. Nagle to A. V. Bourque	506 907	2704
G 104	Letter, Oct. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2705
G 105	Letter, Sept. 20, 1935, Clara Gartman to A. V. Bourque	506 907	2706

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G 106	Letter, Sept. 11, 1935, Clara Gartman to A. V. Bourque	506 907	2707
G 107	Letter, Sept. 5, 1935, Clara Gartman to A. V. Bourque	506 907	2708
G 108	Letter, June 21, 1935, Clara Gartman to A. V. Bourque	506 907	2709
G 109	Letter, July 27, 1935, Clara Gartman to A. V. Bourque	506 907	2710
G 110	Letter, July 13, 1935, Clara Gartman to A. V. Bourque	506 907	2711
G 111	Letter, June 5, 1935, Clara Gartman to A. V. Bourque	506 907	2712
G 112	Letter, May 17, 1935, Clara Gartman to A. V. Bourque	506 907	2713
G 113	Letter, May 6, 1935, Clara Gartman to A. V. Bourque	506 907	2713
G 114	Letter, April 23, 1935, Clara Gartman to A. V. Bourque	506 907	2714
G 115	Letter, April 9, 1935, Clara Gartman to A. V. Bourque	506 907	2714
G 116	Letter, April 2, 1935, Clara Gartman to A. V. Bourque	506 907	2715
G 117	Letter, March 29, 1935, Clara Gartman to A. V. Bourque	506 907	2715
G 118	Letter, March 19, 1935, Clara Gartman to A. V. Bourque	506 907	2716
G 120	Letter, May 7, 1935, J. F. Nagle to W. T. Atkins	506 907	2716
G 121	Letter, Sept. 11, 1935, J. F. Nagle to A. H. Pendergrass	1876	2719
G 122	Letter, Aug. 27, 1935, J. F. Nagle to L. H. Poland	506 907	2720
G 123	Letter, Nov. 15, 1935, Clara Gartman to L. H. Poland	506 907	2721

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G 124	Letter, Oct. 17, 1935, J. F. Nagle to L. H. Poland	506 907	2722
G 125	Letter, Dec. 20, 1935, L. H. Poland to E. F. Underwood	506 907	2723
G 126	Letter, Dec. 21, 1935, J. F. Nagle to L. H. Poland	506 907	2723
G 127	Letter, Dec. 23, 1935, W. T. Atkins to L. H. Poland	506 907	2724
G 128	Letter, December 23, 1935, W. T. Atkins to J. F. Nagle	1876	2724
G 135	Telegram, Dec. 7, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 136	Telegram, Nov. 23, 1935, C. M. Boggs to J. J. Taxman	1876	2725
G 137	Telegram, Feb. 23, 1935, C. E. Arnott to J. J. Taxman	1703	2725
G 148	Letter, Oct. 8, 1935, C. M. Boggs to Dan Danciger	901	2726
G 168	Telegram, Jan. 4, 1935, A. P. Ruether to Crude Oil Department, Tulsa, Petroleum Corporation	724	2726
G 169	Weekly memorandum, Jan. 11, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2727
G-170	Weekly memorandum, Jan. 15, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	824	2728
G 171	Telegram, March 18, 1935, McNair to A. P. Ruether	724	2730
G 173	Telegram, February 2, 1935, R. W. McDowell to P. E. Lakin	825 907	2731
G 174	Telegram, Feb. 13, 1935, G. L. Shoemaker to A. P. Ruether	825	2732

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G 176	Weekly memorandum, March 8, 1935, A. P. Ruether to P. E. Lakin and R. P. Bascom	826 907	2732
G 177	Weekly memorandum, Feb. 6, 1935, A. P. Ruether to Fraser, Bascom, van Eeghen and Lakin	832 907	2733
G 178	Weekly memorandum, March 15, 1935 A. P. Ruether to P. E. Lakin	827 907	2734
G 179	Weekly memorandum, March 20, 1935, A. P. Ruether to R. P. Bascom	827 907	2735
G 180	Telegram, March 20, 1935, E. A. Bacon to A. P. Ruether	827 907	2735
G 181	List of refiners from whom "buying group" are purchasing, compiled April 4, 1935, by Harry Jacobs	827 907	2736
G 182	Weekly price review, March 13, 1935, L. van Eeghen to A. Fraser, prepared by Harry Jacobs	829 907	2737
G 183	Weekly price review, March 20, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	829 907	2739
G 184	Weekly price review, April 3, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2742
G 185	Weekly price review, April 10, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2746
G 186	Weekly price review, April 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2751

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G-187	Weekly price review, April 24, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2754
G 188	Weekly price review, May 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2757
G 189	Weekly price review, May 17, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	830	2760
G 190	Weekly price review, June 7, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2764
G 191	Weekly price review, June 14, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2768
G 192	Weekly price review, June 21, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2771
G 193	Weekly price review, Aug. 9, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1889	2774
G 194	Weekly price review, August 23, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2777
G 197	Weekly price review, Sept. 25, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2780
G 198	Weekly price review, Oct. 2, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2782
G 199	Weekly price review, Oct. 9, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2785

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G 201	Weekly price review, Oct. 23, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2792
G 202	Weekly price review, Oct. 30, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2795
G 203	Weekly price review, Nov. 20, 1935, P. E. Lakin to A. Fraser, prepared by J. H. Wagner	832 907	2798
G 204	Weekly price review, Dec. 6, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2800
G 209	Weekly price review, March 28, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	1876	2802
G 210	Weekly price review, March 21, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2805
G 212	Weekly price review, Feb. 14, 1936, P. E. Lakin to A. Fraser, prepared By Harry Jacobs	832 907	2808
G 214	Weekly price review, Feb. 1, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2811
G 215	Weekly price review, Jan. 24, 1936, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2814
G 217	Weekly price review, Dec. 19, 1935, P. E. Lakin to A. Fraser, prepared by Harry Jacobs	832 907	2817

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G 220	Weekly memorandum, Jan. 2, 1935, A. P. Ruether to Fraser, Bascom and Lakin	833	2821
G 221	Telegram, Aug. 26, 1935, G. L. Shoemaker to A. P. Ruether	833 907	2822
G 222	Telegram, Aug. 23, 1935, H. L. Stegall to A. P. Ruether	725 907	2822
G 230	Letter, May 24, 1935, A. V. Bourgue to P. E. Lakin	1876	2823
G 231-A	Tabulation of cars purchased in March 1935, being enclosure with Government Ex. 230	1876	2824
G 231-B	Tabulation of cars purchased in April 1935, being enclosure with Government Ex. 230	1876	2825
G 231-C	Tabulation of cars purchased in May 1935, being enclosure with Government Ex. 230	1876	2826
G 232	Letter, May 17, 1935, P. E. Lakin to A. V. Bourque	834 907	2827
G 233	Telegram, Dec. 3, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	907	2827
G 234	Telegram, Dec. 9, 1935, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2828
G 235	Weekly Gulf Coast bulk market review, April 9, 1935, C. E. Davis to A. Fraser	834 907	2829
G 237	Telegram, Feb. 15, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2833

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G 238	Telegram, Feb. 25, 1936, Shoemaker to A. P. Ruether	725 907	2834
G 239	Telegram, Feb. 27, 1936, H. L. Stegall to Crude Oil Department, received by A. P. Ruether	725 907	2834
G 240	Letter, Dec. 19, 1935, R. W. McDowell to P. E. Lakin	835 907	2835
G 243	Letter, February 3, 1936, J. E. Fritts to F. L. Schafer	724	2836
G 244	Letter, Jan. 29, 1936, Harry Jenkins to H. A. Bingle, being enclosure with Government Ex. 243	724	2837
G 246	Memorandum, Oct. 3, 1935, J. H. Salmon to Crude Oil Department, received by Harry Jacobs	835 907	2837
G 247	Memorandum, July 26, 1935, A. W. Frey to A. P. Ruether	724	2838
G 248	Weekly Gulf Coast bulk market review, April 23, 1935, C. E. Davis to A. Fraser	1876	2839
G 250	Memorandum, March 6, 1936, A. P. Ruether to P. E. Lakin	836 907	2844
G 251	Weekly Market Letter, April 6, 1935, J. W. Warner to J. D. Collins	622 907	2846
G 252	Weekly Market Letter, April 13, 1935, J. W. Warner to J. D. Collins	622 907	2849
G 253	Weekly Market Letter, April 20, 1935, J. W. Warner to J. D. Collins	622 907	2852
G 254	Weekly Market Letter, April 27, 1935, J. W. Warner to J. D. Collins	622 907	2855
G 256	Weekly Market Letter, May 11, 1935, J. W. Warner to J. D. Collins	622 907	2858
G 257	Weekly Market Letter, May 18, 1935, J. W. Warner to J. D. Collins	622 907	2861

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G 259	Weekly Market Letter, June 8, 1935, J. W. Warner to J. D. Collins.....	622 907	2867
G 260	Weekly Market Letter, June 22, 1935 J. W. Warner to J. D. Collins.....	622 907	2870
G 262	Weekly Market Letter, July 20, 1935, J. W. Warner to J. D. Collins.....	622 907	2872
G 265	Weekly Market Letter, Aug. 17, 1935, J. W. Warner to J. D. Collins.....	1876	2876
G 267	Weekly Market Letter, Aug. 31, 1935, J. W. Warner to J. D. Collins.....	622 907	2879
G 268	Weekly Market Letter, Sept. 14, 1935, J. W. Warner to J. D. Collins.....	622 907	2882
G 269	Weekly Market Letter, Sept. 21, 1935, J. W. Warner to J. D. Collins.....	622 907	2885
G 270	Weekly Market Letter, Sept. 28, 1935, J. W. Warner to J. D. Collins.....	622 907	2888
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G 276	Weekly Market Letter, Nov. 9, 1935, J. W. Warner to J. D. Collins.....	622 907	2906
G 277	Weekly Market Letter, Nov. 18, 1935, J. W. Warner to J. D. Collins.....	622 907	2909
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G 284	Weekly Market Letter, Jan. 4, 1936,	622	
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D 996	Telegram, Jan. 6, 1938, Harold L. Ickes to R. A. Irvine	1342	3750

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D 997	Stipulation of testimony of Harold F. Parsons concerning attached data pertaining to Tide Water Oil Company of New Jersey gasoline production and sales, 1932-1936, and other information	1599 1844	3751
D 998	Stipulation of testimony of R. E. Everitt as to minimum stocks and market facilities of Globe Oil & Refining Companies	1609	3756
D 999	Tabulation of gasoline production, purchases, shipments, and inventories, Globe Oil & Refining Company (Oklahoma) and (Illinois), Jan. 1, 1933 to Aug. 31, 1937......	1609	3757
D 1000	Tabulation of tank cars of gasoline purchased by Globe Oil & Refining Company (Oklahoma), Jan. 1, 1930 to Aug. 31, 1937, and by Globe Oil & Refining Company (Illinois), Jan. 1, 1933 to Aug. 31, 1937......	1609	3762
D 1002	Summary of purchases by three Globe Companies, Jan. 1933 to Aug. 1937, from independent refiners and from other refiners and brokers	1609	3767
D 1003	Tabulation of crude oil runs to stills by Globe Oil & Refining Company plants, Jan. 1, 1931 to Aug. 31, 1937	1609	3768
D 1004	Tabulation of flat price purchases from independent refiners, Group 3, 1935-1936, by Globe Oil & Refining Company (Oklahoma) and (Illinois)	1610	3770

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1008	Chart of gasoline shipments, manufacture, and casinghead and refined gasoline purchases by Globe Oil & Refining Companies, 1933-1937....	1612	3775
D 1009	Tabulations showing comparison of Pure Oil Company's gasoline purchases from Eason Oil Company with Eason Oil Company sales, 1935-1936	1614	3777
D 1010	Tabulation showing comparison of Pure Oil Company's gasoline purchases from Omar Refining Company with Omar Refining Company sales, 1935-1936	1614	3779
D 1011	Chart of purchases by defendant Companies from East Texas refiners, compared with Oilgram East Texas quotations for 1935	1617	3783
D 1012	Stipulation of testimony of Roy W. Dalby concerning gasoline shipped from Texas to Acme Petroleum Company in 1934, with Exhibit A attached	1619	3785
D 1013	Chart showing gasoline service station prices in Mid-Western area compared with the rest of the United States	1628 1679	3791
D 1014	Chart showing daily variations from average normal posted service station price in 28 representative Mid-Western cities, 1934-1936	1633	3795

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1015	Tabulation—Sinclair Refining Company purchases in Mid-Continent field, Jan. 1, 1935 to April 30, 1936.	1636	3797
D 1016	Tabulation—operating refinery capacity of defendant companies compared with total United States operating capacity, as of Jan. 1, 1935 and Jan. 1, 1936	1535	3798
D 1023 (1017–1022)	Chart showing volume of East Texas and Mid-Continent gasoline sales and purchases by all East Texas independent refiners, 29 Mid-Continent independent and semi-major refiners, East Texas independent refiners named in the indictment, and Mid-Continent independent refiners named in the indictment, in 1935 and 1936........	1644 1646 1679	3803
D 1024	Chart of flat price purchases of regular and third grade gasoline, Group 3, Oklahoma refiners, by defendant major oil companies and by jobbers and consumers, compared with 1935 journal quotations	1679	3807
D 1025	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of regular and third grade gasoline, compared with Chicago Journal of Commerce quotations, Jan. 1, 1935 to April 30, 1936......	1663	3809

Vol. I, pp. 1-622; Vol. II, pp. 623-1258; Vol. III, pp. 1259-1890; Vol. IV, pp. 1891-2594; Vol. V, pp. 2595-3062; Vol. VI, pp. 3063-3504; Vol. VII, pp. 3505-3994.

Exhibit No.		Rec'd in evidence at page	Reproduced at page
D 1026	Tabulation—summary f.o.b. Group 3 Oklahoma refinery flat price purchases by defendant companies from independent refiners and brokers of third grade and regular gasoline, compared with Platt's Oilgram quotations for Oklahoma refinery market, Jan. 1, 1935 to April 30, 1936	1663	3810
D 1027	Tabulation—operating refinery capacity, Tide Water Associated Oil Company, Gulf Refining Company, The Texas Company and Deep Rock Oil Company, as of Jan. 1, 1935 to Jan. 1, 1936	1536	3811
D 1028	Stipulation concerning gasoline sales by defendant companies in Mid-Western area, 1935 and first seven months of 1936	1536	3812
D 1029	(for identification) Certified copy, Order, June 23, 1934, by Harold L. Ickes, approving Pacific Coast Agency Agreement and Refiners' Agreement and supplemental agreements thereto	1680	3817
D 1030	(for identification) Certified copy, memorandum, March 22, 1935, Charles Fahy to Administrator of Petroleum Code	1678	3869
G 1031	Letter, Sept. 8, 1936, M. G. Peeters to Clayton W. Haswell, together with enclosure of letter, July 24, 1934, A. G. Maguire to Chairmen of State Petroleum Committees	1683	3874

Exhibit No.		Rec'd in evidence at page	Reproduced at page
G 1032	Tabulation—tank car shipments of refined gasoline from 34 independent refiners in East Texas, March 1, 1935 to March 3, 1936..........	1850	3878
G 1033	Tabulation—purchases of third grade gasoline by Sinclair Refining Company from independent refiners in East Texas, March 1, 1933 to April 30, 1936	1850	3882
G 1034	Purchase order, Sept. 18, 1935, from Globe Oil & Refining Company (Illinois) to T. R. Vaughn	1864	3883
G 1035	Sales acknowledgment, Sept. 18, 1935, from T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois).	1864	3885
D 1036	Letter, Sept. 26, 1935, Globe Oil & Refining Company to T. R. Vaughn Oils	1864	3886
D 1038	Letter, Sept. 20, 1935, J. M. Alexander to T. R. Vaughn Oils.......	1864	3888
D 1040	Identical with Gov. Ex. 1035, except handwritten notations (sales acknowledgment, Sept. 18, 1935, T. R. Vaughn Oils to Globe Oil & Refining Company (Illinois)) (Referenee to)	1864	3890
G 1043	Stipulation concerning exhibits of Shell Petroleum Corporation.....	1876	3890
G 1044	Stipulation concerning Exhibits 24, 27 and 52	1876	3891
G 1045	Stipulation concerning documents of Clyde M. Boggs	1876	3891
G 1046	Stipulation concerning Exhibits 320,		

Vol. I, pp. 1-622; Vol. II, pp. 623-1228; Vol. III, pp. 1229-1890; Vol. IV, pp. 1891-2594; Vol. V, pp. 2595-3062; Vol. VI, pp. 3063-3504; Vol. VII, pp. 3505-3904.

Exhibit No.		Rec'd in evidence at page	Reproduced at page
	321 and 329	1876	3891
G 1047	Stipulation concerning Exhibits 316-319	1876	3892
D 1048	Telegram, Jan. 14, 1938, R. E. Everitt to Ralph Horween	1878	3892
D 1049	Teletype, Globe Oil & Refining Company, Wichita, Kansas, to Globe Oil & Refining Company, Chicago, Illinois	1880	3892
D 1050	Letter, Oct. 4, 1935, W. H. Barber Company to Globe Oil & Refining Company, with enclosure of letter, Oct. 3, 1935, Illinois Farm Supply Company to W. H. Barber Company	1880	3893
D 1051	Letter, Oct. 7, 1935, W. H. Barber Company to Globe Oil & Refining Company	1880	3895
D 1052	Statement re purchase orders and invoices of Globe Oil & Refining Company (Oklahoma) and (Illinois), concerning sales at a loss in 1931 and 1933		3895
G 1053	Stipulation of testimony of H. Russell Richards concerning sales of gasoline by Continental Oil Company, with Exhibit A attached	1889	3896
D 1054	Statement re letter, Oct. 8, 1935, Globe Oil & Refining Company (Illinois) to Globe Oil & Refining Company (Oklahoma), and telephone statements from Aug. 21, 2935, through Sept. 25, 1935, attached	1878	3902
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5701 DEFENSE EXHIBIT NO. 903.

5702 Planning and Coordination Committee
Under the Code
For the Petroleum Industry

The Biggs National Bank
Washington, D. C.

June 18, 1935 Check No. 1550

Pay $322 Dol's 10 Cts. $322.10
to the order of R. W. McDowell

/s/ Fred Van Covern,
Assistant Treasurer.

5703 Endorsements:

This voucher is hereby accepted in in full payment of the within acct. and endorsement of payee shall oper. as a receipt and release accordingly, unless presented at the bank on which it is drawn within thirty days from date hereof. This check is voidable at the option of the maker

For Deposit only
/s/ R. W. McDowell

(Stamp)

Paid through Chicago Clearing House
3
Jun 28, 1935

To the Continental Ill. National Bank and Trust Company of Chicago Pay to the Order of any bank, or banker Prior endorsements guaranteed, Continental Ill. Bank & Trust Company.

Continental Illinois National Bank and Trust Company
of Chicago

2-3 2-3

5704 June 11, 1935.

To Planning and Coordination Committee,
Washington, D. C.

To cover Telephone expenses in connection with Code work for the period ending June 5th, 1935 $322.10

Due R. W. McDowell, c/o Mid-Continent Petroleum Corporation, Tulsa, Oklahoma.

Pencil note—OK. J. D. Collett,
Chairman 6/15/35 Chg. Telep.

5705 Reverse Side

No. P & C. 1935 F-51

To R. W. McDowell

Sundry Credits.	
Vouchers Audited	322.10
Cash Discount	
Total	
Sundry-Debits	
To cover Telephone exp. in connection with Code work for period ending 6/5/35. Chg. Telep.	322.10
Total	

5706 June 18, 1935. Check No. 1550

Original Check Issued for

To $322.10
R. W. McDowell

Planning and Coordination Committee F-51

6/18/35 To cover Telephone exp. in connection with Code work for the period ending 6/5/35. 322.10

Vouchered by H. J. Sionssat

Irwin Lamp.

5707 GOVERNMENT EXHIBIT NO. 904.

Article from Chicago Journal of Commerce for June 8, 1935.

President Puts O. K. on Trade Profit

Cautions Against Anti-Trust Law Violations

Washington, June 7.—President Roosevelt, at his press conference today advised giving honest business a chance to make a reasonable profit. He favored greater distribution not only of wealth in a narrow sense, but of happiness and security.

He further said anti-trust laws do not bar voluntary codes but emphasized the fact that those laws are in full effect and cannot be waived. Asked whether price maintenance agreements are out, he replied, "Yes, if they are against the anti-trust law."

Outline Social Objective

In response to a question from a representative of the Canadian press, the President asked, first, whether that was going to help in the Canadian election. Then he said, in a more serious vein:

"The social objective, I should say, remains just what it was, which is to do what any honest government of any country would do; to try to increase the security and the happiness of a larger number of people in all occupations of life and in all parts of the country; to give them more of the good things of life; to give them a greater distribution, not only of wealth in the narrow terms but of wealth in the wider terms; to give them places to go in the 5708 summer time—recreation; to give them assurance that they are not going to starve in their old age; to give honest business a chance to go ahead and make a reasonable profit, and to give everyone a chance to earn a living.

"It is a little difficult to define it and I suppose this is a very offhand definition, but unless you go into a long discussion, it is hard to make it more definite. I think, however, that we are getting somewhere toward our objective."

"Must" List Not Prepared

President Roosevelt said he has no list of "must" legislation prepared. He spoke of five measures before in a radio speech but said even those five were not considered must but were what he called desirable.

"There will undoubtedly be additions to that list of five," he said.

Asked about the constitutionality of his reciprocal trade agreements program, the President said he didn't think there was any question about it, but it depends on the lawyer you hire.

He declined comment on pending oil legislation, but added that he had no objection to ratification of state compacts and hoped they would work. There are six states in the present compact, he pointed out, and eight or ten others produce oil. He thought there should be some method of protecting the six in the compact from the eight or ten outside. An oil state compact might be all right, he thought, if it included all states and if they all lived up to it.

Price Agreements Discussed

The President declined to state flatly whether price maintenance agreements would be illegal, now that the NRA codes have been invalidated. In answer to a question, he said price pacts would not be permitted if they conflicted with the anti-trust law.

5709 The expiration of the codes, he pointed out, meant that the country went back of necessity to its fundamental statutes and that he was sworn to uphold those statutes.

He is fully in favor of voluntary codes as long as they do not run counter to the statutory law, and his offhand opinion is that industry can agree on voluntary codes under anti-trust laws.

(Comments on A. F. of L. and inheritance taxes are not printed.)

5710
DEFENSE EXHIBIT NO. 910.

5711
HOUSE-BRAND GASOLINE

Number of Subnormal Prices—Year 1934

As of	Total		1¢ or less		1¢ to 2¢		2¢ to 3¢		3¢ to 4¢		Over 4¢	
	T.W.	S.S.	T.W.	S.S.	T.W.	S.S.	T.W.	S.S.	T.W.	S,S.	T.W.	S.S.
Jan. 31.....	24	62	6	23	3	19	7	12	3	3	5	5
Feb. 22.....	18	73	6	29	5	22	3	14	3	5	1	3
Mar. 29.....	11	70	1	23	3	19	3	17	2	7	2	4
Apr. 28.....	62	410	9	53	13	154	31	131	6	51	3	21
May 31.....	96	548	13	56	32	214	40	197	8	73	3	8
June 30.....	240	993	154	287	47	317	25	277	11	93	3	19
July 30.....	339	1,137	205	407	64	317	42	240	23	142	5	31
Aug. 31.....	433	1,327	232	447	129	570	32	128	22	140	18	42
Sept. 28.....	176	516	139	313	10	100	7	45	15	15	5	43
Oct. 31.....	494	1,097	389	544	53	236	29	91	13	103	10	123
Nov. 30.....	550	1,288	358	440	58	294	59	234	45	110	30	210
Dec. 17.....	448	820	346	349	68	210	18	113	13	104	3	44
Dec. 31.....	418	781	355	349	45	237	13	118	4	56	1	21

"T.W." means Tank Wagon Price to Consumers
"S.S." means Service Station Price to Consumers.

5712
Number of Subnormal Prices—1935

January 31...	370	497	363	388	4	72	3	25	—	10	—	2
February 28..	363	477	358	391	3	63	2	20	—	3	—	—
March 31....	13	93	8	39	3	40	1	14	1	—	—	—
April 30......	20	92	9	35	6	41	4	14	1	2	—	—
May 31......	18	86	5	33	11	36	2	15	—	2	—	—
June 30......	22	95	10	45	8	33	3	15	—	2	1	—
July 31......	46	107	13	29	20	63	4	13	—	2	—	—
August 31....	32	68	11	22	12	29	9	15	—	2	—	—
September 30	360	460	339	341	10	43	2	5	9	11	—	—
October 31....	364	405	340	337	12	47	2	7	10	14	—	—
November 30.	360	403	340	335	8	46	2	6	10	16	—	—
December 31.	363	409	345	334	8	51	1	7	9	17	—	—

"T.W." means Tank Wagon Price to Consumers
"S.S." means Service Station Price to Consumers

5713
Number of Subnormal Prices—Year 1936

Jan. 31.....	364	418	343	337	9	58	1	5	12	18	—	—
Feb. 29.....	364	421	342	336	10	58	1	7	11	20	—	
Mar. 31.....	366	412	342	333	10	49	—	7	14	23	—	—
Apr. 30.....	372	413	341	365	13	16	2	8	16	24	—	—
May 31.....	375	425	341	363	14	20	20	35	—	7	—	—
June 30.....	381	434	16	44	342	344	23	38	—	8	—	—
July 31.....	374	435	13	46	338	344	23	37	—	8	—	—
Aug. 31.....	379	441	14	48	340	343	25	41	—	9	—	—
Sept. 30.....	374	1	112	—	260	—	2	—	—	1	—	—
Oct. 31.....	370	3	112	3	255	—	3	—	—	—	—	—
Nov. 30.....	367	—	113	—	230	—	24	—	—	—	—	—
Dec. 31.....	47	—	24	—	23	—	—	—	—	—	—	—

"T.W." means Tank Wagon Price to Consumers.
"S.S." means Service Station Price to Consumers.

5714

DEFENSE EXHIBIT NO. 911.

5715

THIRD GRADE GASOLINE

Number of Subnormal Prices—Year 1934

As of	Total		1¢ or less		1¢ to 2¢		2¢ to 3¢		3¢ to 4¢		Over 4¢	
	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S
January 31	555	330	33	96	191	123	191	72	119	34	21	5
February 22	588	369	35	108	196	135	192	78	145	44	20	4
March 29	351	479	26	98	86	147	161	109	62	67	16	58
April 28	873	948	65	139	229	310	276	255	238	129	65	115
May 31	915	968	62	123	238	289	327	284	221	157	67	115
June 30	1,090	1,353	241	353	277	370	308	326	199	177	65	127
July 30	1,237	1,452	289	413	263	372	332	319	244	200	109	148
August 31	1,330	1,615	358	457	618	775	245	252	88	86	21	45
September 28.	798	846	444	488	280	193	53	73	5	59	16	33
October 3;	980	1,224	559	566	334	337	71	144	13	108	33	69
November 30.	1,028	1,349	416	505	405	404	174	187	26	128	7	125
December 17.	673	887	288	367	237	267	122	117	22	60	4	76
December 31.	619	853	275	361	220	281	109	95	13	59	2	57

"T.W." means Tank Wagon Price to Consumers
"S.S." means Service Station Price to Consumers

5716

Number of Subnormal Prices—Year 1935

As of	Total		1¢ or less		1¢ to 2¢		2¢ to 3¢		3¢ to 4¢		Over 4¢	
	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S
January 31	593	673	279	352	201	183	103	49	8	52	2	37
February 28.	575	632	292	359	193	157	84	58	6	38	—	20
March 31	268	272	62	101	116	55	85	66	4	36	1	14
April 30	363	281	124	102	164	59	68	81	66	30	1	9
May 31	390	315	107	130	188	63	87	73	7	43	1	6
June 30	433	329	74	125	204	69	143	66	11	41	1	28
July 31	560	329	75	84	242	84	199	88	44	44	—	29
August 31	661	325	92	88	405	82	155	71	9	62	—	22
September 30.	794	624	397	404	285	89	97	51	15	58	—	22
October 31	844	660	405	418	305	103	120	53	14	63	—	23
November 30.	776	672	393	413	266	117	103	53	14	64	—	25
December 31.	780	678	391	412	271	116	108	58	10	66	—	26

"T.W." means Tank Wagon Price to Consumers
"S.S." means Service Station Price to Consumers

5717

Number of Subnormal Prices—Year 1936

As of	Total		1¢ or less		1¢ to 2¢		2¢ to 3¢		3¢ to 4¢		Over 4¢	
	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S	T.W.	S.S
Jan. 31	775	693	384	414	263	126	113	60	15	68	—	25
Feb. 29	772	708	383	420	257	133	117	58	15	70	—	27
Mar. 31	790	682	386	418	242	108	145	61	17	66	—	29
Apr. 30	928	699	386	417	293	111	227	65	22	75	—	31
May 31	1,085	719	418	410	338	118	295	72	34	84	—	35
June 30	1,185	751	111	94	800	448	273	143	1	63	—	3
July 31	1,208	763	232	95	666	450	299	137	11	66	—	15
Aug. 31	1,247	755	217	95	683	433	334	135	13	77	—	15
Sept. 30	1,158	4	407	11	628	—	122	1	1	2	—	—
Oct. 31	1,158	4	399	1	646	—	112	1	1	2	—	—
Nov. 30	954	1	307	1	548	—	99	—	—	—	—	—
Dec. 31	533	—	154	—	363	—	16	—	—	—	—	—

"T.W." means Tank Wagon Price to Consumers
"S.S." means Service Station Price to Consumers

5718

DEFENSE EXHIBIT NO. 912.

5719

HOUSE BRAND GASOLINE

Number of Subnormal Prices to Dealers—Year 1935 and 1936

As of	Total	1¢ or less	1¢ to 2¢	2¢ to 3¢	Over 3¢
1935					
July 31	27	15	11	1	—
August 31	31	17	13	1	—
September 30	32	17	13	2	—
October 31	30	17	13	—	—
November 30	30	19	11	—	—
December 31	34	21	13	—	—
1936					
January 31	35	22	11	2	—
February 29	34	23	11	—	—
March 31	33	21	12	—	—
April 30	36	24	12	—	—
May 31	37	24	13	—	—
June 30	39	26	13	—	—
July 31	—	—	—	—	—
August 31	13	8	5	—	—
September 30	406	113	280	12	1
October 31	417	117	288	11	1
November 30	422	121	265	35	1
December 31	78	31	43	4	—

5720

DEFENSE EXHIBIT NO. 913.

5721

THIRD GRADE GASOLINE

Number of Subnormal Prices to Dealer—Year 1935 and 1936

	Total	1¢ or less	1¢ to 2¢	2¢ to 3¢	Over 3¢
1935					
July 31	35	17	13	4	1
August 31	46	19	20	5	2
September 30	47	20	19	5	3
October 31	48	22	18	5	3
November 30	43	21	14	5	3
December 31	45	21	16	5	3
1936					
January 31	47	21	15	8	3
February 29	45	20	16	6	3
March 31	45	20	16	6	3
April 30	46	20	17	6	3
May 31	49	19	18	9	3
June 30	46	19	14	12	1
July 31	56	21	19	13	3
August 31	57	21	20	13	3
September 30	611	163	296	120	32
October 31	632	171	304	122	35
November 30	636	170	307	124	35
December 31	289	59	188	38	4

5722 **DEFENSE EXHIBIT NO. 914.**

For Identification.

(From the Final Report of the Marketing Division, Petroleum Administrative Board, Issued June 1936.)

Stabilization

By the middle of 1934, many retail price wars in different parts of the country had developed into a serious problem. Rebating and secret discounting in violation of the code were usually prevalent in the affected areas and rules 3, 4, 6 and 17 were most flagrantly violated. After these matters were brought to the attention of the Administrator, he wrote on July 20, 1934, to the chairman of the Marketing Subcommittee of the Planning and Coordination Committee authorizing the establishment of local committees to deal with gasoline price wars and to negotiate settlements in the areas affected. This letter read in part:

The market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereof.

Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the code, and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of the industry, which the act was intended to achieve.

I am, therefore, requesting you, as chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which we deem necessary to
5723 restore markets to their normal conditions in areas where wasteful competition has caused them to be-

come depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperate manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your committee must, of course, be consistent with the requirements of clause 2 of subsection (a) of section III of the act, and if in any situation it should appear that this section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

The event that led up to the Administrator's request was a series of unsuccessful attempts on the part of the Board and the code committees to secure settlements of retail price controversies. The Planning and Coordination Committee had substituted for its proposal for retail price fixing the national marketing agreement which had not been approved by the industry or by the Administrator. In view of these conditions the purpose of the Administrator's letter was to request the industry, within the limits of existing law to undertake to stabilize markets with a view to achieving the purposes of the Recovery Act.

The chairman of the marketing subcommittee of the Planning and Coordination Committee effectuating the request of the Administrator organized a General Stabilization Committee and authorized the chairman of each regional marketing committee to instruct the various State code committee chairmen to appoint State stabilization committees wherever necessary. The general stabilization committee consisted principally of men who also served on the marketing committee. The State stabilization committees, where organized, were usually representative of each type of marketer. An attempt was made to have integrated marketers, independent jobbers, trackside operators, cooperatives, and retailers fairly and equitably represented. Sometimes the members of State stabilization committees were also members of State code committees, but many of the "independents" had not previously been active on code or industry committees.

The interest and support of each marketer was found essential to carry out successfully stabilization activities.

Furthermore, since each marketer knew the direct monetary benefits of stabilized and normalized market price structures, keen enthusiasm usually accompanied
5724 marketers' entrance on stabilization activities. The industry with a few exceptions seemed to welcome this opportunity of getting together in an attempt to solve their price problems, consequently the committees were very active. Wherever such committees were formed (particularly in region 3) they appeared almost to supersede the code committees in prominence and in interest. There was evidence that several State code committees practically ceased to function the last 8 or 10 months of the code.

It was customary to have local or zone stabilization committees for each section involved in a price war. The local chairman was sometimes a member of the State committee, invariably a "keyman" locally. Much of the burden of settling local price wars rested on the local chairman. The State committee cooperated and served as a clearing house for all price war problems within the State. The general committee's activities largely covered matters of general policy and marketing practices. Many marketers felt that price wars were results of conflicting policies, especially since among the larger companies marketing policies were varied. There were no jobber or retailer representatives on the general stabilization committee, and frequently meetings were held by that committee with refiners, integrated and nonintegrated, without jobbers or retailers in attendance. Because of discussions of policies affecting jobbers and retailers at such meetings there was considerable criticism by those two groups of the way the General Stabilization Committee was functioning. Early in April 1935 a "steering committee" was organized in region 3 to coordinate the work of the various State stabilization committees with the general stabilization committee to help enforce stabilization in the Middle West. The steering committee included representatives of jobbers, retailers, and unbranded marketers. This change in representation contributed to regaining some jobbers', retailers', and unbranded marketers' support for the stabilization program. General matters of policy were considered by the steering committee, but they could take no final action on any such policy until the matter had been approved by the general stabilization committee. State stabilization committee chairmen were directed to clear all problems their committees could not settle, through the steering committee. The members of the steering committee were expected to attend all general stabilization committee meetings which, heretofore, had been attended only by refiners marketing in the areas involved who had been invited by the chairman, and usually by a representative of the board.

Numerous complaints of the activities of the stabilization committees were received by the Board. Charges were made that all parties of interest were not properly represented on the committees, that the committees were exceeding their authority, and that the recommendations of the general committee were sometimes interpreted as in-
5725 structions, which was not satisfactory, especially to
those groups that were not present at the meetings when such recommendations were made. Compliance by the participating companies with these recommendations was, of course, voluntary. The Administrator placed certain limitations on the activities of the stabilization committees in his letter of April 22, 1935, to the chairman. Three conditions were set forth:

1. No meeting under the stabilization program for the purpose of joint discussion, general voluntary action, or negotiation of a formal industrial agreement or understanding shall be held except with my representative or representatives in attendance at such meeting.

2. All interests affected by any such prospective discussions, action, or agreement shall have an opportunity to be heard before any action is taken.

3. No "orders" or general instructions purporting to be under the authorization contained in my letter of July 20, 1934, shall be issued.

A number of general stabilization committee meetings were held in Chicago and several other cities in the Middle West, which region was the scene of the greatest activity during the stabilization period. A few meetings were also held in New York and one or two other eastern cities. Among the specific recommendations issued by the general chairman were several pertaining to fundamental problems of the marketing branch of the oil industry.

On September 11, 1934, one large marketing company in the Middle West adjusted its normal posted retail prices to within 5½ cents of the delivered tank-car price, plus taxes and inspection fees. Heretofore the distribution spread varied in normal markets between 6 and 7 cents, of which the dealer received 4 cents and the distributor the balance. This adjustment in the retail-price structure did not affect the dealers' margin; it merely lessened the spread to the jobber-distributor. One of the first problems of the General Stabilization Committee was how to bring about an equitable distribution of the 5½-cent spread between the

dealer and the distributor. After several meetings, a recommendation was proposed by the general chairman providing for a reduction of dealers' margins from the prevailing 4-4-3 schedule to 3½-3½-2½ with a further reduction of ½ cent in case of a subnormal market. This became effec-
tive December 1, 1934, in all States in region 3 except
5726 Michigan, which followed April 1, 1935. This action
brought some relief to jobbers, for it increased their normal margin by ½ cent. Jobbers, however, felt their margin should be even larger and they continued to work for a further increase throughout the remaining days of the code. Dealers felt the large companies had acted unreasonably in reducing their margins, especially when the dealers had no voice in the discussions which took place in stabilization meetings.

There were many factors involved in stabilization, complexities merged in confusion, varied factions had to be reconciled to a common purpose, nevertheless, the program was definitely showing beneficial results to the refiners; the independent refiners particularly. They or their representatives had attended the general committee meetings, and for the first time in the history of the oil industry there was evidence of cooperation between large and small refiners in the Mid-Continent in the matter of marketing policies. It was anticipated that equitable solutions to jobbers' and dealers' margin problems would have been worked out if the activities had not been curtailed by the abrogation of the Oil Code.

Other recommendations of the general chairman which were favorably acted upon by those present at the meetings involving the Middle West were:

1. A moratorium for a period of sixty days from February 12, 1935, on soliciting accounts or accepting new business from existing dealer outlets in Chicago. Upon expiration, it was not renewed.

2. At the conclusion of the December 6-9, 1934, session a moratorium on lease agreements or other contracts whereby any rental was paid to filling station dealers where a competitive gasoline was then being sold. Existing leases could be renewed, but companies could not convert their dealer accounts to lease accounts. This moratorium was renewed on April 6, 1935 to July 15, 1935, principally "at the insistence of many small operators and the jobbing industry almost to a man."

Several recommendations submitted by the general chairman for acceptance by the industry in the Middle West were:

1. Selling to a cut-price marketer was destructive to stabilization activities.

2. In depressed price areas all suppliers should:

(a) supply dealers and jobbers with normal requirements only;

(b) confine sales at company stations, dealer and lease and agency stations to delivery into tank of automobiles only; i. e., not to fill barrels, tanks, etc.;

5727 (c) bulk-plant agents must not fill receptacles of cut-price marketers, dealers, or suppliers.

3. No unbranded cut-price marketer should be converted to branded goods until he had sold at normal prices for thirty days after a price disturbance had ceased.

4. No dealer should meet a reduced price unless the supplier should authorize him to meet the reduction and post the same at its bulk plant where deliveries are made.

5. Each supplier should follow the postings for the circuit points of the market maker.

6. Agents and salesmen should try to maintain posted prices and to confine depressed prices to a single area and that suppliers should be responsible for jobbers actions in following the uniform price policy and other provisions including price posting.

7. A standard commercial consumer discount schedule of 1½¢ per gallon per thousand gallons per month off the tank wagon price and was later revised in its application to purchases by the United States and by State and Political Subdivisions.

8. Branded third grade gasoline should not be sold with an octane rating greater than 56 with a tolerance of 1.

9. Suppliers should be responsible for all sales by their jobbers—the Jobber Control recommendation.

10. Sales to grain elevators (particularly in Kansas) should only be made "on the basis of the supplier being responsible for the sales policy of such reseller." The acceptance and adherence to these recommendations were deemed essential by the General Chairman if stabilization were not to fail.

Several "suggested rules of the game" were announced in connection with the recommendations on dealers' margins and the conversion of existing dealer accounts. These "rules" provided briefly, that—

1. No dealer now being served by tank wagon would be converted to a tank car basis.

2. No dealer being supplied by tank car would be converted to a tank wagon basis on a tank-car-plus arrangement.

3. No dealer or group of dealers would be provided with bulk facilities or appointed company's agents.

4. No jobber would be made a company's agent.

5728 As the various problems were offered for discussion at the general stabilization committee meetings, subcommittees were appointed to make recommendations among these subcommittees. 'One of the most important was the tank-car committee, which attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank-car market was essential to a stabilized retail structure. Other matters considered by subcommittees were: Jobber margins, uniform commissions for bulk-station agents, third-party cancelable leases, new retail outlets, extension of stabilization work to products other than gasoline, bona fide cooperatives, truck hauling by refineries, superlatives and other false advertising. When the Administrator removed his sanction of stabilization work due to the abrogation of the code, all of these matters were under consideration, but had not reached form for final action.

Some individuals complained against the activities of the stabilization committees. The National Association of Petroleum Retailers protested on the cut in dealers' margin. Several independent jobbers' associations charged that "under the guise" of stabilization a vast conspiracy existed to eliminate the independent jobbers and dealers from the industry.

The stabilization program was perhaps the outstanding development under the code. It received the support of most elements in the industry and it was effective to a greater degree in eliminating price wars and stabilizing prices and conditions than any other movement yet tried. In many areas the best price structure in years prevailed during the last 6 months of the code. Nearly all company representatives gave credit for this condition to the stabilization program.

Although no authority existed in the stabilization committee to enforce any of the recommendations which it might make, its recommendations were generally effective. This was largely because its aims and purposes were to maintain a uniform and profitable price structure by as nearly direct means as possible. Many critics of the code were ardent supporters of the stabilization program, feeling the code was cumbersome and the machinery for its enforcement so complex as to be ineffectual, but that the stabilization program went to the heart of the problem and was more effective. (pp. 120-125)

5729 **DEFENSE EXHIBIT NO. 915.**

For Identification.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated May 18, 1935, signed by E. B. Swanson and sent to W. J. Brundred.)

5730 **Department of the Interior
Petroleum Administrative Board
Washington**

May 18, 1935

**Mr. W. J. Brundred, Vice President,
Central Pennsylvania Oil Producers Association
Oil City, Pennsylvania**

Dear Mr. Brundred:

Mr. Fahy has asked me to acknowledge your letter to him of May 9, which I am doing by informing you of some developments here during the week.

Messrs. Vockel and Willey, on behalf of their own company and other Pennsylvania refiners were in Washington on Monday and Tuesday of this week and conferred at some length with Mr. Fahy, Dr. Frey and myself. As a result of these conferences it was felt that the Stabilization Committee of the Planning and Coordination Committee, which is under the chairmanship of Mr. C. E. Arnott, might be of definite assistance in connection with lubricants as they have been in connection with gasoline.

Following this thought, Mr. Fahy telegraphed to Mr. Arnott in Tulsa, and yesterday received a reply stating that Mr. Arnott would be in New York early next week and would take the matter up, and that he thought some good could be accomplished for the refiners and others in the Pennsylvania grade territory.

**Very truly yours,
(signed) E. B. Swanson
For the Board
May 18, 1935**

5731 DEFENSE EXHIBIT NO. 916.

For Identification.

(Certified by the Department of the Interior to be copies of duplicate original of telegram dated May 14, 1935 from Charles Fahy and sent to C. E. Arnott; and of telegram dated May 16, 1935 from C. E. Arnott to Charles Fahy.)

5732 Petroleum Administration
Washington, D. C.

May 14, 1935

Mr. C. E. Arnott
c/o American Petroleum Institute
Mayo Hotel
Tulsa, Oklahoma

S M VOCKEL AND G E WILLEY OFFICIALS WAVERLY OIL WORKS ON BEHALF OWN COMPANY AND OTHER SMALL PENNSYLVANIA REFINERS YESTERDAY AND TODAY PRESENTED DETAILED PICTURE REFINING SITUATION THEIR SECTION STOP PRESENT DISPARITY BETWEEN PENNSYLVANIA GRADE CRUDE AND REFINED PRICES UNDOUBTEDLY MAKES IMPOSSIBLE CONTINUED OPERATION SEVERAL PLANTS STOP PROBLEM THERE RELATED MORE TO STABILIZED MARKETS LUBRICANTS THAN GASOLINE STOP HOPE YOU CAN ARRANGE FOR PROMPT CONSIDERATION THIS PROBLEM BY STABILIZATION COMMITTEE LOOKING BOTH TO IMMEDIATE ADJUSTMENTS AS WELL AS LONG VIEW CORRECTION STOP WOULD APPRECIATE YOUR ASSISTANCE IN THIS SITUATION AS IT INVOLVES PLANTS OF LONG ESTABLISHMENT WHICH UNDOUBTEDLY HAVE NOT BENEFITED EQUALLY WITH OTHERS UNDER STABILIZATION PROGRAM BECAUSE OF THEIR DEPENDENCE ON LUBRICANTS RATHER THAN GASOLINE STOP PLEASE WIRE ME AS TO POSSIBILITY YOUR UNDERTAKING THIS

CHARLES FAHY

5733 1935 MAY 17

TULSA OKLA

CHARLES FAHY
LEMON BLDG NEWYORK AVE WASHDC

REPLYING YOUR TELEGRAM FULLY REALIZE SITUATION YOU REFER TO AND QUITE AGREE SOMETHING MUST BE DONE WILL GO INTO IMMEDIATELY ON MY RETURN TO NEWYORK NEXT WEEK AND FEEL CAN ACCOMPLISH SOMETHING CONSTRUCTIVE FOR REFINERS YOU MENTIONED AND OTHERS INTERESTED
C E ARNATT

5734

DEFENSE EXHIBIT NO. 917.

For Identification, and

DEFENSE EXHIBIT NO. 917A.

(From the Annual Report of the Secretary of the Interior for the year ended June 30, 1935.)

Exhibit 917 for Identification

The Code of Fair Competition for the Petroleum Industry was in effect during the entire fiscal year except the last 33 days thereof. Under the code, in conjunction with the success achieved beginning in October 1934 by the Federal Tender Board in sharply restricting movements in interstate commerce of illegal crude and gasoline, and particularly under the successful operations of the production and refinery provisions of the code, the petroleum industry as a whole achieved a balance between the production of crude oil and the manufacture of gasoline on the one hand and the requirements of the Nation for crude oil and gasoline on the other. This was the purpose of the production and refining provisions of the code. The theory of these provisions of the code, particularly the production provisions, and the amendments to the refinery provisions of April 24, 1934, was the balancing of supply with demand in the interest of conservation and of stability within the industry. As a necessary concomitant were the provisions of the code designed to regulate the development of new fields through the approval of plans designed to permit greatest ultimate recovery and economical and scientific development. (pp. 30-31)

The decision of the Circuit Court of Appeals for the Fifth District in the Panama and Amazon cases reversing the lower court and upholding the power of the Federal Government to require reports in the enforcement of section 9 (c) of the National Industrial Recovery Act, and upholding the validity of the section itself, permitted the reestablishment of Federal enforcement in east Texas. In July 1934 and again in August regulations requiring reports and affidavits were revised. However, by filing fraudulent affidavits of the legality of oil shipped and by failing to make reports, hot-oil producers continued to operate in violation of the law and a new means of enforcement of the section was sought resulting in October of 1934 in the creation
5735 of the Federal Tender Board under the authority of

section 9 (c) and the authority to make rules and regulations to carry out the provisions of the section. In lieu of the affidavits of legality required with shipments, certificates of clearance, issued by the Federal Tender Board, were required as a condition precedent to the movement of petroleum and petroleum products in interstate commerce out of east Texas. Conditions had become so serious that prices had begun to break the day the Tender Board was created. The immediately successful operations of this Board stemmed the flow of hot oil into interstate commerce and averted a collapse.

The Federal Tender Board set up a staff of examiners to check applications for tenders, to examine the books and records of refiners and pipe lines, and to make physical checks of the petroleum and petroleum products leaving the field. It set up an accounting staff, which maintained an effective accounting check on all operations in the field. Certificates of clearance, or tenders, were approved by the Federal Tender Board when the petroleum or petroleum products were shown on the basis of the applicant's reports, the accounting record, and the specific examination of examiners to have been produced in accordance with the quotas established by the Railroad Commission of Texas.

The Federal Tender Board functioned effectively until January 7, 1935, when the Supreme Court overruled the Circuit Court of Appeals in the Panama and Amazon cases and declared section 9 (c) invalid on the grounds of improper delegation of legislative power. The Board ceased functioning, and the litigation pending against it was dismissed. Movements of hot oil increased immediately. Additional State legislation authorizing the State to require certificates of clearance for petroleum products as well as for crude petroleum moving in intrastate and interstate commerce, had been passed. However, State Authority law alone still failed adequately to meet the situation and commerce in hot oil steadily increased. On February 22, 1935, the Connally law was passed by the Congress, eliminating the defects found by the Court in section 9 (c) by specifically prohibiting interstate or foreign commerce in hot oil. Federal Tender Board No. 1 was established under this law on March 1, 1935, and shortly thereafter Federal Petroleum Agency No. 1 was set up under the same law to perform the administrative and investigative functions in connection with the applications for approved tenders filed with Federal Tender Board No. 1. The Federal

tender system has functioned effectively since that
5736 time and has prevented any substantial movement in
interstate commerce of hot oil for gasoline out of east Texas. This activity not only tended to check overproduction of crude petroleum but assisted in stabilizing the interstate refinery markets at a time when the intrastate Texas markets were thoroughly demoralized. Several attempts to enjoin the activities of the Board have been attempted without success.

During the summer and fall of 1934 wholesale prices for petroleum products were below parity with the current prices for crude petroleum, which presented a particularly serious problem to the non-integrated refiner. Several plans were projected by the industry to solve the difficulty, which was aggravated considerably by the excessive amount of hot oil and interstate movements of hot gasoline in interstate commerce. The planning and coordination committee proposed a form of contract designed to remove distress stocks in east Texas from the market. The form of contract was approved on June 23, 1934, and during the months of July and August gasoline in east Texas was purchased under this form of contract, to which the Administrator was a party and which provided that the sellers would not process "hot oil." This program proved insufficient, and a new form of contract for the purchase of current output was approved. But the production of gasoline from "hot oil" continued, stocks of gasoline mounted, wholesale prices for gasoline remained below parity with crude-oil prices, and in the early fall of 1934 the industry approached a serious collapse of the wholesale market. The planning and coordination committee appointed a program committee, which proposed a broad plan for the purchase of surplus gasoline with the purpose of also preventing illegal production of crude oil and providing a method of orderly marketing. The excessive amount of overproduction in Texas made the initiation of this program futile, and it was never put into operation. In October the Federal Tender Board was created in east Texas to enforce section 9 (c). Conditions immediately improved as a result, and from then forward the improvement continued, except for the period between the invalidation of section 9 (c) on January 7, 1935, and the enactment into new legislation of the principle of the Tender Board in the Connally Act on February 22, 1935. (pp. 35-37)

5737 **EXHIBIT 917A.**

Letter of Transmittal

The Secretary of the Interior
Washington, November 30, 1935.

Sir: I have the honor to transmit my annual report for the Department of the Interior for the fiscal year ended June 30, 1935.

Very respectfully,
Harold L. Ickes,
Secretary.

The President,
The White House.

(continuation of the above)

The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935. The work of the stabilization committee contributed very largely to the elimination of excessive marketing abuses which tended to keep the retail markets in an unsettled and unstable condition.

One of the difficult marketing problems of the year revolved around the question of price differentials as between different types of marketers. The stabilization committee, authorized by the Administrator in July, 1934, was successful in resolving many localized conflicts and in compromising issues which had brought on drastic price wars to the injury of many marketers caught in between the warring factions. Before the end of the winter markets generally throughout the midcontinent and eastern areas were fairly stable, and at the time of the invalidation of the code at the beginning of the high-consuming season, the industry
5738 as a whole had reached stability in markets, an even
balance between production and demand in the case of both crude and gasoline, had achieved the best statistical position in many years, and entered upon a prosperous summer which has, in fact, proved to be the highest-consuming season in the history of the oil industry. Produc-

tion was under control throughout the Nation with some minor exceptions, the wholesale price of gasoline was in parity with the current price of crude, the refinery amendment had brought a balance between the manufacture of gasoline and the needs of the Nation therefor, the Connally Act had succeeded, as the original Tender Board had previously succeeded, in protecting interstate commerce from "hot oil" or gasoline, and markets were generally stable. (pp. 37-38)

5739

DEFENSE EXHIBIT NO. 918.

For Identification.

(Identical with Defense Exhibit No. 924 for Identification.)

5740

DEFENSE EXHIBIT NO. 919.

For Identification.

(Certified by the Department of the Interior to be duplicate originals of five letters dated March 26, 1935, signed by Harold L. Ickes and addressed to:

H. B. Fell, Executive Vice President, Independent Petroleum Association of America, 640 Shoreham Building, Washington, D. C.;

Mason Houghland, Spur Distributing Company, Nashville, Tennessee;

Robert E. Allen, Central Proration Committee of California, 1110 Security Title Insurance Building, Los Angeles, California;

Sidney Swensrud, Standard Oil Company of Ohio, Cleveland, Ohio;

Paul G. Blazer, Ashland Refining Company, Ashland, Kentucky.)

All identical with the following:

Letterhead of Administrator for the Petroleum Industry,
Washington, D. C.

"My dear Mr. :

I have received the report of the Petroleum Code Survey Committee on Small Enterprise of which you are a member, and I desire to express my appreciation of the service you have rendered in this very pressing and important matter. I know that the work of the Committee, to which you have devoted many days away from your own affairs, has not been easy. The acceptance by you of the responsibility of membership on the Committee is an instance of the needful type of cooperation between industry and Government so essential to the solution of the problems of the day.

I should be very glad if your Committee would consider itself still in existence, in order to observe the progress made along the lines of your recommendations and also to be available for consultation.

Sincerely yours,
(Signed) Harold L. Ickes
Administrator."

5741 DEFENSE EXHIBIT NO. 921.

For Identification.

(Certified by the Department of the Interior to be copy of telegram dated April 23, 1935, from Paul G. Blazer to Charles Fahy.)

5742 Petroleum Administration
Washington, D. C. April 23, 1935.

Paul C. Blazer, Chairman
Petroleum Code Survey Committee on Small Enterprise,
c/o Ashland Refining Company,
Ashland, Kentucky

Would appreciate informal views your committee as to whether gasoline prices have advanced to an approximate parity with crude prices so as to obviate present necessity for reduction in crude oil price as recommended in refining conclusions and recommendations contained in report your committee.

(Signed) Charles Fahy
Charles Fahy

5743 DEFENSE EXHIBIT NO. 922.

For Identification.

(Certified by the Department of the Interior to be copy of telegram dated April 23, 1935, from Paul G. Blazer to Charles Fahy.)

5744 APR 23

ASHLAND KY

CHARLES FAHY, CHAIRMAN
PETROLEUM ADMINISTRATIVE BOARD DEPARTMENT OF THE INTERIOR WASH D C—

RETEL GLAD TO ADVISE INFORMAL OPINION OUR COMMITTEE THERE IS NOW NO NEED FOR REDUCTION CRUDE OIL PRICES SINCE WE CONSIDER TANKCAR GASOLINE PRICES NOW ALMOST UP TO PARITY WITH SUFFICIENT ADDITIONAL ADVANCES ANTICIPATED IN BOTH TANKCAR AND RETAIL PRICES—

PAUL G. BLAZER

5745

DEFENSE EXHIBIT NO. 923.

(Certified by the Department of the Interior to be copy of Press Release dated May 7, 1935, issued by the Department of Interior.)

Petroleum Administrative Board
Memorandum for the Press

For Release Tuesday, May 7, 1935.

When the Petroleum Code Survey Committee on Small Enterprise submitted its report to Petroleum Administrator Harold L. Ickes, it included among its recommendations the statement that if wholesale gasoline prices did not advance to an approximate parity with crude prices within about thirty days, an immediate reduction should be made in the price of crude oil to a parity with refined products.

Approximately thirty days after the submission of the Committee's report, the Petroleum Administrative Board requested an informal opinion from the Committee, asking its views as to whether gasoline prices had advanced to an approximate parity with crude prices, so as to obviate any present necessity for the reduction in crude oil prices as recommended in the refining conclusions and recommendations contained in the report.

Mr. Paul Blazer, Chairman of the Committee, replied that he was glad to advise that the informal opinion of his Committee was that there now is no need for a reduction in crude oil prices, but emphasized that the Committee, in reaching its informal conclusion, anticipated that small additional advances will be made in both tank car and retail prices of gasoline. The majority of the Committee, he stated, is of the opinion that at least another quarter cent advance in tank car prices is essential, and that if such an advance should not occur within the near future, a decline of approximately 5 cents per barrel should be made in crude oil prices.

The Committee also is of the opinion, Mr. Blazer stated, that the final answer to the question as to the maintenance of a parity between gasoline and crude oil prices, after it has been reached, will be determined by the effectiveness of efforts to balance crude oil supply and demand.

Mr. Blazer also expresses the Committee's belief that fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil.

P.A.B.

5746 **DEFENSE EXHIBIT NO. 924.**

For Identification.

(Certified by the Department of the Interior to be copy of Press Release dated March 28, 1935, issued by the Department of the Interior.)

5747 Department of the Interior
Petroleum Administrative Board

Memorandum for the Press

Release in Morning Papers
Thursday, March 28, 1935

An "assured and effective balance of crude oil supply and demand" is required to insure the "stability of the Industry and conservation of the oil resources of the nation," the Petroleum Code Survey Committee on Small Enterprise reported to Oil Administrator Harold L. Ickes today.

The report released by the Administrator in full was a 43 page document comprising an independent survey of the effects of the Petroleum Code on small enterprises in the industry. The Committee comprised of various interests in the industry, in the foreword of its report stated:

"This Committee has become convinced that no permanent benefits of material value to either small or large enterprises of the petroleum industry can be obtained under the Code without a permanent, assured and effective balance of crude oil supply and demand, nor can stability of the Industry and conservation of the oil resources of the nation be achieved without such balance."

The reporting Committee was appointed by Administrator Ickes on January 11 and told to find the facts with the following instructions from the Administrator:

"Throughout my administration of the Oil Code and the regulations issued under Section 9(c) of the National Industrial Recovery Act, every effort has been made to protect the small, independent operators in all branches
5748 of the oil industry, in accordance with the policy of the National Industrial Recovery Act.

"There have been several complaints of late from some of the smaller operators and companies that they are being handicapped to some extent in some of their operations by the effects of the Code. It appeared to me that these complaints warranted a searching and careful, but speedy, inquiry by an unbiased committee composed of competent authorities not connected with the Oil Administration.

Neither the Oil Administrator nor the Oil Administration wants a 'whitewashing'. We want the facts. If the facts as collected show that independent and small enterprises are being handicapped, and where they are being hampered, I want to know the facts and what the Committee thinks may be done."

The Committee consisted of the following:

Paul Blazer, President, Ashland Refining Company, Ashland, Kentucky, Chairman, non-integrated refiner and an independent.

Mason Houghland, President, Spur Distributing Company, Nashville, Tennessee, an independent marketer.

Sidney Swensrud, an economist, and an expert with the Standard Oil Company of Ohio.

H. B. Fell, of Ardmore, Oklahoma, executive vice president of the Independent Petroleum Association of America. He has a thorough knowledge of the industry's problems in the Mid-continent area, as well as conditions in other sections, particularly the problems of the independent producer.

5749 R. E. Allen, Secretary of the Committee of California Oil Producers, Los Angeles, formerly a member of the voluntary committee on petroleum economics, Federal Oil Conservation Board, and known for his intimate knowledge of conditions affecting the oil industry on the Pacific Coast.

The Administrator expressed to the members of the Committee his appreciation of the thorough services rendered by it in a difficult task, and stated that the findings and recommendations made would have his careful consideration.

The Administrator also expressed a desire that the Committee would in the meantime not disband but would continue in existence to advise regarding the progress made in remedying the conditions pointed out by it as detrimental to small enterprises.

A full text of the report follows:

Report
of
Petroleum Code Survey Committee
on
Small Enterprise

Resume of Findings and Recommendations

This Committee has become convinced that no permanent benefits of material value to either small or large enterprises of the petroleum industry can be obtained under the Code without a permanent, assured and effective balance of crude oil supply and demand, nor can stability of the Industry and conservation of the oil resources of the nation be achieved without such balance.

5750 Violations of Rules 4 and 6 of Article V:

More complaints have been received regarding violations of Rules 4 and 6 of Article V than of any other rules of the Code. These rules pertain, respectively, to selling below cost and to the use by integrated companies of profits from their operations in one branch of the Industry to subsidize their losses in other branches of the Industry. We find that small enterprise has suffered severely because of wide-spread violations of these rules.

A surprisingly large number of letters have been received recommending that, to accomplish the purposes of Rules 4 and 6 of Article V, the operations of the Industry be segregated into its four separate branches, viz: Production, Pipe Line Transportation, Refining and Marketing. Many believe that if the operations of the large integrated and partially integrated companies were thus segregated into separate corporations, the requirement of separate Federal income tax returns is all that would be necessary to insure proper accounting and separation of profits between the different corporations. Others believe that complete divorcement of management and control of the separate corporations would be necessary to avoid continued violations of these rules.

To facilitate enforcement of Rules 4 and 6 of Article V, a majority of this Committee favor the enactment of legislation which would prohibit a single corporation from engaging in more than one branch of the Industry, viz: Production, Pipe Line Transportation, Refining and Marketing.[1] We do not recommend requiring divorcement of management and operation of the separate corporations; such divorcement, we believe, would be unnecessarily disruptive, especially expensive to small and medium size companies, and inadvisable from the standpoint of efficiency of operations of the Industry. We believe that corporate separation alone, without interfering with the control and coordination of over-all operations, would assure "arms-length" transactions between the different corporations. We believe that such separation, together with the requirement that reports be filed at stated intervals concerning the financial results of operations of companies having joint management, would exert financial and publicity pressure toward abandonment or reform of the notoriously uneconomical and unprofitable marketing operations of many integrated companies.

As an immediate step toward determining costs for the purposes of ascertaining when sales are being made below cost in violation of Rule 4 of Article V, and to assist in determining to what extent, in violation of Rule 6 of Article V, operations in one branch of the industry are being subsidized by revenues from some other branch, we recommend that all integrated and partially integrated companies
5751 of substantial size be required to submit to the Oil
Administrator profit and loss statements covering their operations, separated into each of the four branches of the Industry, together with sufficient data to evidence whether transactions between operations in different branches are on an "arms-length" basis with the proper distribution of overhead charges. We believe that such data can be obtained under Section 6 of Article VII, which provides for the collection of statistical and other reports which may be needed for the purposes of the Code.

Production:

We find that independent and small units in the production branch of the Industry have, on the whole, been greatly benefited by the Code. The complaints that have been received pertain chiefly to the wage and hour provisions affecting employees in sub-marginal properties.

To relieve small operators of stripper wells, so defined to include only sub-marginal properties, we recommend that operations on such properties be relieved from labor provisions of the Code pertaining both to minimum wages and maximum hours.

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[1] See footnote page 3538.

We find that the inability to attain an effective and assured control over crude oil supply has been the most important factor contributing to the weakness of refined product prices, which in turn has endangered, and continues to endanger, the maintenance of present crude oil prices.

We believe, therefore, that it is of the greatest importance to small enterprises, not only in production but in other branches of the Industry, that such control be achieved as will not only be effective in fact, but which will insure confidence by leaving the least possible doubt as to its continuing effectiveness. We favor such legislation as may be necessary to accomplish this important purpose.

To meet the complaints of drilling contractors that their employees are unable to average a full 36 hours work per week without working more than 48 hours in some weeks, we recommend that the maximum number of hours that an employee may work during the drilling of any single well be increased to 56 hours per week.

We find that rig building contractors have suffered severely because Code wage provisions pertaining to their operations are more strict than are the provisions applying to similar work when done by the oil companies. We recommend that rig building operations be defined, that all labor engaged in such work be properly classified, and for the different classifications there be established minimum wages bearing a proper relationship to wages now prevailing in the Oil Industry.

5752 Refining:

We find that small, non-integrated refiners have been severely injured by the Code and are now in an intolerable position because prices of crude oil and refined products are not on a parity.

There are two ways by which such refiners can be relieved, namely: first, by an increase in the prices of refined products to a parity with posted crude oil prices, or second, by a reduction in crude oil prices to a parity with prices of refined products. The first alternative would relieve the refiners without injuring the producers and thus is preferable.

We are informed that a program for relief of refiners is being considered, the purpose of which is to stabilize both tank-car and retail gasoline prices at levels which will place them in proper relation with prevailing crude oil prices, and that this program includes a concerted informal buying of tank-car gasoline from small refiners by the larger companies. We attach much importance to this program and recommend that the Oil Administrator give it his support.

If, however, the stabilization of gasoline prices is not quickly accomplished by the proposed program, and reasonably well maintained thereafter, we further recommend that crude oil prices then be reduced sufficiently to correspond with refined products prices. As of this date, a drop of approximately 20¢ a barrel would be necessary to make crude oil and gasoline prices conform with the ratio of 18.5 to 1 as set forth in Section 6 of Article III of the Code. Assuming that, on this basis, it may be necessary to reduce crude oil prices to save the independent refiners, we believe that both crude oil and refined prices will advance again as soon as there is better assurance of permanent control of crude oil supply.

To obtain a better balance of gasoline supply in relation to consumptive demand as between the smaller companies on one hand and the larger companies on the other, we recommend that authority be given to refiners to enter into compacts with each other, subject to the approval of the Administrator, to restrict voluntarily their respective gasoline productions below the allocations as given them under Sections 3 and 4 of Article IV of the Code, and to transfer to smaller companies all or any part of that portion of their allowable production thus curtailed.

Marketing:

In marketing operations, we find that small jobbers have suffered because of increased labor costs with little or no corresponding increase in margins. We find they have benefited especially from Rule 8 of Article V, which prohibits the loaning of equipment.

5753 We find that gasoline service station dealers have suffered from increased labor costs, and in some instances from reductions in margins due to elimination of secret rebates from their suppliers. We find, also, that in many cases they have suffered a loss in volume of business due to competition of tank truck sales. We find that because of wide-spread violations of Rule 3 of Article V, prohibiting discounts at service stations, dealers have not benefited from this rule as much as had been anticipated.

We find that the entire marketing branch of the Industry has suffered by price wars of unprecedented intensity and duration which may have been intensified by fear of regimentation under the Code.

To protect individual service station operators from destructive competition resulting from tank truck sales of gasoline to consumer accounts at large discounts off of normal tank-truck prices, and to enable the small independent jobbers to compete on an equal basis for the local business of National and other large accounts, we recommend a new and smaller discount schedule covering such deliveries, the discounts applicable to be determined by total purchases of individual consumers in any one month from all suppliers instead of the prevailing custom whereby discounts are based upon the individual sales of each supplier.

To reduce the frequency and minimize the extent of retail price wars which work a tremendous hardship on small jobbers and dealers operating in the affected areas, we recommend that those large companies that are generally recognized as the dominant marketers in their respective areas, file with the proper stabilization committee the formula by which they determine their normal price levels in the different areas, together with a statement of the reasons for any deviations therefrom which they may make from time to time. Also, we recommend that similar information be filed by their competitors. Those smaller companies that merely follow the market of leaders in the Industry, should so state that to be their policy; similarly, those independent or small marketers, that do not follow the leadership of the larger companies should state their manner of determining their price levels.

To discourage the further building of gasoline service stations, we recommend that authority be given to marketers of petroleum products to enter into compacts with each other, subject to the approval of the Administrator, whereby the building of new service stations, by the parties thereto, or the substantial rebuilding of existing stations, would be either discontinued or restricted in certain agreed upon areas.

5754 **General:**

In order that the smaller companies may have the same advance information concerning impending changes in Code interpretations, rules, policies, etc., that is now enjoyed by the larger companies that have representation on the principal committees dealing with such matters, we recommend that meetings of the Planning and Coordination Committee and the principal Committees under them be open to the trade press.

We believe the present Code Organization with its great number of local, state, regional and National Committees, and sub-committees, is unnecessarily cumbersome and expensive to the Industry. We recommend that the general set-up be simplified and more adequate representation in each branch of the Industry be given to small and non-integrated enterprises.

We find that small enterprises have suffered from failure to enforce certain provisions of the Code which apparently are unenforceable either because of doubtful legality or because of the nature of the provisions. We recommend that when the Code is re-drafted, such provisions either be dropped entirely or be segregated into a separate section, adherence to which would be by mutual voluntary agreement.

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I

Rules 4 and 6 of Article V

We have received so many complaints over the failure of Rules 4 and 6 of Article V, which pertain to selling below cost and the subsidizing by integrated companies of unprofitable operations in one branch of the Industry by revenues from another, that we deem it desirable to give special consideration to these complaints.

These rules appear to have constituted the principal attempts in the Code to safeguard the position of non-integrated units engaged in only one or two branches of the Industry and to protect them from subsidized, destructive competition.

We find that wide-spread violation of these rules undoubtedly has prevailed and that little attempt appears to have been made either to enforce the rules or, if they are not enforceable, to revise them so as to make them enforceable. As a result we find a widespread demand, especially by non-integrated refiners and marketers, for separation or divorcement of one kind or another.

5755 Most of the complaints allege the use of profits from low cost flush production or pipe line profits to subsidize unprofitable refining and marketing operations. It is pointed out that under the Code theory of conservation, one of the chief objectives of production control is the achievement of a high enough average crude oil price to keep in operation the majority of stripper wells. This, it is maintained, automatically creates additional revenue in the production end of the industry. (The average cost of crude oil production in 1933, as determined by the Petroleum Administrative Board in a recent study, was 71.7¢

a barrel, including 10.8¢ a barrel for interest on the investment.)

Many of the independent refiners and marketers see in this situation a constant threat to their operations so long as it is possible for some integrated companies to use their crude oil profits to cover losses in refining and marketing. They contend, therefore, that production profits thus created should not be allowed to trespass, so to speak, into other branches of the industry, but should be separated therefrom in some effective way such as by divorcement of production from the other branches.

Some of those who have written us appear to believe that simply divorcing production from the rest of the industry would be sufficient; others maintain that production and pipe line operations should be divorced from each other and also from refining and marketing. Some believe that refining and marketing should be permitted to remain together. A great many have recommended that all branches of the industry should be separated from each other; i. e., production, pipe line transportation, refining and marketing.

There appear also to be many views as to the kind of separation that should be made. Some suggest only corporate separation with joint management permitted. Others insist that complete divorcement of operations and management is essential. Still others feel that separate accounting by branches and publication of the results for each branch would be sufficient. There are also some who, although recognizing that the purpose of Rules 4 and 6 of Article V have not been accomplished, doubt the desirability or efficacy of any form of separation. Some point out that monopoly might be fostered by horizontal expansion within the different branches of the industry if they were divorced from each other.

To facilitate enforcement of Rules 4 and 6 of Article V, a majority of this Committee, after considering all of the various points of view that have been expressed, favor the enactment of legislation which would prohibit a single corporation from engaging in more than one branch of the
Industry, viz.: production, pipe line transportation,
5756 refining and marketing. [1] We do not recommend re-

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[1] Mr. Swensrud felt that the questions involved were too complex to warrant the Committee's making any final recommendations on the basis of the limited study which it was possible to give to the matter. Mr. Allen is of the further opinion that even though segregation should be found to be in the public interest it would be impossible to accomplish such segregation in time to save the refiners now facing immediate extinction.

quiring divorcement of management and operation of the separate corporations; such divorcement, we believe, would be unnecessarily disruptive, especially expensive to small and medium size companies, and inadvisable from the standpoint of efficiency of operations of the Industry. We believe that corporate separation alone, without interfering with the control and coordination of over-all operations, would assure "arms-length" transactions between the different corporations. We believe that such separation, together with the requirement that reports be filed at stated intervals concerning the financial results of operations of companies having joint management, would exert financial and publicity pressure toward abandonment or reform of the notoriously uneconomical and unprofitable marketing operations of many integrated companies.

As an immediate step toward determining costs for the purposes of ascertaining when sales are being made below cost in violation of Rule 4 of Article V, and to assist in determining to what extent, in violation of Rule 6, of Article V, operations in one branch of the Industry are being subsidized by revenues from some other branch, we recommend that all integrated and partially integrated companies of substantial size be required to submit to the Oil Administrator profit and loss statements covering their operations, separated into each of the four branches of the Industry, together with sufficient data to evidence whether transactions between operations in different branches are on an "arms-length" basis with the proper distribution of overhead charges. We believe that such data can be obtained under Section 6 of Article VII, which provides for the collection of statistical and other reports which may be needed for the purposes of the Code.

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II

Production

Nature of Complaints:

1. It is pointed out that there has not been a definitely assured continuous balance of supply with demand for crude petroleum. It is contended that such a balance must be in effect and that the selling of low cost crude oil by integrated companies in the form of refined products at less than the posted market price for crude oil must be prevented if a high enough average crude oil price is to be maintained to keep stripper wells in operation and conserve

their petroleum reserves. It is claimed that uncertainty of control over supply has been most detrimental and that domestic production allocations, set by the Federal Agency, have been too large. It is generally agreed that more effective means are required to secure individual compliance with allocations.

It is also contended that failure to restrict imports to amounts allowed has resulted in these excess imports supplying markets which would otherwise have been available to domestic producers. It is pointed out that as a result of "hot" oil and other over-supplies pressing on the market, combined with the uncertainty of effective control of supplies, and the selling of crude oil below the posted market price, in the form of gasoline and other refined products, by integrated companies in their mad scramble for gallonage, that the prices of refined products have been depressed constantly to levels below those necessary to the support of existing posted crude oil prices, thus endangering the maintenance of the crude oil prices which are essential if proper conservation is to be achieved.

2. That the application of minimum wage rates to pumpers, and of maximum hours and minimum wage rate provisions to other employees on stripper wells (sub-marginal properties) puts an undue burden on these operations which is unnecessary from the standpoint of labor and makes necessary a higher price for crude oil than would otherwise be required to avoid premature abandonment of marginal
5758 wells, thousands of which are operating at a loss, even at present crude oil prices and without adherence to Code labor provisions. It is pointed out that there is widespread violation and disregard of the labor provisions. It is maintained, therefore, that stripper well employees should be exempt from the minimum wage and maximum hour provisions of the Code.

Analysis of Complaints and Conclusions:

1. Hot oil, excess imports, excess production of crude oil and gasoline have prevented a definite assured continuous balance of supply with demand and have resulted in supply exceeding demand from time to time. The failure to have effective control and the continued possibility of a breakdown in the control of the supplies makes impossible the assurance of a balance of supply with demand. These conditions create an increased willingness on the part of some fully integrated companies to sell their low cost flush production in the form of refined products at

prices which net them less than the market price for crude oil, but which enable them to make a profit on their entire operations.

Because of the wide variation in costs of producing oil, ranging from less than 50¢ per barrel in some flush fields to considerably more than $1.50 per barrel for oil of equal quality in older fields, it is apparent that refined products from low cost crude oil can be sold profitably at prices which constitute destructive competition to products refined from crude oil produced from stripper wells. A continuation of these practices will make it impossible to maintain a high enough average crude oil price to keep stripper wells in operation and conserve their petroleum reserves.

The average price required to insure conservation of the petroleum reserves of wells of settled production is illustrated by figures on cost of production contained in the "Preliminary Report on a Survey of Crude Petroleum" prepared by the Petroleum Administrative Board which throw considerable light on the economic difficulties confronting marginal well operations and the conservation of their reserves. The report was based on figures secured only from individuals and companies producing more than 5,000 barrels per annum (approximately 14 barrels per day) in all states east of the Mississippi River, Wyoming, Colorado and Montana, and 10,000 barrels per annum in all
other states. The questionnaires received and used
5759 represented 75.72 percent of ~~the total production~~ for
1933. It is safe to assume that the figures used therefore include a large percentage of the low cost flush production, and we know that figures of many small stripper well operators with high cost production were not included so that undoubtedly if all figures had been secured the average cost of production shown would have been much higher. The effect of flush production in reducing average costs of production is shown by the fact that if figures on Kettleman Hills, Oklahoma City and East Texas are eliminated it has the effect of increasing the average cost of production, for 1931-1933 inclusive, seven cents per barrel. The average cost of production for 1931-1933 was twenty-six cents per barrel less than for 1927-1930. Two factors contributing to this were (1) increased amount of flush production and (2) low crude oil prices which resulted in lower wages and smaller expenditures for maintaining properties in proper operating condition.

As an illustration of the relatively high cost with which a large proportion of stripper wells are faced, we may cite the results of an analysis made by Ray M. Collins, Enforcement Agent of the Oklahoma Production Committee, based on Oklahoma Corporation Commission's figures, on the Petroleum Administrative Board's cost survey and on special questionnaires to producers.

This survey shows that out of a total of 58,000 wells in Oklahoma, only 4,000 were wells of flush production. Of the remaining 54,000 wells, 30,000, accounting for about 8 percent of the state's total production had costs, exclusive of interest on investment but including depletion, of $1.13 a barrel. At the average selling price from 1931 through 1933 of 73¢ a barrel, these wells, therefore, show an average loss of more than 40¢ a barrel, and even at present crude oil prices the great majority of them are still being operated at a loss.

Another 24,000 wells, averaging 5.35 barrels daily, and accounting for approximately 26 percent of the state's production, had costs exclusive of interest, of 91¢ a barrel. For the three year period, 1931-1933, these wells also, therefore, were operated at a serious loss and even now are obtaining only a moderate return on the investment. The figures for the three groups of wells are as follows:

5760	Production	(Barrels)			Cost (Per Barrel)		Prices	
Group	Number of Wells	Avg. Per Well	Total	% of State	Excl. of Interest	Incl. .09 per bbl. Interest	1931-1933	Since Code
I	30,000	1.33	40,000	8.2	$1.13	$1.22	$.73	1.00
II	24,000	5.36	129,000	26.3	.91	1.00	"	"
III	4,000	80.25	321,000	65.5	.71	.80	"	"
State	58,000	8.45	490,000	100.00	.80	.89	$.73	1.00

Table 9 in the "Preliminary Report on a Survey of Crude Petroleum" issued by the Petroleum Administrative Board, which covers cost of production for the years 1931-1933 for the entire United States, indicates that most small wells of settled production are operating at a loss on present crude oil prices. It is apparent therefore that an average price of more than one dollar a barrel for 36 gravity Mid-Continent would be required to conserve the large petroleum reserves that underlie thousands of these wells.

The following table shows the reduction in stocks of crude petroleum and refined products for each year from 1930 through 1934.

Reduction in Stocks of Crude Petroleum and Refined Products in the United States.

	Crude Oil Bbls.	Refined Products Bbls.	Total Bbls.
1930	—16,563,000	— 4,676,000	— 21,239,000
1931	—40,963,000	+ 5,659,000	— 35,304,000
1932	—30,479,000	—12,038,000	— 42,517,000
1933	+15,437,000	— 4,423,000	+ 11,014,000
1934	—17,220,000	—21,830,000	— 39,050,000
Total 1929 to 1934	—89,788,000	—37,308,000	—127,096,000

Although there has been material reduction in stocks the benefits that should gradually accrue are retarded by lack of certainty of control of supply.

5761 Since the Code became effective imports have exceeded the amount permitted by the Executive Order of September 28, 1933, which was the average for the last six months of 1932, by approximately 5,700,000 barrels based on the figures of the Statistical Division of the United States Tariff Commission.

2. Regular employees on stripper wells have always been employed on a monthly basis and we do not believe that minimum rates of pay can, in practice, be applied satisfactorily to those engaged in that type of work.

We find that ordinarily the operation of stripper or submarginal wells do not involve the usual labor problems, and we believe that to the extent their wage scales are of social interest that interest is greatly overshadowed by the National interest in preserving these important reserves.

The relationship between employee and employer is unusual, often extending over two or three generations of the same family on the same properties. Because of widely varying degrees of employment, frequently carried on along with farming, neither wages nor hours can be suitably determined by the Code. If labor costs on such properties are to be increased because of Code provisions, there would follow the necessity of maintaining correspondingly higher crude oil price levels through more drastic restriction of flush fields, accompanied with increased profits to low cost crude oil producers in flush fields and increases in the prices of refined products.

Allocation of Production Quotas:

We find that the allocation of production quotas within the States as recognized by Sections 4 and 5 of Article III of the Code has not always been such as to promote the conservation of petroleum resources and to prevent physical and economic waste. We believe that such allocations should be so designed and applied as to protect petroleum resources in pools of settled production. Such a policy would tend to discourage the use of profits from low cost flush production to subsidize unfair marketing practices.

1. Recommendations:

We recommend the accomplishment of an effective 5762 and permanent balance of supply (consisting of imports, withdrawals from storage and current domestic production) with demand (consisting of exports and domestic consumptive demand) through the effective enforcement of all allocations fairly and equitably apportioned among the States and among different operators and sources of supply, in order that the supply may be limited to the total demand scientifically determined, since it is of the greatest importance to small enterprises, not only in production but in other branches of the Industry, that such control be achieved as will not only be effective in fact, but will insure confidence by leaving the least possible doubt as to its continuing effectiveness.

To relieve small operators of stripper wells, so defined to include only sub-marginal properties, we recommend that operations on such properties be relieved from labor provisions of the Code pertaining both to minimum wages and maximum hours.

Drilling Contractors:

It is claimed that the failure to grant a twenty-five per cent reduction in wages in old settled areas which the Code provides may be allowed on wells drilled to a depth of less than 1,000 feet, works unreasonable hardships. In drilling wells to depth of less than 1,000 feet in old fields, none of the difficult problems found in flush fields are involved, and therefore the high degree of skill required of labor in drilling in deeper areas or in flush fields is not required.

We recommend that the reduction of twenty-five per cent. in wages on this type of drilling, as authorized by the Code, be granted.

It is claimed that the Code provision limiting to a maximum of 48 hours work in any one week, results in much violation in the Mid-Continent area and that the best drillers leave the employ of those conforming to the Code to go with contractors who will permit them to work more than 48 hours in violation of the Code. It is claimed also that the 48 hour limitation results in the average employee securing only approximately thirty hours work per week over an average of twenty-six weeks, instead of thirty-six hours, and also, that it causes a shortage of good drillers.

5763 We believe, and recommend accordingly, that most of the existing difficulties would be eliminated by permitting a 56 hour week throughout the drilling of a single well and that upon the completion of the well, employees should immediately average back to 42 hours per week before starting work on another well, leaving without change other restrictions as to hours of labor.

Big Building Contractors:

Big Building Contractors, who are generally small enterprises, complain that they have been unjustly discriminated against under the Code in that rig building operations have not been defined and the rates of pay for skilled labor were made too high. They claim this has resulted in producers and construction companies doing part of this work with labor employed at lower rates, thus resulting in a great loss in their business. They maintain that everyone carrying out rig building operations should be placed on the same competitive basis.

We find that rig building contractors have suffered severely because Code wage provisions pertaining to their operations are more strict than are the provisions applying to similar work when done by the oil companies. We recommend that rig building operations be defined, that all labor engaged in such work be properly classified, and for the different classifications there be established minimum wages bearing a proper relationship to wages now prevailing in the Oil Industry.

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III

Nature of Complaints:

The independent refiners complain that they have been doubly injured under the Code. In the first place, they state, refinery operation costs have been increased so that to come out even they would have had to get an increased spread between the cost of crude oil delivered at their refinery and the value of the refined products which they sell, but instead of this spread being increased, they complain that the exact opposite has been the case; they maintain that the price of crude oil has been kept artificially at a level far out of line with the wholesale market value of the refined products.

They maintain, moreover, that often it has been impossible even to realize the published spot prices for their gasoline, due to the depressing effect of retail price wars upon the net realization back at the refinery. Refiners point out that they must give some protection to their distributors to compete with the major companies, and to keep their customers in business.

Analysis of Complaints:

Increase in Refinery Operating Costs.

There is no doubt that, under the Code, refinery operating costs have been increased, consisting, as they do, so largely of labor, fuel, and metal. So far as labor is concerned, the increase varies widely, depending mainly on the number of hours per week worked before the Code. Based on the Committee's study of individual cases, on the opinion of Dr. Stocking of the Petroleum Labor Policy Board, and on studies made by the Labor Sub-Committee of the Planning and Coordination Committee, we believe that it is safe to say that labor costs in refining generally have been increased under the Code by an average of 25 to 30%;
5765 and undoubtedly the percentage increase has been
greatest among the small refiners where longer hours prior to the Code were more prevalent.

Fuel costs vary chiefly with the prices of coal and fuel oil. For 1934 these prices range from 25 to 50% greater than in the year or two prior to the Code. Costs of fabricated steel products and installation, we find, have averaged from 25 to 30% higher than for the precode period. Practically all other items of refinery operating expenses such as chemicals, supplies, etc., have shown substantial increases.

Taking refinery operating costs as a whole, we believe they have been increased under the Code by an average of about 6¢ per barrel of crude oil run.

Refinery Losses

We believe that practically every refinery east of the Rockies is operating at a loss. A considerable number of reports were received from companies engaged only in refining, and various figures were obtained covering the refinery operations of companies engaged in other lines of the Industry as well. These reports showed substantial refinery losses since the advent of the Code.

A typical example is that of a small refiner in the Mid-Continent who in 1932 was able to make, exclusive of tank-car earnings, a net refinery profit of $2,781, who in 1933 had a refinery loss of $6,795, but who, in the first 11 months of 1934, had suffered a net refinery loss of $56,450. In this particular case the refinery operating expenses were low, and careful and prudent operation in general appeared to have existed throughout. The additional loss in 1934 quite clearly was attributable to the change in relationship between the price of crude oil and the realized prices obtained on the refined products.

Another independent refiner who in 1931 made a net profit of $45,911 and a profit of $28,036 in 1932, sustained a loss in 1933 of $15,304, practically all of which was accounted for after the Code was adopted. In 1934 the net loss for the year was $74,388! This refinery is well located both with relation to crude oil and markets. There has been no change in the management and the only change in
the refinery operations was the installation of certain
5766 equipment in 1933 and 1934 which the refiner states
improved the efficiency and prevented even greater losses in 1934.

An intermediate sized company which keeps careful segregated departmental figures showed that whereas its refinery operations in 1933 showed a profit, this was reduced to a loss in 1934, the net impairment in 1934 as compared with 1933 being 21 cents per barrel of crude run; and this was after making an actual reduction in its refinery operating costs in 1934 due to various mechanical changes and improvements.

A group of ten western Pennsylvania refiners, representing a cross section as to size, type and location of such refineries showed that for the last half of 1934 their realization from production of refined products failed by $952,069 to cover their crude oil and refining costs. This was a net loss equivalent to 32 cents per barrel of crude oil run.

It should be noted that in each of the foregoing cases interest on the investment has not been included by the companies as an operating cost.

Upon the basis of our studies we believe that regardless of size or method of operation, almost every refinery east of the Rockies, running upon legal crude and paying or being charged with the full posted price for same plus transportation charges, showed a serious loss in 1934.

Changes in Cost-Price Relationships Since the Code:

Judged by whatever standard of measurement may be chosen, it is evident that the prices of crude oil and of refined products have not been on a parity, and this fact, together with generally increased refinery operating costs under the Code, has put the non-integrated refiner in an impossible position.

The changes since the Code in the relationships between the price of crude oil, the value of its products, and the refinery processing costs can be considered from several angles. One is simply to contrast the increases in cost with the increases in revenue. The price of crude oil reached $1.00 a barrel on September 29, 1933; hence for practical purposes and for simplicity we may say that the Code period so far as the relationships in question are con-
5767 cerned began on October 1, 1933. A comparison of 16 months under the Code with the 16 months prior to the Code should afford a fair measure of the changes that took place under the Code.

The average well price of 36 gravity Mid-Continent crude in the 16 months period prior to the Code—that is, from June 1932 through September 1933, was 67.5¢ a barrel. As compared with $1.00 a barrel, therefore, there was an increase in this item of 32.5¢. Adding this to the estimated increase in refinery operating expense, of 6¢ a barrel, gives a total increase in cost items of 38.5¢ a barrel.

As against this we may take the increase in value, based on wholesale prices of the typical products obtained from the refining of Mid-Continent crude, as indicated, for example, by the Bureau of Mines yield figures for refineries in Oklahoma, Kansas and Missouri. On this basis the refined products from one 42 gallon barrel of crude show an aggregate increase in the 16 months since the Code of 27¢ a barrel as compared with the 16 months prior to the Code. This is shown by the following figures:

Yield Per Barrel		Increase in Value Under Code	
Product	**Gallons**	**¢ Per Gallon**	**Total Per Barrel of Crude**
Gasoline	21.8	0.71¢	15.5¢
Kerosene	3.0	0.38	1.1
Furnace Oil	3.0	0.35	1.1
Fuel Oil	8.7	0.60	5.2
Still Gas	2.0	0.60	1.2
Lubricating Oil	1.2	2.00	2.4
Miscel. Products	1.0	0.50	0.5
Loss	1.3	—	—
Total—	42.0		27.0¢

As against an increase of 38½¢ a barrel in the cost items, there has therefore, been an increase of only 27 cents a barrel in the value of the refined products, leaving the refiner with a net impairment in his position since the Code of 11½¢ a barrel.

It does not follow that this is the full amount of the loss
per barrel sustained in the refining branch in the last
5768 16 months because it is probable that on the whole the
refining branch was already suffering some loss in the earlier period as well. Moreover, the degradation of average realized prices below the quoted spot prices, due to the need of protecting jobbers in retail price wars, undoubtedly was much greater in 1934, thus increasing still further the impairment since the Code.

A second approach is to compare the wholesale prices of gasoline that have existed since the Code with prices that were anticipated. In the original price fixing schedule which was recommended by the Planning and Coordination Committee, and which was intended to include a reasonable refining profit, a price of 6.5¢ a gallon for 60-64 octane grade gasoline in the Mid-Continent was prescribed, along with $1.11 a barrel for 36 gravity Mid-Continent crude at the well. The difference of 11¢ a barrel in the crude oil price would be equivalent to about 0.5¢ per gallon in gasoline cost, so that with $1.00 crude, the wholesale gasoline price prescribed presumably would have been about 6.0¢ a gallon. In contrast to this, the actual price of this grade of gasoline in the 16 months since October 1933, has averaged 4.67¢ a gallon. This deficiency of 1.33¢ a gallon of gasoline would be equivalent to around 30¢ a barrel of crude oil (assuming a gasoline yield of about 22 gallons per barrel of crude).

This figure of 30¢ a barrel is some indication of the amount which the refining branch of the Industry has foregone as against what was considered in the fall of 1933 to be a reasonable operating basis.

A similar method of approach to this same question of what the refiner has gotten as compared to the objectives under the Petroleum Code, is to examine the relationship between crude oil and gasoline prices that has existed, as compared with the ratio of one to 18.5 between the average tank-car price per gallon of 60-64 octane gasoline f. o. b. Group 3 and the well price per barrel of 36 gravity Mid-Continent crude oil. This was the ratio worked out by the Administration and set forth in Rule 6, Article III of the Code as a fair basis for the price of crude oil relative to that of gasoline.

As a matter of fact, we have been unable to check with the figures on which this suggested ratio presumably
5769 was based because the average price of 36 gravity
crude oil in the Mid-Continent during the years 1928 through 1932 was only about 17.8 times the "average" price, as quoted in the Oil Price Hand Book, of the grades of gasoline specified in Section 6. The 18.5 ratio would be substantially correct, however, if the "low", rather than the average of the high and low gasoline price quotations were used.

Let us see how the crude oil price actually in effect since the Code has compared with what it would have been on the basis of 18.5 times the low quotations for 60-64 octane gasoline up to August 1934 (when quotations for this grade were discontinued) and of 63-70 octane gasoline thereafter. The figures are as follows:

		Oklahoma Gasoline Price f. o. b. Group 3	At 18.5 Gasoline Price, Crude price would have been
October,	1933	5.13¢ per gal.	$ .95 per bbl.
November,	“	5.00 “ “	.92 “ “
December,	“	4.95 “ “	.92 “ “
January,	1934	4.78 “ “	.89 “ “
February,	“	4.74 “ “	.88 “ “
March,	“	4.36 “ “	.81 “ “
April,	“	4.53 “ “	.84 “ “
May,	“	4.75 “ “	.88 “ “
June,	“	4.64 “ “	.86 “ “
July,	“	4.52 “ “	.84 “ “
August,	“	4.71 “ “	.87 “ “
September,	“	4.63 “ “	.86 “ “
October,	“	4.23 “ “	.78 “ “
November,	“	4.67 “ “	.86 “ “
December,	“	4.55 “ “	.84 “ “
January,	1935	4.53 “ “	.84 “ “
February,	“	4.39 “ “	.81 “ “

A study which throws considerable light on the amount by which the revenue from products has failed to cover crude oil prices and refining costs was that made early in 1934 by the Accounting Sub-Committee of the Planning and Coordination Committee. At that time, in connection with a study of crude oil production costs, the Sub-Committee made a study of the costs of making the various grades of gasoline during the month of October 1933. By that 5770 month the crude oil price had reached its present $1.00 level, although much of the increase in refinery operating costs which took place under the Code had not yet appeared at that time; especially in view of the retroactive wage increases made later. Based upon the actual figures for October, however, it was found that for the 17 Oklahoma refineries which reported, the average cost, exclusive of interest on the investment, of 60-64.9 octane gasoline was 5.3¢ a gallon. If interest on the investment had been included it would, we estimate, have added approximately three-tenths of a cent to the gasoline cost making it about 5.6¢ a gallon. The average price of 60-64 and 63-70 octane gasoline for 1934 however was only 4.59 cents a gallon in the Oklahoma market and 4.40¢ for Group 3 gasoline in the Chicago resale market. At these prices the refineries were short of breaking even by from 0.7 to 0.9¢ a gallon, equal to 15 or 20¢ per barrel of crude oil run. At this rate the refinery loss on the total crude oil refined in the United States in 1934 would have been from $140,000,000 to $180,000,000.

As a further indication of the cost of gasoline, the Committee also discovered certain figures on gasoline costs and refinery operating expenses published by the Tariff Commission in November, 1931, along with its study of the production cost of crude oil and other products.[1]

In 1929 and 1930 with average delivered crude oil costs at Gulf Coast refineries of $1.56 and $1.50 per barrel in the two years respectively, it was found by the Tariff Commission that the average cost of non-premium gasoline, exclusive of blending stocks, at the Gulf Coast was 7.12¢ a gallon in 1929 and 7.32¢ in 1930.[2]

5771 If the average cost of crude oil delivered to the Gulf Coast refineries as it works out under today's conditions (such delivered cost being around $1.20 to $1.28 a barrel) be substituted for the 1929 and 1930 crude oil cost figures used by the Tariff Commission, the resulting gasoline cost figures would be reduced to around 6¢ per gallon. In contrast to this figure, it is found that for the year 1934 the average price f. o. b. Gulf Coast, for domestic shipment of 60-64 octane gasoline was 5.12¢ per gallon. Here again, therefore, there appears to be a marked deficiency between the value of the gasoline, as determined by market prices, and its cost, based on the posted crude oil price which has been in effect.

Fixation of Crude Price.

There appears to be a widespread belief in the Industry and especially among the non-integrated refiners, that the posted price of crude oil since the Code has, for all practical purposes, been fixed, and has not been free to react, as gasoline has done, to the changes in the supply and demand factors and the prospects that have obtained. In view of the fact that official price fixing for the Industry, as a general policy, was rejected before the date it was to have become effective, and has never since been officially restored, the thought was expressed by many refiners in their communications that it was unfair to bring about, by whatever means involved, the practical fixation of the crude price at a level higher than appeared to be warranted by the effectiveness of the production control. The independent refiners point out that although efforts were made to improve refined products prices, such as through the various gasoline buying programs, none of these plans succeeded and many of the refiners question whether it was fair to hold the price of crude oil at the higher level pending the hoped-for improvement in the refined prices, because under that arrangement, the salvation of independent refiners was made dependent upon the outcome of these experiments. They contend that, however desirable it may have been to raise the refined produce price levels, there was no justification for holding up an artificial crude price level in the meantime.

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[1] U. S. Tariff Commission—Report to the House of Representatives on Crude Petroleum and its Liquid Refined Products. Report No. 30 Second Series. November 30, 1931. Pages 185-205.

[2] Gasoline costs were computed in the Report for the Atlantic Seaboard for the Gulf Coast, and for California. Refinery operating costs were given for these areas and in addition, for most of the other refining centers of the country, but product costs were not computed for inland points.

The issue over fixed crude and free product prices appears to be considered by most independent refiners as so fundamental to their present problem that we believe it desirable to quote from some of the typical expressions of opinion on this subject.

5772 One refiner speaking of the present difficulties of independent refiners says:

"We feel that this situation is due to the fact that the price of crude * * * has been held at a high point through the influence of the Oil Administration at Washington, while the price of finished products has been set * * * by the running of 'hot' crude in East Texas * * *."

Another independent refiner complains that

"While the Petroleum Administration has insisted that the minimum price for crude oil in the field shall not be less than One Dollar per barrel * * * it has taken no effective steps to protect the small non-integrated refiner and make it possible even with the most efficient operation to realize * * * the cost of such operations * * * The efforts to control crude production have never been sufficient to prevent a surplus and consequently have not stimulated the refined market sufficiently to insure the refiner against operating losses, neither have the orders aimed at control been fully effective. As a result there has always been a sufficient amount of refined products on the larger markets to keep the wholesale price below actual cost of production."

Another refiner views it as follows:

"On September 29, 1933, the price of $1.00 per barrel was posted * * * During this period of some fifteen months the price of crude oil has been virtually fixed, due to the insistence that crude prices must not be reduced. There is only one Section in the Petroleum Code that was intended for the protection of the independent refiner. In this Section it was specified that the constant 18.5 should be applied to the price of gasoline in order to determine the price of crude oil. This meant that when crude oil was $1.00 per barrel the price of 60-64 octane gasoline would be 5.4¢ per gallon. There has not been a time since the Code that we have received this price for the named grade of gasoline."

5773 Another refiner, complaining also of major company refineries selling tank-car gasoline in cut price areas at prices which, after deducting freight, net back nothing at the refinery, says:

"Pegging crude at a dollar a barrel with the approval, yes, insistence of the Code authorities, then permitting such acts * * * in the name of this Code of Ethics smacks mightily of a desire to entirely eliminate the independents * * *.

"So far, the Code authorities have not permitted price fixing other than to establish a minimum price for crude oil. In principle, I am opposed to price-fixing by government, but, where the government steps in and tells you what you must pay for crude, then it should go down the line and tell you what * * * to charge for the refined products * * * if a refiner who must purchase his crude can not obtain a price for the refined products equal to what he pays for the crude plus * * * expenses * * * it is only a matter of time until he is out of business—and that is the condition we are in today."

"Personally", says another refiner, "I cannot see how there will ever be any lasting stabilization * * * until something is done to control the price of crude oil so that it will be kept nearer in line with the price of refined products * * *"

After a careful consideration of the facts we feel that it is reasonable to conclude that the crude oil price since the Code has, in practical fact, been maintained at an artificially high level relative to the degree of production control achieved. We recognize that there are contrary views: some say that it is the refined prices which have been too low, that they should follow the crude price and not vice versa; and that the crude price itself has not been too high, based upon costs of settled production and the like. It is apparent however from any study of the situation that changes in the crude oil supply and demand picture have always been reflected more promptly in gasoline prices than in crude oil prices even when both were free to move naturally.

5774 Fundamentally there is only one set of supply-demand factors in the Petroleum Industry. Except in a very narrow and temporary sense there is no "supply" of refined products except the supply of crude oil and no "demand" for crude oil except the demand for its refined products. This is especially true since for a number of years past there has been more than sufficient refining capacity to quickly convert crude oil supplies into any refined products which might be "demanded".

Gasoline prices record changes in this supply-demand picture more quickly than crude prices because gasoline is always being bought and sold in an open market. Each buyer has access to a considerable selection of sellers with little delay, and vice versa; whereas in the case of crude oil, buyers and sellers are physically limited by pipe line connections and it is not feasible for either of them to be constantly changing ~~these connections~~ in order to obtain a minor price advantage. For this reason there is no convenient opportunity for buyers and producers of crude oil to take account of every nuance of supply and demand as in the case of gasoline.

This explains, we believe, why crude oil price changes ordinarily follow those of gasoline by a reasonable period of perhaps a few months, but it does not account for the present crude oil price remaining permanently unresponsive to the same changes in the supply outlook that have been definitely reflected in gasoline prices.

We may mention a few of these changes in the supply outlook during the Code period. Looking at the period as a whole it is apparent that the $1.00 crude oil price was established in anticipation of a degree of control over crude oil production which, for various legal and other reasons, was impossible of attainment. From September 1933 to the end of 1934, crude oil production in the United States, including hot oil as estimated by the Bureau of Mines, exceeded the allocations of the Petroleum Administrative Board by a total of 61,802,000 barrels, almost a month's production.

5775 While at all times since the Code there has therefore been over-production of crude oil as compared to the allocations, there have in addition been many intermediate changes in the outlook with respect to crude oil control. In February, 1934, for example, the Government's powers under the Code were greatly reduced by the decision of

Judge Bryant in the Panama and Amazon cases (see Exhibit I). In the week following his decision the wholesale price of gasoline in Oklahoma declined approximately ½¢ a gallon, which in terms of crude oil would be equivalent to 10 or 12¢ a barrel. In April new Federal oil legislation was proposed and late in that month the Thomas-Disney Bill was introduced, strongly backed by the Administration and a large portion of the Industry. There appeared little doubt that it would pass and that strong Federal control would thus be restored. The price of gasoline reflected these changes in prospect, and from early April through May it rose approximately ¾¢ a gallon. By the second week in June, however, it became evident that the Thomas-Disney Bill would not be enacted. Here again was another shift in the outlook, and the price of gasoline, evidently reflecting it, declined in mid-June by approximately ½¢ a gallon. As the summer progressed the hot oil flow from East Texas increased and correspondingly the gasoline price structure steadily weakened. For a time a distinction was made in the price quotations between legal and illegal gasoline and the full effect of the hot oil and gasoline from East Texas can be understood only by examining the prices at which the hot gasoline was being sold. By the middle of October, however, even legal gasoline had sunk more than 1¢ a gallon from the mid-summer level. Crude, however, still remained at $1.00 a barrel. Then late in October came the creation, under Section 9(c) of the National Industrial Recovery Act, of the Federal Tender Board which was set up to make effective the prohibition of interstate shipments of illegal crude oil and products from East Texas. The new Board was successful immediately in drastically reducing such shipments. Here was perhaps the most definite example of all of a sudden change in the supply picture, and the gasoline price, sensitive to it, suddenly reversed its downward trend and advanced sharply for about two weeks, recovering from the extreme lows of October.

Reflecting subsequent conditions gasoline prices have weakened further since last November and at the end of February the Oklahoma price of 63-70 octane gasoline in the Chicago resale market was 4.125 cents a gallon.

5776 Looking at these events and at their reflection in the wholesale gasoline market it is impossible to escape the conclusion, not only that the conditions of control anticipated when the $1.00 crude price was established have not obtained during the period of the Code, but that, in addition, there have been many intermediate variations and vicissitudes in the supply side of the crude oil picture which were sufficient to have caused fluctuations from time to time of from 10 to 15 or 20¢ a barrel in the price of crude oil had it been free to reflect those factors.

It is this fixity and inflexibility of crude oil prices, in the face of changes and reductions in the market value of the products obtained from the crude oil, that the non-integrated refiner complains of. Many of them have a long record of proud and honorable operation and it is difficult for them to accept defeat at the hands of the present situation. One of them writes:

"As you perhaps know, our company is one of the older refining companies in the United States, having been incorporated in 1886. * * * We have, of course, gone through other depressions in the past, but in these other periods we found that the entire Industry suffered together and we were in no worse condition than other petroleum companies, and when conditions improved our situation improved also. In the present depression, however, we find that the non-integrated refining companies are suffering seriously, whereas the integrated companies, due to the conditions which exist * * * are able to get by without loss."

Another, closing on a more bitter note writes:

"For your information, this company is one of the oldest refineries in * * *. It has never resorted to the use of illegitimate or questionable tactics in conducting its business. And, up to the time the Code became effective, we were proud to be proud to be known as a prosperous asset to the community; while now, under the operation of the Code, we are setting up another tombstone commemorating the 'progress' of the New Deal."

(Then follows Chart)

5777 Conclusions and Recommendations

The refining branch of the industry has been at a disadvantage for a number of years and as a result most of the plans that were doomed by unfavorable location, exhaustion of local crude sources, or inefficiency of operation, had already been eliminated prior to the Code. Disregarding some small plants in East Texas and possibly a few recently constructed in other new fields, most of those that have survived and are now operating appear to have the advantage of favorable geographic locations or unusually capable management. We believe that in a fair race, involving refining operations alone, and all paying the same price for their crude oil, they would more than hold their own in competition with the larger companies. No efficiency of operation however can overcome the present odds. They cannot continue to pay the present posted crude oil prices and continue to sell their gasoline in competition with certain integrated companies that have low cost flush production for which they are realizing, after conversion into gasoline, substantially less than posted crude oil prices.

It is our opinion that most of the large oil companies which post prices for crude oil in the principal fields have been well aware of the fact that crude oil has been too high in relation to the prices of refined products, but that since in most instances they themselves have not suffered seriously as a result of the abnormal situation—and in certain cases have profited greatly—they have not been inclined to cut the price of crude oil and risk the change of administrative disfavor as well as the possibility of adverse legislative penalties. The result is that the refining branch of the Industry has been obliged to absorb the difference between the prevailing posted crude oil prices and those prices which, as indicated by historical experience, should have prevailed.

Since crude oil finds its consumptive market only through refined products, we believe that generally speaking the prices of refined products are a fairly accurate barometer of the degree of success attained from time to time in balancing crude oil supply with consumptive demand, and that no artificial factors should be allowed to interfere with the normal relationship between crude oil prices and the prices of refined products. Otherwise, 5778 profits merely will have been given to one branch of the industry at the expense of another. No additional over-all prosperity will have been created, and natural corrective forces will have been interfered with.

There is a vast difference between small refiners being destroyed as a result of the natural economics of the industry and their being destroyed as the result of artificially maintained crude oil prices.

Immediate relief is necessary if non-integrated refineries are not to be eliminated; it can come in only two forms.

1. An immediate and sustained increase in tank-car and retail gasoline prices to a parity with present crude prices, or

2. A reduction in the posted prices of crude oil to a parity with gasoline.

We agree with the thought prevalent in the production branch of the Industry—that it would be more desirable for the solution to come from an increase in gasoline prices instead of a reduction in crude, but if it cannot be done one way it should be done the other way.

We favor making one more effort at raising gasoline prices. Refiners, of course, will point out that almost continuously over the past year efforts have been directed toward that end with negligible results. But some improvement in the basic factors of the situation may have been accomplished, and possibly only the impetus of concerted buying is needed to obtain a decided change for the better. Interstate shipments of hot oil and its products apparently are being brought under control and if the oil states enforce proper allowables there should be an improvement in the supply side of the picture. We know of nothing, apart from continued improvement in crude production control, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is being considered by the Industry now in connection with a broad stabilization program. We therefore urge that the Administrator give it his approval and active support.

5779 It should be possible to have such a program functioning quickly. Profiting by the mistake of previous efforts, and in having to overcome the counter-effects of excessive quantities of hot gasoline and widespread disastrous retail price wars such as raged when a buying program was attempted last Fall, we believe such a program might be successful in raising both tank-car and retail prices to their proper level in relationship to crude oil prices.

If higher tank-car prices are obtained, we believe they can be sustained only by corresponding increases in retail gasoline prices; otherwise, the burden merely would be shifted from small refiners to small marketers, who in many instances have been in just as much distress as the refiners. We find that abnormally low retail prices can depress tank-car prices just as much as low tank-car prices can pull down the retail price structure. Thus it appears to be essential that both prices move up together.

Unfortunately, many people outside the Industry who recognize the desirability of conserving petroleum reserves and who strongly favor the preservation of small enterprises, are likely to be the first to criticize a moderate increase in retail prices of gasoline, not realizing that in so doing they are striking directly at the non-integrated units and throwing the entire Industry into the hands of a few large integrated companies.

If, however, gasoline prices do not advance to an approximate parity with crude prices by an early date, within thirty days or thereabouts, or if they do not continue in such parity thereafter, then we recommend an immediate reduction in the price of crude oil to a parity with refined products. On the basis of prices as of this date a reduction of about 20¢ a barrel would be required to bring crude oil and gasoline prices into parity on the basis of the ratio of 18.5 to 1 as set forth in Section 6 of Article III of the Code. In view of the fact that most of the trade papers have discontinued publishing quotations for the 60-64 octane gasoline specified in Section 6 of Article III, we suggest in this connection the desirability of resuming such quotations.

5780 Of course some members of the Committee believe that a drop in crude oil prices would simply result in a further decline in the prices of refined products unless the fundamental factors necessary to prevent such a result were made effective in the meantime. A graphic portrayal of all the market changes extending over a period of many years however, discloses that there had been an advance in tank-car gasoline prices soon after every crude oil price decline except in the case of a few series of crude oil cuts constituting major downward movements such as occurred when Seminole was opened up in 1927, East Texas in 1931, and when proration in East Texas collapsed early in 1933. (See accompanying chart, Exhibit III). We believe that if it should become necessary to reduce crude oil prices, corrective forces would assert themselves. It is apparent, for example, as may be seen in Exhibit II that the drilling of new wells and the consequent development of new crude oil supplies is retarded by any reduction in the crude oil price.

In shifting some of the burden from the refiners who buy their crude oil at posted prices to producers who sell their oil at those prices, and in taking away some of the advantage of the large integrated companies that are profiting by the difference between their production costs and posted prices, the entire industry we believe would be aroused out of its complacency over the plight of those companies that cannot hold out much longer. We recognize, of course, that this program would result in many producers now operating at a loss, having to operate at a greater loss until the basic remedies that have been recommended are made effective. Disappointing to producers as such a step might seem, we believe, however, that from the enlightened viewpoint of all factors in the Industry, it would be preferable to the extinction of the non-integrated refiners.

Moreover, restoring freedom to the crude oil price and making it dependent solely upon the efficacy of control over the supply factors and on the confidence in the permanency of such control would, we believe, promote far healthier conditions in respect to such control and its improvement, than where the price of crude oil is artificially maintained at a level inconsistent with the realities of control and the Industry's confidence therein.

(Charts (Exhibits II and III) follow)

5781

IV

Marketing

Nature of Complaints:

We have received the following principal complaints from marketers:

(a) That their costs, particularly labor, have increased greatly under the Code.

(b) That margins allowed both jobbers and dealers are not large enough to permit them to pay Code wages and operate at a profit.

(c) That their volume of gasoline business is diminishing because of competition from lower price service stations.

(d) That whereas the larger companies are now reducing their margins to jobbers and dealers in certain areas, there is no compensating reduction in the total number of retail outlets, and that the same large companies continue building their own service stations, incurring marketing costs far in excess of the margins which they give to their independent distributors.

(e) That the large companies engage in uneconomic marketing practices which could not be continued if their marketing operations were not subsidized by revenues from other branches of the Industry, and that such practices constitute a clear violation of Rule 6, Article V of the Code which is intended to prohibit such diversion of income from one branch of the Industry to another.

(f) That crude oil prices were stabilized but that retail gasoline prices were left to the mercy not only of ordinary competition, but of an especially subsidized form thereof.

(g) That whereas the Code prohibits discounts at service stations, large discounts are being given to consumers that take delivery by tank truck and that particularly since the discontinuance of the CD 1 contracts, both commercial and pleasure car business is being diverted from service stations.

5782 (h) That marketers have been subjected to serious hardships due to so called retail price wars.

Analysis of Complaints:

In analyzing the complaints of independent marketers it is necessary to distinguish carefully between those difficulties that have arisen as a result of the Code and those that find their cause outside the Code. For example, except to the extent that the authority to fix prices might be invoked, complaints concerning margins allowed by supplying companies to the jobbers and dealers, and concerning price differentials between branded and unbranded gasoline, come under the Code only indirectly. The Code does not prescribe what the margins allowed jobbers and dealers should be, nor does it prescribe retail price differentials as between one type of marketing and another.

Unquestionably, there are many existing difficulties and hardships in connection with marketing operations that cannot be related directly to any rule in the Code and for which your Committee does not attempt to offer a solution.

We believe it is inevitable that many service stations must continue to operate at a loss; any margin that would permit all of them to operate profitably, would continue to attract newcomers into the business with the further dilution of gallonage, and then that margin would no longer be adequate. This applies especially to the retailing of gasoline because it is a business that requires little capital or business experience and thus is easy to get into.

While production, transportation and refining operations have been growing more efficient, retail marketing operations steadily have grown less economical, and today costs appear to be approximately twice as high as they were 20 years or more ago when the volume of demand for gasoline was only a fraction of what it is today.

We find that for a year or two prior to the adoption of the Code an effort was made in certain areas by the principal marketers of gasoline to reduce margins and marketing costs, but that after the Code became effective much ground was lost because of prospective price fixing

5783 involving protested margins large enough to take care of almost everyone, followed by the proposed marketing agreement with its margin provisions which were adopted generally by the Industry, giving increases in many territories. There followed a renewed wave of building of service stations.

We note that again there is a tendency to try to reduce margins and marketing costs of gasoline, but it involves an unpleasant and painful process with many accompanying inequalities that frequently are attributed improperly to the operation of the Code.

The trend for the past few years toward lower margins tween tank car and retail prices may be seen in the following figures and the accompanying chart. It will be noted that there was an accelerating trend after 1929 toward a narrowing of this spread, but it apparently had about leveled off by 1932, continuing at about the same level through the first half of 1933. In the last half of 1933 following the adoption of the Code and in the first half of 1934, the spread increased, representing a reversal of the trend and reflecting the attempt to raise retail prices sufficiently to cover the extra costs of marketing and the wider margins extending to re-sellers.

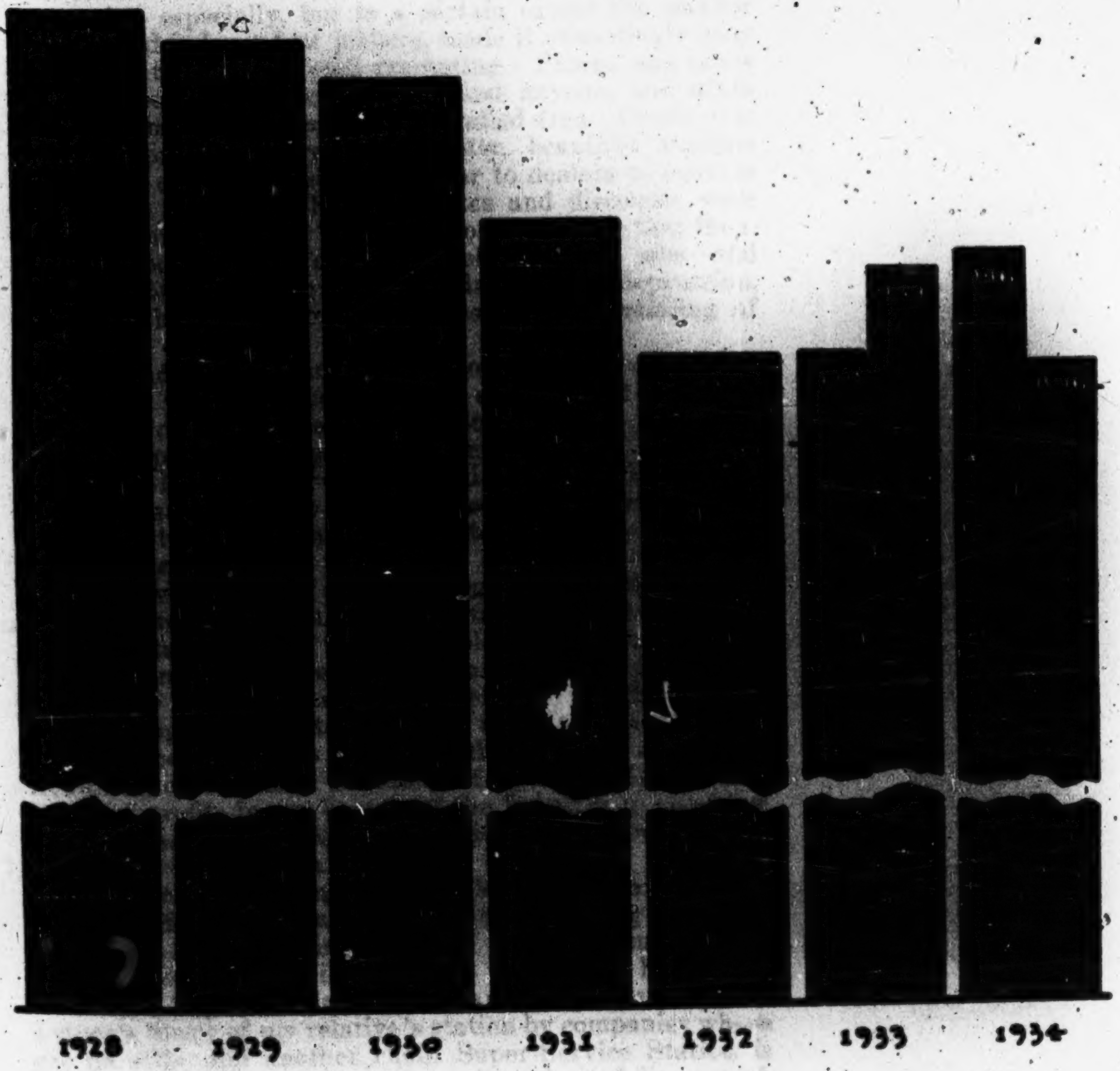
Spread Between Wholesale and Retail Prices
(Regular Grade Gasoline—Cents Per Gallon)

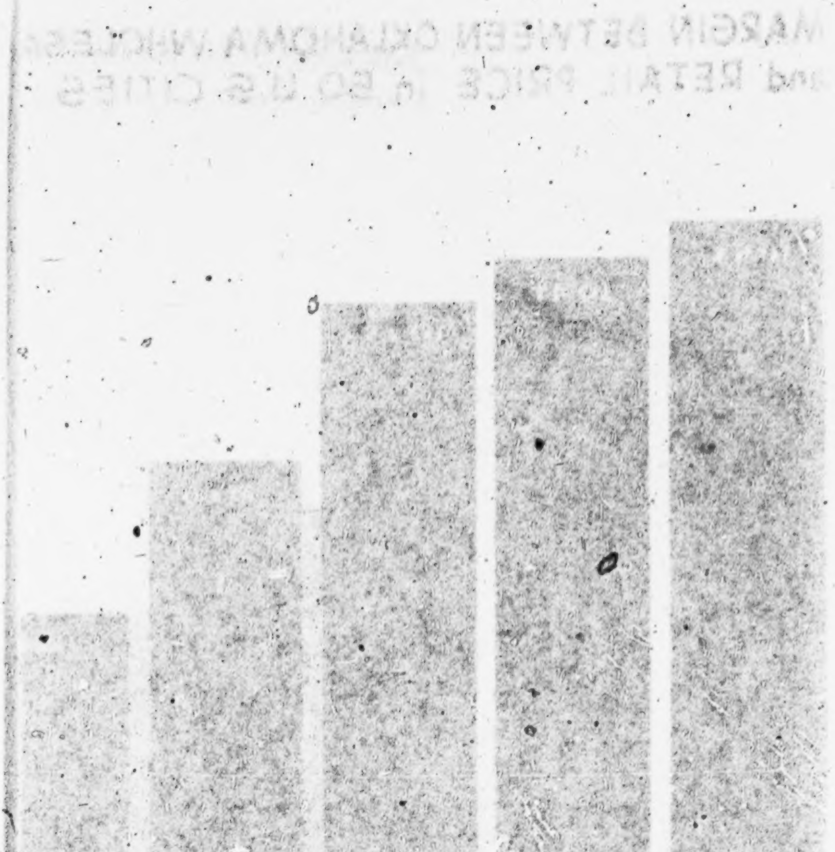
	Average Tank Car Price f. o. b. Group 3 (low Chicago Resale)	Average Retail Service Station Price in 50 U. S. Cities, ex. tax	Spread Between Tank Car and Service Station Price
1928	7.10	17.63	10.53
1929	7.50	17.91	10.41
1930	6.10	16.33	10.23
1931	3.50	13.10	9.60
1932	4.30	13.30	9.00
1933—1st half	2.60	11.61	9.01
—2nd half	4.53	13.92	9.39
1934—1st half	4.44	13.90	9.46
—2nd half	4.36	13.32	8.06

The authors of the Code evidently recognize that the marketing branch of the Industry was in a vicious circle. Many of the Rules in Article V obviously were intended to discourage further expansion of gasoline retail outlets and the correction of bad marketing practices between retail

(Chart follows)

MARGIN BETWEEN OKLAHOMA WHOLESALE PRICE of GASOLINE and RETAIL PRICE in 50 U.S. CITIES [CENTS PER GALLON]





5785 gasoline dealers and their suppliers. Entirely aside from the fact that the Code has failed to protect the independent dealers against certain injustices, it scarcely could be expected to be popular with them because of its very nature.

It should be recalled that for many years the larger oil companies, especially, but to a certain extent the smaller refiners and independent jobbers, made it exceedingly easy for people to get into retail marketing. Pumps and tanks were loaned without rental to almost anyone, and often other expensive equipment was installed free. Credit was extended promiscuously. Frequently, beautiful stations were built, equipped and turned over to dealers to operate practically rent free. Secret rebates and discounts were given to many dealers. Thus it is not surprising that thousands of people who found themselves out of jobs—and often out of money—in the early days of the depression, went into business "for themselves" in the retailing of gasoline.

The steadily increasing number of service stations has meant less volume of business per stations and increased marketing costs. These higher costs could not be passed on to the public because of the competition of track-side and other lower price service stations which have large volume of sales and low marketing costs. In fact the competition of track-side stations tends to hasten a reduction in dealers margins.

We believe that many dealers recognize that reduced margins will mean, eventually, fewer stations and lower marketing costs for those that are able to stay in business. Dealers complain, however, that large oil companies are not closing up those stations of their own which they are unable to operate profitably on the margins given to dealers. We consider this a valid and important complaint. Doubtless, enforcement of Rule 6 of Article V (pertaining to use of profits in one branch of the Industry to subsidize losses in another) which we deal with elsewhere, would tend to correct the situation.

Typical of these complaints is a letter written by a consulting engineer who had given financial backing to a relative in the retail gasoline business. After commenting on a recent reduction in the margins to dealers, he writes: "Two new Super-Service Stations are being erected within a stone's throw of my relative's station by companies whose gas he sells, and another chain Super-Service Station is going up nearby. In the community where I live, north

of New York, four such stations have been erected within
a few months and the small men are being wrecked.
5786 These company stations have so many attendants and
such a high investment cost that it is obvious they
could not fail to lose money if they were charged on the
books for oil and gas at the same prices they charge to
independent marketers.''

Another marketer commenting on the situation writes: ''The principal reason for the multiplicity of service stations is that every integrated company feels it must have service stations in every neighborhood of every city of every State. The local representative here of the .... Oil Company told me he would never be satisfied until his company had service stations in every neighborhood in our city giving them a total of 15 or 20 stations. Other integrated companies appear to have the same idea and soon we will have each of them represented by a service station in every neighborhood—if there are enough corners for all of them.''

A number of those who sent in complaints call attention to the figures submitted in connection with the arbitration of the service station strike in Cleveland last summer, as published in the National Petroleum News. The exhibits presented by ten large oil companies showed that average costs for marketing through their own service stations had averaged 9.63¢ per gallon of gasoline sold during 1933. If, from these figures, is deducted the entire gross profit made on non-gasoline products (equal to 1.7¢ per gallon of gasoline sold) the net cost of selling the gasoline itself would appear to have been approximately 7.93¢ per gallon. This cost, which includes a proper share of bulk plant and overhead expense, compares with an average combined margin at that time to jobbers and dealers of less than 6¢ per gallon. We believe that these costs are reasonably typical of major company marketing expense. Obviously such uneconomical operations can exist only by virtue of subsidies from other branches of the Industry.

Dealers' normal margins on gasoline have been lessened through the giving of discounts at service stations in violation of the Code. Before the Code was adopted, service station discounts in many areas averaged more than 1¢ per gallon on the total volume of business. When the Code was adopted it was thought that Rule 3 (paragraph 4) of Article V, prohibiting the giving of discounts at service stations, would afford dealers a corresponding increase in margin to absorb their increased labor expense, but widespread violations of this rule have greatly reduced the intended benefit. This rule is simple and easy to understand, and in our opinion, is one of the most constructive rules in the Code, yet in certain areas it has been more generally violated than any other rule. In other areas it has been lived up to almost 100%. We believe a more serious effort should be made to enforce it, but at the same time, as we point out elsewhere, steps should be taken to correct 5787 some of the practices which provoke violations of this rule.

We find that independent jobbers have had substantial increases in labor costs and in most cases have received little or no increases in margins between the prices they pay for gasoline in tank car lots and the prices they receive from dealers. In some territories their margins are lower than at any time in recent years.

These rules in the Code intended to help them, such as prohibiting the giving of secret rebates and the loaning or giving away of equipment, appear to have been lived up to quite generally but we believe the resulting savings are insufficient to absorb their increased labor costs.

Many jobbers that have been accustomed to buying their gasoline on the open market from non-integrated refiners have suffered so severely because of local retail price wars that recently increasingly large numbers of them have signed marginal contracts with the larger oil companies. This shifting of source of supply has greatly added to the disability of the small refiners and in many sections has practically eliminated open market gasoline buying except by track-side and other similar tank-car purchasers.

Although the giving of full or partial protection, by the large oil companies, to jobbers in local price wars has taken business away from the smaller refiners, without such protection many of the jobbers could not have survived.

Like other non-integrated units in the Industry, the jobbers complain that the margins they receive are smaller than the cost of corresponding operations of the large companies. They claim that the integrated companies are subsidizing their marketing operations with profits from low cost flush production and pipe line operations. We believe it is reasonable to assume that such deep price cuts in local price wars would not occur if the large companies participating were unable to draw upon reserves from other branches of the Industry.

One of the causes of greatest complaint from service station operators and small jobbers is that in many sections large quantity discounts are being given to consumers tak-

ing delivery by tank truck. We find that this competition is diverting both commercial and pleasure car gasoline gallonage away from service stations. Dealers are tempted to violate the Code by giving similar discounts to hold the business at their service stations but often the tank-truck consumer is getting a price that is as low or lower than the price charged the dealers. We find that the situation has grown much worse since the cancellation of the CD 1 contracts. In fact some large national accounts
5788 having relatively small local requirements in each of
hundreds of small cities appear to be obtaining their requirements from certain major oil companies, delivered by tank trucks, at prices which are almost as low as tank-car prices.

We recommend a new CD 1 type of contract providing for consumer tank-wagon prices not more than 2¢ below service station prices and embodying the other provisions contained in the resolution pertaining to this subject as approved February 20, 1934, except that no quantity discounts should be allowed unless 5,000 gallons or more are purchased in a month and the maximum discounts should be 1¢ on 60 octane gasoline and above and ½¢ on below 60 octane. Also quantity discounts should be earned not on the basis of amounts purchased each month from individual suppliers but on the basis of total purchasers, from all suppliers, by single corporations, partnerships or individuals, as evidenced by affidavits filed within 30 days after the end of each month with the Petroleum Administrative Board or some central agency or agencies selected by them. Discounts would be paid after the end of the month, by the supplying company or companies only upon receipt of claim supported by copy of affidavit previously filed with the central agency.

Under the proposed plan distributors operating only in local areas could give the same discounts to national accounts as the larger companies, thus eliminating a source of much controversy and Code violation in connection with the old CD 1 form of contract.

We believe that the full posted service station price for gasoline should apply, without exception, on deliveries of less than 100 gallons and that penalties should be provided for application by the oil companies to tank-truck drivers that combine smaller deliveries and show same as a single dump of 100 gallons or more for the purpose of concealing a price-cut of 2¢ per gallon. Service station dealers are entitled to protection against this prevailing practice concerning which the management usually can plead ignorance.

We find that local price wars tend to promote monopoly in that they bear more heavily on these smaller or non-integrated units that operate only in the affected areas or only in the marketing branch of the Industry. The larger integrated companies can average their losses over a greater territory and over all the branches of their business.

5789 Some smaller marketers that have suffered seriously from gasoline price wars have urged price fixing. We do not favor price fixing; we believe it could not be enforced. Also because of the complexity of the retail gasoline price structure of the Industry, any effort to apply price fixing would result in injustices equally as great as those intended to be corrected.

It is common knowledge that worse price wars have been experienced in the past year than at any time in the history of the Industry. Gasoline has sold at prices that figured back to less than nothing at the refineries. Small jobbers whose losses were not underwritten, at least partially, by some refiner suffered terrific losses. Small refiners who attempted to protect their jobbers suffered correspondingly.

We are of the opinion that price wars cannot be avoided entirely but they can be minimized. There appears to be no excuse for the deep price cuts which involve the selling of gasoline below cost by a majority if not all of the participants. Unquestionably, the limitation of such serious price wars would be a real step toward solving some of the most serious problems affecting both small marketers and small refiners.

Usually price wars do not accomplish their ostensible purpose. In fact, many of them cannot be explained except on the basis of some sinister motive. It should be possible to put such restrictions around severe price reductions as to make it difficult for companies to precipitate such disturbances for purposes that are not apparent. Certain large integrated companies have engaged in price wars in certain areas ostensibly because of competition of a few track-side stations, when it was generally believed that their real purpose was to destroy other local competition which happened to have a large share of the business in that area.

Large oil companies have, or we believe should have, formulae which they use in determining their prices in the various areas in which they are the most important factors. We recommend that these large companies that are generally recognized as the dominant factors in their respective areas file with the proper stabilization committee the formulae by which they determine their normal price levels in the different areas, together with a statement of the reasons for any deviations therefrom which they may make from time to time. Also we recommend that similar information be filed by their competitors. These smaller companies that merely follow the markets of leaders in the Industry, should so state that to be their policy; similarly, those independent or small marketers that do not follow the leadership of the larger companies should state their manner of determining their price levels.

5790 To discourage the further building of gasoline service stations, we recommend that authority be given to marketers of petroleum products to enter into compacts with each other, subject to the approval of the Administrator, whereby the building of new service stations, by the parties thereto, or the substantial re-building of existing stations, would be either discontinued or restricted in certain agreed upon areas.

5791

V

General

In so far as this Committee has been able to determine, the transportation of crude oil has not been affected adversely by the Code. No complaints having been received from this branch of the Industry it may be reasonably assumed that those small enterprises engaged in such transportation are satisfied with respect to the effect of the Code on their operations. The Committee therefore has no recommendation to make on this subject other than the general one that profits from this branch of an integrated enterprise should not be diverted to subsidize another branch to the detriment of competitors.

To obtain a better balance of gasoline supply in relation to consumptive demand as between the smaller companies on one hand and the larger companies on the other, we recommend that authority be given to refiners to enter into compacts with each other, subject to approval of the Administrator, to restrict voluntarily their respective gasoline productions below the allocations as given them under Sections 3 and 4 of Article IV of the Code, and to transfer to smaller companies all or any part of that portion of their allowable production thus curtailed.

In order that the smaller companies may have the same advance information concerning impending changes in Code interpretations, rules, policies, etc., that is now enjoyed by the larger companies that have representation on the principal committees dealing with such matters, we recommend that meetings of the Planning and Coordination Committee and the principal committees under them be open to the trade press.

We believe the present Code organization with its great number of local, state, regional and national committees and sub-committees, is unnecessarily cumbersome and expensive to the Industry. We recommend that the general set-up be simplified and more adequate representation in each branch of the Industry be given to small and non-integrated enterprises.

We find that small enterprises have suffered from failure to enforce certain provisions of the Code which apparently are unenforceable either because of doubtful legality or because of the nature of the provisions. We recommend that when the Code is redrafted, such provisions either be dropped entirely or be segregated into a separate section, adherence to which would be by mutual voluntary 5792 agreement.

Respectfully submitted,
(signed) Paul Blazer
Chairman
(signed) Mason Houghland
Member
(signed) R. E. Allen
Member
(signed) H. B. Fell
Member
(signed) Sidney Swensrud
Member

P.A.B. 97815

TREND of WHOLESALE GASOLINE PRICE SINCE CODE
[Low Chicago Resale Price F.O.B. Group 3]

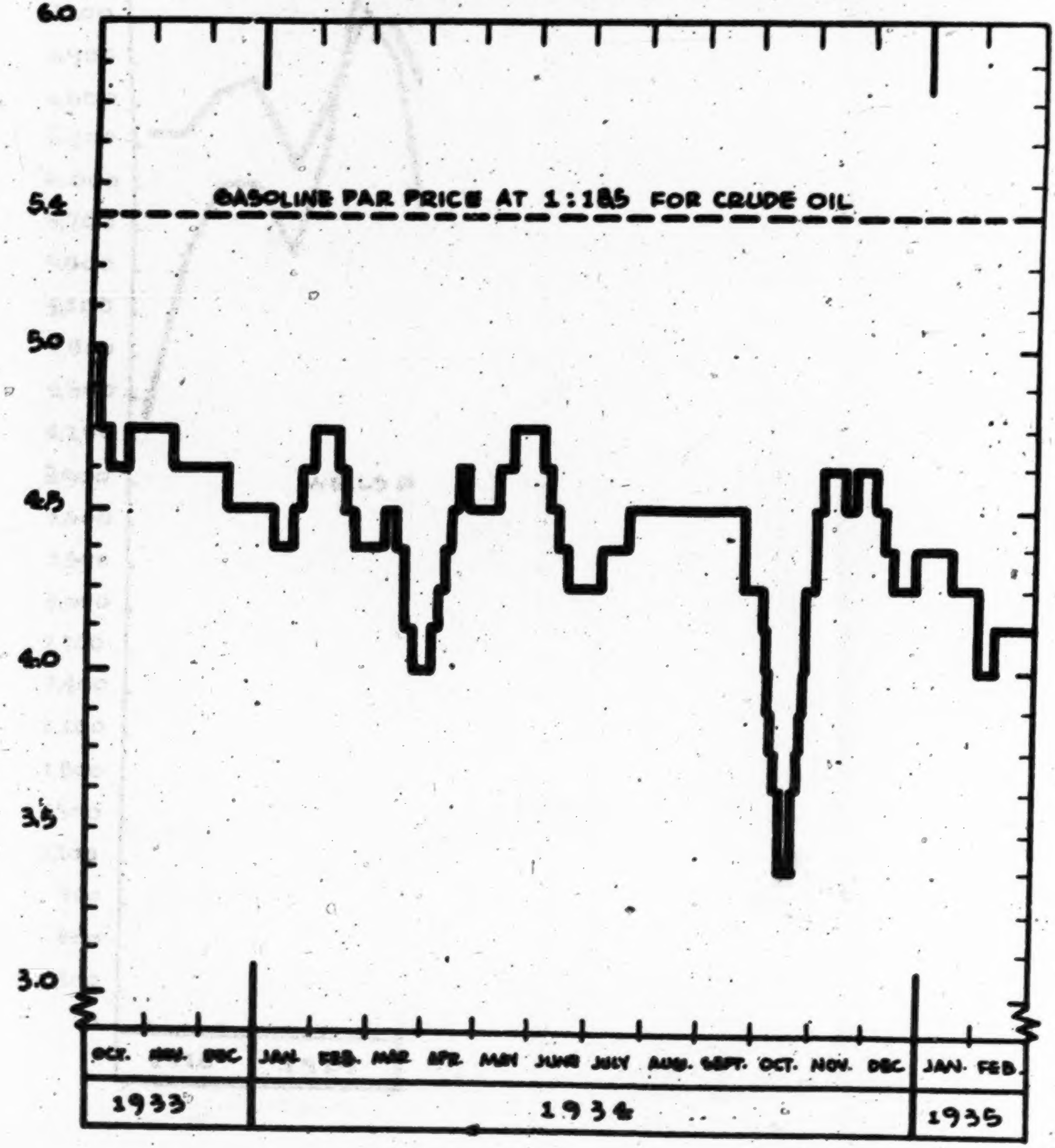
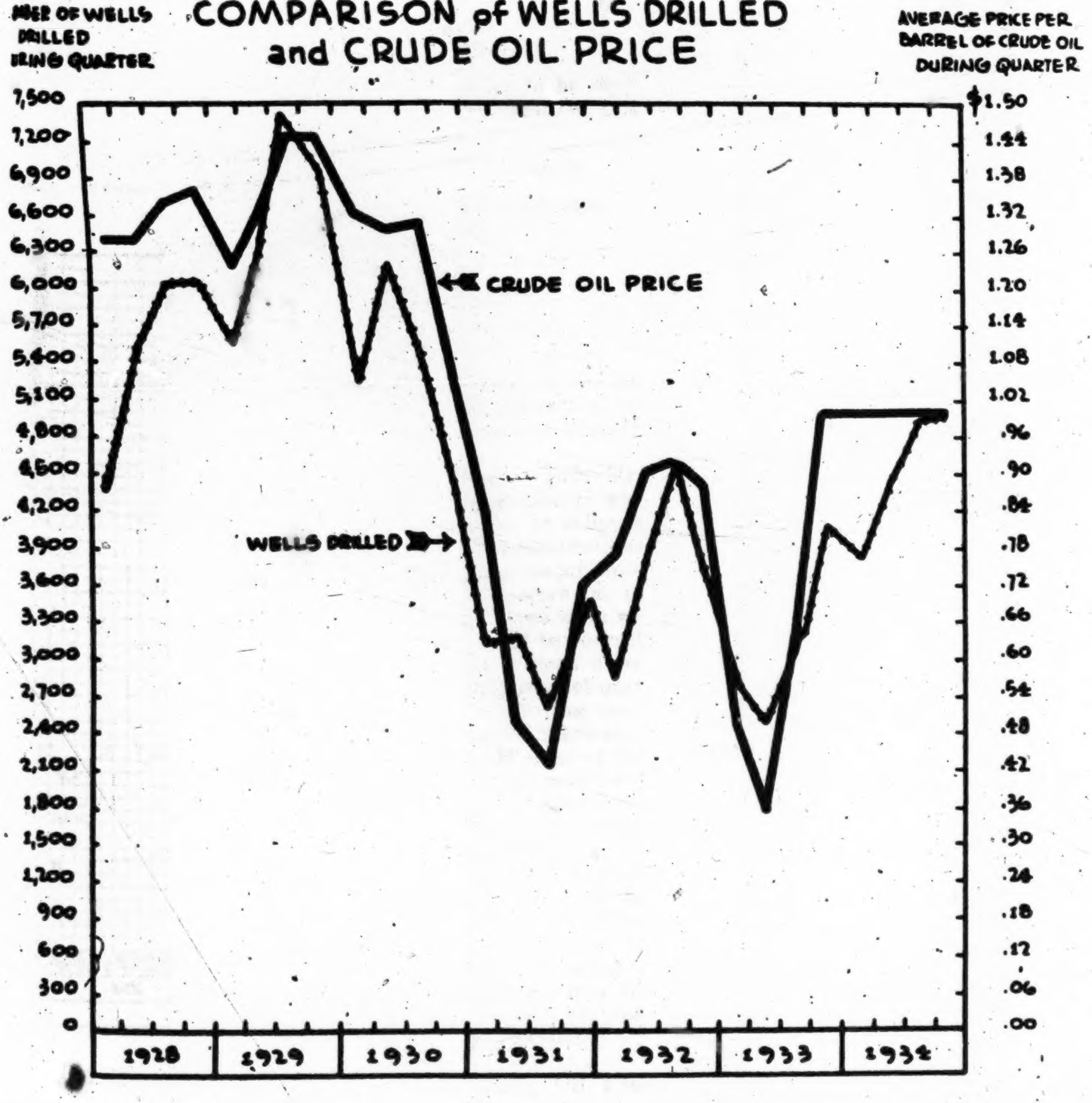
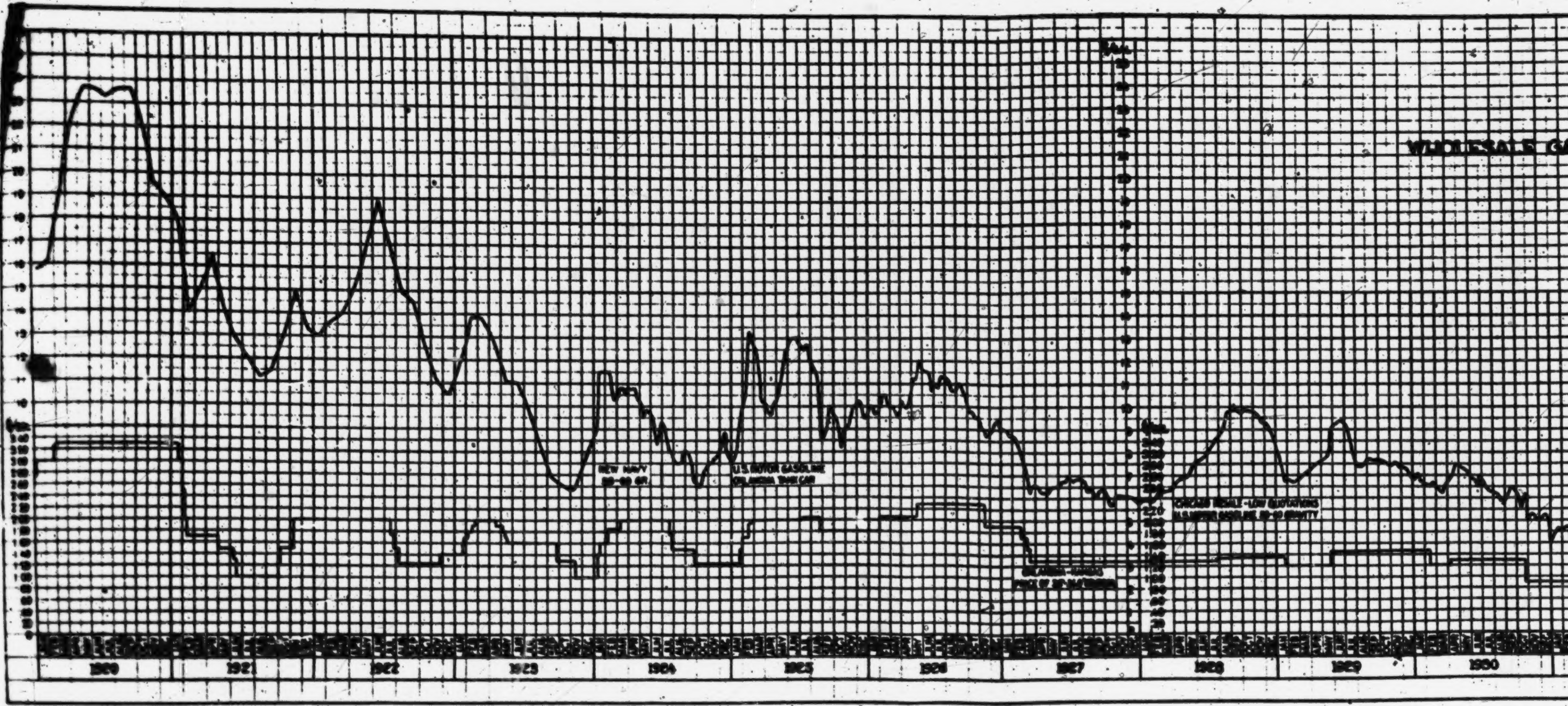


EXHIBIT I

COMPARISON of WELLS DRILLED and CRUDE OIL PRICE




WHOLESALE GA
NEW NAVY
U.S. MOTOR GASOLINE
OKLAHOMA TANK CAR
OKLAHOMA—KANSAS
LOW QUOTATIONS
U.S. MOTOR GASOLINE
1920
1921
1922
1923
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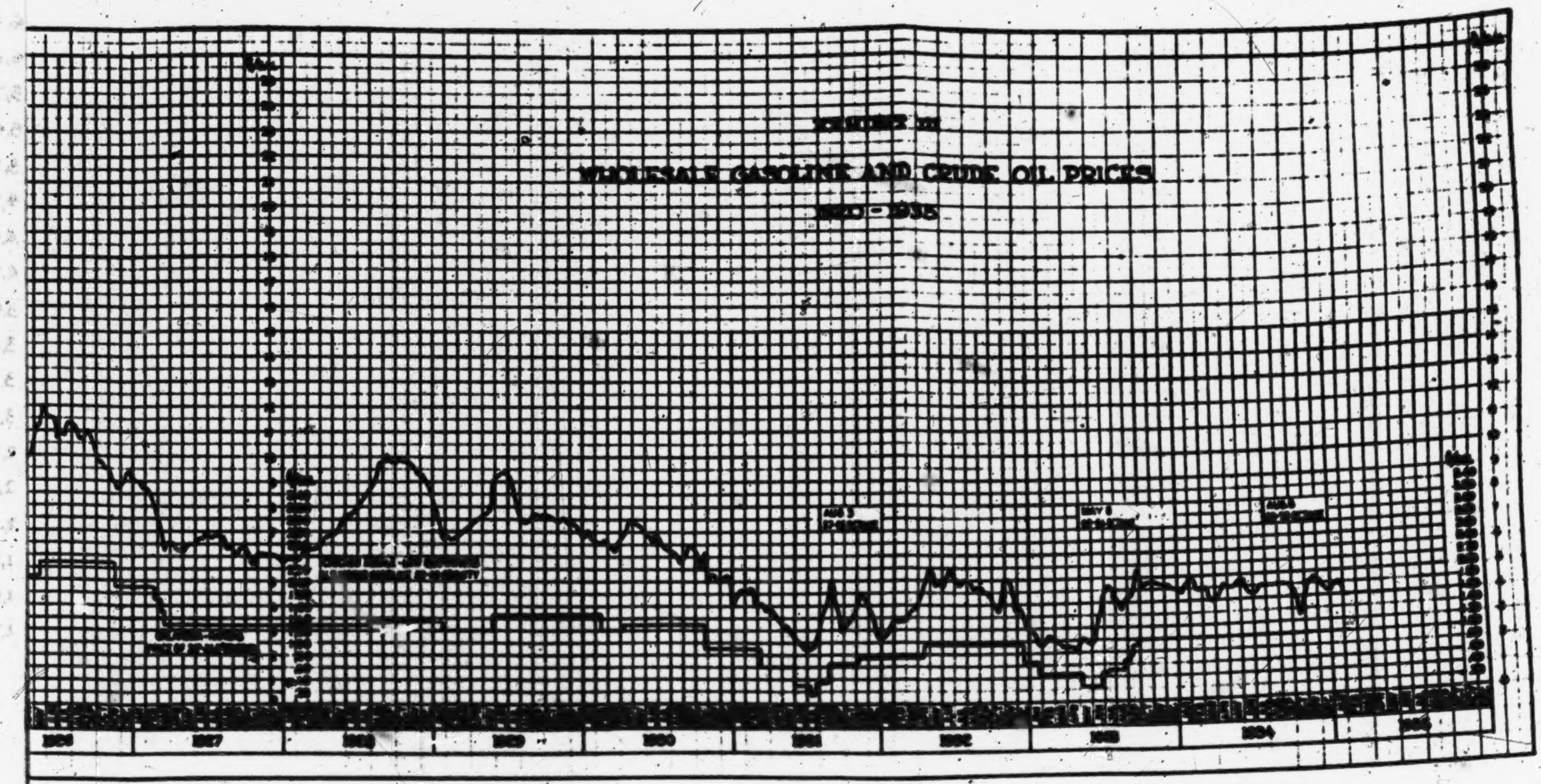
1930


WHOLESALE GASOLINE AND CRUDE OIL PRICES
1926 - 1935
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935

5796 DEFENSE EXHIBIT NO. 925.

(Certified by the Department of the Interior to be copy of letter dated May 9, 1935, signed by W. J. Brundred and addressed to Chas. Fahy.)

5797 Central Pennsylvania Oil Producers Association

Oil City, Pennsylvania
May 9, 1935

Mr. Chas. Fahy, Chairman
The Petroleum Administrative Board
Lemon Building
Washington, D. C.

Dear Mr. Fahy:

Producers in this section have been very sorry to see the gradual stepping-up of Pennsylvania's crude allocation, inasmuch as producers and refiners both feel we are already producing and refining too much oil.

Shortly after the meeting in Pittsburgh which Mr. Shaughnessy attended, a committee of seven producers was appointed to confer with seven representatives of refiners to see if the situation could be remedied. Representatives of three major companies were present. Both major companies and independents agreed runs to stills were far in excess of what they should be and thought if runs were reduced to 60,000, it would still take a long time to correct top-heavy inventories, which inventories have been accumulating for some time past and have demoralized not only the Pennsylvania Grade, but the national lubricating market as well. The low price on Pennsylvania lubricants (our money crop) if making it very difficult for some of the smaller refineries—two of these refineries in this area have stopped running crude due to this condition, and producers who formerly sold their crude oil to them are endeavoring to find other markets. This is made more difficult by the fact that a considerable quantity of Bradford district crude is moving below the market. One refiner states that he would be able to contract for 28,000 barrels of Bradford district crude per month over a six month's period at 15 cents below the market. Unless production and refinery runs can be curtailed, the outlook for producers and refineries marketing non-branded lubricants is very serious.

We sincerely hope the Thomas Bill will be enacted.

Yours very truly,
Central Pennsylvania Oil Producers Association,
By: (Sgd) W. J. Brundred,
Vice-President.

WJB:k

5801

DEFENSE EXHIBIT NO. 926.

5802

CONTINENTAL OIL COMPANY—SPOT SALES TO JOBBERS IN MID-WESTERN AREA

C.O. Co. Order No.	Name of Jobber and Destination	Date of Order	Date Shipped	Quantity & Octane Bracket 63–70	62 & Below	Description of Product	Sales f. o. b. Point
2-77	Frank Strunk, Kansas City, Mo	1- 5-35	1- 7-35	8,178		Conoco Bronze	Kansas City
3-5041	Erie Oil Company, Sheboygan, Wisc	1- 4-35	1- 8-35		8,183	68-70, 360 E. P.	Group 3
2-400	R. C. Martin, De Lassus, Mo	1-28-35	1-29-35	8,251		Conoco Bronze	Ponca City
2-491	Bloom Co-op. Oil Co., Bloom, Kansas	2- 1-35	2- 6-35	4,040		Conoco Bronze	Ponca City
2-491	Bloom Co-op. Oil Co., Bloom, Kansas	2- 1-35	2- 6-35		4,020	Demand	Ponca City
3-5568	Triangle Oil Company, La Porte, Ind	2-16-35	2-19-35		4,038	64-66, 375 E. P.	Group 3
3-5724	Ernest Brinkerhoff, Elkhart, Ind	2-26-35	3- 1-35		4,026	64-66, 375 E. P.	Group 3
2-973	A. R. Granneman, Slater, Mo	3- 5-35	3- 6-35	8,183		Conoco Bronze	Ponca City
2-1236	A. R. Granneman, Gilliam, Mo	3-20-35	3-21-35		8,101	Demand	Ponca City

5803

C.O.Co. Order No.	Name of Jobber and Destination	Date of Order	Date Shipped	Quantity & Octane Bracket 63–70	62 & Below	Description of Product	Sales f. o. b. Point	Sales Price Per Gal.
2-1318	A. R. Granneman, Slater, Mo	3-25-35	3-26-35	8,085		Conoco Bronze	Ponca City	$.0500
2-1388	A. R. Granneman, Gilliam, Mo	3-28-35	3-29-35	8,086		Conoco Bronze	Ponca City	.0500
2-1470	R. C. Martin De Lassus, Mo	4- 1-35	4- 2-35	8,104		Conoco Bronze	Ponca City	.05125
2-1578	A. R. Granneman, Slater, Mo	4- 5-35	4- 6-35	8,115		Conoco Bronze	Ponca City	.05125
3-6252	Dickson Oil Co., Brazil, Ind	4- 6-35	4- 8-35		8,219	Demand	Group 3	.0425
2-1652	C. Humbert Tinsman Kansas City, Mo	4- 9-35	4-10-35	8,156		Conoco Bronze	Ponca City	.0525
2-1691	C. Humbert Tinsman, Kansas City, Mo	4-12-35	4-13-35	8,208		Conoco Bronze	Ponca City	.0525
2-1747	C. Humbert Tinsman, Kansas City, Mo	4-16-35	4-17-35	10,236		Conoco Bronze	Ponca City	.05375
2-1740	A. R. Granneman, Gilliam, Mo	4-16-35	4-17-35	8,093		Conoco Bronze	Ponca City	.05375
2-1819	A. R. Granneman, Slater, Mo	4-20-35	4-22-35	8,113		Conoco Bronze	Ponca City	.05375
3-6429	Ernest Brinkerhoff, Elkhart, Ind	4-22-35	4-24-35		8,117	64-66, 375 E. P.	Group 3	.0466
2-1940	Neely Oil Company, Ellington, Mo	4-26-35	4-27-35	8,011		Conoco Bronze	Ponca City	.05375

2-2016	Neely Oil Company, Chicopee, Mo.	4-30-35	5- 1-35	8,111		Conoco Bronze	Ponca City	$.05375
2-2069	Bloom Co-op. Oil Co., Bloom, Kansas	5- 2-35	5- 4-35	4,015		Conoco Bronze	Ponca City	.05375
2-2069	Bloom Co-op. Oil Co., Bloom, Kansas	5- 2-35	5- 4-35		4,013	Demand	Ponca City	.0450
2-2109	Neely Oil Company, Ellington, Mo.	5- 6-35	5- 7-35	8,159		Conoco Bronze	Ponca City	.05375
3-6629	Michigamme Oil Co., Ann Arbor, Mich.	5- 7-35	5- 7-35	8,132		Conoco Bronze	Group 3	.05375
2-2255	Neely Oil Company, Chicopee, Mo.	5-13-35	5-13-35	8,083		Conoco Bronze	Ponca City	.0550
2-2276	D. A. Winters Tire Co., Wichita, Kansas	5-14-35	5-15-35	8,083		Conoco Bronze	Wichita	.0629
3-6771	Michigamme Oil Co., Ann Arbor, Mich.	5-20-35	5-20-35	8,127		Conoco Bronze	Group 3	.0550
3-6882	Michigamme Oil Co., Ann Arbor, Mich.	5-27-35	5-28-35	8,108		Conoco Bronze	Group 3	.05186
3-6847	Campeco Oil Co., Manistee, Mich.	5-24-35	5-25-35	6,539		Conoco Bronze	Group 3	.0550
2-2458	R. C. Martin, De Lassus, Mo.	5-27-35	5-28-35	8,032		Conoco Bronze	Ponca City	.05625
3-6972	Stephani Strupp Oil Co., Manitowoc, Wisc.	6- 3-35	6- 5-35		8,087	64-66, 375 E. P.	Group 3	.0494
5805								
3-7052	Ernest Brinkerhoff, Elkhart, Ind.	6-10-35	6-12-35		8,009	64-66, 375 E. P.	Group 3	$.0494
3-7227	Triangle Oil Co., LaPorte, Ind.	6-22-35	6-25-35		3,954	64-66, 375 E. P.	Group 3	.0494
3-7188	Ideal Service Station, Bremen, Ind.	6-19-35	6-25-35		6,034	64-66, 375 E. P.	Group 3	.0494
3-7719	Ideal Service Station, Bremen, Ind.	6-27-35	6-30-35		6,487	64-66, 375 E. P.	Group 3	.0494
3-8031	Ideal Service Station, Bremen, Ind.	8-19-35	8-22-35		3,920	64-66, 375 E. P.	Group 3	.0494
3-8287	Ideal Service Station, Bremen, Ind.	9- 4-35	9- 6-35		3,974	64-66, 375 E. P.	Group 3	.0494
3-8363	Stephani Strupp Oil Co., Manitowoc, Wisc.	9-10-35	9-16-35		6,546	64-66, 375 E. P.	Group 3	.0494
3-8557	Ernest Brinkerhoff, Elkhart, Ind.	9-16-35	9-20-35		3,940	64-66, 375 E. P.	Group 3	.0494
3-8575	Ideal Service Station, Bremen, Ind.	9-17-35	9-20-35		3,945	64-66, 375 E. P.	Group 3	.0494
2-5070	DeForest Oil Co., Farmington, Mo.	9-24-35	9-25-35	7,980		Conoco Bronze	Ponca City	.0575
3-8737	Ideal Service Station, Bremen, Ind.	9-28-35	10- 1-35		3,980	64-66, 375 E. P.	Group 3	.0494
3-8951	Ernest Brinkerhoff, Elkhart, Ind.	10-14-35	10-16-35		8,000	64-66, 375 E. P.	Group 3	.0494
5806								
3-9015	Ideal Service Station, Bremen, Ind.	10-17-35	10-21-35		3,995	64-66, 375 E. P.	Group 3	$.0494
3-9107	Erie Oil Company Sheboygan, Wisc.	10-25-35	10-29-35		8,125	68-70, 360 E. P.	Group 3	.0569
3-9282	Borton's Super Service, Alma, Mich.	11- 7-35	11- 8-35	6,551		Conoco Bronze	Group 3	.0575
2-6021	Cox-Prigel Oil Co., Raytown, Mo.	11-15-35	11-15-35	8,143		Conoco Bronze	Ponca City	.0575
3-9345	Erie Oil Co., Sheboygan, Wisc.	11-13-35	11-16-35		8,201	68-70, 360 E. P.	Group 3	.0569
2-6048	Boyd Brothers, Laddonia, Mo.	11-15-35	11-18-35	3,421		Conoco Bronze	Ponca City	.0575
2-6048	Boyd Brothers, Laddonia, Mo.	11-15-35	11-18-35		3,348	Demand	Ponca City	.0487
3-9553	Petosky Oil Co., Petosky, Mich.	12- 2-35	12- 2-35	8,326		Conoco Bronze	Group 3	.0569

C.O.Co. Order No.	Name of Jobber and Destination	Date of Order	Date Shipped	Quantity & Octane Bracket 63–70	62 & Below	Description of Product	Sales f. o. b. Point	Sales Price Per Gal.
2–1942	Checker Board ,Camps, Coolidge, Kansas	12– 9–35	12–12–35	4,038		Conoco Bronze	Ponca City	.0575
3–2046x	Stephani Strupp Oil Co., Manitowoc, Wisc	12–26–35	12–27–35		8,222	64–66, 375 E. P.	Group 3	.0494
3–9627	Ernest Brinkerhoff, Elkhart, Ind.	12–24–35	12–30–35		4,050	64–66, 375 E. P.	Ponca City	.0494
Sub Total	2–1–35 – 12–31–35			209,278	143,360			
Total	1–1–35 – 12–31–35			225,707	151,543			
5807								
3–5263	Norris Oil Service, Rochester	1–21–36	1–22–36	8,317		Conoco Bronze	Group 3	$.0625
3–5274	Ideal Serv. Sta., Bremen, Indiana	1–22–36	1–24–36		4,068	64–66, 375 E. P.	Ponca City	.05375
2–769	Leonard Oil Company, Windsor, Missouri	2–20–36	2–20–36	8,385		Conoco Bronze	Ponca City	.0625
3–5804	Ideal Serv. Station, Bremen, Indiana	2–24–36	3– 3–36		4,009	64–66, 375 E. P.	Ponca City	.0522
3–5834	Ernest Brinkerhoff, Elkhart, Indiana	2–26–36	3– 5–36		3,995	64–66, 375 E. P.	Ponca City	.0522
2–899	Leonard Oil Company, Cole Camp, Missouri	3– 2–36	3– 7–36	4,020		Conoco Bronze	Ponca City	.0625
2–1043	Leonard Oil Company, Windsor, Missouri	3– 9–36	3– 9–36	8,152		Conoco Bronze	Ponca City	.0625
3–6129	Ideal Serv. Station, Bremen, Indiana	3–21–36	3–25–36		4,015	64–66, 375 E. P.	Ponca City	.0522
2–1455	Leonard Oil Company, Windsor, Missouri	3–30–36	3–31–36	8,145		Conoco Bronze	Ponca City	.0625
2–1456	Leonard Oil Company, Cole Camp, Mo	3–30–36	3–31–36	8,237		Conoco Bronze	Ponca City	.0625
3–6216	Ideal Serv. Station, Bremen, Indiana	3–28–36	4– 1–36		3,343	Special Gaso.	Ponca City	.0809
2–1502	Clyde C. Yount, Wichita, Kansas	4– 6–36	4– 9–36	4,030		Conoco Bronze	Ponca City	.0625
5808								
2–1592	Clyde C. Yount, Wichita, Kansas	4– 6–36	4– 9–36		4,027	Demand Gaso.	Ponca City	$.0525
2–1680	Excel Oil Company, Mascoutah, Ill.	4– 9–36	4–10–36	6,557		Conoco Bronze	Ponca City	.0625
2–799	Clyde C. Yount, Wichita, Kansas	4–13–36	4–14–36	8,111 (68–70) (Octane)		Conoco Bronze	Ponca City	.0625
3–6551	Ernest Brinkerhoff, Elkhart, Indiana	4–15–36	4–20–36		3,998	64–66, 375 E. P.	Ponca City	.0522
3–6556	Ideal Serv. Station, Bremen, Indiana	4–16–36	4–21–36		4,000	64–66, 375 E. P.	Ponca City	.0522
2–1950	Hoover-Lewis Oil Co., Princetown, Mo	4–23–36	4–24–36	6,499		Conoco Bronze	Ponca City	.0625
2–1945	A. R. Granneman, Gilliam, Missouri	4–23–36	4–24–36	8,070		Conoco Bronze	Ponca City	.0625

2-1946	A. R. Granneman, Slater, Missouri..	4-23-36	4-24-36	8,131		Conoco Bronze	Ponca City	.0625
3-6573	Barstow Oil Company, Menominee, Michigan....................	4-17-36	4-28-36		3,035	Special Gaso.	Ponca City	.08125
3-6752	Knowlton Oil Company, Knowlton, Wisconsin....................	4-30-36	5- 1-36	6,509		Conoco Bronze	Group 3	.0625
2-2245	A. R. Granneman, Slater, Missouri..	5- 9-36	5-11-36	8,091		Conoco Bronze	Ponca City	.0625
5809								
2-2244	A. R. Granneman, Gilliam, Missouri	5- 9-36	5-11-36	8,035		Conoco Bronze	Ponca City	$.0625
2-2254	A. R. Granneman, Gilliam, Missouri	5-11-36	5-12-36		8,064	Demand Gaso.	Ponca City	.0525
3-6901	Stephani-Strupp, Manitowoc, Wisc..	5-12-36	5-14-36		8,022	64-66, 375 E. P.	Ponca City	.0521
2-2497	A. R. Granneman, Gilliam, Missouri	5-21-36	5-21-36	8,050		Conoco Bronze	Ponca City	.0625
2-2506	Sands Petr. Company, Marceline, Mo.	5-21-36	5-22-36	8,107		Conoco Bronze	Ponca City	.0625
2-2508	A. R. Granneman, Slater, Missouri..	5-21-36	5-23-36	8,097		Conoco Bronze	Ponca City	.0625
3-7006	Ideal Serv. Station, Bremen, Indiana	5-20-36	5-26-36		3,276	64-66, 375 E. P.	Ponca City	.05125
3-7064	Ernest Brinkerhoff, Elkhart, Indiana	5-25-36	5-29-36		3,967	64-66, 375 E. P.	Ponca City	.0506
2-2652	Neely Oil Company, Chicopee, Missouri....................	5-29-36	6- 2-36	8,004		Conoco Bronze	Ponca City	.0625
2-2797	A. R. Granneman, Gilliam, Missouri	6- 3-36	6- 4-36	7,996		Conoco Bronze	Ponca City	.0625
2-2796	A. R. Granneman, Slater, Missouri..	6- 3-36	6- 4-36	8,081		Conoco Bronze	Ponca City	.0625
5810								
2-2774	Neely Oil Company, Ellington, Mo..	6- 3-36	6- 4-36	8,083		Conoco Bronze	Ponca City	$.0625
2-2896	Neely Oil Company, Chicopee, Mo..	6- 9-36	6-10-36	8,002		Conoco Bronze	Ponca City	.0625
3-7233	Ideal Service Sta., Bremen, Indiana.	6- 5-36	6-11-36		3,933	64-66, 375 E. P.	Ponca City	.0506
2-3014	Neely Oil Company, Ellington, Mo..	6-12-36	6-13-36	8,031		Conoco Bronze	Ponca City	.06125
2-3008	A. R. Granneman, Gilliam, Missouri	6-12-36	6-13-36	8,028		Conoco Bronze	Ponca City	.06125
2-3009	A. R. Granneman, Slater, Missouri..	6-12-36	6-13-36	8,021		Conoco Bronze	Ponca City	.06125
2-3041	Neely Oil Company, Bunker, Missouri....................	6-13-36	6-15-36	8,0[illegible]		Conoco Bronze	Ponca City	.06125
2-3116	Neely Oil Company, Chicopee, Mo..	6-16-36	6-17-36	8,049		Conoco Bronze	Ponca City	.06125
3-7360	Ernest Brinkerhoff, Elkhart, Indiana	6-15-36	6-18-36		7,937	64-66, 375 E. P.	Ponca City	.0506
2-3205	A. R. Granneman, Gilliam, Missouri	6-18-36	6-19-36	7,984		Conoco Bronze	Ponca City	.06125
2-3206	A. R. Granneman, Slater, Missouri..	6-18-36	6-19-36	8,007		Conoco Bronze	Ponca City	.06125
3-7468	Ideal Serv. Station Bremen, Indiana	6-23-36	6-26-36		3,940	64-66, 375 E. P.	Ponca City	.0506
5811								
2-3391x	A. R. Granneman, Gilliam, Missouri.	6-26-36	6-27-36	7,943		Conoco Bronze	Ponca City	$.06125
2-3390	A. R. Granneman, Slater, Missouri..	6-26-36	6-27-36	7,947		Conoco Bronze	Ponca City	.06125
2-3531	A. R. Granneman, Slater, Missouri..	7- 3-36	7- 3-36	7,935		Conoco Bronze	Ponca City	.06125
2-3532	A. R. Granneman, Gilliam, Missouri	7- 3-36	7- 3-36	7,921		Conoco Bronze	Ponca City	.06125
3-7653	Ideal Serv. Station Bremen, Indiana	7- 7-36	7- 9-36		3,245	64-66, 375 E. P.	Ponca City	.0506
2-3719	A. R. Granneman, Gilliam, Missouri.	7-10-36	7-11-36	7,913		Conoco Bronze	Ponca City	.06125

C.O.Co. Order No.	Name of Jobber and Destination	Date of Order	Date Shipped	Quantity & Octane Bracket		Description of Product	Sales f. o. b. Point	Sales Price Per Gal.
				63–70	62 & Below			
2-3718	A. R. Granneman, Slater, Missouri..	7-10-36	7-11-36	7,908		Conoco Bronze	Ponca City	.06125
2-3952	A. R. Granneman, Gilliam, Missouri.	7-21-36	7-22-36	7,934		Conoco Bronze	Ponca City	.06125
2-3955	A. R. Granneman, Slater, Missouri..	7-21-36	7-22-36	7,981		Conoco Bronze	Ponca City	.06125
2-4111	A. R. Granneman, Gilliam, Missouri.	7-29-36	7-29-36	4,144		Conoco Bronze	Ponca City	.06125
2-4111	A. R. Granneman, Gilliam, Missouri.	7-29-36	7-29-36		1,935	Demand Gaso.	Ponca City	.05
3-7964	Ideal Service Sta. Bremen, Indiana.	7-28-36	7-30-36		3,901	64–66, 375 E. P.	Ponca City	.0506
5812								
2-4163	A. R. Granneman, Slater, Missouri..	7-30-36	7-31-36	7,954		Conoco Bronze	Ponca City	$.06125
2-4244	A. R. Granneman, Gilliam, Missouri.	8- 4-36	8- 5-36	7,900		Conoco Bronze	Ponca City	.06125
2-4331	A. R. Granneman, Slater, Missouri..	8- 6-36	8- 7-36	7,948		Conoco Bronze	Ponca City	.06125
2-4483	A. R. Granneman, Slater, Missouri..	8-12-36	8-13-36	8,022		Conoco Bronze	Ponca City	.06125
2-4484	A. R. Granneman, Gilliam, Missouri.	8-12-36	8-13-36		2,790	Demand Gaso.	Ponca City	.0494
2-4484	A. R. Granneman, Gilliam, Missouri.	8-12-36	8-13-36	5,031		Conoco Bronze	Ponca City	.0604
2-4558	A. R. Granneman, Gilliam, Missouri.	8-17-36	8-18-36	7,893		Conoco Bronze	Ponca City	.06125
2-4588	A. R. Granneman, Slater, Missouri..	8-17-36	8-18-36	7,902		Conoco Bronze	Ponca City	.06125
2-1719	A. R. Granneman, Gilliam, Missouri.	8-21-36	8-25-36	3,262		Conoco Bronze	Ponca City	.06125
2-4778	A. R. Granneman, Slater, Missouri..	8-25-36	8-26-36	7,979		Conoco Bronze	Ponca City	.06125
2-4897	Hill Oil Company, Washington, Kansas..........	8-30-36	9- 1-36	6,393		Conoco Bronze	Ponca City	.06125
3-8974	Freeport Petr. Corp., Freeport, Illinois..........	10- 7-36	10-10-36		3,313	64–66, 375 E. P.	Group 3	.0506
5813								
3-8990	Ideal Serv. Sta. Bremen, Indiana...	10- 8-36	10-14-36		3,315	64–66, 375 E. P.	Group 3	$.0506
2-6732	Admire Oil Company Admire, Kansas..........	11-28-36	12- 1-36	4,037		Conoco Bronze	Ponca City	.05875
2-7041	Admire Oil Company, Admire, Kansas..........	12-15-36	12-15-36	8,157		Conoco Bronze	Ponca City	.05875
	Total 1/1/36 to 12/31/36..........			379,949	92,127			
	Grand Total 1/1/35 to 12/31/36..........			605,656	243,670			

5814

DEFENSE EXHIBIT NO. 927.

5815 It is hereby stipulated that George Collins, Auditor of Omar Refining Company of Tulsa, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Omar Refining Company from February 1, 1935 to December 31, 1936, as reflected by the books and records of Omar Refining Company are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5816

EXHIBIT A.

Omar Refining Company

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
Feb.	613,456		65,482
Mar.	2,092,691		1,677,573
Apr.	2,092,731		2,597,258
May	2,125,271		1,784,818
June	2,348,135		2,874,730
July	2,350,077		2,256,575
Aug.	2,489,434		2,628,060
Sept.	2,570,601		2,467,262
Oct.	2,489,039		2,450,153
Nov.	2,602,376		2,361,678
Dec.	2,628,891		2,173,870
Total 1935	24,402,702		23,337,459
1936			
Jan.	2,065,427		1,989,161
Feb.	2,002,692		1,482,092
Mar.	2,611,765		2,476,652
Apr.	2,222,867		2,247,101
May	2,457,613		2,366,961
June	2,513,679		3,142,713
July	2,422,175		2,064,965
Aug.	2,596,216		3,628,870
Sept.	3,021,450		3,351,738
Oct.	3,218,254		3,084,106
Nov.	2,955,634		3,024,346
Dec.	2,826,711		2,951,703
Total 1936	30,914,483		31,810,408

5817 DEFENSE EXHIBIT NO. 928.

5818 It is hereby stipulated that M. L. Smith, Assistant Purchasing Agent of Kanotex Refining Company at Arkansas City, Kansas, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Kanotex Refining Company by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Kanotex Refining Company, are as set forth in Exhibit "A" hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5819

EXHIBIT "A".

Kanotex Refining Company
Arkansas City, Kansas

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	3,479,896		4,732,662
February	3,404,021		3,125,042
March	3,831,784		3,797,163
April	4,206,075		4,297,925
May	4,792,761		3,948,466
June	4,012,952		4,613,107
July	3,773,187		4,104,274
August	3,562,877		3,818,170
September	4,084,626		4,312,683
October	4,371,186		3,921,499
November	3,192,779		3,392,118
December	3,782,947		2,822,052
Total 1934	46,495,091		46,885,161
1935			
January	4,079,846		2,855,466
February	3,201,061		3,226,336
March	3,800,912		3,928,701
April	3,988,986		4,491,434
May	3,784,475		4,571,218
June	4,422,281		5,365,020
July	4,811,476		5,432,876
August	5,351,223		5,274,838
September	5,402,711		5,360,898
October	5,152,443		5,212,342
November	5,149,956		4,325,246
December	4,119,713		3,915,400
Total 1935	53,265,083		53,959,775
1936			
January	5,065,166		3,678,354
February	4,315,268		2,531,775
March	4,398,707		3,956,040
April	4,023,497		4,664,609
May	4,043,093		4,278,738
June	4,429,982		5,202,534
July	4,030,255		5,328,244
August	4,504,951		4,818,684
September	4,413,169		4,540,958
October	3,946,219		4,161,532
November	3,904,696		3,527,322
December	4,448,972		3,520,113
Total 1936	51,523,975		50,208,908

5820 DEFENSE EXHIBIT NO. 929.

5821 It is hereby stipulated that L. D. Hinman, Vice-President and Auditor of Eason Oil Company, of Enid, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Eason Oil Company, by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Eason Oil Company, are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5822

EASON OIL COMPANY

Monthly Production and Sales of Gasoline in Gallons
January 1, 1934 to December 31, 1936

	Gasoline Production			Gasoline Sales		
	Not Including Casinghead	Casinghead	Including Casinghead	Including Gasoline Purchases	Gasoline Purchases	Excluding Gasoline Purchases
1934						
January	1,764,001	149,553	1,913,554	2,194,534	3,948	2,190,586
February	1,716,558	146,013	1,862,571	1,811,289	57,362	1,753,927
March	1,994,767	311,679	2,306,446	1,879,215	82,019	1,797,196
April	1,808,972	479,661	2,288,633	1,957,653	104,812	1,852,841
May	1,858,820	281,487	2,140,307	2,179,548	140,209	2,039,339
June	1,928,022	287,826	2,215,848	3,123,536	189,656	2,933,880
July	2,105,600	202,651	2,308,251	2,295,176	92,429	2,202,747
August	1,582,504	196,398	1,778,902	2,115,981	110,657	2,005,324
September	1,650,025	208,192	1,858,217	2,206,380	109,939	2,096,441
October	1,852,247	246,250	2,098,497	2,090,186	124,997	1,965,189
November	1,619,059	257,956	1,877,015	1,880,063	79,404	1,800,659
December	1,784,798	286,743	2,071,541	1,852,814	80,229	1,772,585
Totals—1934	21,665,373	3,054,409	24,719,782	25,586,375	1,175,661	24,410,714

5823

	Gasoline Production			Gasoline Sales		
	Not Including Casinghead	Casinghead	Including Casinghead	Including Gasoline Purchases	Gasoline Purchases	Excluding Gasoline Purchases
1935						
January	1,702,292	261,437	1,963,729	1,842,050	86,851	1,755,199
February	1,469,693	173,561	1,643,254	1,666,277	67,459	1,598,818
March	1,720,230	214,730	1,934,960	2,144,600	79,566	2,065,034
April	1,761,243	252,065	2,013,308	2,006,734	105,230	1,901,504
May	1,922,449	287,850	2,210,299	2,195,539	73,272	2,122,267
June	2,036,234	276,804	2,313,038	2,804,838	139,252	2,665,586
July	1,917,525	163,090	2,080,615	3,109,500	139,535	2,969,965
August	2,081,696	291,975	2,373,671	2,401,914	90,823	2,311,091
September	1,848,647	296,852	2,145,499	2,218,964	135,247	2,083,717
October	1,884,367	301,391	2,185,758	1,882,636	117,466	1,765,170
November	1,799,897	303,040	2,102,937	1,816,215	72,042	1,744,173
December	1,841,886	247,746	2,089,632	1,777,088	56,678	1,720,410
Totals—1935	21,986,159	3,070,541	25,056,700	25,866,355	1,163,421	24,702,934

5824

	Gasoline Production			Gasoline Sales		
	Not Including Casinghead	Casinghead	Including Casinghead	Including Gasoline Purchases	Gasoline Purchases	Excluding Gasoline Purchases
1936						
January	2,002,702	246,976	2,249,678	2,260,258	27,086	2,233,17
February	1,851,243	266,791	2,118,034	1,488,123	38,981	1,449,14
March	1,805,781	309,437	2,115,218	2,250,601	42,521	2,208,08
April	2,088,850	283,072	2,371,922	1,983,506	2,436	1,981,07
May	2,013,732	253,565	2,267,297	2,076,658	2,771	2,073,28
June	1,662,919	311,738	1,974,657	3,206,637	3,270	3,203,36
July	1,919,719	391,328	2,311,047	3,079,506	29,301	3,050,20
August	1,863,432	284,734	2,148,166	2,047,531	16,419	2,031,11
September	1,922,458	296,025	2,218,483	2,492,217	7,034	2,485,18
October	2,009,876	415,013	2,424,889	2,503,878	18,719	2,485,15
November	2,141,257	427,470	2,568,727	1,908,001	79,104	1,828,89
December	2,116,978	396,494	2,513,472	1,943,328	11,724	1,931,60
Total—1936	23,398,947	3,882,643	27,281,590	27,240,244	279,366	26,960,87
	67,050,479	10,007,593	77,058,072	78,692,974	2,618,448	76,074,52

5825

Inventory, January 1, 1934		1,078,68
Production, including casinghead		77,058,07
Add arithmetical errors in yield statements: error in entering kerosene in gasoline column September, 1935	3,024	
errors in computing interplant transfers		
February, 1934	10	
July, 1934	966	4,00
		78,140,75
Less		
Inventory, December 31, 1936	2,057,370	
Gasoline blended with other products, February, 1935	8,862	2,066,23
Sales, after deducting purchases		76,074,52

5826 DEFENSE EXHIBIT NO. 930.

5827. It Is Hereby Stipulated that James D. Miller, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Black Gold Refining Company, of Oklahoma City, Oklahoma by months from January 1, 1934 to December 31, 1936 inclusive, are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5828

EXHIBIT A.

Black Gold Refining Company.

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	639,741		732,848
February	557,759		502,222
March	695,671		645,952
April	688,818		707,452
May	772,679		799,228
June	724,341		777,995
July	761,388		718,061
August	673,826		675,475
September	670,369		691,754
October	547,186		507,079
November	657,293		648,838
December	485,720		474,728
Total 1934	7,874,791		7,881,632
1935			
January	437,064		421,421
February	411,221		398,897
March	402,229		427,189
April	270,849		368,447
May	447,594		387,432
June	571,692		524,282
July	716,846		699,413
August	785,568		786,763
September	818,518		820,571
October	822,760		678,122
November	827,758		817,364
December	683,531		677,492
Total 1935	7,195,630		7,007,213
1936			
January	634,696		805,684
February	630,469		541,493
March	866,409		840,406
April	725,724		797,205
May	918,576		852,427
June	1,020,898		984,133
July	769,592		928,355
August	950,997		728,121
September	1,146,906		1,163,971
October	1,008,051		1,110,578
November	942,111		971,901
December	1,177,837		1,051,873
Total 1936	10,792,266		10,776,147

5829

DEFENSE EXHIBIT NO. 931.

5830

Cosden Petroleum Corporation
Fort Worth, Texas

	Gasoline Production (In Gallons)	Gasoline Sales
1934		
January	4,782,029	3,900,267
February	3,499,380	3,150,641
March	3,417,606	3,488,780
April	3,686,978	4,265,658
May	5,063,282	5,132,369
June	4,466,508	4,185,828
July	4,900,344	5,466,236
August	5,717,210	4,940,878
September	4,326,602	3,965,129
October	4,762,679	4,652,448
November	2,919,753	3,054,622
December	2,810,984	2,898,316
Total 1934	50,353,355	49,101,172
1935		
January	3,225,989	3,008,293
February	3,936,872	3,529,043
March	4,338,527	3,979,925
April	4,150,067	4,023,179
May	4,214,237	4,496,147
June	4,473,131	4,988,729
July	4,696,238	5,926,378
August	5,521,768	4,961,764
September	4,703,763	4,736,025
October	4,837,648	5,382,031
November	4,413,441	4,538,900
December	4,456,575	4,043,099
Total 1935	52,968,256	53,613,513
1936		
January	4,757,962	3,957,445
February	3,030,262	2,566,490
March	3,183,853	4,084,020
April	4,789,877	5,040,747
May	7,134,180	5,330,742
June	6,768,326	6,798,398
July	7,911,404	8,587,541
August	7,132,326	7,933,385
September	6,558,194	7,257,436
October	6,653,077	6,516,881
November	6,149,010	5,841,363
December	6,436,588	5,667,550
Total 1936	70,505,059	69,581,998

5831

DEFENSE EXHIBIT NO. 932.

5832

Sun Company
Yale, Oklahoma

(In Gallons)

1934	Gasoline Production	Gasoline Sales
January	215,139.96	938,545.44
February	659,551.20	641,432.82
March	631,201.62	758,481.78
April	1,465,992.78	905,221.80
May	779,289.42	988,448.16
June	767,189.64	291,338.04
July	844,954.32	973,832.16
August	848,527.68	960,479.94
September	706,305.18	1,146,791.94
October	781,396.98	567,265.02
November	868,042.56	1,142,673.42
December	826,314.72	427,802.34
Total 1934	9,393,906.06	9,742,312.86
1935		
January	741,646.08	719,406.24
February	695,224.32	948,375.12
March	918,716.82	1,014,113.10
April	835,821.00	725,403.84
May	919,524.90	755,575.80
June	905,981.16	947,437.26
July	926,487.66	1,267,098.84
August	1,224,301.68	1,113,645.12
September	911,188.32	1,055,834.64
October	704,269.44	735,522.06
November	848,806.98	597,270.24
December	661,826.34	469,365.54
Total 1935	10,293,794.70	10,349,047.80
1936		
January	722,171.94	537,299.28
February	666,669.36	194,937.12
March	627,879.84	680,153.46
April	558,683.16	892,262.70
May	632,070.60	615,804.42
June	620,270.70	1,003,141.02
July	709,408.56	959,573.16
August	626,040.66	661,654.98
September	885,982.86	859,308.24
October	944,637.12	835,414.86
November	812,382.90	422,184.00
December	713,173.02	677,750.22
Total 1936	8,519,370.72	8,339,483.46

5833 DEFENSE EXHIBIT NO. 933.

5834 RODESSA OIL AND REFINING CORPORATION

	Gasoline Production		Gasoline Sales	
	Barrels	Gallons	Barrels	Gallons
1935				
October	19,298	810,[illegible]16	14,838	623,196
November	30,601	1,285,[illegible]2	24,926	1,046,892
December	29,139	1,223,838	27,367	1,149,414
Total	79,038	3,319,596	67,131	2,819,502
1936				
January	40,910	1,718,220	37,256	1,564,752
February	36,789	1,545,138	30,474	1,279,908
March	43,407	1,823,094	44,643	1,875,006
April	42,776	1,796,592	43,317	1,819,314
May	47,543	1,996,806	53,308	2,238,936
June	49,646	2,085,132	52,272	2,195,424
July	50,013	2,100,546	49,039	2,059,638
August	82,916	3,482,472	80,179	3,367,518
September	66,728	2,802,576	72,930	3,063,060
October	70,648	2,967,216	64,094	2,691,948
November	69,856	2,933,952	74,494	3,128,748
December	63,269	2,657,298	56,000	2,352,000
Total 1936	664,501	27,909,042	658,006	27,636,252

5835 DEFENSE EXHIBITS NOS. 934 AND 935.

NOTE:—Exhibit 934, Deep Rock "Refinery Sales", was identical with the column headed "Gasoline Shipments" on Exhibit 935.

5836

DEEP ROCK OIL CORPORATION
Gasoline Produced from Crude, Casinghead Purchased for Blending and Gasoline Shipments from Refinery

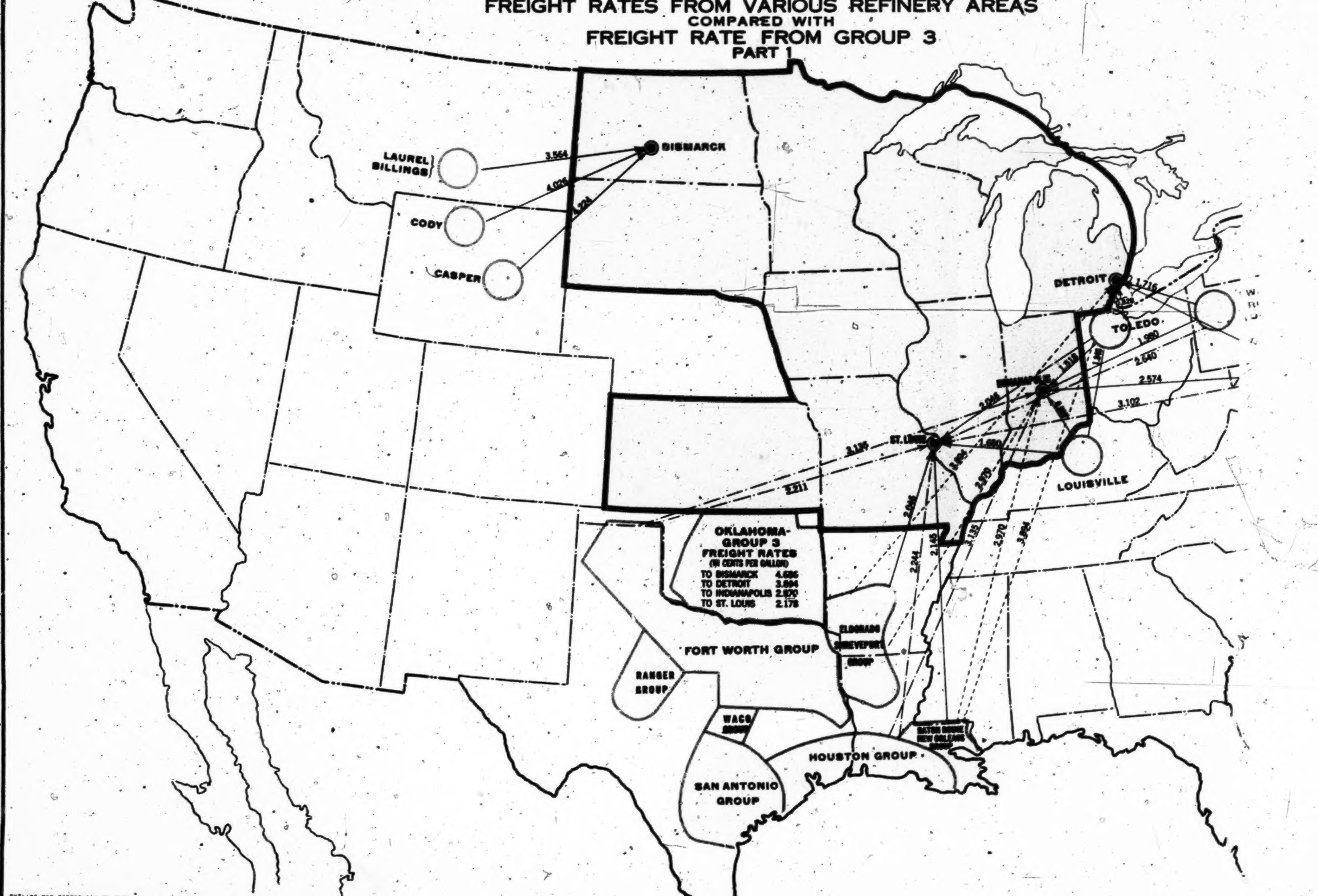
	Gasoline Produced from Crude	Casinghead Purchased for Blending	Gasoline Shipments
	(Gallons)	(Gallons)	(Gallons)
1934			
January	4,239,243	244,272	4,479,264
February	3,757,200	224,070	3,834,396
March	4,434,860	180,600	4,354,634
April	4,718,766	176,652	4,833,467
May	5,653,268	147,168	5,398,827
June	5,124,036	103,866	5,967,015
July	5,195,750	72,072	5,357,938
August	5,475,080	265,776	6,229,558
September	5,002,633	516,432	6,355,098
October	4,925,007	457,800	7,521,556
November	5,169,713	680,652	5,526,206
December	5,473,414	181,902	4,389,815
Totals	59,168,970	3,251,262	64,247,774
	62,420,232		
1935			
January	5,903,956	187,740	4,155,422
February	2,702,656	231,504	4,520,043
March	5,580,410	511,686	5,194,836
April	5,214,550	67,830	5,954,051
May	5,900,568	125,412	6,428,393
June	5,554,448	101,388	5,327,741
July	5,621,258	277,746	5,698,343
August	5,680,531	326,340	5,590,141
September	5,544,455	305,340	6,050,364
October	5,771,801	526,302	6,356,018
November	5,725,471	492,156	5,160,005
December	5,595,732	488,880	4,561,619
Totals	64,795,836	3,642,324	64,996,976
	68,438,160		

5837

	Gasoline Produced from Crude	Casinghead Purchased for Blending	Gasoline Shipments
1936			
January	5,392,130	596,778	4,776,118
February	5,115,889	344,088	3,508,818
March	5,761,517	347,298	4,913,601
April	5,466,669	337,134	5,562,947
May	5,835,178	162,582	6,191,460
June	5,519,492	275,478	7,721,202
July	5,901,957	829,164	8,235,902
August	5,546,922	760,830	8,478,691
September	5,325,085	588,798	6,076,347
October	6,076,766	518,826	6,250,523
November	6,017,343	670,740	5,586,076
December	5,693,901	426,048	5,188,577
Totals	67,652,849	5,858,664	72,490,262
	73,511,513		

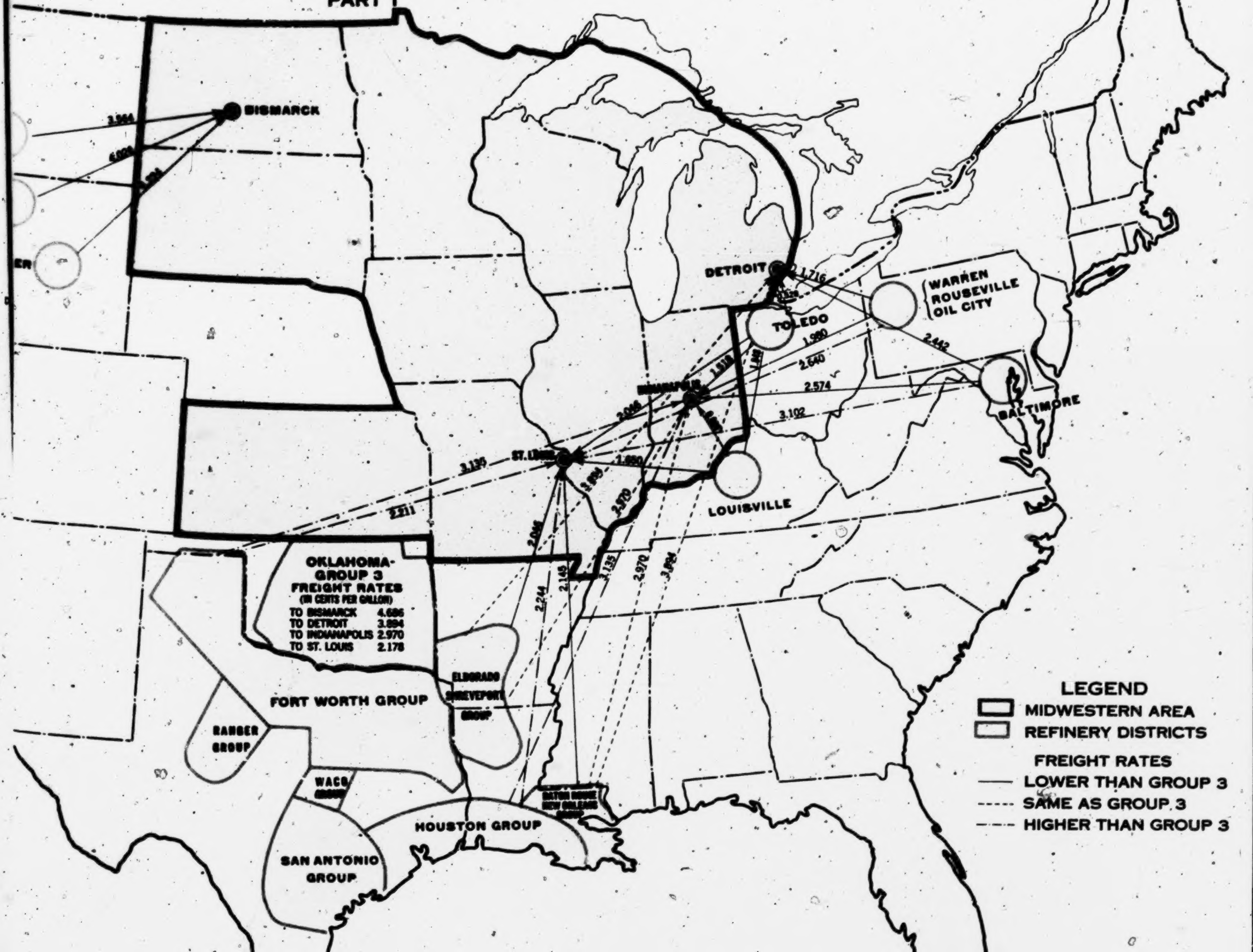
5838 DEFENSE EXHIBIT NO. 936.

FREIGHT RATES FROM VARIOUS REFINERY AREAS
COMPARED WITH
FREIGHT RATE FROM GROUP 3
PART 1

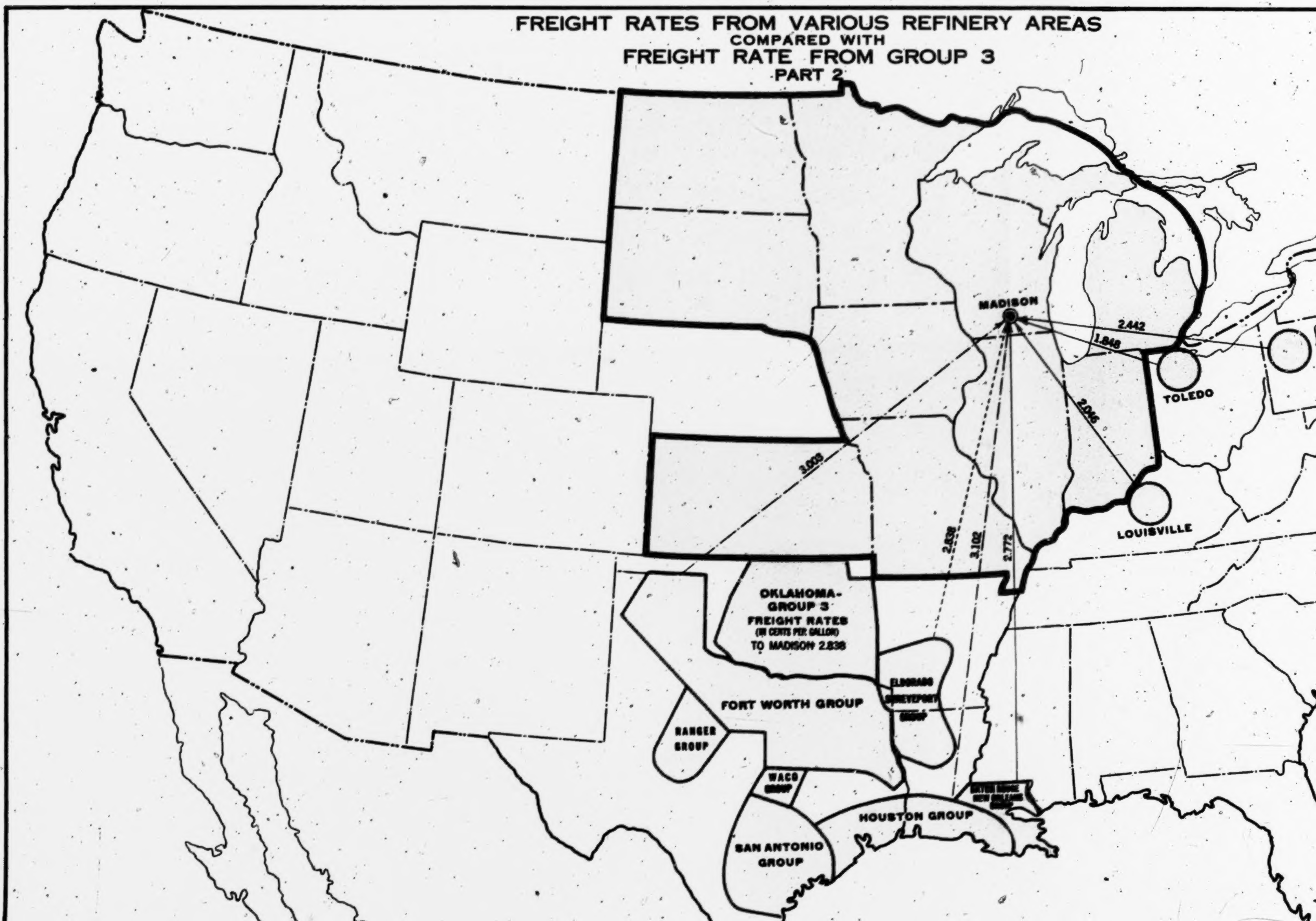

LAUREL
BILLINGS
CODY
CASPER
BISMARCK
3.564
4.026
DETROIT
1.716
TOLEDO
1.980
2.640
2.574
3.102
INDIANAPOLIS
2.046
LOUISVILLE
ST. LOUIS
3.134
2.211
1.600
2.970
2.046
2.244
2.145
3.135
2.970
OKLAHOMA-
GROUP 3
FREIGHT RATES
(IN CENTS PER GALLON)
TO BISMARCK 4.686
TO DETROIT 3.894
TO INDIANAPOLIS 2.870
TO ST. LOUIS 2.178
ELDORADO
SHREVEPORT
GROUP
FORT WORTH GROUP
RANGER
GROUP
WACO
GROUP
HOUSTON GROUP
SAN ANTONIO
GROUP
BATON ROUGE
NEW ORLEANS
GROUP

2601

FREIGHT RATES FROM VARIOUS REFINERY AREAS
COMPARED WITH
FREIGHT RATE FROM GROUP 3
PART 1


BISMARCK
DETROIT
1.716
TOLEDO
WARREN
ROUSEVILLE
OIL CITY
2.442
1.980
2.640
2.574
3.102
BALTIMORE
INDIANAPOLIS
2.046
1.850
LOUISVILLE
ST. LOUIS
3.135
2.211
2.970
2.046
2.244
2.145
3.135
2.970
OKLAHOMA-
GROUP 3
FREIGHT RATES
(IN CENTS PER GALLON)
TO BISMARCK 4.686
TO DETROIT 3.894
TO INDIANAPOLIS 2.970
TO ST. LOUIS 2.178
ELDORADO
SHREVEPORT
GROUP
FORT WORTH GROUP
RANGER GROUP
WACO GROUP
HOUSTON GROUP
SAN ANTONIO GROUP
BATON ROUGE NEW ORLEANS GROUP
LEGEND
MIDWESTERN AREA
REFINERY DISTRICTS
FREIGHT RATES
LOWER THAN GROUP 3
SAME AS GROUP 3
HIGHER THAN GROUP 3

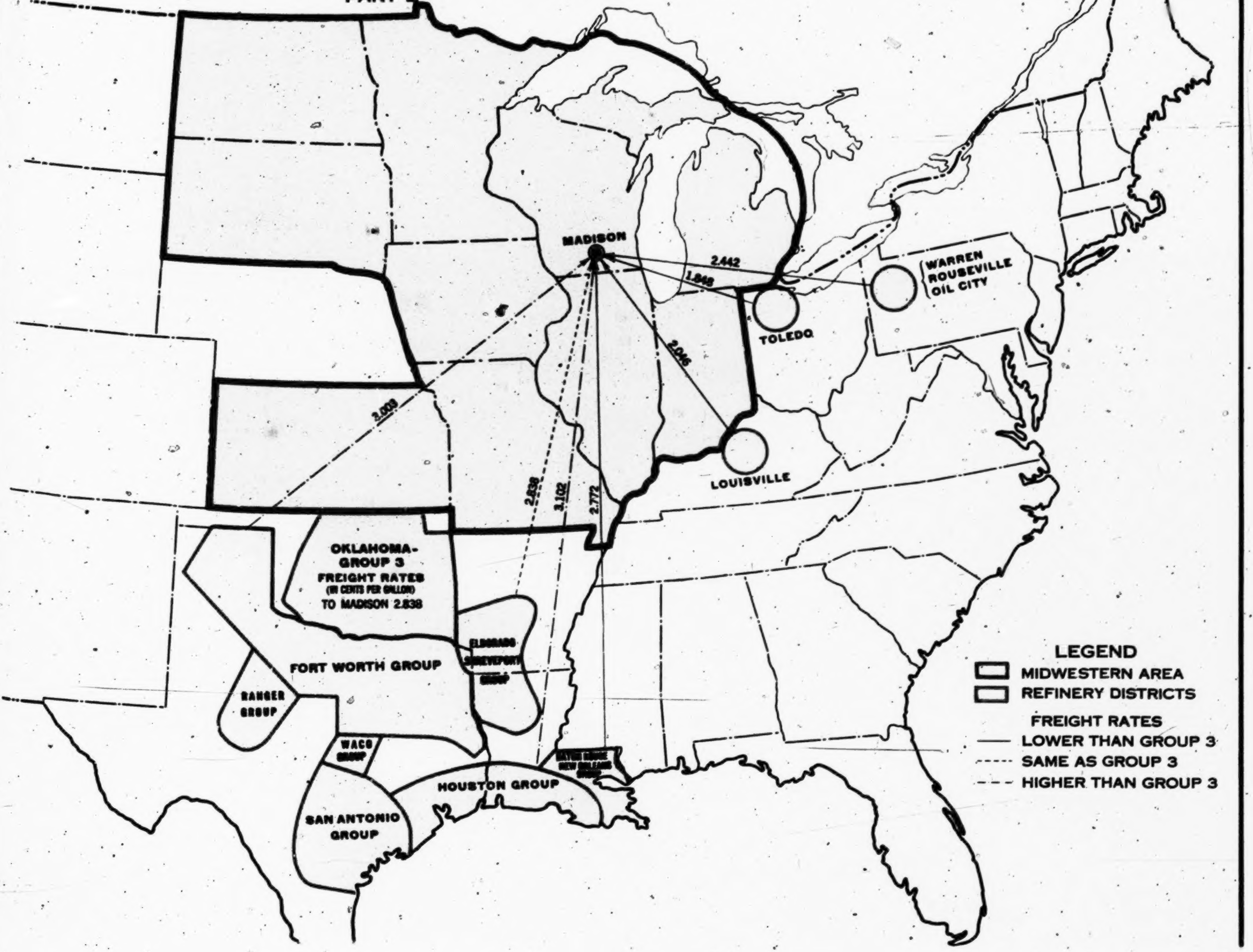
FREIGHT RATES FROM VARIOUS REFINERY AREAS
COMPARED WITH
FREIGHT RATE FROM GROUP 3
PART 2



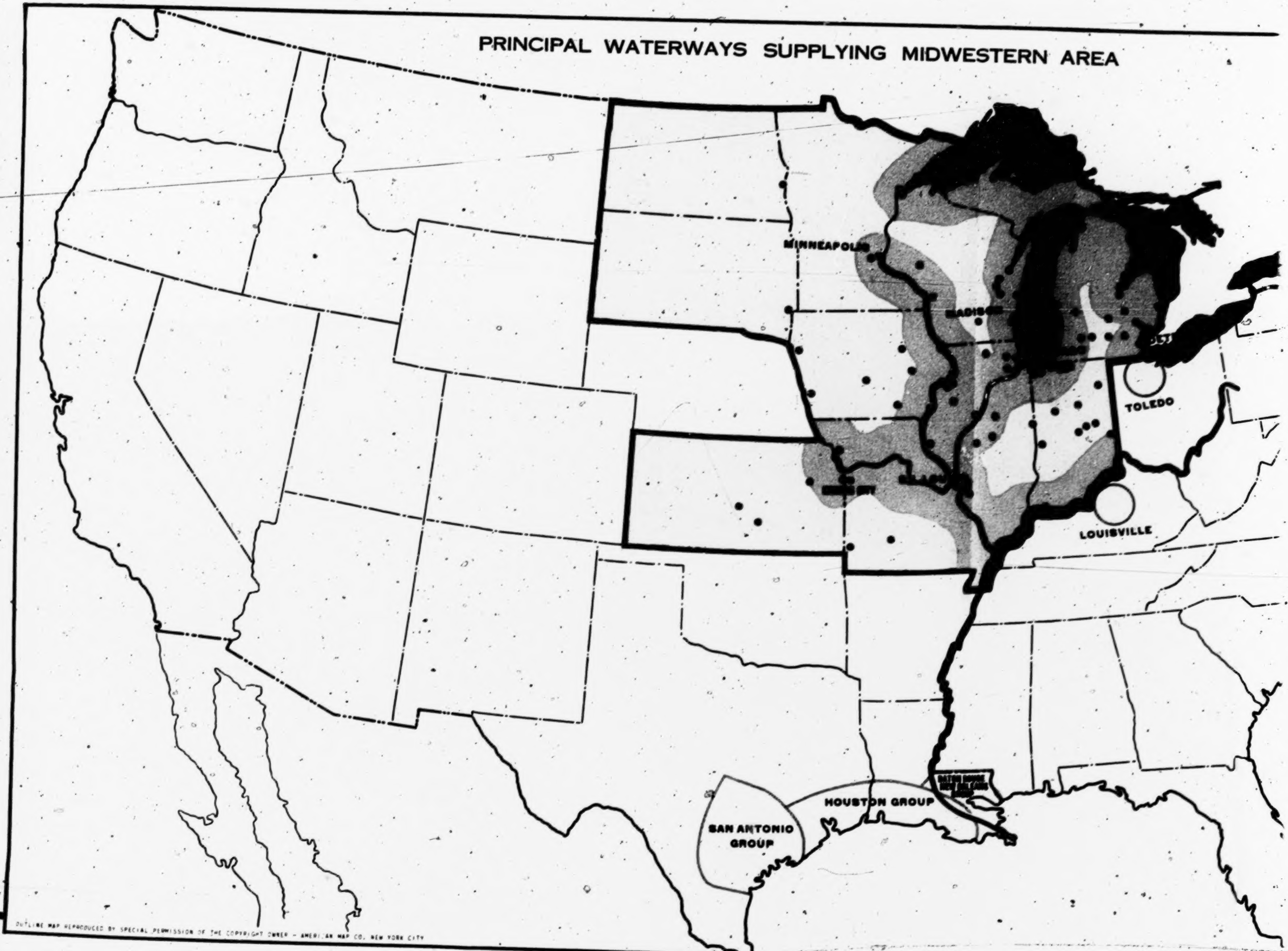
MADISON
2.442
1.848
2.046
TOLEDO
LOUISVILLE
3.003
2.838
3.102
2.772
OKLAHOMA-
GROUP 3
FREIGHT RATES
(IN CENTS PER GALLON)
TO MADISON 2.838
ELDORADO
SHREVEPORT
GROUP
FORT WORTH GROUP
RANGER
GROUP
WACO
GROUP
HOUSTON GROUP
BATON ROUGE
NEW ORLEANS
GROUP
SAN ANTONIO
GROUP

EXHIBIT NO. 937

FREIGHT RATES FROM VARIOUS REFINERY AREAS
COMPARED WITH
FREIGHT RATE FROM GROUP 3
PART 2

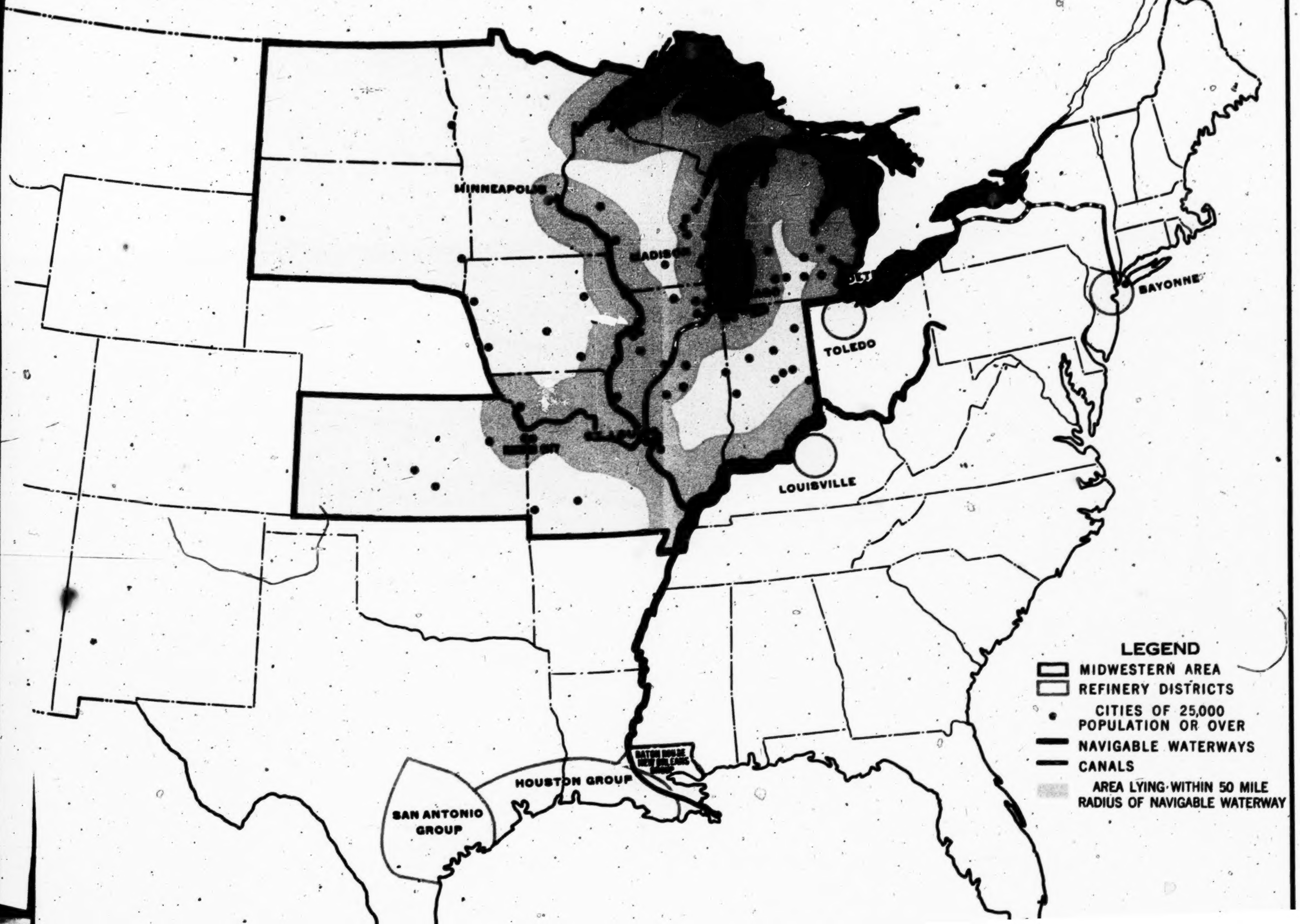

MADISON
2.442
1.848
WARREN
ROUSEVILLE
OIL CITY
TOLEDO
2.046
LOUISVILLE
2.003
2.838
3.102
2.772
OKLAHOMA-
GROUP 3
FREIGHT RATES
(IN CENTS PER GALLON)
TO MADISON 2.838
ELDORADO
SHREVEPORT
GROUP
FORT WORTH GROUP
RANGER
GROUP
WACO
GROUP
BATON ROUGE
NEW ORLEANS
GROUP
HOUSTON GROUP
SAN ANTONIO
GROUP
LEGEND
MIDWESTERN AREA
REFINERY DISTRICTS
FREIGHT RATES
LOWER THAN GROUP 3
SAME AS GROUP 3
HIGHER THAN GROUP 3

PRINCIPAL WATERWAYS SUPPLYING MIDWESTERN AREA


MINNEAPOLIS
MADISON
TOLEDO
LOUISVILLE
HOUSTON GROUP
SAN ANTONIO GROUP

OUTLINE MAP REPRODUCED BY SPECIAL PERMISSION OF THE COPYRIGHT OWNER - AMERICAN MAP CO. NEW YORK CITY

PRINCIPAL WATERWAYS SUPPLYING MIDWESTERN AREA


MINNEAPOLIS
MADISON
TOLEDO
BAYONNE
LOUISVILLE
BATON ROUGE NEW ORLEANS GROUP
HOUSTON GROUP
SAN ANTONIO GROUP
LEGEND
MIDWESTERN AREA
REFINERY DISTRICTS
CITIES OF 25,000 POPULATION OR OVER
NAVIGABLE WATERWAYS
CANALS
AREA LYING WITHIN 50 MILE RADIUS OF NAVIGABLE WATERWAY

5844 DEFENSE EXHIBITS NOS. 939 AND 941.

NOTE:—1935 figures are Exhibit 939.
1936 figures are Exhibit 941.

5845

I.

Refining Capacity of Present Defendant Companies and Subsidiaries in Refining areas Alleged by the Indictment to Supply the Mid-Western Area, as of January 1, 1935 (According to U. S. Bureau of Mines Information Circular No. 6850) and as of January 1, 1936 (According to U. S. Bureau of Mines Information Circular No. 6906).

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Arkansas (None)				
	Illinois				
The Globe Oil & Refg. Co...	Lemont.........	12,000	12,000	6,000	6,000
The Shell Petroleum Corp...	Wood River....	38,000	38,000	21,600	20,800
Socony-Vacuum Oil Co......	E. St. Louis....	5,000	5,000	3,400	3,400
" " " ".....	" " ".....				1,200
Standard Oil Co. (Ind.).....	Wood River....	17,000	17,000	14,624	14,700
		72,000	72,000	45,624	46,100

5846

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Indiana				
Empire Oil & Refining Co...	E. Chicago.....	25,000	25,000	15,000	15,000
Shell Petroleum Corp.......	E. Chicago.....	28,500	30,000	22,000	21,000
Sinclair Refining Co.........	E. Chicago.....	40,000	40,000	27,000	27,000
Standard Oil Co. (Ind.).....	Whiting........	93,000	100,000	67,400	88,500
Wadhams Oil Company.....	E. Chicago.....	6,000	8,000	3,500	8,000
		192,500	203,000	134,900	159,500
	Kansas				
Barnsdall Oil Company......	Wichita.........	5,000	5,000	1,500	1,500
Globe Oil & Refining Co.....	McPherson.....	10,000	12,000	6,000	6,000
Independent Oil & Gas Co...	Kansas City....	9,000	14,000	3,000	3,000
Philgas Company...........	Kansas City....	9,000	9,000	8,000	8,000
Shell Petroleum Company...	Arkansas City..	20,000	20,000	9,000	9,700
Sinclair Refining Company...	Argentine.......	11,000	11,000	9,000	9,000
" " "...	Coffeyville.....	12,000	12,000	9,000	9,000
Skelly Oil Company.........	Eldorado.......	23,000	23,000	15,000	15,000
Socony-Vacuum Oil Co......	Augusta........	15,000	15,000	15,000	20,000
Standard Oil Co. (Ind.).....	Neodesha......	7,500	7,500	8,570	8,570
		121,500	128,500	84,070	89,770

5847 Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	North Louisiana				
Stanolind Oil & Gas Co.	Superior	4,500	4,500	2,000	2,000
	Michigan				
Pure Oil Company	Midland	3,000	3,000		
Socony-Vacuum Oil Co., Inc.	Trenton	10,500	13,000	7,400	10,050
		13,500	16,000	7,400	10,050
	Missouri				
Standard Oil Co. (Ind.)	Sugar Creek	16,500	18,000	16,000	13,500
	Oklahoma				
Barnsdall Oil Company	Barnsdall	5,000		4,000	
Barnsdall Oil Company	Okmulgee	11,000		3,500	
Barnsdall Refining Corp.	Barnsdall		5,000		4,000
Barnsdall Refining Corp.	Okmulgee		11,000		3,500
Continental Oil Company	Ponca City	30,000	30,000	13,000	4,000
Continental Oil Company	Ponca City				9,000
Empire Oil & Refg. Co	Ponca City	12,000	12,000	3,500	1,500
Empire Oil & Ref. Co	Ponca City				2,000
Empire Oil & Refg. Co	Okmulgee	4,000	4,000		
5848					
Independent Oil & Gas Co.	Okmulgee	6,000	6,000	3,000	3,000
The Globe Oil & Refg. Co.	Blackwell		8,000		4,000
Mid-Continent Petrol. Corp.	West Tulsa	40,000	40,000	20,000	20,000
The Pure Oil Company	Muskogee	9,000	9,000	4,700	3,500
The Pure Oil Company	Muskogee				1,200
Sinclair Refining Co	Sand Springs	8,000	8,000	2,000	2,000
Tide Water Oil Co. (Okla.)	Drumright	15,000		7,000	
		140,000	133,000	60,700	57,700
	East Texas				
Sinclair Refining Co	Gladewater	2,500	2,500		
	Panhandle & North Texas				
Continental Oil Company	Wichita Falls	5,000	5,000	2,300	2,300
Magnolia Petroleum Co.	Fort Worth	6,000	7,000	3,500	4,550
Phillips Petroleum Co.	Borger	50,000	50,000	48,000	48,000
Sinclair Refining Co	Fort Worth	4,000	4,000	3,000	3,000
		65,000	66,000	56,800	57,850
	West Texas (None)		—		

5849

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	SHUT-DOWN				
	Arkansas (None)				
	Illinois				
Shell Petroleum Corp.	Wood River			3,850	2,400
Socony-Vacuum Oil Co., Inc	Wood River	5,500	5,500	2,000	2,000
Standard Oil Co. (Ind.)	Wood River			3,656	3,300
		5,500	5,500	9,506	7,700
	Indiana				
Sinclair Refining Co	E. Chicago			1,500	1,500
Standard Oil Co. (Ind.)	Whiting			17,600	5,000
Wadhams Oil Co	East Chicago				1,500
				19,100	8,000
	Kansas				
Skelly Oil Company	Eldorado			13,000	13,000
	North Louisiana (None)				

5850

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Michigan				
Standard Oil Co. (Ind.)	Milwaukee	1,500			
	Missouri				
Standard Oil Co. (Ind.)	Sugar Creek			7,000	7,000
	Oklahoma				
Barnsdall	Okmulgee			1,000	
Barnsdall Refining Co.	Okmulgee				1,000
Continental Oil Co	Sapulpa	4,000		750	
Empire Oil & Refg. Co	Cushing	5,000			
Empire Oil & Refg. Co	Okmulgee			1,000	1,000
Empire Oil & Refg. Co	Ponca City			1,000	1,000
The Globe Oil & Refg. Co	Blackwell	8,000		4,000	
Sinclair Refining Co.	West Tulsa	4,500		1,500	
Sinclair Refining Co	Sand Springs			2,000	2,000
		21,500		11,250	5,000
	North and Panhandle Texas				
Empire Oil & Refg. Co	Gainesville	5,000	5,000	2,000	2,000
	East Texas (None)				

5851

II.

Refinery capacity of alleged co-conspirator Independents' Refineries in refining areas alleged by the indictment to supply the mid-western area, as of January 1, 1935 (according to the United States Bureau of Mines Information Circular No. 6850 and as of January 1, 1936 (according to the United States Bureau of Mines Information Circular 6906.

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Kansas				
The Dickey Refining Co.	**McPherson**	**3,500**	**3,500**	**1,500**	**2,000**
	Oklahoma				
Bell Oil & Gas Co.	**Grandfield**	**4,500**	**4,500**	**2,000**	**2,000**
Champlin Refining Co.	**Enid**	**15,000**	**16,000**	**3,000**	**3,500**
Cushing Refg. & Gasoline Co.	**Cushing**	**4,500**	**4,500**	**2,200**	**2,200**
" " " " "	**Blackwell**	**1,700**	**1,700**		
Eason Oil Co.	**Enid**	**4,000**	**4,000**		**2,000**
Omar Refining Co.	**Garber**		**4,000**		**2,500**
Rock Island Refg. Co.	**Beckett**	**6,500**	**6,500**	**3,500**	**3,500**
H. F. Wilcox Oil & Gas Co.	**Bristow**	**6,000**	**5,000**	**1,100**	**1,500**
		42,200	**46,200**	**11,800**	**17,200**
5852					
	East Texas**				
Arrow Refg. & Producing Co. (1)	**Overton**	**5,000**			
***Cascade Refining Co.**	**Reeds Switch**		**2,000**		**1,000**
***Chief Refining Co.**	**Gladewater**		**2,000**		
East Texas Refining Co.	**Long View**	**10,000**	**10,000**	**10,000**	**10,000**
Gilliland Refining Co.	**Gladewater**	**4,000**		**1,000**	
***Gilliland Refining Co.**	**"**		**4,500**		**1,500**
***Gilliland Refining Co.**	**Overton**		**5,250**		**2,000**
Hurricane Petroleum Corp.	**Overton**		**5,000**		**3,000**
La Prea Refining Co.	**Kilgore**	**2,500**			
Lone Star Refining Co.	**Gladewater**	**2,000**		**1,000**	
***Matthews Refining Co.**	**Gladewater**		**1,100**		
***Ocean Petroleum Co.**	**Kilgore**		**3,000**		**1,000**
Oil Refineries, Inc. (2)	**Overton**	**4,500**		**2,500**	

****Because many East Texas refineries discontinued operating after the Connally Act became effective only those refineries are included which were shown to be in existence by the Texas Railroad Commission's records of December 1, 1935, as reported by the Oil Price Handbook for 1935.**

(1) Shown on Texas Railroad Commission records of December 1, 1935 as Gilliland Refining Co., of Overton.

*** Not reporting to Bureau of Mines as of January 1, 1936.**

(2) Shown on the Texas Railroad Commission records of December 1, 1935, as the Hurricane Petroleum Corporation.

5853

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	(East Texas—Cont'd)				
Premier Oil Refining Co. of Texas	Willow Springs		4,500		
Solvex Refineries, Inc.	Gladewater		5,000		2,500
Southport Refining Co.	Kilgore	4,000		2,000	
*Southport Refining Co.	Kilgore		5,000		2,000
Texas Oil Products Co.	Gladewater	3,500		1,500	
*Texas Oil Products Co.	Gladewater		3,000		2,000
Trio Refining Co.	Arp		2,000		1,250
Tyreco Refg. Co. No. 1	Arp	2,500			
Tyreco Refg. Co. No. 2	Overton	3,000		3,000	
*Tyler Texas Refining Co. (McMurray No. 2)	Tyler		10,000		6,000
Utah Refining Co.	Kilgore	2,000			
		42,000	62,350	21,000	32,250

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* Not reporting to Bureau of Mines as of January 1, 1936.

5854

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Panhandle & North Texas				
Danciger Oil & Refineries, Inc.	Pampa	6,000	6,000	4,000	4,000
Olney Oil & Refg. Co.	Olney	3,000	3,000	1,500	1,500
Panhandle Refining Co.	Kings Mill	2,000	2,500		
Panhandle Refining Co.	Wichita Falls	4,200	4,200	1,700	2,000
Shamrock Oil & Gas Co.	Lefors	1,200	1,500		
Shamrock Oil & Gas Co.	Sunray	2,000	2,500		
Taxman Refining Co.	Wichita Falls		3,000		1,250
Waggoner Refining Co. Inc.	Electra	3,500	6,000		5,000
		21,900	28,700	7,200	13,750
	West Texas				
Panhandle Refining Co.	Lueders		900		

5855

SHUT-DOWN

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	East Texas**				
Century Refining Co.	Friars Switch	2,500			
*Century Refining Co.	Friars Switch		2,500		
Chief Refining Co.	Gladewater	1,200			
Danciger Oil & Refineries, Inc.	Longview	10,000	12,000		2,000
*Dominant Refining Co.	Kilgore		4,000		
*Dominant Refining Co.	Reeds Switch		2,000		
McMurray Refining Co.	Arp	4,000		2,000	

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
*McMurray Refining Co.	Arp		4,000		2,000
Ocean Refining Co.	Kilgore	3,000			
*Ocean Petroleum Co.	Kilgore		2,000		
Trio Refining Co.	Arp	2,000		2,000	
Tyler Texas Producing & Refining Co.	Tyler	15,000		6,000	
*Utah Refining Co.	Kilgore		2,000		
Wabash Refining Co.	Gladewater	1,000			
*Wabash Refining Co.	Gladewater		1,000		
		38,700	29,500	10,000	4,000

**Because many East Texas refineries discontinued operating after the Connally Act became effective only those refineries are included which were shown to be in existence by the Texas Railroad Commission's records of December 1, 1935, as reported by the Oil Price Handbook for 1935.

* Not reporting to Bureau of Mines as of January 1, 1936.

5856

	Oklahoma				
Omar Refg. Co.	Garber	4,000		2,500	
	Panhandle & North Texas				
J. J. & M. Taxman Refg. Co.	Wichita Falls	3,500		1,500	

5857

III.

Refining Capacity of Independent Refineries Not Alleged to be Controlled by Defendants or Co-Conspirators in the Refining Areas Alleged by the Indictment to Supply as of January 1, 1935 (According to the United States Bureau of Mines Information Circular 6850) and as of January 1, 1936 (According to the United States Bureau of Mines Information Circular 6906).

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Arkansas				
Henry H. Cross Co.	Smackover	10,000	6,000		1,500
Lion Oil Refining Co.	El Dorado	11,000	13,000	4,500	4,500
McMillan Petroleum Co.	Norphlet	2,500	2,500		
Root Refining Co.	El Dorado	12,000	12,000	3,500	3,000
Stephens Refining Co.	Stephens	750	700		
		36,250	34,200	8,000	9,000
	Illinois				
Henry H. Cross Co., Inc.	Colmar		1,000		
Henry H. Cross Co., Inc.	Dupo	1,000	1,000		
Henry H. Cross Co., Inc.	Joliet	2,000	2,000		
		3,000	4,000		

5858

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Kansas				
Cusco Oil & Refining Co.	Chase		3,000		
The Derby Oil Co.	Wichita	8,000	8,000	2,500	2,500
The El Dorado Refg. Co.	El Dorado	4,500	5,000	2,000	2,000
Falcon Refining Co.	Great Bend	800	800		
Kanotex Refining Co.	Arkansas City	12,000	12,000	4,500	4,500
The Petroleum Products Co.	Chanute	800	800		
Vickers Petroleum Co.	Potwin	4,000	4,000	3,500	3,500
		30,100	33,600	12,500	12,500
	North Louisiana				
Atlas Pipe Line Corp.	Shreveport		12,500		6,000
Griswold Refineries, Inc.	Shreveport	2,000	2,000	1,000	1,000
		2,000	14,500	1,000	7,000

5859

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Michigan				
Crystal Refining Co.	Carson City		2,000		
Kent Refining Co.	Dewey	750	750		
Keystone Oil Refg. Co.	Detroit	2,000	1,500		
Midwest Refineries, Inc.	Alma	2,000	3,000		
Naph-Sol Refining Co.	Muskegon	2,500	2,500		1,500
Old Dutch Refining Co.	Muskegon	3,000	3,000		
Peerless Oil Company	Saginaw	800			
Roosevelt Oil Corp.	Mt. Pleasant	6,000	6,000		
Superior Oil Corp.	Elsie	1,000	1,000		
Sweet Oil Refining Co.	Wyman	600	1,800		
		18,650	21,550		1,500
	Oklahoma				
Anderson-Prichard Refg. Co.	Cyril	6,000	6,000	3,500	3,500
Black-Gold Refining Co.	Oklahoma	2,000	2,000	600	600
Deep Rock Oil Corp.	Cushing	10,000	10,000	4,000	4,000
Johnson Oil Refining Co.	Cleveland	6,000	5,500	2,000	2,000
Major Petroleum Products Co.	Oklahoma City	1,500			
Monarch Refining Co.	Oklahoma City	1,000	2,000		

5860

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
Oklahoma (Cont'd)					
Sunray Oil Co.	Allen	6,000	6,000	1,600	1,600
Triangle Produce & Refg. Co.	Oklahoma City		1,400		
Wirt Franklin Petroleum Co.	Ardmore	4,000			
		36,500	32,900	11,700	11,700
East Texas**					
Acme Refining Co.	Gladewater	1,250			
Beacon Oil & Refining Co.	Henderson	4,000			
*Beacon Oil & Refining Co.	Henderson		4,500		
*Elk Refining Co. (Western States No. 1)	Overton		3,000		
Johnson Refining Co.	Kilgore	1,200			
Lake Refining Co.	Gladewater	2,000			
McKain Refining Co.	Gladewater	1,500			
*Swastika Refining Co.	Kilgore		2,200		
		9,950	9,700		

**Because many East Texas refineries discontinued operating after the Connally Act became effective only those refineries are included which were shown to be in existence by the Texas Railroad Commission's records of December 1, 1935, as reported by the Oil Price Handbook for 1935.

* Not reporting to Bureau of Mines as of January 1, 1936.

5861

Panhandle & North Texas					
Atlantic Pacific & Gulf Ref. Co.	Wichita Falls	5,000			
Archer Refining Corp.	Megargel	1,000			
Falls Refining Co.	Wichita Falls	2,500			
LaSalle Petroleum Co.	Burkburnett	3,500	3,500		
Pilot Point Refining Co.	Pilot Point	500			
Southland Refining Co.	Olney				2,500
Star Refining & Producing Co.	Ft. Worth	1,000			
Texas Pacific Coal & Oil Co.	Ft. Worth	3,000		700	
		16,500	3,500	700	2,500
West Texas					
Baird Ref. Co.	Baird		1,500	1,500	
Col Tex Refining Co.	Colorado	12,500	12,500	3,500	3,500
Cosden Oil Corp.	Big Spring	12,500	10,000	12,500	10,000
The Exchange Petroleum Corp.	Albany	500	800		
Howard County Refining Co.	Big Spring		2,000		
Moutray Oil Co.	Hawley	500	650		

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
5862					
	West Texas (Cont'd)				
Onyx Refining Corp........	Abiline..........		1,200		
Plainview Refining Co.......	Plainview.......	1,000			
Texas Pacific Coal & Oil Co.	Caddo...........	1,000	1,000		
West Texas Refining Co.....	Pecos...........		500		
Wickett Refining Co.........	Wickett.........	2,500	2,500		
		30,500	32,650	17,500	13,500
5863	**SHUT-DOWN**				
	Arkansas				
Henry H. Cross Co..........	Smackover......			1,500	
Houston Oil Co. of Texas...	Camden.........	5,500	5,500	2,000	2,000
Ouachita Valley Refg. Co...	El Dorado......	2,000	2,000		750
Root Refg. Co..............	El Dorado......			1,500	
Root Petroleum Co..........	El Dorado......				1,500
Simms Oil Co...............	Smackover......	3,000	3,000	2,700	2,000
		10,500	10,500	7,700	6,250
	Illinois				
Peerless Oil Co.............	Blue Island.....	3,000	3,000		
	Kansas				
Golden Rule Refining Co....	Wichita.........	1,000		1,200	
United Oil & Refining Co...	Hutchinson.....	3,000	2,500	500	
		4,000	2,500	1,700	
	North Louisiana				
Spartan Refg. Co., Inc......	Shreveport.....	12,000		6,000	
Oil Refineries Inc..........	Haughton.......		1,000		
		12,000	1,000	6,000	
5864					
	Michigan				
Henry H. Cross Co., Inc...	Muskegon......	1,000			
	Missouri				
Altitude Petroleum Corp. of Missouri................	Kansas City....	4,000		2,500	
Joplin Ref. Co.............	Joplin..........	1,500	1,500	1,000	1,000
		5,500	1,500	3,500	1,000
	Oklahoma				
Associated Oil Company...	Allen...........	8,000	8,000	2,000	2,000
Beckett Co.................	Duncan.........		2,000		
Century Petroleum Co.....	Oklahoma City.	2,500	2,500		
Century Petroleum Co.....	West Tulsa.....	2,500	2,000		
Crescent Refining Co.......	Holdenville.....	1,000	1,000		
The Gilmer Oil Co.........	Ringling........	1,500			
Government Refining Co...	Oklahoma City.	2,600	2,600		
Government Refining Co...	Seminole.......	800	800		
Guthrie Refining Co........	Guthrie.........	500			
Hanger Ref. Co............	Oklahoma City.	500	500		
J. C. Huckins.............	Earlsboro.......	500			

5865

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Oklahoma (Cont'd)				
Illinois Oil Co.	Cushing	3,000	3,000	1,500	1,500
Oklahoma City Ref. Co.	Oklahoma City	2,000	2,000		
Triangle Ref. Co.	Oklahoma City	800			
Western Oil Co.	Beckett	1,500		1,500	
Wirt Franklin Petroleum Corp.	Ardmore		4,000		
Yale Oil Co.	Yale	2,000	2,000		
York Refining Co.	Oklahoma City	2,000	2,000		
		31,700	32,400	5,000	3,500
	East Texas**				
Acme	Gladewater		1,250		
*Ardell Refining Co.	Gladewater		1,000		
Artex Ref. Co. No. 1	Arp	2,000			
Artex Ref. Co. No. 2	Camp Switch	4,250			
*Central Refining Co.	Gladewater		1,400		

**Because many East Texas Refineries discontinued operating after the Connally Act became effective only those refineries are included which were shown to be in existence by the Texas Railroad Commission's records of December 1, 1935 as reported by the Oil Price Handbook of 1935.

*Not reporting to Bureau of Mines as of January 1, 1936.

5866

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
Crystal Refining Co.	Kilgore	1,000			
Elk Refining Co.	Kilgore	4,000			
Gilmer Refining Co.	Gladewater	800			
Gregg Oil Products Co.	Gladewater	1,500			
Hub Oil Refining Co.	Reeds Switch	3,000			
*Hub Oil Refining Co.	Reeds Switch		2,000		
Hunter & Knox Ref. Co.	Reeds Switch	750			
Ideal Refining Co.	Gladewater	750			
Jackson Ref. Co.	Gladewater	1,750			
*Jackson Ref. Co.	"		1,200		
*Johnson Refining Co.	Kilgore		1,000		
*La Petite Refining Co.	Joinerville		800		
*McKain Fuel Co. (Ward) (1)	Gladewater		1,000		
Mid-West Refining Co.	Overton	3,000			
*Outdoor Refining Co.	Kilgore		900		
*Overton Refining Co.	Overton		3,500		

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* Not reporting to Bureau of Mines as of January 1, 1936.

(1) Shown on the Texas Railroad Commission's records of December 1, 1935 as the Overton Refining Co.

5867

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	East Texas (Cont'd)				
Ozozo Refining Co	Friars Switch	7,000			
*Ozozo Refining Co	" "		7,500		
*Ozozo Refining Co	Overton		10,000		
Panama Refining Co	Kilgore	3,000			
*Panama Refining Co	Kilgore		3,000		
Pelican Refining Co	Gladewater	1,000			
*Pelican Refining Co	"		2,200		
Pennant Refining Co	Kilgore	1,500			
*Producers Oil & Refg. Co.	Kilgore		3,000		
Roco Refining Co. (2)	"	2,000			
Rusk Oil & Refining Co	Overton		4,000		
Stag Refining Co	Kilgore	1,200			
*Stag Refining Co	"		2,000		
*State Refining Co. (Bradley)	Kilgore		800		
Supreme Refining Co	Gladewater	1,200			
*Supreme Refining Co	"		1,000		
Union Refining Co	Camp Switch	3,000			
*Union Refining Co	Camp Switch		2,500		

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* Not reporting to Bureau of Mines as of January 1, 1936.

(2) Shown on the Texas Railroad Commission's records of December 1, 1935 as the Admiral Refining Co.

5868

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
Upshur Refining Co	Gladewater	1,000			
*Upshur Refining Co	"		1,000		
		43,700	51,050		
	Panhandle & North Texas				
Archer Refining Corp	Megargel		1,000		
Atlantic Pacific & Gulf Refining Co	Wichita Falls		5,000	1,500	1,500
MacMillan Petroleum Corp	Borger	7,000.	7,500		
Pilot Point Refining Co	Pilot Point		700		
Primrose Refining Co	Wichita Falls	2,500	2,500		
Simms Oil Co	West Dallas	4,000	4,000	3,000	3,200
Southland Refining Co	Megargel		1,000		
Southland Refining Co	Olney	650	650		
Star Refining & Producing Co.	Fort Worth		1,000		
		14,150	23,350	4,500	4,700

5669

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	West Texas				
Active Oil Corp	Arno	1,500	1,500		
Baird Refining Co	Baird	1,500			
Bluebonnet Oil Refg. Co	Wickett	5,000	5,000		
Great West Refining Co	Big Spring	7,500		500	
Nolting Refining Company	Sweetwater	750	750		
Paramount Refineries, Inc	San Angelo		2,000		
Plainview Refg. Co	Plainview		1,000		
Richardson Refining Co	Big Spring	6,000	6,000	4,400	4,400
Superior Refining Co	Tiffin	7,000	700		
Tonkawa Petroleum Corp	Tyote	1,200			
West Texas Refining Co	Pecos	5,000		5,000	
		35,450	16,950	9,900	4,400

5670

IV.

Refinery Capacity of Refineries of Major Companies other than Present Defendants or Dismissed Defendants in the Refining Areas Alleged by the Indictment to Supply the Mid-Western Area as of January 1, 1935 (According to the U. S. Bureau of Mines Information Circular 6850) and as of January 1, 1936 (According to the U. S. Bureau of Mines Information Circular 6906).

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Illinois				
Indian Refining Co	Lawrenceville	16,000		6,300	
Indiana Refg. Co., Inc	Lawrenceville		16,000		6,900
Lincoln Oil Refining Co	Robinson	10,000		12,000	
Ohio Oil Co	Robinson		10,000		12,000
Texas Company	Lockport	20,000	20,000	16,400	17,000
		46,000	46,000	34,700	35,900
	Kansas				
National Refg. Co	Coffeyville	8,000	8,000	4,000	4,000
	North Louisiana				
Louisiana Oil Refg. Co	Bossier City	23,000	23,000	22,000	22,000
Texas Company	Shreveport	7,000	7,000		
		30,000	30,000	22,000	22,000

5871

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Oklahoma				
Marathon Oil Co.	Bristow	5,000	5,000	1,500	1,500
Sun Company (Del.)	Yale	5,000	5,000		
Texas Co.	West Tulsa	14,000	14,000	13,600	14,600
Tide Water Oil Co.	Drumright	15,000	15,000	7,000	7,000
		39,000	39,000	22,000	23,100
	Panhandle and North Texas				
Gulf Refining Co.	Ft. Worth	6,000	6,000	6,000	6,000
Marathon Oil Co.	Ft. Worth	5,000	5,000	1,500	1,500
Texas Co.	Amarillo	4,000	4,000	2,700	2,700
Texas Co.	West Dallas	16,000	16,000	11,000	11,000
		31,000	31,000	21,200	21,200
	West Texas				
Gulf Refining Co.	Sweet Water	5,000	5,000	4,000	4,000
5872	**SHUT-DOWN**				
	Illinois				
Indian Refining Co.	Lawrenceville			1,000	
	North Louisiana				
Louisiana Oil Refg. Co.	Bossier City	3,000			
Louisiana Oil Refg. Co.	Gas Center	15,000	15,000		
		18,000	15,000		

5873 DEFENSE EXHIBITS NOS. 940 AND 942.

OTE:—1935 figures are Exhibit 940.
1936 figures are Exhibit 942.

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I.

efinery capacity controlled by defendants in area surrounding the Standard of Indiana territory as of January 1, 1935, according to United States Bureau of Mines Information Circular 6850.

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aily refinery capacity of defendant companies subsidiaries and dismissed defendants in area surrounding the Standard of Indiana territory as of January 1, 1936, according to United States bureau of Mines Information Circular 6906.

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Kentucky				
	None				
	Louisiana Gulf Coast				
an-American Pet. Corp. (Standard Oil Co. of Ind.)	Destrehan	16,000	16,000		
ıell Petroleum Corp	Norco	21,000	21,000	10,000	10,000
		37,000	37,000	10,000	10,000
	Montana				
ntinental Oil Co	Lewistown	1,500	1,500		
75					
	Ohio				
e Pure Oil Co.	Heath	10,500	10,000	4,000	4,000
" " "	"			4,000	4,000
" " "	Toledo	9,500	9,500	5,000	5,000
" " "	"			3,000	3,000
		20,000	19,500	16,000	16,000
	Western Pennsylvania (Oil City-Warren-Bradford Area)				
w Levick Co (Cities Service)	Titusville	3,000	3,000		
	Pittsburgh Area				
	None				
	Texas (Gulf Coast)				
gnolia Petroleum Co. (ocony-Vacuum)	Beaumont	80,000	80,000	55,000	36,000
-American Rfg. Corp. (tandard Oil Co. of Ind.)	Texas City	25,000	25,000	25,000	25,000
Pure Oil Co.	Nederland	27,000	27,000	12,000	15,450

5876

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Texas (Cont'd)				
Shell Petroleum Corp.	Houston	56,000	42,000	30,000	21,000
Sinclair Refining Co.	"	44,000	44,000	44,000	44,000
		232,000	218,000	166,000	141,450
	Central Texas				
Magnolia Petroleum Co. (Socony-Vacuum)	Corsicana	4,000	4,000		
" " "	Luling	5,000	6,000	3,750	4,200
		9,000	10,000	3,750	4,200
	West Virginia				
The Pure Oil Co.	Cabin Creek Jct.	3,500	2,000	750	750
	Wyoming				
Continental Oil Co.	Glen Rock	2,500	2,500	1,800	1,800
Sinclair Refining Co.	Parco	8,000	8,000	4,000	4,000
Socony-Vacuum Oil Co. Inc.	Casper	5,000		2,500	
Standard Oil Co. (Ind.)	Casper	12,600	12,600	6,550	6,400
" " " "	Gray Bull	5,000	4,000	2,500	1,900
White Eagle (Socony-Vacuum)	Casper		5,000		2,500
		33,100	32,000	17,350	16,600

5877

II.

SHUT DOWN

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Texas (Gulf Coast)				
Magnolia Petroleum Co.	Magpetco	10,000	10,000		
Sinclair Refining Co.	Houston			2,000	2,000
		10,000	10,000	2,000	2,000

5878

Capacities of refineries not controlled by defendants or alleged co-conspirators in certain areas surrounding Standard of Indiana territory as of January 1, 1935 (according to United States Bureau of Mines Information Circular 6850) and as of January 1, 1936 (according to United States Bureau of Mines Information Circular 6906).

I

OPERATING

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Kentucky Independents				
Aetna Oil Service, Inc.	Louisville	2,000	2,500	800	600
Ashland Refg. Co.	Catlettsburg	4,700	4,700	2,200	2,200
Bowling Green Refg. Co.	Memphis Jct.	1,500	2,000		
Louisville Refg. Co.	Louisville	4,500	4,500	2,200	2,200
Simrall Refg. Co.	Horse Cave		2,000		
South Kentucky Pipe Line Co.	Somerset	300	400		
Stoll Oil Refg. Co., Inc.	Louisville	2,000	2,400	600	
		15,000	19,100	5,800	5,000
5879					
	Kentucky Non-Defendant Majors				
Latonia Refg. Corp. (Standard Oil of Ohio)	Latonia	8,000	8,000	5,000	5,000
The Texas Co.	Pryse	2,500	2,500	2,000	2,000
		10,500	10,500	7,000	7,000
		State total	39,600		12,000
	Louisiana Gulf Coast Independents				
Chalmette Petroleum Corp.	Chalmette	7,000	5,000	4,000	3,500
	Non-Defendant Majors				
Standard Oil of Louisiana	Baton Rouge	90,000	90,000		7,400
" " " "	Baton Rouge			34,000	38,500
" " " "	Baton Rouge				3,500
		90,000	90,000	34,000	49,400
		State total	95,000		52,900

5880

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Montana **Independents**				
Arro Oil and Refg. Co.	**West Lewistown**		**1,500**		**800**
B & M Refg. Co.	**Roundup**	**300**			
Big West Oil Co. of Mont.	**Kevin**	**800**	**1,200**	**500**	**500**
Deloraine Refg. Co.	**Oilmont**	**250**			
Conrad Refg. Co.	**Conrad**		**1,000**		
Cut Bank Refining Co.	**Cut Bank**		**350**		
Hart Refineries	**Missoula**	**300**	**300**		
Hart Refineries	**Hedgesville**	**100**			
Hole Bros. Refinery	**Cut Bank**		**250**		
Home Oil & Refg. Co.	**Great Falls**		**1,000**		
Eugene Hunt	**Winnett**	**200**			
Independent Refg. Co.	**Laurel**	**5,000**	**5,000**	**1,500**	**1,500**
The Russell Oil Co. **(Indep. Sales Co.)**	**Billings**	**1,000**			
The Russell Oil Co. **(Indep. Sales Co.)**	**Butte**	**500**			
Unity Pet. Corp.	**Kalispell**	**800**	**800**	**800**	**800**
Yale Oil Corp. of S. D.	**Billings**	**6,000**	**2,000**		
		15,250	**13,400**	**2,800**	**3,600**
5881					
	Montana **Non-Defendant Majors**				
International Refg. Co. **(The Texas Company)**	**Sunburst**	**3,000**	**3,000**	**2,000**	**2,000**
		State total	**16,400**		**5,600**
	Ohio **Independents**				
The Canfield Oil Co.	**Cleveland**	**1,000**	**1,000**		
	Non-Defendant Majors				
Gulf Refg. Co. (Del.)	**Hoven**	**14,000**	**13,000**	**13,000**	**14,200**
" " " "	**Toledo**	**13,000**	**13,000**	**6,500**	**13,000**
The National Refg. Co.	**Findlay**	**3,200**	**3,200**	**1,350**	**1,350**
" " " "	**Marietta**	**700**	**700**		
Standard Oil Co. (Ohio)	**Cleveland**	**24,000**	**24,000**	**10,000**	**10,000**
" " " "	**Lima**	**7,500**	**7,500**	**4,000**	**4,000**
" " " "	**Toledo**	**12,000**	**12,000**	**4,500**	**4,500**
Sun Oil Co.	**Toledo**	**14,000**	**14,000**	**10,000**	**10,000**
		88,400	**87,400**	**49,350**	**57,050**
		State total	**88,400**		**57,050**

5582

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Western Pennsylvania (Oil City-Warren-Bradford Area) Independents.				
James B. Berry Sons Co. Inc.	Oil City	2,500	2,500		
Bradford Oil Refining Co	Bradford	2,300	2,300		
Bradford-Penn Rfg. Corp	Clarendon	1,000	1,000		
Continental Refining Co	Oil City	1,000	1,000		
Daugherty Refining	Petrolia	4,000	4,000		
Franklin Creek Refg. Corp	Franklin	1,500	1,500		
Kendall Refining Co	Bradford	3,500	3,500	1,400	1,500
Oil Creek Refining Co	Fieldmore Springs	1,500	1,500		
Pennsylvania Oil Products Rfg. Co	Eldred	6,000	6,000	500	500
Pennsylvania Refining Co	Karns City	2,000	1,500		
" " "	Titusville	2,000	2,000		
The Pennsoil Co	Rouseville	10,000	10,000	4,500	4,500
Quaker State Oil Rfg. Corp	Emlenton	1,650	1,650	750	750
" " " " "	Farmers Valley	3,000	3,000	1,500	1,500
The Sloan & Zook Rfg. Co	Warren	1,500	1,500		
5583					
	(Western Pennsylvania Cont'd) Independents				
Superior Oil Works	Warren	500	500		
Tiona Refining Co	Clarendon	1,000			
Ultra Penn Refining Co	Bruin	1,000	800		
United Refining Co	Warren	3,000	3,500		500
Wolverine-Empire Refg. Co	Reno	2,000	2,000		
		50,950	49,750	8,650	9,250
	Non-Defendant Majors				
Atlantic Refg. Co	Franklin	9,000		6,000	
	District Total		49,750		9,250
	Pittsburgh Area Independents				
The Canfield Oil Co	Coraopolis	1,500	1,500		
Freedom Oil Co	Freedom	2,500	2,500	500	500
Valvoline Oil Co	E. Butler	2,500	2,500		
Waverly Oil Works	Pittsburgh	1,000	1,800		
		7,500	8,300	500	500

5884

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	(Western Pennsylvania Cont'd) Non-Defendant Majors				
Atlantic Refining Co.	Pittsburgh	8,000		4,000	
Gulf Refining Co.	Naville Island	10,000		5,200	
Gulf Oil Corp. of Pa.	" "		10,000		1,800
		18,000	10,000	9,200	1,800
	District Total		18,300		2,300
	Texas Central Texas Independents,				
Hightower Oil & Refg. Corp.	Brownwood		500		
Master Petroleum Co.	Waco	800	800		
Minerva Refg. Co.	Minerva		2,200		
		800	3,500		
	Non-Defendant Majors None				
	District Total		3,500		
5885					
	Texas (Cont'd) Gulf Coast Independents				
American Pet. Co.	Houston	10,000	10,000		
Bennett Refg. Co.	Houston		2,500		
Coastal Refineries, Inc.	Port Isabel		5,000		2,500
Corpus Christi Refg. Co.	Corpus Christi	3,500	3,500		
Crown Central Pet. Corp.	Pasadena	15,000	15,000	6,000	6,000
Houston Oil Co. of Texas	Viola	1,000	1,000		
Nueces Refg. Co.	Banquete	500			
Pettus Oil and Refg. Co.	Mathis		1,000		
Phoenix Refg. Co., Inc.	Houston	2,500			
Republic Oil Refg. Co.	Texas City	6,000	5,000	4,000	5,000
Stone Oil Co.	Texas City	7,500	7,500		
		46,000	50,500	10,000	13,500
	Non-Defendant Majors				
Gulf Refg. Co.	Port Arthur	100,000	100,000	53,000	53,000
Humble Oil & Refg. Co.	Bay Town	115,000	115,000	55,000	62,400
" " " " "	Ingleside	15,000	15,000	8,000	8,000
" " " " "	Neches	5,000			

5886

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Non-Defendant Majors (Cont'd)				
The Texas Company	Houston	20,000	20,000	1,000	2,500
" " "	Port Arthur	75,000	80,000	2,000	95,600
" " "	" "			90,000	
" " "	" "			3,600	
		330,000	330,000	212,600	221,500
	District Total		380,500		235,000
	South Texas Independents				
Amsco Refg. Co.	Mirando City	2,500	4,500	1,200	
Bee Oil & Refg. Co	Peltus	800			
Citizens Refg. Co	Luling	1,000			
Louis Hausman Oil Co	Laredo	55			
Midway Oil & Refg. Co	Pettus		500		
Pettus Refg. Co	Pettus	1,000	1,000		
Phoenix Refg. Co., Inc	San Antonio	600			
Pioneer Oil & Refg. Co	Somerset	1,500			
Price Refg. Co	San Antonio	500	500		
Rado Refg. & Prod. Co	McAllen	500			
Valley Refg. Co	Harlingen		1,000		
		8,455	7,500	1,200	

5887

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Non-Defendant Majors				
Humble Oil & Refg. Co	San Antonio	4,500	4,500		
The Texas Co	San Antonio	4,000	4,500	4,000	4,500
		8,500	9,000	4,000	4,500
	District Total		16,500		4,500
	El Paso Non-Defendant Majors				
Standard Oil Company (Texas)	El Paso		14,000		4,048
Pasotex Petroleum Co	El Paso	14,000		4,048	
Texas Company	El Paso	1,800	1,800	2,000	2,000
		15,800	15,800	6,048	6,048
	West Virginia Independents				
Carbide & Carbon Chemicals Corp.	S. Charleston	2,000	2,000	1,000	1,000
Elk Refg. Co	Falling Rock	2,500	2,500		
Ohio Valley Refg. Co	St. Marys	2,000	2,000	750	750
Tri-State Refg. Co	Kenova			1,800	
		6,500	6,500	3,550	1,750

5888

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	(West Va. Cont'd)				
	Non-Defendant Majors				
Standard Oil Co. of N. J.		6,000	6,000	13,714	9,000
	State Total		12,500		10,750
	Wyoming				
	Independents				
Capitol Oil & Refg. Co.	Cheyenne	250			
Eclipse Oil & Refg	Newcastle	270			
The Fern Oil Co.	Thermopolis	500	500		
Gillette Refg. Company	Gilette		300		
Northwestern Pet. Co.	Osage		300		
Resolute Oil Corp.	Badger Basin	400	450		
Sheridan Refg. Co.	Sheridan	300	300		
		1,720	1,850		
	Non-Defendant Majors				
The Texas Company	Casper	7,000	7,000	5,000	5,000
" " "	Casper			1,800	2,500
" " "	Cody	3,000	3,000		1,500
		10,000	10,000	6,800	9,000
	State Total		11,850		9,000

5889

II.

SHUT DOWN

	Kentucky				
	Independents				
Glasgow Oil & Refg. Co.	Glasgow	200			
Simrall Rfg. Corp.	Horse Cave	2,600			
	Non-Defendant Majors				
	None				
	Louisiana Gulf Coast				
	Independents				
	None				
	Non-Defendant Majors				
Standard Oil Co. of La.	Baton Rouge			11,000	7,250
" " " " "	Baton Rouge			7,400	5,500
				18,400	12,750
				State Total	12,750

5890

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Crackin Capacit
	Montana				
	Independents				
Arro Oil & Rfg. Co.	W. Lewistown	1,500		800	
Conrad Rfg. Co.	Conrad	1,000			
Consumers Rfg. Co.	Collins	500			
Cut Bank Rfg. Co.	Cut Bank	250			
Hole Brothers	Cut Bank	250			
Home Oil & Rfg. Co.	Great Falls	1,000			
Snow Cap Oil Co.	Sunburst	330		200	
Sunburst Oil & Rfg. Co.	Great Falls	3,000			
Yale Oil Corp. of S. D.	Miles City	500			
		8,330		1,000	
	Non-Defendant Majors				
	None				
	Ohio				
	Independents				
Allegheny Arrow Oil	Canton	1,500	1,500	850	750
The Stellar Rfg.	Marne	1,000		250	
		2,500	1,500	1,100	750

5891

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Crackin Capacit
	Ohio				
	Non-Defendant Majors				
The Gulf Rfg. Co.	Toledo			6,500	
The Standard Oil Co. (Ohio)	Lima			2,000	2,000
				8,500	2,000
	State Total		1,500		2,750
	Western Pennsylvania (Oil City-Warren-Bradford Area)				
	Independents				
Oil Creek Refining Co.	Fieldmore Springs		1,500		
Pennzoil Co.	Rouseville			2,000	2,000
Tiona Refining Co.	Clarendon		1,000		
Valvoline Oil Co.	Warren	1,000	1,000		
Wolverine-Empire Rfg. Co.	Tideioute	800			
		1,800	3,500	2,000	2,000
	Non-Defendant Majors				
	None				
	District Total		3,500		2,000

5892

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	Pittsburgh Area Independents				
Carnegie Refining Co.	Carnegie	2,000	2,000		
A. D. Miller Sons Co.	Pittsburgh	1,000	1,000		
Waverly Oil Works	Pittsburgh			500	600
		3,000	3,000	500	600
	Non-Defendant Majors				
Atlantic Refining Co.	Pittsburgh		8,000		4,000
	District Total		11,000		4,600
	Texas (Central Texas) Independents				
All State Refg. Co.	Thrall	2,500	2,500		
Bobrose Oil Mfg. Co.	Brownwood	1,000			
Minerva Rfg. Co.	Minerva	2,200			
		5,700	2,500		
	District Total		2,500		
	Non-Defendant Majors None				
5893					
	Texas (Gulf Coast) Independents				
*Maritime Oil Co.	Houston		4,500		
Nueces Refg. Co.	Banquette		800		
Stone Oil Co.	Texas City			2,500	
			5,300	2,500	
	Non-Defendant Majors				
Humble Oil & Rfg. Co.	Baytown			5,600	
	District Total		5,300		
	Texas (South Texas) Independents				
Citizens Oil & Ref. Co.	Luling		500		
Conroe Oil & Rfg. Co.	Conroe	500			
Motor Fuel Prod. Co., Inc.	Laredo	2,000	2,000	500	500
		2,500	2,500	500	500
	Non-Defendant Majors None				
	District Total		2,500		500

Refinery	Location	1935 Distillation Capacity	1936 Distillation Capacity	1935 Cracking Capacity	1936 Cracking Capacity
	West Virginia				
	Independents				
Tri-State Refg. Co.	**Kenova**	**2,500**	**2,500**		**1,800**
	Non-Defendant Majors				
	None				
	Wyoming				
	Independents				
Goshen Oil & Refg. Co.	**Torrington**	**250**	**250**		
California Pet. Corp. (Utah)			**300**		
Golden Power Oil & Sup. Co.	**Casper**		**200**		
Northwestern Pet. Co.	**Osage**	**300**			
Osage Rfg. Co.	**Osage**	**700**	**700**	**750**	
Pedro Refinery	**Newcastle**		**300**		
Wyoil Refg. Co.	**Mills**		**200**		
		1,250	**1,950**	**750**	
	Non-Defendant Majors				
The Texas Company	**Cody**			**1,500**	
		State Total	**1,950**		

5895

DEFENSE EXHIBIT NO. 946.

5896

GASOLINE DEMAND

U. S. Domestic Demand and Exports

1935	Domestic Demand	Exports	Total Demand	Total Demand Increase or Decrease Over same Month Previous Year
	(Barrels)	(Barrels)	(Barrels)	(Percents)
Jan.	28,147,000	2,133,000	30,280,000	4.81
Feb.	26,580,000	1,248,000	27,828,000	0.21
Mar.	32,272,000	2,582,000	34,854,000	4.19
Apr.	36,363,000	1,467,000	37,830,000	5.95
May.	39,381,000	2,147,000	41,528,000	2.87
June.	38,086,000	3,222,000	41,308,000	6.75
July.	41,479,000	3,022,000	44,501,000	12.70
Aug.	43,097,000	2,821,000	45,918,000	10.57
Sept.	37,976,000	3,109,000	41,085,000	11.72
Oct.	41,566,000	2,461,000	44,027,000	10.62
Nov.	35,991,000	3,158,000	39,149,000	5.03
Dec.	33,872,000	3,243,000	37,115,000	14.70
Total Year.	434,810,000	30,613,000	465,423,000	6.99
1936				
Jan.	32,412,000	2,572,000	34,984,000	15.54
Feb.	27,216,000	1,668,000	28,884,000	3.79
Mar.	35,871,000	1,615,000	37,486,000	7.55
Apr.	38,825,000	2,532,000	41,357,000	9.32
May.	42,007,000	2,702,000	44,709,000	7.66
June.	44,630,000	2,291,000	46,921,000	13.59
July.	46,638,000	2,369,000	49,007,000	10.13
Aug.	46,081,000	2,409,000	48,490,000	5.60
Sept.	44,346,000	2,491,000	46,837,000	14.00
Oct.	44,253,000	2,491,000	46,744,000	6.17
Nov.	39,919,000	2,586,000	42,505,000	8.57
Dec.	39,393,000	2,105,000	41,498,000	11.81
Total Year.	481,591,000	27,831,000	509,422,000	9.45

SOURCES: A. P. I. Annual Statistical Bulletin No. 16—May 27, 1937.

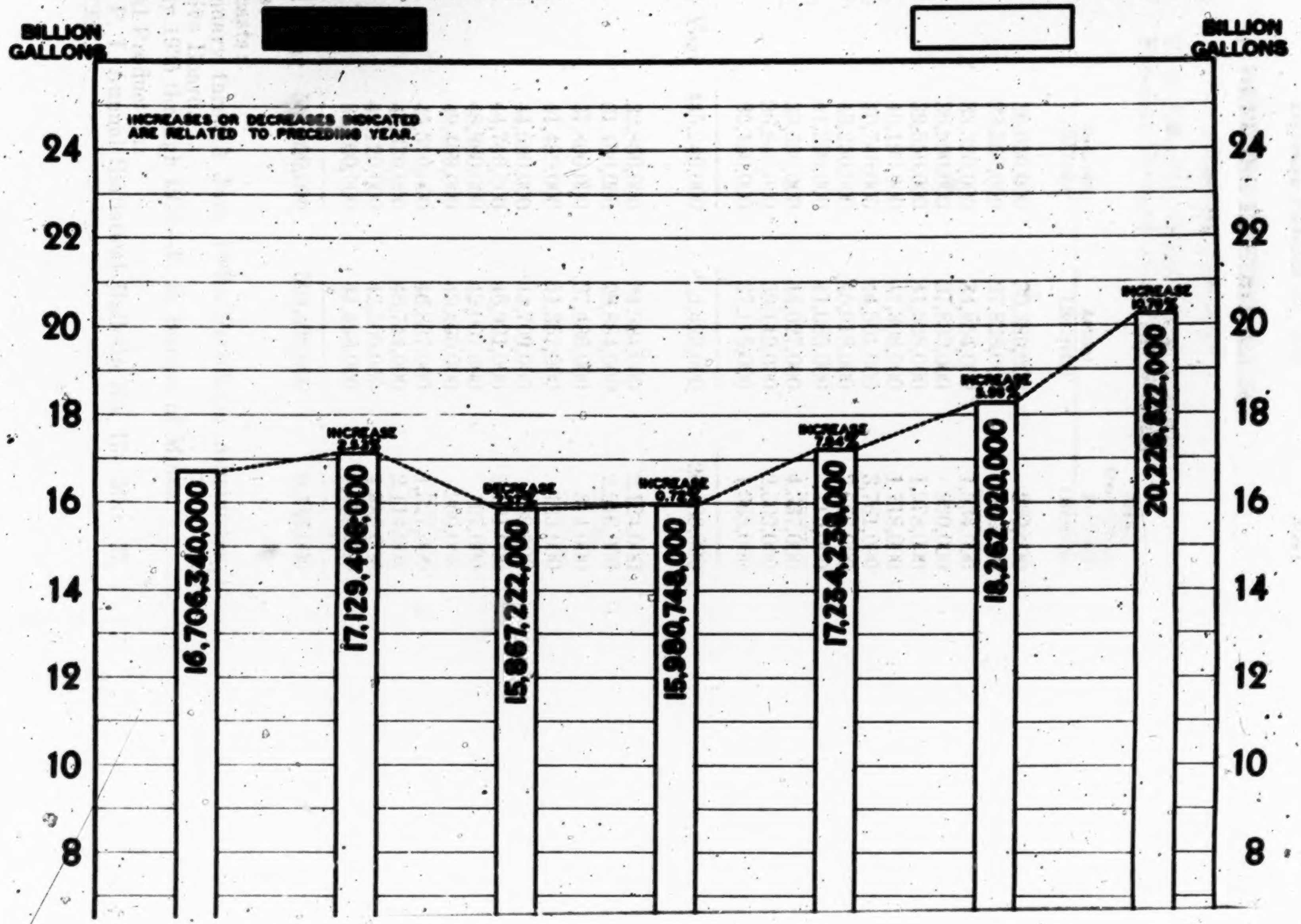
5897

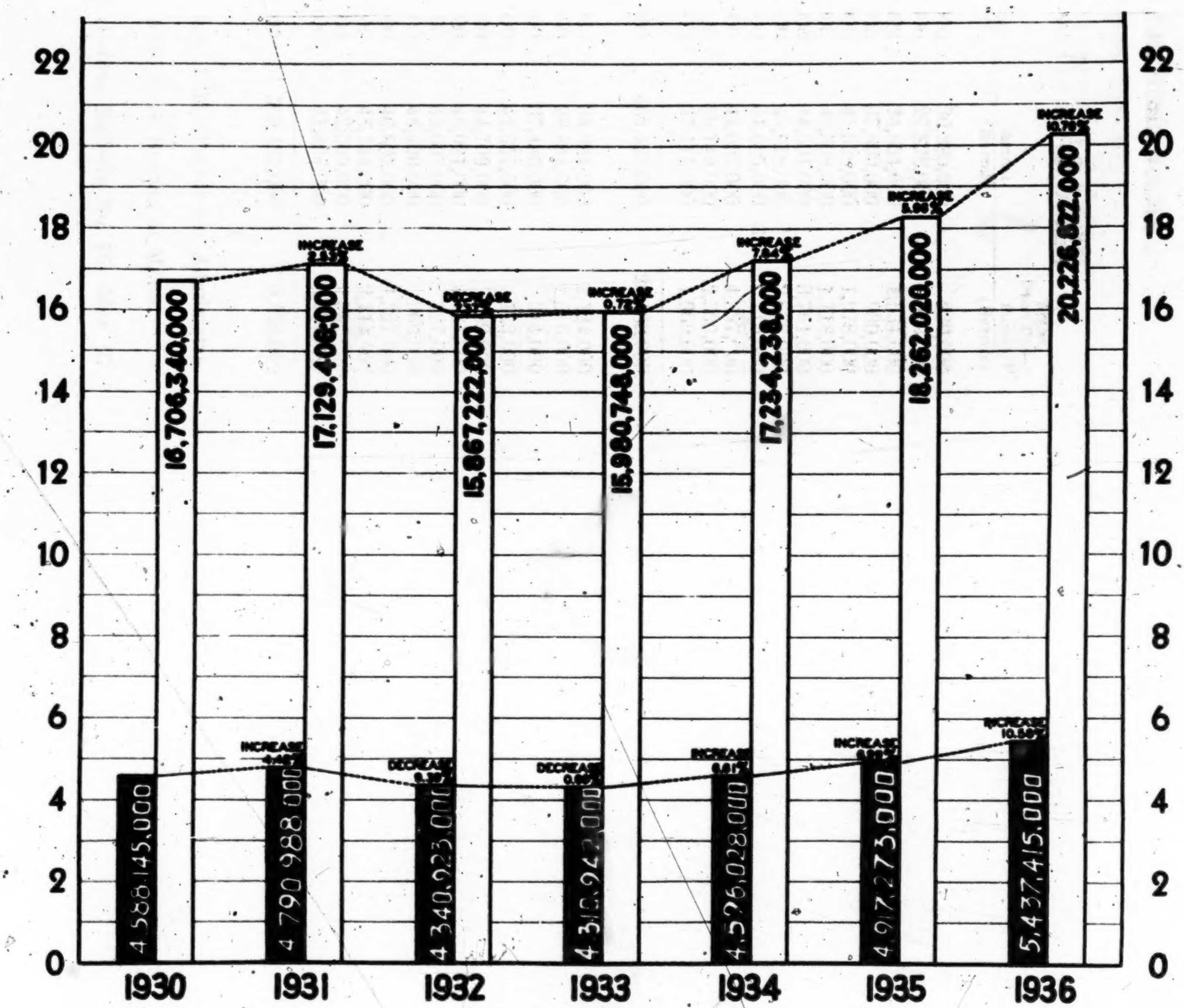
DEFENSE EXHIBIT NO. 947.

EXHIBIT NO. 947

GASOLINE CONSUMPTION 1930-1936

TOTAL MID-WESTERN AREA VS. TOTAL UNITED STATES





SOURCES
Mid-Western Area—A.P.I. Bulletins
Total United States—U.S. Bureau of Mines—Recomputed by A.P.I.

3639

5899 **DEFENSE EXHIBIT NO. 948.**

5900 **Gasoline Demand**

U. S. Domestic Demand and Exports
Forecast Demand vs. Actual Demand

	Forecast (Barrels)	Actual (Barrels)	Actual Over–Under Forecast (Barrels)
1935			
Jan.	30,050,000	30,280,000	230,000
Feb.	28,360,000	27,828,000	$\underline{532,000}$
Mar.	33,320,000	34,854,000	1,534,000
Apr.	36,900,000	37,830,000	930,000
May	39,550,000	41,528,000	1,978,000
June	40,190,000	41,308,000	1,118,000
July	40,740,000	44,501,000	3,761,000
Aug.	43,250,000	45,918,000	2,668,000
Sept.	41,200,000	41,085,000	$\underline{115,000}$
Oct.	39,690,000	44,027,000	4,337,000
Nov.	36,840,000	39,149,000	2,309,000
Dec.	35,150,000	37,115,000	1,965,000
Total Year	445,240,000	465,423,000	20,183,000
1936			
Jan.	32,860,000	34,984,000	2,124,000
Feb.	31,400,000	28,884,000	$\underline{2,516,000}$
Mar.	37,800,000	37,486,000	$\underline{314,000}$
Apr.	41,480,000	41,357,000	$\underline{123,000}$
May	44,520,000	44,709,000	189,000
June	44,740,000	46,921,000	2,181,000
July	48,880,000	49,007,000	127,000
Aug.	49,450,000	48,490,000	$\underline{960,000}$
Sept.	45,510,000	46,837,000	1,327,000
Oct.	44,630,000	46,744,000	2,114,000
Nov.	41,120,000	42,505,000	1,385,000
Dec.	38,700,000	41,498,000	2,798,000
Total Year	501,090,000	509,422,000	8,332,000

Sources:

Forecasts:

January through June 1935—Petroleum Administrative Board.

July 1935 through 1936—U. S. Bureau of Mines.

Actual Production:

A. P. I. Annual Statistical Bulletin No. 16—Mar. 27, 1937.

5901 DEFENSE EXHIBIT NO. 949.

5902 United States

Gasoline Inventories

End of Each Month

	Finished Gasoline	Unfinished Gasoline	Total
	Barrels	Barrels	Barrels
1935			
Jan.	53,266,000	5,339,000	58,605,000
Feb.	58,939,000	5,949,000	64,888,000
Mar.	60,405,000	5,885,000	66,290,000
Apr.	58,218,000	6,175,000	64,393,000
May	55,196,000	6,287,000	61,483,000
June	53,141,000	6,366,000	59,507,000
July	50,472,000	5,974,000	56,446,000
Aug.	45,932,000	5,768,000	51,700,000
Sept.	44,624,000	5,710,000	51,334,000
Oct.	44,373,000	5,425,000	49,798,000
Nov.	46,295,000	5,751,000	52,046,000
Dec.	50,647,000	6,046,000	56,693,000
1936			
Jan.	55,917,000	6,837,000	62,754,000
Feb.	65,061,000	6,869,000	71,930,000
Mar.	67,128,000	7,357,000	74,485,000
Apr.	66,552,000	6,957,000	73,509,000
May	64,675,000	6,930,000	71,605,000
June	60,519,000	6,858,000	67,377,000
July	55,922,000	6,524,000	62,446,000
Aug.	53,040,000	6,456,000	59,496,000
Sept.	51,394,000	6,406,000	57,800,000
Oct.	51,238,000	6,424,000	57,662,000
Nov.	52,509,000	6,290,000	58,799,000
Dec.	56,353,000	6,532,000	62,885,000

Source: API Annual Statistical Bulletin No. 16, March 27, 1937.

5903 **DEFENSE EXHIBIT NO. 950.**

5904 **United States**

Days Supply of Finished Gasoline on Hand

	Gasoline Demand			
	Domestic & Export			
	Monthly Total	Average Per Day	Finished Gasoline Inventory End of Month	Days Supply
	Barrels	Barrels	Barrels	Days
1935				
Jan.	30,280,000	976,800	53,266,000	50.6
Feb.	27,828,000	993,900	58,939,000	50.1
Mar.	34,854,000	1,124,300	60,405,000	46.9
Apr.	37,830,000	1,261,000	58,218,000	43.1
May	41,528,000	1,339,600	55,196,000	39.7
June	41,308,000	1,376,900	53,141,000	36.8
July	44,501,000	1,435,500	50,472,000	34.3
Aug.	45,918,000	1,481,200	45,932,000	33.4
Sept.	41,085,000	1,369,300	45,624,000	32.2
Oct.	44,027,000	1,420,200	44,373,000	34.4
Nov.	39,149,000	1,305,000	46,295,000	39.1
Dec.	37,115,000	1,197,200	50,647,000	46.7
Total	465,423,000	1,275,100		
1936				
Jan.	34,984,000	1,128,500	55,917,000	51.4
Feb.	28,884,000	996,000	65,061,000	51.0
Mar.	37,486,000	1,209,200	67,128,000	47.9
Apr.	41,357,000	1,378,600	66,552,000	45.0
May	44,709,000	1,442,200	64,675,000	41.2
June	46,921,000	1,564,000	60,519,000	38.4
July	49,007,000	1,580,900	55,922,000	35.8
Aug.	48,490,000	1,564,200	53,040,000	34.1
Sept.	46,837,000	1,561,200	51,394,000	34.3
Oct.	46,744,000	1,507,900	51,238,000	36.5
Nov.	42,505,000	1,416,800	52,509,000	40.3
Dec.	41,498,000	1,338,600	56,353,000	46.9
	509,422,000	1,395,700		

Source: API Annual Statistical Bulletin No. 16, March 27, 1937.

5905 DEFENSE EXHIBIT NO. 951.

5906 U. S: Crude Oil Production

Recommended Production Compared with Actual Production

	Recommended Production		Actual Production
Year	Per Day (Barrels)	Computed Per Month (Barrels)	Per Month (Barrels)
1935			
Jan.	2,460,300	76,269,300	78,720,000
Feb.	2,526,100	70,730,800	72,802,000
Mar.	2,520,300	78,129,300	81,650,000
Apr.	2,527,300	75,819,000	78,723,000
May	2,561,200	79,397,200	82,652,000
June	2,651,000	79,530,000	82,692,000
July	2,660,000	82,460,000	85,809,000
Aug.	2,655,000	82,305,000	85,038,000
Sept.	2,613,000	78,390,000	84,458,000
Oct.	2,554,200	79,180,200	88,577,000
Nov.	2,563,700	76,911,000	86,752,000
Dec.	2,540,200	78,746,200	88,957,000
Total Year	2,569,501	937,868,000	996,596,000
1936			
Jan.	2,559,200	79,335,200	88,820,000
Feb.	2,648,100	76,794,900	82,120,000
Mar.	2,738,900	84,905,900	90,568,000
Apr.	2,797,300	83,919,000	90,479,000
May	2,826,300	87,615,300	93,739,000
June	2,838,300	85,149,000	90,185,000
July	2,917,200	90,433,200	92,078,000
Aug.	2,936,900	91,043,900	95,090,000
Sept.	2,864,000	85,920,000	90,972,000
Oct.	2,842,300	88,111,300	95,795,000
Nov.	2,870,300	86,109,000	91,018,000
Dec.	2,930,300	90,839,300	97,652,000
Total Year	2,814,689	1,030,176,000	1,098,516,000

Sources:

Recommended Production:

Petroleum Administrative Board—January through June, 1935.

U. S. Bureau of Mines—July 1935 and subsequent.

Actual Production:

A. P. I. Annual Statistical Bulletin No. 16—March 27, 1937.

5907 DEFENSE EXHIBIT NO. 952.

5908 United States

Crude Oil Inventories

	Inventory End of Month (Barrels)	Increase Decrease During Month (Barrels)
1935		
Jan.	338,199,000	945,000
Feb.	337,349,000	850,000
Mar.	339,179,000	1,830,000
Apr.	339,823,000	644,000
May	338,619,000	1,204,000
June	334,841,000	3,778,000
July	329,459,000	5,382,000
Aug.	325,106,000	4,353,000
Sept.	320,880,000	4,226,000
Oct.	317,955,000	2,925,000
Nov.	315,779,000	2,176,000
Dec.	314,855,000	924,000
Total year		22,399,000
1936		
Jan.	313,081,000	1,774,000
Feb.	310,812,000	2,269,000
Mar.	313,189,000	2,377,000
Apr.	315,389,000	2,200,000
May	315,169,000	220,000
June	311,046,000	4,123,000
July	306,390,000	4,656,000
Aug.	301,757,000	4,633,000
Sept.	295,693,000	6,064,000
Oct.	292,271,000	3,422,000
Nov.	288,998,000	3,273,000
Dec.	288,184,000	814,000
Total year		26,671,000

Sources:

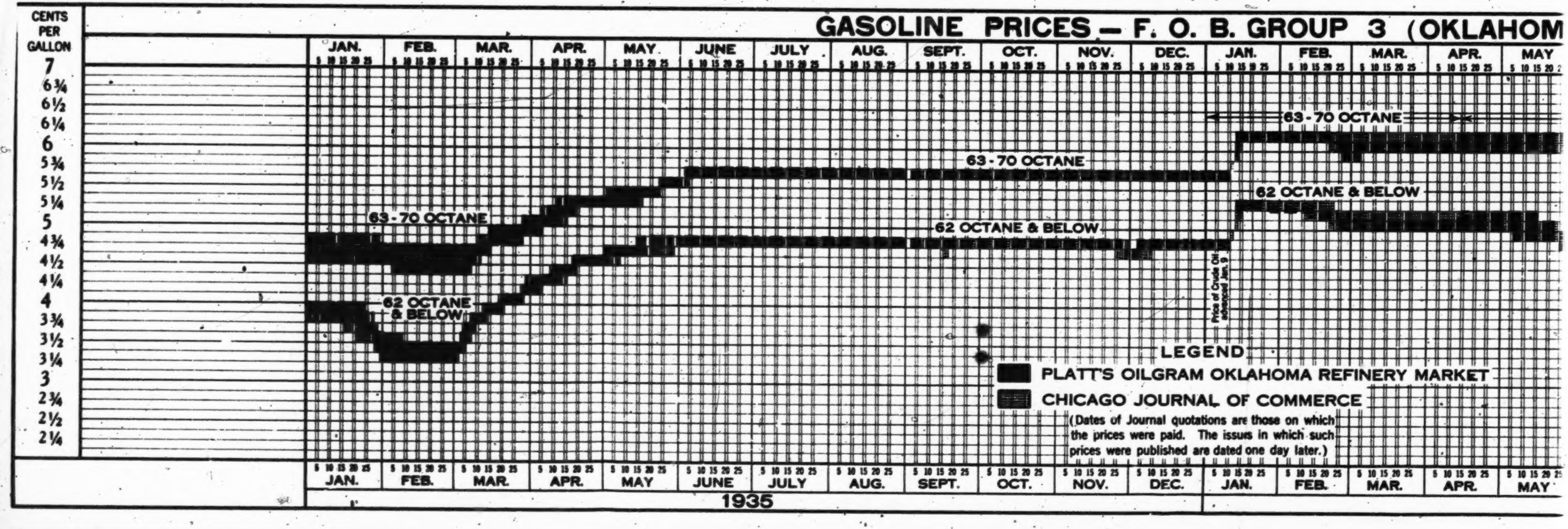
A. P. I. Annual Statistical Bulletin #16—March 27, 1937.

5909

DEFENSE EXHIBIT NO. 953.

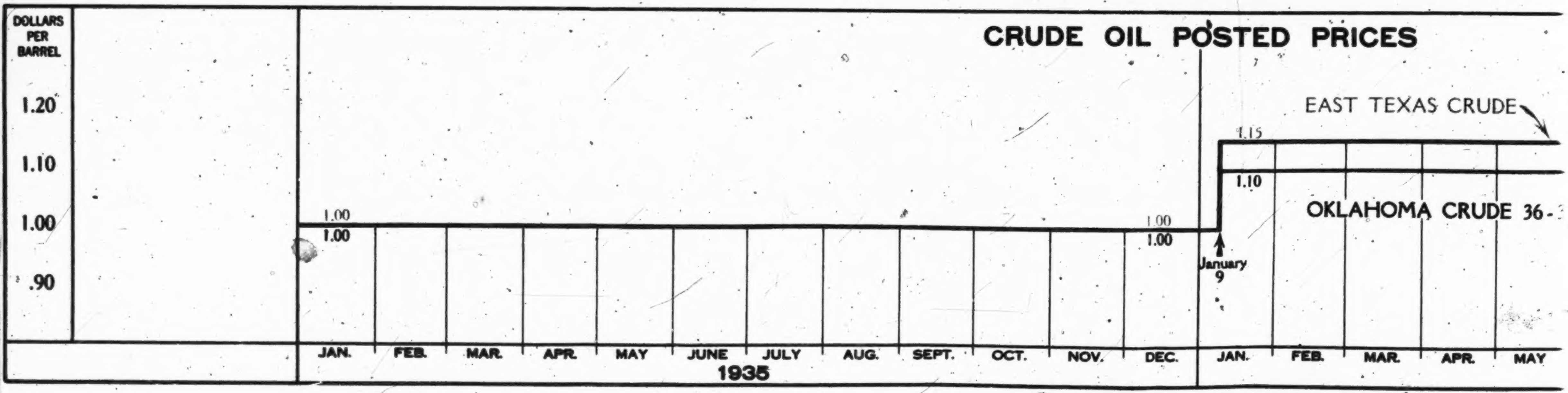
STATISTICS — CRUDE OIL AND GA

(1)



GASOLINE PRICES — F. O. B. GROUP 3 (OKLAHOM

(Dates of Journal quotations are those on which the prices were paid. The issues in which such prices were published are dated one day later.)



CRUDE OIL POSTED PRICES

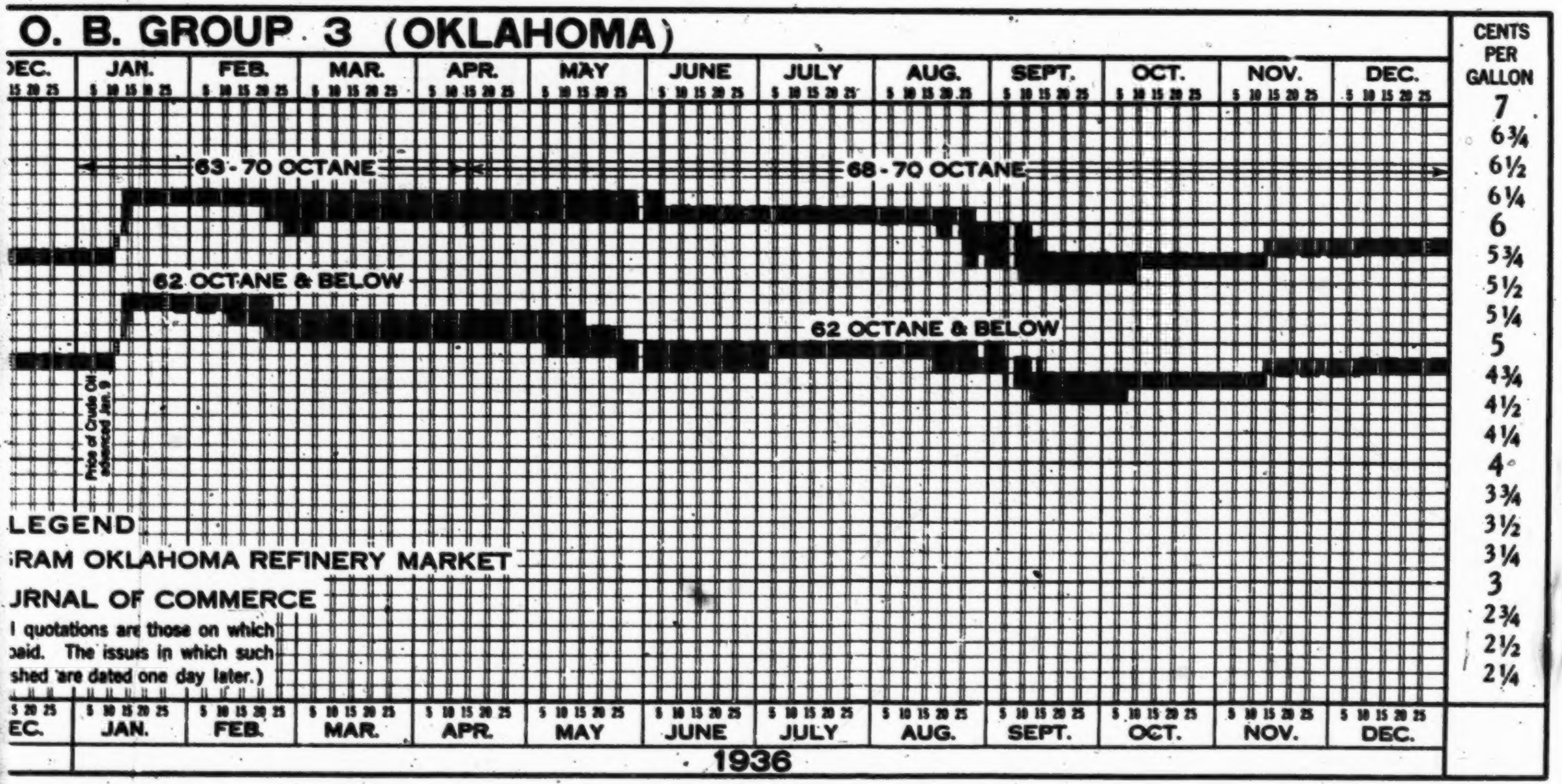
MILLIONS OF

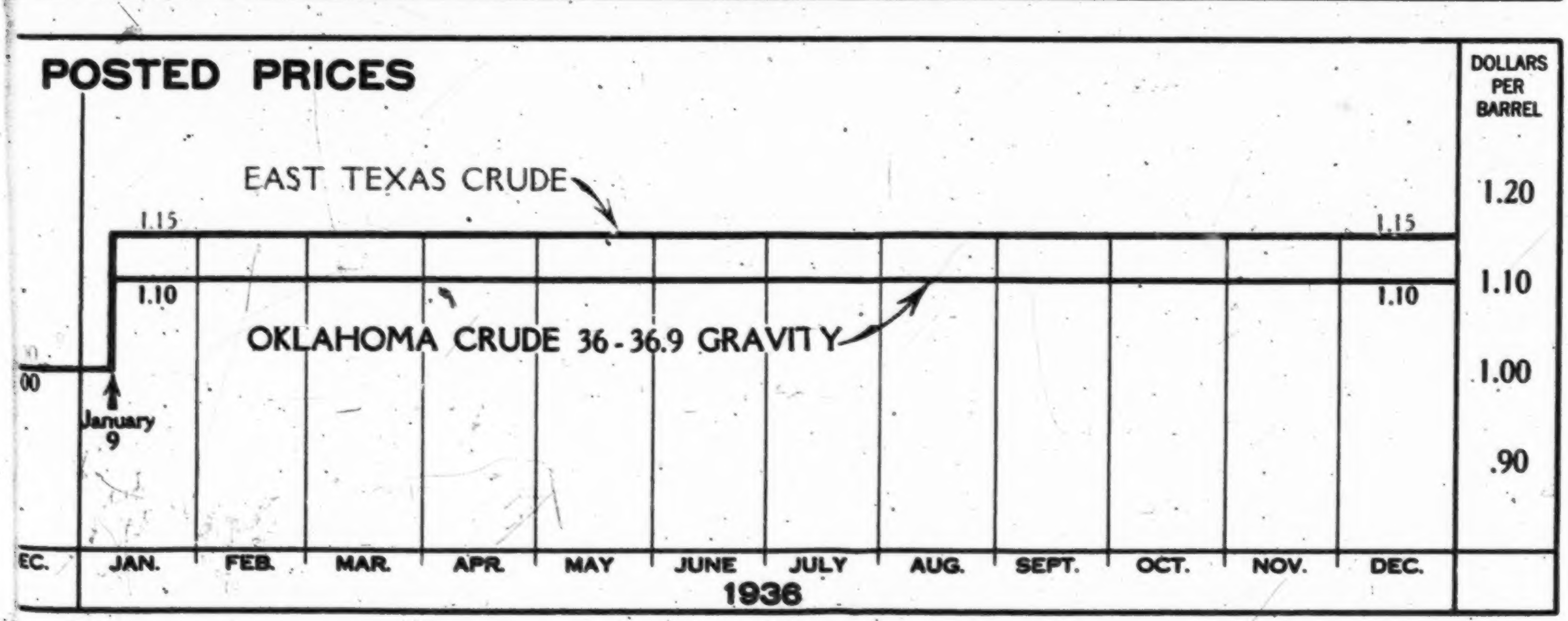
GASOLINE DEMAND

E OIL AND GASOLINE

EXHIBIT NO. 953

(1)





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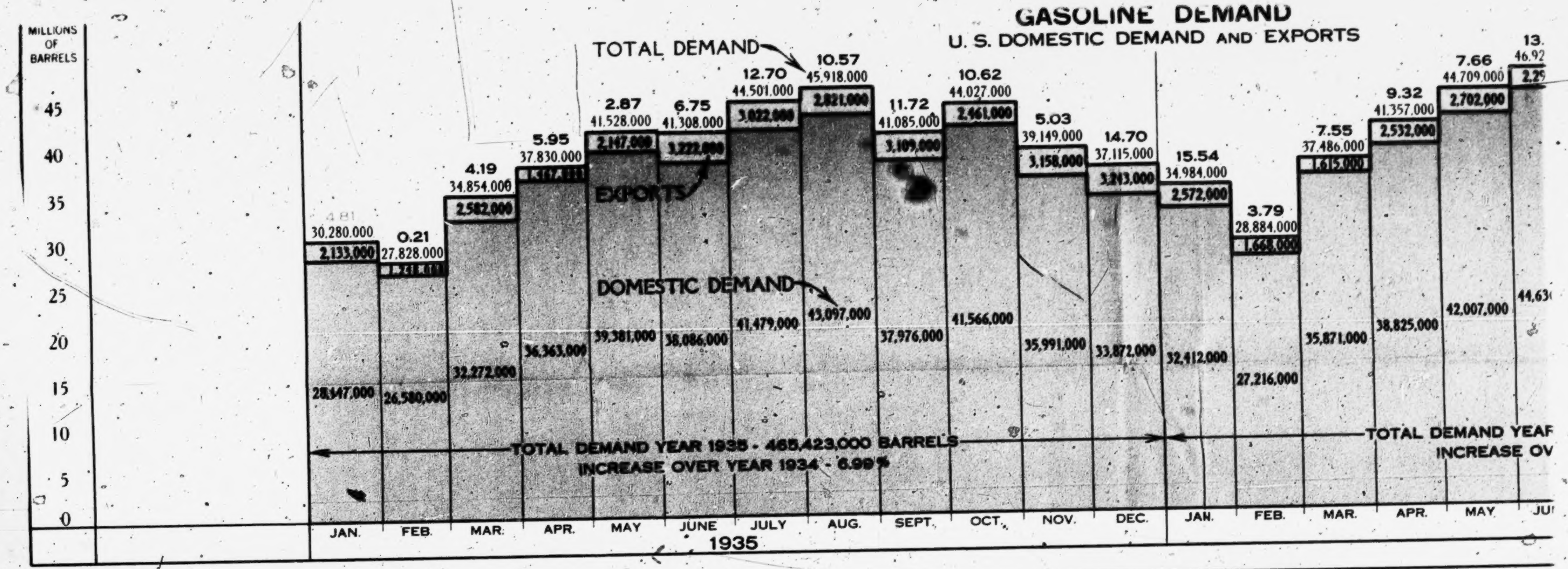
MILLIONS


GASOLINE DEMAND
U. S. DOMESTIC DEMAND AND EXPORTS
MILLIONS OF BARRELS
45
40
35
30
25
20
15
10
5
0
TOTAL DEMAND
EXPORTS
DOMESTIC DEMAND
4.81
30,280,000
2,133,000
28,147,000
0.21
27,828,000
1,248,000
26,580,000
4.19
34,854,000
2,582,000
32,272,000
5.95
37,830,000
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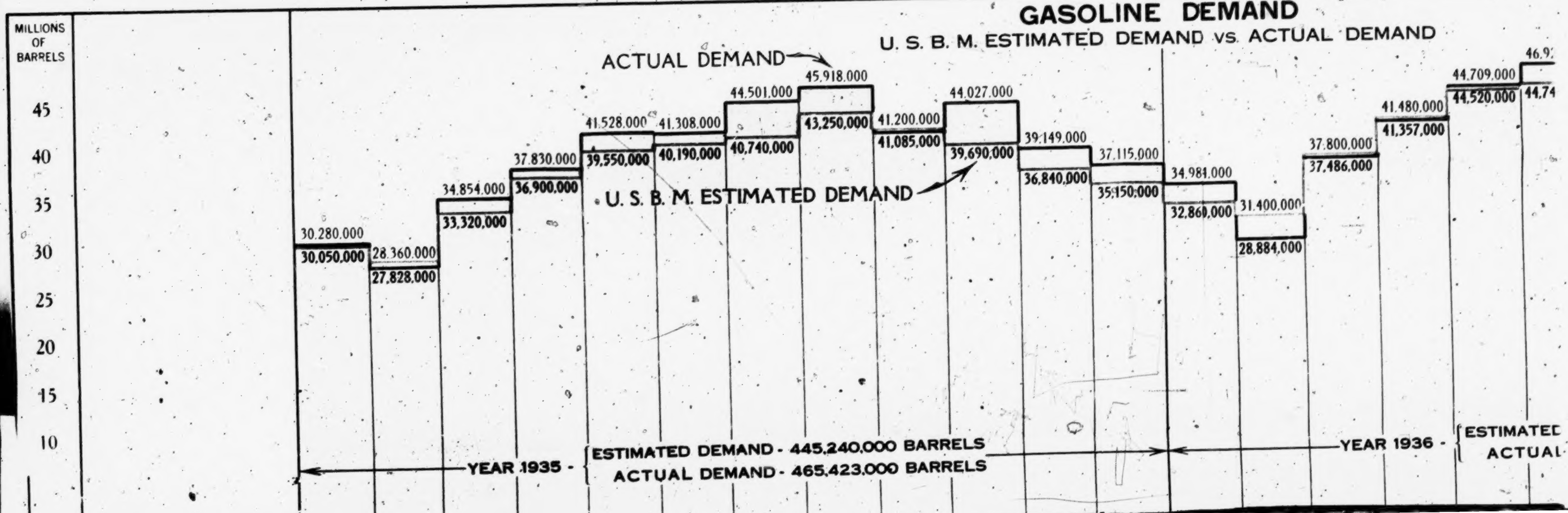
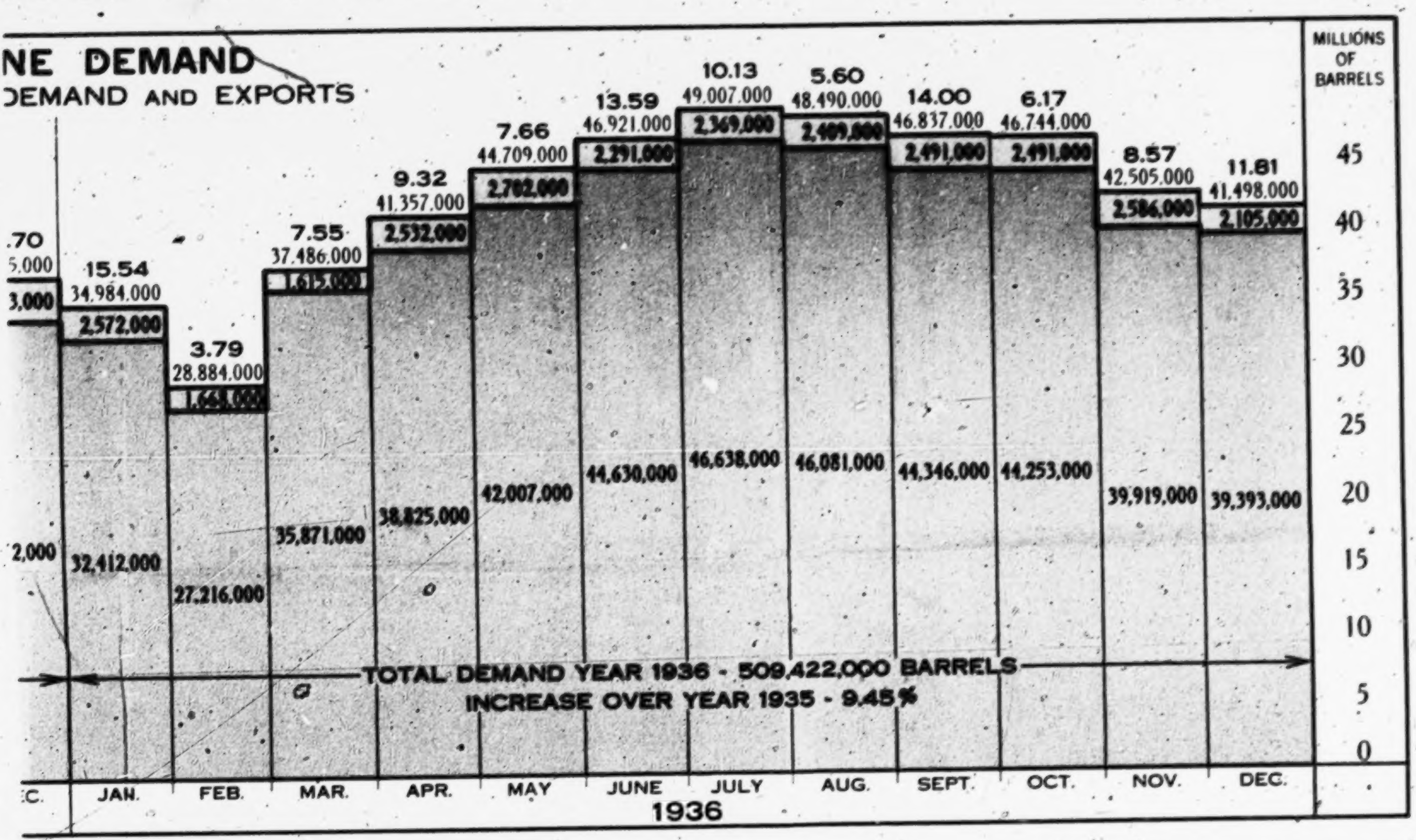
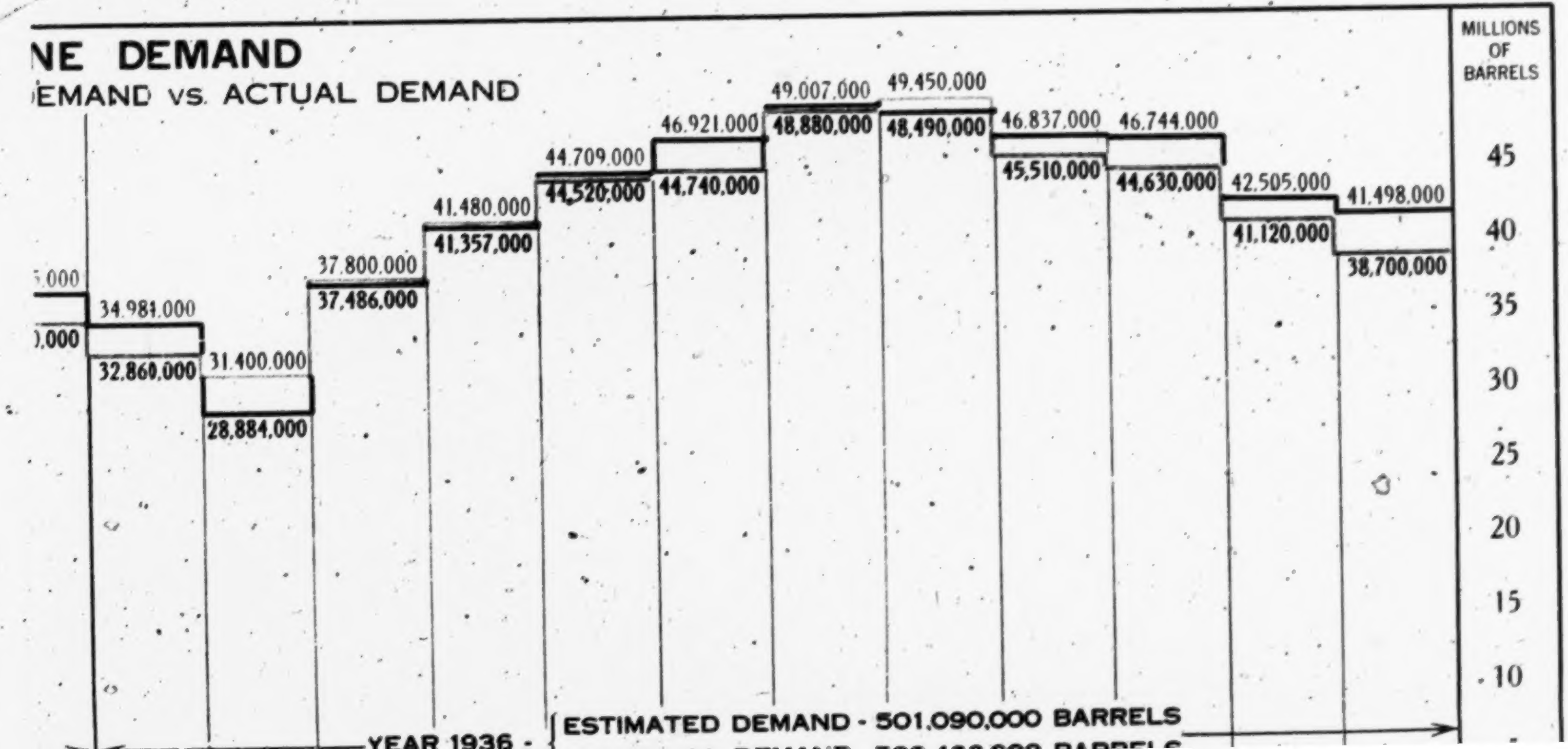
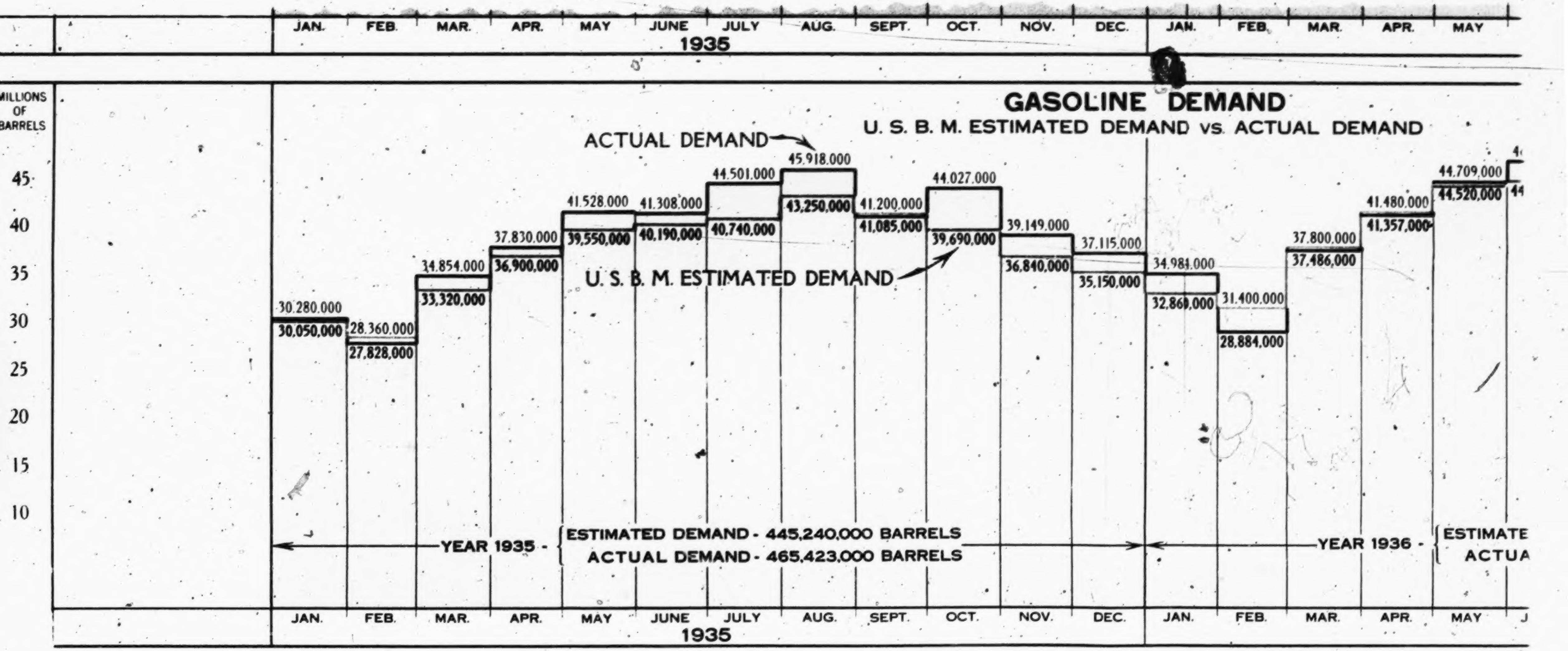
36,363,000
2.87
41,528,000
2,147,000
39,381,000
6.75
41,308,000
3,222,000
38,086,000
12.70
44,501,000
3,022,000
41,479,000
10.57
45,918,000
2,821,000
43,097,000
11.72
41,085,000
3,109,000
37,976,000
10.62
44,027,000
2,461,000
41,566,000
5.03
39,149,000
3,158,000
35,991,000
14.70
37,115,000
3,243,000
33,872,000
15.54
34,984,000
2,572,000
32,412,000
3.79
28,884,000
1,668,000
27,216,000
7.55
37,486,000
1,615,000
35,871,000
9.32
41,357,000
2,532,000
38,825,000
7.66
44,709,000
2,702,000
42,007,000
13.
46.92
2.29
44,63
TOTAL DEMAND YEAR 1935 - 465,423,000 BARRELS
INCREASE OVER YEAR 1934 - 6.99%
TOTAL DEMAND YEAR
INCREASE OV
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
JAN.
FEB.
MAR.
APR.
MAY
JU
1935


GASOLINE DEMAND
U. S. B. M. ESTIMATED DEMAND vs. ACTUAL DEMAND
MILLIONS OF BARRELS
45
40
35
30
25
20
15
10
ACTUAL DEMAND
U. S. B. M. ESTIMATED DEMAND
30,280,000
30,050,000
28,360,000
27,828,000
34,854,000
33,320,000
37,830,000
36,900,000
41,528,000
39,550,000
41,308,000
40,190,000
44,501,000
40,740,000
45,918,000
43,250,000
41,200,000
41,085,000
44,027,000
39,690,000
39,149,000
36,840,000
37,115,000
35,150,000
34,981,000
32,860,000
31,400,000
28,884,000
37,800,000
37,486,000
41,480,000
41,357,000
44,709,000
44,520,000
46.9
44,74
YEAR 1935 - ESTIMATED DEMAND - 445,240,000 BARRELS
ACTUAL DEMAND - 465,423,000 BARRELS
YEAR 1936 - ESTIMATEI
ACTUAL

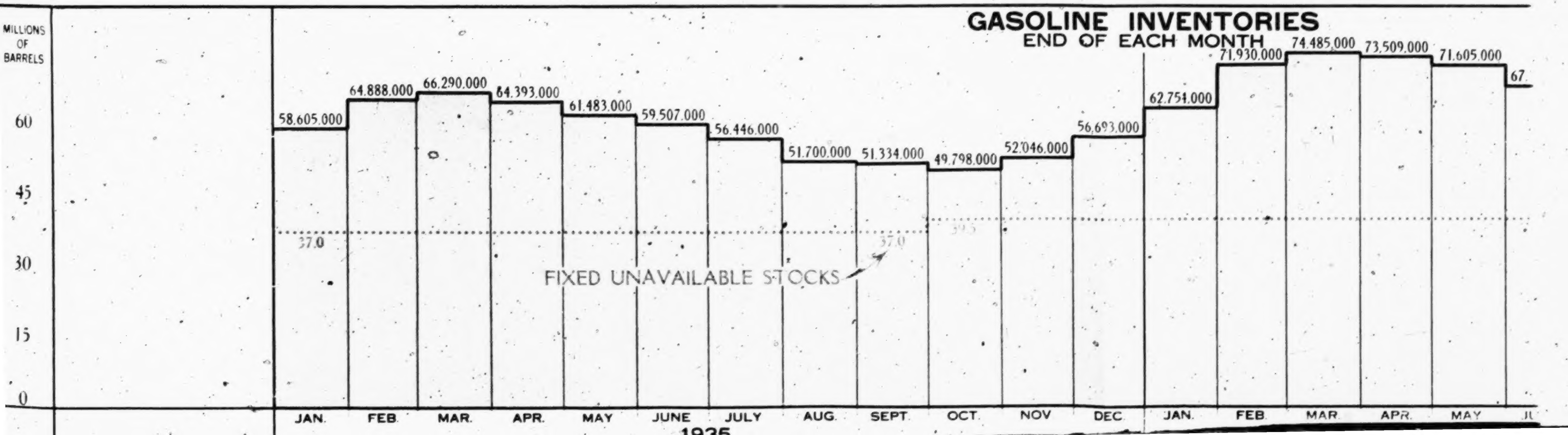

NE DEMAND
DEMAND AND EXPORTS
MILLIONS OF BARRELS
.70
5.000
3,000
2,000
15.54
34.984.000
2,572,000
32,412,000
3.79
28.884.000
1,668,000
27,216,000
7.55
37.486.000
1,615,000
35,871,000
9.32
41.357.000
2,532,000
38,825,000
7.66
44.709.000
2,702,000
42,007,000
13.59
46.921.000
2,291,000
44,630,000
10.13
49.007.000
2,369,000
46,638,000
5.60
48.490.000
2,409,000
46,081,000
14.00
46.837.000
2,491,000
44,346,000
6.17
46.744.000
2,491,000
44,253,000
8.57
42.505.000
2,586,000
39,919,000
11.81
41.498.000
2,105,000
39,393,000
45
40
35
30
25
20
15
10
5
0
TOTAL DEMAND YEAR 1936 - 509,422,000 BARRELS
INCREASE OVER YEAR 1935 - 9.45%
C.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936


NE DEMAND
EMAND VS. ACTUAL DEMAND
MILLIONS OF BARRELS
5.000
0,000
34.981.000
32,860,000
31.400.000
28,884,000
37.800.000
37,486,000
41.480.000
41,357,000
44.709.000
44,520,000
46.921.000
44,740,000
49.007.000
48,880,000
49.450.000
48,490,000
46.837.000
45,510,000
46.744.000
44,630,000
42.505.000
41,120,000
41.498.000
38,700,000
45
40
35
30
25
20
15
10
YEAR 1936 -
ESTIMATED DEMAND - 501,090,000 BARRELS



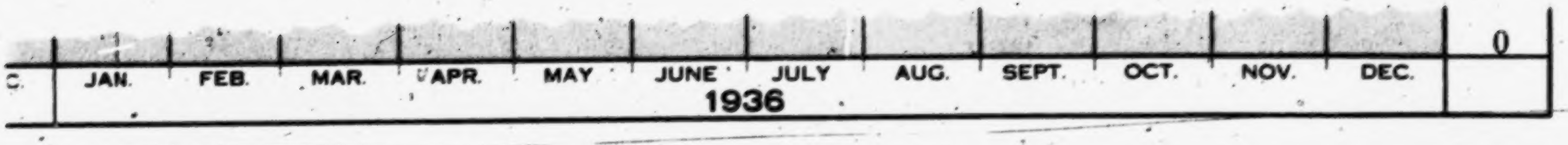
GASOLINE DEMAND

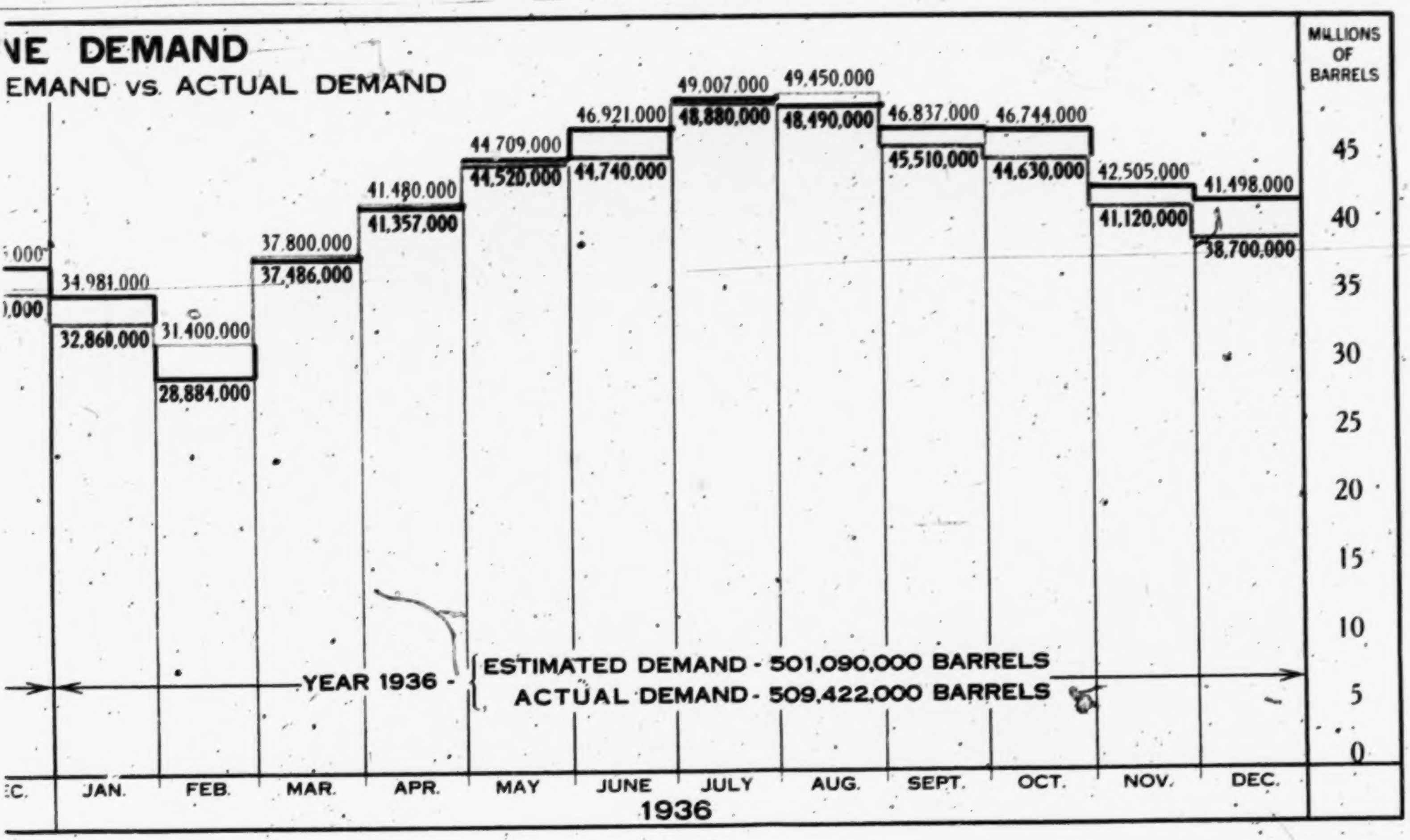
U. S. B. M. ESTIMATED DEMAND vs. ACTUAL DEMAND

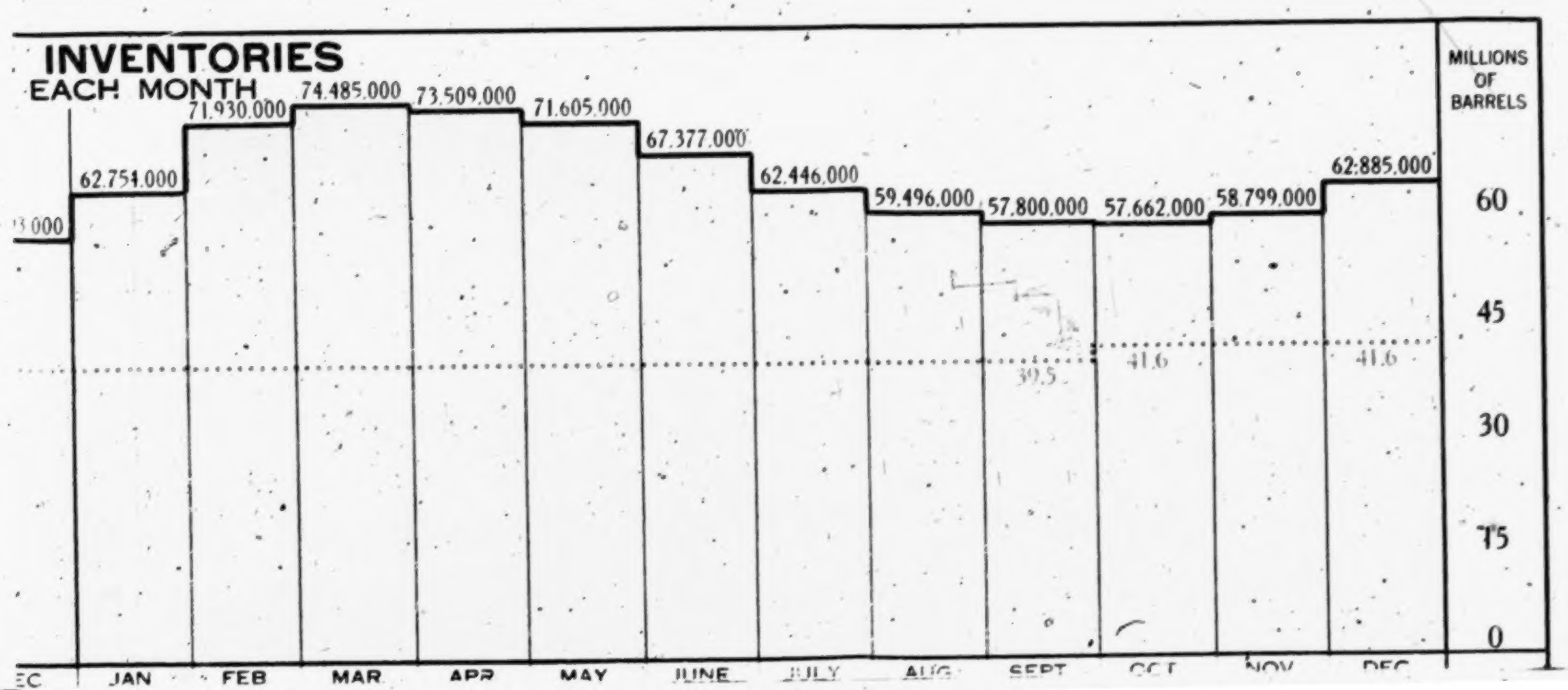


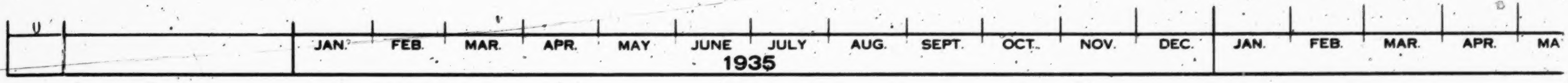
GASOLINE INVENTORIES

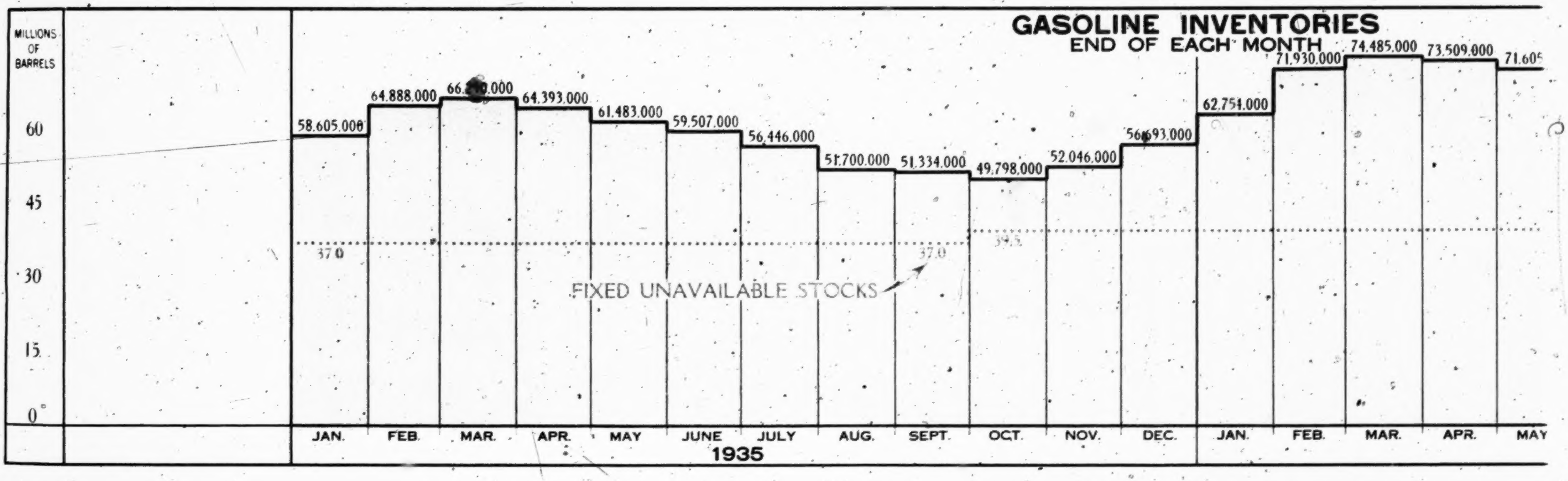
END OF EACH MONTH

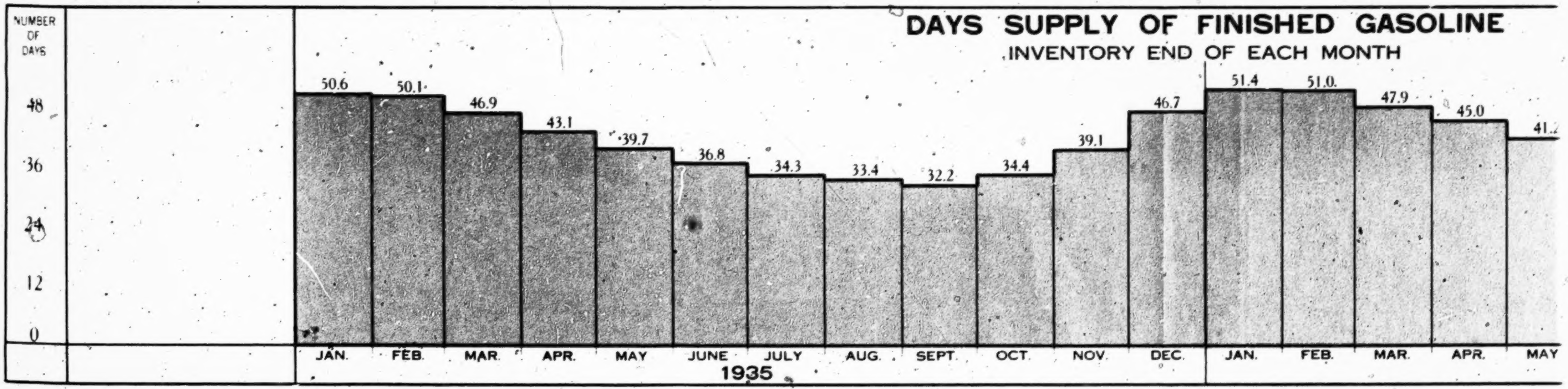

0
C.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936

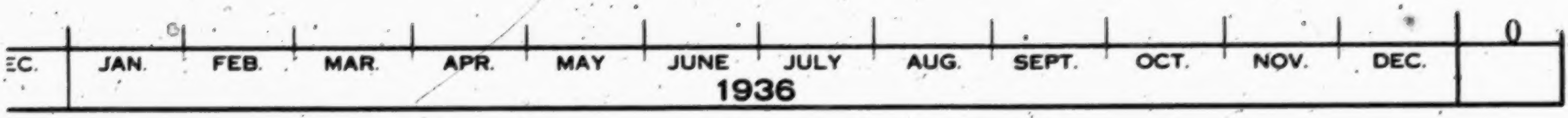

NE DEMAND
EMAND vs. ACTUAL DEMAND
MILLIONS OF BARRELS
5.000
0,000
34.981.000
32.860.000
31.400.000
28.884.000
37.800.000
37.486.000
41.480.000
41.357.000
44.709.000
44.520.000
46.921.000
44.740.000
49.007.000
48.880.000
49.450.000
48.490.000
46.837.000
45.510.000
46.744.000
44.630.000
42.505.000
41.120.000
41.498.000
38.700.000
45
40
35
30
25
20
15
10
5
0
YEAR 1936 -
ESTIMATED DEMAND - 501,090,000 BARRELS
ACTUAL DEMAND - 509,422,000 BARRELS
EC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936

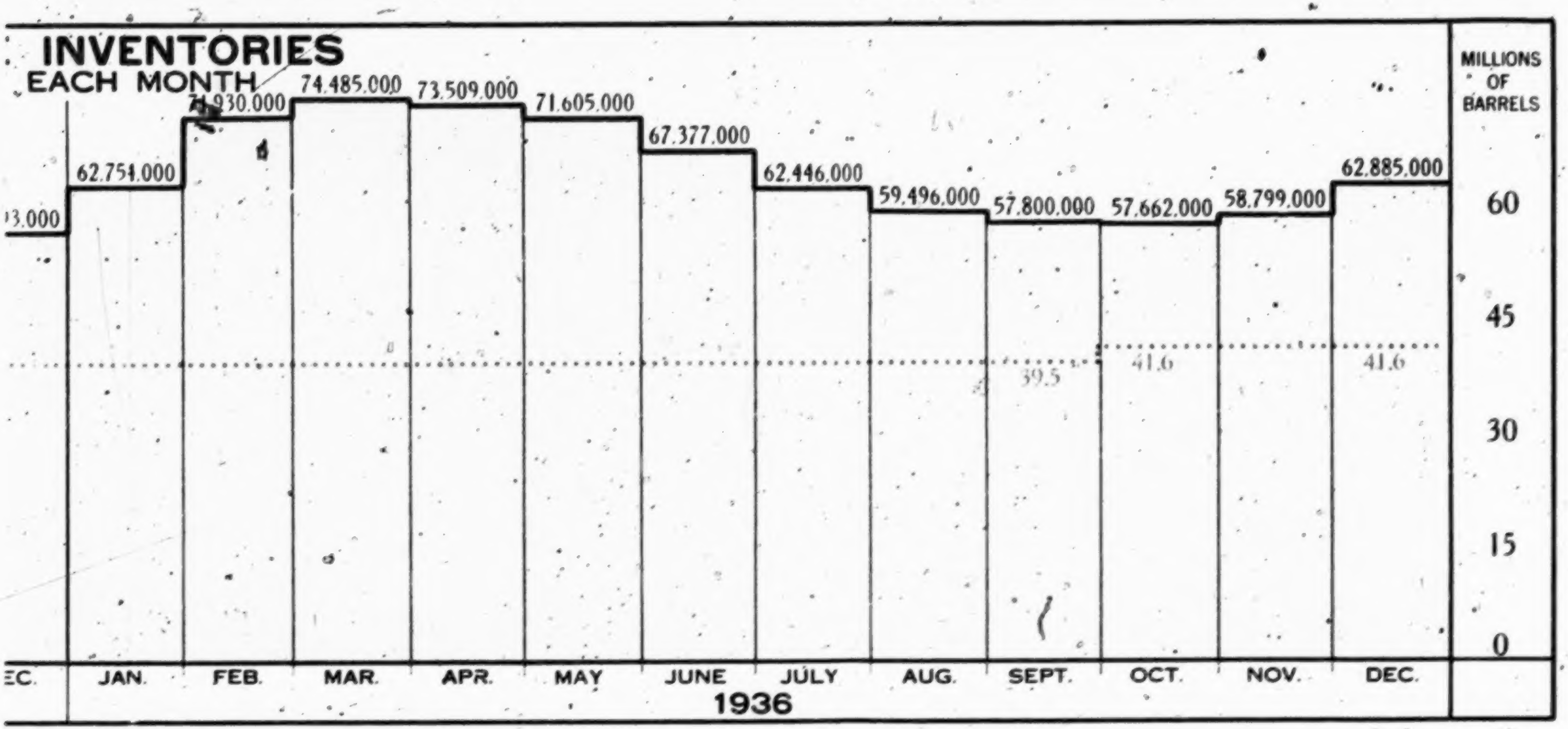

INVENTORIES
EACH MONTH
MILLIONS OF BARRELS
3.000
62.751.000
71.930.000
74.485.000
73.509.000
71.605.000
67.377.000
62.446.000
59.496.000
57.800.000
57.662.000
58.799.000
62.885.000
39.5
41.6
41.6
60
45
30
15
0
EC
JAN
FEB
MAR
APR
MAY
JUNE
JULY
AUG
SEPT
OCT
NOV
DEC

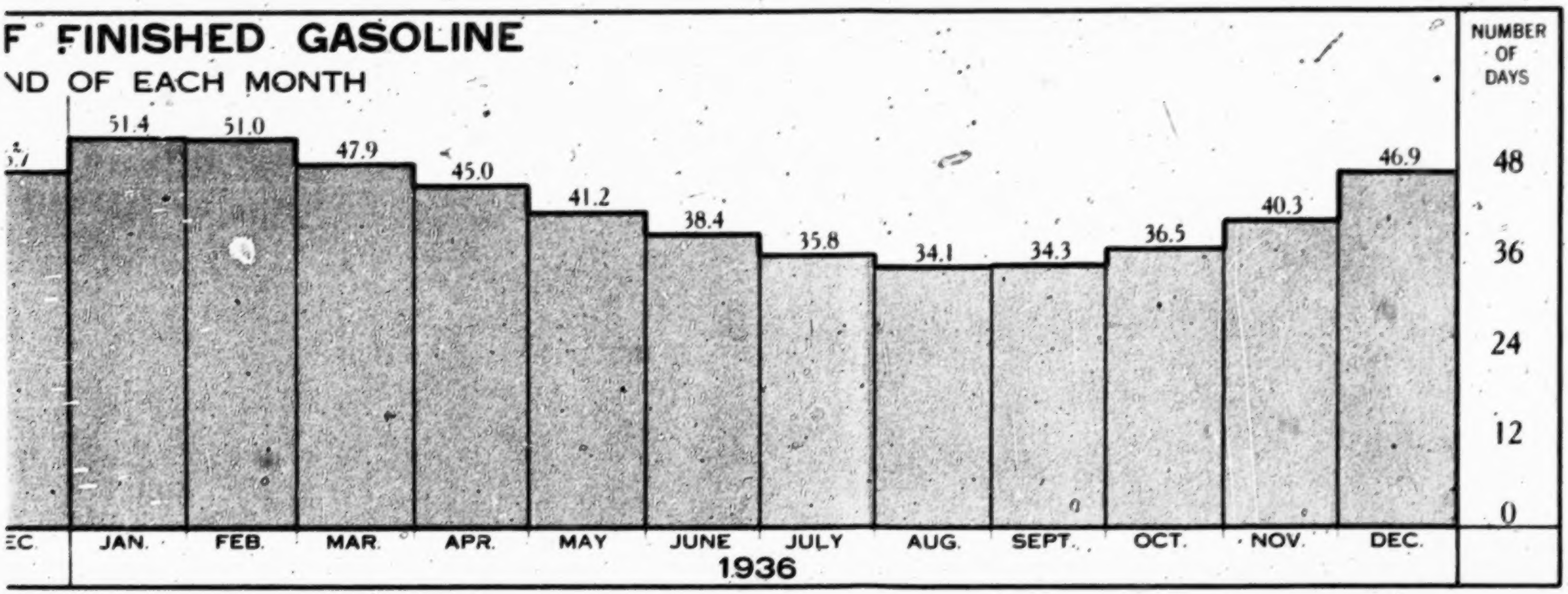



GASOLINE INVENTORIES
END OF EACH MONTH


DAYS SUPPLY OF FINISHED GASOLINE
INVENTORY END OF EACH MONTH

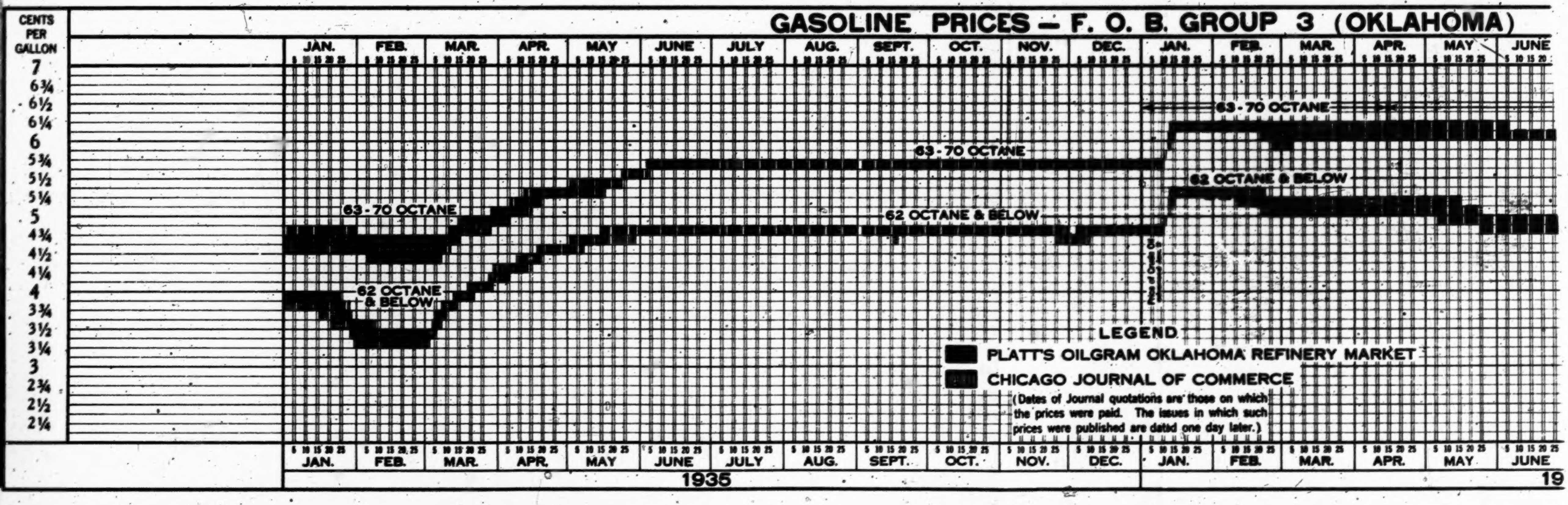

0
EC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936


. INVENTORIES
EACH MONTH
MILLIONS OF BARRELS
)3.000
62.754.000
71.930.000
74.485.000
73.509.000
71.605.000
67.377.000
62.446.000
59.496.000
57.800.000
57.662.000
58.799.000
62.885.000
39.5
41.6
41.6
60
45
30
15
0
EC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936

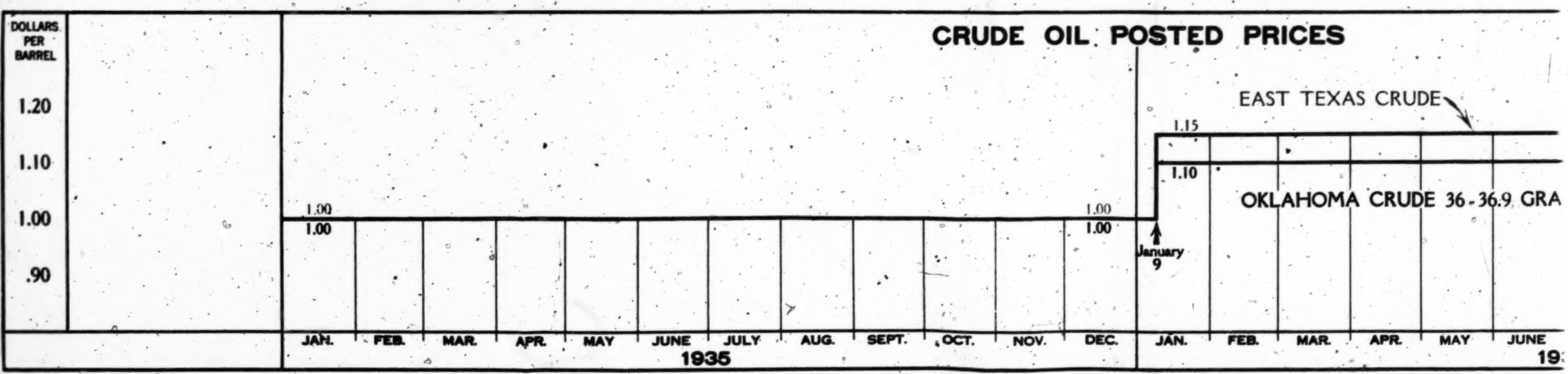

F FINISHED GASOLINE
ND OF EACH MONTH
NUMBER OF DAYS
51.4
51.0
47.9
45.0
41.2
38.4
35.8
34.1
34.3
36.5
40.3
46.9
48
36
24
12
0
EC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936

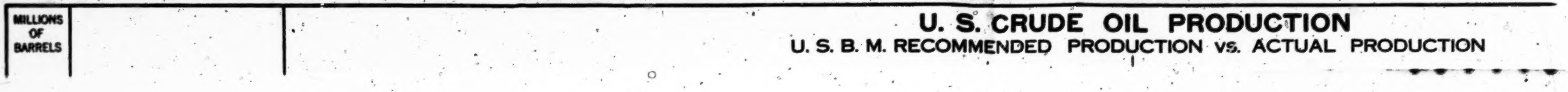
STATISTICS – CRUDE OIL AND GASO

(2)



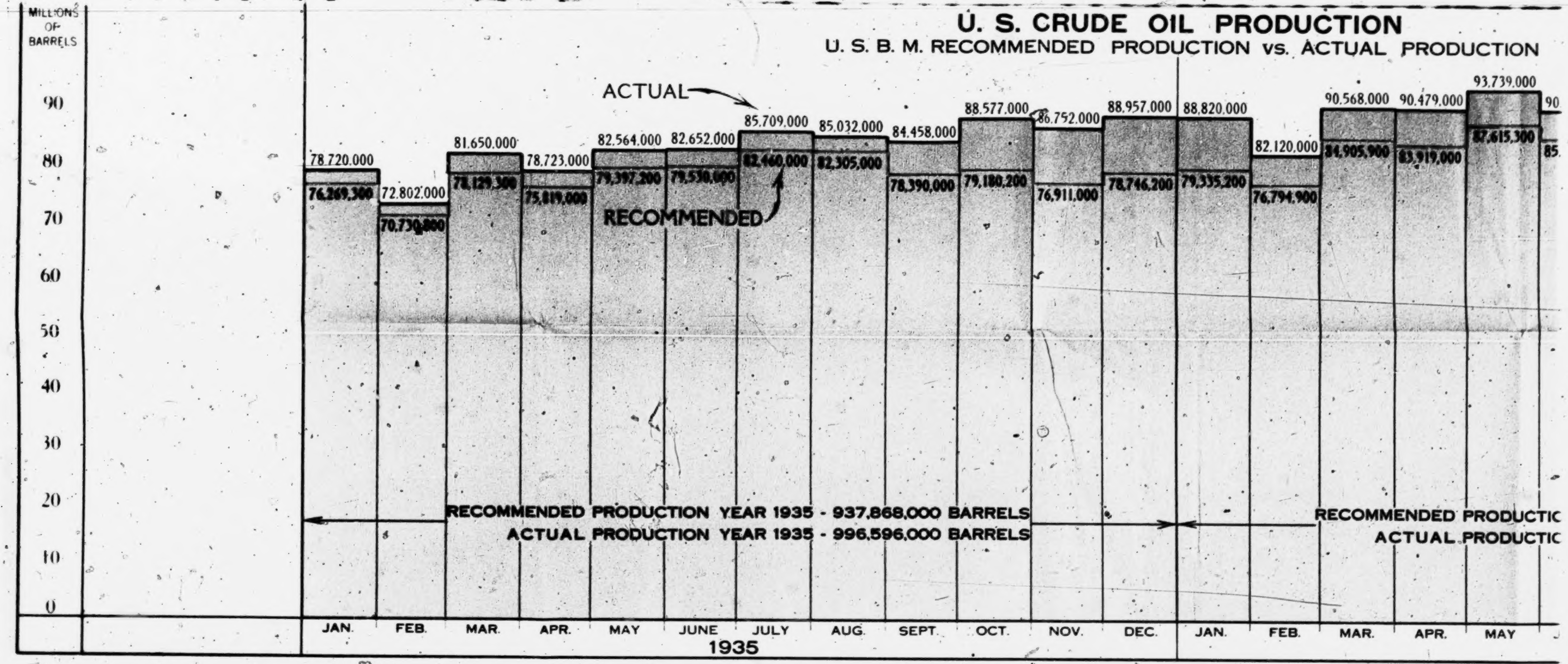
(Dates of Journal quotations are those on which the prices were paid. The issues in which such prices were published are dated one day later.)





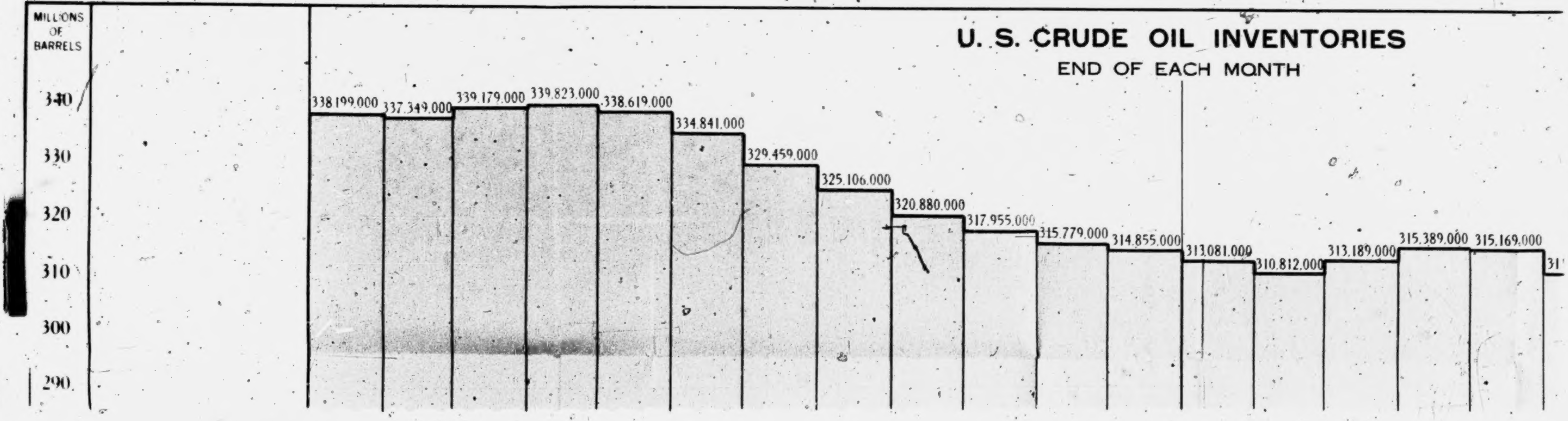
U. S. CRUDE OIL PRODUCTION

U. S. B. M. RECOMMENDED PRODUCTION vs. ACTUAL PRODUCTION



U. S. CRUDE OIL PRODUCTION

U. S. B. M. RECOMMENDED PRODUCTION vs. ACTUAL PRODUCTION

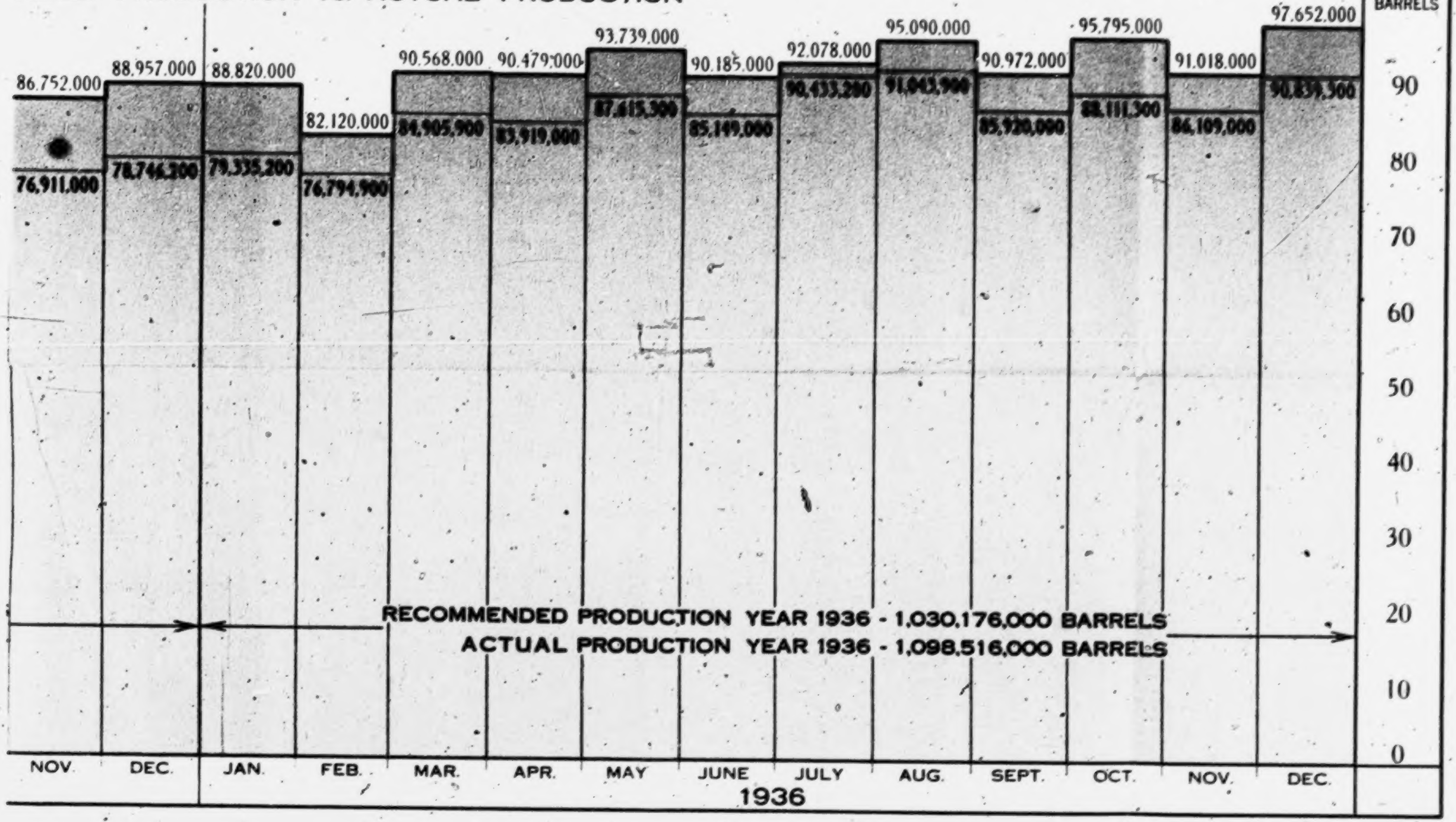


U. S. CRUDE OIL INVENTORIES

END OF EACH MONTH

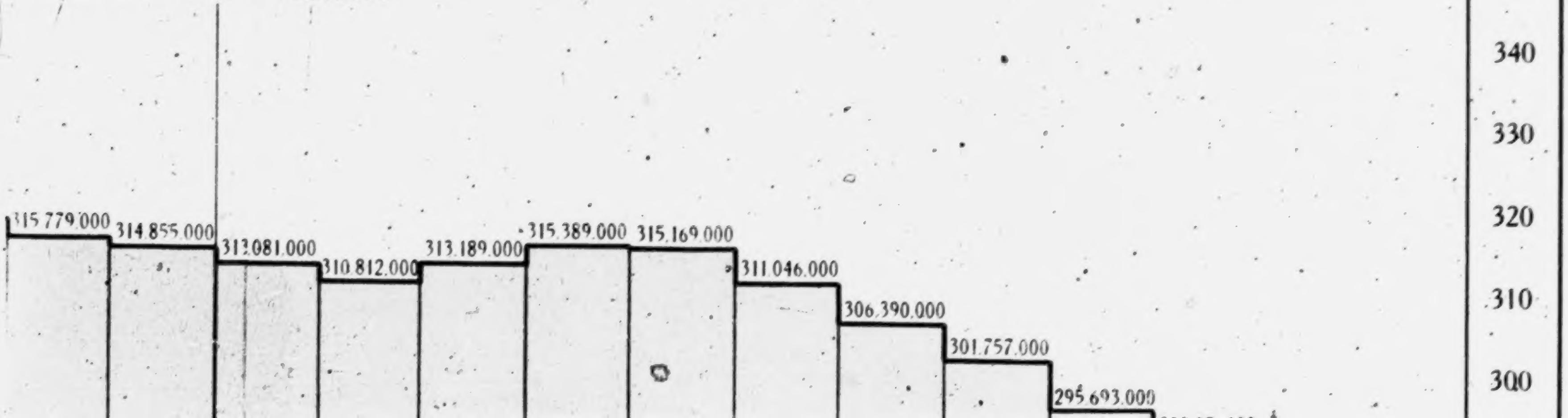
CRUDE OIL PRODUCTION

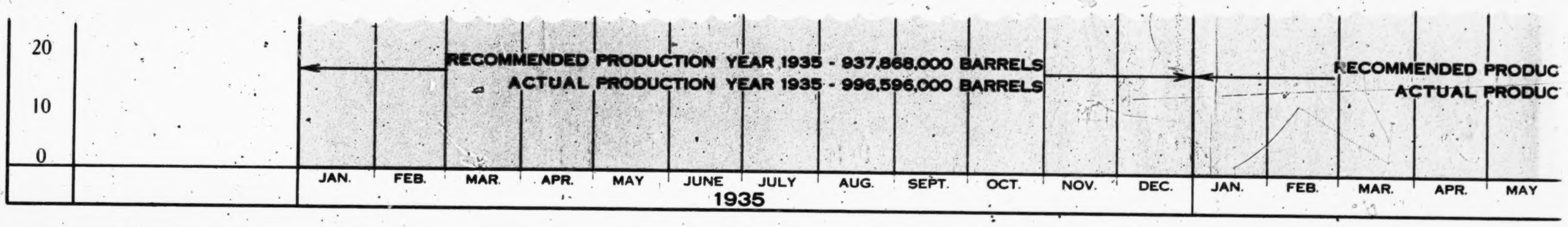
NDED PRODUCTION vs. ACTUAL PRODUCTION

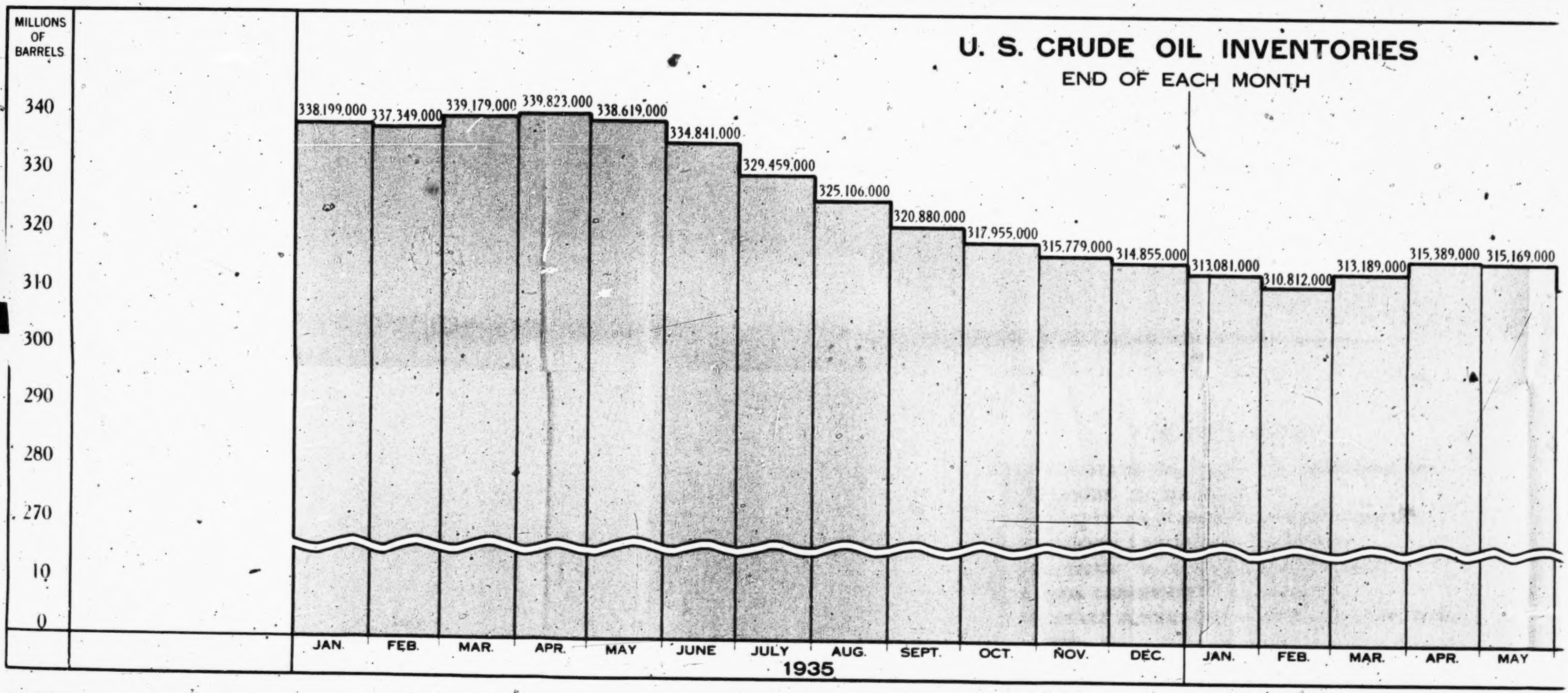


CRUDE OIL INVENTORIES

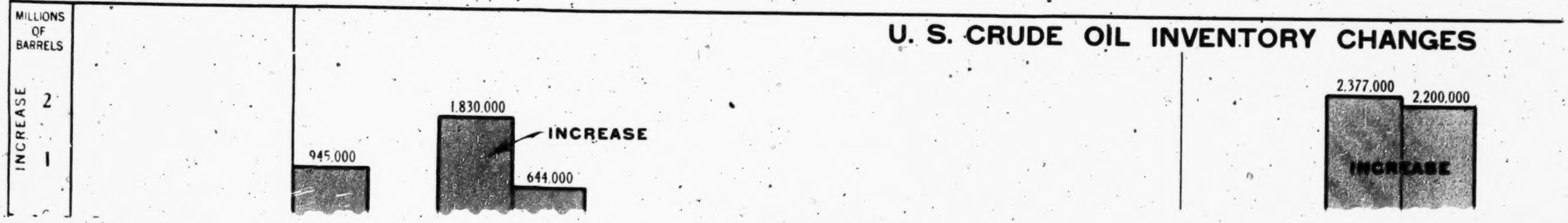
END OF EACH MONTH

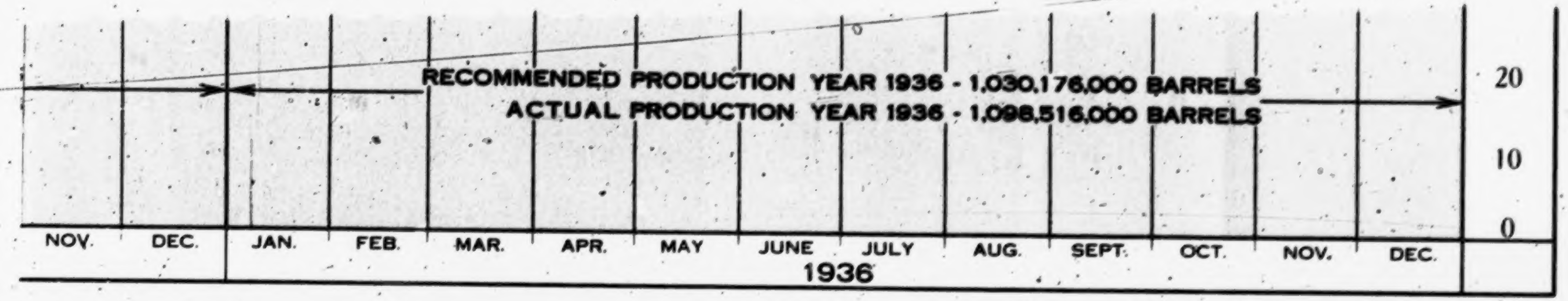


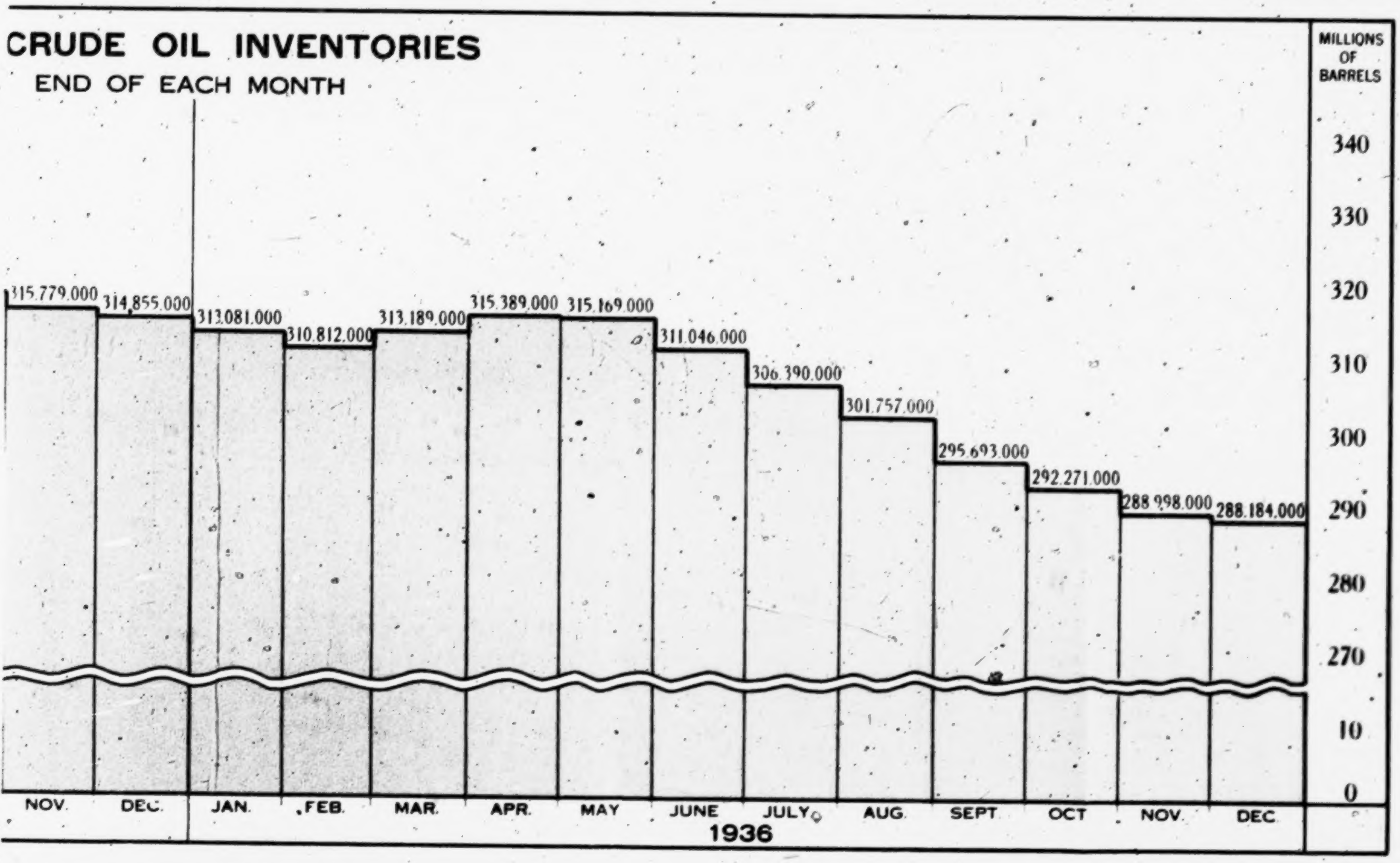


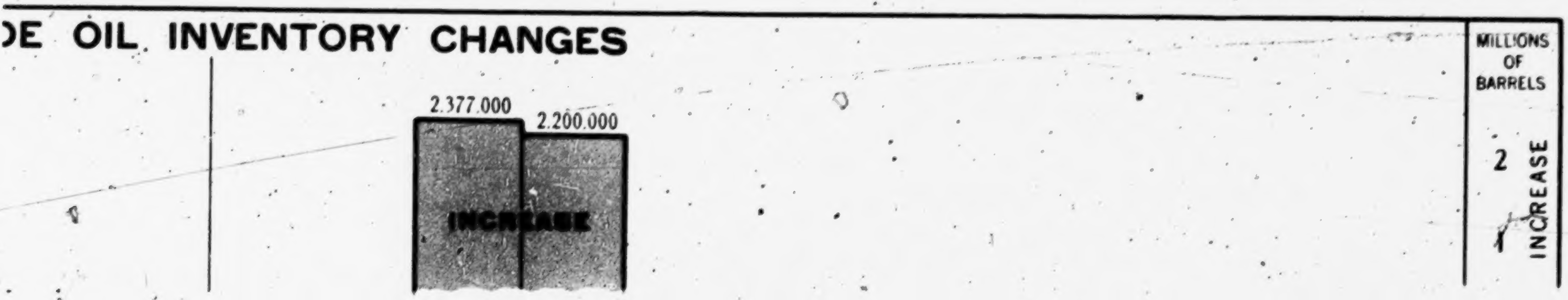

U. S. CRUDE OIL INVENTORIES

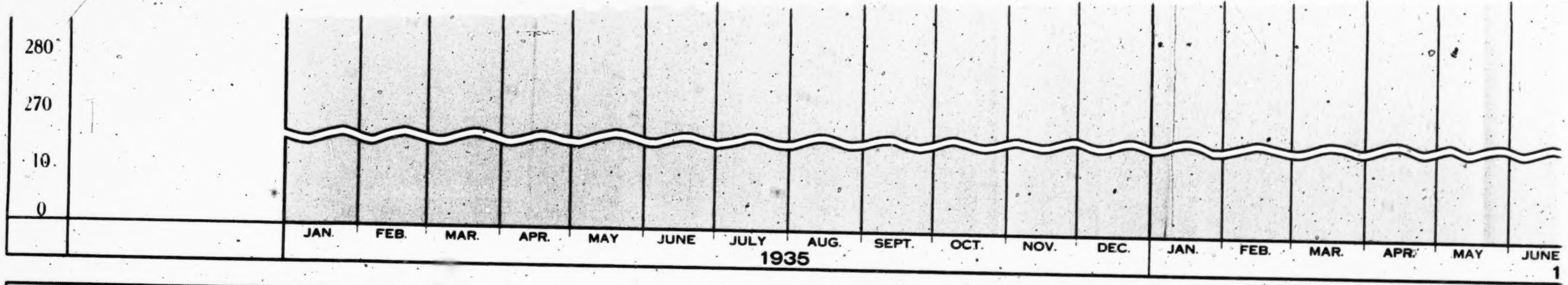
END OF EACH MONTH

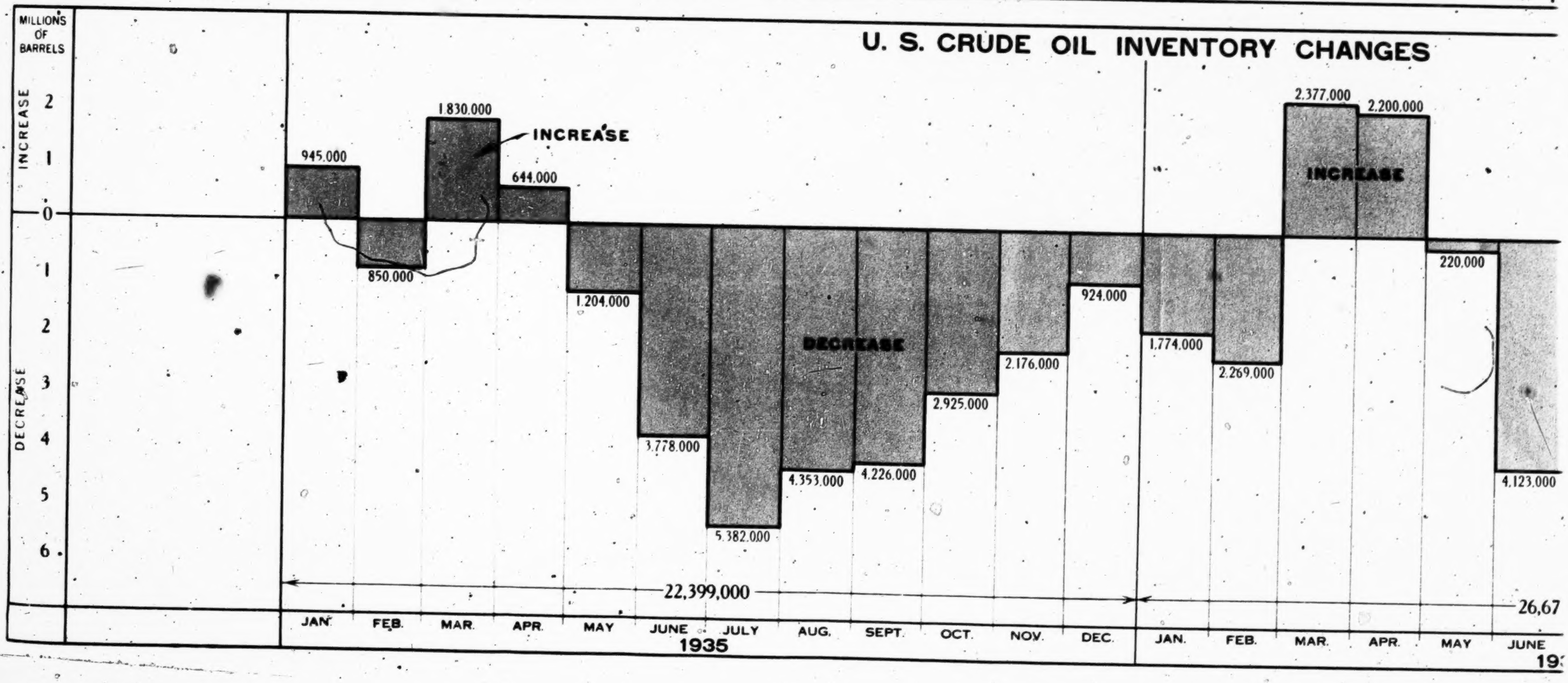

U. S. CRUDE OIL INVENTORY CHANGES



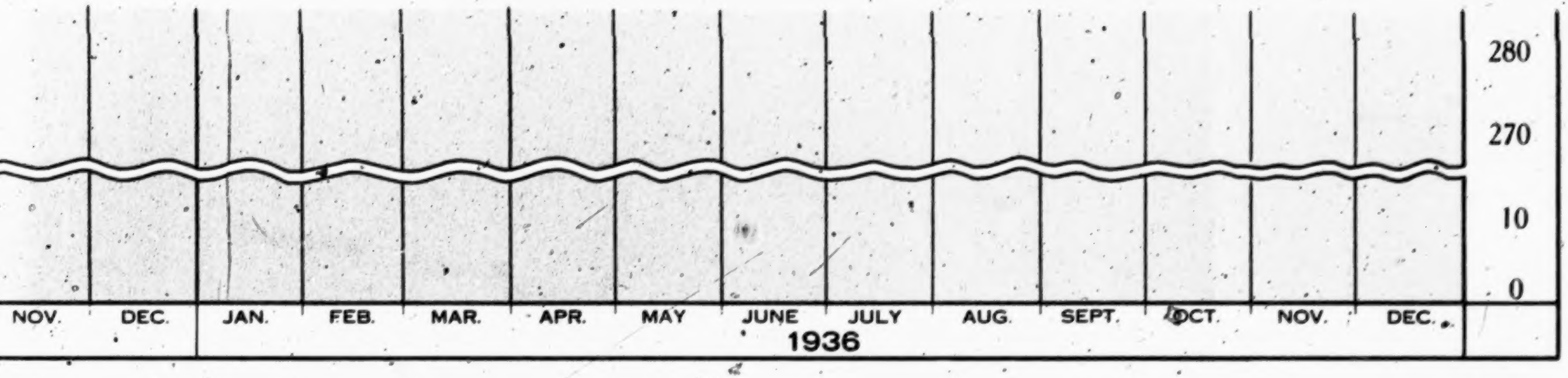

CRUDE OIL INVENTORIES
END OF EACH MONTH

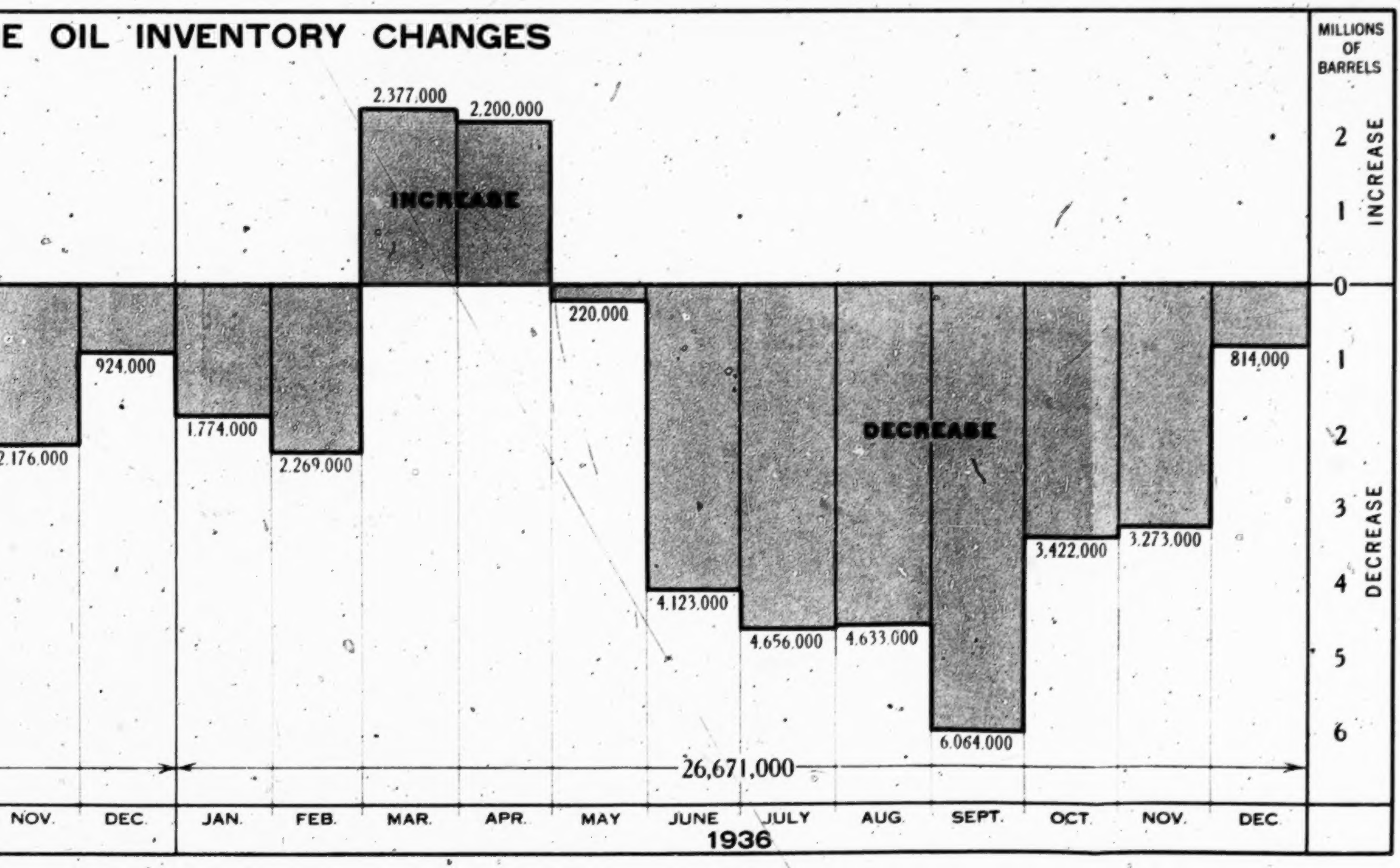

DE OIL INVENTORY CHANGES





U. S. CRUDE OIL INVENTORY CHANGES


280
270
10
0
NOV.
DEC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936


E OIL INVENTORY CHANGES
MILLIONS OF BARRELS
INCREASE
DECREASE
2
1
0
1
2
3
4
5
6
INCREASE
DECREASE
2,176,000
924,000
1,774,000
2,269,000
2,377,000
2,200,000
220,000
4,123,000
4,656,000
4,633,000
6,064,000
3,422,000
3,273,000
814,000
26,671,000
NOV.
DEC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
1936

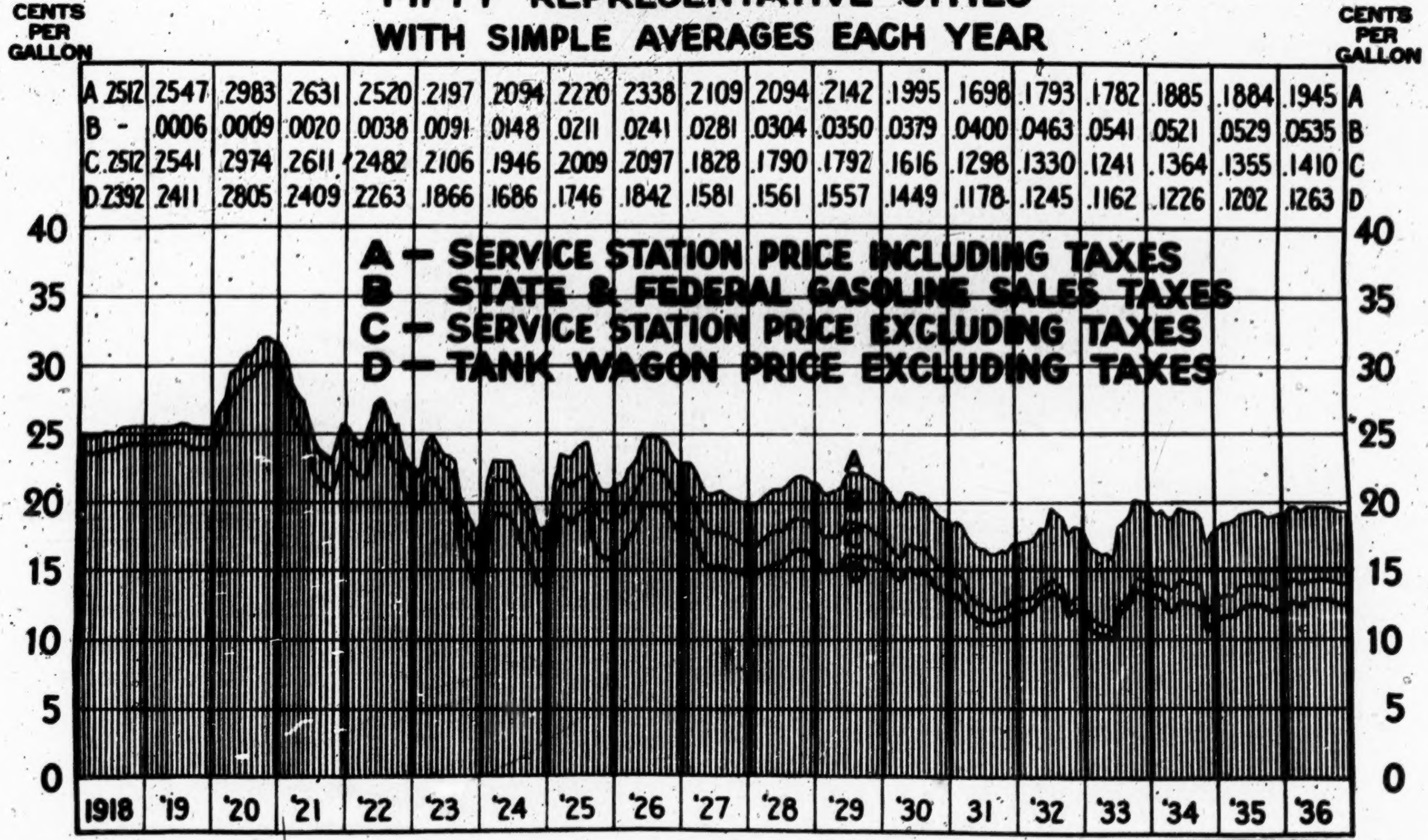
GASOLINE PRICES 1918-1936

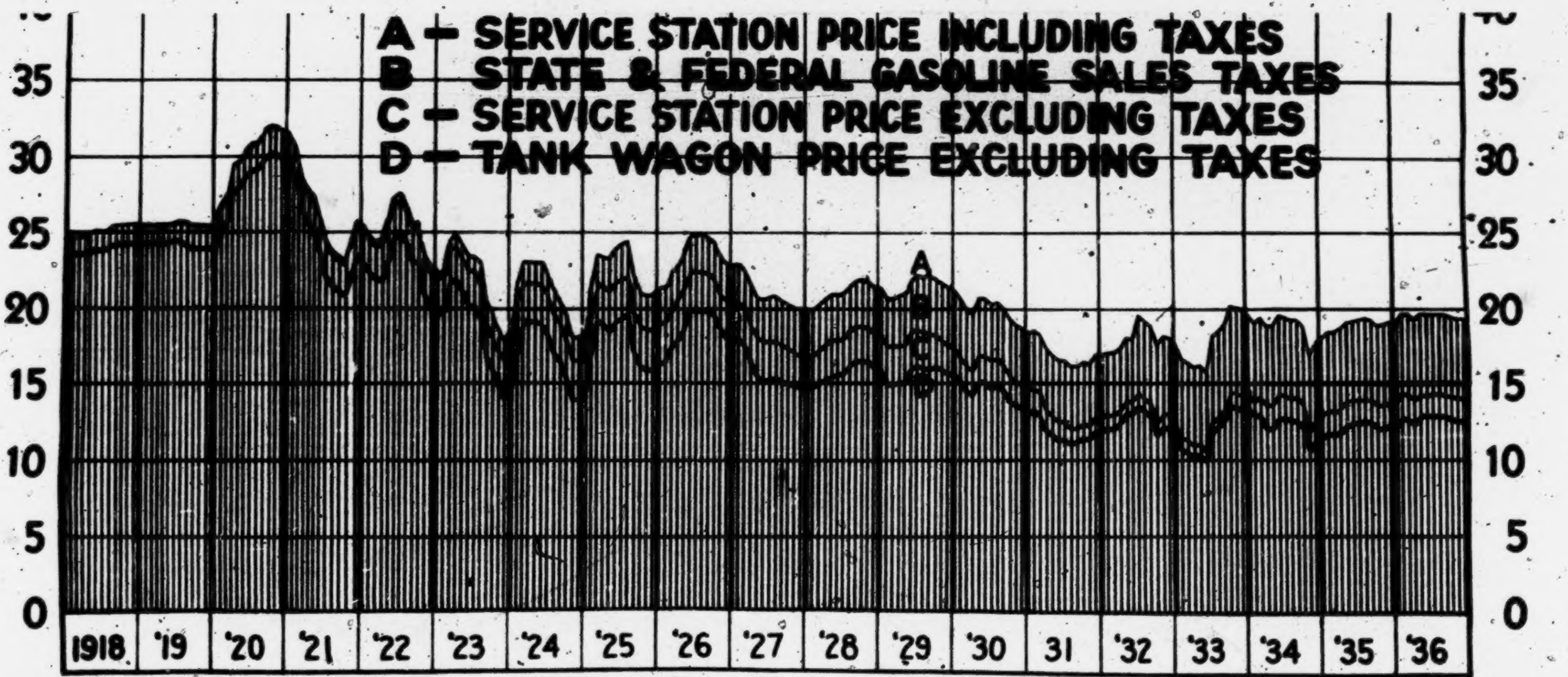
OF THE MAJOR MARKETING COMPANIES

AVERAGE U. S.

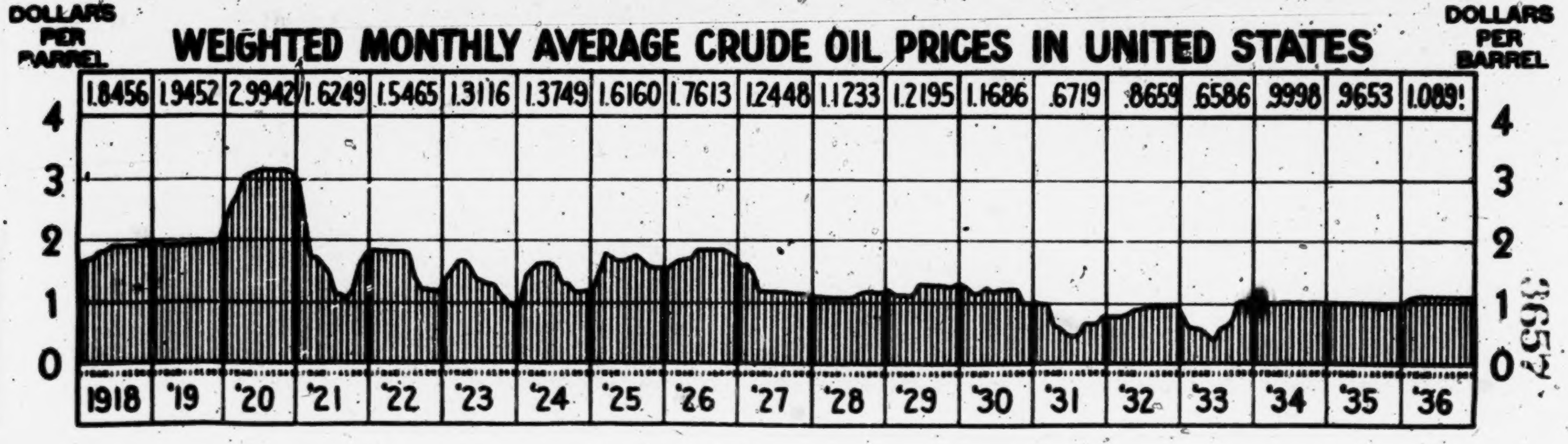
FIFTY REPRESENTATIVE CITIES
WITH SIMPLE AVERAGES EACH YEAR

A	2512	.2547	.2983	.2631	.2520	.2197	.2094	.2220	2338	.2109	.2094	.2142	.1995	.1698	.1793	.1782	.1885	.1884	.1945	A
B	-	.0006	.0009	.0020	.0038	.0091	.0148	.0211	.0241	.0281	.0304	.0350	.0379	.0400	.0463	.0541	.0521	.0529	.0535	B
C	.2512	2541	.2974	.2611	2482	.2106	.1946	2009	.2097	.1828	.1790	.1792	.1616	.1298	.1330	.1241	.1364	.1355	.1410	C
D	2392	2411	.2805	2409	2263	.1866	1686	.1746	.1842	.1581	.1561	.1557	.1449	.1178	.1245	.1162	.1226	.1202	.1263	D





WEIGHTED MONTHLY AVERAGE CRUDE OIL PRICES IN UNITED STATES



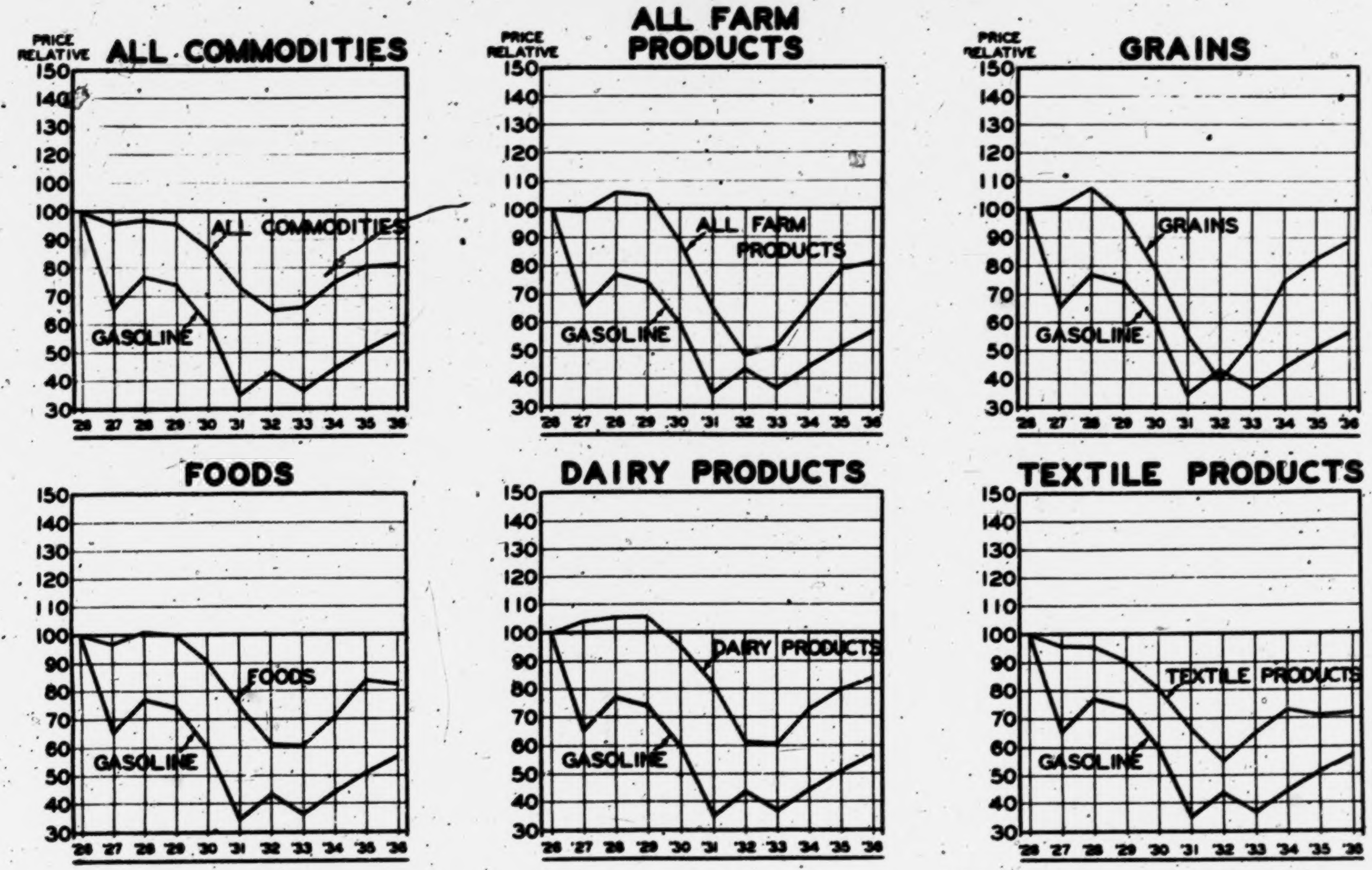
3657

EXHIBIT NO. [illegible]

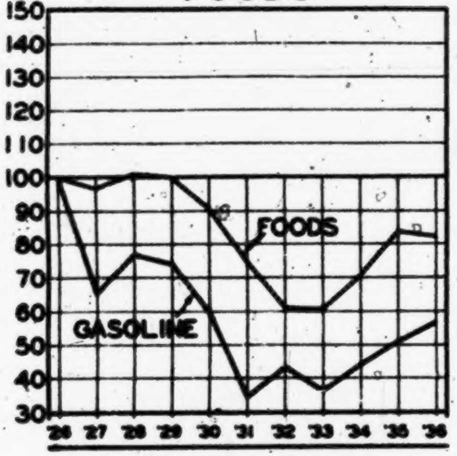
WHOLESALE PRICE RELATIVES

GASOLINE AND OTHER COMMODITIES

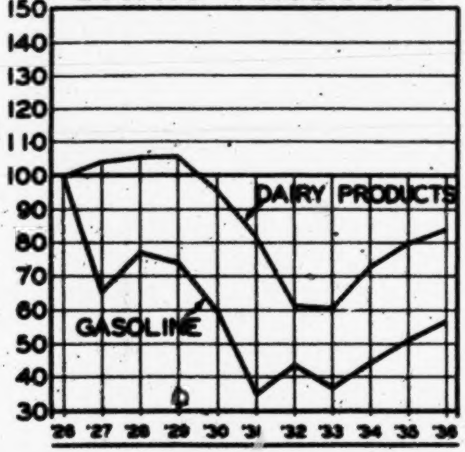
1926-1936 BY YEARS (1926=100)



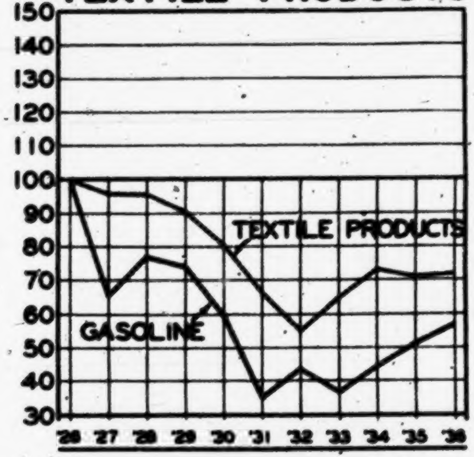
FOODS



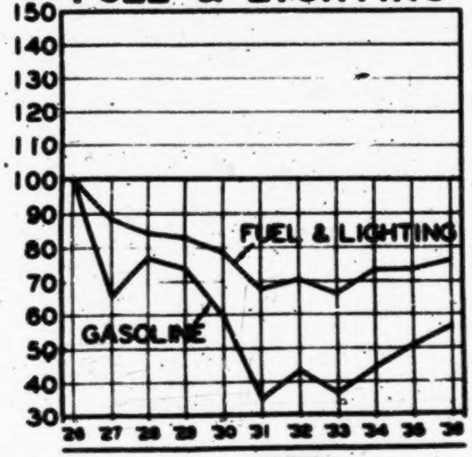
DAIRY PRODUCTS



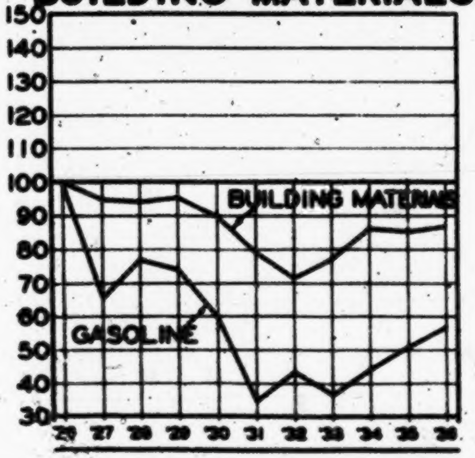
TEXTILE PRODUCTS



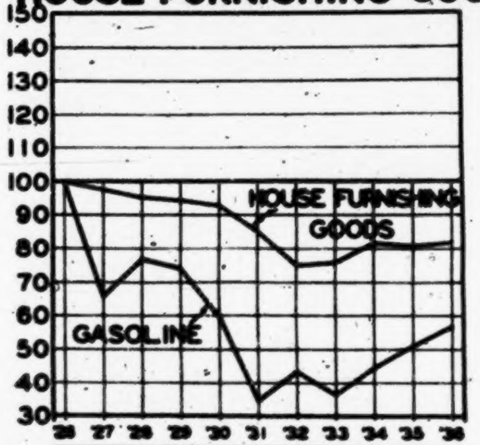
FUEL & LIGHTING



BUILDING MATERIALS



HOUSE FURNISHING GOODS



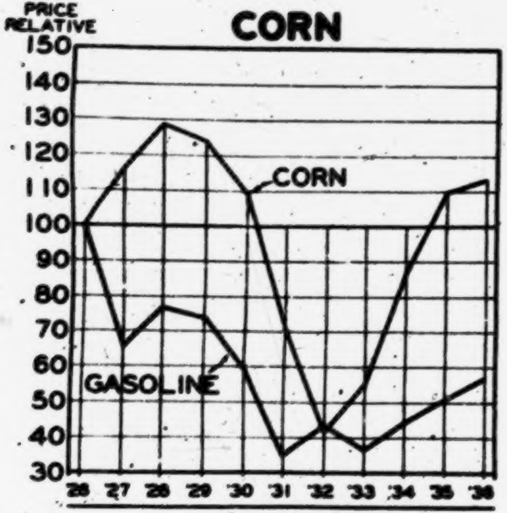
SOURCE:-
1926-1935 -U.S. DEPT. OF LABOR (SEE 1936 SUPPLEMENT-SURVEY OF CURRENT BUSINESS, PAGES 12-13-14-106)
1936 " " " " (SEE WHOLE PRICES - JUNE, 1937 - PAGES 11-13-19-23-24-29-33)

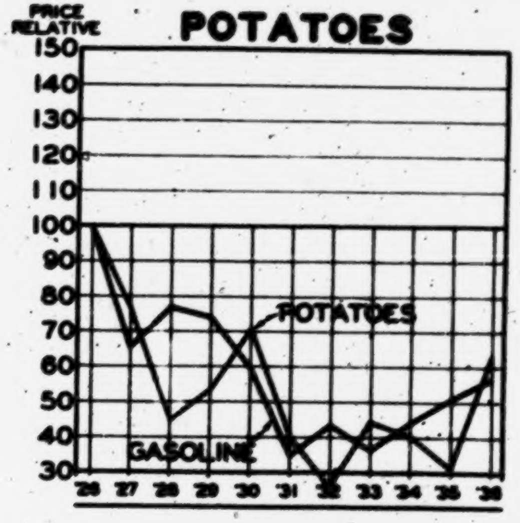
EXHIBIT NO. 987 H.

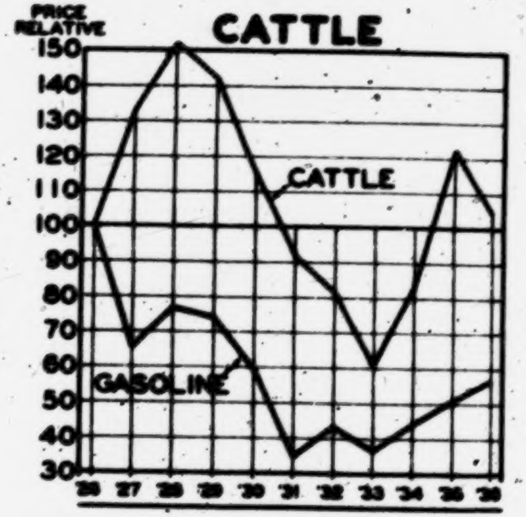
WHOLESALE PRICE RELATIVES

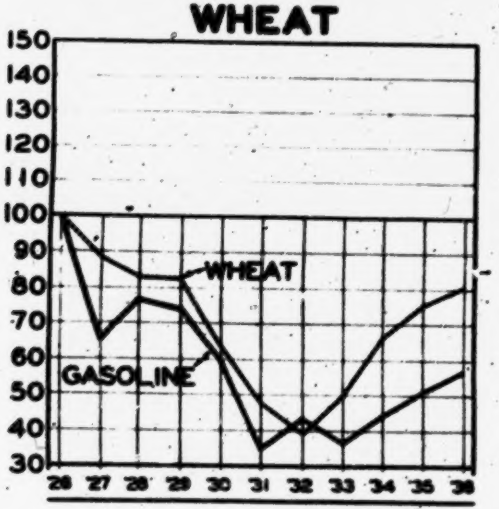
GASOLINE AND INDIVIDUAL COMMODITIES

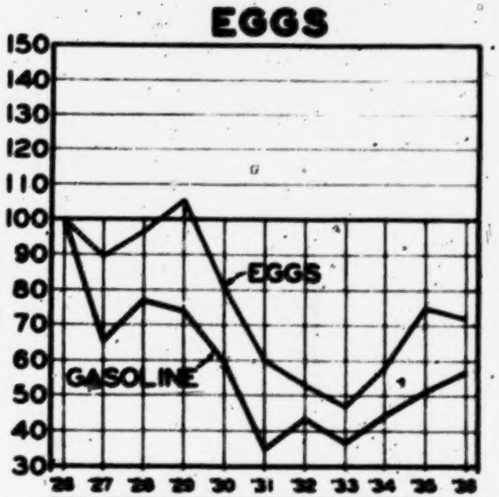
1926–1936 BY YEARS (1926=100)

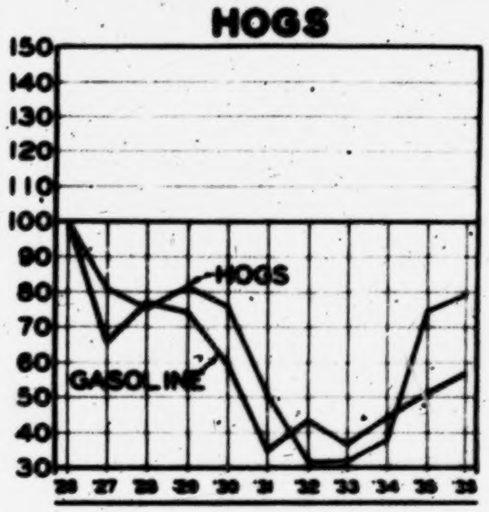


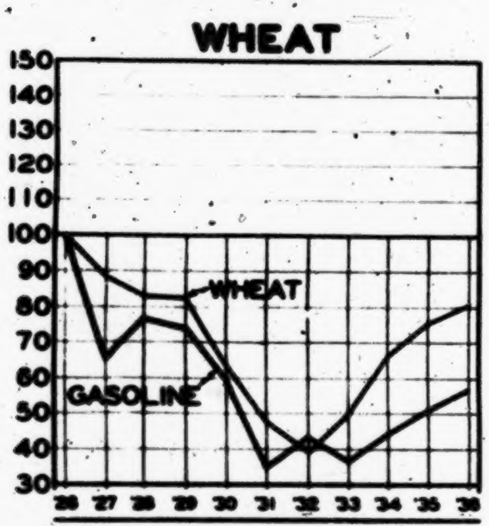


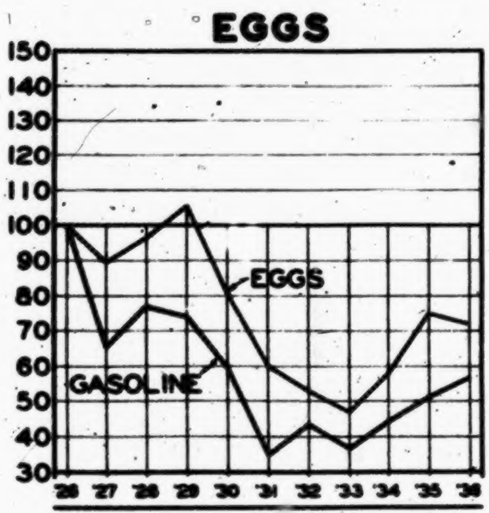


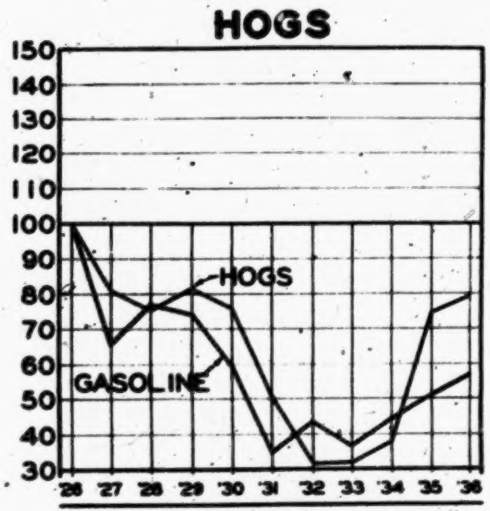


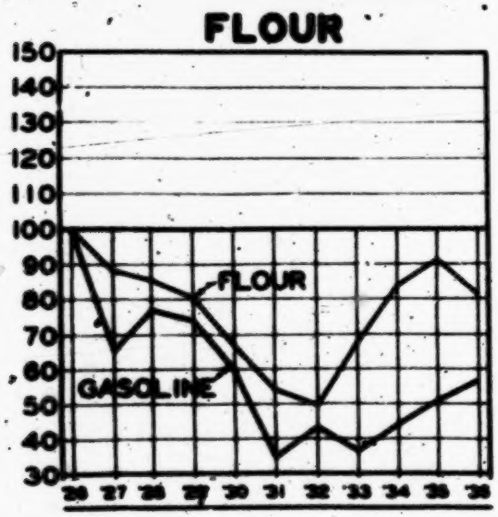












SOURCE:- U.S. DEPARTMENT OF LABOR

1926 TO 1930:- STATISTICAL ABSTRACT OF U.S. 1931, PAGE 336
1931 TO 1935:- STATISTICAL ABSTRACT OF U.S. 1936, PAGE 301
1936- WHOLESALE PRICES JUNE, 1937, PAGES 11-12-13-15
GASOLINE:- SURVEY OF CURRENT BUSINESS & WHOLESALE PRICES

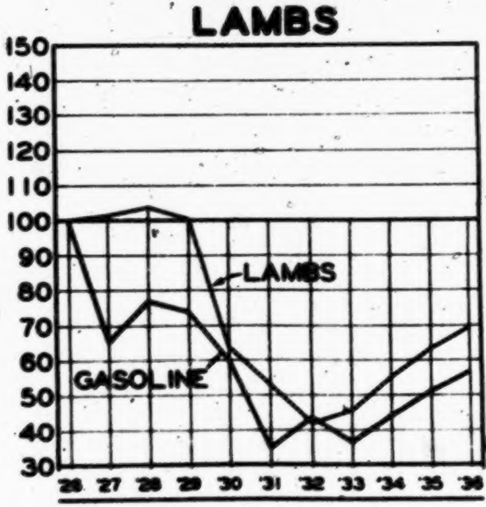
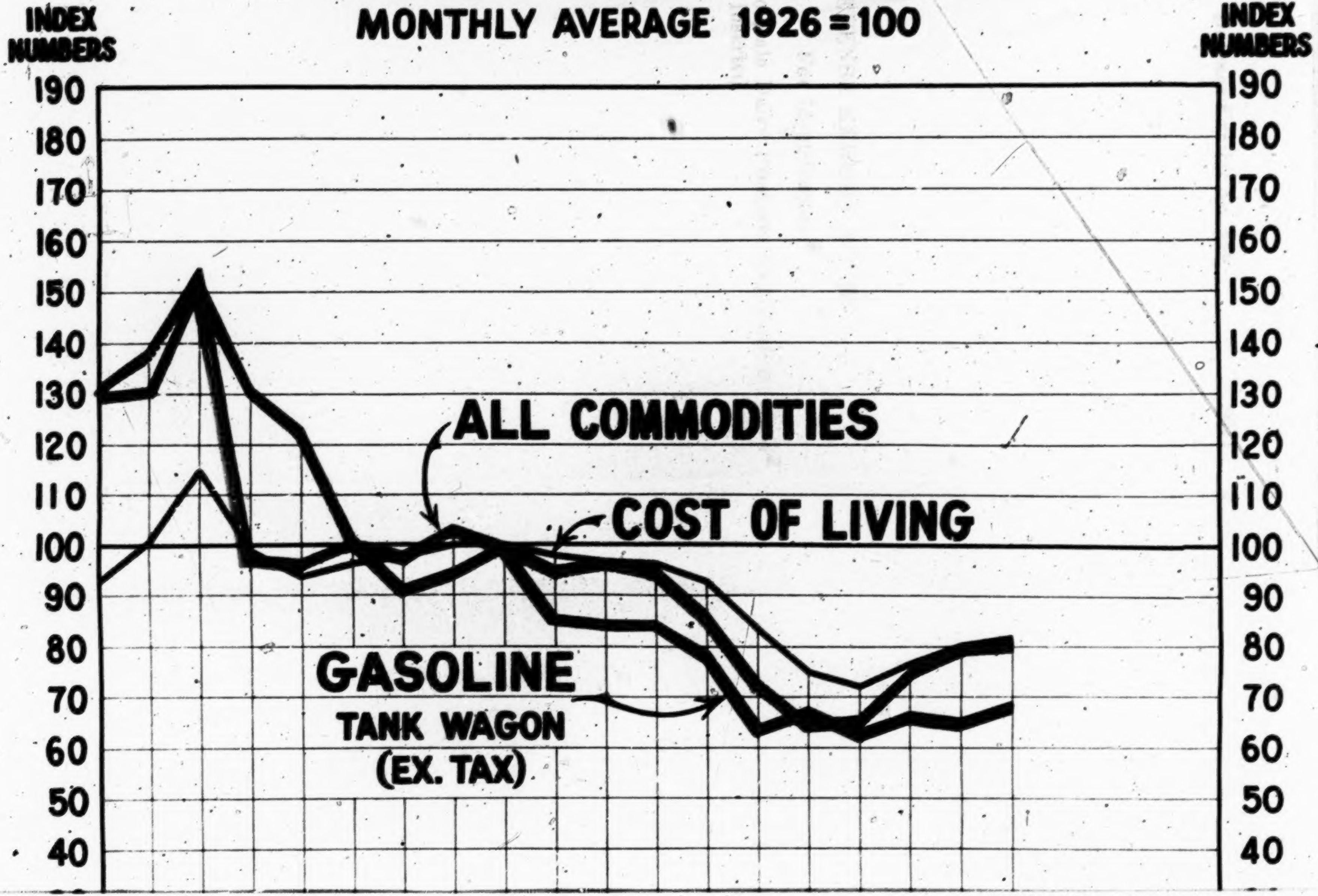
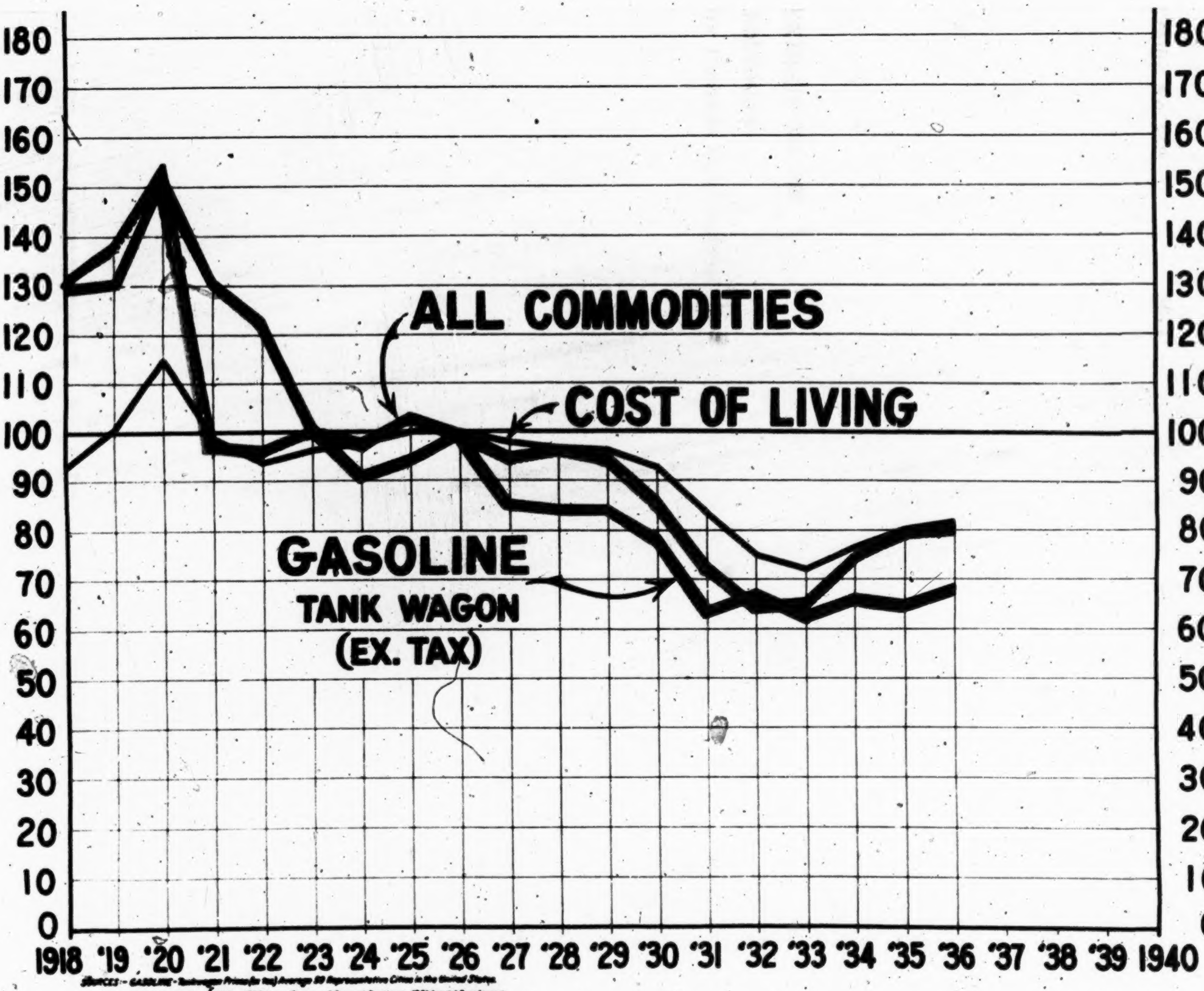


EXHIBIT NO. 958

INDEX OF GASOLINE PRICES COMPARED TO COST OF LIVING AND WHOLESALE PRICES OF ALL COMMODITIES IN THE UNITED STATES

MONTHLY AVERAGE 1926 = 100





SOURCES: – GASOLINE – Tankwagon Prices (ex tax) Average 50 Representative Cities in the United States.

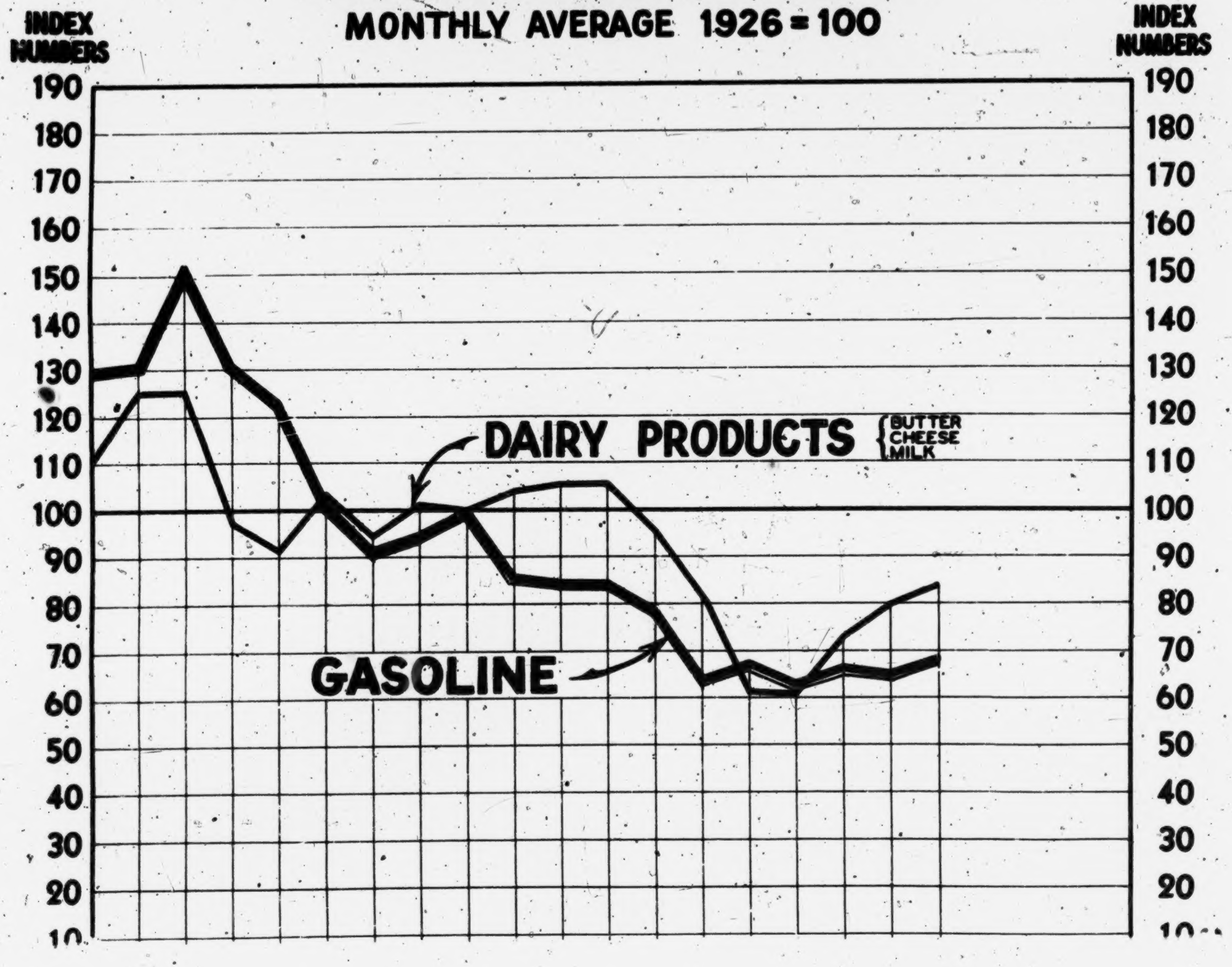
COST OF LIVING and ALL COMMODITIES
- 1918 to 1925, inc. – Survey of Current Business – 1931 Annual Supplement
- 1926 to 1931, inc. – – – – – February, 1932 issue
- 1932 to 1935, inc – – – – February, 1936 issue
- Year 1936 – – – – February, 1937 issue

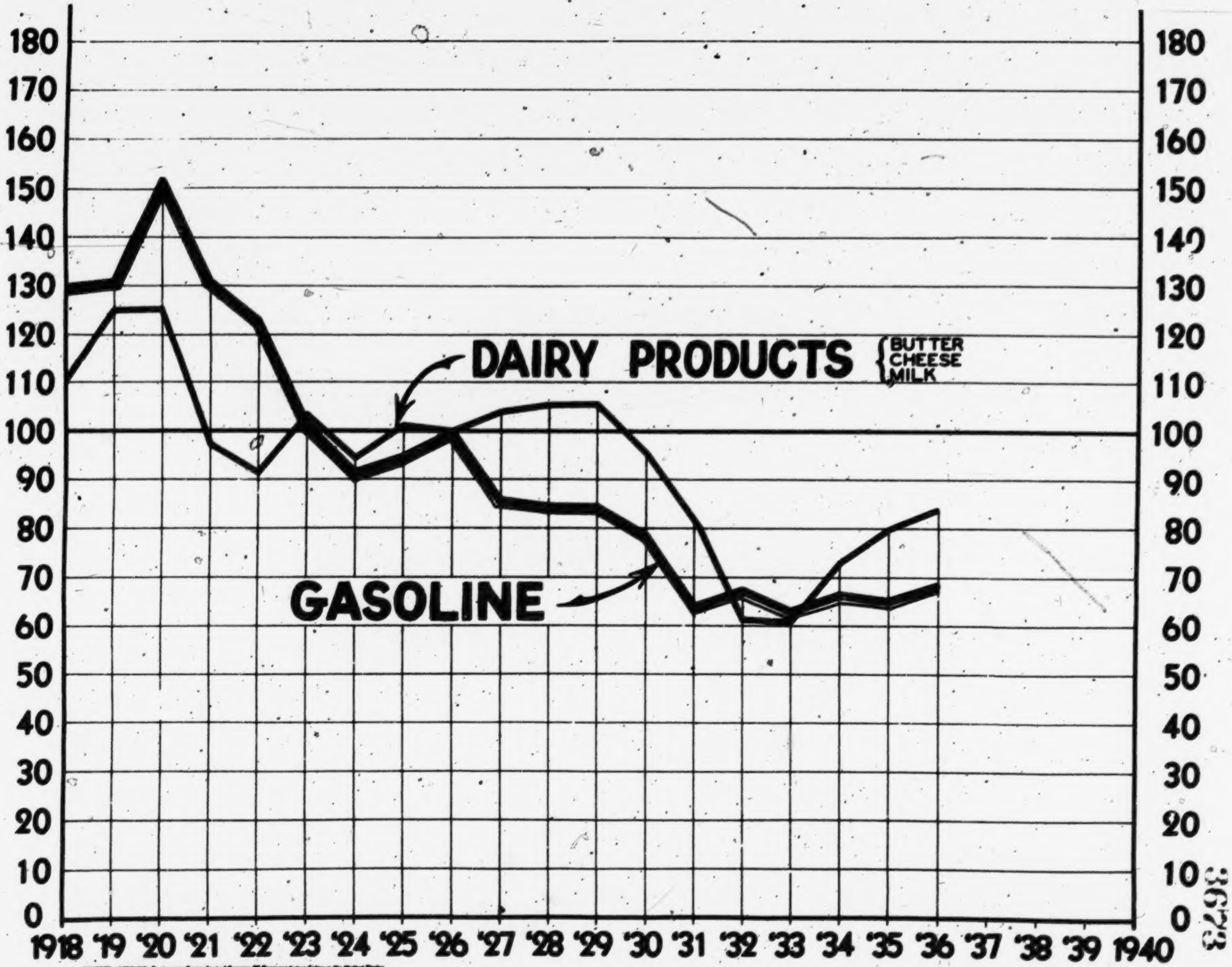
3669

EXHIBIT NO. 959

INDEX OF WHOLESALE DAIRY PRODUCTS PRICES AND GASOLINE TANK WAGON PRICES (EX. TAX) IN THE UNITED STATES

MONTHLY AVERAGE 1926 = 100




DAIRY PRODUCTS
BUTTER
CHEESE
MILK
GASOLINE
180
170
160
150
140
130
120
110
100
90
80
70
60
50
40
30
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10
0
1918
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1940

3673

5923

DEFENSE EXHIBIT NO. 960.

5924

THE DERBY ~~OIL~~ COMPANY
Wichita, Kansas

Gasoline Production & Sales (Gallons)

	Inventory	Gasoline Produced	Casinghead Purchases	Total Production	O/S— Purchases	Total	Refinery Sales	McPherson Sales	Sales of O/S Purchases	Total Sales
1934										
Jan.	3,117,594	2,090,285	272,696	2,362,981	24,776	2,387,757	2,442,999	711,202	24,734	3,178,935
Feb.		3,158,949	607,799	3,766,748		3,766,748	1,894,111	639,313		2,533,424
Mar.		2,948,044	500,225	3,448,269		3,448,269	2,031,950	839,145		2,871,095
April		2,881,125	236,598	3,117,723		3,117,723	2,232,080	844,162		3,076,242
May		3,592,156	339,308	3,931,464		3,931,464	2,788,094	961,704		3,749,798
June		2,957,718	312,595	3,270,313		3,270,313	3,523,400	927,045		4,450,445
July		3,610,549	349,285	3,959,834	Mc 198,918	4,158,752	3,104,192	960,465		4,064,657
Aug.		2,999,245	263,651	3,262,896		3,262,896	3,860,960	842,007		3,702,967
Sept.		3,393,075	250,846	3,643,921		3,643,921	3,042,686	835,938		3,878,624
Oct.		2,794,386	309,854	3,104,240		3,104,240	2,885,331	862,123		3,747,454
Nov.		3,352,687	491,853	3,844,540		3,844,540	2,159,360	689,673		2,849,033
Dec.		1,806,989	502,654	2,309,643		2,309,643	2,057,509	746,442		2,803,951
		35,585,208	4,437,364	40,022,572	223,694	40,246,266	31,022,672	9,859,219	24,734	40,906,625
1935										
Jan.	2,320,156	3,827,323	371,147	4,198,470		4,198,470	2,103,975	892,070		2,996,045
February		2,930,866	395,323	3,326,189		3,326,189	2,178,918	871,038		3,049,956
March		2,558,813	507,670	3,066,483		3,066,483	2,475,731	1,015,369		3,491,100
April		3,198,468	408,104	3,606,572		3,606,572	2,604,075	1,086,693		3,690,768
May		3,576,251	236,252	3,812,503		3,812,503	2,490,370	1,121,021		3,611,401
June		3,441,692	186,305	3,627,997		3,627,997	3,195,137	1,296,719		4,491,856
July		4,105,543	231,358	4,336,901	25,374	4,362,275	3,474,243	1,690,422	25,374	5,190,036
August		3,957,474	231,422	4,188,896	Mc 235,136} 70,119}	4,494,151	2,952,626	1,571,645	70,119	4,594,390

5925										
Sept.		3,247,224	469,671	3,716,895	Mc 454,960 30,583	4,202,438	3,000,946	1,369,570	30,583	4,401,099
Oct.		3,706,138	456,592	4,162,730	Mc 253,756 11,290	4,427,776	2,548,077	1,216,675	11,290	3,776,042
Nov.		3,283,146	665,512	3,948,658	Mc 53,354	4,002,012	1,940,416	1,105,944		3,046,360
Dec.		2,868,331	148,137	3,016,468	Mc 82,174	3,098,642	2,096,812	818,247		2,915,059
		40,701,269	4,307,493	45,008,762	1,216,746	46,225,508	31,061,326	14,055,423	137,366	45,254,115
1936										
Jan.	3,069,207	3,273,764	355,163	3,628,927		3,628,927	2,328,803	828,249		3,157,052
Feb.		2,495,756	266,828	2,762,584		2,762,584	2,034,072	657,489		2,691,561
Mar.		3,084,450	392,827	3,477,277	Mc 40,889	3,518,166	2,736,851	1,027,303		3,764,154
April		1,856,229	498,538	2,354,767	Mc 8,093 227,664	2,590,524	2,464,815	1,032,871	8,093	3,505,779
May		3,352,601	307,404	3,660,005	Mc 48,343	3,708,348	2,616,948	1,120,058		3,737,006
June		4,320,743	392,487	4,713,230	Mc 23,946	4,737,176	3,641,596	1,444,892		5,086,488
July		4,213,876	346,204	4,560,080	Mc 262,161	4,822,241	3,267,928	1,393,742		4,661,670
Aug.		3,804,555	228,759	4,033,314		4.033,314	2,887,363	1,248,296		4,135,659
Sept.		3,673,582	330,407	4,003,989		4,003,989	3,080,607	1,186,373		4,266,980
Oct.		3,924,252	497,747	4,421,999		4,421,999	2,872,541	1,192,494		4,065,035
Nov.		3,510,578	477,599	3,988,177		3,988,177	2,548,364	1,031,773		3,580,137
Dec.		3,664,959	394,637	4,059,596		4,059,596	2,723,935	1,010,474		3,734,409
	2,653,073	41,175,345	4,488,600	45,663,945	611,096	46,275,041	33,203,823	13,174,014	8,093	46,385,930

5926 DEFENSE EXHIBIT NO. 961.

5927 It is hereby stipulated that C. G. Stokes, Chief Accountant of Olney Oil and Refining Company, of Wichita Falls, Texas, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Olney Oil and Refining Company, by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Olney Oil and Refining Company, are set forth in Exhibit A hereto annexed.

It is further stipulated that sales of gasoline to major companies defendants in the above entitled action, and to major companies not defendants in the above entitled action, in each of the years 1934 to 1936 inclusive, are as set forth at the foot of said exhibit.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5928 Olney Oil and Refining Company
Wichita Falls, Texas

1934	Gasoline Production	(In Gallons)	Gasoline Sales
January	1,155,601		1,883,902
February	1,384,909		1,201,325
March	886,576		881,468
April	914,232		1,820,550
May	1,121,791		1,185,200
June	797,194		813,960
July	816,134		863,866
August	880,990		819,903
September	925,672		970,237
October	782,855		483,931
November	431,296		660,458
December	783,094		761,590
Total 1934	10,880,344		11,546,390

1935	Gasoline Production	(In Gallons)	Gasoline Sales
January	497,427		387,154
February	745,770		653,198
March	484,600		669,900
April	525,862		638,251
May	992,831		931,725
June	1,408,072		1,431,500
July	1,197,752		1,193,435
August	1,279,409		1,283,114
September	927,565		931,547
October	911,932		944,766
November	873,857		870,944
December	841,661		842,838
Total 1935	10,686,738		10,778,372
1936			
January	883,237		908,110
February	844,353		663,032
March	865,183		818,261
April	868,835		796,501
May	965,682		921,975
June	988,969		1,137,567
July	1,060,454		1,086,234
August	1,343,697		1,398,155
September	860,341		939,370
October	934,550		905,077
November	876,265		879,968
December	1,025,678		779,886
Total 1936	11,537,244		11,234,136

	To Major Defd'ts.	To Other Majors
1934	3,967,186	374,687
1935	4,370,103	373,609
1936 (to 9/30)	6,665,371	40,210

5929 DEFENSE EXHIBIT NO. 962.

5930 It is hereby stipulated that J. P. Dyer, Accountant employed by Bell Oil and Gas Company of Tulsa, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Bell Oil and Gas Company by months from January 1, 1934, to December 31, 1936, inclusive, as reflected by the books and records of Bell Oil and Gas Company, are as set forth in Exhibit A, hereto annexed; and would further testify that according to his estimate thirty per cent (30%) of said quantities of gasoline sold by the company during each of said years constituted truck sales.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

EXHIBIT A.

5931

BELL OIL & GAS COMPANY

Monthly Production and Sale of Gasoline in Barrels and Gallons—Grandfield Refinery

January 1, 1934 to December 31, 1936

	Production		Sales	
	Barrels	Gallons	Barrels	Gallons
1934				
January	45,458	1,909,236	47,453	1,993,026
February	46,752	1,963,584	43,678	1,834,476
March	53,061	2,228,562	40,807	1,713,894
April	56,965	2,392,530	58,188	2,443,896
May	55,676	2,338,392	52,886	2,221,212
June	48,244	2,026,248	46,720	1,962,240
July	49,320	2,071,440	40,762	1,712,004
August	35,008	1,470,336	31,676	1,330,392
September	48,022	2,016,924	43,258	1,816,836
October	52,578	2,208,276	48,378	2,031,876
November	50,325	2,113,650	42,042	1,765,764
December	33,954	1,426,068	30,604	1,285,368
Totals—1934	575,363	24,165,246	526,452	22,110,984
1935				
January	52,519	2,205,798	46,212	1,940,904
February	54,118	2,272,956	55,768	2,342,256
March	61,008	2,562,336	51,257	2,152,794
April	64,150	2,694,300	59,978	2,519,076
May	56,053	2,354,226	47,261	1,984,962
June	56,848	2,387,616	58,387	2,452,254
July	59,149	2,484,258	57,117	2,398,914
August	65,196	2,738,232	52,573	2,628,066
September	53,092	2,229,864	45,471	1,909,782
October	62,291	2,616,222	61,237	2,571,954
November	65,566	2,753,772	65,450	2,748,900
December	66,895	2,809,590	63,969	2,686,698
Totals—1935	716,885	30,109,170	674,680	28,336,560
1936				
January	66,285	2,783,970	58,231	2,445,702
February	54,495	2,288,790	44,727	1,878,534
March	65,251	2,740,542	74,471	3,127,782
April	62,921	2,642,682	63,757	2,677,794
May	71,522	3,003,924	69,083	2,901,486
June	61,238	2,571,996	60,824	2,554,608
July	64,778	2,720,676	58,547	2,458,974
August	67,387	2,830,254	65,902	2,767,884
September	67,816	2,848,272	60,111	2,524,662
October	59,988	2,519,496	69,914	2,936,388
November	64,105	2,692,410	64,067	2,690,814
December	64,518	2,709,756	59,057	2,480,394
Totals—1936	770,304	32,352,768	748,691	31,445,022

5932 DEFENSE EXHIBIT NO. 963.

5933 It is hereby stipulated that William E. Conway, Accountant employed by Shamrock Oil and Gas Corporation if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Shamrock Oil and Gas Company, by months from January 1, 1934, to December 31, 1936, inclusive, as reflected by the books and records of Shamrock Oil and Gas Corporation, are as set forth in Exhibit A, hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5934 **SHAMROCK OIL AND GAS CORPORATION**

Monthly Gasoline Production and Sales

January 1st, 1934 through December 31, 1936

	Gasoline Production		Gasoline Sales	
	Barrels	Gallons	Barrels	Gallons
1934				
January	5,060.38	212,535.96	7,599.38	319,173.96
February	5,103.09	214,329.78	4,615.09	193,833.78
March	8,437.81	354,388.02	6,048.81	254,050.02
April	9,187.17	385,861.14	10,803.17	453,733.14
May	21,033.74	883,417.08	15,453.74	649,057.08
June	27,422.55	1,151,747.10	33,603.55	1,411,349.10
July	26,064.77	1,094,720.34	17,735.77	744,902.34
August	12,483.07	524,288.94	15,207.07	638,696.94
September	22,684.45	952,746.90	24,170.45	1,015,158.90
October	11,682.29	490,656.18	15,804.24	663,778.08
November	20,683.16	868,692.72	16,114.53	676,810.26
December	22,733.06	954,788.52	26,393.33	1,108,519.86
	192,575.54	8,088,172.68	193,549.13	8,129,063.46
1935				
January	25,894.12	1,087,553.04	19,911.12	836,267.04
February	24,731.07	1,038,704.94	28,827.07	1,210,736.94
March	29,417.89	1,235,551.38	28,072.89	1,179,061.38
April	32,052.83	1,346,218.86	34,070.83	1,430,974.86
May	29,007.45	1,218,312.90	29,177.45	1,225,452.90
June	26,956.26	1,132,162.92	28,195.26	1,184,200.92
July	24,949.00	1,047,858.00	24,439.00	1,026,438.00
August	23,085.50	969,591.00	20,029.50	841,239.00
September	27,298.74	1,146,547.08	28,137.74	1,181,785.08
October	27,683.62	1,162,712.04	23,765.62	998,156.04
November	24,471.92	1,027,820.64	22,535.92	946,508.64
December	23,076.36	969,207.12	27,358.36	1,149,051.12
	318,624.76	13,382,239.92	314,520.76	13,209,871.92
1936				
January	20,618.62	865,982.04	20,446.62	858,758.04
February	12,429.26	522,028.92	15,090.26	633,790.92
March	26,796.55	1,125,455.10	18,522.55	777,947.10
April	22,158.64	930,662.88	19,620.64	824,066.88
May	31,187.98	1,309,895.16	19,566.98	821,813.16
June	34,837.83	1,463,188.86	43,906.83	1,844,086.86
July	46,588.43	1,956,714.06	40,506.43	1,701,270.06
August	26,938.41	1,131,413.22	35,054.41	1,472,285.22
September	39,143.41	1,644,023.22	50,855.41	2,135,927.22
October	29,870.92	1,254,578.64	29,363.92	1,233,284.64
November	26,481.83	1,112,236.86	16,257.83	682,828.86
December	24,575.38	1,032,165.96	25,301.38	1,062,657.96
	341,627.26	14,348,344.92	334,493.26	14,048,716.92

5935 DEFENSE EXHIBIT NO. 964.

5936 It is hereby stipulated that James D. Miller, if called as a witness in the above entitled action would testify that the quantities of gasoline manufactured and sold by Champlin Refining Company of Enid, Oklahoma, by months from January 1, 1934, to December 31, 1936, inclusive, are as set forth in Exhibit A hereto annexed.

It is further stipulated that Champlin Refining Company estimates that during the years 1934 to 1936, inclusive, approximately thirty per cent of its total gasoline sales were to its retail department and that of the balance, approximately sixty-five to seventy per cent was sold under contract and the remainder sold in the spot market.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5937 EXHIBIT A.

Champlin Refining Company

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	3,881,562		5,237,725
February	3,727,573		3,417,360
March	3,872,594		3,948,600
April	4,033,765		4,703,192
May	4,369,348		4,358,361
June	2,755,283		4,830,669
July	3,546,171		3,714,739
August	6,275,300		4,586,926
September	4,931,325		4,455,175
October	4,997,342		4,387,406
November	4,963,687		3,173,119
December	4,812,612		2,550,490
	52,166,562		49,363,762

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
January	4,351,329		3,475,694
February	3,160,234		4,766,277
March	3,650,987		5,479,101
April	5,348,358		5,110,470
May	4,829,640		4,352,182
June	4,658,238		4,106,891
July	4,722,325		4,993,842
August	5,471,803		4,107,221
September	5,732,755		4,515,134
October	5,809,117		4,574,954
November	4,506,424		3,919,366
December	4,017,066		3,946,595
	56,258,276		53,347,727
1936			
January	4,761,569		4,248,912
February	4,401,260		3,078,153
March	3,025,241		4,753,470
April	4,892,333		4,798,952
May	6,315,747		5,589,999
June	6,884,003		6,944,170
July	8,037,022		7,231,110
August	6,408,855		6,840,944
September	4,627,948		6,984,472
October	6,842,089		6,699,018
November	6,088,792		5,829,644
December	6,174,640		6,101,550
	68,459,499		69,100,394

5938 DEFENSE EXHIBIT NO. 965.

5939 It is hereby stipulated that G. E. Dahlen, auditor in charge of the refining and marketing divisions of Danciger Oil and Refineries, Inc., of Tulsa, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by the Pampa, Texas, plant of Danciger Oil and Refineries, Inc., by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Danciger Oil and Refineries, Inc., are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

5940 EXHIBIT A.

Danciger Oil and Refineries, Inc.
Pampa, Texas

	Gasoline Production (In Gallons)	Gasoline Sales
1934		
January	4,597,992	4,759,314
February	4,417,728	3,315,060
March	4,361,742	5,017,110
April	4,060,056	4,028,808
May	4,264,764	4,583,964
June	3,605,028	4,828,782
July	4,495,260	3,441,774
August	3,378,858	4,440,576
September	4,000,206	4,030,404
October	4,125,114	4,405,002
November	3,515,484	2,868,390
December	3,536,904	3,169,194
Total 1934	48,359,136	48,888,378

Defense Exhibit No. 965.

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
January	2,954,154		3,169,698
February	3,568,908		3,139,248
March	3,522,582		4,650,744
April	3,989,622		3,786,216
May	2,867,844		3,408,594
June	4,027,968		3,642,702
July	4,033,134		4,280,010
August	3,564,288		3,329,046
September	3,391,710		3,436,146
October	2,179,884		2,655,828
November	4,032,336		2,973,600
December	3,995,292		3,345,090
Total 1935	42,127,722		41,816,922
1936			
January	4,416,552		3,519,096
February	2,798,754		2,593,248
March	3,855,726		4,492,572
April	4,234,188		4,672,248
May	2,812,320		3,405,192
June	4,080,972		4,519,032
July	4,168,962		4,922,400
August	4,739,490		3,666,180
September	4,451,916		4,026,918
October	4,178,034		4,464,600
November	4,764,606		4,015,158
December	4,306,806		3,056,760
Total 1936	48,808,326		47,353,404

5941 DEFENSE EXHIBIT NO. 966.

5942 It Is Hereby Stipulated that J. H. Sheehan, chief refinery accountant of Lion Oil Refining Company of El Dorado, Arkansas, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Lion Oil Refining Company by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Lion Oil Refining Company, are as set forth in Exhibit A hereto annexed;

And would further testify that in his estimate 50% of the Company's production was sold through its own stations during the years 1934 and 1935 and 60% was so sold during the year 1936;

And would further testify that at the present time the Company operates about 80 bulk stations.

5943 EXHIBIT A.

Lion Oil Refining Company
El Dorado, Arkansas

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	2,990,106		3,693,270
February	3,112,200		2,942,058
March	3,506,664		3,094,140
April	3,497,172		3,189,270
May	3,925,362		4,306,722
June	3,456,180		3,099,054
July	3,117,072		3,634,764
August	2,850,036		3,560,046
September	3,215,478		3,186,456
October	3,254,160		3,600,030
November	3,655,764		3,481,464
December	3,421,236		3,561,936
Total 1934	40,001,430		41,349,210

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
January	3,626,574		3,009,426
February	3,132,486		3,182,004
March	3,780,210		3,450,342
April	3,659,460		3,439,212
May	3,281,838		3,545,934
June	3,451,560		3,515,694
July	3,705,828		3,516,282
August	3,703,644		4,179,042
September	3,561,600		3,313,674
October	3,776,094		3,617,334
November	3,678,780		3,246,684
December	3,437,196		3,392,172
Total 1935	42,795,270		41,407,800
1936			
January	3,590,286		2,621,766
February	3,278,814		2,151,702
March	3,489,486		2,547,468
April	3,169,572		3,603,768
May	3,790,416		3,531,864
June	3,765,174		4,681,572
July	4,398,786		5,109,468
August	3,624,978		4,657,002
September	3,741,402		4,318,356
October	4,073,034		4,371,990
November	3,690,120		3,725,694
December	4,469,346		3,799,992
Total 1936	45,081,414		45,120,642

5944 DEFENSE EXHIBIT NO. 967.

Letterhead of The White House, Washington, D. C.

Mr. C. E. Arnott,
President, Socony-Vacuum Corporation,
Standard Oil Company of New York,
New York City.

My dear Mr. Arnott:

I hereby appoint you a member of the Planning and Coordination Committee of fifteen members, as set up in the Code of Fair Competition for the Petroleum Industry. You were nominated by a group or groups within the industry, as provided in Section 2 of Article VII, of said Code.

I hope that you will be able to serve on this committee.

Sincerely yours,
Franklin D. Roosevelt

5945 DEFENSE EXHIBIT NO. 968.

(Extract from document certified by the Department of the Interior to be copy of press release issued by the Department of the Interior on November 14, 1934.)

Address by Honorable Harold L. Ickes, Administrator of the Petroleum Industry and Secretary of the Interior, before the American Petroleum Institute, Dallas, Texas, November 14, 1934, at 2:00 P. M.

* * * *

If each of you will look back over the past year and, without prejudice or passion, compare present conditions with those of the summer of 1933, you will all find definite improvement in the industry as a whole.

I know it might be difficult for some of you to reach such a conclusion. The refiner who has had to buy his crude oil supply at posted prices and sell his products at the levels which have prevailed might be reluctant to admit that there has been any improvement. His lot has been the hardest of all. Most of these refiners have been extremely patient while waiting for the sun to shine. They may feel that they have been forgotten, but I can assure them that this is not so. Much that has been done during the past several months has had as its particular objective the strengthening of the position of the non-integrated or the partially-integrated refiner. The allocation of gasoline production quotas under the Code and the program for the purchase of distress gasoline both had this as a common purpose. Each of these did its share of good, but the full measure of their accomplishment was not possible because of the "hot" gasoline from East Texas which kept moving into interstate commerce, and because of the price wars which raged in the territory East of the Rockies in the bitter struggle for gallonage.

I realize that East Texas has been an exceedingly popular dumping ground for complaints. It is the land of alibis. It undoubtedly has been blamed for many of the ills of the industry which have had their roots in other soil, but I feel very strongly that East Texas must carry a heavy share of blame for the conditions which weakened the wholesale gasoline market. How could it be otherwise when one of the principal news services of the industry has daily published the fact that gasoline, allegedly manufactured from "hot" crude, could be purchased at a price materially less than that made from legally produced crude?

I came to Dallas with the clear intention of putting all my cards on the table and here go some more of them.

• • • •

5946 DEFENSE EXHIBIT NO. 969.

(Certified by the Department of the Interior to be copy of letter dated February 20, 1935, signed by C. E. Arnott and addressed to Charles Fahy.)

26 Broadway
New York

C. E. Arnott

February 20, 1935.

Mr. Charles Fahy,
Petroleum Administration Board,
Lemon Building, Washington, D. C.

Dear Mr. Fahy:

On my return to New York I find your note of the 11th. I know of the circumstances in connection with the Rhode Island matter and on my next visit to Washington will talk with you about it.

There have been some very important developments in connection with marketing and also in connection with East Texas refiners to which I am giving considerable time and attention.

I am holding a meeting in Chicago Monday and Tuesday, and on Friday of next week I am holding a meeting at Kansas City with the independent group of Midcontinent refiners.

I shall not give you the details of these meetings now but when I visit Washington, which will be quite soon after my return from the West, will tell you all about it.

Yours very truly,
C. E. Arnott

(Handwritten notations):

"Copy sent to Dr. Frey in
Chi. office on 2-23-35"
"Noted C. F."

5947 DEFENSE EXHIBIT NO. 970.

Telegram

New York, N. Y.
May 1, 1935

H. W. Dodge
The Texas Co.

Petroleum administrator has requested P and C Marketing Committee in near future give him its judgment on the Blazer report and also discuss our protest against his definition of an employee Stop In view of great importance and urgency necessary P and C Marketing Committee meet Washington Thursday morning May ninth ten oclock trust you can be present telegraph reply via Westernunion.

C. E. Arnott

5948 DEFENSE EXHIBIT NO. 971.

For Identification.

(Certified by the Department of the Interior to be copy of duplicate original of a telegram dated May 17, 1935, sent by Charles Fahy to C. E. Arnott.)

5949 Petroleum Administration,
Washington, D. C. May 17, 1935

C. E. Arnott
Mayo Hotel
Tulsa, Oklahoma

THANKS VERY MUCH YOUR TELEGRAM RE PENNSYLVANIA SITUATION.

Charles Fahy

5950 DEFENSE EXHIBIT NO. 972.

For Identification.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated May 7, 1935, signed by E. B. Swanson and sent to S. M. Vockel.)

5951

DEPARTMENT OF THE INTERIOR
Petroleum Administrative Board
Washington

May 7, 1935

Mr. S. M. Vockel, President,
Waverly Oil Works Company,
54th Street,
Pittsburgh, Pennsylvania.

Dear Mr. Vockel:

I have your letter of May 2 with which you enclosed copy of Mr. Millhiser's letter to the President of the United States and your letter of May 2 to the Federal Reserve Bank of Cleveland, Ohio.

I feel sure you will appreciate that every effort has been made and is being made under the Petroleum Code to make possible the profitable operation of petroleum refineries. Although this objective has been difficult of attainment, considerable progress in that direction has been made during the past several weeks, and it is my understanding that under the present relationship between crude oil prices and the prices for petroleum products most refining companies are able to operate satisfactorily.

Should you come to Washington, I will be glad to take all the time that may be necessary to go over the situation thoroughly with you.

Very truly yours,

E. B. Swanson
Member.

Signed personally May 7 1935

5952 DEFENSE EXHIBIT NO. 973.

For Identification.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated May 17, 1935, signed by E. B. Swanson and sent to James J. Davis.)

5953 DEPARTMENT OF THE INTERIOR
Petroleum Administrative Board
Washington

May 17, 1935

Hon. James J. Davis,
United States Senate.

My dear Senator Davis:

In connection with your telephone call of last Tuesday regarding the situation described by Mr. S. M. Vockel on behalf of his company, the Waverly Oil Works, and other Pennsylvania refiners, I thought you would be interested in learning of the progress to date in the improvement of that situation.

Mr. Vockel and Mr. Willey, his associate, conferred again with Mr. Charles Fahy, Chairman of the Board, and myself and it was agreed that the problem of these refiners should be placed before the Stabilization Committee of the Planning and Coordination Committee. which is the industrial authority under the Petroleum Code. Accordingly the following telegram was sent by Mr. Fahy to Mr. C. E. Arnott, Chairman of the Stabilization Committee:

"S. M. Vockel and G. E. Willey officials Waverly Oil Works on behalf own company and other small Pennsylvania refiners yesterday and today presented detailed picture refining situation their section stop Present disparity between Pennsylvania grade crude and refined prices undoubtedly makes impossible continued operation several plants stop Problem there related more to stabilized markets lubricants than gasoline stop Hope you can arrange for prompt consideration this problem by Stabilization Committee, looking both to immediate adjustments as well as long view correction stop Would appreciate your assistance in this situation as it involves plants of long establishment which undoubtedly have not benefited equally with others under stabilization program because of their dependence on lubricants rather than gasoline stop Please wire me as to possibility your undertaking this."

Mr. Arnott was delayed in his arrival at Tulsa, and consequently did not receive the telegram until yesterday, whereupon he sent the following telegram: "Replying your telegram fully realize situation you refer to and
5954 quite agree something must be done. Will go into immediately on my return to New York next week and feel can accomplish something constructive for refiners you mentioned and others interested."

If you wish, I will be glad to keep you informed regarding further developments in this matter.

Sincerely yours,
E. B. Swanson (Signed personally)
For the Board
May 17 1935

5955 DEFENSE EXHIBIT NO. 974.

For Identification.

5956 1—480

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR
Washington, D. C.

January 5, 1938.

Pursuant to Code 28, Paragraph 661, United States Code, I hereby certify that the annual papers are true copies of the original orders appointing Charles Fahy, as Chairman, and Norman L. Myers, J. Howard Marshall, John W. Frey, E. B. Swanson as Members of the Petroleum Administrative Board, with related taxes, as they appear in the records and files of the Department of the Interior.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

Harold L. Ickes,
(Seal) *Secretary of the Interior.*

5957 Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage.

By virtue of the authority vested in me by the Act of Congress, entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes," approved June 16, 1933 (Public No. 67, 73d Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9(c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9(c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

Franklin D. Roosevelt.

The White House,
July 14, 1933.

5958 Executive Order

Administration of the Petroleum Industry

Pursuant to the authority vested in me by section 2 (b) of title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73d Cong.), and in accordance with section 2 of article I and section 1 (b) of article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the petroleum industry, the Secretary of the Interior to be Administrator and the Department of the Interior to be the Federal agency, as provided by the aforesaid act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal agency, by such act and such Code of Fair Competition,

Franklin D. Roosevelt.

The White House,
August 28, 1933.

5959

Order
Under Code of Fair Competition for the Petroleum Industry as Approved by the President August 19, 1933

There is hereby established a Board to be known as the Petroleum Administrative Board of the Department of the Interior, the functions of which shall be to advise with and make recommendations to the Secretary of the Interior as the Administrator of the Code of Fair Competition for the Petroleum Industry pursuant to Executive Order of August 28, 1933, which Executive Order was pursuant to the provisions of the National Industrial Recovery Act approved June 16, 1933 (Public No. 67, 73d Congress). Said Board shall also perform such administrative functions as may be detailed to it by the Secretary of the Interior, and shall consist of the following:

1. Nathan R. Margold, Chairman,
2. Charles Fahy, Vice-Chairman,
3. Norman L. Meyers, Secretary,
4. J. Howard Marshall,
5. J. Elmer Thomas, Special Technical Adviser.
6. Ed. B. Swanson,
7. John W. Frey.

Harold L. Ickes,
Secretary of the Interior.

September 11, 1933.

5960

DEPARTMENT OF THE INTERIOR

Order No. 3515—Supplemental Washington November 22, 1934.

Maulding Buren, Realty.

The following appointments or status changes, and organization changes, are hereby ordered and approved:

Bureau—Office of the Solicitor

Name	State	Positio[illegible]d Salary	Effective	Ctf. No.
		Changes in Status		
Margold, Nathan R.	N. Y.	Solicitor for the Department of the Interior, P-8, $9000, from Solicitor for the Department of the Interior and Chairman, Petroleum Administrative Board, same grade and salary.	Nov. 22/34	
		Oil Enforcement		
Fahy, Charles	N. M.	Chairman, Petroleum Administrative Board, $9000 (gross), Gr. 19, from Vice Chairman, Pet. Admin. Board, $8000 (gross)	—do—	

Harold L. Ickes
Secretary of the Interior

5961

Dep't of the Interior,
Received Nov. 29, 1934 Secy's Office
Appts., Mail & Files

DEPARTMENT OF THE INTERIOR

Order No. 3151—Supplemental Washington September 9, 1933

Maulding Buren, Realty.

The following appointments or status changes, and organization changes, are hereby ordered and approved:

Bureau—Office of the Solicitor (Oil Enforcement)

Name	State	Position and Salary	Effective	Ctf. No.
		Appointments		
Thomas, J. Elmer	Texas	Special Technical Adviser to the Oil Administrative Board, $5000		
Meyers, Norman L.	Wash.	Assistant Solicitor and Member of Petroleum Administrative Board, $5000. Terminating app't as Assistant Solicitor, P-5, $4600, Office of the Solicitor.		
Marshall, J. Howard	Conn.	—do— (Terminating temporary detail to Div. of Investigations)		
Tyler, Mrs. Jennie L.		Correspondent Secretary $2400		
Coles, Catherine C.	N. Y.	Stenographer $2000		

Harold L. Ickes
Secretary of the Interior.

5962 1—612

All Status Changes Should Be Requested and Justified On This Form

DEPARTMENT OF THE INTERIOR

Memorandum for the Secretary

In re proposed permanent promotion, change in designation, etc. (Cross out those not applicable) of Charles Fahy (First name, initial, surname) of New Mexico (Legal residence) as Vice Chairman, Petroleum Administrative Board (Designation) at Grade EO 18, $8000 per annum for .... (Probable length of service) to (if promotion) Chairman Pet. Admin. Board at Grade EO 19, $9000 per annum to be employed in Interior Department Division of the Oil Administration and effective .... vice Nathan R. Margold.

*Justification:

The many important duties resting upon Mr. Margold, as Solicitor, make it necessary that he be relieved as Chairman Petroleum Administrative Board in order to devote more time to the legal work of the Department. Mr. Fahy, who has served as Vice Chairman of the Board since its organization and as Acting Chairman in Mr. Margold's absence, is fully capable by experience and training to assume the Chairmanship, in addition to his duties as First Assistant Solicitor.

It is, therefore, recommended that Mr. Fahy's designation be changed from Vice Chairman to Chairman and his grade changed from EO 18 to EO 19.

Previous Government service:

First Assistant Solicitor,
Interior Department
Vice Chairman, Petroleum
Administrative Board.

Nathan R. Margold
(Signature and title) *Chairman.*

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* Give full information, including necessity for employment, qualifications of appointee, and duties to be performed.

(If additional space is necessary, use the reverse side "head to foot," i. e., make the bottom on the obverse the top on the reverse.)

5963 1—612

All Status Changes Should Be Requested and Justified On This Form

(Stamp) Dep't of the Interior. Received Sep 18 1933 Secy.'s Office Appts., Mails & Files.

DEPARTMENT OF THE INTERIOR

Memorandum for the Secretary

In re proposed temporary excepted transfer, (Cross out those not applicable) of Meyers, Norman L. (First name, initial, surname) of Washington (Legal residence) as Assistant Solicitor and Member of Petroleum Administrative Board (Designation) at $5000. per annum for .... (Probable length of service) to (if promotion) .... at .... per (month, annum, hour w. a. e., diem w. a. e.) to be employed in Petroleum Administration Interior Division of the Solicitor and effective .... vice ....

* Justification: Mr. Meyers has been transferred from the legal staff of the Federal Power Commission and, along with Mr. Marshall, has made a study of the legal aspects of controlling oil production and has served the Interior Department in drafting the Oil Code. He has been active in connection with the administration of the President's regulations against the shipment of oil produced in violation of State Law. He has served on this work in Texas. In general, he has been engaged in the oil work of the Department of the Interior, since early in March when he was borrowed from the Federal Power Commission.

Previous Government service:

Assistant Solicitor
Federal Power Commission

Charles Fahy
(Signature and title)

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* Give full information, including necessity for employment, qualifications of appointee, and duties to be performed.

(If additional space is necessary, use the reverse side "head to foot," i. e., make the bottom on the obverse the top on the reverse.)

5964 1—612

All Status Changes Should Be Requested and Justified On This Form

(Stamp) Dep't of the Interior Received Sep 18 1933 Secy's Office Appts., Mails & Files.

DEPARTMENT OF THE INTERIOR

Memorandum for the Secretary

In re proposed temporary excepted transfer, (Cross out those not applicable) of J. Howard Marshall (First name, initial, surname) of .... (Legal residence) as Assistant Solicitor and Member Petroleum Administrative Board (Designation) at $5,000.00 per annum for Six Months (Probable length of service) to (if promotion) .... at .... per (month, annum, hour w. a. e., diem w. a. e.) to be employed in Petroleum Administration Division of the Solicitor and effective .... vice ....

* Justification: Mr. Marshall is on special leave of absence from the Yale Law School. Along with Mr. Meyers has made a study of the legal aspects of controlling oil production and has served the Interior Department in drafting the Oil Code. Has been appointed Special Assistant to the Attorney General in connection with the administration of the President's regulations against the shipment of oil produced in violation of State Law. Has served on this work in Texas and Oklahoma and in general has been engaged in the oil work of the Department of the Interior since coming with the Government.

Previous Government service:

Assistant Solictor.

Charles Fahy
(Signature and title)

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* Give full information, including necessity for employment, qualifications of appointee, and duties to be performed.

(If additional space is necessary, use the reverse side "head to foot," i. e., make the bottom on the obverse the top on the reverse.)

5965 (Stamp) Department of the Interior Received Jan 10 1935 Supervisor of Classification.

(Last name) Meyers (First name) Norman (Middle initial) L.

Title or Position Member of Petroleum Administrative Bd.

Date of Appointment .... Annual Salary $8000 gross.

Local Home Address Chastleton Hotel Phone No. 10,000

State of Legal Residence New York.

Education—State Number of Years

Grade School	8
High School	4
College	8
Business School	......
Correspondence School	......
Finishing School	......

Married Age 27 Single X

Appointed at Request of or Endorsed by ....

Last Government Service Department .... Position ....

Date Released .... Annual Salary ....

Last Position Other Than Government Service Company .... Date Released .... Annual Salary ....

Is Your Husband or Wife in Government Service .... If So, Where Employed .... Annual Salary ....

Describe Duties Now Being Performed: ....

(Handwritten notation):

#Allocated by
Administrator

Duties and Responsibilities:

Under executive direction of the Administrator for the Petroleum Industry (Secretary of the Interior), but with unusual latitude for independent and unreviewed administrative and executive action and decision, to serve as a Member and Executive Secretary of the Petroleum Administrative Board and Chairman of the Federal Tender Board with full responsibility for the success or failure of the duties assigned to him; and to perform related work as assigned.

Work to be Performed:

As a Member and Executive Secretary of the Petroleum Administrative Board to advise directly with the Oil Administrator on fundamentally important and basic problems concerning the administration of the Code of Fair Competition for the Petroleum Industry throughout the United States involving the inter-relation of legal and economic decisions affecting the National policy as respects the oil industry and to draft, under the direct supervision of the Oil Administrator, proposed legislation of a permanent character on all phases of the petroleum industry in the United States and in relation to the petroleum industry in Foreign countries.

As Chairman of the Federal Tender Board to conduct hearings and issue certificates of clearance on all petroleum and petroleum products produced and shipped in interstate and foreign commerce out of the East Texas Oil Field and out of such other fields in Texas and other States by order of and under the direct supervision of the Oil Administrator in the administration of the production and refining provisions of the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act; and to direct the activities of a large force Examiners, Accountants, Attorneys and Clerical Assistants in the administration of the operations of the oil administration in the State of Texas.

5966 Upon direct orders of the Petroleum Administrator to sit in a quasi-judicial capacity to make findings of facts and to hear appeals from the actions of the Central Committee of California Oil Producers and the Proration Committee for the State of Michigan and to conduct hearings in connection with the amendment and modification of the Code of Fair Competition for the Petroleum Industry involving determinations of complex and inter-related technical, economic and legal principles and facts and in cooperation with trade associations and committees of the petroleum industry to assist in the drafting of agreements and forms of contracts to be adopted in accordance with the terms of the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act, involving a wide discretion on legal and financial matters.

As Executive Secretary, to assist the Chairman of the Petroleum Administrative Board in coordinating and directing the activities of the Board, acting as Liaison Officer to the Planning and Coordination Committee of the Petroleum Industry and with the Bureau of Internal Revenue of the Department of the Treasury in connection with the production and processing tax under the Revenue Acts of the United States, and with the Federal Trade Commission, the National Emergency Council, and the National Recovery Act, and as an attorney to assist in the conduct of test cases of major importance in trial and appellate courts, being responsible for the preparation of intricate matters of fact and law and to act as personal representative of the Oil Administrator on Boards such as the Board of Governors of the National Petroleum Pool.

5967 (Stamp) Department of the Interior Received Jan 10 1935 Supervisor of Classification.

(Last Name) Marshall (First Name) J. (Middle Initial) Howard (Department or Unit) Petroleum Administrative Board.

Title or Position Member Petroleum Administrative Bd. Date of Appointment .... Annual Salary $8000 gross.

Local Home Address Park Central Apts. Phone Met. 0540 State of Legal Residence Pennsylvania.

Education—State Number of Years

Grade School	8
High School	4
College	7
Business School	.....
Correspondence School	.....
Finishing School	.....

Married X Age 28 Single ....

Appointed at Request of or Endorsed by ....

Last Government Service Department .... Position ....

Date Released .... Annual Salary ....

Last Position Other Than Government Service Company .... Date Released .... Annual Salary ....

Is Your Husband or Wife in Government Service ....

If so, Where Employed .... Annual Salary ....

Describe Duties Now Being Performed:

(Handwritten notation):

# Allocated by
Administrator

Duties and Responsibilities:

Under executive direction of the Administrator for the Petroleum Industry (Secretary of the Interior), but with unusual latitude for independent and unreviewed administrative and executive action and decision, to serve as a Member of the Petroleum Administrative Board with direct responsibility for the Legal Division of the Board, and as the personal representative of the Petroleum Administrator on the Central Committee of California Oil Producers and the Pacific Coast Petroleum Agency with direct responsibility for the administrative control of production, refining and marketing throughout the entire Pacific Coastal Area under the Code of Fair Competition for the Petroleum Industry and to serve as a Member of the Federal Tender Board; and with full responsibility for the success or failure of the duties assigned to him; and to perform related work as assigned.

Work to be Performed:

As a Member of the Petroleum Administrative Board to advise directly with the Oil Administrator on fundamentally important and basic problems concerning the administration of the Code of Fair Competition for the Petroleum Industry throughout the United States involving the inter-relation of legal and economic decisions effecting the National policy as respects the oil industry and to draft, under the direct supervision of the Oil Administrator, proposed legislation of a permanent character on all phases of the petroleum industry in the United States and in relation to the petroleum industry in Foreign countries; to sit as the personal representative of the Petroleum Administrator on the Governing Boards of the Pacific Coast Petroleum Agency and the Central Committee of California Oil Producers and to draft and issue administrative rules, regulations, determinations and recommendations on behalf of the Petroleum Administrator governing the proration of oil production for the entire State of California and the operations of all the marketing and refining provisions of the Pacific Coast Petroleum Agency Agreement applicable to the entire Pacific Coastal Marketing and Refining Areas; and as a Member of the Federal Tender Board to act in the absence of the Chairman.

5968 Upon direct orders of the Petroleum Administrator to sit in a quasi-judicial capacity to make findings of facts and to hear appeals from the actions of the Central Committee of California Oil Producers and the Proration Committee for the State of Michigan and to conduct hearings in connection with the amendment and modification of the Code of Fair Competition for the Petroleum Industry involving determinations of complex and inter-related technical, economic and legal principles and facts and in cooperation with trade associations and committees of the petroleum industry to assist in the drafting of agreements and forms of contracts to be adopted in accordance with the terms of the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act, involving a wide discretion of legal or financial matters.

As an officer in charge of the Legal Division of the Petroleum Administrative Board, responsible for the enforcement and defense of the Oil Code and Executive Orders of the Oil Administrator issued thereunder in key cases of major importance in the various Federal Courts throughout the United States; legal representative of the Administrator to act as Liaison Officer to the Attorney General and the Department of Justice which work includes the preparation of intricate matters of fact and law.

Defense Exhibit No. 974.

5969

Dep't of the Interior
Received Oct. 22, 1933 Secy's Office
Appts., Mail & Files

DEPARTMENT OF THE INTERIOR

Order No. 3196—Supplemental. Washington November 1, 1933.
Buren

The following appointments or status changes, and organization changes, are hereb ordered and approved:

Bureau—Office of the Solicitor (Oil Enforcement)

Name	State	Position and Salary	Effective	Ctf. No
		Appointment		
Frey, John W.........	D. C.	Member Petroleum Administrative Board, $5000.		

Harold L. Ickes
Secretary of the Interior

5970 DEPARTMENT OF THE INTERIOR.

(Stamp) Dep't of the Interior Received Nov 4 1933 Secy's Office Appts Mails & Files.

Memorandum for the Secretary

In re proposed temporary appointment (Cross out those not applicable) of (First name, initial, surname) John W. Frey of (Legal residence) Washington, D. C. as (Designation) Member Petroleum Administrative Board at $5000 net per annum for (Probable length of service) indefinite to (if promotion) .... at .... per (month, annum, hour w. a. e., diem w. a. e.) to be employed in Petroleum Administrative Board Division of the .... and effective November 1, 1933 vice ....

*Justification:

Full time employment as marketing adviser on the board. He is to have charge of statistical analysis and the statistical group in connection with marketing problems and marketing cost studies.

(In pencil.) Order 3196 Supl. Approved. H. L. I.

Previous Government service:

Research in foreign mining laws with Bureau of Mines June to September, 1928.

Business specialist (Petroleum) Minerals Division, Bureau of Foreign & Domestic Commerce October, 1928, to present.

Chairman, Voluntary Committee on Petroleum Economics—reports 6, 7 & 8. Member of same Committee, reports 4 & 5.

Nathan R. Margold,
Chairman, Petroleum Administrative Board.
(Signature and title)

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* Give full information, including necessity for employment, qualifications of appointee, and duties to be performed.

(If additional space is necessary, use the reverse side "head to foot," i. e., make the bottom on the obverse the top on the reverse.)

5971 (Stamp) Department of the Interior Received Jan 10 1935 Supervisor of Classification.

(Last Name) Frey (First Name) John (Middle Initial) W.
(Department or Unit) Petroleum Administrative Board.
Title or Position Member of Petroleum Administrative Bd. Date of Appointment .... Annual Salary $8000 gross.
Local Home Address 3220 Connecticut Ave. Phone Clev. 0764 State of Legal Residence Wisconsin.
Education—State Number of Years

Grade School	9
High School	4
College	10
Business School	....
Correspondence School	....
Finishing School	....

Married X Age 44 Single ....
Appointed at Request of or Endorsed by ....
Last Government Service Department .... Position ....
Date Released .... Annual Salary ....
Last Position Other Than Government Service Company .... Date Released .... Annual Salary ....
Is Your Husband or Wife in Government Service ....
If So, Where Employed .... Annual Salary ....
Describe Duties now Being Performed: ....

(Handwritten notations):

#Allocated by
Administrator

Duties and Responsibilities:

Under executive direction of the Administrator for the Petroleum Industry (Secretary of the Interior), but with unusual latitude for independent and unreviewed administrative and executive action and decision, to serve as a Member of the Petroleum Administrative Board with direct responsibility for the Marketing Division of the Board, with full responsibility for the success or failure of the duties assigned to him; and to perform related work as assigned.

Work to be Performed:

As a Member of the Petroleum Administrative Board to advise directly with the Oil Administrator on fundamentally important and basic problems concerning the Marketing provisions of the Code of Fair Competition for the Petroleum Industry and to direct the entire Marketing Division consisting of a large staff of Examiners, Accountants, Clerical Assistants in the administration of the operations of the oil administration.

As a personal representative of the Administrator to negotiate and sit with Committees of those engaged in the stabilization of wholesale and retail markets throughout large areas of the United States; to formulate and advise the Oil Administrator as to the National policy in marketing of oil under the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act; to assist the legal staff in the preparation of economic material for the trial of cases and to organize and direct the study of the costs of refining and marketing of petroleum products throughout the United States.

Upon direct orders of the Petroleum Administrator to sit in a quasi-judicial capacity to make findings of facts and to hear appeals from the actions of the Central Committee of California Oil Producers and the proration Committee for the State of Michigan and to conduct hearings in connection with the amendment and modification of the Code of Fair Competition for the Petroleum Industry involving determinations of complex technical and interrelated technical and economic principles and facts and in cooperation with trade associations and committees of
5972 the petroleum industry to assist in the drafting of
agreements and forms of contracts to be adopted in accordance with the terms of the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act and involving a wide discretion on marketing and financial matters.

5973

Dep't of the Interior
Nov. 6, 1933, Secy's Office
Appts., Mail & Files

DEPARTMENT OF THE INTERIOR
Washington

Appointment Division. July 2, 1934.

Order No. 3397—Suppl. Maulding Buren, Realty.

The following appointments or status changes, and organization changes, are hereby ordered and approved:

Bureau—Office of the Solicitor (Oil Enforcement)

Name	State	Position and Salary	Effective	Ctf. No.
		Appointment		
		Washington, D. C.:—		
Swanson, E. B........	Wash.	Member of Petroleum Administrative Board and Chief of Production and Refining Division $6800 gross, Cr. 17.	July 2/34	

Harold L. Ickes
Secretary of the Interior.

5974 1—612

All Status Changes Should be Requested and Justified on On This Form

(Stamp) Dept. of the Interior Received Jul 3 1934 Adm. Assistant Office of the Secretary.

DEPARTMENT OF THE INTERIOR

Memorandum for the Secretary

In re proposed permanent transfer (Cross out those not applicable.) of E. B. Swanson (First name, initial, surname) of Washington State (Legal residence) as Chief, Petroleum Economic Division, Bureau of Mines (Designation) at $5600 per annum for .... (Probable length of service) to Petroleum Administrative Board at E. 0.17 $6800 per annum to be Member of Petroleum Administrative Board and Chief of Production and Refining Division and effective July 1, 1934 vice ....

*Justification:

Mr. Swanson, who has been serving as a member of the Board and Chief of the Production and Refining Division, on detail from the Bureau of Mines, is a most valuable member of the Oil Administration. Recognized as one of the outstanding national experts on crude oil production and refining problems, his permanent appointment to the Board would be most desirable and would make his services available without any possibility of disrupting the Administrative program by reassignment to other duties in the Bureau of Mines. A permanent appointment to the Board also is recommended on the grounds of recognizing his meritorious ability and the heavy responsibilities placed upon him.

Previous Government service:

Bureau of Mines.

Nathan R. Margold
Chairman Petroleum Administrative Board.
(Signature and Title)
DJK

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* Give full information, including necessity for employment, qualifications of appointee, and duties to be performed.

(If additional space is necessary, use the reverse side "head to foot," i. e., make the bottom on the obverse the top on the reverse.)

5975 (Last Name) Swanson (First Name) Edward (Middle Initial) B. (Department or Unit) Petroleum Administrative Board.

Title or Position Member of Petroleum Administrative Bd. Date of Appointment .... Annual Salary $8000 gross.

Local Home Address 2512 Q. Street, N. W. Phone No. 1503 State of Legal Residence Washington.

Education—State Number of Years

Grade School	8
High School	4
College	6
Business School	.....
Correspondence School	.....
Finishing School	.....

Married X Age 40 Single .....

Appointed at Request of or Endorsed by ....

Last Government Service Department .... Position ....
Date Released .... Annual Salary ....

Last Position Other Than Government Service Company .... Date Released .... Annual Salary ....

Is Your Husband or Wife in Government Service ....
If So, Where Employed .... Annual Salary ....

Describe Duties Now Being Performed: ....

(Handwritten notation):

#Allocated by
Administrator

Duties and Responsibilities:

Under executive direction of the Administrator for the Petroleum Industry (Secretary of the Interior), but with unusual latitude for independent and unreviewed administrative and executive action and decision, to serve as a Member of the Petroleum Administrative Board with direct responsibility for the Production and Refining Division of the Board and to serve as liaison officer between the Administrator and the Sub Committee of the House Committee on Foreign and Interstate Commerce investigating the Petroleum Industry; and regulatory commissions and officers of oil producing States; with full responsibility for the success or failure of the duties assigned to him; and to perform related work as assigned.

Work to be Performed:

Acts as representative of the Petroleum Administrator (Secretary of the Interior) in furnishing technical and economic information to and otherwise assisting the Congressional Committee investigating the oil industry for the purpose of determining the necessity for legislation. In this capacity, selected the technical staff from various offices of the Interior Department and organized the study of geology, production, refining, marketing, export and import of petroleum and its products for the subcommittee. In such capacity acts directly to establish liaison between Administrator and the subcommittee.

Maintains, on behalf of the Petroleum Administrator, direct contact with:

1. Regulatory commissions of Texas, Oklahoma and Kansas, conservation officers of Louisiana and Montana, and committees in California, Michigan and New Mexico, in connection with crude oil production orders issued by such commission, officers, and committees, and is responsible for the proper coordination of action relative to crude oil production between the oil-producing States and the Federal Agency.

2. Industrial Code Authority to effect coordinated action between that organization and the Petroleum Administrator with regard to the supply of crude oil and the operation of petroleum refineries.

3. Producing and refining units of the oil industry to co-
ordinate the crude oil requirements of the respective
5976 companies with the supply available from current
production, storage, and purchases, and the operation
of refining plants.

4. Producers and refiners of crude petroleum and the maintenance of markets for crude oil produced in areas of settled production to prevent the loss of employment in such areas.

In addition to the above executive responsibilities to the Petroleum Administrator, acts, in the organization of the Petroleum Administrative Board, directly in charge of all matters pertaining to the production and refining of crude petroleum, with direct supervision over all personnel in that branch of the Board.

Supervises and is directly in charge of:

1. Studies and estimates of the crude oil production necessary to balance consumer demand for petroleum

products and the equitable allocation of such production among the oil-producing States.

2. Studies and determinations of economic levels of gasoline inventories.

3. The methods of forecasting domestic and export demand for gasoline and the compilation of data necessary for the proper determination of established channels for the interstate movement of crude petroleum and petroleum products.

4. Current reports relative to crude oil inventories and the movement of crude petroleum and gasoline from producing areas to consuming areas.

5. Studies of cost of crude oil production in the various districts of the United States and similar cost studies relating to production and refining.

Reviews proposals and recommends to the Petroleum Administrator action in connection with:

1. Plans for the orderly development of new oil pools.

2. Applications of individual companies for the withdrawal of crude oil from storage.

3. Determination of production of gasoline necessary to meet the demand therefor and to provide proper gasoline inventories.

4. Crude oil production necessary to balance consumer demand for petroleum products and the equitable allocation of such production among the several oil-producing States.

5. Personnel changes in committees of the Code Authority concerned with production, refining and natural gasoline.

Considers and adjusts complaints from operating companies and others on matters relating to production and refining.

Conducts any hearings which might be held in connection with the work of the Branch.

5977 DEFENSE EXHIBIT NO. 975.

(Certified by the Department of the Interior to be duplicate original of a Telegram sent by Charles Fahy to C. E. Arnott and dated May 28, 1935.)

Washington, D. C.
May 28, 1935

C. E. Arnott,
26 Broadway,
New York City

In view Supreme Court decision holding codes invalid authority of Administrator of Petroleum Code to you and those with you in stabilization matters is suspended and until further word all such activities must be on purely voluntary basis without any sanction from Administrator.

Charles Fahy,
Chairman, Petroleum Administrative Board
For the Administrator.

5978 DEFENSE EXHIBIT NO. 976.

(Certified by the Department of the Interior to be duplicate original of a Letter dated June 3, 1935, signed by Charles Fahy, and sent to C. E. Arnott.)

Letterhead of Department of the Interior, Petroleum Administrative Board, Washington, D. C.

Mr. C. E. Arnott
26 Broadway
New York, New York

June 3, 1935

My dear Mr. Arnott:

I wish to acknowledge your recent letters concerning stabilization work in the South.

As I have already advised you, our participation in stabilization work terminated with the Supreme Court decision. In consequence, there are no further comments that I can make at this time. I want to take this opportunity, however, to express my cordial appreciation of the work that you have done in promoting the purposes of the National Industrial Recovery Act. Every evidence indicates that, the general situation is better than it has been for some years. It is my hope that the results which have been achieved will be maintained.

Yours sincerely,
Charles Fahy
Chairman.

5979

DEFENSE EXHIBIT NO. 977.

(Certified by the Department of the Interior to be copy of document on file in that Department.)

New York
June 12, 1935.

Mr. Charles Fahy, Chairman,
United State Department of the Interior,
Petroleum Administrative Board,
Washington, D. C.

Dear Mr. Fahy:

On my return to New York I find your note of the 3rd. I thank you for your kind words.

I agree with what you say that the general situation is better than it has been for some time and I think distinct progress was made under our joint stabilization efforts.

I shall be in Washington soon and will make a point of visiting you. I have a number of matters I would like to talk over with you.

Sincerely,
C. E. Arnott

5980 DEFENSE EXHIBIT NO. 978.

(Certified by the Department of the Interior to be Press Release, dated September 18, 1933, issued by the Department of the Interior.)

Immediate Release
September 18, 1933.

Remarks by the Honorable Harold L. Ickes, Secretary of the Interior and Oil Administrator, before the Planning and Coordination Committee and the Chairman and Vice-Chairman for its Regional Sub-Committees, at a private conference in the Mayflower Hotel, September 18, 1933.

Gentlemen of the Oil Industry:

I am pleased to welcome you to Washington in connection with the important work of stabilizing the oil business of this country to which work we expect you to contribute largely.

Certainly it is a gigantic task which confronts us and one that will call for strong nerves, clear heads and sound hearts. Your best business judgment, highest technical skill, utter unselfishness and ardent patriotism will be needed in support of President Roosevelt's program. With proper comprehension and cooperation his plan must succeed.

A short time ago conditions in your industry were very bad, but since the passage of the National Industrial Recovery Act notable improvement has been shown. I find that advances in retail gasoline prices of 30 percent, in wholesale gasoline prices of 100 percent, and in crude oil prices up to 250 percent have already taken place, although our control of production was only inaugurated ten days ago.[*] Your problem is to hold and consolidate this improvement so far as it is justified while paving the
5981 way for further improvement.

I ask you to remember that our primary purpose is to put men back to work and to raise wages, thus enlarging the purchasing power of the industry. This beneficial result will then extend to other industries and again be reflected back to your own. I trust you will direct your earliest and most earnest attention to this labor and wage question, and to keep my staff advised of the progress made.

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[*] Retail price middle grade gasoline 48 representative cities June 1, 10⅞¢, Sept. 15, 14.5¢; tank car price Group 3 same grade June 1, 2⅝¢, Sept. 15, 5⅜¢; 36 gravity Mid-continent crude June 1, 25¢, Sept. 15, 88¢.

Many units in the oil industry adopted the labor and wage provisions of the N. R. A. under the President's reemployment agreement even before the Oil Code was signed, and reports on the improvement in employment and wages should be available by now. I will be most interested in having them brought to my attention at the earliest possible date.

I have established in the Interior Department the Petroleum Administrative Board, the personnel of which was recently announced in the press. This is now organized to handle all matters promptly. The routine will be for all communications from the industry or from the public to clear through the Board's Secretary, Mr. Meyers, by whom each question, technical, legal or administrative, will be referred immediately to the proper person for action.

Many of these matters should go to your Committee first for investigation and recommendation and I hope you will organize yourselves to receive and handle them. The Petroleum Administrative Board will acknowledge each
5982 inquiry, request or complaint by letter or telegram
the day of its receipt, if possible, and issue final determinations at the earliest possible date. This procedure seems highly important if we are to secure the cooperation and support of the public and I am sure your Committee will aid us to carry out this procedure.

For all matters to be taken up by the Committee with the Board I have selected as the point of contact our Special Technical Adviser, Mr. Thomas, who is already known to most of you. This should also facilitate our work, save time and avoid duplication of effort. On this latter point I regret that the pressure of details has prevented one member of the Board from sitting constantly with the Committee but so far we have been unable to arrange that. In the meantime, I suggest that the Committee keep the Board advised in a general way of the proposals which the Committee has under consideration, even while the recommendations are being formulated, in order that our approval can be expedited.

I have a further and important suggestion to make, one that I transmitted to the Committee through the Board a week ago. It is that in naming the personnel of your subcommittees, regional and local, representation be given to all the various groups and factions within the industry so that the problems and views of all may be considered simultaneously in formulating your recommendations. During the process of adopting a Code we became aware how many factions and schools of thought exist, and how widely vari-

ant are their ideas on the industry's problems and their
proper solution. None should be denied a right to be
5983 heard and one of the best ways to assure that is to
make your committees comprehensively representative. Thus we may reduce the flood of telegrams reaching us to the effect that this and that action is being taken without consideration of the welfare of particular groups.

Gentlemen, we have a solemn duty to perform. Our task is to stabilize the oil industry upon a profitable basis. That is the keen desire of the Administration and we will work with you constantly to that end. But we must remember that the income of the oil industry is the outgo of the consuming public, and so design our program by progressive stages, that too great a burden is not placed too suddenly upon the purchasing power of the public just at this time. In the end our program cannot succeed unless we have the support of the public.

5984 DEFENSE EXHIBIT NO. 979.

(Certified by the Department of the Interior to be duplicate original of a Letter dated July 25, 1935, signed by Harold L. Ickes and sent to C. E. Arnott.)

Letterhead of Administrator for the Petroleum Industry,
Washington, D. C.

July 25, 1935

Mr. C. E. Arnott
Highland Avenue
Short Hills, New Jersey

My dear Mr. Arnott:

The Planning and Coordination Committee which was appointed and served under the Code of Fair Competition for the Petroleum Industry engaged with me for nearly two years in the most earnest effort of joint industrial and governmental action perhaps ever undertaken. For the purpose of furthering national recovery, we entered upon this work at a time of great stress within the petroleum industry and generally throughout all industry. Through the invalidation of the Code your activities as a Committee now have been brought to a close and my own as Administrator have become limited under the amended National Industrial Recovery Act to research and review, with such advisory assistance as may be useful to state authorities, to the industry and to the government.

In the organizations formed to assist in administering the Code were numerous and important Committees and employees who contributed to the real progress made during the Code period in the diminution of unfair competitive practices, the balancing of crude oil supply with demand, the increase in employment and wages, the orderly operation of petroleum refineries, and the systematic development of new fields.

I desire to express the appreciation of the government for your long and often arduous service on the Committee, and through you to the many individuals who worked with you, I do this with the conviction, which I believe most of the Committee shares, that the work was well worth while and went a long way in the accomplishment of the purposes of the Code and the National Industrial Recovery Act.

Sincerely yours,
Harold L. Ickes
Administrator.

5985 GOVERNMENT EXHIBIT NO. 980.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated April 2, 1935, signed by Harold L. Ickes and sent to C. E. Arnott.)

Letterhead of Administrator for the Petroleum Industry,
Washington

Apr. 2, 1935

Mr. C. E. Arnott,
Chairman, Marketing Committee,
Planning and Coordination Committee,
Investment Building,
Washington, D. C:

My dear Mr. Arnott:

I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area.

Although no evidence has been presented which would definitely establish the basis for the agreement entered into, it is possible that the companies involved are purporting to act under the authorization of my letter of July 20, 1934, authorizing you to designate committees with authority to confer, to negotiate and to hold due public hearings in order to remedy unfair price situations.

Several parties have complained to the Petroleum Administrative Board that the moratorium oppresses them. I am not attempting, however, in this letter to pass on the wisdom of the moratorium. The matter that at present concerns me is the necessity of complying with the requirements of the basic law. In authorizing the formulation of a stabilization program, I necessarily conditioned the authority granted, by providing that the requirements of Clause 2 of Subsection (a) of Section 3 of the National Industrial Recovery Act should be observed. I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery Act.

I understand that the temporary character of a number of situations and the need for immediate action has made

formalized agreements impracticable and in a num-
5986 ber of instances they may be unnecessary. However, when the understandings arrived at a bases of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal. If any such agreements have been made I should like a report as to them. If they require approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act.

I appreciate greatly your cooperation with the Administration in taking on the difficult work of directing a program of stabilization and I know that you will understand that this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility.

Sincerely yours,
Harold L. Ickes
Administrator.

5987 DEFENSE EXHIBIT NO. 984.

5988 Stipulation

It Is Hereby Agreed by and between the parties hereto that the following facts shall be taken to be admitted by said parties:

The purchases of gasoline by the Standard Oil Company (Indiana) from independent refiners in East Texas and the Mid-Continent Field from 1931 to 1936, (both inclusive) are as follows:

5989

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	**No. Texas Refiners Quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram date of purchase)	##Prices shown in Chicago Journal of Com. (Group 3 Okla.) date of purchase
					(For Comparable grade)		
1-14-31	Cushing Refg. & Gas	30 (sellers) cars	Cushing, Okla.	*U. S. Motor Gasoline	4¢ gal. flat, f. o. b. Group 3	not available	not available
1-14-31	Omar Refg. Co.	50 (sellers) cars	Garber, Okla.	"	4¢ gal. flat f. o. b. Garber, Okla.	"	"
1-14-31	H. F. Wilcox Oil & Gas Co.	75 (sellers) cars	Bristow, Okla.	"	4¢ gal. flat f. o. b. Bristow, Okla.	"	"
1-19-31	Dale Oil & Refg. Co.	60 (sellers) cars	Electra, Texas	"	4¢ gal. flat f. o. b. Group 3	"	"
1-19-31	Eason Oil Co.	75 (sellers) cars	Enid, Okla.	"	4¢ gal. flat f. o. b. Enid, Okla.	"	"
1-27-31	Olney Oil & Refg. Co.	15 (sellers) cars	Olney, Texas	"	4¢ gal. flat f. o. b. Group 3	"	"

5990

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	**No. Texas Refiners Quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram date of purchase)	##Prices shown in Chicago Journal of Com. (Group 3 Okla.) date of purchase
2- 4-31	H. F. Wilcox Oil & Gas Co.	100 (sellers) cars	Bristow, Okla.	*U. S. Motor	4¢ gal. flat f. o. b. Group 3	not available	not available
2-10-31	H. F. Wilcox Oil & Gas Co.	50 (sellers) cars	Bristow, Okla.	"	4¢ gal. flat f. o. b. Bristow, Okla.	"	"
2-10-31	H. F. Wilcox Oil & Gas Co.	50 (buyers) cars	Bristow, Okla.	"	3⅞¢ gal. flat, f. o. b. Bristow, Okla.	"	"
2-20-31	H. F. Wilcox Oil & Gas Co.	75 (sellers) cars	Bristow, Okla.	"	3¾¢ gal. flat f. o. b. Group 3	"	"
5- 7-31	H. F. Wilcox Oil & Gas Co.	50 (sellers) cars	Bristow, Okla.	"	2¾¢ gal. flat, f. o. b. Group 3	"	"
5-13-31	Eason Oil Co.	50 (sellers) cars	Enid, Okla.	"	2¾¢ gal. flat, f. o. b. Group 3	"	"

5991							
						(For comparable grade)	
5-26-31	Eason Oil Co.	50 (sellers) cars	Enid, Okla.	*U. S. Motor Gasoline	2⅝¢ gal. flat, f. o. b. Group 3	not available	not available
6-15-31	Eason Oil Co.	56 (sellers) cars	Enid, Okla.	"	2⅛¢ gal. flat, f. o. b. Group 3	"	"
6-16-31	Dale Oil & Refg. Co.	30 (sellers) cars	Electra, Texas	"	2⅛¢ gal. flat, f. o. b. Group 3	"	"
6-20-31	H. F. Wilcox Oil & Gas Co.	25 (sellers) cars	Bristow, Okla.	"	2⅛¢ gal. flat, f. o. b. Group 3	"	"
		841 cars					

No purchases of gasoline made from Independent Refiners during year 1932

5992							
10-10-33	Waggoner Refg. Co.	15 (sellers) cars	Electra, Texas	59 Octane & below (3rd grade)	3¾¢ gal. flat, f. o. b. Group 3	not available	not available
10-10-33	The Eldorado Refining Co.	15 (sellers) cars	Eldorado, Kansas	"	3¾¢ gal. flat, f. o. b. Group 3	"	"
10-16-33	The Eldorado Refining Co.	15 (sellers) cars	Eldorado, Kansas	"	3¾¢ gal. flat, f. o. b. Group 3	"	"
		45 cars					
						Platt's Oilgram, as above	
5- 4-34	Olney Oil & Refg. Co.	10 (sellers) cars	Olney, Texas	"	3⅝¢ gal. flat, f. o. b. Group 3	3⅞ — 4⅛¢	
5-17-34	Olney Oil & Refg. Co.	15 (sellers) cars	Olney, Texas	"	4¢ gal. flat, f. o. b. Group 3	4⅛ — 4¼¢	
5-18-34	Panhandle Refg. Co.	10 (sellers) cars	Wichita Falls, Texas	65 Octane & above (Regular Grade)	Low price for 60-64 Octane f. o. b. Group 3 Chgo. Jrl. of Com. date of shipment	4½ — 4¾¢ (60-64 octane)	
5-22-34	Taxman Refg. Co.	15 (sellers) cars	Wichita Falls, Texas	59 Octane & below (3rd grade)	4¼¢ gal. flat, f. o. b. Group 3	4¼ — 4⅜¢	
5-25-34	Waggoner Refg. Co.	25 (sellers) cars	Electra, Texas	"	4¼¢ gal. flat, f. o. b. Group 3	4¼ — 4⅜¢	
5993							
5-29-34	Taxman Refg. Co.	15 (sellers) cars	Wichita Falls, Texas	"	4¼¢ gal. flat, f. o. b. Group 3	4¼ — 4⅜¢	
6- 6-34	Olney Oil & Refg. Co.	10 (sellers) cars	Olney, Texas	"	4⅛¢ gal. flat, f. o. b. Group 3	4¼ — 4⅜¢	
6-12-34	Olney Oil & Refg. Co.	10 (sellers) cars	Olney, Texas	"	3¾¢ gal. flat, f. o. b. Group 3	4 — 4⅛¢	

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	**No. Texas Refiners quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram date of purchase)	##Prices shown in Chicago Journal of Com. (Group 3 Okla.) date of purchase
6-19-34	Olney Oil & Refg. Co.	10 (sellers) cars	Olney, Texas	"	3½¢ gal. flat, f. o. b. Group 3	3½ — 3¾¢	
7- 6-34	Constantin & Co.	21 (sellers) 10 (buyers) cars	Overton, Texas	"	Average of lows in Chgo. Jrnl. of Com. & Platt's Oilgram (Okla. mkt.) date of shipment, f. o. b. Group 3	*** — 3⅝¢	
7- 7-34	Trio Refg. Co. (Grogan Oil Co. Sales Agents)	50 (sellers) cars	Arp, Texas	"	" "	*** — 3⅝¢	
7- 9-34	Oil Refineries, Inc.	35 (sellers) cars	Overton, Texas	"	" "	*** — 3⅝¢	
5994							
						(For comparable grade)	
7- 6-34	Constantin & Co.	10 (sellers) cars	Overton, Texas	59 octane & below (3rd grade)	3⅝¢ gal. flat, f. o. b. Group 3	3½ — 3⅝¢	not available
7-12-34	Waggoner Refg. Co.	50 (sellers) cars	Electra, Texas	"	25 @ 3½¢ gal. flat, f. o. b.	3¾ — 3⅞¢	"
					25 @ 3⅝¢ gal. flat, f. o. b. Group 3	3¾ — 3⅞¢	"
7- 17-34	Olney Oil & Ref.	10 (sellers) cars	Olney, Texas	"	3⅝¢ gal. flat, f. o. b. Group 3	3⅞ — 4¢	"
7-26-34	Olney Oil & Ref.	10 (sellers) cars	Olney, Texas	"	3½¢ gal. flat, f. o. b. Group 3	3⅞ — 4⅛¢	"
7-31-34	Arrow Ref. & Prod.	10 (sellers) cars	Overton, Texas	"	Average of lows in Chgo. Jrnl. of Com. & Platt's Oilgram (Okla. mkt.) date of shipment, f. o. b. Group 3	*** — 4¢	
5995							
8- 6-34	Olney Oil & Ref.	20 (sellers) cars	Olney, Texas	62 octane & below (3rd grade)	3½¢ gal. flat, f. o. b. Group 3	4 — 4¼¢	"

8-7-34	Panhandle Refg.	15 (sellers) cars	Kings Mill, Texas	"	3½¢ gal. flat, f. o. b. Group 3	4 — 4¼¢	"
8-9-34	Panhandle Refg.	15 (sellers) cars	Wichita Falls, Texas	"	3½¢ gal. flat, f. o. b. Group 3	4 — 4¼¢	"
8-9-34	Grogan Oil Co. (Sales Agents for Oil Refineries, Inc.)	15 (sellers) cars	Overton, Texas	"	Average of lows in Chgo. Jrnl. of Com. & Platt's Oilgram (Okla. mkt.) date of shipment, f. o. b. Group 3.	*** — 3.9375	
8-9-34	Constantin & Co.	50 (sellers) cars	Overton, Texas	"	" "	*** — 3.9375	
8-10-34	Lone Star Refg. Co.	35 (sellers) cars	Gladewater, Tex.	"	" "	*** — 3.9375	
8-17-34	Grogan Oil Co. (Sales Agents for Trio Refg. Co.)	14 (sellers) cars	Arp, Texas	"	" "	*** — 3.875	
8-17-34	Lone Star Refg. Co.	38 (sellers) cars	Gladewater, Tex.	"	" "	*** — 3.875	
8-20-34	Olney Oil & Ref.	5 (sellers) cars	Olney, Texas	"	3½¢ gal. flat, f. o. b. Group 3	3⅞¢ — 4¢	

5996

8-27-34	Constantin & Co.	20 (sellers) cars	Overton, Texas	"	Average of lows in Chgo. Jrnl. of Com. & Platt's Oilgram (Okla. mkt.) date of shipment, f. o. b. Group 3	*** — 3.8125	
8-28-34	Waggoner Refg. Co.	40 (sellers) cars	Electra, Texas	62 Octane & below (3rd grade)	3⅝¢ gal. flat, f. o. b. Group 3	3¾ — 4¢	"
9-20-34	Waggoner Refg. Co.	50 (sellers) cars	Electra, Texas	"	4¢ gal. flat f. o. b. Electra, Texas	3¾ — 3⅞¢	"
9-21-34	Overton Ref. Co.	40 (sellers) cars	Overton, Texas	"	4¢ gal. flat f. o. b. Electra, Texas	#3½ — 3⅝¢	"
9-21-34	Kilgore Refg. Co.	25 (sellers) cars	Kilgore, Texas	"	4¢ gal. flat f. o. b. Kilgore, Texas	#3½ — 3⅝¢	"
9-28-34	Lone Star Ref. Co.	30 (sellers) cars	Gladewater, Texas	"	4¢ gal. flat f. o. b. Gladewater, Texas	#3⅜ — 3½¢	"
9-28-34	La Pren Refg. Co.	5 (sellers) cars	Kilgore, Texas	"	4¢ gal. flat f. o. b. Kilgore, Tex.	#3⅜ — 3½¢	"

*** This is the average of the lows as shown in the Chicago Journal of Commerce and Platt's Oilgram, (Oklahoma Refinery Market), on the date the purchase was made.

Defense Exhibit No. 984.

5997

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	**No. Texas Refiners quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram date of purchase)	##Prices shown in Chicago Journal of Com. (Group 3 Okla.) date of purchase
10- 1-34	Waggoner Refg. Co.	50 (sellers) cars	Electra, Texas	62 octane & below (3rd grade)	4¢ gal. flat f. o. b. Electra, Texas	3¾ 3⅞¢	Not available
10- 1-34	Olney Oil & Ref.	35 (sellers) cars	Olney, Texas	"	4¢ gal. flat f. o. b. Olney, Texas	3¾ 3⅞¢	"
10-11-34	Kilgore Refg. Co.	25 (sellers) cars	Kilgore, Texas	"	5¢ gal. flat f. o. b. Kilgore, Texas	#2½ 2⅝¢	"
10-12-34	La Pren Refg. Co.	25 (sellers) cars	Kilgore, Texas	"	5¢ gal. flat f. o. b. Kilgore, Texas	#2½ 2⅝¢	"
10-12-34	Texas Oil Prod.	25 (sellers) cars	Gladewater, Texas	"	5¢ gal. flat f. o. b. Kilgore, Texas	#2½ 2⅝¢	"
11- 6-34	Panhandle Ref. Co.	30 (sellers) cars	Wichita Falls, Tex.	69–70 octane (Regular grade)	4¾¢ gal. flat f. o. b. Group 3	4⅝ 4¾¢ (63–70 octane)	"

5998

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	**No. Texas Refiners quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram date of purchase)	##Prices shown in Chicago Journal of Com. (Group 3 Okla.) date of purchase
11-22-34	Panhandle Ref. Co.	30 (sellers) cars	Wichita Falls, Texa.	69–70 Octane (Regular Grade)	4⅝¢ gal. flat f. o. b. Group 3	4⅝ 4¾¢ (63–70 Octane)	"
11-26-34	Waggoner Ref. Co.	25 (sellers) cars	Electra, Texas	"	4⅝¢ gal. flat f. o. b. Group 3	5⅝ 4¾¢ (63–70 Octane)	"
11-27-34	Waggoner Ref. Co.	20 (sellers) cars	Electra, Texas	"	4⅝¢ gal. flat f. o. b. Group 3	4⅝ 4¾¢ (63–70 Octane)	"
12- 7-34	Panhandle Ref. Co.	25 (sellers) cars	Wichita Falls, Texas	"	3⅞¢ gal. flat f. o. b. Group 3	4½ 4⅝¢ (63–70 Octane)	"
		1033 cars					

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* Beginning October 12, 1931, prices on U. S. Motor Gasoline were based on octane numbers.

** Group 3 basis means freight difference between East Texas, and Group 3 has been recognized in the quoted price.

# Price shown in Platt's Oilgram f. o. b. East Texas, (made from legally produced crude oil).

## Chicago Journal of Commerce does not publish a summary of prices quoted on basis of f. o. b. Group 3 by refiners in North Texas or East Texas.

						xPlatt's Oilgram, as above.	
1-14-35	Waggoner Ref. Co.	25 (sellers) cars	Electra, Texas	69-70 Octane (Regular Grade)	4⅝¢ gal. flat f. o. b. Group 3	4¼ (63-70 Octane)	4½¢
2-21-35	"	25 cars	" "	"	4⅜¢ gal. flat f. o. b. Group 3	4¼ (63-70 Octane)	4½¢
3- 8-35 5999	"	25 cars	" "	"	4½¢ gal. flat f. o. b. Group 3	4⅜ (63-70 octane)	4½¢
15 *3-14-35	"	25 cars	" "	"	4⅝¢ gal. flat f. o. b. Group 3	4⅝ (63-70 Octone)	4⅞
22 *3-21-35	"	10 cars	" "	"	4¾¢ gal. flat f. o. b. Group 3	4¾ (63-70 Octane)	4⅞
22 *3-21-35	"	15 cars	" "	62 Oct & below (3rd Grade)	3⅞¢ gal. flat f. o. b. Group 3	3⅞ (62 Oct. & below)	4
4- 4-35	"	50 cars	" "	69-70 Octane (Regular Grade)	4⅞¢ gal. flat f. o. b. Group 3	4⅞ (63-70 Octane)	5
4- 8-35	"	25 cars	" "	"	5¢ gal. flat f. o. b. Group 3	5 (63-70 Octane)	5¼
4-24-35	"	10 cars	" "	"	5¼¢ gal. flat f. o. b. Group 3	5¼ (63-70 Octane)	5½
2 *5- 1-35	"	25 cars	" "	"	5¼¢ gal. flat f. o. b. Group 3	5¼ (63-70 Octane)	5½
9 *5- 8-35	"	25 cars	" "	"	5¼¢ gal. flat f. o. b. Group-3	5¼ (63-70 Octane)	5½
5-21-35	"	25 cars	" "	"	5⅜¢ gal. flat f. o. b. Group 3	5⅜ (63-70 Octane)	5½
6- 4-35	"	25 cars	" "	"	5⅝¢ gal. flat f. o. b. Group 3	5⅝ (63-70 octane)	5¾

5999½

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	No. Texas Refiners quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram) date of purchase	
6-12-35	Waggoner Ref. Co.	25 cars	Electra, Texas	69-70 octane (Regular Grade)	5⅝¢ gal. flat f. o. b. Group 3	5⅝ — 5¾	63-70 octane
6-24-35	"	10 cars	" "	"	5⅝¢ gal. flat f. o. b. Group 3	5⅝ — 5¾	"
7- 3-35	"	15 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
7-12-35	"	15 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
7-18-35	"	20 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
8- 2-35	"	25 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
8- 9-35	"	25 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
8-21-35	"	10 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
9							
9- 7-35	"	10 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
9-13-35	"	15 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
9-17-35	"	15 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
9-27-35	"	25 cars	" "	"	5⅝¢ "	5⅝ — 5¾	"
6000							
10- 8-35	"	25 cars	" "	"	5⅝¢ gal. flat f. o. b. Group 3	5⅝ — 5¾	"
10-15-35	"	15 cars	" "	"	xxLow price Chicago Journal of Com. date of shipment f. o. b. Group 3	5⅝ — 5¾	"
10-17-35	"	10 cars	" "	"		5⅝ — 5¾	"
10-18-35	"	25 cars	" "	"	"	5⅝ — 5¾	"
29							
10-28-35	"	25 cars	" "	"	"	5⅝ — 5¾	"
11- 5-35	"	50 cars	" "	"	"	5⅝ — 3¾	"
12- 4-35	"	25 cars	" "	62 Oct. & below (Third Grade)	"	4¾	62 Octane & below
12-11-35	"	25 cars	" "	"	"	4⅝ — 4¾	"
12-16-35	"	50 cars	" "	69-70 octane (Regular Grade)	"	5⅝ — 5¾	63-70 Octane
12-31-35	"	25 cars	" "	62 Oct. & below	"	4¾	62 Octane

		795 cars					
6001							
-36	Panhandle Prod & Refg. Co.	10 cars	Wichita Falls, Tex.	"	"	4¾	"
-36	Waggoner Ref. Co.	25 cars	Electra, Texas	69–70 octane (Regular Grade)	"	5⅝ — 5¾	63–70 Octane
14 *1-13-36	"	25 cars	"	62 Oct. & below (Third Grade)	"	5¼ — 5⅜	62 Octane and below
14 *1-13-36	"	15 cars	"	69–70 Octane (Regular Grade)	"	6⅛ — 6¼	63–70 Octane
1-29-36	"	5 cars	"	62 Oct. & below (Third Grade)	"	5¼	62 Octane and below
1-29-36	"	20 cars	"	69–70 Octane (Regular Grade)	"	6⅛	63–70 Octane
4 *2- 3-36	"	35 cars	"	62 Oct. & below (Third Grade)	"	5¼	62 Octane and below
11 *2-10-36	"	40 cars	"	69–70 Octane (Regular Grade)	"	6⅛	63–70 Octane
2-27-36	"	25 cars	"	62 Oct. & below	"	5 — 5⅛	62 Octane and below
6002							
3- 9-36	Waggoner Ref. Co.	25 cars	Electra, Tex.	62 Oct. & below (Third Grade)	Low price Chgo Jrnl. of Com. date of shipment f. o. b. Group 3	5¢	62 Octane and below
3-16-36	"	30 cars	"	"	"	5	"
23 *3-21-36	"	20 cars	"	69–70 Octane (Regular Grade)	"	6 — 6⅛	63–70 Octane
4- 6-36	"	25 cars	"	62 Oct. & below (Third Grade)	"	5 — 5⅛	62 Octane and below
4- 9-36	"	50 cars	"	"	"	5 — 5⅛	"
4-16-36	"	25 cars	"	69–70 Octane (Regular Grade)	"	6 — 6⅛	68–70 Octane
*5- 5-36	"	25 cars	"	62 Oct. & below (Third Grade)	"	5	62 Octane and below
*5-11-36	"	25 cars	"	"	"	4⅞ — 5	"
*5-14-36	"	30 cars	"	"	"	4⅞ — 5	"

Date of Purchase	From Whom	Quantity	Point of Origin	Grade Purchased	Price Basis	No. Texas Refiners quotations on basis of f. o. b. Group 3 (as shown in Platt's Oilgram) date of purchases	
*5-18-36	"	20 cars	"	69-70 Octane (Regular Grade)	"	6	68-70 Octane
6- 2-36	"	25 cars	"	62 Oct. & below (Third Grade)	"	4¾ — 5	62 Octane and below
6- 5-36	"	25 cars	"	"	"	4¾ — 5	"
*6-11-36	"	25 cars	"	"	"	4¾ — 4⅞	"
6-16-36	"	25 cars	"	"	"	4¾ — 4⅞	"
7- 8-36	"	25 cars	"	"	"	4⅞ — 5	"
7- 8-36	"	25 cars	"	69-70 Octane (Regular Grade)	"	6	68-70 Octane
7-14-36	"	50 cars	"	62 Oct. & below (Third Grade)	"	4⅞ — 5	62 Octane and below
*8- 3-36	"	25 cars	"	"	"	4⅞ — 5	"
*8- 6-36	"	50 cars	"	69-70 Octane (Regular Grade)	"	6	68-70 Octane
*8-10-36	"	25 cars	"	62 Oct. & below (Third Grade)	"	4⅞ — 5	62 Octane and below
*9- 8-36	"	20 cars	"	"	"	4⅝ — 4⅞	"
9-11-36	"	15 cars	"	"	"	4⅝ — 4⅞	"
**9-17-36	"	15 cars	"	69-70 Octane (Regular Grade)	"	5½ — 5.85	68-70 Octane
*10- 2-36	"	25 cars	"	62 Oct. & below (Third Grade)	Average of lows Chgo. Jrnl. of Com. & Platt's Oilgram date of shipment f. o. b. Group 3, Okla.	4½ — 4⅝	62 Octane and below

12-10-36	"	25 cars	"	"	"	4¾	"
12-14-36	"	25 cars	"	"	"	4¾	"
		925 cars					

* In these instances the written memorandum of agreement was dated subsequent to actual purchase.

** In these instances memorandum of agreement was dated prior, either in error or due to purchase reported by telephone, and later telegram.

x Chicago Journal of Commerce does not publish a summary of prices quoted on basis of f. o. b. Group 3 by refiners in No. Texas District.

xx For comparable grade

"Flat" price sales were for shipment within 30 days

6005 That said gasoline tabulated above was shipped to Standard Oil Company's (Indiana) own bulk stations, and hence distributed by the company to its own dealer and consumer accounts.

6006 GOVERNMENT EXHIBIT NO. 985.

Telegram

Electra, Texas
Mr. A. V. Bourque July 10, 1935
Western Petroleum Refiners Assn.
Tulsa, Oklahoma

Stocks June first seven five eight naught six production June three six eight three six shipments June four five three ten stocks July first six seven three three one stocks July tenth seven four naught six four shipments July first to tenth one ten eight one production July first to tenth out of proportion to shipments because have operated continuously we usually run first eighteen days of month and shut down balance of month July sales to group Barnsdall ten cars Standard of Indiana fifteen Pure twelve Continental five.

Waggoner Refining Co. Inc.

6007 GOVERNMENT EXHIBIT NO. 986.

Letterhead of Dale W. Moore Oil Co., Tulsa

Waggoner Refining Co., Inc. October 2, 1935
Vernon, Texas

Attention: Mr. Dave Gray

Dear Dave:

I have been talking to the Group the past day or two regarding some help on motor gasoline at 4⅝¢, Group 3.

Yesterday they wanted to know if this was Waggoner material and I said, yes. They informed me they understood you did not need any further help in addition to what they were already giving you.

Incidentally, I advised them this was material which I had coming from you under certain agreement and I was having some difficulty in moving all surplus to my jobbing trade unless I cut the price. They would prefer that I endeavor to move this material without calling on them for help, but advised that possibly within the next week when new allocations are arranged with regard to buying they might then be of some assistance.

I am giving you this information for what it may be worth to you.

With kindest regards, I am,

Yours very truly
Dale W. Moore Oil Co.
Dale W. Moore

6008 DEFENSE EXHIBIT NO. 988.

Department of the Interior
Washington, D. C.

January 6, 1938

Pursuant to Title 28, Paragraph 661, United States Code, I hereby certify that the annexed papers are true copies of the original order appointing Charles Fahy as Chairman of the Petroleum Administrative Board, succeeding Nathan R. Margold, and the sheet describing the duties of the position of Chairman of the Petroleum Administrative Board when occupied by Mr. Nathan R. Margold as they appear in the records and files of the Department of the Interior. The duties of the position of Chairman of the Petroleum Administrative Board when occupied by Mr. Charles Fahy were the same as when it was occupied by Mr. Nathan R. Margold.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

Harold L. Ickes
Secretary of the Interior

6009 (Last Name) Margold (First Name) Nathan (Middle Initial) R. (Department or Unit) Petroleum Administrative Board, Department of the Interior.

Title or Position Chairman Date of Appointment Jan. 24, 1934 Annual Salary $9,000 gross.

Local Home Address 2145 C Street N. W. Phone National 5848 State of Legal Residence New York.

Education—State Number of Years:

Grade School	8
High School	4
College	4
Business School	......
Correspondence School	......
School (Law)	3

Age 34 Married

Appointed at Request of: Secretary of the Interior, Harold L. Ickes.

Or Endorsed by ______________________

Last Government Service Department Justice Position Assistant United States Attorney Date Released Sept. 1928. Annual Salary $3,000.

Last Position Other Than Government Service Company Attorney in private law practice Date Released .... Annual Salary

Is Your Husband or Wife in Government Service No If so Where Employed .... Annual Salary ....

Describe Duties Now Being Performed: Executive chief attorney and senior executive officer of the Petroleum Administrative Board, charged by the Secretary of the Interior with executive direction of and responsibility for the Board's actions in connection with the administration and enforcement of the Code of Fair Competition for the Petroleum Industry. Exceptionally wide latitude for independent or unreviewed action or decision on complex legal and administrative questions and functions as deputy administrator of the oil industry.

Primarily responsible as the professional head of a large group of attorneys of several grades, engaged in responsible legal work covering an exceptionally wide range of difficult subject matter, including almost every conceivable type of legal case from routine work to the most difficult, very important and extremely complex cases involving the validity of policies established by the Secretary of the Interior and the President and the constitutionality of the National Industrial Recovery Act and regulations promulgated thereunder by the President and the Secretary.

Responsible to the Secretary for the functioning of the Petroleum Administrative Board and the difficult complexities of the work it does which is of vital importance to the national welfare. Administrative duties requiring virtually unlimited exercise of independent judgment with respect to organization and expenditures as Chairman of the Petroleum Administrative Board which is charged with advising and consulting with the Secretary of the Interior in carrying out the highly momentous policies decided upon in the conservation and utilization of the national petroleum resources. Holds hearings and conferences and carries on correspondence in connection with the most important of these matters.

Chairman.

6010 DEFENSE EXHIBIT NO. 989.

6011 Stipulation

It Is Hereby Stipulated that J. W. Steele, Chairman of the Federal Tender Board No. 1 at Kilgore, Texas, if called as a witness in the above entitled action, would testify that the records of said Federal Tender Board show the names of those East Texas refineries operating on federal tenders during the months between March 1, 1935 and December 31, 1936, inclusive, to be as set forth in Exhibit A hereto annexed.

6012

EXHIBIT A.

EAST TEXAS REFINERIES OPERATING ON FEDERAL TENDERS

March 1, 1935 to December 31, 1936
(By Plants By Months)

Plant	Location	Months Operated On Federal Tenders
Alton	Gladewater	June—July 1935
Arrow	Overton	March—May 1935
Beacon	Henderson	March—November 1935 inclusive January—March 1936 inclusive May 1936
Cascade	Kilgore	August—December 1935 inclusive January—June 1936 inclusive August—December 1936 inclusive
Century	Arp	April—November 1935 inclusive
Chief	Gladewater	March—December 1935 inclusive
Condor	"	June—July 1935
Central	"	January—February 1936
Danciger	Longview	February—December 1936 inclusive
Dominant	Kilgore	October—November 1935
East Texas Cracking	Greggton	June—July 1935
East Texas	Longview	March—December 1935 inclusive January—December 1936 inclusive
Gilliland	Gladewater	March—September 1935 inclusive January—March 1936 inclusive
Plant name changed to—		
General American	Gladewater	June—December 1936 inclusive
Gilliland	Overton	June—December 1935 inclusive January—May 1936 inclusive

6013

Plant	Location	Months Operated On Federal Tenders
Plant name changed to—		
General American	Overton	June—December 1936, inclusive
Gilmer	Gladewater	May 1935
Gilliland	Arp	April—May 1936
Plant name changed to—		
General American	Arp	June—December 1936 inclusive
Hurricane	Overton	August—December 1935 inclusive January—December 1936 inclusive
Hurricane	Arp	May—December 1936 inclusive
Johnston-Burnham	Kilgore	June—August 1935 inclusive
Plant name changed to—		
Kilgore	Kilgore	August—December 1936 inclusive
La Pren	"	March—June 1935

Plant	Location	Months Operated On Federal Tenders
Lone Star	Gladewater	March—April 1935 inclusive
Lyle	Henderson	July—September 1935 inclusive
Matthews	Gladewater	September—October 1935
McMurray	Arp	June—September 1935 inclusive November—December 1935 January—May 1936 inclusive
Ocean	Kilgore	July—December 1935 inclusive January—February 1936 April 1936
Oil	Overton	March—July 1935 inclusive
Overton	"	May 1935
6014		
Petroleum Cracking	Greggton	December 1935
Premier	Willow Springs	July—December 1935 inclusive January—December 1936 inclusive
Riverside	Gladewater	July—August 1935
Swastika	Kilgore	March—April 1935
Southport	"	March—December 1935 inclusive
Solvex	Gladewater	November—December 1935 inclusive January—December 1936 inclusive
Sinclair	"	March..December 1935 inclusive January—December 1936 inclusive
Texas Oil Products	"	March—December 1935 inclusive January—May 1936 inclusive
Texover	Overton	March—July 1935 inclusive
Trinity	Gladewater	December 1935 January—October 1936 inclusive December 1936
Trio	Arp	March—December 1935 inclusive January—April 1936 inclusive
Tyreco #1	"	March—April 1935
Tyreco #2	Overton	March 1935 May—December 1935 inclusive January—March 1936 inclusive
Tower	"	March—December 1936 inclusive
Utah	Kilgore	April 1935
Wabash	Gladewater	June—October 1935 inclusive

6015 DEFENSE EXHIBIT NO. 990.

6016 It Is Hereby Stipulated that James D. Miller, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Dickey Oil and Refining Company by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Dickey Oil and Refining Company, are as set forth in Exhibit A hereto annexed; and that said records further show that during 1934 73.1% of the total gasoline sold by the Company was shipped by truck, and 26.9% was shipped by tank car, and that during the first two months of 1935 58.7% of the total gasoline sold by the Company was shipped by truck and 41.3% was shipped by tank car.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

6017 EXHIBIT A

Dickey Oil and Refining Co.

Gasoline Production and Sales
In Gallons
January 1st, 1934 through December 31, 1936

1934	Gasoline Production	Gasoline Sales
January	549,570	864,150
February	1,196,160	601,734
March	736,092	1,023,834
April	1,019,508	950,334
May	1,091,790	1,178,898
June	1,105,902	1,391,208
July	1,226,988	1,224,258
August	769,902	956,004
September	1,463,826	1,052,226
October	502,530	853,398
November	743,904	759,696
December	1,085,154	1,199,310
	11,491,326	12,055,050

Defense Exhibit No. 990.

	Gasoline Production	Gasoline Sales
1935		
January	929,208	678,804
February	947,748	1,194,816
March	1,076,536	1,149,002
April	1,311,232	1,151,630
May	1,627,800	1,566,900
June	1,428,572	1,450,396
July	1,333,732	1,477,036
August	1,457,036	1,274,294
September	1,508,767	1,416,577
October	1,463,893	1,466,867
November	661,710	898,537
December	1,522,738	1,002,590
	15,268,972	14,727,449
1936		
January	1,103,512	1,066,217
February	482,089	803,896
March	1,371,389	1,393,835
April	1,292,768	1,325,993
May	1,161,722	1,256,050
June	1,200,850	1,252,398
July	1,554,977	1,394,342
August	1,219,495	1,207,671
September	1,346,518	1,143,468
October	1,244,982	1,139,819
November	982,031	1,169,847
December	993,405	952,864
	13,953,738	14,106,400

6018 DEFENSE EXHIBIT NO. 991.

6019 It is hereby stipulated that M. A. Chambers of Panhandle Producing & Refining Company, of Wichita Falls, Texas, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Panhandle Producing & Refining Company by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Panhandle Producing & Refining Company, are as set forth in Exhibit A hereto annexed.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

6020 EXHIBIT A.

Panhandle Producing and Refining Company
Wichita Falls, Texas

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	2,134,792		2,107,987
February	2,331,290		2,010,138
March	2,282,806		2,680,740
April	1,726,574		1,778,399
May	2,321,706		2,568,099
June	2,700,516		2,386,723
July	2,370,450		2,178,563
August	2,219,849		2,392,647
September	2,288,534		2,181,195
October	2,281,682		1,955,401
November	1,829,963		1,900,936
December	2,030,991		2,165,014
Total 1934	26,519,153		26,305,842

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
January	2,043,967		1,856,829
February	1,637,989		2,258,673
March	2,743,299		2,361,174
April	2,314,530		2,691,379
May	2,579,281		2,461,253
June	2,720,712		2,680,578
July	2,792,184		2,933,285
August	2,770,105		2,591,536
September	2,639,419		2,560,623
October	2,358,607		2,445,490
November	2,475,739		2,237,168
December	2,393,818		2,382,990
Total 1935	29,469,650		29,460,978
1936			
January	2,267,340		2,598,968
February	2,177,280		1,862,655
March	2,252,558		2,609,890
April	2,835,473		2,668,041
May	3,017,465		2,829,796
June	3,317,820		3,441,631
July	3,524,459		3,341,500
August	3,168,772		3,291,397
September	2,968,503		2,705,855
October	3,146,065		3,407,614
November	2,993,703		2,710,392
December	2,634,676		2,758,819
Total 1936	34,304,114		34,226,558

	Total Sales	Sales to Own Bulk Plants	Per Cent	Other Sales	Per Cent
1934	26,305,842	10,891,710	41.4	15,414,132	58.6
1935	29,460,978	12,634,039	42.9	16,826,939	57.1
1936	34,226,558	17,440,474	51.0	16,786,084	49.0

6021 DEFENSE EXHIBIT NO. 992.

6022 It Is Hereby Stipulated that M. P. Appleby, Vice-President and Treasurer of Wilcox and Gas Company of Tulsa, Oklahoma, if called as a witness in the above entitled action, would testify that the quantities of gasoline manufactured and sold by Wilcox Oil and Gas Company by months from January 1, 1934 to December 31, 1936, inclusive, as reflected by the books and records of Wilcox Oil and Gas Company, are as set forth in Exhibit "A" hereto annexed; that during the above years approximately sixty-seven (67%) percent of the gasoline sold by the company was distributed through its bulk stations which were located in Texas, Oklahoma, Missouri and Kansas; and that during the months of April, May and June 1934, the company was not operating its refinery.

As so stipulated, said figures are received in evidence in the above entitled action without objection.

6023 EXHIBIT A.

H. F. Wilcox Oil & Gas Company
Tulsa, Oklahoma

	Gasoline Production	(In Gallons)	Gasoline Sales
1934			
January	2,055,438		2,151,240
February	1,182,048		1,363,446
March	2,530,542		1,872,612
April	17,472	(Shown in red)	1,001,910
May	5,292	" " "	273,294
June	9,954	" " "	31,752
July	486,654		132,468
August	1,498,518		1,096,998
September	1,990,128		1,181,628
October	1,169,490		1,342,362
November	1,795,794		1,751,862
December	1,535,142		1,345,890
Total 1934	14,211,036		13,545,462

Defense Exhibit No. 992.

	Gasoline Production	(In Gallons)	Gasoline Sales
1935			
January	1,842,414		1,211,616
February	1,101,996		1,525,818
March	524,328		1,004,892
April	30,576		1,151,892
May	1,023,540		809,886
June	1,771,560		1,647,618
July	2,292,822		2,269,092
August	1,908,648		1,774,500
September	2,069,214		2,094,876
October	1,804,362		1,930,446
November	1,895,544		1,451,562
December	2,079,546		1,928,304
Total 1935	18,344,550		18,800,502
1936			
January	1,959,216		1,882,944
February	1,912,344		1,429,260
March	1,720,740		1,905,624
April	2,047,920		1,963,878
May	2,128,224		2,220,036
June	1,293,642		2,338,602
July	2,337,804		2,314,158
August	2,349,480		1,939,686
September	1,780,716		2,093,028
October	1,956,234		1,816,290
November	1,674,582		1,795,458
December	1,921,668		1,884,162
Total 1936	23,082,570		23,583,126

6024 DEFENSE EXHIBIT NO. 993.

For Identification.

(Certified by the Department of the Interior to be copy of a letter dated April 30, 1935, signed by Paul G. Blazer and addressed to Charles Fahy.)

6025 Ashland Refining Company
Incorporated
Ashland, Kentucky

April 30, 1935.

Mr. Charles Fahy, Chairman
Petroleum Administrative Board
Department of the Interior,
Washington, D. C.

Dear Mr. Fahy:

Referring to your wire of yesterday inquiring as to whether it would be agreeable to our Committee for you to publish the substance of our recent exchange of telegrams, I have communicated with a majority of the members of the Committee and have obtained their approval.

It has been suggested, though, that it be clearly understood that our Committee in going on record that there is no need for a reduction in crude oil prices at this time is acting on the belief that small additional advances will be made in both tank-car and retail prices of gasoline.

It appears to be the opinion of a majority of the Committee that at least another quarter cent advance in tank-car prices is essential and that if such an advance should not occur within the near future, a decline of approximately 5¢ per barrel should be made in crude oil prices.

A tank-car price of 5.4¢ for gasoline figures approximately $1. per barrel for crude oil on the basis of 1 to 18.5 ratio, but attention has been called to the fact that the 63-70 octane gasoline, which is now quoted at 5⅜¢ average price, is a better quality product than that on which the 18.5 to 1 ratio was based. In fact, except for an error in the original calculations, the ratio would have read 17.8 to 1. Also, it is pointed out that quotations for ordinary U. S. Motor gasoline (comparable to present bracket of below 62 octane gasoline) were used during a part of the period on which the calculations were based.

The foregoing might indicate that an advance of more

than ¼¢ per gallon in tank-car prices is proper, but I
6026 believe that refiners should be satisfied with a full quarter cent.

As you know, retail prices have not advanced equally in all areas. In some territories prices have advanced a full 1¢ above the levels which prevailed at the time our report was written, but in other sections there has been no advances, I believe; in Standard of Indiana territory, where retail prices bear an especially close relationship to Mid-Continent tank-car prices and crude oil prices, the advance, I believe, has been only .6¢.

Our Committee has been very much pleased with the success of the program to stabilize tank-car markets. We believe it has been handled in a manner calculated to benefit the non-integrated refiners and without disadvantage to marketers. Of course, the real question is whether, after parity of gasoline and crude oil prices has been obtained, they can be maintained without excessive continued buying by the major companies. It is the opinion of our Committee that the final answer to that question will be determined by the effectiveness of efforts to balance crude oil supply and demand. I believe I can speak for our entire Committee when I say that we believe fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil.

Cordially yours,
(sgd) Paul G. Blazer.

PGB*MEH

6027 DEFENSE EXHIBIT NO. 994.

For Identification.

(Certified by the Department of the Interior to be copy of duplicate original of a letter dated May 7, 1935, sent by the Chairman of the Petroleum Administrative Board to Paul G. Blazer.)

6028

DEPARTMENT OF THE INTERIOR
Petroleum Administrative Board
Washington

May 7, 1935.

Mr. Paul G. Blazer, President,
Ashland Refining Company,
Ashland, Kentucky.

My dear Mr. Blazer:

I am writing to acknowledge your letter of April 30 and to express my appreciation of your courtesy in having the Committee render its informal opinion regarding the present relationship between crude oil prices and prices of petroleum products. The substance of the telegrams which we exchanged, amplified somewhat by your letter, has been included in a press statement prepared for today's release.

I am enclosing a sufficient number of copies of this statement so that you may forward a copy to each member of your Committee, should you so desire. I wish to assure you that particular care was taken to have this statement reflect properly the informal opinion of your Committee.

Yours sincerely,
Signed personally
Chairman.
May 7, 1935.

C

6029 DEFENSE EXHIBIT NO. 995.

Letterhead of Administrator for the Petroleum Industry,
Washington.

Mar. 30, 1935.

Mr. B. P. Lientz,
B. P. Lientz & Company,
3409 East 18th Street,
Kansas City, Missouri.

My dear Mr. Lientz:

In response to your letter of March 22 I am enclosing a copy of the report of the Petroleum Code Survey Committee on Small Enterprise, which I believe will be of interest to you.

Although you state that it is difficult for you to be specific and analyze the situation in a letter because of the likely repetition of information, it occurs to me that after you have read the report of the Committee on Small Enterprise you may have other instances of small enterprise abuse which you may care to relate.

You referred to a meeting about a year ago at which Mr. Howard Bennette discussed the poor marketing practices of the oil industry before a group of oil executives. I have inquired as to whether we had a representative at such a meeting and have been informed that the Petroleum Administrative Board has no information on that meeting. Since Mr. Bennette has died any record of the meeting probably passed with his memory. I am, however, of the opinion that Mr. Bennette was thoroughly alive to the poor marketing practices of the industry, and quite likely any statement which he made would bear out a very substantial amount of the comment made by the Committee on Small Enterprise.

Concerning the independent refiners, other than those in California, it appears from the report of the Committee on Small Enterprise that the outstanding difficulty is due to the disparity between posted crude oil prices and refinery realizations. This situation has been deplorable for many months, but it is my understanding that at present the activity of the Stabilization Committees is having a distinct effect in the improvement of refinery prices, and that
6030 were it not for old contracts, many of which are badly shaded with respect to the posted price, the independent refiner is approaching a normal market structure.

In California the refiners' prices of gasoline have not been particularly subnormal at any time since the Agreement became effective. There, however, has been complaint of the lack of differentials, and that problem is receiving consideration.

As I stated in my letter of March 6, I appreciate your interest in the petroleum problem and I should like to have your personal comments when you visit Washington if it is possible for me to free myself from other demands. Should I be unable to see you, please call on Mr. Charles Fahy, Chairman of the Petroleum Administrative Board, who will gladly discuss the problems of the industry with you, and who will report to me anything with which I am not already conversant.

Sincerely yours,
Harold L. Ickes,
Administrator.

Inclosure

6031 DEFENSE EXHIBIT NO. 996.

Telegram.

Washington, D. C.
January 6, 1938

R A Irvine
No 1 West Main St
Madison Wis

Allocation of positions to salary grades based on job sheets, certified copies of which were forwarded you yesterday, describing duties of John W. Frey, Edward B. Swanson, Norman L. Meyers and J. Howard Marshall as members of Petroleum Administrative Board, effective as of February 1, 1935, was approved by me January 28 1935

Harold L. Ickes,
Secretary of the Interior.

6032 DEFENSE EXHIBIT NO. 997.

6033 It is hereby stipulated that Harold F. Parsons if recalled by the defense would testify as stated on the annexed sheet entitled "Tide Water Oil Company of N. J." and that he would testify that the schedules annexed to said statement (consisting of five pages of typewritten matter) contain true and accurate data taken from the records of the companies referred to on said schedules. Dated, January 11, 1938.

6034 Tide Water Oil Company of N. J.

To supply the gasoline requirements of its market outlets on the Atlantic Seaboard, Tide Water Oil Company (N. J.) owned and operated only one Refinery, that located at Bayonne, N. J.

For the last ten years and longer, Tide Water's Bayonne Refinery has been operated at its maximum capacity without exception for any period.

In no one year was the Bayonne Refinery able to produce enough gasoline to meet Tide Water's sales requirements of its Branded Gasoline.

Over the last ten years ending in 1936, Tide Water's sales of Branded Gasolines exceeded the Bayonne Refinery production of gasoline by an average of 29.5%.

Over the last five years, though the capacity and actual gasoline production of the Bayonne Refinery has been stepped up steadily, it has been necessary in order to meet sales requirements to supplement this production by purchases of different grades of gasoline totaling 32% of Tide Water's sales in 1932, 23% in 1933, 19% in 1934, 14% in 1935 and 16% in 1936.

Tide Water's sales of gasoline on the Eastern Seaboard totaled 341,700,000 gallons in 1932, 356,500,000 gallons in 1933, 372,500,000 gallons in 1934, 380,500,000 gallons in 1935 and 406,700,000 gallons in 1936.

6035

TIDE WATER OIL COMPANY OF N. J.

Total Refinery Gasoline Production and Eastern Seaboard Sales

	Production of Gasoline Bayonne Refinery		Sales of Gasoline Eastern Div.		Intra-Company* Consumption	Shortage** Prod.-Sales, etc.	Purchase of Gasoline All Grades		Inventories of Gasoline End of Year		
	Total Bbls.	% Increase	Total Bbls.	% Increase	Barrels	Barrels	Tot. Bbls.	% of Sales	Total Bbls.	Days Supply***	Increase Bbls.
1932	5,582,394		8,136,474		103,391	2,657,471	2,583,782	31.8	795,001	36	(Red) 73,689
1933	6,771,725	21.3	8,489,177	4.3	144,344	1,861,796	1,922,398	22.6	855,603	36	60,602
1934	7,538,843	11.2	8,869,883	4.5	226,727	1,557,767	1,693,590	19.1	991,426	40	135,823
1935	7,909,985	4.9	9,060,079	2.1	185,769	1,335,773	1,302,664	14.3	958,317	38	(Red) 33,109
1936	8,383,704	6.0	9,682,610	6.9	132,333	1,431,239	1,534,338	15.8	1,061,416	40	103,099

NOTES:—

*Intra-Company Requirements—Includes Sales Depts. and Refinery Trucks and Automobiles consumption and Evaporation and Handling Losses.

**Shortage—Difference between Refinery Production and Sales plus Intra-Company Requirements.

***Days Supply—Calculated on Average Day's Sales for the Year.

	Gasoline Sales—% Ratios				Gasoline Sales—% Distribution		
	Ethyl (Premium)	Tydol (Regular)	Tidex (3rd Grade)	Total (Branded)	Direct	Jobbers	Total
1932	8.7	89.8	1.5	100.0	71.0	29.0	100.0
1933	4.8	90.3	4.9	100.0	70.4	29.6	100.0
1934	4.3	91.8	3.9	100.0	69.2	30.8	100.0
1935	4.6	93.2	2.2	100.0	66.8	33.2	100.0
1936	6.2	90.9	2.9	100.0	64.1	35.9	100.0

12/27/37

6036

Inventories—All Grades of Gasoline

	1931	1932	1933	1934	1935	1936
Finished Gasoline Inventory, 12/31	788,341	743,040	783,632	962,924	832,591	1,024,509
Natural	80,349	51,961	71,971	28,502	125,726	36,907
Total Eastern Inventory	868,690	795,001	855,603	991,426	958,317	1,061,416
Eastern Gasoline Sales—Total		8,136,474	8,489,177	8,869,883	9,060,079	9,682,610
Per Day		22,231	23,258	24,301	24,822	24,455
Year-End Inventory: Day's Supply Basis of Year's Average Per Day		36	38	40	38	40

12/27/37

TIDEWATER OIL COMPANY OF N. J.

Inventories—Finished Gasoline

Bayonne Refinery, Water Terminals and Bulk Plants

	Total Barrels	Day's Supply*
December 31, 1931	788,341	47
December 31, 1932	743,040	45
December 31, 1933	783,632	41
December 31, 1934	962,924	57
December 31, 1935	832,591	45
December 31, 1936	1,024,509	49

	1935		1936	
	Total Barrels	Day's Supply*	Total Barrels	Day's Supply*
January	1,150,652	68	1,010,756	60
February	1,420,001	68	1,145,886	56
March	1,446,668	62	1,238,624	50
April	1,424,549	56	1,420,725	49
May	1,380,733	50	1,322,237	45
June	1,346,921	45	1,335,282	40
July	1,269,774	41	1,214,317	38
August	1,165,602	43	1,151,054	37
September	1,086,681	39	1,034,593	36
October	923,615	34	1,030,318	38
November	826,097	34	1,010,918	39
December	832,591	45	1,024,509	49

NOTE:—*Day's Supply—Calculated on Average Day's Sales for the Ensuing Month.
12/27/37

Natural Gasoline Inventories not Included
Total Barrels

December 31, 1931	80,349
December 31, 1922	51,961
December 31, 1933	71,971
December 31, 1934	28,502
December 31, 1935	125,726
December 31, 1936	36,907

Natural Gasoline Inventories Not Included

1935 Total Barrels	1936 Total Barrels
32,975	81,064
59,157	72,696
47,864	135,460
106,696	134,770
105,995	133,325
98,608	123,612
72,101	110,181
27,255	83,067
28,924	23,717
1,212	71,774
52,837	56,390
125,726	36,907

6038

TIDE WATER OIL COMPANY OF N. J.
TIDE WATER OIL COMPANY OF OKLA.

	Net Crude*	Refinery Crude Runs**			
		Bayonne	Drumright	Total	
	Production Bbls. Per Day	Bbls. Per Day	Bbls. Per Day	Bbls. Per Day	% Produced
1932	14,872	39,761	7,806	47,567	31.2
1933	22,963	42,392	9,100	51,492	44.5
1934	22,278	44,924	9,795	54,719	40.7
1935	26,828	47,693	10,781	58,474	45.9
1936	31,138	52,594	10,981	63,575	48.9

NOTE:—

*Crude Production: All Crude was produced by Tide Water Oil Company of Okla. with exception of Pennsylvania Crude—amounting to less than 1,000 barrels per day—produced by Tide Water Oil Company of N. J.

**Refinery Crude Runs: By the Bayonne, N. J. Refinery of Tide Water of N. J. and the Drumright, Oklahoma Refinery of Tide Water of Okla.

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6039

TIDE WATER OIL COMPANY OF OKLA.

Drumright, Oklahoma Refinery
Gasoline Production, Purchases and Inventories Mid-Continent Division—
Gasoline Sales

	In Barrels Finished Gasoline Production (Includes Natural Blended)		
	1934	1935	1936
January	198,060	176,659	237,648
February	174,177	164,272	223,092
March	170,775	192,731	175,771
April	220,351	196,983	194,660
May	181,907	209,798	215,267
June	244,223	212,285	219,438
July	206,269	237,417	235,030
August	217,315	262,102	258,132
September	218,125	260,273	272,017
October	207,521	258,548	260,717
November	215,118	243,265	260,346
December	201,392	180,745	140,114
Total	2,455,233	2,595,078	2,692,232
(Natural Gasoline (Blended Included Above	331,068	382,055	481,430)

Defense Exhibit No. 997.

	Finished Gasoline Sales		
	1934	1935	1936
January	212,982	164,340	198,210
February	170,981	160,437	146,025
March	188,311	190,861	202,490
April	191,048	217,816	237,061
May	217,568	220,866	246,710
June	228,219	230,246	260,341
July	234,476	279,000	276,325
August	233,549	283,225	259,681
September	210,393	248,458	255,420
October	230,055	249,990	253,250
November	227,249	212,639	221,320
December	173,827	191,402	209,085
Total	2,518,658	2,649,280	2,765,918

Gasoline Sales—% Grades

	Ethyl (Premium)	Tydol (Regular)	Tidex (3rd Grade)	Total
1932	9.7	72.2	18.1	100.0
1933	3.6	75.1	21.3	100.0
1934	1.7	80.7	17.6	100.0
1935	1.2	86.2	12.6	100.0
1936	1.3	88.5	10.2	100.0

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6040

Motor Gasoline Purchases			Natural Gasoline Purchases		
1934	1935	1936	1934	1935	1936
2,020	1,584	1,312	28,515	27,329	50,325
3,883	2,856	1,587	24,706	31,456	42,165
6,935	2,215	2,260	24,187	20,018	40,742
4,402	1,816	1,541	25,369	21,019	45,337
3,488	6,161	1,307	14,046	23,199	35,189
11,673	1,487	1,689	18,182	24,293	32,117
16,666	3,993	1,539	13,187	29,171	34,906
10,875	2,671	1,448	20,284	30,168	46,599
9,177	3,153	1,451	29,093	32,593	52,475
9,210	1,734	1,415	37,815	35,722	56,759
3,883	1,403	1,448	48,724	46,350	46,157
3,252	1,645	1,950	42,697	50,577	51,655
85,464	30,718	18,947	326,805	380,895	534,426

Finished Gasoline Inventories: Barrels			Day's Supply*		
1934	1935	1936	1934	1935	1936
99,464	130,857	145,581	14	25	23
102,071	138,072	232,071	17	25	46
89,261	140,762	205,024	15	23	32
122,214	120,738	171,286	19	17	22
89,143	110,571	141,048	13	16	18
117,452	96,334	103,571	15	13	12
103,881	58,548	64,357	14	6	7
96,667	46,381	64,881	13	5	8
112,928	62,524	83,071	16	8	10
97,000	64,714	98,762	13	8	12
88,643	109,929	134,262	12	16	18
[illegible]	101,524	67,596	21	17	10

Gasoline Sales—% Distribution

Direct	Jobbers	Total
9.4	90.6	100.0
11.5	88.5	100.0
10.2	89.6	100.0
8.8	91.2	100.0
9.3	90.7	100.0

NOTE:—*Day's Supply—Calculated on Average Day's Sales for the Ensuing Month.

12/27/37

6041 DEFENSE EXHIBIT NO. 998.

Stipulation as to the testimony of R. E. Everitt, Secretary of the Globe Oil & Refining Company (Oklahoma), Assistant Secretary of the Globe Oil & Refining Company (Kansas) and (Illinois), and chief accounting officer of the Globe Oil & Refining Company (Oklahoma) and (Kansas) authenticating Exhibits 999, 1000, 1002, 1003; setting out:

That minimum working stocks as determined by the Code Authority under the Petroleum Code, for The Globe Oil and Refining Company (Illinois) was 45,000 barrels; and for the Globe Oil & Refining Company (Oklahoma) and The Globe Oil & Refining Company (Kansas) combined, was 68,000 barrels.

That in 1935 and 1936 none of the Globe Oil and Refining Companies owned, controlled or operated any service stations, bulk plants or other marketing facilities; nor owned, controlled or operated any pipe-lines except local gathering systems in the fields adjoining their respective refineries.

6042 DEFENSE EXHIBIT NO. 999.

6043 **THE GLOBE OIL & REFINING COMPANY**
Oklahoma

Gasoline Production, Purchases, Shipment & Inventory 1-1-33 to 8-31-37
Purchases

Date	Gasoline Production Barrels	Refined Gasoline Barrels	Natural Gasoline Barrels	Gasoline Shipments Barrels	Gasoline Inventory Barrels
1933					
Jan......	85,750		5,819	98,808	91,031
Feb......	83,113		5,176	109,846	68,044
Mar......	100,692		5,981	106,410	69,737
Apr......	86,182	8,677	7,253	126,317	45,532
May......	92,991	4,030	3,255	101,469	44,339
June......	83,415	6,843	2,946	119,470	18,073
July......	93,498	11,940	5,638	94,359	34,790
Aug......	101,771	768	7,522	114,217	30,634
Sept......	94,780	10,459	11,991	91,668	56,196
Oct......	92,683		13,144	80,383	81,640
Nov......	66,422		6,277	69,275	85,064
Dec......	56,718	567	9,021	60,356	89,880
	1,038,015	42,150	84,023	1,172,578	
1934					
Jan......	87,975		14,786	87,950	104,691
Feb......	83,142		7,979	67,469	128,343
Mar......	68,999		9,035	78,905	127,472
Apr......	74,187		11,708	90,841	122,526
May......	69,074		10,953	84,732	117,821
June......	38,438		9,658	67,591	98,326
July......	79,628		14,780	102,501	90,233
Aug......	33,108		8,053	61,305	70,089
Sept......	7,012		8,105	49,794	35,412
Oct......	48,087		14,089	76,842	20,746
Nov......	30,699		7,165	36,865	21,745
Dec......	702		1,360	14,653	7,750
	619,647		117,671	819,448	
1935					
Jan......	335			3,283	4,132
Feb......	250	2,541		2,594	3,829
Mar......	466	15,688	193	16,324	2,920
Apr......	706	23,959		22,101	4,072
May......	39,414	11,337	8,231	36,427	26,627
June......	89,797	386	9,962	69,921	56,851
July......	84,129		18,142	114,286	44,836
Aug......	77,302	2,853	9,804	92,943	41,852
Sept......	66,882		12,523	88,958	32,299
Oct......	63,707		12,533	77,421	31,118
Nov......	70,603		9,502	53,647	57,576
Dec......	76,741		10,506	45,899	98,924
	566,818	56,764	91,396	623,804	

Defense Exhibit No. 999.

THE GLOBE OIL & REFINING COMPANY
Oklahoma

Gasoline Production, Purchases, Shipment & Inventory 1-1-33 to 8-31-37
Purchases

Date	Gasoline Production Barrels	Refined Gasoline Barrels	Natural Gasoline Barrels	Gasoline Shipments Barrels	Gasoline Inventory Barrels
1936					
Jan.	69,244		8,027	41,091	135,104
Feb.	980		588	6,078	128,634
Mar.	879		966	21,973	106,748
Apr.	72,489		21,931	113,430	87,738
May.	82,918		7,802	72,213	106,245
June.	71,476		4,524	88,358	93,887
July.	67,527		4,871	116,268	50,017
Aug.	71,418		5,275	99,434	27,276
Sept.	81,009		6,141	64,688	48,738
Oct.	6,050		6,517	30,433	30,872
Nov.	655		2,904	9,820	23,301
Dec.	190		1,946	13,233	11,824
	519,427		70,492	677,019	
1937					
Jan.	71,283		4,092	12,868	74,331
Feb.	72,621		12,489	28,993	130,448
Mar.	87,577	974	9,714	133,873	94,840
Apr.	90,531		8,329	106,004	87,696
May.	99,142	19,132	9,626	149,654	65,942
June.	94,066		2,608	111,691	50,925
July.	90,074		8,636	115,668	33,967
Aug.	95,493		12,336	112,258	29,538
	700,787	20,106	67,830	771,009	

6044

THE GLOBE OIL AND REFINING COMPANY

Illinois

Gasoline Production, Purchases, Shipments and Inventory. 1-1-33 to 8-31-37

		Purchases			
Date	Gasoline Production Barrels	Refined Gasoline Barrels	Natural Gasoline & Benzol	Shipments Gasoline Barrels	Inventory Gasoline Barrels
1933					
Jan.....	102,267		6,312	113,580	54,499
Feb.....	86,261	976	5,630	105,287	42,079
Mar.....	118,771	977	4,851	122,392	44,286
Apr.....	96,339	12,721	7,319	129,307	31,357
May.....	94,179	4,049	5,857	87,853	47,588
Jun.....	67,696	3,933	7,648	75,262	51,603
July.....	135,852	566	3,650	170,599	21,072
Aug.....	149,898	6,965	5,976	165,649	18,262
Sept.....	138,878	28,700	5,788	145,464	46,166
Oct.....	188,999		4,161	191,264	48,062
Nov.....	113,499	9,606	6,271	139,800	37,638
Dec.....	126,648		4,670	117,532	51,424
Total..	1,419,287	68,493	68,133	1,563,989	
1934					
Jan.....	131,856		3,115	157,539	28,856
Feb.....	145,915		11,213	126,902	59,082
Mar.....	133,275		9,455	142,465	59,347
Apr.....	160,235	193	16,074	181,066	54,783
May.....	166,065	1,145	11,723	188,793	44,923
June.....	158,842	3,609	7,462	164,398	50,438
July.....	177,744		10,430	204,040	34,572
Aug.....	176,173		10,224	186,143	34,826
Sept.....	157,612	192	22,952	171,814	43,768
Oct.....	172,503		24,431	219,290	21,412
Nov.....	146,440	553	19,623	128,157	59,871
Dec.....	138,409		19,317	147,556	70,041
Total..	1,865,069	5,692	166,019	2,018,163	
1935					
Jan.....	143,271		14,189	129,944	97,557
Feb.....	115,959		23,787	174,719	62,584
Mar.....	165,473	3,275	16,336	202,759	44,909
Apr.....	164,550	5,216	20,248	207,052	27,871
May.....	197,383	7,900	23,069	218,046	38,177
Jun.....	171,991	13,620	23,954	217,841	29,901
July.....	196,826	6,673	28,423	232,586	29,237
Aug.....	186,188	1,332	22,871	206,431	33,197
Sept.....	185,511	2,096	21,956	186,723	56,037
Oct.....	195,789	1,147	30,595	237,727	45,841
Nov.....	152,265	4,025	25,163	201,594	25,700
Dec.....	188,134	12,472	25,896	187,730	64,472
Total..	2,063,340	57,756	276,487	2,403,152	

Defense Exhibit No. 999.

THE GLOBE OIL & REFINING COMPANY
Illinois

Gasoline Production, Purchases, Shipments & Inventory 1-1-33 to 8-31-37
Purchases

Date	Gasoline Production Barrels	Refined Gasoline Barrels	Natural Gasoline & Benzol	Shipments Gasoline Barrels	Inventory Gasoline Barrels
1936					
Jan......	172,356	2,132	14,313	143,793	109,481
Feb.....	150,326	3,346	9,247	113,554	158,846
Mar.....	147,845	2,319	22,086	208,252	122,844
Apr.....	208,123	3,653	24,402	227,101	131,921
May.....	217,619	1,910	32,181	260,818	122,813
Jun......	183,382	3,237	31,573	277,021	63,984
July.....	223,672	3,418	36,964	288,426	39,612
Aug.....	195,724	23,130	25,074	236,238	47,302
Sept.....	227,426	15,811	28,823	245,942	73,420
Oct......	249,511	2,109	48,434	286,247	87,227
Nov.....	252,226	779	41,682	236,740	145,174
Dec.....	213,853		24,128	227,942	155,213
Total..	2,442,063	61,844	338,907	2,752,074	
1937					
Jan......	233,144		21,680	199,141	210,896
Feb.....	219,008	4,327	9,623	193,293	250,561
Mar.....	214,508	12,846	32,606	288,561	221,960
Apr......	249,884	5,718	60,562	337,414	200,710
May.....	229,720	8,537	86,302	360,783	164,486
Jun......	239,099	759	55,880	334,120	126,104
July.....	259,244	20,671	68,424	329,987	144,456
Aug.....	223,091	26,936	45,330	310,891	128,922
Total..	1,867,698	79,794	380,407	2,354,190	

6045

DEFENSE EXHIBIT NO. 1000.

6046

THE GLOBE OIL & REFINING COMPANY—OKLAHOMA

Purchases of Refined Gasoline and Natural Gasoline

Jan. 1, 1930 to Aug. 31, 1937

Purchased From	Total Cars	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1930													
Bartles Maguire	1	—	—	—	—	—	—	—	—	—	1	—	—
Total Refined Gaso	1	—	—	—	—	—	—	—	—	—	1	—	—
Natural Gasoline	614	43	37	46	46	51	49	58	45	53	58	44	84
1931													
Bartles Maguire	1	—	—	—	—	—	—	—	1	—	—	—	—
Capital Prod. & Refg	5	—	—	—	—	—	—	5	—	—	—	—	—
Shell Petr. Corp	10	—	—	—	10	—	—	—	—	—	—	—	—
Kanotex Refining Co	8	—	—	—	—	—	—	8	—	—	—	—	—
Radio Petrl. Co	12	—	—	—	—	—	—	5	7	—	—	—	—
Taylor Refg. Co	50	—	—	—	—	—	—	2	48	—	—	—	—
Total Refined Gaso	86	—	—	—	10	—	—	20	56	—	—	—	—
Natural Gasoline	788	69	67	93	70	68	68	46	47	50	74	91	45
1932													
W. H. Barber Co	1	1	—	—	—	—	—	—	—	—	—	—	—
Total Refined Gaso	1	1	—	—	—	—	—	—	—	—	—	—	—
Natural Gasoline	515	58	34	45	37	38	29	28	45	39	70	64	28

6047

1933														
Cosden Oil Co.	25	—	—	—	—	—	—	25	—	—	—	—	—
Cushing Refg. & Gaso	15	—	—	—	—	—	—	15	—	—	—	—	—
Danciger Refineries	20	—	—	—	—	—	—	20	—	—	—	—	—
Dickey Refining Co	4	—	—	—	—	—	—	—	4	—	—	—	—
Empire Oil & Refg. Co	30	—	—	—	30	—	—	—	—	—	—	—	—
Johnson Oil & Refg	30	—	—	—	15	—	—	—	—	15	—	—	—
Security Petr. Co	40	—	—	—	—	—	—	—	—	40	—	—	—
J. D. Streett & Co	57	—	—	—	21	—	36	—	—	—	—	—	—
Total Refined Gaso	221	—	—	—	66	—	36	60	4	55	—	—	—
Natural Gasoline	444	30	27	31	41	17	15	30	40	63	70	33	47
1934														
No Purchases of Refined Gasoline														
Natural Gasoline	617	77	42	47	61	57	50	78	45	42	74	37	7
1935														
Cushing Refg. & Gaso	33	—	13	5	15	—	—	—	—	—	—	—	—
Eason Oil Co	25	—	—	—	25	—	—	—	—	—	—	—	—
East Texas Refg. Co	10	—	—	—	—	—	—	—	10	—	—	—	—
Marimac Oil Co	5	—	—	—	—	—	—	—	5	—	—	—	—
Omar Refining Co	206	—	—	90	100	16	—	—	—	—	—	—	—
H. F. Wilcox Oil & Gas	15	—	—	—	15	—	—	—	—	—	—	—	—
Total Refined Gaso	294	—	13	95	155	16	—	—	15	—	—	—	—
Natural Gasoline	482	—	—	1	—	43	52	95	54	66	66	50	55

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1936													
No Purchases of Refined Gasoline													
Natural Gasoline	372	42	3	5	115	41	24	26	31	28	34	13	10
1937													
Dickey Refining Co	25	—	—	—	—	25	—	—	—				
Eason Oil Co	80	—	—	5	—	75	—	—	—				
Total Refined Gas	105	—	—	5	—	100	—	—	—				
Natural Gasoline	356	23	65	50	44	50	14	45	65				

THE GLOBE OIL & REFINING COMPANY—ILLINOIS

Purchases of Refined Gasoline Natural Gasoline and Benzol

Jan. 1, 1933 to Aug. 31, 1937

Purchased From	Total Cars	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1933													
Acme Petr. Co.	19	—	—	—	—	—	—	—	19	—	—	—	—
Altitude Pet. Co.	10	—	—	—	—	10	—	—	—	—	—	—	—
American Pet. Co	54	—	—	—	—	—	5	3	26	20	—	—	—
W. H. Barber Co	9	—	—	—	9	—	—	—	—	—	—	—	—
Gustafson Bros	1	—	—	—	—	—	—	—	—	1	—	—	—
Industrial Pet. Corp	2	—	—	—	—	—	—	—	—	—	—	2	—
Johnson Oil & Refg. Co	25	—	—	—	25	—	—	—	—	—	—	—	—
Standard Oil Co.	117	—	—	—	—	—	—	—	25	50	—	42	—
J. D. Streett & Co.	33	—	—	—	—	—	10	—	23	—	—	—	—
Theisen-Clemens Co	4	—	—	—	—	—	4	—	—	—	—	—	—
Wadhams Oil Co.	53	—	5	5	43	—	—	—	—	—	—	—	—
Total Refined Gaso	327	—	5	5	77	10	19	3	93	71	—	44	—
Natl. Gas & Benzol	347	32	29	25	38	30	40	19	31	31	22	26	24
1934													
American Pet. Co	1	—	—	—	—	—	—	—	—	1	—	—	—
C. M. St. P. & P. Ry. Co	1	—	—	—	—	—	—	—	—	—	—	1	—
Taylor Refining Co	25	—	—	—	—	25	—	—	—	—	—	—	—
Wadhams Oil Co	1	—	—	—	1	—	—	—	—	—	—	—	—
Wells Pet. Co	½	—	—	—	—	—	—	—	—	—	—	½	—
Total Refined Gaso	28½	—	—	—	1	25	—	—	—	1	—	1½	—
Natl. Gas & Benzol	852½	16	60	50	83	60	37	53½	51	116	125	101	100

6050

1935													
Acme Pet. Co.	10	—	—	—	—	10	—	—	—	—	—	—	—
Atlas Pet. Co.	16	—	—	—	—	5	10	—	—	1	—	—	—
Black Gold Refg. Co.	3	—	—	—	—	—	—	3	—	—	—	—	—
Carson Pet. Co.	1	—	—	—	—	1	—	—	—	—	—	—	—
Henry H. Cross Co.	5	—	—	—	—	—	—	5	—	—	—	—	—
Deep Rock Oil Corp.	104	—	—	14	28	26	16	20	—	—	—	—	—
Eason Oil Co.	10	—	—	—	—	—	—	—	—	—	—	5	5
East Texas Ref. Co.	5	—	—	—	—	—	—	5	—	—	—	—	—
Globe Oil & Refg.-Kans.	3	—	—	—	—	—	—	—	—	—	—	—	3
Globe Oil & Refg.-Okla.	15	—	—	—	—	—	—	—	—	—	—	14	1
Industrial Pet. Co.	7	—	—	—	—	—	7	—	—	—	—	—	—
Dale W. Moore Oil Co.	5	—	—	—	—	—	—	—	—	5	—	—	—
Simms Oil Co.	10	—	—	—	—	10	—	—	—	—	—	—	—
Oils Incorporated	5	—	—	—	—	5	—	—	—	—	—	—	—
Olney Oil & Refg. Co.	10	—	—	—	—	—	—	—	—	—	—	—	10
Geo. C. Peterson Co.	1	—	—	1	—	—	—	—	—	—	—	—	—
Premier Oil & Refg. Co.	10	—	—	—	—	—	—	—	—	—	—	10	—
Standard Oil Co.	6	—	—	—	—	—	—	—	—	—	—	6	—
Sun Company	20	—	—	—	—	—	—	—	—	—	—	10	10
Transamerican Pet. Co.	19	—	—	1	—	10	—	—	—	—	—	2	6
T. R. Vaughn	22	—	—	5	—	6	—	—	—	11	—	—	—
Vickers Pet. Co.	10	—	—	—	—	10	—	—	—	—	—	—	—
Total Refined Gaso	297	—	—	21	28	83	33	33	—	17	—	47	35
Natural Gas & Benzol	1416	74	123	84	104	117	124	146	118	113	158	122	133

Defense Exhibit No. 1000.

Purchased From	Total Cars	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1936													
Acme Petr. Co	10	—	—	—	—	—	—	—	10	—	—	—	—
Atlas Petr. Co	1	—	1	—	—	—	—	—	—	—	—	—	—
Carson Pet. Co	30	—	—	—	—	—	—	—	—	30	—	—	—
Globe Oil & Refg.-Kans	8	—	1	—	—	—	—	—	7	—	—	—	—
Olney Oil & Refg. Co	135	10	10	10	15	15	15	30	15	—	15	—	—
Petr. Exchange Corp	5	—	—	5	—	—	—	—	—	—	—	—	—
Russell Refining Co	5	—	5	—	—	—	—	—	—	—	—	—	—
Transamerican Pet. Co	18	1	—	—	—	—	—	—	8	9	—	—	—
Wiloil Corp	111	—	—	—	—	—	—	—	104	7	—	—	—
Total Refined Gaso	323	11	17	15	15	15	15	30	144	46	15	—	—
Natl. Gas & Benzol	1757	73	46	112	130	179	141	203	132	151	254	219	117
1937													
Allied Oil Co	51	—	—	—	2	—	—	49	—				
Carson Pet. Co	8	—	—	—	—	—	—	8	—				
Johnson Oil & Refg. Co	50	—	—	—	—	—	—	50	—				
Olney Oil & Refg. Co	50	—	—	15	—	—	15	20	—				
Petr. Exchange Corp	50	—	—	—	—	—	—	50	—				
Shell Petr. Corp	35	18	—	—	17	—	—	—	—				
Transamerican Pet	34	—	—	—	2	—	—	28	4				
Waggoner Refg. Co	30	—	—	—	—	—	—	30	—				
Williams Pet. Co	1	—	—	—	—	—	—	1	—				
Wiloil Corp	110	—	31	31	48	—	—	—	—				
Total Refined Gaso	419	18	31	46	69	—	15	236	4				
Natl. Gas & Benzol	1989	123	50	170	315	450	290	356	235				

6052 DEFENSE EXHIBIT NO. 1002.

A summary by years of the combined purchases of the three Globe companies from January 1933 through August 1937, in gallons, from independent refiners named in the indictment, and from other refiners and brokers.

Year	Independent Refiners Named in Indictment	Other Refiners and Brokers
	(Gallons)	
1933	358,763	4,325,607
1934	None	232,776
1935	2,886,500	2,229,278
1936	1,086,504	1,502,767
1937 (8 mo.)	1,523,665	2,792,719

6053 DEFENSE EXHIBIT NO. 1003.

6054 THE GLOBE OIL & REFINING CO.

Crude Run to Stills—Barrels
1-1-31 to 12-13-36

	Blackwell	Lemont	McPherson	Total
1931				
Jan	201,287	152,791		254,078
Feb	196,314	94,115		290,429
Mar	217,423	162,052		379,475
Apr	203,060	170,230		373,290
May	203,311	165,137		368,448
June	195,029	189,294		384,323
July	203,922	172,729		376,651
Aug	224,319	195,992		420,311
Sept	199,604	146,040		345,644
Oct	214,460	153,654		368,114
Nov	209,941	188,165		398,106
Dec	202,550	138,035		340,585
	2,471,220	1,928,234		4,399,454
1932				
Jan	215,944	163,106		379,050
Feb	192,493	165,450		357,943
Mar	205,067	80,037		285,104
Apr	209,529	188,917		398,446
May	236,222	165,236		401,458
June	214,436	172,002		386,438
July	196,838	188,166		385,004
Aug	204,582	188,316		392,898
Sept	201,443	170,938		372,381
Oct	203,027	186,912		389,939
Nov	161,534	195,906		357,440
Dec	157,790	186,657		344,447
	2,398,905	2,051,643		4,450,548
1933				
Jan	174,075	196,229		370,304
Feb	181,520	172,997		354,517
Mar	199,709	227,186	101,370	528,265
Apr	196,376	191,159	193,415	580,950
May	181,008	183,394	212,495	576,897
June	173,483	138,229	257,556	569,268
July	210,750	225,450	241,082	677,282
Aug	214,942	253,781	234,583	703,306
Sept	207,228	234,893	242,896	685,017
Oct	201,632	287,425	248,159	737,216
Nov	136,159	247,672	218,651	602,482
Dec	122,242	223,744	202,574	548,560
	2,199,124	2,582,159	2,152,781	6,934,064

(2)

6055

	Blackwell	Lemont	McPherson	Total
1934				
Jan	183,596	229,365	234,713	647,676
Feb	174,903	244,410	136,115	555,428
Mar	127,643	220,140	260,493	608,276
Apr	170,508	292,568	224,278	687,354
May	142,270	261,145	282,458	685,873
June	93,877	271,860	251,583	617,320
July	184,517	284,970	249,367	718,854
Aug	74,906	284,992	256,335	616,233
Sept	14,751	257,749	226,334	498,834
Oct	111,003	293,580	198,071	602,654
Nov	65,119	251,889	264,145	581,153
		243,566	270,662	514,228
	1,343,095	3,136,234	2,854,554	7,333,883
1935				
Jan		267,812	218,077	485,889
Feb		210,907	226,929	437,836
Mar		290,367	313,514	603,881
Apr		277,113	301,702	578,815
May	112,579	331;388	311,662	755,629
June	190,686	286,893	298,545	776,124
July	159,072	326,260	347,180	832,512
Aug	153,603	308,761	315,043	777,407
Sept	129,911	320,776	292,945	743,632
Oct	124,425	340,361	302,086	766,872
Nov	121,597	267,952	202,180	591,729
Dec	135,005	326,960	243,990	705,955
	1,126,878	3,555,550	3,373,853	8,056,281
1936				
Jan	126,911	296,085	321,147	744,143
Feb		267,664	242;341	510,005
Mar		257,558	234,650	492,208
Apr	142,303	366,088	273,568	781,959
May	156,812	395,497	368,686	920,995
June	141,724	330,460	286,026	758,210
July	152,890	405,423	266,745	825,058
Aug	128,093	363,937	276,559	768,589
Sept	141;708	428,789	317,240	887,737
Oct	6,581	479,131	343,858	829,570
Nov		480,931	340,239	821,170
Dec		414,264	233,384	647,648
	997,022	4,485,827	3,504,443	8,987,292
1937				
Jan	123,933	471,998	318,473	914,404
Feb	125,012	454,170	280,073	859,255
Mar	149,936	448,756	329,323	928,015
Apr	154,213	489,612	301,773	945,598
May	193,869	459,739	339,295	992,903
June	176,147	476,634	357,095	1,009,876
July	162,962	502,105	390,484	1,055,551
Aug	177,917	443,209	332,359	953,485
	1,263,989	3,746,223	2,648,875	7,659,087

6056

DEFENSE EXHIBIT NO. 1004.

6057

THE GLOBE OIL & REFINING COMPANY—OKLAHOMA

Flat Price Purchases From Independent Refiners

(All prices f. o. b. Group 3, unless otherwise indicated)
(Dates are dates of purchase)

1935
Mid-Continent Field

Date	Grade	Seller	Price	Relation to Journal	No. Car
*Feb. 2	Under 62	Cushing	.035 FOB Blackwell	Slightly above average, CJC	3
*Feb. 10	" "	"	.035 FOB Blackwell	High, CJC	5
*Feb. 20	" "	"	.035 FOB Blackwell	High, CJC	5
Mar. 4	70 Oct.	Omar	.0425	1/8 below low, CJC	30
*Mar. 8	Under 62	Cushing	.04 FOB Blackwell	1/4 above high, CJC	5
Mar. 13	70 Oct.	Omar	.045	1/8 below low, CJC	20
Mar. 19	70 oct.	Omar	.04625	1/8 below low, CJC	15
Mar. 27	70 oct.	Omar	.04625	1/8 below low, CJC	25
Apr. 2	70 oct.	Wilcox	.04875	Low, CJC	15
Apr. 9	70 oct.	Omar	.04875	1/8 below low, CJC	25
*Apr. 10	Under 62	Cushing	.045 FOB Blackwell	High, CJC	5
Apr. 19	Under 62	Eason	.04375	Low, CJC	15
Apr. 19	70 oct.	Omar	.05	1/8 below low, CJC	25
*Apr. 20	Under 62	Cushing	.04625 FOB Blackwell	High, CJC	5
Apr. 24	70 oct.	Omar	.05125	1/8 below low, CJC	25
Apr. 29	70 oct.	Omar	.05125	1/8 below low, CJC	25
Apr. 29	Under 62	Eason	.045	Low, CJC	10
May 13	Under 62	Omar	.045	1/8 below low, CJC	1
May 23	70 oct.	Omar	.055	High, CJC	5
May 29	Under 62	Omar	.04625	Low, CJC	10
					274 car
		East Texas Field			
Aug. 9	Under 62	East Texas	.04625	1/8 below low, CJC	10
Aug. 15	Under 62	Marimac	.04625	1/8 below low, CJC	5
					15 car
*For local delivery				Total	289 car

Summary

Omitting 28 cars purchased from Cushing for local delivery,
Total purchased..261 cars

Above low	5 cars
At low	50 "
Below low	206

1936

No purchases in either Mid-Continent or East Texas fields.

THE GLOBE OIL & REFINING COMPANY—ILLINOIS

Flat Price Purchases From Independent Refiners

(All prices f. o. b. Group 3, unless otherwise indicated)
(Dates are dates of purchase)

1935

Mid-Continent Field

Date	Grade	Seller	Price	Relation to Journal	No. Cars
May 24	Under 62	Simms	.04625	Low, CJC	10
July 10	70 oct.	Cross	.055	1/8 below low, CJC	1
Dec. 19	Under 62	Eason	.0475	Low, CJC	5
					16 cars

NOTE:—Purchase of 3 cars of 64–66 octane, July 20, 1935, omitted because of unclassified octane rating.

East Texas Field

Date	Grade	Seller	Price	Relation to Journal	No. Cars
July 31	Under 62	East Texas	.04625	1/8 below low, CJC	5
Nov. 8	Under 62	Premier	.04625	1/8 below low, CJC	10
					15 cars
				Total................	31 cars

Summary

Total Purchased.......................... 31 cars
Above low............ 0 cars
At low................ 15 "
below low............ 16 "

1936

Mid-Continent Field

No purchases

East Texas Field

No purchases

6059 DEFENSE EXHIBIT NO. 1008.

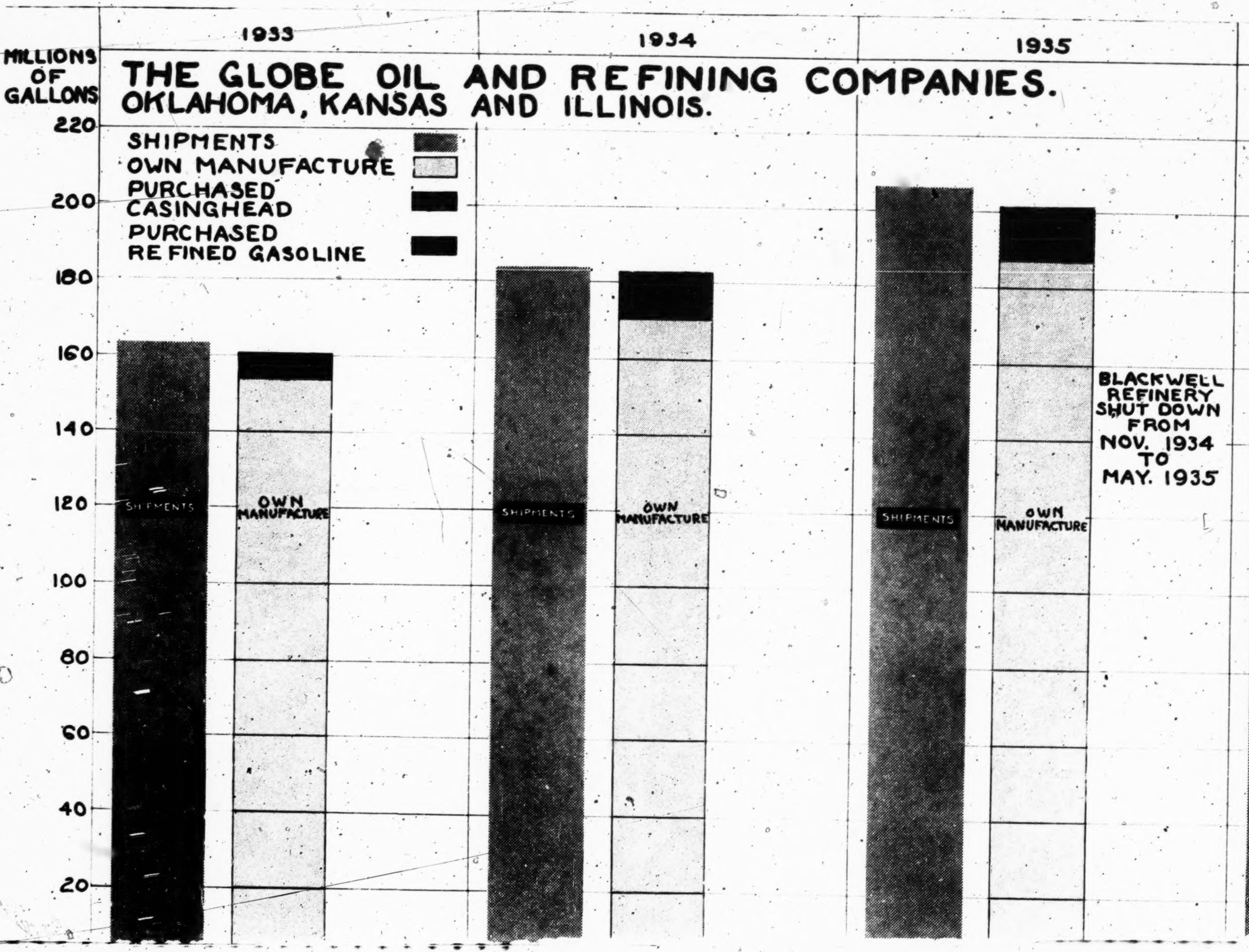
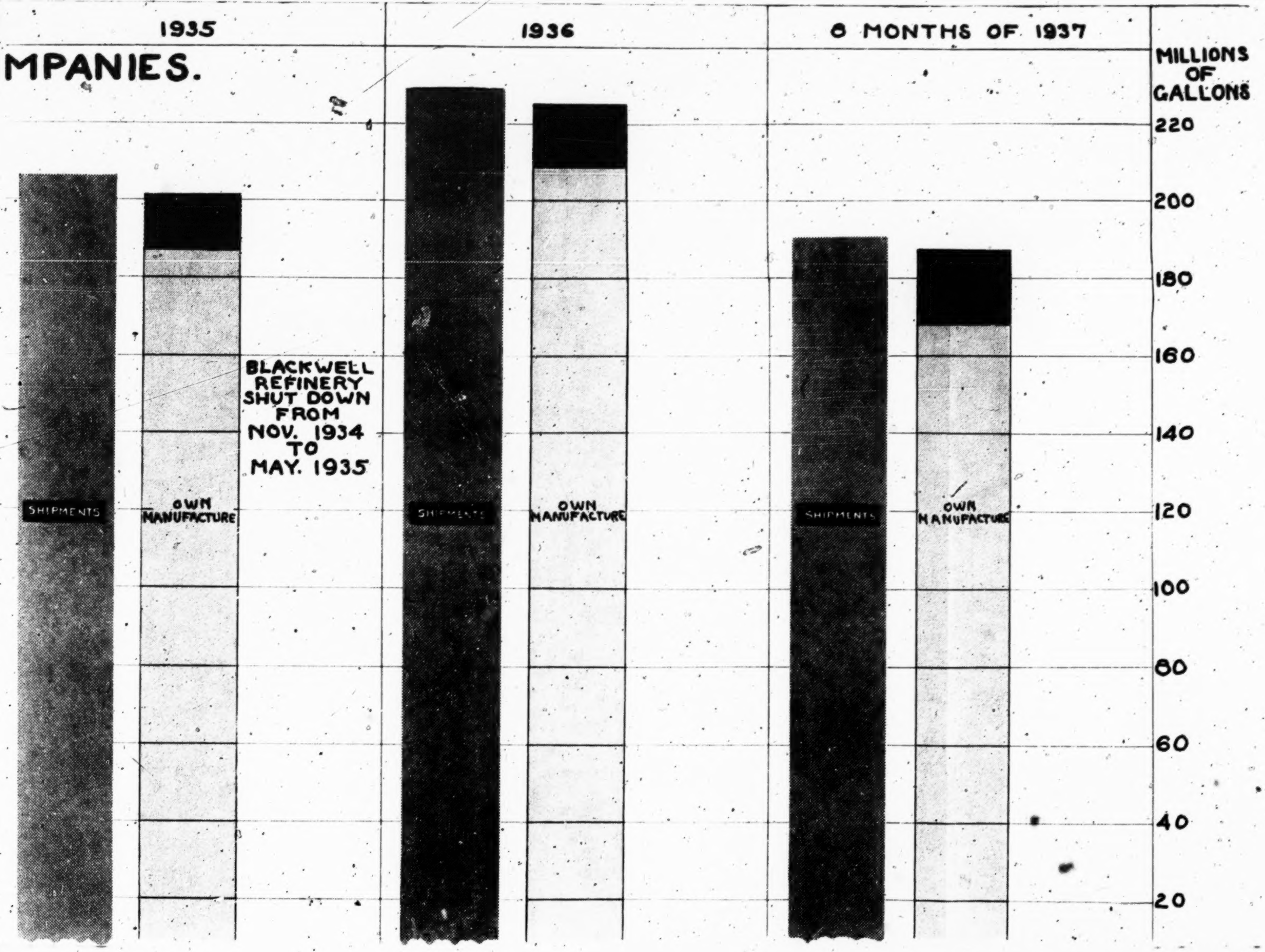
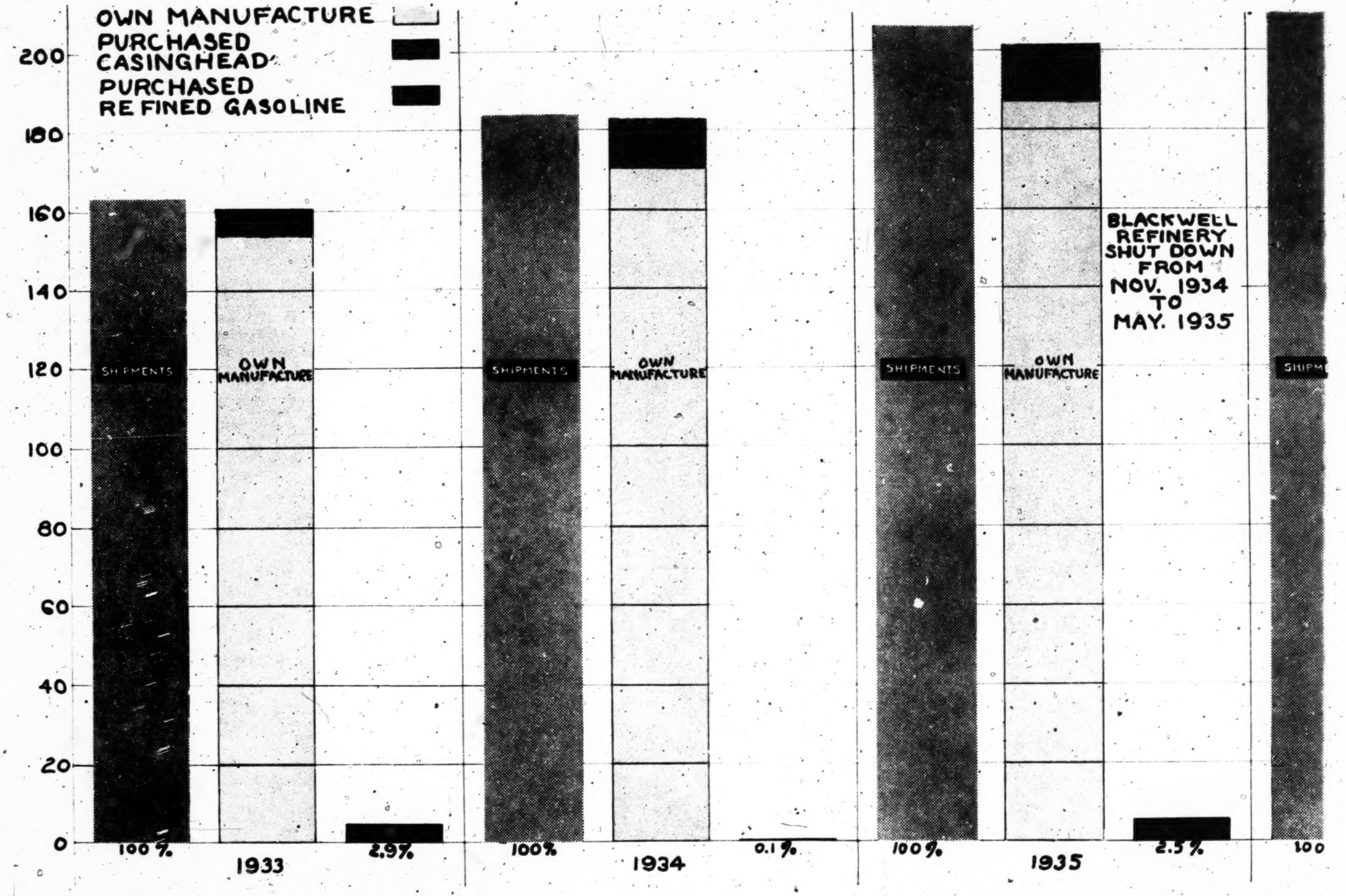
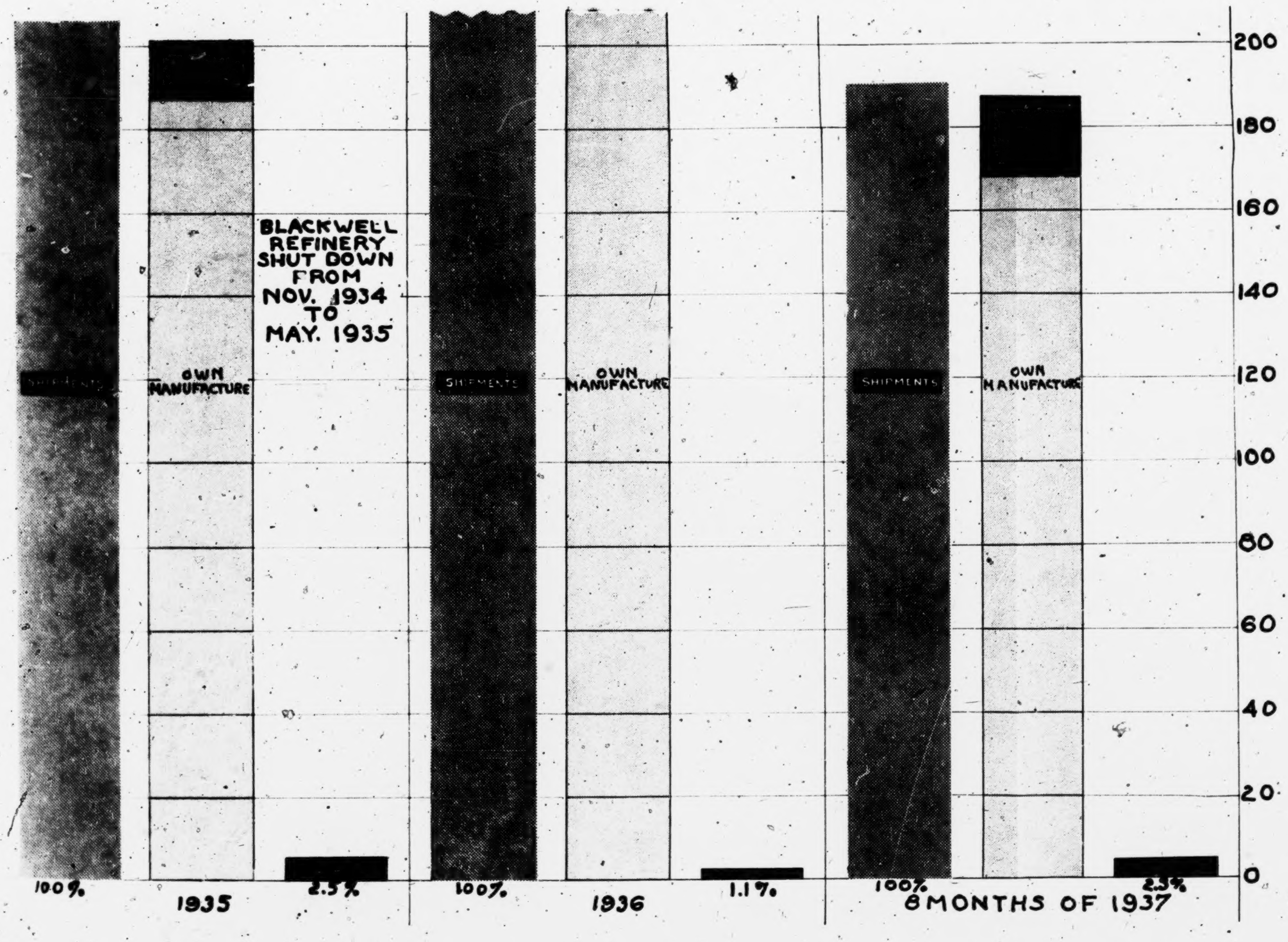

THE GLOBE OIL AND REFINING COMPANIES.
OKLAHOMA, KANSAS AND ILLINOIS.
MILLIONS OF GALLONS
1933
1934
1935
SHIPMENTS
OWN MANUFACTURE
PURCHASED CASINGHEAD
PURCHASED REFINED GASOLINE
220
200
180
160
140
120
100
80
60
40
20
SHIPMENTS
OWN MANUFACTURE
SHIPMENTS
OWN MANUFACTURE
SHIPMENTS
OWN MANUFACTURE
BLACKWELL REFINERY SHUT DOWN FROM NOV. 1934 TO MAY. 1935

EXHIBIT NO. 1008

MPANIES.




OWN MANUFACTURE
PURCHASED CASINGHEAD
PURCHASED REFINED GASOLINE
200
180
160
140
120
100
80
60
40
20
0
SHIPMENTS
OWN MANUFACTURE
100%
1933
2.9%
SHIPMENTS
OWN MANUFACTURE
100%
1934
0.1%
SHIPMENTS
OWN MANUFACTURE
100%
1935
2.5%
BLACKWELL REFINERY SHUT DOWN FROM NOV. 1934 TO MAY. 1935
SHIPME
100


BLACKWELL REFINERY SHUT DOWN FROM NOV. 1934 TO MAY. 1935
SHIPMENTS
OWN MANUFACTURE
SHIPMENTS
OWN MANUFACTURE
SHIPMENTS
OWN MANUFACTURE
100%
1935
2.5%
100%
1936
1.1%
100%
2.3%
8 MONTHS OF 1937
200
180
160
140
120
100
80
60
40
20
0

6061.

DEFENSE EXHIBIT NO. 1009.

6062

Comparison of Pure Oil Company "Flat Price" Gasoline Purchases From Eason Oil Company with Eason Oil Companies' Sales—For Years 1935 & 1936*.

	Pure Oil Co. Purchases—(Gallons)			Eason's Sales Gallons	% Pure's Purch. of Eason's Sales
	3rd Grade	Regular Grade	Totals		
1935					
Jan.	—	—	—	1,842,050	—
Feb.	—	—	—	1,666,277	—
March	—	—	—	2,144,600	—
April	—	—	—	2,006,734	—
May	5,333	—	5,333	2,195,539	.24
June	5,333	4,000	9,333	2,804,838	.33
July	—	—	—	3,109,500	—
August	—	—	—	2,401,914	—
Sept.	—	—	—	2,218,964	—
Oct.	—	5,334	5,334	1,882,636	.28
Nov.	—	—	—	1,816,215	—
Dec.	—	—	—	1,777,088	—
Totals	10,666	9,334	20,000	25,866,355	.77
1936					
Jan.	—	—	—	2,260,258	—
Feb.	—	—	—	1,488,123	—
March	—	—	—	2,250,601	—
April	5,333	160,000	165,333	1,983,506	8.34
May	—	—	—	2,076,658	—
June	—	—	—	3,206,637	—
July	—	—	—	3,079,506	—
August	—	—	—	2,047,531	—
Sept.	—	—	—	2,492,217	—
Oct.	—	—	—	2,503,878	—
Nov.	—	—	—	1,908,001	—
Dec.	—	—	—	1,943,328	—
Totals	5,333	160,000	165,333	27,240,244	.61

***Pure's purchases calculated by converting tank cars to gallons on basis of 8,000 gallons per car.**

6063

Comparison of Pure Oil Company "Flat Price" and "Market Date of Shipment" Purchases from Eason Oil Company with Eason Oil Co's. Sales—For the Years 1935 and 1936.*

	Pure Oil Co. Purchases—(Gallons)			Eason's Sales (Gallons)	% Pures Purch. of Eason's Sales
	Third Grade	Reg. Grade	Totals		
1935					
Jan.	—	—	—	1,842,050	—
Feb.	—	—	—	1,666,277	—
March	—	—	—	2,144,600	—
April	—	—	—	2,006,734	—
May	5,333	—	5,333	2,195,539	.24
June	5,333	4,000	9,333	2,804,838	.33
July	—	—	—	3,109,500	—
August	—	—	—	2,401,914	—
Sept	—	—	—	2,218,964	—
Oct	—	5,334	5,334	1,882,636	.28
Nov	—	—	—	1,816,215	—
Dec	—	—	—	1,777,088	—
Totals	10,666	9,334	20,000	25,866,355	.77
1936					
Jan	—	—	—	2,260,258	—
Feb	—	—	—	1,488,123	—
March	—	—	—	2,250,601	—
April	5,333	160,000	165,333	1,983,506	8.34
May	—	160,000	160,000	2,076,658	7.70
June	—	160,000	160,000	3,206,637	4.99
July	—	164,000	164,000	3,079,506	5.33
Aug	—	200,000	200,000	2,047,531	9.77
Sept	—	160,000	160,000	2,492,217	6.42
Oct	—	170,666	170,666	2,503,878	6.82
Nov	—	160,000	160,000	1,908,001	8.39
Dec	—	29,333	29,333	1,943,328	1.51
Totals	5,333	1,363,999	1,369,332	27,240,244	5.03

*Pure's purchases calculated by converting tank cars to gallons on basis of 8,000 gallons per car.

6064 DEFENSE EXHIBIT NO. 1010.

6065

Comparison of Pure Oil Company "Flat Price" Gasoline Purchases From Omar Refining With Omar Refining Company's Sales—For Years 1935 and 1936*

	Pure Oil Co. Purchases (Gallons)				
1935	Third Grade	Regular Grade	Totals	Omar Sales (Gallons)	% Pure's Total Purchases of Omar's Sales
Jan		(Omar not operating)			
Feb				65,482	
Mar				1,677,573	
Apr				2,597,258	
May		40,000	40,000	1,784,818	2.24
June				2,874,730	
July				2,256,575	
Aug		296,000	296,000	2,628,060	11.26
Sept		104,000	104,000	2,467,262	4.21
Oct		280,000	280,000	2,450,153	11.43
Nov		280,000	280,000	2,361,678	11.86
Dec		280,000	280,000	2,173,870	12.88
Totals	—	1,280,000	1,280,000	23,337,459	5.48
1936					
Jan		288,000	288,000	1,989,161	14.48
Feb		320,000	320,000	1,482,092	21.59
Mar		240,000	240,000	2,476,652	9.69
Apr		160,000	160,000	2,247,101	7.12
May				2,366,961	
June				3,142,713	
July				2,064,965	
Aug				3,628,870	
Sept	8,000		8,000	3,351,738	.24
Oct	5,333	5,333	10,666	3,084,106	.35
Nov				3,024,346	
Dec				2,951,703	
Totals	13,333	1,013,333	1,026,666	31,810,408	3.23

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*Pure's purchases calculated by converting tank cars to gallons on basis of 8,000 gallons per car.

6066

Comparison of Pure Oil Company "Flat Price" and "Market Date of Shipment" Purchases from Omar Refining Co. with Omar Refining Company's Sales—For Years 1935 and 1936*

	Pure Oil Co. Purchases (Gallons)				
1935	Third Grade	Regular Grade	Totals	Omar Sales (Gallons)	% Pure's Total Purchases of Omar's Sales
Jan.	(Omar not operating)				
Feb				65,482	
Mar				1,677,573	
Apr				2,597,258	
May		40,000	40,000	1,784,818	2.24
June		200,000	200,000	2,874,730	6.96
July		—	—	2,256,575	
Aug		296,000	296,000	2,628,060	11.26
Sept		104,000	104,000	2,467,262	4.21
Oct		280,000	280,000	2,450,153	11.43
Nov		280,000	280,000	2,361,678	11.86
Dec		280,000	280,000	2,173,870	12.88
Totals		1,480,000	1,480,000	23,337,459	6.34
1936					
Jan		288,000	288,000	1,989,161	14.48
Feb		320,000	320,000	1,482,092	21.59
Mar		240,000	240,000	2,476,652	9.69
Apr		160,000	160,000	2,247,101	7.12
May		160,000	160,000	2,366,961	6.76
June		160,000	160,000	3,142,713	5.09
July		160,000	160,000	2,064,965	7.75
Aug		—	—	3,628,870	
Sept	8,000	80,000	88,000	3,351,738	2.63
Oct	5,333	48,000	53,333	3,084,106	1.73
Nov		45,333	45,333	3,024,346	1.50
Dec		24,000	24,000	2,951,703	.81
Totals	13,333	1,685,333	1,698,666	31,810,408	5.34

*Pure's purchases calculated by converting tank cars to gallons on basis of 8,000 gallons per car.

6067

DEFENSE EXHIBIT NO. 1011.

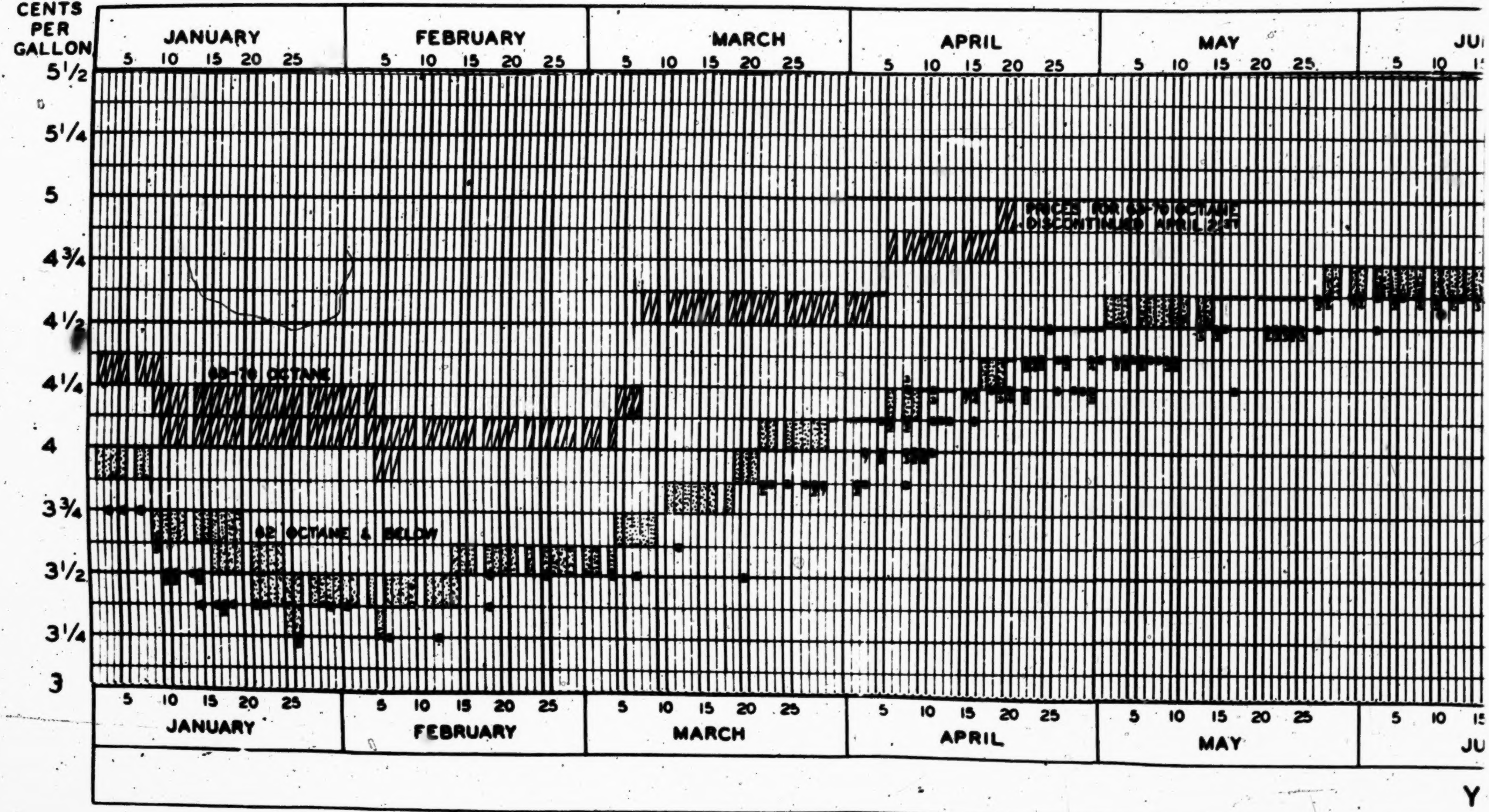
PURCHASES

FROM

ON A F. O. B.

PL

F. O. B.



PURCHASES BY DEFENDANT COMPANIES FROM INDEPENDENT REFINERS

ON A F. O. B. EAST TEXAS REFINERY BASIS

COMPARED WITH

PLATT'S OILGRAM

F. O. B. EAST TEXAS REFINERIES

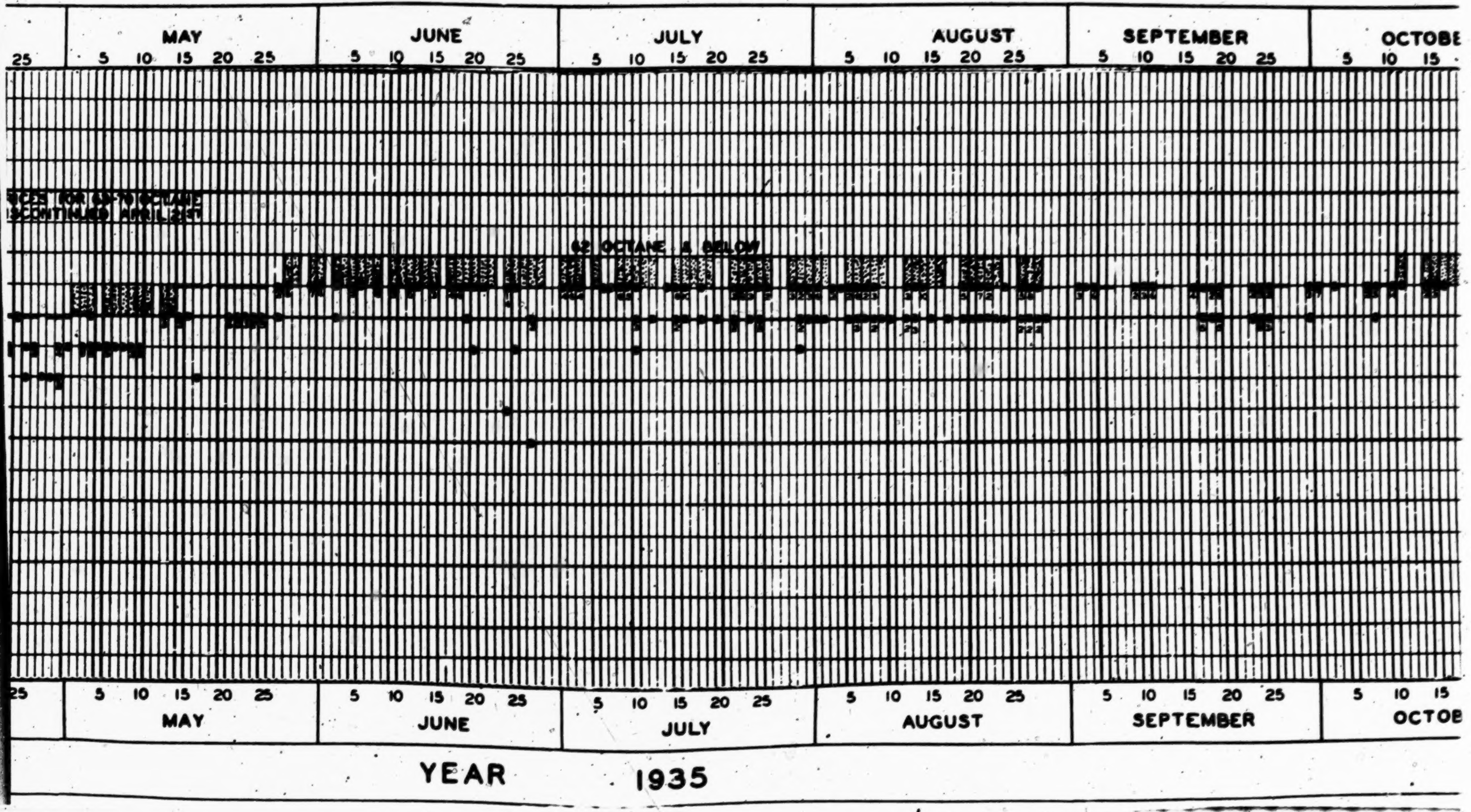
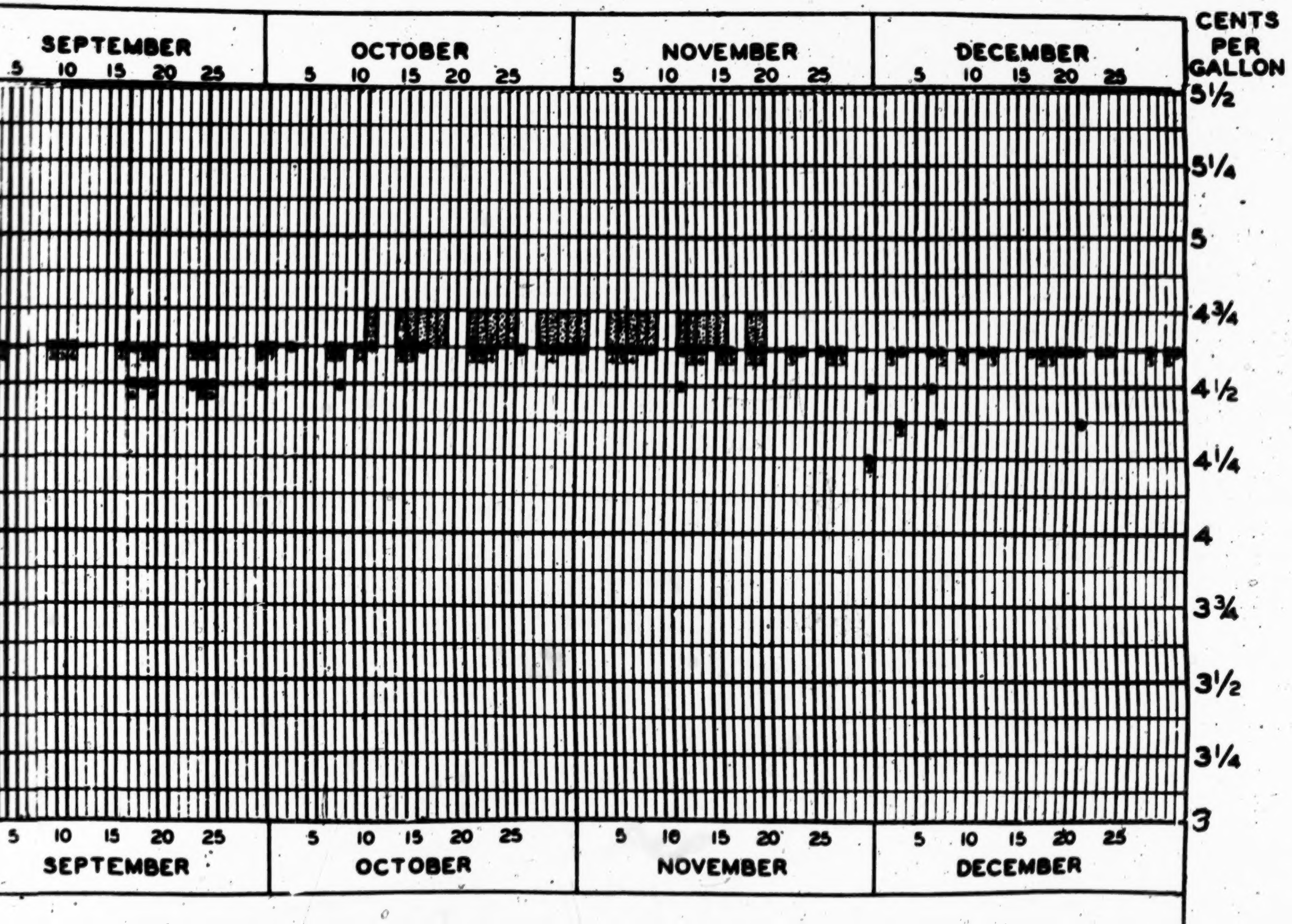


EXHIBIT NO. 1011



6069 DEFENSE EXHIBIT NO. 1012.

6070 Stipulation

It is hereby stipulated that Roy W. Dalby, if called as a witness in the above entitled action would testify that he is at the present time, and since April, 1933, has been employed as a Tax Supervisor in the Motor Fuel Tax Division of the Office of the Comptroller of the Public Accounts of the State of Texas. As such Tax Supervisor, he has had charge of the keeping of, and is familiar with, the records of said Motor Fuel Tax Division relative to the reports made to said Comptroller of interstate shipments of motor fuel by tank car from points in the State of Texas. Since March 21, 1933, the laws of the State of Texas have required railroads shipping motor fuel from points within the State to file monthly reports with said Motor Fuel Tax Division, showing, among other things, as to all such shipments the name of the consignor, the name and address of the original consignee, car number, date of shipment, quantity and product shipped. Mr. Dalby would testify that from such records he has prepared a tabulation, annexed hereto as Exhibit A, setting forth
6071 the shipments of gasoline from time to time during the year 1934 consigned to Acme Petroleum Company by the respective consignors in East Texas named in said Exhibit A.

Mr. Dalby would further testify that said Exhibit A does not purport to show all gasoline purchased in East Texas during 1934 by Acme Petroleum Company, but only such gasoline as appears from the aforesaid records to have been originally consigned to Acme Petroleum Company, as stated above.

6072

EXHIBIT A

Shipper	Date Shipped		Destination	No. Cars	Total for 1934
Acme Oils, Inc	May	25	(4)Chicago (1)St. Louis	5	
Acme Oils, Inc	July	12	Detroit	2	
Acme Oils, Inc	July	16	Chicago	3	
Acme Oils, Inc	July	17	Chicago	2	
Acme Oils, Inc	July	18	Chicago	1	13
Arrow Refg. & Prod. Co.	March	3	Riverdale	2	2
Bigelow, C. H	May	19	Chicago	1	
Bigelow, C. H	May	20	Kinmundy, Ill	1	
Bigelow, C. H	May	21	Chicago	1	
Bigelow, C. H	May	23	Chicago	2	
Bigelow, C. H	June	6	Chicago	1	
Bigelow, C. H	June	7	Chicago	3	9
Blackstone Refg. Co	Oct.	20	Chicago	3	
Blackstone Refg. Co	Oct.	23	Chicago	5	8
Canyon Refg. Co	Jan.	30	Chicago	1	
Canyon Refg. Co	Apr.	20	Chicago	1	2
Century Refg. Co	May	12	(1)Chicago (1)St. Louis	2	
Century Refg. Co	May	25	Chicago	1	
Century Refg. Co	May	26	St. Louis	1	
Century Refg. Co	May	30	Chicago	6	
Century Refg. Co	June	27	Riverdale	1	

6073

Shipper	Date Shipped		Destination	No. Cars	Total for 1934
Century Refg. Co	June	28	Riverdale	1	
Century Refg. Co	June	29	Riverdale	1	
Century Refg. Co	July	7	Riverdale	1	
Century Refg. Co	July	9	Riverdale	1	
Century Refg. Co	Oct.	16	Kansas City	2	
Century Refg. Co	Oct.	17	Chicago	1	20
Condor Refg. Co	Sept.	3	Chicago	5	5
Danciger Oil & Refys	Oct.	15	Chicago	2	2
East Texas Refg. Co	July	26	Chicago	1	
East Texas Refg. Co	July	27	Galena, Ill	1	
East Texas Refg. Co	July	30	Chicago	1	3
Gilliland Refg. Co	Mar.	30	Chicago	3	
Gilliland Refg. Co	Mar.	31	Chicago	1	4
Keystone Refg. Co	Mar.	24	St. Louis	1	
Kilgore Refg. Co	Mar.	17	Colfax, Wis	1	
Kilgore Refg. Co	Apr.	10	Riverdale	2	
Kilgore Refg. Co	Apr.	14	Riverdale	1	
Kilgore Refg. Co	Apr.	23	Riverdale	4	
Kilgore Refg. Co	Apr.	25	Riverdale	1	9
Linzie Refg. Co	Mar.	1	Chicago	1	
Linzie Refg. Co	Mar.	5	Chicago	1	2
McMurrey Refg. Co	Oct.	14	Richland Center, Wis	1	1
Oil Refineries, Inc	Jan.	3	Chicago	1	
Oil Refineries, Inc	Feb.	26	Chicago	1	
Oil Refineries, Inc	Apr.	15	Riverdale	1	

6074

Shipper	Date Shipped	Destination	No. of Cars	Total for 1934
Oil Refineries, Inc	Apr. 16	Riverdale	1	
Oil Refineries, Inc	Apr. 18	Riverdale	1	
Oil Refineries, Inc	Apr. 21	Riverdale	1	
Oil Refineries, Inc	July 17	Chicago	1	7
Overton Refg. Co	Apr. 1	Riverdale	2	
Overton Refg. Co	July 17	Detroit	2	4
Panama Refg. Co	May 7	Chicago	3	3
Petroleum Processing Co	July 13	Detroit	2	
Petroleum Processing Co	Aug. 6	Chicago	1	3
Reasonover, J	May 27	Riverdale	4	
Reasonover, J	May 28	Riverdale	2	6
Roco Refg. Co	Oct. 22	Kansas City	3	3
Solarene Refg. Co	Mar. 8	Chicago	2	
Solarene Refg. Co	June 28	Chicago	2	4
Southport Pet. Co	Mar. 13	Riverdale	2	
Southport Pet. Co	Mar. 16	Riverdale	3	
Southport Pet. Co	Mar. 17	Riverdale	3	
Southport Pet. Co	Mar. 18	Riverdale	1	
Southport Pet. Co	Mar. 20	Riverdale	1	
Southport Pet. Co	Sept. 13	Riverdale	1	
Southport Pet. Co	Nov. 4	Kansas City	4	
Southport Pet. Co	Nov. 5	Kansas City	1	
Southport Pet. Co	Nov. 28	Riverdale	2	18

6075

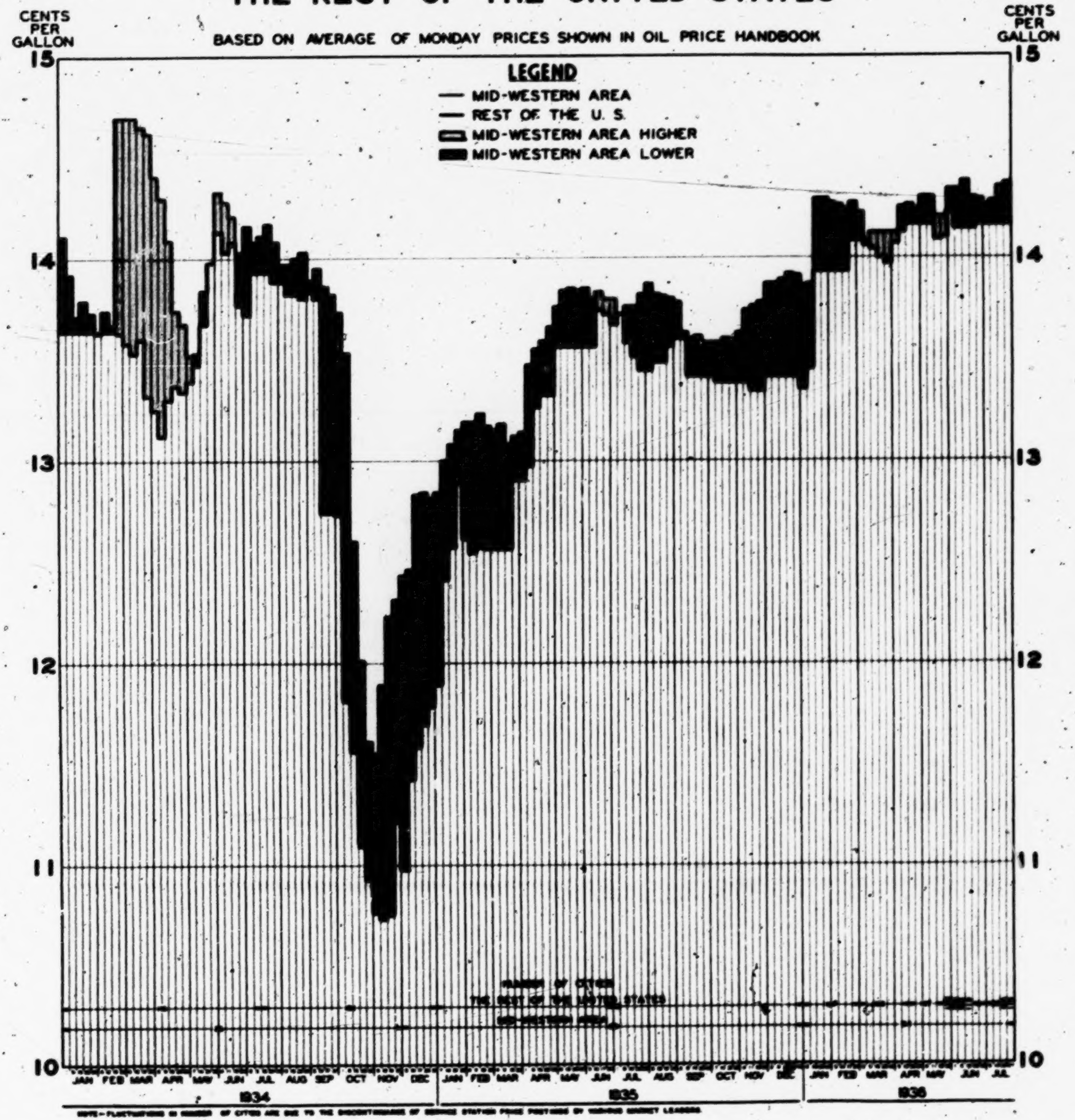
Shipper	Date Shipped	Destination	No. of Cars	Total for 1934
Texas Oil Products Co	Mar. 6	Kansas City	2	2
Texas Refy	Mar. 17	Dodgeville, Wis	1	
Texas Refy	Apr. 14	Riverdale	1	
Texas Refy	Apr. 15	Riverdale	2	4
Trio Refg. Co	Apr. 20	Riverdale	2	2
Tyreco Refg. Co	Oct. 5	Kansas City	1	1
Union Refg. Co	Jan. 30	Chicago	1	
Union Refg. Co	Feb. 21	Terre Haute, Ind	1	
Union Refg. Co	Feb. 23	Chicago	2	
Union Refg. Co	Mar. 3	Chicago	1	
Union Refg. Co	Mar. 12	Riverdale	1	6
Utah Refg. Co	Apr. 13	Riverdale	3	
Utah Refg. Co	Apr. 16	Riverdale	1	
Utah Refg. Co	May 26	(1)Chicago (4)St. Louis	5	
Utah Refg. Co	May 27	Riverdale	1	
Utah Refg. Co	May 28	Riverdale	3	13
Not shown—Gladewater	Nov. 16	Elwood, Ind	1	
Not shown—Gladewater	Nov. 19	Chicago	2	
Not shown—Gladewater	Nov. 27	Chicago	5	
Not shown—Gladewater	Dec. 31	Chicago	2	10

Total where Consignor is shown—1934	157
Total where Consignor is not shown—Gladewater	10
	167

6076 DEFENSE EXHIBIT NO. 1013.

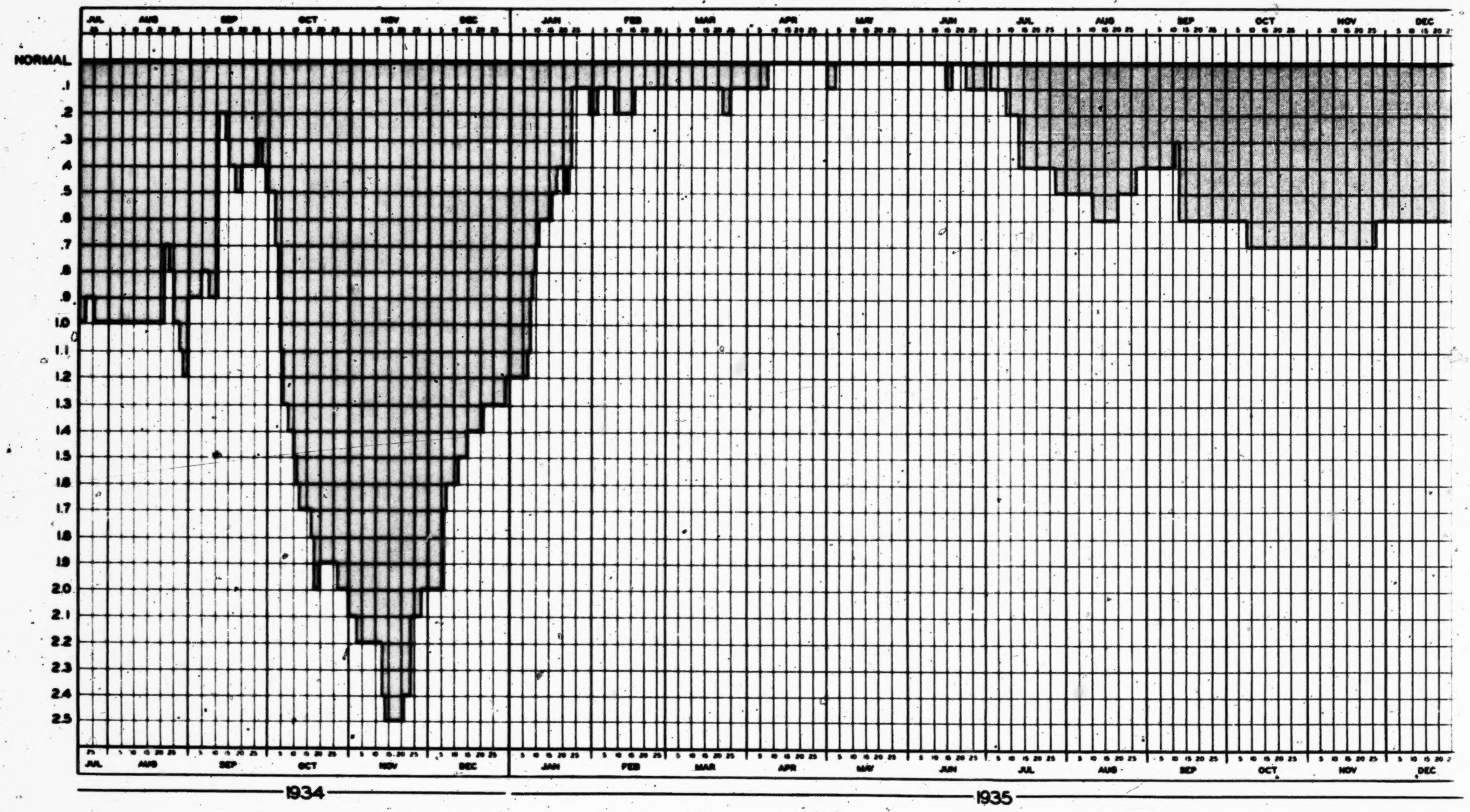
THE REST OF THE UNITED STATES

BASED ON AVERAGE OF MONDAY PRICES SHOWN IN OIL PRICE HANDBOOK

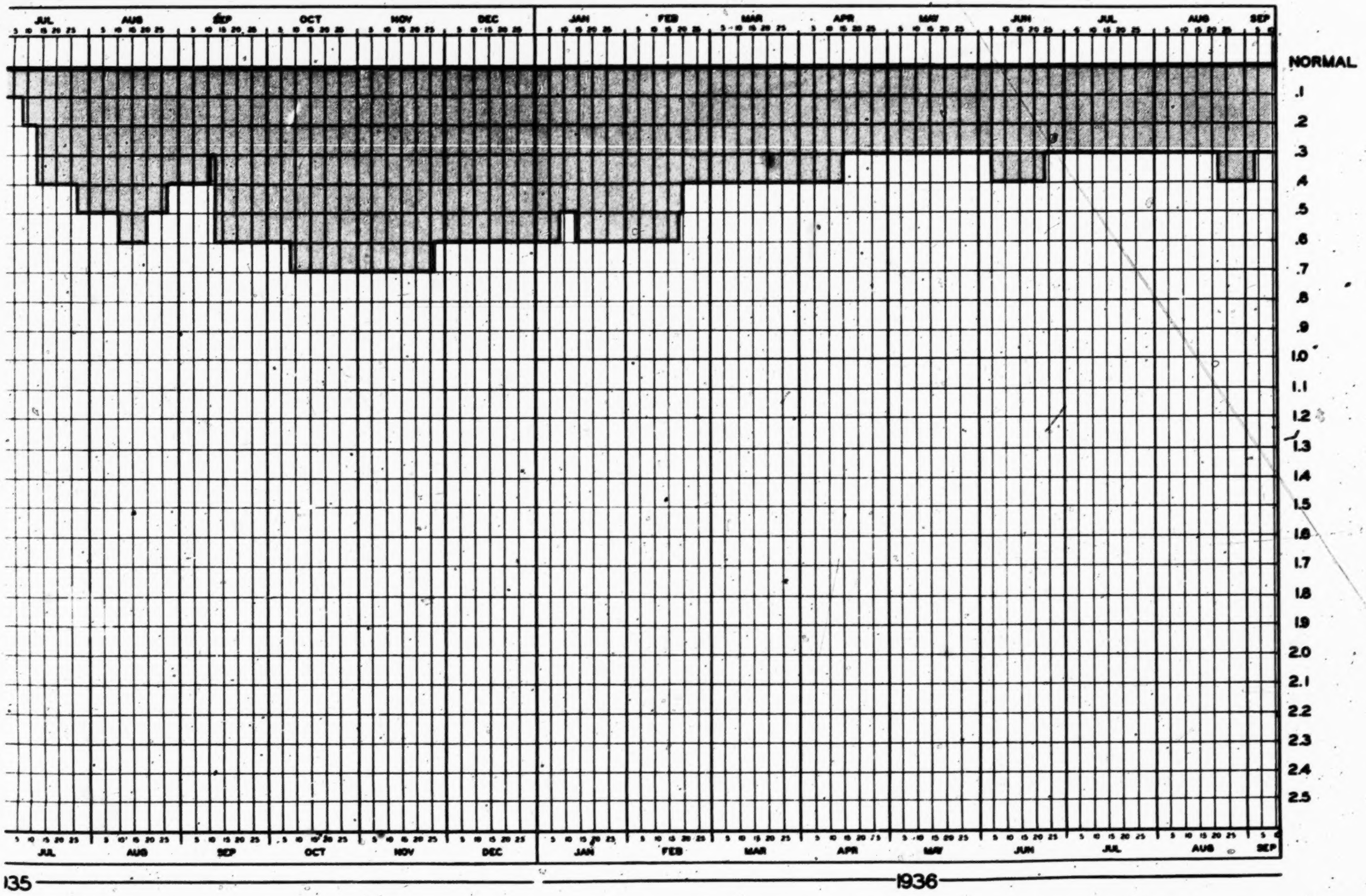


NOTE—FLUCTUATIONS IN NUMBER OF CITIES ARE DUE TO THE DISCONTINUANCE OF SERVICE STATION PRICE POSTINGS BY VARIOUS MARKET LEADERS.

DAILY VARIATION FROM THE AVERAGE NORMAL POSTED SERVICE
IN THE AVERAGE ACTUAL SERVICE STATION PRICE
FOR REGULAR GASOLINE-28 REPRESENTATIVE CITIES IN
COMPILED FROM OIL PRICE HANDBOOK



NORMAL POSTED SERVICE STATION PRICE (EX TAXES)
AL SERVICE STATION PRICE (EX TAXES)
PRESENTATIVE CITIES IN MID-WESTERN AREA
ROM OIL PRICE HANDBOOK



6080 DEFENSE EXHIBIT NO. 1015.

6081 Sinclair Refining Company's Purchases in the Mid-Continent Field, January 1, 1935-April 30, 1936

1. Comparison of Purchases January 1, 1935-February 28, 1935 With Purchases January 1, 1936-February 29, 1936.

Period	Total Gallons	Average Gallons per Month
Jan. 1, 1935—Feb. 28, 1935	7,167,407	3,583,703
Jan. 1, 1936—Feb. 29, 1936	6,409,908	3,204,954

2. Purchases During Period March 1, 1935-April 30, 1936.

Source	Total Gallons	Percentage
Independent refiners named in par. 22 of indictment*	15,374,798	30.71
Other independent refiners**	26,590,446	53.11
All independent refiners	41,965,244	83.82
Major Companies***	8,100,144	16.18
Total	50,065,388	100.00

Average purchases per month—3,578,956.

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* Purchases were made from all companies named except: Champlin, Dickey, Wilcox and Rock Island.

** 1. Anderson-Prichard Oil Corp., Cyril, Okla.
2. Atlas Oil Corp., Shreveport, La.
3. Black Gold Ref. Co., Oklahoma City, Okla.
4. L. O. Carter Co., Oklahoma City, Okla.
5. Cooperative Consumers Refg. Co., Megargle, Texas.
6. Coltex Ref. Co., Colorado, Texas.
7. Casco Oil Co., Wynnewood, Okla.
8. Cosden Oil Co., Big Springs, Texas.
9. Grotex Refining & Fuel Oil Co., Graham, Texas.
10. Lion Oil Refining Co., Pearson & Eldorado, Ark.
11. Lubbock Refining Co., Lubbock, Texas.
12. Major Petroleum Products Co., Oklahoma City, Okla.
13. Montray Refining Co., Hawley, Texas.
14. Octane Oil & Refining Co., Chautauqua, Texas.
15. Onyx Refining Co., Hawley & Lubbock, Texas.
16. Pasotex Petroleum Co., El Paso, Texas.
17. Root Refining Co., Eldorado, Ark.
18. Simms Oil Co., Dallas, Texas (Harrys, Tex.).
19. Southland Refining Co., Olney & Megargle, Texas.
20. Spartan Refining Co., Shreveport, La.
21. Standard Oil Co., of Texas, El Paso, Texas.
22. Texas Pacific Coal & Oil Co., Ft. Worth, Texas.
23. West Texas Refining Co., Pecos, Texas.
24. Wickett Refining Co., Wickett, Texas.
25. Wirt Franklin Petroleum Co., Ardmore, Okla.

***26. Continental Oil Co., Wichita Falls, Texas.
***27. Gulf Refining Co., Sweetwater, Texas.
***28. Louisiana Oil Ref. Corp. and Phillips Petroleum Co., Borger, Tex.

6082 DEFENSE EXHIBIT NO. 1016.

6083

OPERATING REFINERY CAPACITY IN THE UNITED STATES

(As of January 1, 1935 and January 1, 1936, according to Bureau of Mines information circulars)

Name of Company	January 1, 1935 Distillation	 Cracking	January 1, 1936 Distillation	 Cracking
Standard Oil Co. (Ind.)				
Whiting	93,000	67,400	100,000	88,500
Wood River, Ill	17,000	14,620	17,000	14,700
Neodesha, Kansas	7,500	8,570	7,500	5,120
Pan American, Destrelion	16,000	—	16,000	—
Stanolind, Superior, La	4,500	2,000	4,500	2,000
Pan American, Baltimore	8,000	—	8,000	—
Pan American, Texas City	25,000	25,000	25,000	25,000
Sugar Creek, Mo	16,500	16,000	18,000	13,500
Casper	17,600	9,050	16,600	8,300
	205,100	142,640	212,600	157,120
Socony Vacuum				
Wadhams	6,000	3,500	8,000	8,000
General (California)	77,000	6,000	75,000	6,000
E. St. Louis	5,000	3,400	5,000	4,600
Augusta, Kansas	15,000	15,000	15,000	20,000
Trenton, Mich	10,500	7,400	13,000	10,000
Paulsboro	20,000	8,300	20,000	3,600
E. Providence	5,000	4,000	5,000	4,000
Magnolia	94,500	62,250	97,000	44,750
Casper	5,000	2,500	5,000	2,500
New York	30,500	9,000	30,500	9,000
	268,500	121,350	273,500	112,500
Cities Service				
Empire, E. Chicago	25,000	15,000	25,000	15,000
La. Oil & Refg. Co	23,000	22,000	23,000	22,000
E. Braintree, Mass	20,000	4,500	20,000	4,500
Crew Levick	10,000	7,500	5,100	10,000
Empire O. & R	16,000	3,500	16,000	3,500
Crew Levick, Titus	3,000	—	3,000	—
	97,000	52,500	92,100	55,000
Shell				
E. Chicago	28,500	22,000	30,000	21,600
Shell (California)	75,300	40,050	66,400	70,900
Wood River, Ill	38,000	21,600	38,000	20,800
Arkansas City	20,000	9,000	20,000	9,700
Norco, La	21,000	10,000	21,000	13,000
Houston, Tex	42,000	21,000	56,000	40,000
	224,800	123,650	231,400	175,400
Sinclair				
E. Chicago	40,000	27,000	40,000	27,000
Rio Grande (Calif.)	10,000	3,500	10,000	3,000
Argentine, Kansas			11,000	9,000
Coffeyville, Kansas	23,000	18,000	12,000	9,000
Wellsville	10,000	6,000	10,000	6,000
Sands Springs	8,000	2,000	8,000	2,000
Marcus Hook	28,000	29,500	28,000	29,500
Texas	52,500	47,000	50,500	47,000
Parco, Wyo	8,000	4,000	8,000	4,000
	179,500	137,000	177,500	136,500

Defense Exhibit No. 1016.

6084

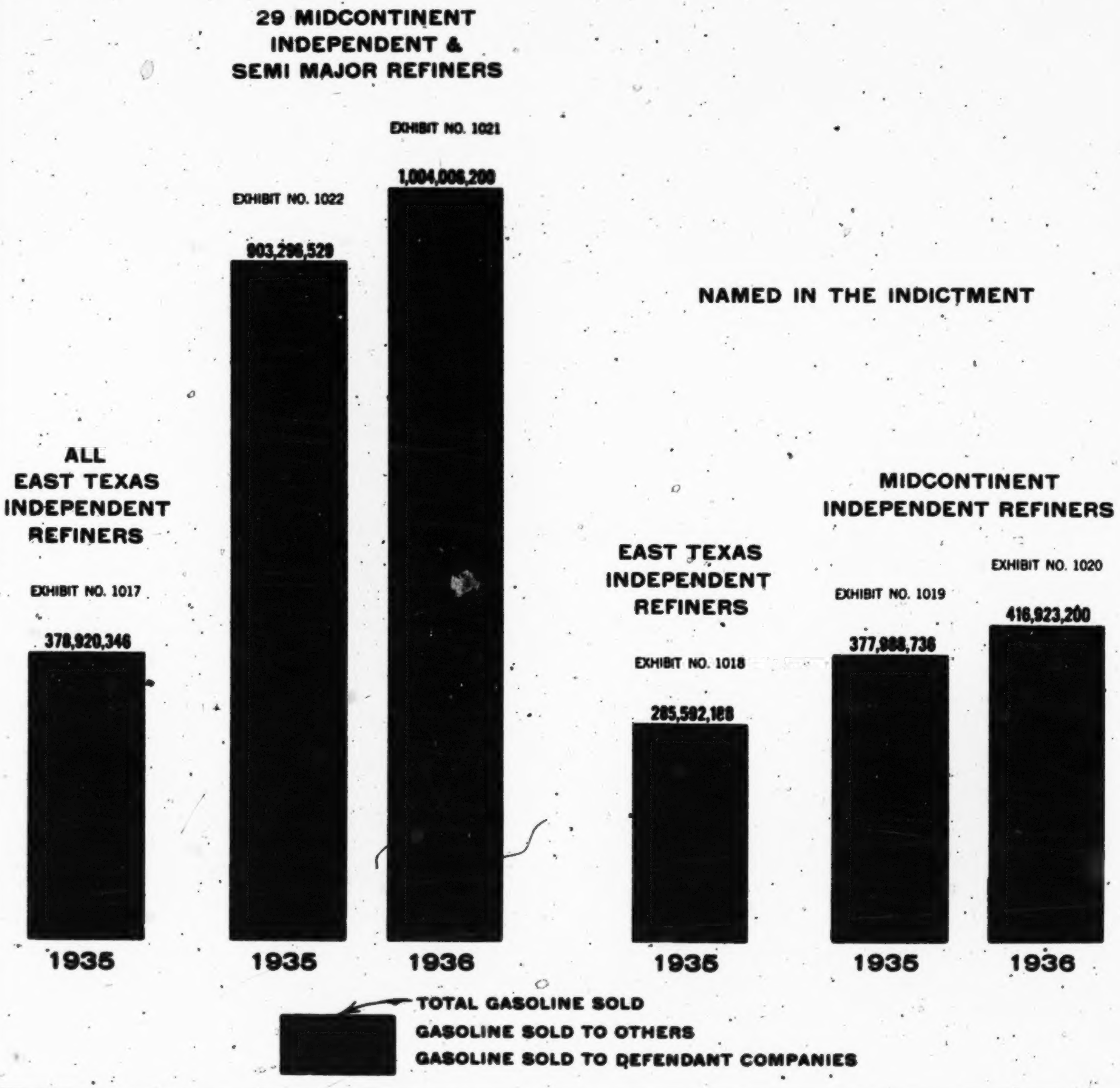
Name of Company	January 1, 1935		January 1, 1936	
	Distillation	Cracking	Distillation	Cracking
Barnsdall				
Wichita	5,000	1,500	5,000	1,500
Oklahoma	16,000	7,500	16,000	7,500
	21,000	9,000	21,000	9,000
Globe				
McPherson	10,000	6,000	12,000	6,000
Blackwell	—	—	8,000	4,000
Lemont	12,000	6,000	12,000	6,000
	22,000	12,000	32,000	16,000
Skelly				
El Dorado	23,000	15,000	23,000	15,000
Pure				
Midland, Mich	3,000	—	3,000	—
Ohio	20,000	16,000	19,500	16,000
Muskogee	9,000	4,700	9,000	4,700
Marcus Hook	16,000	11,400	16,000	11,400
Nederland, Tex	27,000	15,450	27,000	15,450
Cabin Creek	3,500	750	2,000	750
	78,500	48,300	76,500	48,300
Continental				
Colorado	4,500	1,850	3,500	2,300
Baltimore	10,000	4,000	10,000	4,000
Lewiston, Mont	1,500	—	1,500	—
New Mexico	3,500	—	3,500	—
Ponca City	30,000	13,000	30,000	13,000
Wichita Falls, Tex	5,000	2,300	5,000	2,300
Glen Rod, Wyo	2,500	1,800	2,500	1,800
	57,000	22,950	56,000	23,400
Mid-Continent	40,000	20,000	40,000	20,000
Phillips				
Kansas City	9,000	8,000	9,000	8,000
Berger, Tex	50,000	48,000	50,000	48,000
Okmulgee	6,000	3,000	6,000	3,000
	65,000	59,000	65,000	59,000
Total of Defendant Companies	1,281,400	763,390	1,300,600	827,220
Total all others	3,614,749	1,897,778	3,749,835	1,994,868
Total operating capacity, entire United States	4,896,149	2,661,168	5,050,435	2,822,088
Percentages of total owned by defendants	35.45%	40.23%	34.68%	41.47%

6085 DEFENSE EXHIBIT NO. 1023 (1017-1022).

EXHIBIT NO. 1023

VOLUME OF EAST TEXAS & MIDCONTINENT GASOLINE SALES & PURCHASES

(SHOWN IN GALLONS)

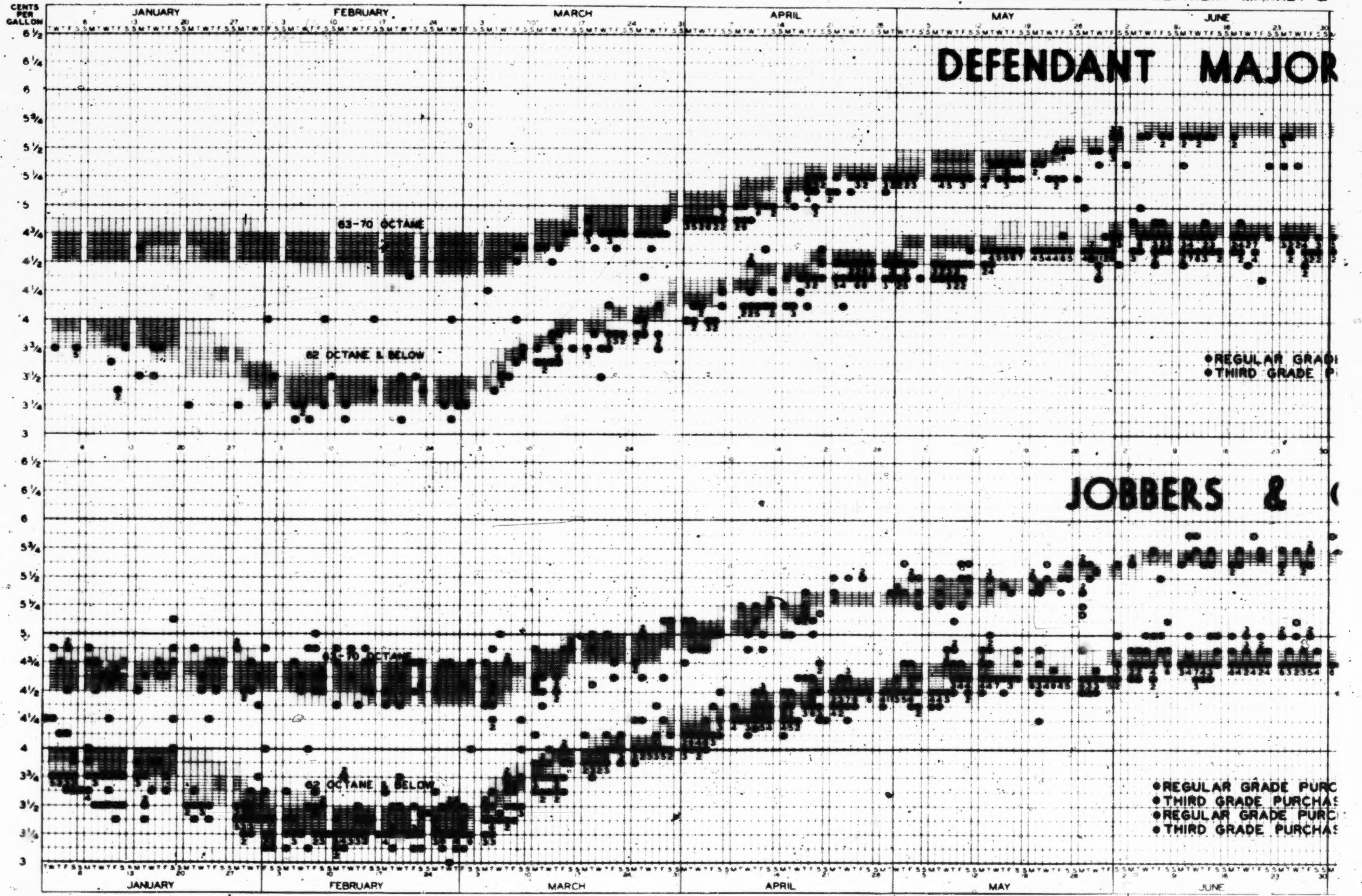


PURCHASES OF REGULAR & THIRD GRADE GASOLINE ON A FLAT PRICE

COMPARED W

COMPOSITE OF 1935 PR

▭ PLATT'S OILGRAM OKLAHOMA REFINERY MARKET &



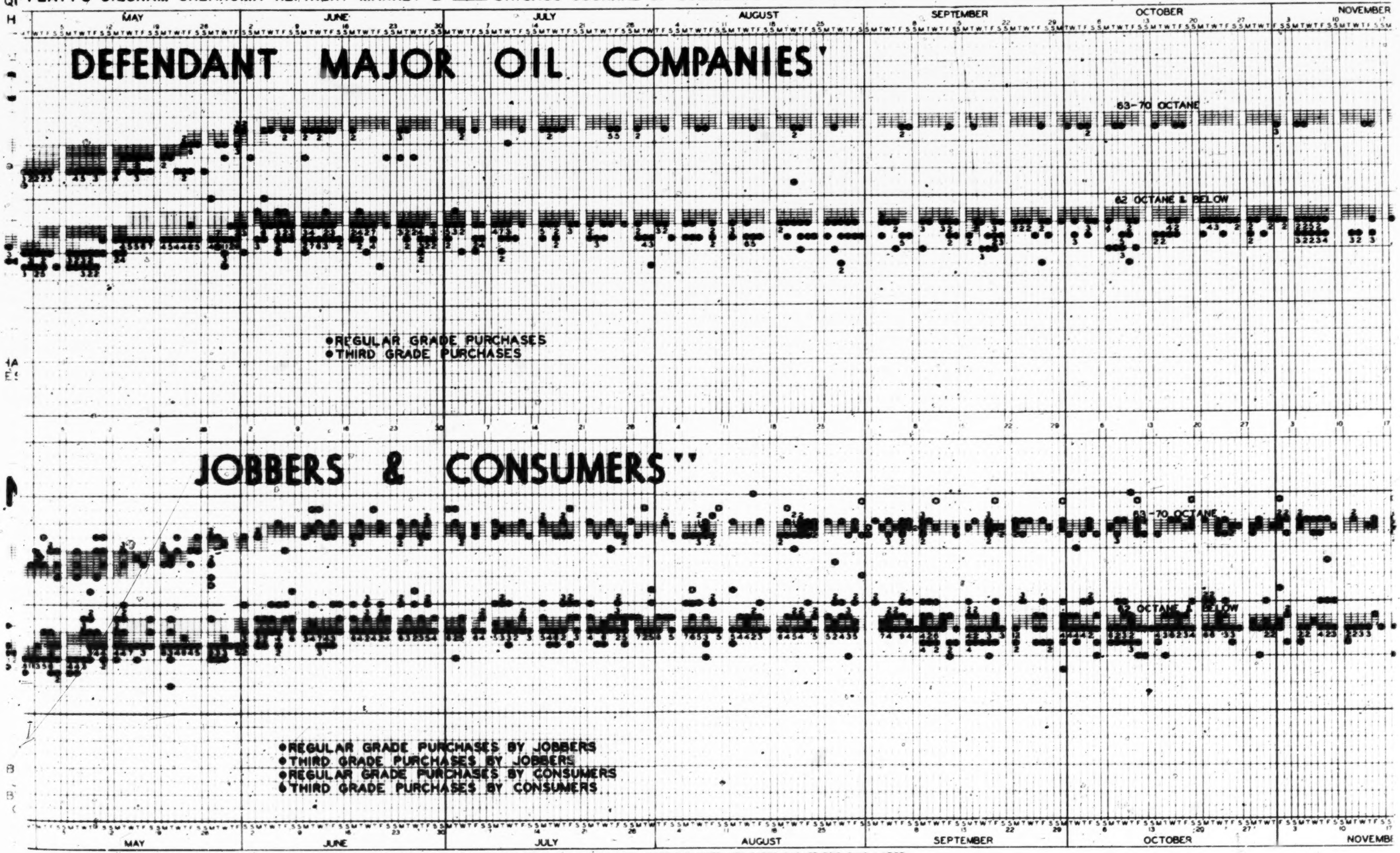
[illegible] OF CHICAGO JOURNAL OF COMMERCE QUOTATIONS ARE THOSE ON WHICH THE [illegible]

IRD GRADE GASOLINE ON A FLAT PRICE OPEN MARKET BASIS F. O. B. GROUP 3 OKLAHOMA RE

COMPARED WITH

COMPOSITE OF 1935 PRICE QUOTATIONS

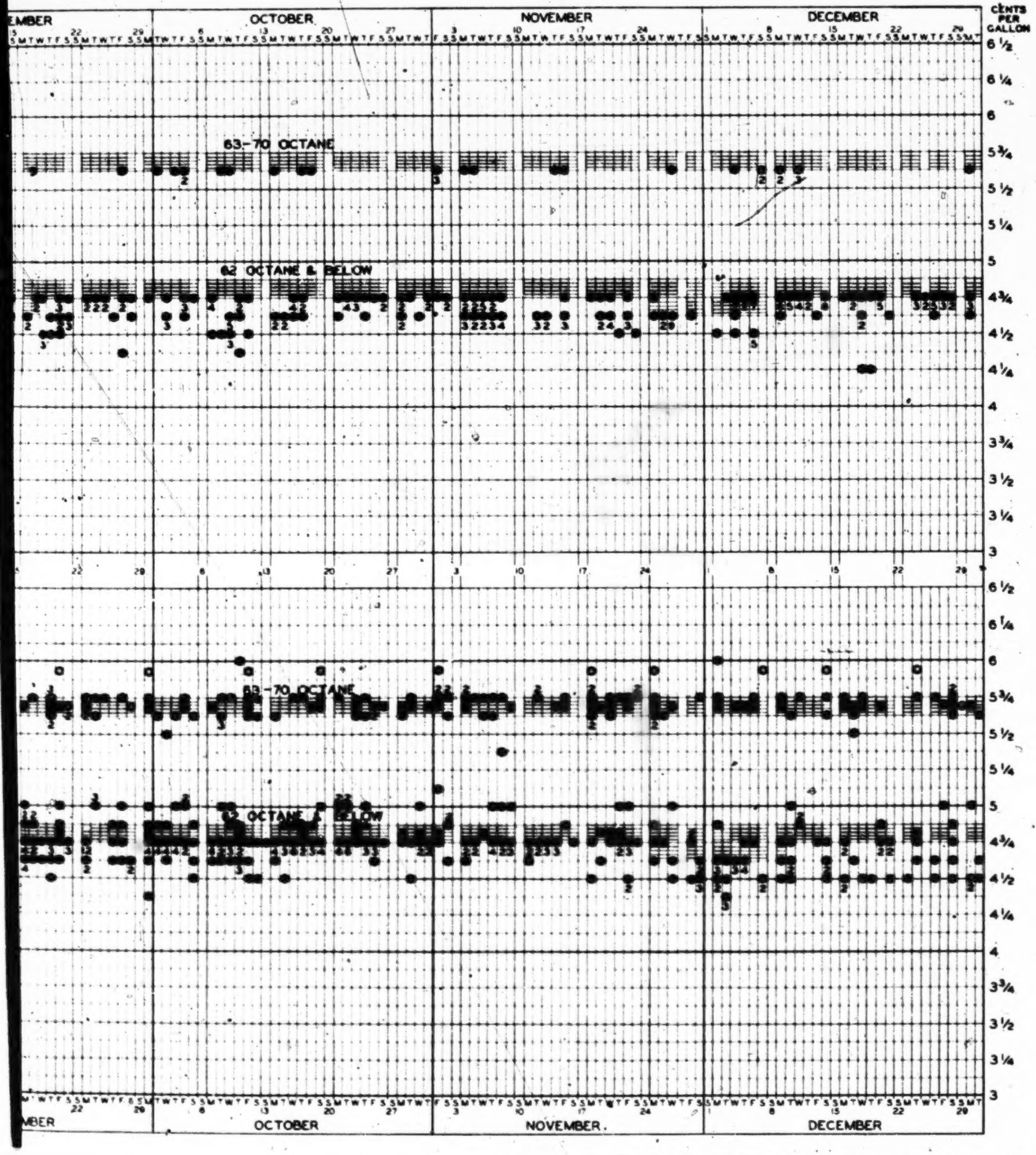
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET & ▤ CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



QUOTATIONS ARE THOSE ON WHICH THE PRICES SHOWN ARE STATED TO HAVE BEEN PAID. THE ISSUES IN WHICH SUCH QUOTATIONS WERE PUBLISHED ARE DATED ONE OR TWO DAYS LATER.

AHOMA REFINERIES

EXHIBIT NO. 1024



6089 DEFENSE EXHIBIT NO. 1025.

6090

Summary of F. O. B. Group 3 and F. O. B. Oklahoma Refinery Flat Price Purchases by Defendant Companies from Independent Refiners and Brokers of Regular and Third Grade Gasoline, Compared with Chicago Journal of Commerce Quotations.

Period	Above High		At High		Within range		At Low		Under Low		Total	
	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars
January 1, 1935 to April 30, 1936: Totals	16	52	41	265	114	722	841	4,473-2/3	404	1,597-2/3	1,416	7,110-1/3
Percentage....	1.1%	.7%	2.9%	3.7%	8.0%	10.2%	59.5%	62.9%	28.5%	22.5%	100%	100%
March 1, 1935 to May 31, 1935: Totals	4	8	15	50	21	105	256	986	162	681-2/3	458	1,830-2/3
Percentage....	.9%	.4%	3.3%	2.7%	4.6%	5.7%	55.9%	53.9%	35.3%	37.3%	100%	100%
March 1, 1935 to April 30, 1936: Totals	12	48	38	254	108	690	825	4,419-2/3	392	1,508-2/3	1,375	6,920-1/3
Percentage....	.9%	.7%	2.8%	3.7%	7.8%	9.9%	60.0%	63.9%	28.5%	21.8%	100%	100%

6091

DEFENSE EXHIBIT NO. 1026.

6092

Summary of F.O.B. Group 3 and F. O. B. Oklahoma Refinery Flat Price Purchases by Defendant Companies from Independent Refiners and Brokers of Regular and Third Grade Gasoline, Compared with Platt's Oilgram for the Oklahoma Refinery Market

Period	Above High		At High		Within Range		At Low		Under Low		Total	
	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars	Pur.	Cars
January 1, 1935 to April 30, 1936												
Totals........	19	59	69	397	4	8	577	3052-1/2	483	1755-2/3	1152	5272-1/6
Percentage....	1.7%	1.1%	6.0%	7.5%	.3%	.2%	50.1%	57.9%	41.9%	33.3%	100%	100%
March 1, 1935 to May 31, 1935												
Totals........	7	15	7	33	9	41	179	758	256	983-2/3	458	1830-2/3
Percentage....	1.5%	18%	1.5%	1.8%	2.0%	2.2%	39.1%	41.4%	55.9%	53.8%	100%	100%
March 1, 1935 to April 30, 1936												
Totals........	15	55	72	420	9	41	766	4491-2/3	513	1912-2/3	1375	6920-1/3
Percentage....	1.1%	.8%	5.2%	6.1%	.7%	.6%	55.7%	64.9%	37.3%	27.6%	100%	100%

6093

DEFENSE EXHIBIT NO. 1027.

94

PERATING REFINERY CAPACITY—TIDE WATER ASSOCIATED OIL COMPANY, GULF REFINING COMPANY, THE TEXAS COMPANY, DEEP ROCK OIL COMPANY

(According to Bureau of Mines Information Circulars 6850 and 6906)

Company	January 1, 1935		January 1, 1936	
	Refinery	Cracking	Refinery	Cracking
ide Water				
Tide Water Oil Co. Oklahoma, Drumright	15,000	7,000	15,000	7,000
Associated & Watson, Calif	61,500	21,000	57,500	28,500
Bayonne, N. J	50,000	21,000	50,000	21,000
	126,500	49,000	122,500	56,500
ulf				
Staten Island, N. Y	15,000	–	15,000	–
Hooven & Toledo, Ohio	27,000	19,500	26,000	27,200
Neville Island & Girard Pt., Pa	40,000	36,400	40,000	27,600
Port Arthur, Ft. Worth & Sweetwater, Texas	111,000	63,000	111,000	63,000
	193,000	118,900	192,000	117,800
exas				
Fillmore & Los Angeles, Calif	34,000	8,200	34,000	8,200
Craig, Colorado	1,000	1,000	1,000	1,000
Claymont, Del	2,000	–	2,000	–
Lawrenceville, Ill. (Indian)	16,000	5,800	16,000	6,900
Lockport, Ill	20,000	16,400	20,000	17,000
Pryse, Ky	2,500	2,000	2,500	2,000
Shreveport, La	7,000	–	7,000	–
Sunburst, Mont. (International)	3,000	2,000	3,000	2,500
West Tulsa, Okla	14,000	13,600	14,000	14,600
Providence, R. I	2,000	–	2,000	–
State of Texas (7 locations)	140,500	113,700	148,300	118,300
Norfolk, Va	2,000	–	2,000	–
Casper & Cody, Wyo	10,000	6,800	10,000	9,000
	254,000	160,500	261,800	179,500
Deep Rock				
Cushing, Oklahoma	10,000	4,000	10,000	4,000
Totals	583,500	341,400	586,300	351,000

6095 DEFENSE EXHIBIT NO. 1028.

6096 It Is Hereby Stipulated by and between the parties herein that the quantities of gasoline sold directly, or by subsidiaries, by the following companies,

Barnsdall Refining Corporation (and predecessor),
Continental Oil Company,
Deep Rock Oil Corporation,
Empire Oil and Refining Company,
The Globe Oil and Refining Company (Kansas, Oklahoma and Illinois),
Mid-Continent Petroleum Corporation,
Phillips Petroleum Company,
The Pure Oil Company,
Shell Petroleum Corporation,
Sinclair Refining Company,
Skelly Oil Company,
Socony-Vacuum Oil Company, Inc. (including Wadhams Oil Company and Magnolia Petroleum Company),
Standard Oil Company (Indiana),
The Texas Company,
and
Tide Water Oil Company, (Oklahoma),

in the territory described in the indictment herein as the Mid-Western area, consisting of the States of Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri and Kansas, during the year 1935, and the amounts thereof sold through their own retail outlets, to jobbers, and to other persons or corporations, as reflected by the books and records of said companies, 6097 are as set forth in Exhibit "A" hereto annexed (the figures for Deep Rock Oil Corporation, The Texas Company and Tide Water Oil Company (Oklahoma) being approximations); that the quantities of gasoline sold directly or by subsidiaries, by said companies in said territory described in the indictment as the Mid-Western area from January 1, 1936 to July 31, 1936, inclusive, and the amounts thereof sold through their own retail outlets, to jobbers, and to other persons or corporations, as reflected by the books and records of said companies, are as set forth in Exhibit "B" hereto annexed, (the figures for Deep Rock Oil Corporation, The Texas Company and Tide Water Oil Company (Oklahoma) being approximations).

As so stipulated, said figures are received in evidence in the above entitled action without objection.

It is further stipulated that the defendant Cities Service Company itself sold no gasoline in said Mid-Western area or elsewhere in the United States in the above mentioned periods,

EXHIBIT "A"

SALES OF GASOLINE IN MID-WESTERN AREA BY CERTAIN COMPANIES
For the Year 1935—In Gallons

Companies Selling Directly or by Subsidiaries	Through Own Retail Stations	To Jobbers	To All Others	Grand Total
Barnsdall Refining Corp. and predecessor	63,135,744	1,312,552	20,392,258	84,840,554
Continental Oil Company	159,803	47,859,206	84,028,104	132,047,113
Deep Rock Oil Corporation (Approx.)	2,000,000	12,000,000	27,000,000	41,000,000
Empire Oil & Refining Company	36,835,203	34,778,534	114,391,546	186,005,283
The Globe Oil & Refining Company (Kansas, Oklahoma and Illinois)		164,513,639	11,471,724	175,985,363
Mid-Continent Petroleum Corporation	77,539,266	129,761,224	726,468	208,026,958
Phillips Petroleum Company	80,428,469	132,051,472	185,467,756	397,947,697
The Pure Oil Company	26,046,171	102,575,068	36,107,917	164,729,156
Shell Petroleum Corporation	127,250,818	66,249,947	164,257,235	357,758,000
Sinclair Refining Company	14,845,240	44,457,167	325,228,467	384,530,874
Skelly Oil Company	18,842,337	80,361,283	48,661,004	147,864,624
Socony-Vacuum Oil Company, Inc. (Including Wadhams and Magnolia)	53,198,132	84,483,527	214,512,392	352,194,051
Standard Oil Company (Indiana)	305,831,418	745,195	726,761,704	1,033,338,317
The Texas Company (Approx.)				309,000,000
Tide Water Oil Co. (Oklahoma) (Approx.)	2,500,000	75,000,000	3,000,000	80,500,000
Totals	808,612,601	976,148,814	1,962,006,575	4,055,767,990

EXHIBIT "B"

SALES OF GASOLINE IN MID-WESTERN AREA BY CERTAIN COMPANIES

For the First Seven Months of 1936—In Gallons

Companies Selling Directly or by Subsidiaries	Through Own Retail Stations	To Jobbers	To All Others	Grand Total
Barnsdall Refining Co. and predecessor	29,590,892	487,257	10,971,667	41,049,816
Continental Oil Company	22,778	32,902,939	41,971,282	74,896,999
Deep Rock Oil Corporation (Approx.)	500,000	5,000,000	15,500,000	21,000,000
Empire Oil & Refining Company	15,992,597	20,165,748	75,627,966	111,786,311
The Globe Oil & Refining Co. (Kansas, Oklahoma and Illinois)		102,736,029	3,200,000	105,936,029
Mid-Continent Petroleum Corporation	49,581,363	75,039,742	535,552	125,156,657
Phillips Petroleum Company	44,419,342	77,673,974	109,200,950	231,294,266
The Pure Oil Company	17,070,875	71,090,043	22,530,089	110,691,007
Shell Petroleum Corporation	36,917,569	41,394,468	141,506,585	219,818,622
Sinclair Refining Company	3,896,473	25,284,937	205,207,481	234,388,891
Skelly Oil Company	7,915,579	47,811,011	31,146,268	86,872,858
Socony-Vacuum Oil Company, Inc. (Including Wadhams and Magnolia)	23,109,614	57,439,359	136,149,547	216,698,520
Standard Oil Company (Indiana)	63,788,838	1,057,722	570,840,588	635,687,148
The Texas Company (Approx.)				193,000,000
Tide Water Oil Co. (Oklahoma) (Approx.)	1,500,000	44,000,000	1,500,000	47,000,000
Totals	294,305,920	602,083,229	1,365,887,975	2,455,277,124

EXHIBIT "C"

SALES OF GASOLINE IN MID-WESTERN AREA BY PRESENT DEFENDANT MAJOR COMPANIES

For the Year 1935

In Gallons

Companies Selling Directly or by Subsidiaries	Through Own Retail Stations	To Jobbers	To All Others	Grand Total
Barnsdall Refining Corporation and predecessor	63,135,744	1,312,552	20,392,258	84,840,554
Continental Oil Company	159,803	47,859,206	84,028,104	132,047,113
Empire Oil & Refining Company	36,835,203	34,778,534	114,391,546	186,005,283
The Globe Oil & Refining Company (Kansas, Oklahoma and Illinois)		164,513,639	11,471,724	175,985,363
Mid-Continent Petroleum Corporation	77,539,266	129,761,224	726,468	208,026,958
Phillips Petroleum Company	80,428,469	132,051,472	185,467,756	397,947,697
The Pure Oil Company	26,046,171	102,575,068	36,107,917	164,729,156
Shell Petroleum Corporation	127,250,818	66,249,947	164,257,235	357,758,000
Sinclair Refining Company	14,845,240	44,457,167	325,228,467	384,530,874
Skelly Oil Company	18,842,337	80,361,283	48,661,004	147,864,624
Socony-Vacuum Oil Company, Inc. (Including Wadhams and Magnolia)	53,198,132	84,483,527	214,512,392	352,194,051
Standard Oil Company (Indiana)	305,831,418	745,195	726,761,704	1,033,338,317
Totals	804,112,601	889,148,814	1,932,006,575	3,625,267,990

6101

EXHIBIT "D"

SALES OF GASOLINE IN MID-WESTERN AREA BY PRESENT DEFENDANT MAJOR OIL COMPANIES

For the First Seven Months of 1936

In Gallons

Companies Selling Directly or by Subsidiaries	Through Own Retail Stations	To Jobbers	To All Others	Grand Total
Barnsdall Refining Corporation and predecessor	29,590,892	487,257	10,971,667	41,049,816
Continental Oil Company	22,778	32,902,939	41,971,282	74,896,999
Empire Oil & Refining Company	15,992,597	20,165,748	75,627,966	111,786,311
The Globe Oil & Refining Company (Kansas, Oklahoma and Illinois)		102,736,029	3,200,000	105,936,029
Mid-Continent Petroleum Corporation	49,581,363	75,039,742	535,552	125,156,657
Phillips Petroleum Company	44,419,342	77,673,974	109,200,950	231,294,266
The Pure Oil Company	17,070,875	71,090,043	22,530,089	110,691,007
Shell Petroleum Corporation	36,917,569	41,394,468	141,506,585	219,818,622
Sinclair Refining Company	3,896,473	25,284,937	205,207,481	234,388,891
Skelly Oil Company	7,915,579	47,811,011	31,146,268	86,872,858
Socony-Vacuum Oil Company, Inc. (Including Wadhams and Magnolia)	23,109,614	57,439,359	136,149,547	216,698,520
Standard Oil Company (Indiana)	63,788,838	1,057,722	570,840,588	635,687,148
Totals	292,305,920	553,083,229	1,348,887,975	2,194,277,124

6102 DEFENSE EXHIBIT NO. 1029.

For Identification.

6103 1—480

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR
Washington, D. C.

Sep 20 1937

Pursuant to Title 28, Paragraph 661, United States Code, I hereby certify that annexed is a true copy of the document described below, which is in official custody of the Department of the Interior, and is on file in the Department.

An Order dated June 23, 1934, signed by Harold L. Ickes, with attached copies of the Pacific Coast Petroleum Agency Agreement and the Refiners' Agreements and the agreements made supplemental thereto.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

Oscar L. Chapman,
(Seal) *Assistant Secretary of the Interior.*

6104

Order
Under the Code of Fair Competition For the Petroleum Industry and the National Industrial Recovery Act

Whereas, certain refiners of petroleum and its products operating in the States of California, Oregon, Arizona, Nevada, and that part of Washington which is west of the Cascade Mountains, have submitted to me agreements known as the Pacific Coast Petroleum Agency Agreement and Refiners' Agreements, which Agreements are complementary, and which have been submitted to me under

Section 4, sub-section (a), of the Act of June 16, 1933, known as the National Industrial Recovery Act, and

Whereas, the signatories to the said Pacific Coast Petroleum Agency Agreement and the said Refiners' Agreements have executed agreements supplemental thereto, and

Whereas, I have carefully investigated conditions in the petroleum industry and the situation giving rise to the submission of said agreements and have found that for several months the market for petroleum and its products in California has been in a demoralized state, and that unless action directed towards stabilization is taken, small enterprise cannot hope to survive, and I have found further that continued losses due to unrestrained competition have resulted in the general breakdown of the provisions of the National Industrial Recovery Act and
6105 of the Code of Fair Competition for the Petroleum Industry approved thereunder, and

Whereas, I have found that the aforesaid agreements are not designed to promote monopoly or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of the National Industrial Recovery Act.

Now, Therefore, pursuant to the authority vested in me by the President's Order of August 28, 1933, issued under the authority of Section 2 (a) of the National Industrial Recovery Act, the said agreements known as the Pacific Coast Petroleum Agency Agreement and the Refiners' Agreements and the agreements made supplemental thereto, copies of which are attached hereto, are hereby approved.

Promulgated this 23d day of June, 1934.

Harold L. Ickes
Secretary of the Interior
and
Administrator for the Petroleum Industry.

6106 This Agreement Made This ______ day of June, 1934, By And Between ________________ hereinafter called Refiner (who has executed an agreement known as Refiners' Agreement with Pacific Coast Petroleum Agency and Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry); And

Harold L. Ickes, as Petroleum Administrator.

Witnesseth:

1. Each of the parties hereto agrees to abide by and conform to the provisions of the Code of Fair Competition for the Petroleum Industry and the amendments thereto and the rules, regulations and orders made in pursuance thereof, so long as it or they remain in effect; provided, however, that nothing in this paragraph contained shall prevent any such party while so abiding and conforming from contesting in good faith before any court, board or official having competent jurisdiction over the same, the validity, meaning or effect of any provision thereof.

2. Each of the parties hereto agrees that he shall conduct his operations under the said Refiners' Agreement so as to eliminate unfair competitive practices, prevent monopolies or monopolistic practices, prevent the elimination or oppression of, or discrimination against, small enterprises, prevent unreasonable or inordinate prices to the public and generally to effectuate the purposes of the National Industrial Recovery Act.

6107 3. Each of the parties agrees that he shall from time to time and within twenty (20) days after notice of demand by letter or telegram from the Attorney General, report or cause to be reported to the Attorney General and to the Petroleum Administrator under oath, such facts and things concerning the operations, activities and records of said Pacific Coast Petroleum Agency, insofar as they concern Refiner, and the operations, activities and records of the parties respectively, and each of them, relating to said Refiners' Agreement as may be required in such notice or demand.

4. Each of the parties agrees without limiting or abridging the full force and effect of Section 12(a) of said Refiners' Agreement, said section shall be construed as including the agreement of each of the parties not to permit gasoline, engine distillate or motor fuel, sold by it, or marketed by it indirectly, to be resold, at wholesale or

retail, except for the same price for the identical product as such party manufacturing the same shall post for direct sale, whether such product be sold or resold without brand or under the same brand or under a different brand. Such posted price shall be an actual published price at which sales are being actually made in the open market and in regular course of business and free from collusion between buyer and seller, and shall not include false, collusive or fictitious nominal posting made or published 6108 for the purpose of defeating the foregoing provisions, or the provisions of said Section 12(a).

5. Section 17 of said Refiners' Agreement is hereby incorporated herein and made a part hereof as though fully set forth herein.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

....

....

Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry.

6109 Agreement Supplemental to Pacific Coast Petroleum Agency Agreement

This Agreement, made as of the .... day of June, 1934 By And Among companies and persons signatory hereto, engaged in the Petroleum Industry on the Pacific Coast, and who have executed an agreement known as the Pacific Coast Petroleum Agency Agreement, which has been heretofore filed with Harold L. Ickes, Secretary of the Interior, Administrator of the Code of Fair Competition for the Petroleum Industry, And

Harold L. Ickes, as Petroleum Administrator,

Witnesseth:

1. Each of the parties hereto agrees to abide by and conform to the provisions of the Code of Fair Competition for the Petroleum Industry and the amendments thereto and the rules, regulations and orders made in pursuance thereof, so long as it or they remain in effect; provided, however, that nothing in this paragraph contained shall prevent any such party while so abiding and conforming from contesting in good faith before any court, board or official having competent jurisdiction over the same, the validity, meaning or effect of any provision thereof.

2. Each of the parties hereto agrees that he shall conduct his operations under the said Pacific Coast Petroleum Agency Agreement so as to eliminate unfair competitive practices, prevent monopolies or monopolistic practices, prevent the elimination or oppression of, or discrimination against, small enterprises, prevent unreasonable or inordinate prices to the public and generally to effectuate the purposes of the National Industrial Recovery Act.

6110 3. Each of the parties agrees that he shall from time to time and within twenty (20) days after notice of demand by letter or telegram from the Attorney General, report or cause to be reported to the Attorney General and to the Petroleum Administrator, under oath, such facts and things concerning the operations, activities and records of said Pacific Coast Petroleum Agency, and the operations, activities and records of the parties respectively, and each of them, relating to said Pacific Coast Petroleum Agency Agreement as may be required in such notice or demand.

4. Each of the parties agrees that without limiting or abridging the full force and effect of Section 12(a) of that certain Agreement entered into between certain Refiners and the Pacific Coast Petroleum Agency, known as the Refiners' Agreement, said section shall be construed as including the agreement of each of the parties not to permit gasoline, engine distillate or motor fuel, sold by it, or marketed by it indirectly, to be resold, at wholesale or retail, except for the same price for the identical product as such party manufacturing the same shall post for direct sale, whether such product be sold or resold without brand or under the same brand or under a different brand. Such posted price shall be an actual published price at which sales are being actually made in the open market and in regular course of business and free from collusion between buyer and seller, and shall not include, false, collusive or fictitious nominal posting made or published for the purpose of defeating the foregoing provisions or the provisions of said Section 12(a).

6111 5. Sections 13 and 14 of the said Pacific Coast Petroleum Agency Agreement are hereby incorporated herein and made a part hereof as though fully set forth herein.

6. This agreement may be executed in any number of counterparts.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

....

....

Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry.

6112 Pacific Coast Petroleum Agency Agreement

6113 This Agreement, made as of the .... day of ...., 1934, by and among the companies and persons signatory hereto, engaged in the petroleum industry on the Pacific Coast, hereinafter called the Members, and by all of the Members with Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry, hereinafter called the Administrator,

Witnesseth:

That Whereas, because of the very definite need for rehabilitation of the petroleum industry on the Pacific Coast to the end that the facilities for distribution of petroleum and its products may be maintained, that the growth of monopoly resulting from uncontrolled and damaging competition may be prevented, and that adequate supplies of petroleum and its products may be made available to consumers at fair and reasonable prices, it has become necessary to provide for the termination of certain prevailing undesirable conditions and unsound marketing practices pertaining thereto, and to provide a means whereby oil operators on the Pacific Coast may be able to dispose of their surplus petroleum products without loss and to provide means whereby refiners may be offered a source of crude supply to meet their requirements, and to provide a fair market for all crude oil produced under curtailment,

6114 Now, Therefore, the parties hereto, acting under the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry, do hereby agree as follows:—

Article One

Sec. 1. This agreement shall not become effective until approved by the Administrator and until permitted by proceedings necessary under the provisions of the Order

Modifying Final Decree made September 25, 1933, by the District Court of the United States for the Northern District of California, Southern Division, in the case of United State of America, Petitioner, *vs.* Standard Oil Company of California *et al.*, Defendants, numbered 2542-S in Equity, on the files of said Court, modifying the Final Decree made and entered by said Court in said cause on the 15th day of September, 1930.

Article Two

Sec. 1. The members hereby voluntarily associate themselves in a group to be known as the Pacific Coast Petroleum Agency, the purposes of which shall be as follows:

To purchase, hold and dispose of fairly and with due regard to market demands, gasoline manufactured on the Pacific Coast by others than members and refiners subsidiary to, or controlled by such members, which the manufacturers thereof may desire to sell and is in excess of the quantity which the manufacturers thereof can market without creating disorderly marketing conditions, and which, if not so purchased, would result in the burdening of the gasoline market on the Pacific Coast with
6115 gasoline uneconomically distributed, and which would
otherwise be sold at prices bearing no proper relationship to the price of crude oil thereby directly affecting the stability of gasoline markets and the prosperity of the petroleum industry on the Pacific Coast, and leading to price cutting and destructive price wars which affect interstate commerce and frustrate the purposes of the said Act and Code; and to purchase, hold and dispose of fairly and with due regard to market demands, crude oil, natural gasoline, and other petroleum products produced in California by others than Members and producers subsidiary to, or controlled by such Members, which the producers thereof may desire to sell and which is in excess of the quantity which the producer can sell without creating disorderly marketing conditions; and, to the extent that such crude oil may be available, to sell the same to refiners; to purchase crude oil from refiners which they have in excess of the amount of refiners' reqnirements for manufacturing their allotted gasoline under contracts with the Agency; to post a price for and to purchase marketable residuum, distillate, and kerosene from refiners who have entered into contracts with the Agency;

Provided, however, the Agency shall not purchase any crude oil, or the products thereof, produced, or which there is good reason to believe was produced, in violation of the Code of Fair Competition for the Petroleum Industry, or amendments thereto, or in excess of the allowable production as so assigned to the producer thereof.

6115½

Article Three.

And for the carrying out of such purposes the parties hereto agree as follows:

Sec. 1. Membership herein shall be open to all refiners and marketers of petroleum products on the Pacific Coast until such time as this agreement is submitted to the Administrator for his approval, and thereafter upon approval of the Administrator.

Sec. 2. The control and management of the Agency shall be vested in a Board of Governors which shall consist of one Governor appointed by each Member at the time of signature hereto, except that a Member whose commitments to purchase from or supply petroleum products to the refiners entering into agreements with the Agency is guaranteed or assumed by another Member shall not be entitled to appoint a Governor. Such appointments may be changed or alternates appointed by the Members from time to time. Upon subscription hereto by Associated Oil Company, General Petroleum Corporation of California, William C. McDuffie, as Receiver of Richfield Oil Company, Shell Oil Company, Standard Oil Company of California, The Texas Company (California), Union Oil Company of California, Rio Grande Oil Company, Gilmore Oil Company, Seaside Oil Company, Guardian Oil Company, Signal Oil Company, and Rocket Oil Company, this agreement shall be submitted as provided in Article One hereof for approval and upon such approval and when permitted by proceedings necessary under the provisions of said Order Modifying Final Decree made
6116 September 25, 1933, referred to in said Article, this
agreement shall become effective. The Board may appoint an Executive Committee and fix its power, and make rules and regulations for the government of the Agency and the conduct of its business. The Board shall elect a President, one or more Vice-Presidents, a Secretary, Treasurer, and such other officers and assistants as it shall deem advisable, and shall define the duties and fix the compensation of such officers and assistants. The members of the Board of Governors and executive committee, however, shall serve without compensation.

Sec. 3. Each governor shall be entitled to an equal vote with every other governor on questions coming before the Board. The Administrator may appoint a non-voting member of the Board of Governors and an alternate.

Sec. 4. The Board of Governors, subject to the supervision and control of the Administrator, may determine what purchases and sales of crude oil, marketable residuum, distillate and/or kerosene shall be made hereunder.

Sec. 5. The assenting vote of two-thirds (⅔) of the members of the Board of Governors shall be necessary and sufficient to carry any matter not contrary to the provisions of this agreement; except that the Agency shall not borrow money except on the unanimous vote of the Board.

Sec. 6. The form of contract with Refiners shall be in substance in accordance with the form attached hereto and marked "Exhibit A". The Members hereby author-
6117 ize the Agency to bind each of them severally to the
provisions of the contract entered into between the Agency and Refiners in accordance with the form attached in regard to the conditions, stipulations, and restrictions in marketing, and the manner in which marketing shall be done, all as set out in Sections VII, XII and XIII in said form of agreement.

Sec. 7. The Board of Governors shall have all requisite powers relative to the transportation, storage, and sale of products purchased hereunder, and the distribution of funds among the subscribers in proportion to their respective interests.

Sec. 8. No Member shall be liable for the obligations of other Members or of the Agency, except as covered by special written agreement, beyond his or its pro rata share as hereinafter provided.

Sec. 9. Separate accounting shall be made by the Agency to each of the Members for each of the Funds established herein.

(A) Operating Capital Fund.

In order to provide funds for the current operating expenses of the Agency an Operating Capital Fund of Fifteen Thousand Dollars ($15,000.00) shall be established, to which a contribution shall be made by each of the Members in the proportion that the quantity of gasoline sold by such Member for consumption in the States of California, Oregon, Washington, Arizona and Nevada
during the year 1933 bears to the total quantity of
6118 gasoline sold by all Members for consumption in the
same territory during the same period.

Distribution of this fund to the Members shall be made upon the expiration or earlier discontinuance of this contract in the exact ratio of their respective contributions.

(B) Operating Expense Fund.

The total amount of this fund shall be determined for each month and shall include the operating expenses of the Agency and the amounts of earnings and loses arising from the purchase and sale of products and from other sources during the month.

Upon determination of the total amount of the Operating Expense Fund for the preceding month, the Board of Governors shall issue a call upon each Member for his proportion of such Operating Expense Fund and same shall be paid immediately. The proportion of the total Operating Expense Fund payable by each Member shall be the proportion that the quantity of gasoline sold by such Members for consumption in the States of California, Oregon, Washington, Arizona and Nevada during the preceding month bears to the total quantity of gasoline sold by all Members for consumption in the same territory during the same period.

(C) Gasoline Purchase Fund.

The obligation of each Member to purchase gasoline from the Agency shall be determined in the following manner: The total quantity shall be the total quantity of gasoline acquired by the Agency for each month and the total cost shall be the total cost incurred by the
6119 Agency for each month in the purchase of such total
quantity. The gasoline purchased by the Agency shall be divided among the Members so that there is no discrimination among them in the quality of gasoline received by each. The proportion of the total quantity which each Member shall purchase from the Agency for each month shall be the proportion that the quantity of gasoline sold by such Member for consumption in the States of California, Oregon, Washington, Arizona and Nevada during the month bears to the total quantity of gasoline sold by all Members for consumption in the same territory during the same period. The proportion of the total cost which shall be paid to the Agency by each Member for such gasoline so purchased from the Agency shall be the same proportion as that established for determination of the quantity to be purchased.

Upon determination of the total quantity and total cost for the month, the amount payable by each Member shall be payable on call by the Board of Governors.

The Agency shall conduct its liftings from refiners and deliveries to Members in the most economical manner which will enable each Member to receive during each month, as nearly as can be estimated, such Member's proper share of gasoline. Differences between the quantities and qualities actually received by Members and the quantities and qualities which Members should have received by operation of the formula herein established will be set up in exchange accounts between the Agency and the Members.

6120 (D) Crude Oil Purchase Fund.

The obligation of each Member to purchase crude oil from the Agency shall be determined in the following manner: The total quantity shall be the total quantity of crude oil acquired by the Agency for each month and the total cost shall be the total cost incurred by the Agency for each month in the purchase of such total quantity. The crude oil purchased by the Agency shall be divided among the Members so that there is no discrimination among them in the quality of oil received by each. The amount of crude which each Member shall purchase from the Agency for each month shall be the proportion that the quantity of gasoline sold by such Member for consumption in the States of California, Oregon, Washington, Arizona and Nevada during the month bears to the total quantity of gasoline sold by all Members for consumption in the same territory during the same period. The proportion of the total cost of each quality which shall be paid to the Agency by each Member for such crude oil so purchased from the Agency shall be the exact cost applicable to the crude oil actually received by the Member during the month.

Upon determination of the total quantity and total cost for the month, the amount payable by each Member shall be payable upon call by the Board of Governors.

The Agency shall conduct its lifting from producers and refiners and deliveries to Members in the most economical manner which will enable each Member to receive during each month, as nearly as can be estimated, its
proper share of crude oil. Differences between the
6121 quantities and qualities actually received and paid
for by Members and the quantities and qualities

which Members should have received and paid for by operation of the formula herein established will be set up in exchange accounts between the Members upon advice by the Agency.

(E) Crude Oil Sale and Distribution.

The obligation of each Member to furnish refinable crude oil to the Agency to meet Agency's obligations under its contracts with Refiners shall be determined in the following manner:

First: Each Member shall furnish part or all of the refinable crude oil purchased by such Member from the Agency through the operation of the Crude Oil Purchase Fund from the effective date of this agreement. In the event the total quantity of such purchases made by all Members is in excess of the quantity required by the Agency, the proportion of the quantity required by the Agency to be furnished by each Member shall be the proportion that the quantity so purchased by such members bears to the total quantity so purchased by all Members.

Second: In the event the total quantity required by the Agency is in excess of the quantity available under "First", each Member shall furnish part or all of the net refinable crude oil added to such Member's stocks from the date of this agreement up to the last day of the preceding month. In the event the total quantity of such additions to stocks made by all Members is in excess of the remaining quantity required by the Agency, the proportion of the remaining quantity required by the Agency to be
6121½ furnished by each Member shall be the proportion
that the quantity so added to stocks by such Member bears to the total quantity so added to stocks by all Members adding crude oil to stocks.

Third: In the event the total quantity required by the Agency is in excess of the quantity available under "First" and "Second", the Agency Members shall jointly apply to the Planning and Coordination Committee, Washington, D. C., or other proper agency or authority, in the manner prescribed by the regulations then in force, for permission to withdraw refinable crude oil from stocks. The total quantity of refinable crude oil for which application for permission to withdraw from storage is made shall be the total quantity, in excess of the quantity available under "First" and "Second", required by the Agency to fulfill its obligations to Refiners for such period of time as the Board of Governors may determine is necessary, and the proportion of the total quantity which each Member shall request permission to withdraw from storage shall be the proportion that the quantity of gasoline sold by such Member for consumption in the States of California, Oregon, Washington, Arizona and Nevada during such period bears to the total quantity of gasoline sold by all such Members for consumption in said states during the same period.

In the event the joint application of said Agency Members for permission to withdraw refinable crude oil from storage for said purpose is approved, the quantities to be furnished by the respective Members shall be the quantities of allowable stock withdrawal assigned to each.

6122 In the event the joint application of the Agency Members for permission to withdraw refinable crude oil from storage for said purpose is disapproved or in the event five (5) days (excluding the day of filing) elapse after the filing of such application without approval or disapproval thereof, and compliance by any Member with its obligation to furnish crude oil to the Agency under this part of the formula would either require such Member to make unauthorized withdrawals of crude oil from storage or to reduce its gasoline production below the allowable gasoline production allocated to it by the Administrator or the Administrator's authorized agent, the Agency shall forthwith give to each Refiner notice of termination of its agreement with him, as in its agreement with him provided, and pursuant to such notice shall terminate such agreement.

In the event of such termination each Agency Member shall during the interim period until such termination becomes effective furnish to the Agency its proportionate quantity of refinable crude oil to enable the Agency to fulfill its obligation to Refiners and to that end shall, if necessary, reduce its own crude runs to such extent as to enable it to deliver its proportion of the total required quantity of allowable crude.

For the refinable crude oil so purchased by the Agency from Members, the Agency shall pay to each of the Members the posted price at the well, effective on the date of delivery, for the particular grade of oil delivered to the Agency plus gathering and transportation charges to 6123 the point of delivery at the rates established for purposes of Federal Pipe Line Tax.

The Agency shall conduct its liftings from Members and deliveries to Refiners in the most economical manner which will enable each Member to deliver during each month, as nearly as can be estimated, such Member's proper share of refinable crude oil. Differences between the quantities and qualities actually delivered by Members, and the quantities and qualities which Members should have delivered by operation of the formula herein established will be set up in exchange accounts between the Members upon advice by the Agency.

(F) In the event the total quantity of refinable crude oil required by the Agency is less than the quantity available under (E)—"First" and "Second" above, there shall be adjustments made in order that no Member shall add to refinable crude oil stocks so long as such surplus is desired by any other Member who is drawing on his own stocks or is short of crude oil for his own allowable refinery runs. If this event occurs then the Members who are adding to their refinable stock shall furnish crude oil to the Member who is drawing on his own stocks or is short of crude, as hereinabove set out, at the posted prices at the well, effective on the date of delivery. Such Members shall furnish such crude in the proportion that their respective sales of gasoline for consumption in the five states above mentioned bear to the total sales of gasoline for consumption in said states by all such Members.

(G) The Agency shall post prices at which it will
purchase from Refiners if, as and when offered, any
6124 marketable residuum, distillate, or kerosene currently
produced by Refiners, and such purchases covering
each product purchased shall be purchased from the
Agency by its Members in proportion that the quantity of
gasoline sold by the respective Members for consumption
in the States of California, Oregon, Washington, Arizona
and Nevada during the month bears to the total quantity
sold by all Members for consumption in the same territory
during the same period.

(H) The Agency shall conduct its liftings from Refiners and deliveries to Members in the most economical manner which will enable each Member to receive during each month, as nearly as can be estimated, its proper share of marketable residuum, distillate and/or kerosene. Differences between the products, quantity and quality actually received and paid for by Members and the products, quantity and quality which Members should have received and paid for by operation of the formula herein established, will be set up in exchange account by the Members upon advice by the Agency.

(I) In determining the quantity of gasoline sold by the respective Members during any period, gasoline sold during such period by one Member having the right to appoint a member of the Board of Governors to another Member having a similar right shall be accounted for by the purchaser. All other gasoline sold shall be accounted for by the seller.

(J) All monthly payments, receipts and adjustments above shall be considered interim settlements, and adjustments shall be made on a composite basis every ninety
6125 (90) days and further adjusted at the termination of
this agreement; provided that final adjustments as to gasoline purchases shall be made at the end of each quarterly period.

(K) At the end of each ninety (90) day period the Board of Governors shall review all formulae above included and they may adjust, change or cancel existing formulae to meet any inequity which may have developed in their operation, and they may at any time adopt new formulae seeming necessary in the operation of this agreement.

(L) It is the intent that this agreement shall be so administered that the respective Members shall bear the burdens and share the benefits as hereinbefore set forth and that no Member shall profit or escape any burden at the expense of any other Member or Members through or by reason of the operation of this agreement.

Sec. 10. It is agreed that in the event of the breach of any of the terms of this contract a judgment for damages would be of no avail and that none of the parties hereto has an adequate remedy at law against the other; that the Administrator is interested in the full and punctual performance of this contract to protect the public interest and to effect the stabilization of the oil industry, and that adequate relief in case of the breach of any of the terms of this contract can be provided only by means of an injunction for specific performance granted by a Court of Equity.

Sec. 11. Unless sooner terminated in accordance with the
provisions of Section 10 (b) of Title I of the National
6126 Industrial Recovery Act, or pursuant to the provi-
sions of Sec. 9 (E) Third, of this Article Three, this agreement shall end on June 15, 1935, or on the discontinuance, repeal, or invalidation of the National Industrial Recovery Act, whichever event occurs first; provided, however, that this agreement may be terminated by any Member on thirty (30) days notice if the production of crude oil in the State of California exceeds the production allocated

to said state by the Petroleum Administrator by more than five per cent (5%) for two successive months, or if at any time there is not available to the Agency and each of its Members out of current allowable production in the State of California sufficient crude oil to supply the full current requirements of its respective Members and at the same time to supply to Refiners who have signed with the Agency contracts substantially in the form of the exhibit hereto attached and marked "Exhibit A", the crude oil which the Agency may be required under said contracts to furnish to them, but the Agency shall continue thereafter only to liquidate.

Sec. 12. The provisions of this agreement shall bind the successors, assigns and legal representatives of Members and if any Member shall be merged or consolidated with another Member, the Member continuing the business shall succeed to and take over the benefits and burdens of the Member so merged or consolidated; provided, that, in the event each of the merging or consolidating Members was entitled to appoint a member of the Board of Governors, the Member continuing the business shall be entitled to appoint only one member of said Board.

6127 Sec. 13. Since Title I of the National Industrial Recovery Act requires that certain provisions of Section 10 (b) of said Title shall be contained in each agreement approved, prescribed, or issued under said Title, said section is here set forth in full and made a part hereof as follows:

"The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect."

Sec. 14. In compliance with Title I, Sec. 7 (a) of the National Industrial Recovery Act the following conditions are incorporated in and made a part of this agreement, viz.:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours 6128 of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

Sec. 15. The Petroleum Administrator may terminate this agreement at any time upon finding that it is contrary to the public interest. It is contemplated that any such termination by the Petroleum Administrator will permit the Agency to continue to function in the holding, transportation and sale of gasoline and/or crude oil for so long as may be necessary to dispose of gasoline and/or crude oil theretofore purchased.

Sec. 16. The Agency shall join the Planning and Coordination Committee in supporting the federal agency in discharging the duties imposed upon it by the Code of Fair Competition for the Petroleum Industry, of making and enforcing crude oil allocation and controlling the supply of crude oil and gasoline inventories.

Sec. 17. The Agency shall aid such Planning and Coordination Committee in working toward a stabilization of markets by adequate action designed to prevent improper and injurious marketing practices.

Sec. 18. Any notice addressed to the Agency may be delivered to the President, any Vice-President, Secretary or Treasurer of the Agency in person, or by mail or telegram, and shall be effective as to the Agency and every Member thereof upon such delivery.

Sec. 19. This agreement may be executed in any number of counterparts.

6129 In Witness Whereof, the undersigned have executed these presents the day and year first above written.

Associated Oil Company
By..
President
And..
Secretary

General Petroleum Corporation of California
By..
President
And..
Secretary

....
As Receiver of Richfield Oil Company

Shell Oil Company
By..
President
And..
Secretary

6130 Standard Oil Company of California
By..
President
And..
Secretary

The Texas Company (California)
By..
President
And..
Secretary

Union Oil Company of California
By..
President
And..
Secretary

Rio Grande Oil Company
By..
President
And..
Secretary

6131 Gilmore Oil Company
By..
President
And..
Secretary

Seaside Oil Company
By..
President
And..
Secretary

Guardian Oil Company
By..
President
And..
Secretary

Signal Oil Company
By ____________________
President
And ____________________
Secretary

6132 **Rocket Oil Company**
By ____________________
President
And ____________________
Secretary

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6134

EXHIBIT "A"

This Agreement, made this .... day of May, 1934, by and between ....

....

....

hereinafter called the Refiner, Pacific Coast Petroleum Agency, an unincorporated association, hereinafter called the Agency, and Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry, hereinafter called the Administrator,

Witnesseth:

Whereas, the Refiner is now manufacturing gasoline at Refiner's refinery in the County of.., State of California, at a location more particularly described as follows:

and is desirous of selling to the Agency gasoline, which Refiner may manufacture in excess of Refiner's current requirements, and the Agency is willing to purchase the same to the extent and on the terms and conditions hereinafter stated,

6135 Now, Therefore, the parties hereto agree as follows:

Section I.

The Refiner hereby sells and agrees to deliver to the Agency and Agency agrees to purchase and receive at the price and upon the terms and conditions hereinafter set forth all of the gasoline which may be currently manufactured by the Refiner at Refiner's said refinery which the Refiner fails to market under his own refinery brands, or under the brands heretofore filed with the Agency, in an orderly way and on the terms and conditions hereinafter stipulated under which the Refiner is obligated to sell his said gasoline. For the purpose of this agreement all gasoline sold by Refiner shall be deemed to be gasoline currently manufactured by him under his quota.

Section II.

All deliveries made hereunder are to be made by the Refiner into the Agency's tank cars or tank trucks, or by pipe lines, at the above described refinery. Quantities of delivery shall be determined by the parties at the time and place of delivery, in the usual and customary manner corrected to 60° Fahrenheit. It is contemplated that deliveries shall be made as nearly as practicable as and when the gasoline is manufactured, and, unless with the special permission of the Agency, shall not be delivered more than thirty (30) days after the time of manufacture.

Section III.

The gasoline to be purchased and delivered hereunder shall be of the same quality as is manufactured by the Refiner and regularly sold in his usual course of business, but in no event shall it be inferior to the following vaporization range and octane rating:

	10%	122° to 176° F. Maximum
	50%	284° F. Maximum
6136	90%	392 F. Maximum
	End point	437 F. Maximum
	Minimum octane rating	59

Section IV.

All samples for tests shall be taken from delivery tanks of Refiner at Refiner's refinery hereinbefore described and tested by the Agency at Agency's laboratory or at such other point as may be mutually agreed upon. All tests shall be made in the presence of a representative of the Refiner should Refiner so desire.

Section V.

The intention of the parties respecting the subject matter of this section is as follows: To pay the Refiner for the gasoline delivered hereunder the amount (and no more than the amount), which he would have realized therefor net at the refinery if he sold all his gasoline in the regular course of business pursuant to the terms of this contract, subject to the provisions of paragraph 3 of this section. The terms of this section shall be interpreted and construed in accordance with this declaration of intention.

Upon receipt of invoice after delivery, the Agency shall advance to the refiner, subject to final determination as hereinafter provided, an amount which shall be computed at one cent less per gallon than Refiner's posted net wholesale delivered tank wagon price for any class of delivery after substracting deductions and/or allowances due, made, or allowed under contract or for quantity on the days of

delivery, but in no event higher than the posted delivered tank wagon market prices of operators of refineries for gasoline of not more than 64.9 octane generally pre-
6137 vailing in the same area at the same time, less one cent per gallon.

The price F. O. B. Refiner's refinery to be finally paid for gasoline shall be the lowest of the prices determined in accordance with the following three methods:

1. One cent per gallon less than Refiner's posted net delivered tank wagon price on date of delivery less any deductions or allowances due or earned under contracts or for quantity sales; provided that no deductions shall be made for quantity deliveries commonly called truck and trailer, where such quantity allowance is not more than one-fourth cent per gallon for quantities of not less than 5,000 gallons of the same quality and brand gasoline delivered to the same address in one calendar day. Such posted tank wagon price shall not be higher than the posted delivered tank wagon market price of gasoline of not more than 64.9 octane of operators of refineries generally prevailing at the same time in the same area in which delivery is taken.

2. The weighted average net back to the Refiner of all sales made during the same calendar month, calculated in the following manner:

Sales to bona fide distributors shall be computed at the prices which such distributor pays to Refiner.

Sales to other than bona fide distributors shall be computed at sales prices, i. e., the gross amount realized by the Refiner.

Sales to the Agency shall not be considered in any calculation.

From the total sales calculated as above shall be deducted the following:

6138 1. The freight paid by the Refiner to points beyond the free delivery area adjacent to refinery, which shall not be less than the regularly established rates of responsible carriers for similar transportation between the points involved.

2. One cent per gallon on all sales to other than distributors, excepting sales commonly called truck and trailer sales when such sales allow not more than one-fourth cent per gallon under full tank wagon price for deliveries of not less than 5,000 gallons of one quality and brand of gasoline delivered to the same person at the same address on one calendar day. On truck and trailer sales thus excepted, there shall be deducted three-fourths of one cent per gallon.

The remainder thus arrived at shall be divided by the total gallons sold and the resulting price per gallon shall be considered the per gallon net back to the Refiner.

Example:

Sales to Bona Fide Distributor 100,000 gallons @ 10¢		$10,000.00
Sales to other than distributors 200,000 gallons at 11¢		22,000.00
Total 300,000 gallons		$32,000.00
Less:		
Freight on 50,000 gallons sold beyond free delivery area	$ 500.00	
1¢ per gallon on all sales, excepting truck and trailer sales	1,000.00	
¾¢ per gallon on truck and trailer sales	750.00	2,250.00
6139 Total Sales Less Deduction—300,000 gallons		$29,750.00

300,000) $29750.00 (9.90 cents
270000

275000
270000

3. The Refiner's lowest net back per gallon on any wholesale or other sale of Refiner's gasoline made to the trade during the month, subject to the following exceptions:

(a) Sales made under any contracts executed prior to August 19, 1933, which contracts cannot be cancelled under the terms thereof. The Agency and/or the Administrator shall have the right to call for and examine any such contracts.

(b) Sales made at the generally prevailing market price at the point at which delivery is made, like quality, quantity and class of sale considered.

(c) Sales made by distributors of Refiner's gasoline at less than the prevailing market price at the point at which delivery is made, like quality, quantity and class of sale considered, where Refiner within 24 hours of knowledge or notice of any such sale, discontinues deliveries to such distributor. Deliveries to such distributor may be resumed only with the approval of the Administrator or his representative.

The term "prices", as used herein, includes taxes.

The word "posted", as used herein is defined to be an actual published price at which sales are being actually made in the open market and in regular course of business and free from collusion between buyer and seller, and
6140 shall not include false, collusive or fictitious nominal postings made or published for the purpose of requiring the Agency to purchase at a price higher than actual market.

In order to determine the amount of settlement and the price to be paid for the gasoline purchased, the Agency shall at the end of each month check up Refiners' sales and for this purpose shall have full access to the pertinent books, records, accounts, sales tickets, etc., of the Refiner. Refiner shall have the right to limit the examination to a certified public accountant chosen by the Agency and paid by the Refiner. The Agency agrees to pay to the Refiner monthly the full amount due said Refiner, subject to the advance payments hereinabove provided, and the Refiner agrees to pay to the Agency the amount due said Agency as determined in said accounting. In the event the Refiner fails to make payment therefor, the Agency shall deduct from the Refiner's advances due in the succeeding month the amount of said indebtedness. Refiner shall before noon of each Wednesday report to the Agency the quantity and price of gasoline sold to all buyers during the preceding week ending midnight Saturday.

Section VI.

Refiner warrants that Refiner has good title to the gasoline and other petroleum products and crude oil which will be delivered by Refiner to the Agency and Refiner agrees to indemnify and hold harmless the Agency from any loss, damage, or liability which the Agency may sustain by reason of any claim of ownership to any such gasoline and other petroleum products and crude oil by any person, firm, corporation, or State or Federal Government.

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Section VII.

Refiner agrees that he will not produce, purchase, transport, or run through his refinery hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which the crude oil is produced under order of the Administrator and that he will not buy, or run through his refinery, any oil produced by any producer who is producing crude oil from the same property in excess of the allotment to the property from which the crude oil is produced under order of the Administrator.

The Refiner may accept written certificates from the Umpire appointed by the Administrator as to the amount of oil which he may purchase and/or transport from any well, property or producer, and any oil run through the refinery in compliance with such certificate and not exceeding the amount named therein from the well, property, or producer therein named; shall be deemed a full performance of the first paragraph of this section. Refiner shall, each month, report to the Agency and the Umpire the amount of oil taken by him from each property separately, together with the name of the operator of said property.

It is especially agreed that the Refiner, by agreeing to the provisions of this section and the provisions of Section X hereof and executing this agreement, shall not be held to have acquiesced in the legality or correctness of any allotment, order, rule or regulation, made by the Administrator, and that he shall not be estopped or otherwise precluded from contesting the allotment, order, rule or regulation, either on the law or on the facts involved in any proceeding before any adminis-
6142 trative body, which proceeding may be initiated
either by him or by the Government, and it is especially understood that he reserves and asserts all his Constitutional rights.

Refiner for himself, and the Agency for itself and its members, agrees not to purchase or transport any gasoline or other petroleum products used in the manufacture of gasoline (except crude oil or natural gasoline which has been manufactured from gas produced from wells operated in compliance with the proration orders of the Administrator), manufactured or produced by any person other than the Agency, its members, or other refiners who have made agreements similar to this agreement with the Agency. This prohibition shall not be applicable to natural gasoline when the Agency, its members, and other refiners entering into similar agreements with the Agency fail to provide sufficient natural gasoline to the Refiner to enable him to manufacture his allotment of gasoline.

Section VIII.

In the event the Refiner shall have refining crude oil in excess of the amount required to manufacture the total amount of gasoline to be manufactured by Refiner the Agency agrees to purchase from the Refiner, and the Refiner agrees to sell to Agency, currently, all such excess refining crude oil at the posted price at the well, provided the total quantity of crude oil produced from the well or property involved does not exceed the quantity allocated thereto.

Section IX.

In the event the Refiner is short of refining crude oil
necessary to manufacture the total amount of gasoline
6143 specified in Section X hereof the Agency will sell to
Refiner so much refining crude oil as Refiner may require for such purpose at the posted field price at the well. Refiner, at his option, may either take delivery at the well or pay to the Agency its actual cost of delivery to Refiner's refinery in addition to said posted field price. In the event the oil is moved through gathering lines and/or trunk pipelines the charge in addition to said posted field price for the oil shall be the rates fixed by the Government for the purpose of determining pipe-line taxes.

It is further agreed that if at any time there is not available to the Agency and its members out of current allowable production in the State of California sufficient crude oil to supply the full current requirements of its members and at the same time supply to Refiner and other refiners who have signed with the Agency contracts similar to this the crude oil which Agency may be required under said contracts to furnish to them, then this contract may be terminated by Agency upon thirty days' notice.

In the event the Refiner is short of natural gasoline necessary to manufacture the total amount of gasoline specified in Section X hereof the Agency will, to the extent that it has natural gasoline available, sell to the Refiner so much natural gasoline as Refiner may require for such purpose at the prevailing market price for natural gasoline of the quality delivered, at the place of production thereof plus Agency's cost of handling and transportation for delivery to Refiner.

6144
Section X.

The Refiner, for himself, and the Agency, for itself and its members, agrees to conform to any order, rule, or regulation, made by or through the Administrator, or by agencies established by the Administrator, applicable to the manufacture and storage of gasoline. In no event, however, will the Refiner produce in any month more gasoline (including motor fuel and engine distillate) than is equal to ....% of the gasoline sold for consumption in the State of California during said month except for adjustments as hereinafter provided.

The expected consumption for the month will be estimated by the Agency and the Refiner notified thereof prior to the 25th day of the preceding month, and the Refiner shall regulate the amount of his production accordingly. As soon as the figures showing the State's actual consumption are available a proper adjustment of Refiner's allowable production will be made by the Agency and notice thereof given to the Refiner.

Section XI.

The Agency agrees that in addition to purchasing the gasoline and crude oil and providing crude oil for the Refiner, as hereinabove provided, it will post prices at which it will purchase from Refiner, if, as, and when offered, any marketable residuum, distillate, or kerosene currently produced by such Refiner.

Section XII.

The Agency hereby represents that it is authorized under written contract with its members to obligate its said members severally to the following stipulations and to the stipulations of Sections VII and XIII hereof which are
6145 intended to apply to each of said members, as well as
to the Refiner; and each member of the Agency shall be bound hereby, as though each thereof had severally signed this contract and shall be included in the expression "the parties hereto":

(a) The parties hereto assume full responsibility for the distribution and sale of their respective gasolines, whether sold under their refinery brands or under the brands of distributors heretofore filed with the Agency, and whether or not acquired hereunder, and whether or

not manufactured from crude or other oil acquired hereunder, from the Refiner to the ultimate consumer and agree that in all sales of gasoline made by any of the parties hereto to a reseller, such party shall require the reseller to resell such gasoline at the wholesale or retail price, as the case may be, which may be authorized and posted by such party at the time and place of resale, and that such party will likewise require all wholesalers, distributors, peddlers, jobbers, brokers, agents, or any other person whomsoever, upon sale of gasoline made by them for resale to agree to require all resellers at the time of sale to them to agree to maintain, and cause to be maintained, such party's authorized posted wholesale and retail prices, respectively, effective at the time and place of resale. In case of sales to or through so-called distributors who do not fall within the definition of distributors in the Code of Fair Competition for the Petroleum Industry, such party shall require that such gasoline so sold, be sold under its refinery brands or the authorized brands of such distributors listed with the Agency as provided by this agreement, and in its name, and that the gasoline shall be so invoiced on the delivery ticket. The posted retail
6146 price for each party hereto for gasoline of 64.9 octane
rating or lower shall at all times be not less than three cents, inclusive of any rental and/or other credits, over the net price to retail resellers. Each and every party hereto agrees that it will forthwith at its own cost and expense cancel and terminate any and all existing agreements which would interfere with or prevent compliance with the terms of this agreement. For purposes of this sub-paragraph (a) gasoline acquired by any member from the Agency shall be treated as the gasoline of such member and not as the gasoline of the refiner or refiners selling the same to the Agency. Each party hereto, in establishing its authorized and posted prices according to trade classifications, shall clearly define its several classifications according to standards responsive to actual trade categories. No classification shall be made or difference in price posted which is not in accordance with generally established trade usage or which has no purpose other than to permit an evasion of the intent of this agreement. In the case of bids and sales to federal or state governments or departments or subdivisions thereof, such price differentials and provisions shall be permissible as may be consistent with the Code of Fair Competition for the Petroleum Industry and the orders of the Administrator on the subject. Gasoline made from crude oil or other petroleum product supplied by a

member of the Agency shall be considered, for the purpose of this agreement, as though the gasoline itself had been sold to the buyer by the supplier of the crude oil or other petroleum product from which it is made. All provisions of this paragraph (a) relating to price structure and posting thereof shall also apply to motor fuel and engine distillate.

6147 (b) No party hereto will convert any split pump account into a one hundred per cent account.

(c) No party hereto will give any additional commission or discount for two or more pumps at a split pump station over what is given for one pump.

(d) Gasoline of less than 64.9 octane rating manufactured by any agency member shall not be advertised by such member or anyone handling same in any way other than by signs posted at the place of sale thereof to the public, or on trucks transporting such gasoline.

(e) Any party to this agreement except the Agency who supplies any petroleum products to anybody not a party to this agreement shall require that any gasoline or motor fuel made from said petroleum products shall be sold, if sold for consumption within the territory described in paragraph (j) of this Section, at the same prices wholesale or retail as the supplying company sells its gasoline or motor fuel.

(f) Each party hereto shall file with the Agency a list of his distributors' brands. Only one party to this agreement may use a listed distributor's brand at any one time. Whenever a distributor, having a listed brand, purchases the gasoline to be sold under such listed brand, from a new supplier, the new supplier shall give notice thereof to the Agency and to the former supplier.

(g) The allowance for truck and trailer deliveries (as the term is used in Section V hereof) shall not exceed one-fourth cent per gallon.

(h) The Refiner for himself, and the Agency for itself and its members, agrees not to solicit or enter into any contract, during the term of this agreement, to take over or serve any retail or commercial account of another party on terms inconsistent with this agreement, which
6149 contract is to take effect at the expiration of this agreement.

6148 (i) The Refiner for himself, and the Agency for itself and its members, agrees that it will not deliver any gasoline or permit the delivery of any gasoline to any service station where the following conditions exist:

First: Where gasoline is sold which is manufactured from crude oil produced in excess of the allotment to the well or property from which the crude oil is produced under order of the Administrator, or from crude oil which has been commingled with crude oil produced in excess of such order, or where the producer of the crude oil from which the gasoline is manufactured, or the refiner manufacturing the gasoline, fails to make reports of crude oil and refinery production to the properly constituted authorities; or

Second: Where gasoline is sold which has been manufactured by a refiner in excess of any order, rule, or regulation made by or through the Administrator or by agencies established by the Administrator applicable to the manufacture and storage of gasoline; or

Third: Where gasoline is sold which has been manufactured from crude oil withdrawn from storage without proper order permitting such withdrawal from storage.

(j) This agreement applies to and covers the States of California, Oregon, Arizona, and Nevada, and the western portion of the State of Washington outlined in red upon a map of said State, copies of which map have been filed with the Agency and the Administrator and are available, at the offices of the Agency, to all interested parties.

Section XIII.

Each party hereto agrees that it will not during a period of ninety (90) days from and after the effective date of this agreement, supply the tanks or serve any retail pump selling or handling branded products of any other party hereto, except, however, that the provisions of this paragraph shall not apply to any branded pump or pumps, the brands of which have been changed to those of new suppliers since April 1, 1934.

Each agency member agrees for itself and its distributors, jobbers, and brokers, and any other person whomsoever reselling its products, that neither it nor they will brand any unbranded pump or sell gasoline for resale through any unbranded pump during such ninety (90) day period. Provided, however, that there is not included in this provision any pump which it or they have served continuously for not less than sixty (60) days prior to April 12, 1934, under a valid written contract made and entered into prior to April 1, 1934, provided that any contracts affecting pumps in the area south of the Tehachapi shall have been filed with the Regional General Chairman on or before noon of April 14, 1934; and contracts affecting pumps in

other areas shall have been filed with said General Chairman before noon April 18, 1934. Neither shall this provision include any pump to which the Agency member was delivering directly and not through any distributor and/or other intermediary for sixty (60) days prior to April 12, 1934. Refiner for himself, and the Agency for itself and its members, agrees not to solicit or enter into any contract
during said ninety (90) day period contrary to the
6150 provisions of this Section XIII, which contract is to
take effect at the expiration of said ninety (90) day period.

Section XIV.

It is agreed by the parties hereto that this agreement is made pursuant to the provisions of the National Industrial Recovery Act and of the Code of Fair Competition for the Petroleum Industry, and for the purpose of stabilizing the industry and preventing unfair competition; that in case of breach of any of the terms of the contract a judgment for damages would be of no avail and that none of the parties hereto has an adequate remedy at law against the other; that the Administrator is interested in the full and punctual performance of this contract to protect the public interest and effect the stabilization of the industry, and that adequate relief in case of a breach of any of the provisions of this contract can be provided only by the remedies of injunction or specific performance granted by a court of equity.

Section XV.

As an additional remedy, and not in lieu of any remedy provided by law or by the provisions of this agreement, it is agreed that in the event of a violation of any of the provisions of this agreement by any person handling the products manufactured by any Agency member or Refiner, the aggrieved party shall promptly report such breach to the Administrator or any agent duly authorized by him who shall, as soon as practicable, review the matter and if deemed necessary hold, or cause to be held, a hearing with respect to such violation and determine whether the proper functioning of this agreement requires the suspension for a period of time of deliveries of motor
6151 fuel to the violator. In the event the Administrator,
or any agent duly authorized by him, deems such suspension necessary he shall immediately notify all Refiners selling motor fuels in the locality or localities where the

violation has occurred to suspend or refrain from making deliveries of all classes of petroleum products to the offending party, distributor, jobber, wholesaler, or retailer, until further notice that such deliveries may be resumed. During the period of suspension the Refiner and the respective Agency members shall not deliver or permit to be delivered, their products to such offender.

Section XVI.

If any controversy arises as to the true intent and meaning of any term of this agreement the controversy shall be referred to the Administrator whose decision thereon shall be final.

Section XVII.

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Title I of the National Industrial Recovery Act requires that certain provisions of Section 10 (b) of said Title shall be contained in each agreement approved, prescribed, or issued under said title. Said section is here set forth in full and made a part hereof as follows:

"The President may from time to time cancel or modify any order, approval, license, rule or regulation issued under this title and such agreement, Code of Fair Competition, or license approved, prescribed, or issued, under this title shall contain an express provision to that effect."

Section XVIII.

All notices hereunder from the Refiner to the Agency shall be addressed to it at ....
Los Angeles, California.

6152 All notices from the Agency to the Refiner shall be addressed to it at ....

Notices in writing deposited in the United States Post Office, postage prepaid and addressed to the foregoing addresses, shall be considered good and valid notice hereunder, effective from the date of deposit.

Section XIX.

Unless terminated in accordance with the provisions of Section 10 (b) of Title I of the National Industrial Recovery Act, or of Section IX hereof, this agreement shall continue in effect until June 15, 1935, or until the discontinuance, repeal, or invalidation of the National Industrial Recovery Act, whichever event occurs first, provided, however, that this agreement may be terminated by either party hereto on thirty days' notice if the production of crude oil in the State of California exceeds the production allocated to said State by the Administrator by more than five per cent for two successive months.

Section XX.

This agreement shall not become effective unless the agreement of the members of the Pacific Coast Petroleum Agency, organizing such agency, which contains a general form of the agreement to be entered into with Refiners is approved by the Administrator, and until permitted by proceedings pursuant to the provisions of the order modifying the final decree made September 25, 1933, by the District Court of the United States for the Northern District of California, Southern Division, in the case of United States of America, Petitioner, *vs.* Standard Oil Company of California, et al., Defendants, numbered
2542-S In Equity, on the files of said Court, modi-
6153 fying the Final Decree made and entered in said
Court in said cause on the 15th day of September, 1930.

Section XXI.

The provisions of this agreement shall bind the successors, assigns, lessees, and legal representatives of the parties hereto, including the members of the Agency; and if any party hereto shall be merged or consolidated with, or its business acquired by, another party hereto, or a refiner, party to a similar agreement, the party continuing the business shall succeed to and take over the benefits and assume the burdens of the party so merged or consolidated, or whose business is acquired.

In Witness Whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

....
Refiner.

Pacific Coast Petroleum Agency,
By ....
President,
By ....
Secretary.

....
Secretary of the Interior and
Petroleum Administrator.

6154
Agreement Supplemental to Pacific Coast Petroleum Agency Agreement

6155 June 25, 1934.

Reprinted July 18, 1934.
Reprinted Nov. 27, 1934.

6156 This Agreement, made as of the .... day of June, 1934, By And Among companies and persons signatory hereto, engaged in the Petroleum Industry on the Pacific Coast, and who have executed an agreement known as the Pacific Coast Petroleum Agency Agreement, which has been heretofore filed with Harold L. Ickes, Secretary of the Interior, Administrator of the Code of Fair Competition for the Petroleum Industry, And

Harold L. Ickes, as Petroleum Administrator;

Witnesseth:

1. Each of the parties hereto agrees to abide by and conform to the provisions of the Code of Fair Competition for the Petroleum Industry and the amendments thereto and the rules, regulations and orders made in pursuance thereof, so long as it or they remain in effect; provided, however, that nothing in this paragraph contained shall prevent any such party while so abiding and conforming from contesting in good faith before any court, board or official having competent jurisdiction over the same, the validity, meaning or effect of any provision thereof.

2. Each of the parties hereto agrees that he shall conduct his operations under the said Pacific Coast Petroleum Agency Agreement so as to eliminate unfair competitive practices, prevent monopolies or monopolistic practices, prevent the elimination or oppression of, or discrimination against, small enterprises, prevent unreasonable or inordinate prices to the public and generally to effectuate the purposes of the National Industrial Recovery Act.

6157 3. Each of the parties agrees that he shall from time to time and within twenty (20) days after notice of demand by letter or telegram from the Attorney General, report or cause to be reported to the Attorney General and to the Petroleum Administrator, under oath, such facts and things concerning the operations, activities and records of said Pacific Coast Petroleum Agency, and the operations, activities and records of the parties respectively, and each of them, relating to said Pacific Coast Petroleum Agency Agreement as may be required in such notice or demand.

4. Each of the parties agrees that without limiting or abridging the full force and effect of Section 12(a) of that certain Agreement entered into between certain Refiners and the Pacific Coast Petroleum Agency, known as the Refiners' Agreement, said section shall be construed as including the agreement of each of the parties not to permit gasoline, engine distillate or motor fuel, sold by it, or marketed by it indirectly, to be resold, at wholesale or retail, except for the same price for the identical product as such party manufacturing the same shall post for direct sale, whether such product be sold or resold without brand or under the same brand or under a different brand. Such posted price shall be an actual published price at which sales are being actually made in the open market and in regular course of business and free from collusion between buyer and seller, and shall not include false, collusive or fictitious nominal posting made or published for the purpose of defeating the foregoing provisions or the provisions of said Section 12(a).

6158 5. Sections 13 and 14 of the said Pacific Coast Petroleum Agency Agreement are hereby incorporated herein and made a part hereof as though fully set forth herein.

6. This agreement may be executed in any number of counterparts.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

Associated Oil Company

By ....

President

And ....

Secretary

General Petroleum Corporation of California

By ....

President

And ....

Secretary

....

As Receiver of Richfield Oil Company

6159 Shell Oil Compny
By ______________________________
President
And ______________________________
Secretary

Standard Oil Company of California
By ______________________________
President
And ______________________________
Secretary

The Texas Company (California)
By ______________________________
President
And ______________________________
Secretary

6160 Union Oil Company of California
By ______________________________
President
And ______________________________
Secretary

Rio Grande Oil Company
By ______________________________
President
And ______________________________
Secretary

Gilmore Oil Company
By ______________________________
President
And ______________________________
Secretary

6161 Seaside Oil Company
By ______________________________
President
And ______________________________
Secretary

Guardian Oil Company
By ______________________________
President
And ______________________________
Secretary

Signal Oil Company
By ______________________
President
And ______________________
Secretary

6162 Rocket Oil Company
By ______________________
President
And ______________________
Secretary

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6163 ______________________

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Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry.

6164

Agreement Supplemental to Refiners' Agreement

6165 This Agreement Made this .... day of June, 1934, By and Between ....

hereinafter called Refiner (who has executed an agreement known as Refiners' Agreement with Pacific Coast Petroleum Agency and Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry); and

Harold L. Ickes, as Petroleum Administrator.

Witnesseth:

1. Each of the parties hereto agrees to abide by and conform to the provisions of the Code of Fair Competition for the Petroleum Industry and the amendments thereto and the rules, regulations and orders made in pursuance thereof, so long as it or they remain in effect; provided, however, that nothing in this paragraph contained shall prevent any such party while so abiding and conforming from contesting in good faith before any court, board or official having competent jurisdiction over the same, the validity, meaning or effect of any provision thereof.

2. Each of the parties hereto agrees that he shall conduct his operations under the said Refiners' Agreement so as to eliminate unfair competitive practices, prevent monopolies or monopolistic practices, prevent the elimination or oppression of, or discrimination against, small enter-
6166 prises, prevent unreasonable or inordinate prices to the public and generally to effectuate the purposes of the National Industrial Recovery Act.

3. Each of the parties agrees that he shall from time to time and within twenty (20) days after notice of demand by letter or telegram from the Attorney General, report or cause to be reported to the Attorney General and to the Petroleum Administrator under oath, such facts and things concerning the operation, activities and records of said Pacific Coast Petroleum Agency, insofar as they concern refiner, and the operations, activities and records of the parties respectively, and each of them, relating to said Refiners' Agreement as may be required in such notice or demand.

4. Each of the parties agrees without limiting or abridging the full force and effect of Section 12(a) of said Refiners' Agreement, said section shall be construed as including the agreement of each of the parties not to permit gaso-

line, engine distillate or motor fuel, sold by it, or marketed by it indirectly, to be resold, at wholesale or retail, except for the same price for the identical product as such party manufacturing the same shall post for direct sale, whether such product be sold or resold without brand or under the same brand or under a different brand. Such posted price shall be an actual published price at which sales are being actually made in the open market and in regular course
6167 of business and free from collusion between buyer and
seller, and shall not include false. collusive or fictitious nominal posting made or published for the purpose of defeating the foregoing provisions or the provisions of said Section 12(a).

5. Section 17 of said Refiners' Agreement is hereby incorporated herein and made a part hereof as though fully set forth herein.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

....

Refiner.

....

....

Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry.

6168 This Agreement, made this.................................day of May,
1934, by and between..

....

...., hereinafter called the Refiner, Pacific Coast Petroleum Agency, an unincorporated association, hereinafter called the Agency, and Harold L. Ickes, Secretary of the Interior and Administrator of the Code of Fair Competition for the Petroleum Industry, hereinafter called the Administrator,

Witnesseth:

Whereas, the Refiner is now manufacturing gasoline at Refiner's refinery in the County of.................................., State of California, at a location more particularly described as follows:

and is desirous of selling to the Agency gasoline, which Refiner may manufacture in excess of Refiner's current requirements, and the Agency is willing to purchase the same to the extent and on the terms and conditions hereinafter stated,

6169 Now, Therefore, the parties hereto agree as follows:

Section I.

The Refiner hereby sells and agrees to deliver to the Agency and Agency agrees to purchase and receive at the price and upon the terms and conditions hereinafter set forth all of the gasoline which may be manufactured by the Refiner at Refiner's said refinery which the Refiner fails to market under his own refinery brands, or under the brands heretofore filed with the Agency, in an orderly way and on the terms and conditions hereinafter stipulated under which the Refiner is obligated to sell his said gasoline.

Section II.

All deliveries made hereunder are to be made by the Refiner into the Agency's tank cars or tank trucks, or by pipe lines, at the above described refinery. Quantities of delivery shall be determined by the parties at the time and place of delivery, in the usual and customary manner corrected to 60° Fahrenheit. It is contemplated that deliveries shall be made as nearly as practicable as and when the gasoline is manufactured, and, unless with the special permission of the Agency, shall not be delivered more than thirty (30) days after the time of manufacture.

Section III.

The gasoline to be purchased and delivered hereunder shall be of the same quality as is manufactured by the Refiner and regularly sold in his usual course of business, but in no event shall it be inferior to the following vaporization range and octane rating:

	10%	122° to 176° F. Maximum
	50%	284° F. Maximum
6170	90%	392 F. Maximum
	End point	437 F. Maximum
	Minimum octane rating	59

Section IV.

All samples for tests shall be taken from delivery tanks of Refiner at Refiner's refinery hereinbefore described and tested by the Agency at Agency's laboratory or at such other point as may be mutually agreed upon. All tests shall be made in the presence of a representative of the Refiner should Refiner so desire.

Section V.

The intention of the parties respecting the subject matter of this section is as follows: To pay the Refiner for the gasoline delivered hereunder the amount (and no more than the amount), which he would have realized therefor net at the refinery if he sold all his gasoline in the regular course of business pursuant to the terms of this contract, subject to the provisions of paragraph 3 of this section. The terms of this section shall be interpreted and construed in accordance with this declaration of intention.

Upon receipt of invoice after delivery, the Agency shall advance to the refiner, subject to final determination as hereinafter provided, an amount which shall be computed at one cent less per gallon than Refiner's posted net wholesale delivered tank wagon price for any class of delivery after subtracting deductions and/or allowances due, made, or allowed under contract or for quantity on the days of delivery, but in no event higher than the posted delivered tank wagon market prices of operators of refineries
6171 for gasoline of not more than 64.9 octane generally
prevailing in the same area at the same time, less one cent per gallon.

The price F. O. B. Refiner's refinery to be finally paid for gasoline shall be the lowest of the prices determined in accordance with the following three methods:

1. One cent per gallon less than Refiner's posted net delivered tank wagon price on date of delivery less any deductions or allowances due or earned under contracts or for quantity sales; provided that no deductions shall be made for quantity deliveries commonly called truck and trailer, where such quantity allowance is not more than one-fourth cent per gallon for quantities of not less than 5,000 gallons of the same quality and brand gasoline delivered to the same address in one calendar day. Such posted tank wagon price shall not be higher than the posted delivered tank wagon market price of gasoline of not more than 64.9 octane of operators of refineries generally prevailing at the same time in the same area in which delivery is taken.

2. The weighted average net back to the Refiner of all sales made during the same calendar month, calculated in the following manner:

Sales to bona fide distributors shall be computed at the prices which such distributor pays to Refiner.

Sales to other than bona fide distributors shall be computed at sales prices, i. e., the gross amount realized by the Refiner.

Sales to the Agency shall not be considered in any calculation.

From the total sales calculated as above shall be deducted the following:

6172 1. The freight paid by the Refiner to points beyond the free delivery area adjacent to refinery, which shall not be less than the regularly established rates of responsible carriers for similar transportation between the points involved.

2. One cent per gallon on all sales to other than distributors, excepting sales commonly called truck and trailer sales when such sales allow not more than one-fourth cent per gallon under full tank wagon price for deliveries of not less than 5,000 gallons of one quality and brand of gasoline delivered to the same person at the same address on one calendar day. On truck and trailer sales thus excepted, there shall be deducted three-fourths of one cent per gallon.

The remainder thus arrived at shall be divided by the total gallons sold and the resulting price per gallon shall be considered the per gallon net back to the Refiner.

Example:

Sales to Bona Fide Distributor 100,000 gallons @ 10¢		$10,000.00
Sales to other than distributors 200,000 gallons at 11¢		22,000.00
Total 300,000 gallons		$32,000.00
Less:		
Freight on 50,000 gallons sold beyond free delivery area	$ 500.00	
1¢ per gallon on all sales, excepting truck and trailer sales	1,000.00	
¾¢ per gallon on truck and trailer sales	750.00	2,250.00

6173 Total Sales Less Deduction—

300,000 gallons	$29,750.00

300,000) $29750.00 (9.90 cents
270000

275000

3. The Refiner's lowest net back per gallon on any wholesale or other sale of Refiner's gasoline made to the trade during the month, subject to the following exceptions:

(a) Sales made under any contracts executed prior to August 19, 1933, which contracts cannot be cancelled under the terms thereof. The Agency and/or the Administrator shall have the right to call for and examine any such contracts.

(b) Sales made at the generally prevailing market price at the point at which delivery is made, like quality, quantity and class of sale considered.

(c) Sales made by distributors of Refiner's gasoline at less than the prevailing market price at the point at which delivery is made, like quality, quantity and class of sale considered, where Refiner within 24 hours of knowledge or notice of any such sale, discontinues deliveries to such distributor. Deliveries to such distributor may be resumed only with the approval of the Administrator or his representative.

The term "prices", as used herein, includes taxes.

The word "posted", as used herein is defined to be an actual published price at which sales are being actually made in the open market and in regular course of business
and free from collusion between buyer and seller, and
6174 shall not include false, collusive or fictitious nominal
postings made or published for the purpose of requiring the Agency to purchase at a price higher than actual market.

In order to determine the amount of settlement and the price to be paid for the gasoline purchased, the Agency shall at the end of each month check up Refiner's sales and for this purpose shall have full access to the pertinent books, records, accounts, sales tickets, etc., of the Refiner. Refiner shall have the right to limit the examination to a certified public accountant chosen by the Agency and paid by the Refiner. The Agency agrees to pay to the Refiner monthly the full amount due said Refiner, subject to the advance payments hereinabove provided, and the Refiner agrees to pay to the Agency the amount due said Agency as determined in said accounting. In the event the Refiner fails to make payment therefor, the Agency shall deduct from the Refiner's advances due in the succeeding month the amount of said indebtedness. Refiner shall before noon of each Wednesday report to the Agency the quantity and price of gasoline sold to all buyers during the preceding week ending midnight Saturday.

Section VI.

Refiner warrants that Refiner has good title to the gasoline and other petroleum products and crude oil which will be delivered by Refiner to the Agency and Refiner agrees to indemnify and hold harmless the Agency from any loss, damage, or liability which the Agency may sustain by reason of any claim of ownership to any such gasoline and other petroleum products and crude oil by any person, firm, corporation, or State or Federal Government.

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Section VII.

Refiner agrees that he will not produce, purchase, transport, or run through his refinery hereinabove described, any crude oil which is produced in excess of the allotment to the well or property from which the crude oil is produced under order of the Administrator and that he will not buy, or run through his refinery, any oil produced by any producer who is producing crude oil from the same property in excess of the allotment to the property from which the crude oil is produced under order of the Administrator.

The Refiner may accept written certificates from the Umpire appointed by the Administrator as to the amount of oil which he may purchase and/or transport from any well, property, or producer, and any oil run through the refinery in compliance with such certificate and not exceeding the amount named therein from the well, property or producer therein named, shall be deemed a full performance of the first paragraph of this section. Refiner shall, each month, report to the Agency and the Umpire the amount of oil taken by him from each property separately, together with the name of the operator of said property.

It is especially agreed that the Refiner, by agreeing to the provisions of this section and the provisions of Section X hereof and executing this agreement, shall not be held to have acquiesced in the legality or correctness of any allotment, order, rule or regulation, made by the Administrator, and that he shall not be estopped or otherwise precluded from contesting the allotment, order, rule or regulation, either on the law or on the facts involved in any proceeding before any court or before any 6176 administrative body, which proceeding may be initiated either by him or by the Government, and it is especially understood that he reserves and asserts all his Constitutional rights.

Refiner for himself, and the Agency for itself and its members, agrees not to purchase or transport any gasoline or other petroleum products used in the manufacture of gasoline (except crude oil or natural gasoline which has been manufactured from gas produced from wells operated in compliance with the proration orders of the Administrator), manufactured or produced by any person other than the Agency, its members, or other refiners who have made agreements similar to this agreement with the Agency. This prohibition shall not be applicable to natural gasoline when the Agency, its members, and other refiners entering into similar agreements with the Agency fail to provide sufficient natural gasoline to the Refiner to enable him to manufacture his allotment of gasoline.

Section VIII.

In the event the Refiner shall have refining crude oil in excess of the amount required to manufacture the total amount of gasoline to be manufactured by Refiner the Agency agrees to purchase from the Refiner, and the Refiner agrees to sell to Agency, currently, all such excess refining crude oil at the posted price at the well, provided the total quantity of crude oil produced from the well or property involved does not exceed the quantity allocated thereto.

Section IX.

In the event the Refiner is short of refining crude oil
necessary to manufacture the total amount of gaso-
6177 line specified in Section X hereof the Agency will
sell to Refiner so much refining crude oil as Refiner
may require for such purpose at the posted field price at the well. Refiner, at his option, may either take delivery at the well or pay to the Agency its actual cost of delivery to Refiner's refinery in addition to said posted field price. In the event the oil is moved through gathering lines and/or trunk pipelines the charge in addition to said posted field price for the oil shall be the rates fixed by the Government for the purpose of determining pipeline taxes.

It is further agreed that if at any time there is not available to the Agency and its members out of current allowable production in the State of California sufficient crude oil to supply the full current requirements of its members and at the same time supply to Refiner and other refiners who have signed with the Agency contracts similar to this the crude oil which Agency may be required under said contracts to furnish to them, then this contract may be terminated by Agency upon thirty days' notice.

In the event the Refiner is short of natural gasoline necessary to manufacture the total amount of gasoline specified in Section X hereof the Agency will, to the extent that it has natural gasoline available, sell to the Refiner so much natural gasoline as Refiner may require for such purpose at the prevailing market price for natural gasoline of the quality delivered, at the place of production thereof plus Agency's cost of handling and transportation for delivery to Refiner.

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Section X.

The Refiner, for himself, and the Agency, for itself and its members, agrees to conform to any order, rule, or regulation, made by or through the Administrator, or by agencies established by the Administrator, applicable to the manufacture and storage of gasoline. In no event, however, will the Refiner produce in any month more gasoline (including motor fuel and engine distillate) than is equal to ....% of the gasoline sold for consumption in the State of California during said month except for adjustments as hereinafter provided.

The expected consumption for the month will be estimated by the Agency and the Refiner notified thereof prior to the 25th day of the preceding month, and the Refiner shall regulate the amount of his production accordingly. As soon as the figures showing the State's actual consumption are available a proper adjustment of Refiner's allowable production will be made by the Agency and notice thereof given to the Refiner.

Section XI.

The Agency agrees that in addition to purchasing the gasoline and crude oil and providing crude oil for the Refiner, as hereinabove provided, it will post prices at which it will purchase from Refiner, if, as, and when offered, any marketable residuum, distillate, or kerosene currently produced by such Refiner.

Section XII.

The Agency hereby represents that it is authorized under written contract with its members to obligate its said members severally to the following stipulations and to the stipulations of Sections VII and XIII hereof 6179 which are intended to apply to each of said members, as well as to the Refiner; and each member of the Agency shall be bound hereby, as though each thereof had severally signed this contract and shall be included in the expression "the parties hereto":

(a) The parties hereto assume full responsibility for the distribution and sale of their respective gasolines, whether sold under their refinery brands or under the brands of distributors heretofore filed with the Agency, and whether or not acquired hereunder, and whether or not manufactured from crude or other oil acquired hereunder, from the Refiner to the ultimate consumer and agree that in all sales of gasoline made by any of the parties hereto to a reseller, such party shall require the reseller to resell such gasoline at the wholesale or retail price, as the case may be, which may be authorized and posted by such party at the time and place of resale, and that such party will likewise require all wholesalers, distributors, peddlers, jobbers, brokers, agents, or any other person whomsoever, upon sale of gasoline made by them for resale to agree to require all resellers at the time of sale to them to agree to maintain, and cause to be maintained, such party's authorized posted wholesale and retail prices, respectively, effective at the time and place of resale. In case of sales to or through so-called distributors who do not fall within the definition of distributors in the Code of Fair Competition for the Petroleum Industry, such party shall require that such gasoline so sold, be sold under its refinery brands or the authorized brands of such distributors listed with the Agency as provided by this agreement, and in its name, and that the gasoline shall be so invoiced on the delivery 6180 ticket. The posted retail price for each party hereto for gasoline of 64.9 octane rating or lower shall at all times be not less than three cents, inclusive of any rental and/or other credits, over the net price to retail resellers. Each and every party hereto agrees that it will forthwith at its own cost and expense cancel and terminate any and all existing agreements which would interfere with or prevent compliance with the terms of this agreement. For purposes of this sub-paragraph (a) gasoline acquired by any member from the Agency shall be treated as the gasoline of such member and not as the gasoline of the refiner or refiners selling the same to the Agency. Each party hereto, in establishing its authorized and posted prices according to trade classifications, shall clearly define its several classifications according to standards responsive to actual trade categories. No classification shall be made or difference in price posted which is not in accordance with generally established trade usage or which has no purpose other than to permit an evasion of the intent of this agreement. In the case of bids and sales to federal or state governments or departments or subdivisions thereof, such price differentials and provisions shall be permissible as may be consistent with the Code of Fair Competition for the Petroleum Industry and the orders of the Administrator on the subject. Gasoline made from crude oil or other petroleum product supplied by a member of the Agency shall be considered, for the purpose of this agreement, as though the gasoline itself had been sold to the buyer by the supplier of the crude oil or other petroleum product from which it is made. All provisions of this paragraph (a) relating to price structure and posting thereof shall also apply to motor fuel and engine distillate.

6181 (b) No party hereto will convert any split pump account into a one hundred per cent account.

(c) No party hereto will give any additional commission or discount for two or more pumps at a split pump station over what is given for one pump.

(d) Gasoline of less than 64.9 octane rating manufactured by any agency member shall not be advertised by such member or anyone handling same in any way other than by signs posted at the place of sale thereof to the public, or on trucks transporting such gasoline.

(e) Any party to this agreement except the Agency who supplies any petroleum products to anybody not a party to this agreement shall require that any gasoline or motor fuel made from said petroleum products shall be sold, if sold for consumption within Region No. 6, at the same prices wholesale or retail as the supplying company sells its gasoline or motor fuel.

(f) Each party hereto shall file with the Agency a list of his distributors' brands. Only one party to this agreement may use a listed distributor's brand at any one time. Whenever a distributor, having a listed brand, purchases the gasoline to be sold under such listed brand, from a new supplier, the new supplier shall give notice thereof to the Agency and to the former supplier.

(g) The allowance for truck and trailer deliveries (as the term is used in Section V hereof) shall not exceed one-fourth cent per gallon.

(h) The Refiner for himself, and the Agency for itself and its members, agrees not to solicit or enter into any contract, during the term of this agreement, to take over or serve any retail or commercial account of another party on terms inconsistent with this agreement, which
6182 contract is to take effect at the expiration of this agreement.

Section XIII.

Each party hereto agrees that it will not during a period of ninety (90) days from and after the effective date of this agreement, supply the tanks or serve any retail pump selling or handling branded products of any other party hereto, except, however, that the provisions of this paragraph shall not apply to any branded pump or pumps, the brands of which have been changed to those of new suppliers since April 1, 1934.

Each agency member agrees for itself and its distributors, jobbers, and brokers, and any other person whomsoever reselling its products, that neither it nor they will brand any unbranded pump or sell gasoline for resale through any unbranded pump during such ninety (90) day period. Provided, however, that there is not included in this provision any pump which it or they have served continuously for not less than sixty (60) days prior to April 12, 1934, under a valid written contract made and entered into prior to April 1, 1934, provided that any contracts affecting pumps in the area south of the Tehachapi shall have been filed with the Regional General Chairman on or before noon of April 14, 1934; and contracts affecting pumps in other areas shall have been filed with said General Chairman before noon April 18, 1934. Neither shall this provision include any pump to which the Agency member was delivering directly and not through any distributor and/or other intermediary for sixty (60) days prior to April 12, 1934. Refiner for himself, and the Agency, for itself and its members, agrees not to solicit or enter into any contract during said
6183 ninety (90) day period contrary to the provisions of this Section XIII, which contract is to take effect at the expiration of said ninety (90) day period.

Section XIV.

It is agreed by the parties hereto that this agreement is made pursuant to the provisions of the National Industrial Recovery Act and of the Code of Fair Competition for the Petroleum Industry, and for the purpose of stabilizing the industry and preventing unfair competition; that in case of breach of any of the terms of the contract a judgment for damages would be of no avail and that none of the parties hereto has an adequate remedy at law against the other; that the Administrator is interested in the full and punctual performance of this contract to protect the public interest and effect the stabilization of the industry, and that adequate relief in case of a breach of any of the provisions of this contract can be provided only by the remedies of injunction or specific performance granted by a court of equity.

Section XV.

As an additional remedy, and not in lieu of any remedy provided by law or by the provisions of this agreement, it is agreed that in the event that of a violation of any of the provisions of this agreement by any person handling the products manufactured by any Agency member or Refiner, the aggrieved party shall promptly report such breach to the Administrator or any agent duly authorized by him who shall, as soon as practicable, review the matter and if deemed necessary hold, or cause to be held, a hearing with respect to such violation and determine whether the proper functioning of this agreement requires the suspension for a period of time of deliveries of motor fuel
6184 to the violator. In the event the Administrator, or
any agent duly authorized by him, deems such suspension necessary he shall immediately notify all Refiners selling motor fuels in the locality or localities where the violation has occurred to suspend or refrain from making deliveries of all classes of petroleum products to the offending party, distributor, jobber, wholesaler, or retailer, until further notice that such deliveries may be resumed. During the period of suspension the Refiner and the respective Agency members shall not deliver or permit to be delivered, their products to such offender.

Section XVI.

If any controversy arises as to the true intent and meaning of any term of this agreement the controversy shall be referred to the Administrator whose decision thereon shall be final.

Section XVII.

Title I of the National Industrial Recovery Act requires that certain provisions of Section 10 (b) of said Title shall be contained in each agreement approved, prescribed, or issued under said title. Said section is here set forth in full and made a part hereof as follows:

"The President may from time to time cancel or modify any order, approval, license, rule or regulation issued under this title and such agreement, Code of Fair Competition, or license approved, prescribed, or issued, under this title shall contain an express provision to that effect."

Section XVIII.

All notices hereunder from the Refiner to the Agency shall be addressed to it at ....,
Los Angeles, California.

6185 All notices from the Agency to the Refiner shall be addressed to it at ....

Notices in writing deposited in the United States Post Office, postage prepaid and addressed to the foregoing addresses, shall be considered good and valid notice hereunder, effective from the date of deposit.

Section XIX.

Unless terminated in accordance with the provisions of Section 10 (b) of Title I of the National Industrial Recovery Act, or of Section IX hereof, this agreement shall continue in effect until June 15, 1935, or until the discontinuance, repeal, or invalidation of the National Industrial Recovery Act, whichever event occurs first, provided, however, that this agreement may be terminated by either party hereto on thirty days' notice if the production of crude oil in the State of California exceeds the production allocated to said State by the Administrator by more than five per cent for two successive months.

Section XX.

This agreement shall not become effective unless the agreement of the members of the Pacific Coast Petroleum Agency, organizing such agency, which contains a general form of the agreement to be entered into with Refiners is approved by the Administrator, and until permitted by proceedings pursuant to the provisions of the order modifying the final decree made September 25, 1933, by the District Court of the United States for the Northern District of California, Southern Division, in the case of United States of America, Petitioner, *vs.* Standard Oil Company of California, *et al.*, Defendants, numbered 2542-S In Equity, on the files of said Court, modifying
6186 the Final Decree made and entered in said Court in
said cause on the 15th day of September, 1930.

Section XXI.

The provisions of this agreement shall bind the successors, assigns, lessees, and legal representatives of the parties hereto, including the members of the Agency; and if any party hereto shall be merged or consolidated with, or its business acquired by, another party hereto, or a refiner, party to a similar agreement, the party continuing the business shall succeed to and take over the benefits and assume the burdens of the party so merged or consolidated, or whose business is acquired.

In Witness Whereof, the parties hereto have caused this agreement to be executed in duplicate the day year first above written.

....

Refiner.

Pacific Coast Petroleum Agency,

By..

President.

By..

Secretary.

....

Secretary of the Interior and
Petroleum Administrator.

6187 DEFENSE EXHIBIT NO. 1030.

For Identification.

(Certified by the Department of the Interior to be copy of document on file in that Department.)

6188 DEPARTMENT OF THE INTERIOR
Petroleum Administrative Board
Washington

March 22, 1935.

Memorandum for the Administrator:

Re—Report of Petroleum Code Survey Committee on Small Enterprises.

The report of the Committee is a searching and useful document. It shows a considerable amount of work and thought, and the Committee appears to have received numerous complaints and criticisms. The report consists not only of a discussion and analysis of the operation of the Code upon small enterprises but makes definite recommendations.

Production:

The Committee states that no permanent benefits can be obtained under the Code without a permanent assured effective balance of crude oil supply and demand, nor can stability and conservation be achieved without such balance. It states that uncertainty of control has been detrimental, that the production allocations set by the Federal agency have been too large, that more effective means are required to secure individual compliance with allocations, that the allocations within the States have not always been such as to promote the conservation of petroleum and to prevent physical and economic waste, that imports have exceeded Code requirements, and that hot oil, excess imports, excess production of crude oil and gasoline have prevented a definite assured continuous balance and have from time to time resulted in excess supply. The Committee recommends the accomplishment of an effective and permanent balance of supply with demand.

In connection with production, the Committee also reviews the minimum wage rates and maximum hour provisions applicable to stripper or sub-marginal properties and states that these stripper or sub-marginal properties should be relieved from the minimum wage and maximum hour provisions of the code.

Further, in connection with production, the Committee finds that the rig building contractors have suffered severely from the wage provisions of the Code and recommends that rig building operations be defined, labor engaged therein classified, and for such different classifications there be established minimum wages bearing a more proper relationship to wages prevailing in the industry.

6189 Refining:

This part of the report is very critical of the operation of the Code on small enterprises, that is, the non-integrated refiner who has had to pay the stabilized price for crude but who has been obliged to sell his products on an unstable market, out of parity with the price of crude. The thesis, as it were, of this portion of the report is that while the integrated company fixes the prices of crude at which the non-integrated refiner must buy, the integrated company with considerable low cost flush production does not itself have to pay the posted price, but in effect obtains its crude at a cost lower than the posted price.

The report points out that the costs of refinery operations have increased due to increase in labor, fuel and metal costs; that practically every refinery east of the Rockies is operating at a loss (citing instances and quoting figures), that it is evident that the prices of crude oil and of refined products have not been on a parity, and that this fact, with the increased operating costs under the Code, "has put the non-integrated refiner in an impossible position". The following is quoted from the report: (P. 30)

"It is our opinion that most of the large oil companies which post prices for crude oil in the principal fields have been well aware of the fact that crude oil has been too high in relation to the prices of refined products, but that since in most instances they themselves have not suffered seriously as a result of the abnormal situation—and in certain cases have profited greatly—they have not been inclined to cut the price of crude oil and risk the chance of administrative disfavor as well as the possibility of adverse legislative penalties. The result is that the refining branch of the industry has been obliged to absorb the difference between the prevailing posted crude oil prices and those prices which, as indicated by historical experience, should have prevailed."

After a very analytical discussion of the plight of the non-integrated refiner, the Committee recommends: (P. 31)

"Immediate relief is necessary if non-integrated refineries are not to be eliminated; it can come in only two forms.

6190 1. An immediate and sustained increase in tank-car and retail gasoline prices to a parity with present crude prices, or

2. A reduction in the posted prices of crude oil to a parity with gasoline.

"We agree with the thought prevalent in the production branch of the Industry—that it would be more desirable for the solution to come from an increase in gasoline prices instead of a reduction in crude, but if it cannot be done one way it should be done the other way.

"We favor making one more effort at raising gasoline prices. Refiners, of course, will point out that almost continuously over the past year efforts have been directed toward that end with negligible results. But some improvement in the basic factors of the situation may have been accomplished, and possibly only the impetus of concerted buying is needed to obtain a decided change for the better. Interstate shipments of hot oil and its products apparently are being brought under control and if the oil states enforce proper allowables there should be an improvement in the supply side of the picture. We know of nothing, apart from continued improvement in crude production control, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is being considered by the Industry now in connection with a broad stabilization program. We therefore urge that the Administrator give it his approval and active support."

(P. 32)

"If, however, gasoline prices do not advance to an approximate parity with crude prices by an early date, within thirty days or thereabouts, or if they do not continue in such parity thereafter, then we recommend an immediate reduction in the price of crude oil to a parity with refined products. On the basis of prices as of this date a reduction of about 20¢ a barrel would be required to bring crude oil and gasoline prices into parity on the basis of the ratio of 18.5 to 1 as set forth in Section 6 of Article III of the Code."

6191 **Marketing:**

The Committee states that many existing difficulties and hardships in connection with marketing operations cannot be related directly to the Code, such as, the increase in service stations, complaints concerning margins allowed by supplying companies to jobbers and dealers, price differentials between branded and unbranded gasoline, etc.

After setting forth the nature of the complaints under Marketing (PP. 34-5), the Committee analyzes these complaints and recommends:

1. Reinstatement of commercial discount type of contract regulating discounts for commercial consumers, with changes suggested by Committee on P. 40 of its report:
2. That price fixing is not a solution;
3. That while price wars cannot be entirely avoided they can be minimized;
4. That large companies file with the proper stabilization committees the formulae by which they determine their normal price levels in different areas, together with a statement of the reasons for any deviation; and that such information be also filed by their competitors;
5. That to discourage further building of gasoline service stations, power be given to marketers to enter into compacts, subject to approval of the Administrator, whereby such building would be restricted or discontinued.

General:

The Committee finds:

1. That transportation of crude oil is not adversely affected by the Code;
2. That authority be given to refiners to enter into agreements, subject to approval of the Administrator, to restrict voluntarily their gasoline productions allocated to them under the refinery provisions of the Code, and to transfer to smaller companies all or any part of their production thus curtailed;

6192 3. That in order to afford smaller companies the same advance information concerning changes in Code interpretations, rules, policies, etc. now enjoyed by larger companies with representation on the principal committees, the meetings of the Planning and Coordination Committee and the principal committees be open to the trade press;

4. That the present Code organization with its number of local, state, regional and national committees and subcommittees, should be simplified and more adequate representation in each branch of the industry be granted to small enterprises;
5. The Committee finds that small enterprises suffered from enforcement failure of certain provisions of the Code, which are apparently unenforceable because of doubtful legality or because of the nature of the provisions; and

that the Code should be redrafted so that such provisions are either dropped or segregated into a separate section, adherence to which would be voluntary.

It is not the purpose of this memorandum to criticize or attempt to answer any of the findings or recommendations of the Committee; although the current improvement in tank car price and the present fairly stabilized retail market is affording relief to some extent to the non-integrated refiner who, the report points out, has suffered most. In our opinion the report should be released immediately, and although we believe that it should not be accompanied by defense made by the Petroleum Administration against the positions taken by the Small Enterprise Committee, there are a number of things recommended which it would be well to do something about. Remembering that the Committee was appointed to do the very thing that it has done, namely, point out the effect of the Code on small enterprises, the question now is whether action in accordance with the report, where action is recommended, should be taken on the basis of this report without affording other elements in the industry an opportunity to be consulted. This meets with the following suggestion to you of the Board:

We believe success in Code administration, assuming that it is to continue, requires that some of the recommendations made should be adopted; e. g., we have encouraged stabilization efforts designed at this time to aid the independent refiner, and we have also recommended to the Planning and Coordination Committee the reinstatement of the commercial discount contracts. We have 6193 also had before us for some weeks the working out of a plan which would afford some basis for making Rules 4 and 6 more effective. These Rules have been the source of difficulty and division of opinion as to what can be done about them. The successful operation of the Code also seems now to require a new effort to obtain cooperation on the part of the industry. The making of this report to you and the desirability of hearing from other elements in the industry as to the recommendations contained in the report, makes this a very logical and psychological time for you and a group of leaders in the industry to meet for the purpose of discussing this report and furthering the recommendations made in it.

(Signed) Charles Fahy
Chairman

Stamped:
"Noted by the Secretary
of the Interior"

6194 GOVERNMENT EXHIBIT NO. 1031.

Letterhead of Wadhams Oil Company, Milwaukee, Wisconsin

Mr. Clayton W. Haswell
Foreman of Grand Jury
Madison, Wisconsin

September 8, 1936

Dear Mr. Haswell:

In compliance with your instruction I am forwarding to you a copy of the letter on stabilization from Region 3 Code Office to the State Petroleum Committee in that Region, which letter followed the Administrator's letter to Mr. Arnott as of July 20, 1934.

The letter I am forwarding has been defaced to some extent because I made penciled notations on it to guide my secretary in taking excerpts from the letter. The letter as typewritten is the true copy, and no dilutions or corrections were intended by either the Region 3 Office or myself.

Very truly yours,
Wadhams Oil Company
M. G. Peeters
Vice President

PS: I will be able to write concerning reports from Mr. Blackall to Mr. Maguire during tomorrow.

6195 Letterhead of Planning and Coordination Committee
Regional District No. 3
Chicago, Illinois

No. C. L.-72
July 24, 1934

To: Chairmen State Petroleum Committees

Re: Price Stabilization Committees Authorized by Petroleum Administrator July 20, 1934

On July 20, 1934, Petroleum Administrator Harold L. Ickes, specifically authorized and requested Chairman Charles E. Arnott of the Marketing Committee, Planning and Coordination Committee, Washington, D. C., to designate price stabilization committees for each locality when, and as price wars developed.

These Committees have the expressed authority to confer, negotiate, take whatever action may be necessary to restore markets, stabilize price levels to normal, and stop gasoline price wars. A copy of the Administrator's letter of authority is attached hereto.

Acting under the Administrator's instructions, it is my suggestion that you establish one strong standing or major committee for your territory and as many special or minor committees, as may be deemed expedient to satisfactorily accomplish the purpose for which this mission is intended. One committee, even working full time, could not possibly be expected to iron out the many difficult situations involved in this assignment. Consequently, the major committee can accomplish much more through assistance than in attempting to cover every bad situation. Nevertheless, there should be whenever possible one member of the major committee on each minor committee and he should be designated Chairman of that Committee, in order that a proper and legal method of procedure will at all times be followed. If this suggestion is found impracticable you must be extremely careful to see that the Chairman of any minor committee, who is not a member of the major committee, is fully instructed as to his duties.

6196 You are respectfully requested to register your nominees for each of these committees with the undersigned, sending the names of the members of all committees to this office as soon as possible. You have full power of action but the personnel of each of these committees must be comprised of every type of marketer in the territory, this regardless of how large or small your Committee may be.

The purposes of these Committees are clearly set forth in the attached letter. You will note a reference to "Clause 2 of Sub-Section A of Section III of the Act". This has reference to the National Industrial Recovery Act and a copy for ready reference is attached hereto.

Regarding the item of public hearings, this does not necessarily mean publicly-advertised hearings, to which the public is invited. It undoubtedly means hearings where every interest involved can confer and negotiate, leaving no fraction unheard.

Ever since price wars started, friendly efforts toward stabilization in an informal manner have been extended by members of the various Code Committees but never before with the expressed sanction of anyone in authority. The procedure followed in the past which has accomplished the desired results should be continued but where negotiations fail, a special committee should be formed, or one or more members of the entire Stabilization Committee should be called upon to effect a settlement.

The instructions contained in the Administrator's letter constitute Federal authority and gives this work official status, i. e. undertaking an assignment which the Administrative Board could not possibly hope to accomplish, owing to its many duties and the multitude of cut price areas.

Great care must be exercised by these committees to comply strictly with the Administrator's instructions and limitations as set forth in this letter. A report in quadruplicate should be sent to this office covering all of the facts developed by the committee comprising all reasonable data ascertainable and indicating the recommendations or disposition predicated on the work undertaken.

All states now have so-called Restoration Committees appointed under and by direction of the resolution of the Planning and Coordination Committee, approved by the Administrator on February 20, 1934, relating to Article V, Rule 3, Paragraph 7. These Committees having strictly limited duties, there would be no objection to combining their duties with this Committee, if it is so desired.

Yours very truly,
Regional Planning and Coordination
Com. #3
By: A. G. Maguire
Chairman for Marketing

1-2-10
Copies to:
General Chairman
Regional Chairman for Mar.

6197 National Industrial Recovery Act

Clause (2) of Sub-Section (a) of Sec. III

"That such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title.

Provided, that such code or codes shall not permit monopolies or monopolistic practices:

Provided further, that where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes.

The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

Shipment of Refined Gasoline (In Tank Cars) From 34 Independent Refineries Located in East Texas Area
During the Period March 1, 1935 To March 3, 1936

	Barnsdall Refining Corp.	Cities Service Company	Empire Oil and Refining Company	Louisiana Oil Refining Corp.	Continental Oil Company	Globe Oil and Refining Company (3)	Gulf Refining Company	Mid-Continent Petroleum Corp.
Alton Refining Company				1				8
Arrow Refining & Producing Company		26					107	
Cascade Refining Company							35	
Century Refining Company	3				68		2	5
Chief Refining Company					10		45	
Condor Refining Company					4			
Danciger Refineries, Inc								
Dominant Refining Company								
Eastex Cracking Company								
East Texas Refining Company	11	14	2	839	24	11	846	
Gilliland Refining Company	6	76		82	107		283	15
Hercules Oil Company								
Hurricane Petroleum Corp.	3			10			62	1
Johnston-Burnham Refineries, Inc							7	
Lapren Refining Company		27			2		28	
Lone Star Refining Company		1			12			
Lyle Refining Company								
Marimac Oil Company Inc							25	
Marine Export Corporation								
Matthews Refining Company								
McMurray Refining Company	4	10			10		181	
Ocean Refining Company	4						60	23
Oil Refineries, Inc		10		47			24	
Premier Oil Refining Co. of Texas					12		80	
Producers Oil & Refining Company								

6199

	Barnsdall Refining Corp.	Cities Service Company	Empire Oil and Refining Company	Louisiana Oil Refining Corp.	Continental Oil Company	Globe Oil and Refining Company (3)	Gulf Refining Company	Mid-Continent Petroleum Corp.
Riverside Refining Company...........								
Solvex Refineries, Inc................					32		75	
Southport Petroleum Company........		95		2			85	
Texas Oil Products Company..........		21		17	65		248	7
Trio Refining Company................				17			30	
Texover Refining Company............		20					53	
Trinity Refining Company.............							87	
Tyreco Refining Company.............		20			1		87	11
Utah Refining Company...............					39			
Totals......................	31	320	2	1015	386	11	2450	70
Percentages.........................	.129%	1.331%	.009%	4.220%	1.605%	.046%	10.186%	.291%

Source: Records of daily shipments compiled by Federal Tender Board #1, Kilgore, Texas.

	Phillips Petroleum Company	The Pure Oil Company	Socony-Vacuum Oil Co., Inc.	Wadhams Oil Company	Sinclair Refining Company	Shell Petroleum Corp.	Skelly Oil Company	The Texas Company	Others	Total
Alton Refining Co.									21	30
Arrow Refg. & Prod. Co.		9			166			3	281	592
Cascade Refg. Co.					90				751	876
Century Refg. Co.	3	5		5	116	5			339	551
Chief Refg. Co.		153	6	5	46				74	339
Condor Refg. Co.									33	37
Danciger Refineries, Inc.									23	23
Dominant Refining Co.					34				10	44
Eastex Cracking Co.									31	31
East Texas Refg. Co.	20	20	13	107	132	8	10	30	2387	4474
Gilliland Refg. Co.		156	3	5	704		10	90	1842	3379
Hercules Oil Company									9	9
Hurricane Petroleum Corp.		35		14	382		10	265	1094	1876
Johnston-Burnham Ref's., Inc.				2	9				77	95
Lapren Refg. Co.					32				211	300
Lone Star Refg. Co.					1				99	113
Lyle Refining Company									6	6
Marimac Oil Company, Inc.		16			73	10			23	147
Marine Export Corporation						7			1	8
Matthews Refining Company					14				19	33
McMurray Refining Company		12	1	19	113			84	368	802
Ocean Refining Company			8	11	42				533	681
Oil Refineries, Inc.		176			220			87	619	1183
Premier Oil Refg. Co. of Texas		17			375		12	55	599	1150
Producers Oil & Refining Co.									1	1

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	Phillips Petroleum Company	The Pure Oil Company	Socony-Vacuum Oil Co., Inc.	Wadhams Oil Company	Sinclair Refining Company	Shell Petroleum Corp.	Skelly Oil Company	The Texas Company	Others	Total
Riverside Refg. Co.									10	10
Solvex Refineries, Inc.		20			84			100	220	531
Southport Petroleum Co.				3	283				1222	1600
Texas Oil Products Co.		15		14	500	10	10		263	1170
Trio Refining Company		525			59			186	882	1600
Texover Refining Co.		23			11				58	165
Trinity Refining Co.					75				77	239
Tyreco Refining Co.	7	15		12	226		15		1330	1724
Utah Refining Company									5	44
Totals	30	1197	31	197	3787	40	67	900	13518	24053
Percentages	.125%	4.977%	.129%	.819%	15.745%	.166%	.278%	3.742%	56.202%	100.000%

Source: Records of daily shipments compiled by Federal Tender Board #1, Kilgore, Texas.

GOVERNMENT EXHIBIT NO. 1033.

Purchases of Third Grade Gasoline by Sinclair Refining Company From Independent Refiners in the East Texas Field During the Period March 1, 1935 to April 30, 1936

In Tank Cars

	East Texas
1935	
March	92
April	336
May	269
June	274
July	358
August	353
September	346
October	539
November	418
December	389
1936	
January	305
February	264
March	154
April	166
Total	4263

6203 GOVERNMENT EXHIBIT NO. 1034.

The Globe Oil & Refining Co.
Illinois

Purchase Order No. A4535
Chicago, Sept. 18, 1935
Illinois

To T. R. Vaughn
59 E. Van Buren Street
Chicago, Illinois

Contract or
Quotation No.

To be Shipped As instructed

Ship to The Globe Oil & Refining Co.

At
Via

Req. No. By F. O. B. Group 3

This order is placed subject to the following conditions and instructions:

Conditions

The right is reserved to cancel all or any part if not shipped as promised.

No charges will be allowed for packing or cartage unless specified in quotation.

All invoices on which no cash discount is allowed will be due on the 20th prox.

This order must not be filled at a higher price than last quoted or charged. If prices have advanced hold and ask for advice.

If these conditions are not acceptable, advise us before making shipment.

Instructions

Advise Receipt and Acceptance Promptly, advising when shipment will be made.

Show This Order Number On Tag, Box, Bill Of Lading or Express Receipt and Invoice.

Render invoice in duplicate and mail to Blackwell, Okla.

Render separate invoice for each shipment or carload applying on this order.

Indicate on this invoice discount for monthly or ten-day payment.

No responsibility will be assumed for verbal orders given by employees.

Quantity	Description	Price
20 T/C	Imperial Refining Company, Wickett, Texas, U. S. Motor Gasoline For shipment at the rate of two cars daily, Sundays excluded. Instructions to follow. Federal Tax Free. Federal Tax Exemption Certificate Attached. Invoice In Triplicate.	.045¢ per gallon

The Globe Oil & Refining Co.
By D. L. Meece
Purchasing Agent

Notice

Issue invoice in triplicate.

6204 GOVERNMENT EXHIBIT NO. 1035.

Sales Acknowledgment

No. 873

T. R. Vaughn
Chicago, Ill. . Date Sept. 18, 1935

Globe Oil & Refining Co.
Chicago, Illinois

Handwritten Notations
"Shipped against this purchase—

9-19	IMRX	1150
9-20	"	1100
9-21	GATX	29675
	"	29507
	"	29417
9-23	IMRX	1149
9-26	GATX	15382
	IMRX	1153
	GATX	29449
	"	29404
		29561

balance cancelled by Globe—"

We acknowledge your order for:

Quantity 20 T/C

Commodity U.S. Motor Gasoline

To be shipped as follows: Federal Tax Exempt

As Instructed—At the rate of two cars per day, Sundays excluded.

This material will be invoiced to you by:
T. R. Vaughn
at a price of 4½¢ per gal. F. O. B. Group 3 Okla.
Terms: 1% 10 days

T. R. Vaughn Oils
By ....

6205 DEFENSE EXHIBIT NO. 1036.

September 26, 1935

T. R. Vaughn Oils
59 E. Van Buren Street
Chicago, Illinois

Gentlemen:

We regret sincerely that your inability to secure shipments at the rate of two cars daily as specified by your Refinery Supplier when we placed our Purchase Order No. A-4535 with you makes it necessary that we cancel past due instructions on which you have been unable to secure car numbers so that we may arrange for immediate shipment from one of our own Plants.

Please make immediate cancellation of orders covering the five instructions listed below.

1 car Farmers Supply Company
Colusa, Illinois
Via CB & Q at K.C.

1 car Order of the W. H. Barber Company
Notify Egyptian Service Company
Salem, Illinois
Via K.C. Mo-Pac, Centralia, M & I

1 car Wabash Valley Service Company
Ridgeway, Illinois
Via B & O at E. St. Louis

1 car Woodford County Service Company
Goodfield, Illinois
Nickel Plate

1 car Logan Mason Service Company
Lincoln, Illinois
Via I C at St. Louis

Unless you are able to furnish car numbers covering the three additional shipments listed below before 3:00 P. M. this afternoon, we will cancel those instructions and will arrange for shipment elsewhere.

1 car to Logan Mason Service Company
Easton, Illinois
Via I.C. at E. St. Louis

6206 1 car to Warren County Service Company
Oil City, Illinois
Via SantaFe, Nemo M. & St. L, Monmouth, RIS

1 car to Shelby-Effingham Service Company
Westervelt, Illinois
Via C & EI at E. St. Louis

Please understand that instructions cancelled because of delayed shipments will be deducted from the total purchase order and will not be reinstated at a later date.

We will see that you are furnished shipping instructions to cover two cars of gasoline daily but if car numbers are not furnished to us within twenty-four hours after the date on which shipments should move, we will cancel each days quota on which shipments are not made and car numbers furnished and place instructions elsewhere. This action is forced upon us because our own customer has refused to give us additional shipping instructions because of our failure to furnish car numbers and has advised us that he is placing instructions which he would ordinarily place with us with another source from which he is able to secure car numbers.

Very truly yours,

Assistant Sales Manager.

Brown L. Meece
cc-Blackwell
cc-Wichita

6207 DEFENSE EXHIBIT NO. 1038.

September 20, 1935

T. R. Vaughn Oils
59 E. Van Buren Street
Chicago, Illinois

Attention: Miss Raab

Gentlemen:

Confirming 'phone conversations of the 18th and 19th, will you please make immediate shipment of gasoline applying against our Purchase Order No. A-4535 of September 18th to the following destinations:

1 car to Whiteside Service Company
Lyndon, Illinois
Via CB & Q at K.C.

1 car to Menard County Farmers Supply Company
Petersburg, Illinois
Via Alton at K.C.

1 car to Monroe Service Company
Waterloo, Illinois
Via M & O at E. St. Louis

1 car to Carroll County Service Company
Lanark, Illinois
Via Chicago, Milwaukee & St. P. at K.C.

1 car to McLean County Service Company
Bloomington, Illinois
Via Alton at K.C.

1 car to Logan Mason Service Company
Easton, Illinois
Via I.C. at E. St. Louis

1 car to Warren County Service Company
Oil City, Illinois
Via Santa Fe, Nemo M & St. L, Monmouth, RIS

(In left-hand margin):

(Handwritten Notation):

"INRX 1149
9/23"

6208 1 car to Shelby-Effingham Service Company
Westervelt, Illinois
Via C & EI at E. St. Louis

1 car to Farmers Supply Company
Colusa, Illinois
Via CB & Q at K.C.

1 car to Order of the W. H. Barber Company
Notify Egyptian Service Company
Salem, Illinois
Via K. C. Mo-Pac, Centralia, M & I

1 car to Wabash Valley Service Company
Ridgeway, Illinois
Via B & O at E. St. Louis

1 car to Woodford County Service Company
Goodfield, Illinois
Nickel Plate

1 car to Logan Mason Service Company
Lincoln, Illinois
Via IC at St. Louis

(In right-hand margin):

(Handwritten Notations):

"GATX 15382
9/25"

"GATX 29404
Oil City"

"GATX 29449
Westervelt"

"INRX 1153
Colusa"

According to our records this will leave a balance of seven cars.

Very truly yours,
J. M. Alexander

k
cc-Mr. C. Black

6209 DEFENSE EXHIBIT NO. 1040.

(Sales acknowledgment T. R. Vaughn to Globe Oil & Refining Company, September 18, 1935, identical with Exhibit 1035 without handwritten notations.)

6210 GOVERNMENT EXHIBIT NO. 1043.

Stipulation.

A. J. Galloway was, during the period covered by this indictment, an officer of Shell Petroleum Corporation.

J. L. Minner was, during the period covered by this indictment, the assistant fuel oil sales manager of Shell Petroleum Corporation.

Exhibit 190 was written by Harry Jacobs, signed by him with P. E. Lakin's name and sent to Alexander Fraser. Exhibit 191 was written by Harry Jacobs, signed by P. E. Lakin, and sent to Alexander Fraser. Exhibit 192 was written by Harry Jacobs, signed by him with P. E. Lakin's name, and sent to Alexander Fraser. Exhibit 193 was written by Harry Jacobs, signed by him with P. E. Lakin's name, and sent to Alexander Fraser. Exhibit 209 was written by Harry Jacobs, signed by P. E. Lakin, and sent to Alexander Fraser. Exhibit 230 was received by P. E. Lakin in response to Exhibit 232. Exhibit 231 was received by P. E. Lakin as an enclosure with document bearing identification number 230. Exhibit 248 was written by C. E. Davis and sent to Alexander Fraser and copies were sent to R. P. Bascom, A. J. Galloway, L. van Eeghen, J. H. Salmon, Harry Jacobs, J. L. Minner, A. P. Reuther and Norman McGaw. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

6211 GOVERNMENT EXHIBIT NO. 1044.

Stipulation.

Exhibits 24, 27, 52 were written by the one so indicated on the document and were received by the addressee. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

6212 GOVERNMENT EXHIBIT NO. 1045.

Stipulation.

Clyde M. Boggs was, from April 8, 1935 until the end of the period covered by the indictment, a non-salaried officer, to wit, the president of the Western Petroleum Refiners' Ass'n.

Exhibits 135 and 136 were written by Clyde M. Boggs and were sent to J. J. Taxman. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

6213 GOVERNMENT EXHIBIT NO. 1046.

Stipulation.

Exhibits 320 and 321 were written by D. K. Chamberlain and were sent to R. D. Cline; Exhibit 329 was written by D. K. Chamberlain and sent to Grogan Oil Company, Attention W. F. Kostelka, and a copy was sent to R. D. Cline. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

6214 GOVERNMENT EXHIBIT NO. 1047.

Stipulation.

Exhibits 316-319 were written by R. O. Audrain and were sent to R. D. Cline. Copies may be used in lieu of originals.

Any pencilled or other notations appearing on the above mentioned documents are specifically excluded from this stipulation.

The defendants expressly reserve the right to all objections against the admissibility of these documents except as stipulated.

6215 DEFENSE EXHIBIT NO. 1048.

Telegram.

Wichita, Kansas
Jan. 14, 1938

Ralph Horween, Atty.
Care Hotel Loraine
Madison, Wis.

Examination Chicago Office telephone bill for September 1935 discloses there were no long distance telephone calls to St. Louis, Missouri on September 17, 18 or 19, 1935. Sending original telephone bill for September 1935 air mail tonight should arrive Madison 12:55 Friday

R. E. Everitt.

6216 DEFENSE EXHIBIT NO. 1049.

(Teletype from Globe of Wichita to Globe Oil & Refining Co., Chicago, Illinois.)

Relative wire 24th pls rush all possible Illinois Farm US Gasoline to following destinations one car Wabash Valley Service Co Ridgwxx Ridgeway Ill via B&O at E St Louis one car Woodford County Ser Co Goodfield Ill via xxx Nickel Plate one car Logan Mason Service Co Lincoln Ill via IC at St Louis may have 2 additional instructions this afternoon above cars placed 19th with us invoice Barber Co in usual manner END

6217 DEFENSE EXHIBIT NO. 1050.

Letterhead of W. H. Barber Company, Chicago, Ill.

October 4, 1935.

The Globe Oil & Refining Company,
59 E. Van Buren Street,
Chicago, Illinois

Gentlemen:

Attached hereto is a copy of letter received from the Illinois Farm Supply Company. Please note that the Shelby-Effingham Service Company is expecting to send us an expense bill covering expense which they were put to by reason of delayed shipment on their order for U. S. Motor placed September 19 which was shipped from Wickett, Texas on September 24. This account was out of gasoline for a number of days and was obliged to haul material from other plants.

These outside shipments caused us a lot of grief and resulted in the Illinois Farm Supply Company placing orders with other suppliers during the last half of the month. For the first nineteen days we received 48 orders for U. S. Motor gasoline which normally would have been shipped out of Blackwell. Due to unsatisfactory service on the outside shipments we have failed to receive additional orders for Motor gasoline from September 19 to the present time. This will give you some idea as to the amount of business lost due to making these outside purchases.

Very truly yours,
W. H. Barber Company,
By J. R. Taylor.

(Handwritten Notation):

"Meece Pl Note"

6218 Copy

Illinois Farm Supply Company

October 3, 1935.

W. H. Barber Company,
3650 South Homan Avenue,
Chicago, Illinois

Attention: Mr. Duffy

Gentlemen:

This will confirm our telephone conversation of this morning on which we called your attention to an apparent duplication of our order #57678, covering U. S. Motor Gasoline for the Shelby-Effingham Service Company at Westervelt.

We were informed by long distance this morning, that in addition to car GATX 29449, which finally reached destination yesterday, another car arrived this morning. This is GATX 29561, which must be reconsigned elsewhere, inasmuch as storage facilities at Westervelt will not permit the unloading of two cars.

In case you fail to reconsign the car before demurage accrues, we will expect you to reimburse the Shelby-Effingham Service Company in full.

The aforementioned car which was unloaded was subject to a reconsigning charge and inasmuch as we issued no diversion instructions from this office, we will also expect you to reimburse the Shelby-Effingham Service Company for this expense. In fact, we have instructed them to itemize all the expense which they incurred because of the delay in filling our order #57678, including telephone calls to this office.

Yours very truly,
Illinois Farm Supply Co.
H. J. Johnson.

6219 DEFENSE EXHIBIT NO. 1051.

Letterhead of W. H. Barber Company, Chicago, Ill.

October 7th, 1935.

Globe Oil and Refining Co.,
Rm. 2115—Buckingham Bldg.,
59 E. Van Buren St.,
Chicago, Illinois.

Attention Mr. J. Alexander

Gentlemen:

The Illinois Farm Supply Company inform us that GATX 29401 is on track at Colusa, Illinois and IMRX 1114 is on hand at Oil City, Illinois. These cars were shipped from Wickett, Texas and are duplications.

We would suggest that you notify the shipper to arrange to make some disposition of these cars.

Very truly yours,
W. H. Barber Company,
By J. R. Taylor.

6220 DEFENSE EXHIBIT NO. 1052.

This exhibit, not otherwise printed, consists of purchase orders and invoices

(1) of Globe Oil & Refining Company (Oklahoma) showing that in August 1931, 40 tank cars of purchased gasoline were sold at a loss; that in September 1933, 23 tank cars of purchased gasoline were sold at a loss; that in June 1933, 40 tank cars of purchased gasoline were sold at a loss;

(2) of Globe Oil & Refining Company (Illinois) showing that in May 1933, 5 tank cars of purchased gasoline were sold a loss.

6221 GOVERNMENT EXHIBIT NO. 1053.

6222 Stipulation.

It Is Hereby Stipulated that H. Russell Richards of Continental Oil Company, if called as a witness in the above entitled action would testify that certain of the customers listed in Exhibit 926 in evidence were under contract to Continental Oil Company for the purchase of "Conoco Bronze" and/or "Demand" gasoline during the periods indicated after their respective names on Exhibit A hereto annexed, and during certain other periods similarly indicated, said witnesses were not under contract.

It Is Further Stipulated that said witness would testify that it was the practice of the division offices, particularly the Kansas City division office serving Kansas City 6223 and Missouri, to immediately start invoicing a customer on a spot basis when a contract expired and in most such instances the spot price charged on regular gasoline was higher than the price would have been if the customer were under contract.

It Is Further Stipulated that the following sales to the following customers tabulated on said Exhibit 926 were the only sales tabulated on Exhibit 1024 in evidence:

Bloom Cooperative Oil Company, Bloom, Kansas.—This customer was not under contract from June 1, 1934 to September 23, 1935. The following sales to this customer were plotted on Exhibit 1024:

February 1, 1935,—Conoco Bronze and third-grade.
May 2, 1935,—Conoco Bronze and third-grade.

Campeco Oil Company, Manistee, Michigan.—This customer was not under contract during any of the years from 1934 through 1936, inclusive. One sale of Conoco Bronze to this customer on May 24, 1935 was plotted on Exhibit 1024.

Cox-Prigel Oil Company, Raytown, Missouri.—This customer was not under contract between January 1 and November 20, 1935. During this period one sale of Conoco Bronze to this customer on November 15, 1935, was plotted on Exhibit 1024.

6224 DeForest Oil Company, Farmington, Missouri.—This customer was not under contract during any of the years from 1934 through 1936, inclusive. One sale of Conoco Bronze to this customer on September 24, 1935 was plotted on Exhibit 1024.

Dickson Oil Company, Brazil, Indiana.—This customer was not under contract during any of the years from 1934 through 1936, inclusive. One sale of third-grade gasoline to this customer on April 6, 1935 was plotted on Exhibit 1024.

R. C. Martin, DeLassus, Missouri.—The last contract with this customer expired on December 30, 1933. Sales of Conoco Bronze to this customer on the following dates were plotted on Exhibit 1024:

January 28, 1935
April 11, 1935
May 27, 1935

Michigamme Oil Company, Ann Arbor, Michigan.—The contract with this customer, dated June 1, 1934, was cancelled by letter dated May 1, 1935. Sales of Conoco Bronze to this customer on the following dates were plotted on Exhibit 1024:

May 7, 1935
May 20, 1935
May 27, 1935

Barton Super Service, Alma, Michigan.—This customer was not under contract during any of the years from 1934 through 1936, inclusive. One sale of Conoco Bronze 6225 on November 7, 1935 to this customer was plotted on Exhibit 1024.

6226

EXHIBIT A

Pete Dominic—Attention Granville Whittlesey, Jr.

Madison, Wis., Jan 7th, 1938

In accordance your telephone and teletype request yesterday am furnishing below contract record with reference to customers shown on tabulation "spot sales to jobbers"—regarding customers sold in spot between expiration of one contract and the beginning of a new one can only say that it was practice of the division offices, one in particular namely Kansas City "which serves Kansas & Missouri" to immediately start invoicing a customer on spot basis when a contract expired and they charged a spot price which on regular gasoline in most instances was higher than the contract price to the customer would have been. That these actually classify as spot sales has been verified by the sales division offices which actually handled the transactions with the customers.

All contracts are drawn to cover period of one year commencing on effective date which is first date shown.

Name of Customer	Effective Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
	AA		
Admire	9/21/34 to 9/21/35	Conoco Bronze	9/21/35 to 10/ 2/35
Oil Co		Demand Gasoline	
6227			
Admire	10/ 2/35 to 10/ 2/36	Ditto	
Admire	No further Contracts		
	1936		10/ 2/36 to 1/13/37
Kansas	Next Contract 1/13/37		Sold on spot during this period
Bartons Super Service			
Alma, Michigan	No Contract		
Barstow Oil Co	4/13/34 to 4/13/35	Conoco Ethyl	4/13/35 to 4/15/35
	4/15/35 to 4/15/36	Conoco Bronze	4/15/36 to 6/ 1/36
		Conoco Ethyl	
Menominee	6/ 1/36 to 6/ 1/37	Ditto (Ethyl)	
Michigan			
Products sold on spot not covered by contract—Conoco Special Gasoline /68–72 300 E.P./			
Bloom Co-Op Oil Co.	Contract Expired		
	6/1/34		6/ 1/34 to 9/23/35
	Next Contract		
	9/23/35 to 9/23/36		Sold on Spot during this period
		Conoco Bronze	9/23/36 thru balance
Bloom, Kansas	No further Contract	Demand Gasoline	1936
Boyd Bros	10/ 5/34 to 10/ 5/35	Conoco Bronze	10/ 5/35 to 11/26/35
Laddonia		Demand Gasoline	Sold on spot during this period
Missouri	11/26/35 to 11/26/36	Ditto	
	10/24/36 to 10/24/37	Ditto	

6228

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
Ernest Brinkerhoff	7/28/34 to 7/28/35	Conoco Bronze	7/28/35
Elkhardt		Demand Gasoline	
Indiana	7/29/35 to 7/29/36	Conoco Bronze	
	7/29/36 to 7/29/37	Conoco Bronze	
Products sold on spot not covered by contract—64-66 375 E.P.			
Campeco Oil Co.			
Manistee, Michigan	No Contract		
Checker Board	11/20/34 to 11/20/35	Conoco Bronze	
		Conoco Ethyl	11/20/35 to 2/11/36
Camps & Oil Co.		Demand	
Coolidge, Kans	2/11/36 to 2/11/37	Conoco Bronze	Sold one car on spot
		Demand	12/9/35
Cox-Prigel Oil Co	11/20/35 to 11/20/36	Conoco Bronze	1/ 1/35 to 11/20/35
Raytown, Mo	10/28/36 to 10/28/37	Demand Gasoline	Sold one car on spot
		Ditto	11/15/3
De Forest Oil Co.			
Farmington, Missouri	No Contract		
Dickson Oil Co.			
Brasil, Indiana	No Contract		
Erie Oil Co	3/ 1/34 to 3/ 1/35	Conoco Bronze	
Sheboygan		Conoco Ethyl	
Wisconsin		Demand	
	3/ 1/35 to 3/ 1/36	Ditto	
	3/ 1/36 to 3/ 1/37	Ditto	
Products sold on spot not covered by contract—68-70 E. P. 360.			
6229			
Excel Oil Co	4/ 6/34 to 4/ 6/35	Conoco Bronze	
Mascoutah	4/ 6/35 to 4/ 6/36	Conoco Bronze	4/ 6/36 to 4/16/36
Illinois		Demand	Sold 1 car on spot
	4/16/36 to 4/16/37	Ditto	4/9/36
Freeport Pet. Corp	9/25/34 to 9/25/35	Conoco Bronze	9/25/36 to 9/27/36
Freeport, Ill		Conoco Ethyl	
	9/27/35 to 9/27/36	Ditto	9/27/36
	9/28/36 to 9/28/37	Ditto	
Products sold on spot not covered by Contract—64-66 375 E.P.			
A. R. Granneman			
Gilliam	2/15/34 to 2/15/35	Conoco Bronze	2/15/35 to 4/22/35
Mo	4/22/35 to 4/22/36	Conoco Bronze	"Sold on spot during
		Demand	this period"
	9/ 2/36 to 9/ 2/37	Conoco Bronze	4/22/36 to 9/2/36Z
		Conoco Ethyl	"Sold on spot except
		Demand	that all cars shpt.
			between 4/22/36 and
			9/1/36 adjust to contract price per credit
			memo of 10/9/36

6230

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
Hill Oil Co.	7/ 3/34 to 7/ 3/35	Conoco Bronze	7/ 3/35 to 7/17/35
Washington		Demand	7/17/36 to 10/20/36
Kansas	7/17/35 to 7/17/36	Conoco Bronze	Sold 1 car on spot 8/30/36
	10/20/36 to 10/20/37	Conoco Bronze Demand	
Hoover Lewis Oil	4/ 2/34 to 4/ 2/35	Conoco Bronze Demand Price Clause	4/ 2/35 to 4/10/35
Princeton, Mo	4/10/35 to 4/10/36	Conoco Bronze Demand	4/10/36 to 5/ 4/36 Sold 1 car on spot 4/23/36
	5/ 4/36 to 5/ 4/37	Ditto	
Ideal Service Station	11/ 1/34 to 11/ 1/35	Conoco Bronze 68–70 Aviation Conoco Ethyl	1/ 1/35 to 1/16/35
Bremen, Indiana	1/16/35 to 1/16/36	Demand	1/16/36 thru balance 36
		68–70 Aviation Gasoline Fighting Grade	Sold on spot after 3/27/36 Conoco Special 68–72 300 E. P.
	11/ 1/35 to 11/ 1/36		
	11/ 1/35 to 11/ 1/36	Conoco Bronze " Ethyl	Bronze & Ethyl 11/ 1/36 to 12/16/36
	12/16/36 to 12/16/37	Conoco Bronze " Ethyl Demand	Demand 11/ 1/35 to 12/16/36

XXX products sold on spot not covered by contract—6-XXX 64–66 375 E. P.

6231

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
Knowlton Oil Co	9/29/34 to 9/29/35	Conoco Bronze Demand	9/29/35 to 6/15/36
Knowlston, Wis.	6/15/36 to 6/15/37	Conoco Bronze	Sold one car on spot 4/30/36
Leonard Oil Co.	Contract expired 12/14/34		12/15/34 to 1/11/35
Windsor	1/11/35 to 1/11/36	Conoco Bronze Demand	
Mo.	1/11/36 to 1/11/37	Conoco Bronze	
	This contract altho effective 1/11/36 was not executed until 4/20/36. We sold on spot during this period pending execution of contract.		
R. C. Martin	Last contract expired 12/30/33		
Delassus, Mo.	/Farmington		
Michigamme Oil Co.	6/1/34	Conoco Bronze	5/1/35 thru to end of 1936. Sold on spot during this period.
Cancelled	5/1/35	" Ethyl	
By Letter		Demand	
Ann Arbor, Mich.			
Neeley Oil Co.			
Neeley Oil Co.	5/20/35 to 5/20/36	Conoco Bronze	1/ 1/35 to 5/20/35
Ellington		Demand	5/20/36 to 6/29/36
Missouri			Sold on spot during these periods
	6/29/36 to 6/29/37	Conoco Bronze Demand	

6232

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
Norris Oil Ser.	Contract Expired		1/ 1/35 to 3/16/36
Rochester	7/13/34		
Ind.	Next Contract		
	3/16/36 to 3/16/37	Conoco Bronze	Sold one car on spot
		Demand	1/21/36
Petosky Oil Co.	Petosky, Mich.—No Contract		
Sands Pet. Co.	4/20/34 to 4/20/35	Conoco Bronze	4/20/35 to 4/22/35.
Marceline, Mo.	4/22/35 to 4/22/36	Conoco Bronze	4/22/36 to 5/28/36
	5/28/36 to 5/28/37	" Bronze	Sold one car on spot
			5/21/36
Frank Strunk	Contract Expired 4/25/34		
Kansas City	8/26/35 to 8/26/36	Conoco Bronze	4/26/34 to 8/26/35
Mo.		" Ethyl	
		Demand	Sold on spot during this period
	11/ 4/36 to 11/ 4/37	Ditto	8/26/35 to 11/ 4/36
Stephai Strupp	4/29/34 to 4/19/35	Conoco Bronze	
		" Ethyl	
Manitowac		Demand	
Wisc.	4/18/35 to 4/18/36	Ditto	4/18/36
	4/19/36 to 4/19/37	Ditto	

Products sold on spot not covered by contract—64-66 375 E. P.

6233

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
C. Humbert Tinsman	4/ 5/34 to 4/ 5/35	Conoco Bronze	4/ 5/35 to 4/22/35
Kansas City		Ethyl	Sold on spot during this period
Missouri		Demand	
	4/22/35 to 4/22/36	Ditto	
	4/22/36 to 4/22/37	Ditto	
Triangle Oil Co.	3/15/34 to 3/15/35	Conoco Bronze	3/15/35 to 3/25/35
La Porte		" Ethyl	
Indiana	3/25/35 to 3/25/36	" Bronze	3/25/36 to 3/30/36
	3/30/36 to 3/30/37	" Bronze	Shows demand price Clause

Products sold on spot not covered by contract—64-66 375 E. P.

Name of Customer	Date of Contracts 1934 thru 1936	Products Covered	Lapse Periods
D. A. Winters Tire Co.			
Wichita	5/14/34 to 5/14/35	Conoco Bronze	5/14/35 to 5/20/35
Kansas	5/20/35 to 5/20/36	Conoco Bronze	Sold one car on spot
		Demand	5/14/35
	5/20/36 to 5/20/37	Ditto	
Clyde C. Yount	3/22/35 to 3/22/36	Conoco Bronze	1/ 1/35 to 3/22/35
Wichita		Demand	3/22/36 to 4/18/36
Kansas	4/18/36 to 4/18/37	Ditto	Sold on spot during this period

6234

Granneman Credit Adjusting Price from spot to Contract is only one we have been able to locate in our files, but I am having our division offices check further to see if any other lapsed contracts sold on spot were later adjusted to contract prices—Will inform you as soon as I hear from them.

H. Russell Richards
952 AM

6234a DEFENSE EXHIBIT NO. 1054.

This exhibit consists of Globe Oil & Refining Company (Illinois) telephone statements covering the period from August 21, through September 25, 1935, together with a letter dated October 8, 1935, from Globe of Illinois to Globe Oil & Refining Company (Oklahoma) stating that the bill had been checked and approved for payment, and a voucher showing payment on October 10, 1935, all having been received in evidence in support of the testimony of B. L. Meece at R. p. 1878 and of Exhibit 1048. In view of this testimony and Exhibit 1048, the statements, letter and voucher have not been printed.

6234b IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—11365) * *

CLERK'S CERTIFICATE.

I, Herbert C. Hale, Clerk of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the foregoing and annexed nine volumes as follows:

Volume I, consisting of pages 164 to 999, inclusive.
Volume II, consisting of pages 1,000 to 1,999, inclusive.
Volume III, consisting of pages 2,000 to 2,999, inclusive.
Volume IV, consisting of pages 3,000 to 3,999, inclusive.
Volume V, consisting of pages 4,000 to 4,654, inclusive, and the Certificate of Judge.
Volume VI, consisting of Volume of Exhibits A.
Volume VII, consisting of Volume of Exhibits B.
6234c Volume VIII, consisting of Volume of Exhibits C.
Volume IX, consisting of Volume of Exhibits D.

(This same certificate being attached at the end of each of said volumes), constitute the true, full, correct and complete Bill of Exceptions together with the said Exhibits as a part thereof, which was duly approved and signed by the Honorable Patrick T. Stone, Judge of said Court, and filed with me in my official capacity on December 9, 1938 at the United States Courthouse of the above Court at La Crosse, Wisconsin, and ordered to be made a part of the record in the above-entitled cause.

I further certify that the foregoing Bill of Exceptions was not settled at the time the original record on these appeals was transmitted and filed with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit on August 19, 1938, and that, pursuant to Item 63 (Bill of Exceptions) designated in the Praecipe of the Transcript of Record filed in this Court on August 19, 1938, the foregoing Bill of Exceptions, consisting of said nine volumes is transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit as a part of the transcript of record in the above-entitled cause, and

I further certify that transmitted herewith is the original defendants-appellants' Assignment of Errors which
6235 was duly filed with me in my official capacity at the United States Courthouse of the above Court at La Crosse, Wisconsin, on December 9, 1938 within the time

allowed by the Order of this Court dated July 20, 1938 and pursuant to Paragraph 3 of said Order, and that, pursuant to Item 64 (Assignment of Errors) designated in the Praecipe for Transcript of Record filed in this Court on August 19, 1938, the foregoing defendants-appellants' Assignments of Errors is transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

In Witness Whereof I have hereunto subscribed my name and caused to be herewith affixed the seal of the District Court of the United States for the Western District of Wisconsin, this 15th day of December, 1938.

H. C. Hale,
Clerk of the District Court of the
United States for the Western
District of Wisconsin.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the Fifth Day of October, in the Year of our Lord One Thousand Nine Hundred and Thirty-Seven, and of our Independence the One Hundred and Sixty-Second.

6721

THE UNITED STATES OF AMERICA, PLAINTIFF-APELLEE

vs.

SOCONY-VACUUM OIL COMPANY, INC., ET AL., DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Western District of Wisconsin

And on, to wit, the 21st day of July 1938, there was filed in the office of the Clerk of this Court a notice of appeal, which said notice of appeal is not copied here as the same appears on pages 2503 to 2512 inclusive of the printed record in this cause certified herewith under a separate certificate.

And on the same day, to wit, the 21st day of July 1938, there was filed in the office of the Clerk of this Court a statement of docket entries, which said statement of docket entries is in the words and figures following, to wit:

District Court of the United States for the Western District of Wisconsin

(Caption D. C. 11365)

STATEMENT FROM THE DOCKET ENTRIES

1. Indictment for unlawful combination and conspiracy in restraint of trade in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, filed December 22, 1936.

2. Arraignments March 3, 1937, as follows: Socony-Vacuum Oil Company, Inc.; Continental Oil Company; The Pure Oil Company; Shell Petroleum Corporation; Sinclair Refining Company; Mid-Continent Petroleum Corporation; Phillips Petroleum Company; Skelly Oil Company; The Globe Oil & Refining Co., Oklahoma; The Globe Oil & Refining Co., Illinois; Wadhams Oil Company; Empire Oil and Refining Company (Now Cities Service Oil Company); Charles E. Arnott; H. T. Ashton; P. E. Lakin; Robert W. McDowell; R. H. McElroy, Jr.

3. Pleas to Indictment entered March 3, 1937, as follows: Socony-Vacuum Oil Company, Inc.—not guilty; Continental Oil Company—not guilty; The Pure Oil Company—not guilty; Shell Petroleum Corporation—not guilty; Sinclair Refining Company—not guilty;

Mid-Continent Petroleum Corporation—not guilty; Phillips Petroleum Company—not guilty; Skelly Oil Company, not guilty; The Globe Oil & Refining Co., Oklahoma—not guilty; The Globe Oil & Refining Co., Illinois—not guilty; Wadhams Oil Company—not guilty; Empire Oil and Refining Company (Now Cities Service Oil Company)—not guilty; Charles E. Arnott—not guilty; H. T. Ashton—not guilty; P. E. Lakin—not guilty; Robert W. McDowell—not guilty; R. H. McElroy, Jr.,—not guilty.

4. Motion to withdraw plea of guilty denied * * * 193 * * * None.

5. Trial by Jury, October 4, 1937, to January 22, 1938.

6. Verdicts of Guilt by the jury for the following defendants filed January 22, 1938: Socony-Vacuum Oil Company, Inc.; Continental Oil Company; The Pure Oil Company; Shell Petroleum Corporation; Sinclair Refining Company; Mid-Continent Petroleum Corporation; Phillips Petroleum Company; Skelly Oil Company; The Globe Oil & Refining Company, Oklahoma; The Globe Oil & Refining Company, Illinois; Wadhams Oil Company; Empire Oil and Refining Company (Now Cities Service Oil Company); Charles E. Arnott; H. T. Ashton; P. E. Lakin; Robert W. McDowell; R. H. McElroy, Jr.

7. Judgements (with terms of sentence) * * * entered July 19, 1938, for the defendants as follows: Socony-Vacuum Oil Company, Inc., $5,000 fine and costs; Charles E. Arnott, $1,000 fine; H. T. Ashton, $1,000 fine; Wadhams Oil Company, $5,000 fine and costs; Empire Oil and Refining Company (Now Cities Service Oil Company), $5,000 fine and costs; Continental Oil Company, $5,000 fine and costs; The Pure Oil Company, $5,000 fine and costs; R. H. McElroy, Jr., $1,000 fine; Shell Petroleum Corporation, $5,000 and costs; P. E. Lakin, $1,000 fine; Sinclair Refining Company, $5,000 fine and costs; Mid-Continent Petroleum Corporation, $5,000 fine and costs; Robert W. McDowell, $1,000 fine; Phillips Petroleum Company, $5,000 fine and costs; Skelly Oil Company, $5,000 fine and costs; The Globe Oil and Refining Company (Oklahoma), $5,000 fine and costs; The Globe Oil and Refining Company (Illinois), $5,000 fine and costs.

8. Notice of Appeals severally filed July 20, 1938, by the following defendants: Socony-Vacuum Oil Company, Inc.; Continental Oil Company; The Pure Oil Company; Shell Petroleum Corporation; Sinclair Refining Company; Mid-Continent Petroleum Corporation; Phillips Petroleum Company; Skelly Oil Company; The Globe Oil and Refining Company (Oklahoma); The Globe Oil and Refining Company (Illinois); Wadhams Oil Company; Empire Oil and Refining Company (Now Cities Service Oil Company); Charles E.

Arnott; H. T. Ashton; P. E. Lakin; Robert W. McDowell; R. H. McElroy, Jr.

Dated July 20th, 1938.

Attest. (Signature) H. C. HALE, *Clerk*.

Filed U. S. C. C. A.–7, July 21, 1938. Frederick G. Campbell, *Clerk*.

And on the same day, to wit, the 21st day of July 1938, there was filed in the office of the Clerk of this Court a notification by the trial clerk of the filing of a notice of appeal, which said notification is in the words and figures following, to wit:

District Court of the United States for the Western District of Wisconsin

(Caption D. C. 11365)

NOTIFICATION BY TRIAL CLERK TO APPELLATE CLERK OF FILING OF NOTICE OF APPEAL

To: THE CLERK OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT:

Pursuant to Rule 31, IV, paragraph 1 of the Rule of the United States Circuit Court of Appeals for the Seventh Circuit, in connection with the case of United States v. Standard Oil Company (Indiana) et al., No. 11365, in the District Court of the United States for the Western District of Wisconsin, I am forwarding herewith to you this 20th day of July 1938, the following papers:

(1) Duplicate notice of appeals filed severally by the appellants named therein in the above entitled case;

(2) A statement from the docket entries in the above case on Form No. 3.

Will you please acknowledge receipt of the above papers.

(Signature) H. C. HALE,
Clerk of the District Court of the United States
For the Western District of Wisconsin.

Filed U. S. C. C. A.–7, July 21, 1938. Frederick G. Campbell, Clerk.

And on the same day, to wit, the 21st day of July 1938, an order allowing 120 days for filing the bill of exceptions, and relative to preparation of the transcript of record, was entered, which said order is not copied here as the same appears on pages 2589 to 2590, inclusive, of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 12th day of August 1938, there was filed in the office of the Clerk of this Court a motion to consolidate appeals, which said motion is in the words and figures following to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6721. October Term, 1937

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

STANDARD OIL COMPANY (INDIANA) ET AL., DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Western District of Wisconsin

Honorable PATRICK T. STONE, District Judge.

Motion to consolidate appeals

Filed August —, 1938

Now comes each of the defendants-appellants in the cause above-entitled, to wit: Socony-Vacuum Oil Company, Inc., Charles E. Arnott, H. T. Ashton, Wadhams Oil Company, Empire Oil and Refining Company (now Cities Service Oil Company), The Pure Oil Company, Continental Oil Company, R. H. McElroy, Jr., Shell Petroleum Corporation, P. E. Lakin, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Robert W. McDowell, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil and Refining Company (Oklahoma), and The Globe Oil and Refining Company (Illinois), by their attorneys, and moves the Court that the separate appeals taken by each defendant-appellant, by the notice of appeals filed severally by each defendant-appellant in this court on July 31, 1938, be consolidated in this Court under the title and number set forth (1) for the purpose of argument, hearing, and other proceedings in this Court, except that separate judgments and mandates in each appeal may be rendered and entered by this Court, and (2) for the purpose of preparing and filing a single praecipe for transcript of record, a single assignment of errors, a single bill of exceptions and transcript of record, and single appellate procedural papers of other kinds in this Court on behalf of all the defendant-appellants to serve for all intents and purposes and treated as separately filed by each defendant-appellant.

In support of said motion, each defendant-appellant shows to the Court:

(1) The defendants-appellants were all tried together under one indictment for conspiracy to violate Section 1 of the Sherman Anti-Trust Act. The jury rendered a separate verdict of guilty as to each

defendant-appellant. The trial judge entered on one paper a judgment severally sentencing each of the appellants.

(2) Each defendant-appellant took an appeal from the judgment or sentence entered as to him or it by the notice of appeals on one paper filed severally by each defendant-appellant. Such notice of appeals has been duly filed in the District Court and in this Court. The separate appeals aforesaid taken by each of the defendants-appellants have been docketed in this Court under one docket number, No. 6721, and are now pending. The United States is the plaintiff-appellee in each appeal.

(3) The District Court on July 20, 1938, after the notice of appeals had been duly filed in that Court, entered an order providing, among other things, (a) that the appellants may file a single assignment of errors, (b) that the several appeals may be presented to the Circuit Court of Appeals on one transcript of record, and (c) that the appellants file an appeal bond in the amount of $25,000, which bond has been duly approved by the District Court and filed therein.

(4) This Court on July 21, 1938, entered an order providing, among other things, (a) that the appellants are granted 120 days to file the bill of exceptions, (b) that the appellants may file a single assignment of errors, (c) that the appellants may file the praecipe of transcript within 30 days; and (d) that the record on appeal shall be filed within 60 days.

(5) The appeals filed by each of the defendants-appellants are of like nature, and substantially all of the questions involved in each appeal are identical. The consolidation of these appeals for the purposes above stated will avoid unnecessary costs, labor, and duplications of appeal papers. The appeals here can be properly and adequately considered upon a single record, bill of exceptions, and assignment of errors. The granting of this motion will greatly simplify the appeal record and will expedite the hearing and consideration of these appeals by this Court.

Wherefore, each of the defendants-appellants respectfully prays that this motion to consolidate for the purposes above stated be granted.

Dated August 11, 1938.

(S) William J. Donovan,
(S) Herbert H. Thomas
Attorneys for each Defendant-Appellant.

And afterwards on, to wit, the 13th day of August 1938, an order consolidating appeals, etc., was entered, which said order is not copied here as the same appears on pages 2590 and 2591 of the printed record in this cause certified herewith under a separate certificate.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the Fourth Day of October, in the Year of our Lord One Thousand

Nine Hundred and Thirty-Eight, and of our Independence the One Hundred and Sixty-Third.

And afterwards on, to wit, the 2nd day of November 1938, an order clarifying the order of July 21, 1938, was entered, which said order is not copied here as the same appears on page 2592 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 7th day of November 1938, an order was entered providing that reference may be made in the assignment of errors to page numbers of the evidence in lieu of quoting the evidence at length, which said order is not copied here as the same appears on page 2593 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 1st day of December 1938, an order was entered providing that certain alleged errors may be included in one assignment of errors, etc., which said order is not copied here as the same appears on pages 2593 and 2594 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 19th day of December 1938, there was filed in the office of the Clerk of this Court the bill of exceptions in this cause, which said bill of exceptions is included in the printed record in this cause certified herewith under a separate certificate.

And on the same day, to wit, the 19th day of December 1938, there was filed in the office of the Clerk of this Court an assignment of errors, which said assignment of errors is not copied here as the same appears on pages 2515 to 2575, inclusive, of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 21st day of December 1938, there was filed in the office of the Clerk of this Court a stipulation to correct page references in the printed record, which said stipulation is not copied here as the same appears on page 2594 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 15th day of May 1939, the following further proceedings were had and entered of record, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Monday, May 15, 1939

Before Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge.

(Caption No. 6721.)

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Messrs. William J. Donovan and Herbert H. Thomas, counsel for appellants, and by Mr. John Henry Lewin, counsel for appellee, and the oral argument having not been concluded, the hearing is continued to 9:30 o'clock tomorrow morning.

And afterwards on, to wit, the 16th day of May 1939, the following further proceedings were had and entered of record, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, May 16, 1939

Before Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge.

(Caption No. 6721.)

Now this day come the parties by their counsel, and this cause comes again comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Messrs. Charles H. Weston and Grant W. Kelleher, counsel for appellee, and by Mr. William J. Donovan, counsel for appellants, and the arguments having been concluded, the Court having heard the same takes this matter under advisement.

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6721. October Term, 1938, April Session, 1939

The United States of America, plaintiff-appellee

vs.

Socony-Vacuum Oil Company, Inc., et al., defendants-appellants

Appeal from the District Court of the United States for the Western District of Wisconsin

July 27, 1939

Before Sparks, Major, and Kerner, Circuit Judges.

Major, Circuit Judge: These are several appeals from judgments of conviction by the District Court for the Western District of Wisconsin for violation of Section 1 of the Sherman Antitrust Act (Act of July 2, 1890, 26 Stat. 209 U. S. C. A., Title 15, Sec. 1). Appellents are twelve corporations and five of their officers and employees.[1] The indictment was returned on December 22, 1936, against twenty-four corporations engaged in the petroleum business (called "defendant major oil companies") three trade journals, and fifty-six individuals, principally officers and employees of the defendant corporations.[2] On October 4, 1937, twenty-three of the corporations, the three trade journals, and forty-six individuals were brought to trial, which continued over three and one-half months before a jury.

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[1] The corporate appellants and their abbreviated names as described in the indictment are as follows: Socony-Vacuum Oil Company, Inc. (Socony-Vacuum); Wadhams Oil Company (Wadhams); Empire Oil Refining Company (Empire); Continental Oil Company (Continental); The Pure Oil Company (Pure); Shell Petroleum Corporation (Shell); Sinclair Refining Company (Sinclair); Mid-Continent Petroleum Corporation (Mid-Continent); Phillips Petroleum Company (Phillips); Skelly Oil Company (Skelly); The Globe Oil & Refining Company (Oklahoma) (Globe); The Globe Oil & Refining Company (Illinois) (Globe).

The individual appellants are Charles E. Arnott and H. T. Aston, of Socony-Vacuum; R. M. McElroy, Jr., of Pure; P. E. Larkin, of Shell; and Robert W. McDowell, of Mid-Continent.

At the close of its case, the Government dismissed the indictment as against four major companies, the three trade journals, and one individual.[3] The court, at the same time, directed verdicts for three corporations[4] and four of their officers and employees. During the course of the trial the court granted motions for directed verdicts on behalf of eleven other individual defendants. The jury on the 22nd day of January 1938, returned verdicts of guilty against the remaining sixteen corporations and thirty individuals.

On July 19, 1938, the trial court set aside the verdicts and dismissed the indictment as to ten of the convicted individuals and one of the convicted corporations. The court also granted new trials to fifteen individuals and three corporations,[5] and sustained the verdicts of the jury against the remaining twelve corporations and five individuals, appellants herein.

THE INDICTMENT

The indictment describes the states of Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri, and Kansas as the market territory of defendant Standard of Indiana, sometimes known as the "Standard of Indiana Territory" by reason of said defendants' dominant position in the distribution of gasoline in each of said states. The territory is also described as the Mid-Western area. Each of the defendant major oil companies, so it is alleged, either directly or through subsidiary or affiliated companies markets gasoline in some or all of the states of such area. It is charged that the defendant companies manufacture and distribute to jobbers, dealers, and consumers more than 85% of all the gasoline sold therein. It is alleged that the jobbers therein, some 4,000 or more, sell more than 50% of all the gasoline sold to retail service stations and that the defendant companies supply more than 80% of the gasoline purchased by those jobbers.

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[2] All parties named in the indictment are referred to in the briefs as "defendants" as distinguished from defendants who are now appellants, and we shall make similar designation in this opinion.

[3] The four major oil companies were Tide Water Associated Oil Company, Deep Rock Oil Corporation, Louisiana Oil and Refining Company, and Cities Service and Export Oil Company. The reason assigned for dismissal as to the first was that the evidence showed the activities charged by the indictment were carried on by its predecessor company and as to the other three, either that their affairs were in the hands of a trustee during the period of the conspiracy or that they had been dissolved. The indictment as to the three trade journals and one of their officers was dismissed because of the legal insufficiency of the evidence to connect those defendants with the alleged conspiracy.

[4] Gulf Oil Corporation, Gulf Refining Company, and the Texas Company.

[5] United States v. Standard Oil Company (Ind.) et al., 23 Fed. Supp. 937. The names of such defendants are set forth in this opinion, together with the court's reason for its action.

During the period of the conspiracy and for many years prior thereto, jobbers purchased gasoline from the defendant companies under long-term supply contracts, which uniformly provided that the price of the gasoline purchased by the jobbers should be determined by the "spot" market prices as published by two trade journals, namely, The Chicago Journal of Commerce, published in Chicago, Illinois, and Platt's Oilgram, published in Cleveland, Ohio. It is alleged that the defendant companies also distribute gasoline through retail dealers and directly to consumers through their own retail service stations, and that retail prices in the Mid-Western area are directly and substantially influenced by, and fluctuate directly with, the "spot" market price.

The indictment alleges that the defendant companies do not sell any substantial part of their gasoline on the "spot" markets. Independent refiners, located in the Mid-Continent and East Texas oil fields, sell most of the gasoline sold on a "spot" basis and the prices received therefor make the "spot" market quotations which are published each day in the market journals. It is alleged that this gasoline amounts to less than 5% of all the gasoline marketed in the Mid-Western area.

It is alleged that, beginning in the month of February 1935, and continuing to the date of the presentation of the indictment, the defendants combined and conspired together for the purpose of artificially raising and fixing the tank-car prices of gasoline in the "spot" markets, and artificially raised and fixed said "spot" market tank-car prices of gasoline, and maintained said prices at artificially high and noncompetitive levels and thereby increased and fixed the tank-car prices of gasoline in the Mid-Western area (including the western district of Wisconsin) and arbitrarily, by reason of the provisions of the jobber contracts, exacted large sums of money from jobbers with whom such contracts were made. Thus, the defendants are charged with an unlawful combination and conspiracy in restraint of trade and commerce in gasoline in violation of the Sherman Antitrust Act.

Then follows the manner and means by which the conspiracy was effectuated. It is alleged that, beginning in the month of February, 1935, the defendants engaged and participated in two concerted gasoline-buying programs, described as the East Texas and Mid-Continent buying programs, for the purchase by them of large quantities of gasoline from independent refiners in the East Texas and Mid-Continent fields. The independent refiners selling in the programs are named as co-conspirators, but not as defendants. The substance of the buying programs, as alleged, is that the defendants by their agents and representatives, purchased large quantities of gasoline in accordance with allocations made to the various major companies and that such purchases amounted to nearly 50% of all the gasoline sold by said independent refiners; that such purchases were in excess of the amounts which the defendant companies would have purchased apart from their participation in said buying program, and that said purchases were made at uniformly high, arbitrary, and noncompetitive prices for the unlawful purpose of increasing the "spot" tank-car price. It is also alleged that the independent refiners, at the instigation of the defendants, curtailed their production of gasoline.

Then follows a paragraph with reference to the "participation of market journals." It is alleged that such journals (theretofore named), together with certain of their officers, participated in the combination and conspiracy, and aided the other defendants in effectuating the same. The market journals are described as "the Chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area." It is alleged that the quoted price published in said market journals was represented to be the price prevailing in "spot" sales to jobbers in tank-car lots when, as a matter of fact, the quotations thus published were the artificially raised and fixed prices paid by the defendant companies in the buying programs.

The indictment then concludes with a paragraph entitled "Jurisdiction and Venue" wherein it is alleged that the defendant companies sold large quantities of gasoline in tank-car lots to jobbers within the western district of Wisconsin at the artificially raised and fixed and noncompetitive prices, and that retail dealers and consumers in said district have been required to pay artificially increased prices for gasoline by reason of the combination and conspiracy and pursuant to the purposes and ultimate objectives thereof.

STATEMENT OF FACTS

The record, as might be expected, is voluminous, and we find it difficult to compress the relevant facts in an opinion of reasonable length. The difficulty is increased by the widely disagreeing views of the respective parties as to what the essential facts are. At this point we shall only undertake to review what seem to be the more salient, leaving to a subsequent time facts material in connection with the numerous questions which are presented.

This case is concerned primarily with the marketing of gasoline in the Mid-Western area. (Indictment territory.)[*] In normal times this area is supplied chiefly with gasoline refined from crude oil produced in the Mid-Continent oil fields. Over 21% of all the gasoline sold in the United States in 1935, amounting to almost five billion gallons, and over 25% in 1936, amounting to nearly five and one-half billion gallons, was sold in this territory.

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[*] The Mid-Western area is also referred to and described in the indictment as "Standard of Indiana territory." At the time of the indictment Standard of Indiana controlled about 22% of the business, was doing more business than any one of its competitors and was known as the "market leader" in that territory.

The oil industry has four primary functions: (1) producing crude oil from the earth; (2) transporting it to refineries; (3) refining it into commercial products; and (4) marketing the products. In the marketing process there are usually three units: the refiner, the jobber, and the dealer. The refiner produces the gasoline; the jobber purchases it from the refiner in tank-car lots, stores it in bulk-storage plants, and resells it to the dealer in tank-wagon lots.

A major oil company is one engaged in all branches of the industry. It produces and stores substantial amounts of crude oil, refines a substantial part of the gasoline which it sells, and owns large amounts of gasoline storage capacity at the refinery. It operates bulk storage plants in the marketing area from which gasoline can be distributed by tank wagons to retailers. In most instances it operates service stations where its product is sold at retail. Most of the corporate defendants in this case are major oil companies. An independent refiner, as described in the indictment, is one engaged largely in the business of refining, usually has few, if any, bulk storage plants, and seldom operates service stations. The independent refiners far exceed the major companies in number, but their business is comparatively small. Some eighteen major companies sell about 85% of the gasoline consumed in the Mid-Western area, while some seventy independent refiners sell only 15%. Appellants marked about 54% of the gasoline sold in this territory in 1935. Over 25% was sold by Texas, by Standard of Indiana, and Barnsdall. A jobber is a "middle man" who purchases gasoline in tank-car lots, generally from refiners, and owns storage or bulk plants from which he delivers gasoline in tank wagons or trucks to service stations or directly to large consumers. In 1935 and 1936 there were more than 4,000 jobbers doing business in the Mid-Western area.

At the time the indictment was returned and for many years prior thereto, most jobbers purchased their gasoline in tank-car lots under contracts in which they agreed to purchase, generally for a period of one year, all their gasoline requirements from a single refinery. The defendants prescribed the form of contract made by jobbers purchasing from them. These contracts varied somewhat in form, but generally the price to be paid by virtue of the contracts was upon the basis of what was known as "spot market quotations" appearing daily in one or both of the two defendant trade journals. The price was determined by averaging the high and low "spot" market quotations as they appeared therein. The contracts usually recognized the Standard of Indiana as the market leader in the territory and contained a provision to the effect that the buyer was to have a margin of 5½¢ per gallon under the service station price as posted by that company. The retail service station prices posted by that company were also followed by jobbers, refiners and retailers. The selling price fixed by that company, as well as by all others, bore a direct relation to the "spot" market quotations during the indictment period.

The normal retail price was usually 5½¢ per gallon more than the "spot" market price.

The daily "spot" market is determined by sales for that day in private transactions at refineries in the field. The principal part of the gasoline on such market is sold by the independent refiners and constitutes from 5% to 7½% of all gasoline sold in the Mid-Western area. The major companies, by reason of storage facilities and their own means of disposing of gasoline, have a more assured outlet than the independent refiners who must depend largely on the "spot" tank-car market. The major companies frequently were required to purchase from the independent refiners prior to the time of the buying programs hereinafter referred to.

Thus the Government contends that at the beginning of the indictment period and continuing through 1935 and 1936, the prices at which the defendants sold the great bulk of their gasoline were directly controlled and determined by prices received by independent refiners of a relatively small amount of gasoline by reason of the following:

(1) The prices of all gasoline sold by the defendants to jobbers under contract were based upon the spot market quotations as published by the two trade journals.

(2) The prices of all gasoline sold at retail by the defendants were based upon the same spot market quotations.

(3) The spot market prices published in the journals were the result of spot sales by independent refiners of gasoline amounting to not more than 7½% of all the gasoline sold in the Mid-Western area.

Prior to a statement concerning the alleged unlawful buying programs, it seems appropriate to refer to the history of the oil industry during the two-year period prior to the indictment, and the efforts during that time to rehabilitate and stabilize the same, upon which appellants lay great stress.

Many pages of the briefs are thus occupied and again we do not find it easy to condense such a statement and do justice to both sides. It is plainly apparent that for several years prior to the alleged conspiracy, the gravest problem confronting the oil industry was the overproduction of crude oil, which inevitably resulted in an oversupply of gasoline. This meant a decline in prices often below the cost of production. As new fields were developed the problem became more acute. Both State and Federal Governments actively engaged themselves in attempting to remedy and solve the problems in various ways, such as curtailment of production, buying programs, and the fixing of prices at which crude oil could be sold. The States of Texas, Oklahoma, and Kansas passed proration laws limiting production. Crude oil produced in violation of such laws became known as "hot oil" and the gasoline manufactured therefrom, as "hot gasoline." The states had little success in the enforcement of such laws and as a result legal gasoline was at a great disadvantage in meeting competition. Out of this situation grew price wars of much concern to Governmental agencies, which resulted in great loss to all branches of the industry engaged in the legitimate field.

Beginning in March 1933, the Federal Government, the interested states, and the industry joined in a general movement to eliminate such destructive practices and to restore healthy competitive conditions. The record sustains appellants' statement that it was sought to accomplish three principal objectives:

(1) The restoration of the price of crude oil to a minimum of $1.00 per barrel. That was the minimum price at which the vast majority of the crude-oil wells of the country could operate.

(2) The restoration of the price level of gasoline at wholesale at the refinery to "parity" with crude oil; that is, a price which would reflect the normal relation between the price of gasoline and the price of crude oil from which it is manufactured.

(3) The stabilization of retail prices at a normal spread or margin between the refinery price of gasoline and the retail price.

In June 1933, Congress passed the National Industrial Recovery Act which authorized the President to forbid the interstate shipment of oil or gasoline produced or manufactured in violation of state proration laws. On July 11, 1933, the President, by Executive proclamation, forbade such shipments. Under this Act a Code was formulated prohibiting sales below cost, defining the natural parity relationship between the price of a barrel of crude oil and a gallon of refined gasoline as 18.5 to 1, and authorized the fixing of minimum prices for crude oil and its products. The President appointed the Secretary of the Interior to be the Administrator of such Code, and the Secretary selected members of his staff, known as the Petroleum Administrative Board. A committee, known as the Planning and Coordination Committee, to aid in the administration of the Code, was appointed by the President. In addressing this committee in September 1933, the Secretary of the Interior said:

"Gentlemen, we have a solemn duty to perform. Our task is to stabilize the oil industry upon a profitable basis. This is the keen desire of the Administration and we will work with you constantly to that end * * *."

By September 29, 1933, the price of crude oil was established at $1.00 per barrel and that was the minimum price maintained throughout the Code period. On one occasion the Secretary approved an order fixing minimum prices based upon the cost of production and manufacture for crude oil, gasoline and other petroleum products, but this order never became effective. In April 1934, an amendment to the Code was adopted under which an attempt was made to balance supply and demand of the refined product by allocating the amount of crude oil which each refiner could process. The Government sponsored various buying programs wherein the major companies contracted to relieve the independent refiners of their surplus gasoline at prices above the going market. It appears that these programs were later suspended because of doubtful legality. "Hot oil" constituted the chief stumbling block to the success of the various programs. Refiners in the field could procure such oil for 35¢ or less a barrel, and manufacture gasoline therefrom for 2¢ or 2½¢ a gallon, while the parity price based upon $1.00 oil was from 5¢ to 6¢.

Another term which finds much use in this case is "distress gasoline." This is described by appellants as legal gasoline manufactured by independent refiners who had to dump it on the market for whatever price it would bring. It is pointed out that the purchase contract of the independent refiner required him to take all the crude oil which the seller was permitted by law to produce. Any cessation of his refinery operations would result in the loss of his crude oil connections. Thus he was compelled to manufacture gasoline regardless of the demand. The Government contends that the term "distress gasoline" is a misnomer and that it constituted nothing more than a surplus.

In July 1934, members of the Petroleum Administrative Board called on appellant Arnott, Chairman of the Marketing Committee of the Planning and Coordination Committee, and requested that he undertake the responsibility of heading a voluntary cooperative movement to deal with price wars. This he agreed to do, pointing out that it would be neccesary to eliminate "hot oil" and "distress gasoline." Under date of July 20, 1934, Arnott received a letter from the Secretary of the Interior which, after reviewing the price wars existing in many localities and the resultant effect which they were having upon the market for oil products, pointed out that the existing conditions would tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor; and preventing the rehabilitation of the industry. Arnott was authorized to confer, negotiate and hold public hearings for the purpose of stabilizing the price level. In October 1934 a "Federal Tender Board" was appointed by the Secretary of the Interior for the purpose of preventing shipment in interstate commerce of "hot oil" and "hot gasoline." Thereafter, oil or gasoline could only be shipped in interstate commerce when accompanied by a certificate or tender issued by the Board certifying as to the legality of its production or manufacture. This action had its immediate effect, increasing the "spot" market tank-car price of gasoline by 1⅜¢. The Tender Board was stripped of its authority by the decision of the court in Panama Refining Company v. Ryan, 293 U. S. 388. To meet the emergency thus created, Congress, in February 1935, passed the Connally Act which again prohibited the shipment in interstate commerce of "hot oil" and "hot gasoline," and again the price of gasoline rapidly increased.

We shall now discuss the alleged unlawful buying programs. The formation and operation of the Mid-Continent program is not in dispute. Appellants (with the exception hereinafter noted) admit that they participated in a concerted program for the purchase of gasoline from independent refiners in the Mid-Continent fields at "going market prices" from March 1935 to May 1936, for the purpose of stabilizing the tank-car market. The program was organized at a series of meetings held during the first three months of 1935. The first meeting, called by appellant Arnott and attended by all of the appellants, was held in Chicago, January 4, 1935. At this meeting a committee was appointed called the "Tank-car Stabilization Committee," consisting of eight representatives of the defendant companies, including appellants Ashton and McDowell. The situation confronting the industry was discussed at this meeting and it was generally conceded that the gains achieved in stabilizing the retail market could not be maintained unless some action was taken with reference to "distress gasoline." The Stabilization Committee had three meetings—one on February 5th in Chicago, another on February 11th in Chicago, and the third on March 5th in St. Louis, Missouri. Without going into detail as to what took place at these meetings, we think the substance of what was accomplished and agreed upon was that the major companies would purchase from the independent refiners the laters' surplus gasoline at going market prices. Surveys disclosed that this surplus gasoline of the independent refiners in the Mid-Continent fields amounted to from 600 to 700 cars each month. Defendant Bourque was designated to make surveys with the view of ascertaining the amount of surplus gasoline and furnishing such information to the defendant companies. A mechanical subcommittee consisting of one Jacobi, the appellant McDowell, and the defendant Tuttle, was appointed to assist in the disposal of surplus gasoline not anticipated by the monthly surveys. It was also a part of the function of this subcommittee to urge companies to pay the fair going market price. The plan was a voluntary one and we find nothing in the record to indicate that anyone participating in the program was to be enpalized for noncompliance therewith. The independent refiners who sold to the defendants in the program met with the defendants and agreed to cooperate.

The program commenced operation on March 7, 1935. During that month between 500 and 600 cars were purchased by the defendants, and thereafter, continuing through April 1936, their purchases amounted to between 600 and 800 cars per month. The Tank-car Stabilization Committee held monthly meetings at which the surveys with reference to surplus gasoline were considered. There is evidence to the effect that the committee recommended the amount which each company should purchase and that the companies felt a moral obligation to comply therewith. The Mechanical Sub-Committee also met frequently and was in frequent contact with the purchasing companies, oftentimes urging them to increase the amount of their purchases. The defendant companies reported monthly to Bourque the volume of purchases and the prices paid in connection therewith. Although there is evidence that the defendants in some instances purchased more gasoline than they actually required, it was all disposed of in the usual channels of trade. There is evidence, rather indefinite and uncertain, that certain employees of the purchasing companies considered that allocations were being made along lines similar to those which had been made under the Code, and that the companies were obligated with respect to such allocations; but the record is far from convincing in this respect. The Tank-car Stabilization Committee was concerned with the price at which purchases were to be made, but it seems the committee was chiefly interested with prices not below the going market price. In fact, no purchases were made above that price and prices actually paid to the independent refiners varied considerably. This was especially true during March 1935, when three of four different prices were paid on the same day by the purchasing companies. More than one price was paid on 72% of a certain number of days on which purchases were made in the early part of the alleged conspiracy. The evidence concerning the amount of gasoline purchased by the defendants varies widely. The Government contends that from 34% to 51% in 1935, and from 38% to 58% in 1936, of all the gasoline sold on the "spot" market by the Mid-Continent independent refiners named in the indictment, and from approximately 20% to 30% during both years of all the gasoline sold on such market by twenty-nine independent refiners in the Mid-Continent field was purchased by the defendants; while defendants contend that the total amount purchased from the independent refiners was from 18% to 27%. The Government contends there is evidence to sustain the allegation that the independent refiners "curtailed their production of gasoline," while appellants contend to the contrary.[7]

The fact is undisputed that the production of the independent refiners in 1935, over the previous year, was from 17% to 21% greater, and that in 1936 the production was 12% greater than in 1935. The Government points out that this situation is deceptive, inasmuch as production was curtailed under the Code during 1934 and the first five months of 1935.

The East Texas buying program referred to in the indictment may be described more briefly. Early in 1935, certain independent refiners in East Texas formed an association called the East Texas Refiners Marketing Association. The purpose of this association was to find a market for its surplus gasoline, and in an effort to accomplish this purpose it contacted certain of the officials interested in the Mid-Continent program. Previous to this time the East Texas refiners had sold only a small part of their product in the Mid-Western area. Shortly thereafter, certain of the defendant companies commenced purchasing through the association and purchased an average of 600 to 700 cars monthly. The purpose of this buying program was similar to that of the Mid-Continent, i. e., for the purpose of stabilizing the gasoline market.

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[7] This matter is discussed later and we conclude that there is no competent evidence in support of the allegation.

The defendants evidently realized the importance of buying the surplus product from the Texas field if their effort in the Mid-Continent field was to succeed. This program, like the other, contemplated the purchase of gasoline at fair going market prices and the prices paid generally coincided with the low quotations of Platt's Oilgram. We think it is fair to state, however, that this program was largely under the control of the Secretary of the East Texas Association, and that the program has more of the earmarks of a seller's program by that association than a buyer's program by the defendants. Here again the evidence is in conflict as to the amount purchased—the Government contending that in 1935 the defendants purchased 20% of the total production of all the independent refiners in the East Texas field, while defendants contend that it was about 12%.

It is the contention of the Government that the buying program produced an artificial and noncompetitive condition of the tank-car market during the indictment period. We shall reserve discussion of this contention to a later time. The fact is, however, there was a consistent rise in price from March to May of 1935. The increase amounted to about 1½¢ per gallon between February and June 1st, and from that time until the end of 1935 the price level remained firm, with only slight deviations. The increase in price was attributed by numerous witnesses to the buying programs, although there is substantial evidence that other factors contributed to such increase. In the early part of January 1936 prices were advanced ½¢ in conformity with a comparable advance in the price of crude oil.

CONTESTED ISSUES

Of the many contested issues and assignments of error, we shall only undertake to discuss those which have been argued by the respective parties. Such issues stated by appellants in the affirmative, the Government contending to the contrary as to each, are:

1. There was a total failure of proof as to the essential allegation of the indictment, namely, that the defendants conspired to fix the spot-market price of gasoline by purchasing gasoline under two buying programs at high, artificial, and agreed-on prices and causing such prices to be published in the trade journals and falsely representing them as spot-market prices paid by jobbers in purchasing gasoline from independent refiners.

II. There was a material and prejudicial variance between the charge of the indictment and the issues on which the case was permitted to go to the jury.

III. The court committed reversible error in overruling the defendants' motions for directed verdicts.

IV. The trial court committed prejudicial error by (a) improperly limiting the extent to which the jury could consider the facts and circumstances surrounding the defendants' activities, and (b) instructing the jury that an agreement embracing the raising of prices by a group controlling a substantial amount of the trade in a commodity is illegal per se. By so doing the court, in effect, directed a verdict against the defendants.

V. The court committed prejudicial error in excluding the evidence offered by the defense as to the facts and circumstances surrounding the alleged agreement in restraint of trade.

VI. The District Court for the Western District of Wisconsin had no jurisdiction to try these defendants because the proof failed to establish that any overt act was committed within the Western District of Wisconsin.

VII. The court erred in the admission of evidence.

VIII. The court erred and abused its discretion in denying the several motions of defendants for a new trial.

IX. The trial court committed reversible error in using and permitting Government counsel to use alleged transcripts of testimony before the grand jury in the examination of important witnesses.

X. The court committed reversible error in permitting Government counsel to make to the jury arguments which constituted appeals to passion, prejudice, and class distinction and tended to induce the jury to disregard the record evidence.

Before discussing the questions thus presented, we think it would be well to give consideration to a basic proposition, recognized as such by both parties, and about which revolve most of the questions concerning substantive law. The question: Does the proof disclose a violation of the Statute unlawful per se?

The position of the Government, forcibly presented, is that the purpose and effect of the conspiracy charged was to fix and control the market price of gasoline and that such a combination is unlawful per se; while on the other hand it is contended by the appellants with equal force that the purpose was merely the stabilization of the industry by the elimination of a competitive abuse, the admitted effect of which was to raise the price, and that such action was not within the condemning statute. The Government relies strongly upon the case of United States v. Trenton Potteries Co., 273 U. S. 392, and cases therein cited, while appellants place almost as great a reliance upon Appalachian Coals, Inc. v. United States, 288 U. S. 344, and the cases therein referred to. We shall first consider the Government's position.

The condemning statute (Act of July 2, 1890, 26 Stat. 209, U. S. C. A., Title 15, Sec. 1) provides that:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restrain of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

The enactment generally was accepted as including every combination which placed any restraint upon interstate commerce until the decisions of the Supreme Court in Standard Oil Co. v. United States, 221 U. S. 1, and United States v. American Tobacco Co., 221 U. S.

106, wherein the now historic "rule of reason" was promulgated. The court, in the latter case, in referring to its opinion in the former, on page 179, said:

"It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose."

The decisions of the courts, including the Supreme Court, thereafter may be said generally to divide themselves into two classes, namely: Those in which the restraint has been held unlawful per se and those in which the character of the restraint remained open for determination. In each class the restraint imposed upon trade was the object of attack and was determined largely by its effect upon competition. In the former class, those in the combination controlled such a large proportion of an industry as to give them the power to suppress or destroy competition, with the inevitable result that the restraint upon trade was unreasonable as a matter of law. In the latter class, where power to suppress or destroy competition is not shown, the restraint imposed is susceptible of investigation with a view of determining whether it is reasonable or otherwise.

A reading of the authorities is convincing that no hard and fast rule can be utilized in determining whether this or that case controls. As was said in Maple Flooring Ass'n v. United States, 268 U. S. 563, 579:

"It should be said at the ouset, that in considering the application of the rule of decision in these cases to the situation presented by this record, it should be remembered that this Court has often announced that each case arising under the Sherman Act must be determined upon the particular facts disclosed by the record, and that the opinions in those cases must be read in the light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied."

A view of the instant situation, as favorable to the Government as the facts justify, discloses that defendants, by concerted effort, agreed to purchase on the "spot" market surplus gasoline for the purpose of raising the price on such market, thus enabling them to increase the market price in the Mid-Western area where the price bore a direct relation to the "spot" market price. The program involved the purchase of from 600 to 700 cars of gasoline per month in each of the buying programs. There seems to be no dispute but that this represented the amount of surplus—that is to say, the supply in excess of the regular demand. It also represented, according to the Government's contention, 20% to 30% sold on the "spot" market by independent refiners in the Mid-Western field and about 20% in the East Texas field, and according to appellants' contention, about 18% to 27% in the former field and 12% in the latter. Assuming that the Government's calculation is correct, it means that the program called for the purchase of from one-fifth to nearly one-third of the gasoline sold by independent refiners in the former field and one-fifth in the latter. In this connection, it perhaps is pertinent to point out that gasoline sold on the "spot" market constituted only from 5% to 7½% of the gasoline sold in the indictment territory; that about 80% of all gasoline sold in the territory was sold by the defendants.[6] There was sold in the Mid-Western area in 1935, about five billion gallons of gasoline and in 1936, nearly five and one-half billions, which constituted in 1935 about 21% of the total amount of the products sold in the United States and about 25% in 1936. The record discloses that the plan was voluntary, without coercion, and with no penalty imposed for noncompliance with the recommendation made by the Tank-car Stabilization Committee. It is true that this committee recommended prices at which it was expected the purchases would be made, but these recommendations were based either upon the low or lower-than-the-spot-market quotations. Inasmuch as these quotations varied from day to day, the prices paid by the defendants in the buying program likewise varied.

A mere statement of these facts makes it plain that they present such a marked variance from those in the Trenton Potteries case as to make doubtful its applicability. In that case the indictment charged "a combination to fix and maintain uniform prices for the sale of sanitary pottery." The members of the combination included 82% of the manufacturers and distributors of such products in the United States. The combination agreed upon a definite price at which their products were to be sold. The essential argument urged upon the Supreme Court was that the case should have been submitted to the jury on the question as to the character of the restraint. It was argued that the price fixed was reasonable and, therefore, the restraint was not unreasonable. In holding to the contrary and that the combination was unlawful per se, the court approved of the charge given by the trial court, that "'* * * the law is clear that an agreement on the part of the members of a combination controlling a substantial part of an industry, upon the prices which the members are to charge for their commodity, is in itself an undue and unreasonable restraint of trade and commerce; * * *'" On the following page, the court said: "The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed. Agreements which create such potential power may well be held to be in themselves unreasonable or unlawful restraints, without the necessity of minute inquiry whether a particular price is reasonable or unreasonable as fixed and without placing on the Government, in enforcing the Sherman Law, the burden of ascertaining from day to day whether it has become unreasonable. * * *" The case thus deals entirely with the price fixing combination on the part of those controlling the essential portion of the product, with the resultant power to eliminate competition.

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[6] Appellants contend that this percentage is unfair to them inasmuch as it includes amounts sold by Texas, Barnsdall, and Standard of Indiana, who were either acquitted in the court below or granted a new trial. The effect of this situation will be hereafter discussed.

The Government also relies upon holdings in prior cases which the court in the Trenton Potteries case relied upon as authoritative precedents for its decision. The four principal cases so relied upon were United States v. Freight Ass'n, 166 U. S. 290; United States v. Joint Traffic Ass'n, 171 U. S. 505; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, and Swift and Company v. United States, 196 U. S. 375. It is argued by the Government that of these four cases, only the two freight association cases were like the Trenton Potteries case, combinations to fix and maintain uniform minimum selling prices (the railroads' freight rates being the equivalent of a manufacturer's selling price).

It is further argued that the Addyston case and the Swift case disclose combinations not to fix prices, but to raise prices. We do not believe this is a correct appraisal of those cases. In the former at page 237, it is said:

"The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee and by allowing the highest bidder at the secret 'auction pool' to become the lowest bidder of them at the public letting."

It is true that the defendants intended and agreed to increase prices, but this purpose was to be accomplished by an agreement to sell only at prices fixed by the committee. The very essence of the combination was therefore the agreement to fix prices. There is language in the Swift case which affords some support to the Government's argument, but that case is likewise distinguishable from the present by the statement of the court on page 392:

"For the same purposes, and to monopolize the commerce protected by the statute, the defendants combine 'to arbitrarily, from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell' to dealers throughout the States. This is effected by secret periodical meetings, where are fixed prices to be enforced until changed at a subsequent meeting. The prices are maintained directly, and by collusively restricting the meat shipped by the defendants, whenever conducive to the result, by imposing penalties for deviations, by establishing a uniform rule for the giving of credit to dealers, etc., and by notifying one another of the delinquencies of such dealers and keeping a black list of delinquents, and refusing to sell meats to them."

Thus it seems that the concerted action there condemned involved price fixing with penalties imposed for deviations therefrom. It is of more importance, however, as hereinafter pointed out, that in each of these cases competition was eliminated. It is also of some significance to note that they were decided prior to the decisions of the court in Standard Oil Co. v. United States, and United States v. American Tobacco Company, supra. Another case which the Government urges in support of its contention is that of Sugar Institute v. United States, 297 U. S. 553. Again we think that case is distinguishable from the present one upon the facts. There the product was sugar and the defendant companies refined practically all the imported raw sugar processed in this country. They provided more than 80% of all the sugar consumed in the United States. Discussing the agreement involved, the court, page 582, said:

"The distinctive feature of the 'basic agreement' was not the advance announcement of prices, or a concert to maintain any particular basis price for any period, but a requirement of adherence, without deviation, to the prices and terms publicly announced."

While the court found that the concerted action imposed an unreasonable restraint, we do not understand that it was found to be unlawful per se. In other words, the court considered the nature and character of the industry as well as certain trade abuses and evils with which the industry was afflicted in making its determination. On page 598, it said:

"* * * Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law. Nor does the fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade."

It was pointed out that the defendants went further than was necessary in an attempt to correct the evils and abuses incident to its business and on page 601, the court said:

"* * * The unreasonable restraints which defendants imposed lay not in advance announcements, but in the steps taken to secure adherence, without deviation to prices and terms thus announced. It was concerted undertaking which cut off opportunities for variation in the course of competition however fair and appropriate they might be."

We think we have referred to the strongest of the many cases relied upon by the Government, and we reach the conclusion that they do not support the contention that the evidence here discloses a price-fixing agreement unlawful within itself.

We now come to the case of Appalachian Coals, Inc., v. United States, supra, which appellants designate as "the leading case," and upon which the argument is largely predicated that the trial court erred in its refusal to direct a verdict in favor of the appellants. We think it must be conceded that there is much support in this case for appellants' contention. There an attempt was made to remedy competitive evils in the coal industry by concerted action among competitors. The defendants were 137 producers of bituminous coal in what was known as the Appalachian territory, which included all or parts of four states. In this territory and the immediately surrounding area, the defendants produced 54.21% of the total production or 64% if the output of "captive" mines (those producing for the consumption of the owners) be deducted; and excluding tonnage in the immediately surrounding territory, the defendants' production amounted to 74.4% of the total production. Approximately 73% of the producers agreed to the concerted action. These producers created Appalachian Coals, Inc., an exclusive selling agency in which they held all the capital stock. It was agreed that the company should sell all coal produced at the best prices obtainable and if all could not be sold to apportion the same among the defendants on a stated basis. It was the Government's contention, sustained by the lower court, that the plan violated the Sherman Antitrust Act in that it eliminated competition among the defendants themselves, and also gave the selling agency power substantially to affect and control the price of bituminous coal in many interstate markets. The defendants contended that the selling agency did not have the power to dominate or fix the price of coal in any consuming market; that the price of coal would continue to be set in an open competitive market; and that their plan by increasing the sale of bituminous coal from Appalachian territory would promote rather than restrain interstate commerce. There, as here, the essential problem facing the industry was overproduction. This unfavorable condition had been aggravated by what the court designated as "distress coal." The court recited the efforts made by operators and by state and national officials seeking to remedy the situation. No attempt was made to limit production. It was found that as between the defendants themselves, competition would be eliminated. As the court said, page 367:

"* * * This was deemed to be the necessary consequence of a common selling agency with power to fix the prices at which it would make sales for its principals."

In discussing the situation with which the defendants were confronted, the court on page 372 said:

"* * * The evidence leaves no doubt of the existence of the evils at which defendants' plan was aimed. The industry was in distress. It suffered from overexpansion and from a serious relative decline through the growing use of substitute fuels. It was afflicted by injurious practices within itself—practices which demanded correction. If evil conditions could not be entirely cured, they at least might be alleviated. The unfortunate state of the industry would not justify any attempt unduly to restrain competition or to monopolize, but the existing situation prompted defendants to make, and the statute did not preclude them from making, an honest effort to remove abuses, to make competition fairer, and thus to promote the essential interests of commerce. The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts, and communities dependent upon profitable production are prostrated the wells of commerce go dry. So far as actual purposes are concerned, the conclusion of the court below was amply supported that defendants were engaged in a fair and open endeavor to aid the industry in a measurable recovery from its plight. The inquiry, then, must be whether despite this objective the inherent nature of their plan was such as to create an undue restraint upon interstate commerce."

On the following page, in discussing the effect upon prices, it is said:

"The contention is, and the court below found, that while defendants could not fix market prices, the concerted action would 'affect' them, that is, that it would have a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain. But the facts found do not establish, and the evidence fails to show, that any effect will be produced which in the circumstances of this industry will be detrimental to fair competition. A cooperative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint merely because it may effect a change in market conditions, where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities."

The court reviews a number of its previous holdings, including that of United States v. Trenton Potteries Company, supra. With reference to that case, it said:

"* * * defendants, who controlled 82 per cent of the business of manufacturing and distributing vitreous pottery in the United States, had combined to fix prices. It was found that they had the power to do this and had exerted it."

It then proceeds:

"* * * In the instant case there is, as we have seen, no intent or power to fix prices, abundant competitive opportunities will exist in all markets where defendants' coal is sold, and nothing has been shown to warrant the conclusion that defendants' plan will have an injurious effect upon competition in these markets."

It was concluded that the elimination of competition among the defendants themselves was not sufficient to condemn the plan, in view of the fact that there remained active competition upon the open market.

The Government points out in that case that the court was dealing largely with what it designated "distress coal" and that surplus gasoline, involved in the buying program in the instant case, does not present a comparable situation. It correctly argues that the coal producer necessarily produces more than one grade of coal and that he is forced to produce those grades for which there is no ready market in order to produce the grades for which there is a market; that only the former is designated as "distress." It is also pointed out that no such situation exists in the production of gasoline and that, therefore, the designation of surplus gasoline as "distress" is a misnomer. On the other hand, appellants contend that the refiner is compelled to produce more than market requirements because of his contracts with the oil producers which require him to accept a certain amount of crude oil under penalty of losing his contract. We do not deem it necessary to go into the merits of these respective contentions, although we must confess we do not see any marked distinction between a distress product such as described in the Appalachian case and a surplus product with which we are here concerned. In either instance it is a recognized evil, productive of price wars, unfair competition and detrimental to the best interests of everyone connected with the business, from producer to retailer.

We cannot close our eyes to a theory prevalent in this country, widely proclaimed and embraced by many, including the Government itself, that overproduction, resulting in a huge surplus, is an evil, the effect of which is demoralizing to the industry concerned. This theory has been given general recognition, as well as application, by producers, associations, and organizations representing the same, and by both Federal and State Governments. In American Column Co. v. United States, 257 U. S. 377, Justice Brandeis, in his dissenting opinion, gave emphatic expression to the evil of overproduction. On page 417, he said:

> "* * * The purpose of the warnings was to induce mill owners to curb their greed—lest both they and others suffer from the crushing evils of overproduction. Such warning or advice whether given by individuals or the representatives of an association presents no element of illegality."

This record is replete with testimony that the Government, over a course of years, made a valiant effort, succeeding to a marked extent, in increasing the price of crude oil by disposing of the surplus and limiting production. If there is any one thing completely established, it is that the oil industry, as well as numerous Governmental agencies, Federal and State, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary, if the industry was to survive, to say nothing of prospering. This situation alone cannot be relied upon as a defense, but it affords justification for the action of the defendants in treating surplus gasoline as an evil of the industry and in making a concerted effort to eliminate the same with a view of stabilizing the market, even though an increase in price might result; provided, of course, the program, either as planned or executed, did not go so far as to constitute an unreasonable restraint by unduly suppressing or interfering with fair competition. And we do not think this conclusion is in conflict with the decision of the court in the Trenton Potteries case. There the court was considering a plan, which in its very nature, destroyed competition. It was not even claimed there was any purpose or object to correct a competitive abuse in the industry. There is nothing in the opinion to indicate that an agreement to raise or affect prices by the elimination of a competitive abuse is per se illegal or that the character of the restraint is not a proper jury question, under such circumstances.

A study of the decisions of the Supreme Court convinces one that the criterion employed in determining whether concerted action is such as to come within the condemnation of the statute, is the effect which the action has upon fair competition. If concerted action destroys competition, it is immediately branded as unlawful. In the Trenton Potteries case, as heretofore pointed out, competition was destroyed under facts there existing by reason of the price fixing agreement. Conceivably, however, a price fixing agreement is not unlawful per se under all circumstances as is evidenced by the holding of the court in Chicago Board of Trade v. United States, 246 U. S. 231. The court there recognized the assailed agreement as being of a price fixing nature. On page 238, it said:

"* * * The case was rested upon the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an important part of the business day, is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."

In Appalachian Coals, Inc. v. United States, heretofore discussed, the ultimate factor from which the court reached its conclusion that the assailed agreement was not violative of the statute, was that "abundant competitive opportunities will exist in all markets where defendants' coal is sold." In other words, fair competition was preserved rather than destroyed. This test has been applied and enforced in many, if not all of the other cases to which our attention has been called. We shall make reference to a few of the many.

In Sugar Institute v. United States, supra, on page 586, the question is thus stated:

"* * * The crucial question—whether, in the ostensible effort to prevent unfair competition, the resources of fair competition have been impaired—is presented not abstractly but in connection with various concrete restrictions to which the decree below was addressed."

In Maple Flooring Ass'n. v. United States, supra, the court on page 578, said:

"* * * In our view, therefore, the sole question presented by this record for our consideration is whether the combination of the defendants in their existing Association, as actually conducted by them, has a necessary tendency to cause direct and undue restraint of competition in commerce falling within the condemnation of the Act."

In Dr. Miles Medical Co. v. Park & Sons Co., 220 U. S. 373, the court on page 408 said:

"But agreements or combinations between dealers having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void."

Again, in Addyston Pipe & Steel Co. v. United States, supra, in discussing the purpose of the combination under consideration, the court, on page 240, said:

"* * * and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination."

Likewise, in Swift and Company v. United States, supra, the court on page 400, said:

"* * * The thing done and intended to be done is perfectly definite: with the purpose mentioned, directing the defendants' agents and inducing each other to refrain from competition in bids. The defendants cannot be ordered to compete, but they properly can be forbidden to give directions or to make agreements not to compete."

As already stated, we are unable to agree with the contention of the Government that the instant case involves a price fixing agreement unlawful per se. It does not follow, however, that appellants' contention is sound that the court erred in its refusal to direct a verdict under the authority of Appalachian Coals, Inc., v. United States, supra. While such contention finds support in that case, we do not think the reasoning therein, when applied here, goes to the extent of requiring a directed verdict. It must not be overlooked that in that case the combination had not been placed in operation. It is evident that the court, in evaluating the effect which the plan would have upon competition, was dealing to a considerable extent in prophecy rather than in actual results produced when and if the plan became operative. The court, on page 377, said.

"* * * We recognize, however, that the case has been tried in advance of the operation of defendants' plan, and that it has been necessary to test that plan with reference to purposes and anticipated consequences without the advantage of the demonstrations of experience. If in actual operation it should prove to be an undue restraint upon interstate commerce, if it should appear that the plan is used to the impairment of fair competitive opportunities, the decision upon the present record should not preclude the Government from seeking the remedy which would be suited to such a state of facts."

In other words, it is plain that the court left open to the Government the right to initiate further proceedings if the plan in operation resulted in the "impairment of fair competitive opportunities." Under such circumstances, we do not think it could be seriously contended but that the nature of the restraint would have to be determined as a matter of fact as distinguished from a restraint unlawful as a matter of law and that this determination would be made from the effect which the plan in operation had upon competition in the open market.

In the instant case, not only the assailed combination, together with its objectives, but the result of its operation for a period of almost two years was before the court. Therefore, it is idle to argue merely as to what was intended by the plan when its operations are disclosed. Its effect upon fair competition, and consequently the question as to whether it constituted an unreasonable restraint of trade, were questions of fact which the court was justified in submitting to the jury for determination. In other words, the restraint imposed was neither lawful nor unlawful per se, but its character was one of fact to be decided by a jury.

The case was submitted to the jury upon the theory that the combination charged was unlawful per se. This, in our judgment, was error such as to require a reversal. Under such circumstances, it ordinarily would serve no useful purpose to enter into a discussion of the evidence as it relates to the character of the restraint imposed. We think it is pertinent, however, to make brief reference to the contentions of the respective parties in this respect by way of demonstrating that the character of the restraint was a jury question and not one to be declared unlawful per se.

Our understanding of the position of the Government is that competition was destroyed or suppressed on the "spot" tank-car market. The Government's position is thus stated:

"The agreement on the part of major companies to purchase gasoline from independent refiners, not competitively and not on the basis of the best price obtainable and not on the basis of purchasing from the concern or concerns whose product best met the purchaser's needs, eliminated price competition among the parties thereto just as effectively and fully as any agreement to sell at uniform minimum prices."

This conclusion, in our judgment, cannot be sustained inasmuch as the buying programs complained of included only about one-third of the gasoline sold on the "spot" market. It would seem that the buying programs actually increased competition among the buyers on that market. No doubt, however, the test should be the effect had upon competition between the sellers and the buyers. Assuming, but not deciding, that competition between the sellers and those engaged in the buying programs destroyed competition as to the one-third of the sales made, there yet remained the two-thirds not involved in the program which was sold on the market as had theretofore been done. Removing the one-third involved in the buying programs, there remained, theoretically at least, and factually so far as the record discloses, a supply equal to the demand. Under such circumstances, it cannot be held that competition on the "spot" market was eliminated. The most that can be said is that the buying programs had an effect on competition, and whether that effect was such as to produce an unreasonable restraint upon commerce, was one of fact. It is argued by the Government that inasmuch as the defendants had knowledge of the amount of gasoline which would be purchased by those not connected with the concerted effort, they were enabled to raise and control the price as effectively as though they had purchased all, or substantially all, of the gasoline offered on the "spot" market. We do not believe this argument is sound. If so, it means that the power or control exercised by all of those engaged in an industry may be included in determining whether a combination of some of its members, perhaps a minority, is possessed with the power to raise and control prices. If such an argument is to be countenanced, then those controlling a relatively small portion of an industry could be charged and convicted with a price fixing arrangement illegal per se. As pointed out both in the Trenton Potteries case and the Appalachian Coals case, it is the combination of those controlling a substantial part of an industry from which the power arises to control prices, but as heretofore stated, where the plan of the concerted effort is placed in operation, we think the situation must be judged largely by its effect.

That the defendants had the power to and did control prices is evidenced as the Government argues, principally by the marked increase in the price of gasoline during the earlier months of 1935, and the "unprecedented rigidity of price beginning in June 1935, and continuing throughout the remainder of the year." On its face, this is a rather convincing circumstance, but when considered in connection with other circumstances, it is not so convincing and certainly not conclusive. For instance, the passage of the Connally Act, which went into effect in February, 1935, undoubtedly played a prominent part in the increase and maintenance of the price level. At any rate, it is disclosed that in prior instances, where the transportation of "hot oil" was prohibited, a similar increase in prices was experienced. Another circumstance which militates against the importance of the rigidity of the price level is the fact that the price of gasoline outside the Mid-Western area was actually higher during the indictment period than it was within. It also is worthy of note that the price to which it is claimed to have been arbitrarily raised and maintained was at no time above that which was regarded by the Government and industry, as a parity price.

In United States v. U. S. Steel Corp., 251 U. S. 417, the court found occasion to comment upon the testimony of certain witnesses concerning the importance of price rigidity. On page 448, it is said:

"* * * His deduction was that when prices are constant through a definite period an artificial influence is indicated; if they vary during such a period it is a consequence of competitive conditions. It has become an aphorism that there is danger of deception in generalities, and in a case of this importance we should have something surer for judgment than speculation, something more than a deduction equivocal of itself even though the facts it rests on or asserts were not contradicted. If the phenomena of production and prices were as easily resolved as the witness implied, much discussion and much literature have been wasted, and some of the problems that are now distracting the world would be given composing solution. Of course competition affects prices but it is only one among other influences and does not more than they, register itself in definite and legible effect."

There are other factors which it is argued entered into the increase in the price level of gasoline. It is pointed out that at the time of the marked increase in the price of gasoline there was likewise a marked increase in commodity prices in general and that at least a part of the increase is attributable to natural causes. It is disclosed that there are many large refiners outside the Mid-Western area but so near the territory that the product is readily obtainable. In many cases the freight rate from these outside refiners to important points within the territory is actually less than from refiners located within the territory. We shall not relate the details of this situation, but it is argued, not without logic, that potential competition from outside the territory would preclude the raising of prices within the territory to high and arbitrary levels.

It is not within our province to decide the effect, if any, which the buying programs had upon competition in the "spot" market, or upon the restraint of commerce, and the circumstances just discussed are not for such purpose. They are cited in emphasis of our conclusion that the effect upon competition and trade produced by the programs in operation was a factual one with plenty of meritorious argument both pro and con. Thus the situation refutes the idea that the combination was unlawful per se and reinforces our conclusion that it was a case which should have been submitted to the jury for the purpose of deciding whether the restraint involved was reasonable or otherwise.

Another question which is somewhat related to the basic one we have been considering is the allegation in the indictment that the independent refiners, at the instance of certain of the defendants, curtailed their production of gasoline. We are unable to find any competent evidence that the curtailment of production was a part of the plan for concerted action either in its formation or operation. The Government, in support of this allegation, says:

"The record shows that throughout the conspiracy period, efforts were made to induce the independent refiners to curtail their gasoline production, and that after the expiration of the refinery allocation system under the code, allocation of production was continued through the defendant Boggs."

We find nothing which connects the appellants in any way with any activities on the part of Boggs in this respect. The court directed a verdict of acquittal as to Boggs. Thus, he was not shown to have been a party to or connected with the alleged conspiracy. Under such circumstances, we know of no rule by which activities on his part could be charged to, or considered as evidence against, the defendants. A number of exhibits are cited in support of the quotation above. They have been examined carefully and we do not think they contain any evidence properly to be considered against the defendants. They consist largely of market letters signed by persons not shown to be members of the alleged conspiracy, in which the hope or opinion is expressed that production be reduced. One of such letters is signed by W. T. Atkins and addressed to J. F. Nagle. (Nagle also was acquitted by direction of the Court.) The letter states: "I had hoped that this refinery's runs might be reduced in line with the Program Committee." It is not disclosed who was meant by Program Committee. These market letters are referred to as "inter-office correspondence." They were published weekly and contained mostly the "gossip" of the trade. A number of them are signed by J. W. Warner and addressed to J. D. Collins, neither of whom was shown to have authority to speak for any of the defendants, but even if he had, such statements as are found in these letters merely represent the opinion, or conjecture, of the writer. Typical of such statements are:

"Marketers in general are advocating a further reduction in gasoline production.

"Many of the plants that are overloaded with gasoline stocks have cut down on operations to half capacity or are operating periodically until demand freely absorbs the present production.

"Suppliers of gasoline throughout the refining districts realize the necessity of keeping gasoline production at conservative levels.

"Reports indicate that the majority of refiners are still adhering to the allocated refinery operations in an effort to keep gasoline production in balance with demand."

So far as we are able to determine, it is just as reasonable to conclude that these expressions of opinion, hope, and conjecture had reference to a continuation of the policy of the Government in reducing production as that they refer to any plan or effort on the part of the defendants. In any event they are incompetent and prove nothing.

Another market letter to which our attention is called is signed by P. E. Lakin, one of the appellants. The letter contains this statement:

"* * * if such refiners hold their runs down to levels in line with a figure recommended by a responsible 'fact-finding' body, the future outlook is bright. Current indications are, that Independent Refiners with a few exceptions, will, in view of their experience during N. R. A., conform to a policy of holding crude runs down to market demand."

The question as to whether this statement has reference to the program of the defendants is one purely of speculation. We recognize the broad rule generally followed regarding the admissibility of testimony on a conspiracy charge. That the acts and statements of each member of a conspiracy performed or made in the execution of the conspiracy are admissable against all is a rule well established. No one of the statements referred to comes within this rule or any other rule of which we are cognizant.

From what we have said up to this point it is apparent that this cause must be reversed. For this reason and for the additional one that the views already expressed have a direct bearing upon many of the specific questions presented it will not be necessary, in considering the same, to go into detail such as we otherwise would. We shall take them up, however, in numerical order as heretofore set forth.

Contested Issues I and II may be considered together. The former has to do with the failure of proof to sustain what is argued to be an essential allegation of the indictment, and the latter with a variance between the charge and the issues on which the case was permitted to go to the jury. The allegation of the indictment referred to is Paragraph 24 entitled "Participation of Market Journals." It alleges that the trade journals named in the indictment "have intentionally and wrongfully engaged and participated in the combination and conspiracy set forth in this indictment, and have directly and materially aided the other defendants in effectuating the same, and the unlawful purposes and effects thereof set forth in this indictment." These journals are charged with being the chief agencies and instrumentalities through which the artificially raised and fixed prices of gasoline paid by the major oil companies have affected the price paid by jobbers and others in the indictment territory. They are charged with having published the price paid by the major oil companies as the price paid by jobbers in the "spot" market, intending that such prices would be relied upon by the jobbers in determining the prices to be paid to the major companies in conformity with the contracts existing between the jobbers and the major companies. The Government, at the conclusion of the presentation of its case, conceded that the testimony adduced was insufficient to support the charge as to these trade journals, and the case as to them was dismissed.

It is argued by appellants that this paragraph of the indictment alleges the means and only means by which the conspiracy charged was to be carried into effect. We do not agree with this argument. As we read the indictment, it states a completed charge against the defendants (other than the trade journals) including the means by which the conspiracy was to be carried into effect, preceding the paragraph with reference to the trade journals. Prior to this paragraph the trade journals had not been connected with the conspiracy and that paragraph evidently was for that purpose. It is in the nature of an additional count specifically charging the trade journals. Without it they were not involved, but it does not follow that it was essential in charging the other defendants.

Paragraph 18 defines the conspiracy. It is alleged that the defendants conspired for the purpose of "artificially raising and fixing the tank-car price of gasoline in the 'spot' market," and that they "artificially raised and fixed said 'spot' market tank-car price of gasoline and have maintained said prices at artificially high and noncompetitive levels," in violation of the Sherman Anti-trust Act. The indictment, prior thereto, had in great detail defined "spot" markets—how prices thereon were determined, and the manner in which the price paid by the jobber and retailer was determined with reference to the "spot" market. Paragraph 19 commences: "Said unlawful combination and conspiracy has been effectuated in the following manner and by the following means." Then follows a detailed description of the two buying programs with the allegation that the purchases in said program were made at "uniform, high, arbitrary and noncompetitive prices." The buying programs are the means alleged to have effectuated the conspiracy. Both the conspiracy and the means alleged precede Paragraph 24 wherein it is sought to connect the trade journals with the conspiracy in a manner similar to that of aiders and abettors. Most of appellant's argument under this point proceeds upon the theory that the paragraph with reference to trade journals describes the only means by which the conspiracy was to be effectuated. Inasmuch as we think this contention is not tenable, we shall not discuss what might be the situation if no other means were alleged.

The argument presented under Contested Issue II with reference to a variance rests upon a similar basis. It is said that the indictment, including the paragraph with reference to the trade journals, charges a price fixing agreement. In other words, the appellants are charged with buying at an agreed price, to be falsely published in the trade journal as the market price, and upon this false price as published, the price to the jobber and retailer was determined. It is argued that the Government, when it failed to make a case against the trade journals, shifted its position and proceeded upon the theory that the activities of the defendants merely affected the prices. Appellants state the situation thus:

> "The fundamental difference between fixing the market price and merely affecting the market price is such as to preclude a showing of the latter as a substitute for a charge of the former."

This statement really contains the gist of appellants' argument on the question of variance.

As we understand appellants' position in this respect it is that the indictment, including the paragraph with reference to the trade journals, charges a price-fixing agreement, and when the Government failed to substantiate that paragraph of the indictment it necessarily followed that no price-fixing agreement was proven but that instead the proof disclosed an agreement merely affecting the market prices and that proof of the latter would not substantiate a charge of the former. The Government, on the other hand, contends that, ignoring the paragraph with reference to the trade journals, the indictment alleges a price-fixing agreement and argues that a price-fixing agreement was proven. The argument again revolves largely around the dicisions of the court in United States v. Trenton Potteries Company, 273 U. S. 392, and Appalachian Coals, Inc. v. United States, 288 U. S. 344. We have heretofore concluded that the Government failed to prove a price-fixing agreement such as is disclosed in the Trenton Potteries case. We also think there has been too much importance attached to the terms "price fixing" and "price affecting," and that the true test to be employed in determining whether an agreement is unlawful per se or one in which the character of restraint is open to investigation must depend upon the effect had upon competition with its resultant effect upon trade. If competition is suppressed or destroyed, the agreement comes within the former class; if not, within the latter. We shall not repeat what we have heretofore said in this respect. It is sufficient here to point out that the distinction has to do with the proof rather than the charge. If a combination has power to destroy competition, no further evidence is required. If it does not, then all relevant evidence should be received and considered in determining whether competition has been interfered with to the extent of constituting an undue restraint. It is not necessary for us to determine whether the indictment charges an agreement unlawful per se, but, answering the question now before us, we assume that it does. That being so, we have no doubt but that proof of an agreement not unlawful per se is sufficient to sustain the charge. The fallacy in appellants' argument rests in the unwarranted premise that two offenses are involved, whereas such is not the case. The statute defines the one offense of "restraint of commerce." The courts have not created two offenses where only one is created by statute, but have classified the offense with respect to the quantum of proof required. In one class, proof of the combination with power to destroy competition is sufficient as a matter of law, while in the other proof is required as to whether the effect upon competition is such as to constitute an unreasonable restraint.

Contested Issue III. It is argued under this point that the court committed reversible error in its refusal to allow appellants' motion for a directed verdict. Appellants' position is stated thus:

"(1) Forced sales of a distress product which contribute substantially to the depressed condition of an industry constitute a competitive evil.

"(2) An intention 'to stabilize the business, or to produce fairer price levels,' through the elimination from a competitive market of a competitive evil (such as distress gasoline) is not unlawful.

"(3) An effort to correct such a competitive abuse is promotive of sound competition and not condemned by the law unless by reason of its intent, inherent nature, or effect it goes beyond the restraint on competition involved in any removal of the competitive evil and unreasonably restrains competition in some other manner than the removal of the abuse."

On the other hand, the Government contends that—

"A combination to fix, raise, or control the market price of a commodity when those who combine possess the power to fix, raise, or control market price is the most important and conspicuous example of this type of restraint. Where a restraint of this kind is established, no question of reasonableness is open for determination by either court or jury.

Again the argument is predicated largely upon the Appalachian Coals case and the Trenton Potteries case. We have held neither case controlling here. It is true in the former case that the court held the "plan would have a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain." It also stated that the evidence failed to show that "any effect will be produced which in the circumstances of this industry will be detrimental to fair competition." As we have pointed out, however, the court there was dealing with a plan which had not been placed in operation. Here we are considering a plan placed in operation with the results revealed. Under these circumstances, it was a jury question as to the effect which the plan in operation had upon fair competition and its resultant effect upon restraint of trade. It may be as pointed out by Justice Harlan in his dissenting opinion in Standard Oil Co. v. United States, 221 U. S. 1, 97, that the submission of such a question is calculated to render the statute indefinite and uncertain. He said: "* * * the injection of the rule of reasonableness or unreasonableness would lead to the greatest variableness and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case and there would be as many different rules of reasonableness as cases, courts, and juries. What one court or jury might deem unreasonable another court or jury might deem reasonable. A court or jury in Ohio might find a given agreement or combination reasonable, while a court and jury in Wisconsin might find the same agreement and combination unreasonable."

Nevertheless, the decisions of the Supreme Court, heretofore discussed, leave no doubt, in our opinion, that the case was one requiring submission to the jury.

Contested Issue IV. This point has to do with the court's charge to the jury, as well as its refusal to instruct in numerous particulars as requested by the appellants. We shall not endeavor to give even a synopsis of the charge which, as might be expected, was of great length. Rather, we shall state appellants' contention, followed by certain admissions made by the Government with reference to the nature of the charge. Appellants' contention may be summarized thus:

"(1) The Court committed prejudicial error by instructing the jury that it was to consider the reasonableness of the defendants' acts, and the facts and circumstances surrounding them, only if it first found (a) that the defendants did not have the power to raise the level of spot market prices, or (b) that they did not combine for that purpose, and (c) that their purchases affected the spot market prices only indirectly and incidentally.

"(2) The Court committed prejudicial error by instructing the jury that an agreement embracing or involving the raising (as distinguished from the fixing) of the price of a commodity by a group controlling a substantial part of the trade in such commodity is illegal per se."

The Government concedes that the cause was submitted to the jury, upon the theory that the condemned agreement was unlawful per se. It states:

"These instructions, like those in the Trenton Potteries case, withdrew from the jury any further question as to the illegality or unreasonableness of the restraint and, as in the Trenton Potteries case, refusal to grant instructions setting forth tests which, in a different situation or with a different kind of combination, might be applicable in distinguishing between a reasonable and an unreasonable restraint of trade, was not error."

The theory upon which the case was submitted to the jury is further illustrated by the following statement by the Government:

"The court repeatedly and explicitly instructed the jury as to the circumstances which would justify a verdict of guilty. These circumstances were that the jury find (1) that the defendants had the power to raise gasoline prices and (2) that they had combined for this purpose as charged in the indictment. The court charged:

"If you find that the defendants, and those acting in concert with them, controlled the greater part of the gasoline sold in the ten Middle Western States, and had the power to raise the price of that gasoline, and that the defendants and these other persons acting with them have knowingly engaged in a combination to raise or fix the price to be charged for gasoline to jobbers or consumers in the Mid-Western area as charged in the indictment, then you will understand that these defendants have violated the Sherman Act and are guilty as charged in the indictment.

"The court, in repeating the substance of this instruction, charged the jury that if the defendants had the power, and combined for the purpose of raising the level of spot market prices, then 'the restraint of trade was a matter of law undue and unreasonable and, therefore, illegal.'" Thus, it is apparent that the court's charge involves the same fallacy as that which runs throughout the case. The court subscribed to the theory urged by the Government that the agreement proven constituted a restraint unlawful per se. We have already decided to the contrary. Since the case is one which should have been submitted to the jury solely upon the issue of the character of the restraint imposed, as we have concluded, it necessarily follows that the court's charge, embracing a theory which we conclude is inapplicable, is reversible error.

Contested Issue V. We shall only make general reference to the proffered testimony which appellants argue the court erroneously refused to admit. Appellants place the refused testimony in three classes, as follows:

"(1) '* * * the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; * * * The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained * * *.'

"(2) Offers to prove facts showing that the Federal Petroleum Administration encouraged and cooperated with the defendants in the activities for which they were convicted, as bearing upon 'the purpose or end sought to be attained.'

"(3) Offers to prove facts showing 'the nature of the restraint and its effect,' and specifically the fact that the prices of gasoline in the southwestern tank-car markets and in the Mid-Western area were not artificially high and noncompetitive during the indictment period."

Objection to this testimony was made by the Government and sustained by the court largely upon the theory that "the unreasonableness of the restraint" was not in issue. No doubt if the case had been tried upon that theory, as we think it should have been, the ruling of the court with reference to the admission of much of this testimony would have been different. The rule as to evidence proper to be considered, where the reasonableness of the restraint is in issue, is clearly announced in Chicago Board of Trade v. United States, 246 U. S. 231, 238. There it is stated:

"* * * To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

Under the authority of United States v. U. S. Steel Corp., 251 U. S. 417, 446-7, and Fosburgh v. California & Hawaiian Sugar Refining Co., 291 Fed. 29, 36, 37, it would seem that evidence otherwise competent, which would show cooperation with the defendants on the part of Government officials, either in approval or in carrying out the program in question, should be admitted. This class of testimony was not offered to show immunity, but as bearing upon the purposes and objectives of the defendants, and as such, had a bearing, we think, upon the issue which should have been submitted to the jury. The argument of the Government that this class of evidence should be excluded, because it was calculated to confuse the jury, is not tenable. The test is its relevancy to the issue. We think it is true, as argued by the Government, that much of the refused testimony was of a cumulative nature. At any rate there certainly is much testimony in the record relative to the history of the oil industry, the evils with which it was beset, and efforts made by the industry and various Governmental agencies, Federal and State, to alleviate the situation. The trial court necessarily must be vested with a large amount of discretion in a situation of this kind. After all, even a conspiracy trial can not go on forever.

The defendants were charged with raising the price of gasoline on the "spot" market and in the Mid-Western area at an artificially high and noncompetitive level and any evidence disproving or directly tending to disprove that allegation should have been received.

Contested Issue VI. Under this issue it is argued that the court was without jurisdiction. The Sixth Amendment to the Constitution provides for a trial "by an impartial jury of the State and District where the crime shall have been committed."

Appellants concede properly we think that the court would have jurisdiction if (a) the evidence established that the conspiracy in violation of the Sherman Act was entered into within the Western District of Wisconsin, or if (b) the evidence established that someone or more of the defendants or of their co-conspirators committed an overt act pursuant to the conspiracy within the Western District of Wisconsin. There is no proof establishing jurisdiction under "a" so if it is found it must be under "b." We also accept appellants' two tests for determining whether an act is overt, viz: (1) Was the act in pursuance of the conspiracy?; and (2) Did the act tend to achieve and advance the objects of the conspiracy? As we understand appellants' contention, it is to the effect that the indictment contains no charge that the defendants agreed to make any contract in Wisconsin, nor that they had any agreement with reference thereto, and that what each defendant did in Wisconsin was a matter of individual determination without regard to any term or obligation of any agreement. In other words, that the acts relied upon by the Government as overt, were the acts of defendants acting in their individual capacities and not for or as representative of those engaged in concerted action. Such being the situation, so it is argued, the acts committed in Wisconsin were neither in pursuance of nor tended to achieve and advanace the objects of the conspiracy. This argument, in our opinion, is predicated upon the false premise that the sole purpose of the conspiracy, as charged, was the raising of the price of gasoline on the "spot" market. The indictment, after the allegation with reference to the "spot" market, continues "and have thereby intentionally increased and fixed the tank-car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the Western District of Wisconsin)." In each of the buying programs described in the indictment, it is alleged "as agreed upon by said defendant major oil companies, all with the unlawful purposes and effects aforementioned." It would seem rather plain that among the "purposes and effects" was one designed to raise the price of gasoline in the Mid-Western area, as well as on the "spot" market. Assuming, as appellants contend, that there was no evidence as to any statement's or acts at any of the meetings wherein the concerted action was agreed to, with reference to sales within the Mid-Western area, or with reference to prices at any place other than on the "spot" market, we still think the conclusion is irresistible that it was a part of the plan to increase the price in the territory wherein their gasoline was sold. We do not think it can be said that their sole object was the stabilizing or raising of the "spot" market price. That was one object. The other, and perhaps of greater importance to the defendants, was to increase the price in the territory in which their gasoline was sold. Even though there be no direct evidence in proof of this second objective, all the circumstances point irrestibly to that conclusion. To think differently would be the equivalent of believing that the defendants were engaged in a philanthropic endeavor. Otherwise, what could be their purpose or objective in increasing the price on the "spot" market? They were buyers on that market and an increase in price would be to their disadvantage. Advantage to them, if any, could come only through an increase in price in the territory in which they expected to and did sell, including the Western District of Wisconsin. To say the object of the concerted action was to raise the price on the "spot" market without, at the same time, saying that there was a further objective—the increase of the sales price to their customers—would be illogical and contrary to common sense.

In the Trenton Potteries case the defendants were tried in a district other than that in which the conspiracy originated. The court, in discussing the question of jurisdiction, said:

"* * * The record is replete with the evidence of witnesses for both prosecution and defense, including some of the accused, who testified without contradiction to the course of business within the district, the circulation of price bulletins, and the making of sales there by some of the members of the association organized by respondents. The secretary testified that, acting for the association, he effected sales within the district. All of these were overt acts sufficient for jurisdictional requirements."

Appellants distinguish that case from the present one, thus:

"In that case, the sales at a set price were required by the very terms of the agreement and were acts which directly carried out the obligation of the agreement. Here the only obligations created by the agreement related to what was to be done in the buying of gasoline from the non-integrated refiners and in the restraining of competition in the spot tank-car market."

The fallacy of this distinction is that it ignores the object and purpose of the concerted action in the instant case. If the object of defendants' concerted action was to increase the price of gasoline in the Mid-Western area (including the Western District of Wisconsin) and that objective was accomplished by sales at such increased price, it is our conclusion that under the decision in the Trenton Potteries case such sales would constitute overt acts.

We shall not discuss the numerous authorities cited by appellants under this point. It is sufficient to say that we have read them and do not believe they are even persuasive, certainly not controlling. We, therefore, conclude that the District Court had jurisdiction.

Contested Issue VII. It is argued under this point that the court erred in the admission of evidence. More than 650 exhibits were introduced, three-fourths of which were offered by the Government. It would be surprising if some error was not committed in passing upon the admissibility of such a volume of exhibits. To enter into a discussion of the various errors assigned in this respect would unduly extend this opinion, which even now is quite long. The documents objected to consist largely of letters, telegrams and market reports obtained from the files of the defendants and referred to in a general way as "inter-office communications"; that is, communications from one officer or employee to another officer or employee of the same corporation. In the main, they charge (1) that the defendants induced the independent refiners to curtail production, (2) that the buying programs were for the purpose of restoring the price of gasoline, (3) that, after the rise of the market price of gasoline, the buying programs were utilized in preventing the dumping of "distress gasoline" on the market, and (4) that the employees of certain companies regarded the amount of "distress gasoline" which they had been asked to purchase by members of the Tank-car Stabilization Committee, as "their share," "allocated" or as "assigned" to them and that the companies were obligated to make such purchases. Heretofore we have discussed the evidence by which it was sought to prove the curtailment of the production of gasoline, and found there was no competent evidence in support of the charge. We understand that appellants concede that the concerted effort, resulting in the buying programs, was for the purpose of restoring the price of gasoline and for the purpose of preventing the "distress gasoline" from being dumped upon the market. We do not think appellants now are in a position to complain of evidence, even though improperly admitted, which proved or tended to prove that which is now conceded. What we have said heretofore concerning the evidence relied upon by the Government to prove the charge of curtailed production is largely applicable to the testimony concerning allocation and obligation to buy "distress gasoline." A review of the exhibits leads us to think that in some instances the statements contained therein merely represented the opinion of an employee. In other instances statements were made by an employee not shown to be a member of the conspiracy and not shown to have any authority to speak. We are convinced, however, that any error committed in this respect could not have affected the result of the trial.

Contested Issue VIII. Under this point it is urged that the court erred in denying the several motions of appellants for a new trial. The Government contends that under the authority of Fairmount Glass Works v. Cub Fork Coal Co. et al., 287 U. S. 474, we are without authority to review the action of the District Court in this respect. Under the theory upon which the case was submitted to the jury, the power to raise prices arbitrarily and artificially was an important element of the case. By the verdict of guilty, the jury found that issue in favor of the Government. When the case was submitted there was included among the defendants the Standard Oil Company of Indiana (and others not here important). The indictment alleged:

> "Said area comprises the gasoline market territory of defendant Standard of Indiana, and is sometimes known as the Standard of Indiana territory by reason of defendant's dominant position in the distribution of gasoline in each of said states."

It was the largest company doing business in the Mid-Western area, and as such was the price leader. During the indictment period its business amounted to about 25% of the total. It purchased from the independent refiners from 6% to 10% of the gasoline sold by them. After the verdict of guilty as to all the defendants, including the Standard, the court allowed a motion for a new trial as to the latter. It is argued by appellants that the power found by the jury included that possessed by the Standard. That, therefore, there has been no finding by the jury that the appellants possessed the requisite power. The question becomes one as to whether the Standard was a partner in the alleged conspiracy or an adversary engaged in competition. Thus an important legal question is presented.

Under the circumstances, however, we need not determine either our authority or the merits of the question, for the reason that it has become moot because the case must be reversed upon other grounds.

Contested Issue IX. The essential error alleged under this point concerns the manner in which the Grand Jury testimony was used during the trial. The witnesses of the Government were largely employees and officers of the defendants. Upon the basis that the witnesses were hostile or unfriendly, counsel for the Government read extensively to numerous witnesses what purported to be their testimony given before the Grand Jury for the purpose, so it is claimed, of refreshing their memory. Some idea is gained of the extent to which this practice was employed by appellants' statement (not disputed by the Government) that uncertified Grand Jury minutes were read or referred to on approximately ninety occasions and more than one thousand lines of the transcript of the record consist of verbatim quotations from those minutes. They were read to the witness in the presence of the jury and, although defendants repeatedly made requests for the privilege of inspecting and examining such minutes, their request in each instance was denied; nor was the witness permitted to see or examine them. It was the theory of the Government during the trial, persisted in here, that by keeping the minutes out of the hands of the witness, an inspection of the same by the defendants could be prevented. The Government argues that:

"A distinction must be made between the use of a prior statement to refresh recollection and its use for impeachment and between its use to refresh recollection and its use as affirmative evidence where present recollection cannot be revived."

For the purpose of this discussion, we shall accept the Government's contention that the Grand Jury minutes were used solely for the purpose of refreshing the recollection of the witness. It follows that there is no occasion for us to determine the validity of the distinction as pointed out by the Government, or what the rule as to inspection might be under other circumstances.

That the procedure employed was erroneous, we think, is borne out by the great weight of authority; and that it was unfair and prejudicial, we have no doubt. The suggestion that the testimony given by the witnesses in each instance was the same as that read to him from the minutes of his Grand Jury testimony, thus reinforcing the testimony given by the witness and thereby being advantageous to the defendants, is devoid of merit.

Notwithstanding the repeated practice in the procedure complained of, the Government now states:

"* * * not a single item of testimony given by any witness which (1) was elicited by stimulating recollection by calling the witness' attention to his grand jury testimony and (2) was not covered by the testmony of the witness otherwise given."

According to this admission, it would seem that the effort to refresh the recollection of the witnesses was a complete failure. Nor does this admission minimize the harm calculated to result from such procedure.

While the use of the testimony in such manner was erroneous, the damaging effect was its use in connection with statements made by counsel for the Government in which it was repeatedly insinuated, if not actually charged, that the witness was deliberately testifying falsely. It is difficult to believe that the jury could have received any other impression. The jury was told in the opening statement of counsel for the Government that certain witnesses for the Government, because of their connections with the defendants, would testify "under the greatest stress and because he finds no other way out." During the examination of one witness, counsel made this statement:

"Your Honor, the Government is distinctly surprised by this testimony, which is in direct contradiction to testimony given before the

Grand Jury; and the Government asks permission to lead this witness, and to confront him with his Grand Jury testimony for the purpose of refreshing his recollection."

We set forth a few of the typical comments made by the Government in connection with the use of such testimony.[*]

As we are only considering the proper procedure where the testimony is used for the purpose of refreshing the memory of the witness, or as counsel put it, "to revive a flagging memory," we shall only refer to authorities applicable thereto.

In Morris v. United States, 149 Fed. 123, the court had before it a situation similar to the present one, except that the written memorandum from which the witness refreshed his memory was shown to him. The court on page 126, said:

"* * * We understand it to be the universal rule of evidence in the courts of this country that, where a witness is permitted to examine and refresh his recollection with a paper, it is to be tendered to the other side for inspection just as soon as it has been identified."

In Lennon v. United States, 20 F. (2d) 490, the witness had refreshed his recollection the day before the trial by reading a written memorandum, and the court held that inasmuch as the refreshing material had not been produced in court, the opposing party was not entitled to an inspection thereof. The court said, on page 494:

"* * * It is only where the witness uses the paper to refresh his memory while on the stand that there exists a right to compel the production of the writing for inspection." (Citing cases.)

In Little v. United States, 93 F. (2d) 401, the court on page 406, said:

"It is a generally accepted rule of evidence that the defendant in a criminal case or his counsel has the right, upon proper request or demand, to inspect and use, for purposes of cross-examination, any paper or memorandum which is used by a witness on direct examination for the purpose of refreshing his present recollection."

Wigmore on Evidence, Volume 1, Section 762, announces a similar rule. The reason therefor follows:

"Furthermore, as by having an opportunity of inspection the opponent is guarded against imposition clearly apparent, so by cross-examination based on the paper he may further detect circumstances not appearing on the surface, and may expose all that detracts from the weight of testimony."

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[*] "We declare to the Court now that we are frankly surprised at the answer of this witness, and we have very good reasons for that surprise, which we will assert if permitted to do so.

"Your Honor, the Government is distinctly surprised by this testimony, which is in direct contradiction to testimony given before the grand jury; and the Government asks permission to lead their witness, and to confront him with his grand jury testimony for the purpose of refreshing his recollection.

"The Government is not satisfied with that answer, and is still completely surprised, and I would like to cross-examine the witness.

"And were those answers true when you gave them in response to those questions?

"Well is that correct testimony?

"How do you reconcile that with the testimony you say you remember you gave before the Grand Jury?

"And were those answers true when you gave them * * *?

"He does not now admit that he talked with him. I have read the minutes, and he denies that, and denies—his denial is in direct conflict with what I read from the minutes.

"Was it clear in your mind when you testified before the grand jury?

"Do you mean to say that you did not give that testimony before the grand jury?"

With reference to some decisions holding to the contrary, it states:

"These decisions, however, are in a small minority and have no principle to support them."

Contrary to the rule announced in Lennon v. United States, supra, the author states that the rule should apply even where the memorandum was consulted before trial and not brought by the witness into court. The Government argues, without logic we think, and with little, if any, authoritative support, that the rule, as announced, is only to be applied to documents used by the witness while on the stand. Apparently the trial court was of the same opinion. In fact, the purpose of reading the minutes to the witness, rather than placing them in his hands, was to circumvent the application of the rule. The cases cited in support of the Government's theory are not convincing—in fact, they are not in point.

In Mullaney v. United States, 82 F. (2d) 638, the court sustained the refusal of the trial court to permit opposing counsel to inspect a memorandum, but as the court points out, the memorandum was not used or referred to by the witness.

In Metzler v. United States, 64 F. (2d) 203, opposing counsel was refused the right to inspect the Grand Jury testimony in the hands of the prosecuting attorney, but there the witness had refreshed his memory, not from the Grand Jury minutes but from notes personally made while before the Grand Jury.

In Browlow v. United States, 8 F. (2d) 711, a prohibition agent had refreshed his memory by reference to a memorandum book. Opposing counsel demanded possession of the book. It was held that counsel was entitled only to that portion of the book pertaining to his testimony and not to other parts which had no connection therewith.

Many cases are cited [10] by the Government to the effect that it is within the judicial discretion of the trial court to permit counsel to endeavor to refresh the recollection of a hostile witness by calling attention to his testimony given before the Grand Jury, or to other prior statements. So far as we are aware, there is not a single authority to the effect that opposing counsel, upon request, is not entitled to examine and inspect any document or memorandum used by a witness in court for the purpose of refreshing his recollection. That the rule can be avoided by the simple expedient of reading to the witness the memorandum has no basis in law or logic. In fact, there is more reason for permitting inspection by opposing counsel in the latter situation than in the former, where at least the witness is given an opportunity to check upon that which is being used to refresh his memory.

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[10] Beeselman v. United States, 239 Fed. 82, 85; Felder v. United States, 9 F. (2d) 872, 874; United States v. Freundlich, 95 F. (2d) 376, 379; Buckley v. United States, 33 F. (2d) 713, 717; Levy v. United States, 35 F. (2d) 483, 484—485; United States v. Lonardo, 67 F. (2d) 883, 884; Bedell v. United States, 68 F. (2d) 776, 777–778.

Contested Issue X. The error urged under this point is predicated upon the alleged improper and prejudicial argument made to the jury by Government attorneys. It is contended that counsel, in urging a conviction, appealed to class prejudice, advised the jury as to counsel's personal opinion, informed the jury that it was the wish and desire of the highest officials in the Government of the United States that the defendants be convicted, and related to the jury the personal knowledge of counsel in contradiction of and in discrediting an important defense witness. A recitation of those portions of the argument complained of and set forth in appellants' brief would unduly prolong this discussion. We shall relate only extracts from the remarks which are claimed to be the most offensive.[11] In doing so, we recognize there is some merit in the Government's argument that it is hardly fair to undertake an evaluation of the effect which those portions of the argument complained of might have upon a jury, without considering the entire argument. We have read the entire argument for both sides, which occupies some 350 pages in the transcript of record, and we think it can be said that the argument, as a whole, does not disclose a picture as prejudicial to appellants as is argued or as is indicated by the particular statements referred to.

In addition to extracts from the argument already quoted, serious complaint is made of the reading by counsel from a speech delivered by a noted son of Wisconsin at a Graduation Day exercise in 1873. In that speech there was vividly portrayed the advent of a terrible monster in the form of the accumulation of individual and corporate wealth. It was prophesied that the time was approaching when the question would be, "Which shall rule, wealth or man? Which shall lead, men or intellect? Who shall fill public stations, educated and patriotic free men, or the futule serfs of corporate capital?"

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[11] "Not only, gentlemen of the jury, is this prosecution actuated by the Government because of the injury done to the public, but because of the fact that it is a terrible thing that a group of influential, wealthy millionaires or billionaires should take over the power, take over the control, the power to make prices, and to want to make them.

"A hundred lawyers employed the very cream of the American Bar, the very best legal talent that these people can obtain—every one of them working night and day with suggestions as to how the red herring can be drawn across the clear-cut issue of this case.

"And I confidently leave it with you, feeling that you will not let your Government and the United States and its citizens and society down.

"Now, just between yourselves, do you honestly think that these boys here [indicating counsel at Government table] fired with the enthusiasm of crusaders, as I say, and having given to this case every ounce of mental and physical strength they have, and I myself have contributed, also, would be trying to convict these men unless that was the wish and the desire of the highest officials in the government of the United States?

"You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done?

"When combinations or corporations having the financial and the money power that these corporations have here, go out and take the law into their own hands and operate their business regardless of the desire of the Government, and without any consideration for the underdog or the poor man, then we can do one thing or another. We are going to stop it, as our forefathers stopped it before us and left this country with us as it is now, or we are going down into ruin as did the Roman Empire——

"Do you want to say that the vast sum of money that has been spent by the Government here—and not in payment of lawyers, either—running into hundreds of thousands of dollars, in trying to get before you the facts in this case, should be thrown to the winds and these men should go clear, and the world and the nation should be told that these combinations of capital can go out and take the law into their own hands, and they can rig any market they please? If you do—why, all right. I will get along. If you can afford to pay thirty cents or forty cents or fifty cents a gallon for gasoline, why, I will get a little once in a while, too."

However appropriate this speech might have been in the political arena, it certainly had no place in a court of Justice.

We shall refer only to one other complaint concerning the argument. One of the defendants' witnesses had given testimony with reference to the shipment of gasoline to St. Paul via boat up the Mississippi River during the indictment period. This testimony was regarded by appellants as important since it showed, according to their theory, that competition within the indictment territory could not have been eliminated because of the accessibility of that territory to outside markets. Government counsel, in argument, advised the jury in effect that he was familiar with conditions about which the witness had testified—that, during that time the Government was building dams in connection with the nine-foot channel and that as a result "they had concrete clear across the river, spaced in so many ways that, as I say, you just couldn't get a rowboat up there." Appellants lay considerable stress on the harm done by this statement, while the Government argues it was trivial. We do not think it trivial, and certainly, it was improper. If counsel desired to testify he should have gone on the witness stand and subjected himself to cross-examination.

The Government does not undertake to justify much of the argument and misconduct complained of, but it earnestly insists that any error committed is not of a reversible nature. As the case is to be reversed, there seems no occasion for us to make a determination in this respect. We shall merely express the opinion that some of the argument complained of was highly improper and that, taken in connection with the misuse of the Grand Jury testimony, heretofore discussed, would present a very serious obstacle to the affirmance of the judgment.

Separate briefs and arguments have been submitted by the appellants, The Globe Oil & Refining Company (Oklahoma), the Globe Oil & Refining Company (Illinois), and R. H. McElroy, Jr., in which it is claimed that there is no substantial evidence connecting them with the alleged conspiracy, either in its formation or execution, and that the court erred in its refusal to direct a verdict as to them. From a study of the record we are not convinced that the trial court erred in this respect.

For reasons herein stated, the judgment as to each of the appellants is reversed and remanded.

Sparks, Circuit Judge, concurring. I concur in the opinion in all matters except that part which holds that the venue of this prosecution was properly laid in the Western District of Wisconsin,

The Sixth Amendment of the Constitution provides that the accused shall enjoy a trial by a jury of the State and district wherein the crime shall have been committed.

The crime here charged is a conspiracy to violate the Sherman Anti-Trust Law, and may be prosecuted only in the district where the conspiracy was formed or where some overt act in furtherance or execution of that conspiracy was committed. Hyde v. United States, 225 U. S. 347; Nash v. United States, 229 U. S. 373; United States v. Trenton Potteries Co., 273 U. S. 392. All acts in furtherance or execution of the conspiracy and none other are deemed overt acts. An act is not an overt act merely because it is related to the individual enjoyment of the personal benefits which a defendant hopes to, and in fact does, receive as the ultimate result of the completely executed conspiracy. See United States v. Black, 160 Fed. 431; Lonabaugh v. United States, 179 Fed. 476; Rose v. St. Clair, 28 F. 2d 189.

Paragraph 18 of the indictment describes the conspiracy as the combining and conspiring together of the defendants "for the purpose of artificially raising and fixing the tank-car prices of gasoline in the aforementioned spot markets (which are referred to in paragraph 16 as 'the spot markets in the East Texas and Mid-Continent fields, and in Chicago, Illinois') and, as intended by them, defendants have artificially raised and fixed said spot market tank-car prices * * * at artificially high and noncompetitive levels, and at levels agreed upon among them and have *thereby* intentionally increased and fixed the tank-car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the Western District of Wisconsin)." [Italics supplied.]

Paragraph 17 of the indictment alleges: "Spot market tank-car prices of gasoline tend to, and do, directly and substantially influence the retail prices of gasoline, i. e., the prices which consumers are required to pay, in that an increase in the spot market tank-car prices of gasoline will, and usually does, result directly in an increase in the retail prices of gasoline."

Paragraph 19 of the indictment then proceeds to state that the conspiracy thus described was effectuated by the defendants engaging and participating in two concerted gasoline *buying* programs, referred to as "(a) the East Texas *buying* program and (b) the Mid-Continent *buying* program," for the purchase by the defendants from the independent refiners in spot transactions of the distress gasoline in the spot markets above referred to.

It is further alleged in paragraph 25 of the indictment that the conspiracy above referred to has operated and has been carried out in part within the Western District of Wisconsin, in the following manner: "In pursuance of said combination and conspiracy, defendant major oil companies (with the exception of Standard of Indiana and Gulf) have contracted *to sell* and *have sold* and *have delivered* large quantities of gasoline in tank-car lots to jobbers within said district at the artificially raised and fixed and noncompetitive prices aforesaid and have arbitrarily exacted from jobbers within said district large sums of money * * * all by virtue of said combination and conspiracy and pursuant to the purposes and ultimate objectives thereof." [Our italics.]

Not one drop of the oil involved in the purchasing programs, which "effectuated" the alleged conspiracy, was purchased by any of the defendants in the State of Wisconsin, and yet, the Government contends that appellants' subsequent sale in the Western District of Wisconsin of a part of this distress gasoline involved in appellants' purchasing programs, should be considered as an overt act for the purpose of giving jurisdiction to the United States District Court for the Western District of Wisconsin. It is my belief that no such sale can rightfully be considered as an overt act within the accepted meaning of those words, because the alleged conspiracy was "effectuated" and completed with respect to the gasoline thus sold in Wisconsin long before such gasoline was sold or offered for sale in Wisconsin. The indictment does not allege, the Government does not contend, and the evidence does not disclose, that these sales in Wisconsin had any effect whatever on the raising, fixing, or maintaining of gasoline prices in Wisconsin, or elsewhere. These effects were alleged and conceded to be caused by appellants' two purchasing programs which resulted in eliminating from immediate sale all distress gasoline on the tank car spot markets.

It is said that the Trenton Potteries case, supra, is authority for basing jurisdiction on sales. It must be remembered, however, that the conspiracy there was a sales conspiracy; that the defendants owned and controlled practically all of the product in the United States; and that by reason of that fact they were able to and did fix the price below which they had agreed not to sell any of the product. It is quite obvious that under those circumstances any sale of the product by any of the defendants in compliance with that agreement would be an act in furtherance and execution of the agreement, hence an overt act. In other words, the price was raised, fixed and maintained by the sales.

Here, however, the alleged conspiracy was effectuated by the defendants' purchases, and was in no manner furthered or effectuated by their subsequent sales or their sales contracts. The alleged crime would have been as completely and effectually proved under this record without the proof of appellants' sales as it was with such proof.

It is suggested by appellee that the indictment alleges an intention and purpose on the part of the defendants to profit by the general rise in price levels over the entire area, which was caused by their unlawful purchasing programs. We would have assumed this even without such an allegation, but it adds no force to appellee's argument. Suppose appellants had sold no gasoline in Wisconsin during the indictment period, would appellee contend that the venue would have been properly laid in Wisconsin? It has not so contended, and we doubt that it would, because there would have been no overt act in Wisconsin. However, the alleged crime was committed and proved regardless of such sales; and its effect was to raise the price levels over the entire Mid-Western area, including the Western District of

Wisconsin. The overt acts were those in furtherance and execution of the buying programs, and none of them was performed in Wisconsin. It is well settled that the venue must be laid in the district where the conspiracy was entered into, or in a district where some overt act was committed, and not in any district where the effect of the conspiracy was merely sensed.

It is further suggested that appellants concede that if defendants' sales were in pursuance of the conspiracy, they should rightfully be considered as overt acts. This record does not disclose that appellants made such concession. Moreover, the court is not bound by an erroneous concession as to the law, if made by either party or both parties. The conclusion of the majority opinion is no doubt based on what the opinion terms as "appellants' two tests for determining whether an act is overt: (1) Was the act in pursuance of the conspiracy; and (2) Did the act tend to achieve and advance the objects of the conspiracy?" Of course, those tests were relied on by appellants, and their soundness cannot be questioned, for they are supported by an unbroken line of decisions covering many years. These tests, however, are not to be considered separately sufficient. The overt act must meet both tests, and this was appellants' contention both in brief and in argument.

Appellee seems to proceed on the theory that the indictment charged a conspiracy to sell, merely because it is alleged that defendants intended to, and did afterwards, sell the gasoline which they had purchased unlawfully. This language constituted no effective part of the illegal conspiracy and was not described in the charge. It was merely a voluntary recital of what the defendants expected to do with the gasoline which they might illegally purchase. In any event, such sales would not be illegal because it is not alleged, proved, or contended that such sales had any effect whatever upon the sales price.

For these reasons, I think the venue of this prosecution was improperly laid in the Western District of Wisconsin, and that the cause should be dismissed.

And afterwards on, to wit, the 27th day of July 1939, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to wit:

And on the same day, to wit, the 27th day of July 1939, the following further proceedings were had and entered of record, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Thursday, July 27, 1939

Before Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge.

(Caption No. 6721.)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Wisconsin, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the judgment of the said District Court as to each of the appellants in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 67, inclusive, contain a true copy of the following proceedings had and papers filed:—Statement of Docket Entries, filed July 21, 1938; Notification by Trial Clerk to Appellate Clerk of filing of Notice of Appeal, filed July 21, 1938; Motion to Consolidate Appeals, filed August 12, 1938, Order of May 15, 1939; Order of May 16, 1939; Opinion filed July 27, 1939, and Judgment entered July 27, 1939; and also references to the pages where certain proceedings had and papers filed in this Court may be found in the Printed Record in this cause filed on February 15, 1939, in the following entitled cause: The United States of America, Plaintiff-Appellee vs. Socony-Vaccuum Oil Company, Inc., et al. Defendants-Appellants, No. 6721, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Tenth day of October A. D. 1939.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1939

Supreme Court of the United States

No. 346. October Term, 1939

Order allowing certiorari

Filed October 16, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 347. October Term, 1939

Order allowing certiorari

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No. 346

In the Supreme Court of the United States

October Term, 1939

United States of America, petitioner
v.
Socony-Vacuum Oil Company, Inc., et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General prays that a writ of certiorari be issued to review a judgment of the Circuit Court of Appeals for the Seventh Circuit reversing and remanding for a new trial the above entitled case.

OPINIONS BELOW

The opinion of the District Court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 27, 1939 (R. 3954). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Rules of Practice and Procedure after verdict in Criminal Cases.

QUESTIONS PRESENTED

The evidence in this case shows that the defendants, who controlled a substantial part of the gasoline industry in ten Mid-western States, combined together for the purpose, and with the effect, of raising and maintaining at controlled levels their selling prices to jobbers and to consumers in that area. This was accomplished by purchasing in concerted programs a substantial part of the "spot" gasoline sold by independent refiners which, pursuant to contracts or marketing practices, fixed the selling prices. The trial court instructed the jury that if it found that the defendants had the power to raise gasoline prices and had combined for that purpose, the restraint of trade was unreasonable and illegal. The principal question presented is whether this instruction was reversible error.[1]

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[1] The opinion of the court below also raises three subordinate questions. These further questions are whether the trial court erred:

1. In the exclusion of evidence.

2. In the manner in which it permitted Government counsel to refresh the recollection of hostile witnesses by the use of transcripts of grand jury proceedings.

3. In permitting certain remarks of Government counsel in closing arguments to the jury.

The court viewed the first question principally as turning upon the main question in the case. With respect to the second question, there is some doubt whether the Circuit

STATUTE INVOLVED

The Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., Title 15, Sec. 1), known as the Sherman Antitrust Act, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

STATEMENT

The respondents, twelve large corporations engaged in the petroleum business and five of their officers or employees, were indicted and convicted in the United States District Court for the Western District of Wisconsin for violating Section 1 of the Sherman Antitrust Act.[2] The Circuit Court

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Court of Appeals found that the District Court committed reversible error. The court expressly declined to determine whether the trial court committed reversible error with respect to the closing arguments, but stated that the remarks were "a very serious obstacle to affirmance of the judgment" (R. 3950).

[2] Four other corporations and twenty-five other individuals were also convicted by the jury (R. 2433, 2434). Of these, the trial court granted new trials to fifteen individuals and

of Appeals for the Seventh Circuit upon appeal reversed the judgments of conviction and remanded for a new trial.

The indictment (R. 2–18) charges a combination and conspiracy to raise, fix, and maintain the wholesale and retail prices of gasoline sold in ten Mid-Western states, referred to herein as the Mid-Western area, during the years 1935 and 1936. It alleges, in substance, that gasoline prices, both wholesale and retail, in the Mid-Western area are controlled by Mid-Continent and East Texas spot market prices, and that the defendants combined and conspired together to raise and fix the spot market prices and thereby to raise and fix gasoline prices in the Mid-Western area by artificially bidding up and maintaining the prices of gasoline on the spot markets through the operation of two concerted gasoline buying programs in the Mid-Continent and East Texas fields.

The evidence as to the marketing structure in the Mid-Western area[3] is virtually undisputed.

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three corporations (R. 2491) and ordered judgments *non obstante veredicto* for ten individuals and one corporation (R. 2490). The validity of the orders for judgments *non obstante veredicto* is now before this Court in the case of *United States of America* v. *Honorable Patrick T. Stone, United States District Judge for the Western District of Wisconsin*, No. 48, this Term.

[3] The Mid-Western marketing area, as known in the oil industry, is composed of the ten states of North Dakota, South Dakota, Minnesota, Iowa, Missouri, Kansas, Illinois, Wisconsin, Michigan, and Indiana (R. 176–7). Over 21% of all the gasoline sold in the United States in 1935 was sold

The defendant oil companies[4] sold about 85%, and the respondents about 54%, of all the gasoline consumed in the Mid-Western area.[5] The remaining 15% of the gasoline sold in that marketing area was refined by small refiners, known as independent refiners, located in the Mid-Continent and East Texas oil-producing fields.[6]

During the period covered by the indictment and for several years prior thereto the defendant companies sold a substantial portion of their gasoline to jobbers[7] under contracts which provided that the price to be paid by the jobber should be determined upon the basis of so-called tank car spot market quotations appearing daily in two trade journals, the Chicago Journal of Commerce and Platt's Oilgram.[8]

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in those states, amounting to almost 5,000,000,000 gallons, and over 25%, amounting to nearly 5,500,000,000 gallons, was sold in 1936 (Ex. 947 (R. 3639); R. 188).

[4] All of the companies are known as major or semi-major companies because they are fully or semi-integrated, combining the functions of production, transportation (by pipe line), refining, and distribution (R. 185, 186, 188; Exs. 1028 (R. 3812), 947 (R. 3649)).

[5] R. 186, 188, 3915; Exs. 947 (R. 3639), 1028 (R. 3812).

[6] R. 187, 188.

[7] A jobber is a middleman who purchases gasoline in tank car lots, generally from refiners, and owns storage or bulk plants from which he delivers gasoline in tank wagons or trucks to retail service stations owned or operated by him or by retail dealers, or directly to large consumers (R. 185, 188, 226, 236, 239, 243, 294, 305).

[8] R. 188, 189; Exs. 618–621 (R. 3031–42), 624–627 (R. 3046–57), 1028 (R. 3813–14).

Apart from sales to jobbers and to large consumers, the defendant companies marketed the rest of their gasoline through service stations, some of which they owned and operated themselves and some of which were independently owned and operated.[9] During 1935 and 1936 retail gasoline prices in the Mid-Western area were also determined by the spot market quotations published in the two trade journals.[10]

The quotations in the journals upon which the Mid-Western jobber and retail prices were based purport to represent the range of prices paid for each grade of gasoline in spot-market transactions in the Mid-Continent fields.[11] Spot market transactions are day to day sales, generally to jobbers, at refineries for delivery immediately or at a specified time in the future.[12] Substantially all of the gasoline which is sold on the spot market is sold by independent refiners, the gasoline so sold constituting only from 5% to 7½% of all the gasoline sold in the Mid-Western area.[13]

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[9] R. 185–6, 253–4; Ex. 1028 (R. 3813–14).

[10] The evidence showed that Standard Oil Company (Indiana) was known as the market leader in the Mid-Western area (R. 176, 800). It posted its normal retail service station prices throughout the area, and all retail distributors, whether independent or owned or controlled by jobbers or refiners, customarily followed those prices (R. 176, 252, 254, 291, 325, 328). Prior to the indictment period Standard adopted the policy of determining those retail prices by adding a fixed differential for distribution costs to the spot market tank car quotations appearing in the Journal of Commerce and Platt's Oilgram (R. 1233–35). This policy was continued in practice throughout most of the indictment period so that during that time the differential between the spot market tank car prices as published in the journals and the normal retail prices of retail distributors, exclusive of taxes and transportation costs, was almost invariably 5½¢ (R. 251, 279, 290, 800).

[11] R. 190; Ex. 730 (R. 3200).

It therefore appears that during the indictment period the prices at which the defendant companies sold the great bulk of their gasoline in the Mid-Western area were directly controlled and determined by prices in spot-market sales by independent refiners of gasoline amounting to not more than 7½% of all the gasoline sold in the ten-state area.

Respondents, with immaterial exceptions, admitted in the Circuit Court of Appeals that they participated in a concerted program for the purchase of gasoline from independent refiners in the Mid-Continent fields at "going market prices" from March 1935 to May 1936 for the purpose of stabilizing the tank-car market.[14] The real purpose and practical effect of the buying program was, however, sharply contested by the respondents. The evidence relied upon by the Government may be summarized as follows:

The program was organized at a series of meetings held during the first three months of 1935. At the first meeting a committee called "The Tank Car Stabilization Committee" was appointed to consider "ways and means of establishing and maintaining a strong tank-car market on gasoline."[15] After "the effect of lower tank-car markets for gasoline on the retail price structure was discussed" by the committee, a buying program was proposed, and the committee, with one exception, "unanimously agreed that a continuous purchasing program was necessary" and "that the most efficient method to handle the situation would be for individual major purchasers to arrange with individual small refiners to keep their surplus off the open market."[16]

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[12] R. 189, 244, 624, 1004–05.

[13] R. 189, 736–7, 797–9.

[14] R. 3918–3919.

Surveys submitted at the meetings showed that sixteen or seventeen independent refiners in the Mid-Continent fields had each month surplus gasoline totalling from 600 to 700 cars.[17] Each of the defendant companies represented at the meetings elected to take one or more of the independent refiners as "dancing partners" and to "assume responsibility for their surplus."[18]

It was contemplated that the Tank Car Stabilization Committee should meet monthly to receive surveys of surplus gasoline appearing on the market each month and to pass the information on to the defendant companies.[19] A mechanical subcommittee of three was appointed to act as a clearing house between the independent refiners and the defendants in their purchasing activities, and to provide for the disposal to the defendants of surplus gasoline not anticipated in the monthly surveys.[20] The subcommittee was also "to guide and control periodically the prices to be paid" by the buying companies.[21]

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[15] Ex. 376 (R. 2977); R. 1168–70.

[16] Exs. 173 (R. 2731); 177 (R. 2733); R. 1178–85.

[17] R. 367, 1179, 1187, 1189, 1196–97.

[18] Ex. 376 (R. 2978); R. 369, 371–2, 384, 1187–88, 1196–97.

[19] R. 1182–83, 1194, 1199, 1219.

The independent refiners who sold to the defendants in the program were named in the indictment as co-conspirators. They met with the defendants at these meetings and agreed to cooperate.[22] It was understood between the defendants and independent refiners that the defendant companies would purchase the independents' surplus gasoline at the low quotations of the trade journals and that the independent refiners would then advance their prices to their regular trade, which prices would in turn be reported in the journals.[23] Surplus gasoline was defined as all gasoline which could not be sold at "going market prices."[24] Thus, in effect, the defendant companies, with their combined purchasing power almost unlimited, placed themselves in the position of insurers to buy up all gasoline which the independent refiners could not sell to their regular trade at prices at or above the market level which the defendants were seeking to maintain in the journals.

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[20] R. 1189–90, 1195, 1199, 1219; Ex. 681 (R. 3111).

[21] Ex. 376 (R. 2977).

[22] R. 362, 401–4, 1192–95, 1703–05; Exs. 137 (R. 2725–26), 176 (R. 2732).

[23] R. 404, 407.

[24] R. 385–6, 642.

The program commenced operation on March 7, 1935.[25] From then until April 1936 the defendants made regular purchases each month under the program, of gasoline, from the independent refiners.[26] This constituted from 34% to 51% in 1935 and from 38% to 57% in 1936 of all the gasoline sold on the spot market by the Mid-Continent independent refiners named as conspirators in the indictment, and from approximately 20% to somewhat over 30% during both years of all the gasoline sold on the spot market by twenty-nine independent refiners in the Mid-Continent fields.[27] The purchasing operations of the defendants were carefully supervised and controlled by the two committees previously mentioned, each of which met at frequent intervals to carry out its functions.[28] There was substantial evidence to show that the mechanical subcommittee functioned to "guide and control" the purchase prices "on an ascending market" during the periods when the market advanced.[29] The defendant companies reported monthly the volume of purchases and prices paid in the course of the program.[30]

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[25] R. 1199–1200, 1706.

[26] R. 396–7, 400, 432–4, 1219, 1776–77; Exs. 230–232 (R. 2823–27), 747 (R. 3271), 812A–814B (R. 3303–10).

[27] R. 189; Ex. 1023 (R. 3808).

[28] R. 391–5, 396–7, 399–400, 444–5, 448–55, 1199, 1205–06, 1207, 1208, 1216; Exs. 101 (R. 2702), 240 (R. 2835).

[29] Between March and June 1935, when the price level was advancing, the committee recommended from five to eight advances in purchasing prices (R. 410–1, 412, 416, 500). After

There was also substantial evidence that the defendants, through the instrumentality of a trade association of independent refiners selling on the spot market in the East Texas field, also operated a buying program in that field in which they purchased from 600 to 700 cars of gasoline each month from independent refiners at going market prices in order to prevent that gasoline from moving into the Mid-Western area and competing with gasoline from the Mid-Continent fields.[31]

Simultaneously with the beginning of the operation of the buying programs, spot-market prices started an upward march with advances of from ⅛¢ to ¼¢ occurring at least once every fourteen days until June 1935, when they had advanced approximately 1½¢ per gallon.[32] From June until the end of 1935 prices were practically frozen at the levels attained and there were only two price

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the committee's last price recommendation in 1935 there were no further advances that year in the market (R. 459–460). In January 1936, when the price of crude oil advanced, another price increase was recommended, and prices again advanced (R. 411, 459–60; Ex. 376 (R. 2978).

[30] Exs. 102 (R. 2703), 103–118 (R. 2704–16), 450 (R. 2985), 490–508 (R. 3000–16).

[31] R. 566–602, 632–64, 1708–27; Exs. 14, 15 (R. 2615–17), 17 (R. 2619), 36 (R. 2635), 40 (R. 2636), 54–68 (R. 2638–52), 69 (R. 2658), 305 (R. 2956), 358–359 (R. 2974), 432 (R. 2984), 442 (R. 2985), 482, 483 (R. 2996), 487, 488 (R. 2997–98).

[32] See defendants' Exhibits 679–680 for identification for the price trend during the indictment period (R. 3105–09).

declines throughout the rest of the year, both of short duration and accounted for by temporary let-ups in the buying under the programs.[33] Retail prices throughout the Mid-Western area, since they were tied to the spot-market prices, also advanced proportionately and were held at a proportionately high level.[34]

The inflexibility of the market was unparalleled in the history of the industry.[35] The price advance occurred in the face of very adverse weather conditions with consequent slow jobber demand on the spot market.[36] After the advances were established the market was completely unresponsive to normal fluctuations in jobber demand. No change of note occurred in the fall of 1935 although consumer demand for gasoline dropped off with the end of the high consuming season and the approach of winter.[37] Prices not only failed to decline but actually advanced during the winter of 1935-1936, which was "the most unfavorable winter for gas-

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The trend of prices in these charts is identical with the trend in other charts introduced in evidence by the defendants. See, for example, defendants' Exhibit 1024 (R. 3805).

[33] R. 1862-63; Exs. 197 (R. 2780), 269 (R. 2885), 280 (R. 2918), 281 (R. 2921).

[34] Ex. 674 (R. 3097).

[35] R. 223, 238, 247-8, 280-2, 317.

[36] Exs. 682 (R. 3112), 684 (R. 3114), 688 (R. 3118), 689 (R. 3119), 692 (R. 3122).

[37] Exs. 270 (R. 2888), 271 (R. 2891), 272 (R. 2894), 277 (R. 2909), 278 (R. 2912), 694 (R. 3124).

oline consumption that the industry has seen in years." [38]

There was substantial evidence to show that the buying programs were the direct and immediate cause of the price rise and the phenomenal rigidity in the market. The rise in the market correlated significantly with the price recommendations of the mechanical subcommittee.[39] Representatives of the defendants repeatedly attributed the price rise and stability in the market to the purchasing activities of the defendants.[40]

The foregoing discussion demonstrates that there was substantial evidence to show (1) that the defendants, controlling 85% of the gasoline business in the Mid-Western area, engaged in the buying programs for the purpose of raising and maintaining the prices at which they sold their products; (2) that the defendants controlled the spot-market prices, upon which their own prices were based, by reason of the cooperation supplied by the independent refiners and of the defendants' power and willingness to purchase all spot-market gasoline necessary to raise and maintain prices; and (3) that prices, in fact, advanced and remained phenomenally rigid for many months as a result of the buying programs. The defendants, on the other hand, offered evidence designed to show (1) that they did not combine together for the purpose of controlling prices; (2) that their purchasing activities were confined to "distress" material, the removal of which did not suppress normal competition on the spot markets; and (3) that the rise in prices and subsequent rigidity were caused by factors other than the buying programs.

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[38] Ex. 706 (R. 3137).

[39] There were 7 advances in the prices of both regular and third-grade gasoline during the period from March 7, 1935, when the Mid-Continent program started operation, and June 1935 when prices finally leveled off. During this period the mechanical subcommittee recommended from 5 to 8 advances in the purchasing prices (*supra*, p. 10, footnote 29). The committee, as we have seen (*ibid.*), made no further recommendations in 1935 after June 1. Market prices remained rigid from June to December.

[40] Exs. 22 (R. 2624), 40 (R. 2636), 218 (R. 2819), 251 (R. 2846), 253 (R. 2852), 254 (R. 2855), 268 (R. 2882), 271 (R. 2891), 273 (R. 2897), 276 (R. 2906), 277 (R. 2909), 682 (R. 3112).

The District Court submitted to the jury these contested issues as to the purpose, power, and effect of the combination by instructing the jury that it might find the defendants guilty if, but only if, it found (1) that the defendants had the power to raise gasoline prices, and (2) that they had combined for that purpose as charged in the indictment. We set forth an illustrative portion of the charge in a footnote.[41] Insofar as the court instructed the jury that the combination was illegal if the parties thereto had the purpose and power to raise prices, the court applied to the circumstances of this case the holding of this Court in *United States* v. *Trenton Potteries Co.,* 273 U. S. 392, that an agreement by members of a combination controlling a substantial part of an industry to fix and maintain uniform minimum selling prices is unlawful *per se.*

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[41] "If you find that the defendants, and those acting in concert with them, controlled the greater part of the gasoline sold in the ten Middle Western States, and had the power to raise the price of that gasoline, and that the defendants and these other persons acting with them had knowingly engaged in a combination to raise or fix the price to be charged

The Circuit Court of Appeals held that the *Trenton Potteries* case was inapplicable here, and that the District Court's instruction was erroneous.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the trial court erroneously charged the jury that if it found that the defendants had the power to raise gasoline prices and that they combined for that purpose as charged in the indictment the restraint of trade was as a matter of law unreasonable and, therefore, unlawful.

(2) In holding that the decision of *United States* v. *Trenton Potteries Co.,* 273 U. S. 392, is inapplicable to the case at bar.

(3) In holding that the trial court failed to submit to the jury the question of the nature and extent of the effect of the combination upon competi-

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for gasoline to jobbers or consumers in the Mid-Western area as charged in the indictment, then you will understand that these defendants have violated the Sherman Act and are guilty as charged in the indictment." (R. 2405.)

tion on the spot markets and, particularly, upon spot market prices.

(4) In holding that the trial court should have instructed the jury that, even if it found that the defendants in combination had the purpose and power to raise and maintain prices, it might still find the restraint of trade reasonable and, therefore lawful.

(5) In holding that the trial court misdirected the jury.

(6) In holding that the trial court erred in the exclusion of evidence.

(7) In holding that the trial court erred in the manner in which it permitted Government counsel to refresh the recollection of hostile witnesses by the use of transcripts of grand jury proceedings.

(8) In holding that certain remarks of Government counsel in closing arguments were improper and that other remarks, alleged to be improper, were not trivial in effect.

(9) In reversing the judgments of conviction and remanding for a new trial.

REASONS FOR GRANTING THE WRIT

I

This case is one of unusual magnitude and of great public importance. More than three years have been devoted to its prosecution and the trial alone consumed more than three months. The respondents are among the largest companies in the oil industry Their activities under attack in these proceedings covered ten states and directly affected the price of 25% of all of the gasoline sold in the United States. It is in the public interest to have the issues as to the legality of these activities determined by this Court.

II

The case presents a question of manifest importance in the general administration and enforcement of the antitrust laws which should be finally determined by this Court. In *United States* v. *Trenton Potteries Co.,* 273 U. S. 392, this Court held that price fixing by members of a combination controlling a substantial part of an industry was illegal *per se.* The District Court charged the jury in the case at bar squarely in conformity with the rule laid down in the *Trenton Potteries* case and in numerous other decisions of this Court.[42] In the *Trenton Potteries* case the parties agreed upon the specific minimum prices which they would charge for their products, whereas in the present case the agreement was to raise and maintain prices at controlled levels without an express agreement upon specific selling prices. The important question in this case is, therefore, whether the latter type of agreement falls within the ruling in the *Trenton Potteries* case.

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[42] *United States* v. *Trans-Missouri Freight Ass'n,* 166 U. S. 290; *United States* v. *Joint Traffic Ass'n,* 171 U. S. 505; *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211; *Swift and Company* v. *United States,* 196 U. S. 375; *Standard Oil Co.* v. *United States,* 221 U. S. 1; *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553.

The Circuit Court of Appeals did not in terms pass upon this question of law because, as will be shown (*infra*, pp. 22–25), it misunderstood the scope of the issues submitted to the jury by the trial court's instructions. However, its broad holding that the trial court's charge embraced a theory which was "inapplicable here" (R. 3941), its analysis of the cases relied upon by the Government (R. 3924–26), and the parallel which it drew between the case at bar and *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, unite to indicate that the court was of the opinion that, even if the jury found that the defendants in combination had the power to raise and maintain prices and the intent to exercise that power, the jury might still find the combination reasonable and the defendants innocent. Such, at least, is the conclusion which seems inevitably to follow from reading the opinion as a whole and which very likely would be followed by the trial court on a new trial. Such a rule, we submit, cannot be reconciled with the decision of this Court in *United States* v. *Trenton Potteries Co.*, *supra*.

The *ratio decidendi* of the *Trenton Potteries* case, as we understand it, is that an agreement by those controlling a substantial part of an industry to eliminate price competition among themselves for the purpose of raising and maintaining market prices gives rise to such imminent danger of and potentialities for arbitrary enhancement of prices through monopolistic price control that such an agreement falls *per se* within the direct condemnation of the Sherman Act.

In the case at bar the defendants by agreeing to purchase noncompetitively on the spot markets eliminated price competition among themselves just as effectively and fully as under an agreement to sell at uniform minimum prices. In addition to this voluntary elimination of competition among themselves, the combination possessed an objectionable element not present in the agreement in the *Trenton Potteries* case. The defendants also effected an involuntary restraint upon the competition of other purchasers on the spot markets. By purchasing all the gasoline which could not be sold at the designated price, the defendants compelled other purchasers to pay artificially high prices for the spot market gasoline which remained. This voluntary elimination of competition among the defendants and involuntary restraint upon the competition of other purchasers on the spot markets was used by the combination to obtain and exercise the power to enhance and control prices just as clearly and directly as was the simple agreement to fix uniform minimum selling prices in the *Trenton Potteries* case.

The dangers of a harmful exercise of the power thus obtained are even greater than in a combination of the type condemned in the *Trenton Potteries* case. The inflexibility of minimum uniform sales prices, forbidding defensive price adjustments, leaves the parties vulnerable to such outside competition as may exist. There are, moreover, evident practical difficulties in reaching an express agreement upon uniform prices to govern transactions of the future; and, once an agreement is obtained, continued adherence by the parties will be uncertain because of the temptation for the parties to secure a competitive advantage by selling below the prices agreed upon. On the other hand, the flexibility of a combination such as the present one, which does not fix an exact minimum price, but instead exercises a constant control over the price level, gives the parties more freedom to adjust prices to withstand outside competition and to meet the special circumstances which would threaten disruption of a uniform price agreement. Likewise, there must be considered the unusual nature of the marketing structure here, which permitted the parties automatically to raise and maintain their own selling prices simply by purchasing a small amount of gasoline on the spot market.[43] This made unnecessary an express agreement on selling prices and permitted the parties to obtain higher prices without the risk of nonadherence which is present when parties combine by agreement upon uniform minimum prices.

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[43] The purchases in each of the two programs amounted to between 600 and 700 cars per month (*supra*, p. 10, footnote 26; p. 11), which amounted to 134,400,000 gallons per year. In 1935 the defendants whose cases went to the jury sold 3,625,000,000 gallons of gasoline in the Mid-Western area (Ex. 1028, R. 3815). The combination, therefore, entailed a buying commitment on the part of these defendants of less than 4% of their actual sales requirements.

The Circuit Court of Appeals, in concluding that the present case was to be determined by broad tests of reasonableness rather than on the sole test of whether the combination possessed and intended to exercise the power to control prices, relied upon *Appalachian Coals, Inc.* v. *United States, supra,* (R. 3931–32, 3939). In that case this Court declined to restrain the operation of a proposed sales agency agreement under which 137 bituminous coal producers, producing less than 12% of the total coal produced east of the Mississippi River, agreed to market their coal exclusively through a common sales agency. Although this Court found that price competition between the parties to the agreement would be eliminated, the Court repeatedly stressed the fact that there was neither the intent nor power to fix or control market prices. (288 U. S. 344, 373, 374, 375.) We submit, therefore, that this decision, rather than supporting the view of the Circuit Court of Appeals, clarifies the holding in the *Trenton Potteries* case and emphasizes its applicability to the facts in the present case by showing that it is the power to control price, when coupled with the purpose to exercise such control, that renders illegal an agreement eliminating competition.[44]

The holding of the Circuit Court of Appeals that the *Trenton Potteries* case is inapplicable here may virtually destroy the effect of that decision. If generally followed, the ruling may permit a combination to obtain, by methods somewhat different from agreements upon uniform prices but equally direct and effective, the identical power of price control which, when found in a combination to fix uniform selling prices, led this Court to condemn the combination as inherently unlawful.

III

The holding of the Circuit Court of Appeals, that the *Trenton Potteries* case is inapplicable, is interwoven with an interpretation of the District Court's charge to the jury, which, we submit, is clearly erroneous. The Circuit Court of Appeals held that the case should have been submitted to the jury "solely upon the issue of the character of the restraint imposed" (R. 3940–41). In support of its holding the court stated (R. 3932–33) that, since the defendants purchased not more than one-third of the gasoline sold on the spot market, the remaining two-thirds not involved in the program

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[44] Under circumstances where there is power to control the price of the entire market, a situation different from that presented in the *Appalachian Coals* case, the possibility of distressed conditions in the industry (relied upon by the court below) is an argument for a legislative program, not for escape from the provisions of the Antitrust laws.

"was sold on the market as had theretofore been done" and that therefore "it cannot be held that competition on the spot market was eliminated." The court concluded (R. 3933) that "the most that can be said is that the buying programs had an effect on competition, and whether that effect was such as to produce an unreasonable restraint upon commerce, was one of fact."

The Government has no quarrel with the court's conclusion that the extent and nature of the effect of the buying programs upon competition on the spot markets could not be determined as a matter of law but was a question of fact for the jury. Where the court erred was in failing to appreciate that this very question of fact was actually submitted to the jury and determined by it adversely to the respondents' contentions.

The trial court did not instruct the jury that the buying programs were illegal *per se*. On the contrary, as we have seen (*supra*, p. 14), it required the jury first to determine from a consideration of all the surrounding circumstances (1) that the defendants combined together for the purpose of raising and maintaining prices, and (2) that they had the power in combination to effectuate that purpose. We submit that this instruction as to power required the jury to determine precisely what the Circuit Court of Appeals said was a question for the jury, that is, whether, as was claimed by the respondents, the combination merely produced an incidental effect upon the spot markets or whether, as the Government claimed, the defendants by their buying activities actually controlled the spot markets in such a way that they were enabled virtually to fix those prices.[45] Thus, the jury by its verdict determined that the spot market gasoline not purchased by the defendants did not continue, as the Circuit Court of Appeals held, to be "sold on the market as had theretofore been done," but that, although that gasoline continued to be sold to jobbers, it was sold in a market controlled by the defendants and their coconspirators, the independent refiners.

Added indication that the court failed to appreciate that the question, which it conceived was one of fact for the jury, was actually submitted to the jury is shown by its observations on the causes for the price rise and stability in the market. The court stated that while the condition of the market was "a rather convincing circumstance," indicating that the defendants had the power to and did control prices, it was not so convincing in view of the evidence offered by the defendants, which the court recited at some length, to show that prices were not noncompetitive. The court stated (R. 3934) that it cited these circumstances "in emphasis of our conclusion that the effect upon competition and trade produced by the programs in operation was a factual one with plenty of meritorious argument both pro and con." But, here, also, this "factual" question was submitted to the jury and determined by it. The jury was expressly instructed to ascertain the cause for the price rise and subsequent rigidity and to acquit the defendants unless it found that the price increase and its continuance at the level shown by the evidence was caused by the combination.[46]

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[45] We do not consider it necessary to discuss further here the evidence relied on by the Government to show that the entire spot market was rendered noncompetitive by the defendants' programs, since implicit in the court's conclusion that it could not determine the effect on the market as a matter of law is a finding that there was competent evidence before the jury on that question. But we desire to call attention again to the significant evidence concerning the cooperation of the independent refiners (*supra*, pp. 9–10). In charging the jury on the question of power the court instructed the jury to consider also the power "of those acting in concert" with the defendants (*supra*, p. 14, footnote 41).

IV

In addition to its decision upon the principal question involved, the Circuit Court of Appeals also considered certain subordinate questions relating to the exclusion of evidence, the use of transcripts of grand jury proceedings to refresh the recollection of hostile witnesses, and the propriety of remarks by Government counsel in closing arguments to the jury. In the event that certiorari is granted, we shall also urge that the court below erroneously decided or commented upon these subordinate questions.

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[46] The trial court, after outlining the various contentions of the parties as to the factors causing the price rise and rigidity, instructed the jury (R. 2407):

"Now, unless you find from the testimony and believe beyond a reasonable doubt that the said price increased, and its continuance at the level shown by the evidence was caused by an unlawful agreement or combination of the defendants, as alleged in the indictment, and as heretofore defined and explained to you, and not caused by the factors aforesaid, then it is your duty to acquit the defendants and to return verdicts of 'not guilty.'"

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

NEWMAN A. TOWNSEND,
Acting Solicitor General.

AUGUST 1939.

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Nos. 346 and 347

In the Supreme Court of the United States

OCTOBER TERM, 1939

UNITED STATES OF AMERICA, PETITIONER
v.
SOCONY-VACUUM OIL COMPANY, INC., ET AL.

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS
v.
UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 346

UNITED STATES OF AMERICA, PETITIONER

v.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is reported in 105 F. (2d) 809.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 27, 1939 (R. 3953-4). The petition for writ of certiorari in No. 346 and the cross-petition for writ of certiorari in No. 347 were filed in this Court on August 31, 1939. Both petitions were granted on October 16, 1939. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Criminal Appeals Rules.

QUESTIONS PRESENTED

In December 1936 an indictment was returned in the United States District Court for the Western District of Wisconsin charging various corporations and individuals with violating section 1 of the Sherman Act. The jury returned verdicts of guilty against 16 corporations and 30 individuals. The district court granted some of these defendants a new trial upon the ground that there was "good reason to believe" that they had not had "an adequate separate consideration of their defense" (R. 2490), and it granted or purported to grant others judgment *non obstante veredicto*.[1] The remaining 12 corporations and five individuals against whom verdicts of guilty were sustained[2] are the respondents in No. 346 and the petitioners in No. 347. They will be referred to herein as defendants or, when appropriate to distinguish between them and the other defendants brought to trial, as respondents.[3]

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[1] See *United States* v. *Stone*, 60 Sup. Ct. 177.

[2] The trial court fined each of the corporations $5,000 and each of the individuals $1,000 (R. 2501–2).

[3] The names of the corporate respondents and the abbreviated titles by which they will be referred to are as follows:

Socony-Vacuum Oil Company, Inc. (Socony-Vacuum).
Wadhams Oil Company (Wadhams).
Empire Oil & Refining Company (Empire).

On appeal by respondents to the Circuit Court of Appeals for the Seventh Circuit, that court rejected several of the errors assigned and found it unnecessary to pass upon others,[4] but it reversed the judgments of conviction upon the ground that the trial court had erred in its instructions to the jury (R. 3939–41) and in its rejection of certain defense evidence (R. 3941–2),

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Continental Oil Company (Continental).
The Pure Oil Company (Pure).
Shell Petroleum Corporation (Shell).
Sinclair Refining Company (Sinclair).
Mid-Continent Petroleum Corporation (Mid-Continent).
Phillips Petroleum Company (Phillips).
Skelly Oil Company (Skelly).
The Globe Oil & Refining Company (Oklahoma) (Globe).
The Globe Oil & Refining Company (Illinois) (Globe).

The following persons are the individual respondents:

C. E. Arnott, vice president of Socony-Vacuum.
H. T. Ashton, manager of Lubrite Division of Socony-Vacuum.
R. H. McElroy, Jr., tank-car sales manager of Pure.
P. E. Lakin, general sales manager of Shell.
R. W. McDowell, vice president in charge of sales of Mid-Continent.

It should be noted that Wadhams is a subsidiary of Socony-Vacuum (R. 3–4, 2596) and that the two Globe companies are affiliated (R. 726).

[4] It held that the district court had jurisdiction of the proceeding (R. 3942–4), that there was no failure of proof as to any essential allegation of the indictment (R. 3936–8), that there was sufficient evidence to go to the jury that defendants' combination unreasonably restrained trade (R. 3938–9), and that if the district court had committed any error in the admission of evidence, respondents were not prejudiced thereby (R. 3944–5).

The court said that it was unnecessary for it to decide whether denial of respondents' motions for a new trial constituted reversible error (R. 3945) and whether certain remarks of Government counsel in argument to the jury had deprived respondents of a fair trial (R. 3950).

and, *semble,* upon the ground that the Government counsel's use of the transcript of grand jury proceedings to refresh the recollection of certain hostile witnesses constituted prejudicial error (R. 3945-8).

The Government's petition for certiorari (No. 346) presents the following questions:

(1) Whether the District Court erred in instructing the jury that if it found that the defendants had combined for the purpose of raising and fixing gasoline prices in the manner charged in the indictment and that the defendants had the power so to raise and fix prices, their restraint of trade was unreasonable and unlawful.

(2) Whether the district court erroneously excluded material, relevant evidence.

(3) Whether Government counsel's use of transcripts of grand jury proceedings to refresh the recollection of hostile witnesses constituted error and, if so, whether this was prejudicial error.

(4) Whether any remarks by Government counsel in argument to the jury had the effect of depriving respondents of a fair trial.

The additional questions presented by respondents' cross-petition (No. 347) are:

(5) Whether the indictment charges and the evidence establishes an offense within the jurisdiction of the United States District Court for the Western District of Wisconsin.

(6) Whether there was a variance between the indictment and the proof constituting a failure of proof.

(7) Whether there was sufficient evidence to go to the jury that defendants' combination unreasonably restrained trade.

(8) Whether denial of respondents' motions for new trial violated any right of jury trial guaranteed by the Constitution.

STATUTE INVOLVED

Section 1 of the Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., title 15, sec. 1), known as the Sherman Act, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

STATEMENT

A general outline of the conspiracy and of the underlying industrial facts pertinent thereto

This case involves an alleged conspiracy on the part of major oil companies selling 85% of all gasoline sold in a marketing region in the Middle West, known in the oil industry as the Mid-Western area,[5] to raise, fix, and maintain gasoline prices in that area. The gist of the conspiracy charged is that gasoline prices in the Mid-Western area are directly based upon and determined by the price of gasoline on the Mid-Continent spot market; that the defendant major oil companies, in order to raise gasoline prices in the Mid-Western area, agreed among themselves and with the independent refiners in the Mid-Continent oil field[6] to buy from these refiners under such circumstances as to price and volume and source of purchase that this buying and the resulting curtailment of the spot market supply would raise Mid-Continent spot market prices to the level desired by the defendant major oil companies and would maintain them thereat once this level had been reached.

The conspiracy also involved a like program of concerted buying by defendant major oil companies from independent refiners in the East Texas oil field, for the purpose of bringing about price increases and price levels on the East Texas spot market corresponding to those achieved, through artificial buying support, on the Mid-Continent spot market. The reason for engaging in this supplementary and auxiliary East Texas buying program was that the tank car freight rate on gasoline shipments from the East Texas field [7] to points in the Mid-Western area is only about ⅛¢ a gallon higher than from the Mid-Continent field (R. 358, 733). Accordingly, if East Texas spot market prices consistently remained more than ⅛¢ a gallon below Mid-Continent spot market prices, jobbers in the Mid-Western area who ordinarily purchased on the Mid-Continent spot market would turn to the East Texas spot market as a source of supply, with a resulting depressing effect on Mid-Continent spot market prices. The East Texas buying program thus constituted an important and almost necessary step to assure the success of the combination to raise and control Mid-Continent spot market prices and, in turn, wholesale and retail prices in the Mid-Western area.

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[5] The area consists of 10 States, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin. The Mid-Western area is also frequently referred to as Standard of Indiana territory, Standard Oil Co. (Indiana) being the price leader in the ten States in question.

[6] This oil field is located in Oklahoma, southeastern Kansas, southern Arkansas, northern Louisiana, and northern and western Texas (R. 181).

Before describing the conspiracy in further detail, certain facts concerning the major oil companies' marketing operations in the Mid-Western area and concerning the gasoline price structure therein should be set forth, since it is only against a background of these facts that a clear picture of the character and effect of the defendants' conspiracy can be obtained. It should be understood that the facts about to be stated refer to those existing in the Mid-Western area during the period of the conspiracy charged in the indictment, February 1935–December 1936, and that the word "majors", used as a noun, will mean the defendant major oil companies.

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[7] This is a highly productive field 50 miles long and 10 miles wide located in the middle eastern part of Texas (R. 181, 1114).

A major oil company is one whose operations in the petroleum business are fully integrated. It produces crude and owns pipe lines for shipping the crude to its refinery or refineries located near a region of large consumption (R. 185–6, 996). It also has both the physical facilities and the contractual relationships requisite for effectively marketing, at retail and at wholesale, the gasoline output of its refineries.

The majors sell most of their gasoline through retail service stations (R. 1379). To supply these stations, the majors maintain bulk storage plants adjacent to local marketing areas. Gasoline is shipped by tank car or tank truck (called tank wagon) from the major's refinery to one of its bulk storage plants and is then delivered by tank trucks to service stations (R. 185). During the greater part of the indictment period the majors owned and operated many of these stations, but with the advent of chain store taxation in certain States they quite generally adopted the policy of leasing their stations to others (R. 177, 253–4, 1233). However, these and other so-called "independently operated" service stations usually handle exclusively the products of just one supplying major, carry its insignia, receive various free services from it, and the price which they pay for the gasoline handled is the tank-wagon price fixed by the supplying major (R. 253, 1380). Generally speaking, therefore, each major retains control over the retail price of its gasoline.

Standard Oil Company (Indiana), hereinafter referred to as Standard of Indiana, is the price leader throughout the Mid-Western area (R. 176–7, 800–1).

It has been customary for retail distributors, whether independent or owned or controlled by majors, to follow Standard of Indiana's posted retail prices (R. 176, 252, 254, 291, 325, 328). Its posted retail price in any given locality in the Mid-Western area is computed by taking the Mid-Continent spot market price and adding thereto the tank car freight rate from the Mid-Continent field, taxes, and 5½¢ (R. 1234–5), the 5½¢ being the equivalent of the customary 2¢ jobber margin and 3½¢ service station margin (R. 253).[8] Thus the retail price structure throughout the Mid-Western area during the years 1935 and 1936 was based upon the Mid-Continent spot market quotations (R. 1234–5, 1252–4).

Standard of Indiana's posted retail prices are regarded as the "normal" retail prices and all lower retail prices are regarded as "subnormal" (R. 1237). When service stations handling gasoline other than that of majors sell at subnormal prices and compel Standard of Indiana or other majors to reduce their prices to meet this competition, prices are restored to "normal" (i. e., to prices bearing a fixed relationship to the Mid-Continent spot market price) as soon as the competition ends (R. 1244). What is even more striking, when subnormal prices prevail in a given locality and Standard of Indiana raises or lowers its "normal" price, the subnormal price rises or falls by a corresponding amount (R. 1255).[9]

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[8] Because of the impracticability of changing retail prices on account of small or temporary fluctuations in spot market price, Standard of Indiana changes its retail prices only if there has been a change of 3/10¢ in the spot market price, continuing for at least seven days (R. 1235).

Apart from service station sales, sales to jobbers constitute the next most important outlet for the majors' gasoline (Ex. 1028, R. 3813-4). The Mid-Continent spot market fixes the price in these sales even more directly and definitely than in the case of service station sales.

The jobber performs the function of middleman or wholesaler. He maintains bulk storage plants, purchases gasoline in tank-car lots for shipment to his storage plant, and then resells to service stations, making delivery by tank wagon (R. 185). Most of the jobbers purchase their gasoline from a major. A few purchase from independent refiners. If the jobber purchases from a major he is compelled to enter into a contract running for a year or longer which requires him to purchase his supplies exclusively from the contracting major.[10] *Over 85% of the majors' jobber contracts provided that the price of gasoline sold thereunder should be the Mid-Continent spot market price on the date of shipment,* the contracts further providing that this spot market price was to be determined by averaging the high and low spot market prices reported in the Chicago Journal of Commerce and Platt's Oilgram or by averaging the high and low prices reported in the Journal alone (R. 339–40).[11] The contracts also contained provisions which had the effect of partially protecting the jobbers' customary 2¢ margin.[12]

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[9] The underlying reason for thus basing prices on the Mid-Continent spot market is because the price in this market determines the cost of most of the competitive gasoline (i. e., gasoline other than that of majors) sold by service stations, the Mid-Continent independent refiners being the principal source of supply for such competitive gasoline (R. 1233-4).

[10] Respondents in their brief in the court below (Appendix A, pp. 9-10) conceded that the majors' jobber contracts covered "all the jobber's requirements of gasoline for a year or more." The present record contains for the most part only the *price* provisions of typical jobber contracts. See, however, R. 999; Exs. 615 (R. 3022), 624 (R. 3046), 625 (R. 3051).

The majors market about 85% of all the gasoline sold in the Mid-Western area, the remaining 15% being the product of Mid-Continent or East Texas independent refiners.[13] Since the latter sell only one-third to one-half their output on the spot market, the Mid-Continent and East Texas spot markets account for only 5% to 7½% of the gasoline consumption in the Mid-Western area (R. 189). With wholesale and retail prices in this area based upon the Mid-Continent spot market, the price structure is a kind of inverted pyramid and an increase in the Mid-Continent spot market price brings a corresponding increase in price in transactions at least 13 times greater in volume. The majors, who do 85% of the business in the Mid-Western area, are the ones who principally profit or lose when price changes on the Mid-Continent spot market occur.

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[11] The contracts do not use the word "Mid-Continent." Most of them define the price to be paid as the "f. o. b. Group 3, Oklahoma," spot market price published in the trade journals. A few contracts define the price to be paid as the "f. o. b. Group 3" spot market price published in the Chicago Journal of Commerce (Exs. 615 (R. 3032), 616 (R. 3029), 623 (R. 3043), 624 (R. 3048)). Group 3 is a freight rate district covering the most productive portion of the Mid-Continent field, the freight rate being the same from any point within Group 3 to the same northern destination (R. 184, 734, 1398).

The contracts referred to Group 3 spot market prices because the prices in the trade journals are quoted on this basis. The Chicago Journal of Commerce publishes spot market price for Group 3 (R. 401, 1661). Platt's Oilgram publishes spot market prices for refinery districts, the Oklahoma district being the equivalent of Group 3 (R. 733, 1576, 1661). For convenience, the prices thus quoted will be referred to herein as the Mid-Continent spot market prices reported in the trade journals.

[12] The usual provision was that if Standard of Indiana's "normal" service station price at point of destination was not 5½¢ a gallon greater than the price to the jobber so determined, plus the freight rate from the Mid-Continent field to point of destination, the price to the jobber should be reduced by one-half the difference. In some of the contracts, the major assumed the full amount of the difference. See Exs. 618–621, 623–640; R. 3031–80.

Of the 5½¢ margin, 3½¢ represented the customary service station margin. See Exs. 631 (R. 3064), 638 (R. 3077).

As to the means adopted by the majors to raise spot market prices—the purchase by them of a large proportion of the output of independent refiners—the defendants made no serious attempt to show any legitimate business reason for the acquisition of most of this gasoline. With two or three possible exceptions,[14] the various majors had excess refining capacity, that is, they could refine more gasoline than they were able to market (R. 999), and their large gasoline storage facilities (R. 1010, 1013, 1028) enabled them to draw upon inventory to meet unexpected increases in demand. It is not surprising, therefore, that the majors when they formed their combination expressly recognized that the purchases from independent refiners which they agreed to make would be a "burden," although it was also recognized that this burden, being distributed among them all, would not be serious as to any one major (Ex. 376, R. 2978).[15]

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[13] R. 188, 1084. In 1935 the majors' sales were a little over 82% of total consumption. Exs. 947 (R. 3639), 1028 (R. 3813).

[14] Pure's crude production exceeded its refining capacity and it therefore contracted with certain major oil companies to have them refine part of Pure's crude, Pure paying for this service and receiving the gasoline so refined (R. 1134–5, 1146). Sinclair and Skelly may have also been unable to refine their full market requirements. In 1935 and 1936 Sinclair's purchases were about 7% to 9% of its sales (Ex. 879, R. 3465) and Skelly's were about 8% to 10% of its sales (R. 853).

The nature of the Mid-Continent spot market prices which the trade journals report requires some explanation. Prices reported were the maximum and minimum prices at which gasoline was sold to jobbers[16] f. o. b. Group 3 (i. e., f. o. b. a refinery in the Mid-Continent field, see *supra,* note 11, p. 11), in a sale for immediate or prompt delivery, at a definite price for the particular transaction agreed upon at time of sale (R. 731–4, 769–70). Majors sell very little gasoline to jobbers on this spot basis and the spot market prices published in the trade journals are based entirely upon sales by independent refiners (R. 189, 735–7, 792).

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[15] Most of the defense evidence on gasoline purchases by majors is not informative because it does not show sources of purchases over a period of years. An exception is Ex. 739 (R. 3226–9), which gives Pure's purchases for the years 1931–1936 (a) from Mid-Continent and East Texas independent refiners and (b) from all other sources. It shows that while Pure's purchases from all other sources remained relatively substantial and stable, its purchases from independent refiners were nominal prior to 1934, averaged about 400,000 gallons a month in 1934 (when certain major company buying programs were temporarily in effect, *infra*, p. 38), and averaged during the conspiracy period over 1,000,000 gallons a month for the last 10 months of 1935, and over 1,400,000 gallons a month for the year 1936. [The averages stated are computed from the figures set forth in Ex. 739.]

[16] Quotations in Platt's Oilgram are based solely on sales to jobbers; those in the Chicago Journal of Commerce are based on sales to jobbers and to industrial consumers (R. 1656).

Independent refiners are companies engaged solely in refining gasoline and having no pipe lines or distribution outlets of their own (R. 185, 996). Their refineries, unlike most of those of majors, are located in an oil-producing field and they market their gasoline by selling it f. o. b. the refinery in tank-car lots (R. 183, 185, 996–9). They supply the jobbers who do not operate under exclusive-dealing supply contracts with majors and, through the medium of these jobbers, they supply the service stations which sell gasoline other than that of majors (R. 188, 204). From one-half to two-thirds of their output is sold to jobbers under supply contracts[16a] and these contract sales are not considered spot market sales (R. 189, 732).[17]

The conspiracy and the most important facts concerning the business involved in or affected by the conspiracy have now been outlined. Two things should be noted at this point. First, the business facts heretofore stated are not, as we understand, substantially disputed by respondents. Second, our statement of the conspiracy has ignored the concluding allegations of paragraph 24 of the indictment that the trade journals were guilty participants in the conspiracy, for the reason that these allegations were not sustained by the proof. They will be discussed later (*infra*, pp. 138–145) in answering respondents' contention, which the court below rejected (R. 3936–8), that these allegations of paragraph 24 were essential elements of the offense charged and [illegible] the failure to prove them therefore constituted a fatal failure of proof.[18]

[16a] These jobbers supply contracts, like the jobbers supply contracts made by majors, generally provided that the price to be paid by the jobber should be based upon the spot market prices reported in the trade journals. Respondents expressly so conceded in their brief (p. 12) in the court below.

[17] Independent refiners also sell to brokers. Since brokers buy for resale to jobbers or consumers at the spot market price, brokers will purchase only if they can buy at ⅛¢ to ¼¢ below the spot market price (R. 175–6, 178, 746). Independent refiners, of course, also sell to majors when and if the latter are willing to buy from them.

The formation, nature, and objectives of the Mid-Continent buying program

The conspiracy for which respondents were convicted had its inception in a meeting held in Chicago on January 4, 1935, called by respondent Arnott, a vice president of Socony-Vacuum, and attended exclusively by representatives of major oil companies (R. 1167–9).

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[18] The indictment named as defendants, in addition to the majors marketing gasoline in the Mid-Western area and various officers and employees of these majors, the corporation publishing the Chicago Journal of Commerce and its petroleum editor, the corporation publishing Platt's Oilgram and its president, and a third corporation, affiliated with the Oilgram, which published a weekly compilation of spot market prices (R. 4–5, 7). The last sentence of paragraph 24 alleges that these five defendants, for the purpose of aiding the other defendants in effectuating the conspiracy set forth in the indictment, knowingly published as spot market prices the very prices which the majors paid in their concerted buying from Mid-Continent and East Texas independent refiners (R. 16–7).

One of the trade journal defendants (Fanshier) was not brought to trial (R. 73–4) and at the close of the Government's case the indictment was dismissed, on motion of the Government, as against the other four trade journal defendants (R. 902, 2471–2).

The Government's position as to these allegations of paragraph 24 is that they were superfluous except with reference to the guilt of the particular trade journal defendants (*infra*, pp. 138–145).

The meeting was one of a series called to consider elimination of retail price wars,[19] but at this meeting those present saw fit to embark upon a discussion of the desirability of raising spot market prices and the whole level of gasoline prices in the Mid-Western area.[20] Arnott appointed a committee, which was later called the Tank Car Stabilization Committee, consisting of one representative of each of eight majors, to consider "ways and means of establishing and maintaining an active and strong tank car market on gasoline."[20]

The Tank Car Stabilization Committee and certain additional representatives of majors held meetings on February 5, 1935, and February 11, 1935 (R. 1178–9, 1186), and at these meetings the conspiracy now before this Court was formed. Defendant Bourque, secretary of a trade association of Mid-Continent independent refiners,[21] came to the first meeting with a compilation listing the independent refiners currently producing socalled "distress" or "surplus" gasoline and the amount of each such refiner's "surplus" production (R. 1179). At the second meeting a revised compilation prepared by Bourque was presented and discussed (R. 1187). It was agreed that the majors would embark upon a continuing program to lift all such gasoline off the market and that, to accomplish this, each would purchase the "surplus" of one or more specified independent refiners, these purchases to be made at what the majors termed the "fair going market price."[22] Bourque was to report at the beginning of each month the estimated "surplus" which Mid-Continent independent refiners would produce during the coming month (R. 1190, 1195, 1218). A committee of three (called the mechanical subcommittee) was appointed to supervise and direct the buying program and to advise the majors as to the prices which they should pay in carrying out their commitment to purchase at not less than the going market price.[23]

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[19] The code for the petroleum industry approved under the National Industrial Recovery Act provided for a Planning and Coordination Committee representing the industry to cooperate with the federal administrative officials "as a planning and fair practice agency" for the industry (Ex. 710, R. 3163–4). Arnott was chairman of one of its subcommittees, called the Marketing Committee. In July 1934 the Petroleum Administrator requested Arnott, as chairman of the Marketing Committee, to assist in attempting to eliminate retail price wars (Ex. 891, R. 3487–8). From time to time he called meetings to discuss the problem as it affected a wide marketing area (R. 1689).

[20] R. 1168–9, 1696–7; Ex. 376, R. 2977.

[21] The membership of the association included majors, but 80% of its members were independent refiners (R. 1179).

At the time these meetings were held Mid-Continent spot market prices were depressed by "hot" gasoline (i. e., gasoline manufactured from crude produced in violation of State proration laws) coming from East Texas (R. 1177). The flow of this gasoline, selling at low prices, had greatly increased following the decision of this Court on January 7, 1935 (*Panama Refining Co.* v. *Ryan,* 293 U. S. 388), holding unconstitutional the section of the National Industrial Recovery Act under which interstate transportation of "hot" gasoline had been prohibited by the President (*ib.*). The Tank Car Stabilization Committee agreed that until this flow was stopped the majors could not succeed in raising Mid-Continent spot market prices, but it was expected that a bill pending before Congress to prohibit interstate transportation of "hot" gasoline would be shortly enacted and that the interstate sale of this gasoline would then be stopped (R. 1180, 1184–6, 1192). Accordingly, it was decided not to put the program into operation until this bill had been enacted and had been implemented by appropriate enforcement machinery (*ib.*). It was left to Arnott to give the signal for putting the program into operation after this had occurred (R. 1191–2).

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[22] R. 1182–4, 1186–8; Exs. 177 (R. 2733–4), 376 (R. 2978).

[23] R. 404, 1189–90, 1199; Ex. 376, R. 2977. Each member of this committee, as composed at the time the conspiracy went into operation, was an officer or employee of a major, with his office headquarters in Tulsa, Oklahoma (*R.* 356, 362, 382, 384).

This postponement of action until the price-raising objectives of the defendants could be effectively achieved shows how completely price raising and price control lay at the very heart of the conspiracy. It also shows that defendants were unwilling to take any action to aid independent refiners at the time when the latter were most seriously affected by low spot market prices.

The Connally Act (49 Stat. 30) became law on February 22, 1935. The Federal Tender Board, the enforcement agency under this act, was appointed about March 1 and issued its first tenders on March 4 (R. 1199, 1512). On March 1 Arnott and Ashton, both officers of Socony-Vacuum (*supra*, p. 3), explained the buying program to a meeting of Mid-Continent independent refiners in Kansas City (R. 1192, 1703–4). The refiners agreed to cooperate with the majors and appointed a committee to attend a Tank Car Stabilization Committee meeting to be held in St. Louis on March 5

(R. 1705). This meeting was held, with the committee of independent refiners present at the morning session (R. 1193, 1195). At the March 5 meeting final details of the Mid-Continent buying program were worked out, including the allocation of particular independent refiners to particular majors (a relationship referred to as "dancing partners" R. 439–40, 1188).[24] Following the meeting Ashton telephoned Arnott, the latter advised that the plan be immediately put into effect, and on March 7 the mechanical subcommittee went into action (R. 1199–1202, 1706).

The three members of the mechanical subcommittee divided up the task of keeping each of the purchasing majors informed as to the gasoline which it was contemplated that it would purchase, in fulfillment of its part of the buying program. One member would convey this information to companies A, B, and C, and another to companies D, E, and F (R. 384–7, 1200). All three members were in frequent contact with the purchasing companies (R. 391–3, 451–3, 454–5, 1206, 1216). The committee met whenever its members "could get together, and whenever there was distress gasoline to consider," sometimes as often as three times a week and at other times not for 10 days, but a good deal of business was worked out over the telephone without meeting (R. 1205–6).

At the very outset the subcommittee concerned itself with price. On March 14, at its second meeting, the members "arrived at what we thought was a fair market price for the week following." These prices, 3¾¢ for third-grade gasoline and 4¾¢ for regular gasoline, were then reported to the various purchasing majors (R. 409).[25] Price recommendations were made at least five times, and possibly eight times, up to June 7, 1935, the last price recommendation made that year, and each time the "recommended" prices constituted a price advance of either ⅛¢ or ¼¢ over the previous recommendation (R. 412, 416, 500). During this period the spot market prices published in the trade journals stepped up nine times, each step representing an advance of ⅛¢ a gallon (see chart, *infra*, p. 29). Following the last recommendation the spot market price remained stabilized at the level then reached throughout the balance of the year (R. 458–9). Never before in the history of the industry had there been a period when spot market prices had remained stationary over an extended period of time.[26] When the majors advanced the price of crude in January 1936, the subcommittee members, after discussing the price situation, recommended to the majors that they advance their price for gasoline purchased under the program by ½¢ a gallon (R. 459–60). The published spot market price then advanced by the amount of this recommendation (R. 460).

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[24] R. 362, 367, 369–71, 382–3, 1193–8. The allocations were, of course, not arbitrary, but the various majors, after discussing the problem among themselves, volunteered to assume responsibility for purchasing the future "surplus" production of one or more specified independent refiners (*ib.*).

The independent refiners were actively cooperating with the mechanical subcommittee in advancing spot market prices. On March 9, 1935, a representative of one of the majors wrote his company as follows concerning a conference with Winget, one of the independent refiners present at the meeting of the Tank Car Stabilization Committee on March 5, 1935 (Ex. 176, R. 2732):

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[25] On the following day one of the subcommittee members wrote his company: "Our Committee decided on a price of 3¾¢ for third grade, and 4¾¢ for 'Q,' for next week" (Ex. 682, R. 3112).

[26] R. 223, 238, 247–8, 280–2, 317.

> I have been in touch with Mr. Winget of Cushing Refining and Gasoline Company who tells me he feels that prices should move faster—*that prices discussed should be reached by the 11th,* and is quoting today, 3⅝ and 4⅝¢ on low and middle octane respectively.[27]

The Tank Car Stabilization Committee, following the meeting on March 5, 1935, continued to meet around the end of each month to consider Bourque's survey of the estimated "surplus" production during the coming month and to agree upon how this should be divided up among the purchasing majors (R. 397–400). The last of these meetings was on February 27, 1936 (R. 400). By this time the plan had become self-operative, the mechanical subcommittee kept in touch with the majors by telephone, and further meetings of the Tank Car Stabilization Committee were considered unnecessary (R. 468, 1208).

The majors regularly reported to Bourque, the trade association representative of the Mid-Continent independent refiners, who actively cooperated with the mechanical subcommittee, the volume of their purchases under the program and the prices paid.[28]

The evidence shows that the "dancing partner" arrangement, that is, the commitment to absorb the "surplus" of a particular independent refiner or refiners, was the result of allocations or assignments collectively agreed upon in fulfillment of the joint undertaking to raise and maintain prices, and that much of the gasoline purchased under the program was regarded as, and was known to be, not needed and economically disadvantageous.

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[27] In this brief all italics are, unless otherwise indicated, supplied.

[28] Exs. 102–118 (R. 2703–16), 230–231–C (R. 2823–6), 490–508 (R. 3000–16); also Exs. 811–814–B (R. 3302–9), as explained in counsel's stipulation R. 901, Ex. 820 (R. 3316).

Purchases in the course of the program were repeatedly characterized by representatives of one of the majors as "allocations," "obligations," and "quotas."[29] The same company considered itself a "guardian" of the company from which it was buying (Ex. 93, R. 2697), referred to that company as "one of the babies placed in our lap last spring when this thing [the buying program] was inaugurated" (Ex. 122, R. 2720), and wrote that "we don't have much choice as to whose material we are to take when we purchase outside third grade gasoline in connection with the Buying Program Committee's operations. On such purchases we have refiners 'assigned' to us" (Ex. 124, R. 2722).

Several of the majors cancelled or declined to enter into profitable arrangements for the exchange of gasoline with other companies in order to participate in the program.[30] Skelly lost a pipe-line transportation profit of 3/16¢ a gallon "on every car of gasoline" taken in the program.[31] Both Skelly and Wadhams continued to purchase gasoline in the program although unable to dispose of it.[32]

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[29] Exs. 95 (R. 2699), 96 (R. 2699), 98 (R. 2701), 101 (R. 2702–3), 112–118 (R. 2713–6), 120 (R. 2716–8), 124 (R. 2722).

[30] Exs. 86–88 (R. 2694–6), 334 (R. 2964), 489 (R. 2999).

[31] Exs. 94 (R. 2697–8), 120 (R. 2716–8).

[32] Exs. 95, 96 (R. 2699), 335, 336 (R. 2965–6).

The formation, nature, and objectives of the East Texas buying program

The normal market for gasoline refined in East Texas is the State of Texas and the Atlantic seaboard (reached through tanker shipments from Gulf ports), but any weakness in East Texas spot market prices makes East Texas gasoline competitive with Mid-Continent gasoline in the Mid-Western area and affects Mid-Continent spot market prices.[33] In the meetings at which the Mid-Continent buying program was organized the defendants recognized that, if they were to attain their objectives, action would have to be taken to prevent East Texas gasoline from becoming a disturbing market influence.[34]

Early in 1935 an association of East Texas independent refiners was formed for the purpose of inducing majors to purchase a substantial part of the gasoline production of its members and Buckley, an employee of a major, was requested to undertake this task (R. 1127–9). He did so after first securing the approval of his employer.[35] In the course of an eastern trip he explained the project to Arnott on February 11, 1935 (R. 574). Arnott at first reserved judgment but later arranged three meetings of representatives of majors operating in East Texas, one on February 25, one on

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[33] R. 644, 1714–6; Exs. 185 (R. 2747), 279 (R. 2915), 280 (R. 2918).

[34] Exs. 177 (R. 2734), 376 (R. 2977). See also Ex. 69 (R. 2655–6).

[35] R. 568–9, Exs. 14 (R. 2615–7), 36 (R. 2635). The major continued his regular salary while he was engaged in this special work, nominally in behalf of East Texas independent refiners (R. 578–9).

March 6, and one on March 15, at which he and Buckley presented the plan for concerted purchasing by majors of the product of East Texas independent refiners.[36] The call for the two March meetings came in the form of telegrams from Arnott. The telegrams summoning the meeting of March 6 stated that its purpose was "to consider future action surplus gasoline this and other groups that is awaiting our decision" and that attendance was a "matter of extreme importance" (Ex. 482, R. 2996). The telegrams summoning the meeting of March 15 urged attendance and advised: "The question of surplus gasoline which has been under consideration must be finalized tomorrow" (Ex. 17, R. 2619).

Both in its organization and in its operation the East Texas buying program followed closely the pattern of the Mid-Continent buying program. The question of the amount of gasoline which the East Texas buying program would involve was discussed at the meeting of March 6 and before the next meeting on March 15 Buckley obtained this information (R. 579–80, 1718; Ex. 69, R. 2655–6). At the latter meeting Sinclair's representative "arose with a slip of paper in his hand" and suggested that each of 12 to 15 majors "take so much gasoline, the amounts being read off as to what each company would take" (R. 582).[37] Every

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[36] R. 575–6, 579, 581–2, 1709–11, 1717, 1720.

[37] While the buying commitments entered into at this meting were not final because most of those present stated that they would have to consult higher officials or their manufacturing departments (R. 583), substantial buying under the program in fact began in March (R. 649–50, 663–4).

Monday the secretary of the East Texas association ascertained from each member how much of its forthcoming weekly gasoline production it wished to sell to majors (R. 596, 639). Majors were requested to purchase at the "fair going market price" and purchases were consistently made at the going spot market price (R. 590–1; 602, 628). Arnott continued his active aid and support after the program got under way.[38]

The Sus and Ruether reports of the February meetings of the Tank Car Stabilization Committee

Our statement of the conspiracy has been assembled from the testimony of witnesses, nearly all of whom were closely identified with the defendants, and from documentary evidence, nearly all of which dealt with only partial or limited aspects of the conspiracy. This method of presentation, although necessary for completeness, carries with it the danger that it may fail to reproduce faithfully the spirit and objectives animating those who formed the conspiracy. Fortunately, there are two items of documentary evidence which remedy this deficiency. One is a contemporaneous report of the Tank Car Stabilization Committee meeting of February 5, 1935, by Ruether and the other a contemporaneous report of the Committee's meeting of February 11, 1935, by Sus.

The reports have almost equal significance, but only one need be quoted at length. The report of the meeting of February 11, 1935, was made by Sus, Sinclair's representative at this meeting (R. 1866–7; Ex. 376,

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[38] Exs. 19 (R. 2620), 21 (R. 2624), 23 (R. 2625), 369 (R. 2976); R. 1723, 1726–7.

R. 2977-8). It reveals the chief features of the conspiracy—the purpose to raise Mid-Continent spot market prices; the buying program as a means to this end, that is, the purchase by majors of all gasoline produced by independent refiners which they labeled "surplus"; the recognition that this "surplus" affected the Mid-Western area; guidance and control of the prices which majors would pay for gasoline purchased under the program; recognition that the total amount required to be purchased was the equivalent of only 2% of the majors' production and that, with all majors sharing in the obligation to purchase, "no great burden would fall upon any one"; the concurrent East Texas buying program, which would serve to prevent this market from being a "disturbing influence" on prices in the Mid-Western area.

The report reads as follows:[39]

> A committee at a previous Stabilization Meeting had been appointed of which Mr. Bob McDowell was Chairman to consider *ways and means of establishing and maintaining an active and strong tank car market on gasoline.*
>
> This committee rendered a report to the effect that *a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of Indiana territory.* It was stated that this East Texas gasoline would move to the Gulf and then go to either the East Coast or for export.

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[39] Of the paragraphs omitted, one states that the majors' purchases would be reported in the Chicago Journal of Commerce and the other deals with Sinclair's selection of its dancing partner.

A survey by the committee then indicated that the *surplus gasoline, which would affect the Standard of Indiana territory only,* amounted to 600 cars per month involving fifteen refining companies.

A report is attached which lists the refineries in the Mid-Continent Field who will have surplus gasoline. This report shows their capacity, their crude runs, their allocation, etc.

The program of the committee involves *fourteen major companies, each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take whatever surplus gasoline this small refining unit will have from time to time.* In other words, a major company would select from among the fifteen small refineries some company whose surplus or distress gasoline it could advantageously move, and in that way *by dividing up* these fifteen companies and *these estimated 600 cars per month* of distress gasoline *no great burden would fall upon anyone.*

A steering committee would guide and control, periodically the prices to be paid for this surplus gasoline by the major company to the small refinery. There was considerable discussion to the effect that *this new program had more chance of success than any previous program because of the way the steering committee would function and the fact they would be buying on an ascending market,* thereby keeping the market both active and strong, rather than buying on a descending market as previous buying movements had been and which previous movements had failed of any substantial success.

> It was estimated that the *absorption of these 600 cars per month by fourteen major refiners would only be equivalent to curtailing their own crude runs 2%.* In other words, it was intended to point out that the absorption of this gasoline by a major would not seriously affect that major's own runs.
>
> * * * * *
>
> The meeting in question was attended by all of the major companies, including such companies as Globe, Skelly, Mid-Continent, etc., *all of whom indicated a willingness to select one of the companies shown on the attached statement and assume responsibility for their surplus.*

The only important feature of the conspiracy not expressly spelled out in the foregoing report is that the defendants' ultimate objective in raising Mid-Continent spot market prices was to bring about a corresponding rise in prices in the Mid-Western area. This aspect of the conspiracy is set forth in unmistakable terms in the report which Ruether, one of Shell's representatives at the meeting of February 5, 1935, made concerning this meeting (Ex. 177, R. 2733-4). These paragraphs read:

> The effect of lower tank car markets for gasoline *on the retail price structure,* was discussed—particularly, low octane, since this grade controlled, Mr. Jackson[40] stated, the Indiana's policy in fixing the retail price.
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> * * * * *

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[40] Mr. Jackson was vice president in charge of sales of Standard of Indiana (R. 5; Ex. 1, R. 2597-8).

COMPOSITE OF
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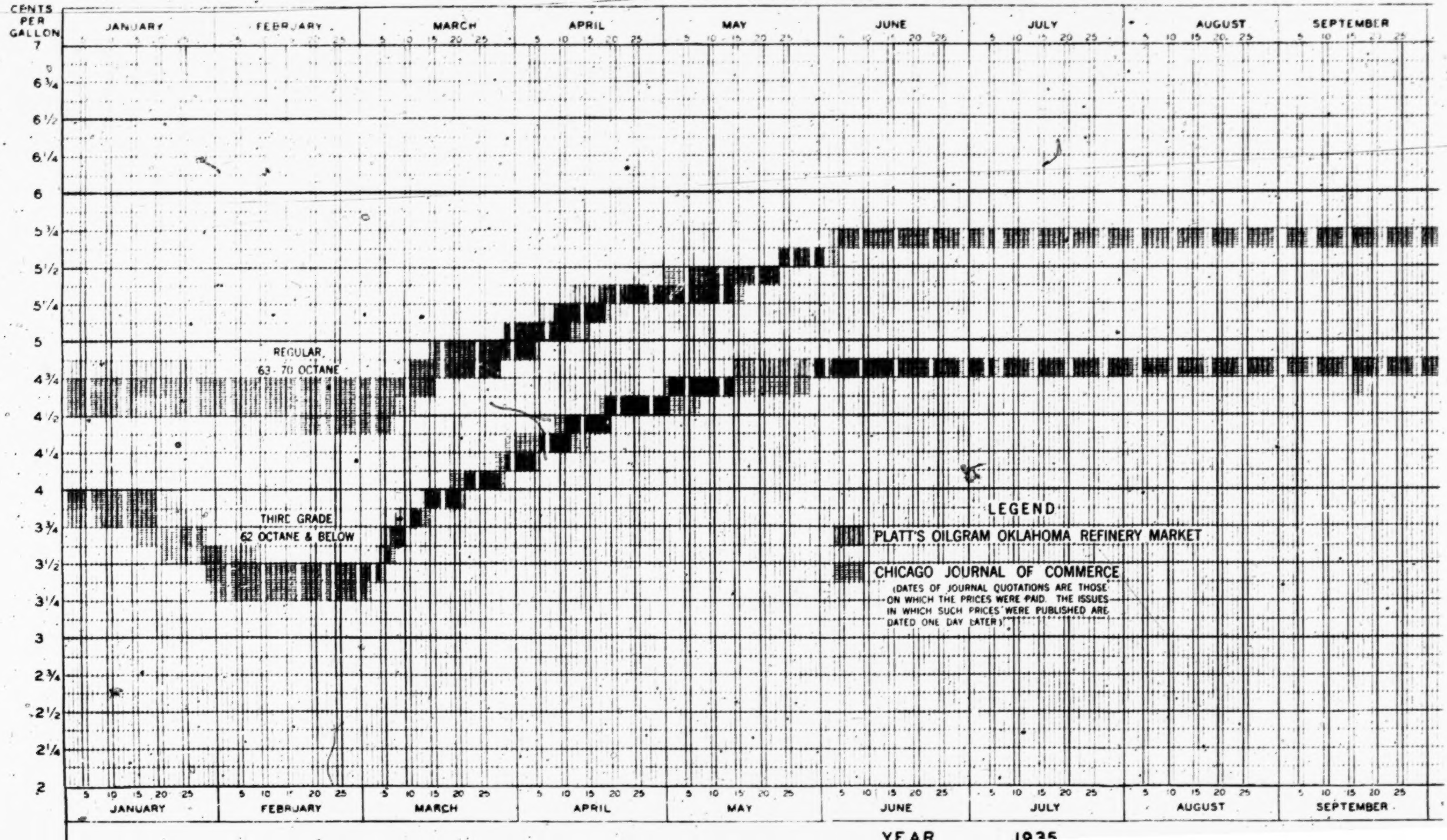
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
AND
CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



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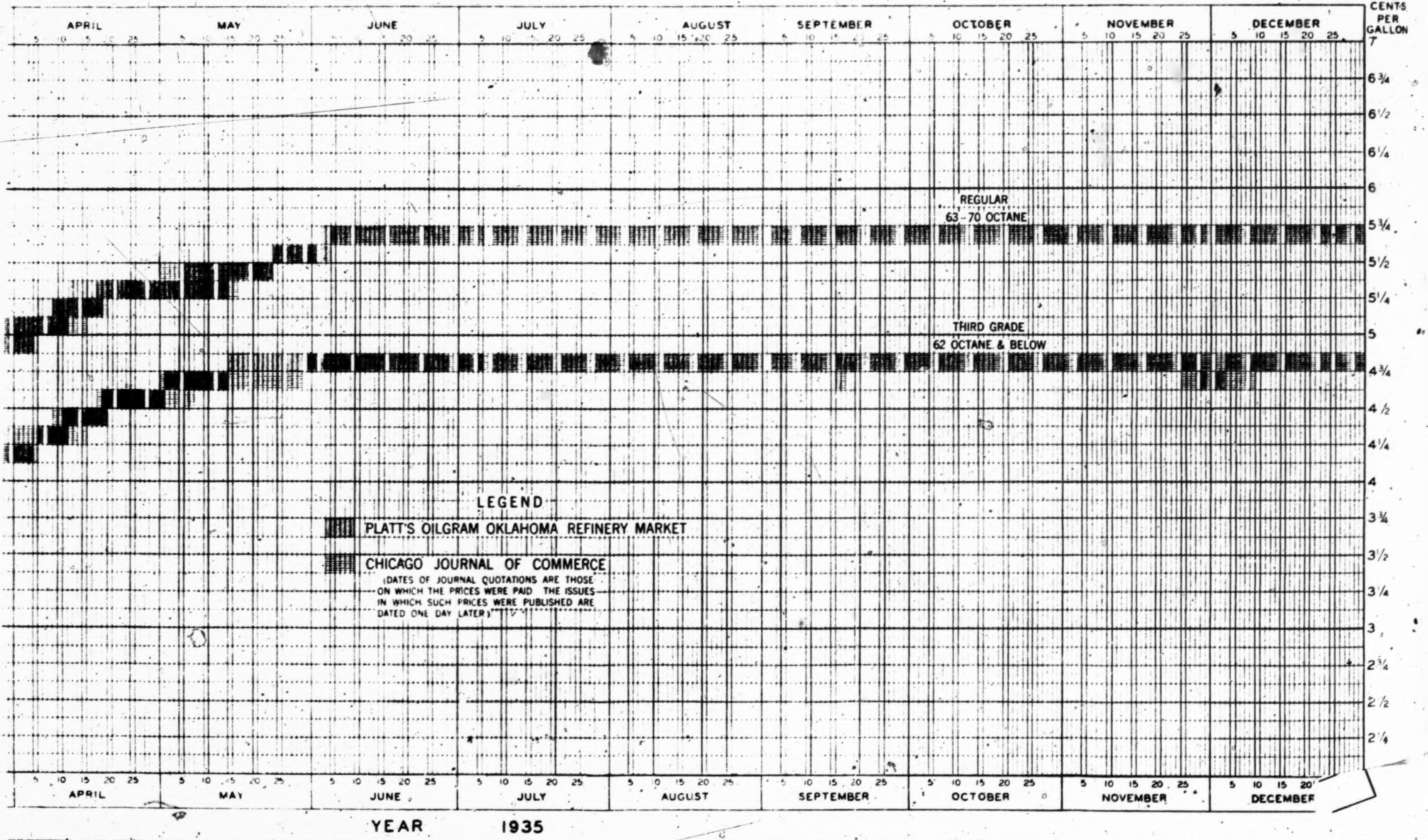

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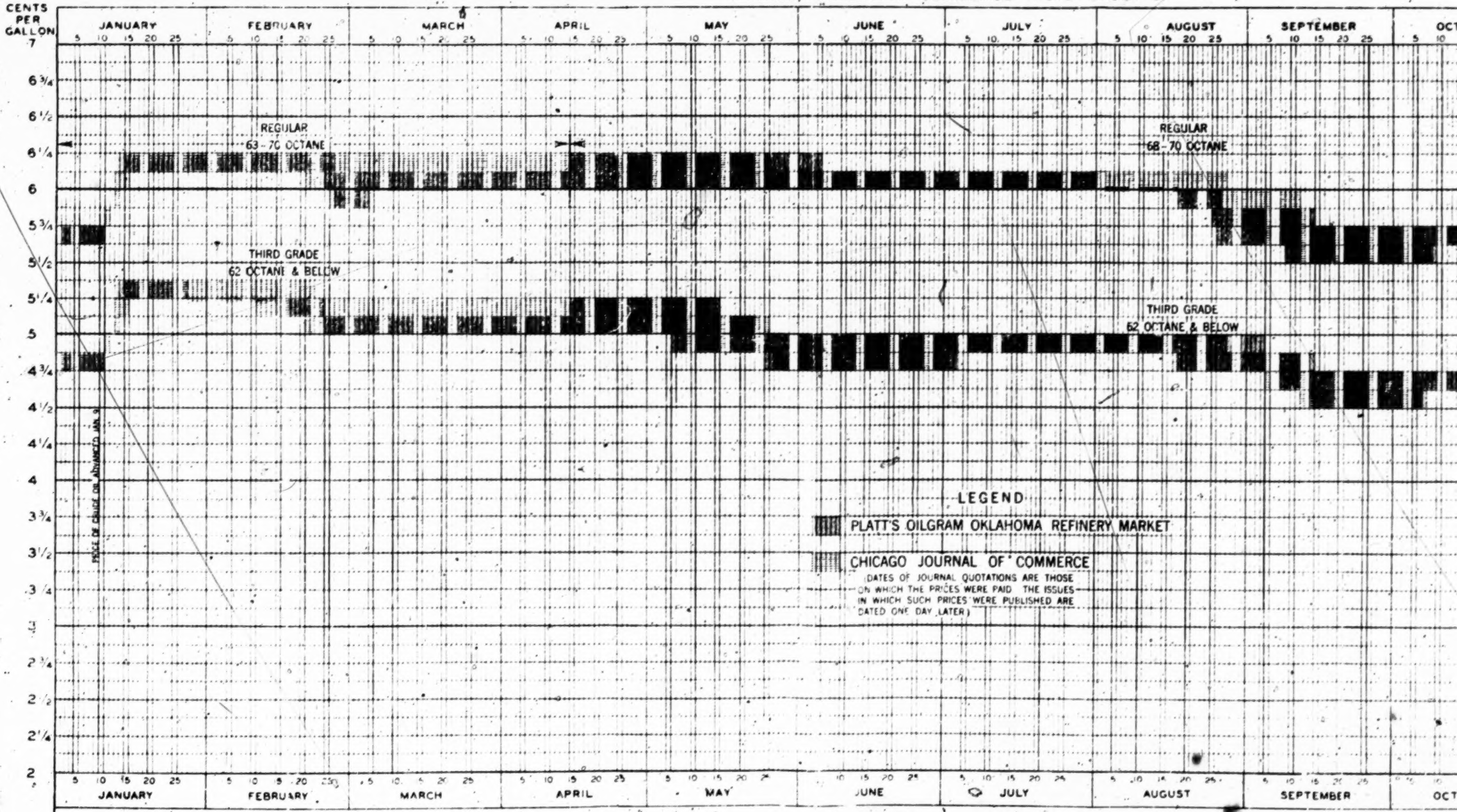

YEAR 1936

COMPOSITE OF
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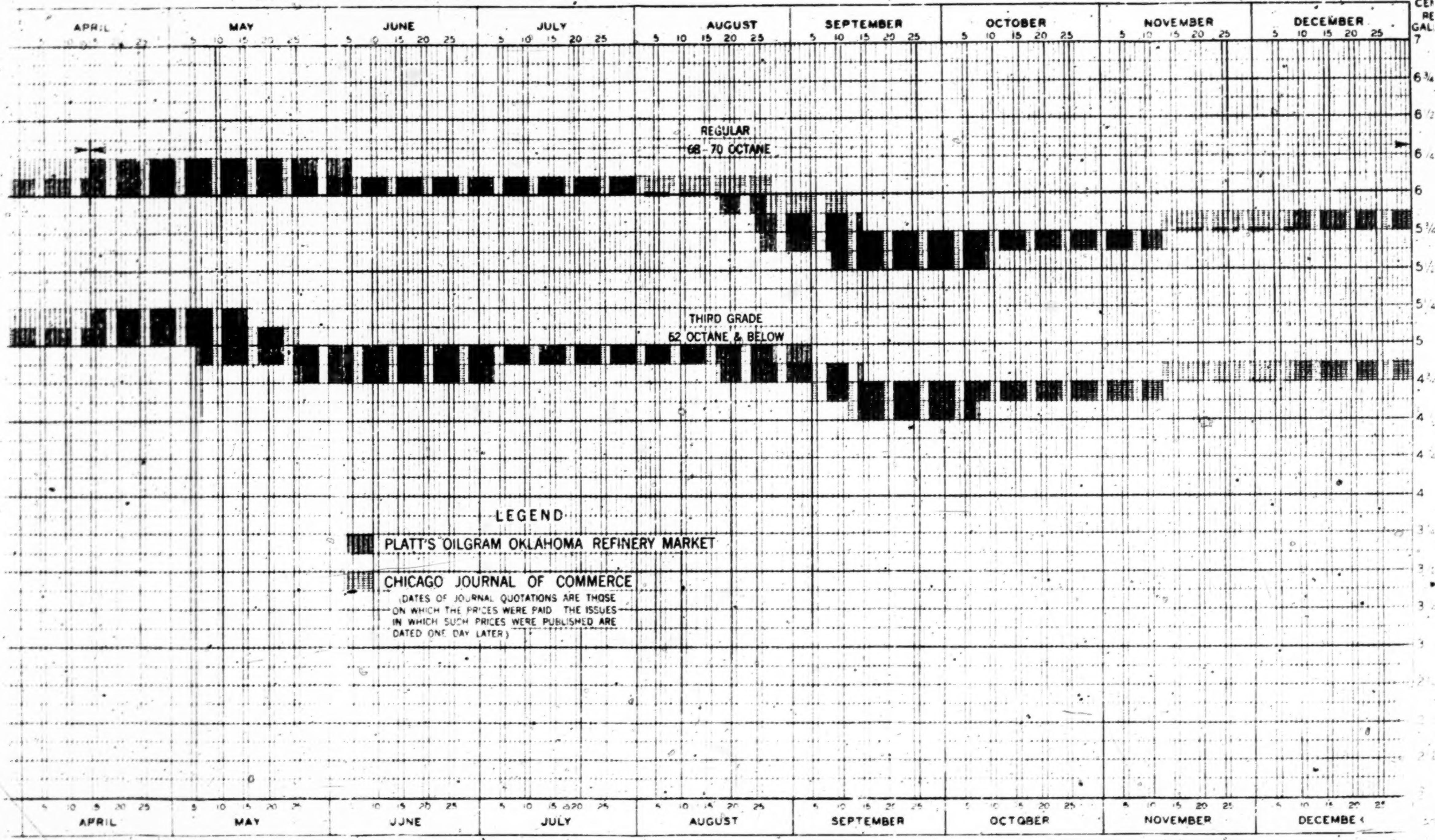
PLATT'S OILGRAM OKLAHOMA REFINERY MARKET
AND
CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3



YEAR 1936

> It was generally assumed that all companies would come into the picture since a stable retail market requires a higher tank car market.[41]

The effect of the buying program on Mid-Continent spot market prices and prices in the Mid-Western area

The charts opposite this page show the Mid-Continent spot-market prices reported in the trade journals for third-grade gasoline and for regular gasoline, for the years 1935 and 1936.[42]

The chart for the year 1935 shows the manner in which prices advanced in nine successive steps from March 7, when buying began, to the first week in June and thereafter remained stationary, frozen at the level attained. It shows that the low quotation on third-grade gasoline rose from 3½¢ on March 6, 1935, the day before buying began, to 4¾¢ early in June and that during the same period the low quotation on regular gasoline advanced from 4⅜¢ to 5⅝¢. This represents a price rise of 35.7% for third-grade gasoline and of 28.6% for regular gasoline.

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[41] The following additional portions of the Ruether report are likewise significant:

"*The committee* (except Karstedt) *unanimously agreed that a continuous purchasing program is necessary to take off the market surplus material* from North Texas, Panhandle, Kansas, and Oklahoma. * * *

"It was agreed that the most efficient method to handle the situation, would be for individual major purchasers *to arrange with individual small refiners to keep their surplus off the open markets*—in this manner *the purchases would be effectively placed* and the buyer would be given the opportunity of using his purchasing power to influence the operating program of the small refiners to stay within his allocation etc."

[42] These charts are defendants' exhibits 679 and 680 for identification (R. 3105, 3109). The data shown is identical with that on other charts admitted in evidence (see Ex. 1024, R. 3807). These particular charts are used because the omission therefrom of additional data makes it easier to observe the price trend.

At the trial of this cause one of the contested issues was whether the defendants' buying program, carried on with the active cooperation of the leading independent refiners, caused the March–June advance in Mid-Continent spot market prices and the subsequent stationary price level thereafter maintained. By the jury's verdict, this issue was decided adversely to respondents.[43] Since there was ample evidence to support the jury's determination, we do not understand that this factual issue is now in dispute.

The Circuit Court of Appeals recognized that the spectacular rise in prices in the first part of 1935 and the unprecedented price rigidity thereafter constituted, on its face, "rather convincing" circumstantial evidence that the defendants had the power to control and did control spot market prices (R. 3933). Moreover, there was other evidence of a convincing character to which the jury was entitled to give weight.

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[43] The district court after outlining to the jury the opposing contentions of the parties as to the factors causing the March-June rise in spot market prices and their subsequent uniform level (R. 2405–6), charged the jury (R. 2407):

"Now, unless you find from the testimony and believe beyond a reasonable doubt that the said price increased, and its continuance at the level shown by the evidence was caused by an unlawful agreement or combination of the defendants, as alleged in the indictment, and as heretofore defined and explained to you, and not caused by the factors aforesaid, then it is your duty to acquit the defendants and to return verdicts of 'not guilty.'"

The buying program removed 20% to 30% of the gasoline which would otherwise be offered for sale on the Mid-Continent spot market and removed from one-third to one-half of the amount which would otherwise be sold on that market by the independent refiners whose offerings were most likely to depress spot market price (*infra*, note 60, pp. 47–48). Such a substantial contraction in supply, particularly when undertaken for the purpose of raising and maintaining prices, could be expected to achieve this result.

Employees of majors, acting as observers of the market and reporting contemporaneously on market conditions, frequently attributed advancing or firm and stable spot market prices to the majors' concerted buying. The fact that trained market observers held these opinions is highly persuasive. Excerpts from typical reports are listed below.[44]

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[44] A report on March 15, 1935 says, after referring to the buying by majors, that "thus far results are gratifying" and that "Since this stabilization work started an advance in price of about ⅜¢ per gallon on both grades has resulted" (Ex. 687, R. 3112). A report early in April states: "The improvement in the market the last few weeks is considered directly due to cooperative efforts of major companies participating in the movement" (Ex. 251, R. 2846). A report later in the month states: "Prices have been boosted by actual purchases through the support of major company cooperation in eliminating surplus gasoline stocks at various small refineries. For this reason, most observers feel the market will continue firm for the next few months if major companies will continue to give active support in absorbing a small percentage of the gasoline production" (Ex. 253, R. 2852). A report near the end of the month states that buying by majors, coupled with the allocation of refinery crude runs "is considered largely responsible for the improvement in the refinery gasoline market the last several weeks" (Ex. 254, R. 2855).

There were similar reports as to East Texas, that is, that firm or rising prices were due to the majors' purchasing program.[45]

As we have previously pointed out (*supra*, pp. 10–11), the price at which majors sold to jobbers in the Mid-Western area automatically advanced, under the provisions of the jobber contracts, with each advance in Mid-Continent spot market prices and, when the level which spot market prices reached in June 1935 was main-

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Reports during the last half of 1935 when spot market prices remained stationary are even more convincing. It was reported that "refiners, through their combined efforts, have prevented any downward trend in the published gasoline quotation list" (Ex. 268, R. 2882); that the market was fairly firm, notwithstanding slow gasoline demand, "primarily as the result of strong inter-refinery buying" (Ex. 218, R. 2819); that the buying by majors "is conceded to be the outstanding feature of support in the prevailing market" (Ex. 277, R. 2909); that this buying was considered "the factor which has so well regulated the balancing of supply and demand for the last few months" (Ex. 273, R. 2897); that unless this buying is continued, "there will result a drastic reduction in spot gasoline quotations" (Ex. 276, R. 2906).

When on only two occasions in 1935 the low quotation on third-grade gasoline dropped temporarily ⅛¢, once in September and once in late November-early December, market observers attributed the prompt restoration of prices to buying support by majors (Exs. 269 (R. 2885), 280 (R. 2918), 281 (R. 2921)).

Again in January 1936 when spot market prices advanced ½¢ in the dead of winter when normal demand is at the lowest, one of the majors' field representatives reported that buying by majors "has been a great help in absorbing gasoline offered, which has prevented any surplus gasoline from hindering the upward price trend of the tank car market" (Ex. 286, R. 2930).

[45] Exs. 217 (R. 2817), 218 (R. 2819), 256 (R. 2858), 275 (R. 2903), 285 (R. 2927–8), 287 (R. 2934). Buckley reported to his company in May 1935 that the purchase of gasoline in East Texas by the majors "was in considerable measure responsible for the difference between the price of 3⅛¢ early in February and the low price of 4½¢ f. o. b. refinery which now prevails" (Ex. 22, R. 2624).

tained, this level fixed the price to jobbers. The same was true in 1936, following the rise in spot market prices in January 1936.

Retail prices in the Mid-Western area similarly kept step with Mid-Continent spot market prices, except that there was a short lag between an advance in spot market prices and the resulting rise in retail prices.[46] This was true as to both normal and subnormal retail prices (R. 1255–7, *supra*, pp. 9–10).

One of respondents' contentions has been that spot market prices were not raised to a level above that which was fair and reasonable. It appears, however, that the raised and maintained price level was such as to yield the majors very substantial profits. On March 27, 1935, the manager of one of the marketing divisions of Socony-Vacuum wrote Arnott that "present prices are just about cost of manufacture" and that if the price of regular gasoline could be raised to 5⅜¢, this would result in "quite a substantial profit for us" (Ex. 306, R. 2957). In fact, the high and low published spot market quotations of regular gasoline, beginning in June and continuing for the rest of the year, were 5⅝¢–5¾¢ (chart, *supra*, p. 29). In January 1936 these quotations advanced ½¢ to 6⅛–6¼¢ (*ib.*). When it is recalled that Socony-Vacuum's sales in the Mid-Western area were over 350,000,000 gallons ~~in 1935 (Ex. 1028~~, R. 3815), it will be seen that even the minimum ¼¢ advance in price above the "substantial profit" level yielded this one company an additional annual profit of approximately $900,000.

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[46] R. 251, 279, 291, 312, 1236–7. See also *supra*, note 8, p. 9.

Another contention by respondents is that they did not advance spot market prices above a level which would put them in a fair ratio with the price of crude. It appears that as spot market prices advanced and became stabilized at a higher level, the two individuals most actively associated with the buying programs, Jacobi in the Mid-Continent field and Buckley in the East Texas field, reported and predicted that the higher gasoline price level would bring about and would support an advance in crude prices.[47] As we have seen, crude prices did advance in January 1936, and this advance was, in turn, made the basis for an advance in spot market prices by ½¢ a gallon. This illustrates that when interested producers and manufacturers rest the justification for prices which they fix on some assumed ratio or "parity" between raw-material prices and finished-product prices, or vice versa, ratio or "parity" operates in a vicious circle. First, one is made the basis for an advance in the other, and then the latter is made the basis for an advance in the former.

Respondents' attempt to show governmental acquiescence in or approval of their conspiracy

In their briefs in the court below respondents set forth at length evidence upon which they relied to show that certain Government officers encouraged the defendants or acquiesced in the activities for which they were indicted. We shall make only brief reference to this evidence since we believe that the alleged acquiescence or encouragement, if in fact given, is too limited in scope to be of any substantial relevance to the issues in this case.

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[47] Exs. 20 (R. 2623), 73 (R. 2688), 76 (R. 2690).

In the first place, the indictment charges and the evidence shows a continuing conspiracy beginning in February 1935 and continuing during 1936. The alleged governmental acquiescence is grounded wholly upon acts or statements by Government officers[48] while they were engaged in administering the code of fair competition for the petroleum industry which the President had approved pursuant to title I of the National Industrial Recovery Act. The authority which these officials could exercise was wholly derived from this code and statute. Such authority terminated when title I of the National Industrial Recovery Act expired by its own terms on June 16, 1935,[49] but the conspiracy admittedly continued unabated after that date.[50] In determining the legality of their subsequent restraint of trade it is immaterial whether or not during an earlier period of the conspiracy there was basis for inferring that the conspiracy produced certain effects akin to some objectives sought by Government officers in administering the statute then in effect. Even if there had been express legal authorization of defendants' activities validly granted under the code, this would have had no bearing upon the reasonableness of defendants' restraint of trade during any continuation of the restraint after such authorization had expired.

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[48] These Government officers are Secretary Ickes and individual members of the Petroleum Administrative Board. The code was administered by Secretary Ickes under authority delegated to him by the President and the Secretary in turn appointed a Petroleum Administrative Board to assist him in performing his administrative functions (Ex. 974, R. 3697–8).

[49] Section 2 (c) of the National Industrial Recovery Act of June 16, 1933, provided that title I of the act "shall cease to exist at the expiration of two years after the date of enactment of this Act" (48 Stat. 196).

Even before June 16, 1935, the decision of this Court on May 27, 1935, in *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, had had the effect of invalidating all codes approved under title I.

[50] In *United States* v. *Borden Co.*, 60 Sup. Ct. 182, this Court said that the case did not raise the question whether acts or conduct falling within the scope of a license issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act could constitute an indictable offense under the Sherman Act.

In the second place the evidence (including that offered but rejected) is inadequate to support even an inference that the conspiracy for which respondents were indicted and tried ever received even the tacit approval of responsible Government officials. There is nothing in the record to show that these officials were ever aware of the real nature of the defendants' activities. Respondents have appeared to rely upon the fact that Arnott in the course of a conference on March 12,

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The Court pointed out that the indictment before the Court charged a conspiracy beginning in January 1935 and continuing to November 1938 and that the defendants operated under a license from the Secretary of Agriculture only in that part of the indictment period prior to March 2, 1935. The Court then said (p. 190): "This clearly imports that the conspiracies were operative after the license came to an end and thus in the absence of any license. A conspiracy thus continued is in effect renewed during each day of its continuance."

1935, with three members of the Petroleum Administrative Board made some kind of verbal report concerning the buying by majors which had been initiated under his auspices a few days earlier (R. 1271–2, 1730).[31] But at this conference Arnott stated that he did not ask for the Board's authorization or "blessing" and that he was acting "on his own responsibility," and the chairman of the Board thereupon advised him that anything which he was doing in the matter was being done wholly "on his own responsibility" (R. 1292–3, 1301–2, 1307).

Reliance has also been placed on evidence purporting to show that Government officials held the view, at certain times and under certain circumstances, that independent refiners suffered from an undue disparity between the price of crude and the spot market price of gasoline and that an increase in spot market prices was the desirable corrective. It does not even tend to show a favorable attitude toward an increase in spot market prices by a combination such as defendants', which vested in majors the power to fix and control spot market prices and jobber and retail prices, or approval of such price-raising and price-maintenance after interstate transportation of "hot" gasoline had been effectively halted.[52]

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[31] There are grounds for doubting the accuracy and completeness of this report (R. 1282–3, 1336–7). Arnott testified that he told the Board "in substance" what he said at the allocators' meeting on March 13, 1935 (R. 1730). As the stenographic report of this meeting shows, he then said with reference to the buying programs that "there are going to be no agreements" and "no group buying" (Ex. 69, R. 2657).

There was also evidence offered or received that during 1934 the Petroleum Administration approved three programs for the purchase by major companies of gasoline produced by independent refiners. But the evidence relating to earlier buying programs tends to negative rather than to support the view that defendants' buying program would have received, had this been requested, administrative approval. The 1934 programs were approved by formal orders and provided for strict governmental supervision.[53] Secretary Ickes personally suspended the last of them in November 1934, after protest by the Department of Justice, one reason being doubt as to its legality (R. 1743–4, 1799). Arnott's complete skepticism as to the likelihood of being able to obtain such approval as to the buying programs undertaken by the defendants and his indifference to such approval is shown by the following remarks concerning governmental approval of buying programs made by him at a meeting on March 13, 1935 (Ex. 69, R. 2653, 2657-8):

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[52] If at any time there was doubt concerning the attitude of Government officials it should have been dispelled by a letter from Secretary Ickes to Arnott on April 2, 1935, shortly after defendants' combination went into operation (Ex. 980, R. 3722–3). The Secretary there stated that he had received complaints concerning certain other activities of Arnott and called attention to the fact that agreements "which might be in conflict with the antitrust laws" require "specific approval." The letter further stated that when understandings "affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal."

[53] Exhibits 844, 845, 846, 847 for identification (R. 3367–88).

> Those of us who * * * have had any experience with PAB and eventually the Department of Justice, know just how long that road is, and for some good reason or for some unknown reason or for no reason at all those agreements seem to have disappeared;, those outstanding attempts—and they were really sincere and worthy attempts—have disappeared in a sort of cloud of mystery, and I don't think I, for one, or anybody else can tell you just where they have gone—*they are out of our minds, they are completed, they are finished, and we are not interested.*

Respondents' attempt to show that the gasoline of independent refiners which the majors concertedly purchased, and which they designated "surplus" or "distress," constituted a competitive evil

Respondents' principal defense of the reasonableness of their combination is based upon the contention that the gasoline which they combined to purchase was "surplus" or "distress" gasoline, that this gasoline constitutes a competitive evil or a trade abuse, that the primary purpose of their combination was to correct or eliminate this industrial evil, and that any purpose to raise or maintain prices and any increase or maintenance of price actually resulting were merely incidental to this primary objective. Respondents' legal proposition, based on these factual premises, is that combination or concerted effort, even by a preponderant group in an industry, to remedy an industrial evil, when those combining have neither the power nor the purpose to produce any effect upon market price other than that resulting from correction of this evil, does not unreasonably restrain trade. Respondents thus attempt to bring the facts of this case within the framework of *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344 (R. 2492–7, 3926–30).

The facts bearing upon the foregoing contention deserve careful examination.

The majors agreed to purchase, not the entire output of independent refiners, but that part of the output which they referred to as "surplus" or "distress." These terms were applied interchangeably, but in the contemporaneous documents "surplus" was much more frequently employed.[54] The first thing to be considered is, what are the characteristics which render gasoline "surplus" or "distress"? We find the testimony on this point both vague and conflicting.

One set of witnesses defined "surplus" or "distress" largely in terms of price. Their view was that it was gasoline which could not, or probably could not, be sold except at a price somewhat under the current market, in other words, any gasoline, the sale of which would tend to lower the market price, would be "surplus" or "distress."

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[54] Exs. 177 (R. 2733–4), 376 (R. 2977–8). See also Exs. 253 (R. 2852), 256 (R. 2858), 286 (R. 2930), 293 (R. 2944). The word "homeless" was sometimes used (Ex. 69, R. 2655–6, 2661, 2667).

Defense witness Shatford testified that distress gasoline is gasoline which an independent refiner has on his hands "for which he has no immediate sale except at a price below the current market," (R. 1003). He stated further: "When the market is pretty well saturated with gasoline, it won't absorb the surplus offers, and it is under those circumstances that distress gasoline gives the most trouble" (R. 1004). The witness recognized that under this view "distress" gasoline is not necessarily confined to product in the hands of independent refiners. He testified (R. 1003):

> Distress gasoline also can come from excessive inventories. A little weakness hits the market and the *major companies,* to get rid of the gasoline, dump it just as the small refiner does. Distress gasoline depresses or reduces the general tank car price to the refiners.

Defense witness Frey stated (R. 1327):

> Distress gasoline is gasoline that is forced on the market for one circumstance or another, *usually* at a lower price than that prevailing in the market. It is almost always due to a condition of over-supply, where the refiner is not in a position to finance the holding of that gasoline over a longer period of time.

Two other defense witnesses gave like testimony (R. 671, 929).

Another set of witnesses defined "distress" or "surplus" as being any and all gasoline produced by an independent refiner in excess of the requirements of his regular trade customers. Jacobi, a member of the mechanical subcommittee regulating purchases in the Mid-

Continent field, said that gasoline is distress when independent refiners "haven't got a regular purchaser for it," which "they would have to shop around to get a purchaser for" when they sell it on the spot market (R. 385). Steiger, the market reporter for Platt's Oilgram, testified that gasoline "left over" after an independent's refiner's "contract customers" and "his regular buyers on the open market" had taken their requirements was distress (R. 751–2). Cline, secretary of the association of East Texas independent refiners through which the majors purchased in East Texas, stated: "Surplus gasoline is more gasoline than the refiners have a regular market for" (R. 643). Defense witness McDowell testified (R. 1166):

> Distress gasoline is that part of any company's manufacture that it has no regular sales outlets for, and that it must sell at prices substantially below the market.

McDowell's view that gasoline sold on the spot market to other than the refiner's regular customers would have to be sold at less than the current market price, in other words, that the price would be lower in sales resulting from arms-length transactions than in sales pursuant to a long-standing trade relationship between the parties, rests upon the assumption that price weakness is a normal condition of the spot market, that its permanent condition is that of a buyers', as distinguished from a sellers', market. It may be conceded that this was the condition of the spot market at the time the conspiracy was formed. But the condition was otherwise during the life of the conspiracy, carried on after the depressing influence of cheap "hot" gasoline had been eliminated as a market factor and when spot market prices were either rising or "firm." As the testimony of Cline clearly shows, under these conditions sales on the spot market to other than regular customers would not move at lower prices, although they had so moved under the very different conditions prevailing prior to the conspiracy. Referring to the gasoline which the majors bought through the association of East Texas refiners, he testified (R. 642–3):

> I don't believe it is true that if the refiner started out to sell that gasoline to jobbers, and not through our Association, he usually would have to take a lower price for it. I believe he might have to take a little lower price if he sold to a broker.
>
> This surplus gasoline did actually move at a lower price before we had our Association; but that was before the Connally Act or any Federal regulation down there, and we had all kinds of prices.

It is not apparent in what respect "surplus" or "distress" gasoline is a competitive evil under any of the definitions given it. If we accept the definition that "surplus" is gasoline which could not be sold on the open spot market without lowering the current price, *respondents' contention amounts to saying that any lowering of price, any drop in the price of the day, is a competitive evil.* It would seem, on the contrary, that if the supply exceeds that which the market will absorb at the day's price, it is both appropriate and necessary that the market price should fall if it is to be a true barometer of market conditions.

Possibly a different conclusion may be warranted when, due to basic industrial changes, there exists as to a particular commodity a relatively permanent condition of oversupply.[55] But it is manifest that in this case no such situation existed. Spot market sales were only 5% to 7½% of total consumption in the marketing area which the spot market primarily served (*supra*, p. 12), so that gasoline offered for sale on the spot market was only a small fraction of the potential demand for these offerings.

Nor can sales on the spot market to other than regular customers be considered a competitive evil. The fallacy of this view is demonstrated when consideration is given to the consequences of its thoroughgoing application. If the only sales on the spot market were sales to regular customers, this would completely exclude from the market all jobbers and brokers accustomed to purchase on a spot basis, not from a particular independent refiner, but from any refiner having supplies on hand. The elimination or sharp curtailment of sales to such purchasers resulting from defendants' conspiracy, far from removing a competitive evil, created one.[56] It might just as well be said that the conspiracy caused distress buying as that it prevented distress selling.

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[55] See *National Ass'n of Window Glass Mfrs.* v. *United States*, 263 U. S. 403; *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, *supra*.

[56] As a result of the buying by majors, brokers and other buyers in the East Texas spot market found it practically impossible to obtain supplies in that market. Exs. 256 (R. 2858), 274 (R. 2900), 275 (R. 2903). See also R. 197-204.

The fact that the limited storage facilities and financial resources of independent refiners made it difficult for them to withhold their product long from the market when the market price was unsatisfactory does not present the situation of the marketing of a by-product under conditions approximating forced sale, such as characterized the "distress" coal discussed in *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, 362–363, *supra.*[57] The gasoline purchased by the majors (1) was not a by-product the production of which was beyond the refiners' control and (2), since it was the same kind of gasoline as that sold on the spot market, the demand therefor was as broad as the entire market demand.

In the court below, respondents, in an attempt to show that the production of independent refiners approximated the conditions which made coal "distress," asserted that the amount of the independent refiner's production was not within his control and that, having no storage facilities, his product had to be sold as fast as produced.

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[57] The conditions which gave rise to distress coal, as described in the opinion of this Court, were: The demand for coal is for particular sizes and in the mining and preparation of any one size, other sizes are made as a by-product. Since there are usually no storage facilities at the mines, the different sizes produced are placed in freight cars. To prevent congestion on the mine tracks, the loaded cars must be shipped to some market. Cars loaded with sizes for which there are no orders on hand are shipped unsold to some consuming center. To prevent heavy demurrage charges, this unsold coal must be sold either during transit or immediately upon arrival.

We submit that the evidence fails to support these assertions. One witness testified that an independent refiner cannot "close down his plant" without risking loss of his crude oil connections (R. 930), but total stoppage of production is not the same as limiting production and independent refiners were able to and did curtail production.[58]

The testimony as to lack of storage capacity upon which respondents relied was that as a "general rule" independent refiners do not have storage for working stocks "beyond a reasonable limit" (R. 929); that they do not have "any substantial storage capacity" (R. 1010); and that "not very many independent refiners" have the capacity or financial resources to store "large quantities of gasoline" (R. 1166). Other evidence shows that many independent refiners had substantial storage capacity which enabled them to keep gasoline off the market when they regarded this as economically desirable.[59] During the conspiracy period they did not fully utilize their storage capacity. In the fall of 1935 "nonintegrated refiners were operating with the lowest working stocks in history" and "plants which would normally carry an inventory of 10,000 to 15,000 barrels of gasoline reduced stocks to 1,000 and 2,000 barrel levels" (Ex. 30, R. 2631). Substantially the same was true during the following winter (Ex. 76, R. 2690; Ex. 274, R. 2900).

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[58] In October 1935 independent refiners were "following a policy of keeping crude runs down to a level where no burdensome gasoline stocks will accumulate" (Ex. 274, R. 2900), and in December 1935, they had reduced runs 10 to 12% under the preceding month in order to "prevent surplus gasoline from being a burden on the open market" (Ex. 281, R. 2921). Monthly allocations of maximum production by independent refiners were also being made during the conspiracy period by the president of their trade association (*infra*, note 18, p. 82).

[59] R. 1535; Exs. 187 (R. 2754-5), 190 (R. 2764-5), 248 (R. 2840).

Various additional considerations negative the view that the gasoline which the majors combined to purchase constituted a competitive evil. (1) The amounts to be purchased by the majors were determined by the independent refiners themselves, through Bourque, secretary of their trade association. (2) They were determined (except for isolated amounts) in advance of production (*supra,* p. 17), in other words, before the actual marketing conditions could be known. (3) Finally, and most important, they constituted from one-third to one-half of the normal spot market sales of the Mid-Continent independent refiners named in the indictment and from one-fifth to almost one-third of the normal spot market sales of all the substantial Mid-Continent independents (including those named in the indictment).[60] Such a large percentage of the independent refiners' normal spot market sales cannot, in reason, be categorized as a competitive evil. On the other hand, this contraction in normal spot market supply would directly serve to raise, and to give the defendants control over, spot market prices.

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[60] Defendants' Exhibit 1023 (R. 3803) shows the total gasoline sales (in gallons) of the Mid-Continent independent refiners named in the indictment and the amount of gasoline (in gallons) purchased from these refiners by the defendants, for the years 1935 and 1936. The exhibit gives the same data for 29 principal Mid-Continent independent refiners (including those named in the indictment). Since independent refiners sell only one-third to one-half of their output on the spot market (R. 189), the

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the trial court erroneously charged the jury that if it found that the defendants combined for the purpose of raising and fixing gasoline prices in the manner alleged in the indictment and if it found that they had the power so to raise and control gasoline prices, the restraint of trade was as a matter of law unreasonable and therefore unlawful.

(2) In holding that the decision of *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, is inapplicable to the case at bar.

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extent to which defendants' purchases reduced normal spot market supply is shown by the tabulation below.

	Total sales	Normal spot market sales		Purchased by defendants	% of normal spot market sales purchased by defendants	
		⅓ col. (1)	½ col. (1)		Based on col. (2)	Based on col. (3)
	(1)	(2)	(3)	(4)	(5)	(6)
Independent refiners named in indictment:						
1935	377,988,736	125,996,245	188,994,368	64,440,712	51	34
1936	416,923,200	138,974,400	208,461,600	80,284,958	57	38
20 leading independent refiners:						
1935	903,296,529	301,098,842	451,648,264	93,394,727	31	20
1936	1,004,006,200	334,668,733	502,003,100	109,378,261	32	21

(3) In holding that the trial court failed to submit to the jury the question of the nature and extent of the effect of the combination upon competition on the spot markets and, particularly, upon spot market prices.

(4) In holding that the trial court should have instructed the jury that, even if it found that the defendants in combination had the purpose and power to raise, fix and maintain prices, it might still find the restraint of trade reasonable and, therefore lawful.

(5) In holding that the trial court misdirected the jury.

(6) In holding that the trial court erred in the exclusion of evidence.

(7) In holding that the trial court erred in the manner in which it permitted Government counsel to refresh the recollection of hostile witnesses by the use of transcripts of grand jury proceedings.

(8) In holding that certain remarks of Government counsel in closing arguments were improper and that other remarks, alleged to be improper, were not trivial in their effect.

(9) In reversing the judgments of conviction and remanding for a new trial.

SUMMARY OF ARGUMENT

I

The district court charged the jury that if it found that the defendants had combined together for the purpose of raising and fixing gasoline prices in the manner set forth in the indictment and if it found that they had the power so to raise and fix prices, the restraint imposed by their combination would be unlawful and unreasonable. The district court likewise charged the jury to acquit the defendants unless it found that their combination had such purpose and such power. These instructions were in accord with the rule to which this Court has consistently adhered, namely, that a combination formed for the purpose of controlling the market price of a commodity and possessing the power to make its price control effective gives rise to such imminent danger of, and potentialities for, evil consequences which the Sherman Act was intended to prevent, that it falls within the direct condemnation of the statute and cannot be removed therefrom by an evaluation of collateral considerations urged in justification of the restraint.

We submit that the foregoing rule, crystallized in *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, is a sound and correct application of the statutory prohibitions. While the act has been interpreted as forbidding only unreasonable restraints of trade and while this concept is of value in many situations where the nature of the restraint is such that the application of the statute is doubtful, the concept does not compel the conclusion that there are *no* restraints which *ipso facto* come within the condemnation of the act. Indeed, recognition that there is *some* zone of directly prohibited conduct provides an almost essential starting point in determining the scope of the act's interdictions beyond this zone.

The district court did not err in regarding the present case as within the authority of the *Trenton Potteries* case. Since the price control exercised by the defendants entailed the same consequences as those flowing from an agreement by a dominant group in an industry to sell at uniform minimum prices, the fact that the machinery of price control was different is immaterial. The Sherman Act deals with matters of substance, not the mere form in which the transaction clothes itself.

The Circuit Court of Appeals assumed that the present combination was formed to eliminate a competitive evil and it said that the *Trenton Potteries* case did not bar defense of the reasonableness of the restraint upon this ground. We submit that the court's conclusion is erroneous in both respects. The former is inconsistent with the jury's factual determination and the latter resulted from failure to appreciate that in the *Trenton Potteries* case defense of reasonableness upon the very ground mentioned was presented and rejected.

The court below also said that the kind of price-fixing involved in the *Trenton Potteries* case "in its very nature, destroyed" competition and that under the present combination competition was not destroyed, it was merely affected. This view is based upon the erroneous belief that the present combination destroyed competition only as to the gasoline which the defendants purchased from the independent refiners. The jury's findings, made upon ample evidence, that the defendants intended to, possessed the power to, and did, raise and fix spot market prices establish that the purpose and effect of the combination was to render the *entire* spot market a rigged, artificial, and noncompetitive market, in which price was not the product of a free play of competitive forces, but was the product of purposeful control, attained through combination. The destruction of competition was therefore as wide and as broad as the market itself.

II

Under the district court's instructions to the jury the question of the reasonableness of the restraint based on collateral questions was withdrawn from the jury. Under these instructions, therefore, evidence relating to defense of reasonableness upon such grounds was immaterial. Since most of the excluded evidence was offered in support of such defenses, the question of error in its exclusion largely turns upon the court's decision as to the validity of the charge to the jury.

Apart from this consideration, if the district court technically erred in any of its rulings on the admissibility of evidence, the error did not affect matters of substance. In a lengthy trial, involving a wide range of inquiry and a great mass of evidence, a new trial will not be ordered on grounds on technical errors in ruling on the admissibility of evidence which do not affect matters of substance.

In addition, respondents failed to show even technical error. The grounds of exclusion involved an exercise of the discretion which, as the court below observed, must be vested in the trial court if the trial of this kind of a conspiracy is not to "go on forever" (R. 3942). As to the excluded evidence relating to conditions in the petroleum industry, the substance of everything at all material which the defendants offered to prove was established by other evidence and the excluded evidence was merely cumulative. The excluded evidence relating to encouragement of or acquiescence in defendants' activities by Government officers was indirect, remote, and circumstantial and it concerned a largely irrelevant issue. The excluded evidence offered to show that gasoline prices during the conspiracy period were not artificially high or noncompetitive was only remotely related to the real issues in the case and its admission would have raised collateral factual issues tending to confuse the jury and unduly prolong the trial.

III

All of the Government's important witnesses were closely allied with the corporate defendants and were evasive and hostile. In the case of some of these witnesses, the Government attempted to stimulate memory by reference to the witness' prior grand jury testimony. The method used was for the trial court or Government counsel to read to the witness in open court excerpts from such prior testimony. Over 84 percent of the attempts thus to refresh recollection failed and no affirmative testimony of any importance was elicited in this way.

Refusal to allow defense counsel to inspect the grand jury transcript was not reversible error. Where a document is used on the witness stand to refresh recollection, opposing counsel are usually granted, upon proper demand, the right to inspect. Inspection is allowed in order (1) to guard against improper communication to the witness by his own counsel and (2) to afford opportunity to test by cross-examination whether the testimony given was the result of bona fide refreshment. Neither of these reasons apply under the circumstances of this case. The grand jury transcript was read to the witness, not handed to him on the witness stand, and there could therefore be no improper communication. Since no testimony of substance was inspired by this means, cross-examination to test the bona fide character of the stimulation was unnecessary. Since the reasons for permitting inspection did not apply, denial thereof was not prejudicial. Nor can prejudice be predicated on comments made by Government counsel in laying the foundation for refreshment. In only three of the ten instances referred to in the opinion of the court below was there objection by defense counsel. Remarks which did not at the time provoke objection are most unlikely to have prejudicially affected the jury.

The right of inspection is limited to such portion of the document as related to the subject matter of the attempted refreshment. Since the inspection demanded by the defendants was the entire transcript of the witness' grand jury testimony, their claim was not support by proper specific demand.

Attempted refreshment by reading from a transcript not authenticated was not error. Authentication is required where the document itself becomes affirmative evidence in the case, e. g., when it is used for impeachment purposes and when, all present recollection failing, the document becomes a substitute therefor, under the doctrine of past recollection recorded. But when a document is used for purposes of refreshment only, the *testimony of the witness* is the sole evidence received. Nor can it be said that in this case the jury was likely to believe mistakenly that the prior grand jury testimony was itself evidence. The trial court duly warned the jury to ignore the grand jury testimony and it exercised close supervision over the manner in which this testimony was used.

It is immaterial that the grand jury testimony was not strictly contemporaneous with the events to which it related. Contemporaneousness, as an assurance of accuracy, is important only where the prior testimonial statements are themselves received as evidence. Contemporaneousness, being a matter of degree, should be left to the discretion of the trial court. Here there was certainly no abuse of discretion. The prior statements related to a conspiracy continuing at the time the statements were made and related to matters arising in the course of the witnesses' regular business duties and employment.

IV

Respondents contend that certain remarks by Government counsel had the effect of denying them a fair trial. The Government's opening statements and closing arguments, from which the remarks in question are taken, occupy 240 pages of the printed record. The culling from argument of great length of the remarks most likely to appear objectionable and the assemblage of these remarks, isolated from their context, give a totally misleading impression of the effect produced upon the jury by the argument as a whole. Clearly there was not here that "pronounced and persistent" misconduct of counsel which, at least if the evidence against the defendant was weak, will be assumed to have prejudiced the cause of the accused.

Furthermore, substantially all of the remarks now alleged to be prejudicial either were not objected to at the time they were made or corrective action was taken by the trial court. Objection in the trial court, in order that any necessary correction may be made before opportunity therefor has passed, is not a merely technical requirement but is imposed in the interest of the orderly conduct of litigation. As to the remarks which, upon objection, were withdrawn and which the jury was instructed to ignore, the error, if any, is deemed cured by such corrective action.

V

The district court had jurisdiction to try the offense of which respondents were convicted. It is undisputed that during the conspiracy period the defendants were selling gasoline in the trial district at prices directly based upon Mid-Continent spot market prices. Sales therein at such prices were within the direct purposes and objectives of the conspiracy. The indictment so alleged and the jury, under the district court's instructions, necessarily so determined when it returned verdicts of guilty.

When producers agree to sell their product at uniform minimum prices, their sales are acts in furtherance of the conspiracy and give the court in a district where sales are made, jurisdiction to try the offense. *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 403–404, *supra.* In the present conspiracy by the defendants to sell their gasoline in the Mid-Western area (including the trial district) at raised and maintained prices based upon artificially raised and maintained spot market prices, the defendants' sales in the trial district at the artificially raised and maintained prices are likewise acts in furtherance of this conspiracy and gave the court there jurisdiction to try the offense.

It is immaterial that the defendants, prior to the conspiracy, sold in the Mid-Western area on the basis of Mid-Continent spot market prices. Adherence to and continuance of sales therein on this price basis were implicit in their agreement to raise and maintain market price. Furthermore, irrespective of whether or not this was a matter of *express* agreement, sales in the Mid-Western area (including the trial district) at the artificial price level brought about and maintained by the conspiracy supplied part of the "continuous cooperation" necessary to keep the conspiracy alive and to render it effective, and therefore constituted a carrying out of the conspiracy within the trial district.

VI

The charge of the indictment against respondents is separate from, and independent of, the charge against the trade journal defendants, that they guiltily participated therein by publishing false spot market prices. This charge constitutes only a subordinate means for the effectuation of the conspiracy and is a nonessential allegation since several other means were alleged and proved.

Paragraphs 5–17 of the indictment set forth facts showing that wholesale and retail prices in the Mid-Western area are directly controlled by spot market prices. Paragraph 18 charged a conspiracy to raise and fix prices in the Mid-Western area by raising and fixing prices on the spot market. Since a conspiracy of this kind is unlawful, further allegations of the means by which this objective was achieved are unnecessary.

The program for concerted buying by majors of gasoline of independent refiners is the principal means for effectuating the conspiracy set forth in the indictment. The allegation that the journals, instead of publishing the prices paid in spot sales by independent refiners to jobbers, published the prices which the majors paid them in purchases made under this program, was the allegation of an additional means not in any way essential to the carrying out of the conspiracy described in the indictment.

There was no material variance between the indictment and the proof. The indictment charged, and the proof showed, a combination falling within the rationale of the decision of this Court in *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, *supra*. Moreover, the variance, if any, between the indictment and the proof was in no way prejudicial to the respondents.

VII

In the court below respondents did not attempt to show that the evidence was insufficient to support the jury's findings that they had combined for the purpose of raising and fixing prices and that they had the power, in combination, to achieve this end. Respondents merely detailed certain evidence which, if the jury had given it controlling weight, would have supported certain contrary findings. Since it lies with the jury, not the court, to pass upon conflicting evidence and disputed factual issues, respondents wholly failed to make out a proper case for granting their motions for directed verdicts.

VIII

The district court's award of a new trial to another corporate defendant, Standard of Indiana, did not have the effect of retroactively invalidating the jury's verdict against respondents. The district court denied Standard of Indiana's motion for a directed verdict. Its motion for a new trial was granted upon the ground that there was "good reason to believe" that it had not had "an adequate separate consideration" of its defense. These rulings constituted an adjudication that the evidence was sufficient to warrant the jury in finding that Standard of Indiana was a party to the conspiracy. It follows, therefore, that when the jury, in passing upon the question of the power of the defendants to raise and fix prices, did so in the light of Standard of Indiana being a party to the conspiracy, the jury's determination of the issue of power was made on the basis of adequate and sufficient evidence as to all matters involved in its determination of this issue and the jury's determination was not only free from fundamental error, it was free from error of any kind.

The ground upon which Standard of Indiana was granted a new trial would seem to be a doubtful one and it was certainly one which involved exercise of the discretion vested in trial courts in passing upon motions for new trial. Since respondents' claim to a new trial rests on the fact that the district court determined that Standard of Indiana was entitled to a new trial and since this was a purely discretionary ruling, respondents' claim to a new trial, which cannot be superior to the claim on which it rests, must likewise lie within the realm of discretion. Nothing is better settled than that the exercise of the trial court's discretion in passing upon a motion for new trial will not be reviewed by an appellate court unless the trial court erroneously concluded that it did not have jurisdiction of the motion or of the grounds advanced in support thereof. The facts of this case establish that the district court had no doubt as to its jurisdiction to pass upon respondents' motions for new trial, including all grounds advanced in support of these motions. In addition, the burden rests upon respondents to show that the district court failed to take jurisdiction.

There is a further obstacle to the relief sought by respondents. They did not present to the district court the ground upon which they now urge that they are entitled to new trials, namely, that the granting of a new trial to an important corporate defendant would require the granting of the same relief to all the other defendants. Their failure to present this question to the trial court bars them from obtaining review thereof by an appellate court.

ARGUMENT

I

THE DISTRICT COURT DID NOT ERR IN INSTRUCTING THE JURY THAT IF THE JURY FOUND THAT THE DEFENDANTS HAD COMBINED FOR THE PURPOSE OF RAISING AND FIXING GASOLINE PRICES IN THE MANNER ALLEGED IN THE INDICTMENT AND IF IT FOUND THAT THEY HAD THE POWER SO TO RAISE AND FIX PRICES, THE RESTRAINT IMPOSED BY THEIR COMBINATION WAS UNREASONABLE AND UNLAWFUL

The most important issue in this case is whether the district court was correct in charging the jury that, if the defendants combined together for the purpose of raising and fixing gasoline prices in the manner charged in the indictment and if they had the power to raise these prices, their restraint was unlawful and unreasonable. Determination of this issue turns upon whether the case at bar is within the authority of *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, where it was held that a price-fixing combination which vests in the parties thereto the power to control the market and to fix arbitrary and unreasonable prices constitutes an unreasonable restraint within the direct prohibitions of the Sherman Act, and that therefore, if the jury finds that a combination having such power and purpose has been formed, no question as to the reasonableness of the restraint is open, by way of defense, for jury consideration.

In dealing with the above issue, we shall set forth (1) the nature of the instructions given the jury in this case; (2) the tests or criteria applied in determining the reasonableness or unreasonableness (i. e., legality or illegality) of various types of restraint of trade, particularly those involving price fixing or price control; (3) the considerations which support the soundness of the holding in the *Trenton Potteries* case; and (4) the reasons which compel the conclusion that in the instant case this holding was correctly applied in the district court's instructions to the jury.

A. *The jury was instructed to acquit the defendants unless it found (a) that they had combined for the purpose of raising and fixing spot market prices and for the purpose of thereby raising and controlling the prices of the gasoline sold by them in the Mid-Western area and (b) that they had, in fact, raised and fixed spot market prices; and the jury was further instructed that if it found both that the defendants had combined for these purposes and that they had the power so to raise and control gasoline prices, the restraint imposed by their combination would be unreasonable and unlawful*

The district court's charge is clear as to the minimum findings which the jury was required to make before it could find the defendants guilty. The jury was instructed that before returning a verdict of guilt against any defendant it must find that the evidence established beyond a reasonable doubt all the material and essential allegations of the indictment, as these had been stated and described in the court's charge (R. 2400–1).

Under this instruction and under the court's statement of the material and essential allegations, the jury in order to return a verdict of guilt, was required to find that the defendants had combined together "for the purpose of raising and fixing" gasoline prices in the Mid-Western area; that prices in this area were "determined by the prices paid for gasoline in certain spot markets"; that "in order to raise"[1] the price at which they sold gasoline, both at wholesale and at retail, in the Mid-Western area, "the defendants combined together, and also combined with a large number of so-called independent refiners, to raise the spot market prices"; that the defendants organized two buying programs "in order to raise the spot market prices, and thereby to raise the prices of gasoline sold by the defendants" in the Mid-Western area (R. 2399–2400).

Near the end of the charge the jury was again instructed that it could not find the defendants guilty unless all the material and essential allegations of the indictment were proved beyond a reasonable doubt (R. 2417). The court amplified this instruction by stating that all the defendants should be acquitted unless the jury found beyond a reasonable doubt that the defendants had conspired together "for the purpose of artificially raising and fixing" spot market prices and that they had also "intentionally raised and fixed the tank car price of gasoline" in the Mid-Western area and had "intentionally raised the general level of retail prices prevailing in" this area (*ib.*). The jury was cautioned that a showing that prices in the Mid-Western area had increased was not sufficient to sustain these allegations, but that the jury must find beyond a reasonable doubt that the defendants had combined together "for the purpose of increasing and fixing the same as well as for the purpose of raising and fixing" spot market prices (*ib.*).

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[1] In the charge the terms "raise" and "fix" are usually employed together. The term "raise," when used alone in some places in the charge, must have the same connotation as, and must have been understood by the jury in the sense of, "fix." It is clear law that the language of a charge is to be interpreted in the light of the evidence and the issues before the jury to which it relates. *Southern Pac. Co.* v. *Hall*, 100 Fed. 760, 769 (C. C. A. 9th); *Hall* v. *McKinnon*, 193 Fed. 572, 576 (C. C. A. 9th); *Seaboard Airline Ry.* v. *Padgett*, 236 U. S. 668, 672. Here the indictment and the uncontradicted evidence show that the spot market prices had been "raised" by some force, not raised generally, but raised from a low, fluctuating level to a definitely fixed, uniform level and had been held there by some control. This kind of raising is fixing. It was therefore left to the jury to determine whether defendants' combination, or some other forces, caused not a general raising in prices, but this particular kind of price-raising and price-control.

The jury was also instructed to return verdicts of "not guilty" unless it found beyond a reasonable doubt that the March–June 1935 rise in spot market prices and their uniform level during the remainder of the year "was caused by" an unlawful combination of the defendants such as alleged in the indictment and explained in the court's instructions, "and not caused by" the factors to which the defense evidence attributed this rise in price and subsequent stationary price (R. 2407).

The jury was advised that it must consider all the facts and circumstances and evidence in determining both whether the combination charged in the indictment had been formed and whether its purpose was that of "unlawfully raising and fixing" gasoline prices in the Mid-Western area (R. 2408, 2409).

The jury was *not* instructed that it should convict the defendants if it found that the essential allegations of the indictment had been proved beyond reasonable doubt. It *was* instructed that the Sherman Act does not prohibit joint action for a lawful purpose and that the Act does not render all cooperative or concerted activity illegal (R. 2402). The court's instruction was that the Act makes it unlawful for a group of individuals or corporations to conspire to raise the price of a commodity when the combining parties "control a substantial part of the interstate trade and commerce of that commodity" (R. 2404–5). This general instruction was then applied to the facts of the instant case as follows. (R. 2405):

> If you find that the defendants, and those acting in concert with them, controlled the greater part of the gasoline sold in the ten Middle Western States, *and had the power to raise the price of that gasoline,* and that the defendants and these other persons acting with them have knowingly engaged in a combination to raise or fix the price to be charged for gasoline to jobbers or consumers in the Mid-Western area as charged in the indictment, then you will understand that these defendants have violated the Sherman Act and are guilty as charged in the indictment.

The court charged the jury that if it found such a combination—that is, one having both the purpose and the power so to raise prices—then the combination would be illegal regardless of any good intentions of the defendants or whether prices fixed were reasonable or unreasonable, or whether or not the conspiracy was beneficial to independent refiners (R. 2405, 2407). The substance of the charge, that if there was both the power and the purpose so to raise prices the restraint would be unlawful irrespective of any other considerations, was several times repeated.[2]

Respondents have contended that at one point in its charge the district court laid down a more restricted rule, which was confusing and erroneous. This contention is based upon the italicized words in the following sentence in the charge (R. 2414):

> If you should find that the defendants acting together, and those independent refiners found acting in concert with them, did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, or that they did not combine for that purpose, *and if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally*, then you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to and did merely eliminate abuses which tended to produce destructive competition and restore

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[2] End of last paragraph R. 2407; first paragraph R. 2408; first full paragraph R. 2409; second paragraph R. 2414; first full paragraph R. 2415.

competition to a fairer basis and produce fairer price levels.

In view of the court's explicit instructions that the defendants were to be *acquitted* unless the jury found that they had combined for the purpose of raising and fixing both spot market prices and prices in the Mid-Western area (*supra*, pp. 63–64), and its explicit instructions that the defendants should be *acquitted* unless the jury found that defendants' combination had, in fact, caused the rise in spot market prices in the early months of the conspiracy and the fixed price level thereafter maintained (*supra*, p. 64) and its instructions that it was *the purpose to raise prices by the means set forth in the indictment, in conjunction with the power to raise prices*, which would make the restraint unlawful under the statute irrespective of any collateral considerations bearing on the question of reasonableness, the jury could not have been misled by any error lurking in a subsidiary part of one sentence in an extended charge.[3] The best evidence that the jury was not misled is the fact that none of the numerous defense counsel took an exception specifying the error which respondents now assert, namely, that the jury was not permitted to consider the reasonableness of the restraint unless it first found that the defendants' purchases affected spot market prices only indirectly and incidentally.[4] In fact, the exceptions which were taken indicate that defense counsel understood that the charge as a whole did not have this meaning.[4]

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[3] The charge, as printed in the present record, covers 26 pages (R. 2396–2422).

Respondents' failure to take any exception specifying the error now alleged bars them from raising it in their appeal. The rule is "that where an instruction embodies several propositions of law, to some of which no objection properly could be taken, a general exception to the entire instruction will not entitle the exceptor to take advantage of a mistake or error in some single or minor proposition therein." *Norfolk & Western Ry. Co.* v. *Earnest*, 229 U. S. 114, 122. See also *Burns* v. *United States,* 274 U. S. 328, 336; *Thiede* v. *Utah Territory,* 159 U. S. 510, 521–522. As these authorities show, the rule is not merely technical, but serves the important purpose of calling attention to the precise error complained of, so that the trial court will be afforded opportunity to correct its charge.

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[4] The exceptions to the charge were general. Exception was taken to so much of the charge "as stated that any agreement between persons having for its purpose the raising of prices as distinguished from the fixing of prices was itself unreasonable under the Sherman Act irrespective of other circumstances" (R. 2424); to the court's failure "to define to the jury what constitutes lawful and unlawful restraint, and to state to the jury what circumstances they should take into account in determining whether or not a given restraint is reasonable or unreasonable" (R. 2425); to "the Court's charge that a combination to raise a price where there is power to control such price is in itself unlawful and unreasonable even though that power * * * is merely power to remove an obstacle to a healthy, competitive price, and to remove a destructive practice in the industry" (R. 2430).

B. *This Court has uniformly held that a combination having both the purpose and the power to control the market price of a commodity imposes an unreasonable and unlawful restraint, directly prohibited by the Sherman Act*

The section of the Sherman Act which is here involved prohibits contracts, combinations, and conspiracies "in restraint of" interstate and foreign commerce. The act contains no further specification of the conduct thus proscribed, but the rule of interpretation laid down in *Standard Oil Co.* v. *United States,* 221 U. S. 1, is that only restraints which are unreasonable are forbidden. Trade, however, may be restrained in many different ways and there is no one rule or test of general application for determining what restraints are unreasonable. The criteria of unreasonable restraint therefore vary with the type of restraint involved. We are here concerned with the scope of the act's prohibitions as to a particular type of restraint, but brief consideration of the basis of decision respecting other forms of restraint will serve to show that in these other restraints, just as in the one now under consideration, the criteria applied in determining whether the restraint is unreasonable are comparatively definite and limited. While a wide scope of factual inquiry is frequently necessary or appropriate when a combination is charged as being in illegal restraint of trade, this is so, not because each individual case calls for its own individual criteria of illegality, but because the *facts* relevant to determining the presence or absence of the controlling criteria of illegality vary from case to case and, in addition, usually are complex.

When a combination takes the form of a union of ownership of competing concerns, the emphasis is on the purpose and the power to exclude competitors from the field and to attain monopolistic or semi-monopolistic control.[5] When those engaged in performing the same function or service take concerted action directed against concerns performing a different function or service, for the purpose of furthering the interests of the first group at the expense of the latter, the emphasis is on the restraint of, or interference with, the right freely to engage in interstate trade.[6] The same element is uppermost where there is a combination not to deal with or not to buy from a particular concern, with the purpose and effect of injuring its interstate trade.[7]

Where competitors, without any integration of property or ownership, combine to limit competition among themselves, the element which is uppermost is the injury to the general public which results from depriving it of benefits which a competitive regime is believed to promote.[8] If there is a combination to exchange statistical information and the only competition eliminated is that which would flourish in the absence of such exchange of information, the restraint is reasonable.[9] The same is true if the elimination of competition is really a defensive measure directed at unfair or improper trade practices.[10] But when a combination having such objectives goes further and employs them primarily as a medium for raising prices, limiting production, or cutting off opportunities for variation in the course of competition, the restraint becomes unreasonable and unlawful.[11] *A fortiori*, when a combination is formed for the purpose of controlling the price of a product and it has the power to make its price control effective, the character of the restraint is unlawful and within the direct condemnation of the statute and it cannot be removed therefrom by virtue of any alleged offsetting business or economic considerations.

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[5] *Standard Oil Co.* v. *United States*, 221 U. S. 1, 57–58, 75–77, *supra*; *United States* v. *Reading Co.*, 253 U. S. 26, 57–59.

[6] *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, 611–612, 614 (retailers against wholesalers); *United States* v. *First National Pictures, Inc.*, 282 U. S. 44, 54 (motion picture producers and distributors against exhibitors).

[7] *Loewe* v. *Lawlor*, 208 U. S. 274, 292–294; *Binderup* v. *Pathe Exchange, Inc.*, 263 U. S. 291, 312.

[8] *United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 388–390.

This Court has consistently adhered to this last proposition.[12] *United States* v. *Trans-Missouri Freight*

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[9] *Maple Flooring Mfrs. Ass'n* v. *United States*, 268 U. S. 563, 582–585; *Cement Mfrs. Protective Ass'n* v. *United States*, 268 U. S. 588, 605–606.

[10] *Cement Mfrs. Protective Ass'n* v. *United States*, 268 U. S. 588, 602–604; *supra; Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, *supra.*

[11] *American Column & Lumber Co.* v. *United States*, 257 U. S. 377, 411–412; *United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 389–390, *supra; Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 599–601, *supra.*

[12] *Chicago Board of Trade* v. *United States*, 246 U. S. 231, although sometimes cited as an exception, is not. A rule of the Board (a grain exchange) prohibited members from purchasing certain grain between the close of the exchange on one day and its opening the next business day, other than at the closing bid on the exchange. The rule did not, either in purpose or effect, involve price control and it was held not to constitute an unrea-

Ass'n, 166 U. S. 290, 330–331, 342, and *United States* v. *Joint Traffic Ass'n*, 171 U. S. 505, 565, 577, held that agreement by competing railroads on uniform freight rates violates the act and that it is no defense either that the rates fixed are reasonable or that the agreement was formed to put an end to destructive competition. In *Standard Oil Co.* v. *United States*, 221 U. S. 1, 64–65, *supra*, the Court said that these decisions were not in conflict with the interpretation of the statute which it was then adopting, that it prohibits only unreasonable restraints. The Court said that in the freight association cases the conduct complained of "operated to produce the injuries which the statute forbade" and that "resort to reason was not permissible in order to allow that to be done which the statute prohibited." It also said that the agreements in those cases, considering their necessary effect, "were clearly restraints of trade within the purview of the statute," and "could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts."

Addyston Pipe and Steel Co. v. *United States*, 175 U. S. 211, involved an agreement for collusive bidding, entered into by manufacturers of cast-iron pipe whose mills were located in a certain geographical area. Less than half the productive capacity of the country was represented in the combination, but adverse freight rates made the competition of non-members' mills only

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sonable restraint of trade. As the Court pointed out (pp. 240-241), its purpose was to concentrate trading on the exchange, where prices were determined competitively and openly, and it "had no appreciable effect on general market prices."

partially effective. This Court, in holding the agreement unlawful under the Sherman Act, quoted with approval (pp. 235, 237–238) a portion of the opinion of the Circuit Court of Appeals which declared that the reasonableness of the prices actually charged was no defense to a combination of this kind.

In *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, *supra*, the defendants, manufacturers of 82% of the sanitary pottery produced in the United States, were convicted under an indictment charging that they had combined to fix and maintain uniform prices for the sale of their product. The trial court charged the jury—

> * * * an agreement on the part of the members of a combination controlling a substantial part of an industry, upon the prices which the members are to charge for their commodity, is in itself an undue and unreasonable restraint of trade and commerce; * * *.

The court also charged the jury that if it found such an agreement it might return a verdict of guilty without regard to the reasonableness of the prices fixed, or the good intentions of the combining parties or whether prices were actually lowered or raised.

This Court held that the trial court "correctly withdrew from the jury the consideration of the reasonableness of the particular restraints charged." In stating the grounds for this conclusion, the Court said (p. 397):

> Reasonableness is not a concept of definite and unchanging content. Its meaning necessarily varies in the different fields of the law, because it is used as a convenient summary of the domi-

> nant considerations which control in the application of legal doctrines. Our view of what is a reasonable restraint of commerce is controlled by the recognized purpose of the Sherman Law itself. * * * it cannot be doubted that the Sherman Law and the judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition. [Citing cases.]
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> The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. * * * Agreements which create such potential power may well be held to be in themselves unreasonable or unlawful restraints, * * *.

The Court also said (p. 398):

> Thus viewed, the Sherman law is not only a prohibition against the infliction of a particular type of public injury. It "is a limitation of rights, * * * which may be pushed to evil consequences and therefore restrained."

In *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, *supra,* the Court did not in any way depart from this holding. The *Appalachian Coals* case sustained the legality of a plan whereby certain producers of bituminous coal, having 64% of the production in the area in which their mines were located and 12% of the production east of the Mississippi River agreed to sell their coal through a common selling agent. This Court said (p. 373): "The plan cannot be said either to contemplate or involve the fixing of market prices." It said (*ib.*) that the evidence as to the conditions of the production and distribution of bituminous coal and the extent of developed and undeveloped mining capacity, "makes it impossible to conclude that defendants through the operation of their plan will be able to fix the price of coal in the consuming markets." Again the Court said (p. 375), "there is, as we have seen, no intent or power to fix prices."

The "deplorable" conditions in the bituminous coal industry, resulting from a progressively diminishing market for its product and aggravated by certain "destructive" marketing practices which the plan sought to remedy or mitigate, were found to be the occasion for and the real objective of the agreement (pp. 361–367, 372). The ultimate holding (pp. 373–377) was that an agreement lacking power or purpose to fix market prices, and really designed to remedy trade abuses, cannot be said to restrain trade unreasonably *merely because* it has "a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain" or because it eliminates price competition among the parties to the agreement.[13]

The limitations of the foregoing decision are clearly marked in *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553, *supra.* The Court recognized that the trade association of sugar refiners had been formed for the primary purpose of putting an end to the granting of secret, discriminatory price concessions to individual customers and that this practice, prevalent in the industry, constituted a trade abuse. But since the Court also found that the carrying out of this undertaking had resulted in an undue restriction of competition among the refiners (who supplied from 70% to 80% of the total sugar consumption), unreasonable restraints were imposed. The Court said (p. 599):

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[13] The Court nevertheless recognized (pp. 377–378) that since the case had been tried before the agreement had been put into effect, it might prove in actual operation to be an undue restraint upon interstate commerce. It therefore directed the district court to dismiss the bill of complaint without prejudice and with the provision that the court might set aside its decree and take further proceedings if future developments should justify this course.

> As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them.

C. *The holding in United States* v. *Trenton Potteries Co., 273 U. S. 392, that a combination having both the purpose and the power to control the market price of a commodity is unlawful under the Sherman Act, is a sound and correct application of the prohibitions of the Act*

The basis of decision in the *Trenton Potteries* case is, as we understand it, that when competitors having the power, through limitation of competition, to control the market price of a commodity enter into an agreement the major purpose of which is to exercise such price control, the restraint imposed is so directly productive of "evil consequences" which the act was intended to prevent that the statute renders the restraint unlawful under any and all circumstances. Accordingly, when court or jury has determined from all of the evidence that such an agreement exists, this determination renders court or jury *functus officio* respecting the reasonableness of the restraint. The soundness of this application of the statute is, we submit, beyond question.

The opposing view is that such a restraint is open to defenses involving, not the nature of the restraint itself, but an attempted evaluation of either collateral and subordinate objectives of those combining or the reasonableness of the prices actually imposed. This view would strip the statute of all certainty as to content.

The word "unreasonable" is not to be found within the statute. Granted the value of this concept as an aid in many situations where the nature of the restraint is such that the application thereto of the statutory prohibition is doubtful, there is nevertheless far less justification for assuming that there can be *no* restraint *ipso facto* within the condemnation of the statute than for assuming that *every* restraint of trade, whatever its nature, is condemned. Unless the tests which the courts apply in defining the scope of the act's interdictions are to be almost wholly subjective, it must be assumed that the interdictions of the act have some definable starting point, that there is *some* zone of directly prohibited conduct.

In the *Trenton Potteries* case the Court said that the restraint there involved was of itself unlawful. A somewhat different way of stating what was actually held may serve to show that the case is but an application of principles generally applied in determining what restraints are prohibited by the Sherman Act.

Whether certain conduct does or does not constitute an unreasonable restraint of trade is a question of law for the courts to decide in the light of all the facts relevant to this question.[14] In a criminal proceeding such as the *Trenton Potteries* case and the instant case, when any relevant facts are in dispute it is for the jury to decide these factual issues, but what are the factual findings which, if made, will establish the guilt of the defendants is a question of law for the trial court to decide.

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[14] Under the Federal Trade Commission Act the Commission is the sole fact-determining body, but what constitutes the "unfair methods of competition" which that act prohibits is a matter of law for the courts to decide. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *Raladam Co.* v. *Federal Trade Commission*, 283 U. S. 643, 648.

The holding in the *Trenton Potteries* case, that if certain basic facts are found to exist the restraint is unlawful, irrespective of what conclusion might be reached upon other factual issues raised by the defense, is essentially the process of decision in equity cases. Most of the cases under the Sherman Act which have come before this Court have been proceedings in equity and in these cases the distinction between questions of law and questions of fact is obscured, but the process of decision, nevertheless, involves singling out the facts relevant to the legality of the restraint, deciding what these facts are, and then determining the legal conclusion flowing therefrom. Thus, in *Eastern States Lumber Ass'n* v. *United States,* 234 U. S. 600, 613, *supra,* an equity proceeding, the Court, having first found that the systematic circulation among a large group of retailers of a list of wholesalers who sold at retail had and was intended to have the effect of causing such retailers to withhold their patronage from the concerns listed, concluded that these facts made the restraint unlawful irrespective of whether or not the defendant's course of action was "necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities."

If the case at bar were a suit in equity and this Court had made the findings which the jury necessarily made when it returned a verdict of guilty—that the defendants combined for the purpose of raising and fixing the market price of gasoline and that they had the power to exercise and had actually exercised this control over market price—there would seem to be no doubt that the restraint of trade would be held unreasonable and unlawful irrespective of the Court's findings on any of the collateral issues tendered by way of defense.[15] As we have seen (*supra*, pp. 75–76), in the *Sugar Institute* case the restraint involved—cutting off "opportunities for variation in the course of competition however fair and appropriate they might be"[16]—was less objectionable than the one involved here, yet this Court rejected as a defense of the reasonableness of the restraint a more meritorious defense—preventing a genuine trade abuse—than the vague and uncertain grounds of defense here. Since, therefore, if the case at bar were an equity proceeding, the Court, in the process of reaching decision, would lay aside these collateral grounds of defense, the trial court was clearly correct in pursuing a like course of action in its instructions to the jury.

D. *The holding in the Trenton Potteries case and other like cases was correctly applied by the trial court in its instructions to the jury in the case at bar*

Respondents have sought to distinguish the case at bar from the *Trenton Potteries* case on a number of different grounds. One ground (not very seriously pressed) is that the reasonableness of the prices fixed or exacted is the only defense barred by that decision. While the opinion primarily deals with the question whether this defense (the one most clearly pertinent and persuasive) is open, it is clear that the actual holding, as well as the language of the Court, forecloses defense of reasonableness upon any other ground.[17]

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[15] E. g., that a subsidiary purpose was to aid independent refiners in obtaining fairer prices for their product or that, when the conspiracy was formed, the defendants reasonably believed that certain Government officers favored higher spot market prices than those then prevailing.

[16] 297 U. S. 553, 601.

Another contention of respondents is that the authority of the *Trenton Potteries* case is to be confined to combinations where the machinery of price control is the same as in that case, namely, an agreement upon uniform minimum selling prices. This attempted limitation of the decision ignores that aspect of the restraint which led to its condemnation—the attainment, through combination and elimination of competition, of "power to control the market and to fix arbitrary and unreasonable prices."

In the instant case the machinery of price control was more complex, but entailed the same consequences as, an agreement by a dominant group in an industry to sell at uniform minimum prices. The first step was raising and controlling spot market prices by means of a buying program which (1) sharply curtailed market supply and (2) absorbed any part of the supply which the independent refiners might be unable to sell at the going market price. This program, with the sellers and the buying group both desiring the same end, higher prices, gave such control over market price that prices could be driven upward until the desired level had been reached and could then be held at this level. The second step, the second objective of the conspiracy, raising the prices at which the majors sold their gasoline in the Mid-Western area, followed automatically from the first step. Under the provisions of their jobber contracts, the price at which the majors sold to jobbers was determined by the spot market price and this price also fixed the prevailing level of retail prices in the Mid-Western area.

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[17] See our previous statement of the *Trenton Potteries* case (*supra*, pp. 73–74).

Plainly this combination conferred "power to control the market and to fix arbitrary and unreasonable prices." Plainly it was attained by combination, by elimination of competition. The majors were not buying from the independent buyers competitively, in the amounts which their business needs dictated, from the sources best suited to serve these needs, or at as favorable prices as possible. The quantity purchased, the source of purchase, and minimum price (i. e., not less than the going spot market price) were all fixed by agreement (*supra*, pp. 16–17, 19–20, 21–22, 26–29).

The mere fact that this combination involved the cooperation of the independent refiners does not in any way alter the control over market price vested in the majors. The higher prices which these refiners were able to obtain by reason of the artificial support to market price furnished by the majors' buying program assured the continued cooperation of the independent refiners. The majors through their power to continue or to withdraw buying support remained in full control of the situation. Thus any tendency by independent refiners substantially to increase production could be effectively curbed.[18]

The power to control market price conferred by such a combination and the dangers of an injurious exercise of this power would seem greater and more serious than in the case of a simple agreement to sell at uniform minimum prices. The inflexibility of minimum uniform sales prices puts the parties at a disadvantage in meeting outside competition. In addition, the individual parties to such an agreement are under the temptation to secure a larger share of the business by granting concealed or secret price concessions, so that the problem of policing is usually a difficult one.[19]

Since the "evil consequences" of the combination here are the same as in the *Trenton Potteries* case, the fact that the machinery of price control was different is immaterial. In determining the scope of the prohibitions of the Sherman Act, "all the difficulties suggested by the mere form in which the assailed transactions are clothed become of no moment." *American Tobacco Co.* v. *United States,* 221 U. S. 106, 180. As this Court has recently said, the restrictions of the act "are not mechanical or artificial," its general phrases are to be "interpreted to attain its fundamental objects", the act "aims at substance." *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, 360, 377, *supra.*

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[18] In the early part of the conspiracy production of all refiners was limited under the petroleum code. The evidence shows that after expiration of the code there was an active movement to limit the production of Mid-Continent independent refiners, carried out under the direction of defendant Boggs, president of their trade association. Ex. 766–808 (R. 3286–3301), as explained in Ex. 753 (R. 3281–2); Exs. 817–819 (R. 3311–4). See also Ruether's report (*supra*, note 41, p. 29) stating that, by virtue of the "dancing partner" arrangement, the buyer could use "his purchasing power to influence the operating program of the small refiners to stay within his allocation."

[19] When the principal sugar refiners agreed not to depart from their published prices without prior public notice of change, enforcement of the agreement required the adoption of more and more detailed rules covering the refiners' business dealings. See *United States* v. *Sugar Institute, Inc.*, 15 F. Supp. 817, 828–831, 834–861, 864–886, affirmed 297 U. S. 553.

The court below held that the question of the effect of defendants' combination "upon fair competition, and consequently the question as to whether it constituted an unreasonable restraint of trade, were questions of fact" which the trial court should have submitted to the jury (R. 3932). The court appears to have regarded the *Trenton Potteries* case as inapplicable to the case at bar for the following reasons: (1) It said that here the reasonableness of the restraint was defended upon the ground that the combination eliminated a competitive abuse; and the court interpreted the *Trenton Potteries* case as not barring defense of the reasonableness of the restraint upon this ground. (2) It said that a price-fixing agreement such as that involved in the *Trenton Potteries* case is one "which in its very nature, destroyed competition"; the authority of that case is confined to such an agreement; and the present combination did not destroy competition, it merely affected it.

In setting forth the first of these reasons the court said, referring to the *Trenton Potteries* case (R. 3930):

> It was not even claimed there was any purpose or object to correct a competitive abuse in the industry. There is nothing in the opinion to indicate that an agreement to raise or affect prices by the elimination of a competitive abuse

> is per se illegal or that the character of the restraint is not a proper jury question, under such circumstances.

The error in the above statement is twofold. In the first place, the court's assumption that in the case at bar the combination was simply "an agreement to raise or affect prices by the elimination of a competitive abuse", is contrary to the findings which the jury necessarily made when it convicted the defendants. Under the trial court's instructions to the jury it was required, in order to convict the defendants, to find that they had combined both for the purpose of raising and fixing spot market prices and for the purpose of thereby raising the prices at which they sold gasoline in the Mid-Western area (*supra*, pp. 62–64). In other words, the jury found that price raising and price fixing, as such, was the *primary* objective of the conspiracy. The characterization of the conspiracy by the court below flouts the jury's verdict although the opinion nowhere intimates that the evidence was insufficient to sustain the jury's findings.

In the second place, the court's statement misinterprets the scope of the holding of the *Trenton Potteries* case. As we have already stated (*supra*, pp. 79–80), that case held that the type of restraint there involved was a restraint which the statute made unlawful and that therefore, once the jury had found this type of restraint, no further question bearing upon the reasonableness of the restraint was open to jury consideration. Moreover, the very point which the court below said was not passed upon in the *Trenton Potteries* case was directly involved. In that case this

Court pointed out that the trial court had charged the jury that if it found a combination such as that alleged in the indictment, the defendants would be guilty without regard to "the good intentions of the combining units" (273 U. S. 392, 395). Respondents can scarcely deny that "good intentions" include the purpose to eliminate a competitive abuse. In addition, the trial court's refusal of various requested charges was held not to be error (*ib.*, p. 396), and among the charges so refused were two to the effect that cooperative action, taken as a measure of self-protection against trade abuses, does not constitute an unreasonable restraint of trade.[20]

The second ground upon which the court below distinguished the *Trenton Potteries* case was that the restraint was held unlawful as such in that case because *price-fixing* by a dominant group in an industry *destroys* competition, but that in the case at bar defendants' combination did not destroy competition "inasmuch as the buying programs complained of included only about one-third of the gasoline sold on the 'spot' market" (R. 3930, 3932).

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[20] Error was assigned to refusal of the following requested charges (*United States* v. *Trenton Potteries Co.* Record, pp. 3672, 3678):

"The defendants had the right by cooperative action to fairly protect themselves against trade evils and abuse and unfair methods of competition and unless the jury finds that they have done more than is fairly justified by self-protection, they should return a verdict of not guilty."

"Persons may make agreements as to prices, provided such agreements afford only the necessary protection to the persons making them in their business against ruinous competition or bad trade practices, and provided further such agreements are not made for the purpose of restraining trade."

The view of the court below that defendants' combination did not destroy competition on the spot market because the purchases constituted only one-third of spot market supply is not only in conflict with the jury's factual determination but represents a complete misunderstanding of what constitutes competition or a competitive market, under the circumstances of this case. The jury found that the defendants had entered into a combination to raise and maintain spot market prices, that they had the power in combination to effectuate this purpose, and that they had caused the rise in spot market prices and subsequent maintenance of this advance (*supra,* pp. 62–66). Thus, the jury determined as a matter of fact that all the gasoline sold in the spot market was sold in a market in which price was not competitively determined but was fixed and controlled by defendants' combination. The statement of the court below (R. 3932) that this gasoline "was sold on the market as had theretofore been done" is, therefore, in the teeth of the jury's contrary factual determination.

The further error into which the court below fell sprang from its failure to grasp the true nature of competition (and of its suppression) as the question is presented under the circumstances here. When most of the producers of a commodity agree upon minimum selling prices as in the *Trenton Potteries* case, all competition is not completely destroyed—the resulting suppression of competition does not ordinarily extend beyond the business of those combining, other producers being free to undercut the group's minimum prices. A very different situation is presented when a powerful buying group undertakes to absorb such proportion of total market supply, and at such prices, that this gives control over the price at which all sales in the market are made. In that case the *entire* market is an artificial, rigged, non-competitive market. The suppression of competition grows out of the fact that buyers are deprived of the opportunity to purchase in a market in which the amount offered for sale and the prices demanded by sellers are freely and individually determined and are not the direct product of combination and concert.

An exactly comparable situation would be a pool of large stock market operators formed for the purpose of manipulating the price of a stock listed on a stock exchange.[21] Such a combination, utilizing its pooled resources for the ulterior purpose of manipulating price upward, would absorb all stock offered at the current market and, as price advanced under the influence of this buying, the prices at which the pool bought would correspondingly advance. A market subjected to this manipulation would not be a competitive market, and this characterization would apply to all market transactions, not simply to the sales to the pool, whether these sales were one-third, more than one-third, or less than one-third, of total market transactions.

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[21] A corner in future cotton contracts, engineered on a cotton exchange, has been held to constitute a violation of the Sherman Act. *United States* v. *Patten*, 226 U. S. 525. An agreement by packers, the principal purchasers at stockyards, to refrain from bidding against each other "except perfunctorily and without good faith" for the purpose of compelling owners of livestock "to sell at less prices than they would receive if the bidding really was competitive", has also been held to violate the Sherman Act. *Swift & Co.* v. *United States*, 196 U. S. 375, 391, 400.

In the court below respondents, in an attempt to show that spot market prices were competitively determined, placed much reliance upon evidence introduced by them (Ex. 1024, R. 3807) that the majors did not all purchase at the same price on the same day, that they frequently bought at a price below the low quotation in the trade journals, and that jobbers and industrial consumers frequently bought at prices above and below the trade journal quotations. This was evidence appropriate for the jury to consider on the issues tendered to it. Since, however, the district court's instructions did not in any way limit the consideration which the jury might give this evidence when passing upon defendants' power or purpose to raise and fix spot market prices, it seems irrelevant to the question whether the district court erred in its instructions to the jury. We nevertheless wish to point out the limited probative weight of this evidence.

The gasoline sold on the spot market is of two grades, third grade and regular, depending upon its octane rating. Gasoline may have an octane rating approaching the bottom or the top of either grade, and these and other variations in the character of the gasoline produced by the small refining establishments which sold on the spot market affect its value and price.[22] Accordingly, as Exhibit 1024 shows, spot market sales at prices slightly above and slightly below those quoted in the trade journals were an almost daily occurrence even when the high and low spot market prices thus quoted were absolutely stabilized. It is not surprising, therefore, to find like variations from the trade journal quotations in the sales to majors.

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[22] R. 1608; also R. 1570, 1573, 1581, 1589-90, 1595, 1597, 1602.

A larger proportion of the sales to majors than of the spot market sales were made at a price below the low trade journal quotation. This was a natural development which did not in any way militate against the success of defendants' undertaking. Certain majors might be inclined to shave the going market price a little bit. Their gasoline purchases from independent refiners were, apart from the effect on spot market price of the collective purchases, burdensome (*supra*, pp. 12–13, 22, 27–28). On the other hand, the independent refiners would clearly and materially benefit from the combination even though, in sales to majors, they received a little under the current spot market price. Thus, if the combination brought about spot market prices higher by ¼¢ than these prices would otherwise have been and if majors purchased at ⅛¢ under these higher prices, the independent refiner profited to the extent of ¼¢ a gallon on the two-thirds of his output sold on the spot market and to the extent of ⅛¢ a gallon on the one-third sold to majors.

II

THE DISTRICT COURT DID NOT COMMIT REVERSIBLE ERROR IN THE EXCLUSION OF EVIDENCE

The Circuit Court of Appeals viewed (R. 3941) the question of error in the exclusion of evidence as turning upon the court's decision upon the main issue in the case; that is, that the question of the reasonableness of the restraint was not foreclosed by a finding by the jury of the purpose and power to control market price. Since most of the excluded evidence was offered on the issue of reasonableness, the court concluded inferentially that it was at least material.[1]

We agree with the court below that the materiality of evidence relating to collateral aspects of the reasonableness of the restraint is largely governed by the holding on the principal issue in the case. As we have shown (*supra,* pp. 64–66), the jury was charged, so far as is material here, that it might convict the defendants if it found that they had the purpose and power through their combination to raise and control prices. Conversely, the jury was instructed to acquit the defendants unless it made these findings (*supra,* pp. 62–64). Under this charge evidence tending to show that the restraint was reasonable based on collateral considerations was immaterial because the jury, if it found the purpose and power to raise prices, might convict despite any such showing and, in the absence of such findings, was bound to acquit without any such showing. If, as we have contended (*supra,* pp. 69–89), this charge was correct, evidence relating to this immaterial issue was properly excluded.

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[1] The court stated (R. 3941) that "no doubt, if the case had been tried upon" the theory which the Circuit Court of Appeals considered applicable, "the ruling of the court with reference to the admission of much of this testimony would have been different;" and that "the rule as to evidence proper to be considered, where the reasonableness of the restraint is in issue, is clearly announced in *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238."

Notwithstanding the fact that determination of the principal issue in the case will probably dispense with the necessity for an inquiry into the question of possible error in the exclusion of evidence, we shall undertake to show that no prejudicial error was committed in this respect. This discussion will be general since the court below did not discuss the specific evidence involved but made only "general reference" to the three classes in which respondents grouped their rejected offers of proof, and since we do not yet know what particular evidence respondents will stress in their brief in this Court.

This discussion will show, we submit, that the trial court acted clearly within its discretion in the exclusion of evidence and that, if any error was committed, it was at most error not affecting matters of substance. This Court has said, where there was a lengthy trial involving a "great mass of evidence" and a "wide range of inquiry," that a new trial "is not lightly to be ordered on grounds of technical errors in ruling on the admissibility of evidence which do not affect matters of substance." *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 404, *supra.*

In the discussion which follows we shall for convenience adhere to the classification of the excluded evidence made by respondents in the court below.

A. *The district court did not err in excluding certain evidence relating to facts peculiar to the petroleum industry*

In their first class respondents grouped evidence offered by them to show the economic condition of the petroleum industry at the time of the passage of the National Industrial Recovery Act, the provisions of the code of fair competition for the petroleum industry, and the efforts made by the Petroleum Administration under the code to obtain price stability for petroleum products.[2]

We submit that the record in this case compels the conclusion that the district court was unusually liberal in permitting the defendants to show the condition of the petroleum business at the time of the adoption of the code and its history during the code period. The record shows that the substance of all of the excluded evidence which was at all material or relevant to the issues in the case was established by other evidence.[3] The Circuit Court of Appeals observed (R. 3942) "that much of the refused testimony was of a cumulative nature," that there is "much testimony in the record relative to the history of the oil industry, the evils with which it was beset, and efforts made by the industry and various Governmental agencies, Federal and State, to alleviate the situation," and that a trial court "must be vested with a large amount of discretion in a situation of this kind" because "even a conspiracy trial cannot go on forever."

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[2] The excluded evidence appears in the record as follows: R. 938–44, 957–9, 960–1, 963–76, 976–80, 992–5, 1037–41, 1046–52, 1056–7, 1122–4, 1125–7, 1150–2, 1153–4, 1156–7, 1428–32, 1832–7; Exs. for iden. 710 (R. 3141), 829 (R. 3324), 830 (R. 3329), 831 (R. 3329), 832 (R. 3330), 844 (R. 3367), 845 (R. 3372), 846 (R. 3376), 847 (R. 3386), 848 (R. 3389), 892 (R. 3489), 1029 (R. 3817).

[3] The exclusion of evidence concerning facts subsequently proved is not a ground for reversal. *Matheson* v. *United States*, 227 U. S. 540, 543.

One example which respondents discussed as typical in the court below will serve to illustrate our point. The court excluded defendants' particular offer to show (R. 938–44) that Secretary Ickes in October 1934 opposed a cut in the price of crude oil threatened by certain independent refiners and took steps to persuade these refiners not to cut crude oil prices. The substance of this testimony was, however, clearly established by other evidence. Government counsel conceded that the price of crude oil was maintained at one dollar during the code period and the court so advised the jury (R. 951, 956). Defense witness Franklin testified to that fact on several occasions (R. 934, 936, 950, 952, 953) and also testified that this price was maintained at the "insistence" of the Secretary of the Interior (R. 951). Arnott testified, in substance, that independent refiners threatened to cut the price of crude oil in the fall of 1934 and that the Government discouraged this (R. 1694–5).

The defendants' showing concerning most of the other matters to which the excluded evidence in this class pertained was equally complete. Substantial evidence was admitted concerning the background of the code;[4] the adoption, pertinent provisions, structure, purpose, operation, and effect of the code;[5] the efforts of the Petroleum Administration to increase the price of gasoline;[6] the economic condition of the independent refiners;[7] and the circumstances surrounding Secretary Ickes' letter of July 20, 1934, to Arnott.[8]

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[4] R. 925–30, 983–5, 1000, 1001, 1070, 1394.

[5] R. 945–51, 948–50, 1002–3, 1007–14, 1022–3, 952–3, 1181, 1212, 1686–8; Exs. 825, 826 (R. 3319–21).

B. *The district court did not err in excluding certain evidence offered in an effort to show that the Petroleum Administration encouraged and acquiesced in activities for which the defendants were convicted*

The principal evidence in this class relates to a report of an industry committee to the Petroleum Administrative Board in March 1935 (Ex. 924 for iden., R. 3530); a telegram in May 1935 from the chairman of the board to Arnott concerning lubricating oil prices in Pennsylvania (Ex. 916 for iden., R. 3520); a final report of a subdivision of the board issued in June 1936 (Ex. 914 for iden., R. 3512); and testimony of a member of the board before a committee of the United States Senate in February 1937 (R. 1841–3). All of this excluded evidence was, we submit, indirect, remote, and ambiguous.[9]

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[6] R. 953–6, 1007–10, 1022–6, 1179–81, 1702–3, 1743–4; Ex. 835 (R. 3347).

[7] R. 931–7, 1041–2, 1168–9, 1180–1, 1328, 1693–5.

[8] R. 1002, 1172–3, 1274–6, 1688–91, 1737, 1796–8; Ex. 891 (R. 3487).

[9] The report of the industry committee (none of the members of which were defendants or affiliated with the defendants) stated in substance, among many other things, that it was understood by the committee that a buying program was under consideration by the industry and urged that the Administrator give it his approval and support (Ex. 924 for iden., R. 3530, 3558–60). Frey, the only member of the Petroleum Administrative Board who was called by the defendants, testified that after the report was received by the board it was decided to take no action on it

Where the defendants sought to establish so-called approval by the Government by direct evidence they were permitted to do so without limitation. They called only one member of the Petroleum Administrative Board, and the district court allowed them to examine him concerning conferences of Board members with Arnott and others at which major company purchasing was discussed (R. 1263–92).[10] Arnott also testified fully on this subject (R. 1698–1700, 1729–30), and the excluded evidence fell far short of his testimony on the issue of Government acquiescence.

Moreover, we submit that under the circumstances of this case the district court would have been justified in excluding all evidence relating to the claim of Government approval.[11] Respondents admittedly con-

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(R. 1323). The telegram concerning Pennsylvania (Ex. 916 for iden., R. 3520) merely suggested that Arnott consider the lubricating oil problem in that State. The telegram was over the signature of board chairman Fahy, but he was never called to explain it. The final report by the Marketing Division of the Petroleum Administrative Board referred briefly to the activities of the Tank Car Stabilization Committee (Ex. 914 for iden., R. 3512, 3518). It was issued in June 1936, well over a year after the commencement of the buying programs. No effort was made by the defendants to examine Frey concerning the report although he was responsible for it (R. 1281). The testimony before the Senate Committee (R. 1841–3), given several months after the indictment in the case was returned, is patent hearsay.

[10] As appears before (*supra*, pp. 36–37), on cross-examination of Frey it was developed that Arnott was warned by the board that he was conducting the buying programs on his own responsibility.

[11] There is now no issue of the suspension of the Sherman Act in this case. Respondents conceded in the court below that under the National Industrial Recovery Act (48 Stat. 195, 198) and under the code of fair competition for the petroleum industry

ducted their activities for many months after the expiration of the National Industrial Recovery Act and the code for the petroleum industry approved thereunder. We submit that evidence that Government officials, acting under the authority of that Act and the petroleum code, encouraged the defendants or that the defendants' activities were in furtherance of the objectives of the Act or code, even though it were material as to activities conducted by them during the code period, could have no bearing on the subsequent period when, following the expiration of the Act and the code, these officials were stripped of all authority derived therefrom.

We also submit that the two cases cited by the court below, *United States* v. *United States Steel Corp.*, 251 U. S. 417, 446–447, and *Fosburgh* v. *California & Hawaiian Sugar Refining Co.*, 291 Fed. 29, 36, 37 (C. C. A. 9th), are not authority for the admissibility of the kind of evidence here in issue. In the *Steel* case this Court, in rejecting a contention of the Government that the acquisition of a certain company by the defendant corporation was inspired by an intent to monopolize, referred (pp. 446–447) to testimony by President Roosevelt that he had approved the acquisition because it was economically necessary for the preservation and operation of the properties of the acquired company.[12] Thus, in that case evidence of approval

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defendants were bound to obtain formal authorization for the buying programs if they were to be immune from prosecution under the Sherman Act and that no such approval was obtained.

[12] It should be noted that the approval in the *Steel* case was established by direct evidence and not by evidence of the kind excluded by the district court in this case.

was material to show that the defendant's intention was other than as charged by the Government. Here the evidence was offered for no such purpose. On the contrary, it tended to establish the claim of the Government that the defendants intended to raise prices. Its only purpose was to attempt to justify that intention, but justification of this kind, even if established, could certainly constitute no legal defense for the defendants' activities.[13]

C. *The district court did not err in excluding certain evidence offered to show that gasoline prices in the Mid-Western area were not artificially high and noncompetitive*

The district court excluded evidence of (1) the trend of gasoline prices during the last three months of 1934,[14] (2) the relationship between the price of gasoline and crude oil during the years 1918 through 1935,[15] and (3) the relationship between gasoline prices and other commodity prices during the years 1933 through 1936.[16]

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[13] The *Fosburgh* case was similar to the *Steel* case. It involved a suit in equity brought by the receiver of a candy company to cancel a contract for the sale of sugar to the company on the ground that a clause in the contract prohibiting resale by the buyer violated the antitrust laws. The question presented was whether the clause was included in the contract by the defendant sugar company pursuant to a Government war regulation under the Lever Act or whether it was included to restrain buyers from competing with the defendant company. The intention of the defendant was, therefore, material, and the court admitted evidence to show that the provision was inserted as a result of suggestions on the part of Government officials charged with enforcing that Act.

[14] Ex. 849 for iden. (R. 3397); R. 1061-2, 1491-1503.

[15] Ex. 955 for iden. (R. 3657); R. 1518-20.

[16] Exs. 956-959 for iden. (R. 3661-75); R. 1521-33.

All of this evidence was either remote from, or presented issues collateral to, the issue in the case with reference to which it was offered, namely, the cause of the price trend during the period of the conspiracy. Although it might have some slight relevancy to this issue, the trial judge was justified in excluding it if in the view of the court it was remote or had a marked tendency to introduce collateral contentions and issues, the exploration of which would divert the jury's attention from the principal issues in the case.[17] Exclusion of evidence for this reason is no ground for reversal in the absence of a clear showing that the trial court abused its discretion.[18]

Respondents particularly stressed in the court below the evidence concerning the trend of tank car gasoline prices in the last three months of 1934. The trend of prices during these months was upward and evidence was offered to show that this was due to the elimination of interstate shipments of "hot" gasoline. From this defendants sought to conclude that the price rise in 1935 was due, not to the buying programs, but to the passage of the Connally Act.

It is submitted that the exclusion of the evidence did not constitute an abuse of discretion. There was already substantial evidence in the record concerning the depressing effect on price of "hot" gasoline and the tendency of the Connally Act to stabilize prices in 1935.[18a] The effect of this evidence was to present an additional controversy to the jury, that is, the causes for the price trend in 1934 before the conspiracy began. This in itself might have confused rather than aided the jury in passing upon the primary issue in the case, that is, the causes for the 1935 price trend. Moreover, whatever value the evidence had depended upon a clear showing that the elimination of interstate shipments of "hot" gasoline was the primary cause for the price rise in 1934. This, however, was a matter of controversy because a buying program was in operation during almost a month and a half of the last three months of that year (R. 1049–51).

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[17] *Schradsky* v. *Stimson*, 76 Fed. 730, 734 (C. C. A. 8th); *Golden Reward Mining Co.* v. *Buxton Mining Co.*, 97 Fed. 413, 416 (C. C. A. 8th); *New England Trust Co.* v. *Farr*, 57 F. (2d) 103, 110 (C. C. A. 1st).

[18] *Metropolitan Life Ins. Co.* v. *Armstrong*, 85 F. (2d) 187, 193 (C. C. A. 8th); *Chesterfield Manufacturing Co.* v. *Leota Cotton Mills*, 194 Fed. 358, 359 (C. C. A. 4th); *Lamborn* v. *National Bank of Commerce*, 15 F. (2d) 473, 474 (C. C. A. 4th).

In addition, a comparison of the trend of prices during the three months of 1934 with the trend of prices during the first three months of the 1935 buying programs shows that the price trends were substantially dissimilar.[19] The amount of the price increase was not the same;[19a] the range of the published quotations was far more flexible during the rise in 1934 than during the rise in 1935;[20] prices were much less stable during the first thirty days after the price rise in 1934 than during the same period after the price rise in 1935;[21] and prices during the last 23 days of December 1934 were in sharp contrast with prices during the comparable period in 1935.[22]

[18a] R. 706–7, 985–6, 988–9, 1063–4, 1115–7, 1466, 1469, 1510–2; Exs. 713 (R. 3177), 989 (R. 3737).

[19] Compare Ex. 849 for identification (R. 3397) with the chart of the trend of prices in 1935, opposite p. 29, *supra*.

[19a] Defendants' proffered testimony shows that the Federal Tender Board was not established until October 25, 1934 (R. 1062). The low quotation of the Journal of Commerce advanced 1¼¢ from then until the 7th of November and the Oilgram 1⅛¢ as compared with the 1½¢ rise in 1935 (Ex. 849 for identification, R. 3395, 3397).

[20] On only 25% of the days during the advance in 1934 were the low quotations of the two journals the same, as compared with over 62% during the period of the advance in 1935. During

III

THE DISTRICT COURT DID NOT COMMIT REVERSIBLE ERROR IN USING, AND IN PERMITTING GOVERNMENT COUNSEL TO USE, THE GRAND JURY TRANSCRIPT TO REFRESH THE RECOLLECTION OF CERTAIN WITNESSES

The Circuit Court of Appeals held (R. 3945–8) that the district court committed prejudicial error in refusing to permit defense counsel to inspect the transcript of grand jury testimony used to refresh the recollection of certain witnesses called by the Government. Respondents also contended in the court below that there were certain other errors involved in the use of the grand jury transcript for this purpose but the Circuit Court of Appeals did not pass upon these.

1934 the spread between the low and the high of the Oilgram exceeded ⅛¢ 91% of the time, as compared with only 10% in 1935.

[21] During the 1935 period there was not a single fluctuation in either the high or low quotations of either journal. In 1934 there were several variations in the lows of both journals. During 76% of the time in 1934 the spread between the high and low of the Journal of Commerce was greater than ⅛¢. In 1935 the spread for both journals was uniformly ⅛¢. During 44% of the time in 1934 the lows of the two journals varied. In 1935 the lows were identical throughout the time.

[22] In the last 23 days of December 1934 there was a highly fluctuating market with frequent variations in both the high and low quotations of both journals and wide variations between the respective quotations of the two journals. During the comparable period in 1935 there was not a single fluctuation in either of the journals and both were identical.

Before considering the question decided by the court below and the further questions raised by respondents' other contentions, it may be helpful to describe how and why the grand jury transcript was used in the trial and the results accomplished by its use. This, we believe, may serve the two-fold purpose of furnishing a background for the argument which follows and of showing the relatively unimportant role of the grand jury transcript in the trial.

All of the important witnesses called by the Government were either representatives of, or closely allied with, the defendant companies.[1] As a consequence, they were hostile, reluctant to testify, and evasive. This hostility is not so apparent in the present record, but it sufficiently appears from comments of the district court provoked by the hostility manifested,[2] from unresponsive answers of one witness volunteering facts favorable to the defendants,[3] and from the contrast between the direct examination and "cross-examination" of certain of the witnesses.[4]

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[1] R. 356, 506, 558, 623, 670, 726, 728, 789.

[2] Concerning Jacobi, the witness as to whom the grand jury testimony was used most often to stimulate memory, the trial court said (R. 503): "It is very apparent that this witness is hostile to the Prosecution. If you noticed, when he was taken over on cross-examination by counsel for the defense he was very responsive; there was nothing evasive; he answered fully. Right now, on direct, he is hesitating, he is reluctant, he is hostile."

See, also, the comments of the district court concerning the witnesses Lanzer and Evans (R. 264, 553).

[3] R. 358, 367–8, 395–9.

[4] Compare Jacobi's and Evans' testimony on direct with the part of their testimony on cross-examination appearing in this record in question and answer form (R. 475–7, 551–3).

Each of these witnesses had testified before the grand juries which returned the indictments in the case. When, therefore, the memory of a witness failed or he appeared evasive or reluctant to testify,[5] or when his testimony appeared to be contrary to that given before the grand jury,[6] the Government invoked the rules announced by this Court in *Hickory* v. *United States*, 151 U. S. 303, 308–309, and *St. Clair* v. *United States*, 154 U. S. 134, 150, and requested permission from the court to cross-examine the witness and to refresh his recollection by reading to him excerpts from his grand jury testimony. No impeachment of the witness was intended by this procedure but its sole purpose was, as repeatedly stated by counsel for the Government and by the trial court,[7] to attempt to stimulate the witness' memory.

Because under the rulings in the above cases the right to cross-examine and to confront the witness with prior contradictory statements depended to some extent upon a showing of surprise or hostility, counsel for the Government, as a predicate for permission to proceed as described, on occasion informed the court that he was surprised by the witness' testimony and that it contradicted testimony given before the grand jury.[8] Such claims were infrequent, however. Usually counsel merely asked the witness if his memory could be refreshed by his grand jury testimony.[9]

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[5] See, e. g., R. 359, 423, 442–4.

[6] See R. 372–80, 381.

[7] R. 263–6, 359–60, 455, 472, 2422.

[8] R. 263, 373, 407.

[9] 402–3, 414, 421, 423, 442, 453.

During the early stages of the trial the grand jury testimony was read to the witness by counsel for the Government from his notes (R. 446). When objection was made to the use of these notes the district court instructed counsel to use the transcript (R. 447). Very early in the trial the court adopted the practice, consistently followed the eafter, of inspecting the transcript and, itself, quickening the witness' memory by reading from his prior testimony.[10] At no time was the transcript ever shown to the witness.

The Circuit Court of Appeals stated (R. 3945) that grand jury testimony was read or referred to some 90 times, and that over 1,000 lines of the record consist of excerpts from the grand jury transcript. We submit, however, that the mere number of references to grand jury testimony or the number of lines of such testimony in the record are, standing alone, of very little significance. One thousand lines is a relatively insignificant part of a record containing many thousands of lines of testimony developed in a trial consuming over three months. Then, too, of the 1,000-odd lines of quotation from the grand jury transcript, over 450 lines are found in the testimony of the witnesses Steiger and Mosher (R. 728–811). Use of the grand jury testimony in their examination could not possibly have been prejudicial to respondents since their testimony related to a charge in the indictment directed against the trade journals which was not established by the evidence and was not submitted to the jury.

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[10] See R. 456 where this practice was first adopted.

The really significant fact concerning the use of the grand jury transcript is that virtually no evidence was adduced by this means. The record shows that over 84% of the attempts by counsel for the Government to refresh the recollection of witnesses during the trial, either by reading verbatim or paraphrasing the witness' grand jury testimony, failed.[11] In only 14 instances where the grand jury testimony was used can it be said that any affirmative testimony whatever was given by the witness.[12] We consider it unnecessary to discuss this testimony, relating as it does to minutiae in the evidence, since respondents at no time have urged that it was of importance.

A. *The refusal of the district court to permit inspection of the grand jury transcript by defense counsel was not reversible error*

This Court has not passed upon the question of the right of opposing counsel to inspect a document used by counsel for the other party to refresh the recollection of a witness. Lower federal courts have held that in a criminal case counsel for the defendant has the right upon proper demand to inspect a document which is used by a witness on the stand for the purpose of refreshing his recollection.[18] Assuming the correctness of this rule, the Government contends that the denial of inspection in this case is not a ground for reversal because (1) refusal to permit inspection by defense counsel was not prejudicial to respondents, and (2) defense counsel were accorded the equivalent of inspection to the extent that they were entitled to such.

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[11] R. 373–7, 378–9, 379–80, 381, 388, 402–3, 405, 407, 421–2, 423–4, 424–5, 425–7, 438, 440, 440–1, 444, 448–9, 450–1, 453, 453–4, 455–6, 463, 466–7, 500, 507, 508–9, 517, 517–9, 520–1, 521–2, 528–9, 531–2, 532, 533–5; 536–7, 547–8, 573, 575–6, 597, 606, 627, 628–9, 633–4, 637, 647–9, 660, 672–3, 679, 681, 683–4, 727, 728, 737, 738–9, 739–41, 743, 744–5; 754–6, 756–7, 758–9, 759–60, 761, 761–3, 768–9, 771, 772–4, 775–6, 778–80, 782–3, 783–4, 794–7, 801–2, 803–4.

[12] R. 263–5, 359–60, 394, 437, 441, 442–4, 445, 462, 628–30, 652, 654–5, 657–8.

1. THE REFUSAL OF THE DISTRICT COURT TO PERMIT INSPECTION BY DEFENSE COUNSEL WAS NOT PREJUDICIAL TO RESPONDENTS

The reasons for permitting inspection of a writing shown to a witness and used by him on the stand to refresh his recollection are (1) to enable opposing counsel to detect any improper communication by counsel using the writing to his own witness and (2) to permit opposing counsel to determine and to test by cross-examination whether testimony which purports to be given as the result of the writing is the result of bona fide refreshment. *Lennon* v. *United States,* 20 F. (2d) 490, *supra;* Wigmore on *Evidence,* Vol. 2, Sec. 762 (2nd Ed., 1923). The Government contends that because neither of these reasons for inspection was present here the refusal to permit inspection, if erroneous, was harmless error.

The first reason—to detect improper communication—was obviously nonexistent. Any attempt at such communication by Government counsel was unlikely since all of the witnesses whose recollection the Government attempted to stimulate by use of the grand jury transcript were hostile to the Government. Moreover, no such communication could have been made by means of the transcript because it was never shown to a witness but was read aloud in open court by Government counsel and the district court.

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[18] *Little* v. *United States*, 93 F. (2d) 401, 406–407 (C. C. A. 8th); *Morris* v. *United States*, 149 Fed. 123, 125–126 (C. C. A. 5th). See also *Lennon* v. *United States*, 20 F. (2d) 490, 493–494 (C. C. A. 8th).

The second reason for permitting inspection, that is, to enable defense counsel to test by cross-examination whether testimony elicited was actually the result of refreshment, was also absent. As stated before (*supra*, p. 104), no testimony of any consequence was inspired by the use of the grand jury transcript. Cross-examination by the defendants was, therefore, unnecessary and the refusal to permit them to have the transcript for such cross-examination was immaterial. See *Taylor* v. *United States*, 19 F. (2d) 813, 818–820 (C. C. A. 8th).

We submit that the question of prejudice to the respondents *by the denial of inspection* should be limited to the foregoing inquiry. If neither of the recognized reasons for permitting inspection was present, it is difficult to see how, if any prejudice was sustained by the respondents from the use of the grand jury transcript, it could be said to flow from this alleged error.

The Circuit Court of Appeals, however, concluded that the respondents were prejudiced by this alleged error for a different reason. The court stated (R. 3946) that the "damaging effect" was the use of the grand jury transcript "in connection with statements made by counsel for the Government" which tended to give the jury the impression "that the witness was deliberately testifying falsely."[14] The opinion does not make clear the relationship between any such impression by the jury and the refusal of inspection. It is likely, however, that the court intended to adopt the argument of the respondents, that is, that the refusal to permit inspection in some way prevented respondents from cross-examining the witnesses with the use of the grand jury tesitmony to show that they were not falsifying.

We submit that the determination of the court below that the refusal of the district court to permit inspection prejudiced the respondents in this manner is based on unwarranted assumption and speculation. If the jury received the impression that the witnesses were falsifying, it is far more likely that it was the result of the hostile, reluctant, evasive demeanor of the witnesses themselves, so pronounced as to be remarked upon by the trial judge (*supra,* note 2, p. 101), than that it resulted from the remarks of Government counsel.

Most of the comments by Government counsel were clearly innocuous. The particular comments referred to in the opinion of the court are by no means typical of the remarks which were usually made by Government counsel. In most instances counsel merely asked the witness if his recollection could be refreshed by his grand jury testimony without claiming surprise or stating that the grand jury testimony appeared to be contradictory (*supra*, p. 102).

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[14] The remarks to which the court referred are set forth in a footnote to the court's opinion (Fn. 9, R. 3947). The court did not expressly hold that the remarks of counsel were improper. The tone of the opinion is, however, critical. We submit that even when the importance of the remarks is magnified by their being torn from their context and assembled together, they were not improper. The isolated claims of surprise and inconsistent grand jury testimony are recognized predicates for cross-examination of a party's own witness under the decisions of this Court (*supra*, p. 102). The other remarks did not, we submit, go beyond the bounds permissible to counsel in prodding an obviously reluctant witness and inducing him to correct his testimony.

Nor is there reason to believe on the face of this record that even the comments of the kind referred to by the court below made any impression upon the jury. During the trial defense counsel objected to only three of the ten remarks referred to in the opinion of the court below.[15] It is submitted that if these statements did not at the time impress counsel as being sufficiently harmful to require objection by them or instruction from the court it is most unlikely that they materially affected the jury.

Moreover, if counsel for respondents believed that the jury had the impression that the witnesses were falsifying and really felt that they could have corrected this impression by cross-examining the witnesses as to their grand jury testimony, they heard read aloud, and had available to them in the record of this case, all of the grand jury testimony brought to the attention of the witnesses. No such cross-examination was attempted.

Under Section 269 of the Judicial Code error which does not affect the substantial rights of the parties is not ground for reversal. Since the only prejudice claimed from the refusal to permit inspection rests upon mere surmise and speculation, the Circuit Court of Appeals erred in holding that this refusal was ground for reversal.

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[15] Objection was taken only to the second, eighth, and tenth comments quoted in footnote 9 to the court's opinion (R. 3947).

2. RESPONDENTS WERE ACCORDED THE EQUIVALENT OF ALL THE INSPECTION TO WHICH THEY WERE ENTITLED

Although opposing counsel may be entitled to inspect a document used by a witness to refresh his recollection, the right has a definite limitation. Opposing counsel is not entitled to inspect the entire document but may inspect only those parts which are called to the attention of the witness or which relate to the subject on which refreshment is attempted. *Brownlow* v. *United States,* 8 F. (2d) 711 (C. C. A. 9th).

Under this limitation respondents were entitled to see at most only (1) the parts of the grand jury testimony actually read to the witness and (2) any additional grand jury testimony of the witness relating to the question on which counsel was attempting to stimulate recollection. This, we submit, is especially true in view of the confidential nature of the grand jury testimony. See *Metzler* v. *United States,* 64 F. (2d) 203, 206 (C. C. A. 9th).

We submit that the respondents had the equivalent of all inspection demanded by them. As stated before (*supra,* p. 103) where the witness was referred to his grand jury testimony the testimony was read aloud in open court and was transcribed verbatim by the reporter. All of this testimony—all of the refreshing material—was therefore available to respondents.

As to any other grand jury testimony of the witness on the subject on which he was questioned (assuming there was any such), respondents cannot complain that inspection was not permitted since they made no specific demand for such inspection. Respondents moved the court (R. 471–2) to be permitted to inspect (1) the entire transcript of the testimony of the witness before the grand jury (to which, as we have seen, they were not entitled), and (2) those portions of the testimony actually read to the witness to refresh his recollection (which, as shown above, they actually had). No motion was made to permit inspection of those parts of the transcript, if any, not read to the witnesses which might have related to the subject on which refreshment was attempted.

As we have seen, on most of the occasions when the transcript was used the court inspected it, and, itself, read the testimony to the witness (*supra,* p. 103). On occasion the court declined to read excerpts from the transcript because inspection of other grand jury testimony of the witness led the court to believe that the witness' recollection would not be refreshed by the particular excerpts.[16] In the course of the testimony of one witness the court declined to permit Government counsel to make further use of the grand jury transcript until the court could go over it "a little more thoroughly."[17] The failure of defense counsel at least to request the district court to ascertain whether there was any additional grand jury testimony relevant to the part read by the court indicates, we submit, that there is good reason to believe that where testimony was read by the court it represented all of the relevant grand jury testimony.

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[16] R. 756. See also R. 544–5.

[17] R. 684.

B. The other alleged errors in the use of the grand jury transcript urged by respondents but not passed upon by the Circuit Court of Appeals are not grounds for reversal

1. THE DISTRICT COURT DID NOT ERR IN PERMITTING REFRESHMENT OF RECOLLECTION BY READING FROM A TRANSCRIPT OF GRAND JURY TESTIMONY WHICH HAD NOT BEEN FORMALLY AUTHENTICATED

Respondents' contention in the court below that it was error for the district court to permit the use of the grand jury transcript without its first being formally authenticated is the result of a failure to appreciate that the rules that govern the use of prior testimonial statements vary with the purpose and nature of the use to be made of such statements.

Where a prior statement is used (1) to impeach the testimony of a witness or (2) to prove, under the doctrine of past recollection recorded, facts concerning which the witness has no present recollection, authentication of the prior statement is necessary.[18] The reason is the same in both instances. The prior statement, itself, becomes evidence in the case to be considered by the jury—in the first instance, in determining the credibility of the witness, and in the second, in passing upon the issue of fact to which the statement relates. The usual standards for judging the probative value of all evidence, including authenticity, are, therefore, applicable to the prior testimonial statement.

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[18] *Bates v. Preble*, 151 U. S. 149, 154–157; *New York Life Ins. Co. v. Neasham*, 250 Fed. 787, 789 (C. C. A. 9th); Wigmore on *Evidence*, Vol. 2, Sec. 745 (2nd Ed., 1923).

In the present case the grand jury transcript was not used for either of the above purposes. It was not offered or received in evidence. Instead, as we have seen (*supra*, p. 102), it was used solely to refresh the recollection of the witness, that is, to stimulate his memory so that he could testify to the facts independently of the transcript. Where a prior testimonial statement is so used its function ends with the effort to revive recollection. Whether the witness' memory is refreshed or not, the only evidence before the jury is the testimony of the witness and the jury is not permitted to consider the prior statement for any purpose. It is merely a part of the permissible leading question by counsel and forms no part of the testimonial answer of the witness. Since the statement has no evidentiary purpose whatever, the rules of evidence are inapplicable. The sole test is: Is there reasonable probability that the witness' memory may be stimulated by the prior statement so that he can now testify from present independent recollection? If so, it is immaterial whether the document containing the prior testimonial statement—in this case the transcript of the grand jury testimony—was prepared by the witness or under his direction, or whether it is an original or a copy.[19]

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[19] *Henowitz* v. *Rockville Savings Bank*, 118 Conn. 527, 529–530; *Volusia County Bank* v. *Bigelow*. 45 Fla. 638. 646–647: *Commonwealth* v. *McDermott*, 255 Mass. 575, 580–581; *Sagers* v. *International Smelting Co.*, 50 Utah 423, 427–431; *Mahoney's Admr.* v. *Rutland R. R. Co.*, 81 Vt. 210, 214–215; *State* v. *Paschall*, 182 Wash. 304. 308–309: *Folsom* v. *Apple River Log-Driving Co.*, 41

In *New York, etc., Mining Co.* v. *Fraser,* 130 U. S. 611, a witness for the plaintiffs, after being handed a paper the authorship of which was not revealed, stated that it was a copy of an account outstanding between the parties and thereupon testified over the defendant's objection to the items of the account. This Court held (pp. 619–620) that the use of this document, which appellant described as "an unproved copy of an unproved account," was not error since it appeared that the paper itself was not admitted in evidence, but was merely used by the witness "as a memorandum with which to refresh his recollection."

See also *Hoffman* v. *United States,* 87 F. (2d) 410, 411 (C. C. A. 9th); *Briggs Mfg. Co.* v. *United States,* 30 F. (2d) 962, 965 (D. C. Conn.), reversed on other grounds, *United States* v. *Briggs Mfg. Co.,* 40 F. (2d) 425 (C. C. A. 2d).

Of the three federal cases upon which respondents relied in the court below, two are not in point. *New York Life Ins. Co.* v. *Neasham,* 250 Fed. 787, 789 (C. C. A. 9th), *supra,* involved a writing used for impeachment. In *Tibbitts-Hewitt Grocery Co.* v. *S. E. Lux, Jr., Mercantile Co.,* 5 F. (2d) 549, 551 (C. C. A. 8th), although a writing used for refreshing recollection was involved, no question of authentication arose or was decided. The third federal authority relied upon was a dictum from *Putnam* v. *United States,* 162 U. S. 687, 694, to the effect that a memorandum used to refresh must have been prepared by, or under the direction of, the witness. This is of doubtful scope and application since the Court

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Wis. 602, 606–608; Wigmore on *Evidence,* Vol. 2, Secs. 759–761 (2nd Ed., 1923).

quoted on the same page of its opinion an extract from Greenleaf on *Evidence* to the effect that where a written document is used to refresh recollection, it "does not seem to be necessary that the writing should have been made by the witness himself, nor that it should be an original writing, provided, after inspecting it, he can speak to the facts from his own recollection."

2. THE DISTRICT COURT DID NOT TRANSCEND THE LIMITS OF SOUND JUDICIAL DISCRETION IN PERMITTING EXCERPTS FROM GRAND JURY TESTIMONY TO BE READ TO WITNESSES FOR THE PURPOSE OF REFRESHING RECOLLECTION

Respondents contended in the court below that the reading of excerpts from the grand jury testimony of certain witnesses while they were on the stand led the jury to conclude that testimony so read was affirmative evidence in the case. In order to maintain this contention here respondents must affirmatively establish that the jury reached this erroneous conclusion. Furthermore, in order to establish that error was committed, respondents must ask this Court to assume that the jury disregarded the instructions which were given them by the district court. During the course of the trial the court on several occasions warned the jury that it must ignore the grand jury testimony (R. 380, 449, 591). In addition the district court in its final charge to the jury stated (R. 2422):

> Testimony given by some of the witnesses in this case when they appeared before the Grand Jury, was read to them when they appeared as witnesses in this trial. *This was done for the purpose of refreshing their memory, and for no other purpose.*

There is, of course, no categorical rule of law which prohibits the use of grand jury testimony to refresh the recollection of hostile witnesses. It is well settled that it rests in the sound judicial discretion of the trial court to permit counsel to endeavor to refresh the recollection of a hostile witness or to induce an evasive witness to correct his present testimony by reading to him in the presence of the jury prior statements which he has made whether before a grand jury [20] or elsewhere.[21] There is reversible error only when the examination is so conducted that the effect is necessarily to lead the jury to believe that the prior testimony is in itself affirmative evidence in the case.

The two cases upon which respondents chiefly relied, *Rosenthal* v. *United States,* 248 Fed. 684 (C. C. A. 8th), and *United States* v. *Block,* 88 F. (2d) 618, 619–620 (C. C. A. 2nd), are cases where the manner in which the examination was conducted clearly led the jury to treat the prior testimony as evidence in the case. In the former, counsel read to the witness "all of his testimony" given on a prior examination and asked him, as "every" question and answer was read before the jury, whether he had so testified. It was held that this procedure did not constitute refreshment "but was in fact introducing" testimony of the witness given out of court. In the *Block* case the prosecutor, after failing in an attempt to refresh the recollection of the witness from testimony given by him on a prior examination, "began to read the examination, question and answer," asking after each passage whether it was true and this "was continued until the whole of the statement had been read to the jury." The court held that error had been committed because the jury had been allowed to take statements of the witness made out of court "as his testimony on the stand."

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[20] *Bosselman* v. *United States*, 239 Fed. 82, 85 (C. C. A. 2nd); *Felder* v. *United States*, 9 F. (2d) 872, 874 (C. C. A. 2nd); *Di Carlo* v. *United States*, 6 F. (2d) 364, 367–368 (C. C. A. 2d), cert. den. 268 U. S. 706; *Levy* v. *United States*, 35 F. (2d) 483, 484–485 (C. C. A. 8th); *United States* v. *Freundlich*, 95 F. (2d) 376, 379 (C. C. A. 2nd).

[21] *Hickory* v. *United States*, 151 U. S. 303, *supra*, 309; *Buckley* v. *United States*, 33 F. (2d) 713, 717 (C. C. A. 6th); *Curtis* v. *United States*, 67 F. (2d) 943, 946 (C. C. A. 10th); *United States* v. *Lonardo*, 67 F. (2d) 883, 884 (C. C. A. 2nd); *Bedell* v. *United States*, 68 F. (2d) 776, 777–778 (App. D. C.).

In *Chase* v. *United States,* 13 F. (2d) 847, 848 (C. C. A. 6th), another case cited by respondents, the facts were substantially like those in the *Block* case. Neither of the two other cases cited, *Nardi* v. *United States,* 13 F. (2d) 710, 711 (C. C. A. 6th), and *Stewart* v. *Morris,* 88 Fed. 461, 462 (C. C. A. 7th), rehearing denied, 89 Fed. 290, involved the point under discussion.[32]

We submit that the facts of this case wholly fail to show that there is any reasonable ground to believe that the jury considered the grand jury testimony as affirmative evidence in the case. Not only was the jury properly instructed in this matter (*supra*, p. 114) but the district court exercised close supervision and control over the examination of witnesses on the basis of the grand jury transcript. On most occasions the court inspected the portion of the transcript proposed to be used by counsel and itself assumed the task of quickening a witness' failing memory by referring him to his prior testimony.[23] The court frequently *sua sponte* called a halt when it thought that Government counsel were about to go too far in their questioning.[24] When a witness, after hearing an excerpt from his grand jury testimony read, testified that his recollection was not refreshed, the inquiry was abandoned by Government counsel, and the court, whenever requested to do so, ordered the questions and answers which had been read to be stricken out.[25] Where the grand jury testimony was not inconsistent, the inquiry was either abandoned or the jury instructed to disregard the questions and answers which had been read.[26]

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[32] In *Nardi* v. *United States*, *supra*, the question decided was whether a prior statement was sufficiently contemporaneous with the events to which it related to be reliable and a proper basis for refreshment. The court followed the doctrine of contemporaneousness laid down in *Putnam* v. *United States*, 162 U. S. 687, which we discuss later (*infra*, pp. 117-121). In *Stewart* v. *Morris* a memorandum used to refresh the recollection of a witness was improperly introduced in evidence.

3. THE DISTRICT COURT DID NOT ERR IN PERMITTING REFRESHMENT OF RECOLLECTION BY MEANS OF GRAND JURY TESTIMONY WHICH WAS NOT STRICTLY CONTEMPORANEOUS WITH THE EVENTS TO WHICH IT RELATED

Respondents' final contention in the court below was that the district court erred in permitting refreshment of recollection with grand jury testimony which was not given contemporaneously with the events to which it related. This contention is based upon *Putnam* v. *United States*, 162 U. S. 687, *supra*, in which this Court held that it was not permissible to refresh the recollection of a witness by the use of noncontemporaneous grand jury testimony.

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[23] R. 378, 424, 449–51, 456, 508–9, 518–9, 520–1, 521–2, 528–9, 531–6, 647–8, 659, 740–1, 754–6, 756, 758, 760, 764–9, 771, 772–3, 775, 783, 784, 795–6, 801, 803.

[24] R. 377, 380, 394, 426, 444, 448, 520, 522, 535, 545, 651, 652, 657, 754, 756, 774, 776, 778, 795.

[25] R. 424–5, 453–4, 455–6, 521–2, 633–4, 637, 672–3, 759, 760, 761, 762–3, 768–9, 783–4.

[26] R. 266, 388, 422, 517, 518–9, 660, 684, 754, 756, 757.

Contemporaneousness is required to assure that the prior statement of the witness was not the result of memory impaired by a substantial lapse of time between the statement and the event to which it refers, and thereby to assure the accuracy of testimony on the witness stand stimulated by reference to such statement. *Putnam* v. *United States*, *supra*, pp. 696–697. Since in the present case no material testimony substantially affecting the rights of respondents resulted from stimulation of memory by the use of grand jury testimony, the accuracy of the grand jury testimony, which the rule of contemporaneousness is designed to secure, was immaterial. Under these circumstances, even if there was error in permitting attempts to stimulate memory by noncontemporaneous prior testimony, the error was harmless and is not a ground for reversal.

Aside from the lack of prejudice, we submit that the district court did not err in permitting refreshment by the use of grand jury testimony (1) because the holding of the *Putnam* case is unsound in principle and should be overruled and (2) because the holding has no application to the facts of this case.

The facts and holding of the *Putnam* case are as follows: The president of a national bank was charged with abstracting certain bonds belonging to the bank.

A witness called at the trial had testified before the grand jury that the defendant had told the witness on a particular day four months before his grand jury testimony that he (the defendant) had the bonds. The grand jury testimony was used to refresh the witness' memory as to these statements by the defendant. The Court held, three justices dissenting, that the trial court had erred in permitting refreshment because of the lapse of time between the conversation in question and the grand jury testimony concerning it.[27]

Since this decision in 1896, this Court has, so far as we are aware, had no occasion again to consider the question of contemporaneousness. The rule of the *Putnam* case has been the subject of vigorous criticism by text writers[28] and on several occasions state courts have ignored or expressly declined to follow it.[29]

We respectfully request that the Court now reconsider the holding in the *Putnam* case if it be regarded as applicable here. It may be conceded that where a prior testimonial statement is introduced in evidence as representative of the past recollection of the witness concerning a fact about which he has no present recollection there is good ground for requiring that the statement be made contemporaneously with the event to which it relates. We submit, however, that on principle there is no reason for applying this rule to a prior statement which is used solely to refresh the present recollection of a witness. In that situation it is the testimony of the witness alone which goes to the jury and the prior statement has no evidentiary purpose. The appropriate test is whether the prior statement is reasonably calculated to revive the witness' recollection and it seems clear that under many circumstances a witness' recollection may be revived by a noncontemporaneous statement. Whether such a statement may stimulate memory is, we submit, a matter for the discretion of the trial court and should not be absolutely prohibited as a rule of law.

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[27] It should be noted that this portion of the opinion in the *Putnam* case was not necessary to the decision. The defendant was convicted on two counts, the sentences imposed ran concurrently and the Supreme Court found no error in the conviction under one of the counts. The Court took cognizance of this and said (p. 714) that "it is doubtful whether the error committed, as to the second count, should be treated as prejudicial."

[28] See Wigmore on *Evidence*, Vol. 2, Sec. 761, fn. 5 (p. 42) (2nd Ed., 1923); Greenleaf on *Evidence*, Vol. 1, pp. 540, 544 (16th Ed., 1899).

[29] *Mahoney's Admr.* v. *Rutland R. R. Co.*, 81 Vt. 210, *supra; Folsom* v. *Apple River Log-Driving Co.*, 41 Wis. 602; *Davis* v. *Field*, 56 Vt. 426; *Bank of Charleston National Banking Ass'n* v. *Zorn*, 14 S. C. 444; *Sagers* v. *International Smelting Co.*, 50 Utah 423.

We submit that at least the holding in the *Putnam* case should be given a limited application. The view expressed in that case that there was no "reasonable probability that the memory of the witness, if impaired at the time of the trial, was not equally so when his testimony on the prior occasion was committed to writing" is to be read in the light of the situation to which these words were directed, a single isolated conversation concerning a matter in which the personal interest of the witness was in no way involved. In that situation a four-months-old memory might be distrusted (although it would not seem unreasonable to leave decision in such a matter to the discretion of the trial court).

We cannot believe, however, that the *Putnam* case was intended to set up an inflexible four-months statute of limitations which would have the effect of barring as a stimulus to recollection any statement made more than four months after the event to which it relates. Where the prior statement used for refreshment concerns events in which the witness actively participated, or relates to business matters with which he was required to be familiar in the course of his regular employment, or constitutes an admission of facts against his own interest or against the interest of his employer, the same yardstick cannot be applied in measuring the point of time at which a statement concerning past events is to be presumed to be the product of a faulty memory. With some trifling exceptions, this was the kind of prior statement used for refreshment in the present case.

Furthermore, in the case at bar the grand jury testimony employed for the purpose of refreshment was given in the early summer of 1936 when the continuing conspiracy to which it related was still in current operation. The testimony may be said to have been contemporaneous with the whole conspiracy of which the facts given in the testimony were parts. There is reason to expect a witness to remember accurately prior events occurring in the course of a continuing enterprise in which he is still engaged. We submit that under these circumstances there was in the present case no such lapse of time between the event and the testimony thereto as to render the accuracy of the latter inherently suspect and, as a matter of law, not a proper subject for stimulating recollection.

IV

THE CIRCUMSTANCES OF THIS CASE FURNISH NO BASIS FOR A REVERSAL OF THE JURY'S VERDICT UPON THE GROUND OF IMPROPER, PREJUDICIAL ARGUMENT BY GOVERNMENT COUNSEL

Respondents, in support of the contention that the jury verdict should be reversed because of improper and prejudicial argument by Government counsel, have relied upon statements in the Government's opening to the jury and in its closing argument to the jury. In the printed record these arguments are 240 pages in length,[1] and the opening and closing arguments are separated in time by over three months (R. 74, 2037). Obviously to assemble together extracts, torn from their context, from arguments of such length gives a totally misleading impression of the character of the argument as a whole and of its probable effect upon the jury. The court below, after stating that it had read the entire argument, said that "the argument, as a whole, does not disclose a picture as prejudicial to appellants as is argued or as is indicated by the particular statements referred to" (R. 3949).

Since the court below had concluded that other grounds required reversal of the judgments against respondents, it found it unnecessary to decide whether these extracts from the argument by Government counsel were ground for reversal, but it said that in its opinion the argument, taken in connection with comments made in using grand jury testimony to refresh recollection, "would present a very serious obstacle to the affirmance of the judgment" (R. 3950). The court, however, totally ignored one very important consideration, namely, that, with trifling exceptions, either defense counsel made no objection at the time to the remarks complained of or, where objection was taken, the trial court took proper corrective action (*infra*, pp. 127–129).

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[1] R. 74–94, 96–113, 2037–2145, 2285–2380.

Whether misconduct of counsel in a given case is of sufficient importance to require reversal of the jury's verdict "depends wholly upon the circumstances of the case, and for that reason authorities are of little persuasion." *Mutual Life Ins. Co. v. City Nat'l Bank & Trust Co.*, 86 F. (2d) 660, 663 (C. C. A. 7th). One of the most important circumstances to be considered in this connection is whether the evidence against the party against whom the jury returned a verdict was weak or was strong and convincing. This Court has said that if the evidence was weak, "prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence," but that, if the evidence was strong, "a different conclusion might be reached" respecting the necessity of reversal because of misconduct of counsel. *Berger* v. *United States*, 295 U. S. 78, 89.[2]

The two leading cases in which this Court has held misconduct of counsel a ground for reversal of a jury verdict are *Berger* v. *United States, supra,* and *New*

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[2] Compare the opposite conclusions reached by the same Circuit Court of Appeals in two cases involving almost identical conduct of counsel. *Chadwick* v. *United States*, 141 Fed. 225, 245 (C. C. A. 6th); *Sparks* v. *United States*, 241 Fed. 777, 789–790 (C. C. A. 6th). Compare also *Volkmor* v. *United States*, 13 F. (2d) 594, 595 (C. C. A. 6th), with *Billiter* v. *United States*, 23 F. (2d) 678, 679 (C. C. A. 6th).

York Central R. R. Co. v. *Johnson*, 279 U. S. 310. A statement of the facts in these cases will show how radically different is the conduct complained of in the present case.

In the *Berger* case, where the evidence against the convicted defendant was declared to be "weak," the conduct of the prosecuting attorney was described as follows (295 U. S. 78, 84, 85):

> He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and, in general, of conducting himself in a thoroughly indecorous and improper manner. * * *
>
> The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury.

In short, as this Court said (p. 89), the misconduct "was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential."

In the *New York Central* case the Court said (p. 318) that respondent's counsel had made "a bitter and passionate attack on petitioner's conduct of the case, under circumstances tending to stir the resentment and arouse the prejudice of the jury." It also said (*ib.*): "The failure of the trial judge to sustain petitioner's objection or otherwise to make certain that the jury would disregard the appeal, could only have left them with the impression that they might properly be influenced by it in rendering their verdict, *and thus its prejudicial effect was enhanced.*"

We submit that in the present case, after a trial of great length and the introduction of a great mass of evidence establishing the character of defendants' combination and respondents' participation therein, certain isolated remarks made by Government counsel in the course of extended argument to the jury could not reasonably be regarded as having improperly swayed the jury's verdict even if timely objection thereto had been taken and the trial court had declined to take corrective action. *A fortiori* is this conclusion required in view of the fact that the remarks now alleged to be prejudicial either were not objected to at the time they were made or, when objection was made, the jury was instructed to disregard them.

"In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings." *United States* v. *Atkinson,* 297 U. S. 157, 160. This constitutes a narrowly limited exception to the general rule that the verdict of a jury will not be set aside for error not brought to the attention of the trial court. This rule is not a technicality but "is founded upon considerations of fairness to the court and to the parties and of the public interest in bringing litigation to an end after fair opportunity has been afforded to present all issues of law and fact." *United States* v. *Atkinson, supra,* p. 159.

In *Crumpton* v. *United States,* 138 U. S. 361, 364, the Court, in holding that argument by a prosecuting officer in a criminal case to which no objection was made at the time of the argument was not a ground for reversal, said:

> There is no doubt that, in the excitement of an argument, counsel do sometimes make statements which are not fully justified by the evidence. This is not such an error, however, as will necessarily vitiate the verdict or require a new trial. It is the duty of the defendant's counsel at once to call the attention of the court to the objectionable remarks, and request its interposition, and, in case of refusal, to note an exception.

Timely objection is, as we have seen, a necessary requirement in the interest of the orderly conduct of litigation. Otherwise, statements by opposing counsel could go unchallenged at the time when, if improper, they might be corrected, and yet could be made the basis for reversal after it was too late to correct them. But another reason why courts will not reverse in the absence of objection to remarks of counsel (later alleged to be prejudicial) is that if opposing counsel was "not then so impressed with the significance of the misstatements as to call the court's attention thereto," it "may safely be said that * * * it is not likely that they materially affected the jury." *Dale* v. *United States,* 66 F. (2d) 666, 667–668 (C. C. A. 7th).

In the case at bar the opinion of the court below refers to the reading by Government counsel of an excerpt from a Graduation Day speech delivered in 1873 by a former Chief Justice of the Wisconsin Supreme Court (R. 3949). At the trial defense counsel interposed no objection whatever to the reading of this excerpt (R. 2041). Likewise, in the case of those portions of the argument quoted in the footnote to the court's opinion (R. 3949), no objection was taken to the second, third, and seventh of the seven separate extracts there quoted (R. 2040, 2145, 2366).

The only portion of the argument which seems to be open to substantial criticism is that in which one of the Government counsel[3] undertook to contradict, on the basis of personal experience, a factual statement made by one defense witness (R. 3950).[4] But when objection was taken to these remarks, Government counsel stated "I will withdraw the statement" and the court instructed the jury to disregard it (R. 2378). *Dunlop* v. *United States,* 165 U. S. 486, 498, held that a statement outside of the testimony made by a prosecuting officer in a criminal case was not a ground for reversal when, upon exception being taken, the trial court held that the statement was improper and the prosecuting officer thereupon withdrew it. This Court said that under these circumstances, "the error will generally be deemed to be cured." It said further: "If every remark made by counsel outside of the testimony were ground for a reversal, comparatively few verdicts would stand."

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[3] Of the nine statements by Government counsel referred to by the court below, six (and the only ones which could possibly be regarded as of any consequence) were made by W. P. Crawford. Mr. Crawford, who is a member of the Wisconsin bar (R. 2371), was specially retained for the present case. He did not either examine (with the exception of one minor witness) or cross-examine witnesses on behalf of the Government.

[4] The statement contradicted, which the court below said "was regarded by appellants as important" (R. 1950), clearly involved a mere minutia of the evidence.

Corrective action was likewise taken in the case of the statements quoted in the first, fifth, and sixth, paragraphs of the note to the opinion of the court below. As we have seen, the economic power of the defendants was one of the principal issues in the case. But the first of these statements, made in the opening statement to the jury (R. 90–1), was objected to as improperly emphasizing the wealth and corporate power of the defendants. Government counsel having thereupon expressed willingness that the court instruct the jury to disregard it, the jury was at once instructed (R. 95) that "any reference to the wealth of any of the defendants is entirely immaterial. A man of wealth has just as much right in a court as a man that is poverty-stricken."

The statement quoted in the fifth paragraph implied that the institution of the present proceedings against the defendants was approved by the Secretary of the Interior. When a like statement by the same counsel was objected to a little later, the court instructed the jury to disregard the statement and Government counsel withdrew it (R. 2370).

The statement quoted in the sixth paragraph, made in the closing argument (R. 2365), stressed the corporate wealth and power of the defendants. Upon objection to a like remark immediately preceding the one in question, the court stated that it would, in its instructions to the jury, caution that body not to be influenced by statements of this nature (*ib.*). The court in its charge to the jury instructed it that it was "to be governed solely by the evidence submitted in this case" (R. 2419). It further charged (*ib.*):

> No jury should convict a corporation of a violation of the Sherman Act solely because of its size or the extent of its business. It is your duty to give these corporations the same impartial consideration in weighing the evidence in this case and in arriving at a verdict which you would give to any individual or to any small corporation whose guilt or innocence might be left to your determination.
>
> You are not concerned with the financial condition of any of these defendants. Whether a man be rich or poor, he is entitled to the same consideration in this Court, and at the hands of this jury, and you must keep that in mind in your consideration of the evidence in this case.

V

THE DISTRICT COURT HAD JURISDICTION OF THE OFFENSE OF WHICH RESPONDENTS WERE CONVICTED

Respondents by their cross-petition for certiorari attack the holding of the Circuit Court of Appeals that the district court had jurisdiction to try them.

It is undisputed that during the period of the conspiracy the defendants were selling gasoline in the Western District of Wisconsin at prices directly based upon the spot market quotations published in the trade journals. The court below held (R. 3942-4), relying upon *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, *supra*, that the sales by the respondents at those prices constituted acts in furtherance of the conspiracy which vested the district court with jurisdiction over the offense.

In the *Trenton Potteries* case the defendants, manufacturers of sanitary pottery, were tried and convicted in the Southern District of New York under an indictment charging a combination to fix and maintain uniform prices for the sale of their product in violation of the Sherman Act. The conspiracy had not been entered into in the Southern District. The Circuit Court of Appeals reversed the conviction (300 Fed. 550) upon the ground, in part, that the trial court had erred in failing to instruct the jury as to the necessity of finding that overt acts were committed in the Southern District of New York. This Court reversed this judgment and affirmed that of the district court, holding that the trial court's failure to instruct the jury concerning jurisdiction was not error, since there had been no request for such a charge and since the evidence on this point was so clear that there was no necessity for such a charge. The Court said (pp. 403-404):

> The record is replete with the evidence of witnesses for both prosecution and defense, including some of the accused, who testified without contradiction to the course of business within the district, the circulation of price bulletins,

> and the making of sales there by some of the members of the association organized by respondents. The secretary testified that, acting for the association, he effected sales within the district. All of these were overt acts sufficient for jurisdictional requirements.

We submit that the *Trenton Potteries* case is clearly controlling on the jurisdictional question presented here. Obviously, if sales within a particular district by parties to a conspiracy to maintain uniform selling prices can give jurisdiction to try the crime there, sales within a district by parties to a conspiracy formed to raise sales prices and to maintain them at fixed artificial levels are likewise acts in furtherance of the conspiracy and give jurisdiction to try the crime in such district.

Respondents' contention in the court below that sales in the trial district did not constitute acts in furtherance of the conspiracy rests upon the false premise that it was neither charged in the indictment nor established by the evidence that raising and controlling the wholesale and the retail price of gasoline in sales in the Mid-Western area (including the trial district) were within the direct purposes and principal objectives of the conspiracy. The indictment expressly charged that the defendants combined and conspired together for the purpose of raising, fixing, and maintaining their prices in sales to jobbers and consumers in the Mid-Western area, including the Western District of Wisconsin.[1]

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[1] Paragraph 18 of the indictment alleges that the defendants combined together for the purpose, and with the effect, of raising and fixing spot market tank car prices, and that they "have thereby intentionally increased and fixed the tank car prices of

The district court in its charge repeatedly instructed the jury that it could find the defendants guilty only if it found that the defendants combined and conspired together for the purpose of raising and fixing the tank car price of gasoline in sales in interstate commerce in the Mid-Western area, including the Western District of Wisconsin, and for the purpose of raising the general level of retail prices in said area and district.[2] The verdict of the jury therefore constitutes a specific finding that the conspiracy was entered into for these objectives and purposes.

The jury by its verdict not only decided this question but this was the very crux of the case as submitted to the jury. The defendants from the beginning of the case admitted concerted buying in the spot markets and that this buying would have an effect in bringing

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gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the Western District of Wisconsin), and have arbitrarily, by reason of the provisions of the prevailing form of jobber contracts above described in paragraph 11, exacted large sums of money from thousands of jobbers with whom they had such contracts in said Mid-Western area (including the Western District of Wisconsin), and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area (including the Western District of Wisconsin)" (R. 12–13). Paragraph 25 of the indictment alleges: "*In pursuance of said combination and conspiracy*" the defendant companies "have contracted to sell and have sold and have delivered large quantities of gasoline in tank car lots to jobbers within" the trial district "at the artificially raised and fixed and non-competitive prices aforesaid * * * and they have required retail dealers and consumers in said district to pay artificially increased prices for gasoline, as aforesaid, all by virtue of said combination and conspiracy *and pursuant to the purposes and ultimate objectives thereof*" (R. 17).

[2] R. 2405, 2408, 2409, 2410, 2417.

about higher prices in those markets. The contested issue was whether this was done for the purpose, as the Government charged, of enabling the defendants to exact higher prices in their sales in the Mid-Western area or solely for the altruistic purpose, as the defendants contended, of aiding independent refiners and the "industry" as a whole.

As the court below observed (R. 3943), even if there were no direct evidence of this purpose to raise prices in the Mid-Western area,[1] the circumstances of the case give rise to an almost irresistible inference that the defendants' purpose in combining to raise the spot market prices was to raise the price of gasoline in their sales to jobbers and retailers in the Mid-Western area. The defendants were buyers and not sellers in the spot market (*supra*, p. 13; R. 3943). Consequently, raising of the spot market prices, unless the price of gasoline sold by the defendants in the Mid-Western area was equally raised, would operate directly to their disadvantage. Unless the jury was to shut its eyes to inducement and motive and, as the court below put it (R. 3943), to believe "that the defendants were engaged in a philanthropic endeavor," it was almost bound to conclude that the defendants' buying activities and their rigging of spot market prices were merely the means adopted to achieve the objective for which the defendants' combination was formed—to raise and maintain at controlled levels the prices at which their gasoline was sold throughout the Mid-Western area, including the trial district.

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[1] The finding of the jury on this aspect of the case was, in fact, supported by substantial direct evidence, some of which is as follows: One of those present at the first meeting of the Tank Car Stabilization Committee reported: "The effect of lower tank car markets for gasoline on the retail price structure was discussed," and further reported, "It was generally assumed that all companies would come into the picture since a stable retail market requires a higher tank car market" (Ex. 177, R. 2733–4). The minutes of the District Allocators' meeting on March 13, 1935, show that Arnott in presenting the objectives of the buying programs to the meeting said: "I am presenting to you a *national picture*—that is East of the Rockies—*whereby this whole stabilization effort of markets, the holding up of normal sales market structures, the question of the realization of refineries*, the working together of those two great groups in order that we may balance this whole picture and in order that we may interest a great many buyers in this so-called surplus or homeless gasoline, can be done along organized lines" (Ex. 69, R. 2660). See, also Ex. 376 (R. 2977–8).

Respondents in the court below stressed the fact that their practice of selling on the basis of spot market prices in the Mid-Western area existed prior to the conspiracy and that the defendants were not charged with having agreed upon a uniform jobber contract or a uniform retail price policy (R. 3942). From this they argued that the conspiracy entailed no obligation on their part with respect to their method of sale and that, therefore, their sales in the Mid-Western area were the result of individual action and not of joint action pursuant to the conspiracy.

The answer to this is that under the terms of the conspiracy the defendants were not free to sell as they pleased in the Mid-Western area. Since the objective of the conspiracy was to raise and maintain prices for the gasoline which the defendants sold in this area and since this objective would fail if the defendants sold at prices not based upon spot market prices, an obligation to adhere to their prior practice of selling on the basis of spot market prices was implicit in their unlawful agreement. The mere fact that the obligation was to adhere to prior practice rather than to change existing practice does not make it any the less an essential and integral part of the defendants' unlawful agreement and of the means employed to achieve its objectives.

The obligation of the defendants with respect to their method of selling, of course, extended no further than was necessary to attain the objectives of the conspiracy. These objectives were fully achieved if the defendants sold on the basis of spot market prices. It was not essential to the objectives of the conspiracy that the defendants adopt any particular form of jobber contract or follow the retail price policy of any particular company, and it was, therefore, unnecessary for the Government to allege or prove that a uniform contract or a uniform retail price policy was adopted or maintained by agreement.

Respondents also contended that in the *Trenton Potteries* case there was an express agreement to sell at the minimum prices fixed by the combination. We submit that in that case, as here, the agreement to sell was merely implicit in the combination to control selling prices. But, irrespective of that, respondents' argument that there must be an express agreement to sell at artificially enhanced prices overlooks the essential nature of a conspiracy. "A conspiracy is a partnership in criminal purposes," constituted not only by agreement but by "the continuous cooperation of the conspirators to keep it up." *United States* v. *Kissel,* 218 U. S. 601, 607–608. Selling to jobbers and consumers in the Mid-Western area at the artificially enhanced prices supplied part of the "continuous cooperation" necessary to keep the entire conspiracy alive, although there may not have been any "agreement specifically directed to that act." *United States* v. *Kissel,* at p. 608. See also *Hitchman Coal and Coke Co.* v. *Mitchell,* 245 U. S. 229, 249.

The dissenting opinion in the court below is, we submit, based upon a fundamental misconception of the Government's position. The dissenting judge was under the mistaken impression that the sales in the trial district which the Government contends were overt acts consisted of sales of the very distress gasoline purchased in the buying programs.[4] As we have seen, the position of the Government is that the sales by the defendants of their own gasoline—not the gasoline purchased in the programs—at the prices which they had raised and maintained through the operation of the buying programs constituted overt acts.

Respondents in the court below relied principally upon *Rose* v. *St. Clair,* 28 F. (2d) 189 (D. C. W. D. Va.); *United States* v. *Black,* 160 Fed. 431 (C. C. A.

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[4] The dissenting opinion states: "Not one drop of the oil involved in the purchasing programs, which 'effectuated' the alleged conspiracy, was purchased by any of the defendants in the State of Wisconsin, and yet, the Government contends that appellants' subsequent sale in the Western District of Wisconsin of a part of this distress gasoline involved in appellants' purchasing programs, should be considered as an overt act for the purpose of giving jurisdiction to the United States District Court for the Western District of Wisconsin" (R. 3952).

7th); *Lonabaugh* v. *United States*, 179 Fed. 476 (C. C. A. 8th); and *United States* v. *Great Western Sugar Co.*, 39 F. (2d) 149 (D. C. Neb.). The first three of these cases merely hold that where two or more persons conspire to do an unlawful act and that unlawful act has been completed, subsequent acts of the conspirators are not in furtherance of the unlawful objective or in furtherance of the conspiracy for which they stand indicted. These cases have no application here, because restraint of trade in gasoline moving in interstate commerce into the Western District of Wisconsin unquestionably falls within the interdiction of the Sherman Act. Accordingly, the acts of the defendants to perfect that restraint were in furtherance of an objective made unlawful by this statute.

The decision in *United States* v. *Great Western Sugar Co.*, *supra*, turns upon a somewhat different point. The criminal information filed in that case charged certain acts of price warfare by a beet sugar company and some of its officers to hinder a smaller competitor from building two new beet sugar factories, and that this was done for the purpose of restraining interstate commerce in sugar. The principal means to effect this restraint was to cut off the competitor's potential supply of sugar beets by contracting to buy from farmers adjacent to the proposed factories the next year's crop of sugar beets at higher prices than those previously paid them. The making of these contracts was outside the three-year period of limitations. Since the court was of the opinion that the information charged only a restraint of trade of temporary duration, ending when the price warfare (which included a temporary drop in the price of refined sugar) ended, the court held (p. 154) that the mere act of paying farmers for beets which they delivered under the contracts which were made during the price war was not in furtherance of the restraint which was charged and did not remove the statutory three-year bar on prosecution.

VI

THE DISTRICT COURT DID NOT ERR IN DENYING RESPONDENTS' MOTIONS FOR DIRECTED VERDICTS BASED ON THE GROUNDS THAT THE GOVERNMENT HAD FAILED TO PROVE AN ESSENTIAL ALLEGATION OF THE INDICTMENT AND THAT THERE WAS A PREJUDICIAL VARIANCE BETWEEN THE INDICTMENT AND THE PROOF

Respondents' contention, rejected by the Circuit Court of Appeals (R. 3936–7), that the allegations in the indictment relating to the guilt of the defendant trade journals (R. 16–17), which the Government failed to prove (*supra,* note 18, p. 15), were essential allegations as to respondents, and that therefore the district court erred in denying their motions for directed verdicts based on this ground, raises a question which depends primarily upon a construction of the indictment.

The crux of respondents' contention is that the indictment charges a single means for the effectuation of the conspiracy, of which the allegations that the journals published false prices are an essential part. We shall describe the indictment with a view to showing that the charge against respondents is separate from, and independent of, the charge against the trade journals and that the allegations relating to the guilt of the journals constitute at most but one of several means set forth (and a relatively subordinate one), and therefore are nonessential allegations.

Prior to the allegation of the conspiracy in paragraph 18 (R. 12–13), the indictment sets forth in paragraphs 5–17 (R. 8–12) the general nature, and interstate character, of the business of the defendant major companies. These allegations show, among other things, the following: The defendant major companies market gasoline in 10 states, known as the Mid-Western area, and together control more than 85 percent of the gasoline distributed in this area. Most of the gasoline so marketed is manufactured from crude oil produced in the Mid-Continent and East Texas fields, which lie outside the Mid-Western area. About half the gasoline sold at retail in said area is distributed through jobbers. The majors uniformly sell gasoline to jobbers under contracts which provide that the price shall be calculated on the basis of the Mid-Continent (Oklahoma) spot market prices published in two named trade journals. Virtually all of the gasoline sold on the spot markets is sold by independent refiners and the total amount of gasoline sold in spot transactions constitutes less than 5 percent of the quantity of gasoline marketed in the Mid-Western area. The majors also distribute gasoline through retail dealers or directly to consumers through their own retail service stations. Spot market prices, in addition to dictating the prices at which majors sell to jobbers, also substantially dictate retail prices in the Mid-Western area because an increase in spot market prices results directly in an increase in retail prices in that area.

Following these preliminary and introductory allegations, paragraph 18 sets forth the conspiracy which is charged. This paragraph alleges that since February 1935 the defendants "have combined and conspired together for the purpose of artificially raising and fixing" gasoline prices in the Mid-Continent and East Texas spot markets, and that they have, pursuant to this purpose, "artificially raised and fixed" these spot market prices and have maintained them "at artificially high and noncompetitive levels and at levels agreed upon among them and have thereby intentionally increased and fixed" prices in sales to jobbers in the Mid-Western area and have likewise intentionally raised the general level of retail prices prevailing in said area. There is a concluding allegation, substantially in the terms of the statute, that the defendants, in so doing, have engaged in an unlawful combination and conspiracy in restraint of interstate commerce in violation of Section 1 of the Sherman Act.

It will be observed that paragraph 18 of the indictment charges a conspiracy (1) to raise and fix spot market prices and (2) thereby to raise and fix prices in the Mid-Western area. The description of the means by which the spot market prices were raised and fixed are left to subsequent paragraphs. But the means by which prices in the Mid-Western area were raised and fixed is clearly shown by the introductory allegations preceding paragraph 18, which describe the interrelation between spot market prices and prices in the Mid-Western area. These give content to the general allegations of paragraph 18 by showing that spot market prices control prices in the Mid-Western area because

(1) prices in contracts with jobbers in this area are based upon spot market prices published in the trade journals and (2) retail prices in the Mid-Western area are determined by spot market prices.

It is significant that the charge in paragraph 18 is in terms of raising and fixing prices *on the spot market* (and thereby wholesale and retail prices in the Mid-Western area), and not in terms of raising and fixing spot market prices *as published in the trade journals.* From the preceding paragraph it appears that the trade journals were the instrumentalities by which the artificial spot market prices were converted into wholesale prices in the Mid-Western area, but there is no suggestion that the prices published by the journals were fictitious or other than prices actually representative of spot market prices.

We submit that the paragraphs of the indictment which we have described constitute alone a sufficient charge against the defendants and that the subsequent allegations, including those alleging falsification of prices by the trade journals, are unnecessary allegations. The paragraphs described charge a combination to raise and fix prices by those having the power to control market price. A conspiracy of this nature is clearly unlawful under *United States* v. *Trenton Potteries Co.,* 273 U. S. 392 (*supra,* pp. 73–74). Further allegations as to the means by which the conspiracy was to be effectuated were therefore unnecessary. *Boyle* v. *United States,* 259 Fed. 803, 805 (C. C. A. 7th).

But even if we assume that some allegation as to the means by which the objects of the conspiracy were accomplished is requisite to the validity of the indictment, the falsification of prices by the trade journals is not, as respondents contend, a single means alleged for carrying out the conspiracy. Their corrupt conduct is not only alleged as one among several means, but it is also alleged as a minor and subordinate means. A review of the remaining allegations of the indictment substantiates this.

Paragraph 19 of the indictment (R. 13) alleges that said unlawful conspiracy "has been effectuated in the following manner and by the following means, that is to say" that the defendants, "acting pursuant to the common purposes set forth in paragraph 18," have "knowingly and unlawfully engaged and participated in two concerted gasoline-buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying program, for the purchase by each of them from independent refiners" of large quantities of gasoline in the East Texas and Mid-Continent fields "at uniform, high, and at times progressively increased prices." The paragraph ends, "Said buying programs are more fully described as follows."

Paragraphs 20–21 (R. 13–15), which are preceded by the heading (*a*) *The East Texas buying program,* give various details concerning this program, including the names of the defendant companies purchasing in the program and the names of the independent refiners from whom such purchases were made. It is also alleged that the independent refiners have "known of said unlawful purposes and have actively engaged and cooperated in the unlawful combination and conspiracy set forth in this indictment."

Paragraphs 22–23 (R. 15–16), which are preceded by the heading, (*b*) *The Mid-Continent buying program,* contain allegations similiar to those made with respect to the East Texas buying program.

The foregoing allegations describe the precise means by which the defendants were proved to have driven spot market prices upwards and to have maintained them at high levels. In substance, it is alleged that the defendants through the buying programs reduced the supply of gasoline on the spot markets and forced spot market prices for gasoline upward by providing an outlet at high prices for a substantial amount of gasoline which otherwise would have been sold competitively on the spot market.

It is only after the two buying programs have been fully set forth, these buying programs having been alleged in paragraph 19 as the means by which the conspiracy was effectuated, that the alleged aiding and abetting by the trade journals is mentioned.

Paragraph 24[1] (R. 16–17), preceded by the heading, *Participation of market journals,* alleges that the two trade journals mentioned earlier in the indictment have materially "aided" the other defendants in effectuating the conspiracy. Thus the intentional and wrongful participation of the journals is described in terms of aid to the conspiracy rather than as being an integral part of it. The second sentence of paragraph 24 sets forth that the journals have been "the chief agencies and instrumentalities" through which the artificially raised and fixed spot market prices affected prices in the Mid-Western area. This allegation adds nothing to the previous allegations of the indictment for, as we have seen (*supra*, pp. 139, 141), whether guilty or not, the trade journals were the instrumentalities by which spot market prices were translated into the prices at which the majors, under the provisions of their jobber contracts, sold to jobbers in the Mid-Western area.

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[1] Except for a concluding paragraph entitled "Jurisdiction and venue," this is the last paragraph of the indictment.

The concluding sentence in paragraph 24 charges, in effect, that the trade journals were not merely instrumentalities in the conspiracy but corrupt instrumentalities—that while professing to publish the prices prevailing in spot sales by independent refiners to jobbers, they knowingly published prices which the defendant major companies paid to independent refiners. Since the buying programs, carried on with the cooperation of the independent refiners, enabled the conspirators to raise and control the level of spot market prices, and since these artificial spot market prices, when published in the trade journals, determined prices in the Mid-Western area, publication by the journals of the prices paid by the defendant companies in buying from independents rather than publication of prices in sales on the spot market to jobbers, was not in any respect essential to the undertaking. The fraudulent publication of prices by the trade journals charged in the last sentence of paragraph 24, if proved, would have been merely an additional means of giving effect to the objectives of the conspiracy.

Since fraudulent publication of prices by the trade journals was merely one of the means alleged whereby the objects of the conspiracy were achieved, failure of proof as to this means was not a ground for directing verdicts of acquittal. In a Sherman Act indictment charging various means by which the conspiracy is effectuated, "not all the means alleged need be proved." *Nash* v. *United States,* 229 U. S. 373, 380.

Respondents in their cross-petition for certiorari (pp. 7–8) urge that if the indictment is construed as we contend it should be, then it charges simply a conspiracy to fix spot market prices and not a conspiracy to fix prices in the Mid-Western area. The fallacy in this argument lies in the assumption that if the trade journals were not guilty participants in the conspiracy they played no part at all in it. As we have seen, however, the indictment prior to paragraph 24 clearly alleges facts showing that the trade journals were the instrumentalities utilized by the defendants to convert the spot market prices which they raised into their prices in sales to jobbers in the Mid-Western area. That the agency utilized by the defendants to effectuate their objective in the Mid-Western area was innocent of any wrongful act of cooperation does not, we submit, make the respondents' crime any less a conspiracy to raise and maintain prices throughout the Mid-Western area, including the trial district.

Respondents in the court below also urged that the failure to prove that the trade journals published the prices paid by the defendant companies in the buying programs constituted a prejudicial variance between the indictment and the proof.[2] Since it is not clear from respondents' cross-petition that they will make this contention in this Court and since the argument is closely related to that just discussed we shall refer to it only very briefly.

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[2] This contention was also rejected by the court below (R. 3387–8).

Respondents' principal argument in support of their contention that there was a material variance was that the indictment charges a restraint of trade controlled by the holding of this Court in *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, *supra*, whereas the proof establishes a restraint of trade within the holding in *Appalachian Coals, Inc.*, v. *United States*, 288 U. S. 344, *supra*. This is answered by our argument on the principal issue of the case where we have undertaken to show that the case as established by the proof falls directly within the rationale of the *Trenton Potteries* case and related cases (*supra*, pp. 69–89).

Respondents completely failed in the court below to show that the alleged variance affected any substantial rights of theirs within the test laid down by this Court in *Berger* v. *United States*, 295 U. S. 78, 83, *supra*. They were not surprised by the alleged variance because they themselves introduced the evidence to disprove the charge that the journals did not publish the defendant companies' prices.[3] Compare *Washington & Georgetown R. R. Co.* v. *Hickey*, 166 U. S. 521, 532. They are adequately protected from a second prosecution for the same offense because, as shown before, the indictment describes and the proof shows precisely the offense for which they were convicted.

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[3] Exs. 1011 (R. 3788), 1024 (R. 3807).

VII

THERE WAS SUFFICIENT EVIDENCE TO GO TO THE JURY THAT DEFENDANTS' COMBINATION UNREASONABLY RESTRAINED TRADE AND THE DISTRICT COURT DID NOT ERR IN DENYING RESPONDENTS' MOTIONS FOR DIRECTED VERDICTS

Respondents contend that there was no evidence sufficient to go to the jury that their combination unreasonably restrained trade and that the district court therefore erred in denying their motions for directed verdicts.[1] But in the court below respondents did not even attempt to lay the necessary foundation for this contention, namely, that there was no evidence adequate to support findings by the jury that their combination had the purpose and the power to raise and fix prices. In lieu of this essential minimum showing, respondents merely detailed certain evidence which, if the jury had given it controlling weight, would have supported certain findings contrary to those which the jury actually made. All that this showing established was that there was a wealth of evidence from which opposing factual inferences might have been drawn. Since it is the function of the jury, not the court, to pass upon conflicting evidence and disputed issues of fact, respondents wholly failed to make out a proper case for granting directed verdicts.

We shall not here set forth the abundant evidence which supports the jury's findings that defendants' combination had the power and the purpose to raise and fix prices. This evidence is set forth in our previous statement of the case and reference thereto seems sufficient. See *supra,* pp. 10–12, 15–33, 47–48.

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[1] The court below rejected this contention (R. 3939).

In the court below respondents sought a partial escape from the real issues raised by their contention, by relying upon an interpretation of the holding in *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, *supra,* which is, we submit, entirely unwarranted. The "principle" which respondents deduced from this decision was that if a combination undertakes to remedy a trade abuse, and if there is "competition remaining", and if its effect on competition and price is only that "intended and to be expected from the very removal of the abuse," the restraint "*cannot be said* to be unreasonable and unlawful."[2]

Not only does the opinion in the *Appalachian Coals* case not support this so-called "principle" but the holding in *Sugar Institute, Inc.,* v. *United States,* 297 U. S. 553, *supra,* is directly contrary thereto. In that case this Court assumed as a basis for its decision that the giving of arbitrary, secret rebates and price concessions to particular customers had been a serious and widespread competitive evil prior to organization of the defendant trade association and that putting an end to this evil was one of the important purposes for which the association was organized. Moreover, there was "competition remaining" after the association was formed. While the members of the association (sugar refiners) agreed to adhere to their openly announced prices until prior public notice of change had been given, they did not agree upon the prices which they would charge and each was left free to announce publicly at any time either lower or higher prices. There were thus the various elements which, under the "principle" deduced by respondents from the *Appalachian Coals* case, render a restraint reasonable and lawful, as a matter of law. This Court, nevertheless, held that the restraint was unreasonable and in the course of its opinion said (p. 599):

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[2] See respondents' (appellants') brief in the court below, p. 146.

> The freedom of concerted action to improve conditions has an obvious limitation. The end does not justify illegal means. The endeavor to put a stop to illicit practices must not itself become illicit. *As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them.*

The Court also stated (p. 598) that its holding in the *Appalachian Coals* case was "that a coöperative enterprise otherwise free from objection, which carries with it no monopolistic menace, *is not to be condemned as an undue restraint merely because it may effect a change in market conditions* where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities." This statement indicates respondents' attempted inversion of the holding in the *Appalachian Coals* case. The holding is that the mere fact that a change in market conditions has been effected by combination does not, if the change is in mitigation of recognized evils, make the restraint *unreasonable.* Respondents then invert this into a holding that the mere fact that a change in market conditions, effected by combination, mitigates recognized evils, makes the restraint *reasonable.*

VIII

THE DISTRICT COURT'S DENIAL OF RESPONDENTS' MOTIONS FOR NEW TRIAL, AFTER GRANTING CERTAIN OTHER CORPORATE DEFENDANTS A NEW TRIAL, DID NOT VIOLATE ANY CONSTITUTIONAL OR OTHER RIGHT OF RESPONDENTS AND DOES NOT CONSTITUTE REVERSIBLE ERROR

Respondents contend that the denial of their motions for new trial, after new trials had been granted certain other defendants, violated their constitutional right to have the issues determined by a jury.[1] The premises for this contention are that a fundamental issue in the case was the possession of the power to raise and fix market prices and that the jury did not pass upon the question whether respondents, aside from the three corporate defendants granted new trials, possessed such power. The Government submits that a review of the trial proceedings will show the lack of basis for the conclusion which respondents draw from these premises.

Each of the convicted defendants filed, prior to the jury's verdict, a motion for a directed verdict, and each filed, after the verdict, a motion for a new trial (R. 1912-3, 2435). Subsequently the district court dismissed the indictment as against certain defendants upon the ground that the evidence was insufficient to sustain their conviction,[2] and on the same day it granted certain other defendants new trials upon the ground that there "was good reason to believe" that these defendants had not had "an adequate separate consideration of their defense" (R. 2490–1). The basis of respondents' present contention is the grant of a new trial to three corporate defendants.[3] For convenience we shall discuss this contention as if Standard of Indiana were the only corporate defendant granted a new trial, since our argument leads to the same conclusion whether a new trial was granted to one corporation or to three corporations.[4]

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[1] The court below did not pass upon this question because of its conclusion that the case should be reversed upon other grounds (R. 2345).

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[2] For present purposes it is immaterial whether the district court had or had not power thus to enter judgment *non obstante veredicto* (see *United States* v. *Stone*, 60 Sup. Ct. 177, *supra*). In the present connection it is the belief of the district court that it was then authorized to rule on the motions for directed verdicts, not its actual power to do so, that is significant.

[3] The question of the defendants' power to control market price concerns only the corporate defendants.

As to the one corporate defendant granted, after verdict, a directed verdict of acquittal, The Globe Oil & Refining Company (Kansas), its operations were such that the jury's determination of the question of defendants' power to control market price could not possibly have been affected by any erroneous conclusion as to its participation in the conspiracy. This corporation did not purchase gasoline from any independent refiner in 1935 or 1936 (R. 1609–10; Ex. 1004, R. 3770–1). The record does not disclose the amount of its gasoline sales in the Mid-Western area, but the combined sales therein by the three affiliated Globe companies was less than 5% of the sales of the convicted defendants (Ex. 1028, R. 3812, 3815–6).

Section 269 of the Judicial Code (U. S. C., title 28, sec. 391), provides that new trials are not to be granted for errors which do not affect the substantial rights of the parties.

[4] Of the three corporations given a new trial, only Standard of Indiana is of any importance. One of the three, Cities Serv-

It thus appears that the ground upon which Standard of Indiana was granted a new trial was, not that the evidence was insufficient to sustain its conviction, but doubt in the mind of the trial court as to whether its defense had received adequate separate consideration by the jury. And when the district court on the same day denied or failed to grant Standard of Indiana's motion for a directed verdict, this constituted an adjudi-

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ice Company, is a holding company (R. 862–4) and its operating subsidiary, Empire, is one of the respondents. The other, Barnsdall, was one of the smallest majors.

As to the importance of Standard of Indiana's operations with reference to the question of the defendants' power to control market price, the fact, emphasized by respondents, that its sales in the Mid-Western area were about one-third of the total sales by majors, is, taken by itself, misleading. This appears when consideration is given to the following circumstances:

~~of the purchases by majors (other than Sinclair) from independ-~~

(1) Standard of Indiana did not play a predominant role in the purchase of gasoline from independent refiners. A tabulation of the purchases by majors (other than Sinclair) from independent refiners shows that Standard of Indiana made no purchases at all in the East Texas field and that its purchases in the Mid-Continent field were less than 10% of the total (Ex. 747, R. 3270–1). Inclusion of Sinclair's purchases in the total would materially reduce these percentages (Ex. 1015, R. 3797).

(2) Upon the question of the defendants' power to extend the raised spot market prices to the prices at which they sold to jobbers in the Mid-Western area, Standard of Indiana was not a factor at all. It alone of all the majors did not sell to jobbers (R. 1247).

(3) As to retail prices, Standard of Indiana's practice, adopted prior to the conspiracy, of basing its retail price upon spot market prices enabled the combining defendants to translate raised spot market prices into raised retail prices. The mere fact that Standard of Indiana could, by a change in its marketing policy, substantially impair this power, does not negative its existence. For example, repeal of the Connally Act would have impaired defendants' price control to a far greater extent. Possession of power is not negatived by the fact that some change in circumstances might defeat the power.

cation that the evidence was sufficient to warrant the jury in finding that it was a party to the conspiracy. Since this adjudication is not open to review or collateral attack, the jury's determination that respondents and Standard of Indiana were parties to the conspiracy and that they had the power to control market price must be regarded as made on the basis of adequate and sufficient evidence. This being so, the jury's determination of the power which the parties to the conspiracy could exercise over market price was free from fundamental error and no constitutional or other right of respondents was violated by the denial of their motions for new trial.

In the view of the Government, it is questionable whether mere doubt as to whether a convicted defendant has had "an adequate separate consideration" of its defense is a proper ground for granting a new trial. At most, award of a new trial upon this ground involves an exercise of the trial court's discretion. Accordingly, even if it be assumed that any doubt attaching to the fairness of the jury's conviction of Standard of Indiana attaches likewise to its determination of the defendants' power to raise or control market price, the most that this assumption could establish is that it lay within the trial court's discretionary authority to grant respondents also a new trial. In other words, respondents' claim to a new trial rests on the claim thereto by Standard of Indiana and cannot rise above that claim. If, as we have seen, Standard of Indiana's claim lies within the realm of discretion, so, too, does respondents'. The trial court exercised this discretion when it denied respondents' motions for new trials (R. 2500).

Nothing is better settled than that the action of a federal trial court in granting or denying a motion for new trial is a matter within its discretion and that its exercise of this discretion will not be reviewed either by a Circuit Court of Appeals or by this Court. *Fairmount Glass Works* v. *Cub Fork Coal Co.*, 287 U. S. 474, 481–482. The only circumstances which permit review are if the trial court "erroneously excluded from consideration matters which were appropriate to a decision on the motion, * * * or if it acted on the mistaken view that there was no jurisdiction to grant it, or that there was no authority to grant it on the ground advanced." *Fairmount Glass Works* v. *Cub Fork Coal Co., supra,* at pp. 482–483.

In the court below respondents did not even attempt to show that they came within any of these exceptions to the general rule. That the district court entertained jurisdiction of respondents' motions and of the grounds advanced in support thereof is shown by its granting of identical motions filed by other defendants (R. 2435, 2491). Nor is there anything in the record to support the contention that the district court erroneously excluded from consideration matters appropriate to its decision upon respondents' motions. A trial court is presumed, in the absence of evidence to the contrary, to have considered all matters, whether raised or not, relevant to a proper disposition of a motion for a new trial. In the present case the trial court must be assumed to have taken into consideration the results flowing from the granting of a new trial to Standard of Indiana, a ruling which the court made on the same day on which it denied respondents' motions for new trial (R. 2488, 2491, 2500). When the record "does not contain any explanation by the trial court of the refusal to grant a new trial," such refusal "cannot be held erroneous as a matter of law" and review is not permissible. *Fairmount Glass Works* v. *Cub Fork Coal Co., supra,* at p. 485.

There is another fatal objection to respondents' contention, namely, that they did not in the trial court request a new trial upon the ground now urged. While at the time the motions for new trial were made respondents could not know which, if any, of the corporate defendants would be given a new trial, each respondent might have set forth in its motion that the granting of a new trial to any of the other leading corporate defendants would destroy the validity of the jury's determination respecting the defendants' power to raise and fix gasoline prices and would require the granting of new trials to all the convicted defendants. The failure to present this question to the trial court is in itself ground for refusing review. *Rossi* v. *United States,* 278 Fed. 349, 354–355 (C. C. A. 9th).

This Court made an analogous ruling in *Helis* v. *Ward,* 60 Sup. Ct. 283. This was a suit for specific performance of a contract. After judgment for the defendant in the district court following trial on one interpretation of the contract, the Circuit Court of Appeals, adopting a different interpretation, gave judgment for the plaintiffs. This Court held that since the facts relevant to the interpretation adopted by the Circuit

Court of Appeals had been fully established at the trial, the defendant was not entitled to have the cause remanded for a new trial. This Court rejected a contention by the defendant that on a new trial he would attack the competency and accuracy of certain evidence, which attack was immaterial to the issues at the trial. One of the reasons given for rejecting this contention was that the defendant, in its petition for rehearing to the Circuit Court of Appeals, had not urged this as a ground for remanding for new trial.

Possibly respondents will urge that the trial court acted inconsistently when it granted Standard of Indiana a new trial but denied respondents a new trial. But alleged inconsistency in the exercise of judicial discretion is not a ground for reversal. Even rational inconsistency between verdicts returned by a jury, whether rendered in a joint trial of several defendants or rendered upon different counts of the same indictment, is not a ground for setting aside the verdict.[8] Furthermore, there was no inconsistency. The question whether respondents should be given a new trial raised speculative considerations not involved in the question whether Standard of Indiana should be given a new trial. Among these additional speculative considerations are (1) whether the jury, if it had given Standard's separate defense adequate consideration, would have acquitted it and (2) whether, had the jury done so, its conclusion as to the defendants' power respecting prices would have differed from that reached at the trial.

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[8] *Dunn* v. *United States*, 284 U. S. 390, 393; *Chiaravalloti* v. *United States*, 60 F. (2d) 192, 193 (C. C. A. 7th); *United States* v. *Austin-Bagley Corp.*, 31 F. (2d) 229, 233 (C. C. A. 2nd).

In the court below respondents cited certain cases which hold that, where judgment is reversed against all but one of two or more defendants who have been convicted of unlawfully conspiring together, such reversal requires reversal of the judgment against the remaining defendant.[6] These decisions have no application to the case at bar since here the district court did not reverse judgment against all but one of the convicted defendants. Moreover, the decisions, even if they were applicable, are of doubtful authority. Not only are they based upon an early doctrine of the common law as to the indivisibility of the crime of conspiracy, from which doctrine the conclusion has sometimes been drawn that no conviction for this crime can stand unless supported by one other conviction (*Feder* v. *United States,* 257 Fed. 694, 696–697, *supra*), but they are also opposed by contrary decisions of equal weight.[7]

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[6] *Cofer* v. *United States*, 37 F. (2d) 677, 680 (C. C. A. 5th); *Morrow* v. *United States*, 11 F. (2d) 256, 260 (C. C. A. 8th); *Feder* v. *United States*, 257 Fed. 694, 696–697 (C. C. A. 2nd).

Turinetti v. *United States*, 2 F. (2d) 15, 17 (C. C. A. 8th), and *Bartkus* v. *United States*, 21 F. (2d) 425, 428 (C. C. A. 7th), which respondents also cited, are not in point, because the reversals in these cases had the effect of establishing that there was no competent evidence sufficient to sustain the conviction of the remaining defendant.

[7] *Rossi* v. *United States*, 278 Fed. 349, 354 (C. C. A. 9th), *supra; United States* v. *Cohn*, 128 Fed. 615, 626 (C. C. S. D. N. Y.), affirmed *sub nomine Browne* v. *United States*, 145 Fed. 1, 13 (C. C. A. 2nd), certiorari denied, 200 U. S. 618; *Jones* v. *Commonwealth*, 72 Va. 836, 850–852. See also *Motes* v. *United States*, 178 U. S. 458, 474–476.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals be reversed and that the judgment of the district court as to each respondent be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 346.

UNITED STATES OF AMERICA, *Petitioner*,

v.

SOCONY-VACUUM OIL CO., INC., ET AL.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

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The opinion of the District Court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is not yet reported.

QUESTION PRESENTED.

We agree with the following statement of the Petitioner as to the question presented by its petition:

> ". . . The trial court instructed the jury that if it found that the defendants had the power to raise gasoline prices and had combined for that purpose, the restraint of trade was unreasonable and illegal. The principal question presented is whether this instruction was reversible error." (Pet. 2)[1]

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[1] Citations to the petition are designated herein by the abbreviation "Pet."

SUMMARY OF ARGUMENT.

1. A concerted effort to eliminate abuses which threaten the competitive system is not to be condemned merely because it results in or tends to result in higher prices. *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344 (1933).

2. The Petitioner concedes the presence of substantial evidence, that the purchasing activities of the defendants "were confined to 'distress material,' the removal of which did not suppress normal competition." (Pet. 14) The removal of any competitive abuse like distress gasoline would necessarily tend to produce fairer or higher price levels.

3. Contrary to the decision in the *Appalachian Coals* case and other cases cited, however, the trial court instructed the jury to return verdicts of guilty, without further examination of the facts, if it found that the purpose or effect of eliminating this abuse was to produce higher—*i. e.,* fairer—price levels. This instruction in effect directed the jury to return verdicts of guilty even though it accepted the respondents' view of the facts.

STATEMENT.

The Petitioner's argument that the trial court's instructions did not constitute reversible error is based in part upon the assumption that this Court must accept its conclusion as to the evidence in the case. The respondents deny that there is substantial evidence to support many of the conclusions upon which the Petitioner's argument is based.[2] For the purposes of this brief, however, it is unnecessary to review the evidence in detail because the petition contains concessions as to the evidence which we believe are conclusive. The Petitioner does not claim that the evidence which it sets forth was undisputed. Instead it says:

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[2] As shown hereinafter, however, the trial court's instructions would constitute reversible error even if there were substantial evidence for these conclusions. (See p. 9, *infra*).

> ". . . The real purpose and practical effect of the buying program was, however, *sharply contested* by the respondents. The evidence *relied upon by the Government* may be summarized as follows:" (Pet. 7, Italics supplied)

Then, after stating (Pet. 11, 13) that there was "*substantial* evidence" (not, it will be noted, "undisputed evidence") to support the conclusions upon which its argument is based, the Petitioner says:

> ". . . The defendants, on the other hand, offered evidence designed to show (1) that they did not combine together for the purpose of controlling prices; (2) that their purchasing activities were confined to 'distress' material, the removal of which did not suppress normal competition on the spot markets; . . ." (Pet. 14)

For a summarized statement of facts, we respectfully direct the attention of this Court to the opinion of the Circuit Court of Appeals which amply supports these concessions.

ARGUMENT.

I.

The Circuit Court of Appeals Correctly Held that the Trial Court Had Committed Reversible Error in Its Instructions to the Jury.

The Petitioner states that the principal question presented is whether the trial court committed reversible error in instructing the jury that

> ". . . if it found that the defendants had the power to raise gasoline prices and had combined for that purpose, the restraint of trade was unreasonable and illegal. . . ." (Pet. 2)

It will be noted that this instruction is not concerned with whether the respondents have maintained prices at *controlled* levels (*cf.* Pet. 2) or whether they have *eliminated price competition* on the spot market (*cf.* Pet. 18-19) or otherwise *fixed* prices. The sole test of legality which this instruction lays down is whether the purpose or effect of the respondents' acts has been to raise gasoline prices. The Petitioner apparently does not claim that such an instruction would be correct if applied to any case involving a combination which contributed to a rise in price, but only that such an instruction did not constitute reversible error in *this* case. At the outset, therefore, we are faced with the question of what the facts submitted to the jury disclose.

Certain facts about the combination are not in dispute:

1. There is no dispute that distress gasoline in the hands of independent refiners had been a competitive evil which had driven the price of gasoline below the cost of production. (R. 385-6, 642, 671-2, 751-2, 929, 1003, 1166, 1327) As the Circuit Court of Appeals said:

> ". . . If there is any one thing completely established, it is that the oil industry, as well as numerous Governmental agencies, Federal and State, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary, if the industry was to survive, to say nothing of prospering. . . ." (R. 3929)

2. There is no dispute that the defendants' combination was a program to purchase distress gasoline from independent refiners. (Pet. 8-9)

3. There is no dispute that the removal of the depressing effect of distress gasoline tended to permit the price of gasoline to seek its normal level. The Final Report of the Secretary of the Interior for the year 1935, introduced by the respondents, discusses the factors which contributed to the price rise in 1935, as follows:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, *and of the stabilization committee of the planning and coordination committee*[3] *with the cooperation of the Petroleum Administrative Board,* brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935 . . ." (Def. Ex. 917A, R. 3525, Italics supplied)

It was on these undisputed facts that, as the Petitioner says, the trial court instructed the jury to return verdicts of guilty if they found that the respondents had the power or the purpose to raise prices. (Pet. 2) Obviously the elimination of a competitive abuse such as distress gasoline may tend to stabilize the industry and to produce fairer price levels. The instruction of the trial court, therefore, required a finding of guilty even though the jury believed that the respondents' activities had been limited to the elimination of distress gasoline and that they had affected or raised prices only through the elimination of that abuse.

This Court has repeatedly held that a concerted effort to eliminate abuses which threaten the competitive system is not to be condemned merely because it results in or was intended to result in higher prices.

> *American Tobacco Co.* v. *United States,* 221 U. S. 106, 177 (1911);
> *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, 373-4 (1933);
> *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553, 597-8 (1936);
> *Window Glass Mfgrs. Assn.* v. *United States,* 263 U. S. 403, 413 (1923);
> *Standard Oil Co.* (Ind.) v. *United States,* 283 U. S. 163, 175, 179 (1931);
> *Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238 (1918).

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[3] The Tank Car Stabilization Committee which operated the Mid-Continent buying program was a sub-committee of the General Stabilization Committee of the Planning & Coordination Committee. (R. 1169, 1696-7)

Appalachian Coals, Inc. v. *United States,* 288 U. S. 344 (1933) stands as a direct and inescapable challenge to the accuracy of the instruction of the court below and to the contention of the Government in its Petition, that any agreement shown by the evidence constituted *per se* a violation of the Sherman Act merely because price raising or price affecting was involved.

In that case the defendant producers formed "an exclusive selling agency," Appalachian Coals, Inc., whose stock was owned by the defendant producers in proportion to their production. The selling agency agreed to sell all of the coal produced at the best prices obtainable but the selling agency was exclusively to determine what that price should be. The effect of this agreement was to compel the agency to sell at the going market price.

With respect to the purposes of the combination it appeared that Appalachian Coals, Inc., was formed to deal with competitive abuses which had driven the price of coal below cost. The most important of these abuses was the sale of distress coal below the going market price.

The District Court found, and the Supreme Court accepted its finding, that the elimination of competition between the defendants would "have a tendency to stabilize prices and to raise prices to a higher level than would prevail under conditions of free competition." (288 U. S. at 359.) The intent, effect and purpose of the agreement were thus to raise prices. Tested by the instruction of the trial court in the instant case the combination would have been *per se* unlawful.

This Court held, however, that the combination was lawful, pointing out that:

> ". . . A cooperative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint merely because it may effect a change in market conditions, where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities. Voluntary action to

rescue and preserve these opportunities, and thus to aid in relieving a depressed industry and in reviving commerce by placing competition upon a sounder basis, may be more efficacious than an attempt to provide remedies through legal processes. The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that co-operative endeavor to correct them necessarily constitutes an unreasonable restraint of trade. . . ." (288 U. S. at 373-4)

As we have shown above, there was undisputed evidence in this case which would have justified the jury in finding that the respondents' activities were identical in purpose and effect with those involved in the *Appalachian Coals* case. The trial court flatly and repeatedly[4] instructed the jury that if it found "that these defendants possessed the power to raise the prices of gasoline to be sold in the ten Middle Western states, and that there was the purpose to exert that power, then the combination became, from the time that this purpose appeared, an illegal one, and a conspiracy in restraint of trade, and the defendants participating therein are guilty of the offense charged in the indictment." (R. 2409) Again it instructed the jury that "If from all the evidence before you, you find not only that there was concerted action, that is, action together, of the defendants, but that it sought to accomplish the illegal purpose of raising the price of gasoline to any extent, then it would follow that the acts and declarations of any one or more of the conspirators in furtherance of the conspiracy are binding upon all the others . . ." (R. 2409) Under such instructions, the sole criterion by which the jury was to judge the guilt or innocence of the respondents was whether their activities did or would result in raising prices.

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[4] The following excerpts from the charge of the Court are typical of the instructions given:

> ". . . It is illegal and a violation of the Sherman Law for a group of individuals or corporations, or both, to act together to raise the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity.
>
> * * *
>
> "If you come to the conclusion from the evidence in this case that these defendants possessed the power to raise the price of gasoline to be sold in the ten Middle Western states, and that there was the purpose to exert that power, then the combination became, from the time that this purpose appeared, an illegal one, and a conspiracy in restraint of trade, and the defendants participating therein are guilty of the offense charged in the indictment.
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> * * *
>
> ". . . It is sufficient that the circumstances shown satisfy you to the extent I have indicated, that the parties thereto were acting together toward a common end, and that that end was the raising of prices charged as the object of the alleged conspiracy.
>
> * * *
>
> "However, if you should find that through the purchase of so-called distress gasoline, defendants and the independent refiners and others acting in cooperation with them had the power, and combined for the purpose of directly affecting and raising the level of spot market prices, then, as I have previously stated, the restraint of trade was as a matter of law undue and unreasonable and, therefore, illegal." (Assignment of Error No. 43, R. 2553-4)

The Petitioner, attempting to defend the instructions in question, claims that the evidence disclosed something more than a mere combination which produced higher price levels through the elimination of a competitive abuse. It states that the respondents sought to maintain prices *"at controlled levels."* (Pet. 2) From this statement it argues that this case, like *United States* v. *Trenton Potteries*, 273 U. S. 392, involved a combination among the defendants "to eliminate price competition among themselves." (Pet. 18-19)

A comparison of the instruction in question with the opinion in the *Trenton Potteries* case will show at once that this argument is untenable. In the instant case, the trial court's instruction made the issue of guilt or innocence dependent *entirely* upon the question of whether the respondents had possessed and exercised the power *to raise prices*. In the *Trenton Potteries* case, on the other hand, the Court was not concerned with whether the purpose and effect was to raise or lower prices.[*] It expressly refused to make the issue of guilt or innocence depend upon whether the combination had produced reasonable or unreasonable prices, saying:

> ". . . in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend upon so uncertain a test as whether prices are reasonable. . . ." (273 U. S. at 398)

The true ground of decision in the *Trenton Potteries* case, as the Petitioner itself concedes, (Pet. 18) was that the defendants there had the power and purpose to eliminate all play of competition in the determination of market price and to substitute an agreed-on arbitrary market price for a competitive one. The determining factor was the destruction of market competition, not whether prices were higher or lower, reasonable or unreasonable. In this case, however, it is established by the conclusion of the Circuit Court of Appeals that ". . . it cannot be held that competition on the spot market was eliminated." (R. 3933) Obviously, the instruction now before this Court *which failed even to mention the effect of the combination on competition* was highly prejudicial to respondents and cannot be sustained on the authority of the *Trenton Potteries* case.

If this case did contain any substantial evidence that the respondents had eliminated or restrained competition in the sale of gasoline on the spot market, (which the respondents deny), that evidence was contradicted, if not over-

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[5] The instruction which this Court sustained in the *Trenton Potteries* case was summarized by the Court as follows:

> "The trial court charged, in submitting the case to the jury, that if it found the agreements or combination complained of, it might return a verdict of guilty without regard to the reasonableness of the prices fixed, or the good intentions of the combining units, whether prices were actually lowered or raised or whether sales were restricted to the special jobbers, since both agreements of themselves were unreasonable restraints. . . ." (273 U. S. at p. 395)

come, by other evidence to the contrary. Again, the Petitioner itself concedes this. It says:

> ". . . The defendants . . . offered evidence designed to show (1) that they did not combine together for the purpose of controlling prices; (2) that their purchasing activities were confined to 'distress' material, the removal of which did not suppress normal competition on the spot markets; . . ." (Pet. 14)

Thus, there was concededly presented in the trial court a conflict of evidence[6] as to whether the purpose and effect of the agreement established was to fix prices "at controlled levels" or, by eliminating the effect of a competitive abuse, to contribute to a rise in price from below the cost of production to a normal competitive level.

On a record which disclosed facts consistent with the conclusion that the respondents had not fixed prices at noncompetitive levels and consistent with the conclusion that they had done nothing more than eliminate a competitive evil which tended to depress prices below normal levels, it was obviously incumbent upon the trial court to instruct the jury as to their duty in the event that they accepted such facts. Instead of doing so, however, the court instructed the jury that the sole criterion by which they were to judge the guilt or innocence of the respondents was whether their activities had had the purpose or effect of raising prices.[7] If the jury found that such was the purpose and effect of the combination it was directed to return a verdict of guilty without further examination of the surrounding facts and circumstances.[8]

---

[6] The Circuit Court of Appeals recognized that the facts were in dispute, saying:

> "The case was submitted to the jury upon the theory that the combination charged was unlawful *per se*. This, in our judgment, was error such as to require a reversal. Under such circumstances, it ordinarily would serve no useful purpose to enter into a discussion of the evidence as it relates to the character of the restraint imposed. We think it is pertinent, however, to make brief reference to the contentions of the respective parties in this respect by way of demonstrating that the character of the restraint was a jury question and not one to be declared unlawful *per se*. (R. 3932 *cf.* R. 3934)

[7] See p. 7, *supra*.

II.

The Instructions of the Trial Court Improperly Limited the Extent to Which the Jury Could Consider the Facts and Circumstances Surrounding the Defendants' Activities.

The Petitioner, having conceded that the respondents introduced substantial evidence showing that their activities did not unreasonably restrain trade, argues that the conflict of evidence was properly submitted to the jury and determined adversely to the respondents. It says: "The jury was expressly instructed to ascertain the cause for the price rise and subsequent rigidity and to acquit the defendants unless it found that the price increase and its continuance at the level shown by the evidence was caused by the combination." (Pet. 25) It is therefore asserted that the finding of the jury must be accepted as final.

The instruction relied upon to support this claim reads as follows:

> "Now, unless you find from the testimony and believe beyond a reasonable doubt that the said price increase, and its continuance at the level shown by the evidence was caused by an unlawful agreement or combination of the defendants, as alleged in the indictment, and as heretofore defined and explained to you, and not caused by the factors aforesaid, then it is your duty to acquit the defendants and to return verdicts of 'not guilty.'" (R. 2407, cited Pet. 25, n. 46)

This instruction, however, flatly condemns the price rise if brought about by a combination "as heretofore defined and explained to you." As we have previously demonstrated, and as the opinion of the Circuit Court of Appeals for the Seventh Circuit clearly points out, the trial court had repeatedly instructed the jury that any combination having *the effect or purpose of raising prices* was an unlawful combination. This fundamental error was merely carried over into and perpetuated in the instruction cited by the Petitioner.

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[8] See p. 12, *infra*.

In fact the jury was not permitted to consider the evidence relied upon by the respondents even to the limited extent indicated by the instruction quoted above. For, the trial court also instructed the jury:

> "You will also understand that if you find an illegal combination to have existed among all or some of the defendants, having for its purpose the raising of prices, it does not matter that there may have been also other factors which contributed to the raising of the prices, as, for example, the existence of the Connally Act, . . ." (R. 2405)

The trial court also instructed the jury:

> "If you should find that the defendants acting together, and those independent refiners found acting in concert with them, did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, or that they did not combine for that purpose, and if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally, then you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to and did merely eliminate abuses which tended to produce destructive competition and restore competition to a fairer basis and produce fairer price levels. In such event, you may conclude that the purchase of such gasoline in the manner shown by the evidence was reasonable and beneficial and not injurious to the public interest and that, therefore, the restraint of trade was not undue and not illegal, and you may acquit the defendants." (R. 2414)

Thus the jury was authorized, and in view of other instructions was required, if it found that the power to raise prices existed or that the respondents had combined for that purpose, to find guilt without being permitted to look at the facts and circumstances surrounding the activities of the defendants. The importance of the evidence in this case concerning the surrounding facts and circumstances is shown by the Circuit Court of Appeals' description of some of the evidence which the jury was forbidden to consider. The Circuit Court said:

> ". . . when considered in connection with other circumstances, it [the evidence relied on by the government] is not so convincing and certainly not conclusive. For instance, the passage of the Connally Act, which went into effect in February, 1935, undoubtedly played a prominent part in the increase and maintenance of the price level. At any rate, it is disclosed that in prior instances, where the transportation of 'hot oil' was prohibited, a similar increase in prices was experienced. Another circumstance which militates against the importance of the rigidity of the price level is the fact that the price of gasoline outside the Mid-Western area was actually higher during the indictment period than it was within. It also is worthy of note that the price to which it is claimed to have been arbitrarily raised and maintained was at no time above that which was regarded by the Government and industry, as a parity price.
>
> * * * * * *
>
> "There are other factors which it is argued entered into the increase in the price level of gasoline. It is pointed out that at the time of the marked increase in the price of gasoline there was likewise a marked increase in commodity prices in general and that at least a part of the increase is attributable to natural causes. It is disclosed that there are many large refiners outside the Mid-Western area but so near the territory that the product is readily obtainable. In many cases the freight rate from these outside refiners to important points within the territory is actually less than from refiners located within the territory. . . ." (R. 3933-4)

There was also the evidence clearly negativing any agreement of independent refiners with the defendants as to the price they would charge jobbers and amply sustaining the conclusion of the Circuit Court of Appeals that the play of competition in these sales by independent refiners to jobbers in the spot market went on as before. (R. 3932)

At most there was a conflict of instructions which merely resulted in confusing and misleading the jury as to when and for what purposes it could consider the circumstances surrounding the activities of the defendants. The Petitioner itself argues that the instructions confused and misled the Circuit Court of Appeals. At page 18 of the Petition it states that the Circuit Court of Appeals "misunderstood the scope of the issues submitted to the jury by the trial court's instructions." If, after a careful and deliberate study of the record and the charge, three judges of the Circuit Court of Appeals "misunderstood" the meaning of the instructions to the jury, how can the Government now ask this Court to find that the jury in the heat and the pressure of the trial did not likewise misunderstand the instructions. Even if we could accept the Petitioner's view of the instructions we would still be faced with the situation which this Court found in *District of Columbia* v. *McElligott,* 117 U. S. 621, 630 (1886) where it said:

> ". . . The charge was inconsistent with the instructions previously given, and was calculated to mislead the jury, for it submitted to them a question which those instructions had, in effect, if not in terms declared to be immaterial in the case."[*]

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[*] In accord are:

Ward v. *Cochran,* 150 U. S. 597, 610 (1893);
Erhardt v. *United States,* 268 Fed. 326 (C. C. A. 7th, 1920);
McLean Medicine Co. v. *United States,* 253 Fed. 694, 696 (C. C. A. 8th, 1918);
Kuhn v. *United States,* 42 F. (2d) 210, 211 (C. C. A. 3rd, 1930);
DeGroot v. *United States,* 78 F. (2d) 244, 253 (C. C. A. 9th, 1935).

CONCLUSION.

For the reasons stated, we respectfully submit that the petition filed on behalf of the United States clearly fails to state any tenable grounds for granting the writ of certiorari.

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IN THE

Supreme Court of the United States

October Term, 1939

No. 346

UNITED STATES OF AMERICA,
Petitioner,
v.
SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,
Petitioners,
v.
UNITED STATES OF AMERICA.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENT, R. H. McELROY, Jr.

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United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENT, R. H. McELROY, Jr.

OPINIONS BELOW

The opinion of the district court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is reported in 105 F. (2d) 809.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 22, 1939 (R. 3953-4). The petition for writ of certiorari in No. 346 and the cross-petition for writ of certiorari in No. 347 were filed in this Court on August 31, 1939. Both petitions were granted on October 16, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Criminal Appeals Rules.

QUESTION PRESENTED

The sole question dealt with in this supplemental brief is *whether or not there is sufficient evidence in the Record to warrant a judgment of conviction as to R. H. McElroy, Jr.* This question arises by reason of the denial in the trial court of R. H. McElroy, Jr.'s motion for a directed verdict at the conclusion of the case (R. 1959; 2432; 2517). The Circuit Court of Appeals decided that the trial court did not err in denying this motion. (See 105 F. (2d) 809, 839). The matter is presented for the determination of this Court by the third specification of error made in the cross-petition for a writ of certiorari filed by these respondents, which cross-petition (No. 347) was granted by this Court on October 16, 1939.

This respondent, R. H. McElroy, Jr., specifically adopts all of the points presented in the main brief herein filed as reasons for a reversal of the judgment of conviction herein rendered against him (R. 2501-2) and, in addition thereto, submits *that there is no substantial evidence* *that this respondent, R. H. McElroy, Jr., had any knowledge of and participated in any unlawful combination or conspiracy,* and for that reason, this Court should reverse the judgment of conviction as to him and order a dismissal of the charges preferred against him in the indictment herein filed.

STATUTES INVOLVED

Section 1 of the Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., title 15, sec. 1), known as the Sherman Act, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, provides in part as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . . Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 14 of the Clayton Act (15 U. S. C. A. Sec. 24) provides:

> "Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who *shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation,* and such violation shall be deemed a mis-

demeanor, and upon conviction therefor of any such director, officer, or agent, he shall be punished by a fine of not exceeding one year, or by both, in the discretion of the court."

STATEMENT

The general statement of facts, contained in the principal brief filed herein on behalf of all respondents, is adopted. Such general statement is sufficient to give to the Court a full background of the entire case, and it would serve no useful purpose to make any additional general statement. R. H. McElroy, Jr., a salaried employee of The Pure Oil Company, was charged with the duty of purchasing gasoline to fill the company requirements above that supplied by The Pure Oil Company's refineries. He bought this gasoline "when and as directed" by the Manufacturing Department. The details of all the testimony pertaining to McElroy's knowledge of, and participation in, the alleged unlawful conspiracy will be hereafter set forth in full. It consists of meager circumstances more consistent with innocence than with guilt. The truth of this statement will clearly appear if this Court will consider the testimony hereinafter summarized.

The Contested Issue

The contested issue dealt with in this supplemental brief is whether or not there is sufficient evidence in the Record to warrant a judgment of conviction as to R. H. McElroy, Jr.; and this supplemental brief will be confined solely to the proposition that since there is no substantial evidence that R. H. McElroy, Jr., had knowledge of and participated in any unlawful combination or conspiracy, the trial court erred in overruling his motion for directed verdict, and the Circuit Court of Appeals erred in failing to direct a dismissal of the indictment as to this respondent. We desire to make it clear that this brief is merely cumulative of the principal brief filed on behalf of all respondents, including R. H. McElroy, Jr. If it be assumed, *for the sake of this argument*, that the evidence was sufficient (*which is denied*) to establish as against two or more of the defendants an unlawful combination or conspiracy, it is our contention, in this supplemental brief, that *the evidence was wholly insufficient to show that R. H. McElroy, Jr., had any knowledge thereof and participated therein.*

The Charge Against R. H. McElroy, Jr.

The indictment charges that R. H. McElroy, Jr., among others, was "actively engaged in the management, direction, and control of the affairs and policies" of The Pure Oil Company, "particularly those affairs and policies" of said company "covered by this indictment" (R. 5); also, that he (and the other individual defendants) "have known of said unlawful purpose and have actually engaged and co-operated in the unlawful combination and conspiracy set forth in this indictment" (R. 16).

Evidence Relating to R. H. McElroy, Jr.

The evidence by which the Government sought to prove that *R. H. McElroy, Jr., knew* of the alleged conspiracy and its "unlawful purpose" and that he "*actively engaged and co-operated*" therein, may be grouped under the following heads:

1. His position with the respondent, The Pure Oil Company.

2. His attendance at three (3) meetings, viz.: January 4, 1935; February 11, 1935; March 6, 1935.

3. Two conversations with Neil Buckley, one on March 6, 1935, and another in the summer of the same year.

4. Telegram from George Morris, General Manager of the Retail Marketing Division of The Pure Oil Company, to C. B. Watson, Vice-President of said company, in charge of marketing and refining, dated March 15, 1935.

The material evidence relating to these topics, and constituting the whole case against Mr. McElroy, will be briefly summarized. An analysis will show that the evidence against him wholly fails to substantiate the charges contained in the indictment.

1. *R. H. McElroy, Jr's position with The Pure Oil Company.*

R. H. McElroy, Jr., is not an official of The Pure Oil Company, but is a salaried employee, in charge of the Wholesale Sales Department. Mr. C. B. Watson (who was granted a new trial [R. 2491]) is Vice-President in charge of refining and marketing. He has authority over the purchasing of gasoline by The Pure Oil Company, although R. H. McElroy, Jr., is charged with the responsibility of purchasing the company's gasoline requirements. Under him are the men in the field who do the actual buying (R. 855; 1142).

2. *Attendance at Meetings.*

R. H. McElroy, Jr., was invited to attend, and attended, meetings in Chicago on January 4th and February 11th, 1935, and a meeting in New York on March 6th, 1935. These are all the meetings attended by R. H. McElroy, Jr., which relate to the alleged conspiracy. In these meetings nothing transpired which proves that McElroy (a) had knowledge of any unlawful conspiracy and (b) participated in its execution. We shall briefly review the testimony as to what occurred at each of these meetings:

Meeting of January 4th, 1935:

This was a general stabilization meeting, called by Mr. Arnott, a high Code official (Exhibit 891; Exhibit 967; R. 3487) and held at the Blackstone Hotel in Chicago. It was attended by about forty or fifty people, among who were:

Messrs.:

Adams and Reeser	(Barnsdall)
Merritt	(Cities Service)
Karstedt and Wood	(Continental)
Majewski and Carthaus	(Deep Rock)
Miskell	(Empire)
O'Shaughnessy	(Globe)
Johnson	(Gulf)
Carpenter and Stover	(Lincoln Oil)
Ashton	(Lubrite Div.— Socony-Vacuum)

McKay	(Marathon Oil)
Smith	(National Refining)
Hughes, Gardner and Moon	(Phillips)
Snyder and McElroy	(Pure Oil)
Van Eeghen and Lakin	(Shell)
Sus	(Sinclair)
Atkins and Skelly	(Skelly Oil)
Arnott and Jones	(Socony-Vacuum)
Bullock, Ball, Jackson and Lewis	(Standard of Indiana)
Humphrey	(Standard of Nebraska)
Wright	(Texas Company)
Warner	(Tide Water)
Maguire and Peters	(Wadhams Oil)
Marcell and Mering	(White Eagle Div.—Socony-Vacuum)
Coffin	(White Star Div.—Socony-Vacuum)
McDowell	(Mid-Continent)

(R. 1167)

Of all of the above listed individuals, only five are respondents here. Those indicted, their official positions with respective companies and the disposition of this case as to them are shown in the footnote.[1]

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[1]

Name	*Title*	*Company*	*Disposition of Case*
E. B. Reeser	President	Barnsdall	Granted new trial (R 2491)
Edward Karstedt	Vice-President	Continental	Not tried
B. L. Majewski	Vice-President	Deep Rock	Not tried
I. A. O'Shaughnessy	President	Globe	Granted new trial (R 2491)
H. T. Ashton	Mgr. Lubrite Div.	Socony-Vacuum	Respondent
A. M. Hugines	Sales Manager	Phillips	Granted new trial (R 2491)
H. A. Gardner	Tank Car Sales Mgr.	Phillips	Directed verdict o acquittal (R. 2477
R. H. McElroy, Jr.	Manager Wholesale Sales Dept.	Pure	Respondent

Mr. Charles E. Arnott, Chairman of the Marketing Committee under the Petroleum Code, opened the meeting with the explanation that it had been called to consider various problems of general stabilization (R. 1167-8). He reviewed the progress which had been made since the December meeting, pointing out that there were already indications that the gains were not holding, and that unless the industry took action, it would soon be back where it started. He specifically mentioned two disturbing factors in the situation:

(1) The influx of cheap gasoline into the territory which continued to undermine the retail price structure, even after it had been improved; and,

(2) The condition of the independent refiners who had deluged Washington with complaints about hot oil and cheap gasoline.

In this connection, Arnott said that he had received a telegram from a group of independent refiners in the Southwest who demanded that the stabilizers take some action to relieve their plight. He said that in his opinion, and in the opinion of many people in Washington, the in-

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P. E. Lakin	Gen. Mgr. of Sales	Shell	Respondent
W. G. Skelly	President	Skelly	Directed verdict c acquittal (R. 2490
Charles E. Arnott	Vice-President	Socony-Vacuum	Respondent
Charles L. Jones	Vice-President	Socony-Vacuum	Directed verdict c acquittal (R. 2490
Edw. J. Bullock	Vice-President	Std. of Indiana	Granted new trial (I 2491)
Allan Jackson	Vice-President	Std. of Indiana	Directed verdict c acquittal (R. 2490
J. W. Warner	Asst. Vice-Pres.	Tide Water	Granted new trial (I 2491)
A. G. Maguire	Chairman of Board	Wadhams	Granted new trial (I 2491)
Robt. W. McDowell	Vice-President	Mid-Continent	Respondent

dependent refiners were going to cut the price of crude oil unless something were done to raise the price of gasoline to parity. He said that the code authorities in Washington unquestionably wanted to achieve parity, and to avoid a crude cut, and that, in his opinion, the stabilization committee should do something about it. He also pointed out that the stabilization of the tank-car market was of vital importance to the whole program, and that unless that market was stabilized, the December restorations of the retail price would all go for naught (R. 1168, 1693-6).

This led to a general discussion of the problem. B. L. Majewski, of Deep Rock, addressed the meeting on behalf of some twenty or twenty-five independent refiners whom he and O'Shaughnessy of Globe represented in stabilization activities. He emphasized their plight and repeated Arnott's statement that unless something were done they would be forced either to close down or to withdraw from code activities, abandon the code standards of wages and hours, and cut the price of crude oil. Several people, including McDowell and O'Shaughnessy, echoed the thoughts expressed by Arnott and Majewski, and agreed that something should be done (R. 1168-9; 1693-6).

Finally, Arnott called for suggestions and upon a motion being made by Majewski, he appointed the following committee to study the situation and make a report:

Name	*Disposition of Case*
R. W. McDowell (Chairman) (Mid-Continent)	Respondent
H. T. Ashton (Vice-Chairman) (Lubrite Div. Socony-Vacuum)	Respondent
L. Van Eeghen (Shell)	Not indicted

A. M. Hughes (Phillips)	Granted new trial (R. 2491)
E. Karstedt (Continental)	Not tried
I. A. O'Shaughnessy (Globe)	Granted new trial (R. 2491)
E. J. Bullock (Standard of Indiana)	Granted new trial (R. 2491)
P. M. Miskell (Empire)	Not indicted

(R. 1169-70; 1696-7).

This committee will be referred to hereafter by the name by which it subsequently came to be known throughout the industry: "The Tank-Car Stabilization Committee." Of the above members of the committee, Mr. McDowell and Mr. Ashton are the only ones who are appellants. The other members were either not indicted, or not tried, or given new trials by the trial court, as above indicated.

At the time the committee was appointed, Arnott stated that the matter which it was to study was quite important to the Petroleum Administrative Board in Washington, and that if and when the committee made any recommendations, he wanted to inform the Board of what was being done (R. 1698).

Meeting of February 11, 1935:

The Tank-Car Stabilization Committee, which had been appointed by Mr. Arnott on January 4, 1935, held its first meeting on February 5, 1935. All the members were present (R. 1178-9). At this meeting, Mr. Ashton pointed out that a survey revealed only six or seven hundred cars of distress gasoline in the hands of sixteen or seventeen mid-continent independent refiners; that, on the other hand, some ten or twelve major companies were known to be buyers of gasoline. He thought it would be very helpful if information as to the availability of distress gasoline could be put into the hands of the major companies, and that it might be a proper function of the Committee to gather such information month by month (R. 1182). Most of those present at this February 5th meeting were favorably impressed by Ashton's suggestion, and McDowell, after being authorized to advise Arnott of the discussion and of the proposed plan, asked the committee to meet again in Chicago on February 11th, after the General Stabilization Committee meeting, which had been set for that day (R. 1184-5). Mr. McDowell advised Arnott of the plan proposed at the February 5th meeting by Ashton; also, that another meeting of the committee had been called for February 11th. Arnott thought the plan had merit, and told McDowell to explain it at the February 11th meeting to the buyers of gasoline, *but to take no action* (R. 1184-6).

Immediately after the General Stabilization Meeting in Chicago on February 11th, the Tank-Car Stabilization Committee met. The following members were present:

Name	*Disposition of Case*
R. W. McDowell (Chairman) (Mid-Continent)	Respondent
H. T. Ashton (Vice-Chairman) (Lubrite Div. Socony-Vacuum)	Respondent
A. M. Hguhes (Phillips)	Granted new trial (R. 2491)
E. Karstedt (Continental)	Not tried
I. A. O'Shaughnessy (Globe)	Granted new trial (R. 2491)
E. J. Bullock (Standard of Indiana)	Granted new trial (R. 2491)

Van Eeghen, of Shell, and Miskell, of Empire, substituted on the committee in their places two of their associates, to wit, Lakin of Shell and Tuttle of Empire (R. 1186). (Tuttle was granted a new trial, R. 2491).

Also present at the February 11th meeting were representatives of several major companies which were regular buyers of gasoline, but which were not represented on the committee. These were as follows:

Name	*Disposition of Case*
Sus (Sinclair)	Not indicted
Dipple (Sinclair)	Not indicted
Atkins (Skelly)	Not indicted
Reeser (Barnsdall)	Granted new trial R. 2491)
R. H. McElroy, Jr. (Pure)	Respondent

(R. 1186)

McDowell opened the meeting with a few remarks about the circumstances under which the committee had been appointed, and his telephone conversation with Arnott (R. 1186; 1868-9).

Ashton then explained the plan to the non-members of the committee. He said that the Connally Act would take surplus East Texas gasoline off the market and prevent it from being a disturbing influence in the Standard of Indiana territory, and, that, with this gasoline out of the way, the surplus gasoline which might affect the Mid-Western area would, according to Bourque's latest survey, be limited to 600 cars a month coming from about fifteen independent refiners. He then said that it had been suggested that the major companies which were regular buyers of gasoline might be able to use this surplus (R. 1186-7).

A number of people said that they didn't want to commit themselves to buy, and that they weren't going to have anyone telling them where or how they should buy. To each objection of this kind, Ashton pointed out that no such features were involved (R. 1186-7). There were also several questions about the prices which should be paid, to which Ashton replied that this was not a price-fixing plan, that there was no basis for setting any price, and that his only suggestion was that the purchasing companies should pay the fair going market price for the gasoline which they bought (R. 1188). He also made it plain that the plan would not be put into operation until the Connally Bill had put a stop to the influx of hot gasoline into the Mid-West territory (R. 1189).

Ashton then read off Bourque's new survey, and asked those present if they would prefer to buy from any particular concerns. It developed that some of the companies were already buying from certain refiners and would like to continue to do so. Others had definite preferences, based upon old association or friendship. In this way, it was found that all but seven or eight of the independent refiners would be taken care of (R. 1187-8).

The question came up as to who would furnish the purchasing companies with the information as to the availability of distress gasoline, particularly since the original surveys might contain errors and the situations of both buyers and sellers were certain to change between surveys. Ashton proposed that a "Mechanical Sub-Committee" be appointed to handle the detailed problems that arose between monthly surveys, to receive information as to the availability of distress gasoline, and to pass it on to the buyers. McDowell appointed himself, Ashton (of Socony) and Tuttle (of Empire) to serve on this committee (R. 1190; 1870).

At this meeting, R. H. McElroy, Jr., for Pure Oil Company, didn't make any commitment as to what he would do with reference to the plan (R. 1874). In fact, there is no evidence that R. H. McElroy, Jr., was in attendance throughout the meeting. The only evidence is that he attended—whether he came late, or left early, or stayed from the beginning to the end, is not shown.

Meeting of March 6th, 1935:

On March 1, 1935, Mr. Arnott invited Buckley and a group of major company representatives to a meeting to be held in the Waldorf-Astoria Hotel, New York, on March 6th. His telegram to The Pure Oil Company was received by Mr. C. B. Watson, Vice-President, in charge of marketing and refining, and is as follows:

> "AM CALLING MEETING WALDORF HOTEL WEDNESDAY MARCH SIXTH OF SMALL GROUP MAJOR COMPANIES TO HEAR OUTCOME MY MEETING WITH EAST TEXAS REFINERS AND TO CONSIDER FUTURE ACTION SURPLUS GASOLINE THIS AND OTHER GROUPS THAT IS AWAITING OUR DECISION TELEGRAPH ME MY OFFICE 26 BROADWAY IF YOU OR YOUR REPRESENTATIVE WILL ATTEND MATTER OF EXTREME IMPORTANCE AND ANXIOUS YOU BE WITH ME,
>
> C. E. ARNOTT"

(Exhibits 482 and 717)

R. H. McElroy, Jr., attended the meeting, the reasonable inference being that he attended it at the request of, and as the representative of, Mr. Watson. The following persons were in attendance at the meeting:

Name	*Disposition of Case*
Eckert (Sun Oil Company)	Not indicted
Hartmann (Gulf)	Indicted but not tried
Gould (Shell Oil & Refining Co.)	Not indicted
Stone (Atlantic)	Not indicted
Ewing (Socony-Vacuum)	Not indicted
Collins (Tide Water)	Not indicted
Frueauff (Cities Service)	Granted new trial (R. 2491)
Carnes (Sinclair)	Granted new trial (R. 2491)
Burns (Richfield)	Not indicted
Blaustein (American Oil Co.)	Not indicted
Hatmaker (Pan American Oil)	Not indicted
McElroy (Pure Oil Company)	Respondent
Neil Buckley (Cities Service Export)	Not indicted
O. D. Robinson (Republic)	Not indicted

(R. 1713)

It is thus seen that the *only individual respondents* who were present at the foregoing meeting are Mr. Arnott and R. H. McElroy, Jr. Others were either not indicted, not tried, or granted new trials, as above indicated.

The foregoing companies were all particularly active on the East Coast, and were substantial buyers of gasoline. Companies whose interests lay primarily in the Middle West were not invited, because East Texas gasoline never appeared in the Middle West except under unusual or abnormal conditions (R. 1714).

Mr. Arnott opened the meeting by pointing out how uncooperative the East Texas refiners had been in stabilization and said that he believed it was his duty to have Buckley, representing the East Texas refiners, and Robinson, representing a group of Gulf Coast Refiners, to talk to those present and to see what could be done to improve the situation. He stated that both men were trying to find buyers of gasoline from their respective groups (R. 1717). Buckley explained the purpose of East Texas refiners to turn over a new leaf and stop running hot oil, saying more or less the same thing that he had said to Arnott at Pinehurst and Chicago, which was in substance, that he had carefully analyzed the situation and felt that such refiners were sincere; that they had everything to gain by being cooperative with the industry and the petroleum administrative board in adopting good practices with respect to the allocations, and the things they had been so freely disregarding; that they wanted Buckley to find a way of contacting the large buyers so that they could find a market for their distress product, and that he had been trying to make contacts with major companies (R. 1717; 579; 574). Robinson also addressed the meeting, telling those present about the distress of the Gulf Coast refiners (R. 1717).

Buckley testified that the principal interest of those present at the meeting

> ". . . was what the association was going to do about hot oil. Everyone was scared to death of handling East Texas gasoline, and of going back to East Texas to buy; and they wanted to know from me whether I thought these refiners were sincere. . . ."

He was asked whether the East Texas refiners were going to support the passage of the Connally Act, and cooperate with it, to which he answered, "Yes" (R. 580-1).

Buckley and Robinson then withdrew from the meeting and a discussion was had as to what Buckley had said. There were expressions of doubt as to whether a change had really come to the East Texas refiners. Some of those present felt that the matter ought to be looked into further to see what could be done to assist such refiners; others said definitely that they had no confidence in Buckley's presentation and would have nothing to do with it. The opinions ran all the way from complete negative to a feeling that the matter ought to be dealt with constructively (R. 1718).

Buckley had been unable to give dependable information concerning the amount of surplus gasoline in East Texas, and the question arose as to whether the Federal allocators would give the refiners allocations which would permit them to run legitimately the same quantity they had been running in hot oil, or whether the allocations would be something less. When Buckley and Robinson could not answer the question with reference to allocations, a five-man committee was appointed to accompany Arnott, Buckley and Robinson to Washington the next week to see the allocators (R. 1718-19). McElroy was not a member of this committee.

3. *Conversation with Neil Buckley*

While in New York, at this time, Buckley saw and talked to R. H. McElroy, Jr., whom he had known for a number of years, and told him that he was off on another tour to try and get help for the East Texas refiners, and asked McElroy whether The Pure Oil Company was going to buy in the East Texas Market. We quote the conversation thereafter, as follows:

> "He told me they badly needed gasoline, but they were afraid to buy it in East Texas, and would not buy it in East Texas, unless they could be assured that the Tender Board was going to function properly, but if it did not function properly, they were going to have to buy on the Gulf Coast, or some place else, and *it would depend on his Manufacturing Department what they bought and where they bought it.*" (R. 593)

Subsequently, Buckley talked with R. H. McElroy, Jr., by telephone some time during the summer of 1935, pleading for a let-down in the rigid specifications on the gasoline purchased by Pure in East Texas (R. 593).

4. *Telegram from George Morris (Pure) to C. B. Watson (Pure) dated March 15, 1935.*

On March 15, 1935, George Morris, General Manager of the Retail Marketing Division of The Pure Oil Company, sent a telegram from New York to C. B. Watson, who was in Chicago, reading as follows:

> "ARNOTT HOLDING MEETING TWO O'CLOCK THIS AFTERNOON IN CONNECTION WITH PURCHASE OF SURPLUS GASOLINE AND HAS ASKED US TO ATTEND. MAC DID NOT OUTLINE DISCUSSION THAT TOOK PLACE AT LAST MEETING BUT ASSUME YOU ARE FAMILIAR WITH IT AND WOULD LIKE TO KNOW IF YOU HAVE ANY INSTRUCTIONS TO PASS ON IN CONNECTION WITH MEETING OR ANY

> COMMITMENTS YOU HAVE AUTHORIZED FOR PURCHASE OF SURPLUS GASOLINE STOP ARNOTT SEEMS EXTREMELY OPTIMISTIC WITH RESULTS TO DATE.
>
> MORRIS"

(Exhibits 482; 717)

The "Mac" referred to in the foregoing telegram is the respondent, R. H. McElroy, Jr. (R. 620-1).

SPECIFICATION OF ERROR TO BE URGED

(1) The Circuit Court of Appeals erred in sustaining the action of the District Court in denying the motion of R. H. McElroy, Jr., for a directed verdict of not guilty. (Third specification of error in cross-petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.)

(2) The Circuit Court of Appeals erred in reversing and remanding this case in so far as respondent R. H. McElroy, Jr., is concerned as, because of insufficient evidence, the trial court should have granted respondent's motion for a directed verdict, and the Circuit Court of Appeals should have ordered a dismissal of the case as to R. H. McElroy, Jr.

SUMMARY OF THE ARGUMENT

I.

The general rules of law which should have governed the trial court in passing upon the motion for directed verdict filed by R. H. McElroy, Jr., are:

(a) The court must not weigh conflicting evidence, but must look solely to the question of *whether there is any evidence to support a conviction.*

(b) The evidence which would support a conviction must be *competent.*

(c) The evidence which would support a conviction must be *substantial. Abrams* v. *United States,* 250 U. S. 616, 619.

II.

Corporate agents will not be held liable for a violation of the Sherman Act unless the proof shows that such agent authorized, ordered or did some of the acts constituting in whole or in part such violation. In other words, before an officer, director or agent of a corporation can be held individually responsible for a violation by the corporation of the Sherman Act, it must be proved by competent and substantial evidence that (a) he knew of the alleged conspiracy; and (b) he participated therein; and the Circuit Court of Appeals erred in not so holding. *United States* v. *Standard Sanitary Mfg. Co.,* 191 Fed. 172; *Patterson* v. *United States,* 222 Fed. 599.

III.

There is no evidence in this Record that R. H. McElroy, Jr., had knowledge of any illegal combination and participated therein; and, therefore, this respondent's motion for a directed verdict should have been granted by the District Judge; and the Circuit Court of Appeals erred in not so holding. *France* v. *United States,* 164 U. S. 676, 683.

ARGUMENT

I.

The Applicable Law

The Supreme Court, in the case of *Abrams* v. *United States*, 250 U. S. 616, held that when a defendant in a criminal case makes a motion for a directed verdict,

> "A question of law is thus presented, which calls for an examination of the record, not for the purpose of weighing conflicting testimony, but only to determine whether there was some evidence, competent and substantial, before the jury, fairly tending to sustain the verdict."

See also *France* v. *United States*, 164 U. S. 676; *Pierce* v. *United States*, 252 U. S. 239; *Reuben* v. *United States*, 86 F. (2d) 464 (C. C. A. 7th). Thus, there are three general principles to be observed:

> (a) The Court must not weigh the evidence but must look solely to the question of whether there is *any evidence* to support a conviction.
>
> (b) The evidence which would support a conviction must be *competent;* and
>
> (c) The evidence which would support a conviction must be *substantial.*

By the great weight of authority, "substantial evidence" is evidence of facts which exclude every other hypothesis but that of guilt.

Isbell v. *United States*, 227 Fed. 788 (C. C. A. 8th); *Grant* v. *United States*, 49 F. (2d) 118 (C. C. A. 3rd);

Graceffo v. *United States,* 46 F. (2d) 852 (C. C. A.); *Nicola* v. *United States,* 72 F. (2d) 780 (C. C. A. 3rd); *Paul* v. *United States,* 79 F. (2d) 561 (C. C. A. 3rd); *Read* v. *United States,* 42 F. (2d) 636 (C. C. A. 8th); *Danaher* v. *United States,* 39 F. (2d) 325 (C. C. A. 8th); *Salinger* v. *United States,* 23, F. (2d) 48 (C. C. A. 8th); *Tinsley* v. *United States,* 43 F. (2d) 890 (C. C. A. 8th); *Rosenthal* v. *United States,* 45 F. (2d) 1000 (C. C. A. 8th); *Gargotta* v. *United States,* 77 F. (2d) 977 (C. C. A. 8th); *Moore* v. *United States,* 56 F. (2d) 794 (C. C. A. 10th); *Parnell* v. *United States,* 64 F. (2d) 324 (C. C. A. 10th); *Gerard* v. *United States,* 61 F. (2d) 872 (C. C. A. 7th).

In the case of *Isbell* v. *United States,* 227 Fed. 788, the Court said:

> ". . . It is certain the evidence of facts as consistent with innocence as with guilt is not sufficient to sustain a conviction, and that at the close of every trial by jury it is the duty of the court upon request to consider and determine whether or not there is any substantial evidence of the guilt of the accused, and, if there is none, to instruct the jury to return a verdict for the defendant. If there is, at the conclusion of a trial, no substantial evidence of facts which exclude every other hypothesis but that of guilt, there is no substantial evidence of the guilt of the accused, for facts consistent with his innocence are never evidence of his guilt. . . ."

In the case of *Gerard* v. *United States,* 61 F. (2d) 872, the rule is stated:

> "Where all the evidence is as consistent with innocence as with guilt, . . . it is our duty to override a verdict of guilt; . . ."

The Government relies wholly upon circumstantial evidence to sustain the conviction against R. H. McElroy, Jr. The rule that "evidence as consistent with innocence as with guilt, is never evidence of guilt" applies to a case based on circumstantial evidence. It is well settled that where a circumstance is susceptible of two inferences—one of which is in favor of innocence—such circumstance is robbed of all probative value.

In the case of *Turinetti* v. *United States*, 2 F. (2d) 15 (C. C. A. 8th) the Court said:

> "Whenever a circumstance, relied on as evidence of criminal guilt, is susceptible of two inferences, one of which is in favor of innocence, such circumstance is robbed of all probative value, even though from the other inference, guilt may be clearly deductible."

In the case of *DeLuca* v. *United States*, 298 Fed. 412, the Court held:

> "Where circumstantial evidence is relied on, circumstances proved must not only point to the defendant's guilt, but must be inconsistent with his innocence." (Syl.)

Section 14 of the Clayton Act (15 U. S. C. A. Sec. 24) provides:

> "Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who *shall have authorized, ordered or done any of the acts constituting in whole or in part such violation*, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such

> director, officer, or agent, he shall be punished by a fine of not exceeding $5,000, or by imprisonment for not exceeding one year, or by both, in the discretion of the Court."

This section of the Clayton Act is merely a restatement of the law as it existed prior to its enactment. *United States* v. *Standard Sanitary Manufacturing Company,* 191 Fed. 172; *United States* v. *Winslow,* 195 Fed. 578; *National Cash Register Company* v. *Leland,* 94 Fed. 502; *Patterson* v. *United States,* 22 Fed. 599.

The case of *Patterson* v. *United States,* 222 Fed. 599, decided prior to the enactment of the Clayton Act, very clearly states what must be proven to hold an officer, agent, or director liable where the corporation violates the Sherman Act. In discussing the question, the Court said:

> "In order for the defendants to have so conspired it is essential that they had such connection with the National Company that in the performance of their duties they had to do with its competitors. Those of its officers and agents who had nothing to do with competition, as, for instance, those in the manufacturing department, can not be said to have so conspired. *It is not sufficient to connect any officer or agent of the National Company with the conspiracy that they knew of it or acquiesced in it. They must by word or deed have become a party to it.* (*People* v. *Richards,* 1 Mich. 216, 51 Am. Dec. 85, 5 R. C. L. p. 1065.)"

In the case of *Tingle* v. *United States,* 38 F. (2d) 573, the defendant was found guilty of a conspiracy to manufacture, sell and deliver liquor, in violation of the National Prohibition Act. On appeal, the conviction was reversed on the ground that the prosecution had failed to establish such a conspiracy. The other parties to the alleged conspiracy were one Hoard, and one Amalia, employees of Tingle, and found on the premises. Tingle had leased a warehouse as an oil jobber, in which warehouse the vats, beer, etc., were found. Hoard and Amalia were present at the warehouse and admitted the officers and summoned Tingle. Under these facts, the Court held:

> "... *Knowledge without some evidence of participation is not enough. Circumstances merely arousing suspicion of guilt are insufficient.* ... The evidence was unconflicting and was that of the Government alone. In such a case, when the circumstances relied upon are as consistent with innocence as with guilt, they are robbed of all probative value. ..."

Thus, before an officer, director, or agent of a corporation can be held individually responsible for a violation by the corporation of the Sherman Act, it must be proven by competent and substantial evidence that,

(a) he knew of that alleged conspiracy, and

(b) participated therein,

Participation cannot be inferred merely because one is employed by a conspirator and knew of the conspiracy. *Tingle* v. *United States,* 38 F. (2d) 573.

Where a motion for directed verdict was *improperly* denied by the trial court, the Supreme Court of the United States will reverse the judgment and order a dismissal of the case. *France* v. *United States,* 164 U. S. 676, 683.

II

An Analysis of The Pure Oil Company's Operations.

Before discussing the evidence relating to R. H. McElroy, Jr., we desire first to give the Court some idea of The Pure Oil Company's operations, its gasoline requirements and the extent of R. H. McElroy, Jr.'s duties in connection therewith.

The Pure Oil Company does business in thirty-two states (R. 860) and during the years 1931, through 1936, and for the first six months of 1937, its gasoline sales were as follows:

1931	493,000,000 Gals.
1932	502,000,000 Gals.
1933	489,000,000 Gals.
1934	520,000,000 Gals.
1935	587,000,000 Gals.
1936	662,000,000 Gals.
1937 (1st 6 mo.)	332,000,000 Gals.

(Ex. 739)

It is seen that the sales during each year increased considerably over the preceding year; that 1935 sales increased by 67,000,000 gallons over 1934 sales; and that 1936 sales increased by 75,000,000 gallons over 1935 sales.

To supply this gasoline sales demand, The Pure Oil Company has seven refineries, situated in Texas, Oklahoma, Ohio, Michigan, West Virginia, and Pennsylvania, but such refineries have been unable to manufacture sufficient gasoline to supply Pure's sales demand, and for years it has been a large purchaser of gasoline. During 1935 and 1936 these refineries were operated at their maximum capacity, (R. 1145), yet during these years The Pure Oil Company had to purchase more gasoline than it had ever before purchased, in order to supply its sales demand. Prior to the year 1935 (the year the indictment charges that the alleged conspiracy began) The Pure Oil Company had purchased from more than one-third of the East Texas and Mid-Continent independent refiners, charged in the indictment as co-conspirators (R. 860). In 1931, the company purchased from independent refiners in the East Texas and Mid-Continent areas 320,000 gallons of gasoline, and from other sources 8,000,000 gallons. In 1932, the company purchased 450,000 gallons of gasoline from East Texas and Mid-Continent independent refiners and from other sources 11,000,000 gallons. In 1933, the company purchased from East Texas and Mid-Continent independent refiners 647,000 gallons of gasoline, and from other sources, 31,000,000.

In 1934, the company purchased from East Texas and Mid-Continent independent refiners, 3,619,000 gallons of gasoline, and from other sources, in excess of 18,000,000 gallons.

In January, 1935, the company, faced with an acute shortage of gasoline, entered into processing contracts with other refiners, on a month to month basis, in order to further supplement its manufacture (R. 1146). During the year 1935, the company purchased from Mid-Continent and East Texas independent refiners 10,339,000 gallons of gasoline; from other sources, 18,906,000 gallons, and had processed for it 60,000,000 gallons.

In 1936, the company purchased from East Texas and Mid-Continent independent refiners 16,919,000 gallons of gasoline; from other sources, in excess of 23,000,000 gallons, and had processed for it 79,000,000 gallons.

In the first six months of 1937, the company purchased from East Texas and Mid-Continent independent refiners 6,828,000 gallons of gasoline; from other sources, 12,000,000 gallons, and had processed for it in excess of 45,000,000 gallons (Ex. 739; R. 856-7; 1146).

To summarize—during the period of 1931 through the first six months of 1937, The Pure Oil Company obtained from sources, other than its own manufacture, the following gasoline:

1931	8,320,000	Gals.
1932	11,450,000	Gals.
1933	31,647,000	Gals.
1934	21,619,000	Gals.
1935	89,245,000	Gals.
1936	118,000,000	Gals.
1937 (1st 6 mo.)	63,828,000	Gals.

(Ex. 739).

R. H. McElroy, Jr., charged with the responsibility of obtaining the company's gasoline requirements over and above its own manufacture, was responsible after receiving directions from the Manufacturing Department, for the foregoing acquisitions of gasoline.

There were only six or seven hundred cars of distress gasoline per month in the hands of Mid-Continent independent refiners, and approximately the same amount per month in the hands of East Texas independent refiners, (R. 1189; 664; 626)—or roughly, 125,000,000 gallons of distress gasoline during the year 1935, and approximately the same amount during 1936. The necessary gasoline requirements of The Pure Oil Company, over and above its own manufacture, were such that it could have purchased and sold, had it so desired, practically all of the distress gasoline in the hands of the independent refiners in the East Texas and Mid-Continent areas, during the period covered by the indictment.

As a matter of fact, Pure Oil Company's purchases of gasoline from East Texas and Mid-Continent independent refiners were relatively small compared with its gasoline requirements over and above its own manufacture. The Pure Oil Company had to purchase gasoline to carry on its marketing business. The capacity of its refineries was wholly insufficient to supply its gasoline sales demand. Therefore, *it is clear that no inference of guilt can be drawn from the fact that the Company purchased gasoline from independent refiners, particularly in view of the fact that such had been a Company policy for many years prior to the date of the alleged conspiracy.* Such acts are certainly as consistent with innocence as with guilt.

III

There is no evidence that R. H. McElroy, Jr., individually participated in any illegal buying program either by ordering, authorizing, or doing any of the acts complained of.

R. H. McElroy, Jr., does not personally determine the amount of gasoline to be purchased nor does he determine the source of purchase. His department merely receives instructions from the Manufacturing Department as to "what to buy and where to buy it." His department, in turn, conveys this information to the proper field representatives (men like Dewey K. Chamberlain, whose motion for directed verdict was granted), who acquire the amount specified from sources which can meet the Manufacturing Department's requirements, both as to specifications and as to point of delivery. Bearing in mind the tremendous amount of gasoline which The Pure Oil Company obtained from sources other than its own manufacture, during the period covered by the indictment, and that R. H. McElroy, Jr., as head of the Wholesale Sales Department, was charged with the responsibility of obtaining such gasoline, in the manner and way above described, how can the Government single out a few purchases and contend that R. H. McElroy, Jr., is guilty because such purchases were made under his general supervision? *There is not a "scintilla" of competent evidence that R. H. McElroy, Jr., ever directed that any gasoline purchased be made from any particular refiner.*

Jacobi testified that Pure Oil Company's "dancing partners" in the Mid-Continent area were Eason Refining Company and Omar Refining Company. (R. 439-40). The Pure Oil Company made its first purchase from Eason Refining Company on June 7, 1935, and made its first purchase from Omar Refining Company on May 24, 1935 (Ex. 741)—both purchases, made many months after R. H. McElroy, Jr., attended his one and only meeting of the Tank-Car Stabilization Committee on February 11, 1935. The total amount of gasoline purchased by The Pure Oil Company during the year of 1935 from these two oil companies was 1,268,000 gallons (Ex. 741). This was approximately 1½% of the Pure's total purchases during the year of 1935.

Bearing in mind that the Mid-Continent buying program began to function on March 7, 1935 (R. 1199-1200) and that during the period March 7th to June 7th millions of gallons of gasoline were being obtained by The Pure Oil Company, through its Wholesale Sales Department (Ex. 739), is it not reasonable to assume that if R. H. McElroy, Jr., at the February 11th meeting had agreed to any purchases of surplus gasoline from Eason and Omar Refining Companies, he would have ordered purchases made long prior to May 24th and June 7th, 1935? *No one stated that he made any such agreement, and there are no facts from which such an agreement on his part can be reasonably inferred.*

We repeat: *There is no evidence that R. H. McElroy, Jr., ordered or authorized the purchase of or that he personally purchased a single gallon of gasoline from those independent refiners in the East Texas and Mid-Continent areas, alleged to be conspirators,* and we submit that there can be drawn no logical inference, from R. H. McElroy, Jr.'s position with The Pure Oil Company, that he individually participated in any illegal buying programs, *either by ordering, authorizing, or doing any of the acts complained of.* Participation in an illegal combination or conspiracy must be proved by testimony *aliunde* acts and declarations of other alleged conspirators in the course of the illegal program. *Dowdy* v. *United States*, 46 F. (2d) 417. No such proof can be found in this record as against respondent, R. H. McElroy, Jr.

No criminal acts can be imputed to R. H. McElroy, Jr., by reason of his being in attendence at the meeting January 4, 1935. The meeting was called by Mr. Arnott, the chief stabilizer under the Petroleum Code, and any innnocent man would attend a meeting called by such a high Code official. There is no inference of guilt by reason of attendance at such a meeting.

It is significant to note that some forty or fifty people attended the January 4th meeting, and only four of such persons, exclusive of R. H. McElroy, Jr., are respondents. We submit that R. H. McElroy, Jr.'s attendance at such a meeting is a circumstance from which no reasonable inference of guilt can be drawn.

Nor can any reasonable inference of guilt be imputed to R. H. McElroy, Jr., by reason of his attending the February 11th meeting of the Tank-Car Stabilization Committee, at which meeting the proposed plan of purchasing distress gasoline in the mid-continent area was explained.

The meeting was called by Mr. McDowell, the Chairman of such committee, and R. H. McElroy, Jr., was invited to attend. It was a Code meeting, and any innocent man, interested in the administration of the petroleum industry under the N. I. R. A. would have attended. There is no evidence that, at this meeting, R. H. McElroy, Jr., participated in the discussion, or agreed that The Pure Oil Company would participate in the purchase of distress gasoline. *On the other hand, the positive evidence by Mr. Sus is that R. H. McElroy, Jr., made no statement as to what The Pure Oil Company would or would not do concerning the plan.* No plan was formulated at the meeting, and Mr. McDowell, the Chairman, had specific instructions from Mr. Arnott to "discuss the plan with these people, but take no action."

Clearly, this meeting was solely for further discussing the plan with members of the Committee, and also with those invited to attend. That no agreement was reached at such meeting is clearly borne out by the subsequent occurrences, as testified to by Mr. Jacobi, Mr. McDowell, and Mr. Arnott. In fact, the Government claims that at the next meeting of the Tank-Car Stabilization Committee, on March 5th, the plan to purchase distress gasoline was formalized.

With reference to this February 11th meeting, the only evidence concerning R. H. McElroy, Jr., is that he attended and made no commitment. Whether he came late, or left early, or stayed from the beginning to the end is not shown. Whether he heard all of the details of the proposed plan is not shown. There were thereafter held the following meetings of the Tank-Car Stabilization Committee:

March 5, 1935	at St. Louis, Mo.
April 5, 1935	at Excelsior Springs, Mo.
May 6, 1935	at Chicago, Ill.
Early June, 1935	at Tulsa, Okla.
Early August, 1935	at Tulsa, Okla.
Early September, 1935	at Tulsa, Okla.
Early October, 1935	at Chicago, Ill.
November 5, 1935	at St. Louis, Mo.
December 4, 1935	at Chicago, Ill.
December 27, 1935	at Tulsa, Okla.
January 28, 1936	at Tulsa, Okla.
February 27, 1936	at Chicago, Ill.

(R. 400).

At none of these meetings was R. H. McElroy, Jr., or any other representative of The Pure Oil Company present (R. 399).

Is it reasonable that if R. H. McElroy, Jr., "was actively engaged in the management, direction, and control of the affairs and policies" of The Pure Oil Company, "particularly those affairs and policies" of said company "covered by the indictment" that he or some other representative of the company would fail to be present at some of the foregoing meetings, particularly, when four of the meetings were held in Chicago, where the home offices of The Pure Oil Company are situated, and where R. H. McElroy, Jr., resides?

Is R. H. McElroy, Jr., to be held responsible for what the committee may have done in his absence at one or more of the twelve subsequent meetings, none of which he attended?

The first purchases by Pure from its alleged "dancing partners" on June 7th and May 24th, 1935, are too remote from R. H. McElroy, Jr.'s attendance at the February 11th meeting to give rise to any inference of guilt as to him. This very fact points more to his innocence than to his guilt.

If R. H. McElroy, Jr., were an actor in the alleged conspiracy relating to the Mid-Continent buying program, we fail to find any evidence of such fact. Surely he would have attended more than one meeting of the Tank-Car Stabilization Committee, if he had any part in such program.

Concerning the alleged East Texas buying program, R. H. McElroy, Jr., attended only one meeting with reference thereto—March 6th, 1935. At this meeting, no plan of action was agreed upon, and no company made any commitment as to whether they would buy from East Texas independent refiners. The whole matter was left "dangling in the air," while a committee went to Washington to discuss the East Texas situation with the Board of Allocators, set up under the Petroleum Code. Thereafter, the following meetings were held with reference to the East Texas program:

March 15, 1935	New York (R. 1720)
May 29, 1935	New York (R. 1726)

Neither of these meetings was attended by R. H. McElroy, Jr., nor by anyone representing him, although such meetings were attended by other representatives of The Pure Oil Company (R. 1713; 1747). If he had anything to do with his company's purchasing surplus gasoline from independent East Texas refiners, under a concerted program, such as that alleged in the indictment, is it not reasonable to believe that he would have been present, either in person, or by representative, at such meetings? *No one has testified that R. H. McElroy, Jr., did any act in furtherance of any kind of a concerted buying program, whether legal or illegal.*

His attendance of the March 6th meeting does not give rise to an inference of guilt, particularly when such meeting was called by Mr. Arnott, the "chief stabilizer" appointed by Mr. Ickes, Administrator of the Petroleum Code. Any innocent man would attend such a meeting. A clear picture of the extent of R. H. McElroy, Jr.'s participation in the March 6th meeting is given in his subsequent conversation with Neil Buckley, on the same day, concerning which Mr. Buckley testified:

> "He told me they badly needed gasoline but they were afraid to buy it in East Texas, and would not buy it in East Texas unless they could be assured that the Tender Board was going to function properly, that they were going to have to buy on the Gulf Coast or some place else, and *it would depend on the*

Manufacturing Department what they bought, and where they bought it."

The foregoing evidence reflects that Mr. R. H. McElroy, Jr., had nothing to do with what gasoline was bought by The Pure Oil Company, and where it was bought. These decisions were committed to the Manufacturing Department. R. H. McElroy, Jr.'s duty was to obtain such gasoline as they told him to purchase. There is no evidence that R. H. McElroy, Jr., at the March 6th meeting participated in the discussion or agreed that The Pure Oil Company would participate in the purchase of distress gasoline from independent East Texas refiners. No such agreement was made by anyone. It is significant to note that of the fifteen or more people in attendance at the March 6th meeting, only R. H. McElroy, Jr., and Mr. Arnott are respondents.

The one piece of evidence which more clearly than any other indicates that R. H. McElroy, Jr.'s conduct was more consistent with innocence than with guilt is the telegram from George Morris, General Manager of the Retail Marketing Division of The Pure Oil Company, to C. B. Watson, Vice President in charge of marketing and refining, dated March 15th, 1935, sent from New York the same day the March 15th meeting was held in New York. It is as follows:

> "ARNOTT HOLDING MEETING TWO O'CLOCK THIS AFTERNOON IN CONNECTION WITH PURCHASE OF SURPLUS GASOLINE AND HAS ASKED US TO ATTEND. MAC DID NOT OUTLINE DISCUSSION THAT TOOK PLACE AT LAST MEETING BUT ASSUME YOU ARE FAMILIAR WITH IT AND WOULD LIKE TO KNOW IF YOU HAVE ANY IN-

> STRUCTIONS TO PASS ON IN CONNECTION WITH MEETING OR ANY COMMITMENTS YOU HAVE AUTHORIZED FOR PURCHASE OF SURPLUS GASOLINE STOP ARNOTT SEEMS EXTREMELY OPTIMISTIC WITH RESULTS TO DATE."

Does the foregoing telegram indicate that R. H. McElroy, Jr., had any power to authorize the company's participation in any buying program? Mr. Morris, General Manager of the Retail Marketing Division, surely didn't think so. He felt that Mr. Watson, Vice President, was the person to give "instructions . . . in connection with meeting" and ". . . commitments . . . for purchase of surplus gasoline." The only reasonable inference from this telegram is that R. H. McElroy, Jr., had nothing to do with "the affairs and policies" of The Pure Oil Company, "particularly those affairs and policies covered by this indictment."

From the foregoing evidence, the Government seeks to prove that R. H. McElroy, Jr.,—

(a) knew of the alleged conspiracy, and

(b) that he participated therein.

Knowledge is sought to be proved by reason of his attendance at the February 11th and March 6th meetings. But since there is no direct proof of knowledge, such must be inferred by reason of his attendance at such meetings.

We do not contend that knowledge as to what occurred at the meetings cannot be reasonably inferred from the fact that he attended the meetings. However, knowledge alone is not sufficient. The *Government must go further and prove participation* in an unlawful combination or conspiracy. The only evidence of Mr. McElroy's participation, to which the Government can point in this record, is his position with The Pure Oil Company. As Manager of the Wholesale Sales Department, he was charged with the responsibility of obtaining his company's gasoline requirements over and above its own manufacture, in such manner as the Manufacturing Department directed. We know of no rule of law holding an agent of a corporation liable solely because of his position with such corporation. If official position alone were sufficient to sustain a judgment of conviction, we do not believe that the Trial Court would have rendered the decision dismissing twelve company executives, which this Court reviewed in the case of *United States* v. *Patrick T. Stone,* decided during the present term of this Court.

The Government, to prove knowledge of the alleged conspiracy on the part of R. H. McElroy, Jr., must do so by inferring knowledge from his presence at the two meetings above mentioned. Then, *after having inferred knowledge,* the Government must go further, and infer participation by reason of the inference of knowledge, and R. H. McElroy, Jr.'s position with the company.

They infer participation from an inference of knowledge—an inference upon an inference. This is condemned by the authorities of every jurisdiction. As stated by the Supreme Court of the United States, in the case of *United States* v. *Ross,* 92 U. S. 281:

> "They are inferences from inferences; presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissable. No inference of fact or of law is reliable drawn from premises which are uncertain."

Again in the case of *RiBaste* v. *United States,* (C. C. A. 8th) 44 F. (2d) 21, the Court announced the rule:

> "Presumption must be based upon proved fact, and not upon another presumption."

Therefore, the Government cannot say that there is a presumption of knowledge on the part of R. H. McElroy, Jr., from his attendance at the February 11th and March 6th meetings, and then say that there is a presumption that he participated in the alleged conspiracy by reason of the presumption of knowledge and his position with the company, because such constitutes the basing of a presumption upon a presumption.

Can it be said that the Government has made a case against R. H. McElroy, Jr.?

There is no evidence that he had anything to do with authorizing or ordering purchases of gasoline by The Pure Oil Company in the alleged buying program, or that he had anything to do with company policy in that respect; there is no evidence that at the February 11th and March 6th meetings he participated in the discussion or agreed that The Pure Oil Company would participate in the purchase of distress gasoline. In fact, there is no evidence that he was in attendance throughout these meetings and heard all of the discussion that took place. There is no evidence that he ordered purchased, authorized the purchase of, or personally purchased any gasoline from the independent refiners in the East Texas and Mid-Continent areas, alleged to be co-conspirators. In such a state of the record, the proper judgment to be entered here is one remanding the case and directing a dismissal thereof.

If the Government could base their case upon R. H. McElroy, Jr.'s attendance at the two meetings, and his position with the company, by piling an inference of participation upon an inference of knowledge, then indeed the presumption of innocence in a criminal case means nothing, and any person would be subject to punishment by reason of some suspicion or conjecture being cast upon him. The same reasons which impelled the Trial Court to dismiss twelve high company officials (reviewed by this Court in *United States* v. *Patrick T. Stone*) should impel this Court to dismiss this case as to R. H. McElroy, Jr., a salaried employee of The Pure Oil Company.

We feel that the Government's case against R. H. McElroy, Jr., is properly characterized by Judge Hutcheson, in the case of *Symonette* v. *United States*, 47 F. (2d) 686 (C. C. A. 5th):

> "This is one of those cases, of which the books contain too many instances, of an effort by the Government, on a conspiracy indictment, to supply the place of testimony by piling inference upon inference; of an effort to make deduction take the place of proof; and to have the jury, by reasoning backward from non-criminal acts, build up by inference a state of facts to make them criminal, which, if they in fact exist, the evidence ought to have established."

It may have been impossible for the Trial Court and jury to have given proper consideration to R. H. McElroy, Jr.'s case, due to the great number of defendants involved and the mass of testimony adduced at the trial. However, this much is clear: *R. H. McElroy, Jr., should not be a respondent here.* All others occupying similar positions were either not indicted or, where indicted, they have been granted dismissals or secured new trials. R. H. McElroy, Jr., was neither a Code official nor a member of any committee which considered the matters complained of by the Government. He participated in no unlawful combination or conspiracy. It would be manifestly unjust for the conviction against R. H. McElroy, Jr., to stand, particularly, where the Government, to make out a case against him, must pile an inference of participation upon an inference of knowledge, supported only by the fact that R. H. McElroy, Jr., was a salaried employee of a company, responsible as such for the purchase of gasoline requirements over and above company refinery output.

CONCLUSION

We appeal to the Court's sense of fairness and justice in asking that as to the respondent, R. H. McElroy, Jr., the verdict of the jury, which is unsupported by any testimony, be set aside. The Government has wholly failed to establish the essential elements of its case against him, and, in such a situation, the law imposes upon this Court the responsibility and duty to see that he is relieved from a jury verdict of guilty, which is unwarranted by the law, and unsupported by the evidence. It is clear that the trial judge should have granted McElroy's motion for directed verdict, and this Court should reverse this case, as to R. H. McElroy, Jr., and order a dismissal thereof. We urge that, in the consideration of the important general issues of this case, the Court not overlook, or brush aside as unimportant, a careful determination of the issue raised in this supplemental brief, because this is vitally important to this respondent who occupies a relatively obscure position, as compared with many of the industry leaders who have been dismissed from this case, and who is entitled to have this Court clear his name of an unfounded and unjustified charge of having deliberately broken the laws of his country.

Respectfully submitted,

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Nos. 346 and 347

IN THE

Supreme Court of the United States

October Term, 1939

UNITED STATES OF AMERICA,
Petitioner,

v.

SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,

SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,
Petitioners,

v.

UNITED STATES OF AMERICA.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF FOR THE RESPONDENTS

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PART ONE—The Circuit Court of Appeals correctly held that the respondents were entitled to new trials 127

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IN THE

Supreme Court of the United States

October Term, 1939

No. 346

United States of America,
Petitioner,
v.

Socony-Vacuum Oil Company, Inc., et al.

No. 347

Socony-Vacuum Oil Company, Inc., et al.,
Petitioners,
v.

United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the district court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is reported in 105 F. (2d) 809.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 27, 1939 (R. 3953-4). The petition for writ of certiorari in No. 346 and the cross-petition for writ of certiorari in No. 347 were filed in this Court on August 31, 1939. Both petitions were granted on October 16, 1939. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Criminal Appeals Rules.

STATUTE INVOLVED

At the time of the indictment Section 1 of the Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., title 15, sec. 1), known as the Sherman Law, provided as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

STATEMENT

FOREWORD

The United States, the petitioner in No. 346 and the respondent in No. 347, is referred to herein as "the Government." Socony-Vacuum *et al.*, the respondents in No. 346 and the cross-petitioners in No. 347, are referred to herein as "respondents."

In December, 1936, an indictment was returned in the United States District Court for the Western District of Wisconsin charging 27 corporations and 56 individuals with violating Section 1 of the Sherman Law.[1] On October 4, 1937, 26 of the corporations and 46 of the individuals were brought to trial at Madison, Wisconsin.[2] Prior to the submission of the case to the jury the court discharged, or directed verdicts of acquittal, or dismissed the indictment as to 10 of the corporations and 16 of the individuals.[3] On January 22, 1938, the jury returned verdicts of guilty as to all the remaining 16 corporations and 30 individuals.[4] Thereafter, the trial court, acting on motions filed at the close of the evidence, on which decision had been reserved, dismissed one of the corporations and 10 of the individuals against whom verdicts had been returned[5] and ordered new trials as to 3 other corporations and 15 other individuals.[6] The respondents are the remaining 12 corporations and 5 individuals.[7]

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[1] R. 2, 3

[2] R. 73, 74.

[3] R. 903, 912, 1149, 1890, 2284, 2351, 2380.

[4] R. 2484.

[5] R. 2490.

[6] R. 2491.

[7] In this brief, as in the Government's brief (B. 2, n. 37), the corporate respondents will be referred to by abbreviated titles as follows:

Socony-Vacuum Oil Company, Inc. (Socony-Vacuum).
Wadhams Oil Company (Wadhams).
Empire Oil Refining Company (Empire).
Continental Oil Company (Continental).

On appeal by the respondents, the Circuit Court of Appeals for the Seventh Circuit reversed the judgments of conviction upon the ground that the trial court had erred in its instructions to the jury (R. 3939-41) and in its rejection of certain defense evidence (R. 3941-2), and upon the ground that the Government counsel's use of minutes of grand jury proceedings to refresh the recollection of certain witnesses constituted prejudicial error (R. 3945-8).

The Circuit Court held that the district court had jurisdiction of the proceeding (R. 3942-4), that there was no failure of proof as to any essential allegation of the indictment (R. 3936-8), that there was sufficient evidence to go to the jury that the respondents' combination unreasonably restrained trade (R. 3938-9), and that although the district court had committed error in the admission of evidence, the error was not sufficiently prejudicial to require reversal on that ground (R. 3944-5). Judge Sparks in a separate opinion dissented from the holding that the district court had jurisdiction.

The Pure Oil Company (Pure).
Shell Petroleum Corporation (Shell).
Sinclair Refining Company (Sinclair).
Mid-Continent Petroleum Corporation (Mid-Continent).
Phillips Petroleum Company (Phillips).
Skelly Oil Company (Skelly).
The Globe Oil & Refining Company (Oklahoma) (Globe).
The Globe Oil & Refining Company (Illinois) (Globe).

The following persons are the individual respondents:

C. E. Arnott, vice president of Socony-Vacuum.
H. T. Ashton, manager of Lubrite Division of Socony-Vacuum.
R. H. McElroy, Jr., tank-car sales manager of Pure.
P. E. Lakin, general sales manager of Shell.
R. W. McDowell, vice president in charge of sales of Mid-Continent.

The Circuit Court said that it was unnecessary for it to decide whether denial of respondents' motions for a new trial constituted reversible error (R. 3945). It also refused to pass on respondents' contention that the alleged misconduct of Government counsel in argument to the jury had deprived respondents of a fair trial (R. 3950). In this connection it stated, however, that "As the case is to be reversed there seems no occasion for us to make a determination in this respect. We shall merely express the opinion that some of the argument complained of was highly improper and that, taken in connection with the misuse of the grand jury testimony heretofore discussed, would present a very serious obstacle to the affirmance of the judgment" (R. 3950).

• • •

The "Statement" contained on pages 5 to 58 of the Government's brief does not purport to set out all of the facts. It assumes that this Court is precluded by the verdict of the jury from examining facts which would support an inference contrary to the Government's conclusions (B. 30, 147).[1] It contains a number of inferences and conclusions which the respondents believe are not supported by the record.

For these reasons the respondents have prepared for the convenience of the Court a detailed digest of the evidence which is filed herewith as "Appendix A" to this brief. In that digest there will be found a description of both the excluded and the admitted evidence.

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[1] Citations to the Government's brief are designated herein "B. —."

The statement in this brief is concerned primarily with the evidence admitted by the trial court. In certain instances, however, it refers to facts which the respondents offered to prove, but which the court excluded. Such facts are set off in brackets, thus [ ]. The facts will be considered under the headings appearing in the "Statement" in the Government's brief.

1. THE GOVERNMENT'S DISCUSSION OF "THE GENERAL OUTLINE OF THE CONSPIRACY AND THE UNDERLYING INDUSTRIAL FACTS PERTINENT THERETO" (B. 5).

Under this heading the Government purports to summarize

(1) The allegations of the indictment;

(2) The nature of the conspiracy established by the evidence;

(3) The size and competitive strength of the respondents;

(4) The relationship between the price on the spot tank-car market and the wholesale and retail prices in the Mid-Western area; and

(5) Other "business facts" which "are not as we understand substantially disputed".

These will be considered in order.

A. The allegations of the indictment.

The Government's description of the allegations of the indictment (B. 5-7) ignores the allegations of paragraph 24 of the indictment "for the reason that these allegations were not sustained by the proof" (B. 14). In thus describing the indictment, however, the Government attempts to dispose of one of the very points in issue under the respondents' cross-petition in No. 347, namely, whether there has been a complete failure of proof as to the essential allegations of the indictment (Cross-pet., 2). We, therefore, deem it appropriate to summarize briefly *our* contentions as to the allegations of the indictment. They are as follows:

The indictment alleged:

> (1) That three market journals, the Chicago Journal of Commerce, Platt's Oilgram, and the National Petroleum News regularly publish quotations purporting to be gasoline prices being paid by jobbers in spot purchases from independent refiners in tank-car lots.[1]
>
> (2) That nearly 50 per cent of the gasoline which the defendants and others sell to jobbers in the Mid-Western area is sold under contracts which require the purchasers to pay prices related to those quoted in the market journals.[2] In other words, these contracts are analogous to contracts to buy so many bushels of wheat for future delivery at the price which is reported by the Chicago Journal of

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[1] Indictment, paragraph 3, R. 4.

[2] Indictment, paragraph 15; R. 11.

Commerce as prevailing in the Chicago wheat pit on the date of delivery.

(3) That the defendants conspired to falsify the market journal quotations by agreeing (a) to purchase gasoline from independent refiners (a type of transaction which would not involve sales to jobbers and so would not ordinarily be reflected in the market journal quotations); (b) to pay the independent refiners higher prices than those being paid by jobbers, and (c) to have the higher prices so paid misrepresented in the market journals as prices being paid by jobbers.[8]

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[8] Indictment, paragraphs 19, 21, 23 and 24; R. 13, 14-15, 16, and 17 which read, in part, as follows:

19. "* * * Beginning in the month of February, 1935, and continuously to the date of the presentation of this indictment, as aforesaid, defendant major oil companies * * * have knowingly and unlawfully engaged and participated in two concerted gasoline buying programs hereinafter referred to as (a) the East Texas buying program and (b) the Mid-Continent buying program, for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices * * *" (R. 13).

21, 23. "* * * Said purchases have been made at uniform, high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon by said defendant major oil companies * * *" (R. 14-15, 16).

24. "* * * While representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area described in paragraph 11 of this indictment, they [the market journals] have throughout said period in the Mid-Western area, including the Western District of Wisconsin, knowingly published and

B. The nature of the conspiracy established by the evidence.

The Government introduced no evidence to sustain what the respondents view as the fundamental allegations of the indictment, namely, the allegations that they had bought gasoline at prices higher than those paid by jobbers in the competitive spot market, and had fraudulently misrepresented and published such prices in the market journals as prices paid by jobbers.

The proof established the contrary. It showed that the respondents had bought gasoline at prices which in general were below and not above the prices paid by jobbers. The market journals had made no misrepresentation. They had reflected the prices actually paid by jobbers in the spot market, not the prices paid by the respondents.[1]

In their closing arguments to the jury Government counsel finally abandoned the charge of fraudulent falsification of price quotations.[2] The trial court, however, permitted them to go to the jury on the contention that, even without such fraudulent falsification, the respondents' concerted buying activities constituted an unlawful restraint of trade.[3]

The record shows that these concerted buying activities grew out of a general movement by the Government and the industry to relieve the oil industry from disastrous conditions and to correct certain competitive evils which

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circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program" (R. 17).

[1] See pp. 56-8, *infra*.

[2] R. pp. 2061, 2082, 2311-2.

[3] R. p. 2396, *et seq.*

were contributing to those conditions.[4] It reveals that the respondents, in an effort to deal with one of those competitive evils, distress gasoline, concertedly engaged in a program (1) to purchase, (2) distress gasoline, (3) from independent refiners, (4) at going market prices.[5]

Distress gasoline is gasoline which, because of technical and economic factors in the industry, the independent refiner is compelled to produce and forced to sell at once regardless of market demand.[6]

The above facts were specifically found by the Circuit Court of Appeals as follows:

> "Without going into detail as to what took place at these meetings we think the substance of what was accomplished and agreed upon was that the major companies should purchase from the independent refiners the latter's surplus gasoline 'at going market prices" (R. 3919).

* * *

> "If there is any one thing completely established it is that the oil industry as well as numerous Governmental agencies, federal and state, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary if the industry was to survive to say nothing of prospering" (R. 3929).

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[4] See pp. 16-38, *infra.*

[5] See pp. 44-59, *infra.*

[6] Jacobi, R. 385-6; Franklin, R. 929; McDowell, R. 1166; Frey, R. 1327. In the oil industry the economic factors responsible for distress gasoline are the rule of capture in regard to crude oil, the impossibility of shutting down crude oil wells, the impossibility of shutting down refineries without losing crude oil supplies, the impracticability of running refineries at a low fraction of capacity because of consequently increased unit costs, and the impossibility of the independent refiners' storing anything but working stocks of gasoline. See pp. 16-7, 29-31, *infra.*

C. The size and competitive strength of the respondents.

The Government asserts that "the majors" (apparently referring to the respondents)[1] "market about 85% of all gasoline sold in the Mid-Western area, the remaining 15% being a product of the Mid-Continent or East Texas independent refiners" (B. 12). No record reference to support this statement is given.

The facts are as follows:

(1) The respondents and the companies dismissed from the case for technical reasons together sold only 54% of the gasoline in the Mid-Western area in 1935.[2]

(2) They owned less than 50% of the operating refinery capacity in the territory which normally supplies the area with gasoline.[3]

(3) They owned less than 40% of the shut-down refinery capacity in that territory. The 60% of the shut-down capacity not owned by the respondents could easily have been put into operation at any time.[4]

(4) The Mid-Western area is not shut off from sources of supply other than those which normally ship gasoline into it. On the contrary, it is virtually surrounded by producing areas, some of them extremely large, which

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[1] The brief states that "the respondents in No. 346 and the petitioners in No. 347 * * * will be referred to herein as defendants or, when appropriate to distinguish between them and the other defendants brough to trial, as respondents" (B. 2). On page 7 it states that "the word 'majors', used as a noun, will mean the defendant major oil companies." These definitions suggest that the figure 85% has reference to respondents.

[2] Def. Exs. 726, 1028, R. 3189, 3812.

[3] Def. Ex. 939, R. 3611.

[4] *Ibid.* Swensrud, R. 1417, 1419.

suffer a freight rate disadvantage, compared with the normal sources of supply, of only a fraction of a cent a gallon.[5] In these immediately surrounding areas, companies other than the respondents had a straight run capacity of more than 749,000 barrels of crude oil a day and a cracking capacity in excess of 387,000 barrels of charging stock a day in 1935.[6] From these refineries the gasoline could easily have been shipped into the area by rail or water if the price in the Mid-Western area had departed from its normal relationship with prices in the rest of the country.[7] Since, according to the United States Bureau of Mines, refineries in general were only operating at 73% of capacity, it is apparent that these refineries could have "increased their output and get hold of some new business and still have their own."[8]

(5) Standard Oil Company (Indiana), which was granted a new trial by the Court, sells about 20% of the gasoline marketed in the area and is known as the "market leader" in that area.[9] Its competition alone will not permit other companies to sell at a higher price than that offered by it.[10]

(6) Even if Standard of Indiana had been a member of the alleged combination, the evidence is undisputed that it would have been impossible for the respondents to have

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[5] Swensrud, R. 1413.

[6] Def. Ex. 740, R. 3626.

[7] Swensrud, R. 1412-16.

[8] Swensrud, R. 1458-9.

[9] Def. Ex. 1028, R. 3813; Beroth, R. 176-7; Shatford, R. 1085; Marshall, R. 1245-7.

[10] Marshall, R. 1244; Swensrud, R. 1388, 1390-1. Of course, when Standard of Indiana is undersold for any length of time, it must drop its prices (Marshall, R. 1249-50).

raised the tank-car and retail price of gasoline in the Mid-Western area to artificially high and non-competitive levels. As soon as the price in the area rose above the cost of manufacture, cheaper gasoline would have begun to flow into the area from the refineries, both inside and outside the indictment territory, which were not owned by the respondents and their alleged co-conspirators. The refiners who were not parties to the alleged conspiracy would have seized the opportunity to undersell the respondents, increase their business, and reduce their overhead costs per unit sold.[11]

(7) If there had been an attempt to maintain an arbitrary price level in the Mid-Western area, the refiners not connected with the plan would soon have captured a large share of the market. "They would just be handed the market on a silver platter."[12] Gasoline consumers react very quickly to a discrepancy in price. As soon as one marketer sells a cent or so below his competitors, he gets an increased share of the business, and the refiners who try to sell at higher prices suffer an immediate and drastic loss of gallonage.[13]

(8) Sales at lower prices by non-participating companies both outside and inside the Mid-Western area would soon have had a controlling effect on the Mid-Continent tank-car spot market prices. The non-participating companies' customers would have been able to undersell, and to take business away from, the respondents' customers. The

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[11] Swensrud, R. 1326, 1390-2. Since the costs of marketing gasoline are largely fixed costs, an increase of volume brings not only larger gross sales but larger profits per units sold (Swensrud, R. 1326).

[12] Swensrud, R. 1389-1427.

[13] Swensrud, R. 1381-8.

respondents would have had to reduce their prices in order to hold their business.[14] No group could have prevented this result unless it handled practically the whole business in the market. Even if the respondents had been doing 85 per cent of the business in the market, as alleged in the indictment, it would not have been enough.[15] As shown above, however, the respondents sold only 54 per cent of the gasoline sold in the Mid-Western area.[16]

D. The relationship between the price on the spot tank-car market and the wholesale and retail prices in the Mid-Western area.

The Government's brief states:

> "Generally speaking * * * each major retains full control over the retail price of its gasoline * * *" (B. 8).
>
> "* * * the retail price structures throughout the Mid-Western area during the years 1935 and 1936 were based upon the Mid-Continent spot market quotations" (B. 9).
>
> "Over 85% of majors' jobber contracts provide that the price of gasoline sold thereon should be the Mid-Continent spot market price on the date of shipment, * * *" (B. 10).

These statements standing alone might give the impression (a) that the major companies determine the price of gasoline not actually sold through their service stations; and (b) that the relationship between the retail price and the spot tank-car market was established by agreement.

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[14] Swensrud, R. 1391-3, 1425-7.

[15] Swensrud, R. 1390-1.

[16] See p. 11, *infra.*

In fact the major companies determine the retail price only of the gasoline sold through their own service stations. As the Government witness Beroth testified:

> "* * * the amount that the [independent] filling station owner is expected to sell his gasoline for over and above what it cost him is a matter of his own judgment * * *."

As appears from Exhibit 1028[1] the respondent companies sold less than 15% of their gasoline through their own service stations. This was the only gasoline of which they controlled the retail price at the service station.

The record contains no evidence that the relationship between the spot market price and the retail price in the Mid-Western area was established or maintained by agreement.[2] The Government specifically denied in its bill of particulars any claim "that each defendant 'entered into an agreement not to sell to jobbers except in accordance with the' contracts in paragraph 11 of the indictment."[3] The Government made a similar disclaimer as to the retail price policy of the Standard Oil Company (Indiana), which, according to its brief (B. 8-10), is responsible for the relationship between the spot market price and the retail price.[4] The record shows affirmatively that that policy was a purely internal matter adopted without consultation with anyone[5] and that competitive conditions controlled its operation. In some instances during the indictment period subnormal prices, i. e., prices which did not follow Standard of Indiana's prices, were in effect in nearly 20% of the major distributing points in the Mid-Western area.[6]

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[1] R. 3812.

[2] R. 2294. Counsel for the Government stated: "If that is what you are worrying about, if you think we are charging you with sitting around a table and agreeing on a uniform retail price, don't worry because that isn't what we are charging.

[3] R. 66.

[4] R. 2308.

[5] Marshall, R. 1235-6, cross, R. 1252.

E. Other "business facts" which "are not as we understand substantially disputed".

The oil industry has certain distinguishing characteristics which must be understood in order to appreciate the background out of which this case arises. These characteristics are ignored by the Government's brief.

One of these characteristics is that the supply of the raw material—crude oil—is subject to sudden and extreme variations through the discovery of new oil fields.[1] This situation is intensified by the fact that the ownership of crude oil in the ground is governed by the "rule of capture"—he who first reduces the oil to possession owns it.[2] Consequently, in every producing field each surface owner attempts to draw as much oil out of the common pool as he can reduce to possession, regardless of market demand. Otherwise his neighbor takes it all.[3] The discovery of any large "flush" oil field is therefore immediately followed by a race for production, and this inevitably results in reducing the price of crude oil.[4]

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[6] See Def. Exs. 910-13, R. 3511. These exhibits show that in April, 1936, Standard of Indiana was posting subnormal prices at over 900 of its 4000 bulk stations (See Marshall, R. 1233).

[1] Franklin, R. 983-4.

[2] Beroth, R. 206; Franklin, R. 920.

[3] Franklin, R. 922, 927.

[4] Franklin, R. 922, 984-5.

Due to this rule of capture and to the fact that it is not possible to shut down wells temporarily except at the risk of complete loss due to subsurface changes, the ordinary economic controls of the competitive system, which tend to keep production in line with consumption, do not operate. A drop in the price of crude oil does not result in a corresponding decrease in production of crude oil. On the contrary, such a drop tends to increase production because costs are relatively fixed, and a lower price requires the production of more crude oil to meet the fixed charges.[5]

When a new flush field is discovered, the effects of these two factors extend to all branches of the industry. Out-of-pocket costs in the flush field are, for the time being, far below the level at which the great bulk of the oil required by the country has to be produced.[6] When the flush field begins producing low-cost crude oil, prices throughout the country tend to drop to the level of that part of the over-supply which comes from the flush field.[7]

If it were practicable to shut the high-cost wells down and wait until they were needed, the situation might not in the long run be damaging. But the fact is that once the high-cost or "stripper" wells are shut down there are usually subsurface changes which make it impossible to reopen them.[8]

As we shall later see, this fact led the federal and state governments to attempt to maintain the price of crude oil at a figure which would permit the stripper wells to continue operations—a minimum of one dollar per barrel.[9]

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[5] Franklin, R. 927.

[6] See p. 25, *infra*.

[7] Franklin, R. 925, 927-8, 929-30; Shatford, R. 1000, 1001.

[8] Franklin, R. 923-4. As shown below, "stripper" wells are wells in which the natural gas pressure has dwindled to a point where the well will produce only a few barrels a day, even when pumped (Franklin, R. 923-4).

Over-production of crude oil also inevitably results in an over-supply of gasoline and a drop in gasoline prices.[10]

Between 1926 and 1930 the oil industry discovered and developed a series of new flush fields in Oklahoma and Texas.[11] The unrestrained competitive exploitation of these fields led to a serious and prolonged condition of over-production which threatened to exhaust the country's petroleum resources and to demoralize the whole industry.[12]

The oil-producing states of Oklahoma and Kansas attempted to remedy these evils by passing "conservation" or "proration" laws, limiting the amount of oil to be produced in each field.[13]

In 1930, just as proration was beginning to work, the largest oil field in history—fifty miles long and ten miles wide—was discovered in East Texas. 23,000 producing wells were drilled in the field in seven years. The Texas Railroad Commission once estimated that, if left unchecked, these wells could have produced at the rate of 300,000,000 barrels of crude oil a day.[14]

When the East Texas field was discovered, Texas had no law limiting the production of oil. The East Texas field proceeded to create a flush production "the like of which has never been known in the history of oil in the United States."[15] This flush production drove the prices of crude oil and gasoline to ruinously low levels. Crude oil sank from $1.25 to 10 cents or 15 cents a barrel. Gasoline could be bought in the East Texas field for 2 1/8 cents a gallon.[16]

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[9] See pp. 21, 24-25, *infra*.

[10] Franklin, R. 927-8, 984.

[11] Franklin, R. 984.

[12] Franklin, R. 984-5.

[13] Franklin, R. 984; Shatford, R. 1070; Swensrud, R. 1394.

[14] Franklin, R. 984; Beroth, R. 181, cross, R. 222; Fischer, R. 1114-5.

[15] Franklin, R. 984; Bradshaw, R. 707.

In 1931 Texas passed a proration law, similar to the Oklahoma and Kansas laws, to be administered by the State Railroad Commission.[17] It proved impossible to enforce it.[18] Crude oil produced in violation of the state proration law became known as "hot oil". The gasoline manufactured therefrom was "hot gasoline".[19]

The inability of the Texas authorities to enforce the state proration laws made it possible for certain refiners in East Texas to obtain hot crude oil at prices which were substantially lower than those being posted for legal oil. This, in turn, enabled them to manufacture gasoline at a substantially lower cost than the refiners who were operating on legal crude. As a result, they could sell their gasoline for less than it cost the legitimate refiners to make it.[20]

The efforts of the legitimate refiners to meet this competition were futile. Hot gasoline crowded into the market everywhere, depriving legal gasoline of its normal outlets so that legal gasoline had to be sold at distress prices.[21]

All refiners, both large and small, suffered. Independent refiners operating on legal crude oil were faced with bankruptcy.[22] Even major companies found that the price of gasoline was below their cost of production. At first they used their storage capacity to build up excessive inventories at their refineries. As the price in the already saturated market sank lower and lower, however, they began dumping these inventories on the market at a loss rather than attempt to carry them over the depression.[23]

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[16] Beroth, R. 208, 222; see Def. Ex. 924, R. 3530, 3575, 3579.

[17] Beroth, R. 213; Bradshaw, R. 707.

[18] Bradshaw, R. 707, Franklin, R. 984-5.

[19] Shatford, R. 1000.

[20] Shatford, R. 1000, 1001.

[21] Shatford, R. 1002.

[22] Shatford, R. 1001.

This was the situation in the spring of 1933. The competition of hot gasoline had driven the price of gasoline below the cost of manufacture. "Everybody was trying to get on the market at once," dumping gasoline wherever it could be sold at any price it would bring.[24]

II. THE GOVERNMENT'S DISCUSSION OF "THE FORMATION, NATURE AND OBJECTIVES OF THE MID-CONTINENT BUYING PROGRAM" (B. 15).

A. Background of the Program.

This section of the Government's brief opens with the statement that "The conspiracy for which respondents were convicted had its inception at a meeting held in Chicago on January 4, 1935, called for by respondent Arnott, a vice-president of Socony-Vacuum and attended exclusively by representatives of major oil companies" (B. 15). The action taken at this meeting and the purposes and motives of those participating cannot be understood except in the light of the efforts of the Government and the industry during the preceding two years. Since, except for a fragmentary footnote, the brief of the Government is entirely silent on this subject, it will be necessary to describe that history in some detail.

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[23] Shatford, R. 1001-3, 1005-6.

[24] Shatford, R. 1001.

1. *Summary of efforts to rehabilitate the industry from March, 1933 to January, 1935.*

Beginning in March 1933, the Federal Government, the oil-producing states and the industry joined in a general movement to eliminate the destructive practices described in the last section.

During the next twenty-two months the federal and state governments and the industry were seeking to accomplish three principal objectives:

> (1) The restoration of the price of crude oil to a minimum of $1.00 per barrel. That was the minimum price at which the vast majority of the crude oil wells of the country could operate.[1]
>
> (2) The restoration of the wholesale price level of gasoline a the refinery to "parity" with crude oil; that is, to a price which would reflect the normal relation between the price of gasoline and the price of the crude oil from which it is manufactured.[2]
>
> (3) The stabilization of retail prices at a normal spread or margin between the refinery price of gasoline and the retail prices.[3]

The expedients adopted to accomplish these objectives took the form of legislation,[4] an N. R. A. Code,[5] formal industry agreements sponsored by the Federal Government,[6] and informal voluntary cooperative action on the part of various groups in the industry, taken with the knowledge and often at the request of the Government.[7]

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[1] See pp. 24-25, *infra.*

[2] See pp. 25-32, *infra.*

[3] See pp. 32-38, *infra.*

[4] The National Industrial Recovery Act, 48 Stat. 195, Sec. 9(c).

[5] Arnott, R. p. 1687; Def. Ex. 710 for identification, R. 3141.

[6] See, *e.g.*, Franklin, R. 954; Def. Ex. 832 for identification, R 3332.

The initial steps directed at these objectives may be summarized as follows:

In June, 1933, Congress passed the National Industrial Recovery Act,[8] which provided for the adoption of codes of fair competition for industry.

Section 9(c) of that Act authorized the President to forbid the interstate shipment of oil and gasoline produced or manufactured in violation of state proration laws. On July 11, 1933, President Roosevelt exercised his authority under that section and forbade such shipments.[9]

In July, the industry was invited to submit a code under the National Industrial Recovery Act. In conference with the Government, it formulated and adopted such a code. By approval of the President in August, 1933, this Code became the law under which the industry was compelled to operate.[10]

The Code[11] included provisions which (a) forbade sales below cost;[12] (b) [required that integrated companies engaged in producing, refining and marketing conduct each branch of their business on a profitable basis];[13] (c) defined the natural parity relationship between the price of a barrel of crude oil and a gallon of refined gasoline as 18.5 to 1;[14] and (d) authorized the fixing of minimum prices for crude oil and its products.[15]

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[7] See, *e.g.*, Shatford, R. 1027; Def. Ex. 842, R. 3360.

[8] 48 Stat. 195.

[9] Def. Ex. 974; R. 3696, 3697.

[10] Arnott, R. 1687.

[11] Def. Ex. 710 for identification, R. 3141.

[12] *Ibid*, 3153-4; McDowell, R. 1212.

[13] Def. Ex. 710 for identification, R. 3141, 3154.

The President appointed the Secretary of the Interior to be the Administrator of the Code of Fair Competition for the Petroleum Industry.[16] Secretary Ickes selected members of his staff, known as the Petroleum Administrative Board, to "advise and consult with him"[17] and "with unusual latitude for independent and unreviewed administrative and executive action and decision."[18] The Board played a prominent part in the activities for which the respondents were indicted.[19]

In accordance with the provisions of the Code, the President appointed a group of 12 (later 23) representatives of the industry and 3 representatives of the Government, known as the Planning and Coordination Committee, to aid in the administration of the Code.[20]

In September, 1933, after these initial steps had been taken, Secretary Ickes, in addressing the Planning and Coordination Committee, reviewed the progress that had been made up to that time in raising the prices of crude oil and its products and emphasized the serious nature of the work of rehabilitation which lay ahead, stating:

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[14] Def. Ex. 710 for identification, R. 3141, 3149; McDowell, R. 1181.

[15] Def. Ex. 710 for identification, R. 3141, 3150; Franklin, R. 952-3.

[16] Def. Ex. 974, R. pp. 3696; 3697.

[17] Def. Ex. 974, R. pp. 3696, 3698.

[18] Def. Ex. 974, R. pp. 3696, 3703, *et seq.*

[19] See pp. 73-91, *infra.*

[20] Franklin, R. 915, 946, 948; Moffett, R. 1149; McDowell, R. 1164; Arnott, R. 1687, 1715, Collett, R. 1801, 1804. See: Def. Ex. 710 for identification, R. 3141, 3163; Def. Ex. 835, R. 3347, 3352; Def. Ex. 967, R. 3690.

> "Gentlemen, we have a solemn duty to perform. Our task is to stabilize the oil industry upon a profitable basis. This is the keen desire of the Administration and we will work with you constantly to that end * * *."[21]

As already said, the state and federal governments and the industry had three primary objectives: (1) to restore the price of crude oil to a minimum of one dollar a barrel; (2) to restore the wholesale price of gasoline to parity with the price of crude oil; and (3) to stabilize the retail price of gasoline at a corresponding level. The pursuit of these three objectives led to the following measures.

2. *The achievement and maintenance of a price of one dollar a barrel for crude oil.*

The first objective—dollar crude oil—was achieved on September 29, 1933.[22] Thereafter, the price of crude oil was maintained at a minimum of one dollar a barrel, *at the insistence of Secretary Ickes,* throughout the Code period.[23]

[The principal reason for the Secretary's insistence on maintaining the price of crude oil at a dollar was the importance of preserving the so-called "pumping" and "stripper" wells.[24]] In these wells the flush production (*i.e.*, production by natural gas and water pressure) has been exhausted, but the wells will still produce if pumped.[25] After they have been pumped for some time, the production declines to a point where each well produces as little as from one to five barrels a day.[26] Some 300,000 of the country's 325,000 producing wells are pumping and stripper wells. They have an aggregate production of some 500,000 barrels a day. The stripper wells alone account for forty per cent of the country's known reserves. Once shut down, they can seldom be reopened successfully. Pumping and stripper wells are, however, the most expensive wells to operate, and unless the price of crude oil remains at, or above the cost of operation, the great majority of such wells must close down.[27] This required the maintenance of the price of crude oil at, or in the neighborhood of, one dollar a barrel.[28]

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[21] Def. Ex. 978, R. 3718, 3720.

[22] Franklin, R. 952, 953.

[23] Franklin, R. 951, 953.

[24] Franklin, offer, R. 977-8.

[25] Franklin, R. 923.

3. *Attempts to achieve parity between the prices of crude oil and gasoline.*

The second objective—gasoline prices in parity with dollar crude—proved more difficult of attainment. The Code provided that the price of a barrel of 36-36.9° Mid-Continent crude oil should be 18.5 times the price of a gallon of gasoline having an octane rating of 60-64.[29] With crude oil at a dollar, the price of such gasoline under this formula should have been 5.45 or about 5½ cents a gallon.

Before the period of the indictment there was a change in the grades of gasoline so that there were no quotations on gasoline of 60-64 octane rating. The grades with which we are principally concerned were known as "third grade" gasoline with an octane rating of 62 and below and "regular" gasoline with an octane rating of 68-70.[32] Parity for third grade gasoline would have been about five cents a gallon and parity for regular, about six cents.[33]

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[26] *Ibid.*

[27] Franklin, R. 924-5.

[28] The price-fixing order signed by Secretary Ickes on October 16, 1933, fixed the price of the normal Mid-Continent crude oil at $1.11 a barrel on the ground that that represented the average cost of production (Franklin, R, 953).

[29] McDowell, R. 1181; Def. Ex. 710 for identification, R. 3141, 3149, 3150.

In attempting to correct the conditions which were preventing the price of gasoline from rising to parity, the Government and the industry undertook the following:

(1) [The Petroleum Administrative Board's first effort to achieve parity took the form of a request for voluntary cooperation. In September and October, 1933, the Board decided that large stocks of crude oil, accumulated during the lower price range for crude, were overhanging the market and depressing the price of refined gasoline below parity. The Board thought it desirable to secure voluntary concerted action by the larger companies in acquiring and holding these stocks of crude off the market, so as not to interfere with the return of gasoline to parity with crude. They asked the respondent Arnott to try to secure such voluntary concerted effort among the large companies to remove the obstruction to the return of the price to normal levels.][34]

(2) On October 16, 1933, Secretary Ickes approved an order fixing minimum prices based upon the costs of production and manufacture for crude oil, gasoline and other petroleum products.[35]

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[32] Beroth, R. 179; Lanzer, R. 267-8; Steiger, R. 732.

[33] See Lanzer, cross, R. 260, 267-70; Steiger, R. 732-3.

[34] Franklin offer, R. 992-4.

[35] Franklin, R. 952, 953.

(3) The price-fixing order never became effective. As a substitute, the industry suggested that the integrated refiners should form a group known as the "National Petroleum Agency."[36] [This was the first proposal to deal with distress gasoline through purchases by the large refiners. The members of the Agency agreed to subscribe the sum of $10,000,000 and "to purchase, hold, and in an orderly way, dispose of gasoline which threatens the stability of the oil price structure in an effort to bring the prices of gasoline into proper relationship with the present price of crude oil. * * *"][37] Twenty-three of the larger companies, including all of the corporate respondents except Globe, agreed to the plan and it was approved by Secretary Ickes on January 24, 1934, but never put into operation.[38]

(4) In April, 1934, an amendment to the Code was adopted under which an attempt was made to balance the supply of gasoline with the demand by allocating the amount of crude oil which each refiner could process.[39] [One of the purposes of this amendment was to aid the non-integrated refiners by reducing the production of the large refiners and thus to force them to increase their purchases from the small non-integrated refiners.][40] This amendment also provided for formal buying arrangements, similar to the National Petroleum Agency Agreement.[41]

(5) [In May, 1934, another voluntary cooperative effort was undertaken by the industry. The Planning and Co-

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[36] Franklin, R. 953-4.

[37] Def. Ex. 832 for identification, R. 3332, 3336.

[38] Franklin, R. 954; Def. Ex. 832 for identification, R. 3332.

[39] Def. Ex. 835, R. 3347; Shatford, R. 1006-7.

[40] Shatford offer, R. 1038-41.

[41] Def. Ex. 835, R. 3347, 3350.

ordination Committee addressed a resolution to the major companies calling upon each of them to purchase 3 per cent of its requirements of gasoline from independent refiners. Some of them did so, but no substantial improvement appeared in the market.][42]

(6) Thereafter the Administration sponsored a series of formal "buying programs" whereunder the major companies contracted to relieve the independent refiners of their surplus gasoline, and sometimes of their entire output, at prices above the going market. Four of these programs were formally approved by Secretary Ickes.[43]

* * *

In spite of these efforts the Government and the industry did not achieve their second objective, namely, the restoration of the price of gasoline to parity with crude oil at one dollar per barrel.[44] The problems of "hot oil" and "distress gasoline" remained unsolved.

Hot oil:—The Government was unable to check the flow of hot oil out of East Texas. Refiners in the field could procure such oil for thirty-five cents or less a barrel, and manufacture gasoline from it for 2 or 2½ cents a gallon.[45] Most of this hot gasoline flowed into interstate markets where it competed with gasoline manufactured from dollar crude.[46] This resulted in a double price level. Inevitably the competition of the cheap "hot" gasoline forced the price of legal gasoline down below the cost of production.[47]

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[42] Shatford offer, R. 1048.

[43] Arnott, R. 1702, 1703, 1799, 1800; Shatford offer, R. 1048-50, 1056. Def. Exs. 844 for identification, R. 3367; 845 for identification, R. 3372; 846 for identification, R. 3376; 847 for identification, R. 3386; 917 for identification, R. 3522.

[44] McDowell, R. 1164-5, 1166; Swensrud offer, R. 1430.

[45] Bradshaw, R. 707; Franklin, R. 984-5; Beroth, R. 208, 222; Shatford, R. 1002.

Distress gasoline:—There was, however, another reason why the tank-car price of gasoline refused to rise to parity during 1934. There were large quantities of "distress gasoline" on the market—that is, *legal* gasoline manufactured by independent refiners who had to dump it on the market for whatever price it would bring.[48]

The independent refiners' purchase contracts required them to take all the crude oil which their sellers were permitted by law to produce. Any shutdown of their refineries, therefore, would have resulted in the loss of their crude connections. It was impossible to curtail production very substantially since operation at a low fraction of capacity would have involved a very heavy increase in the unit cost of the product.[48a] Thus they were compelled to manufacture gasoline, whether or not they had customers for their whole output.[49]

Once the gasoline had been manufactured, the independent refiners were faced with a further problem which resulted from the restricted character of their operations. Few of them had any substantial amount of storage capacity either for crude oil or for gasoline. Each had to refine the crude oil as he received it and sell his gasoline as fast as he made it.[50] At the same time, however, they lacked both bulk plants and filling stations. There was no place to dispose of the over-supply of gasoline at the regular market price. As a result, such gasoline became "distress" or "surplus" gasoline—that is, gasoline which could be neither stored nor sold at the market price, but which had to be disposed of immediately. Inevitably it was dumped on the market for whatever price it would bring from buyers who were under no compulsion to buy at any time and who could take full advantage of such forced sales.[51] Furthermore, the depressing effect which distress gasoline had on the market tended to be magnified because the gasoline was frequently "pyramided"—*i.e.*, offered simultaneously through several different brokers, so that it was, in effect, competing with itself.[52]

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[46] Shatford, R. 1001; Fischer, R. 1117; McDowell, R. 1165, 1166.

[47] Shatford, R. 1001.

[48] Shatford, R. 1001.

[48a] Gray, R. 1827-8.

[49] Franklin, R. 926, 930.

[50] Franklin, R. 929-30; Shatford, R. 1003, 1010; Gray, R. 1827-8; McDowell, R. 1166.

The forced sale of distress gasoline at prices even below the depressed general market price was thus an important factor in nullifying the efforts of the Government and the industry to restore the tank-car price of gasoline to parity.

The Government in its brief argues (B. 39-48) that distress gasoline did not constitute a competitive evil. That argument is dealt with at pages 103-12, *infra*. No one, except the writer of the Government's brief, seems ever to have doubted the existence of distress gasoline as a competitive evil. The Secretary of the Interior referred to it in the fall of 1934;[53] the Petroleum Code Committee on Small Enterprise appointed by the Secretary recognized it in March, 1935;[54] and the Circuit Court of Appeals found the existence of the evil to have been conclusively established.[55]

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[51] For description of this problem see Jacobi, R. 385-6; Cline, R. 642; Bradshaw, R. 671-2; Steiger, R. 751-2; Franklin, R. 929; Shatford, R. 1003; McDowell, R. 1166; Frey, R. 1327. The effect of distress gasoline was not confined to the spot tank-car market. As shown in the next section, it made excellent ammunition in retail price wars, and tended to increase both their number and severity. Price-cutters, who would ordinarily have had to buy their supplies at the market price, were able to pick up distress materials at substantially lower prices and thus to sell at still greater differentials under the regular prices of the branded operators. (Frey, R. 1328; Arnott, R. 1691.)

[52] Shatford, R. 1003-4; Gray, R. 1823. A broker is a middleman who acts as a sales agent for an independent refiner. Sometimes he takes title to the gasoline which he markets, in which case he pays from ⅛ to ¼c below the market. (Beroth, R. 178.)

The effect of hot oil and distress gasoline: The demoralization of the tank-car market which resulted from the presence of hot gasoline and distress gasoline injured every element in the industry. All refiners were selling below cost.

It cost one major oil company—the White Eagle Division of Socony-Vacuum—4⅛ cents a gallon to manufacture third grade gasoline and 4⅞ cents to manufacture regular.[56] [In the middle of October, 1934, however, the price of third grade gasoline ranged from 2½ cents to 3¼ cents and the price of regular from 4 to 4⅝ cents.][57]

The independent non-integrated refiners operating on legal crude oil suffered even more severely. They had to pay a dollar a barrel for all the crude oil they refined. Furthermore, their refining costs were higher. With crude oil maintained at a dollar, it cost most of them about 5 cents to manufacture a gallon of third grade gasoline.[58]

There was only one temporary period of relief from this situation. In October, 1934, Secretary Ickes issued an order[59] which made it illegal to ship crude oil or gasoline out of East Texas in interstate commerce unless it were accompanied by a certificate or tender issued by a "Federal Tender Board", certifying that it had been legally produced or manufactured. The shipment of hot gasoline out of East Texas immediately stopped[60] and prices rose abruptly.[61] In the latter part of November, however, the enforcement of Section 9(c) was enjoined by a number of East Texas refiners. Subterfuges were employed to evade the law.[62] [The price of gasoline once more declined.][63]

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[53] Def. Ex. 968, R. 3690.

[54] Def. Ex. 924 for identification, R. 3530, 3558.

[55] R. 3929.

[56] Govt. Ex. 306, R. 2957.

[57] Def. Ex. 849 for identification, R. 3397.

[58] Franklin, R. 935; see Lanzer, R. 270.

[59] Def. Ex. 6, R. 2601.

4. *Stabilization of the retail market—the General Stabilization Program.*

We come now to the efforts to accomplish the Administration's third objective—stabilization of the retail market. The attempts to accomplish this objective have a direct bearing on the activities for which the respondents were indicted.

Throughout the period described above, while the tank-car market was resisting all efforts to raise it to parity, the retail market was being swept by a series of price wars.[64]

The price wars in 1934 surpassed in number and extent any in the history of the industry. It was unusually easy for a price-cutter to start a price war at this time, for there were huge quantities of hot and distress gasoline available. Both kinds could be purchased at prices so far below the going tank-car market that the price-cutter could cut below any differentials which the other operators could tolerate without losing a substantial amount of their business.[65]

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[60] Lanzer, R. 258.

[61] McDowell, R. 1223; see also Def. Ex. 949 for identification, R. 3642; Shatford offer, R. 1061-2; Van Covern offer, R. 1498-500.

[62] Lanzer, R. 258; see Van Covern offer, R. 1500-1.

[63] Van Covern offer, R. 1500-1.

[64] Frey, R. 1274-5.

Sellers of gasoline which is not nationally advertised usually have to take a slightly lower price for their product. If, however, the spread between the price of the unbranded product and the advertised brand becomes substantial, the sellers of the branded product must lower their prices and reduce the spread or else see a large part of their business go to the unbranded marketers.[66]

In 1934, therefore, when the unbranded operators attempted to increase their gallonage by selling under the normal differentials, the branded operators made similar cuts to protect their business. The price-cutters would then make further cuts to maintain their advantage, the branded operators would retaliate,[67] and the process might be continued until all parties were selling below the cost of production.[68]

The Petroleum Administrative Board itself tried for a time to deal with these price wars. Early in 1934 it commenced negotiating agreements between the marketing companies and persuading individual companies to raise their prices voluntarily.[69] The price wars, however, continued to increase both in number and in intensity.[70]

Finally, on July 20, 1934, Secretary Ickes wrote the following letter[71] to the respondent Arnott.

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[65] Shatford, R. 1002; Frey, redirect, R. 1327, 1328; Arnott, R. 1691, 1710.

[66] Swensrud, R. 1451, 1456-7. See, also, Swensrud, R. 1385; McDowell, R. 1172-3; Marshall, R. 1316-7; Frey, R. 1328; Arnott, R. 1691.

[67] Arnott, R. 1691.

[68] Frey, R. 1274.

[69] Frey, R. 1276.

[70] Def. Ex. 910, R. 3509; Def. Ex. 911, R. 3510.

[71] Govt. Ex. 891, R. 3487.

"ADMINISTRATOR OF THE PETROLEUM INDUSTRY
Washington
Interior Department Building

July 20, 1934

Mr. C. E. Arnott, Chairman,
Marketing Committee,
Planning and Coordination Committee,
Investment Building,
Washington, D. C.

My dear Mr. Arnott:

It has been brought to my attention that the market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the Code, and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve.

Under Article VII, Section 3 of the Code it is the duty of the Planning and Coordination Committee to cooperate with the Administration as a planning and fair practice agency for the industry. I am, therefore, requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your Committee must, of course, be consistent with the requirements of Clause 2 of Subsection (a) of Section III of the Act, and if in any situation it should appear that this section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

I trust that I can count on your cooperation.

Sincerely yours,

/s/ Harold L. Ickes,

Administrator of the Petroleum Industry."

The Government states that the meeting of January 4, 1935, at which it claims the conspiracy "had its inception," was one of a series called under Secretary Ickes' letter of July 20, 1934 to consider elimination of retail price wars. It adds that "at this meeting those present *saw fit* to embark upon a discussion of the desirability of raising spot market prices and the whole level of gasoline prices in the Mid-Western area" (B. 16, italics supplied). This statement makes it necessary to discuss the facts which explain why a meeting called under the letter of July 20, 1934 turned its attention to distress gasoline on the tank-car market.

On July 9, 1934 (eleven days before Secretary Ickes wrote Arnott), members of the Petroleum Administrative Board called on the Planning and Co-ordination Committee's Marketing Committee, of which Arnott was chairman, and asked him if he would undertake the responsibility of heading a voluntary, cooperative movement to deal with price wars.[72] They said that the situation was entirely out of hand; that price wars had become so numerous that it was physically impossible for Secretary Ickes or the Board or its enforcement agents to deal with them; and that the only possible solution was to turn to the industry code authorities, who had an extensive and highly integrated organization in every section of the country.[73]

Arnott pointed out that it would be impossible to stabilize the retail market unless hot oil and the sale of distress gasoline on the tank-car market were eliminated.[74] The members of the Board replied that if he were willing to take the responsibility of dealing with price wars, they would not attempt to tell him how to do it.[75]

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[72] Arnott, redirect, R. 1796-7.

[73] *Ibid.*

[74] Arnott, redirect, R. 1797-8.

Upon receiving Secretary Ickes' letter of July 20, 1934, appointing him chief stabilizer, Arnott asked Louis Titus, the counsel for the Planning and Coordination Committee, as to its effect.[76] [Before replying to Arnott, Titus talked the situation over with Fahy, the Acting Chairman of the Petroleum Administrative Board. Titus suggested to Fahy that, when Arnott made voluntary arrangements among competitors for restoring prices, they should be brought to the attention of Secretary Ickes and approved, because they might perhaps be questioned under the Anti-Trust Laws. Fahy ridiculed this idea; said it was wholly impracticable; that Titus was afraid of his own shadow; that it was unthinkable that Arnott and those who might assist him could ever be assailed for doing what the Government wanted them to do. Titus reported this to Arnott, and wrote an opinion[77] stating that this letter did not and could not give any immunity from the provisions of the Sherman Law, but that these voluntary concerted efforts would be in the direction of eliminating destructive practices and would not be monopolistic in character and that it was unthinkable that they would ever be attacked by the Government which was encouraging them.][78]

Arnott proceeded to set up a new organization—the Stabilization Committees. He appointed a "General Stabilization Committee" with headquarters in Washington, and a Regional Stabilization Chairman in each Region. The latter, in turn, set up complete field organizations, appointing state and local committees.[79] For a time, the program was carried on by the local committees acting locally. The Petroleum Administrative Board and the committees soon discovered, however, that it was impracticable to solve the problem on a purely local basis. Accordingly, the scope of the program was gradually expanded to deal first with larger areas, such as states, and then with the problems of several states at once.[80]

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[75] Arnott, redirect, R. 1798.

[76] Arnott, R. 1737.

[77] Def. Ex. 892 for identification, R. 3489.

[78] Titus offer, R. 1833-5.

The Petroleum Administrative Board was kept in close touch with what was going on, both through its own participation in the stabilization work and through reports from Arnott.[81]

B. The formation of the Mid-Continent buying program.

On January 4, 1935 there was a General Stabilization Meeting at the Blackstone Hotel in Chicago.[1] Arnott advised the meeting that the stabilization committees throughout the Mid-Western area had achieved a considerable but precarious measure of progress in stabilizing the retail markets.[2] In the course of the discussion, those engaged in stabilization efforts expressed the opinion that the gains achieved in stabilizing the retail markets could not be maintained unless something were done about distress gasoline.[3] Representatives of the small independent refiners complained of the failure of all previous efforts to secure a return of the price of refined gasoline to parity with the crude oil price of $1.00 a barrel. They said that unless something were done to relieve their plight they would be forced either to close down or to withdraw from Code activities, so that they would no longer have to observe the Code standards of wages and hours, or to unite in cutting the price of crude oil.[4]

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[79] Arnott, R. 1688.

[80] Frey, R. 1275, 1276; McDowell, R. 1173.

[81] Frey, R. 1267, 1275-7; 1334.

[1] Arnott, R. 1689.

[2] Arnott, R. 1689, McDowell, R. 1168.

[3] Arnott, R. 1691-2; McDowell, R. 1168.

As a result of this discussion, Arnott appointed a "Tank-Car Stabilization Committee" to study the situation and make a report.[5] He selected as members of this committee men who were familiar with the problems of the industry and who had been identified with Code activities from the time of the Code's adoption.[6] As finally composed, the committee consisted of the respondents McDowell, Ashton, and Lakin, and five former defendants, A. M. Hughes of Phillips, E. Karstedt of Continental, I. A. O'Shaughnessy of Globe, E. J. Bullock of Standard of Indiana, and O. J. Tuttle, of Empire, all of whom were either discharged or granted new trials.[7]

Three days after the Tank-Car Stabilization Committee was appointed this Court held Section 9(c) of the N. I. R. A. unconstitutional in the so-called "*Panama* case."[8] Since its establishment in October, 1934, the first Federal Tender Board had been fairly successful in checking the flow of hot gasoline into interstate commerce.[9] When the Board was stripped of its power, there was a renewed influx of hot gasoline into the Mid-Western area.[10] As a result, the tank-car market went down and the problem of restoring the price of gasoline at the refinery to parity with crude oil was still unsolved.[11]

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[4] Arnott, R. 1693-5; McDowell, R. 1168-9.

[5] Arnott, R. 1696-7; McDowell, R. 1169.

[6] Arnott, R. 1696-7.

[7] McDowell, R. 1169; Arnott, R. 1696-7. Lakin and Tuttle were not originally members of the committee. On March 5, 1935, they took the place of their superiors, Van Eeghen and Miskell (McDowell, R. 1193).

[8] *Panama Refining Co.* v. *Ryan,* 293 U. S. 388 (January 7, 1935); McDowell, R. 1177-8; Arnott, R. 1700.

The Tank-Car Committee held three preliminary meetings: one on February 5th in Chicago, which saw a plan proposed to deal with distress gasoline and remove its depressing effect from the spot market,[12] another on February 11th in Chicago to sound out sentiment on the plan and to bring it to the attention of companies not represented on the committee;[13] and the third on March 5th in St. Louis to explain the plan to a committee of independent refiners which had been appointed at one of Arnott's stabilization meetings a few days before.[14]

As stated by the Government, the commencement of the Mid-Continent Buying Program was postponed until after hot oil had been eliminated by reason of the passage of the Connally Act. The Government, however, says that "The Tank-Car Stabilization Committee agreed that until this flow was stopped, the majors could not succeed in raising and controlling Mid-Continent spot market prices." The record references given by the Government (R. 1180, 1184-6, 1192) do not mention the word "control" and in no way support the conclusion of the Government that the committee's purpose was price "control". The pertinent facts are as follows:

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[9] See pp. 31-2, *supra*.

[10] McDowell, R. 1177; Dyer, R. 1467-9.

[11] McDowell, R. 1177; Van Covern, R. 1511.

[12] McDowell, R. 1178, *et seq.*, and see Govt. Ex. 177, R. 2733.

[13] McDowell, R. 1186, *et seq.* Sus, R. 1866, *et seq.* and see Govt. Ex. 376, R. 2977.

[14] Jacobi, R. 362, *et seq.*; McDowell, R. 1192, *et seq.*

At the first meeting of the Tank-Car Committee on February 5, 1935, the following situation was disclosed:

> (1) It was hopeless to attempt any stabilization of the tank-car market until the Federal Government had put an end to the flow of hot gasoline from East Texas.[15] As two members of the Committee put it, "With hot gasoline moving out of East Texas as it was, any buying in the Mid-Continent would be just like mopping up the ocean."[16] [As shown by Defendants' Exhibit 917 for identification, the reason for the final discontinuance of the 1934 buying programs had been "the excessive amount of overproduction in Texas."][17]
>
> (2) After the problem of hot gasoline had been disposed of, the presence of distress gasoline overhanging the market would be the sole remaining factor preventing the tank-car market from reaching a normal competitive level. It was estimated that there would be about six or eight hundred tank-cars of distress gasoline produced in the Mid-Continent oil fields every month.[18]
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> (3) Although there were ten or twelve major oil companies buying regularly from independent refiners in the Mid-Continent area, their purchases did not solve the problem of distress gasoline because

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[15] McDowell, R. 1180, 1185.

[16] McDowell, R. 1180.

[17] R. 3522, 3524.

[18] McDowell, R. 1179, 1182.

they bought habitually from a few large independent refiners who had more than enough business already.[19]

(4) As a result, there still remained a number of small independents who had distress gasoline on their hands and who were unable to dispose of it except at distress prices.[20]

As Ashton said at a subsequent meeting the small independent refiners who could find no purchasers for their gasoline were "wall flowers at the economic ball." In order to meet this situation, "dancing partners" were needed.[21]

Everyone on the committee was opposed to having another formal buying program such as those which the Government had sponsored in 1934, with each of the major companies obligating itself to purchase a definite quantity of gasoline from designated independent refiners at a fixed price above the market. Furthermore, each company wanted to determine for itself how much gasoline it should buy and from whom and at what price. Several of the representatives of the major companies were of the opinion that the only thing to do was to cut the price of crude.[22]

There followed a discussion in which all members of the committee participated.[23] Finally, Ashton summarized the general feeling as follows:

1. Purchasing power already in existence should be used, but more effectively directed to deal with the

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[19] McDowell, R. 1182-3.
[20] McDowell, R. 1183.
[21] McDowell, R. 1188, see also, Jacobi, cross, R. 479.
[22] McDowell, R. 1179-81.
[23] McDowell, R. 1181-2.

distress product. The ten or twelve major companies which were habitually buying gasoline for their needs should buy distress gasoline so far as possible from the refiners who needed help instead of from those who were able to dispose of their products through other channels.

2. There were to be no formal contractual commitments such as had been found objectionable in the 1934 programs. The committee would assemble information as to the quantity and whereabouts of distress gasoline. This information would be put before the purchasing companies so that each could decide to what extent it could and would purchase this distress gasoline.

3. There would be no agreement to buy at a price above the market as in the other programs. It was recognized, however, that the independent refiners owned distress gasoline which they had to dispose of. This created a real problem, for, obviously, the major companies might take advantage of the depressed condition of the independent refiners and bid down the price of gasoline still further. It was, therefore, felt that the purchasers ought to pay the going market price, that is, prices not out of line with those being paid by jobbers in the open spot market.[24]

The essentials of this plan were discussed at the second meeting on February 11th[25] and reported to Arnott.[26]

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[24] McDowell, R. 1182-4, 1203.

[25] McDowell, R. 1186, *et seq*. Sus, R. 1866, *et seq*. and see Govt. Ex. 376, R. 2977.

[26] McDowell, R. 1185; Arnott, R. 1701-3.

C. The Mid-Continent buying program in operation.

It will be recalled that the members of the Tank-Car Committee had recognized that so long as cheap hot gasoline was available, no one would be helped by the removal of the competitive evil of distress gasoline.[1] When the original suggestion was made on February 5th, Congress was already considering legislation to deal with the problem, and it was expected that such legislation would shortly be enacted. On February 22, 1935, Congress passed the Connally Act to replace Section 9(c) of the N. I. R. A.[2] On March 1st, Secretary Ickes set up a new Federal Tender Board thereunder. Within a few days, the shipment of hot oil and hot gasoline out of East Texas had been virtually eliminated. On March 2, the price of gasoline began to rise.[3] On March 8th the Mid-Continent buying program was put into operation.[4]

As the Circuit Court of Appeals found (R. 3919), the program in essence involved (1) the purchase of distress gasoline, (2) in the hands of the independent refiners, (3) at going market prices.

There was concerted action under this program. Such action took the following form:

> (1) The Tank-Car Stabilization Committee had A. V. Bourque, the Secretary of the Western Petroleum Refiners' Association, make a monthly survey which would show the amount of distress gasoline which each independent refiner would have during the month.[5]

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[1] See p. 41, *supra.*

[2] 49 Stat. 30.

[3] McDowell, R. 1199, 1201; Van Covern, R. 1512, See Def. Ex. 1024, p. 66, *infra.*

[4] McDowell, R. 1199-1200.

[5] Jacobi, R. 397, 399.

(2) From March, 1935, through February, 1936, the Tank-Car Committee met once a month. At such meetings the surveys showing the amount and location of distress gasoline were presented and discussed. Each member of the committee would indicate the amount of distress gasoline which his company would be purchasing during the ensuing month and the refiner or refiners from whom it would prefer to purchase.[6]

(3) After each meeting, the purchasing companies which were not represented on the committee were requested to purchase, if they could, any gasoline which would not be taken care of by the members of the committee.[7]

(4) A "Mechanical Sub-Committee" consisting of McDowell, Tuttle and Jacobi was appointed for the purpose of finding purchasers for any new surplus gasoline which might appear between the meetings of the Tank-Car Committee. Its duties were to collect information concerning such additional distress gasoline and to pass this information on to the purchasing companies.[8]

(5) To prevent the information disclosed by the survey from being used unfairly by the major companies in buying distress gasoline from the independent refiners, it was part of the plan that the going market price should be paid for such gasoline. The Mechanical Sub-Committee used its efforts to

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[6] Jacobi, R. 397-400; McDowell, R. 1207-8.

[7] Jacobi, R. 432, 452.

[8] Jacobi, R. 395; McDowell, R. 1187-8, 1189, 1206.

this end. We shall presently refer to the measures which it took.[9]

* * *

The Government states (B. 20) that "The independent refiners were actively cooperating with the mechanical subcommittee in advancing spot market prices." In support of this assertion the Government quotes from Exhibit 176. That exhibit is an intra-office memorandum dated March 8, 1935, from A. P. Ruether, the manager of Shell's crude oil purchasing department, to the respondent P. E. Lakin, who was then Shell's sales manager, and R. P. Bascom, a vice-president of that company. The parts relied upon by the Government (B. 92) read as follows:

> "I have been in touch with Mr. Winget of Cushing Refining and Gasoline Company who tells me he feels that prices should move faster—that prices discussed should be reached by the 11th, and is quoting today, 3⅝¢ and 4⅝¢ on low and middle octane respectively."

Does this exhibit support the inferences, either (1) that prices were being artificially controlled at this time; or (2) that the respondents or their subcommittee had designated a price which the independent refiners were attempting to meet?

The exhibit was written on March 8, 1935. The Shell executives had not been informed that the buying program was about to start until the afternoon of the day before. No purchasing under the program occurred, so far as the record shows, until March 8th, the day the memorandum was written.[9a] The earliest date upon which *even the Government* claims that any action was taken as to the prices paid under the program is March 14th (B. 19).

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[9] McDowell, R. 1183, 1199; Sus. R. 1870.

[9a] Jacobi, R. 384; McDowell, R. 1199-1200.

Even more significant is the fact that the prices which were mentioned in the letter were not, as the Government suggests, prices in advance of the market. On the contrary, the price of 3⅝ on third grade was equal to the *lowest* quotations of both trade journals on that day and the price of 4⅝ on third grade was equal to the lowest quotations of one trade journal and to the average of the other.[10]

The second inference sought to be drawn—that the memorandum refers to a price which had been reached at a previous meeting—is affirmatively disproved by the record. The only natural inference to be drawn from this reference is that two refiners, whose relationship had previously been very friendly,[11] had discussed the probable trend of the market, and that this letter referred to that discussion. In any event, the affirmative testimony as to the discussion at previous meetings is detailed and conclusive.[12]

• • •

As stated by the Government (B. 22), certain employees of the Skelly Company felt that their companies were "obligated" to take the distress gasoline which they had informally indicated to the Committee they would take,[13] and referred to the amount which the sub-committee asked Skelly to take as an "allocation" to it.[14]

The Government argues that these references in the Skelly letters to "quotas," "allocations" and "commitments" show clearly that there were definite agreements and commitments as to the quantities of gasoline which each company was to take. The respondents believe that the essential nature of the program would not in any respect be changed even if it were necessary to make formal commitments or allocations in order to deal with the problem of distress gasoline. However, in view of the emphasis which the Government has placed upon this (legally insignificant) point, it may be well to point out the following:

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[10] Def. Ex. 1024, R. 3807.

[11] McDowell, R. 1197.

[12] See pp. 38-43, *supra*.

[13] See *e.g.*, Govt. Ex. 96, R. 2699.

[14] Govt. Ex. 124, R. 2722.

> 1. The Circuit Court of Appeals specifically held that the evidence "concerning allocation and obligation" was incompetent (R. 3944).
>
> 2. The most that the Circuit Court of Appeals could find in the record was "evidence to the effect that the committee recommended the amount which each company should purchase, and that the companies felt a moral obligation to comply therewith" (R. 3919) and that "There is evidence, rather indefinite and uncertain, that certain employees of the purchasing companies considered that allocations were being made along lines similar to those which had been made under the Code, and that the companies were obligated with respect to such allocations; but the record is far from convincing in this respect" (R. 3920). The Circuit Court specifically found that "The plan was a voluntary one and we find nothing in the record to indicate that anyone participating in the program was to be penalized for non-compliance therewith" (R. 3919), and that "The record discloses that the plan was voluntary, without coercion, and with no penalty imposed for non-compliance with the recommenda-

tions made by the Tank-Car Stabilization Committee" (R. 3924).

3. In point of fact the Skelly letters reflect the opinion of only one man, J. F. Nagle, an employee of Skelly. Of the 15 Skelly letters cited by the Government, four (Government Exhibits 101, 120, 122 and 124) were written by Nagle. Four others (Government Exhibits 93, 95, 96 and 98) are based upon letters from, or conversations with Nagle, and merely repeat the language which he had used.[15] The other seven were all written as a result of instructions which had been transmitted through Nagle.[16] Thus the only opinions reflected in these letters are the opinions of Nagle. He was formerly a defendant in this case. The trial court, however, directed a verdict of acquittal in his favor at the close of the evidence.

4. Nagle's own letters, upon which the Government relies, show that he believed that, regardless of any "allocations," "obligations" or "quotas," Skelly had the right to select the independent refiners from whom it would buy and to refuse to buy from any given refiner if it saw fit. The same letter[17] which stated that Skelly had refiners assigned to it contains the following language:

> "Does United [Laboratories] prescribe any particular set of specifications, by which we might be guided in buying our outside third grade gasoline?

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[15] Cf. Govt. Exs. 94, 101, R. 2697, 2702.
[16] See Govt. Ex. 102, R. 2703.
[17] Govt. Ex. 124, R. 2722.

> If they do, then, of course we can scout the market and find out who, among the small refiners whose surplus is moved through the committee's activities, makes a product meeting such specifications, and then tell the committee that we will take our monthly 'allocation' from them instead of from Wilcox, or Taxman, or Panhandle, or some of the other jacklegs whose stuff won't pass muster."

Similarly, on November 20, 1935, Nagle wrote L. H. Poland, the manager of Skelly's retail stocks department, complaining about the quality of a shipment of gasoline:

> "If * * * these outside refiners ship off-specification material, about the only thing we can do is refuse to take any of their stuff when the Buying Program Committee tells us they have to move some, or to turn the refiner down completely when and if he has the nerve to call us up and solicit some business after such an instance.'"[18]

The amounts actually taken by the various companies from month to month followed no fixed pattern, and were not in proportion to the size of the companies.[19]

As stated by the Government (B. 22) a number of the letters and inter-office memoranda in the record indicate that the purchases which were made in this way at times imposed some hardship on the major companies. The quality of the distress gasoline purchased did not always come up to specifications,[20] and the independent refiners were at times careless about making deliveries.[21]

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[18] Govt. Ex. 100, R. 2702.

[19] Govt. Exs. 747, 750, 751, R. 3270, 3276-9. Jacobi at one point testified that "the larger the company * * * the more gasoline they took" (Jacobi, R. 439). However, the Government's own exhibits showed that he was wrong.

* * *

It is evident from market letters and inter-office correspondence that the employees of certain of the companies realized the obvious fact that the removal of the competitive evil of distress gasoline removed also the depressing effect of such gasoline on market prices. Such letters also indicated that the market was responding normally to other economic factors such as the increase of consumption, the cutting off of hot oil, and the balancing of crude production and refining schedules in accordance with market demand.[22] None of them indicate that the purchasing had any other effect than that which was to be expected from the removal of the evil. Some of them affirmatively show that the market had an independent trend and that the buying merely removed the effect of distress gasoline on that trend.[23]

* * *

During the period when the industry was operating under the Petroleum Code the expenses incurred by the members of the Mechanical Sub-Committee were charged to and paid for by the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry.[24]

On May 27, 1935 this Court held the enforcement provisions of the National Industrial Recovery Act unconstitutional in the *Schechter* case.[25] Shortly thereafter the members of the Tank-Car Stabilization Committee held a meeting to discuss their future course of action. The meeting concluded that it was important to attempt to preserve as much as possible of the constructive work undertaken under the Code.[26] This conclusion was reached in view of the expression of those in public authority that it was desirable to preserve the gains made by industry under the National Industrial Recovery Act.[27]

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[20] See *e. g.*, Govt. Exs. 100, R. 2702; 124, R. 2722.

[21] Govt. Ex. 121, R. 2719.

[22] See pp. 68-70, *infra.*

[23] See, *e.g.*, Govt. Ex. 286, R. 2930.

[24] Jacobi, R. 463, cross, R. 472; McDowell, R. 1213; Def. Exs. 708, 903, R. 3138, 3505.

The activities of the Tank-Car Stabilization Committee were therefore continued until the spring of 1936. The attendance at meetings, however, gradually declined.[28] All activities were discontinued when it appeared that their propriety was being questioned by the Attorney General in grand jury proceedings.[29]

Prices Paid

Of the gasoline purchased by the respondents, 55% was purchased at the lowest prevailing quotation in the Chicago Journal of Commerce, and 35% was purchased below that quotation.[1]

As decided at the preliminary meetings of the Tank-Car Stabilization Committee, the purchasing companies were urged to pay the going market price as follows:

On March 14, 1935, the second meeting of the Mechanical Sub-Committee was held. Jacobi reported to the meeting that the independent refiners had complained that some of the major companies were attempting to purchase the distress gasoline disclosed by the surveys at prices greatly below the market.[1a] The Mechanical Sub-Committee discussed this and concluded that it was clearly contrary to the spirit of the program.[2] McDowell testified:

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[25] *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495 (1935); Arnott, R. 1706.

[26] McDowell, R. 1211-2.

[27] McDowell, R. 1208-9, 1212; Arnott, R. 1706-7; see Def. Exs. 899, 900, 901, R. 3497, 3499, 3503.

[28] McDowell, R. 1207-8.

[29] Jacobi, R. 396, 400.

[1] Def. Ex. 1025, R. 3809.

> "That provoked quite a discussion among us. I took the position that I thought that that was the wrong thing to do; that I didn't think that any one should try to chisel on these independent refiners. I said, however, that, after all, this plan didn't give the Sub-committee any authority to make prices, and that these deals had to be worked out between the buyers and the sellers. My position was that although I thought we should use such influence as we could, if we knew of any specific instance, to urge people to pay a fair going market price."

The members of the committee then discussed the market. From this discussion it appeared that on that day the market price for third grade gasoline was approximately 3¾ cents. The companies represented at the meeting had been paying that price for some days.[3] It was slightly below the lowest current gasoline quotation of the market journals on that day, and the market had already risen more than one-half cent since the Federal Tender Board had gone into operation.[4] The committee, however, decided that the market price would probably be about 3¾ cents during the following week.[5] Jacobi recommended to the companies with which he was in contact that they should pay that price in their purchases.[6]

[1a] Jacobi, R. 402, 407; McDowell, R. 1203.

[2] Jacobi, R. 402; McDowell, R. 1203.

[3] Jacobi, R. 409; McDowell, R. 1204; Govt. Ex. 682, R. 3112.

[4] Def. Ex. 1024, R. 3807.

From time to time during the spring of 1935 the question of what was the going market price continued to be discussed by the Mechanical Sub-Committee. Jacobi continued his practice of recommending to the companies which he contacted, namely, Shell, Sinclair, Globe, and Pure, that they pay what the Sub-Committee considered to be the going market price.[7] Jacobi himself invariably paid either the price which the committee thought represented the market price or one slightly thereunder.[8] Prices recommended by him, as indicated by his own purchases, were prices which were at the low or below the low of the market as already established by sales of independent refiners to jobbers.[9] During the spring of 1935, when these recommendations were being made, the market was rising. Prices recommended were based upon the prices already arrived at in sales by independent refiners to their jobber customers. Accordingly, as the market rose, the recommended prices followed it up. In all cases, however, they lagged behind the prices already being paid on the open market.[10] Jacobi testified that the companies to which he made these recommendations did not indicate whether or not they would pay the prices mentioned by him. He was never advised what they did pay.[11] As a matter of fact, the prices actually paid to the independent refiners varied widely. At times three or four different prices were paid on the same day by the purchasing companies.[12] This was particularly true during the rise in the market when the prices paid by the respondents were lagging behind the market price. During the 67 business days when Jacobi was making price recommendations there were 55 days when more than one major company purchased on the same day. On 40 (or 72.7%) of those days they paid two or more different prices; on 9 they paid three or more different prices; and on one day they paid four different prices.[13]

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[5] Govt. Ex. 682, R. 3112.

[6] Jacobi, R. 409, 410.

[7] Jacobi, R. 410, 413, 415, 431.

[8] Jacobi, cross, R. 479.

[9] Jacobi, cross, R. 479; Def. Ex. 712, R. 3173.

[10] *Ibid;* Def. Ex. 1024, R. 3807.

The practice followed by the respondent McDowell, who was the chairman of the sub-committee, was somewhat different. He never recommended the payment of any price. If a prospective purchaser asked him, however, he would tell what price his own company was paying.[14]

The record does not disclose what the practice of Tuttle was.

The Government's brief contains the following statements:

> "When the majors advanced the price of crude oil in January, 1936, the Sub-Committee members, after discussing the price situation, recommended to the majors that they advanced their price for gasoline purchased under the program by ½¢ a gallon (R. 459-60)" (B. 20).

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[11] Jacobi, R. 413, 415, cross, 490.

[12] See Def. Ex. 1024, R. 3807.

[13] Def. Exs. 874-7 inclusive, R. 3457-60; J. D. Miller, R. 1558-66.

[14] Evans, R. 527, 528, 529, 530; McDowell, R. 1204-5.

This statement requires explanation in two respects:

1. As shown above, the Government throughout its brief uses the word "majors" interchangeably to describe defendants named in the indictment and respondents in this Court.[15] The record shows that the companies which raised the price of crude oil in January, 1936, were neither defendants nor respondents. In the Mid-Continent the price was raised by the Standard Oil Company of New Jersey. In East Texas it was raised by the Sun Oil Company.[16] Neither of these companies is even mentioned in the indictment. There is not a scintilla of evidence to support the inference that the respondents by agreement raised this price.

2. There is no evidence in the record to show that "the Sub-Committee members" at this time recommended a corresponding advance in the price of gasoline purchased under the program. The *committee's* recommendations ended in May or June 1935.[17] The only price recommendation made in January, 1936, was made by Jacobi, acting independently and not by the Sub-Committee.[18]

A reading of the Government's brief (particularly page 20) would leave the impression that the respondents paid recommended prices higher than the price then being paid by jobbers and that such purchases led the market upward. Nothing could be farther from the truth. The actual fact was that the prices paid by respondents were at or, in a substantial proportion of cases, below the lowest prices quoted by the trade journals as being paid by jobbers. The prices paid by respondents *lagged behind* the market rather than led it upward. Examination of Exhibit 1024[19] will dispose once and for all of any impression that it was the recommendation and payment by the respondents of prices higher than the market which accounted for the rise in spot market prices in 1935. For the convenience of the Court a copy of this exhibit is inserted at page 66. It reflects the results of an audit of:

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[15] See note 1, p. 11, *supra*.

[16] Shatford, R. 1072.

[17] Jacobi, R. 410, 413, 415, 431.

[18] Jacobi, R. 459, cross, R. 488.

> (a) all spot purchases of gasoline made by respondents from independent refiners;
>
> (b) all spot sales of gasoline made to jobbers by the independent refiners named in the indictment and by certain others.[20]

The exhibit compares these purchase and sales prices with the prices published in the journals.

Exhibit 1024 establishes:

(1) that the market journal quotations accurately reflected prices currently being paid by jobbers purchasing in the open spot market;

(2) that the prices paid by the respondents were generally *lower*, rather than higher than the prices being paid by jobbers currently purchasing on the spot market;

(3) that the prices paid by the respondents were not uniform, but varied widely among themselves;

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[19] R. 3807.

[20] J. D. Miller, R. 1652-4.

(4) that the market journals did not base their quotations upon the prices being paid by the respondent companies in purchasing from independent refiners; and

(5) that if, as alleged in the indictment, the market journals had published the prices being paid by the respondent companies, their quotations would have been lower and more irregular than they were.

Amounts purchased

The indictment alleges that the defendants participating in the Mid-Continent Buying Program purchased "nearly 50 per cent of all the gasoline sold" by the independent refiners in the Mid-Continent with whom they are alleged to have conspired.[1] The evidence shows that the respondents had purchased only 14.9 per cent of the gasoline of the independent refiners named in the indictment.[2]

Amounts manufactured by the independent refiners

The indictment alleges that "in furtherance of the conspiracy" the independent refiners in the Mid-Continent field "curtailed their production of gasoline."[3] The record not only contains no evidence to sustain this allegation,[4] but shows affirmatively that the production of the independent refiners named in the indictment increased in 1935 by 21% over 1934 and in 1936 by 11% over 1935.[5]

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[1] Indictment, Paragraph 23. R. 16.

[2] J. D. Miller, R. 1646, 1649. The figure 14.9% is obtained by subtracting from the amount purchased by the companies which were defendants when Miller testified, the amounts purchased by Standard of Indiana and Barnsdall, which subsequently were granted new trials. (See Def. Ex. 984, R. 3723; Evans, R. 523-6.)

[3] Indictment, Paragraph 23, R. 16.

[4] The Circuit Court of Appeals found that "there was no competent evidence in support of the charge" (R. 3944, see R. 3935-7).

III. THE GOVERNMENT'S DISCUSSION OF "THE FORMATION, NATURE AND OBJECTIVES OF THE EAST TEXAS BUYING PROGRAM" (B. 23).

In its brief the Government states that the East Texas Buying Program "followed closely the pattern of the Mid-Continent Buying Program" (B. 24). The respondents do not believe that the facts sustain this conclusion. They believe that the so-called "East Texas Buying Program" was in reality a selling program conducted by the East Texas independent refiners. As the Circuit Court of Appeals stated:

> "We think it is fair to state * * * that this program was largely under the control of the Secretary of the East Texas Association, and that the program has more of the earmarks of a sellers' program by that Association than a buyers' program by the defendants" (R. 3921).

Inasmuch, however, as the argument of the Government is directed against the kind of a buying program which it claims was operated in the Mid-Continent, and since it assumes that the same principles of law are applicable to both programs, it seems unnecessary to set forth in this brief the facts as to the respondents' purchases in East Texas. Those facts are fully reviewed, however, in Appendix A, at pages 143 to 184.

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[5] See Appendix A, pp. 136-8. In the Circuit Court of Appeals the Government sought to counteract this evidence by saying that the 1935 increase was the result of the removal of N.I.R.A. code production restrictions after the *Schechter* decision. The argument proves too much. The refinery provisions of the Code were administered with the idea of reducing runs in line with market demand. (See Def. Ex. 835, R. 3347.) If, after the Code, the independent refiners increased their runs by 21% while market demand increased by only 6%, it is obvious that there was no substantial curtailment, but rather a very substantial increase in the supply. (See J. D. Miller, R. 1617-9.)

IV. THE GOVERNMENT'S DISCUSSION OF "THE SUS AND RUETHER REPORTS OF THE FEBRUARY MEETINGS OF THE TANK CAR STABILIZATION COMMITTEE" (B. 25).

To avoid "the danger that it may fail to reproduce faithfully the spirit and objectives emanating those who formed the conspiracy," the Government sets forth in the fourth section of its Statement, excerpts from reports written by Ruether of Shell and Sus of Sinclair, describing, respectively, the meetings of the Tank Car Stabilization Committee on February 5th and February 11th, 1935.[1]

It should be noted that neither Ruether nor Sus ever played an active part in the Mid-Continent Buying Program. Ruether attended the meeting of February 5th as a guest of his superior, Van Eeghen. His company's representative on the Tank Car Committee was first Van Eeghen and later the respondent Lakin.[2] Sus attended the February 11th meeting as a special representative of Sinclair,[3] and his memorandum states on its face that "the writer had no knowledge and did not participate in this discussion."[4] Neither he nor any Sinclair representative ever attended the subsequent meetings of the committee.[5]

Ignoring these facts, however, and accepting the Government's contention that these memoranda represent

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[1] Govt. Exs. 177 and 376, R. 2733, 2977.

[2] McDowell, R. 1169, 1178, 1193; Arnott, R. 1696-7.

[3] McDowell, R. 1186.

[4] R. 2978.

[5] Jacobi, R. 398-9.

"faithfully the spirit and objective emanating those who formed the conspiracy," we find that the record shows the following:

As to the Ruether memorandum, the Government does not contend that it adds anything to the description of the Mid-Continent Buying Program set forth above, except in so far as it indicates that "the defendants' ultimate objective in raising Mid-Continent spot market prices was to bring about a corresponding rise in prices in the Mid-Western area" (B. 28). The first paragraph of the excerpt quoted in the Government's brief states merely that the price policy of Standard Oil Company (Indiana) was based upon the tank-car market. This fact is not in dispute. The undisputed evidence also shows that this policy was arrived at by Standard of Indiana acting independently.[6]

The second paragraph, quoted from the memorandum, states that "a stable retail market requires a higher tank-car market." It will be recalled that Arnott was appointed by the Secretary of the Interior to help stabilize retail price structures in the mid-western area.[6a] Before undertaking that work, he advised members of the P. A. B. that a stable retail price was dependent upon a stable tank-car market.[7] Those engaged in stabilization efforts expressed the opinion that the gains achieved in stabilizing the retail markets could not be maintained unless something were done about distress gasoline.[8]

The statements contained in the Ruether memorandum are, therefore, not only consistent with, but confirmatory of what has been set out heretofore.

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[6] Marshall, R. 1235-6; cross, R. 1252.

[6a] See pp. 34-5, *supra*.

[7] Arnott, redirect, R. 1796-8.

[8] Arnott, redirect, R. 1796-8.

The Sus memorandum (Government Exhibit 376) is a description of the discussion at the meeting of February 11th. The memorandum states that the buying program was designed to deal with "distress" or "surplus" gasoline; that such gasoline was mainly in the hands of only fifteen refiners; that it amounted to only about 600 cars a month or roughly two per cent of the major's runs; that each major was merely to buy from an independent whose distress gasoline *"it could advantageously move"*; that the buying would involve "no great burden * * * upon anyone"; that the guidance and control of prices was limited to the buying prices of the majors (in order as Sus put it "to see to it that these major refiners played fair with these smaller independent refiners who were in economic distress, * * *").[9] In all of these matters the memorandum simply corroborates the evidence described above. It is thus entitled to interest, if not necessarily to the prominence given it by the Government.

The memorandum contains the statement that "a steering committee would guide and control, periodically, the prices to be paid for this gasoline by the major company to the small refiner." The Government assumes (B. 26-7) that this language shows that the purpose of the buying program was to control and fix market prices. The meaning of these words is clear. Mr. Sus, who wrote the memorandum, testified as to just what was said at the meeting with reference to this question. He said:

> "There was a considerable amount of discussion as to a steering committee and the functions it would perform. One of the recommendations of this tank-car stabilization committee was that there should be

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[9] Sus, R. 1870.

appointed a steering committee. The function of this steering committee was to keep itself currently informed as to who had gasoline to sell,—who had distress gasoline, and who, on the other hand, wanted to buy gasoline, in order that there might be an agency which would bring the buyer and the seller together.

"This steering committee was also to keep itself informed as to the price at which gasoline was currently moving. And they were to see to it and to use such persuasion and such influence as lay in their command, to see to it that these major buying refiners did not take advantage of these smaller selling refiners, and by reason of the economic distress of these smaller refiners, bid down the price to below the current levels at which gasoline was selling, because to do so would have defeated the very purpose of the meeting, which was to stabilize. And this steering committee was to see to it that these major refiners played fair with these smaller refiners who were in economic distress, and didn't chisel under the going market, on the price at which they bought this gasoline. The only reference that was made at the meeting to the price to be paid was that they wanted these refiners who bought gasoline from these refiners who had the distress gasoline, to pay the going market price and not chisel." (R. 1870.)

"No recommendation or suggestion was made, that this steering committee should fix the price at which gasoline should be purchased by these companies. No recommendation or suggestion was made, that the committee should recommend the price to be paid from time to time." (R. 1871.)

The respondent Robert W. McDowell, the Chairman of the Tank-Car Stablization Committee, presided at the meeting to which Mr. Sus referred. He also testified in this case. His testimony is as follows:

> "Something was said at this meeting of February 11th about the prices at which purchases should be made. That question was raised several times in the general discussion and by different people, and Mr. Ashton always answered the question by stating that this plan was not a price-fixing plan; there was no basis for the setting of any price; but the plan would suggest that the buying companies be willing to pay a fair going market price for such purchases as they did make." (R. 1188.)

The record clearly discloses the understanding reached at the meetings which considered the Mid-Continent buying program. Five witnesses testified as to the nature of this program.[10] All agreed that it was a program to purchase distress gasoline at the going market price. This record also shows what actually happened under that program. The actual recommendations made to the purchasing companies by Jacobi (a member of the sub-committee) were based on the going market price. The prices paid by the purchasing company were in general at or below the going market price.[11]

The Circuit Court of Appeals considered the testimony as to the agreement reached at these meetings and described it as follows:

> "* * * The Stabilization Committee had three meetings—one on February 5th in Chicago, another on February 11th in Chicago, and the third on

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[10] Jacobi, R. 362-504; Evans, R. 515-55; McDowell, R. 1167-1228; Arnott, R. 1689-1708; Sus, R. 1866-74.

[11] See pp. 52-8, *supra*.

> March 5th in St. Louis, Missouri. Without going into detail as to what took place at these meetings, we think the substance of what was accomplished and agreed upon was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices. * * * A mechanical sub-committee consisting of one Jacobi, the appellant McDowell, and the defendant Tuttle, was appointed to assist in the disposal of surplus gasoline not anticipated by the monthly surveys. It was also a part of the function of this sub-committee to urge companies to pay the fair going market price. The plan was a voluntary one and we find nothing in the record to indicate that anyone participating in the program was to be penalized for non-compliance therewith * * *." (R. 3919.)

V. THE GOVERNMENT'S DISCUSSION OF "THE EFFECT OF THE BUYING PROGRAM ON MID-CONTINENT SPOT MARKET PRICES AND PRICES IN THE MID-WESTERN AREA" (B. 29).

In this section of its brief, the Government argues that the behavior of "Mid-Continent spot market prices" shows that those prices were fixed and controlled by the respondents. The respondents believe that a review of all pertinent evidence will clearly show that the behavior of the spot market prices during the period in question is consistent only with the operation of competition in the absence of distress gasoline and that, therefore, no inference that the respondents fixed or controlled that price is supported by the record.

It will be recalled that in its discussion of the indictment, the Government ignores the allegations that the market journals had fraudulently published the prices artificially fixed by the defendants and had misrepresented such prices as the spot market prices. Elsewhere in its brief, it argues that the real charge in the indictment is that the respondents controlled and fixed not the published prices, but the actual spot market prices paid in the spot market (B. 143-4).

In view of this claim as to the meaning of the indictment, it is somewhat surprising to find that when the Government comes to the effect of the buying program on Mid-Continent spot market prices it refers not to the actual prices paid in the spot market, which are clearly disclosed by Defendants' Exhibit 1024, but to Defendants' Exhibits 679 and 680, for identification, which reflect merely the market journal quotations. The Government explains the use of these particular charts on the ground that "the omission therefrom of additional data makes it easier to observe the price trend" (B. 29). The "additional data," which the Government prefers to omit, consists of the actual prices paid by jobbers and consumers purchasing on the spot market. For the convenience of the Court, we set out Defendants' Exhibit 1024 at this point so that the Court may study the prices actually paid.[1] We shall confine our discussion to these prices.

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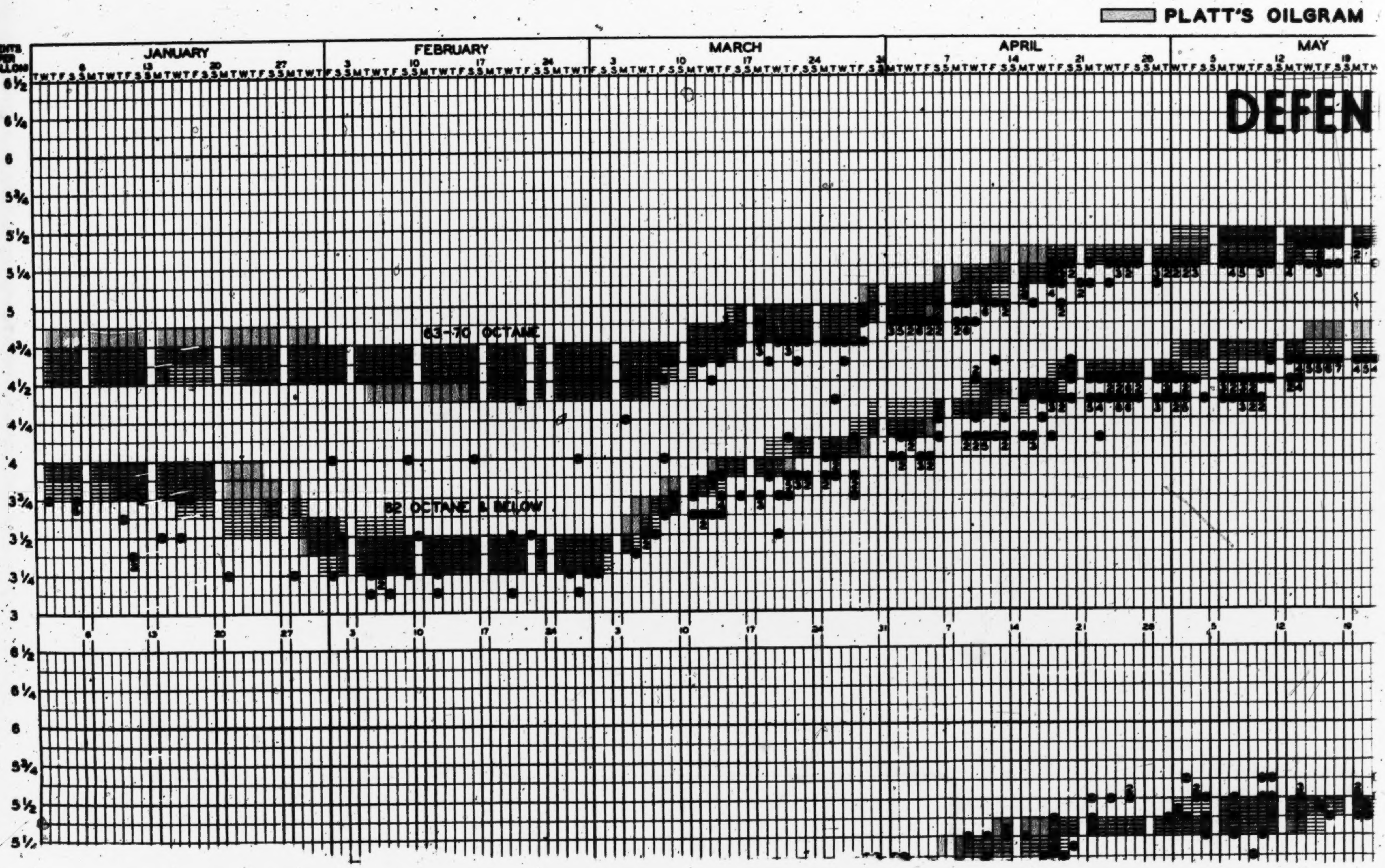
[1] The prices actually paid on the spot tank-car market appear in the form of black, green and blue dots on the lower section of this chart, entitled "Jobbers & Consumers." The position of the dots indicates the prices paid on the date given. The figures under the dots indicate the number of shipments made at the price in question by the refiners covered by the audit. The pink and cross-hatched areas indicate the range of prices quoted currently in Platt's Oilgram and the Chicago Journal of Commerce, respectively.

As appears from this chart, prices paid by jobbers and consumers on the spot tank-car market exhibited much wider variations than would appear from the quotations in the market journals, particularly during the latter part of 1935.

PURCHASES OF REGULAR & THIRD GRADE GA

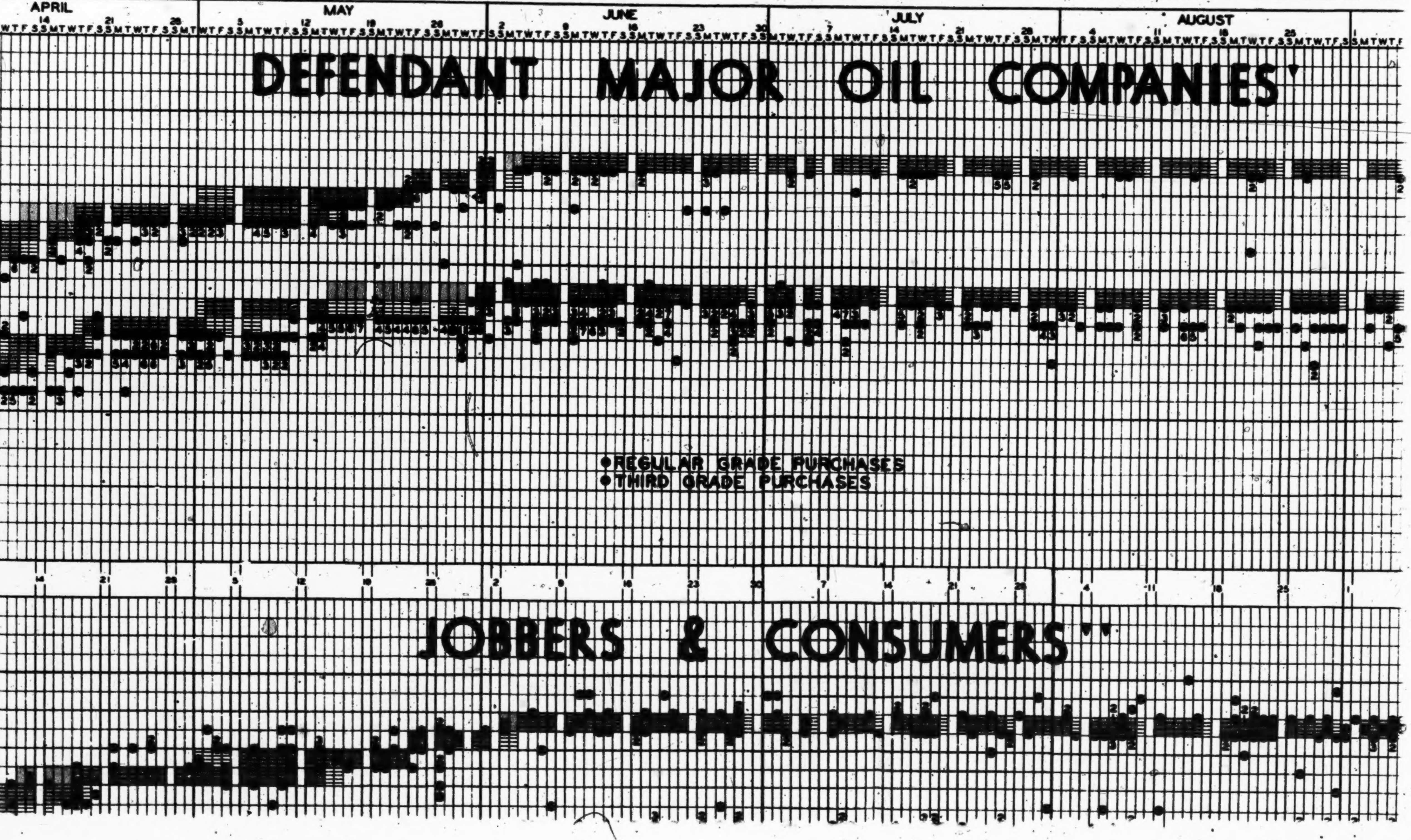


EGULAR & THIRD GRADE GASOLINE ON A FLAT PRICE OPEN MARKET BASIS F. O. B. GROUP 3

COMPARED WITH

COMPOSITE OF 1935 PRICE QUOTATIONS

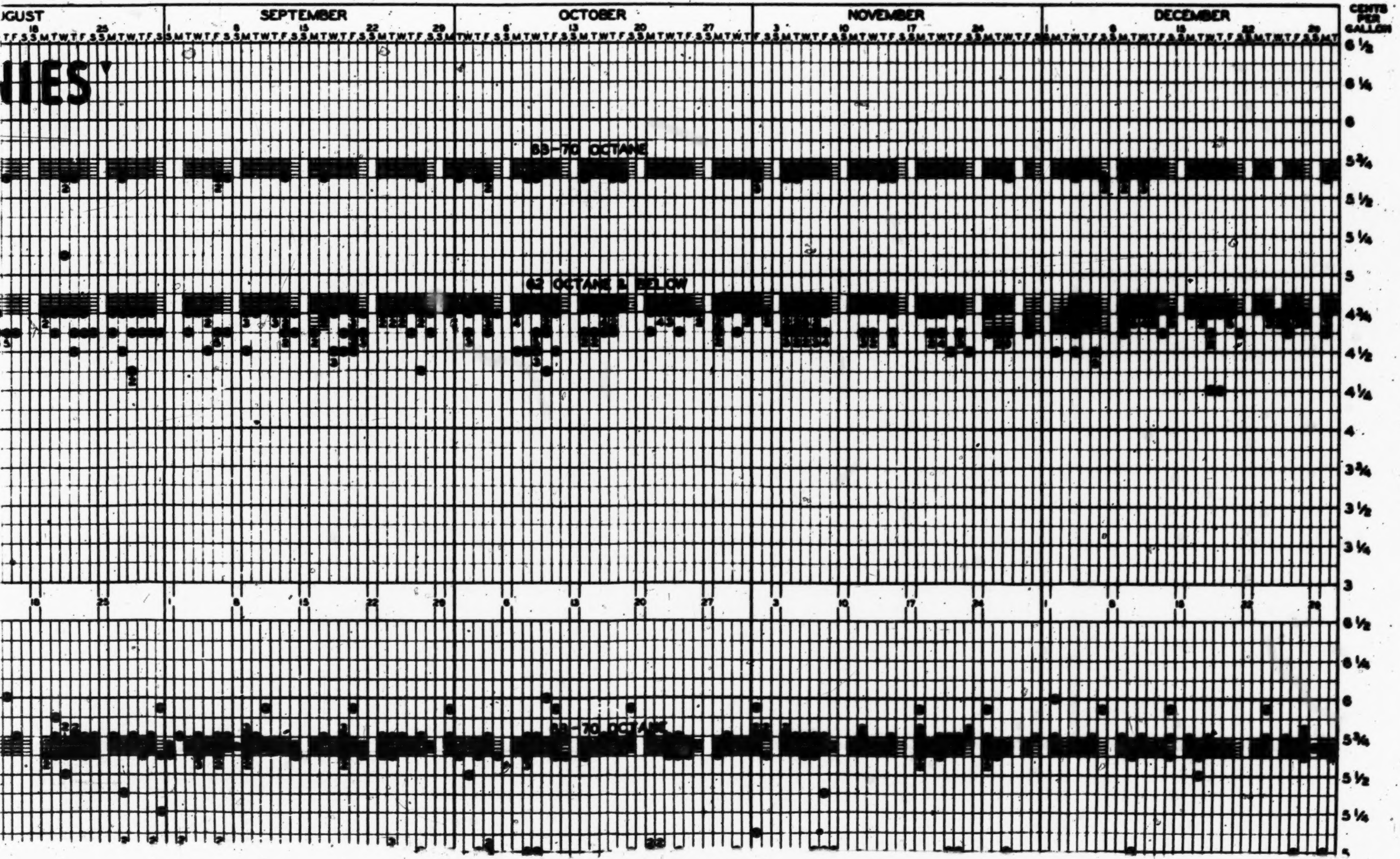
▨ PLATT'S OILGRAM OKLAHOMA REFINERY MARKET & ▤ CHICAGO JOURNAL OF COMMERCE F. O. B. GROUP 3

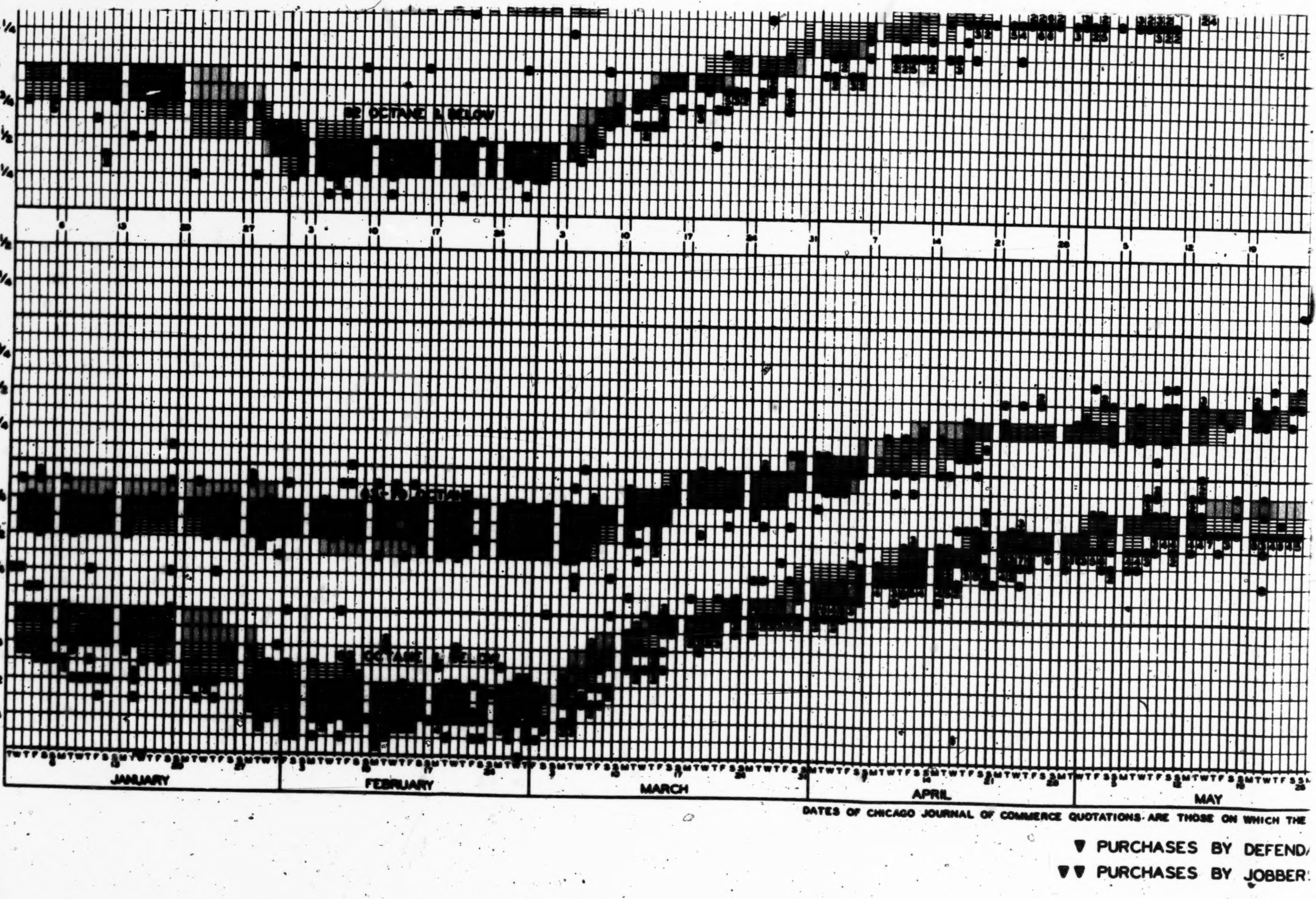


O. B. GROUP 3 OKLAHOMA REFINERIES

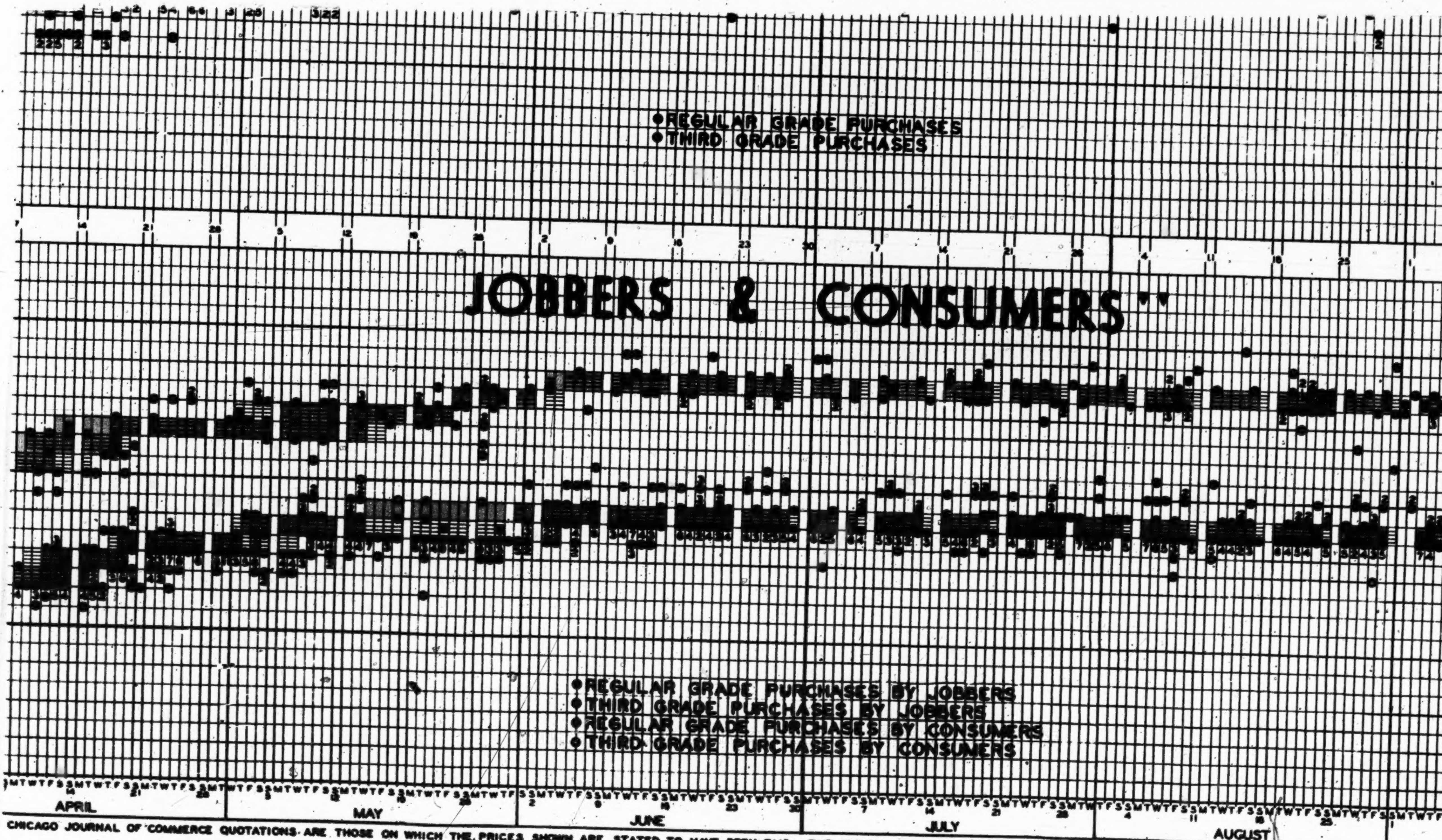
EXHIBIT NO. 1024

E F. O. B. GROUP 3





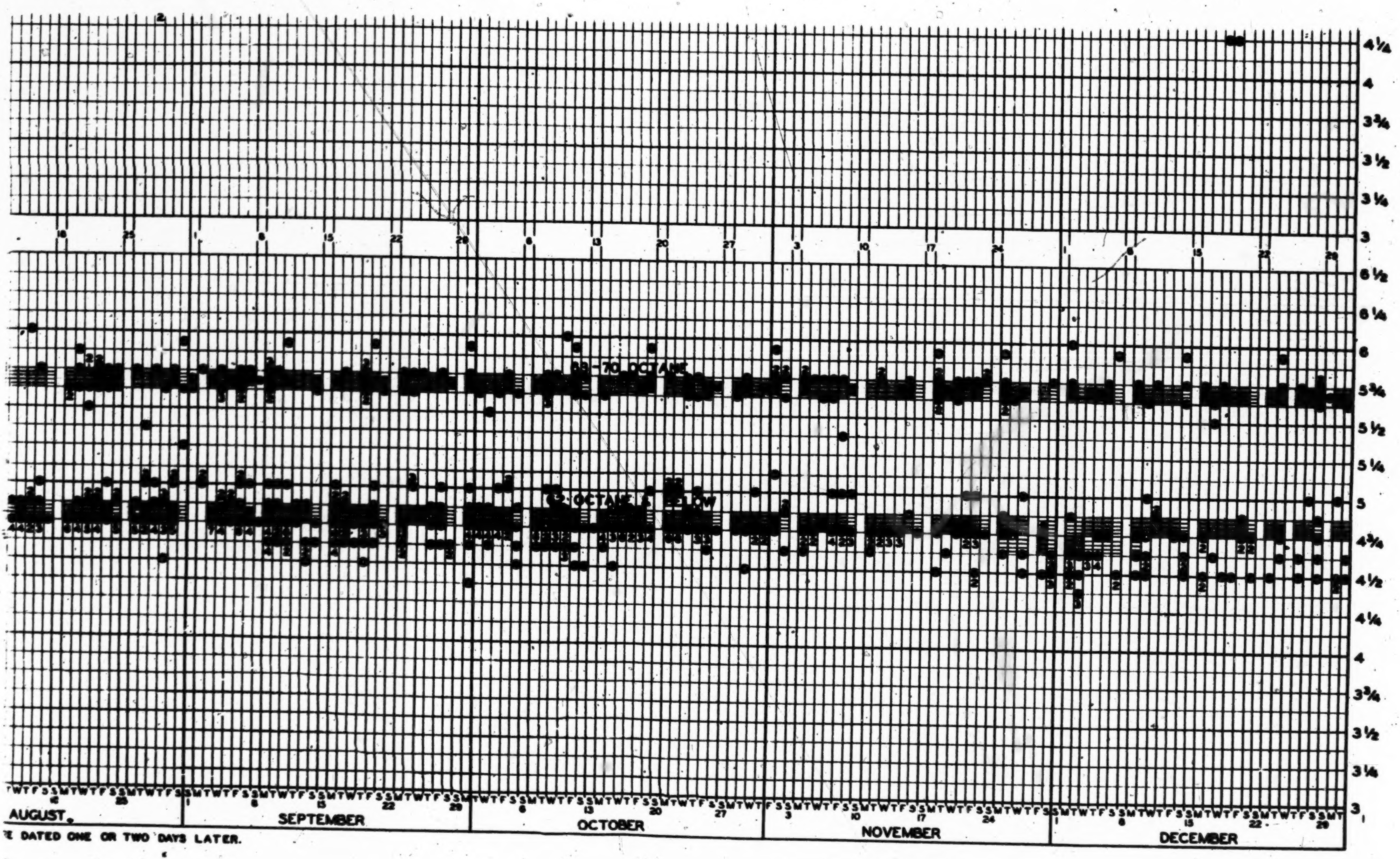
DATES OF CHICAGO JOURNAL OF COMMERCE QUOTATIONS ARE THOSE ON WHICH THE



CHICAGO JOURNAL OF COMMERCE QUOTATIONS ARE THOSE ON WHICH THE PRICES SHOWN ARE STATED TO HAVE BEEN PAID. THE ISSUES IN WHICH SUCH QUOTATIONS WERE PUBLISHED ARE DATED ONE OR TWO DAYS LATER

▼ PURCHASES BY DEFENDANT MAJOR OIL COMPANIES ARE FROM INDEPENDENT REFINERS & BROKERS

▼▼ PURCHASES BY JOBBERS & CONSUMERS ARE FROM INDEPENDENT REFINERS & MAJOR OIL COMPANIES



E DATED ONE OR TWO DAYS LATER.

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The Government says (B. 30):

> "The Circuit Court of Appeals recognized that the spectacular rise in prices in the first part of 1935 and the unprecedented price rigidity thereafter constituted, on its face, 'rather convincing' circumstantial evidence that the defendants had the power to control and did control spot market prices (R. 3933)."

The Government, however, omits to quote the full sentence. What the Circuit Court of Appeals really said is:

> "* * * On its face, this is a rather convincing circumstance, but when considered in connection with other circumstances, it is not so convincing and certainly not conclusive."

We propose to examine these "other circumstances."

The upper part of the chart, entitled "Defendant Major Oil Companies," shows in green and black dots the prices paid by the respondents in purchases from independent refiners and the number of shipments made at each price. This part of the chart was originally introduced to disprove the allegations of the indictment that the respondents had paid higher prices than those being paid by the consumers and jobbers on the spot tank-car market, and that the market journals had fraudulently published those prices. As appears from the chart, these allegations were entirely untrue. The respondents' purchases were generally made at or below the lowest quotations in the market journals, and below the prices currently being paid by jobbers and consumers. If the market journals had attempted to reflect the prices paid by the respondents their quotations would have been lower than they actually were.

A. According to the undisputed evidence, and the concessions of the Government itself, the price rise in the spring of 1935 was due to a number of factors, of which the buying program was only one.

There is no dispute as to the causes of the price rise in the spring of 1935. The Secretary of the Interior summarized the matter in his Annual Report to the President, submitted to Congress in December, 1935,[1] as follows:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935 * * *."

Many witnesses, both for the Government and for the respondents, agreed with the Secretary of the Interior that major company buying had had an effect on the price of gasoline in 1935 and 1936.[2] A number of the respondents and their agents had also written letters showing that they believed that the major company buying, either generally throughout the year, or in specific instances had been a factor in removing the effect of distress gasoline on market prices. Both the witnesses, and the writers of these letters, however, far from admitting that the removal of distress gasoline was solely responsible for the behavior of market prices, repeatedly commented on the market effect of various economic factors, such as hot oil, refinery allocations, increase in consumption, and crude production control which continued to play their part.[3]

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[1] Def. Ex. 917, R. 3522, 3525.

[2] Lanzer, R. 262; Bradshaw, R. 687, 694, 695, 699, 700; Steiger, R. 752-3, 754; Franklin, R. 989; Shatford, R. 1065, 1068; cross, R. 1103, 1105; Van Covern, R. 1512.

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[3] The Government's quotations from these exhibits found in the footnotes on pages 31 and 32 of its brief, of course, leave out these other factors. However, the very exhibits mentioned refer repeatedly to such matters as

> "* * * increase in seasonal consumption has given hope of a satisfactory market in the next few months." (Govt. Ex. 251, R. 2846.)
>
> "Refiners in all districts reported a brisk wave of shipping instructions on gasoline * * *.
>
> "Improved conditions in East Texas the last few days have been noticeable, as less illegally produced gasoline is being offered." (Govt. Ex. 253, R. 2852.)
>
> "Retail market demand is expected to increase materially in several middle western states where the Government has appropriated large sums of money for farm erosion work. This should help to strengthen tank car gasoline and kerosene prices." (Govt. Ex. 254, R. 2855.)

In the same exhibit the tendency of "allocation of refinery crude runs" to improve prices is commented on.

> "Refiners' conservative schedules of operation are considered of great importance for today's market. (Govt. Ex. 275, R. 2903.)
>
> "Manufacturers in general have realized in the last few months the importance of unselfish practices for the good of the industry. Refiners, large and small, have continued to contribute this week toward the firmness of the present market by endeavoring to hold their gasoline production in line with seasonal market demands." (Govt. Ex. 277, R. 2909.)
>
> "The industry seems to have taken heart in the renewed activities of the Federal Board in East Texas and most of the credit for this better state of mind must be given to the Federal Board." (Govt. Ex. 682, R. 3112.)
>
> "The prospective outlook broadened this week toward improvement of the gasoline market in the Mid-Continent territory, due to an advance in crude oil prices." (Exhibit 285, R. 2927.)

The whole matter is best summed up as follows by Government's Exhibit 257 (R. 2861):

Government counsel conceded this in their closing arguments to the jury, saying:

> "The Connally Act * * * was effective in shutting off hot oil, * * * and to the extent that it reduced that supply of hot oil of course it had its effect, a legal effect, a proper effect on price; and I would not be blind enough to say there were not other forces.
>
> "We were coming out of a depression; there was greater seasonal demand, * * * and I would not stand here and say for one minute, gentlemen, that the refinery allocations that were put into effect in 1934 as the result of the refinery amendment to the code * * * did not have its effect also on the raise in the tank car price." (R. 2063, 2064.)

One further fact remains to be noted: no witness attempted to assess the relative importance of these factors. The most that the direct testimony proves is that the respondents' buying was *a* factor.

> "Refiners and marketers in general appear to be in accord in their view of the present market being established on a firm foundation, or at least considerably more so than at any time in the past many months. These thoughts are expressed in view of the prevailing conditions of the crude production end of the industry, the control movement of so-called 'hot oil,' and the products manufactured from same, and also the present basis of refinery operations, as all of these factors hold important places in the making of the market.
>
> "In addition to the above mentioned favorable market factors, observers also point out we are now entering the heavier gasoline consuming season, which should materially help to further strengthen the tank car price structure."

Observe that this Government exhibit sets forth some of the main price factors which the respondents have already shown to have been acting on the market.

B. The fact that the rise in price in the Mid-Western area was less than the price rise in other parts of the country indicates that the respondents' buying activities were a relatively minor factor.

The Government contends that prices in the Mid-Western area were absolutely fixed and controlled by the respondents' activities. As the Government itself brought out on cross-examination, however, retail prices in the Mid-Western area rose less in 1935 than prices outside the area. Between March 1 and June 1, 1935, retail prices in 10 cities within the Mid-Western area rose only 72 one-hundredths of a cent. In 40 cities outside the area they rose 74 one-hundredths of a cent during the same period.[1]

A comparison of the average retail price of gasoline in 20 to 30 representative cities in the Mid-Western area and the average retail price in a hundred-odd cities outside the area,[2] reveals that the retail price of gasoline was lower in the Mid-Western area than it was in the rest of the country, throughout the indictment period. In all but four weeks in 1935 and in all but seven weeks in 1936 the Mid-Western area retail price was lower than the price outside the area. In 1934, on the other hand, the Mid-Western area price was higher during fourteen weeks and the same during one week. In other words, in 1934, the Mid-Western area price was higher than the rest of the country 26.1% of the time, while in 1935 it was the same or higher only 7.6% of the time and in 1936 only 13.4% of the time.[3]

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[1] Swensrud, cross, R. 1462.

[2] J. D. Miller, redirect, R. 1629.

[3] Def. Ex. 1013, R. 3791; J. D. Miller R. 1625-9.

For the convenience of the Court we set out at this point in this brief a copy of Defendants' Exhibit 1013, a chart which compares the course of retail prices in some thirty representative cities inside the Mid-Western area with the course of retail prices in some 120 cities outside the area.

C. There was no correlation between the respondents' activities and the behavior of prices during this period.

The 1935 price rise commenced on March 2, 1935, *a week before the Mid-Continent Buying Program had started.* During that week the market registered a ⅜c gain.[1]

The price rise coincided almost exactly, however, with the installation of the new Federal Tender Board in the East Texas field under the Connally Act, and the issuance of the first Federal Tenders thereunder.[2]

[*The respondents offered to show* that a similar price rise occurred in October, 1934, when the first Federal Tender Board (under Section 9[c] of the N.I.R.A., later held unconstitutional) went into operation. The excluded evidence would have shown that between October 17 and November 9, 1934 the quotations for third grade gasoline rose from 2⅞-3¼c and 2½-3c to 4⅛-4¼c and 4-4¼c, almost exactly paralleling the rise which took place after March 2, 1935 when the second Federal Tender Board went into operation.[3]]

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[1] Def. Ex. 712, R. 3173; Cf. McDowell R. 1201. If mere purchasing be considered without regard to the existence of a program, it might be noted that substantial purchases had occurred in January and February when prices were depressed. (J. D. Miller, R. 1635, 1636.)

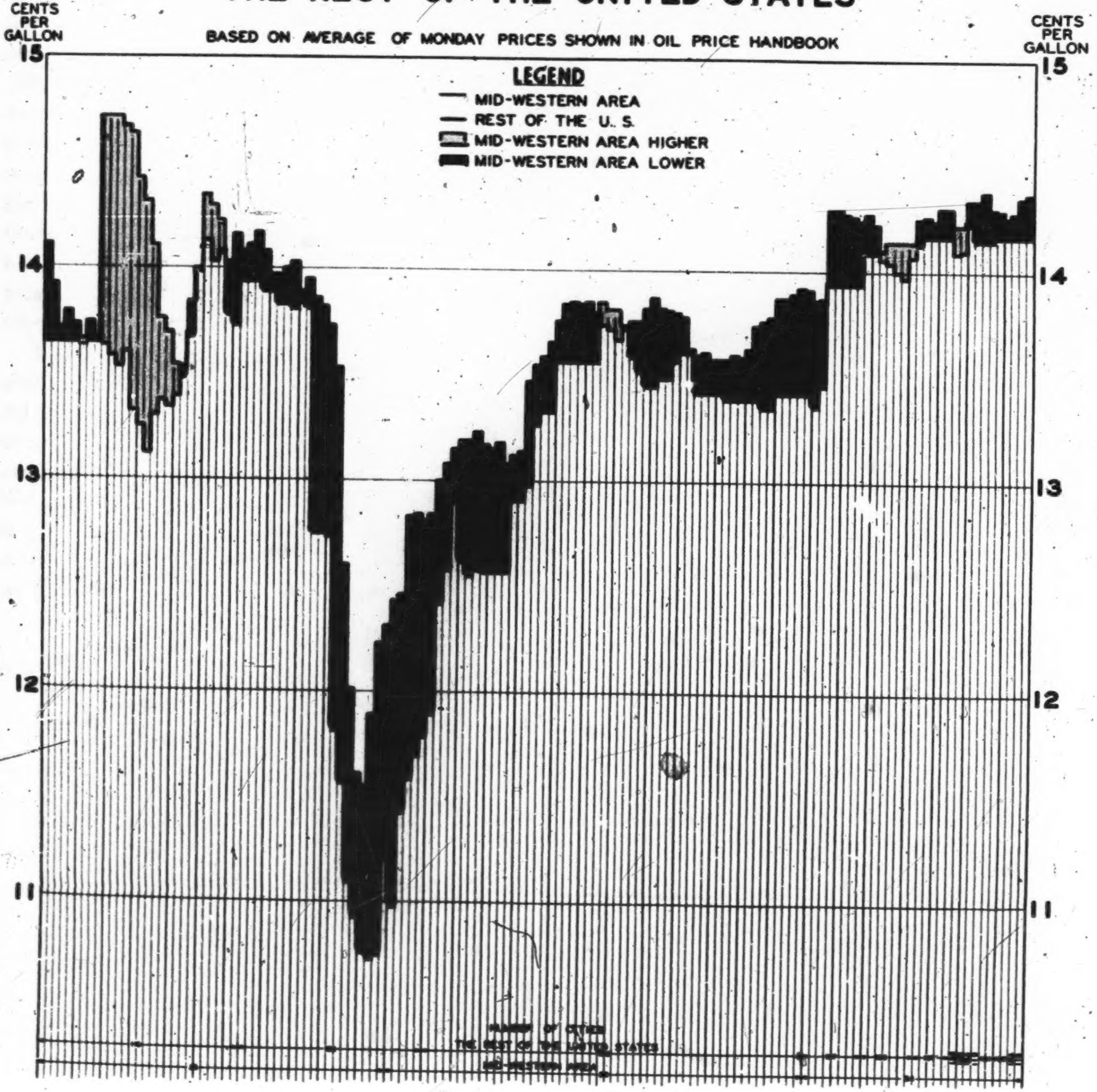
[2] Van Covern, R. 1512.

[3] Def. Ex. 849 for identification, R. 3389; Def. Ex. 868, R. 3433; Shatford offer, R. 1061-2; Van Covern offer, R. 1498-500.

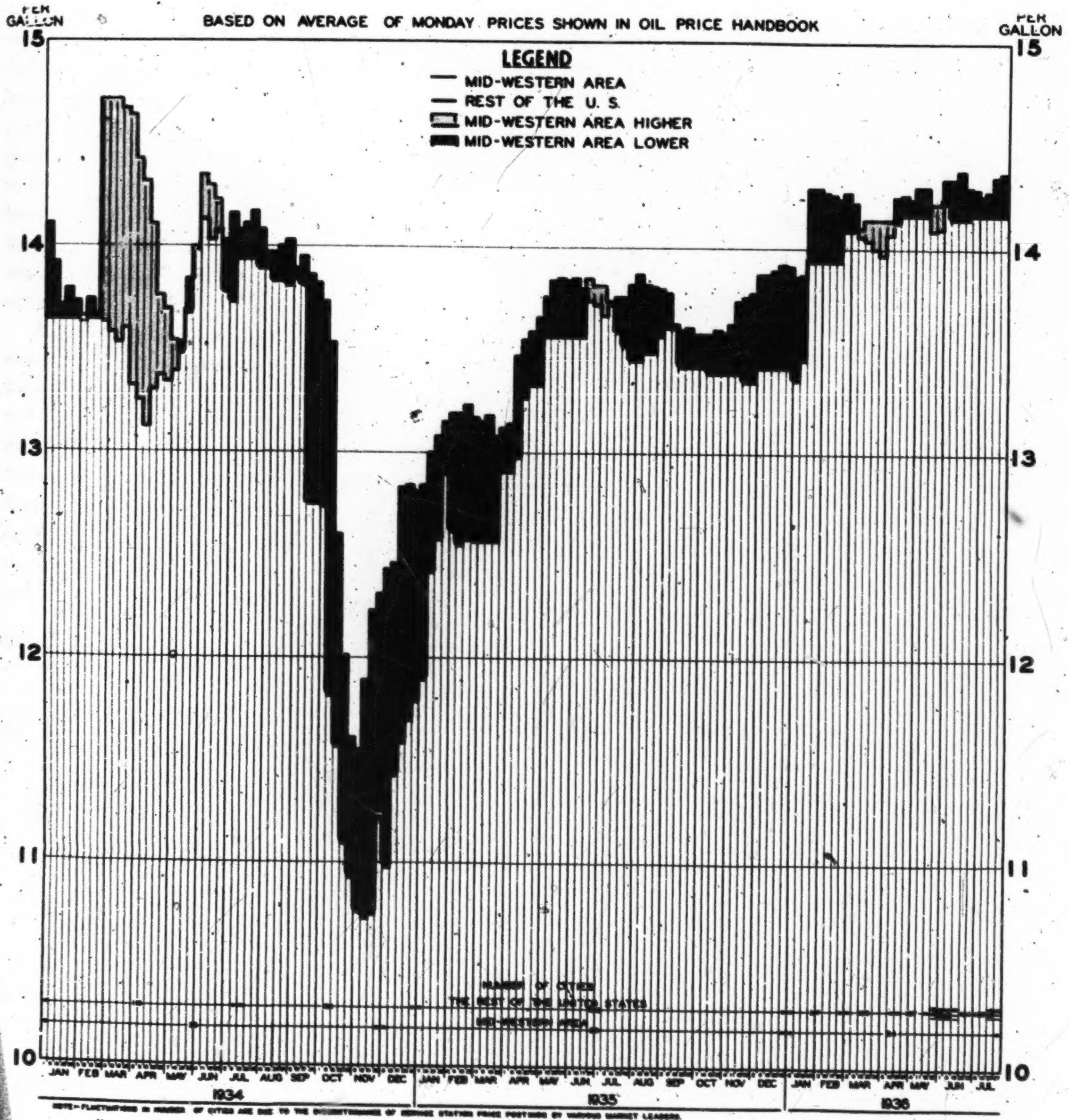
EXHIBIT NO. 1013

SERVICE STATION PRICES (EX TAXES)
MID-WESTERN AREA
COMPARED WITH
THE REST OF THE UNITED STATES

BASED ON AVERAGE OF MONDAY PRICES SHOWN IN OIL PRICE HANDBOOK



BASED ON AVERAGE OF MONDAY PRICES SHOWN IN OIL PRICE HANDBOOK



NOTE—FLUCTUATIONS IN NUMBER OF CITIES ARE DUE TO THE DISCONTINUANCE OF SERVICE STATION PRICE POSTINGS BY VARIOUS MARKET LEADERS.

There was absolutely no correlation between the amount of gasoline which the major companies were buying and the trend of prices on the tank-car market. Major company purchasing was lightest during March, April, and May, 1935, when the market was rising. It was heaviest in May, June, July, August and September, 1936, during which period the price declined ½c. The volume of major company buying in 1936 when the prices were going down was approximately 53% higher than the volume of buying in the spring of 1935 when prices were going up.[4] On the other hand, in October and November of 1936 prices rose ¼c although major company purchasing decreased 38% in volume.[5]

Major company purchasing did not cease with the abandonment of the "program" in April, 1936. Purchasing during the last eight months of 1936 was 27% heavier than during the 14 months of the indictment period. The great bulk of this occurred during the five months from May through September when the price was going down. Major company purchases averaged 650 cars a month more during May, June, July, August and September, 1936, when the market was going down, than they did in March, April, and May, 1935, when the market was going up.[6]

D. The price was not "frozen" at a rigid level from June to December, 1935.

It is true that the *market journal quotations* (which reflect only the journals' opinions as to the range of prices at which the bulk of the gasoline was being sold) maintained an almost uniform level throughout the last half of 1935. *The prices actually paid*, however, displayed no such uniformity. Defendants' Exhibit 1024 (p. 66, *supra*), portrays the results of an audit of such prices. It shows that the prices being paid on the spot market varied from 4⅜c to 5⅛c for third grade gasoline and from 5¼c to 6c for regular. The Government's own broker and jobber witnesses repeatedly testified that substantial quantities of gasoline which was of as good quality as that being sold at prices quoted in the journals were available in 1935 and 1936 at prices below the trade journal lows.[7] As shown by Defendants' Exhibit 1013 (p. 72, *supra*) there were also substantial fluctuations in retail prices.

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[4] Govt. Ex. 747, R. 3270.
[5] Beroth, R. 196.
[6] J. D. Miller, R. 1641.

E. Under the conditions which existed during the indictment period stability in the market was to be expected.

The undisputed evidence showed that every *normal factor* which was brought to bear upon the tank car market during this period tended either to hold it level or to make it go higher.[1] Among those factors were the following:

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[7] Peterson, 299-304; Beroth, 191; Lanzer, 247, 272. "The matter of specifications, however, would not enter into whether we asked the low or above the low or below the low of the Journal."

[1] The Government claims (B. 20, 29) that prices during the indictment period displayed a rigidity which was without parallel in the history of the industry. Its witnesses testified that there had been much greater fluctuation in prior years and that it was most unusual for prices to be so stable as they were in the last half of 1935. (Beroth, R. 193, 194; cross, R. 222-3; Lanzer, R. 38; Breuch, R. 281-2.) The respondents objected to this testimony on the ground that conditions in the periods contrasted were not shown and no

(1) The price of crude oil remained constant at one dollar a barrel.[2]

(2) Because of the Connally Act, it was impossible to obtain illegal crude oil at a lower price.

(3) The Bureau of Mines made monthly estimates of the national demand for gasoline. On the basis of these estimates, it made recommendations to the several states as to the amount of crude oil which each should produce. These recommendations were generally accepted by the states and enforced under their proration laws in accordance with the provisions of an interstate compact approved by Congress.[3] This meant that when demand was great, as in the summer, the production of crude oil was increased and when the demand was small, as in the winter, production was reduced.[4]

(4) The period was marked by a great, consistently maintained and, indeed, record-breaking increase in demand, both in the Mid-Western area and in the country in general, substantially exceeding

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standard of comparison had been established. Not only did the court overrule such objections, but it refused to permit counsel for the respondents to demonstrate on cross-examination that the factors existing in prior years were different from those which existed during the period of so-called price rigidity. This action of the trial court is assigned as Error No. 74. (R. 2575.) When the respondents presented their case, they demonstrated, as shown above, that conditions in the latter part of 1935 could *not* be compared with conditions in prior years.

[2] Van Covern, R. 1513, Def. Exs. 593, 594, R. 3649, 3653.

[3] Franklin, R. 989; Van Covern, R. 1513.

[4] Franklin, R. 989.

the Bureau of Mines estimates upon which production allowables were based.[5]

Two witnesses for the respondents, John E. Shatford and Fred Van Covern, discussed this situation. Their uncontradicted testimony at pages 1070-2, 1476, and 1513-4 of the record shows that the factors affecting supply and demand had reached such a state of balance during this period that a relatively stable price would be the natural result in a normal competitive market.[6]

F. There is no evidence that the respondents' activities removed from 20 to 30% of the normal supply of gasoline on the spot market.

One other contention of the Government demands attention. On page 31 of its brief, the Government states that:

> "The buying program removed 20% to 30% of the gasoline which would otherwise be offered for sale on the Mid-Continent spot market and removed from one-third to one-half of the amount which would otherwise be sold on that market by the independent refiners whose offerings were most likely to depress spot market price (*infra*, note 60, pp. 47-48). Such a substantial contraction in supply, particularly when undertaken for the purpose of raising and maintaining prices, could be expected to achieve this result" (B. 31).

In the first place, the statement just quoted suggests that the respondents' purchases created a shortage of gasoline on the market which may have prevented brokers and jobbers from obtaining supplies. The record, however, contains no evidence that any jobber or broker was ever unable to obtain supplies.[1]

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[5] Lanzer, redirect, R. 261; J. D. Miller, R. 1670; Van Covern, R. 1512-3; Def. Exs. 953, 954, R. 3649, 3653.

[6] For a more extended discussion of the factors at work during this period see Appendix A, pp. 242-59.

In the second place, it is not true that the respondents "removed twenty to thirty percent of the gasoline which would otherwise be offered for sale on the Mid-Continent spot market." As shown above[2] the respondents purchased only 14.9% of the gasoline produced and the gasoline sold by the 14 independent refiners named in the indictment. As shown in Appendix A, there is no evidence in this record to indicate that the respondents removed more than 14.9% of the gasoline which these independent refiners sold on the spot tank-car market. The evidence on which the Government relies to establish this proposition —the testimony of Beroth at R. 189—deals with the amount of gasoline *consumed in the Mid-Western area* which is sold on the spot market. Furthermore, the Government's *entire* calculations are based on the obviously erroneous assumption that 14 refiners owning only 32.2% or 29 refiners owning only 78.3% of the refining capacity in the Mid-Continent fields sold 100% of the gasoline sold on the Mid-Continent spot market. Even if Beroth's testimony had purported to show the total amount of gasoline sold on the Mid-Continent spot market, therefore, the respondents could only be said to have purchased from 14.9% to 22.7% of that total.[3]

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[1] In another connection the Government points to four items of evidence which it claims proves the contrary—(Govt. Exs. 256, 274 and 275, and the testimony of Carl O. Beroth, R. 197-204, B. 44). As shown at pages 223-4 of Appendix A, none of these items of evidence supports the proposition for which it is cited.

[2] See p. 58, *supra*.

Leaving all this aside, however, it is plainly impossible to argue in the face of this record that the Mid-Continent Buying Program resulted in any substantial curtailment of the spot market supply. As the following summary of the record evidence shows, the respondents would have purchased substantial quantities of gasoline regardless of whether there was a buying program.

(1) In 1935 and 1936, as in prior years, the refinery capacity of a number of the respondent companies was insufficient to meet the demand for their product. Pure, for example, although running its refineries in excess of their rated capacity, had to resort to purchasing both from the Gulf Company, Standard of Louisiana and Standard of Ohio and from independent refiners in order to meet its sales requirements.[4] The situation of Sinclair in 1935 and 1936 was the same as in prior years in that it was faced with a steadily rising demand which its own refineries were quite unable to satisfy. Its sales exceeded its manufacture by about 73,000,000 gallons in 1935 and by 173,000,000 in 1936.[5] Skelly's sales had exceeded its production every year since 1931. In 1935 and 1936 the

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[3] See Appendix A, pp. 220-1. In this connection we call the court's attention to the fact that the Government's highest estimate of the amount of gasoline sold on the spot market is, in each case, *50%* greater than its lowest estimate. It is well settled that nothing can be proved by such widely varying estimates. *Standard Oil Co.* v. *United States,* 283 U. S. 163, 182 (1931).

[4] Langfitt, R. 1145.

[5] Def. Exs. 878, R. 3463; 879, R. 3465; Everett, R. 1158-60.

deficiency was in excess of 409,000 barrels and 387,000 barrels, respectively. It purchased gasoline in almost exactly corresponding amounts to take care of this situation. Globe of Oklahoma's purchasing during the indictment period occurred when the Blackwell refinery was shut down and inventories were practically zero.[6] Globe of Illinois purchased only when inventories had reached an extremely low level and demand was very high. Mid-Continent's sales were greatly in excess of its capacity to produce and it would have bought the same amount whether there had been a Tank Car Stabilization Committee or not.[7] Phillips' refineries during 1935 and 1936 had to be operated in excess of their safe normal capacity. The company had purchased gasoline regularly since 1931.[8] Empire, Socony and Wadhams had refinery shut-downs which necessitated their buying gasoline to meet their sales requirements.[9] Socony had always purchased substantial quantities of gasoline from independent refiners and such purchasing had been Jacobi's regular job long before 1935.[10] Continental had always been chronically short of gasoline. It had been forced to purchase substantial amounts of gasoline in each year since 1929.[11] Pure, Sinclair and Skelly bought more in 1936 when the buying program was operating only four months than they did in 1935 when it was operating ten months. Globe purchased almost as much during the first six months of 1937 as it had during 1935. Pure purchased more heavily during this period than in 1935.[12] Continental purchased more heavily in 1934 and 1935.[13] Sinclair purchased more heavily in January and February 1935 than it had during the buying program.[14] Globe of Kansas purchased more heavily both before and after the indictment period than during it.[15]

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[6] J. D. Miller, R. 1612-13.

[7] McDowell, R. 1215.

[8] Kelly, R. 840-841.

[9] Def. Exs. 939-941, R. 3611-13; Jacobi, R. 491, 435.

[10] Jacobi, R. 356, 461.

[11] Bosworth, R. 848. The situation was the same as to other companies, such as Standard of Indiana and Barnsdall, which were granted new trials by the District Court. R. 871, 874, 552, 508, 542.

Finally, and most conclusive of all, *the respondents as a whole purchased 27% more heavily in the eight months following the abandonment of the buying program than they did during the fourteen months of the buying program.*[16]

Thus it is in direct contravention of the record to contend that the buying program "removed" from the spot market all of the gasoline which the respondents purchased during the period of the program or that "the defendants made no serious attempt to show any legitimate business reason for the acquisition of most of this gasoline" (B. 12).

(2) From April 1934 until May 27, 1935 the system of refinery control under the N.I.R.A. was administered for the express purpose of depleting the major companies' inventories so that they would be forced to go out into the market and purchase gasoline from independent refiners. By the end of 1934 majors' inventories were very seriously

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[12] Def. Exs. 739, 853, 854, R. 3226, 3401, 3405.

[13] Bosworth, Cross, R. 848.

[14] J. D. Miller, R. 1635.

[15] Def. Ex. 1000, R. 3762.

[16] J. D. Miller, R. 1641.

depleted, and many of them were being forced to purchase gasoline.[17]

(3) In March 1935 the National Coordinator's office, with the approval of Secretary Ickes, requested the major companies to curtail their manufacture of gasoline during March by some 1,400,000 barrels. The purpose of this voluntary curtailment was to compel the major companies to purchase gasoline from independent refiners. In response to the request the major companies voluntarily curtailed their manufacture by some 960,000 barrels.[18]

(4) During March, April and May, 1935, when the major companies' operations were thus curtailed, the demand for gasoline increased to such an extent that the amount of gasoline which they had on hand was 3,000,000 barrels or 15,000 tank cars short of the amount which they needed to supply their customers.[19] According to the Government's own figures, the total amount which the respondents bought in 1935 was only 93,394,737 gallons or 11,684 tank cars.[20]

In view of the evidence reviewed above the assertion that the respondents had excess refining capacity (B. 12) is also obviously in error. The authority cited for it is the testimony of the witness Shatford that "the major companies began to increase their refining facilities so that they soon reached a point where they could manufacture all the gasoline that they needed for their own customers. * * * In addition to that they had enough gasoline so that they had some to spare." If the balance of the testimony is read it will be seen that this evidence related, not to conditions in 1935 and 1936, but to conditions ten years before.[21]

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[17] Shatford, R. 1010, 1011, 1013.

[18] Shatford, R. 1011, 1026-7, 1028-9, 1034-5; Def. Ex. 842. R. 3360.

[19] Shatford, R. 1065-8.

[20] Govt. Ex. 747, R. 3270.

The statement (B. 12-13) that the respondents were able to draw on inventory to meet unexpected increases in demand is equally misleading. The very record reference cited to support the statement (Shatford, R. 1010) refutes it: "The gasoline inventory levels as of January 1, 1935 were about 53,900,000 barrels or approximately 54,000,000 barrels. *That was very low.* * * * The stocks on January 1, 1935 were quite low and it was that situation that I wanted to have as National Coordinator because of the fact that it would create a firm situation in the market. As a result of such a firm situation we would have a higher price for gasoline. *The effect of low inventories upon major company purchases was to increase the purchases* * * *."

VI. THE GOVERNMENT'S DISCUSSION OF "RESPONDENTS' ATTEMPT TO SHOW GOVERNMENTAL ACQUIESCENCE IN OR APPROVAL OF THEIR CONSPIRACY" (B. 34).

The Government's statement contains no description of the evidence which it says was offered "to show that certain Government officers encouraged the defendants or acquiesced in the activities for which they are indicted". The five pages of its statement which discuss this point, however, contain a number of statements concerning this evidence and the purpose for which it was adduced which require answer before any discussion of the evidence itself can be attempted.

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[21] "One of the competitive conditions that resulted from this surplus supply of gasoline in the hands of the major companies was a new form of contract which, as I remember it, came along about 1924 or 1925." (Shatford, R. 999.)

In the first place the Government's comments show that notwithstanding repeated statements by the respondents both in the trial court and the Circuit Court of Appeals it believes that this evidence was offered for the purpose of establishing immunity from prosecution under the Sherman Law, pursuant to Section 6 of the N.I.R.A. Thus the Government stresses: (1) the fact that the alleged conspiracy continued after the Schechter decision on May 27, 1935, which invalidated the N.I.R.A. (B. 35-36); (2) the fact that the respondent Arnott told the Petroleum Administrative Board that he was not asking its authorization and that he was acting "on his own responsibility" (B. 37); and (3) the fact that the respondent Arnott expressed "skepticism" as to the likelihood of being able to obtain formal approval for the buying program (B. 38-39).

All of these considerations are irrelevant. The respondents have never contended that either the admitted or excluded evidence on this subject could entitle them to immunity from prosecution under the Sherman Law. Their position has always been, and their position is now that the expressed attitude of the Federal Petroleum Administration was a vital "fact and circumstance surrounding their activities."[22]

The Government also states that "there is nothing in the record to show that these officials were ever aware of the real nature of the defendants' activities". (B. 36) The substance of what Arnott told the Administrative Board on March 12, 1935, is contained in Defendants' Exhibit 69[23] which is a stenographic transcript of what he told the District Allocators' meeting under the Code on the next day.

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[22] See pp. 179-84, *infra.*

[23] R. 2653.

Reference to that exhibit will show that Arnott made a complete disclosure of every essential feature of the respondents' purchasing activities both in the Mid-Continent and in East Texas.[24]

The Government also treats the evidence of certain buying programs sponsored by the Department of the Interior in 1934 as if it had been offered to show "that the defendants' buying program would have received, had this been requested, administrative approval" (B. 38). These buying programs have already been referred to in this statement of facts. Evidence as to them was offered, not on the issue of approval, but to show that distress gasoline was recognized by the Government as a "competitive evil," which had to be eliminated.

Finally, the Government contends (B. 37-38) that there is no evidence that Government officials approved of the respondents' activities after hot oil had been eliminated in March, 1935. The evidence which follows shows that most of the manifestations of Government encouragement and cooperation occurred after that date.

A. The period from the appointment of the Tank-Car Stabilization Committee up to the report of the Blazer Committee.

Immediately after the General Stabilization Meeting of January 4, 1935, at which he appointed the Tank-Car Stabilization Committee, Arnott returned to Washington and discussed the seriousness of the problem of parity and the appointment of this committee with members of the Petroleum Administrative Board. He also discussed the critical situation occasioned by the *Panama* decision, and learned that the Government was drafting legislation to meet the situation.[1]

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[24] The Government stresses the fact that Arnott said that "There is going to be no agreements and no group buying" (B. 37, n. 51). It is obvious that Arnott was referring to group buying through a pool or agency and to formal agreements such as had been employed under the Government buying programs of 1934. (See p. 28, *supra* and pp. 176-7, *infra*.)

Shortly thereafter, the former defendant, I. A. O'Shaughnessy, who was a member of the Tank-Car Stabilization Committee, spoke of the appointment of that committee for the purpose of securing a return to parity in a telegram to Charles Fahy, the Deputy Petroleum Administrator. He pointed out that the *Panama* decision had delayed the committee in getting to work, and he stressed the critical situation as to the price of crude if something were not done.[2]

Fahy replied:[3]

> "* * * I am sure you know that the tank car situation with relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block. I may say, however, that I see nothing in the recent Supreme Court decision which in any way affects endeavors to reach a solution * * *."

Fahy also expressed interest in any ideas which O'Shaughnessy might have, and pointed out that the Administrator himself had recognized the seriousness of the situation by appointing a committee to look into the condition of the small refiner. O'Shaughnessy read his telegram, together with Fahy's reply thereto, at the first meeting of the Tank-Car Stabilization Committee on February 5th to convince the committee that an attempt should be made to achieve parity without cutting the price of crude.[4]

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[1] Arnott R. 1698, 1699-1700.

[2] Def. Ex. 893, R. 3491.

[3] Def. Ex. 894, R. 3492.

Shortly after Arnott first talked with Buckley, he wrote Fahy that there was a movement on foot in East Texas of which he would tell him when he was next in Washington, and that there were also hopeful developments in the Mid-Continent field.[5]

Arnott also saw Dr. Frey, another member of the Board, in Chicago about February 25th, and either then or about that time told him of the developments in the East Texas and Mid-Continent situations.[6]

In March, 1935, the National Coordinator of Refinery Allocations under the Code, acting with the knowledge and approval of the Federal Petroleum Administration, requested the major companies to cooperate with the Administration by curtailing their manufacture of gasoline during March by some 1,400,000 barrels.[7] [The Petroleum Administration had been advised that one of the purposes of the plan was to reduce the refinery output of major companies and thereby compel them to buy a part of their requirements from independent refiners.][7a] After receiving this request the major companies voluntarily curtailed their manufacture of gasoline by some 960,000 barrels of gasoline in March.[8]

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[4] McDowell, R. 1181-2.

[5] Def. Ex. 969, R. 3692; Arnott, R. 1729.

[6] Arnott, R. 1729-30, cross, R. 1745-6.

[7] Shatford, R. 1029, 1034-5; Def. Ex. 842, R. 3360.

[7a] Shatford offers, R. 1016-8, 1027; Def. Ex. 842, R. 3360. "The curtailment was requested though the Secretary made no formal order on the subject because, as the witness expressed it, 'Everybody was running around carrying water in their hat, trying to put out the fire.'" (Shatford, R. 1047.)

Shortly afterwards, on March 12th, when Arnott was in Washington to attend the District Allocators' meeting, at which he discussed the buying of distress gasoline in the Mid-Continent and Texas fields,[9] he went in to see the Petroleum Administrative Board, and talked to chairman Fahy and his associates, Dr. John W. Frey and E. B. Swanson.[10] Fahy was much interested, and asked whether there was anything which Arnott thought raised a question under the Anti-Trust Laws.[11] Arnott said he did not think so, and proceeded to outline what the situation was and what he was doing. He described both the Mid-Continent situation and Buckley's efforts to help the East Texas refiners; in fact, the matters which he had come down to Washington to discuss with the District Allocators and which he outlined the next day before them.[12]

Arnott did not ask any formal or written approval of what was being done.[13] He testified that it did not occur to him to do so.[14] He had been engaged in securing informal cooperative action in aid of the common interests and objectives of the Government and industry for the last two years.[15] He felt that the members of the Board thought that his plans were sound and hoped that they would work.[16] If he had thought that they disapproved he would have discontinued his activities.[17] According to Frey, Fahy and Arnott agreed that the latter was conducting the Mid-Continent buying program "on his own responsibility."[18]

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[8] Shatford, R. 1011, 1026-7, 1028-9, 1034-5; Def. Ex. 842, R. 3360.

[9] Def. Ex. 69, R. 2653.

[10] Frey, R. 1267, *et seq.*; Arnott, R. 1730, *et seq.*

[11] Frey, R. p. 1285, cross, R. 1294, redirect, R. 1335; Arnott, R. 1730.

[12] Frey, R. 1285, redirect, R. 1335; Arnott, R. 1730.

[13] Frey, R. 1279, cross, R. 1302, redirect, R. 1335-6, recross, R. 1338; Arnott, R. 1730.

[14] Arnott, R. 1730.

B. The Blazer Committee.

A few days after the conference of March 12th, the Blazer Committee made its report.[1] This was the "Petroleum Code Survey Committee on Small Enterprises," appointed by Secretary Ickes, which Fahy had referred to in the letter to O'Shaughnessy mentioned above.[2] The duty of the committee was to study the plight of the small units in the industry, and to make recommendations as to what should be done to overcome the difficulties under which the industry was laboring.[3]

One of the main features of the committee's report was a reference to, and approval of, the buying of distress gasoline by the large refiners from the small ones.

In the following narrative we shall italicize the portions of the documents referred to which contain obvious references to such buying.

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[15] See pp. 21 *et seq., supra.*

[16] Arnott, R. 1730, 1731.

[17] Arnott, R. 1736.

[18] Frey, cross, R. 1293, 1294, 1301, 1302, recross, R. 1338. Arnott believed that these discussions occurred at the subsequent conference of May 8, 1935, described at pp. 93-6, *infra*, and that the remarks had been made in another connection. Arnott, R. 1730-1.

[1] Frey, redirect, R. 1320; Swensrud, R. 1377.

[2] Def. Ex. 894, R. 3492; see p. 85, *supra.*

[3] Frey, redirect, R. 1320; Swensrud, R. 1377.

[The report stated the conclusions of the committee as follows:[4]

"Immediate relief is necessary if non-integrated refineries are not to be eliminated; it can come in only two forms.

1. An immediate and sustained increase in tank-car and retail gasoline prices to a parity with present crude prices, or

2. A reduction in the posted prices of crude oil to a parity with gasoline.

"We agree * * * that it would be more desirable for the solution to come from an increase in gasoline prices instead of a reduction in crude, but if it cannot be done one way it should be done the other way.

*"We favor making one more effort at raising gasoline prices * * * possibly only the impetus of concerted buying is needed to obtain a decided change for the better * * *. We know of nothing, apart from continued improvement in crude production control, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is being considered by the Industry now in connection with the broad stabilization program. We, therefore, urge that the administrator give it his approval and active support.*

*"It should be possible to have such a program functioning quickly. Profiting by the mistake of previous efforts, * * * we believe such a program might be successful in raising both tank-car and retail prices to their proper level in relationship to crude oil prices * * *.*

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[4] Def. Ex. 924 for identification, R. 3530, 3558-60.

> "* * * We find that abnormally low retail prices can depress tank-car prices just as much as low tank-car prices can pull down the retail price structure. Thus it appears to be essential that both prices move up together.
>
> "Unfortunately, many people outside the Industry who recognize the desirability of conserving petroleum reserves and who strongly favor the preservation of small enterprises, are likely to be the first to criticize a moderate increase in retail prices of gasoline, not realizing that in so doing they are striking directly at the non-integrated units and throwing the entire Industry into the hands of a few large integrated companies.
>
> "If * * * gasoline prices do not advance to an approximate parity with crude prices by an early date, within thirty days or thereabouts, or if they do not continue in such parity thereafter, then we recommend an immediate reduction in the price of crude oil to a parity with refined products * * *."

[On March 22, 1935, Fahy, the chairman of the Petroleum Administrative Board, submitted a memorandum to Secretary Ickes, in regard to the Blazer report.[5] In the course of this memorandum he said:

> "It is not the purpose of this memorandum to criticize or attempt to answer any of the findings or recommendations of the Committee; although the current improvement in tank-car price and the present fairly stabilized retail market is affording relief to some extent to the non-integrated refiner * * *. In our opinion the report should be re-

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[5] Def. Ex. 1030 for identification, R. 3869, 3873.

> leased immediately * * * *there are a number of things recommended which it would be well to do something about* * * *.
>
> *"We believe success in Code administration, assuming that it is to continue, requires that some of the recommendations made should be adopted; e. g., we have encouraged stabilization efforts designed at this time to aid the independent refiner,* * * *."]

Thus it appears that the Petroleum Administrative Board was "encouraging" the Mid-Continent buying program, and that the Secretary of the Interior was advised of that fact.

Upon receipt of the report of the Committee on Small Enterprises, Secretary Ickes met with the Petroleum Administrative Board in his office. He stated to the Board that he was in favor of industrial action to bring about parity between the price of crude oil and the price of gasoline. He further stated that if such parity were not achieved within three or four weeks, he was going to call a meeting of representatives of the industry to see what could be done about it.[6]

On March 30, 1935, Secretary Ickes again commented upon the report of the Committee on Small Enterprises in a letter addressed to B. P. Lientz of Kansas City, Missouri,[7] which referred to the disparity between the prices of crude oil and gasoline as follows:

> "* * * This situation has been deplorable for many months, but it is my understanding that at present *the activity of the Stabilization Committees is having a distinct effect in the improvement of refinery prices,* * * *."

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[6] Frey, redirect, R. 1319.

[7] Def. Ex. 995, R. 3749.

[On April 23rd Fahy wired Blazer, the chairman of the Committee on Small Enterprises, as follows:[8]

> "Would appreciate informal views your committee as to *whether gasoline prices have advanced to an approximate parity with crude prices* so as to obviate present necessity for reduction in crude oil price as recommended in refining conclusions and recommendations contained in report your committee."

[On the same day Blazer wired the following reply:[9]

> "Glad to advise informal opinion our Committee there is now no need for reduction crude oil prices since *we consider tank-car gasoline prices now almost up to parity with sufficient additional advances anticipated in both tank-car and retail prices.*"

[On April 30th Blazer addressed a letter to Fahy which, among other things, contained the following:[10]

> "It has been suggested, though, that it be clearly understood that our Committee in going on record that there is no need for a reduction in crude oil prices at this time, is acting on the belief that *small additional advances will be made in both tank-car and retail prices of gasoline.*
>
> • • •
>
> "*Our Committee has been very much pleased with the success of the program to stabilize tank-car markets. We believe it has been handled in a manner calculated to benefit the non-integrated re-*

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[8] Def. Ex. 921 for identification, R. 3528.

[9] Def. Ex. 922 for identification, R. 3528.

[10] Def. Ex. 993 for identification, R. 3746, 3747.

> *finers and without disadvantage to marketers. Of course, the real question is whether, after parity of gasoline and crude oil prices has been obtained, they can be maintained without excessive continued buying by the major companies* * * * I believe I can speak for our entire Committee when I say that we believe fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil."]

C. The period from April 30th to the end of the Code.

1. *Arnott's conference with the Petroleum Administrative Board, May 8, 1935.*

In the course of the attempts of Arnott's stabilization committees to deal with retail price wars in Chicago, a moratorium on retail accounts had been adopted. The Petroleum Administrative Board requested Arnott to come to Washington to discuss with them certain complaints which it had received with reference to the moratorium and to explore the question whether such action might violate the Anti-Trust Laws unless Arnott obtained written approval from Secretary Ickes.[1] A letter dated April 2, 1935, from Secretary Ickes to Arnott read in part as follows:[1a]

> "I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area.
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> * * *

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[1] Frey, cross, R. 1305-6, 1315.

[1a] Govt. Ex. 980, R. 3722-3; see Frey, R. 1305, 1316.

> "I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary. However, when the understandings arrived at as bases of solution of price wars affecting the industry over a considerable * * * period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal. If any such agreements have been made I should like a report as to them. If they require approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act.
>
> "I appreciate greatly your cooperation with the Administration in taking on the difficult work of directing a program of stabilization and I know that you will understand that this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility."

About the same time the Petroleum Administrative Board required certain modifications of the procedure which was to be followed by Arnott under the letter of July 20, 1934, in which he had been asked to undertake stabilization activities.[8]

Some friction was occasioned because Secretary Ickes had openly criticized the moratorium before taking the matter up with Arnott, particularly as Arnott felt that the proposed changes in procedure would make his work impracticable.[3] The result was a rather heated session between Fahy, Arnott and J. D. Collett, the chairman of the Planning and Coordination Committee, on May 8, 1935.[4] At the end everyone cooled off, and arrangements were made for working out practicable changes in procedure under the letter of July 20th.[5]

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[8] Frey, cross, R. 1305; Arnott, R. 1731.

After the main business of the meeting had been concluded, there was some incidental discussion of the buying program.[6] According to Frey, Fahy asked Arnott if the buying program was continuing and Arnott replied that it was.[7] Fahy then asked him whether he was taking the letter of July 20th as authority for his work, saying that neither the letter of July 20th nor the Code conferred such authority.[8] Arnott replied that he was not relying on the letter of July 20th.[9] Arnott and Collett recalled Fahy's asking how the buying program was going, but did not recall this reference to authority. They did recall that Arnott had said at this meeting that he was acting on his own responsibility in certain other stabilization activities that were under discussion.[10] [Titus, the counsel for the Planning and Coordination Committee, had advised Arnott that the letter of July 20th, although a request for him to undertake certain matters, did not confer any authority under the N.I.R.A.[11]]

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[3] Frey, cross, R. 1305.

[4] Frey, cross R. 1305-7, redirect, R. 1315, 1335-7.

[5] Frey, redirect, R. 1336-7.

[6] Frey, cross, R. 1302, redirect, R. 1335.

[7] Frey, redirect, R. 1335; Arnott, R. 1731.

[8] Frey, cross, R. 1299-1301, 1307, recross, R. 1337-8, redirect, R. 1335.

[9] Frey, redirect, R. 1336.

[10] Arnott, R. 1731; Collett, R. 1802-3.

2. *Arnott's conference with Fahy, May 10, 1935.*

Two days after the conference of May 8th, Fahy had another conference with Arnott. The Planning and Coordination Committee had appointed a committee of three, consisting of Arnott, Collett and Majewski, to discuss the contents of the Blazer report with the Petroleum Administrative Board.[12]

The committee met in Fahy's office on May 10, 1935. It was noted that the Blazer Committee had recommended that the major companies should buy distress gasoline from independent refiners. Arnott and Majewski pointed out that this was already being done.[13] It was also pointed out that this buying had already resulted in some improvement in the situation so that the complaints of the independent refiners were diminishing, and that the system of refinery allocations and the voluntary curtailment of refinery runs in March had contributed still further to the improvement of the situation.[14]

Fahy replied: "That is quite so and disposes of that part of the report."[15]

3. *Fahy's request to Arnott to stabilize the Pennsylvania refinery market, May 14, 1935.*

[The respondents offered to prove that four days later, on May 14th, Fahy requested Arnott to extend his buying program activities into Pennsylvania. The proof offered was as follows:

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[11] Def. Ex. 892 for identification, R. 3489.

[12] Arnott, R. 1731, 1733; Collett, R. 1803.

[13] Arnott, R. 1733, 1734; Collett, R. 1803.

[14] Collett, R. 1803, cross, R. 1806.

[15] Arnott, R. 1734; Collett, R. 1803.

[(1) The small refiners in Pennsylvania, like those in the Mid-Continent, were suffering as a result of the disparity between the price of crude oil and the products made from crude oil. They had also built up excessive inventories which could be sold only at distress prices. Many of these refiners were being forced out of business.[16]

[(2) The condition of the Pennsylvania refiners was well known to Fahy, Swanson and Frey of the Petroleum Administrative Board.[17].

[(3) The Pennsylvania refiners had several times requested the Petroleum Administrative Board to take steps to alleviate their condition. In each case the Board had asked them to wait until the results of the buying program being conducted in the Mid-Continent became apparent.[18]

[(4) On May 14, 1935, after a conference with J. M. Vockel and G. E. Willey of the Waverly Oil Works in Pennsylvania, Chairman Fahy of the Petroleum Administrative Board had sent the following telegram[19] to Arnott:

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[16] Frey offer, R. 1288-9.

[17] *Ibid.* Brundred offer, R. 1354, 1355, 1356.

[18] Frey offer, R. 1287-8; Vockel offer, R. 1345-50; Def. Ex. 972 for identification, R. 3694.

[19] Def. Ex. 916 for identification, R. 3520; Frey offer, R. 1288; Vockel offer, R. 1351.

["Mr. C. E. Arnott,
c/o American Petroleum Institute,
Mayo Hotel,
Tulsa, Oklahoma.

"S. M. Vockel and G. E. Willey officials Waverly Oil Works on behalf own company and other small Pennsylvania refiners yesterday and today presented detailed picture refining situation their section. Present disparity between Pennsylvania grade crude and refined prices undoubtedly makes impossible continued operation several plants. Problem there related more to stabilized markets lubricants than gasoline. Hope you can arrange for prompt consideration this problem by Stabilization Committee looking both to immediate adjustments as well as long view correction. Would appreciate your assistance in this situation as it involves plants of long establishment which undoubtedly have not benefited equally with others under stabilization program because of their dependence on lubricants rather than gasoline. Please wire me as to possibility your undertaking this.

"Charles Fahy."

[(5) In sending the telegram of May 14th the Petroleum Administrative Board wanted Arnott and the Stabilization Committee to go into Pennsylvania to improve the condition of the refinery market in that State by the same method that the Stabilization Committee had used under the buying program in the Mid-Continent area. The Board believed that Arnott could make some arrangements whereby the major companies would purchase from the small independent refiners the excessive lubricants which were overhanging the market in Pennsylvania, and in that way both relieve the plight of the independent refiner and cause the prices of finished refinery products to rise to their proper parity with the price of Pennsylvania grade crude oil.[20]

[(6) On May 27, 1935 E. B. Swanson of the Petroleum Administrative Board wrote W. J. Brundred that the Board felt "that the Stabilization Committee * * * might be of definite assistance in connection with lubricants *as they have been in connection with gasoline.*"[21]] (Italics supplied.)

D. After the Code.

With the *Schechter* decision on May 29th Arnott's activities as chairman of the Marketing Committee and as "Stabilizer," pursuant to the request of Mr. Ickes in his letter of July 20th, came to an end.[1] He was thanked by Fahy, Deputy Oil Administrator, and by Secretary Ickes, for his services.[2]

Dr. Frey testified as follows:

> (1) That although he had never had any direct contact with the Tank-Car Stabilization Committee's work and was not familiar with its detailed operations,[3] Arnott had made reports about the Committee to the Board,[4] and he (Frey) was familiar with the Committee's objectives.[5]

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[20] Frey offer, R. 1289-90.

[21] Def. Ex. 915 for identification, R. 3519; Brundred offer, R. 1355.

[1] Def. Ex. 975, R. 3716.

[2] Def. Ex. 976, R. 3716.

[3] Frey, R. 1266, 1267, cross, R. 1302.

[4] *Ibid;* see Frey, R. 1314.

[5] Frey, R. 1266.

(2) That in his opinion the Tank-Car Stabilization Committee was an offshoot of the General Stabilization Committee[6] which had been appointed under authority of the letter of July 20, 1934, from Ickes to Arnott.[7]

(3) That Arnott had never asked the Petroleum Administrative Board for official approval or official criticism of the Committee's activities.[8]

(4) That, so far as he was concerned, the Mid-Continent buying program was an industry activity, without any official standing.[9] That is to say, it had not been formally authorized by anybody in the Petroleum Administrative Board nor by the Secretary of the Interior. Only Secretary Ickes could have given such formal authorization.[10]

(5) That he believed that major company buying was helpful to stabilization;[11] that the sale of gasoline at distress prices was frequently responsible for price wars;[12] in his judgment, it was impossible to maintain a stabilized retail market if the tank-car market continued to be subnormal.[13]

(6) That in his opinion the presence of distress gasoline on the market in January and February of 1935 was one of the obstacles which was preventing the tank-car market from achieving parity with the price of crude oil.[14]

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[6] *Ibid.*

[7] Frey, R. 1291.

[8] Frey, cross, R. 1294, 1307, redirect, R. 1335, 1336.

[9] Frey, cross, R. 1293.

[10] Frey, R. 1270, 1279.

[11] Frey, redirect, R. 1315-6.

[12] Frey, redirect, R. 1328.

[13] Frey, redirect, R. 1332.

[14] Frey, redirect, R. 1327.

> (7) That Secretary Ickes considered it an undesirable state of affairs, and particularly hard on the independent refiners, for the price of gasoline at the refinery to be out of parity with the price of crude oil.[15]

Toward the end of 1935 the Annual Report of the Secretary of the Interior for the fiscal year ending June 30, 1935, was published.[16] It contained the following statement:

> "The operations of the Tender Board of the production provisions of the code and refinery amendment, *and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935.*" (Italics supplied.)

On June 1, 1936, there appeared the Final Report of the Marketing Division of the Petroleum Administrative Board.[17] This report had been prepared pursuant to an Executive Order of President Roosevelt dated June 15, 1935 (No. 7075), and under the direction of Secretary Ickes.

[The respondents offered certain portions of this report in evidence. After commenting on the serious problems of the industry in 1934, the letter of July 20, 1934, which Secretary Ickes had addressed to Mr. Arnott, and the efforts to eliminate price wars, the report stated:

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[15] Frey, redirect, R. 1328.

[16] Def. Ex. 917, R. 3522, 3525.

[17] Def. Ex. 914 for identification, R. 3512, 3518; Frey, R. 1281.

["As the various problems were offered for discussion at the general stabilization committee meetings, subcommittees were appointed to make recommendations among these subcommittees. *One of the most important was the tank-car committee, which attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank car market was essential to a stabilized retail structure* * * *.

* * *

["The stabilization program was perhaps the outstanding development under the code. It received the support of most elements in the industry and it was effective to a greater degree in eliminating price wars and stabilizing prices and conditions than any other movement yet tried. In many areas the best price structure in years prevailed during the last 6 months of the code. Nearly all company representatives gave credit for this condition to the stabilization program.

["Although no authority existed in the Stabilization Committee to enforce any of the recommendations which it might make, its recommendations were generally effective. This was largely because its aims and purposes were to maintain a uniform and profitable price structure by as nearly direct means as possible. Many critics of the code were ardent supporters of the stabilization program, feeling that the code was cumbersome and the machinery for its enforcement so complex as to be ineffectual, but that the stabilization program went to the heart of the problem and was more effective."] (Italics supplied.)

[The respondents offered to show that on February 12, 1937, Secretary Ickes and E. B. Swanson, a former member of the Petroleum Administrative Board testified before the Senate Committee on Finance as follows:

> "Senator Connally: Mr. Holland is in possession, is he, of the details in regard to those buying pools and things of that kind?
>
> "Secretary Ickes: Mr. Holland or Mr. Swanson has all of that, because he was with the Oil Administration at the time * * *.
>
> * * *
>
> "Mr. Swanson: Mr. Chairman there were several so-called buying pool efforts, that began in December of 1933 and *continued from then on during the entire period of the Petroleum Code.*
>
> "Senator Connally: *What was the purpose of the Department in participating or in authorizing or in aiding those buying pools?*
>
> "Mr. Swanson: *It was an effort of the Department and the industrial committees to bring about the normal relationship between gasoline prices and crude oil prices, in order to permit the independent, non-integrated refiner to be able to operate without loss.*"][18] (Italics supplied.)

VII. THE GOVERNMENT'S DISCUSSION OF "RESPONDENTS' ATTEMPT TO SHOW THAT THE GASOLINE OF INDEPENDENT REFINERS WHICH THE MAJORS CONCERTEDLY PURCHASED, AND WHICH THEY DESIGNATED 'SURPLUS' OR 'DISTRESS', CONSTITUTED A COMPETITIVE EVIL" (B. 39).

Under this heading the Government argues that the decision of this Court in the case of *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344 (B. 40) shows that the distress gasoline which the respondents purchased did not constitute a competitive evil. It is therefore necessary to answer this section as an argument.

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[18] R. 1841-2.

The argument of the Government that distress or surplus gasoline does not constitute a competitive evil is flatly contradicted by the definite and unmistakable conclusion of the Circuit Court of Appeals that—

> "* * * If there is any one thing completely established, it is that the oil industry, as well as numerous governmental agencies, federal and state, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary, if the industry was to survive, to say nothing of prospering" (R. 3929).

The references to the record set forth below[1] which fully and completely support this conclusion.

The Government's argument ignores two fundamental conditions which caused distress gasoline. It is only from an understanding of these conditions that the nature of distress gasoline can be understood.

First: The independent refiner's purchase contracts required him to take all the crude oil which the seller was permitted by law to produce. If he refused to comply with this provision of his contract, the seller had the option to cancel the contract. While some minor violations of this provision might be tolerated, the record is uncontradicted that any shutdown or substantial curtailment of operations by an independent refiner would have resulted in the loss of his crude connections. The Government suggests that there is a distinction between the possibility of a complete shut-down and of a substantial curtailment. There is no such distinction. The law of capture would prevent the crude oil producer from curtailing production and the independent refiner would have to take that entire production or risk loss of his crude connection. Moreover, the Government's argument ignores the fact, fundamental in refining, that it is economically impossible to run a refinery at a low percentage of capacity since the mounting unit cost at a low operating rate wipes out all profit.[2] The point is well illustrated by the testimony of Gray, the manager of the Waggoner Refining Company. He testified as follows:

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[1] Jacobi, R. 385-6; Cline, R. 642; Bradshaw, R. 671-2; Steiger, R. 751-2; Franklin, R. 929; Shatford, R. 1003; McDowell, R. 1166; Frey, R. 1327. Def. Ex. 831, 832 for identification, R. 3329, 3330; Def. Ex. 848 for identification, R. 3389; Shatford offer, R. 1045-52. Def. Exs. 844, 845, 846 and 847 for identification. R. 3367, 3372, 3376, 3386, 3389; Def. Ex. 1029 for identification, R. 3817.

> "When conditions are bad and prices are low, some small refineries do shut down temporarily and some reduce their throughput. By 'throughput' I mean the amount of oil that they put through their plants. But most refineries are one-unit plants, and have a maximum and a minimum at which they can operate. For instance, if you have a plant capable of turning out 2,000 barrels of gasoline a day through one unit, you might be able to produce 1,200 to 1,500 barrels a day economically, through that unit, but you couldn't go below that.
>
> "A number of refiners have a pipe line gathering system through which they transport oil which they buy from the producer in the field. If they shut down their plant, they can't buy that fellow's oil, and he seeks another outlet for his oil. When

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[2] Evans, R. 542-4.

> they get ready to go back in business again, they have a whole system of pipe lines lying in the ground which they have to dig up and put some place else, providing they can find somebody else that will sell them the oil. It is quite frequently difficult to persuade somebody to sell you oil if they know you are a company that is liable to run this month and shut down next month. Therefore, you are forced to stand the punishment in the hope of better days" (R. 1826-7).

Second: Once the gasoline had been manufactured, the independent refiners had to sell it immediately. Few of them had any substantial amount of storage capacity for either gasoline or crude oil. Each had to refine the crude oil as he received it and sell his gasoline as fast as he made it.[3] Inevitably, such gasoline, which had to be manufactured and could not be stored and which had to be disposed of immediately was dumped on the market for whatever price it would bring. Inevitably such sales drove the market down.[4]

The Government states that one set of defense witnesses "defined 'distress' or 'surplus' gasoline as being any and all gasoline produced by an independent refiner in excess of the requirements of his regular trade customers" (B. 41). From this it deduces that the sale of distress gasoline cannot be a competitive evil because:

> "* * *If the only sales on the spot market were sales to regular customers, this would completely exclude from the market all jobbers and brokers

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[3] Franklin, R. 929-30; Shatford, R. 1003, 1010; Gray, R. 1827-8; McDowell, R. 1166.

[4] Shatford, R. 1003.

> accustomed to purchase on a spot basis, not from a particular independent refiner, but from any refiner having supplies on hand" (B. 44).

This statement rests upon a plain misconstruction of the witnesses' testimony. They did not testify that distress gasoline was any gasoline which could not be sold to specific customers of long standing. The purport of their testimony was that even after all customers of long standing had been satisfied and after all buyers who bought "not from any particular independent refiner, but from any refiner having supplies on hand" had been satisfied, there would still be distress or surplus gasoline.[5] In other words, distress gasoline was that gasoline which must be sold, but which was left after the refiner had exhausted every effort to sell his gasoline at the going market price to anybody, regardless of whether or not he had ever done business with them before.

It is obvious from the above recital that surplus gasoline, like the distress coal in the *Appalachian Coals* case, had to be sold *immediately*. This meant "forced" sales which necessarily entailed a terrific competitive disadvantage to the seller. In such a market there were always potential buyers who did not have to buy at the moment In other words, the small refiner had to sell his surplus product at the moment. He sold to those under no such urgency to buy and the result was the distress price

The Government, however, argues that the term "distress gasoline" is a misnomer and "delusive" and that it does not describe the type of competitive abuse recognized in the *Appalachian* case (B. 39-48). Upon examination it appears that this argument is based largely, if not entirely, upon two assumptions. "* * * The gasoline purchased by the majors (1) was not a by-product the production of which was beyond the refiners' control and, (2) since it was the same kind of gasoline as that sold on the spot market, the demand therefor was as broad as the entire market demand" (B. 45).

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[5] See, *e. g.*, Steiger, R. 752 ("* * * it was gasoline left after they had exerted all efforts to attempt to sell it.") See Appendix A, pp. 192-216.

Let us examine these assumptions in order.

This record amply supports the conclusion that distress gasoline was a "by-product" in the same sense that distress coal was—that is, in the sense that the saleable product could not be manufactured without manufacturing the distress product.

First, let us examine the nature of the distress coal involved in the *Appalachian* case. As the Court pointed out (288 U. S. 362-3), the demand for the different sizes of coal varied, and no particular size could be produced without at the same time making a number of other sizes. This constantly resulted in having more of some sizes than there was regular demand for. Because of the lack of storage facilities and other conditions prevailing in the industry, the amount of any particular size which the independent producer was thus forced to produce, and which was in excess of his current demand for that size, was called "distress coal" because it had to be sold quickly—dumped on the market. This distress coal, the Court found (288 U. S. at 363), while more prevalent in some sizes was at times present in all sizes and grades, and its pressure upon the market consequently was a depressing influence upon the prices obtainable for all sizes. It appeared, and the Court ound, that one of the purposes of creating the exclusive selling agency was to provide for a more orderly marketing of distress coal, thus removing its pressure upon the market and tending to raise the price of all coal sold.

The effect of distress coal was accentuated by the practice called "pyramiding" (288 U. S. 363). This was the term applied when a producer authorized several persons to sell the same coal, and they in turn offered it to other dealers, resulting "in abnormal and destructive competition which represses the price for all coals in the market." In the same way, the depressing effect which distress gasoline had on the market was frequently magnified because the gasoline was offered simultaneously through several different brokers.[6]

It abundantly appears from the record in this case that the existence of "distress gasoline" constituted one of the major marketing problems of the industry, and that its dumping upon the market at such forced-sale prices was a destructive practice similar to the dumping of distress coal, and like it, had a depressing effect upon all prices received and upon the condition of the industry itself.

As in the case of "distress coal," the very nature of the non-integrated refiner's business compels him to produce a portion of his product which at the moment is a drug on the market. In the case of the refiner he has to *produce* this portion because, on penalty of losing his *crude oil connections,* he must take the crude oil produced by his supplier as it flows from the wells, irrespective of whether he contracts for a ready market for all the gasoline to be produced therefrom.[7] Like the coal operator, he has to dump the excess amount so produced for which there is no ready market. Neither the coal operator nor the refiner usually has sufficient storage facilities, or capital to create storage capacity, or working capital to tie up his products while storage and operating costs go on.

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[6] Shatford, R. 1003-4, Gray, R. 1823.

[7] Franklin, R. 926-7, 929-30; Gray, R. 1827-8.

The Government (B. 46-7), while recognizing that in general independent refiners had nothing more than working storage, states "Other evidence shows that many independent refiners have substantial storage capacity * * *." The record citations for this statement establish no more than that one or possibly two out of 96 independent refiners had such facilities.[8]

We come now to the contention that "distress coal" was physically different from the ordinary coal supply of an operator because it was of a different size from that of his non-distress product, whereas the "distress gasoline" cannot be physically distinguished from that marketed through orderly channels (B. 45).

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[8] Exhibits 187 (R. 2754), 190 (R. 2764). The following statement in Exhibit 187 is typical of the authorities relied on by the Government:

> "While refiners' stocks are not large, they are apparently holding on to such stocks as they can accumulate * * *."

Of course there was a certain amount of leeway in *working stocks* and this is all that is indicated by these exhibits and by the statements at the top of page 47 of the Government's brief. The fact that for short isolated times the working storage of some refiners was not full to the brim (Govt. Ex. 30, R. 2631) does not indicate in any way that as a general thing independent refiners did not have gasoline which they could neither store nor dispose of except on a distress basis.

In this connection it is significant that in the *Appalachian* case the Court did not find that *no* producer had storage facilities, but only that "*usually* there are no storage facilities at the mines" (288 U. S. at 363). So in this case the evidence is that *generally and usually* the small independent refiner has inadequate facilities for the storage of either surplus crude oil or surplus gasoline. (See Appendix A, pp. 204 *et seq.*)

The Government misstates the facts in the *Appalachian* case. The record of that case shows that all sizes of coal became distress at one time or another (See 288 U. S. 363). The fact was that while there would be apt to be a larger excess over regular demand in the case of some sizes, the phenomenon occurred as to all. There was no more possibility of physically distinguishing nut coal which would be sold under contracts or to the regular trade at the prevailing market price from nut coal which would have to be dumped regardless of price, at the mercy of scalpers and large consumers wanting to take advantage of what the Supreme Court termed the "inequality of bargaining power" of the small producer, than there is of physically distinguishing "distress" from other gasoline.

Moreover, whether or not the distress material was physically distinguishable from non-distress material is entirely without legal significance. The coal involved in the *Appalachian* case was distress, not because it was of any particular size, *but because it was coal, the production of which was compelled by technical and economic factors irrespective of market demand. That is exactly the situation in the case of "distress" gasoline.* Because of the law of capture, the impossibility of shutting down crude oil wells, the impossibility of shutting down refineries or running them at a low fraction of capacity, and the lack of crude oil and gasoline storage facilities, a certain amount of gasoline *had to be* produced and *had to be* promptly sold.

The Government suggests (B. 13, 50-51) that "distress gasoline" was merely that part of the product for which a refiner could not get the price he wanted. The same could be said of the coal operator. In both cases, the "distress" product was that part which had to be dumped below the prevailing market price. In both cases, that prevailing market price might be far below what the operator "wanted" in one sense of the word. It certainly was in the case of the small refiner in the winter of 1935, when the market price was 2¢ below his cost of production.[9] His "distress" product was what he would have to dump even below that artificially depressed level.

The evidence shows that the Government recognized the reality of the problem in 1934 by fostering programs for buying up "distress gasoline," not at the low of the market, but far above the market.[10] The Secretary of the Interior specifically recognized the problem of surplus or distress gasoline in his address to the industry in November 1934.[11] No one ever seems to have questioned the reality of distress gasoline, or its character as a competitive evil, except the prosecution in this case. There is ample evidence in the record to establish that, in the eyes of those best fitted to judge, it constituted one of the major problems of the oil industry.

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[9] See Def. Ex. 1024, R. 3807.

[10] See p. 28, *supra.*

[11] Def. Ex. 968, R. 3690.

SPECIFICATION OF ERRORS TO BE URGED BY THE RESPONDENTS

The Circuit Court of Appeals erred:

(1) In holding that there was no fatal variance between the indictment and the proof.[1]

(2) In sustaining the action of the district court in denying defendants' several motions for directed verdicts of not guilty.[2]

(3) In sustaining the jurisdiction of the district court.[3]

(4) In failing to rule that the arguments of Government's counsel to the jury constituted reversible error.[4]

(5) In failing to rule that the district court should have granted petitioner's several motions for new trials.[5]

SUMMARY OF ARGUMENT

This brief is divided into two parts. Part One deals with the questions presented by the Government's petition in No. 346 to review the judgment of the Circuit Court of Appeals reversing the judgments of conviction and ordering new trials. Part Two deals with the questions presented by the respondents' petition in No. 347 as to whether the Circuit Court erred in refusing to direct the trial court to dismiss the indictment.

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[1] Assignments of Error Nos. 1-16 (R. 2515-7).

[2] *Ibid.*

[3] *Ibid,* Assignments of Error 18 and 19 (R. 2518-9).

[4] Assignments of Error Nos. 37-40 (R. 2543-51).

[5] Assignment of Error No. 21 (R. 2519).

PART ONE

THE CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT THE RESPONDENTS WERE ENTITLED TO NEW TRIALS.

I.

The Circuit Court of Appeals correctly held that the charge of the trial judge constituted reversible error.

On no less than twelve different occasions the trial court instructed the jury to return verdicts of guilty if it found that the respondents had contributed in any degree to the rise in gasoline prices. It will be noted that these instructions are not concerned with whether the respondents maintained prices at controlled levels, or whether they substituted an agreed-on price for a competitive price. The sole test of legality which the instructions lay down is whether the purpose or effect of the respondents' acts was to raise prices to any extent.

The Government concedes that "The defendants, * * * offered evidence designed to show (1) that they did not combine together for the purpose of controlling prices; (2) that their purchasing activities were confined to distress material, the removal of which did not suppress normal competition on the spot markets; * * *". (Pet. 14). Obviously, the elimination of a competitive abuse such as distress gasoline may tend to stabilize the industry and to produce fairer price levels. The instructions of the trial court, therefore, required a finding of guilty even though the jury believed that the respondents' activities had been limited to the elimination of distress gasoline and that the removal of such gasoline "did not suppress normal competition on the spot markets."

This Court has repeatedly held that concerted action to eliminate abuses which distort the normal play of competition is not to be condemned merely because the purpose or effect of the agreement may be to stabilize or raise prices. (See cases cited, pp. 148-53, *infra.*)

The Government's brief misinterprets the charge of the trial court as to the minimum requirements to sustain a verdict of guilty. As suggested above, a reading of the charge in its entirety will clearly demonstrate that the jury was instructed to return verdicts of guilty if the respondents had contributed in any degree to the rise in gasoline prices. We submit that the very most that can be claimed is that there was a conflict of instructions which resulted in confusing and misleading the jury. The Government itself argues that the instructions confused and misled the Circuit Court of Appeals. (B. 84; Pet. 18.)

Apparently, the charge was also misleading and confusing *to the Government.* It now argues that the district court "charged the jury that if it found that the defendants combined for the purpose of raising and fixing gasoline prices in the manner set forth in the indictment, and if it found that they had the power so to raise and fix prices, a restraint imposed by their combination would be unlawful and unreasonable" (B. 50). Emphasizing the word "fixed," it argues that the instruction required the jury to find a "price fixing agreement" within the meaning of *United States* v. *Trenton Potteries Co.,* 273 U. S. 392. *In its petition,* however, it summarized the charge differently. There it said that the "trial court instructed the jury that if it found that the defendants had the power to raise gasoline prices and had combined for that purpose, the restraint of trade was unreasonable and illegal" (Pet. 2). The word "fix," which it now emphasizes, was there omitted. Obviously, if the instructions were misleading, not only to the Circuit Court, but to the Government itself, they could not have been clear to the jury. *District of Columbia* v. *McElligott*, 117 U. S. 621, 630 (1886).

The trial court also erred in instructing the jury that it was to consider the reasonableness of the respondents' acts and the facts and circumstances surrounding them, only if it first found (a) that the respondents did not have the power to raise the level of spot market prices, or (b) that they did not combine for that purpose, and (c) that their purchases affected the spot market prices only indirectly and incidentally. This, in effect, forbade the jury to consider the surrounding facts and circumstances in reaching its verdict.

II.

The Circuit Court of Appeals correctly held that the trial court committed reversible error in excluding the evidence offered by the respondents to show the facts and circumstances surrounding the alleged agreement in restraint of trade.

This Court has held that the legality of a combination such as is here presented can be determined only in the light of evidence showing "the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained * * *." *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918).

The trial court in this case erred repeatedly in excluding evidence offered by the respondents which was clearly relevant under the above rule. In many cases the evidence was necessary to show the background of the industry and the reasons for the respondents' acts. In others it bore directly upon the question of what was their purpose. In others it tended to prove that the price of gasoline was not, as alleged by the Government, arbitrary and non-competitive during the indictment period. In many instances the evidence should have been submitted to the jury not only as direct proof of the matters in question, but in order to rebut inferences which the Government sought to draw from fragmentary evidence.

The Government concedes that "there was a wealth of evidence from which opposing factual inferences could be drawn" (B. 147). Under these circumstances it was imperative that the jury have before it all of the surrounding facts and circumstances upon which the proper inferences depended.

III.

The Circuit Court of Appeals correctly held that the trial court committed reversible error in using and permitting Government counsel to use alleged transcripts of testimony before the grand jury in the examination of important witnesses.

The witnesses upon whom the Government principally relied to establish its case were employees of various of the respondents. Government counsel endeavored consistently throughout the trial, by reading from and referring to certain "alleged grand jury minutes," to persuade the jury that these witnesses were under pressure to avoid incriminating their employers. This persistent effort had a three-fold purpose and effect: (1) to magnify the significance of any testimony of these witnesses detrimental to the defendants; (2) to suggest the existence of additional facts not covered by any testimony and even more detrimental to the defendants; and (3) to prejudice the respondents by persuading the jury that they would suborn perjury to avoid discovery of their alleged unlawful acts.

In this connection the trial court made four general types of error highly prejudicial to the respondents:

1. The court denied respondents the right to inspect the alleged transcripts of testimony before the grand jury to determine the accuracy of the alleged quotations and the statements of Government counsel with respect thereto.

2. The court permitted Government counsel to read from alleged grand jury testimony and from notes alleged to have been made from grand jury testimony which were not properly authenticated nor their accuracy sufficiently established.

3. The court repeatedly read and permitted Government counsel to read from the alleged transcripts of testimony before the grand jury under circumstances which undoubtedly led the jury to conclude that such alleged grand jury testimony was affirmative evidence in the case. In some instances it can be shown from the record that statements so read from the alleged transcripts were not true.

4. The court repeatedly permitted Government counsel to read in the presence of the jury alleged grand jury

testimony for the purported purpose of refreshing the witness' recollection, although it appeared from the record that such alleged testimony was not given contemporaneously with the occurrence to which it related.

IV.

In their closings to the jury, Government counsel made arguments which plainly constituted appeals to passion and class distinction, all tending to induce the jury to disregard the record evidence and to base their verdict upon such improper appeals.

In addition Government counsel, for the purpose of demonstrating to the jury that the entire testimony of a key witness for the respondents was unworthy of belief, resorted to assertions of personal knowledge which not only were not supported by the record, but were not correct.

V.

The granting of motions for new trials to non-appealing defendants required the granting of similar motions to respondents.

The possession of the power to raise or affect market prices arbitrarily was a fundamental issue in this case.

By their verdict of January 22, 1938, the jury found that 16 corporations and 30 individuals had conspired, as charged, and that they collectively possessed the power to execute the conspiracy. Thereafter, on July 19, 1938 the court discharged one corporation and 10 individuals and granted new trials to 3 corporations and 15 individuals. One of the corporations granted a new trial—

Standard of Indiana—alone possessed such power as would make it impossible for any group to raise prices in the Mid-Western area without its agreement and cooperation.

It follows that the fundamental issue of whether the respondents possessed the power to raise or affect prices arbitrarily, never received the consideration of the jury. The jury's finding that the entire group possessed such power by no means carried the implication that, if permitted, the jury would likewise have found that respondents, acting alone, possessed such power. Moreover, the error cannot be cured by pointing to some evidence which would have supported such a finding, if made. There must be a *jury* finding, not a finding by the court, upon this issue.

PART TWO

THE CIRCUIT COURT OF APPEALS ERRED IN REFUSING TO DIRECT THE TRIAL COURT TO DISMISS THE INDICTMENT.

VI.

There was a fatal variance between the allegations of the indictment and the proof.

The indictment alleged a plan or scheme to fix the published spot market tank car price of gasoline and thereby to exact "large sums of money from thousands of jobbers." The essential allegations are:

(1) That three market journals—the Chicago Journal of Commerce, Platt's Oilgram and the National Petroleum News—regularly publish quotations purporting to be gasoline prices being paid by jobbers in spot purchases from independent refiners in tank car lots.

(2) That nearly 50% of the gasoline which the defendants and others sell to jobbers in the Mid-Western area is sold under contracts which require the purchasers to pay a price related to those quoted in the market journals.

(3) That the defendants conspired to falsify the market journal quotations by agreeing (a) to purchase gasoline from independent refiners (a type of transaction which would not involve sales to jobbers and so would not ordinarily be reflected in the market journal quotations); (b) to pay the independent refiners higher prices than those being paid by jobbers; and (c) to have the higher prices so paid misrepresented in the market journals as prices being paid by jobbers.

Thus the indictment plainly reveals a single plan or scheme to fix the published spot tank car market price of gasoline. If any one of the three steps described in paragraph (3) above is eliminated from the scheme, then necessarily it would not accomplish the object for which it was formed.

In this case the Government failed completely to establish the allegation that the respondents (1) bought gasoline at prices higher than those paid by jobbers in the competitive spot market, and (2) fraudulently misrepresented and published such prices in the market journal quotations as prices paid by jobbers. The proof affirmatively showed the contrary. It showed that the market journals had made no misrepresentation. It showed that they had published the prices paid by jobbers, not the prices paid by respondents, and that the latter prices were in fact prevailingly below the price currently being paid by jobbers. Thus the Government failed to sustain the charge of an illegal scheme to fix the published tank car spot market quotations for gasoline.

This failure of proof constituted a fatal variance as a matter of law. In addition the respondents were materially prejudiced. (See pp. 293-8, *infra.*)

VII.

The record contains no substantial competent evidence that the combination either in purpose or effect unreasonably restrained trade within the meaning of the Sherman Law.

The record shows that for several years prior to the indictment period the distress of the oil industry was so acute as to call for remedial concerted action. It also shows that this condition was recognized not only by the industry, but by the state and federal governments. There was no dispute as to these facts.

The situation just described was caused primarily by two abnormal and destructive competitive practices. The Circuit Court of Appeals summarized the effect of these practices as follows: "If there is any one thing completely established, it is that the oil industry as well as numerous Governmental agencies, federal and state, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable but necessary if the industry was to survive, to say nothing of prospering" (R. 3929).

Faced with these conditions the respondents engaged in a voluntary cooperative effort to remove one of these competitive evils—distress gasoline. The nature of their agreement and of its effect were summarized by the Circuit Court of Appeals as follows:

> "Without going into detail * * * we think the substance of what was accomplished and agreed upon was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices." (R. 3919.)

Upon such a record, the respondents were entitled to directed verdicts of acquittal.

The Circuit Court of Appeals erred as a matter of law in holding that the reasonableness of the activities of the defendants was a jury question solely because the plan was "placed in operation with the results revealed." A plan or agreement which has been put into operation may be as unobjectionable as one which is still executory. In either case the question on appeal is whether the facts and circumstances are as consistent with the innocence of the defendants as with their guilt.

The Government in its brief points to no substantial competent evidence which would sustain any other conclusion as to the nature and effect of respondents' agreement.

VIII.

To establish venue in the Western District of Wisconsin, the Government claims that certain acts done within that District were *overt in nature.*

The record shows that the only acts done within the Western District of Wisconsin in this case were (a) the execution of contracts with jobbers whereunder the price was determined by reference to the spot tank car market quotations in the market journals; (b) delivery of gasoline to jobbers under such contracts; and (c) sales to retail dealers and consumers at prices which were affected by prices on the spot tank car market.

An overt act must be an act done within the scope of the agency created by the illegal "partnership" or conspiracy agreement.

The Government and two judges of the Circuit Court of Appeals state that an agreement among the respondents to sell only on the spot market quotations necessarily arises by implication. They argue that since the purpose of respondents' purchases on the spot market was to raise the general level of the wholesale and retail prices in Wisconsin, an agreement to base all such sales upon the enhanced spot market prices must be implied. The argument thus advanced flies in the face of all the affirmative testimony in the record. There is nothing in this record to show that the agreement among the respondents contemplated any restriction upon their freedom in selling gasoline within the Western District of Wisconsin.

Moreover, it is not true that unless the respondents had an express or implied agreement to sell gasoline in the Western District of Wisconsin solely upon the spot market that they would have engaged in a philanthropic endeavor. The mere removal of distress gasoline from the competitive market would obviously result in a more normal price not because of the absence of competition, but by reason of it. The undisputed testimony is that this was all the respondents hoped to accomplish, and the record shows that in fact this was all that resulted.

ARGUMENT

PART ONE

THE CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT THE RESPONDENTS WERE ENTITLED TO NEW TRIALS.

I.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY (A) INSTRUCTING THE JURY TO RETURN VERDICTS OF GUILTY IF THE COMBINATION AMONG RESPONDENTS HAD THE POWER AND PURPOSE TO CONTRIBUTE IN ANY DEGREE TO THE RISE IN GASOLINE PRICES, WITHOUT REGARD TO WHETHER THE COMBINATION COULD EFFECT OR HAD EFFECTED AN UNDUE RESTRAINT UPON COMPETITION, AND (B) BY IMPROPERLY LIMITING THE EXTENT TO WHICH THE JURY COULD CONSIDER THE FACTS AND CIRCUMSTANCES SURROUNDING THE RESPONDENTS' ACTIVITIES.[1]

At the close of the evidence the trial court was under the duty to explain clearly to the jury the applicable law and the issues which the facts and the law raised for determination.

From the time of their opening to the jury the respondents had taken the position that, regardless of what the

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[1] The error in the court's instructions was raised in the Circuit Court of Appeals by Assignments of Error Nos. 42 and 43 (R. 2552, 2553). The court's refusal to give instructions requested by the respondents was raised by Assignments of Error Nos. 46, 47, 48, 49, and 56 (R. 2555, 2556, 2560, 2563, and 2568). The Circuit Court of Appeals sustained the respondents' contention (R. 3941), and the Government raised the issue in this Court as the first and "principal" question presented by its petition in No. 346. (Pet. 2.)

Government might claim was the effect of their activities on price, they had not unreasonably restrained competition. On the contrary, they contended, the effect of their activities had been to free, rather than to destroy, competition. The respondents had conceded at the outset (R. 159) that they had engaged in concerted action to buy distress gasoline from independent refiners and that they had realized that this might contribute[2] to a rise in the price. It was their contention, however, that the normal play of competition in the industry was being obstructed and distorted by competitive abuses which had driven the tank-car price of gasoline below the cost of production. One of those abuses was the forced sale by independent refiners of surplus or distress gasoline. This distress gasoline (together with "hot oil") tended to depress the competitive price of the spot tank car market *abnormally.* This abnormal lowering of the tank-car price, in turn, threatened to destroy the conservation price level of crude oil, which the Government and the industry were trying to secure. It pulled down the tank-car price of gasoline at the refinery below the cost of production, and threatened to wipe out one of the most important competitive elements in the industry—the non-integrated refiners. It caused retail price wars which both the Government and the industry were anxious to eliminate. It was the contention of the respondents that their concerted buying of distress gasoline had freed competition from these destructive tendencies and that it had had no other effect upon price than was normally to be expected from this legitimate action. And it was their contention that this purpose and effect did not constitute an undue restraint of trade or a violation of the Sherman Law.

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[2] There was never any contention that the respondents' activities were solely responsible for the price rise. The Government in its summing up expressly admitted that factors other than the respondents' purchases had contributed to the rise and stabilization of price (R. 2063-4). The evidence which the jury had before it was undisputed to that effect.

The facts upon which these contentions were based are established by substantial competent evidence in this record. The Government expressly concedes that there was a "wealth of evidence" from which inferences favorable to the respondents could be drawn (B. 147). In its petition for certiorari it conceded that the respondents' evidence tended to show:

> "(1) That they did not combine for the purpose of controlling prices;
>
> "(2) That their purchasing activities were confined to distress material, the removal of which did not suppress normal competition on the spot market" (Pet. 14).

The Government, however, took the position before the jury that if the respondents' concerted action had even contributed to the rise in price—if it had "affected the price one iota"[3]—then *as a matter of law that concerted*

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[3] At the close of the opening statement to the jury by Mr. Chaffetz, and in the presence of the jury, the following colloquy occurred:

> Mr. Donovan: May it please the Court, the counsel, in his opening, stated this, as I understood it—and if I am wrong, I wish you would correct me: That if this agreement which he alleged took place affected the price one iota that it was a violation of the law.
>
> I ask the Court to instruct the jury to disregard that statement as being an incorrect statement of the law.

action was an unreasonable restraint of trade. According to the prosecution, it was immaterial whether the higher price level had continued to be determined, largely or preponderantly, by the play of competitive sales on the spot market. It was immaterial whether or not there had been a competitive abuse, or whether its removal had helped to maintain the conservation price level of crude oil, preserve the independent refiners, and prevent retail price wars. It was enough that the concerted action taken by the respondents had affected the price an "iota".

These opposing contentions raised a clear cut issue. If the prosecution was right in its contention, then clearly the duty of the jury was a simple one to perform. The respondents had proclaimed the fact of their concerted action. They had conceded that this concerted action had contributed to the rise and stabilization of prices which had taken place. If the prosecution was right about the law, then there was nothing for the jury to do but to return a verdict of guilty.

This was the situation before the jury when the court

Mr. Chaffetz: If the Court please, I think that that is an exact statement of the law, and it was not an oversight. I made that statement deliberately. I am willing, in order to leave no erroneous impression with the jury, that the Court instruct the jury, that that is only my statement of the law, and not the Court's statement of the law.

Mr. Donovan: Then I ask the Court, so that there will be no misunderstanding or no misapprehension in the minds of the jury, the correct statement of the law be made to them at this time.

* * *

The Court: The Court will instruct the jury as to the law.

Mr. Donovan: Exception. (R. 113.)

The same contention was made by the Government in closing arguments. (R. 2045.)

delivered its charge. What was the jury to understand on this question by the instructions which were then given? Were they such as would naturally or inevitably appear to them to approve and confirm the Government's contention?

It seems inescapable that the net effect which a jury would get from that charge, with the issues drawn as they were by the Government and the respondents, was this:

(1) If the respondents were doing a substantial amount of trade in gasoline—which of course they were; and

(2) if they combined—which of course they did; and

(3) if by that combination they had the power and purpose to contribute to securing a rise in price—as to which there was no dispute—; and

(4) if the price did rise—as to which there was no conflict;

then, *regardless of the effect, if any, which the combination had had upon competition*, the respondents had violated the law and should be found guilty.

This was what the Government had dinned into the jury's ears since the opening of the trial. It was what the trial judge reiterated.

Once a power and purpose to raise price was found, the jury was excluded from any consideration of whether or not there was a competitive abuse which constituted an abnormal depressing influence upon price. It was excluded from any consideration of whether that power and purpose went beyond bringing about the rise in price which would naturally flow from the removal of an abnormal depressing and distorting factor. It was excluded from any consideration of whether or not the combination had, or could have had, any effect beyond freeing competition from the abnormal depressing effect of forced sales.

The Government, in its brief, denies that such was the fair import of the charge. We shall, therefore, first discuss the nature of the charge.

A. The trial court erroneously instructed the jury to return verdicts of guilty if the respondents' concerted action had contributed to any extent to an increase in gasoline prices without regard to whether it had effected an undue restraint upon competition.

The charge of the trial court confirmed the claim which the Government had repeatedly made in its opening and closing arguments, namely, that the respondents were guilty as charged if their activities had contributed "by an iota" to an increase in gasoline prices. Contrary to the decisions of this Court, the charge assumes that a combination having a purpose to affect and raise prices is unlawful under all circumstances, without regard to whether or not the means employed are such as to effect an undue restraint upon competition, or are lawful means. It makes no attempt to distinguish between a combination such as that involved in the *Appalachian Coals* case[1] and a combination such as was before this Court in the *Trenton Potteries* case,[2] where the parties substituted an agreed-on price for one determined by competition. Under the charge the sole test by which guilt or innocence was to be determined was the presence or absence of an effect on price.

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[1] *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344 (1933).

[2] *United States* v. *Trenton Potteries Co.,* 273 U. S. 392 (1927).

The instructions complained of were neither isolated nor inadvertent. They were repeated no less than twelve times.

The trial court instructed the jury that:[3]

> "* * * It is illegal and a violation of the Sherman Law for a group of individuals or corporations, or both, to act together to *raise* the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity." (R. 2404-5).

And further:

> "* * * If you find that a combination existed and that such combination had the power to *raise* the price, the amount by which prices may have been affected by the combination is not important under the law." (R. 2405).

And further:

> "You will also understand that if you find an illegal combination to have existed among all or some of the defendants, having for its purpose the *raising* of prices, it does not matter that there may have been also other factors which contributed to the raising of the prices, as for example, the existence of the Connally Act, * * *" (R. 2405).

And further:

> "Furthermore, if you find that the defendants combined and conspired to *raise* the sale prices of

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[3] Italics supplied.

their gasoline, any good intentions which they might have had in what they did will not make their understanding or combination legal, or excuse them from the consequences of their acts, and it does not matter how helpful or beneficial such illegal activities may have been to the defendants or to the independent refiners, or to any other class of persons * * *" (R. 2407).

And further:

"An understanding on the part of the members of a combination controlling a substantial part of an industry to *raise* the price which the members are to charge for their commodity is, in and of itself, an undue and unreasonable restraint of trade and commerce, * * *" (R. 2407).

And further:

"* * * The law condemns the exercise by any combination of the power to *raise* prices. And so, as I have stated, if you find a combination and that the members of the combination had the power to *raise* the price, and acted together for that purpose, then I charge you that the combination is illegal, and your verdict should be guilty as to each defendant whom you find to have knowingly participated therein." (R. 2407).

And further:

"If you come to the conclusion from the evidence in this case that these defendants possessed the power to *raise* the price of gasoline to be sold in the ten Middle Western States, and that there was the purpose to exert that power, then the combination became, from the time that this purpose appeared, an illegal one, and a conspiracy in restraint of trade, and the defendants participating therein are guilty of the offense charged in the indictment." (R. 2409).

And further:

> "If, from all the evidence before you, you find not only that there was concerted action, that is, action together, of the defendants, but that it sought to accomplish the illegal purpose of *raising* the price of gasoline to any extent, then it would follow that the acts and declarations of any one or more of the conspirators in furtherance of the conspiracy are binding upon all the others, * * *" (R. 2409).

And further:

> "* * * It is sufficient that the circumstances shown satisfy you to the extent I have indicated, that the parties thereto were acting together toward a common end, and that that end was the *raising* of prices charged as the object of the alleged conspiracy." (R. 2411).

And further:

> "However, if you should find that through the purchase of so-called distress gasoline, defendants and the independent refiners and others acting in co-operation with them had the power, and combined for the purpose of directly *affecting and raising* the level of spot market prices, then, as I have previously stated, the restraint of trade was as a matter of law undue and unreasonable and, therefore, illegal." (R. 2415).

And further:

> "* * * Whether or not such was an objective of the Code, the defendants would not be justified

> in combining with others to *raise* the price of gasoline, assuming that they had the power to do so, unless their activities in this regard were specifically authorized by the Code or approved by the President of the United States or the Secretary of the Interior under the National Industrial Recovery Act * * *" (R. 2415).

And further:

> "* * * No inference unfavorable to any of the defendants could be drawn from the mere fact that some of them purchased gasoline through the East Texas Refiners' Marketing Association, provided they acted independently of each other, but if they acted together, in concert, for the purpose of *raising* the price as alleged in the indictment, then their activities would be illegal." (R. 2420).

The instructions quoted above compelled the jury to return verdicts of guilty if it found that the respondents had "contributed to the raising of price" *by one iota.* It is impossible to claim as the Government does (B. 64) that the jury must have found the respondents solely responsible for the increase and subsequent stability in price. For, the trial court also instructed the jury:

> "You will also understand that if you find an illegal combination to have existed among all or some of the defendants, having for its purpose the raising of prices, *it does not matter that there may have been also other factors which contributed to the raising of the prices, as, for example, the existence of the Connally Act,* * * *" (R. 2405. Italics supplied).

All of these statements of the court to the jury must be read in the light of the issue as it had then been narrowed and presented by the Government and the respondents. From the Government's standpoint, any concerted action in buying which affected price one "iota" was unlawful. The respondents' position was that the combination was not unlawful if it affected prices merely by freeing competition from an artificially depressing obstacle. The court's charge clearly indicated to the jury that the court accepted the Government's contention and rejected the respondents'.

The Government now seeks to shift its ground and escape from the consequences of its success in persuading the trial court into error by saying that the trial court meant something different from what it said. It resorts to the fact that in a few instances the court in its charge added the word "fix" or "fixing" in either the disjunctive or conjunctive, without discrimination, to the words "raise" or "raising" (B. 63, n. 1). Apparently, it is the Government's argument that through the occasional use of the word "fix" or "fixing" the jury understood that they were to apply some stricter test than that authorized by the court's reiterated use of the word "raise". The court in its charge did not explain to the jury what it meant by "fix" or "fixing" as distinguished from "raise" or "raising". Indeed, it is quite apparent that the two sets of words were used indiscriminately. Thus the net effect of the court's charge is precisely to the contrary of what it ought to have been, it being clear that the most careful discrimination between "fix" and "raise" was necessary in order that the jury might distinguish between an illegal situation of the character presented by the *Trenton Potteries* case and a legal situation of the character presented by the *Appalachian Coals* case. Much more, indeed, than mere verbal differentiation between the two sets of words was necessary. It is plain that the jury should have been carefully instructed as to the tests to be specifically applied in order to distinguish between the two situations.

As stated by the Government (B. 62-63): the jury was instructed that "before returning a verdict of guilty as to any defendant it must find that the evidence established beyond a reasonable doubt all the material and essential allegations of the indictment;" the trial judge quoted from the indictment to show that the defendants were accused of combining for the purpose of *raising and fixing* gasoline prices in the Mid-Western area; and on the allegation of venue the jury was required to find beyond a reasonable doubt that the defendants had conspired together for the purpose of artificially *raising and fixing* "spot market prices and the price of gasoline in the Mid-Western area as charged in the allegations of the indictment." Then, however (R. 2404), *in defining the material allegations of the indictment*, the court said:

> "Now, what must you find before you may conclude that the Sherman Act has been violated? It is illegal and a violation of the Sherman Law for a group of individuals or corporations, or both, to act together to *raise* the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity.
>
> "If you find that the defendants, and those acting in concert with them, controlled the greater part of the gasoline sold in the ten Middle Western States, and had the power to raise the price of that gasoline, and that the defendants and these other persons acting with them have knowingly engaged

> in a combination to *raise or* fix the price to be charged for gasoline to jobbers or consumers in the Mid-Western area as charged in the indictment, then *you will understand that these defendants have violated the Sherman Act and are guilty as charged in the indictment.*" (Italics supplied.)

Here in unmistakable language the jury is instructed that a combination to raise prices is unlawful and that proof of a combination to raise prices is sufficient to satisfy the allegations of the indictment and to compel conviction.

The Government's argument concedes the failure of the trial court to discriminate between "raise" and "fix" (B., 63, footnote). It asserts, however, that the court must be assumed to have employed some stricter standard inherent in the meaning of the word "fix", that is, that it must have understood the word "raise" to mean the same as the word "fix". Such a contention is not only without foundation but beside the point. It was the bounden duty of the trial court, as we have shown, to carefully discriminate between the two concepts, and the only question we are considering is the minimum finding which the jury was authorized to make under the court's instructions. In twelve different places it had been told that the guilt or innocence of the respondents was to be determined solely by reference to the question of whether or not their concerted activities had contributed to any extent to an increase in prices, without regard to whether the combination had effected an undue restraint upon competition. The sporadic use of the word "fix" or "fixing" in the charge cannot conceivably affect the situation.

The Government apparently now concedes that on this record it was the duty of the jury to consider: (1) whether distress gasoline was a competitive evil; (2) whether the concerted buying was directed toward the removal of that evil; (3) whether during that buying the spot market price continued to be largely or preponderantly determined by the play of competition; (4) whether the buying by respondents did more than free competition from the abnormal depressant effect of forced sales and (5) whether, in view of existing and latent competition from active competitors of respondents it would have been possible for the latter arbitrarily to fix and control prices. Apparently the Government also now concedes that if these questions had been answered by the jury favorably to the respondents, the latter would have been entitled to verdicts of not guilty. (See B. 62-66, 74-75.)

The Government seeks to escape from the effect of these concessions by claiming (B. 84) that all these questions *were* submitted to the jury and decided *adversely* to the respondents. In view of the character of the charge there is no justification whatever for that claim. Indeed, as will presently be pointed out, the jury was affirmatively told *not* to consider the evidence bearing upon any of these matters, that is, the surrounding facts and circumstances, unless it *first* found that the defendants did *not* have the power to raise price and did *not* combine for that purpose (R. 2414, pp. 163-7, *infra*). That the court regarded every combination which contributes to an increase of prices as "price fixing", as it loosely used the term, and indeed as it had been used by the prosecution throughout the trial of the case, is clear from reading the charge in its entirety. It is emphasied by the following excerpt:

> *"The law condemns the exercise by any combination of the power to raise prices, and so, as I have stated, if you find a combination and that the members of the combination had the power to raise the price, and acted together for that purpose, then I charge you that the combination is illegal and your verdict should be guilty as to each defendant whom you find to have knowingly participated therein."* (R. 2407. Italics supplied.)

It is clear that the jury was required to find only that the respondents through their purchase of the distress gasoline affected the market price by raising it.

Even if we accept the Government's contention that the trial court occasionally gave a correct instruction, this would not cure his persistent errors. There would remain a serious conflict in the instructions which must necessarily have confused and misled the jury; irrespective of the fact that it was forbidden to consider the vital evidence with respect to the circumstances surrounding the respondents' activities. The Government itself argues that the instructions confused and misled the Circuit Court of Appeals. Its principal argument (B. 84) is based, not upon the theory that the Circuit Court of Appeals misapprehended the law, but on the ground that it misunderstood and misinterpreted the instructions of the district court.[4] If after a careful and deliberate study of the record and the charge, three judges of the Circuit Court of Appeals "misunderstood" the meaning of the instructions to the jury, how can the Government now ask this Court to find that the jury in the heat and the pressure of the trial did not likewise misunderstand the instructions. Apparently, the charge was also misleading and confusing to the Government. It now argues that the district court "charged the jury that if it found that the defendants combined for the purpose of raising and fixing gasoline prices in the manner set forth in the indictment, and if it found that they had the power so to raise and fix prices, a restraint imposed by their combination would be unlawful and unreasonable" (B. 50). Emphasizing the word "fixed", it argues that the instruction required the jury to find a "price fixing agreement" within the meaning of *United States* v. *Trenton Potteries Co.*, 273 U. S. 392. In its petition, however, it summarized the charge differently, as follows: The "trial court instructed the jury that if it found that the defendants had the power to raise gasoline prices and had combined for that purpose, the restraint of trade was unreasonable and illegal" (Pet. 2). The word "fix", which it now emphasizes, was there omitted. Obviously, if the instructions were misleading, not only to the Circuit Court, but to the Government itself, they could not have been clear to the jury. Thus, even if we could accept the Government's present view of the instructions, the verdict of the jury cannot stand by reason of the principle laid down in *District of Columbia* v. *McElligott*, 117 U. S. 621, 630 (1886), where this Court said:

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[4] See also page 18 of the Government's petition for certiorari in No. 346 where it states that the Circuit Court of Appeals "misunderstood the scope of the issues submitted to the jury by the trial court's instructions."

> "* * * The charge was inconsistent with the instructions previously given, and was calculated to mislead the jury, for it submitted to them a question

which those instructions had, in effect, if not in terms, declared to be immaterial in the case.'[5]

B. The instructions of the trial court compelled the jury to return verdicts of guilty even though it found that "respondents' purchasing activities were confined to distress material, the removal of which would not suppress or unduly affect normal competition on the spot market."

The jury was thus instructed to return verdicts of guilty if it found that the respondents' activities had contributed in any degree to a *rise* in gasoline prices, without regard to the effect of their combination on competition. The wholly erroneous character of these instructions appears at once when we examine the evidence.

The respondents contend, at pages 299 to 327, *infra,* that the record contains *no* substantial competent evidence that their activities unreasonably restrained trade. At pages 9 to 112, *supra,* and in Appendix A, they have set forth summaries of the evidence which, they believe, fairly establish that fact. For present purposes, however, no such exhaustive analysis of the evidence is necessary. In testing the instructions of the trial court, the respondents need only show that it was *fairly possible* for the jury to conclude that their activities had not unreasonably restrained trade.

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[5] In accord are:

Ward v. *Cochran,* 150 U. S. 597, 610 (1893); *Erhardt* v. *United States,* 268 Fed. 326 (C. C. A. 7th, 1920); *McLean Medicine Co.* v. *United States,* 253 Fed. 694, 696 (C. C. A. 8th, 1918); *Kuhn* v. *United States,* 42 F. (2d) 210, 211 (C. C. A. 3rd, 1930); *Degroot* v. *United States,* 78 F. (2d) 244, 253 (C. C. A. 9th, 1935).

Applying this test, the respondents believe that no one can dispute the existence of competent and substantial evidence in the record which would support the following inferences:

> (1) That the only thing which the respondents agreed to do or did was to take concerted action to eliminate distress gasoline;
>
> (2) That distress gasoline was a "competitive evil"—that is to say, a factor which tended to impair or destroy normal competition.
>
> (3) That the respondents' activities neither fixed nor controlled prices nor unduly affected the play of normal competition; that they affected prices only in the sense that the removal of the competitive evil of distress gasoline permitted prices to rise to a normal competitive level; and that competitive forces over which they had no control were such that the concerted buying which they did or agreed to do had no power to do more.

There is certainly substantial evidence that the respondents' combination was a program to purchase distress gasoline from independent refiners. The Circuit Court of Appeals concluded that,

> "the substance of what was accomplished and agreed on was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices". (R. 3919).

We believe that there can be no serious dispute that the evidence establishes that distress gasoline in the hands of independent refiners had been a competitive evil which had driven the price of gasoline below the cost of production. We further assert that there is no evidence in the record in conflict with this conclusion. But, in any event, no one can deny *that the record contains substantial evidence* that distress gasoline was a competitive evil which threatened the petroleum industry. As the Circuit Court of Appeals said:

> "* * * If there is any one thing completely established, it is that the oil industry, as well as numerous Governmental agencies, Federal and State, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary, if the industry was to survive, to say nothing of prospering * * *" (R. 3929).

We further believe that there is no competent or substantial evidence that the respondents' activities either fixed or controlled prices by unduly affecting the play of normal competition. But again, no one can deny that there is at least substantial evidence to the contrary. *Even the Government concedes that there was at least evidence which entitled the jury to find that the respondents had affected prices only in the sense that their removal of the competitive evil of distress gasoline had permitted prices to rise to a normal competitive level.* In its petition for certiorari in this case the Government said:

> "* * * The defendants, on the other hand, offered evidence designed to show (1) that they did not combine together for the purpose of controlling prices; (2) that their purchasing activities were confined to 'distress' material and removal of which

> did not suppress normal competition on the spot markets; * * *" (Pet. 14)

Again in its brief the Government makes clear that there was:

> "* * * certain evidence which, if the jury had given it controlling weight, would have supported certain findings contrary to those which the jury actually made. All that this showing established was that there was a wealth of evidence from which opposing factual inferences might have been drawn" (B. 147).

Let us apply the instructions of the trial court to the evidence just described. That evidence undoubtedly exists. Undoubtedly it is competent and substantial and would have justified the jury in drawing the conclusions indicated above. If the jury *had* drawn those conclusions, it would have found that the respondents had merely engaged in concerted action to eliminate "a recognized competitive evil", the removal of which would tend to promote rather than to impair competition. It would have found that the respondents' activities had neither fixed nor controlled prices:—that they had affected prices only in the sense that their removal of the competitive evil had permitted prices to rise from a sub-normal level to a somewhat higher level determined by the free play of normal competition. *Under the instructions of the trial court,* however, if the jury had made these findings it would have been compelled to return verdicts of guilty. Once it found that the respondents' activities had contributed in any way to a rise in prices, then it was compelled to find, in the language of the trial court, "that these defendants have violated the Sherman Act and are guilty as charged in the indictment" (R. 2404).

The Government's brief states (B. 84) that this Court is precluded by the findings of the jury from testing the charge of the trial court in the light of the evidence that the combination was one to eliminate a competitive abuse. It attacks the conclusion of the Circuit Court of Appeals that the charge constituted reversible error upon the same grounds:

> "The court's assumption that in the case at bar the combination was simply 'an agreement to raise or fix prices by the elimination of a competitive abuse', is contrary to the findings which the jury necessarily made when it convicted the defendants. Under the trial court's instructions to the jury it was required, in order to convict the defendants, to find that they had combined both for the purpose of raising and fixing spot market prices and for the purpose of thereby raising the prices at which they sold gasoline in the Mid-Western area. In other words, the jury found that price raising and price fixing, as such, was the *primary* objective of the conspiracy" (B. 84).

This argument ignores the fact that the jury was instructed to return verdicts of guilty even though it found nothing more than that the combination had had an effect on price, regardless of whether it had effected an undue restraint upon competition. This being so, the only fact which the jury can be said to have found by returning verdicts of guilty is that the respondents had the purpose and power to raise prices. Jury findings are based upon the instructions of the trial court. Obviously if the jury receives improper instructions no findings which it makes can cure the error in those instructions. This Court, therefore, will test the charge of the trial court in the light of the facts which the jury might have found.

We turn to the question of whether, tested in that light, the instructions were correct.

C. The test of legality under the Sherman Law is the effect of the concerted action upon free competition, not the effect upon prices irrespective of whether or not competition has been unduly restrained.

No decision of this Court has ever held, or we believe even intimated, that a combination is illegal merely because its purpose or effect is to raise prices. On the contrary, and without exception, the decisions of this Court hold that the purpose of the Sherman Law is to preserve competition by preventing its undue restraint, and that the legality of a combination is to be determined in the light of its intended or actual effect on competition.

> *United States* v. *American Tobacco Co.,* 221 U. S. 106 (1911);
> *United States* v. *Union Pacific Railroad Co.,* 226 U. S. 61 (1912);
> *Nash* v. *United States,* 299 U. S. 373, 376 (1913);
> *American Column & Lumber Company, et al.* v. *United States,* 257 U. S. 377 (1921);
> *Charles A. Ramsay Co.* v. *Associated Bill Posters of the United States and Canada, et al.,* 260 U. S. 501 (1923).

This rule of law was completely ignored by the trial court. By the charge, the jury was forbidden to consider whether the effect of the combination upon competition constituted an undue restraint. Instead, the sole test which it was permitted to apply was whether the combination had the power and the purpose or effect of raising prices.

The rule of law, which the trial court refused to follow in this case, has nowhere been more forcefully stated than in the dissenting opinion of Mr. Justice Brandeis in *American Column and Lumber Company* v. *United States,* 257 U. S. 377 (1921) as follows:

> "* * * The illegality of a combination under the Sherman Law lies not in its effect upon the price level, but in the coercion thereby effected. * * *
>
> "The cooperation which is incident to this Plan does not suppress competition. On the contrary it tends to promote all in competition which is desirable.* * *" (257 U. S. at 417-8).[1]

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[1] The majority opinion in the case adopts the same view of the law.

> "It has been repeatedly held by this court that the purpose of the statute is to maintain free competition in interstate commerce and that any concerted action by any combination of men or corporations to cause, or which in fact does cause, direct and undue restraint of competition in such commerce falls within the condemnation of the act and is unlawful." (*Ibid,* 400.)

Similarly in *Standard Oil Company* v. *United States,* 221 U. S. 1 (1911), the case which first announced the "rule of reason," this Court indicated that the Sherman Law condemns a combination only when the enhancement of prices is brought about through the elimination of competition.

> "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs *which it was thought would flow from the undue limitation on competitive conditions* caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating

That an undue restraint on competition, and not mere effect on price, is the test of legality, is shown by the case of *Maple Flooring Manufacturers Association* v. *United States*, 268 U. S. 563 (1925). That case concerned the legality of a combination to gather and disseminate information and statistics covering various items in the maple flooring industry. The combination among the defendants was admitted. There was evidence in the record tending to show that the effect of the combination was to stabilize prices and to produce fairer price levels. The lower court found that the combination tended "to increase prices" (268 U. S. at 565). Upon that record the Government in its brief contended that the combination was illegal because "it is sufficient to prove the adoption of a plan or scheme, which in its operation necessarily affects prices * * *."[2] The opinion of this Court expressly stated that the case turned upon the issue thus presented. (*Ibid*, 568.) It sustained the conclusion of the court below that the defendants' activities would tend to raise prices. It rejected, however, the view that such activities were illegal, saying:

> "It is not, we think, open to question that the dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uniformity of price and trade practice. Exchange of price quotations of market commodities tends to produce uniformity of prices in the markets of the world. * * * But the

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as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, * * *." (221 U. S. at 58.)

[2] In the Supreme Court of the United States, October Term, 1924, No. 342, *Maple Flooring Manufacturers Association, et al.* v. *United States*, reply brief on behalf of the United States, p. 182.

natural effect of the acquisition of wider and more scientific knowledge of business conditions, on the minds of the individuals engaged in commerce, and its consequent effect in stabilizing production and price, can hardly be deemed a restraint of commerce or if so it cannot, we think, be said to be an unreasonable restraint, or in any respect unlawful." (*Ibid*, 582).

See also:

Cement Manufacturers Protective Assn. v. *United States*, 268 U. S. 588, 603, 604 (1925).

In view of these authorities it is impossible to contend that the Sherman Law forbids all combinations which have the effect of raising prices merely because of the effect of such combinations on price and without reference to whether the combination would effect an undue restraint on competition. As Mr. Justice Brandeis said in the *Chicago Board of Trade* case, "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.* * *" (246 U. S. at 238).

The reason for this rule is clear. Many combinations which tend to raise or stabilize prices *promote* rather than *impair* fair competitive opportunities. Let us take a single illustration. Assume that a concern conducting a nationwide business is engaged in carrying on destructive price wars against its competitors. The very act of engaging in such practices may constitute a violation of the Sherman Law. If so, an agreement between the company and its competitors to abandon such illegal activities is obviously not condemned by the law. Yet the result and purpose of such an agreement is to raise prices by eliminating the destructive practices which have abnormally depressed prices. Measured by the court's charge, such an agreement not to violate the Sherman Law would be illegal solely because of its effect on prices. But that is not the law.

This Court considered that identical proposition in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 177 (1911). In that case the Government urged that the Sherman Law condemned all agreements which restricted competition without regard to whether the restraint was unreasonable or not. The position of the Government was summarized by this Court as follows:

> "* * * Thus the Government, for the purpose of fixing the illegal character of the original combination which organized the old American Tobacco Company, asserts that the illegal character of the combination is plainly shown because the combination was brought about to stay the progress of a flagrant and ruinous trade war. In other words, the contention is that as the act forbids every contract, and combination, it hence prohibits a reasonable and just agreement made for the purpose of ending a trade war. * * *" (221 U. S. at 177).

This Court rejected this contention, saying that it grew "out of a plain misconception of both the letter and spirit of the Anti-Trust Act" (*Ibid*, 178).

Repeatedly since 1911 this Court has reaffirmed the position it took in the *American Tobacco* case. Repeatedly it has had to pass upon cases in which defendants have combined for the purpose of eliminating or mitigating some form of unfair competition or competitive abuse. Repeatedly, such combinations have been sustained, in spite of the fact that one effect of the defendants' activities would necessarily be to raise and stabilize prices.

> *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918);
> *Window Glass Mfrs. Assn.* v. *United States*, 263 U. S. 403, 413 (1923);
> *Maple Flooring Mfrs. Assn.* v. *United States*, 268 U. S. 563, 582 (1925);
> *Cement Manufacturers Protective Assn.* v. *United States*, 268 U. S. 588, 604, 606 (1925);
> *Standard Oil Co.* v. *United States*, 283 U. S. 163, 175, 179 (1931).

Again, in *Appalachian Coals* v. *United States*, 288 U. S. 344 (1933), this Court upheld the legality of an exclusive sales agency in the coal industry, it appearing that the purpose of the combination was to eliminate competitive abuses.

As stated by this Court in the *Appalachian* case "the challenged combination lies in the creation by the defendant producers of an exclusive selling agency." That combination embraced 137 bituminous coal producers, and they conferred upon their common selling agency the sole power to determine the prices at which their coal should be sold. This Court thereupon thus stated not only the contention of the Government, but the finding of the district court:

> "The contention is, and the court below found, that while defendants could not fix market prices, that concerted action would 'affect' them, that is, that it would have a tendency to stabilize market

> prices and to raise them to a higher level than would otherwise obtain. But the facts found do not establish, and the evidence fails to show, that any effect will be produced which in the circumstances of this industry will be detrimental to fair competition. A cooperative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint merely because it may effect a change in market conditions, where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities. Voluntary action to rescue and preserve these opportunities, and thus to aid in relieving a depressed industry and in reviving commerce by placing competition upon a sounder basis, may be more efficacious than an attempt to provide remedies through legal processes. The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade.* * *" (288 U. S. at 373-374).

The opinion in the *Appalachian* case shows that there is a striking similarity between the conditions in the coal industry which the defendants in that case set out to cure, and the conditions in the oil industry which respondents in the case at bar undertook to cure.

> "This unfavorable condition [of the coal industry] has been aggravated by particular practices. One of these relates to what is called 'distress coal'. The greater part of the demand is for particular sizes of coal such as nut and slack, stove coal, egg coal, and lump coal. Any one size cannot be pre-

> pared without making several sizes. According to the finding of the court below, one of the chief problems of the industry is thus involved in the practice 'of producing different sizes of coal even though orders are on hand for only one size, and the necessity of marketing all sizes.' Usually there are no storage facilities at the mines and the different sizes produced are placed in cars on the producer's tracks, which may become so congested that either production must be stopped or the cars must be moved regardless of demand. This leads to the practice of shipping unsold coal to billing points or on consignment to the producer or his agent in consuming territory. If the coal is not sold by the time it reaches its destination, and is not unloaded promptly, it becomes subject to demurrage charges which may exceed the amount obtainable for the coal unless it is sold quickly. The court found that this type of 'distress coal' presses on the market at all times, includes all sizes and grades, and the total amount from all causes is of substantial quantity" (*Ibid*, 362-363).

Let us compare the two cases, the *Appalachian* case and the one at bar. In each case a "distress" product adversely affected the market. In each case the agreement involved cooperative action which would tend to stabilize or even raise existing prices. In the *Appalachian* case the agreement was held to constitute a reasonable restraint upon trade. In the case at bar, the jury was instructed that an agreement to raise prices or resulting in the raising of prices is *per se* illegal, without regard to the effect of the combination on competition. The error in that instruction as applied to the evidence is therefore plainly revealed by the disposition made of the *Appalachian* case.

The basic question in each case is the same. It is not merely whether "fairer," that is, higher prices, have been sought, but the manner in which those prices have been brought about. That test, applied in the *Appalachian* case, was again stated to be the fundamental law in *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 597-598 (1936), the most recent case involving a combination of competitors to reach the Supreme Court.

> "* * * Designed to frustrate unreasonable restraints, they do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law." (297 U. S. at 597-8.)

The Government argues that the *Sugar Institute* case, rejected the principle that there may legally be concerted action to remove abuses if the effort is confined to what is necessary to remove the abuse and competition is merely freed from the effects of the abuse (B. 75-6).

Contrary to the contentions of the Government, however, it is clear that the *Sugar Institute* case is in complete accord with the *Appalachian* case. In that case, the defendants agreed, not only to publish their prices, but *not to depart from the prices so published* without at least a day's notice (297 U. S. at 580, 582). They further agreed *to refrain entirely* from certain types of transaction (*Ibid.* 591). This Court found these agreements to be entirely unnecessary to obtain the abolition of secret rebating. A mere agreement for the open publication of prices would have obtained that result.

On page 578 this Court said: "The court found that the defendants 'in most of their activities' had 'gone much further than was reasonably necessary to accomplish their professed aims of eliminating fraud, waste and secret, unfair or illegal discrimination'". On page 591 it said: "The court found that defendants' action went further than was necessary to prevent secret rebating and amounted to unreasonable restraints." This Court approved both of these findings.

In the instant case, however, as we have shown, the jury was fully entitled to find that the respondents' concerted action went no further than was necessary to remove the abuse of "distress" gasoline; that the respondents' agreement was strictly confined to the attainment of that end;[3] that in confining their buying to "distress" gasoline at "fair going market prices" established in sales by independent refiners to jobbers, the respondents took no action "to fix and maintain arbitrary and unreasonable prices," or "to fix monopoly prices" (*cf. Appalachian Coals* v. *United States*, 288 U. S. 344, at 373 [1933]); that the respondents' activities had no effect whatever upon prices except the effect which would naturally follow from the removal of the competitive abuse; and that the combination did not remove the ordinary basic competitive factors governing the spot market.[4]

The opinion in the *Sugar Institute* case concludes

> "* * * Nor does the fact that the correction of abuses may tend to stabilize a business, or to pro-

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[3] See pp. 40-5, *supra.*

[4] See pp. 46-51, *supra.*

> duce fairer price levels, require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade. * * *" (*Sugar Institute* v. *United States*, 297 U. S. 553, 598 [1936]).

* * *

The respondents submit that the controlling principles to be deduced from the cases we have discussed may be summarized as follows:

> (1) Forced sales of a distress product which contribute substantially to the depressed condition of an industry constitute a competitive evil. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 362-3 (1933).
>
> (2) An intention 'to stabilize the business' or to produce fairer price levels,' through the elimination from a competitive market of a competitive evil (such as distress gasoline) is not unlawful. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 373-4 (1933); *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 597-8 (1936); *Maple Flooring Mfrs. Assn.* v. *United States*, 268 U. S. 563, 582 (1925); *Cement Manufacturers Protective Assn.* v. *United States*, 268 U. S. 588, 604, 606 (1925).
>
> (3) An effort to correct such a competitive abuse is promotive of sound competition and not condemned by the law unless by reason of its intent, inherent nature or effect it goes beyond what is necessary to correct the abuse, and, instead of merely freeing competition from the effect of that abuse, it unreasonably restrains competition in some other manner. *American Tobacco Co.* v. *United States*, 221 U. S.

> 106, 177 (1911); *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 373-4 (1933); *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 597-8 (1936); *Window Glass Mfrs. Assn.* v. *United States*, 263 U. S. 403, 413 (1923); *Standard Oil Co.* v. *United States*, 283 U. S. 163, 175, 179 (1931); *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918).

Let us test the charge of the trial court with these pronouncements of the law by this Court. It definitely appears from the cases cited above that cooperative effort to raise prices solely through the elimination of a competitive abuse may be legal. The trial court, however, instructed the jury that

> "* * * It is illegal and a violation of the Sherman Law for a group of individuals or corporations, or both, to act together to raise the prices to be charged for the commodity which they manufacture, where they control a substantial part of the interstate trade and commerce in that commodity" (R. 2404-5).

Obviously the two propositions are inconsistent.

The Government in its brief asserts that the charge of the district court is justified by and was based upon the decisions of this court in cases involving agreements to fix market selling prices. If it is intended to mean that the price-fixing cases sustained the charge actually given, then we submit the Government has misconceived those cases. An examination of the decisions clearly reveals that this Court has never condemned price-fixing combinations merely because they raised prices. On the contrary, they condemn such agreements because they achieve that result by suppressing the play of competition in the determination of price. They are illegal *per se*, because they defeat the very purpose of the Sherman Law, *i. e.*, they substitute an arbitrary agreement for the play of competition in the determination of price. That this is true can be illustrated by examining the leading price fixing case, *Trenton Potteries Co.* v. *United States*, 273 U. S. 392 (1927).

In that case manufacturers controlling the manufacture and sale of sanitary pottery agreed to sell only at prices to be determined arbitrarily by the group. It is obvious that the agreement destroyed any price competition formerly existing between the parties. In spite of this fact the defendants urged upon the court that there had been no undue enhancement of prices and for that reason the restraint of trade was not condemned by the Sherman Law. But this Court rejected this argument and pointed out that the Sherman Law was not directly concerned with prices but with the preservation of competition as follows:

> "That only those restraints upon interstate commerce which are unreasonable are prohibited by the Sherman Law was the rule laid down by the opinions of this Court in *Standard Oil* and *Tobacco* cases. But it does not follow that agreements to fix or maintain prices are reasonable restraints and therefore permitted by the statute, merely because the prices themselves are reasonable. * * * Our view of what is a reasonable restraint of commerce is controlled by the recognized purpose of the Sherman Law itself. Whether this type of restraint is reasonable or not must be judged in part at least in the light of its effect on competition, for whatever difference of opinion there may be among economists as to the social and economic desirabil-

> ity of an unrestrained competitive system, it can not be doubted that the Sherman Law and the judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition. See *United States v. Trans-Missouri Freight Association*, 166 U. S. 290; *Standard Oil Co. v. United States, supra; American Column Co. v. United States*, 257 U. S. 377, 400; *United States v. Linseed Oil Co.*, 262 U. S. 371, 388; *Eastern States Lumber Association v. United States*, 234 U. S. 600, 614.
>
> "The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. * * *" (273 U. S. at 396-7).

In that case this Court expressly sustained an instruction which refused to make the issue of guilt or innocence depend upon whether the combination had produced reasonable or unreasonable prices, saying:

> "The trial court charged, in submitting the case to the jury, that if it found the agreements or combination complained of, it might return a verdict of guilty without regard to the reasonableness of the prices fixed, or the good intentions of the combining units, whether prices were actually lowered or raised or whether sales were restricted to the special jobbers, since both agreements of themselves were unreasonable restraints. * * * (*Ibid*, 395).
>
> * * *
>
> " * * * in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend

> upon so uncertain a test as whether prices are reasonable * * * (*Ibid*, 398).
>
> * * *
>
> "The charge of the trial court, viewed as a whole, fairly submitted to the jury the question whether a price-fixing agreement as described in the first count was entered into by the respondents. Whether the prices actually agreed upon were reasonable or unreasonable was immaterial in the circumstances charged in the indictment and necessarily found by the verdict. * * *" (*Ibid*, 401).

The true ground of decision in the *Trenton Potteries* case, was that the defendants had the power and purpose to suppress the play of competition in the determination of market price and to substitute an agreed-on market price for a competitive one. The determining factor was the destruction of market competition, not whether prices were higher or lower, reasonable or unreasonable.[5]

There is nothing, then, in the cases which justifies the charge of the court that the test of legality of this combination is merely whether there was purpose and power to raise prices. Under the cases considered here and on the evidence adduced, the court was under a duty to make it clear to the jury that they must consider: (1) Whether or not distress gasoline was or was not a competitive evil in this industry. (2) Whether the concerted action of the respondents was taken in an effort to remove such competitive abuse. (3) Whether that concerted action in purpose or effect went beyond the mere freeing of competition in the industry from the distorting effect of the abuse and imposed some other restraint unnecessary and undue in character.

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[5] The other cases involving agreements to fix market prices are to the same effect. See cases cited, B. 71-3.

The court should have made clear to the jury that if the method for removing the abuse did not impose a restraint beyond what was necessary to correct the abuse, and the spot market price continued to be a reflection of the play of competition, then the restraint would not be undue. He should have made it clear that the restraint would not become "undue" because of the removal of the artificially depressing effect on price of an abuse, necessarily thereby contributing to a rise in and stabilization of the market price at a higher level. Instead of doing so, the court instructed the jury that if the combination had the power and purpose to contribute to any extent to a rise in price, it was unlawful.

D. The district court committed reversible error by instructing the jury that it was to consider the reasonableness of the respondents' acts, and the facts and circumstances surrounding them, only if it first found (a) that respondents did not have the power to raise the level of spot market prices, or (b) that they did not combine for that purpose, and (c) that their purchases affected the spot market prices only indirectly and incidentally.

In the last section we have pointed out that the district court committed reversible error in instructing the jury that it should find the respondents guilty even if it found no more than that they had combined for the purpose or with the effect of raising prices, without regard to whether or not they had fixed or controlled prices or otherwise unreasonably restrained competition.

The error in the court's charge, however, goes even deeper than this. For, even if the court had correctly instructed the jury as to the tests of legality or illegality under the Sherman Law—*i.e.*, as to the necessity of finding an unreasonable restraint of competition and the standards for determining it as applied to the evidence in this case—the jury would have been unable to apply those tests because it was not permitted to consider the facts and circumstances surrounding the respondents' activities. This error was fundamentally prejudicial, and by itself would require reversal of the judgments of guilty. The Government concedes that "there was a wealth of evidence from which opposing factual inferences might have been drawn" (B. 147). The instruction now complained of compelled the jury to draw its inferences without examining the very evidence which, under the decisions of this Court, must be particularly examined in order to determine what inferences are to be drawn.

That portion of the charge here complained of reads as follows:[1]

> "If you should find that the defendants acting together, and those independent refiners found acting in concert with them, did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, *or* that they did not combine for that purpose, *and* if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally, then you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to produce destructive competition and restore competition to a fairer base and produce fairer price levels. In such event, you may con-

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[1] R. 2414.

> clude that the purchase of such gasoline in the manner shown by the evidence was reasonable and beneficial and not injurious to the public interest and that, therefore, the restraint of trade was not undue and not illegal, and you may acquit the defendants." (Italics supplied.)

Analyzing the charge as made, it very definitely instructs the jury that it may not consider the facts and circumstances surrounding the respondents' activities to determine whether such activities were reasonable and beneficial and not injurious to the public interest, *unless* the jury shall first find in the absence of such facts and circumstances:

> (1) that the respondents did not possess the power to raise the spot market prices, or
>
> (2) did not combine for that purpose, and
>
> (3) *in either of the above cases,* their purchases only indirectly and incidentally affected the spot market prices.

It requires only a word to make apparent the vice inherent in this charge.

(1) The effect of this, taken with what had gone before in the charge, was to tell the jury: If you find a combination with power and purpose to raise price, then that is the end of it; you must convict without determining whether the concerted action of the respondents was intended merely to remove destructive competition and to restore competition to a fairer basis; you are also precluded from considering whether the competitive forces, over which the respondents had no control, limited their power to raise prices beyond the level naturally resulting from the removal of the competitive abuse.

On the other hand, even if the jury found that there was no power to raise prices, they were still authorized to continue with their consideration of the case, and presumably to find the respondents guilty—because if not, why should they continue. Thus the jury was authorized to find an undue restraint after it had previously found an utter lack of power to restrain. It is legally impossible for the two findings to co-exist.

(2) The next portion of the charge precluded the jury from examining the surrounding facts and circumstances unless it first found that the respondents had not combined to raise prices. Of course, if there was no combination there should have been no conviction. Again the jury was required to find the respondents not guilty *before* considering the surrounding facts and circumstances to determine whether or not they were guilty.

(3) Not only did the charge require the jury, before it could apply the rule of reason, to find either that there had been no combination, or that the combination had no power, but it required the jury also to find that the combination's effect upon price must have been indirect and incidental. Obviously, no jury could determine whether the restraint was incidental or indirect without first looking at the surrounding facts and circumstances. The court's charge, however, forbade the jury to look at the surrounding facts and circumstances unless it first determined, *in the absence of such facts and circumstances, that the restraint imposed was incidental.* For, as shown above, it removed from the jury's consideration, *until* they had found that the restraint was incidental, the only facts (*i.e.*, the facts and circumstances surrounding the respondents' acts) upon which such a finding could be based.

The instruction of the court, which clearly permitted such a result, called for immediate modification and the giving of respondents' requested instructions Nos. 89 and 90.[2]

E. Respondents took specific exceptions to the instructions complained of.

The Government finally asserts that "respondents' failure to take any exceptions specifying the error now alleged bars them from raising it in their appeal." (B. 68).

The record discloses, on the contrary, that the exception taken to the portions of the charge here complained of was specifically directed to the precise error relied on. As we have seen, the trial court instructed the jury to return verdicts of guilty if the respondents had contributed in any degree to the rise of gasoline prices without regard to the effect of the combination upon competition. Furthermore, it specifically forbade the jury to consider the facts and circumstances surrounding the respondents' activities. Exception was taken to so much of the charge "as stated that any agreement between persons having for its purpose the raising of prices as distinguished from the fixing of prices was itself unreasonable under the Sherman Act, irrespective of other circumstances."[1] Exception was also specifically taken "to the Court's charge that a combination to raise a price where there is power to control such price is in itself unlawful and unreasonable, even though that power to affect prices as shown by the evidence, is merely power to remove an obstacle to a healthy, competitive price, and to remove a destructive practice in the industry in and by the methods shown by the evidence.'"[2] The trial court was also expressly requested to give Instructions Nos. 89 and 90,[3] which it had previously refused to give. It adhered to its refusal. It also refused to further define for the jury "* * * what constitutes lawful and unlawful restraint, and to state to the jury what circumstances they should take into account in determining whether or not a given restraint is reasonable or unreasonable * * *."[4] It also refused to charge the jury that it must find, in addition to the possession of power by the respondents in company with the independent refiners to raise the price of gasoline, that the respondents exercised that power "by the means charged in the indictment, not by some other means."[5]

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[2] R. 2382, 2386. See Assignments of Error Nos. 47 and 48, R. 2556, 2560.

[1] R. 2424.

The record therefore discloses, not only specific exceptions to the instructions complained of, but specific requests for instructions which would have corrected the error and exceptions to the court's failure to give such instructions. It is well settled that such exceptions are sufficient to preserve the respondents' rights on appeal.

> *Connecticut Mutual Life Ins. Co.* v. *Hillmon,* 188 U. S. 208, 213 (1902);
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> *Long-Bell Lumber Co.* v. *Stump,* 86 Fed. 574, 583 (1893);
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> *Overman Wheel Co.* v. *Griffin,* 67 Fed. 659, 662 (1895).

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[2] R. 2430. The fundamental nature of the trial court's error in this respect is raised by Assignments of Error Nos. 43, 46, 47, 48, 49 and 56, R. 2553, 2555, 2556, 2560, 2563, 2568.

[3] R. 2380, 2382, 2386.

[4] R. 2425. See Assignments of Error Nos. 47 and 48, R. 2556, 2560.

[5] R. 2427.

II.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN THE EXCLUSION OF EVIDENCE.[1]

The Circuit Court of Appeals held (R. 3941-2) that the district court had committed reversible error in excluding evidence of

(1) "The facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; * * * The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained * * *."

(2) Facts showing that the Federal Petroleum Administration encouraged and cooperated with the respondents in the activities for which they were convicted, as bearing upon "the purpose or end sought to be attained."

(3) Facts showing "the nature of the restraint and its effect," and specifically facts demonstrating that prices of gasoline in tank car spot markets and the Mid-Western area were not arbitrarily fixed and controlled.

It is the position of the respondents, and the Circuit Court of Appeals has held (R. 3941), that these offers of proof fall directly within the rule which Mr. Justice Brandeis laid down in the *Chicago Board of Trade* case as to the evidence which the court "must ordinarily consider" in a Sherman Act case:

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[1] This point was raised in the Circuit Court of Appeals by Assignments of Error Nos. 22-36 (R. 2520-43). The Circuit Court of Appeals sustained the respondents' contentions on pages 39-41 of the record. The question is represented by the petition in No. 346 (p. 2).

> "* * * The case was rested upon the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an important part of the business day, is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. *To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts.* This is not because a good intention will save an otherwise objectionable regulation on the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences * * *" (246 U. S. at 238, italics supplied).

We shall consider the excluded evidence under the headings set forth above.

A. Offers to prove "the facts peculiar to the business to which the restraint is applied, its condition before and after the restraint was imposed; * * * the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained * * *."

Among the items of evidence along this line which the district court excluded are the following:

1. The background and provisions of the N. R. A. Petroleum Code.[1]

2. The manner in which the price of crude oil was raised to $1.00 a barrel on September 29, 1933.[2]

3. The order of Secretary Ickes dated October 16, 1933[3] *in which the Federal Petroleum Administrator determined that the average cost of manufacturing 60-64.9 octane gasoline from $1.11 crude oil would be 6½¢ per gallon, and fixed the minimum price at that level.*

4. The National Petroleum Agency Agreement, approved by the Administrator on January 19, 1934[4] which provided:

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[1] The following offers of proof dealt with this subject: Franklin offer re price fluctuations and lack of parity between crude and tank-car prices, R. 976-8; Franklin offer re conditions in the oil industry prior to Petroleum Code, R. 960-1; Moffett offer re conversation with President Roosevelt, March 8, 1933, R. 1150-2; Franklin offer re governors' conference, March, 1933, R. 963-76. (For description of these matters, see Appendix A, pp. 30-32. The Code itself was offered as Def. Ex. 710 for Identification, R. 3141.

[2] Franklin offer re conversation with Ickes on $1.00 crude price, R. 957-9 (See Appendix A, pp. 35-36).

[3] Def. Exs. 829 and 830 for Identification, R. 3324, 3329.

[4] Def. Exs. 831, 832 for Identification, R. 3329, 3330.

"6. The purpose of this association is to purchase, hold and, in an orderly way, dispose of *surplus gasoline* which threatens the stability of the oil price structure in an effort to bring the prices of gasoline into proper relationship with the present price of crude oil and to maintain and support such relationship. *For the purposes of this agreement the proper relationship between mid-continent crude of 36°-36.9 A.P.I. gravity and U. S. motor gasoline of 60-64 octane rating, f.o.b. Group 3 in tank car lots, is that stated in section 6 of Article III of the aforesaid Code* * * * [*i. e., 1:18.5*]." (Italics supplied.)

5. The background of the Refinery Amendment to the N. R. A. Petroleum Code *showing that the express purpose of the Amendment was to force major companies to purchase gasoline from independent refiners.*[5]

6. The attempts of the Federal Petroleum Administration to remove obstacles to the return of the price of gasoline to parity with $1 crude oil,[6] *including four Government-*

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[5] Press release accompanying refinery amendment, Def. Ex. 848 for Identification, R. 3389; Shatford offer re purpose of refinery amendment, R. 1037-41 (see Appendix A, pp. 47-8).

[6] Moffett offer re conversation with C. E. Arnott, September, 1933, R. 1156-7; Franklin offer re conference with Petroleum Administrative Board on East Texas crude oil purchase plan, R. 992-5 (see Appendix A, pp. 68-9); Moffett offers re conference with President Roosevelt, September, 1933, and October, 1933, R. 1153-4, 1156-7 (see Appendix A, p. 43). Shatford offer re conference with Petroleum Administrative Board on proposal that refiners hold product for a minimum price, R. 1056-7; order approving Pacific Coast Agency agreement, Def. Ex. 1029 for Identification, R. 3817.

sponsored programs for the purchase by major companies of distress gasoline in the hands of independent refiners.[7]

7. Evidence as to the failure of the Administration's attempts to raise the price of gasoline to parity with the price of crude oil *showing the actual figures collected by a Government agency as to the costs of manufacturing refined products and the losses which were suffered by independent refiners during 1934 and the spring of 1935.*[8]

8. The background of Secretary Ickes' letter of July 20, 1934, to the respondent C. E. Arnott.[9]

Perhaps the fundamental element in the whole situation that led to the respondents' buying activities was the disparity between the price of gasoline at the refinery and the price of crude oil. The Government, in its brief (B. 34), makes light of this disparity and of the reasonableness of efforts to cure it by removing distress gasoline. It was of vital importance to the defendants to show three things as to this matter. *First,* the public importance which the Government attached to the maintenance of a price level for crude oil which would assure the preservation of that irreplaceable natural resource; *Second,* the fact that the disparity of the price of gasoline, not only threatened the extinction of the small non-integrated refiners, but exerted an almost irresistible pressure toward breaking the conservation price level of crude oil; and, *Third,* the fact that one of the principal causes of this disparity was the existence of distress gasoline in the hands of independent refiners and that the Government recognized the existence of such gasoline as a threat to the price of crude oil. If the existence of this crude oil price level was important, if the disparity was threatening it, and if distress gasoline was one of the causes of the disparity, then the importance of measures to remove distress gasoline immediately becomes real and evident, and clearly has a bearing on the reasonableness of such efforts.

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[7] Shatford offer re 1934 buying programs, and orders relating thereto, R. 1045-52, Def. Exs. 844, 845, 846 and 847 for Identification, R. 3367, 3372, 3376, 3386, 3389 (see Appendix A, pp. 50-5).

[8] Franklin offer re conditions in East Texas field, 1933-1934, R. 1122-4; Travis offer re same, R. 1125-7; Swensrud offer re economic condition of independent refiners, R. 1428-32 (see Appendix A, pp. 58-61).

[9] Titus offer re conversation with Fahy and Arnott and Titus opinion, R. 1832-7, Def. Ex. 892 for Identification, R. 3489 (see Appendix A, pp. 69-73).

The items of evidence enumerated above establish these three propositions beyond the possibility of a doubt. They were specifically offered for that purpose. The trial court excluded them one and all on the bare ground that they dealt with events prior to the appointment of the Tank Car Stabilization Committee.[10]

The importance of this evidence can hardly be illustrated more forcibly than by referring to page 15 of the Government's brief where it opens its discussion of the Mid-Continent buying program as follows:

> "The conspiracy for which respondents were convicted had its inception in a meeting held in Chicago on January 4, 1935, called by respondent Arnott, a vice-president of Socony-Vacuum, and attended exclusively by representatives of major oil companies (R. 1167-9). The meeting was one of a series called to consider elimination of retail price wars, but at this meeting those present saw fit to

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[10] See, for instance, the court's remarks in excluding the first of these offers of proof (R. 944).

> embark upon a discussion of the desirability of raising spot market prices and the whole level of gasoline prices in the Mid-Western area."

There is not a word in the Government's brief of the efforts, stretching back for 15 months prior to January 1, 1935, to maintain a price of crude oil at $1.00. There is not a word about the attempts of the Government and the industry to bring the price of gasoline to parity with the price of crude oil. There is not a word about the part that distress gasoline played in defeating those efforts. The Circuit Court of Appeals found it necessary to discuss all of these facts at length in writing its opinion (R. 3917-8). The Government sought to prevent the jury from considering any of them. It sought to present the respondents' activities to the jury in the same light that it has presented them in its own brief—as a naked conspiracy with no motive and no explanation except avarice and greed.

The Government argues (B. 92-4) that this evidence was cumulative. A few illustrations will serve to answer this contention conclusively.

(1) Nine pages of the Government's brief are devoted to an attempt to ridicule of "respondents' attempt to show that the gasoline of independent refiners which the majors concertedly purchased and which they designated surplus or distress constituted a competitive evil." Reference to the respondents' statement of facts (pp. 29-31, 103-12, *supra*) and Appendix "A" (pp. 192-215) will clearly demonstrate that the evidence concerning distress gasoline is undisputed and that that evidence established that it consti-

tuted a serious competitive evil. The mere fact, however, that the Government on this record makes the contention outlined above suggests the vital need for further testimony as to the cause and nature of distress gasoline. Much of the evidence excluded by the court went directly to this point.[11] In the face of the Government's ~~contention,~~ how can it now possibly argue that it was cumulative to offer evidence that the Department of Interior itself had recognized distress gasoline as a competitive evil and that during 1934 it had launched program after program to eliminate that evil through purchases by major companies or otherwise.

(2) The illustration to which we have just pointed also reveals another fact. The action of the district court in excluding the respondents' evidence not only kept the jury in ignorance of the facts and circumstances surrounding the respondents' activities: *it misled the jury as to the import of the evidence which was admitted.* The Government's own brief shows how damaging this distortion of the facts must have been. On page 37 of its brief the Government says that there are grounds for doubting the accuracy and completeness of the report which the respondent Arnott made to the Petroleum Administrative Board on March 12, 1935. To prove this contention the Government says:

> **"* * * Arnott testified that he told the Board 'in substance' what he had said at the allocators meeting on March 13, 1935 (R. 1730). As the stenographic report of this meeting shows, he then said**

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[11] *e. g.*, regarding the National Petroleum Agency Agreement, the purpose of the Refinery Amendment, and the 1934 buying programs, pp. 27-8, *supra.* Appendix A, pp. 43-55.

> with reference to the buying programs that 'there are going to be no agreements' and 'no group buying' (Ex. 69, R. 2657)."

Taken by themselves, the words which the Government quotes were calculated to give the jury the impression that Arnott had deliberately misrepresented the scope and nature of the respondents' activities to the Petroleum Administrative Board. If the evidence of the 1934 buying programs had been admitted, however, it would have been clear what Arnott meant by "group buying" and "agreements". "Group buying" in 1934 had meant buying by *a central agency or pool* such as the National Petroleum Agency or the Pacific Coast Agency.[12] Under the 1934 programs, these had been *written agreements* following forms prescribed by the Petroleum Administrative Board and binding the purchasing companies to take large quantities of gasoline over long periods of time.[13] The District Allocators, whom Arnott was addressing were thoroughly familiar with these facts. When, therefore, he stated that the Mid-Continent buying program did not involve any "agreements" or "group buying", he was telling the exact literal truth in the sense that his hearers understood him. The jury, having been kept in ignorance of the 1934 buying programs, may well have fallen into the same error as the Government in its brief.

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[12] Def. Exs. 832 and 1029 for identification, R. 3330, 3817. When the Mid-Continent buying program was first proposed, it was specifically stated that "there were to be no pools or central buying agency" (McDowell, R. 1184).

[13] Def. Exs. 844, 845, 846 and 847 for Identification, R. 3367, 3372, 3376, 3386, 3389.

(3) Witness Franklin testified (as the Government states[14]) *to the conclusion* that the price of crude oil had been maintained at $1.00 "at the insistence * * * [of] the Petroleum Administrator."[15] He was not allowed to testify, however, that certain refiners had attempted to overcome this insistence and cut the price of crude oil; or that the threatened crude cut was a direct result of the Administrator's failure to raise the price of gasoline to parity with crude oil. He was not permitted to give the reason for the Administrator's insistence. The offer of proof on this subject[16] would have shown that the Administrator (Secretary Ickes) was informed that "if this cut in the price of crude oil takes place, the Oil Code is out of the window." It would have shown that Secretary Ickes told the Industry Code Authority: "Gentlemen, this price cut must not take place", and telegraphed the independent refiners who were threatening a cut "I personally urge you make no reduction at this crucial time and thus hinder effectuation constructive plans." It would have shown that the price of crude oil was maintained and a price cut prevented *only* upon Secretary Ickes' assurance that further attempts would be made to raise the price of gasoline and

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[14] B. 93. The Government also relies upon the fact that Arnott testified, in substance, that the independent refiners threatened to cut the price of crude oil in the fall of 1934 and that the Government took steps to discourage this (R. 1694-95). An examination of the record reference reveals that Arnott was describing a statement made at the General Stabilization Meeting of January 4, 1935. Even if the Government's contention as to the scope of this testimony were true, however, it would be but common fairness to permit independent corroboration of a defendant's testimony in his own behalf.

[15] R. 951.

[16] Franklin offer, R. 938-44.

that the independent refiners announced that if no improvement occurred within the next two or three weeks, they would make another attempt to reduce the price.

Reference to the other items of excluded evidence which the Government claims were cumulative will reveal similar situations.

B. Offers to prove that the Federal Petroleum Administration encouraged and cooperated with the respondents in the activities for which they were convicted, as bearing upon "the purpose or end sought to be attained."

We come now to certain offers of proof tending to show that the Government encouraged and cooperated with the respondents in their efforts to deal with the competitive evil of distress gasoline.

The theory upon which this evidence was offered is illustrated by the cases of *United States* v. *United States Steel Corp.*, 251 U. S. 417, 446-447 (1920), and *Fosburgh* v. *California and Hawaiian Sugar Refining Co.*, 291 Fed. 29, 36, 37 (C. C. A. 9th [1923]). We accept the abstracts of these cases contained in the Government's brief. They are as follows:

> "* * * In the *Steel* case, this Court, in rejecting a contention of the Government that the acquisition of a certain company by the defendant corporation was inspired by an intent to monopolize, referred (pp. 446-447) to testimony by President Roosevelt that he had approved the acquisition because it was economically necessary for the preservation and operation of the properties of the acquired company. Thus, in that case evidence of approval was material to show that the defendant's intention was other than as charged by the Government" (B. 96).

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> "The *Fosburgh* case was similar to the *Steel* case. It involved a suit in equity brought by the receiver of a candy company to cancel a contract for the sale of sugar to the company on the ground that a clause in the contract prohibiting resale by buyer violated the anti-trust laws. The question presented was whether the clause was included in the contract by the defendant sugar company pursuant to a Government war regulation under the Lever Act or whether it was included to restrain buyers from competing with the defendant company. The intention of the defendant was, therefore, material, and the court admitted evidence to show that the provision was inserted as a result of suggestions on the part of Government officials charged with enforcing that Act" (B. 97, n. 13).

One further fact should perhaps be noted. Neither President Roosevelt in the *Steel* case nor the Government officials in the *Fosburgh* case had any power by virtue of their offices to authorize the acts in question, or to confer any immunity from prosecution under the Sherman Law. The courts in both cases made specific findings to that effect.[1] Nevertheless, the courts in both cases admitted

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[1] In the *Steel* case this Court said:

> "His approval, of course, did not make it legal, but it gives assurance of its legality, and we know from his earnestness in the public welfare he would have approved of nothing that had even a tendency to its detriment" (251 U. S. 446).

In the *Fosburgh* case the court said that the United States Attorney had testified:

> "* * * There was no legal provision that the sugar should be so distributed, but the refiners agreed with us that they would, as far as possible, continue their allotment of sugar, giving their customers proportionate parts, that portion to depend upon the

and considered the evidence as bearing upon the parties' intent and purpose.

The Government does not dispute the doctrine of these cases. It argues only that the respondents in this case did not offer the evidence as bearing upon the issues of intent and purpose. Instead it argues (B. 97) that the evidence was offered as some kind of "legal defense" for the respondents' activities.

This is not the respondents' position. They never offered this evidence on the ground that it would establish a "legal defense" or confer immunity from prosecution under the anti-trust laws.

The trial court accepted the Government's view and excluded this evidence under the erroneous impression that it was offered in an attempt to secure immunity from prosecution in accordance with Section 6 of Article IV of the Code and Section 5 of the National Industrial Recovery Act.[2] There is no dispute that these sections require formal authorization in order that immunity be secured. No such formal authorization was obtained. But, the respondents repeatedly and in unmistakable language advised the court that they were not claiming immunity and that these offers were not made in an attempt to secure immunity but to show "the facts of the circumstances of the situations,

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business which they had transacted with them theretofore. * * * In making the statement that there was no legal requirement, I am just quoting the rules and regulations * * *" (291 Fed. 33, 34).

[2] Def. Ex. 835, R. 3347, 3350; 48 Stat. 195, 198.

which must be taken into consideration" in order to judge the purpose, effect and reasonableness of their activities.[3]

To illustrate: The first offer of proof which the respondents made along these lines was the offer to show that the Federal Petroleum Administration had approved the voluntary curtailment of major company refinery runs in March, 1935,[4] for the purpose of forcing the major companies to purchase gasoline from independent refiners. At that time counsel for the respondents explained the basis of this offer as follows:

> "Mr. Donovan: * * * let me say finally what I have said many times: We claim that what was

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[3] The only offers of proof made on the additional ground that they tended to show Governmental authorization were those dealing with the so-called "Pennsylvania situation", and Defendants' Exhibits 914 and 1030 for Identification (see offers and statements of counsel at R. 1364-5, 1679-81, 1887-9). Those offers did contain evidence that the Petroleum Administrative Board considered Mr. Arnott as having authority to stabilize refinery markets, and that the Board "encouraged" the respondents in their activities. (Frey offer, R. 1290; Def. Ex. 914 for Id., R. 3512, 3518; Def. Ex. 1030 for Id., R. 3869, 3873). Other evidence showed that the Board had "cooperated with" the respondents (Def. Ex. 917-A, R. 3522, 3525). Even in those cases, however, the respondents did not claim that the offered proof, if admitted, would have entitled them to any immunity from prosecution under Section 5 of the N. I. R. A. The evidence of "authority" and "approval" in these cases was offered for the reasons stated in the *Fosburgh* and *Steel* cases, *supra*. But this evidence, in addition to other grounds of admissibility, bore directly on the interpretation which in May, 1935 the Oil Administration put upon the proper scope of the Stabilization Committee under Secretary Ickes' letter of July 20, 1934, introduced by the prosecution (Govt. Ex. 891, R. 3487). It established conclusively that at that time the Federal Petroleum Administration construed the letter as extending to wholesale refinery prices instead of being confined, as the prosecution repeatedly asserted, to retail price wars.

[4] Shatford offers, R. 1016-7, 1017-8.

done by us did not come within the provisions of this section of the Code to which he refers, just as Mr. Francis has said. I have said repeatedly, your Honor, that we are not coming in here and claiming exemptions or immunity under that section. We say what we did was right and proper, and we will undertake to show the circumstances under which the Governmental bodies had knowledge of what we did and what they did in relation to that. That is perfectly simple" (R. 1019).

* * *

"Mr. Dorr: We are not saying that what the government says or does gives us immunity against the Sherman Law. We say what the government is trying to do is one of the facts of the business, one of the facts of the circumstances of the situation, which must be taken into consideration, which the court will take into consideration in determining whether or not the restraint was reasonable.

"Mr. Wood: I say, if you Honor please, that this evidence is admissible to show not only facts and circumstances upon which we rely as indicating that we didn't do what we are charged with having done, that this was some different kind of a program from that which the Government says it was; but also as bearing upon the administrative interpretation of the Code by those charged with this administration, including the Administrator himself, and his immediate advisers, the Petroleum Administrative Board, for what bearing that has upon our objectives and purposes, and upon the legality of what we did" (R. 1021-2).

The district court, however, said:

"Oh, well, if you are going to have anything as important as this, that regulates an industry so important as this—* * * you would certainly expect written approval.

"On the last offer of proof the objection of the Government is sustained. Exception allowed" (R. 1022).

Under this heading we propose to discuss the exclusion of:

(1) The evidence as to the voluntary curtailment of refinery runs in March, 1935.

(2) The official report of the Petroleum Code Survey Committee on Small Enterprises and the action taken by the Petroleum Administrative Board with respect to that report.

(3) The evidence as to the efforts of the Petroleum Administrative Board to have the respondent Arnott conduct in Pennsylvania a buying program similar in purpose and effect to the buying program he was conducting in the Mid-Continent.

(4) The Final Report prepared by the Marketing Division of the Petroleum Administrative Board pursuant to the President's Executive Order 7075 of June 15, 1935, and under the direction of Secretary Ickes.

(5) The testimony of Secretary Ickes, the Administrator of the N. R. A. Code of Fair Competition for the Petroleum Industry, and E. B. Swanson, a member of the Petroleum Administrative Board, before the Committee on Finance of the United States Senate in February, 1937.

1. *The voluntary curtailment of refinery runs in March, 1935.*

In March, 1935, the National Coordinator of Refinery Allocations under the Code requested the major companies to cooperate with the Administration by curtailing their manufacture of gasoline during March by some 1,400,000 barrels. The curtailment was requested with the knowledge and approval of the Federal Petroleum Administration. After receiving this request the major companies voluntarily curtailed their manufacture of gasoline by some 960,000 barrels of gasoline in March.[5]

After this background had been established, the trial court excluded evidence which would have shown that *before approving the plan* the Petroleum Administration had been advised that one of its purposes was to compel the major companies to buy a part of their requirements from independent refiners.[6]

2. *The official report of the Petroleum Code Survey Committee on Small Enterprises, and the action taken by the Petroleum Administrative Board with respect to that report.*

The admitted evidence showed that in January, 1935 Secretary Ickes appointed a "Petroleum Code Survey Committee on Small Enterprises," under the chairmanship of Paul Blazer, to study the plight or condition of the small units in the oil industry and see how they had fared under the Code, and to make recommendations as to what should be done to overcome the difficulties which faced the industry.[7] The members of this committee became Government employees.[8]

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[5] Shatford, R. 1011, 1026-7, 1028-9, 1034-5; Def. Ex. 842, R. 3360.

[6] Shatford offers, R. 1016-8.

The respondents offered the committee's report itself[9] in evidence. It would have shown that the committee reported to Secretary Ickes, in part, as follows:

> "Immediate relief is necessary if non-integrated refiners are not to be eliminated; it can come in only two forms.
>
> "1. An immediate and sustained increase in tank-car and retail gasoline prices to a parity with present crude prices, or
>
> "2. A reduction in the posted prices of crude oil to a parity with gasoline.
>
> "* * * *We know of nothing, apart from continued improvement in crude production control, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is being considered by the Industry now in connection with a broad stabilization program. We therefore urge that the Administrator give it his approval and active support.*
>
> "Unfortunately, many people outside the Industry who recognize the desirability of conserving petroleum reserves and who strongly favor the preservation of small enterprises, are likely to be the first to criticize a moderate increase in retail prices of gasoline, not realizing that in so doing they are striking directly at the non-integrated units and throwing the entire Industry into the hands of a few large integrated companies.
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> * * *

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[7] Frey, redirect, R. 1320; Swensrud, R. 1377.

[8] Frey, redirect, R. 1320.

[9] Def. Ex. 924 for Identification, R. 3530, 3558-60.

> "If, however, gasoline prices do not advance to an approximate parity with crude prices by an early date, within thirty days or thereabouts, or if they do not continue in such parity thereafter, then we recommend an immediate reduction in the price of crude oil to a parity with refined products. On the basis of prices as of this date a reduction of about 20¢ a barrel would be required to bring crude oil and gasoline prices into parity on the basis of the ratio of 18.5 to 1 as set forth in Section 6 of Article III of the Code * * *." (Italics supplied.)

The respondents also offered to prove that Charles Fahy, the Chairman of the Petroleum Administrative Board and the Deputy Administrator of the Petroleum Industry under the Code, in the course of making a formal report[10] to Secretary Ickes with respect to the committee's report and the action to be taken upon its recommendations, stated that:

> "We believe success in Code administration, assuming that it is to continue, requires that some of the recommendations made should be adopted; *e. g., we have encouraged stabilization efforts designed at this time to aid the independent refiner,* * * *." (Italics supplied.)

The respondents also offered to prove that on April 23, Fahy wired Blazer, the chairman of the Committee on Small Enterprises, as follows:[11]

> "Would appreciate informal views your committee as to *whether gasoline prices have advanced to an approximate parity with crude prices* so as to obviate present necessity for reduction in crude

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[10] Def. Ex. 1030 for Identification, R. 3869, 3873.

[11] Def. Ex. 921 for Identification, R. 3528.

> oil price as recommended in refining conclusions and recommendations contained in report your Committee." (Italics supplied.)

And that Blazer wired the following reply:[12]

> "Glad to advise informal opinion our Committee there is now no need for reduction crude oil prices since *we consider tank-car gasoline prices now almost up to parity with sufficient additional advances anticipated in both tank-car and retail prices.*" (Italics supplied.)[13]

3. *The evidence as to the efforts of the Petroleum Administrative Board to have the respondent Arnott conduct in Pennsylvania a buying program similar in purpose and effect to the buying program he was conducting in the Mid-Continent.*

At this point, it becomes necessary to consider the state of the record when the respondents offered the proof relative to the proposed buying program in Pennsylvania. At that time the respondents had established that:

(1) The respondent Arnott and I. A. O'Shaughnessy, a member of the Tank-Car Stablization Committee, had informed the Petroleum Administrative Board of the Committee's appointment on two occasions before the Committee had ever met.[14]

(2) On February 25, the day that he received the formal recommendations of the Tank-Car Stabilization Com-

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[12] Def. Ex. 922 for Identification, R. 3528.

[13] See also further correspondence between Fahy and Blazer, Def. Exs. 993, 994, R. 3746, 3748.

[14] Arnott, R. 1698, 1699-700; Def. Exs. 893 and 894, R. 3491, 3492.

mittee, Arnott had described the proposed Mid-Continent buying program to Dr. Frey.[15]

(3) Two weeks later, on March 12, 1935, Arnott had gone to see the Petroleum Administrative Board in Washington and had given them a complete report of what he was doing.[16]

(4) Although it was not suggested that the Petroleum Administrative Board should secure formal authorization for the program from Secretary Ickes, the Board "cooperated with" the program.[17]

The Government, however, still contended that the members of the Petroleum Administrative Board were apathetic if not hostile to the Mid-Continent buying program. In support of this position, Government counsel pointed to certain testimony (described above) which had been elicited on cross examination from Dr. John W. Frey, former member of the Petroleum Administrative Board, to the effect that at a conference on May 8, 1935, Fahy, the chairman of the Board, had told Arnott definitely "that the letter of July 20th gave him no authority, that he had no authority under the Code with reference to buying programs."[18] It contended that this statement constituted evidence that the Board *affirmatively disapproved* of the respondents' activities. From this the Government argued that not only did the Petroleum Administration not encourage the respondents' buying activities, but it had specifically warned Arnott to discontinue them.[19]

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[15] Arnott, R. 1729-30, cross, R. 1745-6.

[16] Frey, R. 1267, *et seq.;* Arnott, R. 1730.

[17] Def. Ex. 917, R. 3522, 3525.

[18] See p. 93, *supra.*

[19] See closing arguments of Government counsel, R. 2108-2345.

The respondents, however, offered to show that even if Fahy's statement on May 8, 1935 implied what the Government attributed to it, Fahy had quickly changed his mind and general attitude. Six days later, on May 14, 1935, he had asked Arnott to undertake in Pennsylvania a buying program of the same general character as that which he was conducting in the Mid-Continent.

The excluded evidence would have shown that:

(1) The small refiners in Pennsylvania, like those in the Mid-Continent, were suffering as a result of the disparity between the price of crude oil and the products made from crude oil. They had also built up excessive inventories which could be sold only at distress prices. Many of these refiners were being forced out of business.[20]

(2) The condition of the Pennsylvania refiners was well known to Fahy, Swanson and Frey of the Petroleum Administrative Board.[21]

(3) The Pennsylvania refiners had several times requested the Petroleum Administrative Board to take steps to alleviate their condition. In each case the Board had asked them to wait until the results of the buying program being conducted in the Mid-Continent became apparent.[22]

(4) On May 14, 1935, after a conference with J. M. Vockel and G. E. Willey of the Waverly Oil Works in Pennsylvania, Chairman Fahy of the Petroleum Administrative Board had sent the following telegram[23] to Arnott:

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[20] Frey offer, R. 1288, 1289.

[21] Frey offer, R. 1288, 1289; Brundred offer, R. 1354, 1355, 1356.

[22] Frey offer, R. 1287-8; Vockel offer, R. 1345-50; Def. Ex. 972 for Identification, R. 3694.

[23] Def. Ex. 916 for Identification, R. 3520; Frey offer, R. 1288-9; Vockel offer, R. 1351-2.

"Mr. C. E. Arnott,
c/o American Petroleum Institute,
Mayo Hotel,
Tulsa, Oklahoma.

"J. M. Vockel and G. E. Willey officials Waverly Oil Works on behalf own company and other small Pennsylvania refiners yesterday and today presented detailed picture refining situation their section. Present disparity between Pennsylvania grade crude and refined prices undoubtedly makes impossible continued operation several plants. Problem there related more to stabilized markets lubricants than gasoline. Hope you can arrange for prompt consideration this problem by Stabilization Committee looking both to immediate adjustments as well as long view correction. Would appreciate your assistance in this situation as it involves plants of long establishment which undoubtedly have not benefited equally with others under stabilization program because of their dependence on lubricants rather than gasoline. Please wire me as to possibility your undertaking this.

"Charles Fahy."

(5) In sending the telegram of May 14th the Petroleum Administrative Board wanted Arnott and the Stabilization Committee to go into Pennsylvania to improve the condition of the refinery market in that state by the same method that the Stabilization Committee had used under the buying program in the Mid-Continent area. Because of the excessive inventories of Pennsylvania lubricants, the Board believed that Arnott could make some arrangements whereby the major companies would purchase from the small independent refiners these excessive lubricants which were overhanging the market in Pennsylvania, and in that

way both relieve the plight of the independent refiner and cause the prices of finished refinery products to rise to their proper parity with the price of Pennsylvania grade crude oil.[24]

(6) On May 17, 1935 E. B. Swanson of the Petroleum Administrative Board wrote W. J. Brundred that the Board felt "that the Stabilization Committee * * * might be of definite assistance in connection with lubricants as they have been in connection with gasoline."[25]

4. *The Final Report prepared by the Marketing Division of the Petroleum Administrative Board pursuant to the President's Executive Order 7075 of June 15, 1935, and under the direction of Secretary Ickes.*

The offered portions of this report[26] describe the stabilization program conducted by the respondent Arnott in part as follows:

> "The chairman of the marketing subcommittee of the Planning and Coordination Committee effectuating the request of the Administrator organized a General Stabilization Committee and authorized the chairman of each regional marketing committee to instruct the various State code committee chairmen to appoint State stabilization committees wherever necessary * * *
>
> "*As the various problems were offered for discussion at the general stabilization committee meetings, subcommittees were appointed to make recommendations among these subcommittees. One of the most important was the tank-car committee, which*

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[24] Frey offer, R. 1289-90.

[25] Def. Ex. 915 for Identification, R. 3519.

[26] Def. Ex. 914 for Identification, R. 3512, 3513, 3518.

> *attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank-car market was essential to a stabilized retail structure* * * *." (Italics supplied.)

5. *The Testimony of Secretary Ickes, the Administrator of the NRA Code of Fair Competition for the Petroleum Industry, and E. B. Swanson, a Member of the Petroleum Administrative Board, before the Committee on Finance of the United States Senate in February, 1937.*

The respondents offered to show that on February 12, 1937, Secretary Ickes and Mr. E. B. Swanson testified befor the Senate Committee on Finance as follows:

> "Senator Connally: Mr. Holland is in possession, is he, of the details in regard to those buying pools and things of that kind?
>
> "Secretary Ickes: Mr. Holland or Mr. Swanson has all of that, because he was with the oil administration at that time.
>
> * * * * * *
>
> "Mr. Swanson: Mr. Chairman there were several so-called buying pool efforts, that began in December of 1933 and *continued from then on during the entire period of the Petroleum Code.*
>
> "Senator Connally: *What was the purpose of the Department in participating or in authorizing or in aiding those buying pools?*
>
> "Mr. Swanson: *It was an effort of the Department and the industrial committees to bring about the normal relationship between gasoline prices and crude oil prices, in order to permit the independent, non-integrated refiner to be able to operate without loss.*"[27]

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[27] R. 1841-2.

We believed that the vital materiality of all this testimony showing that the officials of the Federal Petroleum Administration had encouraged and cooperated with the respondents is apparent on its face. For the convenience of the Court we list the grounds of materiality and relevance *seriatim* as follows:

(1) All of this proffered evidence was relevant and material to show "the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained." *Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238 (1918); *Standard Oil Co.* v. *United States,* 221 U. S. 1, 70-7 (1911); *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344, 360-1 (1933); *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553, 597-8 (1936).

(2) The evidence offered and rejected would have proved in terms that the officials of the Government charged with the administration of the Petroleum Code were cooperating with and encouraging the respondents in carrying on the alleged illegal buying program and that the fact of such cooperation was known to the respondents. Thus the evidence was relevant and material not only as showing the respondents' intent, purpose and motive, but also as being direct evidence that the aims and objectives which they sought to attain were lawful and in the public interest. See *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553, 576 (1936); *Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238 (1918); *United States* v. *Union Pacific R. R. Co.,* 226 U. S. 61, 93 (1912); *United States* v. *St. Louis Terminal,* 224 U. S. 383, 398 (1912).

(3) Evidence tending to show that those charged with the administration of the Petroleum Code encouraged and cooperated with these respondents in carrying out the buying program is entitled to great weight in determining whether the restraint, if any, was undue and unreasonable and therefore violative of law. *United States* v. *United States Steel Corporation,* 251 U. S. 417, 446-7 (1920), and *Fosburgh* v. *California & Hawaiian Sugar Refining Co.,* 291 Fed. 29, 36, 37 (C. C. A. 9th, 1923).

(4) Throughout the trial, the Government took the position that the programs were carried on in secret, without the knowledge of the Petroleum Administration and in spite of their disapproval.[28] At a conference with Arnott on May 8, 1935, Charles Fahy, Deputy Petroleum Administrator, is said to have stated that the buying activities were not authorized by the Petroleum Code. From this the Government argued that Fahy had warned Arnott that the activities should cease.[29] It was therefore highly material to show that whatever Fahy may have thought or said on May 8, he was, within a period of six days, again encouraging Arnott to continue and in fact requesting him to expand his buying program activities.

• • •

The Government objects that this evidence of Government encouragement and cooperation was "indirect" and says that:

> "Where the defendants sought to establish so-called approval by the Government by direct evidence they were permitted to do so without limitation. They called only one member of the Petro-

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[28] See p. 189, *supra.*
[29] *Ibid,* p. 93, *supra.*

> leum Administrative Board, and the district court allowed them to examine him at length concerning conferences with Arnott and others at which major company purchasing was discussed" (R. 1263-92).

The objection of "indirectness" is somewhat mystifying. At no time during the trial did the Government object to this evidence on the ground that it was incompetent or secondary. Had it done so, and had the objection been sustained, it must be assumed that the respondents would have cured the defect. As it was, the only objection ever made to this evidence was that it was irrelevant and immaterial.

We can only conclude that this objection to the "indirectness" of the respondents' evidence is based upon the Government's belief that the evidence was offered to establish formal authorization and immunity from prosecution under the N. I. R. A. If this belief were well founded it might be argued that a formal written order would be the only competent evidence of approval. As we have already shown, however, the evidence was not offered for the purpose of establishing immunity and the Government has repeatedly been so advised.

Nor is it true that the respondents were permitted to introduce direct evidence "without limitation." Let this Court turn to the direct testimony of Dr. John W. Frey, the member of the Petroleum Administrative Board who testified for the respondents (R. 1263-1292). In thirty pages of testimony there is scarcely a question by the respondents' counsel which was allowed to pass without objection or an objection by the Government that was not sustained. The respondents sought to introduce by direct questions some of the very evidence which now constitutes the offers of proof, viz., the Final Report of the Marketing Division of the Petroleum Administrative Board and the Board's request to Arnott to stabilize the refinery market in Pennsylvania. Objections to all such questions were sustained. Practically the only questions which this defense witness was permitted to answer on direct examination were those addressed to him by Government counsel and by the court.

C. Offers to prove "The nature of the restraint and its effect," and specifically facts showing that the prices of gasoline in the tank car spot markets and the Mid-Western area were not arbitrarily fixed and controlled.

The Government, at page 30 of this brief states:

> "One of the contested issues is whether the defendants' buying program, carried on with the active cooperation of the leading independent refiners caused the March-June advance in Mid-Continent spot market prices and the subsequent stationary price level thereafter maintained."

It argues that this fundamental issue was submitted to the jury and decided adversely to the respondents.

We have demonstrated at pages 132 to 148, *supra*, that the only issue submitted to the jury was whether the removal of distress gasoline in some manner and to some extent affected prices by raising them. But let us assume that the argument of the Government is sound. Any competent testimony showing the causes and the nature of the price rise and the subsequent stability then becomes vitally material and in fact indispensable to the jury in reaching a correct decision as to the issue which it is claimed was submitted to them.

The question presented is whether the price of gasoline was driven to levels which were not warranted by the factors which normally affect price, or whether the respondents' activities merely removed certain artificial factors and permitted the price of gasoline to reach a fair competitive level. The trial court excluded proof of the following facts, offered by the respondents, which related directly to this fundamental issue.[1]

(1) The presence of hot oil and hot gasoline overhanging the market had kept the price of gasoline greatly below the cost of recovery for the entire period from 1932 until March 1, 1935, when the Connally Act went into effect, *except for one short period in October, November and December, 1934.*

(2) In October, 1934, a Federal Tender Board was set up in East Texas which for the first time effectively prevented the shipment in interstate commerce of hot oil. *Within a period of six weeks thereafter, the tank-car market rose one and one-half cents. Between March and June, 1935, the period of the alleged artificial price rise, the gasoline price likewise increased exactly one and one-half cents.*

(3) The various factors which primarily affect price—viz., crude oil inventories, crude oil production, gasoline inventories, gasoline consumption—were almost precisely the same in the fall of 1934 as they were in the spring of 1935.

It thus appears that this testimony as to the course of prices in the fall of 1934 would have amounted to testimony concerning the behavior of prices *during the only period in the history of the industry when the conditions mentioned were the same as they were in the spring of 1935.*

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[1] The evidence in question will be found in Def. Ex. 849 for Identification, R. 3397; Shatford offer re price rise in October, 1935, R. 1061-2; Van Covern offer re factors affecting gasoline prices, October, December, 1934, R. 1491-1503 (see Appendix A. pp. 252-5).

It is apparent from this testimony that the similar increases in price which occurred in October, November and December, 1934, and March, April and May, 1935, were both caused primarily by the same factors, *viz.*, the condition of crude oil inventories, crude oil production, gasoline inventories, gasoline consumption and the elimination of cheap hot oil and hot gasoline.

The evidence was directed to a fundamental claim of the Government's. That claim was that, because there had been concerted buying of distress gasoline by the respondents in the spring of 1935, and because there had at that time been a rise in the price of gasoline, that price rise was an arbitrary rise, and the 1½ cents advance was evidence that the respondents, by their activities, had rigged and fixed the price at an artificial, non-competitive level.

Witness Van Covern, competent to explain to the jury the whole course of prices and the factors in the market, was asked when the price rise which culminated in June, 1935 began. He answered: "It started back in October, 1934."[2] He was then asked to analyze the factors which contributed to the price rise at that time. The objection of the Government was sustained.

It was the respondents' contention that only by a consecutive story describing this whole period could the history of the factors which were operative in the spring of 1935

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[2] Van Covern, R. 1489.

be intelligently made clear to a jury.[3] The effect of the Court's ruling was to limit the proof to an arbitrary segment of time (the spring of 1935), and permit the jury to draw vital inferences against the respondents from what occurred in that particular segment of time without knowing what had preceded it.

The Government argues (B. 99-100) that there may have been factors in the fall of 1934 that did not exist in the spring of 1935 and that this would be confusing to the jury. The answer to this is that the witness would not have so testified. The offered proof discloses that it would have been his testimony that conditions in the two periods were essentially similar, and that the same factors which were primarily responsible for the price rise in the one period were primarily responsible for it in the other.[4]

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[3] It is to be noted that in his Annual Report in November (Def. Ex. 917 for Id., R. 3522-3) the Secretary of the Interior, when he was describing the advance for 1935, also began with the conditions back in the fall of 1934, and like the witness Van Covern, regarded the advance during the whole period as due to the introduction of new factors beginning in the fall of 1934, an advance interrupted by the Panama Refining Co. case decision in January, 1935, but resumed with the setting up of the second Federal Tender Board on March 1, 1935. That part of the Secretary of the Interior's report the Government also succeeded in excluding.

[4] The Government's attempts (B. 99) to meet this testimony are interesting. The first price rise was only 1⅛ to 1¼ cents; the price rise in 1935 was 1½ cents. In 1934 first one journal would go up and then the other; in 1935 the quotations in the two journals tended to rise together. In 1934 the low of the market and the high of the market were about ½ cent apart; in 1935 they were only ⅛ cent apart, etc. There is not the slightest hint and there could be none, that these facts indicate any real difference between the two periods in question.

The Government also claims that the import of the evidence would be a matter of controversy "because a buying program was in operation during *some of the time* in the last three months of that year" (italics supplied). This carefully-phrased statement fails to

Other offers of proof which the respondents offered for the same purposes, and which the trial court excluded on the grounds set forth above, were as follows:

> (1) Evidence showing that the price of gasoline had borne a constant relationship to the prices of crude oil in every month of every year from January 1918 to October 1933. That relationship disappeared for the first time in October, 1933, when the price of hot crude oil fell below that of legal crude oil. It began to reappear in October, 1934, and again in March, 1935, when the cheap hot oil was eliminated.[5]
>
> (2) Evidence showing (a) that gasoline prices were more depressed than the prices of other commodities and the cost of living in 1933 and 1934, (b) that gasoline prices recovered less than the prices of other commodities and the cost of living in 1935 and 1936, and (c) that gasoline prices rose less than the prices of other commodities and the cost of living in 1935 and 1936.[6]

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reveal the fact that the record contains no evidence of a buying program *during the period of the price rise* (October 18-November 8). On the contrary, it shows that the France Program, adopted in August, 1934, had failed, and that the Horween Buying Program, approved on November 2, 1934, was never put into execution. (See Appendix A, pp. 53-5.) In other words, the period in October and November, 1934 when the first price rise occurred was *practically the only period after April 1934 when there was no buying program of any sort in operation in this area.*

[5] Van Covern offer of proof re trend of gasoline and crude oil prices, R. 1518-20; Def. Ex. 955 for Identification, R. 3657.

[6] Van Covern offer re comparison of various commodity prices with gasoline prices, 1935-36, R. 1521-33, inclusive, Def. Exs. 956-959 for Identification, R. 3661-75, inclusive. (This offer was excluded upon the additional ground that it dealt with commodities other than gasoline. R. 1520-1.)

III.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN READING TO WITNESSES CALLED BY THE GOVERNMENT, AND PERMITTING GOVERNMENT COUNSEL TO READ AND REFER TO ALLEGED TRANSCRIPTS OF TESTIMONY BEFORE THE GRAND JURY IN THE PRESENCE OF THE JURY.[1]

The Circuit Court of Appeals held (R. 3945-8) that the trial court had committed reversible error in reading to witnesses called by the Government, and permitting Government counsel to read and refer to alleged transcripts of testimony before the grand jury in the presence of the jury.

The witnesses upon whom the Government principally relied to establish its case were employees of various of the respondents and former defendants. Government counsel endeavored persistently throughout the trial, by methods held to be grossly improper by the Court below, to persuade the jury that these witnesses were under pressure to avoid incriminating their employers. This persistent effort had a three-fold effect: (1) it magnified the significance of any testimony of these witnesses detrimental to the respondents; (2) it gave the jury the impression that the testimony before the grand jury could be accepted as affirmative evidence in this case; (3) it suggested the existence of additional facts not covered by any testimony and even more detrimental to the respondents; and (4) it prejudiced the respondents by persuading the jury that they would suborn perjury to avoid discovery of their alleged unlawful acts.

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[1] This question was raised in the Circuit Court of Appeals by Assignment of Error No. 41, R. 2551. The Circuit Court sustained the respondents' contentions at pages 3945-8 of the Record. This question is presented in this Court by the petition in No. 346 (p. 2, n. 1).

Under the rulings of the trial court, Government counsel found their use of the alleged grand jury minutes an ideal means to this end. They were permitted without restraint to tell the jury again and again, by direct statement and by innuendo, that the witnesses were changing the stories, which they had previously told the grand jury, in an effort to avoid facts damaging to the respondents. Yet, at the end of the trial, the trial court found that the attack was wholly unjustified.

The trial court evidently felt that the constant assertion that Government counsel were merely refreshing recollection justified it in refusing to permit counsel for the respondents to examine the alleged transcript of the testimony before the grand jury to determine the accuracy of the Government's statement that the witnesses had changed their stories on the stand, and to rehabilitate the witnesses in the eyes of the jury by calling attention to related parts of their grand jury testimony. It seems obvious, however, that the claim of surprise, the request for the privilege of cross-examining on direct, and the repeated questions as to whether the witnesses had accurately testified before the grand jury, were entirely inappropriate if it was a mere question of refreshing recollection.[2]

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[2] This Court pointed out in *Putnam* v. *United States,* 162 U. S. 687, 697, 698 (1896), that the right to refresh recollection in no way depends upon surprise. It was said in the *Putnam* case that surprise is one of the elements necessary in order that the right to impeach may exist. It is clear, therefore, that Government counsel were actually attacking the integrity of the witnesses. The cases of *Hickory* v. *United States,* 151 U. S. 303 and *St. Clair* v. *United States,* 154 U. S. 134, which are cited by the Government (B. 102) in support of the practice engaged in, are no authority for the repeated and unjustified insinuations of Government counsel that the witnesses were lying.

Of this practice the Circuit Court of Appeals said:

> "That the procedure employed was erroneous, we think is borne out by the great weight of authority; and that it was unfair and prejudicial, we have no doubt. * * *
>
> * * *
>
> "While the use of the testimony in such manner was erroneous, the damaging effect was its use in connection with statements made by counsel for the Government in which it was repeatedly insinuated, if not actually charged, that the witness was deliberately testifying falsely. It is difficult to believe that the jury could have received any other impression. The jury was told in the opening statement of counsel for the Government that certain witnesses for the Government, because of their connection with the defendants, would testify 'under the greatest stress and because he finds no other way out.' * * *" (R. 3946).

Apparently the Government does not seriously contend that this use of the alleged grand jury minutes was proper but confines itself to maintaining that, even though it may have been erroneous, it was not sufficiently prejudicial to constitute reversible error.[8]

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[8] See B. 103-104. For example, the Government contends (B. 103) that the fact that grand jury testimony was read or referred to some 90 times and embraced some 1000 lines of the record is of little significance in view of the magnitude of the record. It is submitted that the insinuation that a witness is lying need not be made many times in order to have a profound effect upon a jury. The contention that over 450 lines of the 1000 are found in the testimony of witnesses Steiger and Mosher, which related to the trade journals that were dismissed from the case, is dealt with subsequently herein (pages 223-8).

Respondents assert that the record clearly discloses prejudice in the general treatment of the grand jury minutes which has been outlined above and which so impressed the Circuit Court of Appeals. This prejudice arose as a result of four types of error which were highly damaging to the respondents and which made it impossible for the respondents to show the jury that the repeated statements and innuendo of Government counsel were without substantial foundation.

1. The court denied respondents the right to inspect the alleged transcripts of testimony before the grand jury to determine the accuracy of the alleged quotations and the statements of Government counsel with respect thereto.

2. The court permitted Government counsel to read from alleged grand jury testimony and from notes alleged to have been made from grand jury testimony which were not properly authenticated nor their accuracy sufficiently established.

3. The court repeatedly read and permitted Government counsel to read from the alleged transcripts of testimony before the grand jury under circumstances which undoubtedly led the jury to conclude that such alleged grand jury testimony was affirmative evidence in the case. In some instances it can be shown from the record that statements so read from the alleged transcript were not true.

4. The court repeatedly permitted Government counsel to read in the presence of the jury alleged grand jury testimony for the purported purpose of refreshing the witnesses' recollection, although it appeared from the record that such alleged testimony was not given contemporaneously with the occurrence to which it related.

A. The court denied respondents the right to inspect the alleged transcripts of testimony before the grand jury to determine the accuracy of the alleged quotations and the statements of Government counsel with respect thereto.

Counsel for the respondents again and again sought permission from the court to inspect the alleged grand jury transcript and notes of Government counsel, purportedly made therefrom, which Government counsel used as the basis for refreshing the recollection of the various witnesses.[1]

The court uniformly denied these requests.[2] Counsel for the respondents were thus unable to inspect this material at any time and could not ascertain its accuracy, learn whether other portions of the testimony explained the portions in question, or use it for redirect or cross-examination.

It is settled law in practically all jurisdictions that material which is used to refresh the recollection of a witness must be shown to opposing counsel upon demand.[3]

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[1] R. 374, 375, 446, 447, 448, 471-2, 547, 550-1, 630, 680-1, 1311, 1312, 1313-4.

[2] R. 374, 375, 446, 447, 449, 472, 547, 551, 630, 681, 1312, 1313.

[3] Although Government counsel maintained that they were using the grand jury minutes to refresh recollection, the record shows that in a great majority of the instances they used this material to impeach. (See pp. 211-3, *infra.*) But the rules relating to refreshment of recollection will be applied, in view of Government counsel's insistence that the testimony was used for that purpose and in view of the court's rulings on that ground. *Nardi* v. *United States,* 13 F. (2d) 710, 711-2 (C. C. A. 6th, 1926.) The denial of inspection was equally improper, however, even if its use were considered as impeachment. *Wright* v. *Bragg,* 96 Fed. 729, 733 (C. C. A. 7th, 1899); cert. den. 186 U. S. 486; *United States* v. *Cotter,* 60 F. (2d) 689, 692 (C. C. A. 2d, 1932), cert. den. 287 U. S. 666.

Morris v. *United States,* 149 Fed. 123, 126 (C. C. A. 5th, 1906);

Lennon v. *United States,* 20 F. (2d) 490, 494 (C. C. A. 8th, 1927);

Little v. *United States,* 93 F. (2d) 401, 406 (C. C. A. 8th, 1937), cert. den. 58 S. Ct. 643;

People v. *Schepps,* 217 Mich. 406, 408-9, 186 N. W. 508, 509 (1922);

State v. *Patton,* 255 Mo. 245, 254, 164 S. W. 223, 225 (1914).

See authorities cited in 2 *Wigmore on Evidence* (2d ed. 1923) §762.

In the instant case the trial court overruled respondents' requests for inspection principally upon the ground that the grand jury testimony was confidential.[4] Respondents submit that the rule that grand jury proceedings are secret is a limited one and that it does not authorize the denial of the right to inspect minutes of the grand jury testimony where they are used for refreshing or impeachment purposes.

Since the Government does not seriously dispute this, it is unnecessary to devote any considerable space to showing that there was no legitimate reason for the position taken by the trial court that the grand jury testimony was confidential. Suffice it to say that: (1) The universal rule is that there is no reason for keeping the grand jury minutes secret after the grand jury has been discharged and the trial has begun.[5] (2) All courts agree that the secrecy of grand jury proceedings will be waived whenever the ends of justice require it. When, therefore, grand jury minutes have been used in court by the prosecution for refreshment of recollection or impeachment, the veil of secrecy is gone and justice requires that the opposing party be entitled to inspect that portion of the grand jury minutes which is relevant.[6]

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[4] R. 446, 449, 472, 547, 630. The court also indicated that it had in mind the requirement that the witness use the paper to refresh his memory while on the witness stand, in order that the right to inspect may exist (R. 550). *Lennon* v. *United States,* 20 F. (2d) 490, 493-4, (C. C. A. 8th, 1927), was cited by the court in support of this proposition. This case merely held that a paper which had been used by the witness out of court, the day before, to refresh his memory could not be called for. There is no holding, or even intimation, that the right of inspection does not exist where the paper is read to the witness in court but is not handed to him. There appears to be no possible basis for such a distinction.

Under the circumstances just described it is clear that the denial of the right of inspection was, in effect, the denial of the right of cross-examination and of confrontation—in other words, of the constitutional right of every defendant to a fair trial. The Government apparently concedes that the denial of the right to inspect the grand jury minutes was error (B. 104-105). It argues, however, that (1) no prejudice resulted from such denial as existed in this case and (2) counsel for the respondents were accorded the equivalent of inspection to such extent as they were entitled. Let us examine these contentions.

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[5] *Atwell* v. *United States,* 162 Fed. 97, 100 (C. C. A. 4th, 1908); *Metzler* v. *United States,* 64 F. (2d) 203, 206 (C. C. A. 9th, 1933); 5 *Wigmore on Evidence,* (2d ed.) §2362, p. 154. The considerations behind the requirement of secrecy for grand jury proceedings, *prior to the discharge of the Grand Jury,* have been often stated by federal and other authorities. Briefly, they may be summarized as follows: (1) To prevent the escape of those whose indictment may be contemplated; (2) to insure complete freedom to the Grand Jury in its deliberations and to prevent importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before the Grand Jury and later appear at the trial of the indicted parties; (4) to encourage free disclosures by persons who have information with respect to the commission of crimes; (5) to protect the innocent accused, who is exonerated, from disclosure of the fact that he has been under investigation. *United States* v. *Amazon Industrial Chemical Corp.,* 55 F. (2d) 254, 261 (D. Md. 1931); *United States* v. *Providence Tribune Co.,* 241 Fed. 524, 526 (D. R. I. 1917); 5 *Wigmore on Evidence* (2nd Ed.) §2360.

[6] *United States* v. *Cotter,* 60 F. (2d) 689, 692 (C. C. A. 2d, 1932), cert. den. 287 U. S. 666; *People* v. *Miller,* 257 N. Y. 54, 56-7, 177 N. E. 306, 307 (1931); *State* v. *Patton,* 255 Mo. 245, 254, 164 S. W. 223, 225 (1914).

It is well settled that the denial of the right of inspection constitutes reversible error unless it affirmatively appears from the record that *no prejudice* resulted therefrom.

> *Morris* v. *United States*, 149 Fed. 123, 126 (C. C. A. 5th, 1906);
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> *Wright* v. *Bragg*, 96 Fed. 729, 733 (C. C. A. 7th, 1899), cert. den. 186 U. S. 486;
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> *Little* v. *United States*, 93 F. (2d) 401, 406-7 (C. C A. 8th, 1937) cert. den. 58 S. Ct. 643;
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> *People* v. *Schepps*, 217 Mich. 406, 408-9, 186 N. W. 508, 509 (1922).

We look, therefore, to the record to see whether it can affirmatively be stated that the respondents were not prejudiced.

In his opening statement to the jury, the Special Assistant to the Attorney General, Mr. Crawford, predicted:

> "Now, gentlemen of the jury, I think from what I have already said, and certainly from what shall come afterwards from the witnesses, that you will appreciate the fact that much of this testimony giving you the facts with respect to this conspiracy

> is going to come from the mouths of men who are just as hostile to the Government in this prosecution as anybody can be, and you have a right to expect from what I have said thus far, and you will have better reason to expect, as we go along, that some of this set-up has got to come from the mouths of the very men who carried it on; and when Neil Buckley testifies to anything here relating to the facts in this case that may be detrimental to the major oil companies, you can believe that he is doing it under the greatest stress and because he finds no other way out.
>
> "The same will be true with respect to Jacobi.
>
> "You will also find that true, gentlemen of the jury, with respect to a great many other witnesses that the Government is going to call here" (R. 89).

The record demonstrates a consistent effort on the part of counsel for the Government to fulfill this prediction by an improper use of the alleged grand jury minutes.

Throughout the trial, in the presence of the jury, Government counsel repeatedly read or referred to the grand jury testimony of the witness who was on the stand as if it contradicted the testimony he was then giving at the trial.[7] Such reference to the grand jury testimony was under the guise of refreshing the recollection of the witness.

In many of the above instances, the grand jury testimony of the witness was entirely consistent with that given by him at the trial.[8] But in many other cases, the portion that was read or referred to appeared to be inconsistent, in whole or in part.[9]

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[7] See record references, pp. 211-3, *infra*.

[8] See, *e.g.*, R. 263-6, 372-80, 387-8.

[9] See, *e.g.*, R. 380-1, 393-4.

Government counsel would repeatedly bring forth the grand jury transcript, would insinuate that the witness was testifying falsely, and would then paraphrase it or read from it, or would request the court to do so. This was done time and again, regardless of whether the grand jury testimony was consistent with that given by the witness at the trial.[10]

Typical of the comments made by Government counsel are the following:

> "Mr. Crawford: We declare to the Court now that we are frankly surprised at the answer of this witness, and we have very good reasons for that surprise, which we will assert if permitted to do so" (R. p. 263, Witness Lanzer).
>
> "Mr. Lewin: Your Honor, the Government is distinctly surprised by this testimony, which is in direct contradiction to testimony given before the grand jury; and the Government asks permission to lead this witness, and to confront him with his grand jury testimony for the purpose of refreshing his recollection" (R. p. 373, Witness Jacobi).
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> "Mr. Lewin: The Government is not satisfied with that answer, and is still completely surprised, and I would like to cross-examine the witness" (R. p. 407, Witness Jacobi).
>
> "Mr. Lewin: Q. And were those answers true when you gave them in response to those questions?" (R. p. 427, Witness Jacobi).

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[10] The Government asserts (B. 108) that defense counsel at the trial objected to only 4 of the 19 remarks to which respondents take exception at this point. This statement is wholly incorrect. Objections are to be found at R. 373, 394, 407, 426, 427, 449, 545, 590, 683, 672, 804, and, possibly, at 780. And, in order to eliminate interruptions the trial court stated that similar objections need not be repeatedly renewed (R. 391-392).

"Q. Well, is that correct testimony?" (R. p. 438, Witness Jacobi).

"Mr. Lewin: Q. How do you reconcile that with the testimony you say you remember you gave before the grand jury?" (R. p. 444, Witness Jacobi).

"Mr. Lewin: He does not now admit that he talked with him. I have read the minutes, and he denies that, and denies—his denial is in direct conflict with what I read from the minutes" (R. p. 449, Witness Jacobi).

"Mr. Chaffetz: If your Honor please, it does seem to me that that testimony is directly inconsistent with his entire—" (R. p. 545, Witness Evans).

"Mr. Chaffetz: I think the history speaks for itself, what the history was with respect to the two preceding witnesses who were on the stand. The jury and all present know without counsel trying to characterize it. Everybody knows that your Honor said the other day that these witnesses whom the Government is compelled to call, to obtain the facts are employees of the defendant companies. They are under pressure——" (R. p. 590, Witness Buckley).

"Mr. Crawford: Q. Uh-huh. And you said a little while ago that your purchases for the Gulf during '35 and '36 were about 15% of your total purchases of gasoline in those years? A. I estimated that, because I haven't checked those figures.

"Q. Yes. You also made an estimate on that when you testified before the grand jury here, didn't you? A. I don't recall whether I did or not.

"Q. And didn't you estimate that at 1/3, or 33-1/3%? A. I don't remember.

"Q. Your memory isn't good when it comes to that, is it?" (R. p. 672, Witness Bradshaw).

"Mr. Crawford: Enough has already been read by the Court, and enough questions have been asked

> the witness to indicate that he should have his recollection refreshed, or something else" (R. p. 683, Witness Bradshaw).

Repeated comments of this sort were bound to inculcate in the minds of the jurors the feeling that the witnesses were testifying falsely or were concealing the truth. The brief statement in the charge of the court at the end of all the testimony could not suffice to remove this impression. Respondents were unable to gain access to the grand jury minutes to correct this feeling. They were therefore denied their constitutional right to cross-examine the witnesses who were confronting them. No further showing should be necessary to establish that this error was prejudicial.

But if further argument be necessary to convince the Court that respondents were prejudiced by their inability to examine the grand jury minutes, the following facts demonstrate prejudice beyond any possible doubt:

On one occasion the witness who was on the stand protested that his alleged answers before the grand jury might have a different significance if all the testimony that he gave before that body were produced.[11] On numerous occasions the witnesses did not recall having given the alleged testimony before the grand jury at all.[12] This reasonably raises the presumption that if the entire testimony were examined it would probably explain or modify the portion which, when read alone, the witness was unable to recollect. This presumption was clearly borne out during the course of the trial. At the outset the Government had read the grand jury minutes to the witnesses and had made statements that they were inconsistent with the oral testimony without submitting the minutes to either the court or counsel for the respondents. When the court later instituted the practice of reading the minutes themselves before permitting the Government counsel to use them, there were cases in which the court refused to permit them to use the portions which they had requested him to examine on the ground that, when other portions of the minutes were considered, the minutes were entirely consistent with the witnesses' oral testimony.[13] Upon at least one occasion the trial court, after examining the minutes, stated that a different light would be thrown on the grand jury testimony if the full text were used.[14] These statements, by the court and witnesses, demonstrate that other portions of the grand jury minutes which were not divulged by Government counsel would, in all probability, have served to clear up any apparent inconsistencies in the testimony which had been given. Respondents were, therefore, clearly prejudiced by their inability to gain access to these minutes, and to thereby remove any impression on the part of the jury that the witnesses were testifying falsely.

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[11] See, *e.g.*, R. 651-3.

[12] See record references, p. 217, *infra*.

The Government's argument (B. 110) that respondents cannot complain of their inability to inspect since they did not ask to see the related portions of the grand jury minutes, which portions were not read aloud, is wholly without force. From an examination of the record it is apparent that counsel for the respondents asked to see whatever portions of the grand jury testimony might serve to explain or qualify what was read by Government counsel. See *e.g.*, R. 374, 446, 448, 471-472. Counsel for the respondents did not ask to see all of the grand jury testimony but clearly indicated that their need was to see relevant portions which might serve to explain that testimony which had been read.

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[13] See. *e.g.*, R. 544-5.

[14] R. 756.

From what has been said, it is clear that the error of which respondents complain is reversible. They were denied their constitutional right to cross-examine properly the witnesses who confronted them.

As the Circuit Court of Appeals for the Eighth Circuit said in the case of *Little* v. *United States*, 93 F. (2d) 401 (C. C. A. 8th, 1937), involving the refusal of a trial court to permit defense counsel to examine certain notes which a Government witness had used to refresh his recollection:

> "Counsel for the government argue that it is impossible to say from the record whether the witness refreshed his memory upon a disputed fact or only on an undisputed fact, and that, therefore, the record fails to show that appellant was prejudiced. This argument is a misapplication of section 269 of the Judicial Code, as amended (28 U. S. C. § 391, 28 U. S. C. A. § 391), which provides that in an appellate proceeding judgment shall be given 'without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.' In Williams v. Great Southern Lumber Co., 277 U. S. 19, 26, 48 S. Ct. 417, 419, 72 L. Ed. 761, the Supreme Court has declared:
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> > " 'Since the passage of this act, as well as before, an error which relates, not to merely formal or technical matters, but to the substantial rights of the parties, "is to be held a ground for reversal, unless it appears from the whole record that it was harmless and did not prejudice the

> rights of the complaining party." United States v. River Rouge Imp. Co., 269 U. S. 411, 421, 46 S. Ct. 144, 147, 148, 70 L. ed. 339.'
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> * * *
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> "Here appellant was denied his undoubted right properly to cross-examine the witness. The evidence as to his guilt was conflicting. He testified in his own behalf to facts which, if credited and believed by the jury, would establish his innocence. Under these circumstances, it would seem that the appellant had acquitted himself of the burden of pointing out in the record the denial of a substantial right. Rich v. United States, 271 F. 566, 570 (C. C. A. 8); Haywood et al. v. United States, 268 F. 795 (C. C. A. 7). See, also, Berger v. United States, 295 U. S. 78, 55 S. Ct. 629, 79 L. Ed. 1314; * * *" (93 F. [2d] at 406-7.)

B. The court permitted Government counsel to read from alleged grand jury testimony and from notes alleged to have been made from grand jury testimony which were not properly authenticated nor their accuracy sufficiently established.

In view of the manner in which the alleged grand jury minutes were used, and the remarks of Government counsel with respect thereto, it was obviously important that the accuracy of the documents from which Government counsel were reading, or to which they were referring, be established. Government counsel, however, failed entirely to authenticate the alleged grand jury testimony which they used at the trial. They made no effort to show that it had been reduced to writing in the presence of the witness, that it had been read over or examined by him at the time, or to show in some other acceptable fashion that its accuracy was unquestionable. On the contrary, a perusal of the record indicates that there is serious doubt as to the accuracy of the grand jury testimony and notes of Government counsel, allegedly made therefrom, which were used as refreshing material.

The witnesses were not shown the transcript of the testimony or the notes of Government counsel in order that they might determine their authenticity and acknowledge that they had given such testimony before the grand jury. Upon numerous occasions the witness did not recall having given all or a part of the alleged testimony before the grand jury.[1] Upon other occasions the witness was dubious as to whether he had so testified, but he said that he might or must have done so, or that, if such testimony appeared in the transcript, he presumed that he had given it.[2] And several times the witness, at the time of the purported refreshing of his recollection, was not even asked if he had testified in the manner set forth in the alleged transcript.[3]

Not only was the alleged transcript of the grand jury proceedings used without being properly identified and verified, but Government counsel even went so far as to attempt to refresh recollection by means of counsel's own notes. These notes were not authenticated, verified, or shown in any way to be a true copy of the grand jury proceedings.[4]

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[1] R. 438, 453-4, 467-8, 517, 519, 533, 534, 627, 634, 637, 652, 655, 657, 658, 659, 672, 673, 678, 679, 737-8, 744, 761, 774, 790, 791, 794-5, 804.

[2] R. 443, 445, 655, 659.

[3] See, *e.g.*, R. 407, 756-7, 760, 771, 801-2.

[4] See, *e.g.*, R. 425-6, 446-7.

It is fundamental that any paper or document which is brought into the courtroom and used in connection with the examination of a witness must be properly authenticated and identified. Counsel may not simply announce the nature of the document without establishing its authenticity and accuracy. It is equally fundamental that this rule applies to documents which are used to refresh the recollection of a witness or to impeach him.[6]

> *Putnam* v. *United States,* 162 U. S. 687, 694 (1896);
> *New York Life Ins. Co.* v. *Neasham,* 250 Fed. 787, 789 (C. C. A. 9th, 1918);
> *State* v. *Patton,* 255 Mo. 245, 257-8, 164 S. W. 223, 226 (1914) *supra.*

In the *Putnam* case this Court stated:

> "* * * It is also clear that where a memorandum or writing is presented to a witness for the purpose of refreshing his memory, it must either have been made by the witness or under his direction, or he must be connected with it in such a way as to make it competent for the purpose for which it is proposed to use it. * * *" (162 U. S. at 694).

It is thus apparent that the trial court committed error when it permitted Government counsel over objection to use the purported grand jury testimony without proper identification thereof. The fact that the right to inspect was also denied emphasizes the prejudicial nature of this error. The use of the notes of Government counsel, without any check upon their accuracy, was an even more glaring example of prejudice to the respondents in this proceeding.

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[6] The Government's argument (B. 111-112) that the impeachment cases are not analogous because the impeaching material, unlike refreshing material, is evidence in the case is unsound. The universal rule is that impeaching material is not affirmative evidence. *Southern Ry. Co.* v. *Gray,* 241 U. S. 333, 337 (1916); 2 *Wigmore on Evidence* (2d ed. 1923), Sec. 1018.

Government counsel who have so misused the grand jury minutes, and who have obtained a conviction thereby, cannot now be heard to say that such misuse was harmless. *Coulston* v. *United States*, 51 F. (2d) 178, 182-3 (C. C. A. 10th, 1931.)

C. The court repeatedly read and permitted Government counsel to read from the alleged transcripts of testimony before the grand jury under circumstances which undoubtedly led the jury to conclude that such alleged grand jury testimony was affirmative evidence in the case. In some instances it can be shown from the record that statements so read from the alleged transcript were not true.

At the trial, the court and Government counsel read or paraphrased in the presence of the jury large portions of the testimony which various important witnesses had previously given before the grand jury. It is the contention of the respondents that this record discloses that such use of the grand jury minutes undoubtedly led the jury to believe that the grand jury testimony was affirmative evidence in this case. For that reason they contend that the judgments of conviction should be reversed.

Before coming to a consideration of the specific ruling here dealt with, we desire briefly to review the rules of law by which this question must be measured.

1. *The Law.*

(1) Where a memorandum or a transcript of previous grand jury testimony is used as a basis for refreshing the present recollection of the witness it is the well settled rule that the recollection of the witness is the only competent evidence and that the memorandum itself may not be treated as evidence.

> *Roll* v. *Dockery,* 219 Ala. 374, 377, 122 So. 630, 632-3 (1929);
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> *Terry* v. *American Fruit Growers, Inc.,* 3 Harr. (Del.) 497, 506-7, 139 Atl. 259, 263 (1925);
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> *Davis* v. *Michigan Central Railroad,* 294 Ill. 355, 361, 128 N. E. 539, 541 (1920);
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> *Springer, et al.* v. *Labow,* 108 N. J. L. 68, 71, 155 Atl. 476, 477 (1931);
>
> 2 *Wigmore on Evidence* (2d ed., 1923), §763.

(2) A memorandum or a transcript of previous grand jury testimony used as a basis for refreshing the present recollection of a witness may not be read, shown or handed to the jury by the offering party on direct examination, since this might lead the jury to believe that the material so read, shown or handed to it was evidence in the case.

> *Stewart, et al.* v. *Morris, et al.,* 88 Fed. 461 (C. C. A. 7th, 1898), petition for rehearing overruled, 89 Fed. 290, 291 (1898);
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> *State* v. *Patton,* 255 Mo. 245, 257, 164 S. W. 223, 226-7 (1914);
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> *Littig* v. *Urbauer-Atwood Heating Co.,* 292 Mo. 226, 247, 237 S. W. 779, 785 (1928).

In *Stewart, et al.* v. *Morris, et al.,* the court said:

> "* * * There is nothing in the opinion to the effect that the witness was not at liberty to refer to the memorandum for the purpose of refreshing his recollection, the point decided being simply that the memorandum should not have been read to the jury. That was error even by the rule contended for as laid down in Wood, Prac. Ev. § 134, 'that the memorandum itself only becomes evidence when the witness, after examining it, although able to swear that he knew it to be correct when he made it, is unable to state the particulars from recollection.' * * *" (89 Fed. at 291).

(3) It is equally clear that the offering party may not read a memorandum or a transcript of previous grand jury testimony *to a witness* in the presence of the jury for the purpose of refreshing the witness' recollection under such circumstances as would probably lead the jury to treat the material read as competent evidence.[1]

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[1] The Government contends (B. 102), as it did at the trial, that it was surprised at the testimony of a number of its own witnesses and that it therefore had the right to proceed as on cross examination. The principles announced above, however, are also applicable where it is sought to refresh the memory of a witness on cross examination. *Rosenthal* v. *United States,* 248 Fed. 684, 686 (C. C. A. 8th, 1918), *supra*; 2 *Wigmore on Evidence* (2d. ed., 1923) §§763, 764. A hostile witness may be refreshed with a prior contradictory statement, but there may be no extensive reading of the refreshing material in the presence of the jury, *Rosenthal* v. *United States,* 248 Fed. 684, 686 (C. C. A. 8th, 1918), *supra.*

The same rule applies to the impeachment of a witness. *United States* v. *Block,* 88 F. (2d) 618, 620 (C. C. A. 2d, 1937); *Ward* v. *United States,* 96 F. (2d) 189, 191-2 (C. C. A. 5th, 1938); *Kuhn, et al.* v. *United States,* 24 F. (2d) 910, 913 (C. C. A. 9th, 1928), reversal as to one defendant on other grounds, 26 F. (2d) 463, cert. den. 278 U. S. 605; *Philadelphia & Reading Ry. Co.* v. *Bartsch,* 9 F. (2d) 858, 861 (C. C. A. 3rd, 1925). For it is well settled that impeaching material may not be considered as affirmative proof. *Southern Ry. Co.* v. *Gray,* 241 U. S. 333, 337 (1916).

Nardi v. *United States,* 13 F. (2d) 710, 711 (C. C. A. 6th, 1926);

Rosenthal v. *United States,* 248 Fed. 684, 686 (C. C. A. 8th, 1918);

Stearman v. *B. & O. Railroad Co.,* 6 App. D. C. 46, 52 (1895);

State v. *Patton,* 255 Mo. 245, 257, 164 S. W. 223, 227 (1914).

(4) Where the refreshing material is wrongfully placed before the jury, the error is reversible unless it can be said with certainty to have been harmless.

United States v. *Block,* 88 F. (2d) 618, 620 (C. C. A. 2d, 1937);

Nardi v. *United States,* 13 F. (2d) 710, 711 (C. C. A. 6th, 1926);

Chase v. *United States,* 13 F. (2d) 847, 848 (C. C. A. 6th, 1926);

Stewart v. *Morris,* 88 Fed. 461, 462 (C. C. A. 7th, 1898), *supra.*

2. *The Facts Complained of.*

The grand jury minutes themselves were read or referred to on approximately ninety occasions. Over one thousand lines of the transcript of the record consist of verbatim quotations from those minutes.[2] Upon many other occasions the grand jury testimony was paraphrased by the court or Government counsel, or otherwise specifically referred to.[3] Government counsel and the court repeatedly stated that the use of the grand jury minutes was for the sole purpose of refreshing the recollection of the witnesses and emphatically denied that there was any attempt to impeach.[4]

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[2] R. 265, 374-375, 378-380, 388, 394, 421-422, 423-426, 437, 438, 442-443, 448, 450, 453-454, 455, 466-467, 508-509, 517-518, 520, 521, 528, 531-534, 536, 547-548, 629, 647-648, 652, 655, 657-658, 659, 660, 681, 683-684, 740, 754-757, 758-759, 760, 762, 765-768, 771, 773, 775, 783-784, 796, 801-802, 803, 1297-1298.

An example of the way in which the grand jury testimony was read before the jury is to be found in connection with the examination by Government counsel of their witness Steiger. His testimony deals with the most vital issue in the case—whether the defendant companies paid higher prices for the gasoline which they purchased than jobbers buying on the open spot tank-car market a fact which would bear directly on the question whether the purchases of respondents led the market up or merely followed—and reads as follows:

> Q. Were there times during the period, March 1, 1935, throughout the rest of that year, in which they were higher than—Jacobi's prices given you were higher than the prices you were getting from independent refiners? A. I don't recall that they were.
>
> Q. If we read the testimony to you on that subject before the grand jury, would it refresh your recollection?
>
> Mr. Donovan: Same objection as appears at R. pp. 373-74, 446, 630, 680-81, 682, 727.

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[3] R. 359, 370, 381, 440-441, 463, 573, 575, 597, 606, 627, 628, 633-634, 637, 672, 737-738, 743, 744-745, 779-780, 792, 1310-1312.

[4] R. 263, 359, 373, 405, 423, 442, 446-447, 453, 455, 467, 508-509, 519, 521, 528, 531-532, 548, 575-576, 591, 648, 658, 739, 743, 756-757, 759, 764, 776, 794, 795-796, 802, 803, 1296, 1311, 1313, 2422.

The Court: Objection overruled; exception allowed.

A. I will do my best.

(Document purporting to be transcript of testimony before grand jury passed to the Court by Mr. Lewin.)

(The court reads silently.)

The Court: Q. Were you before the grand jury on Wednesday, June 3, 1936—I will read the questions you were asked and the answers you made, and then you may, if it refreshes your memory, you may answer the question asked you by Government counsel.

(Reading:)

"Mr. Lewin: Now, don't you know that the major buying under the programs was buying at or a little better than the price quotations made in the price-quoting service, the journals?

"Answer: There were times when their buying prices were higher, but there was also times when it was identical.

"Question: When it was identical?

"Answer; When those prices were identical.

"Question: Now, I suggest to you that the times in which they were generally higher were between March, 1935, and the first week in June, 1935. Is that right?

"Answer: Yes.

"Question: That is right, and the times in which they were right at the quotation was from the first week of June, 1935, to the first week in January, 1936?

"Answer: Yes.

"Question; That is right?

"Answer: As far as I can recall.

"Question: At another time, when they were a little bit higher than the quotations, was the first week in January, 1936?

"Answer: Was that when there was that little—

"Question: Rise.

"Answer: That little rise. Yes, I am sure that was true.

"Question: And the time when they were just at the quotation was in the first week of March, 1936, when there was a little dip in the curve; is that right?

"Answer: As I remember there was major company buying at those prices.

"Question: I am now addressing your mind to March, 1936.

"Answer: As I remember——

"Question: Do you recall the graph?"

The Court: Q. Was there a graph there? A. Yes, sir.

The Court (reading):

"Answer: Yes, I recall it.

"Question: Do you remember a little dip?

"Answer: Yes.

"Question: That little dip indicates major buying at the quotation of a little bit less, doesn't it?

"Answer: That is my impression, yes.

"Question: And that little dip was restored immediately, wasn't it?

"Answer: Yes, there was only—I don't know—

"Question: A week?

"Answer: Well, that is about right; about a week.

"Question: A week of slackening off on the major buying at the price, wasn't it?

"Answer: Yes.

"Question: And then the little restoration?

"Answer: Yes, it immediately went up.

"Question: Now, when it went up, that indicates the majors buying a little bit heavier than the quotation, doesn't it?

"Answer: Yes.

"Question: And to date your quotations and the price curve to illustrate them, show that the majors since the first week in March, 1936, to date, have been buying at the quotation exactly?

"Answer: That is my impression, yes.

"Question: Then a graph of your quotations is a representation of prices paid by majors under these concerted pools, isn't it?

"Answer: Yes.

"Question: And nothing more than that?

"Answer: It follows that graph, yes.

"Question: Exactly?

"Answer: Yes.

"Question: And the major company buying is so important, and has been given so much importance by you, that it is almost the sole reason for the shape of that graph?

"Answer: It is an important factor, yes.

"Question: Well, the one is identical with the other?

"Answer: Yes.

"Question: All you have done then since March of 1935 is report to the trade, without stating so, the major company program prices; is that right?

"Answer: Insofar as it is reflected in quotations and sales reported to us by refiners, yes.

"Question: And 'insofar' means altogether, doesn't it, because that is just where you got it?

"Answer: We got it from the independent refiners in their reports to us, and quotations.

"Question: And the data that brought about that series of quotations in your paper, the effective data, were the sales to majors under the concerted pools?

"Answer: Those sales were included, were probably included in the refiners—jobbers' sales, to us.

"Question: And the sales to jobbers, pure jobbers at lower prices, were usually outweighed by the concerted buying pool prices that they never did pull that quotation of yours down throughout that period?

"Answer: They outweighed the jobbers' sales that were reported to us, yes.

"Question: The major company buying?

"Answer: Yes.

"Question: And since they outweighed them, they alone were given effect by you?

"Answer: Well, now, let's not make that quite so strong.

"Question: All right.

"Answer: The independent refiners reported to us their district sales.

"Question: That is right.

"Answer: Now, we indicated that many, probably most of those district sales that they reported to us as jobber sales were major company purchases.

"Question: You could have done this, and arrived at the same result: You could have gone to the major companies and learned from them exactly what they would pay under these programs, or what they thought it was necessary to pay, to keep the prices where they wanted them and reported it, and you would have got exactly the same result that you did get, from March, 1935, to date; is that right?

"Answer: That is right, but it is not true.

"Question: You did not go to them and ask them for that?

"Answer: We went to the refiners, yes, and asked for jobbers' sales.

"Question: That is the practice you followed?

"Answer: Yes.

"Question: But you knew when you did that, that in substance, in actuality, in truth, and in fact, what you really were reporting to the trade were major company concerted buying program prices?

"Answer: In substance, yes.

"Question: And that followed throughout the entire Mid-Continent field that you were reporting?

"Answer: Yes.

"Question: The Oklahoma market, the three Texas markets, the Kansas market, and the Louisiana-Arkansas market?

"Answer: If you look at it that way, yes."

Mr. Lewin: That is as far as I——

The Witness: May I explain myself on that?

The Court: Well, the question—does the reading of this refresh your memory?

Mr. Lewin: Q. Just let me ask you: Did you give the testimony that his Honor read, before the grand jury?

A. I imagine I did, but I was certainly mixed up when I did.

Mr. Lawton: What is the question now?

Mr. Chaffetz: There is a question pending.

The Court: What is that question?

(Question read as follows:

"Q. Were there times during the period, March 1, 1935, throughout the rest of that year, in which they were higher than—Jacobi's prices given you were higher than the prices you were getting from independent refiners?")

• • •

> The Court: Q. Does this reading of the testimony before the grand jury refresh your recollection, so that you can answer it now?
>
> A. It doesn't because I have gone back and checked the prices that we indicated in our market leads, with what we quoted, and I don't believe there was a time when those prices were higher.
>
> Q. When what prices were higher?
>
> A. When the major company buying prices were higher than our, than the Oilgram prices, and I would like to have a chance to explain that——
>
> Q. You may. Go ahead.
>
> A. Well, in the first place, that grand jury testimony is all wrong. It just—it is built on a pyramid of hypothetical questions or answers, and it was a build-up and, really, I must not have known what I was saying when I said some of those things there, because I know they weren't true.[5]

This record conclusively demonstrates that Steiger was right when he declared of these alleged grand jury statements "* * * I know they weren't true."

(1) The grand jury testimony gave it as Steiger's impression that the major companies were buying "at the quotation exactly" and that a graph of the gasoline price quotations of the Chicago Journal of Commerce "* * * is a representation of prices paid by majors under these concerted pools." *The Government's own audit of the purchases made by the major companies showed that 89.3% of them were made at or below the lowest quotations of the Journal of Commerce.*[6]

(2) Before the grand jury, Steiger had testified that "the times in which they [the prices paid by major com-

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[5] R. 764-9.

[6] Govt. Exs. 750 and 751, R. 595-7.

panies] were generally higher [than the quotations] were between March, 1935, and the first week in June, 1935." The respondents' audit showed that during this period over 91% of the purchases made by the major companies were made at or below the lowest quotations in the Chicago Journal of Commerce.[7]

(3) Before the grand jury, Steiger allegedly said that the quantities purchased by the major companies "outweighed the jobbers' sales that were reported to us." In fact, all of the major companies named in the indictment, together bought only 11½% of the gasoline sold by independent refiners.[8] According to the Government's own contention, however, the jobbers purchasing on the open spot tank-car market bought from 21.8% to 39.5%.[9]

The excerpts from the grand jury minutes were therefore not true.

All three of the issues dealt with in these extracts from the grand jury minutes are still issues in this case. The Government contends (B. 17) that the respondents had a "commitment to purchase at not less than the going market price." It contends (B. 31) that respondents' purchases produced a "substantial contraction in supply," and (B. 47, note 56) that as a result of the respondents' activities, "brokers and other buyers in the East Texas spot market found it practically impossible to obtain supplies." It contends also (B. 20) that during the price rise in the Spring of 1935, there was a remarkable correlation between the prices paid by the respondent companies and the prices reported by the market journals. The alleged grand jury testimony of Steiger (which as we have seen was not true) was calculated to support each of these contentions which the Government was then making before the jury and which it is now making in this court.

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[7] Resp. Ex. 1025, R. 662-3.

[8] J. D. Miller, R. 1646, 1649.

[9] See B. 47, n. 60.

The example set forth above is but a single typical instance of repeated reading and reference to the grand jury minutes. That procedure was repeated by the court or counsel for the Government time after time. Can it be doubted that the reading of pages of grand jury testimony in the presence and hearing of the jury tended to confuse in the jury's mind the testimony of the witness with the statements made before the grand jury? In fact, the grand jury testimony became, for all practical purposes, testimony in this case. And such testimony was peculiarly prejudicial because it was not true and also bore upon a vital issue in the case.[10]

The use of the grand jury minutes impressed the trial court. On a few occasions he warned the jury that it must ignore the grand jury minutes. But in his final charge to the jury the prejudicial effect of reading the minutes was intensified beyond the possibility of correction. The court charged:

> "Testimony given by some of the witnesses in this case when they appeared before the grand jury, was read to them when they appeared as witnesses in this trial. That was done for the purpose of

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[10] It is difficult to comprehend the argument of the Government (B. 104) to the effect that 84% of the attempts to refresh failed and that affirmative testimony was given in only 14 instances. Apparently the Government argues that no affirmative testimony was given where the material which was read failed to refresh the memory of the witness. This is, of course, unsound, for, as in the case of Steiger, quoted above (pages 223-9, *supra*), the attempt to refresh failed and yet many pages of damaging and untrue material were placed before the jury.

> refreshing their memory, and for no other purpose. You will understand that it was not used for the purpose of impeaching the testimony of the witness. The testimony of no witness who has testified here was inconsistent with any of the testimony he gave before the grand jury which was read to him in this case."[11]

The authorities conclusively establish that no error of this nature could be corrected by a subsequent charge to the jury. *United States* v. *Block*, 88 F. (2d) 618, 620 (C. C. A. 2d, 1937). But the charge did not even tend to correct the error. On the contrary, it magnified it. Take the case of Steiger. He repudiated his grand jury testimony on the stand and stated that such testimony if given was not true. *In fact the testimony was not true.* The jurors heard the grand jury testimony attributed to Steiger. They heard Steiger testify. They also heard the court instruct them that Steiger's testimony was not inconsistent with the testimony read to them from the grand jury minutes. Obviously, such a charge enabled and encouraged the jurors to assume *that the untrue grand jury testimony was the same as the true testimony of the witness on the stand. Not only that but the jury was encouraged to consider the untrue grand jury testimony as evidence in the case, corroborating the testimony given by the witnesses on the stand.* This was clearly prejudicial to the defendants.

The error resulting from the use of the grand jury minutes was intensified in another respect. Government counsel were repeatedly permitted to direct questions toward the grand jury testimony of important witnesses.

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[11] R. 2422.

This necessarily gave the jury the impression that the substance of the testimony before the grand jury was an important item for their consideration. Typical of such questions are the following:

> "Is that testimony right?" (R. p. 388).
>
> "* * * was this testimony correct when you gave it?" (R. p. 394).
>
> "Well, what do you say about that testimony that you gave before the grand jury, * * *? (R. p. 426).
>
> "And were those answers true when you gave them * * *?" (R. p. 427).
>
> "Well, is that correct testimony?" (R. p. 438).
>
> "Was it correct testimony?" (R. p. 443).
>
> "How do you reconcile that with the testimony you say you remember you gave before the grand jury?" (R. p. 444).
>
> "Would you say that is correct now?" (R. p. 445).

These questions were not asked for the purpose of impeachment. But, for whatever purpose, they had the necessary effect of emphasizing in the minds of the jury the testimony given before the grand jury which the court later instructed them was consistent with the testimony of the witnesses. And that testimony was wholly incompetent and highly prejudicial.

In the light of the decided cases, we respectfully submit that the prejudice resulting from the treatment of the grand jury testimony as affirmative evidence is demonstrated.

> *Rosenthal* v. *United States*, 248 Fed. 684 (C. C. A. 8th, 1918);[12]

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[12] The *Rosenthal* case was an appeal from a conviction for false swearing in a bankruptcy proceeding. In reversing the judgment

United States v. *Block, et al.*, 88 F. (2d) 618 (C. C. A. 2d, 1937);

Philadelphia & Reading Ry. Co. v. *Bartsch*, 9 F. (2d) 858, 861 (C. C. A. 3rd, 1925);

Ward v. *United States*, 96 F. (2d) 189, 191-2, (C. C. A. 5th, 1938);

Nardi v. *United States*, 13 F. (2d) 710, 711 (C. C. A. 6th, 1926);

Stewart v. *Morris*, 89 Fed. 290 (C. C. A. 7th, 1898);

Stearman v. *Baltimore & Ohio R. Co.*, 6 App. D. C. 46, 52 (1895).

If further proof is required, we need only refer to the action of the jury in bringing in verdicts of guilty as to

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of conviction, the Circuit Court of Appeals for the Eighth Circuit stated:

> "Another error committed was the admission of the testimony of Lipschitz, the main witness for the government, without whose testimony there was practically no evidence to justify a verdict of guilty. While, in view of his testimony, as given before the referee, it was proper to permit him to be examined as a hostile witness, and as one whose testimony at the trial was a surprise to the government, it was improper to read to him all of his testimony before the referee by way of cross examination, and ask him, as every question and answer was read before the jury, 'Did you not on the former occasion testify as follows?' This was not for the purpose of refreshing his memory, but was in fact introducing his testimony, in an examination before the referee under section 21 of the Bankruptcy Act (Comp. St. 1916, §9605). This was error. *Commonwealth* v. *Jeffs*, 132 Mass. 5; Chamberlayne on the Modern Law of Ev. §3507.
>
> "For the errors indicated, the judgment of the court below is reversed with directions to grant a new trial" (248 Fed. at 686).

all defendants not previously discharged by court. The verdict of the jury could not have rested upon competent evidence, for after the verdict the court ordered the dismissal of the indictment against eleven defendants because there was no substantial competent evidence to support their convictions. The court ordered new trials as to eighteen others.

D. The court repeatedly permitted Government counsel to read in the presence of the jury alleged grand jury testimony for the purported purpose of refreshing the witnesses' recollection although it appeared from the record that such alleged testimony was not given contemporaneously with the occurrence to which it related.

Upon at least ninety occasions counsel for the Government attempted to refresh the recollection of witnesses Lanzer, Jacobi, Evans, Buckley, Cline, Bradshaw, Steiger, and others by reference to their prior grand jury testimony. It affirmatively appears from the record that, in many cases, the testimony of such witnesses before the grand jury was not given contemporaneously with the events to which it related. This fact is reflected in the following table showing in successive columns as to certain witnesses: (1) the record page where use of the testimony before the grand jury appears; (2) the name of the witness; (3) the date of the occurrences to which the testimony before the grand jury relates and (4) the date when the witness appeared before the grand jury:

Record Pages	*Witness*	*Approximate Date of Occurrence*	*Approximate Date of Testimony*
359-360	Jacobi	Jan. and Feb. 1935	Dec. 1936
370	Jacobi	March 5, 1935	May, July, Dec. 1936
373-380	Jacobi	March 1935	May, July, Dec. 1936
381	Jacobi	March 5, 1935	May, July, Dec. 1936
393-394	Jacobi	March 1935	May, July, Dec. 1936
421-422	Jacobi	March-June 1935	May, July, Dec. 1936
423-424	Jacobi	March-June 1935	May, July, Dec. 1936
424-427	Jacobi	March-June 1935	May, July, Dec. 1936
438-439	Jacobi	March 1935	May, July, Dec. 1936
442-444	Jacobi	March-April 1935	May, July, Dec. 1936
445-451	Jacobi	March-Feb. 1936	May, July, Dec. 1936
453-454, 455-456	Jacobi	March 1935-Feb. 1936	May, July, Dec. 1936
466-468	Jacobi	Jan. 1936	May, July, Dec. 1936
508-509	Evans	Dec. 1935-April 1936	July 1936
518-519, 520-521	Evans	March 1935	July 1936
521-522	Evans	March 1935	July 1936
528	Evans	March-June 1935	July 1936
531-535, 536	Evans	March-June 1935	July 1936
628-630	Cline	Feb.-Dec. 1935	May 16, 1936
652	Cline	June 1935	May 9, 1936
654-655	Cline	Jan.-March 1935	May 19, 1936
657-658	Cline	Spring 1935	May 19, 1936
679-684	Bradshaw	Feb. 1935-April 1936	Dec. 19, 1936
754-757	Steiger	Dec. 1935	June 1936
758-759	Steiger	March 1935-April 1936	June 1936
803-804	Mosher	March 1936-May 1936	July 1936
1309-1314	Frey	March-May 1935	July 1936

The witnesses referred to in the above table were important witnesses. Their testimony related to material questions of fact.

It is the clearly established rule in the federal courts that, unless a prior statement was made contemporaneously with the happening of the event to which it relates, it may not be used for the purpose of refreshing the recollection of a witness.

Putnam v. *United States*, 162 U. S. 687, 695 (1896);

Maxwell's Executors v. *Wilkinson,* 113 U. S. 656, 658 (1885);

Felder v. *United States,* 9 F. (2d) 872, 874 (C. C. A. 2d, 1925), cert. den. 270 U. S. 648;

Bosselman v. *United States,* 239 Fed. 82, 85 (C. C. A. 2d, 1917);

Nardi v. *United States,* 13 F. (2d) 710, 711 (C. C. A. 6th, 1926);

Tibbitts-Hewitt Grocery Co. v. *S. E. Lux, Jr., Mercantile Co.,* 5 F. (2d) 549, 551 (C. C. A. 8th, 1925).

The case of *Putnam* v. *United States,* 162 U. S. 687 (1896), is squarely in point. That case holds that it is reversible error for a court to permit Government counsel to attempt to refresh the recollection of a witness in a criminal case by reference to prior grand jury testimony unless such grand jury testimony was given at a time nearly contemporaneous with the event to which it related. Upon this point this Court said:

> "It is elementary that the memory of a witness may be refreshed by calling his attention to a proper writing or memorandum. * * *.
>
> * * *
>
> "The very essence, however, of the right to thus refresh the memory of the witness is, that the matter used for that purpose be contemporaneous with the occurrences as to which the witness is called upon to testify. Indeed, the rule which allows a witness to refresh his memory by writings or memoranda is founded solely on the reason that the law presupposes that the matters, used for the purpose, were reduced to writing so shortly after the occur-

> rence, when the facts were fresh in the mind of the witness, that he can with safety be allowed to recur to them in order to remove any weakening of memory on his part, which may have supervened from lapse of time.
>
> * * *
>
> "Our conclusion, therefore, is that the exception to the action of the court in allowing the use made of the minutes of the grand jury was well taken, and that there was prejudicial error in this particular. * * *." (162 U. S. at 694, 695, 707.)

The doctrine announced in the *Putnam* case is founded upon sound policy. Unless the testimony before the grand jury is nearly contemporaneous, there is no "reasonable probability that the memory of the witness, if impaired at the time of the trial, was not equally so when his testimony on the prior occasion was committed to writing" (162 U. S. at 696-7).

The Government asserts (B. 118) that there was no prejudice to the respondents in the case at bar, and that the *Putnam* case is therefore not controlling. This is unsound, for the ruling of the *Putnam* case is that error of this sort is prejudicial *per se* and requires a reversal. And the prejudice to respondents in the instant case is obvious, as is pointed out below.

The Government further argues (B. 118-120) that the *Putnam* case is bad law, and asks this Court to overrule the decision therein which has been followed in a long line of lower federal court decisions. It is submitted that there is no justification for any such drastic change in the federal rule. The need for that rule is amply indicated in the instant case. The danger of using for refreshment detailed material compiled a year or more after the occurrences to which it related is obvious.

The record in the case at bar discloses that the alleged grand jury testimony of witnesses was repeatedly used in the manner and for the purpose condemned by this Court in the *Putnam* case. As in the *Putnam* case, the testimony before the grand jury was incorporated verbatim or paraphrased in the questions which were asked by Government counsel of their witnesses. As in the *Putnam* case, the testimony before the grand jury was used not to impeach but to refresh the recollection of witnesses.[1] As in the *Putnam* case, the witnesses were important witnesses, and their testimony dealt with vital questions. The question here considered is the same as that disposed of in the *Putnam* case, and should receive the same answer.

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[1] See *Nardi* v. *United States,* 13 F. (2d) 710, 711-2 (C. C. A. 6th, 1926).

IV.

THE ARGUMENTS MADE TO THE JURY BY GOVERNMENT COUNSEL CONSTITUTED REVERSIBLE ERROR.[1]

The Circuit Court of Appeals, having reached the conclusion that the judgments of conviction must be reversed upon other grounds, refused to determine whether arguments to the jury by Government counsel constituted prejudicial and therefore reversible error. It did, however, condemn the arguments as follows:

> "The Government does not undertake to justify much of the argument and misconduct complained of, but it earnestly insists that any error committed is not of a reversible nature. As the case is to be reversed, there seems no occasion for us to make a determination in this respect. We shall merely express the opinion that some of the argument complained of was highly improper and that, taken in connection with the misuse of the Grand Jury testimony, heretofore discussed, would present a very serious obstacle to the affirmance of the judgment." (R. 3950).

The arguments here complained of fall into three classifications as follows:

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[1] This point was raised in the Circuit Court of Appeals by Assignments of Error No. 37-40, inclusive (R. 2543-51). The Circuit Court's comments thereon appear at R. 3949-50. The question is presented both by the petition in No. 346 (p. 2, n. 1) and the cross-petition in No. 347 (p. 3).

A. Appeals to class prejudice.

In an apparent studied effort at the opening of the trial to impress the jury with a fear of corporate power and its overwhelming financial influence government counsel told the jury:

> "Now, of course, again speaking generally, we find in this conspiracy, as you might expect, some of the biggest men—speaking now of big in the way of controlling vast volumes of financial influence—some of the biggest men in this country in the oil business, involved in this conspiracy.
>
> * * *
>
> "Not only, gentlemen of the jury, is this prosecution actuated by the Government because of the injury done to the public, but because of the fact that it is a terrible thing that a group of influential, wealthy millionaires or billionaires should take over the power, take over the control, the power to make prices, and to want to make them. That is the terrible thing, and the thing which the law denounced and was intended to prevent. I would like to have you carry that with you throughout this trial, because it is, after all, the very thing that the Sherman Anti-Trust Act was intended to prevent" (R. 87, 90-91).

And then, lest the jury forget, counsel addressed that body in their closing arguments as follows:

> "A hundred lawyers employed—the very cream of the American Bar, the very best legal talent that these people can obtain—every one of them working night and day with suggestions as to how the red herring can be drawn across the clear cut issue of this case.
>
> * * *

"So, in this case, don't let's justify for one moment that kind of popular attitude towards law enforcement—taking it for granted that these more powerful people are above the law and can't be reached and can't be brought to book.

"And I am going to read you a quotation for a moment, delivered from a Speech of Chief Justice Ryan of this State—one of Wisconsin's greatest jurists, and one of the greatest Judges this country ever had; a veritable genius, I am told. And this isn't law, but this is a part of his address, given away back in 1873—I suppose, before any of you gentlemen were born. And I want you to note the prophecies that are in these words. 1873—about twenty years, seventeen years before the Sherman Act was passed. And he said this, right over here in this law school of Wisconsin, at a graduation day:

> " 'There is looming up a new and dark power. I cannot dwell upon the signs and shocking omens of its advent. The accumulation of individual wealth seems to be greater than it ever has been since the downfall of the Roman Empire. The enterprises of the country are aggregating vast corporate combinations of unexampled capital, coldly marching, not for economic conquests only, but for political power. For the first time, really, in our body politic, money is taking the field as an organized power. The question will arise'——

And here is the prophecy:

> '——The question will arise, and arise in your day, though perhaps not fully in mine, which shall rule, wealth or man? Which shall lead, money or intellect? Who shall fill public stations, educated and patriotic free men, or the futile serfs of corporate capital?'

> "Now, that wasn't an inflaming address. That illustrates the American tradition, and its fear—its fear of corporate power in combination.
>
> * * *
>
> "* * * If the Government can declare war then these oil barons can declare war in Asia when some of their boats are sunk" (R. 2040, 2041, 2044-5).

Thus we have not only highly inflammatory argument, but a definite effort to create class prejudice in the minds of the jury. Instead of a trial of defendants clothed with the presumption of innocence, the jury were led to believe that this was a mere contest between great corporate power and wealth on the one hand, and the public interests on the other, and that the only duty of the jury was to determine which should survive. As said in *Berger* v. *United States*, 295 U. S. 78, 89 (1935), "prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence."

It is significant that the jury convicted all the defendants, sixteen corporations and thirty individuals, and that the trial court was thereafter compelled to discharge, on the ground of utter lack of evidence, ten individuals and one corporation, and to grant new trials to fifteen individuals and three corporations.[2] In the light of the court's action, it may well be said, to quote from *Rouse* v. *Burnham*, 51 F. (2d) 709, 713 (C. C. A. 10th, 1931), that the verdict of the jury "is evidence of aroused prejudices against the defendants," or as said in *Chicago & N. W. Ry. Co.* v. *Kelly*, 84 F. (2d) 569, 576 (C. C. A. 8th, 1936), that the action of the jury cannot be overlooked "in appraising the probable effect of the argument."

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[2] R. 2488.

Courts have always been vigilant in the denunciation of attempts of counsel, such as are here involved, to induce juries to rest their verdicts, not upon the evidence presented to them through competent witnesses and documents, but upon the ground that the corporate power and wealth of the defendants is such as to cause them to become a public menace. The effort of Government counsel here was to create in the minds of the jury a hostility toward the defendants, and it was seemingly successful.

In *Panama Electric Co.* v. *Moyers*, 259 Fed. 219 (C. C. A. 5th, 1919), the following argument of counsel was held to be reversible error:

> "* * * The defendant is a rich corporation, with plenty of money, and has attorneys employed by the year, and it, like all other large corporations, resorts to technicalities and subterfuges to keep a man like this plaintiff out of his money, and this company is now preparing to appeal from the verdict that you will render, and it will keep on fighting the case clear to the Supreme Court of the United States, simply because it has plenty of money and the plaintiff has none" (259 Fed. at 220).

In *Brown* v. *Walter*, 62 F. (2d) 798 (C. C. A. 2d, 1933), the court in reversing the judgment said:

> "* * * Nobody can read the summation without being satisfied that the real issues were being suppressed, and the picture substituted of an alien and malevolent corporation, lurking in the background and contriving a perjurious defense. A judge, at least in a federal court, is more than a moderator;

> he is affirmatively charged with securing a fair trial, and he must intervene sua sponte to that end, when necessary * * *" (62 F. [2d] at 799).

In *Read* v. *United States,* 42 F. (2d) 636, 645 (C. C. A. 8th, 1930), the defendants were convicted of misapplying the funds of a National Bank. In his argument to the jury Government counsel referred to and emphasized the fact that the Reads possessed a fortune, and that it was made out of the bank they had seemingly wrecked. Such remarks were held to constitute prejudicial error.

Cf. Mutual Life Ins. Co. v. *City Nat. Bank,* 86 F. (2d) 660 (C. C. A. 7th, 1936), dealing with argument not more reprehensible than that here involved.

See also:

> *Robinson* v. *United States,* 32 F. (2d) 505, 508 (C. C. A. 8th, 1928).

B. Appeals for a conviction regardless of the evidence on the grounds that (a) Government counsel were convinced of the respondents' guilt, and (b) a conviction "was the wish and the desire of the highest officials in the Government of the United States."

Government counsel further addressed the jury as follows:

> "And I ask you, gentlemen, if you want to encourage them to go on in their arrogant, high-handed, cruel, powerful way, and if you want to encourage other industries made up of the same type of men,—eager, grasping men, to take the law in their own hands and rig the price against the

smaller man, then, I think the way to do it is to acquit them and let them go out and laugh up their sleeves that they did it and got away with it.

"But if, on the other hand, if you have respect for the law—and I know you have—and have pride in our American tradition and the sense of justice—that is a wonderful word, 'justice', for all classes, and if you understand this evidence, and I know you do,—I have looked right in your eyes and I have seen you watch piece by piece this evidence, then gentlemen, you are going to bring in a verdict of guilty against these sixteen companies and these thirty-six individuals that rigged this market for their own aggrandizement and financial return. And I confidently leave it with you, feeling that you will not let your Government and the United States and its citizens and society down.

• • •

"Now, if anybody doubts, if anybody has the least shadow of a doubt about the fact that these men [referring to Government counsel] believe to the bottom of their hearts in the justice of the cause that they espouse here, I can disabuse their minds of that doubt at any time. They have been aggressive, and they have been forceful; their movements here have been intelligent, well-timed; and, as I said, they have come into this court room morning after morning, worn and tired almost to the breaking point. And it seemed to me that, I some times got the feeling, coming as they did then before you to present this evidence and this case, they were something like the Crusaders of old, saying, 'God wills it, God wills it.'

• • •

"You have heard a good deal here about the injustice,—I think that was the word that was used,

—of the Government of the United States, or those who represent it here, in bringing these defendants to trial. I would like to talk about that term, 'What they were doing' after while,—what they were doing being what the Government wanted them to do, especially the Department of the Interior.

"Now, just between yourselves, do you honestly think that these boys here [indicating counsel at Government table] fired with the enthusiasm of crusaders, as I say, and having given to this case every ounce of mental and physical strength they have, and I myself have contributed, also, would be trying to convict these men unless that was the wish and the desire of the highest officials in the government of the United States?

"Mr. Brazeau: May it please the Court; I want to take an exception to the remarks of counsel on that as highly prejudicial and improper.

"Mr. Crawford: I don't think it is, if the Court please. That was referred to many times in the trial of this case.

"Mr. Brazeau: He is referring to the wishes of the highest officers of the United States. The highest officers who are available to them to come here and testify. I want an exception to those remarks.

"The Court: I don't see that there is anything objectionable—there is nothing objectionable in those remarks.

"Mr. Brazeau: I would like an exception.

"Mr. Crawford: I don't expect to get away here without being called a few times. I am going to try to do what I am going to do here without any justification for being called.

"Now, just what do you think about it? Do you think these are three or four or five of these young fellows, as they have been calling them, just starting out on their own, running hog-wild? These are important men. I presume you all know they are engaged in a very important business, a business, the operation of which is almost a necessity in this country today. You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done? And if he wanted it done it was because he believed, as did the other men in Washington, that there was a violation of law here, so outstanding and so withering and far-reaching in its effect that something ought to be done to stop it; and by that to tell the people of his country that you can't do these things and get away with it.

"Mr. Brazeau: May it please the Court, we can't sit here and let those kind of remarks to be made to the jury, and have this prosecution backed up by what counsel is representing to be the opinion of somebody in a higher place, without a syllable of evidence to support it.

"Mr. Crawford: I am satisfied you should make an objection, but I am not satisfied to have you break in on the argument.

"Mr. Brazeau: I am giving my reasons for objecting, and I ask the court to instruct the jury to disregard those remarks of counsel.

"The Court: What remarks?

"Mr. Brazeau: The remarks that the prosecution is backed up by the opinion of someone that it should be brought, somebody outside of the——

"The Court: I suppose we have a right to assume that they are here under the instructions of the Attorney General of the United States.

"Mr. Dorr: Not of the Secretary of the Interior; that is not proper.

"The Court: Just a minute. These men are here as government employees, sent here undoubtedly by the Attorney General.

"Mr. Crawford: In addition to that, if the Court please——

"Mr. Thomas: My objection is this: that counsel is making a statement to the jury that is not supported by the testimony, to the effect that the Secretary of the Interior, as he spoke, is sanctioning this proceeding. Now that is not in this case. For that reason I object to it, and I ask the court to instruct the jury to disregard it.

"Mr. Crawford: Nobody claims that anybody testified, in so many words, to that, but it is a proper inference to be drawn and a proper argument to be made, where it is claimed here by all the defendants' counsel who spoke that what was done here that is now charged to be a violation of law, was done with the consent and approval of the Secretary of the Interior. And I am saying now to the jury that it wasn't so done, the very situation that we are in was a proper one for consideration.

"Mr. Thomas: I take further exception to the statement that counsel just made.

"The Court: Objection overruled.

"Mr. Thomas: I would like an exception, your Honor.

"The Court: You may have an exception.

• • •

"Mr. Crawford: * * * The law—of course, I might say, as I started to say when I spoke about the newspapers, that governments, empires, dynasties have been shattered and broken to the ground—and this country of ours, gentlemen of the jury, is now being shaken to its very foundations by the kind of thing that is alike to what is represented in this law suit. Whether we survive or perish is going to depend very largely upon whether or not, in the language, I think, of one of the greatest statesmen that ever lived, 'Malefactors of great wealth'—

"Mr. Thomas: Now, if the Court please——

"Mr. Crawford: (Continuing) ——people with great power——

"Mr. Thomas: I except to the statement of counsel, for the reason that it is improper and prejudicial. I ask the Court to rebuke the counsel, and I ask the Court to instruct the jury to disregard it. This case is not to be decided upon the principles of malefactors of great wealth——

"Mr. Crawford: I don't ask it to be. The Court, I think, cautioned the jury right at the beginning of the trial of this case against being influenced by such statements.

"The Cour . Yes, and I shall later in my instructions.

"Mr. Thomas: And may I have an exception?

"The Court: Yes, you may have. I will cover that matter in my instructions.

"Mr. Crawford: When combinations or corporations having the financial and the money power that these corporations have here, go out and take the law into their own hands and operate their business regardless of the desire of the Government, and without any consideration for the under-dog or the poor man, then we can do one thing or another. We are going to stop it, as our forefathers stopped it before us and left this country with us as it is now, or we are going down into ruin as did the Roman Empire——

"Mr Thomas: I object to the statement just made by counsel,——

"Mr. Crawford: I don't know why you should object to that.

"Mr. Thomas (Continuing) ——for the reason that it is prejudicial; it is not legitimate argument, and I ask the Court to rebuke counsel and instruct the jury to disregard it.

"The Court: Objection overruled. Proceed with your argument.

"Mr. Thomas: I wish an exception.

"The Court: You may have an exception.

• • •

"Mr. Crawford: * * * But if you should say they are not guilty—I am going to be perfectly frank with you, just like I would if I was talking to you out on a street corner. If you are going to say they are not guilty on this evidence, which is so overwhelming and overpowering that it doesn't even leave the trace or the shadow of a doubt—if you are going to say they are not guilty on this evidence, then you take the responsibility I won't; you get an alibi; I won't.

"I am very frank and very bold in talking to you like that, am I not? I am that way, because I think that is the right way to look at it. Do you want to say that the vast sum of money that has been spent by the Government here—and not in payment of lawyers, either—running into hundreds of thousands of dollars, in trying to get before you the facts in this case, should be thrown to the winds and these men should go clear, and the world and the nation should be told that these combinations of capital can go out and take the law into their own hands, and they can rig any market they please? If you do—why, all right. I will get along. If you can afford to pay thirty cents or forty cents or fifty cents a gallon for gasoline, why, I will get a little once in a while, too" (R. 2145, 2356, 2360-2, 2365-6, 2366-7).

The foregoing remarks of Government counsel were so plainly destructive of that fair and impartial trial to which the defendants were entitled, as to compel the presumption that such remarks prejudicially affected the minds of the jury. Indeed, as said in *New York Central R. R. Co.* v. *Johnson*, 279 U. S. 310, 318 (1929):

> "* * * That the quoted remarks of respondent's counsel so plainly tended to excite prejudice as to be ground for reversal, is, we think, not open to argument * * *."

Quite in point is the following excerpt from *Lowdon* v. *United States*, 149 Fed. 673 (C. C. A. 5th, 1906), wherein the judgment of conviction was reversed:

> "In the second excerpt from the district attorney's argument, he asserted, in effect, that if a juror decided that the defendants were not proved to be guilty, when he returned home, 'the neighbors * * * might conclude that the jingle of the broken bankers' unlawfully and illy gotten gold' in his pocket had influenced his action and decision. The plain meaning was, if you decide to acquit, your neighbors will say you have been bribed with money—with the 'illy gotten' money of the defendants. Although we acquit the learned district attorney of intending any threat, a juror unacquainted with criminal procedure might reasonably have concluded that he was warned against a probable charge of receiving a bribe or of conspiracy.
>
> "In the case of People v. Mull, 167 N. Y. 247, 60 N. E. 629, the court of last resort in New York reversed the judgment of the trial court on account of the argument of the prosecuting attorney, although the court said that the 'evidence in the record

was ample to sustain the verdict.' The argument of the prosecuting attorney in that case was that 'a failure to convict cannot fail to excite widespread comment and indignation among the whole body of citizens of this country.' In his address, the attorney said:

> " 'If there is a man who sits in those chairs that is willing to brand himself with suspicion by saying that Archie Mull did not commit this crime, my judgment of his character is not at all correct. * * * It is no wonder that your neighbors have concluded that the integrity and decency of this panel of jurors, instead of Archie Mull, is on trial here today.'

"The court held that this speech being permitted made it doubtful 'whether the defendant had been fairly convicted,' and the judgment was reversed." (149 Fed. at 678).

In *August* v. *United States*, 257 Fed. 388 (C. C. A. 8th, 1918), wherein the defendant was convicted for offering a bribe in connection with the physical examination of a person to be inducted into the military service, the following remarks of Government counsel were held to constitute reversible error:

> " ' * * * Gentlemen, this occasion and this prosecution is more grave than were it a prosecution against some one for having attempted to corrupt his honor on the bench, though in such a case only the immediate litigants involved would be directly interested or affected. *But today, gentlemen, the world is engaged in a war, the whole world is engaged in a war for humanity; a war which holds in its balance the very future of the race; a war for the rights, the*

> *sacred rights, of man, and the honor of womanhood, and the security and sanctity of little children; and we are here engaged in the prosecution of one who, as I am convinced, was willing to place his influence and his efforts and his filthy gold in the scales against those things which all men hold most dear.*
>
> " '*This prosecution, gentlemen, will not affect only St. Joseph. It will not only affect Buchanan county. It will not only affect northwest Missouri, and reflect either dishonor or credit upon her; but the result of you gentlemen's deliberations will be heralded to every nook and every corner of this land; yea, and in some way I doubt not it shall waft its way to the agents of hell opposed to us across the mighty waters, and there, gentlemen, the verdict of this jury will be read and heard by the war lords of Germany as a beat from the pulse of the American people. So I say that the gravity of this occasion cannot be measured, and I trust gentlemen, that you will consider this case carefully—that you will consider very, very deliberately.*' " (257 Fed. at 393).

In *Hale* v. *United States*, 25 F. (2d) 430 (C. C. A. 8th, 1928), a criminal case, the following, among other remarks of Government counsel, were held to constitute reversible error:

> " 'You should say by your verdict as courageous men, decent men, that they shall hang by the neck until they are dead, and you will then meet the plaudits of the people of this great state——'
>
> "To these remarks objection was made, but an exception was not preserved. However, we deem it necessary to restate the well-known rule that cases should be tried upon the evidence presented, and jurors should not be diverted from the exercise of a dispassionate judgment upon the merits through fear

> of popular denunciation or hope of popular approval. Appeals of prosecuting officers of this nature have met with frequent and consistent disapproval." (25 F. [2d] at 440).

See also:

> *Robinson* v. *United States*, 32 F. (2d) 505, 508 (C. C. A. 8th, 1928).

In *Nations* v. *United States*, 32 F. (2d) 598, 600 (C. C. A. 8th, 1929), the judgment of conviction was reversed because Government counsel impressed upon the jury "the attitude of the press" toward defendant.

In *Turk* v. *United States*, 20 F. (2d) 129 (C. C. A. 8th, 1927), a criminal case, the court said:

> "* * * It is as fatal to a fair trial and a lawful conviction of a defendant by a jury that their verdict was for a wrong and unlawful reason as that it was caused by incompetent evidence or an erroneous charge. If the jury did not believe beyond a reasonable doubt from the evidence before them that the defendant had possession of or sold some beer at the necessary time and place, he could not be lawfully convicted because he was a wholesaler rather than a retailer, or because the release of a guilty man by a jury 'is simply a red flag as you might say to others to engage in law violations,' or because the defendant has made money. The jury ought not to have been urged by counsel to convict the defendant for any of these alleged reasons and counsel must not expect approval by the court of verdicts sought or obtained on such grounds * * *." (20 F. [2d] at 131).

C. Assertions of personal knowledge in contradiction of the record to discredit an important defense witness.

We deem it necessary here to notice but one more item of misconduct on the part of Government counsel. It is contained in the following excerpt from the closing arguments to the jury:

> "I want to refer in a moment to something that made an impression on me.
>
> "You know, we lawyers have to depend—most of us are kind of tough guys. We have our own way of talking about witnesses. And one thing that we very often say and talk about is the three classes of liars. There is the plain liar, the damn liar, and the expert witness. And of all of them, the expert witness is the worst.
>
> "There were a few of them here. There was Swensrud, the representative of the Standard of Ohio; there was Van Covern, and I think there was another one.
>
> "But I just didn't think much of Swensrud's whole testimony, especially after I found out that he was giving testimony that they could ship gasoline in 1935 and in 1936 up the Mississippi River to St. Paul. I happen to be around the Mississippi River quite a little, and know quite a lot about it. In 1935 and 1936, you couldn't get a rowboat up the Mississippi River, north of Winona—because the Government was putting in these dams for the purpose of creating the nine-foot channel that you have read so much about. They had concrete clear across the river, spaced in so many ways that, as I say, you just couldn't get a rowboat up there. When Swensrud talked about gasoline going up that river, where I knew, because I lived there and was around there,

that it couldn't be done, I just thought——" (R. 2377-8)

The prejudice arising from the unsworn testimony of Government counsel is peculiarly damaging because the statements are not true. The Annual Report of the Inland Waterways Corporation to the Secretary of War for the calendar year 1935 (an official Report of the United States Government of which this Court may take judicial notice) contains the following statement:

> "The conditions of the Mississippi River during the year 1935 were very favorable. We suffered no serious delays due to channel difficulties in any section of the river and this improvement was most noticeable in the upper Mississippi section, which was closed to navigation for a period of about 3 months during the summer of 1934. No serious delays were encountered at any time." (page 7).

That report also discloses that during 1935 approximately 240,215 tons of freight moved by water on the Mississippi River between St. Louis and Minneapolis, Minnesota. (*Ibid*, p. 26.) In 1936 approximately 150,802 tons of freight were handled between those two ports. (Report of the Inland Waterways Corporation, 1936, page 24.) Contrast these facts with counsel's statement that "You couldn't get a rowboat up the Mississippi, north of Winona."

The testimony here referred to was vitally material as establishing such outside competition as would have prevented the respondents from raising prices to artificial and non-competitive levels. Yet the Government counsel undertook, in the role of prosecutor, to disprove it on the basis of his claimed personal knowledge.

The Government counsel went further than this: Swensrud was an important witness for the respondents. He had been appointed by Secretary Ickes as a member of the Petroleum Code Survey Committee on Small Enterprises. As a Government employee he had made investigations of competitive conditions in the Mid-Western area. At the trial he testified extensively as to the facts revealed by those investigations. In the above quoted portions of his closing argument the Government counsel told the jury that it should disregard Swensrud's *entire testimony* on the basis of the counsel's personal belief as to a single fact unsupported by anything in the record. Such conduct has been repeatedly rebuked by the courts, notably in *Berger v. United States*, 295 U. S. 78, 88 (1935); *New York Central R. R. Co. v. Johnson*, 279 U. S. 310, 319 (1929); *Taliaferro v. United States*, 47 F. (2d) 699, 702 (C. C. A. 9th, 1931).

The Government concedes (B. 127) that this remark was "open to substantial criticism." It contends, however, that the statement was withdrawn and the jury instructed to disregard it. It can hardly be said that the effect of the withdrawal and instruction was such as "to remove the evil injected * * * by counsel." (See p. 264, *infra.*) The court said:

> "The jury may disregard it. I didn't hear it. I was thinking about something else.
>
> Mr. Chaffetz: He was talking about the Mississippi River" (R. 2378).

Thereupon counsel immediately returned to his theme and proceeded again to brand Swensrud and the other expert witnesses for the respondents as untrustworthy, saying:

> "Now, if you will let me alone a few minutes, I'll be through. If you don't, like 'Old Man River',

> I will just keep rolling along. I don't want to do that.
>
> "Now, I was referring to these witnesses who knew so much. There was Van Covern, Swensrud, and a fellow named J. D. Miller. He was the fellow who never looked at anybody, so you could catch his eye. They knew so much, in the way they were telling it to you, that it is impossible, just impossible to believe that they could know as much as they said they did about it. They just covered too much territory. I think all history, sacred and profane, gives us but one single example of a person who knew everything—and He was not only a man, but He was God. And He gave up His life in a shameful death, upon the cross, between two thieves." (R. 2378).

* * *

As in the Circuit Court of Appeals (R. 3950) the Government does not seriously attempt to justify any of the arguments complained of above. It does, however, call attention to the statement of the Circuit Court of Appeals that "the arguments as a whole do not disclose a picture as prejudicial to appellants as is argued or as indicated by the particular statements referred to" (R. 3949, quoted B. 122).

The respondents submit that the statements made by Government counsel were prejudicial, whether viewed as a whole or individually. In fact one of their assignments of error[1] is addressed to the *entire* argument of the Special Assistant to the Attorney General, W. P. Crawford. We invite the court to read that argument as a whole. It covers some 28 pages of the record. Of those 28 pages there are not five which have anything to do with the

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[1] Assignment No. 32, R. 2543.

facts of the case. The remainder of the argument is devoted entirely to meaningless pleasantries, criticism of defense counsel and remarks similar to those quoted above. Far from being mitigated by the remainder of the argument the prejudicial effect of the remarks quoted above was *intensified* by it.[2]

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[2] As stated above, Mr. Crawford's argument consists of 28 pages, containing some 1317 printed lines. The subjects covered on these pages and the space devoted to each are as follows:

> Opening, closing and transitional remarks: 29 lines (R. 2352, *ll.* 34-41, 2353, *ll.* 10-11; 2372, *ll.* 9-14; 2378, *ll.* 39-45, 2379, *ll.* 34-40); Tension and humorlessness of trial: 107 lines (R. 2351, *l.* 39; 2352, *l.* 16; R. 2357, *l.* 37-2358, *l.* 23; R. 2358, *l.* 45-2360, *l.* 8); Compliments 278 lines: to jury (R. 2352, *ll.* 17-22, to marshalls (R. 2352, *ll.* 23-33); to Court (R. 2352, *l.* 42-2353, *l.* 9; 2373, *l.* 45-2374, *l.* 3); to defense counsel (R. 2353, *l.* 44-2354, *l.* 47; R. 2358, *ll.* 24-31; 2367, *ll.* 7-33), to defendants (R. 2353, *ll.* 12-43; 2358, *ll.* 32-40, 2379, *ll.* 14-23), to Government counsel (R. 2355, *ll.* 1-25, 2355, *l.* 34-2356, *l.* 25; R. 2379, *ll.* 24-33), to Government accountants and investigators ("G-Men") (R. 2355, *ll.* 26-33; 2377, *ll.* 12-28), to press R. 2364, *ll.* 3-39); Expressions of solicitude for welfare of jury: 22 lines (R. 2364, *ll.* 9-30); Reminiscences of old time juries: 41 lines (R. 2371, *ll.* 3-43); Reference to "a terrible handicap, a personal one with which you are not concerned at all" which has prevented Mr. Crawford from contributing much to Government case: 4 lines (R. 2356, *ll.* 38-41); ***The prejudicial remarks quoted above, and objections to and colloquies regarding same***: 249 lines (R. 2356, *ll.* 26-37; 2360, *ll.* 9-37, 2360, *l.* 38-2362, *l.* 7; 2365, *l.* 4-2365; *l.* 7; 2365, *ll.* 21-42; 2375, *l.* 42-2376, *l.* 14; 2377, *l.* 29-2378, *l.* 22; Objections to and colloquies regarding similar remarks: 56 lines (R. 2362, *ll.* 8-13, 2367, *ll.* 8-22, 2370, *ll.* 23-35, 2371, *l.* 31-2377, *l.* 12); Criticism of defense counsel who made objections: 83 lines (R. 2362, *ll.* 14-19, 2370, *l.* 35-2371, *l.* 2; 2374, *l.* 26-2375, *l.* 41); Warnings against tactics of defense counsel: 164 lines (R. 2356, *l.* 42-2357, *l.* 36; 2362, *ll.* 20-36; 2371, *l.* 44-2372, *l.* 8, 2372, *l.* 24-2373, *l.* 2374, *ll.*

The governing principle is thus stated in *Taliaferro* v. *United States*, 47 F. (2d) 699 (C. C. A. 9th, 1931), a criminal case:

> "'* * * Cases are to be decided by juries upon the evidence, and when the evidence is offered by witnesses, the witnesses are subject to cross-examination. A defendant should not be subjected to a trial on the unsworn statements of an attorney conducting the prosecution, even when such statements are relevant to the case, for he would by this procedure be debarred the right of cross-examination and be also deprived of the right of offering evidence in rebuttal. It is not within the legitimate province of counsel to state facts pertinent to the issue that are not in evidence; nor can he assume in argument that such facts are in the case when they are not.' Lowdon v. United States, 149 F. 673, 676 (C. C. A. 5th)" (47 F. [2d] at 702).

See also:

> *Hamilton* v. *State*, 97 Tenn. 452, 457, 37 S. W. 194, 195 (1896);

4-25, 2378, *ll.* 23-38, 2378, *l.* 14-2379, *l.* 13); Statement that Government openings [which had leveled charges of fraudulent falsification of trade journals]—"actually sounded like a prophesy, because we seem to have followed it sentence after sentence, and line after line, and word after word.": 14 lines (R. 2363, *l.* 37-2364; *l.* 8); Advice to Jury—to disregard statistical evidence, look only at highlights of case and reach a verdict quickly: 41 lines (R. 2373, *ll.* 14-44, 2379, *l.* 41-2380, *l.* 3); Significance of the case: "the viciousness and horror and the potential possibilities of destruction in what the defendants did": 51 lines (R. 2366, *ll.* 8-20; R. 2366, *ll.* 7-20; R. 2366, *l.* 43-2367, *l.* 6; R. 2372, *ll.* 15-23); *Remarks about "the facts"*: 157 lines (R. 2362, *l.* 20-2363, *l.* 19; 2368, *l.* 7-2369, *l.* 11; 2369, *l.* 33-2370, *l.* 22); *Analysis of "the law"*: 21 lines (R. 2369, *l.* 12-32).

State v. *McGahan*, 48 W. Va. 438, 442, 37 S. E. 573, 574 (1900);

Commonwealth v. *Shoemaker*, 240 Pa. 255, 259, 87 Atl. 684, 685 (1931).

In *Berger* v. *United States*, 295 U. S. 78 (1935), the Court, after stating that the jury has confidence that the obligations resting upon the prosecuting attorney will be faithfully observed, said:

> "* * * Consequently, improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none * * *." (295 U. S. at 88).

In accord are:

Waldron v. *Waldron*, 156 U. S. 361, 380 (1895);

Latham v. *United States*, 226 Fed. 420, 425 (C. C. A. 5th, 1915);

Read v. *United States*, 42 F. (2d) 636, 645 (C. C. A. 8th, 1930).

• • •

Having set forth considerable portions of the arguments of Government counsel to the jury, which arguments carry their own demonstration not only of inherent power to adversely affect the verdict of the jury, but of real probability that the verdict was so affected, we now turn to consider whether there be any legal principles which would foreclose consideration by this Court, of the question here presented. The Government insists that the question is either not open on the record, or deserves no serious consideration because of inadequate objections, and the fact that as to such objections as were made, the court took "proper corrective action."

The appellate rule with respect to the need for objections in the trial court, is merely a relative and not an inexorable rule. We think the record shows the requisite objections, but even though that was not the fact, it would not constitute a bar to this Court's review of the question. A similar challenge was made in *New York Central R. R. Co.* v. *Johnson,* 279 U. S. 310 (1929), involving alleged prejudicial argument to the jury. In brushing aside the technical contention, this Court said (pp. 318-9):

> "Respondents urge that the objections were not sufficiently specific to justify a reversal. But a trial in court is never, as respondents in their brief argue this one was, 'purely a private controversy * * * of no importance to the public.' The state, whose interest it is the duty of court and counsel alike to uphold, is concerned that every litigation be fairly and impartially conducted and that verdicts of juries be rendered only on the issues made by the pleadings and the evidence. The public interest requires that the court of its own motion, as is its power and duty, protect suitors in their right to a verdict uninfluenced by the appeals of counsel to passion or prejudice. See *Union Pac. Ry. Co.* v. *Field,* 137 Fed. 14, 15; *Brown* v. *Swineford,* 44 Wis. 282, 293. Where such paramount considerations are involved, the failure of counsel to particularize an exception will not preclude this Court from correcting the error. *Brasfield* v. *United States,* 272 U. S. 448, 450."

And in *United States* v. *Atkinson,* 297 U. S. 157, 160 (1936), this Court said:

> "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings. See *New York Central R. Co.* v. *Johnson*, 279 U. S. 310, 318; *Brasfield* v. *United States*, 272 U. S. 448, 450. * * *"

In support are the following cases:

Aetna Life Ins. Co. v. *Kelley*, 70 F. (2d) 589 (C. C. A. 8th, 1934);

Brown v. *Walter*, 62 F. (2d) 798 (C. C. A. 2d, 1933);

Rouse v. *Burnham*, 51 F. (2d) 709, 713 (C. C. A. 10th, 1931);

N. Y. Life Ins. Co. v. *Doerksen*, 75 F. (2d) 96, 102 (C. C. A. 10th, 1935);

London Guarantee & Accident Co. v. *Woelfle*, 83 F. (2d) 325 (C. C. A. 8th, 1936).

But the Government contends that in any event, the trial Court took "proper corrective action." That does not settle the question unless this Court can see that the so-called "corrective action" entirely erased from the minds of the jury all possible harm or prejudice created by the objectionable argument. A similar situation existed in *Mutual Life Ins. Co.* v. *City National Bank*, 86 F. (2d) 660, 663 (C. C. A. 7th, 1936), but the court said:

> "That the District Court made such a valiant effort in this case to remove the evil injected therein by counsel in an effort to avert a mistrial is to be considered. It is to be noted that in each instance

> recited the court acted promptly and correctly instructed the jury that they should not give effect to the matters complained of, which under some circumstances would be deemed to have corrected the evil. We are persuaded, however, that under the circumstances of this case, where, as we believe, at the best, a close fact question was involved, it cannot be said that the jury were not, in spite of the court's admonitions, influenced by such unwarranted conduct of counsel. Nothing remained for the District Court to do that he did not do in an effort to mollify the evil, and the responsibility rests clearly upon the shoulders of plaintiff's counsel."

To the same effect are:

> *Pierce* v. *United States*, 86 F. (2d) 949, 952 (C. C. A. 6th, 1936);
>
> *Robinson* v. *United States*, 32 F. (2d) 505, 508 (C. C. A. 8th, 1928).
>
> *Cf. Throckmorton* v. *Holt*, 180 U. S. 552, 567 (1901);
>
> *Hopt* v. *Utah*, 120 U. S. 430, 438 (1887).

It may very properly be said that the so-called "corrective action" of the trial court in the case at bar, no more met the requirements of a fair trial than that dealt with in *Berger* v. *United States*, 295 U. S. 78, 85 (1935):

> "* * * The trial judge, it is true, sustained objections to some of the questions, insinuations and misstatements, and instructed the jury to disregard them. But the situation was one which called for stern rebuke and repressive measures and, perhaps,

> if these were not successful, for the granting of a mistrial. It is impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as was taken."

Every interest of justice requires that there be applied to the arguments here under attack, the rule thus stated in *McCandless* v. *United States,* 298 U. S. 342, 347-8 (1936):

> "In this situation, §269 is not controlling. That section simply requires that judgment on review shall be given after an examination of the entire record 'without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.' This, as the language plainly shows, does not change the well-settled rule that an erroneous ruling which relates to the substantial rights of a party is ground for reversal unless it *affimatively* appears from the whole record that it was not prejudicial. *United States* v. *River Rouge Co.,* 269 U. S. 411, 421; *Fillippon* v. *Albion Vein Slate Co.,* 250 U. S. 76, 82; *Williams* v. *Great Southern Lumber Co.,* 277 U. S. 19, 26."

The same thought is thus expressed in *Little* v. *United States,* 73 F. (2d) 861, 866-7 (C. C. A. 10th, 1934):

> "We conclude that where the entire record affirmatively discloses that an error has not affected the substantial rights of an appellant, it will be disregarded. But where error occurs which, within the range of a reasonable possibility, may have affected the verdict of a jury, appellant is not required to explore the minds of the jurors in an effort to prove that it did in fact influence their

> verdict. So to hold would, as a practical matter, take from a defendant his right to a fair trial. * * *"

While the Circuit Court of Appeals below found it unnecessary to pass upon the point, its comments nevertheless indicate its conviction not only that the record failed to affirmatively show lack of prejudice in the arguments, but that such arguments probably created an adverse effect upon the jury.

The foregoing discussion under this point of our brief, furnishes additional support for the judgment of the Circuit Court of Appeals below remanding the case for a new trial upon other grounds.

V.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING NEW TRIALS TO SOME DEFENDANTS AND DENYING THEM TO RESPONDENTS, AND THE CIRCUIT COURT OF APPEALS BELOW SHOULD HAVE SO RULED.[1]

The Circuit Court of Appeals, having reached the conclusion that a new trial must result upon other grounds, refused to pass upon the question whether the trial court had committed reversible error in granting new trials to some defendants and denying new trials to the respondents now before this Court (R. 3945).

The error of the trial court lies in the fact that in denying new trials to respondents, there was left in effect as to them a verdict of guilty without any finding by the jury that they, acting alone and without the cooperation of the defendants who were granted new trials, possessed the power arbitrarily to raise, fix, and control prices and thereby unreasonably restrain trade or commerce. Unless they possessed such power, respondents could not violate the Sherman Law. Power constituted an essential ingredient of the offense. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 375 (1933), and *Standard Oil Co.* v. *United States*, 283 U. S. 163, 176-7 (1931).[2]

The Government argues that the denial of a motion for new trial is not reviewable. This rule has no application here. When the denial involves a fundamental right or issue, appellate courts have not hesitated to review and reverse. *Dufour* v. *United States,* 37 App. D. C. 497, 510 (1911); *Browne* v. *United States,* 145 Fed. 1, 13 (C. C. A. 2d, 1905).

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[1] This point was raised in the Circuit Court of Appeals by Assignment of Error No. 21, R. 2519. The Circuit Court's discussion thereof appears at page 3945 of the Record. It was the fourth question presented by the respondents' cross-petition on No. 347 (p. 3).

[2] See also pp. 165-6, *supra*.

In fact, the granting of a new trial may constitute a positive duty, and not a matter of discretion of the court. As the court said in *Pugh* v. *Bluff City Excursion Co.,* 177 Fed. 399 (C. C. A. 6th, 1910), where the denial of a new trial was the sole ground of appeal:

> "* * * It is the general rule that the granting of a new trial is a matter of discretion, and will not be reviewed. But it is not so where the verdict is inconsistent on its face and shows the abuse of power on the part of the jury. If the granting of the motion is a positive duty, it is not discretionary. If it is necessary to correct a mistrial, it becomes a positive duty to set aside the erroneous proceeding and grant a new trial. And such, we think, was the case here. The jury found the plaintiff was entitled to recover. And if she was, it was absurd to say that she was entitled to only nominal damages * * *" (177 Fed. at 401).

Cf. Spreckles v. *Brown,* 212 U. S. 208, 213-4 (1909).

Such a positive duty *to review* the denial of respondents' motions for a new trial clearly exists in this case. There is nothing in the record to indicate that the verdicts of guilty standing against the respondents are supported by any finding by the jury that the respondents, acting without the aid or cooperation of the defendants who were discharged or granted new trials, possessed the power to raise prices arbitrarily and artificially.

Perhaps the matter can be put most clearly by examining chronologically the way in which this issue developed. In its final charge, the trial court said:[3]

> "* * * If you find that a combination existed and that such combination had the power to raise the price, the amount by which prices may have been affected by the combination is not important under the law.
>
> * * *
>
> "* * * What the law condemns is the power on the part of such group controlling a substantial part of an industry to raise the price if it chooses to do so, and for that reason it condemns and brands as illegal all attempts at price fixing by a group such as I have described. The law condemns the exercise by any combination of the power to raise prices, and so, as I have stated, if you find a combination and that the members of the combination had the power to raise the price, and acted together for that purpose, then I charge you that the combination is illegal, and your verdict should be guilty as to each defendant whom you find to have knowingly participated therein.
>
> "* * * If you are satisfied from all of the evidence that any of the defendants acted together for the purpose of raising the price and that they had the power to raise the price, and did in fact affect the level of prices for gasoline in the ten Middle Western states, including the Western District of Wisconsin, as charged in the indictment, then you may return a verdict of guilty against such defendants.
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> * * *

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[3] R. 2405, 2407-8, 2414.

> "If you should find that the defendants and the independent refiners acting in combination with them had the power to raise prices, and that their combination was an illegal one, it does not matter whether or not any of the defendants had any need, immediate or otherwise, for the gasoline which you may find they purchased * * *."

By their verdict on January 22, 1938[4], the jury found that sixteen corporations and thirty individuals had conspired to raise prices and that they collectively possessed power to execute such a conspiracy.

Thereafter, on July 19, 1938, the Court discharged one corporation and ten individuals, and granted new trials to three corporations and fifteen individuals.[5] Such action left the verdict standing as to only twelve corporations and five individuals.

It follows inescapably from the above recital that *the respondents'* possession of power to raise prices (which, under the very charge of the court, was a basic and fundamental issue) never received the consideration of the jury, and that consequently there is no express or implied finding thereon. The jury's finding that the entire group possessed such power to raise prices by no means carried the implication that, if permitted, the jury would likewise have found that respondents, acting alone, possessed such power. The action of the court in discharging certain defendants and granting new trials to others definitely changed the factual situation which existed at the time of the submission of the case to the jury.

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[4] R. 2478-84.

[5] R. 2488-500.

The error cannot be cured by placing the finger upon some evidence which would have supported such a finding, if made. The obstacle here is that *there is no jury finding.* No court can now determine the present issue of the power of respondents to raise prices, without usurping the function of the jury and thereby constituting itself the fact-finding body in this criminal case. Such action would violate the constitutional right of respondents to a jury trial.

The trial court carved out of the jury's verdict four corporations, thus determining, in substance, that they, among others, had not been properly found to have been participants in the conspiracy charged. We need analyze the power of only one of those four: Standard Oil Company (Indiana). That company was granted a new trial after the verdict on the ground that the jury had clearly not given proper consideration to certain "facts and circumstances shown, in some cases, to be highly suggestive of innocence, and in all cases entitled to be considered and weighed." 23 F. Supp. 937, 939. The granting of a new trial to Standard of Indiana, therefore, removed that company from the case as a co-conspirator and restored its former presumption of innocence. It must be so treated in measuring the criminal liability of respondents and the validity as to them of the verdict here under attack. That principle is so thoroughly imbedded in our law as to require the citation of authorities merely for reference purposes. *Bartkus* v. *United States,* 21 F. (2d) 425, 428 (C. C. A. 7th, 1927); *Cofer* v. *United States,* 37 F. (2d) 677, 680 (C. C. A. 5th, 1930); *Morrow* v. *United States,* 11 F. (2d) 256, 260 (C. C. A. 8th, 1926); *Turinetti* v. *United States,* 2 F. (2d) 15, 17 (C. C. A. 8th, 1924); *Feder* v.

United States, 257 Fed. 694, 697 (C. C. A. 2d, 1919); *72* A. L. R. 1188; and *97* A. L. R. 1317.

The Government disputes this, but the cases upon which it relies (B. 157) rest upon their own peculiar facts and do not purport to upset the rule for which we contend. To illustrate, one of the cases cited by the Government is *Motes* v. *United States,* 178 U. S. 458. The ruling in that case is thus correctly construed in *Cofer* v. *United States,* 37 F. (2d) 677, 680 (C. C. A. 5th, 1930):

> "* * * The rule in conspiracy cases is that, when the conviction of all the conspirators except one is reversed, the conviction of that one should also be reversed, since, in conspiracy cases, at least two must be convicted or none. Otherwise it might well be that the sole convicted defendant might be the only one ever convicted in violation of this rule.
>
> "The government relies upon the case of Motes v. United States, 178 U. S. 458, 20 S. Ct. 993, 44 L. Ed. 1150, to the contrary. In that case there was a reversal as to all the defendants who are tried, except the appellant Motes. Motes, upon the trial, testified that he and one Bob Taylor, who had pleaded guilty to the indictment, had killed Thompson, the victim of the conspiracy, and that none of the other defendants who were on trial with him, had anything to do with the conspiracy or the killing. The Supreme Court said that, as the proof of the guilt of Motes was conclusive, the unwarranted admission of a statement made by Bob Taylor, though improper, ought not to work a reversal of the judgment against Motes in view of his evidence that together with Taylor he had killed Thompson in pursuance of the conspiracy * * *."

The action of the trial court below in granting new trials as to some defendants and denying them as to respondents, necessarily involved the court's determination that respondents did possess the power, although the jury had never considered that issue. This decision, as we have already pointed out, resulted in denying to respondents their right to have that issue determined by a jury in a new trial. It is just as essential that the issue of the power possessed by these respondents should be submitted to and determined by a jury as it was that the issue of the power of all the defendants placed upon trial be submitted to the jury prior to verdict. The court's charge at that time recognized that it was *for the jury* to decide whether the defendants possessed the necessary power. Obviously, after granting new trials to so formidable a group of the defendants, the court lacked power to determine such issue as a question of law and against respondents. The case is analogous to *Nash* v. *United States*, 229 U. S. 373, 379-80 (1913), which also arose under the Sherman Law. In that case there was a reversal because the instructions of the court permitted the jury to rest its verdict upon the employment of means which the prosecution no longer charged or which were not established by the evidence. In the case at bar, the verdict as to respondents is left to rest upon an issue never considered or passed upon by the jury. The prejudice in both cases is legally the same, and the corrective remedy to be applied, *viz.*, a new trial, must therefore be the same.

The record shows that Standard of Indiana alone possessed such power as would make it impossible for any group such as the respondents to raise prices without its agreement and cooperation.

The Government's appraisal of the power of this corporation, and of the need of establishing its participation in the conspiracy, if a verdict of guilty was to be secured, first appears in the following excerpt from the indictment:[6]

> "The States of Michigan, Wisconsin (including the Western District thereof), Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri, and Kansas compose one of the great marketing areas for gasoline in the United States. Said area comprises the gasoline marketing territory of defendant Standard of Indiana, and is sometimes known as the 'Standard of Indiana territory' by reason of said defendant's dominant position in the distribution of gasoline in each of said states * * *."

Again in their closing arguments to the jury, Government counsel said:[7]

> "There can't be any doubt about the power, and I am not going to dwell very long on it. Just think of the power of the Standard of Indiana alone, the great octopus sprawling over that territory with its powerful tentacles in every town and hamlet——

* * *

> "It sells a billion gallons of gasoline a year, gentlemen. That is in the record, a billion gallons of gasoline a year. I can't conceive a billion gallons of anything, or a billion anything. I can't conceive a million. But its yearly sales are multiplied by a thousand times a million.

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[6] Indictment, par. 5, R. 8.

[7] R. 2408.

> "It furnishes sore competition when it acts alone, * * *."

Standard of Indiana operates 4,000 bulk stations in the area covered by the indictment. It is the largest major oil company doing business in the area. The record reveals that no company can obtain a higher price than that posted by Standard and that Standard's strategic position in the area is a complete brake upon the power of any other company or group to raise prices without Standard's cooperation.[8]

To summarize: The Court below, while granting new trials to one group of defendants because the evidence as to them had not been given proper consideration by the jury, nevertheless denied a new trial to respondents, although the jury never considered the evidence as to respondents' power to raise prices. This Court has no more power than the trial court to hold that the jury was legally bound to find that respondents did possess power to raise prices. A new trial furnishes the only remedy. The applicable rule is thus stated in *Patterson* v. *United States*, 2 Wheat. (15 U. S.) 221, 225 (1817):

> "* * * A verdict is bad, if it varies from the issue in a substantial matter, or if it find only a part of that which is in issue. The reason of the rule is obvious; it results from the nature and the

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[8] Swensrud, R. 1388; see Shatford R. 1085; Marshall, R. 1233, 1246-7. Add to Standard's power that possessed by Globe Oil & Refining Co. (Kansas) and Barnsdall Refining Corporation (Def. Ex. 1028, R. 3812), against whom also the verdict has been set aside, and it becomes evident that respondents, as a separate group, so demonstrably lacked power to raise prices that no court could properly withdraw the determination of that issue from the jury, and decide it as a question of law adversely to respondents.

> end of the pleading. Whether the jury find a general or a special verdict, it is their duty to decide the very point in issue; and although the court in which the cause is tried may give form to a general finding, so as to make it harmonize with the issue, yet, if it appears to that court, or to the appellate court, that the finding is different from the issue, or is confined to a part only of the matter in issue, no judgment can be rendered upon the verdict" (2 Wheat. at 225).

To the same effect are *Bennett* v. *Butterworth,* 11 How. (52 U. S.) 669, 675 (1850), and *Hodges* v. *Easton,* 106 U. S. 408, 412 (1882).

Cf. Gasoline Products Co. v. *Champlin Refining Co.,* 283 U. S. 494, 497-501 (1931).

We think that we have demonstrated the power of this Court to deal with the question here presented. The Government argues that no review may be had because respondents failed to base their motions for new trial upon the ground that the granting of a new trial to any corporate defendant would require granting new trials to all defendants (R. 155). There was no duty resting upon respondents to anticipate and instruct the court as to its duty in disposing of the several motions for new trial. In any event, the motions for new trial sufficiently raised the point by stating as to each respondent "that the verdict of the jury is contrary to law." When the court, therefore, granted new trials to some, he was bound to determine whether that action would, as to those denied new trials, leave the verdict as to the latter "contrary to law" because such verdict contained no finding of a material issue, *viz.,* whether the respondents who were denied a new trial, possessed power to raise or fix prices. It is clear that on the record the question was properly raised. But the question is so fundamental, and the error so prejudicial, that this Court would be warranted in noticing it although not clearly nor technically raised below.

The Government's second contention is that in the absence of evidence to the contrary, it must be presumed that the trial court took into consideration the results flowing from the granting of new trials to Standard of Indiana and other defendants (B. 154). Respondents do not challenge the accuracy of that view but it has no pertinency here. The fact remains that the court, by granting new trials to some defendants and denying such new trials to the respondents, left the verdict to stand as to them without any finding by the jury that such respondents alone possessed power to raise or fix prices. Respondents are even willing to assume, *arguendo*, that, as now contended by the Government, the trial court undertook to and did find that the respondents possessed the necessary power. That assumption merely emphasizes the error which the court's action created. It possessed no authority to decide such an issue. It was a matter for the jury, and was so recognized by the trial court when it left that issue to the jury under specific instructions as to all the defendants whom they should find guilty. The jury was not instructed to, and therefore had no occasion to consider or determine the power of the respondents. No court can now substitute its judgment for that of the jury upon that issue.

The contention of the Government that for appellate purposes, the Standard of Indiana, which was granted a new trial, must still be treated as linked to the conspiracy, (B. 153) is but to assert that in passing upon the rights of these respondents, this Court must assume that an unconvicted defendant is guilty as charged in the indictment. Of course such a contention will not stand up. The verdict as to Standard of Indiana was set aside, and that action placed that defendant in the status of one never yet convicted. The power of that defendant to fix or raise prices can no more be resorted to for the purpose of adding to the power of the respondents now before this Court, than the power of an untried defendant.

It is true that in denying Standard's motion for a directed verdict, the court was of the view that there was enough evidence to implicate Standard. The granting of a new trial to Standard, however, could only rest upon the ground that the jury had not properly determined its guilt. Otherwise there would have been no occasion for the court to assert that the jury had not given proper separate consideration to Standard.

The Government relies upon *Fairmount Glass Works* v. *Cub Fork Coal Co.*, 287 U. S. 474, as showing that no review of a denial of a motion for new trial can be had where the trial court does not set forth the grounds for denial. It is significant, however, that in that very case this Court said (p. 480):

> "If the refusal to grant the motion for a new trial was deemed by the Circuit Court of Appeals plain reversible error it was at liberty under its rules to notice the error although not assigned;[9] * * *"

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[9] Rule 10 (4) of the Circuit Court of Appeals for the Seventh Circuit provides: "The court may notice a plain error not as-

Under no proper appraisal of the above case can it be said to constitute a bar to the consideration of the question herein presented, for our question goes to the very validity of the verdict by demonstrating that it rests upon findings which did not embrace all material issues in the case. That was not the situation in the *Fairmount Glass Works* case, *supra.*

Nor does the recent decision of this Court in *William Helis* v. *Ward,* No. 68, decided December 18, 1939, constitute a bar to consideration of the question we present. In that case this Court refused to consider whether it should order a new trial, because the petition for certiorari did not present the question sought to be raised.

The foregoing discussion is submitted as an additional ground in support of the judgment of the Circuit Court of Appeals below.

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signed." See *Reliable Incubator & Brooder Co.* v. *Stah,* 105 Fed. 663, 668. A similar rule obtains in this Court; and in each of the other Circuit Courts of Appeals except the Eighth. For examples of the application of these Rules see *United States* v. *Tennessee & C. R. Co.,* 176 U. S. 242, 256; *Columbia Heights Realty Co.* v. *Rudolph,* 217 U. S 547, 552; *Weems* v. *United States,* 217 U. S 349, 358; *Mahler* v. *Eby,* 264 U. S. 32, 45; *New York Life Ins. Co.* v. *Rankin,* 162 Fed. 103, 108. Compare *Pierce* v. *United States,* 255 U. S. 398, 405-406.

PART TWO

THE CIRCUIT COURT OF APPEALS ERRED IN REFUSING TO DIRECT THE TRIAL COURT TO DISMISS THE INDICTMENT.

VI.

THERE WAS A FATAL VARIANCE BETWEEN THE AGREEMENT CHARGED IN THE INDICTMENT AND THE AGREEMENT OF WHICH THE GOVERNMENT CLAIMS THERE WAS PROOF TO GO TO THE JURY.[1]

The Sixth Amendment to the Constitution requires that a defendant in a criminal case be informed of the charge made against him. It follows that under it a defendant cannot be convicted of a crime materially different from that described in the indictment. The accused must be protected against another prosecution for the same offense and must be apprised with certainty of the accusation against him so that he may not be taken by surprise.[2]

A. The charge described in the indictment.

Probably in no other Sherman Law case has the Government so radically shifted its ground as to the agreement which it claimed the defendants had entered into and which it claimed was illegal. In the indictment, as we shall presently show, the prosecution charged an agreement by which the respondents were to procure the publication of false market quotations in trade journals or "market journals", substituting in these quotations higher prices paid by them to independent refiners for the prices actually being charged in the transactions between independent refiners and jobbers which the market quotations purported to reflect. This charge, which Government counsel outlined in the opening to the jury,[3] was affirmatively disproved and abandoned. Nevertheless the trial court permitted the case to go to the jury on the theory that the allegation of an agreement to falsify the published spot market price was immaterial.

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[1] This question was raised in the Circuit Court of Appeals by Assignment of Error Nos. 1-16 (R. 2515-7). The Circuit Court decided it adversely to the respondents (R. 3936-8). It is the second question presented by the respondents' cross-petition in No. 347 (p. 2).

[2] *Berger* v. *United States*, 295 U. S. 78, 82 (1935); *Meyers* v. *United States*, 3 F. (2d) 379, 380 (C. C. A. 2d, 1924); *United States* v. *Byers, et al.*, 73 F. (2d) 419, 422 (C. C. A. 2d, 1934); *Kutler* v. *United States*, 79 F. (2d) 440, 442 (C. C. A. 3rd, 1934); *Malaga* v. *United States*, 57 F. (2d) 822, 825 (C. C. A. 1st, 1932).

What is the scheme described in the indictment? Stripped of the verbiage of inducement, motive and consequential result, the charge is this:

First, the respondents, a group of integrated oil companies, were to buy from small non-integrated refiners in the Mid-Continent field and in East Texas a portion of the gasoline refined by them in amounts relatively small compared to their own output. They were to pay for these relatively small purchases uniform, high, arbitrary and non-competitive prices agreed upon by members of the group.

Second, the respondents would procure the falsification of the market quotations of spot sales of gasoline in the Mid-Continent and East Texas fields published in the trade journals—concededly an important instrumentality of commerce. Left unrestrained, these quotations would have reflected the prices paid in sales to *jobbers* and *not* the prices paid in *inter-refinery* sales, such as are mentioned above, to the respondents. By the agreement these market quotations were to be falsified by the publication of the "wrongfully and artificially raised and fixed prices for gasoline paid by the major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program" in the guise of genuine quotations of competitive transactions between independent refiners and jobbers.

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[3] R. 105-106.

In short the device was for the respondents to pay higher than the actual spot market price for their relatively small purchases from the small refiners and then to secure the substitution of such prices in the market quotations for the lower prices actually being paid by jobbers in competition in the spot market sales. The alleged motive was that the respondents would benefit in their other transactions by the falsification of the market quotations.[4]

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[4] The indictment also charges curtailment of production by independent refiners at the behest of the defendants and asserts that the defendants' purchases amounted to 50% of the independent refiners' production.

The evidence refuted the charge of curtailment of production conclusively and the Court of Appeals so held. The Government has abandoned the charge in this Court.

If engrossment was intended to be charged, it was clearly negatived by evidence showing that the defendants purchased only 15% of the production of the Mid-Continent independent refiners named in the indictment and only 14% of the production of the East Texas independent refiners named in the indictment; by the fact that such refiners owned only 37.6% of the 1935 operating independent refiner capacity in the states supplying the Mid-Western area; by the fact that despite the statements of one broker called by the Government, brokers in general were able to purchase many thousands of cars of gasoline from independent refiners including those named

B. The affirmative disproof of the charge in the indictment.

On this charge the Government went to trial. To its manifest and complete surprise, the essential features of the charge turned out to be not only unsupported by the evidence, but negatived by it. The facts proved to be that the trade publications had based their quotations on jobber—non-refiner—transactions just as they purported to do. Instead of the prices paid by the respondents to the non-integrated refiners being higher than the range of prices prevailing in the spot market, they were at and, in a substantial proportion of the cases, lower than the lowest quotations of the trade journals.[1] Instead of being uniform, they displayed considerable variations, as many as three or four different prices sometimes being paid on the same day.

The evidence affirmatively showed that no such scheme as that charged in the indictment existed; that the respondents' purchases had not been accompanied by any falsification of the trade journal quotations either with or without

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in the indictment and made a volume of purchases during the spring of 1935 greater than during the pre-buying program period (R. 1638, 1640); by the fact that the gasoline purchased was distress gasoline, for which there was no other market except on a distress sale basis; and, most of all, by the fact that prices did not rise as much in the market claimed to have been affected by respondents' buying as they did outside that area (R. 1462).

As we have already noted (pp. 77-8, *supra*), if the Government's method of arbitrarily calculating the volume of the spot market on the basis of the estimate of one of its witnesses that independent refiners sell from one-third to one-half of their gasoline on the spot market is to be accepted, then the respondents' Mid-Continent purchases amounted to only from 14.9% to 22.7% of the total spot market and purchases from East Texas refiners took only 14.07% of that market.

[1] See pp. 57-58, *supra,* Def. Ex. 1024, p. 66, *supra.*

the cooperation of these journals; that the prices paid by the respondents had not led the spot market upward, but had followed and lagged behind whatever increases took place in the spot market prices; and that if the trade journals had reflected such prices, their quotations would have been substantially lower than they actually were.

On the face of it, there was a clear failure of proof. Nothing more had been shown than that the respondents had made concerted purchases of distress gasoline from independent refiners at prices at or below the lowest prices quoted in the trade journals as being paid by others in the market.

C. The theory of the case advanced by the prosecution after its failure to prove the original charge was a variance from the charge in the indictment.

To avoid the consequence of its failure to prove the original charge, the Government has now come forward with a completely new theory of the nature of the offense.

Since the respondents purchased gasoline which would otherwise probably have been sold on a distress basis, the Government contends that such purchases caused an increase in the general level of prices and that they therefore constituted the concerted action described in the indictment. It is claimed that the charge of falsification of the trade journal prices in a paragraph separate from those which purport to describe the "buying programs" indicates that such falsification was a separate auxiliary means of accomplishing the alleged conspiracy and not an essential feature of it (B. 142-4). This contention is diametrically opposed to the prosecution's own statement of what it conceived to be the charge in the indictment before occasion arose to change its interpretation to fit the facts.

In their argument in opposition to the respondents' demurrers, and in their opening statement to the jury, Government counsel insisted that the conspiracy embraced a single scheme and that without the participation of the journals, the conspiracy could not have succeeded. Thus in opposing the respondents' demurrers, government counsel declared:

> "Now, here it is alleged that these trade journals knew anything that has been alleged in that indictment, and then intentionally participated in it. *Now, if knowing of that they had put their feet down and said, 'No, we won't cooperate,' they could have prevented this particular scheme from working.*" (R. 58. Italics added.)

And in their opening statement to the jury Government counsel said:

> "The prices, as I have said again and again, for all gasoline sold in this area, whether to jobbers or consumers, depend on the prices published in these journals. The journals ordinarily publish the going, open market prices. But during the time of this conspiracy, we will show that they published, not the going open market prices, but they published the prices that the major oil companies were trying to fix as the market prices for gasoline throughout this territory.
>
> "The major oil companies sell their gasoline in these states. They sell 85% out of all the gasoline that is sold in these states. By buying on the open market small dribbles of gasoline, in relation to the large quantity that they sold here, and paying an arbitrary price, and getting the journals to carry

> that price as the going market price, that price automatically and directly became the price that they got for the great quantities of gasoline that they sold in this territory. *Now, that is the nub of the Government's case."* (R. 105-6. Italics added.)

We are thus confronted with an indictment containing a material allegation of false publication of prices by the market journals coupled with the repeated assertions of Government counsel that such allegation was indispensable to the success or execution of the conspiracy charged.

The Government and the Circuit Court of Appeals suggest that the indictment states a complete accusation against the respondents even if the section charging falsification of trade journal prices be ignored. The Circuit Court of Appeals characterizes the trade journal allegations as "in the nature of an additional count specifically charging the trade journals" (R. 3937). The Government contends (B. 143) that since the trade journals are stated to have "aided" the other defendants, their participation is not described as an integral part of the conspiracy. These suggestions do not bear analysis. The fact that the trade journals did not actively participate in the alleged conspiracy would not of itself eliminate the possibility that their quotations were falsified by action of the conspirators without the journals' knowledge.[1] The respondents were not automatically relieved of the charge of falsifying the trade journal quotations when the trade journals were dismissed from the case. They still had the burden, which they sustained successfully, of showing that they had not, without the knowledge of the trade journals, but by cooperation with the independent refiners who were constantly reporting their jobber prices to the journals and were one of their main sources of information,[2] secured publication of the prices they paid as the prices being paid by jobbers. That being so the function of paragraph 24 is not merely to charge the trade journals but also includes the description of the crime of which the other defendants were accused.

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[1] Respondents' contention to the contrary was rejected by the trial court in its denial of their motion to dismiss at the close of the Government's case.

The Government also claims that the participation of the trade journals is "* * * alleged as a minor and subordinate means" (B. 142), and that it "* * * was not in any respect essential to the undertaking" (B. 144). Why, if the trade paper allegations are separate and non-essential as now suggested, did the Government say that without trade journal cooperation "this particular scheme" (using the singular) would not have worked? Why, if the trade journal allegations are "minor and subordinate" was the jury told that publication in the trade journal quotations of high prices paid by respondents was "the nub of the Government's case"? What justification can now be found for the draftsmen's repudiation of their own interpretation of the indictment, given before the taking of evidence had created the necessity of twisting it away from its true meaning if the prosecution was not to fail completely?

The question in this case is not whether it would be possible, by cutting out some of the allegations in this indictment and recombining others in different form, to construct a new presentment. It is, rather, whether *this* indictment as now drawn sets forth a plan which is a unified whole and the described features of which are interdependent. If it does, then the fact that it contains elements which might be assembled into a different charge is immaterial.

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[2] R. 745.

The indictment does not make any vague general charge that the mere concerted purchasing of gasoline constituted the restraint. On the contrary, after describing the relationship between spot market prices, trade paper quotations and jobber contract prices, it groups under the heading "C. The Conspiracy", paragraphs 18-24 containing, first, a general allegation and then a more detailed description of the terms of the alleged agreement constituting the conspiracy,[3] to wit, the establishment of buying programs in which independent refiners were to be paid prices higher than the market price, which prices "paid by the major oil companies as aforesaid" were, under the allegations of Paragraph 24, to affect the prices paid by jobbers, retailers and consumers in the Mid-Western area through the agency and instrumentality of the trade journals by the substitution of such higher prices in the trade journal quotations for the lower prices actually being paid by jobbers in the spot market. The whole indictment is instinct with the claim that it was the high prices paid by the respondents which were to lead to the payment of higher prices by jobbers, consumers and retailers in the Mid-Western area. And according to its specific language, it was the prices "paid by the major companies as aforesaid", not the prices paid by jobbers in the spot market, which "affected" the Mid-Western price level.[4] The indictment states specifically that the evil was to be accomplished by directly translating the major companies' supposedly high buying prices into the trade paper quotations, *not* by causing the *correct* quotation of spot market jobber prices to be enhanced in some other way. In this connection it is significant that while the Government in the presentation of its own case offered elaborate tables[5] in an attempt to show that the respondents paid prices higher than jobber prices and that these were printed as the trade journal quotations, it made no attempt to prove the quantity of the gasoline sold on the spot market,[6] the total production of even the independent refiners named as coconspirators, or the percentage of the total independent refiner capacity owned by refiners so named.

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[3] Paragraph 18 standing alone is not a sufficient description of the alleged conspiracy to inform the accused of the nature of the accusation. Into that paragraph are thrown indiscriminately (a) a general allegation that the defendants "combined and conspired"; (b) an allegation of a general purpose for entering into the combination and conspiracy that there would result from it an artificial rise and fixing of prices in the spot tank car market; (c) a general allegation that the defendants had in fact carried out their combination and conspiracy and the desired prices in the spot tank car market had resulted; (d) that there had in fact followed further expected consequential results on the prices which jobbers, retailers and consumers paid to the defendants to the benefit of the defendants. This paragraph of the indictment, then, alleges no more than that the defendants entered into a conspiracy from certain motives and with certain results. It does not sufficiently disclose the *conspiracy agreement* itself or tell *what it was* that was agreed to be done by the defendants. The latter must be found in paragraphs 19-24. The fact that the material in these latter paragraphs is ostensibly a description of the "manner" and "means" by which the alleged conspiracy was effectuated is not controlling. Unless paragraphs 19-24, which are *all* equally under the heading "C. The Conspiracy," contain a description of the agreement constituting the conspiracy there is not a sufficient description of the conspiracy in the indictment and it is fatally defective.

When the pleader alleged that the trade publications have been "the chief agencies and instrumentalities through which the wrongfully and artificially raised and fixed prices for gasoline paid by the major companies as aforesaid have affected the prices * * * in the Mid-Western area * * *",[7] he was charging that the falsification of the published market quotations was an integral and essential feature of the plan of action agreed on by the defendants as their conspiracy. It cannot now avail the Government to say to this Court, as it has (B. 143), that this allegation is surplusage. The claim fits in too exactly with the repeated declarations by Government counsel quoted above that the cooperation of the trade journals was a necessary element of "this particular scheme"[8] and that the falsification of the trade journal quotations constituted "the nub of the Government's case."[9] And this is especially so when it is noted that this language was deliberately added to the indictment. The inclusion of this language was no mere slip, but the deliberate and considered action of the prosecution in endeavoring to make clear the charge against the respondents.[10]

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[4] Indictment, paragraph 24, R. 16-7.
[5] Govt. Exs. 747-751, R. 883-900.
[6] See pp. 77-8, *supra*.

To summarize: this indictment was not brought as a charge that the defendants had been paying *too much* to small non-integrated refiners by not competing in their purchases from them. Paying those prices above the prevailing market was important to the pleader because of his further charge that the device of falsification of market quotations *translated* these higher purchase prices into the published market price. As Government counsel recognized in the statements quoted above (p. 286), it is the only method for so doing that is set forth in the indictment.[11] The purchasing of gasoline and the falsification of the trade journal quotations are thus inextricably connected as necessary and complementary parts of a single scheme alleged in the indictment. Neither could be cut out of it without essentially changing the description of the plan and thus rewriting the indictment.

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[7] Indictment, paragraph 24, R. 16.

[8] Page 286, *supra.*

[9] Page 287, *supra.*

[10] See R. 59-60.

It follows that if mere proof of the conceded concerted action of the respondents in buying distress gasoline at or below what might from time to time be the lowest price made in sales by independent refiners to jobbers establishes any offense whatever, that offense is a very different one from that charged in paragraphs 19 through 24 of the indictment. Not only is it lacking in the essential element of interference with trade paper quotations, but the feature of payment of uniform prices above the market which might of itself be contended to have some adverse effect on competition is also missing.

The arch of the original accusation fell to the ground when these two stones were removed. The reconstruction attempted by the Government in laborious interpretations of the charge which contradict their earlier views of the case created an entirely new and different structure not only substantially varying from the original but, except in isolated parts, hardly bearing any recognizable resemblance to it.

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[11] To spell out anything more, it is necessary to resort to arguments that the indictment *implies* a charge different from that which it specifically describes.

D. The variance is prejudicial and a verdict should have been directed in favor of respondents.

The existence of a variance cannot be doubted. Its prejudicial and fatal character is equally clear.

A fair statement of the Government's whole attitude in this case is found in its comment on the effect of the variance which resulted from the failure to prove falsification of trade journal quotations. The Government says:

> "They [the respondents] were not surprised by the alleged variance because they themselves introduced the evidence to disprove the charge that the trade journals published[1] the defendant companies' prices" (B. 146).

A more amazing misconception of the rule against variance between pleading and proof would be hard to conceive. That rule depends upon the fundamental principle that an accused is entitled to be advised in advance of the charge which he is to meet.[2] Its purpose is to protect him, not against surprise resulting from failure of the Government to prove its case (such surprise could never be prejudicial), but against surprise resulting from his being called upon at the trial to meet a new charge of which he has had no previous warning. The reasoning of the Government amounts to saying: "If you prove yourself not guilty of the charge we make in the indictment, then it is perfectly fair to charge you with something entirely different. Since you knew all the time that we couldn't prove the original charge, therefore you must have known that we meant not that charge but this other charge which we have just disclosed to the jury for the first time after all the evidence is in." If the Government is right, there is no such thing as a prejudicial variance between pleading and proof, and the accused who is in a position to refute a specific accusation against him must be ready to guess at his peril what other charges the prosecution may make against him and refute such other charges also.[3] Such, we submit, is not the law.

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[1] The brief reads "did not publish" but "published" seems to have been intended.

[2] *Meyers* v. *United States,* 3 F. (2d) 379, 380 (C. C. A. 2d, 1924); *United States* v. *Byers, et al.,* 73 F. (2d) 419, 422 (C. C. A. 2d, 1934); *Kutler* v. *United States,* 79 F. (2d) 440, 442 (C. C. A. 3rd, 1934); *Malaga* v. *United States,* 57 F. (2d) 822, 825 (C. C. A. 1st, 1932).

Berger v. *United States,* 295 U. S. 78, 83 (1935), relied on by the Government, is not contrary. In that case the indictment charged a conspiracy to utter false Federal Reserve notes but did not state the purpose of the uttering. The evidence disclosed that some of the defendants uttered for one purpose, and some defendants for another purpose. This Court held, in substance, that as long as defendant was shown to have committed the offense as charged, he was not prejudiced because his associates were shown to have been involved in a different conspiracy. *In other words, as to him the evidence established the very conspiracy charged.* That obviously is not the case this Court is now called upon to consider, for here there exists a very definite failure of proof of the conspiracy as charged and described.

Not only did the variance here deprive respondents of an opportunity to offer evidence on a charge of which they were given no notice, but the complete switch from the earlier charge of restraint by falsification of trade journal published quotations threw the whole course of the trial into disorder. The restraint alleged in the indictment would have been unreasonable and, therefore, unlawful on its face. The history and conditions of the industry, the objectives of the Government in the rehabilitation of the industry, the circumstances which led up to and the effects of the respondents' concerted buying, would not have availed to make any such transaction reasonable and lawful. As a result, all through the case the trial court, as the record discloses, was constantly torn between making a strict ruling excluding such evidence as immaterial and a grudging and disjointed admission of it in the course of the efforts which the respondents were making to put the full story of all that they had done and the circumstances in which it was done before the jury. The respondents were substantially prejudiced by this situation which prevented the jury from ever getting a clear picture of their position and necessarily led them to believe that an attempt was being made to befog the issue by the introduction of irrelevant evidence.

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[3] The negligence case cited by the Government, *Washington and Georgetown Railroad Company* v. *Hickey*, 166 U. S. 521, has no bearing on the question. Where a defendant accused of causing negligent injury in one way comes into court and affirmatively proves that he caused the injury in a slightly different way, there is, of course no prejudicial variance. That is far from a holding that disproof that the injury was caused in the manner described in the pleadings justifies an attempt by the plaintiff to then charge that the injury was done in an entirely different way.

Even more prejudicial was another result of the variances. The respondents, in order to meet and disprove the charge made in the indictment of falsification of the trade journal quotations and of the payment of higher than going market prices, were forced to go into enormous detail in analyzing and proving the actual prices which they had paid in every purchase made from an independent refiner throughout this period. They were also forced to make a protracted and detailed audit and examination of all the sales of more than a score of independent refiners to all their jobber customers during the indictment period. Necessarily, the results of this examination had to be presented to the jury and explained in detail,[4] a process which took days of the court's time. All this evidence[5] became confusing and burdensome to the jury when the case was submitted to them under the instruction of the court that it was immaterial whether the prices paid by the respondents to independent refiners were higher or lower than prices paid by jobbers. Inevitably the impression was created that the voluminous testimony and exhibits in regard to prices which had been presented with such elaboration and detail *to refute the specific charge of the indictment* were totally irrelevant and had been brought into the case solely for the purpose of confusing the issues and misleading the jury.[6]

Another source of injury from the variances will be respondents' position in any treble damage suits. If this conviction should stand, the respondents will be further prejudiced in the defense of any such suits since the verdict will be *prima facie* evidence of the conspiracy *as alleged* in the indictment. Respondents will, therefore, again have the burden of disproving the inflammatory charges of falsification of trade publications. In doing so, they may very well be confronted with a claim that the jury is entitled to take the verdict as proof of the indictment in preference to the evidence of disproof then offered.[7]

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[4] Def. Ex. 1024, R. 3807; J. D. Miller, R. 1539-1617, 1649-1678. See also Def. Exs. 712, 713, 716, 741, 857, 858, 868-73, 889, 890, 984, 998-1003.

[5] Showing conclusively that the defendants had purchased at or below the lowest published market quotations and that there had been no false publication in the market journals.

[6] This is no illusory, after-the-fact, argument. Counsel for the Government repeatedly characterized defendants' proof of the accuracy of the trade journal quotations and the lowness of the prices they paid to independent refiners as "a red herring drawn across the trail." A typical example of the advantage taken by the Government on account of the permitted variance is the following statement by Mr. Lewin in summation:

> "And it makes not one iota of difference—*it is a mere attempt at confusion*—to bring in here day after day a smart accountant, who aided by fifteen others, working night and day, put little dots and dashes along these charts, hung up flag after flag here." (Italics added.) (R. p. 2062.)

The charts thus referred to were Defendants' Exhibit 1024, which shows beyond contradiction that contrary to the indictment the trade papers were not falsified and that the prices paid by respondents were neither high nor uniform, and similar charts comparing the prices paid by the respondents with the trade paper quotations.

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[7] The injury resulting to these respondents from the variances between the allegations of the indictment and the proof can be illustrated by the case of *Local 167* v. *United States*, 291 U. S. 293 (1934). The defendants in that case had been previously convicted under an indictment charging a violation of Section 1 of the Sherman Act. The indictment had described the precise means used by the alleged conspirators. Subsequent to the conviction, and while an appeal from the criminal conviction was pending on appeal in the Circuit Court of Appeals for the Second Circuit, the Government instituted an action in equity to enjoin the practices described in the indictment. The petition in equity was substantially identical with the conspiracy indictment. The defendants answered it by denying that they had formed the conspiracy alleged. The lower court struck the answer as frivolous and sham on the ground that the judgment of conviction was conclusive as between the parties, and that the defendants *were estopped to deny* that they had done the specific things described in the indictment. This action of the trial court was upheld by this Court, which stated:

> "The judgment in the criminal case conclusively established in favor of the United States and against those who were found guilty that within the period covered by the indictment the latter were parties to the conspiracy charged. The complaint in this suit includes the allegations on which that prosecution was based. The defendants in this suit who had been there convicted could not require proof of what had been duly adjudged between the parties. * * *" (291 U. S. at 298.)

This doctrine is particularly important in a Sherman Law case. Section 5 of the Clayton Act provides:

> "A final judgment or decree hereinafter rendered in any criminal prosecution or in any suit or proceeding in equity

Finally it is no light thing for the respondents to rest under the stigma of a conviction of a charge of the grossest fraud on their customers and on the public in the falsification of published market quotations when, as a matter of fact, this charge was affirmatively disproved and forced to be abandoned on the trial.

In short, by permitting the variance complained of, the trial court without justification placed these respondents in an impossible position, from the standpoint of the defense of the case pending against them, from the standpoint of actions against them in the future and from the standpoint of pleading double jeopardy in another prosecution for the same offense.

> brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be *prima facie* evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: * * *"

In an action instituted for damages under this section the plaintiff could describe the alleged conspiracy in the exact words of the indictment, and urge that the judgment of conviction was *prima facie* proof as against the respondents that they had done the precise things alleged in the indictment. The burden of overcoming this presumption raised by a conviction would be both expensive and hazardous before a jury.

VII.

THE CIRCUIT COURT OF APPEALS ERRED AS A MATTER OF LAW IN HOLDING THAT THE RESPONDENTS WERE NOT ENTITLED TO DIRECTED VERDICTS OF ACQUITTAL.[1]

The respondents contend that this record contains no substantial competent evidence that the combination, either in purpose or effect, unreasonably restrained trade within the meaning of the cases herein cited.

The brief of the Government attempts to dismiss this contention by the statement that:

> "* * * in the court below respondents did not even attempt to lay the necessary foundation for this contention, namely, that there was no evidence adequate to support findings by the jury that their combination had the purpose and the power to raise and fix prices" (B. 147).

In this the Government is in error. In their brief below the respondents centered their argument on this point on an examination of the record to show that there was no evidence to warrant a finding by the jury:

(1) That the purpose and effect of the respondents' concerted action was to *do more* than free the play of competition in the spot market from the distorting effect of distress sales at forced prices;

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[1] This point was raised in the Circuit Court of Appeals by Assignments of Error Nos. 1-16, inclusive (R. 2515-7). The Circuit Court of Appeals decided it adversely to the respondents (R. 3938-9). It is the third question presented by the respondents' cross-petition in No. 347 (p. 2).

(2) That the respondents had the power to affect price in any other way.

It was our contention there, as it has been here, that, unless there was substantial evidence to warrant such conclusions, there was not sufficient evidence to go to the jury on which they could find an undue restraint of competition. It was our contention there as here that the evidence was without conflict and affirmatively established the contention of the respondents on these issues of fact.

The Government in its argument on this point has not undertaken to point out evidence which would support sending the case to the jury on these issues. The pertinent facts are summarized in the following argument. For a complete digest of the facts we respectfully refer the court to respondents' Appendix A filed herewith.

A. The law applicable to an appeal from the denial of a defendant's motion for a directed verdict.

All courts agree that it is the duty of an appellate court to reverse a judgment of conviction where all of the substantial evidence is "as consistent with innocence as with guilt." As the Circuit Court of Appeals for the Eighth Circuit said in *Union Pacific Coal Company* v. *United States*, 173 Fed. 737 (1909) (opinion by Judge Sanborn, concurred in by Judge, later Mr. Justice Van Devanter):

> "There was a legal presumption that each of the defendants was innocent until he was proved to be guilty beyond a reasonable doubt. The burden was upon the government to make this proof, and evidence of facts that are as consistent with innocence as with guilt is insufficient to sustain a conviction. Unless there is substantial evidence of facts which

exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused; and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse a judgment of conviction." (173 Fed. at 740.)[1]

B. The issue here under the Sherman Law.

As we have shown in Point I, this Court has developed certain tests to be applied to a state of facts such as that presented by this record—*i. e.*, for determining whether in purpose and effect the activities of a combination impose an undue or a reasonable restraint on competition.[2]

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[1] This rule has been followed in every circuit (including the Seventh Circuit) which has passed upon the problem. *Grant* v. *United States*, 49 F. (2d) 118 (C. C. A. 3rd, 1931); *Graceffo* v. *United States*, 46 F. (2d) 852 (C. C. A. 3rd, 1931); *Nicola* v. *United States*, 72 F. (2d) 780 (C. C. A. 3rd, 1934); *Paul* v. *United States*, 79 F. (2d) 561 (C. C. A. 3rd, 1935); *Gerard* v. *United States*, 61 F. (2d) 872, 875 (C. C. A. 7th, 1932); *Isbell* v. *United States*, 227 Fed. 788 (C. C. A. 8th, 1915); *Hays* v. *United States*, 231 Fed. 106 (C. C. A. 8th, 1916); *Read* v. *United States*, 42 F. (2d) 636 (C. C. A. 8th, 1930); *Danaher* v. *United States*, 39 F. (2d) 325 (C. C. A. 8th, 1930); *Salinger* v. *United States*, 23 F. (2d) 48 (C. C. A. 8th, 1927); *Tinsley* v. *United States*, 43 F. (2d) 890 (C. C. A. 8th, 1930); *Rosenthal* v. *United States*, 45 F. (2d) 100 (C. C. A. 8th, 1930); *Gargotta* v. *United States*, 77 F, (2d) 977 (C. C. A. 8th, 1935); *Vernon* v. *United States*, 146 Fed. 121 (C. C. A. 8th, 1906); *Cady* v. *United States*, 293 Fed. 829 (Ct. of App., D. C., 1923); *Moore* v. *United States*, 56 F. (2d) 794 (C. C. A. 10th, 1932); *Parnell* v. *United States*, 64 F. (2d) 324 (C. C. A. 10th, 1932); *McClintock* v. *United States*, 60 F. (2d) 839 (C. C. A. 10th, 1932); *Leslie* v. *United States*, 43 F. (2d) 288 (C. C. A. 10th, 1930). It is also the rule which this Court has laid down (although no criminal cases have been found) in all cases which have come before it. *Pennsylvania Railroad Co.* v. *Chamberlain*, 288 U. S. 333 (1932); *Gunning* v. *Cooley*, 281 U. S. 90 (1929); *Stevens* v. *The White City*, 285 U. S. 195 (1931); *Chicago, Milwaukee and St. Paul Railway Co.* v. *Coogan, Spec. Adx.*, 271 U. S. 472 (1925); *New York Central Railroad Company* v. *Ambrose, Adr.*, 280 U. S. 486 (1929).

> (1) Forced sales of a distress product which contribute substantially to the depressed condition of an industry may constitute a competitive evil.
>
> (2) An intention "to stabilize the business, or to produce fairer price levels", through the elimination from a competitive market of a competitive evil (such as distress gasoline) is not unlawful.
>
> (3) Concerted effort to correct such competitive abuse is promotive of sound competition and not condemned by the law unless by reason of its intent, inherent nature or effect it goes beyond what is necessary to correct the abuse, and instead of merely freeing competition from the effect of that abuse unreasonably restrains it in some other manner.

In a word: Unless this record contains substantial evidence (as defined above) on which a jury could find that the concerted action of the respondents in purpose or effect went beyond the mere freeing of competition from the distorting effect of a competitive abuse and imposed some other restraint undue in character, the respondents were entitled to directed verdicts.

C. The respondents' purpose was lawful.

1. *There is no conflict in the evidence that there was a competitive abuse.*

The record shows that for several years prior to the indictment period the distress of the oil industry was so acute as to call for remedial cooperative action.[1] It also shows that this condition was recognized not only by the industry but by the state and federal governments.[2]

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[2] See pp. 148-63, *supra*.

There was no dispute as to these facts. The Circuit Court summarized them as follows:

> "* * * It is plainly apparent that for several years prior to the alleged conspiracy, the gravest problem confronting the oil industry was the overproduction of crude oil, which inevitably resulted in an over-supply of gasoline. This meant a decline in prices often below the cost of production. As new fields were developed the problem became more acute. Both State and Federal Governments actively engaged themselves in attempting to remedy and solve the problems in various ways, such as curtailment of production, buying programs, and the fixing of prices at which crude oil could be sold. * * *
>
> "Beginning in March, 1933, the Federal Government, the interested states and the industry joined in a general movement to eliminate such destructive practices and to restore healthy competitive conditions. The record sustains appellants' statement that it was sought to accomplish three principal objectives:
>
> > "(1) The restoration of the price of crude oil to a minimum of $1.00 per barrel. That was the minimum price at which the vast majority of the crude oil wells of the country could operate.
> >
> > "(2) The restoration of the price level of gasoline at wholesale at the refinery to 'parity' with crude oil; that is, a price which would reflect the normal relation between the price of gaso-

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[1] Pp. 16, *et seq., supra.*

[2] Pp. 20, *et seq., supra.*

> line and the price of crude oil from which it is manufactured.
>
> "(3) The stabilization of the retail prices at a normal spread or margin between the refinery price of gasoline and the retail price" (R. 3917).

The Government does not contend that it introduced any evidence to controvert these facts. It thus appears, from undisputed facts that in the winter of 1935 there was a situation in the industry, particularly in the gasoline tank car market, calling for remedial efforts. The cases we have cited show that a purpose to relieve such a depressed industry is lawful.

The situation just described was caused primarily by two abnormal and destructive competitive evils. One of them was "hot oil"—that is, oil produced in violation of the state proration laws.[3] The other was "distress" gasoline in the hands of non-integrated refiners.[4] The activities of the respondents were directed at the latter.

The Circuit Court summarized the facts contained in the record as follows:

> "* * * If there is any one thing completely established, it is that the oil industry, as well as numerous Governmental agencies, Federal and State, have recognized surplus crude oil and surplus gasoline as a distress product, the elimination of which was not only desirable, but necessary if the industry was to survive, to say nothing of prospering. This situation alone cannot be relied upon as a defense, but it affords justification for the action of the defendants in treating surplus gasoline as an evil of

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[3] Shatford, R. 1000-1; see pp. 19-28, *supra*.

[4] Frey, redirect, R. 1327; see pp. 29-31, 103-12, *supra*.

> the industry and in making a concerted effort to eliminate the same with a view of stabilizing the market, even though an increase in price might result; provided, of course, the program, either as planned or executed, did not go so far as to constitute an unreasonable restraint by unduly suppressing or interfering with fair competition. * * *" (R. 3929-30).

The Government does not show any conflict of evidence in this matter. It merely states its view that the industry and the Secretary of the Interior were wrong in believing that the effect of forced sales by small refiners was a competitive evil. It takes the position here, as it did in the *Appalachian* case, that buyers ought always to be in a position to take full advantage of inequality in bargaining power and that any mitigation of that situation is an undue restraint on competition. That, however, was not the conception of this Court in the *Appalachian* case. The facts are discussed at length on pages 103-112, *supra*. We submit that they show no evidence that distress gasoline was not a competitive evil.

On the contrary (to quote the Circuit Court of Appeals), its existence as a competitive evil was "completely established".

2. *There is no conflict in the evidence that the concerted action was directed at the elimination of this abuse. Its purpose did not become unlawful because the elimination of the abuse would tend to "stabilize prices and produce fairer price levels."*

Faced with these conditions, taking the evidence most strongly against them, what did the respondents do? The

Circuit Court of Appeals found that the facts were "not in dispute".

> "* * * Without going into detail * * * we think the substance of what was accomplished and agreed upon was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices" (R. 3919).

The Government does not dispute that if there was such a thing as distress gasoline the respondents' purpose was to eliminate it. It urges, however, that they had another purpose which is controlling in this case; namely, a purpose to increase the price of gasoline.[5] Let us analyze this contention. Of course, distress gasoline, like any other competitive evil, tended to depress the price. Obviously, the removal of distress gasoline would permit the price to rise to the extent that the evil had abnormally depressed it. It is *only in this sense* that the record discloses any purpose or intention on the part of these respondents to increase the price of gasoline. If such a purpose were unlawful, the law would condemn every cooperative effort to eliminate competitive evils, for all such efforts tend to "stabilize prices and produce fair price levels."

The cases which we have discussed under Point I above show that this Court does not deem unlawful a combination which stabilizes or raises prices solely by the removal of a competitive abuse. As this Court said in both the *Appalachian* and *Sugar Institute* cases:

> "The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price

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[5] See B. 18, 26, 28, 31.

levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade. * * *" (288 U. S. at 373-4. See also 297 U. S. at 598.)

D. There was nothing in the nature or effect of the method used to remove the abuse which made the plan an undue restraint.

We have shown that the purpose for which the respondents combined was lawful. Now, in accordance with the second part of the rule described in Section B above, we must examine the further question: Did the combination, by reason of its nature and effect, unduly and unreasonably restrain trade?

In the *Appalachian Coals* case, this Court indicated that the primary test of reasonableness is whether the combination would "effect a change * * * which would be in mitigation of recognized evils" and whether the restraint imposed was incidental to the attainment of this lawful purpose (288 U. S. at 374). In the *Sugar Institute* case, on the other hand, this Court indicated that even a combination to accomplish a lawful purpose might be unlawful if the parties went "further than was reasonably necessary to accomplish their professed aims." (297 U. S. at p. 578.) The primary test, therefore, for determining whether the means used by the respondents were lawful must be: Did they go beyond what was necessary to eliminate the competitive evil of distress gasoline, and restrain trade in some other or different manner?

1. *The method used was an appropriate one to deal with the abuse.*

As we have seen, "the substance of what was accomplished and agreed upon was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices" (R. 3919). What were the mechanics used to make this program effective? The Circuit Court described them as follows:

> "* * * Defendant Bourque was designated to make surveys with a view of ascertaining the amount of surplus gasoline and furnishing such information to the defendant companies. A mechanical sub-committee consisting of one Jacobi, the appellant McDowell, and the defendant Tuttle, was appointed to assist in the disposal of surplus gasoline not anticipated by the monthly surveys. It was also a part of the function of this sub-committee to urge companies to pay the fair going market price. * * *
>
> "* * * The Tank-Car Stabilization Committee held monthly meetings at which the surveys with reference to surplus gasoline were considered. There is evidence to the effect that the committee recommended the amount which each company should purchase and that the companies felt a moral obligation to comply therewith. The Mechanical Sub-Committee also met frequently and was in frequent contact with the purchasing companies, oftentimes urging them to increase the amount of their purchases. The defendant companies reported monthly to Bourque the volume of purchases and the prices paid in connection therewith. Although there is evidence that the defendants in some instances purchased more gasoline than they actually required, it was all disposed of in the usual channels of trade.

> * * * The Tank-Car Stabilization Committee was concerned with the price at which purchases were to be made, but it seems the Committee was chiefly interested with prices not below the going market price. In fact, no purchases were made above that price and prices actually paid to the independent refiners varied considerably" (R. 3919-20).

Such a program was clearly appropriate to eliminate the competitive evil of distress gasoline.

The first thing to do was to find out how much of this product there was which would be "distress." Some of the small refiners would have none. The situation of others would vary. Bourque's current surveys of distress gasoline and the activities of the Mechanical Sub-committee constituted a necessary and sensible first step.

Obviously, the next thing required was to find outlets which could take the distress gasoline from the small concerns which had it *at the time* when they would be otherwise forced to dump it. The major companies were the normal outlets. The Government itself had recognized this in sponsoring its buying programs in 1934.[1]

There was another feature which was absolutely essential if this plan were to work fairly and usefully. After the small concerns had disclosed the extent of their weakness and the urgency of their needs through Bourque's survey; it would have been manifestly unfair for a large concern to take advantage of that knowledge by buying at the lowest distress price which the small refiners' distressed situation might necessitate. Indeed, so far as the independent refiners were concerned, such action would not have mitigated the competitive evil. Any plan for relieving the abuse of distress sales therefore required that the large concerns should buy at, or not substantially lower than, the prevailing market prices at which the small refiners and their jobber customers were, respectively, selling and buying. As appears from the record, this was a feature of the plan of the Tank-Car Stabilization Committee.[2] It would be an essential part of any reasonable plan.

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[1] Arnott, R. 1702, redirect, R. 1799-1800; see Shatford offer, R. 1048-51; Deft. Exs. 844-847 for Identification, R. 3367-86; Appendix A, pp. 50-55.

It is to be noted that *the very price paid was thus made dependent upon the market price which was made by competition in sales by the independent refiners to independent jobbers and consumers on the spot tank-car market.* It would thus merely bring the price they were paying for distress products more nearly in line with whatever competitive price was arrived at in the sales on the spot tank-car market. Insofar as the price was based upon the competitive market, the agreement is analogous to that involved in the *Chicago Board of Trade* case, in which there was an agreed price on products sold between trading hours and that agreed price was made to depend on other sales on the market, namely, those made at the close of the trading hours.

The test is not whether there was *some* concerted action about price as to *some* portion of a product. The question is whether there was a wiping out of competition in the spot tank-car market which prevented the prices *in that market* from being made by the play of competition in sales between independent refiners and their jobbers and consumer customers.

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[2] McDowell, R. 1183, 1184, 1188, 1194, 1199; Sus, cross, R. 1870.

These were the fundamentals of the scheme. They furnished what was on its face a fair and sensible method of dealing with the abuse. This brings us to the question of whether there was evidence that the nature and effect of this method adopted to deal with the competitive abuse, though appropriate for that purpose, was nevertheless such, that instead of merely freeing competition from the distorting effects of the abuse, it imposed other and undue restraints.

2. *There is no conflict in the evidence that the spot market price continued to be determined by the play of competition.*

After the plan was in effect, as before, independent refiners bargained on the spot market with independent jobbers and consumers who were accustomed to buying on that market. The range of prices arrived at in this bargaining made the market which was published in the journals.[8] That market price was certainly a price determined by the play of competition. Before the buying began, however, it was affected by sales of "distress gasoline" and "hot oil", which were sold below that competitive level and tended to pull that level down and hold it down.

When "hot oil" and "distress gasoline" were eliminated, the spot tank-car market price continued to be arrived at in the same way by buying and selling between jobbers and independent refiners. But the depressing factors of sales of "hot oil" and "distress gasoline" below the going market were now removed.

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[8] Steiger, R. 745-8.

A careful analysis was made of a multitude of sales by independent refiners to jobber customers during this period.[4] *It shows conclusively that they were selling to their customers at diverse prices instead of at uniform prices.* Indeed, as the evidence shows, they frequently made sales below the low of the market quotations and, frequently, above the high of these quotations. From all the sales trade papers gathered the prevailing range of the market, and reported it.[5]

There was a suggestion, by the Government in its summing up and in its petition for writ of certiorari, that the prices at which the independent refiners sold were prices which they agreed with the respondents to name. That contention, and the reference to testimony cited in the petition for certiorari to support it, have alike been dropped in the Government's brief. We will not discuss it, except to point out that not only is there no evidence to support such a claim, either in the testimony or in the contemporaneous memoranda of what took place at meetings of the respondents, but it is negatived by the analysis of the sales of independent refiners to jobbers which we have just referred to.[6] (Defendants' Exhibit 1024.) The Circuit Court of Appeals, after reciting the circumstances, said: " * * * under such circumstances it cannot be held that competition on the 'spot' market was eliminated" (R. 3932).

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[4] Def. Ex. 1024, p. 66, *supra.*

[5] Steiger, R. 745-8.

[6] Any contention based upon a claim that there was such evidence would immediately establish a fatal variance, because there was no such charge of any agreement in the indictment. The only agreement as to prices charged in the indictment was as to the buying prices at which the respondents agreed among themselves that they would buy from the independent refiners.

We come next to the question of whether the buying had any effect on this competition other than that flowing from the removal of the distorting effect of the abuse.

3. *There was no evidence that the buying of distress gasoline at going prices had any effect on the competitive market price beyond that flowing from the removal of the evil.*

Of course, as this Court recognized in the *Appalachian Coals* case, you cannot remove a competitive evil which is artificially depressing the price, without thereby assisting the price to return to a normally competitive level.[7] To show that the buying did more than this, the Government relies primarily on (1) the fact that prices did rise; and (2) the fact that after the rise there followed an unprecedented stabilization of price level. (B. 20-21, 30, *et seq.*)

(a) The price rise.

The evidence showed a recovery in the price level of refined gasoline from a low quotation of 3¼¢ for third-grade in February (a cent or more below the cost of production) to 4¾¢ in June.[8] In their closings, Government counsel admitted that there were other factors than buying, such as the elimination of "hot oil" by the Connally

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[7] 8 U. S. at 373-4.

[8] There is no conflict in the evidence that a further rise of ½¢ in January 1936 was due to, and in parity with, a rise in the price of crude oil. (Jacobi, R. 4878.)

Act, which contributed to this rise. No witness assumed to testify, and none could honestly assume to testify, as to how much of a factor the buying of the respondents had been in this rise.

Would the level to which the price rose warrant a jury's inferring that the buying program's contribution to the rise in price had any effect beyond what occurred in the *Appalachian Coals* case from the elimination of distress sales of coal? Certainly not. The price merely recovered to a level described by the Government and industry as "parity with crude"—the natural price relationship between the finished product and the cost of its raw material.[9]

There is the conclusive admission of the report of the Secretary of the Interior on this point, and there is no conflicting evidence. Let us quote here once more precisely what the Government, through its officer in charge of the administration of the oil industry, said about this matter:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935. * * *" (R. 3525).

The point here is not whether this price level was a "reasonable" one. The point is that it was a natural one,—a level in relationship to crude which experience had shown was arrived at from the play of normally competitive forces *in the absence of artificially depressing factors such as hot oil and distress gasoline.* That no doubt was the reason why the Secretary of the Interior described it as the "desired parity."[10]

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[9] McDowell, R. 1181; see Def. Ex. 710 for identification, R. 3141, 3149-50.

There is nothing then in the circumstance of this rise in price which constitutes evidence which would warrant a jury in finding that the buying activities had had any other effect on the competitive price level than the removal of the distorting effect of the abuse. If it is consistent at all with any conclusion, and we do not believe it is, it is at least equally consistent with a contrary finding.[11]

(b) Stabilization of price.

The Government next relies on the stabilization of the price after the rise in the spring of 1935. (B. 20-21, 30, *et seq.*). Does the circumstance of that stabilization warrant the inference that the concerted action of the respondents did more than free competition from the depressing effect of distress sales? It would seem not.

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[10] The Government, in the endeavor to escape from the effect of this admission, refers to a letter (Ex. 306, R. 2957) which indicates that the parity level would yield what the head of one of the manufacturing divisions of one of the respondent corporations regarded as something more than a "quite substantial profit." Since the same letter shows that the company had previously been manufacturing at 1¢ per gallon loss, a parity level which would yield "quite a substantial profit" does not indicate any abnormal price. Even if the statement in this letter was accurate, the manufacturing costs of White Eagle, a major company, were obviously very low compared to those of independent refiners. The evidence is uncontradicted that the level to which prices rose was hardly at the "break-even" point of most independent refiners (R. 935). Further, the point here is not what profits any individual company may have made, but whether the price level was a naturally competitive one. Certainly everyone in a business does not have to operate at a loss in order for the price level to be a normally competitive one.

[11] For a full review of the evidence as to the price rise, see *supra*, pp. 65-82 and Appendix A, pp. 242-59.

(1) The level at which prices stabilized themselves was parity—the natural level in relationship to the price of the raw material under normally competitive conditions.[12]

(2) During the period there were no changes in cost of production except a rise in the price of crude oil in January, 1936, to which the price of gasoline responded in a normal way.[13]

(3) *For the first time in our economic history an attempt was made to balance the supply in a competitive industry with demand, with the whole force of Government, state and nation behind it.* The prime causes of violent fluctuations from time immemorial in the industry, such as overproduction in new flush fields, resulting overproduction by wells and refineries, illegal production of crude with the resulting varying hot-oil factor, were thus eliminated. Supply and demand were brought into reasonable continuing balance (See Appendix A, pp. 247-52). From these factors stable price was to be expected.

Under these circumstances was there anything to warrant a jury's inferring that the respondents' activities made themselves felt in this stabilization of the price level in any way other than by helping eliminate the sudden capricious fluctuations in the market which arose from the forced dumping of gasoline? It is just this kind of abnormal fluctuation, where there is no basic reason for a change, that makes the sale of distress gasoline at distress prices a peculiarly destructive competitive practice. While the situation injures everyone in the industry, it bears most heavily on the weak. It injures the small refiners *as a class* because, if prices temporarily go down because of such fluctuations, they have to bear the full brunt of the difficulties. They are not able through lack of storage to carry their product over until the market reacts to a normal level.[14]

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[12] See p. 314, n. 9, *supra.*

[13] Jacobi, cross, R. 487-8; Van Covern, R. 1514.

It is conditions of this character which make it desirable to take concerted action to mitigate destructive practices, as was done here and in the *Appalachian Coals* case.

If the buying activities of the respondents had had any other effect on competition, then we would have expected prices to rise above the natural level of parity to an artificial level. They never did.

This circumstantial evidence as to the stability of price at parity levels, if it is consistent at all with the inference that the respondents' buying constituted an undue restraint on competition, is equally, and as we think only, consistent with the inference that the buying activity merely freed competition from the depressing effect of the competitive abuse.[15]

(c) Effect of purchases as limiting supply.

The Government next argues (B. 44, 47, 80) that the respondents' purchases so narrowed the supply available on the spot market that they had an effect on competition beyond that which would flow from purchases made merely to cure the competitive abuse of distress sales. As to this, in referring to the play of competition in the determination of the market price on the spot market, the Circuit Court of Appeals said: "* * * there remained, theoretically, at least, and *factually so far as the record discloses, a supply equal to the demand.*" (Italics supplied.) As has been developed (*supra*, pp. 78-80), the Government did not show that the purchases of the respondents in inter-refinery buying materially exceeded, or exceeded at all, those which had been made either in previous or following years, or that there was any difficulty on the part of the jobbing trade in securing the products it desired.

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[14] See pp. 29, 106, *supra.*

[15] For further statement as to the evidence as to the conditions producing stabilization during this period See Appendix A, pp. 242-59.

The record shows that even the so-called brokers, who bought speculatively for their own account in the market for resale, bought regularly and heavily.[16]

The essence of the plan, as the testimony shows, *supra*, pp. 38 *et seq.*, was not to increase greatly the major's purchases but to so direct them to a *particular refinery* and at a *particular time* that products would flow normally in trade instead of being dumped in forced sales by a small refiner who could not carry the stocks and could not at the moment find a jobber customer who in turn had a need for the product in his regular trade.

Speculators, whose business it was to take advantage of such hard situations might, of course, be adversely affected, just as the speculative buyers of distress coal at distress prices in the *Appalachian Coals* case undoubtedly were.

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[16] The facts as to witness Beroth are examined at length in Appendix A, p. 224.

There was, therefore, no direct evidence of engrossment of the market and the circumstantial evidence, instead of pointing to it, points the other way. If there had been an artificial narrowing of the independent refiners' market among jobbers, so that there was an effect on price other than that of relieving the pressure of distress sales, we would have expected the price to rise to artificial levels. Instead, there is no conflict that all it did was to return from a cent or more below cost of production to parity—its natural level under normally competitive conditions.[17]

The evidence on this point, which was circumstantial in character, if consistent at all with the Government's contention—which we deny—was at least equally consistent with innocence and, therefore, could afford no basis for an adverse inference by the jury.

(d) Alleged purchase of all gasoline that the independent refiners desired to sell.

The Government argues (B. 44, 80) that the agreement was to take any gasoline which an independent refiner might offer at the market price. The contemporaneous records of the respondents' discussions and testimony as to what actually occurred are all devoid of evidence to this effect. As the Circuit Court of Appeals stated it, the agreement referred solely to the purchase of *distress* gasoline. (R. 3919.) There is no evidence that the committee, which made monthly surveys showing the amount and location of distress gasoline, was either misled as to the factual situation or intended to disregard it.[18]

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[17] See p. 314, n. 9, *supra.*

[18] See *supra,* pp. 44-59 and Appendix A, pp. 110-30.

It is very clear that the independent refiners had no such conception of the matter. Defendants' Exhibit 1024 shows that many of them constantly made some of their sales to jobbers at below the low of the trade publication quotations.[19] Various Government witnesses testified that they were frequently able to buy from independent refiners at below the low of the market quotations.[20]

Here again, the proof of the nature of the agreement is shown by what was actually done. There was no inherent tendency to push the price up to non-competitive levels from the fact that the respondents were buying distress gasoline at about the going market price. If there had been, instead of stabilizing itself at the natural competitive level of parity—which it did—we would have expected the price to keep on to artificial heights. The respondents were buying in precisely the same way during the period when prices had levelled off as they were before; and yet, while particularly disturbing situations in the market led to a temporary drop below parity at different times, the price never went above it.[21]

Nor can it be argued, as the Government seems to imply, that this was due to the fact that there were no new recommendations as to price made during this period. The fact was that the the only occasions on which any recommendation was made were *after* the market price had risen. The recommendation merely reflected what *had already* taken place in the market.[22] There being no further rise in the market price after parity had been reached except the normal adjustment to meet the rise in the price of crude, there was no occasion to make any further recommendation. The buying price of the respondents continued to range at about the low of the market. If buying in that way inherently tended to force prices up to artificial levels we would have expected to see them keep on rising to above parity. They did not.[23]

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[19] P. 66, *supra.*

[20] See *e.g.*, Beroth, R. 191-2, 196-7; Lanzer, R. 247, 250; Peterson, cross, R. 300-3; Bradshaw, R. 685.

[21] Def. Ex. 1024, p. 66, *supra.*

[22] See p. 52, *supra.*

Here again, if an inference is to be drawn from the circumstances, it is that the plan of buying distress gasoline at about the going market price had no inherent tendency or inherent power to carry the price above natural and normally competitive market levels. It did not in fact do so.

(c) Prices in neighboring markets.

If the price in the Mid-Western market had outrun that in the neighboring markets, no doubt the Government would have urged that this was evidence that the buying had had some effect on competition in that area other than merely freeing it from the depressing effect of distress sales. But the fact is, as the Circuit Court of Appeals pointed out, that the prices in this area did not fully keep pace with those in other areas of the country. The prices in the Mid-Western area prevailingly lagged behind those in the rest of the United States.

The Court will get a graphic picture of these important price relationships over the whole period from Defendants' Exhibit 1013.

The only inferences permissible from this circumstantial evidence are inconsistent with the Government's claim as to the effect of a buying program on competition in the Mid-Western area.

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[23] See p. 314, n. 9, *supra*.

(f) Competitive forces over which the respondents had no control.

There is uncontradicted evidence that if the respondents had tried to do more than free competition from the effect of distress gasoline and to set an arbitrary noncompetitive price through these purchases, they would have been without power to do so. The customers of independent refiners were free to change their sources of supply if the refiners attempted to secure artificially high and noncompetitive prices. They were, in the main, jobbers who were either selling unbranded products or brands of their own creation so there would not be the obstacle of having to establish a new brand if they shifted their sources of supply.[24] The capacity of independent refiners in the area who were not claimed to have been co-conspirators was greater than that of those named in the indictment.[25]

The testimony shows that there were major companies, like the Texas and Gulf Companies, which were indicted but dismissed for failure of proof, and like the Standard of Ohio and the Sun Oil Company which were not indicted, which did business either throughout or at various points in this marketing area. Further, the boundaries of this area were not walled in and made a special preserve of the Mid-Continent refiners. Under the prevailing freight rate structure, the products of refiners in neighboring areas could readily flow into the area. It was the uncontradicted testimony that the actual and potential competition in this area, which was beyond the control of these respondents, put it out of their power to make artificial and noncompetitive prices in this area. Not only, therefore, was there no evidence to show that the respondents intended to do more, or did do more, than free competition from the effect of an abuse, but the evidence is uncontradicted that, by reason of the competitive forces outside their control, they had no power to do more.

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[24] Swensrud, R. 1441.

[25] Swensrud, R. 1406-7; Def. Ex. 939, R. 3611.

(g) Effect of the combination on "fair competitive opportunities."

In the *Appalachian* case, this Court held that the combination was not monopolistic and did not unfairly affect competitive opportunities. Was there evidence which would support a different finding in this case?

How has the Government established any destruction of *fair* competitive opportunities? We emphasize "fair" because that is the determining word. The small independent refiners certainly benefited from the respondents' activities. It helped preserve their opportunity to compete when prices below cost were threatening to wipe them out—threatening to wipe them out, not because they were inefficient but because of conditions in the industry over which they had no control. Many jobbers benefited also. For distress sales often meant that the regular jobber in his trade was confronted with the competition of distress gasoline sold at below the market price and so was subjected to a particularly destructive, if not unfair, form of competition.[26]

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[26] Arnott, R. 1691-2.

Again, can anyone be said to have been injured because the elimination of distress sales was a factor contributing to the return of the tank car price to parity with crude? Hardly. Lack of parity and distress sales, as both the Petroleum Administration and the industry recognized, caused price wars which were highly destructive of "fair competitive opportunities" in the marketing business.[27] In the name of fair competitive opportunities, could anyone claim that he had a prescriptive right to have the evil of distress sales go uncorrected so that he might continue to buy gasoline below parity with crude, and thereby build up the pressure to destroy the conservation level of crude prices?

It is claimed by the Government that the correction of the evil of distress gasoline created an inequality in bargaining between the jobbers and the independent refiners.[28] But did such inequality exist, except in the imagination of Government counsel? There is certainly no evidence to support it. In the first place, a glance at Exhibit 1024[29] —sales by independent refiners to jobbers—shows a constant variation in prices in different sales on the same day which indicates active bargaining. Moreover, if there had in fact been any such inequality, we would certainly have expected the price of gasoline to advance above parity. It never did.

We are bound to concede that there may have been certain buyers whose "competitive opportunities" were injuriously affected, but there were none whose "fair competitive opportunities" could have been injuriously affected. As in the *Appalachian* case, there were, no doubt, many speculative buyers who preyed on the situation by using inequality of bargaining power to get products at prices below the prevailing market, even when that market was two cents below cost of production, and who made a profit by reselling at that prevailing market. Those whose technique it was to get a special advantage out of the distress situation, whether of the coal operators or of the independent refiners, undoubtedly had to revise their business methods. But, if this did not mean the destruction of "fair competitive opportunities" in the *Appalachian* case, how can it be held to do so in this case?

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[27] McDowell, R. 1168; Frey, redirect, R. 1328, 1332.

[28] B. 44.

[29] p. 66, *supra*.

E. The failure of the Circuit Court of Appeals to reverse on this point was due entirely to errors of law.

The opinion of the Circuit Court of Appeals contains a statement of the evidence as we have reviewed it above, and the opinion indicates that the evidence supports all of the inferences which we contend should be drawn from it.

Why, then, did the Circuit Court refuse to hold that it was error to deny the respondents' motions for directed verdicts? The opinion states that except for one fact—that the plan was placed in actual operation—the combination was controlled by the decision of this court in the *Appalachian Coals* case. In speaking of the plan approved in that case, the Circuit Court stated:

> "* * * the Court held the 'plan would have a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain.' It also stated that the evidence failed to show that 'any effect will be produced which in the circum-

> stances of this industry will be detrimental to fair competition.' As we have pointed out, however, the court there was dealing with a plan which had not been placed in operation. Here we are considering a plan placed in operation with the results revealed. Under these circumstances, it was a jury question as to the effect which the plan in operation had upon fair competition and its resultant effect upon restraint of trade." (R. 3939, see also R. 3931, 3933.)

The respondents submit that this ground of decision was erroneous. A plan or agreement which has been put into operation may raise no more of a jury question than one which is still executory.

In either case the question is whether the facts show that the plan involves an undue restraint on competition. Its actual workings merely throw valuable light on what the plan really was and what its effects would be.

Further, the Court below seems to have lost sight of the fact that there was no substantial conflict in the evidence here but merely as to the inferences which it was claimed should be drawn from the facts. The Circuit Court of Appeals, it seems to us, clearly indicates, that innocent inferences are permissible from those circumstances. (See R. 3933.) It has lost sight, however, of the rule of law that, if nothing more than that were so, the respondents were entitled to directed verdicts.

As we have pointed out above (pp. 300-1, *supra*) if the circumstances are consistent with innocence, then, on a trial under an indictment, the jury cannot be left to speculate as between conflicting permissible inferences because, from the very statement of the case, the Government must establish its proof beyond a reasonable doubt. Even though a trial judge might, if he himself were the trier of the fact in an equity case, be inclined to decide against the defendants; still, under the stricter rule of proof in a trial of an indictment, he is obliged to direct a verdict, the Government having chosen that forum.

For the reasons we have given above, we are convinced that the circumstantial evidence in this case is not consistent with guilt; that the *only* reasonable inference from the facts as to what occurred was that the only effect that the concerted buying did have and the only effect it could have, was merely to free competition from the distorting effect of recognized competitive abuses. It is not our burden, however, to show this.[1]

At the very least, it can be said that the circumstantial evidence permits such a conclusion. That is enough not only to require a reversal on the ground of the denial of the motions for directed verdicts but also the dismissal of this indictment.

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[1] See p. 300-1, *supra*.

VIII.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN HAD JURISDICTION TO TRY THE RESPONDENTS.[1]

This Court has granted certiorari to review the decision of the Circuit Court of Appeals (Sparks, J., dissenting) that the District Court for the Western District of Wisconsin had jurisdiction to try these respondents.

The Sixth Amendment to the Constitution guarantees to the accused in a criminal case the right to a speedy and public trial "by an impartial jury of the state and district wherein the crime shall have been committed."

A. Jurisdiction in this case depends on a showing of the commission of an overt act in the Western District of Wisconsin.

The respondents in this case concertedly purchased distress gasoline from independent refiners at going market prices. All of those purchases were made outside of the Western District of Wisconsin. Those purchases contributed to a rise in spot market prices. General wholesale and retail prices reacted correspondingly as they always had. Certain corporate respondents during the period while they were purchasing distress gasoline continued their regular course of business of selling gasoline at wholesale and retail throughout the Mid-Western area, including the Western District of Wisconsin. The prices at which they sold were, like prices charged by other concerns doing business in that area, affected by the rise in tank-car prices. The question of whether the trial court had jurisdiction depends on whether or not there was sufficient evidence that such sales in the Western District of Wisconsin were overt acts constituting a part of the joint activity of the respondents.

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[1] This question was raised in the Circuit Court of Appeals by Assignments of Errors 1-16, 18 and 19 (R. 2518, 2519) and was decided adversely to the respondents, with one judge dissenting (R. 3942-4, 3950-3). It comes before this Court as the first question presented by the respondents' cross-petition in No. 347 (Cross-Pet. 2).

In answering this question it is first necessary to examine the basis of the rule that an overt act[1] done by any one conspirator in a particular district establishes jurisdiction in that district over all the co-conspirators, whether or not they have ever been in the district.

B. The determination of whether a given act is overt depends upon principles of agency.

The doctrine of overt acts is founded on the law of partnership and of agency. A conspiracy has been described by Justice Holmes as "a partnership in crime."[2] Participants in a conspiracy, like members of any other partnership, become, in the eyes of the law, agents for each other in the common enterprise. It is, therefore, legitimate for jurisdictional purposes to treat the act of *one* partner done within the scope of and for the purpose of aiding the common enterprise as the joint act of *all.* That is the rule in the case of any partnership. But it would fly squarely in the face of the constitutional guarantee of trial in the district in which the crime was committed, to base jurisdiction solely upon an act by one conspirator which cannot fairly be said to be an act within the scope of his agency and which is consequently not also the joint act of his co-conspirators who are not physically present in that jurisdiction.

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[1] An overt act has been defined variously as an act "in pursuance of the conspiracy" (*Williams* v. *United States,* 295 Fed. 302, 304 [C. C. A. 5th, 1923]), an act "in furtherance of the common object" (*Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249 [1917]) and an act which "must have the conspiracy in view and have some power to effect it" (*Hyde* v. *United States,* 225 U. S. 347 [1912]).

[2] *U. S.* v. *Kissel,* 218 U. S. 601, 608 (1910).

It is our contention and the view of the minority of the Court below that this is just what has been done in this case. The individual act within the district of a particular conspirator, in the ordinary course of his business, in which he enjoyed the *beneficial* results of the successful effectuation of a conspiracy carried out in *another district,* has been treated as an act done by him within the scope of his agency without evidence to support that conclusion.

To determine whether a given act done while a person is engaged in a conspiracy was his own individual act or whether it was something that he was doing as agent for his "partners in crime" it is necessary, as in the case of any partnership, to look to the agreement which is found to have created the "partnership." The question is: Was the act one coming within the agreed joint activity of the partners or was it one he was doing in the course of his individual affairs?

C. The acts claimed to be overt.

The acts relied on by the Government as constituting overt acts consisted of making contracts with and sales and deliveries to jobbers, dealers and consumers by certain of the respondents in the course of their respective businesses in the Western District of Wisconsin. To determine whether any one of these acts was done by a co-conspirator as his own individual act or whether it was something that he was doing as agent for his "partners in crime," it is necessary to look at the agreement which is found to have created the "partnership." If the act was one which it was agreed or understood should be done by one or more conspirators as the joint act of all in the joint enterprise, then the act was an overt act and, on the principle of agency, binds all. But if the act was outside the scope of the authority conferred by the agreement and was of such character that no one under the agreement was to perform it or cause it to be performed, then the act cannot be said to have been done "in pursuance of the conspiracy."

D. The scope of the alleged conspiracy.

The question here, of course, is not whether sales in Wisconsin were charged in the indictment as acts agreed to be done, but whether it has been proved that they were made as the joint acts of the respondents. The detailed evidence as to the formation of this alleged conspiracy, and as to what the various participants agreed to do by way of joint activity under its terms (discussed at length in the Statement of Facts, and again in Points I and VII), was described by the Court below as showing an agreement that

> "* * * the major companies would purchase from the independent refiners the latters' surplus gasoline at going market prices."[1]

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[1] R. 3919.

There is in the record no word of any other joint obligation or joint activity agreed to be undertaken. The Government has not attempted to point to any such evidence, though it is essential for it to do so if jurisdiction is to be established.

Such effect as this concerted buying had on retail and jobber prices has been conceded by the Government[2] to have followed through the customary working of the market mechanism. The alleged conspiracy was limited to a restraint of competition in buying and selling on the spot market.

E. Since the agreement did not extend beyond purchasing on the spot market, sales at wholesale and retail in the Western District of Wisconsin did not constitute overt acts.

1. *The Trenton Potteries case is not controlling. The conspiracy agreement in that case called for the performance of the very acts held to be overt.*

The Government contends (B. 130-1) that the question presented is controlled by the case of *United States* v. *Trenton Potteries Co.,* 273 U. S. 392 (1927). In that case this Court held that sales at agreed-on prices were overt acts because they were the very acts which the conspirators had agreed to do. It was alleged and proved that the defendant manufacturers had agreed that they would sell sanitary pottery throughout the United States only at prices which they mutually agreed upon. Price bulletins were circulated and sales at the agreed-on prices were made in the Southern District of New York. On these facts this

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[2] R. 2308.

Court held that an overt act had been committed within the Southern District of New York. The basis of its decision is stated in the opinion as follows:

> "* * * The record is replete with the evidence of witnesses for both prosecution and defense, including some of the accused, who testified without contradiction to the course of business within the district, *the circulation of price bulletins, and the making of sales there by some of the members of the association organized by respondents. The Secretary testified that, acting for the association, he effected sales within the district.* All of these were overt acts sufficient for jurisdictional requirements. * * *" (273 U. S. at 403-4. Italics supplied.)

In order to come within the doctrine of the *Trenton Potteries* case, therefore, the Government must point to proof that the respondents entered into an agreement as to the manner in which they would sell to jobbers, and consumers in Wisconsin. Or, to put the matter conversely, if the respondents were free to sell to jobbers and consumers at any price they chose, the *Trenton Potteries* case has no application.

2. *At the trial the Government conceded that respondents did not agree to make sales only on a spot market basis.*

The Government recognizes the difficulty.[1] To meet it, it contends that the respondents "were not free to sell as they pleased in the Mid-Western areas" (B. 134) "since an obligation to adhere to their price practice of selling on the basis of spot market prices was implicit in their unlawful agreement" (B. 135).

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[1] In the Government's discussion of the *Trenton Potteries* case (B. 132), it seems to be suggested that since a certain act was held to be in furtherance of one plan in regard to prices, the rule of *stare decisis* makes that act an overt act in regard to every other plan affecting prices whether or not the conspiracies are similar. We do not suppose, however, that an argument so clearly ignoring the basis for the doctrine of overt acts is seriously urged.

In plain language, the Government now claims that it was part of the conspiracy agreement that each of the respondents bound himself to sell in the Western District of Wisconsin on the basis of spot market prices.

The first thing to note about this contention is that the Government is in no position to make it. It flies directly in the face of concessions which it has made in the course of the trial and in its bill of particulars, which is in effect a part of the pleadings. The Government in the course of the trial and in the course of argument on demurrers to the indictment conceded repeatedly that there was no charge of any agreement among the respondents to sell only on the basis of spot market prices. These concessions were made in response to repeated questions of counsel for the respondents, who were acutely aware of the importance of the issue in connection with the matter of jurisdiction and endeavored to make the matter clear even before the trial started. In response to Mr. Donovan's question:

> "Is it your contention that it is stated anywhere in this paragraph or anywhere in the indictment that the defendants agreed among themselves that they would sell to the jobbers only at the average spot market price that you have described?"

Counsel replied:

> "I will state now that this paragraph does not intend to charge and does not charge that the defendants agreed together to do business only on the basis

> of this contract. The contract, *the substance of it*, is set forth in paragraph 11 * * * I will stand by that —I don't think that charge is made in this indictment."[2]

This concession was repeated during the course of the trial in the following language:

> "There is no charge in the indictment, and counsel has stated it repeatedly during the trial, there is no charge in the indictment of an agreement with respect to these contracts."[3]

Finally and conclusively, prior to the trial, the respondents sought and obtained a bill of particulars from the Government. In that bill it is stated explicitly:

> "The Government does not claim that each defendant entered into an agreement not to sell jobbers except in accordance with 'the contract described in paragraph 11 of the indictment.' "

If the Government did not claim when it filed its bill of particulars that each defendant agreed not to sell to jobbers except upon contracts based on the spot market, how can it do so now?

In the course of the trial the Government made similar concessions that the retail price[4] was not established by agreement. The evidence showed that the Standard Oil

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[2] R. 56.

[3] R. 296. Note that this statement was no mere accident, no slip of the tongue by counsel. It was their deliberately chosen, carefully thought out position asserted "repeatedly during the trial."

[4] The dealer price was a function of the retail price. Beroth, R. 185; Wingrove, R. 235; Lanzer, R. 254; Breuch, R. 276, 286; Fee, R. 289-90; H. E. Miller, R. 306; Middleton, R. 314; Thompson, R. 322, 324-5; Crowley, R. 328; O'Brien, R. 333-4.

Company (Indiana) was the market leader and that no one could sell at a higher price.[5] It also showed that at various times Standard of Indiana was forced to reduce its price to meet the competition of others.[6] Counsel for the Government stated:

> "* * * We do not say that the Standard of Indiana when it posts a retail price first consults with the other companies to find out what retail price should be posted" (R. 2308).
>
> "If that is what you're worrying about, if you think we're charging you with sitting around a table and agreeing on a uniform retail price, don't worry because that isn't what we are charging" (R. 2294).

The Government attempts to evade the effect of these concessions by saying: "It was not essential to the objectives of the conspiracy that the defendants adopt any particular form of jobber contract or follow the retail price policy of any particular company" (B. 135). But the concessions are clearly directed to the broad question of whether or not it was claimed that the respondents agreed to sell only on contracts *based on the spot market*. The purpose and effect of paragraph 11 of the indictment is to charge that gasoline was sold not "on any particular form of contract" *but on contracts whose price provisions referred to the spot market*.[7] Moreover, as can be seen from the quotations above, the concessions were made in response to the question of whether it was contended that the respondents agreed among themselves to sell only on the basis of spot market prices.

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[5] Shatford, R. 1085; Marshall, R. 1233, 1246-47.

[6] Marshall, R. 1249-50, Def. Ex. 910-11, R. 3509-10.

[7] The indictment does not set forth the specific language of any contract, but is merely a summary of substance. Chaffetz, R. 56.

The concession as to the retail price is equally broad. Since the Standard Oil Company (Indiana) calculated its retail price on the basis of the spot market, an admission that the respondents did not agree to follow the Standard of Indiana price is also an admission that they did not agree to determine their retail prices on the basis of the spot market.

3. *The evidence did not establish an agreement on the part of the respondents to sell only on a spot market basis.*

Assume, however, that the Government was in a position to argue that it was part of the conspiracy agreement that the respondents bound themselves not to sell gasoline in the Western District of Wisconsin except on the basis of spot market prices. It is unable to point to any direct evidence of such an agreement. Is there, however, circumstantial evidence which establishes its existence?

The Government suggests that the respondents' objective was to secure through their buying activities higher prices and that they could not do so except by continuing to sell at wholesale and retail on the basis of spot market prices only.

Ignore the fact that all the affirmative evidence and the Government's admissions negative the existence of such an agreement. Assume *arguendo* that the objective was as stated.[8] Putting all that aside, is it true that *unless re-*

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[8] Of course, it was not, except in the same sense that the objective of the combinations in the *Appalachian, Maple Flooring* and *Cement* cases was the making of sales at higher prices by their members because that would be their result.

spondents were bound by some agreement to sell gasoline in the Mid-Western area and the Western District of Wisconsin only on the basis of spot market prices they could not have sold to their jobbers and at retail at higher prices?

The answer is that distress gasoline commanded a lower price than any other gasoline in the market. Under any conceivable marketing system, *regardless of whether prices were in terms based upon the spot market or not*, the distress gasoline which was sold by independent refiners to jobbers on a spot basis would have forced down the price at which any other company could have sold to any other jobber on any basis. That result would follow because, as seems to be conceded by the Government (B. 10, note 9), jobbers selling in competition with jobbers buying distress gasoline from independent refiners would have had to buy their gasoline on equally good terms or be forced out of business.[9] The same economic rule would apply in subsequent stages of the marketing process. Gasoline sold to dealers and at retail would still have to meet the competition of distress gasoline. Removal of distress gasoline then, involved removal of a factor which depressed the whole price level regardless of the pricing system employed. It follows, therefore, that regardless of whether respondents sold to jobbers and at retail on a basis which specifically referred to the spot market, or whether they sold in some entirely different way, removal of distress gasoline would tend to produce an improvement in the prices at which respondents could sell at wholesale and at retail.

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[9] The principle is true regardless of the fact that much of the distress gasoline was third grade and that jobbers selling house brand gasoline could secure a slightly higher price than those selling third grade gasoline. The fact remains that, as stated in the indictment (Paragraph 16), there is an inevitable relationship between the two prices and that one could not drop without forcing down the other (Swensrud, R. 1405).

The assumption that a rise in the spot market prices would only be reflected in the general wholesale and retail markets if the respondents *agreed to bind themselves to follow a particular course of action in the course of their business in those markets* ignores the natural and historic functioning of this market, which the evidence discloses and which the indictment itself describes.

The spot tank-car market had, through the workings of competition, long established itself as the *basic market* in this area. Through the operation of competition the general wholesale and retail markets have reflected the rise and fall of the spot market even when that spot market price was from 1¢ to 2¢ per gallon below the cost of production.

When a depressing factor on that price, such as hot oil, was removed by the first Tender Board in 1934, the rise in the spot tank-car market was immediately reflected, as we would expect it to be, by a corresponding rise in the retail market. This is graphically illustrated by Respondents' Exhibit No. 1013 (page 72, *supra*). It is the normal behavior of markets that when for any reason the price in the basic market goes up or down there is a natural tendency for the subsequent markets to reflect that rise or fall correspondingly. There is not a shadow of a basis for the assumption that this effect on wholesale or retail markets requires agreements among wholesalers or retailers.

It cannot be seriously contended that the respondent companies and the other companies selling in competition with them could and did secure the benefits of the rise in the spot market price due to the elimination of hot oil in 1934 only by *agreeing to bind* themselves to continue to base their wholesale and retail prices on the spot market prices.

Let us test the claim of the Government by reference to the *Maple Flooring* case (*supra*, p. 150), decided by this Court. In that case the specific agreement related to the collection and dissemination of trade information. This Court found that the effect of collecting and disseminating such information would be to enhance and stabilize prices. Obviously, therefore, the defendants in the *Maple Flooring* case were chargeable with intending to raise or stabilize prices. According to the Government in this case, there must have been an agreement in the *Maple Flooring* case, established by inescapable inference, not merely to gather and disseminate information, but, in order to accomplish the purpose of the agreement, to sell only at enhanced and stabilized prices. But as this Court pointed out in that very case, prices were raised not by reason of an agreement relating to selling prices, but by reason of a change in competitive conditions. So in this case, competition continued unabated, but it operated in the absence of a competitive evil which had abnormally depressed it. The mere removal of the competitive evil would result in a more normal competitive price.

The allegedly desired effect would have been produced *regardless of the pricing system employed* and the argument of the Government is, therefore, based on a false premise.

It is also a clear *non sequitur*. There was no need of an agreement to sell only on the basis of spot market prices unless there was some reason to think that sales might be made on some other basis. The evidence shows that the respondents and other companies in competition with them had been selling gasoline on a spot market basis since 1929 or 1930. There is not the slightest suggestion in the record that there was any question of a shift in practice by any respondent or by any other company selling in competition with any of them. There was no *necessity* for any agreement and therefore no basis whatever for inferring that it ever occurred to the respondents to consider making such an agreement—much less for finding beyond a reasonable doubt that they entered into it.

4. *The fact that respondents may have been motivated in part by the desire to secure better prices for their gasoline does not establish that their sales constituted overt acts. Mere action to secure individual benefit from a conspiracy is not such an act.*

The Circuit Court of Appeals suggests that the respondents could derive no pecuniary advantage from purchasing on the spot market unless that purchasing resulted in higher prices in the wholesale and retail markets in which they were selling, and that the circumstances therefore indicated that "an objective" of the alleged conspiracy was the increase of prices in those markets. From this the Court reasons that sales of gasoline by respondents in those markets tended to achieve an objective of the conspiracy and were in consequence overt acts.

In so holding, the Circuit Court of Appeals has, we submit, played upon words, and confused matters of motive and inducement with matters of joint action, and improperly endeavored to use the former as a measuring rod of the existence of an overt act.[10] This, with all due respect, is not the law.[11]

It seems apparent that individual matters of motive and inducement furnish no reliable measure of the extent of a joint activity, and that to determine whether jurisdiction is present, *the agreement itself, not the reasons which led to its formation,* must be looked to.

If the lower Court's position is correct, it might with equal force be argued that the act of a partner in cashing a check which represents his share of the partnership profits is an act of the partnership. The prospect of sharing in the profits was undeniably the further objective which caused the members to form the partnership. The profits themselves are the benefits which flow from the partnership, a result which could not be achieved without its formation. But no one could claim that the individual partner's act in cashing his dividend check is the joint act of all the partners.

A review of the cases confirms the conclusion that the test of the scope of the agreement is not motive, and that the mere reaping of individual benefits from joint action does not constitute an overt act.

In *Lonabaugh* v. *United States,* 179 Fed. 476 (C. C. A. 8th, 1910) the defendants were convicted of conspiring to defraud the United States of possession and title to certain public lands by means of false entries. The conviction was reversed by the Circuit Court of Appeals, which held that the act of obtaining physical delivery of patents on such lands was not an overt act since title to the lands passed from the United States to the conspirators independent of such delivery. Consequently the defrauding of the United States of title which was the design of the conspiracy was fully accomplished independently of the doing of the acts claimed to have been overt.

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[10] This is clearly indicated, we submit, by the fact that the "circumstances" relied on did not point to the taking of any particular joint action since the "objective" in question could be attained in many different ways.

[11] *Lonabaugh* v. *U. S.*, 179 Fed. 476 (C. C. A., 8th, 1910); *United States* v. *Black*, 160 Fed. 431 (C. C. A. 7th, 1908); *Rose* v. *St. Clair*, 28 F. (2d) 189 (D. C. Va., 1928).

Of course, one of the purposes and motives of the conspirators was to secure actual evidence of title to the property. But the agreement claimed to be criminal under the statute was one to defraud the United States of title to its land. Since that fraud was complete without securing delivery of the patents, the latter act did not further the object of the conspiracy even though it was a step in the enjoyment of the fruits of the conspiracy.

On the same ground, the Circuit Court of Appeals for the Seventh Circuit held in *United States* v. *Black,* 160 Fed. 431 (1908), that the payment of money to co-conspirators for making fraudulent entries as a part of a conspiracy to defraud the United States of possession and title to certain public lands was not an overt act, such payment having been made after the issuance of patents based on such fraudulent entries. Here again it was held that the fraud was completely independent of the acts claimed to be overt which were merely the satisfaction of individual motives for entering into the conspiracy.

Rose v. *St. Clair,* 28 F. (2d) 189 (D. C. Va., 1928), involved a conspiracy to violate the Act of July 31, 1912, which made it unlawful to transport in interstate commerce prize fight pictures intended for public entertainment. The question presented was whether the exhibition of prize fight films which had been transported in violation of that Act constituted an overt act because it tended to effect the object of the conspiracy. Here again the purpose for which the films were transported was to profit from their subsequent exhibition. The court held that such exhibition did not further the object of the conspiracy, saying: "The object of the conspiracy * * * is confused with what may be conveniently called the ultimate purpose of the conspirators" (p. 191).

In each of these cases the alleged overt act—the obtaining of patents, or the exhibition of the prize fight films—was an act which was made possible by the execution of the conspiracy agreement. In each of these cases, also, the possibility of accomplishing the act relied on had furnished the motive for entering into the conspiracy agreement. In each case, however, the Court held that those facts alone were insufficient and that not being done in aid of carrying out the conspiracy agreement itself, they were not overt acts. In other words, the agreement defined the object of the conspiracy and, therefore, defined the character of the acts which could be said to be "in furtherance of" the objects of the conspiracy. An act was not overt unless it carried out the particular conspiracy agreement charged and was within the scope of the agency created.

The Government's attempted distinction of these cases, *i. e.* (B. 137):

> "Of course, when the conspiracy is completed subsequent acts are not in furtherance of its unlawful objective",

begs the question. The issue decided by these cases is: Is the mere attainment of an individual benefit of the conspiracy, even though it furnishes the motive for participation therein, a part of the common agreement so that the conspiracy is not completed until that benefit is attained? And the answer given, as is pointed out by Judge Sparks, in his dissenting opinion,[12] is that the common agreement does not extend to matters of individual inducement to, or the realization of individual benefits from, that participation.

5. *Sales at wholesale and retail did not constitute "continuous cooperation in keeping the conspiracy alive."*

The Government also argues that "selling to jobbers and consumers in the Mid-Western area" at the artificially enhanced prices, supplied part of the "continuous cooperation" necessary to keep the entire conspiracy alive, although there may not have been any "agreements specifically directed to that act." This is nothing more than a statement of the obvious fact that an overt act need not have been expressly agreed on by the conspirator provided that it is a joint act which is done with the agreement in view and in furtherance of that agreement. In effect it is a mere repetition of the argument already made that there was an implied agreement to make such sales. We have noted above that prior to this appeal the Government has repeatedly conceded that there was no such agreement. (*Supra*, pp. 334-7.)

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[12] Judge Sparks' dissent is not, as the Government asserts (B. 136), based upon a fundamental misconception of the Government's position, but merely takes the facts more strongly in the Government's favor for purposes of argument. If the sale by the respondents of the very distress gasoline which they had purchased in the course of the program, at prices affected by the *purchase* of that gasoline, did not constitute an overt act, *a fortiori*, the sale of gasoline refined by the respondents themselves and sold at such prices did not constitute such an act.

It has also been pointed out that such sales instead of being made in cooperation, were made in active competition among respondents.[13] It is a contradiction in terms to say that the respondents' competition among themselves in selling gasoline at wholesale and retail in the Mid-Western area constituted "cooperation." Moreover, the selling of gasoline at retail prices constantly varying in relation to tank car prices during the period from June to December, 1935 (shown by Defendants' Exhibit 1013, p. 72, *supra*) is the strongest kind of evidence that sales on a spot market basis were in no way "necessary to keep the conspiracy alive."

As pointed out in the dissenting opinion,

> "* * * The indictment does not allege, the Government does not contend, and the evidence does not disclose, that these sales in Wisconsin had any effect whatever on the raising, fixing, or maintaining of gasoline prices in Wisconsin, or elsewhere. * * *" (R. 3952).

The Government itself says:

> "The prices at which majors sold to jobbers in the mid-western area *automatically* advanced, under provisions of the jobber contracts, with each advance in mid-continent spot market prices. * * *" (B. 32).

---

[13] Marshall, R. 1231-32.

If it is true, as counsel for the Government contend, that "if the defendants wanted to raise the retail price and wanted to raise the price to jobbers, *all* they had to do was to raise the spot market price,'"[14] it is difficult to see how, even if that was what they wanted, action having nothing to do with the course of prices on the spot market could be described as "continuous cooperation necessary to keep the conspiracy alive."

6. *Under the reasoning of the Court below individual sales by members of a combination would constitute overt acts in virtually any Sherman Act case regardless of what was actually agreed to be done.*

The reasoning of the Circuit Court of Appeals, so far as the Sherman Act is concerned, would virtually abolish the constitutional guaranty of a trial in the district where the crime is committed and would substitute a permission to sue *wherever any one of the accused may be found to be doing business.* Under the decision of the majority the making of any sale by any defendant at any point after prices had been advanced as a result of the illegal restraint of competition in another district would always be an overt act regardless of the character of the conspiracy.

Consider some of the more familiar Sherman Act situations from this point of view.

In *Steers* v. *United States,* 192 Fed. 1 (C. C. A. 6th, 1911), the conspiracy in question involved the interference by threats of mob violence with shipments of tobacco in Kentucky. Kentucky growers were dissatisfied with the market price and from time to time sought to increase it by preventing tobacco in Kentucky from reaching the market. Under the reasoning of the Court below, if any defendant in the *Steers* case had happened to be carrying on some stage of his tobacco business in the District of Columbia, for example, and had made sales there after the night riders had been at work in Kentucky destroying tobacco, then all of the defendants would have been triable in the District of Columbia. This would follow from the view of the majority of the Court below since to quote its words, it "would be illogical and contrary to common sense" to say that the "object" of the conspiracy was to restrain trade by preventing interstate shipment of the destroyed tobacco "without at the same time saying there was a further objective—the increase of the price that they might be able to secure in the ordinary course of their business in sales to their customers * * *."

---

[14] R. 2307.

In similar fashion, where, as in *Paterson Parchment Co.* v. *Story Parchment Co.*, 37 F. (2d) 537, (C. C. A. 1st, 1930) three manufacturers conspired to drive a newcomer out of a field by a price war, it would have to be held, under the reasoning of the Court below, that an object of the conspiracy to restrain competition by killing off the competitor was to secure an increase in price or share of the business. Otherwise, how could the defendants gain any advantage from their action? If that "motive" was the "object" and an act to satisfy it an overt act, then all of the defendants could have been prosecuted whenever and wherever any defendant made a sale after the destruction of the competitor. Further, it would seem that the statute of limitations would never begin to run until some way had been found to resurrect the destroyed competitor.

In *United States* v. *Great Western Sugar Co.*, 39 Fed. (2nd) 152 (D. C. Nebr., 1930) a defendant sought to prevent the entrance of a new competitor into the field by agreeing to pay increased prices for its raw material. It would be "contrary to common sense" to suppose that the defendant did not do this in order to secure prices from its customers that would be more favorable than if the new firm entered the field. If the making of sales at such prices was the object of the conspiracy rather than the restraint of competition involved in preventing the new firm from coming into operation by the method described, then the Government in the *Great Western* case could have avoided the statute of limitations which was held to bar the prosecution by alleging as an overt act any sale of sugar by the defendant at any place in the United States within three years of the indictment. If the Government is right the statute could only be made to begin to run by the conception anew of the embryo competitor since, until then, it might be argued that prices would remain different from what they would have been had the new unit entered the field.

7. *Whatever the object of the plan, the proof does not show that any act having the alleged conspiracy in view was done in the Western District of Wisconsin.*

(*a*) Where an act is subject to more than one interpretation *the prosecution must show beyond a reasonable doubt that it was undertaken with the conspiracy in view and not as an individual act.* An indispensable requisite of an overt act is that it shall have been done with the conspiracy in view, *i. e.*, for the purpose of carrying out the conspiracy. (*Hyde* v. *United States, supra.*) Otherwise, the act would not be that of an agent and would not be binding upon other participants in the plan.

A showing that the act in question was one which *could have been done* within the scope of the partnership agreement and with that agreement in view is, of course, not of itself sufficient if under the circumstances the act could also have been done as an individual matter. The act would then merely be ambiguous and it would be necessary to examine the intent of the partner in performing the act in question to determine whether such act was that of an individual acting for himself or of a partner acting for the partnership. Unless the party seeking to assert liability in the principal can, in such an ambiguous situation, show that the action in question was taken by the alleged agent *as such agent* and not in the individual conduct of his own affairs, liability cannot attach.

The case at bar even on the strongest assumption of the Government as to the terms of the partnership agreement would be similar in this respect to an action brought against a partnership on a note signed by one partner. On the face of it, the signature of the note could be either the individual act of the partner who signed or act of the partnership through such partner. The presumption is that it is his individual act.[15] To recover against the partnership the holder would have to overcome such presumption and show that the person who signed intended to act for the firm and not in his individual capacity.[16] If, as this Court has repeatedly declared, the binding nature of an overt act depends on principles of agency,[17] the same rule applies in criminal cases[18] with the single qualification that to overcome the presumption, the intent to act for the partnership or conspiracy and not individually must be shown beyond a reasonable doubt rather than by a mere preponderance of the evidence.

---

[15] *Frederick* v. *Citizens National Bank*, 231 Fed. 667 (C. C. A. 3rd, 1916); *Reed* v. *Dunlap*, 280 Fed. 380 (C. C. A. 8th, 1922).

[16] "* * * An obligation executed by the members of a firm in their names may share as a partnership debt in the administration

(*b.*) *Respondents' sales in Wisconsin were not shown to have been made for the purpose of carrying out any joint enterprise.* Contracting with jobbers and selling to jobbers and at retail in the Western District of Wisconsin are the acts claimed by the Government to have been done to carry out the allegedly illegal plans. The proof showed that

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of the partnership assets in bankruptcy proceedings, upon extrinsic evidence showing that the obligation, although executed in the names of the partners individually, *was in fact intended as a partnership obligation,* incurred for its benefit in furtherance of the firm business and for a consideration received by it." (Italics supplied.) *In Re Nashville Laundry Company,* 240 Fed. 795 (D. C. 10, 1917), *Frederick* v. *Citizens National Bank, supra, Reed* v. *Dunlap, supra.*

[17] "The rule of evidence is commonly applied in criminal cases but is of general operation; indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them." *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229 at 249 (1917); *United States* v. *Gooding,* 12 Wheat. 460, 469 (1827, Story, J.). *American Fur Co.* v. *United States,* 2 Peters 362, 365 (1829); *Logan* v. *United States,* 144 U. S. 263, 309 (1891).

[18] *Hitchman Coal & Coke Co.* v. *Mitchell, supra; United States* v. *Gooding, supra.*

respondents had, for at least five or six years prior to the alleged conspiracy, been making contracts and sales in Wisconsin on a price basis involving reference to the spot market. During the continuance of the buying program and after its conclusion, they continued to make sales and contracts in the same way and on the same price basis which they had always used.[19] On their face, the acts relied upon were nothing more than the usual and normal conduct of the respondents' business. As in the partnership note cases,[20] therefore, the presumption is that the acts were done in an individual and not in an agency capacity.

In this situation it devolved upon the Government to overcome the presumption that such acts were individual acts by proof beyond a reasonable doubt that these sales and contracts not only *could have been made* for the purpose of carrying out the alleged conspiracy *but were in fact so made*. Not only has the Government failed to sustain this burden, but the record will be searched in vain for even a scintilla of evidence indicating that such sales and contracts were made with the conspiracy in view. Nothing in it even suggests that these sales and contracts were not what they appear to be, *i. e.*, sales undertaken by each of the respondents individually without reference to any understanding with any other company and with the individual purpose on the part of each of continuing its regular business in its regular way. Where the respondents had been selling gasoline in Wisconsin for many years it would strain inferences beyond the breaking point to contend that they continued their long established business in the identical manner in which it had for years been conducted, not as an individual matter but with the idea of carrying out a conspiracy which the Government says could have been effectuated merely by raising the spot market price.[21] In the absence of evidence to the contrary, it seems a self-evident contradiction in terms to say that respondents' persistence in their usual course of trade without any agreement among themselves to so continue was an action undertaken in view of the alleged conspiracy. But unless it has been shown beyond a reasonable doubt that such sales and contracts were so undertaken, they have not been proved to be overt acts and jurisdiction in the Western District of Wisconsin was lacking.

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[19] Peterson, R. 298. As already pointed out, there is no evidence that respondents either agreed on a price of so many cents a gallon to jobbers, retailers and consumers and caused that price to become the market price by refusing to sell at any other, as was done in *United States* v. *Trenton Potteries, supra,* or that they agreed to make sales on any particular price basis, and it has been conceded by the Government that they did not do so.

[20] *Supra,* footnote 1, page 350.

Summary

We have shown that an act is not overt unless it is an act of agency authorized by the illegal partnership agreement. Thus we must find an agreement to do some act in the Western District of Wisconsin. There is no evidence of an agreement among the respondents to base their Wisconsin prices upon the prices prevailing in the spot market. The Government so conceded in the argument on demurrer, in its bill of particulars, and on the trial. Indeed the record evidence shows an agreement for joint activity not extending beyond purchases in the spot market. The supposed necessity of having such an agreement in order to accomplish the respondents' objects does not exist. The respondents' agreement was completely accomplished when they purchased distress gasoline in the Mid-Continent and East Texas oil fields. The mere removal of that gasoline, in and of itself, without any further restraint upon competition, permitted prices in the Western District of Wisconsin to rise. The Government failed to sustain the burden of showing that the sales were intended to be made as a part of a joint activity agreed on in a conspiracy rather than as individual transactions in the ordinary course of business. Accordingly the respondents' sales of gasoline in Wisconsin did not constitute overt acts on which to base jurisdiction.

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[21] "And we point out in the indictment that if the defendants wanted to raise the retail price and wanted to raise the price to jobbers, all they had to do was to raise the spot market price." (R. 2307—Mr. Chaffetz.)

CONCLUSION

It is respectfully submitted that the trial court committed reversible error and that this Court should order the respondents discharged.

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Nos. 346 and 347

IN THE

Supreme Court of the United States

October Term, 1939

UNITED STATES OF AMERICA,
Petitioner,
v.
SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,

SOCONY-VACUUM OIL COMPANY, INC., ET. AL.,
Petitioners,
v.
UNITED STATES OF AMERICA.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

APPENDIX A TO BRIEF FOR THE RESPONDENTS— A DIGEST OF THE EVIDENCE

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APPENDIX A TO RESPONDENTS' BRIEF—A DIGEST OF THE EVIDENCE

Note: In this Appendix, as in the Statement of Facts contained in the brief, evidence which the trial court excluded is set out in brackets, thus [ ].

I.

A description of certain features of the oil industry.

A. Crude oil and its products.

The oil industry has four primary functions: (1) producing crude oil from the earth; (2) transporting it to refineries; (3) refining it into commercial products; and (4) marketing the products.

Crude oil—or "crude petroleum"—is a liquid mineral oil with a wide variety of physical and chemical characteristics.[1] It can be refined and manufactured into hundreds of products, including gasoline, kerosene, gas oil, diesel engine oil, asphalt, paraffin wax, fuel oil, and domestic burning oil.[2] Since the advent of the automobile, however, gasoline has overshadowed all the other products in importance.[3] In 1935, when most of the activities described herein took place, the United States produced 43,856,032,000 gallone of crude oil and consumed 17,742,202,000 gallons of gasoline.[4]

Gasoline is graded according to its "anti-knock" quality which is measured in "octanes".[5] During the indictment period there were three standard grades—"third grade", "regular", and "premium". Third grade gasoline had an octane rating of 62 or below, regular, an octane rating of 68-70, and premium, an octane rating of 71 or over.[6]

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[1] Franklin, R. 917.

[2] Franklin, R. 929.

[3] Arnott, R. 1684-5.

[4] Def. Exs. 954, R. 3653; 726, R. 3189.

[5] Beroth, R. 178.

B. "Major integrated" and "independent, non-integrated" refiners.

So-called "major integrated oil companies" like the respondent Socony-Vacuum engage in every branch of the business, owning and operating oil wells, pipe-lines, refineries, bulk storage plants, and service stations.

Semi-integrated companies like the respondent Mid-Continent lack the facilities necessary for engaging in one or more of these branches of the business.

Non-integrated or "independent refiners" like the companies named in paragraphs 20 and 22 of the Indictment are engaged exclusively in refining.[1]

The industry also includes a number of other non-integrated elements such as independent producers who own and operate oil wells;[2] independent wholesalers or "jobbers" who sell gasoline in tank-wagon lots at bulk storage plants,[3] and independent dealers who operate service stations.[4]

---

[6] Lanzer, cross, R. 267-8. There was also an intermediate grade with an octane rating of 63-67 but it was not formally recognized by the market journals quoting gasoline prices until April, 1936 (Beroth, R. 178-9; Lanzer, cross, R. 271; Steiger, R. 732-3).

[1] Beroth, R. 185; Franklin, R. 947; Shatford, R. 996.

[2] Beroth, R. 185.

[3] *Ibid.* Lanzer, R. 243. There are also a number of other types of middlemen; brokers (Beroth, R. 175, 176; Jacobi, R. 427), sales agents (Lanzer, R. 243-4), commission buying agents (Bradshaw, R. 670), cooperatives (Beroth, cross, R. 209; Lanzer, cross, R. 256-7), etc.

[4] Beroth, R. 185-6.

C. Technique of the industry.

1. *Production.*

Of the nineteen states which produce crude oil in commercial quantities, the most important are Oklahoma, Kansas, Texas, Louisiana and Arkansas.[1] These states contain three great producing areas: (1) the Mid-Continent fields which occupy Oklahoma and the adjacent portions of the other four states; (2) the so-called "East Texas field" in Northeast Texas, and (3) the Gulf Coast fields along the Gulf of Mexico.[2]

The oil-bearing formations, or "oil sands" in these fields lie from a few hundred feet to several miles below the surface.[3] They consist of porous sandstone or limestone containing oil.[4] The oil is usually found in association with gas and water, the heavier water being on the bottom, and the gas occupying the spaces in the porous stone above the oil.[5] The oil itself also contains gas which creates great pressure.[6] To be obtainable in commercial quantities, the oil must be trapped by a fold of impervious rock lying over, and enclosing the "sand".[7]

To extract the oil it is necessary to drill a well down through the impervious "cap-rock" to the oil-bearing sand.[8] If a well is properly directed, the pressure of gas forces the oil to the surface, and a "flush well" or "gusher" results.[9]

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[1] Beroth, R. 181; Franklin, R. 918.

[2] Beroth, R. 181. The East Texas field is really one of the Mid-Continent fields, but on account of its size and importance it is usually referred to by name as a separate field. (*Ibid.*)

[3] Franklin, R. 918-9.

[4] Franklin, R. 919.

[5] Franklin, R. 920.

[6] Franklin, R. 917, 921.

[7] Franklin, R. 919-20.

[8] Franklin, R. 920.

Flush production—i.e., production resulting automatically from natural gas pressure—is only a temporary state. As soon as wells start flowing, both the pressure and the rate of production begin to decline. The more rapid the flow, and the greater the number of wells drilled in the pool, the more rapid the decine.[10] Eventually, flush production ceases and the well owners must install pumping equipment to bring the oil to the surface.[11]

As time goes on, even the production of pumping wells declines. The wells become "stripper wells" producing only from one to five barrels a day, and the production of even this small amount is very expensive.[12] Pumping and stripper wells produce almost one-fifth of the country's crude oil.[13]

2. *Crude oil transportation.*

After being produced, the oil is transported to the refinery by crude oil pipe-line. If the refinery is in the field itself, short "gathering" lines are used.[14] Many of the larger refineries, however, are in the consuming areas and along the Gulf Coast, and must be reached by long trunk pipe-lines.[15]

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[9] Franklin, R. 920-1, 922-3.
[10] Franklin, R. 922-3.
[11] Franklin, R. 923.
[12] Franklin, R. 923-4, 925.
[13] Franklin, R. 924-5; see Def. Ex. 954; R. 3653.
[14] Beroth, R. 182; Franklin, R. 925-6.
[15] Beroth, R. 181-3, 187-8; Shatford, R. 996-8.

3. *Refining.*

The refining process is largely a matter of extracting the maximum amount of gasoline from the crude oil. The normal Mid-Continent crude oil contains from 20 to 30 per cent of free gasoline which, being extremely volatile, can be removed by merely heating the oil to its boiling point and collecting the gasoline vapors in a condenser. This process is known as "distillation" or "skimming".[16] If the refiner has the equipment he can then produce another twenty to thirty per cent of gasoline by the process known as "cracking", which consists of distilling the residue at high temperatures under pressure.[17]

4. *Marketing.*

After being refined, the gasoline may be stored for a time, either at the refinery,[18] or at terminals along the navigable water-courses.[19] Then it is shipped into the consuming territory, either by gasoline pipe-line[20] or in railroad tank-cars holding from eight to ten thousand gallons each.[21] It may go directly to a large consumer who buys in tank-car lots,[22] but it is usually shipped to a "bulk station" or wholesale storage plant which holds from eight thousand to several hundred thousand gallons.[23] Thence it is distributed by tank trucks (usually called "tank-wagons") to farms and commercial consumers[24] and to service stations which sell it to private autoists.[25]

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[16] Beroth, R. 180; Franklin, R. 918, 928; Swensrud, R. 1401-2.

[17] Beroth, R. 179-80, cross, R. 207; Franklin, R. 928-9; Swensrud, R. 1402.

[18] Beroth, R. 206.

[19] Barkdull, cross, R. 873; Swensrud, R. 1421-3.

[20] Beroth, R. 182-3; Hopp, R. 850; Shatford, R. 997-8.

[21] Beroth, R. 183, 185; Shatford, R. 997-8.

[22] Swensrud, R. 1379.

[23] Beroth, R. 185; Peterson, R. 294.

D. Methods of selling gasoline from the refinery.

1. *Sales through the refiners' own outlets.*

As stated above, the major companies own both bulk storage plants which sell gasoline to farmers, commercial consumers, and dealers, and service stations which sell to motorists.[1] Since the advent of chain store legislation, however, they no longer operate many service stations. Instead, they have leased out most of their stations to independent dealers.[2]

2. *Inter-refinery transactions.*

Refiners sell a great deal of gasoline to other refiners. One type of transaction is the so-called "exchange" whereby one company supplies another's bulk plants and customers in areas which the latter cannot conveniently supply, in return for a similar accommodation from the latter.[3] Another is the so-called "processing contract" under which one refiner furnishes crude oil and has it refined into gasoline by another.[4] The most common inter-refinery transactions is the straight inter-refinery sale in which one refinery sells gasoline outright to another. Many of the major companies have to acquire a substantial amount of their gasoline in this way. With the exception of Standard of Indiana, they are all relative newcomers[5] and their growth has been paralleled by an amazing increase in the use of automobiles and the consumption of gasoline.[6] Most of them have been engaging in a competitive race for outlets—acquiring large numbers of bulk stations,[7] and filling stations,[8] and signing up jobbers on long-term contracts which obligate them to furnish large quantities of gasoline.[9] At various times, therefore, practically all of the major companies have found their sales outrunning their capacity to manufacture, and they have had to make up the deficiency by purchasing, usually from independent refiners. This was particularly true in the early 1920's.[10] Even in the years from 1931 to 1935, however, most of the defendants were purchasing from other refiners, and at least nine of them were purchasing in substantial quantities.[11]

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[24] Swensrud, R. 1378-9.

[25] Swensrud, R. 1379-80.

[1] See p. 3, *supra.*

[2] Beroth, R. 177; Marshall, R. 1233; Swensrud, R. 1379-80. In 1935 the defendants sold only 20 per cent of their gasoline through their own service stations (Def. Ex. 1028, R. 3812).

[3] Jacobi, R. 470; Hopp, redirect, R. 853.

[4] Langfitt, R. 1146.

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[5] In 1911 Standard of Indiana was the only major company in the field, and there was practically no competition (Barkdull, cross, R. 878; Marshall, R. 1245-6). Socony-Vacuum has built up its distributing system in the Middle West entirely since 1911. (Arnott, R. 1685-6). At least three of the defendants—Pure Oil, Mid-Continent, and Skelly—were not even in existence in 1911 (Wescoat, cross, R. 856; Rouzer, R. 842; Hopp, R. 849). Barnsdall was regarded as an independent refiner as recently as 1933 (Franklin, R. 947).

[6] Shatford, R. 996-7, 999; Arnott, R. 1685.

[7] Shatford, R. 999-1000; Marshall, R. 1246.

[8] Arnott, R. 1685.

[9] Shatford, R. 999-1000; Arnott, R. 1685.

[10] Shatford, R. 999.

[11] See pp. 231-40, *infra*.

3. *The open spot tank-car market.*

Open spot tank-car transactions are sales to jobbers and consumers for prompt or immediate shipment.[12] The market is "open" because the sales are not made under long-term contract; each one is the result of individual bargaining. It is a "spot market" because shipment is to be made in the immediate future—that is, within ten or fifteen days.[13]

There is no central exchange or market place for spot market transactions. Each sale is the result of individual bargaining and is made either f.o.b. the refinery or f.o.b. a refinery center like Tulsa or Chicago.[14] Usually the refiner initiates the transaction by telephoning or wiring his customers and offering them a certain number of cars of gasoline at a certain price, on certain terms of freight and delivery. For instance, "We offer you ten cars of gasoline for immediate shipment, subject to prior sale, 4½¢ per gallon, f.o.b. refinery."[15] Or the customer calls the refiner and asks him, "What price can you give me on five cars of 68-70 gasoline for immediate shipment?"[16] In either case, if the purchaser finds the refiner's price acceptable, a sale on the spot market results. The same method is used with large consumers who purchase in tank-car lots.[17]

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[12] Beroth, R. 189.

[13] Steiger, R. 731-2. Beroth testified that a spot sale should be for delivery within 48 hours (Beroth, R. 189). Shatford testified that in his own refinery he might have regarded a sale for delivery within thirty days as a spot transaction (Shatford, R. 1004). However, the period mentioned above—ten to fifteen days—is recognized by Platt's Oilgram as representing the prevailing usage (Govt. Ex. 730, R. 3200).

[14] Beroth, R. 189; Steiger, R. 732.

[15] Shatford, R. 1005.

[16] Beroth, R. 189.

Sales on the spot tank-car market must be either sales to jobbers or consumers. Sales by one refiner to another are not considered sales on the spot tank-car market, and are not reported in the market journals.[18]

4. *Sales under long-term jobber supply contracts.*

Since 1925[19] the volume of trading on the open spot tank-car market has been shrinking rapidly, particularly in the regular or 68-70 octane bracket.[20] In its place has come the long-term jobber supply contract under which the jobber contracts to buy and the refiner to furnish gasoline for a year or more. From the jobber's standpoint, such contracts have two great advantages: (1) He is assured of a steady supply of gasoline which he can market under the refining company's brand name, thus getting the advantage of the latter's prestige and national advertising;[21] and (2) The contract gives him a wholly or partially guaranteed margin between the price he has to pay for the gasoline and the normal service station price.[22]

These contracts are so attractive that a large number of jobbers have withdrawn their patronage from the spot market.[23] Today the major companies sell about one quarter of their gasoline under contract and scarcely any on the spot market.[24] Even the independent refiners sell under contract from one-third to one-half of the gasoline which they sell in the Mid-Western area.[25]

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[17] Swensrud, R. 1379.

[18] Steiger, R. 769-70, 773-8.

[19] Shatford, R. 999-1000.

[20] Steiger, R. 737-41, 743-5.

[21] Wingrove, R. 228; Pedley, R. 237; Trainor, R. 240. See also Lanzer, R. 245-6.

[22] Lanzer, R. 245; Shatford, R. 999-1000.

[23] Beroth, R. 204; Shatford, R. 999-1000.

It is, of course, impracticable to fix the price which the jobber is to pay over the whole life of such a contract. In most cases, therefore, the contract provides that the jobber shall pay the average price prevailing on the spot tank-car market on the day of shipment as reflected in one or more market journals on that day, with some provision to protect the jobber if the "spread" between his purchase price and the retail market becomes too narrow. During the indictment period, a typical contract[26] would provide as follows:

> "* * * The Buyer shall pay for Seller's regular grade of D-X Motor Fuel the 'spot Market Price' f.o.b. Group 3, Oklahoma, as defined in Clause 6, of 58/60 437 U. S. Motor Gasoline, 63-70 octane number, or said 'Spot Market Price' of the grade furnished, as determined by octane specifications, when such price, plus the cost per gallon of freight transportation from Tulsa, Oklahoma, to point of destination, plus a margin of 5½¢ per gallon, does not exceed the normal officially posted service station price, exclusive of tax, at destination, on date of shipment, of the .... Company on their .... or other similar grade of gasoline as the quality of said gasoline is now maintained or may hereafter be improved.
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> "If, however, such Spot Market Price, plus the said cost per gallon of freight transportation, plus

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[24] Def. Ex. 1028, R. 3812; Beroth, R. 189; Steiger, R. 735.

[25] Shatford, R. 1000; Beroth, R. 189.

[26] Govt. Ex. 618 used by Mid-Continent, R. 3031.

> the aforesaid margin, exceeds such service station price, then the invoice price of said D-X Motor Fuel shall be reduced by an amount equal to one-half of such excess. The aforesaid margin is based on Seller's present Resellers discount of 3½¢ to Undivided Dealers and Resellers; in the event Seller increases or decreases said Resellers discount to Undivided Dealers and/or Resellers generally throughout its marketing territory, then the aforesaid margin will be increased or decreased an equal or like amount • • •.
>
> • • •
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> "The 'spot market price' per gallon f.o.b. Group 3, Oklahoma, shall be the average of the minimum and of the maximum prices, or the average of the prices, of gasoline and motor fuel, as published in the Chicago Journal of Commerce, Chicago, Illinois and Platt's Oilgram, Tulsa edition (Oklahoma markets) on the date on which shipment is made • • •."

The wording of the contracts varied, especially in the margin provisions.[27] The use of the spot market quotations as the price basis, however, was very common. Out of 1729 contracts executed by major oil companies in 1935, 1461 or 84.5 per cent had price provisions substantially like that quoted above. A hundred more based the price on the quotations in the Chicago Journal of Commerce alone.[28]

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[27] See the sample jobber contracts and price provisions in the record, Govt. Exs. 618-621, 623-640, R. 3031-80.

[28] W. J. Miller, R. 339-40. Swensrud pointed out that this comparative uniformity is due to the severity of competition, which forces each company to offer as attractive terms as its competitors (Swensrud, R. 1388-9).

E. The market journals—Platt's Oilgram and the Chicago Journal of Commerce.

The prices paid by jobbers and consumers in the various spot markets are published daily in the trade journals, "Platt's Oilgram" and "Chicago Journal of Commerce."[1]

Platt's Oilgram obtains its quotations through a "market-checker" in the Tulsa office.[2] Each day the checker calls from fifteen to thirty-five refiners in the various refinery areas and ascertains the quantity and price of the gasoline which they have sold in spot sales to jobbers. After checking the prices so reported against various other sources of information and taking into consideration the volume of sales reported at each price, he makes up his mind as to the lowest and highest prices at which gasoline is being sold to jobbers in substantial quantities on the spot market. The result is published in the Oilgram that same day. For instance, if substantial sales are reported at 5⅛¢, 5¼¢ and 5⅜¢, the Oilgram reports a price range of 5⅛-5⅜¢.[3]

The Chicago Journal of Commerce publishes similar quotations[4] except that one set of quotations embraces the entire Mid-Continent field,[5] the quotations appear on the day *after* the sales reported therein,[6] and the same quotations cover not only sales to jobbers but sales to commercial consumers.[7]

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[1] Beroth, R. 190. See Govt. Ex. 730, R. 3200.

[2] Steiger, R. 728-30.

[3] Steiger, R. 741-2, 745-8; See Govt. Ex. 730, R. 3200.

[4] Beroth, R. 190.

[5] W. J. Miller, R. 352.

[6] W. J. Miller, cross, R. 355. The National Petroleum News, which is owned by the same interests as Platt's Oilgram (Steiger, R. 729; Mosher, R. 789-90), gives the Oilgram quotations in weekly form (Steiger, R. 729).

Neither Platt's Oilgram nor the Chicago Journal of Commerce publishes quotations showing the prices paid in sales by one refiner to another.[8]

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[7] J. D. Miller, R. 1656.
[8] Beroth, R. 190; Steiger, R. 769-70, 773-8.

II.

The demoralization of the oil industry prior to 1933.

A. The causes of overproduction.

In the early days of the oil industry, it was believed that oil flowed under a man's land like a river or creek.[1] As a result of this misconception, the courts treated oil pools like underground water-courses and laid down the so-called "rule of capture" whereby anyone who drilled a well was entitled to take out as much oil as he could.[2]

Petroleum geologists long ago disproved the theory upon which this rule was based,[3] and established that all the operators in a pool draw from a common source of supply, and that if one withdraws more than his share, he diminishes what is left for the others. But the rule of capture has persisted, and if one operator insists upon producing his wells to capacity, the operators on adjoining tracts must follow suit or else lose a portion of the oil under their lands.[4]

The "race for production" is intensified by the fact that oil leases usually require the lessee to produce at a rate which will prevent the oil from being drained off by the operations on adjoining properties. Even if the lease does not so provide, the courts imply such provisions.[5]

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[1] Franklin, R. 920.

[2] Beroth, R. 206; Franklin, R. 920.

[3] Franklin, R. 919, 920.

[4] Franklin, R. 922, 927.

[5] *Ibid.*

As Franklin testified:

> "* * * There is always somebody in a pool, some owner, some operator, that wants to produce his wells to the limit, and he will continue to produce. * * * if he continues to produce, every owner or operator in the same pool must produce, or lose at least a portion of the oil from under his property. * * * if he fails to produce and protect the property from drainage, his lease is subject to cancellation.[6]

When a new flush field is discovered and a "race for production" occurs, the price of crude oil declines.[7] Unfortunately, however, low prices do not put a stop to over-production. In fact, they tend to accelerate it, for it takes more barrels of cheap crude to pay the producers' operating costs and fixed charges. When the price declines the producers are almost compelled to produce more oil.[8]

B. The growth of overproduction since 1926.

The conditions described above did not affect the oil industry seriously until 1926. Previous periods of overproduction in 1913 and in 1920 had been temporary and insignificant.[1] The principal problem of the industry during the period was to find enough crude oil to supply the growing demand.[2]

In 1926, however, the situation was suddenly reversed. During the next four years some twenty new pools were discovered in the Seminole area in Oklahoma. At the same time the Yates and Winkler pools and numerous smaller pools were discovered in Texas. In 1928 the great Oklahoma City field came in, producing high grade oil in such quantities that it seriously affected crude oil and gasoline markets throughout the United States.[3]

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[6] Franklin, R. 927.

[7] Franklin, R. 927-8, 984.

[8] Franklin, R. 927.

[1] Franklin, R. 983-4.

[2] Shatford, R. 996.

It was soon realized that overproduction was threatening the interests of the public. The nation's total oil reserves, in known and developed pools, were only thirteen billion barrels—a little more than ten years' supply.[4] With every operator in the new flush fields trying to produce more oil than his neighbor, waste and demoralization were bound to follow.[5] The public was injured in three ways:

1. *Overproduction led to waste.* The independent producers seldom had enough storage capacity to accommodate more than a few days' production.[6] When they produced oil beyond the capacity of the available pipeline facilities, they had to store it in open pits where rains washed it away, the more volatile constituents of the oil evaporated, and large quantities were lost through underground seepage.[7]

2. *Overproduction reduced the productive capacity of the oil fields.* In some cases, the sudden removal of the gas and oil allowed water to reach the foot of the wells and cut off the oil.[8] In others, the gas which forced the oil to the surface, and which should have kept the

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[3] Franklin, R. 984.
[4] Franklin, R. 918.
[5] Franklin, R. 922.
[6] Franklin, R. 926.
[7] Franklin, R. 922.
[8] Franklin, R. 921-2.

oil "thin" so that it would move easily through the porous rock, was wasted in the air. Soon the oil became too "dead" or viscous to move, and the pressure declined to the point where the wells would produce, if at all, only by pumping.[9]

3. *Overproduction drove the price down to uneconomic levels.* "The backbone of the industry" consists of some 50,000 pumping and 250,000 stripper wells with a combined production of about 500,000 barrels a day.[10] Flush production is only a temporary condition. Pumping and stripper wells produce over a long period of time with a relatively small decline in production.[11] The cost of production in these wells, however, is much higher than that in flush wells. A flush field like Oklahoma City may produce crude oil for 50 cents a barrel.[12] One like East Texas may produce for as little as 10 cents.[13] Production from pumping and stripper wells, however, costs much more.[14] At one point during the N. R. A. Code period, the Federal Petroleum Administrator signed an order fixing the price of Mid-Continent crude oil at a minimum of $1.11 a barrel, on the ground that that price represented the average cost of production.[15]

If the price of crude oil falls below the cost of production from pumping and stripper wells, such wells must be abandoned. Once they have been abandoned, subsurface changes make it difficult or impossible to get the wells producing again. Since the pumping and stripper wells constitute over forty per cent of the country's known oil reserves, conservation requires that the price of crude oil be maintained at a level which will permit such wells to continue in operation.[16]

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[9] Franklin, R. 921, 922-3.
[10] Franklin, R. 924-5.
[11] Franklin, R. 924.
[12] Franklin, R. 925-37.
[13] Beroth, R. 208; Shatford, R. 1001-2; Fischer, R. 1116.
[14] Franklin, R. 924, 925.
[15] Franklin, R. 952-3.

C. The failure of attempts to prevent overproduction—The East Texas oil field.

The oil-producing states of Oklahoma and Kansas first attempted to remedy these evils by passing "conservation" or "proration" laws. These laws were designed to prevent waste by limiting the amount of oil produced in each field.[1] Each state charged one of its commissions with the duty of determining how much crude oil should be produced. Each month this commission would receive "nominations" from the various refiners—*i. e.*, estimates of the amount of crude oil they would be willing to buy, or the amount they would need during the ensuing month. On this basis the commission would set a gross figure representing the total allowable production for the state during the month in question. It would then apportion this total "allowable" among the different pools in the state.[2]

In 1930, just as proration was beginning to work in the Oklahoma City field,[3] the largest oil field in history—

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[16] Franklin, R. 924-5. The nation consumes approximately ten percent of its known resources each year (Franklin, R. 918).

[1] Shatford, R. 1070; Franklin, R. 984.

[2] Swensrud, R. 1394. In Oklahoma the regulatory body was the Oklahoma Corporation Commission; in Kansas, the Conservation Commission; in Texas (when Texas finally passed such a law) it was the Texas Rail-Road Commission. (*Ibid.*)

[3] Franklin, R. 984.

fifty miles long and ten miles wide—was discovered i
East Texas.[4]

Most of the field was owned in small tracts by producers who had never been in the oil business before They drilled rapidly, spaced their wells closely together and completed 23,000 producing wells in seven years.[5] It was once estimated that, if left unchecked, these wells could have produced at the rate of 300,000,000 barrels of crude oil a day.[6]

At this time Texas did not have a proration law.[7] The East Texas field proceeded to create a flush production "the like of which has never been known in the history of oil in the United States."[8] The supply of oil from the new field was so excessive that the Oklahoma City field had to be cut down to less than one per cent of its potential production.[9] At one time crude oil sank to 10 or 15 cents a barrel, and gasoline could be bought in the East Texas field for 2⅛ cents a gallon.[10]

D. Hot gasoline.

In 1931 Texas passed a proration law, similar to the Oklahoma and Kansas laws, to be administered by the Texas Railroad Commission.[1] It proved impossible to enforce it.[2] The Railroad Commission issued order after order restricting production, but each time, after a short lull, the production would start to increase and would continue to do so until all barriers had broken down.[3] The crude oil, so produced in excess of the Railroad Commission's allowables, became known as "hot oil." The gasoline manufactured therefrom was "hot gasoline."[4]

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[4] Beroth, R. 181; cross, R. 222; Fischer, R. 1114.
[5] Franklin, R. 984; Fischer, R. 1114.
[6] Fischer, R. 1114-5.
[7] Bradshaw, R. 707.
[8] Franklin, R. 984.
[9] Franklin, R 932, 933.
[10] Beroth, R. 208, 222.
[1] Beroth, R. 213; Bradshaw, R. 707.
[2] Bradshaw, R. 707; Franklin, R. 984-5.

The inability of the Texas authorities to enforce the state proration laws made it possible for certain refiners in East Texas to obtain hot oil at prices which were substantially lower than those being posted for legal oil. This, in turn, enabled them to manufacture gasoline at a much lower cost than the refiners who were operating on legal crude oil. As a result, they often could sell their gasoline for less than it cost to manufacture it from legal crude oil.[5]

The efforts of the legitimate refiners to meet this competition were futile. Hot gasoline crowded into the market everywhere, depriving legal gasoline of its normal outlets so that it had to be sold at distress prices.[6] Many independent refiners operating on legal crude oil were faced with bankruptcy.[7]

E. Distress gasoline.

Even before 1930 the independent refiners' markets had been contracting so that it had become extremely difficult for them to dispose of their gasoline. Many of the major companies which had formerly bought from independent refiners increased their own refining capacity until they were relatively self-sufficient. All of them began acquiring customers at the independent refiners' expense. The major companies had superior equipment, and lower transportation costs. They had bulk plants and filling stations which assured them of having an outlet for their products. The independent refiners had none of these advantages.[1] Even the independent refiners' jobbers began to desert them as the majors offered national advertising and guaranteed margin contracts.[2]

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[3] Franklin, R. 984-5.
[4] Shatford, R. 1000.
[5] Shatford, R. 1000, 1001.
[6] Shatford, R. 1002.
[7] Shatford, R. 1001.

When overproduction of crude oil became serious in 1930, the independent refiners were faced with the further problem of an oversupply of gasoline. The independent producers had little or no storage facilities of their own. When they became involved in the race for production, they had to sell their oil as fast as they produced it.[3]

Crude oil is generally sold under a contract called a "division order" whereby the purchaser binds himself to take all the allowable oil produced on the lease as fast as it comes out of the ground.[4] Unfortunately the independent refiners who entered into these contracts had as little storage capacity as the producers from whom they bought.[5] At the same time, they could not afford to shut down unless they expected to go out of business permanently. If they do so, they would have lost both their oil connections in this field,[6] and their regular customers.[7] The refiners therefore had to buy all the oil produced by their producers and keep their refineries running whether they were making money or not.[8]

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[1] Shatford, R. 997, 999.

[2] Shatford, R. 999-1000; Wingrove, R. 228; Lanzer, R. 245-6; Pedley, R. 237.

[3] Franklin, R. 926, 927.

[4] Franklin, R. 926.

[5] Frankin, R. 929-30.

Once the gasoline had been manufactured, the independent refiners were faced with another problem which resulted from the restricted character of their operations. Having no storage capacity, they had to sell their gasoline on the spot market as fast as they made it.[9] As a result, the independent refiners' gasoline became "distress" or "surplus" gasoline—that is, gasoline which could be neither stored nor sold at the market price, but which had to be disposed of in some way. Inevitably such gasoline was dumped on the market for whatever price it would bring.[10] Such sales inevitably drove the market down until no independent refiner could make a profit.[11]

A complete summary of the record references to distress gasoline will be found in Part VI, pp. 192 to 215, *infra.*

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[6] Franklin, R. 930; Gray, R. 1827, 1828; Shatford, R. 1003.

[7] Franklin, R. 930; Gray, R. 1828.

[8] Franklin, R. 930.

[9] Franklin, R. 929-30; Shatford, R. 1003, 1010; McDowell, R. 1166.

[10] Jacobi, R. 385-6; Cline, R. 642; Bradshaw, R. 671; Steiger, R. 751-2; Franklin, R. 929; Shatford, R. 1003; McDowell, R. 1166; Frey, R. 1327.

[11] Shatford, R. 1003.

III.

Efforts to rehabilitate the industry from March, 1933 to January, 1935.

A. Generally.

In the spring of 1933 the demoralization of the oil industry reached a climax. The competition of hot gasoline had driven the price on the wholesale market down below the cost of manufacture.[1] Even the major companies could no longer afford to supply their jobbers at the prevailing prices. At first they held their products in storage until they built up excessive inventories. Then, as the market became saturated with cheap gasoline, they became afraid to hold their inventories and, like the independent refiners, they began dumping gasoline on the markets. "Everybody was trying to get on the market at once," dumping gasoline wherever it could be sold at any price it would bring.[2] As a result, the price of crude oil on June 1, 1933, nearly three years after the discovery of the East Texas field, was only 25 cents a barrel. The tank-car price of regular gasoline was 2⅝ cents a gallon.[3]

At this point the Federal Government joined with the industry in an attempt to improve conditions under the National Industrial Recovery Act.

Certain features of this attempt were common to all industries at the time. There was an N. R. A. Code of Fair Competition, proposed by the industry, examined by General Johnson, and approved by President Roosevelt.[4] There was an attempt, under that Code, to regulate wages, hours, and conditions of labor[5] and competitive practices[6] throughout the industry. There was an industry Code authority—the "Planning and Co-ordination Committee"[7]—which functioned, partly as an administrative[8] and partly as a compliance[9] agency throughout the Code period.

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[1] Shatford, R. 1001.

[2] Shatford, R. 1001, 1002, 1003, 1005-6.

[3] Def. Ex. 978, R. 3718.

The efforts toward rehabilitation of the oil industry, however, had four unique features which will be described in the four sub-sections which follow.

1. *A special provision regulating the oil industry was incorporated in Section 9(c) of the N. I. R. A. which authorized the President to forbid the interstate shipment of hot oil and hot gasoline.*

Section 9(c) of the National Industrial Recovery Act[10] authorized the President to prohibit, on penalty of fine or imprisonment,

> "* * * the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn

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[4] Def. Ex. 710 for identification, R. 3141; Franklin, R. 915-6; McDowell, R. 1164; Arnott, R. 1686-7.

[5] Collett, R. 1805.

[6] Arnott, R. 1688; Collett, R. 1805.

[7] Franklin R. 915, 946, 948; Moffett, R. 1149; McDowell, R. 1164; Arnott, R. 1687, 1715; Collett, R. 1801, 1804.

[8] Franklin, R. 945, 948; Arnott, R. 1687.

[9] Arnott, R. 1688; Collett, R. 1805.

[10] 48 Stat. 195, 200, Sec. 9(c).

> from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. * * *"

On July 11, 1933,[11] President Roosevelt exercised his authority under this section by issuing an Executive Order which forbade the interstate shipment of hot oil and hot gasoline. A short time later, regulations were issued to make this order effective.[12]

2. *Section 9(c) and the Code were enforced, not by the National Recovery Administration but by a "Federal Petroleum Administration" in the Department of the Interior under Secretary Ickes.*

(a) The Administrator.

On July 14, 1933, President Roosevelt turned the administration of Section 9(c) of the N. I. R. A. over to Secretary Ickes by authorizing him,

> "* * * to exercise all the powers vested in me, for the purpose of enforcing Section 9(c) of said act and said order, [of July 11th], including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary."[13]

This order disposed of the administration of Section 9(c), but did not affect the Code. In the ordinary course of events, the latter would have been administered by the National Recovery Administration. The Department of Interior, however, was the Government's principal agency for conservation,[14] and, on August 28, 1933, President Roosevelt consolidated all authority over the oil industry in that department by designating and appointing,

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[11] Def. Ex. 974, R. 3696, 3697.

[12] Beroth, cross, R. 222; Fischer offer, R. 1123.

[13] Def. Ex. 974, R. 3696, 3697.

> " * * * the Secretary of the Interior to be Administrator and the Department of the Interior to be the Federal agency, as provided by the aforesaid act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal agency, by such act and such Code of Fair Competition."[15]

(b) **The Petroleum Administrative Board.**

On September 11, 1933, Secretary Ickes issued an executive order[16] establishing,

> " * * * a Board to be known as the Petroleum Administrative Board of the Department of the Interior, the functions of which shall be to advise with and make recommendations to the Secretary of the Interior as the Administrator of the Code of Fair Competition for the Petroleum Industry. * * * Said Board shall also perform such administrative functions as may be detailed to it by the Secretary of the Interior, * * * "

During the indictment period the Board was composed of five members: Charles Fahy (Chairman), N. L. Meyers, J. H. Marshall, E. B. Swanson, and J. W. Frey.[17] In actual practice it enjoyed considerably more authority than the above-quoted order would indicate. The "job allocation sheets," approved by Secretary Ickes, designated the Chairman of the Board as the "Deputy Administrator of the oil industry."[18] Each member was given "unusual latitude for independent and unreviewed administrative and executive action and decision," and each was put directly in charge of one phase of the Board's activities.[19] Dr. Frey testified that:

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[14] Franklin, R. 945.

[15] Def. Ex. 974, R. 3696, 3697.

[16] Def. Ex. 974, R. 3696, 3698.

[17] Shatford, R. 1023.

> " * * * Mr. Swanson was a member in charge of the Production and Refining Division. I was the member in charge of the Marketing Division. * * *
>
> "The functions of the Petroleum Administrative Board with respect to marketing were to carry out the purposes of Article V of the Code of Fair Competition for the Petroleum Industry. * * *
>
> "The Board was normally not conducted as a solid group; it was rather departmentalized. We had a group of men who were in law; Mr. Marshall, Mr. Meyers, Mr. Fahy, and Mr. Margold were lawyers; Mr. Swanson gave his attention to production and refining; and I gave mine to marketing. We rarely met as a Board. We usually reported what was happening in our particular field to the chairman of the Board. If he felt it was necessary for all of us to get together, he called a meeting; but normally we operated independently, each more or less in his own division. Insofar as I could solve any problems that had to do with marketing, I did that myself. If necessary, I called in help.[20]

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[18] Def. Ex. 988, R. 3735.

[19] Def. Ex. 974, R. 3696, 3703, *et seq.*; Frey, R. 1265.

[20] Frey, R. 1265.

> "Our contact was very informal with the industry in carrying on the work of the P. A. B. We had frequent occasion to arrange various things with them, controversies of one type or another would develop, and in just a few minutes we might rush into a particular situation. The period was extremely hectic. We didn't have time to sit down and assemble the Board formally to deal with every detail. Every fellow was out to do as much as he could to restore the industry to normal.
>
> "Sometimes it was necessary to meet with members of the P. & C. Committee in Washington, in Chicago, in Detroit, in New York, wherever it happened to be convenient. All of us were at these meetings in very few instances.
>
> "We were sort of a buffer between the committee of the industry, that is, the Planning and Coordination Committee, and the Administrator of the Code, the Secretary of the Interior. Very frequently all preliminary negotiations were carried out in that informal way; and in some instances they were formalized by an order of the Secretary; in other instances, they were not."[21]

3. *The Government and the industry attempted not only to regulate competitive practices, but to balance the basic factors of supply and demand.*

The respondents offered to prove certain important facts regarding the Petroleum Administration's efforts to balance supply and demand. All of this evidence was excluded. It appeared incidentally, however, from the testimony of respondent's witnesses that under the Code the United States Bureau of Mines estimated the future demand for crude oil and divided the total among the oil-producing states,[22] and that most of the latter thereafter followed the Bureau's recommendations in establishing their state "allowables";[23] that the Government limited the daily imports of crude oil and gasoline,[24] and withdrawals of crude oil from storage;[25] and that the Planning and Coordination Committee and its subcommittees regulated refinery operations,[26] and gasoline inventories.[27]

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[21] Frey, R. 1273. See also, Shatford, R. 1012, 1015, 1058; Arnott, R. 1698-9.

[*The respondents offered* the Code Sections in question in evidence. They will be found in Defense Exhibit 710 for identification.[28]

[*The respondents also offered to prove* that under the provisions of Article V, Section 31, any violation of these restrictions was an act of unfair competition and a violation of the Code.[29]]

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[22] Shatford, R. 1002-3; Fischer, R. 1115.

[23] Shatford, R. 1003.

[24] Franklin, R. 986.

[25] Franklin, R. 986-7; Shatford, R. 1003.

[26] Shatford, R. 1001, 1006-7.

[27] Shatford, R. 1010.

[28] R. 3141, 3148-51. The provisions appear as follows: Restrictions on production—Article III, Sections 3-5, inclusive; restrictions on imports—Article III, Section 1; restrictions on the withdrawal of crude oil from storage—Article III, Section 2; restrictions on refinery operations—Article IV, Sections 1 and 2; restrictions on gasoline inventories—Article IV, Section 4.

[29] Def. Ex. 710 for identification, R. 3141.

4. *The Government and the industry attempted to maintain a definite relationship or "parity" between the price of crude oil and gasoline.*

It appeared incidentally from the testimony of respondent's witnesses that "Section 6 of Article 3 of the Code provided that crude oil should be eighteen and a half times the (tank-car) price of gasoline,"[30] that Rule 4 of Article V "provided against selling any product at less than cost,"[31] and that "the Petroleum Code gave us the legal option to direct the price and name the price at which the retailer would sell."[32]

[*The respondents offered* these Code sections and other similar Code sections in evidence and offered to show the background of these sections.

[The offered proof would have shown that the problem of price was one of the first to be called to the attention of the Roosevelt Administration. On March 8, 1933, James A. Moffett had called upon President Roosevelt, as spokesman for the American Petroleum Institute, and laid the problems of the industry before him. At that time the President expressed the opinion that the price of crude oil (then 44 cents a barrel) should be raised to one dollar a barrel, and sent Moffett to see Secretary Ickes.[33] Subsequently, and apparently as a result of these conferences,[34] Secretary Ickes called a conference of the Governors of the oil-producing states at Washington on March 27-29,

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[30] McDowell, R. 1181.
[31] McDowell, R. 1212.
[32] McDowell, R. 1175.
[33] Moffett offer, R. 1150-1.
[34] Moffett offer, R. 1152.

1933. At this conference a committee, composed of representatives of the oil-state Governors and the industry prepared a set of recommendations, many of which were incorporated in Section 9(c) of the N. I. R. A. and in the Petroleum Code. These recommendations concluded with a statement that:

> [“If the foregoing conservation program is to succeed, the committees respectfully submit that it must be based on a price for crude oil which will allow a margin of profit to the producer and a price for the refined products which will allow a margin of profit for the refinery and the retail dealer.”

[Upon the submission of these recommendations on March 29th, Secretary Ickes agreed with the committee “that there could not be conservation of our oil resources, proration of production and limitation of imports into this country without adequate prices for crude oil sufficiently high to cover the cost of production on the stripper well areas of the United States.”[35]

[Subsequently, the N. R. A. Petroleum Code contained the following provisions dealing with the prices of petroleum and its products:[36]

> [“During such periods as the production of crude petroleum in any State is within the allocation to that State, as provided in Section 3, Article III, of this code, *it shall be an unfair practice within that State to buy, sell, receive in exchange, or otherwise acquire Mid-Continent crude petroleum of 36°-36.9° A. P. I. gravity during any*

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[35] Franklin offer, R. 963, 970-974.

[36] Def. Ex. 710 for identification, R. 3141.

calendar month at a price per barrel (to the nearest cent) less than that which will be determined by multiplying the average Group 3 tank-car price per gallon of U. S. Motor gasoline of 60-64 octane rating during the preceding calendar month as ascertained and declared by the Federal agency designated by the President, by the constant 18.5. The constant 18.5 represents the relationship, during the period 1928-1932, between the average price per barrel of Mid-Continent crude petroleum of 36°-36.9° A. P. I. gravity and the average Group 3 price per gallon of U. S. Motor gasoline of 57-65 octane rating or 58-60 U. S. Motor gasoline. * * *" (Art. III, Sec. 6. Italics supplied.)

["For a test period of not to exceed ninety days, the President may prescribe the base price of the gasoline described in Section 6 of this Article to which said constant shall be applied and, at the end of said period the President may revise the formula set forth in said Section 6 or add such additional formulae relative to the wholesaling and retailing of petroleum and its products in such manner as in his opinion may be necessary to effectuate the purposes of the National Industrial Recovery Act. If and whenever the President shall prescribe a base price for gasoline then it shall be an unfair trade practice to buy, sell, give or receive in exchange or otherwise dispose of or acquire such gasoline at a lower price." (Art. III, Sec. 6(a).)

* * *

["Refiners, distributors, jobbers, wholesalers, retailers, and others engaged in the sale of petroleum shall not sell any such refined petroleum products below cost of manufacturing or importation into the State where offered for sale, plus reasonable expenses in the cost of marketing as observed under prudent management, fixed taxes and inspection fees by the Federal or State Government, or any political subdivision thereof, provided, however, that any person is permitted to meet competition in violation of this rule concerning which he has made complaint to the Planning and Coordination Committee, or any authorized agency thereof, but only pending action thereon. * * *" (Art. V, Rule 4.)

* * *

["Inasmuch as there are firms and corporations in the petroleum industry who severally or through firms and corporations owned or controlled, constitute and comprise a complete or integrated unit in such industry or produce and refine petroleum and market the products manufactured therefrom, the business thereof shall be so conducted that the several branches of this industry, viz: producing of petroleum, refining, and marketing of refined products may be carried on upon a profitable basis and that no one or more of the said branches shall obtain or receive excessive or disproportionate gain or profit therefrom to the exclusion of any other branch of this industry." (Art. V, Rule 6.)

* * *

["In all sales of trade-marked or branded petroleum products for resale, refiners, distributors, jobbers, or wholesalers may, by contract, require purchasers to sell at prices therein designated for such resale; and may further require that if such products are thereafter sold by such purchaser for resale, that the original purchaser shall incorporate a similar provision in the contract with its purchaser for resale." (Art. V, Rule 26.)]

B. The objectives of the Federal Petroleum Administration.

President Roosevelt approved the N. I. R. A. on June 16, 1933,[1] exercised his authority under Section 9(c) thereof on July 11,[2] and approved the Code on August 19.[3] The Code went into effect on September 2,[4] and Secretary Ickes established the Petroleum Administrative Board on September 11th.[5] During this period there was a marked improvement in the price structure of the industry. Between June 1 and September 15, 1933 the average retail gasoline price for 60-64 octane gasoline rose from 10⅞ cents to 14½ cents per gallon, the tank-car price for the same grade rose from 2⅝ cents to 5⅜ cents, and the price of 36° gravity Mid-Continent crude oil rose from 25 cents to 89 cents a barrel. Referring to these gains in a speech before the Planning and Coordination Committee on September 18, 1933,[6] Secretary Ickes defined the aims of the Federal Government as follows:

> "* * * Your problem is to hold and consolidate this improvement so far as it is justified while paving the way for further improvement.
>
> "I ask you to remember that our primary purpose is to put men back to work and to raise wages, thus enlarging the purchasing power of the industry. * * *

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[1] 40 Stat. 195.

[2] See Def. Ex. 974, R. 3696.

[3] Arnott, R. 1687.

[4] *Ibid.*

[5] Def. Ex. 974, R. 3696.

[6] Def. Ex. 978, R. 3718, 3720.

> "Gentlemen, we have a solemn duty to perform. Our task is to stabilize the oil industry upon a profitable basis. That is the keen desire of the Administration and we will work with you constantly to that end. * * *"

The attempts of the Federal Government to stabilize the oil industry and to assist the states in conserving the nation's petroleum resources, led to the pursuit of three principal objectives:

(1) The restoration of the price of crude oil to a minimum of $1.00 per barrel. That was the minimum price at which the vast majority of the crude oil wells of the country could operate.[6a]

(2) The restoration of the wholesale price level of gasoline at the refinery to "parity" with crude oil; that is, to a price which would reflect the normal relation between the price of gasoline and the price of the crude oil from which it is manufactured.[6b]

(3) The stabilization of retail prices at a normal spread or margin between the refinery price of gasoline and the retail prices.[6c]

We shall discuss these in the three sections which follow.

[6a] See pp. 37-8, *infra.*
[6b] See pp. 38-61, *infra.*
[6c] See pp. 61-70, *infra.*

C. The achievement and maintenance of a price of one dollar a barrel for crude oil.

The admitted evidence merely showed that on September 29, 1933 the price of crude oil rose to one dollar a barrel.[7]

[*The respondents offered to show* ~~that~~ shortly after September 6th (when the price of crude oil had reached seventy-four cents a barrel), Wirt Franklin, the chairman of the Planning and Coordination Committee, had certain discussions with Secretary Ickes from which it appeared that the latter was in favor of a rise in crude oil. Franklin, speaking on behalf of his Committee, told the Secretary that in order to attain the objectives of the Code and to stabilize the petroleum industry, the price for 36-gravity Mid-Continent crude oil should be $1.11 a barrel. The Secretary agreed that the price should equal the average cost of production, but thought that the minimum price should be one dollar a barrel. On Franklin's advice he agreed to take the matter up with the executives of the major oil companies and see if they would raise their posted prices. A few days later he notified Franklin that he had done so.[8]

[On September 8th the price of crude oil was increased to eighty-nine cents a barrel. On September 29, 1933 it was increased to a dollar a barrel, where it was to remain throughout the remainder of 1933 and throughout 1934 and 1935.[9]]

Franklin was allowed to testify that after the price of crude oil reached one dollar a barrel on September 29,

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[7] Franklin, R. 952, 953.

[8] Franklin offer, R. 958-9.

[9] Franklin offer, R. 958.

1933, it was maintained at that level throughout the Code period at the insistence of Secretary Ickes.[10]

[*The respondents offered to prove* that Franklin, as chairman of the Planning and Coordination Committee, had several discussions with the Secretary in which the latter indicated that he did not want the price of crude oil to fall below a dollar.

[*The respondents also offered to prove* that in October 1934, when several independent refiners threatened to cut the price of crude oil below a dollar, the Secretary declared that the reduction "must not take place," sent a personal telegram to the independent refiners urging them to "make no reduction at this crucial time and thus hinder effectuation constructive plans," and dispatched his administrative assistant, Ralph Horween, to Chicago to prevent the reduction.[11]]

D. Attempts to achieve parity between the prices of crude oil and gasoline.

As shown above the Code provided that the price of a barrel of crude oil should be 18.5 times the price of a gallon of 60-64 octane gasoline.[11a]

From the outset, however, the Administration took the position that not only the price of crude oil but the price of gasoline should conform to this ratio. In other words, it attempted to secure, not only a price for crude oil which would be 18.5 times the price of a gallon of gasoline, but a price for gasoline which would be 1/18.5 of the price of a barrel of crude oil.[11b]

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[10] Franklin, R. 951, 953.

[11] Franklin offer, R. 938-41, 943.

[11a] See p. 33 above.

The reason for this policy becomes apparent when we consider the effect which the establishment of a price of $1.00 a barrel for crude oil had on the independent refiners.

With the price of crude oil at one dollar, the price of 60-64 octane gasoline, according to Section 6 of Article II of the Code, should have been 5.45 or about 5½ cents a gallon.[12] With crude at a dollar it was costing the average independent refiner in the Mid-Continent 5 cents a gallon or more to make third grade gasoline.[13] If supply and demand had been balanced and all refiners had been using legal crude, therefore, the price of gasoline would almost certainly have risen to parity.[14]

Unfortunately, however, supply and demand were not balanced, and all refiners were not paying a dollar a barrel for crude oil. The Government agencies which were trying to enforce Section 9(c) of the N. I. R. A. became involved in a flood of litigation, and the enforcement of the regulations was enjoined.[15]

[11b] Arnott, R. 1728-9. [Express statements of the administration's policy are found in Secretary Ickes' price fixing order of October 16, 1933 (Def. Ex. 929 for identification, R. 3327, 3328), which fixed the price of 50-60 octane gasoline at 18.5 of the price of a barrel of crude oil, and in the National Petroleum Agency agreement (Def. Ex. 832 for identification, R. 3332), which expressly provided that the price of 60-64 gasoline should be 1/18.5 of the price of a barrel of crude oil (see p. 44, *infra*).]

[12] McDowell, R. 1181.

[13] Franklin, R. 935. [The record also shows that it cost the average Mid-Continent independent refiner 5.6c. to manufacture regular gasoline (Swensrud offer, R. 1430).] In 1935 it cost the average East Texas refiner between 4½ and 4⅝ cents a gallon to manufacture third grade gasoline. (Govt. Ex. 19, R. 2621, 2622.) Scarcely any of them manufactured regular. (Cline, R. 626.)

[14] *Cf.* Shatford, R. 1064.

During this period the East Texas field over-produced nearly as much as it had before the passage of the N. I. R. A. In 1933 the Texas Railroad Commission was trying to hold the field down to three hundred and fifty or four hundred thousand barrels a day. In 1934 it was trying to hold it down to four hundred thousand. During both years, however, the field was producing from one hundred and fifty thousand to two hundred thousand barrels a day more than the Commission's allowables.[16]

As usual, this hot oil sold substantially below the price of legal crude. From September 1933 through the year 1934, while legal crude was selling for a dollar, the top price for hot oil was thirty-five cents a barrel. Some of it sold as low as ten.[17]

The hot oil refiners could afford to sell gasoline for as little as two or two and one-half cents.[18] They shipped it into interstate commerce in competition with legal gasoline, and captured business from both major companies and independents.[19] As a result, the price of legal gasoline had to meet the price set by the hot oil refiner.[20] By the end of 1933 the price of 60-64 gasoline had fallen below five cents a gallon on the spot market. It remained below five cents throughout 1934, with occasional drops as low as four cents.[21] Indeed, in October, 1934, the Chicago Journal of Commerce's low quotation for gasoline of less than 62 octane rating fell off to 2½ cents a gallon.[22] As a result, the amount of distress gasoline on the market increased substantially,[23] and many independent refiners either went bankrupt or closed down.[24] As McDowell said:

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[15] Beroth, cross, R. 222.

[16] Fischer, R. 1115-6.

[17] Shatford, R. 1001, 1002; Fischer, R. 1116-7; Beroth, R. 222.

[18] Shatford, R. 1002.

[19] Fischer R. 1117; McDowell, R. 1165, 1166.

[20] Shatford, R. 1001.

[21] Govt. Ex. 671, R. 3089; *cf.* Lanzer, R. 269.

> " * * * The independent refiner * * * was caught between the price of crude oil, which was pegged at $1.00 a barrel, and the competition in the market of gasoline made from hot oil from East Texas, which was put on the market at prices 1½¢ or 2¢ under the price for which any refiner operating on legal market price crude could afford to sell it. This had been going on for months, with very short intervals of improvement; so that many independent refiners had either gone broke or were closed down. The independent refiner just couldn't get enough money out of his gasoline to pay for his crude. The independent refiner had to pay $1.00 for crude, and he wasn't getting $1.00 out of the products that he made from that barrel of crude."[25]

The independent refiners' attempts to escape from this predicament constituted a serious threat to the crude oil price level of $1.00 per barrel which was being maintained at the insistence of Secretary Ickes, and which he considered essential to the preservation of the nation's petroleum resources.[26] For, being unable to obtain a price for their gasoline which would be in parity with $1.00 crude oil, the refiners threatened repeatedly to reduce the price of crude oil to parity with the price of gasoline.[27]

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[22] Def. Ex. 849 for identification, R. 3397.

[23] McDowell, R. 1166.

[24] McDowell, R. 1165.

[25] *Ibid.*

[26] See p. *supra.*

The Administration wanted to help the independent refiners.[28] At the same time, however, it was unalterably opposed to cutting the price of crude oil.[29] During the next year and a half, therefore, Secretary Ickes, the Petroleum Administrative Board and the Planning and Coördination Committee made one attempt after another, either to raise the price of gasoline by direct action, or to eliminate the factors which were keeping it out of parity with the price of crude oil, *i.e.*, hot oil and distress gasoline.

1. *The Price-Fixing Order of October 16, 1933, and the National Petroleum Agency Agreement.*

When crude oil reached a dollar on September 29th, Secretary Ickes was considering a schedule of minimum prices, based upon costs, which had been prepared by the Planning and Coordination Committee.[1] On October 16th, he signed an order approving the Committee's recommendations and ordering them to be made effective, after hearings, on December 1st.[2]

[*The respondents offered to prove* that this order would have fixed the price of 36° gravity Mid-Continent crude

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[27] We have already seen one instance of this in the attempt which the independent refiners made to cut the price of crude oil in October, 1934 (see p. 38, *supra*). Another threat to the same effect was at the General Stabilization meeting on January 4, 1935, described at pp. 78-9, *infra*.

[28] McDowell, R. 1181.

[29] Franklin, R. 951, 953.

[1] Franklin, R. 952, 953.

[2] Franklin, R. 952-4.

oil at $1.11 a barrel, the price of *50-60 octane* gasoline at 1/18.5 of that figure, or 6¢ a gallon, and the price of 60-64 octane gasoline at 6½ cents a gallon.[3]

[*The respondents also offered to prove* that the order was signed as the result of two conferences between Secretary Ickes, members of the Petroleum Administrative Board, members of the Planning and Coordination Committee, and President Roosevelt. In the course of these conferences, the President decided that minimum price-fixing on a cost-recovery basis was necessary to maintain the price of crude oil at one dollar a barrel.[4]]

Many elements in the industry (including most of the major companies[5]) opposed the fixing of prices by the Government. They approached the Planning and Coordination Committee and Secretary Ickes and suggested a substitute plan. Finally, the Committee, the Secretary, and the anti-price-fixers agreed to see if such a substitute could be worked out.[6]

The substitute plan was called a "Petroleum Agency Agreement." It did not fix prices, but it assumed that the price of crude oil would be maintained at a dollar and provided that certain things should be done to maintain the price of gasoline *in normal relationship to* dollar crude.[7]

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[3] Def. Ex. 829 for identification, R. 3327, 3328.

[4] Moffett offers, R. 1153, 1156-7.

[5] Franklin, R. 952-3.

[6] Franklin, R. 953. While these negotiations were under way, Secretary Ickes extended the effective date of the price-fixing order first to January 1, 1934, and then to February 1, 1934. (*Ibid.*)

[7] Franklin, R. 954.

[*The respondents offered to show* that under this agreement[8] twenty-three of the larger oil companies (including all of the corporate respondents, except Globe) agreed to form a group to be known as the National Petroleum Agency, and to subscribe sums aggregating $10,000,000 to achieve its purposes. Those purposes, as set forth in the agreement, were:

> ["* * * to purchase, hold and, in an orderly way, dispose of surplus gasoline which threatens the stability of the oil price structure in an effort to bring the prices of gasoline into proper relationship with the present price of crude oil. * * *"

[The agreement went on to state that:

> ["* * * For the purposes of this agreement the proper relationship between Mid-Continent crude of 36°-36.9 A. P. I. gravity and U. S. motor gasoline of 60-64 octane rating, f. o. b. Group 3 in tank car lots, is that stated in Section 6 of Article III of the aforesaid Code. * * *"

[The members of the Agency further pledged themselves to cooperate with the Code authorities in enforcing and observing the Code and "in working toward a stabilization of markets by adequate action designed to prevent improper and injurious marketing practices."

[The Agency agreement was accompanied by a "National Marketing Agreement" which, it was contemplated, would be signed by refiners having 85 per cent of the refining capacity of the country, and which was to regulate marketing practices, including the margins allowed to dealers and jobbers.[9]]

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[8] Def. Ex. 832 for identification, R. 3332.

[9] *Ibid.*

On January 19th, Secretary Ickes approved [illegible]th agreements with certain modifications. A few days later he revoked the order fixing minimum prices.[10]

The Secretary's modification made it necessary to re-submit the agreements to the industry. On April 25th, 1934, the Planning and Coordination Committee again approved the Agency agreement, and it was re-signed and sent to the Secretary for approval. The latter forwarded it to the Department of Justice which held it under advisement for several months, neither approving nor disapproving. Finally, some of the signers withdrew their signatures, and it became impossible for the agreement ever to become effective.[11]

2. *The Refinery Amendment to the Code.*

The next attempt to help the independent refiners came in the form of an amendment to the refining section of the Code.[12] The original Code system of allocating refinery quotas to the various refinery districts had proved wholly ineffective in controlling inventories.[13] In fact, the situation had grown steadily worse because of the production of crude oil in excess of state allowables.[14]

The new amendment imposed refinery quotas, not upon the refinery districts, but upon the individual refiners themselves.[15] Each month, the Petroleum Administrative

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[10] Franklin, R. 953-4.
[11] Franklin, R. 954.
[12] Def. Ex. 835, R. 3347.
[13] Shatford, R. 1001, 1007.
[14] Shatford, R. 1002-3.
[15] Shatford, R. 1006-7

Board, with the assistance of the Bureau of Mines, would estimate the quantity of gasoline that would be needed to meet consumptive demand during the next month,[16] and the estimate would be submitted to Secretary Ickes for approval.[17] The National Coordinator, the industry's chief administrative authority under the system,[18] would then meet with representatives of the various refinery districts and divide the national allowable among them according to certain rules and regulations.[19] When Secretary Ickes had approved the division of the national allowable among the districts,[20] each district representative would divide up his district's allowable among the individual refiners, according to certain pre-established rules.[21] Each refiner's share was called a "manufacturing quota", and represented the maximum quantity of gasoline that he would be allowed to make during the month in question.[22]

In addition to control of refinery runs and inventories, the new amendment provided a method whereby the major integrated companies might assist the independent refiners in getting rid of their distress gasoline. Section 6 of the amendment[23] provided as follows:

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[16] Shatford, R. 1008, 1015:

[17] Shatford, R. 1022, 1023.

[18] Shatford, R. 1009.

[19] Shatford, R. 1008, 1015, 1074; Franklin, R. 945, 948 949-50: Arnott, R. 1718-9; Collett, R. 1804-5.

[20] Shatford, R. 1025; Franklin, R. 945.

[21] Shatford, R. 1008-9. In fixing each refiner's manufacturing quota, consideration was given to the quantity of gasoline which that refiner had been accustomed to shipping, the quantity of gasoline that he needed to store above what he would ship, and the quantity that he would need to take out of storage to supplement his current manufacture in those parts of the year when demand was greater than supply. (*Ibid.*)

[22] Shatford, R. 1008, 1074; Franklin, R. 949-50. If a refiner were dissatisfied with his allocation, he could appeal, first to a "Board of Review" consisting of five members of the industry, then to the Planning and Coordination Committee, and finally to the Administrator, Secretary Ickes. (Shatford, R. 1009.)

> "In order that the provisions of this article may not operate in such manner as to discriminate against small refining enterprises and in order to assist in orderly liquidation of excessive gasoline inventories, the Planning and Coordination Committee may, with the approval of the President, authorize suitable arrangements for the purchase of gasoline from non-integrated and/or semi-integrated refiners and the resale of the same through orderly channels."

[*The respondents offered to prove* that the purpose of this amendment was to reduce the inventories of the major companies so that they would be forced to purchase gasoline from independent refiners. John E. Shatford, who had originally proposed the amendment, discussed this purpose with the members of the Petroleum Administrative Board in February, 1934, and the latter agreed with him that it was necessary to adjust gasoline manufacturing schedules so as to create more active trading in the industry.[24] The objective was pointed out repeatedly during the formal hearings before the Petroleum Administrative Board.[25] At the conferences which finally redrafted the amendment, Shatford, and other sponsors thereof, again pointed out that it was necessary to adjust the major companies' manufacturing schedules so as to open a market for the small refiner, and the amendment was redrafted with that understanding. This was the objective adopted by the Petroleum Administrative Board at the hearings.[26]

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[23] Def. Ex. 835, R. 3347, 3350.

[24] Shatford offer, R. 1038-40.

[25] Shatford offer, R. 1040.

[*The respondents also offered* the following Press Release of the Department of the Interior describing the purpose of the amendment:[27]

> ["'The collapse of the wholesale gasoline structure and consequent collapse of the crude oil market is threatened by an excessive surplus of gasoline and heavy over-production,' Administrator Ickes said. 'This condition must be quickly remedied.'
>
> ["As drafted, the plan would be a complete substitute for the refining article of the Oil Code. It proposes that gasoline production and stocks be regulated strictly to keep the supply balanced with demand, and vests the industry with control of agencies established to achieve this aim, subject to the approval of the Oil Administrator.
>
> ["The plan also provides for making the proposed gasoline purchase or pooling agreement a part of the Oil Code. This agreement, submitted to Administrator Ickes several weeks ago, provides for the creation of a stabilization pool to buy and hold 'distress' or surplus gasoline. The operation of the pool would be kept under the closest scrutiny of the Oil Administrator, and participants in the pool would agree to keep their own surplus gasoline off the market themselves. It is designed to assure to the small, independent refiner who, in most instances lacks outlets for his production, a market for his gasoline at a fair price."]

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[26] Shatford offer, R. 1040-1.

[27] Def. Ex. 848 for identification, R. 3389.

As a result of the new refinery control system, the country's gasoline inventories were reduced to about 53,900,000 barrels on January 1, 1935.[28] Practically all of this reduction was made at the expense of twenty-five so-called "major companies," including the respondents and the former defendants in this case.[29]

This reduction in major company inventories did not occur by accident. During the first year under the amendment, most of the National Coordinator's duties were performed by the Alternate National Coordinator, John E. Shatford, the independent refiner who had proposed the amendment in the first place.[30] Shatford followed a conscious policy of trying to get the major company inventories as low as possible in order to create a firm market,[31] and to force them to increase their purchases from independent refiners.[32] Whenever a District Allocator came to him with a complaint from a major company he suggested that the complainant should make up its deficiencies by going out in the market and buying gasoline.[33] Whenever a major company asked him for a larger quota, he urged it to buy gasoline. He also did other things to accomplish the same purpose indirectly.[34] As a result, many major companies bought gasoline, usually from independent refiners.[35]

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[28] Shatford, R. 1010.

[29] *Ibid.* This does not include Globe, which is not classed as a major company and does not carry stocks of gasoline beyond those necessary to meet its current demand. (Shatford, R. 1075, 1076.)

[30] Shatford, R. 995, 1009.

[31] Shatford, R. 1011, 1013.

[32] Shatford, R. 1011.

[33] Shatford, R. 1009.

[34] Shatford, R. 1012.

[35] Shatford, R. 1009-10.

3. *The 1934 buying programs.*

(a) Generally.

Perhaps the reduction in major company inventories kept the price of gasoline from falling as low as it otherwise would have done. It did not, however, improve the price, for the hot gasoline coming out of East Texas more than balanced the inflationary effect of refinery control.[36]

[*The respondents offered to prove* that in May, 1934, the Planning and Coordination Committee passed a resolution asking certain major companies to buy a quantity of gasoline in May, equal to three per cent of their sales. This undertaking, however, failed to affect the price level substantially.[37]]

In June the Administration launched the first of a series of formal "buying programs" under Section 6 of the refinery amendment. Under these programs the majors were to purchase the distress gasoline, and sometimes the entire output of independent refiners.

It appeared incidentally from Arnott's testimony that under these programs:

(1) The purchasing companies were required to buy gasoline whether they needed it or not;

(2) The amount to be purchased was determined by the size of the purchaser;

(3) There were definite contractual commitments to buy the gasoline from the independent refiners;

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[36] Collett, R. 1805.

[37] Shatford offer, R. 1048.

(4) The prices at which the gasoline was to be bought and sold were fixed above the market; and

(5) Some of the independent refiners used the programs to dispose of their entire output of gasoline to the purchasing companies.[38]

It also appeared that all the 1934 buying programs were carried on with the approval of Secretary Ickes.[39]

[*The respondents offered to prove* the following facts with respect to these programs.

(b) Bennette program.

[In June the Planning and Coordination Committee undertook what was called the "Bennette buying program."[40] It employed a standard form of contract, under which the purchasing companies agreed to take a certain quantity of gasoline at a fixed price, on condition that the selling companies would agree to abide by the Code and rules and regulations, and by their allocations.[41]

[The Bennette program was formalized to a greater extent than the May program had been. The Planning and Coordination Committee set up an office in East Texas where it brought the buyer and the seller together, helped to carry on the negotiations as to price and quantity, issued definite quotas to the buying companies, and determined exactly how much there would be to sell.[42]

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[38] Arnott, R. p. 1702; redirect, R. 1799, 1800; Shatford offer, R. 1048, 1049. Steiger also testified (apparently referring to the agency agreement which never went into effect) that under these programs the resources of the various companies were pooled together in a central fund for the purpose of buying gasoline. (Steiger, R. 753.)

[39] Arnott, R. 1703; redirect, R. 1800.

[40] Howard Bennette, the president of the Western Petroleum Refiners' Association, was at this time National Coordinator under the Code. (Gray, R. 1828; Shatford, cross, R. 1078.)

[41] Shatford offer, R. 1048.

[The Secretary's order of approval[43] recited that certain refiners had accumulated large and uneconomic stocks of distress gasoline, part of which had been produced in excess of allowables; that shipments of such gasoline into commerce "have been destructive to the gasoline market"; that "the effect of this accumulated storage of excess gasoline has been to depress markets and cause a breakdown of the gasoline price structure throughout the United States to the detriment of independent, non-integrated refiners who purchase crude oil on a market stabilized by proration and are forced to sell gasoline on a distressed market caused largely by the shipment of illegally purchased gasoline into commerce at ruinous prices." The order also waived, as to gasoline bought under the program, certain requirements of the regulations under Section 9(c).

[The standard forms of contract used under the program[44] bound the purchasing company to purchase a fixed amount of storage gasoline at a fixed price on condition that the seller (the independent refiner) should abide by the production and refinery provisions of the Code. To assure the sellers' faithful performance of this provision 25% of the purchase price was to be withheld from 45 to 90 days after shipment. The contract was to be signed, not only by the buyer and the seller, but by Secretary Ickes as well.

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[42] *Ibid.*

[43] Def. Ex. 845 for identification, R. 3372.

[44] Def. Ex. 845 for identification, R. 3372, 3374-5.

(c) Enlarged Bennette program.

[On August 13, the Bennette program was expanded by another order,[45] whereby new standard forms of contract were made available for the purchase, not only of excess gasoline in storage, but of currently produced legal gasoline. Under one of these forms the purchaser could bind himself to take a fixed quantity of gasoline monthly at a fixed price for a period of several months.

(d) France program.

[On August 8th, Secretary Ickes approved the so-called "France buying program."[46] Under this program the Planning and Coordination Committee established a "Program Committee" with offices all over the country. This committee not only brought the buyer and seller together, but determined the prices to be paid under the contracts. These prices were in all cases arbitrarily fixed at one cent or more above the prevailing tank-car quotations. The program made it difficult to enforce the hot oil regulations, because the purchasing companies undertook to buy all the gasoline available, whether legal or illegal.[47]

[The France program and the establishment of the Program Committee thereunder were formally approved by Secretary Ickes under Section 6 of Article IV of the Code.[48]

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[45] Def. Ex. 847 for identification, R. 3386.

[46] Shatford offer, R. 1049. Jacob France, one of the former defendants in this case (now dismissed), was chairman of the committee which supervised the program. (*Ibid.*)

[47] Shatford offer, R. 1049, 1056.

[48] Shatford offer, R. 1049; Def. Ex. 846 for identification, R. 3376.

(e) Horween program.

[In November there was an attempt to revive the France buying program under the name of the "Horween program."[49] This program was undertaken under the same authority as the France program and employed the same contract forms, with the exception of two alterations which were made in the contracts. It was highly formalized, and the Planning and Coordination Committee requested and secured the Administrator's formal approval.[50]]

In November, 1934, Secretary Ickes stated that the legality of these buying programs had been questioned.[51] [As the orders approving them show, all of them contemplated the purchase of illegally manufactured gasoline.[52] After the Secretary's statement, the excessive amount of overproduction in East Texas forced the abandonment of the last program.[53]]

(f) The objectives of the buying programs.

[The objectives which the Government was attempting to achieve in sponsoring these buying programs are described in the Annual Report of the Secretary of the Interior for the year ending June 30, 1935,[54] as follows:

> ["During the summer and fall of 1934 wholesale prices for petroleum products were below parity

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[49] Shatford offer, R. 1049. Ralph Horween was the administrative Assistant to Secretary Ickes (Franklin offer, R. 943).

[50] Shatford offer, R. 1049; Def. Ex. 844 for identification, R. 3367.

[51] Arnott, cross, R. 1743-4.

[52] See Def. Exs. 844-847, R. 3367-86.

[53] Def. Ex. 917 for identification, R. 3522, 3524; Shatford offer, R. 1051.

[54] Def. Ex. 917 for identification R. 3522, 3524.

with the current prices for crude petroleum, which presented a particularly serious problem to the non-integrated refiner. Several plans were projected by the industry to solve the difficulty, which was aggravated considerably by the excessive amount of hot oil and interstate movements of hot gasoline in interstate commerce. The planning and coordination committee proposed a form of contract designed to remove distress stocks of east Texas from the market. The form of contract was approved on June 23, 1934, and during the months of July and August gasoline in east Texas was purchased under this form of contract, to which the administrator was a party and which provided that the sellers would not process 'hot oil.' This program proved insufficient, and a new form of contract for the purchase of current output was approved. But the production of gasoline from 'hot oil' continued, stocks of gasoline mounted, wholesale prices for gasoline remained below parity with crude-oil prices, and in the early fall of 1934 the industry approached a serious collapse of the wholesale market. The planning and coordination committee appointed a program committee, which proposed a broad plan for the purchase of surplus gasoline with the purpose of also preventing illegal production of crude oil and providing a method of orderly marketing. The excessive amount of overproduction in Texas made the initiation of this program futile, and it was never put into operation.* * *"]

4. *Failure of the efforts to raise gasoline prices to parity.*

As noted above, the continued distress of the independent refiners was largely due to the fact that neither the state authorities, acting under their proration statutes, nor the Federal Government, acting under Section 9(c) of the N. I. R. A., could check the production and interstate shipment of hot oil and hot gasoline in East Texas. On October 18, 1934, over a year after the effective date of the Code, Secretary Ickes issued a new set of regulations under Section 9(c) whereby anyone who sought to ship crude oil or gasoline in interstate commerce was forced to produce a permit or "tender" issued by a "Federal Tender Board." Such tenders were to be issued only when it had been proved "to the satisfaction of the Board" that the crude oil in question, or the crude oil from which the gasoline had been refined, had been produced in conformity with the state regulatory statutes.[1] On October 22, the Acting Secretary of the Interior set up the first Federal Tender Board under the new regulations.[2] It operated for about three months,[3] and succeeded in achieving at least a partial control over the shipment of hot gasoline out of the State of Texas. As a result the price of regular gasoline rose ⅝¢ between October 29 and November 12,[4] and the price of third grade gasoline rose 1½¢ between October 17 and November 7.[5] The price of 60-64 octane gasoline, however, was still far below the 5½¢ a gallon, which it should have reached under the 18.5 to 1 ratio provided in Section 6 of Article II of the Code. On December 31, 1934, the average of the market journal quotations for gasoline of 62 octane rating and below (third grade) was

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[1] Def. Ex. 6, R. 2602.

[2] Def. Ex. 7, R. 2612.

[3] Dyer, R. 1466.

[4] Govt. Ex. 672, R. 3091.

[5] McDowell was under the impression that the price of third grade gasoline had risen 2¢ within 30 days. McDowell, R. 1223. The Defense's offer of proof showed that the facts were as stated in the text. (Def. Ex. 849 for identification, R. 3397; Shatford offer, R. 1061-2; Van Covern offer, R. 1498-500.)

3.9¢. Even the average of the quotations for 68-70 octane gasoline (regular) was only 4.65¢. On this basis, the average price for 64 octane gasoline could not have been over 4¼¢ a gallon,[6]—almost 25% below parity.[7] Since, as shown above, it cost the average Mid-Continent refiner 5¢ or more to manufacture third grade gasoline, the prevailing price was substantially below his cost of production.[8]

The Government had failed in all its efforts to help the independent refiner by raising the price of gasoline to parity with dollar crude. Secretary Ickes recognized this in a speech which he made before the American Petroleum Institute in Dallas, Texas, on November 14, 1934:[9]

> "If each of you will look back over the past years and, without prejudice or passion, compare present conditions with those of the summer of 1933, you will all find definite improvement in the industry as a whole.
>
> "I know it might be difficult for some of you to reach such a conclusion. The refiner who has had to buy his crude oil supply at posted prices and sell his products at the levels which have prevailed might be reluctant to admit that there has been any improvement. His lot has been the hardest of all. Most of these refiners have been extremely patient while waiting for the sun to shine. They may feel that they have been forgotten, but I can assure them that this is not so. Much that has been done during the past several months has had as its particular ob-

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[6] Lanzer, cross. R. 269.

[7] McDowell. R. 1181.

[8] See p. 39, *supra.*

[9] Def. Ex. 968, R. 3690. McDowell testified that these conditions continued until the spring of 1935. (McDowell, R. 1164-5, 1166.)

jective the strengthening of the position of the non-integrated or the partially-integrated refiner. The allocation of gasoline production quotas under the Code and the program for the purchase of distress gasoline both had this as a common purpose. Each of these did its share of good, but the full measure of their accomplishment was not possible because of the 'hot' gasoline from East Texas which kept moving into interstate commerce, and because of the price wars which raged in the territory East of the Rockies in the bitter struggle for gallonage.

"I realize that East Texas has been an exceedingly popular dumping ground for complaints. It is the land of abilis. It undoubtedly has been blamed for many of the ills of the industry which have had their roots in other soil, but I feel very strongly that East Texas must carry a heavy share of blame for the conditions which weakened the wholesale gasoline market. How could it be otherwise when one of the principal news services of the industry has daily published the fact that gasoline, allegedly manufactured from 'hot' crude, could be purchased at a price materially less than that made from legally produced crude?"

[*The respondents offered to show* the following facts regarding the condition of the independent refiners at the end of 1934:

[In January and February 1935, virtually all of the independent refineries east of the Rocky Mountains which were operating on legally produced crude oil, were operating at a loss.[10]

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[10] Swensrud offer, R. 1429. A typical independent refiner in the Mid-Continent made a net refinery profit of $2,781 in 1932, had a refinery loss in 1933 of $6,795, and a net refinery loss of $56,450

[The primary cause of these losses was the disparity between the price of gasoline and the high cost of crude oil which had been maintained at $1 per barrel since September, 1933. With crude oil at $1, the minimum gasoline price necessary to enable a refiner to meet his costs and realize *a fair profit* would have been 6 cents a gallon. During the last three months of 1933 and the year 1934, however, the price averaged only 4.67 cents a gallon. In February, 1935, the price averaged 4.57 cents. The deficiency amounted to approximately 30 cents a barrel on each barrel of crude oil. If the Code ratio of 18.5 to 1 had actually prevailed during the period from the adoption of the Code up to February, 1935, the price of crude oil would have ranged from 95 cents in October, 1933, down to 78 cents in October, 1934, and 81 cents in February, 1935. Instead the price of crude oil remained $1 per barrel throughout this entire period, and the independent refiners were forced to absorb the difference.[11]

[Crude oil was not the only cost factor which had increased. Operating costs for the sixteen months from September, 1933, through the end of 1934, averaged 38½ cents per barrel of crude higher than during the preceding sixteen months. The Code had increased refinery labor costs by 25 or 30 per cent, fuel costs by 25 to 50 per

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in the first eleven months of 1934. Other refiners in this area who had been making substantial profits in 1931 and 1932 began to lose money after the Code was adopted and sustained annual losses of as much as $75,000 in 1934, in spite of increased operating efficiency. One of them realized approximately 21 cents less per barrel of crude oil in 1934 than in 1933. These losses were all calculated without inclusion of interest on the investment. In all cases, also, refinery operating expenses were relatively low and the management of the business was competent. (*Ibid.*)

[11] Swensrud offer, R. 1430.

cent, and material and construction costs by 25 to 30 per cent. During the same period (September, 1933, through December, 1934) the net realization from the products of a barrel of crude oil had increased only 27 cents a barrel. The independent refiner was therefore worse off during the code period by 11½ cents a barrel. Since the refining industry had already been suffering losses prior to the N. I. R. A. Code, refinery losses in general were at least 11½ cents for each barrel of crude oil which was refined.[12]

[Oklahoma refineries reporting in October, 1934, had an average cost, exclusive of interest on the investment, of 5.3 cents a gallon on regular (68-70 octane) gasoline. Including interest, the average cost was 5.6 cents a gallon. However, in that month the average tank-car price was 4.5 cents in the Oklahoma market and 4 cents in the Chicago resale market. In February, 1935, prices in the Oklahoma market were just about the same and prices in the Chicago market only about .3 cents higher. In other words, on the basis of these average costs, independent refiners were losing from .7 cents to .9 cents a gallon in October, 1934, and about the same in February, 1935.[13]

[Inefficient refineries had been virtually eliminated before the beginning of the N. I. R. A. Code. Under ordinary circumstances, if there had been a normal relationship between the prices of gasoline and crude oil, the independent refiners could have continued to do business and compete with the larger integrated refiners. However, under the conditions which prevailed in 1934 and the first two months of 1935, these independent refiners were being driven out of business, no matter how efficient they were. In fact the low gasoline prices and increased refinery costs during 1934 had already caused the shutting down of many refineries, and the dismantling of others. The number of operating refineries declined from 454 on January 1, 1934 to 435 on January 1, 1935; while the number of inactive plants increased from 137 to 196, the highest number in the history of the country.[14]

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[12] Swensrud offer, R. 1428-9.

[13] Swensrud offer, R. 1430.

[If conditions had continued as they were in 1934 and the first two months of 1935, a great many more independent refiners would soon have been forced to shut down and the refining business would have been left almost entirely in the hands of large integrated companies. Large numbers of marketers depend on independent refiners as their source of supply of gasoline.[15]]

The independent refiners were not the only ones who suffered. It cost a major company—the White Eagle Division of Socony-Vacuum—4⅛¢ a gallon to manufacture third grade gasoline and 4⅞¢ a gallon to manufacture regular.[16] Yet, as shown above, the average of the market journal quotations for third grade gasoline at the end of 1934 was 3.9¢ and that for regular gasoline was 4.65¢.[17]

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[14] Swensrud offer, R. 1428, 1431.
[15] Swensrud offer, R. 1432.
[16] Govt. Ex. 306, R. 2957.
[17] See pp. 56-7, *supra*.

E. Stabilization of the retail market—The General Stabilization Program.

1. *The spread of price wars in 1934.*

Throughout the period described above, while the tank-car market was resisting all efforts to raise it to parity, the retail market was being swept by a series of price wars.[1]

The price wars in 1934 surpassed in number and extent any in the history of the industry. It was unusually easy for a price-cutter to start a price war, at this time, for there were huge quantities of cheap gasoline available. Both hot and distress gasoline could be purchased at prices so far below the going tank-car market that the price-cutters could cut below any differentials which the branded operator could tolerate without losing a substantial amount of his business.[2]

Sellers of gasoline which is not nationally advertised usually have to take a slightly lower price for their product. When, however, the spread between the price of the unbranded product and the advertised brand became substantial, the sellers of the branded product are forced to lower their prices or else see a large part of their business go to the unbranded marketers.[3]

When the unbranded operators attempted to increase their gallonage by selling under the normal differentials, the branded operators made similar cuts to protect their business. The price-cutters would then make further cuts to maintain their advantage, the branded operators would retaliate,[4] and the process might be continued until all parties were selling below the cost of production.[5]

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[1] Frey, R. 1274-5.

[2] Shatford, R. 1002; Frey, redirect, R. 1327, 1328; Arnott, R. 1691, 1710.

[3] Swensrud, R. 1451, 1456-7. See also Swensrud, R. 1385; McDowell, R. 1172-3; Marshall, R. 1316-7; Frey, R. 1328; Arnott, R. 1691.

Once started, price wars spread with alarming rapidity, for a price cut in a single city would almost invariably be followed by cut prices in the neighboring towns and eventually throughout the entire state.[6]

Price wars also spread very rapidly from one grade of gasoline to the others, and from the retail to the wholesale market. If the price of third grade gasoline dropped more than a cent below that of regular gasoline, and the price of regular gasoline was not reduced correspondingly, some customers would switch to third grade and sales of regular would be materially reduced.[7] As soon as the retailers' margins were reduced by price wars, they turned to their suppliers (jobbers or refiners) for protection, and the latter had to reduce the tank wagon price to keep their customers.[8] When the price war began to cut into the jobbers' margins, they turned to *their* suppliers—the refiners—to protect them. Thus, price cutting was eventually reflected in a reduction in the tank-car market.[9] Price cutting in the wholesale market expanded even more rapidly. A cut in the tank wagon price at a bulk station automatically meant a cut in the five or six towns which were served by that station.[10] And since the territories served by competing stations often overlapped, the price cutting would probably be carried over into the adjoining territory where no cuts had theretofore been made.[11]

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[4] Arnott, R. 1691.

[5] Frey, R. 1274.

[6] McDowell, R. 1172-3; Marshall, R. 1239-40. Swensrud told how a price war in Detroit diverted some 34 per cent of the business from stations in Toledo, fifty-four miles away. (Swensrud, R. 1387-8.)

[7] Swensrud, R. 1405; cross, R. 1457.

[8] Swensrud, R. 1388-9; Arnott, R. 1691.

[9] Swensrud, R. 1389-90; Arnott, R. 1692.

The following table[12] shows the number of subnormal tank wagon and service station prices posted by Standard of Indiana in successive months during 1934:

Date	Regular Gasoline		Third Grade	
1934	T.W.	S.S.	T.W.	S.S.
Jan. 31	24	62	555	330
Feb. 22	18	73	588	369
Mar. 29	11	70	351	479
Apr. 28	62	410	873	948
May 31	96	548	915	968
June 30	240	993	1,090	1,353

The above figures become more striking when it is noted that Standard of Indiana posts only 4,000 tank wagon prices in the whole Mid-Western area,[13] that each subnormal tank wagon price would affect an average of five surrounding towns, and that each subnormal service station price would affect an entire city—perhaps one like Chicago with hundreds of service stations.[14]

At this point the price wars were affecting the market on all levels—service station, tank wagon and tank-car. Every element in the industry was suffering.[15]

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[10] Marshall, R. 1239, 1240.

[11] Arnott, R. 1690.

[12] Def. Exs. 910, 911, R. 3509, 3510.

[13] Marshall, R. 1233.

[14] Marshall, R. 1240.

[15] McDowell, R. 1173; Frey, R. 1332; Swensrud, R. 1388-9; Arnott, R. 1690, 1691, 1692-3.

2. *The letter of July 20, 1934.*

For a time the Petroleum Administrative Board itself tried to deal with these price wars. In the beginning of 1934, it commenced to negotiate agreements between the marketing companies and to persuade individual companies to lead the way by raising the price level voluntarily to see if it would stick. Dr. Frey of the Board was working along these lines early in the summer of 1934.[16] As shown by the above table, however, these efforts were fruitless, and the price wars increased steadily both in number and in extent.

Finally, on July 9, 1934, members of the Petroleum Administrative Board called on the Marketing Committee and asked the respondent Arnott if he would undertake the responsibility of heading a voluntary, cooperative movement to deal with local price wars. They said that the situation was entirely out of hand; that price wars had become so numerous that it was physically impossible for Secretary Ickes or the Board or its enforcement agents to deal with them; and that the only possible solution was to turn to the industry Code authorities who had an extensive and highly integrated organization in every section of the country.[17]

At this time the retail price structure in the entire Mid-Western area was, on the average, more than 2¢ below normal. The members of the Petroleum Administrative Board and the Marketing Committee discussed the reasons for this at some length. Arnott pointed out that it would be impossible to stabilize the retail market unless the tank-car market were also stabilized through the elimination of hot oil and distress gasoline.[18]

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[16] Frey, R. 1276.

[17] Arnott, redirect, R. 1796-7.

The members of the Board replied that if Arnott were willing to take the responsibility of dealing with price wars, they would not attempt to tell him how to do it, but would authorize him to deal with the "elements of conflict" which caused price wars.[19]

A few days later, on July 20, 1934, Arnott received the following letter[20] from Secretary Ickes:

"ADMINISTRATION OF THE PETROLEUM INDUSTRY

Washington

Interior Department Building

July 20, 1934

Mr. C. E. Arnott, Chairman,
Marketing Committee,
Planning and Coordination Committee,
Investment Building,
Washington, D. C.

My dear Mr. Arnott:

It has been brought to my attention that the market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and states. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition, and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

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[18] Arnott, redirect, R. 1797-8.
[19] Arnott, redirect, R. 1798.
[20] Govt. Ex. 891, R. 3487.

Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the Code, and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the Act was intended to achieve.

Under Article VII, Section 3 of the Code it is the duty of the Planning and Coordination Committee to cooperate with the Administration as a planning and fair practice agency for the industry. I am, therefore, requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your Committee must, of course, be consistent with the requirements of Clause 2 of Sub-section (a) of Section III of the Act, and if in any situation it should appear that this Section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

I trust that I can count on your cooperation.

Sincerely yours,

(s) Harold L. Ickes
Administrator of the Petroleum Industry."

As the letter shows, Arnott was at this time not only a member of the Planning and Coordination Committee, but the chairman of its Marketing Subcommittee.[21] As such, he had already had some experience with attempts to achieve industry cooperation and compliance with the Code. The Marketing Committee had a large organization of regional, state, local and temporary committees, representing every element in the industry, which had been working for over nine months to bring about a better understanding of the Code, compliance with its provisions, and the elimination of unfair marketing practices and price disturbances.[22]

[*The respondents offered to show* that on two occasions in the fall of 1933 the Petroleum Administration had requested Arnott to undertake informal programs of voluntary cooperation with a view to restoring prices. In one case the Planning and Coordination Committee, acting at the request of J. H. Marshall of the Petroleum Administrative Board, had asked Arnott to undertake a program for the purchase of crude oil by major companies from independent producers.[23] In the other, J. A. Moffett, one of the Government representatives on the Planning and Coordination Committee, had requested him to persuade the major companies to eliminate subnormal prices throughout the country.[24]]

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[21] Arnott, R. 1687.
[22] Arnott, R. 1687-8.

3. *The Titus opinion.*

Before proceeding with his duties under this letter, Arnott asked Louis Titus, the Chairman of the Planning and Coordination Committee's Legal Subcommittee and the general counsel of the Planning and Coordination Committee itself, for his legal opinion as to the scope of the letter.[25]

[*The Defense offered to show* the nature of this opinion and the circumstances under which it was prepared. The offered proof would have shown the following:

[Upon being asked for his opinion, Titus went to see Charles Fahy, the Vice-Chairman, and, at that time, the acting Chairman of the Petroleum Administrative Board. From his previous contacts with Fahy, Titus believed that he had administrative authority to act for Secretary Ickes in all Code matters except those of extreme importance and those which involved signing orders and agreements. He told Fahy that Arnott had asked him to write an opinion as to the effect of the anti-trust laws on the activities proposed under the letter of July 20, 1934; that he was not satisfied with the letter; and that he thought that Secretary Ickes should approve any industry agreements or arrangemens entered into to settle price wars or eliminate their various causes.[26]

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[23] Franklin offer, R. 992-4.

[24] Moffett offer, R. 1155.

[25] Arnott, R. 1737.

[Fahy not only did not concur, but objected strenuously to the prospect of having to run to Secretary Ickes every few days to get orders of approval. He said that it was not practical to work the matter out in that way; that the Government had assisted the oil men materially; and that it was only fair that the oil men should appreciate this and cooperate with the Government in its efforts to stabilize this industry. He said that the letter of July 20, 1934, was a direction to Arnott to eliminate price wars and get prices back to normal, and that "You don't need the orders of approval which you are requesting. This letter is a complete protection to you. It is all you can possibly need. * * * You apparently are afraid of your own shadow. You can't possibly think that the government will actually prosecute you for something the government is demanding that you do."[27]

[Titus replied that it did not seem to him that it would be very much trouble to get an order for each separate arrangement or each separate meeting. Fahy flatly refused to do this and again reiterated, "This letter now, which the Administrator has signed, is all you need."[28]

[Either the same day or a day later, Titus discussed his conversation with Fahy with Arnott, Majewski, and other members of the Marketing Committee and Planning and

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[26] Titus offer, R. 1833-4.
[27] Titus offer, R. 1834.
[28] *Ibid.*

Coordination Committee, giving Arnott a detailed description thereof, including the words just quoted.[29]

[On July 31, 1934, Titus submitted to Arnott his legal opinion[30] as to the effect of the anti-trust laws on the activities under the letter of July 20, 1934. It read as follows:

> ["Referring to the letter written to you by the Administrator of the Petroleum Industry, dated July 20, 1934, I beg to say that said letter is full and complete authority for the taking of necessary steps to restore markets in any locality to their normal condition. I have also considered this letter in connection with the Anti-Trust laws and my opinion thereon is as follows:
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> * * *
>
> ["From * * * (the provisions of the N.I.R.A.), it is evident that if the President should approve any agreement for the stabilization of prices that such approval by the President would be a complete protection against any charge that the Anti-Trust laws had been violated by such agreement.
>
> ["Under Paragraph (b) of Section 2 of Title 1 of the Act the President was authorized to delegate any of his functions and powers under Title 1 to such agents as he might designate. In accordance with this Section, the President did delegate his powers, insofar as the Petroleum Industry is concerned, to Mr. Ickes. Therefore, any action of Mr. Ickes with regard to such agreements within the Petroleum Industry is in effect the act of the President. So that, if an agreement to restore prices were made in any locality and such agreement should be approved by Mr. Ickes, such ap-

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[29] Titus offer, R. 1834-5.

[30] Def. Ex. 892 for identification, R. 3489.

proval would be a complete protection to all persons participating in the agreement from any prosecution under the Anti-Trust laws. However, the letter which Mr. Ickes has written is not precisely an approval of any agreement. It is a direction to you, as Chairman of the Marketing Committee, to take action to restore markets to their normal conditions in areas where such markets are depressed. You are also authorized to designate committees for each locality where price wars have developed and 'in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar.' You and your committees appointed by you are thus authorized to stabilize the price level 'in a cooperative manner.'

[''The word 'cooperative' means to operate jointly or together, so there can be no question that this is authority for making, in any locality where prices are depressed below normal, an agreement which will restore such prices to a normal level. The only condition attached to this is found in the last sentence of the last paragraph of the letter, which provides that any action of any committee appointed by you must be consistent with Clause 2 of Sub-section (a) of Section 3 of Title 1 of the National Industrial Recovery Act. The clause referred to refers particularly to codes of fair competition, and it provides that the President may approve codes when he finds (a) that they are not designed to promote monopolies; (b) that they are not designed to eliminate or oppress small enterprises; (c) that they will not operate to discriminate against small enterprises; (d) that they will tend to effectuate the policy of Title I of the Act; (2) that they shall not permit monopolies or monopolistic practices.

[“It is clear that no committee appointed by you would even consider an agreement which would have any of the objectionable features provided in this Section. On the contrary, the duty of the committee is to restore prices to a normal level. Restoring prices to a normal level must necessarily aid small enterprises rather than oppress them. It must necessarily have a tendency to check monopolies rather than to promote or permit monopolies.

[“My conclusion is that this letter from the Petroleum Administrator is for all practical purposes a complete protection to you and your committees to engage in all reasonable activities to restore prices to normal levels.

[“I further conclude that the agent of the President having solicited the taking of action to stabilize prices, that it is unthinkable that there could ever be any prosecution or criticism by the Government for doing the very thing which the President's agent had asked you to do.”

[The last two paragraphs of the opinion expressed briefly the substance of the statements which Fahy had made to Titus and which Titus had repeated to Arnott.[31]

[This opinion was mimeographed and distributed throughout the industry.[32] Fahy received a copy of it, but he never questioned any of the statements which Titus had made in the opinion.[33]]

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[31] Titus offer, R. 1835-6.

[32] *Ibid.*

[33] Titus offer, R. 1836.

4. *The organization of the General Stabilization Program.*

After receiving the letter of July 20, 1934, Arnott proceeded to set up a new organization—the Stabilization Committees. He appointed a "General Stabilization Committee" with headquarters in Washington, and a Regional Chairman of Stabilization in each Region. The latter, in turn, set up complete field organizations, composed of state and local committees. In all cases, Arnott gave standing instructions that the committees should embrace representatives of every element in the marketing branch of the industry.[34] There were over fifty such committees in all.[35]

The stabilization committees continued the work which the Petroleum Administrative Board had already started.[36] They were also active in persuading groups of jobbers and dealers to agree to eliminate selling below cost, selling below the posted price and various kinds of chiseling.[37]

The Petroleum Administrative Board, and especially Dr. Frey, worked very closely with Arnott and the committees until the end of the Code on May 27, 1935.[38]

5. *The gradual expansion of the General Stabilization Program.*

Originally it seems to have been intended that all or most of the stabilization work should be done by local committees acting locally.[39] For a time the program was actually carried on this way.[40] The Petroleum Administrative Board and the committees soon discovered, however, that it was impracticable to solve the problem on a purely local basis.[41] As a result, the scope of the program was gradually expanded, and the stabilizers began to deal with larger areas, beginning with the State of Michigan, and then taking up the problems of several states at once.[42]

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[34] Arnott, R. 1688.

[35] Arnott, R. 1745.

[36] Frey, R. 1276.

[37] Frey, R. 1275.

[38] Frey, R. 1267, 1275, 1276, 1277.

[39] This is shown by the letter of instructions which A. G. Maguire, the chairman of the Region 3 Marketing Committee, sent to the chairmen of the State Marketing Committees in the Middle West on July 24, 1934 (Govt. Ex. 1031, R. 3874).

Treatment by states was not entirely successful either. In fact, the number of price wars increased during July and August.[43] Finally, on September 11, 1934, Standard of Indiana was forced to adopt a new price policy which had the effect of reducing the normal price level by an average of 1.6 cents throughout the territory.[44]

At this point the scope of the stabilization program was expanded again. On September 20 or 21,[45] Arnott called the first of a series of meetings which dealt with the problems of the whole Mid-Western area. Some of these meetings dealt with the even larger territory stretching from the Rocky Mountains to the Ohio line.[46]

The letter of July 20, 1934 and the Titus opinion interpreting it were read at the very first of these General Stabilization meetings in September, 1934.[47] The meetings themselves were conducted very informally. Members of the industry who were disturbed by specific problems notified B. L. Majewski of the Deep Rock Oil

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[40] Frey, R. 1275.

[41] McDowell, R. 1173; Frey, R. 1276.

[42] Frey, R. 1276.

[43] Def. Exs. 910 and 911, R. 3509, 3510.

[44] Marshall, R. 1236.

[45] McDowell, R. 1166.

[46] McDowell, R. 1166; Frey, R. 1276; Arnott, R. 1689.

[47] McDowell, R. 1173-4.

Company. When the meeting was convened Majewski would call off each subject in turn and a general discussion would ensue.[48] Sometimes a committee would be appointed to deal with some particularly perplexing problem.[49]

In part, the General Stabilization work continued along the same general lines as the earlier efforts of the Petroleum Administrative Board and the local stabilization committees, eliminating price wars by negotiation.[50] The General Stabilization Meetings, however, had an advantage in that they could deal directly with the refiners who supplied the unbranded operators and price-cutters. As noted above,[51] the Code specifically authorized such suppliers to dictate the price at which their jobbers and dealers should sell. Some price wars could be eliminated by persuading the refiners to insert such provisions in their contracts and to enforce them.[52] Others required prolonged negotiations. Since the independent refiners supplied most of the unbranded operators and price-cutters, it was especially necessary to get their cooperation in these matters.[53]

The process of restoration was a gradual one. On many occasions, when the stabilization activities seemed to have achieved some decided benefit, the prices slid back again after a relatively short time.[54] On December 5, 1934, however, Arnott held another General Stabilization Meeting at the Blackstone Hotel in Chicago. Immediately thereafter, the respondent Ashton held a series of larger meetings which lasted four or five days and were attended by over 1,100 marketers, representing refiners, jobbers, dealers and price-cutters from all over the Middle West. These meetings were highly successful, and resulted in the whole or partial elimination of hundreds of subnormal prices.[55]

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[48] Arnott, R. 1693.
[49] Arnott, R. 1688.
[50] McDowell, R. 1176; Frey, R. 1276.
[51] See pp. 31, 34, *supra.*
[52] McDowell, R. 1175-7.
[53] McDowell, R. 1175, 1176.
[54] Frey, R. 1277; see also Def. Exs. 910 and 911, R. 3509, 3510.

All during this period the Petroleum Administrative Board had kept in close touch with what was going on, both through its own participation in the stabilization work and through reports from Arnott.[56] On December 18, 1934, Arnott made one of these reports to Chairman Fahy and Dr. Frey, the marketing member of the Board, in Washington.[57] He explained what had been done with respect to the restoration of retail markets at the December meetings and told them about the many points which had been restored to normal, the many more which had been half restored, and the others that had not been restored at all. Finally he told them that he was going to call another meeting in the near future to follow up the matter.[58]

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[55] McDowell, R. 1172, 1173; Frey, R. 1277; Arnott, R. 1689, 1728; cross, R. 1742-43.

[56] Frey, R. 1267, 1275-76, 1277; redirect, R. 1334.

[57] Arnott, R. 1727-8.

[58] Arnott, R. 1728. It might be added that Arnott's views as to the necessity of "following up" seem to have been justified, for the price wars were still continuing (Frey, R. 1277) and the rate of improvement was decreasing. During the first 17 days of December the work of the stabilization committees had resulted in the restoration of 102 subnormal posted tank wagon prices. Only 30 such prices were restored during the remainder of that month. Only thirty-eight were restored during January, and only seven during February (Def. Ex. 910, R. 3509). Of the 673 remaining subnormal postings for third grade gasoline, only fifty-four were restored to normal during the last part of December, only twenty-six during January, and only eighteen during February. (Def. Ex. 911, R. 3510.) Price wars continued to plague the industry throughout 1935. (McDowell, R. 1174, 1175-6.)

IV.

The Mid-Continent Buying Program.

A. The appointment of the Tank-Car Stabilization Committee.

The General Stabilization Meeting of which Arnott had notified the Petroleum Administrative Board in December was held at the Blackstone Hotel in Chicago on January 4, 1935.[1] It was attended by about 40 or 50 people, including all five of the individual respondents, representatives of all the respondent companies, and a number of others.[2]

Arnott opened the meeting with the explanation that it had been called to consider various problems of general stabilization.[3] He then reviewed the progress which had been made since the December meeting, pointing out that there were already indications that the gains were not holding, and that unless the industry kept up its efforts it would soon be back where it had started.[4]

In the course of a general discussion of the problem, B. L. Majewski, of Deep Rock, addressed the meeting on behalf of some twenty or twenty-five independent refiners whom he and I. A. O'Shaughnessy of Globe represented in stabilization activities. He emphasized their plight, and stated that unless something were done they would be forced either to close down or to withdraw from Code activities, abandon the Code standards of wages and hours, and cut the price of crude oil. Several people, including O'Shaughnessy and the respondent McDowell echoed the thoughts expressed by Majewski. All agreed that the plight of the independent refiners affected the refinery operations of the whole industry and that something should be done. Two disturbing factors which were specifically mentioned were:

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[1] Arnott, R. 1689.

[2] McDowell, R. 1167-8.

[3] McDowell, R. 1168.

[4] McDowell, R. 1168; Arnott, R. 1689.

> (1) The influx of cheap gasoline into the territory which continued to undermine the retail price structure even after it had been improved; and
>
> (2) the condition of the independent refiners who had deluged Washington with complaints.[5]

Arnott reviewed the situation along the same lines[6] and upon a motion being made by Majewski, he appointed the following committee to study the situation and make a report.[7]

Name	*Company*
R. W. McDowell (Chairman)	Mid-Continent
H. T. Ashton (Vice-Chairman)	Lubrite Div. Socony-Vacuum
L. van Eeghen	Shell
A. M. Hughes	Phillips
E. Karstedt	Continental
I. A. O'Shaughnessy	Globe
E. J. Bullock	Standard of Indiana
P. M. Miskell	Empire

This committee will be referred to hereafter by the

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[5] McDowell, R. 1168; Arnott, R. 1691-2.

[6] Arnott, R. 1695.

[7] McDowell, R. 1169; Arnott, R. 1696-7.

name by which it subsequently came to be known throughout the industry: "The Tank-Car Stabilization Committee."[8]

B. The Panama decision.

Three days after the Tank-Car Stabilization Committee had been appointed this Court held Section 9(c) of the N. I. R. A. unconstitutional in the so-called "*Panama* case."[9]

Since the establishment of the first Federal Tender Board in October, 1934, very little hot gasoline had found its way into interstate commerce. Now, however, the Tender Board was stripped of its powers, and there was a renewed and substantial influx of hot gasoline into the Mid-Western territory. As a result the tank-car market broke sharply.[10]

C. The Petroleum Administrative Board informed of the committee's appointment.

On January 8 or 9, 1935, Arnott reported the appointment of the Tank-Car Stabilization Committee to the Planning and Coordination Committee in Washington.[1]

On the same day Arnott also told J. H. Marshall and N. L. Meyers of the Petroleum Administrative Board about the committee's appointment. He explained what had been done to deal with retail price wars at the December meetings, and told them about the meeting of January 4, describing how the question of the independent refiner had come up, and what he had done in appointing the Committee. Meyers and Marshall expressed great interest in Arnott's statement as to his activities in the Mid-West and hoped that the stabilizers would be successful in maintaining the gains which they had made in the retail market. They also expressed interest in the formation of the Committee in connection with the tank-car market situation in the Mid-Continent.[2]

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[8] Jacobi, cross, R. 475.

[9] Panama Refining Co. v. Ryan, 293 U. S. 388 (January 7, 1935); McDowell, R. 1177, 1178; Arnott, R. 1700.

[10] McDowell, R. 1177, 1178; Van Covern, R. 1511. Nearly a million gallons of hot gasoline is known to have entered the Mid-Western area during January. During February the figure was in excess of 2,300,000 gallons. These are minimum figures inasmuch as a number of subterfuges were adopted to disguise the nature of the gasoline. (Dyer, R. 1467, 1468, 1469.)

[1] Franklin, R. 989; Arnott, R. 1697.

Arnott expressed concern over the *Panama* decision which had been handed down on January 7th, and asked what was being done to deal with the situation created thereby. Marshall and Meyers assured him that Secretary Ickes and the Petroleum Administrative Board appreciated the situation and that they were doing all they could in the preparation of a bill known as the "Connally Bill" which would reestablish the Federal Tender Board in East Texas.[3]

During the latter part of January Arnott telephoned McDowell once or twice and told him about the Connally Bill. He said that the bill had splendid chances of passing, and that if it did they would have a new Tender Board in East Texas and a general improvement in the situation. McDowell promised to assemble his committee as soon as he could.[4] He finally called a meeting to be held in Bullock's office in Chicago on February 5, 1935.[5]

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[2] Arnott, R. 1698, 1699-1700.

[3] *Ibid.*

In the meantime, on January 28th, the former defendant I. A. O'Shaughnessy, of Globe, the representative of the non-integrated refiners[6] whom Arnott had appointed to the Tank-Car Stabilization Committee,[7] sent the following telegram[8] to Charles Fahy, the chairman of the Petroleum Administrative Board:

> "In my opinion the industry has a wonderful opportunity within its grasp at this time for stability if they will only accept it. We have really done a good job in stabilizing retail markets in Standard of Indiana territory, but this condition is not going to continue unless a supreme effort is made to get the tank-car price of gasoline up to a comparable basis with the crude structure. It seems inconceivable to me that we cannot accomplish this objective if the proper efforts were made. Mr. Arnott, as chief stabilizer, appointed a committee for this purpose about three weeks ago, but because of a recent court decision in East Texas[9] we have never met to discuss the situation. We are either supine or incompetent, because every time

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[4] McDowell, R. 1178. McDowell had already made two unsuccessful attempts to assemble the committee, once around January 15 or 16 and again about a week later. (*Ibid.*) Arnott had no recollection of these conversations. (Arnott, R. 1700.)

[5] McDowell, R. 1178.

[6] Arnott, R. 1694-5, 1728; O'Shaughnessy was granted a new trial (R. 2491).

[7] McDowell, R. 1169; Arnott, R. 1697, 1728.

[8] Def. Ex. 893, R. 3491.

[9] This referred to the Supreme Court's decision in the *Panama* case on January 7, 1935, which had invalidated Section 9(c) of the N.I.R.A. and forced the discontinuance of the Federal Tender Board (Arnott, R. 1728).

something comes up about East Texas we crawl to cover instead of endeavoring to map out a definite plan of constructiveness. I do not know what you can do about it because if we cannot help ourselves I am sure no one else can. Am wiring you merely to get it off my chest. What I want to bring out is the necessity for action in getting tank-car prices up before it is too late. I understand that, unless some action is taken to get tank-car prices up shortly, an organized effort will be made to get them down as low as possible so that a general breakdown will occur in service station prices. This, of course, will mean chaos. This for your information. Regards."

On February 1, 1935, Fahy replied to this telegram by letter[10] as follows:

"My dear Mr. O'Shaughnessy:

"I received your telegram of January 28 and was glad to hear from you again. I am sure you know that the tank car situation in relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block. I may say, however, that I see nothing in the recent Supreme Court decision which in any way affects endeavors to reach the solution. We are hoping soon for a report from the Special Committee which the Secretary appointed to look into this kind of thing and make recommendations. I really believe we are going to have some definite suggestions from them which will carry weight. In the meantime, we are considering your suggestions and would like to have any further suggestions you can give us.

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[10] Def. Ex. 894, R. 3492.

"Yours sincerely,

(s) Charles Fahy
Chairman."

On the same day (February 1, 1935) there was a general reallocation of duties among the members of the Petroleum Administrative Board. In this connection Secretary Ickes (who personally approved the reallocation on January 28[11]) officially recognized that the stabilization committees were engaged in stabilizing the wholesale market. Dr. Frey's "job sheet"[12] defined the work to be performed by him as follows:

"Work to be Performed:

> "As a Member of the Petroleum Administrative Board to advise directly with the Oil Administrator on fundamentally important and basic problems concerning the Marketing provisions of the Code of Fair Competition for the Petroleum Industry and to direct the entire Marketing Division consisting of a large staff of Examiners, Accountants, Clerical Assistants in the administration of the operations of the oil administration. .
>
> "As a personal representative of the Administrator to negotiate and sit with Committees of those engaged in the stabilization of wholesale and retail markets throughout large areas of the United States; to formulate and advise the Oil Administrator as to the National policy in marketing of oil

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[11] Def. Ex. 996, R. 3750.

[12] Def. Ex. 974, R. 3696, 3709-10.

under the Code of Fair Competition for the Petroleum Industry and the National Industrial Recovery Act; to assist the legal staff in the preparation of economic material for the trial of cases and to organize and direct the study of the costs of refining and marketing of petroleum products throughout the United States. * * *"

D. Preliminary meetings of the Tank-Car Stabilization Committee.

1. *Meeting of February 5, 1935.*

All of the members of the committee attended the first meeting on February 5th. There were also two or three guests, including representatives of Shell and Globe, and A. V. Bourque, the Secretary of the Western Petroleum Refiners' Association.[1]

McDowell outlined the purpose of the meeting, commented on the bad effect which the *Panama* decision had on the already unsatisfactory price situation, and expressed the hope that they would have some constructive suggestion to make to Arnott. This led to a general discussion of the market situation and the new influx of hot gasoline from East Texas.[2]

Finally, the respondent Ashton stated that while there was a lot of cheap gasoline coming out of East Texas, he did not think that the situation in the Mid-Continent was as bad as people thought. He asked Bourque to read a list which he had brought, showing the names of the independent refiners in the Mid-Continent area and the amounts of distress gasoline which they would have for sale during the month of February. Bourque's figures showed that there would be only six or seven hundred cars of distress gasoline during the month.[3] Ashton pointed out that this was a relatively insignificant amount, and that ten or twelve of the major companies were buying gasoline in the area regularly.[4]

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[1] McDowell, R. 1178-9.

[2] McDowell, R. 1179.

Someone suggested that they persuade these major companies to purchase the distress gasoline, but this immediately provoked an argument. The Continental and Standard of Indiana representatives both stated they did not think major company buying would do any good, because, with hot gasoline moving out of East Texas, it would be just like mopping up the ocean. They cited the failure of the buying programs which the Government had sponsored in 1934, and stated that they didn't want anything to do with another such program.[5] As an alternative, they suggested a cut in the price of crude oil. McDowell replied that it looked as though the proposed Connally Act would stop the shipment of hot gasoline out of East Texas, and that the Committee ought to do something. He stressed the desirability of obtaining the parity ratio of 18.5 to 1 prescribed in the Code and stated that it was quite evident that the Administration wanted to achieve such parity without cutting the price of crude oil.[6]

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[3] *Ibid.* The Western Petroleum Refiners' Association, of which Bourque was secretary, was a trade association composed principally of refiners (both major and independent) in the Mid-Continent area. It had been in existence for 25 years or more, and had always done statistical work, collecting data concerning the production, sales, and inventories of its members, issuing bulletins on the same, and passing on to its members information regarding the statistical position of the industry as a whole. (*Ibid.*)

[4] McDowell, R. 1179, 1182.

[5] McDowell, R. 1179-80.

[6] McDowell, R. 1181.

O'Shaughnessy supported McDowell's stand. He said that the independent refiners whom he represented were desperate. As an indication of how deeply he felt he read the telegram which he had sent to Chairman Fahy of the Petroleum Administrative Board and Fahy's reply thereto.[7]

Ashton thereupon made a suggestion. He pointed out that Bourque's survey showed some 600 or 700 cars of distress gasoline in the hands of some fifteen or seventeen independent refiners. On the other hand, some ten or twelve major companies were known to be normal buyers of gasoline. He thought it would be very helpful if information as to the availability of distress gasoline could be put into the hands of these major companies, and that it might be a proper function of the committee to gather such information month by month.[8]

This proposal provoked another discussion. It was again pointed out that major company buying, even on quite a large scale, had not accomplished anything in 1934. Ashton replied that these buying programs had not been handled right. The majors had merely continued to purchase from a few well-known independent refiners with whom they were well acquainted, thus giving them more business than they needed, and even encouraging them to overrun their federal refinery allocations. The smaller refiners, on the other hand had been left with distress gasoline on their hands. It was his thought that the major companies should scatter their purchases around, dealing with all the independent refiners who had distress gasoline to sell, and that the committee's functions should be to furnish information which would enable them to distribute their orders in this way.[9]

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[7] McDowell, R. 1181-2; Def. Exs. 893 and 894, R. 3491, 3492.

[8] McDowell, R. 1182-3.

Ashton also thought that the major companies ought not to take advantage of the distress of the independent refiners and compel them to sell at distress prices, thus forcing the market down still further. He felt that the major companies should be willing to pay the fair going market price.[10]

Finally, Ashton said, there was no need to have commitments, or allocation, or price fixing, or any of the other features which had been found objectionable in the 1934 buying programs. Instead, each major company could buy in line with its actual needs.[11] With the passage of the Connally Bill they could be assured that hot gasoline would no longer come into the Mid-Western market.[12]

McDowell stated that he felt that the plan had some merit; that he knew that his company would have to buy gasoline anyway because constant reductions in its refinery allocations had brought its inventories very low; and that it had always paid a fair price to the independents from whom it bought. Most of the others seemed to be favorably impressed too. They all indicated that their companies, like McDowell's, would be forced to buy some gasoline any way. Some of them stated that they were already doing so and that they saw no reason why they could not fit their purchasing into Ashton's suggestion.[13]

Ashton summed up his suggestion in three basic principles, as follows: (1) There would be no pools or central buying agencies: everyone would make his own deal with the selling company; (2) there would be no allocations, no commitments, and no percentage quotas: each company would buy in line with its actual needs; (3) the Committee would urge the companies to pay the fair going market price on each transaction instead of chiselling down on an already distressed price.[14] The plan would not be put into operation until the shipment of hot gasoline out of East Texas had been eliminated.[15]

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[9] *Ibid.*

[10] *Ibid.*

[11] McDowell, R. 1183.

[12] *Ibid.*

[13] McDowell, R. 1183-4.

A memorandum from A. P. Ruether, of Shell, to the respondent Lakin and the former defendant, Fraser,[16] indicates that at this meeting there was also discussed "the necessity of taking care of distress gasoline in order to preserve the stability of retail markets." The memorandum further states that a committee of three was appointed to take up the question of "allocating" individual independent refiners to major purchasers, with the idea that such major purchasers would take the distress product of said independents. It was suggested that in this way it might be possible to get the smaller refiners to stay within their refinery allocations under the Code.

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[14] *Ibid.* McDowell summarized the plan on the stand as follows: "* * * we felt there were some ten or twelve companies who were regular and normal purchasers of gasoline, and that this Committee might attempt to put these purchasers in touch with the sellers, for the purpose of giving these independent refiners an outlet that already existed for their distress gasoline. These major companies were buying gasoline and had to buy gasoline, and, as I tried to explain, they had been buying it from just a few companies. Our plan contemplated trying to get them acquainted with some of the smaller and lesser known independent refiners." (McDowell, R. 1218.)

[15] McDowell, R. 1185.

[16] Govt. Ex. 177, R. 2733.

McDowell was finally authorized to advise Arnott of the discussion and of the proposed plan. He did so within the next few days, adding that he had asked the committee to meet again in Chicago on February 11, after the General Stabilization Committee meeting, which had been set for that day.[17]

2. *Meeting of February 11, 1935.*

Arnott was unable to be in Chicago on February 11th, but he telephoned McDowell on the morning of that day and told him that he felt that the suggested plan had merit. He also said that he was almost sure that the Connally Bill would pass, and that the hot oil situation would be taken care of. He instructed McDowell to explain the plan to potential purchasing companies but to take no definite action.[18]

The Tank-Car Committee met in the evening after the General Stabilization Meeting. All the members were present. Also present were representatives of several major companies, which were regular buyers of gasoline, but which were not represented on the committee—Sinclair, Skelly, Barnsdall and Pure.[19]

McDowell opened the meeting with a few remarks about the circumstances under which the Committee had been appointed, and his telephone conversation with Arnott.[20]

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[17] McDowell, R. 1184-5.

[18] McDowell, R. 1185-6, 1189; Arnott, R. 1701.

[19] McDowell, R. 1186. The last named company was represented by the respondent McElroy. (*Ibid.*)

[20] *Ibid.* Sus, R. 1868-9.

Ashton then explained the committee's plan to the nonmembers. He said that the Connally Act would take hot East Texas gasoline off the market and prevent it from being a disturbing influence in Standard of Indiana territory, and that, with this gasoline out of the way, the surplus gasoline which might affect the Mid-Western area would, according to Bourque's latest survey, be limited to 600 cars a month coming from about fifteen independent refiners. He then said that it had been suggested that the major companies which were regular buyers of gasoline might be able to use this surplus.[21]

A number of people said that they didn't want to commit themselves to buy, and that they weren't going to have anyone telling them where or how they should buy. To each objection of this kind, Ashton pointed out that no such obligations were involved.[22] There were also several questions about the prices which should be paid. Ashton replied that this was not a price-fixing plan, that there was no basis for setting any price, and that his only suggestion was that the purchasing companies should pay the fair going market price for the gasoline which they bought.[23]. He also made it plain that the plan would not be put into operation until the Connally Bill had put a stop to the influx of hot gasoline into the Mid-West territory.[24]

Ashton then read off Bourque's new survey, and asked those present if any of them would prefer to buy from particular concerns. It developed that some of the companies were already buying from certain refiners and would like to continue to do so. Others had definite preferences, based upon old association or friendship. In this way, it was found that all but seven or eight of the independent refiners would be taken care of.[25]

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[21] McDowell, R. 1182-4, 1186-7.

[22] McDowell, R. 1187.

[23] McDowell, R. 1188.

Some one asked who would furnish the purchasing companies with the information they needed as to the availability of distress gasoline. It was pointed out that the original surveys might contain errors and that the situations of both buyers and sellers were certain to change between surveys. Ashton proposed that a "Mechanical Sub-Committee" be appointed to handle the detailed problems that arose between monthly surveys, to receive information as to the availability of distress gasoline, and to pass it on to the buyers, particularly if they needed it in a hurry. McDowell appointed such a committee, consisting of himself, Ashton, and O. J. Tuttle, the Tank-Car Sales Manager of Empire.[26]

It was at this meeting that Ashton coined the phrase "dancing partner" which was subsequently used to indicate the independent refiner from whom a major company regularly bought. McDowell described how it happened as follows:

> "* * * There were these 7 or 8 small refiners whom no one had mentioned. He [Ashton] said this situation reminded him of the dances that he used to go to when he was a young fellow. He said, 'Here we are at a great economic ball.' He said, 'We have these major companies who have to buy gasoline and are buying gasoline, and they are the strong dancers.' And he said, 'They have asked certain people to dance with them. They are the better known independent refiners.' He

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[25] McDowell, R. 1187-8, 1189.

[26] McDowell, R. 1189-90; Sus, cross, R. 1870.

> said, 'Here are 7 or 8 that no one seems to know.' He said, 'They remind me of the wallflowers that always used to be present at those old country dances.' He said, 'I think it is going to be one of the jobs of this Committee to introduce some of these wallflowers to some of the strong dancers, so that everybody can dance.' And from that simile, or whatever you want to call it, the term 'dancing partner' arose."[27]

A. H. Sus of the Sinclair Company attended this meeting and, after it was over, made a memorandum of his recollection of what had taken place.[28]

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[27] McDowell, R. 1188. See also Jacobi, R. 439-40, cross, R. 479.

[28] Govt. Ex. 376, R. 2977-8. The memorandum in full reads as follows:

> "A committee at a previous Stabilization Meeting had been appointed of which Mr. Bob McDowell was Chairman to consider ways and means of establishing and maintaining an active and strong tank car market on gasoline.
>
> "This committee rendered a report to the effect that a movement is under way which will take the East Texas surplus gasoline off the market so that it will not be a disturbing influence in the Standard of Indiana territory. It was stated that this East Texas gasoline would move to the Gulf and then go to either the East Coast or for export.
>
> "A survey by the committee then indicated that the surplus gasoline, which would affect the Standard of Indiana territory only, amounted to 600 cars per month involving fifteen refining companies.
>
> "A report is attached which lists the refineries in the Mid-Continent Field who will have surplus gasoline. This report shows their capacity, their crude runs, their allocation, etc.
>
> "The program of the committee involves fourteen major companies, each selecting one or more of these fifteen small refining companies, and the major company obligating itself to take whatever surplus gasoline this small refining unit will have from time to time. In other words, a major company would select from among the fifteen small refineries some company whose surplus or distress gasoline it could advantageously move.

According to this memorandum, a program was proposed whereby each of the major companies would select an independent refiner whose surplus or distress gasoline it could advantageously move, and obligate itself to take such gasoline. (The memorandum shows that Mr. Sus

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and in that way by dividing up these fifteen companies and these estimated 600 cars per month of distress gasoline no great burden would fall upon anyone.

"A steering committee would guide and control, periodically, the prices to be paid for this surplus gasoline by the major company to the small refinery. There was considerable discussion to the effect that this new program had more chance of success than any previous program because of the way the steering committee would function and the fact that they would be buying on an ascending market, thereby keeping the market both active and strong, rather than buying on a descending market as previous buying movements had been and which previous movements had failed of any substantial success.

"It was estimated that the absorption of these 600 cars per month by fourteen major refiners would only be equivalent to curtailing their own crude runs 2 per cent. In other words, it was intended to point out that the absorption of this gasoline by a major would not seriously affect that major's own runs.

"Each purchase of a car, from time to time, by these majors of distress gasoline, would be recorded in the Journal of Commerce as an individual sale, and the number of these sales recorded would indicate an active market, and buying on an ascending market would tend to create a strong market.

"The meeting in question was attended by all of the major companies, including such companies as Globe, Skelly, Mid-Continent, etc., all of whom indicated a willingness to select one of the companies shown on the attached statement and assume responsibility for their surplus.

"The writer had no knowledge and did not participate in this discussion. Mr. Dippel, however, because of his knowledge of some of the purchasing we were doing in the West, tentatively stated that we might consider taking the output of, say, the Wilcox plant. Mr. Dippel indicated he would report this matter to Mr. Carnes and handle to a conclusion as to our participation in this movement."

used the words "surplus" and "distress" interchangeably.) In the course of the meeting all of the attending major companies indicated a willingness to select one of the independent refiners reported by the Committee to have distress gasoline and to assume responsibility for purchasing its distress.

The Sus memorandum contains the statement that the absorption of the estimated 600 cars of distress per month "by fourteen major refiners would only be equivalent to curtailing their own crude runs 2 per cent."

Sus testified that, in using this language, he was merely indicating by a comparison the small amount of distress gasoline which it was proposed should be purchased.[29] This interpretation is in accord with the fact that the record shows that, with the possible exception of one company, none of the respondents was able to produce in its own refinery sufficient gasoline to supply its needs, that others had refinery difficulties which restricted their capacity to produce and that still others produced at the full capacity of their plants[30] and in one case at a rate above the safe capacity.[31]

Also according to the Sus memorandum it was pointed out that the program would have a greater chance of success because of the functioning of a steering committee which "would guide and control periodically" the prices to be paid for this surplus gasoline by the majo company to the small refiner. Sus testified that the function of the committee in this respect was to use its influence to see that the buying companies paid the going market rather than a distress price.[32] The actual activities of the Mechanical Sub-Committee, its efforts to secure the payment of the going market price by the buying companies, and the lack of uniformity of those prices are discussed in detail in later portions of this Appendix.[33]

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[29] Sus, R. 1872.

[30] See pp. 231-9, *infra*.

[31] Kelly, cross, R. 841.

The memorandum also states that each purchase from time to time would be recorded in the Chicago Journal of Commerce as an individual sale, so that the number of sales recorded, together with the fact that the buying would be done "on an ascending market" would tend to create a strong market.

In fact, the Journal of Commerce did carry news items which reported developments in the Mid-Continent buying program.[34] It does not appear that it ever reported the number of cars purchased under that program or the prices at which they were purchased. Even if it had done so, it could not have reflected such sales in its market quotations. The Journal's quotations, like the Oilgram's, were merely a quotation of the range of prices within which sales were being made. They did not record individual sales either to major companies, jobbers, consumers or brokers. Neither the number of sales nor the prices in individual sales were shown.[35]

The statement that buying would be "on an ascending market," insofar as it suggests that purchases should be made above the going market, is not borne out by the facts. The evidence showed and the Government conceded that the respondents did not pay higher than market prices in their purchases. In fact, it affirmatively appeared that their prices were lower than the market and that, if they had been reflected in the trade journals, the trade journal quotations would have been lower than they actually were.[36]

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[32] Sus. cross, R. 1870.

[33] See pp. 120-35, *infra*.

[34] McDowell, R. 1189.

[35] Beroth, R. 190. *Cf.* Govt. Ex. 730, R. 3200, a typical issue of the Oilgram.

3. *Arnott's meeting with the independent refiners, *March 1, 1935.*

On February 22, 1935 the Connally Bill, forbidding the interstate shipment of hot oil and hot gasoline, became law.[37] On February 25 or 26 McDowell, Ashton, and Bourque met with Arnott[38] and told him about the plan which they had evolved, and the committee's activities to date. Arnott stated that he thought the plan was practicable, and that since the Connally Bill had now been passed the only thing that remained was to have it enforced. He withheld his final approval, but said he would get in touch with them when the time arrived to put the plan into operation. He also told them that he had arranged to meet with the Mid-Continent independent refiners in Kansas City on March 1.[39]

The principal purpose of the Kansas City meeting was to find out whether the independent refiners were satisfied with the work of O'Shaughnessy and Majewski, their representatives in the stabilization efforts, and to consider matters relating to their refinery allocations under the Code.[40] As a result of this meeting the independent refiners selected an "Executive Committee" under the chairmanship of C. M. Boggs of the Kanotex Refining Company to represent them in the General Stabilization meetings.[41]

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[36] See pp. 131-5, *infra.*

[37] 49 Stat. 30.

[38] McDowell, R. 1191; Arnott, R. 1701.

[39] Arnott, R. 1703. See Arnott's invitation to the meeting. Govt. Ex. 137, R. 2725.

[40] Arnott, R. 1703. See Arnott, R. 1693, 1694-5, 1697.

In the course of the meeting, Arnott told the refiners that Majewski and O'Shaughnessy had presented their difficulties at the General Stabilization meeting on January 4th; that he had appointed a committee to study the situation and that the committee had made a recommendation. He said that he wanted to find out what the refiners thought of this recommendation, and asked Ashton, as Vice-Chairman of the Tank-Car Committee, to explain what it was.[42]

Ashton told the independent refiners essentially what he had told Arnott in Chicago on February 26. After some discussion the refiners expressed a desire to know more about the Tank-Car Stabilization Committee's recommendation. It was decided to have a meeting of the Tank-Car Committee in St. Louis on March 5th, and the independent refiners appointed another committee, also under the chairmanship of Boggs, to attend.[43]

4. *Meeting of March 5, 1935.*

The March 5th meeting was held at Ashton's office in St. Louis, and was attended by six or seven members of the committee.[44] Miskell of Empire and Van Eeghen of Shell had now resigned and their places had been taken by their subordinates, the former defendant O. J. Tuttle and the respondent Lakin.[45] The meeting was also attended by the committee of independent refiners, and by R. Winget of the Cushing Refining Company who went along as an observer. Later in the morning W. P. Jacobi, the buyer for the Socony-Vacuum companies, arrived, having been invited by Ashton.[46]

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[41] Def. Ex. 305, R. 2956; Arnott, cross, R. 1757-8.

[42] Arnott, R. 1704.

[43] Arnott, R. 1704-5, 1707; McDowell, R. 1192-3. The other two members of this committee were R. G. Cocanower, of the Olney Oil & Refining Co., and L. B. Simmons, of the Rock Island Refining Co. (*Ibid.*)

[44] McDowell, R. 1192-3; Jacobi, R. 362.

McDowell turned the meeting over to Ashton, who explained how the meeting had come about, and the nature of his plan.[47] Several or all of the independent refiners then spoke, and tried to impress the members of the Tank-Car Committee with the seriousness of their situation, saying that they would be faced with bankruptcy unless something were done. Ashton replied that that was why the committee had been appointed.[48]

The independent refiners asked many questions. In answer to one of these McDowell explained that the plan would not prevent independent refiners from selling to brokers. It simply involved an effort to put buying companies in contact with independent refiners in the event that they had distress gasoline to sell. If they could sell their output through brokers, so much the better.[49]

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[45] McDowell, R. 1193. It will be recalled that Mr. Tuttle was already a member of the Mechanical Sub-Committee, having been appointed thereto on February 11th. See p. 92, *supra*. He was granted a new trial (R. 2491).

[46] McDowell, R. 1193; Jacobi, R. 362.

[47] Jacobi, cross. R. 475-7; McDowell, R. 1193.

[48] McDowell, R. 1193; Jacobi, R. 369, 371.

[49] McDowell, R. 1193-4.

One of the independent refiners asked what prices the majors were going to pay under the proposed program. McDowell described his question and the answer thereto as follows:

> "Some questions were asked by the independent refiners in respect to price. Mr. Simmons of Rock Island Refining Company asked a question about what price was going to be paid, and Mr. Ashton answered that this plan did not involve any price-fixing scheme at all, that there was no authority on the part of the committee to set any price, but that we were earnestly suggesting that the buying companies consider paying the fair going market price in the event they did make purchases from the independent refiners.
>
> "Mr. Simmons said that he did not think that was much of an answer, that the price of gasoline was so low that he could not continue to operate very much longer unless something was done about it, and I think he spoke quite at length on the subject. Mr. Ashton simply told him that the plan did not involve anything of that sort, that the companies were going to make their own deals, and it would be up to the selling companies to get the best price they could from the companies that approached them for the purchase of the gasoline."[50]
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> * * *
>
> "Mr. Ashton also pointed out that the Tank Car Stabilization Committee suggested to the Sub-Committee that in their contacts with the field buyers—not all of the major companies had field buyers—but in their contacts with those that have field buyers, they should urge those field buyers to pay a fair going market price."[50a]

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[50] McDowell, R. 1194.

[50a] McDowell, R. 1195.

These were the only references made at the meeting to the prices which were to be paid.[50b]

The independent refiners were told that if the plan were put into operation, Bourque would inform the committee as to the availability and location of distress gasoline. They were asked to explain this to their group and to urge them to give Bourque accurate and honest figures. They were also told that the "Mechanical Sub-Committee" would act as a sort of clearing house for information as to the quantities of distress gasoline available. It was pointed out very definitely that all sales would be negotiated directly between the buying and selling companies, and that the sub-committee would simply distribute information.[51]

The independent refiners were also questioned as to their own situations, and it developed that at least two of them might find buyers among the members of the committee.[52]

[50b] Jacobi testified as follows:

"The only purpose of the plan that was discussed by Mr. Ashton and the other members of the major companies there was to remove this distress gasoline at fair prices." (Jacobi, R. 372.)

* * *

"* * * the only reference to prices at the March 5th meeting was the statement by Mr. Ashton or Mr. McDowell that the companies ought to be willing to pay a fair market price for the gasoline as contrasted with distress prices." (Jacobi, R. 376.)

* * *

"At the * * * meeting in Mr. Ashton's room, the price was mentioned, and it was felt by everyone that a fair market price for this distress gasoline should be paid." (Jacobi, R. 501.)

[51] McDowell, R. 1194-5.

[52] Jacobi, R. 372, 383. Jacobi thought that there was a general discussion of prospective dancing partners at this time, but McDowell put this at the afternoon session. (Jacobi, R. 367, 369, 371; McDowell, R. 1195, 1196.)

Ashton made a rather comprehensive statement as to the purpose of the program, saying that its primary purpose was to remove distress gasoline at a fair price so that the small refiners could operate on dollar crude and get more for their products.[83] It was also pointed out, however, that in helping the independent refiners by removing their distress gasoline, the major companies would be helping themselves because the elimination of distress gasoline would result in a stronger market.[84] Ashton also brought out that the purchasing was to be voluntary. The members of the committee would simply go back and call up the independent refiners whose gasoline they had indicated they might take, and they would find out what their problems were and what their specifications were, and make an honest attempt to work more closely with them. The committee was merely trying to get more coordination in the purchasing that would be going on anyway. Instead of purchasing haphazardly here and there, the buyers were to keep in touch with refiners who met their requirements as to specifications and location.[85]

Several of the independent refiners stated that they felt that the plan was encouraging, but that they were impatient for action and would like a more far-reaching plan. They were also disappointed because the Tank Car Committee, not yet having received word from Arnott, could not tell them when the plan was going into operation.[86]

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[83] Jacobi, R. 372.
[84] Jacobi, R. 376-9.
[85] Jacobi, R. 372-3.
[86] McDowell, R. 1195; Jacobi, R. 369.

The morning meeting adjourned about 12 o'clock. The Tank-Car Committee had lunch at the Coronado Hotel and continued the meeting, without the independent refiners, after lunch.[57] Ashton reviewed the happenings of the meeting of February 11, and described the general reaction of those present to the plan.[58] He also had a more recent survey, prepared by Bourque showing the refiners who would have surplus gasoline available during March, and he asked those present if they had developed any new or different ideas about their purchasing preferences. Several members of the committee indicated that their companies would prefer to buy from particular refiners on this list.[59]

Socony-Vacuum preferred the Champlin Refining Company; Continental would like to deal with the Shamrock Refining Company in order to secure freight savings, due to the location of the latter's plant; Empire wanted to buy from the Olney Refining Company, because Empire's Gainesville refinery had closed down permanently and Olney's location made it convenient from a freight standpoint (in fact Empire was already negotiating with Olney for the purchase of gasoline); Mid-Continent wanted to buy from the Johnson Oil Refining Company because they had sold it considerable amounts of crude and burning oils and had personal friends in the sales department, and from the Cushing Oil and Refining Company because they had previously bought gasoline from it, and its plant was located near Tulsa; Shell wanted to buy from Cushing, because of pleasant relationships in the past; Globe wanted to buy from Omar and Cushing, because both were situated near Blackwell, where Globe's refinery was shut down at the time.[60]

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[57] McDowell, R. 1195; Jacobi, R. 371, 380, 382.

[58] McDowell, R. 1195-6.

[59] McDowell, R. 1196.

It was decided that the purchasing companies should contact their preferred sources of supply with a view to purchasing their distress gasoline, and all present indicated then they would try to work out their plans to permit such purchases.[61] No one said anything definite about the amount of gasoline he would purchase, although Jacobi mentioned that he had orders on hand and was going to buy about 40 cars from the Champlin Refining Company because he knew their product.[62]

The tentative arrangements just described did not take care of all the refiners on Ashton's list. Many independent refiners had not been spoken for at all, and at least 30 or 40 per cent of the distress gasoline had no prospect of finding a purchaser. Ashton asked the members of the committee to see if they could fit the others into the picture, and several men said that they would discuss it with their organizations. Ashton stated that he would get in touch with the buying companies not present at the meeting.[63] It was also suggested that more distress gasoline might come to light at some future time, and that it might be possible to interest other buying companies therein.[64]

Ashton also outlined the duties of the Sub-committee again.[65] As appointed at the February 11th meeting it had consisted of McDowell and Tuttle, who lived in Tulsa, and Ashton, ~~who~~ lived in St. Louis. Ashton now had Jacobi, who lived in Tulsa, substituted for himself so that the committee could work more smoothly.[66]

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[60] McDowell, R. 1196-7; cross, R. 1220; Jacobi, R. 383.

[61] Jacobi, R. 371-2, 439-40; McDowell, R. 1197-8.

[62] Jacobi, R. 383; McDowel, R. 1197.

[63] Jacobi, R. 370, 383; McDowell, R. 1198.

[64] McDowell, R. 1198.

It was decided that if the program continued for any period of time the Tank-Car Committee should meet around the first of each month, so that the information shown by the surveys would be reasonably up to date and accurate. Since Arnott had not yet given his final approval to the plan, no date was set for the next meeting.[67] No one present, however, had raised any objection to the plan as it stood at this time, and Jacobi got the definite impression that they all approved it.[68]

E. The commencement of buying under the program.

The new Federal Tender Board under the Connally Act had been set up on March 1, and had issued its first tenders on March 4.[1] There was an immediate rise in the tank-car market. On March 1st the quotations for third grade in both the Oilgram and the Journal of Commerce, had been 3¼-3½¢. The next day the low quotation in the Oilgram had risen ⅛¢. One or more of the quotations rose each day thereafter until March 8. The Chicago Journal of Commerce was reporting a range of 3⅝-3¾ and Platt's Oilgram a range of 3⅝-3⅞¢.[2]

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[65] McDowell, R. 1198-9.

[66] McDowell, R. 1198; Jacobi, R. 382.

[67] McDowell, R. 1199.

[68] Jacobi, R. 384.

[1] McDowell, R. 1199; Van Covern, R. 1512.

[2] McDowell, R. 1201. See Def. Ex. 1024, R. 3807.

At the same time, as shown in the next section, there was a movement on foot among the East Texas refiners which promised to furnish an outlet for their legal distress gasoline.[2a]

As yet no purchases under the program had been made. On March 6 Ashton telephoned Arnott, and told him what had been accomplished at St. Louis the day before. Later in the day Arnott called Ashton back and told him that since the Federal Tender Board seemed to be cleaning up the hot oil situation in East Texas, the plan should be put into operation as soon as possible.[3] Ashton immediately telegraphed Arnott's instructions to McDowell, and the next morning McDowell called up Tuttle and Jacobi and arranged to have a meeting of the sub-committee at lunchtime.[4]

The meeting was very brief. McDowell felt that the first thing to do was to telephone the companies which had indicated that they might purchase gasoline. He undertook to call Phillips, Barnsdall and Standard of Indiana. Jacobi said that he would call Shell, Globe, Sinclair and Pure. Tuttle was to call Skelly and Continental.[5] McDowell gave them no specific message except that Arnott wanted the plan put into operation, and that if the companies needed gasoline they should put their field men in touch with the independent refiners from whom they desired to buy.[6]

After the meeting McDowell, Tuttle, Jacobi and

[2a] See pp. 143-84, *infra*; Def. Ex. 69, R. 2653, 2656.

[3] Arnott, R. 1706.

[4] McDowell, R. 1199-1200.

[5] Jacobi, R. 384; McDowell, R. 1200.

[6] McDowell, R. 1200.

Bourque made a final survey to determine the amount of distress gasoline which would have to be moved during the month, and found that it would amount to some 600 or 800 cars.[7] They then proceeded to call up the purchasing companies.

McDowell telephoned Bullock of Standard, Hughes of Phillips, and Evans of Barnsdall, stating that Arnott had instructed them to put the plan into operation and expressing the hope that if they needed gasoline they would put their field representative in contact with the independent refiners from whom they preferred to buy.[8] Bullock merely thanked McDowell for the information, without saying what he was going to do. Hughes discussed general market conditions. Evans, however, was not a member of the Tank-Car Committee, and had to have the plan explained in some detail. McDowell also told him about the sub-committee, said that he would be calling from time to time, and indicated the name of an independent refiner from whom Barnsdall might be able to buy gasoline. Evans said that Barnsdall would have to buy anyway and that he would appreciate receiving this information.[9]

About the same time or shortly thereafter Jacobi contacted D. K. Chamberlain of Pure, Lakin of Shell, and O'Shaughnessy of Globe. Lakin and O'Shaughnessy, being members of the Tank-Car Committee, knew all about the plan.[10] Chamberlain told him that he had not yet heard about it, but that he would contact his Chicago office.[11] On March 14, Jacobi called W. A. Tracey of Sinclair describing the plan, and mentioning a small refiner from whom Sinclair might buy. Tracey said that he had not heard of the St. Louis meeting, but that he would no doubt hear from his superiors about it and that he believed they would be doing some purchasing.[12]

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[7] Jacobi, R. 384, 386, 388, 399.

[8] McDowell, R. 1201-2.

[9] Evans, R. 515, 516, 517; McDowell, R. 1201-2.

[10] McDowell, R. 1169; Arnott, R. 1696-7; see pp. 79, 99, *supra*.

[11] Jacobi, R. 391, 395; cross, R. 490.

The major companies alleged to have participated in the program (excluding Sinclair) purchased some 546 tank-cars during March.[13] As the plan progressed, more and more independent refiners called up and wanted to move their distress gasoline.[14] Before the month was out distress gasoline had been bought from all the independent refiners named in Paragraph 22 of the indictment except Taxman, Wilcox and Dickey.[15]

F. The Mid-Continent Buying Program in operation.

It had been suggested at the March 5th meeting at St. Louis that it would be a good thing if the program could be more or less permanent. It was finally decided, however, to try it for a month only with the hope of continuing. There never was any specific agreement to continue the program; it merely went on from month to month as the purchasing companies found that they could use the gasoline.[1]

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[12] Jacobi, R. 392, 393. Both Chamberlain and Tracey apparently did hear from their superiors, for they both knew about the plan later in the month. (Jacobi, R. 394-5.)

[13] Govt. Ex. 747, R. 3270. All the companies alleged to have participated in the program bought except Deep Rock.

[14] Jacobi, R. 387.

[15] Jacobi, R. 389. See Indictment, R. 15.

[1] Jacobi, R. 382-3, 441-2. In a speech before the District Allocators on March 13th, Arnott had stressed the desirability of regular purchasing continuing from month to month (Def. Ex. 69, R. 2653, 2656). As shown by the text, however, the plan never was set up on a permanent basis.

1. *Participants in the program.*

It is alleged in the indictment that Standard of Indiana, Socony-Vacuum, Wadhams, Sinclair, Shell, Empire, Pure, Phillips, Mid-Continent, Continental, Skelly, Barnsdall, Globe, and Deep Rock made purchases in the Mid-Continent field pursuant to the program, and that they purchased from fourteen independent refiners named in the indictment, most of whom were members of the Western Petroleum Refiners' Association.[2]

At the close of the Government's case the court dismissed the indictment as to Deep Rock, it appearing that a trustee appointed under Section 77(b) of the Bankruptcy Act proceedings had been in control of the policies of the company throughout the indictment period.[3] After the verdict, the court dismissed the indictment as to Globe of Kansas on the ground that the evidence was insufficient to support a conviction,[4] and granted new trials to Standard of Indiana and Barnsdall.[5] The record shows that all of the companies named above had made purchases in the Mid-Continent field during the indictment period,[6] and that purchases had been made from all the independent refiners named in the indictment.[7]

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[2] Indictment, paragraph 22, R. 15.

[3] R. 902, 903.

[4] R. 2490.

[5] R. 2491.

[6] Govt. Exs. 747, R. 3270-1; 750, R. 3276-7; 751, R. 3278-80; and Def. Ex. 1015, R. 3797. (The last-named exhibit, expressing the total bought by Sinclair in gallons, has been translated into tank-cars at the rate of 8,000 gallons to a tank-car.) The figures in these exhibits, of course, do not imply that the purchases would not have been made anyway, even in the absence of a buying program. The evidence on this point is discussed at pp. 231-9, *infra*.

[7] Jacobi, R. 387.

The record does not show how many of the purchases from these refiners were made as a result of the program.

The record also shows that all of the independent refiners named in the indictment were members of the Western Petroleum Refiners' Association.[8] There was no evidence that the Association itself participated in the program. C. M. Boggs, the president of the Association, and A. V. Bourque, its secretary, were named in the indictment as defendants.[9] Both of them were dismissed by order of the Court.[10]

There were also substantial purchases from refiners not named in the indictment. Sinclair purchased 3,324 tank-cars, or 53 per cent of its total purchases, from refiners not named in the indictment.[11] Globe made about 50 per cent of its purchases from such refiners.[12]

It also appears that refiners and even brokers not named in the indictment sometimes asked the Mechanical Sub-Committee to find customers for their distress gasoline, and that in a few cases the sub-committee was able to do so.[13] The exact extent of the purchases made from such refiners and brokers at the suggestion of the committee does not appear in the record.

2. *Monthly meetings of the Tank-Car Stabilization Committee.*

Each month from April, 1935, through February, 1936, there was a meeting of the Tank-Car Stabilization Committee.[1] The purpose of these meetings was to analyze the surveys of distress gasoline, which Bourque (with the assistance of Jacobi) prepared around the first of each month.[2] These surveys usually showed that from six to eight hundred cars of distress gasoline would become available during the month.[3] Some purchasing companies' representatives would indicate that their companies could take certain amounts; others, that they would have to check the quality; and so on.[4]

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[8] Jacobi, R. 427; Gray, R. 1828.

[9] Indictment, paragraph 4, R. 5.

[10] R. 2477, 2490.

[11] Def. Ex. 1015, R. 3797.

[12] Def. Ex. 1002, R. 3767; J. D. Miller, R. 1613-4.

[13] Jacobi, R. 388, 427, 428; see Govt Ex. 516, R. 3019.

The evidence indicates that the gasoline taken by the various companies represented undertakings or "obligations" assumed at the committee meetings, based upon the actual needs of the companies represented. As McDowell testified:

> "Here is the situation on what I mean by companies needing gasoline. A company doing business in large quantities as we do has to project their requirements beyond a week or ten days. And we often times buy gasoline that may not actually be sold out of the bulk plant for some little time, but we have to project for stock levels throughout the period of the year. It would depend on the individual policies and ideas of the various companies.
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> "In January or February, 1935, we knew that we were going to have to buy gasoline that year.

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[1] Jacobi, R. 397; McDowell, R. 1207-8. For a detailed statement of the times and places of the various meetings, see Jacobi, R. 399-400. For a detailed statement regarding the attendance, see Jacobi, R. 398-400.

[2] Jacobi, R. 397, 399.

[3] Jacobi, R. 400.

[4] Jacobi, R. 442.

> It was on the basis of the major companies needing gasoline that we assumed they could and would buy. The plan was that we weren't going to ask them to buy anything they didn't need.'"[5]

Jacobi testified to the same effect, as follows:

> "The amount taken was not determined * * * upon the size of the company, its financial size. It was the amount of gasoline that they wanted to take and needed at that time. * * * That was what determined the allocation, and the size of the company had nothing to do with it.
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> * * * *
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> "Those companies represented at the meetings spoke for that part of the total of gasoline that they felt they could use and wanted. The quantities that the various companies took depended upon their requirements and what they wanted. There was no other method of determining the amount which they were to purchase. That was the only method. They said what they wanted, and they knew what their business was and how much they needed and how much they could use * * *.
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> * * * *
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> "I could judge pretty accurately from my experience down there about how much gasoline I could take during that month. We have a refinery in Kansas. The monthly output or capacity of that refinery was about 14,000 barrels a day. We also have a refinery at East Chicago, Indiana, having the capacity of about 11,000 barrels a day. I know the requirements of our company per day. I was in touch with our various offices and knew

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[5] McDowell, R. 1221.

> from month to month approximately what their requirements would be, and I have always done that."[6]

At the same time that the committee members indicated how much distress gasoline they could take, they indicated the independent refiners from whom they would prefer to purchase it.[7]

The indictment charges that the independent refiners were "assigned" to the defendants as "dancing partners".[8]

The term "dancing partner", of course, was derived from the simile of the "economic ball" which Ashton had used at the February 11th meeting. The independent refiners having distress gasoline were "wallflowers"; the major companies were "strong dancers". The committee was supposed to bring them together.[9] As the program went along, most of the majors continued to buy from the same independent refiners with which they had started,[10] and the latter came to be known as their "dancing partners."[11]

Socony-Vacuum, through Jacobi, bought rather regularly from its "dancing partners". It also bought from a number of other refiners. The other purchasers bought from their "dancing partners" with varying degrees of regularity.[12] McDowell testified that Mid-Continent and others bought from "dozens of independent refiners".[13]

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[6] Jacobi, R. 433, 434-5.

[7] Jacobi, R. 397.

[8] Indictment, paragraph 23, R. 15.

[9] See pp. 92-3, *supra*.

[10] Jacobi, R. 397, 440.

[11] Jacobi, R. 439-40; cross, R. 479.

[12] Jacobi, R. 440, 462.

[13] McDowell, cross, R. 1220.

Independent refiners were not "assigned" to the major companies whose representatives attended the monthly meetings. Instead, as the schedule of refiners having distress gasoline was read off, the committee members selected the refiners from whom they would prefer to buy and undertook to take care of their distress gasoline.[14]

3. *Contacts of the Mechanical Sub-Committee with companies not represented on the Tank-Car Committee.*

After each meeting the members of the Mechanical Sub-Committee contacted the purchasing companies which were not represented on the Tank-Car Committee (Sinclair, Pure, Barnsdall and Skelly) and asked them if they could use any part of the gasoline which had not been spoken for at the meeting.[1] Jacobi (who contacted Sinclair and Pure) described these conversations as follows:

> "* * * I talked to Mr. Tracey occasionally about what transpired in the meetings, and told him in a general way what had happened. * * * I made a note of what gasoline had been mentioned at the meeting that Sinclair might be interested in; and passed that information on to Mr. Tracey. I called him after most of the meetings. I may have called him after each one.
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> "I mentioned the particular companies that had the gasoline. I told him the quantity and told him

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[14] Jacobi, R. 369, 383, 439, 440.

[1] Jacobi, R. 432, 452.

> to buy it if he could. I don't remember the quantities now; there might have been 2 or 3 different small refiners. I think on some occasions he asked me what the others were going to do. If he asked me I told him.
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> * * * *
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> "I am sure that after some of these meetings I called up Mr. Chamberlain of Pure and told him what transpired at the meetings. On those occasions, I told him that we had had a meeting and that certain things transpired—I don't remember what they were—that the companies had had their representatives there, and the meeting was at such and such a place, and that it was felt that his company could probably use a certain quantity of gasoline from so and so and so and so, and suggested that they buy it if they could. And Mr. Evans—or, Mr. Chamberlain's usual reply was, 'Well, I will check it up and see.' * * *"[2]

Evans of Barnsdall (who was contacted by McDowell) testified as follows:

> "* * * I heard from him every month for a while when he was in town, I should say. I did not call him or discuss the market with him very often. Probably 2 or 3 times a year. I wouldn't want to say he called me every month. On these calls he would suggest gasoline available from certain refineries, and that is about all there was to it * * *.
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> "I don't recall Mr. McDowell ever suggesting a definite amount to be purchased.
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> "Mr. McDowell may have mentioned the name of a company in connection with the term 'danc-

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[2] Jacobi, R. 445, 451.

> ing partner.' He probably did use the term. He never told me I was to buy from anyone. His were merely suggestions.
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> * * * * *
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> "Mr. McDowell may have suggested that we take some more, after we had all we could take, or all we wanted. I don't remember that he urged it. A suggestion from him wasn't an urge. We had many chances to purchase gasoline which we did not do, when we had already covered our requirements * * *."[3]

The former defendant, O. J. Tuttle of Empire, was the member of the Mechanical Sub-Committee who was in contact with the Skelly Company with respect to its purchasing distress gasoline.[4] Skelly representatives seem to have interpreted his suggestions as "assignments" of definite refiners and definite "quotas" of gasoline. Thus, on August 27, 1935, the former defendant J. F. Nagle of Skelly wrote L. H. Poland of the same company, as follows:[5]

> "We are purchasing today from Rock Island Refining Company, Duncan, Oklahoma, 10 cars of Powermax (Purchase Order No. 187914) and 10 cars of 70 octane Aromax (Purchase Order No. 187915), these purchases being made in connection with the inter-refinery buying program which is still in effect, the Rock Island outfit being one of the babies placed in our lap last spring when this thing was inaugurated."

On October 17, 1935, he wrote Poland again as follows:[6]

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[3] Evans, R. 529, 544, 546.

[4] Jacobi, R. 392; McDowell, R. 1200.

[5] Govt. Ex. 122, R. 2720.

[6] Govt. Ex. 124, R. 2722.

> "As you probably know, we don't have much choice as to whose material we are to take, when we purchase outside third grade gasoline in connection with the Buying Program Committee's operations. On such purchases, we have refineries 'assigned' to us, and, as you might expect, such refineries are small outfits who just make motor gasoline, and don't make any effort at all to make their product suitable for use in pressure gas appliances. Even if we did have some choice, it wouldn't do us much good because, as far as making an extra fine product suitable for this special use is concerned, they just wouldn't be interested, for they aren't that kind of refiners. Now, that goes for most of our Oklahoma refiners, and, with that being true, what can you expect from outfits in the Panhandle and North Texas, to say nothing of East Texas with all its fly-by-night outfits? You probably know that, out of about twelve to fifteen first class or good refiners here in Oklahoma, only six are on the approved list of United for Oklahoma, such concerns as Barnsdall, Phillips, Sinclair, and Tidal being among the missing. Their products might pass muster with United, but they aren't on the list that I have."

On January 8, 1936, Nagle wrote to W. T. Atkins, a vice-president of the company, saying: "I was under the impression that I had given you the line-up on our purchase obligations for January, under the Buying Program as they were given to me by Mr. Tuttle, of Empire, about two weeks ago. * * *"[7]

On January 21, 1936, A. H. Pendergrass, supervisor of Skelly's tank-car order desk, wrote Clara Gartman, its tank-car purchasing agent, regarding the purchase of ten cars of gasoline from Russell Refining Company, Russell, Kansas. Pendergrass noted that, "These ten cars will no doubt be credited against our January quota for outside gasoline for the month of January."[8]

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[7] Govt. Ex. 101, R. 2702.

Again on December 21, 1935, Nagle wrote Poland that certain purchases, "* * * being made because of freight savings effected, are not credited to us by the Buying Program Committee handling inter-refinery purchases."[9] On November 5, 1935, Poland wrote Nagle stating that he realized "that under this buying program, we can't always do what we want to."[10] On December 20, 1935, he wrote E. F. Underwood, the manager of wholesale sales, saying, "I realize we are probably committed to buy from certain people such as Ben Taxman at Chase and other refineries in Texas or Oklahoma in connection with the buying program."[11] Atkins, who received a copy of this letter, agreed that "we are committed to take a certain volume at Chase, Kansas, each month."[12]

In reporting Skelly's purchases Clara Gartman, its tank-car purchasing agent, almost invariably stated that "These purchases are to be credited to Skelly Oil Company on the inter-refinery buying agreement."[13]

Skelly's files also contained a number of letters showing that these "assignments" imposed some hardship on Skelly. The quality of the distress gasoline purchased was sometimes poor.[14] The independent refiners were lax at times about making deliveries.[15] And Skelly, like Phillips and Wadhams, had to modify existing purchase and exchange arrangements in order to make room for the distress gasoline.[16] On one occasion, at least, it abandoned purchases which netted it substantial freight savings.[17]

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[8] Govt. Ex. 98, R. 2701.

[9] Govt. Ex. 126, R. 2723.

[10] Govt. Ex. 99, R. 2701.

[11] Govt. Ex. 125, R. 2723.

[12] Govt. Ex 127, letter dated December 23, 1935, R. 2724.

[13] Govt. Exs. 112-117, R. 2713-5.

The record also shows, however, that Skelly felt that under the agreement it had the right to select the independent refiners from whom it would buy and to refuse to buy from any given refiner if it saw fit. The same letter[18] which stated that Skelly had refineries assigned to it contains the following language:

> "Does United [Laboratories] prescribe any particular set of specifications, by which we might be guided in buying our outside third grade gasoline? If they do, then, of course, we can scout the market and find out who, among the small refiners whose surplus is moved through the committee's activities, makes a product meeting such specifications, and then tell the committee that we will take our monthly 'allocation' from them instead of from Wilcox, or Taxman, or Panhandle, or some of the other jacklegs whose stuff won't pass muster."

Similarly, on November 20, 1935, Nagle wrote L. H. Poland, the manager of Skelly's retail stocks department, complaining about the quality of a shipment received from Waggoner Refining Company, and saying:

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[14] Govt. Exs. 99, 100, and 122. 124, R. 2701. 2702, and 2720. 2722.

[15] Govt. Ex. 121, R. 2719.

[16] Govt. Exs. 96 and 95, R. 2699

[17] Govt. Ex. 96, R. 2699.

[18] Govt. Ex. 124, R. 2722

> "If * * * these outside refiners ship off-specification material, about the only thing we can do is refuse to take any of their stuff when the Buying Program Committee tell us they have to move some, or to turn the refiner down completely when and if he has the nerve to call us up and solicit some business after such an instance."[19]

4. *The work of the Mechanical Sub-Committee between meetings of the Tank-Car Committee.*

The Mechanical Sub-Committee (composed of McDowell, Tuttle and Jacobi) kept in close touch both with the independent refiners and the major companies, asking the former questions as to the amount of distress gasoline they had, and furnishing the information so obtained to the latter.[1] Jacobi also kept in constant touch with Bourque over the telephone,[2] and reported to him all distress gasoline which came to his attention and which had not appeared in the surveys submitted to the monthly meetings but which turned up unexpectedly between meetings, and which he couldn't buy or dispose of himself.[3]

Between meetings of the Tank-Car Committee, the members of the sub-committee frequently called the purchasing companies to see if they could purchase new distress gasoline which had come to light unexpectedly or which could not be purchased by the company originally undertaking to purchase it.[4] McDowell described a typical conversation with a purchasing company as follows:

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[19] Govt. Ex. 100, R. 2702.

[1] Jacobi, R. 395; McDowell, R. 1206.

[2] Jacobi, R. 389.

[3] Jacobi, R. 399, 428-9.

[4] McDowell, R. 1206. See also Evans, R. 527; Jacobi, R. 395, 454-5.

> "* * * After arriving in my own mind as to who would be a most logical purchaser—and many times I was mistaken—I would call this company and say, 'Well, are you buying any gasoline? Do you need any more gasoline this week'?
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> "Maybe they would say yes, or maybe they would say no, or maybe they would say they didn't know. But, regardless of their answer, I would say, 'Well, so-and-so'—being an independent refiner—'has ten or fifteen or twenty cars of gasoline he would like to sell the balance of this month,' or whenever he needed to sell it, if I knew. And I would say, 'If you can fit this in with your needs, why, I know this fellow will appreciate it if you will get in contact with him.'
>
> "Sometimes the party to whom I was talking would say, 'Well, we do need some additional gasoline, and we will get in touch with this concern.' Other times, they would say, 'Well, I don't know; I will have to check it up with the fellows that are doing the buying.' I usually talked to men who weren't doing the actual, routine buying. On many occasions they would say, 'Well, I happen to know that we are not in the market at the present time for any more gasoline.' Then I would have to put in some more phone calls.'"[5]

When McDowell and Tuttle were out of town Jacobi had to keep in touch with the major companies which had been assigned to them[6] and ask them if they could take any of the distress gasoline which cropped up between surveys. In this he had the assistance of McDowell's substitute,

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[5] *Ibid.*

[6] Jacobi, R. 432; Evans, R. 526.

Fitzgerald,[7] a former defendant, dismissed at the close of the case.[8]

5. *Prices paid.*

(a) Efforts to assure payment of going market price.

It was one of the principal features of the original plan that, in making purchases of distress gasoline, the defendants would pay the going market price and would refrain from taking advantage of their knowledge of the necessities of the small independent refiners to beat down the price to the lowest possible level.[1] In his memorandum describing the meeting of February 11, 1935,[2] Sus of Sinclair stated that it was understood that a steering committee (the Mechanical Sub-Committee) was to "guide and control" the price to be paid independent refiners.

McDowell and Sus explained this latter feature of the plan as follows:

McDowell said:

> "Mr. Ashton gave further reasons why he thought the previous purchasing had not been helpful. He stated that he also felt that some of the major companies, at least, had allowed their field buyers to chisel on the sellers and take advantage of their economic distress because they needed to sell gasoline, which drove the market

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[7] Jacobi, R. 392-3, 445, 450, 451-2, 454. Jacobi also had a number of general conversations with representatives of the purchasing companies, Evans of Phillips (Jacobi, R. 393), Clara Gartman of Skelly (Jacobi, R. 392-3), Cramer of Continental (Jacobi, R. 432), Smith of Standard of Indiana (Jacobi, R. 391, 454), and Kennedy of Continental (Jacobi, R. 454).

[8] R. 2477.

[1] McDowel, R. 1183, 1184, 1188, 1194.

[2] Govt. Ex. 376, R. 2977.

down further under an already distressed price. He said he felt that the major companies should consider being willing to pay a fair going market price, rather than chiseling on the small refiners.[3]

* * * * *

"* * * Mr. Ashton covered the duties, as he saw them, again stating that the Sub-committee would be down there in the field close to the information that would arise from time to time; that it would be its duty to pass on information as to the availability of this distress gasoline to the buying companies; that when additional distress gasoline showed up, which had not been on the survey, the Sub-committee would try to find somebody who was interested in buying it; and that the Subcommittee in its contacts with the buying representatives in the field would urge that they pay a fair going market price in these transactions."[4]

Sus testified:

"This steering committee was also to keep itself informed as to the price at which gasoline was currently moving. They were to use such persuasion and such influence as lay at their command and to see to it that these major buying refiners did not take advantage of these smaller selling refiners, and, by reason of the economic distress of these smaller refiners, bid down the price to below the current levels at which gasoline was selling, because to do so would have defeated the very purpose of the meeting, which was to stabilize. This steering committee was to see to it that these major refiners played fair with these smaller refiners who were in economic distress, and didn't

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[3] McDowel, R. 1183.

[4] McDowell, R. 1199.

> chisel under the going market on the price at which they bought this gasoline. The only reference that was made at the meeting to the price to be paid was that they wanted these refiners who bought gasoline from these refiners who had distress gasoline to pay the going market price and not chisel.'"[6]

What actually happened when the program commenced operating was this:

During the first week of the program two of the independent refiners complained to Jacobi that major company buyers were trying to beat the sellers down below the fair going market price.[7] Jacobi felt that this might result in driving the market down because jobbers might hear of such prices through trade journal comment and hold off buying, while the independent refiners, on the other hand, would become discouraged and accept lower prices from jobbers.[8]

During this same week, Jacobi learned of some additional distress gasoline which had not appeared on the survey. He mentioned this to McDowell on March 14th, and the latter called a luncheon conference of the subcommittee at the Tulsa Club.[10] The principal subject of discussion was the additional distress gasoline. Suggestions were made as to various major companies which might be interested in it, and arrangements were made to get in touch with them.[11]

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[6] Sus. cross, R. 1870.

[7] Jacobi, R. 401-2; McDowell, R. 1203.

[8] Jacobi, R. 402.

[10] McDowell, R. 1202-3.

[11] McDowell, R. 1203.

Jacobi then reported the complaints of "chiseling" which he had received from the independent refiners, and the members of the sub-committee discussed the possibility that these practices might adversely affect the published quotations in the market journals.[12] McDowell thought that the purchasers had acted wrongly and that such attempts to chisel should be discouraged. He thought that where a specific instance like this was called to the sub-committee's attention they should use their influence to get the buyers to pay a fair market price. They had no authority to go further, and if the buyer really wanted to pay a lower price the seller would have to take care of himself.[13]

The members of the sub-committee also discussed the current state of the gasoline market. Being constantly in the market, they had a pretty good idea of what jobbers and consumers were paying on the spot market.[14] The sub-committee members exchanged their information, and decided that the going market price for regular gasoline was 4¾ cents, with 3¾ cents for third grade with a possibility that the market might go on to higher levels.[15]

Jacobi believed that he should "recommend" a fair going market price to the purchasing companies with which he was in contact.[16] Accordingly, he telephoned Tracey of Sinclair, Chamberlain of Pure, O'Shaughnessy of Globe, and Lakin of Shell, and told them that the smaller companies had reported attempts by major companies to beat the price down. He then told them of the conclusion the sub-committee had reached as to what would probably be the fair going market price during the next week, and recommended that the purchasing companies pay it.[17]

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[12] Jacobi, R. 401-7.

[13] McDowell, R. 1203.

[14] Jacobi, redirect, R. 501; McDowell, R. 1203.

[15] Jacobi, R. 409; McDowell, R. 1203-4. See Govt. Ex. 682, R. 3112; Jacobi, R. 469.

[16] Jacobi, R. 410.

Similar discussions of the market situation occurred at each of the five or seven meetings of the sub-committee between March 14 and June 1, 1935, and each time, when Jacobi called up Tracey, Chamberlain, and the Globe and Shell offices after the meeting, he told them that he was paying a certain price, or was going to do so next week, and recommended that they do the same if they could,[18] Tracey usually replied that he would see what he could do, or that he would have to check.[19] Chamberlain usually said that he would have to check with his superior (McElroy). He never indicated that he would pay the price.[20] O'Shaughnessy usually said, "Fine," or words to that effect.[21]

In his own mind, Jacobi certainly thought that he was recommending the payment of the fair going market price as determined by the sub-committee. For instance, in the weekly market letter which he sent A. G. Maguire and other superiors in Socony-Vacuum, on March 15th he wrote as follows:[22]

> "The writer has been busy this week on Tank Car Stabilization work, and thus far results are gratifying. Our Committee decided on a price of 3¾¢ for third grade, and 4¾¢ for 'Q' for next

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[17] Jacobi, R. 409, 410.

[18] Jacobi, R. 410, 413, 415, 431.

[19] Jacobi, R. 413.

[20] Jacobi, R. 413; cross, R. 490.

[21] Jacobi, R. 415.

[22] Govt. Ex. 682, R. 3112; Jacobi, R. 469. The "Q" mentioned in the letter refers to "Q gasoline", a synonym for regular gasoline (*Ibid.*)

week. Purchasing companies, including our own units, are paying these prices today."

In passing this price information along to the purchasing companies, however, he did not describe it as a recommendation of the sub-committee, but only as his own idea of what the fair market price was.[23] Nor did he ever follow up to see if the purchasing companies were in fact paying the prices he had recommended, for he understood that the price was to be worked out by the buyer and seller in each instance.[24] Once or twice he did ask Tracey, O'Shaughnessy, *et al.*, whether they were paying the recommended prices, but he did not know what the reply was.[25] Occasionally, too, he would learn from independent refiners the prices which the majors were paying. Sometimes these were the same as the prices he himself was paying; sometimes they were different[26]

Jacobi never knew whether the other members of the sub-committee were recommending prices or not.[27] Nor did he ever presume to recommend prices when McDowell and Tuttle were out of town and he had to contact the companies assigned to them.[28] He did not even know what prices they were paying for their own companies.[29]

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[23] Jacobi, R. 410.

[24] Jacobi, R. 410-1.

[25] Jacobi, R. 412.

[26] Jacobi, R. 410, 411.

[27] Jacobi, R. 412, 422.

[28] Jacobi, R. 431-2, 445, 450, 451; Evans, R. 526, 527.

[29] Jacobi, R. 420-1. Jacobi once asked McDowell whether Mid-Continent was paying what they had decided was the fair going market price. McDowell replied that in some instances he was paying it and in others he wasn't, depending upon the deal he could make with the selling refiner. *Ibid.*

McDowell, the other sub-committee member who testified, had taken a totally different view of the matter. He had shared Jacobi and Tuttle's view that 3¾ cents represented the fair going market price for gasoline on March 14th, but he had neither ordered, nor urged, nor recommended, nor suggested that any purchasing company pay that price.[30] Evans, of Barnsdall, who was contacted regularly by McDowell, and who was the only person so contacted to take the stand, testified that he had never received a price recommendation or suggestion from any member of the sub-committee.[31] If McDowell were asked, he would tell the purchasing companies what his own company was paying for gasoline.[32]

As a matter of fact, there were wide variations in the prices paid by different major companies purchasing on the same day. During the 67 business days when Jacobi was making price recommendations there were 55 days when more than one major company purchased on the same day. On 40 (or 72.7%) of those days they paid two or more different prices; on 9 they paid three or more different prices; and on one day they paid four different prices.[33]

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[30] McDowell, R. 1204.

[31] Evans, R. 527, 528, 529, 530.

[32] Evans, R. 529; McDowell, R. 1204. For instance, after the March 14 meeting, McDowell called Hughes with reference to the additional distress gasoline. Hughes didn't say definitely whether he would buy or not, but he did say that they had been having to buy quite a lot of gasoline, that the market looked strong, and that he was very optimistic. McDowell asked him what he had been paying and Hughes replied that he had been paying either 3⅞c. or 4c. In response to a similar question from Hughes, McDowell reported that his company had just made a purchase at 3¾c. (McDowell, R. 1204-5.)

The prices which Jacobi "recommended" were never higher than the prices he himself was paying,[34] and, as shown by Exhibit 712, the prices which Jacobi paid were never higher than the trade paper quotations.[35] In all but two cases, they were at or below the lowest quotations published by Platt's Oilgram; and on all but three occasions they were at or below the lowest quotations published by the Chicago Journal of Commerce.[36] An examination of Exhibit 1024 shows that those prices were also lower than the prices then being paid by jobbers and consumers on the spot market.[37]

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[33] Def. Exs. 874. R. 3457; 875. R. 3458; 876. R. 3459; 877. R. 3460; J. D. Miller, R. 1558-66.

[34] Jacobi, cross, R. 479.

[35] Def. Exs. 712 and 713. R. 3173 and 3177. At one point in his testimony, Jacobi seemed to think that the prices which he recommended were sometimes above the prices currently being paid by jobbers as reported in the trade journals at the time the Sub-Committee met. (Jacobi, R. 412, 417, 431.) The evidence described in the text and in footnote 37, *infra*, however, completely rebutted this inference.

[36] *Ibid.*

[37] Def. Ex. 1024. R. 3807. When he Sub-Committee met on March 14th the lowest quotations carried by the journals had, as noted, been 3¾c for the preceding three days. During the week of the 17th (when the "recommended" price was supposed to be in effect) the range of the quotations in Platt's Oilgram and the Chicago Journal of Commerce rose to 3⅞-4c and 3⅞-4⅛c respectively and later in the week to 4-4⅛c. During the week of the 10th, jobbers and consumers had paid as low as 3⅝c and as high as 4⅛c for third grade gasoline, with a number of sales taking place at 3¾c and 3⅞c. During the week of the 17th, the bulk of the sales took place at 3⅞c, with several at 4c and 4⅛c. On only one occasion during this week did a jobber or consumer pay as low as 3¾c for third grade gasoline. In regard to the recommendation

Jacobi discontinued the practice of "recommending a prevailing market price for gasoline on June 1, 1935. The only exception occurred in January, 1936.[39] On Ja uary 9 the price of crude oil had advanced from $1.0 per barrel to $1.15 in East Texas and $1.10 in the Mid Continent.[40] Since the price of crude oil is one elemen fixing the price of gasoline, such advances are usuall accompanied by a rise in the tank-car market,[41] the latte usually rising about ¼ cent for each 5 cents advanc in crude oil.[42] The crude advance caused quite a littl excitement and comment in the industry. A number of independent refiners began asking half a cent more for their gasoline., Jacobi called McDowell and Tuttle, who told him that their companies were raising the price on the gasoline which they sold on the spot market. His own company also inquired about the market, and on January 13 he raised the price he was paying by ½ cent. Without further consultation, Jacobi then called the four companies which he usually kept posted, and told them that the refiners were asking for an additional ½ cent— that he personally was going to pay it and that he hoped they would too.[43]

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that the defendants pay a price of 4¾c for regular, it appears that at the time this recommendation was adopted it was the average of the highest and lowest quotations for this grade of gasoline and that during the preceding month, jobbers had been making many purchases at this price and at prices ⅛ to ¼c higher. During the week of the 17th only one purchase was made by jobbers and consumers at 4¾c, but there were several purchases made at higher prices. (*Ibid.*)

[38] Jacobi, R. 413, 416.

[39] Jacoib, R. 411.

[40] Jacobi R. 487-8.

[41] Jacobi, cross, R. 487-8.

[42] *Ibid.*

[43] Jacobi, R. 59; cross, R. 488.

(b) **The prices actually paid.**

Both the Government and the respondents introduced tabulations which showed that from 85 to 90 per cent of the major company purchases from independent refiners had been made at prices which were *at or below* the low quotations in the market journals.

The Government's tabulations[45] dealt with 9,204 tank-cars which the defendant companies, excluding Sinclair, had purchased on a flat price basis from independent refiners in the Mid-Continent field between March 1, 1935 and April 30, 1936. The respondents' tabulations[46] were slightly different inasmuch as they included purchases by Sinclair, excluded sales by defendants who had already been dismissed, and either eliminated or reclassified[47] sales which the Government had either omitted or improperly classified. This reduced the total number of tank-cars involved from 9,204 to 6,920-2/3. Nevertheless, as the following table shows, the results were very similar to those reached by the Government.

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[45] Govt. Exs. 750, R. 3276; and 751, R. 3278.

[46] Def. Exs. 1025, R. 3809; 1026, R. 3810. The purchases during 1935 were also introduced in chart forms as Exhibit 1024, R. 3807. Prior to the introduction of these exhibits the Defense had introduced a number of studies of the prices paid by individual companies, as follows: Socony-Vacuum (Def. Exs. 712, R. 3173; 713, R. 3177); Pure Oil (Def. Exs. 741, R 3237; 741-A, R. 3263; 856, R. 3413; 857, R. 3417; 858, R. 3421; Wescoat, R. 1139-43); Mid-Continent (Def. Exs. 869, R. 3437; 870, R. 3443; 871, R. 3447; 872, R. 3451; 873, R. 3455; J. D. Miller, R. 1550-59); Shell (Def. Exs. 889, R. 3481; J. D. Miller, R. 1573-9); Globe (Def. Exs. 998-1003 inclusive, R. 3756-68; J. D. Miller, R. 1609-10). It had also introduced a study of the *sales* made by the Danciger Oil & Refining Company to major companies (Def. Ex. 868, R. 3433; J. D. Miller, R. 1539-46). Since the results of these studies merely verify the conclusions reached above, they need not be discussed in detail.

[47] J. D. Miller, R. 1593-1610, 1650-51.

Price Group	Government's Study Tank-Cars	%	Respondent's Study Tank-Cars	%
Above the lowest quotations in Platt's Oilgram	745	8.09	516	7.5
Above the lowest quotations in Chicago Journal of Commerce	984	10.7	992	14.3
At the lowest quotations in Platt's Oilgram	6407	69.64	4491-2/3	64.9
At the lowest quotations in Chicago Journal of Commerce	6564	71.31	4419-2/3	63.9
Below the lowest quotations in Platt's Oilgram	2052	22.27	1912-2/3	27.6
Below the lowest quotations in Chicago Journal of Commerce	1656	17.99	1508-2/3	21.8
Total	9204	100.00	6920-2/3	100.00

The respondents' study also showed that only 48 tank-cars or 0.7 per cent of the total had been purchased above the high quotations in the Journal, and that only 55 or 0.8 per cent of the total had been purchased above the high quotations in the Oilgram.[49] During the price rise in March, April and May, 1935, there were only ten purchases of third grade gasoline above the low of either journal, and only five above the low of both. On the other hand, there were 107 purchases below the low quotations of both journals.[50] During the entire year

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[49] Def. Exs. 1025-6, R. 3809, 3810. The Government's tabulations showed that only 228 or about 2.47 per cent of the 9,204 cars treated therein had been purchased at more than an eighth of a cent above the low quotations of the Journal (Govt. Ex. 751, R. 3278), and that only 202 cars or 2.2 per cent had been purchased at more than an eighth of a cent above the low quotations in the Oilgram (Govt. Ex. 750, R. 3276). An eighth of a cent represents the usual spread between the low and the high quotations on both publications (Def. Exs. 712, R. 3173; and 713, R. 3177).

[50] Def. Ex. 1024, R. 3807.

1935 the majors made only ten purchases of third grade gasoline at prices above the high quotations in the trade journals. Four of these occurred before the Mid-Continent buying program started.[51] The percentage of purchases at prices *below* the low quotations was higher during March, April, and May, when the price rise occurred, than during the indictment period as a whole. The percentages of purchases *above* the low quotations was lower during the price rise than during the period as a whole.[52]

There were no purchases of regular gasoline at prices above the high quotations in 1935. During most of the days of that year the majors made no purchases of regular gasoline whatever.[53] The respondents, however, went further than this, and proved that *the prices reported in the market journals, which, as we have just seen, were generally higher than the prices paid by the defendants, were in fact competitive prices, established by open bargaining between independent refiners and jobbers and consumers purchasing on the open spot tank-car market.*

To do this the respondents made an audit of the sales records of the independent refiners themselves. The audit in question[54] was embodied in Defendants' Exhibit 1024.

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[51] J. D. Miller, R. 1669.

[52] J. D. Miller, R. 1663-4.

[53] Def. Ex. 1024, R. 3807; J. D. Miller, R. 1662, 1669.

[54] Here again the Defense offered two preliminary studies before completing its final proof: (1) Flat prices paid to Danciger Refineries, Inc. by jobbers and consumers, November 1, 1934-December 31, 1935 Def. Ex. 868, R. 3433; J. D. Miller, R. 1540-46; and (2) flat prices paid to Deep Rock by jobbers and consumers, 1935 (Def. Ex. 890, R. 3485; J. D. Miller, R. 1587-90). Inas-

It reflected nearly a year's work,[55] in the course of which the respondents' auditors had examined the records of (1) all of the independent Mid-Continent refiners named in Paragraph 22 of the Indictment; (2) two other Mid-Continent refiners and a broker; (3) all the East Texas refiners named in Paragraph 20 of the Indictment insofar as they had sold gasoline on a "Group 3" freight basis and insofar as their records were available; (4) Deep Rock, Mid-Continent and Continental, the only majors which made spot sales on a "Group 3" basis.[56]

This study showed that the market journal quotations reflected accurately the range of prices in sales to jobbers on the open spot tank-car market at the prices indicated by the quotations in the trade journals. Eight per cent of the jobber purchases of third grade gasoline were

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much as these studies were consolidated in the Master Study described below, they need not be discussed in detail.

The Government attempted to discredit the Danciger study on the ground that certain of the sales of third grade gasoline which appeared to have been made at prices above the low quotations in the trade journals were really "62/65 octane gasoline" on which it is customary to charge an eighth of a cent premium. (W. J. Miller, R. 1845-6, redirect, 1854; Edwards, R. 1859.) In other cases Danciger had to pay a ¼¢ rebate to a competing jobber in whose "territory" the gasoline was sold. (W. J. Miller, R. 1846.) In still other cases, it appeared the gasoline had been sold in compartment cars for which Danciger customarily charged an undisclosed premium. (*Ibid.*) On cross examination, however, the Government's witnesses admitted that, except in two instances, even the so-called "62/65 octane gasoline" was really 62 octane gasoline and so had been properly treated as third grade gasoline. (W. J. Miller, cross, R. 1850, 1852; redirect, R. 1853-4; Edwards, cross, R. 1859.) It was also brought out that in cases where a rebate was paid, the purchaser still had to pay the full price reflected by the chart. (W. J. Miller, R. 1853.)

[55] J. D. Miller, R. 1655.

[56] J. D Miller, R. 1652-4.

above the high quotations. Ten per cent were at the high quotations. Seven per cent were between the high and the low quotations. Only 16 per cent were below the low quotations.[57] Major companies had made only about one per cent of their purchases above the high quotations, and from 21 to 28 per cent below the low.[58]

The study revealed similar results in the case of regular gasoline.[59]

In almost every case where the majors paid a new price for gasoline it appeared that jobbers and consumers had already been paying that price for some time past. Exhibit 1024 (which, as stated above, did not include all sales to jobbers and consumers) revealed only two days during the entire year 1935 when this was not true. Even on those two days, the major purchases clearly did not affect the quotations in the trade journals.[60]

6. *Amounts purchased.*

In 1935, the 14 independent Mid-Continent refiners named in the indictment sold 377,988,736 gallons of gasoline.[1] The respondents purchased only 56,208,712 gallons or a little over 14.9 per cent of the total output of such independent refiners in 1935.[2]

The percentage is reduced if 15 other independent refiners not named in the indictment are also considered. The 29 refiners sold in 1935, 903,296,529 gallons, of which the respondents bought 94,460,164 gallons or about 10.5 per cent.[8]

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[57] J. D. Miller, R. 1665.

[58] J. D. Miller, R. 1665-6.

[59] J. D. Miller, R. 1665.

[60] J. D. Miller, R. 1666-8.

[1] J. D. Miller, R. 1645.

[2] J. D. Miller, R. 1646, 1649. Purchases by the former defendants, Standard of Indiana and Barnsdall (amounting to some 8,232,000 gallons) have been eliminated. See Def. Ex. 984, R. 3723; Evans, R. 523-5.

7. *Amounts manufactured by the independent refiners.*

The indictment charges that in furtherance of the conspiracy the independent refiners, at the instance of Arnott, McDowell, Tuttle, Boggs and Bourque, curtailed their production of gasoline.[1]

Under the Code, of course, the independent refiners' operations were restricted, not by the respondents, but by Refinery Control sections of the Code.[2] After the *Schechter* decision, the Western Petroleum Refiners' Association collected certain statistical information from its members,[3] and on the basis thereof recommended schedules of maximum production to them.[4]

There was, however, no evidence to show that any of the respondents or that any other major company or agent thereof had anything to do with such recommendations or that such recommendations were connected in any way with the buying program. The individual who signed the recommendations, C. M. Boggs, was made a defendant under the indictment but the trial court dismissed the indictment as to him at the end of the case.[5]

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[8] J. D. Miller, R. 1645, 1649. Purchase by the former defendants, Standard of Indiana and Barnsdall, amounting to some 8,272,000 gallons, have been eliminated. See note 2, *supra.*

[1] Indictment, paragraph 23, R. 15.

[2] See pp. 45-7, *supra.*

[3] Govt. Exs. 757-65, R. 3285; 788-808, R. 3294-3301.

[4] Govt. Exs. 767-87, R. 3286-93.

Moreover, the fact was that the production of the Mid-Continent independent refiners named in the indictment (except Taxman Refining Company whose figures were not available) ran as follows during 1934, 1935 and 1936:[6]

Year	Gallons Produced	% Increase over Previous Year
1934	295,154,204	
1935	356,862,132	About 21%
1936	397,780,076	About 11.5%

Taking into account ten other Mid-Continent independent refiners, not named in the indictment, the corresponding figures would be as follows:[7]

Year	Gallons Produced	% Increase over Previous Year
1934	659,933,992	
1935	774,350,817	About 17%
1936	868,156,624	About 12%

It thus appears that the refiners named in the indictment as co-conspirators increased their production even more than those not named in the indictment.[8] It also appears from Defense Exhibit 947,[9] which shows the gasoline consumption in the Mid-Western area from 1930 to 1936, that the consumption in that area in 1935 was only 6.99% more than in 1934, and that in 1936 it was only 10.58% more than that in 1935. Thus the increase in the Mid-Continent refiners' operations was greater than the increase in consumption in the market where they usually sell their product.[10]

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[5] R. 2477.

[6] J. D. Miller, R. 1617-8.

[7] J. D. Miller, R. 1618.

[8] J. D. Miller, R. 1619.

[9] R. 3639. See also Def. Ex. 726, R. 3189.

G. Continuation of buying after the Schechter decision.

From the time of its appointment in January until May 27, 1935, the Tank-Car Stabilization Committee operated as a sub-committee of the General Stabilization Committee which the respondent Arnott had appointed as a result of Secretary Ickes' letter of July 20, 1934.[1] Arnott felt that the major companies were participating in the program as the result of a "recommendation" from him.[2] The members of the Mechanical Sub-Committee were reimbursed for their telephone calls and other expenses by the Planning and Coordination Committee in Washington.[3]

On May 27, 1935, however, the Supreme Court invalidated the Code provisions of the N. I. R. A. in the case of *Schechter Poultry Corp.* v. *United States.*[4]

On May 28, Chairman Fahy of the Petroleum Administrative Board stated that the industry had registered large gains during the adoption of the Code and that "as much of the gain as possible should be maintained by voluntary action until there is new legislation."[5] After a White House conference the same day, Donald Richberg, the National Recovery Administrator, issued a similar plea to industry in general. He stated that it would be most harmful to the general welfare if unfair competitive practices were to be revived and if fair standards of treatment for labor were to be disregarded. He hoped that all employers would cooperate in maintaining code standards of fair competition and labor relations.[6] On the 30th, President Roosevelt expressed the hope that industry would adhere to the codes voluntarily, but feared that "chiselers" might drive honest business to the point where it would have to cut wages and lengthen hours in order to survive.[7] During this period the President also pointed out that, with the invalidation of the N. I. R. A., the anti-trust laws were in full force and effect. Again, however, he stated that those laws did not forbid all cooperative action, and expressed the hope that industry might solve its difficulties through voluntary codes.[8] These statements were published in newspapers throughout the country, and became matters of general information for the oil industry.[9]

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[1] Frey, R. 1266.

[2] Arnott, cross, R. 1755-6.

[3] Jacobi, R. 463, cross, R. 472; McDowell, R. 1213; Def. Exs. 708, R. 3138; 903, R. 3505.

[4] 295 U. S. 495. Arnott, R. 1706.

On June 2, 1935, the Board of Directors of the American Petroleum Institute appointed a committee under Arnott to prepare a proposed marketing code for submission to the Federal Trade Commission,[10] and Arnott called an industry meeting at the Blackstone Hotel in Chicago for June 6 and 7, 1935. It was attended by substantially the same people who had attended the General Stabilization Meetings under the Code. Arnott spoke on the effect of the *Schechter* decision, and said that he had talked to a number of industry leaders, to the Planning and Coordination Committee, and to the Code authorities in Washington. They were all of the opinion that the industry should "carry on"—that even though the Code had been knocked out, they should attempt to hold the advantages gained and to carry on voluntarily the constructive activities they had learned under the Code. There were several references to the statements made by Fahy, Richberg, and President Roosevelt as indicating that official Washington favored such a course.[11]

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[5] Def. Ex. 900. R. 3499, 3500.

[6] Def. Ex. 899, R. 3497.

[7] Def. Ex. 901, R. 3503.

[8] Govt. Ex. 904, R. 3507.

[9] McDowell, R. 1209.

[10] Arnott, R. 1707.

The regular monthly meeting of the Tank-Car Stabilization Committee was held immediately after Arnott's meeting. All the members, except Bullock, attended. Every member had attended Arnott's meeting. The discussion revealed a general feeling that the committee's activities were proper and constructive. Healthy business conditions had compelled the individual companies to keep on buying regardless of the *Schechter* decision, and they all said that they would like to continue to get the information contained in the monthly surveys. It was decided to continue to request this information from Bourque and to hold meetings whenever convenient.[12]

McDowell reported to Arnott that in view of the expressed attitude of the Government officials and leaders of industry, the Tank-Car Committee was going to continue to operate on a voluntary basis. Arnott agreed that this was a fine thing to do.[13]

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[11] McDowell, R. 1208-9; Arnott, R. 1706.

[12] McDowell, R. 1211-2.

The Tank-Car Committee continued to meet each month through February, 1936.[14] The procedure followed at these meetings was essentially the same as at the earlier meetings.[15]

Gradually, as the contacts between buyer and seller became well established, the program worked almost automatically. Toward the end it was difficult to get the members to attend. McDowell, himself, attended only three of the meetings after June, 1935.[16] The last meeting, on February 27, 1936, was very informal, being attended only by Ashton, Bourque, Jacobi and a few others.[17] As a result of discussion at this meeting among Jacobi, McDowell and Tuttle, it was decided to discontinue the monthly meetings and to give out the necessary information over the telephone. During March and April, 1936, Jacobi called Globe, Shell, Pure and Sinclair and suggested that, if possible, they should continue to buy from the companies from which they had been buying in the past. Jacobi did not know whether McDowell and Tuttle had made similar calls.[18]

The Sub-Committee continued to meet at irregular intervals until December, 1935.[19] Here, too, there was difficulty in assembling a quorum because the members were frequently out of town.[20] No meetings were held after December, 1935; thereafter the Committee carried on the work by telephone.[21]

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[13] McDowell, R. 1212; Arnott, R. 1707.

[14] Jacobi, R. 400.

[15] McDowell, R. 1208.

[16] McDowell, R. 1207-8.

[17] Jacobi, R. 400.

[18] Jacobi, R. 468.

[19] McDowell, R. 1205-6.

When Jacobi appeared before the Grand Jury at Madison on May 19, 1936, he abandoned all activities in connection with the program.[22]

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[20] Jacobi, R. 431; McDowell, R. 1205.

[21] Jacobi, R. 396; McDowell, R. 1206.

[22] Jacobi, R. 396, 400.

V.

Purchasing Activities in East Texas.

A. The organization of the East Texas Refiners' Marketing Association.

The indictment charges in Paragraph 20 that the East Texas Refiners' Marketing Association "was formed in February, 1935, with the knowledge and approval of some of the defendants, for the purpose of facilitating the sale of gasoline to defendant major oil companies." The evidence bearing on this charge is as follows:

Throughout the Code period, the independent refiners in East Texas had been one of the most demoralizing factors in the industry. They had ignored the state and federal conservation laws, exceeded their refinery allocations under the Code, and sold their products below cost.[1]

The establishment of the first Tender Board in October, 1934, curtailed the activities of these refiners for a time,[2] but they were attacking the Board's authority in the so-called "*Panama* case,"[3] and on January 7, 1935, this Court decided that case in their favor, holding section 9(c) of the N. I. R. A. unconstitutional.[4]

On December 10, 1934, however, the Texas legislature passed a law, modeled on the Federal Tender Regulations, which forbade carriers to receive or transport gasoline unless it were accompanied by tenders from the State

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[1] Arnott, R. 1709, 1716, 1717.

[2] Lanzer, cross, R. 258.

[3] Van Covern, R. 1510.

[4] 293 U. S. 388.

Railroad Commission.[5] F. W. Fischer, the attorney for the Panama Company and for a number of other hot oil refiners, decided that, whether he won or lost the *Panama* case, the new state statute would be held valid. When that happened, his clients would be unable to ship their excess gasoline.[6] Sometime in January,[7] therefore, he called them together and advised them that they had better prepare to obey the law and use legal crude oil.[8]

Fischer's announcement was a blow to the refiners. As long as they had operated on cheap hot oil, they had been able to compete for business all over the middle west.[9] If they had to use legal crude and pay a dollar a barrel for it, their costs would be trebled or quadrupled. Since the Mid-Continent refiners were much nearer the market, they would also have to compete against a freight differential of about a sixth of a cent per gallon.[10] They were already supplying the jobbers and dealers of Texas with all the gasoline they could use and could not expect to sell them any more.[11] They immediately asked Fischer where they were going to find a market for their gasoline.[12]

Fischer had in mind the formation of a central sales organization similar to that involved in *Appalachian Coals, Inc. v. United States*[13] which the refiners could use to distribute their surplus gasoline. They would continue to sell as much gasoline as possible directly to their own customers, and turn the rest over to the sales agency.[14]

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[5] Fischer, R. 1117.

[6] Fischer, R. 1118-19.

[7] Cline, R. 668.

[8] Fischer, R. 1119.

[9] Shatford, R. 1001-2; Arnott, R. 1710.

[10] Beroth, R. 184; Cline R. 643.

[11] Cline, R. 643.

[12] Fischer, R. 1119.

[13] 288 U. S. 344 (1933).

Fischer's opinion as to the validity of the state Tender Law was sustained by the courts.[15] During the next month or so about sixty East Texas refiners went out of business.[16] A number of the survivors decided to adopt Fischer's idea. With his assistance, they commenced the organization of the "East Texas Refiners' Marketing Association," to dispose of their surplus gasoline.[17] At a meeting in Gladewater, they appointed a committee under M. Travis of the Southport Petroleum Company to develop their plans more fully.[18] The testimony of Travis that "none of these defendant major oil companies had anything to do with the formation of the East Texas Refiners' Association, absolutely nothing whatever,"[19] was undisputed.

The Association's first problem was to find customers. The refiners had little choice in the matter. They already had the Texas market saturated with gasoline,[20] and they could not ship northward on account of the freight differential.[21] Their only alternatives were to dump their gasoline on the market on a distress basis or to sell it to major companies who might buy for shipment to the eastern seaboard.[22] Sinclair, Gulf, Cities Service Export and possibly Sun were already purchasing in East Texas.[23] The Travis committee was directed to find a man who could contact these companies and others, and persuade them to buy more and to buy it through the Association.[24]

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[14] Fischer, R. 1119-20.

[15] Fischer, R. 1118.

[16] Bradshaw, cross, R. 706-7; Van Covern, R. 1511-2.

[17] Fischer, R. 1119; Travis, R. 1127-8.

[18] Travis, R. 1127.

[19] Travis, R. 1128. It will be recalled that Arnott had never heard of the Association until Buckley told him about it on February 11. See p. 152, *infra.*

[20] Cline, R. 643.

[21] Beroth, R. 184; Cline, R. 644.

B. The engagement of Buckley to represent the Association.

Travis suggested the name of Neil Buckley, a buyer for Cities Service Export Corporation in Tulsa, whom he had known for five years and in whom he had a great deal of confidence. The committee decided to approach him on the subject.[1]

Late in the afternoon of January 29, 1935, Travis and H. B. May (who later became the president of the Association)[2] telephoned Buckley and told him about their plans. They said that they were going to cooperate with the state and federal authorities in eliminating hot oil; that they were going to establish recognized standards for their products;[3] and that they wanted him to come down and see what they were doing, and, if he felt they were sincere, to go out and help them.[4] Buckley told them that they would have to see his superiors.[5]

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[22] Travis, cross, R. 1129-30.
[23] Travis, R. 1131.
[24] Travis, R. 1127.
[1] Travis, R. 1127, 1128.
[2] Cline, R. 624.
[3] Buckley, R. 566-7.
[4] Buckley, R. 567-8; Travis, R. 1129.
[5] Buckley, R. 568.

There had been a number of reports about the suggested formation of an association[6] and Buckley had just dictated a letter[7] to his superior, H. E. Brandli, setting out what he had heard about the proposed "central sales agency."

After receiving the telephone call from May and Travis, he added the following postscript:

> "P. S.
> Learned today that some of the members of the proposed organization discussed among themselves the possibility of obtaining cooperation from some of the Major Companies and furnishing an experienced man to operate the proposed agency for a period of six months or more. Their idea was to borrow the services of such an individual. We were asked whether we would consent to consider such a task were it offered to us, and replied that any overture along this line would have to be made to the Officials of the company. You will recall that Mr. Bennett[8] had such an idea last May or June."

Either late that night or early the next morning, Travis called Buckley again saying that they did not know his superiors, and asking if he would take the matter up with them himself. The next morning Buckley called Brandli in New York, and told him about his conversations with the refiners.[9]

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[6] Buckley, R. 567, 568.

[7] Govt. Ex. 14, R. 2615.

[8] This is apparently a reference to Howard Bennette, the late president of the Western Petroleum Refiners' Association, who had played a prominent part in the Government-sponsored buying programs in 1934. (Gray, R. 1828, Shatford, cross, R. 1078, Shatford, offer, R. 1048.)

[9] Buckley, R. 568-9.

Brandli referred the matter to F. R. Coates, who was a vice-president of Cities Service Export and a member of the Planning and Coordination Committee in Washington.[10] Coates in turn sought the advice of J. D. Collett, the chairman of the Planning and Coordination Committee and of Dr. E. R. Lederer, the District Allocator who administered the refinery control sections of the Code in East Texas.[11]

Apparently the advice was favorable for on February 1st, Brandli wired Buckley as follows:[12]

> "Arnott away vacation. Coates discussed matter with Jim Collett and Dr. Lederer, both Washington, and both agree excellent idea. They believe majors will cooperate. Believe you appreciate undertaking no small job and will require endless amount work to keep all these Texas refiners in line. You have the confidence of all here and believe you can put it over so go to it. Best wishes for your success."

The next day, Buckley replied by letter saying:[13]

> "Under present plans will be in East Texas on Monday. The group of the larger Refiners who are proposing a Central Marketing Agency expect to have a meeting either Monday evening or Tuesday.
>
> "Will communicate with you by Telegraph some-

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[10] Franklin, R. 947, 948.

[11] Collett, R. 1802; See Buckley, R. 618.

[12] Govt. Ex. 36, R. 2635; Buckley, R. 569-70.

[13] Govt. Ex. 15, R. 2617; Buckley, R. 569. On the same day, Buckley wrote Brandli another letter (Govt. Ex. 16, R. 2617) in which he expressed grave doubts as to the success of the Association on account of unsettled conditions in the East Texas field (Buckley, R. 569).

> time during Monday, advising you a telegraphic address for Tuesday morning.
>
> "Because of the uncertainty of the outcome of the legal entanglement which now surrounds the East Texas plants, it is not possible at this time to pass along any comment on the proposed venture. Will let you have complete information just as early in the week as any news is available."

Buckley arrived in the East Texas field about noon on the 4th, and went to Gladewater, where he talked to several of the refiners. That evening there was a meeting of prominent East Texas refiners at May's house in Overton to complete the formation of the Association. Buckley left before the meeting had started, but he talked to several more refiners in an effort to determine whether he wanted to have anything to do with the Association. It appeared that they wanted him to go to the major companies immediately, and he took the 8:30 train to Houston.[14]

C. Buckley's attempts to find purchasers for East Texas gasoline, February 4-11, 1935.

The next morning Buckley called on O. H. Carlisle, the district sales manager of Gulf,[1] and upon a man in the marketing department of the Texas Company.[2]

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[14] Buckley, R. 570-71, cross, R. 616-7.

[1] Buckley, R. 571-2.

[2] Buckley, R. 571. While in Houston, Buckley also called upon Ben Brown of the Humble Oil & Refining Company (Buckley, R. 571), and Mr. Irwin of the American Petroleum Company (Buckley, cross; R. 617). He also talked on the telephone with Mr. Legge of the Magnolia Petroleum Company (Buckley, cross, R. 618). The record contains no information about these conversations except an intimation that Brown had something to do with the East Texas refiners' decision to send Buckley to the East Coast (Buckley, R. 573).

He explained the situation to each of those gentlemen, stressing the desire of the East Texas refiners to cooperate with the state and federal regulatory bodies and to deal on a legitimate basis, and asked them if their companies would consider doing business through the Association. Carlisle told him that, in view of his past experience with East Texas refiners, he wouldn't think of doing so. The Texas Company man told him that he had no authority to discuss the subject.[3]

On the evening of the 5th, Buckley returned to Dallas, and reported to May, Travis, and two other members of the Association. He told them that he wasn't making much headway, and that they ought to get someone else for the job. The refiners, however, persuaded him to go to the eastern seaboard[4] and promised to pay his traveling expenses and telephone bills.[5] They also located Dr. Lederer, the District Allocator for East Texas, in Pittsburgh, and asked Buckley to get in touch with him.[6]

Buckley took the night plane out of Dallas and arrived at Pittsburgh late the following night. On the 7th, he attempted unsuccessfully to see W. V. Hartmann, the vice-president of Gulf. One of Hartmann's assistants told him that it would be useless to see anyone in the Gulf organization, so he merely left his name and address and the address of the Association.[7]

While in Pittsburgh, however, he saw Dr. Lederer, the District Allocator, and explained the situation to him.

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[3] Buckley, R. 572.
[4] Buckley, R. 573; cross, R. 618.
[5] Buckley, R. 578-9.
[6] Buckley, cross, R. 618.
[7] Buckley, R. 573.

Lederer told him that the only man who could help him was Arnott, the Chief Stabilizer under the Planning and Coordination Committee.[8] Since Buckley had never met Arnott, Lederer called him on the telephone.[9] After saying that Arnott had always seemed interested in stabilization activities on behalf of the independent refiners, Lederer stated that he would like to have him meet Buckley who had something very interesting and important to lay before him. He said that he had talked to J. D. Collett, the Chairman of the Planning and Coordination Committee, and that the latter joined in his request.[10]

At first, Arnott demurred on the ground that he needed a rest, but Lederer insisted that the matter was urgent.[11] Finally he introduced Buckley over the telephone and Arnott agreed to see him on February 11th.[12]

Buckley left Pittsburgh that night and went on to New York, where he saw H. D. Frueauff the vice-president of various Cities Service companies, and his own superior, Brandli.[13] Frueauff told him that Cities Service itself did not buy gasoline, but that Buckley could go to its subsidiaries, Cities Service Export and Louisiana Oil Company, and if they were interested, they could do what they chose. Brandli told Buckley that the Export Company might be interested in buying for its own needs.[14]

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[8] Buckley, cross, R. 618.

[9] *Ibid.* Arnott thought that this conversation occurred two days later when Buckley was in Washington (Arnott, R. 1708).

[10] Arnott, R. 1708.

[11] *Ibid.*

[12] *Ibid;* Buckley, cross, R. 618.

[13] Buckley, R. 592, 594-5.

[14] Buckley, R. 592, 594-5.

On February 13, he gave the East Texas Association its first order.[15]

The next day Buckley went to Washington. After spending the late afternoon in that city, he went on to Pinehurst, North Carolina to see Arnott.[16]

D. Arnott's attempts to help Buckley, February 11-March 20, 1935.

1. *The February 11 conference at Pinehurst.*

Buckley arrived in Pinehurst on February 11th, and told Arnott about his efforts on behalf of the East Texas Refiners Association. He said that he was rather discouraged, having found that the major companies had very little confidence in the sincerity of the refiners, and that Dr. Lederer had suggested coming to Arnott for advice and assistance. He assured Arnott that he had analyzed the situation with care; that he really felt that the refiners were sincere; and that they had everything to gain by cooperating with the industry and the Petroleum Administrative Board. In conclusion, he asked Arnott if he would help get the major companies to buy East Texas gasoline.[1]

Arnott had never heard of the Association before.[2] He told Buckley that he was very interested, but that the industry had found the East Texas refiners one of the most demoralizing factors with which they had to contend. He questioned Buckley as to why he thought they were going to reform, pointing out that there had been a number of unsuccessful attempts to make them observe the Code, and that he would have to overcome the industry's prejudices and doubts on this score.[3] Finally said he wanted an opportunity to investigate and to think the matter over further, and that he would communicate with Buckley when he returned from his vacation.[4]

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[15] Def. Ex. 716, R. 3183; Cline, R. 632.

[16] Buckley, R. 574.

[1] Buckley, R. 574; cross, R. 618-19; Arnott, R. 1708-9.

[2] Arnott, R. 1709.

2. *The February 25 meeting at Chicago.*

When Buckley had returned to Tulsa, Arnott telephoned him, saying that he was holding a meeting in the Blackstone Hotel in Chicago on February 25 to discuss Texas stabilization matters, and that if Buckley wanted to attend the meeting with a few East Texas refiners, and discuss their plans, he could do so.[5]

On February 25, Buckley arrived in Chicago with May and M. Grogan of the Association.[6] He went to the Blackstone alone.[7] There he found Arnott, together with representatives of Gulf, Magnolia, Texas and Sinclair, and A. P. Dyer, the Chairman of the Code Marketing Committee for Texas.[8] Arnott told Buckley that the first part of the meeting would be devoted to Texas marketing matters, but that he should remain on call: Later, he explained Buckley's presence to the meeting, and invited him in to speak. Buckley described the plans of the East Texas refiners in much the same terms he had used at Pinehurst, adding that Arnott had raised many questions, and that he hoped that he could satisfy them as to the sincerity of the East Texas Association and its members.[9]

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[3] *Ibid.*

[4] Buckley, R. 574; Arnott, R. 1710.

[5] Buckley, R. 575; Arnott, R. 1710.

[6] Buckley, R. 575.

[7] Buckley, R. 581.

[8] Buckley, R. 575-7; Arnott, R. 1711. None of the individual defendants attended except Arnott. (*Ibid.*) McDowell dropped in for a half hour or so, but did not see or hear Buckley (McDowell, R. 1192).

There were very few questions during Buckley's speech, and there was very little discussion after he had left. Those present had suffered severely from the activities of the East Texas refiners, and they were almost unanimous in declaring that they had no confidence in their purported reformation. After Buckley had left, the meeting went on as before.[10]

Later in the day Arnott saw Buckley again and the latter told him that May and Grogan were in town and wanted to see him personally. Arnott saw them the next day, the conversation being more or less a repetition of what Buckley had already said. The refiners were obviously worried because they knew how the industry felt toward them, and they pleaded with Arnott to assist Buckley.[11] Arnott told Buckley that he might get in touch with him later.[12]

3. *The March 6 meeting in New York.*

On March 1, Arnott wired a small group of major company representatives, inviting them to attend a meeting at the Waldorf-Astoria Hotel in New York on March 6 "to hear outcome my meeting with East Texas refiners and to consider future action surplus gasoline this and other groups that is awaiting our decision.'"[13] Among those who attended were representatives of Socony-Vacuum, Gulf, Pure, Sinclair,[14] and probably Sun, Shell, Atlantic, Richfield, American Oil, Pan-American, Cities Service and Texas.[15]

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[9] Buckley, R. 576; Arnott, R. 1710-1.

[10] Arnott, R. 1711.

[11] Arnott, R. 1711-2.

[12] Arnott, R. 1712. Upon returning to East Texas Buckley had an interview with Fischer (Buckley, R. 577; Fischer, R. 1120).

These companies were all particularly active on the East Coast[16] and buyers and users of East Texas gasoline. Companies whose interests lay primarily in the Middle-West were not invited[17] because East Texas gasoline never appeared in the Middle-West except under unusual conditions.[18]

Arnott invited Buckley to the meeting. He also invited O. D. Robinson, the president of the Republic Oil Company, who was acting as spokesman for the independent refiners on the Gulf of Mexico. M. L. Benedum, the principal stockholder of Republic, and one of the Government's representatives on the Planning and Coordination Committee had sent Robinson to Arnott early in January[19] to tell about the distressed condition of the Gulf refiners.[20]

Arnott opened the meeting with a speech in which he pointed out how uncooperative the East Texas refiners had been in stabilization, and said that he believed it was his duty to have Buckley and Robinson talk to them and to see what could be done to improve the situation. He said that both men were trying to find buyers for gasoline from their groups.[21]

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[13] Govt. Ex. 482, R. 2996; Buckley, R. 579.

[14] Buckley, R. 579, 581.

[15] Arnott, R. 1713, 1714. The only individual defendants present were Arnott and McElroy. (*Ibid.*)

[16] Arnott, R. 1714.

[17] Arnott, R. 1713-4.

[18] Arnott, R. 1714.

[19] Arnott, R. 1715-6.

[20] Arnott, R. 1715.

Buckley was then invited in and told the meeting substantially what he had already told Arnott.[22]

There were a number of requests for further information most of them indicating a lack of confidence in the East Texas refiners. Buckley seemed to have no very dependable information as to the probable amount of gasoline or as to the size of the independent refiner's Federal refinery allocations, or as to whether their distress gasoline was going to be manufactured within those allocations.[23] He did not get any particular response from the meeting. Those present seemed principally interested in what the Association was going to do about hot oil. "Everyone was scared to death of handling East Texas gasoline and of going back to East Texas to buy." Buckley was specifically asked whether the refiners were sincere, and whether they were going to support the Connally Act. He assured the meeting that they were.[24]

After Buckley had made his statement, Arnott suggested that he withdraw,[25] saying that if anything could be done toward handling the surplus gasoline he would let him know.[26] The meeting was then turned over to a general discussion. Some thought that the matter should be examined further, and that they would be justified in seeing what could be done to help the independent refiners. Others definitely stated that they had no confidence in Buckley's presentation and would have nothing to do with it.[27].

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[21] Arnott, R. 1717.

[22] *Ibid;* Buckley, R. 579.

[23] Arnott, R. 1718. Buckley obtained some information (though apparently not enough) over the telephone from R. N. Cline, the secretary of the Association in Texas (Buckley, R. 580).

[24] Buckley, R. 580-1

[25] Arnott, R. 1717

Arnott called attention to the fact that the District Allocators were meeting in Washington during the next week to divide the national refinery allowable into regional allocations. The group felt that, being unable to get reliable information from Buckley, they should talk to the Allocators. The latter could tell them, not only the amount of the allocations which they were going to allow to these refiners, but whether the hot oil which they had been running was going to be taken into account in fixing those allocations.[28] Accordingly, Arnott appointed a five-man committee to go to Washington and see the Allocators.[29]

While in New York at this time, Buckley saw the respondent R. H. McElroy of Pure. He told him that he was trying to get help for the East Texas refiners, and asked him whether Pure was going to be in the market. McElroy replied that Pure needed gasoline badly, but that they were afraid to buy it in East Texas and would not do so unless they were assured that the Federal Tender Board was going to function properly. If there was no such assurance, they were going to buy elsewhere.[30]

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[26] Buckley, R. 580.

[27] Arnott, R. 1718.

[28] In a letter to another Socony-Vacuum executive, dated March 12th (Govt. Ex. 305, R. 2956), Arnott stated that the purpose of going to Washington was "to acquaint them [the Allocators] with full details and have a check on the figures of the allocation of these particulars refiners so that the program we are working on would not in some way show later that these refiners were not standing by their promises."

4. *The District Allocators' meeting on March 13.*

Arnott arrived in Washington on March 12. On that day, as described elsewhere[31], he conferred with the members of the Petroleum Administrative Board regarding the proposed Mid-Continent buying program. He also told the Board about the East Texas situation, how it had come to his attention, and the part which he was playing therein. He mentioned the fact that he was meeting with the District Allocators the following day.[32]

The Allocators' meeting on March 13th was attended by four members of the New York committee.[33] According to the minutes of the meeting,[34] Arnott first described the problem of distress gasoline and the manner in which it was being treated in the Mid-Continent,[35] and introduced Robinson and J. W. Carnes of Sinclair, who described the position of the Gulf refiners.[36] He then introduced Buckley[37] and the latter described the history and purposes of the East Texas Associa tion,[38] giving the allocation and production figures for East Texas and answering questions.[39] This was followed by a general discussion which occupied the balance of the morning session.[40]

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[30] Buckley, R. 593.

[31] See p. 277, *infra*.

[32] Arnott, R. 1719-20.

[33] Def. Ex. 69, R. 2653; Arnott, R. 1719.

[34] Def. Ex. 69, R. 2653.

[35] Def. Ex. 69, R. 2653-2661.

[36] Def. Ex. 69, R. 2661-2677.

[37] Def. Ex. 69, R. 2677-2678.

Later in the day, several members of the New York committee came to Arnott's office and prepared a schedule showing the probable amount of surplus gasoline in East Texas and on the Gulf, as disclosed at the Allocators' meeting, the names of the regular buyers in those areas, and the amounts which they might take.[41]

5. *The March 15 meeting in New York.*

The next day Arnott, feeling that Buckley and Robinson were entitled to some idea of their prospects,[42] dispatched the following telegram to the men who had attended the meeting on March 6:[43]

> "The question of surplus gasoline which has been under consideration must be finalized tomorrow. Urge you be present meeting at Waldorf Hotel Friday, March fifteenth, ten o'clock, Basildon Room. Telegraph reply."

The meeting was attended by substantially the same group as the March 6th meeting.[44] The members of the committee which had gone to Washington reported what had happened at the District Allocators' meeting.[45] Arnott then said that the East Texas refiners were pressing Buckley for a solution of their problem, and called for suggestions for handling the situation.[46]

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[38] Def. Ex. 69, R. 2678-2680.

[39] Def. Ex. 69, R. 2680-2682.

[40] Def. Ex. 69, R. 2682-2686.

[41] Arnott, R. 1721; see Buckley, R. 582.

[42] Arnott, R. 1720-1.

[43] Govt. Ex. 17, R. 2619; Def. Ex. 331, R. 2964. Arnott, R. 1720. Subsequently the meeting was postponed to 2 P. M. of the same day (Def. Ex. 332, R. 2964).

[44] Arnott, R. 1720; Buckley, R. 581, 584.

Someone (probably Carnes of Sinclair) stated that it had been suggested that a group of twelve to fifteen larger companies should absorb a certain percentage of the surplus gasoline from East Texas. He then read from the schedule which had been prepared in Washington,[47] and explained that the schedule showed what the picture would be if all the known buyers of gasoline were to take part of the surplus.[48]

There was some discussion of the fact that not all of the potential buyers were represented at the meeting. Someone asked whether anyone had talked with the absent companies and it developed that one or two of them had stated that they would not buy any gasoline in East Texas.[49]

Finally those present were polled. Most of them stated that they had no authority to take gasoline without conferring with their superiors and their manufacturing departments. After about an hour's discussion, nothing had been decided as to who would buy, how much they would buy, or whether they would buy at all.[50] No one had said that his company would take the amount indicated on the schedule, or even that it was interested in buying at all. The Shell representative stated that his distrust of the

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[45] Arnott, R. 1721.

[46] Buckley, R. 582.

[47] Buckley, R. 582, 584.

[48] Arnott, R. 1721.

[49] Buckley, R. 582-3.

[50] Buckley, R. 583.

East Texas refiners was such that he would have nothing to do with them under any circumstances.[51]

Buckley sat around for a while to see if he could get an answer and then left the room discouraged.[52] After the meeting, he followed Arnott downstairs and thanked him for what he had done. He said that he felt quite discouraged; that those to whom he talked did not seem very friendly; and that he felt that his mission had been unsuccessful and that he was returning to East Texas empty-handed.[53] Arnott told him that he could understand why there had been no friendly response, but that the men were all cooperative; that Buckley should keep up his courage; and that the men would probably give the matter further consideration.[54]

6. *Buckley's conversation with Arnott in Washington, March 20.*

On March 20, Buckley went to Washington. While there, he visited the offices of the Planning and Coordination Committee and ran into Arnott,[55] who was attending one of the Committee's meetings. They talked briefly. Buckley said that he was still trying to accomplish something but that he was on his way to Texas, and wanted to know how Arnott felt about the situation. Arnott told him that he thought there was some promise; that companies like Sinclair were large purchasers in Texas; and that Carnes was very cooperative and might give him some orders. He also said that Gulf was a substantial buyer in East Texas, and that he saw no reason why they should not be interested, once the reliability of the East Texas refiners had been established. He personally felt that the East Texas refiners were sincere, and that with Buckley representing them as ably as he was, there would soon be some interest in the Association.[56]

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[51] Arnott, R. 1721.

[52] Buckley, R 583.

[53] Buckley, R 583-4; Arnott, R. 1721-2.

[54] Arnott, R. 1722.

[55] Arnott, R. 1722, 1723.

Buckley went to see Hartmann of Gulf and told him that he was discouraged over his failure to achieve any definite results. He asked Hartmann if he could do something to recognize the Association and encourage the work that they were doing. Hartmann replied that he was not unsympathetic with the objectives of the Association, but that Gulf did all its buying through J. M. Bradshaw, a broker in Houston. He said that he would have no objection, in fact he would approve, if Bradshaw got in touch with the Association.[57] Buckley may have asked Hartmann to have Bradshaw get in touch with the Association. If he did, Hartmann did not promise to do so.[58]

That same day, Arnott had a short talk with Hartmann. He pointed out that if the East Texas refiners were really going to cooperate and work under the Code, and eliminate part of the illegal crude, it would be well worth Gulf's while, as a large buyer, to consider it. Hartmann agreed that it was worth thinking about.[59]

While in Washington, Buckley also saw H. W. Dodge of Texas and Carnes of Sinclair and asked them if they were going to buy gasoline in East Texas. Dodge stated that Texas was going to have to buy gasoline but he did not know where it would be bought. He suggested that Buckley visit his New York office.[60] Carnes told him that Sinclair was continuously buying gasoline and would probably buy more in the future, and that he saw no reason why they should not deal through the Association. However, he said the final decision rested with Tracey, and he would talk to Tracey about it.[61]

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[56] Arnott, R. 1722.

[57] Buckley, R 584-5, 592.

[58] Buckley, R. 585.

[59] Arnott, R 1722-23.

Upon returning to New York, Buckley called on R. D. Cottingham in the Texas Company's purchasing department, and told him about his conversation with Dodge. He tried to explain the nature of the East Texas Refiners' Marketing Association. Cottingham said that Texas had its own method of buying and would not be interested. Buckley told him that, regardless of his method of buying, the Association was a service organization and could protect him, without cost, against getting illegal products. Cottingham again said that he was not interested, and dismissed Buckley from his office.[62]

He also saw Noel Robinson of Tide Water regarding the possibility of having Tide Water buy through the Association. Robinson told him that Tide Water had a terminal or transit arrangement with a terminal refinery on the Gulf Coast, and that while they would not be in the market directly for gasoline, he thought that this refiner would buy some in East Texas. He appeared quite enthusiastic over what Buckley was trying to do to help the refiners.[63] (Later, Buckley learned that the terminal company was buying some gasoline through the Association.)[64]

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[60] Buckley, R. 585, 591, 592, 593.

[61] Buckley, R. 585-6, 592.

[62] Buckley, R. 586, 587, 591, 593.

Buckley returned to Tulsa and thence to East Texas, where he attended an Association dinner in Gladewater. He reported that he was disappointed in the results that he had accomplished; that no definite plan for purchasing could be established; that he had been forced to contact individual companies; and that many of the major companies had refused to buy through the Association, or even to buy in East Texas. He also said, however, that some of the majors were already buying in East Texas, and that he felt sure that as the buyers became convinced that the refiners were sincere in their efforts to eliminate hot oil and that the Federal Tender Board was going to be effective they would return to the East Texas field and obtain their supplies there as they had in the past. He said he felt sure that Sinclair and Gulf would buy; that he had been told that the Texas Company might buy, and that there were two or three other potential buyers among the larger companies.[65]

E. The Association's methods of operation.

1. *Generally.*

The East Texas Refiners' Marketing Association was formally organized on February 13, 1935.[1] There were nine charter members,[2] nine elected members,[3] and five companies which were permitted to use the facilities of the Association whenever they happened to be operating on federal tenders.[4]

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[63] Buckley, R. 586, 588, 592, 594.

[64] Buckley, R. 588, 594.

[65] Buckley, R. 586-7.

[1] Buckley, R. 578.

[2] Cline, R. 623.

[3] Cline, R. 624.

All of the East Texas independent refiners named in the indictment either were members of the East Texas Refiners' Marketing Association or were allowed to use its facilities. The only member of the Association not named in the indictment was the Lake Refining Company. All of the officers of the Association were either independent refiners or employees of independent refiners.[5]

As already noted, the major companies practically ceased buying in East Texas after the *Panama* decision. The Association had only one customer—Cities Service Export—during February.[6] It really commenced operations in March,[7] when it negotiated sales to Cities Service Export, Gulf, Sinclair and Pure. The next month Cities Service Export ceased purchasing, but Tide Water Oil and Continental began.[8] Although the Association also sold from 25 to 50 tank-cars elsewhere,[9] these six companies were its principal customers.[10] They bought a total of 6,934 cars from it during the last ten months of 1935, and a total of 1,098 during the first four months of 1936. They continued to buy at the rate of over 400 cars a month for some time thereafter.[11]

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[4] *Ibid.*

[5] Cline, R. 623, 624.

[6] Cline, R. 632, 649-50, 663-4.

[7] Buckley, R. 578.

[8] Cline, R. 632, 649-50, 663-4.

[9] Cline, R. 637.

[10] *Ibid.*

[11] Cline, R. 664-6.

The expenses of the Association were defrayed by assessing the selling companies from $2.00 to $2.50 per tank-car on all sales made through the Association at the going market.[12]

2. *Cline's functions.*

Beginning on February 5th or 6th, 1935,[13] the Association's active manager was its "Assistant Secretary," Robert N. Cline,[14] who conducted its business for over three years[15] from his home in Tyler, Texas.[16] He described his method of operation as follows:

> The first thing every Monday morning I contact all the members in our Association. I find out two things from them; first, how much gasoline they will make during the week over and above their regular commitments and which they desire the Association to attempt to help them move. At the same time I get from that refiner an idea of what he wants for the product.[17]

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[12] Buckley, R. 597; Cline, R. 645, 647. Commissions were also charged on sales to Texas, although it did not buy through the Association but directly from its members. This was agreed to in the early days of the Association when it was hard-pressed for funds. Because of freight savings the refiners made more money on sales to Texas than on sales in the Mid-Continent area (Cline, R. 631-2). The members of the Association reported their sales to Texas to Cline and he checked them once a week or so with Whitey May, Texas field man (Cline, R. 633). For three or four months in 1935, Cline got reports of purchases from Brakefield of Louisiana Oil with the idea of charging commissions on sales to that company. However, he did not succeed, except in one case (Cline, R. 636, 664).

[13] Buckley, R. 577; Cline, R. 623.

[14] Cline, R. 624.

[15] Cline, R. 623; cross, R. 668.

[16] Cline, R. 624.

[17] Cline, R. 639.

The first man I talk to may tell me he has 10 cars of gasoline to move, and he is not going to sell a car of it under 4¾¢ a gallon. Then I go to the next man. He has five cars he wants to move, and he wants to get 4¾¢, but he will take 4⅝¢. And I go on down the line. Maybe I will come to one man that has 40 cars of gasoline on hand and wants 4⅝¢, which he considers the market, but he has to move that gasoline within the next 24 or 48 hours to prevent a shutdown, and he might tell me, "If you cannot get that, and you hear of anything else, let me know." That might be the same specification of gasoline as this first fellow that wanted 4¾¢.[18]

I get all that information on my desk. I find that most of the refiners want 4⅝¢ for their gasoline that week; that is the consensus. Then when the buyers call me or I contact the buyers I use that 4⅝¢ price as a basis to try and sell them. If we get together with the buyers on that basis, I take the orders and distribute them around to our members. But if I contact one buyer, or some buyer contacts me, and he says, "Now, I have got an order for 25 cars of gasoline, but I will only pay 4½¢ for it, that is all my people will let me pay," I tell him that I cannot handle that, but I tell him he might call this other refiner who has already told me that he wished to move some material at a lower price if he could not move it all at the market, and I say, "If you ask that man I believe you will get your 25 cars." I might tell him, "I know one refiner down here that will probably take that, and I will have him call you right away," and I have him do it.[19]

Now, those 25 cars I would not consider as handled through the Association. The other orders that I got at $4\frac{5}{8}$¢, which was what the majority of our people wanted that day, I consider as fair spot market price sales, and charge commission on them.[20]

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[18] *Ibid.*

[19] Cline, R. 639-40.

I don't know whether the major companies usually told me the prices that they would pay. There were a great many instances when they did, and a great many instances when they called me and told me they would need some material and asked what they could buy it for.[21]

These buyers that I dealt with would quite often call me on Mondays, because most of them bought gasoline the first part of the week for their week's requirements. They would ascertain from me what they could buy gasoline for in the field and maybe 2 or 4 hours later, or the next morning, they would call me and have an order at a specified price. So they would specify the price which they would pay for the gasoline. In a lot of the cases it was based on information that they had previously obtained from our office.[22]

We had no understanding as to what any major company was going to buy for the following week. Each order they gave us was a spot order, and we hoped they would continue buying every week, but we had no intimation from them that they would.[23]

• • • •

Bradshaw [the purchasing agent who bought for Gulf] might call me on a Monday morning and tell me he has an order for 50 cars of gasoline. He would either tell me, "I can pay $4\frac{1}{2}$¢ for this gasoline," or he will say, "What can I buy it for?" If he tells

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[20] Cline, R. 640.

[21] *Ibid.*

[22] *Ibid.*

[23] Cline, R. 641. See also Cline, R. 652-3.

> me he can pay 4½¢, I try to get it for him, if that is what we consider a fair market price. And if he asks me what it is going to cost him, I give him the prices that the members of our Association have given to me.
>
> On quite a few orders I have handled, a buyer like Mr. Bradshaw has called me and given me an order for 50 cars of gasoline, we will say, and has told me that he will pay such and such a price for it; and then I have called up the members of our Association and have said, "I have an order here for 50 cars of gasoline; you can have 10 of it, or 15 of it, and the price is so and so," but the member of our Association has already told me that he was willing to sell gasoline at that price.[24]

Cline tried to keep close track of prices in the field[25] and he based his estimates of the going market on those prices.[26] He neither took nor read the Oilgram until December, 1935, and he never used it as a basis for determining price.[27] He made a check just before testifying and found that 30 or 40 per cent of the sales made through the Association had been at prices below the low quotations in the market journals.[28]

Cline also acted as a clearing house for information like any other sales manager. If the buyers asked him, he told them about the condition of the various refiners, whether they were sold up on gasoline, what they considered the market to be, how much surplus there was in the field, who was buying and any other information he might have.[29]

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[24] Cline, R. 641-2.
[25] Cline, R. 625.
[26] Cline, R. 628.
[27] Cline, R. 625, 628.
[28] Cline, R. 659, 660.
[29] Cline, R. 640-1.

He also tried to follow up Buckley's contacts with major companies and promote sales through the Association.[30] He called Bradshaw, the purchasing agent, who bought for Gulf, several times a week,[31] W. A. Tracey of Sinclair,[32] and R. O. Audrain of Tide Water[33] about once a week, D. K. Chamberlain of Pure somewhat less frequently.[34] On one occasion he also saw R. Williamson of Continental.[35]

None of the men whom Cline called ever promised to buy more than a week's supply at a time[36] but they occasionally gave some intimation of their future intentions. Thus Bradshaw said that he would be glad to use the Association as much as he could. He did make most of his purchases for Gulf through the Association, but he handled his other purchases through other channels.[37] Tracey told Cline on several occasions that Sinclair was very short of gasoline and would probably be buying considerable quantities from month to month.[38] Audrain once told him that Tide Water was assembling a cargo on the Gulf and that they expected to buy at least a portion of the material from East Texas and would probably be buying for several weeks. Later he said that they were going to assemble another cargo, thus continuing in the market for several weeks more.[39] Sometime in April Chamberlain told Cline that Pure would require a certain number of cars, and that he would order so many cars a week over a month. Later on he told him that Pure would need gasoline for its refinery on the Coast and would be buying pretty constantly through the summer.[40] Williamson told him that if they could get the right specifications, Continental would call on the Association whenever it had difficulty in making purchases for their East Texas stations.[41] Subsequently Williamson told him that the refiner with whom Continental had been dealing had temporarily shut down, and asked him for help in locating gasoline. Cline referred him to Gilliland, and Williamson said he would buy if they could get together on the price.[42]

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[30] Cline, R. 637.

[31] Cline, R. 638.

[32] Cline, R. 637-8.

[33] Cline, R. 654.

[34] Cline, R. 638.

[35] Cline, R. 653.

[36] Cline, R. 640, 641.

[37] Cline, R. 638, 653. Cline was under the impression that Bradshaw had handled all his Gulf purchases through the Association (Cline, R. 638), but a Government audit showed that he had made about 38 per cent of them through other channels (W. J. Miller, R. 881).

[38] Cline, R. 653.

There are general references in various letters written by officers or employees of Pure, Tide Water and Cities Service to a "buying program in East Texas,"[43] "this movement for the benefit of all,"[44] "a general buying movement,"[45] and "regular weekly purchases from the East Texas group."[46]

A Tide Water letter refers to "regular weekly purchases from the East Texas group."[47] A letter from Chamberlain of Pure to his associate C. W. Snider, states that he expected to receive from Buckley "a complete resume of allocations and purchases" and refers to "our allocation of five cars per day."[48] Snider's reply states that Pure really needed the gasoline which it was buying in East Texas, but indicates that Pure might discontinue its purchases in that area if the other major companies did so.

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[39] Cline, R. 654.

[40] Cline, R. 646.

[41] Cline, R. 653.

[42] Cline, R. 667.

[43] Govt. Ex. 272, R. 2894, and Ex. 487, R. 2997.

[44] Govt. Ex. 488, R. 2998.

[45] Govt. Ex. 454, R. 2986.

[46] Govt. Ex. 284, R. 2924.

[47] Govt. Ex. 272, R. 2894.

In fact only three of the respondents ever purchased through the Association.

3. *Prices paid by the respondents to independent East Texas refiners.*

Cline, the assistant secretary of the Association, determined what price he would demand for gasoline sold through the Association by asking the members how much they wanted for their gasoline. When the purchasing companies called up, they could either accept or refuse his price.[49] If they refused it, Cline would give them the names of independent refiners who might be willing to sell at a lower price. The purchasing company would then contact those refiners and they would bargain.[50] Cline estimated that during the first year of the Association's existence, he was responsible for the sale of more than a thousand tank-cars in this way.[51] The fact that this method of dealing did not result in a uniform selling price appears from the chart of East Texas purchase prices submitted by the respondents.[52] During the last ten months of 1935 there were at least fifty-four occasions when two, three or four different prices were paid on the same day. On more than 40 per cent of the days on which more than one purchase was made during this period, two or more different prices were paid.[53]

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[48] Govt. Ex. 488, R. 2998.

[49] Cline, R. 642.

[50] Cline, R. 640.

[51] Cline, R. 666.

[52] Def. Ex. 1011, R. 3783.

The Government's figures showed that the respondents, excluding Sinclair, had purchased 7,492 tank-cars of gasoline on a flat price basis in East Texas between March 1, 1935, and April 30, 1936.[54] Of these, 2,023 had been purchased at prices which were below the low quotations carried by Platt's Oilgram for the East Texas market, 5,430 had been purchased at the low quotations, and 39 had been purchased at a price of ⅛ cent above the lowest quotations.[55] The respondents proved that even this last figure was erroneous as to all but four cars,[56] and that they had been purchased by a company—Socony-Vacuum—which the indictment does not allege participated in this program. The respondents consolidated the 1935 purchases of all the defendants then under indictment (including Sinclair) in Exhibit 1011.[57] As that exhibit shows, there was only one day during the entire year 1935 when any major company purchased gasoline from an independent refiner in East Texas at a price which was above the lowest current quotation in Platt's Oilgram. The three purchases on that day, April 8, 1935, were made by the same respondent and aggregated only five cars. The price was equivalent to the high quotation of the Oilgram. On the other hand, there were hundreds of cars, constituting a very substantial percentage of all those bought throughout the year, purchased at prices ranging from ⅛¢ to ⅝¢ below the lowest quotations.[58] When the quotations were rising in March, April and May, 1935, the prices paid by the respondents lagged behind, being almost invariably ⅛¢ below the low quotations.[59]

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[53] *Ibid.*

[54] Govt. Ex. 749, R. 3274.

[55] Govt. Ex. 748, R. 3272; W. J. Miller, R. 884.

[56] J. D. Miller, R. 1566-73. Of the remaining 2 cars, one was not checked because it had been bought by a dismissed defendant (J. D. Miller, R. 1568-9), and the other had been ordered under special specifications—"6-62 gravity, 400° end point material"—which ordinarily command a premium of ⅛¢ (J. D. Miller, R. 1573). The Government also compared the prices which the respondents had paid in East Texas with the Chicago Journal of Commerce quotations for the Group 3—Oklahoma market. (The Journal does not publish quotations for the East Texas market.) This study showed that 1549 tank-cars had been purchased at prices which were more than ¼¢ below the Journal's low quotations, 4554 at prices which were ⅛¢ below the law, 1373 at the low quotations, and 16 at ⅛¢ above the low quotations. (Govt. Ex. 749, R. 3274; W. J. Miller, R. 885.). The respondents' auditors checked 15 of the 16 tank-cars last mentioned, and found that the Government was in error as to 10 of them. (J. D. Miller, R. 1566-73.)

Cline testified that from 30 to 40% of the sales through the Association were made at prices below the low quotations in the market journals.[60]

4. *Amounts purchased.*

The indictment charges that the defendants bought more than 50% of all the gasoline produced by the East Texas independent refiners.

The only respondents who purchased in East Texas through the Association are Pure, Sinclair and Continental. Cities Service Export and Tide Water Oil, which were dismissed because they had been dissolved or reorganized; also made purchases through the Association.

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[57] J. D. Miller, R. 1614-5. Prior studies compared the prices paid by Cities Service Export and Pure with the quotations. (Def. Ex 716, R. 3183; Buckley, cross, R. 615; Def. Exs. 741, 857, 858, R. 3237, 3417, 3421; Westcoat, R. 1140-1.) These studies were subsequently consolidated with the master study described above.

[58] Def. Ex. 1011, R. 3783; J. D. Miller, R. 1617.

[59] Def. Ex. 1011, R. 3783; J. D. Miller, R. 1617.

[60] Cline, R. 659.

Gulf and Texas had made large purchases from independent refiners in East Texas, but under circumstances which clearly showed that they were no part of a general program.[61] Neither Tide Water Associated nor Cities Service, which are alleged to have participated in the program, purchased in East Texas at all.[62] At the close of the Government's case, the court directed verdicts in favor of Gulf and Texas,[63] and the Government itself had the indictment dismissed as against Tide Water Associated.[64]

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[61] Gulf purchased 2,291 tank-cars through the East Texas Association and 1,191 tank-cars elsewhere in East Texas during the indictment period. Cline, R. 663-4; Govt. Exs. 747, R. 3270; 748, R. 3272, 3273; and 749, R. 3274, 3275. Alternative figures (also introduced by the Government): R. 2214 and 1321 (W. J. Miller, R. 881). The purchases through the Association were, however, made by J. M. Bradshaw, an independent purchasing agent, on his own initiative, and not as a result of directions from Gulf. (Bradshaw, R. 680; cross, R. 701.) Bradshaw had been solicited by both Buckley and Cline (Buckley, R. 592-3; Cline, R. 638). As described above, Buckley and Arnott had asked various Gulf officers, including H. V. Hartmann, the vice-president of the company, to purchase through the Association, but Hartmann had left the decision to Bradshaw (Buckley, R. 584-5, 591, 592; Arnott, R. 1722.) Texas purchased 1,240 tank-cars in East Texas, but none of them through the Association. (Govt. Exs. 747, R. 3270; 748, R. 3272, 3273; and 749, R. 3274, 3275; Cline, R. 665.) The Association collected commissions on some 800 tank-cars which its members sold to Texas (Cline, R. 663, 664). These commissions, however, were voluntary contributions by the members to the support of the Association, and did not mean that the Association had had anything to do with the sales (Cline, R. 631, 633).

[62] Govt. Exs. 747, R. 3270; 748, R. 3272, 3273; and 749, R. 3274, 3275. As to Govt. Ex. 1032, R. 3878-9, which purports to show certain purchases by Cities Service, W. J. Miller, the Government accountant, testified that they might have been made by Cities Service Export (W. J. Miller, cross, R. 1854). Buckley testified that the Export Company was the only Cities Service Company which bought in East Texas (Buckley, R. 609).

[63] R. 912.

After the verdict, the court granted Cities Service a new trial.[65]

The major companies which purchased through the Association also bought over 1,000 tank-cars of East Texas gasoline (over 12% of their total purchases) through other channels. At least 675 tank-cars of this were purchased from non-members of the Association.[66]

In 1935 the East Texas refiners named in the indictment sold 285,592,188 gallons of gasoline.[67] The respondents bought only 40,195,754 gallons or 14.07% of this total production.[68] In the same year all the independent refiners in East Texas produced 378,920,346 gallons of gasoline.[69] The respondents purchased only 45,598,543 gallons or 12.03% of this.[70]

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[64] R. 901-2.

[65] R. 2488, 2491.

[66] J. D. Miller, R. 1642, 1643. Presumably the figure was much higher, for no figures are available as to the amounts which the dismissed defendants, Gulf, Texas, Cities Service Export and Louisiana Oil purchased from non-members of the Association.

[67] Dyer, R. 1467.

[68] J. D. Miller, R. 1642. This allegation of the indictment is extremely inaccurate even if the purchases of those companies as to whom the indictment was dismissed are added to the purchases of the respondents. In that case, the total purchases were less than 30% of the production of the East Texas refiners named in the indictment.

[69] Dyer, R. 1467.

[70] J. D. Miller, R. 1642, 1648. Even if the purchases of the companies as to whom the indictment was dismissed be added to the purchases of the respondents, less than 25% of the production of all the independent refiners in East Texas was purchased. (*Ibid.*) The Government attempted to show by figures based upon the records of the Federal Tender Board that the defendants, excluding Gulf and Texas (as to whom the indictment had been dismissed), had received some 23.8% of the tank-cars shipped out of the East Texas field between March 1, 1935 and March 3, 1936, and that the de-

5. *Amounts manufactured by the independent refiners.*

The indictment charges that, at the instance of Arnott and Buckley, the East Texas independents curtailed their production.[71]

Travis testified that neither Arnott nor Cline had ever asked him to curtail his refinery runs.[72]

Buckley described a speech which he made to the East Texas refiners at a dinner in February, 1936, as follows:

> "I reviewed the activities of the Association during the past year, as I had recalled them, from the time I had been associated with them. I told them that they were then in a very trying period of their existence; that the Bureau of Mines and various other agencies were calling attention to the fact that stocks of gasoline were very high, that the markets at that time couldn't absorb them, and various trade journals were preaching curtailment, and that everyone interested in the industry, was asking for stabilization of operations.
>
> "I told them that I never had and never would tell any man how to run his business, but that as

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fendants originally indicted had received 43.8% of such interstate tank-cars. (Govt. Ex. 1032, R. 3878-81; W. J. Miller, R. 1849-50.) However, these figures related only *to interstate shipments in tank-cars* and excluded intrastate shipments and shipments by trucks. Whereas the Government's figures showed only 24,052 tank-cars being shipped out of the East Texas field during this period, the respondents proved that the total shipments, by all methods, had been 378,920,346 gallons or the equivalent of 47,365 tank-cars. (Dyer, R. 1466-7, 1469-70.) (See also Cline's estimate, R. 666.) Applying the figures in the Govt. Ex. 1032 to this total, the percentage bought by the defendants, excluding Gulf and Texas, would be 15.2% or slightly higher than the respondents' figures. The percentage for all the defendants, including Gulf and Texas would be 22.2%.

[71] Indictment, paragraph 21, R. 14-5.

[72] Travis, R. 1128-9.

> I viewed the situation, there were three or four courses open to them.
>
> "They could shut down, and sell the crude oil; or they could continue to run on part time, and store the balance of their crude oil for better markets; or they could curtail their operations and sell part of their gasoline and store the rest of it; or they could run their heads off and dump the gasoline for the best price they could get; that it was their choice and I had no recommendations; every man had to make the choice for himself. * * *"[73]

An audit of the records of the Texas Railroad Commission and the Federal Tender Board showed that the output of the East Texas refiners named in the indictment increased substantially during the period of major company purchasing. The actual figures were as follows:[74]

Nov. 1934-Feb. 1935 (Incl.)	56,473,956 gallons
March-June, 1935 (Incl.)	81,299,358 gallons
July-Oct. 1935 (Incl.)	114,209,676 gallons
Nov. 1935-Feb. 1936	99,654,308 gallons

F. Buckley's subsequent activities.

Throughout 1935 and up to May, 1936, Buckley continued his attempts to persuade major companies to buy gasoline from the East Texas Marketing Association.[1]

He contacted Bradshaw, the Gulf buyer, and urged him to buy through the Association.[1a] Late in March he talked with a Continental man but the latter said that the matter would have to be referred to the company's headquarters in Ponca City.[1b] A week or so later Buckley attended the annual meeting of the Western Petroleum Refiners' Association at Excelsior Springs, Missouri. There he received an introduction to E. Karstedt of Continental, who told him that he would not buy any gasoline in East Texas under any circumstances.[2]

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[73] Buckley, R. 613-4.

[74] Dyer, R. 1467-8, 1469-70.

[1] Buckley, R. 592, 594.

[1a] Buckley, R. 586-7, 589.

On April 7, 1935, Buckley saw Arnott at the Excelsior Springs Convention, and told him that there had been some developments, but nothing very encouraging. He said that his work for the Association had compelled him to neglect his duties with Cities Service Export, and that he would have to give up the Association work and devote his full time to his job. Arnott felt that Buckley's work had been very valuable in bringing understanding and stabilization into the East Texas situation.[3] Buckley wanted to have another talk with Arnott, and the latter told him that he would let him know if he held any meetings with potential purchasers.[4]

On April 8, 1935, Buckley reported this conversation in a letter to Brandli.[5] He stated that during the next two weeks he and Arnott were going to try to convince at least two or three buyers of East Texas gasoline of the necessity of establishing a method of buying which would eliminate the present hand-to-mouth basis. It had been suggested that this might be done at a meeting at Atlanta on April 10, or perhaps in New York on the 11th. He concluded by saying that unless he saw Arnott by the 15th he would write him of his necessary retirement and suggest the name of a successor.

[1b] Buckley, R. 592-3.

[2] Buckley, R. 592, 594. Later Buckley told Cline to follow up with Continental's office at Fort Worth and see if he could persuade them to buy through the Association. *Ibid.*

[3] Arnott, R. 1723.

[4] Arnott, R. 1725.

[5] Govt. Ex. 18, R. 2620.

Arnott, on his way to Atlanta to deal with price wars in the southeast, had already wired Carnes of Sinclair:[6]

> "Have today reviewed situation with Buckley. Necessary you, he and I go over program together and do some planning. Advise you bring your records with you and be prepared to go into matter at Atlanta Thursday. * * *"

Arnott thought that if Buckley were going to retire, he could come to Atlanta without much trouble and follow up their Excelsior Springs conversation by telling Carnes and Arnott his ideas as to the continuance of the Association's work and the probable future conduct of the refiners.[7] Carnes, having an expert representative in East Texas (W. A. Tracey), would be likely to have reliable information and up-to-date figures as to conditions there.[8]

Buckley was unable to reach Atlanta.[9] Within the next few weeks, however, Arnott did try to convince several buyers of the desirability of regularity in buying. He pointed out that the buyers were giving little regard to when they placed their orders, and that if they were a bit more systematic, it would help the refiners who had to dipose of their product at the time it was produced.[10]

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[6] Govt. Ex. 369, R. 2976; Arnott, R. 1724.

[7] Arnott, R. 1724.

[8] Arnott, R. 1725.

[9] *Ibid.*

[10] Arnott, R. 1724.

At about this time Buckley talked with J. A. Welch of Louisiana Oil Company. Welch told him that Louisiana had an arrangement of some sort with the Grogan Oil Company and that they would not be interested in purchasing through the Association until this arrangement expired. Subsequently, on several occasions he talked with Brakefield of Louisiana and tried to get him to buy in the field but the latter still preferred to deal directly with Grogan.[11]

About the middle of April Buckley wrote Arnott saying that he would have to give up his work for the Association.[12] On May 17, he wrote Brandli[13] saying that the day before he had again advised Arnott of the necessity of discontinuing his work for the East Texas refiners, and had requested relief not later than the end of May. Arnott had stated that he would advise Buckley whether he wished a final report to be made in New York prior to the relinquishment of the assignment. In May, 1935, Buckley went to New York.[14] On the 27th, he saw Arnott and told him that he had resigned his position with the Association.[15] After Buckley had left, Arnott saw his superior, Coates, who was a member of the Planning and Coordination Committee, and expressed appreciation on behalf of himself and the industry for the fine work Buckley had done. Coates said he was glad to know that Buckley had been so helpful.[16]

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[11] Buckley, R. 595.

[12] Arnott, R. 1724.

[13] Govt. Ex. 21, R. 2624

[14] Buckley, R. 589.

[15] Arnott, R. 1725.

[16] Arnott, R. 1725-6.

That same day this Court invalidated the enforcement provisions of the N. I. R. A. in the *Schechter* case.[17] At Arnott's invitation, Buckley attended and spoke briefly at a meeting on May 29th to discuss the decision.[18]

Buckley continued his activities in behalf of the Association along the same lines as before. His activities included advertising the Association, trying to persuade the major companies to buy from it, and interceding in disputes between buyer and seller.[19] During the summer he called McElroy of Pure, pleading for a let-down in Pure's rigid specifications. Later, Chamberlain of the same company called him and said that McElroy had referred him to the Association. He had called Cline and the latter had told him that two or three refineries in the field could meet their specifications.[20] In the fall of 1935, having heard that Texas was going to buy a considerable quantity of gasoline in East Texas, he called P. C. Scullin of that company on the telephone and asked him if he could let the Asociation help him assemble the gasoline, but Scullin refused.[21] At about the same time he again approached Continental.[22] In October, 1935, he made a trip to New York.[23] In a letter to Brandli[23a] he said that Arnott had invited him to attend a meeting there to report on the status of the East Texas situation.

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[17] Arnott, R. 1726. See 295 U. S. 495.

[18] Arnott, R. 1726. The meeting was attended by approximately the same group which had attended the March 15th meeting (Arnott, cross, R. 1748).

[19] Buckley, R 589, 590.

[20] Buckley, R. 592, 593-4.

[21] Buckley, R. 591, 593.

[22] Buckley, R. 594.

[23] Buckley, R. 589.

[23a] Govt. Ex. 32, R. 2634.

Even after October, Buckley continued to make telephone calls on the Association's behalf until April, 1936.[24] In November, 1935, he went to the American Petroleum Institute Convention in Los Angeles at the request of the East Texas Refiners.[25] There he approached Arnott, saying that the Association had told him that several refiners were in a very desperate plight for need of orders and asking if Arnott knew of anyone who might help. Arnott replied that he didn't know offhand, but that he would be glad to see what he could do. Subsequently, he communicated with several large buyers but it does not appear whether they bought.[26] Buckley also met H. J. Kennedy of Continental at the convention, and asked him to have his Forth Worth office deal through the Association.[27]

In January, 1936, Buckley telephoned Arnott from Tulsa; saying that several refiners were in need of orders, and mentioning that Cities Service and one or two others might be in the market for gasoline. Arnott wired Cities Service as follows:[28]

> "East Texas situation needs prompt handling in order to keep in line need your help very much. What we need is your orders for fifty cars. Will you give me your help? Answer Roosevelt Hotel New Orleans."

Cities Service, however, did not buy.[29]

In April, 1936, the refiners asked Buckley to approach the major companies once more and to ask companies which were not buying through the Association to come in and buy. After attending a dinner in East Texas, Buckley went to Houston and called on two or three people, including Scullin of Texas. He told them that the Association was still operating and gave them his opinion of it.[30]

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[24] Buckley, R. 589.

[25] *Ibid.*

[26] Arnott, R. 1726-7.

[27] Buckley, R. 592, 594.

[28] Govt. Ex. 35, R. 2634; Arnott, R. 1727.

[29] Govt. Ex. 747, R. 3270.

At this point Buckley ceased all activities on behalf of the Association.[31] The East Texas Refiners' Marketing Association, however, continued to function as described above long after the indictment and at least until the time of trial. None of its officers, employees, or members was indicted.[32]

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[30] Buckley, R. 589, 591-2.

[31] Buckley, R. 589.

[32] Cline, R. 568.

VI.

The Accuracy of the Market Journal Price Quotations.

Paragraph 24 of the indictment alleges that the market journals, the Chicago Journal of Commerce, Platt's Oilgram, and National Petroleum News, had been the chief agencies and instrumentalities through which the prices paid by the major oil companies had affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area. It alleges,[1]

> "* * * While representing the price quotations published by them, as aforesaid, to be gasoline prices prevailing in spot sales to jobbers in tank car lots, and while knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers for gasoline in the prevailing forms of jobber contracts in the Mid-Western area * * * they have * * * knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by the defendant major oil companies as aforesaid in the said East Texas buying program and Mid-Continent buying program."

The Government produced no evidence to show that either of the trade journals had ever published a price paid by a major company as a price paid by a jobber or consumer on the spot market.[2]

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[1] R. 17.

[2] The Government originally sought to prove these allegations, not by proving that the market journals had ever published a price paid by a major company, but by proving that *sales on the spot market or in comparable markets had sometimes taken place at prices*

Both the Chicago Journal of Commerce and Platt's Oilgram had collected information about inter-refinery

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below the published quotations. C. O. Beroth, a Chicago broker, testified that he had been able to obtain good quality gasoline at prices ranging from ¼ to ⅞c. below the low quotations in the Chicago Journal of Commerce. (Beroth, R. 191-2, 196-7). The normal discount on sales to brokers was only ⅛ to ¼c. (Beroth, R. 178, 191.) Since Beroth did not cite any specific instances of purchases at the prices he had mentioned, it was impossible to check his statements. William Lanzer, another broker, testified that he had sold 65 octane gasoline for prices as low as ½c. under the low quotations for regular gasoline in the Chicago Journal of Commerce. (Lanzer, R. 250.) It appeared, however, both from his own testimony, and from that of other witnesses, that 65 octane gasoline was *not* regular gasoline, that regular gasoline had an octane rating of from 68 to 70, and that 65 octane gasoline *normally* sold for ¼¢ less than regular. (Lanzer, cross, R. 260, 267-70; Steiger, R. 732-3.) Lanzer insisted that he had made sales lower than the Journal quotations for comparable grades of material, but, like Beroth, gave no specific instances. (Lanzer, redirect, R. 272.) He also testified that he had bought gasoline in East Texas at prices below those being quoted in the market journals. Here again, however, it appeared either that he was talking about 65 octane gasoline (Lanzer, R. 247, 250; cross, R. 260-1, 267-70), or that he was attempting to compare the prices paid with the Chicago Journal of Commerce which publishes no quotations for the East Texas field. (Lanzer, R. 247, 250, 272. See W. J. Miller, R. 351-2.) Oscar Peterson, a jobber, testified that he had both bought material in the open market (Peterson, cross, R. 300-3) and resold it (Peterson, cross, R. 303) at prices below the low quotations in the Journal of Commerce. It appeared however that a great deal of the gasoline bought had been 65 octane material or gasoline from East Texas (Peterson, R. 300-3) and that in any case the same conditions had obtained before the buying program began. (Peterson, cross, R. 300-3.) As to the gasoline sold, it appeared that 550 out of 949 cars had been sold at or above the low quotations in the Journal, and that even these figures included 76 cars sold to brokers who would normally buy below the market. (Peterson, cross, R. 303.) J. M. Bradshaw, a buying agent, testified that he had bought some gasoline in East Texas at prices below the trade journal quotations. He admitted, however, that the gasoline in question was off-specification material which would naturally be cheaper. (Bradshaw, R. 685.)

purchases and sales and reported them as *news items.*[3] The Oilgram's representatives discussed such purchases with, and obtained information from Jacobi, Fitzgerald, Bourque, Buckley, Cline and employees of the purchasing companies.[4] But *there was no evidence that either trade publication had ever published a price paid by a major company as a price paid by jobbers on the tank-car market.*

John E. Steiger, the market checker for Platt's Oilgram, testified that he was primarily responsible for the quotations published in that journal.[5] He testified that not only the low, but the high quotations in the Oilgram represented actual sales to jobbers on the open spot market. He did not recall any day in which there had not been sales at the level of the high quotations.[6] J. P. Mosher, Steiger's superior, testified generally to the same effcect.[7]

Steiger regularly checked the prices reported to him by independent refiners against three other sources of information:

1. The Purity Oil Company, of Springfield, Missouri, one of the few jobbers in the vicinity.

2. Information assembled by the Oilgram's Chicago office which was in close touch with the jobbers in the consuming area.

3. Brokers, who generally bought at about ⅛ cent be-

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[3] McDowell, R. 1189; Steiger, R. 742.

[4] Evans, R. 540; Cline, R. 665; Steiger, R. 746-7, 749-50; 753-4, 781-2.

[5] Steiger, R. 728-31.

[6] Steiger, R. 780-1.

[7] Mosher, R. 791-2.

low jobbers, and so could tell him whether the jobber prices reported by the refiners were out of line.[8]

Government counsel repeatedly suggested to Steiger that he might have encouraged the independent refiners to report the prices they had received in sales to major companies with the prices they had received in sales to jobbers. He denied this unequivocally.[9] He testified, the Oilgram always asked for sales to jobbers. It had given the independent refiners general instructions that it wanted only jobber prices[10] and had repeated these instructions from time to time during 1935 and 1936. He himself had insisted that the refiners segregate their sales to major companies from their sales to jobbers[11] and he believed that they had done so.[12]

At the close of its case the Government itself moved to have the indictment dismissed as to the market journal defendants on the ground that it had "been unable to adduce sufficient evidence to connect up those defendants with the conspiracy charged in the indictment."[13]

In the course of the presentation of the defense an audit was submitted showing that the trade papers accurately reflected the prices being paid by jobbers and consumers in the spot market and that the respondents paid different and lower prices from those being paid by jobbers and consumers. The results of the audit are set out graphically in Exhibit 1024.[14]

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[8] Steiger, R. 745-7. In making these checks, the Oilgram did not attempt to get both buyer's and seller's figures on the same transaction. It merely compared the prices reported to it by the selling refiners with the prices reported by the jobbers and brokers generally. (Steiger, R. 747.)

[9] Steiger, R. 770-4.

[10] Steiger, R. 769-71.

[11] Steiger, R. 769-70.

[12] Steiger, R. 770.

[13] R. 902.

In their closing argument to the jury Government counsel conceded that the purchases under the buying programs were generally made at or below the competitive market prices being paid by jobbers. Here is what they said:

> "* * * So that the major companies bought at the low the majority of their purchases in these pools, bought them at the low of the journal, or chiseled below that and bought them an eighth or a quarter of a cent under the low * * *."[15]
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> * * * *
>
> "Now, how did the proof develop? And that is the thing we are concerned with here, how the proof actually developed; and it was this: The major companies were buying at the market * * *."[16]

As a result of the Government's concessions, the issue of misrepresentation by the market journals was removed from the case when it went to the jury. It should be noted, however, that the matter was further clarified by the evidence on the issue of whether the respondents had paid "high, arbitrary and non-competitive" prices for the gasoline which they bought.

As stated above, *the Government's own evidence* showed that:

(1) In East Texas only 39 out of 5,430 tank-cars, or less than 1 per cent, had been bought at prices

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[14] R. 3807.
[15] R. 2061.
[16] R. 2312.

above the *low* quotations in Platt's Oilgram. 2,062 or 27 per cent had been bought at prices *below* the *low* quotations.[17]

(2) In the Mid-Continent, only 984 out of 9,204 tank-cars, or about 10 per cent had been bought at prices *above* the *low* quotations in *either* market journal. 2,052 tank-cars, or over 22 per cent, had been bought at prices *below* the *low* quotations in *both* market journals.[18]

(3) That no substantial amount of gasoline could have been purchased at prices *above* the *high* quotations in either field. Not a single tank-car had been purchased in East Texas at more than ⅛ cent above the low quotations.[19] Only 48 tank-cars, or 0.7 per cent of the total had been purchased at more than ⅛ cent above the low quotations in the Mid-Continent.[20]

Thus, the Government's own figures show that the market journals did not publish the prices being paid by the respondents. If they had, the great number of purchases being made below the low quotations would have overborne the few being made above the low quotations and *the quotations would have been lower than they were.*

The respondents' audits (Defendants' Exhibits 1011 and 1024) went even further than this. They showed that if the Oilgram had published the prices paid by the respondents in June, July and August, 1935, their quotations would have broken from a range of 4⅝-4¾ cents to one of 4½-4⅝ cents with occasional drops as low as 4 cents.[21]

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[17] Govt. Exs. 747, 748 and 749, R. 3270-5.
[18] Govt. Exs. 750 and 751, R. 3276-80.
[19] Govt. Exs. 747, 748 and 749, R. 3270-5.
[20] Govt. Exs. 750 and 751, R. 3276-80.

In the Mid-Continent, the percentage of major company purchases at prices below the low quotations was higher during March, April and May when the price rise occurred than during the indictment period as a whole. The percentage of prices above the low quotations was lower during the former period than during the latter.[22] In other words, the prices paid by the major companies would not account for either the price rise in the spring of 1935 or the price decline in the spring of 1936. There were no purchases of regular gasoline at prices above the high quotation during 1935. During most of the year there were no major purchases of regular gasoline at all, and it would have been impossible for the market journals to have used the price paid in such transactions.[23]

Finally, as mentioned above, the respondents' audit showed that the market quotations in the trade journals actually represented the prices at which the vast majority of sales were being made to jobbers and consumers on the open spot tank-car market. 76 per cent of the spot sales which the independent refiners had made to jobbers and consumers had been made at the high quotations in the market journals, or between the low and the high quotations, or at the low quotations. 8 per cent had been made at prices which were above the high quotations.[24] Not only, therefore, did the trade journals ignore the prices paid in sales to the respondent companies, but they accurately reflected the prices paid in sales to jobbers and consumers.

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[21] Def. Ex. 1011, R. 3783; J. D. Miller, R. 1617; cross, R. 1617.
[22] J. D. Miller, R. 1663.
[23] Def. Ex. 1024, R. 3807; J. D. Miller, R. 1661-2, 1669.
[24] Def. Ex. 1024, R. 3807; J. D. Miller, R. 1665.

VII.

The nature of the distress gasoline which the respondents purchased.

A. Definitions of distress gasoline.

The respondents purchased only distress or surplus gasoline.[1] Bourque's surveys showed only distress gasoline.[1a] The monthly meetings of the Tank-Car Committee dealt only with the distress gasoline revealed by Bourque's surveys.[2] The Mechanical Sub-Committee confined its activities to distress gasoline.[3] Jacobi testified that that was the only kind of gasoline purchased under the program.[4]

Cline, Fischer and Travis all testified that the only gasoline sold by the East Texas Refiners' Marketing Association was surplus or distress gasoline.[5]

The following definitions of distress gasoline appear in the record:

> "* * * it is the general rule among the so-called independent refiners not to have tankage for working stocks beyond a reasonable limit, and they do not usually have storage facilities beyond their necessary working stocks to take care of current business. * * *
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> "In times of overproduction, they are compelled to throw their product on the market at whatever

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[1] See pp. 105 *et seq., supra.*

[1a] See pp. 85-6, 91, 101, 103, 106-7, 111, *supra.*

[2] See pp. 110-14, *supra.*

[3] See pp. 120-2, *supra.*

[4] Jacobi, R. 382, 384-5.

[5] Cline, R. 642, 644-5; Fischer, R. 1119; Travis, cross, R. 1129-30.

price it will bring. That gasoline is called distress gasoline in the trade." (Franklin, R. 929).

* * *

"* * * From the standpoint of a small refiner, distress gasoline is a product which he has on his hands for which he has no immediate sale except at a price below the current market." (Shatford, R. 1003).

* * *

"* * * Distress gasoline is the part of any company's manufacture that it has no regular sales outlets for, and that it must sell at prices substantially below the market. * * *" (McDowell, R. 1166).

* * *

"Distress gasoline is gasoline that is forced on the market for one circumstance or another, usually at a lower price than that prevailing in the market. It is almost always due to a condition of over-supply, where the refiner is not in a position to finance the holding of that gasoline over a longer period of time." (Frey, R. 1327).

* * *

"* * * Distress gasoline is gasoline that is on the hands of the small selling refiners, in tanks or in cars on the track, for which they have no market except at distress prices." (Jacobi, R. 372-3).

* * *

"* * * The gasoline market is just like the spot market or the stock market; it is based on the law of supply and demand. A refiner is naturally interested in getting as good a price as he can. And the buyer is interested in getting as low a price as he can. The point where the two of them get together is the going spot market. As an example of a price that wouldn't be the going market price under that definition, supposing a refiner had 50 cars of gasoline that he had to sell before night, and he had to take the best price he could get for it. * * * That would be a distress price. The proper price would be whatever the normal trade was going at, whatever we were able to sell for regularly, day to day." (Cline, R. 628).

* * *

"* * * I don't believe I have made clear what we consider to be a surplus gasoline. Here is a refiner that makes 5 cars of gasoline a day; that is 35 cars a week. He is selling a certain number to jobbers, possibly brokers, week after week, and has been for an extended period of time. He knows just about how much business he will get from them each week. Suppose that totals 25 cars. Then there are 10 cars left over that he has no immediate home for. He could sell it in half a dozen places at a bargain price, at whatever he could get for it, or whatever the buyer he approached would pay. * * * That is what we consider, for the purposes of our Association, surplus gasoline. * * *" (Cline, R. 642).

* * *

"My understanding was that excess or surplus gasoline meant a surplus amount of gasoline for which it was hard to find a market, because there wasn't a demand for it. I presume the price had something to do with the difficulty in finding a market for it. I did not understand it to mean that it was more gasoline than they could find a market for at any price." (Bradshaw, R. 671).

* * *

> "* * * Our ideas of surplus gasoline was the gasoline that was left over after the refiner's contract customers had taken out their requirements after his regular buyers in the open market had come in and taken theirs, and it was that gasoline left after thay had exerted all efforts to attempt to sell it. That gasoline left over was distress." (Steiger, R. 751-2).

* * *

> "Distress gasoline is gasoline in the hands of a refiner who does not have a market for it and cannot hold it by reason of lack of finances or lack of storage capacity. * * *" (Gray, R. 1808-9).

In the following sections we shall discuss in detail exactly what the record shows as to the causes and effects of this phenomenon.

B. The independent refiners could neither shut down nor substantially curtail their operations.

The record shows that, in the language of the witness Franklin, the average independent refiner "has to keep [his refinery] running continuously or go out of business permanently. He has no choice in the matter."[1]

There are three reasons for this:

(1) The independent refiner obtains his crude oil under contracts which require him to take all the crude oil which the seller can legally produce. If he violates this provision in order to shut down or curtail operations, the seller may cancel the contract. A refiner whose contract has been cancelled

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[1] Franklin, R. 930.

finds it extremely difficult to obtain a new supplier when he reopens his plant.[2]

(2) The independent refiner also has certain customers of long standing who look to him for supplies. A shut-down usually means the permanent loss of such customers.[3]

(3) Even if *some* curtailment is possible, it cannot be substantial. The costs of refining (outside of the cost of crude oil) are largely overhead costs. Any curtailment of production, therefore, increases the cost per unit sold. If, therefore, the curtailment is carried beyond a certain point, the cost per gallon becomes prohibitive.[4]

The testimony on these points was undisputed.

Wirt Franklin, a former independent producer and refiner, and the first chairman of the Planning & Coordination Committee under the Code[5] testified regarding the danger of losing crude oil connections and customers as follows:

> "The independent producer who has not sufficient facilities for storage must sell the crude oil that he produces from day to day on a day to day basis if he continues to produce his allowable share of the production from the common pool.
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> "In order to take care of that, the oil is sold under what is known as a division order. That is a contract between the operator of the oil wells and

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[2] Franklin, R. 926, 930; Shatford Cross, R. 1077; Gray, R. 1827-8.

[3] Franklin, R. 930; Gray, R. 1828.

[4] Evans, R. 542-4; Gray, R. 1827.

[5] Franklin, R. 914-5.

the purchaser who usually owns the pipe lines that connect to the stock tanks. * * *

"The division order has a provision obligating the purchaser to take from the producer all the allowable oil on the lease which the division order covers. He has to take it as it is produced. He takes it from the tank. While they are filling one tank, they are usually emptying another into the pipe line. * * *" (R. 926).

"When the price of refined products goes down below the cost of operating, the small, independent refiner can't close down his plant until prices rise, unless he expects to go out of business permanently, because of a variety of reasons. The most important is that he would lose his crude oil connections in the field. If he once cuts loose from the producer, the producer has to seek some other market or outlet for his daily runs of crude oil. And if he shuts down, he will also lose his marketing outlets for his refined products, as some other refiner will immediately take over that business.

"As a general rule the independent refiner had certain customers that took from him pretty steadily. I know we did. We had other brokers and jobbers that bought from us from time to time. If we had shut down, those that were our steady customers would necessarily have had to go some place else to buy their gasoline and make other alignments and contracts with other people.

* * *

"It is a characteristic of the refining business that it is necessary for the average independent refiner to keep his refinery operating, regardless of the price of crude oil or the price which he obtains for his refined products. He has to keep it running continuously, or go out of business per-

> manently. He has no choice in the matter" (R. 930).

John E. Shatford, also a former independent refiner, and the National Coordinator of refinery operations under the Code[6] testified as to the danger of losing crude oil connections as follows:

> "I made that point in connection with losing crude oil connections in this sense. If the small refiner shut his plant down and gave up his crude connections, someone else would step in and take it and then when he wanted his crude oil back, he could not get it. He would be without a supply of raw material.
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> * * *
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> "There has been a fluctuation in the operations of individual independents, so-called independent refineries, throughout their history, so far as I know. * * * I think within reasonable limits it is true that the amount that these independent refiners did produce, from month to month, varied through the year." (R. 1077).

D. J. Gray, the former manager of the Waggoner Refining Company, an independent refiner,[7] testified on the impossibility of substantially curtailing operation, and the danger of losing crude oil connections and customers as follows:

> "When conditions are bad and prices are low, some small refineries do shut down temporarily and some reduce their throughput. By 'throughput' I mean the amount of oil that they put through their

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[6] Shatford, R. 995.
[7] Gray, R. 1808.

plants. But most refineries are one-unit plants, and have a maximum and a minimum at which they can operate. For instance, if you have a plant capable of turning out 2,000 barrels of gasoline a day through one unit, you might be able to produce 1,200 to 1,500 barrels a day economically, through that unit, but you couldn't go below that.

"A number of refiners have a pipe line gathering system through which they transport oil which they buy from the producer in the field. If they shut down their plant, they can't buy that fellow's oil, and he seeks another outlet for his oil. When they get ready to go back in business again, they have a whole system of pipe lines lying in the ground which they have to dig up and put some place else, providing they can find somebody else that will sell them the oil. It is quite frequently difficult to persuade somebody to sell you oil if they know you are a company that is liable to run this month and shut down next month. Therefore, you are forced to stand the punishment in the hope of better days.

"Frequently they have fuel oil contracts with the railroads, for 3 months, 6 months or 12 months, and the period which it was shut down makes it impossible for them to resume under those contracts, and they would probably have difficulty in getting new contracts when they start up again.

"It is like any other business when you break down all your connections, both with reference to selling products and the purchase of raw materials." (R 1827-8.).

The high unit cost of curtailed operations affected even companies which had their own supplies of crude oil and which could thus curtail operations without fear of losing their crude oil connections. Barnsdall Refining Corporation (which produced 50% of its own crude oil)[8] kept one of its refineries shut down and purchased gasoline rather than incur the added costs of partial operations.[9]

None of these witnesses testified that *no* curtailment of operations was possible. Shatford recognized that there was "a certain amount of leeway".[9a] Gray testified that "some small refineries do shut down temporarily."[10] It is also clear from the record that there is a certain amount of curtailment in the fall and winter when demand is low. J. W. Warner, an employee of Tide Water Oil Company, made repeated reports to that effect during the fall and winter of 1935-1936.[11] It will be noted from Warner's letters, however, that, in spite of curtailment, there were substantial amounts of surplus gasoline on the market. The curtailment which occurred in the fall and winter of 1935-1936 was clearly not sufficient to meet the seasonal decline in consumption. In fact, it left the refiners with as much surplus gasoline as before. The East Texas refiners manu-

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[8] Evans, R. 507.

[9] "* * * We did not have enough gallonage to operate our 3 refineries at capacity all the time, and it became necessary some times to close one down. It was costing us more to make the gasoline than we could buy it for practically all the time.

* * *

"We had the crude oil and equipment to supply our own demands without going out in the market and buying from smaller refineries at that time, but it cost us more to make it than to buy it. We have 3 plants, and not enough business for all 3 of them, so we cannot run them all 3 together. We have more than enough business for 2, but not enough for the third. They cannot all at the same time be operating on a profitable basis. 2 of them operated every day of the year. The Okmulgee plant was the one where fluctuation occurred. There was a certain amount of investment in that plant, a certain number of employees there, and it was a proposition to close it down altogether., (Evans, R. 542-543.)

[9a] Shatford, R. 1077.

[10] Gray, R. 1827.

[11] "Present conditions of the market and the apparent scarcity of open market gasoline indicates that refiners are following a policy of keeping crude runs down to a level where no burden-

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some gasoline stocks will accumulate. * * *" (Govt. Ex. 274, R. 2900.)

* * *

"The gasoline market early this week lost considerable ground as inter-refinery buying in the East Texas district failed to develop as was anticipated. As a result a surplus quantity of material accumulated, causing temporary anxiety among marketers as to the future trend of prices."

* * *

"Definite and reliable informations shows refiners in the East Texas field have lowered their crude runs to stills to a marked degree. This is believed to be good proof that this group of manufacturers see the necessity of a balanced market." (Govt. Ex. 276, R. 2906.)

* * *

"* * * Refiners, large and small, have continued to contribute this week toward the firmness of the present market by endeavoring to hold their gasoline production in line with seasonal market demands." (Govt. Ex 277, R. 2909.)

* * *

"East Texas group of refiners were said to have a considerable amount of available gasoline at the end of the week, as inter-refinery buying failed to develop in the East Texas district sufficiently to absorb the quantity this group of refiners had to offer. The exact amount of surpus gasoline can not be readily confirmed; however, it is estimated at 100 cars."

* * *

"Observers are stressing the importance of a further reduction of refinery crude runs, as production is generally conceded factured only 12.7% less gasoline, in November, December, January and February than in July, August, September and October.[12] Refiners in the Mid-Continent field (according to Government Exhibit 281 quoted above) did about the same.[13] The decline in consumption during these four months was *17.3%*.[14]

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to be too high in comparison with the present market demand." (Govt. Ex. 278, R. 2912.)

* * *

"Several marketers of Oklahoma and North Texas gasoline are in urgent need of orders, as shown by the fact that they have lowered their prices in an attempt to obtain quick shipping instructions, but with little success. Observers feel that some very definite action must be taken to clear from the open market all surplus gasoline. Unless this is done, a general breakdown in prices is probably, in spite of efforts of many manufacturers to keep production in line with the seasonal decline in market demand." (Govt. Ex. 279, R. 2915.)

* * *

"Marketers in general are advocating a further reduction in gasoline production. A recent survey by some observers of refinery operations for December in East Texas and other Mid-Continent districts indicates refinery crude runs are being reduced ten to twelve per cent under November. However, the percentage of decrease is reported estimated rather than actual calculations, but it is sufficient to reflect that refiners are doing everything possible to prevent surplus gasoline from being a burden on the open market." (Govt. Ex. 281, R. 2921.)

[12] Dyer, R. 1470.

[13] R. 2921.

[14] Def. Ex. 953, R. 3649. Even this was less than had been expected. The Bureau of Mines had estimated on the basis of past performance that consumption during this period would decline over 21%. *Ibid.*

C. The independent refiners were forced to sell their gasoline as fast as they refined it because, generally speaking, they had little or no storage capacity.

Major integrated refiners generally have considerable amounts of storage capacity which enable them to absorb any overproduction.[1] The independent refiners, however, are in an entirely different position. With few exceptions they have little or no storage capacity.

Franklin testified:

> "After the gasoline is manufactured by the refiner, as a general rule, in normal times, he puts it on the market. Each refining plant has a normal amount of storage facilities to maintain inventories necessary for working stocks. But it is the general rule among the so-called independent refiners not to have tankage for working stocks beyond a reasonable limit, and they do not usually have storage facilities beyond their necessary working stocks to take care of current business.
>
> "In times of overproduction, they are compelled to throw their product on the market at whatever price it will bring. That gasoline is called distress gasoline in the trade.
>
> "An independent refiner doesn't build sufficient storage tanks for his gasoline for several reasons. For one thing, it is very costly; and for another, when he puts it in storage he is gambling on the markets, more or less, as to whether it is going to

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[1] Franklin, R. 928; Shatford, R. 1010. During the indictment period most of this storage capacity was empty. Inventories were "very low" in January, 1935. They were reduced below seasonal requirements in the Spring, and were not restored until February of 1936. (Shatford, R. 1010; Van Covern, R. 1512-4. Def. Ex. 953, R. 3649.)

> go lower or higher. Most of them are not able to take those chances, beyond a certain limited amount of storage. It also ties up his capital, and he doesn't get any returns to pay for his runs of crude oil, and he has got to pay the producer for them every month. If he hasn't sufficient storage facilities, he sells the gasoline he produces from day to day at whatever price it will bring on the market (R. 929-30).

Shatford testified:

> "The small refiner cannot hold his gasoline until it is possible for him to get a better price. He hasn't any or very much storage. If he built storage he would not have the money to meet his crude pay-day, that is, the day when he has to pay the producers for their oil. So, generally speaking, he has to sell his stuff as he makes it (R. 1003).
>
> "Independents or non-integrated refiners do not have any substantial storage capacity. They do not have any appreciable refinery stocks of gasoline because they haven't even the storage in which to put it nor the money with which to pay for it as a general rule. There are exceptions" (R. 1010).

McDowell testified:

> "Not very many independent refiners could store this gasoline until they could get a better price, because they had neither the storage nor the money to finance the storing of large quantities of gasoline. And you know, crude oil has to be paid for twice a month" (R. 1166).

Again, it will be noted that the testimony is not that *no* independent refiner had storage capacity, but that, *gen-*

erally speaking, independent refiners do not have any substantial storage capacity.

The Government's brief refers (B. 46, n. 59) to certain testimony of the witness Van Covern and to three exhibits which, it claims, show that "many independent refiners had substantial storage capacity which enabled them to keep gasoline off the market when they regarded this as economically desirable." Van Covern testified that "Any seasonal operator like [the respondent] Skelly or Kanotex * * * carried seasonal inventories".[5] The market letters contain the following remarks:

> "The Waggoner Refining Company (referred to in the last week's report) are cooperating with the 'buying group', in an orderly liquidation of their stocks. * * *"[6]
>
> "Simms Oil Company, who recently disposed of their marketing facilities and are now dismantling their Dallas refinery, originally had some 300 cars of gasoline in storage which they are anxious to dispose of. * * *"[7]
>
> "* * * We received an offer of 75,000 barrels of 66 plus octane from Refiners Export Corporation for lifting at Texas City at a price of 5½¢, which is ¼¢ above the 'current low'. We believe that this cargo is made available by the failure to consummate arrangements for the sale of this cargo on the Pacific Coast to be transported by the S. S. 'Brandywine'."[8]

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[5] Van Covern, R. 1535.

[6] Gov. Ex. 187, R. 2754.

[7] Gov. Ex. 190, R. 2764.

[8] Gov. Ex. 248, R. 2840.

It is significant that these letters refer to obvious exceptions to the rule. The Kanotex Refining Company operates the third largest independent refinery in the indictment territory.[9] Waggoner Refining Company, owned by the wealthy ranching family, has "substantially more storage than the ordinary independent refiner in North Texas."[10] Refiners Export Corporation is obviously not a refiner at all but a terminal export company engaged in the business of assembling cargoes for export.[11]

On February 28, 1935, it was estimated that twelve major companies alone held 93.7% of the gasoline in storage in Kansas and Oklahoma. There were three other large major companies operating in those states. The figures for those companies were not available.[12]

The independent refiner's lack of storage capacity becomes a serious disadvantage when, in order to maintain his crude oil connections or his customers (see Section 1, *supra*), he has to manufacture gasoline for which there is no demand. Having no place to store the gasoline, he has no alternative except to sell the gasoline immediately.

The result is that the gasoline is frequently placed in tank-cars as soon as it is refined,[13] or the refiner "has to move that gasoline within the next twenty-four or forty-eight hours to prevent a shut-down."[14]

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[9] Def. Exs. 939 and 941, R. 3611, 3617.

[10] Gray, R. 1809.

[11] The company is not even listed as a refiner by the U. S. Bureau of Mines. See Def. Exs. 939 and 941, R. 3611, 3629; see also Arnott, R. 1715-6.

[12] Def. Exs. 839, 841, 842; R. 3356, 3358, 3360. Cf. Shatford, R. 1032.

[13] Jacobi referred to distress gasoline as gasoline "in tanks or in cars on the track." R. 3723. Shatford also referred to distress gasoline as being "on the track." R. 1004.

[14] Cline, R. 639.

D. Gasoline was not considered distress gasoline unless the refiner was unable to find a customer for it except at a forced-sale price.

Generally speaking, the independent refiners, had no bulk storage plants or service stations through which they could market the gasoline themselves.[1] They did, however, have two types of customers: (1) jobbers who purchased under long-term supply contracts and (2) jobbers and brokers who purchased from time to time on the spot tank-car market.[2]

The record shows that gasoline was not considered distress gasoline unless both types of customers—not only the jobbers who purchased under contract, but all the jobbers and brokers who purchased regularly on the spot tank-car market—had been satisfied.

Jacobi testified:[3]

> "We differentiated distress gasoline from other gasoline by the statement of the refiners that it was distress gasoline *they couldn't move.*" (R. 384).
>
> "Q. What was the necessity of buying, or of finding markets for the distress gasoline? A. It was evident that *they couldn't find it themselves*" (R. 378).
>
> "In speaking of the recommendations of buying prices which I made between March 14 and June 1, 1935, I stated that I based my recommendations upon the fair prices for gasoline. Independent refiners in 1935 sold some of their products upon contract, and they disposed of some in spot transac-

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[1] Beroth, R. 185; Franklin, R. 947; Shatford, R. 996.

[2] Franklin, R. 930; Jacobi, R. 493.

[3] All italics are supplied.

tions to their jobber outlets. They also sold some through brokers. Generally speaking, *what they couldn't dispose of in these channels was distress gasoline.*" (R. 493).

"In attempting to determine the amount of distress on the market at any time, our sub-committee considered that the movement of refiners' gasoline, other than that which might be purchased by majors, would proceed on a normal basis. We considered the normal outlets of the refiners in their sales to their contract people, we considered the ordinary sales they made to brokers, and sales made to jobbers in the spot market. *If they had no outlet for anything beyond those outlets, that would be distress gasoline.*

"I knew markets in the Mid-Continent area, not marketing, because I am not in the marketing end of the business. I had a good idea of what the outlets were of the independent refiners. I knew that they sold a large part of their output to jobbers." (R. 495-6).

Cline testified:

"We considered in the Association that 'surplus gasoline' was the amount of gasoline a refiner manufactured *over and above his fairly steady outlet to jobbers and brokers.*" (R. 636).

"The way we considered it, it was surplus gasoline that we were selling to these major companies through the Association, but I don't believe I have made clear what we consider to be a surplus gasoline. Here is a refiner that makes 5 cars of gasoline a day; that is 35 cars a week. He is selling a certain number to jobbers, possibly brokers, week after week, and has been for an extended period of time. He knows just about how much business

> he will get from them each week. Suppose that totals 25 cars. Then there are 10 cars left over that he has *no immediate home for.* He could sell it in half a dozen places at a bargain price, at whatever he could get for it, or whatever the buyer he approached would pay." (R. 642).

Steiger testified:

> "Our ideas of surplus gasoline was the gasoline that was left over after the refiner's contract customers had taken out their requirements, after his regular buyers in the open market had come in and taken theirs, and it was that gasoline left *after they had exerted all efforts to attempt to sell it.* That gasoline left over was distress." (R. 751).[4]

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[4] On pages 642-3 of the Record, Cline apparently testified that the distress gasoline marketed through the East Texas Refiners Association could have been sold on the spot market at non-distress prices. An examination of his entire testimony, however, reveals that he was referring to the possibility of sales to major companies. He said:

> "I don't believe it is true that if the refiner started out to sell that gasoline to jobbers, and not through our Association, he usually would have to take a lower price for it. I believe he might have to take a little lower price if he sold to a broker.
>
> "This surplus gasoline did actually move at a lower figure before we had our Association; but that was before the Connally Act or any Federal regulation down there, and we had all kinds of prices.
>
> "Surplus gasoline is more gasoline than the refiners have a regular market for. That is the way I have explained that we used it in our Association.
>
> > "Q. All right. Now, when you have more gasoline than you have a regular market for, can you dictate the price to a person that is taking surplus gasoline?
> >
> > "A. You certainly don't have to take any price that is offered to you.

Fisher testified, regarding the gasoline sold by the East Texas Refiners Marketing Association:

> "Each refiner was to sell his products to his own customers, and his surplus was to be turned over to the Central Selling Organization, and *he was to dispose of it through new customers, wherever he could find them.*" (R. 1119).

Under these circumstances, the only available purchasers for distress gasoline were those *who did not need the gasoline immediately.*[5] Since the refiners *did* have to

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"Q. You can store it if you want to; is that right?

"A. No. You can go out and build new markets, *just exactly what we did.*

"Q. You built new markets among the jobbers and brokers, did you?

"A. *There are other people that buy gasoline.*

"After the Connally Act was put into effect and our new Tender Board was set up, the refiners in the East Texas field were selling to practically every independent jobber and filling station owner in the eastern part of Texas. We wanted to find further markets in that territory; that is, the eastern part of Texas and the Texas Gulf Coast. *We had no one to turn to inasmuch as we were already supplying the independent trade except the major companies or the large companies* who were operating distribution plants and filling stations in the eastern part of Texas, and the people who were operating terminals on the Texas Gulf Coast. *That is what we did.*" (R. 641-2, italics supplied.)

[5] "When the market is pretty well saturated with gasoline, it won't absorb the surplus offers, and it is under those circumstances that distress gasoline gives the most trouble."

* * *

"By 'saturated' market I mean that the market has taken up all the gasoline that it wants, and is beginning to pick and choose on the basis, *not of need, but on the basis of price.*" (Shatford, R. 1004.)

sell immediately, the purchasers naturally took advantage of the situation and forced the price down below the prices being paid by those who did need gasoline.

Prior to 1935 even major companies had used their superior bargaining positions in this way. Jacobi testified:

> "It had been the practice among buyers for major companies as well as others to take advantage of refiners who were in a distress position, and beat down those refiners in their prices. I had done it myself." (R. 477).

On this, all witnesses were agreed: the only price which the refiner could get for gasoline was *what a buyer who had no immediate need for the gasoline was willing to pay.*

> "* * * they have no market, except at distress prices." (Jacobi, R. 373).

* * *

> "* * * They would have to sell at any price they could get for it." (Jacobi, R. 385).

* * *

> "* * * he had to take the best price he could get for it. * * *" (Cline, R. 628).

* * *

> "* * * He could sell it in half a dozen places at a bargain price, at whatever he could get for it, or whatever the buyer he approached would pay. * * *" (Cline, R. 642).

* * *

> "* * * they are compelled to throw their product on the market at whatever price it will bring. * * *" (Franklin, R. 929).

* * *

> "* * * They had to sell it some place. They sold it for a lower price than the market, in order to dump it. * * *" (McDowell, R. 1177).

* * *

See also: Bradshaw, R. 671; Steiger, R. 751-2; Shatford, R. 1002; Travis, R. 1129-30; Frey, R. 1327; Arnott, R. 1691-2; 1763-4.

E. The effects of distress gasoline.

Distress gasoline had three effects:

(1) It kept the tank car price of gasoline below parity with the price of crude oil and below the cost of manufacture;

(2) Because of the hardship which the low level of the tank-car market imposed upon the independent refiners, it was a constant threat to the crude oil price of $1.00 per barrel which the Administration was attempting to maintain; and

(3) It was a primary cause of retail price wars.

The first point—the effect of distress gasoline on the retail market is made clear by the testimony of the witness Shatford:

> "* * * Distress gasoline depresses or reduces the general tank car price to the refiners.
>
> "It is not necessary to have a large quantity of distress gasoline on the market to create this effect. In some circumstances a very small quantity of gasoline will do the trick." (R. 1003).

As Shatford explained, the depressing effect of gasoline might be intensified by the practice known as "pyramiding." He described this as follows:

> "Assume that the market is just a little shaky, say in the fall of the year when everybody is looking for a drop in the consumptive demand and the movement slows up a little, and a refiner has 10 or 15 cars of gasoline on his track that he hasn't sold. He usually wires a broker or a jobber and offers him that 10 cars of gasoline. He probably wires 10 brokers. Then each of those brokers starts calling each other up trying to sell that same 10 cars to each other and starts calling up the jobbers. The first thing you know, it sounds like 100 cars of gasoline, and the market will be hurt." (R. 1003-4).

Witness Gray also testified to this effect, saying:

> "* * * To sell 100 cars of gasoline a refiner may call 4 or 5 brokers and offer them 100 cars of gasoline. That 100 cars immediately becomes 1,000 cars of gasoline." (R. 1823).

Dr. Frey testified that it was his observation "as a member of the Petroleum Administrative Board that, the distress gasoline * * * was one of the obstacles which, in January and February, 1935, was preventing the price of gasoline from rising to parity with the price of $1.00 crude" (R. 1327).

[Many of the respondents' offers of proof also established that distress gasoline had a seriously depressing effect upon the price level. Thus, the National Petroleum Agency agreement[1] provided that:

> "The purpose of this association is to purchase, hold and, in an orderly way, dispose of surplus gasoline which threatens the stability of the oil

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[1] Def. Ex. 832, R. 3332, 3336.

> price structure in an effort to bring the prices of gasoline into proper relationship with the present price of crude oil and to maintain and support such relationship. * * *'']²

The effect of distress gasoline upon the crude oil price structure is best illustrated by what happened at the General Stabilization meeting of January 4, 1935, at which the tank-car stabilization committee was appointed. Distress gasoline was specifically mentioned as one of the principal factors which had contributed to the depressed condition of the independent refiners.[3] The reaction of the independent refiners to this situation is described in McDowell's testimony as follows:

> "* * * Mr. Majewski said he wanted to speak for the group of 20 or 25 independent refiners that he and Mr. O'Shaughnessy had been representing in all stabilization efforts. He said that these refiners were going broke, and that something had to be done. He pointed out that they were having to pay $1.00 for crude, and that they were selling their gasoline way below cost. He stated that under the Code, there was a formula that involved the refining industry's getting 5½¢ for gasoline when crude was at $1.00 a barrel.
>
> "Mr. Majewski said a lot of things, but I will just shorten it. He wound up by saying that unless something was done, this group of independent refiners was going to be forced to either close down and throw people out of work, or withdraw from

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[2] See also Def. Exs. 831, 844, 845, 846, 847 and 848 for Identification, R. 3329, 3367-89; Shatford offer, R. 1045-52. See also the Blazer report (Def. Ex. 1029 for Identification), quoted at pages 282-4, *infra*.

[3] McDowell, R. 1168; Arnott, R. 1691-2.

> Code activities so that they would no longer have to pay Code wages and adhere to Code hours. Furthermore, as a last resort, they would unite to try to cut the price of crude oil." (R. 1168-9—See also Arnott, R. 1693-4).

[It will be noted that in the National Petroleum Agency agreement quoted above, surplus gasoline is characterized as a threat to "the stability of the oil price structure".]

As to the effect of distress gasoline upon the retail market, Dr. Frey, the member of the Petroleum Administrative Board in charge of marketing, testified as follows:

> "Q. What relation, if any, did the sale of gasoline at distress prices have to price wars?
>
> "A. It encouraged the number of them, and intensified the price differentials" (R. 1328).

VIII.

The effect of the respondents' purchasing activities upon the "market supply" of gasoline.

A. Foreword.

This section is necessary because the Government's brief states that:

> "* * * The amounts to be purchased * * * constituted from one-third to one-half of the normal spot market sales of the Mid-Continent independent refiners named in the indictment and from one-fifth to almost one-third of the normal spot market sales of all the substantial Mid-Continent independents * * *" (B. 47).

Elsewhere in its brief the Government states that the respondents "sharply curtailed market supply" (B. 80) and that there was an "elimination or sharp curtailment" of sales to jobbers and brokers purchasing on the spot market (B. 44).

The basis for these statements seems to be footnote 60 on page 47 of the Government's brief which reads as follows:

> "Defendants' Exhibit 1023 (R. 3803) shows the total gasoline sales (in gallons) of the Mid-Continent independent refiners named in the indictment and the amount of gasoline (in gallons) purchased from these refiners by the defendants, for the years 1935 and 1936. The exhibit gives the same data for 29 principal Mid-Continent independent refiners (including those named in the indictment). Since independent refiners sell only one-third to one-half of

their output on the spot market (R. 189), the extent to which defendants' purchases reduced normal spot market supply is shown by the tabulation below.

	Total sales	Normal spot market sales		Purchased by defendants	% of normal spot marked sales purchased by defendants	
		⅓ col. (1)	½ col. (1)		Based on col. (2)	Based on col. (3)
	(1)	(2)	(3)	(4)	(5)	(6)
Independent refiners named in indictment:						
1935	377,988,736	125,996,245	188,994,368	64,440,712	51	34
1936	416,923,200	138,974,400	208,461,600	80,234,958	57	38
29 leading independent refiners:						
1935	903,296,529	301,098,843	451,648,264	93,394,727	31	20
1936	1,004,006,200	334,668,733	502,003,100	109,378,261	32	21

B. There is no allegation in the indictment and no proof in the record as to the extent to which the respondents' purchases had affected the supply of gasoline on the Mid-Continent spot tank-car market.

The only allegations in the indictment as to the extent of the respondents' purchasing activities are contained in the following portions of paragraphs 21 and 23:

> "* * * Said quantities of gasoline purchased from said independent refiners through said East Texas Refiners Marketing Association have amounted to more than 50% of all the gasoline produced by said independent refiners" (R. 14).
>
> "* * * Said quantities of gasoline purchased from said independent refiners in said [Mid-Continent] buying program have amounted to nearly 50% of all the gasoline sold by said independent refiners" (R. 16).

The Government introduced no proof in support of these allegations. As shown in sections IV and V, the respondents affirmatively disproved them. Undisputed evidence introduced by them showed that the respondents, together with the defendants which were dismissed because they had been dissolved or reorganized, had purchased only 14.9% of the gasoline sold by the Mid-Continent refiners and only 14.07% of the gasoline produced by the East Texas refiners named in the indictment.[1]

The respondents also introduced evidence which showed that their purchases amounted to a still smaller percentage of the production of other Mid-Continent and East Texas refiners.[2]

In their closing addresses to the jury Government counsel conceded that these allegations of the indictment were a "mistake",[3] and characterized as a "red herring" the respondents' evidence disproving this charge.[4] They then suggested for the first time that independent refiners "produce a great deal more than they sell on the spot market" and that if an investigation were made into the amounts which the independent refiners sold *on the spot market*, (as opposed to their total production and sales) it would be found that the respondents had purchased a large percentage of that amount (R. 2077). The table on page 48 of the Government's brief is apparently intended to support this charge which was made for the first time, in the closing addresses of the Government counsel.

In point of fact the record contains no evidence as to the amount of gasoline which the independent refiners in the Mid-Continent sold on the spot market. The witness

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[1] See pp. 135-6, 174-6, *supra*.

[2] *Ibid.*

[3] R. 2077

[4] R. 2080

Beroth (upon whose testimony the table in the Government's brief is based) did not testify, as stated by the Government, that the independent refiners sell "one-third to one-half of their output on the spot market". He testified as follows:

> "* * * Of the 15% of all the gasoline that is handled and sold in the Standard of Indiana territory, which I say is refined by the independent refiners, about 7½%, possibly or maybe 10% I would say is sold by the independent refiners under written or printed contracts with the jobbers. That would leave either 7½% or 5% which is sold in some other way by these independent refiners. Normally, that 5 or 7½% is sold in what is known as day to day sales or separate transactions to the jobbers or concerns like ourselves who inquire for prices" (R. 189).[5]

This testimony, however, does not purport to show the total amount of gasoline sold on the Mid-Continent spot market. It shows only the total amount of gasoline *sold in the Mid-Western area* which is purchased on the spot market. In point of fact the Mid-Continent spot market supplies not only the Mid-Western area, but other natural markets, such as the oil-producing states themselves, the Rocky Mountain states, the southeastern states, Nebraska, Arkansas, etc.[6]

The total amount of gasoline sold on the Mid-Continent spot market area must, therefore, have been *considerably greater* than the amount of the spot market gasoline which was sold in the Mid-Western area.

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[5] Another Government witness testified as a "rough guess" that 5 to 10% of the gasoline, "sold and marketed" in the Mid-Western area came from the spot market. (R. 798.) This testimony is not relied upon by the Government.

[6] See Bosworth, R. 847, Govt. Ex. 120, R. 2716.

C. Even if the testimony relied on by the Government had purported to show the extent to which the respondents' purchases had affected the supply of gasoline on the Mid-Continent spot tank-car market, the actual percentages of the supply purchased by the respondents would be only 14.9 to 22.7%.

As we have just seen, the table on page 48 of the Government's brief is based entirely on the mistaken assumption that the witness Beroth was testifying, about the total amount of sales on the spot market, instead of about the percentage of gasoline *destined for the Mid-Western area* which was sold on the spot market.

In so far, however, as the table purports to reflect the effect of the respondents' purchases on the amount of gasoline available on the Mid-Continent spot tank-car market, it is grossly misleading in three additional respects.

(1) Half the figures used by the Government are for the year 1936. The Mid-Continent Buying Program was in operation only during the first four months of that year. The respondents' purchases during the last eight months of 1936 ran *27% higher* than they had under the buying program.[1]

(2) Even the Government's figures as to the amount of gasoline purchased by the respondents in 1935 includes some 8,670,000 gallons which were purchased from the 14 refiners named in the indictment and some 8,710,000 gallons which were purchased from "29 leading independent refiners" by Standard of Indiana, Barnsdall and Globe of

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[1] J. D. Miller, R. 1641.

Kansas, *which are not respondents in this case.*[2] Standard of Indiana and Barnsdall were granted new trials, and Globe was dismissed from the case after verdict.[3]

(3) The 14 independent refiners named in the indictment and the "29 leading independent refiners" were not the only independent refiners doing business in the Mid-Continent field. In point of fact, the former group owned *only 32.2% of the operating refining capacity of the field.* The latter group represented *only 78.3%.*[4]

Limiting ourselves to 1935 (the only relevant period) and making the necessary corrections in the Government's figures we get the following results.

(1) If refiners selling 377,988,736 gallons of gasoline owned 32.2% of the operating refining capacity of the Mid-Continent field, and refiners selling 903,296,529 gallons owned only 78.3%, the total production of the independent refiners in the Mid-Continent field must have been in the neighborhood of 1,153,635,413 gallons.

(2) *Even if,* therefore, the independent refiners had sold from one-third to one-half of their production on the spot tank-car market, the total amount sold on that market would have been from 384,545,104 to 576,817,706 gallons.

(3) If Standard of Indiana, Barnsdall and Globe of Kansas bought 8,710,000 of the 93,394,727 gallons purchased in 1935, the respondents' purchases must have been 84,684,727 gallons.[5]

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[2] Def. Ex. 984, R. 3723; Evans, R. 523-5; Def. Exs. 1000, 1002, R. 3762, 3767.

[3] R. 2490-1.

[4] Def. Ex. 939 and 941, R. 3611.

[5] It might be objected that this figure is misleading because it is confined to purchases from only 29 refiners. However, it is

(4) On this basis the respondents purchases could have amounted to from 14.9 to 22.7% of the gasoline sold on the spot tank-car market.

D. The respondents purchased only 12.03% of the gasoline sold on the East Texas spot tank-car market.

It should also be noted that the Government does not purport to show how much of the total supply of gasoline in East Texas was sold on the spot market. The record on this point, however, is undisputed. The manager of the East Texas Refiners Marketing Association testified that:

> "Through the period 1935 and 1936, the independent refiners in East Texas marketed their gasoline practically altogether on the spot market. By 'spot market' I mean day to day transactions" (R. 624).

It follows from this that the percentage of the total spot market supply purchased by the respondents in East Texas was the same as the percentage of the total production of the independent refiners, viz. 12.03%.[1]

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fair to assume that the figures for all independent refiners would be about the same. The Government's own figures showed that the respondents, excluding Sinclair, purchased 54,240,000 gallons of gasoline in the entire Mid-Continent field during the fourteen months from March, 1935 through April, 1936. This would indicate purchases by those respondents during a twelve months period of approximately 46,491,000 gallons (Govt. Ex. 747, R. 3270). The Government submitted no figures for Sinclair, but figures introduced by the respondents indicate that Sinclair purchased 41,965,244 gallons of gasoline from all of the refiners in the Mid-Continent field (Def. Ex. 1015, R. 3797).

[1] See p. 176, *supra*.

E. The respondents purchased nothing but distress gasoline. There is no evidence that they prevented either brokers or jobbers from obtaining supplies.

As shown above the respondents purchased only distress or surplus gasoline. From the description of that gasoline, its causes and effects in the last section, it is apparent that it was gasoline for which there was no customers except at forced sale or distress prices.[2]

The passages in the various market letters which described the respondents' activities fully, confirm the fact that the respondents purchased only surplus or distress gasoline. Almost invariably they refer to the gasoline purchased as "surplus gasoline", "surplus material", gasoline "offered in excess of jobbers' requirements", etc.[3]

The Government's brief (B. 44, n. 56) refers to three letters (Government's Exhibits 256, 274 and 275), as supporting the conclusion that "brokers and other jobbers in the East Texas spot market found it practically impossible to obtain supplies in that market." The three exhibits mentioned are market letters from J. B. Warner of Tide Water to J. D. Collins of that company, dated May 11, October 26, and November 2, 1935. The pertinent passages thereof read, respectively, as follows:

> "In checking with marketers today we find that they are unable to buy gasoline in large quantities from any one district * * * Consequently brokers are placing the major portion of their purchases in Northern Texas and Oklahoma for northern shipment."

* * *

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[2] See pp. 192-215, *supra*.

[3] Govt. Exs. 118, 188, 193, 198, 203, 260, 281, R. 2716, 2757, 2774, 2782, 2798, 2870, 2921.

> "* * * East Texas has been moving practically no gasoline north as brokers say that they have been unable to find material in that district, and consequently have been placing their orders in North Texas and Oklahoma."

* * *

> "Inter-refinery buying is still a major factor in the East Texas market, most of the material being purchased for Gulf Coast movement, leaving only small quantities available to northern buyers. Consequently, brokers are now purchasing a large portion of their requirements for northern shipment in North Texas and Oklahoma fields."

It will be noted that these three letters refer to two widely separate occasions; that on both of those occasions brokers were attempting to purchase "large quantities" for shipment to the Mid-Continent; and that on both occasions the letters state that the brokers were able to obtain material in the North Texas and Oklahoma (*i.e.*, Mid-Continent) fields.

The same footnote in the Government's brief relies upon the testimony of Carl Beroth. Beroth claimed that, by reason of inter-refinery buying, various East Texas refiners had been unable to fill his orders during 1935 and 1936. McMurray Refining Company sold him small lots, but could not fill an order for 25 cars; East Texas Refining Company and Cascade Refining Company sold him none at all; Grogan Oil Company was unable to fill his orders on four or five occasions in both 1935 and 1936; Trinity Refining Company sold only a few cars; Southport Petroleum Company could sell him none at all; Century Refining Company and Tyreco Refining Company could sell him very little; Ocean Refining Company sold him only a few cars; Gilliland Refining Company sold him not over ten cars at a time.[4]

From other evidence, however, it appeared that the facts as to the availability of the East Texas refiners as sources of supply for brokers were as follows:

The respondents' auditors examined the refinery figures and audited the sales records of certain of the refiners mentioned by Beroth, to wit: East Texas, McMurray, Cascade, Grogan, Trinity and Ocean.[5] This audit revealed that during 1935 East Texas, McMurray and Grogan alone had sold 25,055,629 gallons to at least fifty different brokers. This figure exceeded major company purchases from these companies by eleven and a half million gallons. 770,880 gallons of this had gone to Beroth's own company.[6]

The amount of gasoline sold to brokers by Cascade and Ocean was not available. Since Cascade had a refinery capacity of 2,000 barrels a day, and sold only 55 tankcars to major companies in 1935, those sales amounted, assuming an average operating rate, to only about 7.7% of the company's potential production. Ocean had a capacity of 3,000 barrels a day and sold 30 cars to the defendants during the entire year 1935. Such purchases amounted, therefore, to only 2.8% of the company's potential production. Trinity, which, according to Beroth, could make only a few cars available to him on account of major company purchasing, did not sell a single car to any of the defendants. McMurray sold 1,736,548 gallons to brokers during 1935 as against 746,332 gallons to major companies. Grogan disposed of almost twelve and a quarter million gallons to brokers in 1935, over two million three hundred thousand more than it sold to major companies. East Texas Refining Company, from which Beroth claimed that he could get no gasoline at all, by reason of the respondents' purchases, sold 11,097,761 gallons to brokers in the calendar year 1935 alone. It sold only about a quarter of that amount to major companies during the same period.[7]

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[4] Beroth, R. 197-9.

[5] J. D. Miller, R. 1637, 1639. It was impossible to audit the records of most of the other East Texas refiners because most of them had gone out of business. (J. D. Miller, R. 1653.)

[6] J. D. Miller, R. 1638-9.

Cline, the secretary of the East Texas Refiners' Marketing Association, testified that substantially all of the gasoline sold through the Association was surplus or distress gasoline for which the refiners had no regular market anyway.[8] The East Texas refiners always saved enough gasoline for their regular trade and there was never a day when northern jobbers could not obtain gasoline in East Texas.[9] As noted above, the record shows that the respondents purchased only 14.07% of the gasoline sold on the East Texas spot market.[10]

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[7] J. D. Miller, R. 1638, 1639.

[8] Cline, R. 642, 644-5. This testimony was confirmed by the testimony of Fischer and Travis as to the reasons for forming the Association. Fischer, R. 1119; Travis, cross, R. 1129-30.

[9] Cline, R. 644-5.

[10] See pp. 174-6, *supra*. Beroth attempted to give similar testimony regarding attempts to purchase gasoline in the Mid-Continent. (Beroth, R. 197, 200-2, 204). This testimony was answered in similar fashion (Gray, R. 1817-8; J. D. Miller, R 1639).

F. Most, if not all, of the gasoline which the respondents bought in 1935 and 1936 was gasoline which they were compelled to buy and which they would have bought, regardless of the existence of a buying program.

1. *Generally.*

Since there *was* a buying program, it is naturally impossible to determine whether or not the respondents would have purchased as much gasoline as they did if there had never been a buying program. There *is* evidence that, in the absence of a program, they would not have made so many purchases *from the independent refiners having distress gasoline.* That is to say, the respondents bought more heavily from such independent refiners under the program instead of confining their necessary purchases to other large refiners.

McDowell testified that one of the original objects of the plan was to divert major company purchases from large refiners who had no distress gasoline on hand to small independent refiners who did have. He said:

> "* * * Mr. Ashton said that the plan he would suggest was quite a simple one. He pointed out again that this survey showed about 600 or 700 cars of distress gasoline in the hands of some 15 or 17 independent refiners; on the other hand, there were some 10 or 12 major companies who were known to be regular and normal buyers of gasoline. He thought that if this information of the availability of distress gasoline could be put in the hands of these major companies on an intelligent basis, that it would be a helpful thing for this Committee to do."[1]

* * * *

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[1] McDowell, R. 1182.

> "* * * Mr. Ashton stated that he felt the manner in which this previous buying [by major companies] had been done was responsible for the failure to accomplish anything. He stated that in the first place he had observed that the major companies followed the line of least resistance in their purchasing, and bought from those companies that they were well acquainted with, with the better known and larger of the independent refiners. In many instances, this had resulted in giving those refiners more business than they really needed, so that they had been over-running their federal allocations; and, on the other hand, this had left some of the smaller and lesser known independent refiners with distress gasoline to sell."[2]

* * * *

> "* * * I said that we discussed at that meeting the fact that we felt there were some 10 or 12 companies who were regular and normal purchasers of gasoline, and that this Committee might attempt to put these purchasers in touch with the sellers, for the purpose of giving these independent refiners an outlet that already existed for their distress gasoline. These major companies were buying gasoline and had to buy gasoline, and, as I tried to explain, they had been buying it from just a few companies. Our plan contemplated trying to get them acquainted with some of the smaller and lesser known independent refiners."[3]

In his memorandum of the February 11th meeting,[4] Mr. Sus stated that the program involved 14 major companies, each selecting one or more small refining companies whose gasoline it could advantageously move, and obligating itself to take whatever surplus or distress gasoline such company might have. Mr. Sus' memorandum states that the major companies indicated a willingness to make such selection and to "assume responsibility" for such surplus or distress gasoline.

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[2] McDowell, R. 1182-3.
[3] McDowell, R. 1218.
[4] Govt. Ex. 376, R. 2977.

Sus also testified in this case. He said:

> "Q. On the subject of what the major company could advantageously move, you meant, of course, gasoline which they could use. You didn't intend that anybody would buy gasoline that they would have to dump overboard, did you? A. No, sir.
>
> "Q. But you didn't mean to say that they buy only that gasoline which they would have bought otherwise, or would have bought anyway, did you? A. Yes, yes sir, I did. I meant to say that they were going to buy only gasoline which they normally would have needed and they would have bought regardless of any program."[5]
>
> * * * *
>
> "Q. If they were only going to buy what they needed, that wouldn't have been any burden, no matter how much it was, would it? A. No.
>
> "Q. No. So, if your discussion was that they would each buy only what they were going to need, you wouldn't have talked about a burden at all? A. It would have been a burden to dislocate their present buying routine and direct it into other channels.
>
> "Q. It would have been a burden if they were going to have to do something that they weren't normally doing? A. That is right."[6]

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[5] Sus, redirect, R. 1871.

[6] Sus, redirect, R. 1873.

Occasionally the purchasing companies cancelled existing purchase or "exchange" arrangements in order to use their "dancing partners'" gasoline. In March, 1935, an employee of Philips recommended to his company that it switch some of its purchases of gasoline from another major company, the former defendant Barnsdall, to the distress gasoline of small refiners. His interoffice memorandum stated that such buying would be in line with the program to support the market.[7] One of the divisions of Socony-Vacuum also cancelled an exchange arrangement with another major company because it wanted to be able to take distress gasoline from small refiners.[8]

Jacobi, the buyer for Socony-Vacuum, testified that one factor which influenced him in making purchases was the desire "to do his part" under the buying program.[9]

The purchasing of distress gasoline sometimes was a hardship on Skelly, one of the smaller major companies. For example, on January 9, 1936, W. T. Atkins of Skelly wrote two letters as follows:[10]

> "Dear Mr. Kaye:
>
> "Up to the present time there has been no change in the status of our gasoline purchasing during the last few months which is only for the account of absorption of excess stocks in our immediate territory. We are buying none for our own requirements on account of freight rates or prices with the exception of probably a few points into Oklahoma.

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[7] Govt. Ex. 489, R. 2999.

[8] Govt. Ex. 334, R. 2964.

[9] Jacobi, R. 436.

[10] Govt. Exs. 95 and 96, R. 2699.

"On the present program, we are obligated for about 50 or 60 cars a month of outside material, largely third grade which is rather burdensome at this season of the year when our sales of third grade are the lowest."

• • • •

"Dear Mr. Nagle:

"I wish to acknowledge your letter on obligations in the buying program of 10 cars 70 Octane and 55 cars of U. S. Motor. I trust that you will be able to use some of this U. S. Motor in Oklahoma, even at points where you are buying or exchanging gasoline. It may be that we will have to eliminate some exchanges inasmuch as our sales of third grade gasoline at this season of the year are so low that we cannot move anything like this volume of this product to our own stations.

"In some instances we may have to start with a small amount of freight differentials, temporarily at least until the consumption of third grade gasoline shows a higher rate of consumption as that is about the only way we can relieve the situation since our third grade gasoline sales only amount to 9% of our retail business."

Even these letters, however, indicate that Skelly was already obtaining gasoline from other outside sources.

2. *The respondents had always purchased substantial amounts of gasoline from independent refiners since their production was not sufficient to take care of their sales.*

It was shown without dispute that the respondents have been purchasing substantial quantities of gasoline for many years. While the present major companies have been expanding and integrating their operations, the demand for gasoline has increased so rapidly that their refinery capacity has frequently been insufficient to supply the needs of their own outlets. As a result they have had to purchase—usually from the non-integrated refiners who had no outlets of their own.[14]

Most of the respondents have been purchasing in substantial quantities in every year since 1931. The following table shows the purchases which four of them have made during these years.

(All figures approximate and in thousands of gallons)

Year	Pure[15]	Sinclair[16]	Skelly[17]	Globe[18]
1931	8,522	75,381	6,816	unavailable
1932	12,362	72,848	unavailable	unavailable
1933	31,984	6,778	9,241	2,457
1934	22,044	80,951	10,658	2,483
1935	29,246	86,116	17,300	2,630
1936	40,125	114,189	16,441	2,961
1937 (1st 6 mos.)	16,829	unavailable	unavailable	2,000

The record also shows that Socony-Vacuum had been buying for years[19]—in fact, Jacobi's job was buying gasoline,[20] that Continental had bought an average of 54,600,000 gallons a year since 1929,[21] and that Phillips had bought consistently since 1931.[22]

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[14] Shatford, R. 999.

[15] Def. Exs. 739, R. 3226; R. 3401; 854, R. 3405.

[16] Def. Exs. 878, R. 3463; 879, R. 3465; Everett, R. 1157-60.

[17] Hopp, cross, R. 852-3.

[18] Def. Ex. 999, R. 3757.

[19] Jacobi, R. 356, 461.

[20] Jacobi, R. 356.

[21] Bosworth, cross, R. 848.

[22] Kelly, cross, R. 840.

It will be noted that Pure, Sinclair and Skelly bought more in 1936 when the buying program was operating only four months than they did in 1935 when it was operating ten months; that Globe purchased almost as much during the first six months of 1937 as it had during 1935, and that Pure purchased more heavily during this period than in 1935.

It also appeared that Continental had purchased more heavily in 1934 than in 1935,[23] and that Sinclair had purchased more heavily in January and February, 1935, than it had during the buying program.[24]

The respondents as a whole purchased 27% more gasoline in the eight months following the abandonment of the buying program than they did during the fourteen months of the buying program.[24a]

The respondents also adduced the following evidence, showing the needs of the respondents during the indictment period.

Socony-Vacuum—Wadhams.

Jacobi testified that he had two reasons for buying: he wanted Socony-Vacuum to do its part in the program, and he needed the gasoline.[25] In one of his letters he had noted that Socony's purchases had enabled it "to do its part on the inter-refinery buying."[26] He had, however, been buying for years. That was his job—buying gasoline and other petroleum products for Socony Vacuum.[27]

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[23] Bosworth, cross, R. 848.

[24] J. D. Miller, R. 1635.

[24a] J. D. Miller, R. 1641.

[25] Jacobi, R. 436.

[26] Govt. Ex. 87, R. 2695.

Jacobi kept in constant touch with Ashton and the various Socony-Vacuum offices, and knew what they would need from month to month.[28] From March to November, 1935, for instance, Wadhams' cracking units at East Chicago were shut down for repairs. Instead of running at its capacity of five or six thousand barrels of crude oil a day, the refinery could process only two thousand a day.[29] Since this refinery supplied a good part of the requirements of the Chicago Division, the shut-down necessitated the purchase of additional amounts of gasoline for both companies.[30] Later in the year, the Socony-Vacuum refinery at Augusta, Kansas, fell behind, being unable to satisfy the demand of the various divisions which it supplied, and gasoline had to be purchased to offset this deficiency.[31]

Continental.

Continental had always been chronically short of gasoline, there never having been a year when its production had equalled its sales. The company had been forced to purchase substantial amounts of gasoline in each year since 1929.[32]

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[27] Jacobi, R. 356, 461. During the operation of the program Jacobi sometimes "stimulated orders" from various division offices. This, however, consisted merely of calling the offices and asking them if they had instructions which he could give to some independent refiner who had distress gasoline to dispose of. (Jacobi, R. 436-7).

[28] Jacobi, R. 435.

[29] Jacobi, cross, R. 491

[30] *Ibid.*

[31] Jacobi, R. 435.

[32] Bosworth, cross, R. 848.

Pure.

Throughout the Code period, Pure was refining as much gasoline as the authorities would allow. After the *Schechter* decision it stepped up its runs and operated at full capacity throughout the rest of 1935 and throughout 1936.[33] Even if it had operated its refineries for the sole purpose of producing gasoline and had paid no attention to other petroleum products, it could not have produced enough gasoline of the quality necessary to satisfy its demands.[34] In December, 1934, and January and February, 1935, it was forced to engage Gulf, Standard of Louisiana, and Standard of Ohio to process gasoline for it.[35] The following table[36] shows the amounts of gasoline manufactured, bought, and sold by Pure, and processed for Pure from January, 1931, and through June, 1937.[37]

(All figures approximate and in thousands of gallons)

Year	Sales	Manufactured	Purchased from independent refiners	Purchased elsewhere	Processed
1931	493,745	485,655	320	8,202	None
1932	502,331	498,292	450	11,922	None
1933	489,673	483,983	647	31,337	None
1934	520,294	463,282	3,620	18,424	None
1935	587,971	527,057	10,340	18,906	59,638
1936	662,090	530,688	16,920	23,205	79,051
1937 (1st six months)	332,008	293,514	16,829	12,602	45,028

In spite of efforts to build up substantial inventories during the winter months, Pure's inventories had declined in the winter of 1934-5.[38] Until November, 1935, it had less than twenty days' supply of gasoline on hand. In the spring of 1935 it had less than two weeks' supply.[39] Neither the allowable crude oil at its disposal[40] nor its refining equipment[41] was sufficient to satisfy its demand. Not only did it have to buy finished gasoline, but it had to purchase large quantities of crude oil and have it processed by other refiners.[42]

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[33] Langfitt, R. 1145.

[34] Langfitt, R. 1145, cross, R. 1146.

[35] Langfitt, R. 1146.

[36] Made up from Def. Ex. 739, R. 3226.

[37] Wescoat, cross, R. 856-8; R. 1133, 1134-7.

Shell.

The record contains no evidence as to Shell except the fact that the Shell Pipe Line bought 201,394 gallons of gasoline from the Cushing Refining and Gasoline Company in April, 1934.[43]

Sinclair.

Sinclair's operating figures showed that during the indictment period, and for several years past, it had been faced with a steadily rising demand which its own refineries were quite unable to satisfy. The following table[43a] shows for each year from 1931 through 1936, the company's requirements,[44] the amount it manufactured, and the amount it purchased, with figures showing the relative proportions of the latter to the total requirements.

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[38] Wescoat, cross, R. 860.

[39] Def. Exs. 740, R. 3223; 740-A, R. 3235; 741-A, R. 3263; 855, R. 3409; 859, R. 3425. Wescoat, cross, R. 859; direct, R. 1137-40

[40] Def. Exs. 852, R. 3400; Wescoat, R. 1133-4.

[41] Wescoat, R. 1134.

[42] Wescoat, R. 1133-4.

[43] Def. Ex. 888, R. 3476.

[43a] Made up from Def. Exs. 878, R. 3463; 879, R. 3465; and from Everett's testimony, at R. 1158-60.

[44] The company's "requirements" consist principally of its sales, but also include the amount of gasoline used by the company itself (Everett, R. 1157, 1160).

(All figures approximate and in thousands of gallons)

Year	Requirements	Manufactured	% of Requirements	Purchases	% of Requirements
1931	907,002	848,893	93.59	75,381	8.31
1932	880,243	818,883	93.03	72,848	8.28
1933	964,902	924,396	95.80	66,778	6.92
1934	1,041,334	928,437	89.18	80,951	7.77
1935	1,166,032	1,093,275	93.76	86,116	7.39
1936	1,292,169	1,119,543	92.83	114,189	8.84

Mid-Continent.

McDowell testified that Mid-Continent bought only such gasoline as it needed, and that it would have bought the same amount whether there had been a Tank-Car Stabilization Committee or not. Throughout the indictment period Mid-Continent's sales ran greatly in excess of its capacity to produce.[45]

Phillips.

Phillips had increased its sales each year it had been in business, including 1935 and 1936. In 1934 the increase had been over 5%; in 1935 9.3%; and in 1936 4.4%.[46] Its refineries had always operated continuously at their full capacity,[47] and during 1935 and 1936 they had operated in excess of their safe, normal capacity.[48] The company had been buying regularly since 1931.[49]

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[45] McDowell, R. 1215.

[46] Kelly, cross, R. 841; recross, R. 842.

[47] Kelly, cross, R. 841; redirect, R. 841.

[48] *Ibid.*

[49] Kelly, cross, R. 840.

Skelly.

The facts showed that Skelly's production had fallen short of its sales ever since 1931, and that during 1935 and 1936 its purchases had barely made up the deficiency. The following table shows the deficiency of its production under sales and the amount of its purchases for the years 1931 and 1933-36[50] (In barrels.)

Year	Deficiency	Purchases
1931	65,526	162,288
1933	55,275	220,035
1934	338,415	253,766
1935	409,393	411,910
1936	387,425	391,457

Globe.

The manufacturing, inventory, purchase and sales figures for the Globe companies show that their purchases have corresponded exactly to their manufacturing deficiencies ever since 1931.[51] The only substantial purchasing which the Oklahoma Company did during the indictment period was between February and June, 1935, when the Blackwell refinery was shut down, and inventories were practically zero.[52] The only substantial purchasing by the Illinois Company was during May, June, July and November and December, 1935. Both periods were characterized by extremely low inventories and extremely high demand.

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[50] Ho, p. cross, R. 852.

[51] Def. Ex. 1000, R. 3762; J. D. Miller, R. 1619-21.

[52] J. D. Miller, R. 1612-13.

Empire.

Empire's refinery at Gainesville, Texas represented approximately one-fifth of its available refinery capacity in the territory surrounding the Mid-Western area.[53] Prior to January 1, 1935, this refinery was shut down permanently.[54] At the time of the shut-down and some time before the buying program started, Empire began to negotiate with the Olney Oil and Refining Company, an independent refiner, with the idea of having Olney supply its needs for gasoline. Olney was selected because its location made it especially desirable to Empire from a freight standpoint.[55] When the buying program started, Empire merely carried out its plan by selecting Olney as its "dancing partner."[56]

Former Defendants.

The evidence as to the defendants who were dismissed or granted new trials was of a similar nature. Standard of Indiana had purchased more in 1934 than it had in 1935,[57] and its inventories were seriously depleted throughout the indictment period.[58] Barnsdall had purchased over five million gallons of gasoline in 1931 and 1932, over seven million in 1933, over nine million in 1934, and over twelve million in 1937 (as opposed to eight million in 1935 and ten million in 1936).[59] It was cheaper for it to buy gasoline than to make it because it had too much business for two of its refineries, and not enough to operate all three economically.[60] Globe of Kansas purchased more heavily both before and after the indictment period than during it. During the period, it had purchased only in April, May, July, August and October, 1935, when its inventories were falling rapidly.[61] The eastern Tide Water companies which used the gasoline bought by Tide Water Oil was operating its refinery at capacity throughout the indictment period, and yet fell far short of satisfying its needs from its own manufacture.[62] City Service Export bought in January, 1935, before the East Texas Association was formed,[63] as well as in February and March.[64] It needed gasoline very badly to make up its export cargoes.[65]

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[53] Def. Exs. 939, 941, R. 3611-13.

[54] *Ibid.* Jacobi, cross, R. 491

[55] McDowell, R. 1196-7.

[56] Jacobi, R. 439.

[57] Barkdull, cross, R. 871.

[58] Barkdull, cross, R. 874.

[59] Evans, R. 552.

3. *Depleted inventories resulting from the administration of the refinery control provisions of the Code forced increased purchases.*

As noted above,[66] the system of refinery control had been administered since April, 1934, with the express purpose of depleting the major companies' inventories so that they would be forced to go out into the market and purchase from independent refiners. This purpose had, in fact, been accomplished, and by the end of 1934 the majors' inventories were very seriously depleted, and many of them were being forced to purchase gasoline.[67]

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[60] Evans, R. 508, 542.
[61] Def. Ex. 1000, R. 3762.
[62] Parsons, cross, 812.
[63] Cline, R. 664.
[64] Travis, R. 1132.
[65] Buckley, R. 604.
[66] See pp. 45-9, *supra*.

In March, 1935, the National Coordinator's office, with the approval of Secretary Ickes, requested the major companies to curtail their manufacture of gasoline during March by some 1,400,000 barrels. In response to this request the major companies voluntarily curtailed their manufacture by some 960,000 barrels.[68]

4. *Record-breaking demand forced purchases.*

During March, April and May, 1935, the demand for gasoline exceeded the Government's estimates by 3,700,000 barrels. During each of these months the refinery allocations under the Code were based on the Government's estimates, and the major companies were forbidden to manufacture more than their allocations. As a result, the industry was "caught short", not only by the 960,000 barrels by which the majors had curtailed their operations during March, but by the 3,700,000 barrels by which demand had exceeded the estimates; a total of 4,660,000 barrels. By the end of May the majors alone were short by about 3,000,000 barrels or 15,000 tank cars.[69]

Demand continued to outrun expectations, and to break all previous records. In June, it was 6.8% higher than in June, 1934; in July 12.7% higher than in July, 1934; in August, 10.6% higher than the corresponding period of the previous year; in September, 11.7% higher and in October, 10.6% higher. In November, it was slightly lower than 1934 consumption, but in December it was 14.7% higher than the corresponding period in 1934. During this entire period, with the exception of the month of September, the United States Bureau of Mines' forecasts of market demand, which were circulated in the industry, consistently under-estimated this demand.[70]

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[67] Shatford, R. 1010, 1011, 1013.

[68] Shatford, R. 1011, 1026-7, 1028-9, 1034-5; Def. Ex. 842, R. 3360.

[69] Shatford, R. 1065-8.

In 1936 consumption increased even more sharply, the average for the entire year being 9.5% higher than the record breaking year of 1935. In January of 1936, the increase over January, 1935, was more than 15%.[71]

As shown above, most of the respondents were operating their plants at capacity during this period, and were still unable to satisfy the increased demand of their customers.[72]

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[70] Def. Ex. 953, R. 3649.

[71] *Ibid.*

[72] See pp. 233-9, *supra.*

IX.

The reasons for the final achievement of parity in 1935.

A. Generally.

As we have shown, the price of gasoline began to rise on March 2, 1935.[1] By June, the price of third grade gasoline had risen from its low in February of 3¼¢ a gallon to 4¾¢, approximately in parity with crude oil selling at $1.00 per barrel.[2] Thereafter the price levelled off until January, when there was a rise in the price of crude oil and a corresponding rise in the price of gasoline.[3] The price again levelled off approximately at parity, with some fluctuations, in February and March, at no time going above parity.[4]

The Secretary of the Interior summarized the manner in which this parity was achieved in his Annual Report to the President, submitted to Congress in December, 1935,[5] as follows:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935 * * *."

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[1] See p. 105, *supra.*

[2] Def. Ex. 1024, R. 3807.

[3] Def. Ex. 713, R. 3177; Jacobi, cross, R. 487-8.

[4] Def. Ex. 713, R. 3177.

[5] Def. Ex. 917, R. 3522, 3525.

Many witnesses, both for the Government and for the respondents, agreed with the Secretary of the Interior that major company buying had had its effect on the price of gasoline in 1935 and 1936.[6] As Shatford said:

> "* * * a buying program would be an element of demand. * * * It was part of demand. I can't assess the relative value of that particular demand as against the demand as a whole * * *."[7]

A number of the respondents and their agents had also written letters showing that they believed that major company buying, either generally throughout the year, or in specific instances, had been a factor in raising and stabilizing the price of gasoline.[8]

Both the witnesses,[9] and the writers of the letters,[10] however, agreed with the Secretary of the Interior, however, that a number of other factors contributed to the behavior of the tank-car market in 1935 and 1936. One of the Government counsel conceded this in his closing argument to the jury, saying:

> "The Connally Act * * * was effective in shutting off hot oil, * * * and to the extent that it reduced that supply of hot oil of course it had its effect, a legal effect, a proper effect on price; and

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[6] Lanzer, R. 262; Bradshaw, R. 687, 694, 695, 699, 700; Steiger, R. 752-3, 754; Franklin, R. 989; Shatford, R. 1065, 1068; cross, R. 1103, 1105; Van Covern, R. 1512.

[7] Shatford, R. 1065, 1068.

[8] Govt. Exs. 75, R. 2689; 182, R. 2737; 218, R. 2819; 251, R. 2846; 253, R. 2852; 268, R. 2882; 272, R. 2894; 281, R. 2921; 284, R. 2924; 295, R. 2950; 682, R. 3112; 683, R. 3112; 685, R. 3115; and 686, R. 3116.

[9] See pp. 247-52, *infra*.

[10] Typical comments along these lines are collected in note 3 at page 69 of the respondents' brief.

I would not be blind enough to say that there were not other forces.

"We were coming out of a depression; there was greater seasonal demand, * * * and I would not stand here and say for one minute, gentlemen, that the refinery allocations that were put into effect in 1934 as the result of the refinery amendment to the code * * * did not have its effect also on the raise in the tank car price."[11]

B. Comparison of retail prices inside and outside the Mid-Western area in 1935 and 1936.

The Mid-Western area is the normal market for gasoline from the Mid-Continent area.[1] Furthermore the policies of Standard of Indiana, the market leader which sells some 22% of the gasoline sold in the area tend to maintain a fairly constant relationship between the wholesale price of gasoline in the Group 3 tank-car market and the retail price in the Mid-Western area.[2]

A comparison of the average retail price of gasoline in 20 to 30 representative cities in the Mid-Western area and the average retail price in a hundred-odd cities outside the area,[3] however, revealed that the retail price of gasoline was lower in the Mid-Western area than it was in the rest of the country, throughout the indictment period.[4] In all but four weeks in 1935 and in all but seven weeks in 1936 the retail price inside the area was lower than the price outside the area. In 1934, on the other hand, the price inside the area was higher during fourteen weeks and the same during one week. In other words, the price was higher inside the area than in the rest of the country 26.1% of the time in 1934, while it was the same or higher only 7.6% of the time in 1935 and only 13.4% of the time in 1936.[5]

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[11] R. 2063, 2064.

[1] McDowell, R. 1166.

[2] Marshall, R. 1232 *et seq.*

[3] J. D. Miller, redirect, R. 1629.

[4] Def. Ex. 1013, R. 3791; J. D. Miller, R. 1625-8.

It also appears that the retail price in the Mid-Western area rose less than the price outside the area in 1935. Between March 1 and June 1, 1935; retail prices within the Mid-Western area rose only 72 one-hundredths of a cent. Outside the area they rose 74 one-hundredths of a cent during the same period.[6]

C. Comparison between the respondents' purchases and the course of prices on the spot tank-car market.

1. *The March, 1935 price rise.*

There was no correlation between the start of the 1935 price rise and the start of the buying program. The price rise commenced on March 2, 1935, *a week before the Mid-Continent Buying Program had started.* During that week the market registered a ⅜c gain.[1] The beginning of the price rise coincided almost exactly with the installation of the new Federal Tender Board in the East Texas field under the Connally Act, and the issuance of the first Federal Tenders thereunder.[2]

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[5] Def. Ex. 1013, R. 3791; J. D. Miller, R. 1625-9.

[6] Swensrud, cross, R. 1462.

[1] Def. Ex. 712, R. 3173; Cf. McDowell, R. 1201. If mere purchasing be considered without regard to the existence of a program, it might be noted that substantial purchases had occurred in January and February when prices were depressed (J. D. Miller, R. 1635, 1636).

[2] Van Covern, R. 1512.

[*The respondents offered to show* that a similar price rise occurred in October, 1934, when the first Federal Tender Board went into operation under Section 9(c) of the N.I.R.A., later held unconstitutional. The excluded evidence would have shown that between October 17 and November 9, 1934 the quotations for third grade gasoline rose from 2⅞-3¼¢ and 2½-3¢ to 4⅛-4¼¢ and 4-4¼¢, almost exactly paralleling the rise which took place after March 2, 1935 when the second Federal Tender Board went into operation.[3]]

2. *Price fluctuations during ~~the~~ indictment period generally.*

There was no correlation between the amount of gasoline which the major companies were buying and the trend of prices on the tank-car market at any time during the indictment period. Major company purchasing was lightest during March, April, and May, 1935, when the market was rising. It was heaviest in May, June, July, August and September, 1936, during which period the price declined ½¢. The volume of major company buying in 1936 when the prices were going down was approximately 53% higher than the volume of buying in the spring of 1935 when prices were going up. On the other hand, in October and November of 1936, prices rose ¼¢, although major company purchasing decreased 38% in volume.[4]

3. *The price decline in 1936.*

There was no correlation between the respondents' purchasing activities and the decline in prices in 1936. The first declines occurred in February, 1936, while the Mid-Continent buying program was still operating.[5]

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[3] Def. Ex. 849 for identification, R. 3389; Def. Ex. 868, R. 3433; Shatford offer, R. 1061-2; Van Covern offer, R. 1498-500.

[4] J. D. Miller, R. 1640-1.

As a matter of fact, major company purchasing did not cease with the abandonment of the "program" in April, 1936. Purchasing during the last eight months of 1936 was 27% heavier than during the 14 months of the indictment period. The great bulk of this occurred during the five months from May through September when the price was going down. Major company purchases averaged 650 cars a month more during May, June, July, August and September, 1936, when the market was going down, than they did in March, April, and May, 1935, when the market was going up.[6]

D. During the indictment period, certain factors which had previously made for instability in the market were eliminated.

The Government claimed that prices during the indictment period displayed a rigidity which was without parallel in the history of the industry. Its witnesses testified that there had been much greater fluctuation in prior years, and that it was most unusual for prices to be so stable as they were during the last half of 1935.[1]

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[5] Def. Ex. 713, R. 3177; see Breuch, R. 281. The Government attempted to show a correlation between the price decline in the spring of 1936 and the commencement of the first Grand Jury investigation in Madison in May. Beroth testified that the first small breaks in the tank-car market in 1936 occurred in May and June, at about the time he testified before the Grand Jury at Madison (Beroth 196). The charts showing the actual course of the market journal quotations showed that Beroth was wrong.

[6] J. D. Miller, R. 1640-1.

[1] Beroth, R. 193, 194; cross, R. 222-3; Lanzer, R. 248; Breuch, R. 281-2.

The record, however, shows that there was no longer any reason for a change in the price level during this period except on January 9, 1936 when the price of crude oil rose 10% and was followed by the price of gasoline. On the contrary, conditions which had previously made for instability were eliminated, as follows:

(1) Up until 1933 the oil producing states had never attempted to coordinate the administration of their conservation laws so as to balance the production of crude oil with the consumptive demand for gasoline. Under the Code, however, state allowables regarding crude oil production were conformed with the Bureau of Mines' estimates of gasoline consumption.[2] In the spring when the gasoline consumption curve rose, an increase in crude oil production was permitted. In the fall when gasoline consumption fell off, the state allowables were reduced and the production of the raw material curtailed to correspond with the drop in gasoline consumption.[3] After the Code, the oil states continued the same practice under an Interstate Compact, specifically authorized by Congress, which permitted them to agree with each other as to the quantities of crude oil which they would allow to be produced.[4]

(2) It had never before been possible to enforce the state conservation laws for any extended period as it was after the Connally Act became effective in March 1935.[5] Throughout 1933 and 1934 the East Texas field had pro-

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[2] Shatford, R. 1002-3, 1070; Fischer, R. 1115.

[3] Franklin, R. 989; see Def. Ex. 954, R. 3653.

[4] Franklin, R. 987-9; Fischer, R. 1115; Van Covern, R. 1513.

[5] Beroth, cross, R. 223; Lanzer, cross, R. 258, 259-60; Franklin, R. 986; Shatford, R. 1063, 1064, 1068, 1070.

duced from one hundred and fifty to two hundred thousand barrels of crude oil a day in excess of the State Railroad Commission's allowables,[6] and gasoline produced from this excess crude oil had gone into interstate commerce.[7] After March 1, 1935 there was very little excess production in East Texas,[8] and no hot gasoline whatever went into interstate commerce.[9] This new factor, too, continued to operate after the Code, for the *Schechter* decision did not affect the Connally Act.

(3) The sudden elimination of hot oil in March, 1935 meant that all producers now had to pay one dollar a barrel for crude. Hitherto there had been two prices for crude oil (a) the price for legal crude oil which was $1.00, and (b) the price for hot oil. The price for legal crude was steady at a dollar during the entire period from September, 1933 to January, 1936. The hot oil price was a fluctuating price of from 25¢ to 35¢ a barrel or less and was paid for a bootleg product which came on the market from time to time in varying quantities. The gasoline produced from hot oil necessarily forced the price of gasoline produced from legal crude down far below cost.[10] After the Connally Act, all crude oil from which gasoline for shipment into the Mid-Western area could be manufactured, sold for the legal crude price of a dollar a barrel and fluctuations in the price of raw material ceased entirely. This

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[6] Fischer, R. 1115-6.

[7] Fischer, R. 1117.

[8] Franklin testified that during March 1935, or shortly thereafter, excess production in East Texas fell off to approximately 5000 barrels a day (Franklin, R. 986).

[9] Dyer, R. 1466.

[10] Franklin, R. 985; Shatford, R. 1063.

inevitably had a strong stabilizing effect on the price of gasoline.[11] [*The respondents offered to prove* that crude oil and gasoline prices had risen and fallen and maintained a constant relationship with each other during the entire period from January, 1918 until August, 1933 when the price of crude oil was pegged at a dollar and there came to be a separate price for illegal crude.[12]]

(4) Beginning in the spring of 1935 there was an enormous and unprecedented increase in demand which continued throughout 1935 and 1936. In 1933 and 1934 consumption had been subnormal. Beginning in February, 1935, however, every month showed an increase over the corresponding month in the previous year. Consumption for the entire year 1935 was 7% more than for 1934. That for 1936 was 9.5% over 1935.[13]

(5) When this increase in consumption began in February, 1935, and up until the end of the Code, the various factors of supply were regulated in the manner which had never been attempted before the Code. Imports of crude oil were limited by executive order.[14] Crude oil could be withdrawn from storage only with the approval of Secretary Ickes;[15] gasoline could be manufactured only in the amounts specified by the Department of the Interior and

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[11] Shatford, R. 1064.

[12] Def. Ex. 955 for identification, R. 3657; Van Covern offer, R. 1518-9.

[13] Brench, cross, R. 285; Barkdull, cross, R. 874; Franklin, R. 986; Shatford, R. 1065-68; Van Covern, R. 1480-1, 1504; Def. Exs. 948, R. 3641, 953, 3649; Shatford, R. 1067.

[14] Franklin, R. 986.

[15] Franklin, R. 986-7; Shatford, R. 1003.

the Code authorities.[16] Gasoline inventories had been seriously reduced by the operation of the refinery control system.[17] In March, 1935 they were still further reduced by almost a million barrels through the voluntary curtailment program undertaken with the approval of Secretary Ickes.[18] Thus, at the very time when it needed gasoline most, the industry was operating "in hobbles"[19] with inventories which were quite inadequate to supply the demand. This situation could not be remedied until long after the Code. The demand was so heavy that the industry withdrew from storage and refined 23,000,000 barrels of crude oil in twelve months, and still was not able to restore its depleted gasoline inventories.[20]

(6) Finally, the years 1935 and 1936 were distinguished from prior years by the fact that general business conditions were improving and prices were rising everywhere.[21]

[*The Defense offered* Exhibit 958[22] for identification, a chart showing the course of prices for commodities other than gasoline during the indictment period. The excluded exhibit would have shown: (a) that gasoline prices were much more depressed than the prices of other commodities and the cost of living in 1933 and 1934, (b) that gasoline prices recovered less than the prices of other commodities and the cost of living, and (c) that gasoline prices rose less sharply in 1935 and 1936 than the prices of other commodities and the cost of living.]

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[16] Shatford, R. 1008-9, 1025, 1074; Franklin, R. 948-9; Arnott, R. 1719; Collett, R. 1804-5. See also Shatford, R. 1001-2, 1006-7, 1010-11, re the original refinery control system under the Code.

[17] Franklin, R. 989; Shatford, R. 1068.

[18] Shatford, R. 1034. See p. 240, *supra.*

[19] Shatford, R. 1068.

[20] Shatford, R. 1070; Van Covern, R. 1488-9, 1508-10; Def. Exs. 949, R. 3642; 953, R. 3649; 951, R. 3644; 952, R. 3645.

[21] Breuch, cross, R. 285; Barkdull, cross, R. 874; Franklin, R. 989

[22] R. 3669.

E. Under the conditions which existed during the indictment period, stability in the market was to be expected.

1. *The behavior of the market from October to December, 1934.*

[As noted above,[1] the Defense offered to prove that the price rise in March, 1935, when the Federal Tender Board commenced operations under the Connally Act exactly paralleled, and was in fact a continuation of a prior price rise which occurred in October and November, 1934, when the first Federal Tender Board commenced operations under Section 9(c) of the N. I. R. A.

[*The Defense also offered to prove* that the causes of the price rise in October and November, 1934, were the same as the causes of the price rise in March, 1935. The excluded evidence was as follows:

[In October, 1934, as in January, 1935, almost every factor in the statistical position of the industry tended to produce higher prices. Crude oil inventories were at the proper level. Gasoline demand was increasing not only over the demand for the prevous year, but over the Bureau of Mines' estimates. Gasoline inventories were very low. In fact they were below the industry's minimum requirements because the refinery control system under the revised Article IV of the Petroleum Code and the unanticipated demand for gasoline had operated to force refiners, especially major companies, to reduce inventories without making the usual seasonal build-up.[2]

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[1] See pp. 245-6, *supra.*

[As in January, 1935, however, there was one factor which influenced the price of gasoline adversely—the Administration's failure to control the production of hot oil. Overproduction was increasing steadily and in October reached the highest point in sixteen months. This overproduction in turn led to the manufacture of cheap gasoline which competed with gasoline manufactured from legal crude. The effect of this one adverse factor was so great that it was forcing the price of gasoline downward.[3]

[On October 25, 1934, however, the first Federal Tender Board held its first hearing in the East Texas field. The situation in the field was immediately improved. Many of the refineries previously operating on hot oil closed down, and the number of tank-cars of hot gasoline in interstate commerce was reduced to almost nothing. With the only really unfavorable factor in the situation eliminated, the trend of gasoline prices reversed itself and advanced sharply.[4]

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[2] Van Covern offer, R. 1493-8. Inventories are customarily at the lowest level in September (Van Covern offer, R. 1495). On October 18, 1934, Secretary Ickes took cognizance of the fact that gasoline inventories were at a dangerously low level by ordering that if, after all possible adjustments within the limits of the November allocation and if, as a result of appeals to the Board of Review, it was indicated that inventories had fallen below levels which would permit even and economical operations, the company so affected would be permitted to manufacture additional gasoline (Van Covern offer, R. 1495-6). In recognition of the condition of gasoline inventories and also in recognition of the increased gasoline demand, the Administrator increased his recommendation of crude oil production on December 17 for the period from that date to the end of the month (Van Covern offer, R. 1497).

[3] Van Covern offer, R. 1493, 1499.

[4] Shatford offer, R. 1062; Van Covern offer, R. 1499, 1500

[During the latter part of November and early part of December, 1934, gasoline demand was considerably higher than had been forecasted, inventories of gasoline continued downward, the overproduction of gasoline in East Texas was reduced to a small amount, and crude oil inventories throughout the country declined substantially. These factors would have tended to push the price up further, had it not been for the fact that the Federal Tender Board was under attack in the court; its effectiveness was impaired by injunctions; and it was feared that the tremendous potentialities of the East Texas field would again be turned lose.[5] During December, 1934, as a result of the continued uncertainty in East Texas concerning the operation of the Federal Tender Board, the price actually declined. Furthermore, the hot oil refiners had learned by this time that they could ship illegal gasoline from one point to another within the State of Texas and then divert it into interstate commerce. The movement of illegal gasoline in Texas also displaced some legal gasoline within the state which consequently had to be dumped into interstate commerce at low prices.[6]

[Late in December, the State of Texas required tenders for the shipment of petroleum products in intrastate commerce, and so prevented the movement of illegal gasoline within Texas. The overproduction of crude oil in East Texas decreased substantially, and as crude oil inventories declined still further and gasoline demand continued above the estimates of the Bureau of Mines, prices made a slight recovery.[7]

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[5] Van Covern offer, R. 1500.
[6] Van Covern offer, R. 1500-1.
[7] Van Covern offer, R. 1501.

[Had there been no uncertainty concerning the authority for the Federal Tender Board created under Section 9(c) of the National Industrial Recovery Act, there would probably have been a sustained increase in the price of gasoline to a level bringing it into an approximate parity with the price of crude oil. The price of gasoline would have risen to higher levels and would have continued to rise and would have reached parity long before June, 1935.[8]] . . .

2. *The Behavior of the market in 1935 and 1936.*

The prices which had obtained at the end of December 1934, continued during the first week in January, 1935. The statistical situation of the industry was fairly strong. The demand for gasoline was somewhat lower than it had been the year before, but was still higher than had been expected. Crude oil production was a trifle in excess of the Bureau of Mines' recommendations, but at a lower level than during previous periods. Inventories were high but under control because of the necessity of obtaining permission from the Petroleum Administrator before making withdrawals from storage.[9]

The hot oil problem in East Texas, however, was still a disturbing factor in the situation. When the Supreme Court declared Section 9(c) of the N. I. R. A. invalid in January, the potential production of the field made itself felt and the hot oil refineries which began shipping in interstate commerce. As a result, the price dropped off.[10] The relatively slight increase in demand during February failed to measure up to expectations and stocks increased slightly above the seasonal norm. The market remained depressed.[11]

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[8] Van Covern offer. R. 1502.

[9] Van Covern offer. R. 1510.

[10] Dyer, R. 1466, 1467-9; Def. Ex. 713, R. 3177; Van Covern, R. 1510, 1511.

On March 1, however, a new Federal Tender Board was appointed under the Connally Act, and on March 4 the first federal tenders were issued.[12] Everyone in the industry, including the hot oil runners in East Texas, realized that this law would have to be obeyed and that the East Texas refiners would have to run on legally produced, $1.00 crude oil. The number of hot oil refiners decreased until there were only 14; eight of them shipping in interstate commerce and six of them shipping on state tenders.[13] The price started to rise when the first federal tenders were issued under the Connally Act.[14] Between March 2nd and March 8th, the quotations for third grade gasoline in the Chicago Journal of Commerce rose ⅜¢ and those in Platt's Oilgram ¼¢.[15]

The next three months were characterized by a number of factors making for higher prices. Demand on the retail market increased 4.2% over the previous year in March; 6% in April; and 3% in May. Everyone was forced to go into the market and buy: major companies, jobbers, and brokers.[16] The resulting decline in gasoline stocks wiped out the excess inventories which had existed in February, and reduced the total inventories to a point below the seasonal requirements. Even crude oil inventories were soon reduced by withdrawals from storage made necessary by the increase of demand for gasoline.[17]

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[11] Van Covern, R. 1511.

[12] *Ibid.*

[13] Bradshaw, cross, R. 705, 706-7; Def. Ex. 989, R. 3737, 3738-9; Van Covern, R. 1511-2.

[14] Van Covern, R. 1511, 1512. The Mid-Continent Buying Program did not start until March 8. *Cf.* McDowell, R. 1201-2.

[15] Def. Ex. 1024, R. 3807.

[16] Lanzer, redirect, R. 261; J. D. Miller, R. 1570; Van Covern, R. 1512.

With demand balancing and even overbalancing supply in this way, the price of gasoline necessarily rose from the distress levels of the winter. Insofar as major company buying removed distress gasoline which was overhanging and depressing the market, it also had an effect on price.[18]

The next seven months saw a "plateau," during which, with the exception of slight fluctuations in the price of third grade gasoline in November and December, the market journal quotations for both grades remained at the levels which they had reached during the first week in June.

During this entire period conditions were entirely different from any that had prevailed in the industry in prior years. Production of crude oil was by state action conformed to the consumption of gasoline. The states set their production allowables in accordance with the United States Bureau of Mines' estimates of how much gasoline would be burned during the coming month.[19] In August, 1935, the principal oil-producing states entered into an interstate compact under which this procedure was followed by all of them. The production of crude in excess of state allowables was for the first time completely extinguished insofar as it affected gasoline to be shipped into the Mid-Western area. The price of crude oil, the raw material of gasoline, was absolutely stable.[20] Constantly increasing and record-breaking demand for gasoline tended to take up any slack which developed.[21]

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[17] Van Covern, R. 1512, 1513.

[18] Van Covern, R. 1512.

[19] Van Covern, R. 1513; Def. Exs. 953, 954, R. 3649, 3653.

[20] See Van Covern, R. 1476.

[21] The Government tried to show through Beroth that this rise occurred in spite of a decline in demand which should normally have

Two witnesses called by the respondents, John E. Shatford and Fred Van Covern, testified without contradiction at pages 1070-2 and 1476, 1513-4 of the record that the factors affecting supply and demand had reached such a state of balance during this period that a relatively stable price would be the natural result in a normal competitive market.

A gasoline price rise occurred on January 10-12, 1936.[22] It followed immediately an increase in the price of crude oil which took place on January 9, 1936.[23] The price of East Texas crude rose from $1.00 to $1.15 a barrel and that of Oklahoma crude from $1.00 to $1.10 a barrel. The rise in crude prices followed extremely heavy drafts on crude inventories amounting to 22,000,000 barrels during the year. Gasoline demand for December had been 14.7% in excess of that for December, 1934, and had exceeded all previous records for the month. January gasoline demand increased even more drastically, exceeding January, 1935, by 15.5%. At the same time gasoline stocks were held down close to season requirements and crude oil production, although some 9,500,000 barrels more than that recommended by the Bureau of Mines, was insufficient to prevent withdrawal of some 1,800,000 barrels from storage.[24]

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resulted in a decline in price (Beroth, R. 195, 196). Beroth, however, admitted on cross examination that he did not actually know whether the actual consumption of gasoline in the Mid-Western area (as opposed to his own sales) had been good or bad in December, 1935, and January, 1936. Bradshaw testified that the winter of 1935-36 was a pretty good consuming season throughout the country (Bradshaw, R. 678). The evidence described in the following pages showed that Beroth was wrong and that Bradshaw was right.

[22] Van Covern, R. 1514; Lanzer, cross, R. 262.

[23] Van Covern, R. 1514; Shatford, R. 1072; Beroth, cross, R. 224.

[24] Van Covern, R. 1514.

In February, 1936, for the first time in many months, the demand for gasoline was less than that anticipated by the Bureau of Mines.[25] As a result, there was a more than seasonal increase in gasoline inventories.[26] February also saw a new demoralizing factor introduced in the situation in the appearance of no-octane gasoline[27] from the Rodessa field in Louisiana. The field had been discovered in 1935, but did not become an important factor in the market until the latter part of January, 1936. It was thought at one time that the field would create another East Texas problem, since Louisiana did not have a proration law.[28] This led to a temporary price decline in February, which ended when Louisiana began to regulate production in the Rodessa field. In May the influx of gasoline from the Rodessa field again increased substantially. As a result prices declined in spite of increased demand.[29]

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[25] *Ibid.* Shatford described this as the first "soft spot" in demand in fourteen months (Shatford, cross, R. 1096).

[26] Van Covern, R. 1514.

[27] This term was applied to the gasoline from the Rodessa field because it had a very low octane or anti-knock rating (Van Covern, R. 1515).

[28] Van Covern, R. 1515.

[29] *Ibid.* The further decline in price in June, 1936, was attributable to the continued effect of no-octane gasoline from the Rodessa field. The price level, however, became somewhat more stable in July and the early part of August. In the latter part of August and September, there was a further price decline due to the surplus in gasoline inventories which became a real menace as the high consuming season neared an end (Van Covern, R. 1516). The demand picked up during October and early November, 1936, and held prices fairly stationary. During September, October, and November seasonal inventories reached such a low level that prices even registered a slight increase. The new level was held throughout December, which was again characterized by an increase in demand. (*Ibid.*)

X.

The Power to Fix Prices.

The record shows that the mere fact that a combination of companies sells most of the gasoline in an area, does not in itself confer upon it the power to exact arbitrary and non-competitive prices. The competition of concerns doing a relatively small volume of business is effective to keep the market price on a competitive basis.[1]

A. The amount of gasoline sold by the respondents and their alleged co-conspirators.

There were 4,917,273,000 gallons of gasoline sold in the Mid-Western area in 1935. Of this the respondents sold 2,507,089,119 gallons.[1] The former defendants which were dismissed because they had been dissolved or reorganized (Deep Rock, Cities Service Export, Louisiana Oil and Tide Water Oil) sold 121,500,000 gallons. The total for the two groups combined was therefore only 2,628,589,119 gallons, or *less than 54% of the gasoline sold in the territory.*[2]

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[1] Marshall, R. 1244; Swensrud, R. 1388, 1390-1.

[1] Def. Ex. 1028, R. 3812. This is a maximum figure inasmuch as it includes gasoline sold by Globe of Kansas which could not be segregated from that sold by the other Globe companies.

[2] Def. Ex. 1028, R. 3812. The former defendant Texas, which was dismissed, and Standard of Indiana and Barnsdall, which were granted new trials, sold 1,427,178,871 gallons. (*Ibid.*) No figures are available for the dismissed defendant Gulf, but it appears that its gallonage is comparatively small (Beroth, R. 187-8). The defendants originally indicted thus sold about 82.5% of the gasoline in the territory. See Beroth, R. 186, 188.

B. The refinery capacity of the respondents and their alleged co-conspirators.

Most of the gasoline sold in the Mid-Western area comes from refineries in the area itself and in the Mid-Continent and East Texas oil fields.[1]

In 1935 the total operating refinery capacity of this territory was 1,066,050 barrels of distillation capacity and 601,394 barrels of cracking capacity. The total shut-down capacity was 258,700 barrels of distillation capacity and 115,156 barrels of cracking capacity. Of this the respondents and the defendants which had been dissolved or reorganized controlled the following:[2]

	OPERATING		SHUT-DOWN	
	Distillation	*Cracking*	*Distillation*	*Cracking*
Respondents	443,500	276,900	27,000	30,600
Defendants which had been dissolved or reorganized	38,000	29,000	18,000	None
Two groups combined.	481,500	305,900	45,000	30,600[3]
Percent of total.....	45.16%	50.88%	17.39%	26.57%

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[1] Beroth, R. 181, 183.

[2] Def. Ex. 939, R. 3611.

[3] The figures for the seven companies which were dismissed or granted new trials because of failure of proof are as follows:

	Operating		Shut-down	
Name of Company	Distillation	Cracking	Distillation	Cracking
Barnsdall Refining Corp.	21,000	9,000		1,000
Cities Service Co.				
Globe Oil & Ref. Co. (Kas.)	10,000	6,000		
Gulf Oil Corp.				
Gulf Refining Co.	11,000	10,000		
Standard of Indiana	138,500	108,594	1,500	28,256
Texas Company	61,000	43,700		
Tide Water Associated				
Totals	241,500	177,294	1,500	29,256

It thus appears that some 50% of the refinery capacity in the area was not controlled by the respondents or their alleged co-conspirators. So far as location went, these uncontrolled refineries were in as good a position as those of the respondents to furnish gasoline in the Mid-Western area. For instance, there were independent refiners in the States of Illinois, Indiana, Kansas and Michigan who were not alleged to have participated in the alleged conspiracy, and who had a daily cracking capacity of 59,750 barrels per day and a daily cracking capacity of 14,200 barrels per day. These refiners would actually enjoy a competitive advantage over the respondents and alleged co-conspirators whose refineries were located in Oklahoma and Texas.[4] Refiners who were located in Oklahoma, Arkansas, Louisiana and Texas would at least enjoy a competitive equality with the respondents and alleged co-conspirators whose refineries were located in those states.[5]

The shut-down capacity of refiners not claimed to have participated in the alleged conspiracy would also have to be recognized as a potential factor in the competitive situation.[6] Many of them were shut down because of the extreme distress caused by the lack of parity betwe the prices of crude oil and gasoline. Some of them r opened when conditions improved.[7] Many more cou have reopened had prices risen higher than the compe tive conditions justified.[8]

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[4] Swensrud, R. 1406-7.

[5] As a result of the practice of calculating freight rates by "groups," gasoline can be shipped from almost any point in Oklahoma ("Group 3") to any point in the Mid-Western area as cheaply as from any other point in Oklahoma. Similarly, any refiner in the Fort Worth group, which embraces the East Texas field and most of North-Central Texas, is on a parity with any other refiner in that group. The same is true of refiners in the "El Dorado-Shreveport Group" which embraces Southeastern Arkansas and Northeastern Missouri. (Swensrud, R. 1398. See also Def. Ex. 936, R. 3601.)

[6] Swensrud, R. 1417.

C. Operating refineries outside the indictment territory

In addition to the uncontrolled refineries in the i dictment territory, there were many more such refineri outside, but near enough to the territory to ship gasolii into the Mid-Western area.[1] These refineries were si uated at such points as Toledo, Lima, Findlay and Ci cinnati, Ohio; Latonia and Louisville, Kentucky; Wester Pennsylvania, Southern Missouri, Central Texas, an Montana and Wyoming,[2] and on the Gulf Coast (the lar est refinery area in the world.)[3] In 1935 they had a operating distillation capacity of 230,000 barrels a da and an operating cracking capacity of 101,000 barrels p day.[4]

In general these refiners outside of the indictme territory suffer a freight disadvantage as against r finers inside the territory when shipping gasoline into t Mid-Western area. However, this disadvantage is oft slight and non-existent. Many refineries are almost on t borders of the Mid-Western area. The Ohio refineries are very close to Indiana. The Cincinnati, Latonia, and Louisville refineries are almost across the river from Indiana. Toledo is very close to Michigan.[5] The Gulf Coast refineries are only a little farther south than the Mid-Continent and East Texas ones.[6]

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[7] Swensrud, R. 1418-9.

[8] Swensrud, R. 1419.

[1] Swensrud, R. 1395.

[2] Swensrud, R. 1395-6, 1397.

[3] The so-called "San Antonio-Houston" and "Baton Rouge-Ne Orleans" freight groups. (Swensrud, R. 1396, 1397. See Def. F 936, R. 3601.)

[4] Def. Ex. 941, R. 3611. Swensrud, R. 1412.

In many cases it is actually cheaper to ship gasoline into the Mid-Western area from the points outside the indictment area than from points inside.[7] It costs 3.894¢ per gallon to ship gasoline from Oklahoma to Detroit; it costs 1.84¢ to ship it from Louisville. It costs four-tenths of a cent a gallon less to ship gasoline to Indianapolis from Baltimore than from Oklahoma. It costs a cent less to ship gasoline from Montana to Bismark, N. D., than it does to ship it from Oklahoma.[8] Even cities like Madison and Chicago which are situated in the heart of the Mid-Western area, can procure gasoline from such places as Louisville and Toledo more cheaply than from Group 3, and they can obtain it from the Gulf Coast at only slightly greater expense.[9]

The following table[10] shows how the freight rates (in cents per gallon) from refinery centers outside the indictment territory to various points in the Mid-Western area compare with those from Group 3 in Oklahoma:

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[5] Swensrud, R. 1395-6.

[6] Swensrud, R. 1396.

[7] Swensrud, R. 1396, 1399, 1397-8, 1415. Def. Exs. 936, R. 3601 and 937, R. 3605.

[8] Swensrud, R. 1399.

[9] Swensrud, R. 1415, 1416.

[10] Made up from Def. Exs. 936, R. 3601 and 937, R. 3605, and from Swensrud's testimony at R. 1399, 1415-6.

From	To Bismark	To Chicago	To Detroit	To Indianapolis	To Madison	To St. Louis
Group 3	4.686	2.440	3.894	2.970	2.838	2.178
El Dorado - Shreveport Group		2.440	3.894	2.970	2.838	2.046
Fort Worth Group		2.600		3.135	3.003	2.211
Houston Group		2.600		3.135	3.102	
Baton Rouge-New Orleans Group		2.540	3.894	2.970	2.772	2.140
Warren Rouseville Oil City		2.100	1.716	1.980	2.442	2.640
Toledo		1.580	.528	1.518	1.848	2.046
Louisville		1.700	1.848	.099	2.046	1.650
Baltimore		2.830	2.442	2.574		3.102
Laurel						
Billings	3.564					
Cody	4.026					
Casper	4.224					

It is also possible to reach many points in the Mid-Western area by water.[11] The area is crossed or bordered by a number of navigable waterways—the Great Lakes, the Mississippi, Missouri, Ohio and Illinois Rivers, and the Chicago drainage canal, and these are supplemented by waterways outside the area such as the St. Lawrence River, the Sault Ste. Marie Canal, the Erie Canal, and the Houston Ship Channel.[12] As shown by Exhibit 938, 85% of the Mid-Western area's larger cities and 70% of its total population lie within 50 miles of these navigable waters.[13]

Transportation by water is only about half as expensive as transportation by rail.[14] Gasoline can be sent from Buffalo to Chicago by tanker for as little as ½¢ a gallon. It can be shipped from New Orleans to Chicago for about a cent.[15] Once gasoline is brought to a terminal, it can be trans-shipped and carried 50 miles inland by truck for as little as ½¢ a gallon. The average cost of trucking within a fifty-mile range would be less than ¼¢ per gallon.[16]

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[11] Swensrud, R. 1419. Def. Ex. 938, R. 3609.

[12] Swensrud, R. 1419-20, 1422-3

[13] Swensrud, R. 1424-5.

[14] Swensrud, R. 1425.

[15] Swensrud, R. 1422.

Within the past eight or ten years the use of water transportation has become an important factor in the distribution of gasoline,[17] and it is steadily increasing. In 1935, for instance, 3,500,000 barrels of oil moved through the Louisville district of the Mississippi and Ohio Rivers. In 1936, the figure was 6,251,000 barrels.[18] Several of the major companies have now established water terminals at Minneapolis.[19] Most of the large refineries in Chicago maintain terminals at various points around the Great Lakes and use them to trans-ship gasoline shipped from Chicago by water.[20]

Whether by rail or by water, many refineries outside the Mid-Western area are already shipping gasoline into the area. The Sun Oil Company, with refineries in Toledo, sold 5,227,013 gallons of gasoline in Michigan in October, 1936;[21] Gulf, with refineries at Toledo and Cincinnati, sold 3,933,685 gallons.[22] The Standard Oil Company of Ohio sells gasoline from its Toledo and Lima refineries in Michigan and Indiana. The Aetna Oil Company in Louisville sells in Indiana. So does a Standard of Ohio subsidiary in Covington. The refineries in Western Pennsylvania ship gasoline into the Mid-Western area from time to time. A number of refineries in Montana and Wyoming ship gasoline into the Dakotas. Gulf, Texas, The National Refining Company and the Ohio Oil Company, with refineries both inside and outside the indictment territory, sell in the Mid-Western area. The Standard Oil Company of New Jersey, with a refinery at Baton Rouge, moves a great deal of gasoline up the Mississippi and sells some gasoline (whether from Baton Rouge or elsewhere) in St. Louis.[23]

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[16] Swensrud, R. 1425.
[17] Swensrud, R. 1423.
[18] Swensrud, R. 1419-20.
[19] Swensrud, R. 1421-2.
[20] Swensrud, R. 1423.
[21] Swensrud, R. 1407.
[22] Swensrud, R. 1408, 1411-2.

D. The impracticability of attempting to fix and maintain an artificially high price for gasoline in the spot tank-car market and retail market in the Mid-Western area.

Assuming the truth of all the essential allegations of the indictment, it would have been impossible for the respondents to have raised the tank-car and retail price of gasoline in the Mid-Western area to artificially high and non-competitive levels. As soon as the price in the area rose above the cost of manufacture, cheaper gasoline would have begun to flow into the area from the refineries, both inside and outside the indictment territory, which were not owned by the respondents and the alleged co-conspirators. The refiners who were not parties to the alleged conspiracy would have seized the opportunity to increase their business, acquire jobbers and build service stations in the territory and undersell the respondents and their alleged co-conspirators.[1]

The "outside refiners" would have had a powerful incentive to do this because the costs of manufacturing and marketing gasoline are largely fixed costs which remain relatively constant in the face of increased volume. Thus increased volume would have brought them *not only larger gross sales but larger profits per unit sold.*[2]

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[23] Swensrud, R. 1408-9.

[1] Swensrud, R. 1390-2.

Primarily, the outside refiners would have carried on their invasion of the market in the Mid-Western area by cutting the price to jobbers—*i. e.,* by offering them wider margins or special concessions such as larger advertising allowances or reduced rentals for service stations.[3] The jobbers would have reacted even more quickly than consumers to discrepancies in prices because they sell in much greater volumes—a jobber might shift his patronage for as little as ⅛¢ increase in margin.[4] Hence, if one refiner had made a price concession to his jobbers, the others would have had to follow suit. Otherwise, when their contracts expired, their jobbers would have sought other suppliers.[5]

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[2] Swensrud, R. 1426.

[3] Swensrud, R. 1392. It was suggested to the witness that the outside refiners might have had difficulty (a) in obtaining crude oil to refine and (b) in obtaining jobbers who were not already tied up under long term contracts.

As to crude oil, the witness explained that "the state production allocations were based on 'nominations' by the refiners, *i. e.*, estimates of the amounts they could use (Swensrud, R. 1394). A refiner never has any difficulty in getting all the crude he needs (Swensrud, R. 1394, 1395). If he can't get it from producers, he can get it from storage or from pipe-line companies (Swensrud, R. 1395). There were no restrictions on withdrawals from storage after the Code. (*Ibid.*)

As to jobbers, the witness explained that the long term jobber contracts do not all expire at the same time. Hence, a number of jobbers are constantly becoming free to contract with other suppliers if they choose. Furthermore, a large number of contracts have usually already expired so that the jobbers are continued on a month to month basis. As a last resort the outside refiners could persuade new jobbers to enter the business (Swensrud, R. 1392-3).

[4] Swensrud, R. 1388.

[5] Swensrud, R. 1389.

Even if the outside refiners did not sell through jobbers, they would have affected the wholesale market by offering gasoline to the public at lower prices. Their competitors (both refiners and jobbers) would have had to help their dealers meet this competition by cutting the price to dealers, and would have had to protect their jobbers by cutting the price to them, a procedure which would inevitably have reacted on the tank-car market.[6]

The outside refiners who came in this way and sold gasoline, either through jobbers or directly to the consumers, at prices below those which the defendants were attempting to maintain, would soon have captured a large share of the market. "They would just be handed the market on a silver platter."[7] For, as noted in the next section,[8] gasoline consumers react very quickly to a discrepancy in price, and as soon as one marketer sells a cent or so below his competitors, he gets a large share of the business,[9] and the refiners who try to sell at higher prices suffer an immediate and drastic loss of gallonage.[10]

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[6] Swensrud, R. 1388-90. Many of the outside refiners, especially the smaller ones, could sell only third grade gasoline. If, however, they sold it cheaper than their competitors, they would soon drag down the price of regular gasoline as well. All grades of gasoline are inter-related, and if the price of one grade of gasoline becomes very low, it inevitably attracts business from those other grades. If a service station cuts the price of third grade gasoline very substantially, it gets a great deal of business from people who, if the price were the same, would be buying the regular grade (Swensrud, R. 1404-5).

[7] Swensrud, R. 1392.

[8] See 233-4, *infra.*

[9] Swensrud, R. 1384, 1392.

[10] Swensrud, R. 1392-3, 1387-8. Of course, the first effects of an invasion by outside refiners would be felt in cities on the outskirts of the Mid-Western area, which are more easily reached by

E. Gasoline prices are unusually sensitive so that a small amount sold at a low price will necessarily defeat any attempt to maintain a high price.

The evidence heretofore discussed indicates that there were ample sources of competitive gasoline not controlled in any way by any of the alleged co-conspirators which could have come into the Mid-Western area. The tendency of such competition to defeat any attempt to set an arbitrary price for gasoline would be enhanced by the fact that gasoline prices are more sensitive than those of most commodities.

Most gasoline consumers are persons of moderate means who find it easy, because of the mobile nature of the automobile, to shop for bargains. Business is conducted "right out in the street", and price cuts are given a maximum of publicity. The public also knows that most gasolines of the same grade are pretty much the same; and that even if an unbranded product proves unsatisfactory it will soon be consumed without harming the motor. So, for a variety of reasons, if an unbranded marketer cuts below the normal differential, the major companies and their distributors must either meet the cut or lose business.[1]

Swensrud gave several striking examples of this principle. In one case a group of major companies in California lost 18% of their business in three months by failing to meet a price cut.[2] In another, a Columbus, Ohio service

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refiners outside of the indictment territory. However, as the outside refiners captured the market in these outlying districts the respondents and their alleged co-conspirators would have had to sell more and more gasoline in the interior, thus driving the price down there. In any case, the difference in freight rates between outlying and interior cities is so small that outside gasoline would soon have been pouring into the interior (Swensrud, R. 1414-5).

[1] Swensrud, R. 1381-8, 1404-6.

[2] Swensrud, R. 1384-6.

station increased its daily sales from 8,254 to 24,696 to 261,350 gallons in successive months by cutting he price.[3] A privately branded operator in Detroit, operating on cheap gasoline from Roumania, built up the biggest gallonage in the city by means of a two cent cut. Within a year he was taking trade from other stations within a fifty mile radius due to the fact that through traffic delayed refueling until it reached Detroit.[4] No group could have set an arbitrary price for gasoline in the Mid-Western area unless it controlled practically the whole market. 85% would not have been enough; 50% would have been still less effective.[5]

F. The effect of competition from Standard of Indiana.

The last section described in general terms the results which might be expected if the respondents and their alleged co-conspirators had attempted to maintain high, arbitrary and non-competitive prices in the Mid-Western area. The record also shows, however, that if only one company—Standard Oil Company (Indiana)—were not a party to the alleged conspiracy, it would be impossible to maintain such prices.

In 1911 Standard controlled from 75 to 80% of the business in the Mid-Western area.[1] Since then some twenty major companies have invaded the area. They have cut into Standard's share of the business until in 1935 it had only 22%.[2] Standard is still, however, the largest competitive factor in the area,[3] and it is engaged in bitter competition with the other major companies to maintain its share of the gallonage.[4] At times it has posted subnormal prices in 1600 different cities and at over 1300 of its bulk stations to meet competition.[5] One general price cut which it made in September 1934 reduced the retail market throughout the area by 1.6¢.[6]

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[3] Swensrud, R. 1385-7.
[4] Swensrud; R. 1387.
[5] Swensrud, R. 1388, 1391.
[1] Marshall, R. 1247.
[2] Marshall, R. 1245-6.
[3] Def. Ex. 1028, R. 3812, 3813.

In the last analysis the retail price of a standardized product such as gasoline must be "the price at which the low seller decided to sell his product."[7] When a marketer controlling 22% of the business and having 4,000 bulk stations, as Standard does, cuts the price, *everyone* must follow.[8] In effect, Standard's normal service station price represents the maximum price which anyone can charge for gasoline in the territory. If Standard cuts the normal price, the other major companies have to follow. Once it is reduced, they have to keep it down until Standard sees fit to raise it again.[9] Occasionally some of the major companies fail to follow Standard when it raises the price and Standard has to fall back.[10] But Standard can break any price established by anyone else.[11]

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[4] Marshall, R. 1231-2.

[5] Def. Ex. 911, R. 3510.

[6] Marshall, R. 1236-7.

[7] Marshall, R. 1244.

[8] Marshall, R. 1246-7; 1233; Swensrud, R. 1388.

[9] Shatford, R. 1085.

[10] Marshall, cross, R. 1249-50.

[11] Swensrud, R. 1388. See Shatford, R. 1085.

XI.

The Petroleum Administration and the buying activities of the defendants.

It will be recalled that the scope of the stabiliation activities undertaken by Arnott under the letter of July 20, 1934 had expanded very rapidly during the fall of 1934. Originally, the stabilization committees had dealt solely with local price wars, attempting to treat each locality as a separate problem.[1] When this failed, however, larger meetings were called which dealt first with the problems of entire states and then with the problems of groups of states.[2] Finally, in the General Stabilization Meetings which began in September, 1934, Arnott and his associates treated the entire Mid-Western area as a unit, stabilizing markets over the whole area at once.[3]

As time went on it became apparent that no permanent stabilization of the retail market could be accomplished unless the tank-car or wholesale gasoline market were stabilized too.[4] The independent refiners, who suffered most severely from the depressed tank-car market, threatened that unless something were done to remedy the situation they would not only withdraw from stabilization activities but abandon the Code entirely and cut the price of crude oil.[5] On January 4, 1935, therefore, Arnott appointed the Tank-Car Stabilization Committee.[6] That committee, originally assigned to make a study of the situation,[7] finally organized and put into operation the Mid-Continent Buying Program.[8]

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[1] McDowell, R. 1173; Frey, R. 1275-6.

[2] Frey R. 1276.

[3] McDowell, R. 1166, 1175, 1176, 1173; Frey, R. 1276, 1277; Arnott, R. 1688, 1689, 1728; cross, R. 1742-3.

[4] Arnott, R. 1695.

[5] Arnott, R. 1693-5; McDowell, R. 1168-9.

[6] McDowell, R. 1169; Arnott, R. 1696-7.

A. The period from appointment of the Tank-Car Stabilization Committee up to the report of the Blazer Committee.

1. *Reports before the Tank-Car Committee met.*

As noted above, the Petroleum Administrative Board was told about the appointment of the Tank-Car Stabilization Committee on at least two occasions before the committee held its first meeting. On January 9th Arnott reported the appointment to Marshall and Meyers of the Board, and the latter expressed great interest in the matter.[1] On January 28th, O'Shaughnessy of the committee wired Fahy that:

> "* * * this condition [stabilization of the retail markets] is not going to continue unless a supreme effort is made to get the tank-car price of gasoline up to a comparable basis with the crude structure. * * * Mr. Arnott, as chief stabilizer, appointed a committee for this purpose about three weeks ago, but because of a recent court decision in East Texas we have never met to discuss the situation. * * *"[2]

In his reply on February 1st,[3] Fahy stated:

> "* * * I am sure you know that the tank-car situation in relation to the price of crude is one about

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[7] McDowell, R. 1169; Arnott. R. 1696.

[8] Arnott, R. 1706.

[1] Arnott, R. 1698, 1699-700.

[2] Def. Ex. 893, R. 3491. The "recent court decision in East Texas" referred to was the *Panama* decision (Arnott, R. 1728).

[3] Def. Ex. 894, R. 392.

> which we have no disagreement. How to bring about a correction is the stumbling block. I may say, however, that I see nothing in the recent Supreme Court decision which in any way affects endeavors to reach the solution."

2. *Arnott's letter to Fahy, February 20, 1935.*

On February 20, 1935, about two weeks after he had received McDowell's first report, and nine days after he had met Buckley for the first time, Arnott wrote Fahy:[4]

> "There have been some very important developments in connection with marketing and also in connection with East Texas refiners to which I am giving considerable time and attention.
>
> "I am holding a meeting in Chicago Monday and Tuesday, and on Friday of next week I am holding a meeting at Kansas City with the independent group of Mid-Continent refiners.[5]
>
> "I shall not give you the details of these meetings now but when I visit Washington, which will be quite soon after my return from the West, will tell you all about it."

3. *Arnott's interview with Frey, February 25, 1935.*

At this time, Dr. Frey of the Petroleum Administrative Board was visiting the Board's Chicago office, where, according to a notation in the above letter,[6] he received a copy thereof.

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[4] Def. Ex. 969, R. 3692; Arnott, R. p. 1729.

[5] The first meeting referred to was the Texas State Stabilization Meeting of February 25 and 26, described at pp. 153-4, *supra*. The second, was the meeting of March 1, 1935, described at pp. 97-8, *supra*.

[6] Def. Ex. 969, R. 3692.

On February 25, while Arnott was conducting the Texas State stabilization meeting in Chicago, Frey sent word to him that he was there. Arnott saw him, told him what was happening at the meeting, and asked whether he thought it would be wise to come in, having in mind that the meeting was for the purpose of airing the difficulties between the Texas operators and those from other states. Frey replied that he did not think it was. Arnott then told him of the developments in connection with Neil Buckley, and said that Buckley was going to appear there that day and tell the group about the plans of the East Texas Refiners' Marketing Association. He also described some of the developments in the Mid-Continent.[7]

4. *The voluntary curtailment of refinery runs in March, 1935.*

In March, 1935, it will be recalled,[8] the National Coordinator of Refinery Allocations, acting with the knowledge and approval of the Federal Petroleum Administration, persuaded some twenty-two major companies (including all the respondents except Globe) to cooperate with the Administration by curtailing their manufacture of gasoline during March by some 960,000 barrels.

[*The respondents offered to prove* that the Petroleum Administration had been advised that one of the purposes of the plan was "to reduce the refinery output of major companies and thereby compel them to buy a part of their requirements from independent refiners:"][9]

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[7] Arnott, R. 1729-30; cross, R. 1745-6.
[8] See pp. 240, 251, *supra.*
[9] Shatford offer, R. 1016-8.

5. *Arnott's conference with the Petroleum Administrative Board, March 12, 1935.*

A few days later, on March 12, 1935, Arnott made the report which he had promised Fahy, the chairman of the Petroleum Administrative Board, in his letter of February 20th.[10] At this time, Fahy was deputy administrator of the oil industry.[11] Frey and Swanson of the Board were also present.[12]

When Arnott arrived, Fahy said that he was glad to see him and that Frey had reported what Arnott had told him in Chicago about developments in the Mid-Continent and East Texas. He said that he was quite interested and wanted to help.[13]

He then asked Arnott whether there was anything in his buying program activities which might be in conflict with the prohibition in the letter of July 20, 1934, against violating the anti-trust laws.[14]

Arnott replied that he did not think there was any such conflict,[15] and described what he was doing.[16] He gave Fahy a full picture of developments in the Mid-Continent, the report of the McDowell committee, and Buckley's activities in East Texas. In general, he covered substantially the same ground which he covered at the District Allocators' meeting the next day.[17]

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[10] Frey, R. 1267, 1271-2; Arnott, R. 1730; see Def. Ex. 969, R. 3692.

[11] Def. Exs. 974, R. 3696, 3700; 988, R. 3735.

[12] Frey, R. 1268, 1272; Arnott, R. 1730. Arnott was not quite sure whether Swanson was present (Arnott, R. 1730). At one point Frey thought that certain other employees of the Board and members of the General Stabilization Committee were present, but Arnott disagreed. (*Cf.* Frey, R. 1268, 1272; Arnott, R. 1730.)

[13] Arnott, R. 1730.

[14] Frey, R. 1285; cross, R. 1294; redirect, R. 1335; Arnott, R. 1730.

[15] Frey, R. 1285; redirect, R. 1335.

[16] Frey, redirect, R. 1335; Arnott, R. 1730.

Arnott told the Board that arrangements had been made by which quite a large number of major companies would buy distress gasoline from independent refiners. He said that no pool had been formed for such purchases; that the buying was strictly informal; and that no refiner was committed to buy a definite quantity of gasoline.[18] He said that they hoped that the price of gasoline at the refinery could be improved by such informal buying and the lack of parity which had existed between the crude oil and the tank-car market eliminated. In other words, the crude price, the tank-car price, and the wholesale and retail prices would all be stabilized in relation to each other.[19]

The buying program was not the only subject discussed. Arnott also made a report on general stabilization, and part of the meeting was directed to discussing important problems of that nature, including developments in the retail situation.[20]

According to Fahy, both Fahy and Arnott agreed that the latter was engaged in this activity "on his own responsibility."[21] Arnott did not ask any formal or written approval of what was being done.[22] He testified that it did not occur to him to do so.[23] He had been engaged in securing informal cooperative action in aid of the common interests and objectives of the Government and industry for the last two years.[24] He felt that the members of the Board thought that his plans were sound and hoped that they would work.[25] If he had thought that they disapproved, he would have discontinued his activities.[26]

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[17] Arnott, R. 1730.

[18] Frey, R. 1282-3.

[19] Frey, R. 1283.

[20] Frey, cross, R. 1292; redirect, R. 1335.

[21] Frey, cross, R. 1293, 1294, 1301, 1302; recross, R. 1338. Arnott believed that Frey was confused and that he made this statement at a subsequent meeting on May 8, 1935, and in a different connection (Arnott, R. 1730-1).

[22] Frey, R. 1279; cross, R. 1302; redirect, R. 1335-6; recross, R. 1338; Arnott, R. 1730.

Fahy was the responsible reporting officer of the Board whose duty it was to make reports to Secretary Ickes.[27] Frey did not know whether he did so in this case or not.[28]

B. The Blazer Committee.

In January, 1935, Secretary Ickes had appointed a committee known as "The Petroleum Code Survey Committee for Small Enterprises" under Paul Blazer, the president of the Ashland Refining Company in Kentucky.[1] The purpose of the Committee was to study the plight or condition of the small units in the oil industry and see how they had fared under the Code,[2] and to make recommendations as to what should be done to overcome the difficulties which faced the industry.[3] The members of the Com mittee became Government employees, paid by the Government.[4] Secretary Ickes told them that he had received a number of complaints from various sections of the industry, particularly from small independent refiners, and that he wanted a committee of people who were familiar with their problems to study them and suggest remedies under the Code. The Committee worked from early in January until late in February, 1935, and submitted its report to Secretary Ickes about March 15.[5]

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[23] Frey, redirect, R. 1335; Arnott, R. 1730.

[24] See pp. ——, *supra.*

[25] Arnott, R. 1730, 1731.

[26] Arnott, R. 1736.

[27] Frey, R. 1273; redirect, R. 1326.

[28] Frey, R. 1273.

[1] Frey, redirect, R. 1320; Swensrud, R. 1377.

[2] Swensrud, R. 1377.

[3] Frey, redirect, R. 1320. The committee was composed of Paul G. Blazer (Chairman), the President of the Ashland Refining Co. (an independent refiner), Sidney A. Swensrud, the Assistant to President, Standard Oil Co. (Ohio), (a large semi-integrated refiner), (Swensrud, R. 1375), Mason Hoagland, the President of the

1. *The Committee's report.*

It appeared incidentally from Defendants' Exhibit 923 that the Committee recommended that unless wholesale gasoline prices advanced to approximate parity with crude oil prices within 30 days, the price of crude oil should be reduced until such parity was achieved. It also appeared incidentally from Arnott's testimony that the Committee suggested that it would be very helpful if the major companies would buy gasoline from independent refiners.[6]

As a matter of fact, one of the main features of the Committee's report was a reference to, and approval of, the buying of distress gasoline by the large refiners from the small ones.

In the following narrative we shall italicize the portions of the documents referred to which contain obvious references to such buying.

Spur Distributing Co., R. G. Allen, a member of the Central Proration Committee of California, and H. B. Fell, a labor leader (Frey, R. 1320-21).

[4] Frey, redirect, R. 1320.

[5] Frey, redirect, R. 1320; Swensrud, R. 1377.

[6] Arnott, R. 1734; Def. Ex. 923, R. 3529.

[*The respondents offered* the report itself[7] in evidence. It would have shown that the Committee reported the following facts as to the plight of the independent refiner and the causes thereof:

[Under the Code refinery labor costs increased by 25 to 50 per cent. There was an average increase in independent refinery operating costs of around six cents for each barrel of crude.

[Virtually all independent refineries East of the Rocky Mountains which were operating on legally produced crude oil were operating at a serious loss. Ten Western Pennsylvania refiners, considered typical, sustained a net loss of 32 cents for each barrel of crude. The independent refiner was worse off during the Code by 11½ cents a barrel, than during the period immediately preceding the N. I. R. A. The deficiency below the price at which the independent refiner could realize his costs and make a reasonable profit amounted to approximately 30 cents on each barrel of crude. In 1934 and the first two months of 1935, the independent refiner was forced to pay a price for crude which was out of proportion to the price of gasoline and which inevitably caused him a loss. On the basis of average costs, independent refiners in Oklahoma were losing from 7 cents to 9 cents a gallon in October, 1934, and about the same in February, 1935.

[It was often impossible, due to retail price wars, for independent refiners to secure for their gasoline even the published tank-car price.

[Independent refiners, complaining of their losses to the Blazer Committee, attributed them to (1) the fixing and maintaining of the price of crude at $1.00; (2) increased operating costs under the Code; (3) inability to realize even the quoted tank-car prices due to retail price wars.

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[7] Def Ex. 924 for identification, R. 3530, 3558.

[*The report would also have shown* that the Committee made the following finding and recommendations:

> ["Immediate relief is necessary if non-integranted refineries are not to be eliminated; it can come in only two forms.
>
> 1. An immediate and sustained increase in tank-car and retail gasoline prices to a parity with present crude prices, or
> 2. A reduction in the posted prices of crude oil to a parity with gasoline.
>
> ["We agree with the thought prevalent in the production branch of the Industry—that it would be more desirable for the solution to come from an increase in gasoline prices instead of a reduction in crude, but if it cannot be done one way it should be done the other way.
>
> ["*We favor making one more effort at raising gasoline prices.* Refiners, of course, will point out that almost continuously over the past year efforts have been directed toward that end with negligible results. But some improvement in the basic factors of the situation may have been accomplished, and possibly only the impetus of concerted buying is needed to obtain a decided change for the better. Interstate shipments of hot oil and its products apparently are being brought under control and if the oil states enforce proper allowables there should be an improvement in the supply side of the picture. *We know of nothing, apart from continued improvement in crude production con-*

trol, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is being considered by the Industry now in connection with a broad stabilization program. We, therefore, urge that the Administrator give it his approval and active support.

[*"It should be possible to have such a program functioning quickly. Profiting by the mistake of previous efforts, and having to overcome the counter-effects of excessive quantities of hot gasoline and widespread disastrous retail price wars such as raged when a buying program was attempted last Fall, we believe such a program might be successful in raising both tank-car and retail prices to their proper level in relationship to crude oil prices.*

["If higher tank-car prices are obtained, we believe they can be sustained only by corresponding increases in retail gasoline prices; otherwise, the burden merely would be shifted from small refiners to small marketers, who in many instances have been in just as much distress as the refiners. We find that abnormally low retail prices can depress tank-car prices just as much as low tank-car prices can pull down the retail price structure. Thus it appears to be essential that both prices move up together.

["Unfortunately, many people outside the Industry who recognize the desirability of conserving petroleum reserves and who strongly favor the preservation of small enterprises, are likely to be the first to criticize a moderate increase in retail prices of gasoline, not realizing that in so doing they are striking directly at the non-integrated units and throwing the entire Industry into the hands of a few large integrated companies.

> ["If, however, gasoline prices do not advance to an approximate parity with crude prices by an early date, within thirty days or thereabouts, or if they do not continue in such parity thereafter, then we recommend an immediate reduction in the price of crude oil to a parity with refined products. On the basis of prices as of this date a reduction of about 20 cents a barrel would be required to bring crude oil and gasoline prices into parity on the basis of the ratio of 18.5 to 1 as set forth in Section 6 of Articlue III of the Code."]

2. *Fahy's memorandum to Secretary Ickes, March 22, 1935.*

[*The respondents also offered* a memorandum dated March 22, 1935,[8] analyzing the Blazer Report which Chairman Fahy of the Petroleum Administrative Board prepared for Secretary Ickes. This memorandum contained the following:

> ["This part of the report is very critical of the operation of the Code on small enterprises, that is, the non-integrated refiner who has had to pay the stabilized price for crude but who has been obliged to sell his products on an unstable market, out of parity with the price of crude. * * *
>
> ["After a very analytical discussion of the plight of the non-integrated refiner, the Committee recommends: [Quoting the Sections of the Report Set Out Above.]
>
> ["It is not the purpose of this memorandum to criticize or attempt to answer any of the findings or recommendations of the Committee; although the current improvement in tank-car price and the present fairly stabilized retail market is affording relief

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[8] Def. Ex. 1030 for identification, R. 3869, 3870, 3873.

to some extent to the non-integrated refiner who, the report points out, has suffered most. In our opinion the report should be released immediately, and although we believe that it should not be accompanied by defense made by the Petroleum Administration against the positions taken by the Small Enterprise Committee, there are a number of things recommended which it would be well to do something about. Remembering that the Committee was appointed to do the very thing that it has done, namely, point out the effect of the Code on small enterprises the question now is whether action in accordance with the report, where action is recommended should be taken on the basis of this report without affording other elements in the industry an opportunity to be consulted. This meets with the following suggestion to you of the Board: *We believe success in Code administration, assuming that it is to continue, requires that some of the recommendations made should be adopted;* e. g., *we have encouraged stabilization efforts designed at this time to aid the independent refiner.*"]

Thus it appears that the Petroleum Administrative Board was "encouraging" the Mid-Continent buying program, and that the Secretary of the Interior was advised of that fact.

3. *Secretary Ickes' comments on the Blazer Report.*

When the Blazer Report was submitted, Secretary Ickes assembled the members of the Petroleum Administrative Board in his office and stated that he was in favor of industrial action to bring about parity between the prices of crude and the prices of gasoline. He further stated that if such parity were not achieved within three or four weeks.

he was going to call a meeting of representatives of the industry to see what could be done about it.[9]

4. *Secretary Ickes' letter to B. P. Lientz, March 20, 1935.*

In March 1935, Secretary Ickes again expressed his opinion on the Blazer Report in a letter[10] to B. P. Lientz of Kansas City, Missouri, the relevant part of which reads as follows:

> "Concerning the independent refiners, other than those in California, it appears from the report of the Committee on Small Enterprise that the outstanding difficulty is due to the disparity between posted crude oil prices and refinery realizations. This situation has been deplorable for many months, *but it is my understanding that at present the activity of the Stabilization Committees is having a distinct effect in the improvement of refinery prices*, and that were it not for old contracts, many of which are badly shaded with respect to the posted price, the independent refiner is approaching a normal market structure."

5. *Exchange of telegrams and letters between Fahy and Blazer, April 23—May 7, 1935.*

[*The respondents offered to prove* that on March 26th Secretary Ickes thanked the Blazer Committee for its report, and asked it to stay in existence "to observe the progress made along the lines of your recommendations and also to be available for consultation."[11] On April 23, Fahy wired Blazer as follows:[12]

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[9] Frey, redirect, R. 1319.

[10] Def. Ex. 995, R. 3749.

[11] Def. Ex. 919 for identification, R. 3527.

[12] Def. Ex. 921 for identification, R. 3528.

> ["Would appreciate informal views your committee as to *whether gasoline prices have advanced to an approximate parity with crude prices so as to obviate present necessity for reduction in crude oil price* as recommended in refining conclusions and recommendations contained in report your committee."

[On the same day Blazer replied, also by wire, as follows:[13]

> ["Retel Glad to advise informal opinion our Committee there is now no need for reduction crude oil prices since *we consider tank-car gasoline prices now almost up to parity with sufficient additional advances anticipated in both tank-car and retail prices—*"

[On April 30, Blazer explained his Committee's action in a letter to Fahy as follows:[14]

> ["Referring to your wire of yesterday inquiring as to whether it would be agreeable to our Committee for you to publish the substance of our recent exchange of telegrams, I have communicated with a majority of the members of the Committee and have obtained their approval.
>
> ["It has been suggested, though, that it be clearly understood that our Committee in going on record that there is no need for a reduction in crude oil prices at this time is acting on the belief that small additional advances will be made in both tank-car and retail prices of gasoline.
>
> ["It appears to be the opinion of a majority of the Committee that at least another quarter cent

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[13] Def. Ex. 922 for identification, R. 3528.

[14] Def. Ex. 993 for identification, R. 3746.

advance in tank-car prices is essential and that if such an advance should not occur within the near future, a decline of approximately 5 cents per barrel should be made in crude oil prices.

["*Our Committee has been very much pleased with the success of the program to stabilize tank-car markets. We believe it has been handled in a manner calculated to benefit the non-integrated refiners and without disadvantage to marketers.* Of course, the real question is whether, after parity of gasoline and crude oil prices has been obtained, they can be maintained without excessive continued buying by the major companies. It is the opinion of our Committee that the final answer to that question will be determined by the effectiveness of efforts to balance crude oil supply and demand. I believe I can speak for our entire Committee when I say that we believe fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil."

[On May 7, Fahy replied as follows:[15]

["I am writing to acknowledge your letter of April 30 and to express my appreciation of your courtesy in having the Committee render its informal opinion regarding the present relationship between crude oil prices and prices of petroleum products. The substance of the telegrams which we exchanged, amplified somewhat by your letter, has been included in a press statement prepared for today's release."]

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[15] Def. Ex. 994 for identification, R. 3748.

On the same day the Department of the Interior issued the following press release:[16]

"United States
Department of the Interior

Petroleum Administrative Board
Memorandum for the Press

FOR RELEASE TUESDAY, MAY 7, 1935.

When the Petroleum Code Survey Committee on Small Enterprise submitted its report to Petroleum Administrator Harold L. Ickes, it included among its recommendations the statement that if wholesale gasoline prices did not advance to an approximate parity with crude prices within about thirty days, an immediate reduction should be made in the price of crude oil to a parity with refined products.

Approximately thirty days after the submission of the Committee's report, the Petroleum Administrative Board requested an informal opinion from the Committee, asking its views as to whether gasoline prices had advanced to an approximate parity with crude prices, so as to obviate any present necessity for the reduction in crude oil prices as recommended in the refining conclusions and recommendations contained in the report.

Mr. Paul Blazer, Chairman of the Committee, replied that he was glad to advise that the informal opinion of his Committee was that *there now is no need for a reduction in crude oil prices, but emphasized that the Committee, in reaching its informal conclusion, anticipated that small additional advances will be made in both tank-car and retail prices of gasoline.* The majority of the Committee, he stated, is of the opinion that at least another quarter cent advance in tank-car prices is essential, and that if such an advance should not occur within the near future, a decline of approximately 5 cents per barrel should be made in crude oil prices.

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[16] Def. Ex. 923, R. 3529.

The Committee also is of the opinion, Mr. Blazer stated, that the final answer to the question as to the maintenance of a parity between gasoline and crude oil prices, after it has been reached, will be determined by the effectiveness of efforts to balance crude oil supply and demand.

Mr. Blazer also expresses the Committee's belief that fundamental conditions in the industry have been sufficiently improved to bring about and maintain prices for finished products which will justify $1.00 crude oil.''

C. The period from April 30th to the end of the Code.

1. *Arnott's conference with the Petroleum Administrative Board, May 8, 1935.*

In the meantime the Petroleum Administrative Board had received certain complaints as to the stabilization activities. Some of these complaints dealt with the question of representation at stabilization meetings; others with the fact that the meetings were closed or, it was charged, "secret." A number of them dealt with the so-called "Chicago moratorium."[1] This moratorium was the result of a recommendation of the Illinois Stabilization Committee to the effect that there should be no transfers of dealers among jobbers for a certain period of time.[2]

On April 2, 1935, Secretary Ickes had written Arnott as follows:[3]

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[1] Frey, cross, R. 1305.

[2] Frey, redirect, R. 1316.

[3] Govt. Ex. 980, R. 3722.

"My dear Mr. Arnott:

"I have just received a report from the Petroleum Administrative Board with respect to a moratorium on dealer accounts which is reported to have been arrived at by agreement between the companies supplying the major part of the gasoline sold in the Chicago area.

"Although no evidence has been presented which would definitely establish the basis for the agreement entered into, it is possible that the companies involved are purporting to act under the authorization of my letter of July 20, 1934, authorizing you to designate committees with authority to confer, to negotiate and to hold due public hearings in order to remedy unfair price situation.

"Several parties have complained to the Petroleum Administrative Board that the moratorium oppresses them. I am not attempting, however, in this letter to pass on the wisdom of the moratorium. The matter that at present concerns me is the necessity of complying with the requirements of the basic law. In authorizing the formulation of a stabilization program, I necessarily conditioned the authority granted, by providing that the requirements of Clause 2 of Subsection (a) of Section 3 of the National Industrial Recovery Act should be observed. I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery Act.

"I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements imprac ticable and in a number of instances they may be unnecessary. However, when the understandings arrived at as bases of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal. If any such agreements have been made I should like a report as to them. If they require approval to be effective, as my information leads me to believe is the case with respect to the moratorium, I should be glad to give consideration to them under the provisions of the Act.

"I appreciate greatly your cooperation with the Administration in taking on the difficult work of directing a program of stabilization and I know that you will understand that this action is necessary in order to comply with the requirements of law with which I am charged with administrative responsibility.

"Sincerely yours,

(s) Harold L. Ickes,
Administrator."

On April 22 the Petroleum Administrative Board wrote Arnott another letter in which they imposed three conditions upon the conduct of the general stabilization work:

(1) That there should be no stabilization meetings unless a representative of the Board were present.

(2) That before any final decisions were made at such meetings, every element in the industry should have a chance to be heard.

(3) That no general instructions should be given under the letter of July 20, 1934.[4]

The members of the Stabilization Committee objected to this letter on the ground that it was impractical to operate under the conditions imposed. They contended that it was not always possible to have a Government representative present, that it was not always desirable to have all elements represented at one meeting, and they decided to go to Washington to see if something couldn't be done to change those conditions so that it would be possible to work more effectively in stabilization.[5]

The Petroleum Administrative Board was also anxious to see the members of the Committee. It had received reports from its field men as to certain activities which were being carried on under the stabilization program, and it wanted to know what was going on—to call Arnott on the carpet, and request him to explain what he was doing, and to confirm or deny the reports that had been received.[6]

On May 8, 1935, Arnott, Carnes, Jackson, Ashton and Majewski, of the Stabilization Committee, and J. D. Collett, the chairman of the Planning and Coordination Committee, met with Fahy and Frey in Washington.[7]

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[4] Frey, cross, R. 1305; Arnott, R. 1731

[5] Frey, cross, R. 1305

[6] Frey, cross, R. 1306

[7] Frey, cross, R. 1306-7; redirect, R. 1315, 1337

The meeting was primarily devoted to the general problems of stabilization,[8] to a discussion of the methods to be used by the Stabilization Committee in carrying on meetings, and things of that sort.[9]

It was a rather "warm" session.[10] There was a good deal of heat at the beginning because Arnott thought that the Board should not have dealt with outside complainants without first informing him. "He came in prepared to tear up the place, and proceeded to do it for a considerable length of time. There were some very hot exchanges between Mr. Fahy and Mr. Arnott. * * * But after we got to understand each other, things calmed down, and we decided on how we would proceed."[11]

Arnott's group considered the conditions imposed by the Board's requests in its letter of April 22 quite impossible. Finally, the Board decided to have R. N. Moore of its Chicago office and M. Q. Shaughnessy of its legal staff work the problem out with Majewski.[12]

At the close of the meeting, just before it broke up,[13] there was some incidental discussion of the buying program.[14] Fahy asked Arnott whether the buying was continuing,[15] or "How is the buying coming along?"[16] Arnott replied, "All right, so far as I know,"[17] and said that the buying was still going on on an informal basis. Then he more or less repeated what he had said on March 12.[18]

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[8] Frey, cross, R. 1305.

[9] Frey, cross, R. 1302.

[10] Frey, redirect, R. 1335.

[11] Frey, redirect, R. 1336.

[12] Frey, redirect, R. 1337.

[13] Frey, redirect, R. 1335, 1337.

[14] Frey, cross, R. 1302; redirect, R. 1335.

[15] Frey, redirect, R. 1335.

[16] Arnott, R. 1731.

[17] *Ibid.*

According to Frey, Fahy or someone else also asked Arnott whether he was taking the letter of July 20, 1934, as the authority for his buying program work,[19] and Arnott replied that he was not.[20] He might also have said that he wasn't asking the board's "blessing," although Frey was not sure about that.[21] Frey also thought that Fahy stated to Arnott definitely (although he was not sure of the exact words)[22] that the letter of July 20 gave him no authority, and that he had no authority under the Code to operate a buying program.[23] Nothing was said about approving the program, however, "either one way or the other."[24]

Arnott's recollection was different. He said:

> "In answer to that [letter of April 22], and in the discussion that followed, I stated that, in line with the letter of July 20th that had been sent to me, that necessarily in carrying on the stabilization work I would, and I felt the letter required, make decisions when they were necessary. Furthermore, in making those decisions, there were times when I would have to use my discretion. There was a matter of bringing different elements in and different subjects to discuss at stabilization meetings, and in bringing them together and discussing them I had to use my own discretion.

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[18] Frey, redirect, R. 1336-7.

[19] Frey, redirect, R. 1335.

[20] Frey, R. 1336.

[21] Frey, R. 1294, 1308.

[22] Frey, cross, R. 1307.

[23] Frey, cross, R. 1299-1301, 1307; recross, R. 1337-8.

[24] Frey, redirect, R. 1335.

> and do it on my own responsibility. And in the matter of these meetings, in the matter of these decisions and using my discretion, I was taking the responsibility for them.
>
> "I recall no statement at the meeting of May 8th, by me or any member of the Petroleum Administrative Board, that I had no authority under the letter of July 20th or under the Code for operating a buying program."[25]

J. D. Collett, who attended the meeting as chairman of the Planning and Coordination Committee, testified that his recollection of the meeting was in accord with Arnott's.[26]

2. *Arnott's conference with Fahy, May 10, 1935.*

In April Fahy had requested the Planning and Coordination Committee to review the Blazer Report with the Marketing Committee and to give the Board its comments.[27] The Planning and Coordination Committee appointed a committee of three, consisting of Arnott, Collett and Majewski, to discuss the matter with the Petroleum Administrative Board.[28]

The Committee met with Fahy in his office on May 10, 1935,[29] and discussed the Blazer Committee's comments on the position of the independent refiners and its recommendations with respect thereto.[30] It was noted that the Committee had recommended that the major companies should buy distress gasoline from independent refiners. Arnott and Majewski pointed out that this was already being done.[31] It was also pointed out that this buying had already resulted in some improvement in the situation so that the complaints of the independent refiners were diminishing, and that the system of refinery allocations and the major companies' voluntary curtailment of refinery runs in March, discussed above, had contributed still further to the improvement of the situation.[32]

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[25] Arnott, R. 1732.

[26] Collett, R. 1802-3.

[27] Arnott, R. 1732; Collett, R. 1803. In this connection, Arnott sent a telegram (Def. Ex. 970, R. p. 3693) to the members of the Marketing Committee, asking them to meet in Washington on May 9 to consider the matters. (Arnott, R. 1732.)

[28] Arnott, R. 1733; Collett, R. 1803.

[29] Arnott, R. 1731, 1733.

Fahy replied "that is quite so and disposes of that part of the report."[33]

3. *Fahy's request to Arnott to stabilize the Pennsylvania refinery market, May 14, 1935.*

[*The respondents offered to prove* that on May 14, 1935, less than a week after the conference of May 8th, Fahy, as chairman of the Petroleum Administrative Board, asked Arnott to undertake to stabilize the Pennsylvania refinery market in the same way that he had stabilized the Mid-Continent refinery market and that in connection with this request the Board gave unmistakable evidence of its support and approval of the Mid-Continent buying program. The excluded evidence was as follows:

[The situation of the Pennsylvania refiners was essentially the same as that of the Mid-Continent refiners except that their principal product was not gasoline but lubricating oil. The price of such products was depressed in relation to that of crude oil and the refiners were suffering severely from the disparity between the two. The price of products was, however, more depressed than that of crude oil, and the refiners were suffering severely from the disparity between the two. They had also built up excessive inventories which could be sold only at distress prices, and many of them were being forced out of business.[34]

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[30] Arnott, R. 1733, 1734.

[31] Arnott, R. 1734; Collett, R. 1803.

[32] Collett, R. 1803; cross, R. 1806. See pp. 240, 251, 276, *supra.*

[33] Arnott, R. 1734.

[These facts were well known to Fahy, Swanson and Frey of the Petroleum Administrative Board through reports from agents in the field and through reports from W. J. Brundred, the vice-president of the Central Pennsylvania Oil Producers' Association.[35]

[When the Blazer Report was released, it pointed out vividly the difficulties of the small independent refiners in Pennsylvania. It showed that Pennsylvania refiners were losing 32 cents on each barrel of crude oil refined. S. M. Vockel, the president of the Waverly Oil Works (a Pennsylvania refiner), decided to call this to the attention of the Petroleum Administrative Board. On April 2, 1935 he telephoned the Board in Washington, and explained his difficulties to Swanson. The latter suggested that he come to Washington.[36] On April 8, 1935 Vockel and G. E. Willey, his vice-president, had a two-hour conference with Chairman Fahy, and Swanson, of the Board, and Ben

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[34] Frey offer, R. 1288, 1289.

[35] Frey offer, R. 1288, 1289; Brundred offer, R. 1354, 1355, 1356. The other two members of the Board, Marshall and Meyers, had been out of town for several months. (Frey offer, R. 1289.)

[36] Vockel offer, R. 1345, 1346.

Lindsey, a Board geologist who was familiar with the general situation in Pennsylvania. Vockel told them that his company secured Pennsylvania grade crude oil in the southwestern district of Pennsylvania, and was having to pay $2.02 a barrel for it; there having been two recent price rises of 15 cents each. He said that he could see no justification for the 30-cent rise in the price of crude oil; that the market prices for finished products had been dropping month by month; and that since the recent crude price rises the small Pennsylvania refiner could not sell his products for enough to cover his costs when he sold his finished products. In conclusion, he asked the Petroleum Administrative Board to take steps to cancel the 30-cent price rise for crude in Pennsylvania.[37]

[Fahy and Swanson recognized that the prices for finished products were too low in relation to the price of Pennsylvania crude oil, but they were evasive to Vockel's request. Swanson told him that the Stabilization Committee of the Planning and Coordination Committee was doing a very useful and constructive job in stabilizing the refinery gasoline market in the south-western states. He said that they expected that this Stabilization Committee work would continue; that there would be further rises in the price of refinery gasoline in the Mid-Continent area; and that the effect of this stabilization work and these price rises would soon be reflected through the entire industry. He said that during the next several weeks the useful and constructive work of the Stabilization Committee in the Mid-Continent area would bring the price of refinery gasoline more in line with the price of Mid-Continent crude oil; that they expected that this would cause prices for refined products in Pennsylvania to rise within thirty days; and that the Stabilization Committee work was already helping the refiners and others in the mid-western states. Both Fahy and Swanson gave Vockel the impression that the Board was backing the Stabilization Committee work in the Mid-Continent area.[38]

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[37] Vockel offer. R. 1346-7.

[Vockel said that he would wait thirty days to see whether Pennsylvania would be benefited by the work of the Stabilization Committee in the southwestern states in connection with refinery gasoline markets. Fahy and Swanson told him that if it were not he should come back and they would again consider the problem.[39]

[On May 7th, Vockel received a letter[40] from E. B. Swanson, writing on behalf of the Board, saying:

> ["I feel sure you will appreciate that every effort has been made and is being made under the Petroleum Code to make possible the profitable operation of petroleum refineries. Although this objective has been difficult of attainment, considerable progress in that direction has been made during the past several weeks, and it is my understanding that under the present relationship between crude oil prices and the prices for petroleum products most refining companies are able to operate satisfactorily."

[On May 13, 1935, Vockel and Willey had another conference, lasting about fifteen minutes, with Fahy, Swanson, and Frey, of the Petroleum Administrative Board. Vockel told them that, contrary to the Board's prediction, the Stabilization Committee work in the Mid-Continent area had not been reflected back into Pennsylvania, and that the prices of refined products in Pennsylvania had not risen. He again asked that the Board take steps to cause the price of crude oil in Pennsylvania to be reduced thirty cents a barrel.[41]

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[38] Vockel offer, R. 1347-8.

[39] Vockel offer, R. 1348-9.

[40] Def. Ex. 972 for identification, R. 3694.

[The members of the Board said that the Pennsylvania refiners would have to be patient for a few weeks more,[42] and that they still expected that the work of the Stabilization Committee in connection with the refinery gasoline in the southwestern states would have a good effect on the prices for finished products in Pennsylvania.[43]

[Vockel and Willey then went back to their hotel, and sat up until three o'clock in the morning trying to determine whether or not they would close their refinery. Finally they decided to ask their Senator to intercede with the Petroleum Administrative Board. The next morning Vockel went to the office of Senator Davis of Pennsylvania. When he got back to the hotel, Swanson phoned him and arranged for a conference at twelve o'clock.[44]

[Fahy, and Swanson, and Frey were present, and the conference lasted about five or ten minutes. Fahy said that they had been considering the Pennsylvania situation, that the Board felt that it had arrived at a plan which would help, and that it was sending the following telegram,[45] to Arnott, at Tulsa, Oklahoma:[46]

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[41] Frey offer, R. 1287; Vockel offer, R. 1350.

[42] Vockel offer, R. 1350.

[43] Frey offer, R. 1288.

[44] Vockel offer, R. 1350-1.

[45] Def. Ex. 916 for identification, R. 3520.

[46] Frey offer, R. 1288; Vockel offer, R. 1351.

["Mr. C. E. Arnott
c/o American Petroleum Institute
Mayo Hotel
Tulsa, Oklahoma

["S. M. Vockel and C. E. Willey officials Waverly Oil Works on behalf own company and other small Pennsylvania refiners yesterday and today presented detailed picture refining situation their section. Present disparity between Pennsylvania grade crude and refiner prices undoubtedly makes impossible continued operation several plans. Problem there related more to stabilized markets lubricants than gasoline. Hope you can arrange for prompt consideration this problem by Stabilization Committee looking both to immediate adjustments as well as long view correction. Would appreciate your assistance in his situation as it involves plants of long establishment which undoubtedly have not benefited equally with others under stabilization program because of their dependence on lubricants rather than gasoline. Please wire me as to possibility your undertaking this.

["CHARLES FAHY.".

[The members of the Board did not state what they thought Mr. Arnott could do to help the Pennsylvania refiners, but they made some comments along the line that the Petroleum Administrative Board was back of the problem and would help the Pennsylvania refiners.[47] They also said that they thought Arnott would look into the situation and that he would be able to help them in a very short time,[48] and they indicated that Arnott and the Stabilization Committee would do for the refiners in Pennsylvania regarding their lubricants what was being done for the independent refiners in the Mid-Continent area regarding their gasoline[49]

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[47] Frey offer, R. 1289; Vockel offer, R. 1352.
[48] Frey offer, R. 1289.

[On May 16, Arnott replied to Fahy's telegram as follows:[50]

> ["Replying your telegram fully realize situation you refer to and quite agree something must be done. Will go into immediately on my return to New York next week and feel can accomplish something constructive for refiners you mentioned and others interested."

[Fahy replied by wire:[51]

> ["Thanks very much your telegram re Pennsylvania situation."

[On May 17th Swanson wrote Brundred as follows:[52]

> ["Mr. Fahy has asked me to acknowledge your letter to him of May 9, which I am doing by informing you of some developments here during the week.
>
> ["Messrs. Vockel and Willey, on behalf of their own company and other Pennsylvania refiners were in Washington on Monday and Tuesday of this week and conferred at some length with Mr. Fahy, Dr. Frey and myself. As a result of these conferences it was felt that the Stabilization Committee of the Planning and Coordination Committee, which is un-

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[49] Vockel offer, R. 1352.

[50] Def. Ex. 916 for identification, R. 3521.

[51] Def. Ex. 971 for identification, R. 3693.

[52] Def. Ex. 915 for identification, R. 3519; Brundred offer, R. 1355.

der the chairmanship of Mr. C. E. Arnott, might be of definite assistance in connection with lubricants as they have been in connection with gasoline.

["Following this thought, Mr. Fahy telegraphed to Mr. Arnott in Tulsa, and yesterday received a reply stating that Mr. Arnott would be in New York early next week and would take the matter up; and that he thought some good could be accomplished for the refiners and others in the Pennsylvania grade territory."

[Thereafter Arnott undertook to help the Pennsylvania refiners. He made a survey in Pennsylvania and called a meeting of the Pennsylvania refiners, for May 28, 1935, at the Waldorf Hotel in New York. Swanson was invited, but, on account of the *Schechter* decision, the day before, he did not go. It was Frey's understanding that the meeting was never held.[68]

[*The respondents also offered to prove*, through Frey, that in sending the telegram of May 14th the Petroleum Administrative Board wanted Arnott to go into Pennsylvania to treat the refinery lubricant market by the same method that the Stabilization Committee had used on the refinery gasoline market in the Mid-Continent area. Because of the excessive inventories of lubricants overhanging the Pennsylvania market, the Board believed that Arnott could make some arrangements whereby the major companies would purchase lubricants from the small independent refiner and in that way both relieve the plight of the independent refiner and cause the prices of refinery finished products to rise to their proper parity with the price of Pennsylvania grade crude oil. Before sending the telegram of May 14, 1935, the Petroleum Administrative Board considered that Mr. Arnott had the authority to undertake this work in Pennsylvania because it was part of the stabilization work which he was authorized to undertake.[54]]

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[68] Frey offer, R. 1290.

D. After the Code.

With the *Schechter* decision on May 29th Arnott's activities as chairman of the Marketing Committee and as "Stabilizer," under Secretary Ickes' letter of July 20th, came to an end.[1] He was thanked by Fahy, Deputy Oil Administrator, and by Secretary Ickes, for his services.[2]

1. *The Secretary of the Interior's Annual Report for 1935.*

Toward the end of 1935 there appeared the Annual Report of the Secretary of the Interior,[3] which referred to the stabilization of the tank-car market in 1935 as follows:

> "The operations of the Tender Board, of the production provisions of the code and refinery amendment, and of the stabilization committee of the planning and coordination committee with the cooperation of the Petroleum Administrative Board, brought the desired parity between the wholesale price of gasoline and crude oil in the spring of 1935. * * *"

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[54] Frey offer, R. 1289-90.
[1] Def. Ex. 975, R. 3716.
[2] Def. Ex. 976, R. 3716.
[3] Def. Ex. 917, R. 3522, 3525.

2. *The Final Report of the Marketing Division of the Petroleum Administrative Board.*

In December, 1935 and January and February, 1936, the Marketing Division of the Petroleum Administrative Board prepared a "Final Report"[4] under the supervision of Dr. Frey. Subsequently this report was published by the Department of the Interior.[5]

[*The respondents offered* certain portions of this report in evidence. The relevant portions of the excluded exhibit are as follows:

"Stabilization

> ["By the middle of 1934, many retail price wars in different parts of the country had developed into a serious problem. Rebating and secret discounting in violation of the code were usually prevalent in the affected areas and rules 3, 4, 6 and 17 were most flagrantly violated. After these matters were brought to the attention of the Administrator, he wrote on July 20, 1934, to the chairman of the Marketing Subcommittee of the Planning and Coordination Committee authorizing the establishment of local committees to deal with gasoline price wars and to negotiate settlements in the areas affected. This letter read in part: * * * [quoting Secretary Ickes' letter of July 20, 1934 to Arnott.]
>
> ["The event that led up to the Administrator's request was a series of unsuccessful attempts on the part of the Board and the code committees to secure settlements of retail price controversies. The Planning and Coordination Committee had

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[4] Def. Ex. 914 for identification, R. 3512.

[5] Frey, R. 1281.

substituted for its proposal for retail price fixing the national marketing agreement which had not been approved by the industry or by the Administrator. In view of these conditions the purpose of the Administrator's letter was to request the industry, within the limits of existing law to undertake to stabilize markets with a view to achieving the purposes of the Recovery Act.

[''The chairman of the marketing sub-committee of the Planning and Coordination Committee effectuating the request of the Administrator organized a General Stabilization Committee and authorized the chairman of each regional marketing committee to instruct the various State code committee chairman to appoint State stabilization committees wherever necessary * * *.

* * *

[''As the various problems were offered for discussion at the general stabilization committee meetings, subcommittees were appointed to make recommendations among these subcommittees. One of the most important was the tank-car committee, which attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank-car market was essential to a stabilized retail structure * * *.

[''The stabilization program was perhaps the outstanding development under the code. It received the support of most elements in the industry and it was effective to a greater degree in eliminating price wars and stabilizing prices and conditions than any other movement yet tried. In many areas the best price structure in years prevailed during the last 6 months of the code. Nearly all company representatives gave credit for this condition to the stabilization program.

> ["Although no authority existed in the stabilization committee to enforce any of the recommendations which it might make, its recommendations were generally effective. This was largely because its aims and purposes were to maintain a uniform and profitable price structure by as nearly direct means as possible. Many critics of the code were ardent supporters of the stabilization program, feeling the code was cumbersome and the machinery for its enforcement so complex as to be ineffectual, but that the stabilization program went to the heart of the problem and was more effective."]

3. *Testimony of Secretary Ickes and E. B. Swanson before the Senate Committee on Finance, February 12, 1937.*

[*The respondents offered to show* that Secretary Ickes and E. B. Swanson (one of the members of the Petroleum Administrative Board during the indictment period) testified as follows before the Senate Committee on Finance on February 12, 1937:

> ["'Senator Connally: Mr. Holland is in possession, is he, of the details in regard to those buying pools and things of that kind?
>
> ["'Secretary Ickes: Mr. Holland or Mr. Swanson has all of that, because he was with the Oil Administration at the time.
>
> ["'Senator Connally: Would it bother you if we would hear Mr. Swanson, injecting him right at this point?
>
> ["'Secretary Ickes: I should be very glad to have you do that.
>
> ["'Senator Connally: "What was the operation under those buying pools, Mr. Swanson"?

[" 'Mr. Swanson: Mr. Chairman there were several so-called buying pool efforts, that began in December of 1933 and continued from then on during the entire period of the Petroleum Code.

[" 'Senator Connally: What was the purpose of the Department in participating or in authorizing or in aiding those buying pools?

[" 'Mr. Swanson: It was an effort on the Department and the industrial committees to bring about the normal relationship between gasoline prices and crude oil prices, in order to permit the independent, non-integrated refiner to be able to operate without loss.

[" 'Senator Connally: What do you figure is the proper relationship between the price of crude and gasoline?

[" 'Mr. Swanson: It varies with different price levels, but at a crude oil price of one dollar, the normal price relationship between crude oil and gasoline is as eighteen and one-half is to one. In other words, the crude oil price per barrel should be eighteen and one-half times the refinery price per gallon of regular gasoline'."[6]]

4. *Frey's testimony.*

As noted above, the Petroleum Administrative Board was rather departmentalized, with each member handling an individual field and consulting the others only at irregular intervals. The member in charge of marketing was Dr. John W. Frey.[7] He had been specifically designated by Secretary Ickes: "to negotiate and sit with Committees of those engaged in the stabilization of wholesale and retail markets throughout large areas of the United States."[8]

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[6] R. 1841-2.

[7] Frey, R. 1265

Dr. Frey (now an associate director of the Petroleum Conservation Division of the Department of the Interior)[9] testified:

(1) That although he had never had any direct contact with the Tank-car Stabilization Committee's work and was "not familiar with its detailed operations,"[10] Arnott had made reports about the Committee to the Board,[11] and he (Frey) was familiar with the Committee's objectives.[12]

(2) That in his opinion the Tank-Car Stabilization Committee was "an offshoot" of the General Stabilization Committee[13] which had been appointed under authority of the letter of July 20, 1934.[14]

(3) That Arnott had never asked the Petroleum Administrative Board for official approval or official criticism of the Committee's activities.[15]

(4) That, so far as he was concerned, the Mid-Continent buying program was an industry activity, without any official standing. That is to say, it had not been formally authorized by anybody in the Petroleum Admin-

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[8] Def. Ex. 974, R. 3696, 3710.

[9] Frey, R. 1263.

[10] Frey, R. 1266, 1267; cross, R. 1302.

[11] Frey, R. 1282, 1286, 1303. Arnott, of course, made no such reports after May 27, 1935 (Frey, R. 1314).

[12] Frey, R. 1266.

[13] *Ibid.*

[14] Frey, R. 1291.

[15] Frey, cross, R. 1294, 1307; redirect, R. 1335, 1336.

istrative Board nor by the Secretary of the Interior.[16] In fact, only Secretary Ickes could have given such formal authorization.[17]

(5) That he believed that major company buying was helpful to stabilization.[18] For, although many price wars in the Mid-Western area had been eliminated by January, 1935, and conditions were much better, other price wars were still going on. Furthermore, the Petroleum Administrative Board had repeatedly found that, although the stabilization activities might have achieved "a decided benefit, . . . usually they would slide back after a relatively short time."[19] That the sale of gasoline at distress prices was frequently responsible for these price wars and "encouraged the number" of them by furnishing low-priced gasoline to price-cutters and thus permitting them to sell at a greater differential below the regular price of the major companies.[20] In his judgment, it was impossible to maintain a stabilized retail market if the tank-car market continued to be subnormal.[21]

(6) That in his opinion, the presence of distress gasoline on the market in January and February 1935 was also one of the obstacles which was preventing the tank-car market from achieving parity with the price of crude oil.[22]

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[16] Frey, cross, R. 1293.

[17] Frey, R. 1270, 1279.

[18] Frey, redirect, R. 1315-6.

[19] Frey, R. 1277.

[20] Frey, redirect, R. 1328.

[21] Frey, redirect, R. 1332.

[22] Frey, redirect, R. 1327.

(7) That Secretary Ickes considered it an undesirable state of affairs, and particularly hard on the independent refiners, for the price of gasoline at the refinery to be out of parity with the price of crude oil.[23]

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[23] Frey, redirect, R. 1328.

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No. 347

IN THE

Supreme Court of the United States

October Term, 1939.

Socony-Vacuum Oil Company, Inc., et al., *Petitioners*,

v.

United States of America.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

Supreme Court of the United States

October Term, 1939.

No.

Socony-Vacuum Oil Company, Inc.
Continental Oil Company
Empire Oil Refining Company
Mid-Continent Petroleum Corporation
Phillips Petroleum Company
Shell Petroleum Corporation
Sinclair Refining Company
Skelly Oil Company
The Globe Oil & Refining Company (Illinois)
The Globe Oil & Refining Company (Oklahoma)
The Pure Oil Company
Wadhams Oil Company
Corporations,

Charles E. Arnott
H. T. Ashton
P. E. Lakin
Robert W. McDowell
R. H. McElroy, Jr.
Individuals,
Petitioners,

v.

United States of America.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The United States having filed its petition for a writ of certiorari in the above-entitled cause, petitioners severally file this cross-petition praying that a writ of certiorari issue to review the same judgment entered on July 27, 1939, by the United States Circuit Court of Appeals for the Seventh Circuit. That judgment reversed judgments of the United States District Court for the Western District of Wisconsin convicting petitioners under an indictment charging a conspiracy to artificially raise and to fix the tank car spot market price of gasoline in violation of the Sherman Anti-Trust Act.

Opinion Below.

The opinion of the Circuit Court of Appeals, one judge dissenting, has not yet been reported, but may be found at p. 3911 of the record. The opinion of the District Court on motions after verdict (R. 2488), is reported in 23 F. Supp. 937.

Jurisdiction.

The judgment to be reviewed was entered on July 27, 1939 (R. 3953). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C. Title 28, Sec. 347a), and Rule XI of the Rules of Practice and Procedure, promulgated by this Court on May 7, 1934.

Questions Presented.

1. Whether the indictment charges and the evidence establishes the commission of an overt act adequate to confer jurisdiction upon the United States District Court for the Western District of Wisconsin. One judge below, in a well considered dissent, held that no overt act in Wisconsin was charged or proved.

2. Whether the variance between the indictment and the proof did not constitute a complete failure of proof.

3. Whether the several defendants were entitled to directed verdicts of not guilty, because there was no evidence to show that their acts constituted an unreasonable restraint of trade or commerce.

4. Whether the denial of new trials to petitioners, when such new trials were granted to other defendants, did not violate the constitutional right of petitioners to have the issues determined by a jury, in that the possession of the power to raise or affect market prices arbitrarily was a fundamental issue in this case and the jury never considered nor made any finding on the question whether the petitioners, aside from those defendants granted new trials,[1] possessed such power.

5. Whether the arguments of Government counsel to the jury constituted such an appeal to passion, prejudice and class distinction as to deprive petitioners of a fair and impartial trial.

It is the position of the petitioners that the Circuit Court of Appeals correctly interpreted the Sherman Law, but that for the reasons herein stated the Court erred in failing to direct the trial court to enter judgments of dismissal.

The Circuit Court of Appeals, having decided on other grounds that the petitioners were entitled to new trials, found it unnecessary to decide Questions 4 and 5 above. Those questions, which relate solely to the petitioners' right to new trials, are here presented only out of abundant caution. They could probably be urged in support of the judgment of the Circuit Court of Appeals in any event, if the writ prayed for by the Government in this case be granted. (*Stelos Co. v. Hosiery Motor-Mend Corp. et al.*, 295 U. S. 237, 238-239 (1939).)

The Facts.

Petitioners were convicted in the United States District Court for the Western District of Wisconsin under an indictment charging a conspiracy to artificially raise and to fix the tank car spot market price of gasoline in violation of the Sherman Anti-Trust Act. (Act of July 2, 1890, 26 Stat. 209, U. S. C. Title 15, Sec. 1) (R. 2478, 2501) The conspiracy was to be accomplished by petitioners engaging in two so-called buying programs under which they would make purchases of gasoline in the spot market, at "uniformly high, arbitrary, and non-competitive prices, and from time to time at progressively increased prices, as agreed upon". (R. 13-16) Petitioners were then charged with having fraudulently secured the publication in the defendant trade journals of the prices paid by them, under the false representation that they were prices paid by jobbers. (R. 16-17)

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[1] Among the defendants thus granted new trials was Standard Oil Company (Ind.) (R. 2491). The evidence showed that that company was the largest distributor in the indictment territory, and that acting alone it had the power to prevent its competitors from obtaining arbitrary and non-competitive prices for their products (R. 1085, 1244, 1246-7, 1388, 1390-1, 3813).

It should be noted that the indictment charged that the defendants, in selling to jobbers, usually based their prices upon the spot market quotations in the trade journals. (R. 10) There was neither allegation nor proof that this practice had resulted from any agreement or concert of action among the defendants. Government counsel in their bill of particulars and in statements to the trial court repeatedly disclaimed any intention to charge such an agreement. (R. 56, 66, 296, 2307, 2308)

The Government failed to prove the essential conspiracy allegations. The most it can argue is that there is evidence which might justify the inference that the defendants had agreed to purchase distress gasoline and to pay therefor the fair going market price as competitively established. The price in each transaction was to be determined by individual bargaining between buyer and seller. In fact, the prices actually paid were usually at or below the going market prices and several different prices were often paid on the same day. (R. 1184, 1558-66, 3457-60, 3783, 3807-10) The trade journals, named in the indictment as co-conspirators and charged therein with being the "chief instrumentalities" of the conspiracy, had never either intentionally or unintentionally published the prices which the defendants paid and represented them to be prices paid by jobbers. (R. 769-81, 791-2, 3783, 3807-10) Upon the Government's own motion the trade journal defendants were dismissed from the case. (R. 902-903)

Twenty-six corporations and 46 individuals were brought to trial. During the trial the case was dismissed against 10 of the corporations and 16 of the individuals. Verdicts of guilty were returned as to all the remaining defendants. Thereafter the District Court dismissed from the case 1 corporation and 10 individuals, and ordered new trials for 3 corporations and 15 individuals, leaving the verdict to stand only as to 12 corporations and 5 individuals. These latter constitute the present petitioners. (R. 73-74, 903, 912, 1149, 1890, 2284, 2351, 2380, 2484, 2490-2491) On appeal the judgments of conviction were reversed and the case was remanded to the District Court for new trials, but one of the judges, in a carefully reasoned separate opinion, held that the Disrict Court lacked jurisdiction because no adequate overt act was alleged in the Indictment or established by the evidence. (R. 3911, 3950)

Specification of Errors.

The Circuit Court of Appeals erred—

1. In sustaining the jurisdiction of the District Court.

2. In holding that there was no fatal variance between the indictment and the proof.

3. In sustaining the action of the District Court in denying defendants' several motions for directed verdicts of not guilty.

4. In failing to rule that the District Court should have granted petitioners' several motions for new trials.

5. In failing to rule that the argument of Government counsel to the jury constituted reversible error.

Reasons Justifying Issuance of the Writ.

1. The division of opinion among the judges of the Circuit Court of Appeals emphasizes both the substance and the importance of the question of jurisdiction. In that situation petitioners should not be required to enter upon a protracted new trial[1] until the question of jurisdiction is authoritatively settled by this Court. In sustaining the jurisdiction of the District Court, the majority opinion of the Circuit Court of Appeals appears to reveal a misapprehension of the decisions of this and other courts defining the nature of an overt act adequate to confer jurisdiction for trial purposes. Such an act must be of a character to evidence the operation of the conspiracy in the place where the act is committed. Such is the plain ruling in *Hyde* v. *United States*, 225 U. S. 347, 365 (1912). The indictment here fails to charge that the conspiracy embraced the taking of contracts from jobbers, and the making of sales to them and others in the Western District of Wisconsin. (R. 12-13) Indeed Government counsel, in the proceedings below affirmatively so declared (R. 56, 66, 296, 2307, 2308). So far as the indictment, the evidence and the declared position of Government counsel are concerned, the taking of contracts and the making of sales were individual acts unaffected by any prior agreement. In brief, what was done in the Western District of Wisconsin was concededly not "the activities of the conspiracy". (*Brown* v. *Elliott*, 225 U. S. 392, 402 (1912).) The individual reaping of an advantage, if any, from an already fully executed conspiracy is merely a remote result and no part of the conspiracy itself. It cannot be made a part of the conspiracy for the purpose of creating jurisdiction merely by designating it as such. (*Rose* v. *St. Clair*, 28 F. (2d) 189, 191 (D. C. Va., 1928); *United States* v. *Black*, 160 Fed. 431,

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[1] The trial below commenced on October 4, 1937, and ended with the verdict of the jury on January 22, 1938. (R. 73, 2432)

435-6 (C. C. A. 7th, 1908); *Lonabaugh* v. *United States*, 179 Fed. 476, 481 (C. C. A. 8th, 1910).).

The correctness of our contention is further demonstrated by the construction placed upon the indictment by the Circuit Court of Appeals to support its ruling that the allegation of the indictment charging the use of the trade journals in the publication of the prices paid by the defendants and the fraudulent misrepresentation that such prices were paid by jobbers on the spot market was but the allegation of a means not essential to the carrying out of the conspiracy charged. The court reached that conclusion by indicating that the conspiracy was one to fix and maintain tank car spot market prices, to be effected by purchases under two buying programs conducted in their entirety outside of the Western District of Wisconsin. That done, obviously the conspiracy, because of accomplishment, was at an end, and no mere subsequent sales in the Western District of Wisconsin could aid or execute such conspiracy. The Court below purported to find jurisdiction on the authority of *United States* v. *Trenton Potteries Co.*, 273 U. S. 392 (1927). That decision was clearly inapplicable to the present case for the conspiracy there charged embraced the making of sales at fixed and agreed upon prices. In the case at bar, as we have pointed out, no agreement with respect to sales in the Western District of Wisconsin at any price was either alleged or proved.

2. The only means charged in the indictment for increasing the price to jobbers and others in Western Wisconsin, are the purchase of gasoline by petitioners at "uniform, high, arbitrary and non-competitive prices, and from time to time at progressively increased prices as agreed upon", and the false publication of those prices in the trade journals, which trade journals were named as defendants, but subsequently dismissed from the case for failure of proof. These allegations were essential parts of the offense as alleged, and were, therefore, required to be

proved as laid for they were the only means by which it was alleged that the price to the jobbers and others in Wisconsin had been raised or affected. (*Nash* v. *United States*, 229 U. S. 373, 379, 380 (1913); *United States* v. *Nat'l Malleable and Steel Castings Co.*, 6 F. (2d) 40, 41 (D. C. Ohio, 1924); *United States* v. *American Naval Stores Co.*, 172 Fed. 455, 462-3 (C. C. Ga., 1909); *Patterson* v. *United States*, 222 Fed. 599, 629, 633, 649-50 (C. C. A. 6th, 1915); *United States* v. *Great Western Sugar Co.*, 39 F. (2d) 149, 151 (D. C. Nebr., 1929).)

The failure of proof was, therefore, fatal, for not only did it constitute a complete failure of proof but it left the indictment as merely charging a conspiracy to raise the tank car spot market prices by purchases under two buying programs outside of the Western District of Wisconsin, thus failing to establish the alleged grounds for the jurisdiction of the District Court.

The Circuit Court of Appeals appears to have found itself compelled to adopt this limited interpretation of the indictment in order to reach its conclusion that the allegation describing the use of the trade journals in the publication of fraudulent prices was unessential in the execution of the conspiracy and, therefore, need not be proved. The disposition thus made of this point by the court below strongly emphasizes the inherent merit of our challenge to the jurisdiction of the District Court, for if the tank car spot market price was fixed and maintained by purchases made under the two buying programs, then obviously sales subsequently made in the Western District of Wisconsin pursuant to jobber contracts or otherwise did not in any sense contribute to the execution or success of the conspiracy.

3. The Circuit Court of Appeals, in holding that the trial court did not commit error in denying petitioners' motions for directed verdict, held in effect that there was evidence to go to the jury tending to show that the buying programs as conducted by petitioners unreasonably re-

strained trade and commerce. The court below failed, however, to point to any evidence to sustain that conclusion. It is the contention of petitioners that the record contains no such evidence.

Conclusion.

For the reasons stated, the writ should issue as herein prayed.

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No. 347

In the Supreme Court of the United States

OCTOBER TERM, 1939

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 2488) is reported in 23 F. Supp. 937. The opinion of the Circuit Court of Appeals (R. 3911) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 27, 1939 (R. 3954). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Rules of Practice and Procedure after Verdict in Criminal Cases.

QUESTIONS PRESENTED BY CROSS-PETITION

1. Whether the District Court had jurisdiction to try the petitioners.

2. Whether the failure to establish the guilt of certain trade-journal defendants constituted a failure to prove an essential allegation of the indictment relating to petitioners.

3. Whether there was sufficient evidence to go to the jury that petitioners' combination unreasonably restrained trade.

4. Whether in view of the action of the District Court in granting certain defendants new trials, its failure to grant new trials to petitioners constituted reversible error.

5. Whether certain remarks of Government counsel in closing arguments to the jury deprived petitioners of a fair and impartial trial.

STATEMENT

The Government has petitioned[1] for a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Circuit reversing judgments of conviction by the District Court for the Western District of Wisconsin and remanding this case for new trials. The principal question presented by the petition is whether, as the court below held, the District Court had erroneously instructed the jury.[2] The facts of the case are set forth in the Government's petition (pp. 3-15).

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[1] *United States* v. *Socony-Vacuum Oil Company, Inc., et al.*, No. 346, this Term.

Respondents in No. 346 (petitioners here) have filed a cross-petition for certiorari seeking review of five other questions. The first three of these were decided against them by the Circuit Court of Appeals, that court holding (1) that sales of gasoline by the defendants in the Western District of Wisconsin at prices intentionally raised and maintained by defendants' combination constituted overt acts which gave the District Court jurisdiction of the offense (R. 3942-44); (2) that the Government's failure to prove fraudulent complicity in the conspiracy by certain defendant trade journals did not constitute such a failure of proof as to require dismissal of the indictment as to the petitioners (R. 3936-38); and (3) that there was sufficient evidence to submit to the jury the question whether the combination unreasonably restrained trade (R. 3938-39).

The court expressly declined (R. 3935, 3950) to pass finally upon questions 4 and 5 but stated with respect to the latter that certain remarks of Government counsel in closing arguments when "taken in connection with the misuse of the Grand Jury testimony * * * would present a very serious obstacle to the affirmance of the judgment."[3]

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[2] It is not clear from the opinion of the Circuit Court of Appeals whether the alleged error in the trial court's instruction was the sole ground for reversal. Consequently, the Government's petition also presented for review three subordinate questions which the Circuit Court of Appeals treated as possible grounds for granting the petitioners new trials (Pet., pp. 2-3, 25-26).

For the reasons hereinafter stated, the Government does not oppose the prayer of the cross-petition for review on certiorari of questions 4 and 5 but respectfully requests the Court to limit certiorari to those questions and to the questions specified in the Government's petition.

ARGUMENT

I

Questions 4 and 5, which were not finally passed upon by the Circuit Court of Appeals, involve issues which, if decided in favor of petitioners, would require new trials. If the Government's petition is granted without limitation, petitioners would be free to present their contentions with respect to those questions in the absence of a cross-petition because their contentions would support the judgment of the Circuit Court of Appeals ordering new trials. *Langnes* v. *Green,* 282 U. S. 531, 538–539; *Story Parchment Co.* v. *Patterson Parchment Paper Co.,* 282 U. S. 555, 560. Moreover, since the entire record will be before this Court, we submit that it would be to the best interests of all parties that all questions not decided by the Circuit Court of Appeals be now passed upon by this Court in order to avoid further litigation in a case which has already consumed over three years. See *Cole* v. *Ralph,* 252 U. S. 286, 290. The Government, therefore, does not oppose the prayer of the cross-petition with respect to those questions.[4]

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[3] Because of this observation the Government in its petition requested certiorari on this question (Pet. pp. 2–3, 25–26).

Questions 1, 2, and 3 stand on a different footing. They were considered and finally passed upon by the Circuit Court of Appeals. If certiorari is granted to review them, petitioners state that they intend to urge that the judgment of the Circuit Court of Appeals ordering new trials should be set aside with instructions to dismiss the indictment (Cross-Pet., p. 3). They could not, therefore, obtain this affirmative relief without a cross-petition and their right to certiorari must be determined by the criteria ordinarily applied to original applications for certiorari. *Langnes* v. *Green,* 282 U. S. 531, 537–539, *supra; Morley Construction Co.* v. *Maryland Casualty Co.,* 300 U. S. 185, 190–192.

So tested, none of those questions, in the view of the Government, presents legal problems of general importance appropriate for review on certiorari, but each merely involves the application of settled and undisputed principles of law to the facts peculiar to this case. Consequently, although we believe that this Court would affirm the holdings of the Circuit Court of Appeals on those points, we suggest the inappropriateness of those issues for certiorari and oppose certiorari on those questions.

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[4] The same end could, of course, be obtained by denying this petition and permitting the cross-petitioners to raise the issues in support of the judgment below. The division of the contentions, for purposes of briefing and argument, into two cases would, however, seem to be a more convenient arrangement; in addition, any doubt as to the issues being before the Court would be removed.

If, as we contend, questions 1, 2, and 3 do not warrant certiorari, we submit that there is good reason to limit the writ to exclude them. The arguments on the other points presented by the petition and cross-petition will require lengthy briefs. The usual amount of time assigned for oral argument in this Court will not be sufficient to present adequately even those points. Limitation of the writ as requested will, therefore, enable the parties to devote their briefs and oral arguments entirely to issues which by reason of their importance deserve review by this Court or which have not yet been reviewed by an appellate court.

In the discussion which follows we shall briefly describe the nature of questions 1, 2, and 3, and point out the reasons why we believe they are inappropriate for certiorari.

II

Question 1 relates to the jurisdiction of the District Court to try the offense. The indictment charged[5] and the jury found under express instructions by the court[6] that the defendants combined together to raise and maintain not only the spot market prices but also their own selling prices throughout the Mid-Western marketing area, including the Western District of Wisconsin. The indictment charged, and the undisputed proof showed, that throughout the life of the conspiracy the defendants sold gasoline to jobbers and consumers in the Western District of Wisconsin at prices which the jury found were intentionally raised and maintained by the defendants. The Circuit Court of Appeals, therefore, held under the authority of *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, that the sales in the trial district constituted overt acts which gave the District Court jurisdiction of the offense.

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[5] Paragraph 18 of the indictment (R. 12–13) charged that the defendant oil companies conspired to, and did, raise and maintain spot market prices and "thereby intentionally in-

Petitioners do not contend that the holding of the court below conflicts with any decision of this Court or with any decision of any other circuit court of appeals involving the same questions, or, indeed,

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creased and fixed" their own selling prices throughout the Mid-Western area, including the Western District of Wisconsin.

[6] The District Court charged the jury that it was not sufficient for it to find that the defendants conspired together to raise spot market gasoline prices, but that it must also find that the defendants combined together for the purpose of artificially raising and fixing the tank car prices of gasoline in sales in interstate commerce in the Mid-Western area, including the Western District of Wisconsin, and for the purpose of intentionally raising the general level of retail prices in said area (R. 2403, 2408, 2409, 2410, 2417).

involving the same statute.[7] While they rely upon certain cases[8] in the lower courts, these dealt with questions and statutes wholly dissimilar to those here involved; the Circuit Court of Appeals considered those cases and concluded that they were "not controlling" on the jurisdictional question, and, moreover, that the cases were not "even persuasive" (R. 3944).

Nor do the petitioners urge or show that the jurisdictional question is one of any public importance. Instead, it appears that the problem involved is merely one of applying settled and unquestioned legal principles to the somewhat unusual nature of the marketing structure in the petroleum industry in the Mid-Western area. The legal problem presented is, therefore, unlikely to arise again.

The chief ground urged by petitioners for review of this question is that one judge of the Circuit Court of Appeals dissented from the court's holding on this point. This is hardly a sufficient reason for granting certiorari. Furthermore, whatever importance a dissenting opinion may ordinarily have, the significance of the dissent here is questionable in view of the tenuous nature of the argument of the petitioners to which the dissenting judge subscribed.[9]

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[7] The jurisdictional sufficiency of the indictment was sustained not only by the trial court (R. 37–39) but by other courts where the indictment was challenged on this ground in removal proceedings. *United States* v. *Carlisle*, 19 F. Supp. 927 (S. D. Tex.); *United States* v. *Hartmann* (W. D. Pa.), decided August 24, 1937, and not yet reported; *Hartmann* v. *Sloan*, 99 F. (2d) 942 (C. C. A. 3d), certiorari denied, 59 S. Ct. 487.

[8] *Rose* v. *St. Clair*, 28 F. (2d) 189, 191 (W. D. Va.); *United States* v. *Black*, 160 Fed. 431, 435–436 (C. C. A. 7th); *Lonabaugh* v. *United States*, 179 Fed. 476, 481 (C. C. A. 8th).

Petitioners, in an effort to distinguish the *Trenton Potteries* case, argue that the only crime charged and proved here was a combination to raise and fix spot market prices and that this crime was completed when those spot market prices were raised. From this false premise they argue that the raising of selling prices in Wisconsin was a mere consequence of the completed crime. But, as the majority of the court below found (R. 3943), the only possible advantage which could accrue to the defendants through their activities was the increase of their own selling price. Consequently, while an intermediate object of the conspiracy was to raise and control spot market prices, another and much more important one was to raise and control thereby the prices at which the defendants sold most of their gasoline. Their object in raising and controlling spot market prices outside the trial district was clearly not an end in itself but a means whereby the defendants could in turn raise and control their selling prices throughout the marketing area, including the trial district. Clearly, therefore, sales of gasoline in the trial district at those prices tended to effectuate the main object of the combination here in the same way that sales in the trial district tended to effectuate the object of the combination in the *Trenton Potteries* case to fix uniform selling prices.

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[9] In one important respect the dissenting judge misunderstood the issue between the Government and the petitioners. The dissenting opinion shows that the writer thought that the Government contended that the overt acts in the Western District of Wisconsin consisted of sales of the gasoline purchased in the buying programs (R. 3952, 3953). In fact, the sales which the Government urged constituted overt acts were sales of the petitioners' own gasoline at the prices which the petitioners were able to fix by means of the buying programs. This misunderstanding of the dissenting judge may account for his conclusion that the sales were mere consequences of the combination and not in furtherance of its objectives.

III

The request that this Court grant certiorari on question 2 relating to an alleged failure of proof is not supported by any showing whatever that the question is one of public importance or that the holding of the Circuit Court of Appeals conflicts with any decision of this Court or of any other circuit court of appeals. Petitioners' own statement of reasons (pp. 7–8) shows that the question involves nothing more than the construction of a particular indictment in a particular case. Mere error, if any, in the construction adopted by the Circuit Court of Appeals is not, we submit, an adequate ground for certiorari.

Nor have the petitioners made any plausible showing of error in the holding of the Circuit Court of Appeals. Their argument revolves around the dismissal (R. 902–903) of certain trade journal defendants[10] who were charged in the indictment with participating in the conspiracy by fraudulently publishing as prices paid by jobbers prices which the defendant companies paid in the buying programs (R. 16–17). Petitioners contend that this alleged falsification of prices by the journals was an essential part of the charge against the petitioners (Cross-Pet., p. 7). We submit, however, that a fair reading of the indictment can leave no doubt that the charge of falsification of prices related solely to the alleged criminal liability of the trade journals and that the means alleged to have been used by the petitioners in the effectuation of the conspiracy were complete without reference to the alleged illegal participation of the journals.[11] The

---

[10] These defendants were the publishers of the Chicago Journal of Commerce and Platt's Oilgram. The indictment was dismissed as to them on motion of the Government at the close of its case (R. 902–903).

[11] Paragraph 18 of the indictment (R. 12–13) charges the conspiracy. It alleges that the defendant oil companies conspired to, and did, raise and maintain spot market prices and "thereby intentionally increased and fixed" their own selling prices. Paragraph 19 (R. 13) alleges that the conspiracy was effectuated by the "following means," and specifies the buying programs. Paragraphs 20–23 (R. 13–16) describe the programs. Only after the buying programs, which are alleged in paragraph 19 to be the means by which the conspiracy was effectuated, are fully described are the trade journals charged with participating in the conspiracy. This charge is made in a separate paragraph (R. 16–17) specifically entitled "Participation of market journals," and the journals are charged only as aiders and abettors.

Circuit Court of Appeals, therefore, correctly held (R. 3936–37) that the charge against the trade journals was "in the nature of an additional count" which was not essential in charging the other defendants.

IV

By question No. 3 petitioners seek to challenge the sufficiency of the evidence to go to the jury on the question of the reasonableness of the restraint of trade. This issue, of course, depends upon an appreciation of all the evidence in the case which the Circuit Court of Appeals has already reviewed. Review by this Court, therefore, is neither required nor warranted. *Houston Oil Co.* v. *Goodrich*, 245 U. S. 440; *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 178.

CONCLUSION

It is respectfully submitted that the writ of certiorari should be limited to the questions presented in the Government's petition and to questions 4 and 5 of the cross-petition.

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✓ THURMAN ARNOLD,
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Nos. 346 and 347

IN THE

Supreme Court of the United States

October Term, 1939

United States of America,
Petitioner,
v.
Socony-Vacuum Oil Company, Inc., et. al.,

Socony-Vacuum Oil Company, Inc., et. al.,
Petitioners,
v.
United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

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PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

October Term 1939

Nos. 346-347

◆

United States of America,
Petitioner,
v.
Socony-Vacuum Oil Co., Inc., et al.,

Socony-Vacuum Oil Co., Inc., et al.,
Petitioner,
v.
United States of America.

◆

PETITION FOR REHEARING

Come now the respondents in the above entitled case and respectfully pray that the judgment heretofore entered in the above entitled case be vacated, that the issuance of the mandate thereon be stayed, and that a rehearing be granted, and in support thereof respectfully show:

I.

This Court has held that the District Court for the Western District of Wisconsin had jurisdiction to try these respondents. The decision rests squarely upon the following conclusion:

> "* * * As we indicated in our discussion of the buying programs, there was sufficient evidence to go to the jury that the conspiracy did not end with an agreement to make purchases on the spot market; that those buying programs were but part of the wider stabilization efforts of respondents; that the chief end and objective were the raising and maintenance of Mid-Western prices at higher levels. * * * Accordingly, successful consummation of the conspiracy necessarily involved an understanding or agreement, however informal, to maintain such improvements in Mid-Western prices as would result from the purchases of distress gasoline. The fact that that entailed nothing more than adherence to prior practice of relating those prices to the spot market is of course immaterial. * * *" (Opinion, p. 66.)

The decision is thus based upon the premise that successful consummation of the conspiracy "necessarily involved" an agreement to adhere to prior practices in selling to jobbers and at retail in the Western District of Wisconsin.

As the respondents pointed out in their original brief they do not believe that any such agreement was proved. For the purposes of this petition, however, we will assume that (1) the jury found such an agreement, and (2) there is evidence in the record from which such a finding may be inferred. But after conceding this, the inescapable fact remains that Government counsel, both in pleadings and in admissions made prior to the close of the Government's case, not only conceded but stated affirmatively that there was no charge of an agreement to adhere to prior practices in selling to jobbers and at retail. The respondents relied upon these disclaimers. They made no attempt, and in view of the disclaimers there was no necessity of attempting, to disprove such an agreement by evidence.

1. *The Government specifically disclaimed any charge of an agreement to adhere to prior practices with respect to the prices to be paid by jobbers.*

These concessions were made in response to repeated questions of counsel for the respondents, who were acutely aware of the importance of the issue in connection with the matter of jurisdiction and endeavored to make the matter clear even before the trial started. It will be recalled that Paragraph 11 of the indictment alleged that the contracts which the respondents customarily employed in making gasoline sales to jobbers related the selling price to the published spot market price. In order that there would be no misunderstanding counsel for the respondents addressed the following question to Government counsel during the argument on their demurrers:

> "Is it your contention that it is stated anywhere in this paragraph, or anywhere in the indictment, that the defendants agreed among themselves that they would sell to the jobbers only at the average spot market price that you have described?"

Counsel replied:

> "Mr. Chaffetz: That question touches upon the question that Colonel Donovan propounded in the course of his argument yesterday, and I had intended to deal with that specifically.

"I will state now that this paragraph does not intend to charge, and does not charge that the defendants agreed together to do business only on the basis of this contract. The contract, the substance of it, is set forth in Paragraph 11.

"Col. Donovan: Thank you very much. You won't mind if we take up also whether you think that charge is made here, Mr. Chaffetz?

"Mr. Chaffetz: No, I will stand by that. I don't think that charge is made in this indictment.

"Col. Donovan: It is not made in this indictment?

"Mr. Chaffetz: Not in this indictment, that is right.

"Mr. Lewin: It is charged as an overt act later—not the fact that they made the uniform pattern, but that they sold on that basis.

"Mr. Chaffetz: I stand on my statement, which is that this indictment nowhere charges that the defendants agreed to do business only on this contract, the substance of which is set forth in Paragraph 11.

"Col. Donovan: But the answer to my question is that it is not your contention that they agreed among themselves to sell only at the spot market price which you have described in Paragraph 11?

"Mr. Chaffetz: I think I will stand by the response that I made.

"Col. Donovan: Yes. I just wanted to be sure. Thank you very much" (R. 56).

Thereafter, and prior to the trial, the respondents sought and obtained a bill of particulars from the Government. In that bill it is stated explicitly:

"(8) In response to the demand in said motions:

> "Whether it is claimed that the defendant entered into an agreement not to sell to jobbers except in accordance with 'the prevailing form of jobber-contract described in Paragraph 11'?
>
> "The Government does not claim that each defendant 'entered into an agreement not to sell jobbers except in accordance with' the contract described in Paragraph 11 of the Indictment." (R. 66)

The respondents were not even content with this. During the course of the trial they demanded further clarification of the charge against them and were advised that:

> "There is no charge in the indictment, and counsel has stated it repeatedly during the trial, there is no charge in the indictment of an agreement with respect to these contracts." (R. 296)

Thus it is clear that prior to the commencement of the respondents' case they were advised that the Government would not press any charge that the respondents had agreed to adhere to their prior practices of contracting to sell to jobbers on the basis of spot market prices.

2. *The Government also specifically disclaimed any charge of an agreement with respect to the prices to be charged to retailers.*

The evidence shows without contradiction that Standard Oil Company (Indiana) was the market leader in this area and that when it posted its price none of the respondents could sell at a higher price. In this connection Government counsel made the following statements:

> "* * * We didn't say that the Standard of Indiana, when it posts a retail price, first consults with

> the other companies to find out what retail price should be posted" (R. 2308).
>
> "If that is what you are worrying about, if you think we are charging you with sitting around a table and agreeing on a uniform retail price, don't worry, because that isn't what we are charging" (R. 2295).

Thus it is clear that the Government specifically disclaimed any charge of an agreement to adhere to prior practices of following the posted price of Standard of Indiana.[1]

3. *The Government's true position, as stated at the time when they were construing the indictment in the argument on the respondents' demurrers* (R. 54-61), *was that it would establish jurisdiction by proving that the market journals had published the prices which the respondents*

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[1] It is significant that the indictment fails to charge a retail "price fixing agreement." Paragraph 18, the charging paragraph of the indictment, specifically alleges that the "defendants have artificially raised and fixed such spot markets for tank car prices of gasoline and have maintained such prices on artificial and non-competitive levels" (R. 12). No such charge is made with respect to prices in Wisconsin. The only charge made is that the defendants "have arbitrarily, by reason of the provisions of the prevailing form of jobber contracts above described in paragraph 11, exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area (including the Western District of Wisconsin), and in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area (including the Western District of Wisconsin). In so doing, defendants have then and there engaged in an unlawful combination and conspiracy in restraint of trade and commerce in gasoline among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act" (R. 13). Even had there been no disclaimer it is clear that there is no charge in the indictment of an agreement to fix and maintain retail prices.

had agreed to pay under the buying programs, and that as a result of such publication the respondents' customers had been forced to pay fixed, agreed-on prices in the Western District of Wisconsin. According to their own interpretation of their indictment this was the only charge of activities in the Western District of Wisconsin which the respondents were called upon to disprove. Relying upon these statements of the Government's position, the respondents introduced no evidence to disprove an agreement to adhere to prior practices in selling to jobbers and at retail.

Thus the question of whether there was an agreement to adhere to prior practices was specifically eliminated from the trial. It was raised for the first time in the appellate courts. We respectfully submit that a rehearing will demonstrate that the ends of justice demand that this Court order a retrial in order that the respondents may be afforded an opportunity to submit evidence on this issue.

II.

This is a criminal case. Under the Constitution the respondents were entitled to have every issue of fact determined by the verdict of the jury. We respectfully submit that a re-examination of the record will demonstrate that the charge did not submit to the jury the question of whether the respondents had engaged in "a combination to fix prices" as such a combination is defined in this Court's opinion.

The opinion seems to hold that concerted action is not to be condemned as a price-fixing combination merely because it has the incidental purpose or effect of raising prices. It must have *the direct and immediate* purpose or the direct and necessary effect of raising prices. In fact, this Court repeatedly distinguished cases in which the incidental effect of the combinations involved was to raise prices on the ground that price raising was not the direct and immediate purpose of those combinations.

Thus, in *Appalachian Coals, Inc.* v. *United States*, "* * * the court below found, that while defendants could not fix market prices, the concerted action would 'affect' them, that is, that it would have a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain" (288 U. S., at 373). This Court, however, distinguished the *Appalachian* case from the case at bar, saying:

> "* * * In the instant case there were buying programs of distress gasoline which had as their direct purpose and aim the raising and maintenance of spot market prices and of prices to jobbers and consumers in the Mid-Western area, by the elimination of distress gasoline as a market factor. * * * Unlike the plan in the instant case, the plan in the *Appalachian Coals* case was not designed to operate *vis a vis* the general consuming market and to fix the prices on that market. Furthermore, the effect, if any, of that plan on prices was not only wholly incidental but also highly conjectural * * *" (Opinion, p. 38).

Similarly, in the *Maple Flooring Manufacturers* and *Cement Institute* cases, the courts below found, and this Court sustained their conclusion that—

> "* * * the dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uni-

> formity of price and trade practice. Exchange of price quotations of market commodities tends to produce uniformity of prices in the markets of the world. * * *" (268 U. S., at 582; see *ibid*, 603, 604.)

This Court in the instant case, however, distinguished those cases on the ground that—

> "* * * the systems there under attack were methods of gathering and distributing information respecting business operations. It was noted in those cases that there was not present any agreement for price-fixing * * *" (Opinion, p. 39).

The *Chicago Board of Trade* case involved—

> "* * * a rule or agreement by which men occupying positions of strength in [a] branch of trade, fixed prices at which they would buy or sell during an important part of the business day, * * *" (246 U. S., at 238).

This Court in the instant case distinguished that case, saying:

> "* * * Since it was not aimed at price manipulation or the control of the market prices and since it had 'no appreciable effect on general market prices,' the rule survived as a reasonable restraint of trade" (Opinion, p. 39).

If the purpose of a combination is to be determined merely from the fact that it has an incidental effect upon prices, this Court in reaching its decision would have been compelled to overrule the cases just referred to. But this Court did not overrule these cases. Instead it placed its decision upon the ground that they did not involve a "direct purpose and aim" to raise prices. The actual decision of the Court therefore seems to imply that something more than an intention presumed from the incidental effect of the combination is required. There must be a "direct purpose and aim" to raise prices.

Let us apply the principles which this Court thus enunciated in its opinion to the facts of the instant case.

The facts of this case would have permitted the jury to draw either of two inferences:

1. *The jury could have concluded that the respondents had the "direct purpose and aim" of raising prices.*

This Court specifically held that there was sufficient evidence on this point to go to the jury. It said:

> "* * * The conclusion is irresistible that defendants' purpose was not merely to raise the spot market prices but, * * * to raise the price of gasoline in their sales to jobbers and consumers in the Mid-western area * * *. Certainly there was enough evidence to support a finding by the jury that such were the scope and purpose of the plan." (Opinion, pp. 19-20.)

> "* * * As we indicated in our discussion of the buying programs, there was sufficient evidence to go to the jury that the conspiracy did not end with an agreement to make purchases on the spot markets; that those buying programs were but part of the wider stabilization efforts of respondents; that the chief end and objectives were the raising and maintenance of Mid-Western prices at higher levels. * * *" (Opinion, p. 66.)

2. *The jury, however, was not compelled to make the finding for which this Court found "sufficient evidence to go to the jury." Instead the jury could have found (1) that distress gasoline constituted a competitive evil; (2) that the respondents' direct and primary purpose was to purchase distress gasoline; (3) that the agreement among them ended with such purchases; and (4) that any effect which such purchases had upon the spot market or upon prices in the Mid-Western area was wholly incidental.*

In short, the jury could have accepted, as a fair description of the plan, the testimony of McDowell, who said:

> "After we got through with all this talk pro and con, some one asked Mr. Ashton to sum up just what his suggestion was. Mr. Ashton said that there were to be no pools or no central buying agencies; that the suggestion would be that every one buy in line with his needs, and make his own deals with the selling refiners; second, that there were to be no allocations, no commitments, no percentage quotas, such as there had been in some of the previous plans, but that each company would buy in line with his actual needs; third, that the Committee would urge and suggest to the buying companies that they consider paying a fair going market price in their individual transactions, rather than chiseling down on an already distressed price" (R. 1184).
>
> * * *
>
> "* * * we felt there were some 10 or 12 companies who were regular and normal purchasers of gasoline, and that this Committee might attempt to put these purchasers in touch with the sellers, for the purpose of giving these independent refiners an outlet that already existed for their distress gaso-

> line. These major companies were buying gasoline and had to buy gasoline, and, as I tried to explain, they had been buying it from just a few companies. Our plan contemplated trying to get them acquainted with some of the smaller and lesser known independent refiners" (R. 1218).

As shown in Appendix "A" to our original brief, there was abundant evidence tending to establish that there was no curtailment in the market supply; that the respondents would have purchased the same amount of gasoline regardless of the existence of a buying program (Appendix "A," 216-41); and that the market was at all times subject to all of the influences of normal competition (*Ibid.*, 243-73).

In its opinion, this Court rejects the direct testimony of McDowell and others and alludes to certain evidence concerning the conduct of the buying program which, it implies, might overcome any declarations of the defendants and might establish a primary intention to raise prices. It states that buying orders were "timed" and strategically placed; that sellers were "assigned" to buyers so that the market would not be depressed, and that "as a result of the payment of fair going market prices a floor was placed and kept under the spot markets" (Opinion, p. 41). But such characterizations of the respondents' activities are themselves a matter of inference and conclusion. As shown in the Appendix "A," there was abundant evidence tending to show that the only things which determined whether a purchase was to be made from a particular refiner or at a particular time were (1) whether the buyer actually needed the gasoline, or was assured of needing it in the near future; and (2) whether the refiner from whom he purchased had distress gasoline on his hands (Appendix "A," 110-22). There was also evidence to show that the distress character of gasoline could be determined entirely without regard to price. It was gasoline which the refiner had been forced to manufacture (*Ibid.*, 195-202), gasoline which he had no place to store (*Ibid.*, 203-6), and gasoline for which he could not expect to have any customers (*Ibid.*, 207-12).

The same thing is true of the conclusion of this Court that a "floor was placed and kept under the spot markets" by the payment of fair going market prices. The conclusion of this Court might not have been the conclusion of the jury. This Court assumes that the respondents agreed to purchase any gasoline which would not bring the market price. There was abundant evidence to support a finding that no such agreement existed and that the respondents offered no resistance whatsoever to any natural tendency there might have been for the market to decline (Appendix "A", 122-35). In fact, when the market did decline in November and December 1935, and in February 1936, the respondents' purchases were made at correspondingly lower levels (Def. Exs. 1024 and 713; R. 3807 and 3177).

There is no evidence in the record which cannot be interpreted as being consistent with this view of the buying program. And even if there were, *it would be for the jury, not for this Court, to make the interpretation, and to determine which view as to the purpose and effect of the buying program was to be accepted.*

We respectfully urge that the instructions of the trial court did not submit to the jury the question whether the direct and immediate purpose or effect of the combination

was to raise prices.[1] It is true that the trial court instructed the jury to return verdicts of guilty if it found

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[1] In its opinion this Court refers to a portion of the charge which, it says, required the jury to find beyond a reasonable doubt "that the price rise and its continuance were 'caused' by the combination and not caused by" certain other factors (opinion, pp. 34, 41).

The instruction referred to reads as follows:

> "Now, unless you find from the testimony and believe beyond a reasonable doubt that the said price increase, and its continuance at the level shown by the evidence was caused by an unlawful agreement or combination of the defendants, as alleged in the indictment, and as heretofore defined and explained to you, and not caused by the factors aforesaid, then it is your duty to acquit the defendants and to return verdicts of 'not guilty'" (R. 2407).

This instruction, however, flatly condemns the price rise if brought about by a combination "as heretofore defined and explained to you." The charge had previously condemned any combination having the purpose to raise prices. But the jury was instructed that the respondents were chargeable with intending to raise prices if such were the "natural and probable" result of the combination. Thus, the charge referred to in the opinion of this Court merely perpetuated the general charge which condemned as *per se* illegal any combination having the natural and probable tendency to raise prices.

But this was not all. The jury was merely required to find that the natural and probable consequence of the combination was to contribute in some degree to an increase in prices. For, the trial court also instructed the jury:

> "You will also understand that if you find an illegal combination to have existed among all or some of the defendants, having for its purpose the raising of prices, it does not matter that there may have been also other factors which contributed to the raising of the prices, as, for example, the existence of the Connally Act. * * *" (R. 2405).

that the respondents had combined "to raise" the price of gasoline. It also instructed the jury that it must find that the respondents had "intentionally raised and fixed the tank-car price of gasoline * * *." These instructions, however, did not require the jury to find that the respondents had a "direct purpose and aim" to raise prices. Instead, the jury was instructed:

> "*Every person is presumed to intend the natural and probable results of his acts knowingly done*, and an unlawful act implies an unlawful intent. If a defendant knowingly did acts which the law renders illegal, then he is guilty, irrespective of whether he believed he was violating the law" (R. 2416; italics supplied).

Thus it is clear that the jury was *not* required to find that the direct and main purpose of the combination was to raise prices. It was sufficient if the jury believed that *the natural and probable consequence* of purchasing distress gasoline was to raise prices to any extent.

In fact, the trial court specifically refused to submit to the jury the very question which this Court deems of basic importance, viz.: What was the primary and direct purpose and the direct and necessary effect of the respondents' activities? The respondents specifically requested an instruction which, if granted, would have required the jury to find whether their primary purpose was to purchase distress gasoline or whether it was to raise prices. That requested instruction (the refusal to grant which is Assignment of Error No. 46) reads as follows:

> "It is not the purpose of the Sherman Anti-Trust Act to make impossible the normal and fair

conduct of interstate commerce through the adoption of reasonable measures to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis. The evidence in this case is such as to justify you in finding and concluding that injurious and destructive practices existed in the oil industry in connection with the marketing of tank car gasoline.

If, from the evidence as a whole you conclude that a reasonable theory or explanation of the conduct of defendants is that they adopted and carried out a buying program or programs consisting of reasonable measures *to protect interstate commerce from injurious and destructive practices and thus to promote competition on a sound basis*, you must find the defendants not guilty even though you should conclude that *an incidental result* of defendants' activities was to contribute to the rise of the tank car and retail prices for gasoline, shown by the evidence.

In this connection you are instructed that you may find that the dumping of surplus gasoline by independent refiners at distress or sacrifice prices under the circumstances disclosed by the evidence in this case was an injurious and destructive competitive practice, in that, you may find from the evidence that:

(1) It hindered federal and state efforts to conserve the limited supplies of crude oil in the United States;

(2) It hindered and stood in the way of the reasonable stabilization of the oil industry;

(3) It tended to eliminate the independent refiners as a competitive element in the industry;

(4) It hindered the attainment of the objectives of the National Industrial Recovery Act, including relief of unemployment and maintenance of wages at fair levels'' (Defendants' requested instruction No. 92, R. 2381, italics supplied).

We respectfully submit that the respondents are entitled to have a rehearing on the question of whether the jury was in fact required to find that their primary purpose was to raise prices. This question was not argued in the original briefs of the respondents or the Government, or in the oral argument before this Court for the reason that the Government in its brief took the position that the charge required the jury to find more than an intention to raise prices—that it required it to find an agreement to charge an agreed-on price, such as was involved in the *Trenton Potteries* case (Govt. Brief, 62-66, 74-75). Since the opinion of this Court rejects that view of the Government and makes the entire case rest upon the question of the respondents' primary purpose, that issue should be briefed and argued.

III.

Our discussion under Point II above assumes that this Court condemned the combination in this case on the theory that the jury found that the direct primary purpose or effect of the combination was to raise prices. In fact, however, the opinion has been widely construed as holding that any concerted effort to deal with what this Court has heretofore recognized as "competitive evils" is illegal *per se* once it is shown that the natural and probable consequence of the concerted effort will be to raise prices.[1]

The effect of such a change in the law would be far-reaching.

A "reasonable arrangement" among competitors to end a price war would certainly have the effect of raising the price of a commodity. Yet this Court in the *American Tobacco* case used such a combination as an illustration of a reasonable restraint which the Act did not prohibit.[2]

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[1] This view appears to be based on the following language in the opinion:

> "* * * That other factors also may have contributed to that rise and stability of the markets is immaterial. For in any such market movement, forces other than the purchasing power of the buyers normally would contribute to the price rise and the market stability. So far as cause and effect are concerned it is sufficient in this type of case if the buying programs of the combination resulted in a price rise and market stability which but for them would not have happened. For this reason the charge to the jury that the buying programs must have 'caused' the price rise and its continuance was more favorable to respondents than they could have required. *Proof that there was a conspiracy, that its purpose was to raise prices, and that it caused or contributed to a price rise is proof of the actual consummation or execution of a conspiracy under §1 of the Sherman Act*" (opinion, p. 41; italics added).

> "Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*" (opinion, p. 44).

Since, in the instant case, the only purpose to raise prices which the jury was required to find, was one based upon the natural and probable consequences of respondents' acts, this language suggests that the test need not be "primary purpose or aim" but merely indirect and incidental effect.

[2] 221 U. S. 106, 177 (1911).

A combination of competitors in a depressed industry to pool and disseminate information as to past prices, production and inventories has the natural and probable consequences of stabilizing market prices at higher levels. Yet in the *Cement* and *Maple Flooring* cases this Court rejected the argument that such a combination was illegal solely because in its operation it "necessarily affects prices."[1]

A combination to freeze the market price of a commodity between sessions of an exchange certainly has the natural and probable effect of stabilizing the price of a commodity. Yet such a combination was held lawful in the *Chicago Board of Trade* case.[2]

A combination of competitors which eliminates competition between them and removes the depressing effect of distress sales on the market also has the natural and probable effect of raising prices. The trial court in *Appalachian Coals, Inc.* v. *United States* made a specific finding to that effect.[3] Yet the combination was sustained.

These cases are all based on a fact of common knowledge, viz: that the competitive system itself sometimes destroys competitive equality by creating scarcities or surpluses or other derangements. These derangements subject buyers or sellers to inflated or depressed prices in as arbitrary or extreme a way as any monopoly could do. Sometimes such derangements become chronic. This Court has hitherto proceeded on the theory that concerted action may mitigate or tend to prevent such situations and that when concerted action preserves what Mr. Justice Brandeis described as "all that is worth preserving in competition,"[1] it does not constitute an unreasonable restraint of trade. It has also proceeded on the theory that the processes of voluntary cooperation might function more effectively in the public interest than legislative process.[2]

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[1] 268 U. S. 563, *ibid*. 588 (1925).

[2] 246 U. S. 231 (1918).

[3] 288 U. S. 344, 373 (1933). The finding in question reads as follows:

> "That the effect of the plan of defendants will be to eliminate free competition among a large group of producers of coal and substitute for same concerted action on their part in the offering of their product at uniform prices; and that, because they control so substantial a part of the coal sold in the United States this elimination of competition and concerted action will affect market conditions, and have a tendency to stabilize prices and to raise prices to a higher level than would prevail under conditions of free competition. The defendant will not have monopoly control of any market, nor the power to fix monopoly prices." (*Appalachian Coals, Inc.* v. *United States*, *supra*, Transcript of Record, vol. I, pp. 217-8.)

To abandon this doctrine would be to condemn most of the activities of trade associations which this Court and the Federal Trade Commission have previously approved merely because the natural and probable effect of such activities is to stabilize prices and to mitigate their chronic depression or their run-away advances.

The effect of such a change is particularly important at the moment. We are confronted by the dislocations of a war program with the consequent destructive effects of scarcity on prices. Are buyers to be foreclosed from all concerted action which would protect them from run-away prices which the derangements of competition inevitably threaten? Are sellers to be foreclosed from concerted action to mitigate such situations which consideration of the public need dictates? Was the Secretary of Commerce, when he reported to the President and Congress in 1922 that the producers in the coal industry had saved consumers millions of dollars by concerted action to check run-away prices in an acute shortage, merely advertising the commission of a crime in which he was *particeps criminis* through the encouragement he had given?[1]

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[1] *American Column & Lumber Co.* v. *United States*, 257 U. S. 377. 417-8 (1921).

[2] See *Appalachian Coals, Inc.* v. *United States*, *supra*, at 374.

In their brief and in their oral argument the respondents assumed that the cases referred to above represented the existing law, and that a plan whose direct purpose and aim is to remove a competitive evil is not condemned merely because it incidentally results in fairer or higher prices. Nor did the Government attack this doctrine: on the contrary it attempted to show that the trial court had applied it in framing its charge. If the opinion does in fact repudiate this doctrine, and if the preexisting law is to be discarded, then we respectfully submit that this Court should order a rehearing in order that the nature, wisdom and effect of such a change in the law may be fully briefed and argued.

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[1] See Tenth Annual Report of the Secretary of Commerce (1922), pp. 8-10.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 346

UNITED STATES OF AMERICA, *Petitioner*,
v.
SOCONY-VACUUM OIL COMPANY, INC., ET AL.

No. 347

SOCONY-VACUUM OIL COMPANY, INC., ET AL., *Petitioners*,
v.
UNITED STATES OF AMERICA

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

---

PETITION FOR REHEARING

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IN THE

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OCTOBER TERM, 1939

Nos. 346-347

No. 346

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---

PETITION FOR REHEARING

COMES NOW R. H. MCELROY, JR., one of the Petitioners in the above entitled Cause No. 347, and presents this, his petition, for a rehearing of said cause, and in support of said petition, respectfully shows:

This is a criminal case. The importance of the major issues involved in the whole case has undoubtedly caused this Court to overlook the clear merits of R. H. McElroy, Jr.'s, contention that there is no competent and substantial evidence in the record fairly tending to support, as to him, a jury's verdict of guilty. MR. JUSTICE DOUGLAS in the majority opinion, says:

> "We have carefully reviewed the record for evidence of McElroy's knowledge of and participation in the conspiracy. But without burdening the opinion with a detailed exposition of the evidence on this point, we are of the opinion that there was no error in the denial of his motion."

MR. JUSTICE ROBERTS, in the minority opinion, does not discuss the sufficiency of the evidence as to R. H. McElroy, Jr., the only salaried employee, not holding official position with any Company, found guilty herein.

It is inconceivable to counsel that this Court, always zealous to protect individual rights, should permit a verdict of guilty to stand as to R. H. McElroy, Jr., on the flimsy, intangible and unsubstantial facts, consisting of circumstantial evidence, at best, which have been fully set forth in the supplemental brief of Respondent, R. H. McElroy, Jr. (Sup. Br., pps. 27 to 38). This Court's approval of such evidence as being in compliance with the rule announced in the case of ABRAMS v. UNITED STATES, 250 U.S. 616, 619, mentioned in the opinion of MR. JUSTICE DOUGLAS, is vitally important to those who are charged with, and prosecuted for, violations of our Federal criminal law,—particularly the antitrust and monopoly statutes. MR. JUSTICE DOUGLAS, writing for the majority of the Court, evidently overlooks the fact that this is a criminal case for he cites the cases of TROXELL v. DELAWARE, LACKAWANNA & WESTERN RAILROAD CO., 227 U.S. 434, 444; and LANCASTER v. COLLINS, 115 U.S. 222, 225, as controlling authorities. These were civil cases,—not criminal cases.

In the case of TUCKER v. UNITED STATES, 224 Fed. 833 (cert. denied, 241 U.S. 668), the true rule to guide an appellate court in the determination of the question of law as to whether or not the testimony in a criminal case is sufficient to substantiate a jury's verdict is stated. *The rule is this:*

> "If the court can say that the testimony, taken together, was as consistent with defendant's innocence as with his guilt it is the court's duty to reverse a trial court's judgment of guilty."

It is apparent that the court in deciding the sufficiency of the evidence as to R. H. McElroy, Jr., has not applied this rule. It seems clear that the Court confused the rule applicable in civil cases to the rule universally held to apply in criminal cases.

By almost unanimous authority, *"substantial evidence,"* as that term is used in the case of ABRAMS v. U. S., supra, and in the other criminal cases decided by the Supreme Court of the United States wherein the term "substantial evidence" is used, *is meant evidence of facts which exclude every other hypothesis but that of guilt.*

In the case of ISBELL v. UNITED STATES, 227 Fed. 788, the Court said:

> " * * * It is certain the evidence of facts as consistent with innocence as with guilt is not sufficient to sustain a conviction, and that at the close of every trial by jury it is the duty of the court upon request to consider and determine whether or not there is any substantial evidence of the guilt of the accused, and, if there is none, to instruct the jury to return a verdict for the defendant. If there is, at the conclusion of a trial, no substantial evidence of facts which exclude every other hypothesis but that of guilt, there is no substantial evidence of the guilt of the accused, for facts consistent with his innocence are never evidence of his guilt. * * * "

In the case of GERARD v. UNITED STATES, 61 F. (2d) 872, the rule is stated thus:

> "Where all the evidence is as consistent with innocence as with guilt, * * * it is our duty to override a verdict of guilt; * * * ."

The foregoing quotations are not statements from isolated cases where the precise question here involved was not before the Court, but such statements of the law governing the review of criminal cases on the issue of insufficiency of the testimony, are practically universal in the decisions of our appellate courts. We cite the following list of authorities in support of this proposition, such list being by no means complete but sufficient to show the universality of the rule applicable to a consideration of the evidence with respect to R. H. McElroy, Jr.:

Isbell v. United (C.C.A. 8th), 227 Fed. 788;
Grant v. United States (C.C.A. 3rd), 49 Fed. (2d) 118;
Graceffo v. United States (C.C.A.), 46 Fed. (2d) 852;
Nicola v. United States (C.C.A. 3rd), 72 F. (2d) 780;
Paul v. United States (C.C.A. 3rd), 79 F. (2d) 561;
Read v. United States (C.C.A. 8th), 42 F. (2d) 636;
Danaher v. United States (C.C.A. 8th), 39 F. (2d) 325;
Salinger v. United States (C.C.A. 8th), 23 F. (2d) 48;
Tinsley v. United States (C.C.A. 8th), 43 F. (2d) 890;
Rosenthal v. United States (C.C.A. 8th), 45 F. (2d) 1000;
Gargotta v. United States (C.C.A. 8th), 77 F. (2d) 977;
Moore v. United States (C.C.A. 10th), 56 F. (2d) 794;
Parnell v. United States (C.C.A. 10th), 64 F. (2d) 324;
Gerard v. United States (C.C.A. 7th), 61 F. (2d) 872.

If MR. JUSTICE DOUGLAS, or any other member of this Court, will review the brief testimony offered by the Government to connect R. H. McElroy, Jr., with the conspiracy charged in the indictment and will apply to such evidence the foregoing applicable rule, it is clear that he must arrive at the conclusion which CIRCUIT JUDGE HUTCHESON reached in the case of SYMONETTE V. UNITED STATES (C.C.A. 5th), 47 F. (2d) 686, wherein he said:

"This is one of those cases, of which the books contain

> too many instances, of an effort by the Government, on a conspiracy indictment, to supply the place of testimony by piling inference upon inference; of an effort to make deduction take the place of proof; and to have the jury, by reasoning backward from non-criminal acts, build up by inference a state of facts to make them criminal, which, if they in fact exist, the evidence ought to have established."

Responsibility rested upon the United States in this case to prove that R. H. McElroy, Jr. (a) knew of the alleged conspiracy, and (b) that he participated therein. It was essential that proof of both of these matters should have been made by the Government by "substantial evidence," as above defined, before a jury's verdict of guilty can be permitted to stand.

This record contains not a scintilla of competent evidence that R. H. McElroy, Jr., ever directed that any gasoline purchased by The Pure Oil Company be made from any particular refiner. There is no evidence whatsoever that R. H. McElroy, Jr., ordered, or authorized the purchase of, or that he personally purchased a single gallon of gasoline from those independent refiners in the East Texas or Mid-Continent Areas alleged to be conspirators. No logical inference can be drawn from the mere fact that R. H. McElroy, Jr., was the head of the Wholesale Sales Department of The Pure Oil Company that he, therefore, individually participated in any illegal buying programs either by ordering, authorizing or doing any of the acts complained of in the indictment. It would unduly lengthen this motion to again summarize all of the evidence in this record relating to R. H. McElroy, Jr. Such a summary was given in R. H. McElroy, Jr.'s Supplemental Brief, pages 27 to 38, inclusive. The Government has not challenged the accuracy of this summary. It is full and complete. If this Court will apply to this evidence the proper rule of law applicable in reviewing criminal cases *(instead of* *civil cases)* on the issue of whether or not the evidence is sufficient to justify a jury verdict of guilty, it will arrive at the conclusion that this case, as to R. H. McElroy, Jr., should be reversed and dismissed, or at least reversed and remanded for a new trial.

This petition for rehearing on behalf of R. H. McElroy, Jr., is filed for the reason that counsel for Petitioner feels that the trial courts and the bar in general will infer from this Court's decision that the long line of authorities above mentioned has been overruled by this Court's disposition of the appeal of R. H. McElroy, Jr. We cannot believe that the Court had any intention of doing this; yet such is the necessary effect of this decision. The only logical conclusion which counsel for R. H. McElroy, Jr., could reach was that the Court had judged this evidence under the rule applied to civil cases, such as those cited in the opinion of MR. JUSTICE DOUGLAS, rather than under the rule which has always heretofore guided appellate courts in determining the sufficiency of the evidence in criminal cases where the evidence relied upon by the Government was circumstantial in its nature.

We earnestly urge that the Court review this testimony in the light of the rule announced in ABRAMS V. UNITED STATES, supra, as that rule has been interpreted with practicable unanimity by the appellate courts of this country. If this Court will examine the dissenting opinions of MR. JUSTICE BRANDEIS and MR. JUSTICE HOLMES in the case of PIERCE V. UNITED STATES, 252 U.S. 239, 253, the Court will see a practical application of the rule in a case of major importance.

This case is vitally important to Petitioner, R. H. McElroy, Jr.; and counsel feels that the evidence as to McElroy's knowledge of, and participation in, the alleged conspiracy has not been weighed by the Court in the light of the true rule applicable in criminal cases. We urge that such a review be made.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this motion for rehearing be granted; and counsel for Petitioner certifies that this motion is presented in good faith and not for delay.

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SUPREME COURT OF THE UNITED STATES.

Nos. 346-347.—October Term, 1939.

United States of America, Petitioner,
346 *vs.*
Socony-Vacuum Oil Company, Inc., et al.

Socony-Vacuum Oil Company, Inc., et al., Petitioners,
347 *vs.*
United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 6, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondents[1] were convicted by a jury[2] (23 Fed. Supp. 937) under an indictment charging violations of § 1 of the Sherman Anti-Trust Act[3] (26 Stat. 209; 50 Stat. 693). The Circuit Court of Appeals reversed and remanded for a new trial (105 F. (2d) 809). The case is here on a petition and cross-petition for certiorari, both of which we granted because of the public importance of the issues raised. 308 U. S. 540

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[1] The indictment charged 27 corporations and 56 individuals with violations of § 1 of the Sherman Law. There were brought to trial 26 corporations and 46 individuals. Prior to submission of the case to the jury the court discharged, directed verdicts of acquittal, or dismissed the indictment as to 10 of the corporations and 16 of the individuals. The jury returned verdicts of guilty as to the remaining 16 corporations and 30 individuals. Thereafter the trial court ordered new trials as to 3 corporations and 15 individuals and granted judgment *non obstante veredicto* to one other corporation and 10 other individuals. United States *v.* Stone, 308 U. S. 519. For the opinions of the District Court on that phase of the case see 23 F. Supp. 937, 938-939; 24 F. Supp. 575; and for the opinion of the Circuit Court of Appeals, 101 F. (2d) 870.

The respondents are the remaining 12 corporations and 5 individuals, viz., Socony-Vacuum Oil Company, Inc., Wadhams Oil Company, Empire Oil and Refining Company, Continental Oil Company, The Pure Oil Company, Shell Petroleum Corporation, Sinclair Refining Company, Mid-Continent Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, The Globe Oil & Refining Company (Oklahoma), The Globe Oil & Refining Company (Illinois), C. E. Arnott, vice president of Socony-Vacuum, H. T. Ashton, manager of Lubrite Division of Socony-Vacuum, R. H. McElroy, Jr., tank-car sales manager of Pure Oil, P. E. Lakin, general manager of sales of Shell, R. W. McDowell, vice president in charge of sales of Mid-Continent.

[2] Each of the corporations was fined $5,000; each individual, $1,000.

[3] Sec. 1 provides:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . . Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

I. *The Indictment.*

The indictment was returned in December 1936 in the United States District Court for the Western District of Wisconsin. It charges that certain major oil companies,[4] selling gasoline in the Mid-Western area[5] (which includes the Western District of Wisconsin), (1) "combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline" in the "spot markets" in the East Texas[6] and Mid-Continent[7] fields; (2) "have artificially raised and fixed said spot market tank car prices of gasoline and have maintained said prices at artificially high and non-competitive levels, and at levels agreed upon among them and have thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area"; (3) "have arbitrarily", by reason of the provisions of the prevailing form of jobber contracts which made the price to the jobber dependent on the average spot market price, "exacted large sums of money from thousands of jobbers with whom they have had such contracts in said Mid-Western area"; and (4) "in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area."

The *manner* and *means* of effectuating such conspiracy are alleged in substance as follows: Defendants, from February 1935 to December 1936 "have knowingly and unlawfully engaged and participated in two concerted gasoline buying programs" for the purchase "from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields at uniform, high, and at times progressively increased prices." The East Texas buying program is alleged to have embraced purchases of gasoline in spot transactions from most of the independent refiners in the East Texas field, who were members of the East Texas Refiners' Marketing Association, formed in February 1935 with the knowledge and approval of some of the defendants "for the purpose of selling and facilitating the sale of gasoline to defendant major oil companies." It is alleged that arrangements were made and carried out for allotting orders for gasoline received from defendants among the members of that association; and that such purchases amounted to more than 50% of all gasoline produced by those independent refiners. The Mid-Continent buying program is alleged to have included "large and increased purchases of gasoline" by defendants from independent refiners located in the Mid-Continent fields pursuant to allotments among themselves. Those purchases, it is charged, were made from independent refiners who were assigned to certain of the defendants at monthly meetings of a group representing defendants. It is alleged that the purchases in this buying program amounted to nearly 50% of all gasoline sold by those independents. As respects both the East Texas and the Mid-Continent buying programs, it is alleged that the purchases of gasoline were in excess of the amounts which defendants would have purchased but for those programs; that at the instance of certain defendants these independent refiners curtailed their production of gasoline.

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[4] The major oil companies, in the main, engage in every branch of the business—owning and operating oil wells, pipe-lines, refineries, bulk storage plants, and service stations. Those engaging in all such branches are major integrated oil companies; those lacking facilities for one or more of those branches are semi-integrated. "Independent refiners" describes companies engaged exclusively in refining.

[5] Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin.

[6] Located in the north, eastern part of Texas.

[7] Described as including Oklahoma, the northern and western portions of Texas, the southern and eastern portions of Kansas, the southern portion of Arkansas, the northern portion of Louisiana.

The independent refiners selling in these programs were named as co-conspirators, but not as defendants.

Certain market journals—Chicago Journal of Commerce, Platt's Oilgram, National Petroleum News—were made defendants.[8] Their participation in the conspiracy is alleged as follows: that they have been "the chief agencies and instrumentalities" through which the wrongfully raised prices "have affected the prices paid by jobbers, retail dealers, and consumers for gasoline in the Mid-Western area," that they "knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by" defendants in these buying programs, while "representing the price quotations published by them" to be gasoline prices "prevailing in spot sales to jobbers in tank car lots" and while "knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers."

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[8] Two individuals connected with those journals were also made defendants. One of the individuals was not brought to trial. At the close of the government's case the indictment was dismissed, on motion of the government, as against the other four trade journal defendants.

Jurisdiction and *venue* in the Western District of Wisconsin are alleged as follows: that most of defendant major oil companies have sold large quantities of gasoline in tank car lots to jobbers in that district at the "artificially raised and fixed and non-competitive prices"; that they have "solicited and taken contracts and orders" for gasoline in that district; and that they have required retail dealers and consumers therein "to pay artificially increased prices for gasoline" pursuant to the conspiracy.

The methods of marketing and selling gasoline in the Mid-Western area are set forth in the indictment in some detail. Since we hereafter develop the facts concerning them, it will suffice at this point to summarize them briefly. Each defendant major oil company owns, operates or leases retail service stations in this area. It supplies those stations, as well as independent retail stations, with gasoline from its bulk storage plants. All but one sell large quantities of gasoline to jobbers in tank car lots under term contracts. In this area these jobbers exceed 4,000 in number and distribute about 50% of all gasoline distributed to retail service stations therein, the bulk of the jobbers' purchases being made from the defendant companies. The price to the jobbers under those contracts with defendant companies is made dependent on the spot market price, pursuant to a formula hereinafter discussed. And the spot market tank car prices of gasoline directly and substantially influence the retail prices in the area. In sum, it is alleged that defendants by raising and fixing the tank car prices of gasoline in these spot markets could and did increase the tank car prices and the retail prices of gasoline sold in the Mid-Western area. The vulnerability of these spot markets to that type of manipulation or stabilization is emphasized by the allegation that spot market prices published in the journals were the result of spot sales made chiefly by independent refiners of a relatively small amount of the gasoline sold in that area—virtually all gasoline sold in tank car quantities in spot market transactions in the Mid-Western area being sold by independent refiners, such sales amounting to less than 5% of all gasoline marketed therein.

So much for the indictment.

II. *Background of the Alleged Conspiracy.*

Evidence was introduced (or respondents made offers of proof) showing or tending to show the following conditions preceding the commencement of the alleged conspiracy in February 1935. As we shall develop later, these facts were in the main relevant to certain defenses which respondents at the trial unsuccessfully sought to interpose to the indictment.

Beginning about 1926 there commenced a period of production of crude oil in such quantities as seriously to affect crude oil and gasoline markets throughout the United States. Overproduction was wasteful, reduced the productive capacity of the oil fields and drove the price of oil down to levels below the cost of production from pumping and stripper[9] wells. When the price falls below such cost, those wells must be abandoned. Once abandoned, subsurface changes make it difficult or impossible to bring those wells back into production. Since such wells constitute about 40% of the country's known oil reserves, conservation requires that the price of crude oil be maintained at a level which will permit such wells to be operated. As Oklahoma and Kansas were attempting to remedy the situation through their proration laws, the largest oil field in history was discovered in East Texas. That was in 1930. The supply of oil from this field was so great that at one time crude oil sank to 10 or 15 cents a barrel, and gasoline was sold in the East Texas field for 2⅛¢ a gallon. Enforcement by Texas of its proration law was extremely difficult. Orders restricting production were violated, the oil unlawfully produced being known as "hot oil" and the gasoline manufactured therefrom, "hot gasoline". Hot oil sold for substantially lower prices than those posted for legal oil. Hot gasoline therefore cost less and at times could be sold for less than it cost to manufacture legal gasoline. The latter, deprived of its normal outlets, had to be sold at distress prices. The condition of many independent refiners using legal crude oil was precarious. In spite of their unprofitable operations they could not afford to shut down, for if they did so they would be apt to lose their oil connections in the field and their regular customers. Having little storage capacity they had to sell their gasoline as fast as they made it. As a result their gasoline became "distress" gasoline—gasoline which the refiner could not store, for which he had no regular sales outlets and which therefore he had to sell for whatever price it would bring. Such sales drove the market down.

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[9] Described by one witness as "wells that have gotten down to less than 5 barrels a day, and in some cases down to less than a barrel a day, so that they only have to be pumped, sometimes, an hour or two a day to get all the oil they will produce at that stage of the game."

In the spring of 1933 conditions were acute. The wholesale market was below the cost of manufacture. As the market became flooded with cheap gasoline, gasoline was dumped at whatever price it would bring. On June 1, 1933, the price of crude oil was 25¢ a barrel; the tank car price of regular gasoline was 2⅝¢ a gallon. In June 1933 Congress passed the National Industrial Recovery Act (48 Stat. 195). Sec. 9(c) of that Act authorized the President to forbid the interstate and foreign shipment of petroleum and its products produced or withdrawn from storage in violation of state laws. By Executive Order the President on July 11, 1933, forbade such shipments. On August 19, 1933, a code of fair competition for the petroleum industry was approved.[10] The Secretary of the Interior was designated as Administrator of that Code. He established a Petroleum Administrative Board to "advise with and make recommendations" to him. A Planning and Coordination Committee was appointed, of which respondent Charles E. Arnott, a vice-president of Socony-Vacuum, was a member, to aid in the administration of the Code. In addressing that Committee in the fall of 1933 the Administrator said: "Our task is to stabilize the oil industry upon a profitable basis." Considerable progress was made. The price of crude oil was a dollar a barrel near the end of September 1933, as a result of the voluntary action of the industry.[11]

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[10] It provided for maximum hours of work and minimum rates of pay; forbade sales below cost; required integrated companies to conduct each branch of their business on a profitable basis; established, within certain limits, the parity between the price of a barrel of crude oil and a gallon of refined gasoline as 18.5 to 1; and authorized the fixing of certain minimum prices.

[11] An order of the Administrator fixing minimum prices never became effective. Respondents also made an offer of proof that the Petroleum Administrative Board endeavored, in the fall of 1933, to obtain voluntary action by the larger companies to acquire and hold large stocks of crude oil, said to be overhanging the market and in danger of depressing the price of refined gasoline. The offer of proof indicated that some purchases had been made but did not show the extent. Respondents offered to show, through testimony of the chairman of the Planning & Coordination Committee, that it was the desire of the Administrator that crude oil not fall below $1 a barrel.

but, according to respondents, in accordance with the Administrator's policy and desire. In April 1934 an amendment to the Code was adopted under which an attempt was made to balance the supply of gasoline with the demand by allocating the amount of crude oil which each refiner could process with the view of creating a firmer condition in the market and thus increasing the price of gasoline.[12] This amendment also authorized the Planning and Coordination Committee, with the approval of the President, to make suitable arrangements for the purchase of gasoline from non-integrated or semi-integrated refiners and the resale of the same through orderly channels. Thereafter four buying programs were approved by the Administrator.[13] These permitted the major companies to purchase distress gasoline from the independent refiners. Standard forms of contract were provided. The evil aimed at was, in part at least, the production of hot oil and hot gasoline. The contracts (to at least one of which the Administrator was a party) were made pursuant to the provisions of the National Industrial Recovery Act and the Code and bound the purchasing company to buy fixed amounts of gasoline at designated prices[14] on condition that the seller should abide by the provisions of the Code. According to the 1935 Annual Report of the Secretary of the Interior, these buying programs were not successful as "the production of gasoline from 'hot oil' continued, stocks of gasoline mounted, wholesale prices for gasoline remained below parity with crude-oil prices, and in the early fall of 1934 the industry approached a serious collapse of the wholesale market."[15] Restoration of the price of gasoline to parity with crude oil at one dollar per barrel was not realized.

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[12] The testimony of one of respondents' witnesses was that this policy caused the major companies to buy gasoline—in the main from small, non-integrated refiners.

[13] June 23, 1934; August 13, 1934; September 8, 1934; November 2, 1934. They apparently were short-lived, their legality having been questioned by the Department of Justice. Late in 1933 the industry proposed the formation of a National Petroleum Agency, of which twenty-three of the larger companies, including most of the corporate respondents, were to be members, "to purchase, hold and, in an orderly way, dispose of surplus gasoline which threatens the stability of the oil price structure." Subscriptions for a pool of nearly $9,000,000 were obtained. The plan was never put into operation. In May 1934 there was another voluntary plan (which was abortive), the Planning & Coordination Committee addressed a resolution to certain major companies calling upon each to purchase an amount of gasoline in May equal to 3% of their sales.

[14] Under the November 2, 1934 program the contract provided that the price to be paid for the gasoline purchased should increase ¼¢ per gallon with each 5¢ per barrel increase in the posted price of crude oil and should decrease ¼¢ per gallon with each 5¢ per barrel decrease in crude.

The flow of hot oil out of East Texas continued. Refiners in the field could procure such oil for 35¢ or less a barrel and manufacture gasoline from it for 2 or 2½¢ a gallon. This competition of the cheap hot gasoline drove the price of legal gasoline down below the cost of production. The problem of distress gasoline also persisted. The disparity between the price of gasoline and the cost of crude oil which had been at $1 per barrel since September 1933 caused losses to many independent refiners, no matter how efficient they were. In October 1934 the Administrator set up a Federal Tender Board and issued an order making it illegal to ship crude oil or gasoline out of East Texas in interstate or foreign commerce unless it were accompanied by a tender issued by that Board certifying that it had been legally produced or manufactured. Prices rose sharply. But the improvement was only temporary as the enforcement of § 9(c) of the Act was enjoined in a number of suits. On January 7, 1935, this Court held § 9(c) to be unconstitutional. *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. Following that decision there was a renewed influx of hot gasoline into the Mid-Western area and the tank car market fell.

Meanwhile the retail markets had been swept by a series of price wars. These price wars affected all markets—service station, tank wagon, and tank car. Early in 1934 the Petroleum Administrative Board tried to deal with them—by negotiating agreements between marketing companies and persuading individual companies to raise the price level for a period. On July 9, 1934, that Board asked respondent Arnott, chairman of the Planning and Coordination Committee's Marketing Committee,[16] if he would head up a voluntary, cooperative movement to deal with price wars. According to Arnott, he pointed out that in order to stabilize the retail market it was necessary to stabilize the tank car market through elimination of hot oil and distress gasoline.[17] On July 20, 1934, the Administrator wrote Arnott, described the disturbance caused by price wars and said:

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[15] P. 37. Excerpts from this report were part of an offer of proof by respondents.

[16] The Marketing Committee had an extensive organization of regional, state, local, or temporary committees, scattered throughout the country and representative of the various marketing elements in the industry.

[17] He also testified that the Board said that it could not tell him how to deal with the price wars, but that it would authorize him to deal with "the elements [of] that conflict that cause them".

> "Under Article VII, Section 3 of the Code it is the duty of the Planning and Coordination Committee to cooperate with the Administration as a planning and fair practice agency for the industry. I am, therefore, requesting you, as Chairman of the Marketing Committee of the Planning and Coordination Committee, to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board acting alone to deal with each specific situation. Therefore, I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars develop, with authority to confer and to negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar. Any activities of your Committee must, of course, be consistent with the requirements of Clause 2 of Sub-section (a) of Section III of the Act, ..."[18]

After receiving that letter Arnott appointed a General Stabilization Committee with headquarters in Washington and a regional chairman in each region. Over fifty state and local committees were set up. The Petroleum Administrative Board worked closely with Arnott and the committees until the end of the Code near the middle of 1935. The effort (first local, then state-wide, and finally regional) was to eliminate price wars by negotiation and by persuading suppliers to see to it that those who bought from them sold at a fair price. In the first week of December 1934, Arnott held a meeting of the General Stabilization Committee in Chicago and a series of meetings on the next four or five days attended by hundreds of members of the industry from the middle west. These meetings were said to have been highly successful in elimination of many price wars. Arnott reported the results to members of the Petroleum Administrative Board on December 18, 1934, and stated that he was going to have a follow-up meeting in the near future. It was at that next meeting that the groundwork for the alleged conspiracy was laid.

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[18] Sec. 3(a) of the Act read:

"Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

Section 5 provided:

"While this title is in effect (or in the case of a license, while section 4(a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States."

III. *The Alleged Conspiracy.*

The alleged conspiracy is not to be found in any formal contract or agreement. It is to be pieced together from the testimony of many witnesses and the contents of over 1,000 exhibits, extending through the 3,900 printed pages of the record. What follows is based almost entirely on unequivocal testimony or undisputed contents of exhibits; only occasionally on the irresistible inferences from those facts.

A. FORMATION OF THE MID-CONTINENT BUYING PROGRAM.

The next meeting of the General Stabilization Committee was held in Chicago on January 4, 1935, and was attended by all of the individual respondents, by representatives of the corporate respondents, and by others. Representatives of independent refiners, present at the meeting, complained of the failure of the price of refined gasoline to reach a parity with the crude oil price of $1 a barrel. And complaints by the independents of the depressing effect on the market of hot and distress gasoline were reported. Views were expressed to the effect that "if we were going to have general stabilization in retail markets, we must have some sort of a firm market in the tank car market." As a result of the discussion Arnott appointed a Tank Car Stabilization Committeee[19] to study the situation and make a report, or, to use the language of one of those present, "to consider ways and means of establishing and maintaining an active and strong tank car market on gasoline." Three days after this committee was appointed, this Court decided *Panama Refining Co.* v. *Ryan, supra.* As we have said, there was evidence that following that decision there was a renewed influx of hot gasoline into the Mid-Western area with a consequent falling off of the tank car market prices.

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[19] This committee eventually was composed of respondents McDowell, Ashton and Lakin and five former defendants, who were either discharged or granted new trials.

The first meeting of the Tank Car Committee was held February 5, 1935, and the second on February 11, 1935. At these meetings the alleged conspiracy was formed, the substance of which, so far as it pertained to the Mid-Continent phase, was as follows:

It was estimated that there would be between 600 and 700 tank cars of distress gasoline produced in the Mid-Continent oil field every month by about 17 independent refiners. These refiners, not having regular outlets for the gasoline, would be unable to dispose of it except at distress prices. Accordingly, it was proposed and decided that certain major companies (including the corporate respondents) would purchase gasoline from these refiners. The Committee would assemble each month information as to the quantity and location of this distress gasoline. Each of the major companies was to select one (or more) of the independent refiners having distress gasoline as its "dancing partner",[20] and would assume responsibility for purchasing its distress supply. In this manner buying power would be coordinated, purchases would be effectively placed, and the results would be much superior to the previous haphazard purchasing. There were to be no formal contractual commitments to purchase this gasoline, either between the major companies or between the majors and the independents. Rather it was an informal gentlemen's agreement or understanding whereby each undertook to perform his share of the joint undertaking. Purchases were to be made at the "fair going market price".

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[20] Respondent R. W. McDowell, a vice president of Mid-Continent, testified as follows respecting the origin and meaning of this term:

"The phrase 'dancing partners' came up right there after Mr. Ashton had gone around the room. There were these 7 or 8 small refiners whom no one had mentioned. He said this situation reminded him of the dances that he used to go to when he was a young fellow. He said, 'Here we are at a great economic ball.' He said, 'We have these major companies who have to buy gasoline and are buying gasoline, and they are the strong dancers.' And he said, 'They have asked certain people to dance with them. They are the better known independent refiners.' He said, 'Here are 7 or 8 that no one seems to know.' He said, 'They remind me of the wallflowers that always used to be present at those old country dances.' He said, 'I think it is going to be one of the jobs of this Committee to introduce some of these wallflowers to some of the strong dancers, so that everybody can dance.' And from that simile, or whatever you want to call it, the term 'dancing partner' arose."

A Mechanical Sub-Committee[21] was appointed to find purchasers for any new distress gasoline which might appear between the monthly meetings of the Tank Car Stabilization Committee and to handle detailed problems arising during these periods. It was agreed that any such attempt to stabilize the tank car market was hopeless until the flow of hot gasoline was stopped. But it was expected that a bill pending before Congress to prohibit interstate shipment of hot gasoline would soon be enacted which would deal effectively with that problem. Accordingly, it was decided not to put any program into operation until this bill had been enacted and become operative. It was left to respondent Arnott to give the signal for putting the program into operation after this had occurred.

The Connally Act (49 Stat. 30) became law on February 22, 1935. The enforcement agency under this act was the Federal Tender Board which was appointed about March 1st. It issued its first tenders March 4th. On March 1st respondents Arnott and Ashton explained the buying program to a group of Mid-Continent independent refiners in Kansas City, who expressed a desire to cooperate and who appointed a committee to attend a meeting of the Tank Car Stabilization Committee in St. Louis on March 5th to learn more about the details. This meeting was held with the committee of the independents present at one of the sessions. At a later session that day the final details of the Mid-Continent buying program were worked out, including an assignment of the "dancing partners" among the major companies.[22] On March 6th Ashton telephoned Arnott and told him what had been accomplished at the St. Louis meeting. Later the same day Arnott told Ashton by telephone that the program should be put into operation as soon as possible, since the Federal Tender Board seemed to be cleaning up the hot oil situation in East Texas. Ashton advised McDowell, chairman of the Mechanical Sub-Committee, of Arnott's instructions. And on

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[21] This was a committee of three of which respondent McDowell was chairman.

[22] The list of the independent refiners having the distress gasoline was read and the majors made their selections—some on the basis of prior business dealings, some on the basis of personal friendships, some because of location, freight advantages, etc.

March 7th that committee went into action. They divided up the major companies; each communicated with those on his list, advised them that the program was launched, and suggested that they get in touch with their respective "dancing partners". Before the month was out all companies alleged to have participated in the program (except one or two) made purchases; 757 tank cars were bought from all but three of the independent refiners who were named in the indictment as sellers.

B. THE MID-CONTINENT BUYING PROGRAM IN OPERATION.

No specific term for the buying program was decided upon, beyond the first month. But it was started with the hope of its continuance from month to month. And in fact it did go on for over a year, as we shall see.

The concerted action under this program took the following form:

The Tank Car Stabilization Committee had A. V. Bourque, Secretary of the Western Petroleum Refiners' Association,[23] make a monthly survey, showing the amount of distress gasoline which each independent refiner would have during the month. From March 1935 through February 1936 that Committee met once a month. At these meetings the surveys showing the amount and location of distress gasoline were presented and discussed. They usually revealed that from 600 to 800 tank cars of distress gasoline would become available during the month. Each member of the Committee present would indicate how much his company would buy and from whom. Those companies which were not represented at the meetings were approached by the Mechanical Sub-Commitee; "word was gotten to them as to the amount of gasoline that it was felt they could take in that month." Also, as we have stated, the Mechanical Sub-Committee would endeavor to find purchasers for any new distress gasoline which appeared between the meetings of the Tank Car Stabilization Committee. It would report such new surpluses to Bourque. The functions of the Mechanical Sub-Committee were apparently not restricted merely to dissemination of information to the buyers. One of its members testified that he urged the majors to buy more distress gasoline. Throughout, persuasion was apparently used to the end that all distress gasoline would be taken by the majors and so kept from the tank car markets. As the program progressed, most of the major companies continued to buy from the same "dancing partners" with whom they had started.

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[23] Practically all of the independent refiners named in the indictment were members of this Association. C. M. Boggs, the president of the Association, and A. V. Bourque, its secretary, were named in the indictment as defendants. As to the former, a motion for directed verdict of acquittal was granted; as to the latter, the verdict of the jury was set aside and the indictment dismissed.

One of the tasks of the Mechanical Sub-Committee was to keep itself informed as to the current prices of gasoline and to use its persuasion and influence to see to it that the majors paid a fair going market price and did not "chisel" on the small refiners. It did so. At its meetings during the spring of 1935 the question of the fair going market price was discussed. For example, Jacobi, a member of the Sub-Committee, testified that at the meeting of March 14, 1935, "the subcommittee . . . arrived at what we thought was a fair market price for the week following", viz. 3¾¢ and 4¾¢.[24] Jacobi termed these prices arrived at by the Sub-Committee as the "recommended prices". He made it a practice of recommending these prices to the major companies with which he communicated. According to his testimony, those "recommendations" were represented by him to be not the Sub-Committee's but his own idea. McDowell testified that he never made any such price recommendations but if asked would tell the purchasing companies what his own company was paying for gasoline.[25] Up to June 7, 1935, price "recommendations" were made five or seven times, each time the "recommended" prices constituting a price advance of ⅛¢ or ¼¢ over the previous "recommendation". No more price "recommendations" were made in 1935. In January 1936 there was an advance in the price of crude oil. The members of the Sub-Committee discussed the price situation and concluded that an advance of ½¢ a gallon of gasoline purchased under the program should be made. Jacobi made that "recommendation" to the companies on his list.

We shall discuss later the effect of this buying program on the market.

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[24] On March 15, 1935, Jacobi in a letter to his superiors wrote: "The writer has been busy this week on tank car stabilization work; and thus far results are gratifying. Our Committee decided on a price of 3¾¢ for third grade, and 4¾¢ for 'Q' for next week. Purchasing companies, including our own units, are paying these prices today." "Q" gasoline is regular gasoline with an octane rating of 68-70.

[25] What the practice of the other member of the Mechanical Sub-Committee was in this respect does not appear.

The major companies regularly reported to Bourque, the trade association representative of the Mid-Continent independent refiners, the volume of their purchases under the program and the prices paid. Representatives of one of the corporate respondents repeatedly characterized its purchases under the program as "quotas", "obligations", or "allocations". They spoke of one of its "dancing partners" under the buying program as "one of the babies placed in our lap last spring when this thing was inaugurated." And they stated that "we don't have much choice as to whose material we are to take, when we purchase outside third grade gasoline in connection with the Buying Program Committee's operations. On such purchases, we have refineries 'assigned' to us." This was doubtless laymen's, not lawyers', language. As we have said, there does not appear to have been any binding commitment to purchase; the plan was wholly voluntary; there is nothing in the record to indicate that a participant would be penalized for failure to cooperate. But though the arrangement was informal, it was nonetheless effective, as we shall see. And, as stated by the Circuit Court of Appeals, there did appear to be at least a moral obligation to purchase the amounts specified at the fair market prices "recommended". That alone would seem to explain why some of the major companies cancelled or declined to enter into profitable deals for the exchange of gasoline with other companies in order to participate in this buying program. Respondent Skelly Oil Co. apparently lost at least some of its pipe-line transportation profit of 3/16¢ a gallon "on every car of gasoline" purchased by it in the buying program. And both that company and respondent Wadhams Oil Co. continued to make purchases of gasoline under the program although they were unable then to dispose of it.

Up to June 1935, the expenses incurred by the members of the Mechanical Sub-Committee were charged to and paid by the Planning and Coordination Committee of the Code of Fair Competition for the Petroleum Industry. On May 27, 1935, this Court held in *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, that the code-making authority conferred by the National Industrial Recovery Act was an unconstitutional delegation of legislative power. Shortly thereafter the Tank Car Stabilization Committee held a meeting to discuss their future course of action. It was decided that the buying program should continue. Accordingly, that Committee continued to meet each month through February 1936.

The procedure at these meetings was essentially the same as at the earlier ones. Gradually the buying program worked almost automatically, as contacts between buyer and seller became well established. The Mechanical Sub-Committee met at irregular intervals until December 1935. Thereafter it conducted its work on the telephone.

C. FORMATION AND NATURE OF THE EAST TEXAS BUYING PROGRAM.

In the meetings when the Mid-Continent buying program was being formulated it was recognized that it would be necessary or desirable to take the East Texas surplus gasoline off the market so that it would not be a "disturbing influence in the Standard of Indiana territory". The reason was that weakness in East Texas spot market prices might make East Texas gasoline competitive with Mid-Continent gasoline in the Mid-Western area and thus affect Mid-Continent spot market prices. The tank car rate on gasoline shipments from the East Texas field to points in the Mid-Western area was about ⅛¢ a gallon higher than from the Mid-Continent field. With East Texas spot market prices more than ⅛¢ a gallon below Mid-Continent spot market prices, there might well be a resulting depressing effect on the Mid-Continent spot market prices.[26]

Early in 1935 the East Texas Refiners' Marketing Association was formed to dispose of the surplus gasoline manufactured by the East Texas refiners. The occasion for the formation of this Association was the stoppage of the shipment of hot oil and gasoline as a consequence of a Texas law enacted in December 1934. As long as these refiners had operated on cheap hot oil they had been able to compete for business throughout the Middle West. If they used legal crude at a dollar a barrel, their costs would increase. Their shift from a hot oil to a legal oil basis necessitated a change in their marketing methods. They were already supplying jobbers and dealers of Texas with all the gasoline they could use. Hence, their problem was to find additional markets for the surplus gasoline which they manufactured from legal crude. The Association was to act as the sales agency for those surpluses. Shipments north would be against the freight differential. Therefore, without regular outlets for this surplus gasoline they would have been forced to dump it on the market at distress prices. Their plan was to persuade the major companies if possible to buy more East Texas gasoline and to purchase it through the Association which would allocate it among its members who had surpluses. Neil Buckley, a buyer for Cities Service Export Corporation in Tulsa, was recommended by one of the independents as the contact man. Buckley undertook the job.[27]

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[26] Arnott was reported as saying: "East Texas has been a menace to not only the Eastern Seaboard, but its gasoline also has found its way up into the Mid-Continent and has been competitive with the so-called Mid-Continent suppliers' or refiners' gasoline."

The normal market for gasoline refined in East Texas was the State of Texas and the Atlantic seaboard, reached through tanker shipments from Gulf ports.

Thus it was not established that the major companies caused the Association to be formed. But it is clear that the services of the Association were utilized in connection with a buying program by defendant companies. The record is quite voluminous on the activities of Buckley in getting the support of the majors to the Association's program. Suffice it to say that he encountered many difficulties, most of them due to the suspicion and mistrust of the majors as a result of the earlier hot oil record of the East Texas independents. His initial task was to convince the majors of the good faith of the East Texas independents. Many conferences were had. Arnott gave help to Buckley. Thus, on March 1, 1935, Arnott wired a small group of representatives of major companies, who were buyers and users of East Texas gasoline, inviting them to attend a meeting in New York City on March 6th "to hear outcome my meeting with East Texas refiners and to consider future action surplus gasoline this and other groups that is awaiting our decision . . . matter of extreme importance." The problem was discussed at that meeting[28] but reliable information was lacking as to the probable amount of distress gasoline, the size of the independents' Federal allocations and whether or not such gasoline was going to be manufactured within those allocations. Accordingly Arnott appointed a committee to attend the meeting of the District Allocators[29] on March 13th and to obtain the information. That information was obtained and a schedule was prepared showing the probable amount of surplus gasoline in East Texas and the Gulf, the names of the regular buyers in those areas, and the amounts they might take. Arnott, on March 14th, by telegraph called another meeting in New York City for the next day, saying "The question of surplus gasoline which has been under consideration must be finalized tomorrow." At that meeting someone (apparently a representative of respondent Sinclair) "arose with a slip of paper in his hand and stated that it had been suggested" that each of 12 to 15 major companies "take so much gasoline" from East Texas, "the amounts being read off as to what each company would take". Nothing definite was decided at the meeting. Buckley continued his efforts, talking with Arnott and representatives of other majors. It is impossible to find from the record the exact point of crystallization of a buying program. But it is clear that as a result of Buckley's and Arnott's efforts and of the discussions at the various meetings various major companies did come into line and that a concerted buying program was launched. The correspondence of employees of some of the majors throughout the period in question is replete with references such as the following: "buying program in East Texas"; "our allocation of five cars per day"; "a general buying movement"; "regular weekly purchases from the East Texas group"; "allocations and purchases" in the East Texas field; and the like.

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[27] Buckley first secured the approval of his employer. His company, not the Association, paid his salary while he was engaged in this work; the Association paid his travel and telephone expenses.

[28] Representatives of respondents Socony-Vacuum, Pure Oil, Sinclair and probably of Shell were present as well as representatives of other majors. The only individual respondents present were Arnott and McElroy.

[29] They were part of the organization of the Planning & Coordination Committee under the Code. As to allocations under the Code see *infra*, pp. —.

In 1935 the East Texas refiners named in the indictment sold 285,592,188 gallons of gasoline. Of this certain defendant companies[30] bought 40,195,754 gallons or 14.07%. In the same year all independent refiners in East Texas sold 378,920,346 gallons—practically all of it on the spot market. Of this amount those defendant companies purchased 12.03%, or 45,598,453 gallons. Of the 8,797 tank cars purchased by all defendants (except Sinclair) from March, 1935 through April 1936 from independent refiners in the East Texas field, 2,412 tank cars were purchased by the present corporate respondents.

Every Monday morning the secretary of the East Texas association ascertained from each member the amount of his forthcoming weekly surplus gasoline and the price he wanted. He used the consensus of opinion as the asking price. He would call the major companies; they would call him. He exchanged market information with them. Orders received for less than the asking price would not be handled by the Association; rather the secretary would refer the buyer to one of the independents who might sell at the lower price. Very few cars were purchased through the Association by others than the major oil companies.[31] The majors bought about 7,000 tank cars through the Association in 1935 and about 2,700 tank cars in the first four months of 1936. And in 1935 the secretary of the Association placed an additional 1,000 tank cars by bringing the purchasers and the independent refiners together. The purchases in 1935 in East Texas were, with minor exceptions, either at the low or slightly below the low quotation in Platt's Oilgram, following it closely as the market rose in March, April, and May, 1935; they conformed to the market as it flattened out into more or less of a plateau through the balance of 1935 with a low for third grade gasoline of $4\frac{5}{8}$¢. This was consistent with the policy of the buying program. For the majors were requested to purchase at the "fair, going market price".[32] And it is clear that this East Texas buying program was, as we have said, supplementary or auxiliary to the Mid-Continent program. As stated in March 1935 in an inter-company memorandum of one of the majors: " . . . . . with east coast refiners having a program to purchase surplus East Texas gasoline over the next four months, we feel that still further advances can be made in the tank car market and a resultant increase in the service station price."

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[30] Not including, *inter alia*, Cities Service Export Oil Co., Louisiana Oil Refining Corp., Tide Water Assdc. Oil Co., The Texas Co., and Gulf Refining Co., as respects which the indictment had been dismissed.

D. SCOPE AND PURPOSE OF THE ALLEGED CONSPIRACY.

As a result of these buying programs it was hoped and intended that both the tank car and the retail markets would improve. The conclusion is irresistible that defendants' purpose was not merely to raise the spot market prices but, as the real and ultimate end, to raise the price of gasoline in their sales to jobbers and consumers in the Mid-Western area. Their agreement or plan embraced not only buying on the spot markets but also, at least by clear implication, an understanding to maintain such improvements in Mid-Western prices as would result from those purchases of distress gasoline. The latter obviously would be achieved by selling at th increased prices, not by price cutting. Any other understandin would have been wholly inconsistent with and contrary to th philosophy of the broad stabilization efforts which were under way In essence the raising and maintenance of the spot-market price were but the means adopted for raising and maintaining prices t jobbers and consumers. The broad sweep of the agreement wa indicated by Arnott before a group of the industry on March 1 1935. He described the plan as one "whereby this whole stabilization effort of markets, the holding up of normal sales market structures, the question of the realization of refineries, the working together of those two great groups in order that we may balance thi whole picture and in order that we may interest a great many buyer in this so-called surplus or homeless gasoline, can be done alon organized lines. . . ." Certainly there was enough evidence t support a finding by the jury that such were the scope and purpos of the plan.

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[31] Only three of the corporate respondents purchased through the Association.

[32] An inter-company communication between employees of respondent Pure Oil written in May 1935 stated: "Prices were advanced this week in both regions to $4\frac{1}{2}$¢ and $4\frac{5}{8}$¢-$5\frac{3}{8}$¢, in view of some of the refiners sqawking because our buying price was considerably lower than the publications."

But there was no substantial competent evidence that defendant as charged in the indictment, induced the independent refiners t curtail their production.

E. MARKETING AND DISTRIBUTION METHODS.

Before discussing the effect of these buying programs; some description of the methods of marketing and distributing gasoline i the Mid-Western area during the indictment period is necessary.

The defendant companies sold about 83% of all gasoline sold i the Mid-Western area during 1935. As we have noted, major companies, such as most of the defendants, are those whose operation are fully integrated—producing crude oil, having pipe lines fo shipment of the crude to its refineries, refining crude oil, and marketing gasoline at retail and at wholesale. During the greater par of the indictment period the defendant companies owned and operated many retail service stations[33] through which they sold abou 20% of their Mid-Western gasoline in 1935 and about 12% durin the first seven months of 1936. Standard Oil Company (Indiana)[34] was known during this period as the price leader or market leade throughout the Mid-Western area. It was customary for retail dis tributors, whether independent or owned or controlled by major companies; to follow Standard's posted retail prices. Its posted retail price in any given place in the Mid-Western area was determined by computing the Mid-Continent spot market price and adding thereto the tank car freight rate from the Mid-Continent field, taxes and 5½¢. The 5½¢ was the equivalent of the customary 2¢ jobber margin and 3½¢ service station margin. In this manner the retail price structure throughout the Mid-Western area during the indictment period was based in the main on Mid-Continent spot market quotations,[35] or, as stated by one of the witnesses for the defendants, the spot market was a "peg to hang the price structure on".

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[33] It appears that, beginning in 1935 and increasing in the latter part o 1936, state chain store legislation resulted in the majors leasing many of thei retail service stations.

[34] A defendant to whom a new trial was granted.

About 24% of defendant companies' sales in the Mid-Western area in 1935 were to jobbers, who perform the function of middlemen or wholesalers. Since 1925 jobbers were purchasing less of their gasoline on the spot tank car markets and more under long term supply contracts from major companies and independent refiners. These contracts usually ran for a year or more and covered all of the jobber's gasoline requirements during the period. The price which the jobber was to pay over the life of the contract was not fixed; but a formula for its computation was included. About 80% or more of defendant companies' jobber contracts provided that the price of gasoline sold thereunder should be the Mid-Continent spot market price on the date of shipment. This spot market price was to be determined by averaging the high and low spot market quotations reported in the Chicago Journal of Commerce and Platt's Oilgram or by averaging the high and low quotations reported in the Journal alone. The contracts also gave the jobber a wholly or partially guaranteed margin between the price he had to pay for the gasoline and the normal price to service stations—customarily a 2¢ margin.[36]

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[35] Further details of Standard's policy in posting retail prices are discussed, p. —.

[36] The following is illustrative: The spot market price (computed as indicated) was to govern when that price plus freight, plus 5½¢ per gallon did not exceed the posted service station price, exclusive of tax, at destination on date of shipment. In case that aggregate figure exceeded the service station price, then the price to the jobber would be reduced by an amount equal to one-half of the excess. In some cases the major companies assumed the full amount of the difference. The margin of 5½¢ was based on the seller's discount of 3½¢ to jobbers. Hence if the seller increased or decreased that discount generally then the margin of 5½¢ would be increased or decreased by an equal or like amount. The wording of the various contracts varied but there was great uniformity in principle.

There is no central exchange or market place for spot market transactions. Each sale is the result of individual bargaining between a refiner and his customers, sales under long-term contracts not being included. It is a "spot" market because shipment is to be made in the immediate future—usually within ten or fifteen days. Sales on the spot tank car markets are either sales to jobbers or consumers, sales by one refiner to another not being included.[37] The prices paid by jobbers and consumers in the various spot markets are published daily in the trade journals, Platt's Oilgram and Chicago Journal of Commerce. In the case of the Oilgram these prices are obtained by a market checker who daily calls refiners in the various refinery areas (major companies as well as independents) and ascertains the quantity and price of gasoline which they have sold *to jobbers* in spot sales.[38] After checking the prices so obtained against other sources of information (such as brokers' sales) and after considering the volume of sales reported at each price, he determines the lowest and highest prices at which gasoline is being sold *to jobbers* in substantial quantities on the spot market.[39] Thus, if he finds that substantial sales are reported at 5⅛¢, 5¼¢ and 5⅜¢, the Oilgram reports a price range of 5⅛-5⅜¢. The result is published in the Oilgram that same day.[40] The Chicago Journal of Commerce publishes similar quotations the day after the sales are reported. And its quotations cover sales to industrial consumers as well as to jobbers. But it was not shown that either journal had published prices paid by a major company as a price paid by jobbers on the tank car market.

F. THE SPOT MARKET PRICES DURING THE BUYING PROGRAM.

In 1935 the 14 independent Mid-Continent refiners named in the indictment sold 377,988,736 gallons of gasoline. Of that output, the corporate respondents purchased about 56,200,000 gallons or approximately 15%[41] and the defendant companies who went to trial, about 17%. The monthly purchases of all defendant companies from Mid-Continent independents from March 1935 to April 1936 usually ranged between 600 and 900 tank cars and in a few months somewhat exceeded those amounts.

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[37] For this reason "spot open market" is frequently used, "open" market referring to sales which are not made on contract nor based on future publications.

[38] In case actual sales cannot be obtained, he gets the prices at which the refiners will sell to jobbers in that open spot market.

[39] Major companies sell little gasoline to jobbers on a spot basis. The spot market prices published in the trade journals are based largely on sales by independent refiners.

[40] The National Petroleum News gives the Oilgram quotations in weekly form.

Major company buying began under the Mid-Continent program on March 7, 1935. During the week before that buying commenced the Mid-Continent spot market for third grade gasoline rose ⅜¢. The low quotation on third grade gasoline was 3½¢ on March 6, 1935. It rose to 4¾¢ early in June. That advance was evidenced by ten successive steps. The market on third grade gasoline then levelled out on a plateau which extended into January 1936, except for a temporary decline in the low quotation late in 1935. By the middle of January the low again had risen, this time to 5¼¢. It held substantially at that point until the middle of February 1936. By the end of February it had dropped to 5¢. It then levelled off at that low and remained there into May 1936 when the low dropped first to 4⅞¢ and then to 4¾¢. It stayed there until the first week in July 1936. The low then rose to 4⅞¢, maintained that level until mid-August, then started to drop until by successive steps it had declined to 4½¢ before the middle of September. It stayed there until early October when it rose to 4⅝¢, continuing at that level until middle November when it rose to 4¾¢. The low remained at substantially that point throughout the balance of 1936.

During 1935, as the Mid-Continent spot market for third grade gasoline was rising, so was the East Texas spot market. And when in June 1935 the former levelled off for the balance of the year at a low of 4¾¢, the latter[42] levelled off, as we have seen, at a low of 4⅝¢.

During this period there were comparable movements on the Mid-Continent spot market for regular gasoline. From a low of 4⅜¢ on March 7, 1935, it rose to a low of 5⅝¢ early in June, that advance being evidenced by nine successive steps. As in the case of third grade gasoline, the market for regular gasoline then levelled out on a plateau which extended into January 1936. By the middle of January the low had risen to 6⅛¢. It held at that point until the middle of February 1936. By the end of February it had dropped to 5⅞¢. It rose to 6¢ in the first week of March, levelled off at that low and remained there into August 1936. By mid-August it started to drop—reaching 5½¢ in September, going to 5⅝¢ in October and to 5¾¢ in November, where it stayed through the balance of 1936.

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[41] That percentage is apparently reduced to about 10.5% if sales of 29 independent refiners (including the 14 named in the indictment) are taken.

What percentage these purchases by respondents were of the Mid-Continent spot market in 1935 does not clearly appear, the government's estimate of one-third to a half apparently being somewhat high.

[42] Comparable movements took place in the East Texas spot market for regular gasoline until April 21, 1935, when those quotations were discontinued.

These plateaus are clearly shown by a chart of the market journals' quotations. But that does not of course mean that all sales on the spot market were made between the high and the low during the period in question. As we have said, the quotations of the market journals merely indicated the range of prices (usually an eighth) within which the bulk of the gasoline was being sold. Hence actual sales took place above the high and below the low. Thus between June and December 1935 while the low for third grade gasoline remained substantially at 4¾¢ and the [illegible] at 4⅞¢ jobbers' and consumers' purchases[43] ranged from 4⅜¢ to 5⅛¢. A similar condition existed as respects regular gasoline.

Purchases by the major companies likewise did not always fall within the range of these quotations. In fact, between 85 and 90% of their purchases from the independent refiners were made at prices which were at or below the low quotations in the market journals.[44]

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[43] Respondents computed that for 1935 8% of these purchases of third grade gasoline were above the high; 10% were at the high; 7% were between the high and low; 16% were below the low.

[44] Respondents' computations comparing their tabulations with the government's tabulations are as follows:

Price Group	Government's Tank-Cars	Government's %	Respondents' Tank-Cars	Respondents' %
Above the lowest quotations in Platt's Oilgram	745	8.09	516	7.5
Above the lowest quotations in Chicago Journal of Commerce	984	10.7	992	14.3
At the lowest quotations in Platt's Oilgram	6407	69.64	4491-2/3	64.9
At the lowest quotations in Chicago Journal of Commerce	6564	71.31	4419-2/3	63.9
Below the lowest quotations in Platt's Oilgram	2052	22.27	1912-2/3	27.6
Below the lowest quotations in Chicago Journal of Commerce	1656	17.99	1508-2/3	21.8
Total	9204	100:00	6920-2/3	100.

The government's tabulations dealt with 9,204 tank cars which defendants (excluding Sinclair) purchased on a flat price basis from independent refiners in the Mid-Continent field between March 1, 1935 and April 30, 1936. Respondents' tabulations included Sinclair and excluded sales by defendants who

There were few such purchases above the high and not a substantial percentage at the high.[45]

G. JOBBER AND RETAIL PRICES DURING THE BUYING PROGRAMS.

That the spot market prices controlled prices of gasoline sold by the majors to the jobbers in the Mid-Western area during the indictment period is beyond question. For, as we have seen, the vast majority of jobbers' supply contracts during that period contained price formulae which were directly dependent on the Mid-Continent spot market prices.[46] Hence, as the latter rose, the prices to the jobbers under those contracts increased.

There was also ample evidence that the spot market prices substantially affected the retail prices in the Mid-Western area during the indictment period. As we have seen, Standard of Indiana was known during this period as the price or market leader throughout this area. It was customary for the retailers to follow Standard's posted retail prices, which had as their original base the Mid-Continent spot market price. Standard's policy was to make changes in its posted retail price only when the spot market base went up or down at least 3/10¢ a gallon and maintained that change for a period of 7 days or more.[47] Standard's net reduction in posted prices for the 6 months preceding March 1935 was 1.9¢ per gallon. From March 1935 to June 1935 its posted retail prices were advanced 3/10¢ four times.

Retail prices in the Mid-Western area kept close step with Mid-Continent spot market prices during 1935 and 1936, though there

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had already been dismissed, and eliminated or reclassified alleged omissions or improper classifications by the government.

Respondents' computations also show that the percentage of purchases at prices below the low quotations was higher during the March-May, 1935 price rise than during the indictment period as a whole, and that the percentage of purchases above the low was lower during that period of price rise than during the period as a whole.

[45] Respondents' figures were: .7% above the high of the Journal; .8% above the high of the Oilgram; 3.7% at the high of the Journal; 6.1% at the high of the Oilgram. Apparently all purchases above the high were purchases of third grade, not regular gasoline.

[46] One government witness testified that out of 1,729 contracts made by the defendant major oil companies with jobbers in the Mid-Western area during 1935, 1,461 provided that the basic price was to be determined "on the basis of the average of the averages of the high and low quotations of the Chicago Journal of Commerce and Platt's Oilgram on spot market tank car gasoline." During 1935 defendant companies sold over 900,000,000 gallons to jobbers in the Mid-Western area out of total sales by them in that area of over 4,000,000,000 gallons.

[47] These changes were apparently not made automatically, as the factor of competition was taken into consideration.

was a short lag between advances in the spot market prices and the consequent rises in retail prices.[48] This was true in general both of the subnormal[49] and normal retail prices. To be sure, when the tank car spot market levelled out on a plateau from June to the end of 1935, there was not quite the same evenness in the higher plateau of the average retail prices. For there were during the period in question large numbers of retail price cuts in various parts of the Mid-Western area, though they diminished substantially during the spring and summer of 1935. Yet the average service station price[50] (less tax) having reached 13.26¢ by the middle of April (from 12.56¢ near the first of March) never once fell below that amount; advanced regularly to 13.83¢ by the middle of June; declined to 13.44¢ in August; and after an increase to 13.60¢ during the last of the summer remained at 13.41¢ during the balance of 1935 except for a minor intermediate drop. In sum, the contours of the retail prices conformed in general to those of the tank car spot markets. The movements of the two were not just somewhat comparable; they were strikingly similar. Irrespective of whether the tank car spot market prices controlled the retail prices in this area, there was substantial competent evidence that they influenced them—substantially and effectively. And in this

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[48] A comparison of Monday low quotations for house brand gasoline (Oklahoma market) with average service station prices for Standard's regular grade gasoline (less taxes) for 28 cities (including La Crosse and Milwaukee, Wis.) in the Mid-Western area shows the latter following the former upward from March to June 1935 and in January 1936.

	Oklahoma	*Service Station*
March 4, 1935	4.375¢	12.56¢
March 11, 1935	4.625	12.56
March 18, 1935	4.750	12.56
March 25, 1935	4.750	12.90
April 1, 1935	4.875	12.90
April 8, 1935	5.000	12.97
April 15, 1935	5.125	13.26
April 22, 1935	5.250	13.32
April 29, 1935	5.250	13.32
May 6, 1935	5.250	13.56
May 13, 1935	5.250	13.56
May 20, 1935	5.375	13.56
May 27, 1935	5.500	13.56
June 3, 1935	5.625	13.56
January 6, 1936	5.625	13.35
January 13, 1936	6.125	13.45
January 20, 1936	6.125	13.93
January 27, 1936	6.125	13.93

[49] Prices below the normal price which Standard posted.

[50] Average price (28 cities Mid-Western area) for Standard's regular gasoline.

connection it will be recalled that when the buying program was formulated it was in part predicated on the proposition that a firm tank car market was necessary for a stabilization of the retail markets. As reported by one who attended the meeting on February 5, 1935, where the buying program was being discussed: "It was generally assumed that all companies would come into the picture since a stable retail market requires a higher tank car market."

~~III~~ IV. *Other Circumstances Allegedly Relevant to the Offense Charged in the Indictment.*

The following facts or circumstances were developed at the trial by testimony or other evidence or were embraced in offers of proof made by respondents.

A. ALLEGED KNOWLEDGE AND ACQUIESCENCE OF THE FEDERAL GOVERNMENT.

Such of the following facts as were included in respondents' offers of proof were not sought to be proved in order to establish immunity from prosecution under the anti-trust laws. For admittedly the authorization under the National Industrial Recovery Act necessary for such immunity[51] had not been obtained. Rather respondents' offers of proof were made in order to show the circumstances which, respondents argue, should be taken into consideration in order to judge the purpose, effect and reasonableness of their activities in connection with the buying program.

Arnott testified that on January 8 or 9, 1935, he reported the appointment of the Tank Car Stabilization Committee to officials of the Petroleum Administrative Board who, he said, expressed great interest in it. A member of that Committee late in January 1935 advised the chairman of that Board of the "necessity for action in getting tank car prices up before it is too late". The chairman replied that "the tank car situation in relation to the price of crude is one about which we have no disagreement. How to bring about a correction is the stumbling block." There was evidence that at least general information concerning the meetings of the Tank Car Stabilization Committee was given a representative of the Board in February 1935. In March 1935 the Code authorities, with the approval of the Administrator, asked the major companies to curtail their manufacture of gasoline during that month by 1,400,000 barrels. The purpose was said to be to aid the small refiners by forcing the majors to buy part of their requirements from them. A voluntary curtailment of some 960,000 barrels was made.

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[51] Sec. 5 is set forth, *supra*, note 18.

On March 12, 1935, Arnott saw the Chairman and at least one other representative of the Board. Among other things the buying programs were discussed. Arnott did not ask for the Board's approval of these programs nor its "blessing". A representative of the Board testified that Arnott told them that he was conducting those buying programs "on his own responsibility". Arnott denied this. The Chairman of the Board asked Arnott if the programs violated the anti-trust laws. Arnott said he did not believe they did and described what his group was doing. Arnott testified that he felt that the Board thought the program was sound and hoped it would work; and that if he had thought they disapproved, he would have discontinued his activities. There was no evidence that the Board told Arnott to discontinue the program. But on March 13, 1935, Arnott in addressing the District Allocators' meeting said, respecting these buying programs:

> "I am perfectly conscious that we have made other efforts at times to have this question dealt with. It has always been done in group form. That has involved agreements, group agreements. Those of us who have had anything to do whatsoever with the whole national picture, who have come to Washington and have had any experience with the PAB and eventually the Department of Justice, knew just how long that road is, and for some good reason or for some unknown reason or for no reason at all those agreements seem to have disappeared, those outstanding attempts—and they were really sincere and worthy attempts—have disappeared in a sort of cloud of mystery, and I don't think I, for one, or anybody else can tell you just where they have gone—they are out of our minds, they are completed, they are finished, and we are not interested."

Respondents also offered to prove that a committee of the industry (the Blazer Committee) appointed by the Administrator to study the condition of the small units in the industry, made a report to him in March 1935 which stated, *inter alia*, as a recommendation:

> "We know of nothing, apart from continued improvement in crude production control, which would be so helpful to the tank-car price of gasoline at this time as the substantial buying of distress gasoline by major companies. We understand a program of this sort is

being considered by the Industry now in connection with a broad stabilization program. We therefore urge that the Administrator give it his approval and active support."[52]

They also offered a memorandum dated March 22, 1935, from the Chairman of the Petroleum Administrative Board to the Administrator[53] commenting on the above report and making the following suggestion:

"We believe success in Code administration, assuming that it is to continue, requires that some of the recommendations made should be adopted; e. g., we have encouraged stabilization efforts designed at this time to aid the independent refiner, . . ."

On April 2, 1935, the Administrator wrote Arnott, referred to his letter of July 20, 1934 and stated, *inter alia:*

"The matter that at present concerns me is the necessity of complying with the requirements of the basic law. In authorizing the formulation of a stabilization program, I necessarily conditioned the authority granted, by providing that the requirements of Clause 2 of Subsection (a) of Section 3 of the National Industrial Recovery Act should be observed. I know you will appreciate that agreements between supplying companies which might be in conflict with the anti-trust laws of the United States require specific approval after due consideration if companies are to receive the protection afforded by Sections 4 and 5 of the National Industrial Recovery Act.

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[52] That report went on to say:

" . . . we believe such a program might be successful in raising both tank car and retail prices to their proper level in relationship to crude oil prices.

"If higher tank-car prices are obtained, we believe they can be sustained only by corresponding increases in retail gasoline prices; otherwise, the burden merely would be shifted from small refiners to small marketers, who in many instances have been in just as much distress as the refiners. We find that abnormally low retail prices can depress tank-car prices just as much as low tank-car prices can pull down the retail price structure. Thus it appears to be essential that both prices move up together."

[53] The Administrator was reported as saying about that report that if a parity between crude oil prices and gasoline prices did not come soon he would call a meeting of representatives of the industry to see what could be done about it. On March 30, 1935, according to respondents, the Administrator wrote concerning that report:

"Concerning the independent refiners, other than those in California, it appears from the report of the Committee on Small Enterprise that the outstanding difficulty is due to the disparity between posted crude oil prices and refinery realizations. This situation has been deplorable for many months, but it is my understanding that at present the activity of the Stabilization Committees is having a distinct effect in the improvement of refinery prices, and that were it not for old contracts, many of which are badly shaded with respect to the posted price, the independent refiner is approaching a normal market structure."

Respondents also offered to prove that the Blazer Committee advised the Board in April 1935 that there was then no occasion to reduce crude oil prices since "we consider tank car gasoline prices now almost up to parity with sufficient additional advances anticipated in both tank car and retail prices"; and expressed its satisfaction "with the success of the program to stabilize tank-car markets".

"I understand that the temporary character of a number of situations and the need for immediate action has made formalized agreements impracticable and in a number of instances they may be unnecessary. However, when the understandings arrived at as bases of solution of price wars affecting the industry over a considerable area are intended to operate over a definite period of time or involve substantial changes in the policy of the various supplying companies made only in consideration of similar action on the part of other companies, it is necessary that the procedure required by the Recovery Act be followed in order that the arrangement be legal. If any such agreements have been made I should like a report as to them. If they require approval to be effective . . . I should be glad to give consideration to them under the provisions of the Act."

On April 22, 1935, the Petroleum Administrative Board wrote a letter to Arnott imposing three conditions on general stabilization work: (1) there should be no stabilization meeting without a representative of the Board being present; (2) every element in the industry should be heard from before any decisions were made; (3) no general instructions should be given under the July 20, 1934 letter. A meeting of Arnott's committee and members of the Board was held on May 8, 1935. A representative of the Board testified that they called Arnott "on the carpet to request him to explain" to them "what he had been doing". Arnott's group considered the conditions imposed by the Board quite impossible. The Board assigned two of its staff to work the problem out with one of Arnott's men. According to the testimony of one of the representatives of the Board at that meeting, Arnott did not ask for the Board's approval of the buying programs—nothing being said "one way or the other, about approval or disapproval." And he testified that Arnott in substance was told at that meeting by the Board's Chairman that the letter of July 20, 1934, from the Administrator to Arnott (quoted *supra* p. —) did not give authority to conduct any buying program;[54] and that Arnott said he was not relying on that letter for approval. Arnott, however, testified that he recalled no such statement made by the Board's Chairman. Apparently, however, Arnott, in answer to questions, gave a general explanation of the buying programs, stating that the majors were continuing informally to buy; that there was no pool; that no one was obliged to make purchases; that they were trying to lift from independent refiners distress gasoline which was burdening the market.[55]

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[54] Respondents offered to prove that Arnott's lawyer advised him on July 31, 1934, that although the letter of July 20, 1934, was "not precisely an approval" by the Administrator of any agreement which gave "complete protection" from any prosecution under the anti-trust laws, it nevertheless was "for all practical purposes a complete protection to you and your committees to engage in all reasonable activities to restore prices to normal levels."

Respondents also offered to prove that on May 14, 1935, the Chairman of the Petroleum Administrative Board asked Arnott to undertake to stabilize the Pennsylvania refinery market in the way that he had stabilized the Mid-Continent refinery market; that in connection with this request the Board evinced support and approval of the Mid-Continent buying program; and that Arnott undertook to do what he could in the matter and called a meeting of the Pennsylvania refiners for May 28, 1935. Apparently the *Schechter* decision terminated that undertaking.

Respondents also offered portions of a final report[56] prepared by the Marketing Division of the Petroleum Administrative Board which discussed the work of the General Stabilization Committee[57] saying, *inter alia:* "One of the most important was the tank-car committee, which attempted to get the tank-car market raised more in line with the price of crude recovery cost on the theory that a firm tank-car market was essential to a stabilized retail structure". And respondents offered testimony of a member of the Board before a Senate Committee in 1937 respecting the "buying pool efforts, that began in December of 1933 and continued from then on during the entire period of the Petroleum Code." That testimony was: "It was an effort of the Department and the industrial committees to bring about the normal relationship between gasoline prices and crude oil prices, in order to permit the independent, non-integrated refiner to be able to operate without loss."

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[55] A sub-committee of the Planning & Coordination Committee met with the Board on May 10, 1935, to discuss the report of the Blazer Committee. The recommendation in that report that the majors buy distress gasoline from the independents was discussed. Arnott testified that his group told the Board that "we already had buying of gasoline in effect" to which the Chairman of the Board was said to have replied "That is quite so and disposes of that part of the report."

[56] Prepared between December 1935 and February 1936 and issued in June 1936 by the Department of the Interior.

[57] In speaking of the general work of this Committee (which as we have noted was set up to deal with price wars) the report stated: "The stabilization program was perhaps the outstanding development under the code."

In sum, respondents by this and similar evidence offered to establish that the Petroleum Administrative Board knew of the buying programs and acquiesced in them. And respondents by those facts, together with those discussed under II, *supra*, undertook to show that their objectives under the buying programs were in line with those of the Federal government under the Code: to keep the price of crude oil at a minimum of $1 a barrel; to restore the wholesale price level of gasoline at the refinery to a parity with crude oil; to stabilize retail prices at a normal spread between the refinery price and the retail price.

B. OTHER FACTORS ALLEGED TO HAVE CAUSED OR CONTRIBUTED TO THE RISE IN THE SPOT MARKET.

Respondents do not contend that the buying programs were not a factor in the price rise and in the stabilization of the spot markets during 1935 and 1936. But they do contend that they were relatively minor ones, because of the presence of other economic forces such as the following:

1. *Control of production of crude oil.*

Under the Code an attempt was made for the first time to balance the production of crude oil with the consumptive demand for gasoline. Monthly estimates of gasoline consumption would be made by the Bureau of Mines. The quantity of crude oil necessary to satisfy that demand was also estimated, broken down into allowables for each state, and recommended to the states. And there was evidence that the states would approximately conform to those recommendations. After the Code the oil states continued the same practice under an Interstate Compact which permitted them to agree as to the quantities of crude oil which they would allow to be produced.[58]

2. *Connally Act.*

As we have noted, this law was enacted late in February 1935 and began to be effective the first part of March 1935. Prior to this act, control of hot oil by the states had not been effective for any extended period of time. Throughout 1933 and 1934 from 150,000 to 200,000 barrels of crude oil a day were estimated to have been produced in East Texas in excess of the state's allowables, much of it going into interstate commerce. After the Connally Act went into operation, no hot gasoline went into interstate commerce according to respondents' evidence.

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[58] This Compact (49 Stat. 939) was authorized in February 1935 and became effective in August 1935.

3. *$1 Crude oil.*

As we have noted, crude oil was brought to a dollar a barrel near the end of September 1933. Before the Connally Act, however, hot oil flooded the market at substantially lower prices. Gasoline produced from hot oil forced the price of gasoline produced from crude oil down below cost. But with the elimination of the hot oil, fluctuations in the price of crude ceased. This had a stabilizing effect on the price of gasoline.

4. *Increase in consumptive demand.*

Beginning in the spring of 1935 there was an increase in demand for gasoline. During the whole indictment period every month showed an increase over the corresponding month in the previous year. For the entire year of 1935 consumption for the country as a whole was 7% more than for 1934; that for 1936 was about 10% over 1935—substantially the same increases taking place in the Mid-Western area.

5. *Control of inventory withdrawal and of manufacture of gasoline.*

Under the Code crude oil could be withdrawn from storage only with the approval of the Administrator. Also under the Code there were manufacturing quotas for gasoline which through Code authorities were allocated among the refiners. In March 1935, as we have seen, gasoline inventories of the majors were reduced by over 900,000 barrels through a voluntary curtailment program. The demand was so heavy that the industry withdrew from storage and refined over 22,000,000 barrels of crude oil in storage in 1935. Further, imports of crude oil were limited by order of the Administrator.

6. *Improved business conditions.*

The years 1935 and 1936 were marked by improving general business conditions and rising prices everywhere.

Much testimony was taken on these and related points. It was designed to show that under the conditions which existed during the indictment period, stability in the market was to be expected from the play of these various economic forces. For it was argued that by reason of those forces supply and demand were brought into a reasonable continuing balance with the resultant stabilization of the markets. And there was much testimony from respondents' witnesses that the above factors as well as the buying programs did contribute to price stability during this period. But no witness assumed to testify as to how much of a factor the buying program had been.

IV. *Application of the Sherman Act.*

A. CHARGE TO THE JURY.

The court charged the jury that it was a violation of the Sherman Act for a group of individuals or corporations to act together to raise the prices to be charged for the commodity which they manufactured where they controlled a substantial part of the interstate trade and commerce in that commodity. The court stated that where the members of a combination had the power to raise prices and acted together for that purpose, the combination was illegal; and that it was immaterial how reasonable or unreasonable those prices were or to what extent they had been affected by the combination. It further charged that if such illegal combination existed, it did not matter that there may also have been other factors which contributed to the raising of the prices. In that connection, it referred specifically to the economic factors which we have previously discussed and which respondents contended were primarily responsible for the price rise and the spot markets' stability in 1935 and 1936, viz. control of production, the Connally Act, the price of crude oil, an increase in consumptive demand, control of inventories and manufacturing quotas, and improved business conditions. The court then charged that, unless the jury found beyond a reasonable doubt that the price rise and its continuance were "caused" by the combination and not caused by those other factors, verdicts of "not guilty" should be returned. It also charged that there was no evidence of governmental approval which would exempt the buying programs from the prohibitions of the Sherman Act; and that knowledge or acquiescence of officers of the government or the good intentions of the members of the combination would not give immunity from prosecution under that Act.

The Circuit Court of Appeals held this charge to be reversible error, since it was based upon the theory that such a combination was illegal *per se*. In its view respondents' activities were not unlawful unless they constituted an unreasonable restraint of trade. Hence, since that issue had not been submitted to the jury and since evidence bearing on it had been excluded, that court reversed and remanded for a new trial so that the character of those activities and their effect on competition could be determined. In answer to the government's petition respondents here contend that the judgment of the Circuit Court of Appeals was correct, since there was evidence that they had affected prices only in the sense that the removal of the competitive evil of distress gasoline by the buying programs had permitted prices to rise to a normal competitive level; that their activities promoted rather than impaired fair competitive opportunities; and therefore that their activities had not unduly or unreasonably restrained trade. And they also contend that certain evidence which was offered should have been admitted as bearing on the purpose and end sought to be attained, the evil believed to exist, and the nature of the restraint and its effect. By their cross-petition respondents contend that the record contains no substantial competent evidence that the combination, either in purpose or effect, unreasonably restrained trade within the meaning of the Sherman Act, and therefore that the Circuit Court of Appeals erred in holding that they were not entitled to directed verdicts of acquittal.

In *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, this Court sustained a conviction under the Sherman Act where the jury was charged that an agreement on the part of the members of a combination, controlling a substantial part of an industry, upon the prices which the members are to charge for their commodity is in itself an unreasonable restraint of trade without regard to the reasonableness of the prices or the good intentions of the combining units. There the combination was composed of those who controlled some 82 per cent of the business of manufacturing and distributing in the United States vitreous pottery. Their object was to fix the prices for the sale of that commodity. In that case the trial court refused various requests to charge that the agreement to fix prices did not itself constitute a violation of law unless the jury also found that it unreasonably restrained interstate commerce. This Court reviewed the various price-fixing cases under the Sherman Act beginning with *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, and *United States* v. *Joint Traffic Association*, 171 U. S. 505, and said " . . . it has since often been decided and always assumed that uniform price-fixing by those controlling in any substantial manner a trade or business in interstate commerce is prohibited by the Sherman Law, despite the reasonableness of the particular prices agreed upon." (p. 398.) This Court pointed out that the so-called "rule of reason" announced in *Standard Oil Co.* v. *United States,* 221 U. S. 1, and in *United States* v. *American Tobacco Co.,* 221 U. S. 106, had not affected this view of the illegality of price-fixing agreements. And in holding that agreements "to fix or maintain prices" are not reasonable restraints of trade under the statute merely because the prices themselves are reasonable, it said (pp. 397-398):

> "The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed. Agreements which create such potential power may well be held to be in themselves unreasonable or unlawful restraints, without the necessity of minute inquiry whether a particular price is reasonable or unreasonable as fixed and without placing on the government in enforcing the Sherman Law the burden of ascertaining from day to day whether it has become unreasonable through the mere variation of economic conditions. Moreover, in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend upon so uncertain a test as whether prices are reasonable—a determination which can be satisfactorily made only after a complete survey of our economic organization and a choice between rival philosophies."

In conclusion this Court emphasized that the Sherman Act is not only a prohibition against the infliction of a particular type of public injury, but also, as stated in *Standard Sanitary Mfg. Co.* v. *United States,* 226 U. S. 20, 49, a "limitation of rights" which may be "pushed to evil consequences and therefore restrained".

But respondents claim that other decisions of this Court afford them adequate defenses to the indictment. Among those on which they place reliance are *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344; *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553; *Maple Flooring Mfrs. Association,* 268 U. S. 563; *Cement Mfrs. Protective Association* v. *United States,* 268 U. S. 588; *Chicago*

Board of Trade v. *United States,* 246 U. S. 231; and the *American Tobacco* and *Standard Oil* cases, *supra.*

But we do not think that line of cases is apposite. As cleary indicated in the *Trenton Potteries* case, the *American Tobacco* and *Standard Oil* cases have no application to combinations operating directly on prices or price structures.

And we are of the opinion that *Appalachian Coals, Inc.* v. *United States, supra,* is not in point.

In that case certain producers of bituminous coal created an exclusive selling agency for their coal. The agency was to establish standard classifications and sell the coal of its principals at the best prices obtainable. The occasion for the formation of the agency was the existence of certain so-called injurious practices and conditions in the industry. One of these was the problem of "distress coal"—coal shipped to the market which was unsold at the time of delivery and therefore dumped on the market irrespective of demand. The agency was to promote the systematic study of the marketing and distribution of coal, its demand and consumption; to maintain an inspection and an engineering department to demonstrate to customers the advantages of this type of coal and to promote an extensive advertising campaign; to provide a research department to demonstrate proper and efficient methods of burning coal and thus to aid producers in their competition with substitute fuels; to operate a credit department dealing with the reliability of purchasers; and to make the sale of coal more economical. That agency was also to sell all the coal of its principals at the best prices obtainable and, if all could not be sold, to apportion orders upon a stated basis. And, save for certain stated exceptions, it was to determine the prices at which sales would be made without consultation with its principals. This Court concluded that so far as actual purpose was concerned, the defendant producers were engaged in a "fair and open endeavor to aid the industry in a measurable recovery from its plight". And it observed that the plan did not either contemplate or involve "the fixing of market prices"; that defendants would not be able to fix the price of coal in the consuming markets; that their coal would continue to be subject to "active competition". To the contention that the plan would have a tendency to stabilize market prices and to raise them to a higher level, this Court replied (p. 374):

> "The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade. The intelligent conduct of commerce through the acquisition of full information of all relevant facts may properly be sought by the cooperation of those engaged in trade, although stabilization of trade and more reasonable prices may be the result."

In distinguishing the *Trenton Potteries* case this Court said (p. 375):

> "In the instant case there is, as we have seen, no intent or power to fix prices, abundant competitive opportunities will exist in all markets where defendants' coal is sold, and nothing has been shown to warrant the conclusion that defendants' plan will have an injurious effect upon competition in these markets."

Thus in reality the only essential thing in common between the instant case and the *Appalachian Coals* case is the presence in each of so-called demoralizing or injurious practices. The methods of dealing with them were quite divergent. In the instant case there were buying programs of distress gasoline which had as their direct purpose and aim the raising and maintenance of spot market prices and of prices to jobbers and consumers in the Mid-Western area by the elimination of distress gasoline as a market factor. The increase in the spot market prices was to be accomplished by a well organized buying program on that market: regular ascertainment of the amounts of surplus gasoline; assignment of sellers among the buyers; regular purchases at prices which would place and keep a floor under the market. Unlike the plan in the instant case, the plan in the *Appalachian Coals* case was not designed to operate *vis a vis* the general consuming market and to fix the prices on that market. Furthermore, the effect, if any, of that plan on prices was not only wholly incidental but also highly conjectural. For the plan had not then been put into operation. Hence this Court expressly reserved jurisdiction in the District Court to take further proceedings if, *inter alia*, in "actual operation" the plan proved to be "an undue restraint upon interstate commerce". And as we have seen it would *per se* constitute such a restraint if price-fixing were involved.

Nor are *Maple Flooring Mfrs. Association* v. *United States* and *Cement Mfrs. Protective Association* v. *United States*, *supra*, at all relevant to the problem at hand. For the systems there under attack were methods of gathering and distributing information respecting business operations. It was noted in those cases that there was not present any agreement for price-fixing. And they were decided, as indicated in the *Trenton Potteries* case, on the express assumption that any agreement for price-fixing would have been illegal *per se*. And since that element was lacking, the only issues were whether or not on the precise facts there presented such activities of the combinations constituted unlawful restraints of commerce. A majority of the Court held that they did not.

Nor can respondents find sanction in *Chicago Board of Trade* v. *United States, supra,* for the buying programs here under attack. That case involved a prohibition on the members of the Chicago Board of Trade from purchasing or offering to purchase between the closing of the session and its opening the next day grains (under a special class of contracts) at a price other than the closing bid. The rule was somewhat akin to rules of an exchange limiting the period of trading, for as stated by this Court the "restriction was upon the period of price-making". No attempt was made to show that the purpose or effect of the rule was to raise or depress prices. The rule affected only a small proportion of the commerce in question. And among its effects was the creation of a public market for grains under that special contract class, where prices were determined competitively and openly. Since it was not aimed at price manipulation or the control of the market prices and since it had "no appreciable effect on general market prices", the rule survived as a reasonable restraint of trade.

There was no deviation from the principle of the *Trenton Potteries* case in *Sugar Institute, Inc.* v. *United States, supra.* For in that case so-called competitive abuses were not permitted as defenses to violations of the Sherman Act bottomed on a trade association's efforts to create and maintain a uniform price structure.

Thus for over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements are unlawful *per se* under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense. And we reaffirmed that well-established rule in clear and unequivocal terms in *Ethyl Gasoline Corp.* v. *United States*, No. 536, decided March 25, 1940, where we said:

"Agreements for price maintenance of articles moving in interstate commerce are, without more, unreasonable restraints within the meaning of the Sherman Act because they eliminate competition, *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, and agreements which create potential power for such price maintenance exhibited by its actual exertion for that purpose are in themselves unlawful restraints within the meaning of the Sherman Act, . . ."

Therefore the sole remaining question on this phase of the case is the applicability of the rule of the *Trenton Potteries* case to these facts.

Respondents seek to distinguish the *Trenton Potteries* case from the instant one. They assert that in that case the parties substituted an agreed-on price for one determined by competition; that the defendants there had the power and purpose to suppress the play of competition in the determination of the market price; and therefore that the controlling factor in that decision was the destruction of market competition, not whether prices were higher or lower, reasonable or unreasonable. Respondents contend that in the instant case there was no elimination in the spot tank car market of competition which prevented the prices in that market from being made by the play of competition in sales between independent refiners and their jobber and consumer customers; that during the buying programs those prices were in fact determined by such competition; that the purchases under those programs were closely related to or dependent on the spot market prices; that there was no evidence that the purchases of distress gasoline under those programs had any effect on the competitive market price beyond that flowing from the removal of a competitive evil; and that if respondents had tried to do more than free competition from the effect of distress gasoline and to set an arbitrary non-competitive price through their purchases, they would have been without power to do so.

But we do not deem those distinctions material.

In the first place, there was abundant evidence that the combination had the purpose to raise prices. And likewise, there was ample evidence that the buying programs at least contributed to the price rise and the stability of the spot markets, and to increases in the price of gasoline sold in the Mid-Western area during the indictment period. That other factors also may have contributed to that rise and stability of the markets is immaterial. For in any such market movement, forces other than the purchasing power of the buyers normally would contribute to the price rise and the market stability. So far as cause and effect are concerned it is sufficient in this type of case if the buying programs of the combination resulted in a price rise and market stability which but for them would not have happened. For this reason the charge to the jury that the buying programs must have "caused" the price rise and its continuance was more favorable to respondents than they could have required. Proof that there was a conspiracy, that its purpose was to raise prices, and that it caused or contributed to a price rise is proof of the actual consummation or execution of a conspiracy under § 1 of the Sherman Act.

Secondly, the fact that sales on the spot markets were still governed by some competition is of no consequence. For it is indisputable that that competition was restricted through the removal by respondents of a part of the supply which but for the buying programs would have been a factor in determining the going prices on those markets. But the vice of the conspiracy was not merely the restriction of supply of gasoline by removal of a surplus. As we have said, this was a well organized program. The timing and strategic placement of the buying orders for distress gasoline played an important and significant role. Buying orders were carefully placed so as to remove the distress gasoline from weak hands. Purchases were timed. Sellers were assigned to the buyers so that regular outlets for distress gasoline would be available. The whole scheme was carefully planned and executed to the end that distress gasoline would not overhang the markets and depress them at any time. And as a result of the payment of fair going market prices a floor was placed and kept under the spot markets. Prices rose and jobbers and consumers in the Mid-Western area paid more for their gasoline than they would have paid but for the conspiracy. Competition was not eliminated from the markets; but it was clearly curtailed, since restriction of the supply of gasoline, the timing and placement of the purchases under the buying programs and the placing of a floor under the spot markets obviously reduced the play of the forces of supply and demand.

The elimination of so-called competitive evils is no legal justification for such buying programs. The elimination of such conditions was sought primarily for its effect on the price structures. Fairer competitive prices, it is claimed, resulted when distress gasoline was removed from the market. But such defense is typical of the protestations usually made in price-fixing cases. Ruinous competition, financial disaster, evils of price cutting and the like appear throughout our history as ostensible justifications for price-fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case. In that event the Sherman Act would soon be emasculated; its philosophy would be supplanted by one which is wholly alien to a system of free competition; it would not be the charter of freedom which its framers intended.

The reasonableness of prices has no constancy due to the dynamic quality of the business facts underlying price structures. Those who fixed reasonable prices today would perpetuate unreasonable prices tomorrow, since those prices would not be subject to continuous administrative supervision and readjustment in light of changed conditions. Those who controlled the prices would control or effectively dominate the market. And those who were in that strategic position would have it in their power to destroy or drastically impair the competitive system. But the thrust of the rule is deeper and reaches more than monopoly power. Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress. Certainly Congress has not left us with any such choice. Nor has the Act created or authorized the creation of any special exception in favor of the oil industry. Whatever may be its peculiar problems and characteristics, the Sherman Act, so far as price-fixing agreements are concerned, establishes one uniform rule applicable to all industries alike. There was accordingly no error in the refusal to charge that in order to convict the jury must find that the resultant prices were raised and maintained at "high, arbitrary and non-competitive levels". The charge in the indictment to that effect was surplusage.

Nor is it important that the prices paid by the combination were not fixed in the sense that they were uniform and inflexible. Price-fixing as used in the *Trenton Potteries* case has no such limited meaning. An agreement to pay or charge rigid, uniform prices would be an illegal agreement under the Sherman Act. But so would agreements to raise or lower prices whatever machinery for price-fixing was used. That price-fixing includes more than the mere establishment of uniform prices is clearly evident from the *Trenton Potteries* case itself, where this Court noted with approval *Swift & Co.* v. *United States*, 196 U. S. 375, in which a decree was affirmed which restrained a combination from "raising or lowering prices or fixing uniform prices" at which meats will be sold. Hence, prices are fixed within the meaning of the *Trenton Potteries* case if the range within which purchases or sales will be made is agreed upon, if the prices ~~paid~~ or charged are to be at a certain level or on ascending or descending scales, if they are to be uniform, or if by various formulae they are related to the market prices. They are fixed because they are agreed upon. And the fact that, as here, they are fixed at the fair going market price is immaterial. For purchases at or under the market are one species of price-fixing. In this case, the result was to place a floor under the market—a floor which served the function of increasing the stability and firmness of market prices. That was repeatedly characterized in this case as stabilization. But in terms of market operations stabilization is but one form of manipulation. And market manipulation in its various manifestations is implicitly an artificial stimulus applied to (or at times a brake on) market prices, a force which distorts those prices, a factor which prevents the determination of those prices by free competition alone. Respondents, however, argue that there was no correlation between the amount of gasoline which the major companies were buying and the trend of prices on the spot markets. They point to the fact that such purchasing was lightest during the period of the market rise in the spring of 1935, and heaviest in the summer and early fall of 1936 when the prices declined; and that it decreased later in 1936 when the prices rose. But those facts do not militate against the conclusion that these buying programs were a species of price-fixing or manipulation. Rather they are wholly consistent with the maintenance of a floor under the market or a stabilization operation of this type, since the need for purchases under such a program might well decrease as prices rose and increase as prices declined.

As we have indicated, the machinery employed by a combination for price-fixing is immaterial.

Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*. Where the machinery for price-fixing is an agreement on the prices to be charged or paid for ~~the~~ commodity in the interstate or foreign channels of trade, the power to fix prices exists if the combination has control of a substantial part of the commerce in that commodity. Where the means for price-fixing are purchases or sales of the commodity in a market operation or, as here, purchases of a part of the supply of the commodity for the purpose of keeping it from having a depressive effect on the markets, such power may be found to exist though the combination does not control a substantial part of the commodity. In such a case that power may be established if as a result of market conditions, the resources available to the combinations, the timing and the strategic placement of orders and the like, effective means are at hand to accomplish the desired objective. But there may be effective influence over the market though the group in question does not control it. Price-fixing agreements may have utility to members of the group though the power possessed or exerted falls far short of domination and control. Monopoly power (*United States* v. *Patten*, 226 U. S. 525) is not the only power which the Act strikes down, as we have said. Proof that a combination was formed for the purpose of fixing prices and that it caused them to be fixed or contributed to that result is proof of the completion of a price-fixing conspiracy under §1 of the Act.[59] The indictment in this case charged that this combination had that purpose and effect. And there was abundant evidence to support it. Hence the existence of power on the part of members of the combination to fix prices was but a conclusion from the finding that the buying programs caused or contributed to the rise and stability of prices.

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[59] Under this indictment proof that prices in the Mid-Western area were raised as a result of the activities of the combination was essential, since sales of gasoline by respondents at the increased prices in that area were necessary in order to establish jurisdiction in the Western District of Wisconsin. Hence we have necessarily treated the case as one where exertion of the power to fix prices (i. e. the actual fixing of prices) was an ingredient of the offense. But that does not mean that both a purpose and a power to fix prices are necessary for the establishment of a conspiracy under § 1 of the Sherman Act. That would be true if power or ability to commit an offense was necessary in order to convict a person of conspiring to commit it. But it is well established that a person "may be guilty of conspiring although incapable of committing the objective offense." United States *v.* Rabinowich, 238 U. S. 78, 86. And it is likewise well settled that conspiracies under the Sherman Act are not dependent on any overt act other than the act of conspiring. Nash *v.* United States, 229 U. S. 373, 378. It is the "contract, combination . . . or conspiracy in restraint of trade or commerce" which § 1 of the Act strikes down, whether the concerted activity be wholly nascent or abortive on the one hand, or successful on the other. See United States *v.* Trenton Potteries Co., 273 U. S. 392, 402. Cf. Retail Lbr. Dealer's Assoc. *v.* State, 95 Miss. 337. And the amount of interstate or foreign trade involved is not material (Montague & Co. *v.* Lowry, 193 U. S. 38), since § 1 of the Act brands as illegal the character of the restraint not the amount of commerce affected. Steers *v.* United States, 192 Fed. 1, 5; Patterson *v.* United States, 222 Fed. 599, 618-619. In view of these considerations a conspiracy to fix prices violates § 1 of the Act though no overt act is shown, though it is not established that the conspirators had the means available for accomplishment of their objective, and though the conspiracy embraced but a part of the interstate or foreign commerce in the commodity. Whatever may have been the status of price-fixing agreements at common law (Allen, Criminal Conspiracies in Restraint of Trade at Common Law, 23 Harv. L. Rev. 531) the Sherman Act has a broader application to them than the common law prohibitions or sanctions. See United States *v.* Trans-Missouri Freight Assoc., 166 U. S. 290, 328. Price-fixing agreements may or may not be aimed at complete elimination of price competition. The group making those agreements may or may not have power to control the market. But the fact that the group cannot control the market prices does not necessarily mean that the agreement as to prices has no utility to the members of the combination. The effectiveness of price-fixing agreements is dependent on many factors, such as competitive tactics, position in the industry, the formula underlying price policies. Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy. See Handler, Federal Anti-Trust Laws—A Symposium (1931), pp. 91 *et seq.*

The existence or exertion of power to accomplish the desired objective (United States *v.* United States Steel Corp., 251 U. S. 417, 444-451; United States *v.* International Harvester Co., 274 U. S. 693, 708-709) becomes important only in cases where the offense charged is the actual monopolizing of any part of trade or commerce in violation of § 2 of the Act. An intent and a power to produce the result which the law condemns are then necessary. As stated in

As to knowledge or acquiescence of officers of the Federal government little need be said. The fact that Congress through utilization of the precise methods here employed could seek to reach the same objectives sought by respondents does not mean that respondents or any other group may do so without specific Congressional authority. Admittedly no approval of the buying programs was obtained under the National Industrial Recovery Act prior to its termination on June 16, 1935, (§ 2(c)) which would give immunity to respondents from prosecution under the Sherman Act. Though employees of the government may have known of those programs and winked at them or tacitly approved them, no immunity would have thereby been obtained. For Congress had specified the precise manner and method of securing immunity. None other would suffice. Otherwise national policy on such grave and important issues as this would be determined not by Congress nor by those to whom Congress had delegated authority but by virtual volunteers. The method adopted by Congress for alleviating the penalties of the Sherman Act through approval by designated public representatives[60] would be supplanted by a foreign sys-

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Swift & Co. *v.* United States, 196 U. S. 375, 396, " . . . when that intent and the consequent dangerous probability exist; this statute, like many others and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result." But the crime under § 1 is legally distinct from that under § 2 (United States *v.* MacAndrews & Forbes Co., 149 Fed. 836; United States *v.* Buchalter, 88 F. (2d) 625) though the two sections overlap in the sense that a monopoly under § 2 is a species of restraint of trade under § 1. Standard Oil Co. *v.* United States, 221 U. S. 1, 59-61; Patterson *v.* United States, supra, p. 620. Only a confusion between the nature of the offenses under those two sections (see United States *v.* Nelson, 52 Fed. 646; United States *v.* Patterson, 55 Fed. 605; Chesapeake & O. Fuel Co. *v.* United States, 115 Fed. 610) would lead to the conclusion that power to fix prices was necessary for proof of a price-fixing conspiracy under § 1. Cf. State *v.* Eastern Coal Co., 29 R. I. 254; State *v.* Scollard, 126 Wash. 335.

[60] It should be noted in this connection that the typical method adopted by Congress when it has lifted the ban of the Sherman Act is the scrutiny and approval of designated public representatives. Under the N. I. R. A. this could be done through the code machinery with the approval of the President as provided in §§ 3(a) and 5, *supra* note 18. Under § 407(8) of the Transportation Act of 1920 (41 Stat. 482; 49 U. S. C. A. § 5(8)) carriers, including certain express companies, which were consolidated pursuant to any order of the Interstate Commerce Commission were relieved from the operation of the Anti-Trust laws. And see the Maloney Act (§ 15A of the Securities Exchange Act of 1934; 52 Stat. 1070) providing for the formation of associations of brokers and dealers with the approval of the Securities and Exchange Commission and establishing continuous supervision by the Commission over specified activities of such associations; and the Bituminous Coal Act of 1937 (50 Stat. 72), especially §§ 4 and 12 particularly as they relate to the fixing of minimum and maximum prices by the Bituminous Coal Commission.

tem. But even had approval been obtained for the buying programs, that approval would not have survived the expiration in June 1935 of the Act which was the source of that approval. As we have seen the buying program continued unabated during the balance of 1935 and far into 1936. As we said in *United States* v. *Borden Co.*, 308 U. S. 188, 202, "A conspiracy thus continued is in effect renewed during each day of its continuance." Hence, approval or knowledge and acquiescence of federal authorities prior to June 1935 could have no relevancy to respondents' activities subsequent thereto. The fact that the buying programs may have been consistent with the general objectives and ends sought to be obtained under the National Industrial Recovery Act is likewise irrelevant to the legality under the Sherman Act of respondents' activities either prior to or after June 1935. For as we have seen price-fixing combinations which lack Congressional sanction are illegal *per se;* they are not evaluated in terms of their purpose, aim or effect in the elimination of so-called competitive evils. Only in the event that they were, would such considerations have been relevant.

Accordingly we conclude that the Circuit Court of Appeals erred in reversing the judgments on this ground. *A fortiori* the position taken by respondents in their cross petition that they were entitled to directed verdicts of acquittal is untenable.

B. RESPONDENTS' OFFERS OF PROOF.

What we have said disposes of most of the errors alleged in exclusion of evidence. The offers of proof covering the background and operation of the National Industrial Recovery Act and the Petroleum Code, the condition of the oil industry, the alleged encouragement, cooperation and acquiescence of the Federal Petroleum Administration in the buying programs and the like were properly excluded, insofar as they bore on the nature of the restraint and the purpose or end sought to be attained. For as we have seen the reasonableness of the restraint was not properly an issue in the case.

There were, however, offers of proof alleged to be relevant to the cause of the price rise and the subsequent stability of the markets during the period in question.

In addition to the foregoing offers, respondents sought to show that the presence of hot oil and hot gasoline had greatly depressed

the market from 1932 to early in 1935 when the Connally Act became effective, except for one short period from October to December 1934; that beginning in October 1934 shipment of hot oil from East Texas into interstate commerce had for the first time been effectively controlled; that within a period of six weeks thereafter the tank car spot market rose 1½¢—an amount corresponding to the price rise from March to June 1935; that the various factors which primarily affect price were almost precisely the same in the fall of 1934 as they were in the spring of 1935; that the price of gasoline had borne a constant relationship to the price of crude oil from January 1918 to October 1933—that relationship disappearing when the price of hot oil fell below legal crude but reappearing in October 1934, and again in March 1935, when hot oil was eliminated; that gasoline prices were more depressed than the prices of
0 other commodities and the cost of living in 1933 and 1934, and recovered and rose less than such other prices and the cost of living in 1935 and 1936.

We think there was no reversible error in exclusion of these various offers.

To the extent that they were designed to show that respondents by their buying programs had not raised the spot market prices to an artificial and non-competitive level, these offers of proof were properly denied as immaterial. For, as we have said, the reasonableness of the prices and the fact that respondents' activities merely removed from the market the depressive effect of distress gasoline were not relevant to the issues.

And to the extent that these offers of proof were aimed at establishing and evaluating other contributory causes for the price rise and market stability during the indictment period, they were not improperly denied. In the first place, the record is replete with evidence showing the condition of the oil industry at the time of the adoption of the code and during the code period. There was ample testimony bearing on the other causal factors which respondents contend were primarily responsible for the price rise and market stability during the indictment period. Much of the refused testimony was merely cumulative in nature. A trial court has wide discretion in a situation of that kind. The trial lasted about three and a half months. Terminal points are necessary even in a conspiracy trial involving intricate business facts and legal issues. In the second place, the offer to show the market conditions late in 1934 when hot oil was temporarily under control was not improperly denied. There was substantial evidence in the record to demonstrate the depressive market effect of hot oil. While the offer was not wholly irrelevant to the issues, it was clearly collateral. The trial court has a wide range for discretion in the exclusion of such evidence. See *Golden Reward Mining Co.* v. *Buxton Mining Co.*, 97 Fed. 413, 416-417.; *Chesterfield Mfg. Co.* v *Leota Cotton Mills*, 194 Fed. 358, 359. Admission of testimony showing the market conditions late in 1934 would have opened an inquiry into causal factors as involved and interrelated as those present during the indictment period. That might have confused rather than enlightened the jury. In any event it would not have eliminated the buying programs as contributory causes to the market rise and stability in 1935 and 1936. And it would have prolonged the inquiry and protracted the trial. As once stated by Mr. Justice Holmes, one objection to the introduction of collateral issues is a "purely practical one, a concession to the shortness of life." *Reeve* v. *Dennett*, 145 Mass. 23, 28. And see *Union Stock Yard & Transit Co.* v. *United States*, 308 U. S. 213, 223-224. Similar reasons sustain the action of the trial court in limiting the inquiry into general economic conditions antedating and during the indictment period. In conclusion, we do not think that there was an abuse of discretion by the trial court in the exclusion of the proffered evidence. A great mass of evidence was received, the range of inquiry was wide, the factual questions relating to the oil industry and respondents' activities were intricate and involved. In such a case a new trial will not be ordered for alleged errors in exclusion of evidence where matters of substance are not affected. See *United States* v. *Trenton Potteries Co.*, *supra*, p. 404.

VI *Use of The Grand Jury Transcript.*

The Circuit Court of Appeals held that the trial court committed prejudicial error in refusing to permit defense counsel to inspect the transcript of grand jury testimony used to refresh the recollection of certain witnesses called by the government. Respondents here urge that the use made of the grand jury transcript was error because (1) they were denied the right to inspect it, (2) it had not been properly authenticated. (3) the reading of the grand jury testimony must have led the jury to conclude that it was affirmative testimony, and (4) such testimony was not given contemporaneously with the occurrences to which it was related. And in all respects, respondents contend that such use of the grand jury testimony was highly prejudicial.

There were about 90 instances when the government used that testimony. In practically all those cases, the witnesses were employees or representatives of respondents or former defendants, or were closely associated with them. That most of them were hostile witnesses—evasive and reluctant to testify—clearly appears from a reading of their entire testimony. Each of those witnesses had testified before the grand jury which returned the indictment in the case. At times counsel for the government would state to the court that he was surprised at the witness' answer to a question and that it contradicted testimony before the grand jury. More frequently counsel would ask the witness if his memory could be refreshed by his grand jury testimony. During the first part of the trial government counsel apparently read some grand jury testimony to two witnesses from his notes. After objection had been made, the court instructed counsel to use the transcript. Soon thereafter, and early in the trial, the court adopted the practice of inspecting the transcript and itself seeking to refresh the witness' recollection by reading from his prior testimony. At no time was the transcript shown to the witness. At all times respondents appropriately objected to the practice.

Throughout the trial the stated single reason for the use of such prior testimony was the refreshment of the witness' recollection. Counsel for the defense were ever alert to denounce the practice, especially when it appeared that government counsel might seek to impeach the witness. In such cases the court normally would sustain the objection or admonish government counsel; or the question and answer would be stricken. In many instances where such testimony was used, the incident ended by the witness merely saying that his recollection had not been refreshed. In case it had been, he would state what his present recollection was. Only in about one-sixth of the instances was any inconsistency in testimony developed. In the balance, recollection was either not refreshed or the testimony which had been given was wholly or substantially consistent with the previous grand jury testimony.

During the trial the court told the jury:

> "I have used some of the testimony and read some of it for the purpose only of refreshing the witnesses' memories, and many times I have indicated that there was no conflict or nothing inconsistent between the testimony of the witness and the transcript of testimony. The only reason we use this transcript of testimony of each witness before the Grand Jury is to, if we can, refresh their memories so as to enable them to recall correctly what the fact is."

And the court made a similar statement in its charge to the jury.

As in case of leading questions, *St. Clair* v. *United States,* 154 U. S. 134, 150, such use of grand jury testimony for the purpose of refreshing the recollection of a witness rests in the sound discretion of the trial judge. See *Di Carlo* v. *United States,* 6 F. (2d) 364, 367-368; *Bosselman* v. *United States,* 239 Fed. 82, 85; *Felder* v. *United States,* 9 F. (2d) 872. He sees the witness, can appraise his hostility, recalcitrance, and evasiveness or his need for some refreshing material, and can determine whether or not under all the circumstances the use of grand jury minutes is necessary or appropriate for refreshing his recollection. As once stated by Judge Hough, "The bald fact that the memory refreshing words are found in the records of a grand jury is not a valid objection." *Felder* v. *United States, supra,* p. 874. Normally, of course, the material so used must be shown to opposing counsel upon demand, if it is handed to the witness. *Morris* v. *United States,* 149 Fed. 123, 126; *Lennon* v. *United States,* 20 F. (2d) 490, 493-494; Wigmore, Evidence (2d ed.), § 762. And the reasons are that only in that way can opposing counsel avoid the risks of imposition on and improper communication with the witness, and "detect circumstances not appearing on the surface" and "expose all that detracts from the weight of testimony." See 2 Wigmore, *supra,* p. 42. The first of these reasons has no relevancy here. And as to the second, no iron-clad rule requires that opposing counsel be shown the grand jury transcript where it is not shown the witness and where some appropriate procedure is adopted to prevent its improper use. That again is a matter which rests in the sound discretion of the court. Grand jury testimony is ordinarily confidential. See Wigmore, *supra,* § 2362. But after the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it. See *Metzler* v. *United States,* 64 F. (2d) 203, 206. Since there is no inexorable rule which under all circumstances entitles the witness and his counsel to see the prior statement made under oath and since in this case the court itself examined and thus directly controlled the use of the grand jury testimony, we cannot say that the refusal to make it available to counsel for the defense is *per se* reversible error. To hold that it was error in the instances here under review would be to find abuse of discretion, where in fact we conclude from the entire record on this phase of the case that the judge supervised the procedure with commendable fairness. In sum, the selective use of this testimony and the precautions taken by the trial judge make it impossible for us to say that he transcended the limits of sound discretion in permitting it to be used by the government without making it available to the defense.

If the record showed that the refreshing material was deliberately used for purposes not material to the issues but to arouse the passions of the jurors, so that an objective appraisal of the evidence was unlikely, there would be reversible error. Likewise there would be error where under the pretext of refreshing a witness' recollection, the prior testimony was introduced as evidence. *Rosenthal* v. *United States*, 248 Fed. 684, 686. But here the grand jury testimony was used simply to refresh the recollection on material facts, *New York & Colorado Mining Syndicate & Co.* v. *Fraser*, 130 U. S. 611, not as independent affirmative evidence. *Bates* v. *Preble*, 151 U. S. 149. Furthermore, it was not used for impeachment purposes; and the content of this refreshing material related solely to conversations and events relevant to the formation and execution of the buying programs.

In addition, it clearly appears that the use of this material was not prejudicial. So far as the subject matter of the inquiry is concerned, that prior testimony was either cumulative or dealt only with the minutiae of the conspiracy. The record minus that testimony clearly establishes all the facts necessary for proof of the illegal conspiracy. No portion of it was dependent on the minor facts concerning which the memory of these witnesses was refreshed.[61] Hence, the situation is vastly different from those cases where essential ingredients of the crime were dependent on testimony elicited in that manner or where the evidence of guilt hung in delicate balance if that testimony was deleted. See *Little* v. *United States*, 93 F. (2d) 401; *Putnam* v. *United States*, 162 U. S. 687. Hence assuming, *arguendo*, that there was error in the use of the prior testimony; to order a new trial would be to violate the standards of § 269 of the Judicial Code (28 U. S. C. A. § 391), since the "substantial rights" of respondents were not affected. There are no vested individual rights in the ordinary rules of evidence; their observance should not be reduced to an idle ceremony.

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[61] Respondents strongly urge that this is not true in the case of the testimony of an employee of one of the trade journals. His prior testimony indicated (1) that the major companies were buying exactly at the journal quotations, so that the graph of those quotations represented prices paid under the buying program; (2) that prices paid by the majors "outweighed" the jobbers' sales reported to his journals. At the trial he testified that those grand jury statements were not true. And they were not. But those matters are not essential issues in the case. That purchases under the buying program did not lead the

Putnam v. *United States*, *supra*, held it was prejudicial error to use grand jury minutes to refresh the memory of a witness unless that testimony was contemporaneous with the occurrences as to which the witness was testifying. There the testimony before the grand jury was more than four months after the occurrence. This Court held that because of that lapse of time the testimony was not contemporaneous. Whatever may be said of the *Putnam* case on the merits (see Wigmore, *supra*, § 761) it does not establish an inflexible four-months' period of limitation. There the event was a single isolated conversation, most damaging to the defendant. Here there was a continuing conspiracy extending at least up to the period when the witnesses were testifying before the grand jury. Much of the testimony related to events a year or more old. But in the main those matters were woven into the conspiracy, related to events in which the witness actively participated, concerned the regular business matters with which he was familiar, pertained to his regular employment, or constituted admissions against interest. On these facts we do not think there was an abuse of discretion on the part of the trial judge in permitting the testimony to be used. Measured by the test of whether or not the prior statement made under oath was reasonably calculated to revive the witness' present recollection within the rule of the *Putnam* case, there certainly cannot be said to have been error as a matter of law.

Respondents say that the manner employed in refreshing the recollection of the witnesses was bound to inculcate in the minds of the jurors the feeling that the witnesses were testifying falsely or

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market up, that the vast majority of purchases were at or below the low quotations, that the volume of purchases did not eliminate all competition, that the spot market prices were still determined by competitive forces, that the volume of purchases under the buying programs was relatively small are wholly immaterial, as we have seen.

were concealing the truth. But here again, we find no reversible error. The trial judge, as we have said, was alert to stop impeachment. And in view of the obvious hostility and evasiveness of most of those witnesses, we cannot say that the judge transcended the bounds of discretion in permitting their memories to be refreshed in this manner. "As is true of most that takes place in a trial, the right result is a matter of degree, and depends upon the sense of measure of the judge." See *United States* v. *Freundlich*, 95 F. (2d) 376, 379.

VII *Arguments to the Jury by Government Counsel.*

1 Respondents complain of certain statements made to the jury by government counsel. Their objections are that government counsel (1) appealed to class prejudice; and (2) requested a conviction regardless of the evidence because the prosecution was convinced of respondents' guilt and because a conviction "was the wish and the desire of the highest officials in the Government of the United States."

Under the first of these, they point to the opening statement that this conspiracy involved some of the "biggest men" in the country—big in the sense of "controlling vast volumes of financial influence"; and that it is a "terrible thing that a group of influential, wealthy millionaires or billionaires should take over the power, take over the control, the power to make prices." At the close of those opening remarks and on objection of defense counsel the court counselled the jury that "any reference to the wealth of any of the defendants is entirely immaterial. A man of wealth has just as much standing in a court as a man that is poverty stricken."

But respondents complain that in the closing arguments the same matter was referred to again as follows: "A hundred lawyers employed—the very cream of the American Bar, the very best legal talent that these people can obtain—every one of them working night and day with suggestions as to how the red herring can be drawn across the clear cut issue in this case"; that it should not be taken for granted "that these more powerful people are above the law and can't be reached and can't be brought to book"; that the "fear of corporate power in combination" is part of the American tradition as illustrated by a speech made in 1873 by a Wisconsin judge, who said: "There is looming up a new and dark power . . . The accumulation of individual wealth seems to be greater than it ever has been since the downfall of the Roman Empire. The enterprises of the country are . . . coldly marching, not for economic conquests only, but for political power . . . money is taking the field as an organized power. The question will arise . . . which shall rule, wealth or man? Which shall lead, money or intellect. Who shall fill the public stations, educated and patriotic free men, or the futile serfs of corporate capital?" But as to these statements no objection was made at the time by defense counsel.

There were other such references e. g., "malefactors of great wealth", "eager, grasping men" or corporations who "take the law into their own hands . . . without any consideration for the under-dog or the poor man . . . We are going to stop it, as our forefathers stopped it before us and left this country with us as it is now, or we are going down into ruin as did the Roman Empire." Counsel for the defense objected to these statements as improper and prejudicial. The court overruled the objections stating it would deal with the matter in its charge to the jury. In its charge the court warned against convicting a corporation "solely because of its size or the extent of its business"; that it was "your duty to give these corporations the same impartial consideration" as an individual or small corporation would receive; and instructed the jurors not to be concerned "with the financial condition of any of these defendants. Whether a man be rich or poor, he is entitled to the same consideration in this Court."

On this phase of the matter several observations are pertinent. In the first place, counsel for the defense cannot as a rule remain silent, interpose no objections, and after a verdict has been returned seize for the first time on the point that the comments to the jury were improper and prejudicial. See *Crumpton* v. *United States*, 138 U. S. 361, 364. Of course appellate courts "in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." See *United States* v. *Atkinson*, 297 U. S. 157, 160. But as we point out hereafter, the exceptional circumstances which call for an invocation of that rule are not present here. In the second place, it is not improper in a Sherman Act case to discuss corporate power, its use and abuse, so long as those statements are relevant to the issues at hand. For that subject is material to the philosophy of that Act. Its purposes and objectives are clearly legitimate subjects for discussion before the jury. But, thirdly, appeals to class prejudice are highly improper and cannot be condoned and trial courts should ever be alert to prevent them. Some of the statements to which respondents now object fall in this class. They were, we think, undignified and intemperate. They do not comport with the standards of propriety to be expected of the prosecutor. But it is quite another thing to say that these statements constituted prejudicial error. In the first place, it is hard for us to imagine that the minds of the jurors would be so influenced by such incidental statements during this long trial that they would not appraise the evidence objectively and dispassionately. In the second place, this was not a weak case as was *Berger* v. *United States,* 295 U. S. 78, where this Court held that prejudice to the accused was so highly probable as a result of the prosecutor's improper conduct "that we are not justified in assuming its non-existence." (p. 89.) Cf. *New York Central Railroad Co.* v. *Johnson,* 279 U. S. 310. Of course, appeals to passion and prejudice may so poison the minds of jurors even in a strong case that an accused may be deprived of a fair trial. But each case necessarily turns on its own facts. And where, as here, the record convinces us that these statements were minor aberrations in a prolonged trial and not cumulative evidence of a proceeding dominated by passion and prejudice, reversal would not promote the ends of justice.

Under the second of these objections, respondents complain of the plea to the jury not to "let your Government and the United States and its citizens and society down", and that government counsel "believe to the bottom of their hearts in the justice of the cause that they espouse here". No objection at that time was made by defense counsel. But they did object at the trial to the statements by government counsel, " . . . do you honestly think that these boys here (government counsel) . . . would be trying to convict these men unless that was the wish and the desire of the highest officials in the government of the United States?"; "You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done?" The court overruled the objections stating.

"I suppose we have a right to assume that they are here under the instructions of the Attorney General of the United States." Respondents further complain of the statements that the evidence is "so overwhelming and overpowering that it doesn't even leave the trace or the shadow of a doubt"; that if "you are going to say they are not guilty on this evidence, then you take the responsibility, I won't; you get an alibi, I won't"; that the hundreds of thousands of dollars spent by the government "in trying to get before you the facts" should not be "thrown to the winds" nor should these men "go clear". But no objection was made at the time by defense counsel.

As respects the statement that it was the "wish and the desire of the highest officials" in the government to have defendants convicted, some background should be given. This came near the end of the closing arguments. In the opening statement, during the trial, and in the closing arguments the defense continuously emphasized the knowledge and acquiescence by government officials of the buying programs. As we have noted, that was one of the main lines of defense. From the beginning of the trial to the end, the defense sought to prove, not official approval in the legal sense, but official acquiescence or at least condonation. Bald statements were made that respondents "were conducting a program which resulted from the instigation and inducement of the Government itself"; after the *Schechter* case they endeavored to "stabilize marketing practices" at the "instance of officials of the Oil Administration"; "what was done by these defendants was done for the purpose of accomplishing the objectives and purposes of the National Industrial Recovery Act, and was undertaken at the request and pursuant to the authorization of the Secretary of the Interior, Mr. Ickes, the Administrator of the Petroleum Code"; respondents "acted to carry out the purposes and objectives sought by the Government and initiated by the Government . . . . They were objectives defined by the President of the United States. They were purposes, the accomplishment of which the Secretary of the Interior had been charged, under his oath, to seek to obtain"; "with all this backing and all this help from the government, and all this urging from the government, are you going to brand these men as just selfish individuals?" On innumerable instances the impression was sought to be conveyed by subtle intimation, inference or suggestion that responsibility for these buying programs should be placed on the shoulders of high government officials. Government counsel accordingly justified his statement on the grounds that it denied what the defense had continuously stated, viz., that the buying programs were conducted with the consent and approval of the Secretary of the Interior. At a subsequent point in the closing arguments government counsel again referred to the matter. On objection of defense counsel he withdrew the statement. And the court instructed the jury to disregard it, saying "This prosecution was commenced at the instigation of the Attorney General of the United States."

In view of these various circumstances we do not think that the above statements were prejudicial. Standing by themselves they appear to be highly improper. Even as a rebuttal to the defense which had been interposed throughout the trial, they overstep the bounds. But in view of the justification which respondents sought to establish for their acts, the subject matter of these statements was certainly relevant. The fact that government counsel transgressed in his rebuttal certainly cannot be said to constitute prejudicial error. For a reading of the entire argument before the jury leads to the firm conviction that the comments which respondents now rely on for their assertions of error were isolated, casual episodes in a long summation of over 200 printed pages and not at all reflective of the quality of the argument as a whole.

Respondents further urge as prejudicial error the assertions by government counsel of personal knowledge in contradiction of the record for the purpose of discrediting an important defense witness. The statement of government counsel was that in "1935 and 1936, you couldn't get a rowboat up the Mississippi River, north of Winona." Respondents contend that testimony as to navigability of that river was vitally material as establishing such outside competition as would have prevented them from raising prices to artificial and non-competitive levels. But such testimony was wholly irrelevant, since the reasonableness of the prices was not properly an issue in the case. Furthermore, when objection was made to the remark, counsel withdrew it and the jury was instructed to disregard it. That must be deemed to have cured the error if it could be considered such. As stated in *Dunlop* v. *United States,* 165 U. S. 486, 498, "If every remark made by counsel outside of the testimony were ground for a reversal, comparatively few verdicts would stand."

VIII. *Granting of New Trials to Some Defendants.*

Respondents contend that the trial court committed reversible error in granting new trials to some defendants and denying them to respondents.

The court charged the jury that it could convict any of the defendants found to have been members of the combination and that it need not convict all or none. As has been noted, the jury found sixteen corporations and thirty individuals guilty. Thereafter the court discharged one corporation and ten individuals, and granted new trials to three corporations and fifteen individuals. Such action left the verdict standing as to only twelve corporations and five individuals. The trial court gave as its reason for granting some of the defendants a new trial its belief that they had not had "an adequate separate consideration of their defense, in view of the fact that as to some of them direct evidence of participation was lacking or slight, and the circumstantial evidence viewed as a whole may well have obscured other facts and circumstances shown, in some cases, to be highly suggestive of innocence, and in all cases entitled to be considered and weighed." *United States* v. *Standard Oil Company* (Indiana), 23 F. Supp. 937, 939. In denying the motions of respondents for a new trial it stated (p. 944) that there was "evidence to go to the jury and to sustain its verdict as to every essential charge in the indictment" as to them.[62]

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[62] In this connection the court said (p. 944) that it appeared "without dispute that a concerted buying movement took place in the Mid-Continent field"; that as to its character and the existence of a concerted East Texas program, there was "ample evidence to take the case to the jury"; and that the proofs were sufficient to sustain the verdict as to the charge that defendants "were able to and did effectually tie the jobbers' price" in the Mid-Western area to the tank car price in the spot market. It significantly added (p. 944): "It is claimed by the defendants that they did not have the power to control the price as charged, and that inasmuch as some of the large companies did not or have not been shown to have participated in the movement, the power of the defendants in that respect was inadequate for the purpose. This does not follow, for the reason that large buyers both in East Texas and in the Mid-Continent fields, while acting separately, were nevertheless buying for their requirements in these fields, as they had always done and as defendants had every reason to believe they would continue to do. The defendants were thus able to consider that these buyings would necessarily reduce the available gasoline which they proposed to take off the market just as effectively as though these other companies had joined in the program. The amount of distress gasoline would be exactly the same in any event, and the proof shows that the surplus was in fact a very small part of the total, so much so that most of the defendants have shown that its acquisition in addition to other buying did not materially increase their inventories. I am satisfied that there was ample evidence to sustain the contention of the Government that the defendants did have the power to control the market, and that they did so, as charged."

Respondents' argument runs as follows: The court charged the jury that it was the purpose and the power of the combination to raise prices which were material. Hence the fact that the jury found that the entire group possessed such power does not necessarily mean that the jury would have found that respondents acting alone possessed such power. Since the jury did not consider that issue, it is argued that denial of a new trial to respondents violates their constitutional right to a jury trial. And in support of their contention, respondents insist that Standard of Indiana alone (one of the defendants granted a new trial) possessed such power as would make it impossible for them to raise prices without its agreement and cooperation.

Respondents' argument does not focus sharply the basic and essential elements of the offense and of the instructions to the jury. As we have stated above, the offense charged in this indictment was proved once it was established that any of the defendants conspired to fix prices through the buying programs and that those programs caused or contributed to the price rise. Power of the combination to fix prices was therefore but a conclusion from the fact that the combination did fix prices. Hence in that posture of the case, the issue here is whether or not the finding of the jury that the buying programs affected prices was necessarily dependent on the participation in those programs of all who were convicted.

Obviously it was not. The order granting new trials in no manner impeached or questioned the evidence as to the total spot market purchases made by all companies (whether defendants, co-conspirators or others). Cf. *Bartkus* v. *United States*, 21 F. (2d) 425. In their efforts to place a floor under the spot markets respondents assuredly received benefits and assistance from the purchases made by other companies And the amount of benefit and assistance received did not necessarily depend on whether or not those other companies were co-conspirators. Market manipulators commonly obtain assistance from the activities of the innocent as well as from those of their allies. The fact that they may capitalize on the purchases of others is no more significant than the fact that they may gain direct or collateral benefits from market trends, bullish factors or fortuitous circumstances. And the mere fact that those circumstances might have changed and that Standard of Indiana, say, might have substantially impaired the effect of the buying programs on prices by a change in its retail policies was as irrelevant as was the chance that the Connally Act might have been repealed. The effect of the concerted activities was not rebutted by the fact that changes in events might have destroyed that effect.

Nor did the case against respondents automatically fall when three of the corporate defendants[63] were awarded a new trial. We have here a situation quite different from that where the participation of those to whom a new trial was granted or against whom the judgment of conviction was reversed was necessary for the existence of the crime charged. See *Gebardi* v. *United States*, 287 U. S. 112; *Morrison* v. *California*, 291 U. S. 82; *King* v. *Plummer* [1902], 2 K. B. 339. In this case the crime was not indivisible (cf. *Queen* v. *Gompertz*, 9 A. & E. (N. S.) 824; *Feder* v. *United States*, 257 Fed. 694) in the sense that the existence of a conspiracy under the Sherman Act was necessarily dependent on the cooperation of the other defendants with respondents. Nor was the case submitted to the jury on the assumption that the participation of any of the corporations which were granted new trials was indispensable to the finding of a conspiracy among the rest. As we have seen, the court charged that the jury could convict any of the defendants found to have been members of the combination and that it need not convict all or none. It was the existence of a combination and the participation in it of all or some of the defendants which were important, not the identity of each and every participant. A conspiracy under the Sherman Act may embrace two or more individuals or corporations. Conviction of some need not await the apprehension and conviction of all. The erroneous conviction of one does not necessarily rebut the finding that the others participated. The theory of the charge to the jury was not that the defendants must be convicted, if at all, as a body; rather the issue of guilt was distributive; the identity of all the co-conspirators was irrelevant.

In a Sherman Act case, as in other conspiracy cases, the grant of a new trial to some defendants and its denial to others is not *per se* reversible error. After the jury's verdict has been set aside as respects some of the alleged co-conspirators, the remaining ones cannot seize on that action as grounds for the granting of a new trial to them, unless they can establish that such action was so clearly prejudicial to them that the denial of their motions constituted a plain abuse of discretion. See *Dufour* v. *United States*, 37 App. D. C. 497, 510-511; *State* v. *Christianson*, 131 Minn. 276, 280; *Commonwealth* v. *Bruno*, 324 Pa. 236, 248; *People* v. *Kuland*, 266 N. Y. 1; *Browne* v. *United States*, 145 Fed. 1. There is a complete lack of any showing of abuse of discretion here, for no prejudice has been established.

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[63] The question of the effect of the buying programs on market prices obviously concerns only the corporate defendants. The one corporate defendant granted after verdict, a directed verdict of acquittal was The Globe Oil & Refining Co. (Kansas). The record does not show that this company made any spot market purchases in 1935 or 1936.

Hence this case falls within the well established rule that neither this Court nor the Circuit Court of Appeals will review the action of a federal trial court in granting or denying a motion for a new trial for error of fact, since such action is a matter within the discretion of the trial court. *Fairmount Glass Works* v. *Cub Fork Coal Co.*, 287 U. S. 474. Certain exceptions have been noted, such as instances where the trial court has "erroneously excluded from consideration matters which were appropriate to a decision on this motion". *Fairmount Glass Works* v. *Cub Fork Coal Co., supra*, p. 483. But there are no such circumstances here. No iota of evidence has been adduced that the trial court in denying respondents' motions failed to take into consideration the effect of the buying programs on gasoline prices in the Mid-Western area. In fact it seems apparent that the trial court considered that issue and ruled thereon adversely to respondents. It concluded in substance that whoever may have been all the members of the conspiracy, there was ample evidence to go to the jury on the nature and effect of these programs.

Certainly, denial of a motion for a new trial on the grounds that the verdict was against the weight of the evidence would not be subject to review. *Moore* v. *United States*, 150 U. S. 57, 61-62; *J. W. Bishop Co.* v. *Shelhorse*, 141 Fed. 643, 648; *O'Donnell* v. *New York Transp. Co.*, 187 Fed. 109, 110. In substance no more than that is involved here.

IX ~~VIII~~ *Variance.*

By their cross petition respondents contend that there was a fatal variance between the agreement charged in the indictment and the agreement proved, with a consequent violation of respondents' rights under the Sixth Amendment.

As we have noted, certain trade journals were made defendants. The indictment charged that they were "the chief agencies and instrumentalities" through which the illegally raised prices affected prices paid for gasoline in the Mid-Western area; that they "knowingly published and circulated as such price quotations the wrongfully and artificially raised and fixed prices for gasoline paid by" defendants in the buying programs, while "representing the price quotations published by them" to be gasoline prices "prevailing in spot sales to jobbers in tank car lots" and while "knowing and intending them to be relied on as such by jobbers and to be made the basis of prices to jobbers."

At the close of the government's case the indictment was dismissed, on motion of the government, as against all trade journal defendants who went to trial. This was clearly proper, as the evidence adduced exculpated them from any wrongdoing. But respondents contend that the device charged in the indictment was one by which respondents were to pay higher than the actual spot market prices for their purchases and then to substitute in the trade journal quotations such prices for the lower prices actually paid by jobbers in spot market sales. Since there was failure of proof on this point of falsification, it is argued that there was a variance. For, according to respondents, that feature was an integral and essential part of the plan as charged.

We agree with the Circuit Court of Appeals that there was no variance. Analysis of the indictment which we have set forth, *supra*, pp. —, makes it clear that the charge against respondents was separate from and independent of the charge against the trade journals and that the allegations against those journals constituted not the only means by which the conspiracy was to be effectuated but only one of several means (*supra*, pp. —). In effect, those charges in the indictment sought to connect the trade journals with the conspiracy as aiders and abettors. On the other hand, the gist of the indictment charged a conspiracy by defendants (1) to raise and fix the spot market prices and (2) thereby to raise and fix the prices in the Mid-Western area. So far as means and methods of accomplishing those objectives were concerned, the charge of falsification of the trade journal quotations was as unessential as was the charge, likewise unproved, that defendants caused the independent refiners to curtail their production. The purpose and effect of the buying programs in raising and fixing prices were in no way made dependent on the utilization of fraudulent trade journal quotations. As charged the trade journals were the chief instrumentalities by which the spot market prices were converted into prices in the Mid-Western area. Hence under this indictment they were wholly effective for respondents' purposes, though they were innocent and though their quotations were not falsified as charged. A variation between the means charged and the means utilized is not fatal. And where an indictment charges various means by which the conspiracy is effectuated, not all of them need be proved. See *Nash* v. *United States*, 229 U. S. 373, 380. Cf. *Boyle* v. *United States*, 259 Fed. 803, 805.

X *Jurisdiction or Venue.*

The Sixth Amendment provides that the accused shall be tried "by an impartial jury of the State and district wherein the crime shall have been committed." Respondents contend that the district court for the Western District of Wisconsin had no jurisdiction or venue to try them since the crime was not committed in that district. The Circuit Court of Appeals held to the contrary, one judge dissenting.

As we have noted, the indictment charged that the defendants (1) conspired together to raise and fix the prices on the spot markets; (2) raised, fixed, and maintained those prices at artificially high and non-competitive levels and "thereby intentionally increased and fixed the tank car prices of gasoline contracted to be sold and sold in interstate commerce as aforesaid in the Mid-Western area (including the Western District of Wisconsin)"; (3) have "exacted large sums of money from thousands of jobbers" in the Mid-Western area by reason of the provisions of the prevailing form of jobber contracts which made the price to the jobber dependent on the average spot market price; and (4) "in turn have intentionally raised the general level of retail prices prevailing in said Mid-Western area."

As we have seen, there was substantial competent evidence that the buying programs resulted in an increase of spot market prices, of prices to jobbers and of retail prices in the Mid-Western area. And it is clear that certain corporate respondents sold gasoline during this period in the Mid-Western area at the increased prices. The court charged the jury that even though they found that defendants had the purpose and power to raise the spot market prices, they must acquit the defendants unless they also found and believed beyond a reasonable doubt that defendants "have also intentionally raised and fixed the tank car price of gasoline contracted to be sold and which was sold in interstate commerce in the Mid-Western area, including the Western District of Wisconsin." It also charged that it was not enough "for the prosecution to show an increase in the tank car prices of gasoline within said area, but you must also find and believe beyond a reasonable doubt and to a moral certainty that the defendants combined and conspired together or with others for the purpose of increasing and fixing the same as well as for the purpose of raising and fixing the tank car prices in said spot markets, or one or more of them." It further charged that the jury in order to convict must find some overt acts in the Western District of Wisconsin; and that sales of gasoline therein by any of the defendants would constitute such overt acts.

Respondents, though agreeing that there were such sales in the Mid-Western area and that the prices on such sales were affected by the rise in the spot markets, deny that they were overt acts in pursuance of the conspiracy. Rather, they contend that each of such sales was an individual act of a particular conspirator in the ordinary course of his business by which he enjoyed the results of a conspiracy carried out in another district. That is to say, they take the position that the alleged conspiracy was limited to a restraint of competition in buying and selling on the spot markets and included no joint agreement or understanding as respects sales in the Mid-Western area. In support of this view they cite the government's concessions that it "does not claim that each defendant 'entered into an agreement not to sell jobbers except in accordance with' the contract described in Paragraph 11 of the Indictment";[64] and that it does not contend that defendants were "sitting around a table and agreeing on a uniform retail price". And they assert that there was no evidence that respondents agreed not to sell gasoline in the Western District of Wisconsin except on the basis of spot market prices.

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[64] The standard form of jobber contract referred to in par. 11 of the indictment was described therein as follows: "The price of gasoline to the jobber shall be the average spot market price, determined by averaging the high and low spot market prices for gasoline of comparable octane rating published by defendant Platt's Oilgram for the Tulsa, Oklahoma, market, and by defendant Chicago Journal of Commerce on date of shipment. If the average spot market price plus freight to destination shall allow the buyer a margin of less than 5½¢ per gallon below the service station price posted by defendant Standard of Indiana, then the buyer and the seller shall share equally in the deficit below a 5½¢ margin. In certain States in which the Standard of Indiana has recently discontinued the posting of retail prices, such jobber margins have been calculated on the basis of a margin of 2¢ below the dealer tank wagon prices posted by the Standard of Indiana (such tank wagon prices having usually been 3½¢ below the posted retail prices)."

Conspiracies under the Sherman Act are on "the common law footing": they are not dependent on the "doing of any act other than the act of conspiring" as a condition of liability. *Nash* v. *United States*, *supra*, at p. 378. But since there was no evidence that the conspiracy was formed within the Western District of Wisconsin, the trial court was without jurisdiction unless some act pursuant to the conspiracy took place there. *United States* v. *Trenton Potteries Co.*, *supra*, pp. 402-403, and cases cited. We agree with the Circuit Court of Appeals that there was ample evidence of such overt acts in that district. The finding of the jury on this aspect of the case was also supported by substantial evidence. As we indicated in our discussion of the buying programs, there was sufficient evidence to go to the jury that the conspiracy did not end with an agreement to make purchases on the spot markets; that those buying programs were but part of the wider stabilization efforts of respondents; that the chief end and objective were the raising and maintenance of Mid-Western prices at higher levels. As stated by the Circuit Court of Appeals a different conclusion would require a belief that respondents were "engaged in a philanthropic endeavor". They obviously were not. The fact that no uniform jobbers' contract and no uniform retail price policy were agreed upon is immaterial. The objectives of the conspiracy would fail if respondents did not by some formula or method relate their sales in the Mid-Western area to the spot market prices. The objectives of the conspiracy would also fail if respondents, contrary to the philosophy of all the stabilization efforts, indulged in price cutting and price wars. Accordingly, successful consummation of the conspiracy necessarily involved an understanding or agreement, however informal, to maintain such improvements in Mid-Western prices as would result from the purchases of distress gasoline. The fact that that entailed nothing more than adherence to prior practice of relating those prices to the spot market is of course immaterial. In sum, the conspiracy contemplated and embraced, at least by clear implication, sales to jobbers and consumers in the Mid-Western area at the enhanced prices. The making of those sales supplied part of the "continuous cooperation" necessary to keep the conspiracy alive. See *United States* v. *Kissel,* 218 U. S. 601, 607. Hence, sales by any one of the respondents in the Mid-Western area bound all. For a conspiracy is a partnership in crime; and an "overt act of one partner may be the act of all without any new agreement specifically directed to that act." *United States* v. *Kissel, supra,* p. 608.

XI *Respondent McElroy.*

I

Respondent McElroy argues that the judgment of conviction rendered against him should be reversed and the indictment dismissed not only for the reasons heretofore discussed, but more specifically on the grounds that there was no substantial evidence that he had any knowledge of and participated in the unlawful conspiracy. His motion for a directed verdict at the conclusion of the case was denied by the trial court and the Circuit Court of Appeals held that there was no error in such denial. A question of law is thus raised, which entails an examination of the record, not for the purpose of weighing the evidence but only to ascertain whether there was some competent and substantial evidence before the jury fairly tending to sustain the verdict. *Abrams* v. *United States,* 250 U. S. 616, 619; *Troxell* v. *Delaware, Lackawanna & Western Railroad Co.,* 227 U. S. 434, 444; *Lancaster* v. *Collins,* 115 U. S. 222, 225. We have carefully reviewed the record for evidence of McElroy's knowledge of and participation in the conspiracy. But without burdening the opinion with a detailed exposition of the evidence on this point, we are of opinion that there was no error in the denial of his motion.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court affirmed.

It is so ordered.

The CHIEF JUSTICE and Mr. Justice MURPHY did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 346-347.—October Term, 1939.

The United States of America, Petitioner, 346 *vs.* Socony-Vacuum Oil Company, Inc., et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
Socony-Vacuum Oil Company, Inc., et al., Petitioners, 347 *vs.* The United States of America.	

[May 6, 1940.]

Mr. Justice Roberts.

I regret that I am unable to agree to the court's decision. I think that for various reasons the judgment of the District Court should not stand.

The opinion fully and fairly sets forth the facts proved at the trial, and to its statement nothing need be added. Some of the reasons for my inability to agree with the court's conclusions follow:

The Government relied for venue in the Western District of Wisconsin upon the commission in that district of overt acts in aid of the alleged common enterprise. I think the indictment fails to allege, and the evidence fails to disclose, the commission of any such act in the district of trial. I agree with the dissenting judge in the Circuit Court of Appeals that the case should be dismissed for this reason.

Paragraph 17 of the indictment alleges that the spot market tank car prices of gasoline substantially influence the retail prices.

Paragraph 18 is the only one that defines the charged conspiracy. It alleges that the defendants and others, knowing the facts pleaded by way of inducement (including the fact that retail prices follow spot market tank car prices), "combined and conspired together for the purpose of artificially raising and fixing the tank car prices of gasoline in the aforementioned spot markets. . . . and, as intended by them, defendants have artificially raised and fixed such spot market tank car prices of gasoline and have maintained such prices at artificially high and noncompetitive levels and at levels agreed upon among them, . . . *and have thereby* intentionally increased and fixed the tank car prices of gasoline contracted to be sold, and sold, in interstate commerce as aforesaid in the midwestern area (including the Western District of Wisconsin)" . . . It is further alleged that the defendants have arbitrarily, due to the form of their contract[1] with jobbers, exacted large sums of money from jobbers and, in turn, have intentionally raised the general level of retail prices in the midwestern area (including the Western District of Wisconsin).

The sole and only conspiracy charged is the agreement artificially to raise and fix spot market tank car prices of gasoline in the Mid-Continent field.

Paragraph 19 is devoted to the *means* by which the conspiracy thus described was "*effectuated*". The conduct of the defendants in this respect is described as their engaging and participating in two concerted gasoline buying programs, one, the East Texas buying program, and the other the Mid-Continent buying program, for the purchase by each of them from independent refiners in spot transactions of large quantities of gasoline in the East Texas and Mid-Continent fields.

After describing these buying programs in subsequent paragraphs, the indictment, in paragraph 25, alleges that the conspiracy "has operated and has been carried out in part within the Western District of Wisconsin". The method of its operation in that district is described as follows: "In pursuance of said combination and conspiracy, defendant major oil companies (with the exception of Standard of Indiana and Gulf) *have contracted to sell and have sold and have delivered* large quantities of gasoline in tank car lots to jobbers within said district at the artificially raised and fixed and non-competitive prices aforesaid and have arbitrarily exacted from jobbers within said district large sums of money. Defendant major oil companies (with the exception of Gulf) have solicited and taken contracts and orders for said gasoline within said district, sometimes by sales representatives located there, which district has been an important market for their product and they have required retail dealers and consumers in said districts to pay artificially increased prices for gasoline as aforesaid, all by virtue of said combination and conspiracy and pursuant to the purposes and ultimate objectives thereof.''

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[1] The form and use of this contract is described in paragraph 11 of the indictment.

Thus, after describing the conspiracy as one to buy on spot markets for the purpose of raising the price of gasoline on those markets, the indictment purports to charge, as overt acts, entirely unrelated transactions of individual defendants in the resale of gasoline to jobbers and at retail in the Western District of Wissin.

There is no evidence in the record that any of the purchases made by the defendants pursuant to the conspiracy was made in Wisconsin. But if the indictment could bear the construction that the charged conspiracy involved an agreement as to the terms of resale to jobbers and retailers, proof was lacking to support any such alleged agreement. Government counsel, both in pleading and in admissions at trial, so conceded.

In its Bill of Particulars the Government said:

> ''The Government does not claim that each defendant entered into an agreement not to sell jobbers except in accordance with 'the contract described in paragraph 11 of the indictment.' ''

At trial Government counsel repeatedly disavowed any charge in the indictment or any claim of the Government that there was an agreement amongst the defendants with respect to the price at which gasoline should be sold to jobbers or at retail. The evidence showed, without contradiction, that the Standard ~~Oil Company of~~ Indiana was the market leader in this area, and that when it posted its price none of the other defendants could sell at a higher price. It further showed that at various times Standard was forced to reduce its price to meet the competition of others. In this connection Government counsel made the following statements:

> '' . . . . We do not say that the Standard of Indiana when it posts a retail price first consults with the other companies to find out what retail price should be posted.
>
> ''If that is what you're worrying about, if you think we're charging you with sitting around a table and agreeing on a uniform retail price, don't worry because that isn't what we are charging.''

In its brief in this court the Government attempts to avoid the effect of these concessions by the statement that the defendants "were not free to sell as they pleased in the midwestern areas" and adds that "an obligation to adhere to their price practice of selling on the basis of spot market prices *was implicit in their unlawful agreement.*" This amounts to saying that the conspiracy was not the one charged in the indictment but was a much more ample conspiracy not only to raise the general level of tank car prices on the spot market by purchasing on that market but to raise, maintain, and fix uniform resale prices to jobbers and retailers. But this contention does not aid the Government for there is no evidence of any agreement to raise, or to maintain, jobber and retail prices, but, on the contrary, evidence that competition in such sales existed during the period in question.

Situations arise, and results ensue, from the prosecution of any agreement or conspiracy. Individual defendants may expect benefits to follow from their adherence to a conspiracy or agreement; but benefits or results, whether anticipated or unforeseen, occurring after consummation of the conspiracy, and because of it, are not overt acts done in aid and furtherance of the conspiracy. The authorities to this effect are uniform.[2]

The Government relies on *United States v. Trenton Potteries Co.*, 273 U. S. 392. That case is clearly not in point. There the conspiracy was to fix the prices of the commodity manufactured and sold by the defendants and to adhere to the prices so fixed. This court held that a sale made, pursuant to that agreement, in the Southern District of New York afforded venue in that district of an indictment for violation of the Sherman Act. The case would be apposite if the pleading and proof in the instant case were of a conspiracy to fix and maintain jobber and retail prices and adherence to the agreement in sales to jobbers and retailers. Neither pleading nor proof goes to any such conspiracy.

In accordance with the Government's contention, the trial court repeatedly charged that, in order to convict, the jury must find that a combination existed and that the combination agreed to, *and had the power to,* raise the tank car spot market price of gasoline. Of course, the jury was at liberty to find that any number of the defendants less than all fulfilled the conditions named by the court. By its verdict the jury found that those who were convicted, as a body, (1) possessed the power to raise the price and (2) agreed so to do. The trial court granted a new trial to a number of defendants, including Standard of Indiana, the largest major oil company doing business in the area.

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[2] Lonabaugh v. United States, 179 Fed. 476; United States v. Black, 160 Fed. 431; Rose v. St. Clair, 28 F. (2d) 189.

Standard was granted a new trial on the ground that there was no sufficient evidence to connect it with the conspiracy. By refusing new trials to the other corporate defendants the court has entered its own verdict that the others involved, excluding Standard, had the power, and agreed, to raise the level of spot market prices in the midwestern area. There is no jury verdict to that effect; no jury has ever passed upon that question, but an affirmative finding on that question is vital to the guilt of the defendants now before us. To affirm the judgment of conviction is to affirm a finding of fact by the trial judge without a jury and to deny the respondents the right to jury trial guaranteed by the Sixth Amendment of the Constitution.

The court's instructions to the jury were that they should return a verdict of guilty if they found that the defendants' actions had in any degree contributed to a rise in gasoline prices. The defendants insisted that the test was the effect of their combination upon competition, and that they could not be convicted unless the jury found that their agreement, and their conduct pursuant thereto, unreasonably restrained competition in interstate commerce.

There was substantial evidence that all the defendants agreed to, or did, was to act in concert to eliminate distress gasoline; that such gasoline was a competitive evil in that it tended to impair or destroy normal competition. There was substantial evidence that what they agreed to, and did, neither fixed nor controlled prices nor unreasonably affected normal competition and that their conduct affected prices only in the sense that the purchase of distress gasoline at going prices permitted prices to rise to a normal competitive level. There was no evidence that, as charged in the indictment, they agreed to, or in fact did, *fix* prices. The Court of Appeals, as I think, correctly held "that the substance of what was accomplished and agreed on was that the major companies would purchase from the independent refiners the latter's surplus gasoline at going market prices."

I think the defendants were entitled to have the jury charged that, in order to convict them, the jury must find that, although defendants knew the result of their activities would be a rise in the level of prices, nevertheless, if what they agreed to do, and did, had no substantial tendency to restrain competition in interstate commerce in transactions in gasoline the verdict should be not guilty.

As has been pointed out by this court, violation of the anti-trust act depends upon the circumstances of individual cases.[3] It is always possible to distinguish earlier decisions by reference to the facts involved in them but, in the course of decision in this court, certain principles have been laid down to which, I think, the charge of the court ran counter.

One of these firmly established principles is that concerted action to remove a harmful and destructive practice in an industry, even though such removal may have the effect of raising the price level, is not offensive to the Sherman Act if it is not intended and does not operate unreasonably to restrain interstate commerce; and such action has been held not unreasonably to restrain commerce if, as here, it involves no agreement for uniform prices but leaves the defendants free to compete with each other in the matter of price.[4]

No case decided by this court has held a combination illegal solely because its purpose or effect was to raise prices. The criterion of legality has always been the purpose or effect of the combination unduly to restrain commerce.

I think *Appalachian Coals, Inc* v. *United States*, 288 U. S. 344, a controlling authority sustaining the defendants' contention that the charge foreclosed a defense available to them under the Sherman Act. It is said that their combination had the purpose and effect of putting a floor under the spot market for gasoline. But that was precisely the purpose and effect of the plan in the *Appalachian* case. True, the means adopted to overcome the effect of the dumping of distress products on the market were not the same in the two cases, but means are unimportant provided purpose and effect are lawful.

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[3] See Maple Flooring Mfrs. Assn. *v.* United States, 268 U. S. 563, 579.

[4] United States *v.* American Tobacco Co., 221 U. S. 106, 178, 180; United States *v.* Union Pac. R. Co., 226 U. S. 61, 84-85; American Column & Lumber Co. *v.* United States, 257 U. S. 377, 400, 417; Maple Flooring Mfrs. Assn. *v.* United States, 268 U. S. 563, 568; Appalachian Coals, Inc. *v.* United States, 288 U. S. 344, 362-3, 373-4; Sugar Institute, Inc. *v.* United States, 297 U. S. 553, 597-8.

Ethyl Gasoline Corp. v. *United States* (decided March 25, 1940) is relied upon by the Government but, in that case, as in *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, maintenance of prices fixed by agreement was involved. So also in *Sugar Institute* v. *United States*, 297 U. S. 553, condemned features of the common plan had to do with the maintenance of announced prices and the abstinence from selling certain sorts of sugar. The combinations or agreements in these cases specifically prevented competitive pricing or took a commodity out of competition. This is not such a case.

As I think, the error in the court's charge is well illustrated by the following instruction:

> "If you should find that the defendants acting together, and those independent refiners acting in concert with them, did not have the power to raise the level of spot market prices in the spot markets referred to in the indictment, *or* that they did not combine for that purpose, *and* if you should find also that the purchase of the said gasoline by the defendants affected the spot market prices only indirectly and incidentally, *then* you may consider all the circumstances surrounding the activities of the defendants to determine whether they were intended to produce destructive competition and restore competition to a fairer base and produce fairer price levels. In such event, you may conclude that the purchase of such gasoline in the manner shown by the evidence was reasonable, and beneficial and not injurious to the public interest and that, therefore, the restraint of trade was not undue and not illegal, and you may acquit the defendants." (Italics supplied.)

This was to tell the jury that, if they found the combination had power and purpose to raise the general level of prices, they should convict without considering whether the defendants' concert of action was intended merely to remove a source of destructive competition, and without considering whether, as defendants contended and sought to prove, other factors in the industry, over which they had no control, limited their power to raise prices beyond a level which would be the normal result of the removal of the abuses engendered by the dumping of distress gasoline.

I think that the closing address of counsel for the Government is ground for setting aside the verdict.

It is true that to much that was objectionable in that address the defendants did not object or, if they did, failed to except. However, they assigned error to the whole of it and excepted to some of the more egregious violations of the canons of fair comment. I am of opinion that a situation is presented, which regardless of the technicalities of procedure, requires action by an appellate court. But, in any event, portions which are the subject of exception alone require a reversal of the judgment.

The final and closing address covers twenty-eight pages of the record. About five refer to the facts in the case. The balance consists largely of what the speaker himself characterized as "clowning" and personal references to counsel, parties, the court, and other subjects, the object of which apparently was to distract attention from the issues.

At many points counsel should have been stopped by the court and warned against continuance of such tactics.

The Circuit Court of Appeals said as to this matter:

"The Government does not undertake to justify much of the argument and misconduct complained of, but it earnestly insists that any error committed is not of a reversible nature. As the case is to be reversed, there seems no occasion for us to make a determination in this respect. We shall merely express the opinion that some of the argument complained of was highly improper and that, taken in connection with the misuse of the Grand Jury testimony, heretofore discussed, would present a very serious obstacle to the affirmance of the judgment."

I shall not quote those portions of the address which are quoted or summarized in the opinion of the court. It will suffice to make added reference to several portions.

One of the most reprehensible things a prosecutor can do is to attempt to put into evidence before the jury his own, and his colleagues', opinion as to the guilt of the defendants he is prosecuting. Such a practice brings before the jury the unsworn testimony of a sworn officer of the Government. This fact lends it undue and improper weight and injects an element into the case which is so insidious and so impossible to counteract that trial judges, in my experience, have never hesitated to withdraw a juror and declare a mistrial because of this violation of the canons.

In the closing address counsel said to the jury:

"Now, if anybody doubts, if anybody has the least shadow of a doubt about the fact that these men [referring to Government counsel] believe to the bottom of their hearts in the justice of the cause that they espouse here, I can disabuse their minds of that doubt at any time. They have been aggressive, and they have been forceful; their movements here have been intelligent, well-timed; and, as I said, they have come into this court room morning after morning, worn and tired almost to the breaking point. And it seemed to me that, I some times got the feeling, coming as they did then before you to present this evidence and this case, they were something like the Crusaders of old, saying 'God wills it, God wills it.' "

Objection was not made by counsel for the defendants at the time of this statement but when a somewhat similar statement was made a few moments later objection was noted and exception taken. I think, however, that the offense was so flagrant that the court itself should have intervened irrespective of any objection.

A little later these statements occurred:

"Now, just between yourselves, do you honestly think that these boys here (indicating counsel at government table) fired with the enthusiasm of crusaders, as I say, and having given to this case every ounce of mental and physical strength they have, and I myself have contributed, also, would be trying to convict these men unless that was the wish and desire of the highest officials in the government of the United States?"

After objection and exception counsel continued as follows:

"Now, just what do you think about it? Do you think these are three or four or five of these young fellows, as they have been calling them, just starting out on their own, running hog-wild? These are important men. I presume you all know they are engaged in a very important business, a business, the operation of which is almost a necessity in this country today. You don't think the government of the United States would allow four or five lawyers to come out here and prosecute this case against them, against their wishes, or that the Secretary of the Department of the Interior would allow us to do it, if he didn't want it done? And if he wanted it done it was because he believed, as did the other men in Washington, that there was a violation of law here, so outstanding and so withering and far-reaching in its effect that something ought to be done to stop it; and by that to tell the people of this country that you can't do these things and get away with it."

Again there was objection and exception.

Counsel did not confine himself to testimony as to the prosecutors' belief in the defendants' guilt but, in attacking the credibility of an important witness for defendants, essayed to contradict that testimony by a statement of counsel's own knowledge of facts. The quotation from the address will make the matter clear:

"I want to refer in a moment to something that made an impression on me.

"You know we lawyers have to depend—most of us are kind of tough guys. We have our own way of talking about witnesses. And one thing that we very often say and talk about is the three classes of liars. There is the plain liar, the damn liar, and the expert witness. And of all of them, the expert witness is the worst.

"There were a few of them here. There was Swensrud, the representative of the Standard of Ohio; there was Van Covern, and I think there was another one.

"But I just didn't think much of Swensrud's whole testimony, especially after I found out that he was giving testimony that they could ship gasoline in 1935 and in 1936 up the Mississippi River to St. Paul. I happen to be around the Mississippi River quite a little, and know quite a lot about it. In 1935 and 1936, you couldn't get a rowboat up the Mississippi River, north of Winona—because the Government was putting in these dams for the purpose of creating the nine-foot channel that you have read so much about. They had concrete clear across the river, spaced in so many ways that, as I say, you just couldn't get a rowboat up there. When Swensrud talked about gasoline going up that river, where I knew, because I lived there and was around there, that it couldn't be done, I just thought——."

After objection and a request that the court direct the jury to disregard the statement the court ruled:

"The jury may disregard it. I didn't hear it. I was thinking about something else."

Thereupon counsel resumed as follows:

"Now, if you will let me alone a few minutes, I will be through. If you don't, like 'Old Man River', I will just keep rolling along. I don't want to do that.

"Now I was referring to these witnesses who knew so much. There was Van Covern, Swensrud, and a fellow named J. D. Miller. He was the fellow who never looked at anybody, so you could catch his eye. They knew so much, in the way they were telling it to you, that it is impossible, just impossible to believe that they could know as much as they said they did about it. They just covered too much territory. I think all history, sacred and profane, gives us but one single example of a person who knew everything—and he was not only a man, but he was God. And He gave up His life in a shameful death upon the cross, between two thieves."

It is true that no formal exception was taken but the matter was highly prejudicial. The court should have dealt with it in some definite and positive way, which he omitted to do.

Considering what is set out in the opinion of this court, and the additional references I have made to the address, I am of opinion that counsel's argument was highly improper, as indeed the Government admits, and, further, that it was highly prejudicial. I do not think the court took proper means to counteract the impropriety and prejudice thus created and I think the only remedy available is to set aside a verdict ensuing upon such misconduct. Compare *Berger* v. *United States*, 295 U. S. 78, 85, 88, 89.

Mr. Justice McREYNOLDS concurs in this opinion.